MINUTES OF EVIDENCE

TAKEN BEFORE THE

ROYAL COMMISSION

ON

DIVORCE AND MATRIMONIAL CAUSES.

VOLUME III.

Presented to Parliament by Command of His Majesty.

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TAKEN BEFORE THE

ROYAL COMMISSION

ON

DIVORCE AND MATRIMONIAL CAUSES.

VOL. III.

Winchester House, St. James's Square, London, S.W.

THIRTY-SIXTH DAY.

Tuesday, 25th October 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace THE LORD ARCHBISHOP OF YORK.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
Sir FREDERICK TREVES, Bart., G.C.V.O., C.B., LL.D., F.R.C.S.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

Dr. JAMES SMITH WHITTAKER called and examined.

34,014. (*Chairman.*) You are a member of the Royal College of Surgeons, and licentiate of the Royal College of Physicians, and medical secretary of the British Medical Association?—Yes.

34,015. I think you have had before you the request received from the Secretary of the Commission, which is as follows:—The 9th March this year— saying that the King had appointed this Commission, and giving the reasons for it; and the Secretary says in that letter:—"I am directed by the Chairman on behalf of "this Commission to communicate with you in order to "ascertain whether your Association would feel disposed "to take into consideration the points which form the "subject of the inquiry of this Commission, and to "depute a member thereof to give evidence upon them "or upon such matters connected with them as, in the "opinion of your Association, their experience and "knowledge enables them to give useful assistance to "the Commissioners by so doing. For your guidance "I may mention that those upon which the Commis-"sioners themselves apprehend that the evidence of "your Association would be of interest and assistance "to them are the questions affecting insanity as a "ground of divorce, and any other medical matters "which, in the opinion of your Association or its "representative, bear upon the questions being con-"sidered by the Commissioners." As medical secretary of the Association, have you been instructed to explain the way in which this Association, as a body representing the medical profession, can render assistance to the Commission?—Yes.

34,016. Would you just state what it is?—"It "appears to the Association that the questions stated "in the reference to the Royal Commission do not "involve any points upon which it would be advanta-"geous to attempt to collect and analyse the opinions "of members of the medical profession generally, and "that the most useful service which the Association "can render is that of nominating medical practitioners "who would be recognised by the profession as com-"petent in respect of their experience and general "qualifications to represent to the Commissioners, not "their individual opinions only, but the present state "of medical knowledge upon subjects within the pur-"view of the Commission which have a medical aspect. "The only subject which the Association has felt able "to deal with in this way is the one specifically named "by the Secretary to the Royal Commission, that is to "say, the question of the recognition of insanity as a "ground for divorce," and we have named for that purpose Dr. Clouston, Dr. Robert Jones, and Dr. Hyslop.

34,017. Then you say at the end of this little memorandum that it is to be understood that the evidence that these gentlemen give "has not been considered by "the Association but rests upon their own responsibility "as representing medical opinion in the branches of "knowledge with which they are specially familiar?—Yes.

34,018. That is to say you consider these gentlemen come as really through the British Medical Association?—Yes.

34,019. For them to give evidence on those points which they have special knowledge of, and on those points which the Association thought they would be of assistance to the Commission upon?—Yes, my Lord.

Sir THOMAS SMITH CLOUSTON called and examined.

34,020. (*Chairman.*) You are Doctor of Medicine, Edinburgh, Fellow of the Royal College of Physicians, Edinburgh, and a Doctor of Laws. Are you Ex-President of the Royal College of Physicians, Edinburgh; Ex-President Medico-Psychological Association; formerly Medical Superintendent Cumberland and Westmoreland Asylum; Physician and Superintendent Royal Asylum, Edinburgh; Lecturer on Mental Diseases, Edinburgh University, and Editor of the "Journal of Mental Science"?—That is so.

34,021. I think those qualifications, Dr. Clouston, are sufficient to enable you to give us a great deal of valuable assistance upon the questions you have dealt with in your memorandum. Now I think, if you do not mind my suggesting it, the shortest way will be to ask you—as this has been most carefully prepared, I gather—to read to us the statement you propose to make, and then any of us can ask you some questions which strike us after that has been done. Will you kindly do so?—I will, my Lord. The first paragraph is merely about certain things I have done.

34,022. May we take it it will be transcribed into the print as it stands?—If the Commission likes, certainly.

(*The following is the paragraph referred to.*)

"(*a*) I have had over forty-five years' experience as the physician to two mental hospitals, one being the Royal Edinburgh Asylum, which has a population of over 800 patients and receives over 400 new cases of all classes of society every year. I have had in this way under my care over 15,000 cases of mental disease of every variety, and, in addition, have seen hundreds of cases in consultation. I taught the subject of mental diseases in the Edinburgh University for thirty-five years. I have also written largely on the subject of mental disease. I am the author of 'Clinical Lectures' on mental diseases, which has passed through six editions, and also of 'The Hygiene of Mind,' now in its sixth impression. I have devoted some attention to the subject of the divorce of insane persons. It has been my duty not only to treat my patients but to keep myself up to the most recent advances in clinical and pathological knowledge in regard to mental disease."

(*Witness.*) Beginning at the second paragraph:—

"(*b*) I am of opinion that there are certain forms of mental disease where the law should be so altered as to redress the present hardships to husbands and wives, but especially to make the better care and guardianship of children possible and prevent the birth of children with an undue liability to mental disease.

"(*c*) I am of opinion that the curability or incurability of such persons should be by far the most important test as to whether the question of divorce should be entertained or not. Divorce should only be applicable to persons who can be proved to labour under incurable mental disease, except in certain cases to which I shall afterwards refer.

"(*d*) The crux of the whole matter is whether medical science is now able with reasonable certainty to pronounce that any case is incurable, and to assign reasons for that conclusion that would be satisfactory to a suitable court of the realm. The second factor, next in importance to incurability, to be taken into account, is that one of the main proofs of such a condition of incurability must be held to be the length of time during which any patient has continuously suffered from mental disease. There are very few cases indeed where I should feel justified in giving an opinion that any case is incurable within 12 months after the onset of the disease, whatever the symptoms may be. In my opinion no divorce proceedings should be allowed in most cases within from three to five years after the commencement of the mental disease, the symptoms having been continuous during that time.

"(*e*) The symptoms present, taken along with their duration, which would prove incurability are in a considerable number of patients so definite, as proved by modern knowledge of the study of mental disease, and confirmed by recent pathological investigations into the state of the brain after death in such cases, that physicians of experience would have little difficulty in such cases in giving a definite opinion.

"(*f*) The largest class of such cases consists of persons who suffer from what is called 'secondary' or 'terminal' dementia. In the majority of such patients the disease has begun between the ages of 15 and 30, with acute symptoms at first, which have gradually passed into a state of mental enfeeblement where all the mental faculties are affected, where the patients are 'silly,' have no proper interest in life, and are quite unfit to care for themselves or to manage their affairs. This condition, when fully established, is absolutely incurable, while most of those patients live for many years. It is found to result from two causes: (1) the predisposing cause of a bad mental heredity; and (2) a gradual deterioration in the cells of the brain, which are the vehicle of mind. In a marked case of secondary dementia it is found after death by modern microscopists, working with the most recent methods, that at least one-half of the brain cells have either disappeared altogether or have undergone processes of disease which render them quite unfit to be the vehicle of normal mental activity. It is now a proved fact that a brain cell when it has undergone a certain degree of such disease or degeneration has quite lost the power of renewing itself or becoming again fit for its purpose as a vehicle of sound mind.

"(*g*) Such cases of secondary dementia have so lost the power of proper feeling that the fact of their divorce would make no painful impression on their minds or no impression at all. I have met with large numbers of such cases who have become insane soon after marriage; some have had children, and both those children and the sane husbands or wives have suffered extreme personal, social, and family hardship thereby.

"(*h*) I have seen cases where the early symptoms of such dementia were threatened and the patients recovered, but I have not seen any such case recover where the symptoms are well developed after five years' duration. A new method of treatment is sometimes effectual towards recovery in those early stages, but not after five or even three years' duration.

"(*i*) There are 170,000 registered insane persons."

34,023. You say "registered." Is it necessary all should be registered?—I mean in the books of the Lunacy Commissions; that is in the United Kingdom, England, Scotland, and Ireland; there are about 20,000 each roughly in Scotland and Ireland, and nearly 130,000 in England and Wales: "not including the imbecile and idiots from birth, known to exist in the United Kingdom, and no doubt several thousands must be added to this number who are under private care and not registered. It is a low estimate in my judgment—and I have looked into the question statistically so far as the information can be got from the reports of mental hospitals and the lunacy Blue Books, the figures being compared with my own—that there are 50,000 patients, or about one-third of the whole number of insane persons known to exist, who labour under secondary dementia of an incurable kind. Estimating one-half of those to be married, it produces the actual number of this class which would be possibly affected by any change in the law of divorce at 25,000 persons of both sexes.

"(*j*) The hardship is greater where the married women are so affected than in the case of the husbands, on account of the care of the children coming in. I think any facilities for divorce in those cases would be likely to be taken advantage of more by husbands than wives. This whole class would not feel or suffer injury by divorce proceedings.

"(*k*) The next class of incurable mental disease which would come under the scope of any new Act permitting divorce in such cases would be those suffering from what are called 'gross organic brain diseases.' These are usually accompanied by paralysis or aphasia, and are, in the great majority of cases where mental symptoms have developed, quite incurable. The numbers of such are not easily esti-

mated, but my own experience would point to there being in the United Kingdom 3 per cent. of the whole of the insane, or over 4,000 persons, half being married. Most of those patients are past middle-life, and the question of divorce would not be likely to come up in most of them."

34,024. Would you explain to me what is the difference, physically speaking, between the second class of case and the one of dementia?—The second class, my Lord, have all of them paralysis of the muscles conjoined with the mental symptoms. The secondary dementia cases are mental primarily and altogether. The others have the bodily disease of paralysis superadded.

"(*l*) There is a specific brain disease with mental symptoms called general paralysis, different in its essential nature and causes from the other cases of gross organic brain disease to which I have referred, which has hitherto been found to be incurable. It is thought to result from a specific poison (syphilis), this probably followed by a specific microbe, but its average duration from the beginning till the patient dies is only about three years."

I put in the word "average"; it does not exist there, but it is important because some last much longer: "and divorce would not probably be sought in many of those cases. It is one of the forms of brain and mental disease where we are looking forward to a means of cure, in fact, several recent workers have affirmed that they have cured some cases of general paralysis by the use of special vaccines and serums. My estimate from the reports of institutions is that about 5 per cent. of the new cases sent to mental hospitals suffer from general paralysis, and that there are about 2,000 or 3,000 persons labouring under the disease, half being married.

"(*m*) The next class to whom any change in the law of divorce would be likely to apply are the persons who suffer from epilepsy. In most of those there are mental symptoms present or a tendency to mental deterioration and dementia. Epileptics frequently marry, of which I absolutely disapprove on medical and eugenic grounds. It is a very hereditary disease, and epileptics almost certainly propagate insane, epileptic, and idiotic progeny. The disease appears first, in by far the largest number of cases, during the early years of life, before the age of 25. In every one of those which I have called the 'developmental' forms of epilepsy marriage should not be permitted, and if it is contracted a remedy should be possible to the partner by means of divorce. There are about 100,000 epileptics in the United Kingdom, according to statistics obtained by the recent Royal Commission on the Feeble-minded, of whom 32,000 have not as yet become mentally affected. Excluding the same epileptics and those under puberty and the manifestly imbecile and idiotic, there are perhaps from 7,000 to 10,000 epileptics to whom any change in the divorce law might apply, the disease being practically incurable, probably one-third of these being married.

"(*n*) There is a large class of persons, a few being in institutions for the insane, others in special institutions, and others under private care, who suffer from a congenital weakness of mind. Those, the Commission referred to divided into three classes, to one of which only would any change in the divorce law possibly apply. This class are the high-grade or 'congenitally feeble-minded' of the Commission, as distinguished from the 'imbeciles' and the 'idiots.' A considerable number of such cases of mild mental enfeeblement contract marriage and a large number of the females produce illegitimate children. In my opinion divorce should be obtainable in all such cases who have married, and, although this may be irrelevant to the inquiries of this Commission, the most stringent means should be taken by legal enactments to prevent the occurrence of pregnancy in all such feeble-minded young women. They are, in my opinion, and by general experience, the source of a vast amount of insanity, epilepsy, and general imbecility, crime, pauperism, and mental inefficiency in the community. The tendency of medical and scientific opinion at the present time is strongly in this direction. The Commission referred to estimate that there are 125,000 of the weak-minded persons of the higher grade, and I think a moderate estimate is that one-third of this class, amounting to 30,000 or 40,000 persons in this class, one-half being females, would come under the scope of any new divorce law.

"(*o*) There are certain forms of insanity charactised by 'fixed delusions, 'delusional insanity,' or 'monomania,' or 'paranoia,' persisting in the same form from year to year during the life of the patient, and mental physicians now regard such persons as being incurable. Those are persons who would most deeply resent divorce proceedings, and their disease might be aggravated by the fact that divorce proceedings were taken in their cases. I would make the time limit from the beginning of the disease until divorce proceedings were possible to be 10 years in such cases, because many of them are caused by various poisons, and a few of them do recover after long periods of mental disease."

34,025. Might I ask on that, if it does not interrupt you, assuming a law was passed allowing divorce, would you specially schedule those as not being allowed within a limit of time?—I would.

34,026. Are they sufficiently indicated for the purpose of definition in that paragraph?—In my judgment they are, my Lord.

"(*p*) There is a large class of the insane where the disease is brought on by the excessive use of alcohol and certain drugs, and who have become incurable thereby. Such incurable alcoholic insane are of two classes: (1) Those where the poison has so damaged the cells of the brain that they are in the condition I have described those of secondary dementia to be; (2) the second class are those where an uncontrollable craving for alcohol has existed for many years in despite of treatment and has become an incurable disease. In the first class, which may be called those of 'alcoholic dementia,' I would strongly recommend that divorce proceedings should be applicable, because not only are they incurable, but because another element comes in, namely, that they have brought on their disease through their own acts. I would also recommend, but not with such confidence, that the second class, alcohol cravers that is, which are commonly called 'dipsomaniacs,' should also come under any Statute which may be passed to alter the divorce laws, but I would give them 10 years in which to have a chance to recover. The actual misery that may be caused to wives or husbands, the ruin to families, and the hardships and injury to children are such in all the alcoholic cases that they seem to me urgently to demand a remedy by the State. At a low estimate there are 20,000 incurable alcoholic cases to which divorce proceedings might apply, half of them being married.

"(*q*) There is a class of the incurable insane to which it would probably be more difficult to apply any changes in the divorce laws than to any other. This consists of those who are subject to regularly recurring attacks of mental disease persisting during the whole life, with intervals of more or less duration of what is or looks like sanity. Those are called the 'recurrent' or the 'alternating,' or *Folie Circulaire*. The recurrence of such mental attacks, which often come on gradually, is so extreme a hardship, and the procreation of children so frequently goes on in such cases that in my opinion a remedy in some of them should be obtainable through divorce. Looking to the proportion of those recurring cases in asylums there are about 1,000 of them, half being married.

"(*r*) The last class of the incurable insane existing in any great numbers, to whom by possibility in a few cases divorce proceedings might apply, are those who become insane in old age as the result of arterial or other disease. A few of such cases of the milder type are curable, but the most are incurable. Probably it would be considered contrary to a reasonable and philanthropic view of mental disease to make divorce applicable in any such senile case.

"(*s*) Summing up cases of those persons to whom in my opinion any changes in the law of divorce could possibly apply on account of incurable mental disease or defect, I think they may be put down as 41,000. I

have no means of forming an opinion as to how many of the husbands or wives of those would be likely to apply for divorce, probably only a few.

"(*t*) The question, to which I have referred, of what number of the insane may be said to have brought on their disease by their own acts, conduct, and course of life, is a different one from the mere curability or incurability of the disease, and is one in regard to which it may be said that a medical man can express no more authoritative opinion than anyone else in regard to nullity of marriage or divorce. At one time I made a careful inquiry on this point, and my conclusions were that in not more than one-third of all the persons who became insane could the disease be attributed to their own acts or course of life. Excess in the use of alcohol, the syphilitic poison, and dissipated courses of life I found were the three chief causes, but there is an evident fallacy in coming to any certain conclusion on this important question. It consists in this, that the mental heredity is so much stronger in some cases than in others, that there are many people in whose cases a very little alcohol or dissipation will upset their mental working, and in many of them it is certain that if such causes had not been brought into operation in their youth, they would have become insane all the same as time went on."

This is a point, my Lord, on which there is much public error. It is a very common thing with many people to attribute nearly all mental diseases to the patient's own fault—to vice or alcohol. It is not so. At least two-thirds are, as it were, by the Act of God and not by their own conduct.

"(*u*) In regard to the tests for curability, I am in the habit of saying to my students: 'Never pronounce any case incurable while morbid mental depression or morbid mental exaltation, or morbid stupor and lethargy, persist as part of the symptoms. You may sometimes have such patients getting better.' Those are the cases that sometimes recover after many years of insanity. I have known a few such recover, even after twenty years."

I interject here a short paragraph: "To show statistically the actual chances of recovery in mental disease after three years' duration of the illness, I took the 13,172 patients who were sent to the Royal Edinburgh Asylum in the 35 years 1874–1908 inclusive. Of these 4,794 or 36·4 per cent. recovered. Of these recoveries 139 or 2·9 per cent. took place after three years' duration; 59 or 1·2 per cent. after five years; 20 or 0·2 per cent. after 10 years; 10 or 0·1 per cent. after 15 years; and only 4 or 0·08 per cent. after 20 years. The percentages in the total number of patients treated (13,172) were only 1·05, 0·48, 0·16, 0·08, and 0·03 after these five periods of years."

34,027. What class of case was that?—All classes, my Lord, and all conditions of society; from the highest grades of society to the lowest; and every class of insanity except congenital weakness of mind, of whom there were only a few.

34,028. (*Archbishop of York.*) What was the total percentage of recovery of the 5,000?—About 36 per cent., your Grace. You mean of the recoveries of those in the institution?

34,029. Of those you examined?—All my patients together; all those under my care; you can put them at about 36 per cent. of the total as recovering.

34,030. (*Chairman.*) The times of recovery you have mentioned?—Yes.

"(*v*) Then the same time limit, as I have pointed out, is not applicable to all classes of the insane. The age of the patients comes in too. There is, in most cases, a better chance of recovery and less risk of incurability in the young.

"(*w*) Then the question of heredity comes in. The whole class of patients who have sunk into the secondary dementia that I have referred to and whose disease began before 30 years of age have a strong heredity towards mental disease which comes on during the great process of brain development. There is in them a latent something wrong in their brains from the beginning. I have called that form of disease 'adolescent insanity,' and Kraepelin of Munich includes most of them under what he terms *Dementia Præcox*. They are all liable to procreate children who are liable to become imbecile or will become insane. It is the case, however, that a strong heredity to mental disease does not necessarily mean incurability, and I should be disposed, while not excluding it from the reasons which should be held as pointing to or confirming the conclusion of incurability by any medical man before the Divorce Court, not to make it a *sine qua non* or indeed to insist too much on its importance. Few families have a clean bill of health in regard to a bad mental heredity, and even with the worst heredity very brilliant men and women frequently are met with.

"(*x*) Should the divorce laws be so altered as to provide for nullity of marriage or divorce on account of mental disease, I think the chief evidence should be given by two medical men experienced in mental diseases, their reasons should be fully stated with a history of the mental disease in the case in question, that evidence should be given on oath, they should be subject to an examination by counsel, or agents, or relations of the persons in regard to whom the divorce proceedings are taken, and of course by the judge of the court who would finally decide the issues.

"(*y*) In regard to this question, some persons advocate the remedy of divorce in cases where mental disease has existed and been recovered from. I think this difficult question should be considered by the Commission. There is a risk of the recurrence of the disease in almost every case, and the question of children being procreated comes in as the strongest consideration in such cases. In most such cases I am in the habit of advising that no more children should be born.

"(*z*) It seems to me an important fact, and relevant to this enquiry, that in almost all the persons who labour under secondary dementia, not only is their own affection for relations perverted or dead, but it is commonly seen that the affection of their relations, especially that of husbands and wives, is gone, and they are neglected, and not visited. Perhaps I should except from this general statement the affection of mothers and maiden aunts and a few other pathetic examples where the whole life is devoted to a mentally dead spouse or relative. To eliminate the cases where there is mental deterioration following paralysis, ordinary senility and bodily diseases, there might be a difference provided for between primary mental disease what may be called technical insanity and mental deterioration, which is secondary and sequential to bodily disease.

"I am not prepared to state that all my professional brethren would agree with me in detail in the opinions I have given, but I think I can safely say that the general trend of medical opinion is now in the direction to which I have given expression. I and a very considerable number of the medical profession and of scientists, interested in what is now called eugenics, regret that the scope of the enquiry of this Commission could not have included questions relating to the marriage of persons with an extremely bad mental and nervous heredity, with criminality, and with positive signs of degeneration, and the prevention of fatherhood and motherhood on the part of those almost certain to produce a diseased and bad stock of citizens in the future. Many of us feel that the prevention of mental disease and of imbecility would also imply the prevention of much vice, criminality, and ineffectiveness among our citizens."

34,031. I was going to ask you this. Fortunately we have here a most distinguished man in the profession, but to most of us who are not in the medical profession some of this is a little difficult to appreciate. I was going to ask if it would be possible for you at the moment to put yourself into the position of any one of us who had to formulate a clause, assuming that insanity was made a ground for divorce by the Legislature; to express in that clause exactly what your view would be—I do not want you to do it now. I do not know whether you could do that in a way which would cover the whole of your points?—It would be an extremely difficult matter.

34,032. For instance, a clause would be that a petition may be presented for divorce on the ground of insanity which should be so and so. If you could do that?—One might try. It would be extremely difficult.

34,033. You observe if we accept the view you present we shall have to do that?—Certainly. I can only say I will try, my Lord.*

(*Chairman.*) Now perhaps you will commence, Sir Frederick.

34,034. (*Sir Frederick Treves.*) Your great experience is largely derived from insane poor; is that so?—No, Sir Frederick; in the Royal Edinburgh Asylum one half of the patients are private patients. It is an institution rather peculiar to Scotland, where both classes are combined in different parts of the institution.

34,035. So that your conclusions are not solely derived from your insight of insanity amongst the poor?—They are not.

34,036. It applies to all classes?—It applies to all classes.

34,037. You are quite emphatic that no opinion should be given as to the incurability of the insanity within 12 months from the onset?—Certainly; I am quite clear on that point.

34,038. You spoke of three years. Secondary dementia is that which is secondary to some primary mental disease?—That is so.

34,039. It is not clear whether you date your three years from the commencement of the primary or the secondary disease?—I am sorry; but from the commencement of the primary disease.

34,040. Speaking of the secondary dementia of three years' duration, one rather gathers it would be from that date——?—I was not sufficiently specific, I admit.

34,041. Then you are convinced that there is, as you express it, little difficulty in stating that a case is incurable?—Little difficulty in giving an opinion with reasonable certainty. I do not claim absolute infallibility in that matter.

34,042. And I do not suppose anybody could in dealing with the insane?—I do not think any sensible man would.

34,043. With regard to these 25,000 patients with secondary dementia, do you think that the dread of divorce proceedings would aggravate their condition?—No, they are emphatically the class who would not feel it.

34,044. Who would not appreciate it?—From the very nature of their brain and mental condition it would make no difference to them.

34,045. Then another point is this: it has been said that the insane derive comfort from the visits of their friends, and the visits of their husbands and wives. Do you think these 25,000 people would suffer by being deprived of such visits?—Some of them might undoubtedly.

34,046. Because on page 5 of your proof you say that in persons who labour under secondary dementia not only is their affection for their relatives perverted or dead, but it is commonly seen that the affection of their relations, especially that of husbands and wives, is gone?—You see, I qualify the absolute statement by the word "commonly" with regard to the relations; I do not mean to say in all relations; very far from it; but commonly.

34,047. You say almost all, speaking of secondary or terminal dementia only?—I would restrict myself to the word "commonly" in a large number of cases. There are so many cases to the contrary that it would not be fair to the relatives of such persons to make an absolute statement.

34,048. And you say you have not seen a single case recover when the symptoms are well developed after five years?—That is so.

34,049. This leads to a very important fact. You speak of 25,000 people of whom one can say this: They are married; they are incurable; they are unable to appreciate divorce proceedings; and they are for the most part incapable of deriving any comfort from the visits of their friends?—That is so. As a kind of illustration I should like to say what I saw in the visiting room of the institution once. I saw a case of secondary dementia brought in, and her child was there, perhaps four or five years of age; and the mother of the patient who brought in the child had some apples or cakes. The patient went for the apples and cakes, and took no notice of her own child. I only mention that as an instance.

(*Chairman.*) Would you mind asking how to the ordinary lawyer he would distinguish secondary dementia?

(*Sir Frederick Treves.*) I think, my Lord, the position is this. It is not a question of the wording of a clause, but the question of an answer to this question. Is this individual person, in your opinion, suffering from incurable insanity. That is the position, Dr. Clouston is it not?—Yes.

34,050. (*Chairman.*) Is there any special definition of secondary dementia, or rather explanation of what it is?—Well, we people who have written on mental diseases are very chary of giving verbal definitions of things. We may describe cases, as Sir Frederick Treves has asked me just now to do; but a verbal definition, apart from it, might be tried; but I think you would find a good many difficulties.

34,051. Sir Frederick suggests it would be covered by the word "incurable"?—I think so.

34,052. (*Sir Frederick Treves.*) Then I take it you would exclude general paralysis of the insane?—I should.

34,053. That is a very common trouble?—Yes.

34,054. I suppose it is nearly always due to syphilis?—Commonly; but it has such terrible bodily accompaniments, and it may be said this is a bodily disease, and it may be misconstrued in that way.

34,055. With regard to your third class—the epileptic—and with regard particularly to the developmental epilepsy which appears very early——?—Oh, sometimes from birth.

34,056. Do not you think that is rather a matter for nullity of marriage than divorce?—Nullity certainly. The case I had in my mind was a young woman who looks nicely and well, and perhaps bodily attractive, and it is not apparent on the surface that she is an imbecile; but when you come to study her life and take notice of her faculties she is really an imbecile. That is the class of case that I mean with regard to divorce proceedings.

34,057. Or nullity, I take it?—Yes, nullity; probably nullity would be more logical as she was not fit to get married from the beginning on account of her mental condition.

34,058. I see you say these unfortunate people propagate insane and epileptic progeny, but I do not know that the divorce of the epileptic prevents the epileptic marrying again; or do you follow it up?—I think if divorce did not prevent him marrying again it would not fulfil the purpose I have in mind.

34,059. In other words you would follow that clause on by saying that if an epileptic is divorced he or she is *ipso facto* prevented from marrying again?—Certainly.

34,060. You are very emphatic on that?—Very emphatic on that point. I have seen so many evil results.

34,061. Then as to the congenital feeble-minded, you have no hesitation in saying that these cases can be proved?—Well, feeble-mindedness is like light and darkness; they run into each other and there is no line by which you can tell a mildly feeble-minded person from the person who has the right to enjoy his civil rights. There are borderland cases that would present considerable difficulties, I admit.

34,062. There would be difficulty there?—There would be difficulty there.

34,063. Do not you think it might be argued that in some of these feeble-minded cases you would cause them great distress by instituting divorce?—Yes.

34,064. And by divorcing them do not they lose a guardian?—That is a legal point.

34,065. But they might lose a very good friend?—They might. If it is the wife she would lose her husband's relations, such as her husband's mother and

* Communications have been addressed to the British Medical Association with regard thereto, but no draft clause has been received.—H. G. B.

so on—who would look after her; she would not do so any longer, naturally.

34,066. And she would be made miserable by that?—Certainly, but the misery would not be so deep-seated and would not be the same as in the case of a sane person; it would be shallow misery.

34,067. Then if you do divorce these persons they could marry again unless you added the same clause as in the case of the epileptic?—Yes.

34,068. The congenital feeble-minded person divorced on such a ground should not be allowed to marry again?—No.

34,069. And unless that was done you think your suggestion would be almost null and void?—I think so. At all events it would not be so effective.

34,070. Then the fifth class, the delusional insanity. They would resent divorce?—Yes, it would add to their cases. It would add to their suspicions; they are, of course, very suspicious.

34,071. It would be the one thing that would make their suspicions tangible?—Yes, beyond a doubt.

34,072. But you think that 10 years in such a case would enable you to say the man was incurably insane?—Yes, the delusionally insane are worse to be dealt with by their parents and guardians because they have suspicions against them, and if divorce proceedings were to take place it would aggravate such feelings.

34,073. With regard to alcoholic dementia, I daresay the Commissioners would like to know this. You are speaking of a condition very much beyond that of an habitual drunkard?—Certainly.

34,074. You are speaking of a person who has to be confined?—Who has no mind.

34,075. I thought the Commissioners might not realise it?—A person who very likely at dinner time could not tell you what he had for breakfast.

34,076. And those cases would be easy to prove?—Yes.

34,077. They would be incurable?—Yes.

34,078. And they would not suffer from the idea of divorce, or the visits of their friends ceasing?—No, and many people would say in some cases that if they did so it served them right.

34,079. Then with regard to this most unfortunate class of person, the subject of alternating insanity. I suppose they are often very dangerous?—Very dangerous, and especially very dangerous in this way: at the beginning of the periods of excitement I have known case after case spoil their reputation, lose their fortune and reduce themselves to penury by their acts.

34,080. Many witnesses have brought forward cases which are no doubt cases of alternating insanity where a man has been in an asylum and then come out and beaten his wife, and gone back to the asylum again?—Yes.

34,081. Would you think that three attacks——?—No, I would go for more than that. There are many cases of adolescent insanity where there are three or four or five attacks and that then get quite well. You know when one states a number one merely wants to give an idea, and to be on the right side I would say 10 recurring attacks.

34,082. You would rather leave it at 10?—Well, I have no great ground for that; but more than three, sir.

34,083. Then with regard to senile dementia, you would exempt that altogether?—I would exempt it altogether.

34,084. Because a young woman might marry an old man for his money and make use of the fact that he was suffering from senile dementia to get a divorce?—Yes.

34,085. You would exempt it entirely?—Yes, on the ground that the disease is primarily bodily, not primarily mental.

34,086. Then in making insanity a ground for divorce do you lay any stress on that form of insanity which may be said to be due to misconduct on the part of the patient or not?—Well, sir, as you see that is more a question of public policy—more an ethical and social question than strictly medical; but I do attach considerable importance to it as being an extra reason for altering the divorce laws. Say in the case of alcoholic cases, the fact that those people had brought it on would strengthen the opinion in my mind that a remedy ought to be provided.

34,087. With regard to the test of incurability, you think three years in the case of secondary dementia would suffice?—Yes.

34,088. In Germany and Sweden it is three years?—Yes.

34,089. In New Zealand it is 10 years for all cases of insanity?—Yes.

34,090. What do you think of that?—I think 10 is too long—misery prolonged over 10 years. You do not get your remedy soon enough.

34,091. Then many points have come up which the various witnesses have raised. What do you think of this? It has been said that while lunacy might be a ground for divorce in the early years of married life it would be very improper that it should be a ground for divorce after the marriage has continued for a period; one witness giving a period of 15 years. Do you make any distinction on that head?—Well, that is a point, I confess, I had not thought of, and one would require to think about it. It is also a question of public policy rather than a strictly medical question. The hardship would certainly be greater and the public feeling against it might be stronger.

34,092. You think those that oppose insanity as a ground for divorce would not oppose it so vigorously if it were not applicable, say, 15 years after marriage?—That is the view I take, precisely.

34,093. Then with regard to the machinery for this matter. Sir George Lewis thinks that the decision as to incurability should be based on the evidence of the superintendent of the asylum and three doctors. Do you think that is excessive?—Three other doctors?

34,094. Three other doctors, making four in all?—I should think that two competent doctors should be quite sufficient, giving the judge an absolute power to call in other evidence if it were necessary; but I do not know any fact in law that requires the evidence of four competent witnesses. Why should this require more evidence than any other fact that is to be proved before a court?

34,095. Then many witnesses have said this: If you include insanity why not include any other disease, such as paralysis. Perhaps you would tell the Commissioners your feeling as to the difference between hopeless insanity and a case, say, of paraplegia?—Well, there is an essential medical difference between that and a case of technical insanity; taking secondary dementia, the disease from the beginning has been a disease of that part of the brain which is the vehicle of mind. It has bodily symptoms in most cases, but those bodily symptoms are not necessary. It is a unique disease. In those cases where I have expressed the opinion that mental disease should come in, but where bodily symptoms are primary, there must be mental symptom superadded. But they are not essential concomitant parts of the disease.

34,096. A man with helpless paraplegia may be a brilliant man and be a great comfort to his wife and friends?—Yes. I confess that point would require to be very carefully guarded in any law on the subject so that public sentiment did not squash the whole thing.

34,097. And you would say from a medical point of view that those cases are absolutely distinct?—Yes.

34,098. The helpless subject of secondary dementia and the intelligent man who has paraplegia?—They are absolutely distinct in 99 cases out of 100, but in surgery and medicine there are certain borderland cases which bother people. I would give them the benefit of the doubt and would not divorce them.

34,099. The point that these witnesses argued was that all these troubles are exactly the same?—No, that is not so.

34,100. Then there has been some anxiety by some that you might include what they call nervous debility cases. I do not know that we know much of that?—No.

34,101. But there would be no difficulty in defining what you call incurable insanity?—No reasonable difficulty.

34,102. It has been said that you should not grant a divorce for insanity if the petitioning party had committed adultery?—I have not thought of that point. That is purely a legal question, of course.

34,103. What would be your feeling in the matter of criminal lunatics detained during His Majesty's pleasure?—Divorce them.

34,104. Absolutely?—Absolutely all of them.

34,105. Some of those are the worst cases you can think of?—Oh, the very worst cases—most dangerous. You will have public sympathy with you there.

(*Chairman.*) Would you ask, Sir Frederick, how many there are of those.

34,106. (*Sir Frederick Treves.*) How many are there at Broadmoor?—I would say there are certainly 800 in Broadmoor; 150 in the Perth Prison in Scotland and about 200 in the Dundrum Lunatic Asylum in Ireland. If you put it at 1,000 in the United Kingdom you would be under the mark.

(*Sir Frederick Treves.*) A witness has drawn attention to a case where the man was sent to prison for life as a criminal lunatic who was married to a woman of 22.

(*Chairman.*) That was an instance given?

(*Sir Frederick Treves.*) Yes, my Lord.

34,107. Then it has been said that in what may be called a borderland case the knowledge that the subject may be divorced is calculated to drive him or her out of their mind. In one of these suspicious cases the man knows that he may be, or the woman knows that she may be, divorced on the ground of unsoundness of mind, and it has been said by two or three witnesses that that is likely to drive one of these uncertain-minded people into actual insanity. Do you lay much stress on that?—I should not lay much stress on that. People who are actually getting into insanity—it is the unreal things that have more weight with them than the real ones.

34,108. (*Archbishop of York.*) May I take it that one great object you have in view in the suggestions you have made is to prevent the birth of children with a tainted heredity?—That is so as far as it can be reasonably and rightly done.

34,109. Would it be going too far to say that that is your main desire in the suggestions you have made?—No, your Grace. I have seen so very much of the hardships of those secondary dementia cases. It was a motive in my mind undoubtedly—a determining motive—a strong motive. I would not say the main motive.

34,110. With regard to these cases of secondary dementia or terminal dementia I presume after the disease begins to manifest itself, in such a case there would be very little danger of cohabitation between the parties?—I have known such cases being taken out by their husbands or wives, as the case may be, and such procreation of children actually occurring.

34,111. Even in case of——?—Commencing secondary dementia, and going on when the patient was weak minded. I admit those cases are exceptional, but I have known it occur.

34,112. You agree that the cases are very exceptional?—Yes.

34,113. Where one who had secondary dementia would cohabit at all?—That is so.

34,114. So that the danger of children arising from such a union is small?—Yes.

34,115. Then with regard to cases of what you call gross organic disease, I think you agree that there, application for divorce would not be likely to be very common?—No, and the question of progeny scarcely occurs.

34,116. And there, too, the question of progeny would scarcely occur?—That is so.

34,117. In any case that amounts to only about 3 per cent. of the whole of the cases?—That is so.

34,118. Then with regard to general paralysis?—In these cases we may take it a man or woman affected is really a dying man or woman from the beginning, although children are, unfortunately, procreated in the early stages. I do not say it is a practical question to deal with—that early paralytics procreate children.

34,119. That might be eliminated?—Yes.

34,120. And it would be very hard where a man or woman was really dying that divorce should be permitted?—Yes, I have brought that out in my evidence.

34,121. But it would be a case of very pronounced insanity?—Of pronounced insanity. In short, general paralysis has this feature, that it is not general paralysis at all unless you have mental symptoms. You cannot call any case general paralysis without mental symptoms.

34,122. Then with regard to dementia and gross organic disease and general paralysis, the point of public policy preventing the birth of children scarcely arises?—Not compared with the other cases.

34,123. With regard to epileptics I think you said that the disease very usually manifests itself before 25 years?—Yes, in the largest number of cases.

34,124. But it might be compatible with a considerable degree of good health at other times?—Yes. There is the danger so far as procreation is concerned.

34,125. But at present anyone thinking of marrying, say, a woman who had some epileptic tendencies, would hesitate to do so because he would be aware he is tying himself for life?—If he were a wise man; but men are not always wise on the marriage question.

34,126. I quite agree; but would not the natural tendency be to say: Well, it is worth while to take the risk?—That is what they say.

34,127. And they would say it more if, when the risk occurs, they may procure a divorce?—Well, that view of it did not occur to me. A man who took that view—you would not think much of his ethical character.

34,128. No, but I think a man might say, might he not—not in so many words, but he hears of a girl he is attached to having some really epileptic tendencies—well, I will take the risk of its reappearing, and if it does there is a limit?—From a certain point of view you might say so. I do not think it would practically occur to many ordinarily constituted men to take such a view.

34,129. I only say it might increase such short-sightedness and folly as exists sometimes?—It might, but in very few cases.

34,130. Then with regard to the large and distressing class of the feeble-minded. I gather you would couple any divorce with a legal prohibition to re-marry?—Certainly.

34,131. Then might I ask again about the position that would lead to. Take the feeble-minded girl or woman. She would be, as I think was suggested before, without natural guardians?—Yes.

34,132. She would be without power to re-marry, but she would not necessarily be always detained under restraint?—That is so.

34,133. But she would also retain all those unfortunate physical tendencies which feeble-minded people have?—I presume her own blood relations would not cast her off necessarily. She would still have them. And I think the tendency, looking at the report of the Feeble-Minded Commission, is to involve the future care of such persons by the State to a much larger extent than is the case now. I concur entirely with that report.

34,134. You would couple what you have said about divorcing the feeble-minded with an earnest hope that provision might be made for permanent control of these women?—Certainly. You asked me if the question of progeny was a dominant motive. I say it was a dominant motive in forming my opinion with regard to the feeble-minded.

34,135. With regard to the case of paranoia and delusions and the like, may I take it that in those cases there are very often most surprising cures?—A few of them; after many years a very few.

34,136. It has been suggested that in cases of paranoia the cures are sometimes of the most remarkable character?—The remarkable cures being so very rare make a tremendous impression on one's mind, and they are talked about, but there are very few of them.

34,137. In the case of delusion, delusional cases; would not those be cases in which the knowledge that divorce proceedings might be taken would be, if not

an aggravation of the disease, at least a continuous distress?—A continuous blister?

34,138. Yes?—Certainly.

34,139. So that a man might divorce his wife because she had delusions and marry somebody else?—Yes.

34,140. And make himself comfortable and happy and leave the poor woman for no fault of her own with abiding and lifelong distress?—I think such cases would occur.

34,141. Under which of these categories of insanity would you place the distressing case of insanity produced after child-birth?—Well, they are fortunately the most curable of all classes; they recover in the proportion of 80 per cent., and they recover also from all the symptoms of their disease, and do not exhibit any traces of them. There are only 20 per cent. of them that you have to deal with and they usually fall into secondary dementia after a few years—the 20 per cent. that do not recover.

34,142. Then how long would it take in every case to recover?—In most cases the puerperal woman recovers in about six months. We look upon it as a poison—that a toxin has caused it.

34,143. Might it increase it if she was thinking that she would not get better and her husband might divorce her?—But she would be told by the doctor every day that she would get better.

34,144. Have you heard that one of the reasons why insanity has been eliminated from some of the homes in the United Kingdom is that the public sentiment does not propose to subject a woman to divorce because of something that happened really through her husband?—I was not aware of the fact.

34,145. Then with regard to alcoholic dementia; you lay stress there on the fact that the mental disease has come through the man's own act, but there are many other most painful diseases that have to be put up with in married life which have been brought about by the person's own fault?—Certainly.

34,146. Then lastly with regard to those that have what you would call recurring attacks, of which Sir Frederick was speaking. They only amount to about 1,000?—About that.

34,147. An almost inappreciable number?—Looked at from the population point view; but a thousand cases in the Divorce Court would amount to a great deal in the year. But it is not possible that they would all come, of course.

34,148. But you would say it is almost impossible even for an expert like you to say how many recurring attacks would prove a case incurable?—That is so.

34,149. Then that difficulty would be vastly more felt in the case of two ordinary medical witnesses brought before the court?—I should have at least one of the witnesses an expert, your Grace. We are all getting specialised in medicine and surgery now, and you must have a man who has had experience.

34,150. I will go on with that now as you have brought up the point. It is a little difficult always to decide who are experts and who are not, is it not?—Well, you might put it in that way. We do not ticket ourselves as experts, but we are experts notwithstanding. If one of us had anything wrong with his eyes one would know quite well that an ophthalmic surgeon is an ophthalmic surgeon, and one would go to him.

34,151. It would be left to the judge to decide if a man were an expert or not?—An expert would have to prove he was an expert by the experience he had had.

34,152. To the satisfaction of the judge?—Yes.

34,153. In a comparatively small number of cases, though, it would be difficult to say which would recover?—Undoubtedly, and yet when fully developed they are quite well marked.

34,154. With regard to criminal lunatics I think you said there were about 1,000 out of the 150,000?—Roughly speaking.

34,155. Almost a negligible quantity comparatively?—But a very large number of cases.

34,156. Out of those suffering from secondary dementia, gross organic disease, general paralysis, there may be cases that arouse pity, but there is not much danger as to children?—No, the progeny question is a minimum in those cases.

34,157. But in cases of paranoia and delusion and recurring attacks it is very difficult to decide whether a case is curable or not?—The difficulties are greater in them than in the other cases.

34,158. That rather narrows the problem?—It narrows the problem somewhat.

34,159. With regard to the point of recovery I think you said that the chances of recovery in mental disease were much greater in the cases of the young?—That is so.

34,160. Would you put any limit when you speak of the young; say 30 or 25?—Well, about 30.

34,161. Would not it be just, in case of the younger married couples, if mental disease showed itself that there would be a greater desire for divorce?—Naturally.

34,162. Therefore just where the recovery was most likely would be where the divorce would be most pressed for?—Well, I take incurability as the crux of the whole business. That is assumed in any case before anything is done—incurability.

34,163. But there would be a greater tendency to try and get incurability proved by some expert in the case of young married couples than if they had passed middle life?—Naturally.

34,164. With regard to the distinction between bodily disease and mental disease, I should like to ask this question. Is the basis of your desire to give relief to spouses who are troubled with mental disease of one of them, that the happiness of their intercourse should be secured—that the happiness of the marital intercourse should be secured?—I would put it in this way, that the great object of marriage would be better fulfilled if divorce were permitted in certain cases; marriage is a great social institution.

34,165. May I put it to you that in marriage there is very often a very strong desire for physical as well as mental and social intercourse?—Certainly.

34,166. Therefore the case may well occur where one of the spouses is quite prevented by gross physical disease, or painful diseases like locomotor ataxy or otherwise, to give any possibility to the other spouse of the pleasure of any physical intercourse?—Yes. Still, if the mental condition of both is a condition of sanity you entirely remove such a case from what I am talking about.

34,167. Yes, in your mind; but the principle is that persons who are prevented by disease from fulfilling the hopes of their married life; where is the difference in principle between mental and physical diseases from that point of view?—It seems to me there is a very distinct principle in fact: that in the case to which I have referred one of them is dead mentally, socially, and as to civil rights. He or she is a cipher—is not to be taken into account with regard to any civil bargains, and even the responsibility for crime. Those things constitute an entirely different principle.

34,168. But they are still capable of arousing affection?—But I would say that that case is in a different category altogether from the case I have been thinking of and giving evidence on.

34,169. In your mind, precisely; but we have to consider the bearing of these questions on the whole public attitude towards marriage, and if a person chooses to think they are wronged because the physical part of marriage is not possible, may not they say: Why should I be debarred from a remedy when another person who is shut out from the mental and social side of marriage is able to get it?—Would your Grace allow me to say that that does not concern me as a doctor. That is an entirely different question from those to which I have devoted my attention or can give any opinion upon.

34,170. That leads me to one last question that I ought to ask. I take it that in the evidence you give you have not felt it necessary to consider the bearing upon your suggestions of the teaching with regard to divorce in the New Testament?—As your Grace very well knows, in Scotland we have somewhat wider ideas of divorce, and I have been brought up under the Scotch idea that divorce may be pronounced for desertion and other causes, and I confess that

motive to which you allude has not influenced my mind.

34,171. (*Mrs. Tennant.*) Can you separate into classes the kinds of insanity liable to transmission?—Not in a scientific way. I may say roughly that all kinds of insanity are liable to transmission, but there are some varieties of mental disease which are much more hereditary than others. You cannot have a cut line of demarcation between one that is transmissible and one that is not. Some are more transmissible than others.

34,172. Do you think the progress of scientific knowledge will enable such a line to be drawn?—We hope everything from the progress of science, but as yet we are not able to do it.

34,173. In the interests of the children it is important that you should not allow the marriage of insane people even though their insanity be curable?—I do not quite follow your question.

34,174. I am sorry. You say that "there is a risk "of the recurrence of the disease in almost every case, "and the question of children being procreated comes "in as the strongest consideration in such cases"?—Yes.

34,175. Then the question of children may arise in cases of that kind, which may recover, as in other cases?—Yes, that is one of the difficulties. Medical men see the extreme difficulty of marriage of people who have had attacks of insanity. Scientifically we say no, but practically we know it could not be carried out.

34,176. You do not range yourself then with the persons you speak of, who advocate divorce in those cases?—No, it would be too hard.

34,177. Do you include the case of insanity after childbirth in what you have said about recurring attacks?—They very seldom recur except in subsequent childbirth. It is not a recurring form of insanity as a rule. There is a liability to recur at subsequent childbirths, but not necessarily.

34,178. I should like to ask you a question on the proceedings which you outline on the last page of your proof. What protection would you provide for the person against whom a divorce action is being brought? If he or she wished to call witnesses, and succeeded in calling witnesses of as much eminence as the two called by the person wanting the divorce ——?—I would give the court power and the duty to provide evidence of as good a character on the one side as the other. I believe it is the fact in the divorce proceedings in Scotland that any evidence is paid for by the court.

(*Chairman.*) You may take it, I think, Mrs. Tennant, that there are cases in England where the Official Solicitor is called in where the persons themselves have no means of fighting it.

(*Mrs. Tennant.*) I was thinking not only of persons who had no means, but of persons who had ample means, and of persons whose relations might help.

(*Chairman.*) I remember, speaking of poor cases, where a person has been in an asylum, and where the Official Solicitor has been directed to take up the case.

(*Witness.*) I assume that the onus being on the person wishing to come for the divorce, the interests of the other party would be very fully protected by the court.

34,179. (*Mrs. Tennant.*) May I take it you would like to see officials of the State whose duty it would be to investigate, and give evidence in such cases?—Naturally a special court.

34,180. I mean independent scientific evidence?—Well, many of us believe that expert evidence would be given to more satisfaction to the courts if certain persons were appointed as judicial official advisers to judges. But about that there is a great deal of difference of opinion.

34,181. (*Chairman.*) There are at present in a certain class of cases in the Divorce Court specially selected medical men nominated to inspect?—I have long held, my Lord, that that would be a very improved means of getting reliable expert testimony by the court.

34,182. That is what is done now in a certain class of case that we all know about?—Yes, I have always thought that kind of calling of evidence would be an important addition in the carrying out of justice, as the personal element would be eliminated.

34,183. (*Mrs. Tennant.*) It would be important to eliminate the cross swearing of ex parte expert witnesses; you can imagine the position of a judge being more than ordinarily difficult in cases of this kind?—Yes.

34,184. Particularly if it were a borderland case?—Yes.

34,185. (*Sir Lewis Dibdin.*) I just want to ask you, as an ignorant person, on what basis do you say, taking the first class of secondary dementia, that one half of the persons are married. What is that founded on?—Oh, founded on a rough experience of the asylum reports, about one half. I believe if you take the general population about 62 per cent. are married as against the others unmarried; and of course some of them come in young. It is a rough statement; it is sufficiently accurate.

34,186. It would not be obviously the case, would it, that the proportion of married people amongst the insane would be the same as in the general population?—I take it they are somewhat fewer, but not so very markedly as you might imagine.

34,187. But that is the experience of your hospital, that about half are married?—About half. You may put it at a little less than half, between one-third and a half.

34,188. In the case of epileptics they are not all confined. You say one-third; is that based on anything more than a guess?—A third married?

34,189. Yes?—That is a guess.

34,190. That is a pure guess?—Yes, but then I have had a lot of experience and it is a guess founded on one's experience. I mean, you may know a thing pretty nearly accurately and yet not be able to put your hands on statistics and put them in percentages.

34,191. I am asking for information?—Yes; that, if you like, is a guess, but it is a guess founded on experience.

34,192. Then with regard to epileptics, your ground, as I gather, for thinking that epilepsy ought to be a ground for divorce is the danger from the chance of there being children?—That was my primary reason with regard to epileptics, it being a most hereditary disease. But epileptic insanity in itself is a deteriorating insanity and they become demented if the epilepsy lasts more than a certain number of years.

34,193. Then they come under one of the other classes, perhaps?—Yes, but epilepsy is still the dominating factor.

34,194. You think that epileptics ought not to be allowed to marry?—If I had the making of the laws that would be so.

34,195. And that is on the ground of the children?—The children.

34,196. I believe until there has been that mental deterioration, which comes on gradually—until that has become marked—between the attacks there is no particular reason why epileptics should not be married, is there?—Scientifically there is every reason, but I admit practically it is an extreme hardship. But from a scientific point of view an epileptic is as liable to procreate insane children before he becomes insane——

34,197. But apart from the children?—No, it is the progeny alone.

34,198. As far as the children are concerned that is more a marriage problem than a divorce problem?—Yes, I felt that in my memorandum.

34,199. It is a marriage problem?—Yes, and public policy.

34,200. If you did make epilepsy a ground for divorce it would only be for those who chose to take advantage of it?—Oh, of course, I assume that.

34,201. And there would only be probably a small portion of those who might take advantage of it?—I think so.

34,202. So that in the sum total there would be only a small fraction of epileptic people who would be prevented having children by divorce?—In the present

state of public opinion, but I expect that in no very long time we will necessarily have laws preventing those who labour under such a disease as epilepsy from marrying at all. But that is not the present question.

34,203. Then it would not be necessary to make it a ground for divorce?—Then it would be a nullity of marriage instead of divorce.

34,204. I wanted to ask you about that. In your Bill that you are thinking of you propose not only that it should be a ground for divorce, but that there should be a disabling clause preventing the epileptic from marrying again?—Certainly.

34,205. And I think you say without that disabling clause it would be very little good to make it a ground for divorce?—It would give individual relief in some cases, but it would not fulfil the object that science has in view of preventing a deteriorating posterity.

34,206. Supposing you had that Act of Parliament, how would you prevent epileptics bringing children into the world either as males or females?—If you have a law against any particular thing it is the duty of the law to provide the machinery by which that law is carried out.

34,207. But what do you propose? Could such a law be practically effectual?—I think it could.

34,208. How?—It would come to this. You would have to segregate a considerable proportion of epileptics during a considerable proportion of their lives.

34,209. Confine them in some sort of asylum?—Colonies. The way to deal with epileptics now is to send them to a colony. The report of the Commission on the Feeble-minded indicates such a way of treating all weak-minded people.

34,210. Then your point is that all epileptics should be confined?—Should be segregated from their fellow beings, that they should not have the opportunity of transmitting to posterity a bad stock. That is the scientific ideal position.

34,211. And in order to make your proposal as to divorce practicable that would be necessary?—Meantime certain people who have married epileptics would get the benefit of relief through any Divorce Court before such a sweeping measure as you indicate came in.

34,212. You observe, though there would be relief to the party, there would be no prevention of bringing children into the world?—Of course, very many epileptics are confined in asylums. When the disease is worse they are kept in asylums for the remainder of their lives and in the case of a male epileptic his wife would get a divorce, he staying in an asylum all his life.

34,213. I do not see any difficulty in those aggravated cases, but with the great majority of cases in the earlier stages; and I am trying to appreciate how your proposal, which is really based on the danger of bringing children into the world, is going to be really operative unless your further proposal of segregating epileptics is adopted?—Well, at the present time the lesser proposal is the only one in the wind. The other one is a counsel of perfection perhaps.

34,214. Unless your counsel of perfection is adopted I think you have told Sir Frederick, and me too, that the adoption of the other would have a very partial result indeed?—That is so.

34,215. (*Chairman.*) May I ask you one or two questions which have been suggested by the interesting questions raised, and by your very wonderful answers. Does that last point on which Sir Lewis was asking lead to my rightly asking you whether before marriage at all there should be some investigation of fitness?—I think, my Lord, it would save much unhappiness in life if there were more investigation than at present takes place; and if you have a *primâ facie* case, that investigation should be conducted on more thorough lines than it is at present, by the help of science——

34,216. At present there is no State interference at all?—No.

34,217. Have you thought at all whether it is within practical—I will not say politics, but practical action at any future time that that should be done?—I would like to see such a law as this if there were a plain fact such as epilepsy present in one of the persons proposing to be married—I would like to see a law passed that no clergyman or registrar should be allowed to marry such a person or register the marriage.

34,218. Are there any other classes of cases?—It applies also to the congenitally weak-minded.

34,219. Do you know yourself, or have you come across cases in your investigations, whether any other countries have legislated in that way?—I know in a general way that other countries have done so, but my memory and my knowledge of the facts is not such as I should be justified in giving any information on that point As a matter of fact I was only asked about this last week and never had any time to investigate it.

34,220. We have had some evidence about America in that respect?—I know it prevails in some of the States, but my deposition of facts would be worthless; it is incomplete. I have not the necessary information.

34,221. I should like to ask you one other matter. You have had a large experience; you have told us about the number; many thousands of cases have come before you?—That is so.

34,222. Of married people being confined in an asylum?—That is so.

34,223. To what extent have you found with regard to the partners left outside—the sane partners—any real demand amongst them for relief?—I have in a large number of instances—in casual conversation with sane partners—found that the idea of divorce had crossed their minds and sometimes they have complained of it to me that it was an extreme hardship to them and their children. But I take it that the knowledge that divorce was not practicable has prevented it being spoken about. That came forcibly to my mind last week, talking to a professional man whose wife had become insane within a year after marriage; and I knew him well enough to ask—I never heard a syllable about divorce—and I found out he had actually taken legal advice in the early part of his life with regard to divorce, a fact he had never made known to anybody else.

34,224. One other point. If I follow your distinction between bodily ailments producing a bedridden patient say, and one of insanity, you treat insanity almost as if the person were dead?—That is so; certainly in incurable insanity which one advises should come before the Divorce Court.

34,225. One other matter which I am not quite sure I understand. The case of secondary or terminal dementia; that, if I follow it, putting it in a way that I understand, is where the brain has become thoroughly deteriorated physically?—That is so.

34,226. Does that arise from a variety of causes?—No, it arises essentially from a very strong hereditary predisposition which has affected that brain in its course of life and that brain has not lived its time; the man has died at the top storey, to put it roughly, before elsewhere.

34,227. Is there any cause for that particularly?—Alcohol and dissipation will accelerate it and bring it on in some cases where it would have not come on.

34,228. Then it produces an actual structural change?—An actual structural provable change.

34,229. Then if you would be so kind as to formulate what you would suggest as a clause. Does it roughly come to this, that you would advocate divorce being granted in cases of incurable insanity, but that the case should not be started until after three years from the discovery of the illness or of confinement in an asylum?—That would roughly express my present views with the exception that I have mentioned where the dipsomaniac and the recurrent case and the delusional case come in. I would give them all a longer time.

34,230. But it would not be called incurable then?—No. I would put three years as a minimum.

34,230A. There is one question I want to ask you, Dr. Clouston. Have you been able to form any view yourself as to whether the recognition of insanity in a proper case as a ground for divorce would have any general detrimental effect in encouraging imprudence in marriage or the shaking of the regard in which the

marital state is held?—I am of opinion it would not, but on the other hand it is a problematical question about which one would not express a very dogmatic opinion. But in my opinion it would not.

(*Chairman.*) May I thank you on behalf of the Commissioners and myself for the very interesting and helpful evidence you have given.

Dr. ROBERT JONES called and examined.

34,231. (*Chairman.*) Would you kindly tell us your qualifications?—I am Doctor of Medicine of the London University; Fellow of the Royal College of Physicians, London; Fellow of the Royal College of Surgeons, England; Lecturer, Mental Diseases, St. Bartholomew's Hospital Medical School; Resident Physician and Superintendent, London County Asylum, Claybury; Ex-President of the Medico-Psychological Association. For thirty years I have practised as an alienist physician; I was formerly Resident Physician and Superintendent, Earlswood Asylum, Surrey; also Medical Officer at Colney Hatch Asylum; I have visited Asylums in Russia, Poland, Norway, Germany, Austria, Switzerland, Italy and France, and written reports; I was formerly Lecturer on Mental Diseases to the Westminster Hospital and to the Post-Graduate Courses in London; I am a Justice of the Peace for the County of Essex, and have had experience in regard to maintenance and separation orders; I have given evidence before the Departmental Committee on Physical Deterioration; and am the author of numerous articles in medical, psychological, and social periodicals.

34,232. You have been good enough to prepare a Paper which contains the views you wish to present. If you do not mind my suggesting it, if you would read it, it would be the shortest and simplest form perhaps?—Yes, my Lord. It begins with a précis published at the head of my report and which is an analysis of what I am about to read—

"1. Regarded from the biological standpoint the chief function of the individual is reproduction, and the instinct of sex is a primary one in man and as fundamental as is the instinct of self-preservation.

"2. Relying upon this instinct the institution of matrimony implies the conserving of two especial principles, viz., the mutual support of two individuals and the procreation of healthy children for the State.

"3. For the sake of public morality, of purity in the family life, and the care of innocent children who are dependents, the Church in Christian countries ruled that this tie, performed by the clergy, should be a solemn and religious contract to be regarded as the most binding, and not to be lightly set aside.

"4. Except in Protestant countries the rite is a sacrament of the Church, but in this country the Legislature, owing to the advance in education and with the progress of civilisation, has taken away much of the power from ecclesiastical control, and has altered the cognisance of the Ecclesiastical Courts in regard to the marriage ceremony.

"5. The Probate, Divorce, and Admiralty Division of the High Court of Justice now exercises the power under certain circumstances of annulling the marriage contract. In 1836 it became possible for Dissenters to perform the ceremony of matrimony, and later the same power was given to superintending registrars of districts.

"Further, the law now permits marriage with a deceased wife's sister.

"6. Sympathising with this extension of liberty to the individual, in so far as this is towards the maintainance of public morality, to the advantage of the individual, to the benefit of the family and serviceable to the interests of the State, I purpose, on grounds of public and general interest and for the immediate relief of the poor, who, in contra-distinction to the rich, are severely handicapped and driven into bigamy by convention, sentiment, and restricted means, to place the following facts before the Royal Commission for their consideration, basing my arguments (1) upon the nature of marriage, (2) upon the injury (*a*) to the individual, (*b*) to the family, (*c*) to the race through incurable bodily disease, and especially through irrecoverable lunacy, (3) the burden to the State involved by the disability of mental disease, (4) the great relief afforded by recognising chronic or permanent insanity as legitimate ground for divorce, (5) the definition of incurable insanity.

"(1) *Nature of Marriage.*—It implies a contract, but in the insanity of one party to the contract, that party is unable to fulfil its obligations, and is moreover unable, owing to derangement of reason, to consent to annul the contract. The State steps in and 'restrains' the sufferer against his will. It takes its own will and imposes it upon him, it disposes of his property, releases him from certain obligations, but binds him in matrimony to the detriment of his family and the State.

"Under analogous conditions the State consents to the nullity of a marriage, when by physical infirmity one of the parties to the contract is unable to perform its required duties—bodily incapacity existing at the time of the marriage and proved to be incurable.

"Insanity is a physical disease and it implies mental disabilities also; it is moreover, one which deprives the sufferer of his liberty, of his civil rights, of his social, financial, political, and even of his domestic rights, and a person united in the bonds of matrimony to a chronic and incurable lunatic is for all practical as well as legal purposes one united to a dead person, for by the nature of his physical condition he is not only unable to direct the life of another, but is unable even to control his own. The marriage contract is ended by death, and should similarly and for the same reason be ended by confirmed insanity, which is social and domestic extinction. The insane to-day are under better hygienic conditions and live longer, the grievance is, therefore, all the greater.

"It is against the interest of the struggling partner and of the family to be thus bound. They should have the option by law of another chance of mating with a healthy person.

"(2) *Injury to the—(a) Individual.*—Is it conducive to chastity and purity that persons whose wives or husbands are shut up in lunatic asylums, most of them suffering from incurable insanity, should be compelled by law to pass through life without the chance of mutual help and comfort and mental companionship derived from a sane and healthy partner? This is an injury to the health of the struggling partner, and if a lesson from the practice of the Church were needed, enforced celibacy among the clergy has long since been given up. From a large experience"—(that of 14,000 cases of insanity which have been treated in the London County Asylum at Claybury during my term of office as Resident Physician, and which at present contains beds for nearly 2,500 cases)—"I know numerous instances (which I could quote) where either the husband or the wife has become insane within a few weeks or months (in some instances within a few days) of marriage, and in whose case there is not the slightest prospect (humanly speaking) of ultimate recovery. It is looked upon as a personal debasement and stigma to have married one who is or was the inmate of a lunatic asylum. In some of these instances, the party outside tries to forget the one within, and lives a life of immorality with some other partner, and children are born who are illegitimate—a factor, even among the *very* poor, which is some sort of disqualification.

"In other instances the wife outside seeks employment, but, in order to obtain and retain it, she dare not admit that her husband is in an asylum. She has to assume a false character and pass through life under a cloud, until and when her secret is disclosed, and she then probably loses her situation and her life is further rendered miserable and insecure. If she disclosed the facts, employers would refuse employment, and she would be compelled to resort to some other means for a livelihood,

"There are probably no less than 70,000 widowed and married people in lunatic asylums, and is it right that men and women should be driven to immoral relations, that innocent children should be handicapped at life's start and punished for what they are unable to remedy?

"Something may be said to help the individual who is insane by granting powers of divorce. It frequently happens that the wife demands the bread-winner, or the husband demands his wife's release to look after the home before convalescence is fully established, with consequent relapse, re-admission, and possibly children born in the asylum (in two years at Claybury nearly 30 babies were born)."

34,233. Born in the Asylum?—Yes.

34,234. Do you mean that those were cases of people let out for a time, or after they had been incarcerated for the first time?—In some cases for the first time; the illegitimate children of young girls who received mental shock in finding out their condition; but in many cases, of people who had been in the asylum before and were married women——

"If relief by divorce after a certain fixed time were legalised and recognised, there would, I think, be a greater tendency to patience and a better convalescence would be ensured, instead of, as at present, frequent relapses ending in chronic insanity.

"Against the granting of divorce on the ground of insanity, it is maintained that many wives and husbands among the poorer classes would be driven to insanity by cruelty, continual annoyance, and strife, but in order to secure such separation it has not been found that the circumstances attending other causes of divorce have been used to loosen the bonds of matrimony.

"It is further considered that should divorce on the grounds of chronic insanity be legalised, it would work great hardship in the case of poor married women recovering after many years (as we shall see later that some do), who would find no home after leaving the asylum and who would be tempted to immorality thereby, but I maintain if the State intervened in the private life of a married woman it would be the duty of the State so to 'mother' such a person as to keep her from want and temptation thereafter. Furthermore, the interest of the individual must not be urged against that of the majority in the State.

"(*b*) *Injury to the Family.*—When the mother of a family becomes insane—and insane married women in asylums predominate over insane married men—the husband has, day by day, to leave the home and be out at work, and must have someone to look after his young, helpless, and motherless children. His wages do not permit of his having a proper housekeeper, and most often he cannot afford the rent of an extra room for the caretaker engaged. Two alternatives are left in consequence:—

"(i) A life of immorality with the hired woman brought in to care for the children, whom she often neglects.

(I once sent a woman who had been my patient for some years, with a nurse, to visit her family. The door was opened by the concubine dressed in her (the patient's) clothes! The house was filthy and her children unattended to. She received such a shock that she had a fit, which later caused her death.)

"To drown his grief the husband not infrequently takes to drink when the good influence of his wife is gone.

"Immorality and drink contaminate and degrade the family and harden its members against all sense of decency and right thinking:—

"(ii) In the alternative, the husband breaks up the home, sells his furniture and the children are brought up or rather 'dragged up' by unwilling relatives or friends.

"In either case the neglected children may eventually get into the workhouse—not a fit home for any child—or they may grow up with the inborn tendency to inherit insanity becoming each year more manifest through neglect, and they finally swell the list of the juvenile delinquents, the unfit, or the unemployable, or as is too often the case they join their mother in the lunatic asylum."—

(The father in this instance, and in several instances I have known, has become a general paralytic himself).—

"Instances of each of these are not uncommon in the experience of those in charge of large asylums for the insane.

"I have had the mother of a large family admitted into the asylum under my care at the age of 29—among the poorest early marriages and large families are the rule—and she died 35 years afterwards, being incapacitated from looking after any of her children. Surely the father of such a family should be legally allowed the chance or option of securing the discipline and support of a good and healthy woman over his children and home.

"Let us take the case of the father of a family who becomes insane. The breadwinner is gone, 'stick by stick' the furniture goes. The mother at last gets some work for herself, but at the most"—(and I can speak from experience of many cases)—"she cannot earn in London more than 10s. a week, even at the 'least sweated' industry, and even if her whole time were given to the work. In the end (she often refuses to go to the workhouse) the children are starved, or are sustained upon the proceeds of her own immorality; as she cannot remarry, and from the want of proper nourishment and care, coupled with the hereditary instability of her children, they become a permanent burden upon the ratepayers, and they also swell the ranks of the unfit, or they are mercifully removed through tuberculosis.

"It appears to me a crime not to allow the mother to obtain a divorce and marry again. Even if successful in obtaining a lodger she is faced constantly with temptation and shame—the result is a second family—all illegitimate.

"Another case is known to me. The young father of a large family is in the lunatic asylum. Mother able to get a living, but would lose her only help if the authorities knew she had an insane husband who might return to her. For the sake of the children she never mentioned the husband. After 20 years in the asylum"—(and most of it in Claybury Asylum)—"he returns to home and family. None of the family knew he was their father, but he had to be supported, and the stigma remains a constant sore and prevents the family taking the position which would be theirs if the mother had been legally free from him many years before.

"These are a few of the many instances in which poor women are driven to prostitution, and a life upon the streets might be avoided if only the law were altered.

"(*c*) *Injury to the Race.*—If the children of families in which one parent is incurably insane were properly looked after, and a chance of divorce affords such an opportunity, their better care would be for the benefit of the race. Although I do hold that a good *heredity* is a great factor in the physical well-being of a family, I am of opinion that good surroundings, good food, cleanliness, and education are also to be considered"—(that is, the environment). "Also, a healthy woman divorced from an incurable lunatic has a fresh chance of adding a healthy stock to the race."

May I quote the case on the last page here? It really has more relevance. I shall not refer to it again. It is at the bottom of the last page. "I have at present a patient under treatment who has been in the asylum eight times, each time with the birth of a child, and two of the children have been in asylums; one of them is married, and with what consequences may be correctly anticipated. It would have been better for her husband and her family and the race had divorce been possible after three attacks." Now, "The Burden of Lunacy to the State." I am afraid you have had this all over and over again; it is probably in other statistics.

(*Chairman.*) It is very conveniently put here; we had better have it; we have not had it before, I think.

(*Witness.*) "(3) *Burden of Lunacy to the State.*—It is acknowledged that physical betterment is an intellectual as well as a moral thing, and when the health of the people falls below a certain standard of efficiency it entails a loss to the State. The health

and strength of the individual is a greater asset to the State than material wealth. We recognise that no person need starve in this country, and it is incumbent upon us to maintain our feeble and mentally defective, but there is no reason why the burden should grow so as to be a bar to national progress. Registered insanity has increased by 255 per cent. since 1859, whereas the general population has only increased by 83 per cent. The cost of maintaining insane persons, exclusive of State inspectors, legal officials, and a numerous staff, is three and a half millions a year, and this apart from the cost of land, buildings, and furniture."

May I say I have been most careful in furnishing these statistics; they have been taken from Blue Books or those statistics which I have myself compiled, or from other reliable sources. With regard to this question of increase of lunacy in the London County Council asylums, there are probably 1,000 families related in the ten asylums in London. Possibly one of the big asylums with 2,000 beds might be used only for relations of those families.

34,235. Do you mean that 1,000? — There are 1,000 families related to each other. If there are two members in each family liable to insanity—and there are often more—for not infrequently you have mother, two daughters, father, sons, two brothers, sisters, and so on; if you take the 1,000 families that are inter-related; the brother may be with me, the father at Hanwell, the sister at Colney Hatch, another son perhaps at Banstead, and so forth; and if all were summed up they would probably be equal to the accommodation of one big asylum.

34,236. You say 1,000 families?—The accommodation of one asylum would be over 2,000 beds.

34,237. What is the total accommodation?—The total accommodation in London is 20,000.

34,238. About a tenth of the whole?—Yes; is taken up by the relations probably of the 1,000 families. The cost of one asylum is half a million. I am speaking of my own asylum; it cost 530,000*l.* The cost of maintaining this asylum is 70,000*l.* a year.—

"The insane and the paupers have to be maintained at the expense of the thrifty and the industrious, and it is often forgotten that the majority of the ratepayers are themselves only just above the pauper line. Pauperism, apart from lunacy, costs the country nearly twenty millions a year, and I maintain that the granting of divorce for 'incurable insanity' would greatly tend to lower the number of families which are dependent on the ratepayers, as well as indirectly to lower the number of the insane.

"The great bulk of the insane population consists of those who have been in asylums over three years, and the statistics of a modern asylum like Claybury" —(Claybury has been open 18 years, so it has not yet been silted up with chronic cases as have most of the old asylums in this country, but I take it as fairly representative)—"give a proportion of 72 per cent. of incurable cases; the true proportion is probably higher,"—(at the present moment, or the 1st January 1909, which is very like what it is now) "of 72 per cent. of cases who have their insanity over three years' duration, that is to say, who have been in the asylum over three years and are practically incurable. The following table shows the duration of insanity in 1,784 cases out of a total of 2,476 patients who have been in residence in this (Claybury Asylum) or some other asylum over three years:—

6	have been	between	40	and	50	years	insane.
28	,,	,,	,, 30	,,	40	,,	,,
130	,,	,,	,, 20	,,	30	,,	,,
889	,,	,,	,, 10	,,	20	,,	,,
467	,,	,,	,, 5	,,	10	,,	,,
264	,,	,,	,, 3	,,	5	,,	,,

4. "*Relief afforded.*—By legalizing divorce for cases of incurable insanity we shall have an educative force as to the dangers of inherited disease and to some extent prevent the marriage of the unfit, for incurable insanity in a family will then be seriously viewed in regard to matrimony. We shall likewise control immorality on an extensive scale. The children of many families will be legitimised, and prejudice will thus be removed from many helpless children and irregular homes. Facilities for divorce, in the cases under review, will materially impress upon people the responsibility of parentage, and will, in many cases, be a re-endowment of motherhood, because it will permit many healthy mothers to remarry. At present, the destiny of the race rarely enters into the consideration of matrimonial alliances, but the effect of public opinion will force this to the front, and it will be the means of attaining a better ideal as to the value of health. The extent of this relief will be more appreciated if a few figures are given. There are over 130,000 insane persons to-day mostly in the asylums of England and Wales."—(This is from the Commissioner in Lunacy's Blue Book to the Lord Chancellor.)—"In the general population the proportion of married to single is roughly one to two. In insanity the proportions are reversed, for there are more widowed and married in asylums than there are single. In one year, the last we have for statistics, viz., in 1909, there were 12,000 married and widowed persons and 9,000 single admitted into the different lunatic asylums of England and Wales, and there are more married women insane in asylums than married men. If all the asylums of London are taken, their insane population is nearly 20,000 (19,823), and the numbers and ages of those who have been more than three years in residence are given in the following table" which gives, roughly, 8,000 between the ages of 20 and 50; that is, if you include women.

34,239. Does it show how long they have been there? —No.

34,240. It only shows the cases of people who have been in more than three years?—Yes; this is a table really giving the cases that have been under treatment over three years; and if the two totals on the right-hand side are added up it gives 13,802—approximately 70 per cent. of the total, who might, roughly stating it, be considered incurable, and giving their ages *quinquenna.*

Note.—The following is the table referred to:—

	Under 15 years there were -		3	
	From 15 to 19 - - -		24	
	,, 20 ,, 24 - - -		195	
8,091	,, 25 ,, 29 - - -		516	6,463
	,, 30 ,, 34 - - -		955	
	,, 35 ,, 39 - - -		1,341	
	,, 40 ,, 44 - - -		1,645	
	,, 45 ,, 49 - - -		1,784	
	,, 50 ,, 54 - - -		1,850	7,339
	,, 55 ,, 59 - - -		1,793	
	,, 60 ,, 64 - - -		1,442	
	,, 65 ,, 69 - - -		1,056	
	,, 70 ,, 74 - - -		647	
	,, 75 ,, 79 - - -		366	
	,, 80 and over - -		185	

"From this table is seen the magnitude of the relief which would be afforded to families in London alone, should the struggling partner care to exercise the option, and avail himself or herself of the opportunity for divorce. There are over 8,000 persons, more than one-half of whom are married, between the ages of 25 and 50, incurably insane in the County of London. The number of mothers, during the child-bearing periods, whose breadwinner is permanently incapacitated, is probably over 2,000, and it is seen by the same table that chronic insanity is not limited to the latter periods of life, there being only a slight numerical difference between the totals under 50 and over 50 years of age, a matter to which reference will be made when dealing with the next point, the definition of 'incurable lunacy.' The benefit to those women would be in the direction of prudence and morality, as well as in the deepening of parental responsibility.

5. "*Definition of Incurable Insanity.*— To define such would be an impossible task. It has become an axiom in the study of prognosis as to mental disease that 'anything may happen in lunacy.' Except in what we call 'dementia,' which I use to mean both terminal weakmindedness and that occurring primarily in young adolescents of both sexes, the most unlikely and unexpected recoveries take place. It would be assumed that in young persons, with the vitality and

recuperative powers of youth at their full, the chances of recovery would be better than among the old. The reverse is, however, often the case, and 'it is better to be sixty than sixteen' in regard to recovery from insanity.

"It would also be assumed that the chances of recovery from an attack of insanity would be less in cases where there was a bad heredity, but the cases with the worst histories often make the best recoveries, although they subsequently relapse.

"The course of the most fatal of all forms of insanity, viz., general paralysis, is sometimes marked by remissions, the disease may be arrested for several years with periods of useful citizenship between the remissions."

34,241. I want to get that clear. I understand from Dr. Clouston that three years generally put an end to those cases?—In the statistics I have collected of over 300 cases (I agree with Dr. Clouston entirely, there are exceptional cases) the average duration has been one year and four months.

34,242. Of life?—Of life, from the time of coming into Claybury.

34,243. That they die?—Yes; but some have been there for 10 years or more, and some die within a fortnight of coming in.

34,244. We may take it that general paralysis is quickly fatal?—Yes.

34,245. But there are certain exceptional cases——?—Yes, with long remissions between the insanity, though now in the Wassermann reaction and the lymphocytosis, we have means of diagnosing the general paralysis which are most serviceable, yet cases in which these methods have made the diagnosis positive may live on for several years.

34,246. Is that always due to venereal disease?—You might say that the more accurate and correct statistics are obtained the more will be the numerical proportion per cent. About 80 per cent. are said to be so, but it may be in not a few cases the result of parental syphilis. Even epilepsy associated with insanity is recovered from and epilepsy occurs to the extent of 8 per cent. of men and 6 per cent. of all women coming into the asylums, but 10 per cent. is the proportion of epileptic cases which remain in the asylums of the London County Council, and 16 per cent. in all the asylums throughout the country, showing that they live longer than the other types. Instead of being 8 per cent. remaining in asylums, which is the percentage on admission, it is 10 per cent. to-day in the London County Council asylums. In asylums throughout the country it is 16 per cent. "Even epilepsy associated with insanity is recovered from, as the latest statistics of the County of London asylums testify. That fascinating variety—paranoia"—(delusional insanity or monomania)—"which takes 30 years to develop, sometimes terminates in recovery; and it is safe to say that each of the varieties above named, viz., epilepsy with insanity, general paralysis with insanity, and paranoia or systematised delusional insanity, may end in recovery. Insanity is so full of paradoxes as to its prognosis that the most accurate observer and recorder may be mistaken when prophesying the future. What is then the criterion of incurability?

"In my opinion it is the duration of the disease—the longer its duration the less the curability. Indeed insanity is curable in the inverse order of its duration. In order to place a fixed time I would suggest three years as a valuable guide of incurability. I should like to say two years, because the qualifying period for divorce should not be made too long, for it would lessen the utility of changes in the law, yet there must be a reasonable limit to avoid possible abuses. I should like to add to my list qualifying for divorce cases of recurrent insanity which have suffered from three attacks, even if the period of detention in each case were less than three years. In these recurrent cases would be included possibly all the alcoholic cases. If ordinary drunkenness resulting in three convictions in one year can be dealt with by a sentence of three years in an inebriate reformatory no similar supervision is possible to the lunatic who is insane through drink, for he quickly recovers in the asylum and is quickly discharged. I think that such cases should be included for divorce. Alcoholic cases are the most relapsing kind and they are a burden upon the family. Twenty per cent. of all insanity among men and 10 per cent. among women is caused through excessive drinking.

"The recoveries last year in the asylums of London numbered 1,220. Of these 117 were discharged recovered after an interval of more than three years under treatment. The duration of residence in those who were discharged recovered was as follows:—

2 were over 20 years in residence.
2 were between 15 and 20 years in residence.
14 ,, ,, 10 ,, 15 ,, ,,
43 ,, ,, 5 ,, 10 ,, ,,
56 ,, ,, 3 ,, 5 ,, ,,

a proportion of 9·6 per cent. (of whom more than one half are married women) of all the recoveries having been over three years, so that some hardships are bound to occur"—I mean if divorce were granted in cases over three years these would come in—"but it would probably occur in less than 2 per cent. of all cases admitted into asylums, even if all accepted the chances of obtaining a divorce.

"I believe it would be easier to detain persons suffering from various forms of mental defect in colonies if it became a part of public opinion that incurable insanity, *i.e.*, insanity of three years' duration or three separate attacks, were a bar to matrimony, and I think a divorce on the ground of insanity would be a prelude to the prohibition of marriage with one who had been insane, just as I consider the Deceased Wife's Sister Bill to be a necessary prelude to the one I now anticipate, for it recognised an evil which affected the individual, the family, and the State. I may state that in Germany there is such a time limit for incurable insanity, and I have myself given the necessary evidence for obtaining divorce before the German Consul-General in London."

34,247. May I just ask how you propose in this to treat alcoholic cases?—To treat them?

34,248. To treat them for divorce?—Well, I should make it possible for the applicant when she chooses, after three attacks of insanity, to go either to the local justices, as they do now for separation orders, or to the county court.

34,249. Even though the three years had not run?—Even if the total duration of insanity were less than three years.

34,250. Even if they had not been under treatment the full period?—Yes.

34,251. And obtain a divorce?—Yes.

34,252. And would it be your view that if action were taken as you indicate, there would be any tendency to encourage imprudence in marriage, or conduce to the instability of the matrimonial tie?—No, I think not.

34,253. What do you think would be the result?—I think it would result in a very much healthier family. It would result in the woman (it would be mostly women probably that would apply for divorce) being able to remarry and possibly produce a healthy stock.

34,254. Then your opinion is it would rather encourage morality?—I think so.

34,255. (*Sir Frederick Treves.*) There is one point that might a little mislead the Commissioners on page 4 of your proof—paragraph 3. You say that insanity has increased by 255 per cent. since 1859, whereas the general population has only increased by 83 per cent. I take it you mean registered insanity?—Yes; before 1859 there was practically little registration.

34,256. Then you do not think the disease has increased?—Oh yes, I think so.

34,257. But nothing like this proportion?—No; but I think with the progress of civilisation—and civilisation fixes a higher standard each year—there is no improvement in the physical standard of people; they are unable to get to the higher standard, except perhaps a few, and the rest are left behind; and I think civilisation produces its own insane cases and its own paupers.

34,258. Then perhaps you might use the word "registered" cases?—Yes.

34,259. Perhaps it is five or ten per cent.?—Oh, more than that, I think.

34,260. But nothing like this shown here?—It is very high.

34,261. Now, your opinion and experience of the care of the insane is derived from the poor?—Not alone; there is a private asylum at Claybury Hall for private patients.

34,262. A small asylum?—Yes.

34,263. But I should be right in saying the bulk of your experience, which must be enormous, is amongst the poor?—Yes.

34,264. And your arguments are based upon your experience amongst the poor?—Yes, and territorially in the east of the County of London.

34,265. Then you can say from your own personal knowledge, that as regards the sane partner great distress has resulted, great misery, and a good deal of immorality?—Yes, that is so. I have visited their homes.

34,266. You say that from personal knowledge?—Yes, from personal knowledge.

34,267. That to the sane partner there has been all that distress?—And a great deal of immorality, yes.

34,268. Then, not to confuse the issues with terms, you would limit divorce to cases of incurable insanity without mentioning any name—dementia, or what not?—Yes.

34,269. I take it, when you have isolated the class of patient you have in your mind, you have people who are mentally dead?—Yes.

34,270. Who are totally unable to carry out the obligations of matrimony?—Yes.

34,271. Who are unconcerned with any question of divorce, and are incapable of deriving comfort from the visits of their friends?—Yes; if one recognises insanity as it is, it is a shedding of all those latest acquired altruistic qualities; all those are gone, only the instinct of life is left. They may be able to fulfil the function of marriage, as far as the physical instinct goes—that is often quite strong——

34,272. But mostly they are unable to fulfil the obligations of matrimony?—Quite.

34,273. And they would not be disturbed by the idea of divorce, nor would they lose the comfort of visits from friends?—That is so. There are a great many cases that would not feel the separation. But if you take the paranoiaic or the person with chronic delusional insanity, he fixes his ideas on those nearest and dearest, and personally, I do not think he would feel the strain of being separated from his wife. It was only yesterday I had to break the news of the wife's sudden death to a case of paranoia, who had been so for 17 years; and he said, "Oh, I quite expected it." They are only "cracked" or mad on one point, and I do not think it would be a great strain upon their emotions to separate them from their partner.

34,274. So if you isolate this class of patient there would not be any great strain upon them?—That is so.

34,275. Then it is said, if you allow divorce for insanity, why not for other incurable diseases? I take it your distinction between the two is brought out in this paragraph on page two, paragraph one, "Not only "is the party unable to fulfil its obligations, but is "moreover unable, owing to derangement of reason, to "consent to annul the contract"?—Yes.

34,276. That is your distinguishing point?—Yes, most emphatically. I look upon marriage as an institution for mutual mental companionship.

34,277. I see you distinguish insanity from any disease such as paraplegia?—Absolutely. He is cut off from social, civil, domestic, official, political—all his rights: he is practically dead, and he would not be able to direct even his own life or the life of anybody else. He is practically dead.

34,278. And you make this a very great point, that you can say now that on account of the present state of the law a good many healthy people are unable to produce healthy children from the fact that they are debarred?—It is a definite bar.

34,279. That women may be mothers of healthy children but under these present circumstances they are debarred?—Yes.

34,280. There is one point that I think the Commissioners may be a little uncertain about—on page 3 about the middle of the page you say: "It frequently "happens that the wife demands the breadwinner's "or the husband demands his wife's release to look "after the home before convalescence is fully estab-"lished." Is that really possible?—Yes; and it occurs very extensively and largely in all the pauper asylums throughout the country.

34,281. In defiance of medical opinion?—Yes. I have to sign the discharge of a patient under conditions like that, and I am tempted to do so before the process of annealing has taken place, before the convalescence is established.

34,282. And that has to be done?—Yes, you cannot help it. The Lunacy Act permits that—that if a case is not one of actual danger to himself or to others, the Committee or the Asylum—which are paramount—can discharge in spite of medical opinion, and the Lunacy Law permits people like that to go home.

34,283. And children may be born?—Yes, and are not infrequently; and they come back again.

34,284. And then go out again?—Yes.

34,285. That is obviously a very important matter?—Yes. I should like to say, in connection with that, that the request for discharge has come upon you often as a surprise before the convalescence is really established. There is a way of meeting that, to an extent, that the Committee have power from time to time, of sending a person out "on trial"; and out of 300 discharges that go out from Claybury I venture to say that over 200 go out like that—on trial for a month sometimes, or two months and sometimes three months the patient is still on the books of the Asylum, but living outside with their relatives or friends.

34,286. (*Chairman.*) And during that two or three months——?—They live together and he goes to his vocation and the wife looks after the home.

34,287. (*Sir Frederick Treves.*) Then as to "mothering" a person, as you say, so as to keep her from want and temptation. Is that really possible?—That opens up another point as to the colony treatment; whether there should not be colonies for those people who have been sent out of the asylums more or less weak-kneed after many years' detention.

34,288. Would that be in addition or a rider to the points you urge as to insanity being a ground for divorce?—If a divorce were granted to the husband of an insane woman, and she should recover after many years' detention in an asylum, I think there should be, in addition to our present means of discharging lunatics who have recovered, some legalised place into which such a patient could be sent, *i.e.*, some intermediate institution between the asylum and the outside world, possibly some after-case institution or colony, for which the guardians or the proper authorities under a new Poor Law would be responsible, and into a place of this kind a woman could be sent who had been divorced so that she should be kept from temptation and from the necessity to lead an immoral life. I meant "mother" in the way of being provided with necessary means of obtaining subsistence such as would be provided in such a proposed colony.

34,289. Then there is this point, which is capable, perhaps, of another interpretation. In one of your arguments in regard to the family you say the husband may be induced to drown his grief by taking to drink when the good influence of the wife is lost. That might as well happen if she died?—Yes, but that is the point. I want the law to be so altered that insanity should be considered equivalent to death in its consequences.

34,290. But as far as his giving way to drink it would be just the same if she died?—Yes, but he knows then that he has the power of getting attached and united to somebody else who may be a healthy strong-minded woman.

34,291. You think a divorce would be a remedy for that one specific?—I think so.

34,292. I think it would be very valuable if you will look also at the bottom of page 4—the very last paragraph. It is an important statement. Perhaps you would explain that more fully: "I maintain that "the granting of divorce for 'incurable insanity' "would greatly tend to lower the number of families "which are dependent on the ratepayers as well as "indirectly to lower the number of the insane"?—Yes, I mean there are a large number of families now, owing to the man being in the asylum, where the mother is unable to obtain a living; consequently this family becomes chargeable to the ratepayers. The mother, if she goes to the workhouse, is there with her six or seven children; if she were allowed to marry, a strong man would probably come in, for she would have had previous experience of the necessity of being prudent with regard to matrimonial alliances, and she would marry somebody that could look after her. I know of cases I could quote where a marriage has taken place even where there have been five or six or more in the family.

34,293. Then the second point: "To lower the number of the insane"?—If the family of such a person is neglected all the hereditary tendencies tend to come out if it is a bad environment. If these seven or eight children are provided with a proper environment they will in all probability be able to discharge their functions as citizens. I look upon environment as quite as important in a way as heredity, or, at any rate, not a negligible item.

34,294. And I take it you would not include general paralysis of the insane at all as a ground for divorce, on account of the fact that it is so rapidly fatal?—I think in many cases among the poor, if you take my experience as representative of other alienists, there may be a considerable hardship in long-continued general paralysis. You know we have now the Wassermann reaction for identifying cases of general paralysis, and also the examination of the cerebro-spinal fluid; even after these tests have yielded positive results I have known patients discharged from the Asylum.

34,295. Well?—Yes.

34,296. (*Chairman.*) How do you propose to deal with them in a divorce law?—If they came into my category of insanity lasting over three years I should include them in that.

34,297. The definition of the incurable would come in there?—Yes, it would.

34,298. (*Sir Frederick Treves.*) Then, with regard to recurrent insanity you still think that three attacks—— ?—I think it is most imperative in my opinion. I have sat at Dr. Clouston's feet, he is my teacher; but I also have had very considerable experience, and especially among the poor; I have had 14,000 cases of insanity under my care at Claybury, and numerous cases of women who have been confined some eight times—eight children; puerperal insanity each time. If there had been the possibility of divorce, and a section that no such person could marry again, you would save a not inconsiderable number of children who would be subsequently born and become insane. Out of these eight children one is at Claybury and one at Hanwell, and the one at Hanwell has been discharged and is married.

34,299. (*Chairman.*) Would they come under incurable cases?—If the number of attacks is taken, three attacks, I should take it as incurable.

34,300. Supposing you have three attacks and after that are perfectly well?—They get well after each attack and go home perhaps for six months.

34,301. Would you at the end of three years say that those persons who had had three attacks should be described as incurably insane?—Well, a great number get well; but a certain residuary is left in the asylum, like the patient I quote. I do not quote her as covering every case.

34,302. But suppose we have to draw a section (I do not say we shall) saying divorce shall be granted for incurable insanity if it has existed for three years, then would it be possible for the case you have just mentioned to come into that?—Probably there would be a hardship, but I maintain that the individual must suffer for the sake of the State.

34,303. But I am talking about the drafting of the clause. Does it cover cases you are speaking of?—Could not it be alternative that it should be three years' duration or three separate attacks? Incurable insanity covered by three years' duration in an asylum, or a patient who had been subject to three previous attacks of insanity and had been certified. There are a large number of people among the class from which the private or paying patients are recruited who are not certified and live in the houses of doctors. But I speak with regard to the poor, and I think it is right in the case of the poor to get relief from recurrent cases, and I fix my clause to cover incurable insanity as either three separate attacks or one attack lasting three years.

(*Sir Frederick Treves.*) Dr. Clouston would make ten years, and he has certain cases of insanity where he would make it three years to ten.

(*Chairman.*) If the medical profession could frame a clause it would be very useful.

(*The Witness.*) After all, it is the individual's opinion which is the key of interpretation as to the meaning of insanity, but it is the Commission that have to decide whether sufficient grounds have been advanced for recommending a divorce in cases of recurrent insanity or in fixing a time limit.

34,304. (*Sir Frederick Treves.*) There are a few other general points perhaps you would express an opinion about. A point is raised by some as to whether lunacy occurring as late as 15 years after marriage should be still a ground for divorce, or whether only on occurring early after marriage?—Of course, one feels very much, if you take the State point of view, that it is a great hardship to bring a divorce against a woman over the child-bearing age, and I am very much tempted to be moderate to women over the child-bearing period. After recovery—three years even—they may be quite companions to their husbands. But, as I said before, the hardship will occur, and in 9 per cent. of all cases discharged from the asylums in London recovery has occurred after an interval of over three years, yet these would come under my category of "incurable insanity." The 9 per cent. is not a very high percentage if you take the admissions—31 per cent. of the 1,220 recoveries, and that is 9 per cent. of the 31 per cent., which is really only 3 per cent. of the total admissions into asylums, so that if they were divided between married and single it would probably be under 2 per cent. of the total cases admitted into asylums who would find a hardship in divorce after these years.

34,305. Would you exclude or include senile dementia as ground for divorce?—I really have gone more upon duration than upon sub-varieties. It is very difficult for the general practitioner, for example, and *a fortiori* one who is not a doctor to appreciate niceties in mental diagnosis, and for that reason I have avoided going too much into sub-divisions of insanity; I have taken duration as the best criterion of incurability.

34,306. So you would admit senile dementia?—Yes, I would.

34,307. Then, with regard to the criminal detained during His Majesty's pleasure?—Yes; you know there are a great many of these cases in county asylums. There have been a large number also who have not been looked upon as criminal lunatics who have yet been in prison more than three times, but whose insanity did not occur during the time they were undergoing sentence or before sentence was pronounced.

34,308. Criminal lunatics you would include?—Yes, I would, though I think there are a larger number than adumbrated in previous evidence.

34,309. Then do you think that if insanity was made a ground for divorce it would have any material effect in damaging persons in borderland cases. It has been said that many of these cases might be driven out of their minds by the knowledge that in developing insanity they might be divorced?—I have been in communication with a great many social workers, and I have asked them, and my opinion is really theirs, that it would have no effect in the way of precipitating insanity from borderland cases.

34,310. And in your experience, which I suppose has been almost unique, do you know of persons who have been eager to be separated from the insane partner?—I am at home every Sunday afternoon to about 600 visitors. Frequently I am asked, "Is there " a law so that I can be separated from my husband " 'or' my wife?"

34,311. You think there is a demand?—I should not say a demand, but a strong desire, and I have been asked frequently about the law in the matter. Of course, they do not know, and they ask. They would, no doubt, make use of the privilege if it were allowed.

34,312. (*Mr. Brierley.*) I am not quite clear about what you propose, Dr. Jones. I understand you would not distinguish at all, except in cases of recurrent insanity between different types of insanity as a ground for divorce?—I have not done so, but there is very good ground for suggesting that there should be a distinction, but my great point was to include those absolutely hopeless recurrent cases. I had Jane Cakebread at Claybury. She had been convicted 400 times: only once in an asylum. In alcoholic cases the mental state gets well quite soon, and they go out and repeat the offence and come back.

34,313. With the exception of those recurrent cases the test would be incurability simply?—Yes, as appreciated by duration.

34,314. With the condition that every case should be presumed not to be incurable until three years has passed?—Yes; and also I should add a clause that the patient should have three separate attacks.

34,315. After that, assuming the patient had been under care for three years, you would then make it a question of evidence as to whether the individual case was incurable or not?—Yes.

34,316. Without any legislative provision that a certain type of insanity should be considered incurable or not?—I do not say I should exclude three attacks, even if they were puerperal insanity. I should not exclude them in granting divorce for incurable insanity.

34,317. (*Mrs. Tennant.*) You give statistics of the number of babies born in Claybury. Is it possible to obtain similar statistics of other asylums?—Oh, yes; most of the asylum statistics are printed in the Lunacy Commissioners' Blue Books and issued as a report to the Lord Chancellor, and printed by the authority of Parliament.

34,318. In respect of all asylums?—Yes, a summary of all asylums is printed in the Blue Book, but not all the tables that we have at Claybury. The tables we have at Claybury are used throughout the country, and every asylum issues similar statistics, and most of the tables are summarised by the Lunacy Commissioners, but not all; but all these that I have given are quite accessible, I think, with regard to all the asylums in the country.

34,319. Do you keep any record of the other side of married life, of the number of husbands who are released from time to time, and whose wives have babies born outside the asylum?—Yes, some record is kept with regard to the two sexes in the official case books.

34,320. Can you say if this is shown to be a serious question by statistics?—Yes, I maintain it is. It is more serious, of course, for the woman, but I think it is a very important thing for the man also.

34,321. It is a very serious thing for the woman?—Yes.

34,322. Now I want to ask you about the person who has had three attacks, who should therefore be, you suggest, liable to divorce. If a partner be divorced you would not let that partner remarry. On the other hand, if he should recover you would not keep him in the asylum. What do you propose should happen, because the State is not being well served if a person not fit to be remarried, be yet allowed to go free?—That is a very difficult question. Once a man or a woman is sent out of the asylum, and has had his or her discharge, he or she is practically a free man or a free woman.

34,323. But you take away the freedom of remarriage; and you consider the case to be so bad that the other partner should be entitled to a divorce——?—I agree there are individual hardships, but there are not many of those cases—only under 2 per cent. practically of all those admitted into asylums—and last year there were admitted into asylums in England and Wales 21,000. There would be only 400 perhaps a year who would come into the asylums and would remain in the asylum for the three years, and would be sent out afterwards.

34,324. I am not thinking of three years, but of three attacks?—Three previous attacks?

34,325. Yes?—These would be mainly cases of alcoholic insanity; that is to say, people who are habituated more or less to the use of intoxicating liquor and are mentally affected. As soon as the liquor is withdrawn they get well; they go out of the asylum; they promise that they will not touch it when they go. I very often get them to sign the pledge. Our chaplain has a large number of those who sign the pledge before they leave, but very frequently they come back again.

34,326. I am sorry if I am pressing you unduly, but the point I want to put to you is this, if a man is in such a diseased state that he is not fit to have legitimate children, should he be enabled to have illegitimate children?—Of course, that is a possibility, and I do not see, apart from actual segregation of those who are discharged recovered from lunatic asylums, how illegitimacy is to be prevented. They are detained in the asylum for mental conditions arising out of loss of self-control from drink in many cases and when well mentally they go out again.

34,327. I mean these people are released——?—Yes, and I think that when released they are from the public standpoint a positive danger.

34,328. Is there anything to prevent a man who is released——?—Nothing to prevent him physically.

34,329. Then it may happen?—Well, except that he would be convinced innately that it would be against religion and against morality. I think the fact of having a divorce would be an educative force to enable him to realise his position.

34,330. You do not go so far as to say that a man who is a danger to society to that degree should be removed altogether and isolated in a colony?—No. I think public opinion is going that way, but I do not support surgical measures or——

34,331. I am suggesting only a colony. It seems illogical that a man who is not allowed legitimate children—or a woman, who is especially a danger—if feebleminded, should be set free to be that danger and be exposed to that temptation?—I quite recognise that point, but I am afraid I am not capable of suggesting a remedy.

34,332. (*Mr. Burt.*) There is only one point, on which I should like to put a question or two, and that is excessive drinking—intemperance—as the cause of insanity. You mentioned that in the case of men the proportion is 20 per cent.?—Yes.

34,333. And in the case of women 10 per cent.?—Yes.

34,334. I suppose I may take it that that is a general statistical fact?—Yes, throughout the whole of England and Wales it applies, and it is a fact that is reported in the Lunacy Commission's Blue Book.

34,335. Would you say, as a result of your own experience, that cases of the kind are curable to any great extent?—No, I think they are the most hopeless of all the cases as to relapsing. They are curable when they come under treatment; that is to say, when they do not get drink they get well; but they go out again—a large number of them—and they come back. It has been suggested, in fact, that if the London County Council were to start a hospital which would act as a sieve, so that all lunatics in London should be detained for 14 or 28 days before removal to the lunatic asylum, you would remove from the asylums their most recoverable cases, and that the statistics of recovery would very much go down. I only make this statement to show that those in the asylum from the effect of alcohol get well very quickly.

34,336. Have you had any experience in connection with Inebriates' Homes?—No, none except sitting as a Justice, and finding that some of these people are

ordered to Inebriates' Homes under the Inebriates' Act as habitual drunkards.

34,337. Have you found any beneficial results from these Homes?—Only so long as they are detained there. That is their only cure. I think very strongly about the colony? that it should be a place which is self-supporting, and that many of these uncertain cases should not be discharged continually from asylums but should be detained and made to work, if that is possible. But they will be perfectly well and help to defray the expense of maintenance in the colony.

34,338. I gather your experience has been largely amongst the poor?—Yes.

34,339. Have you known cases also of fairly well-to-do people becoming insane through excessive drinking?—Yes. The proportion is less because there is more self-control among the educated classes. I think instead of 20 per cent. the proportion of alcoholic insanity is 17 per cent. among the educated mental patients, *i.e.*, the private class.

34,340. I do not know whether yon have formed any opinion. In the case of men the percentage is double that of women?—Yes.

34,341. We have heard a good deal with regard to the intemperance of women in recent years?—Yes.

34,342. However, yon have the fact that it is only one half in the case of women?—Yes. Men are, of course, much more convivial than women and drink much more, but when you get a woman who is a drunkard she is a very helpless and hopeless person.

34,343. And she will probably often drink in secret?—Yes, and a large number of them get it through the grocers in my experience; it comes into the house through the grocers.

34,344. (*Sir George White.*) There are two paragraphs in your evidence I want to ask a question about; with regard to the difficulty of women getting employment. Are these matters of your own experience—that a woman has to assume a false character and pass through life under a cloud, and that employers would not employ her if they knew her husband was in an asylum?—Yes, I have had experience of not one but many similar cases.

34,345. One knows there is an objection with many employers to employing married women as such, but I can hardly conceive there would be an objection to employing a woman who needs employment because her husband is in an asylum?—What employers fear would happen is that the husband might come back; it would dislocate the employer's arrangements. The man would want his wife at home to keep house and make a home for him. It is not an infrequent experience.

34,346. Then you say that a mother can get a living but would lose her help if the authorities knew that she had a husband?—That is the same thing again—the employers.

34,347. I thought you meant the guardians, or some public authorities?—No.

34,348. It is on page 4— the 5th paragraph; "Mother able to get a living but would lose her only "help if the authorities knew she had an insane "husband who might return to her"?—That would occur no doubt, as I said just now, if she had a post as caretaker——

34,349. Yes, but it is the same thing?—I do not mean public authorities.

34,350. May we take it, with regard to the paragraph on page 3, that Mrs. Tennant has asked some questions about, that you would say, as a corollary to your position that divorce should occur at the end of three years or three attacks, that the State should pass a law to prevent such a man or woman marrying again?—Yes.

34,351. That is a corollary to your position?—Yes, a necessary corollary from my point of view.

34,352. Yes, I understand. There is one question with regard to the statistics that I want to follow. It is constantly occurring that local authorities make statements that insanity has increased 3 or 4 or 5 per cent. Now you say there are 130,000 insane persons now in the asylums?—Mostly in the asylums, some are in the workhouses. That is in England and Wales only.

34,353. In making these comparisons do you compare the number of insane persons in the same institutions, say 20 years ago or in 1859?—Yes.

34,354. The gross number?—Yes.

34,355. Is not the increase to be largely accounted for by the fact of the way they are treated and the longer time they live?—It would to some extent. As already has been said, registration has a good deal to do with it; the fact that the asylums are now all under the control of County Councils and representatives of labour are on the Committees and are on terms of friendship with many of the friends; the fact also that there is more confidence in the management of asylums now that the public have more access to them may account for some of the increase. That is one point. There is another point also, viz., that the conditions of competition are so great and so keen with the advance (on each quinquennium let me say), and that the demands are unfortunately more than they were without any corresponding advance in the physical conditions of the individual, who consequently breaks down. It is a curious thing there is no insanity in barbaric countries except, such as we have here, from the effects of alcohol. You get idiocy and imbecility, but you do not get the varieties of insanity we have been speaking about to-day. That is the experience of those who know.

34,356. But I want to know why we cannot get an absolutely accurate figure based upon those persons who are in asylums as insane, say, this year as against ten years or twenty years ago; the number of cases that there are—absolutely fresh cases?—We have those.

34,357. Is not that possible?—Yes it is possible and it is done—ever since 1859, when the Lunacy Commissioners issued their Report. These figures are taken from their Report this year presented to the Lord Chancellor; they repeat year by year the number of new cases that occur———

(*Chairman*) Might I say we are going to have three representatives from the Lunacy Commissioners, and they will give the exact figures.

(*Sir George White.*) Thank you, my Lord. We have the same thing repeated locally again and again; though it seems to be inaccurate, it is put before the public.

(*Witness.*) I admit there are a plurality of causes for the increase in appearance, but Sir Frederick has referred to one and that is registration, another is that the diagnosis of cases by medical men is more accurate, the intolerance of affliction in the community is another cause, the growth of flats with the consequent impossibility of looking after sick persons, especially the mentally unfit, and so on.

34,358. But one feels if there are a number of ameliorative causes at work there should be a decrease?—I believe this year has been the only when there has been a decrease in the increase.

34,359. (*Mr. Spender.*) I should like to ask a question to get to the bottom of the recurrent insanity. We are speaking of cases under the name of recurrent insanity in which there is an attack of insanity lasting three or six months, and then a perfect cure, and then another attack and then again a perfect cure until the third time?—Yes. Might I qualify that by saying as perfect a cure as a medical man thinks may justify him in sending a patient out of the asylum. Each attack of insanity leaves a "scar" on the brain; the brain is weaker each time.

34,360. But we are dealing with the person after the third time who is according to all legal tests sane?—Yes.

34,361. May I put that specially with regard to the case of the woman. Supposing a woman has had a child and an attack of insanity at the birth of one child. That is one attack. Then she has had a second child and another attack of insanity, and a third child and another attack. You would hardly suggest, would you, that that should be a ground for divorce on the part of a husband?—At the wish of the husband?

34,362. Yes?—I do think so, and I feel it very strongly. I feel that a child born in this manner is going to be a burden to the State. It is a potential lunatic.

34,363. After the woman had had one attack of insanity at child-birth do not you think the remedy

was in the husband's hands, and if she bore three children with the same result it would be a hardship to her that that should be a ground for divorce?—I would suggest that it would be at his discretion whether he would like to have an action brought, but I would not insist on it.

34,364. You would grant him the remedy of taking action in those circumstances?—I should on public grounds, for there is no possibility of stopping the issue. I have told such cases repeatedly when they leave the asylum that they should have no more children. It happens every discharging day almost, and that is 26 times a year, yet the family almost invariably increase afterwards.

34,365. Is not the remedy for that as much in the husband's hands as the wife's?—Yes, but you are dealing with human beings with a very strong instinctive feeling which is fundamental and rules his life.

34,366. Yes, but we must also think of the hardship on the same lines. If the husband is unable to take that remedy, would you say still he should have the power of taking an action for divorce?—Yes, I would. I think it is such an important public point that this woman should not bear any more children; and I think separating her from her husband by divorce would have an educative effect in that direction.

34,367. I have put a most crucial case?—It frequently happens; the husband is warned that he is producing his own wife's lunacy and yet the woman comes back pregnant. She is as unfit to bear children as if she suffered from epilepsy. She has a taint to transmit. If you are going to give a divorce for epilepsy I think, *a fortiori*, a divorce should be granted for these three recurrent attacks which are definitely known to have been in the asylum, who are a weight and a burden on the ratepayers, and they would be likely to procreate again.

34,368. You would regard that as an inherent physical defect on the woman's side?—Entirely; insanity is an entirely physical disease.

34,369. Would you go so far as to say (I am not sure if I understand what you said to Sir Frederick Treves) that there are no patients in asylums, who have been there three years or over, who were capable of feeling the pain of a divorce?—No; Sir Frederick was asking about cases of dementia, those second or terminal dementias; and I agree with Dr. Clouston that the whole mind in such cases is shed. There is no altruism, but there is intense egoism. The great thing one notices in an asylum garden is that there is no fraternising; they all keep separate and apart, and it is a sign of recovery when they begin to make friends. These cases of dementia are incurable and none of these would feel the pain of a divorce.

34,370. But you would not only deal with those who are certified, but with those who are uncertified?—I think it is difficult to touch those who are uncertified. I am dealing with those certified, there must be a certificate. There must be certifiable insanity; there are cases of neurasthenia, and so on, and people do things which their friends will not tolerate, but when the medical practitioner certifies them, he deals with actual certified insanity.

34,371. Are there not a number of cases in asylums at the present moment whose cure might be affected by the knowledge in the first three years of their residence in the asylum, or even a few months in the asylum if they went in with the knowledge that if it lasted they would run the risk of forfeiting the wife or the husband?—In insanity I do not think there is any thought beyond the next discharging day or the possibility of getting out day by day. I think three years hence very rarely, if ever, enters into consideration.

34,372. A great many of the cases mentioned in your Proof would hardly be touched by divorce after two or three years. The home would be broken up and the conditions of poverty would have taken place?—For these reasons I would personally ask that the period qualifying for a divorce should be reduced to two years, but so as to do away with abuses or anything that would aggravate them, and to give them every chance of getting well, I think if you fixed three years you would fix, in my opinion and that of many others, an extreme limit.

34,373. And with regard to racial effects; I think you hold that divorce laws on this line would be the first step?—I think a most important step. One of the gentlemen asked me about the arrangements in America. I am told by those who have lectured at the Eugenic Society (I am on its Council) that though there is a law in some States prohibiting epileptics marrying, 20 per cent. are married. The epileptic has no recollection of his fit; he would be quite true if he said he had had no fit; and I quite agree saying what to his own knowledge would be that epilepsy is strongly hereditary; but it is very difficult to deal with epilepsy unless it is associated with insanity. You would interfere with the private life of some of the most clever men, the most able and serviceable citizens; but I do think personally it is a very great injustice to the poor people to lengthen the period after which they can get release from an incurable case.

34,374. (*Chairman.*) Just one question to sum up this matter as far as I am concerned. Those cases of puerperal insanity which you have spoken about; are they curable?—Very curable.

34,375. By the cessation of intercourse for instance?—Yes, very curable.

34,376. And what happens at the time when she gets over it?—If she has a large number of attacks each attack leaves the brain weaker, and she becomes an incurable resident in the Asylum.

34,377. Is it not sufficient, then, to deal with those cases by saying that if the insanity is of so long a duration, and pronounced incurable?—I do not quite follow.

34,378. If you were to sit down to-morrow to draw an Act to carry out your views, you would have to express in writing exactly what the Court was to do, and a question would be, what would you express to meet a case such as you are putting of recurrent insanity. If that is not curable I understand it would come within your definition of an incurable case; but if it is curable, and only produced by childbirth from time to time, it might be considered perfectly curable, might it not?—I think, my Lord, I did suggest that you should have two clauses. I am not a lawyer, but that if it were possible to draft such a suggestion that those who had been three years in an asylum should be considered absolutely incurable, and a second clause.——

34,379. That is not exhaustive, because they might never have been put in an asylum, but been kept at home, insane?—I should not take any notice of that; I am really dealing with the poor. I think it is wanted for the poor people, whose insane friends and relations must be brought into the asylum; the friends of the well-to-do classes remain at home, and I do not consider there is hardship here, yet permission or sanction for divorce might be permitted to them also.

34,380. Well, that is your first clause?—Yes. Secondly, those who had been in an asylum three times and had had three definite attacks of insanity. I think on public grounds, for the sake of the race, that I should endeavour to prohibit that person having more children, and the only way you could do that would be to bring a divorce action.

34,381. But suppose the doctors said it was curable?—I should still consider it in the light of epileptic insanity. The person would be comparatively well between the attacks, yet there is an inherent defect which can be and often is transmitted. A recurrent condition of mental disease is one that would need strong dealing with, and I am of opinion that divorce is justifiable.

34,382. Does it need it if it is pronounced curable?—Yes, a certain number of those are cured, and it is quite possible to have a patient who has been three times in an asylum owing to puerperal insanity having other babies subsequently and being perfectly well, and also making a good wife to her husband, yet with each infant she has transmitted the possibility or probability of insanity to the child. I do recognise there are individual hardships, but I maintain from the stand-

point I take that the individual must give way to the good of the community.

34,383. You see in one or two countries this matter has been considered, and I find the definition in Sweden is "Insanity of three years' duration and pronounced incurable." That would not meet it?—Well, it would not meet recurrent attacks.

34,384. It would include recurrent cases if it was insanity that lasted three years and was so liable to come again that it was pronounced incurable. Then in Switzerland they have "Insanity rendering married life " impossible and after three years' duration pronounced " incurable." It is very similar in Germany too. You think that will not meet your recurrent cases?—I think in Germany it is inability to render mental companionship that is ground for divorce.

34,385. In Germany; insanity, of three years' duration destroying intellectual communion between parties and holding out no hope of recovery?—Yes.

34,386. Those would not meet your view about these recurring cases?—No it would not meet the puerperal cases I admit and there would be some others. Take the case of a girl who had a great disappointment with regard to marriage. It is possible she might have three shocks and be well after that to all intents and purposes; but from my point of view, from the point of view of the benefit to society, she is not fit to be a mother. I have avoided dealing with these cases from a surgical point of view. I represent a large number of medical men and they are and I also am very much against surgical interference. That is a way out of it if they consented to an operation.

34,387. That would be classed as curable though they would not be physically perfect?—Yes.

(*Chairman*). May I say how very much obliged we are for your evidence and the way you have dealt with this very difficult subject.

Adjourned for a short time.

Dr. JONES recalled.

34,388. (*Chairman*). I understand you want to add something to what you have already said?—Yes, I just wished to state this, that when I advocated the idea that there should be a relief after three separate attacks of insanity, I did mean that those three separate attacks should cover especially alcoholic insanity, but I was asked whether this would apply to puerperal insanity. I feel that divorce is a relief granted to the individual. My point with regard to incurable insanity generally is for the relief of the individual. My point with regard to puerperal cases was more on national grounds, and it is a question whether that could be separated from the relief of the individual. I would like to try to make it plain if I could.

34,389. As I follow it you mean that in the case of alcoholic insanity that if recurring might be left to the individual; but the case of the puerperal insanity it might be a question for the State?—Yes. It was for the benefit and advantage of the State that I advocated divorce in the case of recurring puerperal insanity. Puerperal insanity was mentioned, but it might be any kind of recurring insanity. I think she or he should have a separation by divorce from an incurable drunkard, from a person who had been in the asylum, say, three times, and had had three separate attacks and brought on by his own act. And when I stated the three years' duration I meant three continuous years' duration under treatment.

34,390. How does that meet the case of three short periods?—I separate those and I really wanted to make it clear that I draw a distinction between the two. I draw a distinction between the three years' continuous duration under treatment and three separate attacks. In the one case I call it incurable insanity and that the person ought on private grounds for the sake of the individual to get a divorce. But the other is a wider question, more or less eugenic in character, and depends more on general or national grounds, and more especially from the point of view of reproduction as regards propagating the unfit.

Dr. THEOPHILUS BULKELEY HYSLOP called and examined.

34,391 (*Chairman.*) You sent in a short memorandum, but you have amplified that since, and just handed to me a typed copy?—That is so.

34,392. Then I propose to ask you if you will kindly read that. First of all I will just ask you about your position. You are a doctor of medicine, and a member of the Royal College of Physicians, Edinburgh, and you are senior physician at the Bethlem Hospital, and lecturer on insanity at St. Mary's Hospital and the London School of Medicine for Women; lecturer on mental diseases and mental physiology; lecturer on mental diseases Royal Free Hospital, and president of the section of psychological medicine and neurology at the annual meeting of the British Medical Association 1910, and President of the Society for the Study of Inebriety, and so on?—That is so.

34,393. Have I exhausted the list of qualifications?—There are many other things, but of minor importance.

34,394. Those are sufficient?—Yes.

34,395. Will you kindly take up your type-written proof then? — "I have been twenty-three years as Medical Officer at Bethlem Royal Hospital, during which time about 6,000 patients have passed through it. The recovery rate has been about 50 per cent. The incurability of the remainder has been in great part due to causes such as heredity plus alcohol, syphilis, &c., and (excluding such conditions as secondary dementia and organic brain lesions from apoplexies, &c.) the incurable malady has been caused mainly by errors or faulty habits in the individuals. *Types.*—There are various types of incurable insanity in which divorce might be advisable. *Chronic melancholia.*—In some cases of *chronic melancholia* which have lasted many years and in which there has also been *loss of brain power.* It is difficult to define the time limit as to curability in some melancholiacs and especially where there is no dementia. I have seen a case of chronic melancholia in which recovery took place after 35 years of residence in Bethlem (1844 to 1879). The patient remained well for seven years but was readmitted (in 1886) suffering from a relapse from which he died 13 years later. In another case of a woman who had been melancholic for 30 years recovery took place on the return from Australia of her brother for whom she had long mourned as dead. I have also seen several cases of recovery from melancholia with agitation, automatic repetition of actions and words, and even hallucinations of hearing, after periods of from five to ten years. *Chronic mania.*—Chronic mania may also continue for lengthy periods, but I cannot recall having seen a case of recovery after five years. *Delusional.*—With regard to delusional states. It is sometimes difficult to determine that delusional states are incurable, especially in the earlier stages when the physical health is impaired. I have seen many cases of apparently systematised delusions yield to time and treatment. The method of onset and the features of the stages of evolution of the delusions (the physical factor being excluded) will enable one with a fair degree of certainty to prognose as to the curability. In some cases at least five years should elapse before considering the question of divorce. *Dementia.*—With regard to dementia secondary to acute attacks of mania, it may be merely a temporary or protracted sequel to the acute brain disturbance. In some post-febrile states, as, for instance, after influenza or typhoid fever, the mental disturbance may be of an anergic form and last for several years, to be followed ultimately by recovery. When there has been a definite apoplexy, or other focal lesion with destruction of brain tissue and mental devolution, recovery is of course scarcely to be looked for. In many such instances the viability appears to be but little interfered with and they may live for many years."

34,396. What is exactly understood by viability there?—The probabilities of life. "With regard to general paralysis of the insane I would say that although as a general rule the disease terminates fatally within two or three years from the onset there are cases in which there may be either a prolonged remission or an indefinite protraction of the symptoms. In the exceptional cases of protraction the question as to the advisabillty of divorce might be considered after the disease has lasted three years, provided that it could also be said that not only is there no possibility of recovery but also that there is little likelihood of the viability being diminished, *i.e.*, the patient might live for years."

34,397. We are told that as a rule it ends fatally in a few years?—But there are exceptions. Some are protracted and last for a considerable number of years. Usually by the end of three years one is able to determine whether the patient is in any immediate danger of death.

34,398. Three years from the disease manifesting itself?—Yes, and also as to whether they are likely to recover.

"*Epilepsy.*—With regard to epilepsy. The mental degeneration resulting from epilepsy is not only apt to be very deep and lasting, but it may also be a source of continual anxiety and even danger. Of the graver forms of epilepsy much is already known, and it is fully recognised how the taint is apt to be transmitted by heredity and even intensified in the progeny. Another type is not so well known and but imperfectly recognised in law, I allude to those conditions known as mental automatism, larvated epilepsy, double consciousness, alternating or multiple personality. They furnish us with the types somewhat akin to Dr. Jekyll and Mr. Hyde. Of these I have seen and recorded many examples. The condition is sometimes unrecognised even by near relatives and friends. Such states are sometimes heralded in youth by the occurrence of convulsions, nocturnal delirium, night-terrors or somnambulism, and are later followed during adolescence by alternating conditions of sanity and mental automatism. Sometimes these cases are taken care of in asylums, but more frequently they commit some crime and are committed for trial. During the last year I have examined two criminals of this type who had committed murder. In both instances they were acquitted on the ground of insanity, and in my opinion in both instances they were incurable. Such instances will always be difficult to deal with, inasmuch as the relative durations of the normal to the abnormal periods cannot be gauged with any degree of certainty." With regard to criminals I would state here that my experience does not quite agree with that of Dr. Clouston and Dr. Robert Jones inasmuch as they stated, and I think they advocated, that all persons who had committed crimes and had to go into Broadmoor or kindred institutions should never have a chance of returning to their married life. I would merely mention that the only way in which I differ is that it would in my opinion be a great hardship to one class of individuals, namely, the young puerperal woman who, through no fault of her own, but because she is suffering an acute delirium and has no consciousness of the act, may through delusion or delirium commit infanticide and be found to be guilty of the act, but insane, and be committed to Broadmoor, where in the course of a few months she recovers her mental faculties; she wishes to return home to her husband who may be devoted to her and also wishes her return. There are several instances in which I have seen this, and appeal has been made to the proper quarters for a reprieve so that she may be allowed to return to her home life. It seems to me in those cases that a very considerable hardship might ensue.

34,399. That would not be an incurable case?—No; but the statement referred to all criminals.

34,400. I do not know that they were speaking of criminals who were curable?—In Broadmoor. I understood so.

34,401. I understood their mind was directed to the question of whether the case was incurable. However, it does not make much difference. We shall see. At any rate, that is an exception, because that would be curable?—Yes. "*Alcoholism.* — Extraordinary recoveries from alcoholic mental disturbances are met with. I have seen patients extensively paralysed, demented, and even apparently moribund, yet they have recovered. Formerly I was inclined to believe that even deep destruction of memory might be recovered from. My later experiences, however, have led me to believe that alcoholic amnesic defects, when extensive, are very rarely recovered from. It is now known that alcohol, if given in excess, destroys the trophic or nutritive functions of the nerve cell so that the cell dies and becomes incapable of regeneration or further functioning. In this somewhat common type of alcoholic amnesia the viability is not much impaired, and they may lead useless vegetative existences for many years. They become quite incapable of managing themselves or their affairs, they neither know nor feel any responsibility, and as by their own acts they have incapacitated themselves it would appear advisable to grant a divorce after a period of at least three years has elapsed. Another type of alcoholic insanity, in which much hardship is encountered by the husband or wife, is that in which the *will-power* has been destroyed. In such instances there is defective inhibition for which neither time not treatment can do any good. I have seen many individuals of both sexes who have had to suffer life-long misery on this account, and divorce would appear to be advisable as a humane method of relief. *Recurrent mania.*—Recurrent mania due to alcohol causes many difficulties. Sometimes the recurrences are numerous, and each attack appears to cause but little degeneration, but ultimately brain destruction is bound to ensue. I have seen recovery take place after the 37th attack of mania with delirium, but each recovery was productive of nothing but misery to friends and relations. One danger in such cases is that between the attacks they may beget children, and I know of several instances in which such children have turned out to be epileptic, nervous, or defective. As a result of my experience with alcoholics I have come to formulate a proposition that any individual who is unable to resist a habit of taking an excess of alcohol, even though he or she may be capable of attaining to a certain degree of power in mind, body, or pocket, biologically considered, so far as evolution is concerned, the world would be better had he or she never been born into it. For such an one divorce is but a part of the aid we should give to the process of eliminating the degenerate and unfit. *Morphinism, cocainism and other drug habits.*—Second to alcohol there is in the whole history of the insane no type of degeneracy, either inherited or acquired, more painful in its social aspects or more productive of human misery than that due to morphia, cocaine and kindred drugs. The types are too well known to need description. The lying and deception resorted to by them and the tendency to recurrence after lengthy periods of treatment, have rendered these types not only difficult to deal with but also sources of unutterable hardship and misery to their wives or husbands respectively. Many an instance have I seen in which, to my way of thinking, divorce might with justice be granted. I see quite a number of degenerates who in their excesses run through the whole gamut of narcotics and other drugs. Abstention from one drug merely means indulgence in another. From such cases nothing is to be gained or even hoped, and they drag others with them down to the lowest depths of degradation. Of these, I have seen several who have ultimately succeeded in getting their marital partner to acquire the same habits of indulgence. *Moral insanity.*—Moral perverts who have tendencies to *kleptomania* and other impulsive states sometimes cause disastrous consequences, and I have been consulted on several occasions as to whether divorce would be possible or justifiable. I have also been frequently consulted as to how to obtain relief from habitual *lying* and an uncontrollable habit of slandering"—I allude to insane cases —"It is often difficult to decide whether they are insane or merely morally defective. Usually, however, in my experience, such cases are complicated by abuse of alcohol or other drugs. *Uncontrollable temper* is

sometimes of pathological import, and I am sometimes called upon to decide as to whether ungovernable outbursts of passion are in reality symptoms of insanity. Not infrequently such cases are adequately met by prolonged periods of separation, but in some instances of hereditary defect of control in which the recurring outbursts of passion have been precipitated by even small amounts of alcohol the condition has not only become chronic but also a source of personal danger, and, even though they may not be technically or certifiably insane, divorce might in some instances be justifiable. *Sexual perversions.*—This opens a very large and painful chapter. I have seen dozens of instances in which the insane patient has been the pervert and not only brought about the actual attack of insanity but has also been the cause of much misery, or apprehension and fear on the part of the husband or wife lest recovery from the insanity should bring about a return to the practice of their perverted acts. The anxieties betrayed by the relatives of such patients lest the patients themselves should be allowed to return to their homes is not unfrequently due to the existence of such perversions. It must also be noted that some insane patients are made insane by sexual perversions of their marital partners. I know of many instances in which relapses are not only common but there is actual dread of home relationships owing to the sexual perversions of those who are still at large and presumably sane. In some cases I am of opinion that protection is needed for the patient. There are various types of insanity in which marriage has taken place. (*a*) *As a symptom of insanity.*—I have given evidence in one case in which marriage took place in consequence of the exaltation and sexual excitement symptomatic of the onset of *general paralysis of the insane.* When the disease became more manifest application for annulment was not only made and granted but ratified by the Pope. (*b*) I have known instances in which *alcoholic* or *bibulous philanderers* have contracted marriage with disastrous results to their wives. Sometimes these marriages have been undertaken by the wives in heroic fits and it is therefore open to question as to whether they become entitled to any relief from what they undertook with their eyes open. (*c*) *Senile decay.*—Sexual excitement not infrequently heralds senile decay and it may lead to unsuitable marriages and many financial and medico-legal complications. In such instances as I have had to do with divorce is seldom sought. In such cases the testamentary capacity appears to have called for the greatest amount of attention. (II.) *Marriage prescribed as a remedy for*—Neurasthenia, hysteria, sexual perversions, alcoholism or other drug habit. In my experience marriage is not justifiable under such circumstances and when one contracting party withholds from the other the existence of any such remedial intent and the marriage proves a failure then relief appears to be justifiable. I gave evidence in one such case and the marriage was annulled. *Marriage without knowledge of the existence of a bad family history, the occurrence of previous attacks of insanity, of alcoholism, of infection by syphilis, or of epilepsy* ought in my opinion to be sufficient to warrant relief for the party from whom the knowledge was withheld. (III.) *Types of insanity of somewhat lengthy duration, but in which recovery may eventually take place.* In *melancholia* attacks may last for many years and then be followed by recovery. Females at the *change of life* not infrequently suffer from sub-acute forms of mental disturbance lasting from two to ten years and yet ultimately recovery takes place. In young women there may be *recurring attacks* of excitement at regular monthly intervals, and these may continue for several years. Our knowledge of these conditions and their efficacious treatment is increasing so rapidly that it is possible such conditions may ultimately be eliminated from consideration. Similarly with regard to mental disorders due to glandular anomalies and faulty metabolic bodily processes. Our knowledge in the future may enable us to treat successfully many conditions which are now regarded as being incurable." One has to recognise that in males there are states in which there may be accumulation of uric acid sometimes accompanied by acute mental symptoms, and these symptoms may recur periodically. One's knowledge of organic therapentics and of serum therapy is now proceeding at such a rate that it is quite possible we may yet be able to eliminate these cases from consideration." "*Summary.*—To summarise briefly: there are some forms of mental degeneration which can with a degree of certainty be recognised as incurable and in which much hardship might be relieved by divorce. The factor of self-indulgence as a cause might with justice influence the decision. Suppression of facts of the existence of degeneracy in the family or in the individual might further influence the decision. In my opinion the question of personal relief from the incubus of being tied to a degenerate is of secondary importance to the wider question of the danger to the community and the race of the transmission by heredity of such conditions of degeneracy, and inasmuch as medical advice on such matters is but seldom asked, and if asked, hardly ever regarded, it would appear advisable to aid the right trend of evolution by facilitating the disruption of marital ties which are not only baneful to the individuals but a source of danger to the proper evolution of humanity. In my opinion, the whole question is in great part dependent upon questions affecting the better regulation of the conditions under which marriage is contracted. In brief, I think that divorce might be considered after three years, provided that the patient is incurable, and that there is no immediate prospect of death or interference with viability."

34,402. (*Sir Frederick Treves.*) There are several different headings under which your evidence comes. I take it that the case mentioned in the second paragraph of your proof would really resolve itself into cases dealt with by nullity of marriage?—Yes, there are some which can be so dealt with.

34,403. That is where marriage is undertaken as a symptom?—Yes.

34,404. Such as in cases of general paralysis of the insane?—Yes.

34,405. In all those cases it is rather nullity than divorce?—In most of them, yes.

34,406. Well, certainly in paragraph A and paragraph C?—Yes, in paragraph C.

34,407. Then with regard to the residue, that is to say, the cases where divorce can be considered, can you separate the pure case of divorce from any question of eugenics? I gather you do not. For example, all your arguments in favour of divorce in alcoholics are based really on consideration of eugenics; that is to say, you would take steps to prevent those persons from producing degenerate children?—Not entirely so. I also stated that in some instances one would consider it very advisable and a humane measure to give relief to the husband or the wife.

34,408. But putting aside any question whatever of children you still hold the view that divorce should be granted for chronic alcoholism or alcoholic dementia?—Yes.

34,409. Quite apart from any question of the offspring?—Yes.

34,410. With regard to other cases and also putting aside all questions of eugenics would you think that divorce should be properly granted for incurable insanity that has existed for three years?—I think that at the end of three years it might be advisable to consider the question. I do not think the question ought to be considered before the end of three years, and only at the end of three years provided there is no possibility of a cure, and also provided that the individual is likely to live—that is to say, that there is no interference with the viability.

34,411. And from your experience, distinguishing the sane from the insane person, you would be disposed to advise that. In other words you have met with cases of such hardship in connection with this matter that you would be disposed to advise divorce?—That is so; I can answer that with perfect freedom. I have met many cases in which it has been a distinct hardship that either the wife or the husband should be saddled with a person for whom there is no possibility of cure. There is no tie so far as feeling is concerned, and there is no possibility of any return to the ordinary normal

state. In fact the tie has served as a clog to hamper them in going through life in even a moderately happy way. I have seen abundance of illustrations of this.

34,412. And you would say therefore that insanity of the kind you have spoken of should be a ground for divorce?—Yes. Of course it is difficult to lay down a general law when you are dealing with so many diverse conditions. Each case would be considered on its own merits.

34,413. If you could draw up a clause to deal with this, would you put it under one description of insanity or an incurable condition of three years' duration?—I would say that the question might be considered at the end of three years independently of the form of insanity, and it might be determined on the question as to whether the viability of the individual is interfered with, and whether it could be determined by an expert whether there is any chance of recovery.

34,414. Speaking again from the medical point of view, looking at marriage not only as a contract but as a very serious and solemn contract the individuals in your mind are practically dead?—Yes.

34,415. As far as being parties to a contract is concerned?—Yes.

34,416. They could not understand the obligations of it and they are non-existent so far as parties to a contract are concerned?—Yes.

34,417. I mean such persons as you have in your mind?—Yes.

34,418. You would not say that all criminal lunatics that have been put away during His Majesty's pleasure should be persons from whom a divorce could be claimed. You except puerperal cases?—I cannot recall any other cases.

34,419. Only these cases of puerperal insanity?—Yes. I have been applied to to see if anything could be done to get such cases out of Broadmoor.

34,420. And they are mostly cases of infanticide?—Yes.

34,421. Would you consider the question which has been already asked as to whether the stage in marriage when insanity occurs should have any weight. It has been said, you know, that insanity occurring 15 years after marriage should not be a ground for divorce?—That question depends entirely on what has happened during those 15 years. For those people who have had 15 years of happiness the question of divorce would never arise. On the other hand I have seen an exceedingly deplorable condition in which individuals have lived 15 years in purgatory owing to the faults of drunkenness, recurring attacks of mania, excitement, brutality, and everything that would drag a person down, so that the marital partner is just at the end of his or her tether at the end of 15 years, and then they are afforded some relief by the individual being in an asylum. If after three years the insanity is deemed incurable, then divorce would appear to be advisable. What has transpired during the 15 years preceding the actual attack of insanity should be the guide. I have seen so many who have endured all kinds of hardships until finally the degenerate has found his way into an asylum, and this has been but the climax. The friends have got a respite and they sometimes hope against hope that the patient will never be restored to them and never even recover. It is very unfortunate and very sad, but that is part of my experience. They have reached this goal after a long period of hardship.

34,422. Supposing insanity were made a ground for divorce, and speaking of these borderland cases, do you think the knowledge of that fact would do much harm to those people. It has been said that the knowledge that such a circumstance is possible might drive a man of unstable mind actually out of his mind?—I do not think so. My experience is this that the more people know the harms that are likely to accrue from giving way the more likely they are to avoid them. Nothing appeals to the individual so much as the possibility of anything affecting his own skin. I am arguing by analogy, but one knows with regard to alcohol we have educated the people and they are gradually becoming alive to the fact that they must avoid that which is harmful. So with the recurrence of these puerperal states one knows that the mere expectancy of a breakdown is quite enough to bring it about, so that if women are educated so that they must not expect to break down, one knows from experience there is not the same tendency for the recurrence of these puerperal attacks. There is another very important point in connection with these puerperal states that was not dealt with, namely, that the puerperal insanity is far more likely to occur in connection with the first birth than subsequent births. If the individual has broken down with the first birth or acquires the knowledge that her mother had puerperal trouble after her child bearing it is almost enough to bring about an attack, so that to advise that they should not have other children for two or three years is often quite enough to prevent subsequent puerperal attacks. This is not an opinion of the moment, but one derived from long experience.

34,423. With regard to epilepsy, putting aside again all questions of eugenics, would you make epilepsy a ground for divorce or limit it to epileptic insanity or dementia?—I would limit it to epileptic insanity in which there is either an exceedingly dangerous tendency, or where there is marked dementia.

34,424. You say that without any question of eugenics or possibility of children?—Yes.

34,425. On its merits?—Yes; although I regard these conditions as also particularly bad as far as heredity is concerned.

34,426. (*Chairman.*) Would you mind informing me what the origin of puerperal insanity is. Is it a germ or some other cause?—It may be due to two factors. The actual shock, causing profound alteration of all the psychical and physical functions, especially in those who are predisposed to instability; it may be a chance condition which is enough to upset the equanimity for the time being, and there may be a profound alteration in the nutrition and metabolism. Then there is the other type which is due to toxic causes; but with our knowledge of toxins these extreme cases of puerperal septicaemia are now but rarely seen.

34,427. You deal with three classes of cases in your evidence. The first class you find incurable, and in that case you think the sane person might be entitled to relief?—Yes.

34,428. Then another class of case. You think there are cases in which the conditions at the time of marriage are such that there might be a decree of nullity of marriage?—Yes.

34,429. That is based upon, for one cause or another, the unfitness to enter into the marriage relationship?—Yes.

34,430. The last branch of your evidence as I understand it is that apart from the right of a petitioner to claim a relief of either of those kinds there are cases in which in the interests of the State something might be done to segregate or to prevent at all events the further procreation of children?—Yes.

(*Chairman.*) I should like to thank you, Dr. Hyslop, on behalf of the Commissioners for the great help you have rendered us in giving evidence.

Dr. Jane Walker called and examined. (*In Camera.*)

34,431. (*Chairman.*) Dr. Jane Walker, would you kindly tell us your medical qualifications?—I am licentiate of the Royal College of Physicians, Ireland, and of the Royal College of Surgeons, Scotland, and an M.D. of Brussels. I am physician to the New Hospital for Women in London, medical superintendent of the East Anglian Sanatorium. I am one of the governors of the Aylesbury Inebriates Reformatory, and one of the visitors appointed to manage the Borstal girls.

34,432. How long has your medical experience extended?—I have been in practice since the end of 1886.

34,433. I believe you also practise at Harley Street?—Yes, I practise at London and in Suffolk.

34,434. I think here you are a representative of the Association of Registered Medical Women?—Yes, I am the delegate chosen by that body.

34,435. And you not only wish to present your own, but their views?—Primarily I am presenting their views. Anything I say, unless I specially qualify it, will be the views of the majority of the Registered Medical Women, and not my own personal views.

34,436. And you go into this because it is of very grave importance?—Yes. Would you like me to read it, my Lord?

34,437. If you think you can express all you wish to say by reading your proof I shall be very glad if you would do so. It would save my asking questions. Begin at the second paragraph because we have really had from you what is contained in the first paragraph?—"Several witnesses, some of them of considerable "public influence, who were heard in the early part of "the proceedings, urged the excusability of adultery "on the part of a husband as a reason for continuing "the present inequality of the law, whereby a woman "cannot obtain divorce solely on the ground of her "husband's adultery.

"We, however, wish to point out that irregular living on the part of married men has disastrous consequences to the health of the women of the country, and to the race.

"It is a recognised medical fact that one act of adultery on the part of the husband may be the means of his contracting venereal disease, and this he may communicate to his wife if they are living together.

"The serious consequences of such infection, when communicated to women, may not be fully understood by those who speak lightly of the act which exposes wives to the danger of infection.

"It is important, therefore, to point out the results of the two diseases most concerned:—

"1. Gonorrhœa, which is the disease most often communicated, is a common cause of sterility, either absolute or relative.

"It is an undoubted fact that a considerable proportion of sterile marriages is the result of this infection communicated to the wife. The national importance of the consequent diminution of the birth-rate is evident, and should be considered.

"The loss of the natural function of child-bearing is not the only penalty which the wife has to pay. Other grave results are the serious and prolonged illnesses from which she frequently suffers.

"It may be urged that the risk of infection would be avoided if the wife refused to cohabit after an act of adultery on the part of the husband, or if the husband always ensured that he was free from infection before returning to his wife. As the law now stands, she has to choose between the alternative of risking her health or of living a single life while ostensibly a married woman.

"2. Syphilis leads also to a diminution of the birth-rate, and is a frequent cause of miscarriage, and children born of syphilitic parents have a heavy death rate during the first year of life.

"Unfortunately the misery entailed does not end here. Of the children who survive a large number become the inmates of blind asylums, and deaf and dumb institutions.

"This disease also exacts a full toll of suffering from the infected wife.

"Medical women are aware of the legal decisions which, in some cases, have made the communication of these infectious diseases on the part of the husband legally 'cruelty,' and so a ground for divorce, when added to his adultery. But a woman runs such risks from the adultery of her husband that they submit that true science, sound morals, and the social well-being of the community alike demand that a married woman should not be exposed to such risks, and that, therefore, there should be equality in the law as between men and women.

"The Association would further point out that the existing possibilities for divorce not only deny to a woman of the poorer classes any redress from the unfaithfulness of her husband, but even when this is accompanied by gross physical cruelty, her poverty is a bar to any effectual relief."

34,438. That is dealing with the question of courts?—Yes, equality between rich and poor.

34,439. The opportunity for bringing a suit?—Yes.

34,440. Does that mean you would advise some scheme to enable the poorer classes to bring their cases before the Court?—If that were possible.

34,441. Has your Association formed any view as to whether that, as suggested by some, would be detrimental to the interests of the country?—I do not think my Association, as an association, thinks it would be detrimental to the interests of the country. "Such infective disease is so readily spread in the "homes of the poor the Association would urge, for "the sake of the whole community, that facilities be "made equal between rich and poor as well as between "the sexes."

34,442. (*Sir Frederick Treves.*) How many ladies are there in your Association, Dr. Walker?—About 500, I think. Something like 500.

34,443. I suppose you had a meeting?—Oh, a great many meetings.

34,444. And this is the matured result of it?—Yes.

34,445. It may be said to represent the deliberate opinion of the medical women of this country?—Of the majority of the medical women.

34,446. (*Chairman.*) Might I ask how many medical women there are in England?—Well, they increase so every year. Do you mean counting India as well?

34,447. When you said 500?—Nearly all the medical women belong to the Association, but not quite. I should think there are about 600 medical women practising in England, but there are a good many more if you take India.

34,448. (*Sir Frederick Treves.*) The main point of your proof is this, that you do not recognise what has been called here "accidental adultery"?—No.

34,449. In other words you would say from a medical point of view one act may be followed by as disastrous results as 10?—Yes, quite.

34,450. And I suppose you would also say, if one act be recognised, you cannot get away from the fact that adultery is legalised to that extent?—Yes.

34,451. That is so, is it not?—Yes, obviously.

34,452. If one act is excused it is legalised to the extent of one act?—Yes.

34,453. From a medical point of view I take it the most important part of your evidence—and a very important point—is the emphasising of the evils of gonorrhœa?—Yes.

34,454. It is the general impression in the public mind that venereal disease always means syphilis?—Yes, the public mind knows nothing whatever but syphilis.

34,455. And it is also a common opinion that gonorrhœa is a mere nothing?—Yes.

34,456. A mere trifle?—Yes.

34,457. And any preventive legislation need not consider gonorrhœa?—That is so.

34,458. It is also a fact that gonorrhœa may lead to most disastrous results in women?—Yes.

34,459. It may lead to lifelong illnesses?—Yes.

34,460. It may lead to very very painful illnesses?—Yes.

34,461. And it may in cases of suppurative troubles lead to operations?—Yes.

34,462. And it is one of the commonest causes of sterility in women?—It is estimated that half of the cases of sterility is due to gonorrhœa, and that half of the operations on the pelvic organs is due to gonorrhœa. It is a much more serious illness to women than syphilis is.

34,463. That is a very important statement?—Yes, much more serious.

34,464. From the point of view of women you regard it as a much more serious illness?—Yes.

34,465. And certainly one involving more suffering and more general illness and distress?—Oh, much.

Syphilis is not a very serious disease to women compared with gonorrhœa.

34,466. And you would add, in speaking of the evils of syphilis, that that in addition to the unfortunate children who are sent to deaf and dumb and blind asylums there will be a large proportion who are very much disfigured?—Yes.

34,467. And prospects of earning a living are much reduced, because they are deformed, and have sunken noses or dwarfed bodies, and so on?—Yes.

34,468. (*Lady Frances Balfour.*) Of course syphilis is less important to women, but it is very important to the children?—Yes, it is a very great cause of infantile mortality. The figures with regard to it are impossible to get. For one thing, people hesitate to say a child has died of congenital syphilis.

34,469. Is it invariably communicated to the infant?—No, not invariably, but very, very commonly.

34,470. And that makes it very serious?—Yes, for the children and for the community.

34,471. Because it is a double thing?—Yes.

34,472. (*Mrs. Tennant.*) Has gonorrhœa any bad influence on the children?—Yes, with regard to the sight. I think it is 80 per cent. of the blindness of children that is due to gonorrhœa. Furthermore *ophthalmia neonatorum* is almost universally due to gonorrhœa. For practical purposes that is the cause of it.

34,473. Is it possible for the husband to convey gonorrhœa innocently. May he do so without knowing he is so suffering?—Yes, he might. There are probably many cases on record where a man has married and given his wife gonorrhœa without his having the slightest intention or knowledge that he was so doing. The disease lasts such a very, very long and such an indefinite time, that he may appear to be quite well, and may think he is, and yet he may infect his wife.

34,474. It is suggested to me by the Chairman he could not do so innocently; when I said "innocently," I meant innocent of knowingly incurring risk?—Do you mean he could give gonorrhœa without knowing he had got it?

34,475. What I meant to convey was this. There is double guilt attaching to the man who in the first instance contracts the disease and then knowingly risks its transmission to his wife. What I wished to ascertain was whether it was possible in the case of gonorrhœa for the husband to have only the one guilt?—Yes, in a very large number of instances he only has the first guilt. It would be a very rare thing in my judgment, and from my knowledge of human nature, that a man would knowingly communicate the disease to his wife.

34,476. (*Sir Lewis Dibdin.*) I want to ask you this. Where the misconduct of the man after marriage has led to his wife being infected with gonorrhœa, I quite follow there is an offence committed for which a wife ought to have a remedy. But take the case of a man who by ante-nuptial misconduct has contracted the disease without knowing it and then he marries and infects his wife. Do you suggest any remedy for that, any remedy, I mean, in the way of divorce?—Well, I believe that that has been adjudged in several cases to be legal cruelty, has it not, the husband having communicated the disease to his wife? Or must it be knowingly?

34,477. I am afraid I am ignorant on the subject?—I think that is one of the definitions of legal cruelty if it can be proved that the husband has communicated venereal disease to his wife.

34,478. (*Chairman.*) Wilfully. That means knowingly, practically.

(*Sir Lewis Dibdin.*) We are dealing with a case where it is not wilful in the ordinary sense. I only want to know what your view is as to whether a wife infected by the husband unknowingly, the disease being in him, not as the result of post-matrimonial misconduct, but as the result of prenuptial immorality. Would you give any relief there?—I think each case there would have to be taken on its own merits. It might be a greater hardship to give relief, as you put it, than to leave things as they are.

34,479. If every case has to be judged on its own merits, in that context, that would mean it would be a possible cause of divorce?—I think it might be perhaps, but I remember a case in my own experience where it would have been a very much greater hardship for the wife to have been told, and the marriage to have been dissolved, than it has been for the marriage to go on without any notice being taken of it at all.

34,480. Do you think it would ever be a proper ground for divorce that a man should be divorced from his wife for having unknowingly communicated to her a disease which he had acquired by immoral conduct before marriage?—If we are going to have divorce at all I think almost it ought to be.

34,481. (*Chairman.*) Would you mind letting me ask you one or two questions which are not fully dealt with in your proof. With regard to gonorrhœa, would you mind telling me whether that is curable within a limited time, or may it last for a very long period?—It may last for a very long period. I believe there is a case on record where infection occurred 13 years after the beginning of the attack. But that would be a rare case.

34,482. Take the normal state of things?—The normal state of things now I think is that a man should not marry for two years after he has contracted gonorrhœa. I think that would be the usual advice.

34,483. And it may be curable in a less time than that?—It might be, but it would not be commonly.

34,484. Your position as representing the Association with which you are connected is that if that accrues through misconduct after marriage the wife should have the option?—Yes, of relief.

34,485. Because you could not anticipate how soon it would be?—No.

34,486. And being a serious matter she ought not to be required to add something to the proof in the way of desertion or cruelty?—Exactly; in other words that the law should be made equal between men and women.

34,487. Now do you think—or if you can say it for your Association too I should like to know—that the levelling of the two would tend to raise the general morality of men?—Yes, I should say it would.

34,488. Has that been discussed?—Yes, and that would be the opinion of the majority of the Registered Medical Women's Association also.

34,489. Instead of having two standards there would be one, and people would be expected to stand to it?—Yes. If I might mention it, in the Society of Friends everything is absolutely equal, and divorce is practically unknown amongst them. Their standard of morality is very much higher than other people.

34,490. But they are subject to our law whatever it is. It may be that divorce is unknown amongst them because they are so proper and good?—Yes, but they regard men and women on an equality amongst themselves.

34,491. And that has tended to raise a higher standard, you mean?—Yes.

(*Chairman.*) I ought to thank you very much indeed for your valuable evidence, Dr. Walker.

Adjourned.

Winchester House, St. James's Square, London, S.W.

THIRTY-SEVENTH DAY.

Wednesday, 26th October 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The Right Hon. The EARL OF DERBY, G.C.V.O., C.B.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
Sir FREDERICK TREVES, Bt., G.C.V.O., C.B., LL.D., F.R.C.S.
Sir LEWIS DIBDIN, D.C.L.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

Dr. FRANCES IVENS called and examined *in camera*.

34,492. (*Chairman.*) What are your qualifications?—Bachelor of medicine and master of surgery of the University of London.

34,493. You are also honorary medical officer for the diseases of women, Liverpool Stanley Hospital?—Yes.

34,494. Is that a large hospital?—About 104 beds, but a very large out-patient department in proportion to the number of beds.

34,495. Do you visit the out-cases yourself?—Yes. I have charge of the gynæcological ward and out-patient department.

34,496. You have prepared a proof which contains the substance of your evidence. Would it be convenient to read that and let us ask you questions as we go on?—Certainly.

34,497. Does that contain all you wish to say?—I think so.

34,498. If you will kindly read it that will shorten matters?—"*Sex inequality in Divorce a cause of widely-spread Diseases in Women.*—It is undesirable from a medical point of view that the present sex-inequality of the divorce law should be maintained. By even one single act of unfaithfulness on the part of the husband, the wife is exposed to the risk of contracting a contagious disease. It should not be necessary for her to submit to the ruin of her health to enable her to obtain a divorce on the additional grounds of 'cruelty.' Such disease, especially gonorrhœa, is common among the poorer married women of the country, although from the reticence necessarily observed by the medical profession, the patient is usually entirely unaware of the nature of this disease.

"An investigation of 1,052 consecutive gynæcological out-patients has shown that 149 cases, viz., 14 per cent., were suffering from gonorrhœa in an acute or 'chronic' form. These patients were, for the most part, respectable women, the wives of sailors and dock labourers."

34,499. Are those in-patients?—No, those were out-patients. "*Danger or Chronicity of such Disease.*—Gonorrhœa is not a slight ailment, but often the cause of illness, dangerous to life, and productive of life-long ill-health. An analysis of 157 consecutive gynæcological in-patients showed that 39 cases, or 24 per cent., required severe operative measures for this disease."

34,500. We were told yesterday it was a fruitful source of sterility. Is that so?—Yes. That comes later in my proof. "In some of the chronic cases ill-health has been present for years, and many of those sought treatment because their physical condition rendered marital relations impossible, giving excuse for further unfaithfulness on the part of the husband.

"*Influence on Children.*—Gonorrhœa in women is one of the most frequent causes of sterility. Of 188 cases investigated, drawn from a class where large families are usual, 60 were childless, viz., 31 per cent. In others there was often only one child, the history indicating that infection took place at the time of marriage from the presence of uncured disease in the husband. The wife is usually blamed for this sterility, although she is in no way in fault. The production of 'ophthalmia neonatorum' by gonorrhœal infection is well known, but the accidental infection of older children by mothers suffering from the disease and unaware of its nature is much less frequently recognised."

34,501. Is that communicated by simply living in the same house?—Yes, or by using the same washing apparatus, and things of that sort. "*Spread of the Disease.*—Reinfection frequently occurs when the wife returns home after treatment directed only to herself. On this account, and for the protection of innocent persons, compulsory notification should be adopted, followed by efficient treatment of both husband and wife. At present the doctor is unable to respect the confidence of the patient and protect the interests of the public at the same time."

34,502. Do you think compulsory notification is within the range of practical politics?—I think there are great difficulties, but they might be overcome.

34,503. Have you thought out how?—I have not formulated any definite plan, but something on the lines of ophthalmia neonatorum which is being notified. I should think it might be done somewhat in the same way. "*Conclusions.*—That sex-equality in divorce would be to the advantage of the race. That the poor require opportunities for divorce as much if not more than the rich (separation not meeting all cases, but leading to increased immorality and illegitimacy)."

34,504. You also sent us a pamphlet which is reprinted from the "British Medical Journal" of June 19th, 1909. Is there anything more in that that is worth addressing attention to now? I have marked one or two passages, but I rather thought everything in it was covered by what you have said?—I almost think it is. The pamphlet is, of course, more from a medical point of view.

34,505. You say on the first page: "It therefore arises that the medical profession as a whole is somewhat indifferent on the subject of gonorrhœa, from ignorance of its prevalence, especially in the chronic forms." Will you explain the meaning of that a little more fully?—It is a difficult disease, in its chronic form, to diagnose, and unless you have had special experience, the sort of experience one gets in gynæcological out-patient work, I think many of the cases are overlooked or put down to some other trouble.

34,506. I have always heard it said in the court over which I presided that no certain diagnosis could be made without microscopic examination. Is that right?—One could not be absolutely certain. One could not swear to it unless one found the organisms; but if I get a very well-marked case I feel I can be practically certain about it even without the examination. If I look carefully I can find it in most cases; at least that has been my experience.

34,507. You further say, "Cases may be regarded as simple leucorrhœa, cystitis, or pelvic inflammation, unless a searching inquiry is made into their etiology. It follows that the lay public is entirely unaware of the

lifelong suffering and chronic ill-health caused to thousands of women annually by this infection." That is your concluded opinion?—Yes. If the doctor himself or herself does not consider that it is gonorrhœa, or think it is, he or she is not likely to tell the patient. They very often do not tell the patient when they know it is.

34,508. Do the figures you have given in your own immediate neighbourhood indicate what one might expect to find in similar circles over the country, or is it peculiar to sailors and dock labourers, whom you mention?—Perhaps it may be a little greater in Liverpool; but when I was working in London, although I made no detailed examination, I am sure from my experience now that a great many cases I then perhaps did not consider were gonorrhœa were, and I do not think there would be very much difference.

34,509. I do not know that there is anything else that struck me in the pamphlet, except at the end, where you come to prophylaxis. You say, "My object in bringing forward these facts is to renew interest in a disease extremely widespread, and the cause of endless suffering to many ignorant and innocent women, and in the hope that practical prophylactic measures will be suggested. I would suggest that, with the co-operation of the medical profession as a whole, further investigations be undertaken to ascertain the extent of this disease, and some attempts made to lessen the incidence. I do not venture to indicate how to deal with the sensitive social conscience of the present day, but it is obvious that ignorance constitutes a grave danger to the community. Loyalty to the patient herself must be the first consideration, and the risks employers and others are running secondary. Apart from education, the only solution of the problem is notification, as has been suggested for ophthalmia neonatorum, so that early and complete treatment could be adopted and if necessary enforced. To this method, unfortunately, there are many grave objections." I have practically asked you about that?—Yes.

34,510. Having regard to your experience amongst these people that attend your hospital, and whom you attend as out-patients, do you think if adultery were placed as a ground of divorce on the same footing between men and women, it would tend to raise the standard of morality amongst men?—Yes, I think it would.

34,511. Have you any reasons for forming that view?—I think, to start with, there is great ignorance among these people, among the husbands themselves, as to the danger of this disease. I do not think many of them realise, when they expose themselves to contagion, that they are likely to communicate it to their wives. They would not wish to do that if they knew it; and if the grounds of divorce were made equal it naturally would follow that they would understand the reason. It would necessarily follow simply from humanity.

34,512. Attention would be more directed to it because of the consequences being possibly divorce?—Yes.

34,513. That would make them more careful?—I think so.

34,514 (*Sir Frederick Treves.*) I take it you wish to emphasize the fact that in the public mind the venereal disease is syphilis?—Yes.

34,515. That is the general view?—Yes.

34,516. You wish to emphasize that there is an almost more serious venereal disease, gonorrhœa?—Yes.

34,517. You emphasize the fact that this disease may lead to indescribable troubles in women?—Yes.

34,518. And to many distressing operations?—Yes.

34,519. That is the main point?—Yes.

34,520. In answer to a question by the Chairman, you said there was no difficulty in diagnosing gonorrhœa by means of the gonococcus?—No, I do not think so.

34,521. If trouble is taken?—Yes.

34,522. It is not a question of widespread ignorance, it is a question of not applying a test that is tedious but which might be applied?—Yes.

34,523. Otherwise the impression might be conveyed that this disease is difficult to recognise?—It does mean a good deal of trouble in chronic cases.

34,524. You would not leave the impression on the minds of the Commissioners that this disease is overlooked because it is sometimes difficult to recognise?—Perhaps not.

34,525. If you look at your proof, paragraph 2, would you let this impression be left, that one-fourth of the cases of operation on women for what are known as diseases of women are due to gonorrhœa?—I only give this as my experience.

34,526. You see how it stands. It means if you take 100 operations on women for what are known as the diseases of women, obstetric and gynæcological operations, you would say that one-fourth of those was due to gonorrhœa?—I can only say in one-fourth of my gynæcological cases it was. I should not like to say that about other people's.

34,527. You are in rather an unfortunate district, poor people with somewhat loose morality, that seem to hang about a seaport?—The women patients I get are really very respectable women, taking them all round, but, of course, there are a great many sailors among the husbands.

34,528. In the third paragraph, would you clear up that point with regard to accidental infection of older children by mothers suffering from the disease. What form would that take?—In children?

34,529. In older children: you are not speaking of ophthalmia neonatorum?—No. As a rule, it is disease of the external generative organs in little girls.

34,530. You mentioned that?—Yes.

34,531. You do not suggest compulsory notification as an actual detail of any alteration in the divorce laws?—No, I simply wish to direct attention to it. It is a thing which would require a tremendous amount of thinking out.

34,532. So far as the divorce laws are concerned, you would not mention it?—No, I do not think it would quite come into them.

34,533. I take it your real point is this, if adultery were recognised as a ground of divorce equally in both sexes, in your opinion it would greatly diminish this distressing disease?—Yes, I do.

34,534. That is the one great point of your argument?—Yes.

34,535. The disease has very lamentable consequences, and if adultery were granted as a ground of divorce equally in the two sexes, this disease would be materially lessened, you think?—Yes.

34,536. You use the figures of 30 and 33 per cent. with regard to sterility. How does that compare with the general figures of sterility in women?—I am afraid I could not give you that.

34,537. That is essential?—I could not give accurate figures, but my impression, judging from the other patients not suffering from this disease, is that, as a rule, they had very large families—the same class of patient.

34,538. Taking 100 married women, would you say that 10 per cent. are sterile?—I could not answer that question off-hand.

(*Chairman.*) I am sure we are very grateful to you for coming here.

Dr. MAY THORNE called and examined.

34,539. (*Chairman.*) What are your qualifications?—Fellow of the Royal College of Surgeons, Ireland; licentiate of the Society of Apothecaries, London.

34,540. And a doctor of medicine?—Yes; that is, an M.D. of Brussels.

34,541. Where is your practice or field of operation?—My practice is a private one and I practise in Harley Street.

34,542. How many years have you been engaged in professional life?—The last 15 years.

34,543. Is your evidence given in connection with any association, or entirely on your own?—My evidence is entirely on my own.

34,544. You have been good enough to prepare a memorandum of the points to which you wish to call attention?—Yes.

34,545. I think it will be convenient if you would read it?—"If divorce is necessary, it should be able to be obtained equally by both sexes and by rich and poor. As adultery is the cause of divorce allowed by the Divorce Court, the causes of adultery should be investigated. The standard of morals expected of men, unmarried as well as married, has hitherto been less high than that demanded of the large majority of women. The standard of morals that men expect from one another on this point is admittedly low."

34,546. You take that, apparently, from some of the witnesses we have had before us?—Yes. I consider that it is admitted in the evidence, although it was known to me on other grounds.

34,547. It accords with your own view?—Quite. "If polygamy is necessary to man then the present marriage system is insufficient for his needs. If polygamy is not necessary, then fornification and adultery cannot be too strongly condemned (*a*) on account of the disease a man often contracts and from which he may suffer for years, and (*b*) because it is difficult for his medical adviser to say when he is cured, and he frequently, greatly to his sorrow, infects a pure wife and passes his disease on to his children. The diseases gonorrhœa and syphilis should be added to the list of notifiable diseases. The fact of notification would, I believe, act as a deterrent to the acts being committed which may lead to these diseases. In order to raise the standard of morals it would be well for each individual man and woman to be cognisant of the consequences, that is, serious diseases, due to fornication and adultery not only in those men and women who commit immoral acts, but to the wives and children who are absolutely innocent. These consequences are of national importance as tending to increase the number of sterile marriages and physically unfit children. If fornication or adultery on the part of either party were made a criminal offence I am under the impression it would make for the good of the community. At present it is, I understand, a rather generally accepted idea among young men that to commit fornication is a sign of virility. This idea cannot be too strongly combatted. Doctors, fathers, schoolmasters, and clergy should speak and teach clearly on this point. A young man should be helped as far as possible by a strong expression of public opinion to combat this indulgence. At present public opinion condones if it does not encourage fornication. I am convinced from my experience of 15 years practice amongst both hospital as well as good class patients that were fornication to cease there would be markedly less disease in many innocent young married women. As it is, the home life of many young couples is ruined by the husband's early experiences, which, in addition to burdening his wife with a life-long illness, has made him less able to be satisfied with her. A vow made in church seems to be considered of no importance by many married men. I feel this Commission should make it strongly felt that the marriage tie is very binding. The question whether insanity coming on some years after marriage should be regarded as a cause of divorce is one I approach with diffidence. If one chronic illness is accepted as a cause of divorce other chronic illnesses must also be allowed, and this might lead to dangerous results in some cases. In individual cases the insanity of husband or wife tells very hardly on the sane partner. But these chronic diseases are on an absolutely different footing to communicable disease due to immorality. I think everything that can be done should be done to reconcile people who have separation orders, but the numerous reconciliations after separation orders must be carefully investigated. For economic reasons many women cannot afford to live apart from their husbands, and now and again a woman, in spite of the husband's drunkenness, brutality, or communicable disease, finds it necessary to live with him."

34,548. The next point we need not refer to, because that is not within our purview?—I am strongly of the opinion that the publication of details of divorce cases is undesirable.

34,549. Do I gather from the general tone of your proof you would advocate the equality of men and women with regard to adultery?—Absolutely.

34,550. Do you think that would be in the interest of the nation generally?—I do.

34,551. Can you tell us why you come to that conclusion?—Because in so many cases women contract disease from their husbands who are leading irregular lives.

34,552. You think it would tend to check irregularity of life?—I believe so.

34,553. If they knew there was this serious consequence?—I think at present they are ignorant of the consequences of these acts in very many cases.

34,554. (*Lady Frances Balfour.*) You say in paragraph 2 the causes of adultery should be investigated, as adultery is the cause of divorce. What do you mean by that exactly?—I think it should be felt very strongly that men and boys should be more educated into the consequences of adultery in order that they may realise what the effect of these actions is. It is the want of education in many cases that allows of these acts being committed which would not be committed if the men and boys knew the results.

34,555. The third paragraph suggests that the standard of morals in men is lower than that expected from women?—It does.

34,556. You think if the men were educated to a higher standard of morals it would improve the condition of things?—That is my feeling, strongly.

34,557. (*Sir Frederick Treves.*) Would you suggest that notification of these diseases under the Act should be an item in any reform of the divorce laws?—I think that if notification were compulsory that it would be strongly felt by many men that they would not commit those acts, and therefore, indirectly, it would tend to the improvement of the present divorce laws.

34,558. You do not suggest that compulsory notification of this particular disease should be a feature of any reconstruction of the divorce law?—I should like to suggest that very strongly.

34,559. It has nothing to do with divorce?—Except that the consequences of these acts bring about divorce.

34,560. Your other point is that adultery should be regarded as a criminal offence. Would you make that a feature of any reconstruction of the divorce laws?—That, of course, is at present a personal opinion, but I cannot help thinking that if that were made a feature in divorce laws that we should have markedly less adultery, and therefore markedly less divorces.

34,561. That would be allowed, I think; but would you suggest that these two particulars should be features in any new divorce laws, because they are outside the immediate province of divorce. The two points are notification of venereal disease and the making of adultery a criminal offence?—If they are not included in a divorce law, I do not see that they will come in under any other heading.

34,562. With regard to insanity, your argument is that if insanity is admitted as a ground of divorce, any other chronic illness should logically be admitted as a ground of divorce; but is there any chronic illness extant which is comparable to the case of an incurable lunatic?—Not absolutely comparable.

34,563. So that that argument you will, perhaps, acknowledge is a little deficient?—It is not as strong as the others, but that is a point I approach with diffidence. I do not know so much about it as these other things.

34,564. Considering that incurable lunacy occupies a peculiar position as a chronic disease, you can hardly argue that if it be admitted other illnesses must be admitted, since incurable lunacy stands by itself. The man is dead, except in the physiological sense?—Yes.

34,565. (*Chairman.*) May I make plain your position about notification. You do not consider that part of the divorce law, but if put into operation it would tend to lessen the cases in which divorce might be required?—That is what I wish to say.

(*Chairman.*) We thank you very much indeed for your evidence.

Miss Helen Webb called and examined.

34,566. (*Chairman.*) You have medical qualifications, I believe?—Yes, Bachelor of Medicine of the University of London, and licentiate of the Society of Apothecaries.

34,567. Have you had a practice in London?—I have been in practice 22 years, during 19 of which I saw patients in the out-patient department of the New Hospital for Women, Euston Road, at first as assistant and for some years—I cannot remember exactly how many—as senior of the department.

34,568. You have had a large experience of women's cases?—I have had a very large experience and a large private practice, a large hospital experience.

34,569. Your name was suggested by one of the Commissioners, and you were communicated with?—Yes.

34,570. You have prepared a very short memorandum, and perhaps it may be necessary to amplify it. Will you give us the effect of your views about these matters?—I felt that the points I had most at heart were for the sake of the next generation. I think a great deal has been said in the evidence which one entirely agrees with about the evils to the persons directly concerned, but the extreme urgency of greater facility of divorce is on account of the children. The evils that arise to them through venereal disease, and also through the bad moral conditions which surround them where the parents are unhappily married, in my mind call for much greater facility than they have at present, especially amongst the working classes.

34,571. May I take it that this sentence of your memorandum summarises it: "That the continuance of any marriage which is physically and morally injurious to the offspring is a menace to society, and calls for greater facility of divorce in all classes"?—Yes. I also feel strongly on the question of the equal moral standard for men and women.

34,572. You say, "One of the principal reasons ordinarily given for the avoidance of divorce is that the divorce of the parents would be socially detrimental to the children." You go on to comment on that by saying: "In my opinion the dissolution of an unhappy marriage is often the only possible way of rescuing them from evil." Will you explain a little more what you intend to convey?—I mean that conventionally it is thought a dreadful thing for the children, that the parents should be divorced, and it is regarded as a slur on them and injurious to them for life, whereas in a great many instances the continuance of a wrong marriage keeps up such a state of friction and discord in the environment of the child in its home and everyday life as will do far more fundamental injury to its character and prospects. The birth of more children is also under such circumstances so highly undesirable, that it is for the good of the offspring that there should be a divorce between incompatible parents or diseased parents.

34,573. Have you your memorandum before you. The next paragraph deals with that point. Will you read it, and say whether there is anything to add to it?—"Not only may even occasional adultery on the part of the husband render the wife, through ill-health, inefficient in the performance of her duties as a mother, but it may also prove a source of suffering to and of congenital defects in the children—stigmata which can never be altogether eradicated."

34,574. That is the same point?—Yes.

34,575. Your views as far as we have gone are based on the detrimental influences and effects upon children?—Yes.

34,576. You add, "No one denies that we are influenced for both good and evil by our surroundings, and we can scarcely overestimate the harm done to the sensitive mind of a growing child by the demoralising atmosphere of an unhappy home." That is again the same point?—Yes.

34,577. You add, "If therefore our chief duty is, as I contend, to the coming generation, the welfare of the children constitutes one of the principal arguments for greater facility of divorce in cases where physical and moral evil is likely to accrue to the offspring." You have not dealt with that. Perhaps I interrupted you when you were going to say something about it on the question of equality, that is to say, making simple adultery of either party the ground of divorce?—I hold the view very strongly that an equal moral standard for men and women would very much lessen the necessity for divorce, and lessen all social evils and difficulties. I am a member of the Society of Friends, amongst whom men and women are regarded as equal on this point and many others. We expect the same standard from men and women, and I do not know of a single case of divorce in all my knowledge of the people called Quakers.

34,578. Do you mean among Quakers there is that standard?—There is that standard amongst the Quakers, all through church government.

34,579. And personal relations?—Yes. The position of women is taken as being precisely the same as men. It certainly leads to a very different point of view about all this kind of thing from what is met with in the world.

34,580. From actual experience you are able to say equality produces a high moral standard amongst the men?—I am. Theirs is a different point of view from that which one meets elsewhere.

34,581. To what extent, in connection with divorce, has that been brought to your attention in the Society of Friends?—I do not know of a single instance of divorce. There may have been some, but I have been a Friend all my life, and my people for many generations, and I cannot remember a single instance.

34,582. That might possibly be because it is against the tenets, religiously speaking?—I do not think so. You seldom get entanglements and difficulties to any serious degree.

34,583. There is a very high moral standard?—Yes. I do not say there are no backsliders, but it is regarded differently.

34,584. Can you tell me the total number of the Society in this country?—I am afraid I cannot. It is diminishing somewhat, I believe.

34,585. You have no idea?—No; I should not like to venture. I am not very good at remembering figures.

34,586. Does that exhaust all you have in your mind?—I should like to say I have no faith in the possibility of any kind of notification such as you asked about from the other witness.

34,587. As a practical matter?—Yes. I think any satisfactory notification would be quite impossible.

34,588. At any rate in the present time?—From the nature of the diseases. It is physically and morally impossible that such would be satisfactory. I should also like to say that I have had a considerable experience of these diseases of which Miss Ivens spoke, and known women whose lives were entirely wrecked by gonorrhœal infection. With reference to the question of whether it can be discovered or not, I think that whereas in the men it is readily discovered, very often no one suspects anything in the woman until years after, when low inflammations and adhesions and other causes of suffering have ruined her life, and it is even then hard to make certain that the trouble is due to gonorrhœal infection.

34,589. (*Sir Lewis Dibdin.*) Does the Society of Friends consist chiefly of one class in society, or of all classes in society equally?—All classes in society, yet in a way we have only one class. We recognise each other socially to a degree that is little known in other circles.

34,590. You have not very many of the very poor?—No, because we never let them be very poor. We should have the very poor if we did; but we look after everybody.

34,591. You prevent their sinking to the class which is a very large one in the world outside?—Yes. There also is, of course, considerable temperance; nearly everyone is a total abstainer.

34,592. You would say the conditions are very different from the conditions prevailing in the world, as a whole?—Not so very different nowadays. We all

have to mix and meet in the world. I mean the temptations and everything else are very much the same.

34,593. Would you not say that all members of the Society are looked after not only in money matters, but in every matter by other members of their own body?—Not to any very binding degree as people live in the world now. In former times there was more complete oversight. They are supposed to be looked after, but it is easy for them to escape it, to keep out of the way.

34,594. There is more protection among the Friends for the weaker members of the body than there is in the general world outside?—Yes, there is protection to a certain extent, and the strength which is given by expectation of a good life. I mean their own people would be just as shocked and horrified at something morally wrong in the life of a man as in the life of a woman.

34,595. In considering the moral condition of the society you must take all those considerations into account?—Of course you must.

34,596. It is hardly possible for the sake of this one matter, the equality of sexes, to make a fair comparison between the world in general and the Society of Friends?—I think the fact that the equality of the sexes goes through the whole life of the Society is an immense factor in keeping men straight; the same standard is expected of men and women, and they have to take the same part in the church government. One realises when one is inside the community how this fact "leavens the whole lump." It is difficult to convey to other people.

34,597. I thoroughly appreciate your view and am not at all suggesting another view. You would say it would not be accurate to suppose that this one factor of the equality of the sexes accounted for the high tone of the Society generally by itself?—Not by itself, but it is the largest factor, I consider.

34,598. You think it is the largest of all?—I think it is the very largest factor.

34,599. You said something about divorce between incompatible parents. Are you in favour of divorce where the parties, after living together a good many years, are incompatible?—I am afraid I should go so far.

34,600. Without any question of adultery or cruelty or desertion?—Yes. I think we see in Sweden and other places that is a very workable and right thing.

34,601. That is your view?—Yes.

34,602. (*Chairman.*) I gather that if we as a nation could reach the standard of Quakers there would not be much to complain of?—I am afraid I think so.

34,603. Your deliberate opinion is that the equality is largely conducive to produce the results you have mentioned?—Largely.

34,604. The largest factor?—To me it seems so.

(*Chairman.*) We thank you very much for your very interesting evidence.

Dr. ETHEL BENTHAM called and examined.

34,605. (*Chairman.*) You are also a medical practitioner and lady doctor, and have been in practice a considerable number of years?—Yes.

34,606. How long?—Since 1894.

34,607. For a short time you were practising in South London, then in Newcastle, Gateshead, and recently again in London?—Yes.

34,608. Are you a member of the Fabian women's group?—Yes.

34,609. They communicated with our Secretary, and you are more or less a representative of that group?—I am representing the views of the group and am also speaking in my own private capacity.

34,610. Do you know the total number of their membership?—Of the women's group?

34,611. Yes?—It is about 200; I do not know whether it is a little more or less.

34,612, Has there been a meeting at which the matters you present were considered?—Yes.

34,613. Has your practice brought you into close and intimate knowledge of the lives of many different classes of people?—Yes, I have been in good class general practice in the North. In South London I was almost entirely amongst the poor, and in Newcastle I had also for five years the superintendence of a large dispensary for out-patient work amongst women only.

34,614. With regard to the members of the group you refer to, are most of them official or social workers in contact with the lives of the poor?—Yes. Those who have expressed any opinions or aided me with facts have had a good deal of experience in various capacities.

34,615. Will you refer to the third paragraph of your memorandum?—"We feel that little of the discussion on the subject of divorce has been free from prejudice. Most even of the witnesses have not considered the question on its own merits, so as to suggest the best conditions for a civilised state to live under, but have approached the subject from the point of view of some law or some interpretation of some law which appears to be immutable, and to which human nature has to accommodate itself as best it may. Even within the limits of one religious body there are widely differing interpretations of what is possible or right. We feel that in framing these laws the starting point should be ordinary principles of justice and equity, without regard to expediency or vested interests of any kind, whether of the rich or of one sex against the other, or of any trade, profession, or calling; and especially we feel that no section of the religious world, however numerous or influential, should be able through the law of the land to impose burdens on the conscience of other sections who think differently."

34,616. Does that mean your society as a whole is in favour of the dissolution of marriage?—No.

34,617. In proper cases or not?—No, the society as a whole is not, and I am most emphatically not in favour of the dissolution of marriage.

34,618. On any ground?—I think, as the sequel shows, that marriage should be able to be dissolved where it has ceased to serve its purpose.

34,619. That is the general view of the society?—Yes.

34,620. Will you give us your view, both for yourself and the society, on the equality question?—Yes. I think the society and myself are absolutely at one on the equality question. We feel that the inequality is the main cause of the low standard of morality and the great many ill social results flowing from it.

35,621. Those two points are so important I wanted to get them clear at the outset?—I do not want it to be taken that either I or the society are in favour of any looseness of the marriage tie.

36,622. I understand that, but you come to causes which you think justify it?—Yes. "The principle of matters of conscience is already admitted in matters of much smaller importance, as, *e.g.*, vaccination, and we believe that the want of equality and freedom of all the community with regard to the marriage laws is causing grave harm to the nation, by tending to break up family life, to lessen respect for the marriage tie to increase illegitimacy and prostitution, and generally to lower the standard of morality. This lower standard, and especially the lower standard tacitly accepted by law and public opinion from men, tends also directly to the lowering of the birth rate and to the birth of children physically and mentally unfit, who are likely to be a burden on the community from their inability to become self-supporting citizens. We feel that a lessening of respect for the marriage tie is making itself apparent precisely because of the impossibility of release from this relationship even when it has manifestly ceased to fulfil its purpose, and is only an instrument of grievous injustice and oppression to one or other of the parties. We do not wish therefore to touch on the religious question, as to

which we, like the rest of society, should take different views probably, and which we hold therefore to afford no real grounds for decisions to apply to all the community, but simply to state certain consequences which we have observed of the present laws and practice. With regard to inequality between classes, several witnesses have said that there is little or no demand for divorce among the poor. There may be little explicit demand since people do not spend time in asking for what they know to be beyond reach, but there is a strong feeling that it is unjust that there should be no possibility of it for them. Amongst the poorer classes the Gordian knot is cut in different ways, always with bad social results. For people of moderate means even the only practicable step is a separation order, and this is in my experience a very unsatisfactory method, frequently resulting in two illegitimate families, and great hardship to those children and those of the legitimate family also."

34,623. You say this is in your experience, and that there is a strong feeling of injustice. To what extent can you say you have come across that?—I have been in contact with a great many women who have in professional confidence expressed their views to me. Very many women have spoken to me, and many men also, although of course not so many, my practice not taking me among men to a large extent.

34,624. To what effect?—That it was wrong and unjust that they should not be able to obtain release when the man was either exceedingly cruel or was openly unfaithful, but that they had not the power to get it unless he was both. Among middle-class people and well-to-do people, as well as among the poor, I have come across that frequently, unfaithfulness without cruelty, and in many cases—it is impossible to violate professional confidence by giving identification—I have found that there is open unfaithfulness which the wife bitterly resents, and which she feels to be extremely detrimental to her children; in two or three cases I can recall she has endeavoured to get a divorce, I mean consulted legal advisers, and was advised that she had no ground.

34,625. That complaint is because more than one cause has to be added in the suit before the divorce could be obtained?—Yes.

34,626. Have you had experience of complaint on the ground of inability of the poorer people to get divorce?—Yes, very often.

64,627. To what extent can you speak to that?—It is a little hard to give the actual extent, but it is a thing that is constantly coming up in my experience.

34,628. That would be during your time of practice amongst the poorer classes?—Yes. I have been always more or less amongst the poorer classes all this time. I had a case yesterday. A woman came to me who expressed these views with very great bitterness.

34,629. I think you may proceed with your proof?—"A man left with children is forced to have a housekeeper, and in the small houses of the poor, decent sleeping arrangements are not possible, and disaster nearly always eusues." I instance several cases in my proof: shall I read them?

34,630. Yes: they are useful as illustrations of what has been said?—"One case I know of is a young artisan, rising in the world, who had a wife who was a chronic drunkard and unfaithful, and ill-treated their three children, and after a little time—this was when I came across him—he took on a housekeeper. There was a child born, and it appeared to be a very happy family, till the wife found him out. She demanded her own children, and made a scandal in the neighbourhood. Nobody in the neighbourhood had previously known that he and his housekeeper were not married. Eventually, the man and his second partner went to America with the one child, the drunken wife had her three back, and they ended in the workhouse."

34,631. Is that a case you recollect yourself?—Yes.

34,632. Was it a case in which, if there had been a less expensive means of divorce, the man might have got it?—The man would have distinctly got it, and he felt very injured indeed that he could not. He wished to legitimise the second union.

34,633. Then I think you give another class of case?—"The wife of a very respectable young man ran away with a lodger. He would not take any steps to get a separation, as he said that it was no good to him or his children, and merely published the matter unnecessarily. After a time she returned—this is a peculiar consequence—and eventually succeeded in getting a maintenance order against him in consequence of his subsequent misconduct with a young woman who looked after his children."

34,634. That must have been put as a case of desertion?—Yes, I believe it was. I do not know the details of the case.

34,635. Why did he not answer it by a case of her adultery?—I do not know. That would probably have altered things, but he was rather a chivalrous person in his rough way, and he did not do it, at all events. "Women are in a still worse position than men, as their resources are usually less, and this applies to women even of the middle and professional classes. Moreover, they have as a rule still greater hardships."

34,636. Are these cases about women that you give?—Yes, two cases I personally know. "Mrs. G. had an unfaithful husband, who was frequently cruel to her, and deserted her and the children several times. She was repeatedly told on applying for help that the law could do nothing for her unless he was living with her, so she went back to him. He assaulted her in the street, and a separation order was at last granted, but he has paid nothing under it, and though she is a clever woman, who can quite well keep herself and her family, she would have to go into the workhouse until her child is born were it not for charitable help. Even so, she can never feel free from him. In this case, both cruelty and adultery could be proved, but the woman has no means to institute proceedings, even if she had not condoned his conduct by her return. I have another case. I am watching at present a case of a young woman who has suffered unspeakable things from her husband. His people have helped her to run away, and she is keeping herself and one child with great difficulty. Her work brings her in contact with a decent man, who has offered to take charge of her and the child. Up to the present she has refused; but she is a woman with great longings for family life, and I think her scruples will be overcome in the end. There are details of many such cases, literally many such cases I personally know, which would be too long to quote. The impossibility of release when marriage has entirely failed leads both for men and women to a position of strong temptation. Those who resist it are deprived of family life, and as they are usually the strongest natures, and would probably make the best fathers and mothers, this is a loss to the community, as well as a great hardship to individuals. But the majority do not resist, as far as I have seen, and the results are illegitimacy, demoralisation, and prostitution. Among the working classes at least, there is a growing tendency to condone these irregular second unions of a wronged husband or wife, on the ground that it is unreasonable to expect either man or woman to live alone and bring up children unaided."

34,637. That is a general statement. To what extent are you able to speak to it from your experience?—One does not have statistics on such a point, but in the last 20 years I have come across that very frequently, and I believe that it is growing. I believe the sense of injustice is much more articulate lately, and people are more inclined to take the law into their hands, and their neighbours practically condone it.

34,638. Would your view be, if for really grievous cases there were a remedy that that tendency would be checked and the whole matter placed on a sounder and better footing?—Yes, most emphatically. "The impossibility of release also militates against marriage itself to some extent. I can recall two cases of women who had seen troubles at close quarters, and refused to enter into legal marriage at all. They preferred to be able to 'get shut of him if he does not behave himself.' Both these appeared to be quite successful

matings, and were certainly objects of envy to many of their neighbours."

34,639. They simply joined together without any marriage at all?—Yes, and the express reason on the part of the women was that it was easier to get rid of the man if he ill-treated them, without any further fuss.

34,640. Do these two exhaust the number of cases of that kind you have known?—I do not think I can remember more than two actual definite cases of this kind. I have heard of others, but those two I know the particulars of.

34,641. You said this had become more articulate: are those recent cases?—Both these cases came under my knowledge about eight years ago. I was not so much referring to people absolutely refusing marriage as condoning the irregular second unions of people who had been married and could not get relief. "It has been urged that because in many cases of separation the parties afterwards return to one another, divorce is not necessary. But this is not a safe deduction. Many of these returns are for purely economic reasons. A woman applied for a separation order because of cruelty and unfaithfulness. Her husband had communicated venereal disease to her. She obtained her order and 8s. per week. The man went to prison rather than pay. She was unable to earn, and eventually he forced her to return to him. She had of course the alternatives of the workhouse or prostitution, and frankly discussed both with me. I happened to be in medical charge of the case. She did try the workhouse, I suppose more or less on my advice, but she came out saying that she had nothing in this world but her children, and she could not be separated from them. She did return when the man came out of prison, after a long experience of the impossibility of getting any maintenance. She returned to him, and he said he meant to pay her out for it all, and he did. She lived a terrible life, and there were other children, some born dead, two who have little chance of being useful citizens. Many cases of the same sort could be given, and we believe that most of the returns are not because there is any hope of a better life, but simply because the woman cannot do otherwise."

34,642. Do you think that divorce would solve that difficulty?—There is a great difficulty. In a case like that, where a woman had contracted disease, it would not solve the difficulty from the point of view of further children, but in cases where things stopped short of that it would give a woman an opportunity, and many of these women have the opportunity, of contracting another more successful union. I admit where the woman is actually diseased it would be of very little use. "The maintenance order is always insufficient and is very rarely paid. It is never sufficient for a woman to live and keep children on decently, and there are many ways of evading it and many ways of making it a means of persecution. I knew a case where whenever a man sent it he sent it by an order to a post office which was five miles distant from the wife's house. She found it very difficult. Very often an order is not paid unless the wife sends the children or goes herself to fetch it. Then the wife goes in mortal terror that the child will be harmed, as occasionally happens. There are all sorts of ways of annoyance. These considerations deter many women from applying for separations. Decent women will put up with almost anything—much more than it is to the general interest that they should put up with—rather than undergo the police court ordeal for so small and uncertain a gain. The most difficult and delicate inquiries affecting the entire lives of two people and their children are hurried through in a few minutes between drunken and disorderly cases, and before the loafers of all sorts who are usually present. There is no time to do justice. The decision can only be haphazard and for this reason the proceedings can often be used as an instrument of blackmail. When an order is made, it can easily be disregarded. It gives little or no protection to either man or woman and the woman has no security at all that payments will be made. Therefore people endure in many cases a life which is miserable in the extreme for themselves and demoralising to their children."

34,643. Upon the question of the hearing of cases, have you been present to enable you to express this view from actual knowledge?—Yes.

34,644. This is your view?—This is my experience. I am not speaking of London; I have not been present in a court in London.

34,645. Are you speaking of cases before lay justices or a stipendiary magistrate?—I have never been present before a stipendiary magistrate; it is the ordinary provincial police courts I am speaking of.

34,646. You now go on to the point I asked you about partly, but it is more in detail in your proof?—"Still more subversive of public morality and harmful to children is the effect of the inequality of the laws as between men and women. 'Accidental adultery' on the part of a man has been excused on the ground that its consequences are not so serious as in the case of a woman and also because 'it is certain that no woman can suffer quite such terrible pangs' in consequence of the husband's deliquency as he would from hers, and that women look leniently on these lapses. We hold that the relative amount of suffering is unproved and unprovable. Certainly no man is in a position to weigh it. That women do condone infidelity is a fact, but that they do it willingly or without the severest economic pressure is not a fact, and the important question is—is it to the public interest that they should be forced to condone it? The witnesses speaking for the Association of Registered Medical Women are clear on this point. Every medical practitioner of experience must confirm their evidence. Acts of adultery, even occasional ones, expose a man to infections and are a danger to the health of his wife from which she has no means of defence. It is not a question merely between the man and woman, but is of grave importance to the State since the diseases which may thus be acquired cause sterility, miscarriages, still-births and the birth of children who have not an average chance of becoming good citizens. These cases are more than a negligible fraction. I believe them to be much more numerous than is at all generally understood and not only among the working classes. Besides and beyond this gross physical danger there is the moral effect. A professional man in a good position was notoriously unfaithful, but he treated his wife generously and salved his conscience by presents to her. This did not prevent their household from being a very unhappy one, and the best comment on its effect on the children is the remark of a daughter of 20: 'Marry! I would sweep a crossing first. I have seen all I want to of marriage.' The wife in this case did consult lawyers on the matter, and was advised she had no ground for divorce."

34,647. It was a case of adultery?—The adultery was notorious, but there was no cruelty. Another woman, confronted with the choice of living a single life while ostensibly married or bearing probably unfit children, committed suicide. That was a case within my personal knowledge. Two others whom I have known attempted it. This choice is itself a very terrible one for women, especially quite young women, but more often they do not even have it. Possibly the man does not himself realise the risk, or there may be, and there has often been, economic pressure or intimidation. Then the next case is one which is a very terrible one—it was reported to me—of a man convicted of criminal assault on his own young daughters. He returned home, and his wife only with great difficulty got a separation order without maintenance. He had never used physical violence to her. But many witnesses have given cases of this kind, and they must be known to everyone who thinks. I quite agree that the misery of these individual women should not weigh against that national wellbeing if that could be proved to be served by it, but we submit that the denial of relief to women in cases where men could obtain it is demoralising to society, and therefore tends continuously to increase those offences for which divorce is demanded." I should like to comment on the evidence Dr. Webb has just read before you. It happens that in the North I was thrown much with the Society of Friends, and nothing struck me more than the entire difference

of tone on all these matters that prevailed amongst the whole of them, many of them quite poor people.

36,648. They are not persons of a well-to-do position?—They would be persons of all positions, but the difference of tone on any of these matters and the absolute absence of troubles of this sort was a thing that struck me, not a member of the Society of Friends, but simply thrown amongst them, very strongly.

34,649. Do you put that down to the equality of personal relations?—Yes. In thinking over it, I have been inclined to think it was much the largest factor. There are doubtless others, but I should say that was certainly the largest factor.

34,650. Then, have you experience with regard to insanity?—"I have only a general practitioner's experience of insanity. I am not an expert in mental diseases, but I am convinced that the community ought to think seriously of its own protection here."

34,651. You are giving the cases you know?—Yes.

34,652. Will you kindly read them?—"I know one case of a woman who became insane at the birth of each child. She dreaded returning to her husband, but he insisted, and three successive children were born under these conditions."

34,653. That does not seem a case in which she could ask for relief?—That is an upside down sort of case, but that woman would have been glad for her own protection. She endeavoured with all her might not to resume marital relations, but he insisted, and three times over she had a child.

34,654. How can you suggest any divorce law on the ground of insanity would touch that case?—It is difficult to arrange, but I should say an individual might be allowed to apply on the ground of her or his own insanity just as much as on that of a partner.

34,655. It is a novel suggestion?—Yes, and it is an unusual case, but I thought it was worth while bringing it before you.

34,656. You put it "for her own protection"?—Yes, and for the protection of the possible children. I do not think those three children are likely to be of any profit or comfort to anybody.

34,657. You rather put that not as a part of the divorce law, but as part of a protective law which should be enforced where necessary?—I do not say how it should be arranged, but surely that is a necessary point for society to consider. The next case is one that would come under it. It is the case of a gentleman discharged from a lunatic asylum. He returned to his wife, much against her will, and two children were subsequently born. These were highly delicate and nervous children, and neighbours who did not know their history used to remark that the wife always seemed in a state of terror. This was explained by his attempt one night to murder all the family, and then it appeared that he had been subject to causeless outbursts of raging fury, and that the wife had been constantly on guard to prevent or avert consequences of these attacks. Another case is reported to me of a man with intermittent insanity who had 10 children. One of them is deaf, two have fits, two are mentally defective, and none are quite normal. The community is unlikely to profit by the children of any of these cases. "It is difficult to see quite how such cases can be brought under the scope of the divorce laws, but there is not the same difficulty in the next kind of case—that of the husband or wife of a hopelessly insane person. Here there is not the same risk of multiplication of a bad stock, but there is the same hardship to the other parent and the same probable consequence of illegitimate children and moral deterioration as occur in cases of desertion. There is no lack of cases to show this result both to men and to women. Long terms of imprisonment need also to be considered. I have not personally come in contact with many such cases, but I know of one in which the wife of a prisoner was living with another man. Their history was not known in the neighbourhood, and they had three children, lived happily together, and were generally respected. The economic struggle had been a very sore one for this woman, and her husband would seem to have been no great loss to society. She had religious scruples, and also a keen consciousness that her partner could leave her at any time if he chose, but she ended her confidences by saying: 'I know he never 'will leave me, and the children don't know that he 'is not their father, He does not make any difference 'between them and his own. So though I was greatly 'afraid I'd be doing wrong, I thought it out and 'made up my mind. God couldn't blame any poor 'woman for giving her children a chance whatever 'the parson might say.' Of course all the workers among the poor know cases of the desperate plight of the wives of prisoners sentenced to long terms. Many would not perhaps accept release, but I am told that many take it for themselves. My personal experience is limited in that. Therefore we believe that the present impossibility of release under any circumstances puts an unbearable strain on certain members of the community, and that there is a great and growing sense of injustice that relief is possible for the rich and not for the poorer classes for whom it is much more important; since to them the failure of marriage usually means the failure of their whole lives and entails actual physical as well as moral damage to them and their children. We think that this is leading now, and will lead more and more to disregard of the law and condonation of that disregard by public opinion. We also think that the different standard allowed by the law for men leads to a general lower standard of morality which tends to the increase of prostitution, the increase of disease and consequent diminution of the birth-rate and deterioration of the national health?" Then we make some suggestions for possible remedies.

34,658. Before we pass to that, that is a statement of what the society and yourself think?—Yes.

34,659. To what extent do you speak to the tendency of a different standard for the increase of prostitution?—That is a difficult question to answer. The extent is always a very difficult thing.

34,660. I was confining it to the extent of your experience. No doubt you represent a number of opinions, and that may be the general effect of them, but it is useful to know to what extent personal experience shows that that is a correct statement?—There is a lower standard of morality amongst men. The fact that society and the law practically do not expect the same standard of morality from a man, I think, makes it possible for men to indulge their instincts without much check, and that naturally and necessarily increases prostitution.

34,661. This is a statement of general inferences?—These are inferences, certainly, but I have known individual cases, such as that case of the woman at the police court, where it was absolutely considered as a possibility; it is not a thing one can get definite evidence of in many cases, but I have two or three cases in which I had very strong reasons for supposing that the woman had adopted that method of supporting herself and in one case her children also. It does not do to ask too many questions in some circumstances. "We think that the remedy is to be sought on the lines of the following suggestions:—

"(1) That reasonable facilities for divorce should be placed within the reach of all classes.

"(2) That the grounds which entitle a man to divorce from his wife should also entitle a woman to divorce from her husband.

"(3) That prolonged and malicious desertion should be a ground of divorce.

"(4) That some measures should be considered for safeguarding the State from the continuance or resumption of marital relations be a person suffering from recurrent insanity.

"(5) That marriage should in all cases be a civil contract, followed, as desired, by the special religious sanctions of the different creeds.

"(6) That whatever courts shall be given jurisdiction in matrimonial cases, they shall be separate courts or hold separate sittings, and that all questions of separation orders shall be withdrawn from ordinary police court hearing even though they should come before the same magistrates in a separate session.

"(7) That measures should be taken to prevent the publication of many of the details of divorce cases. We think that it is not desirable to suppress all evidence and merely to publish results. It is with some diffidence that I put forward the suggestion that there might be an official reporter who should furnish to all papers the essentials of the evidence shorn of unnecessary detail such as descriptions of the personal appearance and clothes of the parties to a suit.

"(8) I feel strongly that whenever in matrimonial cases a maintenance order or aliment is given, these sums should always be collected through an officer of the court."

34,662. Even where the wife requests the payment to be made to her?—I should not prevent the making of a special request to the magistrate; but if I am not very much mistaken there would not be very many who would make a special request.

"(9) That in all cases where there are children—to whichever party they may be entrusted—there shall be an official, a public trustee or guardian, who shall exercise a general supervision over them, much as the Lord Chancellor does over his wards. This official might possibly be the same who enforced payments of maintenance."

34,663. Would the probation officer comply with that?—I think he might in some cases.

34,664. It depends on the class of people you are speaking of?—It would be putting a great responsibility on the probation officer. I think somebody of greater standing would be better.

34,665. Somebody of greater standing might find a difficulty in dealing with the whole country?—Yes; there would have to be somebody for every court in which such cases were heard.

34,666. Have you any special officer in mind?—No; I think probably the probation officer would have to be the person. It is a very difficult and delicate question which would have to be considered. It is very difficult and delicate work, I mean.

(*Chairman.*) That brings us to the end of what you have in your proof.

34,667. (*Sir Frederick Treves.*) You say on the second page, speaking for the Fabian group, "we feel that lessening respect for the marriage tie is making itself apparent." Is that a conspicuous fact in your experience?—That is much more my personal opinion than that of the Fabian group, and, if you take it further, I feel amongst the classes of which I have been speaking that the lessening of respect for the marriage tie is just because of the reason that I have given, but that is much more my personal feeling.

34,668. The reason you give is not recent?—I think people are beginning to feel things. It is impossible for anybody who has been watching for the last 25 years in society not to realise that women are feeling their position and becoming much more articulate on these matters.

34,669. You think the respect for the marriage tie is distinctly lessened?—I believe that is the effect, especially amongst the classes of whom I have been chiefly speaking.

34,670. With regard to the first cases on page 3 of your proof, you would make chronic drunkenness a ground for divorce—if you take the case of that young artisan?—I do not think I would go as far as chronic drunkenness alone. This woman was cruel to the children as well.

34,671. You would not make chronic drunkenness a ground?—No. That might lead to abuses, but practically chronic drunkenness always means cruelty.

34,672. Would you accept insanity as a ground for divorce?—I think so, if incurable. There would have to be safeguards of that, of course.

34,673. You would include a case of alcoholic insanity if it were incurable as distinguished from the habitual drunkard?—Yes, when the thing is incurable and there is actual damage to brain cells.

34,674. The maintenance order, you say, is always insufficient and the money is rarely paid. With your experience of the poor have you any suggestion to make for the bettering of that state of affairs?—I have not, beyond the fact of enforcing the payment, which I think might be done through a court officer. It is the fact that the woman has to ask for it or send children, or make some arrangement herself which makes it so impossible to get it. If the man had to pay into court he would know proceedings would be automatic when he did not do it and I think there would be some improvement in that respect. As to the insufficiency of the maintenance I do not see how it is to be altered, because very few working men can keep one family, much less two.

34,675. You have no practical suggestion for dealing with a case of recurring puerperal insanity such as you mention?—I do not see how it could be put in a practical form unless it were possible for a man or woman to claim a divorce on the ground of their own insanity. This woman would have willingly gone to court and said she ran in danger of life and reason by reason of continual marital relations in order to have got a divorce.

34,676. Her plea would be the plea of not having more children?—Yes.

34,677. That would apply to a great many other conditions besides puerperal insanity. You could hardly allow it for puerperal insanity alone and no other conditions?—No condition occurs to me.

34,678. Take the case of a woman with a narrow pelvis, to whom the birth of a child is inconceivable distress?—That is a case, yes; but I am not disposed to put that on an equality, because there it is not so much a case of unfit children. You have not to consider posterity to the same extent as in insanity.

34,679. You cannot bring that to a practical measure; you mention it as a counsel of perfection?—I think a woman or a man ought to be able to claim separation or divorce on the ground of danger to the children, whether it arises from their own insanity or the partner's. It is not a case that would very often come before any court.

34,680. (*Mr. Burt.*) You state in your proof that irregular unions are on the increase. They are more common now than formerly?—I think they are, from my watching during the last 20 years. That, of course, nobody can say is more than an impression.

34,681. Your statistics do not bear out that point. It is a matter of personal experience you are giving?—Yes.

34,682. You have had experience both in London and in Newcastle and Gateshead. Was that experience mainly among the same class of people, largely among the poorer classes?—Largely among the poorer classes in both cases. I have always devoted a great deal of my professional life to the poorer classes, except in South London when I first qualified, although I have always had a good practice in addition. I am speaking mainly of the poorer classes in both cases.

34,683. Have you found much difference between the North of England and London in that respect?—No very marked difference has come to my mind; but I think now you ask the question that the views in the North as to the necessity of marriage are slightly looser. It is a frequent thing amongst the poorer classes in Northumberland and Durham for there to be a child before marriage—very frequent. I do not think it affects the union afterwards in the least degree; but if you are asking widely about the difference in the classes, I have noticed that.

34,684. Have you found much difference between the artisan class and the labouring classes with regard to that?—The more educated and intelligent people are the more trouble they generally take to retain the good opinion of their neighbours. I should say as you go up altogether in every grade of society, they pay more attention to appearances, but I do not think there is any marked difference between the artisan and labouring people.

34,685. With regard to the separation allowance, you have said the amount is insufficient, and it is often unpaid in many instances, at any rate not paid in full?—Yes.

34,686. With regard to that you make some practical suggestions both as to the court and also with regard to the method of payment?—Yes.

34,687. Do you think it would be advantageous, even if the case were tried by the same magistrates, to have cases of separation entirely separate from all other cases?—Yes.

34,688. And that when an order is made the court ought to see it enforced?—Yes.

34,689. I take that to be your view?—Yes.

34,690. At the present time does the court interest itself or does it leave it entirely to the woman?—The court leaves it entirely to the woman, so far as I have seen.

34,691. She has to take action if the man does not pay?—Yes, and she has to summon him afterwards if it is not paid.

34,692. You suggest some automatic arrangement for paying through the court?—Yes.

34,693. (*Lady Frances Balfour.*) I think you and I met some weeks ago as representatives of industrial women?—Yes.

34,694. And had a very interesting discussion. Did you feel that the standard of marriage and their view of marriage was a very high one, but that with the difficulties of getting divorce being so expensive they had a way of settling the matter for themselves?—Yes. It was not considered merely from a standpoint of divorce. I think all those people who spoke upon that occasion seemed to have some experience of that which goes with my own.

34,695. It has been suggested that because the poorer classes cannot get divorce—it is too expensive—they do not wish it, and live more morally because they cannot get it. Is that your experience?—It is precisely the opposite.

34,696. We rather gathered from this discussion amongst themselves that they had more particular ways of settling it, and had a law to themselves, divorce being out of the question?—I do not think I should go so far as to say they have a law themselves, although I believe in one part of the country, the Pottery District, of which I have had no experience, there is a kind of understood law there.

34,697. (*Chairman.*) What is the law?—That one marriage is as good as another, and it depends upon the continuance of the conditions for which marriage was undertaken.

34,698. (*Lady Frances Balfour.*) If marriage is satisfactory?—If marriage is satisfactory it is marriage; if it is not satisfactory, the sooner it is done away with the better.

34,699. I think we understood if divorce was available to them they would make as much use of it as those classes who could afford it, in proportion?—Yes.

34,700. The absence of power did not lead to a higher state of morality. I ask, because it has been suggested, because it is not available the poor have a higher standard?—We did not gather that from the discussion, and I have not, from my experience.

34,701. (*Mrs. Tennant.*) Have you had time to keep a note of the social side of your medical cases? You speak very strongly about the unsatisfactory working of the separation order system. Have you been able to reduce your observation to figures?—No. I have isolated and scattered notes and remembrances.

34,702. You have no notes to enable you to do that?—I daresay I could find figures if I were to try, but it is scattered over 20 years' observations, and never having been used or taken for that purpose it would be difficult. I might do something.

34,703. Is it asking you too much to make an effort over one or two years? Our evidence is very conflicting as to the good working of the separation order system. If you have made notes which would enable you to say out of so many cases this number was satisfactory for this reason, and unsatisfactory for that, it would be of value?—I cannot at this moment answer whether I could do that. I might be able to do something. I should have to think about it.

34,704. If you find that you can do it and have time, would you be good enough to do so?—I will.

34,705. It has been suggested that the maintenance order might be made a first charge on the husband's wages. What do you consider would be the effect of that?—I think it ought to be. The woman has been put in these cases through the man's misconduct into a most terrible position, and I think he only owes it to her and society to make what little reparation he can.

34,706. It is only fair that he should stand the risk or inconvenience which might come to him in his employment from that matter being brought to the knowledge of his employer?—I do not see any way out of that. As a matter of fact, the employer generally gets to know of it, except in very large firms. I daresay in a firm like Armstrong's it would not come out, but in any smaller firm it usually does come to the knowledge of the employers as it is.

34,707. Do you feel it to be necessarily a considerable peril to him in his employment; that most employers would refuse to take any trouble?—I wish I thought it was.

34,708. It is more than a moral feeling. The employer would have the trouble of stopping so much money from his wages?—I do not think it would make much difference. It could be arranged with very little trouble to employers.

34,709. You think it could?—Yes.

34,710. Of course, the woman would not be in a better position if he lost his employment?—No, and in working out the details the thing would have to be carefully considered, but at the same time the position of the woman and children is so terrible that even a fair amount of inconvenience to the man ought to be encountered first.

34,711. (*Sir Lewis Dibdin.*) I gather your proposal with regard to the court which should deal with separation orders is practically that the procedure with regard to children's courts should be adopted for this purpose?—Yes, it seemed to me that was a practical proposal.

34,712. Do you know the working of children's courts under the recent Act?—No, not more than anybody can get from newspapers.

34,713. That would meet your point of the case being dealt with in a detached atmosphere without the ordinary surroundings of a police court?—Yes.

34,714. Your experience of the treatment by courts of these cases seems to have been unfortunate. You think they have been dealt with very badly in your experience in the magistrates' courts you have attended?—Yes.

34,715. You said you were not speaking of stipendiaries or of the London magistrates?—No. I have had no experience of the courts in London.

34,716. First of all, is your experience a wide one?—Personally, I have only had to give evidence twice.

34,717. Have you been present very often?—I have been present once or twice besides, and have heard a good deal about them.

34,718. As far as your personal share in those proceedings is concerned, it would be confined to a few cases?—Yes.

34,719. Would those be in country courts or town courts?—Both the cases in which I gave evidence were in Gateshead.

34,720. Where you have the town justices; it is a town court?—Yes.

34,721. You would not wish your evidence to go out as a general condemnation of all the magistrates' courts in the country?—No, that would be rather unfair; but what little experience I have had both in that and other matters with amateur magistrates, is not favourable.

34,722. You realise that the conditions are exceedingly different in different parts of the country, it is exceedingly different between town and country?—Yes.

34,723. You realise there are country benches where perhaps the matter may be treated with great indifference, and benches where it is treated with the greatest care?—Yes.

34,724. You cannot generalise?—No, that is true; but at the same time all benches of magistrates have to depend for their legal knowledge upon the magistrates' clerk.

34,725. You would say that even magistrates' clerks vary a good deal?—Yes. I do not wish to make any reflection on magistrates' clerks as a body, but so far as my experience has gone, I do not think their legal knowledge is always very great.

34,726. You probably do not want your evidence to be very marked on that point?—I certainly do not. The two occasions upon which I gave evidence have been about the most unpleasant moments of my life. They were two terrible cases, and in one case the magistrates simply consulted together how they could, in the interest of equity, over-ride the law

34,727. I should have thought you would approve of that?—I do; but as a matter of fact, the whole thing was done in such a few minutes, and in such an absolutely futile way, that nobody knew anything about the rights of the case.

34,728. You suggest that the maintenance allowance should be paid to a public officer?—Yes.

34,729. You are aware, probably, that is now done in many courts in many parts of the country?—I was not aware of it. Is it done so that it is an automatic thing? If the man ceases to pay, without further proceedings the officer takes action?

34,730. It does not go as far as that. It is already done, and I think with good results. The allowance is paid to an officer instead of being paid to the wife. You would be in favour of that being universal, being not a matter of arrangement but a matter of law?—A matter of law.

34,731. And that the payment should be automatically enforced?—Yes.

34,732. You think the amount unsatisfactory. That speaks for itself. You cannot suggest any way of getting rid of that difficulty. The husband cannot afford to pay what is an adequate allowance?—No, it is quite impossible.

34,733. How would that be met in the case of a divorce? Suppose these very painful cases you have given were cases of divorce: how would that be dealt with? How would the wife and the family be any better off? First of all, you would not let the man get off without paying anything; he would have to pay something in the form of alimony?—I think so.

34,734. It would not be fair because she has a divorce instead of a maintenance order, that he should get off scot free for his own wickedness?—Certainly not.

34,735. When that order was made he could not afford more than he could now under the present system. How would it improve matters? How would it be better for the wife and children?—In the case of divorce, as far as my experience goes, these women practically always have the opportunity of re-marriage.

34,736. Your view of the benefit is confined to that, the possibility of re-marriage of the wife?—I will not say it is confined to that, because I think that means a very great benefit to the children. I believe the man who is divorced should contribute to the maintenance of his own children, but I do not think he need necessarily do so to his late wife, if she re-marries.

34,737. Is it your view that the economical improvement that would take place if the law were altered, would be that the wife who is now separated from the husband by a separation order would be able to re-marry, and in many cases from your experience would re-marry?—Would re-marry, yes.

34,738. That is the improvement which would take place in their economic condition?—It would be a good deal, but the wife would be also much freer to get other work and support herself.

34,739. If she were married?—If divorced, and not subject to the continual inroads of the man after a separation order. He very rarely lets her alone.

34,740. If she were re-married that would decrease, would it not?—Yes, if re-married, or divorced, and living an independent life alone. When there is separation, which no one feels to be final, a man pesters her. I know one case, I saw the woman yesterday. The man has rifled her house at intervals instead of paying the allowance she ought to have had. He forces his way in when she is out at work and gathers up any unconsidered trifles and departs.

34,741. Are you not a little exaggerating matters in saying that the allowance is very rarely paid? We have had a very great deal of sad evidence that it is very often unpaid, but is not that an over-statement of the case to say it is rarely paid?—Not according to my experience, I say definitely. Of the cases I have known, not more than 10 per cent. were paid for over a year.

34,742. Would that be 10 per cent. of orders remaining in existence all the year?—Yes. That, of course, is not a very definite figure. That is an inference, but I believe it is not far from the truth.

34,743. What number of cases would that percentage be taken over?—I suppose I personally can remember something like, taking the last 20 years, 120 cases.

34,744. In 20 years?—Those are not cases I have heard of, but cases I have known.

34,745. How far do you go with regard to your view of what the grounds of divorce ought to be? I follow your view as to the equality of the sexes. Is it your view if parties cannot get on for other reasons than sexual immorality or cruelty that they ought to be allowed to be divorced? I ask you that because in your proof you say the impossibility of release when marriage has entirely failed reduces both men and women to a position of strong temptation. Where marriage has failed through entire incompatibility of disposition, where it has been tried and quite definitely failed, would you say there ought to be divorce where there is no question of adultery or cruelty?—Personally, no. I do not know whether I can speak for all the body I represent in that matter, but personally I have very strong views about marriage, and I should say no.

34,746. There must be something like wrong-doing on one side or the other?—Yes, I think so. If people have absolute incompatibility of temper apart from that or for other reasons, they must arrange it as best they can between themselves to live apart or make friends again. Personally, although I do not wish to include anybody else, I would not grant divorce for anything that did not definitely affect the children; there must be absolute wrong-doing or insanity, or something which will definitely affect them.

34,747. Insanity does not necessarily imply wrong-doing on either side?—No. My point of view is chiefly the interest of the children.

34,748. Insanity does not seem to come within the canon you have laid down, that there must be wrong-doing?—Wrong-doing or some other cause which affects the children or possibility of children.

34,749. Not necessarily the parties themselves?—No.

34,750. You do not take the view that anything which renders the performance of the contract impossible breaks the contract and ought to be a reason for divorce—the contract of marriage?—Anything which makes the contract absolutely impossible.

34,751. Does not incompatibility, the utter absence of affection between husband and wife?—Incompatibility in that sense, I suppose.

34,752. The loss of love between husband and wife?—Does utter loss of love between husband and wife occur without something to justify it on one side or the other? I do not think I have considered that point.

34,753. I will not press you if you have not considered it. You think insanity, although not caused by wrong-doing of the insane person, is a ground for divorce?—Yes, from the point of view of the community.

34,754. In an incurable case?—Yes.

34,755. Would you say the same of entire physical disability, something which is not mental, but some disease which renders it impossible that marital relations can go on, the parties being young?—Yes. I think it would be for the interest of the community that divorce should be possible in those cases.

34,756. That, I think, is your test, whether it be for the interest of (*a*) the children, and (*b*) the community?—Yes.

34,757. If it answers that test you would allow divorce for any reason?—Yes. One would have to prove it did fulfil that test.

34,758. May I take it you represent your own views upon this, or those of the Fabian group you represent?—Those are my own views. I should think that they represented those of most of the Fabian group, but we have not discussed that particular point.

34,759. Did I hear you say the Fabian group represented 200 people, or 200 branches?—The Fabian women's group number about 200 people.

34,760. What is their relation to the Fabian Society?—The Fabian Society has among it various groups for the study of particular questions, social questions, and the women's group is naturally for the study of those social questions relating to women.

34,761. Do you consider you are speaking on behalf of the whole Fabian Society as well as the particular group whose views you voice?—No, I have no warrant. I do not suppose I am speaking against it, but I represent only the women's group.

34,762. You referred to Dr. Jane Walker's proof. Have you seen it?—I have not seen the final proof, but I was one of the committee who considered it.

34,763. And discussed it?—Yes.

34,764. (*Mr. Brierley.*) Does your unfavourable experience of police courts lead you to suggest that the whole of these separation orders should be taken away from the magistrates?—I think I am not competent to discuss the constitution of courts, but I suggest that they should be taken in a different atmosphere away from the undesirable public.

34,765. Not mixed up with other cases, but taken in private?—Yes. I do not think they should be absolutely taken in private. I have a feeling that courts ought not to be altogether private if it could be avoided.

34,766. They must be either private or public?—They need not be taken with a lot of heterogeneous cases.

34,767. A special time or day might be allotted to them?—Yes.

34,768. Otherwise you would not be in favour of abolishing separation orders?—No. I think in some cases they meet the case, but in many cases they do not, and form a very unsatisfactory substitute.

34,769. With regard to the question Mrs. Tennant asked you, have you any experience as to the effect of asking employers to pay the money out of the wages to their workmen?—No.

34,770. Would you say that the convenience of the husband ought not to be considered?—If anybody's convenience is to be sacrificed it should be the guilty party, but I do not want to interfere with his chances of earning a livelihood.

34,771. What has to be considered is the best means of getting the money for the wife and children?—Yes. Of course, if you ruin the man altogether you deprive them.

34,772. You deprive the wife?—I do not want to do anything vindictive to the man, or lessen his chances of going on steadily afterwards.

34,773. There is one question I should have put to the last witness. You would not consider the equal treatment of the sexes in the Society of Friends is the only influence that leads to their high standard of morality?—No; I do not think either Dr. Webb or myself suggested that, but I think it is the largest factor.

34,774. They are a small society?—In Newcastle and Gateshead they are a very large body.

34,775. At any rate they are a body the members of which are all known to one another?—Hardly even that, but they are to some extent. Their system of church government does bring them more or less in contact.

34,776. It is so small, that the public opinion of the whole society has a good deal of influence on each individual member?—Undoubtedly.

34,777. They do not encourage marriages outside their own society?—There, perhaps, I am not competent to say. I am not a Friend. I have merely noticed this matter from outside.

34,778. All those influences would have some effect?—Naturally.

34,779. (*Chairman.*) Would you give me a little more information about the meeting Lady Frances Balfour asked you about. I did not know anything about it. Who were there, what class of meeting was it, and where was it?—It was held at 3, Lincoln's Inn Fields, Mrs. Ramsay MacDonald's. It was a meeting of the Women's Labour League, and some other women's organisation.

34,780. (*Lady Frances Balfour.*) One or two members of the co-operative women's guilds?—Yes, and sundry working women's organisations of that sort.

34,781. (*Chairman.*) They represented people all over England?—Hardly. It was too quickly got up.

(*Chairman.*) What number of women were there?

34,782. (*Lady Frances Balfour.*) About 25?—I should say about 35.

34,783. (*Chairman.*) Do you treat them as being representative of labouring women's opinion?—They are representative chiefly of the better artisan class and some middle class. It is very much a mixed organisation.

34,784. Would they represent different trades throughout the country?—Mrs. Ramsay MacDonald is a member; so am I. There are women who are absolutely working women.

34,785. Were some of these 35 actual working women?—Yes. The majority of the members of the Women's Labour League are working women.

33,786. Was this published or written out in any way, or resolutions passed?—I do not think there were any resolutions passed upon that occasion..

34,787. Mere discussion, and not reported?—I and some others had been anxious the league should give evidence before the Commission, but it was felt it was fairly well represented by other people, and that it would be difficult to get a mandate from the branches all over the country in the time.

34,788. I am asking, because we have a good many women's representatives of various leagues, but I did not gather that a meeting such as you described was included among them?—No, it is not for those reasons. The committee of the league felt that it was inadvisable to offer to give evidence on behalf of the league unless the branches all over the country had had an opportunity of expressing their opinions, for which there was not time. This was, therefore, not a league meeting, though many of its members were present and it certainly represented working class opinion.

34,789. There were no resolutions. Can you give anything which shows what was the representative view of that meeting on any of the important points discussed?—Yes; I think I can say pretty fairly that all felt equality between the sexes in this matter was desirable. They felt most strongly, that it was very necessary that there should be facilities for poor people as well as for well-to-do ones.

34,790. That is, with regard to courts?—Yes, and not impossibly expensive proceedings.

34,791. Was there any discussion or any general expression of opinion as to the grounds of divorce, such as adultery alone, or including cruelty?—I do not remember distinctly enough to say whether they expressed any opinions further than adultery and cruelty. I think they did. The majority thought incurable insanity was also a ground; and also I remember everybody was strong upon the inadequacy of the separation order as a means of help.

34,792. (*Sir Lewis Dibdin.*) How were the 35 women selected for the conference?—They were not all women; there were some men.

34,793. How many men?—I had nothing to do with calling that meeting. Five or six men, I think.

34,794. And about 30 women?—Yes.

34,795. Thirty women from the whole of the country. How were they selected?—The Labour League has branches over the country, and the Women's Guild.

and the Railway Women's Guild, but they could not be got together in a hurry. There could only be representatives of a few near branches.

34,796. Were not those branches communicated with?—I do not know.

34,797. Who did it?—Mrs. Ramsay MacDonald and probably the secretary of the Labour League.

34,798. You are not able to tell us all those various branches were actually invited?—I cannot say that they were. In any case, if they were, the expense—because they are all working women—of their coming up would have been prohibitive. That would have been the reason of not coming in many cases if asked.

34,799. Those that were there were principally London people?—London and the neighbourhood altogether.

34,800. You do not know how many did not accept the invitation?—No.

34,801. What was the subject they were asked to discuss? Was it especially with regard to this Commission?—The question of the divorce laws.

34,802. (*Chairman.*) Can you recollect whether any discussion took place upon the subject of desertion?—Yes.

34,803. What was the general view about that?—Someone—I think it was a man, I cannot remember distinctly—expressed the view that malicious desertion ought to be a ground, and somebody else questioned whether that would be safe in all cases. Then the question of the Scotch law was brought up, and most people seemed to think that the Scotch law worked well.

34,804. There was no formal resolution?—No.

34,805. You have given in substance your impression of the discussion?—Yes.

(*Chairman.*) I ought to thank you very much for your interesting evidence.

Lady ALICE MAUDE MARY BAMFORD-SLACK called and examined.

34,806. (*Chairman.*) You come here to give evidence as representative of the Women's Liberal Federation?—Yes.

34,807. Have you been associated with that federation for some time?—Since the second year of its existence, which was in 1887.

34,808. Can you tell me what its membership is?—Over 100,000 women, belonging to 700 organised associations throughout the whole of the country, varying in size.

34,809. Is its object chiefly political or social?—It is a party political organisation, but it is not a party political organisation only, inasmuch as from its inception it had amongst its objects to protect the interests of women and children.

34,810. It is in that latter capacity, I take it, you represent it here to-day?—Yes.

34,811. I notice, at the beginning of your paper, you say one of its objects is the promotion of just legislation for women, and the removal of all their legal disabilities as citizens?—That is so.

34,812. Is the policy of the federation laid down each year by delegates of the affiliated Women's Liberal Association assembled in council?—Yes. We have a council meeting every year, to which the affiliated associations send up resolutions upon those subjects in which they are interested.

34,813. What is the number of the council?—The council generally numbers between 800 and 900, because we have a proportional representation from each association. They send up delegates in proportion to their numbers.

34,814. How many meet in council?—800 to 900.

34,815. Where is that meeting held?—It has been held in St. James's Hall of late years.

34,816. They are all delegates from various associated bodies?—Accredited delegates duly appointed by their own individual association.

34,817. It is a very large meeting?—Yes.

34,818. Have questions relating to divorce been often brought up before the council?—Ever since 1892, when Dr. Hunter's Divorce Amendment Bill was before Parliament, we have had resolutions.

34,819. Was that a Bill brought into the House?—It was brought into the House, and that was the first occasion upon which we were able to support any proposed legislation on the subject. That was in 1892.

34,820. Can you tell me what was the general object contemplated by that Bill?—To equalise the conditions for divorce as between men and women.

34,821. Do you remember what happened to it?—I think what happened to it happens to a great many private members' Bills.

34,822. It did not get on?—No.

34,823. Since that date have resolutions been continually passed at the annual council meetings with regard to divorce?—Yes. There have been 12 resolutions passed with regard to divorce on those same lines; and so persistent were the associations in sending up a resolution asking for an equalisation of the divorce laws as between men and women, that in 1905 the executive committee of the Women's Liberal Federation decided to put it amongst those subjects which were dealt with in the declaratory resolution, as being a subject upon which there was no difference of opinion. That prevailed from 1905 until 1909, and in 1910, when the Marriage Law Amendment Bill was before the House, we again had a special resolution supporting that suggested legislation.

34,824. You have given a copy of the resolution passed at the annual council meeting of the federation in 1892?—Yes.

34,825. I will read it: "That this council is of "opinion that any future legislation on the subject of "divorce should make the conditions for which "divorce is granted apply equally to men and women, "and that the federation should do all in its power "to aid and support Dr. Hunter's Bill for the equali-"sation of the divorce laws." I suppose substantially that was the resolution on the other occasions?—Substantially the same, with the omission of Dr. Hunter's Bill.

34,826. The point is the equalisation?—Exactly.

34,827. Has there been any division of opinion amongst the federation on that point?—I think it is quite safe to say from the very beginning, from the year 1892 onwards, even when we were perhaps at one time divided on women's suffrage, we were always united in demanding an equality of the laws controlling divorce.

34,828. Would not that equality be difficult in the case of the costs question? I do not know whether you have considered that point. At present all these divorce cases are fought at the expense of the man. He has to provide the means for himself and the wife. Would your notion be that each should provide their own? It is one of the advantages under the present state of the law which rests on the women's side?—My notion of equality is that if you gain any advantage through a reform, you naturally have to take the consequent disadvantages, whatever they may be. I am aware those things work out very often very awkwardly, especially at present, having regard to the unequal economic position of women, which is a side issue.

34,829. That is a difficulty I should like to see whether you have considered. Practically amongst the lower classes the man is the breadwinner?—That is so.

34,830. And in general he is the person who earns he funds to keep the household?—Yes.

34,831. And so it is through a very large part of society unless there are private means. The result has been, and part of the old common law was, that a man was bound to maintain his wife and provide the necessary means of contesting the case. Therefore, if she begins her suit the first thing is to give security for costs. If he begins, it is stayed till he does. I want to know whether you have considered that, because I think that might lead to very awkward results?—We initially take our stand on the principle

of equality of the sexes under the marriage law, and it is not unusual in English law that the law should provide for circumstances as they arise. Those are subsidiary considerations.

34,832. That might mean that no woman could bring her case or defend it. You do not want that? —That would be accidental, and not of the essence of the situation.

34,833. May I take it that this equality relates to the ground of divorce?—It is the principle of the ground of divorce we mean by that. We have to take the incidents attaching to it as they come along, I suppose.

34,834. Has your association reached the conclusions that are expressed in the resolution merely on general principles of equality, or have they considered whether these principles would lead to an improvement in the moral standard of man?—They have certainly considered that point of view.

34,835. What conclusions have been expressed about that?—They have considered that the establishment of laws which shall require an equal moral standard from man and woman in marriage will lay the foundations of such a much better view of the marriage tie as entirely to improve the whole ethical and social condition. They believe that there will be a better recognition of mutual obligations as between man and woman if they enter into this contract on an equal footing.

34,836. There is another matter which is not mentioned in your short memorandum, and that is whether there has been any consideration given to the question of the grounds of divorce. I am not speaking of equality, but the grounds upon which the decree should be obtained?—That has been considered. In almost all our resolutions they have asked that divorce shall be granted both to men and women on the ground of unfaithfulness alone.

34,837. Have you any resolution on that?—Yes. In 1910, "This Council approves the Marriage Law Amendment Bill now before Parliament, and as far as it would provide, that the law of divorce should be amended so as to entitle either party to a divorce on the grounds of unfaithfulness alone."

34,838. Are they against the view of extension to the cases that meet desertion or insanity?—I do not understand your question.

34,839. May I see the form of the resolution, because it might be an ambiguous matter? That might alone relate to the conditions of equality. I think that resolution is directed to equality?—Yes.

34,840. That is to say adultery, whether by the man or by the woman, should be a ground of divorce without bringing in, in the case of the woman, some other added cause so as to place them on a footing of inequality?—I thought that was the question.

34,841. No, it is a question that has not been dealt with in the memorandum, whether the federation has considered the addition to the ground of adultery of any other cases which would apply equally to both sexes, for instance, insanity?—Yes, it has considered those points, and it would ask that any laws which decided what should be regarded as a ground of divorce for men should be equally a ground of divorce for women; but we have not decided ——

34,842. What should be the ground?—No.

34,843. That is the point. Your point is whatever law permitting of divorce exists it should be equal to the sexes?—Yes.

34,844. The actual grounds have not been the subject of consideration?—Not all the various grounds. They have been considered and discussed, but they have never been formulated in a resolution. We take our stand that there should be an equality of treatment.

34,845. You cannot express any views as to the extension of the grounds of divorce?—No.

34,846. (*Earl of Derby.*) I did not quite make out whether you are prepared to say, if there are terms of equality, that a woman should give security for the costs of both sides?—She would be required to, I take it.

34,847. You agree to that as being part of the terms of equality?—Certainly.

34,848. Are you prepared to see any alteration in regard to giving greater facilities for divorce by changing the trial ground from London to the Provinces?—That we have not considered. I am not here to advocate greater facilities from the point of view of greater facilities, and we have not considered it in detail. It has only been mentioned incidentally, the question of transferring from London to the Provinces.

34,849. You are agreed that there should be equality for men and women, whatever the causes of divorce are, and wherever the case is tried?—Yes, we consider it only justice to the woman, and that it would have a beneficial effect on the community.

34,850. (*Lady Frances Balfour.*) You have considered it very much from the point of view of the children when you discussed this question of the divorce laws?—Certainly, naturally. The children come very much into the whole consideration.

34,851. You feel that it would benefit them if the law was made equal?—We think it would benefit the children. It would benefit the health of the whole race, and the present position as to legal cruelty having to be proved cannot be said to benefit the children, although it may to a certain extent keep a so-called home together.

34,852. I suppose the federation when this Commission reports will probably consider the report and have resolutions upon it as a whole?—Certainly; that is part of carrying out our duty under that object, that we try to secure just legislation for women and children, so that every time anything of that kind comes up we have to consider it.

34,853. Any legislation?—Or proposed legislation or any question of a Royal Commission. Directly there is one on anything affecting woman we write and say, "Can we have women sitting on that Commission?" and "Can women appear as witnesses before that Royal Commission?"

34,854. (*Chairman.*) Was it not your association that communicated with the Secretary with a view to having a representative to give evidence?—Yes.

(*Chairman.*) Thank you very much for your valuable assistance.

Miss MARY ADELAIDE BROADHURST called and examined.

34,855. (*Chairman.*) You have supplied us with a précis of the evidence you propose to give. Is that given on behalf of the Political Reform League?—Yes.

34,856. Did they write to the Secretary with a view to having a representative, and do you come as such?—Yes.

34,857. Will you tell us about the constitution of the league?—It is a new body and has only been in existence since February of this year. It represents already about 400 members, both men and women, and it is in process of constitution now. I was instructed by the present executive, who approved of my evidence.

34,858. Is it purely political or does it embrace social objects?—It is political, but it also embraces social objects.

34,859. Amongst them the question of women's position?—All the questions affecting women. I will not say that it is confined to women—certainly questions affecting the social and political conditions.

34,860. If you have your paper before you, it might shorten matters if you would kindly read it, and we can ask you any questions that occur to us?—I wish to take the attitude that there should be equal treatment of both sexes in the matter.

34,861. Is that the view taken by the whole league?—Yes. The present law does not give them such equality. We consider that simple adultery should be equally a ground for divorce in both sexes, and from the point of view of society we find that the husband may commit adultery with a woman who is previously chaste, or it may be with a common prostitute, and in

both cases the argument is that consideration would have to be paid to the moral deterioration in the woman. The moral deterioration in the woman is great; she is in both cases degraded, and a man, we argue, cannot so degrade a woman without degrading his own moral nature.

34,862. You are now speaking of the woman with whom he has committed a wrongful act?—Yes, and by so doing he degrades his own nature. When he states that the woman is down, and therefore he has a right to degrade her further, we argue that he is still more morally degrading himself in that he is, as it were, kicking a woman who is down further to spiritual and physical destruction. The general apathy that prevails with regard to the awful degradation of these women we consider is a mark of the moral degradation produced in the race as a result of continued action of that kind. Then, from the point of view of the wife, the wife is by the present law practically required to condone an act of adultery on the part of the husband unless it is accompanied by some further action. We say that as she is naturally the closest guardian of the well-being of the race, acts of adultery on the part of the husband not only injure herself, but through her the race, and that she therefore ought to be able to have protection, and we argue that the race is injured morally because there is moral deterioration on the part of the husband. That must affect the child, both directly, since an immoral father cannot be a good parent, and also indirectly on the race, because any lowering of vitality in the health of the children means that they have less resisting power, morally as well as physically. Finally, we argue that excess in adultery, which practically the wife has to condone, under present conditions, has most dire results. It leads to great mortality amongst children, sterility, and if not that, it lowers the vitality of the children and so renders their resistance to disease less. The woman is affected with terrible results to her, and there are direct hereditary effects on her children of a very terrible kind—in fact, the general opinion amongst medical men is that the effect of excess in matters of this kind is one of the most terrible evils that at present the race is undergoing. The woman is exposed to a disease which is constitutional from the very outset, a disease that may never be curable, and which has the direst hereditary results; and we feel that a man who is responsible for bringing children into the world should not have the power to injure his wife and her children without giving to that wife some protection. The wife should be protected. We are very strong on this. The woman in cases like this is kept in ignorance of much that she ought to know, and much that is vitally interesting to her, and through her to the race. In fact, we consider that there is what amounts to a conspiracy of silence on these matters amongst men, and not only amongst ordinary men but amongst doctors, and doctors ought to have the well-being of the race at heart. In our opinion, giving the woman protection against this is the most vital and far-reaching of any reasons for an alteration in the law. It has been argued if a husband gives his wife a disease it can be called cruelty, and she may get her divorce, and a case has been decided in which she did so get her divorce; but we argue that to convict of cruelty after these terrible results have come is absolutely illogical. A woman should have protection against such a cruel act of this kind, which is argued by the judges as being cruelty. To call it cruelty is equivalent to locking the stable door after the horse is gone.

34,863. You are aware that they can get protection by obtaining a decree of judicial separation?—Yes.

34,864. Is the view you express that this is adequate?—No, it is inadequate. We think a woman should not be sacrificed so far as to be unable to free herself wholly from conditions that are bad for her and her children.

34,865. What you have said covers all the points of your proof until we come to the paragraph which begins "As it stands at present." Will you take it up from there?—"As it stands at present the law condones and thereby encourages vice in men, married or unmarried. It elevates a false standard of morality for husband and bachelor alike. It practically ignores the awful consequences, physical and moral, of adultery on a man, and makes it an offence so trivial that it is the duty of woman to tolerate it. It thus removes from the sum of the conditions which determine vice one of its strongest deterrents," and to argue that man should yield to his nature in this way is to practically give an argument for so yielding. When a standard is erected by public opinion and in Parliament, the erection of such a standard tends to weaken the nature of any but the strongest man; whereas, if another standard were there, and if the man were treated as he deserves to be, that would be something which would tend to deter him from an immoral life.

34,866. You regard the double standard as a bad thing?—A bad thing absolutely.

34,867. I take it from what you have been saying that, if there was equality, it would tend to raise the general standard of morality in the country?—In a most remarkable way; in fact, I do not think there is anything more far-reaching than this. It goes to the root of almost everything.

34,868. The next part of your proof deals with condonation?—Yes. "Also to condone an occasional act of adultery is not only to ignore that moral and physical disaster of the greatest kind may result from even one act, but it would make the Act of Parliament in which it was embodied of practically no effect, it would simply mean permission to commit adultery, provided it was not committed too often."

34,869. Is there any other point to which you desire to call attention, because I have gone through the whole of your memorandum?—I think those are the chief points.

34,870. There is nothing in it about the question of whether there should be any additional grounds of divorce. If that has not been considered, I do not want to trouble you with it?—We have considered other matters, but I think we feel if the law gives equality on the grounds of simple adultery, it would cover what we consider to be the greatest demand.

34,871. Have the other matters had resolutions upon them?—No, they have been considered informally; we have not had time to present resolutions.

34,872. Therefore you could not represent them upon it?—No.

34,873. (*Earl of Derby.*) You keep saying "we." You represent 400 people?—Yes.

34,874. Has there been a resolution passed by your people?—No; our league is new, we are in process of organising, and it was left entirely to the executive.

34,875. Will you read any resolution by the executive authorising you to make these statements?—I have no resolution; it was discussed, and the evidence was read and passed.

34,876. As a matter of fact, there is no resolution authorising you to make these statements?—No.

34,877. You put these views before the executive and you understand that they met with their acceptance?—Exactly.

34,878. There is no resolution?—There is no resolution.

34,879. There is no authority really except that?—Exactly.

34,880. There are one or two things that seem to me to be contradictory. You say in A. (*a*): "Also he probably gives the woman an impulse of wrong from which she can never recover," and (*b*) "if it is urged that the unfortunate woman is already irrecoverable, we reply that in most cases it is not so"?—(*a*) and (*b*) refer to different classes of women.

34,881. In one class it is a wrong from which she can never recover. Then she sinks to the other class in which, you say, in most cases she is recoverable?—I mean where a woman is innocent she would never recover the status that she had had before, but in the case of a girl who has not become vicious she may so far be reclaimed.

34,882. You would regard a woman who had committed adultery as still innocent in class (*a*)?—No; if the man causes her to commit adultery she would never have the same status again.

34,883. You spoke of an innocent woman?—An innocent woman at first, I meant.

34,884. On page 2 you speak of a terrible disease being produced which, through the wife, is transmitted to the children. Is it not rather sweeping to say in every case or in most cases?—Most cases certainly not. I thiuk medical evidence entirely bears it out.

34,885. In most cases even of what you speak of at the end an occasional act of adultery that produces a terrible disease which is transmitted to the children?—It might.

34,886. Can you produce medical evidence to prove that?—I do know of one specific case.

34,887. That would hardly do for such a general statement?—I should refer you to the books, for instance, Bangs and Hardaway. It is shown the conditions might be such that the man would transmit the disease.

34,888. Are you prepared to say, in the majority of cases, what you would call an occasional act of adultery represents this terrible scourge to the children?—I said that an occasional act might, therefore the woman ought to be able to protect herself.

34,889. Are you not aware that she is able to protect herself at present by divorce?—She is not able to protect herself at present against simple adultery.

34,890. She is able to protect herself by getting divorce where that adultery is accompanied by the transmitting to her of disease?—After the disease is transmitted, and if she also proves the husband wilfully did it.

34,891. Will putting women on terms of equality prevent the same disease being given?—It will give her the power, the moment she becomes aware her husband has committed adultery, to take steps if she wishes to.

34,892. That is before she gets a disease—in fear that she may get one?—Yes.

34,893. (*Sir Frederick Treves.*) I am sure you do not wish to over-state your case; but speaking of acts of adultery, are you justified in leaving the impression that the direct result is injurious to the vitality of children?—Of excess.

34,894. That is proved, is it?—I think so.

34,895. Can you give any authority for that?—As to that being the result of excessive acts?

34,896. Yes?—I think it is on the authority of most of the newer books on the matter, even the text books. Bangs and Hardaway is the one I have recently got.

34,897. You cannot give the quotation from it?—No.

34,898. You also give rise, as Lord Derby has said, to the impression that all these acts of adultery must be associated with a terrible disease which through the wife is transmitted to the children?—I do not wish to give the impression of "must be." I think common sense will show that is not the case, but that it may be, and my argument is that the wife should be able to protect herself.

34,899. Also to avoid exaggeration, you speak of this malady as being constitutional from the beginning, and as being incurable?—I beg your pardon, "which may not even be curable" are my words.

34,900. And which is inherited?—Yes.

34,901. Surely it may be curable?—The consensus of opinion, I believe, is that in a virulent case it is not curable wholly, and that it may break out at any time in after life. No doctor seems to be able to predict that it will not.

34,902. Have you any evidence of that?—I have not brought the statement.

34,903. You cannot quote any authority?—I will not quote direct words, but, as I said, it is in text books.

34,904. Have you read it?—Yes.

34,905. Can you tell me the work?—Yes, Bangs and Hardaway.

34,906. You have read no specific work on this matter?—This is a specific work.

34,907. You have not read the treatment of syphilis in the Army, for example?—No. I have the effects of syphilis in ordinary cases.

34,908. Would you like it put in print that it is incurable?—No, that it may not be curable, and therefore the woman should not be obliged to take the risk. That is my point.

34,909. And is inherited and transmitted?—Yes.

34,910. Always?—No, not always, but it may be transmitted, and when it is it has very dire results.

34,911. That, of course, is a matter of opinion?—I think the consensus of opinion is with me in that matter.

34,912. I still again ask you if you can give any written or printed statements in support of that?—There is a statement here. I could have got plenty. "Practitioners should never lose an opportunity to impress upon the mind of the patient the undoubted fact, as supported by clinical observation and laboratory investigation, that gonorrhœa is one of the most severe, and perhaps the most far-reaching in its results, of all the infectious diseases." That is a quotation from this book.

34,913. Now you are going from one disease to another?—I have not mentioned either disease. The two are syphilis and gonorrhœa. I do not mind which you take.

34,914. You put them on the same basis?—I believe, in different ways, they both have very dire results.

34,915. You would not speak of gonorrhœa as a disease capable of being handed down to children?—Yes.

34,916. Have you any authority for that?—Yes. I have not made a quotation with regard to that.

34,917. Can you produce any sentence from any medical book published within the last 30 years to show that gonorrhœa can be inherited?—Here is a statement: "Subtract the evil effects of gonorrhœa "from list of human ills and the resulting increase of "longevity and happiness of the race would be some-"thing marvellous."

34,918. That does not answer the question. Can you show by reference to any work published in the last 30 years that there is a case on record of gonorrhœa having been inherited?—I have not a quotation, but I will take syphilis if you like.

34,919. We must not go from one to the other. You said gonorrhœa just now?—I said I have not mentioned in my evidence either disease. The quotation I gave you was of gonorrhœa, but my statement applies to either disease.

34,920. In that case it involves the assertion that gonorrhœa is capable of being inherited?—It does not involve the assertion that gonorrhœa is capable; it involves the assertion that there is a disease which is capable.

34,921. You said just now gonorrhœa was, quite distinctly?—If that implies it.

34,922. From what source is that?—Lydston.

34,923. It is very desirable in a case of this sort not to over-state the case?—Yes; but I do not think I have overstated it.

34,924. The statement comes to this, that acts of adultery in excess have a direct result on the vitality of children, that syphilis or the disease you speak of is constitutional from the onset, and that it is incurable?—That it may not be curable.

34,925. That it may not be curable and is inheritable?—Yes.

34,926. Further than that, you also state that gonorrhœa is capable of being inherited?—I have not stated that. I do not know whether gonorrhœa is. Syphilis certainly is, and in my statement I have not differentiated between the two.

34,927. Perhaps it would be advantageous if you did?—I do not think it matters to my statement if there is one disease which does.

34,928. An ordinary layman reading your report would carry away the impression that adultery, which no one wishes to defend, would lead to these terrific results?—Might lead.

34,929. You do not put that in, because you said acts of adultery have a direct result on the vitality of children. I am reading from your proof?—Yes, it has such effects. I stand by every word I have said.

34,930. You have not brought forward any medical book?—I have referred to this one, in which you can find corroboration for every word I have said.

34,931. (*Mr. Spender.*) In regard to your last paragraph, you say, "Also to condone an occasional act "of adultery, is not only to ignore that moral and "physical disaster of the greatest kind may result "from even one act, but it would make the Act of "Parliament in which it was embodied of practically "no effect, it would simply mean permission to commit "adultery provided it was not committed too often," you do not mean that as a broad and sweeping statement applying to the conduct of every wife and husband?—No.

34,932. (*Chairman.*) I have examined you upon a proof which has the same page twice. Have you covered all you said? Will you read page 2 and say if you have said all you should have said?—I did not say anything about the fact that the law of divorce does not act by compulsion.

34,933. We may take it that is fairly obvious; it is at the request of the partner who complains?—I think that was covered by the question, that it is not necessary that any case need be acted upon.

34,934. You are not in the medical profession yourself?—I am not. I have gone through a scientific training.

34,935. Your evidence is presented on broad social considerations?—Yes.

34,936. Who is the head of your organisation?—At present I am the head of it.

34,937. Are there any names that are known publicly to us associated with it? It is only to get the general character of it?—Yes; there are prominent men, such as Sir Benjamin Johnson and Sir Rupert Boyce, and men of that kind, and others of the leading men in Liverpool.

34,938. Are the number you mention all men, or partly men and women?—Men and women.

34,939. About equally divided?—Yes.

(*Chairman.*) We thank you very much for your evidence.

Adjourned.

Winchester House, St. James's Square, London, S.W.

THIRTY-EIGHTH DAY.

Tuesday, 1st November 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace the LORD ARCHBISHOP OF YORK.
The Right Hon. the EARL OF DERBY, G.C.V.O., C.B.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
The Hon. LORD GUTHRIE.
Sir FREDERICK TREVES, Bart., G.C.V.O., C.B., LL.D., F.R.C.S.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES, *Secretary.*

Sir LEWIS T. DIBDIN, D.C.L., called and examined.

34,940. (*Chairman.*) Sir Lewis Dibdin, you have been good enough to prepare some notes on the history and otherwise in connection with the Reformatio Legum, which dates from the Reformation days, and copies of that have been supplied to the Commissioners. I think it is probably advisable that you should put it in formally, and I would venture to ask you to do so?—If you please, Lord Gorell. May I say that these notes are directed to four matters. First, the facts as to the Reformatio Legum and Lord Northampton's divorce case. The Reformatio Legum has been largely referred to here, but it seemed to me that the facts were not completely before the Commission. The second point is the real authorship of the Reformatio Legum. The third point is the opinions of Divines of the later 16th and early 17th centuries with regard to divorce; and the fourth point is the law and practice of the Church of England as to divorce, at and subsequent to the Reformation.

34,941. And the Memorandum deals with all those four points?—Yes, my Lord; there are one or two misprints that want correction, which I daresay I shall be allowed to correct.

34,942. Certainly?—I have made inquiries in various quarters to get information, and since I have sent this in letters keep on coming in, and it may possibly be that I should like to add some facts. Perhaps the Commission would allow me to do that should the necessity arise.

(*Chairman.*) Certainly. I would like to say this. I have had the privilege of reading that Memorandum, and I think it is a Memorandum showing immense research and great learning, and ought to prove of great value to us. I personally feel, and I hope I express the views of the Commissioners, very indebted to you for the trouble you have taken in preparing it, and for the assistance we shall derive from it.

(*Witness.*) Thank you, my Lord.

Notes on the Reformatio Legum and its Relation to the Law and Practice of the Church of England as to Divorce.

I. The history of the *Reformatio Legum Ecclesiasticarum* begins with the statute 25 Hen. VIII. ch. 19 (Restraint of Appeals), which recites that—

> "whereas divers constitutions ordinances and canons provincial or synodal which heretofore have been enacted and be thought not only to be much prejudicial to the King's prerogative royal and repugnant to the laws and statutes of this realm but also overmuch onerous to his Highness and his subjects; the s[d] clergy hath most humbly besought the King's Highness that the s[d] constitutions and canons may be committed to the examination and judgment of his Highness and of two and thirty persons of the King's subjects, whereof sixteen to be of the Upper and Nether House of the Temporalty, and the other sixteen to be of the clergy of this realm; and all the said two and thirty persons to be chosen and

appointed by the King's Majesty; and that such of the s[d] constitutions and canons as shall be thought and determined by the s[d] two and thirty persons or the more part of them worthy to be abrogated and annulled shall be abolite and made of no value accordingly; and such other of the same constitutions and canons as by the s[d] two and thirty or the more part of them shall be approved to stand with the laws of God and consonant to the laws of this realm shall stand in their full strength and power, the King's most royal assent first had and obtained to the same."

II. By the 2[d] section it was enacted—

"And forasmuch as such canons constitutions and ordinances as heretofore have been made by the clergy of this realm cannot now at the session of this present parliament by reason of shortness of time be viewed examined and determined by the King's Highness and thirty two persons to be chosen and appointed according to the petition of the s[d] clergy in form before rehearsed: be it therefore enacted by authority aforesaid that the King's Highness shall have power and authority to nominate and assign at his pleasure the said two and thirty persons of his subjects whereof sixteen to be of the clergy and sixteen to be of the temporalty or the Upper and Nether House of the Parliament; and if any of the said two and thirty persons so chosen shall happen to die before their full determination then his Highness to nominate other from time to time of the s[d] two Houses of the Parliament to supply the number of the said two and thirty; and that the same two and thirty by his Highness so to be named shall have power and authority to view search and examine the s[d] canons constitutions and ordinances provincial and synodal heretofore made and such of them as the King's Highness and the s[d] two and thirty or the more part of them shall deem and adjudge worthy to be continued kept and obeyed shall be thenceforth kept obeyed and executed within this realm so that the King's most royal assent under his great seal be first had to the same; and the residue of the said canons constitutions and ordinances provincial which the King's Highness and the said two and thirty persons or the more part of them shall not approve or deem and judge worthy to be abolite abrogate and made frustrate shall from thenceforth be void and of none effect and never be put in execution within this realm."

III. This Act received the Royal Assent on March 30, 1534.* The 32 commissioners were not in fact appointed under this Act, and in 1535–6 the Act 27 Hen. VIII. ch. 15 was passed, which, after stating that "forasmuch as the King's Highness hath not "named and assigned the s[d] 32 persons since the "making of the s[d] Act" (*i.e.*, 25 Hen. VIII. ch. 19) authorised the King to do so "as well before as after "the dissolution of this present Parliament," and empowered the 32 commissioners when nominated to act "at all times from henceforth for the term of three "years next after the dissolution of this Parliament." This Parliament was dissolved April 4, 1536. Still the commissioners were not appointed. In 1543–4 the Act 35 Hen. VIII. ch. 16 was passed. After reciting 27 Hen. VIII. ch. 15 this statute continued—

"since the making of which Act divers urgent and great causes and matters have occurred and happened whereby the s[d] nomination and appointment of the s[d] 32 persons by the King's Highness have been omitted whereby the s[d] search view and examination of the s[d] canons constitutions ordinances provincial and synodal have not been had nor made according to the tenor purport and effect of the same Act."

IV. A fresh power was then conferred on the King to appoint 32 commissioners as in the former Acts, but with two important extensions. First, Henry VIII. was empowered to act in the matter at any time during his life, with no limitation to a period of three years, or to the duration of the existing Parliament. Secondly, the scope of the work of the 32 commissioners, which had hitherto been confined to the collection and revision of existing canons, was now enlarged so as to include the framing of new ecclesiastical laws. The reference to the 32 commissioners is stated thus:—
"to peruse oversee and examine all manner of canons "constitutions ordinances provincial & synodal and "further to set in order & establish all such laws "ecclesiastical as shall be thought by the King's "Majesty and them convenient to be used and set "forth within his realm and dominions in all spiritual "courts and conventions."

V. There is no evidence extant in the Public Record Office of a commission having been actually appointed under 35 Hen. VIII. ch. 16.

VI. Burnet (Hist. Reformation, Pt. II., Bk. I., p. 196, ed. 1681), Strype (Memls. Cranmer, Bk. I., chap. XXX., p. 295, ed. E.H.S.), Reeves (Hist. of English Law, Finlason's ed., vol. III., p. 495), Collier (Ecc. Hist., vol. V., p. 141), and Cardwell (D.A., vol. I., p. 107*n*), all state that a commission was issued under that Act. Their opinion seems to be based on a letter written by Cranmer to Henry VIII., dated January 24, 1546 (Burnet, Hist. Ref., Pt. II., Bk. I., Coll. Rec., No. 61), in which he states that he had sent for Heath, Bp. of Worcester, and had "declared unto him all your "Majesty's pleasure in such things as your Majesty "willed me to be done. And first where your Majesty's "pleasure was to have the names of such persons as "your Highness, in times past, appointed to make "Laws Ecclesiastical for your Grace's Realm. The "Bishop of Worcester promised me with all speed to "inquire out their names and the Book which they "made and to bring the names and also the Book unto "your Majesty, which I trust he hath done before this "time."

VII. Foxe (1517–87), the martyrologist, in his preface to the first printed edition of the Reformatio Legum (1571) also states that Henry VIII. appointed commissioners and that they actually performed their task at least to some extent. ". . . Quocirca cum ex "ipsius tum ex publico senatus decreto delecti sunt viri "aliquot, usu et doctrina præstantes numero triginta duo "qui penitus abolendo pontificio juri (quod canonicum "vocamus) cum omni illa decretorum et decretalium "facultate, novas ipsi leges, qua controversiarum et "morum judicia regerent, regis nomine et authoritate "surrogarent. Id quod ex ipsius regis epistola quam "hunc præfiximus libro, constare poterit, qua et "serium ipsius in hac re studium et piam voluntatem "aperiat. Laudandum profecto regis propositum nec "illaudandi fortassis eorum conatus qui leges tum "illas licet his longe dissimiles conscripserant." (Cardwell's edition of Reformatio Legum, 1850, p. xxiv.) The title of Foxe's edition (and of the subsequent reprints in 1640 and 1641) testifies to the same fact though it does not specifically mention the commission—"Reformatio Legum Ecclesiasticarum ex "authoritate primum Regis Henrici 8, inchoata: "Deinde per Regem Edwardum 6 provecta adauctaque "in hunc modum atque nunc ad pleniorem ipsarum "reformationem in lucem ædita."

VIII. Strype (Memls. Cranmer, Bk. I., chap. XXX., p. 294, &c., ed. E.H.S.) gives a circumstantial account (partly founded on Cranmer's letter already quoted) of Cranmer's appeal to Henry VIII. in 1545–6, to ratify the draft of the new ecclesiastical laws then described as complete, and Strype mentions the draft letter which had been drawn up for the king's signature in order to give official sanction to the new code. This letter, which Henry never signed, is prefixed to all four of the printed editions of the Reformatio Legum. No further step is known to have been taken in Henry VIII.'s reign. Strype (Mem. Cranmer, Bk. I., chap. XXX., p. 296) writes: "But whatsoever the "matter was, whether it was the king's other business, "or the secret oppositions of Bishop Gardiner and the "papists, this letter was not signed by the king." Collier (Ecc. Hist., Vol. V., p. 141) writes: 'But it

* Throughout this memorandum years are reckoned as beginning on the 1st January.

" seems his Highness [Henry VIII.] received advice " from the Bishop of Winchester that in case the king " proceeded to any innovation of this kind the league " now concerting with the emperor would miscarry. " And thus it is probable, for reasons of State, the " king refused the signing of the instrument."

IX. Burnet (Hist. Ref., Pt. I., Bk. III., p. 330), after stating Cranmer's anxiety to procure an authorised revision of the Canon Law, writes: "But it was found " more for the greatness of the Prerogative and the " authority of the Civil Courts to keep that undeter- " mined; so he could never obtain his desire during " this king's reign." Foxe, in his preface quoted above, writes—yet somehow or other at every turn the project failed to succeed, perhaps owing to the troublous times, perhaps to the lack of perseverance of those to whom the business was then entrusted. " Sed nescio " quo modo quaque occasione res successu caruit, sive " temporum iniquitate, sive nimia eorum cessatione " quibus tunc negotium committebatur."

X. There appears to be no means of ascertaining how far the code prepared in Henry VIII.'s reign differed from the Reformatio Legum as it was formulated in Edward VI.'s reign, and as we have it to-day. The only contemporary MS. is of the " Reformatio " in its second or Edwardian stage. It may, however, be safely assumed that Foxe was right in saying, as he does in the preface already quoted, that the code as it was compiled in Henry's time was " far different " from the " Reformatio " of the next reign.

XI. The latter contains many express references to statutes and books of Edward's time. (*See* Cardwell's Reformatio Legum, Preface, p. vii, note *c*.) It is also to be noted that the doctrinal statements in the " Reformatio," though exactly what we should expect in the later years of Edward's reign, are difficult to conceive as having been proposed to Henry VIII. for approval in or about 1545–6, so near the time of the Six Articles and the publication of the " King's Book." Compare, for example, the view of Sacraments generally, and the Sacrament of the Altar in particular, in the Reformatio (De Sacramentis, caps. 2 and 4, p. 30–31, Cardwell's ed.) and in the " King's Book " (" Formularies of Faith," pages 262, 269, 293).

XII. Henry VIII. died on the 28th January 1547, and with him passed away the power to revise the Canon Law created by 35 Hen. VIII. ch. 16. It will be remembered that the authority to appoint commissioners for that purpose was conferred on Henry VIII. personally, though made exerciseable by him at any time during his life. Early in Edward VI.'s reign the matter was again exciting attention. Convocation met in 1547 and the Lower House of Canterbury presented a petition to the archbishop asking that in accordance with the statute 25 Hen. VIII. ch. 19 the long deferred commission of 32 persons should be constituted so that the Church might no longer remain without definite laws (Gairdner's Hist. Ch. of England, Henry VIII., p. 251),

XIII. The further progress of the scheme, however, seems to have been brought about rather by the House of Commons than by the bishops and other clergy. On November 14, 1549, all the bishops joined in a complaint to the House of Lords that owing to the recent changes which had practically abolished the spiritual jurisdiction of the Church Courts (1 Ed. VI. ch. 2), vice and disorder were rampant and could not be repressed. The Lords at first desired the bishops to frame a Bill, which, however, when it was produced, was considered as giving too much power to the hierarchy, and a large committee of bishops, lay peers, judges, and law officers was appointed to draw up another Bill. This they did, and the Lords passed the Bill, but the Commons, after a second reading, " laid it aside," and, as a substitute, revived the scheme for the revision of the Canon Law by a commission of 32 (Hansard, vol. 1, p. 591). Their Bill for this purpose was finally read a third time in the Lords on January 31, 1550, Archbishop Cranmer and several of the bishops dissenting (Journal of H. of Lords, Vol. 1, p. 387). We do not know the ground of this opposition. Collier (History, V., 372) thinks one reason may have been that the Bill did not require the appointment on the Commission of more than four bishops. It would seem more probable that Cranmer and the bishops desired to mark their sense of the inadequacy of the step taken to cope with the evils of which they had complained. At any rate it is important to notice that the reappearance of the commission of 32 was not due to their initiative but to that of the Commons, and that it was actually opposed by Archbishop Cranmer.

XIV. The Bill received the Royal Assent on February 1, 1550, and became the statute 3 & 4 Edw. VI. ch. 11. After reciting that—

> "Albeit the King's most excellent Majesty Governor and Ruler under God of this Realm ought most justly to have the government of his subjects and the determination of the causes as well ecclesiastical as temporal; yet the same as concerning ecclesiastical causes having not of long time been put in ure nor exercised by reason of the usurped authority of the Bishops of Rome, be not perfectly understood nor known of his subjects and therefore of necessity as well for the abolishing and putting in utter oblivion of the s[d] usurped authority as for the necessary administration of justice to his loving subjects,"—

it was enacted—

> "That the King's Majesty shall from henceforth during three years have full power authority and liberty to nominate and assign by the advice of his Majesty's Council sixteen persons of the Clergy whereof four to be Bishops and sixteen persons of the Temporalty whereof four to be learned in the common laws of this Realm to peruse and examine the ecclesiastical laws of long time here used and to gather order and compile such laws ecclesiastical as shall be thought by his Majesty his s[d] Council and them or the more part of them convenient to be used practised and set forth within this his realm and other his dominions in all and particular ecclesiastical courts and conventions."

XV. It was also enacted that the revised and new laws were to be promulgated by Letters Patent, and were not to be contrary to statute or common law. This statute was passed early in 1550, but in accordance with the then practice it would date from the first day of that session, namely, the 4th November 1549, and the three years' period for the exercise of its powers must therefore be measured from this date, and would expire on the 4th November 1552.

XVI. It appears from the Minute of a Privy Council held at Hampton Court on the 6th October 1551 (Acts of the Privy Council, 1550–52, p. 382), that the Lord Chancellor was directed to " make out the King's " letters of commission to the xxxii persons hereunder " written authorising them to assemble together and " resolve upon the reformation of the Canon Laws " as by the minute of the s[d] letter at better length " appeareth.

" Bishops.	Divines.
Canterbury.	Taylor of Lincoln.
London.	Cox—Almoner.
Winchester.	Parker of Cambridge.
Ely.	Latimer.
Exeter.	Cooke.
Gloucester.	Peter Martyr.
Bath.	Cheke.
Rochester.	John Alasco.
" Civilians.	Lawyers.
Petre.	Hales—Justice.
Cecil.	Bromley—Justice.
Sir T. Smith.	Goodrike.
Taylor of Hadley.	Gosnold.
D[r] May.	Stamford.
Traheron.	Carvell.
D[r] Lyell.	Lucas.
Skinner.	Brooke, Recorder, London,

" viii of these to 'rough hewe' the Canon Law, the rest " to conclude it afterwards."

XVII. It is stated in Foxe's preface (already quoted) to the 1571 edition of the "Reformatio" that the commission was actually appointed, and that a plan of procedure was followed by which the whole body divided into four committees of eight, each consisting of two bishops, two divines, two civilians, and two lawyers, and arranged that "what each committee put into shape" should be passed on to the other committees for consideration." (*See also* Strype's Memls. Cranmer, Book II., chap. 26. p. 361, Ed. E. H. S.)

XVIII. There appears to be no evidence amongst the Public Records that the commission actually issued, and the terms of the subsequent Letters Patent of the 11th November 1551 suggest a doubt whether the commission of 32 had at that date been already constituted. (Cardwell's edition of the Reformatio Legum, Pref. vii., note *d*.) On the other hand, Mr. Gairdner (Hist. Ch. England, p. 300) states that the whole 32 commissioners were really appointed on the 6th October 1552 (this must be a mistake for 1551).

XIX. On the Patent Rolls for the regnal year 5 Edw. VI. there is a commission dated the 4th November 1551, and addressed to Cranmer, Ridley, Cox, Peter Martyr, Taylor (of Hadley), Traheron, Lucas, and Gosnold. It directed them to prepare and reduce to writing a draft code of reformed ecclesiastical laws in order that it might subsequently receive the final revision and ratification of the whole body of 32 of which the eight were members. According to Strype (Memorials, Book II., chap. VIII., p. 303), who mentions this commission on the authority of "Warrant Book," it was dated the 22nd October 1851.

XX. On the 11th November 1551 another commission of eight, chosen from the whole body of 32, was issued. This commission was substantially in the same terms as that of the 4th November, which it superseded.

XXI. It appears from the Minute of a Privy Council held at Westminster on the 9th November 1551 (Acts of the Privy Council, 1550–52, p. 410) that the Lord Chancellor was directed "to make out a new Commission to these viii persons here under named for "the first drawing and ordering of the Canon Laws, "for that some of those other that were before "appointed by the King's Majesty [*i.e.*, by the Commission of November 4, 1551] are now by his Highness "thought meet to be left out and the Commission "made to these following—The Abp. of Canterbury, "B^p^ of Ely (Goodrich), D^r^ Cox, Peter Martyr, D^r^ "Taylor of Hadley, D^r^ May, J. Lucas, R. Goodrick."

XXII. It will be observed that the Bishop of Ely, Dr. May, and Mr. Goodrick were substituted for the Bishop of London (Ridley), Mr. Traheron, and Mr. Gosnold. A copy of this commission is prefixed to all the printed editions of the Reformatio Legum, and is dated the 11th November 1551. The commission is extant on the Patent Rolls for 5 Edw. VI. under date 11th November 1551.

XXIII. As to these eight commissioners, selected it would seem with critical care, was specially committed the task of preparing the Reformatio Legum, it is material to note who they were. Archbishop Cranmer at this time was much under the influence of the foreign Protestants, of whom Peter Martyr (himself one of the eight), Martin Bucer, and Henry Bullinger were typical representatives and leaders. Although not one of the eight, a distinguished member of the commission of 32 was John a Lasco, a Polish nobleman and refugee who was appointed first pastor of the church in St. Austin's Friars and of the Dutch congregation in London, to which the King gave the Church for worship. A Lasco was on intimate terms of friendship with the dominant party in Edward VI.'s reign (*see* Strype's Memorials, Vol. II., Part I., p. 375, &c.). Of the rest Richard Cox (described as a great harbourer of foreign divines)*, Roland Taylor of Hadley, and William May, Dean of St. Paul's, belonged to the same party. Thomas Goodrich, Bishop of Ely, appears to have opposed the others and to have been overborne (*see* infra).* R. Goodrich, a nephew of the Bishop of Ely, and J. Lucas, a Master of Requests, were lawyers presumably required to look after the technical matters (such as procedure and pleadings) with which the Reformatio Legum largely deals.

XXIV. It appears from a minute of a Privy Council held at Westminster on the 2nd February 1552 (Acts of the Privy Council, 1550–52, p. 471) that the Lord Chancellor was on that day directed "to make out a "Commission to the Abp. of Canterbury and other "Bishops, learned men, civilians and lawyers of the "realm for the establishment of the ecclesiastical laws "according to the Act of Parliament made last Sessions."

XXV. This commission is extant on the Patent Rolls for 6 Edw. VI., and is dated the 12th February 1552. The names of the 32 commissioners are—

Bishops.	Divines.
Canterbury.	J. Taylor of Lincoln.
London.	R. Cox.
Winchester.	M. Parker.
Ely.	A. Cooke.
Exeter.†	Peter Martyr.
Gloucester.	J. Cheke.
Bath and Wells.	John Alasco.
Rochester.	N. Wotton.
Civilians.	**Lawyers.**
W. Petre.	J. Hales.
W. Cecil.	T. Bromley.
W. Cooke.	R. Goodrike.
R. Taylor of Hadley.	J. Gosnold.
W. May.	W. Stamford.
B. Traheron.	J. Carrell.
R. Lyell.	J. Lucas.
R. Reade.	R. Brooke.

XXVI. It will be noted that these names are the same as those (given above) in the intended commission of October 6, 1551, except that Bishop Latimer, Sir Thomas Smith, and Skinner are omitted, and Wotton, W. Cooke, and R. Reade are substituted. Edward VI.'s Journal (Burnet's Hist. Ref., Part II., Book II., Coll. Records, p. 46, ed. 1680) under date February 10, 1552, records "Commission was granted out to 32 "persons to examine, correct and set forth the "Ecclesiastical Laws." The names of 31 persons only follow. These are the same as those (given above) in the Commission of February 12, 1552, on the Patent Rolls, except that Wotton, Lyell, and Brooke are omitted in the King's Journal, and Skinner and Gawdy are added.

XXVII. There seems to be no satisfactory evidence as to what in fact happened after these commissions had been issued. Foxe, in his preface to the 1571 edition of the "Reformatio," seems to say that the work was done and completed by the whole body of 32 sitting in sub-committees in the manner already described. Strype (Life of Parker, Bk. IV., ch. 5, p. 323, folio ed.), after referring to the commissions, writes: "The work "was closely plied and finished by the foresaid learned "and excellent men under King Edward and put into "very elegant Latin by the pens of Dr. Haddon and "Sir John Cheke."‡ Burnet (Hist. Ref., Part II., Bk. I., p. 197, ed. 1681) says, "thus was the work carried on and finished." There is preserved in the Harleian collection of MSS. (No. 426) in the British Museum, a manuscript of the Reformatio Legum (with the exception of eight sections). Dr. Cardwell (Ref. Leg., 1850, Pref. viii. and ix.) infers from the evidence afforded by this MS. that Cranmer and Peter Martyr

* Dict. Nat. Biog., art. Rich. Cox, Vol. XII., p. 412.

* Original Letters, P.S., Vol. II., p. 580.

† The patent has "Miloni Oxoniensi Episcopo," but this is plainly a slip for Miloni Exoniensi Episcopo. The Bishop of Oxford at this date was Robert King. Miles Coverdale, Bishop of Exeter, is no doubt meant.

‡ Strype (Life of Sir John Cheke, chap. iii, § 2) mentions that Cheke was selected as one of the 32 commissioners, and Foxe in his preface to the 1571 ed. of the Reformatio thinks that Cheke lent a hand in its preparation.

took the whole responsibility of compiling the Reformatio upon themselves, "employing Dr. Haddon to see "that their sentiments were expressed in proper "language. It would appear then that they were "engaged in this work during the year 1552, and that "our MS. may be considered as the result of their "labours during that period." Dr. Cardwell (p. vi) thus describes it: "This MS. possesses a singular "degree of interest. Having been written out with "great care it was submitted to the Archbishop for a "last revision, and contains together with various "supplements and suggestions of Peter Martyr and "Dr. Haddon in their handwriting, the final additions "and alterations of Archbishop Cranmer written by "himself. It had now reached so great a degree of "completeness having had many of its clerical errors "corrected and titles supplied for all the separate "chapters partly from the pen of the Archbishop and "partly from that of Peter Martyr, that after one "further examination from the Archbishop to dispose "of the observations made by Martyr and Haddon, "it might be presented to the King and receive the "final ratifications prescribed by the Act of Parliament "under which the whole work was undertaken." I shall return to the consideration of this MS. later, but it is mentioned here only because it affords convincing evidence that Cranmer and Peter Martyr and, in a very minor degree, Haddon, were concerned in the authorship of the Reformatio.* There is no similar evidence that anyone else had a hand in it, though it is very likely that their labours were shared by others, *e.g.*, Sir John Cheke (Strype's Life, chap. III., § 2), and probably other members of the 32, or at least of the eight.

XXVIII. The period of three years allowed by the Act of 3 & 4 Edw. VI. ch. 11 for the compilation of the revised Canon Law expired, it will be remembered, on November 4, 1552. Apparently it was foreseen some months before this date that the Reformatio, however far advanced towards completion, would not, or might not, be ready by the 4th November. Accordingly a Bill extending the time for the execution of the work was brought into and carried through the House of Commons. It was read a first and second time in the House of Lords on April 14, 1552, but went no further (Journal of H. of Lords, Vol. 1, p. 428). Parliament was dissolved on the 15th April. A new Parliament met on the 1st March 1553. No step was taken in it with regard to the matter in hand, and the King died on the 6th July 1553.

XXIX. It is clear that whatever the reasons stimulating opposition to the legalisation of the Reformatio Legum, it had opponents influential enough to bar its progress. Foxe (preface to 1571 ed.) says that had Edward VI. lived a little longer there is no doubt the Reformatio would have been established by Act of Parliament. Apparently Edward VI. was anxious that there should be a reformed ecclesiastical law. In Oct. 1552 he inserted in a "Memorial" of things he desired to accomplish, "the abrogating of the old Canon Law and establishment of a new." (Strype's Cranmer, Bk. II., ch. 35, p. 299.) His will was intended to contain a similar clause (Strype's Memls., Bk. II., ch. XXII., p. 430). But others were not anxious to see, at any rate, this particular attempt at a reformed Canon Law adopted. Strype (Cranmer, Bk. II., ch. 26, p. 271) referring to Cranmer writes: "He did his part, for he "brought the work to perfection. But it wanted the "King's ratification which was delayed partly by "business and partly by enemies." One or two letters of this period give us a glimpse of the lack of unanimity which hindered decisive action. Thus, Martin Micronius, writing to Bullinger from London on March 9, 1552, says: "We have great hopes of a reformation both in "church and state during this parliament. For "there are appointed to the reformation of the church "eight godly bishops amongst whom is Hooper; eight "doctors in divinity among whom is Master John a "Lasco, a man fearless in the cause of godliness, and "Master Peter Martyr. The business has turned out "well enough hitherto; and if the Bishops of London "and Ely [Ridley and Goodrike] would not stand in "the way with their worldly policy it would, I think, "have made yet further progress. But I hope that "their opposition will be ineffectual." (Original Letters, Vol. II., P.S., p. 580.) Peter Martyr himself, writing at this time (March 8, 1552) from Lambeth to Bullinger informs him of the appointment of the 32 commissioners the majority of whom he evidently regards as congenial to his views, and begs the prayers of his friends abroad. "For it is not only necessary to "entreat God that pious and holy laws may be framed "but that they may obtain the sanction of parliament "or else they will not possess any force or authority "whatsoever." (Original Letters, Vol. II., P.S., p. 503.) Again, Cox (one of the commissioners), writing to Bullinger from Windsor, under date October 5, 1552, laments the disinclination of many to adopt the proposed code of reformed canons. He says: ". . . . but "the severe institutions of Christian discipline are "most utterly abominate. We would be sons and "heirs also but we tremble at the rod. Do pray stir "us up and our nobility too by the Spirit which is "given to you to a regard for discipline without which "I grieve to say it, the kingdom will be taken away "from us and given to a nation bringing forth the "fruits thereof." (Original Letters, Vol. I., P.S., p. 123.) Todd, the biographer of Cranmer (Life, Vol. II., p. 325) writes: "Whether by the death of "Henry or some other cause the plan in his time had "been rendered abortive is uncertain. That by the "death of Edward it now was is the frequent assertion "of historical writers. Some, however, have thought "(Hallam's Const. Hist., 2nd ed., Vol. I., 139) that the "severity of the code would never have been endured "in this country, and that this is the true reason why "it was laid aside. Others (Ridley: Life of Ridley, "p. 352) that in that age of licentiousness, which ill "could brook restraint, some art was employed to "prevent the confirmation of it." Pollard (Life of Cranmer, p. 281) writes: "the Bill introduced in 1552 "to renew the commission failed to become law largely "owing to Northumberland's opposition." Stubbs (Lectures on Modern and Mediæval History, p. 322) writes: ". . practically the work was done by "Peter Martyr the Oxford Professor of Divinity, "under Cranmer's eye and the result was the compilation known as the Reformatio Legum; a curious "congeries of old and new material which really "pleased no party; showing too much respect for "antiquity and divine ordinance to please the Puritan, "and too little to satisfy the men who had guided the "Reformation under Henry VIII. and those who were "to do so under Elizabeth."

XXX. Queen Mary's reign lasted from the 6th July 1553 till the 17th November 1558. It was of course a period of reaction, and not only was nothing done to advance the Reformatio Legum, but the Act 25 Hen. VIII. ch. 19, under which the scheme started, was repealed by 1 & 2 Ph. & M. ch. 8. It was revived by 1 Eliz. ch. 1. Early in Elizabeth's reign a "Bill for making Ecclesiastical Laws by 32 persons" was introduced into and carried through the House of Commons. It was brought up to the House of Lords on the 20th March 1559, and was read a first time there on the 22nd March but did not proceed further (Journal of the House of Lords, 1558–59, pp. 566, 568). Nothing more seems to have been heard of the Reformatio Legum until 1571. In that year (when the 39 articles received statutory sanction) Foxe, with the permission of Archbishop Parker, edited the first printed edition of the Reformatio. It was published by John Day. Foxe used the manuscript already mentioned, and also another MS. (now lost) containing the whole code revised by Archbishop Parker. Dr. Cardwell (Reformatio, Pref. xiii.) writes: "the edition of 1571 is the authentic "form into which the ecclesiastical laws were brought "on their last revision at the time of the Reformation, "and has naturally therefore been adopted as the "standard from which the present reprint should be "taken. But this must be understood with great

* As to Peter Martyr, *see* letter from John ab Ulmis to Bullinger, dated at Oxford, February 5. 1562 (Original Letters, Vol. II., P.S., p. 447). "Peter Martyr is still in London taking "his part in framing ecclesiastical laws."

" limitation. Beyond the common press errors of evil " punctuation and the omission or substitution of letters " or syllables which though extremely numerous are " for the most part easily corrected, the printed book " contains greater mistakes sufficient to limit the use " and impair the authority of the whole record. So " great is the number & variety of them that they " illustrate all the causes to which such mistakes have " at any time been attributed and even baffle in some " instances any attempt at explaining the origin of " them. Besides the alterations which appear to have " been made advisedly and may be ascribed to Arch- " bishop Parker there are deviations from the older " MS. attributable to either the carelessness, the " ignorance or the wilfulness of the transcriber and " then there still remain the many varieties of error " connected with the work of printing."

XXXI. Foxe's print was almost certainly connected with some scheme, the particulars of which we lack, for the revival of the project of an authorised reformed code of Canon Law. All that appears to be known about the matter is thus stated by Dr. Cardwell (Reformatio, Pref., p. xii): " It does not appear to have been adopted " by the Queen and her government but it was pub- " lished, as Foxe intimates, for the purpose of being " used in parliament, it was called for by M^r^ Strickland " and produced by M^r^ Norton eminent debaters of " that period during a discussion on religious subjects " in the House of Commons, was referred, together " with other matters of a similar nature, to a Com- " mittee of that House and was ordered to be trans- " lated into English. But it made no progress. The " Queen, averse to all interference of the Commons " in ecclesiastical matters had conceived an especial " displeasure against the individuals by whom the " measure was recommended: and these individuals " too might find on an examination of the book itself " sufficient reasons for delaying the consideration of it " to a future period. There is no notice of it in the " Journals of either House; and so little does the " Queen appear either to have approved of the book, " or to have been in favour of the general measure, that " no attempt apparently was made during her reign to " revive the Act of 1549." This last statement is not accurate. As we have seen, a Bill was introduced in 1559 but did not pass the House of Lords. Dr. Cardwell gives as his authorities D'Emes' Journal, p. 157, and Penri's tract, " Reformation no enemy," &c., 1590. (*See also* Fuller's Church History, Vol. IV., p. 108.)

XXXII. Speaking of the 1571 edition, Dr. Cardwell says (Preface, xii. *n.*): " The book appears to have had " little circulation. M^r^ Strickland had not seen it " when he called for the production of it and Penri in " the treatise noticed above, which he published in the " year 1590 advertised for a copy of it in the hope " that it would promote his views of ultra-reformation. " And yet these two persons were among the most " prominent of the controversialists in politics and " religion at that period."

XXXIII. No more seems to have been heard of the Reformatio Legum until 1640 (the year of Archbishop Laud's abortive canons). In that year a reprint of the 1571 edition was produced by Daniel Frere of Little Britain in the City of London.* In 1641 another reprint of the 1571 edition was published by the Stationers' Company, London. With regard to these Dr. Cardwell writes (Preface, p. xiv.): " In both indeed and more " especially in the latter of them, the punctuation is " much improved, many of the common errors of the " press have been corrected, and some of the greater " errors have been omitted and their places supplied " by conjectural emendations in some instances " successful, in others the reverse. But it is evident " from the many errors left unnoticed that no original " MS. was employed for either of the two editions."

XXXIV. The only other edition of the Reformatio Legum is that published in 1850 by Dr. Cardwell. It is an extremely accurate and careful piece of work, and is the only edition which can be relied on by a student for ordinary use. Its method is thus explained by Dr. Cardwell (Preface, p. xiv.): " the edition of 1571 " was taken as the standard and all such readings as " differed from the MS. of Archbishop Cranmer but " might have been made advisedly and under the direc- " tion of Archbishop Parker are retained, the readings " of the older MS. in those cases being recorded in the " Appendix. But wherever the readings of the standard " differ from that MS. and cannot have been corrections " proceeding from Archbishop Parker the readings of " the MS. are placed in the text and those of the " standard edition at the foot of the page. So that the " text of this reprint is the same with the edition of " 1571 excepting where errors of copy or of press have " been corrected from the older MS.; and those errors " themselves are recorded at the foot of the page " except when they were of so palpable a nature as to " be undeserving of being noticed. The appendix " contains such readings of Archbishop Cranmer's MS. " as appear to have been purposely altered in the MS. " of Archbishop Parker, together with notices of the " many and important changes made by Archbishop " Cranmer and Peter Martyr in the course of their " revision."

XXXV. Although I have so far dealt with the history of the development of the Reformatio Legum as a whole, it is the particular section of it entitled " De Adulteriis et Divortiis " which has special relevance to the subject now under the consideration of the Royal Commission on Divorce and Matrimonial Causes. This section opens with a statement that adultery ought not to be passed over by the Ecclesiastical Judges without the most condign punishment. It then proceeds to enact that clergymen convicted of adultery are to forfeit all their goods and property and to be perpetually banished or imprisoned for life; that laymen so convicted are to forfeit half their goods and to be perpetually banished or imprisoned for life; that wives so convicted are to be deprived of their dowry and all right in their husbands' property and to be similarly punished; that a husband or wife who deserts the other spouse and either refuses to return or cannot be found but subsequently comes forward is to be imprisoned for life, and a husband who without deserting his wife is absent for a long time and when he returns cannot satisfactorily explain his movements is to be imprisoned for life: that a husband or wife who shows deadly hostility towards or attempts to murder the other spouse and also a husband who is incorrigibly violent and harsh towards his wife is to be perpetually banished or imprisoned for life: that incest is to be punished by imprisonment for life and that fornication is to be punished by penance and (if necessary) excommunication and by a penalty of 10*l.* (or as much as can be conveniently spared) to be placed in the poor box. It is further enacted that the innocent party, where there has been a conviction for adultery, may after an interval of a year or six months (to give opportunity for reconciliation) remarry; but the guilty party may not remarry: that in cases of desertion or protracted absence without tidings, the deserted party may, by sentence of the judge and after an interval decreed by him, be allowed to remarry, but subject to the condition that if the long absent husband return and satisfactorily explain his disappearance the wife must leave her second husband and go back to the first: that one spouse who is the victim of the deadly hostility of the other, or a wife who suffers from the incorrigible harshness of her husband may be allowed to remarry: but that trifling disagreements, incurable disease, adultery of one spouse at the instigation of the other and adultery of both spouses are not grounds for allowing remarriage. Finally it is enacted that separation *a mensa et thoro* is to be abolished.

XXXVI. Questions have been raised (1) as to how far, if at all, the Reformatio Legum furnishes a true reflection of the dominant opinion of the English Church with regard to Divorce at the date of its compilation and (2) as to how far, if at all, the Reformatio Legum, though not formally authorised was in fact acted on in matrimonial causes by the

* Apparently more than one publisher was concerned with this edition. Some copies bear the name of " Laurentii Sadler " at the sign " Aurei Leonis " in Little Britain.

English Ecclesiastical Courts during the latter half of the 16th century.

XXXVII. On the question of Church opinion it is material to ask—Who were the real authors of the remarkable proposals I have summarised? From the nature of the case these proposals were new. The old Canon Law did not recognise divorce *a vinculo* and therefore could not furnish a basis for this part of the Reformatio Legum. Attention has already been drawn to the extreme opinions of the section of the Reformers who were undoubtedly chiefly concerned with its actual compilation. It is easy to see how naturally they would be led on by their emphatic repudiation of the Sacramental view of marriage as a Divinely appointed symbol of the relation between Christ and His Church, and therefore indissoluble, to disown this indissolubility and then, under the pressure of practical considerations, to allow one exception after another to the old rule of theoretic rigidity. Another set of changes made at this time as part of the revolt from Rome, abolished a great many of the old rules as to forbidden degrees of consanguinity and affinity. These elaborate and highly artificial rules produced a system under which marriages theoretically indissoluble, if originally valid, could practically be got rid of by being declared null *ab initio* on account of the impediment of relationship. This relationship might consist in some remote or fanciful connection, between the parties or their godparents, unknown to either of them until the desire to find a way out of an irksome union, suggested minute search into pedigrees for obstacles—a search which somehow seems to have been generally successful. The disappearance of this machinery for what was virtually divorce, left the difficulty to which its development had been due, demanding solution in some other way, and must have furnished another powerful incentive to the men of that age to adopt the direct course of declaring divorce *a vinculo* possible under certain circumstances. It is not at all surprising that the Reformers should seize on the doubtful and always disputed case of adultery as a ground for complete divorce and should range themselves on the side of those who considered that our Lord permitted remarriage at any rate to the innocent party. Speaking generally, the English Reformers seem to have stopped at this point (*see* post). But as we have seen the scheme of the Reformatio Legum went much further. I suggest that the real inspiration of this portion of the code came from the foreign Protestants whose influence in Edward VI.'s reign in the changes then made or proposed, is notorious and has already been noticed. The direct part taken by Peter Martyr (1500–62) in the preparation of the Reformatio Legum and the inclusion of John a Lasco in the body of 32 commissioners indicate the great influence of the foreign Protestants. It should be added however that Peter Martyr's own views on Divorce seem to have been more conservative than those of some other Reformers. He deals fully with the subject in his Loci Communes—"De Divortiis et Repudiis" (cap. 10, p. 302, &c., ed. Heidelberg, 1603: 1st ed. 1560): and he appears to have delivered lectures on Divorce probably in England, in or prior to 1550. (*See* Original Letters, P.S., Vol. II., p. 404, John ab Ulmis to Henry Bullinger.) Martyr's general position is that Christ's words allowed Divorce for no cause except adultery and that the Church must leave to the State any extension of the grounds of Divorce. But Martin Bucer's work *De Regno Christi* written expressly for the guidance of Edward VI. and presented to him about New-year's tide 1551 (*see* Strype's Memorials, Vol. II., Part I., p. 550) may well have been the actual source of the section in the Reformatio as to Divorce. The longest and most carefully written division of the work, *De Regno Christi* (*see* the 1557 edition, Basle, and "The Judgment of Martin "Bucer concerning Divorce . . . now Englisht" by John Milton, 1644) is a treatise in many chapters, warmly defending Divorce and remarriage, *e.g.*, in cases of desertion (chaps. xxxv. and xli.) and condemning divorce merely *a mensa et thoro* as contrary to God's ordinance. Bucer seems to have shocked some at least of his contemporaries by the laxity of his notions on Divorce. John Burcher writing to Henry Bullinger, June 8, 1550, from Strasburgh (Original Letters, P.S., Vol. II., p. 665) says: "Bucer is more than licentious "on the subject of marriage. I heard him once "disputing at table upon this question, when he "asserted that a divorce should be granted for any "reason however trifling."

XXXVIII. It is important when we are considering to what extent the Reformatio Legum reflected the opinions and aims of the Church of England in Edward VI.'s reign, to give due weight to the fact that neither Parliament nor Convocation ever accepted it or expressed approval of its provisions. We do not even certainly know that any of the various commissions appointed to review the Canon Law in fact approved the Reformatio Legum as it has come down to us. It is not improbable that the more sensible men of all parties both clergymen and statesmen perceived, as was surely the case, that a code containing laws such as I have described was hopelessly impracticable in England then, and indeed always. The practical impossibility of the plan while it agrees well with its being the work of foreign theologians, makes it difficult to believe that the scheme was ever really pushed by the great mass of English Churchmen. Even Archbishop Cranmer, as we have seen, opposed the Bill providing for the reappointment of the commission to revise the Canon Law in Edward VI.'s reign. Leaving Edward's time and passing on to 1571, Archbishop Parker's attitude towards the Reformatio Legum is very doubtful and obscure. He undoubtedly made some alterations in Cranmer's draft, and it will be remembered that he was himself one of the 32 commissioners of February 12, 1552. He must have allowed Foxe facilities in the preparation of the first printed edition of 1571 but with what object it would be rash to speculate. There is nothing, so far as I know, in his writings to show that he ever contemplated legislation to give effect to the Reformatio Legum.* The canons of the same year, 1571 (*see* these canons edited by W. E. Collins, now Bishop of Gibraltar, for the Church Hist. Soc.), which it will be remembered were passed by the Convocations but failed to obtain the Queen's affirmation, deal with some of the same subjects as the Reformatio (*e.g.*, concionatores) and yet form a perfectly distinct and separate code. It is inconceivable that Convocation should have busied itself as it did with the canons of 1571 if at the same time there had been any real desire to obtain the Queen's sanction to the Reformatio Legum.

XXXIX. Direct evidence of the views of the leading Churchmen of Edward VI.'s and Elizabeth's reigns is not so abundant as might have been expected. It is clear, as has been already stated, that there was a great unsettlement of the old beliefs with regard to marriage generally and particularly as to its absolute indissolubility. The changes of opinion of Archbishop Cranmer have been already noticed and will again be apparent when the Northampton case is dealt with. So late as December 1540 (*i.e.*, six years after the first of the series of Acts which led to the preparation of the Reformatio Legum) the archbishop was strongly opposed to the lax views of divorce followed by remarriage which seemed to be prevalent amongst Protestants on the Continent. Cranmer (1489–1556) writing to Osiander (Preacher of Nuremburg) December 27, 1540 (Remains, &c., P.S., pp. 404–8) says: "Neverthe- "less some things are frequently occurring which I

* In a remarkable paper entitled "General Notes of "Matters to be Moved by the Clergy in the next Parliament "and Synod" [*i.e.*, 1562], which has some marginal notes in Archbishop Parker's hand, the following occurs:—"That "adulterers and fornicators may be punished by strait "imprisonment and open shame if the offender be vile and "stubborn, &c., as carting by the civil magistrate, &c. *Some "think banishment and perpetual prison to be meet for "adulterers.* When they be reconciled the form of recon- "ciliation appointed legibus Ecclesiasticis Edwardi 6" to be "used without respect of persons." (Strype's Annals, Vol. I., Part I., pp. 473–83.) The reference to the Reformatio Legum is obvious. *See* form of Reconciliation in cap. 16 (Cardwell's ed., p. 177). The words in italics do not indicate the writer's personal agreement with the provisions of the Reformatio as to adultery, &c.

" can neither deny, nor can I admit them without " shame; nor lastly am I able to imagine any sufficient " reason by which they may be shown to have been " done consistently with honour or piety. For, not to " say a word at the present time on usury, which it is " clear is approved by you or at all events some of " you, or concerning the fact that you allow the sons " of your nobles to have concubines (with a view " doubtless to prevent the breaking up of inheritances " through lawful marriages) and yet you are so " strongly opposed to priests having concubines; " leaving this out of the question, what can possibly " be alleged in your excuse when you allow a man " after a divorce, while both man and woman are " living, to contract a fresh marriage and what is still " worse even without a divorce you allow one man to " have several wives? And this you yourself, if I " remember right, in some of your letters expressly " declared to have been done; adding thereto that " Philip [Melancthon] himself was present at a second " marriage, acting as I believe a bridesman and taking " it under his countenance.*

XL. " These two things are expressly and undeni- " ably contrary both to the nature of marriage, which " does not make two, but one flesh, as well as also to " the Scriptures, as will be seen from Matthew xix,, " Mark x., Luke xvi., Romans vii., 1 Cor. vii., from " which passages it is clear that according to the " institution of the Apostles and therefore of Christ " himself, one person ought to be joined in matrimony " with one person, and that persons so joined together " cannot again contract marriage until the death of " one of the parties shall have happened. But if your " reply is that we must understand it in such a sense " as to except the case of fornication, I ask whether " adultery on the part of the wife was the reason why " Philip allowed the husband to marry a second wife " in addition to the first? You know better than I. " But even if it were so, we shall then object that " from the origin of the Church up to this hour (and " according to examples in it interpretations of the " Scriptures must be conformed and by them con- " firmed) at no time, as far as we know, has this been " so received. . . ."

XLI. William Tyndale (the translator of the New Testament, 1500–36) in his exposition of St. Matt. v., vi., vii. (Expositions, &c., P.S. 51, 52), writes: " . . . " But Christ calleth back again and interpreteth the law " after the first ordinance and cutteth off all causes of " divorcement save fornication of the wife's part, when " she breaketh her matrimony; in which case Moses' " law pronounceth her dead and so do the laws of " many other countries: which laws where they be " used there is a man free without all question. Now " where they be let live, there the man (if he see sign " of repentance and amendment) may forgive for once. " If he may not find in his heart (as Joseph as holy as " he was, could not find in his heart to take Christ's " mother to him, when he spied her with child) he is " free no doubt to take another, while the law inter- " preteth her dead: for her sin ought of no right to " bind him. What shall the woman do if she repent " and be so tempted in her flesh that she cannot live " chaste? Verily I can show you nothing out of the " Scripture. . . .

" When the officers be negligent and the woman " not able to put herself to penance, if she went where " she is not known and there marry, God is the God " of mercy. If any man in the same place where she " transgresseth pitied her and married her, I could " suffer it; were it not that the liberty would be the " next way to provoke all other that were once weary " of their husbands to commit adultery for to be " divorced from them, that they might marry other " which they loved better."

But (pp. 54, 55) Tyndale after a digression, continues: " But to our purpose: what if the man run " from the wife and leave her desolate? Verily the " rulers ought to make a law if any do so and come " not again by a certain day, as within the space of a " year or so, that then he be banished the country; " and if he come again, to come on his head, and let " the wife be free to marry where she will. . . . In " like manner if the woman depart causeless and will " not be reconciled, though she commit none adultery, " the man ought to be free to marry again. And in " all other causes if they separate themselves of im- " patience that the one cannot suffer the other's " infirmities, they must remain unmarried."

XLII. Bishop Hooper (1495–1554) (Early Writings, P.S., 378, 379) writes: " There is another kind of " adultery forbidden in this precept, which Christ " speaketh of, Matt. v. and xix., which is unlawful " divorcement of matrimony, where as the man putteth " away the woman, or the woman the man for unlawful " causes. The same authority hath the woman to put " away the man that he hath to put away the " woman. Mark x., Christ saith there is no lawful " cause to dissolve marriage, but adultery. . . . " Wheresoever this fault happen and can be proved by " certain signs and lawful testimonies, the persons may " by the authority of God's word and ministry of the " magistrates be separated so one from the other that " it shall be lawful for the man to marry another wife " and the wife to marry another husband as Christ " saith, Matt. v. and xix." Hooper's view of the equality of the sexes involved him in controversy with his " opponents " who while thinking the innocent husband ought to be allowed to remarry were not in favour of the innocent wife having the same liberty. Hooper consulted Bullinger. (*See* his letter, May 31, 1549, in Original Letters, P.S., p. 64.)

XLIII. Thomas Becon (a Prebendary of Canterbury, died 1570) (Works, P.S., vol. ii., p. 647, Homily against Adultery) writes: " . . . for whereas the " Jews used of a long sufferance by custom to put " away their wives at their pleasure for every cause " Christ correcting that evil custom did teach that if " any man put away his wife and marrieth another for " any cause except only for adultery (which then was " death by the law) he was an adulterer and forced also " his wife so divorced to commit adultery." Again (vol. iii., p. 532, The Acts of Christ and of Antichrist—Of their Doctrine) he writes: " Christ saith whosoever " putteth away his wife (except it be for fornication) " and marrieth another breaketh wedlock, giving her " liberty to the guiltless and innocent man having an " harlot to his wife . . . not only to be divorced " from that harlot sometime his wife but also to " marry again and take another woman to his wife in " the fear of God. . . . Antichrist in his law " saith: If a man have a whore to his wife it shall be " lawful for him to be divorced from her both from " bed and board but he may by no means marry again, " live as he may."

XLIV. Richard Hooker (1553–1600) (Ecc. Polity, Book V., ch. lxxiii., section 3) writes: " Man and woman " being therefore to join themselves for such a purpose, " they were of necessity to be linked with some strait " and insoluble knot." *See also* section 8.

XLV. Bishop Lancelot Andrewes (1565–1626) (Minor Works, Lib. A.C.T., p. 106): " A discourse " against second marriage after sentence of divorce " with a former match, the party then living." Extracts from this paper are given elsewhere in these notes. It was probably written about 1601.

XLVI. Edmund Bunny (Bachelor of Divinity), in 1595, wrote " Of Divorce for adultery and marrying " again: that there is no sufficient warrant so to do." An edition was published at Oxford in 1610. Its title sufficiently summarises its contents. The writer deals with his subject very diffusely and with no novelty of argument or point of view.

XLVII. Dr. W. Fulke (born before 1538, died 1589, Master of Pembroke Coll., Camb.). Text of the N.T. Rheims version contrasted with English version, with commentary. Written in Queen Elizabeth's reign (ed. 1617). Under St. Matt. v. 33, Fulke says: " S[t] Mark

* This probably refers to the marriage of Philip, Landgrave of Hesse, with Margaret de Sala (his first wife being alive) which Luther, Bucer, and Melancthon defended.

" and S[t] Luke understand the exception which they do " not express for they all report one doctrine of our " Saviour Christ and the exception declareth that not " only divorcement but also marriage after divorce- " ment is free as it was in the law where fornication " is the cause of divorcement. . . . The Pope's " Canon Law restraineth the liberty of marriage and " divorcing because he may make money for bulls of " licence and dispensation to marry." In a further passage on the same page Fulke indicates that he only recognises divorce on the ground of adultery.

XLVIII. Bishop Godfrey Goodman (1583–1656) (The Fall of Man," ed. 1616, pp. 260, 261), writes: " . . . but I know not what ill spirit hath set them " at enmity whom God hath coupled together. Some- " times indeed the stream of the husband's love being " carried another way is apt to cast any aspersion upon " his wife's honesty and then he begins to practise " with heretics and to commend the law of liberty " that after a divorce it should be lawful to marry " again and again. Here you shall see large expositions " written in defence thereof and the opinions of certain " Divines, Ministers, Pastors, Superintendents of the " separated congregations or the new Churches from " beyond the seas (thus they would seem to have a " Catholic consent) together with such bitter invectives " against all superstitious fasts, calling all chastise- " ments of the flesh, sins against the body."

XLIX. Bishop Francis White (1564?–1638) ("The Orthodox Faith and Way," ed. 1617, pp. 353, 354) answering a Roman Catholic controversialist, Thos. Worthington, who had accused Luther of saying, " If the wife will not, or cannot, let the maid come," White writes: " This speech being divorced from the occasion " whereupon it was uttered and from the other parts " of the discourse seemeth gross: But the whole con- " texture being laid together affordeth no more but this " —That if a disobedient wife refuse to live with her " husband according to the Apostle's rule 1 Cor. vii. 3 " and by her obstinacy give occasion of adultery the " husband may threaten her with divorce and cutting " her off from his flesh, Eccles. xxv. 26, and terrify " her with the example of Queen Vashti who being " rebellious was put away and Esther a maid was " chosen in her place Esther 1, 12. And if upon " admonition of her husband and others she still " continued obstinate, Luther esteemed this to be a " kind of desertion 1 Cor. vii. 15 and judged it a lawful " cause of divorce. Now although this opinion of his " concerning divorce, be not so justifiable yet the " Papists do shamefully abuse him in detorting his " words to a giving liberty to adultery and dishonesty " which he never intended."

L. Henry Hammond (Canon of Christ Church, 1605–60) (Practical Catechism, Lib. A.C.T., p. 136) writes:—

> " *Scholar:* What doth Christ now in his new law in this matter of divorce?
>
> " *Catechist:* He repealeth that whole command- ment [the Mosaic law] and imposeth a stricter yoke on His disciples . . . . And therefore now He clearly affirms of all such divorces that whosoever thus puts away his wife as the Jews frequently did causeth her to commit adultery and he that marrieth her committeth adultery; and if after such divorcement he himself marry again he committeth adultery and is in that respect sadly liable. That is, in brief that the bond of wedlock now under Christ is so indis- soluble that it is not the husband's dislikes which can excuse him for putting away his wife nor his giving her a bill of divorce which can make it lawful for her to marry any other nor for any other to marry her who is for all this bill still indissolubly another man's wife.
>
> "*Scholar:* But what is no kind of divorce now lawful under Christ?
>
> " *Catechist:* Yes clearly, that which is here named, in case of fornication . . . . this liberty being peculiar to the husband against the wife and not common to the wife against the husband.
>
> " *Scholar:* Is there no other cause of divorce now pleadable or justifiable among Christians but that in case of fornication?
>
> " *Catechist:* I cannot define any, because Christ hath named no other . . . . "

LI. Bishop Jeremy Taylor (1613—67) (Ductor Dubitantium, ed. 1660, tome i., p. 191): " That since " an adulterer is made one flesh with the harlot with " whom he mingles impure embraces, it follows that " he hath dissolved the union which he had with his " wife."

LII. Bishop Joseph Hall (1574—1656) (Works, ed. 1837, Vol. VII., pp. 473, 474, Cases of Conscience) writes: " . . . When a just divorce intervenes " these bonds are chopped in pieces; and no more are " than if they had never been. And if all relations " cease on death as they do in whatsoever kind surely " divorce being as it is no other than a legal death, " doth utterly cut off as the Hebrew term imports all " former obligations and respects betwixt the parties " so finally separated.

" The adulterous wife therefore duly divorced " being thus dead in law as to her husband the " husband stands now as free as if he had never " married: so as I know not why the apostle should " not as well speak to him as to any other when he " saith: Nevertheless to avoid fornication let every " man have his own wife. 1 Cor. vii. 2. Neither " is it otherwise in the case of a chaste wife after her " separation from an adulterous husband. Mark x. 12. " In these rights God makes no difference of sexes: " both may lawfully claim the same immunities. " . . . . Shortly then I doubt not but I may " notwithstanding great authorities to the contrary " safely resolve that in the case of Divorce it is lawful " for the innocent to marry. But for that I find the " Church of England hitherto somewhat tender on the " point (Canon 107) and this practice, where it rarely " falls, generally held though not sinful yet of ill " report and obnoxious to various censures . . . . "

LIII. Bishop John Prideaux (1578–1650) (Fasci- culus Controversiarum Theologicarum, ed. 1649, p. 299), under the heading, " An matrimonium legitimum sit " dissolubile quoad vinculum," the writer deals with the matter in the form of question and answer, and arrives at the conclusion that marriage is indissoluble. For example, at p. 301 he writes:—

> " *Objectio:* In voluntariâ et obstinatâ desertione Frater vel soror non est subjectus (1 Cor. vii., 15) ergo vinculum solvitur.
>
> " *Solutium:* Non est subjectus ut discedentem revocet aut sequatur sed inde non absolvitur a vinculo matrimoniali ut vivente conjuge qui deseruit ad alias transeat nuptias ut fecit Galeatius Caracciolus."

LIV. Bishop John Cosin (1594–1672) (Works, Lib. A.C.T., Vol. IV., pp. 489–502) (Bishop Cozen's argu- ment proving that adultery works a dissolution of the marriage: being the substance of several of Bishop Cozen's speeches in the House of Lords upon the debate of the Lord Ross's case) [Bill for dissolving the marriage of Lord Ross, on account of adultery and to give him leave to marry again, 1670]. The " argu- ment " is said to be " taken from original papers in the Bishop's own hand." The purpose of the argument is thus stated: " The question is indefinitely to be " spoken of whether a man being divorced from his " wife who hath committed adultery and is convicted " of it may marry himself to another wife or no, during " the life of her which is divorced." Cosin considers, (1) as to the argument that " the separation from bed " and board doth not dissolve the bond of marriage," " that this is a distinction without a difference newly " invented by the canonists and schoolmen and never " heard of either in the Old or New Testament nor in " the times of the ancient Fathers who accounted the " separation from bed and board to be the dissolution " of the bond itself; (2) that first institution of " marriage, that they may be one flesh is by adultery " dissolved when the adulteress makes herself one flesh

" with another man and thereby dissolves the first bond " of marriage . . .

" As to the supposed inconveniences that will follow " upon marrying again—

" (1) More inconveniences will follow if they be forbidden to marry again.

" (2) The father would be in an uncertainty of the children if he should retain the adulteress.

" (3) There would be danger of poisoning or killing one another if no second marriage were allowed.

" (4) Where the parties should consent to new marriages for their own lusts the magistrates have power to overrule such practices.

" (5) If they be kept together by divorce from marrying it would occasion the innocent party to sin."

LV. Herbert Thorndike (1598–1672, Canon of Westminster (Theological Works, Lib. A.C.T., Vol. IV., Of the Laws of the Church), at page 304, writes: ". . . it is not possible to show that ever there was " any opinion rule or practice received in the Church, " that it is lawful to divorce but in case of adultery. " I do truly conceive that there was anciently a " difference of opinion and practice in the Church " whether it be lawful to marry again upon putting " away a wife for adultery; or whether the bond of " marriage remain undissoluble, when the parties are " separated from bed and board for adultery. But " this difference argues consent in the rest; that is " that excepting the case of adultery, there is no " divorce to be among Christians."

Again at p. 307 he writes: "Some texts are " alleged to prove the bond of marriage undissoluble " which to me I confess do not seem to create any " manner of consequence." He thus discusses Rom. vii. 2, 3; 1 Cor. vii. 39; Eph. v. 28–32; St. Matt. v. 31, 32; xix. 3–9; St. Mark x. 11, 12; 1 Cor. vii. 1–5, 10, 11; St. Luke xvi. 18. At page 309 he writes: "Be the " marriage of Christians then a sacrament, as much as " any man would have it to be; be it a commemora- " tion (if Adam's was a prediction) of the incarnation " of Christ and of his marriage with the Church; let it " contain a promise of grace to them that exercise it as " Christians should do: it is therefore indissoluble in " the point of right, I confess; that is to say it is the " profession of an obligation upon the parties to hold " it indissoluble. But is it therefore indissoluble in " point of fact? May not the obligation so professed " be transgressed? And is not marriage a civil " contract, even among pagans and infidels; and that " by God's appointment? And may not the law, " which God hath restrained the marriage of Christians " to, presuppose the conditions of a civil contract? " And are not civil contracts void, when one party " transgresseth the condition on which they are " made? . . . ."

Again at p. 321 he writes: "But do I therefore say " that the Church cannot forbid the innocent party to " marry again? or is bound by God's Law to allow " it? All ecclesiastical law being nothing but the " restraining of that which God's law hath left indefi- " nite, and the inconveniences being both visible and " horrible. I conceive I am duly informed that George " [Abbot] late Archbishop of Canterbury was satisfied " in the proceeding of the High Commission Court, to " tie them that are divorced from marrying again, " upon experience of adultery designed upon collusion " to free the parties from wedlock; having been " formerly tender in imposing that charge.* . . . " But they that would not have the laws of the Church " and the justice of the land become stales and panders " to such villainies must either make adultery death, and " so take away the dispute; or revive public penance and " so take away the infamy of his bed and the taint of " his issue, that shall be reconciled to an adulteress; " or lastly bear with that inconvenience, which the " casualties of the world may oblige any man to, which " is to propose the chastity of single life instead of the " chastity of wedlock, when the security of a man's " conscience and the offence of the Church allows it not. " But though this in regard of the intricacies of the " question and the inconveniences evident to practice, " may remain in the power of the Church; yet can " it never come within the power of the Church to " determine that it is prejudicial to the Christian faith " to do so, as by God's law. And the Church, that " errs not in prohibiting marriage upon divorce for " adultery, will err in determining for matter of faith, " that God's law prohibits it; so long as such reasons " from the Scriptures [semble in favour of remarriage " after divorce] are not silenced by any tradition of the " whole Church. . . . ." Finally, on page 327, Thorndike writes: " And can any man be so senseless " as to imagine, so impudent as to affirm that the " whole Church agreeing in taking the fornication of " married people to signify adultery, hath failed; but " every Christian prince that alloweth and limiteth any " other causes of divorce, all limiting several causes " attaineth the true sense of it? Will the common " sense of men allow that homicide, treason, poisoning, " forgery, sacrilege, robbery, man-stealing, cattle- " driving, or any of them is contained in the true " meaning of 'fornication' in our Lord's words? " that consent of parties, that a reasonable cause, " when pagans divorced 'per bonam gratiam' without " disparagement to either of the parties, can be " understood by that name?"

LVI. I will conclude with a quotation from a writer who was neither a theologian nor an Englishman but a civil lawyer of very great reputation in the 16th and 17th centuries, viz., Alberico Gentili (1552–1608), an Italian who came to England in 1580 and became Regius Professor of Civil Law at Oxford in 1587. He wrote a treatise "*De Nuptiis.*" The preface is dated August 1600. The sixth book of this treatise is entitled "*De repudiis et secundis nuptiis,*" and consists of an elaborate dissertation, 124 pages long, on Divorce. Gentili combats very freely the views of Bellarmine on the one side and of Beza on the other. His own final conclusion is—"Mihi certissima hic sedit sententia ut ab illa una causa [*i.e.*, adultery] nullam ab causam discedatur. Nulla par est adulterio, nulla major." (*De Nuptiis*, ed. *Hanoviæ*, 1601, p. 691.)

LVII. It will be noted that, with few exceptions, the English Reformers so far as the above extracts are typical of their views regard adultery and adultery only as a valid ground for divorce *à vinculo* with right of remarriage. The wider grounds, such as desertion and implacable hostility, which found support amongst continental Protestants, and were included in the Reformatio Legum, do not seem to have been defended by English divines generally.

LVIII. Further, there seems to have been considerable divergence of view between different English divines, and even between the opinions of the same divines on different occasions, as to the effect of adultery with regard to dissolution of marriage. Some thought that adultery *ipso facto* dissolved a marriage. This was the view of the authors of the opinion given, and apparently acted upon in the case of William Parr, Marquis of Northampton (1547–52), the facts of which will be presently stated. Archbishop Cranmer, Dr. May, and Bishop Ridley were members of the commission appointed to determine whether the adultery of Parr's wife left him free to remarry. They were also, as we have seen, all connected with the preparation of the Reformatio Legum. Yet in the Parr case it was laid down that adultery *ipso facto* dissolved marriage and was the sole ground for allowing remarriage after separation (Burnet's Ref., Part II., Book 1, Records No. 20): while the Reformatio Legum (caps. 1, 5, 7, 17) proceeds on a diametrically opposite view of both points. Coming to a rather later date, Bishop Andrewes (writing probably in 1601) says: " First I " take the act of adultery doth not dissolve the bond " of marriage; for then it would follow that the party " offending would not upon reconciliation be received " again by the innocent to former society of life, " without a new solemnizing of marriage, insomuch

* The allusion is said (Thorndike's works, vol. iv., p. 321, note l) to be to the decree of nullity of marriage between Lord Essex and Lady Frances Howard in 1613.

" as the former marriage is quite dissolved which is " never heard of and contrary to the practice of all " Churches." (Andrewes' Minor Works, Lib. A.C.T., p. 106.) In the same paper Andrewes combats what he calls "the conceit of some later divines" that 'the word of God' permits remarriage in cases of adultery. He admits therefore that this view was current when he wrote.

LIX. Having now stated such information as I have been able to obtain as to the authorship of the Reformatio Legum and as to the independently expressed opinions on Divorce of some of the leading Churchmen of the 16th and 17th centuries, the conclusion seems to me to be inevitable that the Reformatio Legum, as we have it, so far as the section on Divorce is concerned, is merely a literary relic representing the views derived from continental sources of certain individual Churchmen of great eminence and influence. These views were no doubt also adopted by the rank and file of a section of extreme Protestants in this country, but, except during a few years of Edward VI.'s reign, were never dominant in the Church of England. On the other hand, the opinion that adultery was on biblical grounds a valid reason for the complete dissolution of marriage seems to have been widely, I should even say generally, held by English divines in the latter half of the 16th century.

LX. I proceed to seek an answer to the second question which has been raised, namely, whether the Reformatio Legum, though not formally authorised, was in fact acted on in matrimonial causes during the latter half of the 16th century. As during this period, and, of course, for centuries afterwards, the State left the decision of these causes to the Ecclesiastical Judges whose duty it was to administer the law of the Church of England, what we have really to ascertain is (1) what was the law of the Church of England as to Divorce in the latter half of the 16th century, and (2) what was in fact done in professed execution of that law.

LXI. There can be no doubt as to what was the law of the Church of England prior to the Reformation. It was the law of all Western Christendom that marriage was indissoluble during the joint lives of husband and wife. If a specially English authority is required for this proposition it will be found in the well-known compendium of Church Law supposed to have been written about 1385 by John de Burgh, Chancellor of the University of Cambridge, and entitled "Pupilla Oculi," under the heading "De accusatione conjugum " de adulterio" (cap. xiv., fol. cxl., ed. 1516), "Maritus " potest uxorem accusare et dimittere propter adul- " terium-et uxor virum: quos in tali casu ad paria " judicantur. Non tamen ea vivente potest alteri " nubere." The writer cites various passages from Gratian's Decretum, namely, 2nd Part, Causa xxxii., Quest 1, Cap. iv.; Quest v., Cap. xix. and Cap. xxiii.; and Quest vii., Cap. vii.*

LXII. In Pollock and Maitland's Hist. of English Law, Vol. ii., p. 392, the writers, after referring to a case of Jews whose union was held to be outside the Christian law of marriage, say: "This however was a " rare exception to a very general rule and for the rest " the only divorce known to the Church was that *â* " *mensâ et toro* which while it discharged the husband " and wife from the duty of living together, left them " husband and wife."

LXIII. It is indeed alleged on the authority of one or two text writers that in very ancient times, centuries before the period we are concerned with, Divorce *à vinculo* was granted in England. I do not pause to discuss this extremely dubious contention, because if such a state of things ever in fact existed, it must have been due to action of the State overruling the law of the Church, and it had certainly ceased to exist, wholly and entirely, before the middle of the 16th century, when the Church of England's breach with Rome became complete. The new era, therefore, opened with the law of the indissolubility of marriage established and acknowledged in the Church of England. No change in this law was purported to be made by the marriage legislation of Henry VIII. No canon was enacted which could at all affect the subject until the canons of 1597 consolidated into the body of canons of 1603–4, which will be dealt with presently. On the other hand we are not left in ignorance of what view those concerned in the actual administration of the ecclesiastical laws in the latter half of the 16th century, held and acted upon.

LXIV. Oughton's "Ordo Judiciorum sive methodus " procedendi in negotiis et litibus in foro ecclesiastico," though first published in 1738, preserved for us a collection of rules, established in the Ecclesiastical Courts, which had in fact been matured many generations before that date. I possess a MS. copy of this collection which, as it mentions Richard Cosin as the then Dean of the Arches, must have been written during his tenancy of the office (1590–7). In both the printed book and the MS. the following passage occurs (Oughton, Tit. ccxv., p. 318, MS. fol. 103) under the heading "De tenore sententiæ in causâ divortii seu " potius separationis â thoro et mensâ propter adul- " terium sive sævitiam," namely:—

> " . . . Tamen de jure canonico legibus hujus regni in hac parte approbato non licet personis in his casibus (videlicet nec propter adulteriam, nec propter sævitiam) divortiatis aut separatis ad secundas convolare nuptias viventibus prioribus maritis vel conjugibus. Quia vinculum matrimoniale matrimonii semel perfecti non potest ab homine dissolvi nisi morte naturali."

LXV. Again, in Clark's Praxis, a work of great authority on questions of ecclesiastical practice, from which Oughton derived the chief contents of his book, the same passage occurs (Tit. cxiii., ed. 1684) in identical terms. Clark's preface is dated April 20, 1596. *See also* in the other great text-book of ecclesiastical practice (Conset, 1681, p. 279, 3rd ed., 1708) a statement to the same effect.*

LXVI. It would seem, therefore, that practitioners in the Ecclesiastical Courts in the closing years of the 16th century not only were quite clear that at that time Divorce à vinculo could not be obtained for adultery, cruelty, &c., but were unaware of any change in the law in this respect. It is difficult to believe that if the courts in which they had practised all their lives had been accustomed for a period beginning about 1547 and lasting for 50 years to divorce à vinculo for adultery, these writers would have given no hint of so momentous a fact.

LXVII. The actual records of proceedings and sentences in Ecclesiastical Courts for the period from 1547 (the accession of Edward VI.) to 1603 (the date of the death of Queen Elizabeth) are plentiful, but, unfortunately, for the most part unindexed and practically inaccessible. I have made some search at the Public Record Office, where such records as have survived of the Court of Delegates (the then Court of Final Appeal in ecclesiastical causes) are preserved. An Act book for the period 1539–44 is all that remains prior to 1601. I found one case only of divorce (Fayrfax *v.* Fayrfax); it was a case of cruelty by the husband, and the sentence (June 9, 1543) separated the parties "a consortio, thoroque et " mensâ ac mutuâ cohabitatione." "Donec et " quousque mutuo eorum consensu sese duxerint " reconciliandos." This, therefore, was not a divorce à vinculo, because it contemplated reconciliation and a return to cohabitation. The Records of the Court of Arches (the court of first appeal so far as the province

* Observe that both the "Pupilla Oculi" and the Decretum insist on equality of treatment for man and woman. *See* in addition to the passages cited in the text Causa xxxii., Quest v., caps. xx. and xxi.

* In one of the books of the Consistory Court of Salisbury containing records of proceedings dated 1598–99 there are a few pages in which there appears (in a contemporary handwriting) a statement headed "De Causis Matrimonialibus," according to which cruelty is "causa divortii seu potius separationis â thoro et mensâ." I am indebted for this information to A. R. Malden, Esq., the Registrar of the diocese of Salisbury.

of Canterbury is concerned, and the chief spiritual court in England) are missing until about the time of the Restoration (1660). The records of the London Consistory Court for the period in question are preserved in Somerset House. They have been searched on my behalf by Mr. Kenneth Munro, of the London Diocesan Registry, They contain cases of Divorce a mensâ et thoro for adultery, cruelty, &c., but none of divorce à vinculo on those grounds. The London Consistory Court was the most important court for matrimonial causes in the country. I have made application to the registrars of all the diocesan consistory courts in the country which were in existence in the 16th century. All but two or three possess records relating to the period in question, and such information as could be obtained without an exhaustive perusal and indexing of hundreds of volumes of MSS. in the difficult and contracted legal writing of the time, has been most readily furnished to me. In the result I have not found, and no one of those whom I have asked has ever heard of, a sentence of divorce à vinculo for adultery, &c. in any of the consistory courts. There were a very considerable number of other Church courts (*e.g.*, archdeacons' courts, commissary courts of deans and chapters, and other special or peculiar jurisdictions) which entertained matrimonial suits. Their records have been scattered, and no doubt have largely perished. But Hale's "Precedents in Criminal Causes" (1847) provides a very useful and instructive account of 829 causes almost all of them belonging to these minor Church courts and covering the period from 1475 to 1640. There are some cases where sentence of divorce à mensâ et thoro was pronounced, but these were not intended to take effect as divorces à vinculo, because the separation is expressly made terminable on reconciliation (*see* "Contra Alborough et uxorem ejus de Danbery," No. CCCCXLI., p. 148). Care must be taken not to attribute too much importance to the evidence, such as it is, which has been collected of the actual proceedings in the ecclesiastical courts. Our knowledge even of the records that exist is far too superficial and fragmentary to entitle us, on the strength of it alone, to make definite assertions of what was or was not done by these courts. Possibly in some of the minor courts, especially in those remote from London, it might be found on investigation that strange and irregular things were sometimes done. It is nevertheless a highly important and significant fact that no trace has been discovered of any sentence of any ecclesiastical court purporting to grant divorce à vinculo on the ground of adultery, cruelty, or desertion during the period when, if certain allegations which have been made were well-founded, the Church courts had without authority adopted a practice of pronouncing such sentences.

LXVIII. The references to this subject in the reports of cases in the King's courts point in the same direction.

LXIX. In Mich. term of 44 & 45 Eliz. a case of *Stephens* v. *Totty* was decided in the King's Bench (Cro. Eliz., p. 908). It raised the question whether a husband, divorced â mensâ et thoro from his wife, could receive and give a valid receipt for a legacy bequeathed to her. The Ecclesiastical Court held that he ought not to be allowed to do so. Prohibition proceedings were brought but the King's Bench agreed that the husband's release was bad being tainted with fraud. Nevertheless the report says: "All the justices "held that in regard this separation doth not avoid "the marriage absolutely but they still remained man "and wife."

LXX. Again in *Powel* v. *Weeks*, Trinity Term, 2 James I., C.B. (Noy's Reports, p. 108), the point is thus stated: "In dower it was resolved that a divorce "causâ adulterii is no bar of dower because it is but â "mensâ et thoro and not â vinculo matrimonii."

LXXI. In *Rye* v. *Fuljambe*, February 13, anno 44 Eliz., in the Star Chamber (Moore's Reports, p. 683), it was held that Fuljambe having divorced his first wife for adultery and married Rye's daughter, had contracted a void marriage with the latter, "quia le "primer divorce n'est que à mensâ et thoro et nemy â "vinculo matrimonii." The report adds that Archbishop Whitgift stated that he had summoned to Lambeth a body of the most wise divines and civilians, and that they all agreed in this view.

LXXII. There is another report of this case in Noy's Reports, p. 100, and it is also incorrectly summarised in 3 Salkeld's Reports, p. 137. It will be seen that this case which has sometimes been referred to as effecting a revolution in the then existing practice—a bringing of the law back to "its old state before the Reformation" (evidence before Select Committee of H.L., 1844, Q. 226, and 3 Salk., 137), was in fact in entire agreement, not only with other cases decided at about the same date, but also with the pre-existing practice so far as we know it.*

LXXIII. It may be well to add the testimony of Sir Edward Coke (1550–1634), who lived through the period under notice and was in the best possible position to obtain accurate knowledge of the matter. In his commentary on sec. 380 of Littleton's text (Coke upon Littleton, 235*a*, 1st ed., 1628), after enumerating causes of nullity of marriage, Coke continues: "A mensâ et "thoro as causâ adulterii, which dissolveth not the "marriage â vinculo matrimonii, for it is subsequent "to the marriage. And the divorce that Littleton "here speaketh of is intended of such divorces as "dissolve the marriage a vinculo matrimonii and "maketh the issue bastard because they were not "justæ nuptiæ. And therefore in Littleton's case "though the husband and wife be divorced causâ "adulterii yet the freehold continueth because the "coverture continueth."

LXXIV. In other words, Coke knew nothing of a marriage (valid when it was solemnised) being dissolved on account of the subsequent action of the parties. It seems to me inconceivable if the courts had been decreeing such sentences for the first 50 years of Coke's life, including a time when he occupied a most conspicuous position at the Bar, that he should have been ignorant of the fact.

LXXV. It would seem that this idea that during the latter half of the 16th century divorces â vinculo on the ground of adultery were granted by the Church courts, but that Fuljambe's case marks a change of opinion and of practice and a reversion to the old system of divorce â mensâ et thoro only, is founded on Salkeld's note on Fuljambe's case, to which reference has already

* The Bill and answer and the examination of the defendants on interrogatories exist in the Public Record Office (Star Chamber Proceedings, Eliz. R. 16.22. R. 38.5). The scrit was by Ed. Rye of Aston, in the county of York, father of Sarah Poage (widow). He alleged that Mrs. Poage being entitled through her late husband to the rectory and manor of Misterton, was persuaded by Hercules Fuljambe, who represented himself as a widower, to marry him and in contemplation of such marriage to grant him a lease of the rectory and manor for 40 years; and that it transpired that Fuljambe had one, if not two, wives still living, and that Mrs. Poage having left him, he retained forcible possession of the estate. By his answer Fuljambe alleged that the marriage and the lease were pressed on him by Mrs. Poage, and as to the other wives he pleaded as follows:—"Touching "the said marriage this defendant Hercules Fuljambe saith "that it is true that at the time of the said marriage with the "s[d] Sarah Poage there were two other gentlewomen living "who had been married to this defendant but this defendant "saith that he was informed by divers divines and civilians of "great account and learning whose counsel he used therein "was before his marriage with the said Sarah Poage was [*sic*] "lawfully and according to the ecclesiastical laws of this realm "divorced from the s[d] two gentlewomen which had been his "former wives and thereby lawfully might by the laws of God "and this realm as he was informed by the s[d] divines & "civilians lawfully marry again which s[d] divorces he this def[t] "hath, the one of them under the authentic seal of the "Bishop of Coventry and Lichfield and a copy of the other "under the hand of Mister Doctor Cosens [Dean of the "Arches]." The object of the suit was to regain possession of the estate on the ground that the marriage was bad and the lease fraudulent. Fuljambe in his answer makes but a faint attempt to defend the marriage but insists that he is not to blame and that the lease was obtained by him *bonâ fide* The Public Records tell us no more about the case so far as the marriage is concerned.

been made. It is to be found at page 137 of the third volume of his Reports which was published in 1724, and therefore has no claim, so far as this case is concerned, to the authority of a contemporary record. Salkeld lived from 1671–1715. The passage runs thus:—

> "A divorce for adultery was anciently à vinculo matrimonii and therefore in the beginning of the reign of Queen Elizabeth the opinion of the Church of England was that after a divorce for adultery the parties might marry again; but in Foljambe's case, anno 44 Eliz. in the Star Chamber that opinion was changed. And Archbishop Bancroft upon the advice of divines held that adultery was only a cause of divorce a mensâ et thoro."

LXXVI. It was Whitgift and not Bancroft who had to do with the case and the Lambeth assembly of divines and civilians summoned by Whitgift was, it would seem, a private meeting quite outside the Court of the Star Chamber in which the Archbishop was probably one of the judges but not the sole judge. The writer was very likely right in thinking that the dominant opinion amongst leading Churchmen at the end of the 16th century differed materially from what it had been in the middle of the century. But he was merely jumping to a conclusion, and, I venture to think I have shown, a wrong conclusion, in assuming that the law of the Church of England and the practice of the Church courts had varied in accordance with the change of views of individual divines and doctors. The distinction which Salkeld has overlooked is really the key to the whole problem. Happily it has been made clear for us by a contemporary witness of first-rate competence in this context, viz., Bishop Lancelot Andrewes, who in 1601 wrote a "Discourse against second mar- "riage after sentence of Divorce with a former match, "the party then living" (Andrewes' Minor Works, Lib. A.C.T., p. 106). I am not concerned now with his arguments against remarriage after divorce but with the basis of fact on which he proceeds. He treats it as a matter beyond controversy and not denied that the Church courts did not grant divorce à vinculo, that the view which he desired to combat was confined to some latter divines, and that it had brought them into conflict with what he describes as "the present practice of the law ecclesiastical."

LXXVII. After discussing whether the act of adultery does not *ipso facto* dissolve the bond of marriage (the view taken in Parr's case, *see post*), Andrewes continues—

> "Secondly, the sentence as I take it doth not relieve for there is no lawful sentence of any court in case of divorce but it ever containeth an express inhibition to either party to marry with another, with intimation in flat terms that from the time that either of them shall go about any other marriage, *quod ex tunc prout ex nunc et ex nunc prout ex tunc*, (it is the style of the court,) that present sentence shall be void to all purposes and they in the same case as if it had never been given. These both failing, the word of God is sought to where let me tell you first, that during the primitive Church, even till now of late, the judgment of the divines and the present practice of the law ecclesiastical were both one; and great reason why; for well known it is, that the authority of the fathers was the ground of the ancient canons, by which the law in this case is ruled. So that but for the conceit of some latter divines, there need not be sought any opposition between law and divinity in this question, nor that pitiful distraction happen which we daily see, Divines to give their hands for licence to that, for which law will convent men and censure them too."

LXXVIII. In this context John Godolphin (1617–1678), though a writer of later date, ought perhaps to be quoted. His "Abridgment," a book of recognised importance in Ecclesiastical Law, was largely appropriated by Ayliffe (1675–1732) in compiling his "Parergon." The 36th chapter of the abridgment is entitled "Of Divorce as also of Alimony." His general treatment of the subject need not detain us, but in the following extract (p. 504, 3rd ed., 1687) he conveys very much the same impression as Andrewes as to the difference between the divines and the lawyers: "Although the doctors of divinity are much divided in "this point of second marriage whilst the divorced "parties are alive, yet the law generally seems much "more to favour such second marriages where the "divorce is *ex causâ præcedenti* than where it is *ex causâ* "*subsequenti*; for when it happens *ex causâ precedenti* as "when the degrees prohibited are violated, *præ*-contract, "frigidity in the man, impotency in the woman, or "other perpetual impediment, the marriage was void "and null *ab initio*, it being a rule and a truth in law "that *non minus peccatum jungere non conjungendos* "*quam separare non separandos*; but where the divorce "happens *ex causâ subsequenti*, there the marriage was "once good and valid in law and therefore (as some "hold) indissoluble and that such subsequent cause "have no influence *quoad vinculum matrimonii* but "only *quoad separationem â mensâ et thoro* which is "but a partial or temporal not a total or perpetual "divorce."

LXXIX. The divergence between the law and practice of the Church of England on the one hand and the opinions of individual members of that Church on the other could hardly be made plainer than in the above extracts. But the Marquis of Northampton, Parr's case, which has already been mentioned, provides a conspicuous illustration of the same divergence in a concrete case. Oddly enough this case, the facts of which do not seem to have been very carefully collected, has been cited as some proof that from 1550 to 1602 the law did not hold marriage to be indissoluble. (*See* Report of R.C. on Divorce, 1853, p. 8.) I proceed to summarise the facts of this case so far as I have ascertained them. They seem to me to show that even in a time of such great upheaval as 1547–52, even in the case of a nobleman of extraordinary influence and the highest official position, and notwithstanding the adverse opinion of great Churchmen like Archbishop Cranmer, the Law and Practice of the Church and its courts were not forced into inconsistency with their past, and Parliament had to be invoked to do what the Church courts could not or would not do.

LXXX. 1527, February 9.—William Parr married Anne Bourchier daughter of the Earl of Essex in the chapel of the Manor of Stanstead (London Marriage Licences: Harl. Soc., vol. 25, p. 5).

LXXXI. 1542.—William Parr divorced a mensâ et thoro on ground of his wife's adultery. "But she "being convicted of adultery he was divorced from "her which according to the law of the Ecclesiastical "Courts was only a separation from bed and board." (Burnet's History of the Reformation, Part II., Book I., p. 56.)

LXXXII. 1543.—An Act (34 & 35 Hen. VIII. ch. 43 [or 39]) passed bastardizing the issue of Anne Bourchier. (For Act *see* Roll of Parliament in H.L. Library. *See also* Lords' Journal, vol. I., pp. 217, 223, 224, 230, 233.)

LXXXIII. 1547.—Petition of W. Parr (Marquis of Northampton) to the King (Edward VI.) for a Commission "to determine whether your servant upon all and "every the circumstances of his only particular cause, "the man, state, form, quality and condition of both "the particular parties only pondered and considered "without determination of any general cause might "without the offence of God for the avoiding of "unlawful love whereunto all flesh is prone, and "the procreation of children which he necessarily "requireth, take to his wife in the life of the s[d] lady "the adultress any other lady or gentlewoman un- "married and lawful to take husband." (State Papers, Domestic, Edward VI., Vol. I., 1547, No. 32.)

LXXXIV. 1547, Ap. 19.—Commission by Letters Patent to Abp. Cranmer, Bp. Tunstal (Durham), Bp. Holbeach (Rochester), William May (Dean of St. Paul's), Simon Heynes (Deau of Exeter), John Redmayne and Nicholas Ridley (Doctors "sacræ theologiæ"), Thos.

Smyth (Doctor of Laws), and John Joseph (Bachelor "sacræ theologiæ") to determine, "an lege divinâ "licitum permissum ac tolerabile sit quod predictus "consanguineus et consiliarius noster (dicta domina "Anna naturaliter vivente) desponsare et in legitimo "matrimonio habere possit aliam quamvis virginem sive "mulierem nubilem." (Pat. Roll, 1 Edw. VI., Part 4, dors. of membrane 23 [27].) It should be noted that, in accordance with Parr's petition, the question was limited to the concrete one of his case. The general question was not submitted to the Commission.

LXXXV. 1547?—Parr married Elizabeth Brooke daughter of Lord Cobham. (Burnet's Hist. Ref., Part II., Book 1, p. 56. *See also* preamble to 5 & 6 Edw. VI. ch. , *post*).

LXXXVI. 1548, Jany. 28.—Upon sundry informations brought to the Lord Protector's Grace and Council that the Lord Marquis of Northampton his first wife living had married one named Mistress Elizabeth Cobham which informations were so set forth and aggrieved as being the thing strange "normelle" and against the law whereof being suffered to escape inreformed, namely in a person of such representation, might ensue many and great inconveniences to the whole realm; the same Marquis was commanded this day to present himself before their Grace and Lordships being assembled in council at Somerset Place besides the Strand and after the thing by them objected to him and by him confessed to be done accordingly, excusing nevertheless the fact for that as he said the same stood with the word of God, his first wife being proved an adultress; when many words and arguments had been controverted on behalfs of their Grace and Lordships and of the same Marquis, they commanded him to retire himself apart (as he did) and then weighing among themselves the importance of the case to be such as being either permitted or winked at might breed manifold disorders and inconveniences within the realm; it was by them ordered and accorded that the said Marquis and Mistress Elizabeth should from henceforth be sequestered and dwell apart in sort as the one should not resort to the other, she to remain and sojourn with the Queen's Grace [Katherine Parr, Northampton's sister] until the case should be at full heard and tried whether the same were consonant with the word of God or no; whereupon such further order should then be taken as should be convenient. (Acts of P.C., 1547–50, p. 164. Burnet's Hist. Ref., Part II., Book I., p. 56.)

LXXXVII. ? date.—Burnet states that the Commission now hurried forward their inquiry, and acting on advice which they received from certain "learned men" to whom questions had been propounded, reported in favour of the Marquis's marriage: and that upon this report the second wife was suffered to cohabit with the Marquis (Burnet's Hist. Ref., Part II., Book I., p. 58, and Doc. No. 20). The report is not known to be extant. Burnet's authority for the questions put to the "learned men," and their answers is a collection of MSS. amongst Archbishop Cranmer's papers in Lambeth Library (Lambeth MSS. No. 1108). There is nothing definite to connect these documents with the Parr case, though it is quite possible that they are so connected, and that Burnet's view about them is well-founded. The documents consist of—

(1) A collection of quotations from the Fathers, councils, &c. bearing on remarriage after divorce for adultery.
(2) A similar collection in another handwriting headed: "*Quod non liceat post divortium* "*vivente priori conjuge secundas nuptias* "*contrahere.*" Possibly this is a first draft of No. (1).
(3) Eight questions. These are general questions as to whether the marriage tie can be dissolved at all in the life-time of the husband and wife, and, if so, for what causes. The answers to them would go far to enable the commissioners to report on the concrete question submitted to them, but they indicate a method of dealing with the matter, the very opposite to that which Parr suggested when he invited consideration to "his only particular cause" "without determination of any general cause."
(4) Answers to the eight questions of which the substance is that adultery *ipso facto* dissolves the tie of marriage, and that adultery is the sole ground on which valid Christian marriage can de dissolved. "Ipso adulterii facto matrimonii vinculum dirimi." "Ob solam "causam stupri dirimitur matrimonii vincu- "lum: cujus ipso quidem facto conjugii "dissolvitur nodus et loquimur de hiis qui "sacrosancti matrimonii jus agnoscunt."
(5) A paper in 19 paragraphs against the view taken in the eight answers.
(6) A paper replying to the points raised in these 19 paragraphs.
(7) A paper in five paragraphs in support of the view taken in the eight answers.
(8) A paper replying to the last-mentioned paper.

LXXXVIII. All these documents are stitched together but not in order, in fact in great disorder. The names of the writers or the persons responsible for the questions and answers and the other documents are not given. They are completely anonymous and undated, and, as has been said, do not mention the Parr case. It is said by Burnet that some of the documents bear traces of the handwriting of Cranmer. (*See also* Pocock's Observations in his edition of Burnet's Hist. Ref., Vol. II., pp. 117–21.)

LXXXIX. I am not aware that any record exists of any further action of the Council as a result of the report (if any) of the commission.

XC. 1551–2.—The statute 5 & 6 Edw. VI. c. is entituled "An Act touching the marriage of the Marquis "of Northampton and the Lady Elizabeth." It recites that the Marquis was "at liberty by the laws of God to marry" and had done so four years previously. It is to be noted that neither the report of the commission nor the sentence of the spiritual court for divorce *à mensâ et thoro* nor the Reformatio Legum is relied on or even mentioned. After the recitals by way of preamble which have been mentioned, it is enacted that the marriage should be adjudged lawful, and the issue of it legitimate to all intents and purposes. "The s[d] former "marriage betwixt the said Marquis and Anne or any "decretal canon constitution ecclesiastical law common "law statute usage prescription or custom of this "realm to the contrary in anywise notwithstanding." (B.M. Miscellaneous No. 806 K., 15 (8).) Thus the remarriage was validated by an exercise of the overriding power of Parliament founded on the legislature's views of the effect of the laws of God, without any reliance on the law and practice of the Church courts, and indeed in express disregard of them.

XCI. 1553.—The Act was repealed by 1 Mary, Stat. 2., ch. 33 [40] (*see* Statutes of the Realm). Having regard to the allegation which has been made that the Reformatio Legum was in fact adopted in practice during the last half of the 16th century it is well to note the differences between the opinions apparently acted on in the Northampton case and the Reformatio Legum. In the former it was laid down that adultery *ipso facto* dissolves the tie of marriage and that adultery is the only ground of divorce à vinculo. In the Reformatio (caps. 5, 1, 17) it is made clear that a dissolution cannot be effected but by the action of a court. Further the Reformatio allows divorce on many other grounds besides that of adultery. The Northampton case, especially if we believe Burnet's account of the Cranmer MSS., may justly be cited as evidence that in Edward VI.'s reign there was strong support, amongst leading Churchmen, for the view that adultery furnished a valid ground for the complete dissolution of marriage so that at least the innocent party could remarry: and further that this view was adopted, at that date, by Parliament. But the case not only does not help, it goes far to refute, the contention that the Ecclesiastical Courts, or the Church of England of which those courts are the judicial executive, endorsed and acted on the opinions thus professed by important individuals and by Parliament. Still

less does the Northampton case furnish any justification for the assertion that the Reformatio Legum was ever in actual operation in England.

XCII. While the Ecclesiastical Courts administer the laws of the Church of England, the Church acting through her Convocations, with the licence and assent of the Crown, can make new laws or canons, by which changes in the ecclesiastical law, binding on the clergy in their official capacity, are effected. As this is the only constitutional way in which the Church of England can legislate for herself, canons are rightly regarded as a most important expression of the "mind of the Church" on any matter. It is desirable, however, to add that the canons of 1603–4 are not themselves standards of Church teaching, like the 39 Articles. With rare exceptions they are merely disciplinary byelaws designed to enforce the observance of laws, some ecclesiastical and others civil, which exist independently of the canons and for the breach of which the canons provide a penalty.

XCIII. It has already been pointed out that no canon dealing with Divorce was enacted subsequently to the breach with Rome, until 1597, when certain canons were made which were subsequently embodied in the general collection of constitutions and canons of 1603–4 which is still in force. The canons of 1597 were issued in Latin only, but those of 1603–4 were contemporaneously published in Latin* and in English. The 6th canon of 1597 entitled "De sententiis divortii non temere ferendis" is substantially similar to, though not identical with, the 105th, 106th, 107th, and 108th canons in their Latin form, and we may confine our attention to the latter. The 105th canon entitled "Pro conjugio dirimendo nuda partium confessio non audienda" begins as follows: — "Quoniam matri- " moniales causæ inter graviores semper habitæ fuerint " et propterea majorem cautelam desiderent; siquando " in judiciis veniant disceptandæ, presertim cum matri- " monium in ecclesiâ debite solemnizatum, quovis " nomine *separari vel nullum pronunciari* postulatur; " stricte mandamus et præcipimus ut in *omnibus* " *divortiorum et nullitatis matrimonii* processibus " circumspecte et deliberate procedatur," &c. The English version of the above is as follows: "Forasmuch " as matrimonial causes have been always reckoned " and reputed among the weightiest and therefore " require the greater caution when they come to be " handled and debated in judgment especially in " causes wherein matrimony, having been in the Church " duly solemnized is required upon any suggestion or " pretext whatsoever to be *dissolved or annulled*: we " do strictly charge and enjoin that in all proceedings " to *divorce and nullities of marriage* good circum- " spection and advice be used," &c.

XCIV. The 106th canon, entitled "Sententiæ divortii et separationis non nisi pro tribunali ferendæ," begins as follows:—"Nullæ inposterum sententiæ vel separa- " tionis a thoro et mensâ vel nullitatis matrimonii " prætensi ferantur, nisi publice," &c. The English version (title) "No sentence for Divorce to be given but in open Court," runs thus: "No sentence shall be given " either for separation a thoro et mensâ or for annulling " of pretended matrimony but in open Court," &c.

XCV. The 107th canon, entitled "Separatis eorum altero superstite, nova copula interdicta," is as follows:— " In sententiis quando ad separationem thori et mensæ " tantum interponuntur monitio et prohibitio in ipso " contextu sententiæ lata fiet ut a partibus abinvicem " dissociatis caste vivatur nec ad alias nuptias alterutra " vivente, convoletur. Denique quo postremum illud " firmius observetur sententia separationis non ante " pronunciabitur quam qui eam postulabunt idoneam " cautionem interposuerint se contra dictam monitionem " et prohibitionem nihil commissuros." The English version (title) "In all sentences for divorce, Bond to be " taken for not marrying during each other's life" is as follows:—"In all sentences pronounced only for " divorce and separation a thoro et mensâ there shall " be a caution and restraint inserted in the act of the " s[d] sentence, That the parties so separated shall live " chastely and continently neither shall they during " each other's life contract matrimony with any other " person. And for the better observation of this last " clause the said sentence of divorce shall not be " pronounced until the party or parties requiring the " same have given good and sufficient caution and " security into the court that they will not any way " break or transgress the said restraint or prohibition."

XCVI. The 108th canon is immaterial for the present purpose.

XCVII. Now the importance of these canons for the purpose of ascertaining whether the Church of England recognised in 1604 divorce à vinculo with its consequence of possible remarriage is crucial. If divorce à vinculo matrimonii debite solemnizati was then recognised, these canons containing rules to be applied to all divorce suits must have dealt with it. If they do not, it can only be because the Church courts had no jurisdiction to grant divorce à vinculo, and therefore no rules need be made or could be made about it. But when the canons are read, as they should be, in Latin as well as English, it becomes clear that the canons deal only with divorces a mensâ et thoro and cases of nullity of marriage and not with divorce à vinculo. The Latin form of the 105th canon, although in the English version it is made to cover marriages "dissolved" as well as marriages "annulled," shows that these words are intended to be equivalent to "separari vel nullum pronunciari," which can only describe separations from bed and board and nullities. It should, however, be mentioned that the report of the Royal Commission on Divorce, 1853 (p. 8), quoting the English version of this canon (which is cited as the 105th canon of 1597), and ignoring the Latin, relies on it as strong proof that "marriage was not held by " the Church and therefore was not held by the law " to be indissoluble."

XCVIII. Again, the 106th canon is in terms confined to cases of separation and nullity. There is therefore no provision for cases of divorce *à vinculo* being heard in open court. Assume this jurisdiction existed and the canon becomes absurd by making provision for the less grave cases and not for the more grave ones.

XCIX. Finally the 107th canon is, both by its terms and by the subject matter of it, confined to separations from bed and board. It appears that none of these canons refer to divorce à vinculo, for which, therefore, no provision at all has been made, a state of things only consistent with divorce à vinculo having no place in the law of the Church of England.

C. Another argument has been raised on the 107th canon which it will be remembered requires a bond to be given by a party applying for a separation from bed and board. This bond was for 100*l*., which the party bound himself to pay to the judge of the court if the condition of the bond was broken. The condition was as follows: "If therefore the s[d] A.B. shall not at any " time hereafter intermarry with any other person " during the life time of the s[d] E.F. then this obli- " gation to be void or else to remain in full force and " virtue" (Coote's Ecclesiastical Practice, p. 344). It is said that "the very fact of enjoining a prohibitory " bond implies that the marriage which the bond was " intended to prevent would have been valid (Report Divorce Com., 1853, p. 8). I think it must have been overlooked that a similar "caution and security" is required by the 101st canon to guard against impediments of marriage of all sorts (*e.g.*, the nearest relationship) being disregarded. But I venture to think a consideration of the nature of the sentence of separation *à mensâ et thoro* makes this inference I have quoted from the Report of the Divorce Commission, 1853, impossible.

CI. The 107th canon deals only with such separations, and as a matter of fact the form of sentence in these cases contained a clause expressly making the separation terminable on reconciliation "donec et " quousque mutuo eorum consensu sese duxerint recon-

* Constitutiones sive Canones Ecclesiastici, London 1604, printed by Norton the King's printer for Latin books. A copy which belonged to Abp. Bancroft himself is in Lambeth Library (96. G.18).

" ciliandos." Fayrfax *v.* Fayrfax. Delegates, 1539–44, P.R.O. Del. Acts, Vol. I., folios 383–4; "Until they do better agree," 1566. Hale's Precedents, No. CCCCXLI.; "donec et quousque Deo sic juvante et disponente " contigerit eos in debitam gratiam redire et se " invicem maritali affectione tractare et amplecti," 1666. Neave *v.* Neave. Arches Sentences, 1664–6, No. 96: "Until they shall be reconciled to each other," 1846. Coote's Ecclesiastical Practice, p. 347. (*See also* Clarke's Praxis, Tit. CXIII.) That a sentence, which purported to suspend cohabitation until reconciliation, could not have had the effect of rendering a fresh marriage, in the meantime, "valid," is a proposition which does not seem to require elaborate argument. But the express caution to the parties not to attempt remarriage, and the bond exacting a penalty for disregard of the caution were, we may readily believe, quite necessary to guard against persons who had been divorced à mensà et thoro, persuading others to go through some form of marriage with them under cover of the sentence of separation. There was every facility for wrong doing of this kind because irregular marriages without banns or licence, and even, probably, marriages by *verba de presenti*, without any officiating clergyman or religious ceremony, were recognised in the then state of the law. But the well-known instance of Laud's being induced as a young man and to his life-long regret, to marry his patron Blount, Earl of Devonshire, to the separated (*à mensà et thoro*) wife of Lord Rich* shows that the danger to be provided against was by no means confined to ignorant persons and "irregular" marriages. It was also aggravated by the possibility that people in their eagerness to remarry would avail themselves of the theory apparently acted on in the Northampton case and claim that the unfaithfulness of a partner had *ipso facto* released them from the bond of a former marriage. Moreover, it must be borne in mind that the anomalous condition of the ecclesiastical law rendered it additionally important to take every practicable means to prevent illegal unions from being formed. Once formed under the guise of an alleged marriage, the most lawless and even disgusting connection (*e.g.*, between brother and sister) needed a suit for its effective annulment. This was required not to *make* such a marriage void, for it was void *ab initio*, but in order that its invalidity might be *acted on* it was necessary that there should be a sentence *declaring* it void. A suit for this purpose could only be brought in the lifetime of both the parties to the so-called marriage, and in the absence of a suit, incestuous and probably even bigamous unions might pass uncondemned and the children of them be treated as legitimate It is hardly surprising that this very regrettable state of things has been sometimes mistaken for acquiesence by the law in the irregularities which it failed adequately to suppress. There is, however, no more reason for saying that remarriages after separation were regarded as valid, because they were not always effectively annulled, than there would be for making the same claim with regard to incestuous unions between near relatives. The essential invalidity in such cases is not dependent upon or affected by the presence or absence of a judicial sentence. (*See* Fenton *v.* Livingstone, 3 Macqueen's Reports, 497, in the House of Lords.)

CII. A somewhat similar argument has been advanced, founded on the Bigamy Act (1 Jas. I., ch. 11). Under this Act death was made the penalty for bigamy, which was declared to be a felony. Certain exceptions were however made and amongst them was a proviso: "That this Act nor anything therein contained shall " extend to any person or persons that are or shall be " at the time of such marriage divorced by any " sentence had or hereafter to be had in the ecclesiastical court or to any person or persons where the " former marriage has been or hereafter shall be by " sentence in the Ecclesiastical Court declared to be " void," &c.

CIII. On this it is said: "Now we can hardly " suppose that the Legislature intended to declare in " one and the same breath that bigamy was felony and " yet that a second marriage after divorce, living the " first wife was not to be considered in that light " unless it conceived that the sentence passed in the " Ecclesiastical Court has worked a dissolution of the " marriage contract." (Report of Divorce Commission, 1853, p. 9.) Again, the inference is by no means necessary. Bigamy was already punishable like other forms of immorality in the Ecclesiastical Courts. But the effect of the Act was to make it a capital crime, and it was surely not unreasonable for Parliament, without acknowledging the validity of attempted remarriages after separation by sentence, to recognise a moral difference between them and ordinary bigamy and to provide that such unions, then certainly existing in influential quarters, and perhaps more common in the higher than in the humbler class, should not be visited with the extreme penalty of death. That this is substantially what was meant we learn from Coke, who was Attorney-General at the time and probably closely connected with the preparation and passage through Parliament of this Bill. In his 3rd Institute, cap. xxvii. he comments on this Act, and with reference to this proviso, says, "There be two kinds of divorce the one " that dissolveth the marriage a vinculo matrimonii as " for precontract, consanguinity &c. and the other " à mensà et thoro as for adultery, because that divorce " by reason of adultery cannot dissolve the marriage " a vinculo matrimonii for that the offence is after the " just and lawful marriage. This branch in respect " of the generality of the words privilege the offender " from being a felon as well in the case of the divorce " à mensà et thoro as when it is à vinculo matrimonii " and yet in the second case of the divorce a mensà " et thoro, the second marriage is void, living the " former wife or husband. And if there be a divorce " a vinculo matrimonii and the adverse party appeal, " which is continuance of the former marriage and " suspend the sentence, yet after such a divorce the " party marrying is no felon within this statute in " respect of the generality of this branch, although the " marriage be not lawful."

CIV. In Porter's Case, 1637, Cro. Chas. 461, the judges on a prosecution under the Act doubted (but see Hale's Pleas of the Crown, i. 693, and Middleton's Case, Kelyng's Reports, p. 27, an. 1638) whether a marriage after a sentence de mensà &c. for cruelty was really within the exception of the Act, but it is stated in the report that judges and counsel and "all the civilians and others" agreed that the former connection continued and the second marriage was unlawful. In another case (1641) reported in March's Reports, p. 101, one Williams who had married after having divorced his first wife for adultery was held to be within the exception. One of the judges is reported to have said that while divorce for cruelty was only a cohabitatione divorce for adultery was a vinculo matrimonii; also that remarriage was allowed in the latter case "by the law of Holy Church" but not without licence"! These are, of course, mistakes of fact, for which probably the reporter is responsible. (*See* "Baron and Fume," 1738, p. 442.)

CV. While however the attempt to infer from the Bigamy Act that the validity of marriage after divorce was recognised by Parliament seems unwarranted, the Act by the width of the exception certainly suggests both that the number or influence of those who had remarried after divorce was considerable and also that public opinion was not disposed to treat such persons

* This case is instructive from another point of view. It shows that remarriage after divorce was not regarded at the beginning of the 17th century with easy tolerance. The marriage was in 1605. According to Heylin (Life of Laud, pp. 53, 54)—"The Earl found presently such an alteration in " the King's countenance towards him and such a lessening " of the value which formerly had been set upon him that he " was put to a necessity of writing an apology to defend his " action. But finding how little it edified both in Court and " country, it wrought such a sad impression on him that he " did not much survive the mischief, ending his life before " the end of the year next following." It ought, however, to be added that Lady Rich was the guilty party and the Earl her seducer. On his death the authorities decided that, as Lady Rich was not the Earl's lawful wife, her name could not be quartered with his for the purpose of his funeral pageant. (Baildon's Cases in Star Chamber [1593–1609], p. 444.)

as mere criminals. It seems to me another illustration of what has been already noticed in another context, namely, the prevalence of a looser practice in the society of the time than the law either of the Church or of the realm endorsed. Although it belongs to a period (1553) 50 years before the Bigamy Act, the following passage from Strype's Memorials, Book II., ch. XXIII., p. 443, is worth perusal for its reference to the actual condition of the people: "The nation now became "scandalous also for the frequency of divorces; especially "among the richer sort. Men would be divorced from "their wives with whom they had lived many years, and "by whom they had children, that they might satisfy "their lusts with other women, whom they began to "like better than their present wives. That which gave "occasion also to these divorces was the covetousness "of the nobility and gentry, who used often to marry "their children when they were young boys and girls; "that they might join land to land, possession to "possession, neither learning, nor virtuous education, "nor suitableness of tempers and dispositions regarded: "and so when the married persons came afterwards to "be grown up, they disliked many times each other, "and then separation and divorce and matching to "others that better liked them, followed; to the "breach of espousals and the displeasure of God. "These divorces and whoredoms (a great cause "of them) had especially stained the last reign "[Henry VIII.] and introduced themselves into "this . . ."

CVI. I think, therefore, the answer to the question whether the Reformatio Legum was acted on in matrimonial causes during the latter half of the 16th century must be in the negative. I confess I should have supposed that a mere recital of the regulations and penalties laid down in the Reformatio with regard to this subject (*see* ante) would be enough to convince anyone that it never was and never could have been a practical working code. There is not so far as I know, either in judicial records or in history, any trace of its ever having been acted on. But further, I venture to think that the fair result of an examination of the materials collected in this memorandum is that the law of the Church of England as to the indissolubility of marriage and the corresponding practice of the Church courts remained unchanged throughout the period under notice, that is, from before the Reformation until after the present canons of 1603–4 came into operation. The leading writers on ecclesiastical practice, the records of the Ecclesiastical Courts so far as we can consult them, the references to the subject in civil proceedings, the writings of public men of the day like Coke and Andrewes, the canons of 1603–4, and last but not least the intervention of Parliament in order to dissolve a marriage, when that was really intended, all agree and all point to the conclusion I have stated. Side by side with this adherence to the old standards of law and practice there was, as has already been said, a widespread relaxation of opinion with regard to divorce, a change which was largely confined to an admission of the right "according to God's law" of a man, who had divorced his wife for adultery, to remarry. But there would also appear to have been a general slipping away from old convictions which probably produced amongst all classes vaguely revolutionary notions as to the nature and permanence of the marriage tie, notions which in that licentious and unsettled age men were not slow to put in practice.

The Hon. HENRY GORELL BARNES re-called and further examined.

34,943. (*Chairman.*) There is one document I want to put in. When the Maritime Conference was assembled in London in the course of the month of August there were a number of distinguished jurists here from abroad, and there were amongst them Dr. Alfred Sieveking, son of the great Dr. Sieveking, of Hamburg, who was a very well-known man, and the son is following in his father's steps as a great lawyer, and I ventured to ask him if he could give me any information as to the Parliamentary proceedings in Germany which had led them to adopt insanity as a ground for divorce. The Commissioners will recollect that is one of the grounds in the German Code. Of course we get the law from the Code, but how that law was reached was not easy to ascertain, except from somebody who had practical knowledge like Mr. Sieveking. He has been good enough to send over, and I think Mr. Secretary you now produce, the Memorandum which was sent over, showing the arguments and the divisions that took place in the German Parliament on this important subject, and if you will turn to the end of it you will find the division numbers given on which the clause was carried and passed?—In the last paragraph: "Parliament third reading. The amendment was "again brought and strongly supported by the Ministers "of Justice of Prussia and Saxony. The amendment "was carried by a vote of 161 to 133. Thus insanity "became a ground for divorce."

34,944. I only want to put that in that we may study it. Copies have been sent round, I think?—Yes, copies have been sent to the Commissioners.

The following is the Memorandum referred to:—

MEMORANDUM sent to the CHAIRMAN by Dr. A. SIEVEKING, of Hamburg.

Mental Insanity and Divorce in Germany.

I. Previous to the enactment of the Civil Code in 1900 the diversity of laws with regard to divorce was very great.

The Canonical (Catholic) law was very adverse to any kind of divorce, and admitted merely a separate quoad thorum et mensum, and this only in the case of default (adultery, &c.). This law prevailed, for instance, in Bavaria.

The Protestant Church Law allowed a divorce also only on account of faults committed by husband or wife (adultery, desertion, &c.).

The Prussian Law of 1797 gave a decree for divorce also on account of incurable mental insanity, incurable bodily diseases, and even on account of mutual unsurmountable aversion. This is explained by people at that period looking on marriage as upon a simple contract, and by Frederick the Great wanting to re-people his territories.

The laws of the Kingdom of Saxony, Baden, Nuremberg, Schwarzburg, Londershausen, Saxe-Altenburg admitted mental insanity, if not curable, as a ground for divorce.

Hessen, the French Civil Code (in force in the Rhenish Provinces) admitted divorce only in case husband or wife were guilty of an offence (adultery, desertion, &c.). The same was the law in Hamburg.

II. The First Commission for the drafting of a civil code, consisting of 11 lawyers, and sitting from 1874 to 1880, refused to establish mental insanity as a ground for divorce. This Commission granted a case for divorce only on account of husband or wife being guilty of certain offences. The principal reason for not admitting lunacy besides the one mentioned (lunacy not being an offence) was the impossibility of discriminating between the various phases of mental diseases and of actually stating mental death.

III. The Second Commission, consisting of 16 lawyers, three big landowners, a miner, a brewer, a commissioner of forests and a merchant, and sitting from 1890 to 1895, admitted lunacy as a ground for divorce for the reason that it existed already in the greater part of Germany, and that not granting a divorce in such a case would destroy the family life of the members of the family. But divorce was granted only if—

(*a*) the disease is incurable, and this fact has been established during three years' confinement in an asylum;

(*b*) the connubial and domestic union does no longer exist; and

(*c*) there is no longer a question of any mental union between husband and wife.

Furthermore the lunatic has to be provided for just in the same way as if divorce had been granted on account of the other party having been guilty of some offence (adultery, &c.).

The paragraph then inserted into the code admits a divorce on the ground of mental insanity, provided

(1) the mental insanity has lasted three years after conclusion of marriage;

(2) that at the end of the three years the disease has attained such a degree that all mental union between husband and wife has been lost;

(3) that all prospects are lost of ever restoring the mental union.

IV. The Parliamentary Commission struck this paragraph out again and restored the draft of the First Commission, principally for moral and religious reasons (demoralising effects upon children where they see that one parent makes use of the infirmity of the other in order to be married a second time).

V. *Parliament* second reading rejected, with 125 to 116 votes, the amendment proposed in favour of the report of the Second Commission and adhered to the views expressed by the Parliamentary Commission (formed in accordance with the first reading of the Bill).

(*a*) The views expressed by the Catholics and the Conservatives and supported by the official representatives of the Government of Mecklenburg and Bavaria was that, although poor people would feel a rejection of this ground for divorce more heavily than rich persons, it should be considered that once you grant a divorce for other reasons than certain offences on the part of husband or wife, there was no reason for stopping at mental insanity, but divorce would be granted also for bodily disease, nay, for mental disaffection—that it is very difficult to state whether a disease is actually incurable or not—that great physicians held that there was no case of actual incurability and that, therefore, the proposed amendment would never apply—that a lunatic is still a being and that a misfortune God has sent should not be interfered with, but borne with patience and humility.

(*b*) The view expressed by the Liberals and Social Democrats and supported by the Prussian Government runs thus:—"Provided all the "requirements of the amendment (of supra "sub. III) have been fulfilled, a mentally "dead man is just as dead as a bodily dead "man, and if you maintain that a lunatic is "still a being, you should not then declare a "marriage dissolved by death, because the "soul is still living . . . divorce is granted "only if every prospect of ever restoring the "mental community is absolutely precluded "and if the lunatic is so insane that there is "not left even the slightest degree of a com-"munity between husband and wife—in case "of doubt, no divorce. If not granted you "deprive a poor family of a mother and the "husband of a housekeeper, house and child-"ren can no longer be looked after but will "of necessity be left to the care of the parish "(as paupers), whilst the husband is driven to "the prostitution, instead of being allowed "to marry and give a mother to his children "(rich people, of course, can engage a gover-"ness or the like). The lunatic himself is "bodily provided for by the other parent "being compelled to provide for him just "as if the divorce had been granted for an "offence (adultery, for instance) of the other "parent. The lunatics often have a long "life; nor room therefore for the other "parent to expect a speedy delivery. By "far the majority of German inhabitants "(about 40 millions) live under laws granting "this case of divorce. In Saxony there have "been very few cases of the lunatic having "recovered after having been divorced, in "Prussia never such a case happened—a "general law should not be altered for the "sake of a few exceptions: errors are com-"mitted everywhere, also in cases of divorce "on the ground of adultery. The amend-"ment does not make it a case of incurability "(partial insanity might be incurable too), "but of absolute and never to be restored "again dissolution of mental community "between husband and wife through mental "insanity. Several physicians of renown in "Alsatia were strongly in favour of admitting "this ground for divorce, because not doing "so would be the ruin of many families "thereby affected. Poor families lose their "provider (in case the husband turns a "lunatic) without being able to get another "one."

VI. *Parliament* third reading. The amendment was again brought and strongly supported by the Ministers of Justice of Prussia and Saxony. The amendment was carried by a vote of 161 to 133. Thus insanity became a ground for divorce.

Sir JAMES CRICHTON-BROWNE called and examined.

34,945. (*Chairman.*) Sir James Crichton-Browne?—That is my name.

34,946. May I take it your qualifications are summarised at the head of your Memorandum?—I am the Lord Chancellor's Visitor.

34,947. The Lord Chancellor's Visitor, and you are M.D., LL.D., Doctor of Science and F.R.S.?—Yes.

34,948. When you say the Lord Chancellor's Visitor you mean in the asylums?—In lunacy; not necessarily asylums.

34,949. You have been good enough to prepare a Memorandum of the views which you entertain?—Yes, I have.

34,950. If you would kindly take it from me the Commissioners have had that Memorandum before them, and I am going to ask you the leading points in it. Some of it, if I might venture to say so, is argumentative, but what I want to get mostly is facts and grounds. I will ask you first what your view is as to making incurable insanity a ground for divorce?—Well, I should like to supplement the Memorandum I have sent in on that subject. I had not then seen any of the evidence given before the Commission. Since then I have had the opportunity of reading the evidence reported in the "Times" of three eminent medical men given last week. I presume the Commissioners understood that these gentlemen were speaking on their own responsibility, not as representatives of the British Medical Association, though nominated as witnesses by it. That is an Association numbering, I suppose, some 25,000 medical men.

34,951. I think we understood that?—I quite believe that the majority of that Association might agree with the views placed before you; but as these gentlemen were unanimous, and as the opinion of the Association has not been taken, I thought it might be as well to point out that there would be a very strong body of opinion on the opposite side; though I believe they might represent the majority.

34,952. They were selected by the Association to give evidence?—Yes, but it is only the Council that has nominated these gentlemen as witnesses; it is not necessarily the view of the Association which they expressed. I offered in my memorandum some tentative figures as to the mental condition of patients admitted to asylums. I have altered these figures up to the last year. I said that there were 21,764 patients admitted to asylums in England and Wales during 1909. According to the forms of insanity given by the Commissioners 6,000 might be classified as labouring under forms of mental disease, congenital and acquired, about the incurability of which there could be no doubt. Of the remaining 15,000, 8,000 to 9,000 would be acute recoverable cases, leaving some

6,000 to 7,000 in those groups in which recovery is not likely, but will take place in a certain number of cases. Since that I have made a calculation that might, I think, be of some interest. Taking the whole number of lunatics, idiots, and persons of unsound mind in asylums—in institutions—in England and Wales on the 1st January last I divide them into three groups, taking them roundly at 130,000. There will be 56,000 married persons, there will be 56,000 single persons, and there will be 18,000 widowed persons; that is, in round numbers. This gives the number of married at one time as 56,000 for whom divorce would be possible, but assuming that divorce was not permitted until three or five years of persistent insanity, this number would have to be largely reduced, for numbers of the insane in asylums being advanced in age become widowed during their detention, so that at the end of the five years the number of the widowed would have increased largely. The death rate (again in round numbers) is about 10 per cent. per annum on the average number of resident patients. The rate of recovery is also about 10 per cent. per annum, so that from the total at the end of the first year we should have to deduct 5,600 for death, 5,600 for discharge, recovered or relieved, leaving married at the end of the year 44,800. The death rate and recovery rate are very much heavier amongst the new admissions, and I have no reliable data showing these rates in patients during the 2nd, 3rd, 4th, 5th years of detention, but I calculate that in these four years they could not total less than 10,000, which would reduce the surviving married persons to 34,800 at the end of five years. Of the patients admitted annually 1,000 are over 65 years of age, so that if that were the limit another 5,000 would have to be deducted, leaving the divorcible insane at 29,000. Of these a considerable proportion would be still recoverable or dying. I do not believe that the cases of persons of more than five years duration of insanity in asylums to whom any change in the law of divorce could possibly apply would exceed 20,000, and as regards a large proportion of these there would be no unanimity of medical opinion as to whether they were recoverable or not. I should not be surprised if the number fell under 15,000. It would be very interesting to obtain from our asylums a return of the number of the married and single and of the widowed admitted during any one year surviving at the end of each of the following five years.

34,953. I think you may take it that the statistics will give us most of that information?—Then might I say I have prepared some other figures beyond my Memorandum. I would like, if I may be permitted, to say something as to the different forms of mental disease which were mentioned by Dr. Clouston, who is a very eminent authority. Various forms of mental disease have been named, but many of these are not sharply defined. One so-called form of insanity passes into another. And there are many cases which one medical man would classify under one form and another under another. There is often great uncertainty of diagnosis. There is no form of insanity more definitely marked and more readily diagnosed than general paralysis of the insane, but I find that according to the Commissioners' Report 1,681 patients died of it in 1909, whereas the admissions diagnosed to be general paralysis were 1,336 in number. But general paralysis is a disease of two or three years' duration, and does not certainly arise during treatment in an asylum. The difference in the figures simply means corrected diagnosis by prolonged observation, confirmed in a very large proportion of cases by post-mortem examination. Cases proved to be general paralysis that were not originally recognised as such. Is it not possible that cases of insanity diagnosed incurable might prove curable after all. Medical psychology has not yet attained to the exactitude of chemistry, toxicology, or ophthalmology. Insanity is still in many instances a very uncertain and incalculable quantity, and were it admitted as a ground for divorce, a rich field would be opened to expert evidence and prediction. In many cases diametrically opposite opinions would be expressed, and there would be costly litigation. You might have the children opposing a father or a mother's petition for divorce. Dr. Clouston enumerates several forms of insanity, and would apparently fix different durations of continuance of insanity as a ground for divorce in different forms. But medical men are not all agreed as to the classification of the different forms of insanity. The Medico-Psychological Association has proposed a classification adopted by the Commissioners in Lunacy, and generally in asylums in this country; but that is subject to amendment with the progress of pathological science, and there are cases which one medical man would describe as one form, and another as another. One form passes into another. The first form mentioned by Dr. Clouston is secondary or terminal dementia, which he declares to be absolutely incurable. I do not agree with him about that, as I have seen patients emerge quite well from what has been called secondary dementia. But secondary or terminal dementia is consecutive to some primary and presumably curable form. Where is the dividing line in such cases to be drawn. There will be a period, perhaps a prolonged period, when it will be doubtful whether the incurable stage has been reached. In a very large proportion of pronounced cases of secondary dementia incurability may be safely predicted, but mistakes will occur, and in a considerable number of cases of this kind I have seen recovery take place in wards of the Court of Chancery, a supersedeas being accordingly granted. I have made a list of 26 Chancery lunatics superseded since 1896. One had been insane, counting from the date of the Inquisition, for 21 years, and probably for two or three years before that; one for 19 years; one for 17 years; one for 14 years; one for 11 years; one for 9 years; one for 8 years; one for 7 years; three for 5 years; two for 4 years; three for 3 years; five for 2 years; four for 1 year; and one for eight months. Many of these cases would have been put down as terminal or secondary dementia. I might mention a case I saw not long ago of a gentleman in North Wales who had been for 11 years supposed to be in a state of terminal dementia. He had never moved nor spoken, and had all his food placed in his mouth by his attendants. Suddenly, one day he arose, began to converse, and manifested complete intelligence. He told me that he had a great gap in his life; and for some time after that he was happily engaged in carpentry and gardening. Since then I believe he has gone to the other extreme and become excited. I only mention that as a case that would have been pronounced incurable by a number of experts. I saw three days ago a lady who had been labouring under spiritualistic delusions and hallucinations for 17 or 18 years; but the other day she repudiated them to me and said she must have been mistaken. That is a form of delusional insanity in which recovery might take place. The next form of mental disease mentioned by Dr. Clouston is organic dementia due to gross lesions of the brain accompanied by more or less paralysis, sometimes by aphasia. Patients thus afflicted are almost invariably advanced in life, it is due to vascular degeneration; generally the giving way of a blood-vessel, and they almost invariably die within a few years of the attack. Divorce questions are not likely to arise in such cases, and I would like to emphasize the fact that there are several kinds of mental disease, general paralysis, and gross organic disease of the brain, for instance, that naturally terminate in three years, and if a five years' limit were fixed for divorce they would have all ended and been cleared out of the way before divorce became allowable. Dr. Clouston next refers to general paralysis, which for practical purposes may be regarded as an incurable disease. It is due to a specific toxin or antitoxin, as is now all but universally believed, of syphilitic derivation. It may be that some effectual anti-body may be discovered. Dr. Clouston thinks that possible—although I would doubt the efficiency of any anti-body to remove the organic brain changes it causes after its very earliest stage. The disease is sometimes arrested, but such cases are very rare and it may still be regarded as incurable. As, however, it ends fatally

in two or three years there would be, I presume, no divorce question—and I think it would be scarcely decent to divorce a dying man, for a general paralytic is dying all the time. The discovery of an anti-body would of course render divorce still less necessary if it was to secure recovery. Dr. Clouston next refers to epileptic insanity, an often hereditary, and very intractable form of mental trouble. In advanced cases of epileptic dementia incurability may be safely affirmed, but I feel quite sure that in a large majority of these cases the patient is single, the epilepsy having originated in early life or at puberty and having proved a bar to marriage. But there are several different kinds of epilepsy, and epileptic fits may recur from time to time for a lifetime without any marked degree of mental deterioration. I have known men subject to occasional epileptic fits who have held important public positions with usefulness and distinction. Pronounced epilepsy—epilepsia gravior—even when unaccompanied by mental symptoms other than these grouped round the fit should be a bar to marriage, both because of its hereditary nature, because of the incessant domestic anxiety it must cause, and because of the dangerous impulses which are sometimes developed; epilepsy is often a dangerous form of disease. But epilepsy shades off through *petit mal* into slight momentary mental aberration or muscular spasm, especially during adolescence, which need not I think contra-indicate matrimony, and I believe at a discussion at the British Medical Association it was agreed that there are certain cases that occur at puberty that should not be a bar to marriage. Dr. Clouston next deals with idiots and imbeciles. With them, properly so-called, no question of divorce can occur and as regards the feeble-minded no such question should be allowed to arise. The man who has knowingly or unknowingly married a weak-minded woman should be left to bear the consequences of his disgraceful or rash action. Sometimes a weak-minded woman might be inveigled into a marriage—that has happened—and then be placed under care and got rid of.

34,954. Would your view be with regard to that class of person that the State is not doing sufficient to prevent marriage?—Oh, undoubtedly so—the segregation of certain classes of the weak-minded is advisable. I do not think the number is as large as has been represented. There are a number of cases already segregated—the markedly idiotic and imbecile. Beyond these there are the feeble-minded. There is a certain section that are perfectly harmless, but there is another section which, in the case of women, should be segregated till they are 45 years of age, and of men that ought to be permanently segregated. But that is a very large question.

34,955. We have had views presented as to the desirability of possibly preventing the procreation of children by persons unfit for the purpose?—What am I to understand by prevention, my Lord; detention or segregation? I cannot think of any surgical intervention as tolerable.

34,956. No, I have not suggested any means, but we have had it presented that at some time or another the State should take more care with regard to the entering into marriage of such persons?—Yes, I agree with that.

34,957. That is your view?—Yes, undoubtedly. With reference to "delusional insanity" monomania, paranoia, Dr. Clouston admits that divorce proceedings would give great pain and aggravate the disease—it would be very distressing in some cases—and he would not, therefore, in such cases sanction divorce proceedings till the end of 10 years. The man or woman who has waited 10 years for divorce may, I think, be content to wait a little longer. In such cases recovery sometimes occurs even after 10 years, and I have known recovery take place quite suddenly as if the delusions had dropped out of the mind. Then, as regards alcoholic insanity, Dr. Clouston strongly recommends divorce proceedings, because those suffering from it had brought on their disease by their own acts. I do not agree with him. In a large number of cases the intemperance that has eventuated in insanity was itself a symptom of hereditary disease. When one sees in one family—I am quoting a case from my own experience—the father of which had died insane, one member epileptic, another melancholia and suicidal—and actually did commit suicide—another brilliantly clever and bordering on genius, and another addicted to periodical bouts of drunkenness, one realises that the drunkenness is only one of the allotropic forms of an inherited mental instability. I recognise besides dipsomania—that is a disease by itself—four forms of mental disorder in which alcohol is the predominant factor. Delirium tremens, mania-e-potu, alcoholic delusional insanity, and alcoholic dementia. The two latter are, I should say, incurable forms, and correspond with organic disease of the brain. Alcoholic insanity is, I think, a very dangerous form, homicidal tendencies being often associated with it arising out of the delusions of suspicion and persecution that especially characterise it. As regards alternating insanity or *folie circulaire*, Dr. Clouston admits great difficulties, but holds that in certain cases there should be divorce, apparently because the man may return home and procreate during his lucid interval. But if divorced he may of course marry again during his lucid interval and so propagate his kind; so I think divorce would be no prevention in that case. As regards morphiomania or the drug habit, I have seen absolute and complete recovery in the worst cases. Might I say that in acute and recoverable cases of insanity, I am quite sure that the apprehension that they might at some future time be divorced and so be stamped with what they would regard as an indelible disgrace would tend to prevent recovery. That dread of divorce would apply to every patient in an asylum. There are all sorts of morbid apprehensions and fears, and every patient would have the possibility of divorce before him, and that would, I think, aggravate his or her sufferings immensely. The care of children is mentioned as one of the grounds on which divorce during insanity is advisable. But divorce is not to be confined to men with children. Men without children may have the benefit of it. But if divorce is not to be obtainable till the end of five years a man's worst troubles with his children will be over before he can get relief. It is with the young children that a man's troubles would occur, and even if his wife's were a puerperal case there could be no child younger than five years when divorce became available, and there might be others much older. In connection with the care of children it is also to be noted that the mothers of young children sent to asylums are largely of the recoverable class. They suffer from puerperal mania, the melancholia of lactation, or other of the milder and more curable forms of mental disease—of course I am speaking very generally—in which no question of divorce could arise. The more incurable forms of mental disease in women arise during adolescence and at or after the grand climacteric—before or after the fertile period. These are comments suggested to me by reading Dr. Clouston's evidence as reported in the "Times."

34,958. Might I ask you a few questions. I can see in looking through your first Memorandum you have covered most of the points that are to be found in it. Would you allow me to put it as a person listening to an exposition by a man thoroughly conversant with medical difficulties; I should like, if I may, to summarise what I gather it to be. I do not say this is exhaustive, but there seem to me to be three categories of persons whom you have dealt with under different headings?—Yes.

34,959. One, a class of case where there is insanity the recovery from which is doubtful?—Yes.

34,960. Another, a class of case in which insanity is the complaint, and where it is reasonably safe to suppose that after some interval, longer or shorter, there will be recovery?—Yes.

34,961. And the third case, to use your own words, where insanity may be safely predicted as incurable?—Yes.

34,962. Now, would you mind just for a moment keeping to the last category where after a sufficient interval—say, three, four, or five years or whatever might

be fixed upon—it might be safely predicted that the case was incurable. Would your view be that those cases may be properly considered to be cases in which divorce should be granted?—No.

34,963. Why?—In the first place there are a large number of cases that would be incurable, but there would be mistakes; mistakes would occur, and then my Lord, I ought to——

34,964. Would you mind keeping only to the one point that is in my mind: cases where it might be safely predicted, to use your words, that the case was incurable. I only want to keep to that?—Yes.

34,965. And after a certain time of manifesting itself—say, three, four, or five years?—Yes, in a very large number of these cases in which it could be safely predicted that it was incurable, no divorce need occur, because they would die before the expiry of the five years if that was the period.

34,966. I am speaking of the cases that exist—the cases that are considered quite incurable?—I should say I am entirely opposed to divorce. I may discount my opinion, perhaps, by saying that I am opposed to divorce altogether.

34,967. Would you say why?—Well, for a great variety of reasons. I think to allow divorce in these cases would tend to lighten the responsibility with which a man would undertake the marriage contract. I do not think, of course, that any man for instance would say in so many words: if my wife goes mad after marriage I can divorce her; but the fact that divorce was possible would lighten the sense of responsibility with which marriage is and should be contracted; and particularly in those cases where there should be care—where there is a family taint on one side or the other of insanity. When you afford remedies of that kind you diminish the care and responsibility with which a solemn contract like that should be formed.

34,968. Do you think anybody standing before the officer or the minister really contemplates that shortly after or sometime after that his partner would be in a lunatic asylum?—I do not catch you, my Lord.

34,969. Do you think anybody standing before a registrar or before a minister of religion seriously contemplates or thinks, for one moment even, that the partner would be ever put into a lunatic asylum?—It ought to be thought over before that. A man ought to look before he contracts so serious a contract as marriage; and in some cases medical opinion should be taken, when there is a taint on one side or both.

34,970. But I have a difficulty in seeing why you think it would lessen the regard for marriage?—Well, thoughtful men will come to a physician now, and say: There is my family tree and my intended wife's family tree, there is tuberculosis, cancer, and so on; and on the basis of that he invites advice as to whether he is to marry or not; and if insanity is included in that it might occur as a possibility to him that there is escape if insanity arises. I do not say a man deliberately calculates in that way; but these things come into a man's mind, and I think it would reduce the care and caution with which the marriage ceremony is entered into. Then, I do not think in my experience that there is any demand for it. I have been in lunacy practice for 45 years, and must have had at least 10,000 lunatics under my care, but I have never once heard a wish expressed for divorce. Of course, I quite understand it is not at present looked upon as a possibility. I have had expressions of the wish that the patient would die and be freed from his or her sufferings; I have even had suggestions that incurable cases should be smothered, but I have never once heard divorce suggested as a solutions of existing difficulties.

34,971. I suppose you are aware that they know at present that they cannot get it?—Quite so.

34,972. The reason why I asked you this is that I have received as Chairman of this Commission volumes of letters demanding that that reform should take place, and in due course they will be placed before the Commissioners. I should like to read one just received, as an example, because these bear very much on your view as to whether it is unlikely to lessen the regard for marriage. Here is the last letter I have got: —"My Lord, Seeing you are taking evidence of the "divorce law of lunatics, I beg leave to state my case "which is one of very great hardship in bringing up a "family, I am in a small way of"—I will not say what, as it might identify him—"my wife has been in [a certain] "asylum for [so many] years and no hope for her "recovery. I am left with [so many] children, the "eldest [so many] years. It has cost me 40*l.* a year "and wages to pay for somone to look after the "children. I am nearly ruined, and there is no redress "at present, so surely something can be done. Could "you kindly let me know if such an Act will pass, and "if it will be long in coming into force, otherwise I "shall have to take her home, and suffer the conse- "quences, as I cannot pay anything more without "the children suffering and leaving"—and then he says where he is. "I hope I am not doing what is not "right, but it will soon take me the same road and leave "the children without a home." I only read that as a sample of a great many. Do you think that that class of person is really likely at the time of their marriage to be affected by such considerations as you suggest?—Certainly not. I have pointed out that there will be cases of intense hardship and suffering. There can be no doubt about that. But my belief is that if divorce were granted on the ground of insanity among the humbler orders it would be chiefly sought for the purpose of getting rid of the cost of maintenance. Throughout our pauper asylums in this country, where the wife is placed in an asylum, the husband is called upon for payment where he is able to meet it of some sum, say of 5*s.* or 6*s.* a week, according to his means; and it would be to get rid of that that he would seek divorce, and throw the maintenance of his wife upon the rates. But with regard to insanity being a ground, my strongest point is this:—Insanity is simply a disease, accompanied by mental symptoms; it is a distressing disease, a harrowing disease, and has terrible hardships in connection with it, but so have all diseases, and if you admit insanity as a ground of divorce, I do not see why a large number of divorces should not be granted on other grounds. Take locomotor ataxia; that is a disease of vicious origin, and the sufferer is subject to painful attacks, and can do nothing in the world, and may be helpless for 20 years. He cannot contribute to his wife's maintenance and he is a burden and a cripple. Why should not divorce be granted? Then take personal disfigurement. A man marries a pretty woman, and presently she contracts lupus and becomes hideous to look upon; why should he be bound to her for life?

34,973. Some countries allow that as a ground?—Yes, I say if you allow insanity as a ground, then you open the flood gates. Myxœdema; there is a case where the sufferer becomes, though he cannot be put in an asylum, heavy and dull and stupid, and unable to do any remunerative work, and is kept alive for years by thyroid injections; he is hopelessly blemished and burdensome. I do not see where you are to stop if you admit insanity as a ground of divorce. Cancer, again, a wife may be prostrated by that for years and undergo repeated operations. It is a terrible thing for a man to have his wife suffering from phthisis for six or seven years; and I do not see why for a score of other terrible diseases divorce should not be granted if insanity be recognised as a justification.

34,974. You said you had several grounds. Does that practically exhaust them?—Yes, I admit a distinction is this: insanity generally requires institutional treatment—that is separation from home; but that is not always the case. A great number return home from time to time; a great number are visited by their relations, and I have known cases of most touching devotion. I have known of a case of a young man who was married, and through an accident became insane, and was placed in an asylum. He was lucid on alternate days—one day he needed the asylum treatment and the next day he was practically well. The young wife took rooms in the neighbourhood of the asylum, and she spent those alternate days with him, and she ministered to him till he died. I am bound to say it seems to me that is running counter to the altruism and self-sacrifice which have played such an

important part in all civilisation to admit divorce in insanity. It seems going back to the savage life, getting rid of the weak and diseased.

34,975. You said that there were several grounds on which you were generally opposed?—Yes, I have set forth in the Memorandum a great many grounds.

34,976. I do not want to go through them all, but can you specify any other important ground that is in your mind?—A man undertakes when he marries that it is for sickness or health, and this is one of the forms of sickness that a man should contemplate in connection with his marriage vows.

34,977. Does the religious question enter into your views at all?—Oh, yes. I am not speaking from a religious point of view, but I believe strongly that the religious sanction is of the utmost importance in avoiding divorce. It seems to me that marriage is a contract, but a contract raised to a higher power and made inalienable and imprescriptible by the religious sanction. I do not know—I daresay statistics are in the possession of your Commission—but I would hazard a guess that there are a great many more divorces where marriage has taken place in a Registry Office than under religious sanction. I should hazard that.

34,978. I am not sure that you are right there as I have a return of the divorce statistics which shows the number of the denominational marriages which have been the subject of divorce. I do not know whether you have seen those?—No, I have not.

34,979. I will give you them for two years. I do not think they have been brought out yet. The decrees nisi—I will leave out restitution and judicial separation—in 1907 were: Church of England, 410; Roman Catholic, 7; Denominational Protestants, 50; Jewish, 10; Registry, 141; Foreign, 5. In 1908: Church of England, 485; Roman Catholic, 9; Denominational Protestants, 54; Jewish Synagogue, 17; Registry, 156; and Foreign, 2?—Yes.

34,980. I have not got here at the moment, though I think we have it somewhere, the proportion of marriage in the Registry to those in Church; but apparently there are about three times as many divorces in the one as in the other, though I fancy the statistics show the number of marriages in the Registry are a good deal less?—Yes. What is the proportion of the total number of marriages taking place in churches of one kind or another in the registrars' office?

34,981. I say I have not those——

(*Sir Lewis Dibdin.*) Roughly about 70 per cent. of the marriages are in Church.

34,982. (*Chairman.*) Well, 70 per cent. are in Church. That is very nearly the same thing then as the relation between the Registry and Church of England divorce cases?—Yes, but what I want to know is the percentage of the total number of marriages taking place in Churches and the total number in the Registry Office.

34,983. 70 per cent.?—No, that is the total number of marriages. If I recollect aright, of every 1,000 marriages 800 take place in churches and 200 in registrars' offices. The proportion of divorces to total marriages is therefore much higher in the registry than in the Church marriages.

(*Sir Lewis Dibdin.*) No. Quite roughly, my Lord, the proportion of Church marriages to the total number is about 70 per cent.

34,984. (*Chairman.*) That is very nearly the same proportion as the relative proportion between divorce where the marriage has been in Church, and divorce where the marriage has been in the Registry?—As I believe marriages not only in the Established Church, but in churches of all kinds, to be at least 80 per cent. of all marriages, it seems that the divorces in registry cases are considerably in excess of those in Church cases.

34,985. So I do not think we can draw any safe inference from that?—Perhaps not, but I attach great importance to the religious sanction as exercising an influence over the whole married life. I have even attempted to connect the fall in the birth rate with the loss of the proper sense of the sanctity of family life. I quote Mr. Bertillon who says, where in Breton there is no divorce there is no fall in the birth rate. That is the only part of France, I believe, where that is so.

(*Chairman.*) I think that covers all your Memorandum deals with.

34,986. (*Sir Frederick Treves.*) You are opposed to divorce altogether, on any ground?—I am entirely opposed to divorce.

34,987. And I take it that is to some extent on account of the solemnity of the contract?—It is on general social grounds as well as on the religious sanctity of the contract, that I am opposed to divorce. I admit, of course, that I am perhaps in a minority in the matter, but in the long run I think it is of the utmost importance to make it a bargain that could not be broken, and that if entered on with a great deal more care, and circumspection, trouble would be avoided. (*To the Chairman.*) I did not refer to the question of nullity, my Lord. I do not know whether you refer to that on this Commission.

(*Chairman.*) No, we need not trouble you about that. We know the laws about that pretty well.

35,988. (*Sir Frederick Treves.*) Dr. Clouston was dealing with a class of patient—25,000 in number—who were in his opinion incurable, mindless, and unable to fulfil any contract or even to understand the basis of a contract, and who would be totally unaffected by any question of being divorced or not, and who derive no comfort from the visits of their friends?—I do not agree with that. I think Dr. Clouston put the figure at 41,000.

34,989. That is the total, but taking the cases of what he calls incurable secondary dementia the number comes out at 25,000?—You must draw a distinction between those who are absolutely incurable. In that absolutely incurable group there would be a large number quite capable of understanding about divorce and being pained by it. I presume a citation would have to be served on them in each case, or that some notice would have to be given to the patient in the asylum, and that would be very humiliating and distressing to those capable of understanding it.

34,990. He regards the affection of some of these people for their relatives as being perverted or dead?—Yes, but it is difficult to say that that is so in any particular case.

34,991. And that they would be unable to understand the prospect of divorce?—There are such, but I think a very much smaller number than he estimated. Then, of that incurable group, you must remember one half would be single and a large proportion widowed, so that reduces it to a comparative small number.

34,992. He is speaking of only married patients?—Oh, I see.

34,993. Then Dr. Jones on the other hand, particularly pointed out the evils that he, in his experience of insanity among the poor, has seen from this; the amount of immorality that has arisen from it—from a husband having no wife except in an asylum or *vice versâ*, the wife having no husband to look after her children; and moreover (a point which I am sure you would pay heed to) the fact that if there be 41,000 married lunatics in this country there are 41,000 people who are unable to, possibly, add healthy children to the community?—These evils are perfectly parallel in the case of many bodily diseases. All disease has pain and suffering and misery and disability associated with it. Then, I suppose, it is not proposed that divorce should be granted under five years' continuous insanity, in which case the man's worst difficulties are over by then; the man's children are growing up. It is the first five years while he would be waiting for his divorce that all the trouble and difficulty would occur. Then I have seen cases like this. A woman is put into the asylum for puerperal mania after childbirth, and the case becomes confirmed, and it goes on for five or 10 years; but she is constantly visited by her children, and they show her constant affection and pay all sorts of attention to her. I think it would be eminently distressing and humiliating to her and to them that she should be divorced. As I have said, a man may be in an asylum and pronounced incurable and be divorced—and I am sure Dr. Clouston would not dispute that cases are pronounced incurable which do recover—and that man may have been in an asylum 15 years, have been divorced, and then recover. He goes home and finds another man in his place, and

he is deposed from the head of the household and family. He might not have the divine self-abnegation of Enoch Arden of going away and hiding himself, and you might have great difficulties arising in consequence.

34,994. But the proportion of recoveries between three and five years is 9 per cent., the proportion between 6 and 10 years is 1·9 per cent.?—The proportions of recoveries is nearly 37 per cent. of the admissions.

34,995. But I am speaking of after admission?—Oh, I do not know the statistics to which you refer.

34,996. So your Enoch Arden would be, perhaps, one out of a hundred?—Yes, or if divorces of lunatics became frequent perhaps one out of ten, but none the less dangerous.

34,997. And you particularly say in your proof that a certain proportion of people must be sacrificed for the good of the whole?—Yes.

34,998. Consequently, you are only sacrificing one man for the sake of the 100?—By conceding divorce to a few hundreds of husbands and wives of insane persons you would, I believe, wound and embitter thousands of lives, and debauch the whole community. The way in which they go on visiting for years and years and years their afflicted relatives in asylums is eminently touching, and it would be a great distress to many of them to entertain even the possibility of divorce.

34,999. Yet you speak of a type of insane person as practically a corpse?—Yes, but even a corpse has its claims. I saw in one circular of the Divorce Reform League which was sent to me, a statement that a woman might have to live with a husband who was a homicidal and bestial maniac. I say that is nonsense. The same evidence that would justify a divorce would justify her in shutting him up in an asylum; and if she took a divorce against a husband who had lucid intervals, then on his discharge her position might be very difficult. Then, again, I have said it would be very painful if crime should be admitted as a ground of divorce, that insanity should be put on the same ground as crime—if both were a justification for divorce.

35,000. Would you really hold that insanity is to be placed on the same parallel with any disease. You quote smallpox, for instance?—Oh, that is an acute disease.

35,001. But you quote it?—I quoted it with reference to its disfiguring effects. It is a disease with regard to disability for work; for the maintenance of the family, for any useful work or self-support which I mean. Insanity is in these respects on a perfect parity with a great many bodily diseases.

35,002. But take a paralysed person with, say, locomotor ataxia; a paralysed person is absolutely helpless, but may be a very charming companion?—Yes.

35,003. And capable of conducting the business of the family?—I should not say so.

35,004. But you cannot say that of a lunatic?—No, not always, although some lunatics do conduct business successfully, I admit the institutional treatment is the difficulty, but I do not see any difference really between it and a case of myxœdema. Take exophthalmic goitre. A man marries a woman, and her eyes start from her head and she gets enlarged thyroid, and becomes very impulsive, and is a great trouble in the house. She is not insane, but she is a burden. Is she to be divorced?

35,005. But a woman who has exophthalmic goitre or Graves' disease is still intelligent and capable of being a companion?—Yes, but only to some extent, and so are many of the insane.

35,006. And there is the question of public opinion?—Yes.

35,007. A man who divorced his wife for hopeless insanity may not be ill-criticised; but with a man that divorced his wife for small-pox or Graves' disease it may be different?—I do not say anything about acute cases of small-pox that are well in six weeks or so: but I believe public opinion would be against it amongst the humbler orders, and that a man who divorced his wife because she was in an asylum and was an object of sympathy would be looked at askance. I think in the humbler walks that would be so, and wherever there is still a sense of the sanctity of marriage.

35,008. Dr. Clouston did not include general paralysis of the insane?—He spoke of it. It is reported in the "Times."

35,009. Yes, by answering that it is generally incurable in three years?—Being so rapidly fatal.

35,010. He said he would not include it if he had to schedule insanity?—Dr. Clouston spoke of one or two experiments with regard to general paralysis that seemed to open out a hope; but at the present moment there would be no difference of opinion amongst medical men that general paralysis is incurable and would terminate in three years.

35,011. (*Mr. Burt.*) I have just one or two questions, Sir James. You are absolutely opposed to divorce?—I am.

35,012. Under any circumstances?—Under any circumstances.

35,013. Well, assuming that divorce is allowed as it is, would you place an unfaithful husband on the same footing as an unfaithful wife?—I do not catch the question.

35,014. Would you place the unfaithful husband on the same legal footing as the unfaithful wife?—No, not on biological grounds. I think every biologist would agree with me that a man is not on the same level sexually with a woman. In the first place, the consequences of infidelity are different; and there cannot be a question that the sexual passion is stronger and more aggressive in man than in woman. It is so throughout the animal kingdom. The man is katabolic; the female is anabolic—more passive and cool, and the temptation of the man is much stronger; so on biological grounds it is not the same. It may be that a stronger temptation demands the stronger restraint and requires the heavier penalty. I believe, in my own country—in Scotland—the sexes are exactly on a parity, but then in Scotland, taking the whole population, divorce is comparatively rare, I believe. But I certainly could not place the sexes on the same footing on biological grounds.

35,015. (*Chairman.*) I think you ought to be apprised of the fact that it is 200 cases for the Scotch population and 600 for the English?—I am only dealing with my own personal knowledge. In fact, in my own district in Scotland I have rarely heard of divorce. There are other forms of irregularity in the South of Scotland, but divorce is unusual.

35,016. (*Mr. Burt.*) Would it be a fair question to ask: How do you know that temptation is greater in the case of a man than a woman? Do you put that on medical grounds or as a matter of opinion?—I am not suggesting that that is a ground, but I only state a fact, as I believe it, that the man's sexual feeling is stronger; that he is exposed to greater temptation than the woman. It is not for me to say if that should be a ground for making different penalties.

35,017. But you put that forward as the main ground for making a difference?—Yes, the consequences may be very different in the two sexes.

35,018. (*The Earl of Derby.*) You have spoken chiefly of cases where there are children. I should like to ask if in cases where there are no children and the man's wife is put in a lunatic asylum and she may be in for 25 years with practically no chance of recovery would you give a man no chance for making a home for himself?—None at all. It is very hard. It occurs in other diseases. A man may marry a woman who becomes such an invalid that he is deprived of all marital rights, and that may go on for years and years and he has to bear it.

35,019. In those cases he is not deprived of her companionship; she may be living in the same house?—But I am taking a case of a confirmed invalid spending her winters, perhaps, at Davoz or some health resort and he getting no companionship; there are hundreds of cases of this sort. It is one of the penalties of disease, all disease has penalties connected with it.

35,020. Do you think it is as strong a case as where a man has no children and a wife shut up in a lunatic asylum for 25 years and not allowed to see her?—He should probably have taken more thought before he married her. She is probably a member of an insane family, or something of that kind. But in all these things it is necessary to get now a careful marriage

selection. All my hopes are grounded not on granting divorce in the case of chronic lunatics, but on the prevention of insanity both by eugenic foresight and the progress of sanitation, temperance, and so on.

35,021. But as we do not prevent would not you give a man or a woman some relief?—No. Of course, I admit terrible hardship at times, but it is inseparable from our civilisation; it must be so.

35,022. (*The Archbishop of York.*) I want to ask one or two questions, from the purely medical side. Your opinion, I think, is that what is called expert evidence in any cases which had to be tried as to insanity before the Divorce Court would be an extremely varied and controversial thing?—Undoubtedly. I have not the slightest idea what practical scheme has been proposed before the Commission; whether it is proposed that a lunatic shall be divorced by a judge or a jury or simply on medical affidavits. I should think it would be most dangerous to allow it on medical affidavits—simply affidavits of a couple of medical men saying that the insanity is incurable. It would have to be by judicial authority, and then you would almost always get expert evidence on one side and the other.

35,023. Even in the case of recognised experts?—Yes, in poor cases even more so, because the poor cannot afford them. In the case of the poor who could not afford to take proceedings, the guardians would have to intervene. When a man is getting rid of his wife, and he is paying 6*s.* a week, the guardians might oppose it and say: Are you to throw your insane wife on the rates, but her case is not hopeless? In a bodily disease if a man can maintain his wife he has to do it, and the guardians would say, you have been paying 6*s.* a week for this woman, why should you throw her on the rates. They should oppose the divorce on that ground.

35,024 Do you agree with Dr. Jones that duration and not definition is the only way of getting at the degree of insanity?—Yes, duration; and even then I can tell you of the recovery of a case after 22 years. A man was supposed to be hopelessly insane for 22 years, and he perfectly recovered, and the Court of Chancery superseded him on affidavits and granted him control of his property. As to definition (I am sure all my medical colleagues will assent), we are not agreed as to the different forms of insanity. I have seen certificates in one case with one man calling it one form of insanity and another another.

35,025. But as to duration, would it not be necessary to prescribe for different kinds of insanity different durations?—Undoubtedly.

35,026. If they were to be regarded incurable for the purpose of divorce?—I think Dr. Clouston contemplated that when he proposed in one group of cases five years and in another 10 as the duration warranting divorce. He said in one form of insanity he would grant divorce in five years, and in another, in which recovery might take place at a later date, he would make it 10 years; and he would have a graduated scale; but medical men would not agree as to which part of that scale an insane man should go into.

35,027. So that in framing a clause for an Act of Parliament it would be necessary to prescribe different durations?—You would have to have a schedule.

35,028. And that would bring the definition to suit these different durations?—Yes, about which there would be endless difference of opinion.

35,029. With regard to the question of prevention; are you in favour of the State taking steps to see that all persons desirous of contracting marriage were able to show a fairly clean heredity?—That would be a very extreme measure, your Grace. I cannot understand the State interfering to prevent a marriage on medical grounds. I think the State might afford some facilities for avoiding undesirable marriages. For instance, I should allow the discovery that the woman had suffered from insanity to be a sufficient answer to a breach of promise action. If a man is going to marry a woman, and it is discovered that she has had a previous attack of insanity, I think that should be a sufficient answer. A man ought not to be compelled to marry a woman who has had an attack of insanity, or to pay damages for his prudential caution. As to the interference of the State, I suppose a man would succeed in a suit of nullity if she was actually mad at the time of marriage. I might mention the case of a medical friend of mine who was in active practice and became engaged to a young lady. He being a very busy man the courtship was short. He married her, and in the carriage on the way to the railway station he discovered that she was mad—had all sorts of delusions. He hesitated whether he should go back and give her up to the family, or go on. He went on, and spent the honeymoon on the Continent—she was mad all the time. On the way home from Calais to Dover he heard the cry, "Man overboard," and he saw his wife had thrown herself overboard. She had a crinoline on, and she was buoyed up and saved. Then the delusions disappeared, and they lived a happy married life for 20 years after, and there were children and all went well. If there had been evidence that before the marriage there had been signs of madness, then there might have been a suit of nullity. I have no objection to that.

35,030. Would you be prepared to enlarge the grounds on which a decree of nullity could be obtained?—Oh, well—coercion of any kind might be a ground, of course. I may say I understand that until 1873 all the wards of the Court of Chancery—all our lunatic wards were protected in that way—that if anyone married them the marriage was, *de facto*, null by Statute; there was no necessity for a suit to be brought. But in 1873 the Statute Revision Act set that aside, and now the Chancery wards are, I understand, on the same basis as ordinary lunatics, and it is a question of proof. But, of course, with existing insanity at the time of marriage there is no marriage at all; consent could not be given.

35,031. But would you be prepared to allow a decree of nullity in cases where there was reasonable proof forthcoming that one of the parties, though quite sane for ordinary purposes at the time of marriage, had a family history or a physical constitution of such a kind as to make it almost certain that insanity would arise?—No, that would be very dangerous, I think. Only on clear evidence that at the time of marriage either of the parties did not fully apprehend and understand the nature of the contract—not merely repeat the words, but understand the nature of the contract—should I allow it to be set aside.

35,032. (*Chairman.*) That is the law now; you must have a consenting mind?—Yes, quite so, but I would not allow a mere family tendency to justify a suit of nullity—that would be very dangerous, I think.

35,033. (*The Archbishop of York.*) Then I want your feeling about the proportion of divorces in the Church of England. A question was asked by the Chairman, and perhaps reported, which may give a very wrong impression of the facts, and I can only remove that impression by asking a question. You are aware that the reason why there is a large proportion of cases put down under the Church of England is that the law compels the Church of England to marry any parishioner that comes to the parish church?—Yes.

35,034. Therefore it would not be right to imply that the largest number of divorces come from the Church of England?—That is so.

35,035. With regard to the question of immoral consequences of husband or wife having insane spouses; that would, of course, be equally true whatever the character of the insanity was?—Undoubtedly.

35,036. Even if it was of a comparatively slight kind?—Undoubtedly, yes.

35,037. When you speak about being opposed to divorce generally, I gather you are opposed to it rather on general social grounds than on what may be called ecclesiastical grounds?—I am not indifferent to the ecclesiastical grounds. but it is on social grounds that I have spoken. I believe it is a most solemn contract for life, and that no one ought to be allowed to break it. It is a bargain for life. I have no doubt the abolition of divorce would produce great misery and wretchedness in some cases; but I think for the good of the community at large, and looking to the future, that it would be well to prevent it altogether.

35,038. You quite hold that belief, apart from any doctrinal view?—Yes, on social and medical grounds.

35,039. (*Lady Frances Balfour.*) You spoke about the artizan class, and that it was a great preventive

——?—I come in contact with a large number of them in Yorkshire.

35,040. I know. It was a great preventive if they have to pay for a wife in the asylum?—Yes, they have in accordance with their means.

35,041. They would not divorce in order to get rid of that payment, but because they want to start a new family and wife; marry again, which would be more expensive than the 6*s*.?—The 6*s*. would fall on the rates.

35,042. (*Chairman.*) Not necessarily?—Is a man to continue paying for his divorced wife in an asylum?

35,043. Very likely. He has to now, sometimes?—Then, I think, there would be very little divorce in the humbler classes on account of insanity; it would be the hope of relief from payment which would lead to divorce proceedings being taken.

35,044. I only interpose because we can make it a condition in the Divorce Court to the husband getting a decree—that he shall provide for her to prevent her being put upon the streets. It is a regular suspension.

35,045. (*Witness.*) As I point out, in that artizan's case, if I understand the proposal properly, he would not get the relief at the time it was most urgently needed. It is when the wife first goes to the asylum and there are young children on his hands that he most needs assistance.

35,046. (*Lady Frances Balfour.*) I am only trying to defend the artizan from the charge of getting divorce on the ground of economy. Because if he has to support his wife in the asylum he also has to support his housekeeper if the children are at home?—Yes, he has to support both, but I am assuming that divorce would relieve him from contributing to maintenance of his wife in a pauper asylum.

35,047. As to the relations between him and the housekeeper, I do not know whether morals are much helped by the wife being in an asylum. Then you make no distinction between consumption, paralysis, or cancer, which may be nursed at home, and the disease of insanity, which in most cases puts the patient away from the husband or wife?—I have pointed out the distinction you refer to. Of course, divorce would not be confined to patients who are in lunatic asylums, and there are a very large number of lunatics who still remain at home—who are living at home; a very large number throughout the country who have not been certified or sent to asylums, and it would equally apply to them. If a man wanted to get his wife turned out of the house, and she was insane, he could apply for a divorce, even if she were a mere harmless mental invalid. Regarding those who are in asylums, too, there is a very considerable proportion in the habit of going home from time to time in lucid intervals on trial and who are discharged relieved.

35,048. There is a proportion. Of course, that also brings in the consideration whether it is very good for the future generation that should go on?—The danger to future generations in the person of a discharged lunatic is not confined to one who is living with his wife. Of course, in the artizans' class there are a certain proportion of the wives labouring under bodily diseases in hospitals and institutions, and are away from home as much as the lunatics; cancer for instance. I have known of cases going on for six years, away from home all the time, undergoing operations and so on. It is just as hard upon that man as in the case of a lunatic.

35,049. It is more unusual that a cancer case should last six years?—I have known it last 20 years in a woman past middle age. I have said before that I think the difficulty is the institutional treatment of the insane.

35,050. You make no distinction between the disease which leaves companionship possible and the disease which removes all possibility of companionship? You make no distinction between the two?—What is the distinction you wish me to draw?

35,051. I only ask if you make no distinction between those diseases which leave companionship possible ——?—Certainly not; all disease more or less interferes with companionship. Insanity is a physical disease; it is a bodily disease accompanied by mental symptoms. There are scores of bodily diseases that are not called insanity which are accompanied by mental symptoms. Phthisis is often accompanied by mental symptoms. Insanity is a more grave and a more protracted form, but it is a bodily disease. This seems to me to be running counter to what ought to be our object; our object is to get it regarded as a bodily disease; to get rid of the prejudice against it. We are calling our asylums mental hospitals, in order that we may get rid of that stigma of insanity, and regard it as a physical condition to be treated as any other disease; and if you attach a penalty of this kind to it you run counter to that tendency.

35,052. (*Mrs. Tennant.*) Sir James, you feel that if there were the possibility of divorce for insanity, it might interfere with the care with which people enter into the marriage state?—I think so.

35,053. Have you considered that it might give care and prudence which is now absent, when relations wish to provide for a woman who is to their knowledge bordering on insanity?—I think, of course, that a great many foolish marriages now take place that would not be sanctioned by any medical authority between people with the same pathological tendencies, but I think that divorce would rather diminish the sense of responsibility with which a man enters on marriage, when there is insanity on both sides.

35,054. But I have in mind counter cases within my own experience, where relations have endeavoured to provide for one member of their family, feeling she is settled for life if they can succeed in marrying her?—Yes.

35,055. Do you think that it might help if they could feel she was, perhaps, not settled for life?—Because in those cases there ought to be self-control. I have known a case where there was hereditary insanity in the family—several cases, all from the same form of mental disease; and the three sons met round the father's grave: he was the last of the number that died insane—and they registered a vow that none of them would marry, and they did not; they lived bachelors and they died bachelors. That is a fine piece of self-control and abnegation.

35,056. But I had in my mind unhappily different cases, where a person about to be married is not capable of self-control, and where her family are endeavouring to provide for her by getting her married and off their hands?—In cases of property?

35,057. Not only. I will not say it is common, but it is within my experience in the case of working women: their families find a difficulty in supporting them, or they hope that marriage may restore their mental balance, and they succeed in getting them married, with the feeling that they are settling them for life. I ask whether if divorce were possible their security would not be less?—That is a matter of voluntary control. I do not exactly see how that applies to divorce.

35,058. If they realised that the man need not keep her for life, then they would not feel they were securing her prospects as they do now. I am trying to get the balance of advantage. You feel that the person contracting a marriage should observe greater care?—That is so.

35,059. But that he would be made more careless by the knowledge that divorce is possible?—I do.

35,060. And now I am putting it to you whether you do not feel that other persons—the girl's family—might not, if divorce were possible, recognise that the husband might get rid of his insane wife. Might not that produce caution where sometimes now there is none?—I do not think it would increase the caution, because in such cases there is now the risk of a suit of nuility. As it is, men come to a medical man and say: "Would it be prudent to marry this woman with her "family history." But if he was very much in love with her, and he felt: "Well, I could dispose of her if she goes mad"; I think that might diminish the sense of responsibility under which he enters into the contract.

35,061. Few sane men would consciously face the risk of insane children? But I am talking of cases which perhaps are not within your experience—if so I will leave the point—where a family thinking to do

well for one of its members succeeds in marrying that member who is insane to a man who is sane?—For prudential motives?

35,062. Yes. They would feel less security in their act if they recognised that the man need not keep the woman for life?—Of course, it is very hard for a man with a large property to marry a woman and then he finds he has no children, but he cannot get divorce for sterility.

35,063. Dr. Clouston distinguished in his evidence about the visits of relations, between the husband and wife and other relations. Do you distinguish in the same way, or do you feel that the husband very often visits the insane wife, and the wife constantly visits the insane husband?—I do not think there is any distinction. Do you mean as to the attention paid by the husband to the insane wife?

35,064. I have not Dr. Clouston's evidence in front of me, but I think his statement was that the insane husband, or the insane wife, was not as often visited by the partner as he or she was by a mother, and I think he especially mentioned maiden aunts?—Oh, I have no doubt that is so, but, for instance, in the West Riding it was very difficult for the husband to visit his wife. He had to travel perhaps 15 or 20 miles, and he could not leave his work, but on the holidays the place was crowded with husbands coming to see their wives, and other relations coming to visit too. I have been extremely touched by the affectionate solicitude shown for women who have been insane for 20 years, and by wives for their husbands under long continued insanity.

35,065. Then you do not agree with that distinction?—I agree that the wife is often occupied in the household and she cannot get away, and she may send the children or a neighbour to visit her husband; but that is owing to industrial considerations; not to any lack of affection.

35,066. (*Lord Guthrie.*) You are opposed to divorce altogether?—I am.

35,067. You know at the present time the Courts can decree a permanent separation without divorce?—Yes, judicial separation.

35,068. Are you opposed to that?—No, if a woman and a man cannot agree they must separate.

35,069. That is not the point. Do you approve of the Courts preventing their return unless by mutual consent?—After a judicial separation?

35,070. Yes?—I cannot dictate to the Courts. I should have thought the Court would in every possible way promote reconciliation.

35,071. That is not the point. You are opposed to divorce altogether?—I am.

35,072. Do you approve of what for practical purposes, generally speaking, is the same thing as far as the State is concerned—permanent judicial separation?—I do approve of judicial separation. I see no objection to that.

35,073. Would you approve of judicial separation on the ground of insanity?—I do not see what effect it would have. There is the separation if one person is in the asylum and the other is not.

35,074. Then suppose a husband to be insane for a term of years, and his insanity is recurrent; then he comes out. Do you approve of the present position which is that he is entitled to return and to insist on cohabitation?—No, I should give the Court power to prevent that.

35,075. Then would you give the Court power to give judicial separation in such a case on the ground of insanity?—Yes, to prevent him from molesting his wife, decidedly.

35,076. And to prevent him insisting on cohabitation with her?—Yes, but that is not irremediable, apart from divorce. That man who for a time has been debarred from having access might completely recover, and then he would return to his family.

35,077. Would you give him power to come back to the Court and if he could establish that, then to return to his wife?—Yes, if he could establish complete and permanent recovery. *Folie circulaire* is marked by phases of depression and excitement and lucidity; and sometimes it is a small circle and sometimes a large one, and sometimes the sufferer entirely recovers.

35,078. Do you approve of a man who has been confined for a term of years in an asylum and comes out returning to his wife and procreating children?—I do not see how that is to be prevented. I do not approve of it. I should think the man would be very well advised to observe abstinence, but if he has been a long time in the asylum his wife has very likely passed the child-bearing period; if he has been 20 years in an asylum probably she has.

35,079. Supposing a wife is advised that while the husband has apparently recovered the insanity may return. Would you approve of his returning to her then?—I do not think any woman should be compelled to live in fear of her life. I recall a case where the judge said that no woman is compelled to live with a husband who is dangerous, but the remedy is not the relief of the woman but the restraint of the husband; so I should have legal restraint placed on the husband.

35,080. Do I understand in your view the decisive consideration of whether divorce should be given for lunacy is the interest of the insane person?—There are many considerations.

35,081. No, I am talking of the decisive one. I suggest to you from the point of view of the State the decisive consideration should be the interest of the sane spouse, and the children existing and possible; but I understand from you you think the decisive consideration—— ?—I should think every individual is to be considered in the matter.

35,082. I do not see how you can answer a question till you hear it?—The husband is the afflicted being. He is suffering from disease, and he is afflicted and especially in need of the protection of the State.

35,083. Excuse me, that is not the question. I have suggested to you one view that the decisive consideration should be the interest of the sane spouse, and from the point of view of the State and of the children existing and possible. Do you agree with that, or do you think the decisive consideration should be the interests of the insane person?—I think that all interests should be considered, but which is to be the decisive one is not a medical question, but one for the State.

35,084. Do you decline to answer the question?—I do not. I say that all interests should be considered and justly balanced; but the afflicted man is not to be ignored, and the really decisive interest, in my view, is public morality.

35,085. Suppose that divorce for lunacy were put under four conditions. Firstly, suppose it were confined to those in asylums; secondly, to those who had been in asylums for five years and upwards; thirdly, to those who have so been in asylums continuously; and fourthly, to those who are certified as in all human probability incurable. You think the number of cases would be reduced to a small amount?—Decidedly.

35,086. Now suppose it were so reduced, do you see in the interests of the State any objection to divorce for insanity being allowed under those four conditions—in the case of the small number to whom it would be applicable, and in whose cases it would only be the minority?—That does not in the slightest degree alter my opinion, because it would not only be applicable to them, but all insane patients would suppose it would be applicable to them; and the urgency for a change of that kind is the less, the less the number that would be affected by it.

35,087. (*Sir Lewis Dibdin.*) I did not quite follow your answers to Mrs. Tennant. The point I understood her to put was this. You were speaking of whether the change in the law would decrease or diminish the sense of responsibility with which the marriage is entered into?—Yes.

35,088. Consider this case. There is a woman a member of a family who is mentally deficient, not obviously, but really so. Her family want to get rid of her, and they persuade somebody to marry her without his knowing what her state of mind is; in other words they plant her on him, or commit a fraud. It is suggested to you that if a man who has been so defrauded could divorce that woman—if that were the law—the family would be less likely to commit that fraud, because they would see in advance that it would not always be successful. Now what is your view as

to that. It is suggested that that would make them more careful, and not less careful before that marriage was performed?—In that case the man marrying a weak-minded woman like that there is a perfectly existing remedy in a suit of nullity.

35,089. No, I am taking a case where the present law of nullity would not apply: a person who is not mad in the sense that you could get a decree of nullity. That is an irrelevant case. Apply your mind to the actual point put to you?—But you assume she is weak-minded.

35,090. Well, there is a deficiency?—What does the deficiency amount to; it all depends on that.

35,091. Well, not to that for which a nullity could be got?—In a case like that a man is bound to satisfy himself as to the mental capacity of the woman he is about to marry, and if he does not I would leave him to himself.

35,092. Sir James, you are not doing yourself justice. I am imagining a case where a man is imposed upon?—I can scarcely conceive of such a case. If he has allowed himself to be imposed upon, he must suffer the penalty of having made a very bad bargain, and he cannot have a remedy. I have known a case where a man has married a weak-minded woman for her property.

35,093. No, do not go into something that is not the question. You would give him no relief?—No, not beyond what a suit of nullity affords.

35,094. (*Chairman.*) Would you let me ask you one more question. You said that there would be a difficulty in divorce cases in the judge arriving at his conclusion on medical experts' evidence. You are aware, are you not, that that always arises where the question of a sane or insane person is in issue?—Yes.

35,095. And it always has to be determined?—Yes.

35,096. And whether it is difficult or not it is constantly done?—Yes, but this would lead to a wide field of expert evidence.

35,097. But you know that is done with regard to wills?—Yes, and I have given evidence before your Lordship on several occasions.

35,098. Yes. One other point with regard to nullity. If I might state it in another way there might be cases where the person was really insane, though at the moment it was latent, and yet have had sufficient mental capacity to consent to a marriage, fully realising that it was a marriage?—Yes.

35,099. You understand that?—Yes, clearly.

35,100. Would you go so far as to say that while that is a legal binding marriage at present that the law should be altered to give the sane person a right to get a declaration of nullity if it were proved that the woman or man, as the case might be, were in fact insane though capable of giving consent at the time of the marriage?—Yes, undoubtedly—not able to give full knowledge and consent.

35,101. That is not bringing your mind to the question. I am assuming that they have in fact sufficient intelligence to thoroughly consent with knowledge of what they are doing, but that in fact they are mad in some way which would develop immediately afterwards perhaps, but which is proved to exist at the time. Now I want to know whether you would advocate a change in the law to admit of a declaration of nullity in such cases?—That would surely be a question for the Court, my Lord, as to what the mental condition of the person was at the time.

35,102. No, the Court can only administer the law. I am asking if you would allow a declaration of nullity in such cases?—Yes, I would. The great difficulty in cases of nullity is that, a marriage being an exceedingly disturbing and agitating event, it is suddenly followed by insanity sometimes; and the difficulty is to know whether the insanity commenced before or after marriage.

(*Chairman.*) I have to thank you on behalf of the Commissioners for your very valuable evidence.*

Dr. SIDNEY COUPLAND called and examined.

35,103. (*Chairman.*) Your qualifications are those of Doctor of Medicine and Fellow of the Royal College of Physicians?—Yes.

35,104. And you are one of the Commissioners in Lunacy?—Yes.

35,105. You have been good enough to prepare a memorandum to lay before the Commissioners as the basis of your evidence?—I have.

35,106. Some of it is so carefully detailed that I should like to ask you to read it, because it is statistics and I cannot really ask questions on it; and we can ask you questions afterwards?—Of course statistics are always difficult to follow when they are read, but I hope——

35,107. We shall have them printed after. I have a large number of tables that you propose to put in?—Yes. "The statistics appended to this memorandum are based on the returns which are annually made to the Commissioners in Lunacy, as well as on the figures published in the reports of certain of the county and borough asylums of England and Wales. Only facts bearing on the subject of insanity in married persons, and on the prospects of recovery are here included. (1) *Number of the Insane.*—On the 1st January 1910, there were under care in England and Wales, 130,553 persons certified as insane. Of these, 60,528 were males and 70,025 were females. (2) *Proportion of Married Persons.*—There are no available statistics of the numbers of married insane persons in the community, but only of those who are annually admitted to care. The yearly average of such admissions for the two years 1907–08 gives a total of 21,813 persons, of whom 9,537 were stated to be married. The proportion of the married to the total admitted was: males, 44·4 per cent., females, 43 per cent. Of the married males there were 3, and of the married females 9 who were below 20 years of age. The admissions *at ages 20 years and upwards* amounted to 20,523, of whom 9,826 were males and 10,697 were females." That is to say, the males were to the females as 100 to 109. "Of the former 4,669, and of the latter 4,861 were married." That is to say, 100 males to 104 females. The relative ages of these persons are given in the table (Table I.) which I have put in. "From this it appears that the proportion of married females below 45 years of age was almost the same as that of males above that age."

(*Chairman.*) The shorthand writer will insert that in your proof there.

The following is a summary of the table referred to:—

	Males.		Females.	
	All Classes.	Married.	All Classes.	Married.
At 20 to 44 years -	55·8	43·6	55·5	56·0
„ 45 „ 64 „ -	33·4	45·3	33·3	37·8
„ 65 and over -	10·8	11·1	11·2	6·2
	100·0	100·0	100·0	100·0

35,108. (*Chairman.*) From those figures are you able to give us some estimate of the total number of married people confined in the asylums, say in each year?—Now, at the present time?

35,109. Or in January 1910?—Well, on an average there are about 20,000 admissions in the year, and there are now at present about 130,000 under care. I suppose one might roughly estimate the proportion of married from those.

35,110. That is all I care about. We do not want the precise details?—No. I might say there would be about six times as many as are admitted. That would be about 60,000.

* *See also* supplemental note by the witness, App. XV. p. 127.

35,111. Then the next table is "Comparison with General Population." Is that a useful table for us?—I do not know that it is. I thought it was rather interesting.

35,112. May we not take it now from the word "Nevertheless"?—"Nevertheless it will have been seen that in each separate age-period the proportion of the married was considerably higher in the general population than in the insane. This obtains for each sex, and the sum of such difference at all ages from 20 years upwards is expressed in the statement that, whereas in the general community, for every 1,000 persons of each sex there were 633 males who were married and 575 females, the proportion of married males amongst the insane admitted into asylums was 475, and of females 454 per 1,000."

35,113. Are these tables on the next page taken from the general table which you hand in?—Yes.

35,114. Because we will have those printed separately. "Recovery from Insanity," paragraph 4?—"The annual recovery rate reckoned upon the total number admitted into the county and borough asylums is about 36 per cent. From a study of the figures yielded by 43 asylums (*see* 61st Report of the Commissioners in Lunacy, page 10 *et seq.*) it is estimated that of those who were discharged as recovered (amounting to 37·3 per cent. of the total admitted) within a period of 20 years from the date of admission, nearly nine-tenths were so discharged within the first two years. The actual proportion was 88·8 per cent. A further 9·1 per cent. recovered in from 3 to 5 years, 1·6 per cent. in from 5 to 10 years, and 0·5 per cent. in 11 to 20 years. On this basis, with a total admission rate of 20,000 per annum, the recoveries in the whole period of 20 years would amount to 7,460, of whom there would have recovered ——" And I show that out of that number from ——

35,115. I should like to have those figures?—Out of 7,460, there would have recovered—

"Within 2 years of admission - -	6,625
,, 3 to 5 years of admission -	679
,, 6 to 10 ,, ,, -	119
,, 11 to 20 ,, ,, -	37

"There are no available statistics to show what proportion of the whole number of patients now under care may be regarded as incurably insane, but of late years several asylums in their annual reports have published a return in which the inmates in residence at the close of the preceding year are divided into three groups, according as to whether the prospect of mental recovery was considered to be (*a*) favourable, (*b*) doubtful, or (*c*) unfavourable. From the returns of 53 asylums, dealing with 24,228 male and 28,285 female patients in residence on the 31st December 1908, it would appear that the prospect was deemed to be 'favourable' in 3·5 per cent., 'doubtful' in 5·3 per cent., and 'unfavourable' in 91·2 per cent. (Table V.). It may then be fairly concluded that about 90 per cent. of those detained in asylums are the subjects of chronic and probably incurable forms of insanity, the remaining tenth forming a fluctuating community, of which many pass out of the asylum after a comparatively short residence, some of them (about 28 per cent. according to the L.C.C. asylums statistics) being re-admitted at longer or shorter intervals, owing to a recurrence of their malady, which in a certain number may eventually lead to their inclusion in the irremediable and gradually accumulating majority. Some idea of the amount of irrecoverable insanity may also be gained from the figures in Table VI."

35,116. I am going to ask you about those at the end?—"This has been compiled from the more detailed analysis contained in asylum reports. The table shows the number of cases under care in 65 asylums on 31st December 1908, distributed according to the form of mental disorder: Congenital cases, general paralysis of the insane, dementia-primary, secondary and senile, chronic mania and melancholia together furnish two-thirds of the total, and few of these can have but small prospect of recovery. (5) *Changes in Asylum Population.*—That recovery does occasionally take place after a long term of years is evident from the figures already cited, and from those set forth in Tables VII. and VIII. They indicate how small is the residue remaining under care of those who were admitted 20 years previously, the most marked reductions from discharge and death having taken place long before that term is reached. Many of those discharged as 'relieved' or 'not improved' are merely transferred to other institutions; but no small number return to their homes. It is probable that a great majority of these latter have sooner or later to be re-admitted to care."

35,117. The next is "Observations." May I just get the table in there?—Yes.

35,118. You have been good enough to supply us with some. Tables I., II., III., IV., V., VI., VII., VIII. Those show the points of numbers which you have been telling us in general language in the memorandum?—They do, my Lord.

35,119. But what I should like to get at principally is this. What number do you estimate of incurable cases are such as might be safely—to use Sir James Crichton-Browne's expression—predicted as incurable there are at any one time in the asylums?—About two-thirds of the total in the asylums. I should say out of these 65 asylums, where there are 64,000 under care, two-thirds of them, which would be about 40,000 odd, would be incurable. That is a rough estimate, selecting those forms of insanity which are on the face of them more incurable.

35,120. Roughly speaking, half of those would be married people or less?—Roughly speaking, half or rather less than half.

35,121. Then may we take it that in your view, as one of the Lunacy Commissioners, there are at any time in the asylums a very large proportion of married people whose cases are hopeless?—Yes.

35,122. That is so?—Yes.

35,123. Now you have sent us some tables which are in the form of a diagram?—Yes.

35,124. I am sorry to say the Treasury will not sanction our printing them. Is there anything on them you would like to explain before I pass on?—No, my lord; they simply illustrate the main points I have given in such a way that people can take them in at a glance.

35,125. They cover the points you have already dealt with?—Yes.

35,126. Now the observations?—"The question whether the insanity of a husband or wife should or should not be deemed sufficient ground for divorce is one to which, I confess, I have not hitherto paid any special attention. But the hardships and dangers incidental to such marriages have necessarily been brought before me in the course of my work, and it may be of use to the Royal Commission if I state briefly some considerations on certain aspects of the problem. There are two lines of argument which may be taken to support the plea for divorce, namely (1), that it would tend to prevent race deterioration, and (2) that it would afford justifiable relief to the sane partner from an unmerited and possibly life-long hardship. (1) The first, which may perhaps be styled the eugenic argument, involves the acceptance of the fact of inherited taint. It is certain that no small proportion of the mentally defective have had an insane parentage or some near collateral who was insane. The frequency of this association of an 'insane heredity' with other factors in the life-history of the insane is so marked as to warrant the conclusion that if the hereditary factor were eliminated the amount of insanity would be materially reduced.* If such a conclusion be valid, then the fact of insanity in a near relative, and *a fortiori* an attack of insanity in the individual, should be an absolute bar to the marriage of the latter. Failing such restriction, it might be urged that a certificate of insanity in the case of a married person should carry with it a decree of divorce. The justice and expediency of so drastic a

* *See* Report of Royal Commission on the Care and Control of the Feeble-minded. The extent of the association of such heredity with other assigned causal factors is shown in a preliminary statistical study of the assigned causes of insanity contributed by the writer to the "Journal of Mental Science," January, 1910.

measure as the second alternative may well be doubted; but it could be plausibly supported on the ground that a large number of married women who become insane (about 56 per cent. of those admitted into asylums) are still capable of child-bearing. Every year many such patients, having recovered from their attack of insanity, return to their homes, thereby incurring the risk of possibly adding to the mentally defective population."

35,127. Before you go on to the next paragraph, have you considered whether there is any practical legislation which could be suggested to meet that branch of your observations?—The only thing, I think, is for there to be an absolute bar to the marriage of these people, but I do not think that is practicable.

35,128. How are you to test it and put it into operation at the time people are contemplating marriage?—You ought to have the whole family history of each of the parties.

35,129. And a certificate of the medical officer?—Yes.

35,130. Of fitness to marry?—Yes, something of that sort, but I do not think it is practicable.

35,131. Would you be prepared to recommend the Legislature to require before any marriage that there should be medical certificates of fitness?—No, I do not go as far as that. If it were done there would be much less insanity in the country.

35,132. Have we in England reached the stage of such legislation?—I think it would be impossible.

35,133. But that is an idea which you think ought to be borne in mind?—Yes.

35,134. Broadly speaking, you would try where you could to check marriage where there was unfitness?—Yes. Of course that would be only carrying out the idea of Sir Thomas More in his "Utopia."

35,135. Then the next point deals with the other branch?—Yes. I take it we all know what the hardships are; they have been enumerated by other witnesses.

35,136. I should like you to read that to make your evidence intelligible afterwards?—(2) "The hardships involved by a marriage with one who afterwards becomes insane, and who may remain so for years, are too obvious to need special comment." They have been repeated so often. "Against these two lines of argument must be set the case of the insane partner of the marriage. (1) The eugenic argument applies mainly to those cases where recovery takes place within a few months, or at the most a year or two from onset, and where, moreover, the illness may never recur. It is precisely in such cases that divorce would seldom be sought voluntarily by the sane husband or wife, and to permit it would manifestly be contrary to humane instincts. On the other hand, were opportunity for divorce restricted to cases of confirmed and presumably incurable insanity, the eugenic argument would be far less applicable, seeing that in the vast majority all risks of transmitted degeneracy would be obviated by their permanent segregation. Yet, even in these cases, divorce, whilst apparently not so essential for the welfare of the race, from the eugenic point of view, might still involve injustice, owing to the difficulty there is in defining "confirmed" insanity, since, as experience and statistics show, recovery does sometimes ensue from a mental derangement that has lasted for years. (2) Nor does it appear right that in order to alleviate the hardships of the sane partner to the marriage, the insane partner should be deprived of the sympathy and support naturally due from husband, wife, or children. That he or she is, in many instances, so deprived, does not affect the principle of the marriage bond. To break a family tie by sanction of law because of the mental illness of one member, is to adopt a course which would be universally condemned if the case were one of bodily disease, however chronic and disabling. The case of the mental patient would be harder still should recovery take place after a divorce has been obtained. The question does not appear to be a simple one, and of its necessity it is difficult to judge without an intimate knowledge of families where such cases of insanity exist. Doubtless there are many other considerations which would weigh on one or other side in individual circumstances. It is true that in the course of asylum visits one not infrequently meets with the subjects of chronic insanity whose existence has come to be practically ignored by those whose close ties of relationship should be a claim on their regard. On the other hand, it is equally true that there are numberless instances of an almost pathetic devotion to a mentally afflicted partner, which testifies to the fidelity with which marriage vows have been kept. And many an asylum patient, whose prospect of recovery is practically *nil*, is kept in touch with his or her family by correspondence, if not by frequent visitation."

35,137. If I might summarise what you have said there, you have put some arguments on both sides?—I have endeavoured to do so.

35,138. But I should like to know if you heard Lord Guthrie's questions as to the four conditions. Assume that those were complied with, on which side of the fence would you come down?—I think I should still be on the side of the insane. I feel I am a sort of guardian of the insane, and I do not think the position of the insane is sufficiently recognised, or, I might say, that there is sufficient allowance made by the public generally.

35,139. Now, may I ask whether that is not looking at this subject rather too much from the point of view of those whom you specially have care of?—Undoubtedly that is so; I admit it.

35,140. Now, supposing we turn the picture round and look at it from the point of view of those left on the outside, and the children, and the State's point of view. In cases under the four conditions which Lord Guthrie put, one of which was absolute incurability?—Yes, absolute incurability.

35,141. If you look at it from that side it presents a different aspect, does it not?—I do not know that in a large number of cases there would be such hardship by the family having an insane parent in the asylum. I always think that might be exaggerated. I think it is a great consideration whether they shall not really still retain their link with the insane parent, however incurable.

35,142. Might I ask you whether you think that sufficiently considers the case of the poorer classes. In other branches of this inquiry we have had this class of case presented, that amongst the poorer classes a man, looked at from this point of view, is practically obliged to have someone in his house to look after his children and himself, and he has no accommodation such as in the houses of the well-to-do, where there are separate rooms and so on; and that the relations inevitably lead to immorality. And so also the converse case of the woman is put. Do not you think the matter is worthy of consideration from that point of view, where there is a hopeless separation between the husband and the wife?—I think, my Lord, under Lord Guthrie's conditions, as Sir James Crichton-Browne pointed out, a certain number of years must elapse, and then the man has endured his hardship for the very worst period, and has got over it or become accustomed to it. I should think the hardship would not be so hard as time goes on and his children grow up.

35,143. Might not he say that if he had a hope—the case being represented from the outset as incurable—that after a time he would be free, that that would enable him to perserve in right conduct which he could not otherwise perserve in?—I do not know. I hold a brief for the insane.

35,144. If I might respectfully suggest it—you seem to be in rather a balanced state?—I am. As I say, I have never thought of the question before I was invited to give evidence.

35,145. Then I think we must judge of it in the light of your facts?—Yes.

35,146. (*Mr. Brierley.*) Assuming the four grounds that Lord Guthrie has mentioned, and also assuming that the law is administered as carefully as one expects from an English Court of Justice, would you fear that the case of a person having been divorced on the ground of insanity, and afterwards recovering, would

be otherwise than very rare indeed?—I have no doubt it would be rare.

35,147. I suppose divorce on the ground of incurable insanity is no new thing in other countries, though it would be in this?—Yes.

35,148. And I suppose their experience on a point of that kind would be of some value?—Yes.

35,149. We have had a Memorandum put in to-day that incurable insanity has been a ground in Prussia ever since 1797; that is, considerably more than a hundred years. We have also had it stated that not in one single case had a person divorced on the ground of insanity ever recovered. That being their experience, would you really anticipate much risk (in granting a divorce on the ground of incurable insanity) of any mistake being made in that respect?—No, I do not think there would be much risk, but of course that is not the whole of my argument.

35,150. No, I quite understand that?—Yes.

35,151. On that one particular point?—Yes, on that one particular point.

35,152. (*Judge Tindal Atkinson.*) Can you consider a greater hardship on a woman than having to cohabit with a man who is an habitual drunkard?—No, it is very hard.

35,153. And can you consider a harder case than a woman having to cohabit with a man who comes out of an asylum with the prospect that he may go in again?—I think they are on a different footing. The man that comes out of the asylum would come out because he was thought to have recovered.

35,154. But the woman—having regard to her feelings and position—is not the hardship the same in the one case as in the other?—Oh no. From what one judges from the women one sees visiting their husbands when they are insane, I think they would welcome them back, and it would be a great joy to them to have them back from the asylum if they recovered.

35,155. But, supposing it was not, ought not she to have the option of putting an end to the marriage tie?—I do not think the two cases are parallel. For my own part, I should much rather give divorce for habitual drunkenness than for insanity.

35,156. (*Lord Guthrie.*) I ought to know, Doctor, but I do not. You have given statistics of insane people. Are those limited to those who have been certified?—They are.

35,157. Are all certified insane persons in asylums?—Oh no, a great many are living out of asylums in the care of people in private life; and a certain number in their own homes even.

35,158. Could you divide your total into those in asylums and those not in asylums?—It would be possible. I could not on the spur of the moment. You will observe that all my statistics with regard to recovery, and so on, apply only to asylums, as it is only those we have statistics of.

35,159. Is there any real distinction in the condition of those certified people, differentiating those in asylums and those not?—There is a large group of cases which could not be treated outside asylums—which must go to institutions.

35,160. Mania?—Yes, certain forms of mania.

35,161. And suicidal melancholia?—Oh yes, a large number.

35,162. The total which you have given, both the gross total and of the married persons, are those limited to asylum patients?—No.

35,163. Or do those include those in private homes and in their own homes?—Yes, all certified lunatics; I do not think there is an exception. Might I just verify that, my Lord.

35,164. (*Chairman.*) If you please. (*The witness referred to a book.*)

(*Witness.*) No, it does not include those who are living in houses apart from asylums and hospitals. Of course they are only a small number.

35,165. (*Lord Guthrie.*) Would you be able to furnish the Commission with that number?—No, I am afraid not. There are no statistics whether they are married or single.

35,166. But of the gross?—Oh yes, I can give you those at once.

35,167. Then there are no statistics of the married of those out of asylums?—No. There are only about 600——

35,168. And it might be fairly taken as a similar proportion?—I should think it might be.

35,169. Then, I see that Dr. Clouston uses the expression "registered insane persons.' Does that mean certified?—The same thing in our country.

35,170. You give the certified as 130,000 in England and Wales?—Yes.

35,171. Well, there is some confusion somewhere, because he says in the proof I have that there are 125,000 registered insane persons known to exist in the United Kingdom?—I noticed that in the newspaper report. I could not make it out. I think it was probably on a par with another misprint where he was made to say there were 100,000 criminal lunatics, which is obviously a mistake. It is 1,000.

35,172. (*Chairman.*) Yes, we had that corrected?—Yes; in the paper it was reported 100,000.

35,173. (*Lord Guthrie.*) Then I noticed in those figures he says "not including imbeciles and idiots "from birth." Do your statistics include those or not?—They do; they include all those in idiot establishments, but there are a large number of idiots not certified. It is all those certified in this country.

35,174. Can you give us the number of idiots or insane people, roughly, who are not certified in England and Wales?—I am afraid not.

35,175. Would it be hundreds or thousands?—I have not the least idea.

35,176. Am I right in saying there are practically none?—Oh no, that would be wrong. We know there are some.

35,177. But a thousand?—I have never attempted an estimate of that sort. When we go to workhouses we find here and there certain numbers who are obviously insane, and we require their certification; but there must be a good many in the country; the village idiot still exists I suppose.

35,178. Then your statistics do not include those in workhouses?—No, not the admissions. The total number under care does. The 130,000 includes those.

35,179. Or criminal lunatics?—Oh yes, it includes criminal lunatics.

35,180. May I take it in this way, that a patient on admission may be roughly classed as expected to recover or expected not to recover. Would that be too popular a way to put it?—Oh, much too much so. I should say no medical man would make a prognosis on a case that is just admitted.

35,181. How soon could he make a prognosis which would enable him to say: I expect your friend to recover; or, I do not expect that one to recover?—May I leave that to my colleagues? I have no experience of that myself.

35,182. Certainly. The word "hopeless" has been used pretty often in the course of this inquiry. Would you apply that word "hopeless" to any case of insanity?—I should say no.

35,183. You would say as you did about bodily diseases—as a doctor always does—"Where there is "life there is hope"?—Yes, I would be optimistic.

35,184. Are there any cases where recovery is scientifically impossible?—Oh, yes.

35,185. That are scientifically impossible?—Yes, general paralysis of the insane for instance.

35,186. Where there is no difference of opinion amongst experts?—Yes.

35,187. Any other but general paralysis?—I should think some of those cases Dr. Clouston referred to: secondary dementia, where there is marked degeneration in the brain.

35,188. They would be absolutely impossible of recovery, and they would be cases where any fear of divorce would not affect the patient's mental condition or comfort in any way?—No, but the question of fear of divorce would arise long before that, I imagine; long before they fall into that condition.

35,189. And might be an element of driving them into it?—Oh, undoubtedly; I quite agree with what Sir James says about that. I do not think that is sufficiently appreciated—the effect that all this has on

the mind of the patient. We meet with so many and talk with so many about their condition, and most of them dwell on their separation from the world and being deprived of all their rights, and if this idea was added that they might be deprived of their husband or wife, I think it would be a very great burden, and possibly a great source of increase of their mental disorder.

35,190. Is not that subject to this, however, Doctor, that in a large number of cases the symptom is aversion to their nearest and dearest?—Oh, well, in a certain number of cases, but I should not think a large number. Here, again, I speak not as an expert, but only by mixing with them. No, it is the other way; so many of them deplore the fact that their friends have left off visiting them.

35,191. Have you had any experience to answer this question. Have you ever known a case where a recovered patient was refused cohabitation by the wife or the husband to whom he or she returned?—I have never heard of it.

35,192. They always take them back as far as you know?—As far as I know.

35,193. Would you agree with Sir James that in such a case there ought to be a power somewhere to enable the wife or husband to refuse to have the recovered person return?—Did Sir James make that statement?

35,194. He did, subject, he said, to evidence that if the recovery turned out to be complete, then ——?—You say, if it was incomplete.

35,195. If a person is let out in the hope that it will be all right and that nothing will recur, would you approve of the wife being able to say:—You are not to come back until a certain period has passed; and of getting protection against the man?—I am not prepared to go so far as that.

35,196. At the present moment she has no power to keep him out?—I think it would depend a good deal on the form which his insanity took. If his insanity was associated with homicidal impulse and so on, I think the dread of recurrence of that would justify her in not having him back for a long period.

35,197. And in getting protection?—Yes; but I do not think so in all cases.

35,198. Suppose, Doctor, that divorce was allowed for insanity, if the insanity of a wife, say, had resulted from the conduct of the husband. In that case, clearly, if divorce was allowed generally, you would disentitle that man to have a remedy?—Yes, I should say so.

35,199. Have you known such a case?—I cannot say that I have.

35,200. You have not?—No.

35,201. It would be a rare case?—It is possible.

35,202. But if such a case occurred you would, of course, disentitle him to any remedy?—I imagine so.

35,203. I see at the end of your proof you speak of numberless cases of an almost pathetic devotion to a mentally afflicted partner which testifies to the fidelity with which the marriage tie has been kept. Do you think that is a sequitur?—Yes, it is an indication that he still loves and regards his wife.

35,204. Is not that quite consistent with certain instincts of nature driving him to a certain course?—I do not know; I should have thought, if he still felt affection for his wife, however afflicted she was, he would restrain those. That is why I put that in.

35,205. (*Sir Frederick Treves.*) With regard to one point that Lord Guthrie mentioned, would you endorse this statement by Dr. Clouston: "There are very few "cases indeed where I should feel justified in giving an "opinion that any case is incurable within twelve "months from the onset"?—Oh, quite.

35,206. You would?—Yes.

35,207. On one point of your figures—your gross number of 130,000 covers all cases of certified lunatics?—That is so; all that are known to us.

35,208. But then your cases of recovery, when it comes to 9·1 per cent. for three years and 1·6 per cent. for six to ten years, those are based on cases only in asylums?—That is so.

35,209. And I take it that fact does not disturb the conclusions?—I should think not.

35,210. The cases not in asylums are comparatively few?—Quite so.

35,211. Though the figures are not dealing with quite the same solid mass the general conclusions are not different?—No; the recovery of those in private care I should say are higher, because they are not such severe cases as a rule.

35,212. But we should not be wrong if we took your figures as generally correct for the whole mass?—No.

35,213. Then I take it the cases of lunatics who would resent divorce proceedings are not very numerous, are they? Some lunatics would very much resent?—Yes, those suffering from delusional insanity would undoubtedly, because they are very intelligent people; they feel the hardship much more of being shut up, and complain most of their confinement.

35,214. But the number is not very great?—The proportion of delusional cases is not so high in comparison with the others.

35,215. Yes, Dr. Clouston gave us the numbers?—Yes.

35,216. Then you say that as a Commissioner your interests and sympathies are naturally with the insane?—Undoubtedly.

35,217. As a matter of fact are there any interests that concern the insane in connection with divorce in really incurable cases. Taking the mass of incurable lunatics with whom we are dealing now, and regarding the matter of divorce, which is the only matter under discussion now; has the larger proportion of those lunatics any interest?—Do you mean, are they capable of appreciating things?

35,218. We are told by Dr. Clouston that the bulk knew nothing about divorce and were indifferent to the visits of their friends?—I think you would like to hear other evidence with regard to that indifference to their friends. I cannot speak as against Dr. Clouston, but I should think in very many of the most demented cases there is just a gleam—that is the last thing to go very often—of family affection. It is only to that extent that the question of divorce would come in.

35,219. We get at last, then, to this basis with Dr. Clouston; the lunatic of whom you can say, he is incurable; he is totally beyond any possibility of understanding a single detail about any divorce and he derives no comfort from the visits of his friends. With such a person you would say: they have no interests—or have they?—I think I should agree with you, but I do not think it would be necessary to alter the law for their sake; I do not think there would be many applications in such cases. They are evidently very chronic cases; they have gone on for years. I do not suppose anybody would want to take proceedings.

35,220. We were rather led to suppose that in some cases of terminal dementia that state may be reached within, say, five years?—Yes.

35,221. Another point is this. It has been suggested in obtaining a certificate of incurability that the case should be submitted to three medical men, one the medical man under whose personal care the lunatic is, and the other two, two experts in lunacy. Now do you really think there would be any likelihood of much miscarriage of justice in decision as to the incurability of the case?—Oh no, I think three men of expert knowledge, if they are agreed upon the question, might safely guide one.

35,222. Considering that those who recover after an interval of, say, three to five years only come to 9·1 per cent.?—Yes.

35,223. The probability of a wrong conclusion being arrived at must, I take it, be small?—It must be small. Might I just remark I think the whole question ought not to be made one as to the individual concerned only; but the very fact of divorce being added to their other disabilities is the last straw almost; there is hardly anything left for them and they are regarded, as I think Dr. Jones said, as dead. I think that is an attitude which the public ought not to take towards their insane.

35,224. But practically they are dead?—They are practically treated as dead; and I have brought down here a book, the second edition of which was published

ten years after the man was in the asylum, and which is issued by the publisher as by the "late" so-and-so; and that man is still in the asylum and has been for 40 years. The publisher considers him dead, and that idea ought to be got out of the public mind. They are still members of the community, and, as far as possible, should be treated so.

35,225. But there are some even beyond that ——? —There are some who are perfectly mindless.

35,226. Then, Lord Guthrie spoke of a wife's insanity as possibly due to a husband's misconduct. As far as we know, that would be due to a case of general paralysis of the insane?—That is the only instance I could think of.

35,227. And inasmuch as that does not come in this category?—It would not come into the four considerations.

35,228. It being rapidly fatal?—Yes.

35,229. Then, speaking of the eugenic side of it, you say "every opportunity for divorce restricted to "cases of confirmed and presumably incurable insanity, "the eugenic argument would be far less applicable." You are speaking again from the point of view of the insane; but if there were divorce, I take it it allows the sane wife to bear healthy children, and the sane husband to be the father of healthy children, does it not?—Oh yes, from that point of view. You are quite right. I was only thinking of the eugenic argument as applied to the insane person.

35,230. So, taking the eugenic argument as applied to the sane person, there is something to be considered?—Oh yes. undoubtedly.

35,231. (*Sir George White.*) You admit the severity and the number of hardships that exist under the present system?—I do.

35,232. Then may I put this point: the number of recovery cases in two years you give as 88·9 per cent., and taking three years further on as 9·1 per cent. Therefore within the limit of five years you have practically 98 per cent. of all that are going to recover. Now will you weigh the interests of the husband or the wife and the interests of the State with regard to the hardships that you admit are not equal, and hardships that might occur to the two per cent. that are left of possible recoveries. What I want to bring your mind to is that residue of those affected, if the law is altered, is practically only two per cent. of the possible recoveries; and yet we are to continue admitted hardships in all forms on the one hand as against the two per cent. on the other?—Yes; two per cent. of those who were discharged as recovered within 20 years of their admission. Out of 20,000 admissions these would number 7,500, so 2 per cent. would be 150. Of course, if one tries to balance these things the scale weighs much heavier on the one side than the other; but one still has the idea, as I say, that it is not simply the individual; it would not only be the interest of these 150, but the whole community of lunatics would be affected by the change in the law. It would be recognised that if they become permanently insane all their family ties would be broken, and I think that is a hardship which they ought not ——

35,233. A hardship on whom?—On the insane.

35,234. Then you will remember, of course, that the hardship comes on that proportion of the insane who are less likely to recover and therefore would be less affected in all probability by these outside circumstances?—But many a chronic lunatic, I should think, has as fine and sensitive feelings as a sane person. The insanity does not always deprive him of all feeling.

35,235. Of course you have to weigh the hardships?—I should not weigh them at all. I am afraid I would say that I do not see the necessity for the alteration in the law. There must be hard cases always; we have to submit to it, and it is a very great hardship for a person to have a wife or husband becoming insane, but I think it is one of the inevitable things. I am afraid I have got to that position.

35,236. Then you have spoken of the fidelity shown by, say, the wife to the husband whilst inside the asylum. If the law is altered, it does not compel that wife to get a divorce against her husband; and, therefore, where these feelings existed to any strong degree, then the divorce would not be sought?—True; but on the other hand, they only form a small minority. Those that are quite faithful, and we want if possible to increase the number of those attached to their insane relatives. It would not increase that number if they felt they could get rid of them entirely by law; they would not go on visiting them at all; they would be neglected almost *ab initio*.

35,237. But if there is this refined feeling of fidelity, would the effect of the knowledge that they could get a divorce reduce or drive that feeling away?—I think it would lead to few being visited; the sane partners would be likely to form other attachments. It is not only wives and husbands but children too. No, I think one must put the insanes' side as strongly as possible, because the world at large does not recognise it.

35,238. You have no figures to give us on the matter that arose with a witness last week, as to the total number of insane as compared with, say, ten years ago?—I did not think it was material to this inquiry, but it is published every year—the numbers, how they rise. It does not show the actual increase of insanity, but only of the certified insane.

35,239. (*Chairman.*) May I take it the statistics you have given cover all lunatics within the jurisdiction of the Commissioners?—They do.

35,240. And are those either in asylums or in homes or at private houses?—Yes; those that refer to the general numbers refer to the whole. The 130,000 embraces all certified persons, including those in workhouses or in single care or out-door paupers.

35,241. Over what people have you jurisdiction—those in asylums?—We have over all of them.

35,242. Those in homes and those kept in their own private houses?—We have all.

35,243. All where they have been brought before the magistrate and ultimately certified?—Yes.

35,244. But nobody else?—No.

35,245. The Orders may allow them to be kept at home or in a home, or sent to an asylum?—That is so.

35,246. Then, does any question of religious views enter into your consideration?—No, I should say not. I have not been influenced in my opinions, perhaps not even by humanitarian views. I have spoken merely as a member of the community.

35,247. Then one other matter. You think that the notion that a suit might be brought against some of the delusional lunatics—if that is the right word to use—might affect them?—Undoubtedly I should.

35,248. To what member would you apply that?—Of the delusional cases?

35,249. Yes, of the delusional cases?—Oh, I should think it would be very difficult to say; but mostly the delusionally insane person does not believe he is insane; therefore, the large majority would feel it and resent it quite as much as——

35,250. What number of married delusional cases are there?—I am afraid I cannot give you that.

35,251. Well, of the whole?—Of the whole there are just about a tenth who are suffering from delusional insanity.

35,252. That would reduce the married cases on the other certificates by a twentieth?—Oh yes; if they were half that would be so.

35,253. Now those cases—following up Sir George White's question—there would be only cases operated upon when the option of the sane partner was brought into play. If there were the fidelity which you have spoken of, then the option would not be exercised I take it?—No.

35,254. And it would then apply only to a certain number of cases in which there was no fidelity left?—Yes.

35,255. And when the option to obtain a divorce was claimed?—Yes.

35,256. Do you think that would be likely to affect a lunatic if the relationship had become such between them that the person outside was no longer desirous of associating with the lunatic under any conditions?—I think it might. I do not know whether I quite appreciate your question, my Lord, but there is no

doubt that many lunatics do feel very severely the deprivation of the society of their friends and relatives.

35,257. Yes, but what I was getting at was this: in cases where there was a great attachment the person outside would say: Well, then I leave it where it is, and I visit and pay attentions and so on. Those cases would not be within the divorce consideration, and would not be applied for; but in those cases where it was applied for, it would only be applied for where all desire for intercourse had ceased?—Yes, on the part of the sane.

35,258. Then how would that affect the insane persons, if they were informed all desire for association had gone, whether you come out or stop where you are?—Well, as I say, they feel it very much now.

35,259. Yes, but I do not see how it adds to it?—I do not see why you should give relief to those people who have not shown sympathy to their friends. It seems to me that those that seek relief largely will be those who have lost all sympathy for their husbands and wives. Why should we give them relief?

35,260. The suggestion may be that if you do not they will form ties which are illegal, as we gather from evidence they do?—Well that applies more to men than women, of course, but I should have thought that if a man is a right-minded man he would not do such a thing. Seeing that such a large proportion of the community are single and not married ——

35,261. If everybody were right-minded we should not be sitting here?—Should we legislate for the wrong-minded?

(*Chairman.*) I should like to thank you, Dr. Coupland, very much indeed on behalf of the Commissioners for your very interesting and valuable facts.

STATISTICS.

I.—AVERAGE ANNUAL ADMISSIONS INTO INSTITUTIONS FOR THE INSANE IN ENGLAND AND WALES, 1907–08. (SIXTY-FOURTH REPORT OF COMMISSIONERS IN LUNACY, APPENDIX A., TABLE XXII.)

At Ages 20 Years and upwards.

Age.	Total		Married.		Proportion, per Cent.			
					Total.		Married.	
	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.
20–24 - -	915	991	40	176	9·3	9·3	0·8	3·7
25–34 - -	2,252	2,480	670	1,111	22·9	23·2	14·3	22·8
35–44 - -	2,319	2,460	1,329	1,435	23·6	23·0	28·5	29·5
45–54 - -	1,885	2,218	1,227	1,220	19·2	20·7	26·3	25·1
55–64 - -	1,398	1,347	886	616	14·2	12·6	19·0	12·7
65 and upwards -	1,057	1,201	517	303	10·8	11·2	11·1	6·2
Total - -	9,826	10,697	4,669	4,861	100·0	100·0	100·0	100·0

II.—GENERAL POPULATION (ENGLAND AND WALES, CENSUS 1901).

At Ages 20 Years and upwards.

Age.	All Classes.		Married.		Proportion, per Cent.			
					All.		Married.	
	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.
20–24 - -	1,472,644	1,648,278	254,169	447,885	16·6	16·7	4·5	7·9
25–34 - -	2,485,954	2,769,886	1,569,094	1,781,022	28·1	28·0	28·0	31·3
35–44 - -	1,931,943	2,064,062	1,567,616	1,549,643	21·8	20·9	27·9	27·2
45–54 - -	1,396,209	1,505,982	1,143,059	1,061,938	15·8	15·2	20·4	18·7
55–64 - -	907,945	1,035,305	693,550	589,380	10·2	10·5	12·4	10·3
65 and upwards -	661,072	856,681	379,470	262,277	7·5	8·7	6·8	4·6
Total - - -	8,855,767	9,880,194	5,606,958	5,692,145	100·0	100·0	100·0	100·0

III.—PROPORTION per 1,000 of TOTAL at AGES 20 and UPWARDS in GENERAL POPULATION (ENGLAND and WALES) and INSANE ADMISSIONS, 1907–08.

Age.	General Population.						Insane.					
	Males.			Females.			Males.			Females.		
	All.	Married.	Widowed	All.	Married.	Widowed	All.	Married.	Widowed	All.	Married.	Widowed
20–24 -	166	29	—	167	45	—	93	4	—	93	16	—
25–34 -	281	177	3	280	180	5	229	68	3	232	104	5
35–44 -	218	177	6	209	157	13	236	135	10	230	134	16
45–54 -	158	129	11	152	107	24	192	125	19	207	114	33
55–64 -	102	78	15	105	60	33	142	90	25	126	58	40
65 and upwards.	75	43	26	87	26	50	108	53	42	112	28	64
	1,000	633	61	1,000	575	125	1,000	475	99	1,000	454	158

IV.—Percentage of Married to Total living in each Age-Period.

Age.	General Population.		Insane (Admissions).	
	Males.	Females.	Males.	Females.
20–24	17·2	27·1	4·4	17·7
25–34	63·5	64·3	29·3	44·8
25–44	81·1	75·0	57·3	58·3
45–54	81·9	70·5	65·1	55·0
55–64	76·0	57·0	63·4	45·7
65 and upwards	57·4	30·6	49·0	25·2

V.—Prospects of Mental Recovery. 53 Asylums. 31st December 1908.

——	Males.	Females.	Total.	Males.	Females.	Total.
				Per Cent.	Per Cent.	Per Cent.
Favourable	829	1,055	1,884	3·4	3·7	3·5
Doubtful	1,352	1,403	2,755	5·6	5·0	5·3
Unfavourable	22,047	25,827	47,874	91·0	91·3	91·2
	24,228	28,285	52,513	100·0	100·0	100·0

VI.—Forms of Mental Disorder. 65 Asylums. 31st December 1908.

——	Males.	Females.	Total.	Proportion per 1,000.		
				Males.	Females.	Total.
Congenital	4,198	3,272	7,470	140 0	94·1	115·3
Insanity and Epilepsy	2,682	2,437	5,119	89·4	70·1	79·0
General Paralysis	1,265	334	1,599	42·2	9·6	24·7
Primary Dementia	574	530	1,104	19·1	15·2	17·0
Mania: Recent	1,114	1,395	2,509	37·1	40·1	38·7
,, Chronic	5,437	6,735	12,172	181·3	193·7	188·0
,, Recurrent	816	1,300	2,116	27·2	37·4	32·7
Melancholia: Recent	1,182	1,628	2,810	39·4	46·8	43·4
,, Chronic	2,118	2,964	5,082	70·6	85·3	78·5
,, Recurrent	505	785	1,290	16·9	22·6	20·0
Delusional Insanity	2,924	3,596	6,520	97·5	103·4	100·7
Senile Dementia	935	1,315	2,250	31·2	37·8	34·8
Secondary Dementia	5,562	7,650	13,212	185·5	220·0	204·1
All other Forms	678	830	1,508	22·6	23·9	23·1
Total	29,990	34,771	64,761	1,000·0	1,000·0	1,000·0

VII.—Changes in Asylum Population. 8,009 Cases admitted into 43 Asylums in 1886.

——	1886.	1887.	1888.	1889.	1890.	1891–95.	1896–1905
Admitted	8,009	—	—	—	—	—	—
Discharged	2,002	1,394	368	265	120	372	202
Died	801	608	353	176	176	369	410
Remained at close of year	5,206	3,204	2,483	2,042	1,746	1,105	493

Proportion per Cent. on 1886 Admissions.

(a) *In each Period.*

Discharged	25·0	17·4	4·6	3·3	1·5	3·4	2·5
Died	10·0	7·6	4·4	2·2	2·2	4·6	5·1
Remained	65·0	40·0	31·0	25·5	21·8	13·8	6·2

(b) *During and at End of 1st to 20th Year of Residence.*

——	1st.	2nd.	3rd.	4th.	5th.	10th.	20th.
Discharged	25·0	42·4	47·0	50·3	51·8	55·2	57·7
Died	10·0	17·6	22·0	24·2	26·4	31·0	36·1
Remained	65·0	40·3	31·0	25·5	21·8	13·8	6·2

Proportion per Cent. on Numbers remaining under Care.

Under care	8,009	5,206	3,204	2,483	2,042	1,746	1,105
Discharged	25·0	26·8	11·5	10·6	5·9	15·6	18·3
Died	10·0	11·7	11·0	7·2	8·6	21·1	37·1
Remained	65·0	61·5	77·5	82·2	85·5	63·3	44·6

VIII.—PROPORTION OF DISCHARGES AND DEATHS ON ADMISSIONS AT 20, 15, 10, 5 AND 1 YEAR.

——	Admitted.	Discharged.			Died.	Remained at End of 1905.
		Recovered.	Relieved.	Not Improved.		
1886	8,009	2,988	860	777	2,891	493
1891	10,014	3,585	911	959	3,587	912
1896	11,325	3,796	1,118	1,035	3,774	1,602
1901	12,115	3,859	884	1,573	3,173	2,626
1905	11,034	1,923	323	236	1,259	7,293

Proportion (per Cent.) on Admission.

20 years	100	37·3	10·7	9·7	36·1	6·2
15 „	100	35·8	9·7	9·6	35·8	9·1
10 „	100	33·5	9·9	9·1	33·3	14·2
5 „	100	31·8	7·3	13·0	26·2	21·7
Within 1 year	100	17·4	3·0	2·1	11·4	66·1

Adjourned for a short time.

Dr. FREDERICK NEEDHAM called and examined.

35,262. (*Chairman.*) What is your full name?—Frederick Needham.

35,263. Have you medical qualifications?—Yes; I am a Doctor of Medicine.

35,264. Have you anything to add to that?—No, I do not think so. I am one of the Commissioners in Lunacy.

35,265. Were you also a member of the Feeble Minded Commission?—I was, my Lord.

35,266. You have prepared a short memorandum of some points?—Yes; it is a very short one I think.

35,267. Have you it before you?—Yes. I should like to say, my Lord, before I begin, I do not in any way represent the Lunacy Commission. The Lunacy Commission were asked to give evidence and they were obliged to say they had no collective opinion on this subject, but that their medical members would, if the Commission wished it, place their experience and such knowledge as they possessed at the disposal of the Commission. Therefore, anything that I say, I say entirely on my own account.

35,268. The first paragraph of your memorandum deals with a different date to what we have already had. It deals with the 1st January 1909?—Yes.

35,269. We had the 1st January 1910 before. Would you kindly just read us the first paragraph?—"On the 1st of January 1909 the certified insane known to be under care were 128,787 persons in England and Wales; 22,244 were admitted during the year 1908, and of these 9,507 were married, showing a ratio of 8·4 per 10,000 to the whole married population at the time of the Census of 1901. The Commissioners in Lunacy have no record of the total number or proportion of married persons certified and under care, and it would be exceedingly difficult, if not impossible, to obtain the information."

35,270. We have had various figures given us amounting to many thousands. Are you able to state approximately what you estimate the total number of married persons under supervision is?—I think I should accept Dr. Coupland's statement.

35,271. I think he said 60,000?—About 60,000.

35,272. Somebody yesterday I think said 50,000?—Yes.

35,273. It is immaterial for our purpose which it is, but it is a very large number?—Yes.

35,274. The next paragraph deals with the relation of divorce to insanity. Perhaps you would just state your views about that?—I should like to say that the difficulty of prognosis, the difficulty of saying what patients are going to recover and what patients are not going to recover, is a very great one. I have known a very great number of patients considered to be insane recover after a shorter or longer period; very often after long periods.

35,275. Would it be possible to say that there are a number who for a certain length of time of supervision might reasonably with safety be pronounced to be incurable?—Yes, I think so; these cases of gross

brain disease and so on, in which you could certainly say that recovery could not take place.

35,276. Were you present when Lord Guthrie formulated four conditions as a basis upon which a divorce proceeding might be instituted?—Yes.

35,277. What would be your view about giving divorce for insanity, subject to conditions of a somewhat similar character?—Personally, I object strongly to any extension of facilities for divorce. I think that in the case of insanity it would introduce a very dangerous element. I quite agree with what Sir James Crichton-Browne said in that particular; that it would make people much less circumspect in their entering into marriage even than they are at present, and at present they are extraordinarily careless. It is no uncommon thing in my experience for people to consult me as to whether they should or should not marry a certain person who had been insane or who had the strongest possible tendency to insanity, and not in the least take my advice, but simply marry with the almost certainty of insanity supervening.

35,278. Take the case that I ventured to put to Sir James Crichton-Browne out of a letter that I read. I do not know whether you heard that?—Yes.

35,279. Which is the case of a man, judging from his occupation, who would apparently have married an ordinarily healthy person, because he is a working man. How would you cope with that class of case, where there is a family to be looked after, and a case, apparently, of hopeless insanity on the part of the wife?—Of course, I do not think it requires any additional facts to what are within one's own knowledge, or any argument, to show that there must be tremendous hardship constantly occurring, and the only question in one's mind is whether you would not, by introducing the element of divorce into these cases, add an additional hardship instead of taking away a hardship.

35,280. Would not that apply to every ground of divorce—even the present ones?—No, I do not think it would apply to the present ones, my Lord.

35,281. Would you tell us, if you can, what ground you base that view on besides what you have already said?—As regards insane people, I think that the introduction of divorce for insanity would add a tremendously great additional terror to the present stigma of insanity. I think that throughout the country the insane people who are in asylums or out of asylums would be tremendously hampered and hindered and distressed by the introduction of an additional stigma such as this would be.

35,282. Would that apply to those cases that Dr. Clouston mentioned at the beginning of his evidence of secondary dementia?—It would apply to a certain number of cases of secondary dementia in which recovery takes place, because I do not agree with Dr. Clouston that recovery does not take place ever in secondary dementia.

35,283. But I am speaking of cases of reasonably certain incurability?—No, I think people altogether devoid of mind, as so many of these people are, or practically devoid of mind—that whatever was done of that kind would not much affect them, but it would affect very much the whole body of insane people, a very considerable proportion of whom are going to recover, and I think it would interfere very much with their recovery.

35,284. That is looking at it from the point of view of the insane?—Yes.

35,285. Can you look at it from the point of view of the sane person that is left to bear the hardships that you have spoken of?—Yes, I can, my Lord. It appears to me that what applies to insanity applies to other diseases which are also disabling. I should think phthisis; I should think locomotor ataxia of certain kinds, and chronic rheumatic arthritis, all of which disable people.

35,286. Those do not lead to complete separation necessarily?—No, but I was going to add, in many cases of disablement from cases of that kind patients are necessarily separated from their friends; cases of confirmed and long-continued cancer lasting for years can have disablements of various kinds in which people are taken into institutions for the incurable, and so on. There are a great many of them.

35,287. Of course, people who enter into the matrimonial relationship naturally contemplate they will meet with the ordinary vicissitudes of life, of which disease is almost certain at some time?—Yes.

35,288. Or of old age when decrepitude comes on?—Yes.

35,289. But do you think they contemplate when they marry an apparently sane person that they will be in an asylum after?—No, I do not think so; but I do not think when people marry as a rule they contemplate any physical disablements.

35,290. Is that quite sound; do not we all anticipate that we shall be subject to various disablements and illnesses?—I think we all know it, or at all events we all discover it.

35,291. But none of us contemplates finding oneself in asylums; at least, I hope not?—No.

35,292. However, are there any other points in your proof which you think are worthy of bringing to our attention. I think the figures about recovery are much the same as we have already had?—Yes. I do not think there is anything else, my Lord.

35,293. (*Mr. Spender.*) It seems to me we are in some slight difficulty about the statistics of recovery. The last witness gave us two figures I think, which looked on the face of them to conflict; one, of the irrecoverable patients in asylums, and some recoverable ones. Could we get closer to the figures by analysing the various kinds of insanity, and putting outside the general paralysis cases and the cases which various witnesses have called irrecoverable from lesions of the brain or degeneration of tissue? Could we put these outside and deal with the recoverable cases, putting out senile dementia and others that may be written off as irrecoverable?—Yes, that could be done, but you do get, in what you consider irrecoverable ones, a certain number of recoveries, which would vitiate anything that you did in that way.

35,294. You cannot put on one side of the line cases like senile dementia and call them irrecoverable?—Yes, I think you can get a certain proportion—I think it is a comparatively small proportion—of people that you can say for certain cannot recover.

35,295. And you do not think that would largely affect the statistics of what are acknowledged to be recoverable cases?—No, I do not think so.

35,296. Then your view is a very strong one that, supposing there was a prospect, however remote, of divorce following, it would be a factor in the treatment of the patient—a deleterious factor?—I think it would have a very bad impression on the patient.

35,297. You think even if it had to be a matter of five years?—Yes, they would say, as they say now: "We are pariahs; we are cast out; this is an additional indignity cast upon us."

35,298. Do you think it would be a material factor in serious cases?—Yes, I think so. And a very curious illustration is this. In the county of Lancaster they built an asylum for chronic and incurable cases, and they did not write over the doors, "This asylum is "for incurable and chronic patients"; but the patients discovered it very quickly; the patients refused to work; the attendants lost all heart, and the asylum became so demoralised altogether that the committee had to come and ask us to allow the asylum to be used for acute as well as chronic cases; they found the segregation of chronic cases like this was demoralising the whole establishment.

35,299. And you think that if there were a presumption that after a certain number of years the sane partner would have the option (not that there would be the compulsion of divorce), you think that would have an operative effect on them?—Yes, I think it would have the same bad effect from the point of view of the insane.

35,300. You would admit there is another point of view?—Quite.

35,301. You have to take the two factors; but your view is that it would introduce a serious new factor in the treatment of the insane?—It would, and I need hardly

say that our sympathies are very largely on the side of the insane, as they ought to be.

35,302 (*Sir George White.*) I understand you agree that when two persons are contemplating marriage they do not give consideration to the possibility of insanity or disease of any kind?—I do not think it enters generally into their consideration.

35,303. Is that quite consistent with what you state, that if facilities for divorce were extended to some cases of insanity, that people would be much less circumspect in forming such alliances than they are now?—Yes, I think so, because I think they would feel there was possible relief. When I say that, I am talking of cases where people know that they are running a very definite risk; cases such as I have mentioned, where people have consulted me as to whether they should marry.

35,304. Yes, but I understood your answer referred to cases in general?—No, cases in particular.

35,305. Then may I put this question, apart from your sympathy with the insane, which is a natural sympathy, are you in favour of the present law of divorce, or are you against divorce in any circumstances?—No, I have nothing to say against the present law of divorce. I should be sorry to see it extended but I have nothing to say against the present law of divorce.

35,306. In this expression of sympathy with the insane, do not you overlook to a certain extent the condition in which the partner may be who is outside. Take the cases, of which I know several, where wives are left outside to get their living as best they may. I have a case in my mind where the husband has been back five times, and a comparatively young woman gets her living by letting lodgings, and her husband comes back for a few months, disturbs the whole arrangement, perhaps is very angry that she has lodgers, and all her prospects are ruined and the household upset; and yet apparently (it has been going on for six or seven years) there is no chance of permanent recovery. Is it not a great hardship, and also serious from the point of view of the State as to children?—Certainly.

35,307. And yet you think there is a disadvantage in giving relief?—I think you have to balance the hardship which exists with the hardship which you would introduce, and my conviction at present is, it is not well to enlarge the reasons for divorce.

35,308. (*Sir Frederick Treves.*) Very properly and naturally, Dr. Needham, you speak in the interests of the insane, and the one argument in your mind is that if insanity becomes a ground for divorce it would be a stigma on lunacy generally; it would still further damage the position of the insane. Do you think that is overbalanced by the amount of distress occasioned to the sane by these marriages?—Yes, I think it would. My own impression is that if you alter the law of divorce you would not have a very very large number of people who would apply for it on the ground of insanity.

35,309. You think not?—I do not think you would. That is a mere matter of opinion.

35,310. With regard to the possibility of certifying. Dr. Clouston rather left this impression in our minds, that the insane person he was contemplating was a person of whom you would say this: The case is incurable, the man or woman has no conception of divorce or what it means, and no intellect to appreciate it, and, thirdly, that he or she derives no comfort from friends?—Yes.

35,311. That is an absolute mental vacuity?—Yes.

35,312. Would it be possible in such cases to give a certificate with a little more certainty than you describe. You say it would be extremely difficult to predict with any reasonable degree of certainty?—Yes.

35,313. Would you use as strong a term as that?—Yes, I think so.

35,414. That almost reads as though it is scarcely possible to do it?—I think it is not possible. You get such extraordinary cases of recovery where you least expect it that you could not give a certificate of that kind.

35,315. I suppose the number of cases in which there would be a miscarriage must be very few?—It depends on what you mean by very few.

35,316. Well, you say that the recoveries after three to five years are only 9 per cent.?—Yes.

35,317. If you take that in the mass of figures, it is a very small number, because you have to reckon with the failures among the nine only?—That is quite true; but I fail to see from my point of view why you should do gross injustice to nine people and inflict a great deal of injury on a great many other people in the way I have indicated, for the sake of attaining what may be an advantage or not.

35,318. But the nine are a mere drop in the ocean compared with the vast numbers, are they not?—Oh, yes, quite.

35,319. And Sir James Crichton-Browne made it very emphatic that he thought the few might be supposed to suffer for the mass?—Yes; I have not been able to bring myself to see that it is proper that you should do wrong that good may result to somebody.

35,320. If it be wrong?—I think it would be wrong.

35,321. Then it has been suggested that in settling what would obviously be a very difficult question, three experts should be employed, the medical officer of the asylum, or the medical person in charge of the lunatic, and two other experts?—Yes.

35,322. Do you think that evidence would satisfy you if you heard it?—No, it would not satisfy me, for the simple reason, Sir Frederick, that before I was a Commissioner, which I have been for nearly 20 years, I was a superintendent at two asylums, therefore I may consider I am an expert myself, and I would be extremely sorry to have a question of that sort decided on my evidence.

35,323. And two others?—And two others. Because I know perfectly well that with the best intentions I should be finding myself constantly contradicted by facts. Patients would recover whom I did not expect to recover.

35,324. Then with regard to this argument that if you admit insanity you should admit other diseases, such as chronic arthritis and phthisis. You would hardly say that phthisis and terminal dementia are on the same level?—I see the difference. I see (and one cannot fail to see) the great difference between insanity, taking it generally, and other diseases, taking them generally; that in the one case you get segregation away from home, and in the other case you do not necessarily.

35,325. And moreover, the victim of phthisis, as has been pointed out, may be a charming companion to the very last?—Yes.

35,326. The man may be capable of managing his affairs and looking after his children, and even conducting business of a kind?—Yes.

35,327. You could not say that of insanity?—No; but you have cancer and lupus, and other disfiguring diseases.

35,328. But there is no impairment of mind necessarily?—No, but then you get a considerable number of cases of paralysis in which you get considerable impairment of mind.

35,329. In that instance you get persons who are of unsound mind?—No, not certifiable, and therefore not able to be sent to asylums. You are dealing with people who are disabled for the purpose of companionship to a large extent, but not sufficiently disabled to be obliged to be sent away.

35,330. Disabled mentally?—Yes.

35,331. I suppose the only disease you would put on anything like a parallel with insanity is leprosy, because then they are segregated?—Yes.

(*Chairman.*) That is a ground in some countries where that prevails, but happily we do not have it here.

35,332. (*Mr. Burt.*) I just want to be quite clear on one point. I did not distinctly hear your reply to Sir George White, but I understood you to say you are not entirely opposed to divorce?—Yes, I did say so.

35,333. Would you be opposed to any alteration in the law of divorce as it exists at the present time?—Well, that is a general question which I think I could hardly answer unless I knew what the proposed change was to be.

35,334. What I had in my mind was the equality of the sexes?—Yes.

35,335. Assuming you have divorce, would you be in favour of placing women and men on the same legal footing?—Yes, I think so. I do not see why you should make a difference.

35,336. (*Lord Guthrie.*) With regard to the effect on the insane, Doctor; do you attach chiefly importance to it owing to the fact of the existence of the option or to the exercise of the option?—Oh, the existence of the option.

35,337. The knowledge that the option would be possible?—The knowledge that the option would be possible.

35,338. Supposing that to the four conditions that were previously specified there was added this one; that if it were proved to the satisfaction of the judge that granting divorce would either prevent or imperil recovery he should be entitled to refuse it. Would that affect your opinion in any way?—No, it would not affect my opinion because I think it would be impracticable. I do not see how the opinion of the judge expressed in a particular case would affect the question.

35,339. Because it is not the exercise of the option but the existence of it?—Yes.

35,340. In the case of many lunatics, they never would suppose, would they, that the option would be exercised?—Oh, in the case of many lunatics, certainly not, my lord.

35,341. They would reject the notion, would they not?—Well, a great many patients would be so certain of the affection of their friends that they would reject the notion at once.

35,342. Would it be where there was no affection and the lunatic knew it?—No, I think the general impression upon the patient would be this: "Here am I, degraded by having a disease which separates me from my fellow creatures; they are going to add to me the additional degradation of putting me in the position of having no rights at all by giving an option which might take away my civil rights."

35,343. Do you think that would weigh with many?—I think it would with a very large number, but it would not with a considerable proportion of insane people.

35,344. And the cases where it would weigh, would not they be cases where the wife (if the husband was insane) never came to see him. If she showed affection after he was put in you would not expect in that case that the element would play a part, would you?—I do not quite follow.

35,345. Suppose after the man was put in the wife continued to write to and see him and manifest affection; the idea would never enter his head then?—No, it might not.

35,346. It would be in the case where no such attention was paid?—It might be so.

35,347. You gave a case of the use of the word "incurable" affecting the patient. It so happens that in Edinburgh we have a hospital for incurables, and I have several times objected to the use of the word, and I have been told that they do not care a rap and that it does not affect the spirits in the least. Of course they are sane people. It would be different in the case of insane people, would it; they might brood on it?—I do not dispute your facts with regard to Edinburgh, but I do not believe it with regard to incurable hospitals generally. The sister of a man in one of the incurable hospitals happens to be in my care and I have taken considerable interest in her; and he writes to me continually about her from time to time; and he always carefully obliterates from the head of the letter the word "incurable." That is the place at Streatham.

35,348. That is what one would suppose; but such a thing would weigh more with insane people, who are more likely to brood over things?—I should think so; but this is a striking illustration. It struck us very much; we were very much astonished at it.

35,349. We have had statistics about the percentage of recoveries, such as the case that Sir Frederick Treves mentioned, of 9·1 per cent. recover in 3 to 5 years and 1·6 in from 3 to 10. What does recovery there mean; does that mean liberated?—Oh yes, recovery means liberated, necessarily.

35,350. But then you would require to consider that that percentage is of people who are not recovered permanently but who afterwards come back again?—Yes.

35,351. The percentage would be still further reduced then?—Yes, the ultimate percentage.

35,352. Can you give us any information of how much this 1·6 in from 6 to 10 years would need to be further reduced?—No; I should think that that would be discounted; I should think that would remain a permanent figure.

35,353. Is it discounted, or is it not simply the case of discharged patients that 1·6 per cent. who have been in from 6 to 10 years are in point of fact discharged without regard to the fact that a lot come back again?—No, but the probability is that if the people have been from 6 to 10 years in recovery they would not have rapid recurrences; they would probably remain well. The cases in which you have recoveries with recurrences of the attack are cases of acute insanity; some of them what they call circular insanity, in which you get alternations of depression and excitement, or cases in which you get pure excitement or pure depression coming on acutely from time to time, recurring in months or in years.

35,354. That leads to this question. Is the percentage of recurrences greater or smaller in proportion to the duration of previous insanity?—Oh, probably greater.

35,355. The longer the previous insanity the more likely it is to come back, or the other way?—No, the other way.

35,356. But still, there is a percentage of people who are discharged as recovered, say after six years, who do return?—Yes, no doubt.

35,357. (*Judge Tindal Atkinson.*) Your main objection, Doctor, to the extension of the grounds of divorce to insanity arises from the chances of recovery?—Yes, that is one of the objections.

35,358. When you remove chance of recovery one great ground of your objection goes?—Yes.

35,359. Therefore, assuming you could be positively certain that lunacy was to be permanent, there would be no objection to divorce on the ground of insanity, would there?—Yes, I think there would. Personally, I should have an objection to the extension of divorce to insanity altogether.

35,360. But there is no mischief done in that case to the insane spouse at all?—No, but you get the other objections I have mentioned; you get the objection that the knowledge of the existence of this power is disabling to the whole of the insane throughout the country.

35,361. You have dealt with that matter, but I understand you your greatest ground of objection is the chance of recovery?—That is one of my objections; I should not like to say my greatest, because I have not considered the thing in proportions.

35,362. You can have no experience at present of what would be the effect of knowledge of option of divorce in the case of a person who is permanently insane?—I can only judge from what the influence of other things is on the insane mind. I have no doubt of it.

35,363. (*Chairman.*) Your last point is that it might affect their recovery?—Yes.

35,364. But supposing we deal only with the cases that are admittedly incurable and there is no recovery to consider?—No, my lord, but it would affect the whole body of insane people who are under treatment—the knowledge that this disablement might be put upon them. It would affect the whole body of them, and would, I think, militate very much against their recovery.

(*Chairman.*) Thank you very much for your evidence, Doctor.

Dr. E. Marriott Cooke called and examined.

35,365. (*Chairman.*) Are you a medical doctor?—Yes.

35,366. What are your qualifications?—Bachelor of Medicine in the University of London.

35,367. Are you a Commissioner in Lunacy?—I am.

35,368. You have been good enough also to prepare a memorandum?—Yes.

35,369. I gather your views would be individual, too?—Yes, that is so. I have prepared a few notes irrespective of my colleagues, but I think the evidence I have to give is very much on the lines of that of my colleagues, Dr. Coupland and Dr. Needham. I have known that Dr. Coupland was preparing statistics, and I understood you only required statistics from one of us, so I have not submitted any. But I dare say there are certain points upon which the Commission may like to have my views.

35,370. You say in your notes, "in a certain pro- "portion of cases insanity is brought about by the "patient's own errors?"—That is true.

35,371. But that "in the majority of instances the "sufferer himself is in no respect responsible." Is that in hereditary cases?—It is not limited to hereditary diseases.

35,372. You do not, as I gather from this Memorandum, think that divorce should be treated in any different way from other forms of incurable complaints?—That is so.

35,373. Why do you say that?—For more than half a century, those who had the care and treatment of insane persons have been labouring for the recognition of the fact that insanity is a disease, and any action that would now place insane persons on a more unfavourable footing than those who suffer from other forms of incurable diseases would be, in my opinion, most unfortunate and unscientific.

35,374. The difference has been pointed out to us over and over again, that in insanity cases there is the cessation of mental communion and there is physical separation also, but that that is not so in the ordinary case of disease?—Of course, in many instances the separation is not complete. Ample facilities are afforded in our county asylums for friends of patients to have intercourse with them, and in many instances that opportunity is taken advantage of so far as the means of the relatives will permit. I have no doubt that in the county and borough asylums it is purely a question of expense that prevents the intercourse being more frequent.

35,375. But there is that different existence?—There is; though, of course, as my colleagues have pointed out, there are instances of bodily disease where the patients are bedridden for years. Take for instance certain cases of paraplegia, or those of epilepsy that are unfit to be at home, but where the person is in no way insane, there is enforced separation there.

35,376. You say further on, in your proof that you have not had any expression of wish for divorce by any of the visitors?—I simply state that for what it is worth. It is a fact that while I was superintendent of two large county asylums—first at the Wilts County Asylum some 30 years ago, and then at the Worcester County and City Lunatic Asylum, where I was Medical Superintendent for about 18 years, and where I had nearly 1,200 lunatics under my care, I never heard any relative express a wish that he or she might be divorced.

35,377. I suppose they all knew they could not possibly get a divorce?—I daresay they knew it.

35,378. Because the actual fact is quite inconsistent with the mass of correspondence that has been addressed to us?—Well, I think a good many of them might have said, if they felt it: "I wish I was not "tacked on to my husband any longer as he is in this "unfortunate condition." Without expressing a wish for divorce they might have indicated a wish for separation which they did not.

35,379. The next point in your proof is that you think something should be done "to prevent the fact "being withheld from a person who is about to marry "that the person he proposes to marry has either a "congenital mental defect or has suffered from an "attack of insanity"?—I think that is the only instance in which I would suggest that divorce might perhaps be allowed. I have known of several instances in which the greatest hardship has occurred from these facts being withheld.

35,380. Deliberately?—Knowledge deliberately withheld of insanity having occurred, or of there being a mental weakness. Marriage has taken place and the patient has broken down soon after. I have in mind instances in which it has resulted in a most unhappy life between husband and wife, and been most deleterious to the children. I think that here the question of deliberate deception arises which does not occur in other cases.

35,381. Then you would perhaps accept the view that that might form the foundation of a decree of nullity?—I would.

25,382. And possibly if there be children a declaration of legitimacy so as not to affect them?—Yes.

35,383. That would affect your view?—Quite so.

35,884. Then you suggest that means should be devised to prevent such a fraud, as it is really. Are there any other means except the one you have now mentioned that could be devised?—No.

35,385. (*Lord Guthrie.*) Can you give me any idea what proportion of discharged cases return?—I went into this question years ago, and I think you may take it that of every 100 persons admitted into a county asylum there are 25 who never return after discharge. The average rate of recovery in asylums varies from year to year, something between 33 to 35 per cent. of the admissions. Of those 35 patients who are discharged out of every 100 some are readmitted; some of the readmissions again are discharged; some are readmitted, sometimes perhaps as many as four times, and a few even more. But the nett result is that of the 35 patients there are 25 who ultimately stay out.

35,386. There are 5 who come back?—Oh, more; there are 8 to 10 who come back, and some of those are discharged again. But ultimately, of the 100 persons originally admitted there are 25 who stay out permanently, and who are never heard of again.

35,387. And some 8 or 10 who return?—Come backwards and forwards; some of them ultimately die in the asylum. 25 remain permanently out of the asylum.

35,388. Now take a person who has been in the asylum more than once. When he is discharged are there cases where the doctor says to himself, "He will be back soon"—expects him to return?—Undoubtedly.

35,389. In such a case, Doctor, you know at the present moment that the wife to whom he returns has no protection against his insisting on his resuming living with her?—That is so.

35,390. Do you think that there ought to be a remedy in that case, entitling her to get from some protection against his insisting on cohabitation?—I have no doubt there are many women who are exceedingly pleased to receive their husbands back to them—actually to live with them—but who would be glad if cohabitation could be avoided; but I cannot remember a woman ever saying to me that she would rather not have her husband back.

35,391. In such a case as I have put every medical man would advise that there should be no cohabitation?—It would be desirable.

35,392. Do not you think that the State ought to lend its aid to assist a woman in preventing what you say——?—In theory, perhaps; but in practice it would be exceedingly difficult.

35,393. You mean it would not be often availed of, do you?—I do not see how it could be enforced.

35,394. Why not; if she could go to a court and get judicial separation temporarily or permanently to prevent the husband insisting. The police would not assist her; they would not turn him out. He goes to the house and insists on her living with him as a husband. Do you think that is a proper state of matters?—I doubt very much if the majority of women would take advantage of such a provision.

35,395. But supposing there are women who would do what they ought to do; do not you think the State

should intervene to assist them?—I am very doubtful whether it is a matter in which the State could assist.

35,396. Because of practical difficulties?—Practical difficulties. May I refer to one point on which you asked me a question. A doctor says, "Now this "patient will be back very soon."

35,397. Yes, probably back very soon? — Yes. There was a provision inserted in the Lunacy Act of 1890 requiring that the Medical Officer, in order to keep alive the Reception Order, which is the document under which a person is placed under care, must at certain intervals, first of all at the end of one year, and then at the expiration of another year, and subsequently at the end of two, three and five years, and thereafter at the end of every five years, give a certificate of continuing insanity. Now there are persons as to whom after a time of treatment in an asylum it is very difficult, if not impossible, to give a certificate of insanity, though they may still be in a very unstable mental condition, and in such cases discharge is imperative by the operation of that section of the Act. The Commissioners often have reluctantly, against their will, to insist on the discharge of such persons from care in consequence of that provision. We should be inclined to allow such patients to remain in the asylum, but owing to that provision being introduced into the Act of 1890, which, in my judgment, has considerable disadvantages, there are a number of persons obliged to be discharged who under other circumstances might with advantage be retained.

35,398. You say you never knew a case where the wife, say, had expressed regret with regard to an insane husband that she was still tacked to him?—Personally, I have not.

35,399. Now Sir James Crichton-Browne told us that he had had cases where the wish had been expressed that the insane man was dead, and even proposals that he should be smothered. Have you never had any of these cases?—The only instance I know of is this: Epileptics, as you are aware, are occasionally liable to turn on their faces and be suffocated in their fits, and the only instance in which I can remember anybody making such a reference was a mother who wrote to me and said she was sorry to hear her son was so troublesome and hoped it would not be necessary to smother him. I do not say I have never heard a person say, "Well, it would be a blessing if God took him." That would be the utmost. But one hears that in all sorts of diseases; that it would be a mercy if God took the person who was suffering from some form of malignant disease; but I have never heard anything more than that with reference to any insane patient with whom I have had to do.

35,400. And do you agree with the evidence we have had, that the wife or husband on liberation has in every case gone back to live with the other spouse?—I cannot say that. I have known a few instances of desertion while the patient has been in the asylum.

35,401. But apart from cases of desertion, in every case that you remember had the liberated spouse always gone back to live with the sane one?—Ultimately. Sometimes in the case of the county asylum, as a matter of precaution, the discharge first of all takes place to the workhouse.

35,402. (*Mrs. Tennant.*) You told us that you have had in your experience certain cases of concealed insanity prior to the marriage. Were those peculiar to any one class or spread over the classes?—They were limited to the upper classes.

35,403. Do you think the concealment was sometimes well meant?—Yes, it has been in some instances in the hopes of causing mental improvement.

35,404. (*The Earl of Derby.*) Have you known cases of a man or a woman going back—living with the wife or husband, as the case may be, and children being born, and either the husband or wife, as the case may be, coming back into the lunatic asylum?—I do not think I quite follow your question. Is it the return of the patient ——

35,405. A man is in a lunatic asylum, he is discharged as cured; he lives with his wife, and the result is that a child is born; and that man comes back into the lunatic asylum?—Oh, yes, I have known many such cases.

35,406. And that child has very little chance?—Very little. And that is by no means infrequent in the case of a woman being discharged. Some women are particularly liable to puerperal mania. Puerperal maniacs as a rule get quite well; they are some of the most hopeful cases. Some of them after one attack get perfectly well and have healthy children, and are able to bring up their family and have no recurrence. I have had several instances of that kind, where all the children are healthy, but the opposite sometimes happens, the woman after each confinement being afflicted with puerperal mania, and in many instances the children are defective. One sees many instances of that in the asylums. It is almost impossible to go to a county asylum without finding several instances of a mother being there and some of her children.

35,407. You would agree that under those circumstances it would be perfectly legitimate for the husband or the wife, if you would not give them divorce, to apply for a judicial separation?—No, I am not sure that I am willing for that. My point is, why should you make a distinction in insanity? If divorce was to be extended to other cases of hereditary disease it might be done, but why should you make insanity the one exception. It is no doubt very desirable from the State's point of view that all hereditary diseases should be stamped out, but if you begin with one I think it should be done with all. Why should you make a distinction between phthisis and insanity, or cancer and insanity, or syphilis and insanity?

35,408. Is not insanity one of the most growing evils there are at the present moment?—Quite so, but so is syphilis. What is worse?

35,409. No, but insanity is a case where you have detected it. The other cases you do not always detect, but here is a case of insanity where you have detected it, and where you have the case actually in the asylum, and you know he must be insane, and that if he goes out and children are born, that those children must inherit insanity. Having that case in mind, would not you stretch a point?—I do not want insanity penalised, as it were. I do not want our lunatics to be able to say, "I am the only person afflicted with a disease that is put on a par with wrong-doing. Why should I, on account of my disease, be penalised like those who have done wrong?" If you extend divorce to all hereditary diseases I am inclined to change my opinion, because the insane would say: "I am no worse off than anybody else that suffers with an hereditary disease;" but I do not think it is fair that the insane should be singled out.

35,410. No, but you know what the great danger of lunacy is, and how hereditary it is?—So are other diseases.

35,411. Yes, but other diseases are not so well known and do not come under control at any time. Having once got lunacy under control, are not you prepared to say the control extends to this extent? The others—phthisis and so on—you do not get under control in the same way?—Not unless the other hereditary diseases are put on the same footing. I think it is treating unfairly one section of the community that is greatly to be commiserated.

35,412. Yes, but my point is that it is the only one of the diseases that you mention which you do get under the control of a medical officer at any time; none of the others are?—Oh, pardon me. If I may refer to the disease, syphilis, mentioned just now. See how persons afflicted with that disease are often for a time under treatment in hospitals and elsewhere, and yet there is no control exercised over them as regards their discharge, with the result that the disease is often propagated. Surely that ought to be dealt with.

35,413. (*Sir Frederick Treves.*) There is one point, Dr. Cooke, arising out of Lord Derby's comment on which your opinion would be very valuable. One witness told us this, speaking of asylums, and it took me rather by surprise. He said it frequently happens that the wife demands the bread-winner, or the husband demands his wife's release from an asylum to look after the home before convalescence is fully established,

with consequent relapse, re-admission, and possibly children born in the asylum. We asked whether such demand could be acted upon in defiance of the opinion of the medical superintendent of the asylum, and we were told that it could be?—Any three Visitors of an asylum can discharge a patient, irrespective of the opinion of the medical officer, and if such circumstances are brought before the Visitors as to make them think they are justified in discharging a patient, the medical superintendent has nothing to say to it; though I think, in the great majority of instances, the Committees of the County and Borough Asylums would be largely influenced by the views expressed by their medical superintendent.

35,414. You see the impression that must necessarily be left in the minds of those who heard this is that a certain number of lunatics whose convalescence is not by any means established are allowed to go abroad and to cohabit with their husbands or wives, with the result that children are born. Would you say that is a common occurrence?—I could not say that it is not a fact. If a man came to the asylum and said, "I am prepared to do so and so; I am prepared to look after my wife; I have means; I am willing to do all that is necessary," and the Committee of Visitors on inquiry were convinced that that man's statements were reliable, it is open to them to say, "We do not think it is the best thing for your wife, but you wish to have her at home with you, and you can take her."

35,415. Although she has not recovered?—Although she has not recovered.

35,416. Perhaps it would not be fair to ask if you as a Commissioner think well of that practice?—I think it would be exceedingly hard to say a man is never to have his wife at home if he is prepared to look after her. There are many people in this country very insane who are living with their relatives. It is against the spirit of the law to require a man or a woman to be shut up if their relatives are in a position to look after them. The Lunacy Law to a great extent is founded on the principle that it does not interfere with lunatics in their own houses so long as there is no payment, and they are properly looked after.

35,417. You quite see that it looks as though extraordinary facilities were afforded for the propagation of children who will be imbecile or possibly insane?—Yes, but of course you cannot ignore the fact altogether, I think, that you must expect a husband and wife to be reasonable in such circumstances. No doubt some are quite unreasonable, but I take it the majority would be reasonable in such circumstances.

35,418. We are told in one asylum no less than 30 babies were born in the asylum in two years; and we are led to suppose——?—30 babies born in the asylum in two years?

35,419. Yes?—That is very extraordinary; I should think in every county asylum of any size there are two or three women confined every year, and some of those may never have been there before. They may have been admitted as a result of a mental breakdown due to pregnancy; but I never heard of such a number as 30 women in two years being readmitted in one asylum in a pregnant condition. I cannot say it is not true, but it is very unlikely.

35,420. That rider was not added, but coming immediately after a statement of the number of women that come out and have children, and then the fact that 30 were born in two years one naturally infers that those children are the children of the mothers who have been readmitted?—I do not think that should be assumed, because many of those may have been women who had not been previously patients. But in any circumstances 30 from my experience in even the largest of our county asylums where there are 2,500 patients would be a most unusual number, and I can hardly imagine it was a fact; but I cannot say such was not the case.

35,421. (*Chairman.*) You were asked some percentages about recovery. Can you give me any percentage of those who are admitted into asylums and never go out of them?—It would be about 65 per cent. Out of every 100 there are 33 to 35 who recover, so that it would be the remaining 65.

35,422. Then may I take it that there are 65 per cent. of the persons admitted to asylums who live the rest of their lives and die there?—That is so. Well, no; I think that would be hardly correct, because you would have to allow for those who are discharged relieved.

35,423. Can you give us it fairly roughly—a sufficiently approximate idea?—I should have thought 60 per cent., but that varies a good deal; but, I think, speaking generally, you might put it at 60 per cent.

35,424. Sixty cases admitted to an asylum out of 100 never go out again?—Yes.

35,425. Die there?—Yes.

35,426. And may I take it from the certificates we have that one half of those are married people?—Dr. Coupland is no doubt strictly accurate in his statistics. I am quite prepared to accept his figures.

35,427. Then, in answer to Lord Derby, I gathered that you said there is another disease under control in a manner somewhat similar to lunacy cases. So I understood you. You indicated that another disease was a subject of control in a somewhat similar way to that that occurs in cases of lunacy?—No, I wished to indicate that there were persons suffering from certain diseases whose relatives, though the patients were not under control in the sense of being in an asylum, were obliged to be separated from them.

35,428. May I take it there is no other form of complaint except lunacy as to which at the instigation of someone the State steps in and secludes and controls the patients?—No, not in which the State steps in, but I should say that sane epileptics that are sent to homes are in a somewhat analogous position. It is thought desirable to separate them from their relatives—those that go to homes like Chalfont St. Giles and the David Lewis Epileptic Colony.

35,429. They go voluntarily?—Yes.

35,430. And can go out whenever they like?—Yes, but as a matter of fact they stay. Their disease is such that they have to be separated from their friends.

35,431. But they go in by their own consent?—Yes.

35,432. And so with the habitual drunkard?—Yes, but the difference between habitual drunkards would be that they would not be allowed to leave under a year, whereas the epileptic in Chalfont St. Giles and other similar colonies could go when he liked. There is no detention.

35,433. Then there is no other form of complaint known to human beings in which the State steps in and takes control and absolutely holds the patient subject to its disposal?—No.

35,434. (*The Archbishop of York.*) The habitual drunkard can be put in by the magistrate.

(*Mr. Brierley.*) Yes.

(*Witness.*) I thought your Lordship confined your remarks to patients; you can hardly call an habitual drunkard a patient.

35,435. (*Chairman.*) Are they entitled to come out at any time by their own wish?—No, I think not, I have not the Inebriates Act thoroughly at my fingers' ends, but I think they must remain for a year.

(*Mr. Brierley.*) Well there are inebriates' reformatories and inebriates' retreats. The retreat you can go into by consent and you must consent to stop for any period not exceeding two years. The other you can be committed to for three years and you have no right to come out.

35,436. (*Chairman.*) But leaving that out, there is no other case where the State takes control and keeps control as long as it chooses?—No.

35,437. (*The Earl of Derby.*) That is the question I wanted to get at before. It is the only complaint in which the doctor on behalf of the State certifies that a man is to be detained and that man cannot leave until that doctor certifies that he is safe and is cured and can go out?—Until the Visitors or other discharging authority permit.

35,438. Well, somebody that exercised the same authority?—Yes, but not the doctor who sent him in.

35,439. I mean it is not a case of three years or one year, but it is as long as the certifying authority considers it is safe for the rest of the community for that

man or that woman to be discharged?—Not in all instances, because in the case of a private patient, the person who acts in the position of what is called the petitioner—that is the person who applies to the judicial authority to make the order—the discharge absolutely rests with him, and he can discharge the patient at any time he thinks fit, subject to one provision, namely, that the superintendent of the asylum, or the medical officer of the house can give a barring certificate if he considers that the patient is dangerous to himself or to others; but otherwise, no matter how insane the patient is, if the petitioner orders the discharge the holder of the patient is at once obliged to set him free.

35,440. Does that only apply to private patients?—Yes. In the case of paupers discharge rests entirely with the Visitors.

(*Lord Guthrie.*) The doctor referred to patients discharged only as relieved. Is it a fact that the patients are habitually discharged whom the doctors cannot say have recovered.

35,441. (*Chairman.*) Would you kindly follow up what Lord Guthrie suggests. Is it a fact that patients are discharged from the ordinary asylum when there is no proof that they are completely recovered?—From pauper asylums?

35,442. Yes?—Occasionally, but not very frequently.

35,443. From the private asylums——?—There is no bar to that beyond the one I have just mentioned. In the public asylums the Visitors of the asylum have to be satisfied that the provision for the patient in case of discharge is sufficient, and in that event, though of course the medical officer may be consulted, the order is made by three Visitors. In public asylums the ordinary order of discharge is made by two Visitors on the advice of the medical superintendent that the patient is recovered; but in the other instance, though the medical officer is in the great majority of instances consulted, the discharge rests entirely with the three Visitors of the asylum.

35,444. Now you are speaking of the private ones?—In the private ones that rests entirely with the petitioner, in private cases. Of course, now and again a person is admitted on a wrong order, and we take the initiative and say, this person must be discharged, but that is a matter of routine only.

35,445. Are all those matters you have spoken of dealt with by the Lunacy Act?—Yes.

35,446. We can study the provisions there?—Yes, in the sections dealing with discharge.

35,447. Do you find in practice that people are allowed out and return?—Oh, undoubtedly. Particularly, I should say, to a greater extent in establishments where there are private patients: their relatives being in a better position to look after them, they wish to try and see how they get on with them and whether they can manage them at home.

35,448. Does that occur from public asylums?—Yes, but not so largely. There is generally the question of means.

35,449. Does that amount to this, that in those cases where they are found to return, the patients, when they went out, although apparently well enough to go, are not so stable and so fixed that they are never likely to return again?—There are certain cases that promise well, but after a trial, they are obliged to return. It is proved that they cannot stand the strain or even the ordinary little worries of life; we often find that. And there are a certain number of people in private establishments whom we know are subject to recurring attacks of insanity, and whom the relatives are glad to have at home during the intervals of the attacks.

35,450. In reference to one or two answers you made to some of the Commissioners as to the difference between insanity and other diseases of a serious character, you said, I think, that you could see no reason why insanity should be dealt with differently as regards divorce from those diseases?—I should very much regret to see it dealt with in any other way.

35,451. Because you said the patients would not like to feel they were stigmatised, whereas other persons suffering from serious complaints were not?—Yes, that they were the only people suffering from disease put into the same category with persons who have committed wrong.

35,452. Would you advocate that all those diseases should be grounds for divorce?—In theory I would, but whether that is practicable is a matter of great doubt. Theoretically it would be an excellent thing for the State if it was made absolutely impossible for persons who are afflicted with hereditary disease to propagate children.

35,453. And a step in that direction would be allowing divorce on those grounds?—On those grounds. Whether it is practicable is another point; but in the interests of the State it would be a great advantage.

(*Chairman.*) I have to thank you very much on behalf of the Commissioners for your very valuable evidence, doctor.

Dr. Robert Reid Rentoul called and examined.

35,454. (*Chairman.*) Is your name Robert Reid Rentoul?—Yes.

35,455. Are you practising in Liverpool?—I am practising in Liverpool.

35,456. I think you communicated with the secretary with a view to presenting some of your views to the Commissioners?—Yes.

35,457. Now, we have had your proof before us and I find a good deal of it is what I might call argument or discussion, and I therefore propose only to ask you some points on which I want to get your evidence?—Yes.

35,458. You must recollect that we have been sitting a great many days now and had so much evidence that a good deal of the main points are very fully before us. I have your last memorandum, and I want to take your evidence as to the question of whether or not, what you term half divorce or judicial separation, should remain as a remedy or whether it should be abolished?—Do you mean, my Lord, in ordinary cases of life, or with regard to lunacy?

35,459. As a general ground of relief?—I should do away with that altogether.

35,460. And wherever that is given at present you would give grounds of divorce?—Yes.

35,461. And would you include in that lunacy?—I would give a divorce in cases of marked lunacy.

35,462. Where it is incurable?—Where it is incurable.

35,463. How long would you test the curability for?—There is no cure, my Lord, for insanity.

35,464. I mean how long after it has been continuous ——?—Four years, I would say.

35,465. The next point I want to ask you is with regard to re-marriage after divorce. You have expressed the view here that a co-respondent when found guilty should never be permitted to marry the guilty wife?—Yes.

35,466. Or the guilty husband be permitted to marry the guilty woman?—Yes.

35,467. That is an opinion, I take it. It is not founded on any facts?—It is founded on some of the United States' Acts.

35,468. I think you may take it we have all the laws of the United States in a large Bluebook?—Yes.

35,469. Then, again, "That no guilty party in "divorce proceedings shall be permitted to marry any "woman until 10 years after the granting of the "divorce"?—Yes.

35,470. There again you refer to the United States' laws, some of which have that provision?—Yes, not 10 years, but a series of years.

35,471. You put 10 years?—Yes.

35,472. You mean in the United States there is a series of years, but not a fixed 10?—Not a fixed 10 years.

35,473. Then you have also suggested from the same laws, "that the injured wife should be permitted "to drop her married name and take her maiden name "if she so wishes, provided that none of her children "are given into her care or control"?—Yes.

35,474. That, again, is taken from the United States' laws?—Yes.

35,475. That is why I am shortening this evidence very much, because we have had so very much of all this before from the actual books in which it is all to be found. Then the next ground for divorce which you maintain, is wilful and continuous desertion for four years and upwards?—Yes.

35,476. And that then the marriage should be dissolved—that is at the option of the petitioner?—Yes.

35,477. And the guilty person be forbidden to re-marry until 10 years after dissolution?—Yes.

35,478. Again, you take that from the United States' laws?—Yes, but not the 10 years.

35,479. In case of crime the husband or wife having been imprisoned for five years or upwards the marriage should be dissolved and the guilty person forbidden to marry again under 10 years?—Yes.

35,480. That is also taken from the United States?—Yes.

(*Chairman.*) Now, if you will allow me to say so, having got your opinion on those particular points, I do not think it is really necessary to trouble you any further.

Adjourned.

Winchester House, St. James's Square, London, S.W.

THIRTY-NINTH DAY.

Wednesday, 2nd November 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The Right Hon. THE EARL OF DERBY, G.C.V.O., C.B.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
The Hon. LORD GUTHRIE.
Sir FREDERICK TREVES, Bt., G.C.V.O., C.B., LL.D., F.R.C.S.
Sir LEWIS DIBDIN, D.C.L.
Sir GEORE WHITE, M.P.
His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

Mr. MONTAGUE HUGHES CRACKANTHORPE, K.C., called and examined.

35,481. (*Chairman.*) Your name is very well known to us, but to get it clearly on the notes, you are one of His Majesty's Counsel, and have had a large experience at the Bar?—Yes.

35,482. Since then you have been writing on various subjects?—On some subjects.

35,483. You are also a member of the Eugenics Education Society?—I am president of that society.

35,484. I gather from a note at the end of your proof that what you say is to be taken as your own views, and not as embodying views taken by the council of the society or the members of the society individually?—If you please.

35,485. You do not wish to represent them, but express your own views?—That is so, but at the same time I may add I have no reason to suppose that my colleagues on the council of the Eugenics Education Society would, as a body, differ from what I have said, or what I may say to you to-day.

35,486. You have sent us in a memorandum which we have all read, but I propose to ask you only a few questions upon it, because a good deal of it is historic or dealing with the Acts of Parliament, and so forth. We have the materials ourselves on those points. If you will allow me I will ask you a few questions, and ask you if there is anything you desire to add?—If you please.

35,487. First of all, with regard to the views about marriage and divorce, you consider there are only three different ways of looking at the matter?—Yes.

35,488. One, that marriage is a sacrament and is indissoluble; two, that it is a civil contract dissoluble at the instance of either party by reason of certain acts or defaults of the other party; thirdly, the eugenic theory, which you propose more fully to deal with, that since marriage is an institution for (among other things) the continuance of the human race, it should be subject to regulation by the community, which must be either helped or hindered in its progress by the children that are born into it?—That is my view.

35,489. That is the eugenic theory. You proceed after that to refer to historical matters and I pass entirely by those points. Will you take page 11, where you begin with the principles with which you are immediately concerned. Will you read it, and explain it in any way you desire?—"With an eye both to domestic happiness and to the progress of humanity, eugenics urges the importance of 'right selection' *before* marriage, holding that without such selection the vows of love and fidelity exchanged at the altar may, and probably will, turn out to be a mockery. For the same reason eugenists protest against the giving in marriage of young women by their parents and guardians with a view to secure what is vulgarly called 'a good match.' A really good match requires not only mutual love, but common or reciprocal interests in life; that is to say, either that both parties should be interested in the same things, or, better still, that each should be interested in the 'things' of the other, while cultivating separate interests of his or her own. This is the key to that intimate association and friendship which stands the test of time. This it is, when there are added to it the 'things of the spirit,' that makes a happy home. Eugenics, although it primarily means, as everyone knows, 'good breeding,' also includes good environment. It therefore lays very great stress on the happiness of the home, for happy homes make happy children, and happy children have far better chance than unhappy children of growing into good and useful citizens." May I say that I have from time to time looked at the reports of the evidence of the witnesses who have preceded me, and I have observed a singular silence with regard to children. They have spoken of the married parties: what should be a ground of divorce as regards the parties; how that divorce may work hardship, and so on, but they have left out

of account apparently the children for whom, according to the Church of England, and according to the eugenic view, marriage is, I will not say primarily ordained—I have to use words which to me are not exactly the phrases I should like to use, but I will use the received words—for which marriage was primarily ordained, or at any rate secondarily ordained. That is the first observation I make on that class of evidence. There is a good deal of talk also outside this Commission. With regard to the point I am making in this paper, that marriage should not be entered on without proper safeguards against it turning out to be disastrous, it seems to me that that is not only the experience of humanity, but it is also commonsense and intelligible. At present no precaution whatever is taken, even by those who hold that marriage is indissoluble, to avoid those results which would probably follow if all the facts regarding the heredity, past life and otherwise, of the married parties were known and considered. In other words, to put it very shortly, the State at present and the Church, or rather I should say the Church first and the State next, allow what are promiscuous marriages, that is, marriages without forethought as to the biological conditions of the parties, as to their tendency to lunacy or their actual affliction by certain well-known racial poisons, either communicated to them involuntarily, or incurred by them by their own vice. All those points are left out, and the result is that divorce is frequently brought about by the impossibility of people living together when their true nature is revealed to each other. That applies not only to diseases but also to temperaments, although I would not go so far as to suggest in the present state of public opinion that the example of Austria, Sweden, and Switzerland should be followed in allowing divorce on the ground of what is called incompatibility of temperament, or, to employ the German phrase, insuperable aversion. I should not think public opinion is ripe for that. I should hope it would very soon so ripen on the subject that those marriages would not be brought about, because more care would be taken before people betrothed themselves to each other.

35,490. May I say, after discussing that matter somewhat further in the paper I have, on page 13 you proceed to sum it up. Will you read it?—"One half of eugenic teaching is, accordingly, concerned with the production of the fit; the other half with the elimination of the unfit. By fitness or unfitness are here meant the presence or absence of that amount of health which goes to make up civic worth and usefulness. These two halves are complementary to each other, since selection implies rejection. The first half is called positive or constructive eugenics, and its earliest exponent was Sir Francis Galton, in his 'Hereditary Genius' (1869) and Natural 'Inheritance' (1889). It justifies its name by teaching one generation to be at once the architect and the builder of the next, using the best available materials. The second half is called negative or restrictive eugenics. It teaches the restriction, or restraint, of marriage whenever and wherever the materials to hand are so inferior that they ought not to be used at all. It follows from these definitions that, according to eugenics, marriage and divorce come under the same moral law. Just as there are marriages which, in the interests of the race, ought not to take place, so there are marriages (examples will be given presently) which, having taken place, ought, in the interests of the race, to be dissolved. The doctrine that, once it has been solemnised by the Church, marriage is indissoluble, appears to the eugenist to be, even on biblical principles, irreligious, because inimical to the welfare of humanity, since man 'having been made in the image of God,' humanity is of all Divine institutions by far the best and the highest. The present is not the occasion for presenting even a bare outline of the biological and biometrical researches on which eugenics rest. Those who master this knowledge should study the writings of Francis Galton, August Weissmann, J. A. Thomson, R. H. Lock, Karl Pearson, Archdall Reid, Alfred Ploetz, and others. I do not say that all these authorities are agreed. They are not. But there is enough agreement between them to establish this proposition — that insanity, feeble-mindedness, syphilis, tuberculosis, and any other diseases (including eye defects) are inherited in the same way and to the same extent as are stature, ability, and eye-colour. Direct transmission from parent to child in the sense in which a letter is transmitted through the post, there, of course, is not, for disease, whether mental or bodily, is not a material thing. It is a process which runs its course in some part of the human frame. Tuberculosis and syphilis offer as good an illustration as we could desire. Both are due to specific microbes, but the microbes themselves are not transmitted, for the simple reason that it is the germ-cell that carries the heritable factors, and the microbe cannot form part of the organisation of a germ-cell. What is inherited in each case is, as Thomson points out, a predisposition to caseous degeneration of tissues and a vulnerability to the very kind of microbe which first invaded the parent, should such microbe at a critical moment attack the child or full-grown man. This degeneration or vulnerability may not manifest itself till late in life, or until the second or third generation, the prior generation having been passed over. In the above enumeration of heritable 'defects' I have purposely left out 'habitual drunkenness' or 'alcoholism,' about which a controversy has for some months past been going on in 'The Times' and elsewhere. Let us see how that controversy stands. I will begin by citing the testimony of Dr. Sullivan, a high medical authority, who has written a treatise on 'Alcoholism.' He tells us that in many defective nervous developments of humanity parental alcoholism exercises a causal influence on offspring. In epilepsy such influence has, he says, been noted by one careful observer, in 21 per cent. of the cases, by another in 29 per cent., by a third in 20·2 per cent. In idiocy it has been traced to the father in 471 cases, to the mother in 84 cases, and to both parents in 65 cases out of 1,000. In 150 idiots and imbeciles, whose family history was investigated by a well-known mental pathologist, Dr. Tredgold, it was found present in 46·5 per cent. of the cases, usually in association with insanity or other neuropathic conditions. In prostitutes it has been found in 82 per cent., and in juvenile criminals of weak intellect in 42 per cent. Has this record of facts been displaced by the now famous 'memoir' lately issued from the Galton Laboratory and based on the examination of certain children attending elementary schools in Edinburgh and Manchester? I do not think it has. One would not expect traces of the 'alcohol taint' to be discoverable in a child of tender years; in fact, its non-appearance in such children proves nothing. What we want to know, and what the 'memoir,' limited as it was in its scope, does not tell us, is whether the tendency to excessive drinking is more strongly manifested in adult life when the parent was a drunkard than when the parent was not a drunkard."

35,491. What follows on is only putting the problem in another form. At the bottom of the page you summarise the eugenic position?—"The eugenic position with regard to all the above defects is, I repeat that when before marriage any of these defects is known to be present in either of the parties, the marriage ought not to take place, and that if it has taken place and the wife is not past child-bearing it ought to be dissoluble at the instance of the untainted, unblemished party. Hence, too, it follows that a husband or wife who is divorced on any of the above grounds should be debarred from marrying again, otherwise the mischief, instead of being extinguished (so far as it can be extinguished by law), might break out afresh in a new quarter."

35,492. There are two propositions in that, first the propositiou which deals with matters before marriage. Have you any practical suggestion to make as to how that position is to be dealt with?—Although what I suggest must not be taken as ripe for legislation, because popular opinion has to be formed, and, of course, this Commission has enormous power in forming public opinion, I should say that what will have to be aimed at in the future, perhaps in the near future, are legislative provisions whereby licences to marry

should not be granted except upon some prima facie testimony, it may be in the form of a medical certificate, or at all events of something which would prima facie establish the fact that there was no such hereditary transmissible defect in either of the parties as would prejudice the children which might be born of that marriage. Let me say why I hold that. It is all a question of point of view. A eugenist like myself regards the future quite as much as he looks back upon the past; indeed he cannot alter the past, but he can alter the future. His aims and objects are directed towards the future: he considers that one generation, if I may use the phrase, is a trustee for the one that follows it. He believes in the improvability of humanity by humanity's own exertions, by humanity availing itself of those biological laws which have been, to use again an expression which is popular, but which I rather object to, revealed, because everything is revealed which man can discover by the intelligence with which he has been gifted. I call that a revelation, and a revelation which is being made from day to day. Unless we take advantage of those truths brought to light by intelligent research and labour of man, guided or not guided by a higher intelligence external to ourselves, or guided or not guided by the immanent Spirit which illumines the highest humanity, in either case divine laws are worked out. Those who would neglect those divine laws which have been so discovered, appear to me not to have comprehended the true principles of religious life or useful citizenship.

35,493. That pretty well exhausts, or at least sufficiently so for the purpose of to-day, the position before marriage. Is there anything you desire to add upon that?—It is perhaps germane to observe, although I do not know that it is within the reference of this Commission, that I think actions for breach of promise of marriage, which is an ante-nuptial business, ought to be abolished. Actions for breach of promise of marriage work very badly for the community and are anti-eugenic. Let me remind you—you do not require to be reminded—of the debate that took place in the House of Commons in 1879, when Sir Farrer Herschell—he was then Mr. Herschell, Member for Durham—moved a resolution for abolishing actions for breach of promise of marriage. It was the third time he had moved that resolution, and he moved it in a new form, because he made a proviso that if the plaintiff could show that pecuniary loss had been incurred by reason of the promise having been repudiated, then that pecuniary loss might be made the subject of an award of damages, but nothing more should be awarded than the pecuniary loss incurred. In that debate I recollect very well it was argued, and it is my argument, that breach of promise of marriage actions work mischief, Sir Farrer Herschell on that occasion put this case: It is no defence to an action for breach of proimse of marriage that the defendant has spent the greater part of his life in a lunatic asylum, although that, of course, being known to himself, he might on that very ground refuse to perform his promise.

35,494. You mean assuming that kind of action stood, it should be an answer to say that there was an unfitness?—Quite.

35,495. In either party?—Either party. Then Sir Henry James pointed out (all this is in Hansard; I think the date is May 1879) that the existence of an action for breach of promise of marriage led to this. When people occupying good social positions become engaged, one party or the other makes the fact known speedily, very often to the friends and relations, and it becomes social gossip, social property, that is to say, in the circles in which those persons move, but before the engagement has proceeded very long the parties, on better acquaintance, discover that they are wholly unsuited to each other, that there is no prospect of their temperaments or tastes becoming assimilated, but public opinion, which is fostered by the existence of this form of action, prevents either of them from withdrawing. The result is, when they go to the altar, as it is called, and it is not an inappropriate term when the marriage is ill-assorted, the parties are conscious within themselves, in spite of the splendour of the ceremony and the large gathering and greeting of friends, the marriage is not going to be a success. Sir Henry James pointed this out very clearly, and that is a point I myself take when anybody says that actions for breach of promise of marriage are useful.

35,496. You bring it in on the point you mentioned to begin with, that, being a case where unfitness was found, there should be at any rate a complete answer to such an action. Does that exhaust matters prior to marriage? You have correctly said they are not strictly within the scope of the Commission. I gather you think they bear very largely on the matter of divorce afterwards?—Yes. There is one other matter, and that is the publication by banns. Under the Act of 1753, 26 George II., marriages which up to that time might have been contracted almost consensually were required to be published beforehand, The publication of banns at the present day I consider to be futile, owing to the well-known fact that locomotion or change of residence is so easy now as compared with what it was in 1753, that the persons to whom the banns are published may not know anything of the persons whose names are mentioned. In a village where people live in a small circle it may be all very well, but in large towns or in a city like London it seems to me preposterous to suppose that that so-called publication is any real publication at all.

35,497. May I pass on to the second branch of the eugenic position, which is indicated in the last paragraph that you read, which is taking it up after marriage has been contracted. Will you explain the view, as bearing on the question of divorce, where marriage has taken place. You have two positions, one you have made plain, as to the position the eugenists take up with regard to the necessity for more precautions being taken in entering into marriage. The other point is, what are the grounds upon which they place their views with regard to divorce, assuming that the marriage has taken place?—The best way to deal with that is not by generalising, but by putting a concrete case. I will take the case of lunacy, because that is a strong case. Suppose that after marriage, there being no presumption against perfect sanity before marriage, one of the parties gives signs of lunacy. Those signs grow until at last the party—let me take the wife, say—has to be put under restraint, and she is away for years. I am now thinking of an actual case. She is away say 20 years, but not continuously, because during those 20 years for short periods she is discharged from the home that received her, on the footing that she was cured. That she was not cured is proved by the fact that three months afterwards she had to go back to the restraint from which she was emancipated. From time to time children are born. I am dealing with an actual case in my mind, but one does not wish to particularise too much. Children are born. In the case I am thinking of two children were born; one of them, about the time when she became adult, destroyed herself, committed suicide. I refer to another case in that paper that occurred in which a man by his own act became *non compos* because he developed the drink habit late in life. although he had served in Her Majesty's Navy very creditably—I think there is no harm in saying that, for all the parties are dead—and at last had delirium tremens and had to be put under restraint. He had several children by the lady whom he had married, four or five. What happened to those children? I know as to two of them. Only a few months ago in a flat the sister was horrified when she went into her brother's room by finding him hanging from a hook fastened to his door. She herself was a splendid woman; she went on with her work, but the shock, accompanied by the weakness of constitution which she had inherited from her father was such that she broke down absolutely and died quite in the prime of life. I could give you other instances.

35,498. We would rather have your conclusions?—The conclusion I draw is that lunacy, whether curable or incurable, if it is intermittent is eugenically the worse of the two, because there is freedom of action left, and the result is that children are propagated. Although it is quite true that in a sense when you marry you take your partner for better or worse, the consecrated language of the Prayer Book—and I do not wish in the

least to quarrel with it—I say that you should not take children or propagate children for better or worse. If you do, you ought to be restrained, because to propagate children for worse is simply to abdicate your duty, to commit a wicked act, a selfish act, and an act which must hinder the progress of the community of which you are a part.

35,499. What is the remedy you propose?—I propose in those cases that the cohabitation should be rendered impossible, that a person should not be let out of an asylum in order to live with his wife and propagate children. Precautions should be taken. I am not formulating an Act of Parliament; you would not expect me to do it, but public opinion will tend in that direction. Acts of Parliament are easily formed and framed when public opinion is rightly formed.

35,500. How far would you go in allowing divorce to be obtained in such cases?—I would allow it for the sake of the parties themselves. I am confining myself now to the parties themselves. I think it is absolutely cruel that a man should marry a girl of whom he knows very little except having met her in society, regarding her as a charming object and perhaps nothing more; that he should, I say, marry that woman, and shortly after marriage, whether hereditarily or not I do not care, she should show that she is of unsound mind, and have to be put away, and remain away for years and years and years, and that man be made a celibate against his will. I think that is extremely hard on the man, and, turning the thing round, it would be equally hard on the woman.

35,501. Would you go further than those who would suggest that a case for divorce should be made where insanity is incurable, and say where it exists and is recurrent?—I do, provided that the medical testimony is that it is not a mere momentary temporary aberration, but recurrent, because I regard that as a permanent state.

35,502. You regard that as incurable except where it was a temporary aberration?—It falls under a different head. It is intermittent and dangerously intermittent, and should be ranked as incurable.

35,503. You rather sum up the position as to indissolubility on page 17 of your proof?—"It will be observed that I say the marriage should be indissoluble, not that the parties should be entitled to a judicial separation only—and for this plain reason. It is monstrously unfair that a healthy, and perhaps young, woman—and the same, *mutatis mutandis*, holds good of a man—should be condemned, it may be for life, to involuntary celibacy for having ill-selected her partner, or (as often happens) for her partner having been ill-selected for her." Then I deal with judicial separations, and the Act of 1895.

35,504. I would like you to read that, because you have evidently thought this out very fully?—"Here, however, a distinction must be made between different strata of society, between what are called 'the classes' and what are called 'the masses.' Under the Act of 1895 (referred to already) power is given to stipendiary and other magistrates to make an order for separation against deserting or brutal husbands. These orders appear to me to stand on a different footing from orders for judicial separation pronounced in the Divorce Court. A wife cannot apply for a magisterial separation order unless she is living apart from her husband, and her main object usually is to obtain maintenance for herself and her young children out of her husband's weekly wages. She does not in most cases wish for a divorce in order to be able to marry again. Of matrimony, indeed, she has already had too much. But here, too, she ought to have the option after, say, twelve months of separation, to convert her protection order into an order for divorce. She may have an opportunity of making a fresh start in life by a worthy marriage, and, if she desires to be free, why (except on the sacramental theory) is she to be held bound when all the three purposes of marriage have, in her case, been frustrated? The three purposes being the procreation of children, mutual society, and the avoidance of sexual sin. It is, I know, said that the husband, at all events, should remain bound as a punishment for his misconduct, and that the innocent wife cannot therefore be freed. But surely this is a worthless argument, for there can be no greater desecration of marriage than to insist on its continuance merely to penalise the offending partner. For the realisation of their general ideas, for the achievement of their general purpose, eugenists do not at the present moment make their appeal to the Legislature. They rely on the growth of public opinion—the oracle without whose favourable word no parliamentarian ventures nowadays to stir." When I say "for the achievement of their general purpose" I put in the word "general" deliberately and with an object. The Commission for the Care and Control of the Feeble-minded examined that subject and they came to the conclusion that feeble-mindedness, although it was spontaneous in its origin, whatever that word may mean, was certainly hereditary, and the National Association for the Care and Control of the Feeble-minded has been urging the Government of the day ever since that Commission reported to make provision for the segregation of the feeble-minded, so that they should not marry and propagate children with the feeble-minded defect. Last July, I, as president of the society with which I am connected, attended, as part of a deputation, the Prime Minister in Downing Street. I may say that although the Prime Minister had an urgent engagement and had to leave, the Home Secretary and the President of the Local Government Board remained, and both spoke.

35,505. I suppose it was sufficient to make it public?—It was quite public; it was reported. There were reporters present and the deputation proceedings were reported in all the papers, certainly, at least, in "The Times." The Government were sympathetic, and the Home Secretary was good enough to say he was very much struck with what I had said, speaking in the eugenic sense only, and Mr. John Burns seemed perfectly satisfied with the arguments we presented. The National Association have long been urging this Government to bring in some law whereby segregation of feeble-minded persons should be effected. They have promised to consider it. The Prime Minister said it was a most important matter. He would not commit himself, naturally being Prime Minister he could not without consulting the Cabinet, but he was very sympathetic, and the others I have mentioned were on the same line. Therefore, although for their general purpose the Eugenic Society does not press for immediate legislation, yet for the particular purpose of the segregation of the feeble-minded it does so press. There is no inconsistency of conduct in their pressure and not pressing at the same time, and as a member of the deputation which attended last July, in Downing Street, I urged that very point.

35,506. You have indicated the lines on which legislation might proceed in a further direction so as to prevent marriages of the unfit, and dissolving them if there was unfitness?—Yes.

35,507. The next part of your proof gives some instances. Do you think it necessary to go through hem?—No. I have already anticipated one. I do not wish to emphasize those private cases, although there are many others I could have mentioned.

35,508. May I take it your views are supported by instances that have come before you personally which you can verify?—Certainly. There is a case I heard of in Scotland when I was in Edinburgh, after this case was in print.

35,509. At the close of your proof you summarise it. Might I ask you to give us that?—This is put exceedingly shortly, but I will read it if you will allow me. "(*a*) Marriage—according to eugenics—a privileged, yet terminable contract, a contract of supreme moral, spiritual, and social value, not an indissoluble bond. (*b*) Restrictions on marriage to be based, not on decrees of General Councils of the Church, but on known laws of health and human progress. These laws, once ascertained, to be as binding on the consciences as the decalogue. (*c*) Marriage not to be entered on unless there are present soundness of body, saneness of mind, and unity of spirit. These conditions fulfilled, marriage takes on a sacramental

quality; without them, incalculable misery may ensue. (*d*) The mission of eugenics—the education of public opinion on the great question of the relations between the sexes. (*e*) Public opinion once fully and rightly formed, the required legislation will follow automatically, unchecked by futile party friction or by wearisome debate."

35,510. You have sent to us in addition a small paper, most of which I thiuk you have already covered but I should like to ask you about one passage on page 3, which follows the first point about the State requiring sound conditions of marriage, and it then proceeds to say what is there stated?—This is only a rough outline. Once let the State require sound conditions for marriage, it follows that when these are so unsound that future children would be tainted at birth, separation or divorce should be obtainable so long as the wife is not past child-bearing. This is required by considerations for the national welfare, which are the foundation of national morality.

35,511. So far you have dealt entirely with the question of fitness. Do you wish to present any views as to questions that arise not strictly in connection with fitness, but for conduct which breaks up *de facto* a marriage tie, for instance, desertion extended over a long period of years? You have not touched upon that. Do you propose to go into that question?—I will if you invite me. I do not wish to press my opinions upon you, but if you invite me I should say with regard to penal servitude, which is involuntary desertion caused by the act of the criminal, I think a wife is entitled, if her husband is sentenced to seven years penal servitude and she is a young woman, to consider her husband as dead, and be entitled to a divorce.

35,512. Would you apply that where the husband has wilfully deserted his wife?—A long desertion implies a complete alienation of affection and probably a transfer of his power of affection, if he has any, to another person. I think the wife has been so injured, and the great purpose of her marriage, mutual society, so frustrated, that she is entitled to be free.

35,513. Would that principle apply to cases where the treatment of the wife by the husband had been such that it was no longer safe for her to live with him?—Certainly. I put it as high as this; wherever the cohabitation would be dangerous to health, not only dangerous to life, I think that ought to be a ground for divorce.

35,514. Do your views result in this, that where those conditions arise the remedy is not by separation but by divorce?—Yes, because I have a strong objection, as many other people have, to these long judicial separations. I think they lead to gross immorality and are very unfair. It is a timid policy which is afraid to say "Divorce" because of some notion that marriage is indissoluble. The *a mensa et toro* separation was invented by the canon law, and judged by 19th and 20th century facts it is very disastrous, whatever it may have been when first started. It is a historical thing. One can understand how judicial separations took such a prominent part in the Act of 1857, because legislation proceeds gently. Judicial separation was obliged to be there to replace the ecclesiastical decree of separation *a mensa et toro*, which had been established for many centuries.

35,515. That leaves one further point to ask you upon, and that is important, because what you have said covers all the cases which have been suggested—if I have omitted anything it is my fault—where the object of marriage is frustrated. There is a point you have not touched on, and that is the equality of the sexes. Have you considered that? That is, supposing the grounds of divorce for a woman are the same grounds as for a man?—I would like to say a word upon that. I have touched upon it in the paper, and I daresay I have not expressed myself as fully as I should. It is contended that there should be perfect equality between the sexes. It is sometimes put on biological grounds, sometimes upon the ground of the rights of the woman, and thirdly, it is put upon the moral ground, because it is said the sin of the man is the same as the sin of the woman. Those exhaust the three grounds I have met with by which the absolute equality of the sexes is claimed. Biologically, of course, the sexes are not equal, and never can be made equal, any more in man than they are equal in the protozoa. I agree with what a witness said yesterday—it is the only point on which I do agree with him—that the equality of the sexes cannot be biological. It is not a biological fact. The sexes start equal, but when they attain the age of adolescence, they differentiate; and again, to use a phrase which is popular, I use it because it is so, nature has ordained that they shall differentiate, and for an obvious purpose. In the one case the man has to evolve *qua* man: in the other, the woman has to "involve" *qua* woman, because she has to be the mother of the future race. It is that involution, meaning thereby that intricate complexity of the woman which differentiates her from the man. Therefore the logic is defective, because it starts with a false premiss that man and woman are equal. I repeat, they are not biologically equal. Then before the law how should it stand? If you regard matrimonial misconduct as an offence you are treating it from a judicial point of view by the fact you are calling it an offence. I have some knowledge of criminal law; I had 15 years' experience of it. In all offences you must consider the consequences. We do not send a man to the gallows because he points a pistol at a man and tries to shoot him, but the pistol misses fire. You cannot say that you must not look with the eye of the law at the effect. It is impossible to argue that the effect of matrimonial misconduct on the part of a man is the same as matrimonial misconduct on the part of a woman. I go further than that, namely, on the ground of expediency. Marriage I regard as a very sacred thing, a very solemn thing, certainly, and as an estate not to be lightly put an end to; but if the equality of the sexes were perfect, as some people say it should be, if a single act—I have called it an isolated act, Lord Mersey called it an accidental act—I do not appreciate that phrase——

35,516. To relieve his mind possibly; that term is to be found in the debates of 1857. It is not a new term?—I have no doubt it is quite right. It is a good mediæval logical term, an "accident" is no part of the real man's being *qua* that man: provided it is an "accidens separabile," and not an "accidens inseparabile." Further, when there is a single act proved against a man, if that were to be followed by the same consequences as the single act of misconduct proved against the wife, then divorce would be made too easy, because it would be perfectly possible by a little collusion to bring about a divorce. May I put a concrete case?

35,517. Certainly?—It is not a real case, but a case that might happen any day anywhere. A man and wife after they have lived together a little time find they do not get on so well as they expected, not an uncommon thing to happen to young people during a few months of marriage, for obvious reasons. The estate is new, the discipline, for marriage always is discipline, is new, and for a man the unusual restraint involved creates a feeling that he is not his own master. The wife also often finds that her husband is not the perfect being she imagined when she was "in love" with him and engaged to him. Just imagine these two persons: they have a difference, the man says, and she says, "It is a pity we are married": though they do not say it in terms. The man says to himself, "There is a law now, by which if I commit a certain "matrimonial offence she can divorce me; I will give "her the opportunity." Now, there are at least 60,000 women in Great Britain who are plying the trade of prostitution. I investigated that fact 40 years ago, and the number no doubt has much increased since, but I put it at 60,000. All a man under those circumstances has to do is to compromise himself, as the phrase is; it is generally applied to a woman, but it could be applied to a man if this law were passed. He has only to take up with a woman, taking care that somebody observes him; he has only to go to a house of accommodation—I will speak in plain terms—with that woman, be there a certain time, talk to her perhaps about the sadness of her life, try to reclaim her, and come away. His wife hears of it, "The very

case I want," she says. She brings a petition for divorce, alleging that single act: the man does not contradict it: he says nothing: he does not defend it. The result is that all for that single act she can get a divorce. The woman could not do the same thing. There are not 60,000 male prostitutes in London or England. She could not do it. If she did go through that process, if it were possible, she would be a degraded woman: the man would not be. It is useless to shut one's eyes to the facts of bachelor life and also useless to shut one's eyes to the fact that the clients of the unfortunate women, as they are called sometimes, the victims of circumstances more often than not, are very often married men. It would be ridiculous to deny that: it is a patent fact known to everybody who knows the world. In that case I say they are not equal. If the wife did that she would have to do something which would degrade her as a wife. The man in the case I put would be doing something he thought was best for him and his wife without committing a matrimonial offence, and what could the King's Proctor say? If the parties were discreet—you, Sir, have immense experience of what King's Proctors and Queen's Proctors could do—I do not see how the King's Proctor could stop that decree being made absolute at the end of six months if the husband kept his counsel, which of course he would do.

35,518. May I suggest you are not aware that can be done at the present day in the easiest way possible?—I daresay it can.

35,519. I will tell you how it is done. Assume there is the collusion which you mention, but not detectable. You have only to go to the expense of the wife writing a letter to the husband who does not come home, saying, "I want you to return to me," and his declining to do so, and it follows at once he is liable to a suit for restitution. Upon that suit being got through, which is done if he does not appear, desertion for two years is declared, and then she adds to the one act of adultery one cause of desertion, and obtains her decree. Your difficulty will not be got rid of at the present day as it stands. That is the commonest form possible. Sir George Lewis pointed it out, and it is a form well known to me?—I am quite aware of that.

35,520. Except for the poor, who would not be able to afford the expense of that restitution suit, there is no practical difficulty whatever in a woman getting a divorce for one act of adultery now?—The King's Proctor cannot stop that.

35,521. I am pointing out that abolishing the decree of restitution would effect no different result to what at present exists, except in the case of those who could not afford it?—I quite follow.

35,522. There is one other point in that answer you have made, that for the one act a woman can get a judicial separation?—I know, but a woman who will get a judicial separation for one act is a remarkable woman. I do not believe in such. If she is getting on well, I do not believe a woman would say the offence is unforgivable, even if she believed in it. There may be nothing to forgive, but the form might be gone through.

35,523. Does that exhaust that point?—Yes.

35,524. I think I have gone through the whole of your proof. Is there any other point I have not asked you about which you think worthy of our attention?—I do not think there is. Parenthetically, with your assistance, I have been able to introduce another point. I think that foolish marriages are often made by parties who are too young to marry at all. The common law fixes the marriageable age for girls at 12 and for boys, I cannot call them anything else, or lads, at 14. I think that is much too low. I think, considering the solemnity of the marriage state and the consequences to the community that may follow, it is absurd that the age of puberty should be treated as the marriageable age. I believe the only State in North America in which our common law rule of 12 and 14 is adhered to is Virginia. In every other State in North America it is raised to 16 or 18. Consider how absurd it is. Under the Criminal Law Amendment Act the age of consent is, I think, 16. There is a considerable agitation in the country to raise it to 18.

35,525. For a woman?—The consent of the girl against whom the offence is committed is to be raised to 18. Nobody has suggested, apparently, at least I have not seen it, that the age of consent to marriage should be raised. That is one of the anomalies of the English system, where you have no over-ruling power but spasmodic opinions excited here and there by individual cases under the Criminal Law Amendment Act, and the publicity given to them, when every day a marriage may be had under that age, and clergymen, as I understand it, might have an action brought against them if they said to the parties, "You are too young." That is one of the extraordinary things of the present system. If a minister, where banns have been properly published, or there is a special licence, were to say, "I happen to know you, you are one of my parishioners: I know your mother was a lunatic, your father was in an asylum, your brother committed suicide, and nothing will induce me to marry you," and an action was brought against that clergyman, he has no defence in law. I do not say they will get damages, and what the ecclesiastical authorities would say I do not know.

35,526. What ought it to be raised to?—I should say it ought to be raised certainly to 18 for women (I should be glad to see it raised to 21 for men), because women no doubt are much more forward in their development in many things. I should put it at 18 and 21, because getting the consent of the parents is no difficulty.

35,527. At present that can be got round in a moment?—That can be got round in a moment. Not only that, but if the marriage takes place, the marriage abides; you cannot annul it.

35,528. Would you, in addition to raising the ages, advocate that more effective means should be taken with minors to obtain an actual proof of consent by parents or guardians?—Certainly that ought to be done.

35,529. At present they take the affidavit of anyone who applies?—In France that consent has so much normal weight that there is a celebrated case of a great literary man who wanted to marry an actress. I know it is a fact. His mother was living, and lived to a great age. She said: "Not during my life will I consent to your marrying that woman." He married her at 50; she was 50 and he was about 65.

35,530. If I remember the law in France rightly, a man required no consent after he was 30. There were some conditions up to 25, but the French have lately reduced the age somewhat?—Twenty-five is the age in France.

(*Chairman.*) I think that exhausts all I require to ask you.

35,531. (*Sir George White.*) The proposition with which you terminate your proof are the ideals you wish to bring public opinion up to?—That is so.

35,532. Therefore they are educational rather than legislative?—Quite true.

35,533. At the same time you will bear in mind any practical work this Commission can do must be legislative in character?—All I could expect this Commission to do would be to give an impetus to the ideals which I think might help greatly, although it did not propose definite law.

35,534. Do you consider that public opinion is ripe for any changes in the way of increasing facilities for divorce?—As far as I know, from the circle I move in and the representative character I hold in communication with a number of persons, I think it is. That is a matter of opinion: I have no statistics. I know by what I see and hear on all sides.

35,535. In your opinion such a question as insanity might be dealt with?—I think it is very strongly held that it might be dealt with.

35,536. May I put it to you whether the opinion to which you have given expression as to maintaining the equality of the sexes is not a little lowering of the ideals to which you have given expression in the propositions with which you conclude your proof, the idea of maintaining the present inequality of the sexes

in regard to divorce?—I am glad you have given me an opportunity of meeting this. Of course, the equality of the sexes should be much more brought about than it is by the present law. I think a man who persists in committing adultery should be divorced. I understood the Chairman to take that for granted. I have not read that passage.

35,537. (*Chairman.*) Perhaps you would state to what extent and in what position you would place the woman?—I do not think I could do better than read what I say about that, because I put it in carefully considered words, and it is a pity to give a second version:—"No; the weak feature of our existing law, and one that gives to the injured wife just cause of complaint, is that no such distinction is made in our Divorce Court between the simple and the aggravated adultery of the husband as is made in our criminal courts between 'common' and 'aggravated' assault. The adultery may have been committed in circumstances of indignity to the wife, for instance, under the common roof; it may have been so promiscuous and persistent as to imply deep moral degradation, that is, on the part of the man; or it may have been so focussed and concentrated upon a particular individual as plainly to indicate to the wife that her husband's love has gone elsewhere. Yet in all cases the wife's only remedy is 'judicial separation,' which enables her to keep him at a distance, but does not carry with it her freedom. It is a grievous hardship to a young and innocent wife to be tied fast to an irreclaimable libertine whom she despises and probably hates, but who is careful not to commit any other matrimonial offence which would entitle her to a complete release." Then I go on to the case of the man.

35,538. (*Sir George White.*) There is no practical difference of opinion on the statement there put forth, although I understood you to say that a single act of adultery on the part of a woman degraded her but did not degrade the man in the same sense?—I did not mean that. I said if a wife took the step that I supposed the man would take—which I need not detail again—a woman could not do that without being already an unwifely woman, but the man might not be otherwise than a good husband.

35,539. Is not that opinion contrary to the idea you hold in regard to other matters? Does it not occur from a wrong moral sense in the community?—I do not think it does, because I cannot measure sins by objective acts. It is not the way Jesus Christ measured them. He said: "Whosoever looketh on a woman to lust after her hath committed adultery with her already in his heart." The subjective mind is not the objective act.

35,540. The man does not commit the less sin?—I do not know about sin. I cannot judge the sin.

35,541. I presume you would be also in favour of extending the law of divorce so as to give the same facilities between the classes?—I would if it could be done. I know the difficulties about that, but I am not competent to speak on it.

35,542. In regard to insanity, I take it you put before the Commissioners distinctly that intermittent lunacy is in your judgment just as incurable in those cases, and therefore should be a cause for divorce the same as if it had been declared absolutely incurable?—Yes. Matrimonially considered it is more detrimental than the other, because one means restraint and the other does not.

35,543. Have you considered the durability of the insanity, 1, 5, or 12 years—what it should be before the divorce should be obtained?—I could not measure it by years. The lesion of the brain might be explored by Röntgen rays, and you might discover the man could not recover unless he made fresh tissue—made a fresh brain, practically.

35,544. With regard to separations, if a woman goes before a bench of magistrates and gets a separation and a maintenance order, if the circumstances exist at the end of 12 months, that should be a *prima facie* case for a divorce?—Twelve months or some other similar time. If they are parted for a time that is *prima facie* evidence they will not come together again.

35,545. In regard to restriction on marriages on some grounds such as you suggest, you would not feel that is ripe to be dealt with by legislation?—No, I do not think it is, but my Society exists for the purpose of forming public opinion on such matters.

35,546. (*The Earl of Derby.*) You say you would like to see marriages only allowed after a medical certificate had been given. That is your ideal?—That is the ideal.

35,547. In the event of anybody being debarred from marriage owing to a medical certificate, do you not think, with men and women being what they are, there would be a great increase in illegitimate children in this country?—I really could not say, possibly it may be so. I do not think illegitimate children are a terrible thing. I may mention that I am strongly in favour of legitimation by subsequent marriage. I think it is grossly unfair a man should be branded all his life because he was born out of wedlock when his parents are living together, and that he should be set apart from the rest of the family who are of the same flesh and blood.

35,548. I agree with you, but from the ideal point of view it is equally bad for the rest to have an illegitimate child born of unhealthy parents as it is to have legitimate ones?—Quite.

35,549. The effect of such a certificate might be to throw on the world more illegitimate children, who would have less chance of being well looked after than legitimate ones?—That is perfectly true.

35,550. Is not that so?—Yes. There is a great deal to be said on that; it is an argument but not a dominant argument, because I think the other is the stronger. You cannot make any change without some disadvantage.

35,551. One of the cases you gave was of a naval officer; apparently he was a perfectly sober man till after he had left the Navy, and then he took to drink?—I presume he was sober while in the Navy or he would not have remained. It was not long after. It was in consequence of having no discipline to control him.

35,552. The whole point is: were these children born before he gave way to drink or after?—Born after. The fact is this: when the man got better and was said to be cured, he wrote to his wife's father (she having in the meantime gone to live with her father), not to the wife, and said "I propose to come home and resume my position as a husband," or words to that effect. The father communicated that to his daughter. The daughter said: "I can forgive him all his infidelities, but I can never forgive him for giving his children a lunatic for their father."

35,553. The lunacy came on as the result of drink?—Yes.

35,554. Was that drink habit taken to after the children were born or before?—I believe before.

35,555. Because that makes all the difference?—It is a difficult question to answer. I have always understood it was before.

35,556. (*Lady Frances Balfour.*) We have had your view that the two sexes should not be equal in the eye of the law. Would you alter the law as it stands?—Yes.

35,557. You would take away cruelty as a necessity?—Certainly, provided there was what I have called aggravated adultery.

35,558. You would make it equally for aggravated adultery and for desertion?—Certainly.

35,559. In feeling that the woman has not the same grievance as the man has in what we have called accidental infidelity, you take into account that accidental infidelity may convey to her great disaster in the way of disease and other things?—Certainly. Of course, then, that is cruelty, and therefore you have the two ingredients of divorce at once.

35,560. It makes it rather more serious for her than it would be for the man if the wife committed an accidental infidelity. She is less likely to yield to pressure?—It is a question of probability. One would have to consider who was the communicating party. I

agree it is more easy in the one case than in the other to communicate that disease.

35,561. Also, of course, she has more pressure of different sorts of temptation. She may do it of necessity, for livelihood or anything else?—Yes. There is no doubt that is so. "Pressure" was your word?

35,562. Yes?—Of course there are some men about in the world whose affairs are generally carried on with married women. There are such men.

35,563. It seems to make the biological argument a little unfair towards the woman?—You must balance that against the wide door open to collusions. Like all legislation and everything else in life, it is a question of probabilities. You cannot do more than balance one against the other and consider which way the scale inclines. I think a single act of adultery inclines against making that a ground of divorce *per se*.

35,564. Collusion necessitates the disappearance of that spiritual unity which you lay great stress upon, which makes marriage a sacrament. If there is collusion it means the marriage has ceased?—The parties unite in agreeing that they should disunite. They are for putting an end to an intolerable condition of things, or what they consider to be intolerable, although it might be smoothed down in time.

35,565. Why do you object to collusion, then?—I do not think the law ought to be taken advantage of by collusion, because, if so, that is a shockingly bad example. Collusion and connivance are things which the Divorce Court, according to its traditions, subject to what the Chairman may say, has always set its face against.

35,566. (*Mrs. Tennant.*) Do you not foresee greater difficulty in defining aggravation in a matter of infidelity than in a matter of assault?—Yes. Although I use the word "aggravated" I should not like to define it. "Aggravated assault" has a special meaning because there have been a number of cases upon it. I use the term to indicate something that is not an isolated or an accidental or a single act. That is all.

35,567. Is it not very difficult to arrive at the something which is not isolated?— Yes, it is, but it is difficult to arrive at what are proper grounds for voluntary separation. When are the parties so much at arms' length that any solicitor who knew his business, or any family friend interested in the case, would say: "There must be a separation; it is useless to bring them together." Judges very often, I believe, in the divorce and certainly in the other courts, desire to bring about a reconciliation. I have seen reports of cases—the Chairman will correct me if I am wrong—where the Judge has said "I shall adjourn this case for three or four days, to see if the parties can come together." He thinks they can, naturally: at least he desires that they shall have an opportunity. The opportunity has been already exhausted before they came into court, and they say "No. The fact is it is impossible under the circumstances. The condition of things may arise from an infinite number of causes. It may be impossible to compel the parties to make up their quarrel, and you have to say "The only course is separation." The same thing happens with a divorce.

35,568. Do you think that it would be safe to use "aggravated" as a basis? What would be aggravating to one woman would not be to another. Might it not be left to her?—I would not leave it to the wife who was so hypersensitive as to seek divorce for a single act. I would not take her *ipsa dixit* any more than the law takes it for legal cruelty. I should not take the hypersensitive nature: I should take a normal woman. That has been threshed out with regard to cruelty and could be equally with regard to a single act of adultery.

35,569. Would you distinguish between an isolated act, one single act, and an act isolated by years, repeated in two or three years?—Again, an act isolated by years is not a repetition of the act. For practical purposes it is not the same thing, just as with regard to an offence in the criminal law. If a man comes before a criminal Judge and somebody produces a conviction against him which is 15 years old, I should say, and I do not believe there is any criminal Judge who would not, "I cannot take that into account in passing sentence." Where criminality is separated by long intervals it is wiped out. There should be a limitation of time with regard to character as there is with regard to crime.

35,570. That was not the class of case I had in mind. It is improbable any wife would take action in such circumstances. We may rule that out. I was thinking rather of an act repeated in a couple of years. That would hardly fall under "aggravated" or a similar definition?—Of course, if you put a couple of years, that is a shorter interval and is more difficult. The wife may say: "You made such tremendous promises on the last occasion I cannot believe you again; my confidence in you is broken." That is a stronger case, but I would leave a certain amount of discretion to the Judge, because that is where judges are so useful, not only in declaring the law, but in using discretionary powers.

35,571. I suggest you might leave a certain amount of discretion to the wife?—That is *sic volo sic jubeo*: it is my wish, therefore my command. That is a different thing.

35,572. Take another point of view. Do you not see a danger in dealing with a matter of this kind, which is grave and may have very grave consequences, in the way that one treats the first week in the Workmen's Compensation Act. Is it not taking a material point of view?—I think to take advantage of the first act is to put the case on very material grounds, and to forget the human nature which underlies.

35,573. I think you ignore my point, the discretion of the wife?—I want to know what wife.

35,574. The wife may want to know what husband?—But there are wives and wives.

35,575. I do not wish to pursue it, but there are husbands and husbands?—There are husbands and husbands. After all it is impossible to formulate the thing.

35,576. (*Lord Guthrie.*) You have written a book which touches incidentally upon this question, namely, "Population and Progress"?—A book it is in a sense, but it is made up of a series of essays the first of which was written 40 years ago.

35,577. In addition to work of that sort and articles in magazines, you have had experience of practical life. You are a Bencher of Lincoln's Inn, and Chairman of Quarter Sessions in Westmoreland?—I have been.

35,578. Are you President of the Eugenics Society?—I am.

35,579. You said, and I agree with you, that many witnesses before us have seemed to ignore or unduly to minimise the interest of the children. Do you not think you, as well as many witnesses, have fallen into another error, namely, by forgetting that marriage involves a question of sex instinct and passion which cannot be reduced to rules of proprieties in the ordinary way, and which will be always different in that respect from all other contracts?—I do not think we have forgotten that.

35,580. You have not mentioned it?—That underlies the thing, because it is part and parcel of us. We cannot escape it. We must bring to bear the traditions and customs in which we live.

35,581. Does not that account for this, that while the views you have given utterance to as to restraint of marriage have been advocated and held by eminent persons for the last 2,000 years, if not more, they have never been given effect to?—Because biology is quite a recent science. The explanation is that we have only recently discovered the difference between the somatic cells and the germ-cells.

35,582. You consider that the propriety of restraining the marriage of the unfit is a recent proposal or suggestion?—No, it is as old as Theognis, who lived in the sixth century B.C. and wrote a caustic poem on the subject.

35,583. Has it not been found in every age, race, and country, impracticable?—I do not think so. What was impracticable in one age may be practicable in another. It depends upon the scientific knowledge of

the time. Look at Plato's Republic. His ideas were splendidly eugenic, but he had nothing to back him: he had no facts. Aristotle had no facts, although he was a master of facts. Theognis had no facts: but he was an idealist.

35,584. May I suggest that while you have facts you admit you have no proposals that are practicable?—I do not say that. I point to the legislation of the United States, which is not only practicable but practised.

35,585. In order to carry out your views, would not segregation be the necessary result with the unfit, looking to this, that preventing their marriage does not prevent reproduction by them?—The whole of the class of the unfit could not be dealt with by segregation. The feeble-minded, who are a class of the unfit, could be.

35,586. It involves that necessarily, as far as practicable?—Certainly, but public opinion will do a great deal without legislative segregation.

35,587. Is it not the fact that in marriage the degeneracy of one partner mental and/or physical may be neutralised by the special fitness mental and physical of the other?—I do not think so. According to Mendel's doctrine, which turns on the separation of the unit qualities of the parents, bi-parental reproduction leads to the development of quality A. belonging to one partner in one child and of quality B. belonging to another partner in another child: in other words there is a separation of the unit qualities which Mendel proved to be true of plants, and which many people think is true of humanity.

35,588. That is a question on which there is a great difference of opinion?—But there is a growing agreement of opinion in favour of gametic segregation.

35,589. Is there not this view, that it may neutralise the defect for the immediate generation, although it may reappear?—It is possible. A plus and a minus will together make nothing, but the prevalent scientific view is that in descent plus makes plus and minus makes minus.

35,590. Your views as to restraint would only apply where the woman is not past child-bearing?—Yes.

35,591. In regard to the question of collusion and the question of a single act of adultery, do you know how the facts stand in countries where women are on an equality with men?—I do not know how that is, but I say in my paper, and you no doubt will be able to say if I am right, I should be surprised to find in Scotland, for instance, a single act of adultery made sucessfully a ground of divorce, where there was nothing more.

35,592. If it be the case that in Scotland, where we have had equality for 350 years and we have a vast number of these cases reported in our books down the centuries, and I myself have had a great many hundred cases to deal with, in no single case I know was a divorce suit ever brought by a wife on the ground of a single act of adultery, is it not very academic, this proposed distinction?—No. It seems to me to be a practical proposition.

35,593. Why make the law different when such a case has not been known? May I add this: have you known a case brought for a single act of adultery?—I cannot say I have.

35,594. Have you heard of such a case?—These things are not discussed, even in the recesses of the clubroom.

35,595. Then you have not heard of such a case?—I do not know that I have.

35,596. You have suggested that there may be collusion between husband and wife by an arrangement under which the husband would commit a single act of adultery?—I have suggested that.

35,597. Or did I understand that the suggestion was that he would go and appear to commit such an act?—It was.

35,598. The case you referred to was not a single act of adultery at all; it was a fraud?—I agree. I was supposing the law said a single act of adultery on the part of the husband would entitle the wife to divorce; he would only have to go through that pretence in order that she may get the divorce, and it would make divorce too easy.

35,599. We have had the law for 350 years, and we have had wives changing their minds and going back on every kind of conceivable arrangement with the husbands, and disclosing fraudulent arrangements with a view of having it reduced. If I tell you that we have never had such a case, if I tell you that in the cases I have had the most secret correspondence has been disclosed and I have never seen such a suggestion, do you think it is anything more than academic?—No, but I should say in answer to that, your practice shows you have not the perfect equality, because the law says the wife might have redress and does not use it; therefore the redress is dead, the letter of the law is dead, and the inequality remains.

35,600. I have never known a husband bring an action for divorce against his wife for a single act of adultery. Does that show the law is unjust in giving the right?—I do not know. I think many have been brought in England.

35,601. Are they reported?—I do not know, but I am certain there are many such cases. I do not say there have not been other reasons at the back of it, because if a man loves his wife he might say: "If she has gone wrong with that man once, I have too great an affection for her to take advantage of it." I have known cases of condonation of that sort.

35,602. Is it your view, supposing not a fraudulent case but a real case occurs, of a wife finding out her husband has been guilty of a single act of adultery, she should in no circumstances be entitled to judge the indignity sufficient for her to get a divorce?—No. As I answered Mrs. Tennant, I do not think that it ought to be a woman's option to do it and have a law to support her in it. The law must either say aye or no, that a single act of adultery on the part of a man is ground for divorce, and if it says aye, all sorts of contrivances in England would be resorted to. I do not say the English are as ingenious as the Scotch, but they are very clever in finding out how to avoid the law.

35,603. Do you say in no circumstances should a woman, for a single act of adultery on the part of her husband, get a divorce?—No.

35,604. In what circumstances should a single act of adultery warrant a woman in getting a divorce?—In no circumstances, where the only proof was the objective single act. If the Court knew nothing more than that I should say it ought not to grant a divorce, on the ground of public policy.

35,605. In what circumstances?—I do not quite follow.

35,606. We are considering proposed changes in the law. You admit that the law at the present moment, which in no circumstances gives the wife a right to divorce for a single act of adultery, is wrong?—Yes.

35,607. In what circumstances do you propose that the law should be altered?—I have mentioned three or four. I read them when I was examined a moment ago.

35,608. Does it come to this, in circumstances where the indignity to the wife is substantial?—That is one.

35,609. Do you think that men, looking to what you have said about the difference and inequality between women's and men's nature, are able to judge better than a woman of what is sufficient indignity to her? I will take you and myself. How can we judge what is sufficient indignity to a woman? You admitted the total difference between our point of view and constitution?—This is a puzzle that might be put with regard to most Acts of Parliament. They sometimes lead to an absurdity whether you read them one way or the other. I am afraid I am too old not to know you can put these cases without end.

35,610. You have considered this matter so fully. Have you any views on publication?—Yes. My views are only the views of a member of the public. I do not think that publication should be suppressed. There was a famous case with which you had something to do as judge, if I am not mistaken, which

occupied the attention of the public from day to day. The papers never sold better in London; the placards were large. While that case was going on it was a serial, a journalistic *de jour en jour*, one heard the phrase: "Who is the lady involved now; who is smirched now," and if involved, smirched she was. For in these cases, even if the smirch is removed next day, it remains as far as that lady is concerned. So it goes on, slanders are propagated and the prurience of the public is stimulated. Meanwhile, the newspaper folk ask of each other, "How far may we go next time?" That ought to be stopped. I think it has a shocking effect. The rag and gutter Press of this country is growing day by day. You cannot walk along the streets without seeing it, and if this Commission can put a stop to it as far as divorce is concerned it will be doing enormous public benefit. The Press have lately been taught they must not talk about a man arrested on a warrant, and say that, "He has made a confession." The divorce law ought to teach the same lesson with regard to publication. Suppress altogether, I would certainly not. A great many people are deterred from kicking over the traces because they know their disgrace will be published, and publication is a tremendous restraint. It should not be piecemeal publication, but in some form, either the judgment of the Court or something or other which the Court allows to go forth, consistent with the independence of the Press. In the interest of the public morality I think it should not be a serial, a nauseous prurient tale sold with avidity and gulped down.

35,611. Would it satisfy you and meet the requirements you have indicated if the names of the parties, the nature of the offence, and the result as found by the judge and his judgment were given?—I think it would be very dry reading. I should desire something more. A great deal is to be learned from the Divorce Court. Immense moral lessons are taught there.

35,612. How much further would you go? Would you allow the evidence of witnesses to be published?—I would, but that is a matter of discretion. One would have to be a Press editor to know how to do it. It could be done. Human nature is not to be carried on in the dark although it leads to divorce. Nothing is worse than attempting to cover up things; it stimulates curiosity. I say that with regard to all the relations between the sexes. There is a great deal too much covering up, which leads to great curiosity. Sometimes vice is nothing more to commence with than curiosity indulged, although it ultimately becomes a habit.

35,613. Would you in such cases have the Court open to the public or not, apart from reporting?—As a former practitioner at the bar I object to a closed Court, except for *in camera* cases which cannot be heard in public.

35,614. Are these cases to which you refer where there are prurient details such as the one you have mentioned, not *in camera* cases?—I think the judge ought to have a discretion to tell the Press, the Press are always willing, I understand, to act upon the limit, not to report so-and-so.

35,615. I may tell you in that particular case if I had known what was to happen I should have heard it *in camera*. Do you think I should have been right?—Perfectly.

35,616. (*Sir Lewis Dibdin.*) You have made a life-long study of eugenics?—I have been doing a lot of other things besides. I had to make a living at the bar for 40 years.

35,617. You are not only the President of the Eugenics Society, but practically the founder?—No; Sir Francis Galton, the Hon. President of the Society.

35,618. You are one of the original members?—I am an original member.

35,619. Is it a society with a great many members?—Yes. It publishes a Review, the popularity of which may be shown by one fact, that it pays. It circulates in our Colonies and in America.

35,620. Have you any recollection of the number of members in England?—I could not say. There are at least 400 subscribers. A branch has just been established in Dunedin, New Zealand, of which the Attorney-General of New Zealand is the President. A branch has been established in Liverpool, another is being established in Birmingham and Manchester, and there is in America an eugenic section of the "Breeders' Association" which is making researches into defective family histories, under the direction of Dr. Davenport. This association has lately received considerable financial assistance from a private source. My society, if it had the same help, would number many hundreds of members.

35,621. It would grow?—Yes.

35,622. Substantial financial help would develop it?—Yes, but as it is the Society is growing largely amongst educated people and is a great success.

35,623. The principle you advocate is where there are certain defects present in either party before marriage, that marriage ought not to take place?—I think it is better it should not.

35,624. And, further, if the marriage has taken place under these circumstances, it ought to be in the option of the unblemished party, if a woman, providing she is not past child-bearing, to put an end to it by divorce?—Yes.

35,625. I want to test that with a case. You have mentioned two such leading matters as tuberculosis and syphilis as hereditary taints?—Yes.

35,626. Let us take the case of a man with an undoubted tubercular taint. He is perfectly well, in the prime of life, and married. His wife finds out that there is this tubercular taint. You would say that was a right ground for divorce?—For separation. I do not think I say divorce in all those cases.

35,627. Do you mean what we call judicial separation?—No, voluntary separation.

35,628. Supposing he did not wish to separate, it would come to a marriage under those circumstances that ought to be dissoluble at the instance of the untainted and unblemished party. That would be a case for divorce?—I have said so. I do not withdraw that.

35,629. I do not want to hold you to anything you do not wish to adhere to. If that is your view, two or three things emerge from that. I should like to ask you first of all, does that not give a great opportunity to a woman in the case I put, to get rid of a husband, not on account of the tubercular taint, but because she is tired of him?—Of course, if people do not play fair, but I am supposing that they are playing fair.

35,630. You attach very great weight in another context, I mean in the equality of the sexes point, to the opportunity which a change of the law would give to one partner, the wife, to get rid of the husband for the accidental adultery, to make that an excuse really for the terminating of the marriage by collusion. Does not the same difficulty arise if the law were such that a tubercular husband was liable to be divorced from his wife on account of that?—It certainly would, but it would not be playing fair. It would be perverting the law to another purpose for which it is not framed.

35,631. I want to ask you a practical question. Supposing that divorce takes place, you have a man in the prime of life with tubercular taint, but perfectly well. How are you going to prevent that man getting another family? How can you prevent his setting up another establishment?—By creating such a sound public opinion that no man would dare to do it. I rely upon public opinion. We are all governed by public opinion in our immediate surroundings. Start with a sound public opinion, and a man will no more do that than pick a man's pocket at his club.

35,632. The whole of this inquiry about the enlargement of divorce has at the back of it the natural craving of the human being for sexual relations—put it how you like?—It assumes that.

35,633. You have a man perfectly well, perfectly capable, in the prime of life, and you shut him off from all converse with the other sex. Is that practicable?—There are other ways—I cannot go into them—in which that desire should be satisfied.

35,634. I think it is very necessary to go into them. What are you thinking of?—I am thinking of the limitation of families.

35,635. In this context what does that mean? You have a man who is divorced, and you say there are means by which the natural craving of the sex can be dealt with without the evil of getting children. What do you refer to?—One way is sterilization, asexualization. I do not say I am in favour of that, but I say there is that, and some American laws permit it.

35,636. That means some surgical operation?—Yes, perfectly harmless.

35,637. Harmless so far as the man's health is concerned?—Yes.

35,638. Do you suggest that is the means of meeting the difficulty I have put to you?—No, but I say this thing exists. I am not recommending it.

35,639. If you do not suggest it, do you suggest any other means?—Let those who are driven to it find it out for themselves.

35,640. Do you suggest any other means of meeting that very practical difficulty?—Let me put this case, a woman has produced a fifth child. The doctor goes to the husband and says, "Your wife has had a very bad confinement. If she has another I will not answer for her life. You are in the prime of life. You hear what I say." What is the husband to do? Is he to have a sixth child? These questions are very nice and difficult questions which cannot be answered categorically. A man will find a way out: it depends on temperament. He may say, "It is a matter of indifference to me whether I am conjugally united to my wife or not."

35,641. Observe the difference between your case and the case I put to you. In your case the man has got his wife and is married, and he is called on to exercise a greater or less degree of self-restraint. In the case I have put to you the man is freed: you have divorced him; he is an unmarried man?—I follow you. I am afraid I interrupted the thread of my own discourse. I ought to have gone on to say, as that man rather than have a sixth child will abstain from having intercourse with his wife, so that other man, knowing if he has intercourse with a woman he is liable to bring into the world tuberculous children, will, with the pressure of public opinion which will be brought to bear upon him, abstain.

35,642. Are you not attributing to that man a perfectly unusual amount of heroism? In the circumstances I put to you, he has been divorced on account of the taint which has not become active?—With great respect, I think not. I am attributing to him that cowardice which will not face public opinion on a vital question.

35,643. You think that where there is insanity and it is intermittent, there ought to be divorce, and you put particularly the case of the insane wife?—Yes.

35,644. What is to happen, supposing you have a case of that kind and there is a divorce, the woman being a young woman, and after one of the outbreaks of insanity she recovers and wants to come home. She has been divorced. What is to happen? What do you propose to do with her?—Supposing she recovers?

35,645. I do not mean entirely, but intermittently, during one of the intervals?—He has to exercise the same restraint as in the other cases. He is not to make her the mother of a lunatic.

35,646. I am assuming he has exercised the right you think he ought to have, and has divorced her. What is to happen to that woman?—It is a new case, but no doubt it could be provided for. If a man comes out after seven years' penal servitude and finds his wife gone, having divorced him, what is to happen to him? Society will provide for those cases.

35,647. Is that your only answer for dealing with the case of what is to be practically done with the woman? Supposing she is a poor woman, who is to support her?—He may have to support her.

35,648. Do you propose that the husband who has divorced his wife and married another should still be liable for the support of the former wife?—I have not thought out that point. The vital point is so great that the subordinate points fall into shadow. You cannot think of them all at once. I think of the main points. Society will solve the others.

35,649. If I may put it in that way, you think of one side of the difficulties but you do not suggest a way out for the other side?—No, because it is a subordinate difficulty. The bringing of a lunatic child into the world does not count against the fact that a wife finds herself without a husband after she has recovered from lunacy.

35,650. You said you were dissatisfied as to the adequacy of banns of marriage. Have you any suggestion of a more effective way of letting the public know of an impending marriage?—I think all marriages ought to be civil. The State might publish them in a matrimonial gazette officially established.

35,651. We have the civil marriage law now, and we have machinery for notices of marriage in lieu of banns. Do you think that works better than banns?—I do not think it does. It would work better if an affidavit or certificate had to be furnished in order that the information might be gathered in. The notice would be made public.

35,652. The object of banns and notice to the Registrar is to make it public?—They are not properly made public at present.

35,653. I agree, but what is it you suggest as a substitute? Publication in the London Gazette will not be effective publication?—I suggested an official matrimonial gazette.

35,654. Do you really think if there were an official matrimonial gazette people would take it in and notices in that would reach the public?—I do not see that anybody could be pressed to say how the State is to publish the fact that persons are going to marry. The State will find that out.

35,655. You have no suggestion?—I would rather not make a suggestion.

35,656. In that context you rather blame both the Church and the State for not making more inquiries with regard to the fitness of persons before they are married?—I hardly like to blame the Church, because the Church has inherited things from its forbears when these things were not thought of.

35,657. It is also tied by the State. The Church authorities have no power?—I am not blaming them. I say banns are out of date.

35,658. With regard to the age of marriage, you suggest 21 for men and 18 for women?—I suggested it in answer to the question of the Chairman.

35,659. I should be sorry to be understood to say I think that earlier marriages are wise. Supposing you made that the law, how will you provide for the continence of young men till they are 21? Take the labouring class?—Only by raising the male morality of this country, which wants raising—the standard of morality.

35,660. Which is to come first, the improvement in the average morality of the race or the limitation of the age of marriages?—I do not see how you can put them in opposite scales.

35,661. Chronologically is yours a practical suggestion you would like to see adopted to-morrow, or are you waiting for the improvement of the race before you have it?—No. You will have to wait a generation or two for that.

35,662. You would desire the law to be altered now?—Yes.

35,663. If it were altered to-morrow so that no man could marry till he was 21, what do you suppose would be the condition of morals of the working class young man between 18 and 21?—We should have to deal with the social evil, which has not yet been effectively dealt with, and we should then make men more moral.

35,664. If they could not marry?—Certainly, by raising the standard of morality and withdrawing the casual attractions put before every young man in every city.

35,665. You would increase the attractions. If women could not marry till they were 18 the tendency would be to increase rather than decrease the number of prostitutes?—Women are not naturally inclined to prostitute themselves. Women are naturally chaste and men unchaste. It is well known that many of the young women in this country who work in factories marry too young. It was only yesterday I heard a very distinguished woman, who is thoroughly acquainted with the working classes, say she got into a train in

Liverpool when girls were coming from the factory. She was riding third class to witness these people. They trooped in, there was not a woman over 18. They were working hard all day just in the prime of their adolescence. On the face of them, on the figure of them, there was stamped incapacity for motherhood. When they marry what is the result? The children they produce are rickety, as it is called, rickets being a general degeneration of bone, one of the most frequent sources of feebleness. My informant knew what she was talking about. Such is the result of too early marriages.

35,666. I do not see how this bears on early marriages. Do you say these rickety girls would be better without labour?—Certainly. They were too young when put to this work, and they could not stand it. They cannot stand the work when their frames are not well-knit together.

35,667. I am not suggesting that early marriages are wise, but as a practical measure how will you prevent them without producing a serious evil?—I do not think it will be produced. I believe in the chastity of women.

35,668. Do you believe in the chastity of men?—I do not, not if you speak generally.

35,669. That enters into this problem if you do not allow a man to marry till he is 21?—So it does, if you do not allow them to marry when under 18.

35,670. Although you have been asked so many questions on the point of equality of the sexes, I do not understand the reason on which you advocate the continuance of the inequality. I understand the biological argument, and the argument that passion is stronger in man than in woman, but I do not understand your view as to accidental acts of adultery. I do not follow why an accidental act of adultery should be followed by different results when it is committed by a man from when it is committed by a woman. You have given the one ground of the possibility of collusion, and I follow that. Is there any other?—Yes, that women bear children and men do not.

35,671. How does that bear upon an accidental act of adultery?—Because the woman by a single act may become a mother, and the man cannot become a father.

35,672. It is the *confusio prolis* argument?—Partly.

35,673. You mean the woman, after an isolated act of adultery, may become a mother, which may or may not be put down to the husband. Is not that the point?—Yes, quite.

35,674. Has it occurred to you, after an accidental act of adultery by a man there is always a danger, for instance, of his infecting his wife?—That was put to me by one of the other Commissioners. Of course there is that danger, but that is cruelty.

35,675. That is addressed to a different point. On the question of the evil consequences or the gravity of the consequences, I suggest to you that is a consequence which quite equalises the possibility of *confusio prolis*?—It seems to me, putting it on the chances only, they are so enormously against the communication of disease from a single act of adultery that it is a negligible quantity.

35,676. You think the danger of infection from a single act is very remote?—I do not mean that the danger from a single act is remote if the partner is already infected, but that the chance of such infection being present is usually remote. One who has lived in the world and has experience of the world knows that.

35,677. I understand what you say as to the greater ease, the greater temptation if you like, of a man to commit adultery than a woman, by reason of the facility of occasion for it, but is that an argument which has much weight in the present day? With the far greater independence of working women particularly and their separate lives, which are so much more a fact than they were when you and I were young, I should have thought the opportunities of misconduct were not so very much different with women than with men?—Except that women have a natural instinct for chastity which men have not, as a rule.

35,678. (*Judge Tindal Atkinson.*) Sir Lewis Dibdin put an instance in which there would be great hardship, where a woman came out from an asylum in an interval of soundness of mind, and found she was divorced. That could easily be provided for as regards her mode of living by giving alimony when the decree is made. The power exists now, I believe, or could be made to exist. I should like your opinion on one other subject. Supposing a petitioner petitions for divorce, and there is no doubt about the guilt of the respondent, but the petitioner is also an offending party. Would you take away the discretion that exists in the Court to say that a divorce should not be granted in that case?—No, I would leave that discretion unimpaired.

35,679. But in the way it is now exercised?—I am not sure I know sufficiently how it is exercised.

35,680. Practically speaking, with very few exceptions, the petitioner who is shown to be an offending partner, whatever may be the offence of the respondent, gets no relief?—I would not allow that. I do not think a man ought to be debarred by having that thrown in his teeth. It might be an old offence and yet I believe, subject to the Chairman, that for all time an act on the part of the petitioner of matrimonial offence would be a perpetual bar to his getting a divorce. I do not know if that is so, but I think it is shocking and wrong if it is.

35,681. I rather gather that you disapprove of judicial separation and would substitute divorce for it?—Not wholly, because under the Act of 1895 I think judicial separation works well.

35,682. That is only temporary separation. You think it should be temporary and not permanent?—Permanent, too.

35,683. In the ordinary sense of a judicial separation, for instance, the wife brings a petition for judicial separation on account of the adultery of her husband; that is a case in which there should be a separation, or a divorce if there is to be separation?—If for a single act, nothing beyond judicial separation. If for repeated acts, I would give divorce.

35,684. In cases where a petitioner has the right to a divorce, would you take away the option so as to prevent the petitioner saying: "I will not have a divorce but I will have a judicial separation"?—No, I would not do that. I would leave her free one way or the other, because a judicial separation might ripen into divorce hereafter. I would not debar her from the half-way house if she likes to enter it.

35,685. There are many cases in which the woman, out of revenge, being entitled to a divorce, simply goes for judicial separation so as to prevent her husband from remarrying. Do you approve of that?—No. I do not approve of her motive, but I think she ought to have the option. I disapprove of her action entirely.

35,686. (*Chairman.*) I have the letters from the Secretary to the Council of your Society, who asked if they might present witnesses, and being told yes, your name was sent, but I gather, as you told us to begin with, you are not putting it as a representative opinion, but your own opinion?—The explanation is this. It was considered who should represent the Society. I was nominated at once and I accepted the office. I want to guard myself against this: beyond the eugenic view I do not represent the Society, and nothing outside that paper should be taken as the expression of the Society.

35,687. You are taken to be representing the eugenic view, but other matters you have given your own personal opinion upon?—Yes.

35,688. (*Sir Lewis Dibdin.*) With reference to the marriages of young infants and the consent of parents, you are aware that neither under the civil marriage Acts nor the Church Marriages Act can infants marry without the consent of parents?—I understand that if they do, the marriage is not null and void.

35,689 The marriage is valid, but the clergyman has no right to marry them, and the Registrar has no right to solemnise it?—I did not wish to represent the contrary. All I said was the marriage stands.

(*Chairman.*) Subject to this, the clergyman at present and the Registrar take the affidavit of the applicant himself,

(*Sir Lewis Dibdin.*) No, that is for a licence.

(*Chairman.*) I do not think the consent of the parents has to be verified other than by affidavit.

35,690. (*Sir Lewis Dibdin.*) The clergyman may take whatever steps he thinks right, and in modern times he has been punished for not taking proper steps?—It is evaded by people writing down they are 21 in the register.

35,691. I am not on the sufficiency of the law, but the facts?—If they do, the marriage takes place and stands.

35,692. (*Chairman.*) I only meant to get from you that whatever is the law you think proper steps should be taken to ensure that it is a true consent; that is all?—Yes.

35,693. (*Mrs. Tennant.*) On the question of equality, you suggest that there might be collusion by an act or a pretended act of infidelity on the part of the husband. Might there not be equal collusion by an act or pretended act repeated in the short period of a week, which would possibly come within the definition of "aggravated"?—There might, but collusion repeated in that way would indicate such a settled determination to get rid of the union that the parties had better be separated and even divorced.

35,694. I am putting it to you that both examples of collusion would indicate the same situation. The only difference in the case I put is that instead of pretending on one occasion this husband pretends it on four or five occasions in the one week. It is a very simple matter. It does not cause delay?—That is a new ingenious fraud on the law which the law will have to take cognizance of and stop. When the law is defrauded from time to time, my experience of legislation is that to put an end to such defrauding the law has to be amended.

35,695. Assuming the intention to evade, there is no distinction between pretending the commission of the offence once and on two or three occasions in the same week?—One is a plot and the other is not. It is a different attitude of mind altogether.

35,696. Is not all collusion a plot?—Repeated acts of collusion seem to indicate a different matrimonial condition, pointing to estrangement.

(*Chairman.*) I should like to thank you on behalf of the Commissioners for your very careful evidence, which has been most instructive to us. I am sure it has been a great deal of trouble to you to prepare such valuable evidence, and I am afraid we have subjected you to a great deal of trouble in giving it.

Dr. Frederick Walker Mott called and examined.

35,697. (*Chairman.*) You are an M.D., Physician to the Charing Cross Hospital, Pathologist to the London County Asylums, and Fullerian Professor of Physiology at the Royal Institution?—Yes.

35,698. Your name was supplied by the Eugenics Education Society on two points?—Yes.

35,699. You have also sent a publication in the *British Medical Journal* of a paper on the "Hereditary "Aspects of Nervous and Mental Diseases"?—Yes.

35,700. I have read that through with great care. As far as I follow it is purely of a medical character?—It is quite of a medical character.

35,701. Therefore, I think, it would be more instructive to us if I asked you generally on the two points which the Society has mentioned, which you propose to deal with as bearing upon the subject of divorce?—Yes.

35,702. The two points in the latter associated with your name are insanity and inebriety. I will take insanity first?—I may apologise for sending this paper, but it deals with the facts which I have been studying for some years as pathologist to the London County Asylum in reference to hereditary insanity. It gives a large number of facts showing the relationship of heredity to insanity based on data, which, I think, are incontrovertible. I should have sent a summary, but I was going to Berlin when I received the notice that I had to furnish an epitome. I must apologise for sending this long paper.

35,703. You need not apologise, but the long paper is too medical for the purpose which we have before us. What we want to get is the bearing this question of divorce has with regard to insanity?—Yes.

35,704. I have no doubt you could put that in your own way?—Yes, some years ago I gave evidence before the Royal Commission on the Feeble-Minded, and I endeavoured then to find out the relation of heredity to insanity, but the conditions were not such as to enable me to do that, owing to the fact that in the London County Asylums, under the jurisdiction of the London County Council, they do not take the imbecile class, except in a few instances at one asylum. Therefore I was unable to give more than a very short and unsatisfactory data, but latterly I have been struck with the great frequency of certain forms of insanity in connection with heredity. Considering that in London we have 20,000 lunatics in the asylums, I thought an opportunity presented itself of finding out how many relations there were in asylums. I instituted the card system, and when I commenced this investigation I was surprised to find how few there were known in the various asylums, but after continuing the investigation for some time, I found that there was an enormous number, in fact it has now got up to 2,000 people, who have been in the London County Asylums, either within the last two years or been discharged or died, related to one another, and actually at the present day there are 717 cases of relations so nearly related as parents and offspring, or brothers or sisters, or sisters and sisters, or brothers and brothers. I saw that it was a question which required a statistician to deal with and one who was unbiassed and unprejudiced. I do not care which way it comes out, I want the facts. Therefore I put the cards into the hands of Mr. Edgar Schuster, who has dealt with the subject, and he found that certain forms of insanity are likely to be transmitted in the same form to the offspring. One of them is the recurring insanity, that is, the periodic insanity. It has been known for a long time that what is likely to be transmitted is, not the same form of insanity, but a predisposition to insanity. A child is not born insane, but this predisposition is transmitted to it. A slight incidental condition may develop insanity, whereas with some persons who come from a healthy stock, nothing would make them insane. Drink or disease would not cause insanity. That is the point; that there is a hereditary tendency in certain individuals, and if one takes a large number of pedigrees, you will find that is so. In the hospital with which I am connected, the Charing Cross Hospital, I have taken 40. Of course it takes some time to make the pedigrees if you do them satisfactorily, going back three generations, and finding out what each person suffered from and died with. I then discovered from a comparison of the pedigrees of cases taken at the hospital with those at the asylums (Dr. Elkins, of Leavesden Asylum, which is under the jurisdiction of the Metropolitan Board, was good enough to take 30 pedigrees of chronic imbeciles), the fact that a large number of the pedigrees showed insanity or nervous disease or tuberculosis and syphilis. Therefore I thought it was a matter of importance in connection with eugenics, and also in connection with the question of how to deal with the increase of insanity in this country. The London County Council—I am employed by the London County Council to find out what are the causes of insanity, with a view to stopping the development of it—have had to build a large number of asylums recently—the last 15 years. They have built three large asylums and an epileptic colony, and that does not suffice, and another large asylum is being built shortly, so that it is a question of great importance to the ratepayers. The committee find a great difficulty because these cases of recurrent insanity are discharged and when they are discharged they breed. They are not insane when discharged, but they come back again and again. I have known a case

discharged 23 times and readmitted. This woman has a family. You might say, "Are any of the children insane?" We cannot tell yet, because it is not till they have passed puberty that insanity will manifest itself, but I have shown a number of pedigrees illustrating different conditions, and you will observe how it passes through three or four generations. Therefore this question of recurrent insanity is one of great importance. The committee when they discharge patients recognise it and advise the husband to take precautions not to have more children, because they know this is likely to lead to insanity in the offspring. I must say I find these people do take notice of what is said in many instances. I have heard the evidence given this morning and the remarks made with regard to the possibility, if you stop these people having children, or legislating, you may get illegitimate children. That is one of the difficulties that must be met and must be acknowledged. Then with regard to inebriety.

35,705. Before you pass to that, may I get the matter into a little more clear shape. Would your view be that the State should at any rate take more steps than at present to insure that fit people marry?—Yes, in this way. May I just read a little summary I have here: a much more solemn inquiry should be made, not only of the contracting parties but of the relations and witnesses of the marriage, whether they know of any just cause or impediment why these two should not be joined together in holy matrimony. If the system in force in Germany were adopted of annulling marriages if one contracting party had concealed from the other material facts relating to mental or bodily disease, which might lead to infection by the other contracting party (*i.e.*, syphilis) or be transmitted to the offspring (*i.e.*, congenital, syphilis, insanity, and feeble-mindedness), great good would arise, and the seriousness of the marriage vows would be impressed upon the public to the gain of the community.

35,706. Your suggestion is that in those cases, where it is desirable it should take place, the spouse, whether healthy or not, should have a right as against the other party to obtain a declaration of nullity if the facts were concealed at the time of the marriage?—Yes, that it was breach of contract.

35,707. Have you any further suggestion to make as to an improvement in the law with regard to the formation of marriage directed to the question, which has been mentioned, of unfitness?—In what way?

35,708. It has been suggested that no marriage should take place without medical inspection and a certificate of results?—I do not know. I think, possibly, that might lead to illegitimacy and defeat its own ends.

35,709. Your only practical remedy is that the one spouse should have against the other the right to seek for a nullity of the marriage, if the facts were withheld?—Yes.

35,710. And that children who happened to be born in the meantime should be declared legitimate, notwithstanding the annulment?—Yes, I think so.

35,711. That exhausts the matters that occur at the time of marriage?—Yes.

35,712. What is your view as to the rights of divorce in case of the spouses becoming insane, either because their seclusion was to be permanent, or because it was a case of recurrent insanity which was likely to keep on recurring, and in that sense incurable?—May I read this?

35,713. Yes?—Again, if divorce were possible in cases of chronic incurable insanity, where there was no possibility of future mental companionship, and in certain cases of recurrent insanity—I refer to cases where there are several attempts at suicide or homicidal tendencies—where the patient might at any time be dangerous to himself and others, not only would such a dissolution in some instances afford some amelioration of the hard fate which attends a husband or a wife with a partner practically mentally dead and in confinement, but it would also be to the advantage of the community in the education of the public to the importance of heredity in relation to insanity and feeble-mindedness.

35,714. That comes to this, that the ground of divorce should be incurable insanity?—Yes.

35,715. Whether incurable by reason of being continuous, or because its recurrence was so reasonably certain that it might be treated for all practical purposes as continuous?—A recurrency necessitating confinement. If a patient has frequently attempted suicide, and has the suicidal tendency, it is not likely such a patient would be discharged; nor if he has a homicidal tendency.

35,716. How would you deal with the cases where patients are discharged as recovered and yet are found many times back again?—It is very difficult if they are once let out of an asylum. I think often they should not be let out again, but if they are let out of the asylum there is the difficulty, if you divorce them, that they might go on the streets, if women, or have illegitimate children, and so on.

35,717. Can you state whether any of the recurrent cases are such that they are incurable, in the sense that they will continue to recur?—Yes, I think you could, probably; for example, the above case of 23 times.

35,718. Looked at from a lawyer's point of view, it might be possible to declare insanity which was incurable as a ground of divorce, whether it was continuous, or so recurrent that might be treated as hopeless, although not absolutely from day to day?—Yes, that is why I put "certain cases." It would have to be decided on the merits of each case, after a proper inquiry by the physicians.

35,719. Does that substantially exhaust what you have to say upon insanity?—Yes.

35,720. It has been suggested if this ground of divorce were permitted that it would have a bad effect on certain patients in the asylum. Do you anticipate any fears of that kind?—No, I do not. I have been referring to demented patients who are unconscious of their surroundings.

35,721. Do you suggest any modification of the principle if it were shown that it might have a detrimental effect upon patients in asylums, or do you say that that might be disregarded in incurable cases?—I was in Berlin where the Act has been in force for some years, and I inquired of several distinguished alienists, and they found it worked well, especially nullity for the breach of contract.

35,722. Is that part of the German law?—Yes.

35,723. That Act has been in force 10 years?—Yes.

35,724. No hardship has been found towards the insane?—So I understood. In the Catholic districts it is little used, but in Berlin and the Prussian districts it is extensively used.

35,725. Can you tell me to what extent divorce on that ground has been granted?—One of the superintendents of the asylums said that it had been used extensively in Berlin, but in some districts very little. It depends upon the religion of the population and the character of it.

35,726. You are satisfied from the use of it that it has not been detrimental to the lunatic in so far as it has been used?—I do not think so.

35,727. Will you express your views with regard to inebriety?—I did not intend to say much about it, because I have only studied the question with relation to the pathological effects of alcohol. I have considered the effects of alcohol on the people admitted to a hospital, the Charing Cross Hospital, which is in the midst of the liquor traffic, and we have a large number of cases of people accustomed to drink large quantities of alcohol for long periods of time—Covent Garden porters, for example. I have compared the result of drink on those people, with the result on the people admitted to the asylum, and there is a striking difference. The people who come to the hospital may be admitted with cirrhosis of the liver and dropsy, in consequence of prolonged inebriety, but they were not insane, or else they would not have been admitted to a general hospital. I took the records of 2,000 post-mortem examinations, and found 110 cases of people who had suffered with cirrhosis of the liver and ascites in the hospital. I examined 2,000 cases at the Claybury Asylum that had died, and I only found one case of

cirrhosis of the liver with ascites, and that was the notorious police character Jane Cakebread, who was convicted nearly 400 times before she was found incapable of taking care of herself. I may say that her brain appeared to me perfectly normal after she died. Therefore I think that drink has a most malicious influence on people who are mentally unstable, and it is the cause of many people being brought into the asylum. The epileptic, the feeble-minded, the mentally unstable, particularly these cases of recurrent insanity, are unable to drink a quantity of liquor which many normal people take every day. A very small quantity is enough to make them anti-social, then certified as insane. The post-mortem records show this difference in the effects of liquor on the mentally stable and the unstable. Secondly, I also asked these people who were admitted to the hospital under my care to bring their children, and if they had any, their grandchildren, and I was surprised to find that the children were generally healthy; in fact, I cannot think that the effect of alcohol is wholly the cause of feeble-mindedness (if it is) in one generation. Very often I have noticed that if the father is a drunkard, owing to the good influence of the mother, the children become total abstainers; if, however, drunkenness exists through three or four generations, one finds disease manifesting itself; but the reason why I consider that drunkenness in the parent will not necessarily produce degeneracy (even chronic inebriety will not produce degeneracy in the children) is that a man who can drink for a great number of years daily large quantities of alcohol and keep out of a hospital, asylum, or a prison, started with a stable mental and physical organisation and he transmits that and not the effect of the alcohol. Of course, there is no proof to show that if he had not been a drunkard the children would not have been stronger. It shows the innate nature of the individual is stronger than environment.

35,728. If the drinking habit is acquired by the unstable, then you have an accentuation of their trouble?—I think so. I have found in going through cases in the asylum, which are alluded to in temperance journals as entirely due to the effect of drink, if I made inquiry, that there was insanity in the family; and further inquiry with regard to relatives in past records of the asylum would show hereditary taint.

35,729. How does this bear on the two questions of prevention or annulment of the marriage and divorce?—The questions of drink and insanity.

35,730. Do you mean that for the purpose of insanity you might prove a person was at the time a habitual drunkard, or so affected as likely to be one?—A small quantity of drink would make a man anti-social if he inherited mental instability.

35,731. To what cases of inebriety would you apply annulment?—I should apply it to cases where it led to cruelty to the wife.

35,732. I can understand your saying that you would apply it to cases of specific disease which you have dealt with under insanity, but how do you apply a case of proof to annulment in the case of inebriety?—I did not say I would give evidence of inebriety for divorce, but I wish to point out especially the impossibility of a person living with a man who was a chronic alcoholic, although he did not at the same time possess the potential instability which would make him dangerous.

35,733. You have said you would follow the German principle of allowing annulment in the case of certain diseases?—Yes.

35,734. Which are of a character which may be generally characterised as indicating insanity?—Yes, or active syphilis.

35,735. Would you extend it in the case of inebriety only to those cases, or would you extend it to where a man was a simple drunkard but healthy otherwise?—If a man is a chronic drunkard, I do not know how he could conceal the fact from the person he is going to marry. He might conceal the fact he had been in the asylum before, and that a little drink would make him anti-social.

35,736. It would go back to physical unfitness apart from drink?—I think so.

35,737. That is before marriage?—Yes.

35,738. How do you formulate any views as to divorce on the ground of these evils?—I have not considered that question and I would rather not express any view.

35,739. (*Mr. Brierley.*) With regard to recurrent insanity, which entails permanent confinement in an asylum, you would recommend divorce?—Yes.

35,740. What was your opinion with regard to the cases where the patient goes out and may return to his or her family?—I said public policy would be to allow divorce, but that it would be impracticable. It would lead to the women being left without means and they would find another husband, or go on the streets.

35,741. It comes to this, you would make permanent confinement a necessary essential of divorce?—Yes.

35,742. And incurable insanity?—Yes.

35,743. Whether the insanity were permanent or recurrent?—Yes.

35,744. (*Chairman.*) I did not understand that. I understood you to say that if the insanity was incurable, in the sense that it meant continued incarceration, that was clearly a case for divorce?—Yes.

35,745. If it was incurable in the sense that it would be lasting but recurrent, so that there were lucid times and insane times, would that also be a ground?—Yes, provided the patient when out might become anti-social so as to be dangerous to himself or others. It is the danger to himself or others, such as the case of two or three attempts at suicide which would necessarily mean continuous confinement.

35,746. (*Mr. Brierley.*) In that case the patient would be continuously confined, but the Chairman was putting a case where the patient is not continuously confined, but, on the other hand, goes out and may, if not divorced, return to his or her family?—There are so many possibilities of doing more harm than good by divorce in such a case.

35,747. Would you be in favour of divorce in that case?—I think not.

35,748. (*Chairman.*) I still think he means if they were dangerous?—Yes.

35,749. (*Mr. Brierley.*) You say that if the form of recurring insanity is such that the patient is likely to be dangerous to himself or to others, he ought not to be let out?—He ought not; but he is.

35,750. For that form of insanity you would grant divorce?—Yes.

35,751. (*Judge Tindal Atkinson.*) If a certificate was required in every marriage, that there was no hereditary taint on either side, do you think that there would be many people who could get married?—No, I should think not; I would not require that. After all, love must be the natural mode of bringing two people together. The question is whether it might be advisable to tell people, "Do you know there is insanity in the family, or marked insanity and epilepsy, are you aware of it?"

35,752. Give them the option, you mean?—Yes. I do not think you could interfere beyond that.

35,753. (*Sir Frederick Treves.*) You have extensive opportunities of studying mental and brain disease?—Yes.

35,754. For a great many years your work has been almost entirely devoted to pathology of these diseases?—Yes.

35,755. You have published works on the subject?—Yes.

35,756. Dealing first of all with all these 717 related people in the London county asylums?—There are 2,000 related; and 717 closely related.

35,757. Now?—Yes.

35,758. What type of insanity is presented by the bulk of these people?—Mostly recurrent insanity, adolescent insanity, delusional insanity, melancholic mania, and epilepsy: that is psychoses rather than organic brain disease.

35,759. You put epilepsy last?—We have put epilepsy with imbecility. They are admitted not because of the fits, but because they are also insane.

35,760. Should we be right in concluding that the insane classes are the classes that are likely to transmit the disease?—Yes.

35,761. That is important?—Yes.

35,762. The kind of insane person that is likely to transmit a nervous trouble, you would put first?—Yes, I should put the recurrent insanity first. In this paper I point out that my statistics agree with those of Sir William Gowers with regard to the hereditary nature of epilepsy, and this form of insanity and its greater incidence of transmission by the female sex.

35,763. The second would be delusional?—That is very strong. A large number of the offspring of insane parents suffer with adolescent insanity.

35,764. The third, melancholia?—The new classification of melancholia makes it rather a disease of past middle life, and most cases now are included under periodic insanity.

35,765. You put that next?—That is the recurrent or periodic; it is the same thing.

35,766. Then the delusional, and thirdly the epileptic?—Yes, those are the pyschoses that are transmitted.

35,767. Is it possible to say what form of insanity or brain trouble it will assume in the offspring?—Usually in the greater number of cases it will not take the same form. It is a tendency to a form of insanity. In recurrent and delusional insanity it shows a similarity much more that in any other form of insanity, and that is because it is hereditary. The Germans have called it "Vererbungskreis," because of its circular condition.

35,768. You consider insanity should be a ground for divorce if it be chronic and incurable?—Yes.

35,769. Can you define the word "chronic" in years?—In Germany it is three years, and I am told it works very well, but if that is thought too short a time, it might be three to five years. I think there are some cases, for example, cases of general paralysis, which are arrested. You can be as certain as any man can of anything that such a man is mentally dead and not able to be discharged, and we have a test by which we can be sure of the disease. Therefore why not grant a divorce in certain cases where there is general paralysis? I will take a case I know very well. A lady marries a man: she is a graduate of a university and was able to earn her living as a high class school teacher. Five years after marriage the man developed general paralysis very acutely, and I thought he would have died within six months, but taken so early it has been arrested. He is practically dead to the world and does not know his wife and friends. For five years she has been tied to this individual and she is unable to get an appointment because they say, "You are a married woman." I think that such is a hard case, because we are certain that man can never recover.

35,770. If you extended the period to five years it would cut out nearly every case of General paralysis?—I think so.

35,771. It may be interesting to the Commission if I ask this question. You regard general paralysis of the insane as due to syphilis?—Absolutely.

35,772. You have shown by your pathological work that the cells of the brain in such a case are destroyed and never can be restored?—They are absolutely destroyed; the nerve cells are perpetual cells, that is to say, they are unlike other cells, they cannot be redeveloped. Therefore when destroyed there is no possibility of regeneration; the thing has gone. The same with a syphilitic brain disease. When the arteries are corroded and softening has taken place it is impossible for that brain substance to be put back again.

35,773. There is another subject the Commission would like to have your authority upon. We have been much troubled about these cases of recurrent insanity, especially in a phase of eugenics which interests you. Take the case of a woman who has recurrent attacks, who is in an asylum, who goes home, cohabits with her husband, has another child and goes into the asylum again. Mr. Brierley has put the matter to you, but you would only allow recurrent insanity to be a ground of divorce if it be of such a character that it involves continuous confinement?—Yes.

35,774. Or should involve continuous confinement?—Yes, but I think that the patient would not be discharged from the asylum, and probably ought not to be because she is a danger to herself or to others, as proved by the fact that she has attempted suicide before, or attempted homicide.

35,775. From another point of view, would you be disposed to include forms of recurrent insanity and notify the number of attacks; say that they have had ten attacks, or would you rather not do that?—The question is very difficult. One recognises there is the question, what is to become of this woman if she is discharged? If it were sure she would not be discharged and the authorities would look after her it would be different, and I do not think she ought to be discharged till past the child-bearing period. Many people hold that view because this form of insanity is liable to be transmitted, especially with the pauper population, then it comes on the ratepayers to keep the children afterwards.

35,776. The tendency of science and the practical aspect of scientific work is in this direction, that these people will probably be retained in the asylums?—It ought to be so.

35,777. You think it is tending in that direction from an economic point of view?—I am sorry to say it is not, because in my paper there were twelve-point-something per cent. of discharges and re-admissions in a year, and it is these cases that are discharged and re-admitted. I think it is an unwise policy for the future.

35,778. If you were asked to draw up a clause in an Act defining the cases of insanity that should be a ground of divorce, speaking of recurrent insanity, you would say "only those that are so bad as to require constant confinement"?—Yes.

(*Chairman.*) Who ought to have it if they have not?

35,779. (*Sir Frederick Treves.*) Should be confined, he said. With regard to drunkenness, you are not speaking of alcoholic dementia?—No; cases are not very numerous. I was surprised when I began my work at the asylum. I was convinced that alcohol was a very important cause of insanity, not a coefficient, but it proves to a be marked coefficient, but not of itself so important a cause. There is one form of insanity in which it is the main cause, that is poly-neuritic psychosis, that is to say, patients have an affliction of the nerves with mental symptoms, but those cases are not common. They will recover completely. It is a toxic effect, it is not destructive. After two years they will recover. There are a number which end in permanent dementia. One cannot find in the brain the same changes that you can in general paralysis: It is a toxic effect rather than a destructive effect.

35,780. There is possibility of recovery?—Yes.

35,781. In alcoholic dementia you can test incurability after a number of years?—Yes. In those cases there would be destructive effects of the higher functions of the mind, and the cells too.

35,782. You have not attempted any definition of the words "habitual drunkard"?—No; it varies.

35,783. You see the difficulty?—I see great difficulty.

35,784. (*Sir George White.*) You say that you would allow nullity of the marriage if the facts were withheld at the time of the marriage?—Yes.

35,785. You do not go further, but it is of as much consequence to the race that the marriage should be nullified if the effects come out afterwards as if withheld at the time?—I do not go so far as that. I know this works very well in Germany. It is a question of contract and breach of contract.

35,786. (*Chairman.*) Are any of these recurrent cases incurable?—If we include under "recurrent cases" cases which have two or three attacks in a lifetime, one cannot say they are incurable. It is a question of degree.

35,787. Are some incurable?—I should say some are.

35,788. Would not the proposition, that insanity existing for three or five years, although not necessarily during the whole of the period, at the end of five years

might be declared incurable, be capable of being brought into the general category of divorce?—For public policy it would be right, but for the individual I am not so sure, because the friends would say, "I want an independent opinion and be justified in so doing."

35,789. I am speaking of where it is ascertained, as far as it can be, that it is incurable, although it is not there absolutely every day?—Yes, five years I put that at.

35,790. Suppose a person whose condition was such that for five years he had been incarcerated and the medical world said that must go on for ever, there is a clear case for divorce?—I think so.

35,791. Suppose, on the other hand, there had been intervals during those first five years in which the person was better and allowed out and went in again and was allowed out, but at the end of five years the medical world said that state of things will go on, it is incurable, would not that equally well come under the category for divorce?—Yes.

35,792. Assuming those facts?—For public policy, certainly.

35,793. The difficulty is not one of definition, but of proof?—Yes.

35,794. Where at the end of five years that case is incurable. It comes to proof?—Yes.

35,795. In Germany are the cases of divorce confined to those continually incarcerated?—It does not necessarily mean that they have been for all those three years mentally dead, that is to say, incapable of mental companionship, but at the end of three years they are.

(*Chairman.*) That embraces the case I was last putting to you. I have to thank you very much for your evidence, which has been most valuable.

MR. JAMES ERNEST LANE called and examined.

35,796. (*Chairman.*) You are a Fellow of the Royal College of Surgeons?—Yes.

35,797. You are also a member of the Eugenics Education Society?—Yes. I am Senior Surgeon to St. Mary's Hospital, and to the London Lock Hospital, the only hospital in London for the treatment of the class of disease about which I am here to give evidence. I am a member of the Eugenics Education Society, and have read papers before them and also before the Birkenhead Congress on Public Health on this subject, and it was for this reason that I was appointed by the Eugenics Society to give evidence.

35,798. They sent your name as Senior Surgeon of the Lock Hospital and St. Mary's Hospital to give evidence on the subject of venereal disease. Is your evidence confined to that branch?—Yes, entirely.

35,799. In your memorandum you have dealt with other matters, and if you wish I will ask about them. May we take the venereal disease point first?—Yes.

35,800. In your memorandum you have referred to (*a*) Active Syphilis, a transmissible disease which is one of the most powerful factors in the production of racial degeneracy; (*b*) Gonorrhœa, which is responsible for a large number of cases of blindness in children, and is a fruitful source of sterility in women, and consequently indirectly responsible for race degeneration. Those are your views from your experience?—Yes.

35,801. Will you explain how those points bear upon the question of divorce?—The existence of venereal disease contracted after marriage or before marriage should be a ground for the dissolution of such a marriage.

35,802. Do you mean if contracted before marriage and existing at the time of the marriage you would make that a ground of nullity?—It appears to me to be a ground of nullity.

35,803. If concealed?—If concealed, or even after the marriage takes place, in ignorance that the disease is transmissible.

35,804. Suppose it takes place afterwards?—If infection takes place?

35,805. If it takes place afterwards. There is no difficulty about the infection, because that is a ground for divorce at present. It is proof of adultery. I do not know that it bears on that point further, but I understood it bore upon the question of insanity?—I can say nothing about insanity except that syphilis is a powerful factor in the causation of insanity.

35,806. Would you agree with those witnesses who have said something should be done if possible to check the production of the unfit?—Certainly, to check the production of unfit children, who would undoubtedly bear some of the stigmata of the disease about them.

35,807. Would you advocate some precaution at the time of the marriage, like medical certificates?—I do not think that sufficient inquiries take place at marriage by the parents as to the fitness of the subjects for marriage. For instance, the previous existence of syphilis could be easily ascertained by means of a test which has recently been discovered, and a parent should, in my opinion, make very close inquiries on this subject to ascertain if his future son-in-law was in possession of perfect health and in a condition to marry.

35,808. Would you put any duty on the State in regard to that, of legislating to provide for certificates of fitness, as I understand has been done in America and some places?—I should think it would be a very difficult position to work. I have never contemplated that.

35,809. That really comes not to encouraging legislation so much as the public opinion which directs people's attention to it, in order to make sure for their children's sake?—Yes, the education of the public.

35,810. Is there any other point you think it worth while to bring to our attention?—The evil consequences of venereal disease I assume the Commission are perfectly well acquainted with and have been acquainted with, I mean having regard to the possibilities of transmission to children, and to the possibility of transmitting the disease to the third generation. There are, of course, other venereal diseases besides syphilis which I have alluded to in the paragraph headed "Gonorrhœa."

35,811. I have read that?—I assume that the evil effects of gonorrhœa that may follow marriage have been also explained.

35,812. They have?—The evil effect to the unaffected wife and possibly to the children in the form of ophthalmia.

35,813. Those points about disease were put forward by some medical people as grounds upon which there is not sufficient justification for differentiating between the case of men and women obtaining divorce on the ground of one act of adultery. That is what I understood?—I am not cognizant of the other evidence.

35,814. It is said that with these diseases a man who commits an act of adultery of what has been termed an accidental character, which means an occasional act, is very likely to acquire one of these diseases. That is so?—Yes.

35,815. It is said that means that his wife ought to have the option of saying, "I do not intend to live with you any longer," because the gravity of the offence is such that it might subject her to infection of the complaint. Have you formed any view about that?—I think the wife certainly ought to have that option.

35,816. That means to say, it would put her practically in the same position as a man with regard to one act against the woman?—Yes.

35,817. You agree with that line of evidence?—I think so.

35,818. (*Judge Tindal Atkinson.*) Are you of opinion that the marriage should be annulled or the divorce given although the party suffering from the complaint has not been the offender? A man may inherit syphilis, I understand, and having inherited syphilis, he might marry and impart it to the woman?—I do not think he would impart syphilis to the woman.

35,819. Not in hereditary syphilis?—In all probability by the time he was of a marriageable age he would have been cured of power of transmission. I do not say it does not exist, that it does not show itself in the third generation of children, but it does not show itself in the case of the wife.

35,820. In the first generation a man who had contracted the disease and inherited it from the father, you think, could not impart it to the woman?—He could not impart it to the woman, although it is possible the children born of such marriage might show remote effects of disease.

35,821. You think that should be a reason for saying it should annul a marriage, where the disease was hereditary?—I do not think I should go as far as that.

35,822. I suppose people can contract venereal disease by inoculation?—Yes. A large number of cases occur of what is known as syphilis of the innocent.

35,823. In those cases the person who contracts by inoculation would be perfectly innocent?—Yes.

35,824. In those cases would you annul the marriage?—I think that would be a very great hardship, and I can hardly imagine any wife would urge such a step.

35,825. The mischief to the wife is the same?—Yes, not from the default of the husband, but from misfortune.

35,826. (*Sir George White.*) In view of the interests of the children that are to come, should you dissolve the marriage if the man or the woman is innocent?—That is a question that has not occurred to me. It seems to me it would be a hardship to an innocent person to render them liable to divorce for something that is not their own fault.

35,827. (*Lady Frances Balfour.*) One of the witnesses to-day said that with one act of accidental infidelity, as it has been called, the infection would not likely have been got from syphilis. Is that so?—I cannot follow that. If a man in this so-called accidental infidelity comes across an infected person, he is almost certain himself to be infected.

35,828. (*Chairman.*) Which is the more prevalent of the diseases you specifically mentioned?—Gonorrhœa.

35,829. Is that largely prevalent at the present day?—Very largely.

35,830. Is it? I am only asking because I have had so much about it before—I want it on the notes. Is that a matter there is a great risk of in consequence of the prostitution which exists in England?—Yes, enormous risks.

35,831. Therefore, if you get what have been termed these accidental cases, any woman might say, "I do not know where I am about this: if you have done that I am liable to infection." That is a serious risk?—I do not follow the question.

35,832. If it is prevalent and easily infectious, it means that any woman who is married, if her husband has committed an accidental act, might be justified in saying, "This is a serious matter, and I cannot associate with you any longer"?—I think she would be justified if she had the knowledge her husband was infected with this disease.

35,833. The prevalence is such you might anticipate it would be there in any case of that character—it might be?—It might be there. I do not see that a wife could refuse her husband access, because she would not know he had some venereal disease.

35,834. Is that equally true of syphilis?—Yes.

35,835. It is very prevalent?—Yes. The prevalence of syphilis is not so great as it was, and the gravity of the disease is not so bad.

35,836. It is more amenable to treatment?—It is more amenable to treatment, and the treatment has made enormous advances of recent years. It is not so serious a matter as it was, but still it is a serious matter.

35,837. Has your experience extended among the working classes?—Greatly.

35,838. Working factory towns, and so on?—I was House Surgeon at the Female Lock Hospital when the Contagious Diseases Acts were in force, and there the infected women from Woolwich and Greenwich and one or two other stations were sent up for detention under the Act, so that I saw a large amount of disease amongst the poorer classes in years gone by, and from the year 1878 onwards I have been associated with that hospital.

35,839. Is it found that the risk and prevalence are greater in the lower classes than above?—I should say so, certainly. I meet with a very large number of cases there of married women infected by their husbands, a very large proportion.

35,840. Of cases that come into the hospital?—Yes.

35,841. Have you any idea what proportion?—I can give you the proportion in three years, my experience in three years from the commencement of 1906. Of 1,270 admitted into the Female Lock Hospital, 225 were married women suffering from some form of venereal disease, mostly syphilis—225 out of 1,270.

35,842. Were those respectable women?—Many of them quite respectable, and the husbands had contracted the disease as a rule during the latter months of their wives' pregnancy. When the child was born they resumed cohabitation, and their wives were infected.

35,843. Would you draw the inference from that that separations are a bad thing between husband and wife?—These are these compulsory separations.

35,844. If they lead to trouble, the more permanent separations would be worse?—Yes, I think so.

35,845. Do you wish to deal with any other points mentioned in the Eugenics Society's memorandum, recurrent and incurable insanity?—I have nothing to do with insanity.

35,846. Habitual criminality or inebriety?—No.

35,847. Is there any other point you think you ought to draw attention to?—I think not.

(*Chairman.*) We thank you very much indeed for your evidence.

DR. JAMES CHAMBERS called and examined.

35,848. (*Chairman.*) You are an M.D. and Medical Superintendent of the Priory, Roehampton?—Yes.

35,849. You are the joint editor of the "Journal of Mental Science," and you were formerly Assistant Medical Superintendent of the Royal Asylum, Montrose, and Senior Assistant Medical Officer of the Cumberland and Westmoreland Counties Asylum?—Yes.

35,850. Was your name sent forward by the Eugenics Education Society?—No.

35,851. Do you remember how you came to give evidence?—The Secretary invited me.

(*Chairman.*) I think your name was suggested by Sir Frederick Treves.

35,852. (*Sir Frederick Treves.*) Yes, as the superintendent of an asylum for the rich as distinguished from those we have had who are superintendents of asylums for the poor. That is so, is it not?—Yes.

35,853. (*Chairman.*) The Secretary communicated with you, and you are now present?—Yes.

35,854. You have written a short paper, which I have before me. Does that contain all you wish to say? Perhaps you will add anything that occurs to you. The first paragraph of your proof deals with the term insanity?—The term insanity is applied to a group of diseases which exhibit wide variations in their gravity and duration. There is no agreement as to what constitutes insanity, the result being that this question has from time to time to be referred to a jury.

35,855. Do you anticipate any practical difference in determining the question, when the proper evidence is given?—I think that the suggestion to appoint three medical experts to decide the question of incurability is a good one. It is one of the best suggestions that could be made. I did not think that was possible when I wrote this paragraph.

35,856. We have to deal with the question of insanity in will cases constantly?—Yes.

35,857. The evidence of the expert is given and the judge is guided by it?—Yes. I gather it is proposed that the three medical experts should act as a court of arbitration and settle it by themselves.

35,858. I do not know that it has been put in that form. At any rate evidence can be given which ought to produce fairly definite results. Is that so?—Of course, it will be a very difficult question to answer as to what cases should come under insanity as being a plea for divorce.

35,859. That is another matter. Assuming the cases are stated, it becomes a question of evidence in order to determine whether the particular case falls within the rule?—Yes.

35,860. You say that the question of incurability is in many cases exceedingly difficult to answer—a very prolonged attack may be followed by recovery?—Yes.

35,861. Do you find that there are cases in which you can say—I think the expression I am going to use comes from Sir James Crichton-Browne—that it can be safely predicted it is incurable?—Yes.

35,862. And that in other cases it is doubtful?—Yes.

35,863. And that in other cases it is reasonably certain?—Yes.

35,864. "The causation of insanity is often obscure, as well as being complex—if insanity were made a ground of divorce the causation should be enquired into." Will you kindly explain that paragraph a little more fully?—Yes, I regard that as extremely important. The causation of insanity is very complex. I assume if it was supposed that the petitioner had anything to do with the causation of the attack, this would prejudice his chances of gaining the suit. My point is that the petitioner may have had a great deal to do with the causation of the insanity and yet this factor may be incapable of legal proof.

35,865. You suggest if it was shown it was partly due to the petitioner's fault that there would be grounds for saying there should not be a divorce?—Assuming one took it as a plea at all. That is a point that ought to be carefully considered. Great injustice might be done because medical men know how complex causation is, and how sensitive minds may be upset by inattention, carelessness, and by the partner staying at the club too much.

35,866. I appreciate the difficulty fully. What is your view as to the effect of the knowledge that insanity was a ground for divorce?—It would have a deleterious effect on some members of the sane community. I know how unconvincing it is to press illustrations, but there is one that occurs to me. Take the case of a couple getting married—I am speaking rather of educated people with nervous organisations—and pregnancy occurs. If the young wife, at what is a physiological crisis for her, feels that she has all the attention and care she should have she will pass through it quite safely; but if the husband, perhaps thoughtlessly, is inattentive, she not being judicial in her attitude towards things may wake up one morning and think, "he wants to get rid of me; if I break down in my confinement I may be divorced." This is a grave matter. Then if you come to the other end of life, when a wife is not so attractive and may not be getting the same attention she had when she was younger, at the climacteric—I am not speaking of people with insane heredity, but people who are neurotic—again, if the husband is not careful—he may have too many interests outside his home, some may be wrong and some may not be wrong—she may think that he does not care for her, and it would be a great strain if she knew that insanity was a ground for divorce.

35,867. Those are illustrations which you have been giving?—Yes.

35,868. Further on you say:—"Some of those who support the plea of insanity as a ground of divorce state that divorce would aid in preventing the birth of children with hereditary taint, would lessen the burden on the rates, and would safeguard morality"?—Before I pass on, I would like to state that I think it would add very gravely to the distress of mind of people who are already under care. I have considered patients under my care, and I have talked over with my colleagues the effect it would have upon them. Take the case of a melancholiac, a patient who, whilst he is ill, believes he is incurable. He is probably one of the most delightful natures in the world when he is well, and the world would be poorer without him. It is an essential factor in his treatment to prove to him that he is curable. Sometimes visits from friends are prejudicial, and it is the physician's duty to forbid the wife to see the husband, as the interview would be an opportunity for pouring out his woes and indicating that he is incurable. We often keep the wife from seeing her partner on medical grounds, but we are not always able to assure the patient that it is on medical grounds; our difficulties would be gravely increased if insanity were made a ground of divorce.

35,869. Would you class those under the heading of incurable?—Those who will be prejudiced if insanity is a plea for divorce.

35,870. The proposal is that it may be made a ground of divorce in the incurable cases?—I understand that, and I think that certain incurable cases would not be prejudiced. There are patients who are demented, live in a world of their own, and who would not trouble about it in the least, but I think if it were known publicly that insanity was a ground of divorce it would be detrimental to the other patients in the institution.

35,871. You think it might affect the possibility of their cure?—I believe it would.

35,872. Then you wind up that paragraph with this:—"In my opinion the remedy lies, not in divorce, but in preventing the marriage of the unfit." Have you any practical suggestion to make with regard to that?—Yes, one should begin as the Royal Commission on the Feeble-Minded recommended, by having schools inspected so as to observe the children when young, have the defective children registered, watch them through their career, and try and educate a body of public opinion to have legislation to segregate the defectives. I think that is striking at the root of a bad marriage. It is more logical to prevent the unfit becoming married.

35,873. Would you in no cases permit of divorce for incurable insanity? Would you permit it in the case mentioned by Dr. Clouston of secondary dementia?—I feel so strongly as to the prejudicial influence this procedure would have on the people in the sane community, and also on those in the insane community, that I would not make insanity a ground of divorce.

35,874. Have you studied the German practice which was referred to by the last witness?—I have heard of it.

35,875. That is the law in Germany and it has been for 10 years?—Yes.

35,876. He tells us on the whole that it has worked well?—I am not a German, nor are the people of England, and to my mind that is a complete answer. I do not think you would like the German policeman in the streets of London, and the suggested procedure would be more applicable to our social system.

35,877. Do you know one way or the other how it has worked?—Only from hearsay.

35,878. Is your hearsay to the same effect?—It is, only indirectly. If I had known in time that you were going to ask me about this I would have investigated the matter. I much regret I did not.

35,879. You are adverse to instituting that as a ground?—Yes, for the reasons I have given.

35,880. Have you considered the case of the person left outside?—Yes.

35,881. And the possible tendency to immorality?—Yes.

35,882. You still think so, notwithstanding that?—Yes, I do.

35,883. Have you any views against divorce altogether?—No.

35,884. Your last paragraph is a statement of some admissions. Will you read that?—I have substituted for that a communication which I handed to the Secretary this morning.

35,885. Will you state the effect of it?—Yes. Speaking of the education of public opinion as a preventive of insanity and of the marriage of the unfit, I say that this has operated already in the educated classes. Since 1879 the increase in the pauper insane has been extremely marked. It has gone up from 20 per 10,000 to 32·87. The private insane are fewer in proportion to-day than they were in 1879, and I think that they would be fewer still, only since 1889 it has been possible for patients, who are so-called pauper patients, to be transferred from the pauper to the private class, if their friends can help them by paying the full rate of maintenance. I had a communication from the medical superintendent of a London asylum stating that there are at present in London alone between 400 and 500 patients who have been so transferred. Originally these were classed as paupers, and notwithstanding their addition the ratio of private patients to population is lower than it was in 1879.

35,886. I will read the passage which you refer to in your memorandum:—"The proportion of private patients to the population reached its highest point in 1879, *i.e.*, 2·97 per 10,000. It fell steadily for 20 years to 2·73 per 10,000. It rose again since 1899 and is now 2·93 per 10,000. The rise is accounted for, I think, by the transference of pauper patients to the private class when they have sufficient means to pay the ordinary rates. I think one is justified in stating there has been no true rise. The pauper rate has risen enormously in this period from 20 per 10,000 to 32·87 per 10,000. If the private class had risen in the same proportion it would be 4·85 per 10,000." That is the passage you have been referring to?—Yes, my point is that that is due to the education of public opinion amongst the educated class. I think that is the line on which we ought to advance in connection with the lower classes. I made an analysis of the last 500 consecutive discharges and deaths of persons in the institution under my care, more to have it to refer to if any questions arose, but I will not trouble you with the figures.

35,887. The conclusions are what we want?—There were 96 married female patients who were discharged or who died during that period, and of these 11 suffered from puerperal insanity. They were admitted on account of that. This may seem a small proportion. The point is this, so far as I know not one of these 11 patients has had any children since they were discharged. I am certain of that in eight cases; in the other three I am not quite certain, but I believe I am accurate. Of the men discharged during that time so far as I know there have been no children born to them. My point is this, that the advice I gave was taken, that it was undesirable for there to be any more children.

35,888. Are those paupers?—The upper and the upper middle classes.

35,889. People who can pay a proper amount for being treated?—Yes. There was a very small number of the patients who died under care on the female side. That shows that the friends are very glad to have their old people at home if they can, so as to nurse them, and in many cases, although they may be incurable, their symptoms become very mild, those of mild dementia, and the children like to show an affection and filial duty to their parents, and have them at home when possible. There were only 18 deaths out of 274 female patients that were under care during that time. Only 18 died in the institution. I think it is a plea for keeping up the family life, and it also shows that friends take a great interest in the patients. If these ladies had been divorced, and stepmothers had assumed the care of their children, the result would have been very different. That would appeal to me.

35,890. Is there anything more you would like to add?—I think not.

35,891. That has exhausted all you have to say at present?—Yes.

35,892. (*Sir George White.*) The increase in the pauper patients, which you have given us, is very marked. Is it to be accounted for by more complete registration?—Yes. More complete registration told markedly at one stage, but it has not told so markedly in recent years.

35,893. This is a percentage of the admission per annum?—No, of the total insane.

35,894. Are there any reasons to account for the total number in asylums now being larger than 20 years ago, for instance, that they are better attended to and treated. On the one hand you may say they are not more likely to be cured, but in the incurable cases possibly their life is prolonged by the more humane treatment, and that would account for a permanent population larger than years ago?—That holds good in both classes of society.

35,895. That is quite true, but I am trying to get at whether the difference between 20 and 32 per cent. is an indication of the increase?—I quite understand. I am speaking of relative increase, of the two classes of the community. The point about the more complete registration accounts for a considerable rise. The condition of the poor is more favourable than it used to be. There are more hygienic measures up to a point. My explanation is that the upper classes take charge of their feeble-minded and guard them in a way that is not done by the lower classes, and that this neglect by the lower classes is one of the great factors in the continued production of insanity.

35,896. I am not taking the relative proportions of the rise or fall, but the actual rise in the pauper lunatics, from 20 to 32 per cent. Are we to understand that there are no other causes to account for the increased number of inhabitants in these asylums than the fact of the increased number of cases that come to them. Do you follow me?—I feel that the more complete registration is one factor, and that the prolongation of their lives and consequent accumulation is another. An additional fruitful cause is our neglect of the defectives, who should be segregated.

35,897. (*Sir Frederick Treves.*) The asylum of which you are the medical superintendent, is a large asylum and a very famous asylum devoted to the well-to-do?—Yes.

35,898. One might say the rich?—Yes.

35,899. Your experience, although not limited to the rich, is largely based upon your experience of that particular class?—Yes.

35,900. You say that the question of incurability in many is exceedingly difficult. I know that you were present when Dr. Clouston gave his figures, and you will remember if you put a limit of five years it brings down the number of persons who recover to something like 2 or 3 per cent., even if you do not allow for the fact that out of those who are sent out as recovered some relapse?—Yes.

35,901. So that the number is exceedingly small?—Yes.

35,902. Should I be going too far if I said that the term "exceedingly difficult" is putting it strongly?—I did not know when I wrote that paragraph what limit they were going to give as a definition of incurability.

35,903. If you take the German limit of three years, which has been attended with success, would you still use the term "exceedingly difficult"?—Yes, in many cases.

35,904. Remembering that when you reach the period of five years the number of those who recover has dwindled down to a very small sum?—Yes.

35,905. You have in mind one or two specific cases where the difficulty would be great?—Yes, but not so great at five years as at three years.

35,906. At five years you must have very little difficulty, because we are told that the numbers who recover at that period are very few?—Yes, it is more the isolated individual cases that are difficult.

35,907. You spoke about insanity being due to the fault of the sane person?—Yes.

35,908. Apart from general paralysis is there any form of insanity you could deliberately put down to the conduct of the sane person?—I think one may have an attack of melancholia resulting from the conduct of the sane person.

35,909. Would you put the worry produced by the sane person in a different category to the ordinary worry of life?—Yes.

35,910. Do you think it is possible in a person of normal brain to produce melancholia by any surroundings?—Not when that person is in his or her normal state, but I particularly pointed out the condition that you have in a young wife who is pregnant and passing through a physiological crisis, who otherwise would be normal. She is not normal then; it is a physiological condition, not a pathological one.

35,911. You would not say it is possible for a person to induce puerperal insanity by worry and ill-treatment?—I think it would.

35,912. I take it there are forms of puerperal insanity that may probably be said to be septic?—Quite.

35,913. You must exclude those?—Except so far as this, we know that the individual is better able to resist the sepsis if in a favourable condition.

35,914. That is pushing it to a degree?—It depends on the amount of toxin and the degree of lowered resistance.

35,915. Do you think, given a woman who has a sound mind, a normal woman, that it would be possible to produce in her melancholia of such a degree that she would have to be sent to an asylum, by any degree of worry?—When she is in an abnormal condition as to health.

35,916. You must assume that?—It must be an abnormal condition as to health. That is not done in a day or a week, it is the prolonged stress. I think a woman starting on the 1st January, 1910, in an absolutely normal condition might by the middle of 1911 be in a melancholic state as the result of her husband's conduct, but I do not think this would be capable of legal proof, and a grave injustice might result.

35,917. Supposing you find in the family history of such a lady insanity, or other nervous troubles, you would have to modify the assertion that the husband was the cause of the melancholia?—From the legal point of view it would have to be modified.

35,918. Do you think it possible in a Court of Law to prove that any form of insanity, other than general paralysis, is directly due to the action of a person?—It would be a difficult thing, although I would have a strong conviction that the condition was so caused. That is my point of view.

35,919. You would have to start with the assumption that the person affected was not normal?—Not necessarily. Stress is one of the greatest factors in the production of insanity—I mean prolonged stress. A woman loses, perhaps, two, three or four nights of sleep in each week, and a strong constitution may break down under that.

35,920. The main reason for your objecting to insanity becoming a ground for divorce, is the effect it would have upon insane patients generally?—No, it is not the main reason. There are further reasons given in one of my paragraphs: "the prejudicial effect on the mental health of certain members of the community, and the tending to prevent the expression of those high feelings of self-sacrifice which ought to be a definite factor in the relations between husband and wife."

35,921. From the way you put it I rather gathered that would be one of the strongest reasons?—It is a very strong reason.

35,922. Dr. Clouston gives us to understand the persons in his mind were people who were practically mindless and dead, and uninfluenced by any divorce law?—Yes.

35,923. Also that the persons who would be badly affected would be those who were the subject of delusional insanity?—He was speaking of the incurably insane at the time.

35,924. He said those subject to delusional insanity would be those most distinctly affected?—You are speaking of the incurable class now.

35,925. I do not know that he used the term incurable?—Deemed incurable.

35,926. Those persons who would be upset distinctly and really made worse by the knowledge that insanity was a ground of divorce, but I do not think in that connection he spoke of them as being incurable. It is the last paragraph but one on the third page of his proof. He is speaking of certain forms of insanity, characterised by fixed delusions and so on. "Those are persons who would most deeply resent divorce proceedings, and their disease might be aggravated by the fact that divorce proceedings were taken in their cases"?—My point is this. I am not thinking of the persons on whom a citation would be served. I agree with Dr. Clouston as to the people on whom you might serve a citation. A person suffering from delusional insanity would be the one most affected. It would be cruelty to proceed against him, but I am speaking of the general population of the institution, and the people who are worth saving, if you like to put it in that way.

35,927. You are thinking of those who would not be affected by any alteration in the law of divorce?—Yes, but who would fear that it would become applicable to them.

35,928. That is an important point, because you mentioned as an illustration of those who would be damaged by the knowledge that divorce was possible, puerperal insanity and climacteric insanity. If you take the definition which has been suggested so many times of incurable insanity of three years' duration it would not include cases of puerperal mania?—No.

35,929. And not many cases of climacteric insanity—It might include more. A considerable proportion become chronic.

35,930. If they had been chronic. If she had been insane five years do you think she would become curable?—It is not likely.

35,931. She would become an incurable case?—Yes.

35,932. Putting aside these incurable cases, the two cases mentioned are cases that are not likely to come into this category?—Unfortunately the person most interested who has to judge is not judicially minded. That is my point. A woman who becomes puerperally insane is not able to judge. She is capable of misjudging her husband's conduct because this is a plea.

35,933. It supports the fact that the insane person in whose interest you are speaking, is not the person who would be immediately affected by this alteration in the law of divorce?—Yes.

35,934. You say in the case of 24 patients out of a total of 263 married people that the question of divorce might have been considered?—I amended that, because there was a confusion between admissions and cases. That is very much on the same lines as the paragraph I have substituted.

(*Sir Frederick Treves.*) Might we have that read?

(*Chairman.*) Those who would regard insanity as a ground of divorce might have considered the question in the following cases: in 12 males and four females out 226 cases, and possibly in seven male and three female cases.

35,935. (*Sir Frederick Treves.*) The number is reduced?—Yes, there are fewer cases being dealt with. The first proof was 263.

35,936. Of those, 263 are married?—No, only 226 are dealt with now.

35,937. Taking the cases, not from the asylum point of view, have you met with any cases where there has been great hardship on the sane person?—Yes.

35,938. Let us imagine a case of this sort, a young man occupying a position of importance marries a lady, and she becomes insane within a short time of her marriage, and remains incurably insane. It must take a great deal to out-weigh the disaster in that case?—Yes.

35,939. He is unable to marry, and there are questions of property, and it may be of a title and so on. You must acknowledge that that would be distressing?—A very great hardship.

35,940. Do not you think that hardship, if repeated in a number of cases, is such as rather to balance the possibility of upsetting a certain number of insane persons in an asylum?—No.

35,941. Your professional instinct would properly make you cling to the side of the patient?—I have tried to be judicial, but I do not know that I am constituted to be.

35,942. It is pleasant to see you adhere to the professional tenet that the first person to be considered is the patient. All that being allowed for, from your experience amongst wealthy people you have met with cases?—Yes, of very great hardship.

35,943. (*Mr. Burt.*) With regard to the increase in the number of insane since 1897—— ?—It was 1879.

35,944. Have you any opinion as to the cause or causes of the increase?—I think it is very largely due to the marriage of the unfit. They increase, unfortunately.

35,945. Following that up, would you agree with a previous witness in trying to check the marriage of the unfit?—The only scheme in my mind at the moment is to follow on the lines that the Royal Commission on the Feeble-Minded pointed out, namely, to start with the children in the schools and register them, to keep in touch with them by medical officers, and particularly a Visitor to visit them (it is one of the recommendations stipulated that they should give advice as to marriage), and to create public opinion. It will take time, but such reforms take time, and these are all the better when they come as contrasted with those attempted in a patchy and spasmodic way.

35,946. You would not suggest legislative measures at the present time in that direction?—I would suggest that some of the recommendations of the Royal Commission should be hurried on. They seem to have been hung up and nothing is being done.

35,947. As to patients in private homes or asylums, is there a complete record of the numbers in those asylums?—All who are under certificates—there is a complete record in all the institutions.

35,948. So that you have all the figures?—Yes.

35,949. (*Sir Lewis Dibdin.*) You were asked with regard to the difficulty of settling the question of incurability. As the result of your examination do you retain the opinion that at the end of three years it is difficult to decide whether a case is curable or not?—A proportion of cases would be difficult then.

35,950. That has very much decreased at the end of five years?—Very much.

35,951. With regard to the evil results to the patients themselves, you put a case. I do not think you finished it. You put a case of a man suffering from melancholia, which is a curable disease, but that he is under the impression it is incurable?—Yes.

35,952. Your view is that if he knew a person suffering from incurable insanity could be divorced, it would have a prejudicial effect on him, not because he is incurable, but because he thinks he is?—Yes, his outlook would be depressed, and he would probably lose his sleep and impair his nutrition.

35,953. He would think he would come within the law?—Yes.

35,954. The effect would prejudice his recovery?—Yes.

35,955. Do you think it might prevent it?—Yes, in some cases.

35,956. So that he might develop into an incurable lunatic?—He might.

35,957. You have given some remarkable statistics as to the proportion of better class insane and the pauper insane?—Yes.

35,958. One is increasing very much and the other is fairly stable?—The proportion of the better class insane was diminishing until 1899, when provision was made for patients of the pauper class to be transferred to the better class, when they have sufficient means to pay the ordinary rates. This was a desirable provision, because it helped the self-esteem of the artisan and helped to reduce the burden on the rates, and was some comfort to certain patients. A great many more paid than previously. Of course, that increased the numbers.

35,959. Allowing for that it remains the fact that the better class percentage as against population is not increasing?—Yes.

35,960. But the percentage with regard to the pauper class is increasing?—Yes.

35,961. Do you put that down to better habits, more self-control and better public opinion?—Yes.

35,962. Among the educated?—Yes.

35,963. Your view is that the remedy as far as the race is concerned has not altered conditions of divorce but altered conditions of marriage?—Yes; may I say further, the prevention of illegitimacy by segregating the mentally defective, because it does not simply refer to marriage.

35,964. Improvement would come from wiser and healthier public opinion?—I feel it would come from a healthier public opinion.

35,965. Do you look to that healthier public opinion rather than to legislation in these matters?—I think restrictive legislation would follow on a growth of a healthier public opinion, but I think we must have the healthier public opinion first.

35,966. You think that any legislation in the way of restricting the ages of marriage, or certain classes from marrying, must follow on a healthier public opinion?—My feeling is that it should be tried. I might be converted to stringent measures if it were not a success.

35,967. How do you mean?—I would try and get a a healthier public opinion first. I would not have spasmodic attempts to deal with it, but if the healthier public opinion did not arrive, one might be converted to stronger measures with regard to marriage.

35,968. You think it should be attacked there rather than have a dissolution of the marriage?—I feel that very strongly.

35,969. (*Judge Tindal Atkinson.*) Does your experience of the poorer classes enable you to say that the same injurious influence, from the knowledge that insanity formed a ground of divorce, would apply to the poorer classes, in the same way as the class you deal with?—I think it would apply. When I was senior assistant medical officer in a county asylum I was very much struck by the longing the patients had for their homes and the affection those outside had for the inmates. It would not apply so strongly as it would to the individual with a highly-organised brain.

35,970. (*Chairman.*) Having regard to your views about unfit marriages, would you suggest that it should be a ground for annulling a marriage if unfitness of an insane character were kept back from the other party?—Not just yet.

35,971. What do you mean?—I think one should have further education in the matter.

35,972. Do you mean that in theory you think it right, but that in practice opinion is not sufficiently formed?—I think so.

(*Chairman.*) Thank you very much for your interesting evidence. It is very valuable to us.

Sir GEORGE HENRY SAVAGE called and examined.

35,973. (*Chairman.*) Will you kindly state your qualifications? We all know you, but everybody who reads the evidence afterwards may not?—I am a Doctor of Medicine and a Fellow of the Royal College of Physicians. I have been for over 40 years connected with the treatment of the insane: 17 years Superintending Medical Officer of Bethlem Royal Hospital, 30 years lecturer on mental diseases, Consulting Physician to Guy's Hospital on mental diseases, Physician to Earlswood Asylum, Consulting Physician to the Priory, Roehamption, Chiswick House, Brislington, Bristol.

35,974. You have had an enormous experience on the question of the insane?—I have.

35,975. You have been good enough to address a form of questions to Medical Officers of Asylums, and have had 82 replies?—I have.

35,976. This is the letter you wrote: "Dear Sir, As it is probable that evidence will be taken by the Commission on Divorce, and as I have been approached on the matter, I should like to go prepared with the expressed feelings of the members of our speciality, therefore I take the liberty of asking if you would be

so good as to reply to the accompanying questions and return the answers at an early date.

1. Is insanity a justifiable ground of divorce?
2. If so, what forms of insanity?
3. If incurable insanity, what is your test of incurability? Duration of the malady or its form, or both?
4. Do you base your opinion upon the immediate justice to the individual, the ultimate benefit to society, or both?
5. Should a person divorced on the ground of insanity be allowed to re-marry?

I am, &c.,
GEO. H. SAVAGE."

A. That is so.

35,977. You have had 82 replies to those inquiries?—I have.

35,978. Do you know how many medical officers of asylums you sent to?—I am afraid I cannot give you the number. It was nearly 100. I believe it was 96.

35,979. Does the 82 include the great majority of the asylums in the country?—Yes.

35,980. Of the 82, your paper says 51 are in favour of divorce under certain conditions, 29 are against it, and two are indifferent?—Yes.

35,981. Of the objections, some are on religious grounds, from Roman Catholics and strict Churchmen, and some dissenters?—That is so.

35,982. Can you give us a little more fully the effect of the answers to the five questions you put, because you summarise it in favour or against, but we have not any details of the answers?—I can give those who object to divorce. First of all, those who were in favour always made conditions: one universal condition was that the insanity should be considered incurable. The next question was the test of incurability. A great proportion took time as one of the elements, but the time differed very materially. Taking an average, about five years was looked upon as the term that should be the minimum limit of insanity, and it was always to be understood that that insanity was to have been certified insanity, that the individual should have been certified as insane for at least five years. Two or three considered that the mere fact that a person was certified as insane should be enough. There are only one or two like that. Four or five perhaps considered that the limit should be 10 years. They all agreed as to the forms of insanity that should be generally considered as incurable; universally epileptic insanity was so considered. If incurability from the form of incurable insanity was to be considered as a grounnd of divorce at all, epileptic insanity should be considered first. Next, the so-called dementia, whether secondary dementia, of age or youth, should be considered as a sufficient ground. There is more difference about the so-called recurring insanity, because they recognise that sometimes there are such long periods of convalescence between the attacks. The general idea was that delusional insanity, the so-called paranoia, should be considered as one of the incurable forms, and for two or three reasons given by many of the men that in nearly all cases it was due to bad heredity, and therefore you had the form of insanity which was in itself incurable and which indicated always insane stock. One-third of those who were in favour of it under conditions, thought dipsomania might be considered. Conditions of immoral insanity were referred to by several, more particularly sexual offences, epilepsy, recurring insanity, delusional insanity, dementia, whether so-called adolescent dementia præcox, or secondary dementia, dipsomania, and immoral insanity. Of those who were against it, the two chief grounds were first the religious ground, or those from Roman Catholic asylums, and Ireland, who at once said their answer must be, On no condition could divorce be decreed or allowed. The other ground was the uncertainty of incurability, giving instances. A patient had recovered after 10, 12, 15 or 20 years. The third objection was that anything interfering with the marriage contract was in their opinion injurious to society. Most of them, in relation to the question as to their opinion upon the immediate justice to the individual, the ultimate benefit of society, or both, looked upon it that it was the individual hardship that they considered, and hardly any considered that there was sufficient ground except upon the individual hardship, and those cases were not sufficiently large to make it imperative. Many referred to cases of extreme individual hardship. It is scarcely necessary for me to bring those individually before you. There were many other questions considered by them and referred to. There was a very strong feeling that if such a question as that of divorce in consequence of insanity was to be considered, it must not be a purely medical question, that it must be subject to something like the ordinary inquiry. That was brought out very strongly in many replies. They did not think medical men should be expected to give anything like an authoritative view.

35,983. It would result in a trial with evidence?—Yes.

35,984. Will you summarise your own views yourself?—I think there is no ground for immediate action or anything of that sort. I think there are a very large number of cases in which there is individual hardship, but I do not think they are sufficient to justify any very material alteration in the law. That is practically what my experience comes to.

35,985. Assuming it were fixed upon as a ground of divorce, would all the cases you have mentioned be properly covered by declaring the ground to be incurable insanity after five years of its existence?—It is such a very exceptional thing for one of these cases to recover after five years that if it were granted, I should again say the individual hardship was so small that it was almost negligible. Take it the other way. If it were decided that there should be a limit of five years with definite medical inquiry as to incurability, I think so few cases would arise.

35,986. Perhaps you do not know how many letters we have had about that?—No.

35,987. Assuming that we tried to frame a clause, it would not be necessary to specify the forms of the insanity: it would be sufficient to say generally "incurable after five years"?—That would be the legal form of inquiry. That would be the legal summing-up after the inquiry, or whatever is held, had had medical and other opinion. There are so many ordinary points where it is hardly necessary. There is one that in no case should the divorce be granted when the insanity of the individual had been caused by the fault of the other. For instance, in syphilis, alcohol, or anything of that sort, for the one producing disease in the other that ended in insanity, that should not be considered a ground for divorce. There is one other point I have personally felt very strongly, and which has been brought out in many of the replies. It certainly should be granted when certain concealments had taken place. I have had to give evidence in several cases in which there has been nullity of marriage declared when it has been shown there was insanity before the marriage

35,988. And had been concealed?—Yes, it seems to me if insanity has occurred in either party before marriage and that has been concealed from the other party, and then insanity develops, that should be a plea, certainly a ground.

35,989. A ground for annulment?—Yes

35,990. Fifty-one of your correspondents are in favour of divorce. Do they say on what ground?—Nearly all, the hardship of the individual, and a certain number say it tends to immoral relations, especially referring to the lower orders. Say a man has a wife and three or four children, and the wife becomes insane and is sent to an asylum. He is a working man, and if she does not recover, has to have someone to look after the children. According to several or a good many of these people, that tends, as one would think possible, to immorality, the man living with the woman looking after the children. That is one ground. The next is for the welfare of the children. If the mother is in the asylum, it is important that there should be a woman in the house to look after them. Those are nearly all social and incidental grounds. They refer to the hardship of the working man who may have two or three boys and no girls and no one to look after his house. The plea is nearly always of that kind.

35,991. That has been the class of point, not in connection with insanity, but other grounds put forward as largely affecting the working class, because of the necessity of the man to have someone to look after his house?—Yes.

35,992. That seems to be the ground?—That is the chief ground.

35,993. With regard to one other point which has been mentioned, the detrimental effect on patients in the asylum of the knowledge that there was a ground of divorce in insanity, what is your view?—I am rather doubtful. Besides the doctor who has just been giving evidence, I have independently three or four replies, one from the head of Virginia Water, saying he considered that it would be a distinct hindrance to recovery if a patient suffering from mental depression felt, if he or she did not recover, he or she could be disposed of, as it were. Personally, I think it is a possibility, but I should not have thought that it was a very serious one.

35,994. I think that is all I find in your proof?—Yes.

35,995. (*Sir Lewis Dibdin.*) You think that there would be cases of hardship even if the limit of five years were adopted for incurable insanity?—There would be some cases, but they would be so few.

35,996. A small percentage?—A very small percentage.

35,997. But one which admits of statistical statement?—I do not think one in a thousand.

35,998. You would not be in favour of divorce in cases of insanity where the insanity has been caused by the fault of the other party?—No.

35,999. You heard Dr. Chambers' evidence?—No, I am afraid my deafness prevented me.

36,000. I want to put this case to you: a man without striking his wife or doing anything which could be taken hold of, makes her life a torture. I have no doubt you have come across such cases. We have heard a case where a man, in a good position in society, came home every night and sat at the table and never spoke to his wife for many weeks. Would that sort of relation have a prejudicial effect on the wife, so that it might produce an attack of melancholia or some form of mental disease?—Personally I have introduced that, not as my opinion so much but as the opinion of several. Personally I would say I did not consider that it would be a workable thing except in a very few cases.

36,001. What would not be workable?—If it were a disease like syphilis that was propagated from one to the other, it seems to me that there ought to be a possibility of having a separation when you get that, but I do not see where you draw the line. A parallel is where a man's life is rendered absolutely unworkable and intolerable by the jealousy of his wife.

36,002. That is the same point. You would not make that a bar to divorce?—I would make a bar.

36,003. How is it to be proved?—A bar to divorce.

36,004. I thought you said you would not make it a bar?—No.

36,005. Which do you mean?—It should bar divorce.

36,006. How do you prove it? It seems to me such a difficult thing to prove. It is a kind of intangible worry and persecution?—It would be a bar.

36,007. I am sorry, but we are at cross purposes?—No, divorce should be granted on such a ground.

36,008. We are not on the same point. Assume the effect of the worry has been to make one of the partners, say the wife, insane, ought the man to be able to get a divorce on the ground of the incurable insanity of his wife, although it has been caused by his own worrying ways?—I think not.

36,009. Then the difficulty recurs, how are you going to prove insanity is caused by this sort of impalpable persecution?—I do not think you could.

36,010. Then he would get his divorce?—No.

36,011. The ground of divorce is not the persecution but the insanity of the wife?—Yes.

36,012. Then the defence would be that this insanity has been caused by the action of the husband?—Yes.

36,013. Your view is that the defence ought to succeed?—Ought not to succeed.

36,014. Then you would allow the man to have his divorce although he has caused the insanity of his wife?—I do not say that.

(*Sir Lewis Dibdin.*) Which is wrong, my Lord?

(*Chairman.*) You had better leave it alone, I think we appreciate the point.

36,015. (*Sir Frederick Treves.*) I gather if you had to put a definite clause in an Act, from the opinions you have had from those you have consulted, it would come to this, insanity of five years' continuous duration?—Yes.

36,016. You would add that word to the sentence the Chairman suggested. It must be continuous?—Yes.

36,017. Supposing that were to be certified by three expert medical witnesses, including amongst the three, the medical man in charge of the patient, would you think that is likely to involve any error, or that it is likely to miscarry in any way?—No, I think it would probably be very powerful, but I think we doctors should prefer that the judgment should not be on them entirely.

36,018. If these precautions were adopted, you do not think there would be likely to be many cases of error?—No.

36,019. Considering the number of patients who recover after five years of insanity?—It would be very small, I think, it would be almost negligible.

36,020. I take it you would not schedule all forms of insanity?—No, certainly not.

36,021. You think incurable insanity of continuous duration for five years, properly certified, would cover all your cases?—Yes.

36,022. I take it your case of general paralysis of the insane would vanish under those circumstances?—Yes, and the senile cases, to which some of them refer.

36,023. Would you allow senile dementia to be included?—No, that is a question referred to by one or two.

36,024. You would exclude from that clause senile dementia?—Yes.

36,025. That is to say, dementia due to decay of the body, and therefore standing somewhat by itself?—Yes.

36,026. To once more answer the question Sir Lewis Dibdin started with, insanity caused by the petitioner, outside general paralysis of the insane, it is scarcely possible to prove?—That is my feeling.

36,027. There it would end?—Yes.

36,028. There may be such cases, but you think it would be practically impossible to prove them?—Yes.

36,029. Would you allow that a person of sound mind can be so worried by another person as to be made insane enough to be sent to an asylum, or would you assume that there must be some unsoundness of mind in the person so affected?—I think it would be difficult to establish worry as a sole cause of insanity. It would act seriously only in persons already predisposed by heredity or other organic causes.

36,030. To bring the case home, I will put this to you. To satisfy a court of law would it be practically impossible?—Yes.

36,031. There are two other forms of insanity which Dr. Clouston separated from the rest, delusional insanity and dipsomania, as distinct from alcoholic dementia, and he said he would give 10 years for those cases. Would you especially enumerate them or not?—I do not think I would make any difference. I should be doubtful about granting it to dypsomania.

36,032. You think that doubtful?—Yes.

36,033. You would make no exception of those cases?—No.

36,034. There has been a great deal said about recurring insanity?—Yes.

36,035. Say a wife is subject to these recurring attacks, and that she recovers and goes home and a child is born, and she finds her way back to the asylum again. Those persons would not come under your clause of five years' continuous insanity?—No.

36,036. Could you put that into a clause that would be practicable?—That is the difficulty I think I refer

to. Undoubtedly there are some cases of recurrent insanity, that those of us who have had much experience recognise, who never get out of asylums. I have known patients for 40 years in a place like Bethlem, having an average of about three attacks of acute mania every year. That is an extreme case, but one comes across a fair number of cases in which there is recurrent insanity, during which time they are never moved or certificated.

36,037. That is Dr. Mott's point. He said the only cases of recurrent insanity he would recognise, were those that were or should be under constant certificates?—That is always under the certificate—quite so, continuous.

36,038. Another point is this. We have been told very properly that the interests of the insane must be watched?—Yes.

36,039. The Commissioners of Lunacy have impressed that point very strongly. We know that in the majority of persons we are speaking of, there are no interests. They are morally and mentally dead, but it is possible to conceive that an action may be taken in connection with a lunatic who still has some interests. Do you think it would be wise to allow the Commissioners of Lunacy to have power to intervene in any case in which such an action was being brought, something like the King's Proctor?—In the question of divorce?

36,040. In the interests of the insane, as a safeguard to the insane?—In cases of this kind?

36,041. Yes?—I should say so distinctly.

36,042. Because the insane person is alone or may be. Probably 99 out of a 100 have no interests, but assuming a case is possible where the insane person has interests, do you think it would be wise that a Commissioner in Lunacy should have power to intervene?—I feel very strongly that it should be legal as well as medical opinion, and therefore anything in the shape of intervention by a legal authority like a Commissioner would satisfy me.

36,043. The Commissioner would appear as the friend of the lunatic to look after his interests?—Yes.

36,044. That, you think, would be a good thing?—Yes.

36,045. There are a few small points upon which I think you might express an opinion. You would not make any distinction as to lunacy appearing years after marriage. It has been said that insanity as a ground of divorce should not apply, if it appears 15 years after marriage?—I do not see that should interfere.

36,046. You would not introduce a clause for criminal lunatics detained at Broadmoor?—That is a question one has considered. My feeling is that I should like it done, but I have not made up my mind.

36,047. A large portion of these criminal lunatics would come under the clause of incurable insanity of five years' duration?—Yes, most of them would.

36,048. You would not widen it and say a criminal lunatic *ipso facto*?—One has looked at the American law and in some cases that is allowed I believe.

36,049. In a case of this sort where insanity is going to be a ground of divorce, if the petitioning party had already committed adultery, would you allow the case to proceed? Possibly it is out of your line?—I am afraid that is out of my line.

36,050. (*Chairman.*) May I try in my own way to clear up the difficulty between you and Sir Lewis Dibdin. Supposing a woman is married, and under your clause of incurable insanity for five years, it is found, as a fact, that the husband's conduct had been instrumental in bringing about that condition, what would you do?—I should not allow him to get a divorce.

(*Sir Lewis Dibdin.*) The point is, it will not be capable of proof, and yet the man ought not to have got it.

36,051. (*Chairman.*) Sir Lewis' point is this, that it would be extremely difficult, having regard to the privacy of life, to establish that the man's conduct had brought this about, and his question was, how would you prove that?—I admit the extreme difficulty, but if they establish it, then I should bar the divorce, but you have to establish it. That is the difficulty.

36,052. (*Sir Lewis Dibdin.*) Supposing it exists but you cannot prove it, ought the man to have his divorce?—No.

36,053. Although you have not proved it?—Proved her insanity?

(*Chairman.*) No, if you can prove her insanity but cannot prove anything against the husband.

(*Sir Lewis Dibdin.*) And yet it is his fault, but you cannot prove it. Ought he to have his divorce or not?

36,054. (*Chairman.*) I am afraid we get to the question of proof. Will you summarise it thus. We have grasped what you think might be a clause assuming it were introduced?—Yes.

36,055. Fifty-one of your correspondents are in favour of divorce and 29 against?—Yes.

36,056. Are you prepared to support that clause yourself?—I would not support the 51. I should be more inclined to say that my own personal feeling is, that it has not been established that insanity is sufficiently often a cause to require divorce.

36,057. We have heard that there are 50,000 married people in the asylums. We cannot tell without asking everyone what their views might be as to a desire for release. You do know, I take it, of a number of cases in which it is a great hardship?—There is no doubt of the individual hardship, and that I have felt. I entered upon it with a feeling I must say rather in favour of the divorce, but the more I have considered the individual reports from these people, and the more I have considered my own 40 years' experience, I cannot help thinking that there is not ground enough to justify the alteration.

36,058. (*Chairman.*) I ought to thank you very much indeed for your evidence, and I am sorry that we have had to take up so much of your time?—I am only too glad to have been of service.

Adjourned.

Winchester House, St. James's Square, London, S.W.

FORTIETH DAY.

Tuesday, 8th November 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
Sir FREDERICK TREVES, Bart., G.C.V.O., C.B., LL.D., F.R.C.S.
Sir LEWIS DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).
J. E. G. DE MONTMORENCY, Esq. (*Assistant Secretary*).

Dr. DAVID WALSH called and examined.

36,059. (*Chairman.*) You are an M.D. Where is your sphere of work?—In London, at 27, Welbeck Street.

36,060. You are a consulting physician?—Yes; I am a specialist in skin diseases, and also a physician.

36,061. Have you had these matters that are under our consideration brought to your attention?—Yes. I am editor of a medical journal, and in that capacity these matters have been under my consideration for a great many years.

36,062. You communicated with the Secretary with a view to giving evidence?—Yes.

36,063. I will take you through your proof carefully. Will it suit your convenience to read your paper until I think it is necessary to ask you questions upon it? Some parts of it I can cut shorter?—Yes. "It appears to me that no legislation of the kind concerned is likely to be permanently successful unless it makes some provision not only against the marriage but also against the continuance in wedlock of persons likely to damage to any serious extent the health of the family, especially by producing defective offspring. Hitherto, society has allowed its matrimonial affairs to drift for the most part into the hands of priests and lawyers, with results that have not been altogether satisfactory. In view of that failure its social reformers will do well to call in the aid of medical science. They will find that modern scientific medicine has in matrimonial law, properly handled, a powerful weapon for the prevention of bodily and mental disease in the family, together with the less direct evils of pauperism, prostitution, alcoholism, crime and other disastrous heritages of the union of unfit persons. So far neither priests, lawyers nor social reformers have made any serious attempt either to discourage or to dissolve marriages of the unfit. It may be well, therefore, for the community to find out what medical men have to say upon the subject. The leaders of the English Church, as expressed in Canon Law and recently declared by the majority of Convocation, hold the canonical view of marriage as a sacramental and indissoluble union. From a medical standpoint this doctrine involves serious consequences as regards offspring. Should a spouse become insane, for instance, under Canon Law the marriage cannot be dissolved, and the parents are permitted, if not enjoined, to go on producing children destined in a large proportion to people our lunatic asylums. It is difficult to reconcile such a position with any reasonable conception of a just and all-wise Providence, especially when we reflect that the burden of supporting these hapless victims falls upon the sane and healthy members of the community. Take another case, that of a man who deserts his wife, or who is sent to penal servitude; the Church says the wife may not obtain a divorce upon either ground, although by her non-productiveness during the child-bearing period the State is deprived of the chance of so many additional children. A church advancing doctrines of that far-reaching kind should be prepared with overwhelming arguments in their support. What do we find?"

36,064. We have had so much evidence as to the position of the matter connected with the interpretation of Scripture, that I do not think I need trouble with that part of the paper. I will pass to the bottom of page 4. You will understand I have read it all and fully appreciate what you say. No doubt we all have?—Perhaps I may be permitted to explain my position. The Church attitude is so wrapped up with the whole question, and with the medical aspects of the question, that is impossible to consider or discuss the religious position apart from the medical, and that is why I have put that in my paper.

36,065. I follow that, but you dissent from the Church's position, and refer to the interpretations of Scripture, and so forth. I think the Commissioners would feel we have had a lot of evidence and so much coming on that special point, that we want to keep you to the medical side of it. At the bottom of page 4 you take it up completely, I think?—Yes.

36,066. Of course, if there is any point you specifically want to draw attention to, I do not want to shut it out. It is only that we have a great deal of work to do and we have many learned men on these points with regard to the Scriptural position?—"As a medical man I should not attach undue weight to the doctrines of Canon Law where they clash with the plain teachings of science. Much the same applies to Civil Law. Where legal provisions run counter to established medical principles I should regard the law as defective, at any rate so far as the rational development of Society is concerned. The law declares marriage to be a civil thing, but permits divorce solely on the ground of adultery on the part of the woman and of adultery and cruelty on the part of the man."

36,067. There are one or two additional matters, but for your purpose, cruelty is sufficient?—"Thus the law, while it admits the principle of divorce, yet prevents its extension beyond the slenderest limits, while it takes no account whatever of the medical aspects of the case. It denies dissolution of marriage to a spouse who has been deserted, or whose other spouse has become insane, or has been sent to penal servitude, or has become incapacitated from the duties of married life by reason of drunkenness, disease, impotency or other cause that lessens or destroys the possibility of producing healthy offspring. I submit that the law requires modifying to meet such cases. It presumably agrees with the declaration of the Church that one of the objects of marriage is for the procreation of children, and were the phrase qualified so as to read 'healthy children,' one could then accept it readily enough. From a medical point of view marriage is commendable only when it provides for the procreation of healthy children, while both marriage and divorce might be rendered powerful safeguards against the production of unhealthy offspring. The economic loss to the community arising

from marriages of the unfit is enormous. The history of the Jukes family in America, as related by Dugdale, may be quoted. The family sprang from a backwoodsman and its historian was able to find 834 records of its descendants amongst whom crime, pauperism, insanity and prostitution were rampant. Dugdale estimated that during the century and a half with which he dealt the family cost the State no less a sum than $1,308,000, or roughly 260,000*l.* That, I may say, is a small proportion of the amount that it must have cost the community directly and indirectly."

36,068. Can you tell me the date of that family history at the beginning? Between what periods does that run?—He traced them for a century and a half, and he wrote about 1880.

36,069. The foundation of the tracing was a century and a half before?—Yes. "Society, then, which has thus to bear the heavy burden of unfit marriages, need hardly hesitate in self-protection to exercise a collective control over both the wedding and the wedlock of unfit persons. The principles of medicine that apply to marriage and divorce are few and simple. As a medical man I am dominated in this respect by two main objects, first, the eradication of disease, both by its cure or, better still, by its prevention, and secondly, the production of a healthy race. The application of these two principles to marriage and divorce enable one to arrive at certain conclusions of the utmost importance with regard to the prevalence of insanity, weak-mindedness, pauperism, crime and other social evils of which so much has been heard in recent years."

36,070. You have the two propositions involved in what you have said, namely, prevention by something before marriage, and divorce afterwards, if I follow you. Those are the objects, but they may be separated into two propositions; one, steps taken to ensure the marriage of the fit, and the other the dissolution of the marriage in cases where it might reasonably be dissolved?—What I had in my mind was this: to apply both cure and prevention of disease to marriage, and cure and prevention to divorce.

36,071. Will you apply your mind to the first of those? Have you any practical suggestions you desire to put forward?—Yes, the cure and prevention of disease as regards marriage.

36,072. Before marriage, cure and prevention?—Yes. The cure of certain disease as a necessary preceding condition.

36,073. Perhaps I am anticipating too much. Then you proceed with the medical aspects of marriage?—"It is useless to bewail the prevalence of race degeneracy and its associated evils if we take no steps to hinder the marriages of persons who can reproduce nothing but degenerates. To take an extreme case. Suppose a man and woman, each with a bad family history and a criminal personal record, to be released from their respective lunatic asylums. As things go, they may marry with the blessing of the Church and the sanction of the State, but it is nevertheless a foregone conclusion that sooner or later the community will have to maintain a large proportion of their descendants in gaols, workhouses and asylums." I may say, since this was written, I have heard of the case of a man and woman who actually met in a lunatic asylum; they were both inmates of a private lunatic asylum; they went out and they married. The end of it was the man shot himself. That is an extreme instance. What I took as an extreme instance in imagination actually occurred. In more than one American state, the legislature has arrived at the logical conclusion that it is right to prevent, by means of a simple surgical operation, certain lunatics, criminals and weak-minded persons from reproducing their kind. Control of that sort is being exercised at the present moment in Indiana and its principle has been approved in some other of the United States. Take another case, that of syphilis, which is not only a communicable, but also an inherited disease. Why should syphilis not be dealt with on the same lines that we deal with other serious infectious maladies, such as scarlet fever, small-pox and cholera? Syphilis is often far more damaging to the individual than any of the ordinary notifiable infectious diseases, while in many cases it entails in addition the most serious injury to the offspring. Yet we exercise stringent control over persons suffering from ordinary fevers, while we permit persons to marry with the syphilitic infection full upon them. Syphilis is commonly regarded as a shameful thing not to be spoken of in polite society, but we as medical men are not concerned with the way in which a disease has been contracted. The chastity or otherwise of an individual sufferer is not a matter for the physician, to say nothing of the fact that syphilis may be and not infrequently is contracted in an innocent fashion, as, for instance, in the cases of nurses and medical men attending syphilitic patients. But the physician's bounden duty is to cure and prevent disease. It follows that he must forbid the marriage of persons suffering from syphilis, and if the malady prove incurable in married persons, he must resort to divorce or its equivalent as a means of preventing the further spread of the disease. The State under its existing laws would forbid a man marrying as long as he were shown to be suffering from so comparatively mild a disease as erysipelas."

36,074. What is that law?—Perhaps as I have put it, it is not quite right. I meant if he were suffering from erysipelas he would be, under another law, fined for exposing himself in that condition.

36,075. There is no prohibition against contracting marriage?—No; I misstated it.

36,076. It is not quite accurate: you mean it is in the category of infectious diseases?—I may say this proof of evidence was written under pressure some weeks ago. I have not had an opportunity of revising it, but that obviously does not quite express my meaning. I mean to say, under another law he could be imprisoned, taken up for exposing himself when he is suffering from a notifiable infectious disease and fined 40*l.*, I believe, at any rate heavily fined—I have not the exact figure. If he is suffering from syphilis, there is nothing to prevent him spreading it, but if suffering from a mild disorder like erysipelas he can be stopped. "Why should not a candidate for marriage be required to produce a medical certificate stating that he is free from any communicable malady? That would be a safeguard to many innocent persons, while it would not unduly interfere with the liberty of the subject."

36,077. You suggest in a case in which there has been concealment of the fact that one party to a marriage was suffering from a communicable malady of a serious character, that the other party should have ground for annulment on discovery?—I have not gone so far as that, but I am prepared to do so.

36,078. We have had that suggested?—I should quite endorse that. I was getting at it in a different way.

36,079. Would that apply to all notifiable diseases? Those you have mentioned, it would involve their being notified?—I could not say that. Some are trivial.

36,080. Would it not apply to those diseases which render a person unfit to marry?—That is it exactly, "In the existing state of society, however, it is unlikely that any very stringent legislative control of the marriage contract would be tolerated. Measures founded on medical principles, therefore, would have to depend rather on moral suasion than on compulsion. For the well-to-do classes of society I would suggest to parents and guardians the prudence of requiring a medical certificate of the fitness of a candidate for marriage from the point of view of spouse on the one hand, and of prospective children on the other. A somewhat similar warranty of fitness, if the term may be used, could be obtained by insisting as a necessary preliminary that the candidate should be accepted as a first-rate life in a British insurance office of good standing. As regards the poorer classes, I would suggest the organisation of advisory marriage bureaus, where all persons bent on matrimony could obtain gratis a full investigation of the family and personal history, and all other pertinent facts on both sides, and secure advice as to the desirability or otherwise of the proposed marriage. These bureaus might be associated with the existing labour bureaus, and placed in

charge of medical experts, who would find little difficulty in framing satisfactory rules for their own administrative guidance. As regards marriage of cousins, for instance, it is now generally recognised that there is little risk to offspring provided the stock is free from taint of nervous or other serious hereditary defects. As to epilepsy and insanity, it may be assumed that medical sanction would in many cases be withheld. Without going into further details of their application, I will lay down the general proposition that medical advice and sanction should be sought and obtained as an essential preliminary to marriage in all ranks of society."

36,081. I gather from what you have said you would not be prepared to advocate any legislation in the nature of compulsion? Those last paragraphs are rather indicative of a view that the minds of people should be brought to bear upon, and that they should exercise more control in the matter, or have the opportunity of doing so?—I think I should be in favour of legislation as regards certain diseases.

36,082. Legislation of what character?—A medical certificate as to freedom—there are only one or two diseases I can call hereditary—from insanity and from syphilis.

36,083. From venereal disease?—Yes. That would be an unspeakable safeguard to the community. We as medical men are impressed in a way no other class of the community can be by the enormous prevalence and serious consequences of syphilis and insanity. That is my main object in coming before the Commission, to impress that on you.

36,084. Do you include gonorrhœa in that?—Genorrhœa is as dangerous or more dangerous than syphilis to life; especially in the case of the woman.

36,085. You would be prepared to support legislation requiring in those two cases of insanity, and such diseases as you mention, a medical certificate before marriage?—Yes.

36,086. Supposing that was not obtained, and the marriage took place,—I am thinking of the practical effect of the suggestion?—I suppose, like any other law, that the parties who transgressed that particular law would be held responsible.

36,087. Would you go so far as to say if it were made the law they should be subject to a suit for nullity of marriage?—The question would arise probably only in instances of insanity or syphilis. In that case it should be made a ground for nullity.

36,088. Then you have another point on the next page of your proof?—"As a medical man I advocate the raising of the age at which marriage is legal from 12 years in the girl and 14 in the boy to at least 16 in the girl and 20 in the male—and then only with the consent of parents or guardians, or in their absence, of a magistrate or judge. It seems somewhat absurd that the law should deny the right of making an ordinary contract to a minor, who is nevertheless permitted to enter unrestrainedly into the most important of all personal contracts, as regards the individual, the family, and the State, at the tender ages of 12 and 14 years."

36,089. At present minors require consent, but it is easily evaded by swearing they are 21 years of age. How do you propose to treat the cases in which they had evaded the provisions you suggest? Would you give the right, as is given in France, of the parents seeking a declaration of nullity?—I am afraid I am not prepared with an answer.

36,090. It is not much use laying down a provision which is evaded with the utmost ease, unless you follow it out in some way which makes it of practical effect. I think I am correct in saying in France, because I have had to give judgment in cases of that kind, that the parents can step in where consent is not given and themselves apply for a suit for declaration of nullity. I want to see how far your suggestion goes?—I am afraid in this instance I am only able to draw attention to my views. I cannot express any definite opinion.

36,091. The way to work it out is a matter perhaps, you would say, for a lawyer, but the point is raising the age so that there should be a prohibition under that?—Yes.

36,092. It has been suggested if you carry it as high as 21, the age mentioned—you put 20—but even at 20, it has been suggested that might lead to a great deal more immorality than if you leave it where it is. What is your view about that?—I do not think it would affect the question of morality or immorality much.

36,093. The next part is, what medical aspects of divorce you would like to have taken in private, but looking at it again I think we may proceed?—"The logical application of the principles of the eradication of disease to divorce leads to various more or less obvious conclusions which will be simply stated without formal discussion. Some few points, however, need a brief passing examination. Turning first to the problem of communicable disease, let us take syphilis. The fact of incurable syphilis should, to my mind, constitute a ground for divorce. Any case that resisted treatment, say for two years, might be regarded for practical purposes as incurable." Some cases do seem to be incurable. "At the same time it should be borne in mind that assuming the disease to be established as a legal ground for dissolution of marriage, it is simply permissive and it by no means follows that a spouse would take advantage of it. As a medical man I justify the inclusion of venereal diseases as statutory grounds for the dissolution of marriage on the score of the spread of a serious disease to spouse and children. It is no matter to me whether the diseases in question were acquired innocently or otherwise. It is my professional duty to detect and stamp out and prevent syphilis and all other diseases to the utmost of my power. But there is no reason why I should place syphilis in a class apart from other communicable diseases, taking my stand, as I do, upon purely medical grounds. Take consumption of the lungs, which is sometimes communicated from one spouse to the other, and which is apt to produce deterioration in offspring. If incurable syphilis is to be admitted as a ground for divorce, why not incurable consumption of the lungs? In short I am led to the conclusion logically that the existence of any serious and incurable disease in either spouse likely to injure the other spouse or offspring or to prevent the procreation of healthy children during the child-bearing period of the life of the female spouse should constitute a legal ground for divorce. In this case it should be clearly understood that the ground for divorce would be permissive, and it is tolerably certain that the law would provide against the abuse of such a ground by imposing substantial conditions as to division of property. Thus, one spouse seeking to divorce the other on the score of incapacitating and incurable illness, bodily or mental, might be required to hand over to the other one-half of the claimant's fortune. The re-marriage of parties divorced for such a cause should be prohibited, in my opinion. Without attempting further detailed discussion, I venture to advance the following conclusions and suggestions, based upon social and medical considerations.

"A.—*General.*

"1. Canon Law was in force for many centuries in England, where it proved a failure, inasmuch as divorce, although nominally refused, was in mediæval times readily obtainable by the rich on the flimsiest pretext.

"2. Marriage is a civil thing; and is a matter purely for State control.

"3. Marriage and divorce, which closely concern the health of the individual, the family and the nation, are matters for medical as well as for moral and legal control.

"4. The marriage laws should be simplified, revised and consolidated into one common law for the United Kingdom, and so far as possible for the whole British Empire.

"B.—*As regards Marriage.*

"5. The cost of civil marriage should be small, say, a maximum fee of five shillings including certificate.

"6. The civil ceremony at Registrar's office should be compulsory. Religious celebration to be optional and fees privately arranged.

"7. The conditions of the ecclesiastical and religious marriage to be reduced to one simple form on the lines of the present special licence.

"8. The legal age of marriage should be raised to, say, 17 in the female and 20 in the male—with consent of guardians below age of 21 or, failing that, of a magistrate or judge.

"9. The parents or guardians of well-to-do classes may be advised to test the fitness of every candidate for matrimony by demanding a medical certificate of suitability, or by requiring acceptance as a sound life by a first-rate life insurance company. In the poorer ranks of society the provision of advisory marriage bureaus is advocated, each with a medical expert ready to investigate free of cost the circumstances of persons contemplating marriage and to advise thereon.

"9. The payment of Registrars of Marriage to be in all cases by salary and not by a fee on marriage.

"C.—*As regards Divorce.*

"10. Sex equality should be established.

"11. Cheap or free divorce to be afforded to poor litigants by bringing the law to the door of all citizens.

"12. Until the ideal of free law to all members of the community be attained it is suggested that the legal maximum cost of divorce proceedings be reduced to, say, five guineas for persons whose income does not exceed 200*l.* a year; below that amount the cost not to exceed three guineas.

"13. The magistrate's separation order might be converted by legislation into the equivalent of a decree *nisi* to be rendered automatically absolute at the end of six months. This would provide poor man's divorce with one stroke of the legislative pen and bring to an end a well-meant but not altogether successful experiment.

"14. I would adopt and extend the existing grounds for divorce so as to include—

"(*a*) adultery;
"(*b*) persistent cruelty or violence;
"(*c*) desertion for more than a year;
"(*d*) imprisonment for felony or serious misdemeanour or habitual minor crime;
"(*e*) physical incompatibility;
"(*f*) communication to spouse of venereal or other serious and incurable disease;
"(*g*) development of any serious and incurable disease likely to prevent the procreation of healthy offspring;
"(*h*) insanity or epilepsy;
"(*i*) alcoholism of a year's duration;
"(*j*) drug habits of a year's duration;
"(*k*) non-consummation owing to unreasonable refusal;
"(*l*) acquired impotency during the child-bearing period of wife's lifetime."

36,094. I do not understand the last.

(*Sir Lewis Dibdin.*) By the husband, he means.

36,095. (*Chairman.*) Possibly. Will you tell us what it does mean?—It does mean that, by the husband.

36,096. Through misconduct?—Not necessarily: it might be a nervous disease: it might be a case entirely beyond his control. The ground is that it robs the State of potential children. I do not insist on that at all, but it seems to me that should be a ground.

36,097. You have attempted to cover all those things which are perhaps embraced in two categories—(1) misconduct of the spouse, and (2) the happening of matters which prevent the proper production of healthy children?—Yes.

36,098. That seems to be the general feature of your point?—Anything that injures the next generation or prevents us having a sufficient number. "(15) Medical evidence as to matters of opinion in all matrimonial causes should be obtained by the Court in the form of a report made by a special board of medical experts, but medical witnesses to continue to give evidence on matter of fact as at present. In this way the Court is likely to gain more trusthworthy and judicial information than that now obtained from *ex parte* medical witnesses."

36,099. In one of the very cases, the cases of nullity, the Court has its established reporters, not *ex parte* at all. That is already done?—I should propose an extension of that principle, an extension of an existing principle in cases of nullity. "My case may be summed up briefly somewhat as follows. The Church and the law having failed to prevent the marriage of unfit persons and the perpetuation of defective children, it is high time that society turn to some agency whereby the orderly advance of race evolution may be more effectually secured. The most promising agency for that purpose I take to be preventive medicine, which, in my opinion, would hardly fail ultimately to regard marriage and divorce as instruments for the reasoned control of that reproduction of species which constitutes a supreme essential of human life and progress."

36,100. (*Sir Frederick Treves.*) You come here in your private capacity?—Yes. I come both as a medical man and as a layman.

36,101. What medical journal do you edit?—"The Medical Press and Circular."

36,102. I gather from your proof that your main object, possibly I may say your only object, is to prevent disease, to cure disease, to produce a healthy race?—Yes.

36,103. That is so?—That is so.

36,104. You would make use of the divorce laws to effect that end?—As instruments to that end.

36,105. So that you are not, so far as your proof goes, concerned with the moral, the social, or the economic side of the questions?—These questions are so mixed up. My main object is medical.

36,106. You would use the divorce laws to bring about the objects that you have mentioned, the prevention of disease, the cure of disease, and the production of a healthy race?—Yes, just as I should the notification of infectious disease or any other instrument the law places at the aid of preventive medicine.

36,107. You have not touched upon any moral, social or economic question in your proof in connection with divorce?—Only incidentally.

36,108. On page 6 of your proof, we take it you are in favour of a surgical operation for the sterilization of certain human beings?—I say here that it is the logical conclusion. I have not expressed any opinion. So long as people are allowed to leave lunatic asylums and reproduce children who are almost necessarily by the facts of the circumstances predestined to become lunatics, or at any rate of weak mind, and be a charge upon the community, I consider that the community is entitled to go even so far as controlling their sexual capabilities.

36,109. You think that operation should be a feature of the legislature of this country?—I will not go so far as that, but it should demand the very serious consideration of this Commission.

36,110. It hardly affects the question of divorce, does it? Still, that is a small point. In your proof you deal at great length with syphilis. Would you make that a notifiable disease?—Yes.

36,111. You realise the difficulties that the case presents?—I do. I recognise that there would be very extreme difficulties, but if the principle of notification be sound in minor diseases, I cannot see that it would be unsound in diseases of such great gravity as syphilis and gonorrhœa.

36,112. I suppose there is this peculiarity: the patient is supposed to confide in the medical man, but the fact of syphilis becoming known to a medical man, he must immediately go into the highways and byeways and proclaim the fact. There is that difficulty?—There is very great difficulty. You might say that with regard to scarlet fever he is in the same position of confidence.

36,113. I do not think that involves the same social question. A married woman or man confessing to a doctor that they have syphilis cannot be in the

same position as a case of scarlet fever in a child. At any rate, you say there would be extreme difficulties?—Yes.

36,114. Are you quite sure that you would include syphilis acquired innocently?—I should, on the ground that, however acquired, the children would be equally affected.

36,115. You look at the whole question from absolutely the narrow medical point of view?—The narrow medical point of view, if you put it in that way.

(*Chairman.*) You could not call it narrow.

36,116. (*Sir Frederick Treves.*) From the limited medical point of view. You must have known many surgeons who have acquired syphilis during operations?—Unfortunately I have, and more frequently in midwifery cases.

36,117. We can say a great number?—Yes.

36,118. I should imagine it would be a terrible hardship if a surgeon acquiring syphilis in that way has furnished his wife with grounds for divorce?—I have my saving clause—it is permissive. If the wife loves the man she will not avail herself of it, but if she does not and has contracted syphilis, I consider it right that syphilis in itself, no matter how acquired, should be a ground of divorce.

36,119. Her dislike being the main factor. She takes advantage of the accident of having acquired syphilis to divorce him. Her dislike is the essential feature, and she takes advantage of what is a great misfortune?—One might imagine, for the sake of unborn children, even liking the man, she might consider it her duty to renounce him if the subject of incurable syphilis.

36,120. Speaking of disease generally, with some modification, you compared erysipelas with other maladies. A man obviously cannot marry during the progress of erysipelas, but it is a very ephemeral trouble and may last 10 days. You cannot compare that with phthisis, which lasts a lifetime. That would appear very misleading, do you not think?—Yes, I admit that, but I might, perhaps, compare it with gonorrhœa in the male, which is also extremely fleeting as a rule, and then the analogy would be more exact.

36,121. Supposing all these rules were introduced, that people cannot marry under certain conditions, how do you control irregular unions of such people?—I do not profess to control them. I am treating now of marriage. I do not assume there would be more irregular unions or less than at present under existing conditions.

36,122. If you enlarge the category of people who cannot marry, surely you must increase the number of irregular unions?—I do not know that it necessarily follows, because if we keep people under certain existing conditions under the marriage tie, they are sure to contract irregular unions as it is.

36,123. It is obvious if you increase the number of those who are not allowed by law to marry, you must increase the number of irregular unions?—It increases the possibility of them.

36,124. Well, the possibility of them. You speak of medical certificates of fitness. Who is to pay for those?—Medical certificates for what?

36,125. Of fitness, a warranty of fitness, as you say?—In the case of rich people they pay for their own.

36,126. And in the case of the poor?—That would be done by the State. I consider marriage is so much a matter for the State that the State should bear the whole cost of its regulation in every way, the cost of marriage, divorce, and everything relating to marriage, whether in the preceding stage before wedlock, marriage itself, or the wedlock afterwards, or the conditions of matrimony generally. It is a State matter.

36,127. Take the bureau you suggest. Your experience as a medical man would justify you in thinking these people would take this advice?—I am afraid not, at first, not till they became educated.

36,128. It is advice which would probably not be taken?—I have found a great many poor people in my experience who are willing to take advice, and more so since the time I began as a student. The people to whom this would apply are more inclined to take rational advice. They are getting more educated as to the value of health matters.

36,129. To go to the medical aspects of the question, you would make syphilis a ground for divorce?—Yes.

36,130. Would you be prepared as a medical man to certify any person as suffering from incurable syphilis?—There are some cases of syphilis which appear to resist all treatment. That is all I can say.

36,131. Would you be prepared to put a clause in a Bill defining a man who is suffering from incurable syphilis?—Apparently incurable by medical methods. Some cases resist treatment.

36,132. That would be a little lax?—Say for two years. If a case cannot be cured within two years, I should say a cure would be doubtful.

36,133. Would you be prepared to sign a certificate that in any instance a person is incurable at the end of two years?—I should not.

36,134. Yet you call it here "incurable syphilis"?—I must define that rigidly. Most of us would agree that cases occur in which the disease appears to be incurable by all medical methods.

36,135. Suppose, as a matter of fact, Ehrlich's method was used; that may possibly do away with it?—That will alter my position entirely. If we have a cure that is an accepted and established cure for syphilis, as possibly it may be with Professor Ehrlich's new remedy, that would alter the position, but I am dealing with the conditions as known to us.

36,136. Supposing a clause were drafted in the Bill, would you put in a clause with regard to incurable syphilis and be able to satisfy the judge the individual was incurable?—I can only say I have had cases—I presume we all have—that resist ordinary treatment for an indefinite number of years.

36,137. The question is, can they be stated positively by medical men to be incurable?—I should not think so. Syphilis is one of the most curable diseases, as a rule, it is absolutely under medical control, but this exception provides for the few cases we cannot control.

36,138. I see in your proof you would include communicable and hereditary diseases: that is to say, if a person develops a disease that can be communicated or transmitted to children, that becomes a ground of divorce?—A serious communicable disease likely to injure offspring.

36,139. You mention phthisis?—Yes.

36,140. Take a family where the mother has died of phthisis, and a daughter has developed phthisis, and there are two sons who are healthy; you would forbid all those three to marry?—No, I do not say that, because I do not regard consumption as a hereditary disease.

36,141. As a communicable disease?—Yes.

36,142. Would you prevent the daughter from marrying?—No.

36,143. Supposing she has phthisis?—This applies to spouses only.

36,144. You must wait till they are married before the disease develops?—I should not, from the fact of a child having consumptive parents, forbid marriage on that ground.

36,145. That may be communicated. Supposing a spouse did develop consumption, remembering that marriage is for better or worse, you still would make that a ground for divorce?—I should if I could not cure the disease. I think I have made provision that the phthisis must have been of more than two years' duration.

36,146. Before a divorce could be applied for?—Yes. I should make it perfectly clear that there was no reasonable prospect of curing the disease.

36,147. You know of instances of children being born after phthisis has existed in a parent for two years?—Yes.

36,148. You do not see any hardship in this?—There is hardship, undoubtedly. I am speaking as a medical man, from a purely abstract, philosophical point of view. No great principle was ever enforced by legislation that did not entail hardship on individuals.

36,149. You do not think it affects the regard for the marriage tie that it can be broken under circumstances of that sort?—I think not.

36,150. Broken by misfortune?—I think it would do far less damage than seeing people as I have seen them, poor people in advanced stages of consumption, living in hovels and spreading the disease inevitably to their children. A marriage law that maintains a union under those circumstances requires revision, and the sanctity of the marriage tie is not maintained by a State that insists on wedlock of that kind.

36,151. But take other diseases as you put them in a mass. Take hæmophilia?—There are few hereditary diseases. I regard that as one.

36,152. It would come in your list?—Yes.

36,153. That is a disease known as the "bleeders' disease" which is handed down by the female and comes out in the male?—Yes.

36,154. If a girl belonging to a "bleeder" family had married, would you enable her husband to divorce her?—I should, if I carry out my principle logically. I should try and prevent the marriage.

36,155. She would be perfectly healthy?—My ground is that the next generation would be damaged; there would be defective children produced.

36,156. Supposing her children are females?—If we could ensure that they would be females, it would be another matter.

36,157. To be really practical, the point is this. Here is a perfectly healthy woman in robust health, who will remain healthy until she finally dies of some accidental disease. She may hand down hæmophilia to her children if those children are male. She is happily married, and you introduce a ground of divorce, and she can be divorced on account of these more or less accidental circumstances?—I should not regard her as a perfectly healthy woman if she has hæmophiliac tendencies.

36,158. She has not it, but is the transmitter of it?—Therefore she is not, so far as my medical view of marriage is concerned, a healthy woman, and is one of the cases who should be prevented from bearing children.

36,159. You would exclude that?—Yes.

36,160. You would schedule that as a ground for divorce?—Yes. I consider it a serious enough condition.

36,161. I suppose all these limitations would again lead to irregular unions?—It is difficult to say, in our complex state of society, the cause of irregular unions. I suspect there are a great many contributory causes.

36,162. You are making a very large series of people in this country who are for ever debarred from marrying?—That is so. We may say that the State by shutting men and women up in prison is doing much the same thing. It is impossible, the question is so big to answer adequately here.

36,163. You suggest the cost of divorce should not exceed three guineas for people whose income is below 200*l.* a year?—Yes.

36,164. From your proof it appears there is an immense amount of medical evidence necessary in these cases. Is all that to be paid by three guineas? Who is to pay for that?—I wish the State to pay.

36,165. On the last page of your proof you run through some medical items. What do you mean by "physical incompatibility"?—I mean where for physical reasons the marriage relations are impossible.

36,166. You say "incompatibility"?—That is not the right word. It was the first that occurred to me, but I mean where from physical conditions the ordinary marriage relations cannot be maintained.

36,167. That would be a ground for nullity?—Yes.

36,168. (*Chairman.*) Not if it comes on afterwards for any reason; that is if it exists at the time of the marriage?—Shall I put it "acquired physical incompatibility."

36,169. (*Sir Frederick Treeves.*) You mention under "(*g*)" "development of any serious and incurable disease likely to prevent the procreation of healthy offspring" and put it in the same category with "*l*," the last one. Supposing a man has a stricture of the urethra from accident, that would be a ground for divorce?—Yes.

36,170. You see no injustice in that?—Injustice?

36,171. It is a pure accident that cannot be helped. The man is thrown from a horse, a local injury occurs, and he comes under category "*g*" or "*l*", whichever you like, and that is a ground for divorce?—The wife is deprived of so many years of her child-bearing life. She is deprived of that; surely you might say that. Is she to suffer because of the accident? Why not limit the results of the accident to the person concerned?

36,172. They are married for better or worse; it is misfortune. You make misfortune a ground for divorce?—I do not see how I can logically except it.

36,173. You would include then a stricture following a rupture of the urethra as a ground of divorce?—Yes.

36,174. With regard to insanity, do you give any details? Is it incurable insanity, or any kind?—Upon this point I do not pretend to speak as an expert. My experience is very limited. I spent a year in one of the largest asylums in England, but that was only a passing experience. It seems to me that insanity of any kind, curable or incurable, should be made a ground of divorce on account of the children. It means that the insanity may be curable; it is called curable, but the heredity in all these cases is passed on.

36,175. You include any kind of insanity?—Yes.

36,176. In other words, any certified person?—I would make a few exceptions where the mental disturbance is purely from accidental causes and temporary and there is no reasonable prospect of heredity, but in almost all cases of insanity there is the question of heredity, and that is one that dominates this position.

36,177. You would exclude the accident in insanity, but not in any other disease?—I exclude that particular peculiar accidental case because it is not like the case brought forward by you, which presumably is permanent, the stricture. If the stricture could be cured by surgical means and the man restored to health, by all means let it be a continuing marriage.

36,178. Your alteration of the law would affect 135,000 people in Great Britain; if that is the number of certified insane?—There would be a very much larger number, according to my view, in the next generation of descendants, who would also be in asylums.

36,179. Of these insane people, some get out of asylums, and I suppose they are likely to contract irregular unions?—The danger to me is the people who are let out of asylums, not the irregular unions; it is the regular unions. They go home and procreate children. Time after time in my limited experience I have had to take notes of cases where they have come back and had children in the meantime. One case was brought to my notice a few days ago, a clergyman who had sunstroke and developed insanity. There was no family history of insanity. He went to an asylum, and after a time he was let out and sent home. He had one child, and he ended by shooting himself. That child will shortly be in an asylum. The child born before the sunstroke is healthy. That man, in my view, should never have been let out of the asylum.

36,180. Take this case. Here are a married couple, one becomes insane and there is a divorce, you say, because they may possibly hand down the taint of insanity or some nerve trouble to their children. To be logical, you must take means to see that those people after divorce do not have any other children. How are you going to do that?—The only means I can suggest is that which is enforced by the legislature of Indiana.

36,181. In any one of these cases, not only is the man or woman divorced, but they have to submit to a surgical operation. To make your contention logical that follows?—As a condition of being released from the asylum.

36,182. You cannot keep a person in an asylum if he is not insane. What do you mean by "alcoholism"?—That would be subject to very careful definition.

36,183. Can you attempt to define it?—I would rather not at the moment. I have not come prepared.

36,184. There would be difficulties in that?—It is extremely difficult.

36,185. Can you define the term "drug habit"?—I should also leave that to the wisdom of the legislature.

36,186. (*Lady Frances Balfour.*) I understand you make great distinction between a disease such as venereal disease and a disease such as consumption?—Yes.

36,187. Why you draw the distinction is that one is more apt to be communicated and more likely to affect the children than the other?—Yes.

36,188. Even where it is accidentally contracted, as we have heard it described, it may inflict a very great hardship on the spouse to be obliged to cohabit?—Yes.

36,189. The whole argument is permissive; it is not obligatory?—Yes.

36,190. You would not argue that the State should interfere under those conditions?—No, not compulsorily in any circumstances; it is purely permissive.

36,191. The fact that such a disease has been contracted may make a great antipathy on the part of one spouse to the other?—Yes.

36,192. (*Sir Lewis Dibdin.*) I do not quite understand the distinction which you now tell Lady Frances Balfour you would draw between syphilis and other kinds of communicable disease. I thought your principle was the same throughout, for all communicable disease, whether syphilis or tuberculosis, for instance. Is it not?—There are two distinct sides of the question: one is affecting spouses and the other is affecting children.

36,193. The dominating factor in your evidence on this subject is with regard to the children, the procreating of healthy children?—Yes.

36,194. Would this be a fair way of stating your principle? The principle is that anything which prevents a marriage being fruitful of healthy children should be a ground of divorce?—Broadly, that states my position.

36,195. I thought it did?—It does, broadly.

36,196. That applies as much to tuberculosis as to syphilis?—No. Tuberculosis is not directly hereditary: syphilis is. Tuberculosis might produce weakened children: it does, but it does not produce directly diseased children.

36,197. Is it or is it not your view that where a person is tuberculous, and that is known to the other partner of the marriage, that ought to be a ground of divorce?—I think so, if it is serious and incurable. I put "incurable," but I would allow a certain term of years to see whether the consumption could be cured.

36,198. Although they differ, no doubt, in degree, they are alike in this, that where either is established that ought to be a ground of divorce?—Yes, if incurable.

36,199. Let us take syphilis for a moment. As I gather your view, that is a proper ground of divorce, but only a permissive ground?—Yes.

36,200. That is to say, the wife, supposing it is the husband who is infected, may or may not take advantage of the existence of the syphilis?—That is so.

36,201. Supposing she does not take advantage of it, and they go on producing children, those children I suppose you would regard as children which ought not to have been produced?—Yes.

36,202. Does not that suggest to you that you are not really applying your principle fairly. The principle being the procreation of healthy children, or the prevention of the procreation of unhealthy children; ought it to be left to the wish or the prejudice, if you like, of the wife whether that result is produced or not?—Theoretically no, but I doubt whether it could be enforced in practice. Theoretically it ought not to be so.

36,203. It ought not to be left to the wish of the wife?—Yes.

36,204. Theoretically your view is that where one or other of the spouses has syphilis, the marriage ought to be compulsorily put an end to?—Yes, syphilis that existed beyond a certain period and resisted medical treatment.

36,205. There the spouses ought to be compulsorily separated?—They ought, in theory.

36,206. Let us go to tuberculosis. I suppose there are cases of persons who are suffering from tuberculosis in the sense that their children may be unfit, who yet are in sufficiently good physical health to enjoy life and at any rate to have children, whether male or female—I mean, to be parents?—Yes.

36,207. That is a condition of things which you think ought to be prevented by making it a ground of divorce?—I should think the children would be deteriorated.

36,208. That is why you think it ought to be a ground of divorce, the effect on the children?—Yes, assuming the consumption resists treatment, that it has gone on beyond a certain time.

36,209. I think you told Sir Frederick Treves that you would not allow it to be a ground of divorce unless the tuberculosis had lasted two years?—Yes.

36,210. How are you going to prevent the procreation of children during those two years?—That would be a matter for the framers of any legislation.

36,211. You are helping us to suggest legislation. What is your proposal?—I should have an immediate separation under these circumstances, and there would be a period of probation. Incurability should be established on clearly defined medical grounds to be got collectively from the best medical authorities.

36,212. Your proposal is that where one of the married parties be suffering from consumption, first of all, they should be compulsorily separated?—I think so; at any rate, means should be taken to stop procreation.

36,213. That could be only by separation?—Yes.

36,214. If the disease goes on for two years without being cured, then divorce?—It would be a ground of divorce, but they need not avail themselves of it.

36,215. The same applies to that as to syphilis; you leave it to the wish of the healthy partner, whether she or he will take advantage of it or not?—Yes.

36,216. Supposing a case where that has all happened and the man has been divorced; he is undoubtedly tubercular but able to enjoy life; how will you prevent that man forming another establishment and bringing children into the world?—There is nothing to prevent him any more than under any circumstances.

36,217. You would prohibit his marrying?—If he has moral strength of mind he would regulate his conduct.

36,218. Supposing he has not?—His action would be guided by his moral standards and strength of will.

36,219. If he has not those desirable things?—It would be outside the question of marriage.

36,220. By Act of Parliament you prevent his marrying; that is so, is it not?—If he is incurable.

36,221. So incurable that he has been divorced, I gather you would prevent his remarriage?—Yes.

36,222. It would be impossible to form a regular union, as well as undesirable?—Yes.

26,223. You have no suggestion to prevent his forming an irregular union?—No.

36,224. Except the one which you say has been adopted in some of the States?—Yes.

36,225. Do you recommend that?—I suggest it for the serious consideration of the Commission.

36,226. The Commission would like to be helped by your advice. Do you recommend it?—If I took a purely philosophical attitude, I consider that it is a logical outcome of the rigid application of these principles of preventive medicine I have laid down.

36,227. May we take it that you do recommend it?—I recommend it as a matter of reason. Whether it can be applied practically by society I cannot say. I must leave that to the Legislature. I am forced into that position myself.

36,228. Upon quite another matter of very much less importance, I am very interested in the recommendations you make with regard to the cost both of marriage and divorce. You suggest that the marriage fee should be 5*s*. You are aware they are now very little more than that, 7*s*. or 8*s*., I think it is?—My knowledge was gathered from a perusal of several books, and I came away with a confused idea that

there were about 20 avenues, and an unlimited number of different scales of fees.

36,229. Will you take it from me even for an ordinary marriage it may vary, but you may take it at about 7*s.* or 8*s*?—The cheapest is about 7*s.* 6*d.*

36,230. You may take it from me, with some right to speak, that is about the cost. It varies very much. Do you draw any great distinction between 5*s.* and 7*s.*, or 8*s.*?—Undoubtedly in the case of the poor where a man counts his pence.

36,231. Have you any reason for saying a man who is marrying and setting up a house cannot be expected to find 8*s.* but can be expected to find 5*s.*?—I can give an instance of something bearing on this.

36,232. Is there any real distinction which makes you say 5*s.* rather than 8*s.*?—I should think it would make all the difference to a working man.

36,233. Who is incurring the necessary expense of setting up a house and marrying. You say the cost of divorce ought to be 5*l.* or 3*l.*, according to whether the people have or have not 200*l.* a year, and you told Sir Frederick Treves you did not regard that as including the necessary medical certificates, but that the State should pay for them. May I take it the State should also pay for whatever legal assistance may be necessary?—I should certainly say the State should pay all costs. Marriage is a State matter, and the cost of matrimonial law should be defrayed by the State.

36,234. You regard the whole of the marriage and divorce problem as simply a breeding problem?—That is what it amounts to.

36,235. Just as a farmer with his herd, or the horse breeder. It is a method of getting healthy people into the world?—Yes. I take it at the same time as involving some of the very highest moral considerations. The purity of the family, and very many of these moral considerations are entirely wrapped up in this problem, in my method of treatment you may call it. My ground is not a pure one of breeding. The whole of our moral and religious life is intimately connected with this question. If we approach it without full knowledge of the facts, and recognition of the bare facts of the case, such as they are represented by medical knowledge, we are likely to impose upon the nation a great deal of unnecessary suffering and loss, economic loss, and untold misery upon posterity.

36,236. Your view is that the cost of the marrying and divorce, and so on, ought to be borne by the State because the production or non-production of healthy children is a State matter?—Yes.

36,237. If that is so, why should not the State pay for the support of the family after they are married—at any rate while they are getting these children?—If capable persons cannot support themselves, there must be some defective state of society. That is provided for by the Poor Law.

36,238. You think a medical certificate ought to be necessary to marriage? The Chairman asked you the question, but I did not follow whether your view was that in the absence of that certificate, the marriage is to be invalid, or that it was to be a legal offence if the certificate has not been obtained, for which the parties should be punishable. Which is it?—I should make it a necessary preliminary of marriage, and therefore if it were made so by legislation, it would be an offence not to get it.

36,239. Would you make the marriage invalid?—I do not pretend to know much about legal matters, but the question would arise only if syphilis or one of these diseases existed.

36,240. No. Two parties are married to-day without a medical certificate. Are they married but have committed an offence for which they may be fined 40*s.*, or is it an invalid marriage because they have not fulfilled the necessary conditions?—I should treat it as any other offence against the marriage law.

36,241. There are offences which do not invalidate the marriage, but which are still offences. There are other things which, if not fulfilled, invalidate the marriage. Into which category do you put this?—I think that is a question to be left to the Court.

36,242. You have no view about that? With regard to the consent of parents, the same question arises. Do you make that simply an offence as it is now, or do you make it as it used to be, a condition of the validity of the marriage, so that if the people are married without the consent of their parents, it is no marriage at all? Which do you recommend?—I cannot say. The circumstances of the case would have to be left to the Court to determine, possibly.

36,243. I do not think you have much view about that?—I have no legal training. I have not considered that point.

36,244. With regard to the increase of the age of marriage, for which there is a great deal to be said, and I am not at all combating your view, the difficulty is this, which was put to you by the Chairman. If you increase the legal age of marriage and there is a relation formed between a lad and a girl under that age, will you not be very largely increasing the number of illegitimate children in the world?—I think not.

36,245. I daresay you are familiar with the country, and you know most sadly that the commonest case of all in the country is that a marriage does not take place till a baby is coming. It is a very sad but a very common case?—Yes.

36,246. In a very large number of those cases where now marriage takes places, and although it is regrettable, the family may go on respectably, that child that is coming would be branded as illegitimate necessarily because the parties would not be capable of marriage, according to your view. Have you considered that?—It is a question to me whether they are better off, either the children or the parents, by the mere fact of marriage. They are young persons of immature judgment and unable to provide for a family.

36,247. I presume you regard the increase of illegitimate children as a bad thing. It is better that children should be legitimate rather than illegitimate, if it can be managed?—Yes, distinctly.

36,248. Do you not think if the law were altered in the way you suggest, one result apparently must be to greatly increase the number of illegitimate children in the world?—It may do, but I should consider that the question of marriage is not the paramount consideration. In some of these Police Court marriages, marriages are made between people which are clearly undesirable marriages from the medical point of view. Marriage is in that case made the paramount consideration. The thing that should dominate it from my point of view is the production of healthy children.

36,249. The case I am putting is unfortunately a very common one. You are not preventing children being born into the world, but you are preventing their being born in a state of legitimacy?—Possibly so.

36,250. (*Chairman.*) Regarding your general position as one in which the two parties to a marriage are not alone concerned, the State is concerned in the interests of the children and in the interests of the general morality of the country. I take that to be your standpoint?—That is so.

36,251. You think the State ought to take more steps than it does to ensure healthy progeny and a higher state of morality. That is what it comes to?—Yes.

36,252. You have referred to a practice in America. I have been informed by one of the American lawyers or by one of the books that it is a law, but can you tell us whether it is actually put into practice?—I have not the facts with me, but I have a communication from a correspondent in America, and it gives statistics of the number of people on whom this operation has been carried out at present.

36,253. Have you got that?—I can produce it. I have not it with me.

36,254. Could you send a copy to us?—Yes.*

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* *The Sterilization of Degenerate Criminals.*

By TOM A. WILLIAMS, M.B., C.M., Edin., Washington, D.C.

Civilisation has interfered with natural selection to an extent which has brought an acute realisation of the danger of conditions under which the propagation of the unfit far exceeds that of those who are physically, intellectually, and morally of most advantage to the community. The parasites

(*continued*)

36,255. It is one thing to have a law and another thing to see that law is put into operation, because it would be discretionary with a doctor apparently. I should like to know how far that has been in actual operation.

(*Sir Lewis Dibdin.*) Will you ask whether the cases he is thinking of are cases where it is voluntarily done or done in pursuance of an Order of the Court?

36,256. (*Chairman.*) You are taking your information entirely from a communication?—Yes.

36,257. Are you willing to send us the communication?—Yes.

36,258. That will tell us all you know yourself. With regard to the statement in your proof that there should be a ground in the case of incurable syphilis or any other incurable disease, I gather you propose that in cases where the disease has resisted treatment for two years and its duration is indefinite?—That is so.

36,259. Although it has resisted treatment for two years, if you saw a prospect of complete cure in another six months, you would hardly make that proposition then?—No. That would be provided for.

56,260. The point is, disease which has lasted for some time and has proved not amenable to treatment and with a reasonable probability that it will not be. That is the position?—That is it exactly.

36,261. We all thank you very much for your evidence?—I must thank you for the very careful hearing you have given me. I am afraid I have gone somewhat beyond my proof.

Dr. Louis Parkes called and examined.

36,262. (*Chairman.*) You are an M.D.?—Yes.

36,263. What does D.P.H. mean?—Diploma in Public Health.

36,264. And medical officer of health for the metropolitan borough of Chelsea?—Yes.

36,265. You have been asked to give your evidence on points with which you are familiar?—Yes.

36,266. How long have you been a metropolitan medical officer?—Nearly 20 years.

36,267. What does the borough of Chelsea include?—It is one of the smaller boroughs between Fulham and Kensington, with a population of about 75,000.

36,268. I will ask you to read some of your proof. You say in considering the subject of the amendment of the laws of divorce it is desirable that the whole field of the marital relations of the community at large should come under review?—Yes.

36,269. Will you kindly read on?—Yes. "The number of marriages solemnised by the churches and performed before the registrars annually is recorded, but little is known of the number of couples who are living as man and wife in irregular unions which have no legal sanction. In London and the large towns of this country the number of such irregular unions must be large amongst the working classes, although probably in the classes above the wage-earning ranks of society such unions constitute only a very small minority. It is chiefly amongst the lower orders of the working classes."

36,270. Living apparently in wedlock, but not actually so?—Yes. "The number of illegitimate births annually is not, I believe, stated with any approach to accuracy in the returns of the Registrar-General. So far as my own local returns are concerned, I am only able to class as 'illegitimate' those children who are born in the workhouse and in lying-in institutions, whose mothers are unable or unwilling to designate the name of the father. These children are probably, in the great majority of instances, the results of chance acts of intercourse—often occurring on bank holidays; but I have no information as to the numbers of children born out of wedlock, whose fathers and mothers are living together as man and wife and bringing up families of children with homes of their own." One frequently sees a number of births returned within about nine months after the bank holidays. That has struck me for some years. "The death-rate amongst the known illegitimate children—that is to say, amongst those born in the workhouses as the results of chance acts of sexual intercourse—is very much higher than amongst the children who are commonly regarded as the fruits of lawful union. Probably the average death-rate of those 'illegitimates' in infancy, *i.e.*, under the age of one year, is from two to three times that of the rest of the infant community; and this is what is commonly spoken of as the 'illegitimate rate of infantile mortality.' But it is evident that, as above stated, there are two kinds of illegitimate union, namely, (1) the living together of couples, who are to all intents and purposes performing a social act in living together and bringing up families in home surroundings, and (2) those anti-social acts of isolated or chance intercourse which cause so much social misery, and which bring into the world children who are destined to die in infancy at from two to three times a greater rate than the children whose parents have a home." With regard to the number of births, it is probably very much the same all over London. In Chelsea there are about 75 to 100 births of illegimate children where the names of the fathers are not stated. With regard to the children born in irregular unions, one has no knowledge, and I do not see how you could obtain it.

(*continued*)

who prey upon society are a tremendous drain upon economic resources which are becoming less and less sufficient to the needs of modern life. Utopians have long advocated the artificial elimination of the proved unfit; but they have always been met not only by the sentiment of humanitarianism, but with the shortcomings of present criteria for determining elimination. The blame for this rests largely upon the school of Lombroso, whose error that genius was a form of degeneracy has powerfully influenced sociological thought. More accurate inductions have, however, exploded a good many of Lombroso's hasty generalisations, of which this is not the least conspicuous. Even practical politicians have become aware of this; and in the less conservative societies psychiatrists have succeeded in inducing legislation for preventing at least the propagation of the hereditary criminal.

In the State of Indiana 500 vasectomies of criminals have been performed since the compulsory law of 1907, and the success of the measure rests not only upon its social prophylactic value, but it has had an extraordinary effect upon the criminals themselves. It has been the rule that a morose, sullen, suspicious, erotic degenerate becomes after operation a sunny, bright, natural human being. Not only so, but Dr. Sharp of the Indiana penitentiary declares "that many "boys have come to me and urged me to fix them as I had "fixed some friend or associate of theirs. Masturbators "have asked for castration, which I refuse, but substitute "vaseotomy, which cures many cases." Now similar laws have been passed in Utah, California, and Connecticut, and are being considered in New Jersey, Texas, and Minnesota.

At the meeting of the Tri-State Medical Association at Richmond in February 1910 a unanimous resolution was sent to the Virginia legislature then in Session to endorse a Bill then before it, making it compulsory for each institution which cares for criminals, idiots, and imbeciles to add to their staff a skilled surgeon, an alienist, and the secretary of the State Board of Charity and Direction, who shall examine, with a view to sterilization, those inmates recommended by the physicians and managers of such an institution.

Dr. Carrington, who is largely responsible for the measure, believes that eventually the procedure will be legally extended to perverts, the feeble-minded, and other defectives, even although not criminals; for his observations show that when the patients observe the absence of ill-effects, and indeed an improvement of health, they are content to forego procreation.

Although of negative aspect, as regards eugenics, these prophylaxes cannot but accustom people's minds to the necessary positive point of view that for the improvement of the human race selection is required as well as elimination, and that the economic and social artificialites which interfere with this must be abolished wherever a nation desires to survive in what has now become an intense struggle for existence. The New England family of Edwards is a striking illustration. Descended from strong, religious ancestors, 1,334 were traced through five generations. Of these, 295 were college graduates, 13 college presidents, 65 professors, 60 doctors, 100 missionaries and clergymen, 75 officers of navy, 60 prominent authors, over 100 noted lawyers, 31 judges, 80 held public offices, 3 United States senators, 15 railway presidents, several state governors, members of congress, mayors of cities, ambassadors, vice-president, and not *one single convict.* What a contrast with the well-known Jukes family.

36,271. You know, from what you have said, that there are a considerable number?—One hears about them, or one hears from the inspectors, and what one meets. One comes across them in a chance way, and one knows that there must be a considerable number. "So far as the visits and practical experience of lady health visitors—whether municipal or of voluntary health societies—enable us to judge, there seems to be but little evidence that the children born out of wedlock in regular homes of the parents' making are subject to a higher rate of mortality than the children of similar classes of the community whose parents have been lawfully married. Nor is there, I think, any evidence that the home life of the children of such irregular unions is worse than that of the children of lawfully married couples of the same class in the social scale. So far as I have been able to judge the principal causes of the neglect of the home, of the defective rearing of children, and of all the after effects which arise from parental sloth, neglect, and irresponsibility, may be summarised as due to one or other or a combination of the following conditions:—1. Early or improvident marriages. 2. Casual labour and unemployment, due to want of training, character, or skill, or to incapacitating illness (often tuberculosis). 3. Large families and inadequate earnings. 4. Alcoholic excesses on the part of one or of both parents. No one can say which is the most important of these causes. They very often act in combination, one condition leading to the other, until the parents become hopelessly degenerate, and quite unfit to have the responsibilities of home life and the rearing of children. I do not know of any evidence that the solemnisation of marriage according to law has any effect amongst the poorer classes of the community in keeping the married couples more self-respecting, more inclined to bring up a young family in decency and comfort, and rendering them less open to unfaithfulness and desertion than the simple consent to live together as man and wife without legal contract, provided the couples contrasted are of the same social standing, have had equally good training in youth, and are equally free from anti-social habits. But on such matters as these the clergy of all denominations and district visitors are more competent to form an opinion than I am. No doubt the fact that a man and woman are prepared to take upon themselves the responsibilities of a legal marriage contract is evidence of a higher view of personal conduct than where the couple live together with no legal sanction; but on the other hand the question of marriage and a legal tie is probably largely one of custom and sentiment amongst the working classes, and it is doubtful how far the view of the proper fulfilment of the duties of citizenship enters into the question at all amongst the lower social strata."

36,272. Can you tell me why these irregular unions of which you speak as practically giving a fairly respectable home, should be formed in that way without the legal tie?—I think there are various reasons. In some cases they are formed between men and women who have been already married and have left each other. That accounts for the large majority, I think. They are not usually formed at the outset. The young people generally get married and find they do not get on together, and for some reason or another they part, the woman takes up with some other man and the man with some other woman.

36,273. Has that come across your experience extensively?—No, only now and then. I should imagine that would be the cause of it. "If, then, there is little objection from the public health point of view of the larger aspects of citizenship and national life, to those irregular unions amongst the working classes where the families are brought up in the social surroundings proper to the circumstances of the parents, it follows that there can be no objection on similar grounds to those modifications of the laws of divorce, which will enable the poorest to secure a severance of unions that are sources of misery in home life and that are failures or calamities, so far as the rearing and education of future citizens is concerned. The State is enormously interested in the home life of the children, which is a more valuable training ground for the future useful citizen than any school. The State, then, should interpose no obstacles in the way of remedying the social evils of a home which is one only in name, and which is degrading the characters and habits of the children who are being reared there. In many instances the only remedy for a really vicious home is to render it possible for the least erring party to the union to obtain a dissolution of the marriage. In these cases more consideration should be given to the future prospects of the children of the marriage than to the personal interests of the parents. In my opinion the same sins of omission or commission which justify divorce for the one sex should also apply to the other, so that the two parties to the marriage contract are placed on the same level of equality. There is also, I think, no question that divorce should be obtainable for incurable insanity of either party, when such insanity necessitates detention for life in an asylum." With regard to insanity, I think you have had evidence on that point from medical witnesses, and I do not wish to go into it. I am not an alienist or an expert on questions of insanity. "I do not think that amongst the wage-earning classes greater facilities for divorce will necessarily have any effect in weakening home ties or lowering the moral standard of these classes. The greater facilities that could be afforded for escaping from unions that are social failures would, I think, tend to strengthen the sentiment amongst working people that a legally binding marriage is the proper course of action, and a duty to the nation they belong to. So long as the practical inability to escape from lives of frightful misery is so constantly kept in view of the poorer classes of the community, so long will there be a feeling that the risks of the binding legal contract are greater than they should be called upon to encounter as law-abiding citizens."

36,274. Can you give us the grounds which have led you to form those last expressed opinions about the facilities of divorce?—They are formed from my visits to the homes of the poor, and seeing the life they lead, and the wretched conditions of the homes in many instances, and knowing what these people feel about the subject of marriage themselves. I cannot give you any particular instances, because in the course of 20 years one forgets so many things. In some ways my opinion has been formed from asking the inspectors and health visitors.

36,275. It has produced in your mind definite views from long experience?—Yes.

36,276. Your definite view is that facilities for divorce would not necessarily have any effect in weakening home ties?—I do not think it would have any effect—I believe rather the other way, that it would tend to make people form regular rather than irregular unions.

36,277. If the necessity of the case demands it, the feeling they might have freedom?—Yes.

36,278. Do you think that has any tendency to increase irregular unions?—Yes. Poor people never get divorce; they have not the means; and yet the men and women leave each other and want to form other unions. It is quite natural that they should.

36,279. (*Mr. Brierley.*) Have you in your intercourse with the people who are living in irregular unions found that the explanation given to you for living in that condition was that they have not been able to get a divorce?—No. It is a general opinion only.

36,280. You do not recollect cases where the parties have given that explanation?—No, I cannot recollect any now. It is more a general opinion.

36,281. You express your general experience?—Yes.

36,282. (*Sir Lewis Dibdin.*) I gather you approach the question of divorce through the question of marriage really. You look at marriage first and then at what is the importance of marriage, and against that what is the importance of the dissolution of marriage?—Yes.

36,283. Your experience has been that marriage itself, from the public health point of view, is not of such great importance as the formation of a union

between two parties living together respectably?—Yes, and the point of view of a proper home suitable to the surroundings and the social circumstances of the couple.

36,284. Where that is the case you have found the children growing up quite as well as if there had been a marriage?—I think so, and I do not think in that class they are under any disability in future life. They are not known to be illegitimate and it is not brought up against them. They have no property to succeed to. It does not affect that class.

36,285. You do not think the existence of any unauthorised union of that kind has any bad effect on the feelings of self-respect of either the parents or the children?—I think the married people generally have more self-respect, but these are unfortunately people who are forced into these irregular unions, and they have no way out of them. I do not think they lose their self-respect for that reason. They are often steady hardworking people.

36,286. In fact I think you say from the larger aspects of citizenship and national life there is nothing much to be said in favour of marriage that cannot also be said in favour of these irregular unions?—Yes, amongst the lower classes, I think.

36,287. That being so, it follows, I suppose, as a matter of course, that the dissolution of marriage or divorce is largely a question of expediency?—Expediency, having regard to the interests of the children, especially the young people.

36,288. You do not directly deal with the case of incompatibility; you speak of social failures in marriage, but I suppose you would be of opinion that where two parties were living, shall we say, a cat and dog life, irrevocably and incurably, it would be a good thing that they should be divorced?—Especially if it was having a bad effect on the children.

36,289. It could not but have that?—It must be so.

36,290. Irrespective of any matrimonial offence committed by either party?—I think living a cat and dog life is as much an offence to marital relations as anything you can think of.

36,291. It shows an entire lack of love, which is one of the binding terms of the contract?—Yes.

36,292. In these irregular households you have found so many of, where the parties are not married because they have separated from their lawful spouses, would those be often cases of this sort where the former union was a social failure?—I could not say that. I expect it is so, but people do not separate for no reason at all. They separate because they do not get on.

36,293. But not necessarily because there had been some offence?—It might be the woman had been led astray.

36,294. Or it might not?—One could not say.

36,295. (*Mrs. Tennant.*) The fact that those two persons had married in the first instance shows they would probably consider the legitimacy of their children?—Amongst the class I am speaking of I do not know that they look very far ahead. They look at marriage as something to be taken up and they do not consider the consequences very often—amongst the very poorest class of people. I think it is largely a question of sentiment and custom with them. If it had been the custom not to get married they would continue. As it has been the custom they go on with it.

36,296. There is some diversity of custom: some in the first instance do marry, and some in the first instance have an irregular union?—I do not think there are many among the poorer classes. The irregular unions take place when they are older.

36,297. I wish to know whether you have had experience of any feeling among those who have been married as to the illegitimacy of the children of their irregular unions?—I do not think that troubles them very much. It does not affect them. The children have all the advantages of everybody else. The children of irregular unions go to school and are put out into the world, and they are under no disadvantage or disability I am aware of.

36,298. No feeling between themselves and their parents. Do you not think the children have some feeling?—I do not think the children know anything about it.

36,299. They sometimes learn?—They might possibly learn, but in the majority of cases they do not know anything about it, I should say.

36,300. Nothing of that kind has been within your experience?—No.

36,301. (*Sir Frederick Treves.*) From the point of view of a medical officer of health, you greatly deplore the very high death-rate amongst those illegitimate children, the progeny of casual intercourse?—There is no doubt it is enormous. One does not know how high it is, for the reason that so many of the children come into a district, and before a few months old they go somewhere else. They are moved from one place to another; either the mothers take them or they are boarded out. They cannot be traced. They do not stop in one place long.

36,302. Do you think this deplorable death-rate could be influenced by facilities for divorce, for example?—I should think it is rather doubtful.

36,303. You almost look upon it as beyond a remedy?—These particular kinds of union are not affected by the marriage or divorce laws. They are simply to do with human nature, and nothing else.

36,304. From your experience you see no means of relieving it?—No, I do not think so.

36,305. With regard to insanity, you think that it should be a ground of divorce, and you simply use the word "incurable"; you do not go into details?—No; I am not competent to discuss the subject. I think you have had evidence very fully given before you.

36,306. There is one matter upon which you can be of great assistance, and that is this. You have had years of experience of notifiable diseases. Would you make syphilis a notifiable disease?—I am very doubtful about it. I have not considered the subject in all its bearings. I think it is a very questionable procedure altogether.

36,307. Would you make syphilis a ground for divorce?——

(*Chairman.*) Acquired after marriage.

36,308. (*Sir Frederick Treves.*) Of course?—I suppose it is now, as a matter of fact. Is it not legal cruelty if a man becomes diseased and imparts disease to his wife? It is a ground for divorce.

36,309. (*Chairman.*) Not technically, but practically?—Practically if a man infects his wife is it not legal cruelty for which a divorce can be obtained?

(*Chaiman.*) That is another point.

36,310. (*Sir Frederick Treves.*) Taking syphilis *per se*, disregarding the source of it or any point about it, thinking only of the children, as many have, would you make syphilis a ground for divorce?—I think it is very doubtful. What we are getting to know about syphilis and its treatment would render it still more doubtful. If syphilis is curable, as it appears to be, and easily curable, there would be no ground for making it a ground for divorce.

36,311. The probability is that it may now rank as a curable disease?—It will soon rank as a curable disease, and the question will hardly arise.

36,312. From your experience you cannot indicate any means of lessening the number of these irregular unions. Do you think facilities for divorce would help it?—Yes. If there were greater facilities for divorce amongst the poor, they would avail themselves of them and there would not be these irregular unions; but I do not see any great harm in them under present conditions. It is better that people living together as man and wife should have a proper legal contract sanctioned by the State.

36,313. From a public health point of view?—From a public health point of view, with people of this class I do not think it makes much difference.

36,314. (*Sir George White.*) You speak of 75 to 100 births of illegitimate children in Chelsea whose parents are not known. That is the total number of births of such children per year?—Yes.

36,315. Could you tell the Commission how that would effect the percentage of deaths under one year

of age? You say the percentage of deaths amongst the children is very excessive?—It does not affect it very largely. Supposing there are 100 of these births which take place mostly in the workhouse with unmarried women, and 25 per cent. of those die in the course of the year, the total number of births for the whole borough is 1,400, so that it does not affect the death rate largely.

36,316. It does not seriously affect infant mortality?—Of course, I am speaking of known ones, and they form only 5 or 6 per cent. of the total births, and it is the same for London generally.

36,317. You told the Chairman you had no means of judging of the number of these irregular unions?—I do not think anyone knows how many there are.

36,318. Have you come across cases where in a given court or short street it was known the irregular unions were larger than the regular unions?—I could not say that.

36,319. Not as excessive as that?—I am sure they are very common, and much commoner than people think.

36,320. Have you found generally any consciousness of wrongdoing in so living amongst these people?—They do not like to talk about it, and they do not like their neighbours to know. To that extent they are conscious of ill-doing, but I do not think otherwise: they do not regard it as a very serious offence.

36,321. In the larger number of cases it is not known by their neighbours?—I should think so. It is only now and again, really.

36,322. The children themselves are generally unaware of it. They are treated as married people by everybody around them, and the children as legitimate offspring?—I do not think it makes any difference. It is not like people of our class. When they go to school a thing of that sort getting known would be fatal to a child's career. It does not affect people of that class; they do not regard it as anything extraordinary.

36,323. Can you say to what extent this is limited by the social position of the people?—Is it or is it not confined mainly to what we know as casual labourers, the very lowest social scale?—It is limited more or less to the lower class of wage-earners, people earning under 30*s.* a week. That would be most common, but I daresay there is a certain amount of it among the artizan class too.

36,324. Is not the marriage tie regarded as of importance amongst what you may call the general run of artizans?—Yes, I think it is. The higher you get in the scale the more the marriage tie is regarded as being necessary.

36,325. Your attention as medical officer would be largely devoted to the conditions of quite the lowest class?—Yes, the very poor. Those are the people we come into contact with.

36,326. You would not have knowledge of the better class of artizans?—No, mostly with the very poor.

36,327. (*Mr. Spender.*) We have had a considerable conflict of opinion as to the effect on children of illegitimacy. A good many witnesses, especially from the North of England, have repeated to us that a child being born out of wedlock is a real stigma even in the class you speak of. You do not agree with that?—It may be different in a northern town. London is so huge and people are moving about so much that little is known about people living in the same street, and they do not trouble about it. It may be different in a northern town where they work in factories, and so on. It does not apply in London.

36,328. It is true in London the term "bastard" would be a term of reproach to a child?—Yes, it is, but I do not think it ever would be applied in that way.

36,329. The point I am trying to get at is this: is it not rather that in London the thing is not known than that it is not a disadvantage?—No, I do not think people trouble themselves so much. The working classes are so shifting and migratory in London. The average stay in one place is very often less than a year, so that they are hardly known by their neighbours when they are off somewhere else.

36,330. That is the point I was making: in London the thing is so unknown that it passes muster. I was trying to take the point in regard to what you said to Sir Lewis Dibdin. You would not say it was not an advantage to be able to get married?—I think it is a great advantage that they should be married and should enter into marriage with a proper legal tie. It is an advantage to the children.

36,331. You are of opinion that it should be brought reasonably within their reach?—That is the whole point of my evidence, that it should be made easier for them.

36,332. With regard to the illegitimates, you say "those born in the workhouse." Would you explain a little more? Is that the excessive death-rate? Do you mean to confine that to the illegitimates born in the workhouse?—Practically all the illegitimate children known are born in workhouses or institutions. They are hardly ever born in the houses where the girls live. When they find themselves near the confinement they apply for admission to the workhouse and are confined. They remain a fortnight and leave with their babies.

36,333. This is not a death-rate founded on the workhouse population?—No, the deaths do not occur in the workhouse: they occur in the 11 months subsequent to leaving the workhouse.

36,334. You have no precise way of tracing them, but that is a figure you give as within the mark?—All those born in the workhouse are traced, and if they reside in the borough of Chelsea they are visited, and the lady health visitor keeps in touch with them; but in many instances they move, and at least half of them are not to be traced at the end of a year. They are lost sight of.

36,335. Would your department—to get at the machinery of this thing—be notified by the workhouse Poor Law authorities of the children born in the infirmary that had gone out of the workhouse?—Yes.

36,336. You would ascertain the addresses?—Yes.

36,337. And get the lady health visitor to visit?—She visits them and follows them up as far as she can, and keeps in touch with them for a year, but about half leave the district and go elsewhere, and she gradually loses touch.

36,338. Have you any machinery for tracing ordinary affiliation cases out of the police court?—No.

36,339. Do you take action, or only the Poor Law cases?—Yes.

36,340. Only those that have been Poor Law cases?—Yes.

Dr. SAMSON GEORGE HAYCOCK MOORE called and examined.

36,341. You are a doctor of medicine?—Yes.

36,342. Your paper, which you have been good enough to prepare, has a list of your offices. May I read it. You are Medical Officer of Health for Huddersfield?—Yes.

36,343. What is the population?—100,000.

36,344. You are Chief School Medical Officer, Medical Superintendent of Hospitals, Inspector of Midwives, for the county borough of Huddersfield?—The foregoing refer to Huddersfield.

36,345. You are also Membre du Conseil, l'union International pour la protection de l'enfance du premier age, President of the Yorkshire Branch of the Society of Medical Officers of Health, Fellow of the Royal Society of Medicine. I think that is quite enough to give you a certificate of competency. You have held your present position for nine years?—Yes.

36,346. Formerly you were Assistant Medical Officer in the port of Liverpool for eight years?—Yes.

36,347. Have you also had experience of lunacy work in a large county asylum Rainhill, Lancashire,

of Poor Law Medical Practice in a large Union Infirmary, Leeds, worked in public dispensaries in Liverpool, and held resident appointments in general hospitals, and have had experience of private practice?—Yes.

36,348. This is the point. Have you been brought intimately into contact with the lives of the people from many different medical standpoints, and in particular have you been engaged in special work in a systematic attempt to limit mortality among infants?—Yes.

36,349. In Huddersfield what staff have you under you?—I have in all five duly qualified and registered medical assistants. I have two nurses and half a dozen male inspectors, and a staff of clerks.

36,350. Have you female inspectors too?—No; the work which is done in some localities by female inspectors is discharged in Huddersfield partly by two women doctors and partly by a large voluntary association of ladies.

36,351. From all these various sources in addition to your own contact with these matters, you have gained experience?—Yes.

36,352. Will you kindly take your paper and read it?—Yes. "The considerations which I respectfully desire to lay before His Majesty's Commissioners on Divorce and Matrimonial Causes bear upon the influences upon infants and children of the separation of husbands and wives without divorce and the consequent non-legal sexual unions which arise and which, in the absence of a much greater and more powerful moral sense among the people, must continue to arise. In Huddersfield, I have, on my staff, two lady doctors, who visit every home—with very few exceptions—where a birth occurs, and I have helped to organise, and work in intimate association with, a voluntary body of ladies who visit the homes of the people where infants are born, regularly at longer or shorter intervals for the first year of life and later. It is partly from their reports that I have gained my present insight into this matter. Among the poorer classes the restraints of society are less felt and the common needs of life are more urgent and imperative, so that when, for any reason, the husband or the wife separates the one from the other, leaving children behind, the absence of the former condition and the presence of the latter tend to the formation of unions which are neither recognised by law nor sanctified by the Church. A very long list of examples might be cited with, perhaps, variation as to detail, though the essentials appear to be identical in all the cases. For example:—

"(1) A gas stoker, R. E., having three children by his wife, drunken, unfaithful, and cruel; his wife left him seven years ago; she is now living with G. P.; there are two children of this irregular union; the home is clean, the children are well cared for, but they are bastards (I use this word deliberately in the attempt to convey, with full force, the horrible disability under which they must labour, all their lives)."

"(2) R. C., a tram driver; his wife now living a life of ill repute in Leeds, he has formed a union with G. W., there are three children; they are fine children, well cared for and their father and mother live happily together, yet they, though innocent, are bastards."

"(3) H. S., mill-hand, an alcoholic lunatic, detained in an asylum several times; when he comes out he is a terror (please accept the word in its literal sense); he is a terror to his family, but three of the children are at wage-earning ages; no illicit union has been formed."

"(4) R., a gardener; wife a lunatic, has been in an asylum for a dozen years; this man has relations who have helped and restrained him but he has recently formed an irregular association with a woman, who was, first of all, his housekeeper. The arguments, with which he defends his action, may not be logical or they may, but they are, at least, forceful, and, in effect, satisfy his neighbours.

"(5) M. B., after having one child by her husband which died shortly after birth, was compelled to leave him and commence working again for herself on account of his drunken habits and his cruel and immoral conduct. After a while she formed a union with another man. The first child was still-born, the second is living. These facts indicate, at least are suggestive, that she contracted a loathsome disease from her husband."

"Similar cases could be adduced almost without end. It is an obvious conclusion that many do not become known. But there is another class of case. Some years ago, during the prevalance of small-pox, I was called to examine a woman. She was not young and has a grown-up family. She was suffering from syphilis, and the disease had so far progressed in her husband, from whom she had contracted it, that he had been removed to the Workhouse Hospital. In my judgment this woman was entitled to a divorce. She had suffered the foulest wrong at the hands of her husband and the father of her children which it is possible to conceive a woman suffering from. I am aware that does in practice afford grounds for a divorce."

36,353. Because it is proof of adultery?—On the one hand it is proof of adultery, and on the other hand it is constructive cruelty. The point of this case which I desire to direct your attention to is that the rich have that advantage. A woman having at her disposal sufficient means to-day already can secure some redress, but it is altogether out of the reach of the poor, and I take it that both in the interest of the State, of the people and of the children, and as a mere act of justice, some means ought to be taken to bring the end within the reach of the poor.

36,354. Is that your own individual view, or do you think that represents Huddersfield?—That is merely my opinion.

36,355. Have you had any discussions about it in the city?—I have not. The fact which I desire to bring into prominence is the wrong and hardship which is inflicted upon the innocent offspring of these unions. I am not influenced particularly or especially by the evil, the injury and the injustice which one or other of the parties to the original marriage suffers. It may well be that in the great majority of instances the blame is not all on one side, but I am very strongly of opinion that the case of the children calls for redress. The circumstances are commonly known among the neighbours, and that they are what they are cannot be concealed from the children. Sooner or later, as the result of a quarrel or of jealousy, the most opprobrious epithet in our language is hurled at them, and the result is and here is the point of greatest importance in my judgment—the immediate and complete destruction—the irrevocable destruction—of their self-respect, and it is a character of far greater sternness than is to be expected of such individuals which can survive this handicap in life, which can fight successfully against the overwhelming sense of shame which is theirs.

36,356. Did you hear the evidence of the last witness as to London?—Yes.

36,357. Do you think there is a different view in the North?—Undoubtedly. I have no doubt whatever about that. I know that there is.

36,358. There is a stronger feeling of the sense of the union and of shame in irregular unions?—Undoubtedly. Of course, I know nothing about Chelsea or the manners and customs and habits of the people.

36,359. The North is a very strong country. We know that, you may take it?—I am able to affirm, as the result of a long and intimate working among the people, that they are at least as sensitive to shame as any other class in our social organisation. They may not feel the shame for the same things, but the sense is there as much as with anybody else. It is a simple truth that rather than undergo the shame of accepting "Parish Relief" they will suffer the extremes of cold, the pangs of hunger, and will even endure starvation to the point of death rather than suffer the shame which, in their minds, attaches to contact with the "Parish."

36,360. I would like to ask you upon a point which has suggested itself to me. There has been a great deal of evidence about pauper proceedings?—Yes.

36,361. Would your view as to the shame that might be felt extend to proceedings *in forma pauperis*? Suppose the only means of getting relief was by *in forma pauperis* proceedings; if courts were provided locally at which they could get it without pauperising

themselves, do you think that would meet more favour than if left to sue *in forma pauperis*?—Yes, it would, but I desire to submit this: It is the present machinery of the poor law which is held in abhorrence by the poor people. I have charge of a comparatively large isolation hospital, and I find that poor people willingly and readily avail themselves of it without making any payment, and absolutely without any sense of shame.

36,362. What class of hospital is that?—An infectious diseases hospital. I take it by parity of reasoning one may assume that there would be no reluctance on the part of poor people to avail themselves of gratuitous services in this direction, provided it was not associated with the present machinery of the Poor Law. I desire to add that I am not ignorant of and do not leave out of account the bearing which this has on religion. I am a member of the Church of England and I know it to be the case, that not for many many generations, if indeed at all, in the evolution of mankind, may we hope to maintain morality without the aid of religion, without, in simple, the hope of Heaven and the fear of Hell, but I know it to be the case that the attitude of ecclesiastical authorities in these matters, as expressed by the opinions current in what are termed Church circles—I desire to say that in this term "Church circles" I comprise all denominations—with the approval of the ministers of the Church, is detrimental to morality and religion. I desire here to separate morality from religion. It is detrimental alike to the ordinary morality of the people, and it is detrimental to religion in the selfish sense of the word, to the Churches. Because all circumstances connected with these unions are known in the neighbourhood among the people the difficulties of the man abandoned by an unfaithful wife and left with children to bring up on an income of, perhaps, 23*s.* per week are quite clearly understood by his neighbours, and if the minister in the locality remains aloof and blames and finds fault, as he is bound to do as opinions are at present, it is just so much the worse for him and for the religion which he professes in the minds of the peeple.

36,363. I do not understand how you work that out?—The punctuation is not very good. The point I wish to make is this. I am speaking not of London, but of smaller towns. In all localities there are Established Churches. The social life of the people is carried on in more or less direct relationship with these churches. In the Church circles it is imperative at present that these irregular unions should be condemned, but the neighbours of these people, knowing the circumstances, as in the instance which I cite where a woman abandons her husband and her children and leads a profligate life in Leeds, recognise the impossibility of that man paying a housekeeper a reasonable salary such as will secure for him reasonably adequate services, and knowing that he is perhaps not compelled, but circumstances lead him almost inevitably to the formation of an illicit union, they condone it. If the Church does not condone it, and all the people do condone it, not as it should be but as it is, not morally and ethically, but as a matter of fact, that is all the worse for the Church.

36,364. Your view would be that if there could be freedom acquired by opportunities of divorce, the union would be regularised?—Yes, that is the point. At present divorce relief is inaccessible. Take the case of a man who has, as is the case in Huddersfield, 23*s.*, 24*s.*, 25*s.*, or 30*s.* a week, and three children to clothe and feed, 50*l.* or 60*l.* or 70*l.* or 80*l.* a year. He cannot get relief, and his friends and relations are in the same station of life and cannot provide him with it. It seems a funny thing, but if a man dies in these localities, and leaves what is to many people an inconsiderable sum of 40*l.* or 50*l.*, they speak of it as a fortune. My point is in the interests of the children particularly, that there should be divorce so that these unions can be regularised, and it is worth the while of the State to make it accessible to these people.

36,365. You would regard that as having a tendency to increase the standard of morality?—That is what I aim at.

36,366. Which at present is overlooked, because the hardship of the case is too great, and the theory of the Church is not acceded to?—That is the position. The people know the facts and the circumstances and the weight of moral sense of spiritual authority is quite helpless in the face of that knowledge. The Church condemns, but it is the Church which suffers by the condemnation not the objects thereof. It would be far better for the people, and it would be far better for the Church. I hope it is clear I refer to all religious bodies.

36,367. Yes?—If the tenets of religion could be adjusted to the conditions in which the people live. I know that this is very like saying that the laws of God must be adjusted to the needs of man and I, perhaps, have pursued the subject in this aspect even too far, but I could adduce concrete examples where apparently the explicit commandments of God are adjusted, or have been, to the needs of man, and, after all, if the interpretations of divine commands made by human beings result in the alienation of the people from religion and God, as appears to be the case in these matters now under consideration, men and women will drift to perdition and the Church will decay.

36,368. We may take it you would like to see both brought into line?—Yes.

36,369. The needs of the people recognised so as to meet the difficulties you have presented, and not upsetting any principle of religion?—Yes.

36,370. Would you give a concrete example of what you refer to? You say you can adduce other examples?—They are so frequent. We run trains on Sundays and trams on Sundays. Perhaps this is an example which is more telling, not because really it is more telling, but because the other examples are not so familiar to us here. I lived not very far from a Bishop not many years ago, and on Sunday morning his Lordship was proceeding apparently to preach somewhere. His carriage with two horses and two men and a maid servant was waiting for him just as I passed the front of his palace; he came out and entered his carriage, and I stood till he had done so. I was overtaken by a varsity coach, and an avowed atheist, who proceeded to jeer at the regard which his Lordship had for the commandment which prohibits work on Sunday. I am not joining in the condemnation: I only adduce that as an example of where the explicit divine commands are adjusted to the needs of men.

36,371. You are indicating a general view that a broad principle needs some modification to meet the necessities of the case?—That is so.

36,372. (*Mr. Spender.*) The population of Huddersfield is about 100,000?—Yes.

36,373. That means that the kind of people you are speaking of are pretty well known to each other?—Yes.

36,374. They do not move about as they do in London?—That is so.

36,375. That is what the last witness has explained to us. Your view is that where they know each other and the scandal of these irregular unions becomes known, it is not always condemned, but regarded as a severe handicap. It may or may not be condemned in particular circumstances, but it is recognised by all parties, and the parties to the union, as a handicap and a stigma?—My submission is that the adults do not suffer very much, and in any case may be allowed to look after themselves for the moment, but that the children are inevitably branded as shameful things, and I say that no human being ought, if we can possibly help it, to be subject to such a stigma.

36,376. You would say from your experience of the North of England that for a child to be born out of wedlock is, in the working class as in other classes, a real disability?—I do.

36,377. You have had great experience of infantile mortality. Perhaps you could tell us more of the infantile death rate among illegitimates. Is it your experience that the children are less well cared for among the irregular unions?—The death rate generally among illegitimate children is at least double what it is

among legitimate children. It may be the case, and undoubtedly it is the case, that in many irregular unions a proper home is maintained and the infants do not suffer, but there are a large number of other instances where, on the occurrence of a disagreement—a row—the man or the woman leaves the other, and then the children do suffer. I have no exact figures. I cannot give you the rates.

36,378. As a rough impression would you draw the same distinction Dr. Parkes has drawn between the children of chance intercourse born in the workhouse who are difficult to trace afterwards, and the children of these irregular unions where there is a home provided for them?—Yes, undoubtedly. I do not make the distinction absolute. Every child born illegitimate has an immeasurably less chance of surviving, even from the merely physical point of view as an animal, than a child born legitimately.

36,379. Even in the best illegitimate home?—Yes, that is my impression.

36,380. Can you tell us why? Is it because in that home there is less care which goes with the character which is less careful?—No, not necessarily. I would like to put it this way. Medical Officers rather deal with figures in bulk than with individual instances. I recognise the correctness of the views expressed by the Medical Officer of Health for Chelsea, that in many homes although the parents are not married the children are well cared for, but I believe the children born even in such unions out of wedlock have an immeasurably less chance of surviving, and when I say "an immeasurably less chance of surviving" I mean this, that if you were to establish an infant mortality figure for legitimate children, and an infant mortality figure for illegitimate children born in these irregular unions where the parents are living together, you would find that the latter figure was greater than the former.

36,381. In regard to your last paragraphs, would you extend the grounds of divorce as well as cheapen divorce? I infer you are in favour of the cheapening of divorce to meet the needs of the working classes, or bringing jurisdiction nearer. Are you in favour also of enlarging the grounds of divorce?—I certainly think that divorce ought to be made accessible to everyone, irrespective of the question of money, but I view with very great reluctance any proposition to extend the reasons on which divorce ought to be granted. At the same time I do think that where one of the parties to the marriage becomes insane and permanently insane, and it is to be borne in mind that there are certain cases of insanity where it can be clearly and definitely established that the insanity is permanent, I refer to those cases of insanity which follow acute forms, relief should be granted. You have cases suffering from acute melancholia where the melancholia persists till dementia arrives, secondary dementia that disease is termed, and those people are absolutely and hopelessly insane for the rest of their lives, they are in effect dead. It is an injustice to the survivor to be unable to marry. That is an aspect of the case I do not feel myself concerned with. I express that opinion for what it is worth as a member of the community, but speaking as a Medical Officer of Health, such circumstances lead to the formation of illicit unions which have a detrimental effect on the race and a bad influence on the death rate.

36,382. There is one last question arising out of that. Would you be in favour of equalising the grounds of divorce between the sexes? That might have as great effect on the working class as any other enlargement?—I think there is a substantial reason why that ought not to be so. If a man is unfaithful, so far as the man is concerned the consequences in the majority of instances terminate with the act.

36,383. (*Chairman.*) May I suggest, "so far as he is concerned"?—Yes, so far as he is concerned: but if a woman is unfaithful she may be presenting her husband with a child which is not his, and for that reason—and for that reason only—I think that the present state of the law in this instance ought to be maintained.

36,384. (*Mr. Spender.*) You would not give a woman who really felt that the marriage contract had been violated in a way she regarded as an indignity to herself, the option of a remedy?—That is not a matter for me. It may be that as a matter of justice, divorce ought to follow because of the moral offence, but it seems to me that there is that distinction to be drawn. I am not prepared to say, it is not in my purview, whether the mere act of infidelity is a sufficient ground for divorce. If so, well and good, but there is that difference in the consequences of the act.

36,385. I simply wish to get at your view with regard to the working classes on that point?

36,386. (*Sir George White.*) You have been very successful in Huddersfield in reducing the rate of infant mortality by your voluntary agency and other work?—It has fallen 33·8 per cent. since we commenced our work, not altogether in consequence of our work, but there is that reduction.

36,387. That would affect, of course, the mortality of infants in all classes, covering the classes we have been speaking about especially?—That is for the whole borough.

36,388. I should gather from the view you put before us as to the ideas of the Huddersfield people of the relationships of marriage, that the irregular unions would be smaller probably than in a population like London?—I have no means of forming an opinion, but I hope so.

36,389. You would not regard them as very numerous?—No. Marriage in Huddersfield is regarded as an honourable condition, and it is that; the other thing is regarded as a dishonourable condition, and is avoided.

36,390. Have you any information which would lead you to be able to state whether these irregular unions are formed chiefly by persons who have lived in the married state but have fallen out from one cause or another, and each of them has formed an irregular union?—I am afraid I cannot express an opinion as to which are more frequent.

36,391. I intended to ask the previous witness this question, probably you cannot supply the deficiency now, but the question I intended to put was, are there not many cases in which young people come together as young people and never get married, although they live all their life in this irregular union?—Not in Huddersfield. By one means or another where there is a baby coming, marriage is usually secured, unless indeed the man absconds. Then they do not live together.

36,392. Do the married women work in mills?—Yes, about 20 per cent. of them.

36,393. You have expressed an opinion as to the necessity of divorce on certain grounds; do the people themselves look to this as a desirable escape out of some of their difficulties? I am speaking now of the poorer people?—In the cases which I cite they do.

36,394. They would avail themselves of it if it were accessible?—Yes.

36,395. In regard to the administration of charity funds and that kind of thing, you draw a distinction between the action of the Churches and Benevolent Societies, and the opinion which people form of those whom these societies should benefit. Are we to take it that such a body as the Charity Organisation Society and other agencies of that kind would refuse relief even if the case was a necessitous one, on the ground that these people were living in an irregular relationship?—I believe that the Charity Organisation Society does so. I happen to know that, but other charitable organisations do not. I helped to organise a Guild of Help in Huddersfield a little while back, and that was one of the points that emerged in the discussion when considering it, and it was established as a principle that the need was to be our measure apart from either moral or other consideration.

36,396. I thought your evidence implied that the Churches put themselves in the wrong in the estimation of a number of these poor people, because they would not recognise and help people who were living in these irregular relationships?—I am afraid there was a little misapprehension. I did not say that the

Churches would not help them. I hope that nothing I said conveyed that really. My point was, if the Church condemned from the moral point of view what the majority of the people condoned from a moral point of view, it was so much the worse for the Church.

36,397. I took it from something you said that this condemnation was followed by probably not acknowledging the claim, from the charitable point of view, of these people, and passing them over while they helped others living in a condition of married relations?—That is not what I desired to convey.

63,398. (*Sir Frederick Treves.*) Is it your general opinion that facilities for divorce would lessen the number of these irregular unions; that is to say, from the point of view of a medical officer of health do you think that would be exceedingly desirable?—I think so.

36,399. You would admit incurable insanity as a ground for divorce, such as secondary dementia?—Yes.

36,400. Would you admit syphilis?—Syphilis acquired after marriage, yes.

36,401. Would you make syphilis a notifiable disease?—That is an extremely difficult question to answer. There are certain advantages which would result, and if it were possible to secure knowledge of every case of syphilis, and it is possible to secure knowledge of cases of syphilis without publicity, and if that were followed by judicious action, it is desirable from the point of view of the State and the interest of the people that syphilis should be dealt with by the State; but if the liability to notification were to lead to concealment, the consequences would be so disastrous that I am rather afraid the disadvantages would outweigh the advantages.

36,402. In answer to the question whether syphilis should be a notifiable disease under the terms of the Act, and included in the schedule, you are rather disposed to say at present "No"?—I would like to say this. I believe that I could devise a method of notifying, and I believe that I could devise such wise action following notification that it would be practicable, and that it would be good.

36,403. Such action would not damage that very desirable confidence which exists between a doctor and his patient?—I do not think so. One naturally looks at that from two points of view. The medical man likes, naturally and properly, to uphold the privileges and the proper privileges of his profession. He likes to think that he may consider the interests of his patients to the exclusion of every other thing, but the State seeking the greatest good of the greatest number has already required a breach of that professional secrecy in the matter of the notification of infectious diseases, but not in the matter of the notification of births, because it is not a subject for secrecy except in the very cases where secrecy relates to murder. I refer to illegitimate children. When a birth happens in an honourable family in an honourable way it is a matter for congratulation and for publicity. It appears in the matches and despatches columns of the "Times," amongst other places; but where a child is born illegitimately, concealment is desired, and then I should think a medical man thinking the thing out for himself and conceiving the probable consequences of concealment, I mean the death of the child, would feel he was doing right as a medical man and a member of the community in notifying that birth to the authorities. Those considerations apply, with modifications, to syphilis.

36,404. You will agree, I suppose, if syphilis were introduced into the schedule of the Act, it would tend to cause subjects of venereal disease to seek advice from other persons than medical men?—And the consequences would probably be so disastrous that the bad would outweigh the good.

36,405. Do you think you could make syphilis a ground for divorce without notification, to make it act as you wish it?—I think so, because it is so at present, I take it.

36,406. I am speaking of syphilis *per se*, without any regard to other things?—No. If an individual became syphilitic and then remained away from his wife until he was cured, I should say no; but if he communicated the disease to his wife, I say on every ground, yes, undoubtedly.

36,407. You are then locking the stable door after the horse has been stolen—the trouble is done?—Yes.

36,408. You are naturally anxious that the wife should not be contaminated, and that the children should be healthy, but if you wait till the damage has been done surely your intention is very much hampered?—Yes, from that point of view it is, but then there is another aspect of the case. The individual has inflicted a wrong on his wife for which she is entitled to have redress.

36,409. Separate the eugenic view from the view of justice and the need of punishment?—In so far as circumstances indicate that they ought to be separated, I do.

36,410. There is one case you have mentioned, No. 5. Do we gather you would make chronic drunkenness a ground for divorce?—That was a case of cruel and immoral conduct.

36,411. This was the man who was of drunken habits?—His wife was compelled to leave him and commence working for herself on account of his drunken habits and cruel and immoral conduct.

36,412. Would you make drunkenness a ground for divorce independent of cruelty?—Not alone.

36,413. You see great difficulties in establishing that?—Undoubtedly. After a very careful consideration of certain degrees of drunkenness, of chronic alcoholism, and the consequences, it might be deemed necessary to do so. Generally I do not want to extend divorce.

36,414. (*Mrs. Tennant.*) You said you did not wish to press your point about the equality of the sexes. I therefore do not wish to press you unduly upon it. If you will forgive my saying so, you have given so much thought to the rest of your evidence, I want to ask you to consider that position a little more fully. You did not mention it in your proof; it has come out incidentally. Would you distinguish, as other witnesses have done, between "accidental" acts of infidelity and aggravated or persistent acts of infidelity on the part of the husband?—Yes. I would say that was an abandonment of the position of husband which ought to be punished in that way.

36,415. I should like to ask you one or two questions about these accidental acts. I gather that these consequences are incomparable, in your opinion. In the first place, is it not the fact that the accidental act committed in certain circumstances with certain classes of women is very apt to convey disease to the wife?—Yes.

36,416. That is one very grave circumstance?—Yes. That falls into a different category.

36,417. The wife may have her remedy, although as you pointed out among the working classes, from want of money, she would not have it?—Yes.

36,418. One would like to avoid the injury. Not to reach the need for redress?—Yes.

36,419. That injury, in itself, is one grave consequence?—Yes.

36,420. Take another class of case in which these accidental acts are committed, not with a woman who has, unhappily, little to lose, but with a girl, who is wholly innocent; in that case is there not the further consideration not merely of the injury which an unfaithful husband inflicts upon his wife, but the injury he inflicts upon the girl to whom he gives a child, to that child itself, and to the State, which very possibly has to support the child. The child is born in circumstances which are cruel to it and to the mother, very often in the workhouse. And all this arises from what is called the accidental act of infidelity on the part of the husband?—I think I rather modified my original statement. I say that it may be so grave an offence that even an accidental act of that nature ought to be followed by divorce as a matter of moral law, as a matter of justice; but there still remains as between the man and the wife the distinction that I pointed out.

36,421. There is that distinction, but do you not feel that those two disabilities are sufficiently grave in themselves without distinction? I do not wish to

make the point that, taken together, or apart, they might balance the injury inflicted upon the wife; without making comparisons are they not sufficiently grave to make the act of adultery a ground of divorce?—It may be. I do not suggest that it is not; it may be, but still the distinction remains.

36,422. (*Lady Frances Balfour.*)—You say you do not desire to extend the grounds of divorce except possibly by adding incurable insanity?—That is so.

36,423. In the third example, on what ground do you suggest the woman should get a divorce? Is not that really on the ground of cruelty?—Yes. The reference to an asylum there is not to be taken as a ground for divorce, but his conduct apart. His residence in an asylum results from his conduct out of the asylum, and it is that conduct which I think, in this case, would constitute a ground of divorce.

36,424. He does not appear to have been guilty of immorality, but of cruelty?—Yes, cruelty and desertion.

36,425. Does it not follow from that you would wish to see both cruelty and desertion made grounds for divorce?—Are they not so already?

36,426. (*Chairman.*) Not for divorce, but for a judicial separation only?—Perhaps I would withdraw that case.

36,427. (*Lady Frances Balfour.*) Would you, perhaps, withdraw your objection to any other grounds than at present exist? Would that case not lead you to say that desertion, if persisted in, and extreme cruelty which renders life intolerable, should be grounds for divorce? Otherwise that woman in the case you mention would be without relief?—Yes, I am afraid I am led to that conclusion, that that would form another ground.

36,428. (*Chairman.*) Might I supplement that? I daresay you know that either of those grounds at present, that is to say, cruelty or desertion lasting for two years, is a ground for judicial separation?—Yes, I am aware of that.

36,429. That does not afford a woman a ground for a divorce?—Yes. I am quite aware of that.

36,430. Do you approve of judicial separation or not?—I think that it is an illogical thing. I think if there is ground for a permanent judicial separation there is ground for divorce.

36,431. You gave a very strong statement about insanity and the possibilities that it led to irregular unions afterwards if there was continued incarceration in an asylum. Have you found that actually occur in practice?—Yes, I cite a case.

36,432. Have you an opinion that that might happen where a wife has been permanently deserted?—Yes.

36,433. Have you formulated what you said you could devise, a scheme of notification without publicity? If you have not thought it out, but would like to send it, we should be obliged?—Certainly, I could do that, or state the outlines at present.

36,434. What is the outline?—The medical practitioner could be required to send under seal addressed personally to the official designated to receive the notification, whoever that might be, the particulars required by any Statute so providing. It could be explicitly laid down that the official designated to receive the notification must regard it as confidential. The record must be kept by him in his own personal care, either under seal or under lock and key. The record should be destructible on a certificate being received that the individual was cured. The only action which I should propose to follow the notification would be that the officer designated to receive the notification should himself personally interview the subject of the notification, and hand to him a document clearly setting forth the condition, the dangers connected with it, and the penalty which I would thereupon attach to a violation of certain rules which I would formulate.

36,435. That is a sufficient outline?—The details would have to be provided.

36,436. The cases you have set out you have given as typical cases of which numbers could be given if desired?—Yes.

36,437. One general question on that. Do you consider in Huddersfield, or any parts with which you are familiar, there is a real need and demand among the poorer classes for an extension of divorce facilities in the courts?—There is, I believe, such a demand, but I do not know how much of it there is. I believe that a number of people are suffering disabilities in a way unconsciously. They have drifted into the undesirable condition, they look upon it as inevitable; they do not hope for amelioration, and, therefore, they do not consciously require anything; they could not articulate their needs.

36,438. Has it been mentioned to you by any of them?—Yes, in one case personally.

36,439. To any of your assistants have you had reports of it?—Yes.

(*Chairman.*) I would like to thank you on behalf of the Commission for your very carefully thought out and interesting evidence. I am sure we shall find it of great use.

Dr. William Arnold Evans called and examined. (*In Camera.*)

36,440. (*Chairman.*) You are an M.D.; and are you the Medical Officer of Health for Bradford?—I am.

36,441. You have held that office for 19 years?—Yes.

36,442. You have a staff working under your direction of six women sanitary inspectors, whose chief duty consists in visiting the homes of the poor, their first visit to the home being on account of the birth of a child?—Yes.

36,443. The Early Notification of Births Act is in force in Bradford?—Yes. We adopted it as soon as it came out.

36,444. You say about 4,000 notifications are received annually from midwives who attend women in childbirth: the inspectors therefore have an extensive knowledge of the home life of the greater part of the population?—Yes.

36,445. Do they report constantly what is going on?—I have a report every week from the Chief Woman Inspector.

36,446. She summarises what the rest have done, I suppose?—Yes. We find frequently that neglected homes are due to the unhappy relations between husband and wife. Divorce is often wished for on account either of brutality and neglect on the part of the husband, or neglect of home and children on the part of the wife.

36,447. Can you tell us to what extent you have found it wished for?—It is difficult to state that in figures, but that kind of case constitutes a large minority, and the persons interested wish for divorce.

36,448. Would you say there is no demand among the poorer classes for extension of divorce facilities?—I know in Bradford there is. The expense involved in an action for divorce, however, stands in the way, and, in consequence, irregular unions are brought about. In some cases there is desertion on the part of the husband, and in a few others I have known the woman leave the house and form an irregular union with another man. Owing to the fact that wages received in Bradford by women engaged in the wool and worsted industry being so very low, any woman with children deserted by her husband knows that she will have great difficulty in bringing up the children, and consequently seeks the support of a man and contracts an irregular union. She cannot easily obtain assistance from the Guardians of the Poor, for they are unwilling to grant much in the way of out-door relief, and generally insist upon the woman breaking up her home and taking up her residence in the workhouse together with her

children. I am strongly of opinion that in the interests of the working classes facilities for obtaining divorce should be made easier; that opinion is supported by a consideration of the following cases, which are typical of many others.

36,449. Does the word "facilities" apply only to procedure, or does it include grounds of divorce?—I refer only to procedure. I have no suggestion to make as to the extension of grounds of divorce.

36,450. You do not go into that?—No.

36,451. You mean opportunities in the local courts for bringing cases on?—That is the meaning I intended to convey.

36,452. Do you think that would be beneficial to the people?—Yes.

36,453. Why? Will you please explain?—Some of these people who have contracted irregular unions wish, if they could get rid of the person they have left, husband or wife as the case may be, by a divorce to marry the person with whom they are living.

36,454. That would regularise what is at present an irregular union?—Yes, and some are anxious to do it.

36,455. You have given a number of cases set out in your proof?—Yes, they are as follows:—

"*Case* 1.—Mrs. L. was deserted by her husband after a few years of married life. He left her to support their little girl, going away himself to America. He was immoral and careless, and rarely showed her any consideration. In her work she met with J. L., and a friendship sprang up between them, which ended with her living with him. She subsequently gave birth to a daughter which was notified in accordance with the Early Notification of Births Act. The woman informed me that she would gladly marry the present lover, but that the expense attaching to a divorce was too great. They lived very happily together, and the man is most considerate and brings his wages home regularly.

"*Case* 2.—In this case the man was deserted by his wife, who is now a prostitute and was ever unfaithful to him, in fact she made his life a long misery until she left him altogether. He met R. at a public-house where he was in the habit of visiting on his way home from chimney sweeping. R. was the domestic servant there. They became good friends, and finally he persuaded her to go and live with him. She willingly did so, and proved a most faithful and exemplary companion. The home was beautifully kept, and in spite of much poverty, she ever did her best for him. Yet when ill, no charitable society would come to their assistance, because they were not married. I often helped this woman because I admired her character. She was terribly disappointed that she could not be legally united to the man, who also felt very deeply the position of the woman who was so much to him.

"*Case* 3.—This woman with her three children was deserted some four or five years ago. She is now living with another man by whom she has had two children. Both are quite happy, and the woman has in no way lost caste amongst her neighbours, who call her by the man's name. She is a good mother to her children, and the man seems to behave well towards the family. Both wish to be married, but the expense of a divorce stands in the way.

"*Case* 4. This woman is separated from her husband, and is living with a widower who has three children. She says she had a very bad husband and got a separation from him. Her present home is tidy and the children look well cared for. The woman says if it were possible the man would marry her."

35,456. Is there anything else you wish to add?—I should like to state I recommend the cheapening of divorce and greater facilities in the interests of the children as well as the parents.

36,457. As a medical man do you agree that it is desirable in the interest of the race that the prevention should take place adequately of unfit children?—Certainly.

36,458. (*Mr. Spender.*) As regards what we have heard this morning—I think you heard some of the other witnesses—from your experience in Bradford, do you say an irregular union, even although it had all the characteristics of family life, did inflict a disability in the public opinion of the parties?—In some cases it does and in some it does not. It depends on the district in which they live. In some of the lowest districts it does not matter, but among the great majority, particularly the higher artisan families, it does.

36,459. And with regard to the children of those unions, in whatever social strata they were, it would be a stigma upon them that they were not legitimate?—It is so now. In Bradford 40 or 50 years ago very little importance was attached to it, but public opinion has altered.

36,460. There has been an advance. There has been a change in public opinion towards attaching importance to the marriage tie?—There has been both a change and an advance.

36,461. (*Chairman.*) Do you think these facilities you have spoken of would tend generally in the direction of an improvement of morality?—I think they would.

(*Chairman.*) We are very much indebted to you for the trouble you have taken in coming here, and I hope you will be satisfied that you have done good work in coming. I am pleased you were able to find you could come.

Dr. Ewing Mould Glynn Whittle called and examined.

36,462. (*Chairman.*) You are an M.A. and an M.D. of Cambridge, and you have practised for over 30 years in the city of Liverpool?—Yes.

36,463. You are consulting physician to the Ladies' Charity Hospital and you have been otherwise professionally associated with various public institutions in the city of Liverpool?—Yes.

36,464. You tendered your evidence to the secretary to place before the Commission?—Yes.

36,465. I have two memoranda. Will you read the first one and add anything you wish, or correct it in any way you like?—Yes. We do not sufficiently look upon the question of divorce from the point of view of the poor, especially the poorest of the poor. The hopelessness of the life of a victim of this class married to a partner who is cruel, criminal, insane, or a drunkard is very terrible. I have questioned countless poor women, victims of habitual cruelty, as to whether they would avail themselves of divorce, if they could get it. The answers have been most impressive: Protestants say "Yes"; Roman Catholics say "No." I cannot recall a single Protestant exception.

36,466. Can you give us any idea of the extent of your inquiries?—I have largely put them to people associated with those public charities which come under the head of cruelty and those cases, and I should roughly estimate them, over a great number of years, as from 100 to 150 or more. I was interested in this matter many years ago from the teachings of my father, who was a doctor in Liverpool, and he spoke strongly of the difficulties of the poor then. I was interested to see whether they would avail themselves of divorce if it was open to them.

36,467. Do you speak to 100 to 150 cases?—I have spoken to quite that number spread over those years out of the large experience I have had of these institutions.

36,468. Might I say in your new memorandum you interpolate something before you get to the next paragraph?—May I say why I introduce that? From some of the witnesses there seems to be an impression that legislation has been one-sided, one sex against the other. I think it is a matter of inherent difficulties connected with it, and I wanted to show, from the nature of things, that there was always great difficulty from the point of view of the right doer, and that the wrong doer gets off too easily.

36,469. Will you read the two paragraphs?—If a wife wrongfully pawns her husband's goods or pledges his credit, or without adequate provocation leaves her

home, or if a husband is habitually cruel, or either the man or the woman drinks, nearly all the legal sympathy and most of the judicial help, which our laws afford, are directed—to the prejudice of kindness, sobriety, and honour—against the innocent victims of drunkenness, desertion, and crime. I believe that few civilised states, if any, can equal England in the crimes of wife murder and brutal assaults on wives. The newspapers tell us little of conjugal cruelties, while police statistics reveal much, but much still remains that stops short of reaching the police; for among the worthier victims of even the poorest class the sense of shame is strong and often anything will be endured rather than publicity and exposure.

36,470 Then you might proceed with your old paper?—May I mention this memorandum which refers to the question of cruelty?

36,471. You had better mention anything else after you have finished the paper?—Divorce, if opposed by one side, I would grant on proof of cruelty, lunacy, habitual drunkenness, desertion or serious crime. That is dealing with the principal cases.

36,472. You have left out adultery. Of course you would include that?—I assume that the present laws would be maintained as well. As long as the main basis of divorce is to remain proof of adultery, I am opposed to the recommendation of making the divorce laws equal. My reason does not arise from sympathy with the guilty; they are generally strong enough to fight their own battles with more success than they deserve. My reason is that it would disturb a state of affairs, which, notwithstanding grave faults, makes far more for morality than the law, if altered as proposed, would do. The records of divorce show that many women, not anxious about their financial future, have been so determined to obtain their freedom that they have become reckless of their reputation, and stooped to vice to induce their husbands to divorce them. If men are to be given the same opportunity, the abuse of such a change in the law would far exceed its advantages. Attention has already been called to the almost insuperable economic difficulty which would arise before such a change in the law could be made effective and equitable in practice. In my judgment it could only be done by making adultery a penal offence, divorce to follow a conviction, while, if the public prosecutor failed, the acquitted husband should receive double costs out of the public purse, though the property of the wife, if a lady of means, should be attached to recoup the public prosecutor. Of course I am not recommending this, but only pointing out what a false step may make inevitable. In the way I have indicated only, so far as I can see, could an innocent husband be protected from having to pay the cost of a fruitless prosecution against himself at the instance of a wife, who has been, perhaps, a much loving but jealous and mistaken partner.

36,473. Now will you go back to your old paper?—Yes, if men are to be given the same opportunity, the abuse of such a change in the law would far exceed its advantages. If a man's marriage has turned out so unhappily, whether from his own or his wife's sins, that he has lost all conjugal love for her, it is bad for his health to be compelled to continue to live with her, and what is thus bad for his health is also bad for his mind and morals. On this point it would be necessary to have *in camera* the evidence of experts. In pursuance of your suggestion, I had better delete the next paragraph, because it brings in the Church question.

36,474. Will you take it in your own way entirely?—I will read it if you desire.

36,475. I think that it is a long discussion of the theological side of the question?—Yes.

36,476. I do not think we need trouble you with that?—I will omit that and pass on. I believe that justice between the sexes, and the problem of equitable morality, can ultimately only be reached by a step for which public opinion is certainly not ripe, viz., divorce by mutual consent. If it ever comes, I hope a very long limit, and I would make it seven years, will be imposed before such persons are permitted to make a second matrimonial venture. I will omit the next part because that raises the Church question.

36,477. The only part worth looking at is the end, because the rest is really arguments on theology which we have elsewhere. You summarise it thus:—"In all cases of divorce I would impose long limits before further marriage is permitted to a divorced person, whether petitioner, respondent, or divorced by consent"?—I would like to add a brief remark upon a point that has already arisen, and that is the action for breach of promise of marriage. I would not abolish it, but I think a useful amendment to the present system might be arrived at by adding what is known, in legal phraseology, by the word "negligence." Before a verdict could be obtained I would require that a mere breach of the promise of marriage should not be sufficient, but it should be proved that the defendant had been guilty of negligence. That might extend to many things; it could be worked out by the court, such as being too long, or harsh treatment. I think it is a useful law, and its complete repeal would be mischievous, and would make young men reckless as to the way they trifle with women.

36,478. May I summarise what you say? You think from your conversations with women who have been suffering that there is a need for a means of their obtaining divorce in cases where it is required?—Yes.

36,479. They are too poor to get them under the present system?—Yes.

36,480. You do not favour divorce being placed on equal grounds, as regards sexual immorality, for both sexes?—I think that is impossible as things are.

36,481. It is not impossible, the question is whether it is expedient?—I do not think it would work out as expected. I am opposed to it.

36,482. Thirdly, you consider that the grounds you mention are grounds that should be brought within the doors of the Divorce Court—namely, adultery, cruelty, lunacy, habitual drunkenness, desertion or serious crime?—Yes, a sufficient standard in each. I would like to mention this, lunacy has been mentioned a good deal, and I think great care should be taken and the best expert advice followed. There is one branch of that in which I have had personally very great experience, and I would like to pronounce an opinion upon it. From my long connection as an obstetric practitioner I have seen a good deal of puerperal mania, I know I shall be in conflict with some of my medical friends, but I am strongly of opinion that puerperal mania in its ordinary form, even if recurrent, should not be a ground of divorce.

36,483. Because?—It is very curable even if the case is bad and acute. It even gives excellent results, and my experience does not confirm the supposition that the heredity from it is of the grave and widespread character which it is thought to be.

36,484. You class it as curable?—Yes.

36,485. That would not infringe the proposition they lay down, although it might the facts?—It shows the necessity for careful selection. One of the witnesses was asked by Sir Frederick Treves how a standard of chronic drunkenness could be made satisfactorily for the purpose of divorce. I drafted out this idea, and it seems to me workable. The case would have to be proved to the satisfaction of a judge or a stipendiary magistrate, or of two justices of the peace, with the evidence of two physicians, of whom one must be a permanent medical assessor or his acting deputy. I think with such safeguards as that it could be arranged.

36,486. It does not define what permanent drunkenness is. That is only stating who is to prove it. I rather gathered the question was directed as to what was meant by the term?—It would be very much like a certificate of lunacy. You would have to come finally to the opinions of the individuals.

36,487. There is a difference between opinions and the question upon which the opinion is to be given. You have not dealt with that. In dealing with these cases of poor women, has your attention been called to the fact of immoral relations existing in consequence of the impossibility of getting a divorce?—Yes.

36,488. To what extent can you speak about that?—The prisoners that are brought forward at Liverpool give frequent evidence of those kind of troubles.

36,489. The wife left outside, you mean?—The husband having been deserted by the wife, or the wife having left him, or there has been a complete interchange as described by the witnesses. This confirms the account given by Dr. Ethel Bentham, who went into the subject some time ago. She gave a fair summarised way of how that matter worked.

36,490. Is it productive of immoral relations in your experience?—I am afraid it is. May I make one statement with reference to the notification of syphilis which has been mentioned. I have thought over that matter a good deal, and I am opposed to it. I do not think that it would work in practice. It would lead to such concealment and irregularities that it would be impossible to get good results from it.

36,491. (*Mr. Brierley.*) I did not quite follow why you say that equality of the sexes is impossible?—It would be impossible to obtain the results anticipated.

36,492. What are the results anticipated, I suppose that the wife shall be able to get a divorce if she wishes from her husband on the ground of adultery?—The idea is that you would get these results generally or equitably. I do not think you would.

36,493. I do not follow why you say so?—One can only anticipate how things would work out.

36,494. What are the evil results you anticipate from the abolition of the disability on the part of the wife?—I have referred to what happens already in my examination in chief—with some men especially.

36,495. You mean that they commit the act in order to enable their wives to divorce them?—Yes, it would happen in certain cases.

36,496. Have you experience as to why the way it works out would be a disadvantage?—On that particular point?

36,497. Yes. As far as I know in nearly every Christian country in the world, except Belgium and a few British Colonies, which found their law on the Act of 1857, the sexes are on an equality—in every country where divorce is allowed. The case of England is exceptional?—Is not divorce allowed on many other grounds as well in such places as Indiana and Switzerland?

36,498. I do not know that they obscure that ground; it always remains a prolific cause in divorce cases in every country. Taking that into consideration what reasons are there to anticipate evil results?—I do not know the working of that point in other countries. I have inquired into other countries on one or two points, but not upon this one.

36,499. (*Sir Lewis Dibdin.*) Your view is, that the only ultimate satisfactory basis of a law of divorce is a divorce by mutual consent?—Yes, but it is quite outside.

36,500. I follow that, but I thought I heard you say that was your view of the ultimate basis?—I think it is the only way those difficulties could be overcome.

36,501. That would obviate any application to courts at all?—For the purpose of registration they would have to exist.

36,502. If divorce were allowed by mutual consent the expense and necessity of a lawsuit would be unnecessary?—Yes, that would be so.

36,503. There would be some public registry where the parties would register the fact of their divorce. That would be so, would it not? Would not that very much recall the state of things in ancient times under the Roman Empire?—I do not think it would, because the Roman Empire was never thoroughly christianised, and divorce will never appeal to the vast mass of any civilised Christian country, It is always an unfortunate small minority. The majority of people are not such fools as to wish or desire to break up their homes for this, that, or the other cause. It will be in cases referred to as hopeless incompatibility and things of that sort.

36,504. You think that the great majority of Christian people in the world will never want divorce?—I think that has proved to be so in all countries. I think there are very misleading statements from time to time in the English newspapers. I should like to mention one point——

36,505. I only want an answer to that question, and I want to ask you why. Why do you think Christian people will never divorce?—Because they believe in Christianity, and believe that the ideal put before them is a permanent sacred tie.

36,506. Do you think Christianity is inconsistent with divorce?—No, I do not think Christianity is inconsistent with divorce in cases of permanent misery.

36,507. If it is not inconsistent, why should the fact that the people are Christians prevent them availing themselves of this wide law of divorce by mutual consent?—I said that the majority would never desire it. The overwhelming majority would never desire it.

36,508. (*Sir Frederick Treves.*) With regard to the point of equality, you do not recognise it between the sexes in the matter of adultery?—I think we will have to go on with the present law.

36,509. You do not base your point on biological grounds?—I rather agree with Sir James Crichton-Browne's views. He spoke largely on biological grounds.

36,510. You do not base your present point on biological grounds in your proof?—I may not have mentioned it, but I rather approve of it.

36,511. The point appears to be this, you do not attempt to differentiate between the two acts in the two sexes, and claim that one is less culpable than the other, but you claim that it gives the man an opportunity of possibly providing a ground of divorce on easy terms. That is how it reads?—I say women have done that under the Divorce Acts.

36,512. It seems putting the matter on rather a low basis when you say you will not accept the equality, because if it were made equal it gives a man an opportunity of obtaining a divorce on what may be called easy terms. That is not a very high ground?—I do not quite follow you on that point.

36,513. You say if men are to be given the same opportunity of being divorced by their wives for a solitary act of adultery, the abuse from the change in the law would exceed the advantage?—I am thinking how it would work out in the very low classes. We have to consider that. I do not think they would have scruples in many cases.

36,514. You are opposed to equality because, if equality were allowed, it would give a man an opportunity of obtaining a divorce upon grounds he might consider easy?—I think so.

36,515. That is not a very high ground to take?—No, but you have to deal with the class of persons in large towns as they are, unfortunately. It is a very sad state of affairs, but I am afraid it is so in the slums of large towns.

36,516. You think if a single act of adultery were made a ground for divorce in a man, men would take advantage of it in that improper way?—That is my fear.

36,517. With regard to insanity, if it is incurable insanity of three years' continuous duration, it would not include your case of puerperal mania?—That would satisfy me.

36,518. That would exclude all cases of puerperal mania?—Yes.

36,519. (*Sir George White.*) Do you wish the Commission to understand, from the answer you gave to Sir Lewis Dibdin a minute ago, that you are in favour of divorce taking simply the ground of mutual consent of both parties not wishing to live together any longer?—I attach to that in theory a seven years' limit, and my opinion is that an overwhelming proportion of any persons who apply for divorce go together again and abandon divorce before the expiration of that limit. I would rather not consider the matter practically because I do not think public opinion is ripe for it. It is the only way by which certain advocates can be answered if they have demanded equality. I do not think that they can get it any other way.

36,520. Then there is no value in your laying down certain things for which you would give divorce, such as cruelty, lunacy, and habitual drunkenness, if you cover all those by mutual consent?—I do not take the

two together. Those are apart from mutual consent cases. In lunacy, cruelty, desertion, drunkenness, and any case of serious crime carrying a long term of penal servitude I would not require mutual consent for that.

36,521. You said Christian people will never divorce each other. That is not what you meant?—I said that an overwhelming majority of them would always aim at the ideal of the Christian life laid down in the Scripture, to look at it as lifelong. Reference was made to the State of Indiana by one of the witnesses in reference to certain practices. That State appears to have been rather an active one in looking into these matters. Some time ago I applied to an American friend of mine for definite information as to the proportion of divorces in States where it was easy, and that State was specially selected because it had gone more thoroughly into statistics than the others. These statistics covered 30 years inquiring into the history of all marriages taking place there, and notwithstanding the ease with which divorce can be obtained, the extraordinary fact was revealed that an overwhelming proportion, almost 98 per cent. of the married couples, remained married and never thought of availing themselves of the law of divorce. That is contrary to what one sees in the newspapers in this country as to the proportion of divorces among persons who marry in the United States.

36,522. You mean that the Christian principle will prevent the bulk of the population running into divorce?—Comparisons with Pagan and semi-Pagan countries need scarcely be introduced. Religion has too great a hold on us. I have a paper here in reference to the cruelty question. That is a sample for six years of cases at the assizes and the sessions at Liverpool, and I am told if the cases dealt with summarily by the magistrates were added, they would be ten times more numerous. The cases of cruelty would come up to 200.

36,523. (*Chairman.*) This gives the names of persons indicted for murder, manslaughter, wounding or attempting murder, and so forth, and dealt with at the assizes or sessions, and the sentences given?—One case is that of a woman who is accused of wounding her husband. There is one case only showing the disparity of the overwhelming cruelty suffered by the wives as compared with what they had in return.

36,524. There are 17 cases of men wounding their wives or trying to murder them, and one case of a woman wounding her husband?—Yes, and only two discharges, showing how grave is the case.

36,525. What do you say is the inference to be drawn?—The amount of crime in the country. If you take the population of Liverpool at 700,000 there were three cases of death, two of murder, and one of manslaughter, husbands convicted, not counting the cases of acquittal, and all those other cases of grievous wounding and assault, and a large number of cases, I am told, estimated at ten times as many by the magistrates, very serious cases any of which might have resulted in very grave consequences, and if you apply those proportions to the whole country you get a very serious state of affairs revealed. If we allow that a large seaport town like Liverpool is worse than the average we still have a very grave case of cruelty in the country. We are told by one witness if we relaxed the divorce laws we were reverting to savagery. I think that document shows where the savagery really is.

36,526. It comes to this, if you add these in and the magistrates' cases you find 170 to 200 cases per annum?—No, over six years.

36,527. All very serious, wounding and so on?—Yes.

36,528. You apply that to the whole country and come to the conclusion that there is a very large number of cases of gross brutality?—I think so, and I think where judicial separation is now granted, divorce might be allowed.

(*Chairman.*) We do not want the details of this, we have the effect of it. I ought to thank you very much for your evidence.

Miss Jessie Whyte Allan called and examined.

36,529. (*Chairman.*) You are of Grey Lodge, Dundee?—Yes.

36,530. Have you been for some years engaged in social work in Dundee?—Yes.

36,531. Have you visited the poor in their own homes under the Early Notification of Births Act?—Yes.

36,532. And you are also superintendent of a restaurant and school for nursing mothers?—Yes.

36,533. Is your district a very poor one?—Yes, the poorest in Dundee.

36,534. The women are nearly all spinners and preparers in jute mills, and their wages vary from 10*s.* to 16*s.* a week?—Yes.

36,535. Have you in the course of your experience had many tales told you of matrimonial complications and hardships?—Yes.

36,536. Do you say as the result of your knowledge of these people that it would be in the interests of morality were divorce made more accessible to them?—Yes, it would be in the interest of morality if divorce were made more accessible.

36,537. You say in the next sentence, "At present it is practically impossible." We have been told that in Scotland you have a very satisfactory poor roll system?—Yes.

36,538. That enables the poor classes to bring their cases, so that I do not see why you say that at present in Scotland it is practically impossible?—I have instanced a case where a divorce was obtained *in forma pauperis*, but it means that they have to go to Edinburgh, and with the very small wages they receive, it is impossible for them to get to Edinburgh.

36,539. Although they have the facilities?—No, they have not sufficient means to get there.

36,540. Although you have a poor roll system in Scotland that does not meet the exigencies of the very poor. Is that what you mean?—Yes.

36,541. Will you kindly continue reading from your paper?—Yes. "When the economic burden is so pressing, thoughtful and wholly intelligent behaviour in the matter of marriage cannot be expected. As a rule marriage takes place too early in life for both. When it happens that a husband proves unfaithful, the wife, in many cases I have known, leaves him, taking the children with her. She struggles to work for them herself with more or less success. After a period of hardship she is tempted to enter into another union with a man who is willing to share her burden. The case of Mrs. S. serves to illustrate this. She married at 17 a man who proved both cruel and immoral. She lived with him for ten years and six children were born, four of whom survived. S. left her frequently during this period, and during one of his absences, a prolonged one of eight months, Mrs. S. went to live with a man who undertook to keep her and her children. Before the birth of their first child, R. (the man with whom Mrs. S. was cohabiting) urged her to marry him, as S. had not been heard of for some time, and they thought he might be dead. She refused, fearing prosecution for bigamy. There are now two children of this union, and they have ascertained that Mr. S. is alive, and that he married Mrs. S. under an assumed name. Mrs. S. tells me she would have applied for a divorce a long time ago had it been within her means. Another case of the same nature is that of Mrs. H. She lived with an unfaithful husband for seven years, and four children were born. Signs of syphilis appear in most of them, and she herself suffers from a form of it. She was a domestic servant before marriage, and had some money saved. When life with her husband became intolerable, she left him, taking her children with her. She managed to keep a home for them by going out washing. She tells me she thought of applying for a divorce, but as she had only 2*l.* saved, and the money was needed for the necessaries of life, she did not consult a lawyer. At the end of a year she took up house with a man who has kept her and her children ever since. They have now four children. Other somewhat similar cases of cohabiting are

personally known to me, but I have cited those of women with a claim to strength of character and intelligence. If the temptation was great in these cases, it is easy to see where many must fall when the sense of right and wrong is not so acute. I have good reason to believe that divorce would have been applied for had it been within the means of these women. The fact that it was possible and had not been taken advantage of, would lead, I think, to promoting a keener sense of shame in the matter of cohabiting and the illegitimacy of children. A case has come under my notice when a divorce *in forma pauperis* was applied for and obtained by dint of much economy and saving. The applicant was a Mrs. L., a weaver, whose average wage is 17*s.* 6*d.* a week. She married nine years ago; her husband was abusive and immoral. After six years of unhappy married life, she consulted a lawyer, with the result that a decree for aliment was taken out, but she never received any money. At the end of a year she applied for and obtained a divorce. The case was undefended, and 8*s.* weekly aliment was allowed for her two children. This has never been paid. She now lives with her mother, working constantly to pay up the expenses of her case. These amounted to 13*l.* 15*s.*, and the money was raised in the following manner: her mother had a 4*l.* share in the Co-operative Society Stores, this she lifted and gave to her daughter, a brother gave her 1*l.*, and the lawyer trusted her for the rest, which is now all paid up except 2*l.*

36,542. I do not understand this. If Lord Guthrie were here he might be able to help us. That seems a very large sum to have been incurred for expenses, and to have to be borne by her, under the Scottish system of the poor roll. You say this was an *in forma pauperis* case?—Yes.

36,543. Do you know what the expenses were for?—For witnesses, I believe.

(*Mr. Brierley.*) We were told the only expenses a litigant would have to incur were the travelling expenses of the witnesses.

36,544. (*Chairman.*) Do you mean to say that the travelling expenses amounted to 13*l.* 15*s.*?—I must say it seems to me they are rather large. I believe there have been divorce cases carried through for less than that. I know it was an *in forma pauperis* case.

36,545. (*Chairman.*) Where did the case come from?—Dundee.

36,546. (*Mr. Brierley.*) What is the railway fare from Dundee to Edinburgh?

36,547. (*Chairman.*) It is 2*s.* 6*d.*, I think?—No, I think it is 7*s.* return third class, but I am not perfectly certain.

(*Chairman.*) That would not account for this money.

36,548. (*Mr. Brierley.*) It was an undefended case, and there probably would be only a couple of witnesses?—The lawyer I spoke to about this case told me he thought that it was very dear, and he had known them put through cheaper. It was an *in forma pauperis* poor roll case.

36,549. (*Chairman.*) Will you proceed with your proof?—"Separation orders do not seem to work out very well, and in Dundee are not taken advantage of to any extent. What is more common is a decree for aliment, which apparently gives as effectual relief. With the very poor, amongst whom my work lies, this is obtained through the officer of the Society for the Prevention of Cruelty to Children. He is probation officer under the Children Act. Some of the cases under his charge are personally known to me—women anxious to live respectable lives freed from a miserable tie. One of these, a Mrs. G., married at 18 to a man whose only apparent fault was that he got drunk occasionally. She left him 15 months after marriage, and a month before her baby was born, on account of his drinking habits. He sold up the house, including everything she had contributed, and was seen openly in the society of immoral women. His wife has never gone back to him. She is only 20 years of age now, a spinner earning 11*s.* 1*d.* weekly. She is able to keep her child and herself respectably living with her mother, who keeps the child when she is at work. In my opinion there is great disadvantage in binding a young woman to a celibate life. The case of Mrs. F. strengthens me in this. She is a jute winder and was married at 17 to a man with whom she only lived six months on account of his cruelty to her. A child was born and she applied for a decree for aliment. This was paid irregularly, and after a short time a reconciliation took place. Another child was born. She was unable to live with her husband, however, and went home to her mother. His family have custody of one child now, and she is paid aliment occasionally for the other. She is only 25 now and a very respectable young woman. She says she is anxious for a divorce, and believes it possible to get one, as since she parted with her husband he has been leading an immoral life. It is quite beyond her reach, however, at the present cost."

36,550. These cases puzzle me I confess, because of the facts proved by one or two witnesses, thoroughly competent with the matter, Lord Salvesen and Mr. Lorimer, as to getting a suit before the Court for the mere expenses of the witnesses?—Still, I think 5*l.* would mean a good deal of money.

36,551. For even the expenses of the witnesses?—Yes.

36,552. They have to go all the way to Edinburgh?—Yes.

36,553. Do you think it would be different if there was a Court in Dundee?—It would be cheaper. Another case is Mrs. T., "She left, her husband after seven months of unhappy married life on account of his cruelty to her. She consulted a lawyer and got a decree for aliment which was paid for 10 weeks regularly, and afterwards occasionally for seven years. There was then an attempt at reconciliation, but his habits were even more intolerable, and after four months she left him. A lawyer was consulted about a divorce, but it was too expensive, so a decree for aliment was taken out again. This has been paid at long and irregular intervals for 13 years, and she keeps herself respectably by working as a cook in a Nursing Mothers' Restaurant. I find in my work that there is always a sense of shame where there is illegitimacy in the family life. I have known it to be most carefully hidden for many years, and have seen great sorrow at the discovery. I am strongly of the opinion that the laws relating to marriage should be altered, so that it would be possible for a woman to obtain freedom from a marriage which is degradation to herself and her children, and to permit her to form a legal union with a man who would be a healthy parent and a good example to his children.

36,554. Your laws in Scotland do not want altering for that purpose, a woman can get a divorce for adultery. The difficulty in every case is the question of money. The only suggestion I can think of is a Court in Dundee for you?—Yes.

36,555. Do you think that would make any difference?—Yes, I think it would give relief to those cases.

(*Chairman.*) I think we shall have to ask Lord Guthrie how it is.

36,556. (*Sir George White.*) I notice almost every case you give are cases of marriage on the part of the woman when 17 years of age?—Yes.

36,557. Is that a common age at which marriage takes place in Scotland?—In Dundee it is very common. I think 18 is more common.

36,558. That would be, probably, because they are mill hands and earning money?—Yes.

36,559. It would not be a sample of the age at which marriage takes place in Scotland generally, as far as you know?—I think it is lower in Dundee.

36,560. You ascribe a good many of the evils that follow, to the fact that they marry so early?—Yes.

36,561. (*Lady Frances Balfour.*) Dundee is nearly entirely a manufacturing town?—Yes.

36,562. The women nearly all work in the factories?—Yes, that is so.

36,563. And I am afraid in a very large proportion support their husbands?—Yes, they certainly contribute to the household.

36,564. I think a portion of them support them?—Yes, I think so.

36,565. I am afraid it is not a very high standard of living as compared with the rest of Scotland?—I believe not.

36,566. The poverty of the women is a good deal due to the fact that they are very much dependent upon their own exertions?—Yes.

36,567. You cannot quite argue that the condition of Dundee is that of the rest of Scotland. It is a very peculiar population?—That is so.

36,568. (*Mrs. Tennant.*) In spite of the fact there is of wage necessity a low standard of living in Dundee, you find a strong feeling about illegitimacy?—Quite.

36,569. Have you experienced that on the part of children when they have discovered themselves illegitimate?—Yes, and I see other women pity the children for being illegitimate.

36,570. (*Mr. Brierley.*) Have you had experience of any other divorce case, besides the one you mention, brought through the poor roll?—Personally I did not get to know of any other case. I had a long conversation with a lawyer who had been a poor man's lawyer.

36,571. I understand there is a regular roll of poor agents in Dundee?—That is so.

36,572. Do you know them?—Yes.

36,573. We were told that everybody in Scotland would be acquainted with this system. What do you suggest would be out of the reach of these people? What sort of expenditure have you in mind?—I think it takes a great deal of saving at times to gather 5*l.* together. There is nothing over when there is a family to keep, and yourself to keep respectably.

36,574. One would think from what we have been told, that the expense would not be so great. We were told that the Court in undefended cases sat on Saturday so as to relieve the working people as much as possible, and the only expenses that had to be paid were the witnesses' expenses. I cannot understand how it is that even 5*l.* is necessary in some undefended cases from Dundee. All they have to do is to bring two or three witnesses, which at 7*s.* apiece, amounts only to 21*s.* You are not able to explain that?—No, this lawyer who thought 13*l.* was excessive said he thought 5*l.* very fair.

36,575. If there are several witnesses it might be 5*l.* We were told that it was simply the expense of taking the witnesses to Edinburgh and back, and that in undefended cases it was not necessary to stop more than one night?—Yes.

36,576. I do not understand it?—Still they would need food.

36,577. It is rather important, because we were told that it was an ideal system in Scotland, and one would like to know how it works out in practice?—I do not think it is ever so cheap as that.

36,578. (*Mrs. Tennant.*) Do you happen to know how long the witnesses were absent from their employment in this particular case, or how long the wife was absent from employment?—I think one day, but I am not sure.

36,579. One day only would not be a very big factor?—No.

36,580. No wages for one day is 2*s.*, perhaps?—Yes.

36,581. (*Chairman.*) It has occurred to us it may be that the solicitor will get his out-of-pocket expenses. He might have had to hunt round in different places for the witnesses?—Yes.

36,582. Or he might have had himself to go to Edinburgh. The case may be one in which it was difficult to prove the case without travelling about, and so forth?—Yes.

36,583. It is possible there may be expenses which would make it come to more than we thought at first. Do you think you can procure for us the details of the bill which make up this 13*l.* 15*s.* You have evidently got the exact figure?—Yes, I am sure I can.

36,584. Because we should like to have it looked through by one of the Commissioners, the learned judge who assists us here. If you could get that, or a copy, and send it to us we should be much obliged?—Yes, I will do so.

(*Chairman.*) I ought to thank you very much for your interesting evidence.

Supplement as requested in Q. 36,583.

Grey Lodge, Dundee.

Dear Sir, 24th November 1910.

I was requested by Lord Gorell at my examination on the 8th November to procure further particulars of the cost of the divorce case I cited in my proof. This I am not sorry I have not been able to do as no detailed account was rendered to the woman, but I enclose an account for divorce proceedings from another source, where the sum is less, also a letter from Mr. Charles Soutar, Deputy Procurator Fiscal in Dundee. He has served a term as Poor Roll lawyer, and I think his information may be useful to the Commission.

It may also be of use if I explain briefly the means which poor litigants have to adopt to get the benefit of the Poor's Roll. A poor litigant should apply at the office of the sheriff clerk for the name of a Poor's agent. This agent is bound to take up the case if a competent case can be stated. He obtains a certificate of poverty from the Kirk Session of the parish in which the poor litigant lives, and then employs a Poor's agent in Edinburgh to have the litigant admitted to the Poor's Roll in Edinburgh. This admission only takes place when evidence sufficient to support a competent case is submitted. The evidence is collected by the local agent and transmitted to the Edinburgh Poor's agent. The Edinburgh Poor's agent engages Poor's counsel when the case has been sufficiently advanced to be brought before the court.

I have ascertained that poor litigants frequently employ local agents who are not Poor's agents. In such cases local agents agree to accept a very modified fee, but these local agents must employ the Poor's agents in Edinburgh, otherwise the litigants could not be admitted to the Poor's Roll.

I have now ascertained that the case I cited where the expenses were 13*l.* 15*s.* was one of these—the local agent not being a Poor Agent, but charging a modified fee and employing a Poor's agent in Edinburgh.

This custom has arisen through litigants who have themselves had the benefit of the Poor's Roll taking others in a similar plight to the same agent whose term of office has, by that time, expired.

Mr. Soutar's letter may be taken as a general estimate for undefended cases. The expenses in a defended case would be much more, but these are few amongst the poor.

Trusting these particulars will be of use to the Commission.

Yours faithfully,

Jessie W. Allan.

The Hon. H. Gorell Barnes.

11, Whitehall Street, Dundee,

Dear Miss Allan, 18th November, 1910.

With reference to your call upon me when you desired me to give details of the expense of an action of divorce carried through on the Poor's Roll I think the undernoted particulars may suit your purpose.

The sum which is generally asked by agents varies from 5*l.* to 10*l.* The minimum cost of 5*l.* would be made up as follows:—

	£	*s.*	*d.*
Making copies of precognitions of pursuer and witnesses to send to Edinburgh Agent for the Poor—in all 10 sheets of 250 words each	0	15	0
Fee to messenger-at-arms for serving summons upon defender and for citing witnesses to attend court	0	10	0
Railway fares of three witnesses (Saturday fare)	0	15	0
Allowances to three witnesses for time and food, say 5*s.* each	0	15	0
Postages and incidental outlays, such as stationery and expense incurred in visiting witnesses, say	0	5	0
Payment to Edinburgh agent to cover his outlays, which would include copies of precognitions for himself and for counsel	2	0	0
	£5	0	0

In certain cases the witnesses number more than I have allowed for, and an additional outlay of from 15*s.* to 1*l.* would be required for each additional witness.

It is understood that Poor's agents must give their services free of charge, but are entitled to ask poor litigants to furnish all outlays. It is difficult to define exactly what would be covered by "outlays," but the practice is, as I have informed you, to make a general charge up to 10*l.* according to the labour involved in the case. Agents doubtless consider that they are entitled to take into account office rent, clerks' services, and stationery over and above cash actually expended, so that it is impossible to figure out exactly how the sum asked from litigants is expended. The bulk of the outlay is, of course, borne by the local agent, so that the Edinburgh agent's outlays are simply an allowance against office rent, clerks' services in furnishing copies of precognitions for counsel and for agents' own use, and in some cases the fees of a messenger-at-arms where these are not paid by the local agent.

I may add that in some cases the agent goes to Edinburgh to attend the proof, and this would add about 10*s.* more to his outlays.

I hope the above may be sufficient for your purpose.

Yours faithfully,

CHAS. SOUTAR.

Miss Allan, Grey Lodge, Wellington Street, Dundee.

	£	*s.*	*d.*
Fares of witnesses	1	9	8
Solicitor's fare and expenses	0	12	6
Photo of defender	0	2	0
Registration fee for Australia	0	1	8
Solicitor	4	3	6
	£6	9	4

The Hon. HENRY GORELL BARNES recalled and further examined.

36,585. (*Chairman.*) I believe you have communicated with the President of the Probate, Divorce and Admiralty Division with a view of obtaining through him statistics showing the marriages within the various denominations in the case of marriages dissolved by the Divorce Court?—I did

36,586. I think that instructions were given to the Registry to prepare them, and the result is that the Registry has sent you a paper showing the total number of divorces in 1907 and 1908, and the denominations which they have recorded, of the people?—Of course, as recorded in the petitions.

36,587. They are only taken from the petitions?—Yes.

36,588. It would not necessarily show the exact facts?—No, they are taken as they state them.

36,589. I just put that in. We referred to the figures the other day?—The table is as follows:—

DIVORCE STATISTICS.

1908.								1907.							
——	Church of England.	Roman Cathedral.	Denominational Protestant.	Jewish Synagogue.	Registry.	Foreign.	Total all decrees and Religious.	——	Church of England.	Roman Cathedral.	Denominational Protestant.	Jewish Synagogue.	Registry.	Foreign.	Total all decrees and Religious.
Decrees Nisi	485	9	54	17	156	2		Nisi	410	7	50	10	141	5	
Restitution and Judicial Separation.	52	2	5	2	14	2		Restitution and Judicial Separation.	41	1	4	1	15	0	
								Totals all decrees	451	8	54	11	156	5	685
Totals all decrees	537	11	.59	19	170	4	800	Totals (2 years)	988	19	133	30	326	9	1485

Adjourned.

Winchester House, St. James's Square, London, S.W.

FORTY-FIRST DAY.

Wednesday, 9th November 1910.

PRESENT:
THE RIGHT HON. LORD GORELL (*Chairman*).

The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
Sir WILLIAM ANSON, Bart., M.P.
Sir FREDERICK TREVES, Bart., G.C.V.O., C.B., LL.D. F.R.C.S.
Sir LEWIS DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).
J. E. G. DE MONTMORENCY, Esq. (*Assistant Secretary*).

Mr. ROBERT JOHN PARR called and examined.

36,590. (*Chairman.*) You are director of the National Society for the Prevention of Cruelty to Children?—Yes.

36,591. How long have you filled that capacity?—Since 1905.

36,592. Were you associated with it before that?—I was assistant secretary to the former director, the Rev. Benjamin Waugh, from 1900 to 1904, and assistant director from 1904 to 1905.

36,593. You have had a long experience?—Previous to that I was a speaker and organiser for the society, and before that again I was connected with the work of the society for many years in the country as a member of a local committee.

36,594. You may be taken to represent very fully the experience you have had of the prevention of cruelty to children, and that bears a good deal on the subject under consideration?—Yes.

36,595. Your society is incorporated by Royal Charter which was granted in 1895, and its area extends over England, Ireland, and Wales?—Yes, that is so.

36,596. Not Scotland?—No, they have a separate society.

36,597. During the year ending March 31st, 1905, the society's inspectors inquired into 49,792 cases of cruelty to children?—They did. May I add this statement was prepared some months ago. I should like to put in the figures for 1910 now available. There were 52,670 cases in that year.

36,598. You wish them to be included in these cases. Was the result to show there was a very large number of cases in which there was in fact cruelty to children?—Only 3 per cent. were found to be reported without reason. Only 3·5 per cent. of the cases are dropped.

36,599. What happens to the rest—prosecutions?—No. In 1909 out of 49,792 cases we prosecuted 2,399 only; in 1910 out of the 52,670 cases our prosecutions were 2,466 only.

36,600. What was the result of your prosecutions, broadly speaking, convictions?—Taking the figures for 1910, the prosecutions were 2,466 and the convictions 2,397. The proportion of convictions to prosecutions is a trifle over 97 per cent.

36,601. What happened to that mass of cases beyond those that were prosecuted?—Those were successfully warned by our 250 inspectors, warning followed by frequent visits with supervision, giving friendly advice and persuasion to parents to perform their duties.

36,602. Are there any other figures worth mentioning?—I think that covers the main facts.

36,603. They are very interesting figures indeed. You say in the next paragraph that during the year ending 31st March 1909, 2,399 cases were sufficiently grave to warrant the prosecution of one or both parents?—That is so.

36,604. In the next paragraph, having pointed out your interests are primarily concerned with the children, yet you cannot but be impressed with the large amount of domestic unhappiness existing in the homes where children are neglected or illtreated; therefore you come into contact with the general social conditions of these people?—We do.

36,605. Perhaps you would kindly read your proof from there, and then I will ask you about it?—Though it is true that the society deals with an abnormal condition of affairs, I believe that few people have any real idea of the misery caused to children by the unhappy relations existing between parents. The society is frequently asked to assist in securing judicial separations.

36,606. Has the society been asked through its inspectors as to divorce?—Yes, incidentally, but not to a very great extent, because it is generally known amongst the class of people with whom our inspectors work that there is no opportunity for divorce at present.

36,607. They know about the magistrates' powers, and therefore they ask for judicial separation?—They do.

36,608. To what extent have you had knowledge of applications in which divorce has been suggested?—I should say in not a very large number of cases.

36,609. For the reason you have given?—Yes. The first, and indeed the only consideration under such circumstances, is whether a separation would be for the benefit of the children, and it is only under such conditions that the society's assistance is given. I may say we are not concerned in matrimonial disputes as such. The business of the officer is not to act as peacemaker between husband and wife so much as to secure for the children of the home proper treatment at the hands of the parents. Taking one year, 1907, I find in 73 cases the society has advised or helped with regard to obtaining separation orders, or enforcing maintenance orders under the Summary Jurisdiction (Married Women) Act, 1895, and the Licensing Act, 1902. That is an average year. There would have been a large number of cases in the same period in which for the same reason it was considered inexpedient to render such help. I may say that the total number of 73 cases in which we advised or helped by no means cover the whole number of applications received. A very large number of suggestions are made to individual inspectors by people whose houses they visit, that they should be assisted, but we have a system whereby the local inspector cannot advise. All advice as to prosecution, or judicial separation, is given from our Law Department in London, and from the whole of England, Ireland, and Wales the inspectors send their

reports to the central office, and we decide there as to what action shall be taken.

36,610. Apparently, being most interested in the children, you only take up a few cases of helping to separate?—That is so.

36,611. You give six cases in which there has been assistance by the society in getting their separation orders?—Yes. Those cases are as follows:—

"Pontypridd, 2740, Dec. 1909.—A. G. W. is the wife of a man, a surveyor. She is of the middle class, and well brought up. The man is a waster, who did no work for three years. He drank heavily and gambled. Illtreated his wife. The furniture was sold piecemeal. The family were living in an empty cottage when the society intervened, and were dependent on food given by maternal grandmother and neighbours. The woman is an excellent mother."

"E. Cheshire, 1433, May 1909.—S. R. is the wife of a coal miner. The man is of drunken habits, most of his earnings being spent on drink. He illused his wife, threatened the children, using most disgusting and violent language to them. His wife went in fear of serious injury. She is a hard working and most respectable woman."

"Cheltenham, 1154, Jan. 1909.—F. W. is an excellent mother. Her husband is a saw setter and grinder, who did practically nothing to support his wife and two young children. He drinks to excess, brutally illtreated his wife, who, with her children, was more than half starved. She had to obtain police protection more than once."

"Doncaster, 1947, March 1909.—L. B., the wife of a filler at a coal pit, with two children. She was 19 years old and her husband 22. The eldest child was born three weeks before marriage. The wife and children were literally starving. The man rarely worked but when he did his money was spent in drink and gambling. His mother fed him and encouraged him to illtreat his wife."

"Barnsley, 1958, April 1909.—A. H., the wife of a miner. The man is lazy, and loses the greater part of what he earns in gambling. His wife had to sell the furniture to buy food for her three young children. If the man was not provided with food he would illtreat his wife."

"Bradford, 2111, October 1909.—M. C., the wife of a comb minder, with three children. Having been imprisoned for two months for assaulting his wife, he left her without means and did nothing to support his children. There is a long list of convictions against him, one of six months for an aggravated assault. His wife stood in fear of him."

36,612. Now we come to paragraph 12?—I believe that the present system of separation without complete freedom is cruel and conduces to immorality.

36,613. I would like you to give the grounds upon which you state that?—In the specimen cases that follow later on, particularly with regard to insanity that we shall reach presently, we find that a man separated from his wife, or a woman separated from her husband, almost invariably enters into cohabitation with some other person. It frequently happens that, as the result,—I will go further, and say it invariably happens as the result of that cohabitation children are born, and we have frequently found that when a woman is separated from her husband, or the husband from the wife, certain children of the marriage being taken to live with either of the people who have separated, and other children being born, the difficulty that invariably arises with two families is the reason of our being called in. The children of the marriage are neglected, while the children of the illicit union are cared for by both parents, and it is my experience that as at present arranged these separations, in so far as our own experience goes—I can say nothing of those outside—in which we have intervened to save the children, the great tendency is towards immorality —illicit unions, I would say.

36,614. Do you represent that as extensive or confined to solitary cases?—The whole of this evidence, I think, must be relative, because I am bound to say that, speaking of the poor generally as a class, they are particularly moral. That is my experience. In all I say with reference to these cases I must tie myself down to the former statement, that we are dealing with an abnormal condition of affairs.

36,615. I mean extensive having regard to the cases in which you intervened; that is all?—Yes, certainly that.

36,616. Then will you proceed to paragraph 13?—I am strongly of opinion that increased facilities for divorce should be given to poor people who can prove (*a*) continued drunkenness, (*b*) insanity, (*c*) brutality, (*d*) incest.

36,617. Your view would be that then there would be the freedom to contract a lawful union?—Yes.

36,618. And you would not have these mixed families?—Yes, and, indeed, that the conditions of home life for the children would be, so far as we could make them, normal. Our idea of reform, so far as the condition of the children is concerned, is that the reform should take place in the homes where the children live. As a society we are entirely against the State interference for the removal of the child, believing that the proper place for the child is in the home of its parents. Our experience, as you will see by the figures, in successfully warning such a large number of delinquent parents is an indication of the fact that with proper treatment that end is secured. May I add this. Each case of cuelty or neglect is treated more as a case of disease than as a crime. Each case dealt with by individual inspectors is treated very much in the same way as a case would be treated in hospital by a doctor. No two cases are alike: no one remedy will apply to two separate cases. In all these matters in dealing with the individual cases of cruelty and neglect the only possible chance of safeguarding the interest of the children is to give freedom to the aggrieved party, either in drunkenness, insanity, brutality or incest, the moral condition of the home being usually bad, and the mental condition of the children or child being jeopardised by the naturally bad results, and defects of home life.

36,619. I think we fully appreciate your point. Then you deal with these individually?—With reference to drunkenness, the society has had great experience in the working of the Inebriates Act, 1898, especially with regard to placing women in inebriate reformatories. Since 1898 the society has been the means of committing 350 people, mostly women, to such reformatories out of a total number of 443 persons so committed.

36,620. That figure of 443 is the total for the country?—Yes. Out of that number 350 have been committed at the instance of the society. Your Lordship will remember under the section 1. of the Inebriates Act any person who is charged with an offence of cruelty or neglect, if it can be shown that the cruelty or neglect is caused by drink, instead of being fined or sent to prison, can be committed to quarter sessions and be there tried as an inebriate, and the offence of cruelty can be dealt with by committing the person to an inebriate reformatory for a period not exceeding three years.

36,621. I think that is the Act of 1898?—Yes. In many cases reformatory treatment has been successful in effecting a cure, a low estimate being 44 per cent. There are a number of cases coming under the description of continued drunkenness where great hardships have arisen, especially to children, because of the inability of a parent to obtain divorce.

36,622. You say there is a number. Can you give any notion of what that means?—I am afraid I could not give you actual figures, but I can tell you that the effect on my mind of constantly having to consider cases of prosecution, over a number of years, for cases of difficulty are brought to me direct, leads me to say that where the husband or wife is an habitual drunkard the moral conditions are such that it would be to the advantage of either the husband or the wife to obtain freedom for the sake of the children. You will notice that one or two specimen cases are very striking as illustrating that particularly. Without taking the whole of them, I may call attention to the specimen case on the top of page 8.

"C.O., 57,688, Oct. 1905.—M. J. P. A drunkard for 9 years, husband a greengrocer with a good business. The children were grossly neglected. When in drink the woman was violent and of dirty habits, There had been two separations. Afterwards the woman was sent to an inebriate reformatory for three years. On her return home she relapsed; her habits were disgusting. She would sometimes walk into the shop quite naked, with filth all over her."

36,623. Your point is that the husband having such a state of things at home, in the interest of the children, should be allowed absolute freedom—the case is practically hopeless?—That is so. That is not an unusual case, two separations and three years in the inebriate reformatory.

36,624. Two separations against her for drunkenness?—Yes, in the court of petty sessions. If I may go back for one moment to the further fact, just to state it, the cures in the cases treated in the inebriate reformatories are about 44 per cent. There remain these cases outside indicated by this specimen, and that is one of a very large number that could be supplied. These are the failures in which one seeks relief for the benefit of the children.

36,625. They come out at the end of the three years and revert to the old conditions?—Yes, they break out again. This is another case:—

"Sydenham, 1352, July 1903.—M. J. M., a drunkard for several years. Separated from her husband, people of the middle class. She had been in an inebriate reformatory for two years. The man attributes the idiocy of their son to his wife's misconduct, and has a great hatred of her."

In such cases I think divorce should be possible.

36,626. Before we leave that, because this is a very important question, would your view be, after your experience, that divorce in these cases would tend to the morality of the country, or tend to a variation of the standard of marriage?—From my experience of this class of case I should say, with conviction and without hesitation, that it would tend to increased morality, and would create a different feeling in regard to marriage on the part of people, not only those who receive freedom from it, but on the part of their neighbours. I think the existing condition of things—I will not say "I think," I am sure from my experience of individual cases that the existing condition of things contributes very largely to the low standard of feeling and thought in relation to marriage generally, particularly in streets and districts where people of this kind live.

36,627. Now we pass to paragraph 20?—Then there are the cases of insanity where relief should be obtainable. Here are three typical cases:—

"C.O. 83,407, Feb. 1910.—S. cohabits with a man, her husband being helplessly insane and in an asylum for ten years. There are two children of the marriage and one of the illicit union."

"C.O. 83,611, Feb. 1910.—M. Husband in an asylum, said to be a hopeless case. The woman works, receives parish relief, and some help from children."

"C.O. 83,608, Feb. 1910.—J. Wife in an asylum. No probability of her release. The man is cohabiting with a widow."

In each of those cases there has been no prosecution, but we were called in because of what I said just now. Some of the children were being improperly treated, and in each case we found a warning by the officer was sufficient. The inspector warned in each case, and on following that up with supervision we found that the children of the marriage were being properly treated, as well treated as the children of the illicit union. Warning had the desired effect.

36,628. The two typical cases resulted in an illicit union because the other party to the marriage is confined hopelessly in an asylum?—Yes. I have found only one or two exceptions where we have dealt with cases where one or other of the parties is confined in an asylum. It is very rarely found that the person living at home has kept free from such an illicit union.

36,629. Can you give any notion of the extent to which those cases have been brought before you? You say they are typical cases?—It is very difficult to speak in scores or hundreds, but in relation to the cases generally they are not a large proportion. The cases of insanity are not large in proportion to the general number of cases. I should not like it taken, as we had 52,670 cases last year, that a large number related to people who were in asylums.

36,630. Are there enough, in your view, without getting exact figures, to justify an intervention on the ground that there is a substantial case?—I should say so, certainly. I considered that very carefully before putting it in my notes, and it occurred to me that the condition of things was such, and the proportion of cases such, that one was warranted in including that as a real reason.

36,631. Then paragraph 21?—Though drunkenness is often accompanied by brutality, there are exceptions, and I suggest that, whether the result of drink or without it, long continued brutality should be a reason for divorce.

36,632. Again you give illustrations?—Yes. They are as follows:—

"C.O. 81,359, Feb. 1910.—A. P. Husband an engraver, drinks heavily, and uses disgusting language, quarrels with and illtreats his wife, and has illtreated their boy, 6 years old; this boy is terrorised by his father. The woman wishes to leave her husband, as she fears for her life, but he follows her."

"West Ham, February 1910.—F. After several years of marriage these people could not agree, there were frequent quarrels, and eventually a separation with maintenance order. The man did not keep up his payments and went to live with another woman. To nullify the order, after promise of amendment he persuaded his wife to take him back. He stayed with his wife less than a week, illtreated her twice with violence, and then returned to the other woman. The wife has a hard struggle to maintain herself and two children, and would be only too glad to get a divorce."

"West Ham, February 1910.—L. After several years of married life husband and wife quarrelled frequently and fought. There was a separation order with maintenance, but no payment was made. The man went to live with a woman separated from her husband. She has three children. The woman took her five children and is cohabiting with a man living apart from his wife; he has four children."

It is necessary to observe here that the cases quoted as illustrations under each head are types of many others, full particulars of which can be supplied if necessary.

36,633. Before we pass from the last head, I should like to ask whether you have found—because I see there is one illustration, the last one—that brutality also leads to illicit unions?—Very often.

36,634. How is that?—The wife illtreated by the husband leaves him, and often without a separation. She is practically thrown ont of her house. There are one or two cases that illustrate that in the specimens I have given. The wife beaten by the husband goes off and lives with another man: she takes the children of the marriage. Again there are children as the result of cohabitation, and that is the cause of our being called in.

36,635. Have you had any experience of the operation of separation orders granted by the magistrates?—Yes.

36,636. To what extent have they contributed to illicit unions?—To such an extent that I recommend a little further on that such separations should be terminable at the end of 12 months.

36,637. I am so anxious to omit nothing, that perhaps I am anticipating?—I submit that, apart from the question of immorality resulting from the promiscuous association of these people, there are grave questions arising out of the physical and mental sufferings of the children and the unhappy influences surrounding their lives, particularly relating to these cases of brutality. I have known many cases where children, quite small children, have got up in the middle of the night and have been found by our inspectors in the streets terrified as the result of brutality inflicted by the husband on the wife. They have been taken in by kindly neighbours, sometimes taken to our local inspectors' houses and there sheltered, frequently in a state of terror, and in one or two cases the children

have been so neglected that they have been removed from their parents under custody orders, and have been transferred to my legal custody. I have found difficulty in getting them placed in homes because of their mental condition. My fear is, in this connection, that part of the insanity we have to deal with may be traced—I am not a doctor—to this state of terror in which the children live for so many years at the most impressionable time of their life. It is mainly in the interest of these children my recommendations are made. There remains one other subject to be specially referred to, that of incest; for though the actual physical results to children cannot be classed in the same order as those arising from drunkenness or brutality, the moral danger is great. May I put in here the number of incest cases we have had I was not able to obtain them at the time of writing my notes. It occurs to me to be important. Your Lordship will remember that the Punishment of Incest Act came into force on the 1st January 1908, and under that Act proceedings are ordered to be taken by the Attorney-General or the Director of Public Prosecutions. In practice the Attorney-General has not intervened, but the Director of Public Prosecutions has ordered such prosecutions as have taken place. We have as a society been working in co-operation with the Director of Public Prosecutions, and at his request all such cases as we discover have been handed on to him without our making any inquiry into it, and I find that from the 1st January 1909 to the 12th August——

36,638. I thought you said it came into operation on the 1st January 1908?—Yes, but we had no arrangement with the Director of Public Prosecutions till 1909. From the 1st January 1909 to the 12th August 1910 we reported 68 cases of incest to him.

36,639. Always with children?—All these with children, the object of our being called in of course being that the case was of a child under 16 years of age. Of that total, proceedings were taken in 22 cases. In 46 cases no action was taken, the difficulty of corroboration being a very practical difficulty in such cases. As your Lordship will see from the specimen cases, it so often happens the man terrorises the child by threatening to murder it if any tale is told, and therefore it is most difficult to obtain corroboration of the actual offence. Two cases are still awaiting trial at the Assizes.

36,640. Of the 22 how many were convicted?—All save one. I put in this fact for what it is worth, it is indicative of the gravity of the offence, in these 22 cases in which there was prosecution, 41½ years imprisonment were inflicted by the judges.

36,641. On the total cases?—Yes. I think perhaps one of the worst, if I may give the result of that without troubling you with the details of it, because you have them in the specimens, occurred at Bristol, in which the Commissioner, Mr. W. E. Harrison, K.C., sentenced a man to 15 years' penal servitude for a gross offence against his little girl of 10 years.

36,642. Will you tell me again the dates—January 1st, 1909, till when?—From the 1st January 1909 to the 12th August 1910, there were 68 cases reported. If I may I will hand in this paper.

Incest Cases.

From 1*st January to* 31*st December* 1909.

Reported to Public Prosecutor.	No Action taken.	Action taken.
18	11	7

From 1*st January to* 12*th August* 1910.

Reported to Public Prosecutor.	No Action taken.	Action taken.	Convicted.	Dismissed.
50	35	15*	12	1

* Two cases are awaiting trial at Assizes.

From 12*th August to* 31*st October* 1910.

Nine cases reported to the police (not known if any proceedings taken).

36,643. For the year 1909 only 18 cases were reported to the Public Prosecutor, whereas from the 1st January to the 12th August of this year 50 cases were reported. Why is it for this shorter period there are so many more cases?—The greater knowledge of the existence of the law. We find that in all new legislation. It takes two or three years before people get to know what can be done under the Act, and in addition to that there is a difficulty until the public know that your method of enforcing the law is reasonable; they hesitate before reporting cases to you. When they find you can deal effectively with a certain class of case they are much more ready to report it to you. I ascribe the increase very largely to the growth of public confidence in the efficiency of the Incest Act to deal with these terrible cases.

36,644. From the 12th August to the 31st October, nine cases are reported, but it is not time yet to know what is the result?—No: they are at present in the hands of the Public Prosecutor.

36,645. We shall probably not complete our labours for a good many months yet. Would you mind sending us at the end of June next a complete report for this year and up to then?—I shall be happy to do that.

36,646. A schedule in addition to this one?—Yes.

36,647. Then will you proceed with paragraph 26?—The society has had considerable experience with this class of offence, and has found that many women who are poor and who suffer from great mental cruelty desire the same privilege as would be granted to them if they had means, the opportunity of applying for a divorce.

36,648. Then you instance some of the cases?—Yes.

"Peterborough, 1854, June 1909.—A labourer had regular sexual intercourse for four years with a daughter now aged 15 years; he also similarly abused a daughter aged fourteen. The mother's intervention was prevented by threats of violence."

"Bristol 2012, Nov. 1909.—A labourer criminally assaulted his daughter aged 10 years. He took prostitutes home and misconducted himself in the presence of his wife. On one occasion he brought a man home to assault his wife, and held the door to prevent her escape."

"Westminster, 555, March 1907.—A police pensioner from Metropolitan Police had for four years regularly abused his daughter, now aged 16 years. The girl and her mother, who knew what was going on, were in fear of their lives."

"Rochester, 2693, Nov. 1909.—A labourer for three years had occasional intercourse with his daughter, now aged 16 years, and similarly abused a daughter now aged 13. Wife ignorant; girls were bound to secrecy under threats of murder."

"Newport, 4042, Feb. 1910.—A collier has a daughter aged 11 years whom he has abused occasionally for some time past. Threatened her with vengeance if she told her mother."

"Grimsby, 2868, Feb. 1910.—A labourer has a daughter now nearly 18 years whom he has been in the habit of assaulting since she left school, and for some time before. By threats he induced her to keep the matter secret until recently. The mother was ignorant of the misconduct."

I could give you a brief statement of the whole of the cases that we have reported to the Director of Public Prosecutions. It is a terrible record, but it is of great importance in this connection. With very little difficulty I could give you a return of them all.

36,649. If you would kindly send us that we should be obliged?—Just in brief form as you have the specimen cases, and giving the result in each case.

36,650. The law at present would allow of those people getting a divorce, because it admits of divorce on the ground of incestuous adultery?—Yes.

36,651. This is directed, not to the ground, but to the means, which are excessive and not within their

reach ?—Yes, the prohibitive cost. Where convictions are obtained under the Punishment of Incest Act, 1908, I would suggest that divorce be obtainable by the wife of a man so convicted.

36,652. That is why I asked you the question. It is obtainable, but not practically obtainable ?—Yes. To be of any service to the people with whom the society has to deal, divorce must be made cheaper. I would put in a case, if I might, from the "Manchester Evening Chronicle," one of these typical cases where a man had a wife who was practically incorrigible, and had two or three separations, and was advised by the justices' clerk to obtain a divorce, but it was pointed out in court that a divorce would cost 30*l.*, which was quite prohibitive. That is a typical case and advances my argument. If I may put that in it would perhaps cover that matter.

36,653. I do not think you need put that in; we have had the question of cost so fully before us that we thoroughly realise it ?—In my opinion power might well be given to county court judges, or might equally well be conferred upon the courts of summary jurisdiction throughout the country, where stipendiary magistrates sit. Where, owing to the poverty of the applicant, there is a difficulty in securing legal aid, I would recommend that aid be provided at the instance of the court. May I say in connection with that that our experience with applications for judicial separation is that the woman, who is invariably the applicant, is in such a condition of poverty that she cannot make her own application, and our intervention on her behalf and in the interest of the children is really to provide legal aid. We instruct our solicitor to make the application on her behalf, feeling sure that it will be better for her that she should obtain a judicial separation.

36,654. Apart from your aid, how do you suggest, as a practical matter, she should act ?—If jurisdiction were given to the local County Court, the registrar, I would recommend, should have power to provide legal assistance, or if to a stipendiary, the clerk to the court might be applied to, and if the stipendiary agreed that legal assistance should be given, something in the same way as it is now given to poor prisoners in the higher court.

36,655. You would apply that both to separation cases before the magistrates and to divorce cases ?—I have not thought of it in connection with separations, more particularly with regard to divorce. So far as I can see now there is no great hardship with regard to separations as to cost; separations are usually dealt with quickly, and it is a question of one guinea in all probability. I fear legal aid in questions of divorce, even if divorce is made cheaper, would involve a greater expense than that.

36,656. You think they can get relief so far as the applications to magistrates are concerned ?—Yes. If children are concerned the Society will help. There are local philanthropic agencies in most towns, and rescue societies to help poor women in such need, who might provide legal aid. I am afraid, if it came to asking them to provide more than a guinea, their funds would not stand it.

36,657. Have you been present at many of the separation cases ?—Not personally.

36,658. Do you know from the reports of your officers or other experience as to whether the separation cases are satisfactorily dealt with ?—Yes; each officer sends a report daily to me on any case in which he has appeared in any part of the country, and if anything happens out of the ordinary way he is instructed to report that. I do not remember throughout my experience having any comment made as to any suggestion that could be made with regard to separation orders. Speaking broadly, the Justices are most sympathetic to these poor women, and render facilities for relief of this kind, if you can establish your case and show in the interests of the children it should be granted.

36,659. Do you find, or not, that they are too sympathetic ?—I would not say that.

36,660. Will you proceed with your proof ?—In each case a short report should be made to one of the Registrars of the Divorce Court for confirmation. Any question in dispute might be referred to one of the Registrars of the Divorce Court, or, if necessary, to the President, and power might be given to the Court appointed to refer to the Divorce Court for direction on any matter of difficulty which might arise. Power should be retained to grant separation orders, but these should, in my judgment, only be regarded as tentative. The period for which a separation order is granted should not exceed 12 months, and at the end of that time it should be open to either of the parties to apply for a dissolution of marriage.

36,661. Do you regard the magistrates' jurisdiction as disciplinary and properly confined to that ?—Yes. I am going back to a point I tried to make just now in dealing with a case, showing the treatment of it. Where separation is a part of that treatment, we still follow the home and look after the children, care for the mother, sometimes pay the rent, tide her over a difficulty, and still continue, as far as we are able, to exercise some restriction over the delinquent husband, finding him work if he will take it, and treating him practically as a man who wants assistance. To that end I think it would be of enormous advantage if the man knew, when a separation was granted, that he would be compelled to attend in 12 months before the same Court and give an account of himself. For men of that type it would be an excellent discipline. As it is, they seem to think they have thrown off all the responsibility. An order for maintenance is frequently made which is not complied with, and most of the trouble arises from that fact. The woman without means goes to live with another man.

36,662. Whatever form it takes, you think that the magistrates' powers as such should be exercised as a treatment, and, if found unsuccessful, allow the application for complete separation to be made in a proper court for that purpose ?—Yes. The Court should consider the question of the future of children and have power to make reasonable provision for their maintenance, the wishes of both parties being taken into consideration, except where it was found that a parent had disentitled himself to any voice in their future. I was thinking in that last sentence of cases of incest, where the man has obviously robbed himself of his right to say anything about the future of his children. It is my experience that Separation Orders as granted at present are of no benefit: they break up the home, leaving neither husband nor wife in an independent position, while children are often left unprovided for and deprived of their legitimate protectors.

36,663. You mean granted in the form of permanent separation, instead of being of a temporary character ?—Yes. I am of opinion that increased facilities for divorce as advocated here would not materially lessen the power of the marriage tie. On the contrary, I am inclined to think that the marriage bond would be strengthened, for if either party to the union knew that divorce proceedings could be taken there would be a restraining influence on both.

Nor do I believe that by making relief as wide as possible it would interfere with the conscientious opinions of those who regard marriage as a sacrament.

The publication of reports of divorce proceedings should be forbidden. They are injurious to young people, by lowering the ideals of life, and by throwing a glamour of publicity on indecency. In reference to that, I should like to say I have had frequent reports from honorary workers of the Society. We have a very large body of lady workers, 15,000 throughout the whole of England, Ireland, and Wales, who are concerned in distributing literature giving information as to how cases can be reported, and to mothers who are ignorant as to how to bring up their babies, and I frequently obtain reports from them, particularly in certain districts—I will not particularise the districts—where young girls leaving work at mills buy up copies of the evening papers and read the details of police court cases, which are the subject of conversation in the works for the whole of the next few days, much to their disadvantage, it is said.

36,664. Have those reports been frequently made to you?—I should say that in connection with most of the cases that have attained great publicity. Some such remark as that has been made by one or other of our workers in different parts of the country. The strange thing about it is that it is not confined to any one part. I have had the same thing said over a period of several years from almost every part of the country, and suggestions made that we should refer to the matter in our monthly paper and call attention to the fact. We have not done so because I knew of the sitting of the Commission, but it is a matter that is causing grave anxiety to people who are interested. I am not now referring to the ordinary social worker, the paid worker, but to the voluntary worker who gives up time and devotes a good deal of time to improving the conditions of the poor, and especially workers in Girls' Clubs.

36,665. You have had experience of the Children's Court under the recent Act?—Yes.

36,666. Would your view be that marriage disputes should be heard in the same way?—Yes. I would suggest that the same power be given to the Judge as is given by statute under the Children Act, to exclude from the court any persons when a charge is being enquired into in which the morality of a young girl is concerned. It is Section 114 of the Children Act—power to clear the court.

36,667. You would apply that to separation orders and divorce cases?—Yes. Finally, I say it is not desirable from the standpoint of national well-being that men and women should lead lives of perpetual irritation or martyrdom, and it is not to the advantage of the children who will form the next generation.

(*Chairman.*) I ought to thank you for your very instructive paper; it is a most valuable one.

36,668. (*Mr. Spender.*) May I ask you to expand a little what you said in paragraph 40 about the Press and the publication of divorce proceedings. You say in your proof that the publication of divorce proceedings should be forbidden. In your illustration and your answer to the Chairman you extended that to police court cases. You said you had reports that the young people were corrupted by reading reports of police court cases?—I should not wish to convey that. If I was taken to say I would put the same restriction on separations I should like to qualify that. I do not think there is any great difficulty in having those reported, because as a rule there are no details. It is generally conveyed in a brief paragraph; the proceedings are usually taken early in the court, or after other business has been completed, and it is generally confined to a small paragraph. I was thinking more of the occurrence of taking divorce cases in any other court than the High Court, and the same provision should apply then.

36,669. You would agree that a large part of these reports which have this effect are not merely divorce court reports but are police court reports raising sexual issues and containing indecent details?—That is so.

36,670. Consequently, if we closed the divorce court we should only touch the fringe?—I should hope the influence would be extended and eventually we might improve the condition of affairs.

36,671. You hope for some kind of rule which would apply to all sexual and indecent cases, whether divorce court, police court cases, or criminal cases raising an issue of indecency?—Yes.

36,672. Have you any idea how that could be managed? You suggest only the interference of the judge or the magistrate in a particular case?—I am bound to say the great hope I have is that the proprietors and managers of papers themselves will help us, as they are constantly helping in all these ways. When it is brought before them, I believe they will themselves render the greatest assistance to us.

36,673. I agree with you in hoping that, but in all professions there are certain persons who, if the particular trade is very lucrative, are likely to pursue it apart from public opinion. We are considering what possible restraint in law we could get at. Do you rely on the action of the magistrate or the judge in the particular case, or would you try to form a rule to cover the whole ground?—Provided we could have a similar provision as exists in the Children Act.

36,674. That is, the power of hearing *in camera*?—Yes.

36,675. (*Chairman.*) Would you read the section?—Yes. Section 114 is: "In addition and without prejudice to any powers which a Court may possess to hear proceedings in camera the Court may, where a person who, in the opinion of the Court, is a child or young person is called as a witness in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, direct that all or any persons, not being members or officers of the court or parties to the case, their counsel or solicitors, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of the child or young person: provided that nothing in this section shall authorise the exclusion of *bonâ fide* representatives of a newspaper or news agency. This last sentence is the unfortunate addendum which so often happens in Acts of Parliament, and which bothers us who are trying to deal with these things.

36,676. (*Mr. Spender.*) While the representatives of the Press are present, the magistrate in that case asks them not to report the case, and that is final?—That is so.

36,677. Your suggestion is that it should be left to the discretion of the magistrate or the judge in a particular case to apply that section, and that it should be extended to all cases where it is a sexual issue or indecency, that that discretion should be given to the judge or magistrate in all cases?—And I think also that a circular from the Home Office to the clerks of the justices calling attention to such a provision to be used in certain cases would in all probability strengthen the hands of the justices and stipendiaries.

36,678. How far is it within the power of the magistrate at the present time to clear the court on his own initiative, without that extra section at all?—I think Mr. Brierley could tell us better than I can.

(*Mr. Brierley.*) We have no power.

36,679. (*Mr. Spender.*) There are cases a magistrate can hear *in camera*?—I know of no other provisions save this which is contained in the Children Act. We rather looked upon that as a great step forward.

(*Chairman.*) I do not think it ought to be taken that the magistrates in the theory of the law have no power: you will find plenty of expressions in the debates on the Bills about publication, by some of the most learned lawyers in the House, that they have an inherent power in the interests of decency, and also if they find that a witness is oppressed by the publicity and cannot give evidence in the interests of justice, but those are only *dicta*.

(*Mr. Spender.*) It is not in the name of public decency. That is in pursuance of justice.

(*Chairman.*) In both instances, but they are only *dicta*; there is no Act about it.

36,680. (*Mr. Spender.*) Your view is that you would extend these provisions for decency to all cases, not divorce cases only, but separation cases and all police court cases, the reports of which might have a corrupting influence?—Yes.

36,681. You would not make a positive rule, but leave it to the discretion of the judge or magistrate in the particular case?—Yes.

36,682. You would look forward to the practical effect of that being the closing of the courts?—For deleting from the newspapers references to evidence affecting the sexual relations of people.

36,683. Would you see no possible dangers in the loss of a deterrent, in the case of a man who deserves to be disgraced publicly, or a woman?—I think any possible advantage that might follow from that is overwhelmed by the great disadvantages to the young people whose ideas of life are corrupted by what they hear.

36,684. Taking the experience of your Society, you would say, would you not, that the publicity given by the newspapers to the class of cases your Society is

interested in has been a great help in stirring public opinion?—Most decidedly.

36,685. Then you somehow have to balance that, because if we shut up all the courts the advertisement your Society gets out of these cases in its efforts made on behalf of the children would go, and it would lose the public interest which is always aroused when these cases are reported, and especially so with your Society?—In that connection, may I say, owing to the system I have already described to his Lordship of governing the whole of the prosecutions from a great central authority, instead of dealing with them locally, whenever there are details in a report that appear to me in the exercise of my discretion to be unfit for publication, the letter of instructions to the local solicitor who appears for us will contain an intimation that he should ask that that part of the evidence should not be public, and he makes a request to the representatives of the local papers that that does not appear.

36,686. I follow that?—I would strike a line between the actual indecent cases with which we are mostly concerned, in which we prosecute, and cases of gross brutality or long-continued neglect, the details of which, sordid though they may be, are not corruptive.

36,687. We get to the point that we have to draw a line so as, if possible, not to entirely close these courts, but to keep alive the public interest in your part of the work, and at the same time follow if we could in practice what you do privately in your Society, to prevent the publication of the indecent details?—If you please.

36,888. That is a slightly different thing from what you say here, that the publication of proceedings should be forbidden?—I had this provision in my mind really when drafting this note. It is quite a piece of modern legislation, and I am afraid I had that in my mind. I am quite prepared to soften the word "forbidden" down to such limits as are suggested in the question.

36,689. May I ask you one question arising out of paragraph 28. From reading that, the conclusion I draw, I am not certain whether it is your conclusion, is that a conviction on that ground should *ipso facto* entitle a wife to a divorce?—Yes.

36,690. Is that your view?—Yes.

36,691. And say on the trial, supposing the wife presented her case at the prosecution of the husband, would you make divorce in those cases follow?—It was in my mind that power should be given to the judge hearing a case of incest to grant a divorce to the wife on her application there.

36,692. That is the point I wished to get at. In regard to your suggestion that the man should appear again at the end of 12 months, have you thought of any means of enforcing that if the man should disappear or pass out of the jurisdiction? We have had considerable evidence about that, that it was extremely difficult and costly to bring a man back within the jurisdiction again?—I do not think it would be costly in the great majority of cases. The only case I can think of where there has been expense in bringing back a man on a magistrate's warrant, is the case of a man who was charged at Liverpool and had to be brought back from Ireland, which, after all, was not very great.

36,693. We have had several cases suggesting that. You do not think, if you said definitely within 12 months for the worst class of offenders, that would be an incentive to vanish out of the district just before the 12 months were up?—No. My feeling is strengthened by the experience I have had in the working of the Probation of Offenders Act. The suggestion is practically to put a man on probation for 12 months, although I would not put that under the terms of the Act. Reverting to the idea that a case is to be treated, the exercise of certain influences on that man might in the meantime conduce to his resuming proper relations with his wife and doing his duty.

36,694. On the whole you think that is more likely to be the result in most cases than that the bad ones should attempt to disappear to avoid the trial?—Yes. If a man knew he would be called upon to come up at the end of 12 months there would be restraining influences on him, and our officers could exercise those influences in the right direction.

36,695. Has your Society advised clients to undertake suits for divorce in the High Court, or assisted them in that way?—We have only given assistance through allowing the inspector to appear and give evidence. We have, I should say, in half a dozen cases during the last 5 years allowed our inspectors to appear and give evidence of what they have found while visiting houses, in order that one or other of the persons might secure a divorce.

36,696. You do not provide funds or assist people?—No.

36,697. Practically you would say that divorce as it stands in the High Court is out of the reach of the great mass?—Quite; for the class of person whom we deal with, certainly.

36,698. (*Sir Frederick Treves.*) Your Society penetrates into all parts of the country?—Yes.

36,699. How many inspectors have you got?—250.

36,700. In addition to that there is a large number of voluntary workers?—Yes.

36,701. Amounting to thousands?—There are about 15,000 ladies who are engaged in circulating literature by which we get our cases. I ought to explain the inspectors do not discover cases. They enquire into the cases that are reported to them, and the cases are reported as the result of the labours of the ladies who circulate literature, giving the address of a person to whom complaint can be made.

36,702. Your Society has the fullest opportunity of becoming acquainted with the married life of the poor?—Yes.

36,703. To an exceptional degree?—Yes.

36,704. Is the general drift of your evidence that you regard the children as a great moral influence in maintaining the family tie?—Yes.

36,705. You would put that almost more strongly?—I should say it is essential to the happiness of home life that the interests of the children should be paramount.

36,706. In any divorce laws the case of the children ought to be specially considered?—Most decidedly.

36,707. From that point of view?—Yes.

36,708. As almost outside the actual child itself?—Yes. The only reason I have in advocating certain facilities in divorce is to secure proper treatment for the child and better influence for it, the existing conditions being inimical either to its moral or physical health.

36,709. With regard to continued drunkenness you consider that divorce is a better means of dealing with that than separation?—In such cases as these referred to, where there has been prolonged detention. We have had some extraordinary cures, I am bound to admit that. The longer period of detention the more chance of success we find.

36,710. In the case of drunkenness would you suggest that separation should precede divorce?—Yes, for the 12 months.

36,711. That is to say, it would not be a ground for divorce *per se*; separation would come first?—Yes.

36,712. And if the individual proved to be hopeless, then divorce?—Unless you had such a case as that quoted in the paper, which is typical of a great many, where the person has been a hopeless inebriate over a period of years. I could not suggest the period of years; it would be for wiser heads than mine, but in such a case quoted as the two separations and three years in an inebriate reformatory, I think the person should be entitled to divorce outright instead of separation first.

36,713. Have you been able to define "habitual" or "continued drunkenness"?—Scientifically, no.

36,714. Have you experienced any practical difficulty in the use of those terms?—No, I should say not, because we never take proceedings in court against any person in which we have not tried every other means of recovery. We find a woman who is said to be an habitual drunkard, and we try all sorts of reformatory influences. It is only when those have failed and warnings and supervisions have broken down that we go into court. Of the women taken into court to be dealt with as inebriates I do not remember many that

have gone down. Conviction invariably follows because we have exhausted every other means first before taking her to quarter sessions. So far as the society is concerned, there has been no great difficulty in defining the person as an habitual inebriate.

36,715. I suppose where the wife happens to be committed, the condition of the children must be deplorable?—Beyond description in nine cases out of ten. I sent a good deal of evidence on that subject before the Departmental Committee inquiring into the working of the Inebriates Acts a short time ago.

36,716. As a matter of fact, in a case where the drunken wife is divorced, what becomes of the drunken wife? How is she supported?—That is a very practical difficulty, but in that matter I am afraid the only place to which she can drift would be the workhouse. I would deal much more firmly with her than leave the workhouse as the only place for her reception. I would treat her as a person to be permanently detained until she could prove herself cured.

36,717. In the greengrocer's case you quote, that woman would have to go to the workhouse?—Under existing circumstances. She has no means of support, and would have to apply to the Poor Law.

36,718. It is not suggested her late husband should contribute to her support?—Under those conditions, no, but I am hopeful we shall before many years detain such people as these permanently, and refuse to allow them out to reproduce their kind as is done now.

36,719. At the charge of the State?—Yes, treat her practically as it is proposed to treat the feeble-minded persons, as a hopelessly insane person on the drink question. I feel strongly that to let a person of that character perpetuate her kind is a national disaster.

36,720. You would not make that a feature of divorce law?—No; that is rather outside my suggestion here.

36,721. With regard to these cases of insanity, you have seen actual cases of hardship, of immorality, and of great discomfort and damage to the children?—In a great many cases.

36,722. That has been the direct experience of your society?—Yes.

36,723. You think there must be a large number of cases where insanity should lead to divorce?—Yes.

36,724. There is one small point arising out of a question Mr. Spender asked. In these cases of incest do we gather that if the case be proved *ipso facto* divorce follows, or is it left to the option of the wife?—There is no power now.

36,725. No, but supposing there was?—I suggest that it should be open to the wife to make such an application.

36,726. It is not compulsory?—No; it should be open to her to make an application on the conviction of the husband, should she so desire.

36,727. It does not follow as an addendum?—No; power should be given to make the application at that time.

36,728. (*Sir William Anson.*) These cases of incest and some others would be met if divorce was cheaper and more accessible to the poor?—Certainly.

36,729. And if you put the woman in the same position as the man?—Certainly.

36,730. The additions to be made to the grounds of divorce would be brutality, insanity, and drunkenness?—Long-continued drunkenness and such cases of extreme brutality as are instanced here.

36,731. It would be a matter of degree in each case?—Yes.

36,732. And the same with insanity, confirmed or hopeless insanity?—Yes.

36,733. Would you limit granting separation orders to those cases?—No. I would say nothing about the ordinary power of granting separations, because I have confined myself strictly to the cases in which separation is applied for and granted as a means of helping the children. On the broader question I have no authority to speak, nor much experience.

36,734. You would not regard the separation order as a necessary preliminary to divorce. I understood you to say that power should be retained to grant a separation order only as tentative and for a period of 12 months, and if the parties were not willing to come together again then either should be entitled to apply for divorce?—To make the application.

36,735. You would allow power to grant separation orders outside that?—Yes.

36,736. Outside the three elements of insanity, brutality, and drunkenness?—Certainly.

36,737. Would you think 12 months was long enough to determine these questions of insanity and drunkenness?—Yes. Extension of time could be granted. It could be within the power of the court to say, "We give you another six or twelve months," as in the case under the Probation of Offenders Act.

36,738. Would you leave it to the magistrates, to the same jurisdiction that grants the separation order?—Yes. I have nothing to say with regard to the present jurisdiction in that connection.

36,739. Would you leave the question of divorce to the same magistrate?—No; I would recommend divorce should be in the hands of the county court judge or a stipendiary magistrate, not of a bench of local justices.

36,740. (*Mr. Burt.*) With regard to the Inebriates Act, you have had some experience in watching its operation and in bringing cases before the court?—Yes.

36,741. That experience has been very satisfactory, according to the statistics. I think you say 44 per cent. of the cases have been cured?—Permanently cured.

36,742. That is an estimate. I suppose you have not definite figures?—Those figures are rather more than an estimate. They were worked out with some degree of accuracy for the purpose of helping the Select Committee on the working of the Inebriates Act. If that is material to the issue I could send a copy of the number of women who have been successfully cured from inebriety. It did not occur to me to do it.*

36,743. I am glad you make that statement, because you state in your proof that is a low estimate?—That is so.

36,744. It is probably under rather than above the actual number?—Yes. I ought to say that we do not speak of cures until a person has withstood temptation for three or four years. If a person remains sober for six months we do not consider it a cure. We should not include any case as a cure that had not stood three or four years. A woman is constantly visited on her release from the Inebriate Reformatory by a lady in the district, who will help to complete recovery, again treating these cases as requiring special attention.

36,745. I was going to put a question on that, but you have cleared it up. I think you say that the cases have been mostly women?—Yes.

36,746. There have been men also, I suppose?—Yes, but very few in comparison.

36,747. Has it also been satisfactory in the case of men?—We have not had a sufficient number to make the figures of any value. The feeling both of justices at petty sessions and at quarter sessions with regard to drunken men has been that a term of imprisonment in all probability would be more of a corrective than detention in a reformatory: but with regard to the women, they have proved more amenable to kindly influences, and it has been found that they are more subject to good treatment. The number of men so committed is not sufficiently large to be able to give any figures of value.

36,748. Imprisonment would carry with it, I suppose, the necessity of abstinence from drink?—Temporarily.

36,749. (*Lady Frances Balfour.*) I wanted to ask you about the history of the Incest Act. If I am right in my recollection, it was a long time before it was passed: it was brought before successive Parliaments?—Yes.

36,750. Your society and kindred philanthropic societies found the necessity of it very great?—Yes.

36,751. And the absence of such a law I am afraid caused a great increase in the offence?—Yes.

* *See* "The Report of the Inspector under the Inebriates Act, 1879 to 1900, for the year 1908," and particularly p. 9, *et seq.*

36,752. It was with excessive difficulty at last the law was passed?—Yes. I think the first statement of incest cases we made to the House of Commons was something like 15 years ago.

36,753. It came up to successive Governments, who paid no attention to it?—I am afraid to venture on the number of Bills we drafted and endeavoured to get introduced.

36,754. The House of Lords, I think, was one of the great obstructors?—I am afraid that both Houses must bear the blame. My experience as a lobbyist would lead me to say there was an equal difficulty in getting it introduced into the Commons.

36,755. This Bill chiefly affects children, and through children the mothers. Do you feel that if they had had any direct power of expressing an opinion upon this, perhaps the legislation would have moved a little quicker?—I can only give my own personal opinion.

36,756. The evidence of it all has come through women workers and through women sufferers and women experts upon these children?—I have been led to say in moments of great depression, when I was trying to get a Bill on, if the women could not do better than the men were doing we should be in a bad state.

36,757. I think the Salvation Army was a great helper in getting the Bill passed?—Mrs. Bramwell Booth and her assistants and friends have been of great assistance in this particular matter.

36,758. Did the Church of England take any great part in it?—I have no knowledge of that except in so far as we get much information from friends of ours who are connected with the Church. Several clergymen are honorary secretaries of branches in the country, and they, with others, send us information they receive from their branches which enables us to prepare statistics.

36,759. All societies working in these questions have felt the absence of such a law made a great increase in the vice?—May I go further and say that the mere passing of the Act will in my opinion have a considerable effect in reducing the number of offences. It is very remarkable that in cases of brutality we get a fewer number of extremely bad cases in proportion to the total number of cases each year, and I attribute that fact to the growing knowledge of the law. I believe it will be the same in regard to incest. If we can get a few more convictions like 15 years, 10 years, and 7 years, we shall inspire something like fear into the minds of these people who at present have been allowed to do as they would.

36,760. You have had experience of a man saying the law allows him to do it?—Yes.

36,761. May I ask you about paragraphs 36 and 37 of your proof. You say, "I am of opinion that increased facilities for divorce as advocated here would not materially lessen the power of the marriage tie." You mean by that, when the spirit of the marriage tie is broken, increased facilities would not weaken the real power of it?—No. The real opinion of the people of whom we are thinking more particularly on this subject would be improved if we show the increased responsibility that would be put on individuals to do their duty.

36,762. Then you say, "Nor do I believe that by making relief as wide as possible it would interfere with the conscientious opinions of those who regard marriage as a sacrament." That is a very hopeful outlook from the point of view of those who regard marriage as a sacrament indissoluble, and that therefore anything must be suffered under it?—Of course one has to avoid talking of the historical interpretation of the sacrament. What was in my mind was this, really, that if we could only improve the general habit of thought and mind on these subjects we might be very much more hopeful that the idea of marriage as a sacrament would be improved generally. On reflection it appears to me it would be wicked to talk of marriage as a sacrament with the people with whom we have to deal, who simply walk down the street a certain evening and in a few weeks are married, without any thought of life or parenthood, and within a few months find themselves in such a condition as to warrant the intervention of the Society for the Prevention of Cruelty to Children. That is what was in my mind.

36,763. It would be vain to say to a wife suffering from the knowledge her husband has committed an assault on her child, "This is a sacrament, therefore you must not try to dissolve it"?—Yes. I am hoping the result of your deliberations and recommendations will so affect public opinion in the districts in which these people live, that they will look with considerably more seriousness on the mere act of getting married, apart from the sacrament, that the responsibilities of the marriage tie will be more felt and appreciated.

36,764. (*Mrs. Tennant.*) Have you any arrangement with the inebriate reformatories by which they report the police cases, or do you hear of the cases only as they arise from the children's cases?—Only the cases in which women are committed for cruelty to children. You will notice by the figures nearly all the women in inebriate reformatories are sent for that purpose. We send a photograph of their children every year they are there. We keep in touch with the family, and every year we have a photograph of the children taken and sent to the women. That is part of the cure. The woman is thus kept in touch with home. Just before the release, if the husband is living in the district where the woman is likely to be subject to temptation through old companions, we recommend removal to another part of the town, and, if necessary, pay for it, so that the woman can start under different conditions, removed from old temptations. On her release she is regularly visited either by an inspector, or more often by a lady who is found to visit, say, once a month or six weeks, until she is strong enough to walk alone.

36,765. You give two cases which at the end of three years were apparently uncured. Did the Home recognise that they were uncured?—Yes, quite.

36,766. A previous witness distinguished, in the hopefulness of cure, between those women who went of their own will and those who were rather forced to go: in the one class of case the cure was remarkable, and in the other there were no cures at all?—That is not my experience. Indeed, I am rather inclined to say from experience some of the most remarkable cures have been the cases of the women whom it was most difficult to get sent away, and who told us on their conviction that they were perfectly sure that no cure could be effected, and that they did not want to be cured. The remarkable thing is that the longer these women are kept away from intoxicants the more hope there is, and they get out of the way of using it. I would lay great emphasis on the removal of the family from the corruptive centre and taking the woman away from her companions. I think that has as much to do with it as anything, because she starts in good surroundings.

36,767. Do you include among the efforts you make to help a woman who has been separated from her husband any effort to secure the payment of alimony?—Yes. We have gone so far in certain cases as to collect or endeavour to collect the sums from the man and pay them to the woman. I may say in that matter we are very strong on compelling payments from men to wives and for the support of children. We go so far in every case in which we take custody of the child, either through gross brutality or grave moral danger, as to ask the magistrates to give us a maintenance order against the man, believing it is essential not only for the individual but for the community that the responsibility of the parents should be compulsorily attained.

36,768. Have you ever gone so far in cases of great difficulty as to claim the intervention of the employer to attach a man's wages, or a portion of them?—That is the last step that would be taken.

36,769. Have you ever taken it?—Yes, it has been done more frequently in attaching a pension or part of a pension. There is no risk to the man then. There is a risk if you go to the employer while the man is in employment. If the employer knows he is a bad man he might dismiss him and the second stage would be worse than the first; but we have attached pensions. There is power given in the Children Act to do that.

36,770. (*Sir Lewis Dibdin.*) You have had very great experience through your officers in the working of separation orders and applications. I suppose probably a greater experience than any one body in the country?—I think that is so.

36,771. Your view is that on the whole the jurisdiction is well exercised?—Yes, the occasions we have had reason to complain being comparatively few.

36,772. You find great differences in different parts of the country, the differences between town and country?—Yes.

36,773. Paid stipendiaries and petty sessions, and so on?—Yes,

36,774. On the whole you think that jurisdiction is ample?—I have no suggestion to make with reference to a change there.

36,775. I do not think you answered this clearly before. Would you be of opinion it would be wise that all these applications for separation orders should be made in a court constituted like the Children's Court? You remember the press are to be excluded?—Yes.

(*Chairman.*) I thought the proviso said the press could not be excluded.

36,776. (*Sir Lewis Dibdin.*) That is why I am asking. There is a great confusion about it. I will bring it out. I am dealing now with the Children's Court. I want to know whether you think that applications for separation orders might well be taken in courts so constituted?—I think so.

36,777. The effect of that would be that both the public and the press might be excluded?—That is so.

36,778. And then they could be taken in the Children's Court, which might be in the magistrate's private room?—That is so.

36,779. That is a different arrangement altogether from the provision to which you have called our attention, under which in any case if the child is giving evidence on a sexual case, the court can exclude everybody except the press?—That is so. There are two different sections.

36,780. The suggestion I want to get your evidence about is whether there is any reason why these separation orders should not be applied for in the Children's Court?—None. As I said in reply to Mr. Spender's questions just now, the report of such applications is so brief, simply a statement that the order was applied for and made, that there is no great objection to it being taken publicly.

36,781. What is in my mind is not only the press reports, although that comes in, but do you not think that it would deal much more satisfactorily with the case itself, that the evidence of the wife generally would be given with much less humiliation and much more freedom in a court so constituted than in an ordinary public court?—Most decidedly.

36,782. From something you said I thought you did not think it would be a good thing that where a separation order is made like that, on the application of the wife, the man should be put under the probation officer, and that there should be statutory power to do that?—I have not gone so far as to think that. I had simply got the Probation of Offenders' Act in my mind in suggesting 12 months.

36,783. I want you to consider whether there is any reason, where a man has committed an offence, because he has either failed to maintain his wife, or been cruel, or done something wrong, why he should not, where an order is made against him—it is a penal order—be put under the probation officer?—I am inclined to think that would be an admirable suggestion, because I have found the influence of the probation officer most advantageous in cases of a similar nature.

36,784. I gather your view is that if a separation order for drunkenness is granted for a twelvemonth, and at the end of that time there is no improvement, it should be made a divorce?—An application should be made for a divorce.

36,785. It should be in the jurisdiction of some tribunal to grant it?—On the application of one or other of the parties.

36,786. You have told us you know a very large percentage of successful cures of intemperance?—Yes.

36,787. And in some cases they take a very long time before you can tell whether the cure will be complete or not?—In certain cases, but you will notice, even with all our advantage of removal, the proportion of cures is only 44 per cent. We are grateful for those, but there is a large percentage of hopeless failures.

36,788. Take that 44 per cent.: could you say at the end of a year in all cases whether that person would be curable or not?—No.

36,789. Would not your proposal of allowing divorce at the end of a year sometimes work injustice, say in a case where the delinquent party had not been cured but was in the course of being cured, and was cured subsequently?—In that case you would have tested your cure, because the person would have been committed for three years beforehand and it would be on a relapse on discharge that you would have your separation and your 12 months period of probation, after the discharge.

36,790. Perhaps I am misunderstanding your evidence. I thought your view was that where a separation order was made on the ground of drinking, whether there has been a committal to an inebriate home or not, and that separation order lasted 12 months, there should be jurisdiction to turn the separation order into a divorce?—I had not that in my mind. I was thinking more particularly in regard to drunkenness. You will remember I am speaking purely of those cases in which children are concerned. In cases where the person had been committed to an inebriate reformatory and the attempted cure had failed, and on release from the inebriate reformatory she had broken out, then there should be power. I was not thinking of a case where a man got a separation because his wife was a drunken woman.

36,791. Your suggestion does not apply to any cases except where there have been committals to inebriate homes?—That is the only point on which my opinion would be of value; I have no experience of separations outside those where children have been concerned.

36,792. May I read paragraph 34 of your proof: "Power should be retained to grant separation orders, but these should, in my judgment, only be regarded as tentative; the period for which a separation order is granted should not exceed 12 months, and at the end of that time it should be open to either of the parties to apply for a dissolution of marriage"?—My answer to that is this. I have no recollection of any case of an application being made for a separation order where it was purely a question of drink. The case of a drunkard is treated in an entirely different way. This paragraph refers to the separation orders that are granted now for other causes outside drink.

36,793. As, for instance, failure to maintain, and desertion?—Yes, constant brutality, and things of that description. I would except from this paragraph the inebriate cases, because they are dealt with in an entirely different way.

36,794. I did not understand that. Take the case of the insane. You have found very great evil arise from the fact of divorce not being allowed where one of the parties is insane and in a lunatic asylum, and you give some very sad cases?—Yes.

36,795. If I understand your evidence rightly, it is that in your experience the party left behind at home very frequently makes an irregular alliance and further children are born of that, and your experience is that the legitimate children are neglected for the sake of the illegitimate ones, the second family?—Yes.

36,796. How would the condition of things be improved if there had been a divorce? I will assume instead of the irregular alliance the parties have married. There would be the second family?—I was not thinking so much of the prevention of cruelty in that connection as the legitimising of the offspring. You will remember in these cases that we give, we can only report to you such instances where we have been called in because children have been neglected. There are many others, a much larger proportion where children are concerned, where we are not called in.

The point there was that the woman or man who is left alone by being granted a divorce would have an opportunity to marry again, and you would avoid bastardizing the children of that second union. That was in my mind.

36,797. That could not have been your point on that evidence. Your point was that the legitimate children were neglected for the illegitimate?—If I conveyed the impression that that happened in every case, I should like to alter that. I did not wish to give that impression, that the legitimate children were always assaulted.

36,798. No, not always, but the case you put as one of the drawbacks of the present law was that a second family was produced, being illegitimate, and being the issue of the *de facto* parents, the legitimate family was neglected. I do not see how that condition of things would be improved if instead of irregular alliances the second alliance were a regular one, divorce having been granted?—I agree entirely, but in drafting these notes I had not at that moment the question of the treatment of the illegitimate children in my mind. I had in my mind the undesirability of increasing the illegitimate population. The fact a man living apart from his wife, who is in an asylum, or a woman, enters into an illicit union, has the result that there is a considerable increase in the rate of illegitimate births.

36,799. This is the first time you have referred to that since you have given evidence?—Yes. If I conveyed the impression that in the majority of cases the legitimate children were illtreated and the illegitimate not, that is a wrong impression, and I should like to alter it.

36,800. Supposing there were a divorce in any of these cases, how, in your view, would the first family, the wife and the children—say the man is divorced—be supported in an ordinary way?—It so often happens with the present cases of separation we are able to put a woman in the way of supporting herself. I should say that in a large proportion of the cases in which separations are now granted the husband fails to maintain, notwithstanding the order made upon him, and we set to work at once to enable the woman to become self-supporting. We find relations who will support in a small degree, put her in the way of business, put one or other of the children away to be trained, and endeavour in that way to help the woman to become self-supporting.

36,801. You mean that is more easy where the husband is out of the way than if she is simply separated from a husband who is there with some sort of control over her movements?—It so often happens when you have got a drunken or a brutal man, that when the woman goes to work he will come home and insist on demanding from her the money she has, and the children go without food. I have found again and again a man will stay at home lazy for weeks, the wife is at work regularly, and the children suffer because the man takes the money the wife earns, and I know the men in scores of cases take the food provided for the children and eat it themselves.

36,802. If there was a separation order that could be prevented?—We could keep the man out of the house.

36,803. He could not eat the food?—If there was a separation order we could keep the man out of the house. We want to get him away from the family and the children. That is the difficulty.

36,804. How are the family going to be supported after the divorce if there was a divorce instead of separation? You tell me that it is easier to find work for the woman when the husband is out of the way than when he is about?—Yes, and her mind is much more at ease, and she is better able to do it than if constantly worried by his presence and taking her money and food.

36,805. You attach great weight to the husband making his payments; you try and compel that under a separation order?—Yes.

36,806. You would not let him off because he had a divorce rather than a separation order, or because she had a divorce from him?—No. You will notice that I make a suggestion that power should be given to the court to consider the question of the children, and that power would be given to the court to make such an order for the maintenance of the children as the court may think fit.

36,807. A sort of alimony?—Yes.

36,808. Do you think as a practical matter you would find that easy to enforce, or as easy as under a separation order?—I think so. May I just for one moment give my experience in connection with custody. A certain number of children, not a large number, 70 or 80 a year, are removed from the custody of the parents, the custody being vested in me as director of the society. In every case we ask for a maintenance order against the father. I will speak of last year: I should say we had at least 1,300*l.* or 1,400*l.* from delinquent parents, many of them worthless people, towards the maintenance of their children, and those we enforced even so far as to ask for a committal for failure to pay.

36,809. What proportion does that represent over the whole number of children? 1,400*l.* does not convey much impression unless one knows what it refers to?—We have at the moment 340 children who are in my legal custody. The cost of maintenance would be approximately 5*s.* a week each. If I may take it further, the total cost of maintenance would be about 5,000*l.* Towards that we get from delinquent parents 1,300*l.* or 1,400*l.* It must be remembered in many cases the order made against the parents is only for 1*s.* or 2*s.* a week, as the case may be, and in that matter I am quarrelling with the justices, because I ask them to give more than they are inclined to.

36,810. You think alimony could be enforced against divorced people?—I think so.

36,811. Have you had much experience as to reconciliations after separation orders?—Yes; we try that wherever possible. Unfortunately, I am afraid it has not often come to pass.

36,812. Reconciliations have not been common or have not been real reconciliations?—They have not been common.

36,813. You know that a very large majority of separation orders are practically annulled by the people coming together again?—Yes.

36,814. A very large majority?—Yes. I give a specimen case, where a man to nullify the order made against him comes back and lives with his wife and treats her in the same way.

36,815. Without gross wickedness of that kind, it is within your knowledge that the vast majority of separation orders are put an end to by the parties coming together?—Yes.

36,816. I do not understand how far you carry your suggestions for the enlargement of the grounds of divorce, because in your final paragraph you say, "Finally, I say it is not desirable from the standpoint of national well-being that men and women should lead lives of perpetual irritation or martyrdom, and it is not to the advantage of the children." Would you say that wherever parties were living in a state of perpetual irritation they ought to have a divorce?—No. I am confining my reference there entirely to the cases described within my evidence. I cannot express the slightest opinion outside that.

36,817. Cases of brutality?—And insanity and incest, where children are the victims of the misdeeds of one or other of the parents.

36,818. You do not take the view that where there is what is called "incompatibility" by people living a cat-and-dog life, that in itself is a reason for divorce?—I am afraid there would be a very large increase in the number of applications made.

36,819. That might or might not be an advantage. You have no desire to give that as your evidence?—No, I have no experience of that.

36,820. (*Mr. Brierley.*) You told Mrs. Tennant you sometimes attach the pensions of fathers and husbands?—Yes.

36,821. You do that, I suppose, in the case of sums made payable to you in respect of the custody of children?—Yes.

36,822. For that there is power under the Children Act?—Yes.

36,823. You are aware that there is no such power under the Married Women's Act, 1895?—That is one of the defects of the Act.

36,824. Do you think it would be a good thing that there should be a similar power in the case of separation orders and maintenance orders?—I have long desired to have that change in the Married Women's Act, so that we might have in that the same powers as are given in the Children Act to attach any pension.

36,825. You have found that a useful power to possess?—Very.

36,826. There is one other question about the figures you gave in respect to incest. You would not suggest that those account for all the cases of incest in the country?—No.

36,827. The Criminal Law Amendment Act, 1885, is not repealed by the Punishment of Incest Act, 1908?—No.

36,828. There are many cases of incest committed with children under 16 which are proceeded against under the Criminal Law Amendment Act, 1885?—Yes, and the proportion of such proceedings has not decreased since the passing of the Incest Act.

36,829. The figures which you give of proceedings under the Punishment of Incest Act, 1908, do not tell us in any way what the total number of cases of incest is?—By no means. I ought to say this, I think I have mentioned it incidentally, that the number of cases reported to us either of cruelty or neglect or incest, are by no means comparable to the number of offences committed. Much as we discover, we cannot hope that we are discovering all that happens. That is the melancholy fact.

36,830. I thought the Commissioners might not be aware that there are a large number of cases which are tried under the previous Act, the Criminal Law Amendment Act, and for which no direction of the Public Prosecutor is required at all?—That is so.

36,831. I was a little struck by your figures with regard to the committals to inebriate reformatories, especially the large proportion of the cases with which your society has been connected. Do you mean that the 443 you mention is the total number of people who have been committed to inebriate reformatories since 1908?—Yes, under Section I. of the Inebriates Act. These figures are taken from the return of the Inspector of the Home Office under the Inebriates Act, Dr. Branthwaite. These are the actual figures taken from the Government return..

36,832. Where were they committed?—At quarter sessions.

36,833. Surely a large number is committed to inebriate reformatories by courts of summary jurisdiction? Are you really speaking about inebriate reformatories or inebriate retreats?—Inebriate reformatories. The power to commit to retreats under the section of the Children Act is never applied now. I asked when they were drafting the Children Act that they might delete it because it is never used.

36,834. I want to see whether it is the case. Do you mean these 443 persons are committed at quarter sessions?—Yes, under section I.

36,835. You give us no account of the total number. May I suggest to you a considerably larger number of persons are committed to inebriate reformatories by courts of summary jurisdiction than by courts of quarter sessions or assizes?—If I may I will send on those figures. I will send you the Government return, published by Dr. Branthwaite, from which these figures are taken.

36,836. The larger number of cases sent to inebriate reformatories by courts of summary jurisdiction, I should suggest your society has really nothing to do with?—That is perfectly true.

36,837. And yet, according to you, since 1898 there would only be some 93 persons?—Yes, and Dr. Branthwaite draws particular attention to that in his report, and says it is a remarkable fact that nearly the whole of the women at present in the inebriate reformatories of the country sent there under section I. have been sent there by the National Society for the Prevention of Cruelty to Children. He makes that point. I will send that report along if I may.*

(*Chairman.*) The report showing the total number of people in the inebriate reformatories.

36,838. (*Mr. Brierley.*) It surprises me?—It surprises many people. It is an astonishing fact, but the fact remains.

36,839. It surprises me that so large a proportion of the total should have been sent by quarter sessions. May I suggest to you in Lancashire alone nearly 100 are sent by courts of summary jurisdiction?—Mostly men, are they not?

36,840. No, women. We have no inebriate reformatory for men in the county, and it is difficult to find a place for a man anywhere in the country?—Not under section I. of the Inebriates Act.

36,841. I was asking whether you meant this was the total figure?—May I repeat an answer I gave to the Chairman just now, that section I. of the Inebriates Act gives power to deal with an offence of cruelty to a child where the offence has been committed by a drunken person, and to commit that person to quarter sessions and treat him or her as an habitual inebriate. I think I did get that in just now in reply to your question, and that is the point that is referred to in this paragraph, the people who are committed under section I. of the Inebriates Act.

36,842. That is what I wanted. You mean the 443 is the total of the persons committed under that section of the Act?—Yes, under section I. of the Inebriates Act.

36,843. That you know only accounts for a small proportion of the total number?—Yes.

36,844. I think that is the explanation. In those cases you found so large a percentage as 44 per cent. permanently cured?—Yes.

36,845. You would not get quite so large a percentage if you included the total number?—No.

36,846. (*Chairman.*) With regard to the 433 you have explained already. Will you send us the returns of the total number of persons committed to inebriate homes in any way?—I will send Dr. Branthwaite's report, which contains all the figures.*

36,847. We are going to have him called?—Then you will get it from him.

36,848. If you can send it beforehand we can deal with it more fully?—I will send it to-day, if I may.

36,849. May I clear up some of the points? You said you get maintenance orders against the fathers?—Yes.

36,850. Are those maintenance orders obtained under the Summary Jurisdiction Married Women's Act?—No, they are maintenance orders under the Children Act. Where a child is removed by order and given into my custody, an order is made against the man to contribute so much a week.

36,851. Will you give the reference to the Act?—Section 21 of the Children Act, 1908.

36,852. Have you the reference there to the Probation Act?—Probation of Offenders' Act, 1907, 7 Edward VII., cap. 17.

36,853. You are aware that in the Divorce Court if there is a decree of divorce an order may be made against a husband for weekly or monthly payments?—Yes.

36,854. You would use a similar system if the divorce applied to the class being dealt with?—In some way to provide for the maintenance of the children of the marriage.

36,855. That goes to the wife as well?—Yes.

36,856. With regard to these cases of conviction for incest, the fact of a conviction on proof would, according to you, justify a decree for divorce?—Yes, that is so.

36,857. I take it that those convictions are before a jury who have already tried the case?—Yes.

36,858. Therefore you are of opinion that if the case had been heard and the conviction obtained, the proof in that way, without proof of the fact over again, should be sufficient?—Yes, quite, in order to save the woman, which is such a grave consideration, the

* *See* footnote in answer to Q. 36,742.

necessity of appearing again and going over the whole of the facts.

36,859. In paragraph 13, where you give your category of cases for increased facilities, incest is confined to the cases that you have mentioned?—Yes.

36,860. Have you considered whether you could give any extension with regard to cases under the Criminal Law Amendment Act, on proof of conviction of that?—Incest under the Criminal Law Amendment Act.

36,861. Acts under that Act are not incest, but are offences of a grave character. Would your view be to extend the grounds upon which the divorce could be obtained to that kind of conviction too?—I have not considered that, but subject to reflection I should say at the moment, yes. It is a very serious point where a man has been charged with an offence against a girl.

36,862. If women and men were on the same footing it would amount to proof of adultery. At present that is not so. Have you considered that?—Speaking on the impulse of the moment, I should be prepared to make that suggestion.

36,863. In that paragraph you put down "continued drunkenness" as a ground?—Yes.

36,864. You have followed that up with a reference to the Inebriates Act?—Yes.

36,865. Is your view as to continued drunkenness being a ground of divorce confined to cases where they have been in an inebriate home, or if it has been of a continuous character is it to be proved in another way?—In my own mind I was referring to those cases we had dealt with ourselves, where there had been an attempt to cure and that cure had failed.

36,866. Those confined in inebriate homes?—Yes.

36,867. Does that apply where there is continued drunkenness of an aggravated character which has not resulted in the person being put in a home?—I am afraid I have had no experience whatever of such cases. My experience has been confined in this matter to those persons who have received treatment in one or other of the homes.

36,868. The point of the matter is the impossibility of family life afterwards?—Yes.

36,869. If that were a sound point it would apply to continued drunkenness proved in another way?—Yes.

36,870. Apart from the details of this incest point, your evidence is of very considerable public interest, and although you have wished it taken in private I should like to know whether we might not after it is printed let the press see it?—I have no objection.

36,871. If the other Commissioners take the same view?—I am entirely in your hands.

36,872. No, we are in yours, because you wished it to be private?—I did not understand that. I am afraid it was a misunderstanding, and I took it as the view of the Commission.

36,873. Never mind the misunderstanding?—I have not the slightest objection.

36,874. It will be printed. Are you willing, instead of waiting till the Report is out, that the print of your evidence as transcribed should be looked at by the reporters and the public?—Quite.

36,875. You can revise it before that if you like. I ought to say I thank you very much indeed on behalf of the Commissioners for what I regard as extremely valuable evidence, which has been prepared with great consideration, and has presented many matters which I am sure will be very carefully and anxiously weighed?—I thank you very much on behalf of the society.

Mr. Ninian Hill called and examined.

36,876. (*Chairman.*) You are the General Secretary of the Scottish National Society for the Prevention of Cruelty to Children, and your headquarters are at 137, Princes Street, Edinburgh?—Yes.

36,877. You have been general secretary of the society for the past four or five years?—Nearly five years.

36,878. And previously for many years you have been more or less a student of social problems, and personally acquainted with the conditions of life among the lower classes of society?—Yes.

36,879. Has your society a staff of 42 inspectors stationed at 27 centres throughout Scotland, 10 in Glasgow, 6 in Edinburgh, 2 in Aberdeen, and the rest in various places?—Yes.

36,880. Does your society operate in every county in Scotland?—Yes.

36,881. During the year 1909, there were 7,514 complaints received and investigated against 10,184 offenders, affecting the welfare of 22,224 children?—That is so.

36,882. Why does the investigation against offenders result in a larger number than the complaints? Is it the same person over again?—No; sometimes it is a complaint against both a father and a mother.

36,883. You mean, therefore, the complaints may be less than the actual persons complained against?—The cases may be less than the number of persons complained against.

36,884. The cardinal principle underlying all the society's work appears to be that every endeavour should be made to reform the home and to maintain the unity of the family?—That is so. We make a very strong point of that.

36,885. Cases are only reported for prosecution when good advice and warnings fail, and children are never removed to institutions unless it is absolutely necessary to rescue them from criminal and vicious parents?—That is so.

36,886. That is the general position?—Yes.

36,887. How many persons were convicted at the instance of the society in 1909 for offences against children?—During the year 1909, 676 persons were convicted of offences against 1,789 children.

36,888. That is for cruelty to the children?—For the offence of cruelty. 291 children were committed to industrial schools and 235 were admitted to various homes and orphanages.

36,889. Will you proceed to state your paper? It is in a convenient form?—"I am of opinion that among the lower classes of society there is a strong feeling in favour of the desirability of a woman being married rather than cohabiting without legal marriage. I do not think that this arises merely from money motives or altogether from higher motives, but is prompted by not unworthy self interest. A man cannot get a respectable well-doing woman to live with him unless he marries her, and a respectable well-disposed woman will not cohabit with a man without marriage, because she knows that he would be apt to leave her as soon as his responsibilities became irksome. Marriage alone provides for the stability and welfare of domestic life among the poorer as in other classes. My experience is not sufficient to enable me to say whether or not marriage is regarded as less permanent now than formerly, but I have no reason to suppose that this is the case. With regard to tinkers, one of our most experienced officers writes me, marriage is generally observed and respected amongst tinkers. At the same time a considerable number of them are living together without having been married, and I have an impression that this is on the increase. I am of opinion that the lower the position in the social scale, the less frequently are proceedings for divorce or judicial separation taken. I have often been greatly impressed by the forbearance of erring spouses towards one another. This probably arises from a less keen sense of personal dishonour than in the higher classes, and from the general necessity to make the best of circumstances. The keeping of lodgers is undoubtedly a cause of domestic dispeace in many cases, but many respectable couples take in lodgers without any evil arising. Domestic quarrels frequently lead to a more or less temporary separation. Almost every day the society is dealing with cases in which children are neglected through parents quarrelling. Efforts, very often successful, are made to reconcile parents." The inspector whom I have

already quoted gives me an instance of this. Is it the wish of the Commission to hear particular cases?

36,890. Yes, as typical cases?—As illustrations. This was a woman who was married to a perfect savage of a man who was frequently imprisoned for seriously assaulting her. Our officer gave evidence before the court, and separation and aliment were granted. About three months afterwards she was back living with her husband again. Aliment is usually paid through the law agent. Occasionally the society's inspectors have undertaken the duty on behalf of the father in non-judicial cases of paying aliment for the benefit of the children. Our superintendent of inspectors at Glasgow writes as follows: "Several parties who through jealousy and drunken quarrels have separated and come under the supervision of the society, and after being warned of their responsibility to their children, have come to the office, the father offering to pay a weekly aliment through me, which I undertook to take if the mother was satisfied, thus saving them the commission charged by agents. I have found this course very satisfactory, as on all occasions it has been the means of their settling their grievances and resuming cohabitation. Some have kept apart for 12 months, but in the majority of cases they come to terms in periods from two to four months and do well afterwards." Reconciliation and resumption of cohabitation after separation are by no means uncommon, and are attended with more or less permanently satisfactory results. "On several occasions agents for the poor have written me" (this is from one of our inspectors) "regarding parties applying for separation when they knew that I had been visiting the case, and I succeeded in reconciling the parties. One of these occurred recently, and so acute was the breach that it seemed hopeless. The man had taken a house in another part of the town and would not go near his wife, who, with three children, would have starved but for the kindness of neighbours. She refused to go and live with him, although he was willing to receive her and the children, as she professed to be in terror of him, for he had when in drink threatened to murder them all. The man was cited to appear before the sheriff on a charge of neglecting his children. He pleaded not guilty, and evidence was led. The sheriff gave the man a sound warning and put him under probation. He and his wife went home together and have lived happily ever since." The presumption would be that a marriage of necessity would not be very favourable to domestic peace and happiness, but on the other hand, I think there is often a resolve to make the best of the circumstances, and I think it by no means follows that such marriages are invariably unsatisfactory. Drunkenness is undoubtedly the cause of by far the largest proportion of cases of cruelty to children that come under the observation of the society, and in some of the worst cases it leads to actual separation on the part of the parents, but there is undoubtedly a remarkable indisposition to resort to separation on account of intemperance alone. The inebriate has usually many excellent qualities when sober, and I think that the separations which take place are more the result of temper and the interference of relatives than intemperance alone. I think the indisposition to separate is largely due to the fact that the spouses have got accustomed to each other and go on the principle of, "better the evil you know than the evil you do not know." It is the case I think that the intemperance of one spouse does not always create a repugnance to drink on the part of the other. On the contrary, in too many cases an intemperate spouse teaches the other to drink, or the other loses heart and takes to drink. I should say that in the majority of the society's cases one of the parents is more to blame than the other, but not infrequently the complaint is against both parents for drinking and neglecting their children. I have no suggestions to make regarding the proposed magisterial regulation of the relation of separated spouses as regards aliment, children, &c. The operation of the Probation of Offenders Act, 1907, as applied to parents, I think tends to maintain family life. The Children Act, 1908, gives increased powers for committing children to industrial schools, in addition to previously existing powers of committal to the custody of relatives or "fit persons."

36,891. Your paper deals chiefly with the efforts which are made by the society to protect the children?—That is so.

36,892. In Scotland you have a law of divorce different from ours in England?—Very different, I understand.

36,893. There is the ground of desertion, and both sexes are on the same footing?—Yes.

36,894. You do not propose to go into the question of grounds at all, as I gather from your paper?—My opinion, as far as I have been able to form one, is that the law of divorce in Scotland meets with general acceptance, and I have been unable to find any evidence of any desire for any alteration.

36,895. Have you considered the question of insanity in Scotland?—I have considered that matter, and I have a very sad case I could quote. Undoubtedly, as regards many individuals it is a very serious matter, and especially for a working man whose wife has become insane and has had to be removed to a lunatic asylum: but, on the other hand, it is a very far-reaching question, and while an alteration in the law might relieve many an individual with great benefit, on the other hand it might do incalculable harm. I feel that the harm that might result is so incalculable that I would not wish to appear to advocate any change in the present law.

36,896. How would you deal, in your view, with cases of gross brutality which are not checked by the intervention of the society, and might continue if left? There is no power in Scotland for divorce for that, but only power to separate, I think?—Yes. That would rather be covered by the remark I have made, that the forbearance towards an erring spouse, even a brutal husband, is very remarkable. Nobody who is acquainted with the lower classes of society in Scotland can but be impressed with that fact. These brutal assaults are usually the result of a drinking bout, and when that passes over the brutality of the assault is forgotten, and it is common experience in the police courts that a wife, even although she has been horribly illtreated, is most reluctant to come forward to give evidence against her husband.

36,897. (*Mr. Brierley.*) You have told us there is a very large number of cases in which the parties come together, but I suppose you have experience of a good many where permanent separation is the result of brutal conduct?—Very often a man just simply clears out and disappears.

36,898. That would be a case of desertion which is met by the law of Scotland as it exists, but are there not several cases where the parties separate permanently owing to the cruelty and brutal conduct of the husband?—Doubtless there are.

36,899. Where no reconciliation takes place? What do you suggest should be done in such a case as that?—My feeling in the matter is that the law as it stands is sufficient, but there is a great weakness in the law. A woman may institute an action for aliment and separation against such a husband as you refer to, but the trouble comes in enforcing the order. The husband may either clear out altogether and disappear, or he may work irregularly and not earn sufficient to pay the aliment. The difficulty of the woman in enforcing the decree for aliment against her husband is a very serious matter.

36,900. No doubt, but what I was suggesting is this: do you think it would be an advantage, instead of applying for separation and aliment, that she should be able to apply for a divorce on the ground of her husband's continued cruelty, I mean such cruelty as renders it unsafe for her to live with him, and thereby put an end to the conjugal union?—I am afraid I would not like to express an opinion upon that point. Of course, if a man deserts his wife for four years she can apply for divorce through the agent for the poor.

36,901. That is perfectly true, we are aware of that, but in the case I put there would be no desertion.

On the other hand, possibly the husband might be willing to live with her and be allowed to treat her cruelly as before. How do you deal with a case of that sort? Do you consider it is not a case for divorce, or do you think there ought to be a remedy for that? —It is a very serious matter, but I should not like to say that such a woman would be entitled to a divorce.

36,902. Does your society assist in getting divorces for women in the cases in which they are entitled to them?—Occasionally, of course, our inspectors are cited to appear as witnesses, and they have no option but to give such evidence as they are called upon to give. The policy of the society is rather against encouraging actions for separation and aliment, or divorce. We rather try to bring the parties together and reconcile them.

36,903. As a society have you much experience in the obtaining of divorces through the medium of these agents for the poor?—Not very much.

36,904. We had a witness from Dundee yesterday who told us it does not supply the needs of the very poor in Scotland at present. Have you found there is much difficulty on the part of poor women who really want a divorce, in obtaining one?—I believe they have a good deal of trouble.

36,905. I did not mean trouble; I meant difficulty in the way of providing means for it?—The actual cost of a poor case tried is very nominal, I believe 2*l.* or 3*l.* for a divorce case, which can only be tried in Edinburgh, and for a person in Dundee the whole proceedings are undoubtedly a little formidable; but any deserving woman with a good case will have no difficulty in finding kind friends to help her and advise her, and to see the thing through for her.

36,906. I rather wanted to know whether you had that experience in your capacity as the general secretary of the society, as to whether women had been debarred by want of means from obtaining a divorce even through the medium of the Poor's Roll?—I have had no personal experience, but I do not think so. For a woman outside Edinburgh the necessary formalities that have to be gone through make the process so troublesome that I think there is a tendency to question whether the divorce is worth the trouble.

36,907. I should have thought the procedure was tolerably simple. We are told there is a poor's agent in each district, and all that the poor person has to do is to apply to that poor's agent, and the trouble, so far as the trouble goes, seems to be taken off her or his hands?—I suppose in theory that is something like it. What happens is this. A poor woman wanting divorce has first to go to the parish minister and get a certificate as to her indigence. With that she has to go to the poor's agent at the Sheriff Court in the place where she is living. He will tell her that it is a case for the Court of Session in Edinburgh, and that she must go to one of the poor's agents in Edinburgh with the case. Then the case comes before a committee consisting of representatives of the various law societies. They examine the information which is put before them, and they decide, in the first place, whether or not it is a case for the Poor Roll, and secondly, whether or not there are *primâ facie* grounds to warrant proceedings being taken. If these questions are decided in the affirmative, the case then goes forward, and the agent for the poor takes it up and sees it through. A case of separation and aliment is much more simple, because that comes before the Sheriff Court, which is found in every town of any importance in Scotland.

36,908. I really wanted to know whether your experience goes so far as to be able to tell us that even this system of Poor Roll does not suffice to enable women in poor circumstances to obtain divorce when they live outside Edinburgh?—I think the difficulties are such as to discourage frivolous cases, but not sufficient to debar anyone with a really good case from getting it carried through.

36,909. People are not debarred in proper cases?—No.

36,910. (*Mrs. Tennant.*) You say you think no woman, however poor, would be unable in Scotland to get a divorce, because of the kindness of her friends. They would subscribe money which her own wages would fail to supply?—It is only a question of 2*l.* or 3*l.*, I understand.

36,911. That is if it is only 2*l.* or 3*l.*?—Yes.

36,912. Would you still hold that opinion if we found that the expenses alone are as great as was reported to us yesterday, 13*l.* 15*s.*?—Of course that would modify it.

36,913. Or even 10*l.* or 8*l.*?—It all depends on the kindness and the ability of the woman's friends.

36,914. If a woman is very poor her friends are probably very poor?—Her associates probably are very poor, but if she was suffering an injustice the probability is that her very position would gain her friends who would help her in an emergency of that sort.

36,915. Is it not a position she would not like to advertise? If her friends are very poor they could only give her very small sums?—The first step she would have to take would be to go to the parish minister, and if he was satisfied that the poor woman was deserving he would be the first man in the parish that would be most willing to help her.

36,916. The funds of the parish minister are limited; it really turns upon whether the sum is as great as 13*l.* or as little as 3*l.*?—I cannot say from my own experience about these matters. I understand that a divorce case undertaken by an agent for the poor is supposed to cost absolutely nothing, but as a matter of fact there are a few outlays which amount to 2*l.* or 3*l.*, and that covers it. If the case is an ordinary one, then I understand the cost, if it is not defended, amounts to something like 30*l.*

36,917. (*Mr. Burt.*) In clause 2 of your proof you state, the lower in the social scale the people are, the less frequently are proceedings taken to secure a divorce, and you give as a reason for that the probability that there is a less keen sense of personal dishonour felt than among the higher classes. Would not the difficulty of meeting the cost of divorce also affect the matter?—I have already tried to explain my view that this little cost in itself may be a barrier, but I believe that the trouble involved is perhaps even a more serious matter.

36,918. In Scotland the cost is not so high, I think, as in England?—I have no information as to England.

36,919. In clause 5 you state that separations are most common when the responsibilities begin, and are less frequent in the absence of children. Have you any statistics to bear that out?—No, I am sorry I have no figures to bear that out. We have not infrequently to deal with cases of a very young father and a very young mother, mere boys and girls, getting married, and when the first infant arrives the husband sometimes deserts altogether, sometimes sends his wife home to her parents, at any rate fails to provide.

36,920. Is the separation in cases of that kind usually temporary?—I think so, sometimes.

36,921. They come together again?—Yes.

36,922. Is intemperance a very common cause of domestic discord leading to separation?—Undoubtedly, but there is a great deal of separation of a non-judicial character. The number of judicial cases that come under our observation are a mere fraction of the cases in which the husband and wife separate after a quarrel, perhaps a drunken quarrel, and come together again from time to time. Very often as the result of the drunken quarrel the children are neglected, and the society is called in, and we act the part of peacemakers.

36,923. (*Sir Frederick Treves.*) You say that if insanity were made a ground of divorce, you think it might do incalculable harm? Would you explain in what way it would do incalculable harm?—I used the expression "incalculable" not meaning so much an enormous amount of harm as an amount of harm that it is difficult to estimate.

36,924. The kind of harm would be what?—I think it would add to the terrors weak-minded persons possess already, when they feel that there is a tendency to mental instability; the fear a woman would have, if she were removed to an asylum, that she might recover

and come out and find her husband married and herself supplanted. I think that is a very serious matter.

36,925. Would that be the only point in your mind? —That is the only point that occurs to me in the meantime apart, perhaps, from the religious point of view.

36,926. Supposing you excluded that class of insane person you mention, and the ground for divorce were limited to those who are hopelessly insane, and who have no conception of what divorce meant, that would remove the objection you have just given?—Not altogether, because there would still be this anticipation of what might take place.

36,927. Before they went there?—It would be at the back of every woman's mind, that if her reason was to give way this might happen.

36,928. You rather take it on medical grounds?—I am not competent to express an opinion upon medical grounds, but I do know the case of an old lady who was removed to an asylum of some sort, and it was thought that at her time of life she could not recover, and under legal advice her furniture and all her belongings were sold off. In the course of a few years the lady recovered, and when she found out what had happened she nearly went out of her mind again.

36,929. On the other side, have you had any experience of great distress consequent upon the fact that either husband or wife is immured for life in an asylum?—I have information of a case in which a woman was removed to an asylum 22 years ago. Her husband took in his wife's sister to keep house for him. They have cohabited and have a family of four children.

36,930. Do you think those cases are fairly common? —I have not heard of any case until I inquired specially and came across this one.

36,931. Do you think such a case as you have quoted a hard case?—A very hard case.

36,932. Do you not think relief should be given in such a case as that?—One would like to give relief in a case of that nature; Whether it would be always wise or not is another question.

36,933. In what way, taking up your instance where the unfortunate woman has been insane for 22 years, could harm happen? Where does the lack of wisdom come in?—This poor woman might recover.

36,934. It is conceivable?—Yes.

36,935. You think that should be the sole ground to decide a matter of that sort?—Not the sole ground, but certainly an important ground. The other ground is that behind every woman's mind, in fact any man's mind, would be always this, that in the chances of life it is conceivable that anyone's brain might give way, and there would be this consequence.

36,936. Then in the meantime an irregular union is formed, and a number of children are born who are illegitimate?—Yes.

36,937. Which is rather deplorable?—It is very deplorable.

36,938. You think the possibility of insanity being made a ground of divorce, and the effect it would have on people of unstable mind, would outweigh the whole of that?—I would not like to express an opinion. I think it is a very difficult problem, upon which a great deal can be said on both sides.

36,939. (*Mr. Spender.*) Could you explain a little more fully what you mean in your proof when you say the operation of the Probation of Offenders' Act, 1907, as applied to parents, tends to maintain family life? I did not follow that?—I think one of the cases I mention bears that out, the case I referred to in which a man had threatened to murder his wife when he was in drink. He was cited to appear before the sheriff on a charge of neglecting his children. The sheriff gave the man a sound warning and put him under probation.

36,940. You mean under the First Offenders' Act? —No, the Probation of Offenders' Act, 1907. We have a system in Scotland, apart from the Statute law, of a sheriff deferring sentence. He convicts and admonishes the offender and defers sentence. The offender is ordered to come up in three or six months, as the case may be, for sentence, and then the sheriff gets a report from the police or the society as to the offender's conduct during that period, and it depends on the report as to what sentence is passed. I think that the Probation of Offenders' Act put that system on a more regular basis, and the placing of the offender under a duly appointed probation officer has had an excellent effect.

36,941. Do you find in those cases where the probation officer is in waiting and there is a chance of his being brought up for sentence again, he is deterred from fresh acts of violence? Does the wife usually welcome him back under those conditions?—In many cases. Deferring sentence or placing an offender under probation has a most excellent effect, but there are a certain number of cases in which I am sorry to say it is absolutely ineffectual.

36,942. It is a considerable responsibility for a sheriff to take, to send a man who is violent back to his home under threat of sentence?—I find that there are very few cases of sober violence, if I may express it so. These outbursts are usually the result of drink, and when the drink passes off the man is a peaceable enough citizen.

36,943. Broadly speaking, from your experience of Scotland, do you think, as compared with the English law of divorce, the extensions in Scotland to desertion and the equalisation of the conditions between the sexes operate fairly?—I think, so far as I am able to form an opinion, the law of Scotland with regard to divorce is accepted generally as fair and sound.

36,944. It would not be alleged in Scotland that those two causes led to an unnecessary multiplication of divorce? There is a fear expressed here. I am asking about the working classes especially. You have special facilities for divorce in Scotland at comparatively cheap rates, on two extended grounds, which we have not here. It would not be said of Scottish experience that those three causes operating together tended to weaken the marriage tie or multiply divorce beyond necessity? —I do not think so. I do not think it tends to promote frivolous cases at all.

36,945. (*Chairman.*) Can you give us any information about the working of the attachment of wages in Scotland? I think I am correct in saying in Scotland there is a power in these alimony cases to attach the wages when they exceed 20*s.* a week?—Wages under 20*s.* per week can be arrested only for aliment, and if a man wants to avoid payment he takes good care not to earn a wage that can be arrested. In other words he takes to casual labour.

36,946. There is the law that over that sum you can attach as much as the magistrate thinks fit?—I am not quite sure of the limit.

36,947. That is the way he works it?—Yes.

36,948. Have you heard any objection made by employers in Scotland to any order being made upon them?—No. I am afraid many employers are too familiar with it, for debt of one kind or another.

36,949. Supposing the man has 2*l.* or 3*l.* a week and he does not choose to pay; he does not drop down to 20*s.* in order to get out of it?—He works one or two days in the week.

36,950. You mean a provision of that kind is practically nugatory?—It is very difficult to enforce if the man is determined not to pay, as he usually is.

36,951. Would you advocate that there should be no limit; if a man was in employ there should be power on the part of the magistrates to attach the wages, no matter what they were? Your point is that the limit upsets the arrangement?—I would take this view. In some cases the man would be thankful to pay to get quit of his wife, and other men of a more contentious nature will do one of two things, either clear out altogether or take good care not to earn a steady wage.

36,952. Or perhaps leave one employ and go to another, that sort of thing?—Yes. He will work irregularly with different employers.

36,953. You mean there is no real practical use in giving magistrates power to attach wages, except by the committal of the man's body himself to prison. That is your general experience?—The sheriffs have power to grant separation and aliment, and that carries with it a power to arrest the wages.

36,954. In Scotland it does not carry power to arrest a man does it?—If he fails to pay he may be prosecuted or imprisoned for a period not exceeding six weeks.

36,955. At any rate the power to arrest the wages does not effect the desired result?—It would not necessarily deprive a man of a good situation.

36,956. That is not the point. Would it bring the money in? You say the limit is under 20*s*. It will not bring the money in if the man reduces it below that?—That is the weak point of the law. The man can evade payment without much difficulty.

36,957. (*Mrs. Tennant.*) You say the way in which the workman manages to evade the order is by reducing his employment from five or six days a week to one or two days?—Yes.

36,958. That would make him an unattractive servant to most masters?—That would be so in certain employments, but in others it would be quite practicable, of course.

36,959. Have you any figures you could give us to illustrate that experience?—No, I am afraid it hardly comes within the scope of our society's operation.

36,960. (*Chairman.*) It does surely, to get the money in from these people?—We look after the children and see they are not neglected. It is only incidentally we come across these other matters.

(*Chairman.*) I have to thank you very much on behalf of the Commissioners for your evidence. It will be of considerable use, especially on the last point.

(*Witness.*) It is very kind of your Lordship to say so.

Miss Margaret Llewelyn Davies called and examined.

36,961. (*Chairman.*) You have prepared a very full paper of the evidence which you will give yourself and which you have corrected, and I am going to take you carefully through it, but I will preface it by asking this. Some of the cases and opinions are not your own. You have a note that they have been supplied by members of the Women's Co-operative Guild?—Yes.

36,962. You are really here as a representative of that guild?—Yes.

36,963. What is your own position in it?—General secretary.

36,964. The guild is a self-governing organisation of women connected with distributive industrial co-operative societies, stores, and it has 520 branches. Are they all over England?—England and Wales.

36,965. There are 25,897 members. The branches elect their own committees, they meet weekly and fortnightly, and do voluntary work in connection with local co-operative stores?—Yes.

36,966. I think it will be more convenient if you read the paper you have prepared and we shall get the details very quickly?—Branches are grouped into 37 districts and 6 sections, which elect their own committees, and hold quarterly and half-yearly conferences. A central Committee of 7 members is elected annually by all the branches. It superintends the work of the whole guild, and arranges the annual congress, which sits for two days, is presided over by its own officials, and is attended by nearly 1,000 delegates and members. The Central Fund of the guild is made up mainly of branch subscriptions, 2*d.* per member, and of a grant of 300*l.* from the Co-operative Union, Ltd., while branch funds consist of individual subscriptions and grants from the local co-operative societies to which the branches are attached. The members of the guild are nearly all married women, whose husbands work in the ordinary trades of different localities.

36,967. Does that mean there are nearly 25,000 married women members of the guild?—25,000 women members.

36,968. Nearly all of them are married?—Nearly all married women. As shareholders and purchasing members in co-operative societies they take part in the business control and educational work of the movement. They discuss all kinds of industrial, social, and political questions affecting working women. Outsiders remark on the intelligence and good sense shown in their discussions. They hold strong views on the duties of women as wives, mothers, and housewives, and their opinions are based on experience of life, and usually show a balanced practical judgment. I may add, from my own personal knowledge, after having been annually elected their general secretary for 21 years, and staying in their homes in all parts of the country, that as a class they are equal to any for sense of duty and public spirit.

36,969. How often do these discussions take place?—The branches of the guild meet weekly or fortnightly.

36,970. How often do you have a central meeting?—There are conferences held in districts and in larger divisions, called sections. The district conferences take place quarterly, and the sectional conferences half-yearly, and the congress annually.

36,971. In London?—No, in various towns in England.

36,972. That is the focussing of the whole society?—Yes.

36,973. With regard to the method of inquiry which you have adopted to prepare yourself for this evidence, I think that is stated on the next page?—Yes.

36,974. That has been done expressly for the purpose of giving evidence?—For the purpose of this Commission. In order that the opinions of these women—representing married working women, who form the largest class of women in the country—should be placed before the Commission, I have obtained first of all the views on the questions given below, of 124 individual women who are, or who have been, elected officials of the guild, living in all parts of England. They were merely selected on account of their intelligence (we happened to know these officials were especially intelligent women), and with no regard to their views on the subject, which were unknown in every case.

36,975. They were simply sent without knowing what the answers would be. That is the point?—Yes. 124 individual women replied to papers sent them, and there were 431 guild branches, representing 23,501 members, which answered the following questions:—(1) Do you think the grounds for divorce should be the same for men as for women, as they now are in Scotland? (2) Do you think divorce proceedings should be cheapened, so that divorce may be within reach of the poor? Those were the two questions that were sent to the guild branches. The other questions were sent to individual guild members.

36,976. Before we go to the next point, with regard to these branches, what class of women are they who form the branches?—The majority of them would be married women, the wives of every kind of artisan, miners, weavers, railway men, all the ordinary trades that belong to the locality where the branch is.

36,977. They are not what you would call the lowest class at all?—No.

36,978. They are respectable artisans?—Yes.

36,979. Your acquaintance with the country is not confined to London, but you know many of the branches?—Yes, I have been about the country a great deal speaking to the members of the guild, and I have stayed with them in their own homes in different towns all over England.

36,980. Will you now continue with paragraph 3?—"*Demand for Reform.*—This inquiry has brought out in a striking way an overwhelming demand amongst married women belonging to the artisan class for drastic reform in the divorce laws. I can recall no other subject in the life of the guild which has aroused such immediate response, and elicited such strength and earnestness of feeling. I regret it is impossible to place before the Commission the manuscript letters—often many pages long, laboriously written after thought and consultation—which have been sent in, for the personality and attitude of mind of the writers are largely lost in printed extracts. Great gratification

is expressed that evidence on their behalf is to be given, and the hope is strong that reform will come. Such sentences as the following occur: 'I only hope 'this will help you to bring forward a better condition 'for women,' 'trusting that the results of the Commis- 'sion will be justice to the masses,' 'the members 'sincerely hope that the formation of these resolutions 'as law, may come to pass,' 'do please do all you can 'to get equal laws for men and women,' 'we can only 'hope that the result of the Commission will do much 'to amend the laws existing in England.' Where the subject has been discussed in branch meetings, the following remarks are made: 'We had a lengthy dis- 'cussion,' 'these questions were all well discussed, and a 'good deal of feeling put into expression on behalf of 'the members,' 'caused the best discussion we have 'ever had,' 'the questions were freely commented on,' 'they fully realised the immense importance of divorce 'to working people.' A member writes: 'It is said the 'poor are satisfied and do not want divorce laws 'altering, but there is another class perhaps as poor, 'but a different position, who need consideration. 'There are doubtless hundreds like myself suffering a 'martyrdom.' 'There is great need for it among the 'poor, but they never ask for or speak about it, because 'they realise it is only the luxury of the rich.' At a meeting of Lancashire guild officials, held last month, in Manchester, the question was asked: 'are the women 'of Lancashire satisfied with the present divorce 'laws?' 120 officials were present, from over 50 towns in Lancashire."

36,981. Will you tell me what those officials are. Are they artisans' wives?—The women who are members of the guild and who are officials.

36,982. Are they superior people or of the artizan class?—Through their own intelligence they have become officials of the guild. They are taken from the ordinary rank and file of members. They were secretaries of branches and presidents of the local branches of the guild.

36,983. This is not representing the opinions of upper class people?—No, all this evidence is absolutely that of working class women. Feeling was extremely strong—unanimous as regards an equal standard for men and women, and equal facilities for rich and poor—and all except about five or six were of opinion that serious incompatibility should be a ground for divorce. But the most remarkable display was given at the Annual Congress of the Guild last July at Oxford. There was an attendance of 680 working women delegates from all parts of England. The Central Committee member for the Midlands moved a resolution, in a weighty and restrained speech, with a grave sense of the difficulty and responsibility of her task. The seconder was a midwife from the South, who spoke from intimate personal knowledge of the lives of women. The audience listened with great attention, and a discussion was fully anticipated. Instead, not a single delegate rose to speak. They were prepared to vote instantly, The motion was put, and a forest of hands showed itself immediately and silently. There were only five raised against. The summarised results (given hereafter) show a practical unanimity for equalising the grounds of divorce for men and women, and an overwhelmingly great majority are in favour of cheapening the proceedings, while nearly all the 124 individual members consulted agree in desiring greatly extended grounds for divorce.

36,984. Are those the members you have consulted by letter?—Yes there is a small minority of individuals and branches who are opposed to divorce altogether, namely 10 individuals out of 124, and 40 branches out of 431.

36,985. Can you tell us what the resolution referred to on the previous page was?—The congress's resolution was in favour of equality.

36,986. Have you the terms of it?—No, I did not bring that.

36,987. (*Sir Lewis Dibdin.*) What was it in substance?—It was for the equalisation and the cheapening of divorce, simply those two points.

36,988. (*Chairman.*) If you can get a copy will you kindly insert it here when you correct your proof.* A print of your evidence will be sent to you?—Yes. But one or two of these, while expressing their objection to it, evidently look on it as a necessary evil, and the greater part of them say that as it exists, it should be made equal between men and women. Six branches and five individuals definitely base their objection on religious grounds ("those whom God has joined "together, let no man put asunder"). The following opinions are expressed: "I fear many will not agree with me in not allowing re-marriage, but this has been taught me is contrary to God's command." "From a Christian's point of view I do not believe in a second marriage whilst either of the divorced persons is living. It is quite contrary to the teaching of Christ, and as I profess to be his follower I try and mould my ideas of social life and reform from his teachings." "We take our marriage vow till death (not the law) do us part. At the same time if a couple cannot live together in peace and happiness, it is better for all that they should separate. Especially is this the case where there are children, as it is very hurtful for them to see and hear their parents quarrelling, even if there should be no blows given, which is often the case." Other reasons given for opposing any increase of facilities are that it would "lead to more sin and wickedness," would "lower the standard of the nation's morality," would "make divorce more common," and because "the cost of the law keeps men faithful." A branch secretary writes: "It was resolved that the time was not ripe to alter the laws on marriage or divorce. Instead of doing away with the workhouse we should want more, for if the poor get divorce easy, and there are four or five children, who will keep the wife and children, as we know the woman would not be able to support them: then they fall on the State." Four other individuals are doubtful about allowing divorce. Twenty branches which do not state an objection to divorce in itself are opposed to cheapening it, and seven are in favour of cheapening it for the poor only.

36,989. That is a summary of the objections?—That is the very small minority who are opposed to any extensions. Then paragraph 4: "*Attitude towards* "*Marriage and Divorce.*—Our present divorce laws are not only out-of-date when compared with those of other Protestant European countries, but, as I think the evidence of the guild will show, out of touch with the predominant opinion of representatives of the largest class of women. The opinions of these women are not the result of their own unhappiness, for the great majority appear to be happily married, but are based on a close knowledge of the sufferings and needs of others, and guided by a feeling as to what will conduce most to happy, moral—in a word, civilised individual and family lives. Out of 131 cases sent in, only eight related to their own lives. A guild member wrote saying guild women generally are happily married but they are just the sort of women who have other people's troubles confided to them in a way no district visitor or such person, however kindly disposed, hears them. I have thought it desirable to give almost all the cases, in order: (1) to show the nature and causes of the suffering that goes on, and (2) to show how widespread it is, especially among women. Owing to the state of the law and the fear of hostile public opinion, this suffering is so often borne unseen that the extent and character of it is not realised. It is striking to find out of all these cases which have been sent in, over 130, that only 24 referred to any hardships to men, and of these 24, 11 are insanity cases. I think it is rather remarkable as showing that the suffering is evidently very much more on the side of women than on the side of men. I think women would have an opportunity of knowing and would be quite as sympathetic with men who were suffering with wives who

* The following is the resolution requested in Q. 36,988:—"That this Congress unreservedly condemns the inequality in the grounds for divorce for men and women in England, and is of opinion that divorce proceedings should be made cheaper, so that, where needed, divorce should be possible for the poor as well as for the rich."—(*Moved by the Central Committee.*)

were unfaithful, or from any other cause, and having actually had only this very small number of cases in which the hardship was on the man's side, in spite of some of the cases referring to women only, such as refusal to maintain and cruelty, it is very striking as showing that the great mass of suffering is on the part of the women. The general attitude of the women towards divorce is very definite. They look upon it as a much needed method of release in cases where the marriage tie involves a life of degradation and suffering, most often to women and children. No woman could inflict on a man the amount of degradation that a man may force on a woman. The desire for reform does not proceed from any light wish for a life of pleasure, or for the loosening of home ties. One branch secretary writes, 'I am instructed to say that all present 'considered the divorce law not one to be lightly 'sought for, but when a just need calls for action, it 'should be brought within the reach of the poor.' It is clear that by the great majority, *the sanctity of marriage* is regarded as depending on the nature of the marriage relation. All our members were most emphatic that where the husband and wife could not live happily together, it was no real marriage. It was a life of fraud, without love. 'Nothing but love should 'hold two together in this most sacred of all bonds.' Another member, who is a churchwoman and a communicant, writes: 'I have just resigned from the 'Mothers' Union, of which I have been a member for '15 years, because I do not hold with the line they are 'taking over this divorce. I am told they are getting 'up a petition, and that people are signing it *just to* '*please the ladies*, although as a matter of fact they 'approve of divorce. If I had my time to go over 'again I would not be married in a church. It is said 'that marriages are made in heaven, but in my opinion 'the only real marriage is when men and women are '*real comrades*. When they are not, then in the sight 'of God it is not marriage. Never, never will I 'believe that submission to man who has killed every 'scrap of affection and respect by his unfaithfulness 'and neglect, is accepted in the eyes of a loving and 'just God.'" Where the marriage relation is bad, divorce is looked upon as a right course. Analysing the answers, it appears that the better relation to be desired between married people and the power to dissolve a bad relation, are hindered by a combination of causes:—(1) the view sanctioned by law and custom that the wife is the property of her husband; (2) the want of any effective and reasonably reliable means of support for married women, felt especially where there are children; (3) the fact that the children are the property of the father; (4) the dread of public disgrace.

(1) The feeling against the idea that the wife is the property of the husband is extremely strong. "It lies," says a member, "at the root of the whole question." Others write: "We want to get rid of the idea that a man owns his wife just as he does a piece of furniture. Men have in the past looked upon women as something they could own as one of their possessions as long as they choose. There is so much harm done by a woman regarding herself as a man's personal property. It would be well for England if men and women knew they did not possess each other as property, but felt rather that each was the complement of the other. It is certain many married people would consider each other more if they knew there was a probability of a separation; now a man often feels that his wife is his, no matter how he treats her, and that she must stay to attend to his home and children from social as well as economic reasons. Certainly divorce in itself should not be looked on as shameful, continued intercourse may often be more shameful. I believe if it (divorce) was equal, men would look on women with more respect than at present. I think it is this difference which gives a man the idea that a woman is his property to do as he pleases with. Much needs to be done in educating woman to a realisation of her own importance and responsibility, then she may be the companion and not the servant or property of her husband. I believe it is because men and women think marriage is so fatally binding that in many cases they rebel and err or sin against existing laws, and I feel sure that if women had equal chances with men in this respect, they would respect themselves more and really look upon their bodies as their own property, and not so soon give in to the brutal desires of lazy selfish men. It is terrible to see women giving birth to babies that are born handicapped by the vices of the father."

(2) Although the law recognises the claim of a wife to maintenance, it gives her no legal power to enforce it unless she leaves her husband. The wife who devotes herself to home and does not go out to work has no money of her own at all; and at any moment, owing to a man's selfishness, whim, loss of work, illness or death, a woman may have to submit to being given insufficient money for the family expenditure (and few people know how common it is for men to retain a considerable portion of their wages), she may be left entirely without support, or may even have her home sold over her head. A member writes: "I always remember saying to a woman living apart from her husband what I should do if my husband had turned out to be the beast some men are, nearly killing their own wives to satisfy their own lust, and she said to me: 'And what if you had no wage at the week-end?' and the horror I felt because I thought of the women who could not earn money, but were bound to submit to men because of economic reasons, to get money for themselves and their children. It is rather a serious matter for women. Many men desire young wives, and get rather tired of wives who have been faithfull and perhaps through caring for a family have been kept in the house and have not had a chance of progress. They have aged whilst their husbands have kept young. Now it is no light matter for a woman to turn out in the world again to earn a living, especially with no trade. We know there is not work for young girls, never mind women who have been at home several years, and you cannot always blame a woman who puts up with fearful things for the sake of her home. I was thinking what an awful thing it must be to go round to get work, and if they knew at a works that you were separated from your husband, well that would go dead against you, so you see it would often mean starvation. It is an awful thing the economic dependence on the man, if he happens to be a worthless one, or one that thinks he is 'keeping his wife' when she is at home doing the work." Another member says: "One of our own guild members is compelled to live a life of worry and disgrace through the misconduct of her husband. Because she has a young family for whom it is impossible for her to provide, she must drag through a more than living death."

(3) and (4) The woman has so long had to bear any stigma arising from seeking divorce that she accepts her life for her own and her children's sakes; and the fact that her children belong to her husband if she leaves him is another reason for enduring terrible personal cruelties. "The woman covers up everything for the sake of the children." "A woman endures everything, even amounting to martyrdom, before saying a word." "I suppose it is the children which stops more divorce cases than anything—that is the worst of the marriage tie, all children born in wedlock being the property of the father." "A mother feels it a duty to suffer and bear unkindness in silence for her children's sake. She will suffer much to prevent the finger of scorn being pointed at her children, or that they should have the knowledge of a drunken and brutal father. There are many homes where a mother will hurry her children to bed so soon as she hears the footsteps of a drunken and cruel husband. I know a young man who was 18 years of age before he was aware that his father was intemperate, and that his mother had suffered all these years from various forms of ill-treatment." But there is now a strong and growing feeling that these conditions and views, formerly either accepted or submitted to, are wrong. There is also a rapidly growing conviction that it is the right of children to be born well, and to be brought up in a good home. Children should be borne in love only, and never in any lower or any less satisfactory conditions." "I consider it is a greater shame for a woman to be obliged

to bring up children under such conditions than it would be to have a divorce." "I think I would work my fingers to the bone rather than let my children live with an immoral husband." "What a different state of affairs might exist if the feeling prevailed that it was not moral to bear children to an immoral father or drunkard, or to a man they do not honour or love. What, are our future citizens to be brought up in homes where ill-treatment and no mutual affection exist? No credit to the name of Briton." "I think it is an awful position for a woman to be compelled to live with a man and suffer the degradation of bearing him children when all respect and love for him is lost. And I greatly fear it rests on the poor unfortunate children to such an extent as to warp their whole lives." "Undoubtedly it is bad for children to be brought up in a loveless home, far better to separate, otherwise it is so difficult to train them to live a Christian life. I speak from bitter experience."

These women think that divorce is essential for the destruction of wrong and suffering; but they also believe in its constructive value. They believe that greater facilities for obtaining divorce will tend to the happiness and stability of married life. The following quotations express the view that divorce might lead to better and more moral behaviour:—"It would be one way to keep young life more pure if divorce was cheaper, as when some young people get married unhappily, they would be able to get free and so not lead so much a wicked life as some do now." From what I know of working people, I do not think cheaper divorce will cause more immorality. But I think one cause of immorality is the code of ethics held by such men as Judge Bigham, and it is a commonly accepted one. "While one feels that with easier facilities, the number of divorces may increase, there will be the satisfaction of knowing there is less suffering, and greater happiness with a higher standard of morality." "Reforms on similar lines to Norway will make for a better home life and a strengthening instead of weakening the bonds of true marriage." "I have in mind where a woman lived for years with a man and the clergyman got them married, and the woman said they got on very well together as long as the man knew she could leave him, but directly they were married—tied to him—he treated her cruelly." "Our present system actually puts a premium on unfaithfulness." "Only in homes where no love exists will divorce ever be thought of." "I think making divorce easier would have a deterrent effect and stimulate to better things." "When the economic conditions of women's lives are altered and they learn to value themselves as something better than to have to marry, as so many hundreds do, not for pure love but for the sake of having a home of their own, because they see no prospect of an independent old age, we shall have fewer divorce cases to sadden us." "I am sure if the law of this country was reformed in the same direction (as Norway) we should soon see a happier and purer family life as a result, for if either man or woman knew that the result of incompatibility would likely be divorce, how much more careful it would make each one when making a choice of a partner, and how much more careful to display only the best qualities in the house." "I feel sure if divorce could be obtained at less cost, I believe it would have a tendency to bring about a better *Moral State* in the near future." "I believe that equality in the divorce law would raise the standard of morality for both men and women, and in cases where there are children, equality would have a beneficial effect on their standard of morality."

36,990. Then the next part of your proof are opinions of branches and individuals with sample cases?—"It will be seen from the opinion of guild members given below what are the specific reforms wanted, some being more urgently desired than others. These reforms include:—(1) The same grounds for divorce between men and women; (2) the cheapening of divorce, and, where necessary, the payment by the State of the whole costs; (3) the extension of the grounds of divorce to include: (*a*) persistent refusal to maintain, (*b*) insanity (with restrictions), (*c*) desertion over a period of two years, (*d*) cruelty, (*e*) separation order which has lasted three years or less, (*f*) mutual consent, (*g*) serious incompatibility; (4) offences on both sides to be no bar to divorce; (5) the general suitability of the parent for bringing up children to be the ground on which the guardianship should be decided; (6) the trial of cases in county courts with closed doors; (7) women to be given some part in the administration of the law; (8) maintenance under the law of separation and divorce to be collected and paid out by the court." Since this proof was printed 87 additional branches have sent in, so that the numbers that follow are altered.

Below are summarised the replies of the 124 individuals and of the 431 branches and 23,501 members on the questions submitted to them, with a few illustrative cases and opinions. Further cases are given in an Appendix.

"(1) *Should the present grounds for divorce be the same for men as women?*—It is impossible to exaggerate the strength of the feeling that there should be an equal moral standard for men and women and that the grounds of divorce should be the same. There is not a single individual who gives a negative or doubtful reply. It is felt that the present law actually encourages immorality, and unfaithfulness is spoken of as 'the most refined cruelty of all.' The idea is deeply resented that cruelty should be interpreted as bodily cruelty only."

Shall I continue with all this?

36,991. Yes, I think this is so valuable we ought to have it all?—"Out of 124 individuals asked questions 123 women reply in the affirmative, including 13 who are opposed to divorce, but who are of opinion that while there is divorce, the ground should be the same for men and women. One, whom I happened to know is opposed to divorce, does not reply."

"*Branch replies.*—413, out of 431 branches with 22,558 members, reply in the affirmative, including 25 branches with 1,438 members who are opposed to divorce, but who are of opinion (often strongly expressed) that while there is divorce, the ground should be the same for men and women. Three branches with 156 members reply in the negative. 12 branches with 650 members are opposed to divorce and do not reply to this question."

The *cases* are as follows:—

"1. Husband left wife and five little children all too young to work, and went to live in a neighbouring town with another woman. Wife earns 7*s.* 6*d.* She has applied for a Separation Order, but cannot get one, as the husband times his visits to her sufficiently often to prevent it, yet he has not sent her a penny for nine weeks."

"2. The wife of a man in a fairly flourishing condition could only obtain a Separation Order with small alimony, although the husband is living in open infidelity with another woman."

"3. A wife sold all her property (1) to help her husband in business, (2) to save his name being dragged through court in an affiliation case. The husband brought home another woman and made her sit at the head of the table, the wife knowing he was keeping up a house for this other woman. When she inquired about getting a divorce, she was told that as the house was the husband's, he had a right to bring anyone he liked there. She used to lock herself in another bedroom at night. She tried to obtain a Separation Order, without success, because he provided a good home for her, and there was no violence. In the end he turned her into the street, and she was able to bring a witness to prove it, so got a Separation Order."

"4. I know of a case now where the husband (who is a *tackler in a mill*) boasts to his wife that he can do *what he likes* with certain women and *does*. They are past middle life, he and his wife, and have a married son. She has reached that stage of intolerance when she longs for a divorce."

"5. Husband went to South Africa as reservist; while the war was on the wife got her money from the War Office, but when the war was over, of course that was stopped. He stayed out there to get work for some time. After a time he came back home, while his wife was at work, and brought another woman and

demanded she should live with them. The house was in his name, so she had either to submit or leave him; in which case she would have had no claim for maintenance and there were four children to be kept, so she lived through it. I know too well what she suffered while that kind of thing existed. After a time he went away again with the woman and she does not know where he is."

"6. I know myself of a case where a woman has suffered untold agonies through the disease given to her by an unfaithful husband, her children also suffer from a skin disease and are puny and sickly-looking, and yet he has never struck her. Outwardly he is apparently all that a man should be. I think the evidence of the woman herself and of the doctor who has attended her should be sufficient evidence."

"7. I know of one case in particular where the husband has committed adultery, but the wife cannot show proof of cruelty also (the 'cruelty' taking a form which cannot be shown, but nevertheless less endurable). He could claim the children (girls) and because of this she puts up with him, and her life is a misery. He knows the existing law, and trades on this grave inequality of moral standard for men and women." (*See* Appendix, Cases 58–66.)

"*Opinions.*—Men have argued with me that it is not so bad for the man because he does not take it home, and the woman does; but I answered that he does what is quite as bad, he sends the trouble to someone else's home, and perhaps has been guilty of immorality with the very woman 'who takes it home.' I have heard men declare it is safer to have relations with a married woman, because none of the consequences will fall on the man."

"The fact of a man committing adultery ought to be considered cruelty, without having to prove bodily cruelty."

"There should not be two codes of honour. If a man expects to mate with a virtuous woman, it should be her right to expect the same from him."

"Otherwise a lower standard is encouraged for men."

"A woman has a right to expect from a man the same purity he demands from her. Unhappily, she is, I believe, often disappointed, but whatever a man may have done before marriage, it is to my thinking an abominable idea to regard any act of unfaithfulness as an accident."

"Is not adultery itself a great cruelty?"

"I very much object to divorce altogether, unless the guilty person should be prevented from remarrying . . . As it is deemed necessary to have a Divorce Law . . . the same conditions should be applied to men and women."

"I think certainly the grounds for divorce should be equal, as the women in most cases suffer more from the husband's wrong-doing."

"A witness said an offence on the part of the wife involved 'confusion of progeny,' and was therefore criminal. I fail to see where the difference lies. In the man's case, it must involve 'confusion of progeny' in the woman with whom he has committed adultery, just as much as in the wife's case. The witness who made this statement was merely putting it from a husband's point of view. What difference does he imagine there is between his wife and any other woman with regard to confusion of progeny?"

"Grounds for divorce should be equal, to prevent men carrying on a life of immorality, knowing the law cannot touch them, as long as they refrain from physical cruelty to the wife." (This remark from a woman illustrates my meaning.) "He would not illtreat me although carrying on with other women, because he knows if he did, I should apply for separation or divorce."

"I am surprised to find that so many respectable men think a man should be forgiven for occasional immorality, but not a woman."

"It is a very unjust law for a woman to be (in some cases almost starved) and ill-treated in many ways before she can be allowed a divorce, when she can prove without doubt adultery against her husband."

"I myself have had such a happy married life that I cannot possibly think women would in any way abuse the law if it was made the same for them as it is for men, especially when there are children of the marriage. As a rule, English people hold marriage as a sacred tie, and it is only when some very deep incompatibility arises between them that divorce is thought of."

"We have cases that we know where the above law (permitting divorce for adultery without cruelty) would be very helpful to some good women and mothers and their families."

"(2) *Should divorce proceedings be cheapened, and where necessary be free of all cost?*—The feeling is very widespread that the poor should have the same chances as the rich. The question of cost is of special importance to women. As most wives have no money of their own, they are prevented from either defending a case (thus often are unable to prove their greater suitability as guardians) or from bringing a suit. Where the only chance of payment of costs is out of the husband's weekly wage, it is most difficult for a woman to get her case taken up by a solicitor. No cheapening of divorce can meet the needs of wives. All costs, including the expenses of witnesses, must be State paid, where they cannot be recovered from the husband, and the wife has no property."

"(*a*) *Should divorce proceedings be cheaper?—Individual replies.*—Out of 124, 119 women reply in the affirmative, including nine who are opposed to divorce, but who are of opinion that, while there is divorce it should be within reach of the poor as well as the rich. Three who are opposed to divorce reply in the negative, one of whom is of opinion it should only be made cheaper in exceptional cases. Two who are opposed to divorce do not reply."

"*Branch replies.*—Three hundred and sixty-four branches with 19,124 members reply in the affirmative, including six branches with 223 members which are opposed to divorce, but are of opinion that while there is divorce it should be within reach of the poor as well as the rich, and seven branches which desire that the cost should not be lessened for the rich, but should be graduated according to income, or paid by the State in the case of the poor. Fifty-three branches with 3,000 odd members reply in the negative. Of these, 33 branches with 2,064 members are opposed to divorce. Fourteen branches with 1,155 members are doubtful, or made no reply."

"(*b*) *Should all costs of Divorce proceedings be paid by the State where necessary?—Individual replies.*—Ninety-seven women out of 124 reply in the affirmative, of whom, six are opposed to or doubtful about divorce. Six women reply in the negative, of whom three are opposed to or are doubtful about divorce. Four are doubtful. Seventeen do not reply."

36,992. Do your branches include all denominations of people?—Yes, I think the majority would probably be non-conformists, but it is never asked and it is not known definitely. Then the cases are as follows:—

"8. A woman wished to obtain a divorce, but had to wait till after the birth of her baby. Her husband left her alone in London, a few weeks before the birth of her child. She knew no one, she had no money, and he had pawned all her jewellery. When the baby was born the doctor wished to send for her father as she was in such a terrible condition. When she was strong enough she went with her baby to her people in Manchester. With the help of her father, she managed to obtain enough money to start proceedings, and the case was dated for some little time before the long vacation. She had to come with her baby from Manchester to London, find lodgings for herself, then find her witnesses, one of whom was the nurse, who had to be paid, as she lost her employment for the time she appeared. The doctor, in spite of his action at the child's birth, refused to appear as a witness. After being in London several days, some of which were spent entirely in the Law Courts, she was told that, owing to other cases, the divorce case could not be heard until after the vacation. Owing to the need for money, she was unable to proceed any further."

"9. A man had a bad wife who left him. He saved 30*l.* towards a divorce, but was told it was impossible

to obtain it for so small a sum. He has since been out of work, and has had to use the money saved."

"10. A young wife was left with one child. The husband went to America and married another woman, and the wife saved up for six years before she could get a divorce."

"11. I know of a case where the man sold the home up while his wife was away nursing a sick mother, and went off with another woman. The wife had to furnish a house on the hire system and take in boarders. She has made a living for herself and two children for five years, has paid for the furniture, and is now saving up to get a divorce. In a case like this she ought to have it free."

"12. I knew a man a few years ago who had to lead a very lonely life as he could not raise the money. However, some friends came forward in the end and made a collection which enabled the man to procure a divorce. But many years of his life had been dulled and wasted through the want of means."

"13. Husband frequently leaves wife to go with another woman who actually leads a life of ill-fame while the husband is with her. The consequences to the wife are terrible: frequent miscarriages and abortion have occurred to the poison. The wife is absolutely dependent on the husband, and has no money for divorce proceedings. Further, her ill-health (due to the man) prevents her working for wages. She is hard-working, clean and worthy in every way."

"14. A married woman was regularly visited by a 'gentleman,' so that even the children, of whom she had five, began to talk about it. Things went on in this way for several years, until a collection of 60*l.* was made by the husband's friends and fellow workmen, and he got a divorce. Eventually he married again and lives happily. He is a good husband and father." (*See* Appendix, cases 67–90.)

Opinions.—"At present many lives are made miserable because they have no means to take proceedings."

"Only those who have money benefit under the present law."

"Many poor women have to put up with a dreadful life, through not having the means to get a divorce."

"In this respectable town of ours, the members spoke of two cases where the women would be thankful and are praying that the law may make it easy for them to get a divorce; they cannot afford it now. In some cases the want of facility for divorce makes life unbearable, as the expense entailed does not come within their reach."

"It would save a large amount of unseen suffering and sorrow to many poor women."

"It is much harder for poor people to live together, if either party are wanting a divorce, as they cannot get away from each other as rich people can."

"The law if anything should be made easier for the poor than the wealthy, seeing that in the majority of cases they are even unable to have separate bedrooms."

"I know of several cases of persons who are separated from their husbands or wives, who are living with other men and women, and I certainly think they would have been married had they had the means to obtain a divorce."

"A question of justice should not depend on monetary power."

"If divorce were cheaper, the working woman could claim to be freed from the insults and indignities that often follow separation. After separation a man often dogs a woman's footsteps, especially if she has partially earned the living and makes himself a pest, until the woman either in despair or misled by false promises, takes him back, thereby losing the sum allowed by the court and making her own life more cruel than before."

"Divorce has been a thing out of their reach."

"One thing the women were quite emphatic on was that they could never collect the money even up to 50*l.*"

"Divorce should be cheaper, so that the poor can obtain it. The State should bear the cost when it is absolutely necessary, because the poor are brought in to so much closer contact with each other than the rich, which makes it harder to bear."

"All the arguments for cheaper divorce have not proved to me any solution for the woman's difficulty, as the working-man's wife in the vast majority of cases would not be any better off. Where there is unfaithfulness, drunkenness, cruelty, insanity or desertion the wife is almost sure to be absolutely unable to pay even for a cheap divorce, so I cannot see anything but free divorce."

"The State should assist, as it is very few women who have any money."

"Very few working-men's wives can have money of their own, because, where the husband is not true to home ties, his money finds many other channels, therefore the wife has no chance to save anything for herself, more often she can hardly make ends meet."

"A poor woman is not given any wages for her services as wife, but a housekeeper could state a wage and claim it, but a wife has only shelter and food and clothing. If she wants a divorce, where are her funds? She has none."

"It is far from right that the poor should have to suffer without remedy, because expensive, a hateful companionship, while the rich, to whom such a companionship is not nearly so odious or galling as to the poor people in their small houses, can afford to pay for freedom."

"Most wives of working men are poor, as the money they receive or rather their husbands earn, is not enough to provide for ordinary comforts, let alone allowing for any saving, either for himself or herself, and if there was any over, the husband as a rule would have it put away in his own name. Therefore it is necessary for a woman to know of some resource in dire cases of necessity, and that source should be a State Fund."

"Yes, as the husband might object to money provided for housekeeping being used for such purposes."

"Yes, I do not see the use of women who have no means applying for a divorce unless the State pays, perhaps then they will begin to ask why it is that a married woman has no money of her own."

36,993. I gather the Congress dealt with equality and cost. Now we are coming to individuals?—Yes, these additional grounds were only asked of the individuals. The 431 branches also dealt almost exclusively with equality and cost. The only other question they were asked was whether women should serve on juries. The rest of the evidence is what the 124 individuals have given.

"(3) *Should there be additional grounds for divorce?*"

"(*a*) *Should the husband's refusal to maintain wife and family be a ground for divorce?*"

"*Replies.*—91 women reply in the affirmative, of whom three are not in favour of divorce; 12 reply in the negative, of whom three are opposed to divorce. Two are in favour of punishment or separation as a preliminary step; six are doubtful, one being opposed to divorce; 13 make no reply."

"*Cases.* — 15. Bright, active, intelligent young woman, learning baking and confectionery after marriage in order to help up the finances. Husband begins to loaf and gamble, deceiving his wife in many ways and when given money (by her) to pay her confectionery bills keeping the money, selling her clothes and even their wedding presents. She finally left him and found herself deep in debt, destitute, and almost naked, having slaved week in week out. Has now a good chance of marrying a most suitable man, but unable to do so and has to work very hard to make a living. Only 35 years of age—a proud and honest woman who has never in her life owed a penny."

"16. Brother going to see his married sister and two little girls, found them starving. He at once took them to his home. Because she had left her husband, he (the husband) refused to pay anything towards her maintenance, but offered to take the two children, one a year and the other two years old. This happened nine years ago, and she has never received a penny from him, but has supported herself and the children."

"17. The man was not over fond of work, consequently did not stay long at one place and she had to follow. She has now two children, and they are parted.

He is deemed to pay 7*s.* a week towards the maintenance. He has been more than once before the Court, and still does not or will not pay, and the girl and the children are dependent on her old grandparents."

"*Opinions.*—In cases where the husband would not support wife and family, I should certainly grant divorce, in order to limit the family, otherwise I think the family would sink to the lowest level and in time would become chargeable on the rates as paupers. If a divorce be granted, we relieve the wife of a great trouble concerning a worthless man and in nine cases out of ten the woman will rise above it."

"I believe it would make divorce far too easy."

"In some cases it would be unwise to free a husband to marry again."

"(*b*) *Should insanity be a ground for divorce?*—The great majority are in favour of this. A considerable number desire it only in cases where the insanity has been pronounced incurable. Others consider that the possibility of children being born should be removed. It is difficult for women to support children without the help of a husband and it is thought a hardship that a woman with a hopelessly insane husband should not be allowed to remarry. The need for some precaution is realised. One member says: 'Yes, provided the patient were not in a private lunatic asylum.' Another writes: 'Provided it is not insanity brought on, as is often the case, by weakness in child-bearing or ill-usage.'"

"*Replies.*—98 out of 124 reply in the affirmative, four being opposed to divorce, and 18 saying only incurable insanity should be a ground for divorce; 14 reply in the negative, four being opposed to divorce; two are doubtful, one being opposed to divorce; 10 make no reply."

"*Cases.*—18. Wife has been insane six years, in an asylum, and there is no hope of recovery. The husband has made the acquaintance of a girl who has grown to care for him, and they are hoping for a reform in the Divorce Law to allow them to marry."

"19. Husband has been in an asylum many years, and there is no hope of recovery. The wife has had several offers of marriage."

"20. Wife went insane after birth of third child, and there is no hope of recovery. The husband has to have a housekeeper, and desires divorce."

"21. Wife becomes insane after birth of first child, and is sent to a lunatic asylum. Recovers and lives with husband again. Becomes insane again after birth of second child, and is again sent to asylum. This horrid drama is repeated, until now the woman has been the mother of eight children and is in an asylum permanently."

"22. A man's wife has been in the County Asylum for 16 years. The man is a good tradesman and steady, but with the exception of living with a woman who is not his wife is otherwise a moral man."

"23. Another man not far from here, whose wife is in the asylum and has a family of young children, cannot get a housekeeper without creating a lot of slander. What is he to do? His wife might possibly live for years, thus preventing him ever getting married again."

"24. Man has had his wife in asylum 30 years. This man went through the form of marriage with a woman much younger than himself, and now there is a second family, and the woman does not know her husband has a previous wife living." (*See* Appendix, Cases 91–96.)

"*Opinions.*—Unless it is just a temporary attack, it is unjust to both men and women, because the man is left with young children, and he must either engage another woman or send the children away, or they are sadly neglected. Then, if it is the man, the mother is deprived of the income, and if there are any children she must either go out to work and neglect her children or she must become a pauper, and if she does this the relief is so small that often the woman goes wrong."

"Especially where the case is certified by the doctor as incurable, and if ever insanity is stamped out, I think stringent means will have to be taken that no children follow where insanity has been proved, however slight."

"Where insanity was proved to be hereditary or incurable. In cases of insanity from fear at the approaching childbirth or from shock, not until three or four years have elapsed. I have known cases of insanity from these causes where the person has recovered the mental balance."

"I would grant divorce on the ground of insanity, so as to benefit the future race."

"It is often a hardship on a man with young children to be bound to a wife who is insane and for whom there is no hope of recovery. It leads to immorality and often gives rise to a deal of scandal when there is no real cause, as it is impossible for a working man to earn his living and look after his children as well. He should be granted a divorce and be free to marry again, if he so desired, for the sake of his children."

"We cannot favour divorce through insanity. It is an affliction and a person might be detained for a few years, getting out and finding the said person married again. We think it enough to drive them insane again."

"I do not think that insanity (unless proved to be brought about by the patient's bad conduct) should be grounds for divorce. It is an affliction, just as much as consumption, paralysis, &c."

"(*c*) *Should desertion for a period of two years be a ground for divorce? Individual replies.*—88 women reply in the affirmative, four being opposed to divorce; seven would make the period of desertion from 3 to 5 years; one would make the period of desertion from 8 to 10 years; seven reply in the negative, three of whom are opposed to divorce; seven are doubtful, two of whom are opposed to divorce; 14 make no reply."

"*Cases.*—25. Husband had been in Post Office 24 years. Three months after his marriage his wife tired of living with him in Wales and went back to his mother. Three years later she joined him in Shropshire with their little girl, but after two months she left him again, and they have not lived together since. It is simply incompatibility of temper. The husband often says that if husband and wife have no intercourse for 10 years (except an allowance to the wife) divorce ought to be obtainable."

"26. Husband was sentenced to long term of imprisonment, and then deserted his wife. She remained faithful to him 28 years, and then ventured to marry again."

"27. Young woman under 30, well educated and qualified to take a good position, married. The husband by his own fault lost his situation and had to go abroad to regain his character and a livelihood. She supported herself, and I believe sent him money, and after some time offered to pay his passage home and keep a home for them till he got a situation. He refused, and rarely writes to her. She feels the burden of being bound to a man who does not want her. She would get a divorce, but can only do so at the great expense of sending an agent abroad to obtain evidence of the man's life." (*See also* Appendix, Cases 97–102.)

"*Opinions.*—By the time two years had elapsed the mind would be fully made up as to the possibility of coming together again or not."

"If they have been parted for two years there can be no mutual sympathy, and it means either a life of celibacy or going wrong."

"If a man deserts his wife and family for two years he would not hesitate to do so always, therefore I think divorce in this case would be just."

"(*d*) *Should cruelty be a ground for divorce?* Under cruelty it is thought should be included all forms of cruelty, besides actual bodily cruelty, and the communication of disease."

"*Replies.*—100 women reply in the affirmative of whom four are opposed to divorce; two reply in the negative, one of whom is opposed to divorce; five are doubtful, two of whom are opposed to divorce; 17 do not reply."

36,994. Do you mean the four who are opposed to divorce in the first line are included in the affirmative although they are opposed to divorce?—Yes, they often say they do not wish for divorce, but given

divorce they would be in favour of this particular form. That is what they mean. The cases are as follows:—

"28. In a case I know of the wife has had a terrible life. She has had 11 children, and told me that during the periods of pregnancy he would do all sorts of things to frighten her and so bring on miscarriage. He has even crept down the cellar grate and then rushed up the steps and burst into the kitchen with a great yell. Still she was obliged to stay with him, because she had no means of supporting herself and children."

"29. I know of women who always try to bring on abortion when first they are pregnant, not because they are afraid of the pain for they suffer more than they would at a birth, nor because they do not love children, but because the husband will grumble and make things unpleasant because there will be another mouth to fill and he may have to deprive himself of something. In one case the man always thrashes his wife and has put her life in danger in his anger on discovering her condition. The very fact that they can become pregnant, instead of making them more valuable, makes for their misery. Is it not more degrading for these women to be living in what is, after all, legalised prostitution, than for them to be divorced?"

"30. A woman after being ill-used and kicked about, has tried her husband five times, each time receiving the same treatment from her husband, and has had to work in the factory to keep the house together, and had to be carried home often very ill, and is still after four years under the doctor. I could state many hard cases, in each case the wife a good hardworking and clean woman and mother." (*See also* the important and detailed cases 113, 114, 117, in Appendix.)

"31. Husband and wife have been separated seven years. He was cruel to her, but she cannot prove adultery. She would like to marry again, but cannot get a divorce (1) owing to poverty, (2) owing to the difficulty of proving adultery."

"32. My cousin married a man who has behaved most brutally towards her, has broken her teeth, blacked her eyes, and bruised her body, and I believe is not kind to the children. This is not a case of drunkenness for the man does not drink; it is temper, which I think is a form of insanity. My cousin has told me with her own lips that he has killed every spark of love she had for him, but she must put up for the children's sake."

"33. I have a neighbour married to a well-educated man and she has said that her husband has been cruel in every form, but such as the law cannot touch."

"34. There are cases where divorce would be beneficial from various points of view, such as insanity, insistence on conjugal rights, when either party are suffering from disease which would cause the children to be born unhealthy, especially if it is sexual disease. I have had a case just lately where the baby was born with this terrible disease, and in spite of every effort on the part of the doctor and myself, the child went blind. This is the second case of the kind that I have personally had to do with. One child is dead. Many more cases where the disease has shown itself in children and adults have come to my notice."

"35. Husband physically rotten through bad life previous to marriage. Compelled wife to cohabit—result three children with sore eyes and ears, and mentally deficient."

"36. There is another question that I should like it as a reason for either a man or a woman to get a divorce, for when a man suffers from a bad disease and contracts it to his wife. This I can speak on with a personal knowledge of, being a victim to it myself, which has meant years of misery for me, not only for me, but there is children to consider, and the woman covers up all for the sake of the children."

"*Opinions.*—If a man who is so cowardly as to ill-use the woman he has promised to love and cherish, by violence, I consider she is perfectly justified in obtaining a divorce."

"Cruelty is one of the things which cannot be tolerated in the relations between man and woman. No *law* can make it right for a woman to submit to it. And the present system of separation encourages immorality."

"The power and stability of the State depending upon the units of which it is composed, that power and stability is seriously threatened by the fact that women are forced to bear children (who will be the future citizens) to men often totally unfitted to become fathers."

"Yes, and I would take all forms of cruelty, such as injury to health by the husband's misdeeds, besides personal violence."

"I emphasise this. I know of some cases of persistent cruelty, and they are unable to get a divorce, but can get a separation only. These women are always in fear."

"Some of us women consider moral cruelty worse to bear with than physical cruelty. There are many ways in which a husband can be cruel without breaking the law as it stands at present."

"I believe there would be less cruel treatment if it was known a divorce could be got on these lines."

"(*e*) *Should drunkenness be a ground for divorce?*—(This question was only sent to 40 individuals.)"

36,995. Why was that?—It was owing to the fact that my evidence was put off. I was going to give it before the Commission rose. There were a certain number of individuals we included afterwards to make the evidence more complete. In the first number who were asked questions these were not included.

36,996. This gives those to whom this question was sent?—Yes. "26 women reply in the affirmative, including one who is opposed to divorce; five reply in the negative, including one who would allow separation. Three of these are opposed to divorce. Two are doubtful. Seven make no reply. A few others who were not asked the question suggested it as a cause."

"*Cases.*—37. Husband had a good trade, but drank. In order to bring up her family properly the wife had to go out to work at charing and washing, with her own housework to do when she got in. The man often abused her and drank to excess, which led to immorality. She died suddenly one day while out at work."

"38. Woman had a drunken husband. He would not work, and drank all he could get hold of. She had to work hard and keep him and family—two children. She now has met a fellow who would give her and the children a good home. When doing regular work he earns 2*l.* a week. Would like to marry him, but the law is against her, and she cannot afford to spend any money on solicitors. She has decided to keep house for the fellow. They now have every friend and acquaintance pointing fingers at them!"

"39. Wife has lapsed into intemperance, and leaves her home for days together, on one occasion was away four days drinking, when her baby was 12 days old. The man is a total abstainer, fond of home, and kind in every way, except in allowing such a woman to bear children."

"40. The man was an ardent total abstainer before marriage and for many years after, but he gave way to drink and brought untold sufferings on his wife and children. Surely in a case of this sort the woman could not be blamed for marrying a drunkard, neither should she be forced to live with him, but as things are to-day she could not obtain a divorce however much she desired it."

"41. A relative of mine married a man of good family who has turned out a complete drunkard. She has left him four times, come home and returned, as she says, for the sake of the children, so that they should be brought up with their father. Each time she has returned she has had another little one, making five in all. Now this man has had delirium tremens several times. I ask that a divorce should be made compulsory in cases of this sort, if only to prevent having children." (*See* Appendix, cases 103–5.)

"*Opinions.*—There is such a lot of different ways of cruelly treating a woman, and also for drunkenness,

which I think is one of the worst forms of cruelty for a sober woman to be married to a drunkard."

"I think drunkenness ought to be a cause for divorce in England."

"(*f*) *Imprisonment as a ground for divorce.*—No question was asked as to whether a sentence of penal servitude should be a ground for divorce, but a few suggested that it should be."

"(*g*) *Should a separation order which has lasted for three years be a ground for divorce?—Individual replies.*—75 women replied in the affirmative, of whom three are opposed to divorce; seven replied in the negative, of whom three are opposed to divorce; seven are doubtful; 35 made no reply."

36,997. (*Sir Lewis Dibdin.*) How many was that sent to? Was it 124?—Yes.

36,998. (*Chairman.*) May we take it that the 40 only relates to the drunkards?—Yes. The opinions are as follows:—

"I think two years is enough to allow anyone to make up their minds whether they would be able to live together again."

"Yes, I think separation often leads to immorality."

"Separations are often unsatisfactory, but if at the end of three years there is no desire for re-union, divorce would be better for both parties, and much immorality would be avoided."

"After three years or even less, especially in cases of separation owing to drunkenness and cruelty, the position would be improved by granting a divorce."

"After three years or even less. I do not much care for separation, as it generally leads to immorality. It is much better in the interests of the State that a divorce should be obtained, so as to give them the opportunity to live a happy and useful life with someone else."

"In many cases, after one year, separation orders should become divorce."

"I think it is desirable that an application for divorce could be made at any time by a person who has obtained a separation order—if the Court grant a separation, there is the same occasion for a divorce."

"I think if divorce was granted after a period of separation it would tend to lessen immorality. As it is, neither party can marry, and this leads in some cases to men and women making unlawful alliances, and children are born with the stigma of illegitimacy attached to them."

"If husband and wife have become so alienated that they have lived apart for three years it should most certainly be a ground for divorce."

"I think if man and wife have been separated for three years and still feel they cannot again be united, certainly I think a divorce should be granted, although I am sure many would be against granting divorce."

"If the parties have failed to live amicably together and there is a sufficient case for their separation, that separation should be a divorce. To condemn both parties to lifelong celibacy is cruel, and just as 'separated' people can come together again, so can divorced people re-marry if they wish."

"Yes, I think after three years of separation both must have fully made up their minds that they are unsuited to each other. If this was the case (*i.e.*, if divorce were possible) it would do away with the disgraceful practice of men and women living together unmarried by law."

"(*h*) *Should mutual consent be a ground for divorce?*—82 women reply in the affirmative, of whom two are opposed to divorce; 12 reply in the negative, of whom five are opposed to divorce; 15 are doubtful, of whom two are opposed to divorce; 15 make no reply."

"*Opinions.*—When man and wife agree to part, I feel it would be much better for the morals of both to grant a divorce."

"This is the most reasonable ground for granting divorce."

"If both are agreeable, I think it is sin to compel them for the sake of appearing man and wife to live in the same house when they are divided in reality, though there are many that one knows do so for the sake of the children."

"If it is desired mutually after having tried to agree and failed, yes, seeing it is the only thing they would agree on."

"Many husbands and wives are unequally matched, and would be for many reasons better apart."

"If both are convinced they are unsuitable, why spoil two lives?"

"They should have a separation order first and if this is successful for three years to end in divorce."

"Yes, after time has proved the desire real, not merely a whim or pique."

"Where adequate reasons can be given."

"There would have to be careful investigation made by officers to see if there was real reasons for the parting."

"A man and woman take each other 'for better for worse, till death us do part,' and if there is no stronger reason than that they are tired of each other, I do not think a divorce should be granted."

"It would have a tendency to increase immorality in my opinion. The sacredness of the marriage tie is continually decreasing, and is becoming too lightly treated already. Young people should be given to thoroughly understand before taking this important step, that it is not for a year or two, but for a lifetime."

"(*i*) *Should serious incompatibility be a cause for divorce?—Individual replies.*—75 women reply in the affirmative of whom two are opposed to divorce; 10 reply in the negative, of whom two are opposed to divorce; seven are doubtful, of whom one is opposed to divorce; 32 make no reply."

"*Cases.*—42. The husband and wife though living in the same house have not occupied the same bedroom for a period of two years, and have not spoken to each other for the same period. I can vouch for the truth of this. The climax was reached a few weeks back by the husband leaving his wife and eloping with the music teacher of his children."

"43. I heard of one case recently. The husband and wife have no interests in common, little respect for each other, if any, would be better apart, but neither will commit such an act as is at present considered necessary."

"44. Knowing the case of a near relative, where there is no immorality, only incompatibility, divorce would be welcome."

"45. I have known a most unhappy home, years of misery through a violent-tempered woman who has taught her children to ridicule their father, who worked hard and fretted until released by death."

"46. I was told only a very short time ago by a friend of mine, that when she first got married, her husband and her got on very badly together, for they had both been petted and spoiled at home, and they both wanted the same treatment still from each other and neither one would give in, till she says life was unbearable for some time, and if she could have got away from it she would have done so. But after her baby came things mended, and now, close on 20 years after, they are quite a happy comfortable couple." (*See* Appendix, Cases 106–9.)

"*Opinions.*—There cannot be happiness, and without happiness a husband and wife are much better apart, if for nothing else than for the sake of the children. . . . I feel strongly that only when a husband and wife are living together as comrades is it a marriage in the sight of God, and when they are living together as husband and wife and there is no respect or affection, then in the sight of the Father it is immoral."

"I think the children of such parents are greatly handicapped in life, as there should be great kindness and courtesy shown between parents for the sake of their children."

"When constant friction was going on and had prevailed for any considerable period, it would give them release if desired by either. I believe if this was recognised as a cause for divorce, it would do much to prevent that continual nagging and fault-finding that goes on in some homes, making many lives a complete burden and often driving to drink and the other thing."

"It sometimes may happen that very intelligent and capable persons are ruined for life by having to live with either sex when they find they are not suited to each other."

"In the cases of incompatibility, unless very serious, there should be separation for one or two years before divorce. One feels that many married people are overdosed with each other, and separation would give time for reflection and prevent a hasty marriage which might have the same result."

"My personal opinion is that no two persons should be compelled to live together if they do not desire it. I can quite see the difficulties which would arise under our present system if every woman who felt she could not possibly live with her husband were to leave him, of course she would immediately be dependent on her own resources for her maintenance, and that of her children. I think the State should provide adequate means for their support."

"I do not think anybody would desire a divorce unless there was sufficient grounds for one. If it means incompatibility of temper and so on, I should allow it because of the children, which would, if there was any and brought up in an atmosphere of that kind, be most detrimental to their character, and would not tend to make them very peaceful subjects."

"Yes, this incompatibility is what generally leads to events that are generally regarded as the cause of divorce.

"If desired by both, I think it would be far better to grant divorce in cases like this. There can be no love where such a state of things exists, and I think a home where there is no love (and therefore no peace) has a most demoralising effect on every one in the home and round about."

"It is terrible to think of children brought up in a home where ill-treatment, brutalities, and no natural affection exist. What can we expect from the children brought up in such homes . . . children have no right to be born under such circumstances."

"Yes, the only ground."

"If you could see as I do, the misery of incompatibility and the evil effect on the life in the home, I am sure you would feel with me that even if it is the result of hasty ill-considered marriages, the evil ought not to be perpetuated, and that annulment is the best remedy."

"Specific causes would not meet the case of non-adultery and non-bodily cruelty, but nevertheless a life may be rendered almost unbearable by an abdominable, jealous, vindictive temper."

"Serious incompatibility should be considered good grounds for divorce, but careful judgment would be necessary."

"Yes, if care was taken to see that such incompatibility was proved."

"I think that where affection is not mutual, they are better apart, therefore incompatibility should be a cause for divorce, after careful investigation."

"Provided the incompatibility is so serious as to render living together practically impossible."

"If real reasons can be given."

"Yes, *if it is serious.* I have a married couple in mind, to one at any rate the life is torture, yet there is no remedy."

"No, as they have made their bed, so must they lie."

"No, I think it would have a tendency to make girls take marriage less seriously."

"I do not quite agree with this, as I think there should be a great deal of bear and forbear in married life. Sometimes young couples have some very rough edges to wear off when they are first married and after the corners are smoothed down, they live a very happy life together—(case follows here)."

"I am afraid men would be finding out all sorts of subjects to disagree on if they thought they could get rid of a wife so easily, for there would not be so much stigma of disgrace in this as in an adulterous case."

36,999. Then we come to the last head?—That is the end of the extended grounds. These were just other points.

"(4) *Should divorce be allowed when both parties are guilty? Replies.*—86 women reply in the affirmative, of whom four are opposed to divorce; 12 reply in the negative, of whom five are opposed to divorce, eight are doubtful; 24 make no reply."

"*Opinions.*—How can two live happily together, if each knows the other is guilty of offence?"

"They cannot have common respect, and should not be compelled to live together."

"Loss of respect must mean loss of affection."

"More reason than ever."

"It only degrades marriage for them to live together."

"If divorced these would sully others."

"Yes, most decidedly. If only for the benefit of the community, without considering the children which may come from such a union, it is most desirable for the welfare of the future race that home conditions should be kept as pure as possible."

"If both parties are guilty, that is a sufficient reason to allow divorce, for if they are unfit to live together, they are also unfit to bring children into the world in an atmosphere of immorality and degradation, making them totally unfit for the future before them or of ever becoming good citizens."

"For them to live together is making bad worse."

"If there are children it would have a most disastrous effect on their moral natures."

"Yes, as mentally defective children are often the results of such unions."

"If a divorce were granted to them, would they not most likely spoil another couple."

"(5) *Should the guardianship of children be given to the parent most fit on general grounds?*—Strong feeling is expressed that the presumption should be that the mother should have the guardianship of the children and that she should not be deprived of it unless it were proved that she was unfit on general grounds."

"An unmarried woman is not thought unfit to have the whole responsibility of an illegitimate child. 73 reply in the affirmative.—49 women reply in the affirmative, of whom three are opposed to divorce; 24 consider that the mother should be the guardian unless irretrievably bad. Three of these are opposed to divorce; seven reply in the negative, of whom two are opposed to divorce; two are doubtful; 29 make no reply."

"*Cases.*—47. A married couple took in a lodger while the husband was out of work. As long as he was unemployed he made no objection, but rather encouraged his wife to go about with the lodger. When he obtained employment, he turned against her, and got a divorce with the custody of the children. Soon afterwards he married again, and used to allow his first wife to see her children. She was a good mother, and being deprived of the children has led her to take to drink and she is going to the bad altogether."

"48. A woman was divorced by her husband, though her friends believe she was only injudicious, not guilty. She was very distressed at not being allowed to see her children."

"49. I know of one here, one of our highest, and she fell, and the father has the children, yet her heart aches for them. How can she help it, for nothing can destroy mother-love after what she goes through and what is there so strong to keep her from sinking lower, and I think sometimes others of us would have done the same if we had been tried like her." (*See* Appendix, Case 110.)

"*Opinions.*—I should like to see every effort made even where the mother is the guilty person for her to have the children. It is the exception when she is not the most suitable guardian and the so-called guilt generally is not an argument against suitability. It is very often a thing apart. A man's unfaithfulness is rarely considered a characteristic of parental irresponsibility."

"Who is more fitted to have care of children than a mother? If she be guilty, I feel quite sure she will protect them from the influence of sin as much as possible. I would in all cases grant the care of children to the mother."

"I would lean to the mother if she is not too depraved. I think a mother is more likely to do right

to her children than a man, because a man may provide for them, but he cannot look after them."

"The mother is the best guardian for her children if she is at all suitable."

"Mother should always have access."

"I think that the mother should have charge of the children unless it is *proved* that she is unfit. No other woman can be so suitable, and no one has more right to them, besides if anything will help a mother to keep straight it is her children, and nothing would help to send a woman wrong quicker than to take away her child."

"I think the mother is the proper guardian of her children, few women are so sunk in sin as to lose all love for their children, and while admitting there are some women who neglect their children and are not fit to have charge of them, I think most mothers even if they are guilty would try to hide it from their children."

"One of the most serious and vital questions to be considered. In what manner would you define 'actual suitability'? A guilty mother, in this respect, is not always frivolous, but strong in parental affection. There may be many excuses for her seeking another man's affection, having a hard callous husband for one thing, who might be just as hard to his children, but because of his virtuousness, would he be the most suitable parent? Nothing wrecks home life quicker than absence of affection. I should like to hear discussion on this point."

"I think all possible investigation should be made as to the suitability of both parents. The one that is capable and suitable, whether guilty or not, should be granted the care of the children, the State to reserve the right of taking them in the event of the parent who was granted their custody turning out lax or unworthy."

"The most kind and suitable parent should have the care of the child."

"Much as I dislike separating the mother from the child, I do not like the idea of handing over the child to a guilty parent, as it often means deprivation of both parents, which to me is most sad."

"While I think that no one can do so well for children as a mother who has borne them, in no case should the care of children be given to the guilty parent, be it mother or father. If both parties are guilty, a suitable home and guardians should be found for the children, the father to maintain them, such maintenance to be paid into court."

"(6) *Should the maintenance allowance and alimony under separation orders and divorce be collected by the court? Replies.*—101 individuals reply in the affirmative; four reply in the negative; 19 make no reply."

"*Cases.*—50. A stick-maker with a good business, was only made to pay his wife 10*s.* a week, and to obtain this, he subjected her to every indignity possible."

"51. Husband lives an hour's journey from Manchester where the wife has sewing work. She has to go to the place where he lives once a week to obtain the maintenance allowance, and calls for it at a friend's house. The time is fixed, but the husband often makes her wait so late that she only just catches the last train back."

"52. I know of a case where the woman was separated after her husband bringing home another woman, and because the wife refused to wait on the intruder, he kicked her down the stairs, after which they separated. He, of course, had to make her an allowance which he himself would bring, the result he managed to cohabit with her, which brought her entirely under his control, and consequently he greatly reduced her allowance."

"53. The wife sends her boy to receive the allowance weekly, and the husband often makes him come up several times for it."

"54. I know a case here, the husband regularly paying the money each week, leaving it at the wife's door, and one of the children generally takes it. In this case the father is very fond of his children, who are all over 14 now, and often takes them out and helps them, but would not give his wife a penny more than he is obliged to."

"*Opinions.*—The difficulty of collecting often debars the wife from obtaining justice."

"The present law does not do justice to women."

"Much trouble caused by the wife having to send for it."

"Would cause payment to be made where now it often is not."

"Men pay when they like, women have to apply and often will not rather than stand the exposure"

"If the courts collect the money, they would see it was paid and be better able to trace the man than the poor woman who he has left in the lurch."

"Separate allowances should be collected by court, because often the man sees an opportunity of taking advantage of the woman, and then her case is lost, because she cannot get a second separation as easy as she can the first."

"Maintenance and allowance should be paid through the court. It is most humiliating for a woman to have to receive it from a man who she cannot live with."

"Maintenance allowances should not be paid by the husband direct to the wife, such visits being the means in many cases of adding insult to injury. A third person should forward the money to the wife, preferably an officer of the county court."

"I am strongly of opinion that maintenance allowances should be paid through some independent source."

"If in many cases the woman is to be assured of receiving her maintenance allowance, it is necessary collecting officers should be in charge."

"The maintenance allowance should be collected by special officers to ensure regular payment, to prove the verity of the 'out-of-work' excuse, to prevent insults on envelopes containing payment. These officers should have power to search for missing husbands."

"I certainly think special officers should superintend the collection of maintenance money, so that the parties have no cause to meet."

"I certainly think it would be to the advantage of the woman if maintenance and allowance were collected and paid by the courts. It would also save a lot of unpleasantness and stop the man from escaping payment, as he often does under the present system, by going away to other towns and assuming another name."

"I think the payment of maintenance should be paid according to the discretion of the parties concerned where it can be done by the parties themselves (*see* Case 54). In cases where it is necessary to keep the peace, the court should take the matter in hand."

"(7) *Administration of the Law.*—The opinion is nearly unanimous that divorce cases should be tried in local courts, as long as the trial is with closed doors. The great majority are in favour of county courts. Many express strong disapproval of the cases being tried in the police courts.

"The desire that no details should be published is also nearly unanimous.

"Another point that comes out in a striking way is the view that women should take some part in the administration of the law. One of the questions asked was whether women should serve on juries, and nearly all the replies are in favour. If special inquiry officers were appointed, it was considered essential that women as well as men should be officers. Opinion was divided on the question of officers acting as mediators. The idea was welcomed by some, but the views of others who opposed it were very convincing. It was felt that outsiders would probably be ignorant of the full circumstances, that mediation was ill-advised interference, and that attempts to re-unite couples were fraught with danger. The following quotations express the need for free legal advice and assistance:—

"'I have always thought that there ought to be a free lawyer in every town, say someone acting under the town clerk, where the poor people might go for legal advice, because the poor are terribly defrauded because of their ignorance of the law and because of their inability to pay for advice.' Another member wrote:—

"'A man or woman having to the best of their belief just grounds for divorce, but being unable to

afford the cost, should be able to appear before either the magistrates or county court judge and apply for legal assistance. The court on being satisfied that the person is unable to meet the expense, but has reasonable grounds for making the application, should be able to grant all necessary assistance and charge the cost to national funds. The court should not need to be of opinion that divorce would be granted, but only that the application is not frivolous.' "

37,000. Are these cases about women serving on juries confined to cases in which women are concerned, or to general cases?—To general cases, although it was in reference to divorce cases the question was asked.

"(*a*) *Where should divorce cases be tried?—Individual replies.*—76 women are in favour of county courts; 10 women are in favour of special local courts; three women are in favour of assize courts; four women are in favour of local courts, but only specify that they shall not be police courts; three women are opposed to local courts; two women are opposed to local courts unless the cases are tried with closed doors; 27 make no reply."

"(*b*) *Should women serve on juries?*—(This question was asked of branches as well as of individuals.) *Individual replies.*—104 women replied in the affirmative; four replied on the negative: three are doubtful; 13 made no reply."

"*Branch replies.*—311 branches with 17,991 members reply in the affirmative; 84 branches with 3,390 members reply in the negative; 36 branches with 2,120 members are undecided or make no reply."

37,001. Do you gather from the communications you have received what the objection to police courts is?—I think they feel that the cases do not get sufficient attention. They are tried rapidly, and they dislike very much the exposure in the midst of other cases.

37,002. The reason I asked that question is because I notice one of the answers is, "It is only fair women should serve on juries when her own sex is being tried"?—They made those remarks, but there was nothing in the question to include that.

37,003. These cases and opinions do not include all the cases. On what principle have you taken one in preference to another?—The total number of cases was 131 that were sent in and in selecting those to be put into the proof rather than the appendix, I selected those that were most striking. The appendix has about 74 additional cases. In the proof there are about 54 that have been specially selected as those which were most striking and interesting. The following are replies:—

"55. I would like to say to you that I had the painful duty of being at the inquest on a girl—just went with the mother. The girl was in trouble and so drowned herself, and I was horrified at that inquest to see how lightly that case was taken up with regard to the girl, and no word of warning to the lad nor chastised in any way, and I say Yes from my heart from only that one inquest I see the need for women to be on juries or anything where women are concerned. The girl was not 16 years old, and the lad not 19."

"It is only fair women should serve on juries when her own sex is being tried."

"It is most essential where women and children are concerned."

"All the members agree it is most essential that women should serve on juries."

"All are in favour of women serving on juries and consider it essential, particularly on women's questions."

"Especially in cases of young girls being the only females in court."

"Members are most emphatic on this point."

"Yes, and in many affiliation cases."

"When women are tried women should be there."

"Only women can understand the woman's case and know how fatal to right motherhood undesirable conditions are."

"There was a doubt on should women serve on juries, because some members spoke on the hardship of men being compelled to sit at assizes and bear all their own expenses."

"Some thought women would be out of place on juries or pleading in court, but the majority were in favour of women serving on either if they were educated to do so."

"The time has arrived when women, as responsible persons, ought to have an equal share in dealing with matters so vital and important as the dividing and annulling of the marriage bond."

"It would be advisable to have women officers as well as men, for the reason that there are many cases where a woman would understand a woman's need and grasp the situation before a man who has not had a woman's feeling and nature to aid him, and also a woman would more readily speak to one of her own sex on delicate matters which often induce or cause separation or divorce."

"Whenever women or children are concerned, then women should have a voice in helping to put matters straight."

"I should like to see women on the bench to try them."

"In the case of a poor woman I would have women—broad-minded women of her own sphere of life—to judge her condition."

"Yes, in sexual questions the 'woman's side' is only properly understood by women."

"In equal proportions, in all cases where either adultery, cruelty, or other cases affecting both sexes, are being tried."

"Yes, women ought to judge as well as men, and especially where a woman is concerned."

Cases.—"56. *Difficulty of enquiry.*—Strangers—what do they know of the inner life, and come to that, what do friends and neighbours know? A woman told me the other day that she never told anyone about her husband's neglect and cruelty, because no one really believed her. He was so soft-spoken in front of other people, and they always said he only wanted a little managing. 'Good heavens!' she said, 'I wish they could have him to manage for one month. I have been married to him 18 years, and these last three nights I have slept on the floor rather than in the same bed.' Yet I don't think enquirers would learn any reason for a divorce, unless they took the woman's single word for it. Even her own children do not know."

"57. *Danger of mediation.*—A man and woman were found dead. At the inquest it appeared that they were not husband and wife, and that both were married and had children. They had gone away together, and had been persuaded to return by the relations of the woman. The following is a letter explaining the circumstances:—'I should dearly have liked to have spoken to you yesterday, when you were asking about incompatibility of temper. I send you a cutting about the death of my sister, one whom I dearly loved, and whose death I along with others am responsible for. As you will see, we brought her home. Had you held my sister's hand as I did, telling her, as I thought in love, that she must go home for the sake of her children, had you seen the look of misery on her face, felt the shudder through her body as she said to me, "Annie, you do not know the degradation you are asking me to go through. You do not know the life I have lived for the last few years. Ask me to throw myself in the water or face death in any way, I will willingly do it, and smile at you as I go, but do not tell me to go back to that man (her husband)." However, we persuaded her to go home. She was only there a day. The next thing she was found dead with the most beautiful smile on her face. She could face the great unknown, but not the life she saw in front of her. This is one instance. How many not only lives, but souls are we murdering every day under this system. . . . I should like to add that previous to them going away my sister had visited the wife of the man she went away with, and found they had lived so unhappy that they did not intend to live together again." (*See* Appendix, Cases 111 and 112.)

"*Opinions.—Against mediation.*—Advice and mediation between husband and wife would be dangerous."

"Preliminary inquiries or mediation between husband and wife, while it might do good in some cases, in the majority of cases might make the breach wider. . . . I do not think one average English man or woman would have it (I would not)."

"My experience is, that whatever trouble there may be between man and wife, it is never overcome by the interference of strangers."

"I do not quite know what to say about this question. It is rather a delicate matter for any one to advise or interfere between husband and wife. In some cases advice might do good, but in the majority of cases I do not think it would."

"Why mediate if there is guilt between the parties and the non-guilty one wants to be free? I think there is too much glossing it over and persuasion to overlook as it is, and the future generation suffer for it. It is a pity adultery is not a penal offence, as stealing is. It is quite as strongly spoken of in the Commandments, and continence never yet killed a man or woman. I am afraid if I was the injured party it would need to be an archangel who came to mediate between my husband and myself if I felt it so strongly that I applied for a divorce."

"Some kind of preliminary inquiry might take place, but there would be great resentment felt at too much interference on the part of appointed individuals, and no mediation would be likely to induce either a wronged husband or wife to overlook and condone immorality or adultery on the part of the other."

"*In favour of mediation.*—Sometimes it is really caused by interference from outside, and a word of sound advice from men and women might have a good effect."

"I think every possible means should be taken to prevent divorce proceedings, and sometimes, it may be, timely help and advice would establish a better state of affairs."

"Marriage as an institution is such a sacred and solemn thing that the greatest care should be exercised that no frivolous excuse should separate husband and wife, and every application should be thoroughly investigated by competent officers. . . . It would be advisable to try and mediate between husband and wife in a tactful way."

"I am of opinion that if a suitable officer could have a confidential chat with a man and his wife, many separations would be avoided."

"I do not think it advisable. Married people can generally manage their own affairs. Outsiders only see one side and generally muddle things up and make it worse."

"Yes, a third person is sometimes able to shed a ray of hope and reason in cases of difficulty."

"To mediate between husband and wife, I am sure special officers would be most helpful, and in cases where it is not desirable that they live together, these officers might be the means of preventing crime." (Here follows Case 112 in Appendix.)

"*Publicity.*—The proceedings should be kept out of the press, as it only ministers to a morbid public taste. It concerns only the family, and when others are present must make it doubly painful and degrading."

"The details of divorce cases should be kept out of the papers, and only an official report, to be supplied by an official of the court, be circulated to the press. It is the thought of the publicity which would prevent many sensitive people, both men and women, from seeking divorce."

"As to hearing cases with closed doors, the plan is certainly a better one than publishing all the details, as some of our papers do. Still, there is a probability of deceit where everything is in camera."

"I quite feel the degradation a family feels when private life is made so public, and would agree that the press be forbidden to make known what takes place in court, but the closed doors I do not feel quite comfortable about. Of course, one shrinks from publicity, but I feel if admittance, even by ticket, were allowed it would have a good effect on the jury. It is a very serious responsibility for them."

"The press and public should not be admitted. The disclosure of family is not only harmful, but hurtful to innocent relatives."

37,004. Then we come to suggested machinery?—Yes. So far the evidence has been that of the guild members. What follows are my own views.

"(*a*) *Suggested Machinery.*—The need expressed above for free legal advice and assistance, and for women to share in the administration of the law, might perhaps be met by the institution of municipal legal departments, in which one or more of the officials should be women. I had in my mind something that might be a combination of the poor man's lawyer and the Scottish poor agents, only State-paid. Applications for divorce free of cost would be made to such departments, which would make the necessary enquiries, and the decision as to inability to pay would rest with the County Court, and the State would either bear the cost, where necessary, or undertake to recover it from either party. Seeing that in County Courts there would be no juries, on which women could sit, one or more women assessors might be appointed to act with the County Court judge."

37,005. Why do you say "no juries"? Are you under the impression that they do not come into the County Court?—I thought that was so.

37,006. That is not so?—"Divorce cases being so closely connected with family affairs, what may be called the technical experience of women, in the women's and children's side of family life, is essential.

"(*b*) *A Point of View.*—In claiming that women should take part in administering the divorce law, I should like to point out that they have a distinctive standpoint which it is urgent should be understood and recognised. At the time of the passing of the Divorce Act, in 1857, there was practically no way by which women could make their opinions known. Women were unorganised, without channels of expression, and they neither spoke in public nor made use of the public press. Women were admired for their silence and submission, and their views were generally assumed to be what men wished them to be. Speaking in the House of Commons in 1867, Mr. Beresford Hope said: 'Women had never petitioned against the Divorce Bill, although it was well known that the women of England were righteously opposed to the passing of that measure. He honoured the women for not having done so, because that innate modesty which was the great attribute of the sex prevented them putting themselves forward on such occasions.' During a sitting of the Grand Committee on the Factory Bill of 1895, Mr. Asquith, then Home Secretary, referred to the wishes of working women. Whereupon the former Home Secretary, Mr. Matthews, exclaimed: 'I have my own opinion as to what are the wishes of working women, and to that opinion I shall always adhere.' Another instance of the difficulty found in believing that women may have views of their own occurred recently in Finland. On the introduction of certain bills into Parliament, the men of all parties declared that it was only the women's rights' party which urged the revision of the marriage laws. When this became known, women's petitions poured in from all sources, in support of the action of the women M.P.'s. It is of special importance that on Divorce women's opinions should be heard and should be given equal weight with those of men. Women's position in married life must, in general, be more disadvantageous than men's. Even if unjust laws and public opinion were changed, the greater physical weakness, the conditions of maternity, the difficulty of monetary independence, would still put power in the hands of men, and give opportunities for its abuse. We are often told that women's natural disabilities make it necessary that the marriage tie should be made indissoluble, for the sake of the women themselves and their children. It is true that these disabilities produce an extremely difficult complication. In considering the question of divorce the necessity for some solution of the economic problem of the support of married women and for equalising the rights of parents to their children become painfully obvious. While the present state of things lasts, we are tempting women to sacrifice their

personal dignity and honour. When a woman continues to be the wife of an immoral and cruel man, we are almost forcing her, on account of the difficulty of supporting herself and her children, into what is little better than prostitution. The economic question will have to be dealt with, but our attitude towards divorce should not depend upon it. Meanwhile public opinion ought at least to reverence the woman who faces poverty and work outside her home rather than degrade her womanhood. And if the institution of legal separation is admitted to be necessary, as I believe it is, there is no valid reason why a woman (or a man) should not re-marry. Indeed, it would often be in the interests of herself, the family, and the State that she should do so. To speak of degradation and suffering under the term of 'hardship,' and to advocate and admire a compulsory 'patient endurance' of them is placing strange values on moral conduct. It is the power of choice, which is the essence of renunciation, and alone gives it its value. If divorce is considered a sin, and the patient endurance of degradation and compulsory suffering a virtue, a most serious moral confusion is created. It means that women's self-respect and happiness are sacrificed, and adultery on the part of men condoned. What other conclusions can be drawn, for instance, from the words used by the Archdeacon of Chichester in a Visitation last May?—'It seems to me impossible to place woman on the same level as man in the matters which are before us now. It seems to me obvious that the State must suffer more by the immorality of the wife than by that of the husband. If that is so, the State is bound to put out greater influence to deter the woman from immorality than it exercises in the case of the man, and the unequal treatment of the man and woman in this matter rests upon a more noble basis than national expediency. Nature, *i.e.*, God, has Himself laid on women a heavier penalty for one particular sin than upon a man, as a deterrent from immodesty and from the beginnings of evil. And that being so, I regard as futile and insincere all attempts to treat men and women as equal in matters concerning their union.' The following extract from a guild member's letter is certainly full of warning:—'I heard a discussion between two girls in our workroom. The girl that had attended chapel was in favour of divorce, and thought poor people ought to be able to procure it so that their children could have a legal right to their parents' name, but the church girl was most vehement in her protest against divorce—once married, always married. This girl said that she would rather live with a man unmarried than marry a divorced person. I know two of her friends are living with married men, and others of her friends have been friendly with married men, and her married friends flirt with men. And yet they pretend to have such a standard of morality that because you have been married in a church, it is wrong to be divorced. It is most illogical, but you find it among a lot of people.' Another guild member wrote, 'She thought she ought to go on living with him as her religion taught her that divorce was wrong. I may say that my religious feeling would lead me in such a case to seek relief for the value of my children who could not fail to become contaminated by the contact with such a father.' In addition to the desire to protect the rights of womanhood, a woman naturally feels strongly as regard the rights of children, and there is a general feeling among us that children should only be born of a happy marriage. We think also that a house divided against itself is not one in which children should be brought up. But while women, as well as believers in eugenics, are concerned for the future of the race, I feel that it is very necessary to protest against the tendency to sacrifice the individual woman's development in the supposed interests of the race. What would be disastrous to individuals defeats the object of eugenics, the object of which is to produce a fine race of men and women. If women are to have a decent and tolerable life, one in which their mental and moral powers have free play, it is indispensable that marriage should be more than a physical relation and that more than legal and ecclesiastical ties should be needed to make it sacred. What we want is a real, not a nominal sanctity. We cannot consider an outward and visible tie as sacredly binding when the inward and spiritual grace is lacking. And it ought to be recognised that marriage is made for man and not man for marriage. A spiritual view of marriage entails an equal moral standard for men and women, and the full freedom and responsibility of women, for the best combined life of two individuals is only possible when each is free and responsible. It follows from this view that the serious desire of either husband or wife will be sufficient ground on which the State may sanction divorce, under suitable conditions as to time and provision for children; and that the public unveiling of private misery will be unnecessary. By making incompatibility a ground for divorce, as in Norway, all charges necessitating proof would be done away with and the great advantage would be gained of doing away also with all the objectionable methods of obtaining the evidence. In addition it removes the serious inequality from which women would actually suffer even if the law were nominally equal, owing to its being so much more difficult to prove a husband's infidelity than a wife's. I feel that is a very strong point. However equal the laws are made the difficulty of proof on behalf of the woman would be greater than on behalf of the man."

37,007. Do you advocate divorce for incompatibility of temper?—Yes, for serious incompatibility. "It also follows that, though divorce will be regarded as a grave misfortune, there will not be the stigma attached to the mere act of divorce which is attached to it now. The notion of 'guilt' will have to be revised. Conduct will be judged by a person's character and motives, and no such unreal division into 'sheep and goats' will take place as is implied in such a hard-and-fast phrase as the 're-marriage of the guilty party.' I think it may safely be said that reform in the divorce laws would not affect those who are happily married, or those who are getting on fairly well together; that in other cases, the relationship is likely to be improved, while an intolerable burden—such as we have no right to forcibly lay on any human being—will be lifted from a minority. No doubt there would be some who would take advantage of divorce in a selfish and base way. But the lives of such are not now marked by good behaviour. Speaking generally, we may surely believe without undue hopefulness that there are more forces at work to unite than to part married couples—that mere inertia, habit, the common interests and convenience of home-life, the love of children, the prevailing desire and effort to make the best of things, and sense of doing right towards another even at the expense of personal happiness, are stronger and commoner factors in life than disruptive selfishness, otherwise society would not hold together and advance as it does."

37,008. You have been good enough to hand in an appendix of cases. Do these cases deal with different points in addition to the cases which have been mentioned by you already?—They amplify them.

37,009. I do not think it is any use reading them through now. Would you like to have them printed and added to your evidence?—It would be advisable, because the accumulated evidence is so effective.

37,010. Do you advocate the sitting of women on juries except in cases where women are concerned?—Yes, personally I should.

37,011. Generally?—Yes.

37,012. Do you belong to any branch of the Church?—No.

"58. *Appendix of Cases.*—A man was systematically cruel to his wife, without striking a blow, and never contributed to the support of his wife and two children, who were supported by the wife's mother, in whose house they lived. When trying for a divorce, the wife was told that the fact her husband did not support her would have no weight with the judge, because the husband knew she would not be destitute, but would be supported by her mother. She was able to prove that he had children by more than one woman, her own sister being one, and that he came home drunk and insulted her, but this did not constitute legal cruelty. The midwife was finally able to prove legal cruelty,

committed on the first day the wife got up from her confinement."

"59. A respectable, hard-working, refined woman was married to an auctioneer well able to support a family. Shortly after marriage he began a course of dissipation and vicious living, with all that it means—no comfort, no peace, no money. Wife broken in health with hard work and trouble, shrinking with all the sensitiveness of a refined mind from the publicity of the court, and unable, by lack of means and inability to prove cruelty, to obtain a divorce."

"60. Woman attended by midwife in four confinements. Midwife noticed from the first that things were not right, as her temperature varied from evident worry. After the fourth confinement, it was found out that the cause was the husband's unfaithfulness. He had been courting a young girl, pretending he was not married. When the wife was in bed after her fourth confinement the girl called, bringing two young children, and claiming the husband as their father. He had also been latterly in the habit of staying away from home for one or two nights a week, and was heard of in connection with a raid on a disorderly house. His wife had concealed her suspicions for the sake of the children, and as the man had never remained away from home for any long time or committed any bodily assault on her, she thought she ought to go on living with him, as her religion taught her that divorce was wrong. I may say that my religious feelings would lead me in such a case to seek relief for the value of my children, who could not fail to become contaminated by contact with such a father."

"61. A case where a husband had taken another woman home and was keeping both women."

"62. Husband is spending his time and practically living with a young girl. Wife is broken-hearted. No cruelty."

"63. Man drinks. Brought home a young woman to the house to lodge. Wife had good faith in him doing so, although her sisters thought different. Cruelty developed. He spent his money in drink (four little children), went about with this young woman. The wife at last got a separation order, with custody of children and an allowance of 10*s.* per week. He never paid it. The result is they are again trying to live together, simply forced to, as she could not maintain herself and children. The surroundings of a home like this are terrible to bring children up in, and morally bad for our future citizens."

"64. I know a young and pretty girl, who has been employed in this city. Last year she disappeared and nothing was heard of her for four months, when it was found she had had twin children, and, to the surprise of her family, who had no knowledge whatever or any reason to suppose anything was wrong, it was found that the father of them was her employer. This man has a wife and eight children, the last one being born within a very few days of my friend's twins. The wife is solely dependent on the husband for her maintenance; therefore, should she desire a divorce, has no money whatever. I don't know whether she does desire one or no; perhaps she thinks she is sacrificing herself for the sake of her children, which I consider wrong, and utterly demoralising to herself and children, as they are bound to know. One of the sons is employed in his father's shop."

"65. I myself know of a case where the wife is made miserably unhappy through the unfaithfulness of her husband. Other women seem to draw the man like a magnet from his own home. The wife is a most hard-working soul and tries her hardest to make her home cheerful and is a devoted mother to her children, and has, so far, kept her children from knowing anything of their father's sins. At times the woman feels almost beside herself with grief. I am sure the woman would feel quite a different being, as the fearful strain is sadly telling on her health."

"66. I have personal knowledge of a case where a woman, under 30 years of age and the mother of three children, is married to a man who for two years has been carrying on an intrigue with another woman, The wife has abundant proofs of adultery in the pregnancy of the woman he has been meeting, but, because he has not beaten her, she would be unable to obtain a divorce. I believe, if she could obtain one, her parents would be willing to keep her and the children."

"67. *Poverty.*—I know a case where the woman would have had a divorce years ago if she had the money. Married at 17, a baby born soon after, her husband left her in less than two years with a dreadful disease that he brought home with him from bad women. She has struggled on and brought up her little girl so nice, and now at 37 her brain has given way and she wanders about to find her husband who left her so long ago. She knew he was living with another woman and the father of her children, but she has never seen him since he left her. If she could have had a divorce, she might now have been well and happy, instead of a burden to her dear old parents."

"68. A woman married a professional man and had two children. Then she found he was taking about another woman, and he acknowledged it when accused. It was impossible for them to get on together after that, and one day the husband sold all the household goods, including the cradle, took the money and went to Australia. She went to work to bring up the children. After they were married, her sister died, leaving a husband with one child, and she went through a form of marriage with him."

"69. The parties had been married about eight or nine years and they had three children, and the young wife was pregnant of the fourth when he left her without any means of earning a livelihood and without any cause whatsoever, and she was compelled to go and live with her mother, a widow; and she, the forsaken wife, has buried two of her children since her husband left her, and her husband has never contributed to her or her three children's maintenance since he left her over four years ago. He has been living with another woman (as his wife) first at A., then at C., and now he has gone to F., and is still living with a woman (as his wife). Miss—— went over to M., at Easter and saw him there with her (as his wife on a visit). Oh, the sorrow and misery that man has brought to a quiet respectable young woman and to her widowed mother as well! And she would be divorced from him if she had only the means to do it, so as to put an end to his terrible sin of adultery . . . If this true case will help to put a stop to adultery, or to be able to get a divorce from such a man!"

"70. Husband deserted wife nine years ago, leaving her with two children, one a confirmed invalid. On application to the Poor Law Guardians, she received 1*s.* 6*d.* for the elder child, nothing for the invalid. Inquiries were set on foot, but they could not trace the husband. It is now known that he went away and is living with a girl who visited at the house, and who has two or three children now. The man was in a respectable position, much thought of by the vicar of the parish. He did not ill-use his wife, but rarely gave her any money for housekeeping or clothes for the children or herself. But for her mother and an aunt, the wife and children would have starved."

"After the death of her mother, the wife went to live with another man, and has lived with him since, 18 months. Report says they are married."

"71. Woman had been ill-treated by her husband almost from the time of the marriage, sometimes brutally, and he has been unfaithful to her for many years. Not only has she seen him with other women, but the children too have seen him. 'A deed of separation was drawn up and he agreed to pay 10*s.* a week, but left the town with a woman and did not pay it. The wife spent her hard-earned savings, nearly 20*l.*, trying to find him. She found him living with a woman under an assumed name and applied for a summons, but he did not appear and left the town again. I certainly do think in a case like this, divorce ought to be made easier, as a woman in her circumstances has no chance whatever of getting the marriage tie dissolved. She will not always be able to work so hard to keep herself and home comfortable, and it is not right that a woman like her—she is a most attractive woman—should not be able to marry again."

"72. A. married B. some thirty years ago. He never kept her. She always worked between her

periods of childbearing and endured not only ill-treatment—viz., thrashings—but unfaithfulness. Six children were born, and for some time she was afraid the youngest would be an imbecile owing to his treatment of her before the birth of it. When the eldest got about 15, she decided to leave him. She took a house, and by dint of hard work, they managed to live; but wherever they live; he follows them and makes endless trouble."

"73. Husband was engaged as groom and gardener, wife as laundry maid near B——. He even brought loose women into her bedroom. At last she left him with her child and came home to her mother's. Soon after the mistress wrote her that she had been obliged to discharge the cook owing to her condition, also the man. I have seen letters from the mistress offering to give evidence, if needed, if she applied for a divorce, but she had not the means, and he had disappeared from the neighbourhood. She eventually engaged as housekeeper to a widower with a family—and married him, it is said. They evidently are living as man and wife."

"74. The case I should like to mention of a woman with four children who lives not far from here. Her husband left her five years ago, for no apparent reason that she knows of, but she heard soon after that he had gone to America with another woman. Anyhow she has neither seen nor heard of him since he went away. She had to go out and work. They had nothing to depend on, only what she earned. The work was very hard, she had not been used to it, and after a few months she broke down, was ill in bed for weeks and dependent on the neighbours for support. One child developed consumption, and she applied to the guardians to grant her a small sum per week till her children got a little older. She went for her children's sake, but the questions they asked her were revolting and insulting, finally they told her they could not do anything till she sold part of her home. The proceeds of her furniture, they said, would keep them a few months longer. There was one alternative, she could go in the workhouse if she liked, but this she refused to do. All this happened three years ago, and the woman is still struggling for a bare existence. A merciful God took the consumptive lad away from her a few months ago, but she has still three more to bring up, wearied and worn out before her time, knowing herself to be tied to a callous brute who has ceased to regard the marriage tie as binding."

"75. Husband persuaded his wife to take a holiday, and in her absence decamped with another woman with whom he had been connected for three years. He cannot be traced. Divorce is impossible on account of expense."

"76. Husband left wife when she was still in bed after birth of first baby. He returned some time later, and then deserted her again. Through ill-health, she is unable to work, and is living with another man, who is quite willing to marry, but she has no money to get a divorce."

"77. A wife left her husband, went off with a lodger. Had had a child to a policeman prior to her marriage. Was last heard of in the neighbourhood of Leeds. Five years after, the man married again and has a family. Has often said he wished he had the means of getting a divorce. Always, and is still a steady industrious man." (*See also* Appendix, cases 67, 71).

"78. Husband lives with another woman and has children by her. Wife goes out nursing, or any other respectable work she can get."

"79. Wife with one child and kind husband elopes with a single man, who soon deserts her. She annoys husband continually, and he is in a dilemma how to act, but determined to have nothing to do with the woman again."

"80. Two of the Guild members would get divorce if they could afford it. One is separated and it is not satisfactory. The other has a large family, and for their sakes goes plodding on, trying to keep home together."

"Five homes in the little village of —— made unhappy by unfaithfulness of husbands."

"81. I have a cousin whose wife left him and went to live with another man nearly fifteen years ago, and he . . . would have obtained a divorce if he could have afforded it. So she has been living in adultery all these years, and he has not been able to marry again even had he wished to."

"82. The woman has already had a separation order. This she obtained 10 years ago and the grounds on which it was obtained are:—Persistent cruelty and neglect. He was ordered to pay 10*s.* a week, but since that time has not contributed anything towards her or the children's support. He left her with three, the youngest being seven years old at the time. Since that time the man has been living with another woman who has had two children of which he is the father. I think this is a deserving case for a woman to obtain a divorce, but the heavy expense of obtaining this is too much for her, and so makes it impossible to improve her position in life."

"83. Mrs. D. has been separated from her husband for many years. She had one child by him, a girl, whose support he did not contribute to. He was openly living with another woman in an adjoining village, and had got several children by her. Mrs. D. was not in a position to obtain a divorce owing to lack of money, until her daughter was grown up. At that time a brother who had got on fairly well in business advanced the money and a divorce was obtained."

"84. Twenty-five years ago that party that I am writing about was a respectable young woman. She married a man of good appearance, also he had a good trade. To look at him you would have thought he would have made the best of husbands. After their first baby was born, he began to take drink, he abused her and also kept his wages. Things went on like this till their fourth baby was born and he sold up the home and left her. She went to the workhouse and her baby died. He got a month in prison for neglect, since then he has done three years' penal servitude for stealing, also time for sleeping out and many times he has been up for being drunk. He has gone about with all sorts of women. She has brought her three boys up, the oldest is now 24, next 22 and 20. She has been in her present situation 18 years. So you will see what a lot of hardships she has had, for her married life has been very hard and still she has to be insulted with him every time he thinks fit. So that is one case where cheap divorce ought to come in, as this woman has had one or two good offers of marriage. But she has to stop as she is. Her children are a credit to her, but she cannot see her way to depend on them, so she still works."

"85. A girl of 17 married a widower of 25 with one child. She had lost her parents when quite young, and had had to work very hard. The sympathy for the child drew her into marriage. The husband allowed his mother control of his home, wife and earnings, the girl was merely a convenience to him and soon began having children. She had four children at 21 years of age. Her whole married life has been one of suffering and cruelty. She had been locked out at night and had to sleep in the outhouses, has been beaten, kept without food. Had grown to hate her husband, but the love of her children and the dread of publicity made her shut herself up and suffer quietly. She goes out to daily nursing occasionally. It keeps her in clothes. She has been fond of reading and comforted herself in books as she could get hold of them."

"86. The wife was a bad woman; the husband turned her out, and she applied for maintenance, he pays her now 6*s.* a week. He keeps company with another woman who often comes to his house, whose relations, highly respectable people, are much distressed. He has no means to get a divorce."

"87. I filed a petition, grounds adultery and cruelty. Before entering the case, I found 50*l.* as a guarantee. There was no difficulty in proving the case, for the solicitor had already conducted a plea of affiliation against the respondent for a child acknowledged his. He proved the adultery. The cruelty sworn to by my brother. The only extra expense was the serving of an affidavit to the respondent in America, where he had

gone. This was done by communication with another solicitor in the town where he was.

"The petition was heard in the London Courts. There was no reply to the plea. Ten or fifteen minutes finished the case, decree nisi.

"When my bill of charges came in, they amounted to 105*l.*, which fell entirely on me. The respondent, who ought to have paid all costs, kept away, and when written to, said he had nothing to pay with. These costs almost ruined me. I had a small business which I had worked entirely myself. I was so crippled for money for two years afterwards that I often went without the necessaries of life. Added to this, my late husband returned, and twice I had to go to the expense of taking him to the police court for threatening my life. My experience was such as no honest working woman ought to have, and had I not had a strong will power, good health, and firm trust in the Divine help, I must have given up in despair."

"88. A young woman who was servant in a good family married a sailor. They had kept company and corresponded a couple of years and she had every reason to believe he was a decent man. They were to be married and she left her place to prepare. When he came off his ship he appeared distressed, his mother had died and he made out that his money had been used by his family on his mother's account. The girl had saved money, and believing in him, used her money to pay all costs. It was arranged she was to live with her mother while he was away and they would set up a home later. He left his ship and said he was promised a better berth . . . he stayed at her mother's with her till her money was done, then said he would seek another ship . . . he went away and she did not hear anything more of him; she inquired of his family and found he had never saved any money and did not know anything about him. In due course she had a child, and was partly helped by her relations. She had to apply for relief and the police found him. (He was summoned for maintenance, imprisoned, and afterwards disappeared. Twice afterwards he was heard of as having married and deserted women.) He is now in prison for bigamy. His first wife is still in service, but cannot get enough money to get a divorce, but if the costs could be paid by the State, what a blessing it would be in this case."

"89. The man was to pay 10*s.* a week to his wife, but he has never paid a penny. He has gone away, and she will have to go into the workhouse to have her third child born. She is a fine girl, only 24. Her life is ruined. She is too poor to get a divorce, and yet she cannot marry a good man if she wanted to."

"90. A widower with three children writes: I got married to a young woman . . . She was very quiet and clean and we lived happily up to the time she left, which was three months later. She went to her mother to do some small jobs. I then heard she had been admitted to the Union Infirmary as a person of unsound mind and from there to the asylum. When better, her parents took her home. I have now heard she was away before I married her, which I was kept in ignorance of. I got legal advice, which was, I could get the marriage declared null and void on the ground of deception, but would cost me 15*l.* and that '*in formâ pauperis.*'"

"91. *Insanity.*—Wife has been insane for 20 years. It is very rough on the husband."

"92. Wife became insane after birth of first child, and has been in the county asylum five years; the doctor holds out no hope of recovery. The husband is a labourer."

"93. My friend's husband was sent to the asylum 25 years ago. She was left with six children. The parish refused to help her unless she sold her home. She refused to do so, and has brought her children up by her own hard work. There is no hope at all for him, so I think a divorce would have been a very good thing for my friend."

"94. The husband lost a great amount of money, and when the wife found out she became insane, but her children loved her better than most children do, and it would have been heart-breaking if the father had thought of such a thing as divorce."

"95. A friend of ours married some seven or eight years ago, and about 18 months after marriage a child was born. The wife was delirious, overlaid the child, and when told of what she had done, went hopelessly insane. This is some six years ago, and she is in the asylum. A woman to whom the husband was deeply attached before marriage is still single, and he, as you will see, is in a worse predicament."

"96. I know of three cases where the women are in an asylum and all have daughters who look after the home and husband, and in one case two younger children. The husbands visit the wives occasionally."

"97. *Desertion.*—A man left his wife and four children; went off, it was said, to Australia. The woman worked hard to bring up her children respectably. A little over four years after he disappeared, he turned up with a broker when no one was in the house (woman out charing), sold up everything, and has not been heard of since so far as I know. Woman arrived when the broker was busy removing the goods, but unfortunately she had never changed the name on the rent book. She struggled on (heart-broken) for nearly two years, and then died, leaving her four children to the care of a sister-in-law."

"98. I know of three or four cases where if desertion alone could be made a case for divorce, it would have been a good thing for both parties, while it would, so far as is known, have been difficult to prove adultery, though it in all probability existed in each case. The woman was left with two children, another with one, a third, a man, with none, and a fourth, a woman, with four children under seven years of age."

"99. Husband deserted his wife and gone to Australia with their united savings, including her earnings after marriage."

"100. Husband deserted wife and little boy 14 years ago. Last year the wife went to live with another man."

"101. A father went away to a foreign country and left the mother to battle with the home and the children for 20 years. He came back and got admittance to the home without their knowledge, and the law such that they were not bound to feed him, but they could not turn him out, and he made their lives unbearable till the mother had to give way and they were soon reduced to poverty."

"102. A cousin of mine got married to a young man after keeping company about two years. They took a house, got it furnished, and seemed very comfortable indeed. Both went to work, but the time was coming when the wife would have to give it up and stay at home. . . . About a month before their baby was born, the young man did a very mean thing. While his wife was away, he went to the man who had furnished the house and told him to fetch the goods back. . . . When the wife returned at night, she found an empty house and the man had gone, she knew not where nor for what reason. They had had no cross words or anything. What could she do only go to her parents? Months passed by, she neither saw nor heard of her husband, and all the expense of confinement fell on to her parents, and from then to now she has never set eyes on him, and her baby is now a fine girl of seven years. If he had a reason for leaving her at all, it was because he was too lazy to work to keep her when she was not able to go out and earn her own living. 'If divorce had been possible, they would have gone through with it.'"

"103. *Drunkenness.*—A young woman, now 25 years old, has been married three years. Eighteen months ago her husband began drinking, he neglected his work, stayed off days together. (He lost his place.) Things belonging to the house had to be sold to keep them. Sometimes he would get the money for the article sold, and although he knew his wife was waiting and there was no food in the house, he would stay drinking until he was turned out. (He got another place, but lost it again the week his wife was confined.) He drew 3*l.* wages that week, and sent 10*s.* home by a man who lived next door. For a fortnight he never came home unless he was drunk. (Twice after that he got work at different places, the second time in Scotland. She joined him there), and the first week

he brought money home. The second week he was stopped for losing time and on the Saturday when he ought to have brought his money home he did not do so, and his wife and children were turned out into the streets in the pouring rain by the landlady, and had to pawn some clothing to pay their fare back to London (her father's home). In addition to this treatment, she has every reason to believe he has contracted a disease. Yet she still struggles on to keep out of the way of the law because it is so stigmatising and public. She is a clean and most loveable little woman. Her husband, before he began to drink, was a very smart intelligent fellow. . . She says his treatment has killed all the affection she has had for him, and bothers very much at the example he sets the children. She said, 'If only I could get a divorce, but you see I cannot, I am tied for life, oh God, for life.' She broke down then and cried, the only time I ever saw her give way, for she is a brave little soul."

"104. An orphan girl whose education had been somewhat neglected married a man holding a good position in an office. Things went smoothly for a time, except that her housekeeping allowance was so small that she had to go very short of food herself to enable her to provide hot dinners for her husband in the evening. She soon discovered that his spare time is spent at the bar of public-houses, spending his money and making love to the barmaids. After a time a child is born to them. Can that child be healthy? the father addicted to drinking and the mother half starved. Years pass, the man loses his situation, grows careless and fails to obtain employment, wife in despair does a little needlework to keep them from actual starvation. The girl growing up into womanhood develops consumption. . . . Still the mother fights the battle of life, sometimes the girl is able to do a little work, at others she is at a Sanatorium, till the doctors say there is no hope for her.

"I do know that if a divorce could have been obtained in this case, it would have been a blessing to the poor worn out mother and her sickly daughter."

"105. A woman has a drunken husband; he leads her such a life she has to leave him. Some time after he leaves the town, and she never heard of him again—now a period of 12 years! She has not had any support from him since she left him. She is *now* only 35? She had no family."

"106. *Incompatibility.*—A man is an epileptic, and both husband and wife have found they have made a mistake because of their temperaments. The wife irritates the man with the result that he generally has a fit, then the wife is miserable, and I don't know how it can be otherwise, and there are children which neither of them seem to want in reality."

"107. Young couple married, fit up a nice home, both very respectable, but she proved to be not fit for a wife. They parted. The result is he did not wish to expose the girl, and after suffering in his own mind, and not having means to get a divorce, at the present time he is an inmate of an asylum. She is at home again."

"108. I know a case at present where the husband and wife had been parted for six years and now are living happily together again, both are older now and realise they must give and take to be happy in married life."

"109. Husband and wife live happily, had a very large family. In late years a strangeness came to the husband, refused to earn any money for keep, &c. They have been separated (not legally) for years. She having seen every child out into the world, now he is wishing to live again with her and I hear she has consented."

"110. *Guardianship.*—The woman was a very bad one, she used to have men going to the house all day and the children there. Her husband had to buy everything for the house, even the loaves of bread he had to cut up into pieces, because she would sell if the loaves were left whole for drink. Well, her husband had a separation order from her, and he was to have the custody of the children, but when it came to parting, he left the youngest child with her. Now I think it was very wrong of that man, because he knew she was not fit to have the custody of the child, and it was against the orders of the Court. It always seemed to me as though he did not care what became of the child."

"111. *Mediation.*—The husband and wife had been parted 18 months and the husband wanted his wife back, and to get her back, promised her certain conditions if she would only come. At last she promised to come, and I assisted him to get a home ready for her. Yet if I had known before the wife's views towards him, also the full text of the conditions, I should have exerted all my energies to keep them apart. Every night I fear what the morning may reveal, and am extremely anxious at all times."

"112. I have been told of a case where a man left his wife and two children in connection with his business, being away about a year. The woman fell, and a child was born just at the time of the husband's return. The news was conveyed to him at the railway station, when he refused to return home, and at once instituted proceedings. Divorce was granted, and he again went away. On his return, he sought the woman and offered her marriage, saying he was sorry he had acted hastily, as he, himself, was not free from guilt. They married again, and were, I heard, living comfortably. It seems as if mediation in this case might have prevented all the exposure and waste of money."

"113. *Personal Stories.*—I first met my husband in Leeds. He was then just started on his own, his landlady and he giving me to understand that he was doing well. Twelve months later we were married, he saying he was doing well, well able to keep me, &c. I found the home, such as it was, was got on the hire system He had no money, and the very first loaf of bread I purchased, I had to borrow the money for. I had spent all my savings, 30*l.*, in bed linen, &c. . . He was doing a mere nothing with work. A pound a month had to go for furniture, and the first month's rent he pawned his watch for. I found he was in debt to nearly all the tradesmen. My wedding ring was not paid for. I immediately became pregnant, and being strongly opposed to any credit, I never knew what it was to have enough to eat until just as my baby was born, unless someone asked me out to tea, which was seldom. Often I could hardly resist picking up the crusts out of the road . . . Baby clothes was my own cut up. The tenth day after the baby was born he came home drunk and compelled me to submit to him. Of course, I had no strength and was at his mercy. My uncle got him a situation when he found how we were situated, but that was very soon lost, drink and a haughty bearing the chief cause. Then there was dishonesty in another place . . . Babies came rather fast. Then I got told I was like a rabbit for breeding and drugs was obtained, as he did not want children, although I was compelled to submit. The second little one died, and soon after the third one came, I was so ill I had to have the doctor, who said there was no disease, but I must go from home and stay as long as possible . . . I was so badly treated that when I knew my condition for the fourth time, I took something which nearly ended my existence. It poisoned me. The doctor said in less than half-an-hour if he had not come I should have been dead. I asked my husband what I should do when my time came. I begged him almost on my knees to stay in nights as I feared I should be quite alone, but he would not stay, out often till 2 a.m. However, an old lady of 80 came at the time and for a week to wash the baby. I never had my bed made or was attended to in any way. Had to do all for myself and dress and wash the other children. I suffered for years through this. 12*s.* that confinement cost, and he swore about that. At three weeks I had to run out in the middle of the night in the street to get away from him. That was in December. The treatment was shameful. Result—the poor babe had consumption of the bowels; however, I pulled it through myself. Often I tried to make up my mind to end my existence, but I could not leave the children with *him*. I was always miles away from my friends. I then kept him at arms length for 18 months, I told him I would never have another child by him, and I haven't . . . He gives me as

little money as possible and for weeks together never speaks to me. I have *never* been able to put my troubles before him. Have had to keep *all* to myself. I hid things up from the children as much as possible, but this spring he told me when sober he did not intend to support me much longer. If I earn any, he gives me less, and he never saves any, so what can I do?" The writer tells of her efforts for the children, and goes on: "Years ago he suddenly took a fancy to go to church and took the eldest boy with him. Sometimes I would remark, 'You are late to-night!' 'Yes,' he would always say, 'we have had a long sermon. I found he was in the habit of going straight to a public-house and compelling the boy to come with him. I said to the child, 'why did you go in! Being a member of a temperance guild, it was very wrong.' He said, 'I begged dad to let me come home or stay outside, and he said he would thrash me if I did not come in or told yon.' I never trusted them with him again. My husband has never in his life given his boys one word of advice and has never showed the slightest interest in their welfare. He seems to think there is no wrong in doing anything, telling untruths or prigging; the only thing is *you must not be found out.* I should have left him years ago, only for the children . . . It is so much worse than being a widow . . . Don't you think in such a case there should be some release? And do you think I ought to be turned out into the world at my age, 54, in a penniless condition, to start life afresh? . . . Just think what the feeling is that there is a woman or *women* somewhere in the town probably who knows the life he is living, and one has to put up with this or face publicity. I cannot believe it is right that this should be so or that it is good for the children . . . Suppose I get a divorce, what could I do? I could not go back to my old trade after 25 years (dressmaker). I should simply have to turn out as a charwoman, at the time of life when one needs rest, &c. . . . The boys say 'leave him mother,' but I *could not* wash our dirty linen in public, and if I did, it is the children who would suffer . . . It is impossible to tell you only a little, but I might say . . . the threat has always been held over my head that he should go to some other woman . . . I felt so degraded. I had not the same privilege as the beasts of the field. No one can possibly imagine what it is unless you go through it, to feel you are simply a *convenience* to a man. I used to feel I was much more degraded than the poor unfortunate women who make a living by it . . . I believe that it is immoral in God's sight for a man and woman to live together as husband and wife when there is no possibility of them living together happily."

"114. *Case from Yorkshire.*—At the age of 25, I married a man of my own station, one that I believed would make me a suitable helpmate, but a very short time after marriage I was forced to realise intoxicating drink had for him a far greater fascination than home or wife . . . One evening, hoping to keep him from bad company, I went to the warehouse at which he was engaged and met him after work hours. In the presence of his shop mates he drew me to him, kissed me, saying how pleased he was I came, but directly we were alone he cursed me for trying to spoil his pleasure, and all the way home threatened what he would do when we got there. I was not accustomed to talk to my neighbours. Shame held me silent. This he knew. When we reached home, he pushed me in the passage and locked the door. Then to terrify me he beat a chair into small pieces against the wall, and also threw the burning lamp to the ground; and when I tried to extinguish the blaze, he threw me also to the floor and held me there, until the floor cloth became alight. He then laughed at my fright and hurried to put out the fire. Then fearing the neighbours would wonder at the noise, he threw open the door and shouted that all in the street might hear that he had been working hard all day and had come home and found his wife helplessly drunk and the house filthy dirty. He knew only too well shame of his conduct would seal my lips. I would not defend myself. This is the cruelty that stabs the heart though the body may be free from the marks of brutality. Things went on in this way . . . until we agreed to part . . . I went home to my mother and my husband simply lived in public-houses as long as his money lasted, then without money, work or food he made my life a misery till I consented to try him again. I got a few things together, and life was a little better for a short time until he knew I was likely to become a mother. Then so bad was his conduct that on two occasions I appealed to the magistrates for protection." The husband was three times sentenced, the third time to a month's imprisonment without option of a fine. The wife then obtained a separation order but the only money received was two payments of 5*s.* each during the short life of the child. On the child's death, his shopmates, not knowing he was apart from his wife, made a collection for the funeral expenses. "This money he drank in company with a woman he was very friendly with, he also told this woman the dead child was his, but I was not his legal wife. At the earnest request of many friends, for the sake of my child's name, I allowed this woman to read my marriage certificate. Even after all this, once again he made my life a misery by constantly following me about, that at last in desperation I gave him another trial. In a few weeks the old life started all over again, and when at last the neighbours told him he ought to be ashamed of himself, he told them I was not his wife, but a woman he was living with. I should have known nothing of this, but one day after he had been noisy, a man living next door, an elderly man, asked me why I continued to live with a man like that. I told him I expect it was because he was my husband, but he answered. 'Oh, no! he is not your husband, but only a man you are living with.' I then concluded that I had borne enough. I removed my wedding ring from my finger, and from that time to this never again lived with or acknowledged him as my husband. I allowed that man also to read my marriage certificate. During the last 15 years I have lived working and supporting myself. I might have filled a better position than just a factory hand, as I am to-day, had I not always been in dread of my vagabond husband appearing upon the scene as he had frequently done, covering me with humiliation and shame and spreading the vilest rumours about me reflecting upon my character; but the fact that I have been in one empoly the whole time should, I think, speak for my character. I am personally looking forward with hope that divorce will be brought within reach of the people, and I shall be one of the first to try for that relief, not because I hope or wish to re-marry, but because I cordially long to regain that freedom which will relieve me from the necessity of passing myself off as a widow."

"115. *Case from the North of England.*—Publicity has been my one dread, and I find I am not alone. Then again the ignorance of the law . . . When I have been threatened by legally insisting on conjugal rights. the thought of publicity has made me submit. I was brought up in a very narrow circle . . . I did not understand the world, was married young, left all my early associations, went to the north of England to live . . . Because I had vowed by the marriage law, there was no help but to submit as a duty. Then I had children who comforted me and were very dear to me, and that caused more misery, for my husband was jealous of the children . . . I have worked hard to bring them up decently . . . Since my health gave way my life has not been worth living. When I ceased to add to the income, I was no more than a dog . . . I went into hospital and I vowed if I was spared to go out, I would assert my rights, late in life though it was . . . Still I had not the courage to seek a separation. He would not give me money, but provided the food he thought he would. As I did not work, he thought I would not want much. Then a strange thing happened. My brother, who is a baker, asked me to come and help in the shop for a time, which proved a blessing, to be away from him in the country. It built me up, for I had nearly three months of it. The day I came home I found that early that morning he had moved all the furniture except the

bedroom and gone away, so that I was left without a home or money, and he has never been near since. Now . . . I am free. My daughter and I live very happy together. She is a waitress now, but she often remarks we have not much of a home, but we are free to think and talk and work in our own way."

116. Wife was deserted for six months before the birth of her baby, and afterwards refused maintenance except in the house of the husband's father, where she had been most unhappy. The husband has never seen or asked after the child and is walking about publicly with low women, and the wife has no money to get him watched. She is afraid to go out, as he threatens her. Before marriage she earned 22*s.* a week as typist. His parents insisted on her going out to work after marriage, and she then earned 15*s.*—later reduced to 10*s.*

"117. My husband turned out a thoroughly bad man. A supposed teetotaler, yet a secret drinker. Of women he could not have enough, till I was ashamed to be seen out with him. Eventually he lost his work. I had just come into some money; hoping he would do better I bought him a business. He would not attend to it and lost my money. Then he had other chances, all to no purpose, and through it all, by fits and starts, he was making my life and our sons unbearable by fits of ungovernable rage, sometimes lying in bed all day, another time tearing all over the house, and through the night cursing and swearing, using the most filthy language it is possible to imagine, holding a knife over me, but *never touching me*, because then, and only then, could I get a separation. He never lost himself enough to forget that. It ruined my health. He lost my money, made my life unbearable, and yet through our splendid, just, English, man-made laws, I was utterly helpless, and at my husband's mercy. I got a doctor to see him; he could not certify him insane. Saw the chief constable of the county, he, sorry as he was, could do nothing, the lawyers could do nothing. At last a Christian friend of my husband's came to the rescue; he got him a situation as far away as possible with a friend, took him there, and I was guarantee for 50*l.* I had a letter from him the next day saying he should have come straight back if he had had money, but what's to prevent him coming back, *nothing*, and I live in terror of it, am afraid to be out in the dark or be left at home alone. He sends me nothing for my maintenance, and I have to work hard to keep a home together, and tied fast to such a man. Is it right or just to a woman that it should be so?"

"118. *Miscellaneous Cases.*—I have lately attended a woman with her eighth child. She is 30 years of age and her eldest child is 12 years. She had been left a widow at 24 with three children, and married again in order to have a father for her children. In the six years she has been married to this man, she has had four living children, one premature birth, and one miscarriage. She has had to work just as hard as before, at washing and cleaning. On the occasion of the last birth, she worked up to 4 o'clock in the afternoon, cleaning bedrooms in a large hotel. Her baby was born at 9.15 that night, and I know quite well that the birth would have been much easier had she not been so tired and exhausted with having to work when in an unfit state. She had been in actual pain for two days previously, and ought really to have remained in bed and been well nourished. She stayed in bed after the birth for eight days, went back to her usual work on the 12th day, having put the baby on the bottle, and, as a consequence, the child died. Just think of this waste—the pain borne by the woman, the suffering of the child, and the expense of the birth and funeral, and all because the man, who will not work to keep his offspring, insists on his "rights" as a husband. This man does not drink to excess, he is not in the habit of thrashing his wife, and because of this she thinks he is not a bad husband. When I asked her if she did not think it a pity to keep on bringing babies into the world to have to work for them herself, she said: "Well, he is my husband, what can I do?'"

"119. Woman died broken-hearted when she found she was not the legal wife, as the man she married was only separated from his wife."

"120. Two cases where women have committed bigamy, where, if they could have got a divorce, they would have been legally married."

"121. Wife went away with another man, leaving one child. Later, the husband lived with another woman, and she had children."

"122. Wife left her husband, reason unknown, and came with her little girl to another town, where she lived with another man. They would probably have been married had it been possible."

"123. Case where, after a separation order, both parties led an immoral life."

"124. I know of cases here in B—— where couples are living what they call 'tally,' much more happily than with their lawful husbands and wives, and one couple each have the children of the marriage."

"125. Case of divorce. The sender thinks it is possible the parties might have come together again, if an attempt at reconciliation had been made."

"126. Similar case.

"127. I had a sister who fell through my father's friend . . . circumstances lent themselves to this, but the sorrow was great. Now that sister lies in her grave, and the man is now living. He has filled the highest places in the city except lord mayor. His wife looked over the offence. Yet it must be always there. She died with all done for her that affection could give, his family have been kept together. Now, I think, if this had all been brought public, that family had been stranded, but be sure sin brings its own punishment."

"128. The husband ran away, as we call it, with another woman. He had got all their joint savings, and the poor woman was left destitute. She got work after a time and to all appearances forgot, but no, not quite, and whenever she saw me she invariably began to talk about it. After about six months, the man came back and the woman lived with him again, but though she forgave him, she could not forget, and it eventually turned her brain, and she is now in a lunatic asylum"

"129. A woman got a divorce and was given custody of children. She was taken ill and could not keep them, so the guardians had to relieve them. The father was asked to contribute towards their support. He refused unless he was given a guarantee when the children were old enough to work he should be given their wages, with no consideration for the mother." (Mrs. A. is one of the poor-law guardians.)

"130. A good many cases I know where the men earn 2*l.* or 2*l.* 5*s.* a week and gives his wife perhaps 25*s.* or 20*s.* a week, sometimes not that, while he spends what he has left in drink, or gambling, or horse racing, or making himself as bad as ever the law allows him to be, while the wife she has either to go to work and help keep the children or else go neglected."

"131. I know the case of the husband who went bankrupt, and so getting clear of paying his wife the allowance she was granted. He himself lived in hotels as he had no home, and so was able to say it took all his wages to keep him. So it did, for he spent it all on himself."

37,013. (*Mr. Spender.*) May I take the point on page 48. You say, "It follows from this view that the serious desire of either husband or wife will be sufficient ground on which the State may sanction divorce, under suitable conditions as to time and provision for children." That, I suppose, if it were the practice and principle, would embrace most other causes?—That is so.

37,014. Practically, you would say that if a marriage had broken down in practice according to the feeling of both parties, that should be a ground of divorce. In one of the letters which you have quoted, one of your correspondents is in favour of the cases being heard behind closed doors, and the correspondent adds "It concerns only the family." Do you take that view yourself?—No, not altogether. I am not really prepared to say definitely what I should feel about it, only I think the present custom is undesirable. I should have thought a summary of proved facts would have been all that would be necessary to communicate.

37,015. I am thinking of it not merely from the point of view of publication in the newspapers, but as

a matter of principle. It seems to me to go very much to the root of this matter, if you have a divorce on the ground of incompatibility by the two parties themselves, and that becomes a matter of divorce *ipso facto*. It seems to banish the consideration of the State out of marriage?—I feel that there are certain conditions under which the State might very well step in as they do now, both as regards marriage and as regards divorce, and on the question of children the State should always have some voice in the matter.

37,016. I think in the countries of which we have had evidence in which this ground of divorce is allowed, it is very carefully defined, and it is realised that it is a very important public matter, to which the State is, so to speak, a third party?—Yes.

37,017. You would wish to define it in a very definite way?—Yes, the way in which the State would step in.

37,018. In the Norwegian law, where they admit these grounds, we were told there is a long period of probation when the parties have come for a divorce?—I think in the Norwegian law for mutual consent the period of probation is one year, and where one party makes application it is for two years.

37,019. You contemplate something of the sort?—Yes.

37,020. I put that because on reading this evidence as it stands it looks as if you might interpret it as meaning this was purely a private matter?—I would put it under suitable conditions as to time which you would allow for a probationary period, and there should also be provision for children.

37,021. If I may pursue it a step further, it is commonly said that the loosening of the tie in this respect, relaxing it for both husband and wife, because you would have to give the same rights to the husband as to the wife, would seriously weaken the economic position of women, that a man might easily find ground for dissolving the marriage tie, and throwing off his responsibilities. Is that the view of your working women? Do they feel that the present durability of the marriage tie is a guarantee of their economic position?—They feel strongly the extreme difficulty of the position and the need for some kind of economic independence. What they desire would be the possibility of freeing themselves from a life of suffering.

37,022. Would they take both those things together. In many cases you expound a state of things in which the economic situation compels the woman to live with a man. Supposing you relax that by what you propose, is the economic situation rendered better or worse?—Under present circumstances it is rendered worse.

37,023. Supposing you cannot solve that economic question, would your working class women prefer to take the risk of altering the conditions or to endure the present alleged evils of the marriage law for the sake of the economic assurance it gives to them?—I would rather you ask Mrs. Barton, who is here on behalf of the Sheffield branch of the guild. I understand that they wish to have an opportunity of being free, and would risk the economic difficulties.

(*Chairman.*) We will hear Mrs. Barton afterwards.

37,024. (*Mr. Spender.*) We assume, if we do not go to these lengths, there are certain cases to be taken separately. May I ask for a clearer definition on two points: first as to the husband's refusal to maintain. What would that signify exactly? Do you mean where, after a separation case has been brought into the courts and an order made and an allowance given by the magistrate, the husband has refused to maintain?—No; the meaning was where under the ordinary circumstances of married life the husband did not give his wages to the wife, did not give sufficient money for the maintenance of the family.

37,025. You mean a man returning on Saturday, after receiving his wages, and keeping too large a proportion for his own private expenditure?—Yes.

37,026. Do they consider that alone, or a persistent refusal?—I think they would consider it a persistent refusal.

37,027. Which means drink usually, I suppose?—Not necessarily always at all. I have known many cases of this kind in which there is an inadequate amount given for maintenance, and it is not associated always with drink; sometimes it is extravagance and betting habits.

37,028. We will take the consideration we have just discussed: a divorce is not a remedy for that, it leaves the economic situation just as bad?—I admitted the economic situation was a very important factor, but I did not feel in this paper I was called upon to give any kind of scheme.

37,029. The point is raised acutely?—Undoubtedly; it brings the difficulty to a head.

37,030. What you mean in proposing that is this: suppose a worthless husband had for a long time kept back too large a part of his wages, either for drink or gambling or any other purpose, that woman should be free to seek another partner?—That is what they mean, I think.

37,031. Is there a strong sentiment?—Very strong indeed. I was surprised, in talking it over, how very strong this feeling was, and very naturally, because I have had a case where the inadequate maintenance that is given has meant starvation of the family, and illness.

37,032. As to mutual consent and serious incompatibility, that was your phrase?—Yes.

37,033. Does that mean you could have divorce for either of those two grounds, if both the parties agreed in demanding it?—Yes.

37,034. Or if one alleges that the other is incompatible?—Yes.

37,035. You take either?—Yes.

37,036. Have you any idea what you mean by "serious incompatibility"? What does "serious" mean, exactly? You mean something more than mere friction of temper?—Any strong desire that either would express as regards the impossibility of living with the other. I think it is impossible to define it.

37,037. It might be attachment to some other person?—Yes.

37,038. (*Mrs. Tennant.*) Have you any opinion on the question of penal servitude?—I should include that personally, I think.

37,039. (*Sir Lewis Dibdin.*) Do you share the view of the branches as to the objection to police courts as a court for dealing with these questions?—I have not any personal knowledge, but I should be very much inclined, from all I hear, to agree.

37,040. That is largely, is it not, on the ground of the unsuitable surroundings of a police court?—Yes.

37,041. And the publicity of it?—Yes.

37,042. Would it at all alter your view with regard to that if these cases were heard in a court like the Children's Court? You know what I mean?—Yes.

37,043. Where the press are not necessarily admitted, or the public, and where the surroundings are more what you call "with closed doors," at any rate more private? Would that meet the objection?—I should think it might meet it to a certain extent, but I have not any definite views myself on the subject, not knowing sufficient about the conditions of the various courts.

37,044. You realise that the magistrate very often is a man who is much more in contact with the poor than the county court judge?—Yes.

37,045. You have given your evidence very clearly that you are in favour of divorce by mutual consent, I think you said where the parties for a year are quite definitely of opinion that they would rather be divorced?—Yes. I do not think any definite period was suggested, but there should be some period.

37,046. I thought you said one year to Mr. Spender?—I was mentioning the Norwegian law, which is a year in the case of mutual consent, and two years in the case of one of the parties.

37,047. You think some such period would be adequate?—I should have thought so.

37,048. Or incompatibility. I do not quite follow what you mean by "incompatibility." The explanation you gave to Mr. Spender sounded more like mutual consent?—A serious desire on the part of either of the parties not to live with the other. It is very difficult to define it.

37,049. I do not want to press you about that. For instance, if the husband definitely does not wish to continue his relation with his wife, and the wife would prefer to remain married, if that goes on for two years you think there ought to be a divorce?—I feel there should be the possibility of a divorce.

37,050. Supposing that desire on the part of the husband to be freed from his wife is due to the fact he has transferred his affections to another woman, would that be a kind of incompatibility you would recognise as sufficient for a divorce if it went on long enough?—Certainly.

37,051. That is not only your own opinion (I am not now referring to details), but the opinion of the 124 late officials you have approached?—Not the whole number of them, but a majority of them, certainly.

37,052. You have given the figures?—Yes.

37,053. Have you any reason to think that their views would be shared by the branches themselves?—Yes. On the whole I should say that they were very typical of the other members in the branches. The branch opinion on the whole might not be so advanced, but from the evidence we have had of the branches I may say it would very closely represent the branch view.

37,054. Do those 124 individuals represent all the late officials, or a selected number?—Not late officials. They were women who were selected from those whom we know to be specially intelligent—on no other ground at all.

37,055. They do not represent the whole class of officials beyond late officials?—They do not represent the official class; they do not represent anything.

37,056. I used the wrong verb. I do not mean "represent"; they are not the only officials beyond late officials that exist?—No, we have many more officials than that.

37,057. You selected 124 of the most intelligent?—Women who have been officials or are now officials, and who, from our own knowledge of them, have shown special intelligence.

37,058. Was there any reason why this very important question as to incompatibility should not have been submitted to the branches themselves?—We only submitted the two questions to the branches, the equality and the cheapening, and the question of the juries.

37,059. Why did you not go further?—We did not go into any of the questions with the branches; we did not think they had yet had sufficient study of the subject.

37,060. So far as you are acquainted with their view, you think they would agree with the view you yourself and the majority of the 124 formed?—I should think the majority of the branches would, though all might not be so advanced. But these women are drawn from the same class as the branch members, and would to a very large extent be representative of the branches.

37,061. Your view is not only that the grounds of divorce should be widened to the very large extent you have indicated, but that it should cease to bear any stigma or moral disability at all?—The mere fact of divorce.

37,062. It should be like the severance of any other contract?—It would, no doubt, be considered a misfortune.

37,063. A mere matter of the termination of a contract?—Of a sacred contract.

37,064. Of a sacred contract?—I should be prepared to say that.

37,065. What does that mean? What is a sacred contract?—A contract that had been of a specially sacred character.

37,066. What is a contract of a specially sacred character?—A contract in which the subject was one which would be recognised as of extreme importance and seriousness.

37,067. You cannot define it more clearly than that. It does not convey very much impression to my mind. It is my fault, I have no doubt?—I have heard it called an ethical sacrament; I think that is the term.

36,068. That gets more unintelligible to me, if you will forgive my saying so. Now I want to ask you about women being on juries. I quite follow all you say, but what do you think, from your great experience, would be the attitude of women jurymen in a divorce case? Do you not think that their inclination would be to be hard on their own sex?—I do not think one can specify what women would do in general, any more than what men would do in general.

37,069. That is not your experience; you have not found that in dealing with women, that on the whole women are harder on their own sex?—My own experience would be the contrary.

37,070. Your experience is very large. Would you go further? I rather read your proof to mean something further, that where there was no jury you think a woman ought to be perhaps an assessor to the judge, or perhaps a judge. Do you go as far as that?—I made a suggestion that there might be a woman who would act somewhat in the same way as an assessor in patent or naval cases might act, but I am not prepared to go into detail as regards these leading positions. I feel strongly, and I know I am voicing the strong opinions of working women, that women should take some part in the administration of the law. I am not prepared to specify exactly the kind of legal position they would hold.

37,071. One witness, and I think more than one, suggested that there should be women magistrates to deal with separation orders?—Yes.

37,072. Would you take that view?—I should think it would be very often most advisable.

37,073. If there were such magistrates, would you limit their work simply to the separation orders or would you let them take just the same part as any other magistrate?—I should be inclined to.

37,074. I suppose members of your guild are chiefly of the middle class, what are very inaccurately called the lower middle class?—They belong to the artisan class, the wives of men who would be in trade unions of every kind.

37,075. They are not the very poor?—No.

37,076. I ask that because I see their view, and I gather your view is against outside efforts towards reconciliation between husband and wife?—There is a strong feeling against that.

37,077. You sympathise with that?—I think that is a very natural feeling.

37,078. Is not that largely an incident of the class to which the persons whose opinions you voice belong; I mean to say incidental to their class rather than to the very poor?—The very poor are so very much used to being interfered with, that they would not resent mediation in a way that a better working-class woman would.

37,079. Do you think that is a fair way of describing efforts to make peace between husband and wife among the very poor? I follow it with regard to another class, but do you not think efforts of that kind are very useful?—I think they have been in many cases quite valuable, but I thought it striking that with this better-off class there were many who felt it was in fact almost dangerous.

37,080. You would not depreciate the work of police court missionaries in that way. You know they do a very large amount of work in bringing people together?—That may be. I was dealing with the class of women whom I represent.

37,081. You do not wish to say anything about them?—I think mediation on their behalf would be such as ordinary solicitors now often carry on with people of a richer class, and I think any officials connected with the subject might act as ordinary solicitors do, very often, as mediators.

37,082. A police court missionary going among that class would be considered impertinent?—Yes.

37,083. Does your experience enable you to say anything as to what you think of their work among the class they operate among, the very poor?—I have no knowledge of that.

37,084. (*Chairman.*) Are your own views formed entirely from your connection with the guild or from study, and so forth, generally?—By thinking about the subject generally, and also from the experience

that I have had in connection with the lives of women, which has been large.

37,085. (*Sir Lewis Dibdin.*) There is one question I omitted to ask you. You told us the view of your constituents was strongly that the mother should be the guardian of the children in the event of separation or divorce?—That the presumption should be in favour of the mother.

37,086. Yes. Have they considered as to what age that is to go. "Children" is such a wide phrase. One understands it as to infants in arms, but is it also for boys and girls of 15?—I should think it would include those. I should imagine so.

(*Chairman.*) I ought to thank you very much on behalf of the Commission for the valuable paper you have prepared, and the extremely careful thought and extensive labour you must have bestowed upon it. I think you have brought with you one of the members of the guild. I have not had a proof, but I should like to ask her a few questions.

Mrs. Eleanor Barton called and examined.

37,087. (*Chairman.*) Where is your own home?—Sheffield.

37,088. Are you married?—Yes.

37,089. What is your husband?—He is Secretary of the Independent Labour Party.

37,090. Does he work in a trade as well?—No.

37,091. Are you a member of the Branch of the Guild at Sheffield?—Yes.

37,092. Do you attend the meetings?—Yes, regularly.

37,093. Were you at the Congress in London when the resolutions were passed?—At Oxford.

37,094. You have heard Miss Davies' account of that?—Yes.

37,095. What does your own branch consist of?—Thirty-six members.

35,096. Who are they the wives of?—The better class artisan. We have wives of railway clerks, wives of the Corporation labourers and joiners.

37,097. Can you give any idea of the range of wages which they have?—I should say anything from 25*s.* to 2*l.* a week.

37,098. That I think enables us to judge pretty well. I have not very much to ask you because you have not furnished us with a proof of what you desire to say. What does your own Guild say about the equality of the sexes?—There was only one exception; they were all in favour that the divorce laws should be equal between men and women.

37,099. How many were in favour of it?—Thirty-five.

37,100. What is the view of your Guild with regard to the expense of the present system of proceedings?—They feel that at present it does not help working women at all, and that it ought to be brought within the range of the working women.

37,101. They have expressed a desire for that?—Yes.

37,102. The wages are not enough?—No.

37,103. The money is not enough: that is the broad point?—Yes.

37,104. Do they think they ought to have a court accessible to them if they desire it?—Yes.

37,105. To what extent do your people represent the opinion of others in the same rank of life as they are in Sheffield?—I should say the women we have are thinking women, and women who mix with others and take an intelligent interest in their neighbours. They are members of other organisations where they come into contact with other women and they represent a very large opinion, larger than their numbers would seem to signify.

37,106. Do you think that they may be taken as representative of thinking women in Sheffield?—I should say so.

37,107. You have perhaps heard some of the questions that were put to Miss Davies?—Yes.

37,108. There is one point I should like to ask you about, what is called the economic question. Do you understand that?—Yes.

37,109. Can you give us any views of the women about that?—Yes. It is quite true, as Miss Davies has told you, a married working woman in the home has no money of her own at all and that makes it very hard for women to escape from any amount of cruelty. I do not mean physical cruelty; there are different causes and different cases of cruelty; but to understand the position of working women one has to live among them. There is a great amount of suffering which never sees daylight. The women in many cases are martyrs. I think it is really because of the idea of morality. One has the idea if they are married, they have to submit to their husbands. In all cases, and it makes it especially hard in cases of working women, because they are not able to get away the same as people in a better class of life. They live their lives so nearly together, and it means that a great amount of suffering is suffered by these women by, say, a lustful husband, by bearing children unwillingly. It is not talked about. They feel they are married and because they are married they must submit to this sort of thing.

37,110. How do you think that would be improved, supposing you had a Divorce Court sitting in Sheffield?—I go wider than Divorce Courts there, and say our children should be taught the uses of their own body, both boys and girls. I hold strong opinions on that subject, and also that the law of morality should be the same for both sexes. If a man felt that a woman was not his own property, as he does to-day, and it was easier to get a divorce on account of being cruel, it would bring about a greater respect for womanhood.

37,111. You think if there was the opportunity on proper grounds of going to the Court and an easy means of access at a moderate cost, it would improve the standing of women and men?—I believe so.

37,112. There would be greater respect to the woman from the man, and would put a check on his conduct?—Yes.

37,113. That is your view?—Yes.

37,114. And is it shared by your people?—Yes, mostly, I think.

37,115. What is the view of your body of women on the question of the grounds on which divorce should be obtained?—Of course, there are different views, but most of them have the idea that it should be made very much easier. For instance, with regard to incompatibility wherever there are two people joined together and they find their whole interests are quite opposed to each other, it means they are each living their own life apart, a house divided against itself, and one feels that should be a ground for divorce. Then as regards separation, perhaps a man has been cruel to a woman and she has had a separation. We feel strongly where they have been separated two or three years, that should be an occasion for divorce, because we feel that tends to immorality.

37,116. What is the view about a case where a man deserts and goes off to America?—In that case, if he was away some time and did not communicate, they feel that should be a ground for divorce. When a man leaves a wife and children, as many are doing just now, and have to go to another country to seek a living, and keeps up communication a year or two in the hope of sending for them, that is different.

37,117. That is not the case I put?—In that case one would say they should have a divorce.

37,118. Where he wilfully goes off and does nothing for them, I mean?—Yes, that should be ground for a divorce.

37,119. Has your Guild considered the question of cruelty as a ground?—We have not passed resolutions on it, but I know the idea pretty well. We have discussed it.

37,120. What do you say about that?—They feel that a woman ought not to be subjected to a man's cruelty, because the thing they feel very strongly is what a bad effect it has on the children. One feels, especially where there are boys and girls in a home, it

is giving the boy a very bad chance for his own home life when he breaks apart from the paternal home and has one of his own. It does not give the boys any respect for womanhood.

37,121. Has your Guild considered the question of where one of the people becames insane?—Yes. The general opinion on that was that each case would have to be decided on its merits. There are cases where women are insane after the birth of each child, and one feels very strongly on this point, that a lot of this evidence is kept underhand and the women suffer, but some feel the doctors might speak out because they know and understand these things. The cases come before them.

37,122. I was rather putting the case where a person was hopelessly shut up, not the case you are thinking of. They have discussed that?—Yes. It came up under the same heading; all the things were taken. They seem to think where a man or woman was hopelessly insane it would be better for the other to form a contract with someone else.

37,123. (*Mr. Brierley.*) Was this question of incompatibility discussed by the Guild?—Yes.

37,124. Could you tell us what they meant by it? Does it amount to this, that any established dislike on the part of the husband or wife should entitle him or her to a divorce?—They felt if two people are living together in a house under the conditions working people have to live, sharing the same bedroom all the time, and if their interests are totally opposed to each other, it must create dislike.

37,125. A wife who conceives a dislike for her husband, you think, ought to be entitled to a divorce from him and to retain the custody of her children, although the husband may have committed no sort of wrong in any way whatever?—Yes.

37,126. That would follow?—Without love and reverence for each other it amounts to cruelty.

37,127. It may not be the husband's fault that the wife has conceived a dislike; he may have conducted himself with perfect propriety. Do you suggest the wife should be able to obtain a divorce and to retain the custody of the children of whom he may be as fond as she is herself?—Yes, because I cannot conceive any one caring to bind any one who had no liking for them.

37,128. That would follow?—That is so, but it is one of those things in which we have to look to the greatest good.

37,129. I only wanted to know whether that was the view?—Yes.

37,130. (*Sir Lewis Dibdin.*) You told us one of the grievances under which women labour is not having a definite share or any sufficient share of their husband's wages?—Yes.

37,131. I suppose that is a very real trouble, a man spends his money in betting and drinking, and leaves the family almost to starve?—Yes.

37,132. It has been suggested that there ought to be a law that a definite share of the husband's wages should belong to the wife as a matter of right, and she should have her right, if he does not pay it, to go to some court and compel him to pay it. Are you in favour of that?—Yes. Take a man whose wife lies ill and he has to have a housekeeper or pay for all the laundry work and baking: it costs him so much. Men have the idea a woman's work in the home is not work, but it is work that should be paid for just the same as any other.

37,133. You think the wife ought to have a legal claim to be paid for that just like an outside person?—Yes.

37,134. Is that the view of your friends in Sheffield generally?—Yes.

37,135. It has been really considered by them?—Yes, we have discussed that question.

37,136. With regard to incompatibility, Mr. Brierley put to you the case of a man who has done no harm. In my mind the case is stronger with a man who has done harm. Take a man who has transferred his affections from his wife to another woman, and she knows it. Do you think he ought to be able to go and get a divorce because he says, "I have lost all love for my wife, and there is entire incompatibility between us: I have a mistress, and I prefer the mistress: give me a divorce." Do you think that ought to be?—Yes.

37,137. Supposing the wife does not want it, and is heartbroken at the infidelity, but loves him still. Ought he still to get the divorce?—They do to-day.

37,138. How do you mean?—They grant the divorce to-day when it is only desired by one party.

37,139. I am not speaking on the ground of adultery in that case. The wife might get it, but a person cannot get divorce on the ground of their own?—No. The point I wanted to make clear was you do not ask to-day that both persons shall be agreeable for disunion.

37,140. At any rate, you think no matter what the incompatibility is caused by, if it exists, it ought to be a good ground for divorce to either party?—I think so.

37,141. Is that the view of your friends generally at Sheffield?—Yes.

37,142. I think you told us they belong to all classes of working people?—Yes.

37,143. Do they take any interest in politics?—Yes.

37,144. Are they largely Conservatives?—We have all parties represented, both Liberals, Conservatives, and the Labour Party. Of course, we do not introduce party politics.

37,145. Which do they most belong to?—I should say Liberal, really.

37,146. Not the Labour Party?—No.

37,147. There is another case. You put the case of a woman who did not want to bear children, and her husband made her, really. Do you regard that as a ripe case for divorce?—Yes, I should say so. The question is that women suffer a great deal through their husbands' sensuality, and that is more evident amongst working people than other classes, simply because the conditions of life lend themselves to that sort of thing, and they have not been taught the proper uses of their body. If one eats too much, they are immediately called a glutton, and I think we should be taught we should be able to restrain all passions. No passions should be able to overcome man or woman.

37,148. It is rather difficult to talk about this, but you admit marital relations as one of the great objects of marriage?—Yes.

37,149. If that is refused by one side or not desired by one side, do you think that is a reason for allowing divorce?—Yes, seeing that is the object of it, I should say so. I do not see why marriage should legalise prostitution.

37,150. Having entered into a contract and not wishing to perform part of it, that should be a reason why it should be annulled?—Yes.

37,151. (*Mrs. Tennant.*) I want to clear up one matter. I gather from one of your replies to the Chairman that it is the opinion of women that insanity at childbirth has been caused by what might be defined as the cruelty of their husbands?—Yes.

37,152. Did I gather rightly that they base that opinion upon what doctors have told them?—No.

37,153. You said doctors ought to have spoken up?—Because I feel the doctors know this is the case, and I think they are the people who have this evidence and could give it more conclusively than one like myself.

37,154. Is it merely supposition that the doctors have that evidence, or have the doctors said anything to the women which has made them feel they have that evidence?—I have had things told me by different women that have given me to understand the doctors do know.

37,155. (*Lady Frances Balfour.*) You were asked some questions about fulfilling the marriage contract. You did not mean to imply you did not wish married people to live together in those relations, only if there had been a good deal of brutal treatment and excess in those ways and the woman had come to dislike it, that would be a reason for breaking it off?—No.

37,156. Not simply from disliking the conditions, but simply from the abuse of them, the woman had

been cruelly used and had taken a dislike to that life? —Yes.

37,157. To excess?—That is so.

37,158. (*Chairman.*) Perhaps I had better get this clear. What did you intend to convey by what the doctors said to these women?—What I mean is that doctors know many things women suffer from by their marriage relations, and that in many cases there have been women who have been sent away completely from their home-life to get a complete rest because of the married relations.

37,159. Then the doctor has given very good advice? —Yes.

37,160. I do not think you complain of that?—I do complain very largely. One gentleman here said—it is rather a delicate matter to speak on, but personally, women are suffering.

37,161. You do not complain of the doctors giving good advice?—I do say that the doctors could give very valuable evidence as regards these marriage relations.

37,162. You mean of the necessity for such advice.

(*Sir Lewis Dibdin.*) They could give evidence here.

(*Chairman.*) To show there was abuse in this respect.

(*Mrs. Tennant.*) The point was that was, in the opinion of these women, responsible for their insanity at childbirth.

(*Chairman.*) Yes.

37,163. Do your members belong to any particular section of the Churches?—Yes; we have nonconformists, and we have members of the Church of England.

37,164. All varieties?—Yes.

37,165. They are all agreed?—Yes.

(*Chairman.*) I think your evidence has been very interesting, and I thank you for coming to give it.

Mrs. Ruth Homan called and examined.

37,166. (*Chairman.*) Are you an official of the Woman's Industrial Council?—No, I am only a member of the council.

37,167. The reason I ask is because I had the Secretary's proof before me, but it has been changed to yours. I had Mrs. MacDonald's proof, but you have come instead?—She has resigned. She is no longer a member of the council, and I have been asked to take her place.

37,168. May I take it you are an influential member of the Women's Industrial Council?—I have been a member a good many years. I do uot know that I am influential.

37,169. The council, in the course of their inquiries into the conditions of women-workers, find a great hardship often recurring amongst those who have obtained a separation order, and whose husbands then evade the paying of the maintainance fixed by the court?—Yes.

37,170. Will you kindly read what you say after that?—I have to submit definite cases in point from different parts of the country. In some cases the man has moved from the town, and cannot be traced by the wife. Other cases show that the husband causes unpleasantness when he brings the money, or interferes with the children if they are sent for it. A very common grievance is that the husband though within reach and often earning good money, refuses to pay, and it costs the wife 5*s.* or more to summon him, often without any good resulting.

"The council suggest:—(*a*) That in the case of a separation order, which necessarily implies bad behaviour on the part of the husband (or wife) the couple should not be obliged to come in personal contact, or to communicate by means of the children for the payment of the maintenance. It should be payable into court, or through some official at the option of the parties concerned; (*b*) That the wife should not be at the expense of summoning the husband for making default in payment. A way should be arranged by which, without a large amount of trouble, she should be able to get her summons free; (*c*) That it should be made optional for the wife to put upon the court the responsibility for summoning the husband when the maintenance payable by him is in arrears and for tracing him if he leaves the neighbourhood. The machinery appointed to carry out (*a*) would naturally be utilised also for this purpose of enforcing payment, particularly when there are children; (*d*) That orders for the wife's maintenance might be served on the husband's employer for payment direct to the wife of the maintenance out of the man's wages (if so ordered by the court)."

37,171. Do you think that the employers might resent that position of an order served upon them for payment?—I dare say some employers might object.

37,172. Do you think it might be disastrous to the husband if they did and they turned him out, so that there were no wages?—In some cases that might be so.

37,173. Do you think that is a counsel of perfection? —No. I think (*a*) would be a better plan. This was a final alternative.

37,174. That is only payment into court by him?—Yes.

37,175. Do you think calling on the employers is practicable and likely to result in getting the money? I will tell you why I ask. We were told by a gentleman from Scotland it was easy to evade it by moving from one place to another or cutting down wages?—Do you mean the employers would evade it?

37,176. No, the men would evade it?—That is what they do now practically, is it not?

37,177. Has your council seriously considered whether it would produce any practical good result to have this power?—I think they thought it would be better than nothing, supposing we could not get the other.

37,178. What is the other?—The first proposal was much better.

37,179. That can be carried out now without any alteration of the law, but it is not compulsory: it is the payment into court?——

(*Sir Lewis Dibdin.*) Or through the court.

37,180. (*Chairman.*) It is the same thing. Have you communicated with any employers of labour about it?—I cannot say if the council have: I do not know.

"The council also desire to lay stress upon the need for an equal standard of morality for men and women in the eyes of the law. They do this as a body, having the interests of working women as their special concern, and desire to point out that unfaithfulness on the part of the husband does not only affect the wife, but presupposes the existence of women or girls who are obliged to live an immoral life, whether as professional prostitutes or in conjunction with otherwise respectable employment, as in cases repeatedly mentioned by witnesses already heard by the Commission where a domestic servant is the victim. The council continually have to fight against the existence of such evils and temptations in the path of working women, and believe that as long as the State refuses to set as high a standard of morality for husbands as for wives, it is impossible to remove the existing injustice and danger to other women. N.B.—Besides the specimen cases of separated wives appended herewith, the council have 33 cases, at present on the books of the Association of Trained Charwomen, nine of which have come to our office for the first time in the last two months. In hardly any of these cases does the wife receive any regular maintenance from the husband, but it is not clear in all instances whether she is only a deserted wife, or has obtained judicial separation."

37,181. Then you set out a number of cases to show what you have dealt with?—Yes. They are as follows:—

"Mrs. S., Hull, age 34, blacklead worker.—Obtained a separation order in 1905, after seven years of married life. She has three children, so the man was ordered to pay 12*s.* weekly. He left the town and

did not pay the costs. Paid one 12*s.* after the order, and has not been heard of since; supposed to be in Canada."

"Mrs. G., Hull, age 37, parceller.—She obtained a separation order after two years of marriage, owing to husband's drunkenness and neglect. Had two children, both dead. She earns about 15*s.* a week. Husband still in the town, but she has only had a single payment of 2*s.* from him, though the magistrate ordered 8*s.* 6*d.* a week; has paid 5*s.* twice to get a warrant against him, and he has had two terms of imprisonment (one month and two months), which he did not mind at all."

"Mrs. G., Hull, age 26, parceller.—She obtained a separation order after 18 months' marriage. Magistrate ordered a payment of 8*s.* a week towards support of herself and one child, but it has never been paid. She has summoned him twice, and each time it has cost her 5*s.* 6*d.* and there has been no result. The boy is now of school age. She earns about 16*s.* a week."

"Mrs. G., Blackburn, age 48, weaver.—Husband all right early part of married life, then he took to drink and then to going with other women, hence two years ago the separation order. Magistrate ordered 5*s.* a week. This has now not been paid for 12 months. There are four children, each earning a little. Her own earnings are now very small, 3*s.* 9*d.*, 5*s.* last two weeks.

"Mrs. A., Blackburn, age about 25, ring spinner.—She works now to support home and children, and previously to keep idle husband as well. She earns 21*s.* 10*d.*, and has to pay 1*s.* 6*d.* for car fare. She has her mother and sister living with her, three children of her own and two others who are relations. Husband, who is a hawker, is ordered to pay 5*s.* a week towards the maintenance of the children."

"Mrs. G., Bolton, age 34, waste picker now, formerly cardroom tenter.—Husband drinks and will not support her and her children, he is not living with his wife now, and probably will not again. Practically all their married life she has been breadwinner. Eldest girl diminutive through his treatment of her mother; one or two of the children were actually born in the street because he turned her out; one child crippled from birth, died at 18 months because the man kicked his wife when pregnant; the work in warehouse is laborious and at her recent confinement she had to have instruments and chloroform, and the child's arm had to be broken to effect birth. Husband is a collier and earns good money, but has only been giving 5*s.* to 8*s.* for the support of the children weekly. A magistrate's order has been made for 16*s.* 6*d.*, but it is not enforced. Nothing at all was paid last week. He is to be prosecuted on Monday, as she says she has done with him now."

"Mrs. E., Oldham, age 38, tenter, cardroom.—Four children, ages 11 to 4 years. Mother's earnings average 20*s.* Husband is a confirmed drunkard; had D.T. six weeks after their marriage, the first hint she had that anything was wrong. She has left him several times because when away from her he works, but when at home he lets her do all the earning. For the last three years she has not lived with him; he gives her 4*s.* to 6*s.* a week for the children. When he came last Saturday, he was dead drunk, and she had a bad time getting rid of him. She has summoned him several times, but as she has to pay costs, she has not been much better off, and she dreads going again, so she accepts the small amount as being better than nothing. She thinks women would be in a poor plight if prevented from earning."

"Mrs. H., Bermondsey, age 32, jam factory.—Her parents were superior people, and she used to be a canvasser in jewellery, but cannot now afford money to take out a licence. Husband was fried fish salesman, earning good money, so she had no need to turn out. She now earns 10*s.* when on full time, but there is much slack time; 7*s.* 4*d.* this week. She has four children dependent on her. She does not know what her husband is earning nor what he is doing. The court has fixed 10*s.* a week as her allowance, but she very rarely got it; often she had only 1*s.* or 1*s.* 6*d.* from him. She has had a fifth child dependent on her, but the father kept him when she sent him (a boy of 10) to fetch her money, but she felt she had enough to do, so she made no fuss. An exceedingly pretty young woman, and very cheerful. When asked why she did not press for her allowance, she said her mother had married his father and she wanted no family rows. He was living with another woman, and has one child of 10 with him, whom he kept when sent to for her money. He earned very good money, and had taken to drink and gay company. Her pride was evidently hurt by the false statements he had made to the court, saying that he had left her on account of drink, and from appearance the woman was evidently truthful when she said she never had touched a drop even in her confinements."

"Mrs. S., Salford, age not stated, occupation not stated.—Has been married twice. Her second husband was earning 3*l.* a week then; as time went on he gave her less and less of his money, so that she was obliged to go to work herself. Eventually they decided to separate, and she has a maintenance grant of 8*s.* a week, but she does not often get the money, and as she can earn enough to keep herself (20*s.* weaver) she does not trouble to enforce it. The child of the second marriage has died, and there is one child (9) of the first marriage."

37,182. Will you tell me what is the extent of your council, and what does it represent in numbers?—I think there are about 150 members, and its principal objects are to collect statistics in reference to women's labour. This evidence has been forthcoming not specially for this Divorce Commission, but it came out in collecting evidence on women's work.

37,183. You do not go into any grounds except on the question of the equal standard of morality?—No.

37,184. That matter has not been considered?—No.

37,185. (*Mr. Brierley.*) Do you mean that no other grounds have been considered at all? Might I call attention to the first case you gave. Unless some alteration of the divorce law was made it is not apparent that the wife would obtain a divorce in that case. That is really a case of desertion; the husband has gone to Canada?—Yes.

37,186. Was it not considered?—The question of divorce in that case was not touched upon. It was the question of the man having disappeared without paying maintenance.

37,187. What was the remedy the council thought proper in that case? The idea of getting maintenance is hopeless?—That comes up where they recommend that the tracing of the man should be left to the court.

37,188. Whatever court you left it to I am afraid they would hardly trace him to Canada?

(*Chairman.*) Supposing they did?

37,189. (*Mr. Brierley.*) Nothing could be done to him. Do you mean extradition proceedings?—Yes.

37,190. I am afraid not?—That was the idea.

37,191. (*Chairman.*) That would be a decided case for divorce?—This inquiry was only as to maintenance orders.

37,192. (*Mr. Brierley.*) In that case they did not consider divorce or desertion?—No.

37,193. (*Chairman.*) Apparently your information was collected for another purpose?—Quite so.

37,194. How to get the money?—We only thought it more valuable because it was collected for another purpose.

(*Chairman.*) We thank you very much for your evidence.

Adjourned.

Winchester House, St. James's Square, London, S.W.

FORTY-SECOND DAY.

Tuesday, 15th November 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
The Hon. LORD GUTHRIE.
Sir LEWIS DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.
The Hon. HENRY GORELL BARNES (*Secretary*)

The Hon. HENRY GORELL BARNES re-called and further examined.

37,195. (*Chairman.*) I am asking you to go into the witness chair, first, because I want you to prove some documents and correspondence. I think you produce some returns received from His Majesty's Ambassadors at Vienna, Brussels, Copenhagen, Paris, Berlin, Athens, Rome, The Hague, Christiania, St. Petersburg, Madrid, Stockholm, Berne, and the United States of America?—I do.

37,196. We have had those returns put in piecemeal in the course of the Inquiry, but it has been thought desirable that they should be all put together so that it can be seen at a glance what the provisions of the foreign laws are?—That is so.

37,197. You originally got the information through the courtesy of the Secretary of State for Foreign Affairs, to whom you ventured to apply that inquiries should be addressed to His Majesty's representatives in certain foreign countries?—I have received the returns as the result of my application to the Secretary of State for Foreign Affairs, with the exception of Portugal.*

37,198. Of all the countries referred to in your letter of application, with the exception of Portugal, you have them in?—Yes.

37,199. You are in communication with the Secretary of State for Foreign Affairs with a view to obtaining the result of the inquiries from Portugal?—Yes.

37,200. You say in your memorandum that they have in most cases been produced to the Commissioners as they have arrived from time to time, and it was thought desirable that they should be presented in complete form?—Yes.

(The Chairman then read passages, giving the substance of the legal provisions in the foreign countries referred to, in the returns supplied to the Commission by the Secretary of State for Foreign Affairs. The returns will be found in full in Appendix XVI., page 128.)

37,201. (*Chairman.*) The next document you produce contains statistics showing the amount of space which has been devoted by various newspapers in this country to the subject of the reports of divorce and matrimonial cases. You have made a table with regard to this?—Yes. It is as follows:—

LONDON MORNING PAPERS.

	"Times."	"Daily Telegraph."	"Standard."	"Morning Post."	"Daily Mail."	"Daily Chronicle."	"Daily News."
1909.							
Hilary Sittings.	32½	76¾	51½	27¼	56	34	25¾
Easter Sittings.	10¾	9¼	8¾	¾	14	5¼	2½
Trinity Sittings.	9¼	16¾	12¼	3	19¾	11¾	6¼
Michaelmas Sittings.	30¼	23½	15½	4¾	25¼	10¾	9¾
Total for 1909.	82¾	126¼	88	35¾	115	61¾	44¼
1910.							
Hilary Sittings.	10¾	16¾	11¼	1	16¼	7½	4¾
Easter Sittings.	11½	22	15¼	3	21¼	8¾	4¾
Total for period in 1910.	22¼	38¾	26½	4	37½	16¼	9½
Total for period.	105	165	114½	39¾	152½	78	53¾

* Since received and included.

London Evening Papers.

—	"Pall Mall."	"Westminster Gazette."	"Evening Standard."	"Globe."	"Star."	"Evening News."
1909.						
Hilary Sittings.	17	30¾	77¾	50	36¼	50
Easter Sittings.	2¼	6¼	9½	6½	7	4¾
Trinity Sittings.	1¼	3¾	16½	10¼	12¾	8¾
Michaelmas Sittings.	5½	7	29	14½	11¾	11
Total for 1909.	26	47¾	132¾	81¼	67¾	74½
1910.						
Hilary Sittings.	3¼	2½	16½	7¼	7¼	3¾
Easter Sittings.	1¼	11	22½	16¾	12½	9
Total for period in 1910.	4½	13½	39	24	19¾	12¾
Total for period.	30½	61¼	171¾	105¼	87½	87¼

Sunday Papers.

—	"Dispatch."	"Umpire."	"Sunday Chronicle."	"News of the World."	"Lloyd's."	"People."
1909.						
Hilary Sittings.	37½	81¼	14¾	54¼	38¼	51¼
Easter Sittings.	8½	41¼	2¼	16½	7¾	19¼
Trinity Sittings.	8	60¼	6	21¼	12¼	30
Michaelmas Sittings.	7½	55½	3½	26¾	18¼	27½
Total for 1909.	61½	238¼	26½	118¾	76½	128
1910.						
Hilary Sittings.	10¼	38¾	1	32¾	16½	39
Easter Sittings.	13	34	6¼	21¾	9¼	21
Total for period in 1910.	23¼	72¾	7¼	54½	25¾	60
Total for period.	84¾	311	33¾	174¼	102¼	188

Provincial Papers.

—	"Yorkshire Post."	"Bradford Daily Telegraph."	"Manchester Guardian."	"Liverpool Daily Post."	"Western Morning News."	"Notts Daily Guardian."
1909.						
Hilary Sittings.	26½	34½	26	34½	12¾	23¼
Easter Sittings.	3	3½	1	1	1¼	3¼
Trinity Sittings.	7	9	2¼	5½	¼	3¾
Michaelmas Sittings.	8	12¼	1½	7¾	4¼	12¼
Total for 1909.	44½	59¼	30¾	48¾	18½	42½
1910.						
Hilary Sittings.	7¾	13¾	1	1¾	¼	3½
Easter Sittings.	8	8	1¼	5¼	2½	11½
Total for period in 1910.	15¾	21¾	2¼	7	2¾	15
Total for period.	60¼	81	33	55¾	21¼	57½

37,202. That table is from the commencement of sittings in January 1909 until the Whitsuntide Vacation in May 1910. These returns have been prepared by a research worker (whose employment was sanctioned by the Treasury), who was recommended to you by the Superintendent of the Reading Room of the British Museum?—Yes.

37,203. That has been work of heavy labour, and the results are in the table laid before the Commission?—Yes.

37,204. You have checked some of them to ascertain that they have been accurately prepared?—Yes.

37,205. Have you the books which this worker worked upon?—I have here the books. They are tablet diaries in which the various newspapers are entered day by day. From that I tabulated his daily returns, and then made out the gross totals. Any of the Commissioners can go through them themselves if they desire.

37,206. The first total is for 1909, and the second total is for two sittings in 1910 which have already expired, that is to say, the Hilary sittings and Easter sittings, not Trinity sittings?—No. I took it up to the Whitsuntide Vacation.

37,207. The total for the 18 months is given at the bottom of the column?—Yes.

37,208. I believe your instructions were that in estimating ¼, ½ and ¾, liberal estimates should be taken, that is to say, under-estimates rather than over-estimates, and so far as you can ascertain, this has been carried out?—Yes.

37,209. That will speak for itself. With regard to the representatives of the newspaper proprietors, have you communicated with the leading societies or associations with a view to giving evidence?—Yes.

37,210. What are those societies?—The Newspaper Society, The Newspaper Proprietors Association, Limited, The Federation of Southern Newspaper Owners, The Federation of Northern Newspaper Owners, and The Institute of Journalists.

37,211. I think you have the correspondence there which it is nscessary to refer to because it partly includes resolutions. Have you any witnesses from

those bodies?—I will deal with that as I come to it, if I may, my Lord.

37,212. Take them in your own order. I want to get the resolutions?—As to communications with the *Newspaper Society*, I communicated with them formally. I sent a formal letter to all the societies on the 8th December) and in reply received a letter on the 21st December, in which, after acknowledging receipt of my letter, the Secretary, on behalf of the Society, states: "Whilst entirely sympathising with a movement having "for its aim the suppression of improper reports, my "Committee find themselves powerless to formulate "any scheme of reform likely to meet with the general "approval of those they represent. The Newspaper "Society consists of a large number of daily and "and weekly newspapers, necessarily holding a "diversity of views upon any controversial question, "and the executive body are thus prevented from "acting in this instance on behalf of their constituents "as a whole. If, however, the evidence of some "leading journalists, speaking for themselves individu-"ally, would be of any assistance, my Committee "would have much pleasure in suggesting a few names "so selected as to include the various opinions likely "to prevail upon this important subject." As a result of that I wrote on the 22nd December acknowledging the receipt of his letter, and stating that "I should be "glad to avail myself of your suggestion that you "would, if I so desire, send me the names of some "leading journalists, who would speak for themselves "individually." As a result of that I received a letter dated the 4th February containing the names of various persons, with whom I communicated, and some of them will be present before you. The other names in the letter—I do not know whether your Lordship would like me to give you the names of those suggested by the Newspaper Society?

37,213. You said some of them were coming here?—Yes.

37,214. The names do not matter. We shall see some of them. You communicated with the others, and they did not feel in a position to come. Is that so?—Yes.

37,215. Then you received a letter on the 9th May?—Yes, I received a letter on the 9th May from the Secretary of the Newspaper Society: "I have been "instructed by the President of the Newspaper Society "to forward to you, as Chairman of the Royal Com-"mission, on Divorce and Matrimonial Causes, the "following resolution, which was passed at the Annual "Meeting of the Society held in London on Wednes-"day last."

The resolution is as follows: "That this meeting, "while strongly in favour of a more stringent adminis-"tration, and, if necessary, of the strengthening of the "law against the publication of obscene matter, is "opposed to any restriction of the existing right of "reporting judicial proceedings of any kind." As a result of the receipt of that letter I wrote inquiring on the 10th May as follows: "From the fact that "such a resolution has been passed by your Society "it would appear that the Society is now in a "position to submit a definite proposal on behalf "of its members as a whole." (In the first letter they stated that they did not feel that they could do so.) "I should be glad to know whether your "Society desire that the President, or some other "person, should attend before the Commission on "its behalf. I think it would be very desirable that "someone on behalf of the Society should do so, "as very probably the Commissioners will desire "to ask questions with reference to the views of "your Society as expressed in the said resolution." Then I pointed out that there would be a very large number of witnesses, and that that would enable the Society to have an opportunity of considering the evidence which had already been given, and, if they so desired, they would be able to express any additional views on that evidence. In reply I received a letter on the 30th May.

37,216. There is a letter of the 11th May mentioned in your proof?—That is merely an acknowledgment saying it would be placed before the Council of the Society. On the 30th May I received a letter: "Dear Sir,—Your letter of May 10th, has been reported "to and considered by the Council of the Newspaper "Society, who note your suggestion that the President "or some other representative of this organisation "should attend before the Commission to give evidence "in regard to the reporting of divorce cases. My "Council desire me to point out that in the letter "which I addressed to you on December 21st they "explained that the diverse constitution of the Society "made it impossible for the Executive to speak on "on behalf of members as a whole; and the terms of "resolution which I have had the honour of forward-"ing to you are so explicit that, in the opinion of my "Council, no useful purpose would be served by the "adoption of the course which you suggest." That closes the correspondence with the Newspaper Society.

37,217. Are the names you have mentioned individual and not representative?—They are individual and not representative.

37,218. The next one is the *Newspaper Proprietors' Association*?—In reply to my formal letter I received on the 21st February a letter from the Secretary: "Sir,—I am instructed by the Council of this Associa-"tion to forward the enclosed statement, which "embodies the views of the whole of the members "on the question under investigation by the Royal "Commission."

This is the statement: "The Council of the News-"paper Proprietors' Association, which represents "the newspapers the names of which are stated "below,* are strongly of opinion that it is undesirable "in the interest of public morality that any change "should take place in the law regarding the re-"porting of cases in the Divorce Court. Attempts "are continually being made by the parties to such "cases to prevail upon newspaper proprietors to "refrain from reporting them; proposals are fre-"quently made to newspaper reporters in order to "secure their aid in keeping cases out of the Press, "and the Council are satisfied that publicity is a great "deterrent. In most instances the parties have not "so much objection to the publication of their names "as to the publication of the circumstances affecting "their misconduct. Numerous instances could be "furnished (in confidence), if desired, in proof of "these statements. Only those who are acquainted "with the inner working of the office of a morning, "evening, or weekly newspaper can appreciate the "great anxiety which is felt by the parties to divorce "proceedings to prevent the publication of reports in "the Press, and the great efforts which are made with "that object. This is particularly observable in the "provinces. The attention of the Commission is "directed to the following remarks in the issue of the "New York 'Editor and Publisher,' dated 13th No-"vember 1509, with which the Council of the News-"paper Proprietors' Association entirely concur!—

"Publicity of Testimony in Divorce Trials!

"New York newspapers this week have drawn the "attention of the public to the fact that wealthy men "and women in the metropolis seem to be able to get "divorces quickly and comfortably by a process of "secret court hearings and a sealing of the papers in the "case—all except the decree. The newspapers are "allowed to print the decree, but never a word about "the cause of the divorce. Ex-Justice Roger A. "Pryor, speaking about this matter to a reporter for "the 'New York Times' this week, related some "pertinent things which ought to be of interest in "every city of the country. He said:—'I am not "'opposed to divorce on the one ground on which it is "'obtainable in this State, but I am opposed to the "'granting of divorce in the numerous cases where

* These are the names of the newspapers: "Daily Chronicle," "Daily Express," "Daily Graphic," "Daily Mail," "Daily Mirror," "Daily News," "Daily Telegraph," "Evening News," "Evening Standard and St. James's Gazette," "Financial News," "Financial Times," "Lloyd's Weekly News," "Morning Advertiser," "Morning Leader," "Morning Post," "News of the World," "Sporting Life," "Standard," "Star," and "Weekly Dispatch."

" ' the parties to the suit are getting it solely to be
" ' able to marry again as soon as free, and where the
" ' opposing lawyers are in collusion to get the decree,
" ' the defence being nothing more than a farce, so
" ' that the testimony may be heard in secret instead
" ' of in open court. I headed-off one such case not
" ' long ago and drove it out of New York and out of
" ' America. A rich woman wanted a divorce, so she
" ' could marry an opera singer. The husband was
" ' willing enough, but neither wanted the publicity,
" ' so his lawyer trumped up a defence and the Court
" ' appointed me referee. I was to hear the testimony
" ' in my office, and when the lawyers and the
" ' witnesses, including the infatuated woman, as-
" ' sembled in my office on the day set there were
" ' several reporters present. It was amusing to see
" ' the opposing lawyers acting together at every step,
" ' shaking their heads, and putting them together in
" ' consultation. I knew what the trouble was, but
" ' presently one of the lawyers said: ' Your Honour,
" ' there are reporters present. We would request
" ' you to have them excluded from the hearing.'
" ' Not so,' said I. ' I am sitting as a Court, and I
" ' am going to hold open Court.' Immediately the
" ' lawyers' heads went together again, and a few
" ' moments later, when the woman had been
" ' questioned as to the date of her marriage, counsel
" ' asked for an adjournment. That was the last of
" ' that case in this country. The suit, I believe, was
" ' later renewed in Europe. But that divorce would
" ' have been added to the records of this city if I
" ' had not insisted on publicity. Modern clergymen
" ' and practical statesmen now agree in making the
" ' public a material third party in every divorce.
" ' If a man or woman have much wealth and
" ' respectability, he or she inheres to leadership in
" ' the community. Therefore the public is vitally
" ' concerned in the divorce of such a man or woman.
" ' Very few orderly citizens deny this proposition.' "

" The reports of divorce cases are not calculated
" to incite persons to wrongdoing, as the proceedings
" of the Divorce Court usually show that the way of
" the transgressor is hard, and that the guilty party
" is usually very miserable. The Council desire to
" point out that the law relating to the publication of
" obscene matter is well defined and quite adequate for
" the protection of the public. They also submit that
" there is no reason for stating that the law is not
" observed in relation to the publication of Divorce
" Court proceedings. The Council desire to conclude
" their statement by directing the attention of the
" Commissioners to the following schedule, which is
" taken from the Statistical Summary published by
" the Census Office of the United States Government.
" From this it appears that there are fewer divorces
" in the United Kingdom than in almost any other
" country, and although the grounds upon which
" divorces are granted in England are more restricted
" than is generally the case elsewhere, the conclusion
" to be drawn from the figures is that publicity does
" not increase the number of divorces." Then there is an extract from the Special Reports, which book has been placed before your Lordship. I do not know that I need specifically deal with those. That is the conclusion of that statement. Upon its receipt, I wrote a letter dated the 22nd February, in which I stated: " I should be glad to know whether your Asso-
" ciation desire that you or some other person
" should attend before the Commission. I think it
" would probably be desirable that someone on
" behalf of the Association should so attend,
" as no doubt the Commissioners will probably desire
" to ask some questions with reference to the state-
" ment, even if the representative of the Association
" has nothing which he desires to bring to the
" attention of the Commissioners in addition to the
" facts and opinions contained in the said statement."
In reply I received a letter of the 24th February, stating: " Your letter of the 22nd instant shall be laid
" before the next meeting of our Council, but it was
" the intention of the Council at the time they drew
" up the statement forwarded to you, not to submit
" any oral evidence." On the 2nd March I received this letter: " I brought your letter of the 22nd ultimo
" before the Council at their meeting yesterday, and,
" in reply, was instructed to inform you that they did
" not propose to accept your invitation to offer any
" oral evidence." Then, as a result of correspondence with certain Sunday newspapers to which I will refer hereafter, I wrote a letter dated the 5th May in which I stated: " I have recently been in communication
" with various Sunday papers in order to ascertain
" whether the editors desire to give evidence on
" behalf of their papers before this Commission, with
" reference to the suggestion which has been made
" during the course of this Inquiry by some of the
" witnesses, that the reports on Divorce and Matri-
" monial Causes are given in greater detail than is
" either necessary or desirable in Sunday papers.
" Certain of these papers replied to my letter that
" most probably your Association would select
" delegates to offer evidence; that such delegates
" will represent them, and that they do not propose
" to offer additional evidence. I shall be glad,
" therefore, to know whether your Association now
" propose to adopt the suggestion contained in my
" letter of the 22nd February above referred to, that
" you, or some person or persons should attend before
" the Commission on behalf of the Association." I received in reply to that a letter of the 7th May: " I beg to acknowledge receipt of your letter of the
" 5th instant, which shall be laid before the next
" meeting of the Council, the date of which has not
" yet been fixed." I have received no further communication with regard thereto.

With regard to the *Federation of Southern Newspaper Owners*, in reply to my formal letter inviting them, I received a letter dated the 14th January: " Your letter to Mr. Parke of the 8th ultimo having
" come under my notice as Assistant Secretary of the
" Newspaper Proprietors' Association, I have men-
" tioned the matter at a meeting of this Federation,
" as I gathered from your letter that the views of
" any representative body of newspaper proprietors
" on the subject would be acceptable to the Com-
" missioners. Consequently I am instructed to convey
" to you the following resolution passed by the
" Federation of Southern Newspaper Owners."

The resolution is in these terms: " Seeing that the
" fear of publicity is a great deterrent to offenders,
" and bearing in mind that it is the general practice
" of all important provincial newspapers to suppress
" undesirable evidence, the Federation of Southern
" Newspaper Owners deems it unnecessary that any
" alteration should be made in the existing law dealing
" with the reporting of Divorce and Matrimonial
" Causes." In reply to that I wrote a letter of the 17th February asking whether the Federation desired to send a representative to deal with the point before the Commissioners, and that was acknowledged, but nothing further transpired, so on the 11th May I wrote substantially the letter which I had written to the Newspaper Association: I do not think I need take up the time of the Commission by reading it all. Substantially it was in the terms written to the Newspaper Proprietors' Association, asking whether they would send somebody to deal with the matter orally before this Commission, and pointing out the Commissioners might desire to ask questions connected with their resolution. I have received a letter of the 17th May stating that the matter will be laid before the Council at their next meeting. That terminates that correspondence: I have received no further communication with regard thereto.

With regard to the *Federation of Northern Newspaper Owners*, in reply to my formal letter I received this: " I am instructed to suggest respectfully to
" the Commission that the Federation of Northern
" Newspaper Owners, representing as it does very
" many of the chief newspapers in the Provinces,
" should have an opportunity of considering any
" policy which the Commission may have before
" them and of giving evidence thereon," and a list of the newspapers was appended. In reply to that I stated: " Dear Sir,—In reply to your letter of

" yesterday's date, this Commission will certainly desire " to hear evidence from your Federation, and I should " be obliged if you will send me the name or names of " the person or persons selected to give evidence on " its behalf, together with a proof or proofs of the " evidence to be given." In reply to that I received this letter: "With reference to your letter of January " 28th *re* evidence to be offered by this Federation, I " have to inform you that at a general meeting of the " members held yesterday the following resolution was " passed."

The resolution is in these terms: "That this " Federation is against the use of the Divorce Court " for the provision of items of news for sensational " purposes, but that as many members of the " Federation are giving evidence in their individual " capacity as Newspaper Proprietors, the Federation, " as a body, does not propose to offer any evidence." The letter concludes, "Although not offering evidence, " the Federation are desirous of placing upon record " this expression of opinion." In reply to that I wrote: " I note that therein it is stated that, as many mem- " bers of the Federation are giving evidence in their " individual capacity as Newspaper Proprietors, the " Federation, as a body, does not propose to offer any " evidence. As at present advised, although I have " received names of various Newspaper Proprietors, I " am unaware that such have been put forward on " behalf of the said Federation." I subsequently received a letter giving the names of some of those who had been given by the Newspaper Society, and as a result of that you will have before you, I think to-day, Mr. Moberley Bell, Mr. Jeans, Mr. Russell Allen and Mr. Smith; but, as I understand, they attend in their individual capacity, and not as representing the Northern Newspaper Proprietors. Then I wrote a letter dated April 12th: "The Commission will no " doubt hear the evidence of those gentlemen in due " course in their individual capacity, as suggested in " your letter under reply. I take it, therefore, that " what you desire is that the resolution forwarded " previously should be put in on behalf of the Federa- " tion, and that no oral evidence shall be given as and " from the Federation in respect thereof," and I have received no further communication from that Federation.

With regard to the *Institute of Journalists*, I received in reply to my letter a letter dated the 13th December, which was merely acknowledging my formal letter, and on the 8th February 1910, I received this letter: "With further reference to " your letter of the 8th December, inquiring as to " whether the Institute would feel disposed to take " into consideration the question of the publica- " tion of reports of Divorce and Matrimonial Causes " and to depute a member to give evidence thereon " before the Royal Commission; the letter has been " considered by the Council of the Institute, with the " assistance of a Special Committee; and I am directed " to reply that the Council is unable to appoint any " witness to give evidence on behalf of the Institute, " but that inquiries have been made to ascertain if any " member of the Council wishes to give evidence on " the subject." On the 5th May I wrote a letter: " With further reference to my letter of December 8th, " in your reply thereto of February 8th you state that " you are directed to reply to that letter that your " Council is unable to appoint any witnesses to give " evidence on behalf of the Institute, but that inquiries " have been made to ascertain if any members of the " Council wish to give evidence on the subject. Perhaps " you would be good enough to inform me as to the " result of those inquiries, as in the event of any mem- " ber of the Council wishing to give evidence I should " desire to communicate with him with regard thereto." That terminates that correspondence. One of the names mentioned in the Newspaper Society's letter, above referred to, in which it was suggested that I should communicate with the various people, was that of Mr. Brewster, Manager of the Irish Independent Newspapers, Limited, to whom I wrote in consequence and from whom I received the following reply:— " Your favour of 14th instant came duly to hand, and " I have to apologise for delay in replying to same. " In my capacity as Manager of the 'Irish Independent' " and other papers published by my Company, I do not " think I could give any evidence that would be of " much assistance to the Commission. I am also, how- " ever, the Honorary Secretary of the Irish Newspaper " Society, an Association of Proprietors that includes " all the daily newspapers published in Ireland, and " the Society had the subject of the publication of " divorce reports before it at a general meeting held " in Cork last August. It arose through a memorial " presented to the Society by a number of religious " and temperance organisations of the City of Cork " —I may say the memorial was sent as an enclosure— " praying 'that the publication of proceedings in " 'Divorce Courts should be very much restricted,' " and after careful consideration, a reply was sent to " the memorialists that in the opinion of the Society " it is 'necessary not only that such cases should be " 'tried in public, but also that suitable reports should " 'appear in the Press.' As this correspondence repre- " sents, I believe, the general views of the Irish Press, " it may be of interest to the Commission, and I enclose " a copy of same herewith for their information." I have a copy of the memorial; I do not know whether you would like me to read it?

37,219. Will you read the substance of it?—It is signed by The Cork Women's Aid Association, the Cork Women's Christian Temperance Association, and other bodies of a similar character. It says: "It " seems to your memorialists that, whilst it may be " in the interests of justice that such cases should be " tried in public, yet we respectfully say that the ends " of justice do not require the publication of objection- " able details which are bound to have a disastrous " effect on the morals of the community, as the daily " newspapers find their way into tens of thousands of " homes in the United Kingdom. Your memorialists, " therefore, pray that the responsible representatives " of your Society be convened to consider this im- " portant matter with the view of taking such action " as would meet the desired end." The copy of the letter sent by the Irish Newspaper Society to those memorialists is as follows: "In reference to " your letter of 28th June last, enclosing a memorial " signed on behalf of a number of religious and tem- " perance societies of Cork, *re* the publication of " Divorce Court proceedings, I wish to inform you " that, in addition to supplying our members—includ- " ing all the daily papers published in Ireland—with a " copy of the memorial, I also brought it before the " half-yearly general meeting of our Society held in " Cork on Wednesday last, and I am requested to say " in reply that we believe it to be necessary, not only " that such cases should be tried in public, but also " that suitable reports should appear in the Press. At " the same time we fully sympathise with the desire of " your memorialists that objectionable details should not " be included in such reports, and we believe the same " may be said on behalf of the editors and conductors " of every respectable organ of public opinion in Great " Britain and Ireland, to whose grave sense of public re- " sponsibility we feel that the prayer of your memorialists " may now safely be left." Then I communicated to ascertain whether Mr. Brewster would attend before the Commission on behalf of the *Irish Newspaper Society*, and in reply to my letter, I received a letter stating: "Our annual meeting will take place on the " 12th inst. in Dublin, and if that is not too late, I am " willing to submit the matter then to the members." Having done so, Mr. Brewster states: "In reply to " your favour of 5th inst., I brought the matter before " our annual meeting, and it was felt that the com- " munications I had already made to you fully met the " case so far as we are concerned."

37,220. That letter of the 21st March is the last letter, and that closes that correspondence?—Yes.

37,221. Then you communicated with some others?—Yes. Owing to the statements which had been made in evidence, I communicated with certain Sunday papers, namely, "Lloyd's Weekly News," "The People," "The Weekly Despatch," "News of the World," Limited, The Umpire Publishing Company, Limited, and the "Sunday Chronicle."

From "*Lloyd's Weekly News*" I received a letter on the 24th March, in which the managing editor acknowledged the receipt of my letter, and stated he would be pleased to give evidence before the Commission and would prepare a *précis*. Subsequently, on the 19th April, I received a letter: "With reference to your letter of "the 15th, I find that the proprietors of the Sunday "newspapers have called a meeting to discuss the "subject of offering evidence on Friday next, and I will "communicate with you after I have attended that "meeting." On the 26th April he wrote this letter: "Dear Sir,—I attended a meeting of the proprietors of "London Sunday newspapers, to which I referred in "my last letter. It was decided that the memorandum "submitted to the Royal Commission on Divorce on "behalf of the Newspaper Proprietors' Association, "and signed by this journal among others, would not "be supplemented by the evidence of witnesses from "individual newspapers. In the matter of reporting "divorce proceedings, 'Lloyd's News' confines its "accounts to the barest outlines, omitting most of the "cross-examination of witnesses and all questionable "references. As a result, its reports—as a comparison "of different journals will show—are briefer than the "reports in any daily or evening newspapers. I enclose "a cutting from the 'Sunday School Chronicle,'" and he states they know nothing about the authorship of that article. I do not think I need read the article. Then, with regard to "*The People*," after receiving an acknowledgment of my letter, I received a letter on the 28th April from the managing proprietor: "Dear Sir,— "In further reply to your letters, the newspapers comprising the Newspaper Proprietors' Association "have decided to confine their evidence to the written "statement which has been forwarded to you by the "Secretary, and I am therefore unable to accept your "invitation, but in doing so have to state that in so "far as concerns the 'People,' there is no ground "whatever for the suggestion that divorce case are "reported in more detail in that journal than they are "in most of the London and provincial daily and "evening newspapers; our reports are supplied by the "same agencies, and are, in fact, abbreviated, although, "as we publish in our issue the whole of the week's "proceedings, our report of a particular case may to a "casual observer appear fuller and more detailed than "the reports published in the daily and evening "newspapers."

37,222. Where is the statement?—That is the one I have previously put in from the Newspaper Proprietors' Association.

Then from the "*Weekly Despatch*" I have a letter dated 20th April, in which the Editor states: "I intend during the next few days to read through "the evidence already given before the Commission "and consider whether I have any evidence to offer." On the 29th he writes: "In further reply to your "letters, the Newspaper Proprietors' Association, of "which the proprietors of the 'Weekly Despatch' are "members, have decided to confine their evidence "to the written statement which has been forwarded "to you by the Secretary, and I am therefore "unable to accept your information, but in doing so "have to state that in so far as concerns the 'Weekly "Despatch' there is no ground whatever for the "suggestion that divorce cases are reported in more "detail in that journal than they are in most of the "London and Provincial daily and evening papers: "our reports are supplied by the same agencies, and "are in fact abbreviated, although as we publish in our "issue the whole of the week's proceedings, our report "of a particular case may to a casual observer appear "fuller and more detailed than the reports published "in the daily and evening papers."

37,223. That seems to be a similar letter?—Yes. With regard to the correspondece with "*The News of the World*," my letter was acknowledged on the 14th April, and on the 26th April I received this letter: "In further reply to your letter of the 22nd inst., the "Newspaper Proprietors' Association"—that letter also is in substantially the same terms as the two other letters I have read. It is in exactly the same terms *mutatis mutandis* except there is a paragraph at the end: "The Biddulph suit which is now before the "Courts is a case in point. The morning and evening "papers have been giving from one to two columns per "day of this case, making about eight columns for the "week. Our report occupies less than half of this "space."

37,224. The other part of that letter is the same as the previous letters?—Yes.

Then with regard to the *Umpire Publishing Company, Limited*, I received this letter: "In reply to "yours of the 15th inst., we have received your "communication of the 22nd March respecting the "giving of evidence before the Royal Commission on "Divorce and Matrimonial Causes. Most probably "the Newspaper Proprietors' Association will select "delegates to offer evidence. In that case such "delegates would represent us. We would not propose to offer additional evidence." It was as a result of the statement in that letter, and of one from the "Sunday Chronicle"—which I shall come to shortly—that I communicated with the Newspaper Proprietors' Association in the letter which I have previously read to your Lordship. In reply to that letter I stated I proposed to write to the Association to ascertain whether they did intend to select delegates as as they had previously stated that they did not propose to do so. I received from the Umpire Publishing Company a letter of the 9th May: "In reply to your "letter of the 5th inst., perhaps we were in error in "saying that delegates from the Newspaper Proprietors' "Association would appear to offer evidence. We "should have said that it was proposed that a memorandum of their opinion be forwarded to you. We "think so far as we are informed that is the position. "If so, the memorandum so presented would represent "our views."

I do not think it is necessary for me to detail the correspondence with that paper, "*The Sunday Chronicle*," which is in exactly the same form.

37,225. The result is that you have certain witnesses, and that is all you can get?—Yes, my Lord.

37,226. (*Judge Tindal Atkinson.*) In connection with this tabulated statement, would it not be fair to take into consideration that many of the newspapers give a greater number of columns than others to the general law reports?—I think that is so.

37,227. Take, for instance, the "Times" law reports: they give a considerable number every day of the general law reports?—Yes.

37,228. And also the "Daily Telegraph." They give a column to the County Courts as well as the High Court proceedings?—That is so.

37,229. Some of the other newspapers do not pay so much attention to the legal questions going on every day?—Yes, but, as you will appreciate, the only criterion one can take is the column.

37,230. I am not complaining that it is not proper to take it.

37,231. (*Sir Lewis Dibdin.*) This is the question I wanted to put. I do not understand what is the unit of comparison. Take the first page: you say there are $82\frac{3}{4}$ something in the "Times" and $44\frac{1}{4}$ something in the "Daily News": are those columns?—Yes.

37,232. Of the respective papers?—Yes.

37,233. So that where the column differs in size the amount of space will differ?—Clearly.

37,234. (*Chairman.*) This is all based on columns?—On a column of the individual paper.

37,235. (*Lord Guthrie.*) Can you explain the discrepancy between the Hilary Sittings in 1909 and the Hiliary Sittings in 1910?—I think I can. Your Lordship may recollect that you were trying a case called the Stirling case, and that is what undoubtedly makes the difference. Perhaps it would interest your Lordship on that point if I pointed out the daily details or the monthly details on that. The monthly details for January of that Hilary Sittings of 1909 are: "The Times" $13\frac{1}{2}$ columns, the "Daily Telegraph" $38\frac{3}{4}$, "The Standard" $26\frac{3}{4}$. I could give you all the papers for that if you would like to have them.

37,236. Are you giving the details of the Sterling case?—No. I can give the details of the months.

37,237. If you compare the "Daily Telegraph" Hilary Sittings, it is 76¾ in 1909 and in 1910 only 16¾?—Yes.

37,238. Is the difference to be accounted for by the Stirling case having occurred in the first Sittings and nothing similar in the second?—I think so quite clearly, because, for instance, the Stirling case started on or about Tuesday the 19th. There were parapraphs which appeared then and it is clearly traceable, On Thursday the 22nd January you get in the "Daily Telegraph" 3¾ columns, Friday 4½, Saturday 5¾, Monday 4¼, Tuesday, 2¾, Wednesday 2¼, and so on down through that period; whereas I could give your Lordship the daily details for the next year of the same time: Thursday the 20th, ½: Friday 21st, ½: Saturday 22nd, ¼: Tuesday 25th, 1¼. That is the way the figures compare for the two years.

37,239. It is the same thing with the Sunday papers. Take the "Umpire." Do you find in the Hilary Sittings of 1909, 81¼, whereas in the Hilary Sittings of 1910 it is 38¾ only. Does the same explanation account for that?—Yes. I could give the details.

37,240. That is quite enough.

37,241. (*The Archbishop of York.*) To be clear in my own mind as to the facts you put before us, I gather you communicated with five general associations of newspaper proprietors, and that they have in all cases contented themselves with a memorandum, but have not desired anyone to give evidence on their behalf?—That is so.

37,242. You have communicated with the editors of six leading Sunday papers, and in no case are they willing to give evidence before us?—I am not quite sure I should accept the word "leading." It was the six which I apprehend one would indicate as most particularly dealt with by witnesses, for instance, like the Chief Constables' Association.

37,243. In no case are they willing to give evidence?—That is so.

37,244. (*Sir George White.*) Judge Tindal Atkinson put a question to you as to whether the difference between some of these papers was not to be accounted for by the fact that one made longer law reports than others. Is that quite so? Would you say that is the difference between the "Morning Post" and the "Times," for instance?—I do not know that I am in a position to say how much space the "Morning Post" devotes regularly to law reports. All I can say is that in answer to the question there are regular extensive law reports in the "Times." I have not specifically looked at the "Morning Post" apropos of that.

37,245. You would not suggest that is the difference between the Sunday papers, the "Umpire" and the "Sunday Chronicle"?—No. The difference between the Sunday papers and those who have specific columns for law reports—for instance, the "Times" and the "Daily Telegraph," which devote special colums to law reports—is this, that in the Sunday papers you will find the reports scattered all over the paper. It is difficult to check them.

37,246. As a rule the Sunday papers do not take the ordinary law reports, such as the "Times" reports at length?—I do not think so. I can produce a copy of the Sunday papers. We have them if you would like to see them.

37,247. (*Mr. Spender.*) These various associations do not profess to bind their members or to speak for them in these various communications they have made?—I think the resolutions are on behalf of the societies.

37,248. Is it suggested in any of the correspondence—I did not hear the whole of it—that they were unable to offer evidence in consequence of the diversity of views of their members?—That was so in the case of the Newspaper Society, but they did ultimately pass a resolution. They previously wrote saying they could not give collective evidence. I did read this:—"My "Committee find themselves powerless to formulate "any scheme," but they sent a resolution.

37,249. There is no phrase used in that correspondence which is incompatible with the complete liberty of the individual members of these associations to express opinions for themselves. That is the only point I wish to bring out?—The Newspaper Society's resolution was passed at the annual meeting of the Society. I do not think it would restrict any member from giving his opinion, but those are the views which the Society takes and adopts by its resolution.

37,250. These figures are strictly confined to divorce reports?—Divorce and matrimonial causes.

37,251. What does that include?—I would not like to say absolutely definitely, but so far as I can ascertain it does not include Separation Order cases even. It is confined to divorce. I do not say one or two cases have not got in. It is very difficult to check them in the Sunday newspapers. It is confined solely to divorce and matrimonial causes in the Hight Court itself.

37,252. It does not contain any summary of the numerous other reports which may raise the sexual issue in a different way?—No, it is confined to the Division. It has some Scotch and Irish cases. It practically includes all the reports of any Divorce Court in the British Isles.

37,253. Scotch and Irish matrimonial cases?—Yes.

37,254. (*Chairman.*) I believe your instructions to the gentleman nominated——?—He was not nominated; he was recommended.

37,255. ——were that he was to take only divorce and matrimonial cases?—Yes.

37,256. Whether they appeared in England, Scotland or Ireland, provided they appeared in these papers?—Yes.

37,257. The great bulk of the cases are English?—Yes. I could indicate on the returns where the Scotch and Irish are included quite easily.

37,258. (*Chairman.*) I do not think that is necessary; the point is publication. I should like you to put in the letters you have read, because your evidence on that matter is really contained in that correspondence.

Mr. Alexander Grigor Jeans called and examined.

37,259. (*Chairman.*) Will you tell us your connection with the press?—I am managing director of the "Liverpool Daily Post" and "Liverpool Mercury," which is one journal now, of the "Liverpool Echo," the "Liverpool Weekly Post," and the "Liverpool Weekly Mercury."

37,260. That is rather an extensive undertaking?—Yes, I have been so for over 30 years.

37,261. Always at Liverpool?—Yes.

37,262. You confine yourself to the question of reporting the details of divorce cases?—Yes.

37,263. That is a question which has occupied the attention of newspaper proprietors, especially in recent years?—For many years now.

37,264. Would you kindly read your proof?—"Though I believe that on the whole the reports have been given as inoffensively as possible by the more reputable journals, there is nevertheless a class of paper—chiefly, I think, the London weekly penny papers which have mainly a working-class circulation—which gives great prominence and pretty full details of such reports. The opinion very generally prevails that it is greatly to the advantage of newspapers in so far as circulation is concerned. I have been over 40 years connected with journalism, and for over 30 years have been responsible for a morning and evening and a weekly newspaper—all with very large circulations—and I say unhesitatiugly that so far as circulation is concerned none of these papers has ever derived any increase of circulation from the reporting in detail of such cases. There are only two cases in which, to my knowledge, the circulation of the newspapers (of course, I am speaking of the daily Press and of the better class of papers in this respect) has been influenced by such reports. One was the Dilke case, and the other the Parnell case, and even in these cases it was the prominent character of those concerned in the cases that led the public to take such an interest in them. I am

very strongly of opinion that it would be to the advantage of newspapers if no details were given in the reports of such cases."

37,265. Will you explain the reason of that?—We hardly ever publish a report of a divorce case without receiving complaints from heads of families or ladies who say they cannot admit the newspapers to their drawing-room.

37,266. Do you mean it would be to the advantage of a good class paper?—Quite so.

37,267. If they are not required by competition to put it in?—Yes.

37,268. Then they would rely on no objection being taken to the paper?—Yes.

37,269. Have you received objections frequently?—Very frequently, almost in every case, certainly in every notorious case we have.

37,270. Against their being circulated so as to be found amongst the young people?—Quite so.

37,271. Why do you feel you could not leave it all out?—One paper cannot do it without another paper doing it. I mean to say this: if we were to reduce our reports to results or a brief report, there is no doubt there are a great many readers who would like to see the details, and would go to other newspapers, and we feel we cannot allow readers to be taken away in that way. It is simply a question of competition in these matters.

37,272. So that everybody must be on the same footing?—That is what I contend.

37,273. As far as the public are concerned, do you regard it as a mischief?—I think it is a mischief, certainly.

37,274. For the reasons you have indicated?—Yes. "I know that a very strong feeling exists, however, in newspaper men with very high ideals, that the publication of the full reports is the most serious punishment to the offenders; that is, it is the publicity they fear more than the publication of the result. Probably the publication of the bare names and addresses would not be quite sufficient, and I suggest that an alternative course would be not to permit newspapers to give the evidence in such cases, but simply the summing-up or judgment of the presiding judge, who would be aware that his remarks would be the only account of the case which would be published in the Press. This would at all events avoid the repetition of objectionable details, of which the judge would not give more than is necessary for the due consideration and explanation of the case, and would ensure quite as much publicity as is necessary to act as a deterrent."

37,275. Is it your view that this notion of a deterrent acts to prevent the commission of a wrongful act or the bringing of the case into court?—I think it does both. A great many people fear the publicity quite as much as the decision of the Court.

37,276. Is it the publicity they fear after the event?—After the event. "I know there are several of the better class papers—morning and evening—who would welcome a change of this kind, because at present they receive a good many complaints that unnecessary details are reported. At present individual newspapers do not feel themselves strong enough to pursue the ideal policy I have outlined, because though they do not gain directly by the reports, there are a good many cases which individuals are anxious to see for local and other reasons, and if one paper in a town omitted the reports its readers would probably be driven, for a time at least, to those rival journals who have no such scruples. I have said that although in my experience none of the more reputable journals gain by publishing details, it must nevertheless be admitted that those papers which habitually publish full details and have a reputation for so doing gain circulation chiefly amongst the working classes, but probably at the expense of the same type of journals which do not make a feature of such cases."

37,277. There is one thing I was very much struck by when I read your proof. Have you had an opportunity of looking at a very good article on this subject which appeared in the "Morning Post" in September last?—I am sorry to say I have not.

37,278. May I ask if you would agree with one or two of the passages? It is in the "Morning Post" of September 29th, 1910. It says this: "The right to "publish divorce proceedings in detail is being seriously "challenged, and when the Royal Commission on the "Marriage Laws re-assembles that right must be one "of the important points on which further evidence is "taken. The question will become even more acute "than it is at present if, as the result of the Com-"mission, any attempt is made to facilitate divorce, "whether by increasing the grounds that are accepted "as valid or by cheapening the proceedings and "giving jurisdiction to the inferior courts. However "distasteful such extended facilities may be, no one "can ignore the possibility that they may be granted, "and therefore every safeguard against a consequent "lowering of moral standards must be thought out in "advance. The publication of divorce cases has "hitherto been defended on two grounds: that the "shame of publicity is a part of the just penalty of "divorce, and further, that the right to report the pro-"ceedings in all law courts is a most important part of "the liberty of the Press on which the effective preser-"vation of individual liberties depends. No one "contends that detailed accounts of all the sordid facts "which come to light are in the least necessary to secure "either of these advantages; but it is in practice so "difficult to lay down any precise rule as to what "ought and ought not to be reported, or to impose "any restriction which is not in fact a censorship, that "the decision has been left to the editors of news-"papers. Until recently the duty thus entrusted "could be worthily fulfilled." It goes on to say: "With the growth, however, of a public whose "education has enabled them to read without teaching "them any regard for the necessary conventions and "restraints which civilisation imposes, the task of the "newspaper became more difficult"?—That is so.

37,279. "Just those parts of the evidence which are more wisely omitted as either irrelevant or undesirable were found to be most popular and a new method of reporting was demanded"?—I agree with that. That applies especially to weekly papers.

37,280. Later on it says: "But though no blame "attaches to journalists, who serve their clients to the "best of their ability, as do lawyers, or doctors, or any "other professional men, the fact remains that few "editors can any longer preserve the standard they "would desire, but are forced forward by a public "demand they can neither approve nor resist." I rather gather that is what you have said?—That is what I have said in a brief form.

37,281. "The question of allowing the publication of "divorce proceedings can no longer be discussed with "reference to plain and carefully edited reports, but "must be answered honestly with regard to descriptive "accounts deliberately written to excite and to "interest." It goes on further: "The method of "reporting approved and expected by the largest "section of the public aims at making them as vivid "and enthralling as a popular novel. To that end all "the resources of illustration, of personal anecdote, of "descriptive paragraph, and of arresting headline are "called into play. The question is not whether the "public shall know exactly what takes place in the "Courts of Justice, but whether during the course of "a sensational suit the whole attention of a large "majority of the public shall be concentrated upon "an ugly phase of life to the exclusion of other "interests"?—I agree with that, except I do not agree that the papers have taken the form of descriptive writing with regard to divorce cases. I have never seen that.

37,282. Do they take the arresting headline?—Yes; and also the evidence that is the most objectionable is often given in the utmost detail by some.

37,283. It goes on, "Many wise truisms can be "uttered upon the advantages of knowing the world "as it is and not cherishing attractive illusions. To "see life steady and to see it whole is no mean ideal, "but it is not achieved by giving to all that is sordid "and contemptible an entirely fictitious prominence. "The possible deterrent effect on the few becomes

" unimportant compared with the certain degrada-
" tion of the many. That a degradation is the result
" can hardly be questioned." I should like to ask your opinion upon that?—I think that is pretty much what I have said. I agree with that last paragraph entirely.

37,284. You will not mind my putting this. I was very much struck with this. I want to ask you whether it is in accordance with your views. There are one or two other portions it might be worth reading. "A proposal to enlarge a divorce court
" in order to accommodate a greater number of the
" public would be instantly rejected with contempt,
" yet the encouragement given by the public to
" elaborate descriptive reports is little different from a
" desire to witness the trial. The healthy mind is that
" which pays least attention to disease." And further on, " As familiarity with divorce increases, the instinc-
" tive dislike is weakened. The publication of the
" names of those concerned, as is done in other
" countries, and if necessary a summary of the charges
" proved would be a less dangerous deterrent than the
" present wide publicity. It would also be infinitely
" more equitable, for at present the shame of the
" publicity falls on guilty and innocent alike"?—I agree with that, but I prefer my own alternative, that the judge's summing up should be reported.

37,285. I was rather on the general effect. There is one more passage: "The public by refusing to
" exercise restraint have allowed a liberty to degenerate
" into licence. The public will no longer permit
" the newspaper to preserve the reticence which is
" expected in the pulpit or on a public platform, and
" therefore a special protection must be granted." And further: " But since they have refused the better
" part of self-restraint, the time has come when the
" law must interfere. It may be hoped that as a truer
" education spreads the full liberty may again be
" granted with safety"?—That is substantially what I say. I would like to say with regard to the weekly papers the Education Act of 1870 brought an enormous number of readers of weekly papers into existence about 1890, and I think since then the reporting of divorce cases has very much increased.

The complete article from the " Morning Post " appears at the end of the witness's evidence.

37,286. (*Mr. Spender.*) You say you think the offence is chiefly committed by London weekly papers?—So far as I have seen.

37,287. There are also provincial weekly papers?—Yes, one or two.

37,288. Which have very large circulations?—Yes. There is only one that I know; I should not like to specify it.

37,289. I quite follow. Then you say so far as the circulation is concerned none of these papers—that is, papers you are connected with—have derived any increase of circulation from reporting in detail such cases?—Not so far as I have ever been able to tell, and I can generally tell.

37,290. To put it in another way, do you think, supposing the reports of such cases were dropped, even such reports as you give, you would lose circulation?—I do not think we would lose circulation if our contemporaries did the same. I explained that.

37,291. You say you do not gain circulation by giving reports in detail. It is not relevant to that whether other papers do the same, but the question is whether you would lose in circulation irrespective of them?—If all the papers dropped them we should not lose.

37,292. That is one point, but if you dropped them alone you would lose?—Yes.

37,293. In your last paragraph you say that the papers which habitually publish full details, and have a reputation for so doing, gain circulation chiefly amongst the working classes. Do you not think the practice of certain newspapers shows that there is a similar demand for extensive reports in certain newspapers amongst the middle classes?—I do not think so at all. I know I have a large weekly, and we have for some years now rather kept out the reports of divorce cases. We have given no prominence to them, and all our travellers going through the country have told me that the reason the London papers sell so much better in our neighbourhood is because they give such an enormous number of divorce cases and matrimonial cases of that description.

37,294. That was exactly the point I wanted to get at. It is reported to you that the London papers by reporting these cases fully do gain in circulation over papers which do not report then?—Yes.

37,295. That is not confined simply to the working class?—I know with regard to the weekly papers I talk of, my own weekly papers and weekly papers in London, 95 per cent. of the readers are readers belonging to the working class. They are the people who, as a rule, only buy one paper a week.

37,296. I merely asked the question because the presumption arises from the figures placed before us that the demand for reports of this kind is as great amongst the middle class as amongst the working class. It may be a mistake of newspaper proprietors and conductors, and I was anxious to get your opinion. Your opinion is, on the whole, that the demand is not so great among the middle class?—That is my opinion.

37,297. You would agree it would be very much more convenient for editors, especially of papers which we roughly call middle-class papers, to be relieved altogether of the responsibility of having to publish anything?—Yes.

37,298. It would be more convenient. The letters which every editor receives on the day after a divorce case, however discreetly you do it, from certain readers who say that it offends them and they will refuse to take your paper in future, are extremely disagreeable?—Yes.

37,299. You would also say there were a great many responsibilities which the editor of a newspaper has to undertake, which submit him to a great many disagreeable consequences?—I am aware of that.

37,300. It may be one which, in the public interest, a newspaper editor would be obliged to take?—I think I said so. Some people have very high ideals.

37,301. As to your specific proposal, it is that nothing should be published except the judge's summing up?—Yes.

37,302. Which at present, in many cases, is a very brief one?——

37,303. (*Chairman.*) In undefended cases it amounts simply to a decree. Where there is a contest it would be a judgment and not a summing up if the judge is sitting alone, but if there is a jury, it would be a summing up?—I meant that the judge would be aware that that was the only report which would appear, and he would state the facts of the case, as judges do in most written judgments.

37,304. (*Mr. Spender.*) In undefended cases as well. Does it occur to you as possible that an innocent party in a divorce suit might think it important to have a public cross-examination, especially if the fact that he was involved in the case had become notorious before the suit?—I have no doubt there are cases of that kind. There must be.

37,305. You would admit that is important?—I would admit that, and I think the judge would probably take the opportunity of mentioning it in reviewing the case.

37,306. Do you not think the case might be met by allowing in these particular cases the cross-examination of the party to be public?—I do not see how you are to discriminate in these things.

37,307. You do not think it would be sufficient if one of the parties to the suit said he or she thought it very important for their character that the case should be heard openly?—I think in that case most of the witnesses would insist, either on one side or the other, on having the evidence reported.

37,308. Having the evidence in public?—Yes.

37,309. I put that case to a well-known solicitor who has conducted a great many of these cases, and he gave the opposite answer. He said that in the vast number of cases all parties would desire to have it in private, but I agree that is not a point which concerns the newspapers specifically. Have you considered—

perhaps the Chairman will allow us to extend the consideration of this matter a little—whether anything could be done to regulate publication by amending the law in regard to decency. It has been brought before us. The Lord Chief Justice, who gave evidence, said that the law with regard to decency would not apply to any ordinary report of a divorce case in effect, however indecent it might be?—I am not a lawyer.

37,310. I am asking from the point of view of newspapers, not the point of view of law.

(*Chairman.*) I do not think you have stated that quite right. The Lord Chief Justice had put to him by me the section of the Act, and that is the only law there is. My recollection of it is, speaking without looking at it at the moment, that reports of newspapers of hearings in the Court are practically privileged unless they contain anything that is indecent.

(*Mr. Spender.*) That is the point. I did not make myself clear. He said that the law as it stood could not convict a newspaper of indecency for publishing any ordinary report of a divorce case.

(*Chairman.*) If it was indecent it could.

(*Mr. Spender.*) The point was, as I understood it, that you could not convict for indecency. I think I have a note of it somewhere that you could not convict for indecency, obscenity, the report of the ordinary incidents given in the newspapers in any divorce case, on the ground that it would be obscene.

(*Chairman.*) If they are obscene, indecent.

(*Mr. Spender.*) I think we are at one.

(*Chairman.*) Although that took place in court, it cannot be reported without penalties.

37,311. (*Mr. Spender.*) That is true. It was only a question whether there was any possible amendment of that law which would make it apply to an excess in the reporting of divorce cases?—I think it would be very difficult.

37,312. You think it would be extremely difficult?—Yes.

37,313. Supposing a newspaper were notoriously and persistently trading in indecent reports, not only in divorce cases, but indecent reports from the criminal courts, and doing it obviously for profit and not in the public interest, you cannot imagine a possible remedy which would throw upon the newspaper the necessity of saying that was done in the public interest, just as we do now in the case of the law of libel?—I think it would be so very difficult to prove.

37,314. In a particular case I agree; but supposing you had the career of the newspaper before you, so to speak, a large number of copies showing persistently an immense excess of these reports, not dealing with the cases in the locality, but from all over the country?—I would just put this case. I think the "Times," which reports in a very unobjectionable way, has probably in the course of the year longer reports than any other paper. How do you distinguish?

37,315. I do not think that is so, as a matter of fact?—I do not know the figures, but judging from the reports I read, I think, taking it all round, they give as long reports of the London cases at all events.

37,316. You would draw a very clear distinction between the proportion of space which the "Times," in relation to the whole of what it publishes, gives to these cases, and the proportion of space which appears in certain weekly papers?—Yes.

37,317. You would be able to say in your own mind, whereas the reporting in one case was kept within bounds and there was an attempt to report with legal decency by experts, the other was obviously an appeal at very great length, in much greater disproportion to the possible prurient instincts of the reader?—Yes.

37,318. And a jury would have no difficulty practically in deciding whether the one or the other was in the public interest. I am merely throwing that out, I am not asking you on the spot?—I think a jury would have very great difficulty in agreeing on a question of that sort.

37,319. I merely suggest to you that most people watch these newspapers, and most Pressmen would have no difficulty in their own mind in drawing a distinction between the two things?—I admit that.

37,320. You do not think a jury would be able to draw a similar distinction?—I think it would be impracticable.

37,321. To draw a distinction between those two things?—The distinction is so subtle and so nice, I do not know where you would stop. The "Times" gives fairly full details. The others put them, perhaps, in a more flaming headline, but I do not think they give more objectionable details, and yet I would never complain of the "Times" reports, and I am sure a jury would not.

37,322. That is the point I want to suggest. I do not think any reasonable man would complain of reporting in that way, but it is very much the issue that we have in libel cases?—You know the trouble we have with the public interest in libel cases.

37,323. It is a very clear principle understood by newspapers?—If it could be done I daresay it would be an advantage, and better than the present system.

37,324. It would cover more than the divorce cases, which are only one class?—Yes.

37,325. (*Sir George White.*) As I understand, whilst you admit that some of the papers in question publish these reports in great detail, you do not think that there are any coloured pictorial descriptions drawn from imagination in these newspapers, that we consider most guilty?—I have not seen descriptive reporting extended to divorce cases to any great extent.

37,326. It is confined to what actually takes place?—Yes, in the court, although in detail.

37,327. I did not gather in the respectable papers you represent that you do report in detail at all?—We do.

37,328. Therefore you are not able to carry out your own ideal because of the effect of competition?—Quite so.

37,329. You think it would be an advantage if the law assisted you to carry out that ideal?—Yes.

37,330. You suggest that should be done by publishing the summing up of the judge. Do you consider, if it were confined to the summing up simply, that that would still act as a deterrent in a way you suggest publication now does?—I think so, because I think the judge should have in view that his remarks were the only remarks to be published, and if anything was desirable for the public to know, he would include it in his judgment.

37,331. Owing to the state of the law, he would feel bound to cover ground he does not now in his summing up?—Yes.

37,332. (*Mr. Burt.*) I want to be clear on one point. I understand you to express the opinion that publication acts as a deterrent in these cases?—Yes, I do.

37,333. But I further gather from what you said that you do not think that the publication of these offensive and objectionable details is necessary in order to effect that object?—No, I do not think it is necessary, if the alternative I have suggested is carried out or some alternative in that form.

37,334. (*The Archbishop of York.*) I want to be clear about one point which Mr. Spender asked you upon. You said in your opinion it was very rarely that the circulation of a good newspaper was increased through the reports of divorce proceedings except where persons of a public character were concerned?—Yes.

37,335. You also said, I think, that the circulation even of these good newspapers might be diminished if it did not report divorce proceedings?—If the other papers in the same town did.

37,336. I find it difficult to reconcile the two positions. If the regular readers of a good newspaper are not greatly increased by reason of divorce proceedings, would they be diminished because there were no divorce proceedings published?—It operates in this way. I will take a local divorce case, for instance. If we simply gave the names and our contemporary gave a full report, there are a good many people perhaps who knew the parties who are interested, who would be obliged to go to that newspaper.

37,337. That would not affect the permanent circulation of the newspaper?—We always feel if readers leave us they may not come back; that is so with most papers.

37,338. Even with good class daily newspapers?—Yes, I should think so.

37,339. You also said you felt that editors were influenced by the protests which they sometimes receive from their readers?—They are influenced in some respects, that is with regard to certain details. It is very difficult to draw the line as to what you shall and shall not give, and some readers think we give more than we ought to.

37,340. Do you not think the few who are led away to lower class journals would be balanced by those who prefer to stay with a newspaper because it is high-toned?—They would gain something in tone and respectability. I admit, but they do not like to face the losing of any such circulation.

37,341. Do I gather you are in the habit of receiving pretty constant communications from readers about the character of reports?—Very constant.

37,342. I was much interested by what you said as to the fact that the circulation of these newspapers which gave great fulness to divorce proceedings may be due to the effects of the Education Act?—That is so. I mean to say the weekly papers especially, beginning about 1890 or 1888—the Education Act was introduced in 1870, I think, in about 15 years after that an enormous number of new readers came into existence, and nearly all these new readers were readers of penny weekly papers or halfpenny evening papers.

37,343. Perhaps it is hardly a fair question to ask, but do you know whether the efforts of good weekly newspapers to meet this new demand have been hindered by the class of newspapers which give in great details these matrimonial cases?—I think so, most decidedly. I think that the penny weekly papers of the respectable class have been very much crushed out of the market by the London weeklies.

37,344. Do you think if the law in any way restrained the publication of excessive details, there would be a better chance for good weekly journals meeting this demand created by the Education Act?—Most decidedly.

37,345. You spoke just now about local divorce proceedings. Would it be your opinion that if divorce proceedings were to take place in local courts there would be a great increase in the reporting of such matters in the local Press?—I do not think the reporting would be any more than it is now. We report all local divorce cases in London.

37,346. In London they are some distance away. I speak with some ignorance, but I should have thought the expense would be greater of reporting a case in London than it would be in Liverpool?—It is rather greater, but every big newspaper has its own private wire, and we are almost in direct communication with the Law Courts, and the reports are as fully given from London as Liverpool.

37,347. You do not think if the case were tried in Liverpool it would create a greater local interest and demand for details, and for the newspapers which furnished these details?—I do not think so.

37,348. In regard to the proposed reforms which you suggest, the publication of the names and the result, or the judgment or summing-up of the judge, you admitted, I think, that they might bear hardly on a few individual cases?—Where they wanted to give evidence?

37,349. Yes?—Probably it would.

37,350. Your view would be that these cases of individual hardship were outweighed by the advantage to the whole community in their general good?—Yes.

37,351. Is it your opinion that the fact that newspapers are now largely controlled by syndicates diminishes the sense of editorial responsibility?—I think it does, certainly.

37,352. A newspaper which is controlled by a syndicate is less likely to consider anything but its circulation?—Yes, I think so. I think when a newspaper is controlled by an individual that individual has a direct responsibility not only to the public, but to all his friends and his associates.

37,353. You would ascribe the extent to which these proceedings are reported in large sections of the Press, at any rate to some extent, to the fact that newspapers are now conducted simply and solely as commercial transactions by syndicate companies?—I think it has some effect.

37,354. Will you tell us from your experience how far the editor of a newspaper is really able to supervise the details which appear which are furnished to him by his reporters?—That depends upon the arrangements in each office. In some offices the editor does superintend these matters, but in these cases he very often does not undertake any writing. In most cases the editor has an assistant who knows the editor's mind, and he supervises the reports to be published next morning. It is impossible with such large papers nowadays for one man to read everything.

37,355. In cases where newspapers are governed by a company it would be more difficult for the editor or the assistant editor to act upon his own responsibility?—I do not think so. I think the manager or the editor or assistant editor has full responsibility and must act on his own responsibility at the last moment.

37,356. If he knows the circulation of the newspaper will probably diminish if he acts on his own responsibility in the way of keeping out these objectionable details, does it not affect him from the shareholders' point of view?—That would certainly operate in that case.

37,357. (*Lady Frances Balfour.*) I understand that you have had complaints about things which ought not to be put in the paper, and people say they would rather not take the paper if that is in?—Yes.

37,358. Have you ever had complaints that there is not enough indecency in the paper?—No, I have never known a complaint in 30 years. We have had complaints that certain cases have not been reported, but not with regard to details.

37,359. In putting in these details you are catering for a public you think will leave off reading your paper if they are not in?—To a certain extent only.

37,360. Is it not possible that those who object to the details might increase the sale of the paper by taking it in? Would you not sometimes cater for a a higher standard as well as a lower?—As respectable papers we have all those people already.

37,361. How do you define a respectable paper?—I take a paper like the "Manchester Guardian" as a respectable paper, and the "Yorkshire Post."

37,362. You avoid details there?—They report the cases fully, but they do not give anything like the objectionable details that are given in other papers.

37,363. Would you call the "Liverpool Daily Post" a respectable paper?—I think I would; I am its manager.

37,364. My attention has been drawn to a report there of a case which does not exactly come under divorce, and which I presume was extracted from the Police courts. It is headed, "An Oriental Engineer. Shocking Charges by a Scotch Girl." There was a criminal prosecution of a man where most loathesome details are given?—I am quite aware of it.

37,365. Was that for the purpose of selling the paper?—With regard to that case I was very much annoyed. I was away at Llandrindod Wells, and I was annoyed it did appear. It is one of those cases which get in occasionally without proper supervision.

37,366. It had a most prominent and long place in the paper?—Yes.

37,367. You admit it is far worse for public morals than anything that could appear in the Divorce Court?—Yes.

37,368. You disclaim all responsibility for it?—Yes. I wrote a letter complaining of it at once.

37,369. Do you think the sale of that paper was enormously increased?—I should not, at all.

37,370. (*Mrs. Tennant.*) There was a remand in that case. Have you given instructions that the proceedings under the remand are not to be published?—Yes.

37,371. (*Lord Guthrie.*) Of course in your evidence you are only referring to ordinary newspapers, and do not have any reference to legal journals?—That is so. I know nothing about legal journals.

37,372. Who report for you? Are they barristers or not?—The reporting in London is done by the news

agencies. I do not know whether barristers are engaged in the news agencies or not. I think they are done by journalists.

37,373. On special occasions are special instructions given for reporting a particular case?—No. There may be in certain cases, but our instructions are to send full reports of all local cases in the law courts, whether divorce cases or other cases. We get full reports of all local cases.

37,374. Take, for instance, the Stirling case I tried in Edinburgh. There was a large number of special reporters who came from England to hear that case. Did you send one?—No. We contented ourselves with the report of the news agencies.

37,375. I notice that in the Hilary Sittings of 1909 in the "Liverpool Daily Post" the space stated is 34½ as against a space of 1¾ in the Hilary Sittings of 1910?—Quite so.

37,376. The Secretary has said that, roughly speaking, is accounted for by the occurrence of the Stirling case in the one sittings and nothing corresponding in the other?—I should think that is so.

37,377. What considerations led to your having 34 times the amount of space in the one period compared with the other, devoted to divorce matters in connection with the Stirling case?—The same consideration I have mentioned in other cases. All the newspapers reported that case very fully.

37,378. It was not that it had any legal importance?—No.

37,379. You know it was of the most sordid and unromantic kind?—Yes.

37,380. Why do you think that the papers generally throughout the country took the action they did in reference to that contemptible case?—I suppose they find they have readers for it. I do not remember how long the case lasted.

37,381. Fifteen days?—I think we gave an average of about one to two columns a day.

37,382. You think that was not proper in the interest of public morals?—I think not. I think it would have been better if we had not done it.

37,383. You have in view not the interests of grown-up people merely, but the interests of families?—Yes. I am speaking because of the many complaints I have had from heads of families and from ladies.

37,384. You agree, I suppose, that it would be a very unfortunate position of matters if the head of the house should have to go down early in the morning and read the paper to see whether it was fit for the family to see it?—I have known some heads of houses to tell me so.

37,385. That is the position at the present moment?—That is only in exceptional cases.

37,386. But nobody knows when the exceptional case will happen?—No.

37,387. Do you think that is a position of matters that ought to be brought to an end in a civilised country?—I think I have said so.

37,388. You see no middle course?—I do not think it would be possible to have any middle course.

37,389. The practical difficulties being in your view unsurmountable?—Yes.

37,390. You suggested that the summing-up of the judge might be sufficient—that, of course, is where there is a jury?—Yes.

37,391. Is not the difficulty there that a judge's summing-up does not, or ought not to, indicate any opinion and cannot clear the innocent, as he can in a judgment when there is no jury?—I suppose that would be a difficulty, unless he were to extend his summing-up to a summary of the evidence.

37,392. He cannot express an opinion, and in the case of an innocent decent man being charged he cannot clear him as an innocent man is entitled to have himself cleared?

37,393. (*Chairman.*) The verdict does that?—I see there is great force in that objection.

37,394. (*Lord Guthrie.*) Supposing a case where two men are charged, and with regard to one the case is not proved against him, but not only is it not proved, but the case against him has no foundation whatever. That man is entitled to something more than the verdict?—Would not the judge say so?

37,395. At the present moment he says he has the evidence reported. If that were stopped you need to have something in the place of that. If the judge expressed an opinion upon it you think that sufficient?—He would say the innocent man was not a party.

37,396. In regard to what you have said about circulation, that necessarily raises the question of advertisements, by which a paper largely lives; one thing depends on the other?—Yes, partly.

37,397. Very largely?—Certain papers with smaller circulations get more advertisements than others.

37,398. You said complaints had reached you of cases not being reported?—Yes.

37,399. Were those divorce cases?—I have had one or two cases in my career, but not very often. Sometimes we have been obliged to curtail from motives of want of space. Some years ago, a case was curtailed, I cannot remember it exactly, but I know I had a complaint asking whether there was any object in our keeping out this particular case.

37,400. Keeping it out altogether?—No, but giving only a few lines.

37,401. (*Sir Lewis Dibdin.*) I suppose the effect on circulation of excluding particular news from a paper is a matter only gained by experience?—Yes.

37,402. Would you agree to this principle that where a man looks for news in one paper, and does not find it, and does find it in another paper, that is bad for the circulation of the paper that has not the news?—Generally speaking that is so. He would go to the other paper again probably.

37,403. It applies not only to divorce but many other things, such as sporting news?—Yes.

37,404. You are in favour of a restriction of the present law of publication of reports of divorce cases, but are you also of opinion—I gather you are—that any rule that is adopted must be a very simple one, one that can be easily applied?—Such as I suggest.

37,405. I suppose, in the hurry of newspaper editing and reporting, a very complicated rule such as taking down one witness and not another would be impossible practically?—I think so.

37,406. It has been suggested that it might be sufficiently met by the law as to indecent publications, but the difficulty is not one of theory but a practical difficulty of saying that in a particular case a thing is so indecent that it becomes criminal?—I should say so. I do not think there has been a prosecution.

37,407. The reports that you object to, I suppose, are not always indecent in any technical sense at all, but are a perfectly truthful narration of evidence necessary to be given in the court, and exceedingly undesirable to be read by the public?—Yes. The class of evidence I object to is the evidence of chambermaids and housemaids, and that sort of thing, absolutely necessary to be given in the court but not in the paper, and which would not be given in an objectionable form in the judge's summing-up or judgment.

37,408. Most divorce cases are not heard by a jury but before the judge?—Yes.

37,409. Whether the judge is summing up or giving judgment, he must deal with the evidence?—Yes.

37,410. If the evidence is unsavoury and that is essential to the decision of the case, he must deal with that unsavoury evidence?—He need not repeat the details.

37,411. Is that not rather a matter of the circumstances in the particular case? Can you predicate that the judge will always be able to leave out of his judgment matter which you would recognise should not appear in the newspapers?—I could not say in all cases, but I should say so in the majority of cases, and therefore you would gain something by adopting my suggestion.

37,412. Would you add to your suggestion: do you think it wise that in any particular case the judge might himself refuse to allow the judgment to be reported? He might at the beginning of the judgment say "This case is not to be reported"?—I have not thought over that. I think that would be a very difficult principle to work upon.

37,413. It would be simple in this way: it would be in the hands of the judge simply. On the other hand, I suggest to you there is a great practical difficulty, if you want to make the reports clean and fit for publication, to say that everything a judge says may be published?—You might have cases of people in very high life, and a judge might have great pressure brought to bear upon him to ask that to be kept out.

37,414. You think there would be a risk of improper suppression of the facts?—Quite so.

37,415. (*Judge Tindal Atkinson.*) You see some considerable advantages in publication?—Certainly.

37,416. The greatest advantage is the deterrent effect arising from publication?—Yes.

37,417. Do you agree with the statement that was read to us this morning, that if you practically had no publication you would have many cases of divorce by arrangement?—I think certainly the number of cases would be increased very largely. I know from experience that in reporting those cases the number of applications we have to keep them out of the newspapers shows that the people fear it very acutely, and feel the publication a great deal more than the actual judgment.

37,418. You say not only does publication deter people from committing immoral offences, but from taking proceedings. Do you think that would apply to the innocent party who has to obtain a divorce for the conduct of the respondent? Do they fear publication?—Certainly not.

37,419. Supposing you gave simply the names of the parties and the result, would not that be very much like a "Gazette" notice of a bankruptcy?—Yes.

37,420. And the public would take no interest in it?—I quite agree.

37,421. Might not the difficulty be got over by every newspaper that reported proceedings in the divorce court being required to obtain a licence before they could report in that court, and that if they offended they would know that the licence would be taken from them?—I have not thought of that suggestion. There are so many hundreds of newspapers and the reporting is done for, I should think, three-fourths of them by one agency. Would you propose to deprive that agency of the reporter offended of its right to write for all those papers?

37,422. Yes?—That would be a great injustice to three-fourths of the newspapers.

37,423. You do not think that could be worked at all?—No.

37,424. (*Mr. Brierley.*) As a matter of fact the news agency would provide a verbatim report, and leave it to the editors of the respective newspapers to insert what they pleased?—If asked to do so they will.

37,425. That would be the usual course in a trial that excited any public interest?—Yes. In the ordinary trials they supply simply a condensed report.

37,426. Any newspaper receiving its report from that agency would use its discretion?—Yes.

37,427. You think the only feasible method of dealing with this matter is to have a hard and fast line drawn, beyond which newspaper editors are not allowed to pass?—It would be very difficult to make any other distinction.

37,428. Anything which is left to discretion would not work?—It is so difficult to fix. The discretion of one man is different from the discretion of another.

37,429. So that the line may be drawn in the way you suggest, or otherwise; that is the only feasible way of dealing with the matter?—I think so.

37,430. (*Chairman.*) Your evidence is given individually?—Yes; I do not represent the Northern Federation.

37,431. As a matter of fact I think I am right in this, that your name was supplied to the Secretary by the Newspaper Society, and also by the Federation of Northern Newspaper Owners?—That is so, I believe.

37,432. Are you yourself a newspaper proprietor?—Yes.

37,433. As well as managing director?—Yes.

37,434. Looking at the Press on these questions broadly, would you think it right that a proposition should be complied with which suggested that the true Press attitude should be not to write that which the people were simply interested in, but that which was in their best interests?—It is very good in theory, but I do not think it would work out in practice.

37,435. I have heard that suggested as a proposition. I ought to thank you very much indeed for your attendance. I am sure we all feel your evidence will be of very great value to us?—May I make one remark about the question put to me by Lady Frances Balfour? I explained I was away, and that case got into the paper by inadvertence. These things do happen in newspapers. A London weekly paper detected that, and, knowing perhaps that I was going to give this evidence here, called my attention and that of probably some members of the Commission to it. I only want to say that in my own defence.

37,436. I understand you entirely disclaim responsibility for it?—Yes.

37,437. And gave notice of that fact at the time?—Both Sir Edward Russell and myself were very much annoyed about it.

Article from the "MORNING POST" *of September 29th,* 1910.

"The right to publish divorce proceedings in detail is being seriously challenged, and when the Royal Commission on the Marriage Laws reassembles that right must be one of the important points on which further evidence is taken. The question will become even more acute than it is at present if, as the result of the Commission, any attempt is made to facilitate divorce either by increasing the grounds that are accepted as valid, or by cheapening the proceedings and giving jurisdiction to the inferior Courts. However distasteful such extended facilities may be, no one can ignore the possibility that they may be granted, and therefore every safeguard against a consequent lowering of moral standards must be thought out in advance. The publication of divorce cases has hitherto been defended on two grounds: that the shame of publicity is a part of the just penalty of divorce, and, further, that the right to report the proceedings in all Law Courts is a most important part of the liberty of the Press, on which the effective preservation of individual liberties depends. No one contends that detailed accounts of all the sordid facts which come to light are in the least necessary to secure either of these advantages; but it is in practice so difficult to lay down any precise rule as to what ought and ought not to be reported, or to impose any restriction which is not in fact a censorship, that the decision has been left to the editors of newspapers. Until recently the duty thus entrusted could be worthily fulfilled. The accounts given were straightforward and simple reports of the proceedings, in which the reticence usual in decent society was strictly observed. The effect on the public was certainly useful. The publicity added not a little to the reluctance which restrains even the least modest from invoking the law in private distress. While it increased the penalty imposed on those who wished to break the marriage tie, the simple account did nothing to excite the public interest excessively or to give undue prominence to the seamy side of life. The readers of newspapers respected reticence and made the editorial censorship an effective safeguard to morality. With the growth, however, of a public whose education has enabled them to read without teaching them any regard for the necessary conventions and restraints which civilisation imposes, the task of the newspaper became more difficult. Just those parts of the evidence which are more wisely omitted as either irrelevant or undesirable were found to be most popular, and a new method of reporting was demanded. Those who put the blame upon the newspapers are ignorant of the facts which modern journalism has to face. Just as every nation gets the priests it deserves, so every public gets the paper it wants. If the demand for a certain class of news is large and persistent, newspapers have no choice save to supply it or cease catering for the general public. Considering the success which attends sensational journalism and the eager demand which exists for news about the

private life of other people, the wonder is that the standard of reticence remains on the whole so high.

"But though no blame attaches to journalists, who serve their clients to the best of their ability as do lawyers, or doctors, or any other professional men, the fact remains that few editors can any longer preserve the standard they would desire, but are forced forward by a public demand they can neither approve nor resist. The question of allowing the publication of divorce proceedings can no longer be discussed with reference to plain and carefully edited reports, but must be answered honestly with regard to descriptive accounts deliberately written to excite and to interest. The method of reporting approved and expected by the largest section of the public aims at making them as vivid and enthralling as a popular novel. To that end all the resources of illustration, of personal anecdote, of descriptive paragraph, and of arresting headline are called into play. The question is not whether the public shall know exactly what takes place in the Courts of Justice, but whether during the course of a sensational suit the whole attention of a large majority of the public shall be concentrated upon an ugly phase of life to the exclusion of other interests. Many wise truisms can be uttered upon the advantages of knowing the world as it is and not cherishing attractive illusions. To see life steady and to see it whole is no mean ideal, but it is not achieved by giving to all that is sordid and contemptible an entirely fictitious prominence. The possible deterrent effect on the few becomes unimportant compared with the certain degradation of the many. That a degradation is the result can hardly be questioned. No preacher encourages his congregation to talk as much as possible about sin, far less deliberately interests them in the lives and deeds of sinners, for every sane moralist knows that an interest in things unseemly as often fascinates as repels. A proposal to enlarge a divorce court in order to accommodate a greater number of the public would be instantly rejected with contempt, yet the encouragement given by the public to elaborate descriptive reports is little different from a desire to witness the trial. The healthy mind is that which pays least attention to disease.

"Injurious to public morality, the unfettered reporting of divorce cases will also, we believe, finally lessen the penalty that at present is inflicted on the parties. The real penalty for divorce, apart altogether from the religious disqualifications which ought to attach to it, is not the gossiping comment of millions of unimportant persons, but the subsequent exclusion of the guilty parties from the society to which they are accustomed. The standard of conduct is determined, not by the law, but by public opinion expressed in the intimate judgments of friends. As familiarity with divorce increases, the instinctive dislike is weakened. The publication of the names of those concerned, as is done in other countries, and if necessary a summary of the charges proved would be a less dangerous deterrent than the present wide publicity. It would also be infinitely more equitable, for at present the shame of publicity falls on guilty and innocent alike. Such restriction, however, is unquestionably an infringement of the liberties of the Press, a beginning of that censorship which Englishmen by long tradition have learned to hate. The supremacy of the Law Courts and the publicity of their proceedings are equally important safeguards of the liberty of the individual. But every right entails a duty, and in this case the right of the public to know what happens in the Law Courts carries with it the duty of restraint. The public, by refusing to exercise restraint, have allowed a liberty to degenerate into licence. The public will no longer permit the newspaper to preserve the reticence which is expected in the pulpit or on a public platform, and therefore a special protection must be granted. It would be infinitely preferable if the public could be trusted not to concern themselves with personal details and with private matters that have no importance, but since they have refused the better part of self-restraint the time has come when the law must interfere. It may be hoped that as a truer education spreads the full liberty may again be granted with safety."

Mr. Russell Allen called and examined.

37,438. (*Chairman.*) You are the proprietor of the "Manchester Evening News"?—Yes.

37,439. And any other paper?—No.

37,440. Your name was supplied by the Newspaper Society?—That was not with my knowledge. I am here entirely on my own authority. I represent nobody except myself.

37,441. I was not going to suggest you represented anybody, but I think I am right in saying your name was among the list of names suggested by one of the Societies?—I think they may have sent my name, but it was after I sent it.

37,442. At any rate, you are here in your own individual responsible capacity?—Yes.

37,443. You have given us a neat and short proof. Will you read it?—I am the proprietor of the "Manchester Evening News," and in considering the question of publication in the Press of reports of divorce and matrimonial cases, it seems to me the two main points to be dealt with are :—

"The effect of reports on the parties to the action.

"The effect on the public.

1st. The Effect of Reports on the Parties to the Action.

(*a*) The dread of publicity probably acts as a deterrent in some cases where any other consideration would be disregarded.

(*b*) The publication of a report in the public press is in many cases the only punishment the guilty parties receive, or perhaps it would be more correct to say, the only punishment they care about.

(*c*) The innocent party in many, perhaps most, cases welcomes publication in order that his or her character may be cleared.

(*d*) It is useful to divorced people that the fact should be known, as they thus avoid painful questions from outsiders and friends.

"I have in mind a case in which the very greatest pressure was brought to bear on me by the respondents to keep the report of a certain case out of my paper, whereas the plaintiff was most anxious that a report should appear.

"On general lines it is almost always better that a true and accurate account should appear in the press about any matter of public interest, rather than that the public should be left to gather their information from rumours and gossip."

37,444. Do you mean by a deterrent a deterrent against the commission of an immoral act, or, when it has been committed, deterring people from bringing it out in public? Those are different things: the word may be used for either one or the other. It has been suggested in the course of the evidence that publication is no deterrent against the commission of the act, but the deterrent is bringing it out in public?—I think the deterrent is before that.

37,445. Have you had any experience to make that a definite view?—No, except that one could hardly sit in a newspaper office without realising that in almost all matters of wrong-doing the Press acts as a great deterrent. We constantly have all sorts of people who have committed small misdemeanours and crimes begging that their name shall not be in the paper, quite apart from divorce. I think the Press has enormous powers as a deterrent.

37,446. The next part of your proof deals with the effect on the public?—Yes. "This, in my opinion, is by far the most important question in connection with the matter. It is to be feared that the majority of people do not read these reports as items of news at all. They are read because it is expected they will

contain details of an objectionable and suggestive nature, and I am inclined to think they would be equally sought after if they only contained fictitious names. It is regrettable, but I am afraid true, that this class of reading attracts many people of both sexes, and a huge circulation can be obtained by publishing full reports of the class of cases in question. I myself have often been asked to give fuller reports of certain unsavoury cases, in order that my paper might extend its circulation and hold its own with its competitors. It is well known that certain newspapers live on this kind of matter and create large circulations in consequence. These circulations are then boomed, and used as a bait for advertisers. Your Commission will readily understand how difficult the position of a newspaper management is when faced with competition of this sort. There is no class of business in which it is more difficult to maintain a high standard than the newspaper business, and I should like to point out to the Commission that it is not the slightest use, in these days, to trust in the smallest degree to the good taste of some newspapers. Journalism is now so much in the hands of money-making syndicates that any features, however questionable, are used for the purpose of increasing business, and thereby dividends. Racing, football, and guessing competitions, although repeatedly condemned by the courts as being grossly immoral, are illustrations of the determination on the part of many newspaper managers to avail themselves of any means of making money. I have no hesitation in saying that proprietors of newspapers who have a proper sense of their responsibilities, would welcome regulations which would keep the reports of divorce cases within such limits as to be harmless to the public, without shielding the guilty parties from the publicity they deserve."

37,447. That is extremely carefully stated. I would like to ask you whether you have formulated any practical mode of dealing by the court or by legislation, with matters so as to comply with your last paragraph, proper regulations?—I rather expected that question, and I think it is the most difficult question I shall be asked. The only scheme I have been able to think of is that there should be some official reporter connected with the Divorce Court—how he would be paid I do not know, unless by the newspaper proprietors who took his services—who would be responsible individually, who knew exactly what sort of evidence might be given and would only give such evidence as it was proper to give. By that means you would avoid what is the root of the whole business in this Divorce Court reporting, the competition between the various papers.

37,448. You would have one individual to whom they should all apply after the case was over for such a report as he thought fit to publish?—Yes. He would be almost in the same position as the reporter of the Press Association, but he would be an official of the court and a trained man, and know exactly what evidence it was right to publish.

37,449. Suppose a case lasted a week, that report should not be dealt with until after the whole trial?—I do not think that necessarily follows. I had not thought of it from that point of view. The idea of the official is that decent reports would be issued which would be full enough to meet the ends of justice and both sides to the action, and would keep the Press from engaging in any sort of competition in the way of their reports. That is the only solution I can think of.

37,450. Do you agree in substance with what Mr. Jeans said?—I think so. The point of view of the deterrent may be overdone, I think, because I should like to know how the cases are chosen for the reports. It is perfectly clear all cases are not reported. One is inclined to ask why should some people be deterred and not others.

37,451. He was inclined to agree, I think he did agree, with one passage especially I read from that article in the "Morning Post": "The possible deterrent effect on the few becomes unimportant compared with the certain degradation of the many." Is that matter in accordance with your view?—I do not follow that.

37,452. It means you may possibly deter a small number of people from committing wrong, but that the publication would be a great degradation to the many?—I think the publication as it exists to-day cannot be upheld for a moment. The deterrent might in occasional cases act the other way. Take a nervous and highly-strung woman who might be suffering gross injustice: the fear of publication might prevent her taking any action.

37,453. An innocent woman?—Yes, because she would rather suffer anything than have the publication.

37,454. Did you feel forced by the tenor of publication, as it were, to go along with it?—Yes. I think every newspaper must feel that. It is extremely hard to stand alone, especially now-a-days.

37,455. Have you had any complaints yourself, such as Mr. Jeans mentioned, of people objecting to reports which might come to their children at the table, and so on?—No, I cannot say I have had any definite reports, but I think there must be a feeling of that sort, because one has it one's self.

37,456. I think we have exhausted your proof?—The fact of outside proceedings has been referred to. I do not know whether you would allow me to say anything on that.

37,457. Yes?—Even supposing the door of the Divorce Court were closed altogether and there was no reporting, that would not by any means prevent objectionable matter from appearing in the paper, and in my opinion it is sometimes impossible to avoid it.

37,458. It would be contempt of court, I think, probably?—I do not mean Divorce Court matter: I mean other matter. Somebody referred to police court cases, and I thought it might be helpful to the Commission if I referred to two cases to show the difficulty papers are in sometimes in dealing with these things.

37,459. I thought you said supposing it were heard in private it would still get in the papers?—No; I said if the Divorce Court was closed altogther there would be no reports in the Divore Court, but that would not prevent other objectionable matter from other courts getting into the paper, and sometimes I maintain that may be justified. I wonder whether you would like me to state two cases where I think it may be.

37,460. If you think it will assist us, by all means?—There was a case in Manchester some few years ago which you may remember by name; it was in connection with the Comedy Theatre, in which evidence was produced which was quite as bad and very much of the same sort in a way as the evidence you get in the Divorce Court. It was a most important case, because it involved an action for libel by the manager of the theatre against a member of the Manchester Town Council. I should like to read a few lines which appeared in the "Manchester Guardian" at that time, because the "Guardian" is as jealous as any paper in England with regard to what appears in its columns. It referred to that case, and this is its comment: "In view of the fact that the action against "Mr. Holt has been undisguisedly an attempt to "impeach the police, the Watch Committee, and the "City Council for wrong-doing in the discharge of "their official duty, we have unwillingly departed "from our practice of excluding from these columns "all such reports of evidence as the majority of "healthy-minded persons find repulsive. In this "case the government of the city has been on its "trial, and every citizen of Manchester, since that "government is of our own making and every member "of it chosen by ourselves, has been on his trial with "it. It was necessary, therefore, that every citizen "should be enabled to inform himself on the issues "involved upon which he might at any time be required "to pass his own judgment at the polling booth. We "sincerely hope that the impression left upon respon-"sible public opinion by the issue of this trial may be "deep enough to do more than make amends, by its "reaction on the city's public life, for such a public "misfortune as the necessity that the details of such "a case should be reported."

37,461. That was a matter of great public interest?—Yes. My only point is that if no divorce matter is published at all, that there still will be, and must be, if this is allowed, objectionable matter in the newspapers from time to time.

37,462. That is possible where you get matters of great public interest, but what public interest is there whether A. has committed adultery with B., or the offence of C.?—None whatever.

37,463. Except, as you have indicated in your proof, people will read that for the purpose of reading objectional details?—That is so. The other was a case tried very recently, known as the Palatine Hotel case. My editor sent for me and said, "There is a very nasty "case coming on at the police court; what are we to "do?" I said, "Cannot you leave it out?" He said, "I am afraid we cannot, because it involves a "member of the City Council and is a very important "public matter." The case was reported very fully, the matter was most objectionable, and the Bishop of Manchester thought it wise to refer to it at the opening of a social club for young people, and also in a sermon he preached at the Manchester Cathedral. So that in those cases you get very much the same class of evidence as you get in the Divorce Court.

37,464. Those are public matters, and do not occur every day?—No, I agree.

37,465. You will not get 300 or 400 columns a year out of those cases?—Personally, I should not mind if the divorce reporting was stopped altogether, but I do not know that I should like to say I think that would be a wise thing.

37,466. (*Mr. Brierley.*) Those are rather exceptional cases?—Yes. I want to point out you cannot always overlook them because they are of public interest.

37,467. The last case was of very justifiable public interest?—Yes.

37,468. If you absolutely prohibited the reports of divorce cases, I suppose there would be exceptional cases where it would be of public importance that the facts should be known?—One can imagine so.

37,469. Cases have occurred, without referring to them, three or four perhaps in a century?—Some great public person, where the public would not consent to his downfall without knowing some of the details.

37,470. Do you not think, those cases being so few, that the disadvantages that follow from their suppression would be outweighed by the advantage gained from the suppression of these extremely numerous reports?—Yes, I think so. I do not think the reports ought to be stopped altogether, but they ought to be in such a form, as I say in my proof, that the parties to the action would have such publicity as is necessary, and without any damage to the public.

37,471. (*Judge Tindal Atkinson.*) You were asked whether publication would operate as a deterrent to people from being guilty of immorality. Take a class of society such as professional men, doctors, solicitors; they would be ruined if they were made co-respondents?—Yes.

37,472. Does not the effect of publication upon that class operate as a powerful deterrent?—I should think it would.

37,473. That is, from actually committing immorality?—Yes, and to some women too, the fear of disclosure.

37,474. I suppose this reporter you speak of would be the same as the reporters in the court now, but under the control of the court?—Yes.

37,475. And would report the cases in the same way day after day, but he would be checked if he were doing that which was wrong, or exceeding the line the court thought fit to draw?—Yes.

37,476. You think that would meet the difficulties of the case?—I think we must have one rule for everybody in the newspaper world with regard to that class of reporting. I do not believe in that strengthening of the law against publication of indecent matter. We should get into the same hopeless muddle as with the lottery laws. Nobody knows where they are.

37,477. Do you agree the mere publication of the name and the decree would be of very little use?—I do not think that is going far enough. One might go further than that without the slightest damage to the public.

37,478. Would it be of any use?—I do not think anybody would put it in.

37,479. (*Lord Guthrie.*) You referred to the people's fear of their name appearing?—Yes.

37,480. Is not that really what people are afraid of, they want their name kept out altogether? It is not a question of details or no details, but they do not want it to be known that they are charged with a certain offence?—Yes, in some cases that is true, but I can imagine people who would not mind the mere insertion of their name, which they would hope and which might very easily be missed, when they would object to a fuller account of their misconduct.

37,481. I can imagine such people, but have you not found, as I found as a counsel in old days, that people want to have their names kept out?—Yes, there is no doubt about that. Wrong-doers of all sorts, I said to commence with, come in shoals to get their names kept out of the paper.

37,482. In addition to that, do you think it would be right that a certain amount should appear, such as would be, for instance, in the Judge's summing-up?—My only difficulty is what cases are to appear? It does not seem fair to me to pillory and penalise one set of people and leave other people out.

37,483. You meet that suggestion by an authorised reporter who would proceed on rules laid down by the judge, and on a uniform system?—That would not ensure that what he sent would be put in the papers.

37,484. You think the papers would cease to publish it?—I think to a very large extent. Nobody can deny, if they are honest, that the cases that are chiefly reported now are the sensational cases. Therefore, the people who are engaged in the sensational cases get the punishment that the people who are in non-sensational cases do not get.

31,485. Do you suggest there are a certain number of cases in the Divorce Court in London that are not mentioned in any paper?—I cannot say that. I should think it is extremely likely.

37,486. One would like to know that?—I cannot tell you that. The rule most papers go on would be to publish cases which have a local interest, or sensational cases. Therefore, we might publish a Manchester case which would not appear in a Plymouth paper; but the Plymouth paper might publish a Plymouth case which would not appear in the Manchester paper.

37,487. The London papers would be able to tell us whether there are a certain number of undefended cases that never appear at all?—There must be hundreds.

37,488. We will hear that from the London people. That is a very important matter indeed. You say in your *précis* that it is always better that a true and accurate account should appear in the Press about any matter of public interest. How far do you carry that? Suppose a case of rape, and it is heard within closed doors; is it not desirable, as a matter of public policy, that the present system should go on?—The rule we go on with regard to attempts on girls and women is to give the name of the man but not the girl.

37,489. Such cases are heard with closed doors and not reported at all?—That was more a general statement. I think I had inquests more in my mind. We often get people who want inquests kept out of the paper.

37,490. (*Mr. Brierley.*) The cases Lord Guthrie mentions are not heard with closed doors in England?—We never give the name of the girl or woman.

37,491. (*Lord Guthrie.*) What is your view about divorce cases being heard with closed doors?—I may be old-fashioned, but I do not like the idea of an English Court of Justice being shut up altogether.

37,492. Of any kind?—No.

37,493. Where do you get your reports?—I think we get them from the Press Association and Central News.

37,494. What happens when a report comes? Is it always edited for your paper by your people?—Yes. My brother, who used to be in our editorial department, was only saying last night there were huge

lumps cut out. We do not put in anything like what is sent. To begin with, the reporter does not send all that happens, and we do not put in all that is sent, but I do not claim any special virtues for my paper. I think details appear there which ought not to appear, just as in other papers.

37,495. Is there any general principle which determines whether you shall put a case in at all? Secondly, if it is put in, whether it shall be reported at length or with the bare names?—I think there is no good blinking the fact that sensational cases are reported more fully than others: everybody knows that.

37,496. (*Mrs. Tennant.*) You say in your proof you have often been asked to give fuller reports of certain unsavoury cases. From whom has a request of that kind come?—From news-agents, and people of that sort. We have travellers going round calling on news-agents, to find out how the paper is doing and they bring back word that last night some other paper sold better because they had three columns of a certain case we had not, and unless we report this case more fully we cannot keep up the sale.

37,497. Have you shareholders, or are you the sole proprietor?—No, I am sole proprietor.

37,498. So that it is not from anybody interested in the paper except in the capacity of an agents.

37,499. (*Archbishop of York.*) There is one question arising out of your evidence which I should like to put. You may not be able to answer it, perhaps someone else can. At any rate, I should like to have it put down. Do you know any instance of any newspaper having been prosecuted under the laws of indecency for anything that appeared in divorce reports?—No, I do not remember one.

37,500. I gather that practically it has never happened?—So far as I know.

37,501. So far as regards restraint of this class of publication, the present law is inoperative?—I should not like to say that. Indecency to some extent is so much a matter of taste. It is extremely difficult to make a law. It would land everybody in a sort of muddle of uncertainty. You would never quite know where you were.

37,502. That bears on what I should like to ask you about, your interesting suggestion of the official reporter. Do you consider that the reporter should be left to his own discretion, controlled only by what is expected of him by the Court, or should he submit his report to the Judge or anyone appointed by the Judge?—I do not think so. I think he would have certain rules to go by, and a general idea of what was allowable and what was not, and he would soon learn by experience what he might issue. I do not know whether the Judge would care to undertake it. I do not agree with Mr. Jeans. I do not suppose the Judge would care to have his summing up used as a newpaper report, but I suppose the Judge could occasionally, if any very bad evidence was being given, turn to the reporters and say, "That evidence is not to appear."

37,503. The control of an official reporter of that kind is very possible with the law as it at present stands in which the cases are heard in the High Court, but how would it bear if suggestions which have been made to us were carried out and there were a large number of courts with jurisdiction in matrimonial causes all up and down the country? In each case there would be an official reporter in each court? I am not asking your opinion on that matter. I want to know whether, in that case, you would have an official reporter attached to each court?—That is a complication I had not thought of.

37,504. In that case there would be a large number of persons in the country who were censors of what was or was not desirable for the public to read?—Yes. That is a serious complication, no doubt.

37,505. That would bring in the element of obscurity which you desire to avoid?—I am afraid it would.

37,506. With regard to the other alternative, you thought that if the record for publication were confined to the names of the parties and possibly the result, many newspapers would hardly think it worth while to publish the names at all?—They might for local people. It is a question whether the public are not entitled to know to some extent the amount of guilt or innocence of people.

37,507. Do you think the newspapers would publish them?—I think they would, if local people, probably.

37,508. Otherwise, unless they were well-known people or local people, there would be a chance of not being published or the names published in an obscure position in the paper?—I do not think that would matter, because at present I presume the rules newspapers go on are to take local cases and sensational cases.

37,509. You think there ought to be, in the interest of the public and the parties, something more than the mere publication of names and result?—Yes, providing it does not go too far.

37,510. That being so, supposing for a moment your suggestion about an official reporter had difficulties of its own, what would be your opinion about the suggestion that the judge should make any comments of his own in addition to the actual judgment he thought necessary in the interest of justice to any of the parties?—I do not see any objection to that, if the judges would undertake it, but it seems to me it is throwing rather a heavy duty on the judge to ask him to do a newspaper report as well as a summing-up.

37,511. I am not suggesting that the judge's summing-up or judgment should be furnished to the reporters for the newspapers, but in cases where the judge thought the mere record of the result might be unfair to one of the parties, he should make any comment in addition to the actual judgment, for reporting with the judgment?—I see what you mean. That would do. That would not be very full.

37,512. (*Sir George White.*) I understand you put forward the idea of an official reporter as a better means of dealing with the question of reporting than the reporting of the mere summing-up of the judge?—Yes, I think so. I think it would. I have here some of the advantages of this official reporter. It would settle the idea of regulation, it would be fair all round, it would make for purity, and abolish competition, and would ensure all the publicity which is really necessary. It would lead to the appointment of responsible, trustworthy, impartial, and independent persons for a class of work which experience has proved cannot be safely left to the ordinary reporters influenced by many considerations to behave recklessly.

37,513. In view of the question put to you by His Grace as to the possibility of an extension of Courts, do you still hold the view that an official reporter is the better way of dealing with it, in view of the number of official reporters that must be appointed?—I am afraid that I cannot answer that question now. I should have to think more about it. When the other Courts are formed—they are quite in the air at present, we do not know even if they are coming—if they are formed, we should have to see how many there were and what could be done in the same line.

37,514. Your experience is based on the existing Courts which deal with these cases?—Yes.

37,515. I suppose you gave the case of the Comedy Theatre and the Palatine Hotel, Manchester, case as evidence of the undesirability of closing reports altogether, or minimising them, as a rule, but there must be exceptions in the public interest?—Yes. A good deal has been said about the effect of reading these reports on young people, but I think it is fair to remember that newspapers are not primarily written for young people, and occasionally if the public interest is to be served things must appear which perhaps are not very suitable for young people. I wanted to quote those cases as examples of what I meant.

37,516. With regard to the deterrent influence of these reports, having in view the nature and circumstances of these illicit alliances, is it a fact that parties who enter into them imagine that the thing is likely to be published, and, therefore, they refrain from it lest it should come to the public ear and be published in the newspaper? Is that a fact in daily life?—I think with some natures it would be. It is not with everybody, or else there would be no divorce proceedings.

37,517. Do they anticipate the possibilty of such a thing?—I think so. There is an extract here from a speech made by Lord Lyndhurst in 1856 with regard to the original divorce laws, in which he says: "If we "add the obvious interest in almost every instance "which the woman has to remain in her home, and "the horror most women must feel at the idea of the "public exposure and discussion of such wrongs, it is "evidence they would not be so very eager to avail "themselves, in usual cases, of the extreme remedy."

37,518. In your opinion, it does act as a deterrent to prevent these things occurring sometimes?—Yes. I am certain of that in some cases.

37,519. (*Mr. Spender.*) Your view, roughly speaking, is that first of all the reporting of these cases is on the whole a deterrent?—I do not even say "on the whole." I have modified that first sentence a little bit. In some natures it would be a deterrent. These cases involve the strongest passions of human nature, and in many cases I think it is not a deterrent, and the divorce proceedings show that it is not.

37,520. Might not one say that it belongs to the lower conception of marriage, to regard it as a private matter between the parties, either marriage or divorce, and that it is in the consciousness of the people, perhaps vaguely, but in a very real sense, that the breaking of the marriage vow and the consequences are to be borne in mind, and it is something more than a mere private matter?—Yes.

37,521. That is the only point I wish to make. With reference to an answer you gave to the Chairman, you said there was no public interest in a divorce case. You do not mean us to infer from that that a divorce, such as one frequently hears of in France, is a private matter between the parties?—I meant that there are interests in divorce, if you know anything about the people, even if only acquaintances or people living in the same neighbourhood, and it is right, I think, that a certain amount of report of those cases should appear; but what might be right and proper reporting in the public interest in the neighbourhood of Manchester on a Manchester case would simply be read as a sensational case in such a place as Exeter or Plymouth.

37,522. I meant broadly there is a public aspect of marriage and divorce which makes a certain measure of publicity a natural concomitant of divorce?—Yes. That is surely purely statistical.

37,523. I am taking it as a point of principle. In a country like France, for instance, it is natural there should be no reporting of divorce cases in the papers. If you talk to French people about them, they will say it is purely a private matter which does not concern the public. Our conception of marriage and divorce is one which does contain a public aspect. We cannot take it merely on newspaper grounds, but publicity is in a certain sense the natural result of our whole idea of marriage?—I said I agreed a certain amount of publicity was good.

37,524. I only ask this question in reference to the answer that there was no public interest in a divorce case. "Interest" was used in a double sense there, I think?—Yes.

37,525. With regard to the question Lord Guthrie asked, perhaps we might get at the general practice of the London and Provincial papers with regard to the reporting of these cases. In regard to the London papers, would it be true to say that the reports are mainly confined to sensational cases, or cases affecting well-known people?—I do not know that I can answer that question with any certainty, because I do not say I do not read divorce cases, because I have read divorce cases, but I can confidently say I do not remember the name of a single person who appeared in them at present, and I do not think other people do for long. They simply read them. I think, because they are divorce cases.

37,526. In choosing from among the cases a London paper would report, there would have either to be some incident in it which the editor or sub-editor would imagine would take the people's fancy or interest, or it would have to affect some well-known name?—Yes.

37,527. Supposing there was a Manchester person who was not well-known, and there was no particular incident in the divorce case, there would be no report of that in a London paper, in all probability?—That is so. That fact alone rather leads to wrong conclusions, because the papers choose these sensational divorce cases, and these cases of what you call well-known or society people, and it leads the bulk of the public to believe that there is more immorality in that particular class than there is in other classes, which I do not for a moment believe. I believe it is pretty much the same in every class. It is the fact of these cases of a particular class being put in the paper that gives the impression they are more immoral than anybody else.

37,528. If we go from the London Press to the Provincial Press, it would be true to say that all those cases, the sensational cases and the cases affecting well-known people, would be reported in a provincial paper, and there would be added the cases not reported in a London paper affecting local people?—Yes, I think that is fair.

37,529. The ordinary practice of a provincial paper is to instruct the News Agency to keep watch for any case in the courts affecting local people, and telegraph or send?—They do that, naturally.

37,530. That is the general instruction?—Yes.

37,531. May we get to the suggestion of the official reporter. I call him the "official reporter" because, I think, that was your word?—That is the only name I can call him by.

37,532. Do you contemplate his being appointed by the newspapers or the Court?—I have not worked out the details. There is the question of his payment Whether he would be an official of the Court and paid by the papers, or a man approved by the Court and paid by the papers, I do not know. It is simply the idea of having a report which will be full enough and yet absolutely inoffensive, and which will put all the newspapers on the same footing with regard to reporting these cases.

37,533. It is a very interesting suggestion, but I want to see exactly how it might work, and who would be his master. He would give this official report, subject, I understand you to say, to the correction of the Judge. I think you said, in answer to various Commissioners, that if he exceeded he would be liable to have his licence revoked by the Judge?—That would keep the papers right. If he sent out a report that was not proper, the papers would be in a position to say: "We have not done anything we should not do; "we have simply taken the official report," in other words, making somebody else resposible and not us.

37,534. That would save editors trouble, but the question is whether it would meet the public case and would be workable from the Judge's point of view. It would make the Judge practically into an editor of the official report?—I do not see that.

37,535. Shall we say, the censor of the official report?—I do not know that he need censor. I should be against putting it any further. I think the Judge ought to be absolutely free from any outside duty of that sort.

37,536. You said if the reporter offeuded, the Judge or the Court would have the power of revoking the licence, which would be controlled by the Court otherwise?—He would not interfere with the report at the time beyond perhaps an occasional remark that certain evidence was not to appear.

37,537. The Judge's business would be to revoke the licence?—If the man continually sent out reports that were objectionable and were not the sort of reports he was put there to do, he would have to be got rid of and somebody else appointed.

37,538. I am not saying it is a wrong suggestion. I want to get at who you think would discharge that duty?—I cannot say at the moment who would do it. There are plenty of men who could be got to do it. There are official shorthand-writers in the Court now.

37,539. It is not who would discharge the duty of official reporter, but the duty of censor to the official reporter, because the point of the suggestion is that the official reporter should be kept within bounds and

subject to some restraint on the part of the Court—is not that it?—I can only say, speaking off-hand, that the President of the Divorce Court would have the power to dismiss or censure the man who gave the reports, but he would not do it in Court. He would do it if he objected to the reports he saw. In a very short time the man would learn what the President would allow and not allow, and the kind of evidence he would give, and would send out quite fair reports.

37,540. I am not saying it would be objectionable, but practically the rule of reporting under that condition would be what the President would or would not allow?—You must not take it that is necessarily how it would work out. I have given the suggestion of an official reporter without having worked out the details, which can be done better by somebody else. It may be somebody else could be chosen instead of the President of the Divorce Court to look after this reporting.

37,541. (*Judge Tindal Atkinson.*) In local cases that are tried in the London Court, is it the invariable rule that those cases are reported in the local newspapers?—I should not say it is the invariable custom, and that is what I think is rather an injustice, because it seems to me that certain people get punished——

37,542. I am not talking about divorce proceedings, but generally. Supposing there is a case of interest at Manchester tried in the London Courts, would you expect to find a full report of that in the Manchester papers?—Yes, if it was a local case.

37,543. That is the rule?—Yes.

37,544. Sometimes you will find the report more fully in the local paper than in the London paper?—Yes, if a local case.

37,545. (*Chairman.*) To explain what you said about an official reporter, I suppose if he was a salaried official, it would not be very much to his interest to expand his reports?—No.

37,546. And secondly, it would prevent competition between one paper and another to expand reports. Those two things would come in to make the report, even if there was no control, a more curtailed and more uniform report?—Yes, it would put all the papers—this is the point I want to urge more than anything—if any regulations are made they must be made in such a way that all the papers are on the same line.

37,547. You are not in favour of closing courts. You are aware in certain special classes of cases where it is offensive matter, incest cases, nullity cases, and the cases that are all held with closed doors, no harm appears to result?—Yes, I know it does not, but I have my ideas about closing the Court except for these extreme cases.

37,548. Why should not the ordinary divorce case come within the same category? It is a matter which is of no real public interest in the case of hundreds of these people, these undefended cases?—I think probably my objection is more a sentimental one than anything else.

37,549. That led me to ask you. In whose interest do you think the official reporter would be acting? What benefit or interest would the public get from reading reports of that kind?—I do not know that they would get any particular benefit, but it is news, and it is interesting news to people who know the parties to the action.

37,550. They must know without any reporting at all?—If they know them intimately.

37,551. I want to thank you very much for your evidence. I see you not only have been good enough to present your case, but you have carefully studied the matter in order to do so?—I have read the subject a good deal.

Mr. John Thomas Smith called and examined.

37,552. (*Chairman.*) You are Chairman of the Central London Branch of the National Union of Journalists?—Yes.

37,553. That Union has about 2,000 members?—Yes.

37,554. You have presented in your memorandum the results of your consideration of this matter, and I will take you through it as it stands. You say "The exclusion of the Press would not result in the attainment of the desired end, *i.e.*, the prevention of all objectionable reports. Such reports are far more frequent in other cases than those heard in the Probate, Divorce and Admiralty division." What are the other cases to which you refer?—Police court cases, certain cases at the Central Criminal Court. I make more particular reference to bastardy cases and indecent cases, which in provincial papers are reported at nauseous length.

37,555. They have not the continuity of the Divorce Court sitting every day?—They are very frequent, and there are remands which are reported, and the Quarter Sessions or Assizes, to which they go locally, where they are again brought into publicity.

37,556. If it is an evil to report any of them, it does not improve matters by allowing the whole to be reported; if it is an evil to report two things it would be an improvement if one was cut out and one left?—Yes. I was going to submit it would be unfair to a portion of the Press which uses the Divorce Court to shut them out of that court and allow entry in other courts in which more objectionable things transpire.

37,557. Except that two wrongs would not make it a right, if it were a wrong?—That is so.

37,558. You say such exclusion would result in many evils, far greater in total than those which now exist, and that the present practice is a safeguard against bribery and blackmail. Will you explain what is meant there?—It is a very large question. In the first place, everyone who knows anything about reporting in London knows that reporters are very frequently offered money to keep things out of the papers, and that money is just as frequently refused. In my experience, which runs into 18 years, in Fleet Street. I have known one case only in which a reporter accepted a monetary consideration. That was a very large monetary consideration to keep a case out of the papers. Although it did not occur in the Divorce Court, it bears on what I say, that publicity in any court of justice is a safeguard against bribery. You are aware that a coroner has great freedom in the exercise of his duties: he can hold his court when and where he chooses, and exclude or let in the public as he wishes. The result is in a great many coroner's courts one never knows the hour at which they will sit, and frequently no one, excepting the coroner and his officer and the jury and the witnesses, know where to go. In this case a coroner held a court, very few people were there except the persons taking part, and there was only one accredited representative of the Press and he was a very young man indeed. I should say the person on whom the inquest was being held was a woman in some way connected with a member of a very wealthy family then resident in London,

37,559. I see your point?—I will not say that representative was a man of this kind, but at any rate a solicitor there was able, by the offer of a considerable sum to this young man, to induce him to suppress the report of that inquest. That report was suppressed for three or four weeks, and then, by some means, it became known in America, from which country the wealthy man came, that an inquest had been held on this lady who had had some relations with him. Investigations, in which I took a small part, showed that there was no doubt the young man had received money for not reporting the inquest, and some very scathing comments were passed on English courts and methods in the American press, one or two New York papers going so far as to say that the suppression of such an inquest by such a means would have been impossible in the United States.

37,560. The point I was upon was rather this, that fear of publicity had not deterred the parties from committing the act of which they were ashamed. I want to see whether you appreciate the distinction

between a deterrent which prevents the act which is wrong, and the publicity which makes people desire that that act should be kept out of court. The only thing we are concerned with here is whether it is a deterrent on the commission of wrong?—Yes, I venture with great respect to think it has that effect. To give perhaps a somewhat trite case, take that of a man who is afraid of getting drunk publicly in London because he knows he will be fined at the Police court the next day.

37,561. Do you think prohibiting publication, if the only consideration were the prevention of some acts of wrong, or the great mass of reports with which the world is flooded, is the greater evil?—In the sum total I think the evils which would result from the complete closing of the courts are the greater. I was going, with your Lordship's permission, to talk about blackmail.

37,562. That is in your paper?—Yes.

37,563. You say the existing law, if efficiently administered, would put a stop to present abuses. Perhaps you would kindly read on from there?—I go on to say the present practice is a safeguard against bribery and blackmail. Bribery would operate with a view to the official reporters keeping the case out of the papers. Blackmail would be administered by the unscrupulous publisher to interested parties with the threat of publication if they did not pay. If the Divorce Court were completely closed to the Press—and there are those in our Union who think with me—I am afraid that evil would begin to be felt.

37,564. Not if not allowed to publish evidence?—There are so many persons present in the Divorce Court that it would be very difficult absolutely to prevent every person present in the course of the hearing of a case from giving his version of it to some interested party outside.

37,565. That would be contempt of Court and would be stopped?—Then we come to the other point. It would pay people to get outside of the jurisdiction of the English contempt of Court and publish just across the Channel.

37,566. It would make no difference if prohibited from selling here?—I know the jurisdiction is universal, but the fact that these reports did come into the country——

37,567. They could not, if they were not allowed to be sold?—They would be conveyed here. Later on I point out the difficulties you would be under if you endeavoured to make a law which had that effect.

37,568. You think they might be imported?—Yes.

37,569. It is no good importing if they are not allowed to sell them. You are confining your attention to the actual publication by the publisher. Any prohibition would extend to prohibit the exhibition for sale?—Your difficulties would be as great as they are now, because you have the right now to prevent the publication or selling of any indecent report.

37,570. Assuming they are not indecent, but yet objectionable. I do not see the difficulty which I have read in the rest of the proof about publishing in the Isle of Man and bringing it into this country. I am afraid you omitted to notice that you could prohibit the sale and distribution just as well as publication?—You could prohibit it, but there are many things brought into the country now: for instance, lottery circulars are strictly prohibited, but they are dealt in. You find prosecutions for them every now and then, and for one case there are numbers of others.

37,571. That is dealt with in your next paragraph. Will you continue reading?—Further, it would prevent a public record of many cases which a respondent or co-respondent defends with the object of vindicating his or her innocence. "I want my character cleared!" is what such persons practically say, and in most cases they attain their wish under present conditions. Again, if there were no reportors present, a number of valuable comments by the judge, and many a useful summing-up, would be lost to the public. All degrees of guilt would be as one—there would be no record as to whether the jury retired for two hours or gave a verdict without leaving the box: there would be no explanation as to reasons for decision in cross-petitions. Recent legislation has been in the direction of enlarging the privileges of the Press: *e.g.*, admitting them expressly of legal right to the meetings of local authorities, and to children's courts even when the public are excluded; to exclude them from an important division of the Supreme Court would be a reversal of this tendency. Unless the Press is excluded, too, from the Police court in separation cases you will have poor folks' matrimonial troubles reported at length, especially in the provinces, while persons who can afford to use the Divorce Court will go free—which amounts to one law for the rich and another law for the poor. Indecent reports are far more frequent in connection with other courts than with the Divorce Court. One or two weekly journals which must be known to the Commissioners simply reek of such stuff. I was proposing to hand in a cutting from one Sunday newspaper which I do not desire to name because I do not wish to make that journal appear worse than others. I do not wish to make any invidious distinction.

37,572. We have plenty of copies of the papers ourselves?—Similar reports, though not conveying such bad moral effect, could be found weekly. Most of the Commissioners have country residences, and will be aware how fully bastardy cases, indecent assaults, and the like are reported in local sheets. Divorce reports are purity itself compared with the adjoining columns of paternity cases. The exclusion of the Press from the Divorce Court cannot prevent these; the present law can, if properly used. There are other aspects of the matter. Every journalist is familiar with the fact that money is frequently offered to the Press and as frequently refused. The members of the Union are absolutely unanimous in thinking that closed courts would lead to a great influx of cases. Only recently a member of the Union was offered 200*l.* to keep a case out of the newspapers. The offer was of course declined, and when the case was called on counsel announced that the parties had come to terms. Would they have come to terms if they could have kept the case out of the papers? Members of the Union have overheard counsel advising parties to settle on the grounds that they would thus avoid publicity. It is the rarest thing in the world for a London reporter to be bribed. But the moment the proceedings approach to a private sitting, bribery seems to become possible: for instance, the case in the Coroners' courts I mentioned just now. Publication inculcates fear: any editor will agree to that. One of the most painful experiences one can have is that of the penitent wife begging one to keep her name out of the papers. To do away with publicity would be to lose a valuable moral sanction.

37,573. That is the difficulty I feel. You are dealing with a case in which publicity is allowed as it stands, and it has not prevented the penitent wife from committing the wrong she has done. At present it does not prevent it?—I submit it may have prevented other women from doing that wrong, knowing they would have to go to the Divorce Court and face consequent publicity. The suggestion that newspapers should be provided with the results only, or with a précis of the case by the judge, is, I respectfully submit, impracticable. Newspapers would not publish results. They would convey nothing to their readers; and space is so valuable in the modern daily papers that such a course would be out of the question. And what editor would publish a judge's précis unless he had some guarantee or indemnity that no libel action should follow? Reporting cases takes years of practice; and there are pitfalls well known to the journalist which the judge would not trouble about. Parties to the actions would, rightly, strongly object to this form of report. A further point we submit is, why should this additional duty be placed upon the judge, who, in taking charge of a case in this particular court has quite enough on his hands without having to act as quasi editor or reporter? Again, supposing the jury disagree, and no report is supplied, in what sort of position is the co-respondent?

In the case of Fowler v. Fowler and Esson, a cross-petition in which judgment was given on the 18th March 1910, both petitions were dismissed. I pre-

pared this evidence some months ago for the earlier sitting of the Commission, but you were not able to hear me. That will account for the date being March Of what use would be just the names and result in a case of this sort? Nothing would be conveyed to the public as to whether both were guilty or innocent. The President of the Commission has doubtless been the judge in cases where counsel in cross-examination has discovered that an important witness has been obtained solely because he has read the case in the papers and at once communicated with the solicitors for one side or the other. Members of the Union know cases in which co-respondents have come to the Press box and asked if the cases which they are defending are going to be reported. It is well known in the districts in which they live that they have been cited as co-respondents and they naturally wish their denials to be reported whether they lose or win the case. A person may suffer a very grave injustice in a small town where he or she is well known. With secret courts, his or her side of the case would never be known, except perhaps that he or she has been found guilty. There would be no statement to the effect that the jury took two or three hours to consider the verdict—a most important item in a strongly contested case, as showing that even the jury were in doubt. To a person who had been defending a case this would be most important, but nothing would be heard of it in closed courts. On the 11th April of this year a case came before Mr. Justice Bargrave Deane, Browne v. Browne, which shows the value of publicity. Perhaps I may read an extract. "Mr. "J. Harvey Murphy, for the petitioner, stated that "some evidence of the value of reporting these cases "was to be found in the fact that after the reports of "the proceedings for restitution of conjugal rights, "petitioner received an anonymous letter stating that "respondent had stayed with another woman at an "hotel at Tonbridge. Inquiries showed this to have "been true. Petitioner gave evidence in support of "her case, and his lordship pronounced a decree nisi "with costs." That extract is taken from the "Daily Telegraph" of Tuesday, April 12th, 1910. The second category to be found in my evidence relates to the exclusion of the Press, which we think would result in many evils. These would be principally bribery not to insert a case, and blackmail by unscrupulous journals, levied under threat of publishing a case. This is the actual condition of things in the financial world. The present practice is a safeguard against both. The present law, properly enforced, is sufficient to abolish all the evils complained of. But it is suggested with great respect that in order to obtain the best results in suppressing objectionable reports which appear in a minute portion of the Press, the Press itself should be consulted. As journalists, we could provide a workable scheme.

37,574. What is that?—It would take a good deal of time if I were to elaborate that.

37,575. Take the leading features?—In the first place the editor of a paper is a very human person, and if you can convince him his extensive publication of divorce cases was against public morality he would be prepared to listen to such representations, and I have no doubt if The Newspaper Society were appealed to and other organisations of proprietors, they would do all they could to put an end to it so far as their members were concerned.

37,576. That does not agree with the evidence we have had, that the pressure on the individual by other papers is so great he cannot carry out the standard he would like to act upon?—You could not carry it out by an individual newspaper, but by the Societies of Newspapers, such as the Newspaper Society, and any Federation of Newspaper Proprietors.

37,577. The tendency since the Act of 1870 to develop a lower class of readers has been the opposite way?—I do not know that the Act has developed a lower class of reader. It has made reading more general.

37,578. That means a man who did not read before does read now. The tendency, we are told, is to produce a craving for a sensational highly descriptive account amongst a very large circle of readers which apparently the Union of the Press Associations is not able to cope with?—One might reply that they have not been asked. These Societies have great influence.

37,579. If the evidence we have had is correct, they have been asked by the complaints made, that the papers are not such as they would like to see on their table?—My experience is that complaints of that sort are not so frequent as you may gather from the evidence this morning. I am speaking as a London journalist. We have heard a gentleman from Liverpool and one from Manchester, who are very competent to judge of what happens in those towns, but speaking of London, I should not say there are many of those complaints.

37,580. You seem to look at the thing rather from the point of view of the parties concerned in the litigation, and you do not seem to take any general view as to the effect on the nation of literature of this character, to the extent the statistics we have had show, I do not see any notice of its effect upon the general public of readers?—First, the matter of the actual publication of news is one which rests finally with the proprietors of the paper. I have the honour here to represent to-day working journalists. I am prepared to make suggestions about the publication of evidence, but that would not be strictly within my province as representing the working journalists.

37,581. Will you give your own view?—My own view is that which I have just put before you briefly. If the societies of newspaper owners and the various kindred organisations throughout the country are appealed to they could do something to stop the publication of extremely offensive details. It is only a minute portion of the Press in which these details appear. It is true you had a set of figures this morning which I have not had the advantage of perusing, which tend to show a great deal of space is taken up with Divorce Court reports, but that is not the same as saying those columns contain matter which is nauseous. The papers which habitually print such matter could be counted almost on the fingers of one hand in London, and there is no doubt that the moral pressure of the rest could affect them.

37,582. I do not think it is suggested any of the reports in the papers are what you would call indecent or nauseous. The point is, continually calling attention, through the reports of these cases, to the sexual question, which is naturally one that appeals to young people. However, I have finished your paper, and I will leave other members of the Commission to take it up.

37,583. (*Mr. Spender.*) You say in your proof that the exclusion of the Press would result in bribery and blackmail by unscrupulous journals, levied under a threat of publishing a case. You said something about that being the practice in some other department?—In the financial world.

37,584. I do not see what is common between the cases?—Take a concrete example. The chairman of a public company has a meeting at which something untoward is likely to happen. An unscrupulous financial paper hears of this and brings pressure to bear upon that particular chairman, telling him if he does not agree to pay them a certain sum—it may be by way of advertisement, it may be by way of actual handing over of cash—they will report his meeting in full. That is one concrete case. That is always happening.

37,585. Those two cases would not be parallel, because in the financial case it would be within the power of the newspaper to publish the facts if it chose, subject to the law of libel, and if it was true the law of libel would have no terror for him; but in the supposed case of the Divorce Court, if publicity were prevented there could be no possibility of publication except on pain of coming under the jurisdiction of the Court immediately. In one case you would be trying to blackmail on the threat you would do something illegal, which would not have any terrors, and in the other case you could blackmail on the possibility of doing something which is quite legal?—I submit that the result would be very much the same. If the man

paid the money he would not understand the conditions as well as you do, and even if the Court were a closed Court, interested parties could be obtained.

37,586. It is not a question of closed Courts here. It is a question of the publication of reports being rendered illegal, as you say in a previous part of your proof. If publication were rendered illegal you would not suggest any unscrupulous journalist could blackmail on a threat to bring himself under the pains and penalties of the law by publishing it?—I should not be surprised if such a thing happened. I think it is very likely indeed.

37,587. It is rather remote?—No, I do not think it is remote.

37,588. You suggest a kind of voluntary pressure undertaken by the various organisations?—That is only part of my suggestion.

37,589. May I follow that part. Do you think any of those organisations would be willing to undertake it? Have you any evidence?—I have no evidence that they would not be willing. I should think, rather than run the risk of legislation excluding the Press from the Court, they would be willing to take some action of that sort.

37,590. We have had some evidence put before us of their reluctance to have any change?—Only resolutions they have passed. You have had no evidence put before you to show they would not be willing to modify their reports of divorce cases. You have had evidence to show they do not want the right of the Press to enter into the Courts modified.

37,591. Do you not think they would say, "It is all "very well for us to make a rule, but that will only "lead to newspapers starting outside and running in "competition with the papers owned by our mem-"bers"?—There is that possibility.

37,592. I submit it is rather an important possibility. Your view is mainly on behalf of the working journalists. You have given some evidence that the pressure which is brought to bear, which I think every editor who has come here has said has been brought on him, is brought to bear on the reporter as well as on the newspaper itself?—Pressure to keep the case from being published?

37,593. Yes?—Yes. The pressure occurs in two places: one is in the Divorce Court itself.

37,594. Actually in the Court itself?—Yes, and the other is at the office of the newspaper. With the latter I am more familiar than the former.

37,595. You were speaking of the former?—Yes.

37,596. Is it your view that that pressure is often applied in the Divorce Court?—It is often attempted to be applied by the parties.

37,597. Or their representatives?—Yes.

37,598. And money offered?—Attempted; it is never applied. Members of the Union have been offered money, and I quoted a case of a man being offered 200*l.* to keep a case out of the paper.

37,599. Is the case reported to your Union, as a rule? Have you any means of dealing with that?—We never notice that.

37,600. (*The Archbishop of York.*) You suggest if appeals were made to newspaper societies there might be some diminution of the amount of space given to divorce proceedings or the character of the reports, It is difficult for the general public to know who these associations of newspapers are?—I was not thinking so much of appeals by the general public as of appeals from authoritative sources, for instance, the Treasury or the Home Office, who undertake a prosecution for an indecent postcard or book. In the same way they might write a letter to these gentlemen pointing out that certain reports in certain papers were somewhat objectionable, and asking if they could bring their own personal influence to bear.

37,601. That would be very like having a censor of the Press installed in the Home Office and the Treasury?—I think it would avoid the censorship, because you make the papers censor themselves.

37,602. It means somebody whose business it was to read the reports in the newspapers?—That is so.

37,603. I suggest anything approaching a censorship of the press in this country would not be regarded favourably?—You have that official already in the case of indecent books and pictures, and so forth. There is an official.

37,604. I want to get at the source from which you wanted the pressure to come?—I would like these men to act as their own censors, and be told that "This is objectionable: cannot you put a stop to it?"

37,605. That means somebody whose business it is to read the reports to see if they are objectionable. Supposing such appeals made from any public quarter, either official or unofficial, succeeded, and the clients of any newspaper society agreed to limit the amount of space allotted, or change the character of their divorce proceedings, would not that only be increasing the circulation of the less desirable type of journals?—Nearly every journal belongs to one or other of these societies. There is practically no journal of any repute or large circulation outside all of them.

37,606. I speak in ignorance of these matters, but if that were so, are the particular newspapers we have had so much evidence about under the control of some general board or body?—No. Most newspapers belong to one society or another. The Newspaper Society is a Society of Proprietors of Newspapers. There is the Northern Federation of Owners and the Southern Federation of Owners.

37,607. The class we have had mainly before us of weekly and Sunday papers, without any hesitation, as I understand, deliberately furnish materials for this public appetite. Is not their motive quite frankly to secure the money value of a large circulation?—I would rather leave the proprietor himself to answer that, but I will go so far as to say there is no doubt a demand among a certain class of the public for that particular style of reporting.

37,608. I am sorry to be obliged to ask you that question. Perhaps you can help me and some of the other Commissioners by explaining why it is, when this is a matter of such wide public importance, the proprietors or representatives of these different associations have not come to give us the benefit of asking them questions?—I am afraid I cannot reply with any definite knowledge as to that.

37,609. It puts us in some difficulty. We should like to ask what the attitude of associations of newspaper proprietors would be on these matters, but with the exception of one or two individuals they have not enabled us to ask them questions. You must forgive my putting it to you?—I should be only too happy to enlighten you on any point on which I have knowledge.

37,610. That being so, we cannot get much further with the suggestion that possibly appeals to these gentlemen might result in some change being made without the necessity of changing the law?—I was going to add to that suggestion that a similar suggestion might be made to large wholesale publishing houses, some controlled by men of high personal character: for instance, W. H. Smith & Son, and Horace Marshall. If similar pressure could be brought to bear on them to that which could be brought on owners, some useful purpose could be served.

37,611. I should like to have the opportunity of asking some of the proprietors. I do not press that further. With regard to the point you make in your précis about the reporting of separation cases in the police court, are they largely reported now?—They are only reported to a moderate extent in London, but in the provinces they are reported at great length. A separation case, after all, has a very human interest, just as a divorce case has.

37,612. Your point is that if matrimonial cases in the High Court or in any Divorce Court were forbidden, it would be necessary to forbid also the reporting of separation cases in police courts?—Yes.

37,613. You say also you think that newspapers would not publish the names and the results if that were all?—As a general rule that would be so.

37,614. Why, is it not a matter of public interest?—No, except in very few cases. Unless the parties were known there would be no meaning in that.

37,615. That implies the only reason why anything more is published is not because of the public interest

but merely because of the details?—There can be public interest in the hearing of a case, but not public interest in merely the names.

37,616. Is not that very much the same thing? What the public wants are details, and are not the least interested in the names of the parties?—In some cases that would be so. There may be a very striking divorce case in which some remarkable evidence is given. In that case the interest would not lie in the names of the parties. On the other hand, there may be a divorce case of an every-day character in which well known persons are concerned. In that case the interest would lie more in the names of the persons than the details of the evidence.

37,617. If that would be the course newspapers would adopt, would not that be practically this, that the papers were not concerned to give the public news of public interest, but simply to give details of a certain class of case which suited a certain public appetite?—That is so with regard to a small number of papers.

37,618. Surely the better class papers would as a matter of course publish the names and the results of matrimonial actions as a matter of genuine public interest?—I submit there would be no public interest in them. You will find the better class papers—I have not seen your statistics, so that I am giving my opinion, which may be checked or contradicted by that—give a great many columns every day to Divorce Court cases, in comparison with some papers not quite so good.

37,619. I want to know why papers would not publish a record of divorce proceedings unaccompanied by details?—I believe in the Divorce Court, sometimes they run to 15 or 20 cases a day. Perhaps not one has any real public interest. It would serve no good purpose and only take up space in a first class paper to publish three lines giving the names and the result. It would be most uninteresting to the ordinary public.

37,620. I am afraid we use the word "interest" in a different way?—The way in which I use the word "interest" would be whether it is readable matter for the every-day sane healthy-minded citizen, whether it is interesting news to the every-day sane healthy-minded citizen.

37,621. (*Lord Guthrie.*) Is your Union confined to English journals, or does it include Scotch and Irish?—It includes both Scotch and Irish. We have a number of branches in Scotland and two or three in Ireland.

37,622. Does it include those who are connected with the Sunday papers in London?—Yes, it includes a number of man who are connected with the Sunday papers in London.

37,623. Is there any corresponding institution for the proprietors of newspapers?—Yes, several. There is the Newspaper Society, and there are various societies in the provinces, The Northern Federation of Newspaper Proprietors, and The Southern Federation of Newspaper Proprietors.

37,624. Do the Sunday paper proprietors belong to any federation?—Yes, I know they do, but I could not charge my memory at this moment with stating whether they are members of the Newspaper Society, or whether they have a small society of their own? I know they are in a society.

37,625. Is it the case that the ordinary undefended case in the Divorce Court is not reported anywhere at all?—As a rule not anywhere at all, except that if it is a local undefended case it is reported in the papers in that locality. If the parties come from Manchester there will be a few lines in the Manchester papers about it.

37,626. Take a London undefended case, where the parties are not well known, and there are no spicy details; that is not reported at all?—As a rule it is not.

37,627. So that the present system, if there is any deterrent in reporting, does not supply that deterrent except in the case of probably a minority of cases?—That is so, in the defended cases.

37,628. Do you admit that there is any abuse at the prcsent moment in the publication of divorce cases?—It is a very difficult matter for one individual journalist to say. I am quite willing to add to that, I think there is abuse to a very slight extent.

37,629. That is to say, matter which is unfit for young people to read?—There is a moderate amount of that matter in a certain section only of the Press.

37,630. Is it your view that in the leading London papers—put aside the Sunday papers altogether—there is appearing from time to time matter in connection with divorce cases totally unfit for young people to read?—A very small amount of such matter.

37,631. But there is some, even in the best papers, where the parties are eminent or the details remarkable?—Yes, there must be a certain modicum of such matter if you are to give a fair report of a case.

37,632. So that if such matter is to be excluded. do you see any other way than by prohibiting the publication of the details of divorce cases?—Yes, the present law against the publication of obscene matter would affect the publication of some of these cases if it were put into operation.

37,633. Take, for instance, the letters that appear in such cases, and which are printed in the best papers: do you see any interest to be served by the publication of such letters, which may not be absolutely obscene but which are offensively suggestive? What do you say to letters being published, not incidents, but letters?—If you will forgive me, I would rather not generalise, but certainly in particular cases such letters should not be published.

37,634. Supposing that the law were that there should be no publication of divorce cases until a month had elapsed after the case had been tried, what effect would that have? Would most of them be published at all?—They would not be news then. A newspaper exists for news, and when tidings are a month old they lose almost all their value as news.

37,635. You referred to a case where 200*l.* had been offered to keep a case out of the papers, and a member of the Union reported that. Was the offer made to a working journalist?—Yes.

37,636. In the Court?—Yes.

37,637. (*Sir Lewis Dibdin.*) I do not think you quite made your point in answer to His Grace, the point I think you meant to make. Your view is that if merely the names of the parties in a divorce suit were published it would have no market value, as news it would not be published?—That is so.

37,638. It might be published in the "Times" or a semi-official paper, but the ordinary papers would not publish it?—Yes.

37,639. Are you confirmed in that view by the fact that long strings of undefended cases to-day are not published?—The names do not appear in the papers?—I believe that is so.

37,640. On the other hand, it is suggested that it is the undesirable part of the reports that makes them marketable and makes papers publish them. That is not necessarily so at all. What makes the newspapers publish the report of any other case, say a libel case, something where there is no prurient interest of any kind? What is it that makes it good news?—It is what we call its news value. It is a thing that is understood, if I may say so, perfectly well by journalists, but it is its interest as news.

37,641. It is a story with a human interest in it?—Everything has a certain news value. An experienced journalist can tell at once. He tries to fill his paper, regardless of anything else, with material of news value. He knows how to make it interesting to his reader the next morning.

37,642. Without any reference to sexual matters?—Exactly. As a journalist of considerable experience I have been in entire charge of a daily paper in London for brief periods, and second in command for very long periods, I should like to say this. The public has no conception of the amount of offensive matter jettisoned every night in a daily newspaper. You may see a few lines in a whole issue which may offend your taste, but that is nothing in comparison with the enormous amount thrown away every night. We—I say "we" because I regard myself as an average journalist with average views on this matter—we go on the basis of making the paper as interesting as possible, but only on condition that we do not offend the public morals and taste. I have

thrown away many an excellent thing because there is some little flaw in it, something which might offend the public, which has led to its doom, whereas another paper would have given it. We generally find the journalist act on that principle, to give as interesting a paper as he can without offending the public taste.

37,643. Your view, I take it, is that the reason it pays to report any case, divorce, libel or ejectment, is that there is a story with human interest in it which the public will read?—Yes.

37,644. That element would be lost if you only published the names of the parties and the result?—You have put it most excellently.

37,645. (*Judge Tindal Atkinson.*) Following up that, of course there are many interests which all classes have in common, with the particular details of particular cases?—Yes.

37,646. Lord Guthrie put to you a question that as there are several undefended cases not reported it may be that the reports do not have any deterrent effect, but may I suggest to you that people do not know what cases are going to be reported, and they do not know whether that particular case will be reported or not?—That is so, but their legal advisers know that an undefended case runs very small risk of being reported, and it is conceivable that the Solicitor or Counsel may advise his client not to defend the case knowing that not defending the action will probably result in non-appearance of the case in print.

37,647. Do you agree with the last two witnesses that the non-publication of reports in the Divorce Court may lead to many divorces by arrangement if the parties can carry them through in private?—I have no doubt at all about that.

37,648. You said if you suppressed the publication of the divorce cases, the reports might be taken over the water and sent back again in the shape of publication here?—Yes.

37,649. The Chairman suggested there would be a difficulty in doing that because the newspapers that published it might be liable for contempt of court; but supposing that the paper was published in Paris and simply sent over here for distribution in that way, they might evade the law which prohibited the publication?—Speaking as a journalist, I should not say that was an evasion of the law. I was rather thinking if you succeed by that method in preventing the publication of news, it would be a much more cumbrous method than the present method. As a matter of fact it does not prevent the publication of such news. Take the case the reverse way round. In Paris some years ago, there was a divorce in which an Irish lady and gentleman were concerned. I do not think I need mention names. It was of some interest to both French and English readers. In France, as the Commissioners are well aware, especially since the information read out this morning, the publication of divorce reports is forbidden, but not only did the details of that case become known, but they were published over here in the English Press, in spite of the ban which the French law puts on the publication of reports, and to my knowledge papers containing this information were sent back to France.

37,650. (*Chairman.*) I suppose there was no law in France to stop them being sent back?—But there is a law to stop publication altogether.

37,651. That is publication in France.

37,652. (*Judge Tindal Atkinson.*) Publication and selling are two different things. You might have a paper published and printed in France and sent over to the newsagent here and sold?—That is so.

37,653. I rather gather that is what you meant in your proof. The reports could be got here in that way.

(*Chairman.*) There is nothing to stop you selling it here at present, but there might be something to stop publication, or to stop posting. It is all a question of form.

37,654. (*Judge Tindal Atkinson.*) Is this question of suppressing the publication of divorce cases only part of a very much larger question? If you suppress the divorce proceedings, must you not suppress penny novelettes which may do as much mischief as any publication of divorce cases?—That is a very interesting question. I should like to answer it, but I have no personal knowledge or right to speak about the effects of the penny novelette. I could speak with some knowledge of the effects of newspapers, but I am afraid it would take me beyond my range.

37,655. It would involve the question of suppressing reports in every Court in which there may be cases the reports of which may lead people into mischief by perusing the reports?—That is so. One of the points I endeavoured to make in my evidence was that it would be most unfair to shut one little branch of the Courts in the country, and say because some objectionable reports emanate from this Court therefore this particular Court should be shut up, allowing the huge percentage of Police Courts, Quarter Sessions, Assizes, the Central Criminal Court and others, to be open to the Press in the ordinary way, in which there are details as nauseous and more in quantity to be found than in the Divorce Court.

37,656. You think the question should be considered as a whole, and not piecemeal merely by dealing with the divorce law?—That is so.

37,657. (*Mr. Brierley.*) Why should it be considered unjust to close one particular class of Court if that particular class of Court is found to be the one which does most harm?—I am not prepared to admit it does most harm.

37,658. Supposing it was thought that there was a very much larger amount of publication of proceedings in that Court than any other which did harm, why should it be unjust to attack that particular class of publication?—It would be singling out one class of offender from all the others, and making an invidious distinction.

37,659. The public benefit would be a real matter to be considered. Is not this the important question: supposing you closed the newspapers to the publication of details of any divorce cases, do you think it would lead to the publication of more cases of the other kind you mention?—I am afraid it would have that tendency.

37,660. You would fear that result would follow?—Yes.

37,661. These papers would devote more of their space to the publication of other unpleasant cases?—I am afraid that would be the result.

37,662. (*Chairman.*) With regard to your suggestion that it singles out one set of people, you are aware that is done in several kinds of cases at present?—They are very exceptional cases. You are alluding to nullity suits and incest cases?

37,663. They are not so exceptional we have heard from one of the witnesses lately, nor are nullity cases either. On what principle do you gather that they are excluded from the public?—I do not know what principle those who exclude them had in mind, but the principle that occurs to my mind is that there cannot be any possible public interest in a nullity case.

37,664. Why not, just as much as in a divorce case?—I should have imagined such a case would be very exceptional if it had any public interest whatever.

37,665. (*Chairman.*) It may be divorce cases have no public interest. I ought to thank you very much indeed for your evidence, which has evidently been fully thought out, and I am much obliged to you for attending?—It has been a great pleasure to me.

Mr. CHARLES MOBERLY BELL called and examined.

37,666. (*Chairman.*) You are managing director of "The Times"?—Yes.

37,667. Just to get it on the notes, how long have you had journalistic experience?—Forty-five years.

37,668. You begin your proof by saying that the question as to the advisability of restrictions on the publication of proceedings in the Divorce Court presents itself to you in two aspects, first, with regard to the interests of "The Times" alone without regard to the interests of the public, and secondly with regard to the

interests of the public without regard to the interests of "The Times"?—Yes.

37,669. Will you elaborate that in your own way, or would you prefer to read it from your proof?—I do not know that I can state it more clearly than it is put here. I should like to say I think that the interests of the public ought clearly, in a case of this sort, to come before the interests of a private individual or a newspaper. So far as our interests are concerned, I have no hesitation in saying that if the publication of all reports of divorce proceedings and of many others of a similar unsavoury nature could be absolutely prohibited by legislation, "The Times," and I think every other respectable paper, would welcome it. This is not on the ground of expense, which is immaterial, but because while we dislike being the intermediary by which such details are published, we cannot, so long as it is permitted, altogether neglect reports which are of legal and public interest. That is the view if you look at "The Times" interest alone. I would go further—I happened to be driving home with the editor last night—he had read my memorandum—and he said he agreed with it on the one side and on the other—and he expressed it more strongly. He said "There is "nothing I should welcome more than to be forbidden "to print anything, but it must be universal."

37,670. Will you give us the ground upon which you and he think you would like it to be forbidden, if it was universal?—Mainly on the ground that it would give us more space. The great difficulty we have every day is to get the news into the paper, and we should be delighted if any one thing could be ruled out.

37,671. That is what you call the purely selfish aspect of the paper?—Yes. And also we do not like the responsibility of saying, "This is a matter of such "public importance that, although it is disagreeable "to report, we think we ought to report it," or, on the other hand, the responsibility of cutting out a thing when there may be something to be said in favour of reporting it. We should relieve ourselves of responsibility and give ourselves a great increase of space which we are always crying for.

37,672. Then will you deal with it from the other point of view, that is, the public point of view?—On the other side we feel this. The editor said it was his own view that the deterrent effect of publication was enormous. Twenty years ago when I first came to London as manager, hardly a day passed when the Courts were sitting that we were not pestered to keep things out, not always divorce cases, but mainly divorce, and we adopted the rule, about the year 1891, that if anyone applied to us or to our reporters to keep things out of the paper, then we would report it whether it was worth reporting or not, and the result of that is, it has been rather checked. But even now scarcely a week passes without our being directly or indirectly asked to keep a thing out. On one occasion, a very painful one, about 18 years ago, I believe it was solely owing to our refusing to guarantee, which we could not guarantee, that it would not appear in the Press, a case was stopped altogether.

37,673. That leads me to ask you this, whether when you speak of publication being deterrent you are speaking of it as being deterrent to the commission of the wrong or a deterrent to its being published afterwards, because this deterrent effect has not stopped divorce cases?—In that particular case it was not; the evil had been done, and it was the publicity that was not desired.

37,674. Is not that what is meant by most people when they speak of it as a deterrent?—I think not. Any person who went through the Parnell divorce case—I take that case because it was so notorious, and as the man is dead it will do no harm—would for some years be very careful that he did not put himself in the same position.

37,675. No man in his position who did such an act should fail to realise if it came out that it would be published throughout the world, but yet he was not deterred?—You must not say that because it did not deter one man it has no deterrent effect. In a large number of cases it must have a deterrent effect.

37,676. But possibly not in others?—No. The penalty of death does not deter Crippens, but it is a deterrent to many people against murder, and I believe the other is.

37,677. Except that you cannot commit a murder without it being necessarily published. It must be published afterwards. Adultery, as a rule, is not published?—I am speaking of the penalty of death as a deterrent in the same way as ridicule and contempt are deterrents in divorce.

37,678. If they think they are likely to run any risk of it coming out?—One has that risk before one always.

37,679. Assume there is some deterrent, on the other side, is not there a great public evil in scattering round the country the continued reporting of divorce cases? We have had a lot of evidence about that, and I should like to have your opinion upon it?—It is perfectly true, but it is rather a difficult question to answer. As a rule no harm is done, I think, by the sort of report that we publish. I think you can have a report that acts as a deterrent and does not act as a provocative. On the other hand, you can have reports that act more as a provocative than as a deterrent.

37,680. You said "we publish." Do you apply that to publications all over the country?—I am speaking of "The Times." I cannot speak for anyone else. I have seen reports in English papers which I think are very deplorable.

37,681. We have had some very strong evidence about it. For instance, I might recall at the moment one witness who was representative of 98 places. The witness was one of the chief constables who collected opinions as to the shocking effect on young people who read these cases. I want to know whether you think the public evil is outweighed by the more private point of a deterrent?—I should say the effect of reporting a murder case is infinitely greater and worse than reporting a divorce case. It is a known and admitted fact that publication of the details of a murder case has a very evil effect on small boys.

37,682. There is a tendency to follow the example?—Yes. There was a case the other day of a poor child who was strangled by another school boy pretending he was Crippen. That was a case that was in the paper the other day. If you can stop the publicity of all trials—if the public would allow that—there might be something for it. I think that a murder case does more harm than a divorce case.

37,683. The number of murder cases must be infinitesimal in proportion to the number of divorce cases?—Not only murder; there are other crimes.

37,684. That argument does lead one to follow out the idea that the publicity of divorce cases would have an effect in the same way?—I think to a certain extent it is true, and if there was no alternative between the horrible publication of divorce cases, which occurs sometimes in a very few papers, and absolute suppression, there might be a great deal to be said for absolute suppression. I do not see there is any need so long as you can control, as I believe you may, the methods of reporting.

37,685. That leads me to pass to the next paragraph of your proof, which deals with the suggestion of more effective control?—"A censorship on independent reports furnished to newspapers is impracticable. Conditions of time would not allow of its being performed before publication, and after it was published it would be useless. Moreover, it is open to to all the objections that have been brought against censorship of plays. But it would be possible for the Divorce Court to exercise an indirect, but I think effective, control over reports if the publication of any such report were forbidden unless signed by one of a corps of reporters licensed by the Divorce Court to report. Our own reports are all by barristers, and it would be advisable that the majority if not all of such reporters should be barristers, but exceptions might be made in favour of journalists of known repute. The Judges of the Divorce Court would have power to revoke the licence and the threat would tend to secure the propriety of the reports." I remember suggesting this to your predecessor, and he said he thought if anything were

necessary that it was a good thing, but he was strongly of opinion that there was no necessity for any alteration.

37,686. Will you just finish the proof?—Yes. "This suggestion applies to the existing practice whereby these proceedings are limited to one court. If jurisdiction in divorce cases were given to County Court or other Judges the question of reports would of course become more difficult, and from this point of view—upon which alone I am called to express an opinion—would be very unfortunate. The papers published in large towns have a surplus of matter to publish, and divorce proceedings only are reported by respectable papers when their importance or interest justifies their claim on the small space at the disposal of the editor. But in some country towns there are papers which devote themselves mainly to local matters, and which must sometimes find it difficult to fill their columns. The report of proceedings in a divorce court concerning people in the neighbourhood would be a dangerous temptation, and I fear that such cases would be far more fully reported in the country than at present in London."

37,687. (*Mr. Spender.*) Your practical suggestion would transfer the responsibility from the editor to the Court?—Not entirely. The editor would always keep his responsibility in regard to the paper. The Court might even sanction the thing and say: "We have no "objection to it being published," and the editor might say, "I have no space for it," or "I do not think it of sufficient importance." The only check would be that you would have a certain body of men over whom the Judge of the Court would have a certain amount of control. If they found a man reporting a case too fully they would send for him and say to him: "Take care "or you will get your licence revoked."

37,688. A previous witness suggested one official reporter to serve all the papers. Would that appeal to you?—No.

37,689. You believe in a variety of reports?—You get a more certain impartiality if you have a variety of reports.

37,690. No one would say that the reporter was being controlled by the parties or by the Court?—Precisely.

37,691. That would not meet that case which has been frequently suggested to us as one of the difficulties, There would be no equality between the various newspapers. The competition between some papers wanting to give a longer report than others would go on?—It might go on, but there is no objection to the length of the report as long as it is inoffensive. Except in a very exceptional case like the Parnell case, or where a public man is concerned, we deal with it almost solely from the point of view of whether it is one of legal interest.

37,692. Frequently it has been suggested to us by witnesses that all the evidence you can give of a divorce case has a certain impropriety without being indecent, and that the cumulative effect of many columns of this added together in the weekly papers, which are alleged to be the worst offenders, has that result whether it is censored or not?—I agree.

37,693. So long as you have what the reporters call a story which you can give, or the materials for a story, this cumulative mass of reports will still go on, and that is alleged to be a great evil?—I see that and I think it is true, but if you had barristers as reporters, and you found a paper reporting week after week full details of divorce proceedings, you would send for that man and say to him, "You must not give this at that full length, "it is not a matter of sufficient importance"; the man would be amenable and would not do it.

37,694. When you say "you," whom do you mean?—The Judge.

37,695. You put it into the hands of the Judge?—I would leave it in the hands of the Judge or anyone else to call attention to it. I do not say that he should act from his own motive, but anyone who feels it is carried to too great an extent would report it to the Judge, and the Judge would send for the man and say to him, "You are giving details there is no necessity to give," and you would kill it in time.

37,696. Would you carry that a step further; in case of the newspaper resisting, would you provide any penalty?—Yes, I would provide some penalty for any paper that published a report which was not signed by a barrister. With a barrister you have a penalty if he disobeys the order of the Court, he will be summoned before his benchers.

37,697. You would be inclined to apply a penalty for continued excess of that kind?—Yes. A warning first, and after a time you would have to increase the penalty so as to make it prohibitive.

37,698. You would have a warning first and a penalty for continued excess, which you think would enable you to deal with the paper that inflicted this on its readers as a public nuisance?—It would not be often enforced, because it would begin to tell against the paper. Once it was known persons would hesitate to buy it. They would want to buy it but would not like to; they would not think it respectable.

37,699. Would you be willing to carry it as far as to allow a public department, the Public Prosecutor possibly, or the Judge, to have the right of warning newspapers which were notorious offenders?—Certainly in a case of that sort.

37,700. And in case the warning was disregarded, would you allow the law of indecency to be so extended that they could be brought before a jury for it and compelled to answer for it?—I should say it could be met by a fine for contempt of court, but I am not sufficient of a lawyer to know how that is.

37,701. Do you not think it would be more satisfactory to journalists if there were ultimately a jury trial, so that the jury can decide, as it does in libel actions, what is or what is not of public interest?—No, I do not think a jury, as a rule, are the persons to decide a thing of that sort.

37,702. You would not object to procedure of that kind?—You would have further publicity on the whole subject. I should rely on a certain *esprit de corps* among reporters if you do licence reporters. Take war correspondents, you have the same thing when you have them licensed. They behave better than when you have them cadging about on their own. The reporter, at least, would want to try and get a reputation for respectability, and his reports would be clean.

37,703. We agreed just now that it would not meet the case of a great mass of these reports appearing together in these weekly papers, which are supposed to be the most notorious offenders. They are not obscene now, but they could get the story out of these reports as well as out of any other, and they would add them together. The point in regard to these weekly papers is this. I am not assuming anything about them except what is put in evidence. I am only suggesting if, in spite of these precautions, they used these reports to excess, and printed this quantity of highly corrupting matter, you would be willing to treat them as a nuisance—to be warned and prosecuted if necessary?—Yes, first of all you would get rid of those reporters who reported in that way, till that newspaper would find no one who would report for them.

37,704. May I suggest that privacy naturally follows, as in France, with a general disposition to condone the offence and treat it as a matter of no concern to anyone but the parties. The publicity of the Divorce Court in this country rather lends itself to the view that the public is a third party?—I do not see your point, I am afraid I did not follow what you said at the beginning of your question.

37,705. In France you have it commonly said it is nobody's business except that of the parties, and that goes with the view of matrimony?—Except that of the parties?

37,706. That it is merely a private concern of two people whether they are married or not married, or the marriage is dissolved. In this country we act on the principle that the public is a third party to a marriage; it is a public thing, and therefore publicity in the press, in a sense, follows on that view of marriage, and the closing of the courts would go with the other view of marriage?—I think we have the general idea that proceedings *in camera* are liable to be unjust to one party or the other. It is the desire to do everything *coram populo*.

37,707. (*The Archbishop of York.*) You said with regard to "The Times," that you and the editor would be willing that all these matters should be forbidden, but if so, this must be universal. I did not gather whether you meant by universal to cover all newspapers?—Yes.

37,708. That was your meaning?—Yes.

37,709. You did not mean in that sentence to use "universal" in the sense that it must cover all reports?—No, the more it will cover the better we shall be pleased. I meant by "universal" that it must be obligatory on all newspapers.

37,710. In spite of what you said, if I may say so with truth, about the evils resulting from other kinds of reports, you adhere to what you said at the beginning, that if publication could be forbidden all round, the newspapers, as respectable newspapers, would welcome it?—Yes, from our selfish point of view.

37,711. With regard to the point of the general public, you spoke of the effect on public morality of certain other kinds of reporting; but does it follow because other kinds of reporting do evil, that therefore it is useless to touch this particular kind of reporting?—Not at all. I am using it as an argument. When you say this particular kind of reporting does evil, therefore it must be suppressed, the same thing would logically lead you to prevent the reporting of a murder trial.

37,712. A man would prefer to have a complete sanitary system in his house, but if he could stop one drain, even if a good many others were left open, he would do it without waiting for the complete system?—Possibly, but if you tell that man. We are going to try and save your life by stopping one drain and we are not going to try and do the others ——

37,713. It does tend to the promotion of your health at least to have this drain stopped. It is worth doing it?—It may be.

37,714. Your remarks do not mean that it is useless to stop one source of public corruption because there are others still left open?—No, if there is no alternative between the reports that are published in some papers and absolute prohibition, I do not know that there is not a great deal to be said for absolute prohibition, but it seems useless to do it when there is an alternative.

37,715. Coming to the alternative, there is this point about it, and I should like to have your opinion upon it. The result would be, if you had these licensed reporters, that practically, if not always really, the reports that were published would have the sanction of the Judge?—No, not quite that. After they were published, if the Judge did not reprimand, or if nobody reprimanded the reporter, then they would tacitly be sanctioned.

37,716. In so far as licences were given by the Judge and were liable to be withheld by the Judge, whatever reporting took place in the Court would be necessarily regarded by the public as licensed reporting?—Not entirely so. A clergyman may be licensed by his bishop, but the bishop is not responsible for every act of the clergyman.

37,717. Fortunately not; but at the same time the tendency would be to look upon whatever was published under these circumstances as on the whole good?—As a decent report, but of course the man might err on the Friday, make an improper report, and he would be called up by the Judge on the Saturday.

37,718. I only ask you because I want your own opinion upon it. Is not that to be a very great additional responsibility on the Judge?—I do not think so. In fact, speaking subject to correction, I think if the President of the Divorce Court now saw in "The Times" a thing which he thought ought not to have been reported, he would tell us, at least I am certain someone would. I say that because I frequently discussed the subject with the late Lord St. Helier, and he told me that he once or twice had occasion to speak to a newspaper about a report. He said: "I have "always found them greatly amenable to any sugges- "tion," and that was his reason for opposing any legislation on the subject. He said, "I have found I "can manage the papers perfectly well and on the "whole they were very just."

37,719. Do you think Lord St. Helier had his attention called very much to the reports in the kind of newspapers which have been most in evidence before us?—I do not know. I am bound to say until the question arose I did not know myself, nor do I know now, except from hearsay, the fact that these reports are sometimes of a very objectionable character.

37,720. I have frequently bought these newspapers in which practically divorce and crime are the main items of information?—I have heard that is the case.

37,721. Do you think it is likely that newspapers of that kind will be as amenable as other newspapers?—I do not suppose they would have been to a private suggestion, but I think once you have licensed reporters, you would get over that, because you would find persons would not report for that paper or those papers.

37,722. You have said some reporters would acquire a reputation for respectability?—Yes.

37,723. But the evidence we have had rather suggested that respectability does not pay?—Precisely. That is true, but if you refuse to license those men who send that sort of report or withdraw a licence, a man would not be able to get employment anywhere else. He could no longer get employment in that way if he did that.

37,724. Do you not think that there would be temptation on the part of the newspapers run by powerful financial interests, knowing the great circulation that would be got for any journal that was a little more spicy than the others were, to run these risks?—I do not think so, because I think you could make the fine prohibitive for one thing, and for another thing I am certain of this. We will say there is a paper called anything you like, bought very largely now and to a great extent bought by the people who want it precisely for these spicy reports. If that paper gets that reputation, half its clientèle will go; half of the people who buy it do not buy it for that, the other half do.

37,725. If it is plain that week after week what is purveyed is precisely this stuff, that seems to indicate that is what the great majority of its clients want?—Probably a majority, possibly half or more than half, but there will always be a certain number of people who do not buy it for that purpose. I know of a paper which I have not the least idea ever went in for that sort of thing and I know people who take it, and I know that they do not take it for that reason. If a paper gets branded with the name of impropriety, it will lose its circulation.

37,726. Is it not often the case, one of the reasons persons hesitate to brand a particular novel or illustrated paper is, that the branding will give it an advertisement that is worth a great deal to the novel or illustrated paper?—You fail to make a distinction. It is true as regards novels, it is untrue as regards newspapers. A large sale for a novel is 10,000. You may, by proclaiming its indecency, perhaps secure it that sale from a certain prurient class. A newspaper appeals to a much larger public, and a reputation for indecency, while it might add some purchasers, would drive off others.

37,727. That is your opinion at all events. I will not press it further now. Believing that, do you contemplate licensed reporters publishing fairly full reports of the proceedings, even although having regard to their licence they avoid anything that can be called indecent or obscene?—I think I should.

37,728. Is not the difficulty this, not so much that anything indecent or obscene is published, because most respectable papers now keep them out, but that what is undesirable is the purveying in respectable households of an immense amount of sordid sexual detail?—Excuse me, I should call that precisely as you do, indecent and improper. The style of report I should allow would be the style of report you will find in any number of the "Times,"—I am sorry to have to say the "Times," but I cannot put it in any other way because they are reports I know. I think we have had

in the case of one or two cases probably three columns, and I should see no objection to other papers doing it.

37,729. I think if I may say so, very young persons are not likely to read the "Times"?—No, but I should not object to those three columns going into any paper, if they will report them.

37,730. Even so, speaking as I do with great respect to the "Times," I would suggest that a great many of the details that are published there are of the kind which are perpetually keeping the mind of the person who reads them upon the undesirable side of the sexual question, and if you have any reports that are at all full, that element is bound to come in. You do not object to that?—I am afraid that is a necessary evil and I see it. I think it is a lesser evil than the idea of doing away with them altogether.

37,731. To come to my last point, you think that the real value of the reports is the deterrent effect, and the deterrent effect is so powerful, that, for the sake of it, you are prepared to run the risk attending even a licensed system of reporting?—Yes, because I think the risks of a licensed system of reporting are extremely small, and I think the deterrent effect is extraordinary. I do not think anyone outside of a newspaper office can realise what the deterrent effect of divorce reports is.

37,732. Would you say there is a large number of persons who take the view I have heard expressed, that the only thing that matters is that nothing comes out?—Certainly; being found out is the danger and is what a great many fear. I do not say that it tends to make for morality, it does not, but it tends to prevent immorality very frequently.

37,733. (*Lord Guthrie.*) Your suggestion against the present system is in favour of having persons who would be subject to the Judge acting as reporters?—Yes. I do not want to lay much stress on "subject to the Judge." I think it would be sufficient if you had them all barristers, and I am certain that the Chairman would not say barristers were "subject to the Judge," but yet they are in the sense I mean. If you had them all barristers, you would be all right and there would be certain men of sufficient respectability who would be allowed to come in also.

37,734. Would that be good enough? You attach value to the deterrent effect?—Yes.

37,735. We are told out of 716 divorces last year that 554 were undefended. We are also told that undefended cases are scarcely ever reported?—Yes.

37,736. What becomes of the deterrent under the present system?—The deterrent acts upon the others.

37,737. Less than a quarter of the whole number?—You cannot speak of a report of a case acting as a deterrent on the parties to that case because the case is finished and over. It is the number of persons who have not come into the divorce court, who have been deterred.

37,738. Suppose you had a system under which people knew they would be reported if they came to the divorce court, would not that be a better plan from the point of view of a deterrent? All cases in Scotland defended or undefended are reported. From the point of view of a deterrent it is a better system, is it not?—Certainly it is an extended report.

37,739. Would it be in accordance with your view that cases that were not reported by the papers should be published in the interest of the State?—Yes, I do not see any harm in it. You mean that some official publication should publish those which are not reported by the public press.

37,740. Yes?—If you once do that, why should not the official publication publish them all and relieve us from it.

37,741. Supposing that is not done. All your cases are reported by barristers. Are their reports edited when they come into the office, or are they published as they come in?—They are edited.

37,742. By whom?—By the editor and his assistants, by one of three or four men.

37,743. Does it fall within your view to say that they are substantially edited?—Yes, certainly. You must remember we will perhaps get every night sufficient to fill 12 columns of law reports. We seldom publish more than six, consequently there is a process of selection in which there is a desire to cut down every one that we can, and if we can find an excuse for keeping it out saying, "Really this is a horribly trivial "case, it is only a case about a butcher and his wife" and so forth, we throw it out and are glad to because we always have that pressure for space.

37,744. May I take it you do that not only with a view to gaining space, but also from the moral point of view?—If they saw anything doubtful in that sense, they would take it to the editor.

37,745. Even though the barrister had reported it?—Yes.

37,746. You said except in a case like Mr. Parnell's, for instance, that of a well-known public man, that no cases were reported unless they had a legal interest. Roughly that was the principle?—Yes.

37,747. Is that so?—That is so, I think on the whole, except, of course, sometimes there may be given a case where there is a very strong human interest, or a case with regard to a person of great notoriety.

37,748. I notice in the Hilary sittings 1909 the "Times" had 32½ columns and in the Hilary sittings of 1910 they had only 10¾ columns, and we are told that was due to the fact that in one sittings the Stirling case in Scotland appeared and in the other sittings there was nothing similar. Into what category, of public interest, or of eminent persons, or of legal importance, do you bring the Stirling case?—I am afraid I do not remember it at all, it is Greek to me, I do not know what it was. I should be glad to give you any information I can afterwards upon inquiring into it.

37,749. It was the case of a Scotch lord and an American actress. That was no legitimate public interest whatever. There was no romance and no legal point arose in it?—I should like to put it to my reporters, I could not answer myself.

37,750. Does it not come to this, that there is another category?—What category would that be?

37,751. Of cases with no legitimate interest whatever, but concerning well-known persons, actresses, or officers, or gentry, or otherwise?—I said notorious persons.

37,752. Do you defend that?—Was this actress a notorious person?

37,753. Yes. Do you defend the practice of bringing cases of that kind under the public eye involving sexual matters, cases which are full of suggestive matter although not obscene, where there is no public character to be defended or condemned like the Parnell case, and where there is no legal point?—I should not like to answer that question without reading the case and knowing something about it, because I have frequently turned out a thing as having no legal interest and have been spoken to in strong language by my reporters afterwards, saying, that I did not know what legal interest was, and I was wrong and they were right. Can you tell me the date of the Stirling case?

37,754. Hilary sittings, 1909?

(*Lady Frances Balfour.*) It is reported in the "Times" of February 13th, 1909.

37,755. (*Lord Guthrie.*) It went on for 15 days, and you will find it reported. You might also inquire whether the "Times" did not send a special reporter to Edinburgh the whole time. I do not expect you would know that?—I think I can answer that at once; we did not.

37,756. Subject to ascertaining about it?—I will find out. What was the name of the case?

37,757. Stirling *v.* Stirling?—They were counter cases, husband against wife, and wife against husband.

37,758. (*Lady Frances Balfour.*) We have had witnesses this morning who draw a distinction between respectable papers and those that were not. I suppose you would put the "Times" amongst the respectable papers?—I think so.

37,759. Perhaps you would put it higher than respectable, and you would say that it was a leading journal?—Yes, I would even go so far as that.

37,760. Supposing the "Times" led the way by dropping the reporting of divorce cases, would it drop in circulation largely?—No, not largely.

37,761. We have been favoured with a large numbe of extracts from the "Times," of things which are not

altogether pleasant reading, from the Divorce Court reports over a great number of years. Those are inserted, I suppose, because a certain number of persons like the indecent details which even the "Times" gives?—I do not think we give indecent details, at least I should like to see them first.

37,762. I think we have all noticed things bordering on that in any account of divorce cases?—It is very difficult to draw a line. Some persons would call a thing indecent and some would not. You might, of course, say that of any case; you might say it of the recent case of Crippen because Crippen and Miss Le Neve were not married and lived together. Is that a thing to be slurred over?

37,763. That hardly comes under the head of indecent?—I do not know. I know persons who would consider that indecent, the mere mention of the fact that they lived together, I cannot say until I have the cases before me of the alleged indecencies, what reason there was for publishing them. I am certain there was a reason.

37,764. That is a statement of fact, not a detail about the results of the fact?—Can you give me the reference to the papers which contain these cases?

37,765. The papers or "The Times"?—"The Times" I mean.

37,766. You referred to "The Times" a little while ago that reported perfectly properly everything?—Can you tell me instances? If you will give me a note I will have them looked up, and I will tell you something about them.

37,767. Of course any detailed account must be indecent?—May I have the dates of the improper reports in "The Times," because this is a statement which will probably be published? There are reporters present. You said that "The Times" has published indecent reports, and I want to know what they are.

37,768. There are certain passages in every report of a divorce case which might come under that head?—I deny that altogether. Have you a copy of the paper of to-day? I will show you a case there.

37,769. (*Chairman.*) May I say that someone has sent us, as a great many people send, all sorts of things, and amongst them, I understand, there are some extracts from "The Times," which they comment upon. Perhaps you would like to see them. I do not want to call special attention to them?—I should like to see them.

37,770. I will give them to you, and you can see if they are correct.

37,771. (*Lady Frances Balfour.*) They are put together over a great number of years, and give a stronger impression than if taken separately?—Of course they came out at different times. We had as reporter at the Divorce Court for a great number of years a gentleman who is well-known to Lord Gorell, a certain Mr. Murphy, and Mr. Murphy was so very particular that he would not use either the words adultery or seduction, but called everything misconduct. He had that one word misconduct, which went through and through and covered every sort of wrong.

37,772. I did not want to press this, it was simply upon the point of reporting these subjects in detail?—I do not think we do report them in detail. That is where I differ from you.

37,773. There are certain details reported. We can read them in any paper?—Sometimes a question of detail is necessary on one particular point.

37,774. My question was whether, if "The Times" led the way by dropping these reports of detail, it would lose its circulation?—No, I do not think it would lose anything in circulation.

37,775. (*Chairman.*) Will you look at these extracts afterwards and see if they are correct?—I cannot say whether they are correct from this. May I take these away?

(*Chairman.*) Will you ask one of your staff to see if they are correct. They are simply sent to us like many other things. I do not know what it is because I have not studied it.

37,776. (*Mrs. Tennant.*) You suggested that if an offence were committed by the holder of a licence either a fine might be imposed or the licence withdrawn?—Yes.

37,777. Would you have any objection to making both the imposition of a fine and the withdrawal of the licence run together?—No, I should leave the punishment in the hands of the Court. A man should be warned. In any such new process it would take some time for the reporters to get accustomed to what the Court did and did not permit, and there should be leniency during the first few months, but a man warned once or twice should be dealt with severely, fined perhaps the first time, and then his licence withdrawn altogether.

37,778. I ask that question in pursuance of some questions which have been put, as to whether it is possible for a certain class of papers to have a fine that would be prohibitive. They depend very much on a circulation helped by that class of information. It would depend on the consequent advertisement they received, would it not?—Really, it would be very hard to fix a sum which would not help them, because in a sense the larger the sum the larger would be the advertisement. I think not. I think that can be met.

37,779. By withdrawing the license?—Yes.

37,780. I am pressing it because we have heard this morning that newspaper proprietors are urged by agents to develop that line of news; and provincial papers complain that London weekly papers push their papers out, because the London weekly papers publish this information?—I think it would prove to be efficient having only a system of licensed reporters, but if it did not prove efficient, I think then you have a remedy against the papers that absolutely resist what would be a reasonable provision.

37,781. At any rate you think it would be fair, after a warning, to withdraw the license?—Altogether, and you would have one means which would prove very efficacious, to refuse to allow a paper to publish reports. You would not only withdraw a license from the reporter, but from the paper publishing it.

37,782. (*Judge Tindal Atkinson.*) You agree that the publication of divorce cases is a deterrent against immorality itself in some cases?—It is a disagreeable question to discuss, but I think that any man or woman is liable to think, "Well, there are very serious "consequences that must follow on this; over and "above the ordinary serious consequences there is "another one, and that is publicity." Then there is the effect on the children. In the case I mentioned I had a lady in my office begging and praying and weeping, saying that she wanted to bring a divorce case and asking if it could not be kept out of the paper. I said, "No," and she said that she would rather sacrifice her life than allow the children to know.

37,783. That may influence a large class of people who would be ruined if co-respondents?—I think it would more frequently influence the woman, but it would influence the man also. The man probably has himself a wife.

37,784. You have a passage here about the difficulty of licensed reporters if jurisdiction were given to the county court?—I think there would be a great difficulty.

37,785. I suppose you could leave that in the hands of the county court judge?—Yes.

37,786. Because they must know, I daresay you will admit, the class of reporters they have in the different courts and those that they can trust, Why should there be any difficulty in a county court judge knowing his reporters and being able to licence men in whom he had confidence?—I do not know much about the Press in the provinces, but I imagine that there are not many reporters. I am speaking of very small towns. I should think it might be very much more difficult to work; I do not say that it would be impossible, You cannot, for instance, say that reporters must be barristers as you could here.

37,787. I will give you my experience as a county court judge. A great number of the reporters that come to the smaller towns, come from the larger ones, but not a great distance off; and the reporters in the larger towns are perfectly respectable and would be well under the control of the judge if he was to license

them. If that could be done, that gets rid of your difficulty?—That gets rid of my difficulty, certainly.

37,788. (*The Archbishop of York.*) There is one question I omitted to ask you upon the question his Honour has just been raising. Would there not be this difficulty in this system of licensed reporters? Supposing that the number of courts were greatly increased and divorce courts established in the provinces, the reporters might be competent reporters, but would there not be a danger of different standards as to what it was permissible for the public to read, according to the views of the different judges?—That is true.

37,789. And that therefore the newspapers in one part of the country might have a license allowed to them which a newspaper in another part of the country might not?—I agree. The more you increase the number of persons who have the settlement as to what is or what is not permissible, the more difficulty must occur.

37,790. Your suggestion of licensed reporting would be much more difficult in the case of a large number of courts?—Undoubtedly.

37,791. (*Judge Tindal Atkinson.*) Upon that may I ask this. Do you not suppose that the county court judges are fitted to be entrusted with the question of what is indecent and improper?—I have only the honour of knowing a few. With regard to those I do know, I should certainly think they were; but, then every man's opinion of what is proper or improper differs, and what his Grace says is perfectly true that you might in York have one opinion and you might in Warwick have a totally different opinion as to what was proper or improper. You would have a different sort of legislation.

37,792. As a rule are not you safe in leaving these questions in the hands of persons in the position of High Court or County Court judges? The same difficulty would occur if you gave the jurisdiction to assizes, and you had eight or nine judges travelling round from the High Court. They would all have different standards?—It only amounts to this, that the more persons who have to decide on a very difficult question, the more difficulties are likely to occur between the interpretations that one and the other are likely to give. If you can limit it to one autocrat at the head of the Divorce Court, it would be better than if you had fifty people all over the country. That does not say that the whole fifty were not equally as capable as the one, but an autocrat is better than a divided rule.

37,793. Supposing it became necessary in the interest of the public to establish local courts to bring divorce within reach of the poorer classes of the public, do you suppose it would be advisable not to allow the cases to be published in the local courts: that is to say, the cases could be only published when tried in London?—You could not make a distinction of that sort.

37,794. (*Chairman.*) You rather suggest that the licensing authority would be the President of the Divorce Court?—Or an official delegated.

37,795. Would not that involve this, if there are a number of licensed reporters, that whoever had the licensing would have to look over the reports to see how they were going on, from time to time?—I think not.

37,796. You instanced a case heard on a Friday and the Judge would have to look at it the same day so that it could appear on the Saturday, but no judge could do it?—No, I mean this. The cases would be reported and if anybody complained to the President of the Divorce Court of such a paper or such a reporter, he would give the name of the reporter say Mr. So. and So., barrister, reported in the "Sphinx" the case of Jones *v.* Smith, with an amount of indecent detail which we think was unnecessary. The President would have the report looked at, or whoever looks at it, and would say, "I think this is rubbish," and would put it aside; or he would say, "I think that man is right. Send for the man who reported it," and he would say to him, "There is that thing, take care it does not happen again, I rather agree with it."

37,797. Do you think it advisable to trust the bench with this discretionary jurisdiction?—I think it is the discretion the judge exercises over all barristers at present. If anybody brought to your notice any impropriety on the part of a barrister practising in your court, you would deal with it?

37,798. That would go to his own tribunal, the Inns of Court. The judge would deal with nothing except what happened in front of him?—I meant that.

37,799. Then he stops it at once. *Ex post facto* matters are dealt with by the Benchers of the Inn?—The Benchers of the Inn might be well used. Once you have barristers there is no necessity for a license. The license would only come in for the people who are not barristers.

37,800. May I suggest a difficulty. If you had courts in different parts of the country, would it not be difficult to find a barrister who would be willing to take such small cases in the country. It is quite intelligible in the town court?—That gets over the difficulty I think suggested by the judge. If you made a rule that it should only be reported by barristers, the result would be that the county court cases would not be reported.

37,801. I am afraid I suggest the question from practical experience. It would be difficult for a judge to supervise reports?—I do not mean supervise any more than he supervises barristers.

37,802. How would it affect the news agencies; one man writes many reports?—They would be in the same position. Instead of employing a man who is not a barrister, they would have to employ a barrister or a person who, after a long experience, might be licensed by the Court.

37,803. I want to ask you one question with regard to what Mr. Spender was putting about the law of France. Were you here when I went through the list of laws in other countries?—I was here a part of the time this morning.

37,804. In this part of legal work in foreign countries there exists absolute prohibition. There is power to hear *in camera* and there is absolute power in the judge to close the court or prevent publication. It looks to me as if England was not up to those other countries and was rather making a fetish of publication, which is not made in other countries?—In England generally we have a great deal more publicity than on the Continent, and, on the whole, I think it is for good.

37,805. Every civilised country seems to be drifting in the direction of the exclusion of divorce reports?—Is it not rather the other way?

37,806. All this legislation is fairly recent on the Continent, certainly in Germany; and I think France, Switzerland, Norway and Sweden have all moved in that direction within recent times, although I have not the exact dates?—I should have thought that the old system was that the courts were like Star Chambers with no publicity, and that gradually the publicity has been growing and had grown more in England than elsewhere; but, of course, if you say by recent legislation they have closed the courts, that is a different thing.

37,807. It strikes me as remarkable that all the world seems moving in that direction in this particular class of case, and other indecent forms which have been mentioned, bastardy, and so on?—On the whole is morality better in those countries than in ours?

37,808. That is too large a question to ask you?—What is the rule in South America?

37,809. I think they have not divorce there, but still they have separation only. At any rate we have not got them. With regard to the case of the lady you mentioned as an illustration, I want to ask you about it. I gather she was a petitioner?—I really forget whether she was petitioner or respondent, but I came to the conclusion that it was a case of six to one and half a dozen to the other.

37,810. She was wishing to make a claim, I gather, but was daunted by publicity even against bringing it?—Yes.

37,811. Do you think that prevails to a certain extent, because we have had it said that publicity, although it may act as a deterrent on the wrong-doer,

has also a great deterrent effect on the person, who is innocent, bringing his or her case, because of the unpleasant time they have in court, especially in the case of a woman?—I agree it would be a deterrent in that way also.

37,812. Do you think it would be right to give a judge the power to close a court if he thought a witness was hampered in the giving of evidence?—Yes, I suppose so. It must be left very much to the discretion of a judge.

37,813. At any rate it is an open question whether that could be done. Lord St. Helier thought it could. Assuming it cannot, it seems that the administration of justice should be assisted by the power to close the court in such cases?—Yes.

37,814. You would not be opposed to that?—No. If you closed your courts altogether against the Press I should be delighted, personally.

37,815. Speaking from my own experience, I am satisfied that there are many cases where not only was it difficult for witnesses to give evidence, but difficult for counsel to put the questions because of the presence of the Press and the public. Cases like those would come under the principle I have suggested. I ought to thank you very much for your evidence and for your attendance, especially as you are such a busy person?—It is a busy day with me.

37,816. (*Chairman.*) We are not responsible for those extracts, but if you would like to look through them and send word whether they are correct we should like to know. I do not want them to be published at all?—I will do so.

Adjourned.

Winchester House, St. James's Square, London, S.W.

FORTY-THIRD DAY.

Wednesday, 16th, November 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace the LORD ARCHBISHOP OF YORK.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
The Hon. LORD GUTHRIE.
Sir WILLIAM ANSON, Bt., M.P.
Sir FREDERICK TREVES, Bart., G.C.V.O., C.B., LL.D., F.R.C.S.
Sir LEWIS DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).
J. E. G. DE MONTMORENCY, Esq. (*Assistant Secretary*)

Mr. HOWELL ARTHUR GWYNNE called and examined.

37,817. (*Chairman.*) You are the Editor of the "Standard" newspaper?—Yes.

37,818. I daresay, to-day, you are under pressure, and would be glad to get away?—Yes.

37,819. You have prepared a short memorandum on the question of publication of divorce proceedings in the Press. In order to facilitate matters, I think I had better ask you to read it?—In offering evidence on the subject of the publication of divorce proceedings in the public Press, I would ask the Commission to make a note of a sentiment which I think is shared by the greater number of journalists, that they do not approve of legislation in matters which concern the conduct of their paper. I think the Commission will find, on inquiry, that there is a strong feeling throughout the Press that those who conduct the newspapers rather resent outside interference, and, if I may be allowed to say so, this resentment is not altogether without a good foundation. With those people who would like to see the Press clear of anything which might offend the *jeune fille*, or which might be subversive of good morals, I have, as I am sure my colleagues have, the greatest sympathy; but, when it comes to legislation on the subject, I think the difficulties are so enormous as to render it almost impossible. I would point out that divorce proceedings are not the only thing in a newspaper which might give offence to the moral susceptibilities of the public. There are also the police reports, some of which are infinitely more sordid than a great number of divorce cases. Nearly every day in the police courts of the kingdom cases of rape, abduction, and such-like offences are dealt with, which are more filthy than the great majority of divorce cases. Legislation, therefore, if it is to have any effect, must include all these categories of crime. To deal with a portion only would be a mistake.

37,820. Would that be sound, because there are certain classes of cases which are absolutely excluded at present under recent legislation. There are the incest cases, and in the Divorce Court there are already the nullity cases. I do not see that there is any principle which necessarily excludes a certain class of case, which in a strict sense is private between the parties and in which there is no public interest?—Surely there are cases of abduction, abortion, and rape?

37,821. Does it justify the publishing of one because others are published? It does not necessarily. It might be a good thing to exclude them all?—Yes. I understood this Commission only had to do with the publication of divorce proceedings.

37,822. That is true, but the fact that other things are published which are objectionable does not necessarily lead to the conclusion that you might not make an exception of one?—It is within the purview of the Commission then to recommend the other.

37,823. No, it does not logically follow because certain things—I assume that for the moment—are published that therefore you should not touch any one?—I see your point.

37,824. Incest cases lately by statute are specially exempted from publication, so are the children's cases, and the cases for nullity, therefore the principle of absolute right of publication is gone?—You advocate that the prevention of a portion is better than nothing at all,

37,825. It does not follow that you must include all these categories of crime if you are dealing with one specific subject?—I will put it in another way. If legislation is going to be effective, I am afraid if you exclude one portion such as divorce you rather drive those papers that go in for cases of this kind to the police court, if I may say so.

37,826. Not necessarily, because it might be provided by legislation that offensive cases should be heard with closed doors. I do not know whether you have looked through the evidence—it would practically give a discretion to close the doors in some cases, you might almost say those cases which are of a sexually offensive character. Legislation, to have any effect, must include those, you think?—I am afraid it would make things worse unless it includes those things, because it will drive those papers to worse cases.

37,827. Do you see any objection to the court closing the doors in any case of offence of a sexual character?—Not at all.

37,828. Perhaps you will proceed with your proof?—I have spoken of the difficulty of legislation because I think I may say without fear of contradiction that the great majority of editors are quite as alive to the evil of unrestricted publication of sordid and filthy cases as anybody else, but we have to remember that we are purveyors of news and that we owe a duty to the public to give as complete a picture as we can of the day's doings. If we were compelled by law to omit certain portions of this news, it is possible that the effect might be to relieve editors of a sense of responsibility which they now feel most keenly, and I am not sure that this would be a good thing for the English Press as a whole, for I think that the high standard which it has attained is due to the great sense of responsibility which has animated journalists in the conduct of their newspaper. The second phase that has to be considered is the fulfilment of the avowed purpose of a newspaper, which is to give the news of the day as correctly and as accurately and as quickly as possible, irrespective of the views and prejudices of those who are in charge of the Press; and I would here say that the majority of papers would soon lose circulation if they did not exercise a very severe censorship over those portions of their pages which deal with cases of the kind which the Commission is discussing. It may be true that a certain section of the Press panders to the taste for exciting and immoral news, but the vast majority are very particular as to what they admit into their columns. I have been at some pains to inquire among my colleagues and friends on the Press what rules govern their conduct in this matter, and I find that they are all practically unanimous in keeping out anything of a sordid and filthy nature. In my own particular case the instructions that are given in the office are to keep out everything which would be offensive in a paper which circulates throughout a family from the parents down to the *jeunes filles*. There is another aspect, however, which seems to me to be of no slight importance. Publicity of some sort is to my mind absolutely necessary if we are to achieve a deterrent effect on wrong-doers. How far this effect could be retained without full publicity I am not prepared to say. A suggestion which I have seen put forward, that papers should be restricted to the publication of the judge's summing up in divorce cases is worthy of consideration by the Commission.

37,829. Do you think that would meet most of the difficulties of the case?—Of divorce cases I think it would.

37,830. There is one thing I may suggest in looking through your paper. There are a great many outside interests to consider in these divorce cases, but I do not find any reference to the pain and misery which it may inflict on children of the marriage if they have their parents' detailed life dragged out in public. I do not think that has been mentioned in any of the papers we have had from the Press, if I recollect rightly. May I suggest there is a peculiarity in divorce cases in that class of interest. Possibly it may be the reason why many of the foreign codes give this power of exclusion?—As a rule it is true when they are of young age the children are kept in ignorance for some time. The papers would be kept away.

37,831. In many cases they are not quite so young as not to appreciate it. Statistics show that a large majority of divorce cases take place after a good many years of life together. Have you given that consideration at all?—I have not thought of that aspect of the case, and it is a very serious one, undoubtedly.

37,832. To what extent do you think it is in the public interest that the private life of people in these cases should be handed out to the public?—It is a somewhat difficult question to answer. There is this deterrent aspect, which is a very important one. If you are not going to report divorce cases you lose that effect to a great extent.

37,833. Do you think it operates now?—I think so, certainly. Every editor is flooded every day with applications from people who expect to be involved in divorce cases, to keep it out of the papers.

37,834. I appreciate that, but that does not prevent the wrong; that is to keep it dark when committed?—You mean the wrong to the people whose lives are discussed in the courts.

37,835. No; I meant the immoral act has been committed before they come to the question of keeping things out of the paper?—I think it acts not as a deterrent on them, because the crime has been committed, but on others. I am sure it is a very strong deterrent. At the same time, I think the Commission should bear in mind that even this moderate attempt to direct by legislation what should and what should not go into a paper is likely to be resented by the Press. I am afraid that what I have said is open to the objection that if disease there be, I have not put forward a remedy. I fear that the remedy which I propose is one which is not easy of quick attainment, but must be gradually evolved. I am an optimist in this respect; that I believe the moral tone of the country is rising every day, for it is possible to point with some pride to the fact that there is no print that could be described as obscene or dirty which has any circulation in England. I remember a prominent French statesman telling me once that he considered the miracle of modern life was the cleanliness of the English cheaper Press, which was established after the Education Act of 1870 to meet the growing demand for newspaper reading which was brought about as a result of this and similar Acts, and I am inclined to think that progress since then has been steady. It is, I think, on the lines of education that progress towards the elimination of obscene, filthy and suggestive matter in the Press will be best and more thoroughly attained.

37,836. Do you think that last paragraph as to progress meets the case of the immense development of Sunday literature we have had put before us, in which many columns are devoted not to an obscene or filthy description of these cases, but merely to the cases themselves which call attention to the sexual aspect of life? Do you think that paragraph quite meets that?—By "obscene and filthy" I meant publications that are simply published for the purpose of giving obscene and filthy sexual things.

37,837. I think you may take it the suggestion has not been made that what appears would come within those words, but the harping on the sexual side of life by repeated publication is a bad thing?—I think so, too.

37,838. Would you say in what respect there was progress?—Taking the Sunday papers as an example.

37,839. I am only using them as an example, because a large quantity appears in every paper?—What I had in my mind was this, after the Education Act we had papers like "Tit Bits," "Answers," and those weekly papers, with enormous circulations, and this M. Bourgeois told me that he read this literature and contrasted it with French literature of the same type; it was so clean he called it one of the miracles of modern life.

37,840. That is hardly on the point I am putting?—That is what I had in my mind when I wrote that paragraph.

37,841. (*Mr. Brierley.*) Supposing that restrictions were placed upon the reports of divorce proceedings, would you anticipate that there would be more reporting of these cases in the police courts that you have described as being more sordid?—I am afraid it would be like an india-rubber ball; where you squeeze it in on one side it goes out on the other.

37,842. That would not be so with a high-class paper?—I do not like to make a distinction between

higher-class journalism and lower-class journalism. It might be resented, and fairly resented.

37,843. I notice the report of a conference in which the Dean of Manchester said he had made an analysis of one of the Sunday papers, and there were 6 columns of murders, 12 columns of divorce cases profusely illustrated, 2 scandals, 2 matrimonial cases, one of crime and one a painful case. I do not know what the last two refer to. Supposing that those 12 columns of divorce cases were restricted or prohibited entirely, would you anticipate that their place would be filled with other unpleasant matter?—No. If you left divorce out I do not know how you could.

37,844. You would not replace those columns by reporting more filthy cases?—No; but it is a matter to take into consideration whether they might not be replaced by serials of a kind that would be almost as bad. Apparently a certain portion of the Press wish to meet this desire for the sordid and filthy.

37,845. You think they would provide the columns with something similar?—I should not like to say I think there is a possibility of it. I was making a remark about drawing a distinction between the high-class Press and the other Press. Speaking individually for the "Standard," this does not affect me. I have no objection.

37,846. As a matter of fact, I do not wish to be personal, but the number of columns devoted to divorce cases in the "Standard" and the "Evening Standard" during the last year and a half has been a rather considerable number?—I distinguish police cases which are perfectly clean, a man destitute, found with no bread and nothing to eat, and his wife and children starving; it is a good human story of which we use a tremendous lot, but we do not go out for divorce.

37,847. Whether you go out for it or not, the number of columns is rather large?—In the "Standard"? I have not worked it out myself.

37,848. We had it in evidence yesterday that during the sittings of 1909 and the first two sittings of 1910 the number of columns in the "Evening Standard" was 171?—It is a bigger paper than the others?

37,849. At any rate it is a large proportion?—May I suggest that is the wrong way to put it? It ought to be the proportion of the whole printed paper devoted to that, because one paper would have 12 or 14 pages, while the "Evening Standard" very often has 24 pages, so that you have to take the proportion. Where a case is let run, it is not for its intrinsic value, but because they have the space for it.

37,850. (*Sir Lewis Dibdin.*) The "Standard" gives considerable prominence to legal reports altogether?—Yes.

37,851. Any fair comparison with other papers as to the amount given to divorce ought to contain in it as a factor the amount given to law reports altogether?—Quite so.

37,852. It is a proportional matter rather than a specific abstract matter?—Yes. We give a lot of legal reports; we give about 3½ to 4 columns every day.

37,853. Do you give instructions to give special prominence to divorce cases?—No. On the contrary, if there is a divorce case which we as a newspaper have to give, my instructions are to keep it down to the lowest and keep out of it expressions likely to offend people.

37,854. In the statistics to which Mr. Brierley has referred, the amount of space given in different papers is measured by the column?—Yes.

37,855. The column varies a good deal in different newspapers?—Yes.

37,856. For instance, a column in the "Evening Standard" and a column in the "Globe" are of very different lengths?—Yes.

37,857. Therefore three columns in the "Evening Standard" is not really equal to three columns in the "Globe"?—I do not think so. The front page of the "Globe" has a broader column.

37,858. I give that as an illustration; but the columns in the different papers vary as to the amount of print they contain?—Yes. The right way is to see what proportion of the rest of their pages they give to divorce. The "Standard" is a 14-page paper, the "Evening Standard" 24; the "Globe" and the "Pall Mall" 16 and sometimes 12. Obviously, if they wanted to give at great length any particular subject, the right way to look at it is the proportion these cases bear to the rest of the paper. That column of statistics is not quite a good criterion.

37,859. (*Lady Frances Balfour.*) Do you mean in proportion as you decrease the reports of divorce cases so you increase the reports upon the revision of the Prayer Book, or some kindred subject? Do you try to balance it, because we have for the "Standard" in 1909 88 columns, and to the end of the Easter sittings in 1910, 114½ columns of divorce alone?—Yes.

37,860. Does that mean on each occasion you raise the proportion of what you report of other legal things?—The proportion we give of divorce cases? It all depends on the size of the paper. The paper varies in size from day to day.

37,861. In the number of pages?—Yes. To-day it it is a 12-page paper, to-morrow it might be 14. For other reasons, therefore, we would let the law reports run a little longer to fill up the space in that particular page.

37,862. If there were a startling divorce case, you would increase the size of the paper to report it?—No, unless it is something very extraordinary. We do not increase the size of the paper for any particular thing.

37,863. If it was a very extraordinary case you would increase the size?—No, I never have yet.

37,864. I understand you report all legal subjects rather fully?—Yes, very fully.

37,865. Is there any process of selection? Do you take proceedings in the Chancery Court before you take proceedings in the Divorce Court?—It all depends. If there is a big legal point we give that prominence. As a rule we take the courts—I am afraid I do not know the order of their importance—in the order of their importance. We would not take a divorce case at the top if the Court of Appeal was sitting dealing with a big legal point.

37,866. You would not take the interest of the subject first?—The legal status of the court.

37,867. What defines the position of the subject reported?—Supposing the Court of Appeal was sitting and there was a good divorce case too, the Court of Appeal would come first as being the highest court; after that the Divorce Court and the King's Bench Division. I do not know the order of precedence of the courts.

37,868. Would they be reported at equal length?—It all depends. If there is an intricate legal case we should give it pretty fully for our lawyer readers and solicitor readers, but if it were a case that did not attract legal attention, and not of general interest, we should give it and give the other things more prominence.

37,869. (*The Archbishop of York.*) You said in your evidence that you thought the newspapers as a whole would rather resent any interference with their conduct. Would it be legitimate to say that naturally the main interest of a newspaper which has to be conducted on commercial lines is to furnish within certain limits what the people want?—Yes.

37,870. I suppose the State may legitimately look at the thing from another point of view?—Quite.

37,871. If it seems the people want to appear a lot of what is not desirable, it should restrict the supply?—Yes.

37,872. Would you say there has been in your experience a considerable development in certain sections of the Press of the furnishing of a great deal of this matter to meet a very unhealthy appetite?—I am rather a bad witness in that respect, because I was out of England for about 14 years, up to seven years ago. When I came back I had not followed it—you are referring to the weekly Press, whether it is better within the last seven years when I have more or less studied it. I should say it is about the same. It looks as if there is rather a tendency to increase these reports.

37,873. Would you agree there has been a great increase in what one might call the fulness with which the material is fitted up and set out before the public,

in the way of headlines and descriptive articles, illustrations, and the like?—Yes, I gather it would be; but I am only competent to speak within the last seven years.

37,874. Has not the effect of that been to render it much more difficult than it was, the desire of the editors of the better class, if I may make a distinction, journals to keep up to their high standard of respectability?—Yes, I think so.

37,875. Would you go so far as to say that it becomes increasingly difficult, in face of this other class of newspaper, for the editors of the good newspapers to keep within the limits they would like to set themselves?—Honestly, I do not think it has affected them much, because it is quite a different class of reader. I may put it in this way. If I took a case just as it appears in some of the papers and put it in my paper, I should lose 10,000 circulation the next day. Obviously I should not do it, looking at it from that sordid point of view, but with regard to the other class of divorce, which interests the class of people who are involved, as a rule a man who has a divorce is a fairly rich man, we have to give anyway the result as a matter of news. Whether one likes to elaborate or not depends on the paper.

37,876. Do you think it would seriously affect the circulation of a paper like the "Standard" if hardly any details were given of divorce proceedings at all?—If it were universal, not a bit; but, of course, if we stopped altogether and other papers gave them, the people would buy the other papers.

37,877. Following that out, would it not seem to follow that if there are newspapers which are, as you say in your evidence, obviously pandering to this appetite, an increase of their circulation must inevitably affect the good newspapers in what they put in?—Yes.

37,878. With regard to what is reported in better-class newspapers, you would, of course, naturally strike out anything that was really filthy or obscene?—Yes.

37,879. You would not feel it right to strike out details which perhaps would scarcely come under these very strong adjectives?—My instruction to my chief sub-editor is to keep out anything which would offend a young girl.

37,880. Do you not think it is equally bad for the class we have in view, the young girl, to give her a long succession of sordid details all centering round sexual irregularities?—I am talking, of course, of the details. I keep out those details. You mean the fact of giving a divorce case which centres round an illicit love is bad?

37,881. Yes?—I suppose it is not the best thing in the world, and as far as I am concerned if it could be abolished from every paper I should be delighted. When I talk of the resentment of the Press I mean this. The editors who do not want that kind of thing and have laboured hard to keep it out, would resent interference; those who do it would do it for obvious reasons. I do not say whether I agree with that resentment or not.

37,882. That resentment would be greatly mitigated if the State dealt with the whole question?—Undoubtedly.

37,883. With reporting as a whole?—Undoubtedly.

37,884. I was much interested in what you said, that you thought it was evidenced by journalism that the moral tone of the country was rising. You have admitted that the number of newspapers which attempt to increase their circulation by the publishing of this class of literature is rather on the increase?—I was referring to what, for want of a better word, we call the higher-class Press itself. Twenty years ago the "Standard," the "Times," the "Morning Post"—I am not sure about the "Morning Post," but the "Telegraph," would think nothing of giving half a page to a really first-class divorce case. Now we do not.

37,885. Meanwhile, concurrently with that, there has been this immense increase of circulation of a popular class of journal which takes a very different standard?—Yes

37,886. Is not that presumably partly due to the increase of demand on the part of the public for that class of literature?—I should not like to think so, because a demand like that is rather tickled, like *hors d'œuvres* before dinner.

37,887. You would agree a good deal of that demand is due to the efforts of certain journalism to stimulate it?—I should think so to a great extent.

37,888. Therefore the moral tone of the community would be benefited by some restriction on the power of journals who stimulate an appetite in that way?—Yes, if it was universal.

37,889. Assuming some regulations were made, universal for reporting this class of cases, you have no suggestion to make excepting the one made, that publishing the judge's judgment or summing-up was worth consideration?—My feeling is that the best way of meeting the difficulty would be to define pretty clearly what is obscene and dirty, and let it be a police prosecution.

37,890. You know it has been found as a fact extraordinarily difficult to get much unanimity as to what is obscene?—I should have thought it was not beyond the powers of the lawyers to do that.

37,891. Even so, that would not affect what we were talking of a moment ago, the multiplication of details not singly offensive and obscene, but collectively having a bad effect on morals. Police proceedings would not touch that aspect of the problem?—No, except that they would be all kept out if there were threats of police proceedings on defined lines. My profession is very clever, I think, and it would be possible to evade breaking the letter of the law and yet the spirit would remain. The question is so full of difficulties. I should like to put it in this way, my own personal opinion: I would like to see the whole thing cleared away. When you ask me how you are to do it, I am afraid you are asking a very broken reed to help you.

37,892. Do you wish to give any expression of opinion on the suggestion that there might be a system of licensing reporters?—No, I think that would be almost impossible to work.

37,893. On the deterrent effect of publication, to which you have called attention, would you be prepared to tell us, as some other editors have told us, whether in your experience you have had any number of applications addressed to you to keep things out of the newspapers?—Yes, I have.

37,894. To any extent?—Yes, constantly.

37,895. (*Mr. Burt.*) I think you spoke just lately about the space given now as compared with the space given formerly to first-class divorce cases?—I am talking of "first-class" from the news point of view, what a journalist would call "first-class."

37,896. I suppose, measuring by columns, the space allotted would depend to some extent, probably largely, on the prominence or otherwise of the parties to the divorce?—That is true.

37,897. (*Sir William Anson.*) I think you said you are in favour of the clearance of the whole thing: you would like to see all reports of these cases cleared away by law?—I should be delighted.

37,898. Do you think there is any object whatever in publishing anything?—Except that publishing the pure results has a deterrent effect.

37,899. Has a deterrent effect on whom?—On would-be wrongdoers.

37,900. Do you think that would have some effect on the morals of the community?—Speaking from a high ethical point of view perhaps it is not the best sort of preventive, but there is no doubt it is one.

37,901. In the interest of an innocent co-respondent, publicity is in some cases necessary?—Yes.

37,902. Whose character is cleared by the proceedings?—There is a case where I think it is rather hard he or she should be mentioned at all.

37,903. He is made a party to the suit?—If you have the results—that is a case I had in mind when I was writing my proof: if he is innocent the very fact that he was brought into the Divorce Court is always against him. If you publish results only, his name ought to be left out if possible.

37,904. The results would be sufficient, to your mind?—Yes.

37,905. You would have publication on an important point of law, and for the clearance of individual character?—Yes.

37,906. Where that was just?—Yes.

37,907. Otherwise you see no object in the publication of any details?—No, if it is universal—not otherwise.

37,908. You would have no objection to legislation which effected that?—No, if it could be made effective, and could not be evaded. I think the difficulties are very great, but still not insuperable.

37,909. (*Sir Frederick Treves.*) You lay great stress on the deterrent effect of publication?—Yes.

37,910. That has struck you prominently?—Yes.

37,911. Would not that deterrent effect be efficient, or effectual, without the publication of details?—Yes, I have no objection to that. You may sweep away the whole thing, provided you give the facts; that is, that So-and-so brought a divorce action against his wife, and So-and-so was co-respondent, and he got his decree, which means those two were guilty, but that is all. I ask that should be published. I should not like to fact omitted.

37,912. Supposing the judge's summing-up were published, that would meet your feeling?—I think it is dealing with a very big question.

37,913. The judge's summing-up would cover the whole case. It would point out the innocence of parties who were innocent?—Yes.

37,914. So far as your feelings go, you have mentioned nothing in favour of publication except the deterrent effect?—Yes.

37,915. That is all you have to say for it?—At the present moment we have to give accounts of divorce cases, as long as all the Press do it. We could not exist a day.

37,916. Apart from the business side of it, from the general point of view all you have to say in favour of more or less elaborate publication is the deterrent effect, and that could be still attained by giving what you may call the very barest facts?—Quite so.

37,917. (*Sir George White.*) We have had it represented to us by some previous evidence that publication of the mere results would not attract any attention whatever, just simply that So-and-so brought an action for divorce against someone else, as you describe it. It would be like a category of bankrupts?—I think the category of bankrupts is read very carefully by every man in business.

37,918. And that people would not read them?—The general public do not read them. The bankruptcy cases are a good example, but it is not on all fours with divorce proceedings, which is a matter of social importance. Bankruptcy is business, but every business man reads them.

37,919. If it is desirable as a deterrent that these facts should be known to a certain extent, is the mere publication of the result sufficient? It has been represented to us that it is not?—I think it would be.

37,920. In a case where an innocent person's name is brought in, and you think there should be some details published in justification of that innocent person, how is that to be regulated?—By leaving the name out altogether, if possible.

37,921. Can you? Must you not name the co-respondent, if you publish the bare detail you are suggesting?—I am not a sufficient lawyer to know whether it could be done, otherwise we would be forced to give more details. It would not be fair to say, Jones *v.* Jones and Another, with his name, and then say, "Result, no decree," because the man's name is there. In that case I do not think the mere result would be sufficient to exonerate that man from any complicity in the affair.

37,922. Therefore I want to know who is to regulate what is to be published in justice to the innocent man?—I would suggest the judge who conducts the case. It would not be very much trouble to him if, at the end of a case, the officers of the court asked what was to go out, merely a few lines.

37,923. Then you are making the judge really the censor of the report, are you not?—Hardly the censor. Here is an innocent man. Looking at it from the point of view of wanting to avoid long accounts of proceedings, if you put the results, which would do in all cases of guilt, you ought to have some other procedure in the case where there is an innocent man, and the only thing I can see is a fuller account of that case, or the judge's summing-up, or that the judge should put forward a statement of his own.

37,924. You would suggest the judge's summing-up, which would probably deal with the innocent man, should be included in addition to the bare details. That would apply to other cases?—Yes. In the case of a summing-up, you could see the people who were innocent as co-respondents, and also witnesses; their names are brought into the Divorce Court, and you know how it clings, although people sometimes do not trouble to read the case. They say "Jones has been in a divorce case," whether as a witness or anything else. That is an aspect you have to deal with.

37,925. I am pointing out to you the difficulties of your own suggestion in regard to these cases?—I am sure it is a very difficult thing indeed.

37,926. You see it would not be sufficient in such cases simply to publish the results?—That is so.

37,927. May I ask you about two influences that operate in the conduct of a paper like yours. First, you are anxious to keep out of the paper, being a family paper, detailed reports which may be objection able to heads of families, and on the other hand you admit that there is a competitive influence which compels you to a considerable extent to publish certain details because other papers of the same standing may publish them?—Not the details. We have to give the case. The case itself may not be full of details, but still the whole case turns on a sordid or filthy or extremely sexual point. We have to give the case, otherwise people would buy another paper because they want to see that case. We do not search them out; we do not look for them; we rather repress them, and it is a very difficult thing every day when divorce proceedings are on to give a proper account of a case. Mind you, you are open to legal proceedings if you do not give exactly what happened, so that we have to be very careful.

37,928. I was rather putting to you, would you not welcome the influence of some fresh law upon the matter to back you up in your desire not to give details which to some extent you are compelled to give because other papers will give them?—Certainly.

37,929. With regard to the matter Mr. Brierley called attention to, the position which the "Evening Standard" occupies in regard to these reports, you say that the "Standard" gives somewhat extended reports because it is their practice to give rather lengthy reports of law cases in general?—Yes.

37,930. Does the "Evening Standard" give reports as fully of law cases generally as the morning "Standard"?—I could not tell you without making out a proportion. We are a bigger paper; the "Evening Standard" is a smaller paper. I would rather ask what is the proportion to the whole paper of police and divorce cases in the morning "Standard" and the "Evening Standard," and I could not tell you off-hand. I should say in the "Evening Standard" you would find the proportion was smaller in space than in the morning "Standard."

37,931. With regard to the columns, the "Evening Standard" which has 171½ columns as against the daily "Standard" 114, that is accounted for by the fact of the small page in the "Evening Standard"; to judge from one's casual knowledge of evening papers, as a rule they do not give the law reports to anything like the extent of the morning papers. If I wanted to go to the law reports I should not go to the "Evening Standard," I should go to the morning "Standard." Does it not show that the "Evening Standard" does give these divorce cases at considerable length?—Are these figures for divorce cases or law cases generally?

37,932. Divorce cases?—I should not think it gives more prominence than any other evening paper. It

would give more space because it has more space. The make-up of a paper has to be taken into consideration. There are two pages set aside for police and law cases; they have to be filled up. You cannot put anything else on.

37,933. As a matter of fact you are not personally able to tell me whether the "Evening Standard" contains a considerable amount of law cases reported generally?—Yes, it has, I know.

37,934. The difference probably would be accounted for by the length of the columns.

37,935. (*Chairman.*) I am not sure I appreciate this view of yours about the proportion, because the question is how much is actually in the paper of this kind of thing, whether it is a large paper or not?—Take an 8-page paper, and a third of that is given up to that kind of thing. Surely that, from the point of view of the Commission, or rather from the high ethical point of view, is worse than a paper which only gives up one-tenth.

37,936. That may be, but the amount of one-tenth may be just as objectionable, although it appears in a larger paper or a smaller paper. I do not see your proportional idea improves the matter. If it is a column in a 6-page paper or a 10-page paper, the column is what we are considering?—Looking at it from the point of view of proportion, if a man gives a column in an 8-page paper and a column in a 12-page paper, it means the editor of the 8-page paper is determined to give as much as he can. By looking at the matter from the point of view of proportion, you have, at least, evidences of editorial intention.

37,937. I follow that from the editorial point of view, but the amount of material the public gets on this subject is the same?—Yes, but there is that difference.

37,938. That is rather from the editorial point of view, not giving more than a certain proportion, but still that proportion gets to the public?—You have to count the size of columns, too.

37,939. I am speaking of the same paper having the same size of columns, but more in one edition than another. I do not say, as regards the question we have to consider, whether the paper is large or small. The amount of objectionable material is what we are considering. From the editorial point of view I appreciate it?—And I have to put the editorial point of view forward because of these figures.

37,940. You used the expression "first-class divorce case"; what is the meaning of that?—I was speaking purely as a journalist there. I meant it was a thing that everybody wanted to read about.

37,941. I ask you because we were told that the Hilary Sittings of 1909 had what I think would come within that description, the Stirling case in Scotland. Do you recollect it at all?—Yes, that was what you would call a first-class divorce case from a news point of view.

37,942. That accounts for the fact that your paper, the "Standard," comes second in the morning papers we have; a quantity of material was published in connection with that. Of the evening papers the "Evening Standard" heads the list. Is that your paper too?—Yes. I am not editor of it, but it belongs to the same company.

37,943. That heads the lists of evening papers for material supplied of that case?—I wish to point out it is the biggest evening paper in size.

37,944. In that Hilary Sittings it gave 77¾ columns to divorce cases. It is a 20-page paper?—It varies from 20 to 24.

(*Sir Lewis Dibdin.*) In the next sittings I see it gave 9½.

37,945. (*Chairman.*) The Stirling case was finished then, I suppose?—I suppose so. I have forgotten when the Stirling case was.

37,946 The record for the evening papers during Hilary Sittings is: the "Pall Mall" 17, "Westminster Gazette" 30¾, "Evening Standard" 77¾, "Globe" 50, "Star" 36¼, "Evening News" 50. I suppose that is accounted for by the columns given to that case?—Undoubtedly.

37,947. Why do you think it is of advantage to the public to have a case of that sort circulated?—I do not suppose it was any particular advantage. I am willing, if the thing is made universal, not to publish such cases.

37,948. I quite appreciate that. It really comes to this, that if there is competition on the footing which is indicated, operating on the better class through the expansion—I am using those terms relatively—of those which devote more space to sensational matters, and if that competition remains, you are forced along the line more or less?—That is absolutely true.

37,949. You have frankly given your own views upon the general public value?—Yes.

(*Chairman.*) I ought to thank you very much on behalf of the Commissioners for your evidence. I am sure we shall attach great importance to it.

Mr. HAROLD HODGE called and examined.

37,950. (*Chairman.*) Are you the Editor of the "Saturday Review"?—I am.

37,951. How long have you been engaged in that work?—Since the end of 1898.

37,952. Your evidence is confined to the reporting of cases such as we have to consider?—Yes.

37,953. You commence your short memorandum by stating in your view these reports tend to have an injurious effect in the following way?—I ought to say my paper is not a newspaper; it is a review. I cannot speak from experience as to reporting. In the nature of things mine is hardly more than a pious opinion, but I give it for what it is worth. I think it is likely a great deal of harm is done by these reports as they appear now. I say "likely" because it seems a matter extremely hard to prove and hardly susceptible of proof. When one thinks of the reports as they are now, some of them at least, it seems to me almost certain that they must have an exciting effect on the prurient-minded reader. Also I think they act by way of suggestion on young readers. The whole subject of suggestion is very uncertain, I know, but I think it is fairly well admitted that young minds tend unconsciously to assimilate and grow rather like the things and the people they take an interest in. There cannot be any doubt that a great many young people do find reports of these divorce cases extremely interesting reading. To me more injurious than the question of indecency, or anything of that sort, is the excessive familiarity that the reading of these divorce reports induces in the mind of the reader reading these reports day by day. I am sure that a large number of people get the idea that divorce is a far commoner thing than it is. They get to think that in circles they know little about it is almost the normal end of marriage, and in a general way it produces far too much thought and talk and consideration of the whole subject of divorce and kindred questions than is good. I have the idea that it is well that the average man and woman should rather look upon divorce askance; in fact perhaps think it a shocking thing, and therefore it is not well that vast numbers of people of small experience should be constantly engaging their minds upon it. I believe myself, as far as I am able to judge, that is really the chief injury that flows from the reports of divorce cases as they are now.

37,954. You say at the end of the paragraph which you are taking your evidence from at the moment, "This results in a false social and moral perspective, "and sometimes reacts upon character, lowering the "tone"?—Yes. I think people thinking divorce is such a very common feature of social life in classes higher than their own, come to think, which is not unnatural, that it is not such a very bad thing after all, not so very wicked after all, and unconsciously they lower their tone, their view on the whole question, and think it is so common a thing and so normal that they need not take it so seriously as they would. I believe that kind of feeling has spread.

37,955. If these cases are reported, have you any suggestion to make?—I should like them not to be reported at all; but if they have to be, it seems to me

to report the result so that there may be a record in public prints should be enough. It may be required to state actually what took place, what was decided by the judge; but if that is not enough, it always seems to me that there could be an official report issued subject to the court. It would be a libel, I take it, for any paper to publish anything concerning that divorce case which was not contained in that official report.

37,956. That is a third alternative; either no report, or report of results, or report supervised in some way?—Yes. The idea I have is that there would be an official reporter to the court, and that he would have to take down exactly what happens verbatim of the whole thing, and some officer of the court would draw up a report for the Press which was to go out, and that would be issued subject to the approval of the judge.

37,957. That is your last alternative?—Yes.

37,958. You prefer the first?—I would rather have no reports.

37,959. (*Mr. Spender.*) When you say "no report," do you mean that the court should be absolutely sealed; that there should not be a record publishable in the papers?—That is what I would rather have. I would provide means, in case it was required by somebody as a matter affecting his own personal interest seriously, to find out what did take place; that there should be a means of applying to the court to enable him to see the official report.

37,960. In that case you would have a longhand report of the proceedings?—Verbatim.

37,961. Filed in the court?—Yes.

37,962. And accessible on payment of a fee?—I would rather have it on application to the judge in court. To make it accessible on payment of a fee would make it too easily got at. It would be hard to prevent somebody paying the fee and using what he saw as copy in his own paper.

37,963. Supposing there was something in these reports which was very relevant to the character of a public man or a distinguished man, would you prevent a newspaper from publishing that and making reference to the case?—If any paper wanted to state something specific that was given in evidence in the trial, he should not be allowed to do that until he had made application first in court on the question, and then the judge would have to decide whether it was in the interest of the public that it should be made public. I should not leave it to the discretion of the editor.

37,964. You want a regular application in court, supposing the editor had reason to think there was something material in the case?—Yes.

37,965. You would want a formal application to the court then?—Yes.

37,966. Part of that first plan would be the existence of a record of all cases, a verbatim report of the trial?—Yes: it would be a record of the court.

37,967. The result would be given and the names of the parties?—And what happened when the case concluded.

37,968. You do not think that might do injustice to innocent parties, levelling the whole Divorce Court to practically one procedure?—I can imagine a case where it would, but as in everything else one has to consider the balance of advantage.

37,969. You would not allow the parties who would be aggrieved by private trial to make application?—Yes, it would be free to everybody to make application, and then the court must decide whether the application would be granted.

37,970. You would add that as a condition to your plan of publishing the result only, that either party might apply for a public trial?—Yes.

37,971. And the judge would decide?—Yes.

37,972. That we might add to your second alternative?—No, it is not a question of public trial; I do not propose a divorce case should be tried privately, but that they should not be reported. You said "public trial."

37,973. I was putting the case of a party who might be injured by a private trial followed by publication of results, or an innocent co-respondent or petitioner who thought it important to his character that he should be publicly acquitted?—I should not put it in that way. I should not like in any case the trial to be open to reporters, but anybody could apply that the verbatim report could be published after the event. I do not want the outside reporter to have any status in the court.

37,974. A verbatim report in all cases, and possible application to the court for liberty to publish it afterwards?—Yes.

37,975. With regard to the official report, have you considered the form and difficulties of that? It is put to us that that is an extremely difficult proposal, because it would throw on the court great responsibilities which now belong to the editor, and the editor knows it is very difficult?—If a man has a very responsible position he must take the responsibility; it cannot be helped.

37,976. That is so at present. Would you transfer it all to the judge?—In the interest of the public it is far better that the responsibility should be on the judge and not on the editor.

37,977. One purely general question. It is suggested to us that the privacy of divorce might have the opposite effect from what you suggest; that is to say, if it became as it is very much in France, a mere private incident, which is supposed to concern only the parties, and the public interest to be a prying into it, it would render divorce easier and a much more familiar thing than the extreme publicity and the sensation which may attach to it in an English court of law. Do you think there is any point in that view?—It might make it, as it were, in a sense a smaller thing, not such a big thing in the public light, but I do not see how it can make the public more familiar with divorce.

37,978. It makes the possible parties to divorce familiar with it as a very usual piece of machinery. Practically it comes to this. Do you regard the publication as a deterrent to the people who come into a Divorce Court?—I have not been able to gather from the evidence, from being here this morning, what the publication of reports is supposed to deter. Is it to deter immorality or the bringing of divorce suits?

37,979. I should not like to summarise the evidence so far. There is a difference of opinion. Broadly speaking we have had a great deal of evidence which suggested that a divorce suit entails these consequences and is a deterrent to some by the scandal, to others against the commission of the offence, at all events it gets into the consciousness or the subconsciousness that these conse uences follow just as penalty follows crime?—I should say as a deterrent of immorality it did not exist: as a deterrent of bringing divorce suits it might, but I should not think it would very often. I cannot conceive that people who meant to do it would be kept from doing it finally because of the appearance of a report.

(*Mr. Spender.*) I only wish to illustrate your view on the subject.

37,980. (*Sir William Anson.*) You say you prefer no report?—That would be the ideal.

37,981. Do you mean the proceedings should take place *in camera*, or that the proceedings should be public, but that a report of the proceedings should be forbidden by law?—The proceedings should be public, but no report should be allowed outside the court. There would have to be the official record of the proceedings, which in any case I should want to be verbatim, and that is all.

37,982. (*Chairman.*) They are now taken verbatim, but not at present for publication?—That would remain, I mean.

(*Chairman.*) There is an official shorthandwriter—perhaps the Commissioners do not know that—who takes a note. For instance, the King's Proctor or any party in the suit is always entitled to get it. Others get it only on application to the judge. If there is adequate interest I think I am correct in saying they generally are allowed to have a transcript.

37,983. (*Sir William Anson.*) How do you meet the case of an innocent party who was made a co-respondent to the proceedings, or an innocent witness who was brought in under circumstances which were compromising to his character? How do you meet those cases?—If there was no report at all?

37,984. Because socially it would be known that A. or B. had been a co-respondent or called as a witness?—That would be a serious obstacle to having no report, but looking at the matter from the public point of view I still think on the whole the balance of public advantage would be to have none, and even if a particular party had from time to time to suffer from it.

37,985. You are afraid that the public, being aware that divorce proceedings take place, multiplies them in its own imagination?—I think they do very largely indeed.

37,986. And get to think that the marriage tie is much less respected in this country than it is?—Certainly less, and also themselves get respected less.

37,987. If simply the results of these proceedings were known, anyone might make a calculation at the end of the year and the number of proceedings in the course of the year might be published, and no-one would have an excuse for thinking they bore any large proportion to the number of marriages. Do you see any objection to the bare results with so much additional information as the judge himself thought right, or on the application of one of the parties, to put in with a view to clearing the character of innocent persons?—I should think that an improvement on the present state of things, but not sufficient because, although anybody could make that calculation, extraordinarily few would. They would run their eyes over all they could find about divorce, and they would notice every day during the session of the court some divorce was granted or refused, and go away thinking it was a common thing. Exceedingly few people calculate seriously.

37,988. It would be still a matter of knowledge that divorce proceedings took place and parties were divorced?—Yes.

37,989. Do you not think absolute secrecy in the matter might have even a more serious effect on public imagination than the bare statement of results with qualifications such as I have mentioned?—The mere study of it would?

37,990. Yes?—That would be largely dispelled by the fact of the proceedings in public.

37,991. If the proceedings were public the public would know divorce took place?—You cannot prevent the public knowing divorce takes place. I do not want to make the public imagine there is no such thing as divorce. Far from it. Divorce happens, and it is no good pretending it does not. All I care about is that something should be altered so that the public mind should not be constantly turned upon it as it is now. I think divorce occupies the public mind to an extremely injurious extent, and I do not see how it is to occupy it less so long as we have a large portion of the daily papers given to it.

37,992. The effect on the public imagination, you think, would be improved if no proceedings were reported?—Yes, it seems to me certain that they would think less about divorce than they do now, and those who wanted to think about it in a serious and scientific way still would. It would not affect them if they wanted to study it. I do not want to interfere with anybody who wants to study divorce in a serious way, whether dramatist or author: it is the ordinary reader. I am thinking of classes of people who read very largely, small shopkeepers and people like that. I know they do.

37,993. You would not resent general legislation either in the direction of the entire prohibition of reports, or of reducing it to a statement of results of fact and law, with any further facts which the judge thought right should appear, either in the interest of an innocent party or an innocent witness?—I should welcome it extremely.

37,994. (*The Archbishop of York.*) I rather gather your personal opinion would be against no report of any kind except a report of the result?—Yes.

37,995. Do you think the mere publication of the result gives sufficient publicity to the termination of a relationship in which the State has shown its interest by insisting on publicity before it was entered into?—It seems to me enough. I do not see that any more publicity is given to the end of the case by what happens under the present plan than if you simply publish the result. After all, the result of the case only occupies a few lines.

37,996. An undefended case?—No matter whether defended or undefended, the end of the case is given in a few lines at the end. I do not see that gives any more publicity than supposing it was published in a single paragraph. If you put in a single paragraph of 10 lines, headed So-and-so Divorce Case—Result, it is very likely to impress itself on readers' minds more than now. I am sure for good or bad that would be largely read.

37,997. Nothing like the same number of people would read that record of the result as read the report now, and the papers would say it was not worth while to publish it?—I do not think they would, but still that is a matter of opinion. It is quite true a good many less would read it. I should regard that as so much undiluted gain.

37,998. (*Mrs. Tennant.*) Have you formed any opinion on the proposals which have been made to us that reporters should be licensed?—I have. I am very strongly against that, because on principle I think it is putting on the reporter what is not his business. Surely the business of a reporter is to report exactly what takes place. It is not his business to select between one portion of evidence and another. If you lay on the reporter the burden of having to discriminate between the various events he has to report, you put him in a different position, and I think it has had—I do not say in divorce cases, but in a great many other branches of news—a very serious effect. That has been the objection to the descriptive and imaginative reporter, who makes it so hard to know exactly what takes place very often. I think if the reporter is given the power to do more than take down what is there, you are putting on him a responsibility which ought to be on the court.

37,999. What is your view as to the other proposal, which is analogous, that only barristers should be selected?—That would be, I think, a very admirable thing. As a barrister myself I should naturally think it a great gain, but I do not think it would meet the whole situation. It would be better than now.

38,000. It leaves the onus of decision with the barrister?—I should think he was much more capable of bearing the burden than some of the existing reporters, but still I do not think it would meet what is wanted.

38,001. (*Lord Guthrie.*) I suppose you do not think that the divorce proceedings appearing at the present time in the best papers form a fitting subject for general conversation?—I should not put it in that way. I should not object to any divorce being discussed in a general way amongst people of what I may call right minds. It is not that I think these cases are not fit to discuss, but that it tends to make a very large number of people, whose experience is small and who are likely to look at these things in what I may call a diseased way, not knowing the whole truth, think about them far more than they need or would.

38,002. You refer to right-minded people. What do you say to those cases being the subject of general conversation among young people, especially of opposite sexes?—I think it is unfortunate, when they are.

38,003. So long as they are reported as they are in the best papers, it is not unnatural that they should be discussed in the way I mention?—Of course they are, certainly.

38,004. It is not unnatural, the idea that anything in the papers is fit for anyone to discuss?—A young person might think that.

38,005. You think that is an unfortunate result?—Yes.

38,006. If there is to be any publication, I suppose it would be right that all divorce cases, defended or undefended, should be published?—I should think so, because the only defence for publication is the interest of the parties, and that there should be a public record of the fact. That really would apply to all.

38,007. If there be anything in the deterrent, I think it should apply to all cases also?—Yes.

38,008. Do you know at the present moment the fact is that only about one-quarter of the cases appear in any newspaper?—I was not aware of that, but I daresay it is so.

38,009. It has been said that if the view you entertain about divorce cases were to be given effect to, the same would follow in regard to police court cases, and many High Court criminal cases, where sexual matters are involved. What do you say to that suggestion?—Whether it would follow or not, is doubtful. Whether it ought to follow is, I admit, a difficult question. I can conceive there are criminal cases which it would be better if they were not reported, but, frankly, I should not be by any means prepared to lay down that in a general way, as to criminal cases, as I have to divorce cases. I can see many considerations why criminal cases should be reported, which, I think, would not apply to divorce cases.

38,010. Even although, logically, it did follow, that does not prevent divorce being dealt with now, leaving the others to be dealt with afterwards?—No, because, after all, consistency is not the only virtue to be considered.

38,011. You have no information as to what is done in such countries as France, where your views about reporting being excluded are carried out. You do not know whether any official report is given, or not?—I have no special knowledge.

38,012. (*Sir Lewis Dibdin.*) You are against reporters being licensed in the Divorce Court?—Yes.

38,013. That is because you think the reporter is not the right person to have so much discretion thrown upon him?—I do not think it is fair to him. I do not think it ought to be done. It is not his province.

38,014. Why not?—The reporter's province is to report only. He has not to discriminate between the desirability of publishing one portion of evidence and the desirability of publishing another. It is an entirely different province.

38,015. You know that a reporter is a skilled person?—Certainly.

38,016. That reporting is rather a science?—Yes, in a sense. More an art, I should think.

38,017. You know also that no reporter in reporting a matter in an ordinary way takes a full shorthand note of it?—I suppose he does not in the ordinary way.

38,018. The papers would not hold it?—I agree.

38,019. So that he has in every matter to select what had better be published and what had not?—He very often does, but I feel often with extremely unfortunate results.

38,020. Is not that necessarily part of his professional duty, when he is reporting any event, whether it be a divorce case or anything else. He must make some selection as to what he will publish and what he will leave unpublished?—He cannot help it, as a rule, because of the conditions of his work.

38,021. That is his business?—It is his business only in the sense of that circumstance.

38,022. Have you had any practical knowledge of reporting yourself?—None whatever.

38,023. You think it would not be so undesirable if that discretion rested with a barrister?—I think so.

38,024. Has a barrister special training of that kind?—In discrimination?

38,025. In reporting, discriminating what to report and not report?—I do not think you can say he has any special training, only I think his whole training, both his legal training and the education he has probably had before, would make him better able to discriminate than the ordinary reporter.

38,026. Am I right in saying a barrister has no training, as such, in reporting at all?—Probably he has not.

38,027. Is there any doubt about it?—He may have by chance.

38,028. He is not examined in reporting before being made a barrister?—No, certainly not.

38,029. Would it meet your view if the results were published? Is the idea that there should be a settled column, part of the news of the paper, in which the results should appear? How would it appear?—I should suppose that would be in the discretion of the editor. He would put it where he thought fit.

38,030. His discretion might take the form of not giving it at all?—I should not compel him if he did not wish to.

38,031. The importance of publication would not be satisfied because there would be no publication?—If anybody took the view it was very important it should be published, I suppose he would want to have some provision to compel its publication, but I would rather it was not published.

38,032. I thought you told Sir William Anson you did think it important that the results should appear?—I said it might be. I have said I would like to have no reports. But if there have to be reports, I would rather have the result than anything else. If you must have him, I would prefer an official reporter.

38,033. You would prefer that even the names were not mentioned?—Yes.

38,034. Has it occurred to you that in some sections of society that would be exactly what those who are the subjects of divorce cases would prefer. The thing they are most afraid of is that their dirty linen should be washed in public?—I can believe it would suit a good many parties, who contemplate divorce, that it should not be published.

38,035. Not all parties, but all guilty parties?—It might suit the innocent parties too sometimes.

38,036. You would face that?—That might be unfortunate and sometimes amount to a personal injury, but I should say public advantage was greater on the side of not publishing it. and the private injury must give way to the public advantage.

38,037. If you cannot achieve that, the next best thing would be to only publish results?—That is the way it has occurred to me.

38,038. It would be like an extra column added to births, marriages, and deaths—a column of divorce?—That surely is a matter for the editor's discretion. I should not lay down for any editor how he is to print items of news. He might choose to make it a fourth column on the first page, but if he thinks, as he would probably, he could make more use of it by a more attractive paragraph, he could do it. I should not interfere with that.

38,039. Your third alternative is that there should be, first of all, a shorthand note taken in court of the whole proceedings, which is done now by the official reporter, and then from that some official person should make a report, and that should be accessible to the Press?—Only the report must be issued subject to the approval of the judge.

38,040. Has it occurred to you that all those steps would take some time, and that a report so framed would not be very fresh?—I should have thought the report of the day's proceedings could always be done in time for the papers to have the official report and to publish it the next morning, because the paper need not have it till the early hours in the morning, or late at night, any way.

38,041. Think of the steps. First of all the shorthand note is taken, then it has to be written out?—Yes.

38,042. Then it has to be condensed; the official reporter has to make a report from it?—The official reporter would be at the whole proceedings, and his mind would be occupied with the report all day, and when he came face to face with the verbatim report his mind would be made up as to what ought to go out and what ought not.

38,043. That would help him, but it would be unwise to make up the report without looking at the shorthand notes?—I am not suggesting that.

38,044. There is a further step, that the official reporter must have the shorthand note copied out, and use that for the purpose of making his report?—Plainly.

38,045. When that is done it has to go to the judge for his revision?—Yes.

38,046. Do you seriously think, all those steps being taken, it would be ready in time for the next morning's paper?—I think it possible. Things can be done very quickly.

38,047. (*Sir George White.*) Your ideal is to have no report at all?—Yes.

38,048. And yet to have the court open?—Yes.

38,049. Do you think it is practical to have an open court and an absolutely silent Press?—It might be. I should conceive it was difficult. I believe certain papers—I hope a few—would think it worth while to take the chance of any punishment inflicted on the editor in order to have the copy, but, on the other hand, I think that it could be kept down to a very small proportion compared with what they are now.

(*Sir George White.*) I do not know whether your Lordship would say that would be contempt of court for anyone in court to make any communications to the paper.

(*Chairman.*) There is no difficulty whatever upon that. Prohibition of publication is Mr. Hodge's point. It is equally true whether conveyed or written down at the time.

(*Sir George White.*) My point is, with an open court and a large number of people present, would it be contempt of court to communicate anything to the Press and publish anything that transpired?

(*Chairman.*) Certainly. Mr. Hodge would say so if there was prohibition of publication.

38,050. With regard to the difficulty of getting the report out, do you see any detriment to the report being delayed a few days?—I should not, personally, but I could understand that the editor of a daily paper might see great detriment.

38,051. I am speaking of the public interest; it would not matter whether it came out on Monday or Saturday?—Not at all. I am not looking at it from a newspaper point of view.

38,052. With regard to the suggestion of an official reporter, you were asked as to the discrimination of reporters at present in making a report. Would you regard the discrimination at present employed as a discrimination exercised as to whether it was better in the public interest to report this or that, or whether it was better for the paper's sale?—I should say my own belief was—it is purely my own personal view—in regard to the greater number of papers, that the interest of the papers was the main thing to the Press, perhaps the only thing. I should also say that there was a considerable number in which both public interest and the interest of the paper were considered.

38,053. As you seem to have reflected upon this a great deal, I should like to know whether you can present to us what you think are the considerations which distinguish between the publication of criminal cases and divorce cases?—The first consideration that would appeal to me is this. It seems to me just possible that the course of justice in criminal cases could be affected by its not being published. It might be certain points which were in favour of the defendant or of the prisoner might be slurred over for some reason or another, by accident or something, and if that were published it would be a good deal harder to do that. I also think that the prisoner is entitled to have all that can be said in his interest published as far and wide as possible. It seems to me very important that all that can be said in favour of an accused person should not only be said but made public.

38,054. Is there anything else that occurs to you at the moment?—Not at the moment. I did not really go into that seriously.

38,055. I gather your broad view is that the private interest had better be sacrificed to the public interest, because the present system, as it were, feeds the imagination of a large section of readers?—Yes. That is why I think that more injury is probably done by the respectable reports of divorce cases than by the others, because they are read by a far larger number of people.

38,056. Supposing your view were adopted of publication not being allowed, but the official shorthand writer still taking his note, do you think it would meet any particular difficulty, either in the case of a public man or a party who desired to have his innocence put forth before the world, that the judge should have power to authorise, upon application either of a public authority or an interested individual, the publication of the report?—I do.

38,057. On a special application showing interest of a private or public character sufficient to justify it?—Yes.

38,058. That would meet one point of view?—Yes. I think the application should be made in court.

38,059. The other matter you have not been asked about is this: to what extent do you attach importance to the interests of the children of married people on this question of publicity?—I should think that in many ways the publicity might be injurious to the children.

(*Chairman.*) We ought to thank you very much for your evidence and hope your attendance has not interfered too much with your public duties.

Mr. John Searles Ragland Phillips called and examined.

38,060. (*Chairman.*) Will you kindly tell us your position in the newspaper world?—I am managing editor and editor-in-chief of the "Yorkshire Post" and its other papers.

38,061. Where do you do your work?—In Leeds.

38,062. Your name was mentioned to the secretary by the Northern Newspaper Society?—Or by the Newspaper Society, I think.

38,063. By both, I am told?—Very likely by both.

38,064. Are you a member of the Northern Federation of Newspapers Owners?—Yes.

38,065. And the Newspaper Society?—Yes.

38,066. How long have you been engaged in editorial work?—Since 1878.

38,067. I have your proof before me, and I will follow that?—Before that is touched I wanted to say a word or two about some other matters which have arisen since.

38,068. If they have arisen since I would rather have them afterwards?—If you please.

38,069. In giving evidence you desire to say you do not represent, although you are a member of, any definite newspaper organisation?—Yes.

38,070. Your evidence will be your own views?—That is so.

38,071. You say that the opinions of proprietors of journals vary so much that it has not been found practicable to appoint anyone to represent the whole?—That is so.

38,072. The opinions are not capable of any such definite and simple grouping?—Yes.

38,073. Some are favourable to a total abolition of reports, only they think the names of the parties and the decision should be given?—A few.

38,074. That would not be what you call readable matter, and would not be worth inserting?—That is so.

38,075. That probably would lead to non-publication?—Yes.

38,076. You say another section of your paper friends believe in what may be called limited and official publication?—Yes.

38,077. Will you explain that?—That is a publication written out by an official reporter of the court sanctioned by the judge, or issued on the responsibility of the official reporter.

38,078. May I take the next paragraph and see if that expresses your view on that head: "They agree with certain of the opinions expressed before this Commission, that if there were an official reporter in the court, responsible to the judge for what was sent out, this would meet the need of publicity in which they believe. They do not think it would be consistent with public interest that there should be no reporting of such cases: on the other hand, they are very strongly of opinion that some of the reports printed at the present time—mainly, they say, by a few weekly papers which do not rank in high-class journalism, although they may have large circulations—are much to be deprecated"?—That is so.

38,079. Then you proceed to say what reports you have examined?—Yes.

38,080. Why do they consider they are to be deprecated?—The witness you have already had, namely, Mr. Russell-Allen, who is a friend of mine,

and also Sir Francis Gould, think the publication of these cases does have a demoralising effect upon the public.

38,081. What is your own view upon that point?—I do not think there is any evidence of it.

38,082. Is this still the view of those you are dealing with: "It is felt that unchecked publication is very apt to run into indecency, and that reports of the kind which they deprecate tend to degrade the readers, and possibly to encourage immorality"? That is the point on which they entertain that view, but you do not agree?—No.

38,083. How far do you go?—I am opposed to the publication of any matter which is obscene or indecent. I do not know how far I can go beyond that.

38,084. The point, if I may put it plainly, is not that any paper publishes what could be characterised as obscene or indecent, but points in its reports of this class of case too much to sexual matters, and, therefore, has a detrimental effect by being read by a large section of juvenile readers?—There may be an excess in the amount of publication, I would not deny that there is in some cases, but I do not see how to limit it without going further than I think desirable, that is, how to limit it by legal means. You can limit it by editorial discretion: that is one way.

38,085. You say "There are other journalists of standing who, while holding strongly that matter of the kind is injurious to the national life, are yet afraid that the restraint of publication would tend to defeat the interests of justice; they have known very many cases where publication has led to the discovery of fresh evidence, one way or the other"?—That is true.

38,086. There are three categories of people, so far?—Yes.

38,087. Can you tell us which preponderates?—The last category preponderates, I believe.

38,088. I do not propose to go through the details of some of these cases to which you refer. I would like to come down to a passage in the paper which says: "The point I wish to make here is, that if your object is to prevent the publication and wide dissemination by newspapers of objectionable matter involving sexualism, and, one may add, abnormality, you must throw your net much more widely than has been suggested by any of the witnesses whose evidence I have seen. You must aim, not against the publication of reports of divorce cases, but against that of this much more extended class of reports, many of them, to my mind, far worse than the mere giving of such details as are ordinarily reported in connection with applications for divorce." That may be true in one sense, but is there any real objection to curtailing? Assume for a moment that the reporting of divorce cases is not a good thing. Is there any justification for it because others might go on and be reported if you prohibit it?—In the first place I think that the limitation of divorce cases would not affect the others; that is to say, you might restrict the total amount by the elimination of divorce cases. That is what you suggest. I quite agree that is so, but, on the other hand, there are, as I tried to show other reasons which would operate against such conclusion.

38,089. Logically it does not follow that because it may be a bad thing to publish one class of case, therefore you should take no steps to stop the publication of another class of case?—That is perfectly logical and clear.

38,090. Lower down you proceed thus: "There is one striking distinction between newspaper reports of divorce cases and literature such as I have just indicated, in this: that the reports of the divorce case may, and often do, serve a very useful purpose of either rehabilitating the character of some person who had been attacked, or in showing a prominent person in his true character; and, further, that the fear of publicity may exercise some deterrent effect, whereas in the novel, where all the personages are fictitious, publication does not seem to provide any equivalent benefits." You are drawing a distinction between the publication of reports of actual matters and fiction?—That is so.

38,091. Rather in favour of the view of publication of the actual facts?—That is so.

38,092. I do not propose to go through the details?—I did not propose to read the extracts, but I thought I should put them on my proof for the benefit of your Commission.

38,093. You find, unfortunately, in fiction objectionable features which you would like to see got rid of?—Yes, and very much worse than any I have seen in reports of divorce cases.

38,094. I quite appreciate the point. I would like to take it in this way. A good deal of what I have had my attention called to on page 5 is comment on what witnesses have said before this Commission, which no doubt you have studied with great care?—That is so. It was my own view of points which had been raised and which might or might not have suggested themselves otherwise to me.

38,095. I think it would be best if you would state to us exactly what your own views are. We have all had a look through this proof, no doubt, and therefore we appreciate the minute criticisms, but I think it would be best if you would tell us what your own conclusions are?—That is getting apart from the case I have prepared to show my opinions clearly.

38,096. I do not think it is necessary to go through a lot of detailed cases which are what I might call comments on the evidence which has been given. We want your own experience and your own views?—I may miss some of the points that are touched upon here, and if I do that is a misfortune, from my point of view.

38,097. I do not think you need think that, because we have all read it. Even if we do not get it on the notes it will be in our minds?—My own view is, in the first place, against the abolition of reports advocated by Mr. Hodge. I think, in the first place, that the public, or large sections of the public, do unquestionably hear beforehand of all the divorce cases which are coming on. They may see in the columns of the "Times" the cases which are set down for action, and you may have a divorce case with three or four co-respondents. It may happen that the case against some of the co-respondents breaks down altogether. Supposing you have no report, there is nothing to show the innocence of the innocent persons; there is nothing to show any mitigating facts; there is nothing to clear numbers of persons, witnesses as well as others, who may have been implicated by the gossip of their neighbours. That gossip is very extensive; I know that by my own knowledge. There are cases which I have referred to here in which there have been reports of a petitioner being alleged to behave unkindly to his wife and so has forced her conduct. The evidence in court has shown that to be absolutely unfounded, and cleared the petitioner entirely. Without the publication there would have been no clearance. I think, moreover, there is a large class of cases of persons of high rank, I have detailed some of them here, in politics, the Navy, the Army, or what not, who are involved in cases of the kind, and there I think the openness of the court (and the freedom of publication in a large degree) is not only permissible, but is a public duty. I do not see how you can set up a tribunal with power to say which of these cases shall and which shall not be published. I have named the cases here; I need not name them again. If the Commission has read them all, that is what I want. There are cases where undoubtedly there would not have been a full trial and conviction but for the fullest publication which was given in the papers of an earlier trial. That is my case in regard to those. You may have in the case of secrecy, the absolute secrecy Mr. Hodge wanted, a co-respondent who has been named in the list of cases and you have no report. Thereafter you may have in a political dispute, or what not, the allegation made that Mr. So-and-so had been a co-respondent in a divorce case. It would be perfectly true, but it would not represent the facts, and the publication of that statement would be quite legitimate; it would be to his detriment, and there would be no clearance of him at all. I think that is a very strong argument indeed against absolute prohibition.

Within its degree it goes in favour of freedom of reporting, subject always to the condition that there should be nothing obscene or impure published. It is the public aspect of it in that way upon which I lay stress.

38,098. Then you proceed further on to make the suggestion as to what your view would be, but perhaps before I pass to that, do you wish to say anything on the effect and the extent to which publicity is a deterrent?—That I do know to be the effect. The cases I have stated are facts. We have frequent applications from parties interested not to give anything of their cases, or to deal with them slightly. I would not like to express an opinion as to what extent that fear is an actual deterrent from the committal of adultery. That is quite another matter.

38,099. You heard Mr. Hodge say he did not think it had any?—I did.

38,100. The question of a fully reported case is another matter?—I think publication is part of the punishment, which is quite a different thing from being a deterrent, since you may say the publication of a case of embezzlement is also a part of the punishment, whereas it does not operate, we know, very greatly as a deterrent. I do not think very many clerks who embezzle, or managers of banks, or what not, have had in mind at all the fact of publication. They have had in view the punishment, their general ruin, their downfall. Publication is a secondary matter in that case, but when it comes on I think it is part of the punishment. In the same manner you have referred to the case of children. In the publication of divorce cases there is undoubtedly very much pain and suffering brought upon very many families altogther, and the innocent suffer with the guilty. Unfortunately we know from old times that has been the case. The children do suffer down to several generations, but it is equally the fact in the case of embezzlement. There you have the family suffering under a disgrace which they naturally consider a very serious one if their fathers have embezzled. The punishment is there; it falls upon them equally, I think, as in the case of a divorce trial. I do not think there is any difference from that point of view, and if you consider the children as the determining factor in the one case, then I think you set up a case against the publication of any trial whatever.

38,101. Then you proceed to deal with the suggestions. I do not think it much use making comments on suggestions made. I should like to have your own suggestions, whether you would leave matters as they are, or have you any suggestion to make as to any modification of the present practice?—I think there ought to be a somewhat stricter rule in regard to the checking of the publication of indecent matter. I should support any change in the law or any additional strictness of administration which would deal with that all round.

38,101A. Might I suggest there is a difficulty in treating any of these publications as indecent? The point made is that they are not necessarily indecent, but are harping on a subject which is not fit for the consideration, especially, of young people. To what extent would you go to meet that?—I think you might say that would apply equally to the case of extended trials of murder, and extended trials for a great many other offences. It would apply also to nearly every drama placed upon the boards, because nearly every drama I know of deals essentially either with a sexual problem or with some problem of swindling in some form or other. That is the case not only in the present day drama, but of all drama of which I have any knowledge.

38,102. You say to some extent you would restrict it. To what extent would you?—There are details published unquestionably from time to time which are indecent. I think if there was a prosecution in those cases where indecency can be proved, not only in the case of newspapers, but all others—for I should protest against any singling out of the newspaper press as being the worst offender; I do not think it is the worst offender—I think prosecutions of that kind would have a deterrent and beneficia effect. They would not only prevent what you and I might call the actual obscenity in publication, but they would also tend to check the going as near as possible to the border dividing line. Those of us who have any experience know that there is a great difficulty in saying, on the spur of the moment, what is or what is not actually proper for publication. Matters of that kind arise before an editor and his staff of sub-editors every night, and they have to be dealt with at once; and some of us deal with them on the principle of "leave out where you have any doubt," but there are others, I believe, who would run as near to the line as they possibly could.

38,103. I should like to ask you one general question. You said that there are instances in which there is an excess of reporting offensive details?—Yes.

38,104. Do you think that the publication of reports as it at present stands has a bad influence on the public?—Yes.

38,105. You have dealt with the operation as to individuals concerned in the cases, and the deterrent effect. I am now speaking of the general mass of readers and the effect it has upon them?—You have reminded me. I have suggested that the judges and counsel and others engaged constantly in handling divorce cases, are not, so far as my knowledge extends, worse in a moral respect than the rest of the population.

38,106. You partly put them in the same category as the young people?—As the rest of their class.

38,107. We are rather concerned with the young people?—There has never been, so far as I am aware, the slightest allegation that by reading reports of divorce cases young people or anybody else have been incited to go and do likewise. We have had many cases indeed of boys alleged to have been incited to theft and robbery by following the example of Dick Turpin and other heroes of the kind, but I am not aware of a case where there has been an incitement to adultery through the reading of a divorce case.

38,108. Perhaps you have not read the whole of the evidence we have had yet? At any rate, that is your view?—Yes.

38,109. Is there any other suggestion you think it worth while to put before us?—Might I deal for a moment with certain later facts?

38,110. You said you had something to say which had occurred since?—Yes. The first point was in regard to the table of columns collected by the Commission. No doubt they are perfectly accurate, but at the same time I would suggest they are misleading as they stand. In the first place, the "Westminster Gazette," over which Mr. Spender presides, is set down as publishing 61¼ columns of divorce cases, and the "Yorkshire Post" 60½ columns. I want to say that is a distinct injustice to Mr. Spender. The "Yorkshire Post" columns are longer to the extent of what we call two "sticks," about 30 lines in each column, so that the comparison is not accurate.

38,111. I think you may understand that we appreciate that?—Again, I want to point out that consideration must be given to what are called local cases as distinct from the general cases. There are a large number of local cases which we should report at a length of, perhaps, three or four inches, in accordance with what might seem to be their local interest as news. The London papers as a rule are less local than provincial papers. They would not have the same reason for publishing what we call the local cases we have. Those in the course of a year would mount up considerably. I understand it is the longer cases, those of greater news interest, which you have in mind.

38,112. You seem to have taken as much interest in the Scotch case as most of the other papers?—The Stirling case?

38,113. Yes. Your columns for that in the Hilary sittings of 1909 were 26½, and the other sittings only 3, 7, 8, 7¾ and 8—quite small?—That is perfectly accurate. In that matter, I may say frankly, we give as news what we think the public want to be interested in, always subject to the condensation and the elimination of matter which is in itself obscene. That, I think, is the general newspaper rule, and any suggestion to the contrary I should myself receive with suspicion.

38,114. We have heard Lord Guthrie's description of that. I think he tried it, but I do not gather why so much attention was given to it in any of the papers?—I do not recollect exactly the status of the parties. Was not one of them an actress, or something of that sort?

38,115. We were told so?—That, no doubt, would account for it. She had been known all over the country, or it would be supposed she was known, and that would account for the extent to which it was reported. May I say, if you take the columns, that really does not affect my case, because a larger number of columns might in themselves be more innocent than the smaller ones.

38,116. That is one point you wished to call attention to. Is there any other?—Yes. The other deals with the extent of the columns also. You have the "Western Morning News" down for 21¼ columns. That may possibly be influenced by the distance from London and consequently the greater difficulty of getting the news over in time, and the expense of getting it in the same way. Then I would say you have had raised the question of how the publication of these cases does affect the circulation of papers. I would suggest from the table itself that there is no strict comparison which can be drawn between the publication of length and the circulation of the papers. I may take the case of the "Standard" as compared with the "Daily News" and the "Chronicle." The "Standard" has a much larger number of columns than either of those other two papers, being a penny paper as against their halfpenny. I do not suppose the circulation is so large in actual numbers; it is more important, no doubt, but that is another matter. Again, we have been referred to the question of the lower strata of the population demanding the publication. The figures given in your table would seem to indicate that there is just as eager a demand in the higher strata as in the lower. We may point to the case of the "Times" and the "Daily Telegraph" as supporting that view. The question has arisen of the procedure of a newspaper in checking matter of the kind. I have a tolerably large experience, and in all law cases we get reports very much longer indeed than we could possibly find room for. They come into the office by train or by telegraph, and they are handled by sub-editors. We have in our office eight sub-editors, whose duty it is to select and cut down news all through the night. They are subject to general instructions from me, and they are also subject to my control when the matter is on the proofs before the paper is published, as a rule, although sometimes a proof or two will get through without being seen by the editor. The chief sub-editor glances at the matter when it comes in, or he has a report from another sub-editor upon its character and general news interest. Then he considers the amount of space at his disposal, and gives instructions accordingly as to what length it shall be given at, and the sub-editor in charge cuts it down. Subject to his general instructions it is passed to the printers and appears on the proof. The chief sub-editor glances at the proof, and so do I, as well as the official readers. That is the check we have, and that is the mode of procedure.

38,117. I should like to ask you some questions on two or three specific points. You are not in favour of restriction on the publication wholly; would you be in favour or not of publishing the names of the parties and the result?—That we should not do, and I think it would be objectionable from other points of view.

38,118. The points of view you have already mentioned?—Yes.

38,119. Then it is suggested further that it might be proper to have official reporters licensed for the purpose of reporting. Have you formed any view about that?—I think that would be impracticable. In the first place, suppose you appoint a barrister, we have this objection, from my point of view, that one trained ordinary reporter is worth a great deal more for our purpose than any barrister you can find who is not trained. In the next place, although I think an official reporter might write out his case while the case was proceeding, and side by side with a verbatim man who took the court record, yet by the time the judge had finished his dinner and was able to go through the proof the matter would be very late indeed for the provincial papers. It might not be so for the London papers, which have an extra hour to turn on. We go to press about the same time, and we find that with the matter telegraphed there is about one hour in favour of the London papers. That would, I am afraid, frequently give the London papers an advantage of a day in publication over the provincial papers. While I agree with the suggestion that it does not matter whether you publish a thing on the Monday, Tuesday, or Wednesday, one, two, or three days after it has occurred, provided every newspaper publishes on the same day, yet it does matter very much if one paper is given in practice a preference over another.

38,120. Assuming it was desirable to make some change, would you accept the view that no case should be published until after it was finished?—No, I would not.

38,121. Why?—I will tell you why. You may have cases of great importance which go on for four or five, six or seven days; it would be absolutely impossible to publish the whole report on the one day, to do it anything like adequately.

38,122. You could report a sufficient account to show what had taken place?—I mean a case like some of those I have referred to, high politicians.

38,123. Supposing it is not considered an advantage to publish the reports except so far as necessary to inform the public of what had happened, what objection would there be to say no one was to report the case till it is over?—I do not think you could report a case adequately, not from the freedom of reporting point of view I advocate, where the character of some high person is concerned. If the court were to regulate and limit the report that should be issued and published in a case of a royal personage or a high social person or statesman, or what not, the public would look upon that report with very great suspicion, and rightly so.

38,124. Even though it was published after the whole case was over?—Yes.

38,125. Is there any other point you wish to draw our attention to?—We have been referred to the pressure put upon more reputable newspapers to publish cases of this kind, the pressure they suffer because of the publication by others. I think that is exaggerated. I have sometimes said that we have in the Press and in literature a sort of application of what is known as Griffith's law in economics, which is this: Suppose you put bad money into circulation by the side of good money, the bad will drive the good out, and there is something of a similar application in the matter of literature and journalism. That applies generally rather than in the reporting of individual cases. It applies to the constant publication of *chroniques scandeleuses* from France and Italy, matters which would be outside the cognizance of a divorce law in this country, and which would not be touched by any of the proposals you have had made before you. Those cases are published very largely indeed in the papers with the largest circulation, and they are expensive to get. They are got by means of special correspondents, who are constantly on the watch, as they have in foreign countries. The worst cases of reporting we have had are not those of divorce cases; they are cases of abnormality largely, and some of them have been sent over to the extent of four or five columns from the United States.

38,126. (*Mr. Spender.*) In regard to the practice of reporting, do you give the results of undefended cases in the "Yorkshire Post" when they are local cases? Supposing there are local persons divorced and the action is not defended, is it your practice to give the result?—Very rarely; but if the case is undefended there is a statement of it by the counsel. That would not be the bare result, which is the point, I take it.

38,127. You would give a statement of it. Your reporter in London would have instructions to watch all local cases in the Divorce Court?—That is so.

38,128. He would send you not merely the bare result in those cases, but the result and the speeches of counsel?—Yes. Whether we published that or

not would depend upon the condition of our columns as to pressure of space for other matter, and upon what might be regarded as the news interest of the case. Suppose it was a case of somebody of high standing in the county, then we should give the statement of it. If it were a case of, shall I say, a small shopkeeper, we should probably not give anything of it at all. We should refuse to publish.

38,129. Supposing there was no statement by counsel or proceedings in the court, and you had simply had the record that So-and-so was divorced and So-and-so was co-respondent, or whatever the bare result might be, and that concerned important people in your district, you would still publish that; you would feel obliged to?—If it concerned important people in the district we should probably publish it. May I take another case you will appreciate? We have a column called "Court and Personal." It gives the movements of people in a high status, their marriages and statements of that kind. Suppose my Lord Archbishop of York were engaged to be married; in that case we should insert a paragraph as soon as we could get it in that column "Court and Personal;" but if, shall I say, you yourself were engaged to be married and you wanted it to be published, we should charge you one guinea for it.

38,130. That sufficiently answers the question?—That is a case in point. That illustrates my point in regard to the publication of divorce cases. Where the matter seemed to be of considerable social or political interest we should give what we could and should not charge for it; but if the court or State wanted us to publish other cases which we considered not of interest in that shape we should certainly want someone to pay us for them.

38,131. The point I am trying to get at is this. Supposing an eminent person, a well-known person in the district, to have been divorced and you had the bare record of that, you would still publish it as you do now, without the statement of counsel?—I should indeed.

38,132. It has been suggested as a relevant point that a very small proportion comparatively of all these cases are reported. I think Lord Guthrie said just now only one quarter were reported. Is it not a fact that among all the divorces that come into the London courts a very large proportion are reported locally even if they are not reported in the London papers?—That is a point I had on my notes. When Lord Guthrie referred to it, I was going to suggest that I had not seen the figures. I had had no opportunity of examining the statement that only one case in four is reported. My point was that a large number of purely local cases would be reported solely in the locality in which they were of interest; that is to say, a West of England case would be reported in the "Western Morning News" or the Bristol papers, a Yorkshire case would be reported in the Yorkshire papers, and so on. They would not go outside their own area, so that it is rather difficult, and it would be a most complex table to find out how many were actually reported and at what length. Some would be reported in the daily papers, others would be reported only in the weekly papers. You would have to examine the whole press of Great Britain to have any solid figures.

38,133. That is the point I wanted to get at. In your view the effect of publicity is more even than has been suggested in present circumstances; it is seldom in London but very widespread locally?—Subject to the condition that I have not seen the statistics, I agree with you.

38,134. May I ask your view about the effect of certain statistics which have been laid before us and put in evidence, in regard to the difference between the weekly and the daily paper: the weekly paper has only one issue a week to six of the daily papers?—That is so.

38,135. Therefore when we see on this statement of fact that the paper called the "Umpire" has 238 columns, and the "News of the World" 118 columns, whereas the "Yorkshire Post" has only 44½ columns, it must mean that in the single issue of the weekly paper there is an immensely greater quantity of matter of that kind than there is in the daily issue of any other paper?—That is so. The weekly paper will sweep up the whole of the cases for the week and give them all at once, rather than day by day as the daily papers do.

38,136. Therefore in papers of that class you get a concentrated effect?—That is so.

38,137. By the collection of all these reports into one issue, whereas in the others they are spread over six?—More than that. Where you get the case of the publication of 210 columns in a paper published only once a week as against 60 columns in a paper published six times a week, the disproportion is increased.

38,138. I do not want to make a point of the difference between one class of paper and another, but it has been put to us by chief constables, police court missionaries and others, and we have had a very impressive volume of evidence to that effect, that a kind of impression is made by the practice of these weekly papers sweeping up this garbage, we will call it, which is becoming a very great evil among a number of the working classes. You would admit that that was a very serious matter. They say it is a new feature which pressmen would have to bear in mind?—May I say in regard to it being a new feature, I have here in my proof given cases of reports very much earlier, in the thirties, showing the extent to which matters of the kind were reported then and the character of the reports given. I think they were reported then much more fully than now, and details were given then which would not be given now. I must say, further, in regard to the weekly papers, while I should be ready to agree that the constant publication of such a large mass of matter of the kind is on the whole injurious, yet if you did not have it of the divorce cases you would certainly have its place taken by novels of a similar character, because you must remember, according to theory, that is given because there exists a demand for it in the public, which the proprietors and the editors of those newspapers think they must satisfy, and they will satisfy it, either with the fact as given in the Divorce Courts or the fiction as given by the novelists I have quoted. Unless you prohibited both I think you would entirely fail in your object.

38,139. You would say that supposing we cut off the Divorce Court there would be a great many other criminal cases, as you have said in your evidence, which the purveyors of this literature could take advantage of?—Yes.

38,140. And if you cut off those sources you would multiply fiction which would meet the same demand?—Yes.

38,141. You frankly admit the purveying of this material is for profit and in order to meet this prurient demand?—I do.

38,142. You would not as a pressman say any public interest was served by its appearance?—No.

38,143. It is pure commerce?—Yes, in the cases you have in mind; where you go to the cases of statesmen and persons of that class I hold that the interest is in the State.

38,144. We are face to face with a very wide extended commerce which has nothing to do with serious journalism?—Yes.

38,145. But which is wholly and solely for the purpose of profit, and which you admit to be highly demoralising?—To what extent it is demoralising I would not like to express an opinion. You put in the word "highly."

38,146. It would be very advisable if you could stop it?—When you look back at the history of literature, if you take the Restoration period, which is notorious for its plays and novels, during that period there was, I believe, a steady progress of the country in the right direction.

38,147. Suppose we could imagine a very extreme instance. I do not know that there exists such a journal, but supposing there was a weekly journal devoted entirely to divorce and criminal cases and sexual cases?—There are some almost, the "Police News," for instance.

38,148. Suppose we say "entirely," and it deliberately proclaimed itself as such, and suppose, as some of these newspapers have, it had a circulation

running into a million or upwards, would you as a pressman object to proceedings being taken against that paper, and treating the whole thing as a kind of public nuisance?—Not if you could do that without interfering with the free publication of the other cases I have in mind.

38,149. It is the condensation in those that becomes evil?—That I should have no objection to.

38,150. Would you as a journalist have any objection to proceeding on the principle that at a certain point this thing becomes a public nuisance for which the purveyors may be fairly proceeded against in the public courts, I should say with a jury to decide whether any public interest was involved?—I should have no objection whatever to a proposal of that kind.

38,151. (*Sir George White.*) You say that the newspapers are not the greatest offenders in the matters about which we are enquiring. Do you consider them really offenders at all? Do you, in the existing state of these publications, believe that any change in the law is necessary?—I think a strengthening of the law or the administration in regard to publication of absolutely indecent matter may be desirable. I agree also with Mr. Spender's suggestion further than that.

38,152. Do you agree that any of these papers do publish indecent matter in their reports of divorce proceedings?—Sometimes, I believe, they do in divorce and in other matters.

38,153. Therefore, you consider some fresh regulation is necessary to check that. You are of opinion, from cases you cited, that there have been great improvements in the last two or three generations?—That is my belief, undoubtedly, as the result of enquiry.

38,154. Is it your opinion that this improvement continues, that is to say, during your connection with the daily Press have you found the change still going on in an upward direction?—I have not found any worsening. That is a general impression, whereas the other is the result of examination.

38,155. Do you agree with Mr. Gwynne when he says "I believe the moral tone of the country is rising "every day, for it is possible to point with some pride "to the fact that there is no print that could be "described as obscene or dirty which has any circula-"tion in England"?—I do not think I should agree with Mr. Gwynne.

38,156. You believe that there are such prints?—I believe there are such prints.

38,157. I am afraid that is so. You seem to generally guard yourself as to whether the effect of these publications that are more or less bad in their tone is bad upon the morals of the country?—That is a point upon which I certainly would not like to dogmatise, judging from my own survey of the history of literature.

38,158. You think there is no proof absolutely?—That there is a worsening in the country I have no proof.

38,159. Or that the effect of the publication of these reports is bad on the morals of the country?—I have no proof of it. I can only argue with myself on general principles.

38,160. (*Sir Frederick Treves.*) You lay great stress on the fact that publication has a deterrent effect?—I am told that it has in cases. It certainly has if one may judge by the desire the parties have that there should be no publication. It is part of the punishment, if not an actual deterrent.

38,161. Would not that deterrent effect be affected by the merest statement of the case without details?—I think not.

38,162. You quote the case of an official of a county council who would have been discharged from his office?—Who was.

38,163. If it had been known he was concerned in a divorce case?—Yes.

38,164. Surely the very barest statement of that case would have sufficed?—That applies in certain cases, but it would not apply as regards the social status of a great many people. In other cases the question of detail does undoubtedly arise because the friends of the parties and the public, their neighbours in villages and towns, judge not only by the fact of the presence or absence of legal guilt but by the whole of the surrounding conditions and circumstances.

38,165. In this particular instance, you cite this one case as an evidence of the beneficial effect, or the deterrent effect, at least, of publication?—The strong desire.

38,166. You admit the barest statement of the case without details would have sufficed?—Yes.

38,167. I suppose there must be many more like it?—I suppose there must. That is the only actual official case I have had before me.

38,168. You say that there is no evidence of the demoralising effect of publication. I take it that evidence is practically impossible to supply?—You have evidence of the demoralising effect on boys of literature of the Dick Turpin kind. You have absolute evidence of that. Whether you can get evidence of the other I do not know.

38,169. I do not know whether you think this is fair. You say there is no specific instance where adultery could be accredited to an individual through the reading of divorce reports. Surely you would not press that to such an extent as to suppose that because a report of a divorce case was not found amongst the papers of the guilty individuals, that they were uninfluenced by the reading of those reports?—I would be the last person to say there may not be such influence. If you say there is such influence, I could not contradict you; but I say I have not seen any evidence of it. I can only reason generally, but that is another matter, that is not evidence.

38,170. It may be perhaps regarded as a little unfair to put it in that way?—No, I think it is fair.

38,171. If this evidence on publication is not demoralising, do you consider the discussion of a divorce case at the family breakfast-table is a perfectly reasonable proceeding?—It might very conceivably have a moral tendency. May I take you to another point in that sense. You would not say, I think, with regard to any of the stories of Dickens which deal with seduction or adultery that the recital or the discussion of those cases in the family circle is demoralising? I should say it was not.

38,172. That is a little beside the question. You say there is no evidence of the demoralising effect of such publication. One therefore assumes you think it is not demoralising?—I did not say that.

38,173. There is no evidence, you say, of its having a demoralising effect?—Yes.

38,174. You own it might be demoralising?—Yes, I have done so already.

38,175. And yet not a subject to be discussed with advantage in a family circle?—That opens up a different question. It might be discussed with advantage.

38,176. Do you think generally that the avoidance of publication of detail would be a public advantage? You have mentioned reasons for and against?—In my final conclusion I think the prohibition would be disadvantageous. It is a balanced opinion; it is not a partisan pinion.

38,177. (*Mr. Burt.*) I understood you to suggest the desirability of some stricter rule with regard to publication?—Of anything indecent or obscene, and, as I have said to Mr. Spender, I should be quite ready to agree that the constant publication of a large mass of matter of that kind might be regarded as a public nuisance.

38,178. I suppose it would be difficult to formulate a general rule with regard to a matter of that kind?—It would undoubtedly be difficult, but so it is difficult when you come to formulate what is a public insanitary nuisance, such as the emission of smoke from a chimney, and a variety of things of that kind, as to which there may be differences of opinion, and yet we do find that the prosecution in cases of that kind becomes effective more or less.

38,179. You suggest, I think, prosecution in extreme cases?—Yes. I think that would have the effect of a general deterrent, a general warning; that might be desirable.

38,180. Without some specific rule or some alteration of the law, would it not be extremely difficult to get a conviction even in an extreme case?—I think not in an extreme case. There are many cases where you might obtain a conviction. You would not be able to obtain a conviction in a case which was just on the border line, but I think you would warn the purveyors of matters on the border line, and I think it would have an effect. I should very much deprecate any attempt to transfer that responsibility from the editor personally and the sub-editor acting under him. I should deprecate transferring responsibility from them to the reporter. That would not be consistent with the fixed practice of any paper I know of. We regard the reporter undoubtedly as exercising a discretion. He must do that, as you suggested, because he has to cut down his matter; he cannot give a verbatim report of anything that comes before him. That would be nonsense. But the rule we lay down is that he must report the salient facts of any meeting or trial as they come before him. That is the report we expect from him. After that we cut it down and take out what we regard as objectionable from any point of view, not only the moral point of view, but various others.

38,181. I take it the reporter would not be the responsible person in any case, it would be the editor?—That is so.

38,182. (*The Archbishop of York.*) You have put the question very broadly before us, and I should like to ask you one or two questions on the points you have brought out. I gather your main suggestion is the strengthening of the law against indecent publications?—That is so.

38,183. With regard to the suggestion that papers that habitually offend should be treated as public nuisances, do you mean that the Public Prosecutor should proceed against them?—The actual mode of procedure is a matter I have not considered, because I had not had the point raised till it was raised by Mr. Spender. My answer upon that question was entirely on the spur of the moment. It is an answer I would adhere to so far as it goes. As to the detail, I think the Public Prosecutor would be a reasonable officer.

38,184. Would there not be great danger—Mr. Burt has pointed out how difficult it is to secure a conviction—that the failure of any prosecution would be a great setback to the cause of cleanly reporting?—I do not think so. In the first place, the paper prosecuted, whether the case succeeded or not, would feel that it had gone very close to the line indeed. I think its editor, if it were a responsible paper, would feel that, and would exercise more control in future.

38,185. I lay emphasis on the "if." That applies to a paper of good conscience. Would not the papers we are thinking of mainly be prepared to run the risk and be glad of the advertisement?—There is another point in that connection. There are a large number of publications which persons will buy and will not take home to their families. There are others which they will not show. We all know a number of years ago Fielding's celebrated novel was said to be read surreptitiously in that way: it was not seen on the drawing-room table, but it was read in private. In the same way if you give a paper a public reputation for being indecent, or inclined to indecency, you undoubtedly set it outside of the reputable circle, and to that extent you serve a purpose.

38,186. I would suggest there are other classes who might regard that paper as a paper to give them this kind of stuff?—That is so. There are papers which undoubtedly have a circulation of the kind, papers which, by the way, do not report divorce cases. There are some of the sporting papers—you know the names well enough—which regularly publish indecent jokes and anecdotes, and suggestive jokes, any number; and they get a circulation, probably a large circulation, from certain classes; but those classes are not the classes which are likely to be demoralised. They are demoralised already, and I do not think you would do them any damage.

38,187. Supposing that such a prosecution as you speak of succeeded, that would only be admittedly in what you call a very extreme case?—In the first instance that would be so, but I think it would act as a warning to others who did not want to be prosecuted.

38,188. You gather the main difficulty in this matter is not the existence here and there of an extremely obscene paragraph, but the cumulative effect of a large number of details on sexual matters which would not be touched by this proceeding?—The cumulative effect is suggested as being dealt with by Mr. Spender's proposition.

38,189. The great majority of reports, even lengthy reports, would not be touched?—I am prepared to admit that your idea of what would be an improper cumulative effect might differ from mine as the editor of a newspaper. There may be differences of opinion upon all matters of that kind between one man and another.

38,190. Let us come to the interesting distinction you drew between a newspaper and a novel. You laid considerable stress on the fact that you must deal alike with both classes of literature. Is there not this distinction, that the newspaper is so very much more accessible? Would it not be fair to say the newspaper is put into the hands of the people? A novel is a thing which has to be expressly sought out and bought. Your "Yorkshire Post" is on the table of most of the respectable people of Yorkshire, no doubt, and anything that appears there therefore reaches all these respectable family circles?—Yes.

38,191. The kind of novel you are speaking of has to be deliberately asked for and paid for?—Yes.

38,192. Does that not make a distinction between the two?—May I suggest, as against that view, that when the "Yorkshire Post" has been published 24 hours it ceases to be read, that that is the end of its circulation; and that in the case of a novel bought its circulation does not cease at all with the person who buys it. It is thereafter passed from hand to hand in the course of three, six, nine, or twelve months; and on the whole those 1*s.* or 6*d.* novels—and they are published at that price, those I refer to—have a larger circulation in proportion to their cost.

38,193. I quite appreciate that point, but you would agree that a newspaper, in proportion to its respectability, is likely to reach a large class of persons who would presumably never come across a bad type of novel?—And who would presumably be less likely to be influenced detrimentally?

38,194. Possibly?—Their conditions and education being of a better class, a class that we hope would fortify them more against matter of that kind.

38,195. Is there not this further difference, that a newspaper is a piece of literature which contains an immense number of other subjects and, therefore——?—It is not bought specially for that, that is your point. That is so. It must be from our point of view a representation of the whole world as far as we can make it such.

38,196. Under the circumstances is not the State entitled to make a distinction between a class of literature which reaches all just because it gives news on every subject, and a class of literature which is of a single and special character?—The State is entitled to do whatever it pleases. I could not complain of it, but whether I think it right or desirable—I do not know whether that is the case you would put—that is another matter.

38,197. Let us come to this other point upon which you lay stress, upon the evidence of the effect of all this class of publication, following out what Sir Frederick Treves was saying. You drew the analogy of the admitted effect of reports about crime upon juveniles?—Yes.

38,198. Crime of that kind comes out?—Yes.

38,199. The evils which this class of literature stimulates do not always come out?—May I give you an instance, a personal instance. I have never committed a murder. I may say that to begin with: but I remember reading of Mrs. Siddons, how she studied Lady Macbeth till she was afraid to go to bed with her husband because she was afraid she would put a knife into him. That is a dramatic instance. I myself have had the task of sub-editing night by night two very

extended murder cases, one the murder in a railway train on the Brighton Line, in which there was a long search for a young man who was afterwards hanged, the other the famous Lamson poisoning case. It so happened that the paper I was sub-editing obtained from the Press Association what they call day reports, and those give prominence to the afternoon trial. There were other evening papers we obtained which got the morning reports, and a part of my duty was to carefully collate those two and to extend the report we published by including from the one and the other that which both did not give. I became so immersed and interested in the games of those murderers that I really began to wonder whether I should not commit a murder myself in order to see whether I could escape when these other people could. It was most exciting and for the time a demoralising process. "And almost thence my nature is subdued to what it works in, like a dyer's hand," says Shakespeare.

38,200. These reports of crime issue in crime, therefore you could get some evidence of that. But would it be a fair analogy to say the issue of reading this class of literature is a specific act of adultery? It is the effect, is it not, on the general sexual attitude of large numbers of people?—I say that is a generalisation. I couldr eason generally. I should argue generally that they have a tendency in the wrong direction.

38,201. Therefore the analogy between the effect of criminal and sexual literature is not the same?—The evidence with regard to it.

38,202. With regard to your views as to the effect of publication as a deterrent, you said publication must be regarded as part of the punishment. Had you in mind the fact that in some cases in these divorce proceedings there is an innocent party as well? Would you say he or she ought to be included in the punishment?—If there is an innocent party, surely in the case of a fair report the innocence is shown?

38,203. All his or her most intimate domestic life is dragged out and published in detail?—I do not know how far you can quite say that. I do not know whether you could substantiate that from the majority of cases in regard to any innocent party's life. I imagine a judge would say that the detail of the innocent party's life was irrelevant to the case.

38,204. (*Chairman.*) You cannot do it. The joint life makes the difference?—The joint life of the two; that may be so.

38,205. (*The Archbishop of York.*) Are you prepared, for the sake of punishing the guilty, to include some distress and pain given to the innocent?—I do not see how that can be avoided in any trial.

38,206. About the discretion of editors, you would say roughly your point is to strengthen the law against indecency, and trust the discretion of the editor?—That is so.

38,207. Is it or is it not true of a very large class of journals who have to make their way, that there is a pressure upon the discretion of editors by competition operating in the main in one direction, that is to publish as much as possible?—I think it is only very slight, and the figures in the table suggest to me that competition in that direction does not matter. I take the case of the "Manchester Guardian" and the "Nottingham Guardian" in the figures published this morning. I have nothing to say against the "Nottingham Guardian," it is quite a reputable local paper, but no one would attribute to it either the circulation or the importance of the "Manchester Guardian," yet the "Manchester Guardian" publishes a very much smaller number of columns than the "Nottingham Guardian."

38,208. You do not agree with the evidence we have had that the competition of these less strict journals does create a very great difficulty in the case of an editor who wishes to keep his paper as you would wish it to be?—Some editors may feel it so, but I think the statements on that side have been very much exaggerated.

38,209. I suppose you mean the very interesting memorandum which you have submitted to us with all the painful details to be entirely confidential to the Commissioners?—That I do not know exactly, because that proves my case. I think it proves my case. I think it is necessary to my case. There are some names I have given I certainly would not publish in any form. Those I should regard as confidential.

38,210. (*Chairman.*) I think your evidence deals with the point of view we want. Your evidence as it is given here is quite sufficient on the broad point?—I leave myself in the hands of the Commission. I have no objection at all to doing that.

38,211. (*Sir Lewis Dibdin.*) What do you mean about that? Do you mean you do not press for publication as part of your evidence here. your memorandum, or do you mean you will not make any use of it yourself except as we desire?—I have no intention of making any use of it.

38,212. I want to know which you mean?—I have no intention of making any use of it. It is not published and I do not propose to publish it.

38,213. I observe it is in type: that is all?—If I give evidence here or before the Copyright Commission or anything of that sort, I do put my evidence in type beforehand, but I do not publish it at all necessarily.

38,214. There is no part of this you desire to go in your evidence that you have not told us?—I would not like to say that. If the Commission would eliminate the illustrations I have given and certain news I have given, otherwise the mass of the argument and the mass of the statements I make I think are necessary to my case.

38,215. (*Chairman.*) I have really gone through the points of it and covered it?—Not perhaps so fully as I should like to prove my case. If you would allow me afterwards I would edit this and cut out what I think objectionable and then submit it to you.

38,216. I think we have had quite enough evidence from you without going into that memorandum?—It seems to me that I have endeavoured to deal with the matter broadly and fully from a variety of points of view which have not been raised by previous witnesses.

38,217. (*Sir Lewis Dibdin.*) I see several points that I should have thought you would want to put in evidence?—That is so.

38,218. I will just put one to you. You say on page six: "An earlier witness had laid stress upon the "fact that Queen Victoria was very emphatic in her "condemnation of such reports; but as against this "I may set the fact that in Lord Morley's 'Life of "Gladstone' there is a footnote which says, 'Mr. "'Gladstone used to desire the prohibition of publicity "'in these proceedings until he learned the strong "'view of the President of the Court that the hideous "'glare of this publicity acts probably as no in-"'considerable deterrent.'" I do not know that that has been before us?—That is so.

38,219. (*Chairman.*) That is before the Education Act?—I would not like to say beforehand you have covered all the points.

38,220. (*Sir Lewis Dibdin.*) In fairness, is it a matter you think you ought to have an opportunity of bringing out?—I thank you.

38,221. You would admit the wholesale publication of matter dealing with sexual matters is regrettable?—Yes, I do.

38,222. I suppose there may be people in the world who think that the daily publication of the reports of this Commission is a regrettable matter?—I do not know that the reports of this Commission are much better than the reports of a good many divorce cases I have read.

38,223. There is another point I gather you make, which is that you think that when there are divorce cases where prominent public people are concerned, suppression becomes much more difficult—non-publication of reports becomes much more difficult?—Not only so, but I think it is undesirable in the public interest.

38,224. Is it your view that public opinion would not tolerate suppression of those cases?—That is a very large speculation, as to what public opinion would tolerate, but I think in cases of that kind you would find very many newspapers that would say, "This is a "case which in the public interest we ought to publish, "and we will publish."

38,225. I thought I caught you to say that if the law restricted publication to the names and fact of the

divorce, you would not publish?—In very many cases we should not.

38,226. Why would you not?—Because it would be a waste of space from our point of view.

38,227. From your point of view it would have no news interest?—It would have no news in it, and, therefore, there would be no reason to publish it.

38,228. You would not consider yourselves simply bound to discharge a public duty which had no reference to your own particular calling?—That is so. If the State wants us to publish it the State ought to pay us for it.

38,229. You have drawn attention a good deal to the statistics put before us yesterday with regard to different papers, in which the number of columns devoted to divorce cases in different papers are arranged side by side for the purpose of comparison? —Yes.

38,230. You would admit that those statistics are of interest and of utility? — I should rather take exception to that, because in the case of the provincial papers——

38,231. Might I interrupt you for a moment. I am not suggesting there are no limitations to that utility, but you would admit there was some utility? —As they stand, no.

38,232. Your judgment on that point, I suppose, is influenced by the fact those figures have no common denominator?—They have no common denominator, and more than that, they do not include a variety of papers which should be included if the comparison is to be of value.

38,233. One objection is that the numbers have no common denominator. You get so many columns in the "Times," and so many columns in the "Daily Mail," but the "Times" and "Daily Mail" columns are of different size?—Quite different.

38,234. Therefore, for the purpose of comparison you want a common denominator?—That is so.

38,235. I suppose for the purpose of a really fair comparison between the papers you must take into consideration the amount of space given in each paper to law reports generally?—I scarcely think that.

38,236. Take the "Times." The "Times" publishes, we all know, elaborate law reports, far and away beyond any other newspaper, in size and care and elaboration?—Yes.

38,237. Is it not inevitable that the number of columns which the "Times" publishes on divorce must be in excess of the number which a paper like —I will not instance another, but another paper which has not elaborate law reports, would publish. It is natural, is it not?—My own opinion is that that suggestion is fallacious, that there is a distinction between the reasons for the publication, shall I say, of an appeal from India and the publication of a divorce case here. The two are on a different footing and are dealt with on a different footing, and the publication of the divorce case is solely on account of the news interest and not for any legal principle involved as there may be in the other cases. That is my own personal opinion, as against, I know, some eminent authorities.

38,238. Your view is that for the purpose of fair comparison between paper and paper you must take into consideration the size of the paper, whether a weekly or daily paper, and its general character?—Its general character, yes, and the fact of it being a weekly or daily paper. Whether the size of the paper affects the matter I should differ from other witnesses; I do not think it does.

38,239. The length of the column. It is no good comparing 30 columns in the "Times" and the "Daily Mail" when the column is different altogether?—That is so, if you are considering the mass simply.

38,240. For the purpose of comparison?—Yes, of the mass.

38,241. You have described the way reports are compiled in your office; they are written by the reporter, and revised by sub-editors acting on instructions from yourself?—Yes.

38,242. Have you general instructions with regard to reports of divorce cases and similar cases?—That no indecent matter of any kind shall be given, and they shall not be given at what we could call too great length, that we should not compete with a good many other papers in regard to the length of such reports.

38,243. In other words, you do not emphasise that kind of news?—No, not at all, not to the same extent as a good many papers.

38,244. (*Chairman.*) I do not think there is anything to ask you beyond what has been asked. This memorandum we have read, and I understand you leave it to me to dispose of?—If you would allow me to make some alterations and cut out what we may call the invidious and improper matter, I should prefer it in that way. I could do it to your satisfaction, and, if you will forgive me for saying so, I think I considered the arrangement of it and the course of the argument very carefully when I prepared it.

38,245. I must ask you, I think, if you have anything to add to add it now. I must dispose of the matter?—That is very difficult to do.

38,246. I intended to cover it all?—I acquiesced in your procedure of not reading the memorandum aloud, as other witnesses have been asked to read theirs. That was, of course, a differential treatment. I appreciated the reason for it, and acquiesced to that extent, but still I must be allowed to protest that the general argument I have laid down and carefully prepared is carefully prepared, and that it goes beyond the statements I have made, and beyond any supplementary statement I could give without reading the case.

38,247. I think I must ask if you want to add any point, that you should do so after the adjournment. I do not want to have the whole of that paper put in after the evidence has been transcribed?—I will cut it down with pleasure. I will eliminate those illustrations I gave. I do not want to publish those, but I did want the Commission to have them. There are various matters of that kind. There is the detail in the Lord Melbourne and Caroline Norton case, and the detail of the York case I gave. Those are matters I should cut out. They are strong illustrations illustrating my meaning, but I should want to include the whole of the points in detail in a concise and straightforward argument. I should want to have those on record.*

38,248. I think you must leave it where it is. I think I have taken you all through the proof; it would be simply adding to it I think we have all seen the points if there is any point I have omitted?—I cannot say what you have omitted, because I have skipped from point to point without doing anything more than that, but I do protest most firmly and respectfully that the argument I have laid down was very carefully thought out, and the procedure has been different from that of any other witness.

(*Chairman.*) My view is, with great deference, I have taken you through all the points, and that is quite sufficient.

Mr. JOHN ST. LOE STRACHEY called and examined.

38,249. (*Chairman.*) You are the Editor of the "Spectator"?—Yes.

38,250. How long have you been engaged in journalistic work?—For the last 25 years.

38,251. May I take it you have considered this question of the reporting of divorce cases?—Yes.

38,252. You have prepared a very short proof: I daresay it covers all you wish to say on the subject. You suggest it should be the practice of the judge, whenever he is of opinion that the reporting of evidence or of statements by counsel would be injurious to the public interest and contrary to good morals, to indicate to the reporters and to all persons present in court that such and such testimony by witnesses or statements by counsel ought not to be published in the Press or elsewhere, and that he would treat the publication of the passages as contempt of court. That is the view you present?—Yes.

* The Memorandum referred to is set out as a Supplemental Note in App. XVII., p. 136.

38,253. Is that based on a view that at present the reporting is not in the public interest and is contrary to good morals?—Yes, in many cases.

38,254. You think that is a matter that ought to be checked?—Yes.

38,255. This suggestion is a means of checking it?—My suggestion is that at present the State, quite innocently and unconsciously, provides a great deal of copy to the Press which is of the nature of poisonous literature, and that the State ought to have complete control over the copy, using the journalistic phrase, which it provides, and should have the right to say whether or not it should be used by the newspapers.

38,256. Do you think it would be practicable for the court to interfere continuously in the way you suggest?—I speak with great diffidence before your Lordship on that point, but it seems to me that it might be. At present in very bad cases the judge adjourns the court in camera, into a private room to hear evidence, and something of that nature might take place. The judge could say, "The proceedings, "although I shall not hear them in camera, ought not "to be reported." He should be able to enforce that decision by the procedure of contempt of court.

38,257. Strictly speaking, his right to hear cases in camera in the Divorce Court is confined to the nullity cases?—Is that so?

38,258. It is said—I am not sure whether the authority is sound—that he has in any case power to close the court if injurious to the giving of the evidence, or indecent. You assume he has that power?—I thought in cases of venereal disease and so on he occasionally adjourned the court into his private room.

38,259. You must not take that to be so. There is only one authority I am aware of at the moment, and I think both sides consented in that case?—They can by consent.

38,260. If that authority is distinctly sound, perhaps, However, that is the basis upon which you would go?—Yes.

38,261. Do you think that it would be a duty which should be cast on the judge to act as a censor in that way?—I understand that the judge might dislike it, but I think, considering the great public inconvenience, that it is a duty, though extra and burdensome, which you might put upon him.

38,262. You suggest as a corollary if necessary an Act of Parliament should be passed increasing the existing powers of judges in the matter of contempt of court, so as to secure the object just stated? That is, of course, a corollary?—Yes. I take it, at common law he would not have the power.

38,263. You say the advantage of such a proposal would be that the matter would be dealt with summarily, and that punishment would fall upon those who published undesirable matter, without the publicity of an indictment and trial?—To prevent a big trial at Bar as to whether the thing was indecent or not which would mean having it all rehearsed again.

38,264. You add that at the same time we should not suffer from the undesirable results of trials altogether in camera? You do not favour a private hearing?—No, let the public be present.

38,265. Your point is that it is against public interest that literature of a suggestive character, perhaps not indecent, should go before the public in the way it does?—I should put it in this way. Why should the Divorce Court provide indecent copy for the Press?

38,266. Have you considered whether the publication is a deterrent on the commission of immoral acts?—I have considered it, because it has interested me a good deal. It appears to me most unlikely that in cases of lust, and so forth, it should act as a deterrent. People do not think of these things.

38,267. You would consider it acted as a deterrent in launching a case, but not on the commission of the act?—No.

38,268. (*Sir George White.*) I understand you believe in some report of these cases being put into the daily papers?—I think so. I do not think that there would be any reason for preventing a report. For instance, I have thought one way out of the difficulty might be to allow the judge's summing-up and judgment to be reported, but nothing else.

38,269. Do you not think the plan you suggest, of leaving it in the hands of the judge to intimate when he thought a report of proceedings should be stopped, would lay him open to the reproach, in cases affecting people in high positions of society, that he had stopped a case of that kind when he might not have stopped one with a humbler person?—That inconvenience naturally occurs to one, but I think it is the old story—you must take the lesser of two evils.

38,270. You consider this a better plan than reporting the summing-up, or another suggestion is having an official reporter?—I do not like the idea of official reporters, but I am not at all sure the summing-up would not meet the point, because I presume no judge would as it were censor his own summing-up, or very seldom. In no case would a judge say his own summing-up must not be reported, because the judges are careful not to put in anything that could not be published.

38,271. (*Chairman.*) Would your view, as I follow from what Sir George White asked you, be met by publishing the results and the decision of the judge?—Yes, and even the actual wording of the judge.

38,272. The judge's judgment, or summing-up, if it was a trial by jury?—Summing-up and judgment.

38,273. I daresay you know, in addition to some of the cases which have been mentioned, cases concerning the custody of children are always taken in camera?—Yes.

(*Chairman.*) We thank you for your evidence, and hope we have not kept you too long.

Rev. Augustus Robert Buckland called and examined.

38,274. (*Chairman.*) You are a member of the Church of England?—Yes, I am a Clerk in Holy Orders.

38,275. A minister of the Church of England. You are the President of the Religious Tract Society?—I am the clerical secretary of that society,

38,276. You are also a member of the National Council of Public Morals?—Yes.

38,277. Do you attend here as representative of the council, or in your individual capacity?—In both. I have the agreement of the council as to the general lines of the statement submitted to the Commission.

38,278. You are confining your evidence, I think, to the publication of proceedings in divorce cases?—That is so.

38,279. What do you consider with regard to the existing conditions as to publication?—The existing conditions appear to me to be detrimental to public morals for the same reasons that have been stated by Mr. St. Loe Strachey, that the proceedings of the court enable newspapers to publish a good deal which would not be provided in any other way.

38,280. In your proof you made three points: one that the publication of a selection from the proceedings of the Divorce Court is general, and that in the majority of cases restraint is shown?—That is so.

38,281. Does that tend to indicate that in certain cases it is not general?—Certainly.

38,282. The second is, where the cases present unusual features, as where the parties are known to the world or are persons whose position makes their appearance in such a court the more noteworthy, additional space is given? You take that from your general reading of the paper?—That is so.

38,283. Then you say such a case may be reported from day to day in much detail, is given all the prominence of a feature deemed attractive, and is paraded on the contents bills. That, again, is from actual reading and experience?—That is so.

38,284. The third point is, that certain weekly journals, habitually give much space to proceedings in criminal cases, habitually present week by week extended reports of divorce proceedings. These reports appear to be, when the court is sitting, one of the

most conspicuous features of each issue?—That is so. I present a copy of the "News of the World" for the 24th January 1909, which conveys an example of excessive publication of detail.

38,285. Is that the Stirling case?—Yes.

38,286. We have heard a great deal about that. I do not know that we need put in examples. Those speak for themselves. I only want to take it generally; I do not want the details. You have found similar publications when anything of particular interest is in court?—Perhaps even more than that. It seems to me that the weekly journals of this class make a point week by week of filling several columns with divorce reports, given as a rule at much greater length than the morning or evening paper reports of the same cases.

38,287. There is this feature, too, that it concentrates for the reader of the one paper a great mass of material for the week?—Precisely, and also presents reports in a form meant to be as attractive as possible, accompanied by portraits of the chief personages. Each has been carefully sub-edited and interesting features brought out in headlines from time to time.

38,288. Have you had enough experience to tell us whether papers which are published in that way do really penetrate into different parts of the country?—I believe it can be found from official figures that some of these papers circulate to the extent of more than 1,000,000 apiece weekly, and I find from inquiries among the clergy in country districts that they reach very remote country parishes, and form, I am told, the staple reading of many families on Sundays.

38,289. You proceed in your paper to say: "It is contended (1) that no public interest is served by the elaborate presentation of divorce reports, prepared with such additional attractions as the descriptive reporter, the sub-editor, and the photographer can provide; but (2) that, on the contrary, such reports are a stimulus to evil thinking and evil living." Can you tell us to what extent you have noticed the stimulus of evil thinking and evil living?—No, I cannot indicate any particular case; but I was assured by a gathering mainly of country clergy and country laity quite recently that they regarded journals of this character, more especially from the point of view of their publishing divorce reports and similar reports, as real incentives to immorality in the lives of their people. I should add that I was addressing this clerical gathering on the suppression of pernicious literature, and in the discussion which followed the address these opinions were stated quite clearly by more than one speaker.

38,290. What was the volume of that gathering?—It was a small gathering, numbering, I should think, perhaps 24 people altogether—not more.

38,291. All with parochial experience?—No; three members of the audience were local booksellers and newsagents. The newsagents spoke with very great regret as to the circulation of this kind of literature.

38,292. You proceed in your memorandum to say the grounds for the publication of some report may be (1) the punishment of the guilty, and (2) the vindication of the innocent. What have you to say about those two points?—I imagine that the publication of the facts that a decree has been granted may be deemed a part of the punishment of the guilty party, and at the same time may vindicate the innocent party. Neighbouring gossip at the time may not discriminate between the guilty and the innocent in a divorce case. But the publication of the result *would* discriminate between the guilty and innocent, and anyone who wished to know whether the husband or wife in the particular case were guilty would find the information in an official report.

38,293. Do you think that either of those things, either punishment of the guilty or vindication of the innocent, requires full publication of the proceedings?—I do not.

38,294. It has been said a good many times here that such publication acts as a deterrent to the commission of acts of immorality. What have you to say upon that?—I should regard it as most improbable that a person contemplating acts of immorality of this kind sat down seriously and considered for a moment questions of publicity or any similar questions whatever. Within my personal observation I have never known any consideration for home or family keep any man from the commission of acts of that character, as far as I could understand.

38,295. Or a woman?—I should hesitate to say that in regard to women.

38,296. You would meet those points by suppressing all publication except the names of the parties, the nature of the charges, and the decision of the court?—Yes. May I add, in relation to the preceding question, that I do believe that the publication of the facts acts as a deterrent to proceedings in divorce cases? I believe, that is to say, that many persons refrain from going into court because publicity would ensue, but that does not affect in the smallest degree the fact of wrong having been done.

38,297. Have you been engaged yourself in parochial work?—Not for 25 years or more.

38,298. Before that?—Yes.

38,299. You say it might be that the publishing what has been referred to would result in very few cases being reported. What comment do you make upon that?—I believe that in one Continental country it has been said, in answer to inquiries, that the result of not permitting general publication of proceedings is to secure that practically no cases are reported in the Press. If that is so in another country I conceive it possible it might happen here. It seems most probable that very few newspapers would take the trouble to report anything more than the names of purely local cases, if only the results were allowed to appear.

38,300. Then you say, inasmuch as many cases are even now passed over, it is not clear that any evil would result from silence being observed in a still greater number?—It might be deduced from such publication that takes place that publication is given for one of three reasons, because it is a case which locally interests the readers of a particular paper, or because the case affects persons whose position and standing in society render them peculiarly the subject of public comment, or because the circumstances are of such a nature that readers who like a degraded type of literature will very eagerly read whatever is written about the particular case.

38,301. Would you regard unlimited publication as being an evil?—Undoubtedly.

38,302. You have already covered the next point in your paper with regard to the conference you mentioned. Perhaps you had better state that yourself?—The opinion of the conference was in no way unanimous with regard to that, but inasmuch as I believe various newspaper editors have appeared before the Commission, it would be perhaps needless to give any of the opinions represented in this report of the conference proceedings.

38,303. What conference was that?—That was a conference held last summer.

38,304. A conference of whom? Is it your own society?—It was a conference of the National Council of Public Morals.

38,305. Was that a conference of persons like yourself and others interested in the society?—Undoubtedly.

38,306. What is the point you want to make about that, because I do not appreciate it at present?—It seemed to me only right to state that at such a conference, held in the interest of public morals, the newspaper editors were not at one in desiring restriction of publication.

38,307. Were they there?—Yes, several editors were present and took part in the proceedings, and in view of the nature of the conference it seemed to me right to point out that they did not advocate the suppression of all reports. Many of them expressed great regret at the nature of some of the reports published, but it cannot be said that they were in favour, as a body, of total suppression.

38,308. From your next sentence you seem to have had Mr. St. Loe Strachey present?—Yes.

38,309. We have had his evidence and know his views. The rest of your paper is rather what we have had ourselves, the laws of the other countries?—That is so.

38,310. I do not think we need trouble with them unless you have any special knowledge of the working of those laws in those countries. By that I include information upon which you can rely ?—I have no information which goes beyond the statements doubtless embodied in the official report.

38,311. That is only a statement of what the law is ?—Precisely.

38,312. As we have that, I need not trouble further with your proof. Is there any other point you think worthy of drawing our attention to besides those I have put ?—There is one point, but whether it is one which this Commission should consider, or not, I am not clear. It seems to me from the point of view of the nation's morals, the publications of the character I have presented to the Commission raise a very serious difficulty in regard to national life on one side. Young people, as well as their parents, read these kinds of reports. A great many persons associated with the society of which I am a secretary are keenly anxious as to the reading of the nation, believing that the characters of the people depend to a certain extent on what they read, more especially when they are young. We are face to face with the fact that millions of copies of these publications are taken into the homes and read, in the quiet of Sunday more especially, week after week. It is impossible not to feel that reading of that kind must have a more or less permanent effect upon the moral character of the people. Whether that is a question which should be considered in detail by the Commission I cannot say, but it certainly places a very grave difficulty in the path of those who would like to see the literature of our people raised to a higher standard.

38,313. You include in that literature these reports ?—Yes.

38,314. There are others on other subjects and other kinds of publications ?—Yes.

38,315. They are also included ?—Yes. It may be said that any attempt to restrict publication is unfair to proprietors of journals of this character. On the other hand, a glance at their papers will show that they must in the first place represent so much capital, and in the next place so much journalistic ability, that it is impossible to believe that if this source of news were taken from them they could not supply their pages with something else, which in time, at least, would be equally interesting to their readers. In the end I do not think they would suffer, although undoubtedly if one alone had to exclude all such literature that particular paper would suffer very greatly.

38,316. Your society's object is to raise the whole moral tone ?—It is.

38,317. One of the means of doing that is by general purification of its literature ?—Yes.

38,318. Are there any other lines in which you direct your efforts besides publication ?—Is your Lordship referring to the league or the society of which I am secretary ?

38,319. I do not know that there is any distinction ; if there is, will you explain it ?—One is a society which is missionary in its character, and has as one part of its work the publication of religious and general literature in English.

38,320. Which is that ?—That is the Religious Tract Society. From that point of view I should have to number myself with the publishers who have appeared before the Commission. The National Council of Public Morals is an organisation of those who desire, if possible, to elevate the standard of public morals altogether.

38,321. All round, including literature ?—Yes.

38,322. I think that covers all your proof ?—Yes.

38,323. (*Mr. Spender.*) With regard to the legal provisions in other countries, it would not be true to say that in most of them there is less divorce than there is in this country : I mean, in spite of our publicity or because of it, whichever anybody may choose to think, we have comparatively low statistics of divorce ?—You are aware in some countries there is no divorce at all.

38,324. Compared with many of these countries, France, we will say, and the United States, to take two examples, where the practice is to keep the Divorce Court private, I will not say the result, but the fact is that divorces are very numerous ?—I believe they are.

38,325. It does not necessarily follow that the standard of public morals in matrimonial affairs is lowered by the publicity given to the proceedings ?—That raises an entirely different class of question, because I should have to consider the differences of race.

38,326. I do not wish to press it further than it is worth. As these cases are cited, it seems relevant to put that in ?—Yes.

38,327. Going into the nature of divorce for a moment, in some of these countries might one suggest that complete privacy in the Divorce Court generally goes with a conception of divorce which makes it a private affair of the parties in which the public or the State has very little concern, into which it is a kind of impertinence for other people to pry ?—Unless I had assurance from the countries in question I should hesitate to assume that that was the explanation.

38,328. I do not wish to make any general statement which it is difficult to sustain, but take France, where there is not any publicity. It would not be generally denied by Frenchmen, unless they were strong churchmen, that as a rule the conception of divorce, as of marriage, was that it was essentially a matter for the two parties and nobody else ?—I should have doubted whether French moralists would regard it from that point of view.

38,329. I am speaking of general public opinion, not French moralists. I will not press that. It would be natural if that were the view, and if divorce were regarded as a matter of private convenience, that that view should go hand in hand with complete privacy in the courts ?—I can see that is a possible explanation of it.

38,330. And the view which regarded the State as being a third party, and a very important party, both in the making and breaking of marriage, would carry with it a certain measure of publicity in divorce proceedings ?—I think that position is weakened by the fact that, in some countries at least, the position as to the reporting of proceedings appears to have been taken up with a view to restricting publication of the evidence.

38,331. I do not wish to press it too far, because it becomes a question of whether the reporting is good or bad. One conception of marriage seems to lead to some kind of reporting, and the other leads to complete privacy, so that the moral aspects of the question may be at least divided ?—I should have thought the facts might have been clearly ascertained by witnesses from those countries who might state whether repression of reporting was due to the same feeling which has been represented by witnesses here, or to the feeling which you have suggested.

38,332. To put it on general grounds, you would accept it as a general proposition that in a country where the State is regarded as a party to the divorce as it is to the marriage, some kind of publicity naturally or logically follows ?—I think some kind of publicity is absolutely necessary.

38,333. The question is, what kind ? Your view is, I understand, only the result should appear ?—Precisely.

38,334. Would you modify that for special cases, say that of the innocent party of a divorce suit who might feel himself gravely prejudiced unless he could submit himself to a public cross-examination ?—He may have been cross-examined. One might assume he had been cross-examined in private with the utmost stringency, possibly by counsel on the other side, but why he should yearn to have his cross-examination published for the benefit of the world, I cannot imagine.

38,335. Cannot you imagine the feeling of a public man who would know that a certain amount of gossip and mud sticks ?—I do not think I can.

38,336. That a cross-examination in public would be an advantage to him ?—If he were a public man the other side would probably have been represented by some very eminent counsel, and the public man would know enough to feel sure that counsel had done his

best in cross-examination for his own client, and the public would know that, too.

38,337. If you lay down that principle, it applies not only to divorce but to the entire administration of justice. We should have to take it for granted when a verdict was given that there was the verdict, that the counsel were the most eminent counsel on both sides, and the public had no further interest?—Not at all. If the publication of the details are of an obscene, or at all events of a distressing character, it would be better in other cases they were not published. There are many cases in criminal courts the details of which would shock the public more than divorce details if they were printed in the same fulness.

38,338. I agree certain discretion is necessary. I was taking it on the general principle which you lay down, that the public ought to be content with the verdict of the court?—Only where the publication of the details is contrary to good morals.

38,339. You would say in all these cases publication was necessarily contrary to good morals?—No, not in all cases, but in so many cases that it is far easier and more satisfactory to have no publication of details than to lay upon the shoulders of someone the duty of discriminating what cases should be published in detail and what should not.

38,340. You would make a general rule that there should be no publication?—Certainly.

38,341. You would not allow any of the exceptions suggested, not from the point of view of public justice?—No.

38,342. That was not clear from what you said in regard to results and offences. You would not allow the judge's summing-up to be published or any comments or remarks?—Yes. I confess I do not feel strongly against a proposal to publish the judge's summing-up if thought desirable, but I can conceive even that being made a means of exciting prurient curiosity and so on, and doing harm.

38,343. With regard to these weekly papers which are, as you have said, a concentration of all these cases in one number, a concentration of all that is scattered over the Press during the week, do you not think it possible, if you shut the Divorce Court and leave others open, you merely change the material these papers will have at their command? Police courts are open, and the criminal courts are open. There is an immense field if papers are determined?—In answer to that I should say they have already reaped in those fields to the fullest possible extent, that they had left very little.

38,344. There is always the possibility of extending the reports. These cases in the newspapers are a collection of comparatively short reports which produce a kind of cumulative effect It is an immense number of comparatively short reports; some are long, some are not. I suggest to you—I do not know whether you agree with me—if you asked the editor of one of these papers, or the sub-editor, whether he had put in all that had come to him, he would probably make the answer which every editor who has come here has made, that he he has cut down everything by half and thrown the greater part into his waste-paper basket?—No doubt, but it does not follow that the rejected ones would in any serious manner add to the extent of the evil in a large number of cases.

38,345. I submit just for your consideration, because I think we all admit the evil, it is only a question of remedy, whether this evil in these particular cases had not better be met, or could not better be met, by treating these papers against which you allege this offence—and we all do to a certain extent—as common nuisances to be prosecuted and possibly put before a jury?—That is an alternative method of dealing with them, but it does not appear to meet the case which is before the Commission of ordinary morning papers reporting from time to time particular divorce cases.

38,346. I suggest to you that if there was a public authority which could undertake prosecutions of this kind and give warnings to those it considered were grossly offending before taking proceedings, it would cover the whole Press; but I am not contesting that there is a difference between the two cases. I submit that a remedy of that kind might cover the whole ground, and not merely the reports in the Divorce Court which are a comparatively small proportion—sometimes a large proportion, but often a small proportion—of the total matter presented?—I should scarcely say they were a small proportion.

38,347. I merely suggest that to you. You do not object to that?—I think that there are more difficulties threatened by giving discretionary publication.

38,348. I am suggesting to you that no rule you can make for the Divorce Court will prevent the traffic in cases of this kind, sexual cases, which are by no means confined to the Divorce Court?—No, but I should not be without hope that if something were done in the matter of divorce cases something might in time be done over a still larger area, because obviously there are other cases, as you suggest, the publication of which is equally undesirable.

38,349. I do not want to pursue this too far, but should we not be brought up at exactly the same point as we are with regard to the Divorce Court, I mean the point of difficulty in discriminating between the cases which raise this issue and which do not, and if we made this rule and went on in the way you suggest, we should next go to all other courts of justice and shut them all up on the ground that they might raise issues of this kind?—I do not think the argument is different from that which has always been advanced against any moral reform. We are always told that you will not know where to stop, and that if you do this you will have to do something else; let us be content to do the thing immediately proposed.

38,350. I only put it as a question arising out of an answer you gave me. I should be the last person to press the argument too far, I hope?—Quite.

38,351. (*Sir George White.*) You said in your opening evidence that Divorce Courts furnish these papers with an amount of writing which, if it were not provided in this way, would not be provided in any other way. We have had some suggestions made to us, something on the lines Mr. Spender was asking you questions, that if these proceedings were limited very much, or deleted altogether, the columns now filled with them would be filled with fiction dealing with the same questions, because the papers would satisfy the taste of their readers in some form or other. Have you any belief in that?—I hesitate to think that the space occupied now by divorce cases would necessarily be taken up by material of the same kind under another guise. Mr. Spender will probably say these papers are put together by men of considerable capacity and experience. They have ample means behind them, and still, as any perusal of their contents will show, there are fields which each of them could enter probably with advantage to itself.

38,352. On other lines?—Yes, on perfectly honest lines.

38,353. The suggestion is that they have a taste to provide for, and they are bound to provide for it, if not on the lines Mr. Spender suggests, by reporting other police cases of a similar kind at length, then by fiction dealing with sexual questions?—It might be so, but even so I should hesitate to think the influence of the same amount of fiction would be as bad as the influence of the same amount of fact.

38,354. Mr. Spender has put before you what I suppose is a fact, that the statistics of divorce in this country are very low, and yet we have practically free publication of details. In other European countries the statistics are much higher, and yet publication is prevented. Is there any necessary correlation between those two facts, do you think?—I think it quite possible that the fact might be accounted for by other causes than those suggested. I am not prepared to think that because there are more divorces in some Continental countries per 1,000 of the population than there are in England, that that increased number of divorces may be due to the fact of publication being restricted or forbidden.

38,355. In those countries, generally speaking, divorce is granted on many more grounds than in England?—There is a large number of facts which

would have to be taken into account before any general inference could be drawn.

38,356. (*Mr. Burt.*) I understand you suggest the suppression of all publication save the names of the parties, the nature of the allegations and the decision of the court. We have had evidence submitted to us from the editors of newspapers that in that case they would refuse to publish altogether. You seem to anticipate that that would follow, and you suggest that probably no evil result would follow from the complete suppression of publication. As regards the suggested innocent party, the co-respondent, I think the question was put to you by Mr. Spender, is it not possible that some evil result would follow to him from his not having the opportunity of vindicating his character?—I think that difficulty will be met in part by the official publication of the decree.

38,357. You agree there should be an official publication?—Yes. My words refer to publications in the general newspaper. There would, I take it, be some official record of what had taken place. Then in regard to the possibility of few cases being published, I should think that all cases of local interest would find publication, because there is nothing, as Mr. Spender would probably say, for which an editor of an ordinary paper is keener than news which has local powers of attraction. I take it the facts as to a local divorce case would be certainly deemed worth publication in the first issue after the decree was pronounced.

38,358. (*Lady Frances Balfour.*) I want to ask you about these newspapers. Is there anything as objectionable as the reports of divorce cases? Is the serial literature as bad at present as the reports of the divorce cases?—I have not given serial literature attention for the purpose of this Commission. I do not feel able to make any statement in regard to that.

38,359. Like the public they cater for, you have only read the divorce reports?—For this purpose.

38,360. You do not know whether the literature is as bad in proportion?—I can say I have never heard any general statement impugning fiction as worthy of the same condemnation as the reports of divorce cases.

38,361. The rest of the fiction is for edification?—The rest of the contents?

38,362. Yes?—I do not think that can be said at all. In any of the papers there are quite a number of things for a Commission examining into a question of public morals to consider—answers to correspondents, advertisements, and so on.

38,363. Is it your opinion that these rags are sold purely on account of these divorce reports?—I think they are sold upon their merits as collections of news and reading matter of the kind desired by their readers.

38,364. The matter is bad, whatever it comes under?—They have a general character.

38,365. Police news and matrimonial news?—Certainly those figure largely; any criminal case of interest, a murder, or a suicide, a runaway match, even a breach of promise case receives particular attention.

38,366. There is not much hope of improving, even if the Divorce Court were closed to them?—I am not sure. I do not see why they should not at least in that respect.

38,367. Why do these cases appeal so to the classes that read the papers? Is it that they represent a class of life they do not live themselves, what is known as "high life"?—That is no doubt why so much space is given to a particular case from time to time such as the one mentioned.

38,368. They are representative of a class?—No doubt that adds to the interest and the attractiveness of the report.

38,369. Is it stated in that kind of way, that this is representative or typical of the life of that class?—I could not put my finger upon a case in which that was said, but I have formed a very strong opinion.

38,370. That is the real interest?—That is the influence left on the mind of the readers.

38,371. Not so much the sexual irregularity, but the representation of the set of society to which they think they belong?—Both, certainly.

38,372. (*Sir Lewis Dibdin.*) I had not the advantage of hearing the earlier part of your evidence, but, if I understand rightly, your general point of view is that on the one side there is wholesale corruption caused by the publication of these reports, and on the other side there is, whatever benefit there is in a safeguard by publication, the safeguard of publicity, and so on; but recognising that latter side, on the balance you think more harm is done by publication than good?—I do.

38,373. That is your general standpoint?—That is so.

38,374. I think you said if your remedy were adopted and only the names of the parties and the nature of the result were published, commercially it would not be worth publishing. The news interest of that case, in the case of a local divorce suit, say in London, would be very slight indeed?—Certainly, it would be only of interest as material for a paragraphist.

38,375 Not always that?—Not always that.

38,376. It would be like the undefended cases now, a long string on certain days which do not appear anywhere?—Quite.

38,377. You face that?—Yes.

38,378. But facing that, you still think it wiser that reports should not appear at all?—I do.

38,379. With regard to what has been said by other witnesses and put to you by Mr. Spender, namely, that these undesirable reports are not confined to cases of divorce, but apply to many other cases. Would you say in answer, that while that is so, the largest class of cases in any court in England which deal with sexual matters is in the Divorce Court?—I should.

38,380. By far the largest class of cases?—Yes.

38,381. And therefore if you deal with those, although you leave other matters unremedied, you have remedied, after all, what is the largest class of cases in this particular context on sexual subjects?—Quite so.

(*Chairman.*) Let me thank you very much on behalf of the Commissioners for the assistance you have given them. I am sure we shall attach importance to it.

Adjourned.

Winchester House, St. James's Square, London, S.W.

FORTY-FOURTH DAY.

Monday, 21st November 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The LADY FRANCES BALFOUR.
The Hon. LORD GUTHRIE.
Sir WILLIAM R. ANSON, Bart., M.P.
Sir FREDERICK TREVES, Bart., G.C.V.O., C.B., LL.D. F.R.C.S.
Sir LEWIS T. DIBDIN, D.C.L.
His Honour JUDGE TINDAL ATKINSON.
EDGAR BRIERLEY, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).
J. E. G. DE MONTMORENCY, Esq. (*Assistant Secretary*).

(*Chairman.*) I think, having read through these proofs with great care, the best way will be to ask the witnesses to read their papers and reserve all questions till they have finished.

Mr. ISRAEL ABRAHAMS called and examined.

38,382. (*Chairman.*) Would you kindly inform the Commissioners of your exact official position at Cambridge?—I am reader in Talmudic and Rabbinic literature.

38,383. How long have you filled that office?—Since 1902. Previously to that I was senior tutor at Jews' College, London.

38,384. May I suggest to you, if it suits your convenience, as this is a most carefully considered paper that you have prepared, that you might read it through to us, and we can reserve our questions till you have finished. Until it is read we are not quite in a position to ask you questions?—I think in reading it I may omit the references.

38,385. Yes, it shall be printed as it is there, as your evidence, and you can skip anything that it is not absolutely necessary to read aloud?—Yes. "Social conditions in Palestine at the beginning of the Christian era were bewilderingly complex. Restricting our attention to the question of marriage, we find at the one extreme a sect (the Essenes) which advocated celibacy, and at the other a sect (the Zadokites or Dositheans)"—those were named after the supposed founders of them, Zadok or Dositheus—which forbade divorce, or, at all events, re-marriage. Then there were the aristocrats of the court circle who had adopted Roman ways. For instance, Josephus records two instances in which women of the Herodian house (Salome, 25 B.C., and Herodias, contemporary with John the Baptist) divorced their husbands, and paralleled the excesses denounced by Juvenal in his sixth satire," and it may be that Mark x. 12 is directed against such licentiousness. He refers to the divorcing of the husband by the wife. The Pharisaic Judaism of the same period regarded marriage as the ideal state, yet freely permitted divorce. If the ideal were shattered it seemed to accord best with the interests of morality to admit this, and afford both parties to the calamity a second chance of lawful happiness. The marriage bond should be inviolable, but must not be indissoluble.

"The progress of law and custom in Jewry tended not to modify the theoretical ease of divorce, but to increase its practical difficulties. The Gospel view was that the Deuteronomic divorce was a concession to human weakness, a lowering of the earlier standards of Genesis which held marriage to be indissoluble. The Rabbinic reading of history was different. The Pentateuch introduced the formality of the written Letter of Divorce, and Rabbinism regarded this as an advance in civilisation, not a retrogression. The Deuteronomic divorce was a restriction of the earlier right or power of the husband to discard his wife at will, and with scant ceremony. Rabbinism contrasted the decent formalities of the Mosaic Code with the arbitrary indelicacy of primitive custom (Genesis Rabba, ch. xviii.).

"The Pentateuch, however, contemplates the husband as alone having the right to effect a divorce. In the Babylonian code of Hammurabi the wife had some power of initiative, and when recently the Egyptian papyri of the fifth century B.C. were discovered, it was thought that these Aramaic documents showed the Jewish woman in possession of the same status as man in regard to initiating divorce." It may be that that is still the true reading of those documents, but it does not seem to be so. The reading I quote there is that of Professor Sayce, so that it has good authority that the woman had initiative at that period; the document seems to have that meaning. "Closer study, however, shows that at most the woman of the papyri could *claim* a divorce, she could not *declare* one. This condition remained unaltered in the first Christian century. Josephus (Antiq. xv. viii. 7) distinctly asserts: 'With 'us it is lawful for the husband to do so (*i.e.* 'dissolve a marriage), but a wife, if she departs 'from her husband, cannot marry another unless her 'former husband put her away.' In two cases the husband's right of divorce was abrogated by the Pentateuch (Deut. xxii.), if he ravished a virgin or if he falsely accused his wife of ante-nuptial incontinence. In the first case the man was compelled to wed the woman in an indissoluble union, in the second case he could not divorce his wife. But what was her position? The option rested with her. She could compel her husband to retain her, or she could accept a divorce. Philo declares (ii. 313, *και μενειν και απαλλαττεσθαι*, this last word being Philonean for divorce) that she could divorce him, but it is not probable that the law ever agreed with Philo's view. At most the injured wife may have been entitled to move the court to compel her husband to write her a Letter of Divorce. The situation reminds one of Meredith's 'Diana of the Crossways,'" where the husband fails in a divorce action against the wife, and she will not have anything to do with him. "We are in possession of a clear piece of evidence as to the Jewish progress in divorce law in the period preceding the Christian era. In Matthew xix. 10 the disciples after hearing Jesus' declaration on the indissolubility of marriage, object: 'If the case of the man is so with his wife, it is not expedient to marry.' Here the difficulty of divorce is treated as a bar to wedlock. This is the man's point of view. What of the woman's? Now in the first century B.C. it would seem that, from the woman's side, the facility of divorce was a bar. In face of the ease with which a husband could whistle off his wife, women refused to contract marriages, and men grew grey and celibate (T. J. Kethuboth, end of ch. viii.; T. B. Kethuboth, 82b, Tosefta xii.). Thereupon the Pharisaic leader, Simon b. Shetah, the reputed brother of Queen Alexandra, enacted that the wife's Kethubah or

marriage settlement was to be merged in the husband's estate, that he might use it as capital, but that his entire fortune should be held liable for it." I do not know whether you would like that more clearly put. Before this reform the settlement was kept as a separate entity. It first lodged with the wife's father; afterwards kept, at all events, distinct; apparently they brought objects of value for the sum. Then all the husband had to do was to say, "Go home to your father, he has got your settlement," or, "Here you are, here is your settlement," and take down these objects and give them to her. By merging the property in the general estate of the husband and encouraging him to use it, it was very difficult for him to realise sufficient loose cash (in those days money was very scarce) and when he had from his estate to produce the sum of the settlement, it was much more difficult for him than under the former arrangements.

38,386. More difficult to put away his wife?—Yes. In fact the whole difficulty of the Jewish law has been increased by the Kethubah. "This effectively checked hasty divorce, and indeed the rights of wives under the Kethubah were throughout the ages a genuine safeguard to their marital security. In respect to holding property and possessing independent estate the Jewish wife was in a position far superior to that of English wives before the enactment of recent legislation.

"Another point of great importance was this. Jewish sentiment was strongly opposed to the divorce of the wife of a man's youth, and men almost invariably married young. The facilities for divorce seem mostly to have been applied or taken advantage of in the case of a widower's second marriage (a widower was expected to re-marry). 'What the Lord hath joined, let no man put asunder' represented the spirit of the Pharisaic practice in the age of Jesus, at all events with regard to a man's first marriage." I should say in general in the discussions between the Pharisees and Jesus in the New Testament one never has their answer; that is a point to be remembered. Thus this statement would not have been a knock-down blow to them; namely, "What God hath joined together let no man put asunder." We do not know what they would have said in reply to that. Probably they would have said, 'We agree to that.' "It is rather curious that while in the Gospel so much use is made of the phrase of Genesis 'one flesh' to prove marriage indissoluble, no reference is made to another verse in the same context, 'It is not good that the man should be alone,' which obviously requires marriage and not celibacy. It may be that Jesus, anticipating the near approach of the Kingdom, was teaching an 'interim' ethic, which would have no relation to ordinary conditions of life (cf. the view that angels do not marry, Enoch xv. 3—7, Mark xii. 25, and the later Rabbinic maxim that in the world to come there is no procreation (Berachoth 17a). But it is more likely that he was laying down a rule of conduct only for his own immediate disciples, declaring that all men cannot receive this saying. That, however, a belief in the divinity of the marriage tie was compatible with a belief that the tie could be loosened, is shown by the course of Jewish opinion. The Rabbis held with Jesus that marriages are made in heaven (*see* 'Jewish Quarterly Review,' II. 172), and several Old Testament phrases point to the same roseate view. Of the marriage of Isaac and Rebecca it is written 'the thing proceedeth from the Lord' (Genesis xxiv. 50). 'Houses and riches are the inheritance of fathers,' says the author of Proverbs (xix. 14), 'but a prudent wife is from the Lord.' Again, 'Fear not,' said the angel to Tobias (Tobit vi. 17), 'for she was prepared for thee from the beginning.' The Pharisees fully accepted this amiable theory of divine fatalism. 'God,' said the Rabbi, 'sitteth in heaven arranging marriages.' Or it was more crudely put thus: 'Forty days before the child is formed a heavenly voice 'proclaims its mate' (T. B. Moed Qaton 18b; Sota 2a) Another saying there is that a man gets the wife he deserves. In the Middle Ages, this belief in the divine arrangement of marriage affected the liturgy, and on the sabbath following a wedding, the bridegroom proceeded to the synagogue with a joyous retinue, and the congregation chanted the chapter of Genesis (xxiv.) in which, as shown above, the patriarch's marriage was declared as ordained by God. Naturally this belief in the pre-ordainment of marriage must have strengthened the Jewish objection to divorce." "'For I hate divorce,' saith the Lord" (Malachi ii. 16) was a verse much honoured in Pharisaic thought, and Malachi's protest gave rise to the pathetic saying, 'The very altar sheds tears when a man divorces the wife of his youth,' and to the sterner paraphrase 'He that putteth her away is hated of the Lord' (T. B. Gittin 90. Cf. Prov. v. 19: Eccles. ix. 9; Ecclus. vii. 26)

"But though divorce is hateful, continuance of the marriage bond may be more hateful still. Perfect human nature could do without divorce, but it could also do without marriage. Adam and Eve, it has been well said, went through no marriage ceremony. The formalities of marriage are not less the result of human imperfection than is the need of divorce. Were it not for the evil in human nature, said the Rabbis (Gen. Rab. ix.; Eccles. R. iii. 11.), a man would not marry a wife—not that the married state was evil, on the contrary, it was held to be the highest moral condition—but X needed the marriage bond to limit his own lusts and also to ward off Y. And just as, in this sense, man's evil side requires a marriage contract, so in another sense his good side demands the cancellation of the contract, if its continuance be degrading or inharmonious.

"Hence, though the strongest moral objection was felt against divorce, and though the vast majority of Jewish marriages were terminated only by death, the Pharisaic law raised no bar to divorce by mutual consent of the parties, just as marriage, despite its sacred associations, was itself a matter of mutual consent. It should be remembered that in the Jewish document of divorce no ground for the act is defined, the husband simply declares his wife thenceforth *sui juris* and free to re-marry." The document of divorce is directed to the wife in the second person.

38,387. Is that what we understand as a bill of divorcement?—Yes. She was *sui juris* and free to re-marry. No ground is stated for the divorce. "She could, and often did, re-marry her husband, unless he had divorced her for unchastity, or unless she had in the meantime contracted another marriage." There are also one or two other grounds on which she could not re-marry her divorced husband, but they are not of much consequence. According to some, if he divorced her for barrenness he was bound not to take her back. "In the time of Jesus it was not necessary for a divorce by mutual consent to come before a regular Court or Beth Din of three Rabbis, as later became the practice." It is now distinctly the practice in all decent Jewish communities for a divorce to be brought before a Beth Din. "The whole ceremony could, at the earlier period, be gone through privately, in the presence of two witnesses. An expert Rabbi was, however, probably required to ensure the proper drawing up of the document, and the due fulfiment of the legal delivery to, and acceptance by, the wife. Thus if Joseph of Nazareth and his betrothed bride had mutually consented to a divorce, there is no reason in Jewish law why he should not have 'put her away privily' (Matthew i. 19). There is little ground for thinking that—while Jews lived in an environment in which their whole manner of life was regulated by their own laws—such divorces by mutual consent were either frequent or productive of social evils, though it may be that the woman's assent was occasionally extorted by harsh measures. But though the Rabbis could oppose no legal bar to divorce by mutual consent, it was their duty to exhaust every possible expedient of moral dissuasion. 'Aaron, in Hillel's phrase (Aboth i. 12), was the type of the peacemaker, and this was traditionally explained (Aboth de R. Nathan, ch. xii.) to mean that his life-work was, in part, the reconciliation of estranged husbands and wives." This applies even more strongly to recent times, when Rabbis refuse to listen to a

frivolous claim for divorce. I state here that divorce by mutual consent was not very common. It is certainly very uncommon at the present time. I recently made inquiries with regard to Jerusalem, where the Jews live practically under their own law, Mahommedan law being very little exercised there; and I find divorce is extremely rare; much rarer than divorce in European countries. "But the case was different when one of the parties to the divorce was unwilling to assent, or when one party had something to gain by treating the other party as unwilling. From the eleventh century it has been customary in Jewish law to require that in all cases the wife shall assent to the divorce, except where her misconduct or failure could be shown to be sufficient cause why the marriage might be forcibly dissolved by the husband. But this condition of the woman's assent was not necessary at the beginning of the Christian era, when neither Rabbinic sanction nor the wife's consent was obligatory. The rule in the first century was (Yebamoth xiv. 1): 'Woman may be divorced with or without her will, but a man only with his will.' If, however, the wife contested the divorce, it is highly probable that the husband had to specify his reasons and bring the matter before a regularly constituted Beth Din," or court of three. "This was certainly the case if he suspected her of adultery (Soṭa i. 3–4). The accusing husband took his wife before the local Beth Din or court of three, and after a first hearing two Rabbis would conduct the accused to the Supreme Court in Jerusalem, which alone could deal finally with such charges. If she confessed, she forfeited her marriage settlement and was divorced; otherwise the ordeal of the waters (Numbers v.) was applied."

38,388. What is that exactly; I forget at the moment?—They subjected her to an oath, and gave her to drink this prepared water—these bitter waters; Scripture describes the constituents of it; and if it had an injurious effect upon her, if her body was swollen and so forth, she was guilty, and in the old days her death was supposed to follow. It was an ordeal, a trial by ordeal by a more or less supernatural test as to her innocence.

38,389. If she answered to the ordeal she was treated as innocent?—Yes.

38,390. If she did not she was treated as guilty?—Yes, or rather the ordeal itself was believed to have such effects as to prove her guilt. If she refused to subject herself to the ordeal she was divorced. "We may well suppose that in other cases, especially such as involved a stigma on the wife, the matter would be made a matter of public enquiry if she so claimed. It is only thus that we can fully explain the different views." A wife always had a right to protest against an evil slander against her, and she could force the matter to be brought before the court on other grounds if she wished to resist the divorce. "It is only thus that we can fully explain the different views taken at the early period as to lawful grounds of divorce." I mean that unless the court had something to do with it, then, the husband having full power to divorce on any ground, there would be no reason why the law should attempt to formulate reasons. Apparently it points to somebody else judging, and not the husband.

38,391. As if divorce by mutual consent was a consent forced, because this is dealing with the case where she was unwilling?—No, I am now passing away from them.

38,392. But going back for a moment. If there was consent there was no difficulty?—No difficulty at all.

38,393. But if the consent was withheld this part you are reading came into play?—Yes, that is my point.

38,394. Was it ever found that divorce was obtained by force?—Yes, in certain cases where it says they compelled the wife to accept a divorce if she had been guilty of certain offences; then the divorce was merely delivered to her and delivery was accepted, so long as it got into any space over which she had control; if it was somehow conveyed into her room, or within a certain distance of her hand. Of course there were very close rules as to what delivery of it was.

38,395. But you mean that in effect it forced her consent?—In certain cases, yes. From the eleventh century it was held she was not to be divorced against her will except if she was charged with adultery; or, according to many, in case of barrenness. "The schools of Hillel and Shammai differed materially (Gettin, end): the former gave the husband the legal right to divorce his wife for any cause. Cf. Matthew xix. 3 Josephus, Antiq. iv. viii. 23 ('for any cause whatsoever')."

38,396. Would you kindly tell us for what date those schools——?—I go into that point in the next sentence or two. "The school of Shammai limited the right to the case in which the wife was unchaste. The 'schools' or 'houses' of Hillel and Shammai belong to the first century." They begin from about the time of Jesus and continue till the end of the first century.

38,397. Were they in existence in His time?—Yes, but it is uncertain on a particular point as to how early it goes back into the century. "It is uncertain whether this particular difference of opinion on divorce goes back to Hillel and Shammai themselves, and thus to the very beginning of the Christian era. It is barely possible that the teaching of Jesus on the subject led to further discussion in the Pharisaic schools, and that the rigid attitude of Jesus influenced the school of Shammai. This, however, is altogether improbable, for the view of the latter school is derived from Deuteronomy (xxiv. 1) by a process which closely accords with the usual exegetical methods of the Shammaites." It looks as though it were quite natural to them, and had not been the result of any outside discussion. It is much more likely, as most commentators agree, that the Gospel reproduced a discussion of the schools. Then this I can omit—that "as the text now stands." If that passage in Matthew in which adultery is admitted as a cause of divorce be a genuine part of the text, then it looks as though it must come from Shammai, because there the Greek of the New Testament corresponds so precisely with Shammai's words and not with the words of Deuteronomy. Matthew v. 32 (as the text now stands) with its λόγου πορνείας is certainly derived from the school of Shammai, for the text of Deut. xxiv. 1 reads ערות דבר, and it was the school of Shammai who turned the words round into דבר ערוה (Gittin ix. 10), which corresponds exactly with the text of Matthew.) Hillel's language: "Even if she spoiled his food," is, of course, figurative, and may point to indecent conduct, a sense which similar metaphors sometimes bear." For instance, "there is a metaphor that a man shall not eat out of the dish which his neighbour has partaken of; that is against marrying a woman who has had intercourse with another; and when Hillel said "even if she spoilt his food," I do not think he was making a frivolous remark, but may have been referring to unchastity, but the later authorities did not so interpret him; they interpreted him to mean for any cause whatever. "Hillel was a teacher noted for his tender humaneness; it was he who popularised in Pharisaic circles the negative form of the Golden Rule before Jesus stated it positively. Hence, it is not just to speak of his view on divorce as 'lax' or 'low,' even if (as no doubt later Rabbinic authority assumed) Hillel used this forcible language to preserve as inalienable the ancient norm that a husband possessed complete right to divorce his wife for any cause. For it must be observed that his 'lax' and 'low' view of divorce was also a more rigid and elevated view as to the necessity of absolute harmony in the marriage state." That always has to be remembered, that an apparently lax law of divorce was a rigid law as to the importance of complete domestic harmony. "Still, his view (or its interpretation) did produce a condition of subjection in the woman's status, and left room for much arbitrariness on the part of the husband. 'Aqiba, who went beyond Hillel in maintaining the husband's arbitrary powers ('even if he find another woman more beautiful'),

was in fact no friend of divorce, for he applied the severest rules in estimating the pecuniary rights of the wife under the marriage settlement. 'Sell the hair of your head to pay it,' said 'Aqiba (Nedarim ix, 5) to a would-be divorcer who complained that the payment of the heavy demands of the settlement would impoverish him." 'Aqiba is himself the hero of one of the most romantic love stories in Rabbinic literature, and when a man cites a law it does not necessarily mean that that was his teaching to his disciples; a law is one thing, and a man's feelings and views with regard to it is another. "As D. Amram in his excellent book on the subject of 'The Jewish Law of Divorce' (Philadelphia, 1896) puts it, neither Hillel nor 'Aqiba was making law, they were stating it, 'regardless of their personal views or opinions' (p. 37) It is true, however, that their statement of the law helped to make and perpetuate it for future times. The injurious effect was much mitigated, though never theoretically removed, by subsequent modifications. We can trace the gradual incidence of restraining enactments and customs. Already in the year 40 A.D. we find various reforms introduced by Gamaliel, who ordained, *e.g.*, that the *Get* or divorce letter must be subscribed by the witnesses." Previously, apparently, it had not needed the signature of the witnesses. The husband does not sign the letter; it is only signed by the witnesses nowadays. "And withdrew from the husband the right to cancel the *Get* unless the wife or her attorney were present." It seems that a husband would sometimes give a divorce, and then alter his mind (I point that out in the next sentence), that he would cancel the divorce before it reached her hands, and she would know nothing of it, and she would be in a very awkward position if she remarried, and that was obviated by this reform. "Such cancellation was made before Gamaliel's reform; the husband would locally constitute a Beth-din of three Rabbis *ad hoc.*" At that period he could give a divorce without the Beth-din, but he could not cancel it without, because it became a contract then. When you were dealing with contracts the court had to have cognisance of it. "Though, as stated above, the divorce itself needed no court, many questions (as to settlements, &c.) arising out of the divorce would have to be brought before the Beth-din."

"There were, indeed, certain grounds on which husband or wife could claim the help of the court in effecting a divorce against the other's will. In all such cases, where the wife was concerned as the moving party, she could only demand that her husband should divorce her, the divorce was always, from first to last, in Jewish law the husband's act. The matter was not, however, always left to the parties themselves. 'Joseph being a righteous man, and not willing to expose her to shame, determined to divorce her secretly.' This implies that Joseph had no option"—as a righteous man—" to discarding his wife. If the husband suspected his wife of unchastity while betrothed to him, he was compelled, as a 'righteous man' to divorce her (betrothal was so binding that divorce was necessary to free a betrothed couple). His only option was between divorcing his bride privately with her consent, or formulating a charge of infidelity against her, thus subjecting her to public disgrace as well as divorce."

Anyhow she would be subjected to disgrace if he sent her home and the marriage did not occur, and he divorced her; but the disgrace would be far greater if he absolutely charged her with infidelity. "Divorce was not in itself a disgrace, seeing that it might occur on grounds involving no moral stigma." Of course in this case it would be. "The case was aggravated by the circumstance that Mary was with child, until Joseph received the assurance that his whole suspicion was erroneous. The Wisdom Books and the Rabbinic doctors agreed in regarding adultery as peculiarly heinous when it resulted in the birth of a child."

Thus the Rabbis, on the text in Ecclesiastes (The crooked cannot be made straight), asked, What is that? That is the birth of a child from an adulterous act; that cannot be made straight. "The offence was a three-fold sin." The next statement is taken from Ecclesiasticus (xxiii. 23): "against God, against the husband, against the family. In Jewish law adultery was the intercourse of a married woman with *any* man other than her husband. Though his conduct was severely reprobated, and at all events in later centuries gave his wife a right to claim a divorce, a man was not regarded as guilty of adultery unless he had intercourse with a *married* woman other than his wife. For though monogamy had become the prevalent custom in Jewish life long before the Christian era (cf. 'Jewish Encyclopedia' viii. p. 657), the man could legally marry several wives, and sometimes did so. Thus an unmarried and unbetrothed woman with whom a married man had intercourse might become his wife; indeed such intercourse could be legally construed into a marriage. By the Pentateuchal law the penalty for adultery was death. But this law can never have been frequently enforced. It needed eye-witnesses (hence the 'taken in the 'very act' of John viii. 4)."

I must point out that the objection to the view that adultery was no longer punishable by death is that passage in John. That does assume that the woman who was taken in adultery was going to be put to death, but most commentators do not think it was actually the case, but that it was merely testing Jesus as to whether He would dispute the Pentateuchal law as to the penalty for adultery. Of course, the woman had not been tried, and she could not be put to death without trial. People could not seize a woman and say, "Shall she be put to death?" That would be quite impossible. Therefore, the whole incident does not weigh against the other evidence that adultery was no longer punishable by death. It makes the case different in the interpretation of Matthew; for if adultery was punishable by death, then it stands to reason that when Jesus was saying there should be no divorce, as He did in Mark, He was not thinking of adultery, because that would be punishable by death; the marriage bond would be absolutely broken by adultery, because it would lead to the death of the wife or the guilty party. If adultery was no longer punishable by death then it entirely alters the effect of those passages. "Moreover the husband would hesitate to charge his wife, and the detected adulterer would offer heavy compensation to save his own life which was forfeit. The husband could privately divorce his wife" (even if she was guilty of adultery, I mean) she naturally losing all her rights under the marriage settlement. A charge of adultery would have to be public, and tried before the central court. It is not probable that the death penalty for adultery was inflicted at all in the age of Jesus. The Jewish courts had lost the general power of capital punishment in the year 30 A.D. (T. J. Sanh. 18 a, T.B. 41a). The Mishnah cites a single case which would fall within the age of Jesus, but it does so doubtfully (Sanh. vii. 2), and Josephus' casual assertion that the penalty for adultery was death was rather an antiquarian note than a record of experience (Apion ii. 25). On the other hand it would seem that the ordeal of the bitter waters, as applied in case of suspected adultery of the wife, was still prevalent, for the Mishnah records (Soṭa ix. 9) that the ceremouy was only abolished during the Roman invasion (*circa* 70 A.D.), though Queen Helena of Adiabene—a proselyte to Judaism in the first century A.D.—sought to restore the practice (Yoma iii. 10, Tosefta Yoma ii. 3). It is interesting to note that 'Aqiba—whose view on divorce was so 'lax'—nobly said of the ordeal: 'Only when the (accusing) 'husband is himself free from guilt will the waters 'be an effective test of his wife's guilt or innocence' (Sifre, Nasô 21; Soṭa 47b). With this may be usefully compared the fine utterance (John viii. 7): 'He that is without sin among you, let him first 'cast a stone at her' ('Jewish Encyclopedia,' I. 217; Hastings, 'Encyclopaedia of Religion,' I. 130: from my article there I have taken some passages). The abolition of the ordeal is attributed by the Mishnah to the great prevalence of adultery, and it may be

that in the disturbed conditions due to the Roman régime a temporary laxity of morals intruded itself."

I might add that that would be confirmed by the evidence of the Wisdom Books. The Book of Proverbs is full of warning against harlotry and adultery, so is the Wisdom Book of Ecclesiasticus, but that does not point to a general state of immorality, because the people attacked are the wealthy, and both books were written when the Hellenistic morals had made a road into Jewish society, and we would have the same conditions as during the Roman period, when the Jewish law would lose its hold, and the new law was either laxer, or had not yet come into force, and between the two there may have been a temporary outbreak of immorality of this kind. "The Rabbis held adultery in the utmost detestation. Not all a man's other virtues could save the adulterer from Gehenna (T. B. Soṭa 4b). Unchastity drives away from man the Divine Presence which dwells only in the chaste soul. It is impossible, however, to attempt to collect here the mass of Pharisaic maxims against such offences. In the year 135 A.D., at the crisis of the disastrous revolt against Hadrian, a meeting was held at Lydda. The assembly was attended by several famous Rabbis (including 'Aqiba), and the question was discussed as to the extent of conformity with Roman demands which might justifiably be made rather than face the alternative of death. The result is a remarkable testimony to the Jewish abhorrence of unchastity. It was decided (Sanh. 74a) that every Jew must surrender his life rather than commit any of the three offences: idolatry, murder, or *gillui 'arāyoth*, a phrase which includes both adultery and incest. "The penalty for proven adultery, when the capital punishment was abolished, was mitigated into the divorce of the woman (the husband having no option)."

38,397A. Might I ask how that was enforced. Did the Rabbis insist on his presenting a bill?—Yes, they had all sorts of powers of compulsion. They could order him to have 39 stripes; they could imprison him; they would certainly fine him. We have records of their imposing accumulative fines on him if he refused to obey the order; and they could excommunicate him. In an environment where the Jewish law prevailed that was a terrible power. I state further on that if the man was contumelious in the end I do not see what remedy they had.

38,398. But practically they put such pressure on him that he was forced to present the bill?—That was it. "The wife also lost all her rights under the marriage contract, and was not permitted to marry her paramour (Soṭa v. 1). The husband could, nay must, divorce her on suspicion, but her settlements would be intact." If he suspected her of adultery he was not allowed to continue to live with her.

38,399. Even for suspicion?—Yes.

38,400. But supposing she was not guilty?—That would not matter; he was expscted to divorce her.

38,401. Whether he had real ground or not?—Whether he had real ground or not. It was considered that his suspicions vitiated the position between them.

38,402. Then he only had to say he suspected her to get rid of her?—He would have to give some ground for his suspicion.

38,403. Some reasonable ground?—Yes; that is laid down in the Mishnah. He was not allowed to compel her to undergo the ordeal of the waters without good *primâ facie* grounds. He would have to give evidence. "It would therefore be to his advantage sometimes to prefer a public charge against her. The male adulterer was scourged, but was not compelled to divorce his own wife unless she insisted. In general, when the Mishnah speaks of 'compelling' the husband to execute a bill of divorce, the court could scourge, fine, imprison, and excommunicate him, and had practically unlimited power to force him to deliver the necessary document freeing his wife. By a legal fiction which undeniably had moral justification, the act would still be described as voluntary on the husband's part. But in case of his determined contumely, there would be no redress, as the court could not of its own motion dissolve a marriage, though it could pronounce a marriage *ab initio* void." There would always be a way out of it in certain cases; they would say that the marriage was initially void; and in certain cases they were compelled to do so. "The secular courts might be "used to enforce the desire of the Beth-din (Gittin "ix. 8)." We read of the Beth-din going before the Roman court to compel the man to give a divorce to his wife. But the Beth-din could not be induced to return the compliment, and validate a divorce pronounced in a Roman court (Gittin i. 5). For the whole tenour of Jewish divorce depends on the theory. . ." I should like this to read with reference to the past rather than the present. I was deliberately keeping from the statement——

38,404. You shall have every opportunity of revising the proof?—I should like this to read "depended"; "the whole tenour of Jewish divorce depended"; I do not wish to enter into the present-day question. You are going to hear the Chief Rabbi.

38,405. Of to-day?—Yes; and the practice of the courts substantially in European lands may act on a different principle from this; I am talking of the historical position in the olden time. "The whole tenour of Jewish divorce depended on the theory that divorce is the act only and solely of the husband, and no Beth-din could validate a divorce which was the act of any court, and not of the husband, in the prescribed forms. Moreover, on matters affecting marriage and divorce the Jewish courts would be most jealous of external interference. In modern times, however, the Beth-din would refuse to sanction or validate a divorce which had not been previously effected in the civil courts of the country.

"Other consequences followed from the theory that divorce was the willing act of the husband. The divorce of the insane husband of a sane wife would be impossible (Yebamoth xiv. 1), as he could not execute the deed of divorce. Nor could the insane wife of a sane husband be divorced by by him, because she stood in all the greater need of his protection." It is an interesting point to notice that the insane husband and the insane wife could not get a divorce; the insane husband because he is incapable of executing the document, and the insane wife because it is cruelty to her; but for that, she could be divorced, but the one humane idea comes in that she is not to be thrown off because she needs her husband all the more. "(If the insanity were proved to have existed before marriage, the marriage could be pronounced initially void, for the marriage of the insane was illegal.)." She could not, if insane, contract a marriage; there was a difference of principle. The wife could not be married against her consent though she could be divorced against her consent. "It should here be pointed out that though the sane husband could divorce his sane wife on a variety of grounds, and in the first century could do so without the intermediation of a court, he could not secure himself against the divorced wife's claims for maintenance unless he satisfied the court that the divorce had been properly executed, and that the wife's just rights had been satisfied. In that sense, the courts would have a power to revise his personal acts, even in the early period under review. Apart also from legal duties, the husband was expected to show every possible considerateness to his divorced wife. She was, of course, no longer under his jurisdiction, she was *sui juris*, and her husband lost the usufruct of her estate. This last fact was a constant preventive of arbitrary divorce (T. B. Pesahim 113b)." The charge on his estate for the settlement went much further than his own estate; any property he had ever possessed and had passed into the hands of third parties might be seized by the wife for payment of the settlement.

38,406. That seems rather hard on the third party?—Very hard indeed. "But the husband was expected, as a humane son of Israel, to save his divorced wife from penury. It is related of Rabbi José the Galilean (about 100 A.D.), that after his divorced wife had remarried and was reduced to poverty, he invited her and her husband into his house and

supported them, although when she was his wife she had made his life miserable, and his conduct is the subject of Rabbinical laudation. 'Do not withdraw 'from thy flesh,' said Isaiah (lviii. 7); this, Rabbi Jacob bar Aha interpreted to mean, 'Do not withdraw help from thy divorced wife' (Amram, *op. cit.* p. 110). If the divorced woman retained charge of infant children, the former husband not only had to maintain her, but he was also required to pay her for her services. But, in general, as to the custody of the children, the regulations were extremely favourable to the wife, who was treated with every conceivable generosity. These regulations, however, were not formulated so early as the first century." I could tell you briefly what they were; they were that the children were in the control of the wife until they were six; up to which time, if she chose to retain them, the husband could not reclaim them.

38,407. Even though she was divorced for adultery?—I do not know; I should not like to say offhand about adultery. If she kept them till they were six the husband had to maintain them; if after six the husband claimed them, and the wife was unwilling to part with them, she could still retain them, but then he was no longer compelled to maintain them. Except the daughters; the daughters he was compelled to maintain throughout their lives or until marriage, although they remained with their mother. But this was a later enactment. "It is clear that a husband was very reluctant to divorce his wife if she were also the mother of his children. Though it was held a duty to divorce an 'evil woman'—an incurable scold and disturber of the domestic peace—nevertheless if she were a mother, the husband would waive his right and endure his fate as best he might ('Erubin 41b).

"We have already seen that the insane husband was incompetent to deliver a bill of divorce. In certain other cases of disease—though not of mere infirmity—" I mean if he broke his leg or lost an eye, that was not held to be a ground for divorce, but disease was different—"the wife could claim a divorce (his rights in similar cases were indisputable). If she became deaf-mute after the marriage, he could divorce her" because her consent was not necessary. "If he contracted the same defects he could not divorce her (Yebamoth xiv.);" because he could not address her; he could not divorce her in the same manner as that in which he had married her. "If the husband fell a victim to leprosy the wife could claim a divorce, and in the second century the courts could enforce a separation in such cases against the will of the parties, unless the latter satisfied the authorities that there would be no continuance of sexual intercourse. The wife could claim a divorce in other cases of loathsome disease, as well as when the husband engaged in unsavoury occupations which rendered cohabitation unreasonably irksome (Kethuboth vii. 9). In those cases the wife retained her settlements. The husband could divorce the wife with loss of her settlements if she transgressed against the moral and ritual laws of Judaism, and some Rabbis of the first century held that the same rule applied if the wife made herself notorious by her indelicate conduct in public. If he became impoverished and unable, or if he were unwilling, to support her adequately, if he denied to her conjugal rights, she could by rules adopted at various times claim the right to her freedom (Kethuboth v. 8—9), indeed such treatment on his part was a breach of the contract made in the marriage deed" in which he contracted to do all these things.

38,408. Is there a marriage deed generally?—Yes, certainly; there is strong evidence now that the marriage contract is older than the Christian era. These Aramaic papyri show that in the fifth century B.C. a marriage contract was a very important document and the Book of Tobit has a reference to the writing of marriage. In the present marriage contract the husband contracts to support her as a decent husband should support a Jewish wife, and to honour her and do all those things a Jewish husband should do, and to maintain her in every possible manuer; so that it would be a breach of contract.

38,409. Does she contract in any way?—She only accepts it.

38,410. I suppose that originates really in his having the power of divorce?—Yes.

38,411. He makes certain bargains and she simply accepts?—Yes; of course, she was always asked whether she accepted; it was quite an act of free will on her part. "Similar rights accrued to the wife—some of these concessions belong to a considerably later period—if he restricted her liberty, if he became an apostate, if he committed a crime which compelled him to fly the country, if he violently and persistently ill-treated her, and if he were openly licentious in his life. In case of desertion, the wife could not obtain a divorce; though, in order to certify his death" (presume his death, I mean) "the court would waive some of its usual strictness as to the reception of evidence." They were on the side of the woman wherever they could be. If the woman appeared before them they would accept evidence of the husband's death which they would not accept in the ordinary course; they would accept a single witness's evidence instead of two; there was great relaxation of the law of evidence. "If the whereabouts of the husband were known, the local court would use every effort to compel him to return or grant a divorce. The excellence of intercommunication between Jewish settlements would enable the court to trace him. But the court could not grant a divorce to the wife if the husband had merely vanished and left no trace."

38,412. I suppose he would take the initiative always?—Yes.

38,413. And that presented the difficulty?—Yes. He could appoint a delegate; give a power of attorney, I have read in the middle ages of cases where a man, fearing he was going on a dangerous journey, would get a power of attorney; something like a conditional divorce; I have mentioned in this following paragraph much the same idea.

38,414. You mean if he did not return his attorney could present the bill?—Yes.

38,415. So that it would free the woman?—Yes. This is a conditional divorce that I refer to in what follows. "The persecutions to which the Jews were subjected, compelled many men to leave home in search of a livelihood, and in the Middle Ages, out of love and consideration for his wife, the husband would sometimes give her a *conditional* divorce which would become effective if he failed to appear within a stated term. It is said that in ancient times a Jewish soldier on going to active service, delivered such a divorce which would be valid if he died on the field. The effect would be to save his widow from the levirate marriage, from which as a divorcee she was free." You see she had to marry her brother-in-law if she had no issue, and if she was divorced she was free from that. "In course of time the position of the woman was continuously improved, generation after generation of Rabbinical jurists endeavouring to secure to her an ever greater measure of justice and generosity.

"The wife's barrenness, after ten years' married life, was a ground for divorce (Yebamoth 64a); later on it was disputed whether the court should leave the man to follow his own feeling in the matter, or whether it should *compel* him to divorce his wife, or alternatively (in countries where monogamy was not demanded by law) marry an additional wife."

38,416. Supposing she objected, what would she do then?—To what?

38,417. With regard to the divorce?—Then he could theoretically compel her to accept it. But the husbands do not seem to have wished it; it was really the Society that wished it.

38,418. For the procreation of childreu?—Yes, and one often finds that with the husband. In fact this passage I quote from Philo shows the curious position in which the husband, out of love to his wife, does not wish to part with her because she has no children; but Philo argues with him and says, "Yes, but you are only having intercourse for sexual passion, you know you

can have no children, this is not the reason you are permitted to exercise this passion."

38,419. They practically compel them to?—I do not think he says he would compel them, but he would like them to divorce her. In certain cases in the Middle Ages they would have compelled the husband to have another wife.

38,420. In the general interests of the community?—In the general interests of the community; but they were very reluctant to compel them. I heard of a case in Jerusalem recently where the same principle would apply. It was rather a pathetic instance. He is a good friend of mine, and his grandfather was a Russian, and had lived with his wife for several years without issue, and he thought if he went to Jerusalem the propitious holiness of the soil might give him better luck, and they went and settled in Jerusalem, and waited there ten years and had no children. Then he went to the Rabbi to get a divorce, and the Rabbi absolutely refused. He said he would not sanction divorce on such grounds; they had waited for ten years, let them wait eleven. "But," he added, "I will tell you what I will do, I will bless you." And he blessed him in the court, and they went away, and within a year they had a child—the father of my friend. I only cite this as showing that there is tremendous reluctance shown by Jewish Rabbis for anything like a lax interpretation of the powers the law gives them. "Philo gives us reason to think that at the earlier period husbands were reluctant to make use of their power to divorce a barren wife. But childless marriages were regarded as a failure, and the point gave much trouble at various epochs. It was a religious duty to beget offspring, this was the fundamental purpose of marriage. We very rarely come across a celibate among the well-known Pharisees. Ben-'Azzai (Tos. Yebamoth viii. 4, Sota 4b, &c.) was a solitary exception. He belongs to the beginning of the second century, and he remained unmarried though he denounced celibacy. When a colleague remonstrated with him, pointing out the inconsistency between his conduct and his doctrine, Ben-'Azzai replied: 'What shall I do? My soul clings in love to the Torah' (that is, the religious law); 'let others contribute to the preservation of the race.' But it was not believed that this prime duty to society could be vicariously performed, and every Jew was expected to be a father. The act of sexual intercourse was consciously elevated by the view from an animal function to a fulfilment of the divine plan announced at the Creation," in accord with the text, 'Be fruitful and multiply.'

"From this brief summary it will be seen that the Jewish law of divorce must be judged in relation to the general principles of social and domestic ethics. Rules for marriage and divorce cannot be appreciated apart from many other factors. Jewish teaching and training were directed towards producing moral sobriety, continence, purity. It did this by word and deed, by formulating moral maxims and fostering moral habits. Society usually attacks the problem at the wrong end; it penalises marital offences instead of making those offences rare. The ancient synagogue dealt with the youth and maid in the formative period of their lives. The Jewish law of divorce was the law of a society in which young marriages predominated, and the contracting parties entered into a life-long wedlock straight from a pious and virtuous home, a home in which harmony and happiness were the rule, and the relations between husband, wife and children were distinguished by a rarely equalled and never surpassed serenity and reverence. As a saying (certainly not later than the first century) runs (Yebamoth 62b): 'Our masters have taught, He who loves his wife as himself, and honours her more than himself; who leads his sons and daughters in the straight path, and marries them near their time of maturity;—to his house the words of Job apply (v. 24): Thou shall know that thy tent is in peace.' With much of this ideal the modern world has lost sympathy, but the Judaism of the first century maintained it, and built on it a moral structure which has never been excelled among all the manifold attempts made by man to arrive at an effective discipline of life."

38,421. (*Judge Tindal Atkinson.*) Before the Christian era was there any trace of what we call judicial separation, which had the effect of separating parties for life without dissolving the marriage tie?—I do not think so; I do not find any trace of judicial separation apart from divorce, unless this be the real effect of the Aramaic papyri referred to above.

38,422. Then I gather from what you say that the condonation of adultery was looked upon with dislike by the Jewish society?—Yes.

38,423. It would be still more strongly looked upon with dislike if there were no facilities for divorce?—Yes; that would be held a horrible state of immorality, that a man should be compelled to retain an adulterous woman as his wife; it would have been looked upon as the height of immorality.

38,424. Is there any trace in the authorities showing that the facilities for divorce tended to create immorality?—No. On the whole, I have tried my utmost to get to the bottom of that from the historical evidence. It seems to me it was never abused. I think you had better ask those who are dealing with the execution of the law at the present time. As to what is going on in Russia and those places I am not informed; but I do know of the Oriental countries, where I should expect divorce to be more frequent than in European settlements, and there I am convinced that divorce is very rare; though the facilities would be very great for any Rabbi in the Oriental countries to apply the letter of the law, he does not, and the divorces are extremely rare. It is because of the young marriages, too; the spouses grow up together and they very rarely part—those marriages which have been contracted in early maturity are very lasting.

38,425. (*Lord Guthrie.*) How would you compare the position of women among the Jews in the period you have been speaking of with Roman and Greek women?—The Roman and Greek women just then were getting into a position of great independence. The average Jewish woman would not have had anything like the rights—I will not say the rights, but the freedom—that the Roman women seem to have had if we are to believe the satirists, though I never believe them. I think one has to take Juvenal and those people with a very big grain of salt. I cannot think he is giving a true picture, but if he is, then these women like Herodias and Salome—no decent Jewish woman would have desired such a position of rights over her husband. According to the Sixth Satire of Juvenal a woman could have eight divorces, divorce eight husbands one after another. I do not know whether that is true to Roman law or whether it is the satirist's exaggeration. With it go certain conditions in the status of woman, no doubt.

38,426. Would you say that amongst the Jews morality has always been high as compared with that of persons professing other religions?—I should not like to contrast them with good elements of Christian society; but I can only say this, that the condition of sexual morality was far superior to what it is in modern big towns; undoubtedly it was far purer. The sexes were separated to begin with; they did not mix in this free manner; the whole position of women was a different one. What I object to is calling it a lower one without qualification. It is not a lower one but a different one. It is a pity when one talks of "low" and "high." You are aiming at a certain result, and you may get it in the Jewish methods when the Jewish law is prevailing. You cannot think of criticising what the marriage law and divorce law of Jews was by itself; you must deal with it and the other methods of the Jews as a solidarity.

38,427. That is, the Jews have mixed with other races now?—Yes.

38,428. Could you say how their morality in this country now compares with what it was under the old conditions?—I should say it is not as good as it was. I should say there has been a deterioration amongst Jews owing to their living the ordinary life of the society around them and having abandoned a great many of their own distinctive safeguards to morality.

I should say there has been a weakening due to the participation of Jews in general society, as in other matters. You would never have come across a Jew who was a drunkard, but you will find Jews, nowadays, I suppose, drinking too much. You would not have come across them in the olden days when sobriety was the common virtue of Jews. They mix with other young men and go and drink with them, and no doubt catch the same morals, and will have intercourse with women before their marriage just as other young men do; but it was entirely unheard of in the days of young marriage; that was the point, to keep them straight and pure, and from many of these temptations.

38,429. Are you able to speak—or will you leave it to the Rabbi—of the present position of Jews with regard to divorce, and to the statistics, if any, of the proportion amongst them in proportion to marriages?—I should think it would be very difficult to get the statistics, for this reason. Dr. Adler, for instance,—the Chief Rabbi—would certainly not permit a divorce if it had not been granted first in the civil court; so his statistics would probably be the same, or fewer, than those of the general court.

38,430. But in the Jewish statistics there is nothing said about religion, so we can only get it from him?—I think I saw a return——

(*Chairman.*) We have a number of statistics.

(*Lord Guthrie.*) With regard to divorce?

(*Chairman.*) Yes.

(*Lord Guthrie.*) Judicial statistics?

(*Chairman.*) Those that the registrar has furnished from the Divorce Court. The figures of the various churches are given.

(*Lord Guthrie.*) That will meet my point.

(*Chairman.*) I do not say that it will give the proportion in relation to all the Jewish marriages. Dr. Adler is going to be called.

(*Witness.*) Yes, he will be able to answer questions of that kind better than I can.

38,431. (*Lord Guthrie.*) As to the time you have been speaking of, what were the causes under which nullity would be declared?—Well, there were various causes. For instance, supposing the wife was incapable of bearing children, and that was discovered after.

38,432. Relationship? — Relationship would be rather incest. Of course any cases of forbidden degrees.

38,433. Want of knowledge?—Perhaps; I should think so.

38,434. No others?—I think there would be others.

38,435. Ante-nuptial immorality?—Certainly; but there would be others than that. If either party contracted the marriage under misinformation on important crucial matters—on matters of serious importance, or even a deliberately misleading statement on less important matters, the contract was invalid.

38,436. Do you know, Mr. Abrahams, whether the Jewish law now, in a country, would allow a divorce or a nullity suit to be carried through which the civil law would not allow?—I do not quite understand the question.

38,437. Take the case that the Jewish law allowed nullity on a ground that the civil law of a particular country did not allow, would it be possible by the Jewish law to carry it through; or are the only grounds, either for nullity or divorce, according to the civil law of the particular country?—I think in all the modern communities—say London, Berlin, Paris, and communities like that—the regular Beth-din would never dissolve a marriage on grounds which would not have previously led to dissolution in the courts. They would not put a woman in the double status of being married by one law and not by the other. The other difficulty is where the divorce is pronounced in the civil courts and not confirmed by the Jewish courts. Then she is in a double status until some way is found of getting the husband to divorce by Jewish law.

38,438. Can you tell me whether now, if a divorce is carried through in the civil courts between Jews, it first comes before the Jewish court?—Oh no.

38,439. It comes after?—It would come after They might have heard of it before, but they would not decide it.

38,440. You quote the statement that the birth of a child through an adulterous act could not be made straight. Was there no *legitimatio per subsequens matrimonium*?—In many cases in which the marriage was dissolved the child was not declared illegitimate. Certainly in the next generation it made no difference. The child of an illegitimate child was legitimate: it did not go on.

38,441. That was not the point of my question. Supposing a Jewish man and woman before marriage had had a child, and the man then marries the woman, would that make the child born previously out of wedlock between them legitimate?—I cannot remember that particular point; I cannot answer that definitely, but I think that the subsequent marriage could not legitimise the child in regard to inheritance.

38,442. With regard to divorce, Mr. Abrahams, either in the old days or now, did it and does it at all affect the social position of a man that he has divorced his wife. Is it thought to put a stigma at all upon him, he being innocent?—No, I should think not. I should think there was no stigma in divorce when the divorce was for a cause which was no question of morality. I should say no, there is no stigma.

38,443. Have you ever known a case of a Jew or a Jewess being divorced more than once?—Yes, they could divorce more than once. The husband could not re-marry the wife after she had been divorced a second time. He could only marry her previous to her second marriage.

38,444. Do you know if this matter has been discussed in the Jewish community; especially the difficulty that the poor have in getting a remedy, about which we have heard so much?—There is no difficulty at all. The poor and the rich are in precisely the same position. The mere cost of the suit is nothing. The court takes no fees.

38,445. I quite understand that as far as the Jewish Court is concerned, but you know we have had a great deal about the poor generally being denied the remedy on account of the expense of Divorce Court proceedings. Do you know if that has been felt, discussed, amongst the Jews?—I do not think the question has been felt very strongly at all amongst the Jews. I think still, in spite of the influence of modern society upon Jewish morals, the desire for divorce amongst Jews is very slight, especially amongst the poor The rich man is always better off than the poor in every law devised by society. There are the difficulties I have mentioned about paying settlements, and there the rich man does not have the same difficulties as the poor man. The rich always get the pull; that must be the case.

38,446. (*Lady Francis Balfour.*) I did not quite understand if the wife could claim a divorce for the infidelity of the husband. She can if he has a loathsome disease?—Yes.

38,447. But can she claim it for infidelity?—In modern times she could.

38,448. But not previously?—I do not think so, because you see with the husband's infidelity he could, after all, marry the other one. The position was complicated. He would not be guilty of a crime if his infidelity was not adultery; that is to say, if the partner of his wrong was an unmarried woman. That was where the position was a little complicated. If, however, the infidelity went so far as to cause her husband to absent himself unreasonably from the wife's society, she could claim a divorce. It was one of her strongest rights.

38,449. But she could claim it if he had a disease?—Certainly, and also if he had had that disease when she married him, and even if she did it knowingly, because she might say, "I did not realise the difficulty "of living with him; I now realise it, and I cannot live "with him any longer"; and thereupon the marriage was null and void.

38,450. If it was leprosy she was bound to claim it?—The authorities had the right, and at certain times they felt it was necessary, to enforce the separation;

but if they were sure that they were only living in the same house together but having no intercourse, they would allow them to remain married.

38,451. (*Sir William Anson.*) Is there any difficulty at the present time in conflict arising between the Jewish law and the law of the land in which the Jewish family is situated?—Yes, it does arise sometimes in the case of re-marriage. The synagogue will not re-marry a party that has not been divorced by Jewish law, and then the difficulty arises. That is, I think, the only question on which it arises.

38,452. Are not there cases in which, by the Jewish law, the divorce or decree of nullity would be possible when it is not possible by the law of this country; for instance, in the case of pre-nuptial unchastity?—It would not be granted—not by such a Jewish court as we have in London, on the ground that it cannot place them before the law in a state of freedom, and therefore it would be only deceiving the people to go through any ceremony of divorce which means nothing to them.

38,453. Practically the Jewish law would be made to conform in those respects to the law of the land?—Except that it will retain its own stringency over and above the law of the land in the one case, that it requires the husband to divorce her even though the law has decreed a divorce. As to all this question—the relation of the Jewish law to the law of the land in England at the present day—Dr. Adler can better inform you. It is a local question, affecting different countries differently. My own inquiries have been limited to Oriental countries.

38,454. (*Chairman.*) In some cases the woman could claim a divorce—Yes.

38,455. How was that put in force?—She would no doubt appear before the court, and the court would listen to her.

38,456. But I thought the claim would be made, but it must be a claim to make him present the bill?—Yes; then they would have the husband before them.

38,457. And they could force him to present a bill? Yes; the word in the Mishnah is constantly "כּוֹפִין" which means compel or force.

38,458. But he might still be obstinate?—He could always be obstinate. Just as torture nearly always effected its ends, but it did not always.

38,459. Can you specify in what cases the woman would be allowed to claim a divorce such as to justify pressure to be put upon the husband to get it?—In all those cases in which I talk of her having a right to claim I mean that.

38,460. Does that include any form of infidelity such as adultery with a married woman. I think you said it did?—In the case of the man's adultery with a married woman he was in no better position than the woman adultress. I mean he was guilty of a capital offence.

38,461. Then the wife could press the claim then?—She could have brought a charge of adultery against him, or have instigated the charge, and later in case of proved adultery of course she could have a divorce.

38,462. But I did not know if she could do that in the case of infidelity with a person not married?—No, not in the olden time; certainly not.

38,463. Is there a difference now?—There is a difference now in many communities. Many Jewish communities would allow the wife to claim a divorce if the husband were unfaithful.

38,464. One other matter. There is a beautiful saying on the last page of your proof. I want to know whether that is the foundation of what you have said, that there is really great care taken in entering into the marriage?—Yes.

38,465. And that leads to the probability of less difficulty after?—Yes.

38,466. And that is the foundation of the Jewish position?—Yes. While the Jewish discipline of life prevailed as a whole, the Jewish law of divorce fitted into the scheme.

38,467. With regard to statistics which Lord Guthrie inquired for, I have them now. In 1908 there were 17 decrees nisi of marriages apparently that have been performed in a Jewish synagogue; in 1907, 10. Probably Dr. Adler will be able to give more assistance about that?—I think it would be as well, perhaps, if you were to apply to the United Synagogue or some authority who could give you the number of marriages.

38,468. I do not know to what extent you can tell us, but in the case of divorce in the olden times what was the position of children? Is that what you have already stated, namely, that the wife would be allowed the children to six years and he would maintain them?—In olden times? It is the third century that those rules apply to; that is why I did not put them in. I find them first stated for the third century. It was the influence of Roman law; I believe it was in the age of Diocletian.

38,469. You do not know what was done with children in the days of Christ?—No; only infant children. That regulation about infant children was the first century; up to the time of weaning. An Oriental child often is not weaned till three, and certainly not till two; and therefore when we talk of weaning it means a longer period in Oriental countries. Until the time the child was weaned the divorced wife, in the time of Jesus, retained the child if she liked; if she chose to repudiate it she could do so from the first hour of divorce. They had no claim upon her services as nurse of the child. But if, as in normal cases, she did wish to retain it, the husband had to maintain her till the child was weaned, and pay her for her services as nurse. Then, when the child was weaned she could discard it or retain it till six—that was the third century regulation—during which time the husband had to keep her. Then at the sixth year he could claim the children, and if she refused to give them back she had to support the sons. The daughters he had to support for ever, or until they were married. If the father died, the children became public wards, the community having to support them.

38,470. Do you know how much of that relates back to the Christian age?—No, I could not say how much of the regulation applies to the early Christian age.

38,471. But as to the weaning?—That distinctly belongs to the first century. I cannot trace the other matter.

38,472. With regard to children now; do they follow the civil courts' orders?—I should think so. I should think that the Jewish Beth din would not interfere with the civil courts at all.

38,473. There is one other matter at the bottom of page 2, in reference to the phrase in Genesis "of one flesh." Could you give me the interpretation of that?—The words used there are that the woman is made out of the rib of man; she is physically his flesh. Then she becomes woman and he marries her and gets back his flesh. There is an amusing saying in the Talmud on that subject. One Rabbi asked, 'Why does the man do the courting and not the woman?' and the answer is, 'If a man loses a valuable 'object he has to go and look after it, and he cannot 'expect it to run after him. So his rib being taken 'from his side he has lost it, and he has to go and 'look for his wife and court her. She becomes his 'flesh again by marriage.' That is rather quaintly put, but it seems to be the whole idea of the passage originally. Then once more they are one flesh. It is uncertain whether it points, as some commentators think, to the primitive form of beena marriage, the marriage by which the husband went, on the marriage, to the tribe of the wife; the phrase, 'A man shall leave his father and mother and cleave to his wife,' might mean to leave his paternal kindred and go to his wife's; of which there is evidence in the patriarchal stories, where the man leaves home and joins himself to his wife's kindred.

38,474. Which is the more modern?—The second is the more modern thery. The objection to it is simply this, that to assume that meaning in Genesis would mean giving Genesis an antiquity which critical science

does not ascribe to it. If that refers to beena marriage it would be very ancient, and the modern idea is to regard that passage in Genesis as nothing like so old.

38,475. It might mean the latter, but that is the objection to it?—Yes.

(*Chairman.*) I think I ought, on behalf of the Commissioners, to thank you very much indeed for your interesting paper. I am sure we shall have a great deal of pleasure in studying it with greater care than we can at the moment.

Dr. William Sanday called and examined.

38,476. (*Chairman.*) Although I think we know them, would you kindly give us your official and other qualifications?—I am Lady Margaret Professor of Divinity at Oxford; a canon of Christchurch; and Doctor of Divinity.

38,477. I did not quite hear. Do you occupy one of the professorial positions? — Yes, I am Lady Margaret professor.

38,478. Of divinity at Oxford?—Of divinity at Oxford.

38,479. Might I ask how long you have held that office?—Since 1895.

38,480. You have been good enough, I have no doubt with a good deal of trouble and care, to prepare a paper for us on the New Testament passages bearing on marriage and divorce. It is so much in sequence that I think, if it is not too great an effort to you, I should like to ask you to read it, and we will reserve any questions we have till it is finished. I would suggest that, as there is a good deal of quotation and Greek, you might omit the reading of those parts; but, of course, they will appear in the print as part of your evidence?—Yes.

38,481. Will you read it yourself?—I will read it, my Lord:—

"It is perhaps desirable to guard expressly at the outset against a mistake and confusion which may be very easily and naturally made, especially by anyone who is not quite familiar with the particular class of questions to be investigated. There are two distinct questions, which should be kept distinct: one as to the text of our present Gospels, and another as to the original wording of the hypothetical documents or sources which, on the strength of critical analysis and inference, are presumed to *lie behind* our present Gospels. The first of these questions is commonly treated as coming under the head of 'textual criticism;' the second is rather regarded as a department of what is technically called the 'Synoptic Problem,' or the inquiry into the mutual relations of the three first Gospels to each other and to their sources. It is this second deeper question which really gives trouble in the case before us. There is, it is true, some variation in the authorities for the text of the Gospels, but it is all of a minor and secondary kind. The important questions do not arise until we begin to go *behind* the text of our Gospels. I observe that in the paper of reference the word 'interpolation' is used in connexion with the text of St. Matthew's Gospel. I am not sure that it is quite the right word. But, however that may be, it should be clearly understood that *if* there is interpolation, it is *by the first Evangelist himself*, and not by any later scribe. It would be well to bear this distinction in mind all through the inquiry.

"When it is borne in mind, it will soon be apparent that the questions of textual criticism, so far as they relate to the text of our Gospels, are really subordinate. If they were omitted altogether, no great harm would be done. Still, as it is well to work upon right data rather than upon wrong, it will probably be wished that I should begin by discussing the textual questions involved.

"The inquiry will fall under three heads or steps, in an ascending scale of difficulty and complexity: (I.) Textual Criticism; (II.) Synoptic Criticism; (III.) Higher Criticism and Exegesis. By the second I mean the inquiry into the relation of the different texts to each other. By the third I mean the discussion of the ultimate question as to what was really said, and what it really meant."

Perhaps I might be allowed to take as read this first portion on textual criticism. The upshot of it

38,482. Is that you take the Revised Version?—That we may take the Revised Version as it stands.

The following is the portion of the proof referred to:—

"I.—Textual Criticism.

"We begin with the simplest and easiest, the problem of Textual Criticism. The passages involved are four, or it is better to say five, if we include the passage from St. Paul, as I believe we ought: Matt. v. 32 or rather v. 27, 28, 31, 32; xix. 3–12; Mark x. 2-12; Luke xvi. 18; 1 Cor. vii. 10, 11.

"It will not be necessary as yet to set out these passages at length, because the questions of text affect them singly rather than in combination, and so far as three out of the five are concerned no substantial question arises, while in regard to the remaining two (both from St. Matthew) the substantial variants are confined to single verses.

"It may be convenient if I anticipate at once the conclusion at which I shall presently arrive, viz., that, for the purpose of the Commission, it will be safe to take the Revised Version and the Revisers' Greek Text as they stand."

I may pause for a moment to point out that this conclusion, if I am right in regard to it, is fortunate and satisfactory. Not only will it simplify the whole procedure of the Commission so far as this part of the subject is concerned, but it also seems to me that the evidence of the Revised Version is evidence of a kind to which the Commission would naturally attach the greatest weight. It may be taken to represent as nearly as it can be represented the great mass of scholarship throughout the English-speaking nations. Strictly speaking, it represents opinion as it stood in the year 1881. But I may note in passing, that the American portion of the Revision Committee continued its sittings till 1900, and when it brought out its separate edition in that year (N.T. 1900; "Standard Edition" of the whole Bible, 1901) the only change was the comparatively trivial, "Not all men can receive" for "All men cannot receive" in Matt. xix. 11.

It may perhaps be not altogether superfluous to suggest that, from the point of view of the Commission, the Revised Version has certain further advantages. Not only is it the work of a group of representative scholars from a variety of denominations and from the two great branches of the Anglo-Saxon race, but it may be also said to embody the principle of judge and jury. We might call it a sort of High Court of the English-speaking nations, with the democratic principle added. It will be remembered that the Revision Committee had the good fortune to number among its members the two leading textual critics of the time (for I believe that, if foreign opinion as well as English were canvassed, it would pronounce that, in the year 1881, Drs. Westcott and Hort had no superiors anywhere). In addition to these the Committee included such other experts as Bp. Lightfoot, Bp. Ellicott, Dr. F. H. A. Scrivener, Prof. Edwin Palmer in this country, and Dr. Ezra Abbot in America. But these experts were not able to give an uncontrolled verdict; they had to convince a considerable body of non-expert scholars as well. In other words, the final

verdict was not that of specialism alone, but of specialism (for good or ill) tempered with common sense.

"For these reasons it seems to me that the Revised Version is just such an authority as a Royal Commission would like to have. All that I feel called upon to do is to point out how the verdicts of the Revisers stand at the present time, and, as nearly as I can, the exact shade of significance to be attached to the differences between the text and the margin.

"We are concerned at present more especially with the Greek original; and the only passages that really need comment are Matt. v. 32, and xix. 9. In the Revisers' Greek Text (as edited for the Oxford Press by Prof. Edwin Palmer) these verses stand as follows:—

"Matt. v. 32.—Ἐγὼ δὲ λέγω ὑμῖν, ὅτι πᾶς ὁ ἀπολύων τὴν γυναῖκα αὐτοῦ, παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι· καὶ ὃς ἐὰν ἀπολελυμένην γαμήσῃ, μοιχᾶται.

"Matt. xix. 9.—Λέγω δὲ ὑμῖν, ὅτι ὃς ἂν ἀπολυσῃ τὴν γυναῖκα αὐτοῦ, (*a*) εἰ μὴ ἐπὶ πορνείᾳ, καὶ γαμήσῃ ἄλλην, μοιχᾶται· (*b*) καὶ ὁ ἀπολελυμένην γαμήσας μοιχᾶται.

"(*a*) παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι. M.

"(*b*) om. καὶ ὁ ἀπολελυμένην γαμήσας μοιχᾶται. M.

"In saying that the Revisers' Greek Text might be safely followed, I did not mean that the best scholars at the present moment would exactly agree in all the *minutiæ* of wording, but only that none of the points that may be regarded as still in debate are such as to make any substantial difference to the sense. The Revisers expressly stated that they did not consider it within their province 'to construct a continuous and complete Greek Text.' Accordingly, the Oxford editor (Prof. E. Palmer) explains that he 'adhered closely to 'the text and orthography of Stephanus in all cases 'in which the Revisers did not express a preference 'for other readings.' Hence the framework in which the Revisers' deliberate corrections are set is simply a survival from the third edition of Stephanus published in 1550.

"Perhaps the best way to form an estimate of the present position of the Revisers' Greek Text will be to compare the relevant portions of that text as it stands with the results obtained by a few leading scholars. It will be better not to confuse the issues by giving the opinions of those who have not made to some extent a special study of Textual Criticism.

"TISCHENDORF, C.—The eighth edition of Tischendorf's Greek Testament, published in 1869–1872, is the quarry from which subsequent editors have derived most of their materials. It is a landmark in the history of the Greek Text.

"WESTCOTT, B. F., and HORT, F. J. A.—The critical edition of Westcott and Hort appeared almost simultaneously with the Revised Version in 1881, and has held a leading place among editions of the Greek Testament from that time to the present.

"WEISS, B.—The veteran scholar, Dr. Bernhard Weiss, published a continuous text of the Four Gospels in 1900, after many years of preliminary study, the first fruits of which appeared for St. Matthew in 1876. This edition probably does not allow sufficient weight to the evidence supplied by Versions and Fathers, but is based upon a close study of the Greek MSS. and of the classes of error to which they are liable.

"BLASS, F.—The accomplished classical scholar, F. Blass, towards the end of his life turned his attention to the New Testament and published texts of three Gospels and the Acts, that of St. Matthew in 1901. Blass was very fresh and independent in his methods, and represents a tendency rather opposed to that of Weiss.

"ZAHN, TH.—Dr. Theodor Zahn is perhaps the most learned of living commentators, and he has given considerable attention to textual criticism. His commentary on St. Matthew appeared in 1903.

"Comparing the readings adopted by these scholars with the Revisers' Text, we get the following results:—

"Matt. v. 32 (R.T.).—Ἐγὼ δὲ λέγω ὑμῖν, ὅτι πᾶς ὁ ἀπολύων τὴν γυναῖκα αὐτοῦ, παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι· καὶ ὃς ἐὰν ἀπολελυμένην γαμήσῃ, μοιχᾶται.

"Blass and Zahn read ὃς ἂν ἀπολύσῃ for πᾶς ὁ ἀπολύων.

"Westcott and Hort bracket the last clause, καὶ ὃς ἐὰν ἀπολελυμένην γαμήσῃ μοιχᾶται, as possibly, though less probably, an addition to the original text.

"Both these readings, though not more widely adopted, deserve attention, because they are in accordance with tendencies at work in modern scholarship since the appearance of the Revised Version.

"Matt. xix. 9 (R.T.).—λέγω δὲ ὑμῖν, ὅτι ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ,[p] εἰ μὴ ἐπὶ πορνείᾳ, καὶ γαμήσῃ ἄλλην, μοιχᾶται. [q] καὶ ὁ ἀπολελυμένην γαμήσας μοιχᾶται.

"Marginal variants:—

"[p] παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι.

"[q] Omit καὶ ὁ ἀπολελυμένην γαμήσας μοιχᾶται.

"All the scholars named above omit both ὅτι and εἰ: their other divergences from the text are all included in the two comprehensive alternatives offered by the Revisers in the margin. All omit the last clause, except that it has a place in the margin of Westcott and Hort. It will be seen that none of the variants, not even the last, materially affect the sense: and even if the possibility is recognised that the clause καὶ ὁ ἀπολελυμένην γαμήσας μοιχᾶται, as well as its equivalent in v. 32, should disappear from the First Gospel, it still remains standing in Luc. xvi. 18."

A. (*cont.*)—Then page 3, I might take as read—the New Testament passages.

38,483. Yes, I think we have all had an opportunity of reading them.

The following is the portion referred to:—

"II.—SYNOPTIC CRITICISM.

"At this point it seems desirable to set out in full the Revisers' text, which we accept with the slight modifications just mentioned, of all the passages under discussion. For convenience we add 1 Cor. vii. 10, 11.

"Mark x. 11, 12.—Ὃς ἐὰν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ καὶ γαμήσῃ ἄλλην, μοιχᾶται ἐπ' αὐτήν· καὶ ἐὰν αὐτὴ ἀπολύσασα τὸν ἄνδρα αὐτῆς γαμήσῃ ἄλλον, μοιχᾶται.

"Matt. v. 32.—Ἐγὼ δὲ λέγω ὑμῖν, ὅτι πᾶς ὁ ἀπολύων τὴν γυναῖκα αὐτοῦ, παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι· καὶ ὃς ἐὰν ἀπολελυμένην γαμήσῃ, μοιχᾶται.

"Matt. xix. 9.—Λέγω δὲ ὑμὶν, ὅτι ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ, εἰ μὴ ἐπὶ πορνείᾳ, καὶ γαμήσῃ ἄλλην, μοιχᾶται· καὶ ὁ ἀπολελυμένην γαμήσας μοιχᾶται,

"In the margin two alternatives are given: (1) for the clause εἰ μὴ ἐπὶ πορνείᾳ καὶ γαμήσῃ ἄλλην μοιχᾶται the alternative παρεκτὸς λόγου πορνείας ποιεῖ αὐτὴν μοιχευθῆναι: and (2) for the clause καὶ ὁ ἀπολελυμένην γαμήσας μοιχᾶται the alternative of omission of the clause.

"Luc. xvi. 18.—Πᾶς ὁ ἀπολύων τὴν γυναῖκα αὐτοῦ καὶ γαμῶν ἑτέραν μοιχεύει· καὶ ὁ ἀπολελυμένην ἀπὸ ἀνδρὸς γαμῶν μοιχεύει.

"1 Cor. vii. 10, 11.—Τοῖς δὲ γεγαμηκόσι παραγγέλλω, οὐκ ἐγὼ, ἀλλ' ὁ Κύριος, γυναῖκα ἀπὸ ἀνδρὸς μὴ χωρισθῆναι (ἐὰν δὲ καὶ χωρισθῇ, μενέτω ἄγαμος, ἢ τῷ ἀνδρὶ καταλλαγήτω), καὶ ἄνδρα γυναῖκα μὴ ἀφιέναι.

"Mark x. 11, 12.—Whosoever shall put away his wife, and marry another, committeth adultery against her: and if she herself shall put away her husband, and marry another, she committeth adultery.

"Matt. v. 32.—Everyone that putteth away his wife, saving for the cause of fornication, maketh her an adulteress; and whosoever shall marry her when she is put away committeth adultery.

"Matt. xix. 9.—Whosoever shall put away his wife, (3) except for fornication, and shall marry another, committeth adultery: (4) and he that marrieth her when she is put away committeth adultery.

"In the margin there are the following notes:—

"(3) Some ancient authorities read *saving for the cause of fornication, maketh her an adulteress:* as in ch. v. 32.

"(4) The following words, to the end of the verse, are omitted by some ancient authorities.

"Luke xvi. 18.—Everyone that putteth away his wife, and marrieth another, committeth adultery: and he that marrieth one that is put away from a husband committeth adultery.

"1 Cor. vii. 10, 11.—But unto the married I give charge, yea not I, but the Lord, That the wife depart not from her husband (but if she depart, let her remain unmarried, or else be reconciled to her husband); and that the husband leave not his wife."

A. Then I go on at the bottom of page 3.—

"The relation of the first three Gospels to each other constitutes what is technically called the Synoptic Problem. And that problem is directly involved, in one of its more difficult branches, by the phenomena which the three Gospels present in the instance before us.

"Up to a certain point the verdict of critical scholars would be clear and practically unanimous. It is at the present time very widely held that our Gospel of St. Mark (or something very like it) lay before, and was used by, the other two evangelists. But if this position holds good, as the writer of this fully believes it does, its importance for the subject into which we are inquiring will be self-evident. It will follow that St. Mark represents the original which St. Matthew, and perhaps St. Luke, are (after their manner, *i.e.*, not slavishly, but with a certain amount of freedom) reproducing."

I use the traditional names of the Evangelists, though I fully believe myself that Mark wrote the Gospel which bears his name and that St. Luke wrote the Gospel that bears his name. But with regard to St. Matthew, I think the Gospel incorporates what St. Matthew wrote but is not identical with it. It is a later editor who has made use of a document written by St. Matthew to which I refer below under its symbol Q.—

"So far as this relation extends, St. Mark is prior to the other two Gospels, and in authority takes precedence of them. But in St. Mark the prohibition of divorce is absolute, and in this respect the wording of St. Luke agrees, as also does the general tenor of the two verses of the First Epistle of Corinthians."

38,484. Need you read the next?—It is where they are derived from. I say the question as to St. Luke is the most complicated.

38,485. I think that is very clear?—Yes, I think that can be omitted.

38,486. Not omitted from the note but from your reading it?—Yes, if the members of the Commission will kindly bear in mind that there is some difficulty as to St. Luke, then the first conclusion is that where all three Gospels are extant the other two Evangelists are following St. Mark.

[The following is the passage referred to:—

"It is a question of considerable and unusual difficulty to determine exactly from what source St. Luke derived his brief precept. The chapter in which it occurs consists for the most part of matter peculiar to the Third Evangelist, and therefore, as we should naturally suppose, is drawn from a source to which he alone had access. The first thirteen verses of the chapter are taken up with the parable of the Unjust Steward and the discourse to which it gave occasion. The last thirteen verses are taken up with the parable of the Rich Man and Lazarus. The intervening paragraph consists of five verses, of which the first two are peculiar and describe the attitude of the Pharisees. The remaining three (including the verse with which we are more immediately concerned, Luke xvi. 18) are as many curiously disconnected scraps, which appear to have broken loose from their original moorings. All three present a loose resemblance to passages from different contexts in St. Matthew. Only one—our verse—seems to have a direct parallel in St. Mark, though the not very common word εὐκοπώτερον, which occurs in the second passage, appears to be Marcan. In these circumstances it is not easy to be sure whether St. Luke is drawing from the same source as St. Matthew, or from St. Mark, or from neither of these but from some special source of his own. The difficulty of deciding is increased if we do not read καὶ ὃς ἐὰν ἀπολελυμένην γαμήσῃ μοιχᾶται in Matt. v. 32. Sir John Hawkins (in an essay as yet unpublished) has argued that in this part of his Gospel St. Luke does not make use of St. Mark, and that the parallel is to be sought rather in St. Matthew. But I do not think that he would regard the conclusion as stringent. I am afraid that with our present data the question must be left open."]

A. (*cont.*)—"The second main conclusion"—not so universally accepted as the first—

"which has a wide currency among scholars, is the existence of a further document which formed the common ground of those portions of St. Matthew and St. Luke which have no parallel in St. Mark. The symbol by which this hypothetical document is now usually designated is Q. It should be clearly understood that this second hypothetical document has not so large a consensus of opinion in its favour as the first. It may claim a majority of suffrages, but not an overwhelming majority. At the same time, a view which has the support of scholars so diverse in antecedents and tendency as Harnack, Wellhausen, and H. J. Holtzmann in Germany, Loisy in France, the Dean of Westminster, Sir John Hawkins, Professors Stanton and Burkitt, the late Dr. George Salmon, and Sir W. M. Ramsay in this country, is clearly one that deserves serious attention

I do not include in the list Bernhard and Johannes Weiss or W. C. Allen, because, although accepting the theory in part, they do so in somewhat different forms.

"Wellhausen and Harnack took opposite sides in their estimate of the historical value of this document; but by far the majority go with Harnack in rating it very highly. Many believe it to have been the actual work of the Apostle St. Matthew, the extensive use of which gave its title to the First Gospel."

Perhaps, I might say, it is rather a paradox, but still both Dr. Salmon and Sir William Ramsay have thrown out the idea, that it was written actually during the lifetime of our Lord. I am afraid that is a little too optimistic, but still I believe it to be very early and very valuable.

38,487. Which do you mean was written, according to their view, in the lifetime of our Lord—Q or the Gospel as we have it?—No, Q.

38,488. (*Sir William Anson.*) That would make Q anterior to St. Mark?—Yes, and I confess myself I think it is anterior to St. Mark—

"The starting point for the hypothesis of the existence of this document was the considerable amount of agreement between St. Matthew and St. Luke in sections not found in St. Mark, and the only sure ground for referring a section to this document is its occurrence in both Gospels. But just as in the case of the other document, a section might be wanting in one of the same two Gospels, St. Matthew and St. Luke, without disproving its presence in the original document—one of the two writers might for reasons of his own omit to use it—so in regard to this second document a section might drop out of one of the two later Gospels and be preserved only in the other. This *might* be the case, though it could not be so clearly proved as where the original itself is extant.

"This drawback exists in regard to the passage Matt. v. 31, 32. It cannot be proved, but the possibility should, I think, be distinctly contemplated, that these two verses (with or without the restricting clause) belonged originally to the second document Q. The discourse that we call the Sermon on the Mount was one of the most conspicuous features in this document. Now, the long section, Matt. v. 21–48 —a succession of paragraphs, each beginning 'Ye 'have heard that it was said to them of old time' (or the like) six times repeated—clearly hangs together. Only portions of the whole have direct parallels in St. Luke (Matt. v. 25, 26, Luke xii. 57–59; Matt. v. 39–48 = Luke 27–36, but in broken order). If this section did not come from Q, it came from a source very like Q."

38,489. (*Chairman*). Perhaps we might treat the small print as foot-notes as it were?—Yes. Perhaps I might just say that Sir John Hawkins, whose opinion is very valuable, gives a list of the portions where St. Matthew and St. Luke are parallel to each other, which is the main basis of Q, or of the reconstruction of Q; and then this very section of St. Matthew he places as next in order, as standing first with regard to the probability that it was part of Q. of all the other sections which occur only in one Gospel.

38,490. Is his work published with any title that we could ourselves see?—A work of his is published called "Horæ Synopticæ"; a second edition has already been issued. The reference in this document of mine to an unpublished book will soon not be applicable as it is nearly on the point of being published. It is a collection of essays bearing on the Synoptic Problem and it will be called "Studies in the Synoptic Problem."

The following is the Note referred to:—

"Of the writers who indicate the source of each section, Johannes Weiss assigns the whole to Q, and Allen to his equivalent for Q (with some suggestion of editing in vv. 22, 33–37). Harnack refers portions to Q, including v. 32—but without the crucial words παρεκτὸς λόγου πορνείας. Sir John Hawkins (in the unpublished essay of which I have spoken) 'would place Matt. v. 17–48 by itself as a section which we may 'regard as more likely to have formed part of Q than 'any other which is found only in a single Gospel'."

38,491. Then at the top of page 5—

A.—"I do not feel that I can press the point; but on the other hand I do not think that those who take a different view can exclude the possibility that the verses we are discussing belong to Q.

"If we apply the stricter method which is characteristic of cautious investigators like Sir John C. Hawkins, we must treat Matt. v. 31, 32 as coming under the head of matter peculiar to the First Evangelist. And, unfortunately for our purpose, this peculiar matter of the First Gospel is probably the part of the whole Synoptic Question which is at the present moment in the most backward condition. So far I have been able to appeal to a considerable amount of consensus, but at this point scholars are consciously feeling their way."

38,492. Then the next is chiefly footnote again, if I may call it so, which will all be printed. May we then pass on to No. III.?—If I may say so I am not clear if it would be right to omit some references to the portion that follows. The reason is, it is an attempt to form something of an induction as to the value of these insertions which we get in the First Gospel—of these insertions in the main tenor of the Gospel of St. Mark.

38,493. I did not mean it should be omitted. It will be printed, but I do not want to give you the trouble of reading it through. This will all be printed. Perhaps we might pass on to No. III.

(*Lord Guthrie.*) Sir Lewis points out that if he read the first paragraph and then the last one in small print on page 6 it might be better.

38,494. (*Chairman.*) Might I relieve you by reading the first paragraph and the last paragraph?—Thank you.

Chairman.—"The list of portions peculiar to St. Matthew is drawn out at length by W. C. Allen (*Comm. on St. Matthew*, Edinburgh, 1907), and occupies nearly three pages (pp. l-liii). The main point to be apprehended about it is that it is by no means homogeneous. A number of points, occurring especially towards the end of the Gospel (such as xxvii. 3-10, Judas and the blood money; 19, the message of Pilate's wife; 24, 25, Pilate washing his hands; 51b-53, the resurrection of the dead saints; 62–66, the sealing of the tomb; xxviii. 11–15, the bribing of the guard) are among those in which least confidence can be placed and which look most like the accretions of oral tradition. On the other hand, we cannot forget that the peculiar matter of St. Matthew includes much of the Sermon on the Mount and a series of parables (the Tares; the Hid Treasure; the Precious Pearl; the Draw Net; the Labourers in the Vineyard; the Two Sons; the Marriage Feast; the Ten Virgins; the Sheep and the Goats). Not all of these parables are perhaps quite on the same footing. Several of them are challenged, especially by continental critics. We cannot go into that question here. But, speaking generally, these portions of the Gospel carry with them a considerable presumption of genuineness. There is an intermediate class of passages, such as the two sections, xvi. 17–19, and xviii. 16–20 (the only places in the Gospels where reference is made to 'the Church') in which many critics suspect the influence of later ideas.

"It is to be observed that in Matt. xix. 9, the words 'except for fornication' are inserted in the course of a section taken generally from St. Mark. Insertions of this kind are fairly common. It may be worth while to give a few examples, so as to show their general character." (*Then the examples are given.*)

[The following are the examples referred to:—

"(*a*) In the incident of the disciples plucking the ears of corn (Matt. xii. 1–8 = Mark ii. 23–28 =

Luke vi. 1–5) after the argument from the precedent of David, Matt. adds the following:—

> "'Or have ye not read in the law, how that on the Sabbath day the priests in the temple profane the Sabbath, and are guiltless? But I say unto you, that One greater than the temple is here. But if ye had known what this meaneth, I desire mercy, and not sacrifice, ye would not have condemned the guiltless' (vv. 5–7).

"This breaks the thread of the narrative in Mark; it is wanting in Luke, but is probably a genuine saying (or combination of sayings) brought in from another context. In favour of its genuineness may be urged, (1) the real parallelism with what had just preceded, which was the reason for the Evangelist introducing it here; (2) the comparison of 'One greater than the temple' with 'a greater than Jonah, greater than Solomon,' in xii. 41, 42 (Q); and lastly, (3) the resemblance of 'if ye had known what this meaneth' to ix. 13 'go ye and learn what this meaneth.' It is possible that the inserted verses may come from Q. If not, the substance of them is confirmed by its triple parallelism, to Mark, Q, and some other source unknown.

"(*b*) There is a very similar insertion in the next section, Matt. xii. 11, 12:—

> "'What man shall there be of you, that shall have one sheep, and if this fall into a pit on the Sabbath day, will he not lay hold on it, and lift it out? How much then is a man of more value than a sheep!'

"There is something very like this in Luke xiv. 5 (cf. Luke xiii. 15). We may infer that either the passage comes from Q or it is supported by Q.

"(*c*) The verse Matt. xv. 14 presumably comes from Q (= Luke vi. 39). It is preceded by two verses:—

> "'Then came the disciples and said unto Him, Knowest thou that the Pharisees were offended, when they heard this saying? But He answered and said, Every plant which my heavenly Father planted not, shall be rooted up.'

"So far as form goes, these verses might come from Q; but neither their source nor their genuineness can be verified.

"(*d*) In the story of the Syrophoenician woman three verses (23–25) are peculiar to Matt.:—

> "'But He answered her not a word. And His disciples came and besought Him, saying, Send her away; for she crieth after us. But He answered and said, I was not sent but unto the lost sheep of the house of Israel. But she came and worshipped Him, saying, Lord help me.'

"These verses are a problem, and a difficult one. In any case we may endorse Montefiore's comment 'If Loisy is right, and these verses are editorial, they 'show wonderful art.' But it is difficult in the extreme to regard them as simply editorial (*i.e.*, inserted at the last revision, when the Gospel was sent out, after A.D. 70). What motive would an editor at that date have for interpolating such a sentence as 'I was not sent but unto the lost sheep of 'the house of Israel,' when the rejection of Israel was complete and the Church consisted mainly of Gentiles? On the contrary, the verse bears the strongest marks of antiquity and originality. Only during our Lord's lifetime and in the earliest years of the Christian community would it be possible to write in such a way. It is important to note the parallel to this saying in Matt. x. 5, 6 'Go not into the way of the Gentiles, 'and into any city of the Samaritans enter ye not: 'But go rather to the lost sheep of the house of 'Israel." It is conceivable that the one insertion was suggested by the other. But we may be confident that one at least rests on good—the very best—authority. I should myself be inclined to say this of both.

"And then it must be remembered that the case is very similar to that more immediately before us. Matt. xix. 9 points back to v. 32 in exactly the same sort of way in which xv. 24 points back to x. 5, 6. This is of the greatest significance for the whole problem with which we have to deal.

"(*e*) Another important example arises out of the famous passage which contains the blessing pronounced on St. Peter (Matt. xvi. 16–19).

> "'Thou art the Christ, the Son of the living God. And Jesus answered and said unto him, Blessed art thou, Simon Bar-Jonah: for flesh and blood hath not revealed it unto thee, but my Father which is in heaven. And I also say unto thee, that thou art Peter, and upon this rock I will build my Church; and the gates of Hades shall not prevail against it. I will give thee the keys of the kingdom of heaven: and whatsoever thou shalt bind on earth shall be bound in heaven: and whatsoever thou shalt loose on earth shall be loosed in heaven.'*

"It is true that the passage contains what is supposed to be the tell-tale word 'church.' But, as Mr. Allen admirably brings out—

> "'The Jewish colouring in these sayings is very remarkable; 'flesh and blood,' 'my Father which is in heaven,' 'gates of Hades,' 'keys,' 'kingdom of heaven,' the 'binding' and 'loosing,' the literary contrast of 'earth' and 'heaven,' were probably all commonplaces of Jewish theological thought. The single word 'church' alone lies open to the suspicion of betraying Christian influence, and it may easily be explained as representing a more specifically Jewish or less Christian word.'"

"As to the last point, it is enough to note that the word occurs nearly a hundred times in the Septuagint. Not only is the rest of the vocabulary essentially Jewish, but it must come from a quarter in which the Jewish origin and relations of Christianity were strongly marked, *i.e.*, from a source near to the fountain head.

"(*f*) The healing of the Epileptic Boy (Mark ix. 14–29 = Matt. xvii. 14–20 = Luke ix. 37–43) is considerably abridged in both Matt. and Luke. But Matt. ends—

> "'And He saith unto them, Because of your little faith: for I say unto you, If ye have faith as a grain of mustard seed, ye shall say unto this mountain, Remove hence to yonder place; and it shall remove; and nothing shall be impossible unto you" (where Mark has, "And He said unto them, This kind can come out by nothing, save by prayer.'"

"The additional saying in Matt. is a doublet with Matt. xxi. 21 (= Mark xi. 23). Comparing Luke xvii. 5, 6, we should naturally infer that it was brought in here from Q.

"(*g*) To the passage Matt. xviii. 6–9 (= Mark ix. 42–48 = Luke xvii. 1, 2) Matt. adds the beautiful saying Matt. xviii. 10—

> "'See that ye despise not one of these little ones; for I say unto you, that in heaven their angels do always behold the face of my Father which is in heaven."

"Here again both idea and language are very Jewish.

"(*h*) The same may be said of the addition in Matt. xix. 28:—

> "'And Jesus said unto them, Verily I say unto you, that ye which have followed me, in the regeneration when the Son of Man shall sit on the throne of His glory, ye also shall sit upon twelve thrones, judging the twelve tribes of Israel.'"

"This too has a very primitive look, and goes with (*d*), (*e*) above. Compare Luke xxii. 28–30, which is perhaps a similar passage from another source.

"(*i*) Nearly the whole of the following (Matt. xxi. 14–16) is additional or varied matter:—

> "'And the blind and the lame came to Him in the temple: and He healed them. But when the chief priests and the scribes saw the wonderful things that He did, and the children that were crying in the temple and saying, Hosanna to the

* All but the first four words of this passage is an addition to St. Mark (St. Luke has—"the Christ of God").

Son of David; they were moved with indignation, and said unto Him, Hearest thou what these are saying? And Jesus said unto them, Yea: did ye never read, Out of the mouth of babes and sucklings thou hast perfected praise?'"

"This perhaps belongs (as may v. 11 of the same chapter) to the special tradition (which may have been oral) from which Matt. introduces added details in his narrative of the Passion.

"Mr. Allen notes a curious tendency in this Evangelist to substitute 'a statement of healing' for Mark's 'statement of teaching' (as in xiv. 14, xix. 2). This is a striking, and indeed an extreme, example of the freedom with which the later editor sometimes altered the text that lay before him."

Chairman (continuing).—Then we get to the last paragraph—

"All the above are cases of insertion or addition where the First Evangelist is following the general tenor of the narrative of St. Mark. As literary workmanship, the marks of suture are sometimes apparent; the Evangelist did not hesitate to transfer material from one context to another, and upon occasion, to squeeze it into its place somewhat roughly. But, upon the whole, if we examine the above examples one by one, I think that we shall form a favourable estimate of the quality of the new material. The most vulnerable point in his procedure is that which has just been mentioned, the laxity which allowed him to speak of 'healing' where the authority before him spoke of 'teaching.' There is quite a fair presumption that some of the material comes from Q, which is very probably the best authority we have. If it does not come from Q, it is supported by parallels from Q or from Mark, which is even better, because in that case we have two coincident authorities instead of one. I would not in all cases at once infer that the words as they stand were actually spoken by our Lord. In many cases I fully believe that they were. But even where one cannot be quite confident of this, the impression made is that the source employed is early and good. With that general impression we must perhaps be content.

"I have so far been trying to test analogous cases to that more immediately before us, of insertions by Matt. in the narrative of Mark. I must now go on to deal at closer quarters with the particular data that are the subject of our inquiry, and I shall have to try to answer the ultimate question whether, or how far, they can be traced up to the authority of our Lord Himself."

38,495. (*Sir William Anson.*) Might I ask whether these cases of insertion or addition is what is meant by interpolation on page 1, Dr. Sanday"?—They might be so described.

(*Chairman.*) Perhaps you would like to know how that word happened to be used. It was a letter which was sent originally to Dr. Turner, and then afterwards it was taken up by Dr. Sanday, in which the secretary wrote that a commission had been appointed, and giving the terms of its appointment, and stating that "certain points have now arisen as the result of "evidence that has been given or is about to be given "before the commissioners which renders it desirable "that the commissioners should have before them an "exposition by some person of pre-eminent authority "on the following among other points," and several points are set out, and amongst others, "The correct "view entertained by textual critics on the possible "interpolation, and the exception of adultery or "fornication in St. Matthew's Gospel." That was only using a word which had been used by one of the witnesses before. There are several points mentioned here on which Dr. Sanday was asked, later on, to give evidence.

(*Witness.*) I may say it is very common. It is often described as an interpolation, only I mean we ought to know exactly what is meant by it.

38,496. (*Sir Willlam Anson.*) Then it is an introduction by the Evangelist into the text of St. Mark?—Yes, an addition to St. Mark by the Evangelist himself.

38,497. (*Chairman.*) Then:—

"III.—Higher Criticism and Exegesis.

A.—"I need not say that this last step is the most delicate, the most difficult, and the most responsible of all.

"The position at which we stand is this. It is sufficiently clear that in St. Mark, one of our primary authorities, our Lord is represented as forbidding divorce absolutely. St. Luke has a single verse, the origin of which is not quite certain, to the same effect. St. Paul, who in this case is something more than a witness to the usage of the Christian community because he expressly quotes his master, also states the general principle without qualification. This leaves only the two passages of St. Matthew as evidence for the existence of any qualification. We shall have, before we have done, to consider how far in any case the four authorities can be reconciled. But as a preliminary to this, we must first ascertain what sort of weight is to be attached to the two clauses in the First Gospel standing where they do. The first passage, it may be well to remind ourselves, *may* "—

I confess I think, myself, probably it did—

"in the main come from Q—we shall have to consider that possibility somewhat further; the second passage is certainly in the main based on St. Mark. The qualifying clause in the first case is the expression παρεκτὸς λόγου πορνείας, in the second μὴ ἐπὶ πορνείᾳ.

"Now it would be true to say that most critical scholars regard these qualifying clauses as due to the Evangelist himself, and not found by him in his sources."

That is what is meant by "interpolation."

"This view is expressed by Mr. Allen with so much conciseness, clearness and precision that I shall venture to quote his comment in full, and to let it stand as representing critical opinion generally."

Would it be wished that I should read the next?

38,498.—*Q.* If you please.

A.—"λόγου πορν είας is probably equivalent to the Hebrew 'something unchaste,' which the school of Shammai decreed to be the only ground of divorce; cf. *Gittin* 90[1], 'No one shall divorce his wife unless there be found in her something unchaste. πορνεία defines the unchastity as illicit sexual intercourse. It is, however, open to question whether this exception is not an addition of the editor, representing no doubt two influences, viz., Jewish custom and tradition, and the exigencies of ethical necessity in the early Christian Church. A similar exception is made in xix. 9, and it will there be seen that the clause is clearly an interpolation."

The exact expression is used by Mr. Allen.

"There is, therefore, a presumption that it has also been interpolated here. Moreover, the teaching of Christ as recorded by St. Mark (x. 11) seems to preclude any such exception. And St. Luke represents His teaching as a simple prohibition of divorce without reservation (xvi. 18). The same may be said of St. Paul's account of Christ's teaching, 1 Cor. vii. 10, 11."

"It will be seen that the reasoning of this passage is very decided and very rapid; it takes a straight course, without much looking either to the right hand or to the left for other possibilities than those that are followed. And this characteristic hangs together with a general tendency in Biblical exegesis at the present time. This tendency is accounted for by the history of the study in recent years. When once it came to be understood that the Bible

was to be investigated by the same methods as other books, Biblical students hastened to give proof of their fidelity to this canon by rather catching at the first explanation that suggested itself as being the most natural and the most probable. And yet it is matter of experience that this is by no means always the case."

I mean the *primâ facie* view is not always the true view.

"In deliberate work there has to be a good deal of weighing of competing probabilities. And it is a question whether such weighing ought not to be encouraged to a greater extent than it has been in the recent past.

"I will venture to illustrate what I mean by an attempt to apply the principle in the two cases before us—Matt. v. 32 and xix. 9.

"I must confess to a belief myself that at least the main body of v. 32 is derived from Q. We have not the advantage of access to a clear parallel in St. Luke; and therefore we cannot treat this as a settled conclusion. But I have argued above that the whole or the greater part of the lengthy section —Matt. v. 21–48—must be taken together as continuous and homogeneous. The successive paragraphs of which it is composed are all constructed upon the same plan; and this plan appears to be carried through simply and without forcing.

"But if that is so, then the first question that we have to ask is whether the clause 'saving for the cause of fornication' is to be taken with the rest or not. There are three possibilities: (i) that this clause was an integral part of the text of the document (Q?) from which the verse was taken; (ii) that it comes from some other (written or possibly oral) source; (iii) that it was introduced by the Evangelist at the last revision (when the Gospel was published) as a concession to Jewish usage and the pressure of human weakness. The last explanation, as we have seen, is that usually given. But I greatly doubt whether it deserves so clear a preference over the other two. What we have so far collected as to the habits of the Evangelist would be all in favour of his having some authority to go upon external to himself."

I might say the evidences of that were in the portions I did not read on pages 5 and 6.

"I quite agree that he has added the corresponding clause 'except for fornication' in Matt. xix. 9; and it would be quite in keeping with his practice elsewhere to make the insertion on the strength of some earlier passage like v. 32. It is clear that he himself attached considerable importance to the qualification; and I do not think that he would have introduced it without external warrant. It may be thought that this is a subjective impression; but it has at least a basis of analogy in the list of examples that we went through. And I am less ready than some are to believe that a private member of the Church (for the last editor of the Gospel was quite anonymous) would have inserted a condition of so much importance purely of his own motion.

"It is doubtless true that the parallel in Luke xvi. 18 may be used as an argument for supposing that the source from which the First Evangelist drew was originally without the limiting clause. But this inference is precarious on many grounds. It assumes not only that both Evangelists are using the same source, but that St. Luke had the source open before him, and is quoting from it verbally. It is by no means certain that this is the case. We have seen in what a curious way the three disconnected verses which present parallels to St. Matthew are introduced in the midst of matter that appears to have an altogether different origin.

I think that has reference to a passage omitted, but in the xvith Luke, which begins with a long parable and ends with a long parable, both peculiar to St. Luke, and which come from what I believe to have been the special sources to which he had access, and inserted in the middle there, are three rather disconnected verses, the origin of which is somewhat puzzling.

"But, even if St. Luke is quoting from Q and is not quoting from memory, he may be influenced by his recollection of Mark x. 11, 12. The saying in its Matthaean form is specifically Jewish, and it is characteristic of St. Luke in the main body of his narrative to pass over these Jewish touches."

He was a Gentile himself, and more familiar with the Greek world than the Jewish, as also his readers would presumably be—

"Thus, in the Sermon on the Mount, he omits such verses as Matt. v. 22–24 (Jewish expressions of anger, and the gift at the altar); v. 34, 35 (Jewish forms of swearing); vi. 2 (Jewish modes of almsgiving); vi. 16 (Jewish modes of fasting;)"

All that in the Sermon on the Mount; and in St. Mark vii., an important passage, he omits the whole section—

"on 'the tradition of the elders.'

"We pass on to Matt. xix. 9. Here 'except for fornication' is confessedly an insertion in the text of St. Mark. But I do not like, without more ado, to call it an 'interpolation,' because such a name begs the question by assuming that the Evangelist inserted it with no other authority than his own. It would, to my mind, be much easier to believe that he found his warrant in the source of v. 32."

38,499. Why is the word "confessedly" used there?—I mean that I should confess it myself, and I think all scholars would agree that the primary authority in that section is St. Mark—

"But there is another alternative; and it is upon this alternative that I desire to lay some stress. It seems to me that this verse (Matt. xix. 9) should not be separated from the three which follow immediately upon it (vv. 10–12). It may be well to print the whole passage continuously, bracketing those portions which come from St. Mark:—

9. "['And I say unto you,
'Whosoever shall put away his wife,']"

that is from St. Mark—"except for fornication"—that is an insertion—

"[and shall marry another,
"committeth adultery:
"and he that marrieth her when she is put away
"committeth adultery.]"

that is from St. Mark. Then what follows is peculiar—

10. "The disciples say unto Him: If the case of
11. the man is so with his wife, it is not
12. expedient to marry. But he said unto them, All men cannot receive this saying, but they to whom it is given. For there are eunuchs, which were so born from their mother's womb: and there are eunuchs, which were made eunuchs by men: and there are eunuchs, which made themselves eunuchs for the kingdom of heaven's sake. He that is able to receive it, let him receive it."

"We cannot help seeing that the added paragraph (vv. 10–12) is similar in moral tendency to the inserted clause. A new and profound question is raised; and in the answer that He gives to that question our Lord certainly does take account of human weakness. If He does in the one case, it is fair to presume that He would also in the other.

"The next question that we have to ask ourselves is, What are the probabilities that the added incident and saying are historical?

"I see that Mr. Allen refers the saying to the source which is his equivalent for Q; but the two verses which lead up to it he marks as supplied by the editor. But he does not seem to have noticed—what is pointed out by Wellhausen, though with a different motive—that there is a rather remarkable parallel to these verses a little later in the chapter. In the discourse about Riches (vv. 23–26) very much the same kind of objection is brought by the disciples, and very much the same kind of answer is given by our Lord. The principle is laid down that 'it is 'easier for a camel to go through a needle's eye, 'than for a rich man to enter into the kingdom of 'God.' This too is a 'hard saying'; and the disciples ask in astonishment, 'Who then can be saved?' And just as in the previous case our Lord had replied that there were certain persons who had an exceptional gift from God, so here He replied that God could make possible, what with men was impossible.

"There is yet another parallel—also noticed by Wellhausen, though again with a different intention (W. regards the expressions in xix. 10–12 as invented by the Evangelist 'on the model' of the parallels quoted). This second parallel is between xix. 11, 'All men cannot receive this saying, but they to whom it is given,' and xx. 23, 'To sit on My right 'hand, and on My left hand, is not Mine to give, 'but it is for them for whom it has been prepared 'of My Father.' The second passage is an almost exact reproduction of St. Mark, and therefore contributes the high and independent authority of that Gospel.

"These two coincidences, taken with the deep originality of the saying, seem to put a stamp of authenticity on the verses in which they occur.

"But if we may accept the new material of xix. 10, 12 as authentic, some light is reflected back from this upon xix. 9. It is clear that, when the First Evangelist wrote this verse, he had other matter in his mind bearing upon a kindred subject. The question is therefore suggested to us whether there may not have been something in the same source which led him to insert the restrictive clause.

"Thus a second explanation becomes possible of the origin of that clause. It may be a paraphrastic repetition of v. 32, or it may be derived from the new source which the Evangelist is just going to use. Between these alternatives we have not the means of deciding positively. But it seems to me that in any case the probability is increased that the Evangelist had *some* definite authority behind him, and that he is not merely drawing upon his own invention.

"One more inference from this same paragraph appears to be of importance, viz., that (as I have put it) our Lord did condescend to take account of human weakness. He had not one fixed and absolute standard to be applied to all persons upon all subjects."

"He clearly contemplates three classes you see. 'There are eunuchs which were so born from their 'mother's womb; and there are eunuchs which were 'made eunuchs by men; and there are eunuchs which 'made themselves eunuchs,' which seems to imply different grades of obligations.

"No doubt it would be hazardous to lay too much stress upon this; the principles of morals cannot be raised or lowered at will. But there are certain great and elemental facts that a wise legislator will bear in mind. He will not strain the powers of human nature to the point of breaking.

"This consideration brings me to the last question with which in this part of the subject I feel called upon to deal. We are now confronted directly with the necessity of deciding (so far as it is possible for us to decide) upon the probabilities as to what our Lord really said and meant.

"Now, I am well aware that this is often treated as a sharp alternative. Did our Lord speak in the terms attributed to Him by St. Mark, St. Luke, and St. Paul? Or did he speak substantially in the sense of the two passages from the Gospel of St. Matthew? We are invited to make an absolute choice between these propositions.

"I may be wrong; I have been charged before this with a tendency to combine things that are really incompatible. I am certainly tempted to incur this risk on the present occasion. I ask myself whether it is not possible that our Lord might in certain circumstances and under certain conditions lay down a principle of general application, and in other circumstances and under other conditions state that principle with a certain amount of restriction. I should myself be inclined to answer this question in the affirmative. The difference seems to me to be between a positive rule and a moral ideal. To me it appears to be quite possible and not really inconsistent, on the one hand to state a principle in broad and general terms, and, on the other hand, when it became a question of translating that principle into a definite concrete rule to import into it a certain amount of limitation.

"But, indeed, when we come to look into the matter, there is no need to state this view tentatively and apologetically; it is absolutely forced upon us by the immediate context of one of the leading passages that we are considering.

"Matt, v. 27–32 deals with the question of Adultery and Divorce. The next section of the Sermon on the Mount, Matt. v. 33–37, deals with the question of Oaths. That which follows Matt. v. 38–41 (comp. Luke vi. 29), deals with resistance to injuries; and the concluding verse of the paragraph, Matt. v. 42 (comp. Luke vi. 30) is concerned with Borrowing and Giving. Now, it is universally recognised that the last two precepts cannot be literally and absolutely applied to present-day conditions. They represent the Christian ideal, the inner Christian spirit, not a literal rule of law. And as a matter of fact, the legislation, even of Christian nations, has been compelled to disregard them. And even St. Paul distinctly recognises that the civil magistrate 'beareth not the sword in vain: 'for he is a minister of God, an avenger for wrath 'to him that doeth evil' (Rom. xiii. 4).

"Similarly in regard to Swearing: the precept in the Sermon is not held to be inconsistent with the administration of an oath in courts of law. Our Lord Himself responded to the adjuration of the high priest (Matt. xxvi. 63); and again we find strong language in the mouth of St. Paul: 'I say 'the truth in Christ, I lie not, my conscience 'beareth witness with me in the Holy Ghost' (Rom. ix. 1); 'I call God for a witness upon my 'soul, that to spare you I forebore to come unto 'Corinth' (2 Cor. i. 23); 'As the truth of Christ is in 'me, no man shall stop me of this glorying' (2 Cor. 'xi. 10); 'The God and Father of the Lord Jesus, 'He who is blessed for evermore, He knoweth that 'I lie not' (2 Cor. xi. 31); 'Now touching the 'things which I write unto you, behold, before God, 'I lie not' (Gal. ii. 20).

"In all these cases we have the indubitable juxtaposition of a lofty unqualified ideal with the admission of a lower or different standard in practice. Can we regard the question of Marriage and Divorce as standing upon a different footing from these other cases which all occur in the same context? I do not think we can.

It may be well to remind ourselves that there are two distinct questions: (1) Does the use by our Lord of unqualified language on one occasion absolutely preclude the possibility that He should have used qualified language upon another? and (2) Does the recognition by Christians of a lofty and unqualified moral ideal of necessity prevent a Christian State from legislating (as it were) upon a lower level? For myself, I should feel compelled to answer both these questions in the negative.

"I am free to confess that this result is clearer and more decided than I had myself anticipated. I am also afraid that it runs more counter to the general feeling among conscientious Churchmen. It seems to me, however, to follow directly from the method pursued and from the state of the data. The determining considerations are two: (1) I have throughout felt that, even upon critical grounds, the form of the precept in the First Gospel could not lightly be put aside. And (2) this conclusion seems to be confirmed, and the whole question assumes a different aspect, when once we call to mind the nature of these elevated sayings and their relation to practice. They are addressed to the Christian conscience as such, and the appeal to them is an appeal to that conscience. But legislation by the Civil Power is a different matter; and obedience to the Civil Power comes under the head of rendering to Cæsar the things that are Cæsar's, and does not clash with duty towards God. The individual Christian (whether cleric or layman) is free to apply, and ought to apply, the highest standard to his own conduct; he is free to use, and he ought to use, all his powers of persuasion to induce others to adopt for themselves the same standard. But when it becomes a question of passing judgment upon others and of enforcing that judgment by the arm of the law, the lower standard is the right one."

Of course I ought to say that is only my own opinion.

38,500. I do not think you need read the appendix; that will be printed?—It does affect the main issue in one respect, my Lord. An alternative view is given of the whole question by Mr. Montefiore in his recent book, "A Commentary on the Synoptic Gospels." Perhaps I might summarise it in this way. I have been trying to set the version in St. Matthew by the side of the version in St. Mark, and to maintain that they are not absolutely incompatible with each other. Mr. Montefiore would explain St. Mark practically on the lines of St. Matthew. It sounds a little paradoxical, but on this ground—on the ground that with the Jews at the time of course the proper punishment for adultery was not divorce but death. Of course that comes out in the paragraph on the adulteress which is an interpolation in the Fourth Gospel; "It is commanded of the law to stone such," so that Mr. Montefiore thinks that St. Mark put aside the case of adultery in the wife, and that he took it for granted, and therefore did not set it down.

The following is the Appendix referred to:—

"APPENDIX.

"It may be worth while to print as an Appendix comments by two writers, one of which presents an alternative view to that taken above, while the other illustrates the view taken with much force and precision.

"I observe that Mr. C. G. Montefiore (*The Synoptic Gospels*, i. 235 f.), having in his mind the methods of Jewish exegesis, does not regard the passages in St. Matthew as qualifying the general precept in St. Mark, but rather interprets this general precept in the sense of St. Matthew, supposing that the case of adultery is tacitly understood and excluded. He writes as follows:—

> 'The version of this section in Mark differs in important respects from the version in Matthew (xix. 1–12). In Mark the question is asked quite generally, "May a man divorce his wife?" In Matthew the question is, "May a man for any reason divorce her?" In other words, the question there is, What attitude does Jesus take up on the point at issue between Hillel and Shammai? The parallel passages (Matt. v. 31, 32; Luke xvi. 18) must also be taken into account.
>
> 'At first sight it might seem as if Mark can only then be supposed to give the more original and accurate report of what Jesus really said, if W[ellhausen]'s interpretation of Mark be accepted. That interpretation robs the difference between Matthew and Mark of any considerable importance. It assumes that Jesus did not mean to say that, even if a woman had committed adultery, she must not be divorced, and that in the lifetime of that guilty woman the guiltless husband must never marry again. It supposes that adultery was not in question. For though Shammai held that unchastity ought to be the only ground for divorce, there is no reason to suppose that the ordinary custom and law from the earliest period onward had not been in accordance with the opinion of Hillel, namely, that a man was able to send his wife away for a number of reasons unconnected with unchastity. Adultery was a separate affair, which was not dealt with by anything so mild as a mere bill of divorce. The penalty of adultery was death.
>
> . . . .
>
> 'On this view the discussion in Mark must be supposed to exclude adultery, though it does not mention adultery. Matthew, to avoid any unclearness, adds words which make adultery the exception to the general canon which Jesus lays down.'

"It must be confessed that this view seems to be also very tenable. According to it, St. Mark's silence would be due to the fact that the proper punishment for adultery was, not divorce, but death.

"The following is taken from a *Commentary on the Gospels* by Dr. J. B. McClellan (London, 1875). The italics and capitals are in the original:—

> 'Our Lord deals with the case presented in the cited Mosaic Law (Deut. 24. 1–3), *viz.*, the case of the *husband*. He does *not deal, except by inference, with the case of the wife*. Moreover, he expressly excepts from the general sentence the *ground of fornication*. With this proviso he condemns first *divorce on the part of a husband*; next, *marriage with a woman divorced by her husband*. But, except, as we have said, inferentially, *these decisions do not rule the distinct case of an innocent wife seeking and obtaining a divorce from an adulterous husband*. Wordsworth therefore (like Jerome, Chrysostom, the Romish Church, *al.*) is not warranted in saying that "in "*no case* does our Lord permit a person to marry "a *woman* who has been divorced." Further, the decisions of our Lord ("*causeth her to commit adultery*, &c.") are based on the assumed fact that *a new marriage* of the *woman*, as well as of the *man*, is the natural and divinely permitted consequence of a *divorce* from the old cohabitation (cf. Mt. 19. 3–12; 1 Cor. 7. 2–9, 15). Fornication, then, of the wife is expressly declared by the Lord to be an allowable cause (albeit the sole one) for the *husband's* complete dissolution of the marriage bond: the guilty wife may be divorced, the innocent husband be thus set free, and, being free, as a matter of course, and by the original and unrevoked ordinance of God, may marry. Next, *inferentially*, we argue from the Lord's declared mind in the case of the *husband* to his undeclared mind in the case of the *wife*. On the general principles of divine justice and Christian equality, there being no special direction of the Lord to the contrary, there must be understood to exist the same law and the same permission for the *wife* as for the *husband*: the guilty husband may be divorced, the innocent wife be thus set free, and, being free, may marry (cf. S. Aug. *de Conjug. Adult* I., II.)."

"This comment, it will be understood, is based upon the highest estimate of the authority of the text as it stands in St. Matthew. That of Mr. W. C. Allen quoted above (p. 7) is more in accord with the general opinion of commentators at the present time. The Jewish view may be seen in Mr. Montefiore (*ut sup.*).

"A subordinate question may be raised in regard to which it may be well to give the opinion of Dr. McClellan. Bp. Lightfoot in his work *On a fresh Revision of the English N.T.* (London, 1872) p. 71 n., had criticized the A.V. of Matt. v. 32 for casting 'equal blame on the 'woman, thus doing her an injustice, for obviously 'she is not in the same position with the husband as 'regards guilt; but the Greek μοιχευθῆναι (not μοιχᾶσθαι), 'being a passive verb, implies something quite different. 'In this instance, however, the fault does not lie at the 'door of our translators, who instead of μοιχευθῆναι had 'the false reading μοιχᾶσθαι; but, the correct text 'being restored, a corresponding change in the English 'rendering is necessary.' It may be presumed that the R.V. takes account of this by substituting 'maketh her an adulteress' for 'causeth her to commit adulterry.' But Dr. McClellan objects—

> 'that μοιχεύεσθαι equally with μοιχᾶσθαι was certainly used to imply the *criminality* of the woman. *See* Jo. 8. 4, "*This woman was taken* " COMMITTING ADULTERY (*μοιχευομένη*), *in the* " *very act.*" Aristoph. *Pax.* 978–985. Hermog. ap. Rhet. Graec. II. 137 (ed. Teub.), "*A woman* " *revealed to her husband the way of access to the* " *Tyrant: he slew the Tyrant, and charged her* " *with adultery. Her condemnation will be mar-* " *vellous, even should she be convicted of having* " COMMITTED ADULTERY (*μεμοιχευμένη*)." Dion Chrys. II. 328 (ed. Reiske), "*This Legislatress gave* " *three laws to the Cyprians: first, That the woman* " *who* COMMITTED ADULTERY (*μοιχευθεῖσαν*) should " be *shorn and sent to the brothels. Her own* " *daughter* COMMITTED ADULTERY (*ἐμοιχεύθη*), " *and was sent to the brothels.*"'

(*Chairman.*) I think I have no questions on this to ask you because it is so very clear what you intend to convey.

38,501. (*Sir William Anson.*) Dr. Sanday, the difficulty is, is it not, whether St. Matthew in using these qualifying words put in something at the date when the Gospel was issued in conformity with the ethical ideas of the time, or whether he put them in from some earlier sources accessible to him, which would be as authoritative as anything in St. Mark?—Exactly.

38,502. That is the question?—That is the real question.

38,503. Then as confirmatory of the view that he went to earlier sources we have the concessions to human weakness which follow close on the repitition of this same injunction in this later chapter in St. Matthew?—Exactly.

38,504 "He that is able to receive it let him receive it"?—Yes.

38,505. And I suppose it may be taken that the passage about eunuchs representative of the life of chastity is the ideal?—Yes.

38,506. But that everyone cannot receive that?—Yes.

38,507. Then could those words "He that is able to receive it let him receive it" relate back to the passage about marriage; or would you confine it to the passage about the eunuchs?—Strictly speaking I think it should be confined to the second passage.

38,508. Then there is the earlier passage, "But He " said unto them, all men cannot receive this saying, " but they to whom it is given." That would refer to the passage about marriage?—I am afraid I think that refers to the second passage, and not the first.

38,509. If the case of the man is so with his wife, it is not expedient to marry. But He said unto them, " All men cannot receive this saying, but they to whom it is given." You think that does not refer to the question of putting away the wife, but to the later passage which refers to the question of virginity?—I am afraid it had not occurred to me that it could refer backwards, but I see that there is some primâ facie reason for thinking it might. I am afraid I had not put the question to myself as I should have done.

38,510. At any rate may I ask you this, that the juxtaposition of the two passages—that relating to marriage with the exception and that relating to virginity, also with the exception, would rather tend to show that the exception in the case of marriage in both cases is a genuine exception from an earlier source?—I do think that.

38,511. And, therefore, the absolute prohibition is the ideal?—Yes.

38,512. A principle which may be modified in the practice of human life?—Yes. I should be glad if I might be allowed to retract what I said on the spur of the moment in answer to your first question—whether " All men cannot receive this saying," and "He that is able to receive it, let him receive it," might also refer back to the question of divorce. I spoke too much on the spur of the moment.

38,513. You think it is possible that they might, or at any rate the first, "All men cannot receive this saying"?—It does look as if it did point back, but if I might say so, that is not quite a deliberate opinion. The difficulty of giving a decided answer to these questions arises from the fact that the literary conditions and the historical run up into each other; it is necessary to keep in mind and to adjust the complicated relationships of the Evangelist, of his source, and of our Lord as speaker.

38,514. There are two reservations: " All men " cannot receive this saying, but they to whom it is " given," which comes immediately after the disciples' remonstrance, "If the case of the man is so with his wife it is not expedient to marry;" and then the other, "He that is able to receive it;" so that the first might conceivably be taken to refer to the exceptions?—It does quite look so.

38,515. Then as matter of opinion, assuming your view that the Gospel points to a high ideal with possible exceptions in application, do you think that the grounds of divorce should be extended beyond adultery?—You ask that question in reference to the present state of things?

38,516. Yes?—Perhaps I may offer an explanation which I gave to the secretary when he first approached me on this question. I said that the whole subject was one that I had not studied—that I had rather deliberately not studied because I did not like it—and I would rather not express opinions outside this paper. On any question relating to the New Testament passages and their bearing I should be glad to express myself.

38,517. Then we do not go further than this, that it would not be inconsistent with your view of a just application of the Gospel rule to possibly extend the grounds of divorce?—That is an extension. Of course the Gospel gives one single cause of exception.

38,518. And that is the only departure from principle which the Gospel admits of as it stands?—As it stands.

38,519. We cannot really look beyond that?—Of course this is a very large question.

38,520. But you would not say we could take on any interpretation of these words or could get any authority for the extension of the grounds of divorce beyond the ground of adultery if we follow the lines of the New Testament rule?—I think we have justification for qualifying the absolute prohibition in this case of adultery, and it certainly is a question to my mind whether by parity of reasoning there might not be the other exception.

38,521. But you wish really to confine your evidence to what we can extract as the real effect of the disputed sentences in the Gospel of St. Matthew?—Yes.

38,522. (*The Archbishop of York.*) I want to ask you one or two questions on the textual authorities just to get your meaning clear. You would, agree I suppose, after what you have said, that the stricter intepretation of the New Testament passages—the one, that is, which looks upon the exception clause as a later

insertion—as more in accordance with the primary textual authorities?—I am not sure that I am quite prepared to say that. It is more in accordance with the general tenour of modern interpretation.

38,523. Then certainly you would agree, I suppose, that it is much more in accordance with the language of St. Paul?—Oh yes.

38,524. Undoubtedly?—Yes.

38,525. And you would attach great importance—perhaps more importance—to St. Paul, who spoke in the first century than to later opinions?—Yes.

38,526. Would you say that that same stricter interpretation was more obviously in accord with our Lord's general teaching about marriage, of which, in two of the main passages, these words about divorce are only an illustration—namely, the general teaching "That those whom God hath joined together let no man put asunder"?—Yes.

38,527. You would agree the stricter interpretation is more in accordance with that teaching of our Lord?—I quite agree that that is the ideal that He evidently contemplated.

38,528. And that the stricter interpretation is more in accordance with what He said on that generally than the laxer?—The main point for which I have been contending, if I may say so, is that those two clauses in St. Matthew cannot be treated as if they did not exist.

38,529. I am coming to that; but obviously you have noticed (though in some of our discussion it has been altogether forgotten) that in two of the passages—Matthew xix. and Mark x.—our Lord's words about putting away his wife and committing adultery come more as an appendix to a much wider and more general teaching about the meaning of the institution of marriage?—Yes.

38,530. And, certainly, these appendices in the stricter form of St. Mark follow more naturally and simply from the general ideas laid down in the context, do they not?—Of course, there is a further insertion in St. Matthew. It will be remembered, the form of the question is rather different. "That goes along with "Is it lawful to put away a wife for any cause"? There is the insertion of "for any cause." That evidently anticipates an exception.

38,531. Yes; but my point is that in both passages in the context our Lord lays down certain broad principles about human marriage, of which the summary is, "Those whom God hath joined together let no man put asunder?"—Yes.

38,532. And I ask, would not a stricter prohibition of divorce and re-marriage follow more naturally, apart from other reasons, than the looser one would in that position?—Yes, I think so.

38,533. Then again, would not be the stricter view more in accordance with the circumstances which attended the question which our Lord was asked, that is to say, if He himself gave the exception except for the case of adultery, would not He then have been merely affirming one of two rival positions of the Jewish Rabbis. He would have been merely giving his sanction to the school of Shammai?—Yes.

38,534. Yet even in the position of St. Matthew v. 32, which on your own showing is more distinctly authoritative than xix. 9, our Lord's words come in in relation to a writing of divorcement being obtained. I will read the words, "It was said also, whosoever shall "put away his wife let him give her a writing of divorce-"ment; but I say unto you"—showing that our Lord represented Himself as coming in with a new teaching not familiar to the Jews and His hearers?—He would be endorsing the strictest Jewish view; Shammai represents the strictest Jewish view.

38,535. Do you think our Lord did nothing more than endorse one of two contending views?—Of course there were a number of views; it was not only two. There was the school of Hillel, and other extremes that went beyond Hillel.

38,536. Yes I know, but would not you be prepared to say it was more consistent with our Lord assuming the position of an independent judge and legislator that He should go beyond what even one of the schools of the Rabbis had asserted?—I am afraid I should not be prepared to lay stress on that.

38,537. Then would you say that at any rate the stricter form was more in accordance with the exclamation of the disciples as recorded in St. Matthew than if they had been listening merely to a re-assertion of the principles of Shammai which they were familiar with. It is natural they would have made the exclamation "Then it is not expedient for a man to marry?"—That would still represent the strictest view that was current about then.

38,538. Yes, I do not want to conduct an argument, but only to elucidate a point. I agree it is compatible, but would not it be more natural that that exclamation should follow the assertion of a principle that was not familiar to them?—There would be perhaps some *à priori* probability in that direction.

38,539. Then again, would not the stricter view be much more in accordance with the universal—I think almost universal—treatment of the subject in the first three centuries. Of course you are aware that, I suppose, no writer in the first three centuries accepting the text of St. Matthew ever used that as a justification for re-marriage after divorce, would that have been so if from the very first——?—I am afraid I am not sufficiently intimate with the history of the question.

38,540. Then summarising these questions, would you say it was at least reasonable to say that the stricter view was more naturally in accordance with the original authorities—with St. Paul, with our Lord's general teaching, with the circumstances in which the question was asked, and certainly with the universal teaching of the first three centuries?—I consider that is absolutely decisive as to what the Christian ideal ought to be, but I do not think it necessarily prejudges——

38,541. I only ask, is not that the reasonable line to take in interpreting what we are to make of these excepted causes in Matthew?—I do not like to explain away precepts so definite as that.

38,542. Then I will come to that. With regard to the explanation of these definite exceptions, would it be true to say that St. Matthew or the Evangelist—the writer of St. Matthew's Gospel—was mainly concerned with Jewish questions and addressing Jewish hearers and readers?—Yes, I think that would be true.

38,543. That therefore he, whoever he was, would be continually dealing with difficult questions that arose between the Jewish community and the early Church?—Yes.

38,544. Therefore there would be a natural disposition on his part to welcome anything that seemed to make an adjustment of these relationships easier?—Yes, I quite think so.

38,545. Then could you tell us at all what time in your judgment would elapse between our Lord's teaching and the publication of St. Matthew's Gospel as we have it?—Perhaps something like 50 years.

38,546. It might have been 50 years?—Yes.

38,547. So that within that 50 years it was quite possible that some of those who were writing and editing reminiscences of our Lord's teaching might have incorporated very naturally, from whatever sources, words which made it easier for the Christian Jews to adjust the Christian ideal to the practice of their own race?—I would not question that.

38,548. So that, without for a moment imputing any kind of design on the part of the latest editor of St. Matthew, some of the documentary sources or all the sources he had might have incorporated during that 50 years some such accommodation?—I certainly would not deny the possibility, but the question is, for instance, as to whether that is so in the case of a document like Q, which is the very best authority we have. If it was part of Q I should doubt whether that had happened.

38,549. As to its being part of Q, though I attach great weight to what you say, you admit the balance of critical scholarship is against you on that?—Hardly, I think. Many scholars would agree that Matt. v. 32 comes in the main from Q, though a rather large pro-

portion of these would cast doubt upon the words "saving for the cause of fornication."

38,550. I will not press that question. Coming to your interpretation of the passage, you say: "It is "possible that our Lord might in certain circum- "stances and under certain conditions lay down a "principle of general application, and, in other cir "cumstances and under other conditions state that "principle with a certain amount of restriction." Now I should like to ask whether, as a matter of fact, the circumstances which from two of the Gospels we know surrounded our Lord when He made His pronouncement were not just those in which something like a definite statement would have been expected. In both cases, though in slightly different forms, a definite question was asked as to what our Lord's views were on a matter of current importance; in both cases it was in answer to that question that He made these statements. Do not those circumstances suggest that if our Lord would ever make a definite statement it would be then, rather than a general statement?—In the case of the Sermon on the Mount it is not an answer to a question, is it?

38,551. No, but in St. Matthew xix. and St. Mark x. it is?—True, but there is also that passage which follows, which I think has a retrospective effect.

38,552. True, but my point is, are these circumstances which would suggest that our Lord was making a definite statement here, and that afterwards He might qualify it?—If you take it exactly in the form in which it appears in St. Mark, I think one would say that; but if you take it in the form in which it appears in St. Matthew, and along with the following section, I should be not so clear.

38,553. Then, again, I venture to suggest this as a point of some importance. In St. Mark x. a further statement about marriage and divorce occurs as an answer to a distinct question asked by the disciples after our Lord's general words about marriage. "For "this cause shall a man leave his father and mother, and "shall cleave to his wife; and the twain shall become "one flesh? So that they are no more twain, but one "flesh. What, therefore, God hath joined together, "let not man put asunder," a general statement; "and in the house the disciples asked Him again of this matter, and He said unto them 'Whosoever shall marry'"—is not that one of the circumstances in which the disciples asked a definite question about the meaning of that ideal and received in answer a definite statement?—That is a point certainly; but perhaps it should be remembered that the circumstances are differently stated in St. Matthew. "There came unto "Him certain Pharisees, tempting Him, and saying: "Is it lawful for a man to put away his wife for any "cause?" It would not be otherwise than in agreement with the tendency of the Evangelist rather to conflate two occasions. You see his version of the circumstances is different from St. Mark's version of the circumstances.

38,554. I admit that, but all I wanted to get at was your opinion. In both instances in which the words occur in St. Matthew and St. Mark it is in answer to a definite question upon a definite issue. In one of these instances the passage about marriage follows as a distinct answer to a difficulty of the disciples—at any rate in St. Matthew and St. Mark, xix. and x. respectively, our Lord's words occur in that context of definiteness if I may say so?—Yes.

38,555. Do you think it would be natural to say our Lord might here have been laying down a principle for general application, but in other circumstances have been more distinctive. It seems to me to be just the circumstances in which definiteness was asked and given?—I admit the point.

Adjourned for a short time.

(*Witness.*) May I be allowed to add just one word to the last sentence. I said "I admit the point"; may I add to that "so far as it goes," just to qualify it a little.

38,556. (*The Archbishop of York continuing.*) Certainly. Now, passing, Dr. Sanday, to what I may call the general conclusions to which you have come, which is, roughly speaking, that you make a distinction between a positive rule and a moral ideal, you think that our Lord's words, however reported, expressed a moral ideal rather than a positive rule. This is the tendency of your evidence?—Yes.

38,557. How far would you go; that he intended it to be more than a mere moral ideal, and also a positive rule for His own disciples? I mean, admitting for the sake of discussion that He was not legislating for human nature in general, how far in your view was He in some sense legislating for His own disciples?—I think the passage in St. Matthew, with the restrictions, was intended to apply to His own disciples.

38,558. I am not discussing now the precise form of the text; but even admitting St. Matthew's account, do you say that with that explanation he was in some senses legislating for His own disciples, or His own society, putting before them an ideal?—Certainly. Not more than that. I think I should prefer to put it in that way.

38,559. Again I will ask what you think about the fact that certainly in St. Matthew and St. Mark a general ideal is laid down, and then there seems to come something in the nature of a positive rule; the ideal, namely, of the union of man and wife in one flesh, followed by the positive rule "Whoever" &c. You make no distinction between the two parts?—I should be quite clear that the exception was a positive rule; and perhaps I might refer to the last sentence of my paper which I added specially with a view to that point. I thought that for Christians what I call the ideal is the proper standard for their conduct—for their own conduct.

38,560. But, first of all, is it to the Christians only an ideal, or does it represent a positive obligation for Christians?—I think there are degrees of obligations in that passage in St. Matthew xix. distinctly recognised; not absolutely the same law for everyone.

38,561. But I noticed just now you said you regarded the exception as a positive rule; but, surely, if the exception is to be regarded as a positive rule, so must the rule of which it is an exception?—Only because the one is a general statement and the other is precise.

38,562. But is not the form of the statement in St. Mark and St. Luke quite precise?—It is as general as it can be. I think that the more general does not exclude the more precise; but I think that the more precise does not suggest the more general.

38,563. Then, may I take it that you think that even to Christians our Lord is only expressing the same kind of general idea as He does when He speaks about turning the other cheek also, and so forth?—I think the two cases are parallel.

38,564. You do, or you do not think?—I do think they are parallel.

38,565. Therefore, to a Christian, it would be left to him to judge for himself how far he ought or ought not to divorce his wife for, say, insanity, just as it would be left to him to judge how far he ought to speak back or resist evil?—I would refer to that passage in St. Matthew xix. 10 to 12, to the distinction that is there drawn; that some were able to receive the saying and some were not.

38,566. Yes, I must return to your main distinction; but coming to St. Mark x. and St. Matthew xix,, "If the case of the man is so with his wife, it is not "expedient to marry," the next verse goes on: "All "men cannot receive this saying but they to whom it "is given." Can we be quite sure that nothing may have been said between the words "It is not expedient to marry" of the disciples, and then our Lord's words, "All men cannot receive this saying." Judging of what follows as to the eunuchs, may it not refer to some words our Lord spoke about the general question of marriage?—I think that is conceivable, quite.

38,567. So the authority is not very strong for saying that our Lord's words, "All men cannot receive this saying but those unto whom it is given," refer to His views about marriage?—I should be sorry to say it did not include that reference.

38,568. Now I come back to the main point, which after all is this. You put, I understand, our Lord's words about marriage on the same level of obligation as the other precepts given, say, in the Sermon on the Mount?—Yes.

38,569. They are, are they not—these other statements— largely paradoxical and metaphorical?—Yes.

38,570. This on the other hand is quite explicit?—It would be paradoxical to a Jew at that time.

38,571. Forgive me. Would it be paradoxical to the Jew of that time if your view is right, that our Lord was only giving His guarantee to one of the Jewish schools?—That refers to the statement of exception?

38,572. Yes?—Yes.

38,573. Not paradoxical altogether; but is there not this further distinction—that our Lord in the other precepts is speaking of general moral attitude on the part of His disciples. Here He is speaking of a normal constant human relationship and expressing what persons ought or ought not to do with regard to the human relationship which is of constant and universal occurrence?—Yes.

38,574. Then does it not seem in this matter our Lord has not followed the line of His general teaching, but has made an exception, and has given a definite and positive direction?—Do you mean as to the general prohibition or the express qualification?

38,575. I do not much mind for the purpose of this question which; whether our Lord's words implied entire prohibition or prohibition only for the case of adultery. I am simply addressing myself to your most important point, that in this matter our Lord was only following the example of His ordinary moral precepts, and I suggest He can scarcely have done so because this is a question that affects concrete human relationship of constant and universal occurrence?—It certainly lays down what is normal—the normal state. But that does not exclude the possibility of exceptions.

38,576. Would you go so far as to say that at any rate there was a very real distinction between this precept of our Lord and others that you speak of, such as not resisting or not swearing?—I can see that there is a difference, and it would be a question—a problem, perhaps—what that difference should count for.

38,577. Supposing that our Lord's words had been regarded merely like the other precepts in the New Testament, as a statement of a general ideal, to which in deference to human weakness exceptions might largely be made, do you think (I just want to get your opinion) that such an interpretation of our Lord's words would ever have enabled the early Church to withstand the whole tendency of Roman society for four or five hundred years?—I suppose it is rather partial—the extent to which they did withstand it—especially in the East.

38,578. But at any rate for the first three centuries there was very considerable withstanding. What I put to you is that surely the hard cases would be extraordinarily frequent in the early ages of the Church where the whole basis of society reflected the Roman law which gave abundant facilities for divorce; and if the early Church had considered that this word of our Lord's about marriage and divorce were on the same level as His words about non-resistance to evil, would they have been able to resist the pressure of these hard cases as they did?—I am afraid I have not the facts definitely enough before my mind. Of course the evidence with regard to the first three centuries is imperfect.

38,579. You would rather I did not examine you about that?—Yes, thank you, I would.

38,580. How would you determine what are or are not exceptions to which this general ideal is to to be subject?—In the New Testament there is only one exception specified.

38,581. Then do you regard that as an exclusive exception, that is to say as excluding all others; or only as an illustrative exception?—I should not regard it necessarily as excluding all others. I am inclined to think that these general precepts of our Lord have been pressed rather too far as a basis of law.

38,582. Then admitting that the exception of adultery is only an illustrative exception, what is to determine what other exceptions may legitimately be made to our Lord's ideal?—I think that there is room for a statesman at the present day to consider what is best in the interests of the higher expediency.

38,583. But would the ground of pressing an exception be a weakness of human nature?—It might be put in that way, because I think in that second passage our Lord does distinctly take account of human weakness Himself.

38,584. I am not speaking now of that exception. I am going on what you said, that that might be regarded as only an illustration of exceptions that might generally be made as a concession to the weakness of human nature, and I think you said the point to determine whether further exception should or should not be made would be the weakness of human nature?—I would rather use the phrase I used just now—higher expediency.

38,585. But the expediency would occur because it was not possible to impose a law if human nature could not stand it?—Yes.

38,586. But has not human nature, apart from stringent provision, a tendency to become very unequal?—I think, in any case, we may apply to this as well as to other questions those words: "All men cannot receive this, but they to whom it is given."

38,587. But I only want to know how far we are to press that point which you made with great force before us. Does that mean that if only a sufficient number of persons can say that they find the Christian law very hard, that that of itself is a reason why they should have a relief from what they feel to be oppressive?—I think I explained that I had not thought out the whole question, and I would rather fall back upon that in answer to a question of that kind. I cannot say I have thought it out.

38,588. Then I will not press you further about it. I would only just ask this further question: Would you be in any way averse to at least leaving the Christian Church or the Christian society freedom to uphold that ideal for its own members strictly?—I should hesitate myself. To uphold it in the sense of putting it before them very strongly is one thing; but to uphold it by a definite law is another.

38,589. But you would attach great value to the consistency and vigour of the witness to the ideal given by the Christian Church?—Yes.

38,590. Do you think that consistency would be largely maintained or that witness more consistently given if no particular notice were taken of those numbers that paid very little regard to it or availed themselves of all kinds of exceptions to it?—You mean that it should be definitely expressed in discipline?

38,591. Yes. What I am asking you is, do you think a moral witness can be really maintained for any length of time against the tendency of human nature unless it is accompanied by some kind of discipline?—I think that the intention is in that direction. I mean I should myself much prefer to lay stress upon our Lord's teaching as representing an ideal that one ought to follow—that one is under a moral obligation to follow—than to lay stress upon the discipline. I think there has been a tendency to harden our Lord's sayings into definite rules.

38,592. I quite understand that as regards individual witness; but, if it is of value that the Christian Church as such should uphold the Christian ideal, and nothing whatever in the way of discipline happens with individual Christians who put their own interpretation on what that ideal means, then a great element in the maintenance of that ideal would surely gradually evaporate?—That is true. I should like to treat it as parallel to the second portion of the first section of the 19th chapter of St. Matthew.

38,593. You again fall back on that?—I think so.

38,594. (*Lord Guthrie.*) Dr. Sanday, I understand it is not your view that Christ taught that in all circumstances, and without any exception, marriage is indissoluble?—That is my opinion; at least my opinion is that those two passages of St. Matthew hold good.

38,595. That is to say that He did not teach that it is indissoluble in all circumstances?—Yes.

38,596. Now is it possible ——?—Perhaps I ought to distinguish. Of course as an ideal it is indissoluble.

38,597. Quite?—But as a law at least one exception is noted.

38,598. And as ideal, and normally, it is indissoluble?—Yes, quite so.

38,599. But that there should be at all events in one case a remedy for the innocent person?—Yes.

38,600. Is it possible, Dr. Sanday, to be reasonably certain whether Christ used the words "save for fornication" or not, or is it a matter left in doubt?—In the present position of criticism and opinion "reasonably certain" would be too strong.

38,601. I quite understand. Suppose He said so, suppose He did use these words, is it possible to be reasonably certain whether He meant them as exclusive, or merely as illustrative and typical? Is that also a matter in doubt?—I should say so myself; and, if I may say so, I am very glad I have been asked that question, because there has hitherto been rather an ambiguity between those two points and I am not clear in my own mind.

38,602. Suppose He did not use these words, is it possible to be reasonably certain or is it a matter of doubt whether, although He did not use them, He implied them?—I do not think we can be certain that He did not.

38,603. Then also, Dr. Sanday, supposing they were illustrative—assuming that for a moment—is it possible to be reasonably certain what other exceptions He would have included, and what others He would not have included. Do we get any guide as to that from any of Christ's teaching, or is it left to each Church and State to settle that for themselves?—My own judgment would incline that way, but at the same time *valeat quantum.*

38,604. The Archbishop put to you the case of individuals putting their own interpretations on Christ's words. I understand you contemplate the State and Church consulting on this matter, and, according to the necessities of the times, fixing certain rules to which individuals must stand?—That was not exactly present to my mind—not the consultation of Church and State.

38,605. Well, the State alone. Did you contemplate that individuals should be free to put their own interpretation and act accordingly, or that it was a matter for the State to determine?—Every State on the ground of the State, within the sphere of the State; every Church within the sphere of the Church. Certainly not for individuals.

(*The Archbishop of York.*) May I explain my question as Lord Guthrie refers to it? I meant individuals availing themselves of any regulations which the State saw fit to lay down.

38,606. (*Lord Guthrie.*) Quite. Is it your view that in any regulations the State lays down they must act in accordance with the general principles laid down by Christ?—That is my feeling.

38,607. If you came to be of opinion that it was reasonably certain that Christ had forbidden divorce in all circumstances, and without any exception, then I presume you would not advise the State to act on the other principle?—I am not so certain, as at present advised.

38,608. But if you were so certain, then I presume it would follow that the State ought to take the same line?—It is a very large and difficult question.

38,609. Assuming that the matter in your view was perfectly clear—as the Roman Catholics think, you know?—Yes, it is the whole question of the relation of the Church and the State.

38,610. Never mind the Church just now. Take one who acts as a citizen, keeping in view that he is a Christian also. If the teaching of Christ were perfectly clear that there could be no divorce, I suppose as a citizen you would act on the same line, would you not?—It is a very contingent state of things.

38,611. Very well. I will leave it there; I understand your view. With regard to the question of legislation as against general principles, if Christ meant to legislate and lay down a hard and fast rule in this particular case, do you know any other case where He did so?—I do not think He did with regard to this case.

38,612. I know, I am coming to that. Assuming that He did, do you know any other case where He did, or do they fall under the same view you represent about oaths and war and giving away one's substance, and so on?—I have not present to my mind any case.

38,613. Now, we had a very distinguished witness here who took the view that there was no other case, but that in this case Christ legislated; and his ground for saying so was that marriage lies at the foundation of society in a way that none of the other questions do. What do you say to that?—It seems to me at the first blush to be a tenable view.

38,614. Then take the question, not of war or of oaths, but of truth, "Thou shalt not bear false witness"; the same very eminent witness maintains that in order to save life it is allowable to tell an untruth. Do you think that truth is not as much at the foundation of society as marriage; is it not the foundation of everything?—Yes, I should be inclined to say so on the spur of the moment.

38,615. And I suppose it is at the foundation of marriage also, because fidelity is just truth in another form, is it not?—Yes.

38,616. So you adhere to your view that Christ was acting in this case as He did in all others, laying down great general principles to be applied from time to time?—That is exactly my view.

38,617. I do not know whether it enters into it, but do you reject the view that marriage is in any reasonable sense a sacrament? Does your view depend on that at all?—I asked to be allowed not to answer questions on the general question.

38,618. You were not asked that. I will ask this question: Does your view which you have stated at all depend on the answer to that question; or is it quite independent of it?—It is independent of it.

38,619. Have you formed any opinion on the question of equality—whether we can get any light on that from Christ's general teaching?—Between the sexes?

38,620. Yes?—I have not considered the question, but of course one's impulse is to say that there should be equality.

38,621. That in equality there would be nothing inconsistent with the general line of Christ's teaching?—I should say so, certainly.

38,622. (*Sir Lewis Dibdin.*) Dr. Sanday, I gather your position is that, textually, we ought to think that the writer of the first Gospel, whoever he was, introduced the class of exception as to adultery?—That he introduced it; but I am inclined to think, myself, with some authority behind him.

38,623. Yes, I am putting it at the lowest?—Yes, quite so.

38,624. It is as old as that, I mean?—Oh, yes, certainly.

38,625. If that be so we are excluded, are we not, from supposing that that was done in bad faith by the author of the Gospel?—Certainly.

38,626. The whole fabric of our religion prevents our adopting that hypothesis; we, at all events, get a very strong *contemporanea expositio*?—I do think so.

38,627. Is not that a point of considerable importance?—I do think so.

38,628. That, if Christ did not say it, at any rate He was understood by his contemporaries to mean it. Would not that be a right way of putting it?—I think so, especially if one guarded oneself by saying a certain section of his contemporaries. There is a difference between the case of St. Matthew and St. Luke. St. Luke is a Gentile Christian coming, perhaps, from the west of Asia Minor; that would be one set of conditions, and a thing would sink into one mind that would not into the mind of another.

38,629. But, as far as the Jewish section of his contemporaries were concerned, he was understood to mean that the exception of adultery was to be read into the law of indissolubility of marriage?—That

certainly applied to our first Evangelist, and perhaps to the document on which he was drawing.

38,630. Which may have been very much earlier?—I think it may be the actual words of St. Matthew.

38,631. The real St. Matthew may have written Q, and this may really have been from Q?—Yes.

38,632. As we are on the text; I did not understand quite the point the Archbishop of York put to you on the passage in the 19th chapter of St. Matthew. As I understand the answer you gave, I think to Sir William Anson, it was that the words in the 11th verse, "All men cannot receive this saying," applied to our Saviour's teaching as to marriage, which had just gone before, and not exclusively at any rate to what follows, the passage about the eunuchs?—I think it might do so; I am not quite sure.

38,633. That I followed. Then I understood the Archbishop to suggest to you that there might have been some passage, now gone, in between the 10th and 11th verses to which those words, "All men cannot receive this saying" would apply?—That is conceivable; it is quite conceivable.

38,634. What I, as an ignorant person, wanted to ask you is this; is there any authority, or are there any authorities or any evidence that there ever was such a passage?—Oh, no.

38,635. Then surely that is an argument by which you could get rid of the emphasis of any passage by assuming that another passage existed of which you had no evidence at all, and that if it did the words in question would apply to it. I mean it seems to be entirely gratuitous?—It is not a point I could press at all, not such a possibility as that, and perhaps that is putting it in slightly too concrete a form. I do not suppose that the Archbishop suggests that there was an actual passage in the writing or in the document which was omitted or ignored. You see it is only a very condensed record, and we do not know what was behind it, what the actual facts were behind it.

38,636. The suggestion is that there might have been something in our Lord's words, whether recorded or not, in between?—Yes.

38,637. But I do not follow that. As an ignorant layman, it seems to me absolutely gratuitous. You might get rid of any argument by assuming something else existed which accounted for it?—I should not quite describe it in that way. It is a real possibility——

(*The Archbishop of York.*) May I again interrupt, as Sir Lewis seems to be describing my question in his words to you? I think he has rather missed my point. It was whether the words which follow in the 12th verse about the eunuchs do not more naturally seem to indicate that our Lord may have been using some words about the general ethics of marriage to which the words there specially refer. I did not throw any stress on the fact that there might or might not be a passage, which we have not got, between verse 10 and verse 11; but that the context in verse 12 may seem to point to the fact that our Lord was discussing another aspect of the marriage question. I only want it put right.

38,638. (*Sir Lewis Dibdin.*) I am very much obliged to the Archbishop; it has made it much clearer to me. Is there any evidence, Dr. Sanday, of a passage such as the Archbishop suggests might have existed?—No; it is a matter of speculation. We are left in the dark as to the context on many things.

38,639. But if it were any other subject it would be such a narrow basis on which to ground an argument—that there might have been words which are not there. In any document such as I have to deal with such an argument would not be listened to for a moment?—I could not lay stress on it myself.

(*The Archbishop of York.*) I hope Sir Lewis does not think that is my argument which he is describing now.

38,640. (*Sir Lewis Dibdin.*) I am extremely sorry if I have misrepresented anything that you intended. I thought I had now represented what you intended. I am very sorry if I have misrepresented any view your Grace wished to put. Again, for my own information, Dr. Sanday, I have not quite followed your answers with regard to the differences between the broad general principle and the specific rule. As I read your paper, or as you read it and I listened to it and followed it, I thought that was your way of reconciling the two accounts in St. Mark and St. Luke on the one hand and St. Matthew on the other. I thought you suggested that the account in St. Mark and St. Luke were a statement of the principle in broad and general terms, but that the words in St. Matthew might be at any rate the principle reduced into a definite concrete form?—Yes, on another occasion—in another context.

38,641. If that is your view, as I thought it was your view, is not there much more difficulty in reading into the statement of the concrete rule with its exception, further exceptions, than there is into the statement of the general rule? I quite follow the general rule may admit of exceptions to any extent, but I do not quite follow you when you take the passage in St. Matthew and treat that as a statement of the concrete rule with an exception—I do not quite follow you in saying (as I think you did in answer to Lord Guthrie) that there might be other exceptions—that the exception was only illustrative. There seems great difficulty in adopting that view?—I should not like to commit myself so definitely as that. It is a point I cannot say I have really thought out.

38,642. But you do see, do you not, that there is greater difficulty in enlarging an exception to a concrete rule which gives an exception, than in importing exceptions into a general rule merely stated generally?—That is quite true. Perhaps I ought just to point out that what I put forward—that possible explanation, that both statements might stand together—was only my own opinion; and of course the view expressed by Dr. Montefiore that I have quoted in the appendix is quite an alternative view to that, and equally possible.

38,643. Yes, speaking for myself I am very much impressed with your view of it. I will not keep you a moment. I just wanted to ask you something on the very end of your paper. I do not quite follow the attitude you suggest with regard to the Church and the State. I see in the last paragraph you say this: "But legislation by the Civil Power is a different "matter; and obedience to the Civil Power comes "under the head of rendering to Cæsar the things "that are Cæsar's, and does not clash with duty "towards God." Now assuming for a moment that the rule laid down by our Lord is intended as a binding rule, then I suppose legislation by the State inconsistent with that rule would be clashing with our duty towards God, would it not?—I am not sure that it is an absolute binding rule for all future centuries.

38,644. But I mean assuming that it was. Assume that the Rigorist view is right—or anything approaching that—then I suppose legislation which is inconsistent with that would be clashing with our duty towards God, would it not?—It would not be what is called specifically Christian legislation.

38,645. Let us take something quite different. Suppose legislation were passed definitely repealing the Commandment, "Thou shalt not steal"; that would clash, would it not, with out duty towards God?—Yes, it would.

38,646. There could be no doubt about that?—No.

38,647. Then if you had an equally definite rule as to marriage and its indissolubility, or its limited dissolubility, and legislation is passed plainly contravening that rule, that also must clash, must it not, with our duty towards God?—On the surface it appears so, but it is a large question,

38,648. But assuming that to be the case, what ought to be the attitude of persons or the Christian society who accept the directions of our Lord as binding laws upon them?—I think, perhaps, I would rather not answer the question, only because I have not really thought it out.

38,649, I am very much obliged to you for answering any questions. I will not press it. I just want to put this point to you. Might it not be said that our

Lord's teaching—this is an argument I suggest only could be applied to Christian people, people who believe in Christ—although not binding upon the State as religious teaching, but, because it is our Lord's teaching to Christian men, would represent what would be for the highest good of society? I am afraid I have expressed myself badly?—Not at all. I quite see the meaning. That would be a possible consideration to bear in mind.

38,650. That is all I am putting, that to Christian men as citizens our Lord's teaching is important, is it not, as representing something which, apart altogether from Christianity, represents what in our Lord's view is for the highest good of society?—Of course there are so many sides from which you can look at the highest good of society. It is propounding a very large question.

38,651. (*Judge Tindal Atkinson.*) Just one question on page 3 of your print. You set out the 10th and 11th verses of the seventh chapter of St. Paul's Epistle to the Corinthians, "That the wife depart not from the husband." You see the word "depart" there?—Yes.

38,652. Does that mean that she shall not divorce herself from her husband, shall not separate; because it follows, "But if she depart let her remain unmarried"; or does it merely mean she is not to separate herself?—I think so.

38,653. Separate?—I think so. Unfortunately I have not the Greek before me.

38,654. You have set out the Greek above?—Oh, yes, *μὴ χωρισθῆναι*: that is separation.

38,655. And also at the end, "That the husband leave not his wife"; that is, separate?—Well, *'αφιεναι* is the word that would be used for putting away.

38,656. Divorce?—Yes.

38,657. As far as separation goes, is it conceivable that St. Paul could have meant that there were no circumstances that could exist which would justify a separation?—Oh, no, he certainly admits that.

36,658. (*Mr. Brierley.*) I should just like to ask one question. It has been suggested, as I understand, that it is hardly likely that our Lord would have introduced the words of exception in St. Matthew's Gospel, because He would be by that only expressing His approval of the doctrine of one particular school, namely, the school of Shammai. Historically, was it possible for our Lord to express an opinion as to dissolubility or indissolubility of marriage without expressing his approval of the doctrine of some particular sect of the Jews?—The school of Shammai went furthest.

38,659. We have had it that there was a school of Hillel that had lax views on the question of divorce?—Yes.

38,660. And the school of Shammai, that allowed it on one ground?—Yes.

38,661. And we have had it in evidence this morning that there was a school called the Zadokites which prohibited divorce on any ground?—I was not aware of that.

38,662. We have had that from Mr. Abrahams: and also the school of the Essenes which tooks a strong view. So that assuming our Lord gave his opinion as expressed in St. Mark, He would only be expressing the view which the school of the Zadokites then held?—Yes.

38,663. Therefore, if that is so, the argument would rather lack force that He could not have used the words of exception in St. Matthew, because He was thereby only expressing His approval of a particular school?—I confess I have not felt there was great force in it in any case.

38,664. But that would be so?—Yes, it would follow.

38,665. If there were schools prohibiting divorce altogether?—The Rabbi 'Aquiba went further in laxity than even Hillel.

38,666. Yes; but I was taking the other end of the scale, that there was a sect that absolutely forbade remarriage on any ground whatever?—I was not aware of that; it is news to me.

38,667. (*Chairman.*) Would you mind repeating what your view is as to the difference between the view of Mr. Montefiore and those which you have expressed in one part of your paper—as to the alternative, I mean. I should like you to put, in your clear way, what you understand to be the difference, the alternative he puts?—My point was that the two statements as we have them in St. Mark, and as we have them in St. Matthew, might both stand side by side. Mr. Montefiore explains St. Mark in the sense of St. Matthew by assuming that the question of adultery did not come in and was taken for granted, because the proper punishment for adultery was death.

38,668. Then one question in summary. At the end of your paper, page 10, I see you speak of those precepts or sayings. They are addressed to the Christian conscience as such, and the appeal to them is an appeal to that conscience. That I understand to be your considered view?—That is the way in which it presents itself to me.

38,669. Then that would leave the idea to be expressed in a matter of personal conduct?—I incline that way.

38,670. And that would again leave the State (if I follow the next sentence or two) to deal with the question of law on the basis which it considered the best in the higher expediency?—That is the opinion to which I incline, but I have only thought of it in reference to this paper. The whole subject is one which I had not considered.

38,671. But assuming it applies to this particular subject on which we are, that would logically follow; but the parity of reasoning, as you said, admits of statement of grounds which included something more than adultery?—My own view is—for what it is worth—that it is open to the State to take a broad view.

(*Chairman.*) I think I quite appreciate what you have said. Would you allow me, Dr. Sanday, on behalf of the Commissioners, to tender you our very best thanks for the very valuable assistance you have given in sending in this paper, and coming here to give us an explanation of it. We regard it as a very great privilege to have heard you.

Dr. WILLIAM RALPH INGE called and examined.

38,672. (*Chairman.*) Are you Lady Margaret Professor of Divinity at Cambridge?—I am.

38,673. How long have you filled that office?—3½ years.

38,674. Before that were you—— ?—Before that I was Vicar of All Saints, Knightsbridge.

38,675. You have been good enough to prepare a memorandum on the passages of the New Testament which bear on divorce; and, if you would allow me to suggest it, that should be taken as your evidence as a whole; and I would only, therefore, ask that you would kindly read some parts of it, because some are quotations, and we might treat it, if you will allow me to suggest it, as put in. That will enable you, if you assent to that view, not to read the first three pages.

The following is the portion of the proof referred to:—

"A.

"*Passages in the New Testament which bear upon Divorce. The Greek text, with conspectus of various readings where these have any possible significance for the purposes of the present Inquiry, and a comparison of the Authorised and Revised Versions. The Greek text quoted is that of Westcott and Hort's Edition,* 1881.

"(a.)

"Mt. 5. 31, 32.

'Ερρέθη δὲ 'Ος ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ, δότω αὐτῇ ἀποστάσιον. 'Εγὼ δὲ

λέγω ὑμῖν ὅτι πᾶς ὁ ἀπολύων τὴν γυναῖκα αὐτοῦ παρεκτὸς λόγου πορνείας ποιεῖ αὐτὴν μοιχευθῆναι [, καὶ ὃς ἐὰν ἀπολελυμένην γαμήσῃ μοιχᾶται].

"The clause bracketed by Westcott and Hort is wanting in D. B reads ὁ ἀπολελυμένην γαμήσας.

"'It { was said also (R.V.) / hath been said (A.V.) } whoever shall put away his wife, let him give her a writing of divorcement; but I say unto you { that every one that / that whosoever shall } putteth / put } away his wife, saving for the cause of fornication, { maketh her an adulteress : / causeth her to commit adultery : } and whosoever shall marry her { when she is put away / that is divorced } committeth adultery.'

"(b.)

"Mt. 19. 3–10.

Καὶ προσῆλθαν αὐτῷ Φαρισαῖοι πειράζοντες αὐτὸν καὶ λέγοντες Εἰ ἔξεστιν ἀπολῦσαι τὴν γυναῖκα αὐτοῦ κατὰ πᾶσαν αἰτίαν ; ὁ δὲ ἀποκριθεὶς εἶπεν Οὐκ ἀνέγνωτε ὅτι ὁ κτίσας ἀπ' ἀρχῆς ἄρσεν καὶ θῆλυ ἐποίησεν αὐτοὺς καὶ εἶπεν Ἕνεκα τούτου καταλείψει ἄνθρωπος τὸν πατέρα καὶ τὴν μητέρα καὶ κολληθήσεται τῇ γυναικὶ αὐτοῦ, καὶ ἔσονται οἱ δύο εἰς σάρκα μίαν ; ὥστε οὐκέτι εἰσὶ δύο ἀλλὰ σὰρξ μία · ὃ οὖν ὁ θεὸς συνέζευξεν ἄνθρωπος μὴ χωριζέτω. λέγουσιν αὐτῷ Τί οὖν Μωυσῆς ἐνετείλατο δοῦναι βιβλίον ἀποστασίου καὶ ἀπολῦσαι ; λέγει αὐτοῖς ὅτι Μωυσῆς πρὸς τὴν σκληροκαρδίαν ὑμῶν ἐπέτρεψεν ὑμῖν ἀπολῦσαι τὰς γυναῖκας ὑμῶν, ἀπ' ἀρχῆς δὲ οὐ γέγονεν οὕτως. λέγω δὲ ὑμῖν ὅτι ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ μὴ ἐπὶ πορνείᾳ καὶ γαμήσῃ ἄλλην μοιχᾶται. λέγουσιν αὐτῷ οἱ μαθηταί Εἰ οὕτως ἐστὶν ἡ αἰτία τοῦ ἀνδρὸς μετὰ τῆς γυναικός, οὐ συμφέρει γαμῆσαι.

"For μὴ ἐπὶ πορνείᾳ (v. 9), which is the reading of ℵ C, &c., B D have παρεκτὸς λόγου πορνείας, and this form is quoted three times by Origen and once by Clement of Alexandria with χωρὶς for πορεκτός., καὶ γαμήσῃ ἄλλην ℵ C D and most versions. Omitted in B and two versions. Origen and Clement of Alexandria both quote the verse, omitting the words. μοιχᾶται ℵ C³ D and most versions. ποιεῖ αὐτὴν μοιχευθῆναι B C and two versions.

"After μοιχευθῆναι B adds καὶ ὁ ἀπολελυμένην γαμήσας μοιχᾶται. So C, with γαμῶν for γαμήσας, and three versions. The words are absent in ℵ C³ D and two versions.

"{ 'And there came unto Him Pharisees, / 'The Pharisees also came unto Him, } tempting Him and { saying, / saying unto Him, } Is it lawful for a man to put away his wife for every cause? And he answered and { said, / said unto them, } Have ye not read that he which made them { from / at } the beginning made them male and female, and said, For this cause shall a man leave { his } father and mother, and shall cleave to his { wife : / wife : } and { the / they } twain shall { become / be } one flesh? { So that / Wherefore } they are no more twain, but one flesh? What therefore God hath joined together, let not man put asunder. They say unto him, Why { then did Moses / did Moses then } command to give a { bill / writing } of divorcement, and to put her away? He saith unto them Moses, { for your hardness of hearts, / because of the hardness of your hearts, } suffered you to put away your wives : but from the beginning it { hath not been / was not } so. And I say unto you, Whosoever shall put away his wife, except { it be } for fornication, and shall marry another, committeth adultery : and { he that / who so } marrieth her { when she / which } is put away { committeth / doth commit } adultery. { The / His } disciples say unto him, If the case of the man { is / be } so with his wife, it is not { expedient / good } to marry?

"R.V. notes in margin that in v. 9 'and he that . . . adultery' are 'omitted by some ancient authorities.

"(c.)

"Mk. 10. 2–12.

Καὶ [προσελθόντες Φαρισαῖοι] ἐπηρώτων αὐτὸν εἰ ἔξεστιν ἀνδρὶ γυναῖκα ἀπολῦσαι, πειράζοντες αὐτόν. ὁ δὲ ἀποκριθεὶς εἶπεν αὐτοῖς, Τί ὑμῖν ἐνετείλατο Μωυσῆς ; οἱ δὲ εἶπαν Ἐπέτρεψεν Μωυσῆς βιβλίον ἀποστασίου γράφαι καὶ ἀπολῦσαι. ὁ δὲ Ἰησοῦς εἶπεν αὐτοῖς Πρὸς τὴν σκληροκαρδίαν ὑμῶν ἔγραψεν ὑμῖν τὴν ἐντολὴν ταύτην · ἀπὸ δὲ ἀρχῆς κτίσεως ἄρσεν καὶ θῆλυ ἐποίησεν [αὐτούς] · ἕνεκεν τούτου καταλείψει ἄνθρωπος τὸν πατέρα αὐτοῦ καὶ τὴν μητέρα, καὶ ἔσονται οἱ δύο εἰς σάρκα μίαν · ὥστε οὐκέτι εἰσὶν δύο ἀλλὰ μία σάρξ. ὃ οὖν ὁ θεὸς συνέζευξεν ἄνθρωπος μὴ χωριζέτω. καὶ εἰς οἰκίαν πάλιν οἱ μαθηταὶ περὶ τούτου ἐπηρώτων αὐτόν. καὶ λέγει αὐτοῖς · ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ καὶ γαμήσῃ ἄλλην μοιχᾶται ἐπ' αὐτήν, καὶ ἐὰν αὐτὴ ἀπολύσασα τὸν ἄνδρα αὐτῆς γαμήσῃ ἄλλον μοιχᾶται.

"'And { there came unto him Pharisees / the Pharisees came to him } and asked him. Is it lawful for a man to put away his wife? tempting him. And he answered and said unto them, What did Moses command you? And they said, Moses suffered to write a bill of divorce-

ment, and put her away. { But / And } Jesus said unto them, For { your hardness of heart / the hardness of your hearts } he wrote you this commandment. But from the beginning of the creation { male and female made he them. / God made them male and female. } For this cause shall a man leave his father and mother and { shall } cleave to his wife; and { the / they } twain shall { become / be } one flesh; so { that / then } they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder. And in the house { the / his } disciples asked him again of { this / the same } matter. And he saith unto them, Whosoever shall put away his wife, and marry another, committeth adultery against her: and if { she herself / a woman } shall put away her husband, and { marry / be married to } another, she committeth adultery.'

" (d.)

" Lk. 16. 18.

Πᾶς ὁ ἀπολύων τὴν γυναῖκα αὐτοῦ καὶ γαμῶν ἑτέραν μοιχεύει, καὶ ὁ ἀπολελυμένην ἀπὸ ἀνδρὸς γαμῶν μοιχεύει.

" { 'Everyone that / 'Whosoever } putteth away his wife, and marrieth another, committeth adultery; and { he that / whosoever } marrieth { one / her } that is put away from { a / her } husband committeth adultery.'

" (e.)

" I Cor. 7. 10–16, 39.

Τοῖς δὲ γεγαμηκόσιν παραγγελλω, οὐκ ἐγὼ ἀλλὰ ὁ κύριος, γυναῖκα ἀπὸ ἀνδρὸς μὴ χωρισθῆναι,—ἐὰν δὲ καὶ χωρισθῇ μενέτω ἄγαμος ἢ τῷ ἀνδρὶ καταλλαγήτω,—καὶ ἄνδρα γυναῖκα μὴ ἀφιέναι. τοῖς δὲ λοίποις λέγω ἐγὼ, οὐχ ὁ κύριος· εἴ τις ἀδελφὸς γυναῖκα ἔχει ἄπιστον, καὶ αὕτη συνευδοκεῖ οἰκεῖν μετ' αὐτοῦ, μὴ ἀφιέτω αὐτήν· καὶ γυνὴ ἥτις ἔχει ἄνδρα ἄπιστον, καὶ οὗτος συνευδοκεῖ οἰκεῖν μετ' αὐτῆς, μὴ ἀφιέτω τὸν ἄνδρα. ἡγίασται γὰρ ὁ ἀνὴρ ὁ ἄπιστος ἐν τῇ γυναικί, καὶ ἡγίασται ἡ γυνὴ ἡ ἄπιστος ἐν τῷ ἀδελφῷ· ἐπεὶ ἄρα τὰ τέκνα ὑμῶν ἀκάθαρτά ἐστιν, νῦν δὲ ἅγιά ἐστιν. εἰ δὲ ὁ ἄπιστος χωρίζεται, χωριζέσθω· οὐ δεδούλωται ὁ ἀδελφὸς ἢ ἡ ἀδελφὴ ἐν τοῖς τοιούτοις, ἐν δὲ εἰρήνῃ κέκληκεν ὑμᾶς ὁ θεός. τί γὰρ οἶδας, γύναι, εἰ τὸν ἄνδρα σώσεις; ἢ τί οἶδας, ἄνερ, εἰ τὴν γυναῖκα σώσεις; γυνὴ δέδεται ἐφ' ὅσον χρόνον ζῇ ὁ ἀνὴρ αὐτῆς· ἐὰν δὲ κοιμηθῇ ὁ ἀνήρ, ἐλευθέρα ἐστὶν ᾧ θέλει γαμηθῆναι, μόνον ἐν κυρίῳ.

" V. 39 *νόμῳ*, which is translated in A.V., not in R.V., is omitted in ℵ A B D, &c.

" { 'But / 'And } unto the married I { give charge, yea / command, yet } not I, but the Lord, { That / Let not } the wife depart { not } from her husband: but, and if she depart, let her remain unmarried, or { else } be reconciled to her husband; and { that / let not } the husband { leave not / put away } his wife. But to the rest { say / speak } I, not the Lord: If any brother hath an { unbelieving wife / wife that believeth not } and she { is content / be pleased } to dwell with him, let him not { leave her. / put her away. } And the woman which hath { an unbelieving husband, / husband that believeth not, } and { he is content / if he be pleased } to dwell with her, let her not leave { her husband. / him. } For the unbelieving husband is sanctified { in / by } the wife, and the unbelieving wife is sanctified { in the brother: / by the husband: } else were your children unclean; but now they are holy. { Yet / But } if the unbelieving { departeth, / depart, } let him depart: { the / a } brother or { the / a } sister is not under bondage in such cases: but God hath called us { in / to } peace. For { how / what } knowest thou, O wife, whether thou save thy husband? Or how knowest thou, O { husband, / man, } whether thou shalt save thy wife'?

" { 'A / 'The } wife is bound { for so long time / by the law so long } as her husband liveth, but if { the / her } husband be dead, she is { free / at liberty } to be married to whom she will; only in the Lord.'

" (f.)

" Two other passages, which might be referred to, throw no light on the subject. In Rom. 7. 2, 3, the normal conditions of marriage are stated, without thought of the exceptional conditions created by unfaithfulness; and in Mt. I., 19, the question is of breaking off a betrothal, not a consummated marriage."

I should like to ask you if you would commence at page 4, letter B?

" B.

" *The probable Import of the Utterances attributed to Christ on the Subject of Divorce taken as they stand in our Texts.*

" The chief problem raised by the passages quoted above from the Gospels arises from the fact that, in Mk. 10. 11, and Lk. 16. 18, Jesus forbids divorce absolutely, while in the two passages from Mt. He makes an exception. But, before discussing this discrepancy, it may be well to consider the meaning of the exception, as it stands in our documents. Two questions are here important: (1) What is the offence for which divorce is here allowed? (2) Is the remedy divorce with freedom to re-marry, or only separation?

"(1) The exception named is the case of fornication (Porneia). This word, in its proper signification, denotes intercourse with a prostitute, πόρνη being the ordinary contemptuous or plain-spoken name for harlot. A few critics (*e.g.*, Döllinger) have argued that the ground for divorce here sanctioned is the discovery by the husband that the wife has been unchaste before marriage. This, however, is impossible, for the following reasons :—

"(i) The word (Porneia) and its cognates is commonly used in the Septuagint for unchastity in general (*c.f. e.g.*, Hos. 2. 5 ; Amos 7. 17) ; and in the New Testament it has this sense in I. Thess. 4. 3 and I. Cor. 5. 1.

"(ii) None of the Patristic writers of the first three centuries adopted the explanation advocated by Döllinger, or even thought of it.

"(iii) The general sense of the passages in St. Matthew is against it.

(2) Roman Catholic commentators have maintained that Christ here sanctions separation from bed and board, in cases of adultery, but not divorce, *a vinculo matrimonii*, with liberty to re-marry. This, however, is impossible for the following reasons :— "

38,676. Could we take those three items as read?— Very well, my Lord.

The following is the portion referred to :—

"(i) The passage in Deuteronomy (24. 1–4), with which Christ is dealing, expressly permits re-marriage. It must therefore be assumed that this permission remains in force, if not explicitly repealed.

"(ii) The words "causeth her to commit adultery" or "maketh her an adulteress" assume that the divorced woman will re-marry. The exception, therefore, implies that re-marriage after divorce for adultery is not adultery.

"(iii) Divorce without liberty of re-marriage was unknown both to Jewish and Roman law ; and though at a later period a Christian husband or wife might, in certain circumstances, feel it a duty to get a divorce from the civil courts, while yet, as a Christian, feeling bound to abstain from re-marriage, these conditions did not exist in Palestine in the time of Christ.

" But it has been urged, in favour of the view here rejected, that, if the husband of the guilty wife may re-marry without incurring the guilt of adultery, it is inconsistent to say that 'he that marrieth a divorced woman committeth adultery' (5. 32). For adultery is a crime incidental to the marriage state, and if it be possible in either party, it must be because the bond of the marriage still continues ; and if the bond exists both are bound.

" To this objection, two answers are possible :—

"(i) In the clause he that marrieth a divorced woman we must understand, as if it were repeated, the exception about 'Porneia.' He who marries a woman who has been divorced *for any other reason* committeth adultery ; but the divorced adultress is free to re-marry. (So Meyer and Alford.)

"(ii) The clause in question indicates that the prohibition of divorce was intended to be absolute, and that the 'exception' is interpolated. (*See* below.)

" Our conclusion is that, taking the two passages in Matthew as they stand, we must admit that Christ allowed divorce, with liberty to both parties to re-marry, in the case of adultery. That is to say, the passages in Matthew, which contain the exception, are in sharp contradiction with the passages in Mark and Luke, which do not contain the exception.

" A third question, whether Porneia or its Aramaic equivalent, may be stretched to include any other kinds of misconduct, besides bodily unchastity, will be better discussed in connection with Jewish interpretations of the Deuteronomic legislation. (*See* F.)."

38,677. I think we ought to have the next, if you please?

" (C.)

" *The possible interpolation of the "Exception" in the two Passages of Matthew.*

"We have seen that if the two passages in Matthew are interpreted in their natural sense, which alone seems to be admissible, there is an obvious discordance between these passages and the parallel passages in Matthew and Luke. The question now arises, which report represents the actual teaching of Christ?

" Those who still cling to the old theory of inspiration will be compelled to follow the fuller report. The omission of the exception in one or more reports does not prove that the exception was not stated on another occasion ; the hypothesis of an interpolation of such importance in a canonical book could not be admitted without impugning the supernatural guarantee which, on this theory, we may claim for the trustworthiness of every detail in the Gospel record.

" But this theory of inspiration is no longer thought by scholars to be tenable. Modern critics endeavour to get behind the text of the Gospels to the sources from which the Synoptic Gospels were composed. If we follow the methods of investigation now generally approved, we find in the first place that no saying of Christ is better attested than the saying about divorce. It must have appeared both in the document generally called 'Q,' the main source of the non-Marcan part of Matthew's Gospel, and in the other primitive document which is, in substance, our Mark. (*See* Burkitt, The Gospel History and its Transmission, p. 148, *sq.*). Secondly, it is now felt that it is much easier to account for the discrepancy by supposing that there has been an unwarranted addition, or interpolation, in Matthew than by supposing that an important qualification has been suppressed in Mark and Luke. A motive for the alteration may be suggested in the desire to bring the legislation of Christ into nearer agreement with Jewish custom, and with what may have seemed to be a practical necessity in the Christian Church. Such alterations of the words of Christ are unfortunately not without parallel in Matthew, and in more than one case the insertion has been made since the date of our oldest manuscripts. For instance, Matthew 17. 21, is a verse interpolated from Mark 9. 29, which had been already corrupted by the insertion of καὶ νηστείᾳ ('fasting' as well as 'prayer' declared to be the means of expelling evil spirits). Again in Matthew 5. 22, the originally unqualified statement, 'he that is angry with his brother shall be in danger of the judgment,' has been thought too harsh, and 'without a cause' (εἰκῇ) has been inserted. In Matt. xix, 3-10, the interpolation seems to be prepared for by the words 'for every cause' (κατὰ πᾶσαν αἰτίαν) in verse 3 ; these words are not in Mark's account. Again, the hypothesis of interpolation is supported by the exclamation of the Disciples in verse 10 : 'If the case of the man is so with his wife, it is not expedient to marry.' Their surprise would be difficult to account for if Christ had merely affirmed the stricter Rabbinic

interpretation of the law, with which they must have been familiar already. On the other hand, if the prohibition of divorce had for the first time been made absolute, their astonishment was natural. Lastly (*see* further, under F), the expression λόγος πορνείας seems to be a translation of the Hebrew words in Deut. 24. 1, the ambiguity of which gave rise to the controversy. To quote them (in Aramaic) without comment would explain nothing.

"It seems fairly certain, then, that the 'exception' was not found either in the original Q or in the Marcan document, though Q may have been interpolated before the evangelist whom we call Matthew used it. Can we decide whether the clause has been added to the text of Matthew by a later copyist or editor, or whether it is part of the Gospel as he wrote it?

"The two passages must be considered separately. In 5. 32 we have seen that the words παρεκτὸς λόγου πορνείας come in awkwardly, and have the appearance of a gloss; but there is no variation in the manuscripts. The natural conclusion is that Matthew either inserted the clause himself, or found it in an interpolated copy of Q, which he used.

"The case of 19. 9 is different. The variations in the manuscripts cannot be accounted for by any carelessness on the part of copyists. The text has been subjected to deliberate manipulation. There are no less than four variations in which the great Uncials differ among themselves. These are (i) μὴ ἐπὶ πορνείᾳ or παρεκτὸς λόγου πορνείας; (ii) καὶ γαμήσῃ ἄλλην omitted by B; (iii) ποιεῖ αὐτὴν μοιχευθῆναι or μοιχᾶται; (iv) καὶ ὁ ἀπολελυμένην γαμήσας μοιχᾶται omitted by ℵ C3, D. It would be rash to base any important argument on a passage where the text is in such confusion; and the most probable explanation of the confusion seems to be that the verse was not part of Matthew's Gospel, but is a later interpolation.

"The result of this examination has been to invalidate the alleged exception, and to reinstate the absolute prohibition of divorce in its unqualified severity. But it would not be right to close the inquiry without asking ourselves whether it was not Christ's method to make statements in a quite unguarded form, leaving it to the common sense of His hearers to add the necessary qualifications. The Sermon on the Mount contains several startling injunctions of this kind, such as that already quoted which forbids anger under all circumstances, and the command to turn the other cheek to the smiter, which Christ Himself, according to the Fourth Gospel, did not follow when He was smitten. It is quite a tenable view, that the prohibition of divorce is absolute in form rather than intention, the case of adultery not being in the speaker's mind at the moment. It is even possible that, to a Jew addressing Jews, the right of the husband to complete divorce for adultery might seem too obvious to need to be affirmed; and in this case the gloss containing the exception would correctly interpret the speaker's intention. But against this may be set the surprise of the Disciples (Mt. 19. 10); and also, I should say, the general character of Christ's teaching.

"It is a very significant fact that St. Paul, in the passage of I. Corinthians, first distinctly recognises the absolute rule as given by the Lord, and then proceeds at once to allow an exception, *on his own authority.* (*See* the passage I. Cor. 7. 10–15.) In so acting, he indicates that for him the absolute authority of Christ is to be claimed rather in the sphere of general principles than of particular legislation; and if we adopt this view, to which we are led by the whole character of Christ's teaching, it does not seem that the conclusion at which, on critical grounds, we have arrived, necessarily carries with it the further conclusion that it is *ultra vires* for a Christian church or state to sanction divorce under any circumstances."

38,678. I think, if you will allow me to suggest it, as the next is mostly quotation, it might be taken as read, and then you can pass on to "G"?

The following is the portion referred to:—

"D.

"*The opinion and practice of the early Church* has so obvious a bearing on the interpretation and even on the textual criticism of the passages of the New Testament concerning divorce, that I subjoin a brief statement on this point, taking as my limit the writings of Origen.

"The questions which I propose to try to answer are as follows:—

"In the Christian Church between 100 and 250 A.D.—

"(i) Was separation of husband and wife (*a*) allowed (*b*) enjoined, in case of adultery?

"*Answer.* — Hermas (about 140) says that a husband who continues to live with a wife whom he knows to be unfaithful to him, is a partaker of her adultery. (Pastor, Mand. 4.) Tertullian (about 200) says that the husband ought to put away his wife for adultery, and that a wife may put away her husband for the same cause; but he seems to contemplate cases where the sin is continued after discovery. (Adv. Marcionem 4. 34; De Patientia, par. 12.) Connivance is one thing; readiness to forgive after repentance is quite another.

"(ii) Were the parties to such a separation required to remain unmarried?

"*Answer.*—Hermas says: 'With a view to her 'repentance, the husband ought not, after sending 'his own wife away, to marry another. For this 'cause it is commanded to you both to remain single, 'both husband and wife, because that in such a case 'there may be repentance.' Justin Martyr (about 150) says that Christ taught that 'he who marries 'a woman who has been divorced from another man 'committeth adultery.' (Apol. Prima, par. 14, 15.) Clement of Alexandria (about 200) says: 'The 'Scripture lays down the law absolutely: Thou 'shalt not put away a wife except on the ground of 'fornication; and it considers it adultery to contract 'another marriage during the lifetime of either of 'the separated parties.' (Strom. 2. 23.) Again, referring to the words of the apostle: 'If the case 'of the man be so with his wife, it is not expedient 'to marry.' He says: 'They sought to learn whether, 'when a wife has been found guilty of fornication, 'and has been put away, it is permitted to marry 'another.' (Strom. 3. 6.) He, like Hermas, says that no obstacle should be placed in the way of the erring woman's repentance and return to her husband. Tertullian (about 200) assumes that all agree that there can be no re-marriage after divorce, and bases on this his contention that, since marriage is *per se* indissoluble, re-marriage is not permissible even after the death of the husband or wife. (De Monogamia, par. 9.) The obscurely worded passage, Adv. Marcionem 4. 34, probably means that Christ allowed separation, but forbade re-marriage; this was clearly Tertullian's view. Athenagoras (Leg. pro Christ, 33) takes the same view as Tertullian (De Monog. 9); he says that, 'second marriage is only specious adul-'tery, for Christ permits not to send away her 'whose virginity he has ended, nor to marry again.' In the 'Apostolical Constitutions' the *clergy* are forbidden to marry a divorced woman. In the 'Apostolical Canons' re-marriage is forbidden; but this may refer to divorce for lighter causes. The

Council of Elvira (later than the limit we have chosen) enacts severe penalties for those who have been divorced *without cause* and have married again. Lactantius regards re-marriage as permissible for a husband who has divorced his wife for adultery.

"It is plain that there was no uniformity, either of theory or practice, in the early Church. The question is complicated by the existence of a strong prejudice against second marriage, a prejudice which was not confined to Christians. (On Pagan tombstones a woman is often given credit for having been *univira*.)

"(iii) Are there any indications that the prohibition of re-marriage, even if generally accepted, was not strictly enforced by the early Church?

"*Answer.*—Tertullian (Ad Uxorem 2. 1) speaks of 'certain women, who, when by divorce or by a 'husband's death an occasion of continency was 'offered, had not only thrown away the opportunity 'of so great a good, but even in marrying again had 'not chosen to remember the rule that they should 'marry in the Lord.' Origen (on Mat. 19. 9) says that 'certain rulers of the Church, contrary to the 'precepts of Holy Scripture, have allowed a man to 'marry a woman in the lifetime of her former 'husband,' and adds that such a concession to human weakness is 'not altogether unreasonable.' It is not unlikely, though it is not stated, that these were cases when non-Christian husbands had put away their wives for becoming Christians, or perhaps such cases as that mentioned below (vi).

"(iv) Was the 'exception' in Matthew recognised?

"*Answer.*—Yes. It is quoted by Theophilus (about 180); by Clement of Alexandria, by Tertullian, and by Origen; but as we have seen, it was not, by these writers, understood to sanction re-marriage.

"(v) Was there any doubt about the meaning of 'Porneia'?

"*Answer.*—No; all who mention the exception understand it to mean adultery. But Hermas, and some later writers, think that it may include spiritual fornication, *i.e.*, (especially) 'worshipping other Gods,' which is called fornication against Jehovah in the Old Testament. Origen further suggests witchcraft, child-murder, and peculation, as possibly equivalent in guilt to 'Porneia.'

"(vi) Did Christians avail themselves of the civil law of divorce, except for adultery?

"*Answer.*—Yes; there is an instructive instance in Justin's Second Apology. A woman who was married to a heathen husband embraced Christianity. The husband, following a repulsive practice very common among the Pagans, wished her to submit to unnatural usage. After some time she sent him a notice of divorce (ῥεπούδιον) and left him. The divorce was not sought or granted on the ground of cruelty or immorality; the law required no reason to be given. The notice sent, she was legally free to marry again; as a Christian she would probably not be free to do so, but in such a case it is possible that some bishops would have sanctioned re-marriage; *cf.* (iii) above.

E.

The Regulations bearing on Divorce in I. Cor. 7, *where the Apostle quotes the authority of Christ.*

(The passage is quoted in full above, in Greek and English.)

"St. Paul is here discussing mixed marriages, a subject which, however important in the mission field, does not concern the present inquiry. But his way of dealing with it is very significant. He quotes 'the Lord' as having forbidden a wife to depart from her husband. No exception is mentioned. And then, having apparently recognised the absolute rule as laid down by Christ, he proceeds, on his own authority, to allow an exception. If the unbelieving husband puts away his Christian wife, the marriage, which has never been a Christian marriage, is dissolved. 'The brother or sister is not under bondage in such cases.' These words imply, in all probability, permission to marry again (*cf.* Rom. 7. 3, where the widow is ἐλευθέρα ἀπὸ τοῦ νόμου [τοῦ ἀνδρός]; this is equivalent to 'not under bondage'). Grammatically, no doubt, it would be possible to translate 'If the unbelieving partner *is for* '*separating*, let him go; the believer is not under 'bondage to live with him': but in most cases, if the Pagan husband wished to separate, he would leave his wife no choice; the permission therefore would be superfluous.

"In estimating this concession, it must be remembered that indissolubility was no part of the contract in Pagan marriage. Such a union, in St. Paul's view, was only 'sanctified' by the Christian party to it, who would interpret his or her vows in a higher sense. Verse 39 of this chapter, ('only in the Lord') is an express prohibition of *marriage* between a Christian and a Pagan (*cf.* II. Cor. 6. 14); the case contemplated in v. 15 would only arise when one partner became a convert after marriage. Further, it would appear that v. 16 partially retracts the concession just made. The marriage is *legally* (even from the Christian point of view) dissolved by the 'departure' of the unbelieving partner—the Christian wife or husband is free, no longer 'under bondage'; but where there is any hope of the return of the unbeliever, or of his conversion, which would naturally involve his return, there is a moral obligation for the Christian partner not to interpose any fatal obstacle, such as re-marriage would be. St. Paul hints rather than pronounces this precept, and adds (v. 17), 'As God hath called each, so let him walk.' The passage is not free from obscurity, owing to the apostle's elliptical style; but the thought seems to be that which I have indicated. If the abandoned Christian partner can endure to lead a single life, in the hope, however slight, that the other party may return and 'be saved,' that is the most Christian course; but St. Paul will not forbid re-marriage, only he lays down as a general principle (which he proceeds to illustrate by the cases of circumcision and slavery), that the Christian should be content to remain in the outward condition in which salvation found him.

"It is right to add in conclusion that scholars are not unanimous as to the extent of the concession here made by St. Paul, some holding that no permission to re-marry is implied in v. 15. My chief reason for dissenting from this view is that it would be meaningless to say to a deserted and divorced wife, 'you are no longer in bondage' or 'you are now free,' if she were not free to marry again.

F.

The state of the Jewish Law and Custom which may be material to appreciate the Passages in the New Testament which have been referred to.

"Dent. 24. 1–4 is the important passage in the Old Testament. According to Driver and other safe authorities, the translations in the Authorised and Revised Versions are both inexact. Driver renders: 'When a man taketh a wife and marrieth her, if she 'find no favour in his eyes, because he hath found in 'her some indecency, and he writeth her a bill of 'divorce, and delivereth it into her hand, and sendeth 'her out of his house, and she departeth out of his 'house, and becometh another man's wife, and the 'latter husband hateth her and writeth her a bill of

'divorce, and delivereth it into her hand, and sendeth 'her out of his house; or if the latter husband, 'which took her to be his wife, die; her former 'husband, which sent her away, may not take her 'again to be his wife, after that she is defiled.'

"If this is correct, the passage is not a law of divorce. The right of divorce is assumed, and restrictions are imposed. A husband who took back his wife after she had been 'defiled' would be wanting in proper self-respect.

"The phrase 'some indecency' (lit., the nakedness of a thing) was ambiguous enough to be very variously interpreted. The School of Shammai (1st century B.C.) interpreted it to mean unchastity, while the School of Hillel, laying stress (quite illegitimately) on the word 'thing,' and treating the words 'if she find no favour in his eyes' as if they had not been explained by the clause which follows, wished to allow divorce κατὰ πᾶσαν αἰτίαν (Matt. 19. 3). A man, according to them, might divorce his wife for being a bad cook, or even because he saw someone who pleased him better. This interpretation is plainly sophistical, and the absolute licence which it justifies was perhaps seldom claimed. On the other hand, the limitation advocated by the school of Shammai seems stricter than the language warrants. For (1) if the woman was divorced for unchastity, she would hardly become more 'defiled' by her second marriage. If the husband could overlook the earlier unchastity, he could overlook the second marriage; (2) since the legal punishment for adultery was death, divorce is presumably allowed for something short of the capital offence. 'Immodest behaviour' is probably near the meaning.

"But is the Matthaean λόγος πορνείας a translation of the Hebrew words (or their Aramaic equivalents) which Hebraists believe to mean not only adultery but any immodest behaviour? The early Church, as has been said, uniformly understood the words to signify adultery only among sexual offences; that is to say, they never thought of 'unchastity before marriage' or immodest behaviour short of adultery, as a possible meaning, though it was suggested by more than one early writer that certain other offences, having no connection with the sexual life, might be morally equivalent to 'Porneia' (*see* D. (v)). We have also seen that one Rabbinical School, that of Shammai, interpreted the Hebrew words in Deut. 24. 1 in the same sense which the Christian Church gave to λόγος πορνείας, that is, adultery only. Let us suppose, as seems very probable, that the question put to our Lord was intended to evoke a declaration in favour of one or other of the opinions, which divided the Rabbis into two sections, the stricter view of the School of Shammai, or the laxer view of the School of Hillel. (It is possible, as Professor Burkitt suggests, that the questioners desired to know in particular whether Jesus would be as uncompromising as John the Baptist in condemning Herod's irregularities.) It was quite in accordance with our Lord's method on other occasions (compare, for instance, his replies to the questions about the tribute-money and marriage in the future state), that He should, instead of a direct answer, lay down a general principle from which the answer might be easily inferred. Such an answer would be the unqualified prohibition of divorce. But the answer, as given by Matthew, containing the exception about 'Porneia,' would not (if λόγος πορνείας is a translation of the ambiguous phase in Deut.) have been an answer at all in Aramaic, though it sounds like an answer in Greek. For both the contending schools based their opinion on the passage of Deuteronomy containing the clause about 'the nakedness of a thing.' The difference between them was in the interpretation of those very words. Therefore, to quote the words without comment would be, in effect, to say nothing.

"If, however, some still think it possible that the 'exception' was made by Christ in language borrowed from the text of Deuteronomy, we shall have to put to them the alternative that *either* Christ followed the School of Shammai in restricting unduly, and so partially misunderstanding, the words of Deuteronomy, *or* that He meant to give His sanction to those words in their true sense, which would involve an extension of the right of divorce alien to the principles which the other Evangelists aver that He laid down, and alien to the practice of the primitive Church. The latter is scarcely tenable, since neither school of Rabbis interpreted the word in the way which modern Hebraists advocate.

"Arguments from the fact that the death penalty assigned to adultery in the Old Testament was still legally in force in the time of Christ may be set aside. There seems to be no doubt that this law remained a dead letter; it is probable that there was no serious intention of stoning the adulteress whose case is mentioned in John 8.

"G.

"*General Conclusions.*

"It seems clear that Christ, in the words so variously report by the Evangelists, intended to inculcate a higher view of the sacredness of marriage than was held by the Rabbis of either school. Divorce had been allowed by Moses 'for the hardness of your hearts'; but 'from the beginning'—that is to say, according to God's intention—marriage is essentially an inviolable contract, terminable only by death. No Christian can contract a marriage with any other intention, or regard it as anything less than a life-long union, to which both parties have pledged themselves before God. This is the principle involved. I do not think that Christ meant to lay down hard and fast rules. He was always more concerned with states of will and feeling (*cf.* Mt. 5. 28) than with overt acts. If a very hard case had been brought before Him, it would have been in accordance with His general attitude towards social legislation if He had answered, 'Marriage was made for man, and not man for marriage.' The early Church probably interpreted His mind rightly when it laid stress on the chance of repentance and return as the main reason why re-marriage after desertion by an unfaithful partner is generally not permissible to a Christian. I am sure that He would not have sanctioned the notion that either husband or wife is *ipso facto* released from the vow by unfaithfulness on the part of the other partner."

"The doctrine that marriage is absolutely indissoluble cannot, in my opinion, be proved from the New Testament. St. Paul cannot have held it, or he would not have allowed even mixed marriages to be dissolved. By admitting the Matthaean exception into the canon, the Church accepted an interpretation of Christ's words which is incompatible with the view that marriage is *per se* indissoluble. And while admitting *porneia* as a ground of divorce, the Fathers of the Church, as we have seen, were willing to discuss the question whether certain non-sexual offences against the marriage-bond might not be morally equivalent to *porneia*. The Christian emperors, apparently without much protest from the Church, allowed divorce, with leave to re-marry in certain cases. The Greek Church has always allowed the innocent party to re-marry and has even made other concessions. The Roman Church is strict in theory, but by no means in practice. The Reformed Churches have allowed divorce, with leave to re-marry, for adultery and some other offences. Lastly, in our own country private Bills have

(previously to 1857) taken the place of the Papal dispensations, and divorce was within the reach of those who could afford to pay for it.

"It is plain then that those members of the English Church who maintain that since by Christian law marriage is *per se* indissoluble, no divorce shall be granted under any circumstances, are making a claim which is historically untenable, and which the practice of all Christian Churches in all ages has proved to be unworkable. It is to their credit that they do not propose to soften the rigour of their principle by resorting to the subterfuges which have been so common in the Roman Church. But they do not realise that they are 'laying a yoke on the neck of the disciples which neither our 'fathers nor we are able to bear.'

"The duty of a Christian State, it seems to me, is to legislate with due regard for the imperfections of human nature, while at the same time recognising an imperative obligation to maintain the unique sanctity of the marriage contract, which Christ unquestionably intended to emphasize in the strongest manner. In carrying out this obligation, it is, in my opinion, the duty of the State to punish adultery as an offence against itself, a violation of a contract which the State has guaranteed. Adultery in either sex ought to be a misdemeanour punished by a terms of imprisonment. The infliction of a penalty which all would feel to be a disgrace would have a most beneficial effect on public morality, by stripping this odious offence of the glamour of romance which has unfortunately been allowed to gather round it. The convict's jacket is the proper modern equivalent for the white sheet of public penance. Further, I am convinced that the law which permits the re-marriage of the guilty pair, after divorce proceedings, ought to be altered. In France, I believe, such marriages are forbidden. In this way a great temptation to adultery might be removed. And, I need hardly say, that the law which compels a clergyman to lend his church for such marriages is an injustice to the Church, which ought to be terminated.

"With regard to the innocent party, I think that the rule of the Greek Church should be followed, and that the clergy should be compelled to solemnize, and permitted to contract, such marriages. I say this, though I am myself in favour of the stricter rule, and should always advise an innocent partner not to re-marry during the lifetime of his or her erring mate. I believe that Christ's indulgent maxim, 'He that is able to receive it, let him receive it,' applies to such cases.

"If the law were thus tightened in the interests of Christian morality, I do not see why the State should not assume the power of dispensation in a few other cases besides adultery. The cases which seem to me most to justify such dispensation are brutal cruelty, habitual drunkenness, conviction for felony, and venereal disease. It would still be open to the clergy to dissuade from re-marriage in such cases, and I hope they would do so; but re-marriage should not be forbidden, nor should the Church, while it remains established, be allowed to brand those who have so re-married as evil livers.

"I think that a husband should, as now, be able to divorce his wife for a single act of unfaithfulness, and that a wife should be able to divorce her husband for habitual or frequent unfaithfulness, without cruelty. An isolated lapse on the part of the husband should, in my judgment, be punishable by imprisonment but not by divorce, since the temptation is greater in the case of the man, and the injury less, inasmuch as he does not risk bringing another man's child into the home."

38,679. (*Sir Lewis Dibdin.*) I gather from your Paper, which I have read fully, and which you have now read shortly, that your view is that our Lord's teaching simply indicates a general principle, and that subject to exceptions?—General principles and counsels of perfection.

38,680. Would your view be the same had you come to the conclusion that the exception as to adultery in Matthew was part of our Lord's teaching?— I think that if those words are admitted as genuine it throws the whole of our Lord's teaching on the subject into confusion, and it would be then extremely difficult to say what He meant.

38,681. I see you agree with Dr. Sanday that they are no doubt part of the author of St. Matthew's Gospel's words; that they are original in that sense, I mean?—Yes, I hold that view with regard to the passage in the 5th Chapter.

38,682. Yes, it is that I am speaking of really?—Yes.

38,683. Do you agree with the view I put to Dr. Sanday, which I think he agreed with, that there is a good deal of force arising from the fact that the contemporary witness put those words into our Lord's mouth?—Yes, I should say there is force.

38,684. Because it looks as if either he said them or the author, who was a contemporary, thought that he would have said them?—Not quite a contemporary, supposing the Gospel was written in 90.

38,685. Well, within 60 years of our Lord's time. He thought either that He said them or that He would have said them had He thought of it?—I had said that I do not think the words existed in Q; therefore one cannot necessarily put them much before 90 A.D.

38,686. That is why I put it only on St. Matthew. That consideration, though you think it is entitled to weight, is overborne, you think, by the other consideration to which you have referred?—I think it is entitled to great weight as showing the feeling and opinion of the Church about the time the Gospel was written, but I do not think it has much value as going back to our Lord Himself.

38,687. In the very interesting little summary that you give of the history I do not quite follow what you mean by saying that the Private Bills in this country took the place of Papal dispensations?—I meant that the State assumed the right and power of annulling a marriage.

38,688. But Papal dispensations were never granted for divorce, were they?—I suppose not under that name, but practically I suppose they were.

38,689. Dispensations?—Dispensation is not quite the right word. I meant to take such a case as Henry VIII's divorce, and allowing him to re-marry.

38,690. But that kind of cases are not cases of dispensation but cases where the parties took advantage of the fact that there was no dispensation. Take the common case of two cousins marrying without dispensation, and afterwards wanting to get a divorce?—Yes, dispensation was the wrong word.

38,691. You meant the artifice by which annulment was obtained, whatever it was?—Yes.

38,692. The concrete opinion you express, is of very great interest and importance; but may I take it that those are your views as an individual rather than as an expert on Biblical criticism and so on?—Yes.

38,693. I notice you have suggested certain additional grounds for divorce, but you do not indicate any principle on which they are founded. What in your view is the principle which should guide divorce?—I think that no mere misfortune ought to be a ground. I should not, for example, be in favour of granting divorce for insanity.

38,694. That is negative. What in your view is the principle which ought to control the grounds for divorce?—I think guilt inflicting intolerable conditions on the other party.

38,695. Intolerable in what sense?—Intolerable in any sense.

38,696. You mean something which is a breach of the contract; something which renders the performance of the contract impossible?—Yes.

38,697. I do not want to suggest anything to you, but I do not quite follow what you mean by intolerable. Intolerable seems to me to be a relative phrase.

Suppose the parties had ceased to love one another. Would that be a ground for divorce?—No, I should not say so.

38,698. But there would be a clear breach of the contract, would there not?—I suppose there would, but I should not regard it as in accordance with Christian principle to allow divorce for that.

38,699. (*Lord Guthrie.*) I understand in your view that what renders the continuance of the marriage relations reasonably impossible must involve moral wrong if it is to be a ground for divorce?—I think so.

38,700. And that would exclude insanity?—And that would exclude insanity.

38,701. But it would include adultery?—Yes.

38,702. Cruelty?—Yes.

38,703. Habitual drunkenness?—Yes.

38,704. And crime?—Yes.

38,705. You do not mention desertion, Professor. Suppose it be manifestly permanent, and has continued over a considerable period of years without any support whatever to the innocent spouse, and, let us say, leaving on her the support of the children. What do you say to that case?—I think it would not be wrong for the State to allow divorce in such a case, but I should feel that there was some divergence such as may very well exist between Church law and State law in that case; and I think in cases of that kind it would be open to the Church, even while established, to impose a short period of excommunication.

38,706. By way of discipline?—By way of discipline; after which the person may be considered to have purged his contempt.

38,707. The innocent person?—The innocent person. I think that would satisfy most Church feeling.

38,708. Do you apply that to any of the other cases I have mentioned: adultery, cruelty, drunkenness or crime?—Yes.

38,709. You think in all cases a short period of discipline would be required?—I think so.

38,710. Adultery included?—I should myself say adultery included, because I do not think our Lord meant adultery to be a cause for divorce.

38,711. But in your view does divorce in any circumstances involve a measure of sin on the part of the innocent person?—Whether followed by re-marriage or not?

38,712. Yes?—No, I should not say so.

38,713. But if followed by re-marriage?—If followed by re-marriage I should say it would involve some breach of the Church's law which the Church might justifiably claim to consider.

38,714. If it thought fit?—Yes.

38,715. Do you deduce that from anything in the Jewish law at the time of Christ?—As far as I know, the Jewish law at the time of Christ never contemplated separation without leave to re-marry.

38,716. But did it contemplate, in the event of re-marriage, discipline by the Church?—As far as I know, not.

38,717. Do you think that Christ contemplated, if there was re-marriage, the necessity for discipline?—It is very difficult to say whether Christ contemplated any such conditions as afterwards arose in the shape of a large and organised Church. I think one can only judge as best one can from the general principles.

38,718. Is it quite clear that when Christ referred to this subject He was objecting to some law and practice followed by the Jews?—I think it seems most likely that the question was put to Him with a view to getting his opinion as to the views taken by the two schools of Rabbis, or possibly with special reference to Herod's irregularities; or, thirdly, it is possible that those who asked the question had heard that He had already prohibited divorce and wished to get a declaration from Him.

38,719. It is quite clear that He was objecting to something connected with divorce, whatever it was?—Yes.

38,720. What do you think yourself it was that He was protesting against?—I think He was protesting against the lax tone of society at the time, and that He wished to lay down, as a counsel of perfection, and as a rule as far as it could be followed, the absolute prohibition of divorce.

38,721. Were those laws or practices or both that He protested against?—I should say both the Mosaic law and the practice—and interpretation of it.

38,722. You do not think He could have had in view the laws or practices of the Romans who were in possession of the country?—I think that unlikely, because I do not think the Romans interfered with the Jewish legislation on those points.

38,723. So far as contemporary exposition goes, do I understand you to think that the particular action of St. Matthew and the express statement of St. Paul with reference to a Christian husband and a non-Christian wife, both come under that category of contemporaneous or nearly contemporaneous exposition?—Yes.

38,724. Does it come to this; that the case that St. Paul had to deal with was not before Christ and could not be at the time?—No, it could hardly come before Christ.

38,725. And the case we now have to deal with of desertion in the case of Christian husband and Christian wife was not before St. Paul?—No, I think not.

38,726. Does any reason occur to you why the view which St. Paul took with regard to the case of a Christian husband and non-Christian wife should not apply to the case of a Christian husband and a Christian wife?—I think I do see a reason in that pagan marriage is a thing we have no experience of. The conditions do not exist in any Christian country. Cicero wished to divorce his wife in order to marry his ward who was young and wealthy; and that goes beyond even anything that America does.

38,727. But if a Christian man deserts, or a Christian woman deserts; from one point of view is not the argument *a fortiori* in favour of desertion?—Yes, I think that might be held.

38,728. What do you make of the action of the Christian Fathers; of the views and actions of the Christian Fathers? Are we to ignore them, or what weight are we to give to them?—I think they saw clearly what the tendency of our Lord's teaching was and interpreted it aright; but I think we also have to take into account the peculiar views about marriage which were prevalent at that time. It was a period of race exhaustion and world-weariness; and that race exhaustion was reflected in the opinions about marriage.

38,729. And have we also to take into account that there was naturally in their minds a revolt against the Roman and Jewish remedy with regard to marriage; a tendency to go to extremes on that account?—Yes, I think so.

38,730. Had their views with regard to the Second Coming anything to do with it?—Those views, I think, are very important during the first century; but after the end of the first century I should say the expectation of the end of the world gradually died away and is no longer so important.

38,731. We have heard a great deal about St. Matthew possibly putting in the words "save for fornication" in deference to Jewish sentiment. Is it not possible that he put them in from recollection, either of what Christ said on the particular occasion or in private discussion with Christ?—I rather doubt, myself, whether the editor—the Evangelist, who wrote somewhere about 90—had ever known Christ in the flesh, but I think undoubtedly he had tradition to go upon, besides the two documents Q and the Marcan document; and I ought to have said in my memorandum that I attach great importance to those verses about the eunuchs which follow immediately in Matt. 19, as throwing light on this question. They are peculiar to St. Matthew, and I think they indicate that our Lord was laying down a counsel of perfection rather than a basis for legislation.

38,732. Do I understand you do not associate the disciple Matthew so directly with the Gospel that carries his name as to make him responsible for all the statements in it?—I think the disciple Matthew may very well have been the author of Q, but not of the Gospel as we have it.

38,733. Suppose it be the fact that Christ's general method was not that of legislation but of laying down great general principles; do you see any reason why He should have departed from that rule in the case of divorce and in that case only?—The only reason I can suggest is that the words are very categorical. There are very few definite laws that are so definitely laid down in the Gospels as that.

38,734. Take oaths; "swear not at all"; is not that very categorical and distinct?—I think it is a very parallel case.

38,735. And I suppose you think the Quakers make the same mistake there as the persons who maintain absolute indissolubility make with regard to divorce?—Perhaps. I am not quite sure that the Quakers are wrong; but I do not think it is a matter of great importance.

38,736. Take the other Quaker view—with regard to war. They take a very similar view with regard to Christ's precepts there as those take who believe in the absolute prohibition of divorce?—Yes.

38,737. (*Lady Frances Balfour.*) You make a distinction between the infidelity of a wife and that of a husband?—Yes.

38,738. You say the temptation is stronger with the men?—Yes.

38,739. The man is a feebler creature and cannot resist it?—No, I think it depends on the physiological constitution of the two sexes.

38,740. Is another reason that the wife may bring another child to her husband?—Yes.

38,741. But if the husband is unfaithful he may bring another child into another family?—Yes, if the other party is a married woman.

38,742. There they would become equal?—Yes.

38,743. (*The Archbishop of York.*) I think you said in answer to Lord Guthrie that the words of our Lord's injunction about marriage are very specially categorical?—Yes.

38,744. Is there any other similar injunction of our Lord which has been accepted as a definite rule for any section of the Christian Church—at any rate for many centuries—such a one as Lord Guthrie suggested, "Swear not," and the like?—I do not know that there is, but some sections of the Church have admitted the exception.

38,745. But you admit that this has been regarded by the Christian society as a legislative injunction in a sense in which no other injunction of our Lord has been taken?—I think it has been so regarded.

38,746. Then in regard to what you said about St. Paul; though it occurs only in your memorandum I think it is of some importance. You say St. Paul made an exception himself, on his own authority, to the absolute rule; but was St. Paul really making an exception to the rule of Christ which affected presumably primarily the marriage of his own followers. It did not concern two Christians at all, did it?—I think he seems to have been conscious that he was making an exception, or putting an interpretation.

38,747. Would not it be possible to urge that what St. Paul regarded as requiring some justification was rather that the Christian wife and the heathen husband should be encouraged to live together at all?—Yes, I have no doubt he would have strongly disapproved of those marriages; in fact forbade them to be contracted.

38,748. Pardon me; in the passage he gives a reason for rather urging the Christian wife to remain with her husband if he would allow it?—Yes, but I think that refers to cases where one party had been converted after marriage. In other places—in the Second Epistle to the Corinthians—he forbids mixed marriages to be contracted.

38,749. Yes, mixed marriages being made; but what St. Paul was making the exception for was that the Christian wife should remain with the heathen husband if he was willing to stay?—Yes.

38,750. And he was not making any exception to the Christian law as between Christians. It was not an exception to the law of Christian marriage?—No.

38,751. One question more about your memorandum on patristic authority. Do you know of any single instance in which any Christian writer of the first three centuries either approved of re-marriage after divorce in any case, or even quoted St. Matthew as justifying it?—No I do not; but they speak of the thing as being done. Origen apparently implies that even some bishops allow it.

38,752. I do not want to go into that; I could, at some length. I only ask the question?—No, I do not know of any case where it is approved of, and I should not expect to find one.

38,753. Then on the general question which you have given us the benefit of your opinion about, I only want to ask this. You say that the law which compels a clergyman to lend his church for such marriages is "an injustice to the Church which ought to be terminated." What is your view about compelling a clergyman, even if he has very strong objections, to celebrate a marriage in the case even of the innocent party. Supposing he holds himself bound by what you would probably admit to be our Lord's actual words, and feels that very strongly; ought he to be compelled, as now, to celebrate it?—I think it is always expedient not to put a strain on men's consciences; therefore I think it would be as well that it should not be compulsory.

38,754. Apart from the Church itself, do you regard the marriage service as expressing the mind of the Church of England on this matter of marriage?—Yes, with the exception of certain passages about the Patriarchs which might be removed with advantage.

38,755. Would you say that the marriage service of the Church of England does take the strictest view of our Lord's words?—I should say so, yes.

38,756. Then is it desirable that the state should encourage or compel the use of words in a public ceremony which obviously do not admit of any interpretation but one, namely, that there should be no marriage after divorce?—I do not think I feel very strongly about that. I think the law of the State might be expected to be rather laxer than the law of the Church.

38,757. But ought the State to compel a clergyman to use words in a way that means one thing in such a way as implies that they mean another?—I am afraid I have not considered that question.

38,758. Just one thing more. You mention this matter about the discipline of the Church. In your proof you say that re-marriage should not be forbidden; nor should the Church, while it remains established, be allowed to brand those who have re-married under those extended grounds you have mentioned as evil-livers. When you say "be allowed" do you imply that the State should order the clergy to admit persons to communion who are married under the State laws?—I think if the Church were to ordain, for example, that a person who had obtained a divorce for desertion, and had afterwards re-married, should be excluded for life from holy communion, I think that would strain the relations between Church and State too far.

38,759. No doubt it would strain it; but I want to know the meaning of your words "be allowed." Do you mean that the State should order the Church?—I mean if the Church insists on that kind of legislation disestablishment would be the only way out of the difficulty.

38,760. But you would not admit that the State ought to have the power of determining actually what persons the Church shall or shall not admit to holy communion?—No, I should not admit that; but, as I say, if the divergence between Church and State went too far it might make a separation necessary, and make the continuance of the present state of things impossible. That is all I meant.

38,761. (*Sir William Anson.*) I am not quite clear from your evidence how you think this saving clause in St. Matthew got into the text. It was not in "Q" and it certainly is not in St. Mark?—I should think it was probably put in by St. Matthew himself—at all events in the 5th chapter—to bring his Gospel into accordance with the prevailing Jewish-Christian sentiment; because the whole of St. Matthew's Gospel is strongly pervaded with Jewish-Christian feeling.

38,762. When you say St. Matthew——?—I mean

the editor of the Gospel as we have it, not the author of "Q."

38,763. Have you considered the view expressed by Dr. Montefiore, that seeing that adultery was punishable by death, it was such an obvious ground for divorce that it was taken for granted in the earlier text?—Dr. Montefiore is an authority on the Jewish practice and I am not, but my impression is that that law was entirely a dead letter, and that there was no intention of stoning the adulteress who was brought before Christ.

38,764. Therefore you cannot take it for granted that adultery was a ground for divorce. I mean our Lord cannot be held to have passed over the subject on the ground that it was too obvious for introduction?—I do not think He passed it over as too obvious, because we have to consider the surprise of the disciples, and I feel certain from the general tenour of our Lord's teaching that He would not have regarded a single act of unfaithfulness as a sufficient ground for dissolving a marriage.

38,765. (*Chairman.*) I think you said that the Gospel of Matthew, as we have it, dated from 90?—I think that is the probable date.

38,766. Is there any material on which that date is founded?—No, it is rather conjectural, but I think that is the date which most critical scholars take; there or thereabouts.

38,767. Is it conjectured, then, that it was not his own writing but of some redactor of that time. It is conjectured that it was by someone, not himself, but someone who followed him?—Some Jewish Christian, I think is the usual opinion, who lived about that date and who compiled his Gospel from two sources.

38,768. With regard to "Q" is that conjectural or is there anything that enables that to be traced?—The existence of "Q" is only arrived at by an analysis of the contents of the three Gospels; but that is the general consensus of opinion.

38,769. There must have been some document which is called "Q" now, that they had when they had their own preparations in hand?—Yes; I think it may be regarded as certain.

38,770. Is there any possibility of fixing the date of that?—No, but I think that most scholars are now disposed to date "Q" very early indeed—before the Marcan document; perhaps not many years after our Lord's death.

38,771. But how long after is not certain?—It is impossible to say.

38,772. But before St. Mark?—Yes.

38,773. You said something about adultery not being a ground for divorce. I did not catch what you said as to that?—What I meant was that I do not think it would be in accordance with our Lord's teaching to regard a single act of unfaithfulness as *ipso facto* dissolving the marriage tie. It would come under the general ground, I think, of forgiveness of injuries.

38,774–5. But one broad question. Do you find from your exhaustive studies of the Scriptures that the State might act on Christian principles and yet permit of divorce being granted on the serious grounds which you have mentioned?—That the State has a right to do that.

38,776. And still be acting in accordance with Christian principles?—Yes, I do think so.

(*Chairman*) I think that is all. Let me thank you very much, Dr. Inge, for coming; and not only for coming but for preparing such an extremely interesting and learned paper. We shall all value it most highly.

Adjourned.

Winchester House, St. James's Square, London, S.W.

FORTY-FIFTH DAY.

Tuesday, 22nd November 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace the LORD ARCHBISHOP OF YORK.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
The Hon. LORD GUTHRIE.
Sir LEWIS T. DIBDIN, D.C.L.
His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).
J. E. G. DE MONTMORENCY, Esq. (*Assistant Secretary*).

Professor JAMES DENNEY called and examined.

38,777. (*Chairman.*) You are Professor of New Testament Theology in the United Free College of Glasgow?—Yes.

38,778. How long have you been in that capacity?—For 13 years.

38,779. Prior to that I think you were United Free minister for 12 years of the Broughty Ferry Church?—Yes.

38,780. I think your name was supplied to us by Lord Guthrie?—I understand so.

38,781. You have been good enough to prepare a statement on "Divorce in Scripture and in the Law and Practice of the Church"?—Yes.

38,782. I think, if you will allow me to suggest it, it would be convenient if you were to read it?—Shall I just begin at the beginning?

38,783. Yes, please, and we will reserve our questions till after.

"A. 1. The Old Testament has a *law* of divorce (Deut. xxiv. 1–4). Custom allowed only the man to divorce his wife, not the woman her husband; and the intention of the law is evidently two-fold, (1) to check arbitrary action on the part of the husband; (2) to supply the divorced wife with evidence that she was in a position legally to marry again.

"2. The New Testament is not like the Old, or at least the various Codes of the Old, a statute book as well as a book of devotion, and, properly speaking, it contains no legislation. But there are various words in it bearing on divorce, the import of which has to be considered.

"A. *Words of Jesus.*—These are found in Matt.

v. 32, xix. 1–9; Mark x. 11–12; Luke xvi. 18; 1 Cor. vii. 10–11. It is one and the same saying of Jesus which is given in all these passages, but with a notable variant in the first Gospel. According to Mark, Luke, and Paul, Jesus rejects divorce without qualification, as a violation of the divine law of marriage; according to Matthew he rejects it except on the ground of the wife's unchastity. It has been common to regard Matthew as giving the words of Jesus in full, and to read them as a statute, sanctioning divorce in one case, excluding it in every other, and over-ruling the unqualified exclusion of it in the other reports; but it can hardly be doubted that this is wrong. The analogy of parallel variants and of the style in which Jesus habitually speaks is all in favour of regarding the unqualified form as that which truly records his words." I mean, by parallel cases, cases like the qualification as to the words about anger: "Whosoever shall be angry with his brother," where some manuscripts insert the words "without cause," or the passage, "Men shall speak evil against you falsely," where "falsely" is undoubtedly an insertion in the same way. "What Jesus does is to assert in the strongest terms and without any qualification, the divine ideal of marriage; it is the permanent union of man and woman, and to dissolve it is adultery. This is what is given as the mind of Christ in Mark, Luke, and Paul; but the first evangelist, who collected the words of Jesus as a new law for the Christian community, and in doing so involuntarily gave them here and there a quasi-statutory touch, which was originally foreign to them, introduces into this saying what (to him and to those for whom he wrote) was a self-evident qualification. It is as if he said: 'The dissolution of marriage is adultery. Yes, except, of course, in the case in which adultery has 'preceded, and the marriage has been dissolved already, *ipso facto*." This is not a divine statute limiting divorce for Christians to this one case; it is the first reflection of a Christian teacher, and an obvious and natural one, as he brings the absolute word of Jesus into relation to the facts of the world, and begins to construe and apply it as a law.

"Among the Jews, only the husband could divorce his wife, and there is nothing in the words of Jesus about a right of the wife to divorce her husband, either for adultery or for any other reason. The singular saying in Mark x. 12, which has perplexed interpreters, binds woman equally with man to maintain the divine ideal of marriage";—that is the saying that contemplates a woman putting away her husband, and says that a woman putting away her husband and marrying another commits adultery too. The peculiarity about that is that it is found in St. Mark only; and also it seems improbable that it is a saying of Jesus at all, but an extension of his words by the evangelist to the circumstances of the pagan world in which he wrote, and in which the divorce of a husband by his wife was possible enough—"but says nothing about her rights or his if the ideal is not maintained. This also shows that it is a mistake to look for anything statutory about divorce in the words of Jesus."

"B. *Words of Paul.*—In 1 Cor. vii. Paul discusses a number of questions connected with marriage and the relation of the sexes. Apparently they had been propounded to him in a letter from Corinth. He recalls the words of Jesus in which the divine ideal of marriage has been asserted (vv. 10, 11), and argues his cases in view of them. He does what a modern missionary has to do in many parts of the world, and not without similar hesitation and perplexities. It is casuistry, not legislation. The one case which concerns us is that examined in vv. 12–16. This is the case of a marriage in which one of the parties has become a Christian, while the other remains a heathen. Paul's judgment is, that if the heathen partner is willing to continue the relation the Christian one is not to break it up; but if the heathen one goes off the Christian one is not in bondage. In other words, the Christian husband or wife, who is deserted by the heathen partner, is free to form a new marriage with some other person. This passage is often referred to as if it were a New Testament statute allowing divorce for desertion, but it is clearly nothing of the kind. It is Paul's judgment on a case arising in a particular condition of society"; and, no doubt, there was some particular case of breaking up suggested to him, the especial conditions of which had actually been operating on his mind. "He says expressly it is his own, not the Lord's (v. 12); and many Christians, even if they did not dissent from it, would agree only with misgivings." I should think, in our ignorance of the particular conditions before the Apostle's mind, we should be slow to say he was wrong; but any person who held a strong idea of the indissolubility of marriage, as I certainly should do, would be equally slow to say he was certainly right. We do not know really what he was pronouncing upon. "The New Testament, therefore, while it declares that marriage ought to be permanent, and consequently implies that nothing in legislation should tend to impair its sanctity, gives no express guidance to the legislator for dealing with cases in which the divine ideal has evidently been frustrated. It does not give a divine sanction to divorce, either for adultery or for desertion, or for any other cause. But neither does it preclude divorce as a legislative remedy in any given case. It perplexed Paul, and may perplex the Legislature always, to provide for the variety of cases in which marriage, in point of fact, breaks down; but there are no Scriptural statutes which exempt us from the responsibility of dealing with every case on its merits, or which limit our liberty to deal with every case as the interests of all concerned prescribe—always in the light of the Christian ideal.

"3. *The Early Church.*—The Church of the first centuries was generally hostile to divorce. Even when it read Matt. v. 32, as it usually did, in the statutory sense, it preferred that the man who put away his wife on the ground of adultery should remain unmarried. Only death (it was argued) really dissolved marriage, and the true rule was not to marry while the former partner lived. But while this view was widespread it was not universal; the very purpose for which divorce was contemplated, from Deut. 24 down, was to put the innocent person in a position to marry again, and remarriage was not forbidden." That appears from the passages collected by Cotelerius in his Commentary on the Apostolic Fathers—I mean the opposition to all marriage after divorce, and the fact that it could not be prohibited. [*See* the passages collected by Cotelerius on Hermae Past. Mand. iv. (Amsterdam edition ii. p. 88).]

38,784. Is that work to be found in any book that we could have access to?—I do not know anywhere except in Cotelerius' edition of the Apostolic Fathers, but I should say that would be in every large library. "What it is equally important to remember is, that the opposition of the Church to a new marriage after divorce has to be heavily discounted in view of its opposition to second marriage at all. Athenagoras (Suppl. pro Christ. c. 33) speaks of marriage even after the death of one's partner as 'specious adultery,' and Tertullian (De Monog. c. 9) says roundly that it makes no difference to God whether, when a woman marries the second time, her husband is living or dead. This view, that marriage should not be repeated under any circumstances, is not without New Testament promptings (1 Cor. vii. 39, 40)"—where Paul says a woman may marry again, but is happier if she remains as she is; and also in 1 Tim. iii. 2, 12; v. 9; Tit. 1, 6, where we have something in the nature of a statute, that a bishop should be the husband of one wife, corresponding to the statement that an ecclesiastical widow must be the wife of one husband; that is to say, if a bishop is a married man he must not marry again; and that a man who otherwise might be eligible to a bishopric is by that disqualified. There is something of a statutory nature in that, but it is worth remarking, perhaps, that no church in the world has ever treated that and applied it as if it were a statute; I mean, no church actually applies that rule. Some churches do not

allow their bishops to marry at all; some allow them to marry as often as they please, or as often as the law of the land where they are allows; but no church allows them to marry once and forbids them to marry twice. "And though it never became law"—that is, that marriage should not be repeated under any circumstances—"it intensified the feeling against marriage after divorce. The whole attitude of the early Church on questions arising within this area is unsound, because it is not determined by any rational or Christian principle, but in the main by a violent reaction against the immorality of the heathen world." Everything determined as a result of reaction needs to be discounted. "There was so much corruption in sexual relations that the very idea of them seemed inseparable from sin, and the less there was of them the better. Celibacy was a higher moral state than marriage. It was praiseworthy that husbands and wives should live as brothers and sisters. If to marry at all was not the best, to marry twice was a grave fault, and to marry after divorce was mere adultery. When this state of mind is considered as a whole, it is too abnormal to furnish any real guidance to the legislator.

"4. *The Mediæval Church.*—The Greek Church adopted and retains the view that adultery dissolves the marriage relation"—but not alone, of course, because in the Greek Church, in Russia, though the ecclesiastical court has the law in its hands, it grants divorce not only for adultery, but it can grant a divorce for certain crimes, and also for five years' absence—"and that it is lawful for a person who has obtained divorce for adultery to marry again. In the Latin Church the view which came to prevail was that the marriage bond is indissoluble, and divorce impossible; no matter how completely a marriage breaks down, nor from what causes, neither partner can marry during the lifetime of the other. This was not formally defined as the law of the Church till the Council of Trent. At the beginning of the period, Augustine (*De Fide et Operibus*, c. 19) had doubts as to whether the innocent man who divorced an adulterous wife might not, in consistency with Scripture, marry again. Personally, he thought not; but he also thought the Scripture evidence so obscure that anyone might be pardoned for taking the opposite view. At the very end of the period Cardinal Cajetan, subject always to a determination by the Church which has not yet been given, holds that by the law of Christ a man may put away his wife *ob fornicationem carnalem* and marry another."

38,785. What date is that?—Cajetan died in 1534, and he was an elderly man at the time. I could not say exactly the date of the Commentary. "An examination of the canons of mediæval councils shows how gradually and with what difficulty the view which ultimately prevailed, and which pronounced divorce *a vinculo* impossible, was actually carried through." The references I took for that are all taken from Hefele, Conciliengeschichte I., where the councils are examined.

38,786. That shall be quoted in your evidence.

The following is the portion of the proof not read by the witness:—"*See* Canon IX. of Elvira in Hefele, *Conciliengeschichte* I. 131F, Canon X. of Arles, A.D. 314, *ibid.* 179; Canon VIII. of Carthage, A.D. 407, *ibid.* II. 88; this canon suggests applying for an imperial decree to forbid separated husbands and wives from marrying others; Canon II. of Vennes, A.D. 465, *ibid.* II., 573; by the statutes of St. Boniface marriage is indissoluble except *in causa fornicationis* and by mutual consent *propter servitium Dei*, *ibid.* III. 549; a synod at Vermeria in 753 A.D. decided that where persons of unequal rank had married (slave and free), one being ignorant of the status of the other, the marriage could be dissolved, and another marriage with a partner of the same rank take its place, *ibid.* III. 538; Canons IX. and XVI. of the Council of Compiègne (about 756 A.D.) allow a man whose wife has committed adultery with his brother or a man whose wife has taken the veil, to marry again, *ibid.* III. 555; a man whom his wife has tried to murder, and who has killed in self-defence someone who was helping her, may dismiss her and marry another, *ibid.* III. 583; Canon XVI. of a Council at Bourges in 1031 rules that he who dismisses his wife for any other cause than adultery may not marry another, *ibid.* IV. 658F. During the ninth, tenth, and eleventh centuries 'Verstossung der Frau und Verehelichung mit einer andern ist sehr häufig,' *ibid.* IV. 497."

A. Then I think the sentence in the middle of page 6 is where I might take it up. "Pope Gregory II., on the ground alleged in 1 Cor. vii. 9, allowed a man who had not the gift of continence, and whose wife had become through illness incapable of rendering her conjugal duty, to leave her and marry another, providing, however, aliment for the first. The Church had, in short, an ideal of marriage, but could not directly translate it into a statute, and did not feel bound to do so. Its policy is indicated in the words of Pope Gregory to Augustine of Canterbury, who had consulted him on questions of this class." I have given the quotation.—[The following is the quotation referred to:—"In hoc enim tempore sancta ecclesia quaedam per fervorem corrigit, quaedam per mansuetudinem tolerat, quaedam per considerationem dissimulat, atque ita portat et dissimulat ut saepe malum quod aversatur portando et dissimulando compescat (Wilkins, *Concilia* I., 20."]—"Though in the mediæval church, where its ideal prevailed, there was formally no divorce, there was in many cases a practical surrogate for it in the facility with which existing marriages could be declared null *ab initio*. When the prohibited degrees of consanguinity, affinity, and spiritual relationship were so widely extended, it required a high degree of genealogical knowledge and of legal skill to avoid a breach of the law. What was ordinarily complained of was not that the law made marriage indissoluble, but that there was hardly any assurance possible that a marriage could not and would not be dissolved." Shall I fill up these references?

38,787. We will take it as part of the print, and if there is any other reference you would like to add when you see your evidence in print you can do so. [The following are the references:—"Apol. Aug. "Conf. XXIII., 71; Müller's Symbol. Bücher der "Evang. luth. Kirche 248; Laing's Knox. II., 245."]—Those are contemporary references to the Apology for the Augsburg Confession and Laing's Knox.

38,788. Have you got those written out?—Yes.

37,789. Could we have the full writing inserted?—Yes.

The following are the extracts referred to:—

"From the Apol. Conf. Aug.—Nostri principes, quicquid acciderit consolari se conscientia rectorum consiliorum poterunt, quia etiam siquid sacerdotes in contrahendis conjugiis mali fecissent, tamen *illa dissipatio conjugiorum, illæ proscriptiones, illa sævitia*, manifeste adversatur voluntati et verbo Dei. Nec delectat nostros principes novitas aut dissidium, sed magis fuit habenda ratio verbi Dei, præsertim in causa non dubia quam aliarum rerum omnium.

"From Knox.—Because that marriage, the blessed ordinance of God, in this cursed Papistry hath partly been contemned, and partly hath been so infirmed that the persons conjoined could never be assured of continuance if the Bishops and Prelates list to dissolve the same, we have thought good to show our judgments how such confusion in times coming may be best avoided."

These are confirmed by Mr. Bryce, who sums up the state of affairs in this sentence: "The rules regarding impediments were so numerous and so intricate that it was easy, given a sufficient motive, whether political or pecuniary, to discover some grounds for declaring nearly any marriage invalid." (Studies in History and Jurisprudence, II., p. 434.). Then—

"5. *The Reformed Churches.*—At the Reformation the Canon Law was abandoned in Protestant countries, and they were left to face all the matrimonial causes which emerged without its guidance. The *Kirchenordnungen* of the German States almost

all have chapters on marriage and divorce. Those who drew them up seem to have been much impressed with the variety and difficulty of the cases which had to be considered, and often a large discretion is left to the judges. Thus the Wurtemberg ordinance of 1537 reserves the right to purify, to lessen, to increase or to abrogate the *Ee* [= Ehe, marriage] *ordnung* in one or more or all of its articles as from time to time in view of circumstances seems good and necessary." Of those ordinances, a hundred and sixty-five are collected in Richter's book, *Die evangelischen Kirchenordnungen des* 16 *Jahr hunderts.* "The *Ordonnances ecclèsiastiques de Genève* (1541), printed in the same collection, enjoin in a certain case *qu on lui* (*i.e.*, to a person petitioning for divorce) octroye ce qui raison portera"—give a fair and reasonable decision. "In the Palatinate (1563, *ibid.* 256) a woman deserted by her husband " is to get 'gebührliches Bescheid' "—a decision answering her requirements. I mention those as an instance of the indefiniteness of the latitude in discretion left to the Court. "In several, when the courts are baffled an absolute discretion seems to be formally vested in the sovereign. The motives to which reference is most frequently made are the necessity of avoiding offence, of preventing further sin and shame, and especially of giving relief to the injured person." For example, when divorce is granted for desertion, by way of avoiding offence the deserting person is very often forbidden to return to the territory of his prince upon pain of death, and things of that kind. "Marriage is never regarded as a contract which can be broken by consent, but as a relation of another kind which can only be impaired or destroyed by the guilty action of one or both the parties to it. But by such guilty action (all the Reformed Churches hold) it can be impaired or destroyed, and this creates the situations with which the courts deal. A man did not apply to the court, according to the earlier ordinances, to dissolve his marriage." In the later ordinances it sometimes does take that form, but it is very much a difference of terminology. "In the earlier ordinances he applied for a *Toleramus* or *Permittimus* to marry again on the ground, which he undertook to establish to the court, that by the guilty action of his partner the marriage had been already dissolved.

"The Protestant Churches are at one in holding that, while marriage is not dissoluble by mutual consent, there are cases in which divorce, followed by a new marriage, is lawful. Where they differ is on the proper grounds for divorce.

" (*a*) There are those which limit these to the so-called scriptural grounds, either adultery only, or adultery and desertion. A typical example is the Westminster Confession of 1647 (c. xxiv. 6). Here adultery and desertion are the only causes sufficient to dissolve the bond of marriage, and desertion is defined as such wilful desertion as can no way be remedied by the Church or civil magistrate. All the Ecclesiastical ordinances of the continental churches surrounded divorce for desertion with precautions against haste and possible abuse. These two grounds are the only two which have been recognised in the Scottish Church. Divorce for adultery was granted without statute from the first"—presumably on the authority of scripture—" desertion was made a ground for divorce by a statute of 1573," the relation of the Church to which is certainly obscure. "Although, if we read scripture as a statute, adultery is a ground for divorce much more unequivocally than desertion, Calvin held that prolonged and heartless desertion is a far clearer case of a marriage being *de facto* dissolved than adultery, and had no hesitation in granting divorce on that ground.

" (*b*) There are churches which, while they admit that marriage laws ought to be determined by the Word of God, do not read scripture in this statutory way. They recognise adultery and desertion as grounds of divorce, not because they are specified in scripture, but because in point of fact they fatally impair or annihilate the marriage relation. Whether there are other offences that have the same effect. and under the burden of which the injured person should have the same remedy, is an open question. Most of them think there are." I am not sure that I should say "most"; I did not count them; it is only an impression, but certainly in a great many it is so. " In difficult cases they sometimes fell back on ideas or principles of the Roman law. Zwingli speaks of sins against conjugal duty which are *adulterio graviora aut paria*," worse than adultery or as bad. To judge from the ordinances the cases most frequently discussed were attempting one's partner's life, insanity, desertion, crime which entailed degrading punishment, leprosy, or any incurable illness of a kind which made conjugal intercourse impossible. A fair specimen of this attitude to the whole question may be seen in the *Reformatio Legum Ecclesiasticarum* which was largely the work of Cranmer and Peter Martyr, and had the support of a great body of Reformed opinion in England." I mention that, not that it ever had authority in England, but because it is more accessible than the German *Kirchen Ordnungen*, and in spirit is very like them. "Not only adultery and desertion (with due precautions), but attempted murder and continuous cruelty, are here regarded as grounds for divorce. Incurable disease is not. Separation from bed and board is wholly abolished as at once unscriptural, unreasonable, and immoral.

" While taking the responsibility of dealing with the moral wreckage in which marriage sometimes ends, the Reformed Churches have always asserted the Christian ideal. Their marriage services speak of marriage as life-long union. They teach that it is God's will that it should be permanent and pure. On the subject generally I should be disposed to say:—

"(1) That nothing in the law should tend to disparage the Christian ideal of marriage as the permanent union of husband and wife with a view to family life, a union which is recognised by Society and which is the nursery both of Church and State.

"(2) That the law has to take account of facts by which in certain cases marriage is unquestionably destroyed, and that for dealing with those facts scripture gives us no authoritative guidance. It neither prescribes nor precludes the remedy of divorce, and of a new marriage, in dealing with any or all of them.

"(3) That in the interest of morality, and therefore of the Christian ideal of marriage, it is a mistake to put marriageable people in a situation in which marriage is prohibited. Offences against the law of marriage should perhaps be punished"—"perhaps" is probably too weak—"there is statutory authority enough for this in the Old Testament, and in many of the ecclesiastical ordinances of national Protestant churches; but they should not be punished by sentences of celibacy.

"(4) That it is possible to distinguish between *offences against* the marriage relation and its duties by which the marriage as a natural and spiritual union is actually destroyed, and conditions or circumstances which in given cases are *incidental* to it, and which, however painful or trying they may be, are not in kind different from the pains and trials which have to be borne in all human relations." Dr. Johnson says in some place that marriage is not unhappy otherwise than as life is unhappy, and if it is just the unhappiness of life that afflicts marriage, of course there is no ground in that for annulling it.

" The former would be grounds for divorce but not the latter. There might easily be cases (cruelty, for example, or criminality of a degree involving long imprisonment) where it is difficult to draw the line; in such uncertain cases, it is probably better that a few people should be made unhappy than that society should be corrupted on a vital point of morality."

38,790. (*The Archbishop of York.*) I gather from your evidence that you consider on critical grounds the unqualified words are those that are probably most genuine and authentic?—Yes, that is so.

38,791. With regard to the passage in the First Epistle to the Corinthians, you, I gather, would not agree that there was any justification in that passage taken by itself for treating desertion as a ground for divorce?—No, I do not think St. Paul is legislating about desertion or about any abstract case at all. He has something before his mind, and he gives this decision upon it, which I think is a decision quite open to question.

38,792. He is dealing, is he not, with a corresponding situation such as might arise anywhere even now on the mission field as regards the relation between a Christian spouse and a heathen?—Quite so, and I think the only thing that one could say about it is that probably a person brought up to regard the sanctity of marriage, as most Christians are, would feel that Paul was rather taking a liberty than doing the safest thing in the circumstanees.

38,793. Would you agree that what St. Paul was rather trying to justify in that passage was the continued cohabitation of a Christian with a heathen spouse. That was the main object of his *privilegium*?—He starts from that point of view; that the sanctity of marriage is not impaired by the fact that one of the persons is heathen and the other Christian; a marriage performed between two heathen people is not to be dissolved when one of them becomes a Christian.

38,794. Then, strictly speaking, of course, that passage of St. Paul is not really applicable to the marriage of Christians except so far as inferences may be drawn?—What I should say about that is that I do not recognise that the marriage of Christians is a distinct thing from marriage *simpliciter*. I do not think there is any justification in scripture for saying that Christian marriage is different from marriage in general.

38,795. Then do you take the view that Our Lord's words were intended to express His view about all marriage and not the marriage of His disciples?—Yes, I think so, undoubtedly. I do not think the idea of Christian marriage is an idea that has any basis in the New Testament at all. For one thing, when Our Lord spoke there were no Christians in the world to lay down laws for. There was no Christian society and nobody had the imagination of a Christian society for which legislation was required. The persons to whom He spoke were Jews, and the law He laid down was for them, and He does not base it on any idea of His as to marriage, but on the creative order of God. God made them male and female; it is on the first page of Holy Scripture, "For this cause shall a man leave his father "and mother and cleave unto his wife." That is the universal law of marriage, and the idea of Christian marriage as being something different from that seems to me a pure superstition.

38,796. Did He not express that it was His will that marriage should be everywhere restored to that primitive eoneeption?—Everywhere, yes.

38,797. That was the ideal towards which human society ought to move?—Yes, that is so—the indissolubleness of marriage.

38,798. Therefore, any movement in human society, or in the evolution of moral ideals, which made against that ideal would be against His will?—Yes, anything that undermined the sanctity of marriage would be against the will of Christ.

38,799. Then with regard to your remarks about the history of the matter in the Early Church. You lay naturally some emphasis on the view which was commonly held, or which at any rate was held in certain quarters, about second marriages. Would it not be fair to say that that view was largely determined by the Montanist attitude towards life?—Well, the passage I quote from Tertullian, where he says, "It "makes no difference to God whether when a woman "marries the second time her husband is living or "dead." That passage is quoted from a book written after Tertullian became a Montanist; but I do not think that is relevant on this subject, because the only difference between Montanism and the Catholic Church on moral questions was—well, the pot which was always at boiling point in the Catholic Church sometimes boiled over with a splash—which was Montanism. Tertullian was a Montanist, but he was a Christian.

38,800. But, to use your figure, the second marriage was the splash that boiled over?—But the other persons, like Athenagoras, said things just as strong, and so did Tertullian in the two books he wrote to his wife before he became a Montanist.

38,801. But you would not wish to convey that that attitude towards marriage ever received anything like formal recognition by the Catholic Church?—Not exactly; but even a Catholic writer like Hefele says distinctly in his account of these things, that the Church had difficulty in keeping a second marriage, even after the death of the first spouse, legal, so strong was the feeling against it.

38,802. Admitting, then, that there was a very strong feeling, was not that based upon the strong and clear conviction which the Church at that time had, that Our Lord in His words meant to prohibit remarriage after divorce. The argument would be, would it not, if that were so, He had spoken of the matter in that way, and, *a fortiori*, it would be so with regard to any special marriage?—No, I do not think it has any relation to the matter of divoree at all, because you will notice in the New Testament that there is a beginning of that aseetic tendeney in the passages I have pointed out where the question of divorce does not come up. For instance, the passage in the First Corinthians, seventh chapter, where Paul discusses the question of widows' remarriage, and he says they had better not, where divorce is not in question at all. In the same way in the case of a bishop; a bishop must not be a man who has married twice, and a widow who was to be put on the list of Church widows must not be a woman who had married a second husband, because to have married a second time at all, at that time had something damnifying about it and disqualified the person from representing Christianity before the world.

38,803. What I submit is that that attitude was largely due to the conviction that Our Lord had spoken against remarriage?—Our Lord spoke against divorce, but this has nothing to do with divorce.

38,804. But is it not the fact that Tertullian based his view of second marriage on Our Lord's words with regard to divorce? I think it is so in more than one place?—Tertullian rather treats a second marriage as if it were adultery on the ground that the first marriage is for good and all; that even death makes no difference to it. He states this kind of argument: Are we to be nothing at all after death, as some epicureans, and so on, would teach us, and not as Christ Our Lord teaches us? But I do not think there is any ground for looking at marriage like that in the teaching of Jesus.

38,805. With regard to what you say as to the attitude of the Early Church on this question not being "determined by any rational or Christian principle, "but in the main by a violent reaction against the "immorality of the heathen world." Would you agree that reaction was necessary or, on the whole, salutary?—If I did, it would only be a temporary consideration.

38,806. Would that reaction against the evils of Roman society have been effective unless based on the conviction that our Lord's words represented something more than an ideal which could be set aside if circumstances were hard?—I am afraid I do not quite follow.

38,807. Well, was not the success of the stand which the Church made against the laxity of Roman society due to the conviction that Our Lord had given an absolute law to His Church? Rightly or wrongly, was not that the view?—No, I should not say so if an absolute law means a peremptory statute The reaction against the dissoluteness of Roman society was due to a profound conviction that Christ demanded absolute purity of life, and that that had to be asserted at any cost against all these horrors; but that is a different thing from saying that Jesus laid down a statute.

38,808. I am not saying what our Lord did; but was not that the view almost universally held—at any rate, during the first three centuries—by the Early Church, and was not that common view the explanation of the strictness with which, at any rate with regard to dissolution of marriage, they withstood the

laxity of Roman society?—What do I understand you to say is the view?

38,809. It seems very simple. Would the Christian Church have been able to resist the laxity with which marriage was held in Roman society, unless it believed that our Lord had prohibited remarriage after divorce?—I do not see why not. If the church believed in the Christian ideal of the permanence and purity of the marriage relation, quite apart from any conception as to circumstances in which divorce was or was not permissible, I do not see why it should not have resisted it just exactly as it did.

38,810. I only want to know what your opinion is, as it is an important point. Surely the Roman law gave permission for divorce for a great number of causes, including mutual consent. There were cases of great hardship frequently in the Christian community, and would the Church have been able to persist in its rigorist conception of marriage as against the laxer Roman view if it believed that Our Lord's words were only an ideal which would legitimately give way to any circumstances of human hardship or weakness?—Well, it seems to me that that is a hypothetical question which it is really impossible to give an answer to.

38,811. Then I will leave it there. With regard to what you say about the attitude of the Reformed Churches. You say in your proof that "Marriage is never regarded as a contract which can be broken by consent" in the Reformed Churches, "but as a relation of another kind which can only be impaired or destroyed by the guilty action of one or both of the parties to it. But by such guilty action (all the Reformed Churches hold) it can be impaired or destroyed." I would like to ask you two questions about that. When you speak of "all the Reformed Churches" you do not exclude the Church of England from the category of Reformed Churches, do you?—No, I do not think so.

38,812. You would not say that the Church of England had taken that position, would you?—What was in my mind, when I wrote, certainly was the Reformed Churches of the Continent, because I had been speaking immediately before of the Evangelischen Kirchen Ordnungen of the sixteenth century.

38,813. You said that their marriage relationship would be destroyed by the guilty action of one or both of the parties; but later on, on the following page, you say that there were many ordinances of the continental Reformers which justified divorce and remarriage for insanity, leprosy, or other incurable illness of a kind which made conjugal intercourse impossible?—I say these are the cases most frequently discussed.

38,814. Do you know of any instance in which insanity or leprosy or incurable illnesses of that kind were definitely held to be legitimate grounds for divorce in the Reformed community?—I am not prepared to say offhand whether there are or are not. What impressed me more in reading those ordinances was the perplexity of the writers in dealing with these cases than the actual decision of one case and another that they came to. On the whole I know they are against granting divorce for incurable disease.

38,815. That would include insanity, would it not?—In most cases I should say it would, yes; but perhaps I could provide, by consulting the documents again, some more precise information about that.

38,816. Perhaps you might add a note as to that to your evidence?—Yes, I will look into that. I am not positive about that fact.*

38,817. Then there is the point that has been before us a good deal with regard to the practice in Scotland. Did the Scottish Church ever expressly or formally base its acquiescence in regarding desertion as a legitimate ground for divorce on scriptural grounds?—Yes, the Westminster Confession in 1647 justifies divorce both for adultery and desertion on scriptural grounds.

38,818. One more question as to what you say with regard to your own opinion. "It is possible to distinguish between offences against the marriage relation and its duties by which the marriage as a natural and spiritual union is actually destroyed." I should like to ask whether the word "and" there is strict or whether yon would be prepared to use the word "or"?—I was thinking of marriage in all its aspects.

38,819. Would you go so far as to say, if circumstances arose that destroyed what you call the spiritual union in marriage, they would form a legitimate ground for divorce; or would you keep it to causes which affected the natural side?—I would keep them both together. Marriage is a spiritual union, and if that meant that people had difficulties in their temper, and so on, I would not grant a divorce for that.

38,820. (*Lady Frances Balfour.*) You twice say, in your print, that amongst the Jews only the husband could divorce his wife, and that the wife had no right, under any conditions, to divorce her husband. We had a witness yesterday who said that not for infidelity, but for disease and other things, a wife had a right under the Jewish law to divorce her husband?—Well, what I have given in this paper is only as to what scripture contains about divorce, and there is nothing to that effect in scripture. It may be the case that in the actual administration of Jewish law that is so.

38,821. That the actual practice of the Jews went a little further than their law?—I really do not know about that; it may be so. In scripture nothing is contemplated, except that the man is the head of the family; and certainly the man had the right to turn his wife to the door, but the wife had no corresponding right—or had the power, anyhow.

38,822. Then, on the point of desertion admitted by the Reformed Churches. Of course they felt that they were not going against scripture in permitting it for desertion?—As a rule, they thought they had ground in scripture for it.

38,823. On the ground that the contract was broken?—Well, that is mixing up two things. If you say they had scripture authority, the scripture authority must be taken by itself. If you say, on the other hand, that the contract was broken, that is not scripture authority, but authority in the nature of the case.

38,824. But does not scripture—underlying scripture—recognise the civil or the natural contract?—If you go to underlying scripture you have left the ground of scriptnre altogether. They must have said, Scripture is our authority, and that recognises divorce for desertion, and on the ground of scripture we recognise it too.

38,825. I think you said that Christ was laying down grounds under the conditions in which the Jews were then living when He spoke about divorce?—Yes, and He said that the only law of marriage is that marriage is indissoluble.

38,826. Recognising the Jewish contract or the Jewish form of law?—No, I should say it is a little confusing to introduce any particular law as that within which the words of Jesus were spoken. Jesus never speaks of any law except the law of God, and if you say that by the law of Christ marriage is indissoluble, it seems to me the only thing we can have in mind is this: The law of God is a moral law, and it can only be stated as a requirement. It cannot be stated as a datum. What God requires of all married people is that they should live in the marriage relationship purely and permanently. The divine requirement is a requirement of indissolubleness. Just because it is a moral requirement it may not be fulfilled; the laws of God may be violated and the marriage that ought to be indissoluble may be dissolved; it may be dissolved by adultery or by desertion or any other such matter, and the situations in which it is found to be dissolved are those for which the law has to take legal order the best way it can, and irrespective of whether it is Roman law or Jewish law or English law.

38,827. Under the moral law if one partner deserts the other that moral law cannot be fulfilled?—No, the law has been broken.

* A further examination of the documents shows that there is no consensus in them as to any grounds of divorce, except adultery and prolonged and malicious desertion.

38,828. Well, I use the word contract, but I think we are meaning the same thing. The conditions under which it was undertaken are broken, and therefore it is no use legislating for a condition which is gone?—Yes.

38,829. You cannot say it is indissoluble if it has not been fulfilled?—You cannot say it is indissoluble if it has been dissolved; but I do not understand how anyone can speak of indissolubleness as if it were a datum—something in the nature of the case instead of a requirement—something that is to be realised in the conduct of the people.

38,830. Then the Archbishop was drawing your attention to the natural and spiritual union. You cannot have a spiritual union without the conditions of the natural union being fulfilled?—No, I should say not. The whole thing is one.

38,831. (*Lord Guthrie.*) Professor, you say that anything which undermines the sanctity of marriage would be against the will of Christ. Do you think that divorce under the conditions which you have described does tend to undermine the sanctity of marriage?—No, I do not think so.

38,832. Do you think that to preserve the formal bond when the real bond has in fact broken down for such a cause we will say as adultery, tends to assist in preserving the sanctity of marriage?—I do not think so, although I quite agree with what one finds in a great many Church laws, that even in a case of so grave an offence against the law of marriage as that, room should be left for repentance, and for the possibility of reconciliation. I do not think there should be hasty divorce, but I do not think to maintain an imaginary vinculum when everything else has passed away is doing any real service.

38,833. Is it not the fact that those who think divorce a necessary remedy in certain cases are just as strong in their views of the sanctity of marriage and formal indissolubility of marriage as those who take the opposite—what I may call for shortness the Roman Catholic view?—I should think that is so. For my own part I frankly admit I have a great deal of sympathy with even Tertullian.

38,834. And have you the sympathy with Tertullian against re-marrying on the ground which was stated by a very eminent person, that he believed in the resurrection from the dead?—I do not know whether I could state all the grounds on which I think it or not, but I should say that that was part of the reason certainly.

38,835. In Scotland it is the practice, is it not, in the marriage service in the Presbyterian Church to use the words, "What God has joined together let no man put asunder"?—Yes, I have constantly used those words in marrying people.

38,836. Do you see any inconsistency in the use of those words by persons who believe that marriage is not absolutely indissoluble?—Not absolutely indissoluble? Do you mean do I see anything inconsistent in the use of those words in the case of a person who afterwards justifies divorce if the marriage has broken down?

38,837. Precisely?—No, I do not see anything inconsistent.

38,838. It has been suggested that no one who holds your views can consistently, or even intelligently, use those words with reference to marriage. Do you agree with that?—Not at all. As I said, I have married many people in my time, and I always say, "What God hath joined together let not man put asunder," which means that no human authority has any right to dissolve that tie. But that does not affect the fact that the persons themselves who have formed that tie, by a violation of God's law, break it themselves, and create a new situation with which the law has to deal in the ways that the law thinks fit.

38,839. Is it right to assume that certain conditions shall be fulfilled, fidelity amongst them?—Oh, yes.

38,840. And if that condition is not fulfilled and the marriage has, as you say, been broken, do you see any inconsistency in a remedy being provided such as you have indicated?—Not in the least.

38,841. In Scotland, are you aware, whether owing to our having had divorce for adultery or desertion for 350 years, there has been any prejudicial result in the way of affecting people's ideals and practice with regard to marriage?—I do not think so. As far as I have been in contact with people at all, I think people generally have the utmost possible reverence for the sanctity of the marriage relation.

38,842. Take the ordinary case where divorce results; you do not find it except in aggravated circumstances?—I do not think so. In the 12 years I was a minister I was only in contact with two cases of the kind, and they were both extremely aggravated cases; and in one of them divorce was sought and in the other it was not.

38,843. You have not found any tendency for light causes to what is called rush for the divorce court?—Never.

38,844. Have you found cases where, in the interests of the children, it would, perhaps, have been the duty of the wife to go and she would not?—I do not know. As I said, I have not had much experience at all, because the people that get into the divorce court are not the people who come to church.

38,845. But you have found both women and men enduring hard conditions where they might have had a remedy if they chose?—I think practically everybody endures a great deal before they think of such a remedy as divorce.

38,846. And, as far as you are aware, Professor, speaking only as an outsider, do you know any condition in England so different from Scotland that should produce in England a different result from what we find in Scotland?—I really do not know. I never have lived in England much.

38,847. No, I mean as far as you know?—I should think not as far as I have met and spoken with English people.

38,848. With regard to what you said that in Scotland the relation of the Church to divorce for desertion was obscure, you are referring, are you not, to the time of 1573 when the Act of Parliament was passed authorising divorce for desertion?—Yes, I mean between 1560 and the passing of the Act. There certainly seems to have been some want of understanding between the Church and the State at the time; but the situation created by the passing of the Act was certainly accepted by the Church after.

38,849. Yes, from 1560 to 1647 as far as Church law is concerned there was only the recognition of divorce for adultery in the terms of John Knox's views?—So I understand.

38,850. In short, the law of the State authorised divorce for desertion, but the law of the Church did not expressly do so?—I think so.

38,851. Notwithstanding that the Church accepted the law of the State and did not disable people who availed themselves of it?—So I understand, but I am not acquainted with the details.

38,852. After 87 years' experience of the working of the State law, it is the fact that the Church deliberately in 1647 put into its statutes divorce for desertion?—Yes, that is so.

38,853. You see it has been suggested that it was the influence of the Earl of Argyle in 1573 which brought about divorce for desertion. Could that have any effect in 1647?—I think that is impossible though it may be the fact that a person so great as the Earl of Argyle had influence in getting a change made in the law of 1573; but when in 1647 it was adopted as "In nothing contrary to the discipline and doctrine of this Church," I do not think it would have affected that.

38,854. And that confession was adjusted in London, of course?—Yes, I had that in view when I said the Reformatio Legum Ecclesiasticarum represented a considerable body of English opinion, because out of the hundred members of the Westminster Confession only seven were Scotch and no less than 13 were heads of English Colleges.

38,855. You said that divorce for adultery was introduced in Scotland without any statute. What is your explanation of that?—I have no doubt they read the passage in St. Matthew as a statute, and thought

they had the authority of the Word of God for acting directly in that way.

38,856. And if it be the fact that in 1560 there was a statute passed abolishing the Pope's jurisdiction, do you think it followed that they were free then to take their own view of what scripture meant?—Undoubtedly they would feel so and believe so.

38,857. Can there be any doubt, looking to the methods and views and practice of our forefathers in Scotland, that they must have thought that both divorce for adultery, in 1560, and divorce for desertion in 1647, were in accordance with scripture in the sense at least of being consistent with it?—Undoubtedly they thought so, because they put forward scripture in defence of both.

38,858. Now on page 7 of your proof you say, "The Protestant Churches are at one in holding that "while marriage is not dissoluble by mutual consent, "there are cases in which divorce, followed by a new "marriage, is lawful." You had in your mind, you said, primarily the Continental Churches?—Yes, I was thinking of them in the main.

38,859. Do you exclude the Church of England from that statement? Well, perhaps I ought to say I was not thinking about the Church of England when I made the statement at all.

38,860. Now you have told us about the Reformatio Legum; do you know the name of any English Reformer who did not take the view that marriage was dissoluble for adultery?—No, I did not make it part of my business to investigate the views of individuals so much as the documents.

38,861. You have referred to Cranmer. Do you know the name of any English Reformer who did not take that view that marriage was dissoluble for adultery?—I really do not know; but I do not claim to have any particular knowledge in that field.

38,862. It has been said, Professor, that the view taken in England by the English Reformers is traceable to continental influence, especially the influence of Peter Martyr and Martin Bucer?—I suppose that is quite credible in the sense that the Reformation in England generally was subsequent to the Reformation on the Continent, and influence across the sea told on this side.

38,863. Do you think it is any the worse for that?—No, I do not think so. I think Scotland has always been a little less insular than England.

38,864. Take another question. Suppose the English Reformation, so far as based on the great doctrine of justification by faith, was traceable to Luther; is it any the worse for that?—No, and ultimately it is traceable to St. Paul.

38,865. Do you think in short that the fact that continental influence may be discerned in both cases makes any difference as long as the English Reformers accepted the view that marriage was not indissoluble?—I do not see so at all. It does not seem to me to be of any interest where the idea came from.

38,866. Except historically?—Except historical interest.

38,867. As far as you know with regard to the Church of England, do you know anything in the Articles or Prayer Book of the Church of England which makes marriage in your sense indissoluble?—I should say that everything in the Articles or in the Prayer Book makes marriage indissoluble in my sense.

38,868. Yes, precisely—in your sense. Do you see anything that makes it indissoluble in the Roman Catholic sense?—I do not think so.

38,869. We have had quoted to us the words, "What "God hath joined together let no man put asunder." We have also had quoted to us that a man and wife take each other for better or for worse. Do you think that interferes with the view you have mentioned?—No, I think that quite agrees with the idea of the indissolubleness of marriage in the moral sense; but it does not prevent marriage being dissolved by the moral conduct of the people who have entered into it. It is no good quarrelling with facts.

38,870. Do you think the Article that speaks of marriage not being a sacrament points to marriage being absolutely indissoluble?—Probably not, but frankly I have never been able to see what people mean by speaking of marriage as a sacrament.

38,871. The Roman Catholic Church so considers it and bases their view on indissolubility partly on that ground?—Yes, but the indissolubleness of marriage based on Christ's teaching is not based on anything at all but the order and nature of creation.

38,872. The universal law?—Yes.

38,873. Can you in your own mind see any reasonable sense in which marriage is a sacrament. How do you understand it?—I do not understand it at all. I do not know what anybody means when he says marriage is a sacrament, or that even Christian marriage is a sacrament, if that is what is meant; and I do not believe that in Roman Catholic theology there is any coherent or consistent idea of what the sacrament of marriage is.

38,874. I suppose it is intelligible in the sense that it involves an oath, and in that sense it makes God a party to the contract?—Yes, that is intelligible; but that applies to every contract.

38,875. Exactly; if that is so, does that result in this, that when essential conditions entering into the relation have been broken the fact of an oath having been taken prevents the relation coming to an end?—I do not see it. I think the whole notion of a sacrament cannot have even approximate meaning in one's mind. If you take marriage out of the world of ethics and reason and try and imagine it having its being in some other world altogether, then I understand; but if it is a rational or moral relation, then it is what God requires—indissoluble—because it is a rational and moral relation, and people have no right to break it; but when wicked people have put asunder what God has joined, it brings it to an end.

38,876. I suppose in your life appointment if the Church thought you had adopted views that were quite inconsistent with your profession you would have to go?—Yes, and I hope I should.

38,877. It is an *ad vitam aut culpam* arrangement?—Yes; I do not think anything else is either rational or moral.

38,878. You referred to other causes beyond adultery being in the category of open questions. Is it your view that, looking to the whole material, scriptural and historical—taking the whole question of divorce—we have causes that may be justified within the region, that ought to be treated as open questions?—By open questions I mean questions on which men's minds were not made up on any definite principle. They were questions full of difficulties; there is nothing of which these ecclesiastical ordinances are more full than the recognition of the extreme difficulty and variety of the cases with which the judges had to deal. Every case was different, and they were in continual despair about getting rules and statutes which they could apply to such offences with any sense that they were doing justice.

38,879. Of course, if you thought that Christ had laid down an inflexible law of absolute indissolubility you would feel bound to follow it?—Yes, I presume I would, only my whole conception of what Christ is would be totally changed if I could imagine Him laying down statutes which were to be administered in a civil State.

38,880. On any subject?—On any subject.

38,881. Can you see any reason why if, as is universally admitted, He did not usually lay down statutes He should have made one exception in this case of marriage and divorce?—I do not see it.

38,882. You see it is said here that you have definiteness that is not to be found in the other cases. Do you agree with that as contrasted with "Swear not at all," for instance?—No, I think Christ treats the Seventh Commandment just as he treats the others "It was said to them of old time, thou shalt not "commit adultery; but I say unto you that every "one that looketh on a woman to lust after her hath "committed adultery with her already in his heart." Nobody would make a statute of that, and one has no more right to make a statute of "To send away your "wife is to break the Seventh Commandment." Of course, it is, unless in the case, as the Evangelist

implies, the Seventh Commandment has been broken already.

38,883. Then your view would dissent from the Quakers when they say, "Swear not at all," is to be taken absolutely?—Quite.

38,884. Would you also dissent from the absoluteness of the Capital Punishment Abolition Society, who think "Thou shalt not kill" is absolute?—Quite.

38,885. Can you suggest any cause for divorce which in your view would not be in accordance with Christian principle?—I should think there are endless causes of divorce which would not be in accordance with Christian principle—people who had friction with one another just over their domestic arrangements, or their finances, or the management of their children, or people who have grown tired of one another. I do not think anything really respects the sanctity of marriage which grants divorce for a cause less than a cause that hurts the very life of marriage.

38,886. Would you exclude entirely divorce at the will of one of the parties?—The mere caprice of one of the parties?

38,887. Yes?—Oh yes.

38,888. You think that in every case there must be a serious cause bringing the marriage relation reasonably to an end?—Yes, that is what I meant to indicate.

38,889. And that that must be ascertained by a competent Court?—Yes. By the way that is one of the points on which in all these ecclesiastical ordinances stress is laid—that people are not to divorce themselves, and that, however grave their ground for applying for liberty to marry again is, it must be proved before a Court, and even if a man's wife has committed adultery and runs away and lives with somebody else, if he marries before he gets the permission of the Court he is himself guilty of adultery, and is punished as an adulterer. Precaution is always taken against self divorce.

38,890. It would involve proof before a competent Court with notice to the accused party and opportunity to defend of course?—Yes, and that is especially provided for in cases of divorce for desertion—that the deserting party is always to be summoned and every kind of effort made to bring him to reason.

38,891. (*Sir Lewis Dibdin.*) You realise, Dr. Denney, I gather that the question of the dissolubility of marriage is a very difficult one?—I did not catch.

38,892. You realise, do you not—I gather that from the whole of your evidence—that the question of whether divorce ought or ought not to be allowed is a very difficult one?—A very difficult one, yes. I mean it is difficult to determine in what cases it ought or ought not to be allowed.

38,893. Now, Lord Guthrie has examined you with regard to the sacramental view of marriage, and you have said that you do not understand it?—I do not.

38,894. And I think Lord Guthrie said he did not understand it; therefore, that perhaps does not render it easy for you to discuss it on that basis?—Well, I would say impossible.

38,895. But you realise, do you not, that there is a very large body of opinion now, and always has been, which without regarding marriage as a sacrament still regards it as bound by our Lord's words, using His words in a statutory sense, you recognise, do you not, that there is a very large body of opinion which regards the subject from that point of view?—That treats the words of Jesus as statutory?

38,896. Yes?—Oh yes, I know there is.

38,897. And that is altogether independent of any notion of whether marriage is a sacrament or not?—Yes, I quite admit that.

38,898. So I suggest that for clearness we can in this discussion put out the Roman Catholic's view of marriage as a sacrament and discuss it as you have discussed it, on the basis of what is the real significance of Our Lord's words?—Yes, I think that is quite practicable.

38,899. And I suppose there is another consideration; as to what is really for the public good in the matter?—Yes, I think the family is the ethical unit and is always the one thing to be considered.

38,900. And I suppose from the point of view of Christian men we are entitled, are we not, to look upon Our Lord's teaching as indicating to us what is for the public good?—No doubt.

38,901. Therefore, if Our Lord's words ought rightly to be interpreted as prohibiting divorce, or only allowing it in the one case of adultery, that ought to have weight with us, ought it not, on the ground of promoting the public good?—Yes, but the two suppositions in the question, first, that Our Lord does prohibit divorce; secondly, that He prohibits it for every cause but one, are both ambiguous and need to be discussed.

38,902. Oh, I quite realise that you do not take either of those views of Our Lord's words. I only put that as a supposition?—I have no doubt that obedience to Our Lord's words in the sense that He used them is altogether for the good of society.

38,903. Now, coming back to Our Lord's words, I am not going to discuss them with you—I am not competent to do so—but when you say that the words of Our Lord recorded in St. Matthew and the words recorded in St. Mark and St. Luke represent one and the same saying of Jesus you do that no doubt being aware that many competent critics do not hold that view, but think they refer to separate sayings of Our Lord?—I know that is so, but I have not a shred of doubt in my own mind that the mind of Christ on this subject was one and that it was the same saying that is represented in those passages.

38,904. I follow that is your view. Dr. Sanday was here yesterday, and with a great deal of caution and moderation he indicated to us that in his view they were probably two sayings. You would agree that it is a point of view which must be taken account of?—Then may I ask which are the two sayings?

38,905. I beg your pardon?—You say that there are two sayings by Jesus. May I ask which two sayings you mean?

38,906. I am not competent to express any view myself, but I think the view Dr. Sanday put to us was that the passage in St. Matthew, which indicates an exception, might be a different word of Our Lord's pronounced under different circumstances.

(*Chairman.*) May I say with deference I doubt if that is right.

(*Sir Lewis Dibdin.*) It certainly is right.

(*Chairman.*) And I have asked the Archbishop.

(*Sir Lewis Dibdin.*) I am very sorry your Lordship should think it necessary to interrupt me.

(*Chairman.*) Well, is it necessary to discuss what He said; is it not better to get what this witness wishes to say?

38,907. (*Sir Lewis Dibdin.*) As the Chairman desires it, I propose to read exactly what Dr. Sanday did say. Of course, you understand this is part of a long memorandum. It is on page 9. "We are now confronted directly with the necessity of deciding (so far as it is possible for us to decide) upon the probabilities as to what Our Lord really said and meant. Now, I am well aware that this is often treated as a sharp alternative. Did Our Lord speak in the terms attributed to Him by St. Mark, St. Luke, and St. Paul? Or did He speak substantially in the sense of the two passages from the Gospel of St. Matthew?" That is really an answer to your question, "We are invited to make an absolute choice between these propositions. I may be wrong; I have been charged before this with a tendency to combine things that are really incompatible. I am certainly tempted to incur this risk on the present occasion. I ask myself whether it is not possible that Our Lord might in certain circumstances and under certain conditions lay down a principle of general application, and in other circumstances and under conditions state that principle with a certain amount of restriction. I should myself be inclined to answer this question in the affirmative. The difference seems to me to be between a positive rule and a moral ideal. To me it appears to be quite possible and not really inconsistent, on the one hand to state a principle in broad and general terms, and, on the other hand, when it became a question of translating

" that principle into a definite concrete rule to import " into it a certain amount of limitation " ? — Well, what I should say in answer to that, and in dissenting, as I feel bound to do with great respect——

(*Sir Lewis Dibdin.*) I hope you do not think I misrepresented Dr. Sanday's view.

(*Chairman.*) I still think he did not suggest that there were two sayings but two different records.

(*Sir Lewis Dibdin.*) It is extremely difficult to discuss a matter of that kind while examining a witness.

(*Chairman.*) But you put it as if that was distinctly Dr. Sanday's view.

(*Sir Lewis Dibdin.*) May I remind your Lordship that when I examined Dr. Sanday I asked him if that was or was not the meaning of that passage, and he told me quite definitely that it was.

(*Witness.*) Then may I indicate what my mind is about that particular point? Dr. Sanday says that Our Lord may at one time have expressed Himself with absolute generality—have stated a moral ideal—and on another occasion He may have given a positive rule that contained a qualification. Now the thing to notice is this. If you take the very same occasion (because the same occasion is certainly recorded in the two Gospels)—the occasion on which the people came to Jesus and asked Him the question about the legitimacy of divorce (which is recorded in the x. Mark and the same incident in the xix. Matthew)—in the x. Mark Jesus answers without any qualification; in the xix. Matthew He answers the very same question on the very same occasion with a qualification. It is not Our Lord speaking on two different occasions and saying different things; but He is speaking on the same occasion, answering the same question, and the one Evangelist records the unqualified answer and the other records it with a qualification.

38,908. As I say, I am not in the least degree competent to discuss the matter with you; but the only point I want to bring your attention to is what I think you will admit, that it is possible to take two different views, and that your very direct and categorical statement that these two passages refer to one and the same occasion is open to a difference of view?—With all respect on this particular point I do not.

38,909. I do not know whether it is necessary, but my friend, Judge Tindal Atkinson, shows me a statement further on in Dr. Sanday's proof, "It may be " well to remind ourselves that there are two distinct " questions: (1) Does the use by Our Lord of unquali- " fied language on one occasion absolutely preclude " the possibility that He should have used qualified " language upon another?"—Well, what I have been pointing out is that the two occasions are unequivocally the same.

38,910. I quite follow that that is your view?—Excuse me, I do not put that forward as my view. I should like to know whether anybody could possibly dissent from the view that the x. Mark and the xix. Matthew are accounts of the same incident in the life of Jesus when he was put the same question by the same people and gave the same answer, and gave the same scriptural ground for the answer; and in one case it is recorded with the qualification and in the other without the qualification.

(*The Archbishop of York.*) I think what Sir Lewis has in his mind is that the difference in the occasions between St. Matthew xix. 9 and St. Mark x. and the words of Our Lord in St. Matthew v. 32, which is part of the Sermon on the Mount.

(*Witness.*) Then I say that the words in St. Matthew v. are like the words in St. Matthew xix. St. Matthew on each occasion gives the words with the qualification. St. Luke on the only occasion he gives the words gives them without qualification. St. Mark has no qualified statement and St. Matthew has no unqualified statement.

38,911. (*Sir Lewis Dibdin.*) Your view is that it is symptomatic of the general treatment by the two Evangelists of their narratives. One puts things in a qualified way and the other in an unqualified way. Is not that it?—Well, that is what has happened on this particular occasion. As I say in my proof, the first Evangelist collected the words of Jesus—a great mass—and collected them first for catechetical and disciplinary use in the Church, and he involuntarily gives them a little turn that a lawyer must give to words when he is going to bring them down to practical application.

38,912. Likewise then you say that to take Our Lord's words as statutory can hardly be doubted to be wrong. It is on the first page. There again, although you have put that quite poistively, do not you realise that there are a great many people for whom you would have great respect who do very seriously doubt whether Our Lord's words ought not to be taken in a statutory sense?—Yes, I know there are people who think so, of course.

38,913. So that perhaps in writing more deliberately you would not put that quite in that form—that it can hardly be doubted that that is wrong?—No, I should never want to put it less strongly than I have put it. I am quite sure that to read Matthew as giving the words of Jesus in full and to read them in a statutory sense sanctioning divorce in one case, excluding it in the other, and overruling the unqualified exclusion of it in the other reports—I am quite certain that is wrong. It is a mistake.

38,914. Although you realise that there are other people whose judgments are worth consideration who think otherwise?—Yes, I am not going to dispute that, but it does not affect my judgment.

38,915. Now, if I may ask you about one or two matters that are historical. You say on the top of page 5 of my copy that the indissolubility of marriage, in the Church view as to that, was not formerly defined as the law of the Church till the Council of Trent?—Yes.

38,916. I quite follow that statement, but you would admit, would you not, that long, long before the Council of Trent it was settled Church law which the Church administered that marriage was indissoluble?—Oh, yes, practically that was so.

38,917. Not only practically; it was a matter of established Canon law?—Well, I should say the quotation I give from Cardinal Cajetan, who died in 1534 after the Reformation was well under weigh, but before the Council of Trent, proves that it is not so.

38,917*a*. Must not we separate in all these things the academic view of particular authorities and the law which they and other people at that time were equally bound to obey—the law of the Church—I mean?—Yes, I have no doubt that Cardinal Cajetan, who was one of the strongest opponents of the Reformation, acted under the conviction that marriage was indissoluble in the Roman Catholic sense, and yet he says here, " I am of opinion, therefore, by this law of Christ " that it is lawful for a Christian to dismiss his wife " for the adultery (fornicatio carnalis) of his wife and " to be able to take another wife; salva semper ecclesiæ " definitione, which heretofore has not appeared," and there is no decision of the Church on the subject.

38,918. By which he meant not that a man could do it properly then, but that the law ought to be such that he could do it. Was not that his view?—That is not what he says anyhow.

38,919. Would you dissent from the view stated by Pollock and Maitland in their history of English law—of course this had to do with England—and the editors say on this question, in talking about a Jewish marriage, " This, however, was a rare exception to a very general " rule, and for the rest the only divorce known to the " Church was that of *a mensa et thoro*, which, while it " discharged the husband and wife from the duty of " living together, left them husband and wife "?—That is practically the universal custom.

38,920. Would you say custom or law?—I do not know what is the difference, not being a lawyer, sufficiently.

38,921. Well, I do not want to go into what seem to you minute distinctions. To me it seems very different. Now you mentioned several Councils there—you have omitted it in reading it, for shortness—the Canons of which were more or less loose in the view of divorce, and were loose in the sense of marriage being indissoluble. You would not say, would you, that

those Councils you have referred to are typical of the views taken by the Councils during the Conciliar period?—I think they are typical of the Councils held in Western Europe in the centuries mentioned.

38,922. But are they typical of the views of Councils——?—These Canons are the only means we have of knowing the views of the Councils.

38,923. But you mentioned all, as far as I know, where the loose view is taken?—I did not choose them on that principle at all. I read through all the Canons of the Councils in the six volumes of Hefele's work with regard to marriage, and I say that the Church had an ideal in its mind——

38,924. Yes, I follow that, Professor; but let me refer you for one moment to the three Councils you have mentioned of Verberies and Compiègne and Bourges. Were those all Frankish Councils?—Yes.

38,925. And are not they referred to constantly in books on these subjects as Councils that took an exceptional view, which was overruled by subsequent Councils such as the Council of Rouen?—I do not know what you mean by calling it an exceptional view They took the only view that it was possible for them to take in the state of society with which they had to deal. They did their best with thoroughly refractory materials.

38,926. But is it not a fact that the decisions that those Councils came to on this point differed absolutely from the later Councils such as the Council of Rouen?—Yes, that is to say, at a later period, the Church was able to enforce its ideal more completely.

38,927. I suppose the particular Councils you have mentioned were not Ecumenical Councils?—No, they were all local Councils.

38,928. Provincial Councils?—Yes.

38,929. It would be like comparing the recent decision of Convocation on Prayer Book Reform with a resolution of a Ruri-decanal Conference?—I am afraid I do not know. They do not suggest anything to my mind.

38,930. You know so much, Professor, that I thought you would know what a Ruri-decanal Conference was. Now, you mentioned the letter of Pope Gregory the Second to Boniface. Is it quite right to refer to that as a normal incident in Church history? Was it not a most startling and, to this day, inexplicable phenomenon—that letter?—Yes, just as startling and inexplicable as Luther giving permission for the marriage of Philip Landgrave Hesse with Margaret de Sala, his first wife being alive, and I do not give it as being normal but as an illustration of the extremely difficult things that actually emerged, and that cannot be decided on abstract principles, and which people have to take the responsibility of deciding even though they make mistakes.

38,931. Gratian, in compiling the Decretum, altogether repudiates that letter of Gregory?—Yes.

38,932. Now, in the next paragraph you refer—if I may say so, very naturally—to the impediments that were made use of under Canon law before the Reformation for putting an end to marriage. Have your researches enabled you to say whether, in fact, marriages were very often put an end to in that way. Let me explain what I mean. I mean was there a body of litigation of that kind, comparable, for instance, to the number of divorces in England now-a-days in a year?—I do not know about that—in that form. The statement I made about that is based on the statement in the Apology to the Augsburg Confession.

38,933. I am not quarrelling with your statement a bit, but I want to know whether you are aware that there were really a great many marriages dissolved—whether it was a widespread thing in practice. If I may trespass once more upon your patience, the reason I ask that is because I have had recently to look into that a great deal myself, and I cannot find in England any trace that there was a very large number of those cases?—Well, it is not possible for me to express any opinion about it at all from the point of view of the person who has investigated legal registers to see what traces the cases have left behind them; but there are the strongest possible statements made by people who lived under that system to the effect that the condition of things made it impossible for them to say whether anybody was married or not.

38,934. Those were statements made by people who had already got into trouble about their marriage and wanted to get out of it?—I do not think that can be said with regard to the Apology for the Augsburg Confession, or the one I have quoted from Mr. Bryce.

38,935. You have been asked already, and I did not quite gather your answer; but you do definitely exclude England from the Reformed countries, where divorce was allowed, I suppose. I mean this is not a matter of opinion but a matter of fact, I should have thought?—I know that as far as laws of divorce are concerned, England stands in a different position from the continental Reformed countries and from Scotland too.

38,936. Then you speak of the Reformatio Legum, and you say that it had a large amount of public support: "Had the support of a great body of Reformed opinion in England." You have told us that is partly founded on the number of English delegates who helped to form the Westminster Confession. Is there any other ground for that view?—Nothing beyond the fact that it is connected with the name of men like Cranmer and certainly represented a great body of reformed opinion at that time.

38,937. Yes, it is connected with Cranmer and connected with Peter Martyr?—Yes.

38,938. Who, of course, was not an Englishman. Is it connected with anybody else that you know of?—It is connected also with Archbishop Parker, but the amount of Parker's connection with it seems to be quite disputable.

38,939. How is it connected with Archbishop Parker? I quite remember that he was one of the Commission as a young man, but we do not know what part he took, or if he took any part then. At some time he seems to have revised Crammer's draft, and in later years to have allowed the publication of the Reformatio. But his relation to the whole affair is obscure, is it not?—I am not in a position to say that he took any part in publishing it. I know his name is often connected with it; on what foundation I do not know.

38,940. That statement is not founded on a particular knowledge of the point?—No.

38,941. With regard to Archbishop Cranmer, his views varied a good deal, did they not, on this question?—You mean the question of divorce?

38,942. You have mentioned him in connection with the Reformatio Legum?—Yes.

38,943. May I remind you of what I have no doubt you know already, of what he wrote in 1540—that was some years after the Act under which the Reformatio was first initiated—to Ossiander; it is in the Parker Society book. It is a long letter. I am reading from a translation, but he said this in the course of it: "What can possibly be alleged in your "excuse when you allow a man after a divorce, while "both man and woman are living, to contract a fresh "marriage"?—Well, I suppose a man who lives through a Reformation does change his mind on a lot of things.

38,944. That is your only answer to that. You are quoting Cranmer as a great representative of reformed opinion, and I suggest to you he is not a very good type because he varied so much?—Well, I should think it would be difficult to quote any man who lived through the Reformation age who did not change his mind about many things.

38,945. But if you are at liberty to quote the Reformatio as showing that it had the support of Reformed opinion, I suppose I am at liberty to quote the letter to Ossiander as showing what the Reformed opinion was then. I suggest that neither of us can quote him, and that Cranmer was not typical?—Well, I should think that even in his inconsistency Cranmer was probably typical.

38,946. Has your experience taken you very much amongst the poor?—Not a great deal.

38,947. You were asked your opinion upon what the effect of widening the law of divorce would be on society. But what one wonders is what effect it would

have upon the very poor, who, of course, look at all these questions in a very simple way—I mean they cannot go into very fine distinctions. Do not you think the mere fact that divorce could be obtained for a great many more reasons than formerly would make them look upon marriage as a less necessarily permanent state?—Well, there are two things I should say to that. First, I do not know that anybody contemplates making divorce possible for a great many various reasons; and the second would be, that I really have not had any such contact with cases in which people were divorced at all, or were contemplating divorce, as enables me to say anything on the basis of experience about that.

38,948. Then I will not pursue it, but I take it your general view is that though marriage is indissoluble as an ideal, if the marriage has broken down, then that fact ought to be recognised by divorce with power to re-marry?—That fact I should say is a fact the law may be bound to take cognisance of and to deal with in any way that seems satisfactory or efficient. I do not say always by divorce, but I do not say divorce is precluded, either.

38,949. Now you have told us you have very often married people in Scotland. Do you have a service for it or is it left to the discretion of the clergyman?—Well, formally it is left to the discretion of the clergyman, but practically all ministers in Scotland do use the same form of service. I mean there is a book of service issued for all sorts of Church functions, the use of which is optional, but in effect everybody uses it.

38,950. Have you anything corresponding to the vow which is adminstered under the English Service; first to the husband and then to the wife?—Yes.

38,951. Do you at all remember the form of it?—Yes, I have married people scores of times, and I always say to them, "Do you, A.B., take this woman whom you now hold by the hand to be your lawful wedded wife, and do you promise before God and these witnesses to be a loving and faithful husband to her till God shall separate you by death"; and I say something corresponding to that to the woman.

38,952. So that a very real prominent part of that vow is that they are to love one another?—Certainly.

38,953. Now supposing the marriage breaks down by their ceasing to love one another altogether; they are both satisfied of that, and their neighbours are and everybody is, and they want a divorce; ought not they to have it?—I should say a marriage could not break down in respect of their ceasing to love one another without breaking down in ways that are capable of proof. I would never grant a divorce to people who could only say their affection had cooled.

38,954. Why not, if you are satisfied of the fact?—But I would not be satisfied of the fact except by things of another kind than the cooling of affection.

38,955. Is that a right way of dealing with the question. Surely it is conceivable you might be satisfied that a man and his wife had ceased to love one another irrespective of their own admission—without proof of adultery or of desertion or madness or penal servitude—I am just giving the grounds which are proposed, you know?—Well, I should not contemplate it certainly, and I do not think anybody in the world could contemplate divorce for such a reason.

38,956. I thought you would say that, but I want to know why. The marriage has broken down, and therefore it seems to come under the principle which you have laid down?—The marriage has broken down in one particular, and perhaps every marriage breaks down in one particular; but it has not broken down fatally so as to cease to be. There is no reason why people whose affection for one another has quite died away should not live in the same house and care for the same family and regulate the life of a family in common.

38,957. But has it not broken down when the main condition of the vow that was put to them when they were married is broken?—The main condition?

38,958. A loving husband you told me?—Yes, a loving and faithful husband. But when you say love has ceased to be, you interpret love as if it were only an emotion. If a man promises to be a loving husband to his wife, it is not only his emotion that he promised, but a whole set of complex duties, and as long as he is living with her and providing for her, and the family is being brought up in accordance with the laws of society, the marriage has not broken down.

38,959. But, suppose he is not living in those conditions. Suppose he is living in such a condition that he and his wife sit at the same table, but do not speak to one another, but he does not strike her, and he gives to her money for the household and so on, but the condition is an unloving condition, is it not broken down?—It has broken down very seriously, but not for the purposes of society irremediably, and the interest of society is a thing that always has to be taken into consideration.

38,960. (*Judge Tindal Atkinson.*) Do I understand you to be of opinion, Professor, that the guilty parties should be allowed to remarry after divorce. I rather gather from your proof that you think they ought to be at liberty to remarry?—That is a question that, in point of fact, all churches almost have evaded an opinion about. Certainly, the general rule was to forbid the guilty person remarrying. Very often the guilty person was sentenced to some severe punishment, but in practice—not so much in the Church, as the law passed out of the hands of the Church in all foreign countries—in the State owing to the difficulty of distributing the guilt between the parties, and the undesirability of having people living in relations identical with marriage, except that the law did not recognise them—because of that it has become common to allow the guilty to remarry too.

38,961. But what is your opinion on the subject?—My opinion is that you can do no nothing happy—in either case. It is bad that it should be and bad that it should not be, but which is worse perhaps depends on circumstances. I do not think I have any very strong opinion about it.

38,962. Supposing that the scriptures forbade divorce without any qualification or exception, is there anything in the scriptures which justifies judicial separation?—I do not think so. I think judicial separation is an entirely artificial idea which does not belong to the world with which scripture deals at all.

38,963. Then taking the words of St. Paul, are they construed without qualification—"that the wife depart not from her husband"?—I should say again in I. Corinthians vii. 10–11 St. Paul has the law of Christ before him that marriage is indissoluble, and probably has some case in which people have separated in Corinth, and he says separations are not things to be encouraged, and let people take time and have a chance to be reconciled.

38,964. I take it that the words mean to desert or leave her husband so far as the wife is concerned, because she would not be entitled to marry again; and that the words that the husband leave not his wife refer to the husband divorcing his wife and not putting her away, If the first words are construed unconditionally—that is, that the wife depart not from her husband—would that lead to the condition of things that if the husband was living in adultery, the wife would be compelled to condone that adultery by not leaving the husband—if you construe it strictly?—No, I certainly should not read the passage so. I do not think there is anything in it further than this. Jesus says that marriage ought to be indissoluble, and therefore people ought not to leave one another. If they do leave on impulse, hasty or bitter—well, let them be reconciled.

38,965. You do not mean that St. Paul would say a wife was compelled to live with a husband although he is living in adultery?—Oh, certainly not.

38,966. Nor that the husband should not put away his wife when she is living in adultery?—No, I do not think those were the situations contemplated in St. Paul's words at all.

38,967. (*Chairman.*) May I just ask one or two questions for information, Dr. Denney. You referred to the Westminster Confession of Faith. I have had a memorandum supplied me upon that, and I want to ask you whether it is correct, and whether the names that are in it are, in your recollection, also correct.

There is a chapter in the Westminster Confession of Faith headed "Marriage and Divorce," and I think it is the fifth or sixth article that provides for the case of adultery and desertion being permissible grounds of divorce. I have them copied here?—I should think that is right, but I do not remember. Yes, chapter xxiv., section 6.

38,968. Section 6 is the first?—Yes.

38,969. I see section 5 is also on the same subject?—Yes.

38,970. It deals with adultery?—Yes, but section 6 is, I suppose, adultery and desertion.

38,971. I just want to ask you about that. Was that adopted by the Church of Scotland in 1647?—Yes.

38,972. And ratified by Act of Parliament in Scotland in 1690?—Yes, at the Revolution Settlement.

38,973. You said it was originally formulated in England at a meeting at Westminster?—Yes, that is true.

38,974. And you said there were a number of English divines upon it?—There were seven Commissioners from Scotland, and all the rest, of which there were over a hundred, were from England.

38,975. Fourteen were Doctors of Divinity; are those all English or partly Scotch?—I really could not answer off-hand. Any edition of the Confession contains a list of the members at the beginning with their titles.

38,976. My note is that the Confession "included "Arrowsmith and Tuckney, Professors of Divinity at "Cambridge; Dr. Hoyle, Professor of Divinity at "Oxford; and such scholars as Twisse, Lightfoot, "Coleman, Calamy, Godwin, and Gataker among the "English clerical members; and Gillespie and Ruther-"ford among the Scotch. During the period of the "sittings John Selden was one of the English lay "members"?—Yes, one of the leading and most impracticable members.

38,977. (*Sir Lewis Dibdin.*) Impracticable?—That is what the Presbyterians say.

38,978. (*Chairman.*) Is that substantially correct?—I think so.

38,979. Then I want to ask you one other matter. You were asked about some of the Councils which apparently came to different conclusions. I think you said that was so?—Yes.

38,980. Was it the Decretum of Gratium at about 1100 and something—I forget the exact date—which largely influenced the unanimity at that time or at a later time?—I really do not know. I agree with the gentleman who put the questions that the ideal in the mind of the Church was always the idea of indissolubleness in this sense, that the Church was working towards it; but it had to do a great many compromising things in the course of human history, and consented to do them.

38,981. Would it be right to say at the time of Gratian it comes more into uniformity throughout?—Yes.

38,982. Or by the time of his Decretum?—By that time, anyhow.

38,983. Then you used the expression "formally defined in the Council of Trent"?—Yes.

38,984. That means the actual formal definition?—Yes.

38,985. Then one other matter. You refer in paragraph 4 of the ninth page of your paper to the destruction of the natural and spiritual union?—Yes.

38,986. Will you just explain to me what in your view is the spiritual union if death terminates marriage and remarriage is allowed with some other person. I have a difficulty in conceiving myself the spirituality of it?—When I said spiritual, I was thinking of a man and woman as being spiritual beings whose union is naturally a communion of thoughts and emotions and sympathies and so on.

38,987. Nothing that adhered after death?—No, I was not thinking of it in that sense—natural and spiritual in the sense that a man is a natural and spiritual being at the same time.

38,988. Then you were asked about treating the precepts or sayings in the Gospels in the nature of law as distinct from an indication of what should be moral conduct. Have you noticed that there is no reference in any way to the interests of children in any of the sayings. Would that or not affect in your view the question of whether what has been laid down was something moral as distinct from something of a legislative character?—I should say that the words of Jesus which make indissolubleness a moral law of marriage are the greatest possible security for the interests of the children, though the children are not specially mentioned.

38,989. But you have already said, I think, that it does not amouut to legislation?—No, I do not think there is a single word in the sayings of Jesus that you could lift and put into the statute book, and they are not statutes in this sense—that they can be enforced by sanctions, or the violation of them be punished with penalties. There is nothing in them but an appeal to the moral nature of man.

(*Chairman.*) I should like to thank you, Professor Denney, for your very valuable evidence and for the statement you have presented, and also for the trouble you have taken in preparing it.

Professor JAMES POUNDER WHITNEY called and examined.

38,990. (*Chairman.*) You are Professor of Ecclesiastical History at King's College, London?—Yes.

38,991. How long have you held the office?—Eighteen months.

38,992. And before that?—Before that I lived at Cambridge for three years, working there; and for five years I was Principal of Bishop's College, Lennoxville, in Canada; and before that I had been in two or three different parishes in England; and for five years I was Lecturer in History at the Victoria University in Manchester.

38,993. You have been good enough to prepare a memorandum on the Continental Reformers and Divorce arising out of the New Testament passages?—Yes.

38,994. Might I say that a good deal of it is quotation from a number of the authors whom you refer to, and that, if you think it will be sufficient, I should like to treat the paper as in, and the print to be before us as part of your evidence; and I will therefore content myself with asking you to take the first part, and read that as showing the general lines on which you are dealing with this subject. Afterwards we can leave the rest to be printed?—That would be at the end of page 283.

38,995. Yes; I do not know that it will be necessary to go as far as that even. But the first part is your own?—Yes, my Lord.

"Many Continental Reformers wrote on marriage and divorce and matters arising out of them. So far as their treatment was founded upon the New Testament they were greatly influenced by Erasmus—in his annotations upon the New Testament (St. Matt. xix. and 1 Corinth. vii.). Erasmus also treated the matter in his controversy with Lee, afterwards Archbishop of York, and in his *Responsio ad Phimostomus*. But their treatment was also largely affected by the course of events. In the outburst of individualism, and the reaction against existing Church authority, these writers gave undue prominence to points of the controversy with Rome: these received naturally more attention than was proportionally their share. Thus Zwingli's attention to clerical marriage draws him away from other aspects of marriage. Attacks upon the estimation of marriage as a sacrament were very likely to lower its estimation, and incidentally these writings show that as time went on it was necessary to lay greater stress upon the sanctity of marriage. Individual differences may also be noticed in the attitude taken by individual writers towards the existing regulation of marriage and the Canon law. Some, like Melanchthon, Peter Martyr, and Beza treat of

these at length, and attach importance to their illustrations. Roman law is also often discussed.

"The magnitude of the revolution attempted by the Continental Reformers should not be overlooked. Existing marriage laws were overturned: the share of the State and of the Church in the new system was not only important theoretically but practically: the difficulty of determining these respective shares increased disorder. Lutherans and Calvinists took different views here, and, as usual, the Calvinist system was practically superior. The importance of the Zürich legislation in illustrating the change is great. This special legislation was not held very effective.

"Another point of interest is the stress laid upon Old Testament examples. Reforming theologians, no less than Cardinal Cajetan,* were drawn into discussions upon the legality of polygamy for Christians, or its occasional possibility by dispensation or otherwise."

That is the same scholar you have been discussing this morning.

38,996. Yes, Professor Denney referred to him?—Yes.

"The bigamy carried out by Philip of Hesse and suggested for Henry VIII throws light upon the morals of the day. Beza finds it necessary to reject the loose views of Bernardino Ochino, and that this was not a mere literary question the well-known practices of the Anabaptists show us. There were among writers all gradations from strictness to laxity: public opinion would thus find it difficult to form itself upon the teachings of reforming theologians. Upon their accepted principles of Biblical interpretation it was difficult to dismiss at once polygamy as impossible for Christians. Bucer, for instance, considers all parts of the Bible as equally authoritative.

"It is necessary for completeness to say something upon the moral background of these writers. In the opinion of those most competent to form an opinion, the sixteenth century was a time of moral decline. Times of revolution are rarely favourable to morals, and evidence from all sides, not least from the treatises here referred to, shows the sixteenth century to be no exception. It was also an age of great economic change: the old ecclesiastical courts, which had so long dealt with moral offences, were getting out of gear, losing authority, or being abolished. Accepted standards were criticised, and morality, so far as it was founded upon practice and custom, began to appear uncertain. This was the general social and political background of theological discussion. The sixteenth century was a time of low practical morality.

"As regards New Testament interpretation, the views of Erasmus, as noted before, were mostly followed. Christ was held to have restricted the licence of the Jews, by assigning only one cause for divorce, namely, adultery: this exception was made because adultery was diametrically opposed to the nature of marriage. There was, however, a divergency of opinions as to whether the mention of this one cause excluded others, or whether it was not typical, and so might be held to cover other causes such as desertion and crimes. The different views of marriage, as on the one hand a sacrament, and, at any rate, having some sacramental force, or, on the other hand, a mere contract even if raised above other contracts by its holiness, underlay these discussions. The treatment by Luther, Peter Martyr, and Beza illustrate this. In most cases divorce was held to allow remarriage: opinions varied as to the weight given to the merely physical objects of marriage. On the extension to be given to divorce there was also a difference in details.

"The relations between the State and the Church in regard to principles and jurisdiction were largely discussed. The Lutherans, as usual, conceded much to the State. Hence a difference between the Christian ideal and the practice enforced by the State might exist, although it was a difference Christians must view with disfavour. But the tendency to regard the teaching of Christ as an ideal, to which it was difficult, in such evil days, to approach, led to an "economy." In the view of later Lutheran commentators the regulations of the Church cannot reach the ideal: as the majority of its members are in the position of the Old Testament people regarding morality and marriage the Church must tend towards Old Testament practice. As the application of New Testament teaching is likely to do harm to unconverted and unregenerate people the Church may permit divorce and remarriage, thus admitting for the bulk of its members a modification of our Lord's teaching. Hence although more conservative theologians kept to the older views, preferring separation without remarriage, there was no clear line of principle drawn. Divorce with liberty of remarriage gradually superseded separation, a process illustrated by the history of German law. But this process was thus related to theological thought. The old view of the Church was that of a body intended to teach and enforce the Christian ideal. The Lutherans held that the Church was to teach and exhort, but the practical enforcement of morals, and the fixing of the standard, lay with the State, and the decision of the State had validity. The Calvinists, however, considered that the State must take its ideal of morals from the Church. This was the line of division between the two bodies of reformers. Among the commentators the exception of adultery as a cause for divorce was held to be merely typical: desertion—one of the other causes admitted—was capable of wide extension. Liberty of divorce, it has been said, was a product of the Reformation.

"The views of the Continental Reformers have great historic interest, apart from their merits or demerits. The course of marriage legislation in Germany, and the extension of divorce in the United States, have been plausibly ascribed to their influence. Further, the height of continental influence upon the English Reformation is marked by the production of the *Reformatio Legum*, which in its proposed legislation upon marriage and divorce resembled the continental schemes. On the other hand the very definite position taken by the Church of England was marked by its rejection of the *Reformatio Legum*, and the enactment of its canons: the recent legislation of the Church of England in Canada further illustrates this cleavage between the English Church and the Continental Reformers."

38,997. What is that?—That is a canon passed at a synod in Quebec in 1905, which definitely laid down that even the re-marriage of the innocent party was invalid.

38,998. Admitting of no divorce?—Admitting of no re-marriage after divorce.

38,999. Admitting divorce, but no re-marriage?—Well, it did not admit the divorce, but the marriage of any divorced person was refused by the Church of England in Canada.

39,000. Have you got that in any form of resolution?—I asked a friend to send me the canon; but I could get it and forward it.

39,001. If you would I should be glad?—Yes.*

39,002. But that is not statutory?—No, that is the Church of England. I am speaking of the cleavage between the English Church and the Continental Reformers.

39,003. But there are others in Canada?—Oh, yes, I am speaking of the Church of England in Canada.

"It may be noted that the system set up under Zwingli's influence at Zürich laid down death as a punishment for adultery. There was a fair general agreement among the Reformers as to this, and much greater stringency was demanded from the State in its infliction."

39,004. From there is there not a statement in detail from each reformer which we might take as put in and not read at the moment?—Oh, yes, from there onwards. That is just a summary I have tried to make of the various views.

* *See* Pastor, "Geschichte der Päpiste" IV. 2, p. 509, note 1.

* The following is the canon in question:—

Canon 5 of the General Synod of the Church of England in Canada, passed Session iv., 1905. "No clergyman within the jurisdiction of the Church of England in Canada shall solemnize a marriage between persons either of whom shall have been divorced from one who is living at the time."

39,005. And the rest shows what each one is considered by you to have said?—Yes.

39,006. I think if we may take the whole of the rest of this proof as in, and have it printed as part of your evidence, we need not have it read, I do not know whether you have any summary of what each of these reformers to whom you have referred has permitted with regard to each of the different grounds of divorce?—I think the summaries that I have given——

39,007. It is not summarised anywhere, is it?—Do you mean summarised in any other place than here?

39,008. I mean, you have given the whole views, practically, of each of these authors whom you have referred to?—Oh, yes, but it is in a very summary form, because some of them are given at very much greater length.

39,009. I know; but is there any possibility of having a small summary saying what each reformer holds?—Yes, condense these still further.

39,010. For instance, if I might suggest what I mean, you begin with Luther in one part, and Zwingli and so on. I think it would be an immense convenience if you would say Luther permitted divorce on this ground and Calvin on that?—Yes, I could do it quite easily from that.

39,011. If you would not mind, when the print comes for you to revise, putting at the end of it, "Result is, the following allow divorce on this ground and the following on this and the other"?—Yes.*

39,012. I think I can then save troubling you any further with detailed questions, unless there is anything you would desire to add to the paper?—I should like to add, if I might, my view of the passages in St. Matthew. I can do it very shortly. I quite agree with what has been already said about the different occasions. There are two occasions in St. Matthew, in the fifth chapter, thirty-first and thirty-second verses—the Sermon on the Mount—and in the nineteenth chapter, verse three, in which our Lord dealt with the question. Then in the tenth chapter of St. Mark, and also in the sixteenth of St. Luke, the eighteenth verse, we have two statements from our Lord. I take it there is very little difference of opinion that the nineteenth chapter of St. Matthew and the tenth chapter of St. Mark agree; or, at least, they are the same occasion, and the sixteenth of St. Luke is very much the same in nature with the passage in the Sermon on the Mount, The difference lies in the two occasions in St. Matthew making our Lord lay down a general rule with the important qualification of "except for adultery," or "save only for adultery" (there is a slight difference in the wording); whereas in St. Luke and St. Mark the passage is given generally and emphatically, meaning this, that marriage is indissoluble. It seems to me that one difference which has not been sufficiently noticed is that in the two passages in St. Matthew our Lord is dealing with different questions. Most critics—partly on textual grounds and partly on other grounds—are of opinion that the qualification in St. Matthew is part of the editing. That, I suppose, would be very largely held with regard to the nineteenth chapter, but it is a little bit more difficult with regard to the fifth chapter. In the Sermon on the Mount, however, our Lord is dealing with questions of individual responsibility. In dealing with the Sixth Commandment, He speaks of killing—murder. There, for instance, anger is the cause; and then He goes on to consider what I should consider more indirect responsibility, the removing causes of offence, and, as I take it, in quite an analogous way—dealing with the question of marriage and adultery, our Lord laid down, first of all, for the man that there might be a case of actual adultery, and, secondly, that a man sinned just as much if he indulged in lustful thoughts; and then, in the third place, our Lord went on to consider another case in which a man was also responsible. A man was responsible if by the act of divorcing his wife he put her in a position in which she was almost bound to commit adultery, or adultery by a remarriage. The question presented itself to our Lord then as one of the responsibility of the man, and in pronouncing on that general responsibility, as I take it, He pulled Himself up, as it were, before condemning the man, because if the man put away his wife for adultery it is clear that he could not be held responsible for her afterwards falling into causes of adultery or evil living. The real cause and real responsibility then lay not with the man but with the nature of the woman.

39,013. Directions to his conduct rather than——?—Yes, and that therefore it is quite possible that our Lord was dealing with the question in that way in St. Matthew; not laying down the qualification as anything that was to affect the ideal of marriage, but merely taking the question of divorce as, if I may say so, a casual illustration of the facts of individual conduct; and that therefore the exception was always found rather difficult to interpret, because people would approach the 5th chapter of St. Matthew with the impression that our Lord was laying down a general rule and such exception as He allowed; that He was dealing with divorce as the important matter, whereas really our Lord was dealing with the question of the responsibility of the man. In other words, the exception is to the responsibility of the man, not to the indissolubility of marriage.

39,014. His own moral conduct?—Yes. It always seems to me that is the real explanation of the insertion of the qualification, and that from that 5th chapter of St. Matthew it was afterwards, as most critics would assume, carried into the 19th chapter.

39,015. Is there anything further you would like to add?—Nothing that I would like to add, my Lord.

39,016. You heard Professor Denney's evidence?—Yes.

39,017. Do you in substance agree with him that the teaching of that is of a moral law and not anything which is a matter——?—No, I should differ very markedly from him him there. Taking the conception of the Church throughout the greater part of its history, I should take it our Lord was certainly laying down a general principle which is absolutely binding upon Christians.

39,018. Without any modifications?—Yes, without any modifications.

39,019. And then the State would be obliged to act upon that?—Well, of course that involves questions of the relations of the State and the Church, and also the different theory of the two; but I should take it, speaking for myself, that there was no doubt that any Christian was bound to act on that, and that it was bound to be the regulation of the Christian Church, that because it was the principle laid down by our Lord: and therefore every Christian, who would naturally wish the law of the land to be in uniformity with the ideal of Christ, would endeavour to make them uniform.

39,020. (*Mr. Brierley.*) I should like to ask you one question about the Canon which you say has been passed by the Church of England in Canada. Is that a Canon which prohibits the remarriage of divorced persons in church, or does it lay down any more general rule as to the remarriage being prohibited under any circumstances?—It prohibits their marriage by any minister of the Church of England.

39,021. It prohibits any marriage in the Church?—Well, a large number in Canada take place not in church but in private houses.

39,022. But it prohibits the marriage by a minister of the Church?—Yes.

39,023. In Canada divorces are not numerous, but of course they do occur; sometimes by Act of Parliament in a large part of Canada, and in some few provinces they are granted by the courts. Supposing divorced persons do remarry civilly, does the Church go on in the Canon to state what is their position then. Are they notorious evil-livers who are excommunicated by the fact of the remarriage?—I suppose that would be a matter for the decision of the individual bishop. The Canon only deals with the question of marriage.

39,024. Then the Canon does not deal with the position of divorced persons who remarry but only

* *See* summaries at end of this witness's evidence.

prohibits any minister to marry them?—The Canon lays down that the law of the Church of England is that those marriages are illegal.

39,025. Then does the Church of England in Canada differ from the resolution of the Lambeth Conference?—No, the question of admitting them to Communion would be a distinct question. The Church of England, as I take it, is still bound by the Canon Law under which all remarriage of divorced persons is illegal, and in further interpretation of that law there had been a difficulty, because of course Canon Law assumes the whole medieval state of things; the question of its interpretation came up, and the Church of England in Canada, after two or three debates, passed a Canon prohibiting remarriage of divorced persons, whether guilty or innocent, by a minister of the Church.

39,026. But it did not go on to state what it would hold to be the position of the divorced persons if they chose to remarry without calling on a minister of the Church of England in Canada to marry them?—No, but they would not be called upon.

39,027. Surely if two persons who had been divorced married before the Registrar (or what is equivalent to the Registrar in Canada), the Church would then be bound to consider what their position was; whether they were living in sin or whether they were living as married persons?—Yes, but I mean the Canon regulating the marriage would not deal with that; that would be a further matter.

39,028. There is no Canon dealing with that?—No. I speak from recollection, I have not a copy of the Canon, but I think that is the case.

39,029. (*Judge Tindal Atkinson.*) Do I understand you that our Saviour, according to the Gospel of St. Matthew, allowed divorce in the case of adultery, but did not allow marriage on the part of the woman?—No, I am afraid——

39,030. I mean I should like to understand?—No. our Lord was dealing with the question of a man putting away his wife. On the surface of the statement in St. Matthew there is an exception in which He allows a man to put away his wife, and that is adultery; and I was speaking of the way that exception presented itself to our Lord.

39,031. Then what is the effect of allowing divorce on the part of the husband on the ground of the adultery of his wife; did that entitle the wife to remarry when she was divorced?—Are you asking me for my own opinion or for the practice?

39,032. I am asking what the scriptural interpretation is. Do you understand that our Saviour intended that it should be a divorce for all purposes, so as to enable the husband to marry again and to enable the guilty woman to marry again?—That, of course, is a question on which some of the Reformers whose opinions I have summarised, differed.

39,033. What is your interpretation of the scripture?—My own interpretation of our Lord's saying would be to take the words in the utmost strictness, forbidding a remarriage of any kind.

39,034. Both on the part of the divorced men and the divorced women?—Yes.

39,035. Neither of them can remarry?—No.

39,036. That is the interpretation you put on St. Matthew's Gospel?—Yes, that is one interpretation.

39,037. Would that be a justification for separation?—Yes; and it would be a separation as distinct from a divorce with liberty to remarry.

39,038. Now if you take St. Paul—the 1st Corinthians—do you agree those words must be taken with some qualification, when he says "the wife depart "not from the husband and the husband leave not his "wife"? Must they be read with some qualification?—Well, of course St. Paul is dealing there with the exceptional case of a believing husband with an unbelieving wife.

39,039. Those follow afterwards; but the 10th and 11th verses, "But unto the married I charge you, yet "not I, but the Lord, that the wife depart not from "the husband and that the husband leave not his "wife"?—Yes, there he lays down, as is generally supposed, the same principle as our Lord does.

39,040. He cannot lay down there the principle that under no circumstances shall the woman leave the husband, can he? I mean that would leave it a compulsory condonation of adultery if she could not leave him. Take a case where the husband is committing open adultery and the wife is living with him; if you read those words strictly she could not leave him even in that case. He could not have meant that, could he?—No, he meant it as a general rule, I suppose. Then, if there were exceptional cases, the wife might depart; but her remarriage would be a different thing.

39,041. Therefore you must in St. Paul's case put in the qualification; namely, when she has just cause she may depart?—Of course St. Paul was speaking in his usual way and dealing with questions without very much exception or qualification.

39,042. But he must have had in his mind some qualification. I mean the case I gave you, where a husband living in adultery and living with his wife, the wife departs from the husband on the ground of his adultery, St. Paul could not have meant she was obliged to come back while the husband continued in that state of adultery. You could not suppose that, could you?—Well, I should hesitate to say that St. Paul might not have done it. It is a difficult verse to interpret, but I should not like, myself, to lay down any rule about it.

39,043. Just the same, the husband, he says, should not put away his wife if she is living in open adultery. Is that to be literally construed?—I should be prepared to take it so. The Christian Church has always laid such extreme stress on the duty of forgiveness. That was the root of a good deal of medieval legislation.

39,044. Then what was the justification for judicial separation, If you interpret St. Paul so strictly as that, what is the justification for judicial separation which the Church allows?—I am afraid I do not see where the difficulty comes in.

39,045. If the husband cannot put away his wife and if the wife cannot leave the husband literally according to these words, a judicial separation does separate them, and that would not be justified, according to your view of St. Paul's words?—Because in a judicial separation there would always be the possibility of foregiveness and a restoration of former relations.

(*Judge Tindal Atkinson.*) One party has compelled the other to live separate, and the party who has the decree is the only one who can decide the coming together again.

39,046. (*Lord Guthrie.*) Do I understand, in your view in no case conceivable ought there to be the spouse having the right to divorce, involving remarriage?—Yes, that is my view.

39,047. The case, for instance, of a husband who leaves his wife and children, lives with another woman openly and has children by her, contributes nothing to his wife's support or his children's support. Your view is that Christ meant that in that case the formal bond should remain, and the man must live in celibacy for the rest of the woman's life and be deprived of any head of the house (his wife) to look after his establishment?—Of course there would be the individual hardship, but on the other hand there is the importance of laying down rules for the benefit of society, and under those circumstances I should say (especially with the words of our Lord in mind, which I take to be of perfectly general obligation)—it would be better that the individual should be sacrified to the interests of the community.

39,048. However numerous these individuals may be. You think that is consistent with the teaching of a Man who was not only the Son of God but the Son of Man?—I see no inconsistency.

39,049. Do you know any church which has ever since Christ's time refused to separate people finally and allow remarriage?—Oh, yes; that was the case with the medieval Church.

39,050. Was it?—Yes.

39,051. Are you not aware that in the medieval Church the position of matters was this, that through subterfuges they had practically the power of getting rid of wives just as the Protestant Church has had

since the Reformation?—There I should differ entirely. I know the statement is very often made; but apart from taking a general statement such as one of the Commissioners referred to this morning in his cross-examination of Professor Denney, I think there are very few cases of the supposed subterfuges; that is to say, that the medieval system worked with very much fewer such cases than is supposed. I know of very few cases.

39,052. You propose to allow none, Professor?—Yes. Cases of nullity of marriage are, of course, quite distinct.

39,053. Now, do you propose, Professor, to allow under our system the indirect cases that the Roman Catholic Church did allow, and to introduce the causes of third and fourth cousins, spiritual relationships, sponsorship, and so on?—No. I should say those causes, especially the spiritual relationship, were, of course, mistaken; but I was speaking about the number of cases in which there was some subterfuge in practice—I am speaking of the cases in which there are these alleged subterfuges found in the medieval Church. My own experience would be that those cases are very few, and I should then, I think, agree with the opinion of the late Professor Maitland. (*Eng. Hist. Review*, x. 760 f.)

39,054. Then do you propose to introduce a system which no age, no church, and no race has ever had? Is not that so?—It seems to me, if I might say so, you are confusing the case of nullity of marriage and dissolution of marriage.

39,055. No, Professor. Tell me any age or any church which has adopted your system of neither having open divorce for adultery, let us say, or having indirect methods few or many (it does not matter) by which people could get rid of their husbands or wives?—If I might say so, I think you are really assuming that in the indirect methods there were invalid methods; that through some supposed plea of nullity there was a way of evading the law. That is a description of medieval practice that I should differ from.

39,056. No, you have only differed to this extent, that instead of many cases there were few. You propose to admit none under your system?—I am proposing to go back to the state of the middle ages, or what, in my eyes, would be the ideal state, the state of medieval law, with the exception that spiritual relationships were not considered a case of nullity of marriage.

39,057. And with the exception also that cousinships shall not be considered reasons for nullity of marriage?—Yes.

39,058. And with the exception also that pre-contracts shall not be considered a reason for nullity of marriage; and with the exception also that prior intercourse between relations of the spouses shall not be considered a cause for nullity of marriage. You do not allow any of these?—No.

39,059. Does not the fact that the practice of the medieval Church to which you have just referred was as it was, show that in the necessities of human nature, divorce is an absolute necessity, however unfortunate and however much to be regretted?—No, I should not say so.

39,060. At the Reformation (you have very usefully given us a prospectus of the opinions) was there any difference or opinion amongst the Reformers—British or Continental—on the question of dissolubility?—I should not be prepared offhand to refer to any individual English Reformer.

39,061. Or Continental. Can you name to me a single Reformer—English, Scotch, or Continental—who held your views, that marriage in no circumstances whatever can be dissolved so as to allow of remarriage?—I should take it certainly that that was the view that the Church of England by its consensus——

39,062. Never mind that. Name to me a single Reformer in the Church of England who held your views, if you can?—Well, that is rather large. I would undertake to find some.

39,063. Have you gone into it? I have gone into it and know of none?—I have not gone into it in the case of the English Reformers. I was only asked to deal with the case of the Continental Reformers.

39,064. Well, I know of none, and I do not at the moment remember any English Reformers who held your views on indissolubility. Because we want information, you know?—Yes.

39,065. If you can find any, and send it to the Secretary, it will be a great favour?—I shall be glad to undertake it. [*See second note at the end of the evidence of this witness.*] The mere fact that the whole body of Convocation rejected the view that marriage was dissoluble——

39,066. When?—When they passed their Canons.

39,067. When?—When the Canons were passed in 1603.

39,068. I am talking of the Reformation. That is a hundred years after the Reformation?—I take the Reformation in England and the Continent to be a series of changes that finally issued in definite settlement, and after sundry ups and downs, in England, the final settlement was the product of the reign of Elizabeth and of James I. I should hesitate to speak of the Reformation as a final movement being confined to the reigns of Henry VIII. and Edward VI.

39,069. Perhaps you would say if you can find anybody in Henry VIII.'s reign, Edward VI.'s, Mary's, or Elizabeth's?—Yes, I shall be glad to do so.

39,070. Then on the Continent; do you happen to remember any French, German or Scandinavian Reformer that held your views?—No.

39,071. Either Lutheran or Calvinistic? — No. There were differences of opinion amongst them, but on the general principles they were in line.

39,072. That marriage, in certain circumstances in regard to which they differ, was dissoluble?—Yes, certain circumstances such as adultery, which they based on our Lord's words, and desertion.

39,073. Now you say in your very valuable and interesting paper, with regard to the Church of England, on page 10, if you will kindly turn to it, near the bottom, about 20 lines up: "Bucer's views greatly "influenced and interested Milton, who reprinted (in "epitome) Bucer's treatise. Milton's views represented "those of the Lutherans, which lingered on in "England, outside those views taken by the Church of "England." Now you would read that as saying that the Church of England was unanimous in maintaining absolute indissolubility. Do you mean that?—I mean that while the Church of England by its legislation of 1603 was committed to that view, there were some writers (especially at the time of the Civil War) who took the very opposite view such as Milton.

39,074. But you say, "outside those views taken by the Church of England." You do not mean that in the Church of England the opinion was unanimous?—Oh, I beg your pardon. No. I mean there were bodies of opinion in England distinct——

39,075. Inside as well as outside the Church of England?—Well, there might be individual sympathisers inside.

39,076. Do not you know that many of the greatest names in the Church of England have held views diametrically opposed to yours?—Yes. I have known some few, but I did not mean it was an absolute impossibility to find some sympathisers with, say, Milton, in the Church of England.

39,077. I am talking of the Church of England. You put it that there were sympathisers to be found outside the Church of England. You do not mean that the Church of Englaud was solid for absolute indissolubility?—No. I am speaking there of the constitutional views of the Church—the views laid down by the Canons.

39,078. Which you interpret as laying dowu the law of absolute indissolubility preventing remarriage?—Yes.

39,079. You are aware that exactly the opposite view has been taken by extremely learned men in the Church of England?—Yes.

39,080. King Charles the First's Chaplain and many others?—Yes; but I should take the views that are expressed in the majority of the ecclesiastical legal text-books and the views that are expressed by Professor

Maitland. (Phillimore's *Eccles. Law*, 640 f., Pollock and Maitland; *Hist. of Eng. Law, II.*, 364–5, 390–3; *Camb.* Mod. Hist. II., 589).

39,081. Now I would suggest to you, against your views, and in favour of dissolubility for adultery, there was Joseph Hall, Jeremy Taylor, John Cosin, and Archdean Baillie, and Gilbert Burnet. What names would you put against these comparable for eminence in the Church of England. I am aware of only one name, that of Lancelot Andrewes?—With regard to that we ought to bear in mind, when once the Church of England had taken up its position it was much more natural that people who wished to have the position changed should write on the point than those who wished to maintain the existing state of things. That is how you have expressions of individual opinion. I have not gone into the whole question of England.

39,082. You do not at the moment remember any names comparable to those, with the exception of Lancelot Andrewes, who maintain your view?—No, I am not prepared to say now, but I have no doubt there are some. It is only that I am not prepared on the question.

39,083. It would be a convenience if you would kindly furnish us with the words of the Canadian Canon?—Yes.

39,084. You said that the Church of England was bound by Canon Law to find that all remarriage of divorced persons was illegal. Where do you find that. What do you base that statement on?—At the Reformation there was a Commission of 32 appointed by Act of Parliament to re-draft the Canon Law and prepare a scheme; and that until they presented their scheme to be approved, such parts of the Canon Law as were not in opposition to the law of the land should be valid; and that scheme never has been presented.

39,085. That is what you refer to?—Yes.

39,086. (*Chairman.*) Just one or two questions, Professor. Would you advocate the repeal of the Act of 1857?—Personally I should be glad to see its repeal, because I consider it would conduce to the cause of morality.

39,087. But would you do so on the ground that it was unscriptural?—My main ground would be that I should take it, I was bound by a very definite statement of our Lord's.

39,088. Do you mean on the Christian teaching?—Yes.

39,089. Then would your view be consistent—that that was the general position, if one finds a great number of bishops in 1857 voting in favour of the Bill?—I do not know that that would affect my opinion.

39,090. It would affect this; that I rather gathered your view was that the Anglican position was always in favour of indissolubility?—I am speaking of the Anglican view as laid down in the Canons, and the prevalent view.

39,091. Then what is not the prevalent view was supported by certainly a number of bishops in the House of Lords in 1857, which enabled the Act to be passed which declared marriage dissoluble—certainly on one ground?—Yes.

39,092. That would not show your views to be in accordance with all opinion?—Not with the view of the bishops of the time.

39,093. Now is your view in accordance with the Resolution passed at the two Conferences held in 1888 and 1898 at Lambeth?—You mean referring to the remarriage of the innocent party?

39,094. Yes, which permits that. Those are Pan-Anglican Conferences?—They permit it in direct reference to the Communion of the married parties.

39,095. They, as I understand, recognise divorce on the ground of adultery, and the right of the innocent party to remarry. I think that is correct, is it not, Lord Guthrie?

39,096. (*Lord Guthrie.*) It comes to that?—Well, I should take it rather that the view was that there were grounds for supposing an exception in the case of adultery laid down; and that while that was the case it was difficult, for instance, to refuse Communion to people who had been remarried.

39,097. All I meant was that that would not be consistent with your construction of the New Testament teaching?—It is a little difficult to express it. because the difference would come in not so much with regard to the Church undertaking the marriage, for instance, of such persons, as the Church admitting them to Communion afterwards; and I think the Lambeth Resolution dealt with the second question.

39,098. (*Mr. Brierley.*) They dealt with marriage too, if I remember right. Apparently they passed a Resolution by 87 to 84 to the effect that it was undesirable that such marriages should take place in Church; but they were unanimous, I think, that the Clergymen should not refuse the Communion to persons who had been remarried under civil sanction. That was my impression.

39,099. (*Chairman.*) One other matter; because we have had all these facts before really. Which are the words in the teaching of Christ which you regard as prohibiting divorce altogether?—The passages put in this unqualified form in the xth chapter of St. Mark, verses 2 to 11, and St. Luke, xvi. 18.

39,100. That is the way you construe them?—Yes.

39,101. One other point which Lord Guthrie was asking you about; the kinds of nullity that preceded the present position in England. Do you know that the various grounds of consanguinity, and so on, which are not now recognised were all put an end to by an Act in Henry VIII.'s time?—Yes.

39,102. But up to that time they existed?—Yes.

39,103. And in that way did afford a means, to the extent to which they went, of getting out of a marriage which was not satisfactory?—Yes.

39,104. Now you are going to send us, if you can, a copy of the "Canon of Synod" in Canada?—Yes. I am sorry I could not answer your questions more definitely, but it is impossible to prepare matters over such a large field. [*See* footnote to Q. 39,001.]

39,105. And also a short note at the end of your evidence giving what each of these Reformers has permitted?—Yes.

(*Chairman.*) May I be allowed to thank you very much, on behalf of the Commissioners, for your evidence, and for the great trouble you have taken in collecting these valuable extracts.

(*Witness.*) If I may say so, it was dull but very interesting.

The following is the remainder of the witness's proof:—

I. The schemes of individual reformers may now be noticed in more detail.

Starting from the denial of marriage being a sacrament, Zwingli interpreted the text "Let no man put asunder," &c. to mean that marriage was to be highly regarded for every man, and not lightly condemned for some as by the Papists. Nor was it meant that adultery was the only cause of divorce, but that all equivalent or as serious causes, such as treachery, parricide, &c. should be allowed.

The marriage law of Zürich (1525) was, as Bullinger tells us, drafted under Zwingli's influence. The Reformation at Zürich took the special form of a repudiation by the city of the authority of its bishop; the Bishop of Constance, and the jurisdiction previously held by him was now handed over to a new board of four lay and two clerical members. Later (1525–6) legislation against concubinage and adultery followed: the penalties were excommunication, the loss of civic vote, of a place in guilds. Cases of desertion, and those not dealt with by the laws, were to be dealt with according to their nature by the magistrates.

The Great Council could re-admit offenders to civil status. The first offence was punished by three days' imprisonment on bread and water: a second offence by three times this punishment: the third offence by banishment: on return, one year's exclusion from office: but evil life after return was punished by drowning.

In case of marriage which from nature or other reasons proved unsuitable ("zu ehlichen werken"), the couple were to live together for a year at least so that the intercessions of their friends might bring about a

better understanding. If the state of things was the same at the end of a year they might separate and remarry. It should be noted that this covers not only impotence but also what would now be called "incompatibility."

The institution of Stillstände or Ehegaumer to guard marriage and morals in each parish followed, but the control proved irritating and not altogether effective.

It is interesting to notice the beginning of marriage registers (*cf.* with England) at this time.

These regulations due to Zwingli's influence remained for a long time in force at Zürich, and through Zürich had much influence in Switzerland.

Little need be said of Zwingli's exegesis: it follows the usual lines, but as is always the case with him, his interpretation is very broad, *e.g.*, extending the case of adultery as an exception to include others also.

II. Luther's idea of marriage has caused much discussion: in some passages he seems to regard it as existing merely for physical reasons: elsewhere, as in treating cases of prolonged sickness his view is on a higher plane. Here, as elsewhere, his language is unbalanced and variable. A question of much importance is his view of the State and its powers over marriage and divorce. It was the duty of the State to exercise control over the unregenerate: the converted were able to regulate themselves by the law of God. In its sphere the State was sacred; naturally a different tone is used when Luther is speaking of the unregenerate, and of those who possess Christian liberty: it is the former whom the State must coerce, and for whom it must have rigid laws. For those laws the State is responsible. Luther did not feel himself called upon to lay down precise lines for State legislation, as Zwingli did in legislating for a city-republic, or as Calvin did in legislating for a theocratic-republic. From these considerations the vagueness in effect and seeming contradictions of much of Luther's language can be explained.

In practice Luther allowed almost free divorce. The treatment of an adulterer as dead through his adultery (being liable to stoning under the Old Testament) should be noted. The suggestion of emigration to another State with easier laws, for an adulterer who could not amend himself is characteristic of Germany with its many States.

Luther's writings would justify the drawing of a parallel between the marriage vow and the vow of celibacy, which was not only treated as undesirable, but as breakable with impunity. The frequent sermons against regarding marriage as a sacrament would also seem to have lowered its status in public esteem. The treatment of polygamy has already been noticed. Language such as that in the Greater Catechism could not fail of a bad effect.

Luther's writings also reveal a bad state of existing morals: as a remedy it was suggested that the pastors should preach more vigorously against sin, while the pastors in their turn called upon the State for more vigorous laws, and a better execution of laws.

The maintenance of the Consistories should be noticed: at the same time the power of the State was brought into frequent use.

For minor causes of strife to married Christians (as distinct from the unregenerate), Luther prescribed separation kept in chastity. [The tendency in later Lutheranism has been, as seen in German law, for complete divorce to be allowed in all these cases.]

III. The views of Melanchthon, as a more considerable theologian than Luther, and as the leader in the formulation of the documents of Confession, are very important.

Christ, he said, rebuked the levity of the Jews (and Gentiles) in giving divorce and in dealing with marriage. Passing on to consider divorce separately, the quarrels of married life arose from original sin, and were material for penitence. Thus we are led to rules. The first rule is that married couples should remember God's will, by which marriage is indissoluble, so that persons who, like adulterers and deserters, give cause for divorce, sin grievously. The laxity of Mosaic divorces was reproved by Christ; who recalled marriage to its first institution. Hence the married state demands much patience and prayer.

The second rule is: adulterers and deserters sin: after such a breach of the marriage bond, the question arises whether the innocent party can contract a second marriage? The Pope says no. Melanchthon shortly alleges the text which says, in his view, that between an innocent party and an adulterer a divorce can be made. If liberty of remarriage is not conceded to the innocent party, it would be nominal, not real, divorce [a distinction Melanchthon draws elsewhere]. It would be needless to except adultery if the innocent person received no more liberty then than in other cases, such as those of angry or sick spouses. He alleges that the custom of the Ancient Church allowed such remarriages.

The third rule is this. As Christ expressly excepts adultery, so St. Paul excepts desertion. In such cases the innocent person is not under bondage, that is, in Melanchthon's interpretation, is allowed remarriage.

A "deserter" or "desertrix" is a person who without just cause leaves a spouse and is absent a long time without just cause, from malice as often happens. In such cases adultery is often involved also.

In these two cases the Lutheran Consistories allowed remarriage. Then there arises the question of punishment for the adulterous or deserting person.

Although the innocent person is freed by the act itself, such cases are to go before the judges, as no one is judge for himself. The pastors are to point out to their flocks the evils arising from marriages made without such preceding judgments, as the causes are often found insufficient. Hence it is good there should be judges in the Consistories, and it was to be wished they were helped more by the sovereign power.

The Papists almost utterly neglect such judgments, just as they have corrupted many other good ordinances, and their (*i.e.*, Lutheran) own civil powers are even more negligent. But God's help is to be sought, and his gift of a salutary regimen.

It is sometimes asked whether separation can take place on account of a permanent disease. Speaking in a sermon, Melanchthon left most of such points to the Consistories, and only discussed things of popular use.

The case of impotence he dismisses as making marriage null. Diseases such as leprosy, *morbus gallicus*, &c. are not sufficient causes. They merely make demand upon additional fidelity and patience. Admonitions to this ideal of married life were needed in times when many were impatient instead of being driven to God.

As to the punishment of offenders against marriage, the Church has only one penalty in its power, excommunication, yet for this impious men do not care. But in the Old Testament law the civil magistrates were called upon to inflict death. If they were negligent, whole races suffered. So now. Preachers should warn them oftener; they can do no more. Hence Melanchthon exhorts magistrates and rulers to greater severity, in view of the anger of God.

These same points reappear in the Visitation Articles, Examination of Ordinances, and elsewhere. Specially to be noticed are: the obviously insufficient control of marriage cases, as indicated by Melanchthon's reiterated exhortations against taking the law into one's own hands and not waiting for judgment before action. Difficulties naturally arose now as later upon the question of desertion, and the general view of marriage obligations was clearly low. The basing of the legislation about desertion on St. Paul's words really needed more argument than was given to it. Lutheran and Calvinist views contrast here.

Melanchthon's standpoint differs curiously from that of Calvin: the former is anxious to emphasise their agreement with canon law and ecclesiastical precedent: the latter lays down what he is convinced is the will of God. Much of the difference in the systems is due to the greater influence of politics and society upon Lutheranism, and the Lutheran attitude towards the civil power.

Melanchthon's attitude of an apologist for Lutheranism accounts for much of his language. He is clearer and more consistent than Luther, but the points

noted in Luther as regards the State are to be noted in Melanchthon also. He laments the inefficiency of the State, but can only pray for amendment. This is the Lutheran attitude. Unless this is borne in mind the language of the *Loci Communes* (*e.g.*) is not intelligible.

In Melanchthon's *Loci Communes*, Pt. II., Appendix (De Coniugio). the same questions are treated—and in the section (De Divortio) the same conclusions are reached. Briefly, the need for legal decisions. and attempts at reconciliation before recourse to courts, the necessity of punishment for adultery by the civil arm, and desertion and its definition, with the time needed for desertion to be held definite. are all treated of. Here, as elsewhere, he considers cruelty (*saevitia*), attempts at poison or destruction of life, as causes of divorce: here the civil power should intervene: his language seems to imply that the civil power should take steps which the ecclesiastical courts (Consistories) acting under the law of Christ could not take: those who reject this opinion "non recte intelligunt discrimen legis et evangelii." Infectious diseases, which are incurable, he decides not to be fit causes of divorce. In the *Loci Communes* even more than elsewhere—where Melanchthon writes as a law-giver.

IV. The *Loci Communes* of Peter Martyr, which were translated into English, and were often reprinted, had probably much influence in England. He, as a refugee under the Interim, not only visited England but lived with Cranmer, and was one of the 32 commissioners for redrafting the Canon Law (1551). The *Reformatio Legum*, although its precise history is a little obscure, was connected with this commission, and the influence of Peter Martyr was probably great in its formation. His views are therefore specially significant for England.

Starting with a learned but lengthy discussion of the punishment of adultery, with reference to the history of ancient people, Jews and Germans, he comes (§ 27) to the mitigation of the punishment of death, the Bishops taking the punishment to themselves to save death. The well-known question of the treatment of adultery by the ancient Church, especially in the time of Cyprian, is then discussed. It is interesting to notice that he holds the shame of women who sin to be greater, although the sin is actually greater for men because of their relative stronger character. The putting away of wives was, he points out, a law of men, but it was to David and not to Bathsheba that Nathan was sent, because David was the greater sinner. He then passes on to consider reconciliation—against which some civil laws were described. If an adulteress showed signs of penitence the Church should intercede for her: otherwise the Church should not, lest it support sin by doing so.

Christ recalls us to the primitive institution of marriage. The relaxations made for the hardhcartedness of the Jews do not hold for us. If there are found people as hardhearted as Jews (or worse), they, as aliens from Christ, are handed over to the commonwealth to be dealt with. They have to do with civil laws. Christ's words lay down no exception to the indissolubility of marriage except adultery. St. Paul further adds the case of a spouse not bound to an infidel who rejects him or her.

In speaking of adultery as an exception, did Christ mean it exclusively or did he include other sins of equal gravity? Custom and methods of interpretation of the New Testament (as illustrated by Erasmus) favour the latter view. Adultery is named because it strikes at the very root of marriage. But for himself, Peter Martyr dislikes divorce for causes not expressly mentioned by Scripture. And in these cases nothing should be done, nothing is to be done without the approval of the magistrates. Marriage has contact on so many sides with civil laws. But the laws should conform to the laws of God.

If a man cannot live with his wife he has two remedies. He may live apart and chastely, considering himself called to this life by God. If he cannot do this let him go to a State where a second marriage is allowed. (The differing laws of German States should be remembered here.)

Christ, he considers, allowed remarriage after a divorce. Patristic precedents are here discussed. But as regards the equality of women and men, Peter Martyr sided with St. Augustine and St. Jerome against St. Ambrose. He would give women equal rights with men if divorce be limited to cases of adultery, but not if extended, owing to the greater inconstancy of women.

He discusses three causes alleged why remarriage after divorce should not be allowed:—(1) the husband might feign a cause; (2) it is foolish of a man, unhappy in a first marriage, to try fortune again; (3) marriage is a sacrament. These allegations he holds to have been refuted by Erasmus. As to (1): the magistrates can check pretended causes and can lay on heavy punishments: and (3) if marriage is a sacrament many other things must be held so too. He goes on to argue that where real causes for divorce occur, it is God not man who dissolves marriage. [But the moral aspects of this statement he does not consider sufficiently.]

As to the discrepancy between the Evangelists in the words ascribed to our Saviour, he holds that Sts. Mark and Luke did not know the full sentence of our Lord, which St. Matthew did.

Commonwealths appoint to themselves a scope so as to incur least evil, *e.g.*, allowing harlots to live in a certain part of a city, whereas God forbids such a course. Such things are not according to Christianity but are to be seen in commonwealths. Leave for divorce seems to him better than forcing them to live together. Yet a "bill" should be given because we ponder more deeply things we write.

Our Redeemer hath appointed decrees for his people, but he does not condemn the old commonwealth of the Hebrews.

He quotes St. Augustine's exhortation to forbearance and patience in married life. Consorts must live together unless there is no hope of salvation in the living together. There is always a hope of an Atheist becoming a Christian. But if marriage cannot be kept up without contumely to Christ the Christian may depart. Before departing all means should be tried. He feels strongly that "idolatry" does not break marriage. This is not to say that idolatry is a less grievous sin than adultery, but that adultery strikes more against marriage.

It is not well that the punishment of death for adultery should be intermitted.

It will be noticed that Peter Martyr takes a mediating position between Lutherans and Calvinists. His political theories are those of the former: his moral and theological affinities rather those of the latter. There are traces, I think, of his paying deference to the views of Luther and his followers when his own inclinations are rather the other way, as in allowing exile as a remedy for a man unable to live chastely in separation. Here as in other matters he was not a theologian of strength or independence.

V. We now pass to the Calvinists. Calvin's views were affected by his strong opinions of the power of Divine Grace, and also by his theocratic theory of society. And while the Lutherans did not consider the Christian ideal possible even for the Christian community as a whole, Calvin held that "the faithful" were called to a stricter life, and that the ideal could be worked out among them: it could even be enforced upon outsiders.

His views may be summarised as follows. While all contracts were to be kept in good faith, marriage surpasses them in sanctity and demands more reverence The practices among the Jews were merely permitted, not approved of, by God: many things were not punished by the law of Moses which God does not approve of. For police punishment is inflicted with regard to human interests not for offences against God. Open and serious offences against God, magistrates should, of course, punish, but "oblique offences where there is not open contempt of God," the magistrates do not punish. But God reserves his right to punish in such cases. In the case of the Jews God did not care to exercise his rigours against them. But such accommodations of the magistracy law do not alter the Divine law.

If a man puts away his wife except for adultery, and marries again, he is an adulterer and he makes his wife an adulteress. He is such because he has broken his marriage; in separating from his wife he is false to the faith he has given. In divorce (Old Testament) a man could put his wife away for any cause, but only by giving a bill of divorcement so that she should not be defamed. This was a matter of civil law ("police"). Is such divorce permissible to-day? See our Lord's decision. It is not so for us to-day. If we assumed it was we should equally have to assume the legality of polygamy. We know God's will better than did the Jews, and are governed by His Holy Spirit.

Christ went back to the first institution of marriage, with which divorce conflicts. The bond between man and wife is pronounced by God to be closer than between father and son, and one party to the relation can as little sever it in the one case as in the other.

The saying "they too shall be of one flesh" condemns polygamy no less than licence in repudiation of wives. A magistracy which gives a man the liberty of repudiation abuses its power. But between the politic and external order and the "spiritual regimen" there is much difference.

The exception of adultery was, added by Christ because by adultery a wife, tearing herself as a rotten limb from her husband, frees him. Those who assign other causes for divorce are to be condemned as wishing to be wiser than the "celestial magistrate." Elephantiasis, *e.g.* Here, just as he would counsel a husband not to approach a wife so afflicted, so he would not permit him the liberty of divorce. If anyone says there is a need of a remedy for anyone who cannot live in chastity, he replies that is no remedy which is sought outside the word of God. The gift of continency will never be lacking to those who entrust themselves to God's guidance.

St. Paul's exception (1 Cor. vii.) is not really repugnant to the mind of Christ, because he is only speaking of the case where a woman can keep to her spouse solely by denying God; and a quarrel with man is to be preferred to alienation from God.

If death were the punishment of adultery, Christ's exception seems superfluous. But it was for this reason Christ freed the husband from the *vinculum* of marriage. So to-day the perverse indulgence of the magistracy makes it necessary for men to have the remedy of divorce since adultery goes unpunished.

Note that in marriage husband and wife are on an equality since the husband is not lord of his own body. The adultery of a husband therefore gives a wife liberty. Remarriage in these cases is not adultery for Christ was only speaking (as was St. Paul) of frivolous and petty causes of divorce, not of adultery.

It will be seen how Calvin's views are based on God's original institution and Christ's words: for the Christian, who was not to be misled into taking civil laws as the ideal, there was thus a clear course marked out. In a community governed on Christian principles the contradiction between Divine and civil law would disappear. There divorce—except for adultery, where Christ was held to have laid down the law of exception—would not exist. And adultery would be punished by death.

It may be noticed that Calvin's scheme is more consistent and clearly expressed than that of other Reformers. Also, and this again is characteristic, he argues entirely from Scripture and God's will as seen by reason: precedents, such as those discussed so much by Peter Martyr, Melanchthon, and Beza, of imperial or canon law have no interest for him. Here, as everywhere, he legislates, as it were, afresh and without hesitation. His interest in the conflict of laws is to be noticed; the divergency between his political theories and those of the Lutherans, and also his firmer and more reasonable treatment of the Old Testament examples, are also noteworthy: his treatment is that of a strong theologian.

VI. Theodore Beza, on his *Tractationes Theologicae* (Vol. II.), treats at length of Polygamy and Divorce, including all questions of prohibited degrees, &c. As respresenting Geneva, his treatise is specially useful. Cases of disease which are impediments to marriage he takes to indicate the will of God in the matter. He would not have marriage dissolved because one partner was or had become an infidel. If the infidel deserts the believing brother or sister is free: cases are to be taken upon their merits. In the part of the treatise upon divorce the question as to the nature of desertion is more fully dealt with.

Incurable disease affecting matrimony is to be dealt with cautiously, but this is more properly a case of impediment.

After a severe denunciation of those who teach that valid marriage is dissoluble by mutual consent and so forth, he passes on to consider if for any cause a valid marriage can be dissolved, and, if so, for what causes.

Death he holds destroys the bond. Adultery and desertion are held by the word of God to be causes for divorce. He then considers argument to the contrary. To the assertion that he who marries a divorced woman commits adultery he replies that the exception *unless for adultery* is to be carried on to the second part of the sentence, and implies that he who marries a woman divorced for any reason save adultery does commit adultery, but that a divorce for adultery may be followed by remarriage.

To the argument that divorce is against the command "*Whom God has joined*," &c. he says he does not concede to the magistrates the right to make new laws of divorce, but that God and not man is the author of divorce for adultery. To the objection that such divorce goes against Rom. 7, 2, he replies that the Apostle is speaking of marriage simply and not of divorce. Other Biblical arguments he answers in the same way. To the objection that remarriage ought to be limited to the innocent party, as otherwise it is a reward for the guilty, Beza replies that it is to be wished that magistrates did their duty (*i.e.*, punished adultery), but that only upon great cause do they (*i.e.*, at Geneva) allow remarriage to the guilty. The precedents of the early Church are discussed at length.

Adultery he considers to break the bond of marriage: the innocent person may remarry, which it is yet praiseworthy not to do without the leave of the Church and of the pious magistracy. As to the guilty "party" he should be punished: his repentance should be ascertained, and not rashly or quickly should his remarriage be allowed. Celibacy in penitence should be suggested to him, but if he cannot carry this out he may be allowed to remarry.

The right of private judgment of an offending wife by the husband is discussed: Beza upholds public decision. In discussing the rightfulness of retaining an adulterous wife he replies to the arguments of Bucer ("a man of pious memory, but from whom in "this controversy he was forced to differ in many "points") who absolutely denied this right. Beza wishes laws to be enforced against adultery, but that a Christian should be allowed the exercise of forgiveness.

He would not allow a guilty party to accuse a guilty partner: the Church and the magistracy should enforce a reconciliation. He also considers that a charge of adultery once condoned cannot be brought up again. He then discusses at length the canonical punishment for adultery.

He then passes to a discussion of desertion as breaking the bond of marriage, founded upon 1 Cor. vii. A deserter he holds to be one whom cohabitation (to be interpreted in a larger than merely physical sense) displeases. "Bondage" (*servituti*) he interprets of conjugal obligation.

But does this go against the words of Christ excepting adultery only? There is a question whether the Apostle was not speaking as inspired by Christ. Allowing this Beza discriminates the cases dealt with by Christ and by St. Paul. Christ was speaking of marriage between a "faithful" couple (*i.e.*, Jews): St. Paul speaks of an "unequal" marriage. He did not add anything to the law of Christ, because he was dealing with a different case. Beza dismisses the interpretation of "servitude" which made it mean the obligation to follow the deserting unbeliever: it must mean, in his view, the whole conjugal obligation.

He holds that as there is no obligation a new marriage is open. This is discussed at length. Some

of the arguments are like those alleged against re-marriage after adultery, and these he passes over. He considers the possibility of the deserter changing his mind, and then by a new marriage having taken place finding his chance of restoration gone. Like arguments would bring untold complications into human decisions, and it is no argument to say we are limiting the forgiveness of God. What of the objection that St. Paul was here speaking solely for himself and not as binding us? This he thinks verges on blasphemy. St. Paul means that in the first case he was interpreting Christ's own words: here he was speaking upon a question which Christ had not been asked about.

Beza's contention is: Christ laid down adultery as a cause of divorce: St. Paul laid down no new cause: to the Corinthians asking if a divorce could be made for heathenism ("infidelity" in religion), he said "No," but added that if a heathen consort deserted his or her spouse the believing partner was not under bondage. This is the question of what is to be done after a divorce illegally made by a heathen spouse (*i.e.*, made by private action). The Apostle's decision was that the deserted believer was not to consider himself as bound, and if the case should be taken before a magistrate, there is no place for divorce, but the deserter is to be dealt with by force. The Apostle does not lay down a right of breaking the bond of marriage on account of "unbelief," but only says the believer is not bound. The whole blame of desertion lies with the deserter, and meanwhile the interests of the innocent party are to be guarded (*consulendum*). I take his meaning to be that in the last case, force failing to coerce the deserter, re-marriage is open to the believer.

A believing consort cannot desert an unbeliever. The nature of unbelief is illustrated by the demand on the part of a husband for the believing wife to consent "ad audienda abominanda missae sacra."

Beza goes on to show that desertion of a believer from a believer is no ground for divorce, and the magistrate is to enforce conjugal duty: the innocent person is to hold a call to celibacy received, and seek strength from God. But matrimony is not dissolved. The process at Geneva in the case of a deserter who has left the territory is that the deserting party is recalled to the territory by letters and messenger: if the summons of the Church is not obeyed by an appearance, then after a fortnight's lapse in an assembly of the Church and before the magistrate the marriage is pronounced void by desertion. He who defies the Church is so far an unbeliever, and can be treated as such, and the case is to be treated as described before.

For other causes divorce is not allowed: adultery and desertion standing alone. He denies the right of anyone to add to these causes. The following discussions turn largely upon Biblical and Imperial precedents. Finally he concludes that divorce is to be regulated by the rule of God's Word, of which magistrates ought to be guardians, and not transgressors.

As to the judges of divorce. The burden of deciding the meaning of God's Word belongs to the Church: hence controversies as to marriage, reconciliation, and divorce belong to the Church (*i.e.*, the Presbyters). But the magistrates are concerned so far as civil laws are concerned.

It may be noted that Beza places men and women upon an equality in these matters.

Beza's complete system may be taken as descending from Calvin's in its political theory and logical basis. Its divergency from Lutheran systems will be noted. The argument is complete and consistent.

VII. In Bucer's treatment of divorce, marriage is regarded mainly as a matter of civil law concerning the State rather than the Church. The jurisdiction of it had been wrongly seized by the Antichrist of Rome. The law of Moses must be seriously weighed to see what God's meaning as expressed in it was. Officers of the Church should be appointed to watch over marriages: they should warn and then cite offenders. His arguments are expressed with much bitterness against the Catholic usage of forbidding remarriage—and it may be noted how he refers to the Roman Law, and the Imperial legislation again and again.

In discussing our Saviour's words he contends it was impossible he should brand as adultery anything allowed by God in the Old Testament. What God allowed the Jews he could not but allow to his own people now. For God changeth not. Nor had our Saviour come to make civil laws. And it is wrong to suppose our Saviour allowed divorce for adultery only—for see the language of St. Paul in 1 Cor. vii.—and note the Old Testament. The whole Bible must be taken together. And every Christian is bound to obey the laws of his own commonwealth if they are not against those of God. In this connection there is given a most disingenuous piece of reasoning: the question asked by the Pharisees was in meaning—can a man really married be divorced? Now this cannot cover the case of a man where for any cause the marriage is broken (these causes are considered elsewhere), for he is not really married, so that his case is not covered by Christ's words. Our Lord's words only refer to one essentially (so to speak) married (this means, in a state of valid marriage). And, finally, seeing that God cannot be willing for anyone to live in danger, and that he has ordered a bill of divorcement in Old Testament cases, it is impossible a man who follows this precedent now should be held to commit adultery.

A wide extension of divorce is based upon Malachi ii., 15, 16, where a man is ordered to put away a wife he hates. Where there is not perpetual union the marriage is already broken, and in such cases second marriage can follow. As for adultery, a man ought not, for private reasons, to retain an adulterous spouse, owing to the injury wrought to the State. So, too, a wife is at liberty to leave an adulterous husband. The punishment for adultery is death.

The causes of divorce under the Imperial law are enumerated—including witchcraft, lodging forth without a reason, frequenting theatres — and these are approved.

Where marriage is made ineffective by malevolence, or inbred weakness of mind, or impotence of body, it does not hold good. Cohabitation is demanded, and if by mutual consent the parties disjoin this or one leaves against the will of the other, then marriage is broken.

The duties of marriage are (1) to live together: (2) to love to the height of dearness in the Lord and in the communion of true religion: (3) the husband to be the head and the wife a helpmate: (4) the marriage duty. Those who do not do these or will not do them dissolve matrimony and are not man and wife.

The causes enumerated by civil law as breaking marriage are really right: divorce by mutual consent is allowed. Anyone, further, who really disregards the ends of marriage is an "infidel," and his wife may leave him.

In all cases of divorce remarriage is allowed.

Bucer's views greatly influenced and interested Milton, who reprinted (in epitome) Bucer's treatise. Milton's views represented those of the Lutherans, which lingered on in England outside those views taken by the Church of England, and they had considerable influence in the American colonies.

The great stress laid upon Old Testament example should be noted: its force for Bucer is as great as is that of the New. It is odd to notice in this connection the strange accusation of Judaism against him which was not founded upon this cause.

[Milton's condensed translation of Bucer's treatment of divorce—"The judgement of Martin Bucer "concerning divorce: written to Edward the Sixth, in "his second Book of the Kingdom of Christ: and "Englished"—makes it needless to give quotations.]

Erasmus and Zwingli.

VIII. Of the Pharisees.) Illi putabant sibi licere quavis de causa quoties libuisset uxorem abiicere. Id Christum astringit, unicam duntaxat causam excipiens, nempe stupri. [Notes the wide opinion of Origen, other crimes being included.]

Ego puto ob id exceptum adulterium, quod hoc ex diametro pugnet cum natura matrimonii,

Neque protinus tollitur matrimonii sacramentum, si in paucis coniugium male initum bene derimatur: non profecto magis quam adulteriis quae nunc passim crebra sunt aut divortio quod nos indulsimus male cohaerentibus.

[He feels the difficulty of the passage.]

Zwingli.

IX. Marriage Law (Zürich) of May 1525.

Zwingli: Opera; Vol. II., Pt. II., 356 (in modern German in I. C. Moriköfer, Ulrich Zwingli, I. 261, as given here).

Um Argwohn, Hinterrede und Betrug zu vermeiden, so wollen wir, das jede Ehe, die rechtlich eingegangen ist, öffentlich in der Kirche bezeugt und mit der Fürbitte der Gemeinde zusammgegeben werde. Auch soll ein jeder Pfarrer solche Personen alle einschreiben und aufzeichen, um Keiner dem Andern seinen Unterthanen einziehen ohne seinen offenkundigen Willen.

Was eine Ehe scheiden möge: Es geziemt dem Gatten, der keine Ursache dazu gegeben hat, das Andere, so am offenen Ehbruch ergriffen wird, von sich zu stossen, zu verlassen und eine andere Ehe einzugeben. Offener Ehbruch ist derjenige, welcher vor dem Ehegericht mit genugsamer Kundschaft erwiesen oder durch offene That so bar und verdächtigt ist, dass die That auf keine Weise geläugnet werden mag. Um dem Ehbruch nicht Glimpf zu thun und damit Niemand Veranlassung suche, durch Ehbruch zu einer neuen Ehe zu gelangen, wird noth sein, dass man auf den Ehbruch auch eine harte Strafe setze. Daher werden die Pfarrer solch Uebertreten mit der christlichen Gemeinde bannen und ausschliessen; aber die leibliche Strafe, und die Entschiedung über das Gut steht der Obrigkeit zu. Damit sich aber Niemand um dieser Ursache willen vor der Ehe scheue und in Hurerei verfalle, sollen solche ebenfalls gebannt werden. So nun die Ehe eingesetzt ist, Unkeuschheit zu vermeiden, und aber oft solche erfunden werden, die von Natur oder andern Gebrechen zu Ehlichen Werken ungeschickt oder unvermögend sind, sollen sie nichtsdesweniger ein Jahr freundlich bei einander wohnen, ob es um sie besser würde durch ihre und anderer biedern Leute Fürbitte. Wird es nicht besser in der Zeit, so soll man sie von einander scheiden und anderswo sich vermählen lassen. Grössere Sache denn Ehbruch, als so Einen das Leben verwirkt, nicht sicher vor einander wären, bei Wuth, Verrücktheit, frecher Hurerei oder Eines das Andere unerlaubt verliesse, lange abwesend wäre, aussatzig und dergleichen däruber man wegen Ungleichheit der Sachlagen kein bestimmtes Gesetz machen kann, mögen die Richter prüfen, und handeln, wie sie Gott und die Gestalt der Sache lahnen wird. Diese Satzungen sollen alle Pfarrer fleissig und zum öftern Male den Ihrigen verkündigen und sie warnen. Datum zu Zürich, d. 10 Mai 1525.

Commentary on St. Matthew.

X. *Quicunque repudiaverit suam uxorem.*—Iudaei ob levem causam uxores a se repudiabant, affectibus suis in hoc nimium indulgentes. Metam ergo ponit Christus, ne-quid nimis. Cohibet affectus, et modum quendum ponit, quem transgredi nefas sit. Stuprum autem aut adulterium diserte pouit, non ut caeteras causas divortii excludat aut hanc solam praescribat, sed ut unam ex multis definiat. Hic enim mos est scripturae sanctae, ut uno exemplo contenta universa eiusdem generis exempla comprehendat. Non ergo adulterium duntaxat causa est divortii, sed praecipua fere. Quae enim vel aequant vel superant adulteris, ut sunt proditiones, venficia, parricidia, etc., cur excluderet dominus? Quod vero unico exemplo scripture caetera intelligat, ut reliqua taceam, ex cap. 19 Deuter. manifestum faciam, ubi una involuntarii homicidii causa duntaxat ponitur, propter quam tutus sit in asylis homicida, nempe si ferrum de manubrio lapsum comitem temere interfecerit. Quid si lapide aut latere e tecto delapso prateriens praeter voluntatem eius qui tectum reficit laedatur et intereat? quid si ligno aut alia re? Num illi duntaxat asylum a domino constituitur, qui ferro præter mentem trucidat. Minime, redimoy ponitur causa, eaque exempli vice, ex quibus caeterae facile colleguntur, etc.

From Commentary on St. Matt.

XI. Quod deus coniunxit homo non separet. Ego sensum genuinum talem esse puto. Nemo temere congugium damnet, nemo divinam ordinationem, ut Papistae fecerunt et aliae gentes, quae coniugium damnarunt. Deinde etiam nemo temere separet eos qui matrimonio iuncti sunt. De repudio loquuturi, primum de antinomia quaedam praemittemus, etc. [. . . an opposition of laws which good judges soften .]

Verba igitur Christi (quod deus coniunxit homo non separet) sic arida sunt ut videantur coniuges nulla ex causa separari posse. Deinde unam fornicationem excipit, ut videantur nulla alia causa admittenda esse. Hinc inter Christianos receptissimum est, ubi semel coiit matrimonium, nulla pacto posse dirimi, nisi alterius morte. Sed uolumus Iudaico more sic literae inhaerere superstitiose, ut leges alias negligamus quae eodem spiritu dictante proditae sunt. Dominus enim temerarium repudium Iudaeorum hic damnat, non omne repudium. Neque unam duntaxat causum excipit, tametsi unius tantum meminerit. Hic enim mos est Hebraeorum, ut sub inferiori similia et graviora omnia intelligunt et exprimant. Minimam ergo causam adulterium seu fornicationem assignat, quasi terminum ponens infra quem nemo uxorem repudiare debeat. (Examples of this *Heb. Mos.* follow.)

Qui impotentes sunt natura rite separantur, et nubendi facultas uxoribus datur, idque optimo et divino iure, tametsi hoc nusquam claris verbis sit expressum. Dicit enim Paulus: Qui continere non potest nubat, et melius est nubere quam uri. Quod si quae viro nupserat natura impotenti, quis non videt iam causam adesse divortii? quum matrimonio in hoc sit a Deo institutum, ut utrique remedium carni habeat praesens. Porro in impari coniugio Paulus divortium admittat, si alter alterum ob fidei professionem dimiserit.

Qui repudiatam duxerit, adulter est. Eam, scilicet, quae ex levi causa repudiata est, sine iure, sententiaque iudicis. Nam si repudiata est propter fornicationem seu ob aliam causam graviorem, potest talis fortasse recipi in gratiam si resipiscat et admitti ad aliud connubium.

Luther.

XII. Von dem ehelichen Leben oder Ehestande (Den II. Theil).

Aufs andere wollen wir sehen, welche Personen man scheiden möge.

36. Drey Ursachen weiss ich, die Mann und Weib scheiden. Die erste, die jetzt und droben gesagt ist, wenn Mann oder Weib untüchtig zur Ehe ist, der Gliedmass oder Natur halben, wie das seyn mag: davon ist genug gesagt [referring to 34 where he says:

"Wenn Mann oder Weib untüchtig zur Ehe ist. Das ist die einige redleche Ursache unter diesen achzehn die ehe zu verreisen: wiewol sie dennoch mit viel Gesetzen verfasset ist, ehe man es zewege bringen kann bey den Tyrannen."]

37. Die andere ist, der Ehebruch. Von dieser haben die Päbste geschwiegen, darum müssen wir Christum hören, Matt. 19, 4, *sq.* da ihn die Iüden fragten, ob ein Mann sein Weib lassen möchte aus allerley Ursach?—Antwortete er: Habt ihr nicht gelesen, dass, der den Menschen vom Anfang schuf, der machte sie ein Mann und Weib, und sprach: Darum wird ein Mann lassen Vater und Mutter, und au seinem Weibe hangen, und werden zwey Ein Fleisch seyn? Das nun GOTT zusammen füget, das soll niemand scheiden, etc. Hie siehest du, dass um Ehebruchs willen Christus Mann und Weib scheidet, dass, welches unschuldig ist, mag sich verändern. Dern damit, dass er spricht, es sey ein Ehebruch, wer eine andere nimmt, und lässet die erste (es sey denn um Hurerey willen) gibt er gnugsam zu verleben, dass der nicht Ehebruch thut, der eine andere nimmt, und die erste lässet um Hurerey willen.

38. [He expounds case of Jews, giving a letter of divorce.] Darum gilt solch Gesetz bey den Christen nicht, welche sollen im geistlichen Regiment leben. Wo aber etliche unchristlich leben mit ihren Weibern, wäre es noch gut, dass man solch Gesetz sie liesse brauchen,

so fern, dass man sie fur keine Christen hielte, das sie doch sonst nicht sind.

40. Aber offentlich sich scheiden, also, dass sich eins verändern mag, das muss durch weltliche Erkundung und Gewalt zu gehen, dass der Ehebruch offenbar sei vor jedermann: oder, wo die Gewalt nicht dazu thun will, mit Wissen der Gemeinde sich scheide: dass abermal nicht ein jeglicher ihm Ursach nehme zu scheiden, wie er will.

41. Fragest du denn, wo soll das andere bleiben wenn es vielleicht, auch nicht kann Keuschheit halten? Antwort: Darum hat Gott im Gesetz geboten, die Ehebrecher zu steinigen, dass sie diese Frage nicht dürften. Also soll auch noch das weltliche Schwerdt mit Obrigkeit die Ehebrecher tödten. Denn wer seine Ehe bricht, der hat sich schon selbst geschieden, und ist für einen todten Menschen geachtet. Darum mag sich das andere verändern, als wäre ihm sein Gemahl gestorben, wo er das Recht halten, und ihm nicht Gnaden erzeigen will. Wo aber die Obrigkeit saümig und lässig ist, und nicht tödtet, mag sich der Ehebrecher in ein ander fern Land machen, und daselbst freyen, wo er sich nicht halten kann. Aber es wäre besser, todt, todt mit ihm, um böses Exempels willen, zu meiden.

42. [Objection may be made to this as leading bad men to give themselves free course, but it is better they should go away than that whoredom should occur in the community.]

43. [Where the magistracy does not inflict death, and a spouse retains his spouse, punishment should be given, privately, before the Church or by law.]

44. [If a couple are unable "die eheliche Pflicht zahlen" the husband is to warn the wife three times, bring her before the officials (Gemeinde) and put her away.] "Willt du nicht, so will eine andere: will "Frau nicht, so komme die Magd."

45. (Founded on 1 Cor. vii.)

[If a wife will not render duty.] Darum muss die weltliche Obrigkeit das Weib zwingen oder umbringen. Wo sie das nicht thut, muss der Mann denken, sein Weib sey ihm genommen von Räubern, und umbracht, und nach einer andern trachten. Müssen wir doch leiden, ob jemand sein Leib genommen wird: warum sollte man denn nicht leiden, dass ein Weib sich selbst dem Manne raubte, oder von andern geraubt würde.

48. In case of a sick spouse, she is not to be put away: it is possible to contain: it is a way to holiness.

M. Luther.

De Divortio.

XIII. Et in summa, eo licentiae ac et libertatis rem deduxerant, ut citra omnem metum et conscientiam cum matrimonio contrahendo et divortio faciendo agebant, ut volebant. . . .

Caeterum quemadmodum apud nos in re coniugali et faciendo divortio agendum sit dixi, Iurisperitis commendandum esse et magistratui subjiciendum. Cum matrimonium res prorsus sit externa et mundana, sicut uxor, liberi, domus, agri, praedia et eius generis alia ad magistratus officium pertinentia, utpote quod rationi omnino subiaceat Genes. i. quare neque nos latius euagabimur quam ut videamus, quae apud Iudaeos hac in re fuerit licentia, et quomodo vivendum sit his qui Christiani perhiberi volunt. Nam qui Christiani non sunt, nihil ad nos pertinent, quippe qui non sunt Evangelio, sed vi et supplicio regendi, ut officium nostrum purum conseruemus, nec plus agamus, quam nobis commissum est.

. . .

[Speaks of licence given by Moses.]

Quocirca Christum quoque Matt. xix. interrogabant, num liceret homini divortium facere cum uxore sua, qualibet ex causa: Quibus saevere ac duriter respondet, illorum leuitatem accusans, non secus atque hic concludens, quod et qui uxorem repudiat et qui repudiatam duxerit (nisi propter stuprum) uterque adulterium committat et facit illam quoque adulterium committere, si alteri nupserit (nam alioqui moechari non posset, si sine viri conuersatione permaneret.) Quibus verbis non tantum ipsorum hac in re leuitatem reprehendit, sed docet etiam, diuortium prorsus non faciendum esse, aut si factum fuerit, utraque pars in coelibatu permaneat, concludens diuortium semper adulterii causam esse.

[Moses allowed divorce for hardness of heart.]

Stat ergo sententia, quod iis, qui Christiani esse volunt, diuortium faciendum non sit, sed unicuique sua uxor retinenda est, qua cum bona et mala, acerba et dulcia aequo animo ferre cogitur et pati, quamvis morosa fuerit et difficilis atque defectibus obnoxia. Aut si repudiaverit, vt in coelibatu perseveret. Nec valet aut licitum est, ex matrimonio libertatem facere, quasi in nostro arbitratu situm esset, cum illo hoc aut alio pacto agere, mutare et remutare, sicut animo nostro collibuisset. Sed ita res se habet, sicut Christus dixit: Quod Deus coniunxit, homo non separet.

. . . . . .

Caeterum si quaesieris, an prorsus nulla causa sit, quae permittat viro cum uxore facere diuortium. Respondeo, Christus hoc capite et iterum Matt. xix. hanc indicat, quae adulterium dicitur, tractam e lege Mosaica, adulterium capitis supplicio puniente. Cum ergo sola mors matrimonium scindat et segreget et alterum partem a iugo liberet constat iam adulterum quoque repudiatum esse, non per homines sed ab ipso Deo, et non tantum a sua coniuge sed etiam ab hac vita segregatum et exterminatum. Nam adulterii flagitio se ipse ab vxore sua segregavit et matrimonium discidit, quod ipsi scindendum non erat, quo scelere mortem commeruit, et iam coram Deo mortuus est, quanquam a iudice non occidatur. Itaque Deo hic diuortium faciente, altera pars liberatur, ut non amplius compari cogatur esse obnoxia, seruare velit, nec ne eam quae lapsa est, nisi lubenti animo facere voluerit.

Proinde talis diuortii neque autores sumus, neque dissuasores, sed magistratui omnem eius rei causam cognoscendam commendamus, non grauate permittentes quicquid faciendum statuierint. Attamen Christiane viuere volentibus autor essem, multo satius esse, utramque partem moneri et provocari, ut simul manerent, et pars innoxia crimini et culpae obnoxiae (si modo deijcere se velit et resipiscere) placandum se exhiberet et illi Christianae charitatis ductu ignosceret, nisi vitae esset usque adeo deploratae, ut nulla spes foret unquam resipiscendi et vitae in melius commutandae. Aut si is, qui adulteriis famosus esset, et iam denuo in gratiam receptus tali beneficio abuti velit, nec eo minus suae consuetudini aperte et libere satisfacere, ista impunitate et facilitate ignoscendi fretus, quasi ipsi parcendum esset et venia concedenda. Hic ego quoque suaserim, tali nullam delecti gratiam esse faciendam sed potius autor esse velim, ut tam perditi nebulones fustuario et virgis publicitus emendarentur, aut talis adultera sacco insuta in gurgitem mergeretur etc.

Super hanc causam adulterii adhuc una est, quae sit, quoties altera persona coniugum alteram dimiserit, sicut quando altera ab altera ex mera animi libidine cursitat. Veluti si Ethnica apud Christianum habitaret, aut quemadmodum hoc aetatis saepe accidit, ubi altera persona adhaerescit Euangelio, altera infensa est (de quibus Paulus 1 Corinth. vii. scribit) num hic quoque locus relinquendus sit diuortio. Hic diutius Paulus concludit, alteram partem manere volentem, alteri seruandam esse, quanquem in fide discordes sunt, fides tamen matrimonium discindere non debet. Sin altera pars prorsus manere nolit tum missam facito, neque ideo captus aut coactus es, ut illam cursu insequaris.

Ubi autem quispiam liguritor et perditus nepos citra uxoris suae consensum et scientiam clanculum abierit et fuga se subduxerit, domo, uxore, liberis, et familia desertis et animum unum atque alterum, aut quandiu tandem animo libitum fuerit, peregre manserit (sicut hac tempestate saepenumero accidit) et postquam libidinatus fuerit, omni etiam per luxuriam abunde devorata substantia, iterum se ad domum velit recipere, et dominium se vendicare, ita ut deserta uxor ipsius aduentum expectare cogeretur, quoad illi licuisset, et iam reducem denuo ad se recipere, eiusmodo inquam nebulo, non tantum e propriis bonis praecipitandus et exterminandus est, sed etiam exilio mulctandus et altera pars (si vocatus et iam multo

tempore expectatus venire supersederet) libere pronuncianda. Talis enim quovis gentili et infideli longe est deterior, et minus ferendus, quamque simplex aliquis fornicator, qui quanquam semel lapsus sit, tamen se emendare potest et pristinam fidem suae coniugi exhibere.

Hic autem pro ridiculo et delectamento habet matrimonium, nec tanti uxorem et liberos suos aestimat, ut cum illis sicut patrem decet, legittimo thoro habitare et manere dignaretur, sed ut reuersus certum, receptum habeat, quoties et quando animo libuerit, redire voluerit. Verum enimuero haec scripturae est sententia, qui uxorem et liberos habere voluerit, illi domi cum suis manendum est, et communis fortuna, sive secunde sive adverse flaverit, toleranda, quamdiu apud superos egerit, aut si hoc recusaverit, tum fustibus adigendus et emendandus est, ut faciat, aut in totum ab uxore aedibus et re familiari segregetur et excludatur.

Caeterum his causis deficientibus, alii defectus et casus connubium impedire non debent, sed neque divortio dissipare, ut sunt ira, iurgium, contentio, rei familiaris negligentia et id genus sexcenta. Sin autem divortio separati fuerint (inquit Paulus) tum utraque pars in coelibatu permaneat.

[Married people to bear with each other, etc.]

See also "The Babylonish Captivity"—of matrimony, in Wace and Buchheim, Luther's Primary Works, p. 215 f., especially p. 226.

XIV. *Melanchthon.*

Dictum est:

Qui dimiserit uxorem suam, det ei libellum repudii. Ego autem dico vobis, etc.

(*a*) Quia Christus aliquoties repetivit hanc concionem, in qua reprehendit divortia, qualia usitata erant Iudaeis et gentibus, satis apparet, quod illam levitatem valde improbavit. Fuit enim usitatum, ut dimitterent uxores tantum ex levitate, cum mulier nihil peccasset, sed fortassis vir vidit aliam, quae magis placuit. Item arte alius alterius coniugem ad se pellexit, et ludebant specie iuris, quasi quaelibet divortia essent in lege Moisi concessa. Hortensius rogavit Catonem, ut sibi cederet coniugem Martiam, pulcram et generosam foeminam. Fecit Cato, et post mortem reduxit Martiam, quod erat etiam contra ethnicas leges. Augustus practicabat, ut Drusus sibi cederet Liviam. Talia saepe et multum facta esse apud Iudaos quoque, valde credibile est.

Has levitates taxat Christus, quia valde displicent Deo confusiones libidinum.

Ideo volo ordine de hac materia dicere. Primum, de castitate. Secundo, de coniugio. Tertio, de diuortio. Quarto, de officio Magistratus, in puniendis adulteriis, et aliis libidinibus.

De Divortiis.

(*b*) Primum recitetur querela: Dissidia et miseriae coniugum, sunt magna pars calamitatum generis humani, et sunt signum et poena peccati originalis, quia si natura hominum non esset mersa in peccatum, fuisset illa societas unius maris et unius foeminae, plena mutui amoris et dulcedinis, et nulla facta essent divortia, nec vir aliam concupivisset, nec mulier alium virum, nulla odia, nullae discordiae fuissent, sed laeti simul educassent et docuissent sobolem, et simul coluissent suos hortulos ex agros, egissent *Deo* gratias, audivissent seniorum sapientiam, inter sese de doctrina, de operibus *Dei* multa collocuti essent.

Quando igitur incidunt domesticae calamitates qualescunque, cogitemus de peccato originis, et de aliis peccatis, quae nos addimus, et has coniugales miserias sciamus poenas esse peccatorum. Ideo agamus poenitentiam, et oremus Deum, ut nos regat, et simus ipsi vigilantes contra diabolum, ne rixae crescant, quia diabolus, sumtaoccasione, ex parvis scintillis magna incendia exuscitat.

Set igitur haec prima regula

(*c*) Sciant coniuges, quod sit voluntas Dei, ut coniugium sit unius maris, et unius foeminae legitima coniunctio, et indissolubilis, et quod sine dubio peccent personae quae praebent causam diuortio, ut adulteri, aut desertores.

Hanc esse mentem Evangelii certissimum est. Quanquam enim Moises permisit divortia, ita ut liceret viro dimittere uxorem, etiam quae non peccaverat, tamen hunc morem Christus improbat, et expresse prohibet talia Mosaica divortia, et retrahit coniugium ad primam institutionem. Erunt duo in carnem unam.

Ut autem coniuges possint manere simul, discamus etiam opus esse patientia mutua, et precatione ad Deum contra diabolum.

Secunda regula.

(*d*) Certum est, quod peccant adulter et adultera, item quod peccant desertor et desertrix. Postquam autem per tales dilaceratum est foedus coniugii, quaestio est, An liceat personae innocenti, rursus cum alia coniugium contrahere?

Hic Papa dicit, quod non sit concedendum aliud coniugium personae innocenti. Non volo autem longam disputationem hoc loco recitare, satis clarus est hic textus, qui dicit posse divortium fieri inter tales, personam innocentem, et adulteram vel adulterum.

Iam si innocenti personae non concederetur aliud coniugium, id esset Nomine divortium, non Re.

Quid opus fuisset excipere casum adulterii, si voluisset eodem modo obligatam personam innocentem, sicut in aliis casibus vult esse obligatam, videlicet, si uxor sit iracundior, aut sit aegrota?

Et olim in Ecclesia hunc morem fuisse, ut concederentur talia divortia personis innocentibus, aliqua antiqua dicta et exempla ostendunt.

Ieronymus narrat, Romae fuisse nobilem matronam Fabiolam, quae maritum habuit adulterum, et turpissime viventem.

Haec tandem alteri viro nupsit. Etsi autem Ieronymus disputat de hoc facto, tamen historia ostendit, fuisse hunc morem adhuc usitatum. Et leguntur alia exempla.

Tertia regula.

(*e*) Sicut Christus expresse loquitur de casu adulterii, sic Paulus de alio casu loquitur, scilicet de desertore vel desertrice. Et dicit, quando alter coniugum fit fugitivus et desertor, tunc persona innocens non est subiecta servituti, id est, non est ei amplius obligata, sed concedendum est ei aliud coniugium.

Est autem desertor vel desertrix persona, quae sine iusta causa discedit a coniuge, et diu abest sine iusta causa, ex malicia, ut saepe fit. Tales sunt etiam plerunque adulteri et adulterae.

In his duobus casibus servatur etiam in nostris consistoriis hoc, ut concedatur innocenti personae aliud coniugium.

Sed postea quaerendum est de poena personae, quae peccavit vel adulterio vel desertione. De hac poena dicam proxime.

De iudiciis et poenis.

(*f*) Nuper dictum est, in quibus casibus possit concedi personae innocenti coniugium. Et clare et expresse dixi, quod nullus homo possit iuste distrahere coniugium. Sed adulter et desertor distrahunt contra voluntatem Dei, et horribiliter peccant. Persona innocens non distrahit, sed est libera, postquam iam per adulterium alterius facta est distractio, vel per desertionem alterius.

Sed hic sciendum est, quod oportet tales causas afferri ad Iudicem ad hoc ordinatum. Nemo est sibi ipsi iudex adversus alterum. Sed si vis condemnari personam nocentem, et te pronunciari liberum, oportet hoc fieri per ordinarium iudicem.

Nec prius licet personae innocenti contrahere aliud coniugium, quam fiat cognitio per iudicem ordinarium. Hoc etiam diligenter et saepe debebant Pastores in suis concionibus populo dicere, quia saepe accidit, ut contrahant tales personae sine iudicio, et postea inveniuntur causae insufficientes separationis, et multa mala sequuntur. Ideo recte factum est, quod potestas in his Ecclesiis singulares Iudices et Consistoria pro

his causis ordinavit, ut sciant homines, ubi quaerendi sint harum rerum iudices, et optandum esset, hos iudices magis etiam iuvari a potestate superiori, et ab iis, qui gerunt gladium.

Papistae talia iudicia fere omnino negligunt, sicut alias multas bonas ordinationes valde corruperunt.

Et propter istorum negligentiam, nostrae potestates etiam sunt negligentiores. Sed oremus Deum, ut ipse nos iuvet, et det nobis salutaria regimina.

Quaestio de aegrotis.

(*g*) Hic etiam quaestio movetur de aegrotis, an propter morbum perpetuum facienda sit separatio?

Responsio.

Non volo de omnibus quaestionibus huius materiae in concione loqui, sed relinquo haec negocia Consistoriis pro magna parte. Tantum pauca dicam, utilia praesenti populo.

Ac primum hoc dico, quando aliqua persona natura non est idonea ad coniugium, ut, so ein Man gantz keine manliche krafft zu einer Frawen hat, talis coniunctio non est coniugium. Et iudex scit se debere pronunciare, quod non sit coniugium, et debet potestatem concedere personae valenti, ut aliud coniugium contrahat. Et de hac materia satis sit iam dictum, caetera commendo Consistoriis.

Sed si sunt alii morbi, ut lepra, morbus gallicus, vel alii similes morbi, in viro vel in muliere, hic dico, quod tales morbi nequaquam separent coniuges et quod nequaquam sint sufficientes causae diuortii.

Dicit aliquis: Hoc grave est, quod cogor retinere aegrotum coniugem. Quanquam est grave, tamen iustissimum est. Id sic probo.

Summa amicicia est bene facere amico in necessitate et in miseria.

Inter maritum et uxorem est summa amicicia tantisper, donec non divelluntur per scelus aliquod. Tantisper enim de eis verum est. Erunt duo in carnem unam.

Ergo propter morbum nullo modo dissolvatur coniugium, sed in morbo ostendatur fiidelitas erga aegrotam personam.

Quanta haec iniuria esset, si haberes honestam coniugem, et ex ea filios et filias, et illa inciperet aegrotare, si tunc velles eam abiicere.

Sic estis copulati, ut laeta et tristia simul toleretis, et alter alteri auxilium ferat. Sicut parentes non debent abiicere filios et filias, cum aegrotant, sic maritus uxorem non debet abiicere aegrotantem, nec mulier discedere a viro aegrotante. Deus ideo instituit societatem coniugum, item parentum et filiorum et filiarum, ut infirmi et aegroti habeant auxilium, sicut mater infantulum curat, non abiicit.

Haec satis sit etiam de hoc casu dixisse, et necessaria est haec admonitio pro multis, quia multi fiunt impatientes, et aliqui deserunt aegrotantes coniuges. Tales impatientes sciant voluntatem Dei esse, quod debeant petere consolationem a Deo, et Deo obedire in tali afflictione, et debeant manere apud aegrotantes, et nequaquam ab eis discedere.

De poenis adulterorum.

(*h*) Restat ultima pars de poenis, de qua etiam breviter dicam.

In Ecclesia est tantum una poena, scilicet Excommunicatio, adversus omnia delicta, quae sunt manifesta, vel in iudiciis ostensa. Etsi autem haec poena valde magna est, scilicet esse eiectum ex Ecclesia Dei, et non habere remissionem peccatorum, sicut dictum est: Quorum retinueritis peccata, retinentur eis, tamen homines impii non curant hanc poenam.

Sed mandatum Dei est, ut magistratus, qui gerit gladium, severe puniat adulteros poenis corporalibus, sicut in lege Dei scriptum est, Deut. 22: Si dormierit vir cum vxore alterius, uterque morietur, adulter et adultera, et auferes malum de Israël.

Et alia multa ibidem de poenis adulterii et scortationis dicuntur. Et quia magistratus non punit, Deus postea punit utrosque, scilicet, adulteros et magistratus. Imo punit propter hanc negligentiam totas gentes, sicut in exemplo Beniamin apparet.

Nobiles adolescentes, compresserant Levitae coniugem, et eam interfecerant, maritus dissecuit cadaver, et misit partes ad omnes tribus Israel, et questus est de hoc scelere.

Israël sitae convenerunt, et iusserunt ut sontes mitterentur ipsis, ut iusta poena eos afficerent, sed quia erant hominum nobilium filii, nemo voluit eos dedere ad poenam. Ideo postea secutum est magnum bellum, et fere tota tribus Beniamin interfecta est. Ita non debemus dubitare, quin Deus puniat et adulteros et magistratus, et totas gentes, propter magistratuum negligentiam. Haec nos concionatores monere debemus, plura facere non possumus. Sed dico vobis: O Consules et Magistratus: Timete iram Dei, et considerate poenas publicas. Scitis ipsi vestram in puniendo negligentiam, ideo emendate vos, et sitis seueriores.

Haec de hoc loco Matthaei, de adulteriis et de divortiis dicta sufficiant.

XV. [In prohibited degrees Moses' list to be kept to.]

(*a*) Caussa divortii est adulterium, sed hic priusquam fiat divortium, semper reconciliatio tentanda est, nec licet discedere ab adultero, aut reiicere adulteram sine iudicio Ecclesiae, hoc est, eorum, quibus commisit Ecclesia.

Item, non licet ei personae, quae discessit ab adultero, contrahere matrimonium cum alia, nisi divortium coram Ecclesia, id est, his, qui praesunt, factum sit.

. . . . . .

Quid, si mulier aegrotet morbo gallico, seu lepra, liceat aliam ducere? Responsio: Non licet, nec morbum esse caussam rescindendi matrimonii, nec senecta caussa est dividendi. Igitur Pastores in his casibus iudicandis cauti sint.

Vom Ehestand.

[The Pastors to denounce, and magistrates to punish sins against marriage.]

Rechte gesetze vom Ehestand sind allezeit allein in der wahrhafftigen Kirchen gewesen, da der Ehestand durch besondere Gottes gab recht erhalten ist.

De coniugio.

(*b*) Coniugium est legitima et indissolubilis coniunctio tantum unius maris et unius feminae.

[Prohibited degrees kept: and *all* fit persons allowed to marry.]

De divortiis firmissime tenetur Regula, peccare eos, qui vel adulterio, vel desertione initium faciunt distractionis. Et adulteri ac adulterae et desertores et desertrices condemnantur voce docentium in Ecclesiis et iudicum in Consistoriis, et a magistratibus severe puniuntur. Sed personae innocenti, cum re cognita, pronunciatur esse libera, non prohibetur coniugium, ut Deum invocare et pie vivere possit. Cum enim expresse dominus liberet personam innocentem Matt. 19 cum altera polluta est adulterio, intelligenda est liberatio non tantum nomine, sed re, Et Paulus eodem modo loquitur in casu desertionis. Haec nostra consuetudo et cum veteri Ecclesia congruit. Ceterae leges in Consistoriis nostris congruunt cum Jure canonico.

De Divortio.

(*c*) Dictum est in definitione, coniugium esse legitimam et indissolubilem coniunctionem unius maris et unius foeminae; nec dubium est, has restrictiones congruere ad primam institutionem; quia Deus voluit genus humanum non ut pecudes vagari commixtionibus, sed marem et foeminam certo ordine copulatos esse, ut huius ordinis observatione obedientiam ipsi debitam praestare; et hunc ordinem severissimis legibus sanxit, et perpetuo tristissimis poenis in toto genere humano omni tempore confusiones huius ordinis punit, ut ostendunt diluvium, deletio Sodomae, Sybaris, Thebarum, Troiae, et plurimarum gentium; et huius tantae severitatis causa est, quod vult Deus in genere humano lucere castitatis intellectum, ut sciamus et ipsum esse mentem castam et castitatis amantem, et huius virtutis mentione discernamus eum a naturis immundis.

Sanxit igitur statim initio, ne dissolverentur coniugia, inquiens: erunt duo in carnem unam, id est, inseparabiliter iuncti; nam in hanc sententiam Dominus ipse hoc dictum citat Matth. 19; et huic praecepto primi patres, Adam, Seth et alii sine ulla dubitatione obtemperaverunt, et hanc doctrinam aliis tradiderunt.

Sed postea laxata veteri disciplina divortia etiam recepta sunt, et cum iam ante Moysen usitata essent, permissa sunt et voce legis Mosaicae, sed tamen initio metae circumdatae fuerunt, ne privata levitate fierent, sed in iudiciis prius cognoscebantur causae.

Sanxit etiam lex singulari consilio, ne rursus duceretur dimissa, quae postea alteri nupta fuit; detestatur enim Deus confusiones libidinum.

Apud veteres Atticos etiam consuetudo fuit, ut in iudiciis causae divortii cognoscerentur; sed postea apud Iudaeos et gentes secuta est maior levitas et licentia, et privato arbitrio facta sunt divortia; sive causae graves essent, sive leves, sive nullae; sunt et reductae, quae antea dimissae fuerant, ut Cato petenti Hortensio cesserat Martiam, et post mortem Hortensii rursus eam sibi adiunxit. Talis Levitas occasionem quaestioni praebuit Matth. 19: prohibet igitur Dominus divortia in eo loco, excepto uno casu, videlicet adulterio, in quo casu persona suo scelere dissolvit coniugium, et e medio tollenda erat; nec dissolutionis causa est persona innocens; ideo vox Filii Dei liberat innocentem personam; extat et alter casus 1 Cor. 7 de desertore vel desertrice.

De modo procedendi.

(*d*) Non sunt autem facienda divortia sine cognitione legitimorum iudicum, sed persona innocens, si vult fieri divortium, petat a iudice vocari personam, quae deliquit. Hic cum utraque pars venit in iudicium, primum adhortandi sunt utrimque, ut redeant in mutuam gratiam; si non procedit reconciliatio, pars innocens non potest cogi, ut recipiat ream.

Auditis igitur partibus, et confirmata accusatione, si accusator honeste vixit, et petit ferri sententiam, pronuntietur hoc modo: cum persona, quae deliquit, suo scelere dissolverit coniugium, iudex auctoritate Evangelii personam innocentem pronuntiat esse liberam, et expresse inquit, concedi ei, ut pro sua conscientia pie contrahat aliud coniugium.

Pontificii Canones faciunt divortium nomine, non re, id est, non premittunt, ut persona innocens contrahrat aliud coniugium; sed cum Evangelium in illis casibus concedat divortium, intelligatur id non de inani vocabulo, sed de tali liberatione, quae sit re ipsa divortium, videlicet, in quo non retineatur ligata persona innocens: et fuisse hanc consuetudinem in ecclesia veteri, annotatum est ab Origine in Matthaeum; item ab Eusebio in Ecclesiastica historia, qui pag. 88 recitat historiam ex Justino Martyre, qui scribit, mulierem piam fecisse divortium cum marito polluto flagitiosis libidinibus, et publice accepisse libellum repudii, ut vocabant, id est, tabulas testificantes de divortio; et Hieronymus recitat Fabiolae nobilis matronae romanae historiam, quae propter mariti scelera fecit divortium, et nupsit alteri. Haec exempla meminisse utile est ad confirmandum morem iudiciorum in nostris ecclesiis.

Sin autem persona quae deliquit, non venit in iudicium, sed aut contumaciter abest, aut inveniri non potest, cum accusator confirmata accusatione testes adducit, qui affirmant eius famam integram esse, et petit se liberari, pronunciet iudex, eum liberum esse, ut ante dictum est.

Sed quid fiet de persona condemnata?

An concedendum est ei, si adest, ut in iisdem locis vivat?

Respondeo: magistratus politicus adulteria punire debet: ideo persona condemnata, si non punitur durius, pellenda est ex iis locis, ubi vivit persona innocens: cui altera, videlicit condemnata, velut mortua existimanda est; et haec severitas ad politicum magistratum pertinet.

Quis sit desertor.

(*e*) In quaestione de divortio liberat vox divina personam innocentem, cum alter coniugum foedus coniugii adulterio dissolvit, et innocenti personae re iudicata, ut dixi, conceditur contrahere aliud coniugium, idque hoc modo servatur in nostris consistoriis; servatur idem de persona iniuste deserta, quia Paulus inquit 1 Cor. 7, 15: si autem infidelis discedit, discedat; non subiectus est servituti frater aut soror in talibus. Expresse pronuntiat Paulus, personam iniuste desertam liberam esse, id est, non cogendam esse, ut vagabundum desertorem sequatur.

Etsi autem aliqui restringunt hoc dictum ad casum de religione, tamen vere accommodatur in genere ad quamcunque iniustam desertionem, cum non sit ratio dissimilitudinis; et consentaneum est, desertores impatientes freni coniugalis deinde non abstinere ab aliis mulieribus; sed cum variae sint causae migrationum, definiendus est desertor; nec concedendum est desertae personae coniugium sine iudicum cognitione.

Est igitur desertor, qui discedit a coniuge, aut diutius abest, nulla honesta causa coactus, sed vel levitate, vel iniusta impatientia freni coniugalis, vel aliis non necessariis causis impulsus vagatur.

Et multi adeo sunt ἀστοργοι, qui agitantur a diabolis ut etiam sobolem negligant: talis desertor propter perfidiam et ἀστοργιαν supplicio publico puniendus erat; ideo iustum est opem ferre personae innocenti, quae deserta est; accedat autem, ut dixi, cognitio iudicum; vocetur ergo in iudicium, et cum non veniet, audiantur testimonia de personae innocentis integritate et pronuncietur libera, etc.

Non est autem desertor, qui abest officii causa, ut legatus, aut miles delectus auctoritate legitima ad militandum, aut si voluntate coniugis maritus abest in mercatu, aut alio honesto negotio.

Nec captivitas dissolvit coniugia, nec deportatio, ut lex Alexandri Severi in Codice de repudiis inquit: matrimonium deportatione, vel aquae et ignis interdictione non solvitur, si casus, in quem maritus incidit, non mutat uxoris affectum, id est, si non est tale scelus, quo alioqui coniugium dissolveretur.

De milite autem narrat constitutio Justiniani in Authenticis: olim, si toto quadriennio nihil significasset uxori inquirenti miles de sua voluntate, concessum fuisse mulieri aliud coniugium. Hanc brevitatem temporis reprehendit Justinianus inquiens: militi tristius esse uxorem domi amittere militiae causa, quam capi ab hostibus: ideo sancit longius tempus, et requirit diligentem inquisitionem de voluntate viri. Loquitur autem lex de militia legitima, non de levibus hominibus, qui non virtutis et militiae causa domo absunt, sed ut liberius vagari possint, militum titulum assumunt. Hoc discrimen etiam iudex considerabit.

De tempore, post quod alia coniugia concedi possunt.

Si divortium factum est propter adulterium, innocenti personae non praescribitur tempus, postquam res iudicata est.

Sed in quaestione desertionis annos considerari necesse est, ut intelligatur personam vere desertam esse, non levitati aut perfidiæ praetexere umbram desertionis.

Lex in Codice concedit sponsae post biennium alteri nubere, si ea non assentiente sponsus, qui tamen non est extra provinciam, tam diu differt publicum ritum coniugii.

Alia lex de sponso peregrinante loquitur, de quo concedit sponsae post triennium alteri nubere, videlicet nisi ea assentiente diutius absit.

Pontificiae constitutiones desertae personae quantumlibet innocenti nullo unquam tempore concedunt coniugium, nisi desertricem personam constet mortuam esse; sed supra recitavi dictum Pauli ex Corinthiis, quod liberat personam innocentem, et plerumque desertrix persona simul adulterii rea est: nequaquam igitur laquei iniiciendi sunt innocenti personae propter aliena delicta, sed intelligatur et in hoc casu liberatio non de inani vocabulo, et personae liberatae concedatur coniugium.

Justinianus expresse concedit coniugium desertae personae post decennium. Glossa in capitulo: in

praesentia in Decretalibus, ita inquit: ubi post septennium verisimiliter praesumitur de morte viri, excusatur mulier, si nubat; ac mitior est glossa, quam textus; sed cum iudex inquisiuit negotium, et comperit, querelam de desertione non esse inanem praetextum, et videt mores personae innocentis honestos esse, posset imitari legem Constantini de quadriennio, vel dictum de quinquennio in Digest. in tit. de divortio.

Haec moderatio non videtur absurda; nec tamen praescribo certum tempus, sed sapiens iudex simul considerabit, quid deceat exempli causa, et ne laqueos conscientiae innocentis personae iniiciat.

De divortiis propter saevitiam, veneficia et insidias structas vitae.

(*f*) Cum textus Matth. 19 tantum faciat mentionem adulterü, valde pugnant aliqui, non posse fieri divortia propter saevitiam et insidias vitae structas; sed in codice lex Theodosii, quam existimo gravi deliberatione piorum scriptam, ut tunc usitata divortia restringeret ad certos casus, concedit divortium etiam in his casibus.

Etsi autem aliqui reiiciunt hanc legem et contendunt eam ab evangelio dissentire, tamen hi non recte intelligunt discrimen Legis et Evangelii; et cum expresse dicat Dominus, in politia Moysi divortia permissa esse propter duritiem cordis, significat aliam esse gubernationem hominum sanabilium, qui sunt membra ecclesie, et volunt obtemperare Evangelio, aliam politicam impiorum et contumacium, qui frenos legum pati nolunt.

Si quis est igitur talis maritus, qui saevitiam in coniugem exercet, et admonitus a pastoribus non desinit furere et domesticae ecclesiae invocationem turbare, et uxorem ita crudeliter tractare, ut vita in periculo sit, hic certe magistratus politici imperio coercendus est, qui non solum vitam personae innocentis tueri debet, sed etiam debet eius conscientiae consulere, ne fracta dolore et indignatione tandem abiiciat invocationem aut aliquid iniuste faciat, ut dicitur; furor fit laesa saepius patientia. In eo casu, in persona crudeli, non pertinente ad ecclesiam, magistratus politicus Theodosii lege uti posse videtur.

Imperia politica vult Deus honori esse bonis, et terrori malis; vult Deus tegi eos, quorum mores sunt sine scelere, vult eis concedi pacem ad invocationem, ad educationem et ad institutionem sobolis; vult latrones reprimi, sive domi sive foris latrocinia exerceant; nec desunt unquam in imperiis homines contumaces, iniusti et *ἀστοργοι*, exercentes in suos iniustam saevitiam, quales nominat Dominus in hac concione duros corde.

An propter morbos contagiosos et incurabiles, ut propter lepram, divortium fieri possit?

(*g*) Respondeo: plane et perspicue affirmo, nequaquam facienda esse divortia propter morbos, nec deserendum esse aegrotum maritum, nec deserendam esse aegrotam uxorem, quia semper oportet hanc regulam esse firmam et immotam: quos Deus coniunxit, homo non separet: quare omnis persona vivens, quae volens inchoat distractionem, sine ulla dubitatione horribiliter peccat, ut adultera seu desertrix inchoat distractionem volens, et facit contra hunc ordinem divina voce et lege sancitum. Ita si persona recte valens inchoaret distractionem, esset similis desertrici et adulterae, et rea magni sceleris; nam calamitas, quae inter viventes accidit sine culpa, nequaquam dissolvit coniugale foedus.

Omnia igitur dicta, quae prohibent distractionem, proponant sibi homines timentes Deum: Gen. 2. 24: erunt duo in carnem unam; 1 Cor. 7. 4: vir non habet potestatem corporis sui, sed uxor; nec uxor potestatem habet corporis sui, sed maritus; Eph. 5. 25, 28. etc.: viri diligite uxores vestras; nemo carnem suam odio habuit, sed eam alit et fovet.

Cum igitur maneat foedus coniugale inter tales personas, quas non distraxit culpa, manifestum est, non deserendam esse aegrotam personam, ac deberi ei benevolentiam et auxilium tanquam proprio corpori. Summus amicitiae gradus est foedus coniugale; iniustissimum est autem, in calamitate amicum deserere egentem auxilio, et confugientem ad amici benevolentiam et fidem: quare desertio coniugis propter calamitatem, in qua nulla est culpa, iniusta et scelerata est.

Quidam vero crudeliter disputant, leprosos similes esse mortuis, et hoc praetextu consulere personae recte valenti student, sed hoc sophisma refutat manifesta crudelitas. Mortui non indigent aliorum hominum auxilio, aegrota persona adhuc indiget hominum auxilio; quare, quod ad verae amicitiae officia attinet, nondum est mortuae similis. Adhuc est caro tua, adhuc lex divina tibi concionatur: nemo carnem suam odio habuit; et auctoritate magistratuum cogenda est persona recte valens, ne deserat aegrotam, et ne negligat eius vitam, sed ferat opem aegrotanti. Etsi autem videtur aliquibus haec sententia durior, tamen iustam esse omnes bonae mentes intelligunt. Si quis autem maritus pius indiget consilio, interroget pastores eruditos et graves, et recte intelligentes doctrinam ecclesiae; potest enim responderi, ne perplexitate implicetur conscientia, et ne fides et invocatio in viro interrogante impediantur.

Peter Martyr.

De Diuortiis & Repudiis.

XVI.—(*a*) 52. Hebræis & Ethnicis fuit leue dimittere vxores, & licuit quauis de causa, at Christianis non ita esse debet. Christus hoc tractauit Matth. 5 & 19 vbi cùm dicat, Moses dedit vobis libellum repudii: nequaquam id sic accipi debet, quasi Moses id per seipsum absque iussu Dei egerit. Quia fuit, vt illi diuinitus testimonium datur, fidelissimus. Et quod iu Lege statuitur de diuortio, postea in Malachia præcipitur: Si odio habueris, nimirum vxorem tuam, dimitte illam. Nolebat quippe Dominus, odia et inimicitias in tanta necessitudine retineri. Reuocat itaque nos Christus in nouo Testamento, ad pristinam institutionem: Quia cùm modò sit spiritus copiosior & largior gratia, viri maiorem patientiam & charitatem erga vxores præstare debent, vt non quauis de causa sic aduersus illas offendantur, vt abijciant. Similiter ab vxoribus, maior obedientia & modestia requiritur.

(*b*) 53. Hîc mihi dices, Quid si hodie inueneris inter Christianos, tam duros corde & pervicaces, ad inimicitias & odia retinenda in coniugiis, vt Iudæos vincant, nedum illis æquentur? Quare cùm sit idem morbus, idem remedium non relinquitur? Quibus respondemus, eos qui sunt eiusmodi, à Christo alienos esse. Idcirco eos Reipub. committimus, vt statuat de illis prout melius visum fuerit. Quando enim ab Ecclesia emendari non possunt, illos vt Ethnicos et publicanos habemus. Agatur cum eis legibus ciuilibus. Ex verbo Christi satis explicatè habemus, id fieri non debere, vt citrà causam adulterii diuortium fiat: quæ exceptio non est mirum si à Paulo intermittatur: Quia cùm Paulus dicat, se non ista dicere, sed Dominum, nos ad eius verba remittit, neque mandato illius quippiam detrahit. Et cùm inquit se non dicere, sed Dominum: minimè reddit infirma quæ superius tradiderat, cùm à Christo dicta non legantur. Quoniam et illa sunt à Domino. Dicit quippe, Puto autem quòd et ego spiritum Dei habeam: Sed mandatum Christi ideo memorat, vt leniat verborum suorum acerbitatem. Carni quippe videtur întolerabile, matrimonium non posse dissolui: Est ac sì Paulus dixisset, Non propono vobis vel alienа, vel noua, et quæ ante me inaudita fuerint. Hoc mandauit Dominus. Alioquin et ista, et quæ superius scripsit Apostolus, firma sunt et authoritatis plena. Sed hoc interest, quòd ista Dominus per seipsum locutus est, et ea repetit per Paulum, illa verò tantummodo per Apostolum proferri voluit. Atque suam sententiam de non dissoluendo coniugio, Christus probauit ex testimonio libri Geneseos, vbi dicitur: Propter hoc relinquet homo patrem suum et matrem suam, et adhærebit vxori suæ. Duæ necessitudines his verbis conferuntur: vna est inter parentes et liberos, altera inter virum et vxorem. Cumque necessitudo paterna vel filiorum eiusmodi sit, vt diuelli ac discuti non possit, multò minus ista coniugalis: utqúe durat perpetuo necessitas inter filium et parentes, ita coniunctio inter virum et vxorem. Hæc est Christi interpretatio illius loci, et argumentatio quam inde producit. Vult attamen exceptam causam stupri. Et Paulus (per quem loquitur

Christus) aliud excipit, si alter coniugum, quòd sit infidelis, nolit habitare cum fideli, vt suo loco dicetur.

(*c*) 54. Verùm de stupri causa, quam Christus excipit, nonnulli addubitant an ea sit sola, et dicere audent, Christum in illa complecti voluisse alia omnia scelera, quæ stuprum grauitate aut æquant, aut superant, moremqúe aiunt esse diuinarum literarum, vt in vna causa commemorata, alias consimiles includant Vti habetur in Deuteronomio de homicidio, quod casu et contra voluntatem admittitur: vbi tantummodo vna ratio describitur, quando securis è manubrio exilierit. Sed quid? Nónne idem iudicabimus, si ædificando, vel aliquid conuehendo, quispiam nolens, alterum occiderit? Ita dicunt in præsentia, sunt pleraque crimina paria, et fortè grauiora quàm sit adulterium: quamobrem existimant illa quoque crimina facere copiam diuortii. Quem sensum fortassis Imperatores nonnulli, alioquin pii et Christianissimi studiosi, multa crimina in suis legibus expresserunt, propter quæ liceret diuortium facere, quòd illa iudicauerint, non leuiora esse stupro. Et alias quoque causas extra crimen adulterii admittendas esse, inde potest apparere, quòd Paulus adiecit de coniuge infideli, qui nolit cum altero habitare, quem casum Christus reticuerat. Quin et hodie, si deprehendatur in matrimoniam iam contracto, vt loquuntur, frigiditas, vel simile impedimentum, iustum diuortium permittitur. Et nihilominus Christus causam tantùm stupri excepit: Imo si velimus inspicere, quantum sibi pontifices Romani hac in re permiserint, videbimus illos apertè sibi facultatem arrogasse, modò non esset (vt loquuntur) secuta copula, matrimonium iam contractum dissoluendi. Imò fertur diploma fuisse conspectum Papæ dirimentis matrimonium non tantùm contractum, sed vt dicunt, consummatum. Et Zacharias Papa, vt in quarto Sententiarum scribitur, cùm quidam polluisset adulterio sororem vxoris suæ, rescripsit: Cùm hoc facinus admiseris, neutram illarum habebis vxorem, erisqúe tu et illa, quam adulterio polluisti, sine spe coniugii; vxor verò tua cui voluerit, nubat in Domino. Quo casu aperte vides, iudicatum esse ab isto Episcopo, diuortium propter stuprum admittere alias nuptias. Volunt præterea matrimonium dissolui, si erretur in persona vel conditione, vt si qua putauerit se habere quempiam maritum, et deprehendet alterum esse ab eo quem habere voluerat: vel, si liberum et ingenuum sibi asciuit, quem comperiat seruum esse. Accedit et causa gradus propinquitatis, etiam diuina Lege non prohibiti, vt voluerunt matrimoniam contractum rescindendum esse. Quare apparet, non adeò seueriter iudicatum fuisse, vnam tantummodo causam, quam Christus expresserit, diuortium facere. Alioquin cùm Christus vnam tantummodo causam expresserit, quomodo Imperatores, et quidem Christiani, atque viri Ecclesiastici, tot alias adiecissent? Certè hoc fuit, quod arbitrati sunt, in illa vna Christum voluisse, et pares et grauiores culpas contineri. Adiecit Erasmus, qui hanc rem copiosè tractauit: Cùm Dominus præcipit ne iures, ne irascaris, ne dixeris Racha: si quis te percusserit in vna maxilla, obuerte illi alteram: si quis vult auferre pallium, da illi et tunicam, et alia id genus: admittimus interpretationes, vt hæc sæpe intelligamus de animi præparatione, vt non fiat leuiter aut temere, non sine iusta causa: et hic erimus tam duri et asperi, vt nullam vel interpretationem, vel expositionem admittamus?

(*d*) 55. Cur vero Christus vnam duntaxat adulterii causam expresserit, ea videtur esse ratio, quòd nihil magis atque huiusmodi scelus, matrimonio aduersetur. Erunt (inquit Scriptura) in carnem vnam. Qui verò stuprum admittit, ita se alteri carni adiungit, vt à sua vxore auellatur: Num Paulus, Tollam membrum Christi, et faciam membrum meretricis? Hæc est, vti, exposui, quorundam sententia. Quæ licet impia non sit, et fortasse non facilè refelli possit: ceterùm ego vt causas in Scripturis expressas libenter amplector, ita etiam vltra illas difficilè patior diuortium suos fines proferre. Et profectò quoad huiusmodi crimina quæ Scriptura commemorat, si magistratus, cùm sit Christianus, vteretur seueritate, quam et diuinæ leges et Romanæ iustissimam decreuerunt, his molestiis non laboraretur. Non autem loquor in præsentia de impedimentis naturæ, quæ ita possunt accidere, et à Deo immitti, vt matrimonium vlteriu non possit constare, tantùm quod protuli, ad scelera contractum velim, quæ à multis putantur matrimons ium rescindere. Ea inquam, non facilè consuluerim aliunde accipi, quàm è Sacris literis.

(*e*) 56. Quin et in his quæ Scriptura expressit, nihil absque magistratus approbatione audendum iudico. Etenim matrimonium quanquam res est diuinitus instituta, quo tamen ad circumstancias, habet permulta quæ ad ciuiles leges et mores attinent. Vnde qui nouum matrimonium contrahunt, dimissa priori vxore inuitis magistratibus, et publicis legibus prohibentibus, grauissima incurrunt damna. Liberos enim, quos suscipiunt ex recenti matrimonio, ea infamia notant vt pro spuriis publicè habeantur, et vxorem quam ducunt probro exponunt, vt adultera et meretrix existimetur, seipsos quoque turpitudini eidem faciunt haberi obnoxios. Quamobrem rogandus esset et obtestandus magistratus omnibus modis, cùm sit fidelis, vt hac de re statueret, et suas leges verbo Dei accomodaret. Estqúe prouidendum, vt ita constituatur, ne fenestra magnis flagitiis patefiat, per quæ passim ac temerè matrimonia dissoluantur. Et ex altera parte cauendum, ne dum ita factum diuortium tueri volunt, de quo nunquam sacræ Scripturæ quidpiam habent, vt vinculum coniugii maneat, viro et vxore à se inuicem disiunctis; ac ita disiunctis, vt nequaquam simul habitare possint: videndum inquam, ne vagis libidinibus et scortationibus occasio præbeatur. Si quis autem propter stuprum, aut quòd nolit coniux vllo pacto secum habitare, vt Paulus de infideli scribit, solus cogatur degere, et absque coniuge perpetuò viuere, cùm ei facere nolint leges copiam secundarum nuptiarum, sit anceps, et nesciat quid agere debeat, certè non possunt ei occurrere nisi duo remedia: vt vel in ista necessitate positus, iam arbitretur se à Deo vocationem habere ad cœlibatum, quem precibus assiduis et pulsare debet et solicitare vt sibi adsit, quò castè et purè viuat: et cùm videat sibi à legibus iniuriam fieri, causam suam Deo commendet, quòd non ipse vltro aut volens in hunc statum se coniecerit, sed necessitate adactus, cogatur hanc sortem retinere. Quod si omnino viderit sibi non succedere, vt castè viuat aut contineat, et in animum suum non potest inducere vt sit cœlebs et absque vxore viuat, putetqúe sibi expedire vt libertate à Deo concessa vtatur, ne id inuito magistratu suo et publicis legibus vetantibus committat, discedat et se conferat in regiones vbi hoc liceat, ibi vxorem ducat, et ei se Reipub. addicat, per cuius leges hoc ei permittatur. Hæc à me sic traduntur, vt melius ac sanius consilium perpetuò sim paratus et audire atque admittere.

(*f*) 57. Id autem mecum sæpenumero sum miratus, quomodo Valentinianus, Theodosius et Justinianus, alioquin Christianissimi principes, leges de diuortiis, partim ipsi tulerint, partim antiquitus latas authoritate sua roborauerint, et à sanctissimis episcopis, qui tunc temporis viuebant, legibus huiusmodi reclamatum non fuerit, cùm alioquin Ambrosius Theodosium adegerit, vt legem conderet de poena capitis in aliquot dies proferenda, et sua authoritate effecerit, vt decreta quæ Symmachus sancire voluisset, locum non habuerint. Cùm itaque illi principes admodum pii huiusmodi statuere suis legibus ausi sint, et Ecclesia non reclamarit, quid hodie tantopere magistrátus cunctantur hac de re decernere? Sunt fortasse dicturi, Quoniam omnia diuortiorum plena erunt: Quod verisimile non est, cùm apud Hebræos, Græcos et Romanos, vbi diuortia licuerunt, non legamus vsque adeò multa extitisse. Quod si putent nostros homines deteriores iam esse, quàm vel Hebræi vel Ethnici antiquitus fuerint, et nomini Christiano iniuriam facient, et hac ratione adducentur, vt potius diuortium concedant, quod vt remedium improbitatis permissum fuerat. Quis enim medicinam ablatam velit, cùm morbum adhuc grassari videat?

(*g*) 58. Hoc deinde certum esse debet, Christum cum excepit adulterii causam, nequaquam intellexisse diuortium, quo vxor et vir à mensa tantùm, vt loquuntur, et à thoro diuiderentur, maneretqúe adhuc saluum coniugii vinculum. Loquebatur Dominus cum Hæbræis: quare sermones illius de vsitato apud eam gentem

diuortio intelligendi sunt. Ethnici quoque tam Romani quàm Græci, hanc solam diuortii rationem cognitam habuerunt, vt sic vnus coniugum ab altero solutus esset, quò nouæ nuptiæ licerent. Quod si Christus aliter intellexisset, potuisset videri ad quæstionem sibi propositam non respondisse: quia de eo diuortii genere tunc agebatur, propter quod libellus repudii à Lege concessus fuerat. De eo disputatum est: quare de eo verba Christi intelligi debent. Quid enim verisimilius est, Iudæos interrogasse de diuortio quod ignorabant, an de eo quod Moses in Lege illis concesserat? Non arbitror esse dubium cuiquam, de re vsitata illos interrogasse.

(*h*) 65. Verùm nunc expendenda quædam esse existimaui, quæ ab Augustino in duobus libellis de Adulterinis coniugiis ad Pollentium dicuntur, prout ad propositum huius loci ea facere iudicauero. Putabat ille quidem repudianti vxorem stupri causa, non licere alteram superinducere. Sed cum apud Matthæum ea causa excipiatur, is respondet vtrunque esse moechum, et qui propter adulterium, et qui extra illam causam vxorem à se repellit, atque alteram ducit. Et Matthæum (inquit) alterum eorum tantummodo expressisse, vt illam notaret qui grauius peccat. Ambo quidem moechantur, vxorem dimittendo, et alteram ducendo. Sed grauius, qui hoc extra causam fornicationis fecerit. Atque ita vult eam exceptionem tantummodo valere ad crimen adulterii leniendum, non tamen ad hoc vt prorsus tollatur. Atque id putat se posse ostendere ex verbo Dei. Quoniam Lucas et Marcus eam sententiam absolutè, et absque vlla exceptione protulerunt. Aiunt, Omnis qui vxorem dimiserit, et alteram duxerit, moechatur. Concludit itaque generaliter Christi dictum accipiendum, vt Lucas et Marcus scripserunt. Matthæus verò (inquit) illum notat, qui causa stupri hoc fecerit, vt intelligatur leuius peccare. Verùm hoc genus argumenti, equidem iudicarem infirmissimum. Quia potius videtur dicendum, Lucam et Marcum non completam seu perfectam scripsisse Domini sententiam, quam oporteat ex Matthæo contrahere, et definitè accipere. Quam regulam ipse tradit, et non semel vtitur in libro de Consensu Euangelistarum, vbi apertè dicit, in aliis Euangelistis persæpe minus explicatè ac integrè quædam dici, quæ ex Matthæo perfectius colligi debeant. Et est miraudum, quomodo is videatur semper accipere istam discessionem, de qua loquitur Apostolus, pro ea quæ liceat, cùm Apostolus apertè dixerit: Vxor à viro non separetur. Quare constat eum agere de illa quæ non liceat, cum eam prohibeat. Vnde facile apparet, non esse hic sermonem de causa stupri. Quia eo casu non mandaret Apostolus, vt vxor à viro non discedat: quippe id esset fouere lenocinium, si adulteria fieri se præsente atque morante apud virum pateretur. Iubet atque Paulus, vt non discedat propter istas leuiores causas, cùm id non liceat. Et si fortasse discesserit, vt innupta maneat præcipit, aut reconcilietur viro. Tenetur quisque auferre malum è sua familia. Qui posset vir non eijcere vxorem, cùm in adulterio eam deprehenderit? et tamen Apostolus ait, Vir vxorem non dimittat. Debet igitur eius adulteria fouere? Hæc satis ostendunt, de qua secessione seu eiectione hæc sint intelligenda. Et Chrysostomum habes hoc loco, nostræ huic sententiæ fauentem: nam inquit, Discedunt quandoque propter contentiones, propter pusillanimitatem, vel propter continentiam, aut alios prætextus, neque adulterii vllam mentionem facit. Tertullianus lib. 4. contra Marcionem inquit, Iustitiam habere Dominum assertorem diuortii. Quibus verbis facit Christum confirmasse diuortium, non prorsus sustulisse. Nam hoc nomine probare nitebantur hæretici, Christum pugnare cum Deo veteris Testamenti, quòd ea damnaret quæ ille instituerit. Quæ Tertulliani sententia vera non esset, si iusta diuortia, prout Hebræi habebunt, inter Christianos minime darentur.

(*i*) 66. Neque oportet vt hoc multum nos turbet, quod in veteri Testamento libellus repudii sit permissus quauis de causa, cùm modò Christus rem adeò in angustum contrahat. Ob id non est quod existimes illum cum decretis et legibus paternis pugnare: Sed hoc tibi videndum est, tum temporis legem illam de libello repudii, quæ lata est Deut. 24 ciuilem fuisse. Christus autem non egit de rationibus ciuilibus. Qui Remp. administrant, eiusmodi scopum sibi proponunt, vt si duo mala siue incommoda offerantur, id quod leuius est permittant, ne incurratur in grauius. Quod facilè demonstrari potest in meretricibus, quas in ciuitatibus permittunt, ne grauiora facinora perpetrentur, quod tamen lex Domini in sua Repub. non permisit. Sed nunc istud vt exemplum affero, quod licet minus Christiane fiat, in multis tamen Rebuspublicis passim cernitur, sic quoad matrimonii negotium, quando sunt coniunctiones infoelices, alterum duorum incommodorum videbatur necessarium, vt qui odio habebant vxores, vel perpetuò eas affligerent atque demum occiderent, vel diuortii facultas erat danda. Hoc posterius visum est magis tolerabile: quamobrem id in Repub. sua Deus concessit: sed ita concessit, vt scriberetur libellus, quo vir asper et immitis, vel illum scribendo vtcumque moueretur, et grauius expenderet, quàm indignum esset illam à se abigere, cum qua iam inde ab initio coniunctissimè vixisset. Attentius enim solemus ea ponderare quæ scribimus, quàm illa quæ loquimur. Deinde præcipiebat, vt cum eiecta esset per libellum repudii, nunquam deinceps à priori viro in matrimonium recipi posset. In his itaque politicis legibus, Christianus et pius vir ita se geret, vt hac facultate, quam videt concessam, ne incidamus in atrociora mala, non vtatur: cùm eam quoque secum habere coniunctum malum videat quanquam leuius. Suis itaque Redemptor noster et pietatis et religionis decreta proposuit. Non interim damnabat Dei consilium, quo in Republica Hebræorum vsus fuit ad grauiora peccata coercenda.

Calvin.

A.D. 1556.

XVII.—(*a*) Les autres contracts doivent bien estre gardez en bonne foy: mais cestuy-ci, d'autant qu'il surmonte en saincteté, doit avoir plus de reverence.

(Of the Jews.) Et Dieu (comme nous avons dit) n'a point là regardé à une perfection telle comme elle seroit requise entre les fideles; mais plustost il a supporté la durté de ce peuple, qui estoit rude et difficile à gouverner: et quand il n'a point puni les divorces qui se faisoyent contre equité, ce n'est point pourtant qu'il les eust permis. Car nous oyous ce que nostre Seigneur Jesus Christ en prononce, que l'homme qui aura delaissé sa femme (excepté le cas d'adultere, et qu'il soit prouvé contre elle qu'elle ait paillardé) et qu'il en ait prins une autre: qui c'est un paillard. . . . Si elle n'est punie devant les hommes: et bien Dieu se reserve tousiours son droict. Or ceci se fait, d'autant que pour la police on punira tousiours plus les interests humains, qu'on ne fera pas l'offense commise contre Dieu. Il est vray que les iuges et magistrats ne doyvent point lascher la bride, à ce que Dieu soit mocqué, que son nom soit mis en opprobre, que la religion soit foulée au pied: comme nous avons veu par ci devant, que les blasphemes estoyent plus griefvement punis que les meurtres. Mais quand il y a quelque peché oblique, là où on n'apperçoit point un mespris manifeste de Dieu en la police, on ne poursuyvra point cela si fort, que si les hommes y ont interest.

. . . . .

Au reste, quant à la police, Dieu a regardé ce que portoit l'infirmité du monde, et s'est conformé là. Et ainsi il y a beaucoup de choses qui n'ont pas este punies en la Loy de Moyse.

Or Deut. xxiii., 24, 25; xxiv., 1–4.

Or il est dit finalement: "Quand le mari auroit " ainsi repudié sa femme, et qu'elle seroit remariée à " un autre, que son premier mari ne la pourroit point " reprendre. Car cela seroit abomination au Seigneur," En ceste Loy nous avons à noter en premier lieu, quand Dieu a ainsi permis le divorce, qui ce n'a pas esté une dispense pour faire la chose licite: mais ça esté qu'il n'a pas voulu exercer rigueur (quant à la police) contre les Juifs.

[Magistrates ought to go by the Divine Law, but their regulations do not alter the Divine Law.]

. . . . Or quant aux maris, nostre Seigneur Jesus Christ dit, que si quelcun laisse sa femme, si-non

pour paillardise, qu'il est un adultere, et qu'il fait sa femme adultere. Il met l'exception de paillardise. Or en disant que l'homme est adultere, c'est pource qu'il a rompu son mariage: et quand il se separe de sa femme, encores qu'il ne paillardast point ailleurs, puis qu'il a faussé sa foy qu'il avoit donnee, il est conveincu d'adultere. La raison c'est, qui le mariage emporte, que quand un homme s'adioint à une femme, il la prend pour sa compagne à vivre et à mourir.

[He notes contradictions between the civil law and the law of God]

Nous voyons donc comme la police est bien diverse de la Loy de Dieu: mais cependant aussi il n'y a nulle contrarieté. Et ainsi ce n'est point une excuse qu'il faille amener: mais plustost c'est une chose absurde, quand on dira: Et quoy? Dieu n'a point puni les divorces, il s'ensuit donc qu'il a consenté qu'ils se fissent ainsi. Non: la chose a autrement. Car le mariage tiendra indissoluble quant à la Loy de nature, et quant à la volonté de Dieu qui l'a institué, et a monstré qu'il doit estre inviolable. Mais cependant le divorce est permis: voire quant à l'ordre commun, qui n'est que pour tenir une bride entre les hommes ici bas, et non pas pour les reformer comme enfans de Dieu doivent estre, et qui sont gouvernez par son sainct Esprit.

. . . . . .

Il est vrai qu'il nous faut bien obeir à l'ordre public: mais ce n'est pas le tout, ce n'est qu'une partie. Si un homme est transgresseur des loix civiles, et qu'il soit punissable devant les iuges terriens, il le sera bien au double devant Dieu.

Or maintenant traittons la matiere du divorce. Quant à la police, il est oit permis à un homme de quitter sa femme: voire, mais c'estoit en luy baillant tesmoignage, afin que la femme par la cruauté de son mari, ou par quelque chagrin qu'il avoit, ne fust point diffamee: mais qu'on cogneust qu'elle s'estoit gouvernee honnestement avecques luy, et que ce n'estoit point par sa faute qu'elle estoit reiettee. Voila quant à la police. Or si on demande: Assavoir si tel divorce pourroit auiourd'huy estre permis? Regardons ce que nostre Seigneur Jesus Christ traitté. Il dit: Pour la durté de vos cœurs cela n'a point esté defendu. Or si entre les Juifs telle permission a esté donnee, auiourd'huy ce n'est pas le semblable entre nous. Car aussi bien la pluralité des femmes à este permise, comme nous avons veu, d'autant qu'elle n'a pas esté punie. Et auiourd'huy seroit-il question d'avoir cela? Nenni. Car nous voyons que d'autant que Dieu nous a revelé sa volonté plus à plein qu'aux Juifs, que c'est bien raison que nous n'ayons pas une telle bride; voire et la liberté qu'il nous donne est pour nous obliger plus, quant à ceci, que n'ont pas esté les Juifs.

Calvin.

(*b*) Quod ad divortium spectat, quamvis per indulgentiam concessum fuerit Judaeis, pronunciat tamen Christus nunquam fuisse legitimum, quia primae Dei institutioni, ex qua perpetua et inviolabilis petenda est regula, palam repugnat. Vulgo dicitur, iura naturae insolubilia esse; atqui semel pronunciavit Deus, arctius esse coniunctionis vinculum viri cum uxore quam filii cum patre.

Atqui si nuntium quis patri remittat, et iugum excutiat cui alligatus est, tale prodigium nemo admittet. Multo igitur minor erit solvendi coniugii libertas. . . .

Erunt duo in unam carnem. Hoc dicto non minus polygamia damnatur quam licentia in repudiandis uxoribus. . . .

Abutitur enim sua potestate magistratus, qui viro gratiam facit repudiandae uxoris.

Adde quod à politia et externo ordine multum differt spirituale regimen.

. . . . . .

Summa autem est: quamvis lex divortia non puniat, quae a prima Dei institutione dissident, adulterum tamen esse, qui reiecta uxore alterum sibi accipit. Neque enim est in hominis arbitrio coniugii fidem solvere, quam Dominus ratam manere vult: itaque pellex est, quæ legitimae uxoris torum occupat. Addidit autem exceptio, quia mulier scortando, se quasi putridum membrum a viro rescindens, eum liberat. Qui alias causas excogitant, quia supra magistrum coelestem sapere volunt, merito sunt repudiandi. Elephantiasin volunt iustam repudii causam esse, quia morbi contagio non modo ad maritum, sed et ad liberos perveniat. Ego autem, sicuti pio viro consulo ut elephantiacam uxorem non attingat, ita eius repudiandae licentiam non permitto. Si quis obiiciat, opus habere remedio, qui caelebes vivere ne queunt, ne urantur: dico remedium non esse, quod extra Dei verbum quaeritur. Addo etiam, numquam illis defore continentiae donum, si Domino se regendos tradant, quia sequuntur quod ille praescripsit.

Obrepet alicui uxoris fastidium, ut congredi cum ea non sustineat: an huic malo polygamia medebitur? Alterius uxor in paralysiu, vel apoplexiam incidet, vel alio incurabili morbo laborabit; an maritus incontinentiae praetextu illam reiiciet? Atqui scimus Spiritus auxilio nunquam destitui, qui in viis suis ambulant. Scortationis vitandae causa, inquit Paulus, quisque uxorem ducat (1 Cor. vii. 2). Hoc qui fecit, licet non succedat ex voto, suis partibus defunctus est. Ergo si quid desit, Dei subsidio sarcietur. Ultra progredi, nihil aliud est quam Deum tentare. Quod autem alteram causam notat Paulus (1 Cor. vii. 12–15), mempe ubi pietatis odio coniuges ab incredulis reiici contingit, non esse pium fratrem vel sororem tunc servituti obnoxium, a Christi mente diversum non est. Neque enim illie de iusta repudii causa disserit, set tantum an viro incredulo obstricta maneat mulier, postquam Dei odio impie reiecta non aliter redire in gratiam potest quam si Deum abneget. Quare nihil mirum, si Paulus alienationi a Deo dissidium cum homine mortali praeferat. Videtur tamen supervacua esse quam pouit Christus exceptio. Nam si capitale supplicium meretur adultera, quorsum attinet de repudio loqui? Sed quia mariti erat uxoris adulterium iudicio persequi, ut domum flagitio purgaret, qualis qualis fieret eventus, maritum, qui uxorem impudicitiæ convincit, absolvit Christus a vinculo: et fieri potest, ut in corrupto et degenere populo huius quoque sceleris tunc magna regnaverit impunitas. Sicuti hodie perversa magistratuum indulgentia facit, ut necesse habeant viri impuras uxores reiicere, quia de adulteris poena non sumitur. Notandum autem est, commune ac mutuum esse ius utriusque partis, sicuti mutua et par est fidei obligatio. Nam quum aliis in rebus primatum vir teneat, quod torum uxori aequatur, non enim est dominus corporis sui. Ergo quum adulter a coniugio defecerit, part est uxori libertas.

Qui repudiatam duxerit.—Hoc membrum pessime expositum fuit a multis interpretibus. Generaliter enim et confuse putarunt, caelibatum praecipi quoties divortium factum fuerit: ita si maritus adulteram reiiceret, utrique iniecta est caelibatus necessitas. Quasi vero sit haec repudi libertas, tantum ab uxore secubare: quasi etiam Christus non clare in hac causa fieri permittat, quod promiscue sibi Iudaei pro suo abritrio usurpare soliti erant. Fuit ergo ille nimis crassus error: nam quum adulterii damnat Christus, qui repudiatam uxorem duxerit, restringi hoc ad illicita et frivola divortia, certum est. Ideo Paulus manere innuptas iubet, quae sic dimissae fuerint, aut viris suis reconciliari, quia scilicet rixis et dissidiis non aboletur coniugium (1 Cor. vii. 11). Idque elicitur ex Marco, ubi nominatim exprimitur uxor quae a marito discesserit non quod liberum fuerit uxoribus dure maritis repudii libellum, nisi quatenus in exteros mores prolapsi erant Iudaei: sed notare voluit Marcus, corruptelam, quae tunc passim trita erat, reprehendi a Domino, quod post voluntaria divortia utrinque ad novum coniugium transibant: ideo adulterii nulla fit apud eum mentio.

Theodore Beza. De Devortio.

XIX.—(*a*) Nunc verò nobis de veris et ratis coniugiis dicendum est, num ea videlicet dirimi fas sit: et si fas est, quibus iustis rationibus id fieri liceat. Mirus enim hac in re fuit artifex Satan, humani generis hostis, modò quidem (quod difficile non fuit à plerisque impetrare, qui, quo sunt ad libidinem sponte naturæ propensiores, eò magis optant coniugiorum vinculum relaxari) persuadens

quod mutuo quorundam consensu deuincitur, ab iisdem quoque, vt cæteros contractus, mutua saltem dissensione, ac proinde publica ex certis causis auctoritate, dissolui posse: modò verò apud homines religiosores vsque adeò arctè matrimoniorum nodum adstringens vt seruandæ fidei obtentu conscientias misere torserit timore, vbi nullus erat iustus timor: donec tandem vtràque via grassatus omnia foedis libidinibus contaminauit. Cogit ergo nos ipsa necessitas duo quærere, et in primis quidem, illud quod alioquin optimo iure posset superuacaneum uideri, num videlicet vlla ratione quod semel ratum fuit matrimonium dissolui possit; deinde quibus de causis iuste dissoluatur.

Duo sunt autem quæ hic affirmo: vnum, duobus præterea modis coniugia ex Dei verbo, ac proinde auctore Deo, dirempta censeri, nempe adulterio et desertione, quamuis non eadem sit adulterii quàm desertionis ratio, alterum, nullam hic esse hominum, imò ne Angelorum quidem auctoritatem ad nouas leges de plenis ac veris diuortiis ferendas, sed hac in re penitus acquiescendum esse in vno Dei verbo. De vtroque sigillatim dicemus, ac de illo quidem priore loco.

(*b*) Adulterio igitur coniugium rectè et bona conscientia dirimi posse affirmo expressis hac de re Christi verbis. Quum enim videret Christus legem de lapidandis adulteris latam (vt et alias plerasque) contemni, cauere tamen conscientiis voluit: ideóque interrogatus an, vt facere plurimi solebant, quauis ex causa diuortii libellum tradere liceret, sic respondit vt non tantùm negaret id fas esse quauis ex causa, verùm etiam exprimeret, nulla id ex causa nisi ob adulterium licere: quibus verbis nihil planius aut magis perspicuum dici potest. Itaque nullus adhuc est, quod sciam, inter Christianos seu veteres seu recentiores inuentus qui non concesserit, probato adulterio, fas esse innocenti nocentem dimittere: sed plerique excogita distinctione inter separationem à thoro & dissolutionem ipsius coniugalis vinculi, quod rectè prius constituerant mox euertunt, quum noui coniugii potestatem separatis non concedunt: cuius sententiæ quum etiam Augustinus ipse fuerit, necesse est in primis ostendere quàm firmis rationibus omnia contraria argumenta doctissimi Theologi nostra memoria diluerint.

(*c*) Primùm opponunt illi istud Christi dictum, *Qui repudiatam duxerit, mœchatur.* Nam certè si penitus solutum esset vinculum, mœchari vir eiusmodi non diceretur. Respondeo, exceptionem priori membro additam, in posteriori quoque esse repetendam. Nam si qui dimittit vxorem extra causam fornicationem facit vt ea mœchetur, consequitur eum qui vxore propter adulterium repudiata aliam duxerit, non facere vt ea mœchetur. Ex quo rursum colligitur, id quod subiicitur apud Matthæum de repudiata, non nisi repetita ex priore membro exceptione intelligendum, quoniam Dominus alioqui sibi ipsi contraxisset. At enim obiicient illam exceptionem adulterii apud Marcum & Lucam non adscribi. Respondeo, nouum hoc non esse vt apud vnum Euangelistam illud exprimatur quod alii reticuerunt, et tunc locos magis concisos esse ex plenioribus explicandos. Prætereà illud quoque obseruandum est, etiam si apud Matthæum illa exceptio addita non esset, ne hoc quidem contra nos facturum. Nam de diuortiis propter adulterium neque Pharisæi quaesiuerunt, neque propriè respondendum fuit Christo: applicanda enim est responsio ad interrogationem. Rogatus autem fuit Christus non an aliquam ob causam veluti ob adulterium, licuerit diuortium, sed an ob quanuis causam diuortium in foro conscientiæ concedatur. Itaque neque apud Marcum, neque apud Lucam longiùs trahendum est Christi responsum, nisi exceptionem ex Matthæo suppleas.

(*d*) Secundum illorum argumentum nititur hoc Christi dicto, *Quod Deus coniunxit, homo non separet.* Deus autem virum et mulierem coniunxit: ergo homini nullo modo licet illud vinculum separare. Concedo totum illud argumentum, ideóque non assentior iis qui putant Magistratibus licere nouas diuortiorum leges condere: sed nego diuortii propter adulterium auctores esse homines, quum Dominus iam olim adeò expressè voluerit adulterio matrimonia dissolui, vt etiam adulteros morte punierit: et postea rursum Christus consulens conscientiis propter Magistratuum negligentiam adulterium exceperit, quum de diuortio non licito dissereret.

(*e*) Illud certè vix posset in dubium reuocari, interrogatum fuisse Christum à Pharisæis de eo diuortio quod inter Iudæos usurpabatar, quo videlicet ipsum thori vinculum abrumpebatur, ac proinde non esse de alio diuortii genere intelligendam Christi responsionem.

Huc accedit quòd iniquissimum fuerit innocentem luere nocentis culpam: quod sanè fiet si cogatur innocens vel adulteram recipere (quod sæpe honesto viro ipsa morte acerbius) vel scortationis periculum incurrere. Innocentius tamen de desertione loquens, hanc rationem diluit hac exceptione, quòd in multis casibus contingat aliquem iure suo sine sua culpa priuari, vt si alter coniugium incidatur. Sed facilis est responsio, longè aliud esse vitium corporis ex Dei voluntate superueniens coniugio, quàm crimen adulterii quo sese quispiam sponte et mala voluntate contaminauit. Itaque etiam si eiusmodi fuerit illud vitium vt alter alteri debitum ampliùs reddere non possit, tamen (vt suo loco dicemus) non propterea fit diuortium, tum quia potiùs oporteat coniuges in eiusmodi calamitate mutuo sibi auxilio esse: tum etiam quia qui propter eiusmodi calamitatem non potest ampliùs reddere debitum, tamen cum alio non factus est vna caro: ex quo consequitur adhuc manere matrimonii vinculum. At in adulterio, digna est supplicio nocens persona, non commiseratione: et præterea coniugii vinculum abrupit quisquis factus est scortatricis membrum. Præterea quum iidem Canonici quibusdam, et quidem meritò, præcipiant adulteram vxorem dimittere, ac proinde illam repetere prohibeant, quid illis fiet, obsecro, si non habuerint continentiæ donum? Petant illud, inquies. Verùm qua promissione freti particulare donum illud petent? Absurdum enim est statuere quempiam, sese per vxoris adulterium ad continentiam vocari. Deinde etiam si concederemus prorsus teneri innocentem nocenti resipiscenti veniam dare eò vsque vt etiam illam sibi rursum adiungat (quam Augustini opinionem suo loco expendemus) quid fiet, obsecro siqua perfrictæ frontis mulier vel scelus addat sceleri, vel simulatè resipiscat? quid si etiam adulterii repetiti conuicta sæpius repudietur? quid fuerit iniquius, obsecro, quàm innocentis qui uratur ne tum quidem rationem habere? Imò quis non videat ista noui ineundi coniugii prohibitione tum committendis eò audaciùs adulteriis, tum etiam si commissa fuerint, tolerandis et dissimulandis, aditum patefieri.

(*f*) Concludo igitur adulterio abrumpi coniugii non tantum vsum, sed vinculum, quod nisi voluntate innocentis rursum coalescat, integrum esse eidem innocenti, si continere non potest, nouas nuptias inire: quod tamen laudabile est, absque Ecclesiæ; ac etiam pie Magistratus venia non facere, vt infirmorum offendiculis occurratur. Verùm quid de nocente statuendum erit? Vtinam verò Christiani saltem Magistratus, ita vt divinæ et humanæ leges sanciunt, adulterii crimen vindicarent, ne quis istis quæstionibus locus relinquatur. Interea respondeo, primùm omnium iniquum esse vt nocenti personæ fiat nouarun nuptiarum potestas tantisper dum innocente in cœlibatu permanente pendet reconciliatio. Deinde oportere vt de syncera ipsius resipiscentia constet. Tertiò, nec statim nec temerè hoc illi concedendum, sed multum diúque admonendam vt, si fieri potest, lugere et cœlebs manere malit quàm coniugium repetere in quo tam turpiter se gesserit. Quòd si res ipsa ostenderit periclitari ipsius conscientiam nisi ei prospiciatur, nubat sanè cui vult, modò id fiat in Domino. Canonas enim illos quibus omnis spes coniugii, etiam innocente defuncto, nocenti quantunuis resipiscenti adimitur, aut etiam votum illud Satanicum perpetuæ continentiæ præcipitur; vt Apostolicæ doctrinæ repugnantes, atque ideò à Satana, sese in angelum lucis transformante, suggestos, planè repudio. Quoniam autem variæ præterea incidunt in hac controuersia quæstiones, age illas quoque scorsim explicemus.

(*g*) Nunc de desertione nobis dicendum est, qua videlicet dissolui quoque rata et iam consummata matrimonia ex Dei verbo eousque affirmauimus, vt qui desertus est seruituti non sit obnoxius. In primis autem dicendum videtur quis sit desertor vocandus. Desertorem igitur eum appello, cui, vt loquitur Apos-

tolus, non placet cohabitatio, id est, qui indiuiduam illam vitæ consuetudinem penitus abrupit. Nec enim cohabitationis sine ὀφειλομένης εὐνοίας, id est, debitæ beneuolentiæ nomine intelligitur duntaxat corpornm copulatio, quam barbarè vulgò vocant *debiti reddi-tionem*, sed mutuus ille conuictus, atque adeò summa in omni sancto vsu vitæ coniunctio. Addo autem illud *sancto*, vt sciamus eum quoque desertorem esse habendum qui cohabitationem quidem non deneget, verùm impias conditiones pertinaciter requirat. Præterea quum variæ simultates & rixæ ob religionis diuersitatem incidant, eò usque interdum efferuescentes vt secessio consequatur, adiiciendum est et illud, non priùs videri desertorem quempiam, quàm de eius qui religionis odio consuetudinem vitæ abrupit, penitus obfirmata voluntate constiterit. Quoties ergo tale quippiam inciderit in coniugio impari, id est, quoties infidelis quispiam odio veræ religionis, penitus abruperit sanctum illum indiuiduæ vitæ coniugalis vsum, matrimonium quantunuis antea ratum dissoluitur: nullo prorsus facto discrimine, an quum matrimonium contraheretur, vtraque persona esset infidelis, an altera duntaxat: an verò vtraque fidelis, quarum altera postea ad hæresim aut impietatem defecerit. Apostolus enim in genere pronuntiat, *Si discedit infidelis, discedat: non est seruituti subiectus frater aut soror in huiusmodi*, id est, quum quippiam huiusmodi incidit. Seruitutis enim nomine nihil aliud quàm coniugii obligationem commodè possis intelligere.

(*h*) Quædam tamen superioribus opponuntur, ac primùm quidem illud: Si matrimonium sic dissolutum dicamus, videri irritum fieri verbum Christi quo statuitur coniugium vnico adulterio dirimi. Respondent nonnulli, Apostolo spiritu Dei prædito licuisse aliquid adiicere illi Christi sententiæ, id quod non tam Apostolus quàm ipsemet Christus per os Pauli loquens facere videatur. Ego verò etsi verissimum esse agnosco quod de Apostolica auctoritate in hoc responso dicitur, tamen respondere malo nihil prorsus à Paulo adiectum fuisse Christi sententiæ. Quid igitur respondit Christus? Solo adulterio dissolui coniugium. Quid Paulus fideles alloquens? *Vxor à viro ne discedito: Vir uxorem ne dimittito.* Loquitur autem (vt suo loco diximus) de diuortiis quæ ob quasuis causis Iudæorum peruicaciæ concedebantur: nec adulterii meminit, veluti bene ominans Christianorum coniugiis. Quid verò idem Paulus de impari matrimonio? *Fidelis infidelem consentientem cohabitarene deserito.* Ergo ne hic quidem Paulus aliud quàm Christus. Sed quid si discedat infidelis? Hic verò non dicit Paulus rectè illum facere: (ita enim videri posset euertere Christi dictum, & plus iuris infideli quàm fideli tribuere:) sed, *discedat*, inquit, id est, quandoquidem non vult in officio permanere, maneat sanè in suo peccato, & hoc illi imputetur. Non dicit etiam Apostolus licere vicissim fideli discedere. Fuisset enim hoc absurdum, quia satis intelligitur desertam personam quam recipere nolit infidelis, cogi extra consortium eius permanere à quo est deserta. Itaque ne in his quidem Paulus quicquam adiecerit Christi sententiæ. Superest vnum illud, quòd quum dicat Christus eum qui extra causam adulterii vxorem dimittit facere vt ipsa mœchatur, et vicissim eum qui alia de causa dimissam ducat mœchari satis ostendit eiusmodo diuortia nunquam in foro conscientiæ licuisse, ac proinde sic dimissam mulierem non potuisse absque peccato alter nubere: at Paulus negat fidelem fratrem aut sororem obnoxios esse personæ infideli desertrici. Hoc verò si ita accipiendum esset, non tam deprehenderetur Apostolus aliquid adiecisse Christi dicto, quòm contrarium prorsus decernere: id quod vel suspicari de Paulo nefas est. Quid ergo? nempe rogatus Christus de coniugiis Iudæorum, id est, inter fidelem vtranque personam contractis (omnes enim circuncisi censentur fideles ex professione externa) de iisdem respondit, neque ipsius responso Apostolus quicquam addidit: de impari vero coniugio: neque interrogatus est, neque quicquam profectò respondit. Ideo Paulus de hac quoque quæstione à Corinthiis interrogatus, primum vtitur præfatione, *Reliquis dico ego, non Dominus*: deinde ex spiritu Dei respondet. Qui verò possit meritò videri Apostolus quicquam adiecisse Christi responso, quum de una specie interrogatus fuerit Christus, nempe de pari coniugio. de altera verò, id est, de impari coniugio Paulus responderit? Cur autem in hoc genere diuortii, cuius meminit Paulus, quum videlicet infidelis fidelem odio religionis deserit, aliud statuatur quam in eo de quo disserit Christus, quum nimirum ob fastidium alterius, aut aliam eiusmodi occasionem diuortii libellus datus fuerat, causæ facilè coniici possunt. Nam certè qui veræ religionis odio membrum Christi à se abiicit, dignissimus est qui eo priuetur. Deinde in aliis illis diuortiis præsumptum meritò fuit aliquid esse vitii in ea persona quæ dimittitur, quoniam vix fieri potest vt temerè prorsus quispiam vxorem repudiet: in ea verò quæ ob vnum veræ religionis odium dimittitur, quid tandem culpæ esse possit? Itaque dimissam personam planè iniquum esset luere impii desertoris culpam, quod fieret tamen si impii desertoris arbitrio maneret obstricta.

(*i*) Obiicitur et illud, quòd nomine seruitutis intelligi possint varia vel vxoris vel mariti officia, quæ præstare persona fidelis deserta non teneatur, imò ne maritum quidem desertum teneri desertricem infidelem sequi, quod alioqui facere vxor eius teneatur: inde vero non effici dissolutum esse ipsum coniugium. Respondeo, merum hoc esse commentum, quum generali nomine seruitutis vsus sit Apostolus, id velle excipi quod penè vnum meretur seruitutis nomen. nempe quòd qui est in coniugio, non sit corporis sui dominus. Deinde quum hoc ita explicatur ac si diceretur fidelem, non teneri sequi discedentem infidelem, ineptè hoc tribuitur marito fideli, quoniam maritum non teneri ad sequendam vxorem certum est, quum potius illam fugientem repetere ac reuocare possit. Itaque omnibus non contentiosis constare puto, quum dicatur à Paulo frater vel soror seruituti non subiici, intelligi abruptum esse omne coniugalis obligationis vinculum.

(*j*) Ex his autem arbitror liquere quid statuendum sit de cohærente alia quæstione, An videlicet soluto desertione matrimonio, fas sit desertæ personæ, superstite adhuc desertrice, aliud matrimonium inire. Nam si (teste Apostolo) desertus non est seruituti obnoxius, consequitur à lege alterius (vt idem Paulus ibidem loquitur) id est, ab omni eo iure quo persona desertrix cum obstrictum tenebat, liberatum esse. Quòd si liber est, ergo solutum est vinculum. Cur igitur si continere non potest, matrimonii remedio, contra doctrinam Apostoli, priuabitur, modò nubat in Domino? Itaque ne Canonici quidem nostri matrimonium denegant desertæ personæ, in eo tantùm peccantes quòd doctrinam Apostolicam, quæ vniuersalis est, ad certam speciem falsis distinctionibus restringunt, vt in superiore tractatu diximus. Age tamen contraries rationes expendamus.

(*k*) Octauo loco negant addendum esse quicquam ad verbum Domini: Dominum verò disertis verbis diuortia extra fornicationis causam damnasse. Ego verò concedo nihil verbo Domini adiiciendum esse, sed præterquàm quòd Pauli verba sunt Domini verba, quum Paulus hæc scribens spiritum Dei habuerit, neo sanè nostra defensione egeat: ad ea quæ iam antea pluribus respondi hoc quoque adiicio, quod magnopere videtur in hoc argumento considerandum, nempe Apostolum nullam nouam diuortii causam verbis illis significare, ex qua liceat matrimonium dirimere, ac proinde Christi verbis nihil adiicere. Quærentibus enim Corinthiis, an propter infidelitatem liceat diuortium facere, respondet non licere. Itaque in eo quod subiicitur de desertione, non est quæstio de diuortio faciendo, sed illud quæritur, an post diuortium illegitime factum ab infideli, liceat consulere fidelis conscientiæ. Tantum abest igitur vt in hac specie agatur de repudianda vxore, vel dimittendo marito, sicut in causa adulterii: vt contrà deserta persona se deseri conqueratur, et desertricem repetat quantum in se est. Itaque si coram Magistratu Christiano eiusmodi causa ageretur, nullus esset diuortio locus, quoniam secundum desertam personam iudicaretur, et iusta vi adigeretur desertrix persona debitum reddere. Quòd si desertrix persona nulla ratione possit ad mutuam coniunctionem repetendam adduci, negat Apostolus oportere innocentem luere nocentis culpam. Dicam apertiùs. Ob solam adulterii causam (sicut expressè testatus est filius Dei) licet diuortium petere et facere. Quid si igitur infidelis

fidelem deserat? imputetur infideli (inquit Apostolus), qui sanè adulter est si cum alia persona consuescat nedum vt legitimè diuertat. Interea verò æquum est vt fideli innocenti consulatur, quò possit vitam tranquilla conscientia transigere. Ex his efficitur Apostolum non facere ius dirimendi propter infidelitatem matrimonii, sed hoc tantùm dicere, desertionis culpam totam residere penes deserentem, et esse interea innocenti desertæ personæ consulendum.

(*l*) Nostra verò sententia tam multos offendi posse demiror, quum nec ipsi Canonici, vt modò diximus, præcisè in omni desertione nouas nuptias prohibeant: Ambrosius verò apertè concedat, et in nonnullis multo minore vel potius nulla occasione, iidem Canonici non tam difficiles se præstent. Si Proferam Leonis constitutionem qua vxoris furiosæ marito nouas nuptias post triennium concedit, obiicient nimirum, et rectè quidem, opinor, aliud esse Cæsaris quàm Christi leges. Verùm quid responderint ad illud sanctissimi scilicet Papæ rescriptum, cuius antea memini, solenni totius Romanæ curiæ iudicio in Hispanias vsque transmissi, in quo, superueniente, etiam per ignorantiam, spiritualis (quam vocant) affinitatis vinculo, non modò dissoluitur quantumlibet ratum prius coniugium (contra quàm ipsi alibi docent) verum etiam et viro et vxori post annum contrahendi noui matrimonii potestas conceditur? Quæ quum ita se habeant, modò priùs legitimis omnibus modis et officiis tentarit deserta persona desertricem Deo et sibi reconciliare: modò ipsa in culpa non sit: modò patienter quantum in se est resipiscentiam infidelis expectarit: modò causæ cognitio legitima, de qua suo loco dicemus, præierit: modò denique in Domino nouas nuptias meditetur, cur dubitem quin ex Dei per Apostolum loquentis verbo, liceat desertæ personæ matrimonium inire?

(*m*) Postremò vel maximi est momenti hæc quæstio, An quod de desertione ex Apostoli doctrina constituinus, locum habeat quacunque ratione alter alterum deseruerit, Certum enim est Apostolum, si quis propius intueatur ipsis scopum, de ea demum desertione agere quæ religionis odio fiat, ac proinde in matrimonio impari. In causa verò diuortii quod meritò per se odiosum est, minimè iis assentiendum arbitror qui causas in verbo Dei proditas, quantum possunt, amplificant, sed potius quàm arctissimè fieri potest, arbitror intelligenda quæ de hac re in Dei verbo traduntur. Respondeo igitur primum de impari, ac deinceps de pari coniugio. In impari comuio, si prior discesserit infidelis, non ita difficile fuerit, quicquid prætexat, intelligere num religionis odio, an verò aliam ob causam discesserit. Nam præterquàm quòd sciri facilè potest, an liberum veræ religionis cultum fideli tolerabiliter saltem concesserit, quum fidelis sit in Ecclesiæ potestate, facilè inquiri in eius mores, et ipse officii admoneri potest: cui consilio si paruerit, vel composita fuerint omnia, sublata videlicet dissidii occasione: vel, infideli non acquiescente in alterius resipiscentia, aut iudicio sese non sistente, aut nihil probante, patebit ipsius hypocrisis, qui reuera non tam fidelis mores quam religionem oderit: sin uerò qui se fidelem profitetur, Ecclesiæ tamen non paruerit, digna fuerit contumax persona quantumuis fidelem se prædicans, quæ ex Ecclesiæ cœtu eiiciatur. De extraneis verò iudicabit Dominus: et omnino iniquum fuerit, cuiquam suam culpam atque adeò contumaciam prodesse. Quid si vero infidelis non amplius ferens contumacis et ex Ecclesiæ communione eiectæ personæ mores, nouum etiam matrimonium inierit? Tum vero non desertione, sed adulterio dissolutis prioribus nuptiis, alteri coniugio locus erit: quod tamen ne tum quidem temerè fiet, in eius personæ gratiam quæ sua contumacia præbuerit tot offendiculorum occasionem.

(*n*) Sed quid si fidelis vel morositate, vel ob malam tractationem (non tamen interueniente religionis odio) prior discesserit? Tum sanè fidelis aut reconcilietur oportet, aut extra coniugium manens suam crucem ferat. Quod enim dixit Apostolus de pari coniugio, *Ne vir vxorem, aut vxor virum relinquito*, in impari quoque coniugio locum habet, si tollas religionis causam, quum idem Paulus disertè prohibeat fideli ue infidelem deserat quamdiu cohabitare non recusarit. Est autem etiam Magistratus officium, et publicæ tranquillitati et sigulorum ciuium saluti consulere, vt si fortè fidelis in culpa deprehendatur, nec Ecclesiæ pareat, cogatur aut minis aut pœnis ad coniugem reuerti. Sed quid si non impatientia vel malo affectu discessit, verùm quòd absque certo vitæ periculo apud infidelem versari non posset? Tum sanè admittatur quidem infideli, tantisper dum ad frugem redeat, vsus illius personæ qua seipsum priuat: interea verò coniugii vinculum minimè dissoluatur. At enim, inquies, quid si vel infidelis nocens, vel innocens fidelis, non habet continentiæ donum? Infidelis quidem hoc sibi ipsi imputet, nisi mores mutare et reconciliari malit: fidelis autem petat donum quod non habet, et impetrabit. Est enim ei crux illa à Domino imposita, qui vetat homines disiungere quod ipse coniunxit, nec tamen sinit suos supra vires tentari, si modò vigilent et precentur.

(*o*) In pari autem matrimonio quum legitima non possit esse desertio, (dicente Apostolo), *Neque vir vxorem, neque vxor virum relinquito*) et vtraque persona sit in Ecclesiæ potestate, diuortium desertione fieri non posse videtur: sed cogendum esse qui in culpa deprehendetur, tum Ecclesiasticis, tum etiam, si necessitas postularit, Ciuilibus pœnis, ad faciendum coniugis officium, vt Christianum hominem et honestum ciuem decet. Quædam tamen hoc etiam loco difficultates oboriuntur. Nam quid si flecti contumax deserentis animus non possit? Respondeo, tantisper dum Magistratus contumacem domare possit, innocenti in precibus perseuerandum, quæ si ex fide fiant (quum Dominus suos in tentationibus non deserat) irritæ esse non possunt. Sed quid si inuitus alter iusto metu coactus secesserit, an cogetur cum certo vitæ periculo redire? minimè verò, sed priuetur quidem ille qui in culpa est, alterius consuetudine, tantisper dum sapere et officium facere didicerit: innocens verò statuat interea sese ad cœlibatum vocari, et in fide petat victoriam ab eo qui supra vires tentari suos non sinit: matrimonium verò ob eam causam dirimendum, quum vtraque persona est in Ecclesiæ potestate, in verbo Dei non inuenio. Verùm quid si non simpliciter alter à mutuo conuictu secesserit, verùm etiam extra territorium aufugerit? Tum verò vtimur hoc iure in hac Geneuensi ecclesia. quod mihi videtur verbo Dei consentaneum. Præeunte legitima cognitione, nocente quoque, si fieri potuit, literis saltem et nuntiis euocato, nec tamen sese iudicio Ecclesiæ sistente, tandem trinundina præeunte tum in Ecclesiæ cœtu tum apud Magistratus denuntiatione, desertione solutum matrimonium pronuntiatur. Quanuis enim iste sese religionis odio non discessisse fortasse profiteatur, tamen qui Ecclesiæ cognitionem subterfugiens, contra conscientiam matrimonium dirimit, manifestè infideli, simul et religionis et coniugis desertori, meritò æquiparatur.

(*p*) Sed ad quos iudices pertinet istarum rerum cognitio? Id verò difficile non est existimare partim ex reci ipsius natura, partim ex purioris Ecclesiæ consuetudine. Contractum hunc diximus mixtum esse, quoniam quatenus ad societatem humanam spectat, planè ciuilis est, vt et reliqua hominum inter se commercia; quatenus verò Deus expressè dicitur interuenire, et coniuges copulare, (vnde etiam hic mos est vetustissimus, et planè, vt arbitror, Apostolicus, vt publicè in Ecclesia benedicantur qui hunc contractum ineunt) planè diuinus est et Ecclesiasticus. Huc accedit et illud quòd in iis quæ ad ipsum coniugii vinculum attinent, ex vno Dei verbo cuius primaria est in hoc contractu auctoritas, decidendæ sunt controuersiæ: verbo autem diuini interpretatio procul dubio ad ministerium Ecclesiasticum spectat. Denique quum dissidentes coniuges sui officii admonendi sint ex Dei verbo, et, quoad eius fieri debet ac potest, reconciliandi, tum quoque quum iusta diuortii causa comperitur: quum denique satisfactiones Ecclesiasticæ sæpe iniungendæ sint, quod fieri absque causæ cognitione nec potest nec debet: ad quos alios, obscero, hæc cura potiùs quàm ad Ecclesiam, id est, Ecclesiæ Presbyterium, illic quoque vbi Magistratus Christianus est, pertinebit? Et fuisse hunc morem totius veteris Ecclesiæ, etiam sub Christianis imperatoribus ex Canonibus apparet, ex quibus procul dubio presbyterium, nulla cum Magistratus iniuria, iudicabat, sicut vel ex illo incestuosi Corinthii exemplo liquet. Verùm quænam illa erant iudicia? nempè merè Ecclesiastica siue spiritualia, nullis prorsus ciuilibus, siue pecuniariis siue corporalibus poenis sancita. Absit

enim vt sanctos Episcopos vel Presbyteros vsquam existimemus sibi vendicasse vllas civilis Magistratus partes. Mors enim Ananiæ et Sapphiræ, excæcatio Elymæ, et si qua eiusmodi facta sunt, extraordinaria et singularia fuerunt, neque in exemplum magis trahenda quàm Phinees factum. Sed rursus quum contractus iste, vt paulò antè dixi, vel maximè ad societatem humanam pertineat, plurimáque merè ciuilia in controuersiis coniugalibus incidant, vt quæ ad ius dotium, ad donationes mutuas, et plurima eiusmodi spectant: atque adèo plurimùm intersit Reipubl. ritè aut minus ritè ex verbo Dei coniunctos, aut postea separatos, auctoritate quoque Magistratus, diuinarum etiam legum custodis vindicisque, cognosci: iure suo certè non prophani tantùm, verùm etiam Christiani et religiosi Principes leges de coniugiis posuerunt passim extantes, et ex iis ciuiliter iudicarunt, bonis Episcopis non modò non reluctantibus, verùm etiam hoc in primis postulantibus. Sit igitur hæc moderatio, vt quum mixtus sit hic contractus, Presbyterium de iure conscientiæ ex Dei verbo, Magistratus de ciuilibus, ex legibus bonis et æquis iudicet: quòd si diuortio sit locus, Presbyterium quidem ex verbo Dei diuortium faciendum pronuntiet, Magistratus autem ipsemet dirimat: ita vt nec illud delibet vllam Ciuilis iurisdictionis partem, nec Magistratus ciuilis quæ Ecclesiastici ministerii sunt ad se pertrahat, quin potiùs Ecclesiæ auctoritatem sartam tectam tueatur. Itaque quòd nolunt Canonici in foro conscientiæ valere diuortia, nisi præierit Episcopi iudicium (præerat autem Episcopus Presbyterio, ex cuius etiam non autem ex sua vnius sententia iudicabat) in eo rectè sentiunt.

Th. Beza (Supplemental).

(*q*) . . . Hoc, inquam, omitto, quoniam hoc loco non est nobis propositum de civilibus adulterii poenis disputare. Tantum dico, longè praestitisse semel necare adulteram, sicut iure divino et ciuile vere legitimo cauetur, quam præposteræ clementiæ praetextu vitam illi ad corporis simul et animae aeternum exitium prorogare. Quid enim aliud est ad perpetuam continentiam aliquem vel invitum cogere, vel imprudentem allice, quam certissimo mortis aeternae periculo ipsum exponere. [This of the Imperial law of forcing an adulteress into a convent.]

In pari autem matrimonio quum legitima non possit esse desertio (dicente Apostolo, *neque vir uxorem, neque uxor virum relinquito*) et utraque persona sit in Ecclesiae potestate, divortium desertione fieri non posse videtur: sed cogendum esse qui in culpa deprehendetur, tum Ecclesiasticis, tum etiam, si necessitas postularit, civilibus poenis, ad facienum coniugis officium, ut Christianum hominem et honestum civem decet.

Nostra haec igitur sententia est, de Divortiis vere sic appellatis, id est, quibus vinculum coniugii bona conscientia soluitur, ex uno Dei verbo iudicandum esse, cuius custodes, non autem transgressores, esse Magistratus oportet.

Summary of opinions of some Continental Reformers as to Divorce referred to in Q. 39,011.

Zwingli:

Allowed divorce under jurisdiction for various causes which seem to cover incompatibility.

Luther:

Allowed divorce for impotence, for adultery, and where they are unable to render duty to each other. [His language seems to vary.]

Melanchthon:

Allowed divorce for impotence, for adultery, for desertion, for "sævitia," attempts at life, but not for incurable disease.

Peter Martyr:

Allows divorce for adultery, and in the case of a heathen spouse. Other causes he dislikes.

Calvin:

Allows divorce for adultery, and in the extreme case of heathen spouses, but not for cases of disease.

Beza:

Allows divorce for adultery and desertion by an unbeliever. [In some cases the guilty party may re-marry.]

Bucer:

There must be divorce in all cases of adultery. Divorce is allowed in cases where the fullest ends of marriage are not reached, and practically by consent.

Opinions of some English Reformers in favour of the indissolubility of marriage referred to in Q. 39,065.

(1) *Cranmer*, in letter to Osiander (1540). [Jenkyns, Remains of Cranmer, Oxford, 1833, Vol. I., 304.]

. . . quid poterit a vobis in excusationem allegari proeo, quod permittitis, a divortio, utroque conjuge vivo, novas nuptias coire, et quod adhuc deterius est, etiam absque divortio uni plures permittitis uxores. Id quod et tute, si recte memini, inquibusdum tues ad me literis apud vos factum diserte expressisti, addens Phillippum ipsum sponsalibus posterioribus, ut paranymphum credo atque auspicem, interfuisse.

Quæ ambo, tum ipsius conjugii ratione, quae non duo; sed unam carnem facit, tum etiam Scripturis sunt expresse et manifeste contraria, ut patel Matth. xix., Mark x.; Luke xvi.; Rom. vii.; 1 Cor. vii. Quibus locis perspicuum fit, ex apostolorum, atque adio Christi ipsius, institutione, unum uni debere matrimonio conjungi, nec perse sic conjunctos postea, nisi interveniente morte alterutrius, denuo contrahere. Quod si responderitis, hoc intelligi excepta causa fornicationis: an uxoris adulterium fuerit causa cur Philippus marito permiserit aliam superducere, vos melius nostis. Quod si fuerit, tunc objiciemus; ab uneunte hucusque Ecclesia (cujus exemplis oportet Scripturam interpretationes conformari confirmarique) nunquam, quod scimus, hoc sic fuisse acceptum.

[A long argument in this sense follows.]

(2) *The Institution of a Christian Man* (1537).

"In marriages lawfully made, and according to the ordinance of matrimony prescribed by God and holy Church, the bond thereof can by no means be dissolved during the lives of the parties."

The necessary Doctrine and Erudition (1543).

Repeats the above reading "God and the laws of every realm," instead of "God and holy Church."

Hugh Latimer. Last Sermon before Edward VI. Sermon XIV. [Sermons of Hugh Latimer, Parker Soc., 1844, pp. 243–4.]

He urges the King "to take an order for marriages here in England. For here is marriage for pleasure, and voluptuousness, and for goods: and so that they may join land to land, and possessions to possessions: they care for no more here in England. And that is the cause of so much adultery, and so much breach of wedlock in the noblemen and gentlemen, and so much divorcing. And it is not now in the noblemen only, but it is come to the inferior sort. Every man, if he have but a small cause, will cast off his old wife, and take a new, and will marry again at his pleasure: and there be many that have so done. I would therefore wish that there were a law provided in this behalf for adulterers, and that adultery should be punished: and that might be a remedy for all this matter."

[He would punish adultery with death after the first offence.]

Whitgift. [In Gibson's Codex, edn. 1713, p. 536. Note to Canon CVII. of 1603.]

He refers to case of *Fuliambe*, who, having divorced his wife for incontinency, married again during her life: "and the second Marriage was declared to be void, because it was only a Divorce *a mensa et thoro*: and because Archbishop Whitgift affirmed, that several grave Divines and Civilians, whom he had assembled at Lambeth to consider that point, did all agree that such marriage was void."

First Book of Homilies (1547). [Homily of Swearing, Pt. I., p. 72, edn.; Oxford, 1832, p. 72.]

"By like holy promise, the sacrament of matrimony knitteth man and wife in perpetual love, that they desire not to be separated for any

displeasure or adversity that shall happen." [This was edited by Cranmer.]

Richard Hooker: Eccles. Polity., Bk. V. c. LXXIII.

"Man and woman. . . . were of necessity to be linked with some straight and insoluble knot."

"The ring . . . nothing more fit to serve as a token of our purposed continuance in that which we never ought to revoke."

[Jeremy Taylor's sermon, "The Marriage Ring" (Vol. V., espec. p. 254), states the sacramental view of marriage strongly.]

Adjourned for a short time.

Rev. Cyril William Emmet called and examined.

39,106. (*Chairman.*) You are one of the clergy of the Established Church?—That is so, my Lord.

39,107. I believe the reason for your being present is that you wrote an article in the "Church Quarterly Review" in April last on the questions, to some extent, which we have under consideration?—That is so.

39,108. And you were accordingly communicated with, and have prepared a short paper on the subject?—Yes.

39,109. Your proof is really a *resumé* of the conclusions which you arrived at in your article?—I am afraid perhaps I ought to have put them more fully. I did not know what the proper procedure was before a Commission, and I just sent in a *resumé* of what I had already written.

39,110. Would it suit you to read this and comment on any points you wish to mention in the course of it?—Certainly.

39,111. That will enable you to put everything before us?—Yes.

39,112. I should ask, how long have you been ordained?—Eleven years.

39,113. And have you made some study of this subject?—I have, my Lord.

39,114. Will you kindly read the paper, then?—

"This proof is a *resumé* of the conclusions arrived at in the writer's article in the "Church Quarterly Review" of April 1910, where full references may be found, if required.

"In the Old Testament we find divorce taken for granted, as established by immemorial custom; it is limited and restricted by legislation though not abolished. At the same time, there are clear enunciations of a higher ideal of marriage which implicitly condemns the practice.

"In the New Testament teaching there are two main points to be considered: (1) There are repeated condemnations of divorce in general; the passages which emphasise this side present no special difficulties of interpretation, and give rise to little discussion; they are therefore in danger of being overlooked. (2) There are three much disputed passages which seem to admit the possibility of exceptions to the general rule. (*a*) Two verses in St. Matthew allow divorce and remarriage in the case of adultery. It is true this interpretation is disputed, but it is that adopted by the best scholars. Many leading critics, however, take the view that the exception represents a modification of Christ's teaching and does not rest on His direct authority. But even so, the following considerations must be borne in mind:—(i) The words in dispute are undoubtedly an integral part of St. Matthew's Gospel, and, therefore, embody the opinion of an important section of the early Church. (ii) They may be also a correct interpretation of Christ's meaning, since He may well have taken for granted the current view that adultery *ipso facto* dissolved a marriage. (iii) If we appeal to the New Testament in a matter of this sort, we must take it as it stands; we can hardly expect Parliament to adopt critical views (however probable) of the sources which lie behind the present text of our Gospels. (*b*) There is a much-disputed passage in I. Corinthians, where St. Paul perhaps allows remarriage in the case of a Christian deserted by a heathen partner.

"The New Testament then is clear and decisive in its statement of the main principle, but leaves a *margin of uncertainty* as to possible exceptions. This uncertainty can, from the nature of the case, never be finally disposed of. The conclusion to be drawn is that we are meant to go to the Bible for principles, not for detailed legislation. Neither Christ nor His Apostles left us codes of morality. They laid down principles which were to be worked out in practice by the Church or the Christian State. The writer is bound to say that in his opinion the New Testament does leave room for exceptions to the general principle which prohibits divorce, and that the precise limitation of those exceptions must be partly determined by the varying social requirements of each age. But he would submit that if justice is to be done to the teaching of the New Testament regarded as a rule, the following conditions should be observed: (i) That any exceptions should be carefully defined and restricted within as narrow limits as possible. (ii) That their existence should be recognised as a necessary evil, a concession permitted for the hardness of men's hearts, in order to prevent worse evils. In an ideal state they would not exist, just as, according to Christ's teaching, oaths ought to be superfluous, if a man's simple word could always be trusted. We have, however, to recognise facts; men are not always truthful and marriage is not always ideal. (iii) That the ultimate object of any legislation which is to claim the sanction of Christianity should be the gradual realisation of the ideal, not an increasing liberty to drift further from it. If these considerations are forgotten, and the whole stress is laid on the possible exceptions admitted by the New Testament, the true drift of its teaching is entirely mistaken."

39,115. You rather indicated that you might desire to add something. If you will do so, I shall be obliged?—I notice in reading it over I say "in an ideal state they would not exist." I mean, of course in an ideal state, or condition, of society, not an ideal government. I should like to add something with regard to a question about which I believe the Commission has heard almost as much as it wants—the question of the supposed exceptions in St. Matthew's Gospel. I quite admit that the critical arguments are in favour of the view that probably the exception does not represent the *ipsissima verba* of Christ. At the same time there is a margin of uncertainty as to whether it may not go back to some other report of His words, some memory of a conversation of His on some entirely different occasion, and then combined with this same occasion which Mark narrates; and certainly the Church and State must take the New Testament as it stands in a matter of this sort. Further, even if the words are not Our Lord's, they might quite well be a correct gloss giving His real meaning, and modifying the general principle as He would have Himself modified it. There is a very good parallel to this in the Sermon on the Mount, where certain manuscripts of St. Matthew add after: "He that is angry with his brother" the words "without a cause——." Now the words "without a cause" are a gloss, and are omitted from the best manuscripts of St. Matthew—at the same time they are no doubt a correct gloss and convey Our Lord's real meaning—modifying the very general and sweeping statement; and it is quite possible that the exception "except for the cause of fornication," can be explained in the same way. But there is one further thing I should like to say very emphatically, only I say it with some hesitation, because one is loath to differ from people whom one greatly respects; it is this: that those who maintain this exception in St. Matthew does not represent the words of Christ, and also is directly contrary to His teaching, are taking up a most dangerous ground. They regard a second marriage after divorce for adultery as a legalised adultery or bigamy; that is to say, they are committed to the position that the author of the first Gospel is guilty of the horrible mistake—assuming it is unintentional—one must call it something stronger if it was inten-

tional—of twice putting things into Our Lord's mouth the permission to commit a heinous sin. Now, that is really the most serious attack on the authority of the first Gospel that can possibly be imagined; it destroys its credit altogether. Now it is on this Gospel, for instance, that the command to baptise in the name of the Trinity rests; and the text on which that rests is open to critical attack no whit less grave than that to which this exception "except for adultery" is open; and it seems to me the only possible Christian view, if we maintain the credit of the Gospel, is to hold that whether the Gospels represent the words of Christ or not, they represent His mind in all essentials, as the outcome of the Spirit which was to guide His followers into all truth. This attitude alone, for instance, can properly preserve the authority of the fourth Gospel, which we cannot well receive as the *ipsissima verba* of Christ, but we say it represents the spirit, and we must apply the same thing to the exception in St. Matthew, even if it cannot be said to represent His exact words. That is the chief thing I should like to add. I see I have said, speaking of 1st Corinthians, that "perhaps" St. Paul allows remarriage. I confess that further thought and further reading incline me to substitute "most probably" allows remarriage.

39,116. There is one question I should like to ask. Do you confine the exception, according to your interpretation and your views, to adultery, or do you permit of other causes which are, as you say, carefully defined or restricted?—It is a question, my Lord, that I find some difficulty in answering. I have no doubt at all about the adultery, but building on the 1st Corinthians' passage and its probable interpretation, it does seem to me that the door is not entirely shut, and that the Christian Church ought to be able to acquiesce in certain carefully restricted exceptions besides; but whether those exceptions are really necessary is a point that should be decided by the social requirements and conditions of the age.

39,117. You would then, perhaps, in some way suggest their definition by considering whether they entirely frustrated the objects of marriage?—Exactly.

39,118. According to the needs of the day?—Yes.

39,119. Is there anything else you think it worth while to add?—No, I think not, my Lord.

39,120. (*Lord Guthrie.*) Mr. Emmet, I suppose you are as strong as any men against divorce except as the most final remedy?—Most certainly so. I should have said I should yield to nobody in my sense of the importance of the sanctity of the marriage tie and the pure home as the whole foundation of society.

39,121. As far as you are aware, though the Churches have differed so much, has every Christian Church in every country discouraged divorce wherever possible?—I imagine so, my Lord.

39,122. And never recommended it where it could possibly be avoided?—Certainly not.

39,123. You would refer to St. Paul's action as stated in 1st Corinthians. Is it your view that he there introduced a remedy at his own hand for a case which had not been before Christ at all?—That would be the most probable interpretation.

39,124. Now you said that this question admits of room for difference of opinion. There is room for difference of opinion, even as to whether St. Paul was right, is there not, in that particular case?—As to whether he was right in limiting remarriage to the case of a mixed marriage?

39,125. Yes?—Certainly it would be quite possible to say St. Paul allowed this and St. Paul was wrong. That is a perfectly intelligible position.

39,126. Anyone who thinks that divorce should be allowed only for adultery would necessarily disapprove of St. Paul's action?—He would probably say, if he was building on the Bible, that the passage in 1st Corinthians does not allow of remarriage but only of separation.

39,127. But if it does allow of remarriage?—Then he would have to throw St. Paul's authority overboard, as far as I can see, or else he would take the line that there is a distinction to be drawn between a Christian marriage and a non-Christian marriage.

39,128. Now I would like to know what you say about that. What view do you take with regard to Christian marriage as opposed to universal marriage?—I am bound to say that with regard to the question of dissolubility I can see no difference whatsoever. St. Paul was certainly writing as a Jew, though in this particular case he was writing mainly to Gentiles. Amongst the Jews I believe it is the case that there was no sort of religious ceremony, and it did not come into Christian times till comparatively late I think. Mr. Lecky, in his History of Morals, says it came in about the 10th century; but that I should have to verify. [II., p. 351.]

39,129. As a necessity?—As a necessity, yes; but St. Paul when he was writing was writing of marriages that had been solemnised according to the ordinary law of the State in which the parties lived; not marriages which had received some further sanction from a religious ceremony. I cannot see how a distinction can come in there.

39,130. Apart from St. Paul, what do you say of the suggestion that Christ was legislating for Christian marriages as against universal marriages?—That is really, I suppose, the whole question of the proper interpretation of the Sermon on the Mount and His teaching in general. There is no doubt that, as laying down a moral ideal, in that record His words are binding on Christians in a sense that they are not binding on non-Christians. But with regard to this particular point of marriage one hesitates to say what was in Our Lord's mind, at the same time one can see no evidence for suggesting that He was thinking only of marriages amongst his future followers and not in the world as a whole. In speaking of marriage He was very possibly referring to the recent divorce of Herodias and her adulterous marriage with Herod. That was possibly the original ground of the Pharisees' question. He is answering the Pharisees in one passage at any rate.

39,131. Then with regard to His teaching in general, do you understand that He was recommending His views only to those who would become His followers or to all whom he addressed?—I should imagine that in a case of that sort He would say that the more widely His views were adopted the better, but that it could only be expected that they would be fully adopted by those who were His followers.

39,132. But they were addressed to all?—Addressed to all, certainly.

39,133. Then if St. Paul took the line he did in a case that had not been before Christ, do you think that his action could be reconciled (assuming that remarriage was meant, you know) with the Rigorist interpretation of Christ's words?—It does seem to me (and that is the point that has most affected me in my consideration of the subject) that if St. Paul, more or less knowing the tradition of our Lord's words, yet allowed remarriage in certain cases, he looked upon our Lord as laying down a principle that was susceptible of certain modifications. I can, myself, see no escape from that conclusion.

39,134. If St. Paul took that line—thought himself entitled to take that line at his own hand with regard to a case not before Christ, is it your view that Christians from time to time, when new cases arise, must apply their minds and consider how these new cases are to be dealt with, always in conformity with the general principles of Christ's teaching?—It is difficult to say what authority there is at the present time that could quite, in our own minds, correspond to the authority of St. Paul. If the Christian Church was really united and could speak with a unanimous voice, one would certainly accept its conclusions in a matter of this sort, and would certainly say it had power to lay down a possible exception. I am not prepared to say what authority could really add to St. Paul's modifications.

39,135. You are keeping in view that St. Paul expressly says that he is doing it himself?—Yes, "Not I but the Lord."

39,136. Not after consultation with other apostles or with the Church in general?—No, but I should consider that St. Paul had certain plenary individual authority.

39,137. Which is not represented now?—Not quite represented now.

39,138. How does the argument affect you, Mr. Emmett, which has been powerfully urged, that when the disciples heard Christ's views they practically said, "Well, what is the good of being married at all?" Does that seem necessarily to imply that he had prohibited divorce in all circumstances, or merely that he was laying down a stricter view than was prevalent?—I admit that it does rather suggest that He had prohibited divorce under all circumstances, but I do not think that is quite incompatible with the view that He was taking a line which was quite as strict as the strictest theoretical view of His time, and was practically a great deal stricter than any practice that was in force.

39,139. Then there is another argument I should like to have your view upon. We know what you say as to whether the words "save for fornication" were used by Christ or not. Now it is suggested that, suppose He enunciated a law with one exception, it is more difficult to read in another exception than to assume that He made a general statement recorded by St. Mark and St. Luke, and to assume that He did not exclude possible exceptions?—You mean it would be really easier to graft further exceptions on to the version of St. Mark then it would on to the version of St. Matthew?

39,140. Precisely?—I confess there is something in that. I am not prepared with an answer at the moment.

39,141. Take as an illustration, Christ tells the young ruler to keep the Commandments, "Thou shalt not kill." Then, of course, He did not prohibit the two well-known exceptions of self-defence and that of a public authority, although the enunciation is absolutely general. It is suggested that that is easier than if He had said, "Thou shalt not kill save in self-defence." Do you think there would have been any difficulty there in putting in the other exception, the act of a public authority?—I do not think there would, unless one thought that Our Lord was really speaking as a legislator. Otherwise it would be easy to say that self-defence was an illustration of exceptions that could be applied according to common sense.

39,142. I suppose it is quite clear, Mr. Emmet, that Christ maintained, as every Church has maintained, the normal indissolubility of the marriage relation?—Of that I should think there was no doubt whatever.

39,143. And it is equally clear that any proposal which would involve the dissolution of that relation for trivial causes would be contrary to Christ's teaching?—Absolutely.

39,144. Or which gave, as among the Jews, one of the spouses the right, at his own hand, to put away his wife. It would he absolutely inconsistent with Christ's teaching?—I am not quite sure that I follow you in the last. Do you mean the right to put away without application to any legal tribunal?

39,145. Yes?—Oh yes, certainly.

39,146. Then how do you put it. Can you express in a general statement what you think would be necessary in order to come within the permission, which you think the State has, to introduce limited divorce?—I feel that is a point that is really outside the range where I have experience or any power of speaking.

39,147. May I put it to you in this way. You have heard what other witnesses have said, that it must be something that makes the continuance of the marriage relation practically impossible?—That seems to be a fair definition.

(*Chairman.*) He has already said so. I put it to him.

39,148. (*Lord Guthrie.*) Very well. Might I ask you finally this question. In your view, must such a cause involve moral wrong on the part of the person who is divorced. Of course, I have in view insanity, you know?—I know. That has been a question which has been in my own mind, to which I have been able to find no answer. I think I had better say that.

39,149. A very difficult question?—Yes.

39,150. (*The Archbishop of York.*) I only wanted to ask one or two simple questions, Mr. Emmet. I am sorry I was not here earlier in your evidence. I see in your proof you say, "Any exception to what seems "to be the principle laid down in the New Testament "should be carefully defined and restricted within as "narrow limits as possible." Have you been able in your evidence, which I have not heard, to indicate on what principle you would restrict any extensions.

(*Witness.*) Do you mean as to what should be the authority imposing the restrictions?

39,151. No, on what principle you would make any restrictions?—I think that is the same as the question which has just been asked me. The only formula that I can think of (and it is very difficult of application) is one which entirely destroys, not only one of the purposes of marriage, but all the purposes of marriage, and makes them impossible.

39,152. Do you include mental as well as physical obstacles? Perhaps you have not thought that out?—I have thought about it a great deal, and found it very difficult to find an answer. I am bound to say a case of insanity, if it can really be assumed to be incurable, does seem to me to be just one of those things that are to be admitted on the analogy of the Pauline exception.

39,153. But surely the Pauline exception has very little reference to any exception except as to some difficulties in heathen lands?—That is so if one takes it literally; but if one accepts the interpretation of the Pauline exception, that it implies the possibility of remarriage, it admits the principle that marriage is not indissoluble under all circumstances whatever. Then one would maintain that it became a question for the Christian conscience, guided by the Spirit, and expressing itself through what organs it may, to decide what possible exceptions may be allowed on the same analogy,

39,154. You speak continually of Christian conscience and Christian land, and so on—a situation which was not in St. Paul's mind when he was dealing with a very difficult and real case. He was dealing with a wife who was married to a heathen who probably was very loose in his old conceptions of the marriage relation, and probably took part in religious celebrations which would be digusting to the wife, and possibly immoral. There is hardly any real analogy, is there, between the circumstances that St. Paul was dealing with and the circumstances in what is called from time to time a Christian country and so on?—When I referred to the Christian conscience I meant the Christian conscience as expressing itself through St. Paul's words; and in adequate circumstances admitting that the marriage bond should be dissolved for certain grave reasons.

39,155. Then I will not go further with that. Then you say, "the ultimate object of any legislation which "is to claim the sanction of Christianity should be the "gradual realisation of the ideal, not an increasing "liberty to drift further from it." By that, I suppose you mean the object of legislation should be to bring marriage law and marriage customs as near as possible to that ideal of indissolubility which is put before us by Our Lord in the New Testament?—As near as circumstances will allow, and without introducing worse evils.

39,156. Your idea is that the progress of legislation in a Christian country should be towards that ideal?—Undoubtedly; but it would not always imply that under the special circumstances of any particular country it would be possible to make the marriage tie stricter.

39,157. But is it much use, in view of what we know to be the point of view all over Europe, to say at one moment that you can multiply the grounds of divorce, and to say in the next that the idea of legislation ought to be towards the Christian ideal?—Is it not possible to say that restrictions on the legal possibility of divorce do in fact tend to the increase of immorality, and therefore to the drifting away from the ideal? That would be a question in my own mind.

39,158. Then would your position be that it is qu te possible that increasing laxity in the strictness

with which the ideal is enforced and the increasing number of the grounds on which divorce could obtain, would tend towards the realisation of the Christian ideal?—"Increasing number" rather conveys something a little bit loose. I should be inclined to admit that there are certain circumstances in which the granting of a carefully restricted facility for divorce might in the end make for greater morality.

39,159. Do you think, for instance, that the progress of divorce in America has made for the greater morality of the country, or for the progressive realisation of the Christian ideal?—I should imagine they have not attempted to keep the Christian ideal in view at all. They have gone a great deal too far.

39,160. I think they would maintain they have only made concessions with regard to human necessities?—My point would be that each individual ground for restriction must be judged on its own merits; that it ought to prove the necessity for its inclusion up to the hilt before it could be admitted.

39,161. All I venture to put is that I do not see much help in your actual suggestion towards that object which you put before us as the aim of legislation—a gradual realisation of the ideal?—So far as circumstances would allow.

39,162. I am afraid circumstances are generally rather stronger than ideals?—If I might give one illustration. I should have suggested, though one hesitates a little after one or two of the remarks made this morning, that the Roman and the Mediæval Church had its strict theory of the marriage law, and at the same time did drift very much further from the ideal by allowing practical immorality and practical dissolution of marriage on the ground of nullity of marriage from the beginning; that it drifted further from the ideal than other States and other Churches which have frankly allowed divorce for grave and adequate reasons.

39,163. As you have put that, I should like to ask again if there is any real evidence that marital infidelity was greater in the Middle Ages or in England when those divorces were permitted at all than it has been since. Is there any real evidence beyond inference, say from the time the Canon law was established up to the Reformation, that there was looseness in the marriage tie greater than there is now?—I am afraid I am not a historian. One has the evidence of the preamble to the Act of Parliament in Henry VIII., and so on. Evidently that implies it was a pretty well recognised thing that no marriage was so tightly tied that it could not, under certain circumstances, be dissolved if people were prepared to take enough trouble about it and pay a sufficient amount in fees. And it seems to me that would offer such a tremendous temptation that human nature, being much the same in all ages, would probably take advantage of it.

39,164. As a witness was asked this morning, that is merely a natural inference; but is there any evidence to show it was so?—It is a point I cannot answer. I was building on the special statements.

39,165. And, again, would you say, in spite of all the evils of the 18th and early 19th centuries, that the marriage tie was more loosely observed than it has been since 1857?—It always seems to me it is extraordinarily difficult to compare one age with another, so I think I had better not attempt to answer the question. I feel there are no grounds for the comparison; or rather, there are grounds, but it is so difficult to get at the facts.

39,166. (*Lady Frances Balfour.*) May I ask one question? Of course, in England certain classes are precluded from getting divorce because divorce is too expensive. Do you think those classes are more moral than the classes that can get relief by divorce?—I am bound to say that my impression would be, they simply do without it; that is to say, they live without it because they do not feel the need of being whitewashed by the respectability that comes from divorce.

39,167. They are a law to themselves?—This is rather my impression.

39,168. (*Chairman.*) Do you consider that if the restrictions are too severe the law may be disregarded? I am afraid I do not quite grasp the bearing of the question.

39,169. Well, if marriage was absolutely indissoluble in this country by law do you think that would tend in the direction of morality in this country?—I think it would tend in the direction of immorality unquestionably.

39,170. That would equally be so if the restrictions were not wide enough to meet the necessities of life?—It would, I suppose—yes.

39,171. Is your view that you would tend in the direction of morality by meeting the real necessities of the case?—I consider that in this question, as in most others, it is a question of the balancing of advantages and the balancing of conflicting claims. On the one side one has to consider the needs and the necessities of the individual, and the hard cases of the individual, and on the other side the influence on society that would come if you tend in any way to make the marriage bond lax.

39,172. On page 2 in your paper you say: "Their "existence should be recognised as a necessary evil, "a concession permitted for the hardness of men's "hearts, in order to prevent worse evils." What are the worse evils that you refer to in that paragraph?—Oh, the case of people living in union without the marriage bond, unquestionably, immorality in the ordinary sense.

39,173. If they are not able to get free?—Yes.

39,174. When perhaps the necessity of the case would justify it?—Yes.

39,175. That is the idea?—Yes.

(*Chairman.*) Thank you, Mr. Emmet: I am sure we are very grateful for your attendance here.

Adjourned.

Winchester House, St. James's Square, London, S.W.

FORTY-SIXTH DAY.

Wednesday, 23rd November 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
The Hon. LORD GUTHRIE.
Sir FREDERICK TREVES, Bart., G.C.V.O., C.B., LL.D., F.R.C.S.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
The Hon. HENRY GORELL BARNES, *Secretary*
J. E. G. DE MONTMORENCY, Esq., *Assistant Secretary.*

Rev. Professor JAMES COOPER called and examined.

39,176. (*Chairman.*) You are a Doctor of Divinity of the University of Glasgow?—I am a Doctor of the University of Aberdeen, and I am a Professor of Church History in the University of Glasgow.

39,177. I beg your pardon. I was reading from the memorandum of evidence. I thought the D.D. referred to Glasgow?—No, Doctor of Divinity of Aberdeen and Professor of Ecclesiastical History of Glasgow. I am also Secretary of the Scottish Church Society.

39,178. Which branch of the Church do you belong to?—The Church of Scotland.

39,179. The established Church?—Yes.

39,180. You have been good enough to send a short memorandum on the construction of scripture with regard to the divorce question?—Yes.

39,181. I think if you have it before you the best way would be for you just to read it, and anybody can ask you questions upon it afterwards?—"I. Divorce in the Word of God. (1) In the Old Testament divorce is (*a*) contrary to the original institution of marriage; (*b*) 'suffered for the hardness of men's hearts,' but discouraged, and restricted by the Law; (*c*) and declared by the Prophets to be hateful to God. (2) In the New Testament, the teaching of our Blessed Lord: the original institution of marriage re-asserted, and legal permissions"—that is, the permissions of the Mosaic Law as understood by the Rabbis—"removed by the authority of the Son of God—the 'time of ignorance' being past, and 'grace and truth' having 'come by Jesus Christ.' (3) The limits of possible permission of divorce (*a*) by the clause 'except it be for fornication' (St. Matthew v. 32 and xix. 9); and (*b*) the words of St. Paul, 'if the unbelieving depart, let him depart,' and the further words in the same chapter, 'A brother or sister is not in bondage in such cases.' '(4) But (*c*) the clause in St. Matthew is of doubtful genuineness" in both places; "and (*d*) the interpretation of St. Paul's permission is difficult and uncertain." It refers to a case that the Apostle Paul is considering, namely, the case of mixed marriages only. "(5) While neither text in the Gospel says anything allowing re-marriage.

"II.—Divorce in the subordinate standards of the Church of Scotland. (1) The *Confession of Faith*—'the public and avowed confession of this Church'—allows re-marriage to the innocent party in the case of a 'divorce sued out' for 'adultery after marriage' (chapter xxiv. (5). (2) But it declares 'Nothing but adultery or such wilful desertion as can in no way be remedied by the Church or civil magistrate, is 'cause sufficient of dissolving the bond of marriage' (chapter xxiv. 6).'

39,182. That, I think, is adopted from the Westminster Confession?—These are from the Westminster Confession.

39,183. We have had that put in already?—I think the law as at present interpreted and administered in Scotland is contrary to the doctrine of the Church of Scotland. and is of a nature to overturn the doctrine of the Church. In the first case, with regard to divorce for desertion, by the Act of 1861, all the precautions which the Church took, and which were specially preserved in the Act of 1573, have been swept away, and there is not always even an intimation now to the person charged with desertion; and I think this is a violation of the laws of the Church, and extending the permission of divorce for desertion far beyond anything that the Church ever consented to.

39,184. That Act of 1861 did away with the necessity for the suit of adherence beforehand?—Yes, and with every effort on the part of the Church to heal the desertion.

39,185. But it did not abrogate in any way the right to get a decree for divorce on the ground of desertion?—But there was no right to get a decree for divorce except under certain conditions, and after a great many efforts had been made to heal the desertion.

39,186. I quite understand that?—We think that a very outrageous state of things. Then the law of divorce for adultery is directly evaded, because it has become very frequently the practice now not to put in the name of the paramour, with the express effect of letting the adulterous spouse marry the paramour.

39,187. You would be entirely averse to allowing guilty people to marry?—Yes.

39,188. That, I take it, is on the ground that it is injurious to morality to allow that temptation?—Yes.

39,189. Apparently the Act contemplated, originally, that that should be so, but there is the loophole out of it by leaving the judge power to leave the name out?—Yes, but it was never intended that the judge should use that loophole to evade the purpose of the Act. Divorce was never considered as a thing desirable or to be encouraged; nor re-marriage a thing to be helped, but rather to be objected to.

39,190. I think I quite appreciate that point. Then may we pass on to No. 3?—Yes. "(3) Complaint that in regard to *divorce for desertion* the Church's conditions, carefully set down in the Confession, have been

wholly disregarded by the Scottish law courts. Is this right? seeing that (apart from higher considerations) the Confession of Faith is part of the Public Law of Scotland, being embodied in the Act of Parliament 1690. Such divorce injurious to religion and morals. (4) Opinion and discipline in the Church of Scotland."

"III. Evidence of previous witness traversed. Our Lord's teaching in regard to divorce is not a mere 'ideal' at which a community ought to aim; neither is it a 'counsel of perfection' for individual souls." Our Lord always says "Whosoever": on the other hand, when He gives a counsel of perfection He speaks to those who wished to be His disciples, or are His disciples. The "counsels of perfection" begin "If thou wilt be perfect" (St. Matthew xix. 21), and apply to such things as a voluntary vow of poverty or celibacy, but they are not laws for everybody. In regard to marriage, however, it is different. there our Lord's law is general; and He uses general terms, "whosoever" and "a man shall leave father and mother and cleave to his wife." Also, He did not say that for a man to put away his wife and marry another was to come short of the ideal: He said it was to commit the great sin of adultery. "In the New Testament, as in the Confession of Faith, marriage is 'for all sorts of people who are able with judgment to give their consent.' Our Lord's words regarding it were spoken not to, or for, the disciples only, but to the Pharisees (St. Matthew xix. 3, 8; Mark x. 2). This law of Christ must be preached by the Church to all nations and enforced by her godly discipline; it ought to be acknowledged and supported by the civil magistrate, since Christ is King of Kings and Lord of Lords; it can be kept by every individual, since the Holy Ghost is given; and His help is open to all men in and by the means of grace which are open to all.

"IV. Christ's teaching in regard to divorce not isolated, but connected with His laws and teaching concerning (*a*) repentance, (*b*) forgiveness." There must be space given for repentance and forgiveness, and I hold that no man should divorce his wife, however guilty she is; because he is bound as a Christian to give her an opportunity of repentance, nor does it follow that therefore he is bound to condone or connive at sin. The whole object of Church discipline is to win men from sin, and every Christian husband or wife is bound first to care for the salvation of the other partner. A husband must not shut himself out from the opportunity of being able to forgive until seventy times seven. This is the doctrine of repentance and forgiveness. "(*c*) The moral benefits of suffering, trial, and self-sacrifice." Christianity teaches that adversity is a blessing; prosperity is the blessing of the Old Testament, and adversity of the New Testament, and trials patiently and lovingly borne do more to ennoble a man and woman than anything else. It is not happiness that is the end of life, but moral well-beign.

"V. Divorce in Scotland too easy and morally injurious. The religious aspects of marriage ignored in the law-courts, and therefore to a large extent in popular opinion." I hold the law courts should be the servants of God and of Jesus Christ, and they ought to care for the souls of the persons called before them, and call upon the ministers of religion to use all means in their power to keep people out of sin. This was intended by the Reformers, and has always been contended for by the Church of Scotland. "Harm to religion and morality through the confusion of thought engendered whensoever the civil law permits what the Church is bound by her fidelity to Christ to condemn as sinful."

39,191. Is it your view that divorce for adultery and for desertion—if the desertion is properly guarded—are permissible according to the teaching of Christ? —I am very doubtful on the point, and I think the doubt should go in favour of God's general law, which declares in plain terms against divorce in general.

39,192. But apart from that point you must regard the alteration of the law as to desertion in Scotland; the established Church has recognised since 1560 certainly the ground of adultery, and from 1673 the ground of desertion, provided the procedure there laid down is followed?—Yes, and provided the re-marriage is only for the innocent party.

39,193. We may take it that the Scotch Church has not treated the marriage tie as an indissoluble tie? —Not as absolutely indissoluble.

39,194. Is that your view?—No, personally I hold it is indissoluble. While the Church of Scotland deprecates divorce it thinks that on these scriptures permission may possibly be given with the precautions referred to.

39,195. Your own view is rather of a more restricted nature?—My own view is of a more restricted nature on account of the uncertainty, which seems to grow among scholars, as to whether our Lord used words that have been founded on.

39,196. Would you regard our Lord as indicating a general principle which in certain cases should have exceptions, or that there should be no exception? — Well, I am not sure that He made any exception at all. I think it is doubtful whether the clause "Except for fornication" was ever spoken by our Lord.

39,197. Leaving that doubt to be resolved in favour of there not being any special exception mentioned, would you then think that the general principle might be modified?—No, I think the foolishness of God is wiser than men. I do not think we have any right to alter——

39,198. I just want to finish what I was going to put. Do you think no amount of human weakness and suffering would justify a departure from your view? —Yes.

39,199. (*Mr. Brierley.*) Were you quite right in saying that the Church of Scotland only allows the remarriage of the innocent party?—Certainly. It is in the Confession of Faith.

39,200. I thought that what they forbade was the inter-marriage of two guilty parties?—I have the very words here.

(*Mr. Brierley.*) I thought it was the intermarriage of the two guilty parties with one another.

39,201. (*Lord Guthrie.*) You might just read the passage, Professor, as you have it there?—Yes. "Adultery or fornication committed before a contract being detected after marriage giveth just occasion to the innocent party to dissolve that marriage. In the case of adultery after marriage it is lawful for the innocent party to sue out a divorce, and after the divorce to marry another as if the offending party were dead."

39,202. (*Mr. Brierley.*) Does that mean that the guilty party may not re-marry at all?—Apparently. Certainly the guilty party may not re-marry with his or her paramour, or in the lifetime of the injured spouse.

39,203. One other question. I understand you personally are against divorce being allowed in any case whatever?—Yes; I think the exceptions in scripture are so problematical that it is safer not, and I think the general law of God should prevail when the question is a question of doubt. I think the benefit of the doubt should be given to the general law of God.

39,204. Do you allow a judicial separation?—There may be circumstances that would render a judicial separation necessary. I should think even a judicial separation undesirable.

39,205. Take this case where a husband is an adulterer, is a drunkard, is syphilitic and is cruel. That is not an imaginary case, but I have a case in my mind. What is the wife to do in those circumstances? —Well, in such a case judicial separation might be considered, but not permission for her to re-marry.

39,206. Do you think it the duty of the wife to live with such a man as that and bear children?—It would be not necessary for the wife to live with him at the time, but to pray for him and wait for his recovery and hope on to the end. It is not a greater trial than other trials that have to be met.

39,207. (*Judge Tindal Atkinson.*) On what principle yourself do you object to the guilty party marrying? What is the principle on which you proceed? Not altogether from scripture or religion?—I do not know any principle except the principle of religion. Religion is the guide of life, and I believe permission to re-marry

to be contrary to religion and good morals, and also an encouragement to people to commit adultery in order to get a separation.

39,208. It may be that in some cases the chance of re-marriage may be an inducement to adultery; but that is not so in all cases?—Well, people have to bear trials.

39,209. I should like to know what is the object of keeping a man and wife in a state of celibacy for the rest of their lives or to live in immoral relations. Would it not be better that they should marry?—I do not think their marriage would be lawful, and I do not think that any ceremony of marriage would deliver them from sin. I think it would still be adultery as long as the original partner is alive. I do not think the ceremony of marriage would remove the sin. It might cover it, or pretend to cover it; it would not heal it; it would not cure it.

39,210. At all events it would be better for the children born of that connection?—No; I think the law should discourage such a connection in every way, because for a man to live with another woman so long as his wife is alive is adultery.

39,211. Would it discourage the parties living together if you prohibited them from marrying?—Yes. I think it would. Permitting the paramours to go through the marriage ceremony would only tend to make it look as though it were a good marriage; and it would be sin for a minister to bless it because he would be apparently absolving them from sin.

39,212. You do not think it would be better for the children?—Unfortunately the sin of the parents—well, I should not say unfortunately as it is of God; but in the order of the world children must often suffer for the sins of their parents, and that ought to be a reason why people should avoid sin: the possibility of their children suffering is a strong motive for them to avoid sin.

39,213. You recognise that there are circumstances under which it is impossible for the spouses to live together owing to the conduct of one?—Yes.

39,214. What is the justification in scripture for a judicial separation when there is no justification for divorce? Where do you find in the words of scripture any right of the parties to live apart under any circumstances?—You find it in the seventh chapter of the 1st Corinthians, verses 11 and 15, where it is said, "Let not the wife depart from her husband; but and if she depart let her remain unmarried or be reconciled to her husband," and "If the unbelieving depart let him depart." That is a separation without a marriage; but the wife is to remain unmarried.

39,215. That only applies to one particular instance?—It only applies to one particular instance, but there are to be very few instances of such cases. A judicial separation is only to be given in the extremest cases. If the sin be one which, like idolatry, practically amounts to a total denial of the whole duty to Christ, judicial separation may then, I should fancy, take place.

39,216. Then the exeeption given by St. Paul does justify separation?—I think it justifies separation in very extreme cases.

39,217. If that can be a justifieation for a separation, why does not that make for the justification for divorce for good reason—for the same reason?—Because God's general law is that "He hateth putting away," and that a man is not to put away his wife, and that any person who marries while the other party is alive, he committeth adultery, or she committeth adultery be re-marriage.

39,218. Then there is justifieation in scripture, I understand, for judicial separation for life?—I do not know that it should be for life; judicial separation till the guilty person repents.

39,219. But the judicial separation is a decree of the court which puts the parties in the same position except with regard to the wife re-marrying?—The court ean alter the terms of its deeree.

(*Judge Tindal Atkinson.*) I doubt that.

39,220. (*Lord Guthrie.*) It eannot do that?—Well, the law can be ehanged. It is not a Divine law; it ean be changed.

(*Chairman.*) Might I suggest you are getting rather into argument than asking questions; are you not?

(*Judge Tindal Atkinson.*) If your Lordship thinks so, I will not follow it.

39,221. (*Sir Lewis Dibdin.*) I had not the advantage of hearing your evidence, Professor Cooper, but I just want to make clear, if I can understand it, what your view was as to the scriptural warrant for judicial separation?—I have just been speaking on that point, sir.

39,222. I know, but I want to make that a little clearer. I understand your point to be that St. Paul in the 1st Corinthians, seventh chapter, says—speaking not of himself but, as he says, the Lord speaking through him—that if the wife depart from her husband she is to remain unmarried. That is in the 10th and 11th verses?—Yes.

39,223. Do you regard that as a seriptural warrant for judicial separation?—In certain cases.

39,224. In rare cases?—But without re-marriage.

39,225. Yes, for judicial separation. Then it is suggested: if that is so, is not the 14th verse a similar warrant for divorce in the case of desertion? I understand you to distinguish the two. Is your ground of distinction that the 14th verse, which deals with divorce for desertion, applies only to an unbelieving marriage?—I think St. Paul is ouly dealing with the case of a marriage contracted by a pagan man and woman, where, after hearing of Christ, one spouse became a Christian and the other remained in unbelief.

39,226. And that is his own view—not, as he says, our Lord's view?—Our Lord's view is as plain as possible. He says, "Let not the wife depart from her husband and let not the husband put away his wife."

39,227. Yes, I am only trying to make your view clear to myself. You distinguish between these two passages?—Yes.

39,228. First that one is our Lord's teaching, and the other, St. Paul's view?—Yes.

39,229. And, secondly, that the first applies to all marriages, and the other to unbelieving marriages?—Yes, mixed marriages with unbelievers.

39,230. (*Lord Guthrie.*) Are your views which you have just enunciated in accordance with the standards of the Church of Scotland?—I think they are to a large extent in accordance with the standards of the Church of Scotland, but I drew the distinction, and I draw the distinction with regard to my official actions. Nothing would induee me to solemnise the marriage of any divorced person; I have always refused to do so, and I should do everything I could to dissuade such persons from marrying. When, however, as a parish minister I had a ease before me of a man who had divorced his first wife for adultery, he himself being innocent, and had married again, I felt in my official capacity as a minister of the Church of Scotland that I was bound to admit him to Holy Communion, and I did so.

39,231. But you see, Professor Cooper, I asked you if your views are in accordance with the standards of the Church of Scotland?—I think they are.

39,232. Amongst the standards of the Church of Scotland one includes the Westminster Confession of Faith?—Yes.

39,233. If that Confession expressly sanctions, and on scriptural grounds, divorce for adultery and desertion, and if you think both are wrong, how can your view be in accordance with the standards of the Church of Seotland?—Because I think the standards of the Church of Scotland say that the supreme standard is Holy Scripture, and that in both the cases referred to the supreme standard does not warrant the statements of the Confession. There is very good reason—not a private opinion of mine but the opinion of a large number of the best scholars and critics—to think that the words relied on in St. Matthew are not genuine, and also that the passage in the 1st Corinthians which is quoted does not apply; moreover, the Confession of Faith, in cases of divoree for adultery, allows re-marriage only to the innocent party, and with regard to divoree for desertion, the conditions set down in the Confession of Faith are not implemented. It only

allows it for certain causes which are now no longer complied with.

39,234. That is not an answer to my question. You have said you felt bound to admit to Communion a person who has divorced the guilty person and was re-married. That implies that you are bound by the Confession of Faith apart from the supreme standard?—Well, I think that a member of the Church of Scotland is entitled to Church privileges, if his position is authorised by the Confession of Faith, whatever my private views may be.

39,235. Then it comes to this, that the standard of the Church of Scotland in that matter ought to be altered?—Yes. We have no power at present to alter our standard.

39,236. You have power by going to Parliament?—We have power by going to Parliament.

39,237. Have you ever proposed going to Parliament?—I have often wished to do so.

39,238. I am not talking of "wish." Have you ever moved in the General Assembly to have this important alteration which you think would bring the standards of the Church of Scotland in that matter in conformity with scripture?—I do not think it would be possible to touch one part of the Confession of Faith, and I do not think it would be desirable to have a discussion in Parliament as to a matter of that kind with regard to one article in the Confession of Faith, and I have not moved it.

39,239. This has existed—divorce for adultery—for 350 years as part of the law of the Church of Scotland, and in the case of divorce for desertion, 240 years?—Under rigidly specific limits.

39,240. So far as you know, has any person Episcopalian or Presbyterian, Established Church or Dissent, ever proposed in Scotland to alter the law as it stands?—I do not know of any.

39,241. How do you account for that?—Well, I account for it partly on the ground that a great deal of practical liberty has been left to ministers. I account for it also partly because our system of government does not lead individuals to make motions of that kind; and also by the extreme difficulty and inadvisability of altering the Confession in any particular in the Established Church, and the danger that it would open up very large questions. "Better to bear the ills we have," perhaps——

39,242. For 350 years?—For 350 years, yes.

39,243. You say in your proof that you think divorce in Scotland is morally injurious. How do you account for Scotland standing for 350 years a morally injurious system without any person lay or clerical, Episcopal or Presbyterian, State Church or Dissent, proposing to alter it?—Well, I think it is very largely a case of indifference with regard to the marriage tie. I think the state of morals in Scotland with regard to the breaches of the Seventh Commandment is not of the highest and never has been of the highest, and I think that is due to a low view held of the sanctity of marriage in Scotland.

39,244. Everywhere, I suppose?—Everywhere I suppose, but very much so in Scotland. There has been a great increase of marriages without religious service. That is a sign of the same thing.

39,245. You are the first person who has said that in Scotland the marriage tie in comparison with other countries is held in low estimation?—I never said in comparison with other countries. I do not know enough about other countries.

39,246. Well, do you not say that the law of divorce in Scotland has produced less sanctity for the marriage tie than in other countries?—I should like to know what you mean by the sanctity of the marriage tie?

39,247. Well, do not use that expression; say the value and the permanence of the relation. Do you say that the law of Scotland has had that effect as compared with other countries?—I do not know about other countries, but I know a large number of people in Scotland think as I do with regard to them.

39,248. With regard to what?—With regard to the evils; that divorce is too frequently given both for desertion and adultery, and that this is evil. A very large number of people think that.

39,249. Then it is your view that divorce is increasing in Scotland in proportion to the population?—I am not aware of the statistics.

39,250. Do not you know the opposite is the fact?—I was glad to see so from your Lordship's paper in the "Historical Review."

39,251. What do you make of this, Professor, that in Scotland where we have this law, instead of there being a rush to the Divorce Court, the divorces in proportion to the population are diminishing?—Well, I am very glad to hear it.

39,252. So am I. You mentioned a very interesting point about the present administration of the law, and you referred to the Act of 1861?—Yes.

39,253. Was that Act opposed by the Assembly of the Church of Scotland?—I think in Fraser's "Law of Husband and Wife" there is a passage which may in part explain why it was not: it is where he says that he wishes permission were given to repeal clauses that are in the Act of 1600 with regard to the marriage of adulterous persons—about naming the paramour—he says that this was not put into the Act for fear of exciting opposition. 1861 was before my personal——

39,254. I mean with regard to 1861, abolishing the cumbrous procedure. Was that opposed?—I do not think the attention of the Church was called to the Act. A good many things are done in the way of getting Acts of Parliament on legal points, which the Church of Scotland, not being accustomed to legislation nor having any direct representatives in Parliament, does not observe.

39,255. It was not opposed?—It was not opposed, was it?

39,256. No?—Was it known to the Churches? Was it sufficiently obvious to the Churches what was being done?

39,257. You said that divorces were granted without any intimation to the person charged. What is your information about that?—I was present myself at a case of the kind—a case where I had solemnised the marriage, and I had to be a witness, and I stayed to hear the case.

39,258. Was it a case of desertion?—Yes, and the husband who was the defender was in India. Lord MacLaren was the judge, and the counsel proceeded to lay evidence before him that the husband—the defender—had received information, and Lord MacLaren said it was not necessary to go into that.

39,259. I think you must be mistaken, Professor. That is entirely contrary to the practice as far as I know it?—Well, that was a case that I——

39,260. You see there would be written evidence of it, and it was not necessary to have oral evidence. I think that is what you mean?—Perhaps your Lordship is right, but I was very much shocked at the time.

39,261. You see written evidence is put in and a copy is produced usually with the man's acknowledgment in his own handwriting on it, and in that case we do not have any oral evidence of it?—When the counsel was going to lead proof that the husband had received intimation, Lord MacLaren interposed and said it was not necessary.

39,262. No, because written evidence was already in?—Very well.

39,263. You refer to the opportunity of repentance. How far do you go in that? You quoted the text about seventy times seven; even that is limited?—Even that is limited, but it is not intended to be limited.

39,264. Supposing the man or the woman, as is usually my experience, has appealed again and again to the person to abandon the adultery and to return to mother or father the children, they have refused and lived with a paramour and borne children to the paramour, or, in the case of the man, become the father of the paramour's children. What do you say about repentance then?—I think it would still be better to bear the very heavy cross. I think much greater glory will come.

39,265. Have you ever known any case historically—one knows your very minute acquaintance with the

history of Scotland—in either the Episcopalian or Presbyterian Church where a person who divorced a guilty spouse and re-married has been subjected to discipline?—I beg your pardon.

39,266. Have you ever known a case in the Episcopalian or Presbyterian Church where the innocent person divorcing and re-marrying has been subjected to discipline?—The innocent person divorcing and re-marrying could not be subjected to discipline in the Church of Scotland because of the Confession of Faith.

39,267. And, as far as you know, the same thing prevailed while the Episcopal Church was established?—I think so; I do not think the Episcopal Church was established; I think it was two different governments established successively in the same national Church.

39,268. Well, there was a period when Presbytery was superimposed on Episcopacy?—Yes.

39,269. Or Episcopacy superimposed on Presbytery?—Yes.

39,270. Now with regard to the guilty persons re-marrying. Suppose the guilty persons were prohibited to marry each other, but the guilty person was not prohibited to marry somebody else. Do not you think that would take away what everybody feels is a strong point which you make on that?—But I do not think the guilty person has a right to re-marry at all while the other party is alive.

39,271. But it would be important to prohibit the guilty person marrying the paramour. You attach importance to that?—Yes.

39,272. Now suppose the guilty person repents, Professor; on evidence of repentance he is entitled to be restored to Church privileges?—I should think not so long as he was living with any woman except his still living wife.

39,273. No, of course not. I am assuming the guilty person, of course, gives up the guilty cohabitation, comes to the Church, makes confession, gives evidence of repentance. He would be entitled to be re-admitted, would he not?—Yes.

39,274. To the Communion?—Certainly.

39,275. If he has done so, and given evidence of repentance, why, after that—being, to use a popular phrase absolved—should he not re-marry, not the paramour?—Nobody should re-marry while the other spouse is living.

39,276. You lay down an absolute rule?—An absolute rule. I think our Lord lays that down.

39,277. That the tie subsists whatever may happen during life?—Yes.

39,278. You refer to separation and the passage from St. Paul. There is nothing in what Christ says that you found anything on in that matter?—Not in regard to separation: as to divorce, I think the words that St. Paul quotes from our Lord are probably the oldest record of our Lord's sayings on the subject.

39,279. But what is there in any record of our Lord's sayings that would warrant permanent judicial separation?—I do not know anything in our Lord's sayings, but ——

39,280. And, as I understand, you do not think there is any scriptural warrant for permanent separation?—I should think not.

39,281. Then can you tell me, Professor, that being your view, has there ever been any country, or any age, or any Church, which has both denied divorce and permanent separation?—Well, I think the abuses in regard to marriage in the latter period of the Roman Church were one of the causes of the Reformation. I think there were very great abuses in giving judicial separations and giving dispensations which were contrary to the Word of God, and I think the Reformation partially proceeded on the wickedness of these practices.

39,282. That is not quite an answer. I asked, has there been any Church, or any age, or any country which has not only denied divorce but has also denied permanent separation?—I do not know.

39,283. So the result is that you go further in your views—and you are entitled to—than the Roman Catholic Church?—I think the Roman Catholic Church erred very grievously about judicial separations, and also with regard to the dissolution of marriage.

39,284. Would you give me an answer; the result is you do go further?—I do go further than frequent practice in the Romish Church.

39,285. (*The Archbishop of York.*) How far are the views which you have kindly expressed to us representative of any large section in the Church of Scotland?—They represent a very considerable section of opinion both of the clergy and laity. I am able to say that.

39,286. So you would wish us to regard what you have said as more than an individual opinion of your own?—In many respects. I did converse with a few who approved of my paper and I know I am not speaking for myself alone.

39,287. Would you say that anything based on the views you have expressed would represent a very considerable minority in the General Assembly?—I do not know about the General Assembly, but I know that they would have considerable support throughout the Church.

39,288. You think the views you express —— ?—Represent a very considerable minority.

39,289. A growing minority?—I hope so.

39,290. With regard to some questions that Lord Guthrie asked, do you know whether the Episcopal Church in Scotland has formally accepted and acquiesced in the principle of divorce?—I should doubt it very much. I should think this Commission might hear evidence from the Episcopal Church. I answered Lord Guthrie that I did not know that at any time when Episcopacy was established in Scotland there was any protest against the state of the law as it then was.

39,291. I was talking of Episcopacy since the Reformation or whatever you call it?—I think the view of the Episcopal Church should be asked on that subject.

39,292. You say in your proof that "In regard to divorce for desertion the Church's conditions, carefully set down in the Confession, are wholly disregarded by the Scottish law courts." What does that refer to?—Perhaps the words "law courts" are wrong, because in regard to divorce for desertion the law courts go upon an Act of Parliament passed in 1861 which dispensed (as far as the civil law was concerned) with all the conditions laid down in the Westminster Confession. I believe myself that the Church acted *per incuriam* in allowing that Act to be passed.

39,293. You think the Church ought to have been more vigilant than she was?—But I am sure it is not in accordance with the will and desire of the Church. However, I think the Church was very much to blame for not opposing that Act.

39,294. (*Chairman.*) May I just ask this. You wrote to offer your evidence here?—Yes.

39,295. Feeling it was desirable it should be presented?—Yes, and I may say that a number of people have thanked me for doing so—a very considerable number of people.

39,296. I should like to ask as to what you said to his Grace the Archbishop about a minority holding your view. Has there been any meeting or expression of that view in any definite form?—It has not yet been before the courts of the Church in any definite form; but when the Act of Parliament giving civil sanction to marriage with a deceased wife's sister was before us, and the proper course for the Church to take in view of that change of the civil law, there was a very large committee, and I may say that every person on that committee protested that any interference with the law of the Church with regard to divorce would be strongly opposed. There had been no proposal yet to alter the law.

39,297. Was there any opposition to the Deceased Wife's Sister Bill?—Oh yes, there was a good deal of opposition to the Deceased Wife's Sister Bill.

39,298. Do you know in what proportion?—The doctrine of the Church in Scotland remains what it was before: the Confession's statement against such unions was not altered; but permission was given to dispense with discipline in such cases.

(*Lord Guthrie.*) Lord Gorell, there is one matter which Sir Lewis has drawn my attention to that I ought to put in fairness to Professor Cooper.

(*Chairman.*) If you please.

39,299. (*Lord Guthrie.*) I put to you, Professor Cooper, which was not accurate in a sense, that you objected to permanent separation, and I suggested that therein you would be going further than the Roman Catholic Church. Now I ought to tell you that in the Roman Church the separation which they allowed is not permanent in this sense, that it is rather indefinite than permanent?—Well, I have no objection to indefiniteness.

39,300. One moment, Professor. The clause that is put in these decrees runs in this way: "Until they shall be reconciled to each other"?—Yes, I do not go further than that. I quite approve of that; reconciliation, on repentance, is what a Christian must desire and seek.

39,301. There is no power for one to come and ask that it be recalled, but they can both go together?—Yes, I quite agree with that. I have no objection to that. That is what I desire to get—reconciliation.

39,302. But would you allow one to go and show that the cause for which the judicial separation had existed had ceased?—I am not a lawyer, but as a divine I should think the indefinite condition is much better—until they both be reconciled.

39,303. And only until?—And only until. It was the abuse of the thing I was objecting to.

(*Chairman.*) May I thank you very much for your attendance and the assistance you have given us here.

Rev. Canon HASTINGS RASHDALL called and examined.

39,304. (*Chairman.*) Will you kindly tell us what is your official position at present?—Canon Residentiary of Hereford; Fellow and Lecturer of New College, Oxford.

39,305. You have given the subject of this question of divorce and matrimonial causes your very careful consideration on certain aspects of it?—I think I may say that.

39,306. May I ask you if you would kindly read us your memorandum on the subject. I think on these matters it is better that questions should be asked after, because these are prepared papers?—"(1) The opposition to divorce with liberty to re-marry in so far as it rests on religious grounds is based partly upon the sayings attributed to Jesus Christ in the Gospels, partly upon the authority of the Church. I should like to deal with these points separately. With regard to the first a full discussion of the subject would involve a very thorough enquiry into the nature of revelation and of authority on ethical questions, and the limits within which any external authority—even that of Christ himself—can be regarded as regulating the details of morality for all time. Such a discussion would be out of place on the present occasion, and I will only say (1) that to my own mind the unique authority which Christians rightly attribute to the teaching of Jesus is based in the last resort upon the appeal which it makes to the moral and religious consciousness, and the response which it evokes in the souls of men. That being so, I should find it difficult to regard a saying of Christ as absolutely and permanently binding upon His followers if it were found to be in collision with the dictates of the moral consciousness in the present, (2) that it is only for general principles and not for details of morality, which must necessarily vary with changing circumstances, that Christians can look for guidance to the dicta of their Master; and one of the chief claims of Christianity to the position of a universal religion is just the fact that its Founder confined himself almost entirely to laying down principles of the broadest possible character, and made no attempt to draw up a detailed code of rules which should be binding upon His followers for all time. That Christians must not expect in the teaching of their Master explicit guidance as to the details of conduct is a principle which has been still further emphasised by the Christian doctrine of the Holy Spirit.

"I feel bound to say this much upon the more fundamental issue which is raised in the particular problem before us; and the line I have taken would, I think, be fairly representative of a large body of Christian opinion. But some who might be disposed in a general way to accept these principles would doubtless contend that the marriage question is one of so much importance that it must be regarded not as a detail of morality, but as one of its fundamental principles, and consequently that, if Christ taught the doctrine of the absolute permanence of marriage, it must be regarded as one of the eternal principles of Christian ethics. Without attempting to decide how the line is to be drawn between principles and details, I wish in what follows to discuss the question from the point of view of those who would hold that a dictum of Christ on such matter should be final for all Christians for all time.

"(2) I proceed, therefore, to ask what was the actual teaching of Jesus Christ upon the subject. He is reported by two Evangelists to have forbidden divorce under any circumstances whatever (Mark x. 11, Luke xvi. 18) and by St. Matthew (v. 32, xix. 9) to have forbidden it 'except for fornication,' which in such a connection must be taken to mean adultery. No scholar competently acquainted with Jewish customs and modes of thought will, I take it, deny that divorce must be taken to include liberty to re-marry (as indeed is suggested by the following words about marrying her that is put away): the idea of a mere divorce *a mensa et thoro* was unknown at that time. Consequently those who would forbid divorce in the case of adultery even to the innocent party cannot appeal to the authority of Christ. It is true that there are critical grounds for suspecting that the unqualified prohibition of divorce represents the historical form of the saying. That is the version of St. Mark and St. Luke; and when there is such a consensus, it may usually be assumed that St. Matthew represents a later development. But those who wish to rest not only the personal conduct but the political arrangements of modern communities upon the *ipsissima verba* of Christ can hardly base the prohibition of what might otherwise on their own principles be lawful upon a critical conjecture made for the first time by nineteenth century scholars. This is no question of mere textual criticism; there is no doubt that the exception forms part of the genuine text of our present first Gospel. Such an attitude is particularly inconsistent in those who insist much upon the authority of the Church; for the exception introduced by the first Evangelist at least represents the interpretation given to the saying by the Church of his day, *i.e.*, the Christian Church at the end of the first century A.D., or, possibly, the beginning of the second. The very fact that it is impossible to ascertain with any certainty exactly what Jesus said on a matter of this importance illustrates in a striking manner the impossibility of making the *ipsissima verba* of His teaching—there is no great difficulty in ascertaining its general spirit—into an exclusive and final authority for modern Christians.

"Moreover, though the words 'except for fornication' are, critically speaking, a gloss, it is extremely probable that they represent what our Lord really meant. What He was attacking was the idea that a husband had the right to divorce his wife for mere caprice—for any and every cause. This was the actual attitude of the Jewish law and of average Jewish opinion in spite of the higher teaching of Malachi (ii. 16) and of a school among the Rabbis. Against such a view He set forth that the true ideal of marriage was a permanent monogamous union. No one should enter upon a marriage union without intending to make it so. That adultery on the part of the wife, which *ipso facto* destroys such a union, was an exception would go without saying. The political question—the question under what circumstances the State should permit of divorce—lay, it may be safely affirmed,

wholly beyond the scope of our Lord's thoughts. He no more thought of laying down what should be the legal conditions of marriage than He thought of abolishing the institution of property when He recommended His followers to allow the man who had taken a man's cloak to take his coat also. Nor can we assume that, even as a rule for the private guidance of His followers, He would have refused to recognise that there might be other cases besides that of adultery in which divorce might be the less of two evils. Many of Christ's sayings can only be understood as expressions —sometimes paradoxical expressions—of a principle, a general rule which might admit of many exceptions, a rule for the guidance of an ideally righteous society. He condemned the use of the term 'fool'; yet He is several times recorded to have used it himself. What He must be taken to have prohibited is the angry and unreasonable abuse of a fellow-man. (In the following words 'He that is angry with his brother shall be in danger of the judgment,' the later MSS.—followed by the received text—have added the gloss 'without a cause,' very much as the earlier gloss 'except for fornication' may be supposed to have been inserted by the first Evangelist.) He condemned oaths; yet the Christian Church has generally allowed them on solemn occasions. He urged non-resistance; yet Christians have interpreted His words as allowing a Christian State to hang or imprison offenders, and Christian men to take up arms at the command of the magistrate. And so on. Our Lord undoubtedly intended to teach that men should endeavour to make the matrimonial union a life-long union. What He would have recommended when such a union had become virtually impossible through the fault of the wife, is a question which can only be answered by an appeal to our own moral consciousness—a moral consciousness enlightened by His teaching and the working of His Spirit in Christian Society.

"(3) I should like to make one or two further remarks with reference to the teaching of Christ on this matter:—(*a*) The same kind of critical reasoning which suggests that the words 'except for fornication' may be a gloss suggests also—though doubtless with less certainty—that the words 'And if the wife shall 'put away her husband and marry another, she com- 'mitteth adultery,' likewise represent a traditional amplification of the original dictum. These words are found in St. Mark; but, as they are absent from the parallel passages in Matthew and Luke, they can hardly have been found in the form of Mark which these Evangelists had before them; and they are absent from the passage on the subject in Matthew's version of the Sermon on the Mount (Matthew v. 32), which was presumably derived from what scholars are disposed to look upon as the earliest Gospel source—the document now commonly spoken of as Q—the presumed source of the sayings preserved by Matthew and Luke, but not by Mark. As a wife had, according to Jewish law, no power of divorce, it was unnecessary for our Lord to deal with that case. (*b*) I agree with Canon Henson in recognising that the divorce *à mensa et thoro* is—or rather may be, in so far as it is avoidable—just as much a breach of our Lord's principle as the divorce *à vinculo matrimonii*. In Matthew v. 32 the mere act of putting away is forbidden, the words 'and marry another' being omitted. 'Everyone that 'putteth away his wife saving for the cause of fornica- 'tion maketh her an adulteress.' The mere repudiation was wrong, because it placed her in a position in which she was likely to marry again during the life-time of her husband. It would be admitted to be adultery for the wife to put away her husband and marry someone else; the husband who puts away his wife is practically making his wife do this. Such seems to be the thought of the passage. It suggests both that the divorce condemned is not merely the divorce *à vinculo*, but any termination of a union in life and in affection which should be dissolved by death alone. Cleaving to one's wife does not mean merely abstaining from marrying somebody else. It may be urged with reason that there are circumstances in which a continuance of cohabitation is practically impossible; but, if exceptions may be assumed in our Lord's teaching, it may be equally contended that exceptions are to be assumed as to the divorce *à vinculo*. I may add that the form of the saying in Matthew v. 32 powerfully suggests the objection to a permanent judicial separation. It tends to encourage illicit unions.

"(4) I hold, then, that the only principle that is absolutely binding upon Christians for all time is that the ideal of marriage is life-long monogamous union. And that is a principle which, I believe, appeals to the developed moral consciousness on its own merits, even apart from the authority of Christ. Christians are, no doubt, bound by this principle when they act as legislators no less than in their own private conduct. At least, it should certainly guide the legislator when he is legislating for a community whose moral consciousness does, speaking broadly, recognise the ideal. The question for such a state is 'By what kind of 'legislation will most respect be secured for this 'ideal; and where the ideal cannot be realised, which 'is the less of two evils—the hardship inflicted upon 'an innocent party (and even upon the guilty party) 'by the prohibition of re-marriage, together with the 'social evil of encouraging irregular unions, or the 'evil inflicted upon society by the tendency which 'such permission may have to lower the ideal of 'marriage for the whole community?' A Christian may, it seems to me, quite well recognise that the conditions of marriage are a matter which the State should regulate in accordance with its view of social expediency, provided that in the notion of social expediency is included the cultivation of a high ideal of life and character and not merely the promotion of maximum pleasure.

"(5) And here I should like to add a remark which is suggested by some of the evidence already given before the Commission. It seems in some quarters to be assumed that there are only two alternatives before us—either a highly ecclesiastical view of marriage, based upon the doctrine that marriage is a sacrament, and the theory that it is a mere contract, like a deed of partnership or a conveyance of property, the terms of which ought (it seems to be suggested) to be left entirely to the discretion of the parties. Of course marriage is a contract, Even according to the teaching of medieval Canon Law the essence of marriage lay in the consent of the parties: up till the Council of Trent, as is well-known, the ecclesiastical ceremony was not recognised as essential to its validity even as between Catholic Christians. Nor has the very technical doctrine that marriage (not the marriage ceremony) is a sacrament in reality anything to do with the question of indissolubility, since some of the sacraments obviously admit of repetition. Marriage is certainly a contract; but no State, civilised or barbarous, has ever looked upon it as a contract of no social concern, the terms and consequences of which might be regulated entirely by the whim of the parties. There are some contracts which every State recognises as immoral and refuses to enforce, as being intrinsically immoral and contrary to public policy. This attitude can easily be defended even on grounds which would appeal to advocates of the most purely hedonistic utilitarianism. Few, for instance, would be prepared to say that a modern State ought to recognise and enforce a contract by which a man made himself the slave of another for life. Still more is that the case from the point of view of those who think that the State has an ethical end, and that, while undoubtedly all moral laws and institutions depend for their justification on their tendency to promote social well-being, social well-being, properly understood, does not mean a mere maximum of pleasure but includes as its highest element a certain ideal of character. One most important element in the ideal which commends itself to the developed moral consciousness is a high type of feeling and practice in the matter of sexual relations. The only type of sexual relations which commends itself to the moral consciousness is that of permanent and monogamous marriage. The question is what is the best thing to be done when through the fault of one or both of the parties, by adultery or in other ways, this ideal becomes in the particular case impossible of attainment. In deciding that question,

the State is bound to have due regard to the general and permanent interests of society, and not merely to the desires, or even the interests, of the parties in the particular case.

"(6) Church and State alike are interested in promoting the highest type of character in their members. It does not necessarily follow that (apart from the particular relations between Church and State existing in England and Scotland) the attitude of the State and of the Church ought to be precisely the same. It might be quite possible to hold that the State ought to allow—as the less of two evils—divorces and re-marriages which the Church, a voluntary society consisting of persons definitely pledged to a high ideal of life, might rightly refuse to perform or even refuse to recognise when contracted by the authority of the State. At the same time the great evil involved in such a discrepancy between the law of the Church and that of the State ought to be duly borne in mind; and the difficulty is, of course, increased by the peculiar relations between Church and State prevailing in England. That being so, it will be desirable for me to say a word about the question of Church authority. It should, I think, be remembered that the decisions of the Church have always professed to be interpretations of the teaching of Christ. Except for those who believe that the Church is incapable of misinterpreting the teaching of its Founder—which, in view, for instance, of the history of religious persecution, would be a difficult contention for any modern Christian—this authority will have little weight, if we believe that its interpretation is really a misinterpretation. Another circumstance which seriously weakens the attempt to base an absolutely exceptionless prohibition of divorce with liberty to re-marry upon the authority of the Church, is the enormous variety of attitudes which the Church has adopted at different times. St. Paul himself introduced an exception not explicitly recognised by his Master, and allowed divorce, doubtless with liberty to re-marry, to a converted heathen whose unconverted husband or wife desired a separation; and such a liberty is still allowed by the Roman Church with all its strictness in other respects (*cf.* the speech of Sir Henry Maine on the re-marriage of native converts in 'Sir Henry Maine; a brief memoir of his Life,' by Sir M. E. Grant-Duff, pp. 137 *seq.*). In the early Church there was the greatest variety of teaching on the subject. At one time people who had married slaves were allowed to divorce their spouses and to marry again. Theodore, Archbishop of Canterbury, allowed slaves who had gained their freedom to divorce their consorts. Some Christian emperors permitted divorce by mutual consent, and such a permission could not have been without some support in Christian public opinion. The Theodosian code allowed divorce for certain crimes. A law of Ethelbert, passed in the time of Augustine of Canterbury, simply required the adulterer to provide the injured person with a new wife. Even St. Ambrose allowed the re-marriage of the innocent party after divorce for adultery. (References to the original authorities for these statements will be found in Smith and Cheetham's 'Dic. of Christian Antiquities,' Art. Marriage.) It was only very gradually that it was settled in the East that re-marriage should be allowed to the innocent party, and in the West that it should not be allowed to either party. I mention these facts merely to show that there is no ground for contending that the permission of re-marriage to the innocent party is opposed to any universally admitted principle of Christian ethics, or that the Church is for ever precluded by its own past from reconsidering the question of still greater extensions of facilities for divorce. If the authority of the medieval Church is binding and final, we are bound also by the innumerable prohibitions of marriage on grounds of consanguinity or affinity which our Church has abandoned. While the view is not untenable that the State ought to allow divorce and re-marriage which the Church ought to forbid, the State ought, I think—even when there is no close connection between Church and State—to be extremely reluctant to establish lower standards of conduct in the matter of marriage than those recognised by the Church. In Protestant countries, at least, the State is—for the mass of the people—a more powerful moral educator than the Church. It is hard to persuade the average man that a union which the State allows is not sanctioned by the highest morality. Any divergence between the rule of the Church and that of the State on this matter is therefore a very serious evil; and this ought to be borne in mind on both sides.

"(7) I now approach the fundamental question: 'Is it desirable for the State to extend the causes for 'which it will grant divorce with liberty to re-marry?' I have no doubt whatever as to the desirability of allowing divorce where it is now allowed; and I think morality would gain rather than lose by the extension of this permission—practically for the first time—to the poorer classes by conferring jurisdiction upon the county courts, or some of them, with due precautions against collusive divorce, and proper machinery for compelling the guilty husband to contribute to the maintenance of his wife and children. The question is: 'Should the causes for divorce at present recognised be extended?' And here I will confess at once that I feel much more clear as to the principle on which the question should be decided than as to the actual application of the principle to particular cases. I am quite clear that no principle of religion or morality forbids divorce with liberty of re-marriage if a sufficient social advantage can thereby be secured, including in the notion of social advantage a strong public opinion in favour of permanent marriage and fidelity to marriage bonds and a generally healthy state of feeling as to sexual relations. I feel that I should perhaps be able to arrive at a more decided opinion if I possessed just that knowledge of the results of different types of legislation in other countries, and that evidence from persons possessing the kind of practical experience which I do not possess, which it is the business of this Commission to collect. I have no doubt that divorce for causes other than the adultery of one of the parties should be made difficult. In the abstract the extension of the grounds of divorce to many other cases seems to be reasonable; but I strongly feel the difficulty of defining such cases rigidly enough to prevent the relaxation growing into divorce by mutual consent, and so practically allowing every husband or wife to get rid of his or her spouse simply because he or she would prefer another. I would rather, therefore, express no decided opinion as to the desirability of extending divorce to such cases as desertion or cruelty, and to confine myself to urging that, if there is to be any extension of the present grounds for divorce, the extension should be of a strictly limited character, and should be surrounded by as many safeguards as possible against abuse. If cruelty is to be a ground for divorce *à vinculo matrimonii*, it should be at the discretion of the judge to grant a divorce or a judicial separation; where the cruelty is not extreme, the State may reasonably say to the injured party: 'We cannot compel you to live with this man 'or this woman; but if you insist on separation, the 'desirability of discouraging hasty marriages and 'precipitate divorce is so great that in the public 'interest you must remain unmarried.' Another strong reason for not granting a divorce *à vinculo* in every case of cruelty is that it is desirable to encourage reconciliation. Among the poorer classes such reconciliations are, it is evident, very common. If the power at present possessed by magistrates of granting judicial separations is to continue at all, the separation ought in the first instance to be for a short period only; and it would be well that, even in the High Court, separation should be at first temporary. If desertion is to be recognised as a ground for divorce, the desertion should be for a considerable period. The strongest cases for an extension of the present grounds seem to be (1) the case of long-continued and apparently incurable insanity of a serious type; (2) the case of disappearance for a certain number of years—the period should not be a short one—when it is established that the deserted party does not know, and cannot discover, that the deserter is still alive. In these two cases I should have no hesitation about the desirability of allowing re-marriage. The permanently insane person may be regarded as virtually dead; and it is

reasonable that death should be presumed after a sufficient period of disappearance.

"I doubt very much whether habitual drunkenness ought to be a ground for divorce; the difficulty of definition is too great; it is possible that the worst kind of dipsomania might properly be treated as insanity. As to the case of long sentences for crime, I should feel the objection which has been expressed by the Lord Chief Justice and others. In all cases it would be desirable that re-marriage when allowed should only be permitted after an interval, in order to permit of reconsideration and to diminish the inducement to divorce by mutual consent.

"(8) There remains the question 'Under the 'particular relation between the Church and State 'prevailing in England, what legislation should there 'be as regards the ecclesiastical side of marriage, in 'the event of any extension by the State of the 'grounds for divorce *à vinculo*?' In the first place I should like to express in the strongest possible manner my dissent from the suggestion that civil marriage should be compulsory in all cases, and that the State should cease to concern itself with the ecclesiastical ceremony at all, whether in the Church of England or in Nonconformist chapels. Such a measure would, I believe, have the effect of seriously lowering the public estimate of the solemnity of marriage, and of the moral obligations which it involves. It would suggest the idea that it was only in the view of the clergy of certain religious sects, and not in the view of the general community, that marriage possesses any greater solemnity than a mere commercial transaction; while to make the right to be married in church and to be admitted to communion in the Church of England wholly dependent upon the views of the individual clergyman or of a purely clerical assembly like the present Convocations, would be to take an important step in the direction of Disestablishment, and to make concessions to sacerdotalism such as even a disestablished Church would not be at all likely to make. At present, at all events, Parliament is the only legally recognised organ for the expression of lay opinion in the Church. I quite agree with Canon Henson's suggestion that the re-marriage in church of the guilty party in a divorce suit might well be prohibited. This does not necessarily imply that such a marriage is altogether unlawful. The guilty party is a notorious evil liver, and as such cannot claim to be admitted to communion, or to have his marriage blessed by the Church. It does not follow that his continued co-habitation with the second wife should be made a permanent bar to communion; but the question of the duration of time within which such a notorious evil liver is to be debarred from communion is at present (in the practical desuetude of proceedings against laymen in the ecclesiastical courts) left to the individual clergyman, and the prohibition of such marriages in church would leave matters in this respect just where they are. The same prohibition of re-marriage in church for the guilty party would, I think, remove the one feature of the present law which is shocking to those churchmen who do not share the extreme view as to the intrinsic indissolubility of marriage, and would strengthen the position of the State in refusing to defer to the dominant clerical opinion as regards the re-marriage of the innocent party, which, as has been seen, has always been allowed in those Eastern Churches with which high-churchmen are so anxious to establish inter-communion. With this exception it seems to me that the attitude of the State up to the present is one which commends itself to Christian public opinion, even to the great majority of lay churchmen and to a considerable minority among the clergy. In such matters Parliament is, I believe, a much better exponent of Christian, and even of Church of England, opinion in this country than the majority of the bishops or of Convocation.

"I strongly hope, therefore, that in any future legislation on the subject the State will not go back upon its present attitude, and will allow (without enforcing upon the conscientiously objecting clergyman) the re-marriage of the innocent party and of those who have contracted a marriage with a deceased wife's sister, and will insist on the right of such persons to Holy Communion. If the State were to go further and to extend the grounds for divorce to such cases as I have discussed, I admit that a grave situation would arise. As an individual churchman I should be in favour of the Church recognising the act of the State and allowing re-marriage. The question of such permission being one of social expediency, and a matter within the competence of the State, the Church ought, I think, to accept its decision—so long as the State does not extend the facilities for divorce to a point at which they become obviously inconsistent with the ideal of permanent monogamous marriage, and so, from the Christian point of view, sanction something intrinsically immoral. But any official recognition of such re-marriages by the bishops or by the Convocations, or by any ecclesiastical authority whatever, would be at present wholly impossible; and here the refusal to celebrate or recognise such marriages would be supported by a much larger body of Christian opinion inside and even outside the Church of England. Unsatisfactory as such an expedient must be admitted to be, the best practical course would perhaps be to allow any clergyman who is willing to perform such marriages to do so in any church which its incumbent is willing to lend for the purpose, with due protection for both clergymen against interference or vindictive proceedings by individual bishops. In this way Christian public opinion will be allowed to develop itself freely in the matter—whichever direction such development may take—whereas the total prohibition of all such marriages in church would stereotype the present phase of ecclesiastical opinion on the subject.

"I am assuming that any extension of facilities of divorce, if granted at all, will be of the moderate kind which generally commends itself to Christian public opinion in Protestant Churches other than in the Church of England. I will not attempt to discuss the history of Protestant opinion on the subject, but will merely appeal to the fact that the Westminster Confession allows divorce *à vinculo* in the case of 'such wilful desertion as can in no way be reconciled by the Church or civil magistrate" (Chap. 24), while other Protestant Churches have gone further than this. I appeal to the fact not as an example which ought necessarily to be followed, but merely to show that the proposal to offer further facilities for divorce is not opposed to universal Christian opinion.

"Within such limits I do not think the State should prohibit marriage in church to an innocent party. I regard it as inconceivable that this country should adopt the marriage laws of the laxer American States, against which a strong opinion is gradually forming in America itself. If it did so, I should fully admit that a more decided distinction between the civil and the ecclesiastical marriage would become inevitable. The celebration in a Christian church of re-marriage after divorce granted for mere caprice or collusive desertion or a mere pretence of cruelty would be an intolerable scandal which the State ought not to permit, still less to enforce. So long as divorce is only granted on grave and serious grounds, such as may reasonably be held to fall within the principle that marriage can only be dissolved when the conduct of one of the parties has *ipso facto* dissolved it, I do not think that in an Established Church the State ought to forbid a clergyman who takes this view from celebrating the re-marriage of the innocent party, or to forbid him from admitting such a person to Holy Communion. In this case it would perhaps be necessary to protect from legal proceedings a clergyman who should feel himself bound in conscience to refuse Communion to such a person, while he would also be protected from legal proceedings for admitting him.

"(9) I should like to second Canon Henson's protest against the clause in the recent Act by which a clergyman is liable to penalties for marrying his deceased wife's sister. The clause was introduced into the Act by the House of Lords at the last moment, and I do not believe the House in the least understood that the technical expression "ecclesiastical censure" (to which the clergyman who contracts such a marriage

was made liable) included deprivation of a benefice. I should like to observe in passing that the ecclesiastical authority (patristic and conciliar) against the second marriages which are freely contracted by high-church bishops and priests is far stronger than any that can be pleaded against the marriage with a deceased wife's sister whether in priest or layman. If there is to be any further legislation on the marriage question, opportunity might be taken to remove this anomaly from the statute book."

39,307. I have not read that passage before. I doubt whether that is really relevant to our inquiry at all. Up to that everything seems to be?—I think the subject was introduced by Canon Henson.

39,308. It may have been mentioned, but we probably said so at the time?—"(10) I venture strongly to plead for permitting the publication of divorce cases with the degree of fulness now usual in respectable newspapers. I am inclined to think that there is some exaggeration about the bad effects of such publication, except what is the inevitable result of that knowledge of evil which boys will be sure to acquire at an early age without the assistance of newspapers. And I do not believe that the deterrent influence of a mere statement that A.B. has been divorced on the ground of adultery or cruelty would be strongly felt. I suspect that is not so much the mere fact of its being known that he is guilty of adultery which exercises a deterrent effect on the class of people who figure, or might under certain circumstances figure, in divorce suits as the publication in detail of the discreditable and often (according to the most worldly standards) dishonourable behaviour, on one or both sides, which have led up to the actual adultery. In the same way, many a man who would care comparatively little about the world knowing that he had been guilty of something which the law called cruelty—mere technical cruelty, as he would say to his friends—would shrink from having the actual details of his neglect or bad temper or brutality proclaimed to the public.

"(11) Although I recognise that there are strong arguments on the other side, I think on the whole it would be conducive to the interests of morality that adultery without cruelty or desertion on the part of the husband should be a ground for divorce *à vinculo matrimonii*, when it could not be shown that the other party had conduced to or connived at the adultery for the purpose of facilitating a divorce. I may perhaps be allowed to add one further suggestion; while it is certainly desirable to offer no inducements to misconduct deliberately planned with the view of facilitating a divorce, I have always found it difficult to understand why misconduct on the part of the petitioner should be held a bar to an absolute divorce in all cases, even when the misconduct was in no way responsible for the misconduct of the respondent. When both parties desire a divorce it might be desirable to extend the discretionary power of the court to overrule such an objection on the part of the King's Proctor when it is of opinion that the misconduct did not take place by mutual agreement for the purpose of procuring the divorce. The argument in favour of such an extension is the general social objection to the multiplication of judicially separated persons living apart and yet forbidden to contract legal marriages, I do not say that no such separations should ever be allowed, but they should be minimised as much as possible in the interests of morality itself."

39,309. That is so very full, Canon Rashdall, that I have not much to ask you; but I should like to get one point a little more fully, if you would kindly turn to page 2. It is a question of fact and not comment It is the paragraph beginning, "I feel bound to say this much upon the more fundamental issue which is raised in the particular problem before us; and the line I have taken would, I think, be fairly representative of a large body of Christian opinion." I want you to tell us to what extent you consider your views in that respect are representative of a body of Christian opinion?—Well, I should be disposed to say if this particular question of divorce were not raised, if one confined oneself to the general question of the authority of our Lord on matters of conduct, I should think that nearly all intelligent Christian opinion would recognise that our Lord only purported to lay down general principles, leaving the detailed application of them to the individual conscience, or to the conscience either of the community or the individual as the case may be. That I think would be almost universally admitted in general terms. When we come to this particular case, I admit that the number of people who would be disposed to agree with me would be smaller; I think it is probable it would be a minority of the clergy—certainly it would be a minority of the clergy—but I think it is very probable it would be a majority of lay members of the Church of England. But, however, opinion on this subject is so rarely expressed that it is rather difficult to say what view is generally taken.

(*Chairman.*) I think that indicates a little more fully than the paper does what you intend to convey.

39,310. (*Sir Frederick Treves.*) You are strongly disposed, Canon, to the admission of incurable insanity as a ground for divorce. You state no reasons for that?—Well, I should have thought it was so obvious that the insane person is not capable of being to the other person what a husband or a wife should be.

39,311. But it has been said in this room that that applies to many other incurable diseases, and why select insanity?—You said any incurable disease?

39,312. Yes?—Well, I should have said the case was scarcely parallel; because as long as a person is incurable, no doubt he or she cannot be all that the ideal of marriage requires that he or she should be to the other party; but then there would still remain duties and good offices which the other partner may render to the sick person, and I do not think it should be laid down that he or she is discharged from rendering those good offices by virtue of a disease. But, when you come to insanity, you have to deal with a being who, in the moral sense of the word, is not a person at all.

39,313. And therefore you would put insanity by itself as a condition totally apart from the ordinary mass of incurable diseases?—I should be inclined to do so.

39,314. It has been said that marriage is for better or for worse; and if an unfortunate person becomes insane, in view of that statement do you still hold insanity should be a ground for divorce?—Yes, I think so.

39,315. On what ground?—Well, I do not think you can take a particular formula like "for better or for worse" and base your whole theory of marriage on the actual use of those words. Most general statements require some qualification, and it obviously would not be convenient in the marriage ceremony that the parties should enumerate the particular cases to which the general rule does not apply.

39,316. (*Mr. Burt.*) Just one question. I gather from your evidence that you would place the two sexes on terms of equality?—I should incline to do so, though I do not feel at all decided on the subject. I think there is so much to be said on both sides; but on the whole, I think so.

39,317. (*The Archbishop of York.*) I should like to ask you one or two questions, Canon Rashdall, bearing on your evidence, so as, if possible, to elicit your real meaning. At the beginning of your very interesting proof you lay it down as your opinion that you would find it difficult to regard any saying of Christ as absolutely and permanently binding on His followers if it were found to be in collision with the dictates of moral consciousness in the present. Does that mean that the moral consciousness, so far as it can be discovered at any time, is to condition the acceptance of a saying of Christ?—Well, perhaps I might put it in this way. I regard the grounds for the authority that we ascribe to Christ, and the position which is assigned to Him by Christian theology, as resting very largely indeed on the appeal His teaching makes to the moral consciousness, and, therefore if we found that to an important extent the teaching of Christ was such as did not appeal to the moral consciousness, the ground for the authority that is ascribed to Him

would be gone, and one would find oneself involved in a circular argument. I might illustrate the point in this way. Suppose, as a matter of fact, Christ taught what Mahomet had taught. I could then no longer accept His authority, and, therefore, I should find it difficult to say: "Here is some important general "rule which does not commend itself either to my "moral consciousness or the moral consciousness of "the age, and yet I feel bound to accept it merely "because it is recorded that our Lord Jesus Christ "said so nineteen hundred years ago."

39,318. Might I submit that is a purely hypothetical case. Might I ask who is to determine what the moral consciousness of the present is?—Well, with regard to his own personal conduct everybody must determine it for himself.

39,319. So if a person said. "I refuse to obey a "saying of Christ, because it does not commend "itself to my moral consciousness," would one be justified in considering him a Christian?—Well, I think it would depend on the special character of the precept. He might reject some detailed recommendation of Christ and remain a Christian on the ground that the detailed recommendation of our Lord referred to a state of things that has passed away, and that the principles of the Master's teaching must be applied by each age to its own circumstances. But if the thing were a matter of sufficient importance, then I think, *ipso facto*, he would cease to be a Christian by refusing to accept it; or his Christianity would become a Christianity of a different kind.

39,320. Would you say that our Lord's sayings about marriage are dealing with details?—If they are to be taken as absolutely binding rules, binding upon the State as well as the individual, and upon the individual in all possible circumstances, I think it might be possible to regard them as dealing with details.

39,321. But apart from these conditions, do you wish to convey to us that your opinion is, that even a strong ideal expressed by Christ, if in conflict with the moral consciousness of the present at any time, might be set aside?—Certainly, I think the moral consciousness ought to prevail; but then in that case the moral consciousness would, to that extent, have rejected Christianity.

39,322. Quite; but I want to know what your opinion is, as it is capable of very wide extensions. On that principle one ought to follow the development of the moral consciousness, even in such a case. That is, apparently, a higher authority than the sayings of Christ?—I did not quite gather what you said.

39,323. You would admit that an individual or a body of individuals would be entitled to say the development of the moral consciousness must prevail, even against what seems to be a large ideal laid down by Christ?—Yes, I should say it would be the duty of such a person not to be a Christian, since the reason that we have for being a Christian is the fact that the Christian ideal appeals to us. If the Christian ideal did not appeal to us, it would be certainly our duty not to be Christians.

39,324. Then you would say the only authority that Christ had on the individual or community was limited by whether or not what he said commended itself to the moral consciousness of that person or community?—Yes, if that is to be taken in this sense, that so long as it did not commend itself to the individual or community, the individual or community ought not to follow it; but it would not follow that the individual or community was right. The teaching of our Lord might be the right moral teaching.

39,325. But you say we can only determine what is right by its correspondence with the moral consciousness of the present?—Certainly.

39,326. Then a person would be right to reject even a large ideal of Christ, if it did not correspond with that moral consciousness?—Yes, I think so.

39,327. You would agree that hitherto the general impression has been amongst Christians that the ideals of Christ were to control rather than to follow the ordinary development of moral consciousness?—I never for a moment suggested that the ideals of Christ should follow. Christ laid down the ideal, if I may say so, out of His own moral and religious consciousness. I have not suggested that He ought to have subordinated His ideas to the lower ideas of His time.

39,328. No, but what you have suggested is, that the moral and religious consciousness of Christ has no authority to control or guide the moral and religious consciousness of humanity, but should rather defer to that as a higher authority?—No, I have not suggested it should defer to it. I have suggested that an individual who finds himself hopelessly in collision with the ideal of Christianity should follow his own conscience. I do not mean to say the individual is not to take account of the authority. In making up his mind if a thing is right, an individual ought to pay great deference to authority; and for anyone who is a Christian, the authority of Christ would be the highest authority that could possibly be appealed to. But, all the same, in the last resort, if, having taken into account the importance of the authority against him, he still is clear that what is recommended by that authority is wrong, he ought not to do it I think your Grace said that the general Christian opinion would be against me. I believe I could appeal on that matter most distinctly to the authority of Bishop Butler and of Cardinal Newman. In a well-known letter Cardinal Newman wrote practically to this effect —that if the Pope, whom he acknowledged to be infallible, told him to murder the King, he would feel bound to obey his conscience and not the Pope.

39,329. I think you admit that is an extreme case?—Certainly, but I think it is necessary to take into account extreme cases when we lay down general principles.

39,330. Then would you say that when the moral consciousness in the past had taken a strong line, the Christian ideal ought to have deferred to it, or accommodated itself to it?—I not only think it ought to have done so, but that it did so, because no age has based its conduct entirely on some external authority without appealing to its own moral consciousness.

39,331. Then were such generations forcing the teaching of Christ to accommodate itself to their own moral consciousness?—It would not have been necessary in their own view. The age that recommended celibacy and regarded marriage as barely tolerable, and a necessary evil, based its view on the deliverance of the moral consciousness. They really did think marriage a base and a low thing, and that celibacy was a high ideal. That being so, they would no doubt have thought that their ideal was the ideal of our Lord; they interpreted his sayings in that way.

39,332. Then would the persons who resisted those low notions on the ground that they were not Christian have been justly shut up, if I may use the expression, by being told that that was the moral consciousness of the present?—I have never said the individual Christian should submit unreservedly to the moral consciousness of other people, but take it into account; and I think the individual might be justified in acting on the authority and thinking it was more likely to be right than himself. But if his moral consciousness was sufficiently clear that it was his duty to act against the general view of his age, I say he ought to have acted upon it.

39,333. Then we will come to the future. Supposing that over any large section of civilised society views of marriage prevailed which were of an extremely lax kind, but these views commended themselves to the moral consciousness of the present; it would be, in your view, no longer open to the Christian to say, "I object to this because it is inconsistent with the ideal of Christ"?—It would be open to him to say so, certainly; for in some cases to act upon authority is a perfectly reasonable thing if an individual does not feel perfectly clear about a matter, It is impossible to define the degree of conviction and clearness which makes it the duty of individuals to act against even the highest of external authorities; and when the conviction is not of a very strong kind, and his opinion is not the clearest possible, he may very well be

justified in deferring to the authority. He might put it to himself in this way: "Christ's moral stan- "dard I recognise as being the highest the world "has ever known, and, if in a particular case I find "myself at issue with it, it may still be better for me "to defer to it, because I think Christ is more likely "to be right than the spirit of the age." But if that were not the case, and he felt in his own consciousness that the spirit of the age was right, he ought to act on that judgment, no matter what the external authority against him was.

39,334. No doubt that is the individual conscience; but you say that the ideal of Christ about marriage even is subject to the greater authority of the moral consciousness of the present—which may mean equally at any future period of the evolution of ordinary morality?—If I may say so, I do not think that is a fair way of putting it. You are suggesting that what I have said——

39,335. No, I am not suggesting anything I only want to know what your opinion is?—Well, you seem to think my opinion was that the individual ought always to defer to the opinion of his age, excluding himself. I have not suggested that. I am taking the case where an individual's moral consciousness agreed with that of his age. I think the individual ought to pay a certain amount of deference to the opinion of others; but still there are limits to that deference.

39,336. I will not pursue the question further, except by reading again what you have said in your proof, and asking whether it represents your considered judgment. "I should find it difficult to regard a "saying of Christ as absolutely and permanently "binding upon His followers if it were found to be in "collision with the dictates of the moral consciousness "in the present." Does that represent your judgment? — The moral consciousness of the present includes the individual's own moral consciousness, and your Grace rather assumed that it should be excluded.

39,337. I assume nothing. I only want your opinion. I understand that is so?—Including the individual's own moral consciousness. I stand by that sentence.

39,338. I should like to know what your opinion is as to this. Looking at it from the public point of view—how is the State, in dealing with this marriage question, for instance, to discover at any time what is the best moral consciousness of the present?—I suppose Members of Parliament are elected as representatives of the moral consciousness. They must act on their own moral judgment, but they must also use the means that are open to everybody of finding out what is thought by those who they are inclined to think are most likely to know.

39,339. But you would say that the opinion of the majority of the House of Commons might be taken as a good expression of the developed moral consciousness of the present?—The opinion of the House of Commons acting with a sense of responsibility, knowing that they are the representatives of other people, and therefore are not free to express merely their private opinions, but of the opinions which are generally held——

39,340. But surely every majority of the House of Commons would suppose it was acting as the representative of the people after full deliberation?—Yes.

39,341. Therefore any opinion of the majority of the House of Commons could be legitimately taken as the best test of the moral consciousness of the present?—By themselves. They act under the belief that they do represent the people. When I say the moral consciousness of the community I do not necessarily mean of a bare numerical majority. On moral matters I should think there would be a larger amount of agreement than there is on the ordinary issues of party politics, and I do not think a member of the House of Commons would be justified in accepting a view that only represented a majority of his own party. Perhaps I might say that all along it is to be understood that authority does not mean infallibility, I have not claimed infallibility for any authority.

39,342. No; I understand your view is that, as far as it is to be discovered (and I have a difficulty in knowing what your opinion is, as to how it is to be discovered), the moral consciousness of the present is the highest ethical authority?—I do not mean the moral consciousness of the present when it clashes with the individual's own conscience. Supposing the individual does not agree with it, the individual should think, no doubt, of the moral consciousness of the past as well as of the present.

39,343. Thank you. I will not pursue that further. I am coming to what you have said about extensions, which you would be prepared to think would be of social advantage in the grounds of divorce, rather bearing on what Sir Frederick Treves was asking you. Could you give us any indication whether the grounds you have selected for possible grounds for divorce have been selected upon any basis of principle governing them?—The existing grounds?

39,344. No; the proposed grounds of extension, which you have advocated?—I think it is a matter of social expediency, and each case must be considered by itself. I am quite clear about the two cases I have mentioned. I am rather inclined to think that there should be further extensions, but there are so many expediencies on both sides that I do not pretend to have a very clearly decided opinion as to any further grounds.

39,345. You would have no objection on any ground of principle (though you might have grave objections on grounds of expediency) in accepting mutual consent as a ground for divorce?—If divorce by mutual consent was for the real good of the community I should be prepared to vote for it, but I cannot conceive that under any possible circumstances or in any possible community the permission of divorce by mutual consent could be for the real good of the community.

39,346. You would not consider that our Lord's saying would have any bearing except as representing a high moral opinion on the question as to whether mutual consent should be a ground for divorce or not?—I think an individual, before committing himself to such a judgment, should weigh the authority of Christ; but I think if he came to the conclusion that, in spite of Christ having held another ideal divorce by mutual consent ought to be permitted, he would have taken a considerable step towards repudiating the authority of Christ altogether, and, so far, have ceased to be a Christian.

39,347. I only wanted to know. You would leave even that to be determined by the social expediency of the time?—Yes, including in one's notion of social expediency the maintenance to a certain moral ideal which does not vary with the times.

39,348. I have found a little difficulty in knowing just where your views would carry us. I see you think there might be these extensions "if a sufficient "social advantage can thereby be secured, including "in the notion of social advantage a strong public "opinion in favour of permanent marriage and fidelity "to marriage bonds, and a generally healthy state of "feeling as to sexual relations." I should like to ask whether you think at the present time, for instance, even in our own country, there is a generally healthy state of feeling as to sexual relations?—I do not think the state of feeling is as healthy as it might be, but I think the ideal generally held is much in advance of the general practice. The ideal is much healthier than the practice.

39,349. Then, do you think, if the views you have put before us as to the moral authority of the sayings of Christ were generally adopted—not by a student in a university, but by people generally—these strong feelings about the permanence of marriage and the sexual relations would remain as strong as they are?—I think the judgment of the great mass of the people on moral questions is, and always must be, very largely determined by authority—by the general sense of the community. They have no reason very often for believing a particular thing to be wrong except that it is generally accounted so.

39,350. And you would think that is a reasonable opinion?—I think as long as they have no decided opinion of their own they are right in deferring to the accepted standard of the community, but those accepted standards are not infallible; and they ought to be, and continually are, modified by changes of moral sentiment which first of all spring up in individual minds or in a section of the community and gradually extend to the community at large.

39,351. Leaving out these rather elaborate distinctions, what I want to get at is, do you think the views you have promulgated about the sayings and authority of Christ, if largely adopted, would tend to the strengthening of the feeling about the permanence of marriage, or even the obligation of personal purity. What I wish you to have in mind is that you cannot expect every man in the street to make the distinction which you have been good enough to put before us?—The question that your Grace is raising constitutes one of the most difficult problems of moral philosophy. I quite admit that it may possibly not be very desirable to encourage masses of ignorant people to enquire too curiously into the grounds on which things are accounted right or wrong, but I do not think there is anything in the views I have propounded the diffusion of which would tend to lower the general ideal of marriage.

39,352. Then I come to one or two questions about the very interesting opinions you have put before us, on the difficult question of the relation of Church and State with regard to marriage. How far would you wish us to suppose that the views you have represented to us represent any considerable section of opinion in the Church of England. I want to get a little more clearly what you said in answer to the Chairman?—Well, I have read the evidence of several clerical witnesses who have given evidence within the last few days, and I find myself in general agreement with them. I may not agree with every word they have said, or they with every word I have said; but I find myself looking at the thing from the same point of view as such people as Professor Sanday and Professor Inge, and I think they represent a considerable section of opinion among the clergy and a very much larger section of opinion amongst the laity, in so far as the laity have ever arrived at very distinct and definite opinions on the subject.

39,353. Do you think Dr. Sanday would be prepraed to agree with the opinions you have expressed on the first page of your proof?—Dr. Sanday is chiefly a theologian and has not written on questions of ethics, but I think it is extremely probable he would agree.

39,354. Now how far would you regard Convocation as fairly representing the mind of the Church of England on this matter?—I should think it represents fairly enough the minds of the majority of the clergy.

39,355. Do you regard Convocation as having any constitutional place in expressing the mind of the Church of England?—I recognise it as having the amount of authority which the law attributes to it.

39,356. It is the only constitutional (whether it is sufficient or not is another matter) expression of the mind of the Church of England, is it not?—Except in so far as the mind of the Church of England is the mind of the nation expressed in Parliament.

39,357. I am coming to that in a moment. Do you regard the Houses of Laymen elected by members of the Church as in any way representing the mind of the Church of England?—I should think they are about as bad representatives as it is possible to discover.

39,358. Is there any other way to represent laymen in the Church of England except Parliament?—No, I do not think there is.

39,359. So that in the absence of anything else except Parliament it is in some way representative?—Well, there is a body of persons elected by somebody, and they call themselves representatives, but I do not recognise that body as possessing any legal or much moral authority.

39,360. Then do you regard the Diocesan Conferences as at all representing the mind of the Church of England?—They represent the opinions fairly well of the majority of the clergy, but I do not think they are very expressive of the real mind of Church people. Knowing the kind of way they are practically elected I do not attach much importance to their decisions, because people who are not strongly interested in ecclesiastical questions seldom take much part in electing them or their deliberations.

39,361. But ecclesiastical questions is a Latin way of describing Church questions, and those members of the Church who are interested in the Church should be more generally regarded as representative of the mind of the Church than those who are not?—I do not know that I should admit that.

39,362. You would say as to elections that those citizens who thought about and informed themselves of the affairs of the State are more representative, and their opinion more worthy of being considered, than the mass of citizens who read and think very little, would you not?—I should not admit that the people whose opinions are not represented by Diocesan Conferences necessarily feel less strongly about moral matters than those who are represented.

39,363. But this matter is a matter of something more than a mere technical ecclesiastical question?—Certainly; but I do not think because a man has strong views about this question he is necessarily likely to offer himself to be elected, or to be elected, a member of a Diocesan Conference.

39,364. Then except for Parliament you think it is not possible to ascertain the mind of the Church of England?—I do not think it can be ascertained in a cut and dried way. I think one's general knowledge of life will tell one what is the view generally held by members of the Church of England.

39,365. It must be a matter of individual experience?—Yes, necessarily.

39,366. It must depend on the particular members of the laity you encounter?—Yes. It is not only by personal conversation, but one reads books and papers which give an idea of the views that are held in the community in which one lives on this and other religious questions.

39,367. Then is it, or not, true that both Houses of Convocation in both provinces, both Houses of Laymen, the representative Church Council containing all of these met together, and, so far as I know, every single Diocesan Conference, has expressed opinions very diametrically opposed to those you have represented?—That does not convince me at all——

39,368. I am not seeking to convince you, Canon Rashdall; I know I could not; but is it not the fact, as far as you know?—I have not examined it very carefully, but I take it from your Grace that that is the fact.

39,369. Then if that is to be set aside, we come to Parliament as representing the mind of the Church of England in a more satisfactory way. Is that so? I think you said in your proof that you thought Parliament was a better exponent of Church of England opinion than certainly a majority of bishops in Convocation?—Yes, I think that is so.

39,370–1. Even if Parliament were composed of a majority of people who were not members of the Church of England?—But is it so composed? I do not say under no conceivable circumstances Parliament might cease to represent the opinion of the Church of England. I mean taking Parliament as it stands. It might be that the majority of the community should become Mohammedans, and then the majority of Parliament would represent Mohammedanism.

39,372. Do you think that the mind of the Church of England on this matter would be dumb and inarticulate except so far as it is expressed by the House of Commons?—It has no other formal expression, but I should not say it is dumb and inarticulate; because it reveals itself in the literature of the day and the public opinion of the day; that you cannot find its opinion by counting the heads of a particular assembly, I admit.

39,373. In other words, you are not able to point to anything except your own impression as to the mind of the Church of England on this matter?—I think if I had time I could probably produce evidence that

these opinions are not confined to myself; but I cannot point to any easily accessible proof of that for the moment.

39,374. Now with regard to the effect of any possible extension of the grounds of divorce in the relations between Church and State. I think you have very forcibly said that if the State were to go further (that is, than allowing the re-marriage of innocent parties and those who have contracted marriage with the deceased wife's sister) and extend the grounds of divorce, a grave situation would arise. You feel that the relations of Church and State would be very greatly strained if the State were to adopt these grounds of extension and were to expect the clergy to celebrate marriages made in consequence of that?—Which kind of extension does your Grace mean?

39,375. Beyond the innocent party in a divorce for adultery re-marrying, which is at present permitted by the present law?—Yes, I think it would be a difficulty that would have to be dealt with.

39,376. I suppose the main difficulty would be, first of all, the celebration of such marriages?—Yes.

39,377. And you say you think the best practical course would be to allow any clergyman willing to perform such marriages to do so in any church which its incumbent was willing to lend for the purpose. But might not there be a very strong feeling that the celebration of marriages based on these extended grounds of divorce was a profanation of the church itself, and was a very violent exception, for instance, to the meaning of the marriage service?—Some people would think so, no doubt.

39,378. And would not the feelings (which I think would be those of a very large number of lay people in such matters—even parishioners) be entitled to be considered as well as the wish of the individual incumbent to lend his church?—I think it should be a consideration certainly, but to give it too much importance would be to prevent the celebration of marriages which the majority of the community thought it desirable to allow.

39,379. Then supposing the majority of the community thought it right to allow divorce by consent, would you consider then that the religious service should be held in church?—No; because that would be opposed to the feeling, not merely of a bare majority but of practically the whole of the population which could be considered seriously Christian.

39,380. Yes, but I am talking of the future?—Then it would be the duty of Christians, no doubt, to protest, and bring about some modification in the relations between Church and State.

39,381. Then the next point, with regard to the admission of persons who have re-married, under whatever conditions, to the Holy Communion. Is it your view that it is the province of Parliament (I suppose that is ultimately the majority in the House of Commons) to determine who are and who are not to be admitted to Holy Communion in the Church of England?—I think, at present, under the present relations between Church and State, it is right that that should be determined by Parliament.

39,382. That is, by a majority of the House of Commons?—Yes.

39,383. (*Sir Lewis Dibdin.*) There are just one or two points I want to get clear in my own mind. On the first page of your memorandum you say—towards the end of it—that "one of the chief claims of Christi- "anity to the position of a universal religion is just "the fact that its Founder confined himself almost "entirely to laying down principles of the broadest "possible character." It is so carefully written one can see every word is weighed; but does that mean that there are some cases which are covered by that word "almost"?—I think there are detailed applications, but I think they are intended rather as applications or illustrations.

39,384. Could you give me an example of a case where our Lord, departing from His usual method, did give what you would call a detailed rule?—Well, for instance, He said, "Lend to him that asketh of thee." That, I should say, was a detailed application of the general principle of love to one's neighbour. But that detailed application, though it is the most obvious one, does not necessarily imply that that is a rule which is to be acted upon in every individual case for all time.

39,385. Certainly not. You would not contend we are always to lend to those who desire to borrow from us?—No.

39,386. Then you do not mean really that our Lord laid down any specific rule of action which was to be followed in what was called yesterday here the statutory sense?—I think that no rules other than broad general principles were laid down and intended to be observed by all persons, under all circumstances, for all time.

39,387. I do not want to pursue the subject you have been asked so much about, namely, moral consciousness, but I have a difficulty in following the sort of basis of your view which you lay down on the seventh page. "The only type of sexual relations "which commends itself to the moral consciousness is "that of permanent and monogamous marriage." Why do you say that the only type of sexual relations which commends itself to the moral consciousness is monogamous?—Well, the deliverances of the moral consciousness are ultimate facts, and you cannot appeal beyond them. When it has reached a certain period of moral development, every community has generally recognised that, or at all events the persons I should regard as representing the moral consciousness at its best are certainly agreed about that point.

39,388. Would not it be true to say that at least half the human race regard polygamy as not inconsistent with their moral consciousness?—I rather doubt whether, as a matter of fact, that is so, because I think the tendency of recent research has been to show that the general rule all through history has been monogamy, and polygamy rather the exception.

39,389. Well, it is common ground between us that there are vast sections of the human race, by no means the least civilised, who believe in and practise polygamy?—Yes; but then I do not regard the moral consciousness that sanctions that as being the highest. Of course, in the last resort one has to fall back on one's own moral consciousness, as one does in matters of scientific truth. The vast majority of the human race probably believe that the sun goes round the earth, but that does not make it true.

39,390. I quite follow what you say. Then it comes to this, that the basis of what you start with in the marriage relation is that your moral consciousness requires as a substantive matter that marriage should be monogamous, and that the moral consciousness of another may favour polygamy?—But it does not follow we are both right.

39,391. But who is to settle?—Well, each individual must settle it, just as each individual acts on his own views with regard to scientific truth; and when it comes to the action of the community, the community must act on the moral ideas that are prevalent in that community.

39,392. I quite follow that, and if I may say so, with all respect, that is quite an intelligible view in the lecture room, but for the law we have to be definite. An Act of Parliament cannot rest on the moral consciousness of an individual. What is the basis on which an Act of Parliament, in this matter, is to go in changing the law? You start with what is a subjective basis—monogamy. But why is Parliament to take that?—I do not ask Parliament to take my individual opinion, but I think Parliament would have no difficulty in satisfying itself that the vast majority of the community do equally regard monogamy as the right thing.

39,393. Of the community here?—Yes.

39,394. Then we come round to the same thing again. The community here does not agree with the community somewhere else, and you tell me that in the end you must decide by your own moral consciousness. That, again, is an individual matter?—Yes, but I do not see quite the exact point of the question which you want me to answer.

39,395. I am trying, Canon Rashdall, without any desire to create a difficulty in your mind, or any

confusion, to translate your evidence into practical action; and I confess I fail to see, with your view of the ultimate force of the human moral consciousness, how we are to arrive at a definite law which will bind everybody?—Well, of course we cannot make it possible that there may not arise a collision between Acts of Parliament and individual consciences, and unfortunately such collisions arise, and it may be the moral duty of the individual to disobey the Act of Parliament, though I am strongly inclined to think it very rarely is so. I am not contending for anything novel. Parliament does act on its view of what the moral consciousness requires, and I might say, by way of illustration, that judges are often called upon to determine whether a certain contract, for instance, is opposed to morality, and they will in those cases act upon their own view, partly of what is generally thought moral and partly of what they themselves think moral. There is no external way of discovering what is moral. In the last resort morality is created by the moral consciousness, and I am afraid there is no way out of that—just as in intellectual matters. Supposing the question to be whether it is desirable to act on the views that the sun goes round the earth, or that the earth goes round the sun—Parliament has to act on its own view of scientific truth after paying due attention to the opinion of experts.

39,396. Now turning to another matter. You said in your paper very clearly that you would regard any divergence between Church and State in this matter as a deplorable matter, or a grave evil?—Yes.

39,397. That means, I suppose, that you regard the sanction of religion in connection with marriage as an important social factor?—I do.

39,398. That means also, does it not, that the Church is entitled to have an opinion; otherwise there would be no divergence?—Yes, but at present I think the Church is only entitled to express its opinion through the present constitutional channels.

39,399. Do you mean as the result of establishment?—Yes.

39,400. But you would agree, would you not, that the Church of England is a society which exists apart from establishment? You would not say, would you, that the Church of England has no existence apart from its union with the State?—It has consented to the union with the State, and therefore it has no legal existence except in such a way as is allowed by the terms of that union.

39,401. Yes, that is so. I am not on that. I am on the question whether they were two parties that could agree. and whether there is an independent body or society which is the Church of England?—I do not think there is any outward and visible organisation——

39,402. I do not ask that. Is there an independent society or institution?—I should say it exists ideally rather than as an actual fact, because you cannot point to the determinate persons who constitute it under the present conditions.

39,403. That brings me to one other matter I want to ask you about. I am not going to repeat his Grace's questions, but I have a difficulty here. You say on page 13, "At present at all events Parliament is the only legally recognised organ for the expression of lay opinion in the Church." I do not quite understand what it is you are referring to when you say that?—For some purposes we must take the Church to mean the people who are members of the Church of England in some other sense than merely being members of the nation, but they cannot be very accurately determined. It would be too narrow a conception of the body of churchmen to limit it to the people who habitually go to church, and on the other hand it would be too large to say that everybody is a member of the Church who is not actively a member of any other body; but we know in a rough way who are churchmen and who are not.

39,404. I am not asking you to define churchmen. That is not my point at all. There are two points on this. First, it seemed to me that that sentence did seem to be a recognition that there was such a thing as the Church independently of the establishment?—There are a body of persons who are adherents of the Church of England, and for the moment I was using the word in that sense.

39,405. Now the other point I do not understand in that sentence is what you mean by Parliament being the legally recognised organ of it. When did it become the legally recognised organ of the Church? I do not follow that?—Well, I think it has always been so more or less; and became very definitely so at the Reformation.

39,406. Became the organ of the Church? I will drop the matter altogether if you mean that no legislation is possible which Parliament does not consent to (if it is not the action of Parliament). That is the case with all legislation in England, and is only a truism. But I cannot follow what you mean by saying that Parliament is an organ and a legally recognised organ of the Church?—Well, it is not very easy to define accurately, but legislation proceeds on the theory that the nation is the Church. We all know, in point of fact, that that theory does not quite correspond with the fact; but I think it does correspond with it to a certain extent, even now, in such a way that it is on that ground that the present legal arrangements commend themselves to a large number of churchmen. They are satisfied with the present arrangement, satisfied that Parliament should act as the governing body of the Church and make the ultimate laws which the Church must obey, and in that sense I think it may be said to be still an organ of the Church.

39,407. May I regard this as your view; that the Church is really the nation in its ecclesiastical capacity. And then, of course, Parliament as the organ of the nation becomes an organ of the Church?—That would be the ideal, but one has to recognise, in point of fact, that there is a certain discrepancy between the ideal and the actuality.

39,408. That is what I was coming to. The House of Commons now does not represent the Church in any real sense, does it?—I think it would not be likely to legislate on these Church questions in a way that is not acceptable to the majority of churchmen.

39,409. Do you think the House of Commons itself takes the view that it represents the Church of England?—Well, it does in so far that it actually legislates on that basis. Of course the actual individual members of it——

39,410. Does it legislate for the Church? Have you ever had any practical dealing with getting Church Bills through Parliament?—No, I have not. I know it is very difficult to get them through.

39,411. It is startling to me to hear that the House of Commons performs the function of legislation for the Church of England?—If you open an ecclesiastical law book you will find most of the laws of the present—laws relating, for instance, to the relations between bishops and the licensing of curates, and about non-residence and pluralities.—by far the greater number of the operative laws of the Church are Acts of Parliament, and are printed in books of "laws relating to Church and clergy," and so on.

39,412. All changes have to be made by Act of Parliament?—Yes, and that does justify the assertion I make.

39,413. I ask you all this because it is of very practical importance to this Commission to understand what the view of the Church of England is with regard to these questions in view of what you yourself have said of the undesirability of there being any conflict between the Church and the State. It is in that way only that this question is relevant, and that brings me to the other point as to which his Grace asked you, and as to which I doubt if there is any real difference of opinion between us, namely, as to the position of the Houses of Laymen and Diocesan Conferences. I quite followed what you said, and personally I do not think I disagree with it—not that that is important. But would it not be true to say that there are two kinds of laymen of the Church of England? There is, is there not, the ordinary man of the world who if you asked him what he is would say he was a churchman; and there is the man who is

actively interested in Church matters, and matters in his parish and diocese—a man who has active interest in the concerns of his Church. Do not these represent two very distinct classes?—Yes, but I should say there are a great many classes. There are all sorts and degrees of adhesion to the Church; and some who would be the very best churchmen from some points of view would not be so from other points of view.

39,414. But you do recognise these two types?—Yes, and others.

39,415. Have you much practical acquaintance with Diocesan Conferences and Houses of Laymen and these bodies?—At the present moment I am a member of one, and I have taken part in one such conference; otherwise my experience is limited to reading the reports in the newspapers.

39,416. Would not you say that all those bodies are fairly representative of opinion amongst the second class I have indicated—the actively interested churchmen—but are not in the least typical of opinion amongst ordinary lay churchmen?—I do not think I could admit that they are fairly representative even of the narrower class, the class of those people actively interested in the affairs of the Church, because I think very largely the people taking part in them are those whose views agree with those of the clergy. They are often asked to stand by the clergy, and many men may be counted as good churchmen in the sense of being interested in the affairs of the Church, whose views are not uppermost in these ecclesiastical assemblies, and who shrink from offering themselves as members of such bodies.

(*Sir Lewis Dibdin.*) Then if you do not take the view I suggest, I have nothing more to say. It is your evidence that is being given and not mine.

(*Sir George White.*) May I ask one question?

(*Chairman.*) If you please.

39,417. (*Sir George White.*) I should like to ask a good many questions on the examination of his Grace the Archbishop, but it is forbidden by the rules of this Commission. However, I think I may be permitted to ask one question. May not I take it that where, in your judgment, the moral consciousness differs from the views which the Church, for instance, gives, or the interpretation which the Church gives of the view of Christ's teaching, that it at once raises the question as to whether that interpretation is a correct one or not. Do you follow me?—Yes.

39,418. As I gather from your evidence, you would feel that where this moral consciousness differs from the views of the Church, those views are probably incorrect; that the interpretation of Christ's teaching by the Church is an incorrect one?—Yes.

39,419. And it is on that ground, as I gather, that you would pay heed to the moral consciousness rather than the interpretation which the Church puts on these teachings?—Yes.

39,420. (*Chairman.*) May I just ask one thing? The questions, as I listened to them, are rather exclusively in the interests of the Church of England. I should like to know if you can tell me what proportion is generally recognised of the whole population in this country as belonging to the Established Church, because we have a great many interests here to consider besides the Established Church; there are all the other Churches, and many people who do not accept Christianity at all?—I think I would rather not answer——

39,421. I only want to know if you can give us any idea?—I should not like to give a definite answer without looking up statistics on the subject, but the general impression, I suppose, is that those who can be considered, in a rather liberal sense, members of the Church of England are a small majority—are not a very large majority of the community—but they are a majority. Perhaps I might say with regard to these moral questions I think nearly all I have said would be equally applicable to the great body of Christian people. I mean to say I am not suggesting that the Commission should act on the views of the Church of England, but on those which would commend themselves to the great body of the Christian people in the community.

39,422. I only put the question because we have to keep in mind the view of more than one Church?—I intended to bear that very distinctly in mind in all I have said.

(*Chairman.*) Canon Rashdall, I think we ought to thank you very much indeed for the trouble you have taken over this evidence, and I am sure it will be very valuable to us. Thank you very much indeed for your attendance as well as for the paper.

(*Chairman.*) I daresay some of you will remember that Dr. Swete said he was not well enough to come to-day (I have the correspondence here), and at one of the meetings we resolved that his memorandum which he had prepared should be read I have it here. This is a copy he sent up corrected in his own handwriting, but some of it is Greek and some is Hebrew.

The following memorandum was read by the Chairman:—

MEMORANDUM prepared by Dr. Swete, Regius Professor of Divinity, Cambridge, and presented to the Commissioners.

"In this paper I limit myself to two points: (1) the text and interpretation of certain sayings of our Lord which bear on the question of re-marriage after divorce; (2) the interpretation of a passage in the Epistles of St. Paul.

"1. Mark x. 11 = Luke xvi. 18, Matt. xix. 9; Matt. v. 32.

"In Mark, the statement that the re-marriage of a divorced person is adulterous stands without qualification. Luke supports this, and the text shows no important variant in either Gospel.

"On the other hand the parallel passage in Matthew (xix. 9) notes an exception to the general rule. There is a good deal of uncertainty as to the verbal form of the exception; the "Western" text gives παρεκτὸς [λόγου] πορνείας (so BD latt^{vt}); the other uncials and the later authorities, generally have [εἰ] μὴ ἐπὶ πορνείᾳ (so ℵ C vg, &c.). It has been suggested that these are two renderings of the same Aramaic, and that the addition of the words κατὰ πᾶσαν αἰτίαν in Matt. xix. 5, prepares us to expect an exception of some kind in verse 9. It is possible, therefore, that one or other of the forms of exception in the MSS. of verse 9 stood in the autograph of the Greek Matthew.

"In Matt. v. 31, there is no variant, and the exception (παρεκτὸς λόγου πορνείας) is probably original, *i.e.*, it belonged to the Saying as reported by Matthew in that context. Nevertheless, it is open to question whether even there the exception is a true part of the original Saying. In both the Matthean contexts where the Saying occurs there is clear reference to Deut. xxiv. 1, which permits a husband to divorce his wife 'if he has found some unseemly thing in her' (lxx. ὅτι εὗρεν ἐν αὐτῇ ἄσχημον πρᾶγμα), *i.e.*, as the school of Shammai interpreted the words,* some act of unchastity. Now the first Gospel represents our Lord as adopting this interpretation and basing an exception upon it. But in that case it is difficult to see how He could have spoken of the Mosaic regulation as a concession to the σκληροκαρδίαt of the Jewish people. Moreover, His own ruling would have been substantially a republication of the old law, and not, as the whole context in Matthew v. plainly requires, an antithesis to it.

* *See* Driver on Deuteronomy, p. 270. † Matt. xix. 8.

"But, as it appears to me, there is a stronger reason against attributing the exceptions in Matt. v. 32, xix. 9, to our Lord Himself. It is not after the manner of His Synoptic teaching to guard the principles He lays down by making possible exceptions. He states a principle broadly, leaving it to His disciples to apply it to the circumstances of life, and, where necessary, to relax its rigidity. There are excellent examples of this habit in the immediate neighbourhood of Matt. v. 32, *e.g.*, in v. 22, 39 ff.; in verse 22 some early interpreter has endeavoured to supply a limitation by adding εἰκῇ, which has found its way into the Received Text. In verse 32, if my view of the passage is correct, this has been done by the Evangelist himself, who has thus brought the Saying into line with what was probably the practice of the Jewish Christian circle in which he moved.

"I believe, then, that, in its original form, our Lord's condemnation of re-marriage after divorce was absolute, *i.e.*, that He stated no exception. Such a contingency could find no place in the new ideal of marriage and married life which the Church was to present to the world. But I do not draw the inference that it is not lawful for the Church or for a Christian State to permit divorce or re-marriage in any circumstances. Both, however, are strongly to be deprecated because both are departures from the Christian conception of marriage; neither was contemplated by our Lord; and if they must be conceded, this should clearly be done only under grave necessity, and because of the σκληροκαρδία which the new law of love has not yet dispelled.

"2. 1 Corinthians vii. 1–17.

"In this passage St. Paul deals with marriage, (*a*) where both parties are members of the Church, and (*b*) where one of them is a heathen. With regard to (*a*) he says that the Lord's rule is to be followed, γυναῖκα ἀπὸ ἀνδρὸς μὴ χωρισθῆναι —the reference being probably to the Saying in Mark x. 9, ὃ οὖν ὁ θεὸς συνέζευξεν ἄνθρωπος μὴ χωριζέτω.* But in the case of mixed marriages (τοῖς δὲ λοιποῖς, v. 12) which in a Christian society lately gathered from a great heathen population, as at Corinth, would be the great majority, no instructions had been left by Christ, and the Apostle decides upon his own authority (λέγω ἐγώ, οὐχ ὁ κύριος). His ruling is as follows:—

"The Christian partner in a mixed marriage (contracted presumably before his conversion, and with heathen rites) is not to seek divorce (μὴ ἀφιέτω), but if it be forced upon him by the heathen, it is to be accepted (χωριζέσθω). In this case the Christian who has been divorced may regard himself as free from t marriage bond (οὐ δεδούλωται: cf. Rom. vii. 3, ἐλευθέρα ἐστὶν ἀπὸ τοῦ νόμου). But (δέ) this liberty is to be used with due regard for the maintenanee of peace, for peace is the very atmosphere of the Christian calling (ἐν δὲ εἰρήνῃ κέκληκεν ὑμᾶς ὁ θεός). No step should be taken by the Christian which would render reconciliation impossible, for (γάρ) there still remains the hope of winning the heathen to the faith of Christ.

"In this interpretation I have assumed that both ἀφιέναι and χωρίζειν refer to divorce and not mere separation by consent. There is some evidence that both verbs were so used in the literary and perhaps also the colloquial Greek of the time.† I have assumed also that either the Greek or the Roman process of divorce is in view. Lastly, in the clause τί γὰρ οἶδας . . . εἰ . . . σώσεις, I have taken εἰ to mean 'whether . . . not,' as in Esther iv. 14, lxx., τίς οἶδεν εἰ εἰς τὸν καιρὸν τοῦτον ἐβασίλευσας;‡

"It appears to me that in this passage, while full liberty is allowed to the divorced Christian in the circumstances described, such a step as re-marriage is strongly discouraged on the ground of Christian charity. The question, so far as St. Paul faces it, is lifted on to the high ground of the Christian calling. The case, of course, is a special one, and does not now exist amongst us; but the Apostle's ruling seems to show how the Church has to meet all such questions—not so much by an absolute *veto* on conduct which is not in itself immoral, as by raising the whole standard of human life, and the relations of the sexes in particular."

* In this connection μενέτω ἄγαμος is to be noticed as showing St. Paul's belief that re-marriage after divorce was, as a general rule, prohibited by Christ.

† Ἄφεσις is so used by Plutarch, and χωρίζεσθαι by Polybius. On the colloquial use of the latter word, *see* Deissmann, "Bible Studies," p. 247.

‡ For this passage, *see* the Oxford Hebrew Lexicon, p. 50 (2, *b*).

Adjourned for a short time.

Dr. William Emery Barnes called and examined.

39,423. (*Chairman.*) You are a Doctor of Divinity and Fellow of Peter House, Cambridge, and you are Hulsean Professor of Divinity in the University of Cambridge?—Yes.

39,424. I belong to the same college, but I do not remember how long you have been Hulsean Professor?—Since 1901.

39,425. You have been good enough to prepare a very short memorandum expressing your views in connection with the subject we have under consideration. Perhaps you would read it to us, and state any points on it which appear desirable to present. I see it is only a skeleton. I confess I hardly know what to ask you. If you would take it through and tell us what views you propose to indicate as you go along I think that would do. It is suggested to me that, perhaps, you have expanded this into a paper of your own?—Yes, those points that need expanding.

39,426. Then will you give it us as you proceed?—'The institution of marriage is protected by Church and State, (*a*) by the State through the enactment of laws; (*b*) by the Church through the presentation of an ideal given by our Lord Jesus Christ." I believe there is a great difference between the work done by the Church and by the State, and I feel that the Church does its work through the presentation of an ideal. I do not think that the Church has anything that can be called a law. For laws we look to the State, and we as Christians look to see the Christian ideal expressed in the laws. Our most important duty is to discover what our Lord's ideal was. It was given in the form of a criticism of Jewish law, and therefore it has the nature of an utterance called forth by a particular occasion. But in spite of that we may detect the principle. It was given in criticism of a Jewish law. According to recognised authorities this law allowed a husband to put away his wife for a cause deemed sufficient by himself without applying to any public court—a state of things hardly to be understood I think in modern England, so different is

it from present conditions. But this divorce, which was the act of the husband himself, included power to marry again. The only bit of justice about it was that as the husband was free so the wife was free also to contract a fresh marriage. Re-marriage was of the essence of Jewish divorce. Against this unrestricted freedom of divorce and re-marriage our Lord stated His ideal that marriage is to be regarded as a divine institution and a sacred compact. "Those whom God has made one are not to be put asunder by man." The reference in the word *man* is undoubtedly to the action of the husband. There is no reference to the work of a court of law because a court of law did not enter into the case. Our Lord states that the husband breaks a divinely-sanctioned compact if he puts his wife away except for fornication. The words "except for fornication" are taken by many authorities to be simply St. Matthew's limitation of our Lord's own words, but I believe that the exception "except for fornication" belongs to our Lord's own teaching, though the words are absent from the parallel account of what our Lord said as given in St. Mark. This strong word "fornication" implies such conduct as of itself breaks the marriage bond, so that divorce becomes merely declarative of a fact. A court that grants divorce in my belief simply states a fact—that a separation, in fact, has taken place—and that the fact must be recognised by public authority.

39,427. Might I ask you to make this sentence a little clearer. Where you say "The strong word 'fornication' implies such conduct as of itself breaks the marriage bond." Does that refer only to sexual immorality or does it include other classes of conduct?—I believe only sexual immorality. May I refer to the passage St. Matthew v. 32. My argument is that the exception, "except for fornication," does belong to our Lord's own teaching. Our Lord is speaking of the different precepts of the Ten Commandments, and He gives an extended reference to each of them. When He comes to the command "Thou shalt not commit adultery," He extends it in this way: "I say unto you that every one who dismisseth his wife except for the cause of fornication causeth her to be the subject of adultery." The verb is in the passive, and I believe it means that the husband causes his wife to become the victim of another man's act of adultery. So that our Lord's extension of the command "Thou shalt not commit adultery" in this case is "Thou shalt not cause adultery to be committed by another person"; and I think it is absolutely necessary for the sense to include the words "except for fornication," because if a wife has already committed adultery it could not be said that the husband, by putting her away, caused her to be made an adulteress, because she would be one already. So that I think the words "except for the cause of fornication" necessarily belong to our Lord's words, and that our Lord does therefore allow divorce in His own ideal for the cause of fornication. Fornication I take to mean all immoral conduct.

39,428. I want to get this quite clear. What do you mean by "all immoral conduct"?—Some have tried to restrict it to immoral conduct before marriage. I think that cannot be sustained for a moment. There is no doubt, from instances of the use of the word in the Septuagint and in the Greek Testament which I have here, that the word fornication can be applied to adultery after marriage. It is simply a somewhat wider word—includes a little more than adultery, or some cases that could not be described simply as adultery. For instance, in the fifth chapter of the Epistle to the Corinthians the word fornication is applied to the conduct of a man who had taken his stepmother to wife. I think the word is chosen simply because it is a wider word than the word adultery.

39,429. I only wanted to get it clear that you meant by "all immoral conduct" sexual immoral conduct?—Yes, sexual immoral conduct.

39,430. I think there is a little more at the end of your proof which you have not referred to?—"Unless the Church renounces Christ's ideal, it cannot bless the marriage of any divorced person, except that of the innocent partner in the case of divorce for fornication." I mean by that that the marriage is absolutely broken by the immoral conduct, and therefore that the partner who has not been guilty of the immoral conduct is perfectly free.

39,431. May I then sum up the point that I gather you make broadly thus. You would not regard the teaching to be found in the Gospels as teaching the absolute indissolubility of marriage, but its dissolubility only on the one ground of sexual immoral conduct after marriage?—Yes my Lord, that is so.

39,432. That is substantially the position of the present state of the law?—Yes.

39,433. Except that the wife in her case has to add something to the proof of such an act?—Yes.

39,434. (*Sir George White.*) Do you say there are no other circumstances that would as effectively break the bond of marriage as fornication? You say here that fornication of itself breaks the marriage bond, so that divorce becomes merely a declaration of the fact. Are there not other conditions which as effectively break, or at least do break the marriage bond as well as fornication?—I think, if I may say so, that that is a question for one who has much more practical experience than I have. I have been fortunate enough to come across very few matrimonial difficulties, and I feel I am hardly qualified to answer that question. I hope you will not think that I am shirking it. It is simply that I feel one ought to have experience to answer such a question as you put to me.

39,435. The only ground upon which I put it is that part of the marriage bond, for instance, is to love and cherish your wife. A man may go on in a system of brutality of the grossest kind for many years. Surely that breaks the marriage bond?—I suppose that would bring in the difficulty of when the marriage bond became broken. One knows that wives do cling to their husbands in an extraordinary way after a great deal of terrible ill-usage.

39,436. Or you can have wilful desertion continued for very many years. That must certainly be held to break the vow?—I have never come across that case, so I do not feel I can pronounce upon it. I can imagine the possibility of other things really destroying the bond effectively, but I should be sorry to give my own opinion with an absence of practical experience.

39,437. You would consider that the declaration of Christ upon the subject was really confined to fornication. That is your reading of the scripture?—I have no warrant to go further.

39,438. And having in view the fact that a great deal of Christ's moral teaching was based upon general principle rather than specific cases, would you have expected Him—if I may put it so—to go into greater detail; and are we justified in assuming that because He did not go into further detail, therefore it is absolutely confined to the condition of fornication, when we know in real life there are other hardships almost as great under the marriage bond as fornication?—I think I see some difference between fornication and other things in breaking the bond; but in the absence of experience——

39,439. May I put a general question, whether your reading of Christ's teachings on these moral questions does show that He lays down general principles rather than specific cases; is that your reading of the scripture?—I think we must look for general principles rather than special cases.

39,440. (*The Archbishop of York.*) How far would you say, Dr. Barnes, in this particular matter, that there was anything more than a mere general principle? The general principle is stated in the words, with all the comment on them, that "These, whom God hath joined together, let not man put asunder"; and then in addition to that there is made a specific and definite provision about marriage, which is a definite act and not a mere moral attitude. How far would you say that in this matter our Lord was going—however little—beyond the usual practice of merely stating a general ethical principle?—I am not quite sure that I grasp your Grace's question, but one exception of course our Lord was bound to go into, because the school of Shammai among the Jews asserted it so definitely. They had the qualification, "Except it be

so that he hath found in her uncleanness"—that is fornication of some kind.

39,441. That was not really quite what I meant. What I meant to ask was this, whether you think there is any distinction between our Lord's words about marriage and any of these general moral principles which He has laid down—for instance, in the rest of the Sermon on the Mount?—No. I think they are all of the nature rather of ideals than of positive laws.

39,442. If your view is right, that our Lord himself introduced this specific exception in what He said about marriage, would that, in your judgment, make it more—rather than less—difficult to suppose that He admitted other exceptions?—I think it would make it on the whole less difficult to believe that He would have allowed other exceptions; but He does not mention them, I should say, because such exceptions would be rarer, and in any case, not such good exceptions. Fornication is such a very clear thing; it either has been committed or not, whereas cruelty is a case of degree; and even desertion, with regard to time, is a case of degree.

39,443. But, surely, may it not be said that if an exception is so very obvious there was no good in making it?—The Sermon on the Mount I should take rather to be a discussion in which there were other people speaking as well as our Lord; and I imagine that directly our Lord laid down the principle that whosoever dismissed his wife was guilty of adultery, some person present must needs say, "What of the case of fornication?" and then I imagine our Lord would say, "Yes, except in the case of fornication."

39,444. That is purely a hypothetical account of the Sermon on the Mount, is it not?—Well, I suppose I am following good authority. Few people imagine that the Sermon on the Mount is a verbatim report.

39,445. But it is a hypothetical account?—A hypothetical account, yes, your Grace.

39,446. But if our Lord were laying down a quite general principle, and if He did in doing that state one general exception, it would be more natural to regard Him as limiting it to that rather than illustrating other possible exceptions?—It really might be taken, I imagine, either way.

39,447. You do not wish to express an opinion about that?—I have no formed opinion on it.

39,448. I should only like to ask you one other question, Dr. Barnes. You say in your last point that "Unless the Church renounces Christ's ideal it cannot bless the marriage of any divorced person except that of the innocent partner in the case of divorce for fornication." After what you have said does that still remain your opinion?—Well, if any case were put to me which plainly proved to be an *ipso facto* breaking of the bond just as much as fornicction, then I supposa I should have to add that to my exception here.

39,449. May I ask whether you have really given the question of the possible extension of the grounds of divorce the same thought and care which you have given to the critical question of the authority of our Lord's words in the New Testament?—No, I have not.

39,450. So that your qualification of this last point in your proof would be based on impressions you have received to-day rather than from careful thought beforehand?—Certainly. I am quite willing to acknowledge that.

39,451. Then it would be scarcely fair to press you further on that point.

39,452. (*Sir Lewis Dibdin.*) There is really only one point I want to ask you about. Referring to paragraph E of your memorandum, you said "Those whom God hath made one are not to be put asunder by man," and you say, "The reference to putting asunder is to the action of the husband"?—Yes.

39,453. And I understand you to give as a reason for that that no court came into the matter in the case of a Jewish divorce, but the husband did it without any court?—The husband could do it without any court.

39,454. We had a great Jewish expert before us on Monday, I think it was, and he told us that that really was not so, that the husband could do it without a court if they both agreed, but that if they did not agree, and "the wife contested the divorce, it is highly probable the husband had to specify his reason, and bring the matter before a regularly constituted Beth Din," and I think I gathered that a Beth Din was a court consisting of three judges. Would that modify your view at all?—He only says "It is highly probable."

39,455. Well, suppose that high probability was well founded, would that modify your view at all—your view I mean that you are right in construing the marriage being put aside by man as necessarily and exclusively meaning the husband?—I think it does really mean the husband

39,456. But, supposing Mr. Abrahams' view which he describes as highly probable is well founded, that it did require a Court unless the parties agreed; would that make any difference to your view as to the meaning of our Lord's words that man was not to put asunder those whom God had joined together?—I should still think that the chief reference was to the husband, because so much in any case is left to the husband in Jewish law; what Mr. Abrahams says, rather in my belief describes what was gradually evolved after this time than what was in force at this time.

39,457. He gives it as his view of what went on at the time. But that is your answer; you still think that applies to the husband only?—Yes.

39,458. (*Judge Tindal Atkinson.*) In the marriage service, when the parties take each other for better or for worse, does the Church place no limitation on the word "worse"? Does the party who marries take the other party for worse under all conditions and circumstances, or must there be some limitation?—There must be the limitation of fornication.

39,459. And may not there be other limitations too? For instance, supposing a man a few days after his marriage commits a murderous assault on the wife; the wife did not take the husband for worse agreeing to submit to such a condition as that?—Forgive me, I am a little inclined to say that "hard cases make bad law" in answer to that suggestion.

(*Chairman.*) I think, Dr. Barnes, that is all we require to ask. Thank you very much for the trouble you have taken in coming here.

Adjourned.

Winchester House, St. James's Square, London, S.W.

FORTY-SEVENTH DAY.

Tuesday, November 29th, 1910.

PRESENT:

HIS GRACE THE LORD ARCHBISHOP OF YORK (*in the Chair*).

The LADY FRANCES BALFOUR.
The Hon. LORD GUTHRIE.
Sir WILLIAM ANSON, Bart., M.P.
Sir FREDERICK TREVES, Bart., G.C.V.O., C.B., LL.D., F.R.C.S.
Sir LEWIS DIBDIN, D.C.L.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.
The Hon. HENRY GORELL BARNES, *Secretary.*
J. E. G. DE MONTMORENCY, Esq., *Assistant Secretary.*

Mr. ROBERT LESLIE BLACKBURN, K.C., called and examined.

39,460. (*The Archbishop of York.*) You are a King's Counsel?—Yes, of the Scotch Bar.

39,461. You are Chancellor to the Primus of the Episcopal Church in Scotland?—Yes, and I am here by his request and the request of the bishops.

39,462. Perhaps it will be convenient if you will just go through the points on the proof which you have submitted?—I am here because of some questions which your Grace put to Lord Salvesen when he was in the box. In consequence of answers Lord Salvesen gave an idea was suggested that the views of the Scotch Episcopal Church in reference to this question of divorce were somewhat different from the views held by the Church of England on the same subject. I am here to say that the attitude of the Scotch Episcopal Church in this matter is the same as the attitude of the Church of England, and that the Scotch Episcopal Church adopted the resolutions on the subject of divorce of the Lambeth Conference both in 1888 and 1908. I may add that I have Lord Salvesen's authority to say that in giving the answers he gave he did not profess to be speaking on behalf of the Episcopal Church of Scotland; all he intended to say was, so far as he was aware, not being a member of that Church, that the Episcopal Church in Scotland had never publicly protested against desertion being regarded as a legitimate ground of divorce, and that it was within his knowledge that Episcopalians had from time to time taken advantage of the Scotch Act on divorce in order to put an end to the marriage tie. The matter is probably best expressed by a letter which the Primus addressed to your Grace on the 25th May last.

39,463. That is the letter which is put in the appendix to your proof, appendix 1?—Yes.

39,464. Will you kindly read it?—The Primus wrote, "I am writing on behalf of my brother bishops "and myself to say that we understand that a state- "ment has been made before the Royal Commission "on Divorce to the effect that the Episcopal Church "in Scotland recognises divorce on the ground of "desertion. I need hardly point out to your Grace "that this is not the case, and I have only to mention "as proof that our bishops accepted, both in 1888 "and 1908, the terms of the Lambeth Conference "resolution on the subject, viz.:—

> 'That inasmuch as our Lord's words expressly forbid divorce, except in case of fornication or adultery, the Christian Church cannot recognise divorce in any other than the excepted case.' (Resolution 39, page 55 of Report.)

"It may be true that certain members of our "Church have applied for divorce on the ground of "desertion. But the action of individuals who happen "to be nominal members of a church of course in no "way involves that church in responsibility for their "conduct. I can with confidence add to what I have "already said that in this matter our clergy generally "and the faithful laity are at one with the bishops in "repudiating the ecclesiastical lawfulness of divorce in "the case of desertion. We should be very grateful "to your Grace if you would kindly find an opportunity "of reading this letter to the Commission, or of letting "its contents be known in any way you may judge best, "in case a wrong impression may have been created by "the statement which is reported to have been made."

39,465. Perhaps you would return to your proof. On the first page you have dealt with the point of the acceptance of these resolutions of the Lambeth Conference. Perhaps you would begin the proof at the bottom of the first page?—With reference to the statement in the Primus's letter that he has the support of the clergy and the faithful laity generally, I may refer to what has happened in connection with the Code of Canons of the Scottish Episcopal Church. The laws of the Scottish Episcopal Church are embodied in a Code of Canons which has from time to time been added to and extended. In the stormy days of the Episcopal Church of Scotland, when practically it was a very small body, the canons consisted of only four or five in number, directed generally to the management of the Church, and designed as far as possible to ensure the continuance of the Episcopal succession; but within recent years, the last 40 or 50 years, the canons have been from time to time extended, and although they have never up till recently included a canon dealing expressly with this question of divorce, there is no doubt that the canon which has recently been enacted by the Consultative Council of the Scotch Episcopal Church represents the attitude of the Episcopal Church in this matter. That Council recently passed a canon to this effect, that no clergyman shall perform the marriage service for either of the two persons between whom divorce has been pronounced during the lifetime of the other party That canon was passed after mature consideration by a council which may be said to thoroughly represent the Church, consisting of all the Bishops, 38 representative clergymen, and 38 representative laymen. I may say that that canon was adopted practically unanimously, though a motion to except the innocent party in cases of adultery was proposed and only negatived by 31 votes to 18. There was some difference of opinion in the council as to whether or not the canon should go further and say what punishment should be inflicted by the Church, either on a clergyman who should perform the marriage service in contradiction of the canon I have read, or on parties who had offended against the Church views of marriage laws, but after mature consideration the council came to the conclusion it would be better to leave that matter as it stands without any express directions as

to punishments to be inflicted. I may say from my own personal knowledge of the feeling of churchmen on the subject that that canon will represent the views of, anyhow, the faithful laity in the Scottish Episcopal Church. Perhaps I should point out this. I have already said up to now the Code of Canons has not contained the whole of the laws of the Church on matters of discipline and so forth; it has been added to from time to time, but there is no doubt, as far as I can gather from the bishops, and as far as my own experience goes, that has always been the attitude of the Episcopal Church of Scotland in the matter of divorce. They have never recognised divorce for desertion as being a ground justified by scripture for divorce.

39,466. I think you add on page 2 of your proof another opinion with regard to the attitude of the bishops in case of a divorce for adultery. Will you read that?—I know that the bishops have acted on the footing that even in the cases of divorce for adultery and the innocent person remarrying, the marriage should not be celebrated by the clergy of our Church. I know, personally, of a case within recent years of someone socially and otherwise in a high position, who was the innocent party in an action of divorce, and who subsequently wished to remarry; the Episcopal clergyman refused to celebrate the marriage, and it was ultimately celebrated in a Presbyterian Church. I am told by the bishops that there have been other instances of the same thing, and I have also been told by the bishops that one, at all events, has refused to allow a spouse, who had divorced the other spouse for desertion and then remarried, to attend a celebration of sacrament in the Episcopal Church. I know of no case of desertion having been recognised by the clergy of our Church as being one of the lawful grounds of divorce recognised by scripture.

39,467. I understand you do not wish to go into any of the other questions before the Commission, but merely to give evidence upon a particular point?—That is so. I am here representing the bishops, and I would rather not give my personal views about anything. Your Grace has had plenty of personal views before this Commission. I would rather be here as representing the bishops on this question and go no further.

39,468. I notice you said that the canon to which you have drawn attention was passed by the Consultative Council, but in your proof you say that it was recommended. What is the difference between the council recommending a canon and passing a canon?—The position with regard to that is this. The Consultative Council have been engaged for the last three years in revising the canons. We have completed our labours, or practically completed our labours, but the canons have to be approved by the Provincial Synod before they finally become law. You may take it the Consultative Council has approved the canon to this extent; it is practically adopted although formally it is not yet the law.

39,469. (*Lord Guthrie.*) You said that the canon had been enacted by the Consultative Council. That, as you have explained just now, is not strictly accurate?—That is so.

39,470. It goes to the Provincial Synod, which has an Upper House composed of seven bishops, and a Lower House of representative clergy?—That is so.

39,471. These representative clergy are not necessarily the same, and are never the same as the clergy who happened to be in the Consultative Council?—No, not necessarily. They are not the same just now, but they might happen to be the same.

39,472. The Consultative Council merely reports any proposed amendment which they think fit to the Provincial Synod, who may pass it or not, as they choose?—That is so.

39,473. In addition to that, if the Provincial Synod originate any proposed amendment, they must refer it to the Consultative Council for opinion?—I am not certain whether they have not power to pass an amendment without reference to the Consultative Council, but I think it must be referred back to the council for consideration and opinion before being passed.

39,474. The bishops themselves, when they meet alone, are called the Episcopal Synod as distinguished from the Provincial Synod?—Yes, when they meet as a synod they act as an Episcopal Synod.

39,475. The body which has judicial power is the Episcopal Synod; the body which has legislative power is the Provincial Synod acting along with the Consultative Council?—Yes.

39,476. You said that the attitude of the Scotch Church is the same as the attitude of the Church of England. Are you referring to its present position under its present canons, or its position under the proposed canons?—When I said Scotch Church I mean the Scotch Episcopal Church.

39,477. I mean that?—I think all of it. I know of no reason to suppose that at any time the Scottish Episcopal Church took up any different attitude on this question. When I say the Scottish Episcopal Church there, I mean after the date of the Revolution, that is to say, after 1688 or 1689, because I do not think that before that date, that is to say from the Reformation, 1560 onwards, the Episcopal Church had hived off as a separate body. The Church of Scotland at that time was a Protestant anti-Romish church, sometimes governed by an Episcopal form of government and sometimes by a Presbyterian form of government; when the Episcopalians were in power a certain number of the Presbyterians probably did not worship in the church, and when Presbytery had the upper hand a certain number of the Episcopalians refused to worship in the church. The church as a body was the same church, sometimes governed by Episcopalians and sometimes by Presbyterians, and I do not think it is possible to arrive at any definite conclusion as to what the views of that church at that time were on this question. At that time individuals had views; John Knox had a view one way much stronger than people take nowadays, and there are views expressed by Episcopalians and others in different directions. The only test as to the view of that church is to turn to the Confessions of Faith. The Confession of Faith first adopted, that was the Confession of the Church from 1560 down to 1647, was John Knox's confession, which recognised adultery as the only ground of divorce justified by the word of God. In 1647 the Westminster Confession was adopted, which recognised divorce for adultery and desertion. It has a very curious clause in it to the effect that where divorce has taken place on the ground of adultery the innocent spouse may be allowed to marry again during the lifetime of the guilty one, which to my mind leads to the direct innuendo that the guilty spouse in the case of adultery was not to be allowed to marry again; in the case of desertion it was not contemplated that either of the spouses should marry again under any circumstances.

39,478. Do I understand that your evidence is on the footing that the Church of Scotland between 1660 and 1690 was not a truly Episcopal church?—1560, the Reformation?

39,479. Is your evidence on the footing that the Church of Scotland established between 1660 and 1690 was not a truly Episcopal church?—That is the last period of Episcopacy.

39,480. Yes?—My evidence is this; the government was certainly Episcopal, but at that date the Episcopal and Presbyterian Churches had not hived off from each other in the definite way in which they did subsequently. In 1660 you were getting nearer to it, but up to those later days I should say that it is impossible to take the views of the Church at any one time as being anything except the views of the Protestant anti-Romish Church at that time.

39,481. You are aware, I suppose, that the bishops were Episcopally ordained, that the Service-book was revised by Archbishop Laud, and the canons of that time were revised by Archbishop Laud and Bishop Juxon?—The government and the administration of the Church during that period were Episcopal.

39,482. The Episcopal Church in Scotland at the present moment does not repudiate the views which were held between 1660 and 1690 as no part of its history?—No, certainly not; I agree with that.

39,483. At that time are you aware how things stood?—Between 1660 and 1690? The confession which was adopted in 1647 was the Westminster Confession. I do not know how things stood at that period.

39,484. You are aware at that time the judges of the Divorce Court upon questions of adultery and desertion were appointed by the bishops?—I know that. The Commissioners were appointed by the bishops under the Act of 1609 or 1610, but that is purely a matter of administration.

39,485. Are you aware how the canons stood at that time? You have said that the canons never until recently dealt with divorce?—I do not know that there were any canons at that time. There were some passed in 1636 by the King, but they never had any authority other than the King's authority.

39,486. They were probably by certain of the Scotch bishops, revised by Archbishop Laud and Bishop Juxon, and imposed by the King?—It is so supposed. There is nothing very certain about it. Those canons deal more with administrative matters than matters of doctrine.

39,487. Do you know how they dealt with divorce?—I looked it up to see, and my recollection is that what they say about marriage and divorce is that divorce for adultery, or other causes, is not to be granted on the evidence of the spouses alone uncorroborated by anybody else, and secondly in the case of divorce *a mensa et thoro*, that is to say what we call a separation, the judges are to insert in the decree a warning to the parties that they are not at liberty to marry again.

39,488. That is to say just what you have in canon 107 of the canons of 1603 in England?—I will take your Lordship's word for it.

39,489. Those canons did deal with divorce?—Yes, but from a judicial point of view entirely and nothing else.

39,490. When the later canons were enacted, in 1707 and afterwards, was that repeated?—No.

39,491. How do you account for that?—I account for it by what I said. The canons of 1636 were enacted by the King and were not recognised by the Church as representing the views of the Church on the matter. You will find that laid down, I think, by writers, Grub and others.

39,492. Your view is that in regard to that canon they did represent the views of the Church?—I think that canon, in 1636, is merely a direction to the judges who pronounced the decree of divorce, first, not to do it on uncorroborated evidence, and, secondly, to be careful to put a warning into their decrees. It is only a direction to the judges and nobody else.

39,493. Do you think, or do you not think, that at that time the Scotch Episcopal Church established by law was against divorce either for adultery or for desertion?—I cannot say as to divorce for adultery; I cannot say as to divorce for desertion. I do not think there is any evidence to show that the Episcopalians had adopted either of those grounds. If you look at the general history of the thing, what the Episcopal party was striving at was to purify the old Church which existed before the Reformation as they did in England. The Presbyterians were striving to erect a new church altogether.

39,494. That is your view?—Yes. I will not put it that way about the Presbyterian Church if you object to that, but what the Episcopalians were striving for was to purify the old Church, and if that is so, I think you would require very positive evidence to show that on a question of doctrine so firmly held by the old Church, the Episcopalians had repudiated the views of the old Church.

39,495. Your view is that the Scotch Episcopal Church all along has held the view that no divorce should be allowed either for adultery or desertion?—I prefer to put it this way. They have always held the view that desertion is not one of the grounds justified by scripture.

39,496. And, further, that there should be no divorce for adultery?—I think it follows in the case of a Church. If a Church regards this as not authorised by scripture the Church cannot approve of it.

39,497. Your view is that the Scotch Episcopal Church always took that view?—Yes.

39,498. If that is so. You said that the attitude of the Scottish Church has always been the same as the Church of England?—I say it is now. They have adopted the Lambeth Resolutions. I do not know what the attitude of the Church of England was originally, or 100 years ago.

39,499. You propose now to forbid marriage by a clergyman between persons who have been divorced for either adultery or desertion?—Yes.

39,500. Is that the present attitude of the Church of England?—I have the Lambeth Conference Resolution here, if I may refer to it.

39,501. You have been good enough to quote it. The Primus has quoted it in the appendix: "That, "inasmuch as our Lord's words expressly forbid divorce, "except in case of fornication or adultery, the Christian "Church cannot recognise divorce in any other than the "excepted case." It follows that the Christian Church can recognise, in the view of the Lambeth Conference, divorce in the case of adultery. You propose that the Scotch Episcopal Church should not recognise divorce in the case of adultery. How do you reconcile that?—I do not think the inference is that. The Primus only quotes the first paragraph of the Lambeth Resolution The next paragraph is, "That under no circumstances "ought the guilty party, in the case of a divorce for "fornication or adultery, to be regarded, during the "lifetime of the innocent party, as a fit recipient of the "blessing of the Church on marriage." Then No. 3, "That, recognising the fact that there always has been "a difference of opinion in the Church on the question "whether our Lord meant to forbid marriage to the "innocent party in a divorce for adultery, the Con-"ference recommends that the clergy should not be "instructed to refuse the Sacraments or other privileges "of the Church to those who, under civil sanction, are "thus married." Then the next article is, "When an "innocent person has, by means of a court of law, "divorced a spouse for adultery, and desires to enter "into another contract of marriage, it is undesirable "that such a contract should receive the blessing of "the Church." I take that to mean that it is undesirable that the marriage should be celebrated in the Church, and that is the view that the Episcopalian Consultative Council take in recommending this canon.

39,502. The Scotch Episcopal Council forbid a clergyman to do it?—Yes.

39,503. Where do you find anything to forbid a clergyman to marry the innocent person, who has been divorced, to some third party?—I find it there, that it is undesirable that such a contract should receive the blessing of the Church.

39,504. That is not a prohibition?—No, but the clergy of the Church of England are in a different position as they are the State Church. In Scotland we are a dissenting body.

39,505. To an extent you propose to forbid the clergyman, and you go further than the Lambeth Conference?—I do not think we go further than the feeling of the Church of England, but of course they are a little tied by this, they are the State Church, and possibly within themselves they cannot go the length they would otherwise wish to.

39,506. I was not talking of the feeling of the Church of England, but the terms of the Lambeth Conference. You go further than they did and would make it prohibitive?—Yes.

39,507. You do not propose to recognise divorce in the case of adultery: the Church will not recognise that in any way whatever?—The Church will not re-marry the parties.

39,508. Will they recognise it? The Lambeth Conference says it is not to be recognised except in other cases, by which I should assume it was to be recognised in the case of adultery. In what respect does the Scotch Church propose to recognise divorce in the case of adultery?—In the case of the innocent party. We adopt the third clause of the Lambeth Conference, and they would not be refused admission to the sacraments and other privileges of the Church.

39,509. In the case of the innocent party?—Yes.

39,510. You do not propose to impose any penalty on the innocent party so far as communion is concerned?—That is so. That is a necessary sequitur of the resolution.

39,511. But to forbid any clergyman to marry the innocent party?—Yes.

39,512. You said you are here in consequence of what Lord Salvesen said. Is there any statement that he made to which you object? Will you kindly take the Notes? I have marked the two passages. Is there any statement he made which you do not think is accurate? The first is on page 260, Q. 6355: "(*A.*) I "have this comment to make, that although the Church "of Scotland, since the Reformation, has been at times "Episcopal—at all events, for 30 years was Episcopal" —that is the 28 years we have mentioned—"and for "the rest of the period has been Presbyterian, and "though the Presbyterians have split into numerous "sects, there has never been any section of the "Reformed Church of Scotland which has objected "to the remedy of divorce for desertion." Do you object to that?—I wrote to Lord Salvesen and he said he meant a public objection, objecting openly and publicly, and I agree with that. There has been no public endeavour to get the Act removed.

39,513. So far as you know the Scotch Episcopal Church has never taken any action to have the Scotch law either rescinded or modified?—No, I do not see how they could. It would be most undesirable for them to endeavour to do so just now, from the point of view of the Church.

39,514. Why?—Politically. I do not know what business they have to interfere with the matter as a Church.

39,515. Do you say the same about 1660 to 1690, when they were in power?—What I say about them is this: they were busy about far more important matters than the question of divorce. The trouble going on at the time was to get the power of the Church, the administration and the government of the Church, and the form of worship.

39,516. They were persecuting the Presbyterians just as the Presbyterians did when they got the chance with them. In anything associated with Presbytery, having absolutely the upper hand, why did they not rescind the Act?—The Act, as your Lordship knows, was passed for the express purpose of enabling the Earl of Argyle at the time to get his divorce. That is the view taken by Lord Fraser in his book. The divorce of the Earl of Argyle was the *causa causans* of the passing of that Act. He was a great power in the land, and, considering the political state of matters at that time, for any Church to set themselves in opposition to persons possessing the power possessed at that time by great nobles in Scotland would have been politically very unwise and foolish. Probably that had a great deal to do with it.

39,517. The person in whose interests that had been passed had been dead for 100 years. In 1661 the existing holder of the title of Marquis of Argyle had his head taken off and his son went into exile. How did the influence of the Argyle family, who were in exile at the time—one had his head taken off and the other was in exile—prevent the Scotch Episcopal Church between 1660 and 1690 agitating for the repeal of the Act?—What I said about the Earl of Argyle referred to the time the Act was passed.

39,518. I was talking of the other period?—You applied that to a later period. You have to take into consideration the political condition of matters at the time.

39,519. You think that accounts for it?—Yes.

39,520. Will you look at the other passage in Lord Salvesen's evidence on page 265, Q. 6478. His Grace put some questions to Lord Salvesen, and Q. 6480 is specially dealing with this. "You would not wish to "argue that the Episcopalian Church had expressly "given their sanction to desertion being a ground for "divorce?" Notice the answer; it is this: "No, "but I say since 1690 the Episcopalian Church has "always existed in Scotland as a separate body and "there never has been, that I know of, by the "Episcopalian Church any protest against our law of "divorce for desertion, and I know Episcopalians "constantly resort to it." Is there anything there you object to, either in the one statement or the other?—I agree, but in all the reports I have seen (I have not seen the authentic version) that "No, but" has been left out.

39,521. If it is left out you go on to two statements, "It has always existed in Scotland as a separate body "and there never has been, that I know of, by the "Episcopalian Church, any protest against our law of "divorce for desertion." That is accurate?—Quite accurate.

39,522. "And I know Episcopalians constantly resort to it." That is accurate?—Quite accurate. As explained in the Primus's letter, you cannot control the action of individuals.

39,523. So that Lord Salvesen's statement is accurate in point of fact?—Quite accurate. I agree, and I said, to begin with, his answer as reported, except in regard to what I have pointed out, was hardly a fair answer to the question, but there is nothing inaccurate in it. May I call attention to the question previously put to Lord Salvesen, which I have not seen before. It is Q. 6479: "But you admit from 1660 to "1690, which is only 30 years, Scotland was only "loosely Episcopalian?—(*A.*) As I said, I do not think "there was much difference in creed; the creed remained "the same, and even their ritual remained much the "same." That is what I was saying to which your Lordship took exception. No matter what party was in power during that 100 years, the Church as a body consisted very much of the same people, who sometimes worshipped under Presbytery and sometimes under Episcopalians.

39,524. Not between 1660 and 1690?—I agree the extreme people on each side never came in, but the great bulk of the people of Scotland just changed over from Presbytery to Episcopacy or *vice versâ*. Scotland is a big place. The Church just changed hands, and the bulk of the congregation changed with the party in power. The extreme people were always out. They went into exile or openly took up arms.

39,525. At that time there had not been, as there is now, English clergy filling many of the most important positions in the Scotch Episcopal Church? That was unknown in those days?—I should think English clergymen in those days who came to the Scotch Episcopalian Church must have been hard up for a job.

39,526. Do you know of any cases?—No. Down to 1780 the Episcopal Church consisted mainly of a few bishops and a few very small congregations in Aberdeenshire.

39,527. Is it the case now the influence of the English Church is strong in the Episcopal Church in Scotland, through the number of eminent persons from England who fill a high office?—I should not say any more than the influence of the Scotch Episcopal Church is felt in England in respect of the number of eminent people from Scotland who hold high office in the English Church.

39,528. Take the Primus? Will you explain it? We have no archbishops in the Scotch Episcopal Church, but one of the bishops is appointed by the bishops as a whole?—He is elected by brother bishops as Primus.

39,529. The present Primus is Bishop Robberds; his predecessor was Bishop Wilkinson, and his predecessor was Bishop Kelly; his predecessor was Bishop Jermyn, and one of the first Primuses was Bishop Eden. I will take it they are all eminent persons, and they have all been English?—What about Bishop Robberds? He is a direct descendant of the Forbes of Corse, in Aberdeenshire, John Forbes was a prominent Episcopalian prior to 1690. The Primus's name is John Walter Forbes Robberds. His father may have been English.

39,530. He was born in India. Excepting him have they not all been English?—Bishop Wilkinson was. He came to Scotland for his health, and a great addition he was. Who was the next before him?

39,531. Bishop Kelly, of Inverness?—That sounds Welsh, or Irish.

(*The Archbishop of York.*) I do not want to interrupt your exceedingly interesting historical discussions, but are we not getting into rather unnecessary detail? I quite see your point.

(*Lord Guthrie.*) Your Grace will know in point of fact whether I am right or not about Bishop Kelly.

(*The Archbishop of York.*) I could not tell you.

(*Witness.*) I am afraid I cannot tell you. The office of Primus has existed since 1731.

39,532. (*Lady Frances Balfour.*) I notice in your proof you say, "The laws of the Episcopal Church of Scotland." That is a slip for "in Scotland"?—Yes. The title of the Church in the canons is "The Episcopal Church in Scotland.

39,533. The Episcopal Church is not the National Church?—Quite so.

39,534. One of the dissenting bodies in Scotland?—Yes; it is the Episcopal Church in Scotland.

39,535. Can you tell us the number of the Scotch Episcopalians?—I think about 150,000.

39,536. One hundred and fifty thousand communicants?—Not communicants, they number about 5£,000. The figure I gave is the membership all told.

39,537. I just wanted to make the point clear. Sitting in England as this Commission is, there is such a heap of ignorance about Scotland it is necessary to point that out, that the Scotch Episcopalian Church is not the National Church?—No.

39,538. (*The Archbishop of York.*) I want to get one point clear. You do not wish to convey that the Lambeth Conference is a conference of the Church of England particularly?—No.

39,539. It is a conference containing representatives of all the churches in different parts of the world, but who are in union with the Church of England?—Yes.

39,540. It would, therefore, contain a large number of bishops from the American Episcopal Church?—I believe it did.

39,541. So that the resolutions of the Lambeth Conference are not binding upon any single Church which sends its representatives?—I agree; I ought to have made that plain.

39,542. Do they only represent the opinion of a large number of bishops, dealing with churches, who have their own special problems in different parts of the world?—Yes.

39,543. It would be scarcely accurate to quote the Lambeth Conference as officially expressing what you call the attitude of the Church of England?—I agree.

39,544. Some figures have been prepared for us, and will shortly be laid before us, I think, as regards the number of divorces in Scotland, from which it appears that in the case of those who were married according to the rites of the Episcopalian Church there is one divorce for every 101 marriages, which shows that they are most frequent amongst those married according to the rites of the Episcopalian Church. Can you give any explanation of those figures, since you are here?—One would always like to see the figures. Does that include people who have been married in the English Church?

39,545. The figures are one in 101 of those married according to the rites of the Episcopalian Church, one in 180 of those married according the rites of the Established Church, one in 199 of the Free U.P. and U.F. combined—that can hardly be accurate, because the U.P. and the U.F. are the same—one in 155 in other congregations. Can you offer any explanation?—I cannot. I would like very much to know whether the marriages in the Episcopalian Church include the marriages in the Church of England of people who have come to Scotland.

39,546. Would you also say that might be partly explained by the fact that a large proportion of the members even of the Episcopal Church in Scotland are of the wealthier society by whom divorce is more easily obtained?—Your Grace is working from a different point of view from what I was. That is one explanation. I had in my mind this, if that includes all the people who are married in England or in Ireland and come to reside in Scotland and acquire a Scotch domicile, you might be getting down to one of the very lowest classes in Scotland, and it might be explained in that way. I should require to see the figures.

39,547. I should be interested to know?—I am surprised to hear it is so.

39,548. (*Sir Lewis Dibdin.*) You were asked about the canons of 1636, and you spoke about them with reference to the word "divorce." Is "divorce" used in those canons in the sense of divorce *a vinculo?* Is it not divorce *a mensa et thoro*, equivalent to separation?—It is used in both senses.

39,549. In the canons in 1636?—Yes; the expression is "divorce for adultery" in one canon and "divorce *a mensa et thoro*" in the other.

39,550. You said they were like the English canons of 1604?—Lord Guthrie said that.

39,551. In those canons it would be wrong to assume divorce *a vinculo* was spoken of at all except in the sense of nullity; they only dealt with divorce *a mensa et thoro?*—I am pretty sure in 1636 one paragraph deals with divorce for adultery and the other deals with divorce *a mensa et thoro.*

39,552. Divorce *a vinculo* for adultery?—I should have said *ex vinculis*, I think that is the ordinary expression.

39,553. I am accustomed to say "*a vinculo*," but we will not quarrel about the expression?—What is your question?

39,554. You spoke of divorce on the ground of adultery in the canon. Do you mean divorce *a vinculo* on the ground of adultery, or *ex vinculis* if you prefer it, or divorce *a mensa et thoro*?—Divorce *a vinculo* for adultery.

(*The Archbishop of York.*) We are much obliged to you for coming to give evidence and completing the information which we have received from Scotland.

Rev. EDWARD STEVENSON GORDON SAVILE called and examined.

39,555. (*The Archbishop of York.*) You are the secretary of the Church of England Men's Society?—Yes.

39,556. Will you kindly explain to the Commission the nature and objects of the society you represent? It will be convenient if you read the first paragraph of your proof?—The Church of England Men's Society is a movement established 10 years ago under the Archbishops of Canterbury and York for uniting churchmen on the basis of prayer and personal service. The society does not look for numbers, but only regards the earnestness of those who desire to be members, and it may now be looked upon as representing some of the most active and intelligent amongst the churchmen of all classes. In spite of thus limiting its numerical growth the movement now contains 100,000 churchmen. It has spread from the Church of England to the Church of Scotland and the Church of Ireland.

39,557. You mean the Episcopal Church in Scotland?—Yes. It has been adopted by the churchmen of Australia, South Africa, New Zealand, India, and the British West Indies. Many branches have also been established in the Army and the Merchant Service. Thus the movement represents the opinion of a large body of churchmen. But in regard to the issue before the Royal Commission the opinion of the members in England has alone been sought. A very large percentage, probably over 70 per cent., of the membership in England consists of what are popularly termed "working men," and my council believes that this evidence will be particularly valued by the Commission.

39,558. Am I right in supposing the evidence you wish to offer is a record of resolutions which have been sent to you?—Entirely. I am only here as the mouthpiece of others who have sent in resolutions.

39,559. Will you kindly explain shortly the method by which these petitions have been received?—The council of the Men's Society was approached by a

great many of its branches and members asking them to take some action in regard to bringing the feeling of churchmen before the Commission, and after a long discussion it was decided that the best way of bringing any evidence would be for the members themselves to be able to send up to the council what were their own opinions and decisions, rather than that the council sitting in London, consisting of some 70 or 80 members, should speak in the name of the whole society. This decision was made known to the branches. No pressure was brought to bear. They were simply told that the council would be ready to collect, analyse, and submit any evidence that was volunteered, and so in what I am going to bring before the Commission I hope you will bear in mind that it is entirely voluntary evidence by men who feel strongly, who have taken the trouble to discuss the whole question and then forward the resolutions which they have passed. This evidence is extraordinarily unanimous. There are 317 branches which have sent signed and unsigned petitions against any extension of the facilities or grounds for divorce. When I speak of "a branch" it mostly represents a parish; in nearly every case a branch of the Men's Society is co-terminous with a parish. There are a few exceptions that I desire to bring before the Commission in a few minutes. We also have as a second step what are called federations, which is the grouping of branches in a particular area into a federation. Twenty-six federations have sent in these petitions against any extension of the facilities or grounds of divorce. The aggregate of the full number of men signing these petitions is 15,028. A very large number of branches, while protesting against any extension of the facilities or grounds, have also advocated the repeal of the Divorce Act, and have added this to their resolution. The number that has done this is 412 branches and 28 federations, making altogether about 17,450 members who have protested not only against the extension of facilities and grounds of divorce, but also appealed for the repeal of the Divorce Act. The signed petitions from branches, that is where they have asked all the members who desire to append their names, are 442, and the unsigned petitions 290. The number of signed petitions from federations is 13, and the unsigned petitions 41, making 786 petitions, signed and unsigned, which have been sent in. If we count up the number of branches represented by those groups or federations, we find that 732 were received direct from branches, and that the grouping of branches represented 555, totalling 1,287 altogether; 1,287 parishes have sent in petitions upon this question. The signed petitions, where we have been able to count each man's name—and when I say that I may mention that our membership only touches those who are over 18, nobody under the age of 18 is allowed to join the society—number 10,485 names. When we come to the groups, however, they are more difficult to deal with. We find 13 of them are signed, but on quite a different footing. Six of them have evidently been sent round to all the branches within the group, four of them have been signed by the committee in the name of the whole federation, and three of them have been signed apparently at some central meeting where they all met to discuss. That makes 667 signatures, so that the total number of signatures which we have received and which I have the honour to present, is 11,352. Then we have to count in a number of petitions sent in not signed. All the branches did not actually append signatures, but passed a resolution in the name of the branch. Upon the figures that we have at the office, there are on an average 25 members in each branch, and that would mean that the unsigned petitions from branches represent about 7,250. The unsigned petitions from federations would be 13,953, or if we think some of the branches within the federations have already sent in signatures, that would make 10,465, making a total of 17,715. The total number of members who have signed their names is 11,352, and the ones who have sent in unsigned petitions represent 17,715, making a total of 29,067. Then there are a few particular petitions which have been sent in which I should like to bring before the Commission, because they deal with various points outside the extension of facilities and grounds of divorce, and the repeal of the Divorce Act. I said in the preamble that we only appealed to our English branches, but we have a petition from a Scotch branch at Aberdeen. I thought it might interest the Commission to know that another petition was sent in by the undergraduates of Selwyn College, Cambridge; also one was sent in from Kirkmichael, in the Isle of Man, protesting against all proposals for making divorce easier. Although no special appeal was made to our soldier members it will be interesting to know that petitions to the same effect have been received from branches at Dover, Portsmouth, Bordon Camp, Alderney, Aldershot, Chatham, Gibraltar, and Northern India. They are all to the same effect. One branch makes a special point; it is St. Mary's, Hulme, Manchester. It is a point that is interesting, viz., that the action was unbiassed and was due to the lay members and not to the clergy. That holds good over a very large number of these petitions, and from what I have seen of various branches it is the layman's opinion you have before you. The membership is certainly about 20 laymen to one clergyman in our movement, so that the number of clergy is not very large. There are three which have come from abroad, although I do not know whether you accept them. It is rather touching to get one from Taltal in Chile, and they write to this effect: "Although far from its native land, we take the "keenest interest in the welfare of the old mother "country, and deeply deplore the suggested increased "facilities for divorce, feeling on the contrary that the "existing facilities should be diminished." There is another from Rawal Pindi in North India. Some branches have added something to the effect of the Church having its own discipline outside of the actual legislation of the State, and a branch in Paddington passed this resolution: "That this meeting . . . . "expresses the hope that any fresh legislation on the "subject will, in the same interests, impose some "punishment and disability of re-marriage on the "guilty party to a divorce, and will, in justice to the "Church, give her liberty as regards the refusing the "re-marriage of divorced parties in church and their "admission to the privileges of Church membership." Another is from Stoke Newington: "That any mar-"riage which receives the blessing of the Church "should be legally exempt from the operation of the "divorce law." I have a few here dealing with some other extraneous points; one from Wooburn: "The "branch feels that one way of guarding against the "cases of unhappy marriages which not infrequently "occur would be found in legislation which shall "prevent the contraction of undesirable and improvi-"dent marriages." Here is one from Ingatestone: "That marriage should not be refused to the innocent "party; that facilities be not granted for divorce in "county courts or any of the local courts." The branch of St. Mark's, Reading, is in favour of separation only. Woolston, near Southampton, "Dis-"tinctly advocates the extension of facilities in the "administration of the law of the land so as to treat "equally all, whether rich or poor, who do not submit "themselves to the guidance of the Church." All Saints', Northampton, says: "That in the opinion of "this branch if any increased facilities are given for "divorce it should only be in the direction of enabling "the poor to obtain divorce with an expense in the "same proportion to their income as for the rich; and "in allowing divorce from a marriage partner for "habitual criminality, habitual intemperance, or for "insanity. They would at the same time point out "that they do not wish to alter the Church's hands "in this matter." From Dorchester there is this resolution: "That this meeting regrets that there "should be one divorce law for the husband and "another for the wife." From Liscard, Cheshire: "That the members of this branch deprecate the "extension of facilities for obtaining divorce, and in "particular the extension of jurisdiction to county "court judges." From St. Chrysostom's, Manchester: "Believing that judicial separation should be main-"tained in the interests of the general morality of the

" nation; they further record their opinion that the " methods of granting the same stand in need of " amendment, especially on the following points:— " (*a*) an equal standard of purity for both sexes; " (*b*) payment through court or official, instead of " direct, as at present; (*c*) the compulsory suppression " in the public Press of details of cases liable to " corrupt the youth of the nation, the publication " of names only being necessary as a deterrent." From Heanor, in Derbyshire: "In view of (1) the " attacks which are being made on marriage as an " institution, (2) the fact that the possibility of divorce " tends to adultery and connivance, and enlarges the " peril of race-sterility; (3) the lowering of the whole " idea of marriage and of family life, brought about " by the operation of the present divorce laws; and, " above all, (4) the teaching of our Lord as set forth " in the Scriptures, and of the Church of our land " as set forth in the Prayer Book, we are convinced " that the maintenance of the principle of the indis- " solubility of marriage is essential to true family " life and to the highest interests of the State; and " we therefore urge the recognition of the principle " of the indissolubility of the marriage tie, and the " repeal of the present divorce laws." There are just two other points I should be glad of the opportunity of bringing forward. The first is that several branches mention a distinction under the present law between poor and rich, and the branch at St. Nicholas, Plumstead, sends in this resolution: "That if further " facilities for divorce should be granted by the State, " it would insist on equal rights for poor and rich, " for women and men, and on the evidence, but not " the names, being suppressed in the public Press." The other is from Pembroke Dock: "Rather than " make divorce easier for the poor man it is strongly " in favour of making it harder for the rich man." And lastly, a point which I believe the Commission will be glad to have evidence upon, is the opinion of those who state that they definitely represent the working classes. We have resolutions here from the Holy Trinity, Gray's Inn Road, Branch: "That in " the opinion of this meeting no further facilities in " the way of divorce are either generally desired or " needed by the working classes of this country." Then from Guisborough, in Yorkshire: "It is not " desired by the great mass of the working classes." St. Paul's, Worcester: "That the statements now being " circulated to the effect that such extension is desired " by the majority of the working class population is " not in accordance with the facts of the case." From Derby: "That we, as a body of working men, know " of no desire for such further facilities among the " members of our class, for whom these facilities are " specially asked." From Bristol: "The members of " this branch of the C.E.M.S. consider there is no " real demand on the part of the working classes, " as a whole, for increased facilities for divorce, and, " further, that we should deplore the granting of any, " as it would tend to weaken the sacredness of the " marriage bond, and is in direct antagonism to the " teaching of Christ." From Horbury, in Yorkshire: " In view of certain statements made by witnesses " before the Divorce Commission, we, as members of " a working-class parish, desire emphatically to deny " that the working classes as a whole do not care " whether people living together are married or not, " or that they desire increased facilities for divorce, " and we record our emphatic opinion that the publica- " tion of details of divorce cases is injurious to morals." From Norwich: "We are against the proposal now " being made for the extension of the grounds of, and " facilities for, dissolving the marriage tie, especially " having regard to the great moral danger to which " divorced women belonging to the working classes " will be exposed." From Bolton, Lancashire: "Expresses the opinion that the working men of the " Church of England have no desire whatever for any " loosening of the marriage tie." From South Leigh, in Oxfordshire: "Protest against any increase of the " facilities and grounds for divorce, considering that " such increase would endanger the sanctity of the " marriage tie, and is not generally desired by the " working classes." From Lilleshall, in Salop: "We " further wish to state that we believe that there is " no widespread demand for such an extension among " the poorer classes, and do not think that these classes " would avail themselves of the extension even if " granted." From Bristol: "There is no real demand " on the part of the working classes as a whole for in- " creased facilities," and, lastly, from Stepney, in East London: "That we members of the Church of England " Men's Society of St. Dunstan's and St. Faith's, Stepney, " living and working in the East End of London, feel " that there is no desire among those among whom we " live for the extension of facilities for divorce, and " that the only real remedy for the present state of " affairs is the repeal of the Act of 1857." That is shortly the evidence which I have here ready to present.

39,560. I understand your object in coming here is not to express your own opinion upon any of the matters before us, but simply to lay these petitions and resolutions before the Commission?—That is so.

39,561. You do not wish to be asked any questions on the merits of the various proposals which have been made before us?—No, because I could not answer for them. I simply give the evidence they have given me.

39,562. May I ask whether the resolutions and petitions you have presented include any that have been also possibly sent to our Secretary?—I do not remember any case in which they have told us that.

39,563. In all probability would they send to the Secretary without sending to you?—I am afraid I do not know.

39,564. Would you describe most of those who have either sent in resolutions or petitions as for the most part belonging to what we call the more respectable and intelligent working class?—I think so, certainly. The obligations which are laid upon them rather sift men, and only the best would join a movement like this.

39,565. You have, I think, put some resolutions before us in certain details taking a different line from the majority. Have you laid them before us in order that we may see that the matter has been fairly discussed by the different branches and accord with their opinions quite frankly?—Yes.

39,566. (*Lord Guthrie.*) Who are admissible to the society?—Only members of the Church of England who declare themselves as such; those who are communicants become full members: those who profess themselves members and are ready to take the obligation of daily prayer and readiness to work for their Church but are not yet communicants are accepted as associates, as a stepping-stone to full membership. The proportion is only 5 per cent. of associates to 95 per cent. of communicants.

39,567. You told us there were 11,252 signatures altogether. Have you at your hand the number of those who desire the repeal of the Divorce Act? You gave the number of the whole taking signed and unsigned at 17,000 odd who want repeal of the Divorce Act. Could you give the number of those who signed? You may not have it, perhaps: you can hand it in later on. Have you the copy of the letter that was sent to the branches asking them to consider the matter and express their opinion?—Yes.

39,568. Would you kindly put it in?—Yes.

39,569. Was the same sent to all?—Yes.

39,570. (*The Archbishop of York.*) Will you read it?—Read the resolution the council passed?

(*The Archbishop of York.*) Is that what Lord Guthrie means?

39,571. (*Lord Guthrie.*) Was that sent to each branch?—Yes.

39,572. With an accompanying letter?—It is included in the letter.

39,573. Will you read a copy of the whole letter?—Yes. "That the secretaries be instructed to com- " municate with the branches and give them the " opportunity to forward resolutions of protest against " the extension of the facilities and of the grounds of " divorce, in order that the secretaries may com- " municate with the Royal Commission and ask to " be allowed to give evidence before it." That was

further elaborated later in another letter in which it was said that the council was willing to accept any other resolutions that they liked to add besides the one dealing with the extension of facilities and grounds of divorce.

39,574. (*The Archbishop of York.*) Was the object of that to give branches liberty to send any resolutions they liked?—Yes. When this resolution was first passed my council were under the idea that this Commission would not receive evidence about the repeal of the Divorce Act, but it was just about that time that the Mothers' Union gave evidence, and it became public that they were ready to receive evidence about the repeal of the Divorce Act, and we in a further letter said we would accept other points, besides the extension of facilities, which the branches liked to make.

39,575. (*Lord Guthrie.*) In both cases what was said was that they could send in resolutions of protest?—They could send in resolutions of protest.

39,576. No opportunity was given to send in anything but resolutions of protest?—I think we should have accepted them. I should have brought them.

39,577. You put in the letters?—Yes.

39,578. (*Mrs. Tennant.*) You have not the letter to the branches?—Yes, I have it in my hand.

39,579. (*The Archbishop of York.*) Will you read it?—I will only deal with that part of it which touches on this matter.

39,580. (*Mrs. Tennant.*) It is the terms of the invitation we want?—The letter deals with many subjects, and I will read the part that deals with this point: "In "accordance with the powers given in the byelaws, "the chairman then brought the question of divorce "before the Council. He stated that a number of "resolutions and letters upon the subject had been "received by himself and at headquarters, but that as "he was himself a member of the Commission it would "be fitting that he should leave the Council free to "discuss the matter. The Chaplain-General was then "voted to the chair, and after a considerable discussion "the following resolution was passed:—'That the "'secretaries be instructed to communicate with the "'branches and give them the opportunity to forward "'resolutions of protest against the extension of the "'facilities and of the grounds of divorce, in order "'that the secretaries may communicate with the "'Royal Commission and ask to be allowed to give "'evidence before it.' The Council also decided that "such protests should be signed by those members "who passed these resolutions. Those branches that "have already sent in resolutions are therefore asked "to forward their petitions over the signatures of "their members. We feel that there will be branches "that would wish to go beyond the wording of this "resolution, but we would remind them that in order "that the protest should come within the terms of "reference given to the Royal Commission and be "admissible as evidence before it, branches should "confine themselves to a protest dealing with the "extension of the facilities for and of the grounds "of divorce. We have been in communication with "the secretary of the Commission, and he has "courteously answered that he will bring the request "before the Commissioners." That is all that deals with it there. Then it was found that further evidence would be admissible, so in August this further paragraph deals with the same subject: "A large number "of resolutions regarding divorce have been received "by us. All these are being filed and analysed, so "that the evidence may be presented before the "Royal Commission. We notice that many branches "only state that the resolution forwarded was passed at "a meeting, and no record is furnished of the number "who voted. We would remind hon. secretaries that "the Council has suggested that the resolutions should "be signed by the members so that there may be "definite records to submit. As the Royal Commission will not sit again until October we would ask "such branches to collect the names of those who "desire to express their opinion between now and "then, so that they may be added to the resolution "already sent in. The Council decided not to stereotype any one form of protest, though they suggested "that all branches which sent resolutions should, for "the sake of uniformity, make their protest against "the extension of facilities and grounds of divorce. "Many branches have added further resolutions advocating the repeal of the 1857 Act, &c., and of all of "them a strict record is being kept for presentation "to the Commission."

39,581. The Norwich resolution speaks of the moral danger that divorced women belonging to the working classes would be exposed to. I am not sure whether I have it accurately. Is that your recollection? This was a meeting of men?—Yes.

39,582. Do you know if they took counsel with their wives or with any representative women?—They have not been asked to,

39,583. Before putting this forward?—I have nothing except the protest which has been sent in. The wording is "especially having regard to the great "moral danger to which divorced women belonging to "the working classes will be exposed."

39,584. As you do not know whether they took such counsel you would not know whether they considered the moral danger to which women are exposed who have been separated from their husbands?—I imagine it would come out in the discussion.

39,585. But they do not state it?—No.

39,586. We have had a good deal of evidence on that point before the Commission?—Yes.

39,587. (*Lady Frances Balfour.*) His Grace drew your attention to the sentence in which you said: "It "has spread from the Church of England to the Church "of Scotland and the Church of Ireland." Were you under the impression that the Episcopal Church was the established Church of Scotland?—No.

39,588. It was not an inaccuracy?—No.

39,589. I understand the whole of these directions were entirely upon the lines of a protest. It would not be consistent with the expression you used once: if they wished to send up resolutions for further extension they could hardly have done so under the direction that they were to protest?—I think the feeling was they were free to discuss the whole subject and send resolutions, which would be brought before the Commission.

39,590. How could they be free if they were directed throughout to send up protests? That is not a free word at all. The whole direction of everything was to sign protests?—Yes.

39,591. Could they, under that, sign a protest against the inequality of the laws between men and women at this moment?—Yes.

39,592. Could they have protested that they wanted further extensions?—Yes; we intended to present what they sent.

39,593. The expression used was they should submit themselves to the direction of the Church?—When was that expression used?

39,594. That is not in the letter, but in one of the petitions sent up?—It is only an individual expression from one branch.

39,595–6. The whole direction was that they should protest?—Yes. We were approached by so many asking that we should collect the evidence which was all in the form of protest and submit it to this Commission that we said we would.

(*Lady Frances Balfour.*) It would seem to have been of greater value if there had been a free discussion without the word "protest" used at all.

39,597. (*Sir William Anson.*) Are the 100,000 churchmen which you say the movement contains limited to England, or does that number comprise membership in the Episcopal Church of Scotland and Ireland?—Yes.

39,598. And the dominions beyond the seas?—The total number.

39,599. The numerical value of the protest must not be regarded as very great?—It is absolutely volunteered, that is the great value of it. It has not been engineered in any way, there has been no form sent out asking them to sign it. They have had to do it on their own initiative.

39,600. It was in response to an invitation to send protests?—Yes.

39,601. It could hardly be described as absolutely volunteered?—It was not necessary to answer the invitation, of course.

39,602. The invitation was to protest?—Yes.

39,603. Against any extension of the grounds of divorce?—Yes.

39,604. And it represents the men's view?—Entirely.

39,605. The question of the moral effects of separation orders was not under consideration?—It has been discussed by all these branches. None of these resolutions are passed until there has been a whole evening spent in discussion.

39,606. The protests are confined to the question of the extension or even the existence of divorce?—Yes, and these additions which I have read to you.

39,607. (*Sir Frederick Treves.*) Does this society represent any phase of opinion in the Church, high or low?—It is as inclusive as "the Church of England." We have all sorts, we make nothing of these divisions.

39,608. In the two circular letters which you have read the leading point is this: you do not ask for an opinion on the divorce laws, but seek rather to collect opinion on one side of it, that is to say the evidence of those who protest?—Yes.

39,609. That is quite clear. It is not an open invitation to express their opinion on the existing laws, but it is to collect and enumerate those who are on the side of protesting?—I think our branches quite understood that when they came together and discussed this subject, whatever conclusion they came to they could send up to us and we would bring it before the Commission.

39,610. Do you think that really comes out in both those circular letters, especially the second one?—I have had such an enormous amount of correspondence about it individually, outside of this, with branches, that I am sure I am right in saying all branches felt that if they came to a diametrically opposite opinion they would be able to send it, and it would have been brought forward.

39,611. The letters suggest what you are desirous of collecting are resolutions of protest?—Yes.

39,612. That expression is prominent in both of your letters, and that inference might be drawn from those documents?—Yes.

39,613. (*Mr. Spender.*) You are against the extension of facilities: do you mean that you would not extend the existing divorce laws without alterations to bring them within the reach of the poor by any changes in jurisdiction?—These last letters I read seem to bear that construction.

39,614. The law is to be left as it is, that is to say, confined to the High Court?—Yes; several of them have actually mentioned that.

39,615. You would not say that there was no minority against this opinion among the young men in the Church of England?—It has not been sent to us as evidence. May I make one slight alteration? We do not really represent young men. The average age of the members of this movement I should think was over 30. I said 18 was the limit going downwards, but the great bulk of men are from 25 to 60.

39,616. Your friends, I gather, are solid against any publication in the papers?—Those branches which have mentioned it have all said so, except the names; the names should be published, but not the accounts.

39,617. They do not see any objection to sealing up the Divorce Court?—I do not know. I simply present what I have.

39,618. (*The Archbishop of York.*) I would like to ask this, as clearing up the nature of your evidence. Did the council act on its own initiative in sending out the first letter, or under pressure from the branches themselves?—There was a great deal of pressure, both from the branches and individual members.

39,619. Would you describe, from your knowledge of the society and its ways of working, the letter as anything in the nature of a direction that persons should send up views of a particular kind?—My remembrance of what took place at the council is strongly that it was intended to be an invitation to branches that if they wished to pass resolutions instead of sending them individually, the council would collect them and present them.

39,620. From your knowledge of the nature of the branches in the federation would you say that any branches, who discussed the matter and came to a different opinion, would certainly have intimated that fact to the council?—I think so, certainly.

39,621. Would you say that these men are in any kind of way subject to clerical control or influence?—Subject, but by no means tyrannised over. The branches are very free; they do accept the leadership of their clergy, but the body of laymen within the branch hold their own opinions.

39,622. Do you find instances in which they assert their opinions freely apart from what the clergy may think?—Occasionally there are difficulties, the laymen expressing opinions so strongly that the clergy may take umbrage at it. The general rule we lay down in all things is that we hope this movement will bring about co-operation between clergy and laity, and it is doing so.

39,623. You said in answer to a question that the society is not confined to any single party in the Church; it represents all parties?—That is so.

(*The Archbishop of York.*) We are very much obliged to you for taking the trouble to collect this evidence and opinions and putting them before us.

Father Michael Kelly called and examined.

39,624. (*The Archbishop of York.*) In what part of London do your labours lie?—Hoxton Square, Shoreditch.

39,625. You are a parish priest?—Yes, and director of that mission.

39,626. You come here, if not at the request, certainly with the knowledge and approval of the Archbishop of Westminster?—He asked me to come and give evidence. I believe I am the oldest parish priest in London and the longest labourer in a place like it.

39,627. Is it his wish that you should represent the experience of practical working among the poor in the Roman Catholic congregation?—Yes.

39,628. Will you kindly read your proof?—I have a short statement here I should like to put before you.

39,629. Will you kindly read what you have amplifying the proof?—I have brought this short summary so that the Commission may clearly understand the position of Catholics. Matrimony is a sacrament by which the contract of marriage is blessed and sanctified. When a man and woman lawfully make an agreement for lifelong cohabitation we have marriage. If both parties are baptized we have Christian marriage: if one only is a member of the visible body of the Church and the other is baptized but not a member of that body, it is a mixed marriage. Christian marriage, when validly celebrated between qualified persons and consummated, makes a complete bond of matrimony, and they are two in one flesh (Mark x. 8). The unity of marriage means the rule by which polygamy in both senses of the word is forbidden to Christians. Married persons have mutual rights and duties, different entirely from those which bind the unmarried: (*a*) Marriage justifies cohabitation; (*b*) The spouses are bound to co-operate in the proper education and provision of food and necessaries for their offspring; (*c*) They have a special duty of mutual fidelity; (*d*) They must assist each other to lead Christian lives. The Catholic poor hold with a firm faith that consummated Christian marriage is indissoluble except by the death of one of the parties, and that no power of the State can render their marriage voidable. They consider any decree purporting to put an end to the matrimonial bond is absolutely valueless and not binding in conscience. In the exercise of my ministry for over 46 years I have baptized close upon 7,000 children. This speaks of an intimate and confidential touch with my people. I know them as only a

priest can know them, and was trusted by them as only a priest is trusted. They came to me in real or fancied trouble. They told me in earnest words of sweated labour, exorbitant rent, uncertain employment, the curse of intemperance, the hurtful words and acts engendered by incompatibility of temper or other regrettable causes, and, however appalling or terrible their sufferings were, or exaggerated their notion of the outlook, in no single case was divorce mentioned as a remedy. With them the word "divorce" is a synonym for "adultery." I do not put that down offensively, but it is the word they make use of. The Catholic poor suffer severely and take angrily the law that compels them to pay the registrar for the publication of banns and his attendance at the ceremony. It is a grievance which causes the worst feelings against the law, and no species of reasoning can remove it. In my opinion the poor have a just cause of complaint. The fees without a certificate amount to 7*s.*, with a certificate to 9*s.* 7*d.* These for the very poor are an enormous tax. In preparation for the marriage deserving young people make a strenuous effort to save a small sum: the home, poor at its best, has to be furnished, extra clothing purchased, while to keep to a becoming custom a few friends are to be invited on the occasion. All this means expense, and at the same time he gets an independence worthy of encouragement. When the computation for outlay is made there stands out the mulct for the registrar. Can one be surprised to find at the moment feelings of anger and disappointment or a bitter lamentation that for performing a solemn act of religion they have to pay an odious fine? Too often, unfortunately, this relic of the penal days leads to an unwedded life and the consciousness of wrongdoing and unblessedness. I submit this legal ordinance is not only a hardship but fruitless and unnecessary. The civil registration, as with births and deaths, could otherwise be effectively secured. That an official of the State must be present, and the married couple be compelled to repeat an unnecessary form of words in his presence at a time so sacred and important to them, are undoubtedly, for the Catholic poor, causes for sore murmuring. They help to make a ridicule of religion, are a temptation to reject all by living together and thus lay the foundation of future misery and despair. Separation orders are not readily resorted to by our people. If frequently threatened, it is by way of reform rather than a desire to live apart. Their unhappy environment in a great measure accounts for these menaces. Naturally quick-tempered, they are easily touched and feel painfully the depression that comes from severe illness, home troubles and disappointments. If taken too seriously the separation that was applied for in an outburst of temper and had no radical meaning may become a permanent harm from bitter remorse and continual recrimination. Delay is a safe remedy. If accompanied with advice it soothes the unreasonable and obdurate, and restores the lost peace. Every effort should be made to prevent Separation. This questionable remedy for marital grievances means a loveless family and a broken home. separation leads to drunkenness, immorality, and other misfortunes of an outcast life. I deplore the pernicious freedom of the Press in publishing the details of divorce cases. These make unwholesome reading for all: for the young they are disastrous and dangerous in the extreme. If the reports of divorce cases may not be totally prohibited, at least they ought, in the interests of pure family and social life, to be confined to the names of the litigants and the decision of the Judge. *Summary.*—(1) That as the Catholic poor do not acknowledge any power in the State to nullify valid Christian marriages, they do not entertain the idea of greater facilities or of availing themselves of these so-called privileges. (2) That they regard the present marriage law as an abhorrent injustice, inasmuch as it is an impediment to the freedom of marriage, the solemnity of the ceremony, and an odious impost that leads to illicit cohabitation. (3) That separation be granted only when the counsels of the magistrate and priest have failed to reconcile the parties, and then temporarily, with the hope of the amendment of the guilty party. (4) That the publication by the Press of divorce proceedings be strictly prohibited, or, if decided to be necessary in the interests of justice, they be restricted to the names of the petitioner and respondent and the judgment of the court.

39,630. Do I gather that you make one definite suggestion as to the amendment of the marriage laws in regard to requiring the presence of the registrar at the marriage ceremony?—Yes, very strongly, because I cannot conceive that anyone would desire it if they knew the harm that comes of it from what I know.

39,631. Is the harm rather the fee which is charged than the presence of the official?—I would say both. The fees are enormous in the case of poor girls who are working for 5*s.* or 6*s.* a week. It is almost impossible for them to be able to spare that money, and when men and women put money together they find they must pay this. The priest often would be glad to pay for it, but there is a feeling that their fathers and mothers made an offering on some occasion, and they feel that they should do the same. We are forbidden by our Church to ask for anything on the occasion of the administration of the sacrament, but I have often paid these fees to have the marriage celebrated. These poor people feel that they are unable to make an offering as their parents did on a like occasion, and so to avoid the humiliation, they go elsewhere or live together unmarried. I think at that time it is a very important and solemn ceremony, and they feel when an official like the registrar, who is always very gentlemanly and polite, comes in that it is a desecration of what is a solemn and religious ceremony.

39,632. Do you not think the requiring of some fee, not a prohibitive fee, but a fee which represents a certain amount of forethought and self-sacrifice, may be a useful check against improvident and heedless marriages?—In some cases, but I do not see as a rule, from the way people regard it, that it can be other than a grievance. They scarcely ever have 2*s.* to spare; their life is a continual misery, hard labour, and poverty.

39,633. You said it was regarded as a relic of penal days?—Previously it was required by law that marriages should take place before the clergyman of the Church of England, and only these marriages were recognised. When exemption came, Nonconformists felt under the law that the registrar should go to their place of worship. Then followed another law brought in by the late Lord Russell, that the registrar need not go to the Church provided some other duties followed, and one was that the people should pay 4*s.* and the registrar would have a right to receive them. That was not taken advantage of by the Nonconformist bodies that I know of, for good or bad.

39,634. You are in favour of making all separation orders in the first instance temporary?—Yes. I think these people come in a passion and ask for a separation in court, and if the magistrate is hurried he gives it to them, and then later things are not so happy as they were before and they are sorry for it.

39,635. Is it your experience, after all these years, that in a great many instances those who have obtained separation orders from the magistrate become reconciled to one another?—I do not know a case where it has not taken place. We have very few cases of violated faith amongst our people. Most of these things arise from drunkenness, or the man has no work, or sweated work, or is not able to bring home anything, and he takes to drink and comes home without money, and there is a row with the wife and children. If he strikes her, which unfortunately he may do, or break the furniture, then she goes to the magistrate, and when he finds there is a separation order against him—the wife does not make use of it, but he does make use of it, and it causes the violence to continue. If the magistrates were to let it stand over for a week I think they would be reconciled if they would assent to the priest or clergyman or some friend helping them, and the result would be that the magistrate would hear no more of it.

39,636. You are in favour of recommending in all cases a postponement upon making the order?—Yes.

39,637. Would you go further and say if the order is made that it should in the first instance be only made for a time?—Yes, I would make it in that way for adultery or continual brutal behaviour of one party to the other. In an ordinary case I would not grant the order, but I would let it remain over for a week or a fortnight.

39,638. Do you find many of your people who do not resort either to separation or divorce?—I never heard divorce mentioned by one.

39,639. Do you find that in doing that they separate practically from one another?—No, not at all. There may be a case of a man who has some stain on his character, whose previous life has not been pure, and there is some trouble and he goes away. The people generally do not separate, as we understand the word, but there is a coolness of manner and habit for a time.

39,640. You are in favour of total prohibition of reports in the newspapers?—Certainly. I consider it the very worst reading people can possibly have. For one reason, they always draw an inference. They say, "If these things happen among better-class people why should we be blamed?" You will notice with these young girls who work in the morning poorly clad and fed, that each of them will find a halfpenny to read these proceedings, and I think they are very hurtful to them.

39,641. Do you think that a considerable number of the poor do read these things?—I think the majority of them do.

39,642. And that it does them harm?—Yes. They speak of it in the workroom, and they begin to think of things which would never have come their way otherwise. There is no possible good in them amongst the poor.

39,643. I think I am right in saying that you have worked in Hoxton for 46 years?—Over 46 years, and I may say that I have scarcely ever had a vacation or been out of the place. I am amongst them and know them well.

39,643*a*. (*Sir Lewis Dibdin.*) I do not understand what the grievance is about the registrar?—It is a grievance that some should pay for the marriage.

39,644. Is it that the fees are too high?—I do not see why the State should step in and be present at that ceremony when it can be obviated.

39,645. You realise that it is important that the State should see that the people are validly married?—Quite so.

39,646. What security has the State that that is done unless some public official is either present or engaged in the matter?—What is there to prevent an authorised priest from giving the certificate?

39,647. You have mentioned and are no doubt aware of the Act of 1898, which contemplated that being done. Are you an authorised officer under that Act?—No. Our bishops have never availed themselves of it.

39,648. If they had, your grievance would have been met?—Very little. I do not see that it would make any difference to us.

39,649. If you avail yourselves of the Act of 1898 the priests would become authorised officers, over whom the Government would have some hold, and if you did that the marriages would be celebrated without the attendance of any official?—I object to the fee being paid for that purpose.

39,650. Keep the fee separate. If your Church consented to the priests being authorised officers for that purpose under the Act of 1898, your grievance, so far as the attendance of the registrar was concerned, would be met?—Yes.

39,651. You object to that extra fee of 4*s*.?—Yes.

39,652. That was a compensation that was supposed to be due to the registrars for the loss which they would have by the ministers of the different religions being substituted for them as authorised officers?—Yes.

39,653. Are you aware that that enactment of 4*s*. on each marriage came to an end two years ago? It was only in operation for 10 years?—I am aware of it. The reason I make the point is because of what has happened amongst our people.

39,654. But there is no fee of 4*s*. payable now?—I do not know what the change is.

39,655. It was only put on for 10 years, from 1898, and we are now in 1910, so that it must have come to an end?—There was another grievance attached to that.

39,656. That has come to an end, has it not?—I believe it was to be for 10 years.

39,657. What is the other one?—The clerk of the union is the district registrar of every district, and in a poor district many of these people have to come and have relief. Suppose there is a mistake made, and they make a marriage late in life, which they will if the priest can arrange it, but then the clerks of the union are made acquainted with this, or one of the substitutes, who will say "These are people who have only just been married."

39,658. You think that the registrar for marriage should be a separate man from the clerk of the union?—Yes. It would save a great deal of hardship if there was some registrar appointed as for births and deaths.

39,659. Do you think it is an unreasonable thing that people who are marrying should have to pay a few shillings for the marriage? Do you think it ought to be an obstacle? If they are so poor are they in a position to marry?—That is not the point altogether. We hold that they are not disqualified for that reason.

39,660. Not legally disqualified?—No, by the Church.

39,661. Are there any fees charged in the Roman Church for marriage?—No; we are not allowed to ask for fees. Most of the Catholic people would make a small offering. A great many cannot do that.

39,662. There is generally some small offering made?—Yes.

39,663. You do not call it a fee?—No, it is not a fee. There is another advantage if that law was amended. You may find people living together, young people who have made a mistake, and the priest would marry them and send the certificate to the registrar to prevent them living in sin afterwards and causing a great deal of trouble. It is for the sake of morality and social good I speak of it.

39,664. Have you had any experience of sentences for divorce *a mensa et thoro*?—No, I have never had an application of that kind, but I know it exists. They take these cases to the Archbishop's Court.

39,665. You have no personal knowledge of them?—No.

39,666. (*Lord Guthrie.*) Why does not the Catholic Church allow priests to register under the 1898 Act?—I could not tell you that. They never accepted it. A great many of the Nonconformist bodies have not, in the same way.

39,667. Would you object to a law which made civil marriage compulsory on everybody, leaving the individuals to have any religious ceremony they choose thereafter?—I do not think the law has a right to interfere with marriage at all. I object to that entirely. It is a matter between themselves and a great deal of the future good depends, at least with Catholics, upon the marriage which they make.

39,668. You used the expression "valid Christian marriage"?—Yes.

39,669. Would that apply to marriage between Protestants?—No; we should get a dispensation from the mixed religion for the party that is not a member of the Church.

39,670. When you talk of a "valid Christian marriage" do you include in that the Protestant marriages or only the Catholic marriages?—We make a distinction between a contract and when the sacrament is administered. Until such time as they live together and that marriage is consummated it is only a ratified marriage, but after that it is a valid Christian marriage.

39,671. When you are referring to the sacrament being administered, that is by a Catholic priest?—I am speaking of Catholics, of course. I am not speaking of Protestants.

39,672. In using the expression "a valid Christian marriage," you are referring to Catholics only?—Yes, and those that have complied with all the laws of the Church.

39,673. Would you have any objection to the law allowing divorce for non-Catholics within its dominions?—No, we do not acknowledge divorce at all.

39,674. Do you go so far as to hold that the State is not entitled to allow divorce for anybody, or do you limit it to Catholics?—I do not think the State has any power to annul what I call a valid marriage. If two people make a contract to live together and consummate it, it is marriage; but if they have not consummated it by living together it would be a ratified marriage, and for certain reasons that could be annulled like any other contract.

39,675. For what reasons?—We hold when two baptized persons agree to a life-long cohabitation, and the marriage has not been consummated, it can be dissolved by the authority of the Church.

39,676. Whether a Christian marriage or not?—I am speaking of Christian marriage.

39,677. You exclude divorce for all marriages?—Yes, we hold it is contrary to the law of God.

39,678. Supposing Catholics go to the Divorce Court, what happens to them?—If they go to the Divorce Court we hold they are married still. If a man had a proper reason for going to the Divorce Court and putting away his wife for adultery or anything of that kind, or the wife putting away her husband, then we hold that they live in that divorce your Lordship mentioned a short time ago, *a mensa et thoro.*

39,679. You do not object to Catholics going to the Divorce Court for separation *a mensa et thoro?*—No. Catholics must have the sanction of their Bishops' Court for going. They have no other means of having that made valid in the eyes of the law.

39,680. Supposing Catholics go further and get divorced and re-marry, what do you do with them?—We hold they are not married. The Church could not interfere with them.

39,681. If they persist in it?—They woould remain outside the laws of the Church.

39,682. Would they be turned out?—They would remain outside the Church.

39,683. Have you known any such cases?—I never had a case in my life.

39,684. You have known cases of Catholics, contrary to the law of their Church, obtaining divorce and re-marrying?—I do not know of one. If they re-married they would not be Catholics any longer.

39,685. Have you found many cases in your large experience among the poor of deserted wives?—Yes. Men go away sometimes when work is very bad: they mix up with some societies or things of that sort and go away. As a rule most of these people return.

39,686. You have found some cases where they do not return?—Yes.

39,687. And some cases where they do return?—Yes; in the majority of cases they return.

39,688. (*Mrs. Tennant.*) Your length of parish service is exceptional, and therefore you are in particularly close touch with your people?—Yes.

39,689. It is true the Catholic priest is always in close touch with his people?—He is always in close touch with his people.

39,690. There are few Catholics living out of communion with their Church?—Very few. There may be some who get into habits which take them away from it. If a girl makes a mistake and is not able to get married, has not the means, and the priest can find her, and that girl can be married without the presence of any person outside, quietly, we pay for that and have it registered, and it saves the girl for life as a rule.

39,691. The priest is usually successful in arranging a marriage in those cases?—Yes.

39,692. Have you ever advised separation?—No. I always try to reconcile them by talking to the man, waiting first of all till such time as I can find him sober, or taking the woman down to the house and speaking to her and trying to make things better. I have found that a good thing.

39,693. You never thought it might help your case if they could be separated for a little time?—I do not think so. There is always a danger in that.

39,694. It is your experience that almost always reconciliation is effected?—Yes.

39,695. In the interval during the estrangement you think there is a danger?—Yes; there is always a feeling with a man that he has done something he had no right to do, and he goes into bad company, into the public-houses, and places of that sort, and does worse things. That man may have months of a bad life. We know them all as a rule, but sometimes they escape us and go right off.

39,696. Do you take any steps to safeguard the two persons during their period of separation?—Of course, we see them and try to make friends with them and bring them to the Church. If we can get them to go to the sacraments they do very well.

39,697. Can you generally keep in touch with both people?—Yes, we know where they go to, and they always feel wherever there are the priests there is secrecy.

39,698. What steps are you able to take in the case of the man who is separated from his wife and who is likely to live with another woman?—A man that was doing that I would try to bring back.

39,699. Before he does it how do you help him? Is there any way in which you are able to help him?—He would have to give up that intercourse.

39,700. But I mean before he has fallen into it?—We try to get these people to move away to another portion of the district, or to some other district, and so avoid the woman that was the cause of it.

39,701. I am not thinking of the time after the fall; I am thinking of any preventive measures you can take. Have you any club or institution you are able to take him to, temporarily?—I never found a case when I could not reconcile them as a rule when the man gives up the woman. The first thing is to give up the cause of the sin.

39,702. That is not my point. My point is if a wife comes to you and tells you that she has got a separation order you know there is danger to both persons?—Yes.

39,703. Are you able to do anything to save either or both of them from falling into the evil which you dread? They have a separation order for certain of the causes you have stated, such as incompatibility of temper; there is not another woman in the case then. Are you able to protect that man from going to live with one?—We take great care of that. We make a special case of that. The sisters of charity go about amongst them and take charge of the woman, and we take charge of the man and find work for him and make him see what he has done.

39,704. Your system is really very complete?—Yes, it has been very workable, taking the class of people we have to deal with and the many temptations they have—so many public-houses.

39,705. Catholics stand in a peculiarly happy position if they are so well looked after?—I do not draw comparisons between the Catholic and any other denomination. In Hoxton if anyone wishes to do good he has to work hard, and it is very depressing work.

39,706. You said you thought the period during which a separation order lasted should be temporary. Have you any period in mind? Would you suggest three months?—I would not suggest anything. The best way I think would be to see what improvement the man would make and then bring him to the magistrate. You could show how he had conducted himself. I think that would be a help to the man to improve. He would feel he had not lost his character.

39,707. To whom would you give that supervision? To whom would you give that power?—I am only speaking of the Catholic poor in the district. I could not say with respect to others. I certainly think that a visit to the magistrate would be useful and help them in that way. During the years I have been there, over and over again the magistrates have written or sent the warrant officer to ask if they could do anything in the case.

39,708. (*Mr. Spender.*) Is it necessary that the registrar should be in the Church?—It is necessary by the law.

39,709. Is he not in the vestry, or the sacristry?—It is not necessary for him to be there. He comes in and repeats these words after they are married. He repeats the form of marriage.

39,710. Taking the legislation of 1898 and the possibilities of getting rid of this trouble?——I am only speaking of what has occurred and what has been the cause of so much trouble.

39,711. You would say in its requirements as to civil marriage this country is as moderate as any country in Europe?—I do not complain of that. I complain of the effect it has on the people. Every marriage ought to be registered and taken care of independent of the Church. The church might be burnt down, or many other things might happen. I think that could be effectively done and not hurt the poor people, who are very susceptible.

39,712. I was suggesting that a way is provided for that?—I only put that down to be discussed.

39,713. (*The Archbishop of York.*) Would the offering at the time of marriage ever be refused by any of your people?—We never refuse the smallest offering that is made to us.

39,714. Would they decline to make an offering?—They always wish to make an offering, and if they have no offering as a rule they will keep away or go elsewhere and not be married. They feel that is part and parcel of their existence to make the offering, even if you give it back to them half an hour afterwards.

39,715. Is there any suggestion made as to what would be a suitable offering?—No. We are forbidden strictly before or after marriage to speak of an offering when the sacrament has been administered.

39,716. It is left to them to make what offering they please?—Yes. They may put it in the offertory box if they like.

(*The Archbishop of York.*) We are much obliged to you for your attendance and for the evidence which you have given us.

Rev. JOHN SCOTT LIDGETT, M.A., D.D., called and examined.

39,717. (*The Archbishop of York.*) You are ex-President of the Wesleyan Methodist Conference and warden of the Bermondsey Settlement?—Yes.

39,718. You appear on behalf of the Wesleyan Methodist Committee of Privileges, but not as a delegate to express any official views?—The position is this: the Wesleyan Methodist Conference has never expressed a formal opinion on the subject. There was a notice of motion at the recent Conference, but notices of motion come at the end of the proceedings, and unfortunately the Conference came to an end without it being discussed; therefore I am simply selected to appear here because the committee has been good enough to suppose on the whole in this informal way I may represent, not in any formal way the Church, but informally a large trend of opinion.

39,719. Is the Committee of Privileges a committee of the Conference?—It is the committee of the Conference charged with dealing with public affairs as they arise during the intervals of the Conference.

39,720. Would you prefer to follow your proof and amplify it as you go along?—I should like to say in the first place that Wesleyan Methodists as a whole have remarkably little direct experience of these questions which are now occupying the attention of the Commission. In the whole of my long experience, for example, I have never known a single case of divorce or separation between Wesleyan Methodists, nor have I heard of one. No doubt occasionally such cases arise, but they are very infrequent indeed. Moreover, I have never heard, although I believe occasionally cases have arisen, of divorced people, innocent or guilty, applying to Wesleyan ministers for a re-marriage ceremony. The Wesleyan Methodist Church does avail itself of the provisions of the 1898 Act, and I am not in a complete position to say whether that has affected the situation, but I take it that divorced people seldom, if ever, have recourse to our ministers. Rather by reason of the fact we have very large missions and some settlements in the heart of poor districts in great cities, we are brought in touch with the people, and the views which I express here I have reason to believe are the views taken by the most experienced missioners in charge of these central missions. I should like to say that the Wesleyan Methodist Church as a whole shares the anxiety of all branches of the Christian Church that the sanctity of the marriage tie should be upheld. If any changes in the law are to be made we feel it should be with a view to strengthening throughout the community, and not weakening, the reverence for the marriage contract. At the same time I cannot help thinking that any facilities which are given to the well-to-do for securing divorce on grounds laid down by the State should, as a matter of justice, be extended to the very poor, and that no considerations of cost should stand in the way of the poor having the same facilities that are accorded to the rich. Even though I might feel that the law had erred in certain directions in extending facilities, on the ground of equal justice I should hold we had no right to interpose for even benevolent reasons in what I should consider to be an act of equal justice, on the ground that there should be no differentiation between rich and poor on the ground of poverty, and that such inability of the poor to secure their rights under the law should not be used for the most beneficent reasons. That would be a dangerous course of policy, I think. I feel strongly, and I represent a large body of opinion, that the only recognised ground of divorce should be as at present, adultery. It is quite true that certain amongst us are influenced by the new and very recent critical conclusions which tend towards upholding the view of the absolute indissolubility of marriage for all reasons, but I do not think that would be the view that would be taken by any very large number. If I may dwell for a moment on the critical question so far as our Lord's teaching is concerned, it hardly follows, even supposing the conditional words, "except for the cause of adultery," have been introduced from another source, that they are spurious or have been simply introduced by reason of the infirmity of the flesh for what I may call unworthy motives. The whole critical problem as to their place seems to me uncertain. Moreover, after the long usage and the long understanding of the Gospels it seems to me at the present time impracticable to turn aside from what has been so long the *textus receptus* for popular purposes as well as for scholarly purposes everywhere. Moreover, there is the extremely difficult problem for us how far the principles laid down by our Lord in His teaching were intended to be by Him the absolute guide to legislators: for example, He Himself explains to His hearers that Moses for the hardness of their hearts laid down, as a legislator, certain inferior principles which were the best that under the circumstances could be administered. Therefore, I think I am still expressing the common opinion of those for whom I speak when I say we are perfectly satisfied on religious grounds with the existing qualification admitted on the subject by the law, but our general object would be to get the law into as close accord as we possibly could with what we regard as the authoritative teaching of our Lord. I should say that not merely because of our submission to what we understand to be His authority, but because we believe that that authority does uphold principles which are absolutely vital to the spiritual and moral and even to the physical well-being of the community. We should therefore have a two-fold ground, not only our acceptance of His authority, but our practical and utilitarian belief that His authority does in this matter safeguard the most important interests of the community. So far as the one exception, the case of adultery, is concerned, we should distinguish that from any other cause for the dissolution of marriage that could possibly be adduced,

on the ground that it strikes directly at the marital bond in a way that no other cause or alleged cause for divorce does. Of course those of us who work among the poor are constantly brought into contact with exceedingly hard cases. There are cases of lunacy, criminality, cruelty, and of desertion, but those whom I am representing would look with grave dislike upon any extension of the causes of divorce on these grounds, and for various reasons: first of all, because we should fear that once you begin to multiply the causes you will accelerate a tendency to multiply them in the future. In the next place, so far as many of these suggested causes are concerned, they are very difficult of precise definition and of absolute certainty. I think at once to give the right of divorce in regard to any one of them, and particularly to criminality or even to cruelty, is absolutely to rule out from our modern conception of marriage, that it ought to have, if I may say so, some kind of redemptive grace in it, that the standard before an offended partner to a marriage should be that in cases of offence there is not to be a light resorting to legal rights, but that the unexhausted stores of original affection should be commanded to try to restore the bond which has been threatened or even broken. For that reason I should think that, although hard cases are fairly frequent, yet hard cases should not make the law, because the more the hard cases break down the existing practical acceptance of the indissoluble contract of marriage the more you will weaken the general sanctions of marriage, and that would be an evil far more serious than the mitigation of particular hard cases. Then I am here to represent that there should be complete equality of the sexes as to the grounds of divorce. I, and those for whom I can speak, believe that the best way to raise the moral standard of men is to call upon them for a higher degree of self-discipline by making the conditions of divorce absolutely equal between the sexes. It is quite the case that infidelity on the part of a wife has more serious consequences to the home than that of the father, probably in most cases, but at the same time I think that is a question that will solve itself by the ordinary processes of practical life. We have long felt, and feel strongly, the only way to raise the moral standard is to make it equal between the sexes. I should like to add that all those with whom I have to do are greatly opposed to the disability of the poor with regard to obtaining divorce on the ground of the immoral consequences of separation orders. Our experience is that separations lead to the formation of irregular unions, and that it will be far better where the cause of divorce exists, which is allowed in the case of the rich, and in the interest of morals that the poor should have the relief of divorce rather than of mere separation. I am very strongly of opinion that much greater care should be exercised in giving the ordinary separation orders where incompatibility of temper or other causes of that kind are established, and that every influence should be used, including the occasional revision of the order, the intervention at intervals of the magistrate in order, if possible, to bring the parties together, because, after all, most of these cases are cases of young, immature, and undisciplined people who have got married perhaps thoughtlessly. I hold, again, you want first of all the moral influence of friendship, if possible, brought to bear upon them, but also side by side with it the sanction which is the only sanction that will keep young and thoughtless people from getting married, that it is very difficult to escape the bonds they contract. So far as publication is concerned I agree with those who have urged the evil that is done by a certain section of the Press, which gives inordinate space to the details of divorce cases, and unfortunately sometimes reports that which is the most harmful to prurient imaginations. At the same time I feel very strongly that publicity is required, and I am not at all sure of any remedy that has been suggested, except our reliance upon the general sense of restraint of the Press and the general influences that go to raise the moral standard of the community.

39,721. May I ask one or two questions to get your evidence clear. I gather you, and those whose opinions you know, look upon adultery as standing on a special ground, not only because it is an exception in certain reported words of our Lord, but because of its own intrinsic character?—Yes.

39,722. You would regard that as standing in a different relation to the rupture of the marriage bond from any of the other causes?—Totally.

39,723. With regard to what you said about the recourse to divorce and separation on the part of the Wesleyan Methodists, how far would you say that was due to the fact that the majority of definite members of the Wesleyan Methodist Church would belong either to the middle class or the very respectable working class?—Of course the preponderance of our members throughout the country belong to the working classes; no doubt they are the respectable classes. In most cases their religious convictions made their respectability.

39,724. You would say among that class the question of divorce or the desire for divorce hardly ever occurs?—As far as our experience goes.

39,725. You speak of the effect of separation orders at the present time, that they are apt to lead to immorality. You say in your proof that permanent separation under such conditions generally leads to immorality. You would not feel the same about separation orders not in the first instance made permanent?—No, certainly not.

39,726. You would agree they had some advantage?—I should like to see the magistrates continued in the general powers they exercise, but put under stricter rules so far as the using of almost a paternal influence in bringing parties together and assisting them to look over the trivial causes which with young people lead to permanent estrangement.

39,727. Would you be prepared to advocate that separation orders in the first instance should be made only for a time?—I should be quite prepared, I think.

39,728. You would advise in any case there should be as a rule postponement of decision except in cases of immediate urgent necessity?—Yes.

39,729. Even before the order was granted?—Yes.

39,730. In expressing the opinions you have about publication, do you feel that you are representing the view which would be likely to be taken by your Wesleyan Conference?—I think so.

39,731. You speak of leaving a selection of the details to the general good sense of the Press. How far, in your opinion, is it likely that that general good sense we all admit may be affected by the competition of less desirable journals who think more of making money than of exercising restraint?—That, of course, is a difficulty not only in this matter but in so many other matters, and I frankly confess I hardly see a solution.

39,732. (*Mr. Spender.*) Your view is briefly that you wish to see the present law made accessible to the poor, and that you would like to see the ground of adultery equalised as between the sexes?—That is so.

39,733. You would not go beyond that even, say, to desertion?—No. I think the case of desertion is probably, on the whole, the strongest case of those that are brought forward for an increase of facilities, but, when I consider the possibilities of collusion, going no further, I think it would be a highly dangerous thing to grant. I have been a Poor Law guardian for many years in a very poor union, and I know the great difficulty we have in all these cases of desertion, and the immense amount of collusion that takes place.

39,734. You say as regards separations that in your opinion they lead to further immorality on both sides and to the formation of irregular unions, and that divorce would be more conducive to morality and general well-being than separations. Does that argument not apply exactly as it stands to the enforced separations which are caused by desertions?—That apparent conflict has been present to my mind, but I look upon it that the greater harm is the harm of weakening the marriage bond throughout the community by giving extended causes of divorce, and that you would do more harm to the community as a whole

and eventually to every class by such extensions than you would by upholding the restriction, even although such separations do lead from time to time to immoral connections.

39,735. Would you say that the marriage law had been weakened in Scotland where desertion is permitted as a ground of divorce?—I have not sufficient experience of the working of the marriage laws in Scotland to offer any opinion.

39,736. Apparently no evidence of any considerable disproportion of divorces consequent upon it has been given?—Apparently.

39,737. It is thought possible in Scotland to prevent collusive desertions?—Yes.

39,738. You used a phrase, a good phrase if I may say so, about the relations of the parties in marriage, the element of redemptive grace, and you use that as an argument against adding to the grounds of divorce. Would you not say the value of the redemptive grace might be diminished if it is always compulsory?—I want the whole community to recognise that when people enter the bond of marriage it is not something which they are to be allowed to, or which they are to contemplate, lightly giving up, but it does call for all the resources of mutual forbearance, or may call, and that is part of the anticipation which they should have in contracting the marriage tie.

39,739. Would you say that motive was weakened supposing in extreme cases there was a possibility of relief from an intolerable situation?—I am afraid of extreme cases, not only in this, but because of the certain effect which has taken place in other countries than Scotland from the admission of new grounds of divorce. I am afraid I am hopelessly conservative on this subject.

39,740. (*Sir William Anson.*) You say, to begin with, your experience of the demand for divorce among members of your Church is extremely small?—Yes.

39,741. You would wish in any alteration of the law that it should be with the object of securing a strengthening of adherence to the marriage tie. One step you would take would be to make adultery the sole ground for divorce, equalizing the position of men and women?—Yes.

39,742. And incidentally make the cost and the procedure accessible to rich and poor. You might get over certain causes of continuous immorality amongst the poor?—Yes.

39,743. As regards the grounds of divorce, you think there may be cases of desertion or cruelty, or others, which you call hard cases?—Certainly.

39,744. On the whole, in the interests of the community, apart from the questions of scriptural interpretation, you think the interest of the community would be better served by limiting the ground of divorce to adultery?—That is my position.

39,745. On the ground it is so difficult to keep within the limits of the very hard cases?—That is so.

39,746. With regard to separation orders, do you think as at present administered they are conducive to morality?—I cannot resist the evidence which constantly meets me of the way in which people in poor populations who are separated do form irregular ties.

39,747. Can you suggest any changes in the law or the administration with regard to separation orders which would get over that difficulty? Are they granted too readily, or for too long or too short a time, or are the grounds unsuitable?—I should imagine there is a great variation in administration as to the ease with which they are granted, but I dislike their being unconditional at the first, and I am anxious in the case of poor people, not poor people only but these undisciplined people who are ready to have a tiff and leave one another, that there should be brought to bear the kind influence of friendship before any separation is made finally. I think that friendship and friendly influence, if it is possible to exercise it, may be in many cases almost omnipotent in composing such differences. I know cases where it has been permanently successful.

39,748. That being brought to bear before the order was granted, or in the interval?—Both before and after.

39,749. As regards the publication of news about divorce cases, you think a certain amount of publicity is required as a protection to the public. In what sense would publicity be a protection to the public?—I think the public is entitled to know these things. I have known administrative cases of scandal. There are vast numbers of people who are in confidential positions of all sorts, and I think any attempt to hush up divorce proceedings would be thoroughly bad in the public interest for that reason.

39,750. The bare fact that divorce proceedings had taken place, and that the issue had been one way or the other, is what you think ought to be recorded?—Certainly.

39,751. I was not sure whether you were referring to the innocent party who might be brought into divorce proceedings and whose reputation would be at stake?—I was thinking of the guilty party, but it does tell the other way also, and I should be glad that it should tell the other way also.

39,752. (*Lord Guthrie.*) What parts of England have you worked in?—I have been 20 years in the South of London as the head of the settlement which I formed there nearly 20 years ago. Before that time I had ministerial appointments under the short service system of the Wesleyan Methodists in the Potteries, in Southport, in Cardiff, in Wolverhampton, and in Cambridge.

39,753. Is the Wesleyan Methodist Committee of Privileges, on behalf of whom you appear, appointed by the Conference?—Yes.

39,754. Does it consist of ministers and laity?—Both.

39,755. In what proportion?—Practically equal proportions.

39,756. You said the subject had never been discussed in the Conference?—As far as my knowledge goes, that is so. The Wesleyan Methodist Conference is an administrative body. We are a highly centralised denomination, and the time we spend, a fortnight every summer, is absolutely taken up, or almost absolutely, with the administrative affairs of the Church, and we have, some think, too little time to give to the great questions of public and religious importance.

39,757. When one talks of the subject itself that applies equally to divorce and to separation?—Equally.

39,758. Have you known amongst the Wesleyans any cases of judicial separation?—Not one.

39,759. Have you any information as to what action, if any, the Wesleyans took in 1857 when the Act was passed?—I am sorry to say I have not, but my strong belief, without referring, is that they acquiesced.

39,760. There would be differences of opinion among them at that time just as there are now?—I think so.

39,761. You think as a whole they acquiesced?—As a whole they have been satisfied with the existing state of the law.

39,762. At the present moment you cannot have any notion as to the extent of difference of opinion in regard to other causes among the Wesleyans?—I may say I submitted the proof to a number of influential people before I sent it in here, men who were generally representative, and I have also taken counsel with the most responsible missioners who have to do with very great activities in Manchester, Birmingham, and elsewhere, to be sure I was expressing not only my opinion, but in general theirs as well.

39,763. No doubt amongst the Wesleyans, as among other denominations, there are those who advocate extended grounds?—There may be, but I have never met them.

39,764. You think your view represents the general view?—I may say that the motion which was put down at the recent Conference was in the general terms of my proof. It was not fully discussed. The Conference ended by saying that there was no time to discuss it.

The only speeches that were heard against it during the short interval before that resolution, when there was no time to discuss it, were in favour of the absolute indissolubleness of marriage, and not any further extensions.

39,765. The absolute indissolubleness of marriage, subject to the one exception?—No, without it.

39,766. Were those the terms of the motion?—No, the terms of the motion were on the lines of my proof. The only dissent from the motion was an appeal that no resolution should be passed owing to the lack of time, on the ground of belief that marriage should be absolutely indissoluble, and not on the ground of any desire to extend facilities. There may have been some persons who desired to extend it, but they were not heard.

39,767. There are three views, keep things as they are, abolish the recognised exception, or extend?—Yes. As far as my belief goes, although I am not entitled to cite any formal resolution, the great majority desire to keep things as they are. I have not met with any who desire the causes of divorce extended. I think I heard one somewhat influential man express, or know of his expressing, some suggestion about desertion or cruelty, and there are some, although I believe them to be a small and yet influential minority, who would uphold the entire indissolubility of marriage.

39,768. That would be in the direction of repealing the Act of 1857?—Yes, but I believe them to be a small minority.

39,769. Do they exist both among the clergy and the laity?—I have only heard it from ministers.

39,770. You thought desertion was the strongest case for extension although you do not advocate it. Why do you say that as compared with other grounds?—I think permanent desertion goes nearer to destroy the whole bond of marriage, as it can be understood from any standpoint, than incompatibility of temper or cruelty, or the fact that one partner to the bond has been subject to a criminal sentence.

39,771. Is that on the view that the two essentials in the marriage relations are first, fidelity, and secondly, adherence?—That is so.

39,772. The others not going to the essence of the matter?—Yes.

39,773. In regard to what Mr. Spender asked, suppose that in Scotland it has been found that the four fears, which you quite naturally have, have not been realised: namely, first that the marriage bond has not been weakened; secondly, that there has been no practical difficulty found from collusion; thirdly, that there has been no agitation for further extension, and, fourthly, that there is no practical difficulty in ascertaining what is desertion. What do you say if that has been the case in Scotland over a very long period of years? Do you think these fears might come to pass in England although they have not in Scotland?—I do not want in any way to express mistrust of Englishmen or to pay a compliment to Scotchmen, but I have an idea in my own mind that there is a certain power of moderation in Scotland which enables them to do dangerous things sometimes with impunity which to the multitudes of an English city might be perhaps more dangerous.

(*Lord Guthrie.*) I hope you are more correct, but I do not agree with it.

39,774. (*The Archbishop of York.*) You came here on the nomination of your Committee of Privileges and at the request of our secretary?—That is so.

39,775. In that sense you are representative?—That is so. My proof was seen by a sub-committee appointed to read it before it was sent here, and they took no exception to it.

39,776. We may take it as representing a very representative body of opinion in the Wesleyan Methodist Church?—I hope so.

39,777. With regard to the question of courts your view was, that the mere cost should not be a reason why a citizen should be prevented from availing himself of remedies his State has allowed?—That is so.

39,778. How far would you couple with that the view that the standard of the court should be as high as possible?—I should feel that very strongly indeed. I think special arrangements would have to be made.

39,779. Have you any opinion to express on the suggestion made that it would promote the cause of morality if the guilty parties in any divorce case were forbidden to re-marry?—I altogether doubt the practicability of advising such a course.

39,780. You have formed no strong opinion about it?—I can form no strong opinion. I sympathise with the position of those who refuse to give them the advantage of Christian marriage.

(*The Archbishop of York.*) We thank you very much for your interesting and valuable evidence.

Rev. Herbert Williams called and examined.

39,781. (*The Archbishop of York.*) You are rector of Horselydown?—Yes.

39,782. I understand you wish to come before us in order to make a personal explanation in connection with some mention of your name, or certain facts which you would like to have an opportunity of dealing with, referred to by Mr. Cecil Chapman, of the Tower Bridge police court, in his evidence before the Commission?—That is so.

39,783. I think you asked to be allowed to give that personal explanation?—I did.

39,784. I think you may take it from me that the Commission only wishes to hear you on the particular point about which you wish to give a personal explanation. We have had a great deal of evidence from all kinds of people, and a great deal more is to follow on the other matters. As you were good enough to volunteer to give evidence upon that particular matter, we should wish you to confine your remarks to that point. Will you kindly tell us what is the explanation you wish to make?—Yes. I would like to say that Mr. Cecil Chapman is a very great personal friend of mine, and that we work very much together, endeavouring to do our best for the people of that particular neighbourhood, and we were discussing several points connected with what we see so very frequently, breaches of the marriage bond on the part of the poor people, and in particular I ventured to suggest that it was our duty to elevate rather than degrade that ceremony which is held in our parish churches; that the present system of encouraging all sorts and descriptions of people to come to our churches to be married is much to be deprecated, and in our conversations together we instanced the fact, and I draw attention particularly to that fact, that there were one or two churches in London where it was the custom on certain days in the year to invite anybody and everybody to come forward and get married at a very low cost, I believe it was the sum of one shilling. That fact Mr. Cecil Chapman, I think, brought to your notice, and it was spoken about afterwards in the public papers. There were two questions really that we were discussing. The first was that such practice of inviting people in that way to come was very wrong, and then afterwards we discussed the way in which marriages were sought after by the clergy, in a way that he felt, and I felt, very much, was quite contrary to the practice and directions of the book of common prayer; that the bann system had entirely failed in the vast number of the boroughs of London, and that people were coming to get married, sometimes living nearly a mile away from the church in which they were married, and were entered into the book as belonging to this parish, whereas the term parish really referred to the borough rather than to the parish. These two questions I discussed with him, and when he was before you I believe he brought forward the first, and when asked to give authority for that statement he said that it was from the lips of the Rev. Herbert Williams. The churches that we are referring to are one in Whitechapel, I think commonly called the Red Church, and another in Walworth, where I think, on Easter Monday, or some other day, they were accustomed to draw great crowds of people to be married in a way, to my mind,

which is very detrimental to the future prosperity of their lives. I have been charged with bringing an accusation against my brothers in the particular neighbourhood in which I live, of going out of their way to undersell one another so as to get custom for this marriage market, but that was not ever in my mind, although at the same time I very much deprecate and speak against, and will continue to speak very strongly against the practice of putting the price of marriage outside the church walls, as if it were some article to be sold cheap. I know that my brothers in that particular neighbourhood in which I live are accustomed to charge exactly the same as the registrar in his office, the Registry Office. The whole fact of drawing people to get married, when they have not been accustomed to enter into the spirit of the solemnity of the service in which they take part, is to my mind one of the chief causes of that misery and wretchedness we come so commonly into contact with in the poorer parts. Mr. Chapman and myself were agreed upon this point, which I put forward as one of the most necessary things to be done with regard to the question of matrimony amongst the poor, and that is, that they should be all carried out at the Town Hall by the civil officers of the State, and then those who had the desire for holy matrimony in the church should have the Church's blessing given to them. I want to make perfectly clear before the Commission that my remarks to Mr. Chapman which were afterwards reported to yourselves had no reference whatever to any local church, although at the same time, I do feel and still feel, and ever shall feel that it is quite contrary to the spirit of the Church's teaching to put forward matrimony as one of the things that can be obtained at a certain price at a particular church. The way in which arrangements have been made amongst some of the clergy to call their parish as if it were including the whole of the borough, I think is likely to lead to what has happened to myself. After the most careful enquiry on one occasion I united a girl, or went through the form of uniting the girl, to a man who had another wife living. He assured me most fully that his wife was dead, and I made the mistake of not requiring to see his former marriage certificate and the certificate of her death. I married him, he was living in the parish some weeks before-hand, and I afterwards found that he was married really to someone else. In my own case I investigate every notice of banns that is given, and I should never dream of marrying anybody that one was not perfectly satisfied about as living in the ecclesiastical parish over which it has pleased God to set me.

39,785. Thank you, I think that makes the point quite clear. I would just like to ask you this question, do I understand you to say that, in your opinion, it is still the custom of some churches to offer marriages at a fee as low as 1*s.* in any part of London?—I do not know whether it is still the custom, it was the custom till quite lately.

39,786. You do not allege that the custom is to your knowledge appertaining anywhere now?—No, I am thankful to say I have no knowledge of that fact.

39,787. In your opinion the best safeguard of the sanctity of the marriage tie among the poor, would be to insist in all cases upon a civil marriage and to leave the religious marriage to the option of the parties?—I am quite decided in my own opinion upon that point, because I believe the civil marriage would impress them much more than a crowd of young people coming on Christmas Day or at any other time, to get married, and we should not have to go through what is one of the most terrible parts of our duty, to say words that, to my mind, are nearly blasphemous, over the heads of people who are not in a position to receive the blessings we are asking God to give them.

39,788. You mean the fact that words are spoken over the heads of such people makes them almost blasphemous?—Yes.

39,789. (*Sir Lewis Dibdin.*) Did you tell Mr. Chapman that you knew of churches which were advertising the cheapening of marriage fees?—I did.

39,790. What churches did you refer to?—I referred to the Red Church in Whitechapel.

(*The Archbishop of York.*) Forgive me, the Red Church is in Bethnal Green.

39,791. (*Sir Lewis Dibdin.*) That is one?—And a church in Walworth.

39,792. Did you also draw his attention to an advertisement that the fees at a particular church were to be lower than at another?—Not at all.

39,793. That is a mistake?—Yes.

39,794. When Mr. Chapman said that he misunderstood you?—He misunderstood in this way, he was referring to those cheap days if I may so call it.

39,795. What I have been referring to is at questions 13,429 and 13,430 of the Minutes of Evidence, and what I am going to refer to is at question 13,490. Did you draw attention to an actual advertisement in this form, as well as he could remember, "The fees for marriage at this church will be reduced "from so-and-so to so-and-so and marriages will "take place," giving a list of the dates?—No, I did not say that. Mr. Chapman had received that information from someone else.

39,796. He was in error when he said his attention had been called to it by one of the prominent clergymen in his district, which he afterwards explained meant you?—I think he was under a misapprehension.

39,797. Did you tell him that the particular church in question was close to him, that is Mr. Chapman, in Bermondsey?—No, I did not.

39,798. That is a mistake?—Quite a mistake.

39,799. Did you also tell him that this question of advertising the reduction of marriage fees, the competing point—you understand what I mean?—Yes.

39,800. That that was not only done in the particular case but that it was a practice?—No, not in that way.

39,801. So that in all those matters Mr. Chapman was under some misapprehension?—I think he was confusing the two points we were making.

39,802. You mentioned the Red Church, that is St. James the Great, Bethnal Green. Are you aware that the scandal which undoubtedly was created by the clergyman there, ended in 1898 when that clergyman died?—I believe so, but I am not sure of the date.

39,803. You did not give us that impression just now, that it had passed away 12 years ago?—I did not know the date. We were referring to the fact that that was done.

39,804. Are you aware that since that date the marriages in that church have been confined, as, of course, they ought to be confined in every case to persons resident in the parish?—I have not looked into the matter at all.

39,805. Are you aware of any other churches besides this Red Church that I have just mentioned, and this case at Walworth?—No, I do not know any at all, not where there is a fee of 1*s.*

39,806. Or anything like competition with other clergymen in regard to fees?—No.

39,807. As a matter of fact you have told us that the fees in the churches in Bermondsey are of the same amount as the registrar's fees?—Yes.

39,808. Your own are a good deal lower?—I found them, I do not know how to alter them.

39,809. I am asking you the fact?—Mine are 7*s.* 1*d.*

39,810. Instead of 9*s.* 7*d.*?—Yes.

39,811. I think you were going to add that you found that system going on when you came?—Yes.

39,812. You have been unable to alter it or perhaps unwilling to alter it?—I should like to do away with fees altogether.

39,813. On the question of one church competing with another it is a matter of observation that your fees are lower than your neighbours?—Quite so, but I do not put mine forward.

39,814. I understand that you are not personally responsible for it. I want to ask you another question. You are not only entitled to an opinion but your opinion is of weight as to the wisdom or unwisdom of advertising the amount of the fees on the church boards. Are you aware that that is so common a practice

as to be almost general in towns?—No, I should not call it general.

39,815. You would call it a common practice?—It is common but I should not call it a general practice.

39,816. It has at least this advantage that none of these poor people—— ?—I cannot see any advantage at all.

39,817. Does it not occur to you that these poor people cannot be cheated and deceived by being charged more for the marriage than they ought to be. It is before their eyes outside the church?—I do not think the clergy would cheat them.

39,818. There are other people involved in matrimony. I am making no charges against anybody, but it is conceivable that someone who was interested in the fees might tell people that they must pay so much, when in fact the legal fee was less. Is not that chance rendered impossible by the actual amount of the fees and whom they are paid to being published quite plainly, painted on a board outside the church?—I do not agree with the line of argument you are taking. I object most strongly to the idea of a person——

39,819. Will you just apply your mind to the question. The publication of the fees does prevent the possibility of fraud on poor people coming to be married?—I would not like to say so.

39,820. Surely it does?—No, I do not like to bring in the word fraud in connection with my brother clergy.

39,821. I am not suggesting anything against anybody. I have said before that there are other people besides clergymen involved in the arrangements for marriage. It is possible in that as in anything else for one man to cheat another?—No, I do not think so.

39,822. You do not think it possible?—No, not in those cases.

39,823. At any rate if it were possible the possibility would be removed by the board outside the church stating the amount of the fee, would it not?—I do not follow what you are driving at.

39,824. You are not doing justice to yourself. A poor person who is going to be married wants to know how much it will cost. If it is published in this way outside the church it is impossible for some person behind to say you must pay so much, which is more than the legal fee?—It is quite possible if such a thing were likely to happen.

39,825. We will not discuss that. It is rendered impossible by the publication of the fees?—I quite grant you that.

39,826. (*Sir William Anson.*) Is your objection to the charge of fees at all?—I do not say that, but I do object very strongly to a system that I know is in practice in a particular borough, in which the clergy, with one or two exceptions, have combined together to agree that they can marry anybody out of the borough and put in the register book the fact that they belong to this parish. I think such a system is likely to lead to many evils.

39,827. (*The Archbishop of York.*) Forgive me, that is not the point you have put in your proof?—It has been brought out by the cross-examination of Sir Lewis Dibdin.

39,828. (*Sir William Anson.*) I understand what was told us in the summer was that there are churches which bid against one another for custom by underselling one another in fees. Is there any foundation for that statement?—There is no foundation for that at present.

39,829. It was made by you?—No, it was not made in that connection.

39,830. It was made to us on your authority?—It was made in connection with two churches in particular of which we were speaking.

39,831. Which were you speaking of?—We were speaking of the Red Church, Bethnal Green, and also of a church at Walworth.

39,832. Do you say these churches were bidding for custom against one another?—Why do they put up the notice?

39,833. You do not object to fees being charged?—I object very strongly to the fact of trying to draw people to come to a particular church.

39,834. That is not my point. The fees are chargeable?—They are by law.

39,835. Is it not desirable that those who are to pay fees should have the fullest notice of what has to be paid?—I should not say that it is wise to put them as a prominent feature outside the church, the fact that marriages can be obtained at a price of so-and-so.

39,836. It is not a question of obtaining marriage at a price. It is the legitimate payment which people have to make?—Quite so.

39,837. Is there any objection that they should be informed of that in the fullest way?—There is an objection in one way in which I feel, but which cannot be applied as a matter of allowability; it is allowable for the clergy to do that.

39,838. I am sorry I was not here at the beginning of your evidence. Do I understand that you withdraw the charge which we understand was made by you that your clerical brethren bid against one another?—I withdraw it in the fact it was understood to apply to my clerical brethren living in close proximity to myself.

39,839. Anyone of whom you know?—I was speaking of certain churches in a far distant position from the particular parish in which I work.

39,840. Were you in any way qualified to speak of those churches?—Yes. I have known of it from time to time. It has been brought to my notice, and I have heard the clergyman of one boast of the many thousands he had married.

39,841. In consequence of the low fees?—I am afraid people do a great deal in South London for a shilling, or to save a shilling.

39,842. I understand the scale of fees is very fairly uniform in Bermondsey?—It has been agreed upon.

39,843. I do not understand, so far as Bermondsey is concerned, that there is any foundation for the charge?—None whatever.

39,844. Is it not rather unfortunate it was ever made?—I was not here to hear what Mr. Chapman said, but from what I have been told by Sir Lewis Dibdin and others by reference to what he said, I think he mixed up the two questions that we were discussing.

39,845. What were they?—The two questions were these.

(*The Archbishop of York.*) It was rather a long point, and you will find it in the evidence. The witness went over it at great length when he began.

(*Sir William Anson.*) It was my misfortune I was not here. I will not ask you anything further.

39,846. (*The Archbishop of York.*) I gather in reply to Sir William Anson you said that anything you mentioned about competing churches referred to two distant churches?—Yes.

39,847. Both have ceased to use the practice so that your words have no reference to any existing facts?—No. We did discuss the question of putting up notice boards, and I think that must have been very much in Mr. Chapman's mind at the time.

(*The Archbishop of York.*) We are very much obliged to you for coming here to say what you have said.

Rev. Canon HENRY LEWIS called and examined.

39,848. (*The Archbishop of York.*) You are Rector and Rural Dean, Bermondsey?—Yes.

39,849. You desire to give an explanation to us of the matters which we have just had before us, namely, certain remarks made by Mr. Cecil Chapman on authority which he put before us, and I understand that you wish to give evidence on that point?—Yes.

39,850. May I say I think it would be well that you should confine your evidence to that point because we have had a very great deal on some other points

you have brought before us. I do not think that it will be necessary to trouble you about those. I do not think it is necessary to read the whole of your proof because we have nothing to do with personal questions between you and any of your clergy. We want to get the facts. Perhaps you might address yourself to the two questions, namely, whether there are any churches in your deanery or neighbourhood which would justify the words that were used by Mr. Chapman, and secondly, whether there is any justification for the suggestion that the publishing of fees on notice boards leads to any undesirable competition in marriages?—With regard to our fees, 16 years ago there was a uniform fee of 12*s.* 6*d.* for marriage. About 15 years ago the clergy met and agreed that the fees should be lowered to 9*s.* 7*d.*, which is the local registrar's fee. They have continued to do that ever since, and the fees are the same now. There is only one church in Bermondsey which is an exception and that charges 1*s.* less. We are most particular about insisting on these fees in the cases of people who can afford to pay them. Of course there are charity marriages where we do not charge anything, but we rather pride ourselves on being careful in this matter. That is one question your Grace wished me to deal with, and then with regard to advertising, the only approach to that is the notice board outside our churches, which we put up for the information of people who are very poor and uneducated in these matters, as to what they have to pay, so much for banns, so much for marriages, so much for the certificate and the total at the bottom. I may say, as a rural dean, it is one of the questions I am expected to ask of every church I visit, "Is the scale of fees " charged at this church put in a prominent position " where the parties affected can see it?" Therefore it seems to me right and proper that these notice boards should be there. I wish the Commissioners had allowed me to have said one word about what Mr. Williams said and I wish he could have been present.

39,851. Will you please say anything that arises out of the matter before us or the evidence you have just given?—I should like Mr. Williams to have been asked why he went out of his way to give opportunities to interviewers of various London papers to come to him to pick his brains and to get his views, and then put them out in all the attraction of bold type. Mr. Chapman gave evidence here on the 26th May; I wrote to Mr. Chapman on the 27th. I also wrote to Mr. Williams for his explanation on the 27th, and on the same day there came out a very florid interview in the "Westminster Gazette," in which the man says, after various things told him by Mr. Williams, "Although " there is no longer any notice of the kind affixed to " the church fabric my predecessor's advertised charge " has become a tradition with respect to this parish, " and the fee for the performance of the marriage " ceremony is on the same footing now as formerly." Then at the bottom the interviewer says "Within half " a mile of St. John's Rectory striking proof was " afforded of the custom to which Mr. Williams had " been alluding. On the walls of Bermondsey Old " Parish Church of St. Mary Magdalen there is " exhibited this notice." And then we have the particulars I have given the Commissioners. It seems to me that Mr. Williams has not been quite fair, he not only led Mr. Chapman astray—— I charged Mr. Chapman with that and he said he got the information from Mr. Williams, but after Mr. Williams had finished with Mr. Chapman he goes to the interviewers, and that is where we feel we have been ill-treated.

39,892. I do not think we need trouble you with regard to the matters between you and Mr. Williams?—I am most grateful to the Commissioners for allowing me to come here.

39,853. I think it is quite sufficient, I understand you have assured us with your special knowledge and authority as Rural Dean that there are no churches in the neighbourhood of Horselydown, or as far as you know anywhere in that district which justify the remarks that were made by Mr. Chapman?—No.

39,854. And secondly you entirely justify the publication of the fees on the notice boards, both because it is expected in every church that the fees shall be put in a prominent place so that the parishioners can see them, and because it is only fair to those who wish to avail themselves of the services of the church, to know what the fees are exactly?—That is so.

39,855. You wish us to understand that in the publication of these fees there can be no shadow of a suggestion that there is any competition?—None whatever.

39,856. May I ask one question which arises out of your evidence. I think we should like your opinion, as one who has great experience among the working classes in Bermondsey, as to whether you think the universal requirement of civil marriage would be for the advantage of the community or not?—This is a point on which I have been speaking at our own diocesan conference during the past week. It is a point about which we, at the Mother Church of Bermondsey, feel very strongly. We have had three thousand marriages during the time I have been there in 15 years, and therefore we feel that we have some touch with our people in that respect. We view the opportunity presented to the churches of means of reaching the people in the matter of marriage as a magnificent one, I mean from a Christian point of view. We feel that although they may be uneducated and even degraded, yet it is a great opportunity to be able to get these people near to the higher things that we represent. It is a grand opportunity to call upon the better nature in them and to lift them up to the higher levels of thought and feeling, and we do find in our experience that marriage, in the case of men and women who have not thought of religion has often been the means of making them live a religious life. At any rate we press that always, and if the church lost that opportunity, and still worse if she flung it away, then it would be a very disastrous thing indeed for the church and also for the nation.

39,857. Do you think that if civil marriage was made compulsory people would cease to ask for marriage in church, or do you think that the custom of liking to be married in church would really continue?—For a time it would, but I think the secular feeling would prevail.

(*The Archbishop of York.*) We are much obliged to you for coming to give evidence.

Adjourned.

Winchester House, St. James's Square, London, S.W.

FORTY-EIGHTH DAY.

Wednesday, 30th November 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

His Grace The LORD ARCHBISHOP OF YORK.
The LADY FRANCES BALFOUR.
The Hon. LORD GUTHRIE.
Sir WILLIAM ANSON, Bart., M.P.
Sir LEWIS DIBDIN, D.C.L.
EDGAR BRIERLEY, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

J. E. G. DE MONTMORENCY, Esq. (*Assistant Secretary*).

The Right Rev. PEARSON M'ADAM MUIR, D.D., called and examined.

39,858. (*Chairman.*) You are a doctor of divinity and minister of Glasgow Cathedral?—Yes.

39,859. You are also moderator of the General Assembly of the Church of Scotland?—Yes.

39,860. Is that office held for the year?—Yes.

39,861. You have been for 40 years a clergyman of the Church of Scotland, and this year you are the moderator of the General Assembly?—Yes.

39,862. During those 40 years you have had parish minister experience as well, I take it?—Yes.

39,863. You say first in Catrine, then in Polmont in Stirlingshire, a rural parish with a considerable agricultural population and several mining villages, then in Morningside, a suburb of Edinburgh, and your present charge is in the original parish of Glasgow, in the heart of the city?—Yes.

39,864. I take it Glasgow is the place where you have a very large experience of social conditions in Scotland?—Yes. I have been in Glasgow between 14 and 15 years now.

39,865. May I take it from the experience you have had, you consider you have had a great opportunity of becoming acquainted with the habits and opinions of people of all classes?—I should think I have seen the general opinion as much as one could do in that time.

39,866. In your memorandum you say divorce is a matter which has been very seldom brought to your notice amongst your parishioners?—Scarcely ever.

39,867. They are probably a well-behaved, moral set, who attend your ministrations?—Yes. I am speaking not only of the congregation, but of the parishioners at large, and my present charge contains a large proportion of people who do not belong to the congregation and are of the humblest classes.

39,868. As far as your experience goes, do you conclude your present system in Scotland would meet with much opposition, or is it acquiesced in generally?—I think it is. I do not think there is any desire to change it.

39,869. We know the Scotch law well, and I will not elaborate it. You think it meets with general approval?—Yes.

39,870. You find everywhere in your experience respect for the marriage tie, which is highly esteemed in Scotland?—Yes.

39,871. You say you can only recall one instance of a couple in the lower classes living together for years as man and wife in defiance of public opinion?—Yes that is a solitary instance.

39,872. They were eventually married, finding their position untenable?—Yes. Of course, I am speaking solely of what came under my own personal observation.

39,873. That is what makes it valuable. Have you seen the statistics of marriage and divorce in Scotland?—I do not think I have.

39,874. They will be put in in due course. We have had them supplied to us. In the Established Church, under the head of "Number of marriages in which there is one divorce" the figure is 180?—Indeed.

39,875. That is not within your knowledge?—I have not seen the statistics.

39,876. You have had some information supplied to you by Mr. Gillie, the chief criminal officer of Glasgow?—Yes.

39,877. He has stated that "it is, with few exceptions, "considered highly discreditable for parties to be "living in cohabitation without marriage, and in such "cases they invariably pass themselves off to neighbours as married persons. This is easily contrived "in Glasgow, by reason of the fact that there are "numerous 'farmed-out houses' (*i.e.*, houses which "the tenant sub-lets in sets of one or more furnished "rooms) where they can put up, and in these places "not thirty per cent. of the parties living in cohabitation are lawfully married." That is what he informed you?—That is his information, and nobody knows the conditions of the lowest classes better than he does.

39,878. He further says: "I do not think there is "any falling off in the feeling of desirability on the "part of the woman to be married, rather than live in "cohabitation, and in this the money consideration has "but little bearing"?—Yes.

39,879. In your next sentence you are dealing with what you gather was an assertion, that in Scotland the marriage service does not distinctly bind couples together for life, and you say that assertion is utterly misleading?—Utterly misleading.

39,880. What is the marriage service in your Church?—In the Church of Scotland and in the Presbyterian churches generally there is no liturgy, and, as one might say, there is no form of service actually prescribed, but invariably there is some such phrase—the actual wording may differ—as till death do part the couple. That is invariably used. I have never been at a marriage and never heard one celebrated without that phrase being used.

39,881. Impressing on the two parties that it is a binding union for life?—Yes.

39,882. You say, further on, separations have not been frequent in your experience, and you mention two cases. What do they show?—I mention the fact of so few having happened to show that, after all, divorce as a rule is very seldom sought for, comparatively, I mean.

39,883. You mention one case in Glasgow, in which the husband and wife each returned to the parental roof, living close together, and are living now, after 35 years, still unreconciled?—Yes.

39,884. In the other case you mention the husband disappeared?—Yes.

39,885. Those are the only two within your own knowledge?—Within my own personal observation.

39,886. You deal in the next paragraph with the forgiveness which is shown by wives to husbands?—Yes.

39,887. Perhaps you will read that yourself, and see if that is what you wish to convey?—"That there

are many unhappy marriages is undeniable, but, as a rule, the unhappiness is carefully concealed. And the way in which wives screen their husbands' faults and make no complaint of neglect and cruelty, usually arising from dissipation, is most touching and beautiful." This is my own observation. I have known numbers of cases where certainly the marriage has not been happy, and where as a general rule the husband has been unreasonable and cruel in most cases, but, on the other hand, the wife has screened the husband, and has borne with it in a very remarkable manner.

39,888. Will you kindly read on?—"But in the slums of Glasgow, according to the chief criminal officer, separation and desertion "exist to an appalling 'extent.' In one half year, 895 deserted wives applied for help. The same authority states that there is 'little or no sign of any decrease in the 'number of cases.' In his opinion this is 'one of the most serious questions of the day,' and what renders it specially serious is 'the utter unconcern of the general public.'"

39,889. What remedy do either you or he suggest for that?—I do not know that there is any particular remedy beyond the raising of the standard of good feeling. The lodging-houses in Glasgow, the farmed-out houses, and even the model lodging-houses have become, according to the statement of the inspector of the poor, Mr. Motion, who is an extremely competent man, too much used by men deserting their wives and families, and there is difficulty in tracing them. Of course, the remedy in the eye of the law would be to get hold of these men if possible, to trace them and seek them out, and force them to maintain their wives and families,

39,890. Perhaps you will kindly continue your proof?—I believe Mr. Motion's report upon desertion has been forwarded to your lordship.

39,891. I am not sure?—I have not a copy with me, but it is a very important document.

39,892. I will enquire of the secretary?—He has in a recent memorandum indicated that, while the causes of desertion of wives and children by husbands and fathers are many and complex, there are seven causes conspicuous. I am simply stating Mr. Motion's views, but I believe they will be found to be correct on the whole. The causes are: "1. Pernicious home "influence in childhood and youth. 2. Drunkenness, "immorality, infidelity, and gross neglect of parental "duty. 3. Aversion to work in general, and to settled "employment in particular (casual labour). 4. "Ignorance of household management on the part of "the wives. 5. Mixed marriages (*i.e.*, between Pro-"testants and Roman Catholics). 6. Early marriages. "7. Total absence of religious influences."

39,893. The secretary tells me he is not sure whether he has had that or not. If not, will it be possible for you to send us a copy of the pamphlet?—I shall be glad to send it.*

39,894. Will you kindly read on?—"Cases are not unknown to me in which, after long separation and estrangement, reconciliation has taken place and has been followed by a singularly happy life. Irregular marriages, marriages without the benediction of the Church, are not regarded with general approval. People may have ceased to attend church, may by preference have banns published at the registrar's office rather than in church, but the wedding itself is not regarded as perfectly respectable unless it is performed by a minister. The fact that in Scotland the mere acknowledgment of each other before witnesses as man and wife constitutes a legal union makes it remarkable that such marriages are exceedingly uncommon." I mean comparatively uncommon, of course. "I am inclined to think that the recognition of such marriages, contrary to what might be supposed, is an evidence of the reverence with which marriage is regarded. The solemn words, 'I take thee to be my wife or husband,' are not to be uttered lightly. That, if uttered at all, even in jest, they must be held as binding, is a prevalent belief. I am, perhaps, scarcely qualified to speak regarding the national sentiment on the subject of divorce in general, but so far as I can ascertain, the rightness of divorce for desertion is accepted without demur, and any attempt to abolish it would be met with a strong opposition, although there is certainly no desire for the introduction of a system of divorce on lighter grounds. It is conceivable that there may be a feeling, more widely spread than has found expression, as to the propriety of permitting divorce in certain cases, such as incurable insanity, where it might be argued that death, virtual if not actual, has taken place." I am here giving what I believe to be the views of other people, but I think this view is probably held by a minority; at the same time, some do hold that incurable insanity should be a ground, but the very utmost rigour would be exercised, as I believe in Scotland always is the case, in making certain that it was incurable.

39,895. On the other point, take the two cases that are allowed by the Scotch law, adultery and malicious desertion. Is it your view that is in general accordance with the Scotch feeling?—Entirely. I am on surer ground when I say that the Scottish rule whereby unfaithfulness in the husband is treated as severely as unfaithfulness in the wife is supported by public opinion, and that there is a growing feeling that, while divorce should be difficult for every class, it ought not to be easier for the rich than for the poor to obtain it. It is true that the sum for which a poor person may obtain divorce is in itself small, but it is not likely to be less than 10*l.*, and however little that may seem to many, it is a practical impossibility for many others to raise it. "There are hundreds," to quote again the chief criminal officer of Glasgow, Mr. Gillie, "of poor "persons irrevocably tied to the most profligate, "wanton, and degraded spouses, simply because they "cannot, and have no prospect of ever being able to "gather together the sum of 10*l.* to get their legal "remedy."

39,896. That is a very strong and emphatic statement, but we have had a good deal of evidence as to the advantages of the poor's roll system in Scotland. Apparently that does not seem to meet these cases?—My own impression was that it was somewhat easier than the chief criminal officer represents it, but I am stating his view, and he is thoroughly acquainted with the condition of affairs in Glasgow and amongst the people.

39,897. Does that mean, according to what you understand him to have said, that even with the poor's roll the people must collect 10*l.* or so to get their cases through?—The 10*l.* must come from somewhere or other, and I do not know—I am not qualified to state—whether it is given from the public funds.

39,898. Perhaps it is for witnesses, and so on?—I could not answer that question.

39,899. That is Mr. Gillie's statement?—Yes. It is also borne out by what the inspector told me.

39,900. Even with that system?—It is a difficult thing for anyone to obtain divorce. Of course I have occasionally, very seldom, but perhaps three or four times, signed papers, the wife indicating that she was unable to pay herself, in order to get on to the poor's roll.

39,901. On those occasions have you gathered what expense it would put them to?—I could not answer that question, but this is upon the authority of one who knows. It may be different in other cities, of course.

39,902. You said that there was a growing feeling as to something?—There is a growing feeling that while divorce should be difficult for every class it ought not be easier for the rich than for the poor to obtain it.

39,903. What indications of that growing feeling have come before you?—Merely in conversation I have heard the opinion expressed pretty frequently, and I believe that it is the feeling of those who think about such matters in general.

39,904. Will you read your last paragraph?—"I am of opinion that in Scotland the propriety of the innocent partner marrying again in the lifetime of

* "Memorandum and Report by the Inspector of Poor with reference to Desertion Cases."—H. G. B.

the divorced spouse is questioned only by a few. Whether the guilty should be allowed to marry again, would be held doubtful by many."

39,905. (*Mr. Brierley.*) You say that the chief criminal officer in Glasgow tells you in one half year 895 deserted wives applied for help. Do you know whether that means they applied to the sheriff's court for maintenance orders or for poor relief?—I should think for poor relief, but I cannot say.

39,906. Is it your experience that the result of those frequent desertions is that these wives live with other men?—That may happen in some cases, but I am not prepared to say that it is general by any means.

39,907. Is that the opinion of Mr. Gillie?—I did not put that question to him, but from conversations I have had with the inspector I should think that it is occasional only. As a general rule I think it is the husband.

39,908. Mr. Gillie thinks the expense of obtaining divorce does sometimes lead to that?—Yes.

39,909. (*Lord Guthrie.*) Although a parish minister, I suppose you have come into contact with all denominations?—Yes.

39,910. Visiting in the course of your parish work?—Yes.

39,911. Both Protestant and Catholic?—I cannot say so much about the Roman Catholics in Glasgow especially, but in country parishes I knew them just as well as I knew my own people.

39,912. And many Protestants, both State Church and dissenters?—Yes.

39,913. We have had statistics which Lord Gorell asked you about which you did not know. They seem to show that to some extent the divorces are higher amongst those who profess to belong to the Church of Scotland than amongst those who profess to belong to the dissenters. There is nothing in that, is there, because there are a certain number of people who for the sake of respectability return themselves as belonging to the Established Church but have no church connection at all?—I suppose there are some who do so. I have not seen the statistics and cannot enter into them.

39,914. One would not attach any importance to a mere difference of that kind?—Personally I should not be inclined to.

39,915–6. The law of the Church of Scotland on this matter as laid down in the standards is in unison with the law of the State entirely. So that no practical difficulty arises as the law is now between Church and State in regard to this matter?—There is nothing in regard to divorce that I am aware of that causes any difficulty whatever.

39,917. So far as you are aware, has there been any proposal at any time or now in the General Assembly of the Church of Scotland to alter the law of the Church?—None whatever that I am aware of. I suppose you mean with reference to desertion especially?

39,918. To desertion and to divorce generally?—I have never heard of any proposal of the kind.

39,919. If any such alteration were to be made by the Church, that would involve an Act of Parliament as well as an Act of the General Assembly?—Yes.

39,920. The General Assembly is a legislative body as well as judicial and administrative?—Yes.

39,921. Which represents and speaks for the Church as a whole?—Yes.

39,922. Composed half of laity and half of clergy?—Yes.

39,923. In practice what is done in the case of the innocent person, who has divorced the guilty spouse, proposing to re-marry?—So far as I am aware there would be no opposition made to that in any quarter. There are some, of course, who would object. As I understand, it is in accordance with custom and the general feeling.

39,924. In Scotland what is the practice in regard to marrying in the Church and marrying in private houses?—As a matter of fact, the law of the Church, and I believe the law of the land, is that marriages should take place in church. In the time of John Knox it was very clearly laid down that marriages should be there, in the face of the congregation, and, indeed, it was to be upon Sunday, and the contracting couple were to receive the Communion. That was the theory of John Knox. How long that was acted on I am not sure. It was only about the beginning of the 18th century that for fashion's sake marriages in church began to grow less frequent and were performed in private houses. It is within living memory that marriages had become almost unknown in church and were performed in private houses, but now, for the last 30 or 40 years, marriages have again come to be celebrated in church, and many people at first were inclined to think it was imitating the practice of other countries and communions, whereas it was merely a return to the actual law.

39,925. Like some other reforms?—Yes.

39,926. In the case of an innocent person re-marrying, would there be any objection to being married in church any more than in a private house?—That has never come before my observation, but I should not think there would be.

39,927. Is there any element of that kind entering into the question, whether it is church or private house?—We regard house marriage quite as sacred.

39,928. It is often a matter of convenience and sometimes a matter of fashion?—Yes. I regret to say, a great many marriages are now performed in hotels, which is, perhaps, a lower depth than private houses.

39,929. You attach importance to there being a ceremony of some solemnity?—I do, certainly.

39,930. What is that founded on—experience that it does produce a good effect?—I believe that in this case, just as in any other case, a solemn ceremony is of great importance, affecting the friends of those who take part in it.

39,931. What do you say to the proposal that all marriages should be civil marriages, leaving the parties to have any religious ceremony they choose? What do you think would be the effect of that?—I am scarcely prepared to answer that question.

39,932. Do you think it would lead to a great many who now have a religious ceremony and are benefited thereby, contenting themselves with a civil ceremony only?—I do not think so to a great extent. I understand that what are called irregular marriages have somewhat increased of late years.

39,933. Before the registrar?—Yes, before the registrar only; it is a matter purely of convenience, I think. As I have said here, I believe, perhaps not in the very lowest class, but pretty far down, the feeling is that such a marriage is irregular, and is barely respectable unless it has the benediction of the Church.

39,934. You think practically the great mass of marriages with religious ceremony would still continue?—I believe so.

39,935. What about the guilty person? Supposing the guilty person proposes to re-marry, not the paramour, but a third person, and comes to the minister, what happens? I will also add this, that he comes to the minister and shows evidence of contrition for what he had done. What does the minister do?—The case has never come before me, and I am not prepared to say what I might personally do. I have indicated that the general feeling is much more doubtful in regard to that than in regard to the innocent party, where practically there would be little difficulty at all, but I can conceive reasons even in the case of the guilty party—I think it would depend on circumstances—and, personally, I think I should be in some cases inclined at once to refuse, but in other cases I should be inclined to perform the ceremony.

39,936. When you say it depends on circumstances, does it not come to this, that the question is generally considered apart from repentance. Supposing a guilty person satisfies you he is genuinely penitent and says he is not so constituted that he can live alone, and you come to be convinced that to keep him in the straight path re-marriage is the only course, is that the kind of case where you would be inclined to allow it?—There certainly would be some reason in such a case as that.

39,937. But for a guilty person to merely come to ask you to re-marry him, it would be refused?—He

would be refused at once. There is one point, perhaps; I do not know whether it has been stated here before; others are much more competent to show the strictness of the law of divorce in Scotland and the difficulty of obtaining it; it is only from the Court of Session that it can be obtained. I have heard it has been stated here—I do not know whether I am right in saying so—that it could be obtained in other courts, the sheriffs' courts, but I understand it is only in cases of separation, and that divorce must be obtained from the Court of Session itself.

39,938. You approve of that?—I approve of it.

39,939. Suppose the guilty person proposes to marry the paramour, what would be done then?—I know of a case—I do not know the parties personally—but there is a case which is in my mind in which that has happened, and I have been thinking a good deal about it, and I confess in that particular case I suspect that most people would think it was almost an advantage; at the same time, it is very questionable, but the thing has been done. I do not know by whom they were married; I do not know whether they were married in England or Scotland.

39,940. When you say "an advantage," that means in relation to the particular case?—Yes, and in relation to morality.

39,941. In the particular case?—Yes.

39,942 On the other hand, you see, it has been said to be a serious possibility because it encourages immorality. Many married women who fall would not fall unless in the expectation that things would be made right by the paramour?—I see that difficulty, and that is what makes it so extremely important, I think, that it should be very rare indeed, but there are special cases where probably it might be allowed.

39,943. There, again, would it depend upon whether the guilty spouse proposing marriage showed evidence of contrition?—I think it should depend somewhat upon that.

39,944. In Scotland men and women are on an equality on the question of divorce?—So I am informed.

39,945. Do you approve of that?—Yes.

39,946. Is that also in accordance with Scotch feeling and opinion?—As far as I know.

39,947. Of course, in Scotland, as everywhere else, you have the population divided into three classes: first, those who have a real Church connection; second, those who have a nominal Church connection; and, third, those who have none at all. In regard to the first class, there is no question of divorce or separation at all?—As a general rule I think that is so.

39,948. It is the rarest thing in the world?—In my experience I have scarcely ever come across it, in fact never.

39,949. The question arises in the case of those who have a merely nominal Church connection, for the sake of respectability, or who have none at all?—Yes.

39,950. In regard to the poor, you referred to the certificate which the minister grants. That relates to the circumstances of the parties, and also, so far as the minister knows, they are of a respectable character?—I do not think it says much about their personal character. So far as I am aware, it is simply that they are in reduced circumstances, or unable to bear the expenses of the action.

39,951. There is also a very general statement that, so far as is known, they are respectable?—I had forgotten that at the moment. The certificates do bear that, but I had not thought of that in this case.

39,952. If that be so necessarily, I suppose there are a certain number of poor persons, the criminal poor, for instance, who could not get on the Poor's Roll because they could not get the certificate?—Yes. Certainly never anyone of the criminal classes has applied to me so far as I can remember. In every case that I can remember the people have been themselves what one would call respectable.

39,953. I do not know whether you have formed any opinion upon this. There is a proposal before us that the details of divorce cases should not be published in the papers. Have you any opinion on that?—I think it would be a very great advantage if they were not published?

39,954. Do you think, in saying that, you represent a general feeling?—So far as I have had any opportunity, I should say I am representing the general feeling.

39,955. You referred to the marriage service and the words that it was for life. Is it the practice also in your experience that the Scriptural words are always used, "Whom God hath joined together let no man put asunder"?—I have invariably heard those words. They invariably use them, and I never was at a marriage in all my life in which such a phrase was not employed, and the Scriptural words, certainly.

39,956. (*Lady Frances Balfour.*) With regard to the question of the words in the marriage service, "Till death do us part," it has been suggested that they are not compatible with divorce for desertion, but I suppose there the feeling is that death has ended the contract if there is a separation: it is the same as death?—It is the same as death practically. I understand if a man disappears for seven years by the Scotch law he is regarded as virtually dead, and it is after four years' desertion that divorce is granted. Even then it is after strict investigation. The mere fact of a person appearing and saying that the husband has disappeared for four years is not allowed unless a very strict examination indeed has been made and proof brought, but in this matter, of course, my legal friends can say more than I can.

39,957. In using the words over a married couple with all solemnity you feel in the background it is consistent with divorce for desertion?—Perfectly so. The ideal and intention is that marriage is indissoluble, but when it is dissolved in that particular way, by death or by desertion, naturally it is consistent.

39,958. I want to ask about the class in the slums of Glasgow. We know they are not the most elevated, and we know they are not Scottish, most of them: they are Irish?—Very largely.

39,959. When the officer, Mr. Gillie, the inspector of the poor, speaks of their habits and the lowness of their homes, he does not distinguish between the two nations?—No.

39,960. We do know as a matter of fact they are chiefly Irish?—Yes. It did not occur to me to ask him that question. I am not aware whether he would be able to answer it or not.

39,961. I think any of us who know Glasgow, know the worst slums are inhabited by the Irish?—There is a new work coming out just now in a good many volumes, the Catholic Encyclopædia, and the article on Scotland, or Glasgow, states that there are 380,000 Roman Catholics in Glasgow. Personally, I believe, that is considerably exaggerated, but such a huge figure would not be given unless there were a very great many. I believe myself—of course I am only speaking from conjecture and observation—there can be no doubt whatever that a very large proportion of that 380,000 or 250,000, whatever the figure is, live in the very lowest quarters of the town.

39,962. Glasgow should not be the town to take as representing even the type of morals which we do not like in our Scottish people, because it is not a Scottish type?—In the slums there are certainly a very great many.

39,963. Of the Irish?—There are districts even in Edinburgh where a great many of the population are Irish.

39,964. (*The Archbishop of York.*) You would make a distinction, following on what Lady Frances Balfour has said, between the type of people you have dealt with in the congregation and parish of the cathedral in Glasgow and what are generally called the slums?—Yes.

39,965. You say that the slums are inhabited by Irish Roman Catholics; but we have had evidence from London and elsewhere that the Irish Roman Catholics very seldom, in the experience of their clergy, apply for separation, and never, of course, contemplate divorce. Would you think, therefore, that because a very large number of the very poor in Glasgow or elsewhere are Irish Roman Catholics, it follows that these are the people who are applying continually for separation or divorce?—Of course I cannot say.

I have not examined the statistics. We come across the individuals, but the facts are, as Lady Frances has said, there is a huge number of Irish in Glasgow, and they mostly live in these quarters, and if a very large proportion of cases of divorce come from these quarters, I should naturally assume a very large proportion must be from the Irish, but that is merely an inference.

39,966. You know any such proposal on their part would practically separate them from their religion?—So it is said.

39,967. Would you not agree that, even in religious Scotland, there is a very large and possibly growing mass, even of Scottish people, who have slipped away from any kind of connection with religion?—I should say it is very like England in that respect. I do not know that there is any special difference in that respect. I think statistics show—I have seen these, at any rate—that in London, for example, the proportion of those who have drifted away from all church attendance is very much larger than in Glasgow or Edinburgh, or any Scottish town I am acquainted with.

39,968. I should say that is true. Would it not follow from that that there is a much more widely diffused respect for religion among the working poor in Scotland than possibly in England or other countries?—I do not like to make invidious comparisons, but amongst the poor in Scotland I have come across very frequently those who do not attend church, but certainly do show great reverence for sacred things, and would be wounded unutterably in their feelings if they were thought to be separated from the Church.

39,969. That would account largely for the fact that it is so universal a custom even to require a religious ceremony of marriage as almost necessarily to make it respectable?—That prevails very largely even where one would not expect it among the people, as far as I have found out. One great reason in Scotland more than in other countries why people drift away from the Church is that simply they have not clothes good enough to go to church in. To a most extraordinary extent that feeling prevails amongst the poor.

39,970. That fortifies what you said in answer to Lord Guthrie. You think even if civil marriage was made in all cases compulsory, the Scottish poor would still feel it was right to have a religious service at their marriages?—I think to a great extent it would be so.

39,971. With regard to the grounds of divorce in Scotland, has it been usual in the ordinary teaching of the people to base the marriage laws on Scriptural grounds, on the grounds of our Lord's words?—I do not know that it is frequently the subject of discourses. I think it has been always taken for granted that our Lord's words are the basis. I do not think anybody questions that.

39,972. Has there been in your knowledge any considerable attempt to justify divorce for desertion upon similar Scriptural grounds?—That has been invariably the rule in Scotland ever since the Reformation, and I do not think it has been under discussion at all.

39,973. Is it accepted rather as the result of the Reformation than based on Scriptural grounds?—It is supposed to be the Scriptural inference, at any rate, and it is regarded as in accordance with the spirit of the New Testament.

39,974. How far do you think that would apply to any extension such as you indicate the possibility of—to insanity, and so forth?—It would be upon the same ground, but, personally, I am not indicating the slightest desire for a change in that respect. I only say I have heard the opinion expressed that the same rule would apply in that case if it were ever to become law. It would be simply on the ground that the person should be regarded as virtually dead. It would be one of extreme difficulty.

39,975. You would say that the principle limiting any possible ground should be that one of the parties should be regarded as practically dead?—Yes.

39,976. Do you think there would be any opinion in Scotland which would go beyond that?—I do not think there would be, as a general rule. I may say, personally, I was very much struck the other day when I saw a brief notice of Sir James Crichton Browne's evidence here, in which he stated, if one granted divorce for insanity, one would probably need to go further and grant it for other diseases. I do not think that that would be accepted, but it showed me an additional difficulty, and, personally, I should be less inclined than ever to support such a proposition.

39,977. With your very great knowledge of public opinion in Scotland, have you come across any widespread feeling that there ought to be an extension of these grounds of divorce beyond adultery and desertion in Scotland?—I do not think there is any desire for any change whatever in the present law.

39,978. I want to ask you another question which I think will be of interest to us. In answer to Lord Guthrie you anticipated a question I would like to have asked you, possibly with the same interest in the matter. In speaking about discipline I should like to ask, is the responsibility for taking part in the marriage of any couple left entirely in the hands of the individual minister?—That is to say, there is no form of words actually prescribed.

39,979. I did not mean that; but is it left entirely to the discretion of the minister in each case whether he shall or shall not be present and take part in the religious ceremony of a marriage?—Whether the minister must be present?

39,980. No. Is it left to the discretion of the minister whether or not he shall in the case of any couple marry them or not?—I have heard the statement made that any couple coming, producing due credentials, the minister is obliged to marry them, but I never heard of it being put to the test. Personally, if I was convinced there was anything wrong, I would refuse at once.

39,981. So far as you know, you would not be subject to any penalties from the State for so doing?—Not so far as I am aware, unless it was a mere vexatious refusal on my part. If I had a proper ground for refusing, I do not think the State, or anybody, would interfere.

39,982. Still more so, supposing a couple, one of whom was a guilty party in a divorce suit, asked to be allowed to be married at the cathedral in Glasgow, you would consider that you were entirely within your rights in deciding whether or not you would allow the church to be so used?—I think I should be quite within my rights in refusing.

39,983. Would you regard it as an undue interference on the part of the State if you were in any case compelled to marry a couple at the cathedral?—I should not like to be compelled to do anything by the State.

39,984. I think we all appreciate that. With regard to the exercise of discipline, in the Church of Scotland it would be left entirely to the minister and kirk session to decide in each case whether a person ought or ought not to receive Holy Communion?—It might, but it never came before me, and I never consulted the kirk session about such a matter.

39,985. I am asking you: as a matter of fact it is left entirely with the minister and kirk session to decide as to who should or should not be admitted to Communion?—I beg your pardon; to the Communion, certainly.

39,986. It is absolutely at their discretion?—Yes.

39,987. Should I be right in saying that the Church of Scotland would greatly resent the idea that any mere law of Parliament should dictate to the minister and kirk session who they should or should not admit to Communion?—Most emphatically, I do not think the State would have anything to do with that. I have never heard of it interfering.

39,988. Although the Church of Scotland is an Established Church, it would not consider it belonged to Establishment that the State should tell the ministers and kirk session who they should or should not admit to Holy Communion?—Certainly. We claim, rightly or wrongly, to be absolutely free.

39,989. (*Sir William Anson.*) I understand that the Scotch law in respect of grounds of divorce differs from the English law in two ways, the equality of men

and women in respect of infidelity, and the power of obtaining divorce on the ground of desertion?—I believe so.

39,990. Both those are in accord with public opinion in Scotland?—Quite.

39,991. That is to say, the Scotch people would resent the withdrawal of the right on the ground of desertion?—I think that they would.

39,992. Supposing the grounds to be limited to adultery?—I think there would probably be opposition, perhaps widespread opposition. On the other hand, there is not the slightest desire, as far as I am aware, for any extension, unless, as I have indicated, it might do on the ground of incurable insanity.

39,993. Desertion is not mere absence, but absence with evident intent not to resume cohabitation?—Yes, and where the man has deliberately ——

39,994. Maliciously?—Or deliberately, at any rate, gone away.

39,995. You would not yourself advocate extension on the grounds of divorce?—Certainly not.

39,996. You are not aware of any feeling in favour of it?—I do not know of any widespread feeling; there may be a feeling on the part of some.

39,997. I observe you say that there is a feeling that access to the remedy of divorce is not the same for rich and poor, owing to expense?—They have access, but it is very difficult. It is, as a matter of fact, more difficult, I think, although they have these advantages and these opportunities.

39,998. You would be in favour of putting it within the power of a poor person to obtain the same remedy as a rich person?—I think there should be equality.

39,999. You also would be in favour of retaining the jurisdiction in the Court of Session?—Certainly.

40,000. How would you redress the inequality?—I am not prepared to offer any suggestion.

40,001. You are not altering the jurisdiction?—I do not know that there is any need of any particular alteration, because the idea is that there is really equality in the opportunity of finding relief in Scotland, at least, more than elsewhere, but at the time, there is no desire that divorce should be made easier anywhere.

40,002. In order to bring the law within the reach of the poor, which, as you say, it is not always now, could you offer any suggestion?—It is within the reach of the poor, the poor's roll. I am quoting the words of Mr. Gillie, there as to the amount that is needed, but, of course, I have been speaking also of the poor's roll in which people may be able to ——

40,003. I was referring rather to your proof. You say "It is true that the sum for which a poor person may obtain divorce is in itself small, but it is not likely to be less than 10*l.*, and however little that may seem to many, it is a practical impossibility for many others to raise it."

(*Chairman.*) I think the witness is only the moderator, and a barrister will help us a little more.

40,004. (*Sir William Anson.*) I wanted to know whether the witness had any suggestion to offer, inasmuch as he was anxious to retain the jurisdiction of the Court of Session?—The legal authorities would be more able to deal with that.

40,005. With regard to the last sentence, "Whether the guilty should be allowed to marry again would be held doubtful by many"; that is to say, a guilty party may not with the other guilty party, but with some third person?—I mean marrying some third party.

40,006. When you say "should be allowed to marry again," do you mean whether that marriage should be lawful, or whether he should be entitled to the blessing of the Church?—I was not taking that practically into consideration; but that they should be allowed to marry, I say "it is doubtful." I am not expressing my own opinion, but what I have heard expressed by others.

40,007. When you say "allowed to marry," do you mean whether the marriage should be lawful?—Certainly. I do not think there is any unlawful marriage. When one says they are allowed to marry, I presume that it would be a lawful marriage.

40,008. You were not thinking of the service?—No.

40,009. But of the legality of it?—Yes.

40,010. Is a marriage in a house always attended with a religious ceremony?—Certainly, always, unless it may be one of those extremely uncommon marriages where one declares the other to be husband or wife. That in itself, before witnesses, is, according to Scottish law, accepted as a contract according to the law of contract, I believe. My legal friends would answer that.

40,011. As a rule the religious ceremony takes place, whether the marriage is in a house or church?—Always.

40,012. And the minister would have a right to refuse if he thought there was anything wrong?—Certainly; as a general rule he asks. That is not invariable, but as a general rule it is asked if there is anyone who has any objection to offer.

40,013. As regards the re-marriage of the two guilty parties, have you any opinion whether public morality might not be improved if that were rendered impossible?—There is a good deal to be said on both sides as it is, but I have not made up my mind.

40,014. You spoke of an individual case in which you thought it would be the best thing for the parties?—It seemed to me in that particular case that it perhaps tended more to morality than a refusal would have done, but I would not make it general.

40,015. Is it not perilous to legislate on individual cases?—Very perilous indeed.

40,016. (*Chairman.*) Following up a point the Archbishop of York asked you about, with regard to the discretion that rests in the minister to admit a person to Communion, I suppose that is a discretion based on what would be considered evil living in some form?—Yes. On one occasion I have refused to admit a man to Communion.

40,017. Would there be any right of appeal on his part to any higher authority than the minister who dealt with the matter?—He could appeal to a higher Church court. I am not sure whether it has been appealed to the law courts.

(*Lord Guthrie.*) Never.

40,018. (*Chairman.*) In what court would that appeal lie?—He would have a right of appeal to the presbytery.

40,019. Of the whole Church?—No, the presbytery corresponds, roughly speaking, to a diocese in England.

40,020. The presbytery of the district?—Yes.

40,021. Would there be an appeal to the general assembly?—There would be an appeal from that to the synod.

40,022. And from that to the assembly?—To the General Assembly.

40,023. There might be a dispute about facts, apart from the exercise of the discretion. A minister might take a view of facts which might be open to criticism?—It might be open to criticism.

40,024. In that way there would be a right of appeal on facts and discretion?—There would be an appeal, because it is conceivable a minister might, on some untrue gossip or otherwise, refuse to admit a man. It would be unreasonable if he had not a right to justify his character.

40,025. (*The Archbishop of York.*) Of course you would emphasize the point that all the way through from kirk session to presbytery, and presbytery to synod and synod to general assembly, the appeal is to a spiritual court?—Yes.

40,026. (*Sir Lewis Dibdin.*) Just as in England?—I am not qualified to speak about that.

40,027. (*Sir William Anson.*) Is it not a condition of membership of the Church in Scotland that the right to Communion is dependent on the discretion or permission of the minister?—Admitted by the minister and kirk session. It is the minister and kirk session who have the right of admitting or rejecting. In practice it is the minister alone.

40,028. It is part of the condition of membership of the Church that the right to Communion should be

so dependent?—It is so, but we admit anyone at our own discretion as a matter of fact.

40,029. (*Lord Guthie.*) You were not quoting your own experience, you quoted the Roman Catholic statement with regard to that 380,000. I think by "Glasgow" there must have been included the rest of Scotland—Lanark, and all those places—because there are only about 450,000 Roman Catholics in Scotland altogether?—I merely saw this statement; it was purely accidental.

40,030. "Glasgow" may have been used in a wider sense?—Nor have I seen the volume. I merely saw it mentioned in a review of the book.

(*Chairman.*) Let me thank you very much for your evidence and the assistance you have given us; I am sure it will be of great advantage to us.

Mr. CHRISTOPHER NICHOLSON JOHNSTON, K.C., LL.D., called and examined.

40,031. (*Chairman.*) You are one of His Majesty's counsel in Scotland and an LL.D., and you are sheriff principal of the county of Perth, and have been a sheriff in successive sheriffdoms for nearly 10 years?—Yes.

40,032. You make a note that "a sheriff principal "continues to be a practising advocate in Edinburgh, "and holds courts only occasionally in his sheriffdom, "the sheriff substitute being the resident local judge"?—Yes.

40,033. You are also procurator of the Church of Scotland, that is, the standing counsel and legal assessor of the Church. You have been a member of the General Assembly of the Church since 1892, and I take it you are familiar with ecclesiastical law and practice?—I think so.

40,034. You have taken considerable interest in questions of consistorial law?—Yes.

40,035. I do not think you need trouble to tell us anything about the present state of the law in Scotland; we have had that very fully; but I should like to ask you, passing to the next paragraph, in Scotland the law has recognised adultery and desertion as grounds of divorce for a very long time. Has that recognition by the State been in harmony with the general law of the Church?—It has been in harmony with the law of the Church.

40,036. The Scottish Churches have the same Confession of Faith—the Westminster Confession?—Yes, the Presbyterian Churches.

40,037. Which was ratified in 1690?—Yes.

40,038. I think we have the text of the Westminster Confession on the note. I will pass to a later portion of your proof. Do you consider that that confessional doctrine is still in accordance, not only with the law, but also with the prevalent sentiment in the Church?—I do.

40,039. To what extent do you think there is any opinion in Scotland going beyond those two cases?—I do not think there is any general opinion. You will find individual opinions which suggest some one cause and some another; but I do not think there is any general opinion in favour of any extension of the grounds of divorce.

40,040. You say you reserve your opinion upon the case of incurable insanity. To what extent has that subject been brought up to enable you to form a view or to express the views which have been formed about it?—Except in a merely theoretical, and occasionally speculative conversation, I do not think it has been seriously considered till this Commission called attention to it.

40,041. Since then?—It has been discussed, and different opinions one way or the other have been expressed; but I cannot say that there is any general concensus one way or the other. I should say there would be a considerable volume of opinion in favour of it if the public could be satisfied of the possibility of establishing insanity as quite equivalent to intellectual death.

40,041*a*. That, put in other words, would mean if it was a perfectly hopeless case, and it was reasonably sure it was so, of incarceration?—Yes. Even then I should not say opinion would be unanimously in favour of it.

40,042. Passing on a little further, you have views to express as to the sentences of penal servitude?—Yes. I think penal servitude is an illustration of what might strike the popular mind in the first moment as being a good case for divorce, but such a rule would involve inextricable difficulties, and marriage would be dissoluble or not according as a judge in his discretion deemed three years or five years the appropriate sentence in a case, say, of embezzlement. Great difficulties would arise in the cases of pardon, release for special good conduct, discharge for ill health, &c., which all go to show how inconsistent it would be with the marriage relationship that there should be any such possibility of relaxation. I have already had a considerable experience of criminals, as Crown counsel, and there are very few convicts who have wives who are anxious to be released from them. They are either a low criminal class, or else men who have got in for embezzlement, whose wives do not desire release, and are glad to welcome them back.

40,043. Will you kindly pass on to the difference between the English and the Scotch law. Perhaps you will read that paragraph, because it is important?—"The most important difference between the divorce law of England and that of Scotland is the recognition of desertion as a ground of divorce in Scotland. I do not propose to argue this question in its ecclesiastical or religious aspect, but I may point out that in my view there is in England very often a misunderstanding upon this question. The doctrine that it is unlawful to put away a spouse for any cause other than adultery was not denied, but it was accepted by those who gave ecclesiastical sanction to divorce for desertion. The Scriptural condemnation of the putting an end to marriage by desertion was recognised, but it is the deserting not the deserted spouse who is condemned. It is the deserter who puts away the spouse and brings the marriage relationship to an end. The decree of divorce is the official recognition and registration of the fact that the deserting spouse has departed from the marriage, and that the marriage relationship no longer subsists. Be this as it may, however, divorce for desertion has obtained in Scotland ever since the Reformation, and is supported by both popular and ecclesiastical opinion. There is no desire to depart from it. On the whole the system works well, and is not often abused for the purpose of obtaining with some delay what is really a divorce by mutual consent. No doubt, however, there are sometimes cases where one spouse in effect says to the other: 'We are not 'hitting it off. It would be better for both of us to 'part, and in four years you will get your divorce.' This does not, however, often happen, and the great majority of divorces for desertion are cases where one spouse has maliciously abandoned the other. The attempt to find a justification for divorce for desertion in the theory that the deserting spouse generally commits adultery, does not appear to me to be successful. It is illogical, and in the case at all events of women of all but the lowest class who desert, it is not in accordance with fact."

40,044. You say there on the whole the system works well. Do you think that the fact that there is a ground of divorce for four years' malicious desertion in any way tends to lessen the regard for the marriage tie?—I think not. Whether it might have that effect in a country introducing it for the first time I do not know; but it has been long established and accepted in Scotland, and at a time when the marriage vow was, perhaps, regarded generally as more sacred even than at present, and I do not think in these circumstances that it tends to relax the sanctity with which marriage is regarded.

40,045. You put it on the previous page that the deserting spouse brings the marriage to a termination,

and all the court does in effect is to recognise the fact?—Yes, that is my view.

40,046. The next point in your evidence is with regard to the equality of the sexes. Perhaps you will read that, too?—"In regard to the question of what is called 'equality between the sexes,' I do not think that there is any desire for change in Scotland, or indeed that any change would be assented to. I appreciate the theory of the distinction which the law of England draws, and I do not conceive it to be based upon any principle of inequality. There may undoubtedly be cases in which what has been described as a casual act of adultery on the part of a husband who is otherwise a good husband and father is an insufficient ground for the disruption of a family, whereas on the other hand when a married woman goes astray it generally indicates a perversion of the domestic affections which is fatal to family life. A woman is protected much more than a man both by natural modesty and by social conventions. The defiance of these indicates a greater degradation and perversion of affection on the part of a married woman than does similar conduct on the part of a man. The quality of the act may be the same in both cases, but the obstacle to be overcome in the case of a woman is such as to infer turpitude if she yields. But whilst this is so, in my view no satisfactory general rule can be devised to discriminate the class of case in which adultery on the part of the husband should not by itself warrant a divorce. Certain evils have, I understand, been found to attend the attempt to do so in England. In practice, too, the inequality which is involved in the treating of every case of adultery on the part of a husband as on the same footing with adultery on the part of a wife is redressed by the circumstances that casual infidelity on the part of the husband is seldom found out, and when it is found out it is very often forgiven." I will explain that, if I may illustrate it in this way. If you find that a man is once or twice seen the worse for drink, there is no reason why you should infer from that that he is an habitual drunkard; but if you find a woman of any social position once or twice the worse for drink it is a fair inference that she is an habitual drunkard, and whilst I regard a single or isolated fall due to sudden passion as not an adequate ground for putting an end to the marriage tie and breaking up a family, whether the husband or the wife be the offender, I think it is impossible to discriminate these cases from other cases, and that in the case of a woman it is extremely improbable that her misconduct is of this casual character and is not associated with a divorce of real affection from her husband. I do not think it possible to discriminate.

40,047. That has been the law in Scotland for over 300 years?—Yes.

40,048. What is your view of its practical working?—I do not think it works any mischief in the way of breaking up families unnecessarily. The late Lord Fraser was our greatest authority on consistorial law, and I remember him telling me—he had a very large experience—that he never knew a case where a wife divorced her husband who was an affectionate husband and father simply because he had gone wrong on a chance occasion. There was always something else, cruelty to her or the children, or desertion, or some other grave element in the case.

40,049. That is to say, in your view, if that is right, you might leave it safely to the working out of the discretionary right of the party to apply, whether it is husband or wife?—Yes.

40,050. Rather than differentiate by an express enactment of the law?—Yes. I think that differentiation does great harm, because it is very much misconceived and gives rise to what I think an unjust reproach against the law.

40,051. Your next point is with regard to the question of recrimination. In Scotland there is no power to refuse divorce, even though the petitioner has himself been guilty of an offence?—That is so.

40,052. Do you find that that is a law which should be changed in Scotland?—No, I do not think so. There is no demand for it, and I do not think any evil has arisen from it.

40,053. You know in England, although it is nominally discretionary, it has been so restricted as to be practically useless?—I am aware of that.

40,054. You think the Scottish rule is right?—I do.

40,055. Has it led to any abuse in your experience?—I do not think so. I have not known a case where it has led to any abuse.

40,056. As I understand the suggestion that is made in answer to it, it is that it removes any check upon the conduct of the petitioner?—Yes.

40,057. They may be guilty as they please, and yet come forward with a suit?—Yes.

40,058. The suggestion is we ought to look further back and put a check on it. That is the point that is rather indicated as a drawback to there being no power of recrimination. What do you say about that?—I see the theoretical force of that. I have known a fair number of cases in which there has been misconduct on both sides, but I cannot say I know a case where the present state of the law has been an operative element in bringing about the misconduct. I think, in any view (although in England, as your Lordship has explained, the rule of this plea being discretionary has been very nearly made obsolete), that where the system of granting divorce in cases of mutual misconduct exists as in Scotland, if it is altered it must be subject to a discretion. I strongly dislike discretions on the part of an individual judge as to whether he shall divorce people or not. I think it should be governed by the law as applied to the facts.

40,059. Whether right or wrong in theory, you do not think it has led to abuse in Scotland?—No, I do not know that I would introduce it if it did not exist.

40,060. You say at the end of that paragraph: "English law, however, seems to regard divorce as an equitable remedy to an injured spouse much more than does the law of Scotland, which treats it rather as the solemn annulling of a union of which the vows have been broken." That is rather looking at it from the State point of view, that it is no good continuing it if it cannot practically endure, whereas in England it is treated as if it was looked at too much from the point of view of the petitioner?—Yes.

40,061. The next is a point of practice. You regard the English system of giving discretionary power as to pecuniary consequences as better than the Scotch?—I do.

40,062. You want a wider power to reform settlements and meet the general justice of the case by wider powers?—Yes. Such powers are in the interest of morality, so that women although they have gone astray should not be left penniless.

40,063. The next point is a question about the tribunal. You maintain the desirability of exclusive jurisdiction of the Supreme Court, and give these reasons: lessened solemnity, confusion as regards domicile, absence of uniformity of practice, only local publicity, no counsel to intervene between the solicitor who is in contact with the agent and the court. That summarises practically the disadvantages of an inferior court as compared with a superior court?—Yes.

40,064. You think divorce should be pecuniarily within the reach of the poor, but it should not be made easy. Will you kindly state in what particular you do not think it should be too easy?—In particular I do not think that divorce should be easy in the following respects:—(1) The procedure should be deliberate—slow if you please—divorce ought not to be obtainable a fortnight after the initiation of the proceedings. (2) Divorce should not be obtainable without the fullest publicity. (3) The information before the court in regard to the whole matrimonial relations of parties should be full and the scrutiny of the evidence should be rigid. (4) The court should be one of the highest authority, and should not be a court where ordinary jurisdiction is limited to minor matters.

40,065. You think that provided no insuperable financial difficulties are placed in the way of the poor, it is an advantage that the obtaining of divorce should involve anxious and irksome procedure?—I do.

40,066. Does the actual working out of your poor's roll system in Scotland enable the poor to get to the Supreme Court with their cases?—I have made inquiry into that matter within the last week or two, and I have a very short statement if you will allow me to read it.

40,067. Yes. A little confusion rests in my mind about it. In theory the poor's roll seems to enable the party to get to the court, but we had a witness who pointed out certain figure of expense which would practically be prohibitive to a poor person. If it will help us to appreciate how that is to be solved it will be of assistance?—I have made particular inquiry in regard to the expense to which poor litigants are put in connection with divorce proceedings in the Court of Session. There are four agents for the poor in civil causes, two writers to the Signet and two solicitors before the Supreme Court. I have obtained particulars from them all, covering some 80 cases. Three of these gentlemen have acted for nearly a year, and the fourth for nearly two years. The experience of all four is to a like effect. If the litigant is able to pay anything they ask for something to cover outlays, such as the fee to officers to serve the summons, the fee for the extract of the marriage, &c., and they frequently get a small sum, 2*l.* or 3*l.* 5*l.* is the maximum, and only one case was mentioned where so much was obtained. If the litigant is in poverty and can pay nothing the agent gets nothing to cover the outlays, and bears the expense himself. In no case has the agent declined to act because he got nothing. One agent who has had 23 cases has paid all the outlays in six. As regards witnesses, the practice is to tell the litigant he must bring his or her witnesses and arrange with them. The witnesses are generally relatives or friends of the litigant, and come gratuitously, or on easy terms. In an ordinary case where the litigant pays from two or three pounds to the agent and brings his or her own witnesses, say from Glasgow or Dundee, in the opinion of the poor's agents the case does not cost the litigant more than 5*l.* If an unwilling witness has to be brought the agent cites, that is, subpœnaes him, and in this case he has generally to pay the witness out of his own pocket unless the pound or two he has got from the litigant covers it. In some cases of extreme poverty the agents have paid the expenses even of the friendly witnesses whom the litigant has arranged to bring. In the only two cases in which, to the knowledge of the present poor's agents, considerably more than 5*l.* was paid by a poor litigant to a solicitor, the money was paid not to the Edinburgh agent, but to an agent in the country. This tends to confirm my opinion that poor litigants would not fare better as regards outlay if divorce cases were disposed of in the local courts. Work for this class of people on a business footing is part of the daily round of local solicitors who are employed by the poor, and much of whose forensic work is in the small debt court. Their incomes are small, and they could not live if they did not press poor clients to pay, or incurred any outlay which they did not see their way to recover. The same idea may be illustrated in the medical profession, for example, if you compare the Royal Infirmary to the Court of Session. A person is sent by a country doctor and gets every attention and comfort and it costs nothing, but that country doctor must charge that person, although in humble circumstances, if he remains in the country. It is no discredit to him. In the same way local agents in the country are accustomed to do this small class of work for humble people, and they think nothing of pressing for all such payment as they can get, whereas when the litigant comes to Edinburgh matters are on a somewhat different footing. I was also assured by the poor's agents, and my own experience fully confirms it, that in the case of a person who was a little above the line which qualifies for admission to the poor's roll, if that person was respectable and had an introduction, say from a clergyman or an employer, there would not be the least difficulty in obtaining the gratuitous conduct of the case as regards legal charges, either to counsel or agents. As regards the Bar I can speak with absolute confidence. In a long experience I have never heard of a case where a deserving person of small means was shut out from the Consistorial Court through inability to pay counsel's fees, and I do not believe such a case ever occurs. If I got a letter from a clergyman, or any person whom I knew, mentioning a person with 70*l.* or 80*l.* a year, a teacher or something of that kind, who could not pay counsel's fees, I could get 50 counsel in Parliament House who would do it for nothing, not because of a favour to me, but because of *esprit de corps* in the profession.

40,068. Who is the informant from whom you have got that paper?—The four gentlemen who act as agents for the poor at present.

40,069. I thought that paper was prepared by one gentleman?—No, it was prepared by myself from their information.

40,070. What is the general result of it? There appears to be for those who can get to Edinburgh some expense which they find themselves to begin with, 2*l.* or 3*l.*?—Yes, subject to this, that all the poor's agents assured me if they could not find it they did it themselves for nothing.

40,071. What is that 2*l.* or 3*l.* for, if there are no court fees?—The officers of court are required to be paid in order to serve the summons which must be served personally.

40,072. And get a certificate of the marriage?—Yes. There may be postages and minor outlays. If the poor person has a few pounds, the agent thinks himself entitled to be paid for actual copying as being outlays.

40,073. The end of it is that for a very small sum the poor persons can get their cases brought?—Yes.

40,074. Five pounds seems as if it would generally be sufficient?—So I am informed.

40,075. Of course the witnesses' expenses are a separate matter. It depends where they come from?—2*l.* or 3*l.* are paid to the Edinburgh agent, and in addition to that, there are the expenses of witnesses. The estimate in an ordinary case, witnesses and all, paid directly by the person, does not bring the case up to more than 5*l.*

40,076. (*Lord Guthrie.*) The total charge?—Yes. It may be a slight under-estimate, because the agents do not see what the witnesses are paid.

40,077. (*Chairman.*) I think we will return to your proof now. You have views to express about the reporting of cases?—Yes. "In Scotland the great proportion of divorce cases come from the humbler walks of life. Divorce for adultery among the upper and upper middle classes is rare. Accordingly the great majority of cases being of a squalid character are briefly and not offensively reported. Cases which attract much general attention and are fully reported are rare—not one in the year. But the reports of 'society scandals' in the English courts appear in the Scottish papers, and English papers with even fuller details circulate largely in Scotland. These reports are highly mischievous, and any scheme for their curtailment or total suppression by the exercise of a wide discretion on the part of the judge or otherwise would be welcomed. On the other hand, it is not desirable that facilities should be given for the huddling through of divorce cases quickly, as this would encourage collusion and diminish the stigma attached to divorce."

40,078. The next is an important part: I have read it through, and it seems to express itself so well that if you will read it I shall be glad?—"Marriage of divorced persons. By the Act of 1600 c. 20 of the Scottish Parliament the marriage of a divorced person with the paramour with whom adultery is found to have been committed is null. Such marriages are also forbidden by the Church (General Assembly, 1567, Sess. 3). The confession of faith declares that the innocent spouse is free to marry again. As to whether the guilty spouse might marry a third party the church appears to have hesitated. In 1566 Sess. 3 the General Assembly incidentally described such marriages as contrary to God's law. In the following year, however, the following passage occurs in the minute (Sess. 3):

—'Ane man being divorced for adulterie—*Quaeritur* 'whether he may marry again or not?—The kirk will 'not resolve herein shortly'—I think, shortly' means 'summarily'—'but presently inhibits all ministers to 'meddle with sic marriages whill (until) full decision of 'the question.' So far as I am aware consideration of the question has never been resumed, and no case has arisen in the Ecclesiastical Courts. I am of opinion that if a case did arise the Church Courts would neither compel a minister to celebrate such a marriage nor visit him with discipline if he thought right to do so."

40,079. Is that a marriage by one of the guilty people to another independent person?—Yes.

40,080. What about the marriage of the two guilty parties?—That marriage would be null by the civil law if the parties had been declared by the court to be guilty.

40,081. I was thinking of the case where the name was left out, as it is done; what would be the attitude of the Church with regard to such a case?—If the name is left out there might be a difficulty in seeing what warrant a clergymen who was applied to had, unless he was told, in holding these parties were the two guilty parties, and in respect of whose adultery the divorce had been declared. If the thing was notorious the clergyman would probably decline to marry them, but some clergymen would marry them.

40,082. It would still come within that opinion, that the Church Courts would neither compel a minister to celebrate such a marriage nor visit him with discipline if he thought right to do so?—Yes. They probably would get out of it by saying if it was not in the decree of divorce they could not look beyond the decree. I do not know that they would allow it if the two people said, "We have done this and want to be married." "The statutory provision is frequently (but not invariably) evaded by the non-insertion of the paramour's name in the decree of divorce. I humbly confess that I have some doubts as to the legitimacy of judges thus constituting themselves judges not merely of the law but of the policy of the law. The Act of 1600 says that parties who have been found to have committed adultery by decree of the court are not to marry. It was not intended by those who framed the Act that the judge was not to put the name, according to his discretion. They assumed the name would go in. It was worked out in this way, judges taking a lenient view refrained from putting in the name. In my view there is an immense deal to be said for the statutory rule upon grounds of public policy. As regards the well-to-do classes, both in England and in Scotland, I believe that cases of conjugal misconduct would be enormously diminished in number if such a rule obtained and was enforced. The cases are rare in which a woman of respectable surroundings will go off with a man with no prospect of ever being more than his mistress. There even exists a spurious code of honour in the matter. This was illustrated in a recent case where a divorced lady raised an action of breach of promise of marriage against her paramour, and stated in court that what she sought was not damages but the vindication of her 'honour.' She could face the reproach of infidelity to her husband and desertion of her children, but not the reproach of having yielded to a man who did not promise afterwards to marry her. I quite admit that in the particular case where the offence has been committed and the marriage has been dissolved, it will often be in the interests of the guilty party that he or she should be allowed to marry the paramour. But the prevention of conjugal infidelity is much more important than the adjustment of the relations of parties when infidelity has been committed. The state of the law, too, which makes the injured spouse the arbiter of the fate of the spouse who has absconded with a paramour, and sets revenge on one side against pity or self-interest on the other is not satisfactory."

40,083. What does that mean exactly?—Where a wife goes off with a paramour, the husband may be so extremely indignant that he thinks he will punish her by not suing for divorce. It is in his discretion either to permit or forbid her to marry, according as he is influenced by pity on the one hand or revenge on the other. I do not think that is desirable.

40,084. How would you remedy that, because the petitioner is the only person who can start the suit?—I would remedy it by making such marriages illegal. I use this as an argument against the illegality of these marriages—it results in that.

40,085. You would declare a guilty spouse should not be allowed to marry the paramour, independent of whether there was a decree or not?—Yes.

40,086. They could not marry without a decree. I do not follow the point?—They could not marry without a decree, and therefore the husband nowadays, if he is indignant or thinks they ought not to be married, can prevent them by not suing for divorce.

40,087. How would you remedy that?—If you make such a marriage null, then the husband is not put to the option that he shall be tied for life to the woman or allow her to marry the paramour. He can divorce her and she cannot marry the paramour.

40,088. He would bring his suit free from the consideration that he was either giving them an opportunity or not?—Yes. I saw in yesterday's paper an illustration. I speak of revenge, but cupidity may come in. It was a case where the paramour paid so much to the husband on the condition that he should raise an action for divorce. The husband did not do it, and the paramour raised an action to get the money back.

40,089. If you prohibited marriage between these people, it frees the position of the husband to act without the question of whether he was acting for revenge or not. It eliminates that?—Yes. "Nobody I think can have studied the history of divorce cases and the correspondences which have passed without realising that many of these cases would never have occurred if the law did not leave the door open to rehabilitation of the guilty parties. If the warning to the guilty which Dante puts over the door of the infernal regions were inscribed over the door of the Divorce Court—All hope abandon ye who enter here—the lot of those who entered might be harder, but the number who entered would be enormously diminished."

40,090. Is that paragraph about the correspondence that has passed written from your own practical experience?—My own experience to a certain limited extent, in actual cases occurring in which I have been counsel, but to a much larger extent reported cases I have read, cases reported in the newspapers and the law reports.

40,091. I regard that as a very important point. That correspondence has led you to the conclusion that there is an invitation practically to commit a guilty act because there will be an opportunity of re-establishment afterwards?—Yes.

40,092. If the divorce is granted?—If the divorce is granted.

40,093. I do not know to what extent the next point has already been covered. Perhaps you will read it?—"The suggestion has been made that the difference between the law of England and the law of Scotland, particularly in regard to desertion, is attributable to the fact that the law of Scotland regards marriage simply as a consensual civil contract. There is a measure of the truth in attributing this attitude to the law so far as regards the actual contracting of the marriage. (It may be noted, however, that down to a very recent date the only lawful manner of contracting marriage was in *facie ecclesiæ*, and although a clandestine marriage was binding, the parties to it were guilty of a criminal offence.) But though it might be easy to make a binding marriage, when once a marriage was contracted the Scottish law took a most strict view of its obligations and was far from treating the relation of marriage as one merely of civil contract. Adultery was a criminal offence, and in the seventeenth century the death penalty was more than once inflicted upon notorious adulterers. Intercourse with the near of blood of the other spouse was treated as incest and was punishable with death. There is here no savour of the mere civil contract. The strict view of the law has always been and still is supported

by public opinion. I have made particular inquiry into this matter among those who work among the poor, and their testimony is, that except in the very lowest strata, the married state is held in great respect and conjugal infidelity and cohabitation without marrying are reprobated. It is remarkable that in the agricultural counties great respect for marriage co-exists with a low tone of sexual morality. In this connection it has been remarked that whilst in many, if not indeed the majority of, cases, a ploughman's wife is pregnant when he marries her, infidelity on the part of a ploughman's wife is almost unknown." So far as I speak of the respect in which the married state is held amongst the poor, I have made particular inquiry. I got a list of clergymen and others who are specially conversant with the matter, and I corresponded with them before writing this paragraph.

40,094. Will you kindly read the next paragraph?—"Judicial separation can be obtained in Scotland in either the Supreme Court or the sheriff court. The grounds are adultery, cruelty, and habitual drunkenness, and perhaps desertion, though the law on this point is doubtful. In practice it is not resorted to in cases of desertion, indeed this remedy for desertion is an anomalous one, as it stereotypes and legalises the separation which the law deprecates. I regard judicial separation generally as a necessary but unsatisfactory remedy for marital wrongs. The present system in Scotland which authorises only a decree of permanent separation is unsatisfactory. It is unreasonable, for example, that where a man who has been separated for habitual drunkenness or for an act of drunken violence has become a permanent abstainer a decree of judicial separation should be binding against him for life. But even short of such extreme cases, I think that there should be room for reconsideration particularly in view of the narrow grounds upon which such decrees sometimes proceed where there have been faults on both sides, of the chastening influence of the experience of enforced separation, and of the moral evil of permanent separation of persons under disability lawfully to marry another. The court ought, I think, to be empowered to make temporary orders which would leave the matter open for reconsideration after a certain interval. I think too that there is room for more benevolent and ameliorative procedure in the less serious class of cases, as by the judge seeing the parties in chambers when he deems it expedient. I have known cases of reconciliation when the parties were brought face to face even in the public courts. In this view it is of interest to note that according to the Confession of Faith and the early theory and practice of the law, it is the duty both of the civil magistrate and of the Church to endeavour to bring spouses together."

40,095. You say, "the moral evil of permanent separation of persons under disability lawfully to marry another." I take that to mean immoral connections that they are likely to form?—That is so.

40,096. I appreciate the point about the temporary character, if I may call it the disciplinary work of the magistrate, but suppose it ends in no reconciliation and there is a permanent state of separation, what is the proposal you would make then?—When a reconciliation becomes impossible?

40,097. Yes?—I do not think you can make it other than it is at present, if the grounds are not such as warrant divorce. I would not on account of the evils of separation extend the grounds of divorce, because I think that these individual cases of hardship, whilst they might be remedied, would far from compensate for the general unsettlement of the public conception of the marriage tie. I would rather let these people suffer than make a general change in the law.

40,098. Then will you read the last paragraph?—"According to my experience, confirmed by inquiries which I have made of others, the question of judicial remedies for marital wrongs is one which does not touch very deeply the daily life of the people of Scotland. Closely as the marriage relationship affects almost every household in every section of community, there has never since popular government was introduced been a trace of agitation of these matters. In my long experience of Scottish politics, out of the innumerable questions put to candidates, I can only recall two having relation to marriage, one about the deceased wife's sister and the other by an indignant suffragette who was burning to see redressed the non-existent 'sex inequality' in Scotland. Among the well-to-do classes the conditions which lead to judicial interposition are fortunately comparatively rare. Among the humbler classes there is a wonderful disposition to endure. The wife who meets at the prison gate the drunken husband who has been incarcerated for thrashing her is a representative of her class, as is the hard-working husband who will not separate from the drunken wife who pawns the blankets. On the whole, I do not think that any drastic change in our divorce laws or any wide extension of judicial interference in matrimonial matters is desired, and I am of opinion that it is not desirable."

40,099. (*The Archbishop of York.*) You quote the Westminster Confession at the beginning of your very interesting evidence, and make it plain, I think, from the quotation that the standard of the Church in Scotland recognises no ground of divorce except adultery and desertion?—That is so.

40,100. The words of the Confession are quite plain, that nothing but adultery or such wilful desertion, &c., is a cause sufficient for dissolving the bond of marriage?—Yes, and I think the latter, the desertion, was at that date admitted with some hesitation.

40,101. That being so, the extension of divorce for any further grounds, however natural or justifiable they may be, would be inconsistent with the standards of the Church?—That is so.

40,102. Therefore, is not that a matter which would necessarily come before the General Assembly? If the State were to authorise divorce for these other grounds it would immediately become a question for the Assembly to determine how far it should adhere to or alter the standard?—Yes.

40,103. Therefore, in Scotland, quite as much as in England, any civil extension by the State of the grounds of divorce beyond desertion and adultery might very likely result in some conflict between the law of the Church and the law of the State?—It might. The only possible extension which I think might not lead to such conflict would be such an extension as this: where a separation had occurred as the result of gross cruelty or constant drunkenness, it might be regarded as an element in considering whether the husband or his wife was really the deserting party. I think some judicially introduced modification of the rule in that way might not be disapproved of by the Church, but that is simply determining what is desertion. I do not think the Church would accept other grounds than desertion and adultery.

40,104. Supposing that the State did make a law extending the grounds of divorce beyond adultery or desertion, even if desertion received some such judicial interpretation as you speak of, then also difficulties which have hitherto hardly occurred in Scotland would arise about persons marrying under these changed conditions?—That is so.

40,105. So that in Scotland as well as in England, would you say that a change of the law, unless it were very urgently demanded by public opinion, might very likely bring about a difficult situation both in the General Assembly and in the administration of discipline in parishes?—I think it might, subject to this, the constitution of the Church of Scotland being so democratic, if a change were supported by the great body of public opinion in Scotland the chances are that it would be approved of by the clergy and elders who rule the Church; but if it were not supported by the concensus of public opinion I do not think the Church would accept it.

40,106. Your opinion is, that in Scotland there is no such demand by public opinion?—That is my opinion.

40,107. Therefore, if anything of this kind were done now it would not be supported probably by the General Assembly?—I think not.

40,108. Your opinion was succinctly expressed in your proof. I do not know that it was actually read by you when you were giving your evidence. I would just like to have it down on the notes: "In my view, which I believe to be in accordance with well-informed public opinion, though there may be hard cases, it is better that the hardship should remain than that there should be any disturbance of the law which, since the Reformation, has governed the domestic relations in this regard, and has protected the sanctity of marriage"?—That is my view.

40,109. You think that an extension beyond the present admitted grounds in Scotland might very seriously disturb that general respect for the marriage tie which you feel marks the people of Scotland now?—Yes, I think it might.

40,110. With regard to the courts, have you come across any expression of dissatisfaction or grievance on the part of the poorer or working classes in Scotland about their being compelled to take their cases to the High Court in Edinburgh?—No. The only criticism or suggestions on the matter I have heard are on the part of country solicitors.

40,111. Has there been, so far as you know, any serious demand, beyond the country solicitors, either on the part of the profession or of the public, that the sheriff courts should be used for this purpose?—No, I think not.

40,112. Would you say that the sheriff courts enjoy, on the whole, a very high reputation amongst Scottish people?—As I am a sheriff myself, I am bound to say they do, and I think they do; but I think there is a very general concensus of opinion that this special matter should be dealt with not by a local, but by a national court.

40,113. With regard to an interesting point you have mentioned, I gather you are not aware, so far, happily, of any case of dispute as to the right of clergymen in Scotland to refuse marriage or refuse Communion to any couples having been brought before any of the Ecclesiastical Courts?—Not quite that. I did not know of a case on this question of remarrying divorced persons having been brought up in that way.

40,114. That is what I meant?—There have been cases which have gone to General Assembly, not many, in recent years; but there were a number in old days as to refusing Communion to persons living in certain immoral relations, or who had contracted marriages the Church did not allow.

40,115. Your opinion is that, supposing a minister were to say, "I have every reason to believe you were "the guilty party in divorce proceedings, and you "are now asking me to marry you and I decline to "do so"—supposing a minister were to say that, there would be an appeal on the part of that guilty party to the Presbytery?—There might be. I think it is more likely he would go to another minister of the Church of Scotland or some other denomination. He might appeal.

40,116. In your judgment no civil or ecclesiastical penalty would be inflicted upon that minister for coming to that decision?—I think that no civil penalty could possibly be inflicted, and I do not think—I am sure—the Assembly would inflict no ecclesiastical penalty.

40,117. The Church opinion of Scotland would not tolerate the suggestion that a minister for conscientiously refusing to celebrate such a marriage should be punished?—I do not think Church opinion would tolerate it, nor do I think the judges of the Court of Session would regard it as the law.

40,118. Supposing a minister, after consulting with his Kirk session, were to say to two persons presenting themselves for the Holy Communion, "I have reason "to know that one of you was a guilty party in divorce "proceedings, I cannot admit you," I think we had it that these parties would be entitled to appeal to the Presbytery?—Yes.

40,119. Do you think that on a ground of that kind the Presbytery would be likely to interfere with the discretion of the minister?—The general rule is not lightly to interfere with the discretion of the minister. Are you figuring the case of two people who have actually been married?

40,120. Yes, one of them having been a guilty party in divorce proceedings. I gather that happily in Scotland these difficulties have not largely occured, but I put it to you again, coming back to what I asked before, supposing there was any further extension of grounds, beyond what Scotland has accepted for 300 years, these difficulties might become rather acute?—I think they might. Perhaps you will allow me, with reference to the question you put about the Civil Courts, to explain my view. I had occasion to put it down elsewhere recently. I think any parishioner has a right to demand of the parish minister any religious service, such as baptism or marriage, that the law of the Church allows to that man, but if the minister in his discretion refuses, the man who is aggrieved has no civil remedy. It is a spiritual right, and the Church Courts are the spiritual courts of the land, and they only can give the remedy. It is a legal right the man has to the service, but it can be enforced only in the spiritual courts.

40,121. (*Lord Guthrie.*) Have you been a Prison Commissioner?—I am at present.

40,122. How long have you been so?—Five years.

40,123. In the course of your duties have you to visit the prisons and come in contact with prisoners making complaints and otherwise?—Yes.

40,124. Have you been a Lunacy Commissioner?—No, but I am director of an asylum.

40,125. How long have you been so?—Nearly six years.

40,126. Therefore you have had special experience both in connection with prisoners and lunatics?—Yes.

40,127. In connection with prisoners is it found that even depraved persons still preserve to a marvellous extent domestic affections?—Yes, I think so. There are exceptions.

40,128. I notice, for instance, recently in the Peterhead convict settlement in some of the cells they are allowing photographs of the relatives to be put up?—Yes.

40,129. I notice even in cases of very bad criminals they seem to like to have their children's and their wives' pictures in their cells?—Yes.

40,130. That is in accordance with your experience?—It is, and it is also in accordance with my experience that apart altogether from the lawful communication that is allowed, they find means in some subterranean way to keep in more frequent communication with their wives and families, and know what is going on.

40,131. Then, in reference to those questions of crime and insanity, whose interests do you think the State should have primarily in view, the spouses' or the children's?—I think the children are of more importance to the nation than the spouses. There is a stain on the spouse, and we hope there may be no stain on the children. A good life is better than a damaged one, but I do not think the primary consideration as regards the change of the law should be either the spouses or the children in the particular class of cases. It should be the bearing of this change upon the general conception of the law.

40,132. If you do take as the primary consideration in the case of crime the criminal, in the case of insanity the insane person, you will be opposed in their interests to including either crime or insanity as a ground for divorce?—Yes.

40,133. If you look, on the other hand, to the primary interest of the children, what would you say then, even for penal servitude for life, or a man certified to be incurably insane. Consider the interest of the children as a primary consideration, what do you say then?—Children who were living with the other party?

40,134. Yes?—I do not think you can lay down any general rule that would be applicable to such children as a body, because if these children were left to the beneficent care—it is becoming more and more beneficent—of the Poor Authorities, their lot would probably be much better, and they would be better cared for than if left to such a person as the wife of a convict,

who had perhaps been associated with him in his crime. In some cases perhaps the woman might marry a good husband. I do not think you could lay down a general rule as to what would be the bearing of such a change of the law on the children.

40,135. In Scotland from the earliest times in regard to divorce—in fact you indicated it—has the theory of punishment entered into the conception of the law?—You mean adultery was punishable?

40,136. Take adultery?—Punishable as a crime?

40,137. Yes. Is it not the fact it did not last long, but I think Lord Fraser shows at a very early period divorces were at the instance of the Crown and prosecutor?—Yes.

40,138. At all events has it been the view in Scotland, which would arise in a question of insanity, that divorce should be only allowed in a case of moral wrong?—Yes, certainly.

40,139. Do you think that feeling would militate strongly against divorce for insanity where there may be moral wrong but is not necessarily so?—Yes. I think that according to the Scotch conception there is a very great stigma in divorce, and many people would revolt against putting this stigma on a person suffering under the hand of God.

40,140. Is the view the stigma is such in the case of the innocent spouse and children that while there may be advantages for the children in getting a new head of the house, there is a great drawback in being the children of divorced persons?—There is no doubt about that. It is remarkable in the case of women who have divorced their husbands that really many people do not seem to draw much distinction between the innocent and the guilty, and regard her as having a stigma upon her.

40,141. That is not confined to her, but also casts a shadow on the children?—That is so.

40,142. Is it a fact in your experience, both in the case of husbands and wives who have ample ground for divorce and who would be benefited by it themselves enormously, that they have refrained from it for the sake of the children?—Yes, I have known such cases.

40,143. In regard to adultery you said you thought the expectation of marriage was a temptation to commit adultery, and you referred to your own experience in the way of correspondence that you had seen or read. Have you known of any correspondence written before the adultery had been committed from which it appeared that the adultery would not have been committed but for the expectation of marriage with the paramour, or has it rather been after the adultery has been committed, references to hopes that the husband will divorce the guilty person and enable her to re-marry the paramour?—I would not like to charge my memory definitely upon the matter. I think the correspondence that has come out in court would naturally be correspondence after the offence had begun, but I think that correspondence threw an important light on the attitude of parties before the offence was committed, and in a number of cases I have heard oral evidence of what went on before any actual offence, which showed clearly that the man vowed he would stick to the woman before she yielded.

40,144. I quite see the force of all that. Suppose that is true, and that that enactment of law preventing marriage between the paramours would create a definite barrier against adultery, must you not apply the same principle in the case of unmarried persons? It is the fact that many women yield on a promise of marriage, and would not have yielded but for the expectation of marriage. If your reasoning is sound in the one case would it not lead to a law declaring that wherever the event showed, by the date of the birth of the child, that there had been sexual intercourse before marriage, that marriage should be null and void?—It would lead to this, that if there were such a law there would be many cases of a fall averted: that is to say, if it were the law that parties who had been guilty of fornication should not be allowed to marry, I have no doubt there would be less fornication, in country districts especially: but that is one of the cases where logic perhaps fails a little. In the one case I think the evil that is suffered by keeping the offenders unmarried is slight compared with the benefit that would result from the prohibition of such marriages by way of restraining people from immorality. In the other case I think that the benefit is not sufficient to compensate for the very great evil and hardship, especially to children, that would result if you did not allow these marriages.

40,145. You have a very interesting suggestion that to allow desertion does not increase the cases in which the innocent spouse puts away, because it is the deserter who puts himself away?—Yes.

40,146. Is that really sound? Is not the essence in both cases that the guilty person has rendered continued cohabitation impossible—in one case morally, because no self-respecting man or woman can live with an adulterous spouse, and in the other case physically by taking himself off. In both cases is not the essential element that of malice, for instance, that a married woman has connection with a man other than her husband is not necessarily adultery. We all know cases of personation. That a man leaves his wife is not necessarily desertion: he may be in penal servitude for life. In both cases is there not some essential element, that of malice, and is there a difference between the two cases?—I do not know that there is where the adultery is deliberate and repeated. In both cases it may be said that it is the guilty person who departs from the marriage. Many people have great difficulty on account of the prohibition by our Lord of putting away, and it appeared to me that an answer to that might be found in the fact that it was the deserter who put away, and not the person who was deserted. On the other hand where one spouse divorces the other for a single act of misconduct it may fairly, I think, be said that he or she puts that spouse away.

40,147. It is extremely ingenious and subtle and delightful, but I am not sure there is much substance in it. However, we have your views. Will you tell me what you say to this, from your experience. You know the opinion was expressed by Lord Salvesen that in connection with divorce he had most satisfaction, if he had any, in giving judgment in favour of the pursuer or plaintiff in cases of desertion, the view being this, that where a man had abandoned his whole duties and taken himself off permanently and refused to contribute anything to support his wife and children, Lord Salvesen felt more satisfaction there, and sense of doing justice, than in cases of adultery, where the judge thinks, for the sake of the children, the man or woman should have forgiven the spouse. What do you say to that?—People have different opinions as to the ultimate propriety of the ground, but if you lay that aside, there is, no doubt in my view, very strongly, that divorce may be much too severe a penalty for the mere adultery, but it is not too severe a penalty for malicious desertion for four years.

40,148. What do you say to our Scotch practice of allowing persons to re-marry the moment the decree is pronounced, as against the English practice of the decree nisi?—I do not know that I have very specially considered it. It always appeared to me that there was somewhat of an indecent haste in some of our Scotch marriages the day after the divorce, and it would not be undesirable, especially in view of the right of the Lord Advocate to intervene, that there should be a certain period of suspense.

40,149. You have told us how the poor's agents do work for poor people and pay the money out of their own pockets. How do you account for that?—For them doing it?

40,150. Yes?—Partly, no doubt, on account of the *esprit de corps* which I think they share with the members of the Bar, partly because they are men who are accustomed generally to deal with people of more means, and who feel it presses hardly on humble people, and also because an agent of the poor has no option but to undertake the case submitted to him. It may be he could not be compelled to make out lays in a case, but if the case was to stop because he

refused to pay a few shillings it would be unpleasant for him.

40,151. Is it not that the experience they gain in being brought before the court is to their good?—No doubt.

40,152. Can you explain the evidence which Mr. Gillie, the chief criminal officer of Glasgow, gave, which Canon Muir was good enough to report to us? He says, "There are hundreds of poor persons tied to "the most profligate, wanton, and degraded spouses" —this is with reference to Glasgow—"simply because "they cannot, and have no prospect of ever being able to, "gather together the sum of 10*l.* to get their legal "remedy"? There must be some mistake there?—I think so. I think he knows that number of cases of people are united to wanton neglectful husbands and left destitude, but it is an entire mistake to assume those people desire divorce. A great many do not because of the stigma, many more do not because of the hope of getting something out of the husband, and others because they are Roman Catholics. If any of these people are people of respectability and came to a clergyman like Dr. M'Adam Muir for 5*l.* or 10*l.*, the money would be got somehow.

40,153. You said "respectability"; you do not mean a high standard of respectability?—No.

40,154. Non-criminal, in short?—Yes.

40,155. Do you think if it is the case that criminals cannot get divorce that there is much hardship that the law should take cognizance of?—I do not think so.

40,156. The poor's roll in Scotland is not only for divorce cases, but for all cases?—Yes.

40,157. So that you do not suggest any improvement of the Scotch system there?—No. It is a small matter, but I do not know if it has been mentioned in a consistorial case, although it is not a poor's case you can get off all fees in the Court of Session.

40,158. Do you suggest any improvement of our method for administering the law otherwise, particularly in regard to what was said by Dr. Cooper about there being no intimation to the guilty person, and about the whole procedure in desertion cases not being now gone through? These two points were mentioned to us?—As regards intimation to the guilty person, you mean the person who would be co-defender if he were sued?

40,159. Yes?—There was an Act of Sederunt requiring that lately.

40,160. The Court is always particularly careful to say the defender and co-defender are to be acquainted with what is to be done against them?—There was a difficulty suggested if you did not take any action against the co-defender he might be stigmatised with adultery, and the Court passed an Act of Sederunt requiring that he should get notice.

40,161. The abolition of the Rolls proceedings by the Act of 1861; Dr. Cooper seemed to regret that, and thought there was a substantial loss?—Theoretically so, but they died a natural death, and I do not think they could be resuscitated.

40,162. There is no opinion proposing to resuscitate it?—No.

40,163. What do you say in regard to publication?—I am against publishing details, but strongly in favour of publicity.

40,164. What do you think about the proposal to shut the Court in all divorce cases as is done in the discretion of the Court now in a certain very extreme class of case, to hear all divorce cases *in camera*?—I should be against that if it meant the exclusion of the Press, to the effect that the cause of divorce with the offending party's name should not appear in the paper the next day.

40,165. You think the Press should be present, but subject to a law as to no details?—Even that with a certain qualification, that certain classes of details ought to be excluded; there ought to be sufficient so that it would not be a mere register, but that the general public would look at it and read it and the stigma would remain.

40,166. Do you think it important that in this island the laws of the two countries with regard to divorce should be similar?—I do not think it is practicable to make them identical in view of tradition in all details. I think it would be expedient, if possible, that the substantive grounds should be the same in both countries.

40,167. At the present moment it is the fact, a practical difficulty does arise through English people trying to make themselves out Scotch, and get the benefit of the law of desertion?—That is so.

40,168. In your view the Scotch practice of allowing divorce only for adultery and desertion, while it may not remove the whole hardship, practically meets the necessities of life?—That is my view.

40,169. (*Sir Lewis Dibdin.*) When you say that similar laws should be made in England and Scotland, that means if the English laws were made like the Scotch laws?—I did not put it that way. I said it would be desirable that they should be the same, but in a theoretical sense: I do not mean for that reason to alter the law of England or the law of Scotland. On the whole it would be desirable.

40,170. You realise there would be great difficulty in making the two laws identical?—Great difficulty.

40,171. I understood you to say that there was an obligation on the part of the parochial clergy in Scotland to marry their own parishioners?—I think so.

40,172. Does that obligation arise from common law or from statute? I am asking for information?—It arises not from any express statutory provision, but from the settlement of the Church and State under a territorial ministry, whereby a minister is provided for each separate parish, who is bound to discharge all the religious functions of the parish. That was done at a time when there was one Church in Scotland, and the inference deduced by the law is that he is under an obligation to supply the spiritual wants of all who desire to come to him.

40,173. That is very like the obligation of English incumbents?—Yes.

40,174. It rests on something I may call a common ecclesiastical law rather than any statutory law?—Yes.

40,175. Did I hear you rightly that you have never known a case of that law being enforced in the case of a clergyman who has refused to marry parishioners for reasons which he thought adequate? You have never known a case of his having been compelled to marry them, notwithstanding his refusal?—On the ground that they were divorced?

40,176. On any ground. I am not for the moment on divorce at all, but on parochial clergymen in Scotland refusing to marry parishioners for reasons which they considered satisfactory. As a matter of fact I thought you said you knew of no case where that legal obligation had been enforced on him?—I think there have been one or two cases, not in recent years, where the General Assembly has found that the parties ought to have been married. I do not know that they ordered the minister to do it, but they found that they, having manifested penitence, should be married.

40,177. That obligation would be enforced, if at all, in your spiritual courts, not in the civil courts?—That is so: the civil courts could not touch it.

40,178. In England there is no case that I am aware of in which the obligation has been practically enforced, and it is at least doubtful whether there is any civil obligation on a clergyman to marry at all. There is no doubt an ecclesiastical obligation enforceable in the Church courts, but it is open to doubt whether there is any civil obligation. With regard to refusal of communion, what is the test? Again I am not specifically on divorce, but on disability in the Scotch Church. If I may illustrate it, in our Church a man must be an open and notorious evil-liver, whatever that may mean. What is the test in Scotland?—A young person about 17 or 18, against whose character there is nothing, comes forward, and that person after a period of private training by the clergyman is admitted as a communicant, and after that as a member of the Church. If that person has an illegitimate child or is convicted of theft, that person is debarred from communion.

40,179. On what ground?—On the ground of unfitness, owing to the offence. It is practically the same as the English notorious evil-liver.

40,180. You have no document you can refer to? It does not rest upon written law, but upon again a sort of common law?—No written law enumerating the class of offence; but certainly there are written rules of the Church which regulate the procedure in these cases. They are called cases of discipline, and the person may be restored. In the old days they did public penance. That is not required. They come before the Session, and say they are sorry and they are re-admitted.

40,181. It depends more upon case law than anything else?—Yes.

40,182. Precedent?—Yes.

40,183. I wanted to ask you about your evidence with regard to poor people. I gather since 1905 you have had a system of separation orders just as we have in England?—Yes.

40,184. Made by the sheriffs?—Yes. Since 1907 the sheriff can grant separation *a mensa et thoro* which was formerly reserved to the Supreme Court.

40,185. Is recourse had to that system largely, and are many orders made?—To a considerable extent in Glasgow, but I do not think to a very large extent elsewhere.

40,186. You were asked your view as to those orders continuing permanently, whether it would not be wise that they should be developed into divorce. Your view is that they should not?—No, unless there are grounds for divorce, the present grounds.

40,187. Take a case where a separation order has been made on the ground of desertion under your law as it is now, that will mature into a case of divorce at the end of four years. There will then have been malicious desertion for four years?—You could not get separation for desertion unless the desertion had lasted for four years.

40,188. It would mature into it. The fact that they had a separation order would not make it impossible for them afterwards to use desertion as a ground of divorce?—They could not get the separation order until the desertion had lasted four years, the same as divorce. It is doubtful whether even then mere desertion is a ground of separation.

40,189. It is not as in England; a woman deserted by her husband cannot get a separation order at once, or within a very short period ——

40,190. (*Chairman.*) Are you sure that is so?—She can get maintenance, but not separation, unless there is cruelty or adultery.

40,191. (*Sir Lewis Dibdin.*) I am in Mr. Johnston's hands. He knows; I do not. You think not? However, that may be, there is no reason under your law, where desertion is already a ground of divorce, why a separation order should not mature, as it were, into a divorce by the desertion becoming the ground of a divorce suit under your existing law?—Under the existing law suppose everyone could get a separation for desertion, I do not think it is an appropriate remedy for desertion; a woman could not afterwards get a divorce because the husband ceases to be in desertion—he is forbidden to come near her.

40,192. That is like our English law. Lord Guthrie read an extract from Dr. Muir's proof, in which he quotes Mr. Gillie's evidence to the effect that in the slums of Glasgow "separation and desertion exist to "an appalling extent. In one half-year 895 deserted "wives applied for help. The same authority states "that there is little or no sign of any decrease in the "number of cases." I understood you to say in answer to Lord Guthrie that you do not think that many of those are people who would apply, but that they, if they liked, could get help for a divorce suit on the poor's roll?—Yes.

40,193. But they do not?—Yes.

40,194. Does that not look rather as if the existence of a great number of these poor people who have been deserted by their husbands would not be ameliorated by an alteration of the law of divorce as to desertion in England, because in Scotland, where you have already got it that they could get divorce for desertion, they do not seek it?—That is so, assuming the sentiment would be the same in England as in Scotland.

40,195. Assuming the conditions are the same, it looks as if the argument greatly pressed before us that the existence of these people deserted by their husbands is a ground for widening our law, is not a sound argument, because in Scotland you have the same phenomenon of a great crowd of people deserted by their spouses, the law allowing divorce for desertion, and yet divorce is not applied for under a system by which it could be applied for if they liked?—The question is one of degree. If you had divorce for desertion, it certainly would not sweep away the body of people who are deserted and seek no remedy. There would still be numbers of such.

40,196. It shows that the existence of a great mass of suffering from desertion is not necessarily due to the condition of the law of divorce?—That is so.

40,197. I listened with very great attention to your evidence as to indissolubility, at any rate the argument in favour of not allowing the guilty spouse to marry his paramour. I was not sure whether you went further and suggested that he or she should not be allowed to marry at all, that the guilty partner should not be allowed to marry at all?—I did not suggest that.

40,198. That is going a great deal further?—Yes.

40,199. What strikes one is that if you put a concrete case, here is a man who, first of all, has been unfaithful to his wife and then betrayed another woman and then goes and marries a third. Does not that sound rather unjust?—It is the lookout of the third, I think.

40,200. You would think the woman he owed some obligation to was the paramour?—It seems to me somewhat illogical to allow the innocent spouse to marry and not allow the guilty one to, because to allow the innocent one to marry shows you declare the marriage at an end. It is making a ground of personal penalty that a man should not marry which I have a difficulty about.

40,201. It is not going behind the theory that divorce in Scotland is regarded not as a punitive thing but as annulling the contract which has been made? If it is annulled, it is annulled for both parties?—That is my view.

40,202. I am putting the difficulty in my mind as to the adoption of the view, for which there is much to be said, of not allowing the guilty party to re-marry, at any rate the paramour?—Yes, I appreciate the view of those who would not allow the guilty or the innocent to marry, but I have more difficulty about this, to allow the innocent and not the guilty.

40,203. On the other hand, there is not much analogy between the cases Lord Guthrie put to you. His suggestion was that, to be logical, you must make the law of disability apply lto ante-nuptial immorality. But if you look at it in a practical way I suggest to you in the case you are putting there has been a judicial finding that the adultery has taken place with the particular person who is not to be allowed to marry the man?—Yes.

40,204. But in the other case there is no finding of the immorality at all. The man and the woman cohabit together, and a child is begotten, and then they afterwards marry, but the law does not come in anywhere. I do not see how you could apply such a

NOTE.—The witness supplied the following note in regard to the law of Scotland as to separation orders:—According to Erskine (1. VI. 9) simple desertion is a ground for judicial separation. Fraser (Husband and Wife, 896) combats this and adopts the reasoning of Sir William Scott (See *Evans*, 1 *Hag*, C.R., 120). There is no reported case and no case is known to have occurred in modern practice. Accordingly the question whether desertion must have endured for four years in order to warrant a judicial separation is not a practical one, and it is thought that if the question were now raised judicially, the court, in the absence of all trace of the opinion of Erskine having been acted upon, would hold that desertion is not a ground of judicial separation. A deserted wife may obtaiu a protection order for her property (24 & 25 Vict. c. 86, as amended by 37 & 38 Vict. c. 31), though since the Married Women's Property Acts of 1877 and 1881 this is of little importance. A deserted wife may also obtain an order for aliment. Neither a protection order nor an award of aliment prevents the desertion maturing as a ground of divorce, but a judicial separation on whatever grounds it is granted has this effect.

case to such a law. The two things seem to be different?—It could only apply where there had been an action of paternity. The thing is not worth arguing about, because public opinion would not stand it.

(*Sir Lewis Dibdin.*) If I may respectfully say so, I agree.

40,205. (*Mr. Brierley.*) About this poor's roll procedure in Scotland, we have had evidence, not only the statement of Mr. Gillie, which Dr. Muir referred to, but also from witnesses who work amongst the poor in Scotland, who have told us that this poor's roll procedure is really in point of expense out of the reach of poor people. One witness from Dundee said an undefended divorce case cost the petitioner 13*l.* odd. I should like to know the procedure when a petitioner lives in some provincial town such as Dundee. What does she have to do?—She ought to go to the person who is acting for the poor there, and get him to write to the poor's agent in Edinburgh.

40,206. Is the procedure afterwards carried on by correspondence between the Edinburgh agent and the party, or does she, assuming it to be the wife, have to go to Edinburgh to interview him?—That is a question of circumstances. In some cases she would come at once; in other cases the country agent would do it.

40,207. These witnesses seemed to think that the expense is very much more than you have stated to us in practice?—Of course, I go on the information I get. It may be more in some cases, but I do not think it is prohibitive.

40,208. That is what she would have to do; she would have to see the local agent, and he would communicate in writing or possibly personally with the Edinburgh agent, and the business would be transacted between the Edinburgh agent and the party?—Yes.

40,209. (*Chairman.*) Would you tell me whether the Scottish view, which has adopted adultery and desertion as far back as the 16th century, is, generally speaking, founded on Scriptural grounds?—I do not think that, as regards desertion, it originated on Scriptural grounds, but the attempt has been made to justify it on such grounds. I am not a theologian, and I do not say with what success they justify it on Scriptural grounds, but those who advocate it would endeavour to show that it was within the sanction of Scripture.

40,210. If it is justifiable, it may be justifiable on such a ground, according to some?—Yes.

40,211. Is the other ground on which it is justifiable that it puts an end to the married life and it is practically no use keeping it up?—Yes.

40,212. If that is the basis, I do not see why that necesarily excludes some other cause which would do the same on any principle?—Yes, I follow.

40,213. Do you exclude from the possibility of consideration a case—I will give you one in a moment—which would have a similar effect to that of desertion as on principle justifying a dissolution?—Theoretically no, but I should like to know the particular case.

40,214. I would like to put this case. It is accepted, and you accept it, that in Scotland desertion for four years maliciously would be a ground?—Yes.

40,215. Suppose that there is no desertion by the offender, but there is cruel treatment for years to such an extent that life is no longer safe for the person who is injured, and that person says, "I cannot live with you any longer, I am going," that person could not make a complaint on the ground of desertion, but by the conduct of the other the marriage tie was just as much broken as if the offending party had gone to America?—If you suppose that after this cruelty they separate and remain separate for four years, then I think that might possibly be brought under the principle of desertion on the ground that the person whose cruelty caused it was the deserter. If you contemplate that the divorce is to be raised at once when the parties separate on account of the cruelty, or perhaps while they are still living together, I say there may be theoretical justification for that on the grounds which I suggested as justifying divorce for desertion, but that the practical mischief of allowing anything so elastic and discretionary, as regards the person who tries the case, as cruelty or drunkenness, outweighs the possible benefit of giving redress in such a case.

40,216. Let me put a case—I have seen this repeatedly—where, say for 10 years life has been made a perfect hell for the petitioner, and at the end she says, "I cannot stand it any longer, I am off"; I do not see any principle to differentiate that from a case of desertion, unless you go to Scriptural grounds, which is another matter?—I do not profess to justify it as a logical distinction, but my view is that it is a practical distinction. I would rather let that be unremedied than loosen the law.

40,217. Supposing the number of those hard cases runs into thousands or hundreds, what is the advantage to the State or the children from the parties remaining in the marriage tie?—There is no advantage in those individual cases, but what I am doubtful of is whether it might not loosen the marriage tie in 10,000 other cases, and also if you once let in these grounds the questions of degree become more fine.

40,218. I was putting a case where it is absolutely unsafe to life. You do not differentiate that in principle from the separation?—No.

40,219. You said that insanity had not been discussed until lately. Did you mean by that since it has been mentioned it has been discussed in Scotland as a ground possibly of divorce?—Yes.

40,220. Do you know at all to what extent that has taken place?—It has not been publicly discussed on the platform or even in the Press, but wherever men have met together, reading the accountof this Commission, such questions have turned up.

40,221. I wanted to ask you because you have, if I may say so, a most logical mind. Do you see any difference in principle between treating insanity as a ground of dissolution, if it in fact brings an end to the marriage tie, and a case of desertion? In both cases the marriage tie is broken as regards a practical matter?—Yes.

40,222. I want to know, because it is a very interesting point, what difference there is in principle between the two?—There is this difference: in the case of insanity it is not the act of either party. In the case of desertion it is, and it may be that there is something in the view suggested by Lord Guthrie that where it is a visitation by the hand of Providence, although in that particular case it is equivalent to death, still it would alter our conception of the marriage tie if you allowed divorce in these circumstances. I do not commit myself against divorce.

40,223. You said you were not against it?—If you can make it out as equivalent to intellectual death.

40,224. At the moment I am putting to you the difficulty I feel in making a distinction in principle. Have you considered that in the application of it to insanity you have to deal with a vast mass of people, according to the statistics we have had, and many cases I gather are young people who find their spouse perfectly mad shortly after marriage, and then have to live the rest of their life alone with consequences which are disastrous?—Yes.

40,225. Do you think that those considerations ought to be excluded altogether?—No. I think that raises quite a fair case, always assuming that you can ascertain the insanity to be permanent.

40,226. Assume that. You would be prepared to say, assuming the insanity to be established after a certain number of years and pronounced incurable, at any rate it is a case for consideration, the case of the young and perfectly innocent spouse who has no possibility of a united life afterwards?—Yes.

(*Chairman.*) I thank you very much on behalf of the Commissioners for your evidence: it is very valuable evidence indeed.

Mr. Frederic Harrison called and examined.

40,226*a*. (*Chairman.*) Your name is so well known that I do not know whether I need ask you to describe yourself, but perhaps you will indicate how you would like it put down on the notes?—I was president of the Positivist Committee for 25 years, from the year 1880, but I have now for some years ceased to have any official position with that society. I have written several papers upon the question of marriage law, and also I have published a marriage service which I was asked to conduct, and have indeed for the last 20 years from time to time done so.

I should like to put a few extracts from my articles before the Commission. The following are passages from my article on "Civil and Religious Marriage" which appeared in the September 1894 number of "The Positivist Review":—"The question of lay versus "ecclesiastical marriage has become a burning problem "in some European countries, and gives rise in our "own country to several irritating anomalies. It is "ever at hand to bring about a conflict between the "law of the State and the most cherished institutions "of religion." "Wedlock never will be, never can be "confined within the limits of any Church, sect, or "opinion. Men and women, at any rate in the eye of "the State, ought to be free to marry into or out of "any church, any communion, any school of thought. "Here is a dilemma fertile of strife, in which the "partisans, first of civil, then of religious, liberty, are "equally hot, equally wrong, and equally right." "To "Positivists, marriage is at the same time an act in "law—a political function—and also a sacrament or "religious consecration. Both are indispensable—"perfectly distinct—alike honourable; and both should "be conducted with equal dignity and publicity." "To one plain and simple solution we must come. "Whatever else is done, the State must insist on its "own independent, uniform, lay act in the law: distinct "from any religious rite, and not affected by any "religious rite, antecedent, subsequent, or simultaneous. The State must have its own official, its "own distinct ceremony, its own national register, and "its own absolute record in its own keeping. With "all this duly done and witnessed—valid, unimpeachable marriage is concluded in the eye of the State "and in judgment of law. Without this—no marriage, "no legitimacy, no legal consequences from any pretended ceremony of marriage. No citizen need in "the eye of the law do more; but no citizen can be "married with less." "In the meantime let it be "understood that to Positivists the religious marriage "is a matter of religious duty. To Positivists marriage "is a sacrament—a sacrament of profound importance "and inestimable value. By sacrament they mean the "solemn and public pledge to fulfil a social, personal, "and religious duty. In the sanctity, indissolubility, "sacramental efficacy of marriage, Positivists can "yield to no Churchman, Protestant or Catholic. To "this aspect of the great institution I hope to return. "My immediate purpose was only to maintain as the "rational solution of a social dilemma, civil marriage "first—independent, obligatory, and uniform." Then in the October 1894 issue, in another article on the same subject, there is this passage: "There is every-"where in democratic societies a movement to render "divorce common, and re-marriage a matter of course. "And the note of modern free-thought is the assimila-"tion of all functions of man and woman. Both "tendencies must be fatal to true marriage. The "first saps the very idea of permanent union: the "second poisons the moral purpose of marriage itself. "The task of Positivism is to restore the institution "of marriage which even Catholic Christianity does "not adequately defend. Its essential conditions are "the exclusive and indissoluble bond of marriage, "and the setting free the wife to be the moral head "of the home. Marriage is the eternal devotion of "one man to one woman—a bond which no one can "put asunder and which normally should survive death "itself. To reject this last condition is to deny the "continuance of a spiritual life for a day beyond the "limits of corporal life on earth. Any view of the "prolongation of a moral and spiritual being beyond "death must necessarily involve the spiritual pro-"longation of the marriage union."

The following are passages from my article on "The Marriage Law," which appeared in the June 1903 number of "The Positivist Review":—"The questions "about civil and religious marriage are again in an "acute stage, and have received a new phase by the "very important decision of the new Bishop of London, "that he will visit with his displeasure any of his "clergy who should celebrate the re-marriage of a "person against whom a decree of divorce has been "pronounced. By this act it would seem that the "Church takes up a ground opposed to that of the "law, and also to that of average current opinion. "The marriage law and the law courts put no difficulty "in the way of the re-marriage of any divorced per-"son; and public opinion certainly favours it, espe-"cially where it promises a new life of happiness, or "an act of reparation. It may surprise some readers "to be told that the Positivist theory of marriage "offers the only reasonable and final solution of this "problem. And it may surprise them still more to "be told that the Positivist in this matter sides with "the Churchman and the Catholic against any religious "consecration of such a marriage." "To Positivists, "marriage, in its religious side, is a sacrament—"meaning thereby a public pledge by the wedded pair "that they will love, serve, and honour each other, "whereon the consecration of the Church, so far "representing humanity, is publicly bestowed on "them to stimulate their good intentions. This "consecration, or sacrament, is not conferred as of "course, or as a mere legal formula. Almost every "church, Catholic or Protestant, consents to marry "persons of notorious evil lives, or even hardened "criminals. The motive, no doubt, is the idea that "marriage obviates sin, and the Church, by exercising "its function of marrying, asserts its own ascendancy "in private and public life. The Positivist Church, "disclaiming any such idle pretensions, and fully "recognising the primary function of the State to "order the conditions of legal marriage, is free to "judge whether a religious consecration should pro-"perly be added to the legal rite. There is in this no "hardship on the parties, and no abandonment to "sin if such consecration is refused, for the legal rite "is open to all and is sufficient for every secular "interest. The Christian churches, however, as a "matter of course, perform the marriage ceremony "for adulterers and rogues indiscriminately, and a "parson of the Establishment can hardly exercise any "discretion in the matter. The Positivist Church, on "the other hand, is perfectly free to exercise an "efficient moral discipline over those whose con-"sciences it binds." "The bitter controversies we "see to-day can only be closed in one way—the recog-"nition of the double character of marriage by a "double and distinct rite, legal and religious. Posi-"tivists heartily support those who claim the freedom "of a simple legal rite as adequate and conclusive. "They as heartily support the claim of the churches "to enforce their own freedom to give or withhold "religious consecration upon any such marriage. It "is a striking example of the power of the great "Positivist principle—the independence and separation "of temporal and spiritual authority."

40,227. The marriage service you have referred to you have yourself performed?—Yes. That is published in my book on "The Creed of a Layman."

40,228. You have performed it as president of the society?—Yes.

40,229. How has that been legalised—by the presence of the registrar?—No, after the registrar's certificate. In every case I have insisted upon having the registrar's certificate put in my hands either at the time or before.

40,230. The service before the registrar has taken place first, and the Positive church service afterwards?—Yes. I may say when I was invited by yourself if I had any evidence to give to this Commission, I said

the only really practical point dealing with legislation upon which I could offer any remarks was that upon which these articles principally turn, which was the establishment of a universal compulsory civil marriage in all cases, thus relieving various churches from difficulties which have arisen. With regard to the general question of divorce I have nothing to offer to the Commission. I am simply the man in the street. I have never practised in either criminal courts or matrimonial courts.

40,231. You would like this paper you sent in to be referred to?—Yes.

40,232. Perhaps you would read it?—I will take the first point, which is the only point upon which I can offer any suggestions for practical changes in the law. "The controversies which have arisen between the law of the land and the practice of the churches would be abated if the following general principles could be accepted by both: (1) Marriage has a double character, legal and religious; (2) there should be a double ceremony, each quite distinct; (3) the legal ceremony should be general, compulsory, and uniform; (4) the religious ceremony should conform to the rules of the communion to which the parties belong, or to the individual conscience of the marrying pair; (5) the religious ceremony should be entirely at the option of the parties; (6) it should have no legal effect or conditions; (7) every communion and every minister should be equally free to confer or to withhold such ceremony. The struggle has arisen from the practice of combining the legal and religious side of marriage in a single rite. The State still in England hands over one of its fundamental duties to a number of sects. The Church still strives to maintain an obsolete monopoly, and to enforce the substitution of a theological for a political sanction, and by this both State and Church are dishonoured in the struggle. Law, order, and conscience are equally offended." No. 1 is the point I wish to submit to this Commission: "The State has the highest interest in maintaining a uniform, public, simple form of lawful marriage. Property, family rights, personal duties, and liabilities all hang together on this institution. The State should not abdicate its duty of recording this legal act and suffer various religious bodies to keep these all-important registers. If public registers of birth and of death are compulsory, uniform, and official, why should not the State keep its own register of marriage and require its own conditions of the legal ceremony?" That is my first point, and I may say, is the only point upon which I think I can offer anything in the shape of suggestions for practical change in the law, and I am prepared now to answer any questions.

40,233. I think it would be simpler if you finished reading your proof?—Then I come to the second point: "To a large majority of Englishmen, and to almost all English women, marriage seems to demand a religious sanction of some kind over and above the legal sanction by the State. But since there is now a great variety of religious communities, and also wide differences of religious opinion, the religious sanction must be left purely voluntary at the discretion of the parties. To allow the religious rite to constitute, or in any way to affect or modify the legal rite, is to breed confusion and strife. The popular dislike of civil marriage in England is caused by the State having suffered the churches to retain their mediæval monopoly of the marriage rite, and by the scurvy way in which the civil rite was treated when the legislature was compelled to admit the protests of dissenting laymen. Civil marriage in other countries is made a decent, if not an honourable function, and it ought to be regarded as at least as formal and solemn an act as the investiture of a public functionary or the swearing in of public servants in ordinary judicial practice. In the ever-increasing diversity of religious opinions and congregations, and the repudiation by many persons of any religion, a plain and simple solution must be sought. Men and women to-day must be free to marry lawfully, whether they are within or without any Church, sect, or school of thought. The State must insist on its own independent, uniform, lay act in the law, distinct from any religious rite, and not affected by any religious rite, antecedent, subsequent or simultaneous. The State must have its own official, its own distinct ceremony, its own national register for all marriages alike. And it is a scandal that this fundamental institution of civil society should be treated as if it were a mere form, like taking out a licence to keep a dog or to drive a motor" —I mean by just going off to the registrar.

40,234. I think that finishes the subject of the necessary civil formal and respectful marriage?—Yes, as in other countries of Europe.

40,235. I think we might turn to the other aspect, because that is of importance?—I now proceed to that which I feel is an ideal and which is only practicable in a very altered state of things and in a very great religious reformation:—"To turn to the other aspect of marriage—the religious sanction, for what has been urged above was not based on any secularist point of view, but on the actual practice of a religious community. The body with which I have been associated for forty years, and of which I was the president until recent years, has always regarded marriage as a religious institution to be solemnised with a religious rite. To them marriage is a sacrament—the highest and most sacred of all sacraments, meaning (by that fine old Roman phrase) a public pledge to fulfil a personal, social, religious duty, to be faithful each to each, to form an honourable family in the nation. Marriage, we say, from the view of human religion is the devotion of one man to one woman by a bond which, if life in a spiritual sense is to survive after death should normally resist the dissolution of the body. In the religion of humanity, marriage is the exclusive and definitive consecration of the spouses to one another, and to the children, or even the childless family which by their union they form. That is to say, from the strictly religious point of view, that is to us Positivists, there is normally and regularly neither divorce nor re-marriage, even though one spouse be left physically—but not spiritually—widowed. On all this I need not enlarge to this Commission. It rests upon a vast scheme of ethical, social, philosophical, and religious reorganisation of life and thought. I do not come here to explain or to justify all that may be read in the voluminous works of Auguste Comte. I have often expressed my own opinion that many things therein are an impracticable Utopia, and some things even anti-social and certainly fantastic. I am speaking now of the actual practice of the community of which I was long the president, for whom I prepared and published a ritual of the sacrament of marriage—to be used after legal registration—and I have frequently officiated in conferring that ceremony in public. That ceremony, whilst insisting on the truly sacramental character of religious marriage, and denouncing the growing recourse to divorce, and to the really polygamic practice of successive re-marriages, carefully disclaimed any interference with the law of the land, any censure on those who choose to re-marry in the terms of the existing law, and emphatically refrained from asking for any pledge or promise to abstain from a second marriage. To the religion of humanity, second marriages may have full legal and moral validity —but cannot ask for any religious consecration. That being the practice of the religious community whose principles I have been asked to state, I need not attempt to put before the Commission my personal views as to the law of divorce. I should find it very difficult to distinguish my own advice to politicians from my religious sentiment and ideals. Comte himself fully recognised the difference between normal rules of society and special exceptions; and he formally laid it down that a conviction of penal servitude for life was a legitimate ground for annulling marriage. If I were a legislator, I might possibly accept some other exceptions arising from cruel cases of suffering. But human life and society have cruel cases of suffering on every side—cruel parents, cruel children, treacherous friends, fraudulent agents, and inhuman masters. And in our eagerness to save individuals, let us not ruin institutions by degrading the moral law which holds them together. To extend facilities for divorce to some is to vulgarise the sanctity of marriage for all.

Our body, here and abroad, has never given any countenance to the cry of modern democracy to extend and popularise divorce. On the contrary, it has always held divorce to be one of the most sinister and most dangerous symptoms of social dissolution, of moral anæmia, and of religious chaos. It seems to us the thin end of the wedge to establish *free love.*"

40,236. On the paragraph "If I were a legislator I "might possibly accept some other exceptions arising "from cruel cases of suffering," in such cases as have been put very prominently before us in an earlier part of the evidence, where one spouse deserts another, leaving the deserted spouse in this country, and proceeds to America or the colonies, and by means of the laws there contracts a second marriage and brings up a family, what would be your view as to what a legislator should do with regard to the position of the person left behind in this country?—I am not prepared to make any general alteration of the law which would cover such cases, because, as I have said, to alter the law for all is to put temptation into the way of people to avail themselves of that licence.

40,237. Might I suggest the difficulty I feel, that that sort of fact exists now with the present state of the law which forbids the dissolution of the marriage—it exists, and there it is. We have had these cases put before us in large numbers, and the difficulty one feels, looking at it from a legislative point of view, is what is to be done with the persons left behind, and their children? Are they to be left to contract irregular alliances, as we are told they do, or placed in a position in which they can establish themselves in a proper way?—All I can say is that I am not prepared to extend the law of divorce. I am prepared to deal with gross cases of conjugal wrong, both criminally and by means of every possible social and religious stigma, and if that was done we should not have such frequent cases.

40,238. Might I suggest that in those cases the criminal law would not be operative? It could not operate outside the country, and the wrongdoer is beyond the reach of any social or other pressure. That is one of the strongest cases put before us?—I have read the cases which have been printed and put very carefully, and I have considered that, but, considering all that, I am not prepared to recommend any extension of the law of divorce.

40,239. The other point is, according to the views of the Positivist community, marriage once contracted is not only temporal, but is continuous, and they would not permit a second marriage, I understand?—That is dependent upon the whole of the Positivist view of subjective immortality; that is to say, the real moral and spiritual life of persons survives death. If that is ever to become a reality, that feeling will, we hold, prevent the re-marriage even after death, although, as I told you, in the marriage service which I have very frequently performed, which is now published, and a copy of which I will put in, we have always very carefully abstained from asking any pledge of that kind. We simply say that if you believe that the moral and spiritual life, although not the physical life of men and women, does survive the dissolution of the body, your marriage in a spiritual sense should be considered to live, and so far as I know I have not known of any case of re-marriage after death amongst the Positivist body since the whole community has been organised. I do not think there is any case.

40,240. That presents an idea which is beyond that which prevails in the Christian churches?—Certainly, very much, because that is what we have often insisted upon, which I have insisted upon in many printed works. It all rests upon the idea that there is a reality, a spiritual immortality after death, but this Commission is hardly the place in which I could enlarge upon such a subject.

40,241. I rather gather you would like the marriage service to appear with your evidence?—Yes, the marriage service is contained in my book called "The Creed of a Layman." The whole of that rests upon an entire re-organisation of our moral, social, and religious life, and I quite feel that it is merely at present an ideal. The Commission has listened to the views which have been put forward by moral reformers 2,000 years ago, and we are simply suggesting ideals which we believe may become practical centuries hence, but that really has no bearing upon immediate legislation.

40,242. I have looked through the papers; they are clearly marked. Shall we print the whole of this service?—Just as you think fit. It contains the whole points of the view of our body.

40,243. If you would like it to be put in, we will by all means?—Yes.

FORM OF MARRIAGE SERVICE.

In the Name of Humanity.

Order and Progress.—Live for Others.—Live openly.

The principle - - -	Love.
The foundation - -	Order.
The end - - - -	Progress.

Family.—Country.—Humanity.

We acknowledge that the moving spirit of our lives should be regard for others; for those, first, of our own household and family, for those, next, of our own country, and, lastly, for the whole race of man.

May we all learn to live for others, for only thus do we truly live. To live for others, not for self, is the real happiness of each of us, as it is our plain and simple duty. We acknowledge in humanity, in the past, the present, the future of man, the source of the best things that we possess; our protector and comforter, when evil things threaten us; the end and object of our work and hope.

We are met together to welcome as husband and wife this man and this woman; who, in the face of this congregation, and in ampler form, desire to renew the vows of wedlock which to-day they have made before the representative of the law. It has ever been the custom, both in ancient and in Christian times, for bridegroom and bride to assemble their friends, and solemnly to plight their troth in public. And in all civilized societies the primæval rite of marriage has been held to be an act both civil and religious—regulated, on the one side by law and the authority of the magistrate, and consecrated, on the other side, by the formal sanction of some spiritual communion. That twofold aspect of marriage we most unfeignedly respect. It is well that all who marry should accept such civil rite as is ordained by the law of the land; and also that they who think fit to be content therewith, should be free to act as their conscience directs. But marriage is a religious, no less than a civil act. It concerns society, as well as the two persons whom it unites, and the new family which it forms. Whilst it is the most decisive step that we can take in our personal life, it is the foundation of a new life in the home; and it is the means whereby man and woman take new parts in the social life of the community. For these reasons—reasons which have been approved in ancient and modern times—it becomes to us the foremost of those celebrations which we speak of as sacraments. The sacramentum of the old Roman citizen was the formal pledge that he took in presence of his comrades to be true to his country and his chief. And for ages the sacrament of marriage has been the formal pledge taken by the wedded pair, in presence of the congregation wherein they meet for worship, that they will love, serve, and honour each other; and also the Providence which they acknowledge as surrounding their lives. They who enter into the honourable estate of matrimony are taking upon themselves not only the solemn duty to be true husband and true wife to each other; but they take upon themselves new duties (no less solemn and even ampler) to the community in which they dwell, and to the great family of mankind. In the love, honour, and service which they promise to each other, they are learning to render to humanity itself love, honour, and service in a larger field. The presence and the sympathy of the congregation in which they meet, consecrates the obligation they take in this momentous epoch of their lives; and, investing their union with public acceptance, it dedicates it anew to the eternal human family, even as they dedicate to family affection and mutual help the new home they

are about to form. Hear what the Master has said about the purpose and meaning of marriage:— "Marriage is the simplest and most perfect mode of "man's social life; the only society we can ever form, "where entire identity of interests obtains. It is a "union wherein each is necessary to the moral develop- "ment of the other; the woman surpassing the man "in tenderness, even as the man excels the woman in "strength." "Marriage joins together two beings to "the mutual perfecting and service of each other, by a "bond which no shadow of rivalry can darken. Its "essential purpose is to bring to completeness the "education of the heart. Attachment, in which it "begins, leads on to the spirit of reverence, and that "to the practice of goodness; each spouse is in turn "protector and protected; the one being richer in "affection, as the other in force." Again, he says: "Between two beings, even if united by strong mutual "affection, no harmony can exist unless one commands "and the other obeys. To work out her supremacy in the "moral sphere, the woman accepts the just rule of the "man in the practical." "When two beings so complex "and yet so different as man and woman are united "together, the whole of life is hardly long enough for "them to know each other fully and to love each other "perfectly." "The marriage bond is the only one in "which none can share, and which none can put "asunder; and so it outlasts even death itself. For "time, which tends to weaken all other domestic ties "does but cement more closely this one—the only "human union of which we can say: 'These two shall "be one.'" Lastly, he has said: "The moral value of "the domestic life is this: there is no other means "whereby man's personal life can be naturally enlarged "into a social life. It is the first stage in our pro- "gress to the end of all moral education—a spirit "of active goodness towards all mankind." In the spirit of these words, and in this human and social understanding of the solemn institution of marriage, these two persons present come now to acknowledge their union, as already complete in law; and in the presence of this body they will profess their willing- ness so to live. Let them, therefore, standing in the face of this congregation, repeat the words which custom and antiquity have sanctioned to our ears; words which the Church adopted from the ancients; which, in various forms and from time immemorial have been used as the symbols of marriage.

(Question: To the husband.)

Wilt thou have this woman to thy wedded wife?

Wilt thou love her, comfort her, hearken to her, honour, and keep her in sickness and in health; and, forsaking all other, keep thee only unto her, so long as ye both shall live?

(The husband answers.)

I will.

(Question: To the wife.)

Wilt thou have this man to thy wedded husband?

Wilt thou counsel and obey him, serve, love, honour, and keep him in sickness and in health; and, forsaking all other, keep thee only unto him, so long as ye both shall live?

(The wife answers.)

I will.

(The husband, with his right hand, takes the wife by her right hand, and says, as follows:)

I, M., take thee, N., to my wedded wife, to have and to hold, from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love and to cherish till death us do part.

(The wife, with her right hand, takes the husband by his right hand, and says:)

I, N., take thee, M., to my wedded husband, to have and to hold, from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love and to cherish, till death us do part.

(The husband puts the ring on the fourth finger of the wife's left hand, saying:)

With this ring I thee wed, with my body I thee worship, with all my worldly goods I thee endow.

In the name of those who are wont to meet in this place, and of all elsewhere who share our hopes (the feeble image of the greater family of mankind) I offer our welcome to those who to-day have entered into wedlock, and have pledged their troth before the law and before this congregation. We receive them as a new household added to our simple community. May the power of social sympathy add strength to their resolves, and grace to the aspirations of their hearts. May they long abide in mutual help and perfect love, fortifying and inspiring each other in all good things; a support to those around them, and an example to those who come after them. In the spirit of which things they desire to give their pledge, as follows:—

(Question to both standing.)

You do now, as husband and wife, profess your desire to live as useful and virtuous citizens in the world, and in all right ways in the faithful service of man: that the home which you are about to form in our midst may be the abode of love, industry, and peace within; the source of good works and just dealing to all your fellow citizens without?

(Answer by both.)

We do.

(Question to both standing.)

You do also resolve, that if children be born into your household, you will strive so to train them up worthily in the same spirit, that they may hereafter become true children of the great family of mankind?

(Answer by both.)

We do.

Of all the institutions of society, that of marriage is the one which most plainly exhibits the law of progress throughout man's social life. In its primitive form, among the untutored races, it was surrounded by barbarous or fantastic customs, as caprice or selfish- ness dictated. In its early patriarchal form, as we read of it in the old records of the East, much of that caprice has disappeared; but, though a more human spirit of duty and protection is enforced, the selfishness of the stronger is but too manifest in its laws. In the habits of the Greeks, but far more in their poetry, a purer spirit arises; and the joining of one man with one woman in permanent and equal union is recognised at least in theory and of right. The Romans made a great advance on the moral standard of the Greeks; and the Roman matron has long served the world as a type, at least, on the sterner side, of the dignity and duty of the wife. But the practice of the Romans, especially in the days of their decline and in the centre of their empire, very early fell short of their primitive ideal. And nothing made the advent of a new religion more needful and more inevitable than the Roman corruption of marriage, and the degradation of woman from her true part in human life. The ages of Christendom enormously raised the institution of marriage, by establishing for the first time a real and true monogamy, and by insisting that marriage should be practically indissoluble. But the true beauty of the home was beyond the reach of any Catholic priest- hood, as the spiritual mission of woman was a sealed volume to a theology of figments. Both Catholic and Protestant rituals have failed to beautify marriage; and, by the instinct of modern sentiment, they are judged to be to-day behind the age. It is to modern morality, modern poetry, and modern sentiment, that we appeal to show forth the inner sanctity of marriage, and to dignify the wife and the mother, in all the glory and the power of her mission. Marriage—too long regarded in early times from the point of view of the lord and master, and as a mere source of multiplying the tribe—too long undervalued by the mystical extravagance of theology, as a lower state of life, as a concession to human weakness, as a material necessity

of worldly life, which had to be enveloped in supernatural mystery—marriage has only, in our own age, been duly understood to be the great social instrument of religion; the moral education of man and of woman; the first link between the person and humanity; the stepping-stone from the lower self to the higher unself, or other self. You have heard how Auguste Comte has shown us that the home is the only natural mode by which man's selfish life is purified and elevated into social or unselfish life. And the wife is the centre of the normal home—the typical embodiment of the home influence. Certainly, all men and women are not husbands and wives, just as all homes are not the abode of any married pair. There are noble men who, for excellent reasons, are not husbands; and noble women who are not wives; as there are beautiful homes where there is neither wife nor husband. But the typical centre of the home is the wife, as the typical basis of the home is marriage. The home (in the sum) is the universal resting-place of normal man and normal woman; it is the source of our principal moral ideas; nay, it is the source of our real moral knowledge. And marriage constitutes the home in its normal and perfect form. The home, thus centred in marriage, is the miniature image of humanity, as marriage is the type and prelude of religion. The home, of which the married pair are the natural centre, has in its essential features all aspects of the great human family of which it is a unit; and all the conditions and elements of religion begin to be exercised in the married state. Its originating principle is love. Its basis is the order of a true and natural distribution of duties. Its end is the moral progress of husband and wife; she growing stronger by use in the spiritual influence of affection and tenderness, he growing stronger by exercise in the active duty of protection, devotion, and endurance. She yields when he commands; whilst she leads in inspiration and by moral suasion. He leads by force of his superior strength in labour and public activity; he follows when he is animated by her pure counsels, or moderated by her sympathy and pity. Both gain in true strength—both, in turn and in their due sphere, guiding and following; both, broadening to their true mission: the husband ruling as materially the master in his own house; the wife guiding as, morally, the mistress of her home. As the Roman matron said in their marriage rite: "Ubi tu Caius, ego Caia"—"Where thou art master, I too am mistress." The symbol this of the material and the moral power; government and counsel; the world of action and the world of feeling; State and Church. But in our faith the end of marriage does not stop there. It is not alone the normal completeness of the married pair; it is the State, society, humanity, which is the final aim of the family. As we are reminded by the inscriptions on these walls, family is but an element of country, as that is but an element of humanity. If the progress of our affections stopped short at family, the family itself would develop a deeper collective selfishness. It is a danger which besets all modern societies, and none more sorely than our own. The very end of the family is perverted, if in love for our family we are estranged from the public. The central maxim of our faith is—live for others. We learn to live for others best, as we live for our parents, our brothers, and our sisters, after the flesh; then mainly most deeply as we live for our wives, and in good time for our children and descendants. But to live for our wives or our husbands, for our children or our household, to the exclusion and forgetfulness of all wider duties, is to live for self in a way, less coarse it may be than the life of the mere individual, but perhaps more injurious to society, more widely at war with the spirit of humanity. In the history of marriage as an institution there are two main features which show a continual progress—and to-day there are two great dangers by which the institution is menaced. From the first, marriage has tended to become more and more exclusive and indissoluble, and the position of wife has more and more tended to that of a moral and spiritual supremacy. Monogamy—the marriage of one man to one woman for ever—has been the slow triumph of ages of civilization. And even yet, it is far from perfectly observed. The wife who was once but the first of the slaves, and then the mere mother of children, has but lately been recognised as the good genius of the home. And even yet there are households too many where the ancient savagery remains. There are two dangers, I have said, which menace the institution, and they both are steps backward in the progress of ages. The growing tendency for facilitating divorce and re-marriage—the very practice which ruined marriage at Rome—is pressing upon us with the lawless passions of democracy and its claim to be free of all social limitations. And the same democratic passion for equality is madly pressing onward to assimilate the functions of man and woman, and even to annihilate the distinction of sphere between that of the husband and that of the wife. It is the aim of our faith, and it has no aim more sacred and urgent to resist both these tendencies; to counteract both these social poisons; and to strive, without rest or equivocations, to the further development of the institution of marriage—the basis of all society and the school of all morality—under the same two conditions towards which it has ever been tending. The two conditions are: the completely exclusive and indissoluble form of marriage, and the recognising the wife as the moral head of the home. Where divorce is common, marriage is not exclusive or even permanent; whilst monogamy itself is degraded to a temporary union at will. The progress towards divorce is therefore the retrogression towards polygamy. And the man who, as in some Protestant countries, marries in succession several living wives, never truly has one wife at all. And so, in like manner, the moral headship of the woman is destroyed where she is urged to grasp the material power of the man, to compete with him in the same sphere. It will be the mission of our faith in the future to carry to its furthest limit the exclusive and indissoluble nature of the marriage bond. Marriage is the eternal devotion of one man to one woman—a bond in which but they two can enter, and which none can put asunder. It survives death itself. I speak not of possible exceptions under special conditions, of which extreme shortness of married life together on earth is obviously the chief. We ask for no legal restrictions upon the re-marriage of those whose marriage has been sundered by death. But, morally and normally, marriage is the union of one man to one woman for ever, and once for all—it is their union physically, morally, spiritually; in life, and in death, in sight, and in memory; in material society, and in spiritual communion. Were it less than this, it would stop short of becoming the moral education of the heart and soul. It is no part of our duty, as a nascent, rudimentary society, to impose beforehand on those who come amongst us a formal pledge to this effect. We will leave it to them, in the fullness of married life, to form such a resolution in the ripeness of their own free judgment. Much less is it any part of my duty, who have no sacerdotal pretension whatever, to ask any vow to such end. But it is no less my duty as the organ and mouthpiece of those who meet here in the faith in humanity, to assert this sacred, this tremendous obligation as normally a part of the true obligation of marriage, as inextricably bound up with all we believe and with all we teach. And in like manner it is my duty to assert that the dignity of marriage is impaired when the moral sphere of the woman is confounded with, or surrendered for, the practical sphere of the man; to appeal to the duty of increasing that dignity and enlarging that moral sphere in every way, and the need of protecting the woman in her indispensable mission. That mission is impaired and ruined by all that impedes the woman in the true duty of the home; by all which withdraws the mother or the wife from the incomparable task of being its real moral providence. By engrossing labour, by absence from the home, be it in toil or in pleasure, by the burden of children too numerous to tend or to train, by the distraction of too many cares, by ambition to shine, by eagerness to gain money, by all that dries up in woman the fountains of love, joy, and pity; by all that strangles in the wife her grace, her tenderness, her

self-respect, her purity, her refinement; by all that chokes in the mother her passion for her little ones, her yearning anxiety for their welfare in body and soul; by every coarse word, or selfish act, or sordid thought of him who is the natural protector of the home, the home is degraded and ruined. To far brighter and purer ends we would dedicate the married life which begins amongst us to-day. May the happy auspices with which it opens be ever unclouded and unchanged. May this new home be a source of happiness and goodness within, and a strength and an example without. May the master of this new household make it a pattern of industry, good order, and moral well-being in all the acts of a good citizen and a just head of an honourable family. May the mistress of this new household make it a pattern of tenderness, purity, and devotion in all the things that belong to true and perfect wife. And if this household shall hereafter be blessed with children, may they be trained up in all things that belong to love and goodness; first by their mother, then by both parents equally, till at last they be worthy to enter into the training and the service of society. Thus we would trust that all the great principles of our faith may be here expressed and illustrated afresh. May all they of this household, resting on good order inspired by love, and striving after moral improvement, be seen for ever to live for others, and as they live openly, may they live in the spirit of order and of progress, so that a new and worthy family may be this day added to our country; imaging to us all, whilst it realises and prospers in it, the great life of humanity itself.

40,244. (*Sir William Anson.*) I understand that the question of divorce or even of re-marriage would not concern your community in any way; you do not contemplate either divorce or re-marriage? — No, not from a religious point of view, certainly; and might I protest against the extension of the present law of divorce? I remember the establishment of the law of divorce at the time of the great duel between Sir Richard Bethell and Mr. Gladstone, when Mr. Gladstone made a magnificent fight for the old law, and I do not hesitate to say I and my friends regret the establishment of the Divorce Court. I may say the old law, bad as it was, with all its evils, to my mind did not affect general society. The public never for a moment regarded divorce as possible. I suppose the rare cases of divorce by Act of Parliament were called forth with a view to establishing succession to titles and to great landed estates, and things of that kind. The general public regarded it as out of the question, and did not require the horrible publicity or the vast expense of an Act of Parliament, and therefore it did not touch them. But when the Divorce Court was established all marriages were immediately affected, and in my opinion any change and extension of that law of divorce would still further affect all marriages and all homes. That is our point of view.

40,245. In fact you regard the Act of 1857 as a step in the wrong direction?—Yes.

40,246. You would rather the State did not advance upon that. I observe you would like to sever altogether the civil contract of marriage from the religious ceremony. Outside your own community do you think that would be to the advantage or otherwise of the sacred and serious character of the marriage obligation?—I think that it would be good on the whole, because it would avoid the immense amount of hypocrisy and falsehood which goes on when persons most hostile to the religious ceremony think it a matter of social convenience to submit to it. That, to my mind, has a very serious effect upon the whole social point of view, and very much injures the authority and the influence of the Church, that avowedly and knowingly consecrates Agnostics by a sacrament, when they know perfectly well persons submitting to it regard it with hostility, not only indifference. It weakens their influence. Everybody present is aware a gross act of hypocrisy is being carried out. I think it must do harm. We are very anxious indeed that there should be solemnity not only with the religious service but also with the civil, and for that purpose if civil marriage were made compulsory and general, it should be put in the hands of other functionaries. I should suggest something like mayors, lord mayors and mayors, and also perhaps three justices sitting in petty sessions, in a public justice court, in a quarter sessions court, and perhaps not interfering with the present registrars; but it might be done gradually, supposing the practice became universal and common. So in Catholic countries like France and Austria there is no objection raised to civil marriage, even by extreme Catholics, and it is made a serious and interesting ceremony. I think without touching the present registrar's office, the civil marriage might be entered into before mayors, chairmen of quarter sessions, or perhaps three justices, in a public way, something of that kind; but in my opinion it is essential that there should be ample notice given, and ample publicity of intended marriage. The great evil of the present registration system is that marriages are so contracted quite secretly, and in the shabbiest way often, and under the most sinister circumstances. I think it essential there should be publicity. If I was asked how the law might be amended, speaking of civil marriage, I would say in the first place, by insisting upon ample notice, ample publicity, and perhaps raising the age of marriage, and requiring, possibly, affidavits of the fitness of the persons to marry, including, no doubt, their conditions as to sanity and to health. That would be essential.

40,247. The reason I asked was because we have had conflicting evidence as to the effect of making the civil marriage the only legal form, leaving the religious ceremony to the option of the parties. You do not think that would, taking the case of the population of the large towns, affect the seriousness with which the obligation was entered into, assuming, as you suggest, that the civil marriage was surrounded by more accessories?—On the contrary, I think its effect would be good, and would increase the seriousness and sanctity of the marriage bond, even of those who went no further, because they would feel that they were engaging in a civil public act for which they were responsible, and that there was no sort of concealment of opinion, no hypocrisy, no saying one thing when you meant another in the matter at all. It would be a bonâ fide act of civic duty, and on the whole the effect would be good. If some of the churches say "We might lose," that does not affect me. I think in time people will see it is necessary to have a real religious marriage from the public and social and human point of view.

40,248. You think in time they would come to associate a religious character with the civil function?—I think so; for instance, take our own experience: ours is not a very large body, but it has been in existence now for 30 years. In connection with it there is a guild of 100 or so of young women, mostly working women in factories. There is another guild of young men, mostly young clerks and young workmen, and we find amongst them that very many of them decline, both the men and the women, any religious service in the existing churches, but both of them, and especially the women, very much desire a religious service, and therefore they come to us. The marriage ceremony which I have published, and which I have put in, was forced upon me; I did not suggest it to anybody. We had young people who had met together in the guilds (my wife was the president of one guild, and my successor was the president of the other guild), we had known them for months and years very often, and had seen them together, and when they came and said they desired to have a religious marriage, I found it then necessary to form my service. I saw them, and gradually formed, after a great deal of consultation with friends, the marriage ceremony which I have now put in. I may say that we never gave that without full knowledge of the people. I have had before me once or twice a couple who were outside our strict Positivist community. Amongst others I had Dr. S. C., the head of a great Ethical movement; his intended wife, came to me and asked me to perform the ceremony of marriage. I said, "The question "is, do you sufficiently accept this point of view? "I do not regard you as being entirely members

" of our body," because there were things which they hesitated to accept, and I had interviews with both of them together, and they satisfied me that in the first place they had had that printed ceremony before them, had studied it, and they came back to me and said, " Yes, we will accept that." I said, " Under " those circumstances let us proceed," and the ceremony took place in Kensington Town Hall, which was full, with good musical ceremonies. Recently the same thing has occurred with one of the professors of a Scotch University. He is an Englishman, but has now married a Scotch lady, and they insisted upon the Positivist ceremony. I said, " But I must know a little " more about you, and know that the bride as well as " the bridegroom accepts that point of view; are you " going to make these protestations in real earnest? " Do you mean it, and feel it, and do you recognise the " seriousness of making such professions as these "—because there are very serious professions in that little form—and after inquiry I found that they did. One is actually a member of our Positivist committee, and a scientific man of great value and ability. We married them with musical ceremonies in the Old Hall of Clifford's Inn. That was an instance. On another occasion a man came to me after attending a great many of our discourses—I had been speaking—and said he wished to be married. I said, " You come to " us frequently at Newton Hall, but I do not know " anything about your intended wife, and what are " you?" He was an Irishman, and spoke with an Irish accent, and I said, " Are you a Catholic?" and he said he was. I said, " Why do you not get " married in the Catholic Church?" He said there was a difficulty, and I asked what difficulty. He said the fact was he had been divorced, his wife had divorced him and the Catholics would not marry him now. I said " I daresay not, nor would I, so you must go away."

40,249. (*Lady Frances Balfour.*) How many Positivists are there, can you say?—I do not know. We keep no Positivist roll. There is a Positivist society in which people are actually enrolled.

40,250. You have no way of numbering them; you cannot say how many you have in the society?—No, we have no roll. There are several societies about; there are two in London. Another body meeting in Holborn has sent you, I believe, an address which has been given; with the substance of that address I very much agree.

40,251. You are against divorce, but supposing it exists you would like to make the law equal between men and women?—Certainly not, at present as things are.

40,252. You prefer it as it stands, cruelty as well as adultery?—I am prepared to see great alteration of the law for various forms of marital wrong. I should like to see criminal legislation, but I should trust still more to the growth of moral, spiritual and social, and religious stigma; I am prepared to deal with a variety of cases of conjugal wrong even in a criminal way.

40,253. You would not allow it to be equal between men and women, as it is in Scotland?—No, certainly not; it is not the same thing. I cannot imagine the idea of putting the possible casual act of passion of a man by which he may become a father as having the moral, the social, and the physical consequences of the woman becoming a mother. It seems to me the two things are so absolutely incommensurable that I cannot for a moment say there is any similarity in them.

40,254. The sin is different between the two?—I do not know about the sin. I do not say the sin is different. Morally speaking, I see very little to choose between the male and female sinner.

40,255. The infidelity of wife against husband is the same as husband against wife?—Very much.

40,256. (*Chairman.*) Could you not give some idea of the numbers of the Positivist community as you know them?—No, I cannot give you any idea of numbers. There is no roll. There are a great number of people who come. I was talking the other day to a learned prelate, and he said, " You know I have " sat under you at Newton Hall," and a great many have.

40,257. I did not mean the number that attended the place of worship or instruction, but those you would enumerate as recognised members of the society?—I cannot give any number; besides which I do not think it is a thing which interests or concerns this Commission.

(*Chairman.*) We thank you very much. I think that concludes everything you have been good enough to say, and I must thank you very much for coming here.

Mr. ISAAC SHARP called and examined.

40,258. (*Chairman.*) You are a member of the Society of Friends. Do you hold any official position?—I am the general secretary of the Society of Friends, working at the central offices at Devonshire House, Bishopsgate.

40,259. You attend here on behalf of the Society?—I am here as the representative of the Society, at the request of its executive committee.

40,260. A communication was made asking whether the Society desired to present their views, and you are sent in answer to that?—I am sent to present a memorial and support it, if you require, with evidence.

40,261. The memorial we take as read; it will appear in the print, as signed by direction of a meeting held for the purpose of passing it?—Not held for that purpose only: at the regular meeting of the executive committee of the Society of Friends this came on the agenda for that particular day.

40,262. May I take it, as it will appear as part of your proof, to be a memorial which practically places women on the same footing as men?—That is the one point in it.

40,263. That is the only point you have come to present?—It is the only point. May I hand you the signed copy?

Memorial of the Representative Meeting of the Religious Society of Friends in Great Britain.

To the President and Members of the Royal Commission for inquiring into the Divorce Law and its Administration.

Respectfully sheweth:

That your memorialists, in considering the proposals now being made regarding the amendment of the law of divorce, desire to lay before you their convictions on the subject of the equality of men and women under the moral law.

For two and a half centuries as a Religious Society, we have in practice recognised equality between the sexes in spiritual, as well as in educational and other matters, and the results have led us to value highly the benefit to the community of this equality, and particularly the benefit of an equal moral standard.

We deplore the present law, by which, while faithfulness is required from the wife, the husband's unfaithfulness does not give ground for divorce unless accompanied by " legal " cruelty.

We condemn the false principle which does not demand from men the same moral life as from women, and we maintain that the present inequality of the law has a disastrous effect upon the public, in encouraging the view that the morality of men is not important.

We believe that our recognition of equality in religious, educational, and business affairs of the Society has laid the foundations of a view of marriage in which troubles leading to divorce are less likely to occur, because there is a better feeling as to the mutual obligations of the sexes. Divorce is, in fact, practically unknown in our Society, and we believe that the influence of the laws of the country would tend in the same direction if they were based on equality between men and women.

From the point of view of justice to women, of the moral health of the nation, and of the educative influence which laws exert upon the community, your memorialists will be thankful if your Commission will recommend that relief shall be granted to an injured

40,300. I leave it in your hands?—In the annual report of 1907 there is this passage: "Divorce.—The "words of the presiding judge of the Divorce Court "uttered a year ago have had the effect which might "have been expected; they have led to the formation "of a Divorce Law Reform Union, which is agitating, "in the supposed interests of morality, for a wide "extension of the Law of Divorce. This new organ- "isation boasts that it has already received promises "of support from many influential members of Parlia- "ment, and the fact that a Bill has been introduced "into Parliament for the purpose of enabling the "wives of convicts sentenced to more than seven years' "penal servitude to obtain a divorce, illustrates the "deplorable trend of opinion on this question. There "must be no slackening in the work of spreading "information; and the President and Council would "respectfully urge the Clergy to give suitable in- "struction in view of the fact that a generation has "grown up which accepts divorce as an established "institution, belonging to the natural order of things, "and neither shameful nor against the Law of God "and the Church. Moreover, there is grave reason to "fear that marriages of divorced people are in- "creasing in the Diocese of London. The Chancellor "of that Diocese is understood to have introduced a "new rule into his office, which provides that licences "issued to persons who have been divorced are to be "withdrawn from the general list, in order, it is sug- "gested, to prevent those who object to such marriages "from becoming acquainted with the name of the "church at which the ceremony is to take place. "It is, therefore, matter for regret that a resolution, "respectfully asking the Bishop to direct his clergy "to refuse to act upon licences issued by his "Chancellor to divorced persons was not allowed to "appear on the agenda paper of the recent meeting "of the London Diocesan Conference. Two objects "must be kept in view: (1) the freeing of the Church "from all complications arising from this infamy, and "(2) as already suggested in America the redemption "of society from the corruption which increases year "by year as a consequence of the Divorce Act of 1857. "The true remedy would be to repeal that Act, and "to forbid all divorce *a vinculo*, except in the one case "of nullity of marriage, whether such marriages have "been celebrated with religious rites or not. It must "always be remembered that the Church is under "grave responsibility to the nation in this respect, for "the Divorce Act could never have become law had "the Bishops of that time done their duty to the "Church and State." That was in 1907. In 1910 there is a similar passage. It introduces no new argument, in fact, it just re-affirms what was said before as to the desirability of bringing about a better state of things by the repeal of the Act of 1857. "For some "years past, as was noted by the President and "Council in their last report, it has been apparent "that efforts would be made to extend the operation "of the existing law concerning divorce. The appoint- "ment of a Royal Commission as the result of a "motion in the House of Lords, made by Lord Gorell, "the former President of the Admiralty, Probate and "Divorce Division, in the High Court of Justice, was "no surprise. The Commission has held many "sittings, and has received much evidence. This "evidence, which has been published in the news- "papers day by day, although not in a complete form, "sufficiently indicates the nature of the proposals "which are being made in various quarters, and the "dangers which would result from their adoption. It "is asserted that the poor are being unfairly treated, "inasmuch as they cannot get decrees of divorce for "want of means, and that there ought not to be one "law for the rich and another for the poor. This was "the great argument used by the supporters of the "Act of 1857. If such be the case, the repeal of the "Divorce and Matrimonial Causes Act would be a "great step towards the remedying of the alleged "injustice. All the predictions made in 1857, as to "the disaster which would overtake the Church and "society by the alterations of the law then made, have "been more than fulfilled. The English Church Union "has always consistently held the view which the "President and Council here express. Happily there "are signs that those who have appeared to be "indifferent in the past, and have connived at, "and sanctioned breaches of the Church's law, are "now alarmed; and the President and Council trust "that no sort of unworthy compromise will on "this occasion be attempted. Certain individual "suggestions, however, entirely inconsistent with "Church principles, have already been made in "quarters where they would not have been expected, "and have raised much comment. On the other hand, "successive judges in the Divorce Court, after the "experience gained there, have declared that in the "interests of public morality it would be well if the "indissolubility of marriage could once more be "affirmed by law. That is the opinion always firmly "held by the members of the English Church Union, "knowing that the law of the Church declares that "the bond of matrimony is indissoluble save by death. "It is most satisfactory to note that at the last group of "sessions a report was presented to the Lower House of "the Convocation of Canterbury, which speaks with no "uncertain voice on this matter. The House itself, "after a very serious debate, adopted resolutions "opposing any increase of facilities for divorce, and "asserting the desirability of the repeal of the "Divorce Act, 1857." Mr. Wood, who is here, was a member of that committee of the Lower House of the Canterbury Convocation. The Union, as I said just now, has been consistent throughout, and amongst other things one might mention the fact of a great meeting at Exeter Hall in 1896, at which a letter to the President was read from Mr. Gladstone, dated March 7th, 1896: "My dear Halifax, my opinions, so "often declared during the last forty years remain "unchanged, and as a meeting hostile to the principle "of divorce your meeting on Tuesday has my full "and warm sympathy. Always sincerely yours, "W. E. Gladstone." Perhaps I might mention that the Council of the Union in 1896 thought it necessary and desirable to pass this resolution: "That to "sanction, permit, assist at, or otherwise connive at "the use in Church of any ceremony connected with "the legal union of a divorced person is conduct "incompatible with membership in E.C.U." That resolution has once or twice been acted on with the result, in one case, of the resignation of a member, and in the other, of an apology for what was thought to be contrary to the principles of the Union. I think I do not need to say more about the Union. I trust I have made clear the position.

40,301. What are the grounds upon which the English Church Union would seek to repeal the Act of 1857?—I am coming to that presently.

40,302. I thought you were passing away to something else?—In the last part of my memorandum I raise the question.

40,303. Will you finish that now?—On the ground that we think it is contrary to the law of Christ; that it is not conducive to the good of civil society; that it is destructive to family life, and that it is a dishonour to our Lord and to His Church.

40,304. I suppose that the first point, that it is contrary to the law of Christ, is based upon the Gospel teaching?—It is based upon the law of the Church which declares the law of Christ.

40,305. I do not quite follow that ——

40,306. (*Sir William Anson.*) Where?—I had prepared this. The law of the Church is declared in the Book of Common Prayer, and in the canons of the Church. The Prayer Book service is familiar surely to all of us, and the canons.

40,307. (*Chairman.*) You mean by "in the Book of Common Prayer," where it deals with the marriage service?—Yes, we get it there, and the canons of the Church of 1603, of Canterbury and York of 1604, canons 106, 107, 108. There is nothing to say it is not competent for the State to repeal those.

40,308. May I take it your view is that those are in accordance with the Gospel teaching?—Quite.

40,309. The real position that results from that is that the Union will desire to see the Act of 1857 repealed?—Entirely.

40,310. That would make an end of all the difficulties?—Yes, and would do away with the alleged inequality as between the rich and the poor.

40,311. They are prepared to take that view, and adhere to it, notwithstanding the amount of suffering that would be inflicted upon those who have utilised, or still would continue to utilise, the Act?—The amount of suffering? In what way do you mean—spiritual suffering? Do you mean if Church people reject the law of the Church, which it is so clear is binding on them? They do it at their risk. We cannot consider particular cases of suffering as against the good of the whole Church.

40,312. I want to get quite clear the position. That would exclude from consideration the dissolution of the tie in all those cases we have had put before us, of people going to other countries and leaving their partners to look after themselves?—I do not know that the Church could alter her universal law to meet particular cases.

40,313. It would also exclude from consideration cases where a man or woman was living in the same neighbourhood with another person and producing children, in the case of the woman, while the person left behind was left alone?—I do not know how the Church of Christ can be expected to lower her standards and alter her laws to meet the lapses and all the difficulties of individual sinners.

40,314. I want to get the position quite clear?—I think that fairly states it.

40,315. Does that exhaust all you have to say?—No, I would like to come back to that. I will deal with the last part of my memorandum if you wish.

40,316. You mean that part which begins "There " can be no question as to the law of the Church"?—Yes. I say the marriage service in the Book of Common Prayer is plain enough.

40,317. What do you mean by saying, "There can " be no question as to the law of the Church"?—It is so plain I do not see how anybody could dispute it.

40,318. I do not want to interfere with the course of your evidence, but we have had three different views from the Church?—From Church people?

40,319. Yes?—I will deal with those. I have them in my mind.

40,320. May I ask whether, if there are three views presented to us by different people from the same Church, you can maintain that there can be no question as to the law of the Church?—I think so. I think you will see my position if I may make my statement. I have said: "Divorce for a faithful Church person is unthinkable. Nor is it open to anybody in the Church, from bishops downwards, to go behind the authority of the Church and deduce for themselves exceptions taken from the Bible. They are bound to accept the Church's law." There is no question about the Prayer Book and about the canons, and it is alleged that much use has been made of the resolutions of the Lambeth conference of the bishops in 1888, and the conclusions of that committee. I believe it is common knowledge it recognised an exception which was carried by a small minority of the committee, while the encyclical letter which went out from the conference has this in it: "The sanctity of " marriage as a Christian obligation implies the faithful " union of one man with one woman until the union " is severed by death." So that the conclusions of that committee have not been generally accepted in the Church. For instance, I hold in my hand a very valuable report on divorce. It is a report of the Lower House of Convocation of York (and I should be glad to send a sufficient number of copies for the information of the Commission) which passed these resolutions on June 4th, 1896, eight years after the Lambeth conference, *nemine contradicente*: "(1) That " the marriage law of the English Church is that " to which those who are members of it must " look, and by which they must abide. (2) That this " law is clearly set forth in the marriage service, " namely, that the sanctity of marriage as a Christian " obligation consists in the faithful union of one man " with one woman until the union is severed by death " (3) That this law is in accordance with Holy Scripture, and has the support of the vast majority of " Councils, and of Fathers, and these the most weighty. " (4) That this law does not permit the marriage of " any person separated by divorce, so long as the " former partner is living. (5) That it is, therefore, " inconsistent to issue any marriage licence, or to " allow banns to be published, or a marriage to be " solemnized with the rites of the Church, for any " such person." Those are the conclusions of the committee which issued a very valuable report, and as further evidence that the resolutions of the committee of the Lambeth conference are not followed throughout the Church of England and Churches in union with her, I would like to remind the Commission that the general Synod of the Canadian Church in September 1905 passed this canon: "That no clergyman of this " Church shall solemnize the marriage of any divorced " persons in the lifetime of either of them." Only the other day the House of Bishops of the Episcopal Church in the United States of America, on October 18th, resolved to take steps to amend their canon so that it will read, "No minister knowingly after due " inquiry shall solemnize the marriage of any person " who has been or is the husband or wife of any other " person then living from whom he or she has been " divorced for any cause arising after marriage." You were good enough to draw my attention to certain views placed before this Commission, but I do not claim to be a scholar, and I do not wish to enter into any question of Biblical criticism. I would like to remind the Commission that views so confidently expressed as to the exception in disputed texts in St. Matthew's Gospel, are not generally accepted, and I will read two short extracts bearing that out.

40,321. What are the extracts from?—From a paper. I do not want to argue myself about it.

40,322. I only ask you so that we may be able to look at it afterwards?—For instance, in the session of the Shrewsbury Congress in 1896 Dr. Luckock, who is now dead—he was then Dean of Lichfield—in the first paper on "the Church's law of marriage, especially in " relation to divorce," had this to say on this very subject: "The subject is dealt with directly or in- " directly eight times in Holy Scripture. In six of " these marriage is regarded as indissoluble, save by " death, without the slightest hint of any possible " exception. In the two remaining those who advocate " re-marriage after divorce for adultery claim to find " divine authority for the practice. Now, if they are " right, I am bound to say that it lays a tremendous " strain upon our belief in the inspiration of Scripture. " To be told that our Blessed Lord deliberately allowed " that upon one condition the marriage tie was broken " —changing thereby the whole character of its original " conception—and yet that the All-wise Spirit of God " permitted, yea, even moved, three out of four of the " sacred writers upon the subject to make no mention " of the exceptional concession, simply fills us with " blank amazement. I purpose now to concentrate " your attention upon the two passages in St. Matthew's " Gospel on which the claim is based." Dr. Luckock was a scholar of great repute and had written on this subject. I will read one other passage from that same congress at that same session by Prebendary Barker, then Rector of Marylebone, who is now Dean of Carlisle, and I am sure that Dr. Barker would not object to the description that he represents a large number of liberal-minded clergy. Here are his words: "But I " would observe in the words of the Rev. Oscar Watkins, " whose valuable book, 'Treatise upon the Divine Law " of Marriage,' should be studied by all interested in " this subject, that 'there are extraordinary variations " ' in the reading of this text. The original reading " ' may well have contained no reference to re-marriage " ' at all. And in any case the uncertainty of the " ' reading makes it very undesirable to base any " ' argument upon it.' However, whatever interpreta- " tions is put upon it, it is inconceivable that our " Blessed Lord should contradict Himself; and to " interpret it in the sense of giving His sanction to

" divorce *a vinculo* would be in flat contradiction to " His own words in other and undisputed passages, " *e.g.*, 'Have ye not read, that He which made them at " 'the beginning, made them male and female; and " 'said, For this cause shall a man leave father and " 'mother, and shall cleave to his wife; and they " 'twain shall be one flesh? Wherefore they are no " 'more twain, but one flesh. What therefore God hath " 'joined together let no man put asunder.' Christ, " in fact, raised the divine ordinance of marriage to the " position of a sacrament. He made the marriage " bond indissoluble except by death, because it was " impossible to sunder it. The relation between " husband and wife is not in His view an artificial " relation, but an essential one, like that between " father and son. Once a son always a son. Once a " wife always a wife. Once a husband always a " husband. Having by God been made one, they " could never be divided so as to be at liberty to " re-marry while either lived, any more than the " mystical union, to which St. Paul compares mar- " riage, between Christ and His Church can ever be " broken." I do not think I need add anything more to that branch of the subject.

40,323. I do not wish to argue it with you, but the reason I wanted to know a little more from you was because you say there can be no question as to the law of the Church. I understand your view to be as expressing the sentiment of the Church Union, that the law of the Church is that marriage is indissoluble?—Yes.

40,324. Why I do not understand your statement that there can be no question is because we have the law of the land passed in 1857, and a number of the bishops voted for it. That would go to show there is a question at any rate?—I am extremely sorry as a Churchman to be reminded of that incident. I have a pretty extensive acquaintance with the feelings and sentiments of my brother Church people, and the Bishops in Parliament are not the Church. They do not sit in the House of Lords as hostages for the Church, or as representing the Church, and they had no authority from the Church to take part in helping the State to change the law of marriage.

40,325. May I remind you that one was the Archbishop of Canterbury, and another the Bishop of London?—I should be sorry to detain the Commission to say at length all that one has always felt, and all that churchmen generally feel about those facts.

40,326. I do not wish to argue it for one moment, except to suggest it is hardly correct to say that there is no question as to the law of the Church?—The Church has raised no question in her corporate capacity. Individual members of the Church—bishops, priests, and laymen—no doubt have done things which are contrary to the settled law of the Church.

40,327. What do you understand to be the Church?—Our part of the whole Catholic Church of Christ.

40,328. How does it present its views?—For us who live here in union with the Archbishops of Canterbury and York, in these two provinces we are bound not only by the Divine law, but also by that law as expressed in our own marriage service and in our own canons.

40,329. I do not think you caught my meaning. How does the Church make its law plain? By what voice?—Do you mean in what circumstances? I do not follow you.

40,330. You said that the Church's view is so and so. I wanted to know how you said that the Church manifests its view?—In her own marriage service and her canons by which her priesthood and bishops are bound. The whole thing is fully gone into in this report.

40,331. I think that exhausts the point about the present position?—Yes, I think so. That is all I wish to say; I do not wish to argue.

40,332. The other part of the case is your experience in South London?—Yes, with regard to general Church opinion, I should like to say since this Commission was appointed there has been a very strong opinion manifested all over the country against any extension of divorce and also a strong feeling in favour of the repeal of the Act of 1857.

40,333. Will you tell me by whom that feeling has been manifested?—By branches of our union, and notably at the annual conference of the Church of England Men's Society, which was held at Bristol at the end of October with 1,000 delegates.

40,334. I think we had that yesterday?—I do not think you have had this.

40,335. I was not here myself, but I am told that we had the secretary yesterday?—I will be very brief. I was a delegate to that conference. There were 1,000 delegates at that conference, and I was one of them, and to a resolution advocating personal purity this rider was carried unanimously: "And further " trusts that individual members, branches, and " federations will also do their utmost to defend the " Church's law of marriage and resist divorce, so that " the cause of public and private morality may be " better maintained." I know what was behind that rider, because I drafted it myself, and it was carried unanimously at that conference. What was remarkable was that the loudest cheers upon this question at the conference were given to an expression of opinion made by a speaker, that the only way out of all these difficulties was to repeal the Act of 1857. I think that is all I have to say about that.

40,336. You have also a passage in your report giving your own experience?—I will willingly do that. I think I may put in my own experience. I lived for 26 years in South London, from 1873 till the end of 1899. It was before the days of settlements and poor men's lawyers and Labour members of Parliament, and it was in a period when instructed church people rather liked to live in poor parishes and to do what good they could. For 17 years I lived in Horselydown, a parish on the banks of the Thames in Southwark, just at the foot of the Tower Bridge. I held many offices in that parish, in fact, every office a layman could hold. I was rather an active politician. I was twice vice-president of the liberal association of the district, I was chairman of a radical club, and I think I knew the life of the poor as well as anybody about there. I was constantly taking part in all sorts of discussions, and I should like to mention one incident which would show that I did possess the confidence of my neighbours. When the great dock strike got to that side of the river, there was some fear of disorder, and I was asked if I would address a meeting of the strikers, because they feared that they would not be recognised by the people who were conducting the strike at Poplar. I did so, and took down the first list of the names of those people on strike, and that list was taken over by Dr. Esmonde the next morning at Poplar. I only mention that to show that I was well known, and knew the poor very well, and that my neighbours had confidence in me. They came to me with all sorts of troubles and difficulties of every kind and description, but never once was I asked by any woman or man in trouble whether there was any way by which they could be separated or the marriage tie could be dissolved. I am quite clear about it, because I think those who know me would allow that I was an active worker in all sorts of ways, and really did know the lives of the poor. There is another experience I should like to mention, I have only thought of it to-day. There was a small but influential body of communicants of the Church, called the Guild of St. Matthew, which did a lot of work in giving lectures on all subjects at radical clubs in London during the eighties. Their main work was to combat the secularism which was identified with the name of Mr. Bradlaugh, and in all those connections, and in all my work as a political and church worker amongst the poor, and as willing to give lectures of that sort, I never once remember the question of divorce, or the need of the divorce laws being extended having been raised. On the contrary I found amongst the poor a general abiding respect for the marriage bond. Many times it has been said to me, "After all, he is my husband" or "after all, she is my wife." I do not know what evidence there is, or what facts it can be based upon, which would go against the testimony I venture thus to give. I can only say what I felt and found myself, and perhaps add some weight from the fact that during all those years I held just the views I have expressed

here to-day, as to the position of the Church, in regard to divorce.

40,337. (*Sir Lewis Dibdin.*) When you describe the law of the Church as against divorce, I notice you only put it on the prayer book and the canons. Is that the only ground upon which you put it?—The universal law of the Church.

40,338. Let us take it in steps like this. Before the Reformation I suppose it is quite clear that according to the law of the Church marriage was indissoluble?—Yes, and since the Reformation ——

40,339. Let us go by steps. Was any change made by the Reformation about that?—No substantial change.

40,340. Was any change made with regard to that particular point?—I am not disposed to go into any highly technical legal argument when I have the canons of the Church of England as they exist to-day plainly before me, and the marriage service of the Church plainly before me.

40,341. I think you misapprehend the object of my question?—Mr. Wood is a very learned person upon those things and will doubtless answer any questions of the sort.

40,342. I will not ask you any more questions about that, except to ask you what it is in the Canons of 1604 which in your view negatives divorce?—The fact that they must live separately, that it is not a divorce *a vinculo*, and they cannot marry again.

40,343. Has it escaped you that that canon had nothing to do with divorce *a vinculo* at all, but merely with judicial separation?—I have just said so.

40,344. You will find it is so by the heading. I will not ask you any further questions if you do not wish me to?—It has been accepted that the canon is what I have stated.

(*Sir Lewis Dibdin.*) Indeed it has not.

40,345. (*Sir William Anson.*) Have not you read the heading of the canon you hold to be the authority against divorce or the canon itself?—I have read the canon many times.

40,346. Are you aware what its purport is?—Here is a print of it: "In all sentences for divorce, bond to be taken for not marrying during each other's life."

40,347. In all sentences for divorce?—In all sentences pronounced only for divorce and separation not *a vinculo* but from bed and board.

40,348. That is what you were asked?—I apprehend your question.

40,349. Will you tell me what you mean by the Church in its corporate capacity?—Did I use that expression?

40,350. Yes, I was rather struck by it. What is the Church in its corporate capacity?—With regard to Government? In what connection did I use that? I would like to be reminded of it.

40,351. You said the Church in its corporate capacity had never accepted the Act of 1857?—The Church of England.

40,352. Yes?—The Church never has.

40,353. What is the Church in its corporate capacity. In what way would the Church in its corporate capacity express assent or dissent?—No synod of the Church.

40,354. You again use the words "general Church opinion"?—I mean the general Church opinion held by individual Church people.

40,355. Church opinion has varied in respect of divorce in the course of the last 150 years?—I can only speak within my own lifetime and thank God general Church opinion is very much strengthening just now against divorce.

40,356. General Church opinion is a temporary thing. You are happy to feel during your lifetime that it has taken a form satisfactory to yourself?—Yes, and it will make it exceedingly more difficult for bishops, if they continue to sit in the House of Lords in future, to behave as the bishops did in 1857.

40,357. (*Chairman.*) I think that exhausts all you have to say, or is there anything else you would like to add?—I have nothing else I wish to add, except that I would like to send you a copy of this report.

40,358. I have had that?—I will send some more copies.

40,359. It is not necessary to print the whole of that?—No.

(*Chairman.*) We shall have the extracts you have read before us.

Rev. Edmund Gough Wood called and examined.

40,360. (*Chairman.*) Are you a Bachelor of Divinity?—Yes, of the University of Cambridge.

40,361. You are the vicar of St. Clement's, Cambridge?—Yes.

40,362. You are the proctor in convocation for the diocese of Ely?—Yes.

40,363. Do you attend on behalf of yourself, or on behalf of any body?—I am asked by the council of the English Church Union to attend in the same way as Mr. Hill. I am a member of the council. You will see that I am one of the elected members, and I have been a member of the English Church Union since 1882.

40,364. You have been good enough to prepare a short memorandum on the question of the position of the Church with regard to the indissolubility of marriage?—Yes.

40,365. You have only just sent in your memorandum, and I think I have the only copy there is?—I regret very much that I was not able to send it sooner. I sent it at the first opportunity I possibly could.

40,366. I asked that because I understood from the secretary this is the only copy. It is rather regrettable, because I believe you communicated with us as far back as February last?—No.

40,367. The union did, then?—I never heard of it, then.

40,368. The best way will be for you to read it, so that we can follow it?—I intended it as a sort of précis.

40,369. It only came last night?—Perhaps I might be allowed to make a brief statement.

40,370. I would rather you took it fully?—I want first of all to put before you the grounds upon which those theologians and canonists, who maintain the theory of the indissolubility of marriage, rest their opinion. I do not put it forward as the opinion of the Church. I desire to put it forward before you as the opinion of those theologians who maintain this theory, because I have observed that there are certain misapprehensions with regard to the grounds upon which we who maintain this theory do so. First of all, we do not base our theory ——

40,371. Who is "we"?—Those who maiutain the doctrine of indissolubility.

40,372. That is what you mean?—That is what I maintain. If, for shortness, I say "we," you will understand I mean those theologians who maintain that theory. We do not base it upon any special Christian dogma. We base it upon the fact that we regard marriage as a divine institution instituted in the time of man's innocency.

40,373. What is meant by that?—That it was along with the creation of man that the Creator intended that there should be marriage between man and woman, and that it was a state—I will explain it presently—which should exist between them, and that it was not owing to the choice of man and woman that this condition of marriage arose, but it was of divine origin, not of human origin.

40,374. Where did you get that from?—We take it from the statement of our Lord in the Gospels. "Whom God hath joined together let not man put asunder." We took it from the general idea those words give, and also from His expression, "In the beginning," which, according to Scripture usage, seems to mean the beginning of human society, the beginning of the human race.

40,375. As described in the first and second chapters of Genesis?—Quite so.

40,376. Do you take those chapters as describing actual facts?—Oh, dear no. I take that as being a mode in which the Divine Spirit has enshrined certain Scriptural truths, but I do not take them as being descriptive to us of actual facts as those words relate them. I do not imagine, for instance, that Eve was taken in a literal sense from Adam's side. I do not in the least imagine that. It is a way of expressing deep spiritual truths.

40,377. Can you tell me the date when those chapters were written?—No, I cannot possibly tell you.

40,378. Or by whom?—I cannot possibly tell you, but I do not rest upon the chapters of Genesis. What I rest upon are our Lord's words when he speaks of the condition of marriage being "In the beginning"—it was not so in the beginning—with regard to that particular question of divorce. I also rest upon our Lord's words that "They twain shall be one flesh." I rest upon our Lord's words that "What God hath joined together let not man put asunder." All those point, in our opinion, to the idea of a divine institution, not of the human origin of marriage, but the divine origin of it. It is a question of origin; it is a question of what was the origin of marriage. We do not believe it to be merely owing to some evolutionary process, but to as direct a divine operation as the creation of man solely. That is our belief. That is what we mean by marriage being of a divine origin. Human practice departed from the original institution.

40,379. The first line of this paragraph in your proof is, "Marriage a divine institution instituted in the time of man's innocency." Where do you get that from?—That is simply a quotation from the preface to the marriage service.

40,380. That marriage service was compiled at a later date than the foundation of Christianity?—I quote that as a way of expressing what one means by a divine institution and the time of the divine institution. I do not quote those as being authoritative words, but merely as being familiar words to express the idea. It was at a time before sin had appeared in the world, taking the ordinary Christian view (which I am not here, of course, to argue), of the beginning of sin and the origin of sin. We say marriage was before that. Then sin came into the world and human practice degenerated; for instance, polygamy was introduced. Now that human practice having departed from the original institution, it was part of Christ's work as the Restorer of all things, to restore that which had been departed from, to restore marriage to the higher ideal with which it was originally instituted.

40,381. I am sure you will forgive me for trying to get it quite clear, but I do not understand where you get the original institution from?—I am again going on our Lord's words, "It was not so in the beginning," when discussing the question of divorce. Now there came the Mosaic legislation, but we do not regard the Mosaic legislation with regard to divorce as being of divine authority, again based on our Lord's words. He said Moses gave the permission and proceeds to say, "I say unto you," which seems to draw a distinction between the Mosaic authority and Christ's authority, contrasting the two, and therefore asserting that the authority for divorce among the Jews was of human institution by Moses, not as a divine legislator. Speaking philosophically, the principle of indissolubility is based upon the declaration which our Lord makes, "They twain shall be" or "become one flesh." By "one flesh," following the general line of Biblical psychology, is meant constitution into one moral or spiritual personality, and the principent cause of that oneness is the divine institution, that is to say, the divine origin of marriage. The efficient cause is the divine power operating when two individuals consent to be man and wife. The instrumental cause is the contracting by the parties, and I use the expression of the old civic law, *consensus facit matrimonium*. From those we draw the conclusion that marriage is not a contract but is a state. The marriage contract effected by the consent of the parties and by that alone, is the means by which the state is entered upon. The efficient cause being divine, it follows that the bond which is thereby created is dissoluble neither by human authority nor by mutual consent, because the bond was not created by the contract but created by divine power, on the theory that marriage is a divine and not a human institution.

40,382. Which constitutes one moral or spiritual personality?—Yes.

40,383. I do not follow why that should be dissolved by death?—Because it is part of the divine institution that the union is for the lifetime of the parties, as declared to us by the revealed word of St. Paul, when he says that the woman is bound by the law of her husband so long as he liveth; therefore not after his death. It is an incident or principle of the divine institution. The vinculum is not the contract, but the divine institution which established the state, and which by means of the contract admitted the parties to it. The Church relies upon Christ's words, "What God hath joined together let not man put asunder." I say the Church relies upon it because those words are used in the marriage service.

40,384. They are not correctly quoted by you, but that is another matter?—The Church doctrine of indissolubility does not arise out of any sacramental theory, as is sometimes supposed. I am anxious to state that, because it has been supposed that the doctrine of indissolubility as taught by most theologians arises out of sacramental theory. That would be in effect an inversion of the sequence of thought. The Church holds marriage to be indissoluble not only in the case of Christians, but of non-Christians also. In the case of the baptized, the sacramental theory lays down that Christ in their case elevated the natural institution into an outward and visible sign, whereby inward spiritual grace should be given to the parties to enable them duly and religiously to fulfil the obligation and duties of the state of matrimony: the consent of the parties expressed *per verba de presenti* being the matter and form of the sacrament, and the parties themselves being the ministers of the sacrament. The theory holds that the sacramental character is not dependent on the intervention of a priest nor of the use of any service or ecclesiastical ceremony of priestly blessing. The indissolubility is not affected in any way whatever by the sacramental character. Baptized persons contracting in a registrar's office would receive the sacramental grace equally with those contracting in a church and with the Church service.

40,385. That applies equally to Christians and non-Christians?—The indissolubility, not the question of sacrament.

40,386. I have not the evidence before me at the moment, but I understood that the Bishop of Birmingham said that it applied to Christians, but as regards non-Christians he did not regard the marriage as essentially indissoluble. I understand that you differ from that?—I differ from him upon that point. The next point I pass on to is the question of the Scripture proof of indissolubility, upon which I have written a memorandum. I put aside for the moment the St. Matthew account, and we have the following statements by our Lord, from St. Mark x., 2, to the Pharisees who said, Moses for the hardness of your heart permitted to write a bill of divorce. Then He states they are no more twain but one flesh; what therefore God hath joined together let not man put asunder. And then to the Disciples He says, "Whoso-
" ever shall put away his wife and marry another
" committeth adultery against her, and if a woman
" shall put away her husband and be married to
" another she committeth adultery." Then in St. Luke xvi., 18, He says, "Everyone that putteth away
" his wife and marrieth another committeth adultery,
" and he that marrieth one that is put away from her
" husband committeth adultery." Then in St. Paul's Epistle to the Romans, vii. 2 and 3: "The woman
" that hath an husband is bound by law to the husband
" as long as he liveth, so then if while the husband
" liveth she be married to another man she shall be
" called an adulteress." These passages, if taken by themselves, would be conclusive as to the Scripture teaching on the point, that is to say, certainly none of

those passages allow re-marriage, and they certainly seem to negative re-marriage. We have also the St. Matthew passages, which seem to create a difficulty. Assuming for a moment that the primâ facie view of the matter is that the St. Matthew report of our Lord's words permit of divorce in a certain case not mentioned either by St. Mark, St. Luke, or St. Paul, on what principle of interpretation are we to proceed? Are we to endeavour to interpret St. Matthew so as to harmonise with the other passages, or are we to read St. Matthew's apparent exception into the other passages? It has been suggested by Dr. Sanday that we must regard our Lord's teaching in these other passages as the moral ideal and not as a positive rule. It would follow from that that our Lord made a concession to human infirmity, in fact that He did what Moses did. But the concession theory is entirely inconsistent with the whole line of teaching of our Lord, not only in the Sermon on the Mount but always. Moses gave the law, and the law was hard, too hard for man, as he thought to endure by himself, and Moses could give no help to keep the law, the law was deadly. Moses had therefore to make a concession that, at least in a certain case, the case of adultery, the marriage should be dissoluble. The law came by Moses, but grace by Jesus Christ, hence Christ could put before men the highest ideal, because while He did so He also gave grace to enable men to act in accordance with that ideal. There was no need for Christ to make concessions. They could find no place in the system which is a kingdom of grace and of power. Confessedly He set up the ideal of indissolubility, but He did so that man might not merely admire it but act up to it. While He did so He provided means by which they should be enabled to act up to it. We cannot admit any concession theory as satisfactory. It would be wholly inconsistent with the teaching that our Lord gave and with His plan, and we must therefore interpret St. Matthew in the light of the other passages. Now taking the passage in the Sermon on the Mount first, in St. Matthew v., 31 and 32, we find these words: "I "say unto you that every one that putteth away his "wife saving for the cause of fornication (*παρεκτὸς* "*λόγου πορνειας*) making her an adulteress (*ποιεῖ* "*αὐτὴν μοιχασθαι*), and whosoever shall marry her when she is put away committeth adultery." Now the wife is either innocent or guilty. If she be innocent of adultery, then by divorcing her the husband "makes her an adulteress," that is, he places her in the position of an adulteress, because, according to the strict interpretation of the Mosaic law, only one guilty of adultery could be put away: but if she is an adulteress then of course the putting her away does not make her one, for she is that already. The clause therefore is equivalent to "setting aside the case of an adulteress." *παρεκὸς* will undoubtedly bear that interpretation. The next point is to whom does the further clause "and whosoever shall marry her when she is put away committeth adultery" apply, that is, do the words "been put away" apply both to the lawfully and to the unlawfully put away wife? No doubt the word *ἀπολελυμένην* might mean only the unlawfully put away if this passage stood by itself, but in the light of other passages we must make it include both. If we do so, as we are entitled to do, and as the well known Herman commentator Meyer says, we have a complete agreement: but even if we confined the term to the unlawfully put away wife, while it would be true to say that our Lord only pronounced that if she married again she and her second husband would be adulterous, it also is true to say that our Lord does not pronounce anything in that case about the guilty woman. He says nothing about the innocent party or his re-marriage, nor anything about the guilty party. The scope of the passage is confined entirely to the question of unlawful divorce, and says nothing about putting away an adulterous wife. There is, therefore, nothing inconsistent with the other passages, but while we are entitled to say that, we are of course not entitled to say that this passage forbids re-marriage of the innocent husband, or even the re-marriage of the adulterous wife. On the latter point, considering the passage as an interpretation of the then existing Mosaic law, there was no need to say anything, as the adulterous wife was to be stoned. Let us take now the other St. Matthew passage, St. Matthew, xix. 9. The Pharisees come to Christ and put to Him the question, was it lawful to put away a wife for every cause? I need hardly remind the Commission of the well-known fact that there were at that time two schools among the Jews, the school of Hillel, which holds divorce might be for any cause whatever, even, as one Jewish writer says, if the wife burned the soup, or, as the Rabbi Akiba says, if he saw another woman whom he thought was better-looking than his own wife, There was also the strict school of Shammai, who maintained that the Mosaic legislation only permitted divorce in the case of adultery. The Pharisees apparently come to ask the Lord His opinion as between those two schools, and our Lord first of all replies to that; "What therefore God hath joined together let not man put asunder," that is to say, He asserts in the plainest language the indissolubility of marriage, and then he proceeds to say, "Whosoever shall put away his wife except for fornication," and here St. Matthew's report, according to the received text, uses a different expression, *εἰμὴ ἐπί πορνείας*, "and shall marry another committeth adultery, and "he that marrieth her when she is put away com-"mitteth adultery." I use the translation of the Revised Version. Before examining this statement it is important to remember that the text is in an exceedingly doubtful condition. From the point of textual criticism it is quite impossible to settle satisfactorily what the true reading is. There are so many variants and so many combinations of those variants. In fact, the condition of the text is such as to warrant our saying that no argument can be securely based upon it. Indeed, so far back as the fourth century, we find St. Gregory Naziangen, in his 37th oration, speaking of the obscurity of the passage. These variants add very greatly to the difficulty of interpretation, but they also suggest endeavours to gloss the text in an unwarrantable way. From the point of view of higher criticism the passage is one of doubtful authority. Professor Driver, as well as others, says on this passage, "It is open to question whether this exception"—that is, in St. Matthew v.—"is not an "addition by an editor representing, no doubt, two "influences, Jewish custom and ethical necessity in "the early Christian Church. A similar exception is made in xix. 9, and it will be seen that the clause is clearly an interpolation.

40,387. What are you reading from there?—From the International Critical Commentary, edited by Professor Driver. "The teaching of Christ seems to "be that recorded by St Mark, St. Luke, and St. Paul. "The interpolated clause confuses the issue." Bleek, Keim, and others, denied the genuineness of the clause, on the ground that Christ's original unqualified statement was felt to be a stumbling block, and that the exception crept into the traditional report. "There is grave reason," says Plummer, in his edition of St. Matthew, "for doubting whether Christ, either in "the Sermon on the Mount or elsewhere, ever thought "that divorce is allowable when the wife has committed "adultery. There was an earlier marriage law of "divine authority, according to which the marriage tie "was indissoluble. To this divine law men ought to "return." Then I might quote Dr. Salmon, the late Provost of Trinity College, Dublin, to the same effect. The importance of these statements is, that they come from thinkers not specially predisposed to take what I may call the ecclesiastical line, but if we take a more conservative line, it is quite possible to interpret, as we are bound to do if we can, this passage in agreement with the other passages. One important question is, how did the disciples understand it? The Pharisees had propounded the question, "Is it lawful for a man to put away his wife for every cause?" clearly the question between the two schools of Hillel and Shammai. The latter taught that it was lawful to divorce for adultery, and for that only. Was that what Christ taught? The disciples do not appear to have thought so; they clearly thought our Lord's

saying a hard one, something beyond what they had heard before. If the case be so with the man and his wife, it is not good to marry. It is difficult to think that they could have spoken as they did about a mere re-stating of the familiar dictum of the school of Shammai. But if Christ's teaching was something stricter than that of Shammai, it could only have been so because it was an enunciation of the doctrine of the indissolubility of marriage, and therefore of the unlawfulness of divorce *a vinculo* even in the case of adultery. It seems clear, therefore, that the disciples so understood Christ's words. That seems to point to the conclusion that the exception is an interpolation. But taking this statement as presented in the Revised Version, is it possible to interpret it consistently with St. Mark? Probably the most reasonable suggestion is that of Bellarmini, namely, that the clause, "except for fornication," is simply negatived and not exceptive, that is to say, that Christ meant that He was not discussing the question of the wife having committed adultery, but only divorce in other cases. If that be so, and it is a possible interpretation, then there is no inconsistency between this statement and the others. I allow that another interpretation could be put upon it, but my point is, if possible one ought to interpret the St. Matthew passages in harmony with the other passages, and that this is a possible interpretation, and, therefore, as it is in agreement with the other passages, it is the interpretation which we ought to accept. The conclusion seems to be that the teaching of the New Testament is that, without any exception, marriage is indissoluble, and therefore divorce *a vinculo* impossible, and re-marriage of divorced persons is adultery. Now the next point, if I may be allowed to refer to it, is very briefly to sketch the historical position with regard to the question of indissolubility and divorce. There is, of course, undoubtedly a divergence between the Eastern Church and the Western Church.

40,387*a*. You are now going back to the copy I have?—No; I have to give you another copy directly. I now treat the historical aspect of the matter. First, taking the period up to the conversion of Constantine, which we put in 314, we may give this summary of it. So far as we can gather from Christian writers and councils up to the conversion of Constantine, we may say this: First, the wife may be put away for adultery but cannot marry again, nor can the husband do so in the lifetime of both parties. Secondly, the wife similarly may divorce the husband under similar conditions, that is to say, there was the equality between the sexes. Thirdly, that the Church did everything she could to encourage penitence on the part of evil-doers and so bring them together again. Fourthly, that there is no instance of any writer during the period referring to St. Matthew xix. as sanctioning re-marriage after divorce. Origen refers to that St. Matthew passage and discusses it, but not from the point of view of it being a sanction for re-marriage after divorce. What I might in a rough way call the voice of the first three centuries may be said, so far as silence can be allowed to speak, to be unanimous against divorce and re-marriage, yet on the whole the Roman Civil Law was encouraging laxity in some cases referred to by Origen, who is strong for indissolubility, and there seems to have been on the part of some bishops a certain weak tolerance. Then, according to the Apostolic Canons, 47—I am not discussing what the date of them may be, it is usually taken that they were pre-Nicene—say, "If any layman having put "away his wife shall take another, or if anyone take "a woman divorced by another man, let he be excom- "municated"—no exception whatever. According to the Council of Elvira (Granada) 305, Canon 9 amongst other Canons forbids re-marriage of innocent party under penalty of excommunication only to be relaxed *in articulo mortis*, so that both from silence and those positive enactments it seems fair to say that the first three centuries knew nothing authoritatively of re-marriage. Taking the period from Constantine to Justinian, 314 to 527, we may summarise the evidence of the period thus: in the West all re-marriage after divorce was excluded; St. Matthew xix. is not cited by any writer to support re-marriage; the Councils of Arles, the well-known so-called African Code, St. Ambrose, St. Jerome, St. Augustine, disallow re-marriage and maintain indissolubility. On the other hand, at the beginning of the period Lactantius, apparently under the influence of Constantine and a writer called Ambrosinister, admit the re-marriage of the innocent husband but do not admit the re-marriage of the innocent wife; fourthly, the Churches of the East, under pressure of civil legislation, began to waver; fifthly, St. Basil bears witness to the pressure which the Roman law and the customs of Eastern society were causing, hence the difficulty of inflicting discipline, and he shows himself weak on this point, that is the point of inflicting discipline, while quite clearly teaching that marriage is indissoluble and disallows re-marriage, It must be remembered that the Roman law on divorce was becoming more and more lax; divorce by mutual consent was allowed, and the grounds of divorce widely extended. The Church in the East was endeavouring to check these extravagances, and so keen was the struggle over these points that the maintenance of discipline with regard to others became relaxed. Now I would like to say a few words with regard to the West after Justinian. In the West, as the Frankish and German people became converted, there naturally came to be a conflict similar to that which existed in the East. In the British Isles much corruption prevailed amongst the Celts. Hence here and there we find laxity, but it was only sporadic. The Church was stronger than in the East and held her own, and Council after Council refused to allow re-marriage. We may note in regard to one Council, the Council of Aachens in 862, which to the great scandal of many Christians permitted Lothair to re-marry, the firm conduct of Pope Nicholas the First, who did not hesitate to excommunicate all who took part in that Council. The age of the Canonists, which we may date from the 9th century, marked the final triumphs of the doctrine of indissolubility in the West. Now, just for a moment to discuss the question of the practical divergence between the East and the West, I think we are entitled to say this, that the difference between the Eastern and the Western Church on the subject of re-marriage and indissolubility has been (really it is re-marriage) a question of practice rather than a question of doctrine or of law. So far as law is concerned, the Eastern Canon Law is quite clear with regard to the forbidding of divorce and the forbidding of re-marriage. The great Code of the Eastern Church is that which was constituted by the Canons of the East, called the Canons of Trullo, in 691, which adopted into the Code first of all the so-called African Code, the Apostolic Canons, the Canons of St. Basil, the African Code, the Canons of Milevium in 416. All those elements in the great Code of the Eastern Church distinctly and explicitly maintain indissolubility and forbid re-marriage, and that is the law of the Eastern Church at the present time, so that she is conservative in those matters; she has not altered the law; the law of the Eastern Church is in agreement with the law of the Western Church. Further, it is a notable fact that in the criticisms and accusations which Eastern theologians have levelled at the Western Church with regard to many of her practices and her theological decisions, there never has been anything said by any Eastern theologian by way of criticism of the Western Church on indissolubility and of the forbidding of re-marriage. Notably at neither the Council of Lyons in 1274 nor at that of Florence in 1432 was any difficulty raised upon this point. On the other hand, Michael Paleologus in 1274, in his letter to Gregory 10th, expresses his acceptance of the Western theory of indissolubility, so that we come to this, that while there is unquestionably grave difference of practice between the East and the West, yet the Eastern practice was going away from her own law and her own theory under the pressure of Byzantine corruption and legislation of the Eastern emperors which the Church in the East was not strong enough to resist, as the Church in the West, freed from the incubus of the Roman Empire, showed herself to be. The conclusion I venture to offer to the Commission is that certainly

up to the period of the Reformation the law of the Church, both East and West, putting aside the question of practice, was that marriage was indissoluble, and that re-marriage was not to be allowed. With regard to the position of the Church of England, in the first place when we speak of the "Church of England" of course we only mean the two provinces of the Catholic Church which go by the name of York and Canterbury, that is to say, the Bishops, the clergy and laity of the one Holy Catholic Church of Christ, that which the preface to the Prayer Book calls the Whole Catholic Church of Christ, that part of it, those individuals who are domiciled in England. By the "Church of England" one does not mean any religious body, but simply a part of the one whole Catholic Church. Unless it can be shown that the Provincial Synods of England have made any alteration in the laws existing at the period when rightfully the incubus of papal supremacy was rejected in England, unless it can be shown that the Provincial Synods have made any law different from or inconsistent with that existing, then we must hold, as it has been held, I do not speak with regard to this particular subject, but with regard to other subjects, that the existing Canon Law still survives and still is to be appealed to. Undoubtedly an attempt was made, as everyone knows, at the period of the Reformation, to alter the law of the Church on this point. I will not discuss now whether a Provincial Synod could alter the law of the Church, assuming it to be as I have endeavoured to show it is, but as a matter of fact an attempt was made as shown by the reformatio legum to alter the law of the Church, although as a matter of fact the law of the Church was not altered. I do not rely particularly upon the Canons of 1603. I simply look upon them as being in harmony with what appears to me to be historically the law and custom of the Churches throughout the West and throughout the East, and I am as yet uninformed as to any way in which the Church of England, meaning by the "Church of England" the two Synods, has altered the law. Therefore I venture to say that the law of the Church of England, using the term in the sense I have used it, is that marriage is indissoluble and that the re-marriage of the divorced person is not to be allowed. One does not rely, of course, upon the marriage service as being law, because rubrics do not bind, nor does the service book *ex proprio vigore*, but are declaratory or explanatory of the existing law which underlies it. So far as it goes, the service book of the Church of England in the marriage service bears witness to the fact that those who drafted that service did believe that marriage was indissoluble. Now I venture to say this, that as an Established Church the Church of England has a right to claim the support of the State in respect of her laws as affecting her own members. That is the only—I speak here in agreement with the late Professor Freeman, who wrote on the subject—meaning to my own mind. The word "Establishment" is that the State supports by the civil power the law and custom of the Church, and therefore on this ground, the ground of Establishment, we, and when I say "we" I mean the English Church Union, base our demand for the repeal of the Divorce Act of 1857, and we do so as a matter of right. We conceive that the Established Church has a right to look to the State not only to legislate in opposition to her law and custom, but, so far as her own members are concerned, to support her law and custom. We regard the Divorce Act of 1857 as being in effect, and quite truly—I am not speaking rhetorically but purely argumentatively—a measure of disestablishment. Even if the law of England should continue to allow divorce and re-marriage, I further say that it is inconsistent with the principle of establishment that the clergy of the Church should not be restrained by the civil power from solemnizing such marriages, or that such marriages should be solemnised in church, or that persons choosing to contract such marriages should be held to be legally entitled to the rites and sacraments of the Church. On those grounds we ask for the repeal, either the total repeal of the Divorce Act or for such amendment of it as will make it impossible for re-marriages of divorced persons to be celebrated in Church.

40,388. Do you think that is within the range of practical politics?—I do think so. It has come within my personal knowledge in going about and talking with lay people. I could give an instance of persons I meet every day who are not members of the Church, Nonconformists and Liberals, who entirely agree with me as to the importance of maintaining the indissolubility of marriage and the desirability of the repeal of the Divorce Act. I believe myself, of course, each individual can only speak of his own experience, but I believe there is a rising in public opinion for the repeal of the Divorce Act.

40,389. The next point in your paper I have is with regard to separation orders?—Yes.

40,390. We have had that very fully discussed already?—It is desirable that that law as to separation orders should be reformed. It is desirable that it should be made more difficult to obtain such orders. They should no longer be granted by magistrates. Jurisdiction should be given to the county courts to grant them. In extreme cases where danger to the wife may be apprehended, a temporary protection order to be granted by a magistrate pending proceedings in the county court. No separation order should be for more than six months when fresh application may be made. Provision to be made for endeavour to reconcile the parties under the authority of the court. Proceedings for separation orders to be instituted by either party.

40,391. Then paragraph 3 is really an objection to the facilities of divorce on the grounds you have already given. Obviously no consent can be given to such extension by those who object to divorce. Alleged inequality of treatment of rich and poor best met by abolishing divorce?—Will you kindly note in that that the argument with regard to the inequality of treatment of rich and poor is best met by abolishing divorce altogether.

40,392. That is expressed there?—Yes.

40,393. Then paragraph 4 says, "The objection as "to separation orders giving rise to immorality and "therefore facilities should be given for divorce. "This would be in the view of those who object "to divorce the substitution of one immorality for "another." Then paragraph 5: "So long as divorce is "legally permitted no case should be adjudicated on "which is undefended; provision should be made for "intervention of King's Proctor in all such cases"?—Might I say with regard to the King's Proctor that is important from my own experience. In a recent case I myself reported to the King's Proctor what occurred in my own parish.

40,439. There is power to intervene in all cases now?—I desire to see that there should be a counsel officially assigned to defend every case.

40,395. Your next paragraph is with regard to civil marriage?—Yes. The proposal to make civil marriage, that is the contracting without religious ceremony, compulsory in all cases would not be a remedy for present difficulties. Attitude of the Church towards clandestine marriage. Only an *impedimentum impediens*, except where the Decree Tametsi of the Council of Trent is in force. Recognition of a contract, however entered into, if it can be proved, though penalties, even to the bastardising of the children, should be enforced. Objections to Tametsi and to Lord Hardwicke Act. But the Church requires her members to contract *in facie ecclesiæ*. This would create a certain conflict were a civil ceremony compulsory. Grave objections to reiterating the contracting. The State as well as the Church has the most profound interest in ascertaining that the contract has been properly entered into and that the evidence is duly preserved. It is possible so to arrange that the necessary requirements both of the Church and other religious bodies on the one hand, and of the State on the other, may be duly satisfied without any conflict. Recent legislation in the Bahamas has shown this. Description of the provisions of the Act of the Legislature for securing all that the State requires without interference with the religious contracting, or, with the

rules as to impediments, &c., which any religious body may make for its own members. Desirability of some such legislation to supersede the present Marriage Acts, and for securing uniformity throughout the United Kingdom. With regard to the recent legislation in the Bahamas, may I say what it was. I applied to the Crown Agents for the Colonies to supply a copy of the Act, and if you would like it I will send it in.

(*Sir Lewis Dibdin.*) I think we have it.

40,396. (*Chairman.*) Will you make your point on it, because it is mentioned here. You say, "Recent legislation in the Bahamas has shown this." Will you add what you want to say about the Bahamas?—The legislation of the Bahamas was this. It is about three years ago. First of all the State recognises no marriage which has not been contracted in the presence of a marriage officer appointed by the State, and any minister of religion of any permanent congregation is qualified to be a marriage officer. He applies to be appointed and is appointed by the governor. If the governor refuses to appoint him he has an appeal to the Secretary of State for the Colonies. In addition to those ministers of religion, justices of the peace are appointed, and other persons. Every marriage must be contracted in the presence of a marriage officer. The ceremony of marriage may be whatever the marriage officer likes, provided that it contains certain words of contract which are practically identical with those words in the Book of Common Prayer. The marriage has to be registered by the marriage officer in triplicate. As to preliminaries of marriage, very great care is bestowed as to the publication of banns, which have to be published in certain words, and a considerable amount of information has to be obtained. The parties giving that information are liable to prosecution for perjury if they give wrong information before the banns are published. Very strict regulations are made with regard to residence. Then there is a clause in the Act that every religious body can make such regulations as they choose with regard to impediments to marriage, and may refuse to celebrate the marriage unless the parties conform to such regulations, so that in the case of marriage officers who are ministers of religion, no party who does not conform to the regulations of the particular sect to which that nomination or to which that marriage officer belongs, would have the right to be married by him. He would have a right if he does conform. Those provisions make the preliminaries uniform, and that all brings in the authority of the State in a proper manner, and provides that the contract shall be uniform and the registration uniform, and in that way supplies the State with all that the State has a right to demand, namely, that the marriage shall be properly contracted and that the evidence shall be preserved.

40,397. Your last point is really an indication of what preliminaries to marriage you think should be provided for?—Yes. There I desire to say one word. What I put as the preliminaries to marriage are not theoretical: it is based on practical experience.

40,398. Does it not sufficiently summarise your recommendation?—I think it does. Publications of banns and issue of licences. Unsatisfactory and insufficient character of present practice. Requisite publicity is not secured; the law continually violated. Suggestions for an improved system. Powers to be given to marriage officer to require particular information from the parties with the view of ascertaining that no impediment exist Declaration under oath to be required. No fees to be allowed for preliminaries. Publication of banns to be in public places as well as in church, or registrar's office. Residence to be required before publication of banns. Arrangements for facilitating the solemnization in any place desired by the parties. Uniformity of marriage fee.

40,399. The last but one, No. 8, is "Desirability "of enacting that children born out of wedlock should "be legitimated *per subsequens matrimonium*"?—I am very strong about it, and I want to bring the law in England in accordance with the old law of Scotland in regard to that, and, I may say, in conformity with the law of almost every civilised country.

40,400. Will you explain No. 9, "Recognition in "accordance with the authentic form of the table of "prohibited degrees, that affinity as well as consan-"guinity arises *ex copula illicita*"?—I may say the table of prohibited degrees, as usually printed, omits the notes which were made at the bottom of it, which Parker originally made. One of these things was, it is to be noted, that consanguinity or affinity hindering marriage arises out of the unlawful intercourse of man and woman as well as the lawful intercourse. That was in accordance with the old Canon Law that affinity arose *ex copula illicita*. There is a doubt at the present time. I may refer to two cases of recent years: one is the case of Wing *v.* Taylor, in the Court of Matrimonial Causes, in 1861, in which Sir Cresswell Cresswell decided that affinity arising out of unlawful union was not a cause for the pronouncing of a decree of nullity. The case was that of a man who had married a woman with whom his father had had intercourse, and it was held that that was not a case for nullity. It may not be a case for nullity, because one knows how easy it would be to assert such a thing, but it was held by the old law of England as an impediment to marriage, and I would desire to see that restored, in order to bring it on a level with the law of England existing at the present time. Consanguinity does arise out of illicit intercourse. That was held at the same time in the case of *The Queen* v. *The Inhabitants of Brighton*, before Sir Alexander Cockburn. It seems to me desirable it should be made clear on what we must call the *honestus publica*, as the Canonist would say, that in such abominable cases a man should not be allowed to marry, in the interest of public decency.

40,401. That concludes your paper. Is there anything else that occurs to you to add?—Nothing else, my Lord.

40,402. (*Sir Lewis Dibdin.*) It is extremely important we should get your view as to what it is in the law of the Church of England which prevents marriage. I have listened very carefully to your evidence, and I gather you take the view which I was endeavouring to put to Mr. Hill, but he was not anxious to be questioned, that the law of the Church of England really rests not upon the Canons of 1603, but upon the fact that the Canon Law at any rate prevailing in the Western Church, including England, up to the time of the Reformation was decisive against it, that no change was made at or after the Reformation in the law of the Church, and that therefore it remains to this day as it was before the Reformation. That is really the argument?—That is really my argument.

40,403. Both of you represent a very important body, the English Church Union, but on this point your evidence is inconsistent. May I ask who does represent the English Church Union on this point, you or Mr. Hill?—I do not think Mr. Hill was inconsistent with me, but he did not quite express himself.

40,404. May I take it it is you?—I think Mr. Hill would say I have expressed the opinion of the English Church Union. I think he will allow me to say so.

40,405. You put clearly to us at the beginning of your evidence this view. You said we regard marriage as a divine institution, whether Christian marriage or non-Christian marriage, and you regard both marriages exactly the same?—Yes.

40,406. You would not wish the Commission to come to the conclusion that although that is your view, that is the uncontradicted view of the Church, or different branches?—I speak in that way speaking as a student of the Canon Law. As far as I am able to say, that seems to be the view of the Canons.

40,407. You would not say it was the view of all the Canonists?—Except with regard to what one may call the Pauline dispensation.

40,408. I am thinking of that?—I think that is a very difficult point.

40,409. I am not arguing it with you, but I want to get the matter right. The Roman Church would not agree there was no difference between Christian marriage and non-Christian marriage?—They would, only they would regard it as a dispensation.

40,410. They would hold the Pauline privilege applied to a non-Christian marriage but not to a Christian marriage?—The very thing, the Pauline privilege, is a privilege to override the law. Privilege is something which overrides the law. I did not want to overweight what I was saying, but I would have regard to that, and that is the way every Canonist would explain it, that it was a privilege overriding the law.

40,411. I do not want to argue it. I want to get the fact clear. You know Mr. Watkins' book on marriage, with which you agree in many ways?—Yes.

40,412. I am reading from page 589. His view is that marriages contracted outside Christianity are not essentially indissoluble?—I do not agree with that.

40,413. There are two views even among the school you represent?—Yes.

40,414. Yours is that all marriages, Christian and non-Christian, are alike indissoluble?—Only that there is a sort of dispensation, that St. Paul gave a dispensation in the case of converts.

40,415. They are equally indissoluble essentially?—Yes.

40,416. On the other hand, the received Roman view is that the question of indissolubility only affects the Christian marriage?—I do not think so.

40,417. That is Mr. Watkins's view?—Yes, but I do not think Mr. Watkins is right. As regards the opinion of Roman Catholics ——

40,418. I think Mr. Watkins has rightly interpreted the Roman view, but I leave it there. Would it not meet your view as to the remedy of the ceremony, the civil marriage, if the Nonconformist Marriage Act of 1898 were made universal? As you describe the practice of the Bahamas it seemed to me extremely like the machinery of the Nonconformist Marriage Act of 1898?—It is very much like that, but I should like to sweep away all Marriage Acts and have a consolidating Act.

40,419. That is a detail. You would like to establish machinery so that the State might make the clergyman of a particular church, or the minister of a particular nomination, its marriage officer?—Quite so.

40,420. And let him, subject to pronouncing certain words of the marriage oath, celebrate the marriage with any marriage service suitable to his own denomination?—I would take away from the clergy of the Church of England their official right to celebrate marriages, and in future make their right from the State point of view to celebrate marriages depend upon their attitude as marriage officers.

40,421. That is your proposal?—Yes.

40,422. In proposing that are you representing the views of the English Church Union?—No.

40,423. Those are your own personal views?—Yes.

40,424. With regard to the legitimation of children born prior to marriage, you bear in mind the old objection to changing the laws of England?—I know.

40,425. Although you have not told us so, are you not a little influenced by your love for canon law?—I am.

40,426. You said it was in accordance with the law of other States, but is not what is in your mind the Canon Law?—Quite so, but I regard canon law as good law.

40,427. I follow that is your view, but that is the influence at the back of your mind?—But I am also influenced by social considerations and general considerations of public weal. I am not putting it forward because it is canon law.

40,428. (*Chairman.*) Your view is that marriage is indissoluble according to Christian principles?—Yes.

40,429. In that you differ from the present law, although that was supported by certain dignitaries of the Church?—Quite so.

40,430. You also differ from those who have been called before us who maintain that it is desirable on grounds in addition to adultery, and they are also members of the English Church?—Yes.

40,431. So that we have three views of the English Church at present placed before us?—Yes. I agree nothing can be said to be truly the view of the English Church except as voiced by her Convocations.

40,432. Do you think there is any certainty about it at all, after that minute examination you have made, pointing out the extreme difficulty of making out what the experts really say?—I do not think there is a difficulty. I think that the teaching of the New Testament is perfectly clear as to indissolubility, and the only difficulty is this.

40,433. How do you account for the dispute through the centuries which has resulted in 1910 in three different views being held by the English Church, if it is so perfectly clear?—I believe that entirely arose out of the Byzantine corruption, and it was *ex post facto*.

40,434. Cannot we leave the Byzantine corruption out of the question now? I ask you, to-day?—Because it is a tradition.

40,435. Why is it not equally so that your view is a tradition and you have tied yourself down by the writings of people who are dead and buried centuries ago?—Because notwithstanding the difficulty which some writers have found with regard to interpretation of St. Matthew, the practice of the Western Church came to be inconsistent with the notion that our Lord had made an exception.

40,436. Are you not relying on the practice of ages when there was a great deal of ignorance and superstition in the world which does not exist to-day?—I think there is more superstition to-day than there ever was, and more ignorance.

40,437. Does that represent your serious view?—Quite so.

(*Chairman.*) Thank you very much for your evidence.

Mr. Henry Willliam Hill recalled.

40,438. (*Chairman.*) I think you wish to say something?—Yes. If the matter had been put to me as it was to Mr. Wood, by a statement of what he thought was the truth, I should have assented at once, but Sir Lewis Dibdin is a lawyer and I am only a layman, and he began to ask questions as to what happened at the time of the Reformation, and in Mr. Wood's presence, who is known to be a very learned Canonist and an expert on all these questions, I did not care to enter into what I knew he was going to deal with There is, however, no difference of opinion between Mr. Wood and myself as to the operation of the pre-Reformation canon law.

40,439. (*Sir Lewis Dibdin.*) If Mr. Hill desires to apologise for the way in which he received my questions I accept it, otherwise I refuse to ask any questions at all?—If Sir Lewis Dibdin thinks I did not receive his questions as I ought to have done, of course, I apologise. I should be extremely sorry if he thought that.

(*Sir Lewis Dibdin.*) I accept the apology.

40,440. (*Chairman.*) Do you wish to indicate to us there is no substantial difference of view between you and Mr. Wood on that point?—Yes.

40,441. (*Sir William Anson.*) Although I understood from you that the Church law, with regard to marriage, was to be found in the Prayer Book and the Canons?—The substance of it, certainly.

40,442. I understand from Mr. Wood, and it seems to me a reasonable view, that it was the law of the Church unchanged at the time of the Reformation?—Just so.

40,443. And unaffected by the Prayer Book and Canons?—Yes.

(*Sir Lewis Dibdin.*) That was the view which I desired to put to Mr. Hill, but which he refused to allow me to put.

40,444. (*Chairman.*) May I take it that you have now said what you want to say?—Quite.

(*Chairman.*) All I care about is, that we should have everything said people wish to say.

Adjourned.

Winchester House, St. James's Square, London, S.W.

FORTY-NINTH DAY.

Tuesday, 6th December 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The LADY FRANCES BALFOUR.
Sir WILLIAM R. ANSON, Bart., M.P.
Sir FREDERICK TREVES, Bart., G.C.V.O., C.B., LL.D., F.R.C.S.
Sir LEWIS T. DIBDIN, D.C.L.
His Honour JUDGE TINDAL ATKINSON.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.
The Hon. HENRY GORELL BARNES (*Secretary*).

Mr. BASIL HOME THOMSON called and examined.

40,445. (*Chairman.*) You are secretary to the Prison Commission?—Yes, my Lord.

40,446. And late governor of Dartmoor Convict Prison?—Yes.

40,447. Are you now at the Home Office?—Yes.

40,448. What is your office there?—Secretary to the Prison Commission.

40,449. What does the Prison Commission do?—It has control of both convict and local prisons.

40,450. Does it inquire into anything that requires looking after?—Yes.

40,451. Under the direction of the Home Secretary?—Yes. I am also an inspector of prisons, and sometimes hold inquiries on behalf of the Prison Commission.

40,452. You have had long experience with long-sentence convicts?—Yes, my Lord; chiefly with the recidivist.

40,453. What do I understand on that?—Prisoners convicted of grave or persistent crime. As a rule, in practice, recidivists are men who have undergone several terms of imprisonment and are over the age of 24.

40,454. That is at Dartmoor?—That is at Dartmoor.

40,455. Where your experience was?—Yes, and at Wormwood Scrubs too; because they come to Wormwood Scrubs on conviction.

40,456. You say in your proof, with regard to convicts who belong to the habitual criminal class: "Comparatively few of these men are lawfully married to the women with whom they live"?—Yes.

40,457. "Though they refer to them as their wives"?—They regard them as their wives, but are not married.

40,458. And you say, "Many of these women correspond regularly with their men throughout a long sentence, especially when they have borne them children."—That is so.

40,459. Have you found that they take up with other men?—They do, but they very often go back to these men again afterwards unless they have entirely disappeared. They will carry on a temporary connection with another man while the husband is in prison, and then go back to him after, sometimes with his knowledge.

40,460. "When they take up with other men, as they often do, they will return to their reputed husbands if, as often happens, the husbands are willing to have them."—That is so.

40,461. How often have you met with that?—Well, it is difficult to give figures, but I should say one is always coming across cases in the convict prisons of that sort; a man comes and complains that his wife has gone wrong.

40,462. Can you give us roughly what is the total of long-sentence prisoners; I would say seven years and over?—I can give you the figures for five years and over.

40,463. They do not keep them at seven years separate?—Yes, we could have got it, but I did not actually ask for it.

40,464. Would you give it us at five?—At five there is a total of convicts now undergoing penal servitude, or rather undergoing penal servitude on the 6th of August last, 3,200. Out of these, 1,694—that is about half—were serving five years and over.

40,465. The other half is not so long?—The other half are three and four years' sentences.

40,466. Is there anything at all to show what the number of those at five years and over is who are married?—Six hundred and thirty-six are reputed to be married, that is to say, they said they were married on reception.

40,467. That is quite a different thing from fact?—That is quite a different thing from fact.

40,468. Are those all at Dartmoor or scattered about?—They are scattered about in five convict prisons.

40,469. Do you find that of those who are in prison there is much anxiety as to whether the wife, or supposed wife, will be true when they come out?—Very great.

40,470. There is?—Yes.

40,471. And you say here, "Sometimes I believe she does so, particularly when she has reached middle age." I suppose that means she remains true. Have you got your memorandum?—I have a copy, my Lord.

40,472. Perhaps you would read that and explain what you mean?—"In those cases where marriage has taken place, the man suffers much anxiety as to whether his wife will remain true to him. Sometimes I believe she does so"—I mean sometimes she remains true—"particularly when she has reached middle age, and in such cases she would not apply for a divorce even if the law gave her the right to do so. In most cases, however, she goes to live with another man, either writing a farewell to her husband or concealing the fact from him and neglecting to answer his letters." I should like to qualify that by saying that that is the recidivist class I am dealing with, not the star class. I should like to except the star class.

40,473. What are the star class?—First offenders, of previous good character.

40,474. They are not so long?—Yes, they may be as long, but they are men specially classified by the Prison Commissioners on reception, after inquiries of anyone that has known them; and they include bankers and solicitors and doctors and all kinds of professions; and, as a rule, they are much better educated than the recidivist or habitual class.

40,475. And this refers to the recidivist class?—Yes, only to the recidivist class. "Both cases are common in a convict prison, and in such cases she might or might not apply for a divorce. Generally she would not, as in the criminal classes people do not trouble themselves about the ceremony, and are not

thought less of because they may not have gone through it." That again is the recidivist class.

40,476. Do you think that divorce cases might be brought by those who you say would live with another man if they had the possibility of doing it?—I do not think they would take the trouble. They would not pay the fees.

40,777. To get free?—No.

40,478. It would depend on the individual or their circumstances?—Yes, but people of that class simply go and live with another man.

40,479. Then you give an instance on the next page, if you will pass on to that?—"I remember one instance in 1899 where a husband undergoing five years' penal servitude heard from an incoming convict that his wife had had a child by another man. He was then only 21 and his wife 18, though they had been married two years. In his distress he wrote her a threatening letter which on my advice he withdrew, and he then wrote her a letter quite properly worded, promising to take her back if she would leave the man. To this she replied admitting her lapse, but explaining that the father of her child was a casual acquaintance whose name she did not even know and whom she had never seen since, and that the child was a boy of whom she was sure her husband would be very proud, as it was the image of him (!), and she would bring it with her when she came to visit him on the next August Bank Holiday. After some demur the father consented to this arrangement; the Church Army consented to interest themselves in the young woman, and I believe the couple were re-united. This was doubtless an exceptional case, and I relate it only to show how lightly persons in this class may treat adultery on the part of a wife. Personally I do not think that there is any demand for divorce on the ground of prolonged imprisonment for the following reasons:—(1) The wife who is attached to her husband would not apply for it. (2) The woman who might apply for it would go away and live with a man without going to the expense of a divorce. There are moreover strong reasons against it: — (1) A judge in sentencing a prisoner to a long term would in one case be awarding a terrible addition to his sentence (*i.e.*, where a man was attached to his wife), in another would be imposing the bare sentence of imprisonment (*i.e.*, where the man was unmarried or cared nothing for his wife), and the judge would have no evidence enabling him to judge between the two. (2) A prisoner sentenced to a long term often has the term shortened by the Home Secretary. In such a case the wife might have secured a divorce to which, on the shortened term, she was not entitled."

40,480. Then you have made an additional note?—"On 6th August, a circular was addressed to 27 persons who have had experience of convict prisons, including the governors, chaplains and medical officers of all the convict prisons, inviting their views, supported if possible with actual instances 'showing the hard-'ship or the advantage of maintaining the marriage 'relation when the husband or wife is undergoing 'a long term of penal detention.' Of these 27, 3 gave no opinion; 7 were in favour of a long sentence being a ground for divorce, and 17 were against it."

40,481. Now can you give a summary of, first, those in favour of a long sentence being a ground; and then, secondly, the reasons of the 17 that were against it. Can you summarise it? I believe you have a memorandum which Captain Wilmot sent which summarises it. If you have not got it, it does not matter?—No, I have not got it, my Lord. Out of the 17 against it, I think all the chaplains were against it on religious grounds.

40,482. That is what I want. Can you tell me how many of the 17 were chaplains?—I think nine, my Lord. By going into the other room I could get the actual figures.

40,483. Perhaps you had better?—(*After a short pause*). Eight were chaplains, my Lord.

40,484. Do they base their views on religious grounds?—Yes, nearly all of them.

40,485. I do not want very long details, but you have been good enough to send us from the Home Office the names of some gentlemen representatives; you were asked for that?—Yes, that is so.

40,486. The witnesses that are coming have all had their names supplied to us by the Home Office as representing opinions?—Yes, that is so.

40,487. Can you summarise for us what are the reasons on which those who were in favour of long sentences being a ground for divorce put it, and what the reasons are, given roughly, by those against it?—Well, my Lord, I take first of all those who were for divorce. Some were in favour of it, not on the ground of length of imprisonment but on the ground of the nature of the crime.

40,488. Can you indicate a little more?—Well, unnatural crimes; crimes against nature; crimes of indecency; and even crimes of violence one or two were in favour of. I think one or two favoured divorce on the general ground that there might be cases of hardship in long sentences, and that a woman, though she might not use the power, ought to have the power if she wanted it.

40,489. Did any of them base it on the ground that there are cases of criminals who are in and out of prison repeatedly?—Yes, that was mentioned, but it was more on the personal ground that a man that did that was a very bad husband.

40,490. Then on the other hand?—Well, against the grounds I have already given, that of uncertainty in the mind of the judge in sentencing; and also the question of shortening the time by the order of the Home Secretary, and also a very strong ground with a great many of them was the great hardship on the man himself, especially on the star class. There is often a very great affection between the husband and wife, which comes very much to the front after a long sentence, and it was felt that it would be a very cruel addition to the sentence if a man were uncertain whether his wife would avail herself of divorce or not.

40,491. That seems more from the point of view of the criminal?—That is the case in the answers, that it was rather the criminal who appealed to the prison official than the relations outside.

40,492. What view has been taken about the position of the children?—Curiously enough, the position of the children is quoted by both sides.

40,403. Each in support of their own view?—Yes.

40,494. Now, you have mentioned yourself how the tendency seems to be for these women associating with these men to go off and live with somebody else while the man is in prison?—Yes, I have, my Lord.

40,495. Was that a matter that enabled either side to present any view?—No, I do not think so, and I think my experience is more limited than some of the others, in the sense that I was only dealing with the recidivist class, and they were dealing with the star class as well.

40,496. Have you anything else to add that may help us?—I think not, my Lord.

40,497. (*Mr. Brierley.*) You have given us the number of prisoners suffering penal servitude for five years and upwards as 1,694?—Yes.

40,498. That includes, I suppose, the recidivist and star classes?—Yes.

40,499. Could you give us the number of prisoners of the star class under sentence of five years and upwards?—I could obtain them easily.*

40,500. Your opinion that you expressed really refers to the recidivist class, does it not?—Yes.

40,501. With regard to the wife not caring about a divorce and going off with another man?—Yes.

40,502. That would entirely apply to the wives of prisoners of the recidivist class?—Yes.

40,503. I should like to know the number of prisoners in the star class, because their wives might take a different view. They would be probably respectable women, would they not?—I can give you very nearly the right number, but not quite.

* The witness subsequently wrote to say that the number of such prisoners in custody at the present time is 313 males and 16 females.—H. G. B.

40,504. They would be women who in all probability would not be willing to live with another man?—Quite so, and would not avail themselves of the power of divorce also.

40,505. Well, that might or might not be so, according to whether they had any affection for their husbands?—Yes. The approximate number is about 400 in the star class; and then there is a second class, called the intermediate class, who are on the verge of being recidivist, but are sufficiently young to give hope of reformation.

40,505. (*Chairman.*) Did the witness give the number of the star class?—Approximately 400.

40,506. (*Mr. Brierley.*) That is the class of five years and upwards?—No.

40,507. But would you confine yourself to the class of five years and upwards; I should like to know the number of the star class. I suppose it would be much less than that, would it not?—About 200.

40,508. And the intermediate class. You would not have any intermediate class of five years and upwards, would you?—Oh, yes, they are classified according to their antecedents, but I could not give you the figures.

40,509. Different considerations would apply to the 200 class of prisoners?—Certainly.

40,510. (*Judge Tindal Atkinson.*) We have had some evidence that in these irregular unions women would prefer not to be married because they get greater control over the men. Would not that apply equally to the women whose husbands are in prison?—I do not think so.

40,511. (*Sir Lewis Dibdin.*) I only want to ask you, Mr. Thomson, with reference to your knowledge generally of prison governors, and authorities of that kind; the great preponderance of opinion, I take it, is against making penal servitude a ground for divorce?—Yes, that is so.

40,512. (*Chairman.*) Are there any definitions in writing of the classes into which people go in prisons?—Yes, my Lord; the definition of a recidivist is a person guilty of grave or persistent crimes. The definition of the star class—I cannot give it you verbatim, but the effect of it is—(they are in the prison rules which are statutory).

40,513. Could you send us a copy of the prison rules?—Certainly.

40,514. Would that enable us to judge what the star class or the recidivist are?—No, my Lord. But as I am a member of the classifying board, I can tell you.

40,515. Well, would you tell us first what you understand by the star class?—May I give you the process from the beginning?

40,516. If you please?—The process is that on the conviction a convict—that is, a man sent to penal servitude—the previous record is prepared at the prison of conviction, and it is the duty of the governor to send out a certain form with a number of questions on it as to previous character; first to the police; second, to any friend of the prisoner's he may nominate, or old employer and so on, or any person that the governor may know; and these come before the board of which I am a member; and each member of the board records his opinion independently; first of all, seeing the man's previous record of crimes; second, the opinions about him (of course, if he has had a previous term of penal servitude he becomes a recidivist, naturally); and if there is a difference of opinion another member is called in, the chairman, as a matter of fact, of the Prison Commissioners, to decide between the differing opinions; and the star class——

40,517. Might I stop you for a moment there. What sort of cases go, as a matter of course, in the recidivist class?—As a matter of course, only those who have been previously in penal servitude.

40,518. For how many years?—For any time.

40,519. That is what I was trying to get at?—That is almost invariable. I have known about two exceptions in the whole of my time.

40,520. Supposing a man got penal servitude for any length of time, and then gets it again for any length of time does he become a recidivist?—He does, unless it is actually a case where he has come before a court which has taken a very grave view of a small crime, and has awarded penal servitude. If he comes up again, still being under 24, he would perhaps be an exception.

40,521. Does nobody become a recidivist under 24?—Very rarely.

40,522. It is in your discretion?—It is in our discretion, but it is very rarely that it happens.

40,523. What is the shortest term that he can have the first time, the shortest the second time, that would put him into the recidivist class?—Three years in each case.

40,524. Does that practically exhaust that?—No; because a receiver of stolen goods, where it is his first conviction, but there is evidence that he has been a receiver for a long time—there are cases where that man would be put into the recidivist class.

40,525. Although he has not been sentenced at all?—Yes, but there would be evidence from the police that he was a trainer of young thieves, and we would put him into the recidivist class to save contaminating the others.

40,526. Then, supposing a man has a great number of sentences?—If he is over 24 he would go into the recidivist class; if under 24, we would give him the benefit of the doubt.

40,527. What class of crime would the earlier case have to be?—In practice they are generally crimes against property; the only habitual criminal is really a man that commits crime against property. The *crime passionel*—the crime of passion—may be persistent, especially sexual crime; but it is very uncommon; and it is very uncommon that the two classes of crimes cross over—that the *crime passionel* becomes a crime against property, and *vice versâ*.

40,528. But the result is that a recidivist is really a man who would be described as habitually criminal?—That is so.

40,529. Would that be so even though his last sentence were not penal servitude?—Yes, if he is over 24. If he had a large number of sentences for crimes against property we should make him a recidivist.

40,530. Then as to the star class?—Well, that depends very much on these reports. If it is a first offence, and there is nothing known against the man by the police or others, and he gets a good character from his employers, he goes into the star class as a matter of course.

40,531. Does that include a man who has been guilty of manslaughter and sent to prison for 20 years?—Yes.

40,532. He is still in the star class?—Yes, or men who have been commuted from the death sentence; a considerable number.

40,533. Supposing the first sentence was rape?—Well, formerly bad rape cases were not admitted, but now they are admitted into the star class; and we admit unnatural offences into the star class now.

40,534. Does that exhaust the star class. It really means a person who is not supposed to be habitually guilty?—No, it is more than that, my Lord. It is a person who has committed a crime, but is of previous good character and antecedents.

40,535. That is what I was trying to convey. Then the intermediates?—The intermediates are those who are not quite good enough for the star class. I think that is the best way of putting it. And amongst those are habitual criminals under 24, because there is a hope of their crimes not being persistent.

40,536. Then, broadly speaking, with regard to long sentences, it does not follow because a man has a long sentence, that he goes into any one class?—No, it is entirely character.

40,537. He may get 20 years and yet find himself in the star class?—Yes.

40,538. And he might get less years and be put into the recidivist class?—Yes.

40,539. He has done something less offensive, but he has enough to make him an habitual criminal?—Yes, he would go into the recidivist class.

40,540. Could you send me anything in writing showing the classes?—Yes, a transcript from the rule, and the practice under it.

40,541. Do those contain the statutory definitions of habitual criminals?—Yes.

40,542. You would take that from the rules?—Yes.

40,543. (*Sir William Anson.*) Do these distinct classes—star class, recidivists and intermediates—have any effect on the prisoners in an ordinary prison or convict prison, with regard to prison discipline or privilege?—Yes, in two respects only. The star class and intermediates have only one month separate confinement, and the recidivists three, at the commencement of the sentence. And the second is that they are all kept apart. The discipline is the same, but the star class are kept apart from the recidivists, and the recidivists from the intermediates.

40,544. The star class is not necessarily a first offender?—No, a man who has had two or three convictions for drunkenness might still go into the star class.

40,545. Nor does it depend on the character of the offence?—Not now; it used to.

40,546. Nor on the length of the sentence?—Not in the least.

40,547. And the same with the recidivists?—Yes.

40,548. A man may become a recidivist for a first offence?—No, not for a first offence unless it is receiving.

40,549. And would that be necessary with a sentence of penal servitude, or, say, 18 months' imprisonment?—No, only penal servitude. The classification is different in the local prisons; it is carried on by the local authority there.

40,550. (*Chairman.*) In the local prisons they do not get long sentences?—No, only up to two years.

(*Sir William Anson.*) But there is a star class.

40,551. (*Chairman.*) But they are classified in a different way?—Yes, there is a star class; but in the case of a man coming in for only a month it is not possible to make the same inquiries.

40,552. Then really this classification is a matter of discretion very largely?—Yes.

40,553. There are no arbitrary rules?—No.

40,554. But according to the general condition of the prisoner you would put him in one class or the other?—Yes, his previous character and antecedents. Might I add one thing that I forgot to say. We stretch a point in the direction of keeping the star class exclusive, because the figures of reconviction of the star class are so extremely low; they are under 10 per cent.; perhaps under 2 per cent. of the star class return to penal servitude.

40,555. Under 2 per cent. come back?—Yes, and for that reason we are very careful not to make the star class too wide.

40,556. The whole idea is discipline and reformation?—It is reformation, but the discipline is the same for all.

40,557. But I mean the object is to reform?—Yes, entirely.

(*Chairman.*) Thank you very much, Mr. Thomson; you have thrown great light upon it. I hope it has not greatly inconvenienced you coming here.

The following are the rules referred to in the witness's evidence:—

The classification of prisoners sentenced to penal servitude is governed by the Statutory Rules set out below.

PRISON RULES

(Convict Prisons).

Rules, dated January 21, 1905, *as to Division and Classification, made by the Secretary of State under the Prison Act,* 1898.

"A."—Ordinary Division.

3. All convicts in the Ordinary Division shall be classified by the Directors immediately after conviction as follows, viz.:—(*a*) The Star Class; (*b*) the Intermediate Class; and (*c*) the Recidivist Class. Convicts of each class shall, as far as practicable, be kept apart by themselves, and not be allowed to associate with convicts of the other classes.

4. *The Star Class.*—Any convict shall be eligible for this class who has never been previously convicted, or who is not habitually criminal or of corrupt habits. Convicts in this class shall be liable to be removed to the Intermediate Class if found to exercise a bad influence over other convicts.

5. *The Intermediate Class.*—Any convict may be placed in this class—

(*a*) who has not been previously convicted, but who, owing to his general character and antecedents, is not considered by the Directors to be suitable for the Star Class; or

(*b*) whose record shows that he has been previously convicted, but not of such grave or persistent crime as would bring him within the Recidivist Class.

6. *The Recidivist Class.*—Any convict may be placed in this class—

(*a*) who has been previously sentenced to penal servitude or whose record shows that he has been guilty of grave or persistent crime; or

(*b*) whose licence, under a sentence of penal servitude, has been revoked or forfeited.

7. Convicts in the Intermediate Class may be promoted to the Star Class on their showing proofs of a reformed character, or they may be reduced to the Recidivist Class if they are known to be exercising a bad influence on their fellow convicts.

Classification under these rules is carried out as follows:—The governor of the prison to which the convict is first committed, sends out forms of inquiry to the police and reliable persons to whom the convict is known, and forwards the reply with all other particulars to the Prison Commissioners, who proceed to classify the convict according to the information available as to his character. Certain factors are considered in the classification:—

(1) A conviction for an offence of a non-criminal character, or a criminal conviction several years before would not necessarily disqualify for the Star class, provided that the recent character was good.

(2) Men convicted of criminal assaults on young children are generally excluded from the Star class. Women convicted of illegal operations, where there is evidence of persistence, and men who have committed several bigamies accompanied by fraud are disdisqualified.

(3) Professional receivers, makers of base coin, confirmed blackmailers, and members of a gang of long firm swindlers are not as a rule admitted to the Star class, even though it be a first conviction.

(4) Young men, whose records point to classification as Recidivists, but who are under 24 or even a little over, are generally classified as Intermediates in order to keep them away from more hardened criminals.

(5) Convicts who have already undergone a term of penal servitude are with a few exceptions classified as Recidivists.

From time to time convicts in the intermediate class whose character and disposition appear to justify the change, are promoted to the class above; and others in the star or intermediate classes whose conduct and disposition show that they are exercising a bad influence on their fellows are reduced to the class below.

(Signed) BASIL HOME THOMSON.

Dr. JOHN BENSON COOKE called and examined.

40,558. (*Chairman.*) Are you engaged at His Majesty's Prison at Wakefield?—I am.

40,559. What is your official position?—My official position is principal medical officer of His Majesty's Prison, Wakefield.

40,560. How many do you have there?—We have just under a thousand prisoners altogether.

40,561. And are some of them, and if so, how many, what you call long-sentence prisoners?—We have 200 convicts who are of the recidivist class, and we have a certain number of juvenile adults.

40,562. Can you say how many of five years and over you have?—I am sorry I cannot tell you. I did not dissect the figures of my own particular prison, but I take the figures of all the convict prisons.

40,563. Well, what are the figures you have?—Over five years, my Lord.

40,564. Five and over?—I did not take it on the five years basis, but on the seven years basis.

40,565. Well, will you give us that?—The figures, my Lord, would be about—taking the seven years basis—of recidivists who are undergoing a sentence of seven years and over—it would work out at about 1,000.

40,566. That is the recidivist class?—Yes.

40,567. How many have you of a class called star?—We have no stars at Wakefield. Generally the star class, taking the figures in the Blue Book, were 355.

40,568. That is this last year?—Yes, the year ending 31st March.

40,569. That is the class who have not come under the general head of habitual criminals?—The star class men are men quite by themselves. They are not habitual criminals.

40,570. Are they the persons whom Mr. Thomson described?—Yes, they are.

40,571. You have been good enough to express your views in a memorandum?—Yes.

40,572. Have you got that before you?—Yes, I have it before me.

40,573. Would you kindly read it. It states it very clearly?—"I have the honour to express my views on this subject as requested in the accompanying letter"—that was a letter to the Commissioners. "I am afraid that the large majority of long-sentence criminals, and the women with whom they live when at liberty, are so loose in their sexual relations, and so readily form temporary ties, that any advantage from the facilities suggested would not be very far-reaching in its effects. There may be a few respectable women, struggling to support themselves and their families, who, having the chance of favourable re-marriage, might be benefited by the facilities suggested. It is not unreasonable to suppose that the binding nature of the marriage tie, in the existing state of the law, may occasionally be the means of driving the wife into irregular sexual union with a man who would marry her if the law were altered. Apart, however, from the question of re-marriage, such facilities would possibly operate favourably in another direction; I have known instances in which the return of the husband from imprisonment has been dreaded by the wife, and his actual return home has been the means of breaking up the home."

40,574. To what extent have you known that?—I have known that, but I very much regret I could not refresh my memory with the actual details; but I know I am stating a fact when I say I have known several instances of that; and I have heard it also from the police who have followed the lives of these men afterwards.

40,575. Then will you kindly proceed?—"It is in such a case as this, where the granting of divorce facilities would be an advantage to the woman in freeing her from these disastrous consequences that follow her husband's return from prison. I have heard of instances where the husband has, under these circumstances, forced the wife and girls into prostitution in order to obtain money for himself. Such cases seem to emphasise the need for releasing the woman from the matrimonial tie."

40,576. Does that mean on his return?—On his return, yes.

40,577. And if she had been able to free herself he would not have had the power to do it?—That is so. "It might be objected that the influence of a good wife is occasionally the means of reformation of the criminal on his regaining his liberty. I think such cases are rare. The difficulty, however, would be likely to adjust itself, inasmuch as the woman who would seek divorce under these circumstances is not the kind of woman to prove a guardian angel to her husband. Any facilities for divorce in the circumstances mentioned would be quite inoperative unless the state of the law were fully explained to the wife by some outside agency, acting the part of friend and adviser. To become operative the alteration in the law would have to be supplemented in this way. In some cases it is extremely likely that divorce having been granted to the wife in the husband's absence, he would on release resort to reprisals which might easily take the form of personal violence. I regret that I have not any notes which enable me to give concrete instances of the conditions to which I have referred, but I am in no doubt as to the actual facts. From the standpoint of mere expediency, and ignoring any considerations touching the sacredness of the marriage tie, I incline to the view that the balance of advantage would be found to lie in the granting of such facilities."

40,578. Then you have some further notes?—Yes. "I incline to the view that it is not so much merely long absence from the wife that should be looked upon as a ground of divorce in regard to long-sentence prisoners, so much as the moral depravity evidenced by the length of sentence, and degree of recidivism. In regard to the illustrations mentioned in my report of August 24th as to the hardship inflicted on the wife by the return of a depraved husband ——"

40,579. This is the previous memorandum, I take it?—It is, my Lord.

40,580. This is a supplemental one?—Yes, my Lord. With regard to those illustrations—"I can now remember two others. One, the case of a wife visiting her husband who was seriously ill in the prison hospital at Portland. On being told that the patient was out of danger, the woman's grief seemed rather to increase than diminish, which she explained by confessing that her tears were really due to the distress of mind caused by the near prospect of her husband's return, with all the misery it would bring upon her and her children. I also remember an instance in a convict prison in which the governor received a quite pathetic letter from the wife of a prisoner, imploring him (in her ignorance of the law) to keep her husband in prison as she and her children had got a nice home together which would all tumble to pieces on his return. There can be no doubt that a rigid adherence to the law in its present form often means something indistinguishable from slow martyrdom in the case of a respectable woman tied to a cruel and hopelessly bad man; and I would put the matter in this way: let such a down-trodden woman choose whether she sacrifice herself in this way, or seek to break the matrimonial tie. I would not force the sacrifice upon her."

40,581. Might I ask, as you refer to the children there, whether you think the woman should have that choice, and exercise it partly for the benefit of her children?—I think the consideration of the children comes in very largely in dealing with a man of utterly debased morals—a man whose influence in society is nothing but pernicious.

40.582. If he came back the influence might be so bad that she might say: "Well, I prefer to exercise this for the sake of my children"?—I do; I feel that very strongly indeed; and I should like to add that I look upon many of the recidivist class as most dangerous

to society, forming centres of moral infection. I have had a great deal to do with the police ——

40,583. Would you add exactly what you mean by the recidivists?—The recidivist class are men who have been sentenced—I think, Mr. Thomson, I am right in saying that the recidivist class are men who have been sentenced to a certain number of local sentences, or of penal servitude. Is not it so?

40,584. Well, we want *your* evidence; we have had Mr. Thomson's?—I was asking for the official view of recidivism.

40,585. Well, never mind the official view; give us your view?—Well, recidivists are men, I take it, who show by their classification as recidivists that they are habitual criminals.

40,586. Well, that is quite sufficient for the present purpose. Then you have dealt with the numbers on the next page?—Yes. "Taking the total number of convicts as 3,046, it will be seen that they are made up as follows" ——

40,587. Is that this last year?—Those are the figures up to the end of March of this year—the last official year. "They are made up as follows in reference "to classification:—

"Stars	355
"Intermediates	522
"Juvenile adults	67
"Recidivists	2,102."

40,588. What are the intermediates?—The intermediates are men who may have committed crime and probably have been sentenced previously, but who do not show that they are habitual criminals.

40,589. You mean there is a doubt about it?—There is a doubt about their being habitual criminals. They are intermediate between the star and the recidivists. "In regard to the star class, although there are many long-sentence prisoners among them, they are a very hopeful class. They are to be looked upon as more unfortunate than absolutely criminal. They feel their imprisonment very keenly, and mental depression is not uncommon among them. For these reasons, I would not add to their punishment the forfeiture of matrimonial rights. The 522 intermediates are so young in years, and, moreover, criminal habits are not fixed in them. Any divorce facilities would therefore not apply to this class. We are now left to deal with the 2,102 recidivists, men in whom the criminal habit has become fixed, and whose 'moral mainspring' (to quote a recent writer) has been irreparably damaged and permanently put out of action. On the suit of the wife I would grant divorce facilities to some, if not all, of this class. But when it is considered that certainly half these men are unmarried, it will be seen that the number of wives of long-sentence prisoners who would be affected by divorce facilities is very small. Among the prisoners in local prisons there are, however, 1,516 old convicts of the recidivist class. It would be reasonable to include some, if not all, of these under the penalty of forfeiture of matrimonial rights. My present feeling is rather in the direction of restricting the proposed penalty to convicts, whether in convict or local prisons, who have undergone two and more previous sentences of penal servitude. The figures under this heading would work out at about 1,000."

40,590. How long are these sentences that you have in your mind?—Those sentences that I have in my mind are not limited. There is no limit to the number of years in that case I merely take men who have done two previous sentences.

40,591. Even if it were, say, two years or three years?—Oh, it must be three years in a convict prison, but if it were two sentences of three years, I should be inclined to look upon their degree of recidivism as being so pronounced as to justify their being called habitual criminals.

40,592. Do they ever come into the recidivist class without having had a previous sentence?—As a rule, they must have had a previous sentence either in the local or the convict prison.

40,593. In the convict prison it must be three years?—Never less than three years.

40,594. And in the local prison?—It may be from two days up to two years. The recidivists I am speaking of are recidivist convicts; they are not local prisoners at all. I am not considering the local prisoners except the 1,500 and odd convicts who are doing small sentences in a local prison.

40,595. But at the top of the page you have now reached you are dealing with those who have undergone two or more sentences of penal servitude at least?—Yes, I am.

40,596. And for those you think it might be a case for divorce?—Yes, I do.

40,597. Now, I want to know what your views are with regard to those who, for instance, have done some small offence, and then have a sentence, say, of seven years?—I am not absolutely determined in my own mind as to whether divorce should be granted for recidivists who have done seven years; I am not sure; I leave that rather open. It is a matter of detail I really have not made up my mind about.

40,598. But you include in recidivists a man who has been sentenced to a small punishment first and then a penal servitude punishment?—No, I do not in this case. I am only dealing with men who have done two previous sentences of penal servitude actually.

40,599. Yes, I follow that at the top of that page; but do you include generally under the term of recidivists persons who have done short sentences in a local prison and then a long sentence in a convict prison?—No, I do not.

40,600. They are not included as recidivists?—Not necessarily.

40,601. Then are recidivists only those who have had penal servitude twice?—No, I think I am right in saying it depends on the number of previous sentences, and also the nature of the crime very much—as to their being recidivists or not.

40,602. Then would you proceed?—"Taking the same number of recidivists, if those whose present or past sentence is, or was, seven years and over, were made liable to forfeiture of matrimonial rights, the figures would be well under 1,000." That is taking it on the seven years basis. "This is, of course, a very small number to legislate for, but the methods of selection I have suggested would serve to single out those whose reformation cannot reasonably be expected and who, in a condition of liberty, are a focus of moral infection and a cause of degradation to all around them."

40,603. I gather that is really your point of view, that if they are, when let out and coming back to their families, a focus of moral degradation, it is an advantage to the wife, and possibly to the children too, to be free?—Yes, that is my feeling.

40,604. That would apply to any that come within that category?—Any that come within that category, as showing a certain depth of moral depravity. "The indirect effect of divorce facilities in such cases would be considerable. It would give an unfortunate downtrodden woman 'something to bargain with,' even if not utilised, in dealing with her husband. At present, among the lower orders, the idea largely prevails that the wife is the property of the husband." Then I have made some remarks under the head of general considerations.

40,605. Yes, I should like to have that?—"*General considerations not touching exclusively the question of long-sentence prisoners.*—In my experience I have met with instances of systematic tyranny, persecution and cruelty practised upon a helpless woman by a dissolute, ruffianly husband, of which cruelty the details should only be heard *in camera*. For such there is at present no relief. It is to be remembered, in connection with women living without support apart from their husbands, among the lower orders, that the taking in of lodgers is a common way of making a living; and, very naturally, this easily leads to temptations to unfaithfulness."

40,606. (*Sir Frederick Treves.*) In your large experience, Dr. Cooke, have you met with many actual instances of hardship to the wives of convicts through the want of facilities for divorce?—I have certainly

met with one or two instances; I cannot say I have met with very many.

40,607. One or two in an experience of how many years?—In an experience of 25 years.

40,608. You could only say you have met with one or two instances in which the wives of convicts suffered hardship from the lack of facilities for divorce?—That is so, but I should like to add I have not been looking out for them.

40,609. Still, the number has been very small?—It would not immediately come under my notice. If I had been looking out for them I should probably have found a great many more.

40,610. Then might we infer in the case of the recidivists there is not likely to be much demand for divorce?—You mean on the part of the wife?

40,611. Yes?—I do not think so, seeing that a very large proportion of the recidivists prisoners are unmarried. My own view is that it might easily be found that only a third are married, because prisoners are very fond of telling the chaplains and other officials that they are married. They mean that there is a certain woman they live with, but the ceremony has been waived, and they say she is the wife; she is allowed to visit the prison, and it is an advantage to the man; and, therefore, I would not take the figures of the officials.

40,612. Then if it becomes a matter of law that five or seven years imprisonment is a ground of divorce, it would not be made use of by the wives of the habitual criminals?—I think it would be made use of to a very small extent indeed; because my experience of the lower orders is, that they are so ignorant, that they would know nothing about it, unless there were some outside authority to tell them. I believe if it were law to-morrow that the number of instances where a wife would apply for divorce would be very small indeed.

40,613. Then you make an exception of the star class. You say you would not allow penal servitude to be a ground for divorce in the case of the star class. I mention this, because I think the impression that has rather been left on the minds of the Commission by previous evidence is that these are the very people whose wives are likely to want relief. For example, there has been mentioned the case of a quite young woman—I think her age was 22—who married a man, who within three or four months of their marriage is convicted for some offence, and has five years' penal servitude. Probably he would come into the star class. Does not that strike you as a hard case?—I feel with regard to the star class that they should be considered. The star class feel their imprisonment very keenly and mental depression is exceedingly common amongst them; and if, added to the punishment were the knowledge that their wives could leave them, and go off with some other man under cover of divorce, I think the depression would be very great. I think it would be an addition to the man's punishment.

40,614. You are carrying out the excellent tradition of our profession of considering first the patient and are looking at the question from the prisoner's point of view?—Yes, I think quite likely I am.

40,615. Looking at it from the wife's point of view, do not you think there may possibly be a great hardship in that class of case to the wife?—I think so, but I do not think it applies any more to these prisoners than to any other absentee; a man out prospecting in the colonies, or any other absentee from a wife.

60,616. Therefore, it comes to this, that if you exclude the star class the number of cases of divorce likely to arise would be exceedingly small?—Exceedingly small, yes.

40,617. (*Lady Frances Balfour.*) You are talking about depression, Dr. Cooke, of the star class in prison. Of course, their wives are probably equally as well educated as themselves: they are a superior class in education?—Yes, I think they are.

40,619. And the wives are probably as well educated?—I should think that may be considered to be the case,

40,619. Then is it not possible that the mental depression of the wife outside who has a husband in for some disgraceful crime may be quite as great as that of the star class in prison?—I think that cannot be denied.

40,620. And that therefore she ought to be considered; considered by giving her her freedom to release her from this pain?—That would follow if you would consider that mere absence should be a ground for divorce.

40,621. No, I do not agree there. Surely a crime that puts a man in prison is quiet different from desertion. The disgrace to her and her children is quite different from the man deserting her?—But so many crimes of the star class are crimes of passion committed under a momentary impulse, perhaps when a man is drunk; and I am bound to say I have a great deal of sympathy with them in that way. I think they are quite rightly punished; but I quite agree that the wife's position should be considered.

40,622. If they are crimes of passion, which are not so usual, I suppose, in the star class as in other——?—Oh, I think so. Many of them are momentary attacks under a sense of injury and not premeditated crime.

40,623. Then we may probably assume that the wife and children have suffered from that before the imprisonment?—I do not think that would prevail largely in the star class.

40,624. Then you say that the woman should also have in her hands something with which to bargain with her husband, so to speak?—I think so.

40,625. In the lower classes it would be an advantage to the women to have the power of divorce. I do not like to put it the lower classes generally; but that element would enter into the condition of things, and operate very strongly, namely, that at present the wife has nothing to bargain with, and her hands are empty, and she is entirely at the mercy of her husband?—I quite agree that is so.

40,626. And that would be a practical proof that she was not in his hands?—Yes, I think so; I think it would operate indirectly to the advantage of the woman; the mere existence of facilities would operate indirectly to the advantage of the woman.

40,627. She is equally free as he is himself?—Exactly.

40,628. (*Judge Tindal Atkinson.*) Would the fact that the right to divorce exists operate as a deterrent to the commission of crime?—I do not think it would; I think it would be quite inoperative; I think it would not deter a single man from committing crime.

(*Chairman.*) Thank you very much, doctor; I am sure your evidence will be of great assistance.

Dr. WILLIAM HENRY WINDER called and examined.

40,629. (*Sir Lewis Dibdin.*) You are governor of the prison at Aylesbury?—I am.

40,630. Your prison experience is almost entirely with women prisoners?—It is; yes.

40,631. You have been kind enough to furnish a memorandum. If it will suit your view, I will ask you to read it?—"My prison experience has been almost entirely with women, chiefly convicts, and therefore is somewhat restricted. It seems to me that if divorce is to be possible, as the result of criminal action by one party to a marriage contract, it should only be allowed when the other desires it, and when he or she has led a respectable life. I do not think that divorce should be an automatic result of every long sentence. I certainly think divorce should be possible in the case of serious offences leading to long sentences of, say, ten years and upwards, but I would not allow divorce if the husband or wife of the offending party had anything to do with the commission of the crime. My reasons for these conclusions are: — (1) The long separation which often leads to immorality on the part of the free party. (2) The unfairness of the non guilty party having to live with the criminal partner

after the termination of the sentence. (3) The advantages which would result to the children of a marriage by complete separation from the guilty party. Cases of female prisoners' husbands living with other women have come under my notice, but the information is mostly unreliable, so one hardly feels justified in quoting them."

40,632. Are the women prisoners you have to deal with generally married women?—As a rule, yes, I think so.

40,633. And you say in cases you have had before you where the husbands have gone with other women, the evidence is too unreliable to give?—Yes, I have tried very hard to recollect some cases, but I could only hear of four or five.

40,634. Is there anything else you wish to tell us?—No, I do not think so.

40,635. (*Mr. Spender.*) I suppose your first point, Dr. Winder, applies to a suggestion that was made to us by a previous witness, that if, say, the wife of a convicted prisoner applied to the judge on conviction in case of certain long sentences, a decree of divorce should be at the discretion of the judge. That would not be your point of view?—I had not looked at it in that way.

40,636. You think that in those long sentence cases there should be grounds for divorce practically on evidence that the wife has lived a respectable life, or the husband, as the case may be?—Yes.

40,637. Have you any idea in your own mind what sentence should carry that with it?—Well, I said 10 years, but I am not very clear about it.

40,638. Ten years, you think?—Of course, 10 years in an ordinary way does not mean 10 years. If a woman gets 10 years, she would in the ordinary way get out in six years and eight months.

40,639. Is it your experience that a wife or a husband of a convict criminal is faithful to the other party?—I think so, but I am not very clear about it. It is so very difficult to get information.

40,640. They do not talk about it?—No.

(*Sir Lewis Dibdin.*) Thank you, Dr. Winder.

Dr. OLIVER FEREIRA NAYLOR TREADWELL called and examined.

40,641. (*Sir Lewis Dibdin.*) You are governor of the convict prison at Parkhurst?—No, medical officer of the convict prison at Parkhurst, and medical superintendent of the asylum at Parkhurst.

40,642. Now you have been kind enough to prepare a memorandum for us. Will you read it to us if that meets your views?—Yes, this gives my views: "I am of opinion that a criminal offence, resulting in a term of imprisonment long or short, should not, by itself, form a ground for divorce for the following reasons:—In a large number of instances, the convict is attached to his wife and children by ties of affection, and I know from reading many letters passing between them that the ties of affection are kept up during the incarceration of the convict, and that both look forward to the reunion after his release. I am of opinion that the marriage tie is powerful as a deterrent from infidelity, and the perils to the wife would seem to be increased by the possibility of divorce, merely as the result of application on her part on the ground of her husband's imprisonment; she would be more liable to be subjected to persuasion by other men, and might well give way to a course of action she would deplore later on, especially on again meeting her husband after release. Where there are children, the difficulties of the situation would be still further increased; the father after release might find his wife married to another, his children, out of his custody, neglected or ill-treated, and a situation produced tending to crimes of violence. As regards the convict himself, I am of opinion that the severance of the marriage tie would in very many instances remove a powerful incentive towards good behaviour in prison, to possible endeavour towards a better life when free, and might produce in some considerable depression and despondency, possibly leading to suicidal impulse; it would in some, no doubt, engender bitter feelings of revenge to be brooded over and fostered during imprisonment and acted upon after release. It appears to me that the question of repeated acts of crime, leading to repeated terms of imprisonment, might well come within the scope of consideration as a ground for divorce under the heading of desertion, but that other contributory evidence should be necessary to give it effect; *e.g.*, that the wife was ignorant of, or no party to, the crime; had not benefited thereby; had endeavoured to persuade her husband from his course of conduct, and after due notice had been given him, that persistence in his course of crime would be used as a plea for divorce. As I understand it, divorce is granted to persons both of whom have shown, the one by misconduct, the other by the application for divorce, that it is mutually desirable to be relieved of the marriage tie, and, as a general rule, I should say both parties are relieved, or at any rate able to appreciate the justice of the result. But it appears to me that, in placing a term or terms of imprisonment in the category of reasons for divorce, we should often be acting unjustly towards one member of the contract; we should be forcing divorce upon one member for reasons to some extent outside his control, reasons which in the majority of instances would not appeal to his judgment as direct acts of misconduct, injustice or injury towards his wife, and thus engender a spirit of injustice or a desire for reprisal."

40,643. Have you anything you desire to add to your statement?—I should like to qualify it to some extent. In the first place, I should like to say that the prisoners with whom I have to deal are male convicts only. They are of three different classes of prisoners. They are those you have already heard of as the star class, the intermediates and the recidivists, and in addition there are collected at Parkhurst prison nearly all the weak-minded convicts, and since the year 1906, nearly all the convict-insane. The remarks which I have made here in reference to the state of mind of the prisoner which might be engendered by the possibility of the divorce of his wife, would apply more particularly to the star class prisoner. These prisoners very often for one particular act—in fact, the imprisonment which they are suffering is for one particular act of crime—get long sentences, and I know from experience in many cases the ties of affection are kept up between the prisoner and his wife, and both are mutually looking forward to the time when he shall come out of prison and return to his family. In a very large number of cases the man does not revert to a course of crime. He comes out and makes a home for his wife and children, and it seems to me that the mere fact that a man has been locked up as a result of one crime or even of more crimes than one, should be taken as a ground for divorce would be detrimental. With regard to the other class of prisoners—the recidivists particularly—it appears to me, in fact I know from experience and from enquiry of the prisoners themselves, that in many cases they did not live with their wives. It is not at all uncommon for them to go out, and instead of returning to their wives to live with another woman, and in those cases I do not think the factor of divorce would affect them individually so detrimentally. At the same time, it appears to me that even there this factor might be taken into consideration in another way. For instance, as desertion; the fact of his having repeated terms of imprisonment might be looked upon as desertion. As regards the weak-minded convicts, I am of opinion that divorce might be granted in almost every case, because they do not appear to me to be at all fitted for family life. They are most unstable people. They have no ability to make or keep a home, and consequently are not at all fitted for married life. At the same time, the difficulty would arise as to whether they should be allowed to re-marry if you grant them divorce; this is a very important question, because it would be no good if you grant a divorce and after three years the man goes out and re-marries. So we seem hardly ripe for legislation on that point, until something with

regard to carrying out the recommendations of the Feeble-Minded Commission is done. With regard to the convict insane, I should say, in the majority of cases, the wife ought to be entitled to divorce. The conduct of the convict insane is generally very bad. The majority of the cases are incurable, and under any circumstances it seems to me that they are not fitted to go back to family life.

40,644. Are there many of these cases—the last class that you have mentioned (the criminal insane) —who are married?—Of those cases that have been in the asylum since it was opened in June 1906 (numbering about 168 cases), the proportion of the criminally insane who are married is about one to three. There are 40 married, roughly, to 120 single.

40,645. About 40 married cases?—Yes, and about 120 single.

40,646. Since 1906?—Since 1906—of those that have been through the asylum of which I am superintendent.

40,647. That asylum is a branch of Parkhurst prison?—It is a branch of Parkhurst prison. It now takes the whole of the convict insane.

40,648. How many prisoners have you got in Parkhurst altogether?—In the prison itself the general average is about 780.

40,649. Counting the asylum too?—The general average population of the asylum is 56.

40,650. Between 800 and 900 altogether?—Between 800 and 850 altogether.

40,651. And of those during the four years you have had 46 married insane?—We have had 40 married insane.

40,652. Would you say it was an argument in favour of divorce in the case of the recidivist, that when he comes out he generally does not go back to his wife, but seeks some other alliance?—I would not say it is generally done, but very frequently.

40,653. We must not look at it simply from the point of view of the prisoner. Is it not rather an argument in favour of the wife having a chance of divorce?—Yes; but it does not seem to me it is a divorce that should be given on the ground of imprisonment, but on the factor of desertion, which would be easily proved too—desertion coupled with imprisonment should entitle to a divorce, but the mere fact of imprisonment *per se* should not entitle to divorce.

40,654. (*Mr. Brierley.*) Do you say the 120 you have mentioned are the whole of the convict insane in the country?—No, in Parkhurst.

40,655. I thought you said they were all at Parkhurst now?—No, the majority.

40,656. Because there is Broadmoor?—Yes, but they do not go to Broadmoor now—very few go to Broadmoor. They are only the convict insane. They are not the King's pleasure insane; only those certified to be insane after they have received a sentence of penal servitude go to the Parkhurst Asylum—who become insane during the term of their imprisonment —and that does not represent anything like the whole total number, because a certain number are boarded out in the county asylums.

40,657. You do not know what the total number is?—No, I could not give the actual total number.

40,658. (*Judge Tindal Atkinson.*) Do I understand if a man is an habitual criminal that should entitle the wife to a divorce?—No, I would not give divorce—not for actual crime—for actual terms of imprisonment at all. I think there should be some other factor to be taken into account with it.

40,659. By reason of his being an habitual criminal, if he was kept in prison for a certain number of years, you would count that desertion so as to give the wife a right to divorce on the ground of desertion?—Yes, if she could prove that when he came out he did not endeavour to make a home for her, then I should look upon that as desertion, and the fact of his crime being also taken into consideration, she would be entitled to divorce. But I think there ought to be more than one factor—not the simple factor of imprisonment.

40,660. You would include the imprisonment as a ground for divorce, and if, when he came out, he puts her into such a position that she cannot live with him, then you would include imprisonment as a factor for divorce?—Yes.

40,661. You would combine it?—Yes. I think it might be combined with the nature of the crime—particular crimes against the person—crimes of immorality and possibly crimes of violence; if she could prove that he treated her very brutally I think that might be taken into consideration with the term of imprisonment from the point of view of getting a divorce.

40,662. Then you mention a man coming out and going off with another woman. If the sexes were made equal in the Divorce Court, she could get a divorce simply on the ground of adultery?—Yes, and if the facilities for divorce—that is to say, the cheapening of the process—were brought within reach. I am told by these men—by a large number—that they believe their wives live with other men while they are in prison—I am speaking particularly of the recidivist class—and I should imagine that is possibly the case, and that a divorce is not sought in many of those cases because they cannot afford it. I think it is quite possible that many of those people might seek divorce if there were the facilities for it.

40,663. (*Sir William Anson.*) You would not make imprisonment in itself a ground for divorce?—No, I would not.

40,664. Either length of time or frequency of conviction?—No.

40,665. In fact, you would couple it with desertion ——?—I would couple it with some other factor which might ——

40,666. Which might not in itself be enough?—Enough to entitle to divorce.

40,667. With regard to re-marriage, you said that some of these persons whose wives might be entitled to divorce were quite unfitted for married life?—Yes, I think so—the feeble-minded.

40,668. If they were divorced ——?—They would re-marry.

40,669. You could hardly, as the law stands, put any restriction on the re-marriage?—They would marry another woman, and we should be worse off than before. I admit that.

40,670. Have you come across many cases in which divorce is desired either by the prisoner or the spouse outside?—No, I have no opportunity of coming across that. Practically in a convict prison one has very little opportunity of coming across the families. The only ones one would come across are those who visit; and if a man is visited by his wife, there would be some affection presumably between them, and we should not hear anything in those cases on that point.

40,671. Then have you come across individual cases in which you think divorce would be desirable?—No. I know of many convicts whom, I think, it is most undesirable that they should return to their wives.

40,672. Therefore would it not be desirable that the wife should have a divorce if she could be induced to apply for one?—Yes, there are many such cases undoubtedly.

40,673. (*Sir Frederick Treves.*) The term "criminal lunatic"; by that do we understand a person who is insane at the time the crime is committed?—Well, the term criminal lunatic—I do not know whether it is justified, but it has actually come into use to signify a lunatic who is at the time during the period of his certificate doing a sentence of imprisonment.

40,674. As a matter of fact, there are two perfectly distinct classes of individual: one is the person insane at the time the crime is committed?—That is so.

40,675. And the crime would be a feature of that insanity?—That is so.

40,676. And the other person is a person who becomes insane after he has been convicted?—Yes.

40,677. And the crime for which he has been convicted need not necessarily be the outcome of the insanity?—Quite so.

40,678. That is to say, a man may be convicted for forgery who later on develops homicidal mania?—Yes, he becomes insane.

40,679. As a matter of fact, at Parkhurst you have

all the prisoners who have become insane after conviction?—No, only the convict insane and not quite all of these.

40,680. Do they follow the ordinary classification of the insane with regard to proportion?—I should say they do very nearly. The two great classes we have are the secondary dementia and the delusional insanities, and I should say that is much the same proportion as in the ordinary asylum.

40,681. The secondary or terminal dementia represents one-third of the total of the insane in this country?—Yes.

40,682. Would that be about the proportion in your asylum?—The secondary dementia taking the cases since we opened the asylum—of course the asylum itself at the present moment only accommodates 56 patients—but taking it from the period from which we opened it we have had 164 through the asylum; of those, 42 have been classified as secondary dementia; delusional insanity 43; the next two classes, being the melancholias or manias, or the alternating insanities.

40,683. And the proportion of recoveries in those cases is about the same as in other asylums throughout the country?—I should say the proportion of recoveries is very small, or small in comparison.

40,684. Then you would allow that the criminal lunatic—using the term in either sense—or the weak-minded convict should afford a ground for divorce?—Certainly.

40,685. But I rather gather that you base that on eugenics, because you say, speaking of the weak-minded convict, "It is no use to grant divorce if he can marry "again"?—No, that is so.

40,686. Then your basis rests mainly on eugenics?—Yes.

40,687. You are not granting divorce because a man is insane, but because he may possibly propagate degenerate——?—No, not altogether; I consider he is unfitted to go back to his wife. I admit that under the present state of the law one is not able to keep him away; but that is only a deplorable condition which ought possibly to be remedied.

40,688. But would you allow that, in the interests of the wife, it would be justifiable that insanity should be a ground for divorce?—Yes, I think so.

40,689. That is a different aspect of the case?—Yes; there is the aspect of the case as regards the probability of the hereditary influence upon his children, which would be certainly bad. He ought not to be allowed to have any more children.

40,690. But in the interests of the wife, would you say also that insanity should be a ground for divorce specially in the case of criminal lunatics?—Yes.

40,691. Then you have amongst your patients an exceptionally large proportion of epileptics, have you not?—No, we have not a very large number. We have a general average in the whole population of about twenty epileptics; not insane epileptics or weak-minded, but epileptics of any description.

40,692. And they do not come under the category you have now mentioned?—No; the proportion of epileptic insanity in our asylum is very small indeed. I think I have only known of one or two cases.

40,693. Would you distinguish between insane epileptics and sane epileptics?—No; on the ground of eugenics I would not allow the epileptic to marry at all.

40,694. Then that you would hold entirely on the ground of eugenics?—Yes.

40,695. (*Mr. Spender.*) You seem to distinguish, Dr. Treadwell, between a criminal condition and criminality as measured by the conviction. You would not give a wife a remedy of divorce in the case of a husband who has been convicted of any crime or any sentence?—Not as regards the sentence. I think the actual fact of imprisonment, or the length of the sentence, or the mere fact of the sentence, ought not to enter into consideration in the question; but it ought to have added to it the factor as to the crime which has been committed, or the desertion of his wife when he is free, or his conduct when free. If he treats her brutally, and she can prove brutality as well as imprisonment, it seems to me that there are two factors there, one the violence towards his wife, the other the inability to support her; or he does not support her, or make any endeavour to support her, because of his imprisonment, and I think those are two factors instead of one.

40,696. Does not that seem to require to add an element of cruelty to the desertion? Take the case of a wife whose husband has been sentenced to a term of imprisonment for 10 years; on your principle that would be desertion. Would you not give her a remedy for that unless it were coupled with something else which you would call cruelty or general misconduct?—Yes.

40,697. Do not you think in that case——?—I see the hardship to the wife. There are many cases, I have no doubt, in which there is extreme hardship to the wife consequent on the husband having been in prison, and being taken away from her for 10 years. But I come across a large number of the star class of prisoner (I am speaking here particularly of the star class) who are in for crimes against property—perhaps one act; they are brought up for forgery or misappropriation of funds—men in a good position, whose wives have corresponded with them on the most affectionate terms, and who are looking forward during the whole period of their imprisonment to their return to their wives and particularly to their children, and who after their release, as far as one can tell, have never lapsed into another period of crime, and who have made a home for the wife and children after release; it seems it would be a very great hardship to the convict, and might be detrimental to him—in fact, I think it would be detrimental to him, as far as his mental condition is concerned—in such a case if, owing to the pressure of some person outside, the wife were to obtain a divorce from him merely on the ground of his imprisonment.

40,698. I do not think anybody has proposed making it compulsory, and in the case of the wife being affectionate it would not arise?—It is only a question of where the injury to the individual would arise—whether there is, to commence with, a mutual affection; but it seems to me that the wife might be subject to undue pressure when she was away from her husband to take some action which she would deplore when he came out of prison.

40,699. Do you think that should weigh against giving other wives the right to have this release from a convict who is in prison for 10 years or going to be? Do you think that ought to weigh?—Yes, I think it ought. It is a contract that has been entered into, and it appears to me it is a contract which must to a great extent be kept. I think there are many cases in which, even where they are living together, there are very great hardships which have to be borne.

40,700. We are only thinking of the particular case. Supposing it is just to give it to the wife in these extreme cases, ought we to withhold it because it might be abused in some cases owing to extreme pressure from outside?—It is difficult to say, but that is the point that strikes me about it—that it is open to that. I have conversed on the subject of divorce with a good many prisoners and the opinions differ a good deal. There are a certain number of men who would, I think, welcome divorce; there are a certain number who would be willing to accede divorce if it were requested; and there are others who have told me that the fact of their having children and a wife to go back to has enabled them to continue their self-respect while in prison; has enabled them to go through their incarceration in a much more contented frame of mind, and been an incentive towards, and hope for, a future better life on their release. I think, if you take away all that, you would take away a very great deal of that incentive to reform which is most important—certainly, with the star class of prisoner.

40,701. (*Sir William Anson.*) There is one question I should like to ask. You have experience both of male and female convicts?—No, I have only male convicts. I have had no experience of female convicts for so many years that I could not speak of those.

40,702. Then what you have been telling us applies entirely to male convicts?—Yes.

(*Sir William Anson.*) We are very much obliged to you for your evidence.

Mrs. Mary Hodder called and examined.

40,703. (*Sir William Anson.*) You are a visitor for the Church Army, I believe?—Yes.

40,704. And in the department which concerns prisoners' wives and families?—Yes.

40,705. You have been kind enough to prepare a short statement. Would it be convenient to you to read that aloud?—"I have worked for the Church Army 17 years, and for the past 11 years I have given the greater part of my time to visiting and helping the wives and families of prisoners. I have during that time seen some 3,000 cases; I have analysed my books, and find that 1,475 were long-sentence cases ranging from one year to 20 years; the remainder were of shorter duration. During the whole of my experience in dealing with these people, I have never heard of one desiring divorce; the great majority of the women are very faithful to their husbands. I am of opinion that the majority of prisoners' wives would resent the idea of being divorced. It is true some have done wrong, but in every case owing to extreme poverty, and under a promise from the seducer, that they and their children would be cared for and provided with a home; with these few exceptions the women on the whole are very loyal and true to their husbands. My feelings are that increased facilities of divorce would be conducive to more harm than good. Bad as the husbands of these poor women are, they seem to have a certain amount of regard for their wives, and are most ready to forgive their wives in the few cases when unfaithfulness has occurred."

40,706. Is there anything you would like to add to that, Mrs. Hodder?—Only one thing I would like to say, that all the cases with a very few exceptions I have proved are married. You see, I always get their marriage certificates before I help them. Some have tried to deceive, but now that it is generally known that I insist upon seeing the marriage certificate, I have very few who try to deceive me in that way. So with a few exceptions they are all married.

40,707. Your evidence applies almost entirely to women who are married?—Yes. There are just one or two who are not whom we have helped and are helping now. We have a woman who has been with us over a year; we care for her children; but she is very faithful to the man, and he has promised to marry her when he returns in January after serving his term of imprisonment.

40,708. Then your experience, I may take it shortly, is that you have not come across any demand for divorce amongst the wives of these prisoners?—No, I have never met any prisoner's wife who desired to be divorced from her husband.

40,709. Have you any experience on this point, whether the continuance of the marriage tie has a good influence on the man?—Well, I believe so. I had a letter from a prisoner, who is undergoing six years sentence, this week, and he tells me how he is looking forward to coming home to his wife and children; and I have seen the wife, and she is also looking forward to the man returning to her. Then I have had a case where a man was sentenced to 20 years' imprisonment, and all the children—five in number—have been taught to look forward with joy to their father's return; and during the 11 years I have been dealing with that case, that man has written to me saying how delighted he is at the thought of being re-united to his wife and his family. She, I know, has been faithful to him during that time.

40,710. (*Judge Tindal Atkinson.*) In those cases you have mentioned, even if there were a right of divorce it would not be taken advantage of?—I am certain it would not.

40,711. Is that any reason why, in cases where there should be a divorce owing to the conduct of the man, the wife should not have it?—Well, I have known of a case where I think there would be no difficulty in his getting divorce; but the wife has repented of her wrong-doing, and she has repented so very much that she has suffered very much for her wrong-doing, and the man has freely forgiven her.

40,712. There there would be no divorce at all?—No, there would not be, but she has done wrong to the extent that if he sought for divorce he would be granted it, but he has forgiven her.

40,713. But Dr. Treadwell mentioned cases where the man has had a long term of imprisonment, and then come out, and he is a man of such bad character that he ill-treats his wife. In such a case as that, do you agree with him that you could, by combining the imprisonment with the subsequent misconduct, give the wife the right to divorce?—Well, as far as I am concerned, I would; but strange to say, the more the men ill-use their wives the better they seem to like the men. It is a very strange thing, but, notwithstanding the illusage, they are sometimes subjected to—they seem to cling to their husbands.

(*Sir William Anson.*) We are very much obliged to you, Mrs. Hodder, for your evidence.

Mr. Harry Butler Simpson, C.B., called and examined.

40,714. (*Chairman.*) Are you in the Home Office?—Yes.

40,715. What is your official position there?—Principal Clerk in one department of the Home Office.

40,716. Which is that?—Department C, which deals, amongst other matters, with police and criminal procedure.

40,717. I wanted to get some information from you which I have no doubt you can give us with regard to the expenses that would have to be paid by married women in enforcing their maintenance orders and getting those orders. You state here that formerly the clerks to the Justices were "solicitors acting in a more or less private capacity, and they charged persons asking for the issue of warrants, summonses, &c. fees for the clerical labour involved"?—That is so.

40,718. And that "later the amount of these fees had to be in accordance with tables approved by Judges of Assize. Since 1848, every new table of fees requires to be approved by the Home Secretary"?—That is so.

40,719. And that "there is a model table in use at the Home Office which has been revised from time to time"?—Yes, my Lord.

40,720. Now could you keep your attention to the one point that interests me, namely, the obtaining by married women of their orders for maintenance, and the enforcing of those orders. Does each county and borough have the same rate of fees for obtaining an order?—Oh, no, my Lord, there is no special fee for obtaining such an order. One has to look at the table of fees and see what would be chargeable on the proceedings that are taken in order to obtain an order. For instance, a fee for issue of summons; a fee for hearing a witness; a fee for making an order; a fee for service of order. Each of those fees might differ.

40,721. In the different counties and boroughs?—Yes.

40,722. Is there no power in the Home Office to require a uniform fee throughout the country?—No, I am afraid not. Each county and each borough has a separate table.

40,723. Have you to approve at the Home Office of those tables?—Yes, we should approve of new tables, but there are some tables in force that have not been approved by the Home Office; in fact, in boroughs I think the majority of tables came into force before 1848.

40,724. And those still exist?—I believe so.

40,725. Therefore, there is in fact diversity of fees chargeable in the police courts both in boroughs and counties throughout the country?—A considerable diversity.

40,726. I was struck by it; that is why I asked your attendance. I think we were told by one of the police magistrates in London that a fee for a woman issuing a summons for a maintenance order was 2*s.*, and on inquiry in the country I was told it was considerably larger than that. Can you tell me what the minimum and maximum are for the mere issue by a woman of a summons to obtain a separation order for maintenance?—I am sorry to say I could not give that, but I should mention that the history of the fees chargeable at the Metropolitan police courts is quite different from the history of the scale of fees at every other court; that is to say, they were never remuneration to clerks for the work done. They were first settled at the end of the 18th century, I suppose, when the courts were first established, though they have been revised since, and the object was to obtain a sufficient revenue to maintain the court. I think it may be said that, though in some particulars a particular fee chargeable at a Metropolitan police court may be higher than a similar fee chargeable at another court, still the total costs payable at the Metropolitan police courts are considerably lower than the average that is chargeable at other courts.

40,727. So I rather gathered. But can you give us as to the issue by a woman of a summons for separation. Can you give us the minimum and the maximum in England for that?—I am afraid I could not. It would depend for one thing on the number of witnesses called.

40,728. No, the issue of the summons?—I beg your pardon, my Lord. I am afraid not, because I do not suppose we have at the Home Office the majority of the tables. I have never seen them.

40,729. Do you know at all what they do run up to for the mere issue of the summons?—I have never seen a case where it was more than 2*s.* 6*d.*, and I should think it is improbable.

40,730. Then as I gather you have no definite powers at present to fix a scale applicable to all the courts?—No, my Lord.

40,731. Do you think it would be an advantage if that were done?—Undoubtedly.

40,732. To make it uniform throughout the country?—I think undoubtedly.

40,733. I quite understand there may be a difference in cost where you have a different number of witnesses; but with regard to the next point, the enforcing of the process by the arrest of the husband—is there any uniformity about fees charged for that?—Under the Police Act, 1890, each police force may submit to the Home Secretary a table of fees chargeable for the performance of certain duties, one of which is the execution of a warrant. A great number of forces have not submitted such a table. A table, when approved, is only in force for five years. A great number of forces having submitted a table, have certainly not submitted one within the last five years. Whether those fees are still charged or not we are not aware at the Home Office; we do not hear.

40,734. Then is there any uniformity when a woman has the order and wants to arrest her husband to enforce it; is there any uniformity with regard to the fee she has to pay?—With regard to the fee payable to the police, I do not think there is a higher fee in any force than 2*s.* 6*d.* chargeable, and I think, in the majority, no fee would be charged.

40,735. No fee at all?—I think it is probable that is so in the majority.

40,736. You mean in some cases there would be a charge of 2*s.* 6*d.*, and in others there would be no charge for enforcing the warrant?—Yes.

40,737. Is that for dealing with the warrant in the district of the police in which it is issued?—Yes. I came away in rather a hurry, and so I did not bring everything I intended to, but I can say that in some boroughs the fee for executing a warrant to enforce a summons is 6*d.* higher outside the borough than within. I think there are a few boroughs like that.

40,738. May I just follow this out. You say, "Since 1877 every clerk to justices has been paid by salary, but he has to collect the fee for the benefit of the county or borough fund." Then, "Fees for executing warrants of arrest can only be charged by the police in accordance with a table not more than five years old, approved by the Home Secretary under section 23 of the Police Act, 1890"?—Yes.

40,739. But that may be settled in many ways?—A great number of police forces do not charge fees at all.

40,740. Some do?—Some do.

40,741. That is the fee paid to get the warrant out?—To get the warrant executed. The police fee is to get the warrant executed.

40,742. To get it put into motion?—Yes.

40,743. Then you go on to say, "The costs of executing warrants stand on a different footing." What does that mean?—Well, if the warrant is executed, say, in the same borough, no costs would be incurred, but if the man is living at the other end of England very considerable cost might be incurred.

40,744. That is another point I want you to tell us a little more about. Is that cost borne by the borough out of which the warrant issues or by the applicant?—There are 190 different forces and it is impossible to make a general statement that would be applicable to all; but so far as the Home Office experience goes the general practice is that it would not be borne by the applicant. Exceptions, however, must be made.

40,745. I was informed that in some counties, the county in which the warrant is taken out charged nothing for executing it, whereas in some they did?—I am not aware of any county which, at the present time, always would charge that cost to the applicant, but I should be quite prepared to hear that there are some counties in which they do it.

40,746. That, again, should be based on a uniform system, should it not?—Yes, but you cannot have, I think, a rigid rule because there must be a certain number of exceptions.

40,747. As, for instance——?—Well, supposing the wife takes out a warrant in Cornwall and her husband is living in Northumberland, and there is only a few shillings owing, it is scarcely reasonable that the ratepayers should bear the expense of bringing him back from Northumberland to Cornwall.

40,748. Why is it necessary to do that?—Because he has to be brought before the bench that issues the warrant.

40,749. I am told that in the county courts (and, perhaps, Judge Tindal Atkinson can help us here), if a plaintiff gets a judgment against a defendant and then proceeds to issue process of execution under the Debtor Act for the purpose of committal to prison and an order is made, the debtor is not brought back to the district where the order was made, but is committed on a re-issue of the committal order in the county court district where he is found. That is one reason why I wanted you to come here, because we are told that the expense to a woman of bringing the man back to her own county was in many cases prohibitive, and I wanted to know why, if that is done in the county courts, it cannot be worked in the police court?—I have very little practical knowledge of the actual administration of the Act, but it all turns on the Summary Jurisdiction (Married Women) Act, 1895, and the procedure for enforcing an order under that Act is the same as the procedure under the Bastardy Acts. I think it is the case, that a wife under the Married Women Act, 1895, can apply for a warrant (when she has got her order) at any place where she is residing, and the warrant would be in the usual form requiring the police to bring the defaulter before the justices who issued the warrant. Therefore, if she is living in Cornwall, she applies to the Cornwall magistrates for a warrant in respect of arrears, and the man has to be brought before them.

40,750. I know, but I want to know why that is necessary if he is in default. Why cannot he be locked up in the gaol where he is? In the county court when a man is committed for contempt, I am told they do not bring him back to the court where the order is made, but lock him up in the gaol of——

(*Judge Tindal Atkinson.*) Except by leave of the judge.

40,750*a*. (*Chairman*) Well, that is different. They lock him up in the gaol of the district where he is found. You see there is no greater expense then than if he is locked up in his own district?—I think you would get more useful evidence on that point from some one who deals with the actual procedure of the courts; but I see some difficulty in any other procedure. The man, though he is in default, may have very good reasons in the way of extenuation of the default. He may have been out of work or ill.

40,751. All those are equally applicable to the county courts?—I do not know the procedure there.

40,752. The order cannot be made without evidence, and he has notice to attend, and if he does not attend, then the order is made, and it is executed wherever he is?—In the county court I understand a committal order cannot be made until there has been proof that the defendant has or has had means to pay. In the case of the Act of 1895 there is no proof of means necessary before the commitment.

40,753. That is true, but what I want to get at is, do you yourself see any reason why machinery should not be provided so that if a man is ordered to pay by the magistrate he should be able to be locked up in the district where he is, just as much as if he is ordered to pay by the county court judge in which case he is locked up in the district where he is found?—I think before magistrates lock up a man they should always hear if he has any excuse to offer; and, on the other hand, hear if the wife has anything to say in answer to him.

40,754. But so they do in the county court?—Would the wife go up to Northumberland then? I am thinking of a case where an order has been made, say, in Cornwall. The payments have been going on, say, for four or five years; then they cease. She happens to know her husband is up in Northumberland; she goes to the magistrates, and she tells them that he has ceased to make the payments. It would scarcely be fair that they should forthwith be able to issue a commitment, because he may have good reason for not having made the payments. He may have been ill. So at present the practice is she asks them for a warrant. The man is brought before them; she appears, and unless he shows some very good excuse, then the commitment is issued. The commitment is not issued before the man is brought before them.

40,755. I quite understand that, but I want to know why if it is not required and found requisite in the county court it need be found requisite in the magistrates' court.

(*Judge Tindal Atkinson.*) The creditor can send up an affidavit. Supposing a judgment was given in the county court, and the defendant were to reside in Northumberland, and the plaintiff wants to commit him, he can issue a summons in Northumberland, and send an affidavit of the means of the defendant, and the order is made there. He will not be brought back again to his original court, except by leave of the judge, or unless he tenders to the defendant the whole amount of the expenses of carrying him backwards and forwards.

(*Chairman.*) The substantial point is, in the county courts, having got the order that a man should pay, you can execute it by committal in another part of the country, and lock him up there.

(*Judge Tindal Atkinson.*) Yes, that is generally done; I do it in a great number of cases.

40,756. (*Chairman.*) But the point made was that in these orders before the magistrates, which are very numerous, a woman is in a difficulty if the man moves out of the county, and I want to see if we cannot get over that. I do not see why it is necessary in the case of the magistrates any more than in the county courts. I do not mean necessary now, but necessary in principle; because of course you are bound by your Acts now?—I have no doubt that the procedure under the Act of 1895 might be amended, but I am not prepared at present to say in what way it actually should be.

40,757. That is another matter, but you agree at present that in order to enforce the order obtained by the women they must get the men brought before the bench in their own district?—In the district where they have applied.

40,758. And whether that can be remedied at present you have not fully considered?—You might get better evidence from someone who is actually engaged in that matter.

40,759. Now as a fact there are counties in which these expenses of bringing the men have to be borne by the applicant before the applicant can bring him?—I do not know of any, but I think there may be. I have made inquiries of a certain number of forces, and from the answers, some of them evidently have had no cases bearing on the question for some time. One or two of them say that the rule is not to charge the applicants; and the impression left on one's mind from the official papers at the Home Office, and from some special private inquiries I have made, is that the general rule is that no woman should be prevented from enforcing the order through poverty. From one borough—the only borough that gives a quite positive and clear answer—the answer was, as though it were the general rule: Yes, we always require her to guarantee the expenses, and if she cannot, we refer her to the poor law guardians. They left it there. What the poor law guardians do was not explained.

40,760. Would your view be that enforcing these orders by women who cannot provide any means at all should be a charge on the rates?—As a general rule, no doubt, I think so. That is done by the Metropolitan Police.

40,761. I think that is all you can tell us about that. Now you have also sent in some additional notes in connection with the prisoners' position with regard to divorce. Are you desirous of giving evidence about that?—I do not think I have any evidence to give on that subject. The subject very rarely comes up in the petitions or in any official papers that I have to do with.

40,762. You get, I daresay, a great many matters about prisoners brought before you?—Thousands.

40,763. But you do not get the divorce question?—Very rarely.

40,764. Have you anything you wish to say about that part of the matter?—I would only say this for what it is worth, I think the fact that amongst these many thousands of communications we see so little trace of difficulty arising through people being sent to prison for long terms, suggests that there is not a very urgent or widespread demand for an amendment of the law.

40,765. They do not, I suppose, come to you for the purpose of getting divorce. They want to get the prisoner free, or something of that kind?—Well, they write long rambling letters about a variety of matters.

40,766. You have made some mention in your additional notes about the position of women before the law as compared with her husband. I suppose those are based on the present position of the law?—They are one or two remarks that have occurred to me, but I am not in a position to give actual evidence on the subject.

40,767. (*Mr. Brierley.*) Just one question. In the table of fees which you say is approved by the Home Secretary under the Police Act, that does not exhaust the amount of fees that the wife has to pay on obtaining her warrant, does it?—The fees that are strictly chargeable are, first the justices' clerk's fees for obtaining it, and then ——

40,768. Yes, there are also those for her to pay, are there not?—Yes.

40,769. In addition to the fee payable under the Police Act, do you know about how much that fee generally is upon an average—the fee of the clerk to the justices for the warrant?—One shilling or two shillings. Our model table says 1s.

40,770. I am afraid in some cases it is rather more?—I have no doubt it is.

40,771. I can tell you of a case where it is half-a-crown, for instance?—Yes.

40,772. Do you know the limits. From one shilling to what?—As I said to the Chairman, the highest I can remember having seen is half-a-crown, and I may say whenever the Home Office is ——

40,773. I am afraid in the court I know of it is half-a-crown.

(*Chairman.*) Would you ask him if that is uniform?

40,774. (*Mr. Brierley.*) That belongs to the class of fees that you say is not uniform—namely, the justices' clerk's fees?—Yes.

40,775. I understand that these fees of the clerks to the justices are quite diverse; they are by no means uniform throughout the country?—No, but I think probably you may say this, that if you took all the boroughs that existed in 1834—including Birmingham—probably all of them, or the great majority of them, have a table which was recommended by Lord John Russell, I think, in 1838, or some date like that, and when commissions of the peace are issued to new boroughs we almost invariably now insist on their adopting our model table, and I think one may roughly say that any tables that have been approved during the last 30 years—or most of them—are fairly uniform.

40,776. Yes, no doubt those that have been approved during the last 30 years, but I suppose a large number of petty sessional divisions have tables of fees that date from considerably before that time, have they not?—I do not think so. One thing, there is not a separate table for the petty sessional divisions; the table is approved for the county or the borough. I do not think there are more than three or four counties that have as old a of fees as many boroughs have.

40,777. However that may be, the fee is not absolutely uniform for obtaining the warrant, payable to the clerks to the justices. Then in addition to that you have the fee payable to the police for executing the warrant?—Yes, there may be that fee.

40,778. That, in most cases, has been approved by the Home Secretary. In a great many cases I should say it has been approved by the Home Secretary, as you have said?—Legally it cannot be enforced unless it has been approved by the Home Secretary within five years.

40,779. I am afraid it has been enforced as a matter of fact, although the table has been approved at a rather earlier date than five years ago. Again, I have before me a table of fees authorised by the Home Secretary in 1902, which is still in force.

(*Chairman.*) For your district?

(*Mr. Brierley.*) Yes, for the city of Manchester.

(*Chairman.*) What is that?

40,780. (*Mr. Brierley.*) "In respect of the execution "of any warrant where the cause of complaint has "arisen within the borough there is a fee of one "shilling. Fee for the execution of every other "warrant, one shilling and sixpence." That is for executing warrants sent from other districts, is it not?—That is so, I should think.

40,781. That is still enforced though approved in 1902?—Still enforced?

40,782. The fees are still demanded, though possibly they are not legally demanded?—I am not sure whether in strict law that is not an offence called extortion.

40,783. Possibly. However, that is what the amount of fees come to on the execution of the warrant?—Yes.

40,784. Now, with regard to what you call the costs. I suppose they are really the railway fares in most cases?—Yes, I suppose so.

40,785. It would be generally three railway fares and something over if the officer goes to the place where the husband is and back again; the return fare for the officer and the single one for the husband, and subsistence allowance for the officer if he has to spend a night away?—I suppose those would be the expenses. There might also be a fee for getting the warrant endorsed.

40,786. I suppose the view of the Home Secretary is that the police have a discretion as to whether they will demand those expenses or not?—Yes, it is inevitable that they should; even in a case of a warrant for felony (when there is a much more stringent duty on the police to arrest) we are advised that the police have to exercise their discretion.

40,787. But whether as a matter of practice some chief constables send their officers for the husband, say, in the case in question or not. It is entirely within his discretion whether he will do so or not without receiving his expenses beforehand?—Yes. It is his duty to use his discretion reasonably, and we should say it is his duty not to allow a warrant to remain unenforced simply because the woman who has taken it out is poor. We should say he was failing in his duty, I think, if that were the result.

40,788. But I thought you said there were cases where he ought not to execute the warrant?—There are some, but what I meant to suggest was that the Home Office view is it should not remain unexecuted simply because the woman is poor. I could give a case which one chief constable mentioned to me where everyone would agree it should not be done at the expense of the rates. It was a case where the woman obtained an order against her husband. For a good number of years it was enforced. She then began to lead an immoral life, and did not enforce it. After a little time she heard that her husband was living with another woman; that so much infuriated her that she at once took out a warrant, went to the police and asked them to enforce it. The police in that case said, "Well, you must guarantee expenses." I think it would be agreed that in that case they exercised their discretion rightly.

40,789. Yes, I do not suggest they do not exercise their discretion quite rightly; but as a matter of fact it is within the discretion of the chief constable whether he will execute the warrant or not without having his expenses guaranteed?—Outside the jurisdiction for which he acts.

40,790. I do not know what the view is as to the legal obligation of the constable. The warrant is issued to the constable in the district?—Yes.

40,791. And they are bound to execute the warrant in the district?—Yes.

40,792. Without asking costs from anybody, except such as they are allowed to do under the table of fees under the Police Act?—Precisely.

40,793. But the whole question arises when they have to execute it outside their district, and as to that they have a discretion?—Yes.

40,794. You have mentioned some cases where the chief constable has declined to execute the warrant where the woman is very poor, and says he refers her to the poor law guardians?—That was one borough I heard of.

40,795. You do not know what the poor law guardians do in that case?—I only got that answer a day or two ago, and I do not know quite what it means. It may mean that the poor law guardians give outdoor relief, or it may be when he says "We do this" that he only means "We have done this in a few cases lately."

40,796. You do not suggest that the poor law guardians pay for the expenses of the execution of a warrant, do you?—I cannot see how they should unless they might do it in the case of a woman who is getting outdoor relief already.

40,797. I only wanted to know the existing practice. With regard to the possibilities of executing a warrant without bringing the man, you do not wish to express an opinion about that?—I do not know enough of the county court practice.

40,798. (*Sir Lewis Dibdin.*) I wanted to ask you this on a question Lord Gorell put, as to whether the practice could not be simplified as to enforcing warrants. We are all anxious to find some way of dealing with enforcing separation orders. I gather you feel some difficulty in the proposal that in the case you put about Cornwall and Northumberland, in the process for committal taking place in Northumberland when the separation order has been made in Cornwall?—I do not quite see, speaking with very little knowledge of the subject, how magistrates could take the responsibility of sending a man to prison for what is after all a debt, unless they had heard both what he had to say and what his wife had to say. That is the difficulty that occurs to me.

40,799. It would not work that the warrant should issue automatically by any authority. There must be something in the nature of an application when somebody must exercise the discretion as to whether the

warrant should issue or not?—You mean a warrant of committal.

40,800. Yes?—Certainly I should think so.

40,801. I suppose there is a difficulty in that application being made to a different tribunal from the tribunal which made the separation order?—There is that difficulty. Of course I believe part of the difficulty arises from the fact that justices make an order which may be enforced I suppose for as long as thirty or forty years ago.

40,802. That is an additional difficulty. Now, let us take an ordinary case. Here is a man living in the petty sessional area, if you like in Northumberland (to keep to the counties you have mentioned), and there is an order for committal in Cornwall, and then there is a difficulty as to who is in default. What are the magistrates to do? Is the man to be summoned before them to show cause why he should not be committed. What is the procedure? I do not mean the precise procedure, but in general, what kind of step is to be taken. That is my difficulty. I do not see how it is going to work.

40,803. (*Chairman.*) Has not he got to be served with the application for the warrant?—No.

(*Mr. Brierley.*) The application is *ex parte.*

40,803*a*. (*Chairman.*) For the warrant?—Yes.

40,804. (*Sir Lewis Dibdin.*) But supposing the law is altered and he is served with a notice of application for the warrant. That comes before the petty sessional court who know nothing about the case—it was not made in their part of England even; is it likely that an application which in the Chancery courts I am more familiar with would be called a motion to commit, is it likely that that would be dealt with satisfactorily in the absence of the woman—assuming it is the man being committed—and in a district which has no seizin of the matter generally—no knowledge of the matter, I mean?—It does not seem as if it would be satisfactory, but I am not sure if I quite understand your suggestion; but another objection occurs to me far stronger, and that is that if you are going to serve a man with a notice that a warrant of arrest is going to be applied for, in a large proportion of cases it will not be much good to take out that warrant of arrest.

40,805. He will go, I quite follow; then another difficulty; could that be properly dealt with in the absence of the woman, suppose his answer is: "She "has committed adultery, and I am no more liable to "pay." Who is to deal with it unless you bring the woman up to Northumberland? — That particular defence would be, strictly speaking, no defence. I believe until he has the order set aside he is still liable to pay.

40,806. Oh yes, I see. Though it might not be in strictness, it would in any court which had any discretion in the matter have a good deal of effect, would it not?—It ought to. It is still a moot question whether they have got any discretion about committing to prison; but at all events they could commit that man for a single day, anyway.

40,807. (*Sir William Anson.*) Do you withhold approval from tables that do not correspond with the model table?—Under the Act, if once a local authority has submitted a table for approval the Secretary of State has power to alter it and approve it as altered. That we wish, of course, to avoid, if possible, and we usually try to persuade the local authority that our model table is really better than the one they have submitted; we put it from the point of view that as things are at present it may not be an ideal table, but uniformity is desirable.

40,808. And if they do not follow that counsel of perfection, what happens?—Well, we get very few tables before us. It so happens a table came up before me yesterday, and I am not sure what the Secretary of State will do about it.

40,809. There is a discrepancy between one table and another in different parts of the country?—There is.

40,810. Do you ever call the attention of the persons responsible to these differences?—Well, there is one county where we tried very hard. They came up to the Home Office—I will not mention the county—and we tried very hard to get them to submit a table to the Home Secretary for approval; but up to now they have refused to do so.

40,811. Are not they bound to submit the table for approval?—No, because they have one that is approved. It only so happened that, as to the particular county I am thinking of, we had a good number of complaints. It is a very old table dating back to 1840 or thereabouts.

40,812. Then your table is refused from time to time?—Yes.

40,813. But the local authorities are not bound to bring their table in correspondence with yours?—No.

40,814. And if they have an approved table you have no hold on them?—No.

40,815. You said you had a great many petitions pass through your hands. Is that from prisoners only or from friends of prisoners?—I think more from prisoners than the friends of prisoners, but thousands of both.

40,816. Then, if there was any general desire for divorce on the ground of imprisonment, I suppose you would come across it in these petitions?—Well, one does not like to put an argument from absence too strongly, but I think it is probable one would have heard more of it.

40,817. And you never have, or hardly ever?—Scarcely ever.

40,818. (*Mr. Spender.*) You said just now you were not quite certain what the Secretary of State would do in a particular case. Can you tell us what he could do?—If any table of fees is submitted to him in the statutory form, and signed by the right people, he can either approve the table as submitted or alter it as he thinks fit and approve the altered table.

40,819. And if he alters the table, can it be enforced on the locality?—Yes, the Act says he may alter a table and approve it for that borough or county.

40,820. Then, as a matter of fact, the Secretary of State already has these powers, and he could if he chose make a uniform table?—No, only when a table has been submitted to him in the statutory form.

40,821. It is only when a local authority has of its own accord submitted a table?—Yes.

40,822. In those cases the Home Secretary can alter it and enforce the alteration?—Yes.

40,823. (*Chairman.*) Supposing a woman had got a separation deed under which she was to get 15*s.* a week and her husband will not pay, and she goes to the county court and gets a judgment requiring him to pay 15*s.* a week; then, suppose she goes to the magistrates and gets an order for 15*s.* a week, her position in respect of what she has to get is exactly the same—in one case under a judgment, and in the other case under an order. So far we agree?—Yes, I suppose that is so.

40,824. Then, the next step is to enforce it. In the county court, if the man has not paid, she serves through the county court bailiff of the district where the man is a notice of application to commit for contempt, and on that application coming on the judge commits or not, according to whether it is a proper case. That is right, is it not? If the man does not turn up, he has had the opportunity to; and if he comes of course it is heard, but whichever it is, the order to commit is then placed in the hands either of the bailiff of the district where the order is made if the man is there, or sent to the bailiff of the district where the man is; and in that case he is locked up in the prison of the district where he is. That is how a claim for 15*s.* a week under a deed is made. In the magistrate's case the woman applies ex-parte for a warrant of arrest?—Yes.

40,825. And he is brought up on that warrant to say if he has an answer or not—for instance, whether he has paid it?—Yes.

(*Sir Lewis Dibdin.*) I thought he was not brought up.

40,826. (*Chairman.*) Yes, he is brought up on the warrant. That is the difficulty I want to get rid of. Do you see any reason why he should not be treated in the same way precisely by the magistrate as by the

county courts?—These things come before the Home Office in the most casual way, so I have great hesitation in expressing an opinion; but, as I understand it, the county court procedure gives the husband—the defaulter—a chance of absconding; that is to say, a notice is sent to him. My impression is that the difference between the class of people on whom orders are made by justices, and the class of people who are parties to a separation deed, would be considerable. In the case of a very large number of the persons on whom these magisterial orders are made you will not get any money out of them unless you arrest them without notice.

40,827. The only point of difference then is the possibility of absconding, which, of course, is a very likely thing?—Well, that struck me. I have not thought the subject over. That is the first thing that struck me—that it would give the defaulter that chance.

40,828. But, apart from that, is there any reason that you can see why there should not be a capacity to lock up the man at the place where he is?—No.

40,829. Instead of bringing him at the expense of the rates from one part of the country to the other, when he possibly does not dispute the debt?—No, I cannot see any reason.

(*Chairman.*) Thank you very much indeed for the trouble you have taken, and for the evidence you have put before us.*

* The following table was subsequently supplied by the witness showing the number of prisoners sentenced as habitual criminals under the Prevention of Crimes Act, 1908, up to the 15th May 1911:—

	Males.	Females.
Number sentenced to date -	242	3
Quashed by court - - -	6	—
Special licences granted - -	1	—
Suicide - - - - - -	1	—
Remitted by Secretary of State -	3	—

Adjourned.

Winchester House, St. James's Square, London, S.W.

FIFTIETH DAY.

Wednesday, December 7th, 1910.

Present:

The Right Hon. LORD GORELL (*Chairman*).

The Lady Frances Balfour.
Sir Frederick Treves, Bart., G.C.V.O., C.B., LL.D., F.R.C.S.
Sir Lewis Dibdin, D.C.L.
Edgar Brierley, Esq.
J. A. Spender, Esq.
The Hon. Henry Gorell Barnes, *Secretary.*

Mr. John Astley Bloxam called and examined (*in camera*).

40,830. (*Chairman.*) You are an F.R.C.S., a J.P., Consulting Surgeon to the Charing Cross Hospital and the Lock Hospital, and late Assistant-Surgeon to the West London Hospital?—Yes.

40,831. You have been good enough to attend to answer any questions which might be suggested to us on the questions relating to venereal disease as affecting the subjects on which we are inquiring?—Quite so.

40,832. Will you allow me to suggest that Sir Frederick Treves, who is so much more competent than I am to put questions on this subject, should ask you the questions which might be relevant?—I am quite agreeable.

40,833. (*Sir Frederick Treves.*) How long have you been connected with the Lock Hospital?—Over 30 years.

40,834. During that time you must have seen an enormous number of cases. Have you any notion of the number of cases of syphilis you have seen in hospitals?—I know I have examined 90,000 women alone. Of course that is not including what I have seen also in the Service, when I was in the Army.

40,835. In the Horse Guards?—Yes, and also what I have seen privately.

40,836. Would you speak of syphilis as a prevalent disease?—Of course it is a disease, what we term as belonging to the order of filth diseases, and it is prevalent, but how prevalent in this country one is unable to state, because there has been no real notification of the disease, and although it is prevalent, yet one would like to say that it is not quite so prevalent as I think the public imagine. I would like also to say that I am quite convinced that it is less prevalent than it was in years gone by. I am also prepared to say that it is less deleterious in its forms than it was in years gone by.

40,837. On that point will you tell the Commission your impression of the effects of syphilis, not only on the person in whom the disease develops, but on the progeny?—Syphilis is distinctly destructive of human life. In some cases rapidly so, but our evidence is in museums, and also other evidences point to the fact that it has a distinct effect on the rate of life in this country existing.

40,838. From an insurance point of view, you mean?—Yes. Syphilis also has a distinct effect on the early origin of life, I mean to say that it is a cause not of sterility but of abortion and early fœtal death; hence it is one of the great causes of prevention of over-population.

40,839. What is the effect upon the child of syphilitic parents?—When the child lives, its life is frequently a burdensome one, inasmuch as it is afflicted with distinct lesions, and those lesions, which may be prominent even early after birth, may be delayed till a later time of life so as to produce defective sight and also forms of visceral disease.

40,840. The child is very often deformed in the matter of the nose and skull?—Yes.

40,841. The contagiousness of syphilis is very marked?—Yes, distinctly so; it is a disease which is obtained by contact with the organism which produces it.

40,842. And a very slight contact suffices?—There must be some breach of surface for that organism to enter into the constitution.

40,843. The organism is the spirochœta pallida?—Yes.

40,844. That enters in all lesions?—Yes, even in what is termed the gummy or tertiary forms; it is very difficult to separate tertiary from secondary, and secondary even from primary. They are all the results of inflammatory processes set up by this organism which is known by the term spirochœta pallida.

40,845. The demonstration of syphilis by the discovery of the spirochæta pallida presents no difficulty. If you find the spirochæta pallida the matter is at an end?—Yes, if you find the spirochæte you may be certain that it is syphilis. We have other reactions.

There is no doubt in my mind that the Wassermann test, if it produces a positive result, is distinctive of the patient being the victim of syphilis.

40,846. The Wassermann test is reliable in 90 to 98 per cent. of all cases?—Yes, 98 per cent.; I think that is quoted.

40,847. As far as this Commission is concerned you can assure them that there is no difficulty in identifying and diagnosing a case of syphilis, either by the discovery of the spirochæte or by the Wassermann reaction?—None.

40,848. The incubation stage of this disease is of what period?—It varies; I should say the average is 14 to 21 days.

40,849. The secondary period of the disease, the period of extreme contagiousness, lasts how long?—I should say if a person has had a suspicious intercourse and no sequelæ follow, he might be safe after 90 to 100 days.

40,850. How long would you consider that the contagiousness of syphilis in a marked degree exists; in other words, if a patient came to you with syphilis and wished to be married, how long would he have to wait before he could be free to do so?—I should say he must undergo a treatment. I have always recommended a continuous treatment for two years, and then I have always made provision, since the Wassermann test has come out, that he should have his blood examined to see if it gave a positive or a negative result. If it gave a positive result it is necessary for him to undergo a still further course; if it gave a negative result, for all practical purposes, at least as far as we could possibly foresee, we may consider him fit and fairly capable of being married.

40,851. An individual who marries within two years of acquiring syphilis is liable to communicate the disease to the person he marries?—Yes. Although the evidence now is coming that the treatment of syphilis is becoming so much improved that I think we may put it that two years would be a safe interval; but we could not speak of it as a certainty, because the curious fact remains in syphilis that the organism escapes into the tissues generally after it has been in the blood a certain time, and then the organism seems to be locked up either by something surrounding it, or else it remains in a dormant state until, unfortunately, certain conditions arise, such as privation or exposure, or defective general health, and then this organism seems to be capable of escaping into the blood again and giving rise to symptoms.

40,852. Will you put aside exceptional cases and consider it generally?—Taking a broad view, I should say two years and a negative result after a Wassermann reaction.

40,853. Supposing that syphilis unrevealed were made a ground for nullity of marriage, you could say that marriage carried out within two years of the inoculation should come within that rule?—Yes.

40,854. I suppose such a law, from your point of view, would be a great deterrent if a man knew, in addition to the penalties of this disease, he was unable to marry for a period of two years?—Certainly. I think it would be a great thing if you could make it so that a man should not marry unless he has had two years' treatment.

40,855. Anyhow, if a man knowing that he had syphilis were to marry within two years, and not reveal the fact, he would be liable to communicate the disease. That would not be an unreasonable ground for the nullity of that marriage?—No.

40,856. And would be a great deterrent?—Yes.

40,857. The next point is a very important one: syphilis may be acquired innocently or, say, accidentally, by tattooing for example?—Yes.

40,858. By dentist's forceps, by pipes, by drinking from glasses, by a blow cutting the skin. Is it possible, in your experience, to readily exclude those cases?—No, it is not possible to exclude them, but they are so few that really they hardly need be seriously discussed, I think.

40,859. The point has been noted that whether syphilis be acquired innocently or not, the healthy spouse may be inoculated all the same?—Yes.

40,860. Two witnesses have maintained that syphilis *per se* should be a ground for divorce, I take it that the sore produced by accidental inoculation is usually on a visible part of the body—the face or the hands?—Yes.

40,861. In your experience you practically have no difficulty in isolating these cases?—Not the slightest. I have never seen any difficulty occur, but they are so rare.

40,862. Still, should they occur, there would be no practical difficulty, in your mind, in identifying them?—No, because almost always there is a scar which can be proved as a test to be able afterwards to satisfy evidence.

40,863. The sore being visible, is immediately noticed and, no doubt, immediately treated?—Yes.

40,864. This is another important point. You have, I take it, known of cases of men or women who have had syphilis and not been cognisant of the fact?—Yes, many.

40,865. The manifestations need not be so gross as to attract the attention, say of an uneducated person?—Yes.

40,866. Would you say it is possible for a man or a woman to communicate syphilis and honestly be unconscious of it?—I think in the male it is not so probable, but in the female I think it is.

40,867. You would not deny this, that it is possible for a male to communicate syphilis to a female and be unconscious of the fact he had done so, and, in fact, be unaware that he had syphilis?—Yes, it is possible, but it is not so probable.

40,868. With regard to the woman it is more probable?—It is more probable that she might communicate it without being aware that she had syphilis.

40,869. The Commission would like to know this. The treatment now in vogue—Ehrlich's—carries with it some possibility of syphilis being curable?—I have great hopes that syphilis in this country, by improved treatment, by knowledge given generally to people of both sexes, could be totally eradicated, the same as any other filth disease, such as rabies. There is every evidence now to make one believe that syphilis is more amenable to the treatment advised as recommended now. I have no hesitation in saying that great strides have been made, and I foresee it could be practically carried out, that by providing more general information, not by that concealment which false—what shall I say—modesty, which is so common. If only young men were taught to regulate themselves and see the importance of early treatment, and see the importance of regular and persistent treatment, and if women also were taught in some way to regulate themselves and to know the dangers to which they exposed themselves when submitting to casual intercourse, I have little doubt that considerable improvement, even in the diminution of syphilis, would take place in this country.

40,870. And apart from that what is your opinion?—I am by no means a pessimist.

40,871. This specific measure of Ehrlich as now practised carries with it a prospect of a cure for syphilis?—Yes.

40,872. That is undoubted?—Yes.

40,873. Consequently any kind of legislation based on syphilis as we knew it six months ago might have to be modified by the results of this new treatment by Ehrlich?—I do not think it could be possible to make any legislation with regard to the prevention of syphilis.

40,874. I am speaking of it more as a ground of nullity of marriage, syphilis of two years' duration. If Ehrlich's method has been applied and a man is apparently cured and the Wassermann reaction is nil, you cannot say that man has syphilis, especially if you cannot find the spirochæte in his blood?—No.

40,875. With regard to gonorrhœa, you have, of course, seen cases by thousands?—Yes, I have seen numbers.

40,876. Is that a very distressing malady?—It is very prevalent; I do not know that it is much more prevalent than syphilis. One would have thought it was, but of late years there has been a very considerable diminution even of gonorrhœa; the habits of cleanliness, and the use of disinfectant by injections by both sexes, largely in women, has diminished certainly the frequency of gonorrhœa that one sees.

40,877. Does that apply both to town and country, or do you distinguish between town and country?—I

distinguish, because in the country the education, or the cleanliness education, has not extended so well as it has in towns. The women of towns where they naturally have to more or less obtain their livelihood by their sanitary condition are more careful in these days to adopt measures which prevent the frequency of gonorrhœa.

40,878. You therefore expect to get the worst cases of gonorrhœa from the country?—Yes. Gonorrhœa is a disease which affects by inflammation the structures which it attacks, and produces lesions which are inimical to the mechanical foundation of the individual.

40,879. In other words, it may produce sterility both in women and men?—Yes.

40,880. And more often in women than in men?—Yes.

40,881. Anyhow, it is a common cause of sterility in women?—It is the most common cause, and the reason why the prostitute is so rarely a mother is because of the obliteration of the tubes, and of uterine irritation.

40,882. As far as women are concerned it is apt to produce inflammation of the tubes, what we call pelvic peritonitis, and not only intense distress, but an illness that may last that woman her lifetime?—Yes. A woman may have pyo-salpinx and salpingitis for years and years, and carry the organisms of gonorrhœa over a very considerable time. She cannot be cured.

40,883. Her life is rendered hopeless and miserable?—Yes.

40,884. Moreover the gonococcus, the organism of gonorrhœa, is so easily conveyed; it may be conveyed to the eye and cause blindness, and troubles of that sort?—Yes. Frequently women become pregnant and have a child, and yet have the gonococcus in the vagina, and when the child is born the child has what we call infantile ophthalmia, and if that is not carefully treated sloughing of the cornea and total blindness may ensue.

40,885. It may lead in women to lifelong illness and infinite distress?—Yes.

40,886. It presents itself as a frequent cause of sterility, and may lead to incidental troubles such as blindness in her child, and so on?—I have seen gonorrhœa cause death in women and death in men on many occasions. I may say that I have seen gonorrhœa occur in males and within six months death. It is destructive. it creates suppuration of the prostate, perforation of the rectum, and I have seen it extend into the kidney and form an abscess around the kidney, as you have known, and the whole paraphernalia.

40,887. (*Chairman.*) I would like to get a few matters which occur to me in consequence of the questions you have been asked. First of all, both these diseases you have been asked about are extensively prevalent both in men and women?—Yes.

40,888. The extent through the whole country must be a matter of guesswork?—Yes, but they are prevalent. We know the statistics of what they are in the Army, and that gives us some idea as to what they might be amongst the public, but I should say they were certainly less than the Army generally.

40,889. Could you give me the figures for the Army at any time?—I believe that the statistics of venereal disease at this present moment have been reduced down to 20 per 1,000.

40,890. At a given time?—Yes, it has been as high as 160, I believe.

40,891. How is that percentage divided between the two complaints?—Unfortunately there is not a distinction. They have been returns of the total venereal disease. From my own experience I would say this, that in a regiment like my own, which consists of 406 men, the Blues—I was in the Service when the Contagious Disease Act was in force—we had 100 admissions a year at Knightsbridge as a rule, and Albany Street; when we went to Windsor, where the Contagious Diseases Act was in force, it fell to 25. It was very funny. A quarter of the regiment seemed to have been admitted into the hospital at Albany Street, or there were one-quarter of admissions for venereal and only 25 were admitted at Windsor.

40,892. That is the total?—Yes.

40,893. Is there anything which shows the difference in figures between the two diseases?—I think that gonorrhœa was larger.

40,894. We have only had those two diseases mentioned. In the course of my own experience in court I have heard others mentioned. Are there any other diseases of a venereal kind which are in the same kind of category as either of those two?—Yes. We have local soring, what we call contagious soring, a sore which is not followed by sequelæ, a sore that is contracted by contact, which spreads by contact, and goes on spreading unless destroyed.

40,895. Would that be in the same category in the sense it is communicable to the other side?—Yes.

40,896. And to children?—No. It is not an infective disease; it does not affect the constitution. It is purely local.

40,897. It affects the other party, and may be acquired?—Yes.

40,898. Is that painful, and has it any bad effects?—It is almost always followed by the suppuration of glands in the groin.

40,899. Does it affect sterility?—No; but it is very destructive of tissue, and therefore it may prevent it. I have seen it produce terrible disfigurement and deformity.

40,900. Would you categorise it for such purposes with the other two?—I would classify it as a separate and distinct disease.

40,901. I quite agree that it is a separate and distinct disease, but——?—It must come in amongst the category of dirt diseases—a venereal disease.

40,902. It would be on the same footing for the purpose of legislation?—Quite.

40,903. Does that exhaust the diseases that are worth mentioning?—I think so. I think that exhausts all the venereal diseases.

40,904. Have you considered whether notification is a practical matter?—Yes, I have considered that very seriously. I do not think it is at all practicable. It is impossible, because it would be exceedingly difficult, and it would also open a field for all kinds of blackmailing, I think, and a terrible condition of things. I do not think it is possible. It would so interfere with the liberty of the subject as at present understood that I think it is absolutely impossible by any legislative proceeding.

40,905. You could not put it on any footing like those diseases which are at present notifiable by statute?—No, it would become so inquisitorial that it could not be possible.

40,906. You look rather to an improvement in the advance of medical science and the advance of morality, I take it?—Yes, and also in knowledge.

40,907. I was rather including that in medical science?—Although it is a terrible thing to do, yet I think these subjects are not sufficiently discussed. I mean young men are not sufficiently aware of the danger. Many a young man of strong health and vigour has a natural instinct to produce himself, or to reproduce himself. It is the order of the whole animal kingdom, and man cannot be separated from that order in his position, although we may try to do it; unfortunately it exists, and it is only, I think, by drawing the attention of young men and young women to it, and by proper systematic education, that we shall be able to touch the subject.

40,908. I should like to ask this, perhaps only as a matter of curiosity. What is the origin of those two diseases?—Of course, syphilis has been supposed to have been introduced into this country from America at the time of Columbus, by the Spaniards; that is the generally accepted idea, somewhere about 1490 or 1500.

40,909. I was not thinking of its introduction, but of its origin amongst man, its foundation amongst the human being. How did it get in at all?—Dirt, I should think. It is a filth disease.

40,910. It is a living germ?—Yes.

40,911. Where has that originally been supposed to come from?—I think no one can tell that.

40,912. There is nothing corresponding with this class of thing amongst animals?—No, but there is a

disease very much like it, which we cannot distinguish sometimes, and gives a reaction with Wassermann, called "yaws."

40,913. I only wanted to know if there was any real knowledge on that subject. Would you view this with favour, that if a party to a marriage was aware of the fact that they were suffering from a communicable venereal disease at the time of marriage and kept that back from the other party to the marriage, that other party might have a right to obtain a decree of nullity?—Yes.

40,914. You think that would be to the interest of the party and possibly of the children, too?—Certainly.

40,915. And it would not be too severe a penalty on the person who had concealed it?—No.

40,916. It has been suggested by Sir Lewis Dibdin that I should ask you whether that would be rightly a case for permitting the application of such a principle, although the disease had not, in fact, been communicated at the time of discovery?—No, I think you ought to have the fact that it has been communicated.

40,917. Why would that necessarily be so, because suppose it were discovered in the interval between the actual marriage and any time of intercourse that there had been the deception and the state of the disease, why should not the applicant be able to say, "I am "not going to run these risks: I ask for a nullity: "you kept it back," just as much, in fact, as if they had had intercourse and acquired the disease?—I do not quite gather what you mean.

40,918. There are two different cases. One is where the disease is existing at the time of marriage and kept back and communicated after the marriage to an innocent person?—I think that person should be able to get a divorce.

40,919. Or a decree of nullity?—Yes.

40,920. Take the other class of case, where the disease exists, is known to exist, and concealed, but the person who might complain was fortunate enough to discover it before an act of intercourse?—I think the nullity should be given.

40,921. It is exactly the same case?—Yes. I did not quite gather that.

40,922. (*Sir Lewis Dibdin.*) There is one more case, namely, where intercourse had taken place, probably in most cases it would, but in fact the innocent party had not been infected?—I think the person is entitled to a nullity.

40,923. (*Chairman.*) That is because there is the risk still to run?—The person would run the risk again.

40,924. Suppose such cases as I have put of discovery shortly after marriage, how long in common run would either of these diseases be probable in duration, assuming they were existing in a communicable state at the time of marriage?—Two years we put for syphilis.

40,925. Supposing it existed at the time of marriage, how long is it possible and how long normally possible that that will continue in the case of syphilis?—I should say after two years the intercourse may take place, provided there is proper treatment. I have had many cases of this, unfortunately. Things occur so suddenly, and I have had men who have been engaged and unfortunately through some stupid affair they have run the risk within a few weeks of their marriage, and even within a week of their marriage they have come to me suffering with the evidences of primary disease, and they are going to be married in a week. Those, of course, have been very distressing cases for you as a medical man to meet, and I have always considered my duty was to at once inform the man of his condition and to point out to him that it was his duty to inform the relatives of the lady whom he was to marry; and then those people have met together and discussed the question, and in many cases the marriage ceremony has been actually performed, but the consummation of the marriage itself has not taken place for two years, until the case has been treated and the test has been satisfactory; and then, as far as my experience goes, I have not seen any cause up to the present moment of regretting that such a proceeding took place.

40,926. Two years you have spoken of with regard to syphilis; but take the other cases of gonorrhœa?—Then, of course, you can only do that by a complete cessation of all signs and the microscopical evidence of the gonococcus not being present.

40,927. How long may that normally be considered to be?—That is a very difficult point to say, it is very uncertain. I have known the gonococcus to exist in the urethra of the male for two years, and I have known it disappear completely, even when the urine has been of course most carefully examined daily for the gonococcus, in six to eight weeks.

40,928. Have you known it longer than two years?—No. I have never personally had a case go longer than two years, but I can understand in the female that it could exist for years.

40,929. Do those general considerations apply to the other disease, the sores which you have mentioned?—No, not the local spreading sore.

40,930. Would you apply the same principles of nullity to those?—I would say certainly if you could prove that a man had had gonorrhœa shortly before his marriage.

40,931. I have passed from that. You mentioned a third complaint?—The sore.

(*Sir Frederick Treves.*) The soft chancre.

40,932. (*Chairman.*) Is that a durable matter, too?—No; it generally is curable within a few weeks.

40,933. Would you apply the same principle of nullity to that if kept back?—Certainly.

40,934. You would also say this, that if that principle were applied it would tend to check the possibility of immorality which would affect marriage?—Yes.

40,935. That would be an advantage both to the woman or man, as the case might be, and to the children?—Perfectly so.

40,936. Even though those diseases became, after two or three years or whatever the time might be, curable with proper treatment?—Yes.

40,937. You would give the wronged party, if I may use the term, the right to say, "I do not hold to this"?—Yes, I would. Of course, in these days I believe even now syphilis communicated is cruelty to the woman, is it not?

40,938. If known; but it is not always known that it will be communicated?—Supposing a woman had syphilis given to her by her husband, it is admitted as cruelty, and also as evidence of adultery.

40,939. As regards cruelty, it will require him to have reasonable ground for knowing that he might communicate it. It must be something wilful?—Yes.

40,940. It would not be necessary that he should know it for proof of adultery. It would be the fact which would speak for itself. Does your experience, which is enormous, enable you to give one any notion of the number of prostitutes in the country?—No, I could not say. I should think it is impossible to give any data.

40,941. It is very large?—Yes.

40,942. I suppose in your experience you see a good many of them in the hospitals?—Yes. Of course, it is largely them that we see. There is one notable fact I think I should mention, and that is since the Aliens Act has come in there has been a distinct diminution of severity of syphilis here, and we have not had at the Lock Hospital so many aliens as there used to be. In the old days it was common enough for a woman to have come over here and to be brought to the Lock Hospital after she had been in this country only about a week.

40,943. Coming with the disease?—Yes.

40,944. Do you mean that it is probably more prevalent on the Continent?—No; but they get turned out and they cannot carry on their profession.

40,945. The reason why I wanted to ask you upon that is this. Probably you have seen the point in the Press that has been put before us, that one of the reasons why women might be placed on the same footing as men as regards divorce is that the single act of intercourse on the part of a man with an improper

woman may produce a state of disease, and that that therefore should justify a wife, if she chose, in claiming it as ground of divorce, though only one single act?—Yes. I do not mean to say that one single act of intercourse with another woman should be ground for divorce unless venereal disease has thereby been contracted.

40,946. As distinguished from what has been termed habitual and continual intercourse with some other woman?—Yes.

40,947. Is it your experience that these cases of disease do come from single acts of intercourse?—Yes.

40,948. There is a real risk of that in the country?—Yes.

40,949. In your large experience have you come across a number of people, either in the hospitals or in private practice, who are respectable women who have been infected?—Yes.

40,950. By all these diseases?—Yes, very largely.

40,951. That, of course, must have been got through some immoral intercourse by their partner with somebody else, and then communicated?—Yes.

40,952. That is a real grievance and a real danger in the country?—Yes.

40,953. Is it possible to know to what extent that prevails?—No, it is impossible, because I could only give a general sort of idea.

40,954. It is enough if you tell me that it is prevalent?—Yes, it is prevalent.

40,955. In the Lock Hospital you take all classes of women?—Yes.

40,956. Both respectable and those who are not?—We do. We get a certain number of what you might call the semi-respectable, but as a rule they are treated at home and by private means.

40,957. You get them, but not extensively?—Only a small percentage. They have not entered the band of the others.

40,958. (*Sir Lewis Dibdin.*) A respectable woman would not like to come to the Lock Hospital if she could help it?—No.

40,959. (*Chairman.*) She may be poor?—It is curious, but there has been a very curious move all through London with regard to the hospitals. At St. Bartholomew's, when I was there, there were 57 beds for women who were prostitutes, admissions for venereal diseases for women, and 48 men. At Charing Cross there is a charity, under which a certain number of beds had to be, in the old days, kept for venereal disease. There was a street, Craven Street, and a fund, the Craven Fund, and in the old days of the Strand the prostitutes lived in Craven Street, and when a portion of it was sold the money was divided, so much to Westminster, so much to Charing Cross, and so much to the Lock Hospital, which was then situated in the corner of Park Lane. The people of Bartholomew's had so many calls for other diseases, and these beds were not always occupied, and in consequence of that they were diminished, and at Charing Cross the public subscribed and sent patients there, and they had to be put in beds approximate to where these women were, and the consequence of this was there was a great agitation, ladies complained of their maids, suffering from some simple malady, being put next to prostitutes in beds, and the result of it was that eventually almost all the prostitutes gravitated to the Female Lock Hospital, so that most of the hospitals have a very small percentage for venereal disease treatment.

(*Chairman.*) I think I ought to thank you very much for the evidence you have given. It is most valuable, and we shall be much informed by it, and it will help us considerably in our conclusions.

Mr. John Pedder called and examined.

40,960. (*Chairman.*) You are one of the principal clerks at the Home Office?—Yes.

40,961. What particular department do you represent?—One of the four departments, and inside that department is the question of the Aliens Act and all questions of nationality.

40,962. You have certain points which you are able to present in connexion with the Aliens Act?—In connexion with the expulsion of aliens.

40,963. There was a letter addressed by Sir Edward Troup, who is at the Home Office, to the Secretary of the Commission, calling attention to certain facts under the Aliens Act?—Yes.

40,964. I do not want to read through the letter, because you can probably state the matter more clearly. Will you kindly give us the points that have occurred to the Home Office as worthy of presentation?—There are two sets of circumstances in which aliens can be expelled. One may be called criminal and the other non-criminal, and my evidence, I think, may be confined to the criminal side. Under section 3 of the Aliens Act any alien who is convicted of an offence for which the punishment may be imprisonment without the option of a fine may be recommended by the court for expulsion, and the Secretary of State may thereupon, in due course, make an expulsion order. On receiving a recommendation, the Home Secretary considers all the circumstances, frequently including points which have not come before the court, and decides whether or not to make the expulsion order. If he decides to make it, the order is made and served on the alien before he is discharged from prison, or at his discharge from prison, and the order requires him to leave the United Kingdom and remain thereafter out of the United Kingdom. The alien must then forthwith, or within a short time specified in the order, leave the United Kingdom, and never come back except upon pain of imprisonment for three months in the first instance and twelve months on subsequent occasions. If an alien is married and has children, the various members of his family must either arrange to go away with him or join him abroad subsequently, or if they desire to remain in the United Kingdom they must remain apart from him. That is where our point comes in. There is no power to compel a husband or wife or child to go with an expelled alien unless he or she has individually become subject to the expulsion provisions of the Act; but the Home Secretary has power to and in proper cases does arrange for such persons if they wish and if they are not otherwise able, to go with the alien. In some cases one of the parties to the marriage, generally the wife, declines to accompany the other out of the country, and remains here. The physical separation of the parties is then complete so long as the expelled individual does not return to this country or the party who remains here does not join the other abroad. To that extent expulsion effects a release from the conjugal obligations, and an answer to that effect has been correctly given by a police court clerk to a woman who, at the same time as expulsion proceedings were in progress, asked for a separation order. Notwithstanding that physical separation, of course the marriage tie remains, and the party left in the United Kingdom is in a difficult position. Particularly in the case of a woman the point is important, because she is an alien by her marriage—although her children may be British subjects by reason of their birth in the United Kingdom—and is unable to acquire or resume the status and rights of a British subject so long as her husband remains alive and does not obtain divorce. That is the general position which I was directed to lay before you. I only have to add on my own part details, if you desire them, of two or three cases.

40,965. You said in some cases the wife may desire to accompany her husband, and the Secretary of State would assist her to do so; but there are other cases, I understand, in which the offence for which the alien is expelled consists in living upon the earnings of the wife's prostitution, or of ill-treatment to her, cruelty?—Yes.

40,966. Can the Expulsion Order be made in either of those cases?—Yes, the Expulsion Order can be made. The nature of the offence, provided it is an offence punishable by imprisonment without the option of a fine, does not matter from the point of view of the power to make the Expulsion Order.

40,967. Compelling women to submit themselves to prostitution and living upon them is an offence ?—Yes, within the terms of the Aliens Act.

40,968. What is the punishment ?

(*Mr. Brierley.*) Not exceeding three months for a first offence.

40,969. (*Chairman.*) That is a case in which the man can be expelled from the country if he is an alien ? —Yes.

40,970. Is that a case which occurs ?—Constantly.

40,971. To what extent ?—I should think certainly 10 per cent.

40,972. Of what ?—Of the aliens that have been expelled.

40,973. How many have been expelled ?—About 2,000 since the Act came into force.

40,974. Are the women left behind ? Are they British women ?—In some cases originally British women.

40,975. Therefore a British woman might marry an alien, might be compelled by him to prostitute herself so that he may live on her earnings ; he might then be found guilty of that and expelled from the country, and she would possibly say, "No, I do not intend to go with you " ?—That is what happens.

40,976. That might occur in the case of cruelty, too ?—Yes.

40,977. Where he has been punished for a cruel act, violent assault ?—Yes. That is the most marked case.

40,978. The assault ?—The assault, or the prostitution, the most marked case of the hardship possible to a British woman married to an alien.

40,979. The point is, the man being expelled, the woman has no remedy in this country worth anything in the way of divorce ?—None, I think.

40,980. She would be obliged, if he is an alien, to proceed for any remedy she could enforce in the country where he belongs ?—I suppose so.

40,981. I take it she would probably have no domicile here, and certainly he could have none after he is expelled from the country. He is never allowed to return ?—No, the order is to remain out of the United Kingdom.

40,982. He cannot have a domicile in the United Kingdom, and thus the jurisdiction, acting on domicile, for a woman to obtain release from a man, if the grounds are such as to give it, cannot be enforced in this country ?—I suppose not.

40,983. That is the point. Is there anything in addition that you think it is desirable should be drawn to our attention ?—I think not in general terms. The instances I could give would be mainly elaborating what you have just been saying.

40,984. Are they instances which have actually been brought to your notice ?—Which actually have occurred.

40,985. Assume, for instance, that the man remained in this country, but that he had not brought himself within the divorce law, suppose he had not committed adultery himself, would the view you desire to present from the Home Office be that in those circumstances, if he is expelled for what you have already described, that should be constituted a ground of divorce ?—That was the suggestion, that if the grounds on which a woman may obtain divorce are to be extended, one of the causes might be that she has been compulsorily separated from her husband by his expulsion.

40,986. That would be on grounds affecting her. There are expulsionary grounds not at all directed towards the woman ?—Yes.

40,987. But towards the alien who has committed other offences ?—Yes. Our submission would be as broad as the grounds for expulsion.

40.988. If ever an alien is expelled on any ground, leaving an English wife behind ?—Or even a foreign one.

40,989. She should have the right to a divorce because she can no longer live with him ?—It should be a ground upon which a court might dissolve the marriage.

40,990. And should have jurisdiction to do it as well, although he were not any longer domiciled in England ?—Yes.

40,991. Is there anything else you wish to add ?—I think not.

40,992. (*Mr. Brierley.*) Can you give us the number of cases of expulsion on the ground of crime ?—About 2,000, I think, in nearly five years since the Act has been in force—about 400 a year.

40,993. You say 10 per cent. of those are cases under the Vagrant Act of living upon prostitution ?—I am bound to say that is an estimate only. I have only given it as what occurs to me.

40,994. Do you draw any distinction between the cases where an alien lives on the prostitution of his wife, and where he lives on the prostitution of other women ?—I should not, from the point of view of my general submission. It is expulsion in itself, that is my point.

40,995. With regard to the figure of 10 per cent., are those cases where the alien lives on the prostitution of his wife, or do they include cases where he lives on the prostitution of a woman ?—Only of the wife, I think.

40,996. You think that amounts to 10 per cent. ?—I should think so.

40,997. (*Sir Lewis Dibdin.*) I think you said when the Expulsion Order was made the Home Secretary in a proper case would assist the wife to follow her husband ? —Yes.

40,998. But she sometimes declines to do that ?—Yes.

40,999. Is it the suggestion that in those cases she should be entitled to a divorce ?—Yes, I think so.

41,000. In all of them ?—Yes, on the ground that she has very good reasons for not accompanying him.

41,001. She may or may not have good reasons ?—I should submit that would be a question for the court.

41,002. A discretion ?—Yes.

41,003. There should be jurisdiction to divorce a woman who, having been given the opportunity to follow her husband who has been expelled, has refused to avail herself of it ?—Yes.

41,004. Wht is the particular advantage that you anticipate from allowing the wife this divorce ? Let us take the case you have put, where the woman has unfortunately become a prostitute through the wrongdoing of her husband and he is expelled, and she is left here a prostitute, separated from her husband, so that there is no individual molestation or anything of that kind ; what particular advantage do you think would follow from her being divorced from him ?—Freedom on her own part to start again, possibly marry respectably.

41,005. Do you think that is a case which would frequently occur ?—Merely on the prostitution cases perhaps I should not say frequently.

41,006. We have to deal with this. I am now speaking of the prostitution cases. Do you think really a divorce would make much difference to a woman placed in that very sad position ?—I should say so in a considerable proportion of cases, on the ground that many of the cases we see are very young girls, and if they were taken in hand, as they might be by proper agencies, and free to start their life again, it might be a considerable advantage.

41,007. Supposing your suggestion were restricted to those cases, I quite feel the force of the suggestion. Would it not be a possible view that while it was right that there should be a divorce in those cases, it is difficult to defend a divorce granted to a woman who, not placed under those circumstances in which it is quite impossible to live with her husband, nevertheless refuses to follow him abroad ? It strikes one as rather startling to suggest a divorce should be granted under those circumstances, that there should be jurisdiction to do it. I follow that it is a matter of discretion ?—I do not know quite what you want me to answer.

41,008. I suggest to you there is a very considerable distinction between the cases you have put, where the alien has brought his wife and made her a prostitute, and other cases where she may, for good or bad reasons, prefer not to follow him but still has had the opportunity of doing so and has refused ?—I think

there may be very great differences in the degree of the hardship which the wife is seeking to escape.

41,009. Is there any very great difference between the case of an alien whose wife refuses to follow him and the case of a man who emigrates, goes to America, and his wife refuses to follow him? You know cases of that kind occur. Would you say the court ought to have jurisdiction there to divorce a woman?—As regards emigration?

41,010. Yes?—I would not put it on the same basis as the effect of expulsion, which is compulsory. It is an act of the State.

41,011. That is in favour of the man. The man cannot help being expelled, but my emigrant can help emigrating?—The wife cannot have any influence over the expulsion at all. She may discuss whether her husband should emigrate or not: she cannot discuss whether he shall be expelled.

41,012. She can follow if she chooses in the case we are considering?—Yes.

41,013. And she elects not to?—Yes.

41,014. In the other case she elects not to follow him when he emigrates?—Yes.

41,015. Is there much distinction?—I should be inclined to base a distinction on the fact that the emigration she might be able to prevent by discussing it with her husband, and the compulsion she cannot.

41,016. (*Lady Frances Balfour.*) May I direct your attention to this. You have been asked about the unfortunate man who is expelled, or who emigrates. I should like to ask your attention to the woman's point of view. I suppose these alien men are nearly always expelled for some crime?—It must be some crime.

41,017. The common crime, I imagine, is using their wives in the worst form they can?

(*Sir Lewis Dibdin.*) About 10 per cent.

41,018. (*Lady Frances Balfour.*) These women are 10 per cent., you say?—I estimate it at that.

41,019. You consider it the very worst form a woman can be subject to, to be sent out into the streets for the support of this kind of man?—An extreme hardship.

41,020. Even one case of that would make a grievance against the husband which is an unforgivable grievance?—I am disposed to agree.

41,021. There is no crime greater that a man can do against his wife who is dependent upon him?—I do not know that I am in a position to express an opinion on that.

41,022. Do you think there is any crime greater than using a woman as a prostitute for the living of a man?—I really have not considered it definitely.

41,023. You are uncertain if that is a crime?—Not at all. It is a statutory crime—if for no other reason.

41,024. The common reason is that they are expelled for that crime?—It is one of the reasons. I guessed it at 10 per cent. I could have the actual figures calculated if the Commission desired it.

41,025. The man has to leave the country under the laws of the country. He is expelled for crime?—Yes.

41,026. Do you think that that is to be measured with the case of a man emigrating of his own free will to one of our Colonies?—I should draw a great distinction between the two sets of cases.

41,027. In neither case is divorce to be compulsory; it is at the will of the woman. Presumably the woman, if she does not wish to follow, has some very good cause?—Yes.

41,028. Either his cruelty, of the kind we are discussing, or some other cruelty?—Yes. The man has committed some offence for which he is considered not fit to remain in the United Kingdom. The offences vary immensely, of course. The grievance against the woman will be one of degree in each case.

41,029. That, of course, is totally different from leaving the country of his own free will as an emigrant to one of our Colonies?—That is the point I wished to submit to the Commission—the compulsory nature of expulsion.

41,030. That alone comes under the purview of the Home Office; they have nothing to do with the emigration of a free citizen or his wife, who is presumably more or less a free citizen?—No.

41,031. (*Chairman.*) Did that 10 per cent. you mentioned present the cases of compulsory prostitution?—I guessed it only on the spur of the moment as representing the cases of men living on their wives' prostitution.

41,032. Can you tell me how many cases there have been of expulsion for other offences against the wife, for instance, ordinary violence?—I am afraid I cannot off-hand. The figures can be taken out if you wish.

41,033. Have you the figures which show during the years the Act has been in force, the cases in which there has been expulsion, and the grounds of the expulsion?—They are published yearly.

41,034. Would you find it possible to send us a copy?—Certainly.*

41,035. Does it specify in some column clearly what the offence is?—All the offences are classified and set out in tables.

41,036. That would enable us to see exactly what the figures are?—Yes.

41,037. (*Mr. Brierley.*) The offences of living on prostitution would be offences under the Vagrancy Acts. Could you, in those figures you are going to give, distinguish between living on wives' prostitution and living on other women's prostitution?—If that is desired I could get that done. That will not appear in the published tables, but it could be got out.

41,038. (*Chairman.*) One wants to get a very definite notion of how many cases there are in which the wife is treated in this way, and in which that is regarded as a ground for turning the man out of the country; secondly, how many other cases there are in which the woman is treated brutally, and he is turned out of the country for brutality, but not of a prostitution character. That is the real point?—The figures could be taken out to show that.

41,039. Could you also show, or do they show, cases of expulsion on the ground of cruelty to children?—I should be inclined to say there have not been any on the mere ground of cruelty to children.

41,040. If the tables are sent and we require further explanation, I daresay you would furnish it to us in writing?—Certainly.

41,041. We are much obliged to you for coming to give evidence. Was it by the direction of the Secretary of State himself that this matter was brought to our attention?—Yes, the letter was written by the direction of the Secretary of State.

41,042. Shall we treat that letter as part of the matters which should be appended to our Report?—I think so, if you wish.

"Letter from the Secretary of State, Home Department:—

WHITEHALL,

"SIR, 7th June, 1910.

I AM directed by the Secretary of State to request that you will inform the Royal Commission on Divorce and Matrimonial Causes that he has thought it right to bring to their notice certain facts which have come before him in connection with his duties under the Aliens Act, 1905. When he makes an Expulsion Order under section 3 of that Act, requiring an alien criminal to leave the United Kingdom, difficult questions not infrequently arise in regard to the alien's wife and children. In some cases the wife desires to accompany her husband out of the United Kingdom and in proper cases the Secretary of State assists her to do so. In other cases, including some in which the offence for which the alien is being expelled consists in his having lived upon the earnings of her prostitution or involves other ill-treatment of her, the wife decides to remain in the United Kingdom, being glad to take advantage of the physical separation effected by the Expulsion Order. This separation is absolute and life-long so far as regards the United Kingdom, seeing that it can be broken only by the wife's going abroad to join her husband or by his returning to this country, in

* *See* supplement at end of evidence.

which case he is liable to arrest and imprisonment, and at the end of any such imprisonment would be sent out of the country forthwith. But the woman (not infrequently British-born), remains subject to the marriage tie and may be exposed to considerable hardships and temptations.

"It has occurred to the Secretary of State that if the Royal Commission are contemplating any extension of the grounds on which it should be competent for a Court to grant divorce, the case in which an alien husband has been expelled from the United Kingdom for crime deserves consideration.

I am, Sir,
Your obedient Servant,
(Sgd.) EDWARD TROUP.

Supplement to Mr. Pedder's Evidence.

Letter referred to in Questions 41,033–4 and 41,357–61:—

Home Office, Whitehall, S.W.,
9th December 1910.

DEAR MR. BARNES,

I ENCLOSE, as desired by the chairman, the blue books showing figures relating to the expulsion of aliens.

In Part II. in each volume you will find all available information: and in Table I. thereof you will see the cases arranged according to offences.

The column headed "Living on Prostitution and Procuring" covers the greater part of the matter which gave rise to my estimate of 10 per cent. "Keeping Brothels" has also to be taken into account, and "Wounding, Assault, &c." probably includes cases of the same nature.

For the years 1907 and onwards these columns are easily compared with the column showing the total of males dealt with. For the year 1906 males were not distinguished, and the figures are less useful.

I do not feel confident that if my 10 per cent. is to be limited to husbands living on their wives' prostitution (as I was rash enough to say it might be) the actual figures would confirm it—at all events as regards actual convictions; but I feel pretty sure from seeing all the cases as they pass through that this particular evil is not confined to the cases where it forms the subject of the charge or where it may actually be disclosed on inquiry.

If the chairman desires it, I can have all the papers searched; but it would be a very laborious and lengthy job, and I venture to think would not be likely to give any very certain or valuable result.

I did not take out the figures originally, because I wished, and (subject to the chairman) would still wish, to base the case not on the particular offence or the enormity of the offence against the woman, but on the fact of expulsion and the separation effected thereby. That, it is suggested, should be a ground for moving for divorce; the nature of the offence which led to expulsion would then be one of the considerations which the court would take into account. It might well happen that the actual final cause of expulsion was some comparatively trivial offence, possibly with no direct bearing on the woman; while the whole facts and history of the case might well justify release from the marriage tie.

I have some fear that I allowed myself to be deflected from this general intention into a discussion of particular offences. I may have failed to make clear the broad suggestion that the State having for some reason or other decided to send the man away, had a special duty to look to the woman's welfare, both from her personal point of view and from that of the community, involving as it often does the fate of British-born children. Questions of nationality, further, are important. I just mentioned them; but perhaps did not lay sufficient stress on them.

Please pardon this long letter, and understand that I am very ready to get out further information so far as possible, if thought necessary.

I am, yours very truly,
(Signed) JOHN PEDDER.

Dr. WILLIAM DAVID MOORE called and examined.

41,043. (*Chairman.*) You are an M.D. and Medical Superintendent of the Holloway Sanatorium, Virginia Water?—Yes.

41,044. How long have you had charge of that sanatorium?—I have been medical superintendent there for about 11 years.

41,045. You have sent us a short memorandum dealing with the question of insanity. Is that what your evidence is confined to?—Practically.

41,046. Is that sanatorium a place for the reception of patients who suffer in that way?—Yes.

41,047. A private sanatorium?—Yes.

41,048. We have had it frequently said that there is a difficulty about coming to a definite conclusion as to curability, at any rate until that has been tested for some considerable time. Is that right?—A very considerable time, in some cases.

41,049. During the last 25 years at your asylum, 1,281 patients have recovered?—That is so.

41,050. Of those, 61 had been in residence for more than three years before recovery, and, in several cases, there were no signs of improvement until the ninth or tenth year. How many cases have you had in which it has been absolutely incurable?—Probably about two-thirds of the entire number treated.

41,051. How many is that?—It would not be so much as that It would be about 4,000 altogether. We had 1,281 recoveries, and the incurable would be about two-thirds of the remainder.

41,052. Nearly 2,000?—Speaking roughly.

41,053. A very large number have been found quite incurable?—So far as we can judge.

41,054. Leaving on one side insanity as a ground of divorce if it should have been brought about by the conduct of the party applying, you think that should be eliminated?—That is my opinion.

41,055. What do you say about the insanity being a ground where there is a state of incurability duly determined?—So far as the individual patient is concerned I do not think it matters in a certain proportion of cases, but a large proportion of the patients who may be termed incurable are those suffering from delusional insanity. These patients, although they may be incurable in the ordinary way, would still feel it very acutely if they were divorced.

41,056. You have expressed it more fully in your paper. Perhaps you would read it, from "The causation of the insanity"?—The remarks about the causation do not refer to that.

41,057. I think we have had the whole of what you say in that way. Will you kindly read from there?—"The causation of the insanity is therefore a consideration of importance. 'Mental stress' was assigned either as a principal or contributory cause of the insanity in 2,671 females admitted to Institutions for the Insane in England and Wales during the years 1907–8, and during the same period it was the cause of the attack in over 30 per cent. of the private female patients admitted to registered hospitals and licensed houses. These statistics have an important bearing on the subject under consideration as, in married women, mental stress often means prolonged anxiety in regard to their husbands or their affairs. In many cases within my knowledge the conduct of the husband has not only been a contributory or predisposing cause of the wife's insanity—it has been the immediate and direct cause. The facts could not be disclosed at any inquiry that might be held, and a woman might be condemned to lifelong misery owing to an illness for which the husband was directly responsible." That is all I have said in my memorandum about causation.

41,058. That is why you exclude cases from consideration in which the applicant has been the real cause of the distress?—Yes.

41,059. Perhaps you will proceed with the rest of it?—"Divorce on the ground of insanity would entail

an amount of suffering out of all proportion to the relief it might possibly afford. Only those who live and work amongst the insane can have any conception of the distress, and even mental torture it would occasion. Not only would it affect patients who may be regarded as incurable—every married woman admitted into an Institution for the Insane would suffer in consequence. It would also, in my opinion, lead to an increase of puerperal insanity. Our attention has recently been drawn to the great improvement, during the last 50 years, in the nursing of the sick and wounded. During the same period a corresponding change has taken place in the treatment of the insane. Whereas formerly the main object in view seems to have been the safe custody of the patient, at the present time our efforts are directed to his recovery and comfort. The Lunacy Acts, from time to time, have given expression to these altered conditions and, in the present Act, every section has been drawn up with a view of protecting the patient and his interests. In my opinion divorce on the ground of insanity would be a retrograde step—contrary to the spirit of the Lunacy Acts and to the principles which govern the administration of the law generally."

41,060 (*Sir Frederick Treves.*) In general terms you object to insanity as a ground for divorce?—Yes.

41,061. You object, I take it, from the last paragraph of your proof, to lunacy being regarded as distinct from any other kind of disease?—Yes.

41,062. That is a prominent point, is it not?—Yes.

41,063. That has been mentioned by several, and I think it would be well to make it clear to the Commission. You speak of the improvement made during 50 years in the treatment of sick and wounded. You are thinking of the time when lunacy was not regarded as a disease?—Yes.

41,064. When it was considered to be due to a demoniacal possession or to the influence of the moon, as the term implies: it was not a disease comparable with other maladies?—Or even almost criminal.

41,065. In other words, there was no scientific treatment applicable to the insane?—That is so.

41,066. The lunatic was treated as a common brawler?—Yes.

41,067. He was locked up because he was a nuisance?—Yes.

41,068. When he was put away so that his noise and brawling were not disturbing to other people, the responsibility of the State ended?—Yes.

41,069. He was not medically treated?—No.

41,070. It is on that ground you regard it as a step backwards, the once more isolating of lunacy from other diseases. You speak of it as a retrograde step. You speak of the changes that have taken place in 50 years and I gather your fear is that if lunacy be a ground for divorce it will have the effect of once more isolating lunacy from the whole range of human disease?—That is so, of course. One feels that, but that is not the only question.

41,071. It is what is in your mind, in the last paragraph of your proof?—It is part of what is in my mind.

41,072. Your well-known asylum at Virginia Water is for the well-to-do?—Yes.

41,073. I take it you have had experience amongst the poor insane?—I have.

41,074. Have you never met with any cases of hardship amongst the poor from having insane spouses?—Yes, I have.

41,075. Serious hardships?—No, I have not known much of it.

41,076. The cases of husbands with children, whose wives are confined to an asylum, who have been driven to find some woman to look after the children and have formed irregular unions?—That I do not know much about.

41,077. Amongst the well-to-do have you met with no hardships?—Undoubtedly there is hardship, but it is only a hardship.

41,078. You do not think very much of it?—No.

41,079. Or, rather, your experience has not led you to think very much of it?—No.

41,080. Indeed you have considered this matter, as I think you ought to consider it, more from the point of view of the insane than from the point of view of the sane?—Naturally.

41,081. To go to definite points, you say that it is generally recognised that it is impossible to come to a definite conclusion as to curability in some cases of insanity of long standing. We have had a good deal of evidence on this point?—Yes.

41,082. Dr. Clouston says that physicians would have little difficulty in giving a definite opinion as to incurability. It is only fair to say he had in his mind cases of from three to five years' duration?—Yes.

41,083. You do not agree with that?—No, but in the greater number of cases he is perfectly right; you generally can.

41,084. We will come to those numbers. During a period of 25 years you have had in your asylum 61 patients who have recovered after a residence of more than three years?—That is so.

41,085. That represents the comparatively small number of 2·4 per annum?—Yes.

41,086. I take it that that is a very small margin for error?—I suppose so.

41,087. I daresay you know the figures which show that the number of recoveries after five years are, according to Dr. Clouston's experience, only 1·2 per cent., and according to the evidence of Dr. Coupland, the Commissioner in Lunacy, only 1·6 per cent.?—Yes.

41,088. You must therefore allow that the margin is very small?—There is no doubt about what?

41,089. The margin for error?—Yes.

41,090. I daresay you are aware that 82 medical officers of asylums have been asked whether they would consider that insanity should be a ground of divorce, and of that number 51 are in favour of insanity being a ground of divorce. You perhaps know the mean time they agree to is five years?—Do you refer to Dr. Savage's figures?

41,091. Yes?—I think it is only right to mention, in connection with that, that Dr. Savage at the beginning was in favour of divorce and afterwards, even after he had those communications from those 51, he changed his mind.

41,092. That does not alter the figures?—No.

41,093. We have Dr. Savage's letter. You know the letter?—Yes.

41,094. And there are the figures. It does not alter them. It come to this, if you take the cases of insanity that have been in existence for five years, and realise out of that number the recovery is only 1·2 or 1·6 per cent., do you really think there is much difficulty in coming to a conclusion as to the curability of these cases?—Not as to the curability, but that is a small part of the question.

41,095. That is the only one we are considering at this moment?—That is so, then.

41,096. There is one little point one ought perhaps to put clear, because it might be the subject of error. You speak of mental stress as a cause of insanity, and you mention it in connection with this question?—Yes.

41,097. It may be inferred from your proof that the mental stress you have in your mind is due to the husband?—Of course it is not altogether.

41,098. All your lady patients are not married?—No.

41,099. There are other forms of mental stress besides that due to the ill-conduct of the husband?—Yes.

41,100. You say that a woman might be condemned to lifelong misery owing to an illness for which her husband was directly responsible. Is that a term you think quite correct in the case of terminal dementia?—No.

41,101. You are thinking of one particular class, the delusional?—Yes, but they form a very large proportion of the incurably insane.

41,102. You say divorce on the ground of insanity would entail an amount of suffering out of all proportion to the relief it could afford. Do you know there are 50,000 registered insane suffering from terminal dementia?—Yes.

41,103. That is one-third of the entire insane population of these Islands?—Yes.

41,104. The full number of registered insane given to us is 150,000, of which number 50,000 are cases of terminal dementia. Allowing 25,000 of those to be married, do you not think that possibly an immense amount of suffering on the part of the sane spouses would be involved?—I would not say "suffering"; I would limit it to hardship, I think.

41,105. Because these 50,000 people, we are told, we may regard as dead, except in the physiological sense——?—Quite so.

41,106. ——they are spoken of as having no interest in their friends, totally unable to appreciate anything about divorce, and practically as dead to the world?—That proportion of insane refers to county asylums. Amongst private patients the proportion would be very much smaller.

41,107. The figures given to us include the whole of the registered insane in Great Britain. I mention that because you say divorce on the ground of insanity would entail an amount of suffering out of all proportion to the relief it might possibly afford. In terminal dementia there is no suffering in the sense you mean, so far as the question of divorce is concerned?—No.

41,108. Another point you make is that if this became a matter of law, not only would it affect patients who might be regarded as incurable, but every married woman admitted into an institution for the insane would suffer?—Very probably.

41,109. Taking the enormous number of cases of secondary dementia, they would not suffer?—My idea there was not so much with regard to the incurable. I said every married woman admitted into an asylum in the early years of admission probably would suffer intensely.

41,110. At the beginning?—Yes.

41,111. You would apply that to every kind of insanity?—You cannot apply it to all; where you get cases of primary dementia there can be no suffering.

41,112. It is only to correct your proof. The impression left on our minds would be that every married woman admitted into the asylum would suffer in consequence. That you modify by saying it would depend on the nature of the insanity?—Yes.

41,113. With regard to it leading to an increase in the amount of puerperal insanity, with an affectionate husband that is hardly likely to occur. You rather represent that worry about possible divorce proceedings might lead to an increase in puerperal insanity?—That is so.

41,114. Do you think in the case of an affectionate husband that is likely to be an element?—Yes.

41,115. Are there not cases of puerperal insanity which are septic in their origin?—A very small proportion.

41,116. Those could not be affected by dread of divorce?—I do not suppose sepsis in itself would cause insanity.

41,117. There must be the two combined, you think?—Yes.

41,118. Supposing as a matter of practice that divorce were to be granted for insanity of five years' duration, you are not likely to have much element of error in that?—You would have a certain amount—not much.

41,119. It comes to something less than 1 per cent.?—That is so.

41,120. We are told by Dr. Clouston that he has never seen a case of secondary dementia recover when the symptoms are well developed after five years?—In secondary dementia one would not expect them to recover.

41,121. You agree with that?—Yes.

41,122. You are naturally very interested in these cases of delusional insanity?—Yes.

41,123. Those who have given evidence here, I daresay you know, think that delusional insanity, alcoholic dementia, and what is called dypsomania, might be grounds for divorce after 10 years. You would not agree with that, I know, but I want you to consider this. The Commissioner of Lunacy has only one person's interest at heart, and that is the insane?—Yes.

41,124. He is appointed by the State to look after the insane?—Yes.

41,125. That is his sole care?—Yes.

41,126. Would you not think it a safeguard if in any case of divorce proceedings brought on the ground of insanity, it were possible for the Commissioner in Lunacy to intervene on behalf of the insane person?—With regard to what?

41,127. Supposing an action for divorce is brought against a wife on the ground of insanity. It is possibly a case of delusional insanity. She has no-one to represent her interests. Would you think it well that the Commissioner in Lunacy should *ex-officio* be able to intervene in a case of that sort on behalf of the lunatic?—I do not see what good it could do.

41,128. Surely he could do good. In the case just imagined no one represents the insane woman?—No.

41,129. She is certified as being insane. Then comes another case where she is represented by the Commissioner in Lunacy, who says, "I know that this "poor woman will be infinitely distressed by any "divorce proceedings, and it will aggravate her "condition"?—Yes.

41,130. Would not your scruples be to some extent met if it were allowed that the Commissioner in Lunacy should have powers to intervene in any action of this kind?—Of course it would be very necessary that they should have the power to intervene.

41,131. You think if they had that power it would remove some of your objections?—No.

41,132. Some objections?—Hardly any.

41,133. It would remove this objection. It has been said the poor insane person has no one to represent him or her, and if it were officially permitted that the Commissioner in Lunacy should intervene, whether asked or not, on behalf of the insane, surely that is in their interest?—Neither the Commissioner in Lunacy nor the medical officer of the asylum would be aware of all the effects, which only that woman would know herself, and she would not be in a position to give expression to them.

41,134. Still, some expression could be given for her by the official?—I doubt it.

41,135. A Protector of the Insane?—I do not think so.

41,136. I suppose you have nothing to say about the so-called criminal lunatic?—No, I do not think so.

41,137. You have not had to deal with them?—No, not really.

41,138. It has been said that a criminal lunatic should be divorced because of the fact itself?—That is a different question; crime comes in, and it is a different thing.

41,139. You have not considered that question?—No.

41,140. (*Lady Frances Balfour.*) On this paragraph Sir Frederick has been asking you about, I understood you said it would lead in your opinion to an increase of puerperal insanity. I thought that kind of insanity was quite different?—No; puerperal insanity is very much like other forms of insanity.

41,141. It is conditional—from the condition?—To a certain extent. The cause is different, but the insanity itself is very similar.

41,142. Does it ever last?—Yes.

41,143. Does it last for life?—Very rarely.

41,144. Is it not the case that the patient after recovering usually totally forgets the condition of insanity altogether?—Not always.

41,145. She remembers she was in that condition?—Yes.

41,146. It is not incurable?—Not as puerperal insanity, no, certainly not.

41,147. You never would class it among the incurable forms of insanity?—No.

41,148. Therefore it would not come within our purview if it is not incurable?—I think it does, in a way. It would add very much to the distress.

41,149. If the patient knew it was curable?—The patient would not know it was curable.

41,150. If she remembers her condition she probably has intelligence to ask what form of insanity she has

had?—You cannot tell a patient every case of puerperal insanity is going to recover.

41,151. You give her usually the benefit of the doubt if she asks you?—You must consider that a patient is very unreasonable. Very often you cannot reason with them at all.

41,152. You could not convince them they would not have a divorce because of puerperal insanity?—No, quite impossible.

41,153. (*Sir Lewis Dibdin.*) I suppose there are some cases of puerperal insanity which develop into incurable cases?—There are some cases.

41,154. May I take it anything which creates anxiety, what you have called mental stress, would be likely to aggravate the case?—There is no doubt about it at all.

41,155. I gather your view is that if the law were changed so that incurable insanity were a ground of divorce, that would become known, and any woman who was suffering from puerperal insanity would have the added anxiety that possibly she might be divorced on the ground of that?—Yes, and the dread of insanity is not to be despised as a factor in the causation of insanity.

41,156. In the delusional cases, those are among the incurable?—Yes.

41,157. I suppose in a great many delusional cases the incurable patient is perfectly conscious of what is going on?—Perfectly.

41,158. Perfectly capable of considering and brooding over the fact of a probable divorce?—Perfectly.

41,159. Do you think that would be likely to aggravate his condition?—Very much so.

41,160. I suppose, apart from his being cured, he may be better or worse according to the circumstances under which he is placed?—That is so.

41,161. If you add a new cause of anxiety that is likely to prejudice his condition, is it not?—I think so.

41,162. You have drawn attention to the cases where it would be highly unjust for a man to get a divorce from a mad wife whose madness has been largely caused by his own action?—Yes.

41,163. Not definite cruelty, but something which has caused her mental strain?—Yes.

41,164. Probably it will be admitted on all hands it is inequitable that the man should have a divorce, but is there not great difficulty in bringing that home to the man in any way?—It would be impossible to bring it home.

41,165. Possibly circumstances which are only known to the poor woman herself?—Yes.

41,166. And if circumstances which do not admit of legal proof in any way, they are not cruelty in any legal sense?—Yes.

41,167. But yet may be highly efficient in having produced her condition?—I would say in addition, if divorce were a ground of insanity that we would not in those cases get the history at all. At the present time we do get a history, but we probably would not get that history.

41,168. You do not deny, as I understand, that great suffering must be caused in a multitude of cases where one of the partners is insane. It is impossible to deny that?—No; there is a great deal of hardship, but in the one case it seems to me it is a hardship; in the other case, if divorce were a ground of insanity, it would be almost a calamity.

41,169. And, one may say, injustice?—There is no doubt about that.

41,170. Those conditions of suffering which take place when one of the partners is insane are, I suppose, of the same kind as where one of the partners is suffering from, say, incurable paralysis?—Yes. Of course there are differences.

41,171. Again, it is a case of great suffering?—Yes.

41,172. And calling for great pity?—Yes.

41,173. We cannot get away from that kind of thing in human affairs?—No.

41,174. (*Chairman.*) How many people do you have in your asylum at a given time?—As a rule between 395 and 400.

41,175. All of them paying?—All private patients; not all paying, but all private patients.

41,176. Mostly provided for by those who have been instrumental in bringing them before the Commissioners?—Yes.

41,177. You told Sir Frederick Treves that naturally you looked at this matter rather from the point of view of the patient?—Yes. I think that the medical officer who lives amongst the insane is the only person who can realise what terrible suffering would follow.

41,178. That is looking at it rather from the point of view of those who are in charge?—No, looking at it from the point of view of those who know, I would rather put it, what the result would be.

41,179. I take it, when we have to consider this matter, we must also consider the interests of those outside the wall, and who are suffering in consequence of separation?—Quite so.

41,180. What is your view of the position of a young man of 25, who finds out that, unfortunately, he has married a wife who is hopelessly and incurably insane?—I have no doubt it is a considerable hardship, but at the same time I would say that the greater the hardship the less likelihood there would be of his having a desire for divorce, that the more he was devoted to his wife the less desire he would have for divorce.

41,181. Do you think with a large number of people we have heard, that it may lead in cases to the person in such a position forming an irregular connection, persons left outside in such a situation as I have put to you?—He could not get a divorce for five years, and a man who lives a moral life for five years would probably not change.

41,182. Have you met with any cases yourself of complaint of the hardship?—Very few. I do not think there is any demand at all on the part of the wives; I am almost quite sure of that.

41 183. Of wives who are outside?—Yes.

41,184. And with regard to the men?—Exceedingly few exceptions, only one or two; and I may say that they seem rather ashamed of their position in bringing the matter up.

(*Chairman.*) We thank you very much for your evidence.

MR. FRANK AUSTIN GILL called and examined.

41,185. (*Chairman.*) You are the Director of the Lancashire Inebriate Reformatory?—I am.

41,186. Where is that situated?—It is about 30 miles north of Manchester, in Lancashire.

41,187. At what place?—Langho: that is the postal address.

41,188. What is the constitution of that reformatory? How has it originated?—It was created under the Inebriates Act, 1898, and maintained by the county boroughs and the county of Lancashire—a joint board.

41,189. How long have you been in charge?—Since the commencement: that is about 6½ years ago.

41,190. How many do you have there in a year?—175 I have to-day. The average will be about 140 to 150.

41,191. How many men, and how many women?—They are all women: I have no experience of habitual drunkenness amongst men.

41,192. Only women are sent to you?—Yes.

41,193. Are they sent sometimes compulsorily or voluntarily?—We have them compulsorily. They have all been committed by the court under the Act of 1898.

41,194. For habitual drunkenness?—Yes.

41,195. I think some have to go with their own consent?—They must be willing to be dealt with summarily. They have the option of appealing to be tried by indictment by a higher court.

41,196. We have had the Act before us but I have not it at the moment. My impression was that women charged with being habitual drunkards could only be

sent with their own consent, except where there was criminality?—If they are habitual drunkards, and commit some offence such as being drunk and disorderly, offences of that class, they are brought up before a police court and must be willing to be dealt with summarily. They must be asked that question.

41,197. Being summarily dealt with is one question: consenting to go is another. Do you get both cases, those that are compulsorily sent, and those willing to go?—We get no voluntary cases.

41,198. You have put before us a memorandum which perhaps you will read, as it gives your view precisely?—My memorandum refers entirely to what may be called the criminal inebriates: they are practically the only ones I have any experience of. Habitual drunkenness, when proved to be incurable, constitutes a ground for divorce.

41,199. You mean it should constitute a ground for divorce?—Yes. Many cases of habitual drunkenness are annually cured, and every effort ought to be made to effect a cure before accepting it as a valid cause for divorce. No divorce should be granted unless the drunkard has undergone a period of detention either voluntarily in a retreat or compulsorily in a reformatory, if qualified for the latter. At present I am aware there is no law which enables a non-criminal inebriate to be detained except voluntarily, so that until there is further legislation embodying the recommendations of the Departmental Committee on the Inebriates Acts nothing can be done to compel the respectable inebriate, if I may use the word in contradistinction to the criminal inebriate, to undergo a course of treatment. The criminal inebriates committed to certified inebriate reformatories are the worst and most degraded of drunkards, and yet I have personal knowledge of cases being completely reformed, and returning to their husbands and families as good wives and mothers, so that I feel it is very necessary that every means to effect a cure should be exhausted before a divorce is granted.

41,200. How long, or in what way are you to determine that the case has proved incurable?—It is rather a difficult question to answer. I think they ought to be compelled to undergo some course of detention, and at any rate give themselves a chance to be cured. It is very difficult to say when they are cured or not cured.

41,201. You start by saying habitual drunkenness, when proved to be incurable, should constitute a ground of divorce. I want to know when the test is to be applied and how determined?—You cannot determine it absolutely.

41,202. But reasonably, perhaps?—I should say that many of these women that have been discharged from Langho, if they had never been sent there, would be still drunkards, and at the present moment they are respectable wives and good mothers of families, so that a period of detention in my opinion should at least be tried.

41,203. I want to get to the stage when the applicant for divorce would be able to say, "This is a case proved incurable." Do you define that later on? I presume you do?—Yes, I do refer to it to some extent.

41,204. Perhaps you will read on?—"Given an incurable drunkard, *i.e.*, a drunkard who has failed to reform after a period of detention and treatment——"

41,205. What is the period you refer to there?—All I can say is that if a woman has been detained in a reformatory for a period of one or two years, if she has gone in under a sentence of three years, and she reverts to drunkenness on her discharge, I am prepared to admit, for the purposes of divorce, she is an incurable drunkard.

41,206. After trying it a reasonable time, for two or three years, three years at any rate, and relapse occurs on discharge, you have a hopeless case?—I should say probably; you cannot take it absolutely.

41,207. Is three years the maximum time?—Yes, that is the maximum sentence.

41,208. Will you kindly proceed with your paper?—"Given an incurable drunkard, *i.e.*, a drunkard who has failed to reform after a period of detention and treatment, then I consider the disease or vice, as the case may be, is sufficient ground for divorce, and for the following reasons:—1. The injury, social, moral, and material to the sober partner is great, and demands redress. 2. The injury, physical and moral, inflicted on the offspring calls even more urgently for relief. Not only have the existing children to be considered, but a drunken parent is probably a potential source of degenerate offspring, and any action which tends to restrict the output of such should be adopted."

41,209. That is the eugenic point?—Yes. The next paragraph is this: "In attributing an inherent degeneracy to the offspring of alcoholic parents, I am aware that I am treading on debateable ground, but I am satisfied from my own actual experience that the heritage is sufficiently real to justify precautions. So far I have dealt with habitual drunkenness *per se*, but the women committed to the Langho Certified Inebriate Reformatory, of whom over 50 per cent. are married, are mostly immoral, and about 60 per cent. are feeble-minded in some degree. Immorality I need hardly deal with here. It is resorted to as a means of obtaining a livelihood and of procuring drink. Where drunkenness is complicated by some degree of feeble mind, then I think divorce is still more justifiable, not only for the relief it affords to the sober partner, but for the sake of the offspring, existing or potential. Taking a working man's wife of average ability as a standard, then 60 per cent. of the habitual drunkards in Langho Reformatory are unfit by reason of their mental deficiency and drunken habits to be wives or mothers of children, and should be divorced in the interests of their husbands and the race. I am assuming for the moment that their husbands would be sober and respectable, a very improbable assumption. Where both are drunkards, I presume the question of divorce would not arise.

"*B.—Definition.*

"So much difficulty has been made over the definition of the term 'habitual drunkard' in law courts, that I must decline to attempt a definition. I suggest the definition recommended by the Departmental Committee on the Inebriates Acts be adopted, or adapted if you wish to include drug intoxication."

41,210. Will you tell me what that recommendation is?——

(*Sir Frederick Treves.*) It is in Dr. Branthwaite's proof.

41,211. (*Chairman.*) We will get it on the note?—The definition suggested is that an inebriate is a person who habitually takes or uses any intoxicating thing or things.

41,212. (*Mr. Brierley.*) That is not the existing definition?—You want the existing definition?

41,213. (*Chairman.*) I mean the definition recommended by the Departmental Committee on the Inebriates Act?—"An inebriate is a person who "habitually takes or uses any intoxicating thing or "things, and while under the influence of such thing "or things, or in consequence of the effects thereof "is (*a*) dangerous to himself or others; or (*b*) a cause "of harm or serious annoyance to his family or "others; or (*c*) incapable of managing himself or his "affairs, or of ordinary proper conduct." Then with regard to separation orders. "Separation orders are of value. They afford a greatly appreciated protection against the offending partner, they protect existing children, and help to restrict the output of more vitiated lives."

41,214. That is with regard to a separation order made on the ground of habitual drunkenness.

41,215. (*Mr. Spender.*) Could you tell us what proportion of the inmates of your establishment are married?—55 per cent.

41,216. What proportion of those have children?—I cannot give you the percentage that have children, but the average children to married habitual drunken women, I think, speaking from memory, is 6.

41,217. I do not follow that?—The average number of children of habitually drunken married women is 6. Am I correct? I think the figure is 6. It is in the inspector's returns in any case.

41,218. You say that the sentence is a maximum of three years. Are these women sent to their homes

again at the end of three years, whether cured or uncured?—Yes.

41,219. Do you follow the cases?—We follow the cases as far as we can, but it is very difficult to do so, because only a small proportion of them have a real home to go to.

41,220. Do they return into your hands? Do they come into the courts again and get sentenced to another period?—Yes, a certain number do, but not all of them by any means. Only a small proportion are re-committed to reformatories.

41,221. You find at the end of three years you cannot follow them because only a small proportion of them have regular stable homes?—That is so.

41,222. You do get a certain proportion of cases where the husband is a respectable man?—Yes.

41,223. Do you hold any dealings with the husband in those cases?—We generally keep up communication with him.

41,224. Do you know of cases in which he desires divorce?—Yes, I do.

41,225. You say in your second paragraph that no divorce should be granted unless the drunkard has undergone a period of detention, either voluntarily in a retreat, or compulsorily in a reformatory. Unless the law were altered to make it possible for that to be done compulsorily the drunkard could always avoid proceedings for divorce by refusing to submit to that treatment?—Yes.

41,226. Therefore that does not meet the case as the law stands?—No.

41,227. You propose to alter the law to make it meet it?—When I wrote this I had in mind that some legislation should follow on the lines of the Departmental Committee's Report on Drunkenness, which makes compulsory provision for those non-criminal cases, but that is not the law now. There is no law at the present moment enabling non-criminal cases to be detained against their will.

41,228. The procedure which you recommend would require, as a condition, that the law should be altered to make it possible?—As regards voluntary cases that is so.

41,229. (*Sir Frederick Treves.*) What do you think is the proportion of individuals who are cured in your institution?—Of criminal inebriates I should say 20 to 25 per cent.

41,230. The remaining cases are hopeless?—Practically.

41,231. What period would you yourself wish to have in order to establish the ground of incurability? You rather hinted at three years?—I say three years because three years is the maximum period that the courts have power to inflict. By giving a three years sentence you stand a better chance of reformation. If you sentenced to shorter periods I do not think your result would be so good.

41,232. Supposing you say incurable drunkenness is a ground of divorce, the next thing is to give the bases for the term "incurability"?—Yes.

41,233. I have gathered it means this, that the individual must have been confined three years, and after that time has become drunk again; in other words, it would take four years to establish a case of incurable drunkenness?—In some cases you could do it in a lot less time than three years. Give a three years sentence and you will establish the incurability shortly afterwards. A three years sentence is giving them the maximum opportunity of reformation.

41,234. As a matter of actual practice, it would take four years to establish a case?—That is so.

41,235. In the case of the incurably drunk, it would be necessary to defer proceedings till four years had elapsed?—Yes.

41,236. You would be satisfied then that the case was really incurable?—Yes.

41,237. What is meant by "a criminal inebriate"?—As the law stands at present a person who has been guilty of certain misdemeanours, such as drunk and disorderly, and drunk in a public place. If in such cases a person has been found guilty three times within 12 months, on the fourth time she is an habitual drunkard under the Inebriates Act of 1898, and can be detained compulsorily.

41,238. The bulk of your inmates are of that type?—Yes. There is also the other type under section 1, which is, that a person who commits a crime caused or contributed to by drink can be tried on indictment and convicted, although it is the first time she or he has been drunk.

41,239. What examples do you give of that?—Cruelty to children is the most common. A person need not have been convicted four times. If she or he can be proved guilty of cruelty to children, and drink is a contributing cause, they may be committed on the first offence.

41,240. The maximum sentence being three years?—Yes.

41,241. What other charges are there besides cruelty to children?—I presume larceny in a person who was drunk, wounding, attempted suicide under the influence of drink—such as those.

41,242. You have examples of all those?—Yes.

41,243. The majority are persons who have been habitual drunkards, or charged with being drunk and disorderly for the fourth time?—Yes.

41,244. (*Sir Lewis Dibdin.*) Is three years the maximum period?—Yes.

41,245. I know it is under the present law, but in your view ought three years to be the maximum period for determining whether a case is incurable? Can you say in every case at the end of three years whether a case is curable or not?—I am not prepared to say a case that went wrong after three years was absolutely incurable, but one has to get to a fixed limit somewhere.

41,246. Would you say that the length of period of treatment must depend upon the particular case?—Certainly.

41,247. In some cases it might be very much less than three years, and in some cases it might be more?—Yes.

41,248. You cannot draw a hard and fast rule at all?—I quite agree.

41,249. You have given us very clearly reasons why you think divorce ought to be allowed in a case of incurable drunkenness, and one very strong one is the second one, the danger of a person of that kind bringing children into the world—the undesirability of it. I have no doubt you have thought this out. How is a divorce going to prevent it as to that partner? First of all, would you make it part of the sentence that that inebriate is not to marry again?—I did not intend to do that.

41,250. If you did not, fresh children might be born of another partner?—I agree.

41,251. And the same evil would occur?—That point did not occur to me. I appreciate your point.

41,252. Even if marriage were prevented, in that class particularly I am afraid it would not prevent the likelihood of offspring?—I grant it would not.

41,253. Having regard to the human animal, it is almost impossible by law to say that a man or woman is not to have issue?—That is so.

41,254. I have been wondering, while you were giving evidence, supposing the law were altered in the way you suggest, whether it would have a large operation. You say that about 50 per cent. of the women in your reformatory are married?—Yes.

41,255. Of those, about three-fourths we may take as incurable?—Yes.

41,256. Thirty-seven per cent. You say, if I may say so, very naturally, divorce would be only a practical question where the husband was himself a sober and respectable man?—Yes.

41,257. Then you say that is a very improbable assumption in most cases, and that you mean, of course?—Yes. I find that in most cases.

41,258. Then the residuum of the 37 per cent. of the cases under your care, where the husband is of a character that would entitle him to a divorce, must be very small?—At present I could count them on five fingers—those cases in which a husband would be likely to ask for a divorce.

41,259. Or be entitled to one by his own conduct?—Yes, five would probably cover them.

41,260. (*Mr. Brierley.*) Langho is an inebriate reformatory for women?—Yes.

41,261. There is a distinction between inebriate retreats and inebriate reformatories?—Yes.

41,262. In retreats persons enter voluntarily, and in reformatories they are sent in lieu of punishment of other kinds?—Yes.

41,263. Could you tell us what proportion of your inmates are sent for being four times convicted within 12 months, and what proportion are sent under section 1 of the Act?—I do not know if I can give you the exact proportion, but I should say the proportion sent under section 1 is very small.

41,264. Are we not right in saying nearly all the inmates of your reformatory are sent for having been four times convicted of drunkenness within 12 months and of being habitual drunkards?—Nearly all.

41,265. You say 25 per cent. are cured. I was rather glad to hear that?—I should say 20 to 25 per cent.

41,266. How do you ascertain whether they are cured or not?—Two years ago I wrote to every chief constable in Lancashire, from whose jurisdiction cases had been committed, and to every charitable society who had been asked to take care of the cases, and my figures were based on their reports. A certain number of cases were untraceable—a good many.

41,267. Otherwise, you arrive at it from the fact that the women have not appeared in the courts again?—Yes, combined with the fact I have had good reports about them and no report of relapses.

41,268. Do you follow them?—To a certain extent. Those that are doing well we can generally trace, and those that are not are lost sight of immediately, probably because they have no homes to go to, and there is no place to trace them to.

41,269. That applies to a considerable number?—It does; it applies to the majority.

41,270. There is no means of tracing a large number of these women?—No.

41,271. Fifty per cent. of them are married. Could you say how many of those married women were leading an immoral life at the time of their sentence?—I have the police records to go by, but I prefer to go by what my own matron and many officers can tell me from women's confidential talks to them. I should say perhaps 90 to 95 per cent. of women sent are immoral.

41,272. In the great majority of cases there is a ground for divorce open to the husband if he wishes to make use of it, apart from drunkenness. The great majority of these women sent to you are prostitutes?—Yes.

41,273. Sent by reason of drunkenness and accosting men in the street?—Yes.

41,274. There would be nothing to prevent the husband getting a divorce?—No. As a matter of fact, there is one case quite recently, in which the husband attempted to divorce his wife, but the proceedings fell through for want of funds, but the husband did attempt to divorce his wife on the ground of immorality, whilst at the same time she was an habitual drunkard.

41,275. You do not suggest that separation orders on the ground of habitual drunkenness should be altogether abolished?—I do not, because I know of one or two cases where the husband and their children are only too glad to be rid of the wife and mother.

41,276. Or the other way round. What do you say to this suggestion: supposing a man or a woman has a separation against wife or husband, and that separation order has lasted for some time and there is no improvement. What do you say to that being a ground of divorce?—I should say it ought to be.

41,277. After a certain time?—Yes.

41,278. If it can be shown that the habitual drunkenness still continues, then there should be a ground of divorce?—I think so.

41,279. (*Chairman.*) You do not get cases of separation orders sent to you, because they are only made by the magistrates under the Act of 1879 on the application of a husband who proves his facts, if he can. You do not get that class?—No; they only come to us as habitual drunkards, irrespective of the separation order.

41,280. In the separation order cases there is no preliminary test at all; it simply depends on the evidence, whether the evidence can prove a case within the definition apart from detention in a home?—Yes.

41,280A. You think if that continued it might be turned into a divorce, if it became hopeless?—I think so.

41,281. Is it not because it is hopeless the separation order is made?—I presume it is, although the question of separation order never comes under my notice—the cause or the reason.

41,282. If a separation order was justified in being made a permanent one, you think if the grounds were sufficient for it you might just as well give divorce at that time as postpone it?—I agree, if they are satisfied that the case is hopeless. I am willing to admit that.

(*Chairman.*) We thank you very much for your evidence.

Dr. Robert Welsh Branthwaite called and examined.

41,283. You are an M.D., D.P.H., and His Majesty's Inspector under the Inebriates Act?—Yes.

41,284. Does that inspectorship cover a large area of country?—England and Wales.

41,285. Are there others besides yourself or are you alone?—I have a lady assistant.

41,286. You are really the responsible inspector?—I am the responsible inspector under the Inebriates Act.

41,287. You have been working amongst inebriates for the last 26 years?—Since 1884.

41,288. You have been during the first 15 years of that period in the personal management of three institutions for the control of inebriates; and during the last 11 years you have been engaged in supervising the management of all institutions in England and Wales?—Yes.

41,289. Altogether you have been responsible for the conduct of 51 institutions, and have had personal knowledge of between 9,000 and 10,000 inebriates drawn from all classes?—Yes.

41,290. Does all classes include upper classes too?—Yes.

41,291. Anybody confined in any home?—Yes.

41,292. Perhaps you would just continue your proof?—Yes. Of persons who have entered retreats on their own application (7,654), 66 per cent. were married, 34 per cent. single. Of the married, 85 per cent. were living with husband or wife at the time of admission to institutions, 7 per cent. were widowed, and about 8 per cent. separated or divorced. Of course that refers to persons who have voluntarily entered retreats.

41,293. How long a period does that figure 7,654 refer to?—30 years.

41,294. From the year?—1879.

41,295. Perhaps you will proceed with your proof and we will ask you about it afterwards?—Of persons committed to reformatories from courts, 62 per cent. have been married, 38 per cent. single. Of the married only about 18 per cent. were living with husband or wife at the time of committal, the remainder being separated by order of court, by mutual consent, or by the desertion of the drunken by the sober party.

41,296. You do not give us the total committed by courts. The percentage is given but not the total?—3,300.

41,297. Is that for the same period?—That is from 1898 to 1908, 10 years.

41,298. Will you proceed with the definition?—There is only one statutory definition, that in the Habitual Drunkard Act, 1879, section 3. A habitual drunkard is "a person who, not being amenable to any "jurisdiction in lunacy, is notwithstanding, by reason

" of habitual intemperate drinking of intoxicating " liquor, at times dangerous to himself or others, or " incapable of managing himself or herself, and his or " her affairs." This definition has proved very unsatisfactory in many ways, and the defects have been admitted and discussed by a departmental committee appointed to inquire into the operation of the law relating to inebriates in England, 1908, and by a similar committee appointed by the Secretary for Scotland, 1909.

41,299. Were you on either of those?—I was on the English committee.

41,300. Is that by the Home Office?—Yes.

41,301. Could we get the report?—I have it here. The English committee suggested a definition to take the place of the above, and the Scottish committee an alternative. Would you like both of those?

41,302. We will have those two on the notes?—The English committee suggested the following as an alternative: "An inebriate is a person who habitually takes " or uses any intoxicating thing or things, and while " under the influence of such thing or things, or in " consequence of the effects thereof is (*a*) dangerous to " himself or others, or (*b*) a cause of harm or serious " annoyance to his family or others, or (*c*) incapable " of managing himself or his affairs, or of ordinary " proper conduct." The alternative suggested by the Scottish committee is as follows: "An inebriate is a " person who habitually takes or uses any intoxicant " or narcotic, and while under the influence of such, or " in consequence of the effect thereof, is (*a*) at times " dangerous to himself or any other person; or (*b*) at " times incapable of managing himself, or his affairs; " or (*c*) at times a cause of harm or serious annoyance " to his family or to any other person; or (*d*) unfit to " have the care of any child of which he is the parent." As a third alternative, I now recommend a definition which does not vary greatly from either of the above; but which seems to me to remove some of the objections to both: "An inebriate means a person who " habitually takes or uses any intoxicants, and while " under the influence of such intoxicants or in con- " sequence of the effects thereof is at times, (*a*) dan- " gerous to himself, or dangerous or a cause of terror " to others; or (*b*) a cause of serious harm or suffering " to members of his family or others; or (*c*) incapable " of managing himself or his affairs." (The expression "intoxicant" to be understood to include any intoxicant liquor, or sedative, narcotic, or stimulating drug or preparation.)

41,303. No doubt you have considered it very fully, but there is a difficulty about that definition I should have thought might occur in practice. What do you mean by habitual. All the rest is very clear?—I never intended it to be in if it could be avoided.

41,304. If you leave it out you get into a difficulty because an inebriate means a person who "takes or " uses any intoxicants, and while under the influence " of such intoxicants or in consequence of the effects " thereof, is at times (*a*) dangerous to himself." That might happen to an absolutely sober man, who on one occasion got hopelesely drunk, say on Boat Race Day. I am afraid you must have something in to qualify it. "Habitual" is always found difficult to define. My difficulty, on thinking about this matter, is to know what "habitual" means?—I do not think you can define the word.

41,305. You would leave that to common sense?—Yes, leave it to the discretion of a court. The Departmental Committee discussed it for days, but could find no substitute for the word "habitual."

41,306. It must be applied by common sense.

(*Sir Lewis Dibdin.*) "At times," I think he relies on that.

41,307. (*Chairman.*) How often? You do not think there is anything better than that?—No.

41,308. The ordinary sensible magistrate would say "this is habitual" and "this is not"?—Yes.

41,309. That would be a way out of it. Will you proceed with the proof?—

"*Inebriety as a cause of conjugal misery.*—Although it may be necessary to mention a few cases by way of illustration, I do not propose to submit any detailed collection of instances where inebriety, within my knowledge, has caused impossible conjugal relationship. Domestic troubles from inebriety vary considerably in character, according to the sex of the offender, and the effect of alcohol or drug upon the individual.

"*In the case of the inebriate wife.*—According to the action of the drug, loss of interest in surroundings, loss of self-respect, neglect of duty, personal uncleanliness; or madness, violence, delusions of suspicion, or a tendency to indecent behaviour. In any case, resulting discomfort, worry and annoyance to sober husband. I have known many women who have not only caused miserable homes, but have actually dragged down sober and hard-working men from comparative comfort to penury. I have known them to pawn movable property, pledge their husband's credit to an impossible extent, and even forge their husbands' cheques. Wealthy husbands suffer in social life, but have remedies not available to others. The working man makes his own arrangements, and no one in his own class blames him. Professional men and tradesmen, whose places of business are immovable, are the greatest sufferers of all."

41,310. About that sentence just above "and no one in his own class blames him." What do you refer to?—He just leaves his wife.

41,311. You mean taking up with someone else?—Yes.

41,312. You left out the words "most effectual ones," and I was not sure whether that was what you referred to?—Yes. *In the case of the inebriate husband.*—The inebriate husband has more power for active evil than the inebriate wife, the physical pain of brute force being often added to the mental and moral injury he inflicts by his habits. By neglect of business and wanton expenditure he has more power to reduce the family to penury. The woman suffers more with an inebriate husband than when the positions are reversed. Here again, the working class woman has an advantage over her better placed sisters; she is brought up to use her hands, and is therefore able to get clear of her worthless husband and fend for herself.

Should Inebriety be a ground for Divorce?—When approaching the question as to whether or not divorce may be considered a reasonable remedy for such unpleasant situations, it seems necessary to consider what effect it would have upon (1) sober partner, (2) the inebriate one, and (3) the children of a marriage. Divorce from the aspect of the sober party provides undeniable advantages to the sober party.

"Broadly speaking, divorce for inebriety would benefit the sober party only, or practically so, and would be detrimental to the inebriate one.

"*Divorce from the inebriate partner's point of view.*—The case is materially altered when considered from the point of view of the inebriate partner, for little but disadvantage would result to him or her. Divorce may be considered a questionable proceeding from the point of view of the inebriate because:—

"(1) Inebriety may reasonably be regarded as a diseased state for which the inebriate can hardly be held responsible.

"(2) Inebriety in some of its forms is curable.

"(3) So long as the marriage tie is binding the sober partner often exercises some power for good over the inebriate one. The withdrawal of that restraining influence results in further degradation.

"(4) To many persons, especially to women who have not been brought up to support themselves, divorce means destitution.

"*The effect of divorce for inebriety upon the children of a marriage.*

"In order to arrive at some sort of conclusion on this head it is necessary to distinguish between paternal and maternal inebriety as they respectively affect children.

"*Paternal inebriety.*—Generally speaking, if a father has rendered himself dangerous, or a sufficient cause of misery to his wife to lead her to apply for divorce,

the children also would probably be safer, happier, and have a better chance of good upbringing apart from him. But financial difficulties interfere. Divorce would probably benefit the children if the mother, or both mother and children, were in possession of sufficient means apart from the father, or if the father was contributing nothing to family finances and hampering a woman who could otherwise earn a living for herself and children. On the other hand in cases where all property is in the hands of the inebriate father, or where, notwithstanding his inebriety, the father is earning something (the mother being impecunious) it is a little doubtful whether divorce on the whole would benefit the children.

"*Maternal inebriety.*—When the mother is inebriate the subject resolves its itself into the question whether or not her condition is sufficiently bad to justify forcible severance from her children, in their interests. As to this, I fear my experience forces me to a very definite conclusion. If irreformability of the mother can be proved, if mental or physical injury to children can be proved, I think that the best interests of the children demand separation from such a mother's bad influence.

"*General Conclusions on the Desirability or otherwise of Divorce for Inebriety.*

"Notwithstanding all difficulties, I am of opinion that divorce, for the inebriety of one partner to a marriage should be recognised by law; but restricted to the worst cases and under definite conditions, to prevent abuse. Under no conditions should divorce be possible when both parties are inebriate. I do not think any religious argument should be allowed to interfere with grant of divorce for inebriety; nor do I think we should refuse to benefit the sober partner because the inebriate one may suffer. The sober one deserves, and should be able to command sympathy.

"*The Value of Separation Orders for Drunkenness.*

"I am of opinion that the separation order for drunkenness is a bad remedy; but am not prepared to endorse the wholesale condemnation which has been hurled at the procedure by many persons. It grants some measure of relief to the sober partner, minimises molestation, and at any rate attempts to enforce a maintenance contribution. It is the divorce of the poor, the only remedy available to them. Lastly, it does not prevent reconciliation and re-union. On the other hand, permanent separation of husband and wife, without dissolution of marriage, constitutes a lasting temptation to immorality unless the parties are well past middle age, or abnormally asexual. It is a condition counter to the law of nature. No separation order should be permanent. If a separation order has been in force three years, if no reform has occurred, and if the person upon whose request the separation was granted still desires it, I think the order should be convertible into divorce. If two persons separate and remain so for three years, and still determine to remain apart, marriage becomes a useless tie, and one that is very detrimental to the sober party."

41,313. Will you allow me to say that this is such a carefully reasoned paper from a person of very great experience, I do not know that I can ask you anything upon it, except with regard to what you say as to separation orders. "It is the divorce of the poor, the "only remedy available to them." Would your experience lead you to think it would be of advantage if the poor had the opportunity of obtaining divorce in a court properly constituted for the purpose?—Yes.

41,314. Have you any doubt about that?—I have no doubt whatever. May I say that the only advantage of a separation order previous to divorce is in its constituting a sort of probationary period. That to me is the only advantage of the separation order over immediate divorce.

41,315. It ought not to be granted to begin with until a state of things has occurred in which there is habitual drunkenness?—That is so.

41,316. But still even then you might advocate letting it go for a short time, such as was reasonable, before it was converted into a ground of divorce. That is what you mean?—A probationary period in the hope of curability.

41,317. (*Mr. Spender.*) What sort of period would you regard as the test of curability or the reverse. The previous witness said three years?—That is an exceedingly difficult question to answer, but I should prefer two or three short periods of detention with intervening freedom before I should be prepared to say that the man was incurable. I should like to refer on that point to the report of the Departmental Committee, because the suggestions for amendment of the law on that point of curability are very important. We recommend that the sentences should be much shorter to begin with, and be followed by longer ones, as giving a better chance of cure. Not one long sentence, but shorter periods of detention with breaks in between.

41,318. So that the inebriate should go to a home for a few months and return to his own home and be on probation. Is that the idea?—That is so.

41,319. If no bad results followed he would be considered as cured?—I should like the probation period to extend altogether over two years.

(*Chairman.*) We will get a copy of the report of that Departmental Committee and circulate it among the Commissioners.

41,320. (*Mr. Spender.*) In the present state of the law, supposing there was an application for divorce on the ground of inebriety, what kind of test do you propose. A previous witness suggested an alteration of the law as a condition of changing the law of divorce?—If the alleged inebriate has not submitted to detention I would give the Court power to order his detention.

41,321. In all cases?—Yes.

41,322. In an ordinary appeal for divorce you could not give the Divorce Court the power of ordering detention?—Why not.

(*Chairman.*) You could give an order *nisi* subject to a period of detention.

41,323. (*Mr. Spender.*) That is the point. Your notion is that it should be part of the machinery that there should be a period of detention?—Certainly.

41,324. Before the decree was granted?—I would never be prepared to certify a person as incurable without a period of detention.

41,325. You would take probability as the guide. You would not say that there was not a chance of the case being cured afterwards?—No; but it would be unlikely.

41,326. (*Sir Frederick Treves.*) Following Mr. Spender's question, do we gather that an individual who wished to apply this question of habitual drunkenness as a ground for divorce, would have to wait for four years?—Yes.

41,327. In order to establish his claim?—I should make the first condition the existence of inebriety for three years before he made any application for divorce.

41,328. That being proved, how long a time would you allow in order to demonstrate that the case was incurable?—I think a very reasonable answer can be given in about two years.

41,329. That makes five years?—Yes.

41,330. A question has been raised about irregular unions, and so on?—Yes.

41,331. If you have to wait five years, it is very likely that the damage will be all done by that time?—During the first three years of the five there has been presumably no necessity for an irregular union.

41,332. Not on account of the person having been in the retreat the whole time?—No, I am assuming husband and wife to have been living together during the first three years. A man has to come and say "my wife has been an inebriate for three years." He has been living with her during those three years so the irregular union difficulty does not apply.

41,333. The two years do apply?—Yes.

41,334. If that wife at the end of three years is committed to one of these Reformatories for three years, it carries you on to six years, and if you have another year to judge of the effect of the segregation it takes you on to seven years. The only point is this.

Could you give us any reasonable limit that you think would govern the average case?—I am not prepared to let the test of incurability depend entirely upon time. I think an experienced manager of an institution should be able to give a very fair idea as to the curability or incurability of a case. I think this should be the first evidence. After that detention for periods, in the aggregate amounting to about two years, should be required. I do not think I should care to go below two years because I have known many cases recover.

41,335. Then comes your period of final probation?—Yes, the period of final probation.

41,336. What do you say for that?—6 to 12 months.

31,337. It takes it over some little time?—Yes.

41,338. Are you including cases of morphia?—Yes.

41,339. You would not view those in the same light as the alcoholic cases?—I am afraid I do. I have seen just as much misery and domestic trouble arising from the taking of morphia as I have from alcoholic cases.

41,340. Have you seen the same proportion of cures?—Certainly not.

41,341. In women?—In neither sex.

41,342. They would have to be in a separate category in the matter of curability at least. The test that you sketched out just now as applied to alcoholic persons, you would hesitate to apply to morphia patients?—I do not think so.

41,343. How long are these kept in retreats?—On the average about 9 months.

41,344. Is that the maximum?—No, two years.

41,345. In any case at the end of two years they go—under any circumstances?—Yes, but they can re-sign.

41,346. Does the husband contribute to the maintenance of the drunken wife in the retreat?—Yes.

41,347. If divorce took place that payment would cease?—I presume that would be a matter for the court.

41,348. In that case someone must maintain the unfortunate woman in the retreat. That point has to be considered has it not?—I think that might be a subject for an order of the court. It is certainly an important question as to what shall become of the divorced inebriate, I agree; but my important point, the point I want to make to-day, is the necessity for affording relief to the sober partner, notwithstanding the trouble to the drunken one. After all, we have arrangements in the country to prevent starvation even in the worst cases.

41,349. Last of all with regard to your ingenious definition, two previous witnesses were exceedingly strong on one point, that there should be no definition?—I wish we could do without it.

41,350. They were both lawyers and they went out of their way to emphasize that. You do not think that is practicable?—I do not think it is.

41,351. So far as your experience goes, which is, I suppose, really unique, you think your definition would fill up the difficulty as well as any you know of?—I think so, but it is not an easy matter to draw up a definition.

(*Chairman.*) I am afraid if you cannot do it after 26 years of work, nobody else can. I must thank you very much, on behalf of the Commission, for what seems to me to be extremely valuable evidence.

Adjourned.

Winchester House, St. James's Square, London, S.W.

FIFTY-FIRST DAY.

Tuesday, 13th December 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The LADY FRANCES BALFOUR.	Sir LEWIS T. DIBDIN, D.C.L.
The Right Hon. THOMAS BURT, M.P.	His Honour Judge TINDAL ATKINSON.
The Hon. LORD GUTHRIE.	EDGAR BRIERLEY, Esq.
Sir FREDERICK TREVES, BART., G.C.V.O., C.B., LL.D., F.R.C.S.	J. A. SPENDER, Esq.

The Hon. HENRY GORELL BARNES, *Secretary.*
J. E. G. DE MONTMORENCY, Esq., *Assistant Secretary.*

The Hon. HENRY GORELL BARNES recalled and further examined.

41,352. (*Chairman.*) Mr. Secretary, I want you to produce some documents you have?—I have received a Return from Portugal as to the divorce laws in that country, through the Home Secretary. Those are not the Returns from that country as to publication of reports which the Foreign Office is endeavouring to get.

41,353. Those are laws passed since the disturbances?—Yes.

41,354. Well, that will go in?—Then I have the proof of Dr. Hogg, to whom I wrote asking whether he would consent to the Memorandum which he supplied being treated as his evidence as he has been unable to attend; and he says that that course quite meets with his views.

41,355. I do not know that we need read it. You put that in, then?—I put that in. I have also received from Mr. James Dunlop, who is in the Registrar-General's Office in Edinburgh, statistics which he has revised dealing with matters connected with divorce and marriage in Scotland, for the use of the Commissioners.

41,356. Some of the statistics were referred to?—Some of them have been referred to; and Mr. Dunlop has verified all his references, and they are in such form as can be used in the Appendix.

41,357. You can hand in the statistics?—I can hand in the statistics, and they will be printed and circulated to the Commissioners in due course. Then Mr. Pedder——

41,358. He is the gentleman from the Home Office?—Yes—on the Aliens Act. He has sent the 1st, 2nd, 3rd and 4th volumes of the Reports under the Aliens Act, and copies will be sent to the Commissioners.

41,359. Those are what he promised to send?—Yes. There is an explanatory letter which might be appended to his evidence, my Lord.*

41,360. What does he say?—He says he encloses the Blue Books; and then there is his explanation as to some of the details, which I do not think it would be any good detailing until the Commissioners have the opportunity of looking at the tables.

41,361. Then you would propose to put that in at the end of his evidence?—I would propose to put that in at the end of his evidence.

41,362. And then we shall have the tables?—Yes.

Memorandum of Dr. Hogg:—"I have practised "medicine for about 23 years, and for the past "12 years my practice has been entirely among "inebriates, and during these years I have been "resident medical superintendent of the Dalrymple "Home for Inebriates at Ricksmansworth."

"*Q.* (*a*) Should habitual drunkenness be a ground for divorce?—*A.* (*a*) Seeing that a separation is obtainable under section 5 of the Licensing Act, 1902, and that a permanent separation may involve hardship to the sober partner, who is obliged to live a life of enforced chastity or of adultery, I consider that habitual drunkenness (and habitual drug abuse) should be a ground for divorce. But I am of opinion that opportunity should first be given to the inebriate to reform by placing himself under treatment, and that a period of two years should be allowed for this purpose. In connection with this point, I would further suggest that in the case of the inebriate without means the State should render assistance by allowing him to voluntarily enter a certified or State reformatory without compelling him to qualify for admission by becoming a criminal. At present, under certain conditions specified in the Inebriates Act, 1898, the inebriate law-breaker may obtain treatment gratis at the cost of the country, but the law-abiding inebriate who is without means has no such refuge."

"*Q.* (*b*) How would habitual druukenness be defined for this purpose?—*A.* (*b*) I suggest that the word 'inebriety' be substituted for 'habitual drunkenness, in order that drug habitues may be included.' This was one of the recommendations of the Departmental Committee on the Inebriates Acts appointed in 1908, to whose definition of the term 'Inebriate' I venture to refer you; with slight modification of their recommendation, the definition might run as follows: 'Inebriety is the condition resultant 'on the habitual use of any intoxicating, sedative 'narcotic, or stimulating preparation or drug whereby 'the consumer, when under the influence of such pre-'paration or drug, or in consequence of the effects 'thereof, is (I) dangerous to himself or others, or '(II) a cause of harm or serious annoyance to his 'family or others, or (III) incapable of managing him-'self or his affairs, or of ordinary proper conduct.'"

"*Q.* (*c*) Your opinion as to the value of separation orders in cases of habitual drunkenness?—*A.* (*c*) I have known separations to be of value from a reformative point of view in the cases of husbands who had affection for their wives or for their children, but I consider that in the large majority of cases separation is useless unless the inebriate places himself under appropriate treatment and control."

Rev. Dr. HERMANN ADLER called and examined.

(*Chairman.*) Will you kindly give us your full description?—Ph.D. of Leipsic, Hon. D.C L. of Oxford, and Hon. LL.D. of St. Andrews.

41,363. I think you are the Chief Rabbi in England?—Yes, my Lord.

41,364. You have prepared a short statement of matters relating to Jewish divorce to lay before this Commission?—Yes, my Lord.

41,365. Before reading it I should like to ask you how long you have had experience of England?—My experience dates from the time that I have been Minister prior to having been appointed Chief Rabbi. I was the chief Minister of the Bayswater Synagogue from the year 1864 to 1879. Then, owing to my father's—my predecessor's—advanced age, I was appointed Delegate Chief Rabbi in the year 1879; and when my father died in 1890, I was appointed Chief Rabbi of the United Hebrew Congregations of the British Empire.

41,366. That enables you to give us the benefit of a very long experience of this country, and of the Jewish questions regarding this matter that information is required about?—I hope so.

41,367. This is evidently a carefully prepared Memorandum; I should be much obliged if you will read it?—I will, my Lord. I will begin by giving a:—"1. *Brief historical statement of Jewish Divorce.*—The Bible, in recording the institution of marriage, lays down the principle that those who enter upon the conjugal covenant should regard this relation as permanent as their lives. 'Therefore shall a man leave his father 'and his mother, and shall cleave unto his wife, and 'they shall be one flesh.' (Genesis 2: 24.) But the Mosaic law also recognises that circumstances may arise which render the continuance of the matrimonial relation undesirable, if not impossible, when marriage, instead of being the source of supremest happiness, becomes the origin of deepest misery. It is enacted in Deuteronomy 24: 1, 2."

41,368. May we take those verses as read?—Certainly.

41,369. They will appear in the Print?—Certainly. The following are the verses referred to:—"When a "man hath taken a wife and married her, and it come "to pass that she finds no favour in his eyes, because "he hath found some uncleanness in her: then let him "write her a bill of divorcement, and give it in her "hand, and send her out of the house. And when she "is departed out of his house, she may go and be "another man's wife." "The interpretation of the "phrase 'some uncleanness' (literally the naked-"ness of a thing) used here is a point on which the "schools of Shammai and Hillel, which flourished in "the first century after the Christian Era, differed. "The former school limited the right of the husband "to divorce his wife to the case of moral delinquency "on the part of the woman, while the school of Hillel "permitted divorce for any cause that might disturb "domestic peace. Though legally the opinion of the "school of Hillel prevailed, divorce was, on ethical "grounds, deprecated by the Rabbis in general. "Stress was laid upon the denunciation of Malachi "(2: 16), 'For the Lord the God of Israel saith, that "he hateth putting away.' A Talmudic maxim is to "the effect 'Tears are shed on God's altar for him "who forsakes the wife of his youth.' It was pro-"vided by the Mosaic law, that the husband was "not allowed to put away his wife by mere word of "mouth, but a formal document was required. The "purpose of requiring this regular and legal document "was obviously to prevent precipitate action, as the "preparation of such instrument would need time and "the intervention of public authority to attest its "sufficiency and its due execution. This provision "was further elaborated by Talmudic law. To consti-"tute a valid Jewish divorce, the grounds on which "the divorce is sought must be stated before the Beth "Din, a competent Jewish tribunal. The husband, "before putting his wife away, was compelled to pay "her the amount promised in the Kelthubah (marriage "contract). The husband was required to put away "his wife when she had committed adultery, this offence "not being viewed merely as an injury inflicted on the "husband, which might be condoned, but as a crime "which saps the foundation of marriage, and makes "its continuance impossible. A divorce was also "required when marriage had been contracted con-"trary to Biblical and Rabbinical law where the union "was not incestuous, such unions being null and void "*ab initio.* The husband could also be compelled to "divorce his wife, if he was addicted to fornication, if "he refused maintenance and other conjugal rights,

* *See* Supplement to Mr. Pedder's evidence, referred to in Q. 41,034.

" if adequate proof were given of impotence, if he " maltreated her, and for some other reasons. The " Mosaic law did not permit the husband to divorce " his wife if he had falsely accused his wife of ante- " nuptial incontinences, and if he had ravished her " before marriage. To these two restrictions the " Mishneh adds three others:—(1) When the wife is " insane, (2) when she is in captivity, and (3) when " she is a minor. By a decree of Rabbi Gershon " of Mayence, who lived in the 11th century, it " was enacted that a woman could not be put away " except by her consent. To constitute a valid Jewish " divorce it was essential that a 'bill of divorcement,' " called *Get*, should be carefully written by a com- " petent scribe. The document is couched in an idiom " composed of Hebrew and Aramaic, and sets forth " that the husband, by his voluntary act, sets his wife " free and gives her full power to marry henceforth " any man whom she may choose. The most minute " rules are given to ensure that there may be no pos- " sible error in regard to the identity of the parties " concerned, nor as to the place where and the date " when the 'Get' is written. This document must be " signed by two competent witnesses, and must be " delivered in the presence of these witnesses by the " husband to the wife either in person, or, if she is in " another town or country, by a deputy appointed for " the purpose and duly accredited. Verbal questions " are put to husband and wife, and declarations have " to be made by them, the scribe, and the witnesses to " ensure that all the parties concerned are fully cogni- " sant of the nature of the proceedings, and that both " husband and wife are consenting parties to the " 'Get.' To ensure the most accurate compliance " with these various rules and formalities, it is required " that the entire act be conducted and supervised by a " Rabbi duly ordained and fully versed in Jewish law. " It is also deemed advisable that he should be assisted " by two assessors, also learned in Jewish law. Divorced " persons were allowed to marry anyone after the " expiration of three months, with the exception of " the individual with whom the husband or wife had " been guilty of adultery."

41,370. Might I ask one question on that. In the copy, which agrees with yours, you say "By a decree " of Rabbi Gershon of Mayence, who lived in the " 11th century, it was enacted that a woman could not " be put away except by her consent." Now, what happened supposing she was a wrong-doer—guilty of adultery—but would not consent to divorce?—That case certainly was an exception. In that case she could be put away without her consent.

41,371. Now taking the case you have already referred to, where she was insane. Then she could not give consent?—No, and as she had done no wrong, her consent was required. If the wife was insane the husband could not put her away because she would not be able to understand the nature of the ceremony and the contents of the instrument, which was handed to her; therefore in that case she could not be put away. Therefore as an insane person could not give consent she could not be put away.

41,372. But adultery would be an exception?—Adultery would be an exception.

41,373. Even though she did not consent?—Even though she did not consent.

41,374. Are there any other exceptions where she did not consent?—Public shameless, immoral, and irreligious conduct, which was viewed as equivalent to adultery.

41,375. Was the consent one which might be somewhat involuntarily given by pressure put upon her?—I do not quite understand, my Lord.

41,376. Supposing the husband said "I will make " your life unbearable unless you do consent." Was the consent then considered a good one—if given under pressure?—Under duress?

47,377. Yes?—Well, no doubt it was the duty of the Beth Din (of the Ecclesiastical Authorities) to examine into the matter to see if any undue pressure was exercised.

41,378. And if it was?—Then no doubt it was their duty to take action. At the present day; of course, this could not occur, because we only give a "Get" after decree has been pronounced by the court, and then naturally as a rule the woman always readily consents.

41,379. May I ask this also. Prior to the 11th century Rabbi Gershon of Mayence enacted that a woman could not be put away without her consent. Was the consent not required before that?—Not strictly according to law. The object of Rabbi Gershon's enactment was to prevent abuses.

41,380. I am asking because I rather think Professor Abrahams indicated that even if there was no consent the husband could for many causes get a decree for divorce?—I have carefully read over Professor Abraham's evidence, and as I say later on I agree with it in the main. I believe as far as I can judge you will find, my Lord, that there is no difference of opinion that is at all material between the evidence given by him and by me.

41,381. At any rate it simplifies my question when you say you have read his evidence over and you think that is right?—Yes, certainly.

41,382. Have you read it in one of the prints of the evidence?—I have read it in the "Jewish Chronicle."

41,383. Was that a full report?—Fairly full I believe, except with regard to the examination; that naturally was only given quite briefly.

41,384. Then No. 2?—No. 2. "*The attitude of the Jewish Ecclesiastical Authorities in this country towards Jewish Divorce.*—Prior to the passing of the Divorce Act of 1857, the Jewish Ecclesiastical Authorities exercised the power of granting divorce on grounds established by the Jewish matrimonial law. When the Act was passed, some eminent English jurists held that they were still entitled to dissolve a marriage that had been contracted in accordance with Jewish usage. In 1866 the then Registrar-General, Sir George Graham, decided that he could not recognise as valid a divorce *a vinculo* granted by the Jewish Ecclesiastical Board in London. In accordance with this decision my predecessor in the Chief Rabbinate and I have never granted a Jewish divorce unless and until the marriage previously contracted has been annulled or dissolved by a divorce decreed by an English court that has been made absolute. We hold in accordance with traditional Jewish Law, that while the decree of the court dissolves the civil marriage, it does not affect the religious marriage. To dissolve this it is necessary that the husband should deliver to his wife a bill of divorcement as before described before a competent Jewish tribunal. And I do not permit the parties to marry according to the usages of the Jews until such bill of divorcement has been delivered, because according to Jewish law, such marriage would not be valid. When foreigners who have been married abroad desire to contract a second marriage here they must furnish me with satisfactory proof that the first marriage has been dissolved. In the case of immigrants from Russia the party desirous of re-marrying here has to produce a certificate testifying that the marriage has been dissolved by a competent Jewish religious authority abroad. When such certificate, couched either in Russian or Hebrew, is exhibited to the Registrar-General, he forwards it to me asking my opinion as to the validity of such divorce. When I find that the requirements of the Jewish law have been complied with I submit my opinion to the Registrar-General, who then instructs the Superintendent Registrar of the district to enter notice of the marriage in question."

Now I would give a:—"3. *Statement as to the legality of Jewish divorces in Russia and Poland.* (A.) *Divorce in Russia.*—The following Memorandum as to the legality of Jewish divorces in Russia has been kindly furnished to me by Mr. Benjamin Grad, an expert in Russian Law, of 20, Great St. Helens, E.C.:—'In Russia there is neither Civil Marriage nor ' Civil Divorce, but any Russian, whether belonging ' to the Orthodox Faith, or not, can be divorced if ' his religious persuasion permits divorce, and if the ' religious form of divorce is duly complied with. Such ' religious ceremony of divorce, constitutes the valid ' divorce. Such divorces are registered in the registers ' of the respective religious denominations. Any person ' having been duly divorced by his own religious autho-

'rities can marry again and the issue of such marriage 'is legitimate. There may be some religious com- 'munities, however, which do not permit of re-marriage 'of a divorced person, and an orthodox Russian 'divorced person, if the guilty party, cannot marry 'again. So far as the Jews are concerned, the cere- 'mony of the divorce must be performed according to 'the religious rites, to the satisfaction of the "Crown 'Rabbi," who must register the divorce in his official 'register. As a matter of practice, he always consults 'the "spiritual" Rabbi (Dukhovny Ravvin), although 'the latter has no official status. In some cases the 'Crown Rabbi and the Dukhovny Ravvin are one and 'the same person. A Jew having obtained "get"— 'been divorced—according to the Jewish law, can marry 'again and his marriage, even if "stille chuppah" (or 'clandestine) if contracted in accordance with the 'Jewish law, *though primâ facie invalid,* could be 'proved to be valid by Russian law, notwithstanding 'that the Crown Rabbi has omitted to register, if the 'parties were *bonâ fide.* The penalty for non-regis- 'tration is primarily against the Crown Rabbi, but not 'so as to invalidate the religious ceremony whether 'of divorce or marriage. Lately a Parliamentary 'Commission has been sitting. It returned in favour 'of the appointment of divorce by Civil Law, but the 'reactionary party being then in the ascendant, the 'Ecclesiastical Authorities still have jurisdiction over 'divorce. The above statement refers to *Russia proper.* 'The Laws are different in *Poland* and the *Baltic* '*Provinces.*" (B.) *Divorce in Poland.*—The following 'statement regarding Jewish marriages and divorces 'was forwarded to the Board of Deputies by a competent 'Russian Counsel. In the Kingdom of Poland there 'is a special law for the Jews at their marriages, namely, 'that besides an ecclesiastical marriage performed by 'the Rabbi a marriage certificate issued by the Officer 'in charge of the State Register is required. If a 'marriage thus contracted, *i.e.,* ecclesiastically and 'officially, has to be dissolved by divorce, it is necessary 'then that the Rabbi should first perform an ecclesi- 'astical divorce, according to the Jewish rites, and with 'such a document of the Rabbi the persons interested 'have to bring suit in order to be granted a formal 'divorce by the Court for civil and property purposes. 'If a marriage has been performed by the Rabbi only, 'without being registered in the State office, then the 'couple so married are given a certificate by the Rabbi 'of their Ecclesiastical Union, which is called an Act 'of Connection, and in that case the Rabbi is empowered 'to give also a divorce, and on the ground of such 'divorce, the couple are allowed to contract a new 'marriage. This way of contracting marriages in 'Poland is customary among the poor only who are 'entirely indifferent as to the consequences of their 'private and property affairs.' 4. *Jewish Divorces in this country.*—Cases occur from time to time in which parties, who have been married abroad and are domiciled here, apply to me to have their marriages dissolved by a Jewish divorce. When there are grounds that would entitle either of the parties to relief, I refer them to the Court of Divorce. But in most cases they are unable to defray the cost entailed by such application, even if they sue *in forma pauperis.* And even in the event of their possessing the necessary means they would experience the greatest difficulty in proving the first marriage. The parties thereupon resort to one of the foreign Rabbis, who have settled in this country, and who grant a Jewish divorce in the erroneous belief that since the marriage has taken place abroad, a civil dissolution of such marriage is not necessary. They also grant divorces in cases of mutual consent, or when the husband is compelled by poverty to leave this country, and there is reason to apprehend that the wife will be permanently deserted, and for other reasons. The parties who resort to the Rabbis are, as a rule, illiterate and ignorant of the law of the land, and believe that they are not acting unlawfully. But the results of this procedure are most grave. The husband learns subsequently that the divorce he has obtained is not valid according to English law. When he desires to marry, and gives the required notice to the Superintendent Registrar he describes himself as a bachelor or widower. When the deplorable fact of such false declaration having been made has come to my knowledge on a few occasions, I have deemed it my duty to acquaint the Superintendent Registrar, who of course, refused to issue his certificate. The man then has gone through a form of marriage with the woman he desires to marry, and cohabited with her. Visitors among our poor from time to time report to me the evil consequences of such clandestine marriages and unlawful cohabitation. The husband refuses to maintain his legitimate wife. The woman with whom he cohabits is unable to sue him for maintenance, so that both mother and children become dependent upon charity I am unable to say how many cases of these illegal divorces take place during the year. But unfortunately they are not infrequent. Some Rabbis, who formerly offended in this respect, have yielded to the representations made on the subject by the Board of Deputies, by Lord Rothschild, President of the United Synagogue, and myself, and have ceased doing so. The names of those known to me as at present engaged in these practices are Mr. G. in London, Mr. S. in Manchester, and Mr. R. in Edinburgh."

41,385. Do you want those names put in?—I certainly do not wish it if your Lordship does not think it necessary. I have only supplied initials.

41,386. You see they are not here to speak for themselves?—No.

41,387. And apparently you do not approve of this. Will it be sufficient to say there are cases in which these practices have been adopted?—Yes.

41,388. Without giving the names?—Yes.

41,389. I only mean that unless they are here and have a chance of saying something about it, it perhaps seems a little unnecessary to give the particular names, as long as you call attention to the particular practice? —Oh, quite so, my Lord; I am sure that this will suffice.

41,390. It would be sufficient to put it before such persons who have been engaged in these practices?— The parties concerned have certainly been warned.

41,391. Now with regard to the cases that come under it. Do you think it necessary to set out those cases?—No, not at all. I only put them in in the event of your Lordship requiring them.

41,392. What I think you mean is this; you yourself would not grant a Jewish divorce unless the parties have been properly divorced by the Law Courts of the country?—Quite so.

41,393. But unfortunately, you say, some go and grant Jewish divorces without seeing that the civil divorce has been granted?—Yes.

41,394. And you give one or two typical instances? —Yes; the reason being so as to give the motive for what follows, namely, for the request which we make that the matter should be made penal and punishable in some way. That is why I have mentioned these facts.

41,395. I think I quite appreciate the point. Perhaps it would be as well then to indicate the real point. I think it would do if you take it up at the next page: "Both the Board of Deputies"?—Yes. I only mention there that there is reason to believe in several cases that the parties imagine that a Deed of Separation drawn up by a solicitor, together with the Jewish *Get,* suffices to set them free to re-marry. "The Board of Deputies, Lord Rothschild and I have repeatedly warned the Rabbis to desist from granting these irregular divorces, but except in a few instances without avail, as besides informing them of the disastrous consequences of their action, we are unable to point out to them any law which they are guilty of breaking. They may also suppose that the procedure valid in their native country is valid here I would therefore ask, whether it would not be possible to introduce legislation imposing a penalty on all persons assisting at, or taking any part in, the pronouncing of a Jewish divorce except after and on production of a decree absolute of the Divorce Court of England, or proof of a previous legal divorce elsewhere. Such law would, of course, not interfere with the duty imposed upon the recognised Jewish Ecclesiastical

Authorities to grant the Jewish divorce after the marriage has been civilly dissolved, so as to enable the parties to re-marry in the synagogue. The Ecclesiastical Authorities should also be permitted, when parties have been married abroad, and the husband is domiciled there and has obtained a Jewish divorce, which is valid there, to complete such divorce in the interests of his wife, who may be residing here." Giving my personal opinion on the grounds of divorce I would say, "I do not plead for any alteration on the law as to the ground on which persons are entitled to petitions for dissolution of marriage. I am painfully aware that grave hardships are inflicted by the fact that the law as it stands does not grant divorce in cases of insanity, flagrant cruelty and long imprisonment for crime; but I believe at the present day facilities for divorce do not tend to raise the moral standard of a community. At the same time I deem it eminently desirable in the interest both of necessitous Jews and Christians, that the procedure for obtaining divorce should be made less costly than it is at present. In conclusion I beg to refer to the evidence given by Mr. Israel Abrahams on November 24th. His account of Jewish Divorce during the first century of the Common era is both able and complete. With regard to the statistics which Lord Gorell has been good enough to give as to decrees *nisi* pronounced in 1907–8, I beg to supplement the number of Jewish marriages solemnized in those years. In 1907, when 10 decrees were granted, the number of marriages according to Jewish rite was 1,964. In 1908, when the decrees numbered 17, 1,856 marriages were solemnized. I believe that this proportion does not compare unfavourably with that of the rest of the population. If this is the case, it is due to two facts:—(1) That cases of drunkenness, so fruitful a source of domestic strife and of misconduct, are very rare among the Jewish population; and (2) That great importance is attached to the duty of endeavouring to reconcile husband and wife, this being a sacred obligation devolving on the Beth Din. It may be of interest to note in connection herewith a statement in the Jewish Ritual Code (Eben ha-ezer, 154, § 3) 'That if 'there is any doubt as to the originator of a quarrel, 'the husband is not believed when he asserts that the 'wife has commenced the dispute, as all women are 'presumed to be lovers of peace.'"

41,396. That is the completion of the Memorandum?—Yes, my Lord.

41,397. May I just ask you one question about it. You say, Dr. Adler, on the second page of your Paper, this: "The husband could also be compelled to divorce "his wife if he was addicted to fornication, if he "refused maintenance and other conjugal rights, if "adequate proof were given of impotence, if he mal-"treated her and for some other reasons." Have you got that passage?—Yes.

41,398. Would you tell me first how that was done on the part of the wife?—By the wife applying to the Jewish Tribunal, called the Beth Din, in those days when the Jews still had autonomy in the Holy Land and in Babylonia, by the infliction of forty stripes and by the withdrawing of religious privileges, which would be tantamount to excommunication.

41,399. Did that mean that by virtue of those powers they compelled him to present a bill of divorcement?—Yes. Of course there was some discrepancy between this compulsion and the fact that the divorce had to be given voluntarily by the husband; but it was assumed that although his lower nature might resist still by these suasions and chastisement, his better nature would prevail and his will would finally consent.

41,400. To present a bill?—To present a bill of divorce.

41,401. Was it correct then that she could in fact get a bill (force him to present one) if he refused to maintain her?—Yes, if he steadfastly refused maintenance after being summoned again and again and still refused, although able to do so, after the ecclesiastical authorities had satisfied themselves that he was in a position to maintain her.

41,402. Then what would be the position if he had left the country or deserted her?—Then every endeavour would be made by communicating with the ecclesiastical authorities of the country in which he dwelt to compel him to send over a bill of divorce.

41,403. But that, in fact, would be giving her the right to obtain a decree in an indirect way for desertion?—Yes, but the husband was required to send the "Get"—the bill of divorcement.

41,404. I quite understand, but he would be pressed to do it?—Would be pressed by all possible means.

41,405. Supposing the pressure was successful the effect would be that she would get the divorce from her husband because he had deserted her?—Quite so, yes.

41,406. Then the other point I want to ask you upon is this: "Also if he maltreated her." Would that be cruelty?—Yes, that would be mean cruel and persistent maltreatment.

41,407. The same course might be followed then?—Quite so.

41,408. And you say here: "And for some other reasons." What are those other reasons?—The other principal reasons are if he is afflicted with a loathsome disease, if he has become an apostate, if he has committed a crime for which he is compelled to leave the country.

41,409. Does that complete it?—Yes, those are the principal reasons.

41,410. What period was it that that particular practice applied to? Does it apply in Jewish law now?—It does apply in Jewish law now. But I would lay stress upon what our Code says as to the grounds of divorce. The commencement of our Ritual Code with regard to divorce is that the man must not divorce his first wife unless he has found in her the uncleanness of a thing; that is moral delinquency.

41,411. If a woman left the country what would be the position then? I do not know whether they had the means or opportunity of doing it in olden times?—Then the following would be the course; it would be absolutely necessary that a communication should be established by the Beth Din—the ecclesiastical authorities of the country where the husband lives with the ecclesiastical authorities of the place where the woman is, and the woman would be cited before the Beth Din, and would be asked: Are you willing to accept the religious divorce—the "Get"—from your husband; and then the ecclesiastical authorities would deem it their duty to communicate with the Beth Din of the place, giving also the names of the deputy who would there be appointed to receive the "Get" on behalf of the wife.

41,412. That would make the consent you mean?—Yes.

41,413. But suppose she said: "I do not give my consent, but I have left"?—Then it would be quite impossible to compel her. One could not compel her to receive the "Get" unless it is established that she had been guilty either of adultery or of notoriously immoral and irreligious conduct.

41,414. (*Sir Lewis Dibdin.*) Just one point I want to ask you about. You told us that now sometimes foreign Jews come to this country and want a divorce, and there may be a case for it according to our Civil law, but they cannot get it because they have no means and because it would be extremely expensive to prove their marriage?—Quite so.

41,415. What is the remedy you propose for that state of things?—The remedy is that if possible the cost should be reduced in the case of necessitous persons. The engagement of the solicitor apart from the fees, weighs very heavily upon those poor people.

41,416. I follow. That meets the difficulty of the expense of the procedure, but it does not seem to meet the difficulty of proof of first marriage?—I agree. It is necessary to prove the first marriage, but it could be perhaps regarded as sufficient if the marriage contract, which is written in Hebrew, could be exhibited, and an expert would be always willing to explain and indicate that that constitutes a valid Jewish marriage.

41,417. (*Chairman.*) Might I assist Sir Lewis in this way. I think you have often been before the Court when I have presided when the petitioner has

produced the certificate that he has got from the foreign country, and you have said that that shows a good marriage?—Yes, my Lord.

41,418. That is the cheapest and easiest way of proving it?—Yes.

41,419. (*Sir Lewis Dibdin.*) Would that apply to every Jewish marriage abroad? Would there always be such a certificate?—Yes, certainly. But, it may be lost. When it has been lost there would be great difficulty, because in Russia and Poland no regular registers are kept, and then there would be immense difficulty.

41,420. That is what I am thinking of. There must be parts of the world where this system of certificates does not work regularly, or is not in existence?—To the best of my knowledge the Hebrew marriage contract is used by Jews everywhere; when lost, the testimony of two trustworthy witnesses who say the parties have been living together, and are reputed to be man and wife, is sufficient. Of course, I do not say we should go to the Scotch way of proving a marriage, but it would be advisable to make it a little easier than at present.

41,421. You think there might be some evidence of repute?—Yes.

41,420. (*Lord Guthrie.*) How many Jews are there in Great Britain, roughly?—I should think 250,000.

41,423. England, Scotland, Ireland, and Wales?—I believe so.

41,424. With regard to matters of opinion that you have been good enough to give us, has there been any consultation on this matter amongst the Jews, or are you giving us your own individual opinion only?—Certainly on the main point that I have brought before you I have carefully deliberated with the Law and Parliamentary Committee of the Board of Deputies, and you will hear subsequently that they agree with me; and naturally I have also consulted my assessors—the members of the Ecclesiastical Court, on the subject, and they are fully at one with regard to the main points I have brought before the Commission.

41,425. Does that include the view yon have expressed as to increased grounds or facilities for divorce? Is that a view you have discussed with them, or is that your individual opinion?—I feel it my duty to say it is my own individual view—my personal view, and not one to which I could commit either the Board or the community, or even my colleagues.

41,426. You have given us a very interesting historical account. Can you tell me in the time of Christ what was the state of the divorce law and practice as distinct from the time before and the present time?—I believe that there is very little difference, except that one matter quoted in Mark x. 12, where the Founder of Christianity said, "And if a woman shall put away her husband;" from which it would appear that at that time a woman had the right to divorce—probably this only refers to very exceptional cases—the well-known cases of Salome and Herodias, because it was very much discountenanced that a woman should have this right, as we know from the history of the Romans what terrible immorality this led to—as proved by the satires of Juvenal and the poems of Martial.

41,427. You are aware that Christ founded His views on certain passages in Genesis?—Yes.

41,428. Are the views held by Jews with regard to marriage and divorce dependent on these passages?—I cannot with sufficient emphasis state how strongly at the present day the views of Jews are ruled by the statement, "Therefore shall a man leave his "father and his mother, and shall cleave unto his wife; "and they shall be one flesh," and also, "It is not "good for man to be alone, I will make him a help-"meet for him." There is one point on which I did not dwell at all, which I ought to have mentioned, and that is the profound sanctity which the Jews attach to the marriage state. The first and one of the most important duties of a Jew is declared in the words at the commencement of Genesis, "be fruitful and multiply." Therefore the duty devolves upon a Jew to marry, hence the blessedness of marriage and of the marriage state. Nothing is considered more meritorious than the marriage state in accordance with the words, "It is not good for man to be alone." For that reason in the Jewish law, if now and again it would seem that there are undue facilities for divorce, it is due to the fact that marriage without happiness, and a marriage without the hope of having children, was considered as nullifying the object for which wedlock had been instituted.

41,429. You are aware that some Christians think those words you have quoted in Genesis exclude the possibility of divorce?—I am perfectly aware.

41,430. Have the Jews ever taken that view at any period of their history?—No, no real Jews; that is quite certain. A certain sect, and probably two sects, the Zadokites, concerning which there has been a remarkable document discovered by Dr. Schechter in Cairo; they certainly did not permit divorce; and perhaps also the Dositheans, but they were heretics; it was not the Jewish view.

41,431. Did those sects, or either of them, exist in the time of Christ?—They were before Christ. But probably some of the ideas must have been entertained in the time of Christ.

41,432. You told us as to the existence of the two schools, the School of Shammai and the School of Hillel; that dispute existed in the time of Christ?—No, Hillel and Shammai, the two individuals, were at the time of Christ, but the schools represented by the names of Hillel and Shammai lived a century after Christ.

41,433. But at the time of Christ there was the dispute going on, was there not, which was associated with those two names?—Probably; I could by no means say positively that there was this difference of opinion then, because we cannot say for certain that the School of Shammai and the School of Hillel represent the views of their respective masters.

41,434. Mr. Abrahams seems to put to us, Dr. Adler, what we have understood from other sources, that in the time of Christ there was an acute difference of opinion amongst the Jews somewhat representing those two schools. Is not that so?—Possibly; but I will gladly further investigate that point with regard to the evidence we have whether the Schools of Shammai and Hillel, literally the houses of Hillel and Shammai, represent the opinion of their respective teachers.*

41,435. You see that it is extremely important, because every Christian scholar, whatever his views on divorce, has assumed that in the time of Christ there was this acute question; so that, if you have anything further to tell us about it, you might kindly look into it?—I certainly will do so.

41,436. Does that difference of opinion still exist amongst the Jews, or are they now unanimous on their views of divorce?—As I said, the opinion of Hillel prevailed, namely, that divorce was not confined to those cases where the wife had been guilty of immorality. There may be divorce for other causes. Yet as a wise ethical maxim at the head of the laws concerning divorce the rule is declared that a man shall not divorce his first wife unless and except he has found an uncleanness in her—that is, moral delinquency.

41,437. It is with regard to the other causes that I ask the question. Is there difference of opinion

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* The question whether the Schools of Shammai and Hillel represent the opinions of their respective teachers as to divorce is not easy of solution. The following reason disposes me to answer it in the negative. Though in the Mishneh (Eduyoth, c. I., §§ 1-3; Chagigah, c. II., § 2) several matters are cited on which Hillel and Shammai differed, the mention of divorce is not included. *Per contra*, on other points the Schools differed, and yet no divergence with respect to them on the part of the masters is mentioned. There is no evidence in Talmudic sources for the assumption that acute controversy existed on the subject of divorce at the rise of Christianity.

It would appear that the opinion of the School of Hillel represented the legal aspect—the right of the husband to put away his wife for any cause that disturbed domestic peace. This was the view accepted by the people, and is stated by Philo and Josephus to have been the general practice. The opposite view taught by the School of Shammai, limiting the right of the husband to cases of moral delinquency, represented the standpoint set forth in the teaching of the prophet Malachi (II., 13-16).

amongst the Jews of the present day as to what other causes should be held sufficient?—There is no difference, I believe, on that point.

41,438. Then I notice in the country of Hungary they provide separately for Catholics, Greek Orientals, Protestants, Jews, and mixed marriages. I presume the grounds of divorce which they allow for the Jews must have been at the request of the Jews. There is a special provision for the Jews?—I should think so, certainly.

41,439. They are nine in number you know. Might I just ask you to tell me whether these causes represent the causes which Jews generally think ought to be allowed. The first is on the agreement of both consorts?—Certainly, my own individual opinion shared, I have no doubt, by the majority of those in England, and also I should hope of other countries, is that that should not constitute a valid ground. I hold it would be terribly dangerous that as soon as there was the slightest dispute between the husband and wife they might say, "Oh, this is an excellent way of getting rid "of each other"; while we all know that if it is once established that no divorce could be had on such ground husband and wife would try everything in their power to heal their dissensions and endeavour to live in amity. I would certainly be opposed strongly to such a ground.

41,440. Then that first ground does not represent the general opinion of Jews as you know it?—No, sir.

41,441. Secondly, "Adultery"?—That we are all agreed upon.

41,442. Thirdly, "If one of the consorts embraces "Christianity and the other party declined to do so "and to continue conjugal life." You are agreed upon that also?—In such a case I certainly think that the husband or wife, as the case may be, and the Beth Din should use their utmost endeavours to bring this consort to the former religious belief. But there again I would say we have had such cases in this country where we have been asked to grant divorce, but as such divorce is not acknowledged by the law of the land, we have refused and said we could not grant a divorce as the Courts of Divorce would not grant a divorce on such ground. But I think it would be advisable to make this a ground of divorce after every possible endeavour had failed.

41,443. That is what is postulated in the law?—In such a case the other party should decline to continue conjugal relations.

41,444. Then 4: If one of the consorts is found to have committed a crime, does that represent the Jewish opinion generally, apart from the law of different countries?—Certainly not the commission of crime, unless it is punished by life-long imprisonment; unless there comes with it deportation, and the wife is unable to accompany her husband; then there would be ground for divorce.

41,445. Then the next is abandonment, which I suppose means wilful and malicious desertion, which is proved to be permanent. Is that considered by the Jews generally to be a proper ground for divorce?—It might seem to be a relief to the poor woman, so as to prevent her becoming a burden, either to the public authorities or to herself, through inability to maintain herself.

41,446. But is it generally considered amongst the Jews a proper ground for divorce—permanent desertion?—I could only give my own individual opinion, as the matter had not come before us as to whether we would wish to see the grounds of divorce widened and enlarged. We have not considered it, and, as I said before, I am giving my own individual opinion. But there is grave question in making this a ground. A man gets tired of his wife and therefore proceeds to desert her. If he knows that on that ground he could be divorced that would be an incentive and stimulus to him to desert his wife, and that would be a most unfortunate thing, as I hold that anything that could lower the idea of the sanctity of the marriage should be deprecated as emphatically as possible. I am certain I am giving the opinion of Jews in this country, and of all countries—that anything that tends to lower the idea of the sanctity of the marriage tie must be avoided and prevented as much as possible.

41,447. You see, Doctor, that is not quite the question. In Hungary the Jews have obtained the right of divorce on the ground of abandonment or desertion. Do you say the Jews in England take a different view from the Jews in Hungary?—No, the Jewish law is certainly strongly in favour of giving relief to a deserted woman, so that she may re-marry. But we have anxiously kept aloof from proposing desertion as a ground of divorce, so as not to touch the law as it stands, and to prevent the idea going forth that we are not satisfied to uphold the law as it stands Therefore, we have not touched that question at all.

41,448. But, Doctor, we are wanting to ascertain what would be right for everybody in the country. You are not prepared to tell us what the views of the Jews are with regard to the future laws in this country for them as well as for others?—I should certainly think that on this point there would be a difference of opinion between the recent arrivals and those that have become completely Anglicised. Those who have recently immigrated would wish, desire and welcome such an increase in the grounds. The English and the Anglicised would be against it.

41,449. Unanimously?—For the greater part. It is a little difficult to say positively, but, speaking generally, I think that division would hold.

41,450. And that would apply to the other causes as well?—I think so.

41,451. Looking at what you have said about Scripture, would that apply to insanity or would the Jews be unanimously against insanity: because you say it is only for uncleanness—moral fault of some kind, and insanity there is not necessarily anything but the act of God?—Quite so. The question of insanity naturally appeals to everyone, and it is felt to be a terrible, deplorable hardship for both parties.

41,452. But would not your Scriptural view almost exclude insanity?—There would be this difficulty. As the Bill of Divorce has to be given with the knowledge and with the consent of both parties, when either of them is insane that difficulty would arise.

41,453. Can you tell me whether you have any knowledge of the conditions in Ireland, where there is no divorce except by Act of Parliament. Have you ever had any grievance alleged—amongst the Jews in Ireland?—I have not heard that there is any grievance. As far as I can remember I can only recollect one case of a divorce that happened recently in Dublin.

41,454. Just one other question, Doctor. From what you said one quite appreciates that you believe that the facilities for divorce do not tend to raise the standard of morality. In Ireland there is no divorce except by Act of Parliament. In England there is divorce for adultery, of which the Jews avail themselves. Do you find that the existence of divorce has lowered the standard of morality amongst the English Jews as against the Irish Jews?—Certainly not.

41,455. In the Scotch Courts there is divorce for desertion, of which the Jews avail themselves (they have been in my court). Are you prepared to say the standard of morality is less high, and the sacredness of the marriage relation less high, among Jews in Scotland than in England?—I am not prepared to say so. I have not the statistics of divorce in Scotland, but only in England.

41,456. But you know the general state?—Oh, yes; and I am by no means prepared to say that the state of morality among the Jews in Scotland is lower than in England.

41,457. Then if you take the Jews in Hungary, where they have the possibility of getting divorce for cruelty and for desertion, and for crime; have these facilities, in point of fact, tended to lower their standard of morality or their sense of the permanence of the marriage tie as compared with the Jews in England?—I am not prepared to say so.

41,458. But is not that a very important question?—Yes, but I do not think it would be just on my part to say so. I can make inquiry on the subject. Dr. Büchler, who is Principal of our Jews' College, is

a Hungarian. From what one hears I think I ought to say it would appear that the state of morality among people generally in Hungary compares somewhat unfavourably with the state of morality in some other countries. I have certainly heard that.

41,459. Of course it is not a mere question of morality. It is a question of whether the permanence of the marriage tie is lowered in the minds of the Jews. You are not prepared to say that these extended grounds have in point of fact, where allowed, lowered the sense of the permanence of the marriage tie?—I believe that extension of the grounds is always fraught with that great danger.

41,460. But we would like to know facts, Doctor, Are you prepared to put before us any facts showing that among the Jews where they have the extended facilities the permanence of the marriage tie has suffered. You are not prepared to do that, I understand?—No, except that I would say this, that in some of the countries in the East—in Russia and Poland—one hears, without the slightest degree impugning the morality of the people, that there is not so strong a faith in the permanence of marriage that there is in other countries where there are not equal facilities.

(*Chairman.*) I have to thank you very much, Dr. Adler, for your very valuable evidence.

Mr. DAVID LINDO ALEXANDER, K.C., called and examined.

41,461. You are one of His Majesty's Counsel?—I am.

41,462. And you practise at the Bar?—I retired two or three years ago.

41,463. I was not aware of that, but at any rate you have been?—For more than 40 years,—42 years I think.

41,464. Are you President of the London Committee of Deputies of the British Jews?—I am.

41,465. Which is commonly known as the Jewish Board of Deputies and which is the only representative body of Jews in the British Empire?—That is so, my Lord.

41,466. Would you kindly read your paper?—I will. "I am the President of the London Committee of Deputies of the British Jews which is commonly known as the Jewish Board of Deputies and which is the only representative body of Jews in the British Empire. The Board has existed for 150 years, having been founded in the year 1760, and it is now composed of 121 deputies, of whom 43 are the elected representatives of 27 metropolitan congregations, 74 the elected representatives of 73 provincial congregations, and 4 the elected representatives of four Colonial congregations."

41,467. Is it right what Dr. Adler stated, that there are about 250,000 Jews in the British Islands?—Yes, 240,000 or 250,000. "The Board is the recognised medium for communication with the Government, and, during the last 74 years, it has enjoyed Parliamentary recognition, the duty of certifying marriage secretaries for the registration of Jewish marriages being under the Marriage Acts entrusted to the President for the time being of the Board. Under the Marriage Acts of 1836 and 1857, Jews are permitted to solemnize their marriages according to their own usages, provided that due notice to the Superintendent Registrar shall have been given and his certificate or licence shall have been issued for the marriage; and every possible precaution is taken by the Board in conjunction with the Chief Rabbi to ensure a compliance with these statutory conditions and also to prevent the solemnization of marriages, which although allowable by Jewish matrimonial law, are prohibited by English law. Where a person intending marriage has been previously married, the Chief Rabbi always requires strict proof of the death of the former husband or wife (as the case may be), or of the legal dissolution of the previous marriage. To prove such dissolution, he requires in the case of an English domicil, production of a decree absolute of the English Court of Divorce, and in the case of a foreign domicil, production of clear and satisfactory evidence that the previous marriage has been fully dissolved according to the law of the foreign domicil, and he withholds his authorisation until such evidence is produced to him. Moreover, the Chief Rabbi never pronounces a Jewish divorce unless it is preceded by a civil divorce in this country or elsewhere There are, however, a few foreign Rabbis in this country who presume not only to solemnize Jewish marriages in the absence of the Superintendent Registrar's certificate or licence—which marriages are called "Still Chuppah" (*i.e.*, clandestine) marriages—but also to grant Jewish divorces not preceded by a civil divorce in this country, and for many years past such irregular proceedings on the part of these foreign Rabbis have been a constant source of trouble to the Board. The Board has taken every available step within its power to put a stop to such marriages and divorces, but I regret to say with little or no success. The position taken up by these rabbis is, that it is their duty to administer the Jewish matrimonial law and that where the English law conflicts with Jewish law the former must give way. As regards Jewish divorces, these foreign Rabbis still continue to grant them in spite of their knowledge of the want of legality. Every year cases are brought to the attention of the Board and the number of these so-called divorces is decidedly on the increase."

41,468. Would you be in favour, as Dr. Adler was, of making that penal unless there was a legal divorce in this country?—Certainly.

41,469. Or in the country of the domicile?—Certainly; that is what I am going to suggest later on.

41,470. Because it places them in a false position in the eye of the law altogether?—Certainly. That is what I am going to ask for. "The evil consequences of such divorces are extremely serious, for the divorced parties are led to believe that their marriage has been validly dissolved and that they are quite free to contract a fresh marriage. Even when the divorced husband is aware of the want of legality the divorced wife is as a rule ignorant of it, for the bill of divorcement handed to her by her husband purports to give her full power to re-marry. More often than not a Jewish divorce is followed by the re-marriage of one or both of the divorced parties, with the result that the party so re-marrying is guilty of bigamy and adultery. But the mischief does not rest there. Cases frequently come under the notice of the Board in which the divorced husband deserts his second wife, or the divorced wife is deserted by her second husband. In neither case can the woman obtain a maintenance order against the man who has deserted her, and the mischief is naturally accentuated when, as often happens, there are children of such a second marriage, for besides being illegitimate they are as a rule wholly unprovided for and become dependent on charity. Such re-marriages are usually of the Stille Chuppah type but occasionally they take place at a registry office, the divorced party assuming a name slightly different from his or her own, or describing himself or herself as a bachelor or spinster. A further evil arising out of these Jewish divorces is, that unless the divorced wife can prove that she did not consent to the proceedings she can neither obtain a maintenance order against her husband on the ground of his desertion nor a decree of divorce even where he has married again, for, in the absence of such proof, she is taken to have connived at his subsequent marriage and adultery. I will here mention two typical cases."

41,471. Is not the point so plain that the cases are not necessary?—Just as your Lordship thinks fit. They are cases that came before the Courts; there is no need for secrecy.

41,472. Then we had better have them. Reported cases?—Reported cases; so I think there is no possible objection to my mentioning these two cases.

41,473. Certainly?—"In the year 1908, a case of *Friedberg* v. *Friedberg* came before the Court on a petition of a wife asking for the dissolution of her marriage on the ground of her husband's bigamy and adultery. It appeared that the parties were married in 1902 at Riga, in Russia, in accordance with the law of that country, and that immediately after their mar-

riage they came to England and settled in Manchester. In April 1907, the husband took his wife to a house in Manchester when, in the presence of a Rabbi named Schlossberg and a number of other persons, a bill of divorce or 'Get' was presented to her and a formal ceremony of divorce gone through. After that the husband left the wife with two children, and on the 4th May of the same year under the name of Frankenberg, which he assumed, went through a ceremony of marriage at a registry office at Glasgow with a Miss Stringer, by whom he had a child, born on the 3rd June 1908. Another case of a Jewish divorce came before the Court only a few months ago. From the report in the 'Times' for the 18th February 1910, it appears that one Samuel Lobe Levi was married to Sarah Levi, whose maiden name was Goodman, at Byron Street, Leeds, on 31st May 1898; that on 6th January 1903, he was granted by Rabbi Schapino, then resident at Amsterdam, a certificate of the dissolution of his marriage with Sarah Levi, and that on the 4th October 1903, he was married at Leeds to Leah Abrahams by a man styling himself Rabbi Solomon Oswer." I have the full report of the "Times" here. Quite recently another case has been reported to my Board, but I propose not to refer to it, as I have not been able to verify the facts and I should not like to state anything that I am not sure of, and it has not come before the Courts. I have inquired very carefully into that case, but I cannot get a complete answer, and I should not like to put anything before your Lordship unless the facts are quite certain; so I have struck out that case.

41,474. Yes, quite right?—"The misery caused in such cases is entirely due to the action of the foreign Rabbis in this country, for without their assistance these irregular divorces could not take place. They invariably charge a fee for the performance of the ceremony, which in many instances induces the parties to believe that he is a person having authority to dissolve their marriage legally. At the end of 1908, the Board finding itself powerless to stop such irregular proceedings on the part of these Rabbis, and in special view of a so-called divorce granted by a gentleman in the East of London, decided to place the matter before the Registrar-General. Accordingly in company with Mr. Henriques (a Vice-President of the Board) I had an interview with the Registrar-General when he asked to have the facts and the suggested legislation laid before him in writing in order that he might confer with the Law Officers of the Crown. Thereupon a statement was prepared and forwarded to him on the 16th February 1909, a copy of which I now produce, and in order to avoid unnecessary repetition, I ask that that statement may be treated as part of my evidence on the present inquiry."

41,475. Is that the statement on the next page?—Yes, my Lord. Perhaps I should read it.

41,476. I think we have all read it. It will be put in the print as part of your evidence?—Yes, I should like it to be put in the print. A good deal of what I have already said would be repetition. If it is put in as part of my evidence I think that will be satisfactory.

41,477. Yes.

The following is the statement referred to:—

London Committee of Deputies of the British Jews.

19, Finsbury Circus,
London, E.C.,
16th February 1909.

"SIR

"IN accordance with your suggestion at our recent interview, we beg to submit to you the following statement as to Jewish irregular divorces ('Gittin'), which are causing considerable trouble:—

"You are aware that the Chief Rabbi does not authorise the celebration of any Jewish marriage in the United Kingdom unless the provisions of the Marriage Acts have been complied with. When a person whose marriage has been legally solemnised in England desires to re-marry here, he requires strict proof that he or she is a widower or widow, or that his or her marriage has been previously, legally and fully, dissolved by the decree absolute of the Divorce Court of this country. When a foreigner whose marriage has been both solemnised and dissolved abroad desires to re-marry in this country, he requires him or her to prove that he or she is a widower or widow, or to produce a certificate testifying that the marriage has been dissolved by competent Jewish Ecclesiastical Authorities abroad, and when such certificates, which, as a rule, are in Hebrew or Russian, have been exhibited to you, you have constantly forwarded them to the Chief Rabbi, and he has then submitted to you his opinion as to the validity or invalidity of such divorces. But we regret to say that there are some foreign Rabbis who have settled in this country who presume to dissolve a marriage between persons residing here by granting to them 'Gittin' according to the mode prescribed in Deuteronomy xxiv. 1—4, the husband under their direction handing 'a bill of divorcement' to his wife without the marriage having been previously dissolved by the Divorce Court of this country. As a rule they do this in the following cases:—

"1. When the marriage has taken place abroad, some people are under the erroneous belief that in such cases it is not necessary for the parties to obtain a decree of the Divorce Court of this country.

"2. When the marriage has taken place here, and the wife has been guilty of adultery, the Rabbis in question holding that, according to the Jewish law, it is the duty of the husband to divorce the wife, having found 'some uncleanness in her,' and that as a Rabbi it is his duty to grant the 'Get.' He probably fails, however, to inform the parties that a decree of the Divorce Court of this country is still essential for the dissolution of the marriage.

"3. When the marriage has taken place either here or abroad, and there is incompatibility of temper between the parties, or the husband threatens to leave his wife, the Rabbi in such cases considers that he is releasing the woman by granting 'Get,' and therefore is doing her an act of charity.

"But these Rabbis, unfortunately, do not realise that their action involves great hardship, as neither party is enabled, according to the law of England, to re-marry after a mere religious divorce, and as a result it often happens that they either go through a form of irregular marriage or simply cohabit without even a marriage ceremony. These Rabbis have been warned that they are directly assisting at these undeniable results, but without avail. It may be taken as a fact that in the majority of cases Jewish couples seeking the assistance of these Rabbis for the purpose of 'Get' have not the slightest suspicion that the ceremony does not entirely release them from their marriage obligations, and, generally, either one or the other of the parties subsequently seeks to contract a fresh marriage. Even in those few cases in which the husband has some knowledge of the fact that the ceremony has no legal value, it is unlikely that the wife is similarly well-informed. Our Board has on several occasions been informed that these irregular divorces are being granted, but finds itself quite impotent to check them. Our Board generally does not get information of these divorces until the wife, who has subsequently re-married, finds herself deserted by her so-called second husband and without any legal remedy for maintenance, or otherwise; for even if she can trace her first husband, should she endeavour to obtain restitution of conjugal rights from him, she will probably find it beyond her power to strictly prove in a court of law her first marriage, for in the majority of cases it will be found that it was solemnised abroad. Moreover, should she succeed, she will have proved her own bigamy and adultery. In such cases the woman and her children usually become dependent on charity. We were some time ago informed of a case in which the same person underwent several successive 'divorces' in each case followed by a further 'marriage.'

"The number of these divorces tends to increase. Last year, as a test case, a Russian-born woman named Friedberg, who had been married in Russia, was assisted to bring civil divorce proceedings against her husband, on the ground that after divorcing her by 'Get' in this country he had subsequently re-married, and had thus committed bigamy and adultery. She established an English domicile to the satisfaction of

the court, proved that she was not a willing party to the 'Get,' and obtained a decree nisi. The husband's second union having taken place in Scotland (where he is now resident), the Procurator-Fiscal was asked to prosecute him for bigamy, but he has been advised that he is unable to collect sufficient evidence to secure a conviction, although the facts as to the divorce and re-marriage are clearly established. The wife is now dependent on charity. The real fountain-head of the evil in this and similar cases is the Rabbi who conducted the religious divorce ceremony (without which the husband could not have married), and this Rabbi will still remain unpunished, for it is difficult to convict him of a punishable offence in granting the divorce. The Act 20 & 21 Vict. c. 86 vests all jurisdiction then vested in or exercisable by any ecclesiastical court or person in England in the Court for Divorce and matrimonial causes, but the Act contains no penalties for the pretended exercise by any person of the powers so vested in the Divorce Court. We have never heard of any attempt to punish proceedings here described as a violation of this provision, and therefore a contempt of court, and do not know whether the Government authorities would be willing to initiate such proceedings. If such a course is thought impracticable, we venture to suggest that legislation is needed for penalising the pronouncement of Jewish divorces in the United Kingdom with the following exceptions:—Jews are not permitted by Jewish law to re-marry, even *after* a civil divorce, unless the religious ceremony of 'Get' is super-added, and therefore, complete prohibition of the Jewish divorce would constitute an impediment to the re-marriage even of the innocent party to a civil divorce. Moreover, the Jewish ecclesiastical authorities find it essential in the interests of a wife who may be in this country to complete in this country a Jewish divorce granted abroad which is already legally binding on the husband abroad. We therefore suggest that a convenient form for the proposed amending Act would be to impose a penalty on all persons assisting at or taking any part in the pronouncing of a Jewish divorce, except after, and on production of, a decree absolute of the Divorce Court in England, or proof of a previous legal divorce elsewhere.

"The penalty for the offence to be effectual should be severe, so as to prevent it being considered merely as an additional fee imposed by law on the ceremony.

"We may add that the foregoing statement has been submitted to the Chief Rabbi, and meets with his entire approval.

"Commending our suggestions to the early consideration of yourself and the law officers of the court,

We are, Sir,
Your obedient Servants,
(Signed) DAVID L. ALEXANDER, K.C.,
President.
H. S. Q. HENRIQUES,
Vice-President.
CHARLES H. L. EMANUEL,
Solicitor and Secretary."

The Registrar-General,
Somerset House, Strand, W.C.

"Legislation is undoubtedly needed to suppress the irregular proceedings of these foreign Rabbis and I submit that such legislation should proceed on the lines indicated in the statement sent to the Registrar-General (that is to say): A severe penalty should be imposed on all persons assisting at or taking part in the pronouncing of a Jewish divorce except after, and on production of a decree absolute of the Divorce Court in England or proof of a previous legal divorce elsewhere."

41,478. I just want to see if you want to leave out any particular case?—I do not.

41,479. You do not desire to strike out the case which you have already struck out?—Oh no; that case is not referred to in the statement sent to the Registrar-General.

41,480. That deals entirely with this point of the irregular divorces?—Yes; there is nothing in that statement or letter which I want struck out.

41,481. You would like the letter printed?—Yes, my Lord. I point out in the letter to the Registrar-General that the question whether the Act of 1857, which transfers the whole of the jurisdiction of every Ecclesiastical Court in matters matrimonial, does not transfer the jurisdiction of the Jewish court as well; and, as a matter of fact, it suggests for consideration the question as to whether a person who gives a "Get," or a Rabbi who grants a Jewish divorce without it being preceded by a divorce in this country, does not commit a contempt of court.

41,482. Before the Act of 1857 what was the position the Jews occupied?—Before the Act of 1857 the "Get" was given by the Jewish Rabbis, and they continued to do so until 1866. The history of this is very clear. Your Lordship will probably remember that in 1854 there was a Bill in Parliament which proposed to transfer the jurisdiction, or to give jurisdiction, to the Court of Chancery. When that Bill was before Parliament it was submitted to some legal gentleman on behalf of the Board of which I am now president, and they said that that Bill did not interfere in any way with the power of Rabbis to grant divorce according to Jewish law. When the Act of 1857 was passed the opinion of three eminent gentlemen of the Bar was taken as to whether that Act made any difference. The unanimous opinion of those gentlemen, which I have here, was that it made no difference and no doubt, from 1857 until the year 1866, the Ecclesiastical Court—the Beth Din—did grant divorces under the impression, I believe, which was founded on the opinions which had been obtained—legal opinions—that the Act made no difference whatever. But in 1866 the then Registrar-General, Mr. Graham, refused to recognise that practice; and I think you may take it that from 1866 the Jewish ecclesiastical authorities in this country have always refused to grant any Jewish divorce unless it is preceded by a decree of this country, or, if the domicile is foreign, unless proof that according to the foreign laws that the marriage has been legally dissolved is furnished.

41,483. You say the Act of 1857 established for the first time that the Court could grant divorce. Transferring the Ecclesiastical Court power could not have done that?—That is so.

41,484. What was the actual position with regard to a Jewish divorce before 1857. Did the law take cognisance of it?—My own view is—and Mr. Henriques' evidence will go to this (in which I entirely concur)—that a Jewish divorce was invalid before; that you could only get divorce by Parliament, of course.

41,485. Still, you say the Ecclesiastical Jewish authorities acted ——?—But I do not think if a case had ever come to be contested in a court of law in this country the English Courts would have acknowledged the validity of such a divorce.

41,486. Well, since 1866 it has always been required by the Jewish authorities, before they would act, that the law had acted; and your point which you wish to have notice taken of is, that it should be made quite clear that these illegal divorces should be stopped?—Yes, I want to stop them.

41,487. Whatever the law of England is, that that should precede any religious interference?—Yes. Of course, we do not want to have the religious divorce entirely stopped. It may follow the civil divorce, but it must not precede the civil divorce.

41,488. Is there anything else you wish to add?—Yes, there is one statement, my Lord, I want to add: Since I prepared my statement which is before your Lordship, it has come to my knowledge that in the State of New York there does exist at the present day a law based very much on the lines on which I suggest legislation is needed in this country, and I have got here ——

41,489. Are you now speaking of legislation for the Jews, or generally?—This is general legislation, but it would really make the proceedings on the part of these foreign Rabbis a punishable offence. The law is to be found in Article 136 of the Penal Laws of the State of New York, Section 1450, and the provision is in these terms:—"Until a marriage has been dis-
" solved or annulled by a proper tribunal or court of

" competent jurisdiction any person who shall assume " to grant a divorce in writing purporting to divorce " husband and wife, and permitting them, or either " of them, to lawfully marry again, shall be guilty of a " misdemeanor punishable by fine for the first offence " not exceeding five hundred dollars, and the second " offence one thousand dollars, or imprisonment not " exceeding one year."

41,490. That is confined to a divorce in writing?—Yes, I said on the lines, my Lord.

41,491. I can quite conceive a divorce not being in writing, but effectively pronounced verbally?—Yes, but this makes it punishable ——

41,492. You would recommend some legislation on those lines?—Yes, I do. Then, might I call attention in this connection to a case which came before the Court of New York on a charge of bigamy against a Jew in New York who, after obtaining a divorce from a local Rabbi, married again. I think it might be useful. I have taken the trouble to make inquiries as to the sources from which this report comes, and I think I am justified in saying that the report which appears in the "Jewish World" for the 15th July, 1910, is perfectly reliable.

41,493. Will you tell us what point it establishes?—Well, the judge, in giving judgment, refers to this practice of the Jewish Rabbis who come to New York that they administer this Jewish law, and that they are not ministers in any shape or way in charge of congregations having places of worship or synagogues under their control, but that they come and cause this mischief. They point out the mischief which arises. They come and make a living out of the money they can obtain by these irregular marriages and irregular divorces.

41,494. It is more of a business than an ecclesiastical profession?—I can give your Lordship this paper.

41,495. No, the point is clear, I think. Was the effect of it to sentence someone?—Yes; imprisonment, I think, for 10 months for the bigamy.

41,496. On a man who had gone through the form of marriage?—Yes, on the man; but the Judge says it was a hardship; that the real offender was not before the Court; the real offender is the Rabbi who does this thing for a money payment and leads people to think they can re-marry; and the judge says, "It is a " matter of great public importance that the laws of " the State relating to marriage and divorce should be " observed and those conscientiously committing the " crime of bigamy should be adequately punished."

41,497. Does the information lead you to find out if the authorities prosecuted the Rabbi?—In this particular case I have not been able to ascertain that, but there is no question about it that the real offender in all these cases is the Rabbi, because without his assistance these irregular divorces could not take place, and the parties, no doubt, by the payment of the money, think they have got to a tribunal which can give them a legal divorce; and very often the woman is quite innocent of the illegality, even if the man knows it. What I do ask this Commission to do, is to suggest and recommend legislation which will put a stop, once for all, to the practice of these Rabbis in this country. Your Lordship quite understands the Jewish Ecclesiastical Authorities in the country never do it. It is only these foreign Rabbis that come over here who resort to the practice complained of.

41,498. I think you have made the point quite plain, and it is one not called attention to before, until Dr. Adler mentioned it. Now you have made it very plain?—And I ask to have this practice put a stop to.

41,499. We can recommend, but we cannot stop it?—Well, it leads to an immense amount of misery and trouble.

(*Chairman.*) I think the point is quite plain.

41,500. (*Judge Tindal Atkinson.*) If the opinion of these three eminent Counsel is accurate, then these foreign Rabbis are not committing any offence at all?—That is so. If the view taken by these three eminent gentlemen is correct, then, of course, the Rabbis did nothing illegal.

41,501. And these divorces that they grant are perfectly legal?—Certainly.

(*Chairman.*) No, he does not say that. The difficulty would be just the same. Mr. Alexander said he thought they were not legal.

41,502. (*Judge Tindal Atkinson.*) That is Mr. Alexander's opinion. I understand, among the Jews before the Act of 1857, these divorces by the Rabbis were considered legal and binding and good?—They considered them.

41,503. But the Jews generally?—I suppose they did before 1857; but my own personal view is, having considered the matter and having had the advantage of reading through the evidence which is to be given by Mr. Henriques to-day, that these divorces were bad according to English law.

41,504. (*Chairman.*) Bad according to English law?—Yes.

41,505. Though the Rabbis thought they were right?—Quite so.

41,506. (*Judge Tindal Atkinson.*) That is not the opinion of these three Counsel?—Well, I think these learned gentlemen were wrong.

41,507. (*Chairman.*) At any rate you want it put straight now?—It is quite immaterial whether it was right or wrong before; but I bring before you a serious evil—an evil attended with very serious consequences both to the man and wife and the issue; and this is an opportune moment, when you are considering the whole question, to have the matter put straight, and to prevent a practice which I say is bad in its inception and has been bad throughout.

(*Chairman.*) Thank you very much for your evidence. You have very forcibly drawn attention to an important point.

Mr. Henry Straus Quixano Henriques, B.C.L., called and examined.

41,508. (*Chairman.*) What is your occupation?—A barrister, my Lord.

41,509. You have written on these questions that you have dealt with in your paper?—Yes.

41,510. You are also representative of the West London Congregation of British Jews at the Board of Deputies, and Vice-President of that Board?—Yes.

41,511. You have prepared this with some care, no doubt, and I would venture to ask you to read it?—" Before the expulsion of the Jews in the year 1290, questions as to the validity of Jewish marriages undoubtedly came before the English Courts, but I have been unable to find any trace of any authoritative legal opinion as to the effect upon such marriages of the process of Get or a Jewish Bill of Divorce. Since the return of the Jews in the reign of Charles II., the earliest instance in which the Courts were asked to grant a divorce in the case of a Jewish marriage is the suit brought by the Baroness d'Aguilar against her husband in the year 1793."

41,512. That would be a divorce *a mensa et thoro*?—Yes, with a view to a Bill, which I think was afterwards obtained. "In that case, upon an objection being taken to libel, Sir William Scott (afterwards Lord Stowell) is reported to have said: 'This is a 'suit brought by Lady d'Aguilar against the Baron, 'the parties being Jews and married according to 'the Jewish rites, but the Court is under the same 'obligation to interfere and grant aid on violation of 'any duty arising out of such marriage as well as 'any other';[1] and in his final judgment, delivered the following year, the same learned judge says: 'This is a cause of separation for cruelty and adultery 'brought by the wife against the husband. The 'marriage took place in March, 1767, according to 'the rites of the Jewish nation, both parties being 'Jews. The Court does not remember any pro-'ceedings between such parties in a case of this 'nature; there may have been such, but whether 'there have been or not, there is no doubt that the 'suit may be entertained. The marriages of Jews 'are expressly protected by the Marriage Act, and

[1] Hag. Cons. Cas., p. 134 (note).

'the persons of that persuasion are as much entitled 'to the justice of the country as any others; for I 'take the doctrine to be that all persons who stand 'in the relation of husband and wife in any way the 'law allows as by a foreign marriage or by a domestic 'marriage not contrary to law, have a claim to relief 'on the violation of any matrimonial duty. Jews in 'this country have the same right of succession to 'property and administration as other subjects; and 'they come to the Ecclesiastical Court in order to have 'such rights secured. Many of them are possessed of 'considerable personal property and they have the 'same right to transmit as others. It would be hard 'then if they had not the same mode of securing the 'legitimacy of their children, and, consequently, if the 'same rights of divorce did not belong to them. I 'have, therefore, no doubt that it is the duty of the 'Court to entertain such a suit between Jews, as 'between others of a different persuasion.'[1] From this time forward the Courts competent to deal with matrimonial causes (the Ecclesiastical Courts, the Divorce Court, and the Divorce Division of the High Court) have dealt with the marriages of persons professing the Jewish religion in precisely the same way as with other marriages. In respect to the proof of the ceremonies necessary to constitute a marriage according to the usages of the Jews, they have inquired into and given effect to the provisions of the Jewish law,[2] because both the common law and the marriage acts recognise the validity of such marriages although the formalities which would in other cases be necessary have not been complied with.[3] But it is a well-settled rule that no other evidence of Jewish law can be admitted; for the special privileges conferred upon Jews by the English law are strictly confined to the method of solemnizing marriage, and in every other respect a Jewish marriage is in the same legal position as other marriages.[4] Thus, in the d'Aguilar case above referred to, it was contended that a guilty husband might avail himself of the ancient Jewish law in answer to a charge of adultery.[5] Such a principle has never been admitted by the English Courts and would be repudiated by Jewish law."

41,513. What was that?—It was polygamy, or having concubines; I forget which. I have given the reference.

41,514. They acted on the English principle?—Yes, my Lord. "Dr. Adler in his evidence says that, prior to a decision of the Registrar-General given in the year 1866, divorces had been given by his predecessors in the office of Chief Rabbi, although no decrees had been obtained from a court having jurisdiction in matrimonial causes. These Jewish divorces were granted in the belief that they were valid by the law of the land and would enable the parties so divorced to marry again. This belief was founded upon an opinion given by Dr. Addams, Sir Travers Twiss and Mr. Baddeley, who had been specially consulted by the Jewish Board of Deputies upon this point. However, in 1866 the Registrar-General informed the Board of Deputies that, guided by the best legal advice accessible to him, he could not recognise such divorces as valid. This view was accepted by the Chief Rabbi and the other Jewish authorities and the practice of granting such divorces has since been discontinued as far as the competent Jewish authorities are concerned; it has, however, of late years been revived by certain foreign Rabbis resident here, with disastrous consequences, which are referred to in the Board of Deputies' letter to the Registrar-General of February 16, 1909."

41,515. That is the one Mr. Alexander referred to?—Yes, my Lord. "In my view such divorces never had any legal effect in this country; for the English law did not recognise the possibility of dissolving a marriage once validly contracted except under the provisions of an Act of Parliament, and, although the law was avowedly founded on the principles of the lex Christiana, I can find no authority for saying that an exception would be recognised in the case of marriages solemnized in accordance with the lex Judaica, although such marriages themselves were allowed to be valid. A careful perusal of the words of the statutes which make bigamy a crime punishable by the civil courts, namely, 1 Jac. I. c. 11, 9 Geo. IV. c. 31, s. 22, and 24 and 25 Vict. c. 100, s. 57, makes it clear that a divorce of this kind is no answer to a charge of bigamy. There is, however, an opinion in certain sections of Jewish society that a marriage contracted according to the usages of the Jews can be dissolved by a Jewish rabbi without the intervention of the civil courts. This view seems to be founded upon the fact that in some foreign countries such divorces are valid, that Jewish marriages are exempted from the provisions of the Marriage Acts and that at one time such divorces were granted by the official head of the Jewish hierarchy in England. Two cases in the Reports are also referred to as bearing out this view, but I do not think that they lead to any such conclusion. The first is *Moss* v. *Smith*, which came before Erskine (J.) in 1840. It was an action of assumpsit, in which the plaintiff, Mrs. Moss, sought to recover damages in respect of certain goods deposited in the defendant's pantechnicon for safe custody. During the course of the trial it appeared that the plaintiff's husband was still alive and it was accordingly objected that the plaintiff, being a married woman, was not entitled to sue. To this it was answered that the marriage had been solemnized by the Jewish ritual and put an end to by a Jewish divorce. Dr. Solomon Hirschel, chief rabbi, and other subordinate officers of the synagogue, were called. 'The Book of Divorces,' kept by the superintendent of the synagogue in Brooke's Gardens, containing an entry of the divorce in Hebrew, was produced by the superintendent, who was present at this divorce; but it also appeared from the evidence of Dr. Hirschel that to constitute a valid divorce under the laws and usages of the Jews a written document of divorce must be delivered from the husband to the wife; and that the delivery of this document is the operative part of the ceremony, which must, however, take place in the presence of the high priest and of ten persons at least. This document of divorce, which is attested to by two witnesses, may be retained by the wife, but it is more frequently handed over by the wife to the high priest. This document was not produced by the plaintiff, and the high priest stated that he had not been requested to bring it with him. Upon this evidence it was contended for the defendant first, that, although Jewish marriages are excepted out of the Marriage Act, yet by the common law a marriage, whether Jewish or Christian, if once validly contracted, can be dissolved only by Act of Parliament, and that supposing a Jewish divorce to be capable of effecting a dissolution of the marriage, yet in the absence of the document of divorce, there was no evidence that any divorce had taken place. The learned judge was of opinion that a divorce had not been established.[1] It does not appear on which of the two conditions the judge based his decision, but at any rate he did not overrule the first contention, which it is submitted was well founded. The other is *Ganer* v. *Lady Lanesborough*, which was tried by Lord Kenyon in 1791. That was an action for debt, in which the defendant pleaded in abatement that she was married to John King. The plaintiff in answer proved the marriage of King with a former wife and that she was still living. The defendant then offered to prove that King had been divorced from his former wife at Leghorn according to the rites and customs of the Jews. 'She produced an instrument under the 'seal of the synagogue there, whereby they were 'divorced from each other. But Lord Kenyon held 'this to be no evidence, for before he could take 'notice of any proceeding in a foreign court he must 'know the law of the country, which was matter of 'evidence and should be proved by witnesses. The 'defendant then called King's former wife to prove

[1] I. Hag. Ecc. Cas., 773.

[2] *See* Lindov Belisario (1795), I. Hag. Sons. 2; 6 and Goldsmid *v.* Bromer (1798), *ibid.*, p. 324.

[3] *See* Jewish Marriages and the English Law, pp. 15-32.

[4] In *re* De Wilton (1900), 3 Ch. 481.

[5] Hag. Ecc. Cas. I., p. 785.

[1] Moss *v.* Smith, 1 M. & G., 228 *sq.*

'the divorce. She was objected to as an incompetent 'witness, but, the objection being overruled, she swore '(without producing any instrument) that she was 'divorced from King before the rabbi at Leghorn 'according to the ceremony and customs of the Jews 'there. On this evidence the defendant had a verdict.'[1] As to this case, I think it must be taken that the judge was satisfied that the parties to the divorce in question were at the time domiciled at Leghorn, and that the law in force there recognised and adopted the principle that a Jewish marriage might be dissolved by a Jewish divorce. The decision does not seem to me to have any bearing upon the effect of a Jewish divorce pronounced in England. I have accordingly come to the conclusion that no special privileges in the matter of divorce have ever been granted to the Jews by the English law, nor do I believe that there is any widespread desire among the Jewish community in England that such special privileges should be granted, at any rate at the present time, when the indissolubility of the marriage bond is no longer strictly insisted upon. Some, perhaps many, members of the Jewish community would like the causes for which divorces are granted to be extended, the procedure to be modified and the expense to be decreased, but they wish that these reforms should be made for the benefit of all, and do not desire any special enactments to be made in favour of their co-religionists. With regard to the question of Jewish divorces pronounced by foreign Rabbis living here, and the means of preventing the evils they produce, I have to refer to the statement presented on behalf of the Jewish Board of Deputies to the Registrar-General on February 16th, 1909, in which I fully concur."

41,516. Is that the letter which I had before?—Yes, my Lord. Your Lordship will see I signed the letter, and, as far as I remember, I think I drafted it, but I cannot be quite certain about that.

41,517. (*Lord Guthrie.*) Can you tell me this, Mr. Henriques: if you happen to know whether, amongst the Acts of Parliament before the 1857 Act, any was obtained by a Jew?—Yes, the Baroness d'Aguilar was. I am not sure if that was the second, but I think that is the only one. I think I ought to add this, as to this particular thing we are asking for, making it penal to pronounce these divorces: we have had a number of hard cases in which we have tried to punish the offending Rabbi, and have been consulted about it; but it is impossible to find any Act of Parliament under which that can be done.

41,518. (*Chairman.*) You support entirely the view that has been presented that something should be done to prevent these irregular divorces?—Yes.

41,519. And you would make it in some form penal?—Yes.

41,520. There is one question in the last paragraph but one of your paper where you say, "Some, perhaps "many, members of the Jewish community would like "the causes for which divorces are granted to be "extended." Would you tell us what views you desire to express about that, and to what extent they are representative?—Well, I have no wish myself one way or the other, but, as far as I know, the Jewish community is practically divided in the same way as the English community is, that there are a number of people who say, "We would like the law for the husband and "wife to be made the same," and so on; but that is very much because they mix with English people and have much the same ideas.

41,521. And also you mean that to apply with regard to increasing the grounds?—Yes.

(*Chairman.*) Thank you; I am very much obliged to you for your paper.

Rev. William Isaac Carr Smith called and examined.

41,522. (*Chairman.*) I think your name has been furnished to the Commissioners, through the Secretary, by Sir Lewis Dibdin as likely to give us some information about New South Wales?—Yes, my Lord; I should like to make it clear it was at the personal request of the Archbishop of Canterbury that I came. I should not like my friends in Australia to think I wished to foul the nest where I have lived so long. I was not eager to come and give evidence.

41,523. Well, that is how you came here?—Yes.

41,524. You have only sent a little memorandum of these heads, and the first is, "The present Divorce "Law of New South Wales with the differences as "applied to husbands and wives." Before dealing with that, how long have you been in New South Wales?—I was Rector of St. James', Sydney, for over 13 years.

41,525. The Anglican Church?—Yes; it is one of the most important churches in Australia; and I should like to make it clear that New South Wales is the oldest and most populous State, and has taken the lead in certain matters; this amongst them—the question of divorce.

41,526. Is that in Sydney?—Yes.

41,527. Well, what is the present state of the law there? I have just sent for the book. I think there has been some amendment of it lately?—Might I just refer to the marriage regulations?

41,528. I think if I get the law first it will shorten matters. When did you return to this country?—About 12 months ago.

41,529. And are you taking up official duties here?—Yes. I had been in England over 16 years before I went to Australia, so that I knew something about the condition of things here.

41,530. What is your position here now?—I am vicar of Grantham now—in Lincolnshire.

41,531. We have it abstracted; but perhaps you will state in your own way what you wish to say under Note 1 of your memorandum?—Before I do that may I just remind the Commission that the general regulations with regard to marriage are so different from what they are in England. I was very startled when I lived there to find a person could choose when they would be married, and by whom, without any restriction hardly. St. James' is a central church in the heart of the city, and that has given me an unusual experience. No banns are required, and no notice really. You can be married at once. I have married many persons immediately. They can choose amongst all those who are recognised for the purpose of taking marriages by the State. They can choose anyone they like. It is not that you must reside in a certain parish or neighbourhoood. I have married people from anywhere in consequence.

41,532. You can marry without notice?—A person to take a marriage service can demand a certain notice, but he is not obliged to ask for it.

41,533. And is no public information given?—No. I was very much startled, as I say ——

41,534. Who can perform marriages?—Ministers of religion, who must have, at the time they make application to be recognised, a certain number of people that they consider their congregation. When once they have got on the Registrar-General's List they can be kept there. Their congregation may be dispersed, or it may have been got together, I am sorry to say, for a particular purpose; but when once they are on it is almost impossible to remove them.

41,535. Is there anybody else besides ministers of religion who can marry people?—The Government officials, the registrars; but that is discouraged by the Registrar-General at any rate, I am glad to say. The Registrar-General's office was in our parish, and I know frequently when people went in to ask to be married there the official would say, "Have you a "conscientious objection to being married with a "religious ceremony"? "No, I do not know that I "have, but I thought I would come here." And then he would say, "Then I cannot marry you."

41,536. Do you mean with regard to the registration no form of notice is required?—No.

41,537. And no residence?—No. He can demand notice if he thinks he ought to make inquiries, but he is not obliged to. After having been there many years,

[1] 1 Peake. 17–18.

and having had a long and varied experience, I do not know that there is any great abuse of it, and I certainly have found very great advantage in it. I married a man, for instance, within half an hour of his death. I had been chaplain to the Sydney Hospital, the biggest hospital in Sydney, and he had been seriously injured, was brought hurriedly to the hospital, and he told me at once that the woman he had been living with for 17 years, and by whom he had a large family, he had never been married to, and he was most eager to be married before he died. I had, as I thought, sufficient proof of his penitence, and I married him.

41,538. Did that legitimatise the children?—That legitimatised the children and made the wife the possessor of his property.

41,539. Does not it rather suggest that hastily-conceived notions of walking into a church or registry to be married might lead to detrimental marriages?—It may; and perhaps others' experience may be different from mine; but I have not had cause to think that any of the cases where I have married people there has been any abuse of it.

41,540. You can tell me this I daresay. Is this provision about how marriage may be celebrated in New South Wales statutory?—Oh, yes, I believe so, my Lord.

41,541. Then we can get the exact provision?—Yes.

41,542. Now, going back to No. 1 of your paper, you refer to the present law of divorce?—Until 1873 there is no divorce law; the Supreme Court had no jurisdiction in divorce. I suppose then anybody had to journey to England.

41,543. Are you sure about that? Because my impression is that they had the same jurisdiction as in England up to 1887?—I quote from the New South Wales Year Book: "Until 1873 the Supreme Court of "the State had no jurisdiction in divorce."

41,544. And from 1873 to 1887?—Then from the 1st July of that year 1873 down to the year 1892 the number of divorce decrees made absolute was 447.

41,545. Then there was a law, you say, introduced in 1873?—Yes, in 1873.

41,546. What was that?—That was simply that "Any husband"—or the terms were about the same with regard to the wife—"may present a petition to "the Court praying that his marriage may be dis-"solved on the ground that his wife has since the "celebration thereof been guilty of adultery."

41,547. The statement I have is that in 1887 the grounds for divorce were "the same as in England "with the exception that a wife could sue because of "the adultery of her husband if he was domiciled in "the colony at the time the suit was brought." But the grounds were the same as in England?—Yes; I am quoting from an earlier date. I am afraid I do not reckon very quickly.

41,548. Well, what is the law now? We have it shortly?—It is almost the same for husband and wife. Desertion, habitual drunkenness and neglect of duties, sentence for crime, attempted murder and repeated assaults.

41,549. Yes, we have the list of that accurately?—With only just the trifling difference in the case of habitual drunkenness and cruelty that of course neglect to support on the part of the husband is added.

41,550. With regard to the wife there is some question about domicil which does not deal with what is material at the moment?—No, that is so.

41,551. Then, "The extent to which it is made use of," is your next note?—The number of cases of divorce between 1873 and 1907, which are the figures I have, is 3,958. The population of New South Wales now is about a million and a half—rather more, it has grown more rapidly in recent years of course.

41,552. Can you give us the annual figure for the last year or two?—For the years 1903 to 1907, which are the last figures I have, the number of decrees made absolute were 830.

41,553. Is that five years or four?—It must be five.

41,554. And the population what?—Rather more than a million and a half, of which about 650,000 is congregated in Sydney.

41,555. Can you say how many of those were men's suits and how many were women's?—I am afraid not.

41,556. What are those taken from?—The Year Book.

41,557. The New South Wales Year Book?—Yes.

41,558. Then the next head—No. 3—is Personal experience?—I wanted to say with regard to the other point that the causes pleaded for divorce were most numerous on the grounds, of course, of adultery and desertion.

41,559. I think we have most of the statistics. Would you kindly give us your personal experience?—Of course, I did not come from Australia prepared with any figures of my own. I could have brought the exact number of marriages that I have taken during those years. As it is, I can only quote from the general impression that is left upon me. I should suppose I have taken from 50 to 60 marriages in the course of a year; and I think probably five or six times each year I have been appealed to by people who, after a little inquiry, I found were proposing to be married after divorce. I have always refused, and I think I can honestly say that in no single case were those people poor.

41,560. What does this lead to?—The point I wanted to make clear is, that so far as Australia is concerned there is no hardship with regard to poor people. None of the people that have appealed to me to marry them after divorce have been poor people.

41,561. What provision is there for poor people suing in courts?—Oh, they can sue *in formâ pauperis*. And also the reports of the cases may be forbidden by the authorities.

41,562. That I think we have already heard. The publication of the details?—Yes.

41,563. Now what is the general view you want to present; that is what I want to get?—My own strong impression is (but, of course, I can do no more than give you such evidence as the Year Book gives, and from many conversations with people) that the facility with which divorce can be obtained has had a very considerable influence in the decline of the birth-rate. The Chairman of the Royal Commission (on that particular matter) in Sydney, was a friend of mine, and I have had many talks with him on the subject, and my impression is that that is one of the elements that have had a very considerable influence. I do not know whether you have noticed, my Lord, the figures with regard to the children of marriages where divorce has been sought for, but out of the number 3,958 there were no children in 1,281 cases.

41,564. You mean those cases in which marriages have been sought to be dissolved—with children and without children?—Yes.

41,565. We have got those figures for England?—But this is New South Wales; 1,281 with no children, 961 with only one child.

41,566. But what does it all lead to. I do not quite follow at present?—My impression is that the decline of the birth-rate has been very largely due to the facility with which divorces can be obtained. People knowing that they can probably get a divorce have remembered that the children will add to the difficulty of the situation.

41,567. Do you mean that this has led to a deliberate abstention from having children?—I think so. Another cause——

41,568. Do you really mean that during the time they are living together, without any idea of divorce apparently, that the possibility that there might be divorce has led to the restriction of having children?—I do.

41,569. One would have thought it would have led to the restriction of marrying at all?—I am sorry to say I have had a very sad experience in that particular matter.

41,570. In what?—Regarding the decline of the birth-rate.

41,571. What are the figures you have: are they all in the Year Book?—All those figures I have quoted are in the Year Book.

41,572. Is there any other point to which you think attention should be drawn. I have no information of what you desire to say, you see?—No. I asked a lady whom I have known many years in New South Wales, who is the widow of a leading doctor, and herself was a nurse for a number of years at one of the principal hospitals in Sydney, what she thought was the principal cause of the large number of divorces sought for in Australia; and she said, love of luxury, and dislike of work.

41,573. Might I ask you this: What year was this Act passed giving these extended facilities? What is the last Act under which the present law stands?—There has been no change, as far as I know, since 1892.

41,574. What was the law prior to 1892?—Prior to 1892 the same as the English law.

41,575. Prior to 1892?—Prior to 1892.

41,576. Then there are all these different causes of of desertion and maltreatment and so on. We want to be accurate about this. Up to a time (it does not matter about the accurate date) the courts had no jurisdiction?—That is so.

41,577. After that they had jurisdiction according to the law of England?—Yes.

41,578. After that they had jurisdiction extending it?—Yes.

41,579. Why was it the Colony decided to introduce extended causes?—It was very largely, I am told, under the influence of Sir Alfred Stephen, who for 22 years was a Judge of the Supreme Court, and he very largely favoured this.

41,580. Are there two houses there?—Yes.

41,581. That was passed by both Houses?—Oh, yes, my Lord.

41,582. And no doubt fully discussed?—I suppose so. I might add, since the Commonwealth came into existence—I cannot remember the year; I wrote to our High Commissioner, Sir George Reid, a day or two ago, and asked him if he could give me the year, and I have not had a reply——

41,583. Well, we have all the statutes about it; I do not think we need trouble about the exact details?—No. There was an attempt made to bring in Federal legislation—to assimilate all the States of Australia to that of New South Wales, to the best of my recollection; that was to be made the standard: There was such strong opposition on the part of the other States and so much was said in New South Wales that that attempt dropped.

41,584. May I suggest that your evidence is too general to be strictly of use; because Victoria, which is one of the largest colonies, has the same law, substantially, as New South Wales; Queensland, Tasmania and South Australia the same as England?—Yes.

41,585. You said there was so much opposition by all the colonies?—In all the colonies, I should say, then.

41,586. Well, the most important, Victoria, is the same as New South Wales; and then that is recently changed I think?—I could not say about that. I have been in Victoria frequently but I do not know the state of the law there.

41,587. I cannot ask you more definitely because I have no proof of yours; but is there anything else you wish to add?—There was one other point I wanted to mention (it is not strictly germane to this); and that was the fact of publishing some of the evidence with regard to the decline of the birth-rate, brought before the Divorce Commission, seems to have had a very wholesome effect on the life of the community; that matters have improved very much since.

41,588. In what way?—The decline is very much less than it was.

41,589. What was that caused by do you say?—The Government appointed a Royal Commission to inquire into all matters that had to do with the decline of the birth-rate, which was very serious indeed.

41,590. And is there a report on that?—Yes, there is.

41,591. Have you got a copy of it?—I have not, but I am sure it could be obtained from the Agent-General of New South Wales.

41,592. What year was that in?—I think that was about six years ago.

41,593. The Agent-General would no doubt know?—Yes.

41,594. Is there anything else?—No, my Lord.

(*Mr. Spender.*) With regard to your figures; you said, I think, there were 3,000 in 13 years. Your first figures were 3,000 covering 13 years.

(*Lord Guthrie.*) 3,958.

41,595. (*Mr. Spender.*) Then that gives an average for those 13 years of about 250 divorces a year?—That is from 1892 to 1907.

41,596. That gives a yearly average of about 250 or 260 divorces?—Yes; the report in the Year Book calls attention to the fact that it was in the early years of that period that they were so numerous; probably people taking advantage of the increased facilities; and the later part they declined.

41,597. Then in the last part there were 830, which gives 166?—Yes.

41,598. That is a considerable decline from the early years?—Yes, and the reason I have just stated is the one that is put forward as an explanation.

41,599. Then do not we arrive at this point, when you have made full allowance for that, that the increase of the causes for divorce have not, in the long run, increased the number of divorces?—No, I think that is probably a fair inference.

41,600. Then with regard to poor people, you said they can sue *in forma pauperis*. Can you tell us, as a fact, whether many poor people do sue *in forma pauperis* in New South Wales?—I cannot say; I can only speak of my own experience, which leads me to the conclusion that not one of the people that asked me were poor people; and some certainly were very wealthy.

41,601. That might be due to one or two causes; either that the poor live in a comparatively lax condition which did not require divorce or re-marriage, but contracted irregular unions; or it might mean that they were strict in their morality, and neither applied for divorce or desired marriage after divorce. Can you give us any idea which of those two things it was likely to be?—I cannot say.

41,602. Then with regard to the limitation of child-bearing; it is pretty clear from your argument that the fact that marriage was childless might be a cause for divorce; but do you think that argument can be reversed, and do you think you can say that divorce is a contributing cause to childless marriages? Because the obvious form of the argument is the other way round from the method you have taken it?—Yes, the other point I had not at all considered.

41,603. Do not you think it is a more obvious inference from the facts?—I am not at all sure.

41,604. (*Sir Frederick Treves.*) You state that the diminished birth-rate is very likely due to the extended grounds of divorce?—I say I think it is possible; it cannot be much more than opinion.

41,605. Then how do you explain that this diminished birth-rate is so conspicuous in certain countries which are Catholic, where no divorce exists?—Well, of course, I know there are many other causes that are supposed to contribute to it. I am afraid I am not prepared with an answer on that point.

41,606. But you admit the fact that the diminished birth rate is, I think I might say, most conspicuous in countries which are Catholic?—Well, nominally Catholic.

41,607. Well, nominally Catholic, where no divorce exists?—Yes.

41,608. (*Sir Lewis Dibdin.*) Mr. Carr Smith, your church at Sydney, I think you said, was one of the chief churches of the place?—Yes.

41,609. What is the character of the congregation there; is it a working class parish or a rich parish, or what?—The parish is like an old City parish in London, only with the advantage that the trams and the boats converge on it from every point, and it is probably the most mixed congregation you would find anywhere, from the Governor-General to the loafer.

41,610. Was your church one of the chief churches for marriages in Sydney?—Yes.

41,611. So that the number you had would be probably more than the other churches?—I should think so.

41,612. Were they varied in point of view of class, or were they mostly church people?—A considerable proportion were people in the social world. I married a good many poorer people.

41,613. Then I suppose you moved about among all classes in Sydney?—Yes, amongst all classes.

41,614. And do you think you knew what was going on in Sydney, and understood the opinion there?—I think I did. I was chaplain, as I say, of this big hospital. I was in constant touch with the labour party. I was chosen by 1,500 tram employees out on strike to be the arbitrator, and I have had experience of all classes.

41,615. And your attention was particularly drawn to the law of divorce in the Colony, I understand?—Well, I knew that there were facilities, and that numbers of people who had been divorced were constantly going about wishing to get married, and I was always on the alert to avoid having anything to do with them.

41,616. It was a matter brought before your mind?—Yes.

41,617. Did you form any opinion as to the effect of the law of divorce on the moral condition of the community?—Well, I deplored, of course, the slackness that it was evidence of, but that is to be seen in many other ways.

41,618. But did you connect that slackness at all with the condition of the law?—Oh, yes, I feel perfectly certain that the fact that the facilities existed made many people wish to avail themselves of them.

41,619. Had you any reason for that beyond opinion?—Only conversation with many people.

41,620. It was the conclusion you came to as the result of your life there?—Oh, most decidedly.

41,621. (*Judge Tindal Atkinson.*) I suppose you consider, where they wanted facilities for divorce there was good ground for divorce. It would not be much use having facilities for divorce if you had not a ground for it?—Oh, no, there were grounds.

41,622. Then the facilities that you say people required and wished for were facilities for getting a divorce where there was good ground for divorce?—What they considered good grounds, of course.

41,623. It would be for the Court to decide what were good grounds?—Yes.

41,624. A man could not get a divorce unless the Court knew there were good grounds for it?—No.

41,625. Then how could the facilities for divorce create an amount of mischief, because the mischief is created already, is it not?—I think the thing reacts on itself and that it leads to the desire—the fact that it exists.

41,626. Are the costs of obtaining a divorce in Sydney very great?—I am afraid I do not know anything about the costs.

41,627. Are the costs beyond the reach of the poorer classes?—That I really could not say. I can only say that they can sue *in forma pauperis*, and a large number have availed themselves of that.

41,628. (*Chairman.*) Just with regard to the statistics, Mr. Carr Smith. I have them now from the United States Census. I see, taking 1887 and 1891, they were 29 in 1887 and 66 in 1891; and then they are given separately from 1892 to 1896. In 1892 they are 102, in 1896 they are 233. Now comes a change. In 1897 they are 245; in 1896, 174?—Oh, yes.

41,629. So that the longer your Act, with the increased causes, is in operation the lower seem to become the total number of divorces?—Yes, that is so. I called attention to that and said that the reason urged for that is that there were many people who had been waiting for the increased facilities and at once took advantage of it.

41,630. Yes, but the "at once" is in 1893?—Yes.

41,631. They had 305, and in 1894, 311. From that time down to 1906 it has gone down to 174?—Yes.

41,632. Steadily declining?—Yes.

41,633. What one would rather gather from that is that the increased causes have not had any deleterious effect on the morality of the place?—Still, the number is very high in proportion to the population. I do not carry the figures in my mind, but I remember a year or two ago when the agitation was on about increasing facilities in the whole Commonwealth, New South Wales stood at the head of all communities in the British Empire.

41,634. Well, we have figures that hardly agree with that, I am afraid. Yes, they are higher in 1893; and in 1894, 1895, 1896, and 1897 they are continually going down, and there is only one difference between them and Victoria in 1896?—Of course, New South Wales has a larger population than Victoria.

(*Chairman.*) We are obliged, Mr. Carr Smith, for your evidence.

The Right Hon. Sir EDWARD HENRY CARSON, K.C., M.P., called and examined.

(*Witness.*) My Lord, I am sorry I have not been able to write out the evidence, but the evidence I have to give is very short.

41,635. (*Chairman.*) You have not, as you say, sent any proof in?—No.

41,636. That relieves me from a great deal of trouble. Then I will ask you if you would express what you have to say?—Well, my Lord, I practised, as your Lordship probably knows at all events, in Ireland, before I came to England, for many years, and I was a King's counsel there as well as here, and I had some experience—not a very large one—in such divorce work as there was in Ireland. I propose first merely to state something about that country, and may I say that in stating about Ireland I adduce what I am going to say as to Ireland as a very strong argument against further facilities—a matter on which I have a very strong opinion that there ought not to be further facilities, and as to which I will say a few words afterwards. Now, my lord, in Ireland there is now no real matrimonial division of the courts at all. There was a President of the Probate and Matrimonial Division, but that was altered, and now there is simply a judge told off—as there is in England in Bankruptcy—to do whatever is necessary in relation to applications in matrimonial matters; and the ordinary cases that have to be tried, which I will show in a few moments, are quite insignificant, are sent with ordinary actions—commercial or tort actions—to be tried before the ordinary King's Bench judges in their rotation, without any special arrangement in relation to them. The Commission are probably aware that the courts in Ireland have no power to grant what we call divorce—that is a divorce *a vinculus*. They can grant a divorce or a separation *a mensa et thoro;* and then the procedure is that, having got a separation *a mensa et thoro* it is generally thought necessary, in the ordinary case of a man taking divorce proceedings against his wife, to take the old action of crim. con.—criminal conversation—asking for damages against what we call the co-respondent over here. Then, upon obtaining these two decrees—one the separation and the other damages in the crim. con. case—a petition is filed to the House of Lords; and it goes then before the House of Lords on a Bill, and is investigated there, and, if it is passed by the House of Lords, then it comes down to the House of Commons; who have a Standing Committee for Divorce of which, I am sorry to say, I am a member myself; and then, if it passes the House of Commons, who make a somewhat perfunctory examination into the facts, then the marriage is annulled by Act of Parliament. That is the procedure.

41,637. That is the old procedure which applied to England?—The old procedure that used to be applied before the Act here. Now, in Ireland I have got the figures for the last eight years, from 1902 down to the end of last year, and I will give them in detail in a moment; but may I state that, roughly, you will find the average of the eight years for petitions *a mensa et thoro* is about 22, and the number of decrees granted

in Ireland come, roughly, to about four in the year. You may take it that the average that go to the House of Lords—an average for the years that I have from 1902 to 1909—is about two; the first four years I find there were none, and then afterwards I find there were a few. Now, I take more specifically this: in 1902 the petitions for divorce *a mensa et thoro* were 27; decrees were granted in three, one was dismissed, and there was no Bill in the House of Lords. 1903, petitions for divorce *a mensa et thoro*, 16; decrees for divorce, 2; dismissals, none; and divorce bills, none. 1904, petitions for divorce *a mensa et thoro*, 20; decrees for divorce *a mensa et thoro*, 4; no dismissals, and no Bills in the House of Lords. In 1905, petitions for divorce, 18; decrees, 4; dismissals, 1, and 4 Bills in the House of Lords. 1906, petitions for divorce, 29; decrees, 5; dismissals, 2; Bills in the House of Lords, 1. 1907, petitions, 25; decrees, 6; dismissals, none; divorce Bills in the House of Lords, 4. 1908, petitions for divorce *a mensa et thoro*, 29; decrees, 6; dismissals, none; divorce Bills in the House of Lords, 1. Petitions for divorce *a mensa et thoro* in 1909, 18; decrees for divorce, 3; dismissals, 1, and divorce Bills in the House of Lords, 1. I should also add that I have inquired as to whether there was any proceedings by which a party could appear *in formâ pauperis*, and I am told that there is such a provision, with regular rules laid down, but that in the years I have given nobody has ever applied to proceed *in formâ pauperis*. I may also add that the Act giving the magistrate power to make separation orders does not apply to Ireland, and I think the reason that that was not made to apply to Ireland was that the Irish members generally would have opposed it, and, therefore, it was not included in the Bill in the House of Commons. I may say I have made inquiries and had inquiries made, as to whether there is any demand whatsoever for any further facilities in Ireland, and I do not believe there is any whatsoever in either of the Churches. Of course one would expect that, probably, in the Catholic Church, as they set themselves against divorce very strictly—particularly over there. I have also had inquiries made with regard to the Protestant Church, and a gentleman, a King's counsel, whom I saw and asked to go to make a particular inquiry, consulted, amongst others, Dr. O'Hara, the present Bishop of Waterford, and who himself knew Belfast and knows the working-class; and, as that was a Protestant district, I thought one could get something from him, and he said, so far from there being need for further facilities the working classes were very opposed to any relaxation of the divorce laws. I think it may be taken, so far as Ireland is concerned, that there is not what I may call a divorce question there at all; and I put that forward before this Commission, of course with great diffidence and great respect, as an illustration of how things work where for years and years—in Ireland I may say for all time—there have been really no great facilities at all, and where the people have settled down in their homes and in their houses with the knowledge that they have not got these facilities, and that it is best for them to make the best of the engagement they have entered into. As regards the question in England I know there is a very great variety of opinion. Of course, I have been reading things that have appeared in the press from time to time, and I may say I have had some practice myself in the Divorce Court here. My own view is that, although I see there is a good deal to be said on each side, it would be a very fatal mistake to give any increase of facilities. I think the first thing one has to do is to make up one's mind as to what is to be the policy of the State—whether the policy of the State as to facilities, in consequence of the inconveniences that arise, is to give power of getting a divorce, or whether the State ought to set its face as far as possible against divorce with a view to making people settle down as best they can and try and come to terms and arrangements.

41,638. Might I suggest as to that a difficulty which has been put to us on one branch is an illustration is the desertion cases. It is no good to talk about settling down in cases where one person has gone to America and started a new life, and the person behind is left?—I quite agree. I am not putting it as a one-sided thing, but I am taking it as a whole for the State—weighing the benefits of the one side and the disadvantages on the other.

41,639. But take that class of cases; what advantage to the State is it to maintain the tie?—No, but I say you cannot create these facilities without, in my opinion, rendering these cases much more numerous.

41,640. Do you really think that follows?—I do. In my opinion the more facilities there are the more people will take the opportunity of bringing themselves within the facilities. That is my view. I do not say there is not a great deal to be said on the other side.

41,641. Might not the view also be that if you have a law which does not fit the facts the opinion of the community does not reprobate the people acting contrary to the law; whereas if you have a law that does fit the facts, and people depart from it they would meet with the disapprobation of society?—I do not think so. I think every facility makes divorce less of a blot on the character of the person who is divorced; and that to my mind is a great calamity. I think that we should come in this country to look upon divorce as an ordinary every-day proceeding would be a very great calamity. May I also mention this, as I have also had a good deal of experience in advising people professionally who have come to me in this kind of trouble: I find a very growing feeling amongst young married people of restlessness, and I know that over and over again when early squabbles arise they begin flinging the Divorce Court at each other, threatening the Divorce Court, and feeling that there is a way out; and I think very many of them at a very early stage make up their minds that they will take the first opportunity or the first chance they can of trying to get rid of the marriage. I have spoken very seriously to many of these people that have come before me, and I have often asked young people suddenly—whether a young husband or a young wife—"Are you perfectly sure now that you have lost all love for your husband?" or, "That you have lost all love for your wife?" and, putting the question suddenly, some of them certainly have sometimes said, "Well, I never looked at it in that way; I was much too angry." And I have very often said, "Well, go home and before you see me again think that well over," and certainly, on several occasions, they have come back and said they were glad they had thought over it.

41,642. Might I ask if you have considered the class about which we have had an immense body of evidence—the working class—where a man has children and only one or two rooms, and his wife goes away and leaves him, and lives with somebody else, and he takes somebody to look after the children with the usual consequence; or the case of a woman who is left to look after herself, and takes a lodger with the usual consequences. I do not quite follow why you think in all that class of case the facility for a re-establishment would necessarily tend to shake the present state of things?—Well, of course, divorce would become such a common thing. Look how we do in Ireland; that is why I started with Ireland. All this does not arise in Ireland.

41,643. Is Ireland a country in which nobody goes to live with anybody else in an immoral state?—No, I do not say that, but it does not lead to any desire to alter the divorce laws. I think Ireland is a very moral country, but I do not set it up as absolutely free from immorality.

41,644. All I meant to indicate was that that is one of the points that have been very seriously put before us, and whether what you suggest sufficiently meets it?—Well, I started by saying you would have to leave, of course, a good deal of difficult ground whatever policy you adopt; but suppose you adopt that policy of making facilities for working men—that will be open to everybody. Not only the working-man, but the highest people in the realm, if they are ever guilty of these things, can go in the same way. It will be a common thing to walk into your police court, or county court, or district court or whatever it is; you cannot draw the line; and nobody will think anything more of divorce. If I am told that the working classes

have not got the same facilities as other classes who can afford to take proceedings—well, I would much rather see the facilities cut down for the so-called rich people.

41,645. You would not extend the opportunity and say the people in Liverpool could have their cases heard there?—I would much prefer not. I think these are cases—anybody who has been in divorce business must know there is tremendous temptation with regard to collusive cases—I think these are cases that require to be very very seriously dealt with by a particular tribunal.

41,646. We have had a class of case put before us of where people have waited and saved up for years to get money together to come to London?—Yes.

41,647. Would you be against the opportunity for their bringing those cases in their own district?—I would, because I would not give any facilities. I admit the result of my evidence is to leave a number of people without divorce. I admit that frankly. But I say of the two evils—making the thing a common everyday matter and allowing these people to be still bound when they have been so married—I say the lesser evil ——

41,648. That would have been an answer to the passing of the Act of 1857?—I daresay. I would go the full length of saying that I think things would have gone on better without that.

41,649. I should like to hear you on publication?—Yes, there are two other matters I should like to say a word about. The question of publication: In my opinion the publication ought to be allowed to go on. I think some of the newspapers very grossly abuse the right of publication, but I am perfectly sure that the fact that the case has to come before the public and be reported is of itself a deterrent; and I think it is much better to have that. Of course one would like to see the reports in some cases—I think the majority of what I may call the higher class papers take a good deal of care about the matter—but one would no doubt like to see the reports somewhat curtailed. You sometimes see because parties happen to be particular parties——

41,650. The details you would like to see reduced?—Yes, I should like to see the details reduced. There is one other matter: I do not know whether it comes within the scope of the Commission, but I should like the opportunity of saying this. In my opinion the damages given in divorce cases, where there is a co-respondent, are entirely inadequate as a rule. If a man has his home broken up, and his wife, who may be his greatest treasure, taken away from him—deliberately taken away from him—very often by a friend who has been admitted to his own household, he does not get as much damages as he would get for a picture of the same wife by an eminent artist; and in my opinion the damages have been utterly inadequate, and I think it would be a salutary thing that the damages should be made heavier than they are in these cases.

41,651. The Court could hardly lay down a rule with regard to that. That is a jury matter?—Yes, but I think the Court can encourage the jury.

41,652. Do not you think it does so, when it thinks it is a bad case?—You see 5,000*l.* is looked upon as very large damages in a divorce case. Well, take the case of a wealthy man—I have one in my mind who has 20,000*l.* or 30,000*l.* a year—deliberately thinking he would like to have possession of another man's wife and taking her away. In my opinion, in that case the damages ought not to be 5,000*l.* but at least 100,000*l.* for breaking up the man's home.

41,653. But how would you get at that? Most of these cases, even in the special juries, are not men of very large means?—No, but the thing has gone in a kind of line.

41,654. Would you suggest that that should be a matter left to the judge, who would have all the facts of income and everything before him?—Well, I do not think the judges are ever liberal in the question of damages. I think judges are inclined to be more parsimonious even than juries.

41,655. Then I do not see how you can get at it?—I only want to put my point. It would be a great deterrent. It is absurd. A man's wife's picture is painted by Sargent, for instance, might be worth a thousand pounds, and if somebody rammed a sword through it, or tore it, that might be the amount of the damages; but you would not get as much for the loss of your wife altogether perhaps.

41,656. There is another view, you know, taken—on the contrary—that it is a shocking thing a man should ask for damages at all?—Well, I do not care what becomes of the damages. You may do what you like with them; you may frame your law in any way you like.

41,657. Would it meet your view that the judge should have power to make orders with regard to the property of the co-respondent like he has with regard to the husband's property, to provide for the wife and children and possibly even for the husband. Not in the nature of damages——?—To be brought into court and settled as the Court should provide.

41,658. You know how we deal with settlements now?—Yes, I am going to say a word about that in a moment.

41,659. Would it meet your view that the judge should make orders in that way?—Yes, that would meet my view. I do not mind really what is done with the damages; but it always seemed to me that in certain cases (of course there are different circumstances in every case, but I am talking of really bad cases) the damages are quite inadequate.

41,660. Is there anything more you want to say?—Well, I want to say this: that I think, where a wife divorces her husband, the rule of the Court is to give to the wife, by varying settlements or giving alimony, an entirely inadequate sum. If the wife is a blameless wife and has been a good mother to her children and has done nothing, I cannot see why the husband should be left in possession of the greater part of the income, and she should be sent to a lodging and have all the worst of it, while the husband has all the property.

41,661. You do not think the Court exercises the power sufficiently in favour of the petitioner?—Yes, that is so.

41,662. And leaves to the husband too much?—Yes.

Adjourned for a short time.

41,663. (*Chairman.*) May I just ask you two questions before you proceed. What view does your experience lead you to take with regard to the marriage of the two guilty persons?—I myself, as the tenour of my evidence is to do everything that is possible as a deterrent, should certainly think it would greatly minimise the cases if the guilty party were not allowed to marry again, and I should be very strongly in favour of the alteration of the law in that respect.

41,664. Do you mean that that present power to re-marry may be used as an inducement to go wrong in the first instance?—I have no doubt about it.

41,665. With the expectation of righting it?—I have no doubt about it.

41,666. You have seen enough——?—I have seen enough of it. I believe in many cases—and I think they worked for it—they themselves very often obtrude the immorality on the other party so as to make it almost necessary to have a divorce; because there is a sort of so-called chivalry that it should be put right after.

41,667. And the prevention of re-marriage would put a stop to that?—Yes.

41,668. The other point is that for these causes which have been under our consideration—or at any rate for some of them—at present there is a right to obtain a decree of judicial separation which we are told in many cases produces immorality afterwards. What view do you express about retaining that right?—Do you mean, my Lord, in a case where the man, for instance, has committed adultery?

41,669. Yes?—Well, I should be very loth to alter that. I think myself that a state of facts may arise where the adultery of a man may amount to cruelty. For instance, it is not an uncommon case which is,

I think, to be distinguished from what I might call a momentary aberration, where a man is flaunting his immorality in the face of his wife and bringing another woman about, which is the grossest insult, and must have an effect upon her health and everything else. I think that ought to come within the category of cruelty.

41,670. There are two questions there. Would you be in favour of placing men and women on the same footing?—No, I should not. I do not believe it is the same thing.

41,671. Secondly, would you be in favour of retaining a right to obtain a decree of judicial separation simply, in cases where it is obvious that the life of the two people was definitely separated; or would you allow a decree of divorce?—I would not allow a decree of divorce. I would maintain the other view.

41,672. It is said, as to that, that it only leads to disaster?—I think it probably does in some cases, but I weigh the whole thing, and I think the balance is in favour of not adding greater facilities.

41,673. (*Judge Tindal Atkinson.*) There are one or two questions I should like to ask you. I suppose, if you could have opposed the Act of 1857, you would have done so?—I would.

41,674. With regard to facilities for divorce, may it not be rather injurious to the State that you should have compulsory condonation of adultery. You see, if you grant no facilities for divorce, it is a compulsory condonation of adultery really?—Well, you mean that the parties are bound to live on together afterwards?

41,675. Yes?—Well, even that I think is better than having the facilities.

41,676. Of course, as regards the parties, you fully admit the injustice of the situation?—Oh, I admit the injustice in many cases, and I think you can get extremely hard and extremely difficult cases; but I look at it as a whole as to which is the best, the one or the other—to make it a common practice or not.

41,677. We have had very strong evidence that in large cities this want of facilities leads to a number of irregular unions, and that a great number of people are living together unmarried in consequence of not being able to get a divorce?—I am not at all sure you would have as large a minimising of that state of the facts even if you had the facilities. In many cases when they go and live together, even if there was a divorce, I do not believe they would marry — the working-classes. I believe they do it openly.

41,678. I suppose, in your opinion, it would be better that they should be married than living in that state?—Oh, of course.

41,679. Then you think there would be some danger of collusion if facilities were granted for divorce?—If the facilities were extended all over the country you mean?

41,680. Yes?—I think there would be great danger of collusion.

41,681. Earl Desart, I think he was the King's Proctor, gave evidence here that, though collusion could be suspected in a good many cases, "our suspicions "may be ill-founded. There is, no doubt, a certain "proportion of cases in which collusion is suspected. "(*Q*) Would one or two cases suggest such collusion? "(*A*) That is about it. I think it works out hardly "more than two. There might be three one year and "one in another"?—Yes, detected collusion is very small; but that there is a great deal of collusion I have no doubt.

41,682. If the High Court judges could not detect it, the others could not?—No, you would have to have a King's Proctor in every place where you had a divorce court.

41,683. No, he said also the King's Proctor could deal with the local courts——?—That would be by having an agent, which would be the same thing.

41,684. A little more expensive, that is all?—Yes.

41,685. (*Lord Guthrie.*) Sir Edward, have you any notion of what the total cost of an unopposed Act of Parliament in an Irish case is?—Very roughly, 500*l.*—I do not think it would come to more than that.

41,686. Including the two parliamentary investigations?—If absolutely unopposed that would be the outside.

41,687. But it would cost that?—I think it would cost about that.

41,688. Do you know whether, prior to the date you told us about—say, prior to 1857—there were any Acts of Parliament got in the British Parliament from Ireland?—Not that I am aware of. I think the old English procedure always acted in Ireland.

41,689. But there were Acts of Parliament got before 1857. Do you know whether all those related to Irish people?—That I cannot tell you. I do not know of any; I do not remember any special Act.

41,690. In Ireland do I understand there is no procedure before the magistrate for separation?—No.

41,691. There is only a method for judicial separation?—That is all.

41,692. Did you give us the total number or only the number of judicial separations got with the view of going on to divorce?—No, I gave you the total number and you see there is a great difference between the number of petitions filed, although they are small, and the number of petitions adjudicated upon; and I am told in a good many of these the parties arranged the suit together; and in others no doubt they may merely execute separation deeds.

41,693. Apparently, Sir Edward, it looks as if those that come to a decision were really in reference to further procedure, because, for instance, in 1908 there are 29 applications, six judgments, and then four House of Lords Acts?—29 petitions; six judgments and one House of Lords Act.

41,694. Then I am wrong. Well, take 1907. 25 applications, is it not?—25 applications, six granted by the Irish Courts and four go to the House of Lords.

41,695. Apparently therefore, except in connection with ultimate divorce proceedings, there is almost no judicial separation?—There is very little. I think the figures show that.

41,696. You suggest very interestingly, Sir Edward, that the Irish experience with regard to divorce had an important bearing on England, and showed that it was not necessary in England?—That it would not be necessary if the people got accustomed to know that they had not the facilities.

41,697. Apparently that would go even further, would it not, and a separation in Ireland—if you can argue from one country to the other—would not be necessary either?—I think the difficulty of drawing conclusions about separations is that it may be where you know—taking a country like Ireland—you cannot ultimately get a divorce without a Bill, that, instead of filing petitions, a good many people may agree by deeds to separate. That may account somewhat for the small number and therefore it is very hard to draw conclusions as one does not know of course what has happened out of court without filing any proceedings at all.

41,698. Suppose it is a fact that the Roman Catholics in England freely avail themselves of separation, does not that seem to show that there must be some difference in the conditions between the two countries?—Well, you see I have not got the data to know what separations take place by agreement—outside the court. I do not think myself there are very many in Ireland, and it may be that the Catholic Church in Ireland has more influence in preserving people from separating at all. Of course one knows that the Church sets itself very greatly against that.

41,699. But in your view, you would be opposed to anything that would cause the married persons not to live together?—I would, yes. I would give as little State countenance to that as possible and I would put the people as far as possible into the frame of mind from their earliest childhood: that when you marry it is your duty and obligation—not merely as a question of religion but as a question of citizenship—to make up your mind that you have to hit it off together, to use a common expression.

41,700. You see, we have had no evidence, Sir Edward, from anybody who differed from that. Everybody agrees with every word you have said, but then, if it be the fact that we have, laid before us, evidence showing that there are a large number of cases where no self-

respecting innocent person could live with the guilty spouse either because such offences have been committed that further union is morally impossible, or because physically the one spouse has taken himself or herself permanently away, would not a good deal depend on the number of such cases that we think have been proved to exist?—Well, of course, it must always be a question of degree; but, for my own part, I should have to see a very overwhelming case before I thought the general benefit to society of the State steadfastly settling itself against any such separation was outweighed.

41,701. In short, we should have to consider three things, should we not; first, the number of cases of what you have called hardship?—Yes.

41,702. Secondly, the bad effect of divorce?—Yes.

41,703. And, thirdly, the bad effects, if any, of no divorce?—Yes, you will have to weigh those in the balance, and in my opinion, as far as it is worth anything, I think the balance is in favour of leaving the cases of hardship rather than making divorce common.

41,704. But it is a question of balance?—I quite agree. It must be a question to a large extent of degree.

41,705. Suppose it was thought that your view—which one quite understands—against divorce altogether is not practicable, and that the 1857 Act must be continued, do not you think in that case it is reasonable that there should be some facilities, that the poor should be put on an equal footing with the rich or the well-to-do?—It greatly depends on what the facilities are going to be, but I should think proceedings *in forma pauperis* or something like that—even, if necessary, supplemented by State aid—would be far preferable to opening up a large number of courts with jurisdiction. Of course we know the State has passed a Poor Prisoners' Act, so as to put a prisoner in a position of being defended; therefore the principle would not be a very novel one, if the case was so overwhelming that it was thought that there should be these facilities.

41,706. Supposing they had in England what we have in Scotland, with a counsel and agent appointed who act for nothing, and there are no reporter or court fees, and that no case *in forma pauperis* can be prosecuted which has not passed an independent body of legal reporters, would you see any objection to that?—Not if it was brought up into the Probate and Matrimonial Division.

41,707. (*Mr. Burt.*) There is just one point, Sir Edward, on which I should like to put a question to you. First, I should like to know if I quite understand your general position. I take it you are opposed not only to the extension of facilities for divorce, but absolutely to divorce?—Well, I do not say I am absolutely opposed to divorce, but I should certainly not increase the facilities beyond what they are at present if I had the doing of it.

41,708. Then a question I want to put to you is: assuming divorce to be permissible, would you place the sexes on terms of equality?—No, I would not. If you mean would I abolish the law which necessitates something in addition to adultery in the case of a man—either desertion as it stands at present, or cruelty—I would not.

41,709. That is exactly what I mean. You would not place the unfaithful husband on the same footing as the unfaithful wife?—No, because I do not think it is the same thing. There are many reasons if one were to go into all the reasons. In the first place one must look at facts as they actually exist, and no doubt by reason of the results of immorality the whole thing has become quite different. Everybody knows a great number of men—I will not say the majority of men—before they are married have been accustomed, at all events at times, to have relations with women. Such a thing cannot arise in the case of women, and therefore I think one naturally gets to look upon it in a somewhat different way—by reason of the difference in the results which happen in the one case and the other. I am not defending that as a matter of morality, but it is an existing fact. Then, in addition to that, the serious nature of a woman committing adultery and the probability of passing off children which are not the children of the husband at all, seems to me to make a very vital difference. And, thirdly, I believe—though of course it is only a matter of opinion—that men who have committed these matrimonial offences from time to time (I do not mean habitually immoral men, but who have done so from time to time) do not get degraded in the same way that a woman does. If a woman gives herself away, whether she is married or unmarried, I believe her own moral sense in every way becomes far more degraded than it does with a man. I hope nothing I am saying will be taken as any justification on my part for the existence of this sort of thing. I only put it as the actual existing differences which I think arise out of the physical condition of woman as compared with man, and the results that follow.

41,710. My question had reference to what took place after marriage. That was the first point. Do you think it would tend to raise the standard of male morality——?—I do not think it would in the least. Might I also say this, that I am very doubtful whether it would be to the advantage of women that they should be able to divorce a man merely for an act of adultery—though that may sound very strong. But it is for this reason that I believe, if that were possible, men who wanted to get the marriage contract annulled and get a divorce might very often commit these crimes and make it almost essential for the wife to divorce them, But they will not commit cruelty. I have had over and over again in my practice men come to say: "I am quite willing to come into court and "admit I have committed adultery; but I will not "have it said that I committed cruelty—that I was "cruel to a woman." I have over and over and over again heard people say that, and I believe myself if the law were altered in that respect, and a man took it into his head to say: "I would like my wife to get rid of me," that he would bring it about in such a way that the wife would have to divorce him for adultery. But I believe the same man would cut his right hand off before he would strike or do anything cruel to a woman or desert a woman or do those things which are looked upon as unmanly on the part of a man.

41,711. With regard to family life and confusion that an adulterous woman brings into it. Would not that apply also in some degree to the adulterous husband?—No, I do not think so. In the case of the adulterous husband the children would not be acknowledged in the eye of the law. In the case of the adulterous wife it would be impossible to know. If the husband and wife are living together and she is committing adultery, the child is presumed to be the husband's. Although it may not be, the law presumes so.

41,712. (*Mr. Spender.*) Might I ask one or two questions about the statistics in Irish cases which you gave us, just to clear up what Lord Guthrie asked you. 29 petitions, I think you said, in one year and 6 decrees. Does that mean that 23 applications were unsuccessful. I did not quite follow that?—No, in that particular year there were no unsuccessful cases, but these are petitions that are filed in the court. Some of them may come to a hearing and some may not. Some of them may never be proceeded with; some of them may be settled by the parties agreeing to a deed outside the court, and then they would never be heard of in court.

41,713. Then it is the normal proportion in Ireland, that of petitions filed only about a fifth go on to trial?—About that.

41,714. Can you say how many of those that come on for trial succeed?—I gave the figures in each case. 1908 was the one you asked me about, I think; the whole six that year that were brought to trial succeeded. Very often, I may say, after a petition is filed, friends may intervene and the clergy may intervene (which is not unlikely in Ireland), and the parties may be brought together again, and then the petition would not go on.

41,715. Then one point I am ignorant about. Are there any considerable number of Irish cases in which the parties become domiciled in England or Scotland and pursue their suit here or in Scotland?—I think there are a few cases. There are certainly some in

which the parties come specially and become domiciled in England for the purpose of getting a divorce so as to do it without going to the House of Lords at all. But, I think, you may take it that that is a most negligible quantity. The courts are now very particular in taking care of that—that the domicile is really an English domicile.

41,716. (*Chairman.*) I introduced a rule that everybody filing a petition must swear that he has an English domicile?—Yes, there were one or two cases where very disastrous results happened, where the domicile was Irish, and they came here and went through without being noticed. I know of a case where, after eighteen years, counsel raised the question on resettlement whether the other marriage was ever legally annulled, and there was a large grown-up family in the meantime.

(*Chairman.*) The only case I knew of was where a judge, not of the Divorce Division, took the work for a certain time.

(*Witness.*) I think though, with regard to what Mr. Spender asks me, there are a very few cases where people come over like that.

41,717. (*Mr. Spender.*) There are a certain number of Irish people who have domiciles in both countries?—You cannot have domiciles in both countries.

71,718. Well, who have residences and can acquire it?—They can acquire one by coming here, but they have to swear that they have come to live. There was a case the other day, I know, where there was a domicile acquired for the purpose of divorce.

41,719. Then I think you said, if facilities were granted, the cases would be more numerous; that is your opinion?—Yes.

41,720. Now, if one might take such a cause as desertion—do you mean that desertion will be more common, or that the actions for divorce on the ground of desertion will be more numerous?—Well, you do not get divorce for mere desertion.

41,721. I am supposing that we had the Scotch law in this country. Would you suggest that desertion would become more common?—I do indeed. I am perfectly certain if you had the mere desertion as a ground for divorce you would have them very often. I should think they would be greatly increased.

41,722. Do you mean the actual number of suits in which people applied for divorce would be increased, or that the actual practice of desertion would be increased?—I believe it would increase desertion.

41,723. Is that the experience in Scotland?—I do not know anything about Scotland, but I know people come and consult one as to how they are to get rid of their wives, and wives as to how they are to get away from their husbands; and it would be very easy.

41,724. Even if you take all the precautions they do in Scotland?—I do not know anything about the Scotch procedure.

41,725. The figures do not show that?—Well, we have a very large population here in England.

41,726. Who might be more prone to do that?—Yes.

41,727. (*Lady Frances Balfour.*) You said you thought that Ireland was entirely satisfied with the condition of its law, but I think I have come across cases, I happen to have an Irish friend who had to get a divorce through the House of Lords—a most scandalous case—and it cost her a thousand pounds? Very likely.

41,728. Do you think that is satisfactory?—No, but I do not think you can legislate for one person.

41,729. But we may presume, wonderful as Ireland is, there are more than one person who would take advantage of the law?—I daresay there are, but I talk of Ireland as a whole.

41,730. Do you think it is wrong that divorce should be granted for adultery?—You mean adultery by a man?

41,731. Or by a woman?—No, I do not. I do not see anything wrong.

41,732. Do you think it is just that a man or a woman should get release from marriage because of an act of adultery?—I think certainly, as the law stands at present, a woman should be divorced for an act of adultery.

41,733. That is an act of justice?—Yes.

41,734. Then do you think it is just that the law in Ireland should be such that you cannot get it under 1,000*l.*?—Because the general community there do not require it.

41,735. They do not require it because they cannot get it?—They do not ask for it.

41,736. You do not ask for the moon. If you cannot get a thing you do not ask for it?—I do not know; I think that is the time I do.

41,737. If it is a piece of justice, surely it should be within reasonable reach of those who want it?—But very often in legislating for individual acts of justice you may cause great pain and inconvenience and great public detriment; and, in my opinion, divorce is exactly one of those cases; although I have admitted all through my evidence there may be cases where it would be what you call an individual act of justice to individuals, still I believe the detriment to the community in making divorce cheap and common would outweigh it.

41,738. I do not call it individual justice. I said if it was a just law, ought it not to be within reach of all individuals?—I do not think so for the reasons I have given.

41,739. You prefer it should remain an act of injustice—that you cannot get justice?—Yes, if you please to put it in that way.

41,740. Yes, I do please to?—If you wish to legislate, I think the benefit to the community of making them think and reflect how sacred a thing the marriage tie is, ought to be considered—educating their minds to the belief that that is what they must preserve and see no loophole out of. I think that far outweighs any advantage that individuals may have in hard cases for having a lax law.

41,741. What part of the marriage tie do you think is sacred—the contract or the service?—Oh, I leave religion out altogether.

41,742. You used the word "sacred"?—Yes, well I do not take that from the religious view. I mean the greatest and most serious act that a man and woman can do in their whole lives and the obligations they take—not from a religious point of view, but the obligations that arise; I think it is most sacred.

41,743. I do not know what meaning you attach to sacred?—The meaning I have told you.

41,744. A serious act is a sacred act?—Yes.

41,745. Then, when we come to the question of cruelty, we have had some very interesting views on that. Do not you think it is possible, if you should have equal justice between men and women, that the man would more often think it more cruel to be unfaithful to his wife—which you do not seem to think very much of?—No; I do not think you should say that, Lady Frances. I do not think that is a justifiable observation.

41,746. Well then I withdraw it if you say so. From my point of view and most points of view it is an act of cruelty to go about with various women?—I agree. I said so.

41,747. Then when these men come and say they do not mind being adulterous, but they do mind being cruel to a woman, what do you say?—You see I am a lawyer, fortunately or unfortunately, and when they talk of cruelty, they talk of legal cruelty. The other is a matter that I think is cruel, but not legal cruelty.

41,748. It is morally cruel?—It is not my business to lecture them about these things. I tell them what is the law.

41,749. But you lecture them in the sense of telling them to go home and think about these things?—Yes. If I am consulted as to cruelty, I cannot tell them that a thing is legal cruelty that is not.

41,750. I again ask the question, if it was made equal as between men and women, do not you think you would be able to show that it was cruelty?—Well, I said before, that if a man flagrantly goes about and it becomes part of his life committing acts of immorality, and in that way causing his wife pain and annoyance, I say I would bring that within the defini-

tion of legal cruelty. I do not know whether you were here when I said it.

41,751. No, I am sorry I was late. You would bring that within it?—Yes, but I should make it as cruelty.

41,752. You would not give divorce for adultery alone?—I would in that case, but not a mere act of adultery——

41,753. What has been called here "accidental" adultery?—Yes, well call it accidental adultery. As I said before, I think if a man takes a woman about and flaunts her in the face of his wife and allows his wife to suffer in that kind of way—I think that is just as much cruelty as if you went and hit your wife a slap in the face.

41,754. And yet you say these men draw a distinction between that and striking their wives; that they regard that as cruelty and the other not?—I say the law draws that distinction.

48,755. If the law were made equal, do not you think it would raise the standard?—To that extent I would account that cruelty—that if a man is leading a persistent life of immorality or flaunting a woman in the face of his wife, I would count that cruelty and give a divorce. But what you call "accidental" adultery—which has happened over and over again, and the man and woman have been on good terms after—I would not bring that in for the reasons I have given.

41,756. Even with all the dangers that it would bring to the wife?—No.

41,757. You would not alter it in that respect?—No, because I do not think it would deter him. I think those accidental cases stand by themselves.

41,758. Would not it be very difficult to make out how much or how little would amount to that cruelty?—I do not think we could define it. We are not able to define how much, in a general life of interference, constitutes cruelty. It may be often a long series of small and petty acts that amount to cruelty, which taken by themselves would be no cruelty at all; and the law does not find any difficulty in that.

41,759. Probably, if the law were altered and made equal, you would not very much object yourself?—Personally?

41,760. Yes?—Except that I have a dislike for increasing divorce. But with regard to myself, as I have no anticipation of being divorced on any ground, it would not affect me personally.

41,761. No, but I think it would affect the lives of a great many women?—I think they will find they are wrong for the reasons I have given.

(*Lord Guthrie.*) My Lord, the witness used the word "Bill" throughout. I suppose they all passed into Acts.

(*Chairman.*) Yes, I just want to ask two or three questions.

(*Judge Tindal Atkinson.*) My Lord, I do not know if I may put one question.

(*Chairman.*) If there is anything new, by all means.

41,762. (*Judge Tindal Atkinson.*) Do you think that the fear of going into the Divorce Court acts as a deterrent against immorality?—I am very doubtful whether it does. It may with some women.

41,763–4. (*Chairman.*) May I just clear up one or two points. Lord Guthrie wishes to know when you refer to Bills whether you meant the Acts which had resulted from those Bills?—Yes, I did.

41,765. Then there are just these questions to ask you. Do you think that the views which you have very clearly expressed take adequate consideration of the interests of the children? Let me put what is passing through my mind, for instance—cases of gross cruelty, cases of habitual drunkenness, cases where the husband has deserted and gone to another country, and the woman has no means of bringing up her children. Do you think that the absolute retention of the tie in such cases as that takes adequate consideration of the interests of the children?—I have not very much considered that question, but I am very doubtful whether in those cases—I am talking now of the working classes—the thing can be a happy thing for the children at all.

41,766. We are told—we have had such a lot of evidence about it, and there is still more to come—that the effect of a woman being unable to sever the tie between her husband and herself is so disastrous on the children who are affected by remaining, that the children's interest must be considered and largely considered, in any views we have to express about it?—Do you mean that the woman marrying again would get a husband who would be willing to spend his wages on the other children?

41,767. Yes, it has been said by an enormous number of witnesses?—Well, I do not know enough about it to say that.

41,768. Would you differ from the view that that consideration ought to be borne in mind in dealing with these questions?—Yes, but I should like to satisfy myself as to how far and to what extent the children of a former marriage were likely to be benefited by any such remarriage.

41,769. That is a matter to judge of on other materials?—Yes.

41,770. The other point is this. A question was put to you by Mr. Spender with regard to desertion, if made a ground in England, probably increasing the inclination to people to desert?—Yes.

41,771. Do you think there would be a great check possible upon that if the desertion involved the court's dealing with the property of the husband as if he were dead, or ordering money to be paid as long as his wife lived?—No doubt, in a case where there was property, that would be so.

41,772. And where there was none, if there were an order made to pay?—Well, those orders to pay, where there is no property, as your Lordship knows, are very difficult to enforce.

41,773. Well, they shut a man up in prison?—I know they do, and there is always a great agitation going on to stop it.

41,774. Do you think that that would have to be taken into consideration in thinking whether, if desertion were added as a ground, there might not be strong temptation not to desert if the effects of orders of that kind were severely pressing upon the deserter?—Well, in my opinion, if you make desertion a ground of divorce as apart from separation, I think myself it will be a disastrous revolution in the whole matter; but you see you could bring about all that without granting divorce—all that you are saying—by saying that in a case where a man deserts his wife, upon a petition to the court, either for separation or anything of that kind, you would have full power to deal with his property. In point of fact you have now.

41,775. I know, but there is this further difficulty about that particular subject, that we have had a lot of evidence that these deserters go to countries like the United States and Canada and the other Colonies and set up new homes of their own. Now the sanctity of marriage is absolutely gone in a case of that kind, and the unfortunate woman left behind remains tied for the rest of her life, while the man is living what I suppose he thinks is a happy existence in another country. I only want to know whether you think any great harm is done, or would be done by legislating to enable a woman in that case to be free?—If you enable it in that case, you would in every case. You would have to enact that if I walk away to-morrow because I am tired of my wife, that then a divorce can follow.

41,776. The reason I am putting it a little more fully than necessary perhaps is that that happens every day now under the present dispensation. We have had proof from almost every place in England of that happening?—Yes, but then you have tied the man. Suppose a man falls in love as they call it with a woman, and he says: Now I can desert my wife, and that is a ground; the other woman he is in love with may be a perfectly proper woman in the sense that she would not be guilty of immorality as long as there is no divorce. Then he can go and make a ground of divorce with a view to marrying this woman by a mere desertion. That would be calamitous.

41,777. He does it now?—No, he does not.

41,778. Yes?—He does not make it a ground of divorce. I do not say there are not cases where it

might not be very well, but I take the general view. If you can limit it to certain cases, it might be all right; but you open up a floodgate of new divorces and new opportunity of getting divorce.

41,779. But we are told that that ground in Scotland works perfectly well?—Well, I do not know anything about that.

41,780. And we have had the statistics to show it?—Yes, well I do not know anything about that.

41,781. And that it has been in operation for 300 years?—My belief is it would work very badly in England in the class of people I have to do with.

47,782. Then following out one other matter that Lady Frances Balfour put to you as to this position between men and women. At present, as I understand it, a woman can for any single act—accidental or otherwise—obtain a decree of judicial separation?—Yes.

41,783. Does not she by that punish the man more than if she gets a divorce from him?—Very likely. Yes, I think she does.

41,784. Then why should not it be equally available for a decree of divorce?—Well, because I am opposed to allowing a divorce in that kind of case.

(*Chairman.*) I think those are all the matters. Thank you very much for coming, Sir Edward. It must have been inconvenient, and we shall have to weigh your evidence with the greatest care.

Mr. ALFRED JAMES SHEPHEARD called and examined.

41,785. (*Lord Guthrie.*) Mr. Shepheard, you have been in practice as a solicitor for upwards of 40 years in London?—Yes.

41,786. And you have had a considerable connection amongst Nonconformists?—Yes.

41,787. You are secretary of the Protestant Dissenting Deputies, a body which has existed for over 170 years, and is made up of lay representatives from Nonconformists in London?—Yes.

41,788. In London only?—Yes.

41,789. And you have been a member of the Congregational Union for many years, and its governing committee and council?—Yes.

41,790. And at present you are Chairman of the General Purposes Committee?—Yes.

41,791. In that way you are in a position to know the views of Nonconformists on the questions we are considering in this Commission?—I think so, particularly amongst the Congregational body.

41,792. I think a communication was sent by the Secretary of this Commission to the Congregational Union asking them if they desired to have their views expressed, and you are here in answer to that communication?—I am here with my colleague the Rev. Mr. Jones who is coming to-morrow. I very much regret he is not here first, because when he was appointed he was the Chairman of the Union, and I am only chairman of a Committee. Therefore I should have liked him to be the first witness.

41,793. I understand in your proof you refer to a resolution which you produce. What body was that resolution passed by?—It was passed by the Council of the Union.

41,794. That represents the Congregational body only?—The Congregational body only.

41,795. Neither Presbyterian, Baptist, nor Methodist?—No, my Lord.

41,796. Have you a copy of the resolution?—Yes.

41,797. When were these resolutions passed?—About March this year.

41,798. At a meeting the Congregational Union as a whole?—No, a meeting of the Council of the Union.

41,799. How many does that consist of?—200 to 300. It may be taken fairly to represent the view of the Union just as much as if the Assembly had spoken.

41,800. Coming from different parts of England and Wales, Scotland and Ireland?—Not Scotland and Ireland, only England and Wales.

41,801. Is it composed partly of ministers and partly of laymen?—Yes, and of men and women.

41,802. What would be the proportion of ministers to laymen and laywomen?—I could not give that right off.

41,803. Roughly?—I should not like to give it; I have never looked at it.

41,804. Would the majority be laymen and lay women or ministers?—I should think the members attending would be a majority of ministers.

41,805. Will you read that resolution?—I may say it was passed with the express view of putting before this Commission.

41,806. Unanimous?—No, but by a large majority.

41,807. Can you give the figures?—No. I can get them.

"(1) That no extension of divorce be made beyond the one ground of unfaithfulness.

"(2) That no one should be debarred, owing to excessive costs, from obtaining a Divorce Order of the Court, and that in any necessary revision of charges the case of the very poor should have special consideration.

"(3) That the only report of Divorce Court proceedings to be allowed, be one furnished to the press by an authorised officer of the Court; such report to make clear on whom the guilt rests.

"(4) That the moral guilt being the same in the case of the men as in that of the women, husbands and wives in respect of marital infidelity to be placed on a legal equality."

41,808. May I ask whether there was any difference of opinion except with regard to the first of these resolutions?—Yes, I was not there—I should like to say that.

41,809. Was Mr. Jones there?—Mr. Jones was there. Perhaps you would not mind postponing that question till he comes; but I believe there was a difference of opinion on number four as well as number one.

41,810. As far as I understand, the Council were unanimous with regard to the poor having the same remedies as the rich; and with regard to the publication question?—I think so, yes, my Lord.

41,811. Would you tell us to what extent you yourself have had any experience amongst the classes among whom divorce proceedings at present originate?—My personal experience is very limited. It is a curious fact, but I have been casting my memory back as far as I can with a view to appearing here to-day, and I do not know a dozen cases of divorce amongst Congregationalists that have come to my knowledge—either professionally or as a member of the body. I do not say there have not been a larger number than that, but I could not put them down or remember them.

41,812. Have you had in your practice any case of divorce between Nonconformists?—I have only had a very few cases in my practice. One was a case that went to the House of Lords—a divorce with regard to people who had been Nonconformists but were not at that time.

41,813. Have you known cases of that kind where persons who have once been Nonconformists, have had recourse to the Divorce Court after having joined other bodies?—No, I should not like to give an answer to that; I do not remember.

41,814. Have you yourself worked amongst the poor apart from Congregational interests?—I have had a great deal to do with the poor, but I have not worked myself as a poor man's lawyer; but I have in my firm a son who is a poor man's lawyer in London, and a nephew who is another poor man's lawyer at another Settlement.

41,815. Is your son at Claremont Mission, Islington, and your nephew at Whitefield's, Tottenham Court Road?—Yes.

41,816. What is their experience with regard to divorce as you understand?—They tell me when people come to consult them—as they very often do—that as soon as they hear what the expense of a divorce is, they give it up almost invariably; and then I am sorry to say, they go on to add, the result is that they very

often live in illicit intercourse, either the man with another woman, or the woman with another man.

41,817. Are those persons who allege that they have grounds for divorce because of adultery?—Yes.

41,818. You have no knowledge as to whether and to what extent there are other persons who desire divorce on other grounds, and are told that by the law of England there is no other ground available for them except adultery?—I only have general knowledge that when a woman is deserted by her husband she naturally wants to know if that is not enough for divorce, but I cannot speak of specific instances.

41,819. Have you any opinion as to whether the cases are many or few where, apart from anything else, divorce would benefit the innocent spouse and the innocent children?—No, there again I could not give you specific instances.

41,820. Or whether the cases are many or few?—No.

41,821. Now to take your resolution, with regard to the first matter, that no extension of divorce be made beyond the one ground of unfaithfulness. Is that based on a single ground, namely, either scriptural or public policy; or on a combination of grounds?—I should think, my Lord, it arises originally from the scriptural ground or the idea drawn from scripture that that is the only ground that ought to be allowed for divorce. But I do not think that is the only ground on which it is held. I think it is held on general State grounds that the facilities for divorce should not be extended too far.

41,822. With regard to the scriptural ground, is there any difference of opinion amongst the Congregationalists on whether Christ's command was absolute, without exception, or whether it allows one exception, or whether there may be more than one exception?—Yes, I should think there are all those views held amongst the Congregationalists.

41,823. Now on the question of public policy, could you just state how that strikes those whom you represent?—Those who feel with myself would feel that we should wish to keep the principle of the marriage tie as not to be violated on any account whatever. Acting on this principle, we say that divorce should only be allowed where it was felt that adultery had been committed, and that therefore there was no longer a marriage existing. I should put it in that way myself.

41,824. No marriage existing in fact?—Yes, it has been broken by one of the parties committing adultery. But on the State ground I should think I am representing the majority of my colleagues in the Congregational body in saying that we are exceedingly averse to extending divorce.

41,825. As far as you know, has the question been considered of whether in the case of desertion proved to be permanent, wilful—abandonment of the marital relation—there is not exactly the same ground as there is in the case of adultery; namely, that the marriage has terminated in fact and finally?—I do not think so, my Lord. In the one case the moral aspect comes in very strongly, and in that other case not so strongly. For myself I do not hold desertion is the same breach of the marriage state as adultery is, by any means.

41,826. Why not, Mr. Shepheard?—It may be sentimental partly, but the old view and the view that commends itself to me is that a man and wife are one flesh, and having become so, if any part of the body is used to unite with another, that is a breach of the marriage-ideal. But in desertion that does not come up—it is only that a man or a woman goes away.

41,827. One quite understands; they become one flesh, and if the man commits adultery, that has ceased to do?—Yes.

41,828. But apart from scripture, do you see any difference so far as failure in the one case to fulfil one of the conditions, namely fidelity, and failure in the other case to fulfil all the conditions?—Yes, I think in one case fidelity is the main condition of marriage, and adherence is a subsidiary condition—a very important one, but a subsidiary one. Therefore I do hold there is a difference between the two.

41,829. Does that express fully your views on that?—May I just say one thing. I notice lately you have been taking the case of lunatics. If I am asked to express my own view, I should say that a confirmed lunatic ceases to be a normal being; and on that ground I should be prepared to think divorce might be allowed.

41,830. Do you think that expresses the common view amongst the Congregationalists?—I do not think it has been thought of very much amongst the Congregationalists. I think the idea is a new one, and wants a lot of consideration amongst us. I am only expressing my own view.

41,831. How do you reconcile that with what you have previously said, that it is only where there is a moral fault leading to the idea of the "one flesh" coming to an end?—Well, I take this view, that the man or woman by becoming a confirmed lunatic is no longer a man or woman—not a human being. A confirmed lunatic is not an ordinary human being, and therefore should not have the rights of an ordinary human being or compel anybody to deal with him as if he were so.

41,832. Even though the fact was that it was a lunacy on one point?—Yes, I can see the point. I am thinking of a lunatic who is taken away from his family and separated in an asylum, and we are told he will never be in a state to come back again. It seems then a great hardship that the one left should be tied to that sort of person.

41,833. If, however, we are to go upon the consideration of hardship merely, I suppose you would extend your area so as to cover systematic cruelty, habitual drunkenness, long sentences of imprisonment?—Those are very difficult points, my Lord, to form an opinion upon. I grant that in those cases the hardship of not allowing divorce is exceedingly great. At the same time I have to balance the thought in my mind, and if you extend divorce in that way, are not you doing what I should consider an injury to the idea of the marriage tie in the view of society?

41,834. In general?—Yes.

41,835. Then with regard to the second point. You have spoken about the excessive costs, and the resolution quite tallies with the information you have had from these poor men's lawyers?—Yes.

41,336. With regard to the third point, how far do you propose to go? What is this report by the authorised officer of the court to include?—My idea would be that it includes simply the result; the fact that the divorce was brought; the names of the persons and the fact of the decree, and stating on whose fault the decree is granted.

41,837. Supposing the decree is not granted, would it not be fair that the judge's opinion, which may free the respondent entirely, should be published?—I think it would be.

41,838. Have you considered whether the Court should be open or shut in such cases?—I do not think you can shut a public court. I have a great idea that justice should be done in public, and I would not therefore shut it, but I should hope that every endeavour would be made to keep out those whose mere object in coming was curiosity. But I should not advocate the shutting of the Court.

41,839. Would it not be sufficient, in your view, if any persons interested in the case—relatives or others—were allowed in, and the mere outside public kept out?—You mean, including the press?

41,840. I will put it in this way. If the persons interested directly or indirectly only, and solicitors or barristers that chose to come in were admitted, would not that be sufficient publicity to satisfy your view?—I think it would be.

41,841. Then with regard to the last point. Perhaps Mr. Jones would know better if there was any substantial difference of opinion on the question of equality?—I do not think so. That view is held very fully amongst us.

41,842. And what is your own view?—My view is distinctly that. Of course I know what is said, that the results of the infidelity in the one case are very different from the other; that I have realised, and a lawyer can appreciate it; but that the moral guilt is

the same in the one case as the other, I hold most strongly.

41,843. And is it your view that the wife is the best judge of whether it would be in her own interests or the interests of the children to take proceedings or not, if there is adultery?—I do not quite see who else is to be the judge. It must be the wife, must it not?

41,844. But at the present moment, whatever the wife's view of the indignity is, she cannot sue unless there is something else conjoined with it?—Yes.

41,845. Do you think, if it is a question of indignity, that she is the best judge *prim̀ facie* of whether the indignity is sufficient or not?—Quite so.

41,846. And it is the fact, as known to you, that women in such matters are extraordinarily long-suffering?—Oh, undoubtedly; that is common knowledge, I should have thought.

41,847. With regard to adultery and cruelty and drink?—Yes.

41,848. What is the practice at the present moment, or is there any, amongst Congregational ministers if an innocent party has divorced a guilty spouse, and he comes there-after, asking a Congregational minister to marry him to some third party altogether. What does the minister do?—If the guilty one comes?

41,849. No, the innocent?—Oh, they would remarry him. I do not think you would find an exception.

41,850. What about the guilty?—I think they would in that case also.

41,851. Supposing the guilty person proposes to marry the paramour, in connection with whom he or she has been divorced, what then?—I think they would marry them.

41,852. On what view is that done?—I think they would accept the fact that the marriage tie had by law been loosened altogether, and that therefore the re-marriage was allowable; and also that it would be desirable that the guilty ones, if they desired, should live together as man and wife.

41,853. Now, it has been suggtsted to us that while in the interests of the guilty person that is clearly so, in the interests of general policy it is more desirable to prohibit such marriage because you would then take away a considerable temptation that leads to adultery in the expectation that it will be made all right by subsequent marriage. How does that strike you?—I appreciate the weight of that argument very much. It is a very strong argument indeed; but I have to take the fact that the former marriage has been dissolved, and that two guilty persons wish to live in a better state—in a state of marriage as man and wife—and I take the simple fact as I find it, that they wish to do it and therefore should be allowed to do it, and I should facilitate it.

41,854. And I suppose it is your view that it is in the interests of the State to prevent illegitimacy as much as possible?—Clearly.

41,855. And if that were not allowed, you would have them living together and having illegitimate children?—Yes.

(*Lord Guthrie.*) Thank you, Mr. Shepheard, we are much obliged to you for your evidence.

Mr. RONALD PERCY CLAYTON, called and examined.

41,856. (*Lord Guthrie.*) Would you kindly tell us what you are, Mr. Clayton?—I am solicitor to the Liverpool Society for the Prevention of Cruelty to Children and also a member of the committee of that society.

41,857. For how long have you been so?—Eight years.

41,858. You have forwarded a copy of the Report of the Liverpool Society for the Prevention of Cruelty to Children?—Yes.

41,859. That shows that you deal with a very large number of children who are in necessitous circumstances from a great many reasons unfortunately?—That is so.

41,860. And I see at page 9 there is an account of the society and then at page 26 there is a table showing the causes that bring the children unfortunately within your knowledge?—That is so.

41,861. Divided under cases of violence, cruel neglect, begging, vagrancy and exposure, and fourth, immorality?—That is so.

41,862. One or two questions on these figures. I notice with regard to the violence an extraordinary discrepancy in the number of cases. Take 1897, 312; then in 1909 only 97. How does that arise?—Those cases are the cases of what I may call active violence—actual brutal ill-treatment as distinguished from passive neglect. The class of those cases is distinctly on the decrease. We do not meet such violent cases of cruelty as we did in years past.

41,863. What do you trace the decrease to?—I trace it to a better state of life amongst the poorer classes of Liverpool, where the slum districts have been very largely wiped out. Secondly, to the operations of the society, and to the fact that the inspectors are getting very well known in the poorer districts, and the people are afraid of having these cases brought up by the society if they cruelly ill-treat their children. And, thirdly, I may say that these cases of brutal ill-treatment are generally the climax to a course of ill-treatment which is stopped in the earlier stages by the operations of the society.

41,864. It is not from your officers merely driving the people away to other places?—Oh, dear, no.

41,865. Because other societies operate elsewhere?—Yes, our society operates in Liverpool only. The National Society operates practically elsewhere.

41,866. Do you attribute anything to the diminished facilities for getting drink?—No doubt that has an effect. I think the amount of drinking in Liverpool is on the decrease.

41,867. Then in the cases of cruel neglect, you have an increase there. If you take the same year, 1897, you have 4,141, and in 1909, the same year for comparison, 10,754; how is that?—Increase in the supervision, a more systematic inspection of the town and the finding out of more cases. I do not think it is due to an actual increase in cases, but it is due to the detection of more cases.

41,868. Then begging, vagrancy and exposure. There is an extraordinary increase in 1909, when you had 227 cases as against 34 in 1907. What is that due to?—That is due to periodical attempts to put down begging in the streets. It is an almost impossible thing to put down, but every now and again an attempt is made to do it, which shows an increased number.

41,869. Then you cannot infer much from that?—No, I do not think anything can be inferred from that.

41,870. And then, last, immorality. One sees a diminution on the whole, because in 1897 you have 111, and then in 1909 you have 31. Can you deduce anything from that?—I think that is due to the fact that the police are stricter with regard to the immoral houses in Liverpool, and the amount of the immorality in connection with the immoral houses and the children there is not as large as it was.

41,871. Can you say, Mr. Clayton, to what extent those children so dealt with are deserted by their parents?—Comparatively few cases. The vast number of the cases are those of neglect in the way of not making sufficient provision for their food and clothing, and so on; and, with regard to the women, lack of cleanliness—allowing them to get into a verminous and dirty condition.

41,872. Have you a considerable number of women who come and tell you their husbands have deserted them?—The majority of our cases—in fact, I may say nearly two-thirds, I think—are on reports by one parent against the other. The society is very well known in Liverpool now, and is looked upon as a friend of the children in such a way that if the parents have any

cause of complaint one against the other which is acting deleteriously to the children, they come at once to the society and invoke its aid.

41,873. Then the remaining one-third consists of children, of widows, and of deserted wives?—Two-thirds would be the remainder. I should have said one-third in the other matter.

41,874. One-third would be one parent informing against the other?—Yes.

41,875. And what is the other two-thirds?—Any other complaint. They are all set out on page 30 of the Report.

41,876. Then does page 30 enable us to have any idea of the number of cases of desertion?—No, that would give no information on that point.

41,877. We cannot get that?—No, it would not be possible.

41,878. You see we have had to consider the bearing of desertion on divorce, and whether there are many cases where a man goes away to the Colonies?—Yes.

41,879. You cannot give us any information?—No, I am afraid I could not give you actual figures on that point.

41,880. Could you give us any views as to whether in the interests of the children there are cases where, if women, let us say, could get a divorce from their husbands, they would do so beneficially to their children?—No, I cannot think that it would materially benefit the children.

41,881. What would be the result, do you think, of enabling the poorer classes, where there is adultery, to get a divorce? Do you think they would avail themselves of it to any extent?—I think, with regard to the class with which we are dealing, it would be perfectly inoperative. Divorce could not possibly be made cheap enough to deal with their cases.

41,882. How would you define the classes you deal with; you would not call them the submerged tenth, would you?—No, I should call them——

41,883. A little above it or below it?—Well casual labourers of a migratory class, dock labourers and so on.

41,884. Well, that is very near the submerged tenth?—Yes, they are very near the border line.

41,885. You do not meet with skilled labourers?—We do not get much trouble in those cases.

41,886. Or labourers in regular employment?—Yes, a certain number of those.

41,887. But that is where there is drink, I suppose?—Yes, almost invariably drink.

41,888. Then with regard to the Children's Courts, to which you refer on page 17; are those courts shut to the public? On page 17 you refer to the Children's Acts, and to the provision that there should be separate police courts for trying children. Are those shut to the public?—Yes.

41,889. Except to persons interested?—Yes.

41,890. Are they shut to reporters?—They are shut to reporters.

41,891. And is that found to work well?—Yes, I think so. Perhaps I am not right about the reporters; I do uot think the reporters are there, but I am not sure.

41,892. (*Mr. Brierley.*) I think they are open to the press?—Yes, well I am not certain. I will go so far as to say I do not think I have ever seen a report of any case of the Children's Court in Liverpool.

41,893. (*Lord Guthrie.*) Does it ever come across your knowledge, Mr. Clayton, of efforts being made to reconcile the parents of these children to get them to live together again?—Perhaps if I may be allowed to explain exactly how we work these cases. The cases which are found by the inspectors not to be amenable to persuasion by them are in almost every case brought before the Visiting Committee of the society. The Visiting Committee sits every Wednesday at the society's shelter for children. The parents are warned to be present, and in most cases come. The inspector states the case against them, and they are entitled to answer.

41,894. Both parents?—The parent in fault particularly. Then an effort is made by the Committee to reconcile the parents, the main object being not to break up the home.

41,895. Is that often successful?—In a very large number of cases. In fact last year the number of cases brought before the Visiting Committee at the shelter was I think 528; of those 93 were ordered for prosecution, and those are the worst cases. The whole number of investigations would be largely in excess of those, because they would not be actually brought up by the inspector to the Committee, but of 528 only 93 were ordered for prosecution. The rest were cautioned, advised, and helped to get employment and sent back again, frequently the children cleaned and clothed and given back again in a condition in which it is hoped they can be kept nicely in future.

41,896. In your view, that was for the benefit of the children?—We attribute a very large part of our success to that personal investigation of each case by the Committee.

41,897. Then, in your opinion, is the desirability of keeping the family together sufficient even to counterbalance the drawbacks that may arise from occasional drunkenness and so on?—I think so.

41,898. Or even occasional cruelty?—Or even occasional cruelty. We see many cases where after warnings by the society—even drunkenness and cruelty—the home has ultimately become a happy one.

41,899. There is a case of that I see on pages 19 and 20, where apparently a very bad case had, through the agency of your society, been put right?—Yes.

41,900. Where the mother pawned everything she possessed?—Yes.

41,901. And do you think that more could be done in the way of trying to reconcile these people who are quarrelling, to the drawback of their families, than is done?—It is difficult to say if anything more could be done.

41,902. But wherever it is possible it should be done?—Yes.

41,903. Have you any experience of the difficulty, where there is an order made on the man to pay something for his wife and children, in recovering it?—Yes, many cases.

41,904. How does that arise with you?—Well, the experience of the society is that an order on a man merely for payment of money—a maintenance order—is very largely inoperative. The man does not pay—either refusing deliberately or because he cannot. Then a warrant is taken out for arrears, and rather than go to prison he goes back, frequently, to the wife and induces her to allow him to cohabit again—either voluntarily or forces his way in, and breaks the maintenance order.

41,905. Have you any suggestion to make as to any better method than is now possible?—In our society, in a number of cases where there has not been actually a maintenance order and separation by the Court, but where the facts would justify such a case, we get the guilty husband to pay the money to the society, and the society passes it on to the wife. I think we are acting like that in about 20 cases at present, and we have found that very effective, because the wife has not to go and ask the husband for the money, and they are kept quietly apart for a short time to think over their difficulties, and to realise that the faults were not all on one side. The wife has the opportunity of getting a nice clean home together again, and we find in perhaps half the cases they ultimately come back and live happily.

41,906. Do you get the money from the man?—We get the money from the man and pay it over to the woman on her signing a counterfoil.

41,907. You have no cases where you get the money direct from the employer?—No.

41,908. Would not that be practicable?—Not with the class of people we deal with, because the employment is of so casual a nature. One man may be employed by three or four different people each week; he may get one day's work here, and one day's work there.

41,909. So that if by the law it was possible for the order to be made, for payment to be made to the

woman, it would not come to much?—No, not in the class we deal with.

41,910. Do you find both women with their husbands and husbands with their wives stand an extraordinary amount?—Yes, an extraordinary amount.

41,911. Is it your experience that they are ready for trivial causes to rush for separations, or not?—No, far from it.

41,912. You have not found in your experience cases of that kind the other way?—No, it is generally a far-reaching case before they want to break up the home.

41,913. After a course of ill-treatment?—That is so.

41,914. Do you find that these women are largely moved, or at all moved, by the interests of their children even when they are in conflict with their own personal interest?—Oh, I think so, unless they are the actual persons in default.

41,915. I mean the innocent women?—Oh, certainly, I think, certainly so.

41,916. Is not that generally the primary interest in the case of the innocent woman?—I think so.

41,917. (*Mr. Burt.*) I notice that in all these cases, covering about six or seven pages, drunkenness has been the cause of the neglect of the family?—I should think in certainly 90 per cent. of the cases drunkenness is the primary cause.

41,918. I want to know whether these were specially selected. They represent a large percentage of cases of neglect and cruelty?—Yes, in 90 per cent. of all the cases the primary cause of neglect and cruelty is drink.

41,919. In one case it is mentioned that laziness as well as drink was the cause?—Yes.

41,920. I suppose the two often go together?—Very frequently, but you do get occasional cases of laziness without drink, but they are few and far between.

41,921. I suppose you find many cases in which an intemperate husband and an intemperate wife may be industrious?—Yes, but with always very bad effects on the children. They become neglected in the case of drink on both sides.

41,922. (*Sir Lewis Dibdin.*) I understood by your evidence you did not wish to give any statistics with regard to desertion. Of course, you see a vast number of cases in Liverpool?—Yes.

41,923. Could you say without giving any figures whether there is a great proportion of cases of desertion amongst these people that come under your notice?—No, I should not say a very great proportion.

41,924. And that, although the Liverpool population is largely casual labourers, Liverpool being a seaport and necessarily a very migratory class?—Yes, that is so.

41,925. That is rather remarkable. Then I wanted to ask you with regard to the separation orders not being applied for except under great provocation. Does that apply to people of all ages or to the mature men and women who have families? I will tell you exactly what I am thinking of. We have had a good deal of evidence here of mere lads and girls who have got married and then in a few weeks, without any provocation almost, going off to the magistrate to get a separation order?—Yes, that does occur.

41,926. That comes within your experience, too?—Yes.

41,927. But in the case of really adult people with families, your evidence is that they stand a great deal before they apply?—Yes.

41,928. Then with regard to reconciliations, I thought I heard you say that about 50 per cent. of your cases after separation orders, where you had an opportunity of receiving the money yourself, ended in reconciliation?—Those are rather selected cases, perhaps. They are cases where there has been no separation order; not cases which the court has ever dealt with, but where they are living apart and want to get a separation, and arrangements have been made instead for the husband to pay the money to the wife through the sheltering home.

41,929. But the parties have never been separated?—No, but they are given the opportunity of living apart and settling their differences.

41,930. Then they are separated *de acto* for the time?—Yes.

41,931. And your reconciliations are really *bonâ fide* reconciliations?—I think I may say half become reconciled, and perhaps four-fifths of those remain happily reconciled.

41,932. With regard to separation orders, I suppose you have come across a great proportion of cases where the order lapses?—Yes.

41,933. And of those I suppose a considerable proportion are reconciliations in a real sense?—Oh, no doubt. A considerable proportion.

41,934. That comes within your experience?—Oh, yes, but not by any means all: a great many are deliberately broken by the husbands.

41,935. And there are sham reconciliations of course?—Yes.

41,936. But putting those aside, your evidence is that there are a great number of real reconciliations?—Oh, yes, no doubt.

41,937. (*Judge Tindal Atkinson.*) Do you think that if divorce could be brought within the reach of these casual labourers they would avail themselves of it?—Well, sir, I cannot imagine any conceivable method of bringing it within their reach.

41,938. Suppose you take Liverpool, and they could reach the County Court there?—That would be prohibitive. I am speaking of a class of people to whom the separation fee of two shillings is prohibitive. They have to apply for a summons free.

41,939. Then if a system of *formâ pauperis* were granted?—They must cost something. There must be costs of witnesses and bringing the witnesses to the court—actual carriage expenses.

41,940. Assuming they could get to the Court, would they avail themselves of it?—It is a subject which it is almost impossible to judge of. I should hardly think it is likely. I do not think they would realise they could get it for nothing; and it would have to be absolutely for nothing.

41,941. But realising that fact, would it not be probable?—I have no doubt they would if they could get it for nothing at all.

41,942. (*Mr. Brierley.*) Just one word about the statistics in the answers you gave. You told Lord Guthrie that the rise from 4,141 cases of general neglect in 1897 to 10,754 in 1909 was owing to the greater activity of your inspectors?—Yes, and partly to the increase of the area.

41,943. I was going to suggest that. You work within the City of Liverpool?—Yes.

41,944. And as that extends so does the sphere of the operations of your society?—Yes.

41,945. I take it the population of Liverpool has increased at least one-third in recent years?—Yes.

41,946. In 1901 there was a sudden rise?—Yes.

41,947. Was that the year that Garston was taken in?—I think there was an incorporation in that year.

41,948. They had taken in a very large district?—Yes.

41,949. And it is partly accounted for by that?—Yes.

41,950. (*Lord Guthrie.*) Just one point. I notice in your proof you have a reference to cases under the Incest Act and the Criminal Law Amendment Act, and you say you report these to the police?—Yes.

41,951. Can you give us any figures as to the numbers you report?—No, we merely report the cases after a preliminary and very slight investigation to see if there is a *primâ facie* case; we report them to the police and leave them entirely in their hands.

41,952. Do you get many complaints?—Not a great many; perhaps six or seven a year.

41,953. Under both Acts?—Yes. Well, mainly under the Criminal Law Amendment Act. The Incest Act is so recent that one hardly has had any cases under it.

41,954. That is true. Then have you any notion of the number of those that are *bonâ fide*?—We only report them. We cease actually to be concerned in them after reporting them to the police.

41,955. But unless you think them *bonâ fide* you do not report them?—No.

(*Lord Guthrie.*) Thank you, Mr. Clayton; we are much obliged for your evidence.

Adjourned.

1909. GENERAL STATISTICS FOR THE TWENTY-SEVEN

——	1883.	1884.	1885.	1886.	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.
I. VIOLENCE.												
(*a*) Assault	6	39	88	57	52	136	133	62	51	53	56	33
(*b*) Excessive Beating	44	22	8	7	6	5	7	34	20	43	41	21
(*c*) Ill-treatment	—	—	—	—	—	—	—	—	—	—	64	131
TOTAL	50	61	96	64	58	141	140	96	71	96	161	185
II. CRUEL NEGLECT.												
(*a*) General	86	399	568	444	461	598	726	677	773	782	1,106	1,033
(*b*) Starvation	20	8	11	11	1	8	29	6	11	4	3	—
(*c*) Infanticide	—	—	—	—	—	—	—	—	—	—	—	—
TOTAL	106	407	579	455	462	606	755	683	784	786	1,109	1,033
III. BEGGING, VAGRANCY, AND EXPOSURE.												
(*a*) Begging by Day	57	51	85	302	133	212	136	64	72	129	113	158
(*b*) Begging by Night	100	72	44	108	84	132	73	53	87	444	355	456
(*c*) Selling without a Licence.	—	—	—	—	—	—	—	—	—	—	—	—
(*d*) Selling after hours	13	42	84	82	9	1	85	153	434	296	91	153
(*e*) Selling Under Age	—	—	—	—	—	—	—	88	—	190	67	206
(*f*) Exposure	20	87	165	293	70	171	243	314	387	356	330	277
(*g*) Sleeping out at Night	17	54	40	70	78	78	48	64	115	106	81	54
(*h*) Overloading	3	1	—	1	—	—	1	—	—	—	—	—
(*i*) Dangerous Performance.	—	—	—	—	—	—	3	—	—	—	—	—
TOTAL	210	307	418	856	374	594	589	736	1,095	1,521	1,037	1,304
IV. IMMORALITY.												
(*a*) Juvenile Depravity	3	4	—	—	2	3	7	2	6	1	1	1
(*b*) Living in Brothels	6	17	5	—	2	—	2	3	—	—	26	22
(*c*) Dangerous Surroundings.	3	48	52	44	25	37	9	52	79	75	59	67
(*d*) Criminal Assault	—	—	—	—	—	—	—	1	4	2	1	2
TOTAL	12	69	57	44	29	40	18	58	89	78	87	92
GRAND TOTAL	378	844	1,150	1,419	923	1,381	1,502	1,573	2,039	2,481	2,394	2,614

N.B.—The figures represent the number of children involved in the cases inquired into. The number

——	No. of Children involved in the Cases taken up.		
	In the Old Cases.	In the New Cases.	Total.
Sources of Information.			
Anonymous Letters	629	462	1,091
Charitable Institutions	202	197	399
Children came to Shelter	10	1	11
Clergymen	19	4	23
Committee of this Society	25	40	65
Doctors	2	17	19
General Public	418	219	637
Magistrates	1	—	1
Missionaries, Biblewomen, &c.	14	11	25
Neighbours of Children	429	318	747
Officers of this Society	1,593	191	1,748
Police Officers	664	341	1,005
Relations of Children	2,758	1,305	3,883
Relieving Officials	15	—	15
School Board Officers	313	125	438
School Teachers	389	88	477
Sanitary Inspectors	218	271	489
Total	7,519	3,590	11,109

YEARS ENDING 31ST DECEMBER 1909. 1909.

1895.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.	1909.	Total No. of Children.
27	30	20	26	13	12	9	6	4	7	3	1	1	4	5	
13	1	3	—	—	6	8	4	—	2	1	4	—	—	—	
212	387	289	231	141	146	152	130	121	116	89	97	92	114	92	
252	418	312	257	154	164	169	140	125	125	93	102	93	118	97	3,838
1,808	4,498	4,141	4,459	4,064	4,200	7,247	8,333	9,506	9,968	10,007	10,279	11,083	11,189	10,754	
—	—	—	—	—	—	—	—	4	7	—	—	1	—	—	
—	—	—	—	—	—	—	—	—	1	—	—	—	—	—	
1,808	4,498	4,141	4,459	4,064	4,200	7,247	8,333	9,510	9,976	10,007	10,279	11,084	11,189	10,754	119,314
296	136	148	97	72	136	101	87	72	49	39	11	1	21	96	
327	70	117	71	72	101	91	125	84	65	65	26	—	7	42	
—	—	—	—	98	98	52	66	35	36	5	—	—	—	—	
123	49	64	32	12	—	—	1	—	—	—	—	—	—	—	
180	72	75	36	78	67	35	31	26	12	3	23	—	—	—	
284	395	334	241	195	179	95	76	79	57	42	17	21	41	62	
61	80	65	62	97	32	25	27	27	24	20	—	12	14	27	
—	—	1	—	—	—	—	—	—	—	—	—	—	—	—	
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
1,271	802	803	539	624	613	399	413	323	243	174	77	34	83	227	1,566
7	—	2	—	—	2	2	2	1	2	1	—	2	2	1	
7	—	15	18	21	2	6	11	1	21	1	3	1	—	—	
88	105	89	81	43	24	25	11	19	18	12	27	16	21	28	
2	1	5	3	2	—	1	3	6	3	—	5	2	1	2	
104	106	111	102	66	28	34	27	27	44	14	35	21	24	31	1,447
435	5,824	5,367	5,357	4,908	5,005	7,849	8,913	9,985	10,388	10,288	10,493	11,232	11,414	11,109	140,265

of cases would be smaller, as there are sometimes several children involved in one case.

Winchester House, St. James's Square, London, S.W.

FIFTY-SECOND DAY.

Wednesday, December 14th, 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The LADY FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
The Hon. LORD GUTHRIE.
Sir WILLIAM ANSON, Bart., M.P.
Sir FREDERICK TREVES, Bart., G.C.V.O., C.B., LL.D., F.R.C.S.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour Judge TINDAL ATKINSON.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.
The Hon. HENRY GORELL BARNES, *Secretary*.

Rev. JOHN DANIEL JONES, called and examined.

41,956. (*Chairman.*) Are you a Master of Arts and a Bachelor of Divinity?—Yes.

41,957. What is the body to which you belong?—The Congregational Union of England and Wales.

41,958. Where are your own special services?—Richmond Hill, Bournemouth.

41,959. Do you hold at the moment any official position in the Congregational Union?—Not exactly. I am ex-Chairman. I was Chairman last year, when the request for evidence came before the Council.

41,960. That is how we had your name before us?—Yes.

41,961. Is that a yearly office?—Yes.

41,962. You have only sent a very short memorandum; probably you will expand it when you give evidence. First of all, I would like to ask you, what is the extent of the Union?—We number half a million communicants, about one and a half millions of adherents, members of congregations, and about 3,000 ministers.

41,963. Does that mean 3,000 churches?—Yes, fully that: more than that.

41,964. Do some ministers have more than one place?—Yes.

41,965. Is that scattered over the whole of England and Wales?—Yes.

41,966. The first point you propose to deal with is the question of the grounds on which divorce should be granted. Do you express individual views, or views which you were delegated to present?—I am delegated to express what is in the minute here.

41,967. Perhaps you will give any individual view you hold if asked about it. First of all, with regard to the grounds of divorce, what do you say about that?—Speaking generally, the Union is not in favour of multiplying the grounds of divorce. The general view would be that adultery is the only ground the Union would recognise.

41,968. Is that based on Scriptural reasons?—Partly, I think.

41,969. What else?—The general conception of marriage that obtains amongst us.

41,970. Is that a unanimous opinion, or is there any divergence about it?—We are the most individualistic of all denominations. I should not like to say for one minute that that was unanimous, but that is the general trend of feeling amongst us.

41,971. Has it been discussed at all, and have any resolutions been passed?—Not in General Assembly, but in what we call the Council, which is the business Executive Committee of the Assembly.

41,972. Has any resolution been passed about it?—These resolutions were passed by the Council.

41,973. The first is "That no extension of divorce "be made beyond the one ground of unfaithfulness." That does not necessarily express the whole individual opinion?—No, because even at the Council at which this matter was discussed several expressed the desire that divorce should be granted, say, for insanity and in the case of habitual criminals. Those things were mentioned specially.

41,974. Was desertion mentioned specially?—I think it was. One or two magistrates mentioned desertion.

41,975. Was this a meeting partly of clergy and partly of laity?—Yes.

41,976. Some magistrates expressed a view in favour of desertion being made a ground of divorce?—Yes.

41,977. The next resolution is with regard to means. Perhaps you would read the resolution and say anything further upon it you wish to say?—"That "no one should be debarred, owing to excessive costs, "from obtaining a divorce order of the Court, and "that in any necessary revision of charges the case of "the very poor should have special consideration." The Council felt that in case of infidelity the poor should have a chance of relief on the same terms as the rich. I presume they meant that the cost of divorce should be brought within the reach of the poor.

41,978. The means of doing that is a matter they did not consider?—No.

41,979. But that it should be done was unanimous?—Yes.

41,980. What is the third resolution?—"That the "only report of Divorce Court proceedings to be "allowed be one furnished to the Press by an autho-"rised officer of the Court; such report to make clear "on whom the guilt rests." The feeling the Council had was that there was a certain profit in publicity in the way of putting a stigma on the guilty party, but at the same time it was strongly felt that full publication of details was injurious to morality.

41,981. Have you been able to notice any effects of that character?—If I may speak quite frankly, we have very few illustrations of that kind. Divorce amongst us is almost unknown. In all my 21 years I have come across no case of this kind.

41,982. The Union is really a Union of a highly moral class of people?—I do not wish to claim for them any superiority over any other body, but as a matter of fact we have very few cases of divorce amongst us. I think that those of our men who live in London districts have felt that the full publication of divorce reports has been found injurious, for instance, to young folk. That has been found.

41,983. What is the last resolution, No. 4?—"That "the moral guilt being the same in the case of the men "as in that of the women, husbands and wives in "respect of marital infidelity to be placed on a legal "equality." Of course we recognise that the social effects are not necessarily the same, but looking at it as Christian men we felt the moral guilt was the same in both cases, and therefore that men and women should be put on a footing of absolute equality.

41,984. Leaving them to exercise their right if they thought it was a case in which they ought to do so?—Yes.

41,985. Was that a unanimous view?—Yes. Upon the last three resolutions we are unanimous; it is only on the first we differ.

41,986. What was the number present when these resolutions were passed?—The Council numbers 300. We met at Lincoln in March of this year. I should think there would be present perhaps 200 to 250.

41,987. Both clerical and lay?—Yes; they are representative. We represent one another by counties.

41,988. Is there anything else you yourself would add to what you have already said?—I do not think so, unless members of the Commission wish to ask me questions.

41,989. I have no doubt they will?—I think these resolutions represent my own personal views very much.

41,990. (*Mr. Brierley.*) Could you tell me, as to the question of desertion, what sort of division of opinion there was in the Council?—The division did not come to a vote; I could not tell you the proportion. Several of our laymen especially hold that insanity even more than desertion should be a ground. Some would grant it in the case of desertion, the habitual criminal and the insane.

41,991. There was no division about it?—No.

41,992. (*Lord Guthrie.*) I understand the general feeling was that nothing should be done which might affect the general idea of the permanency of marriage?—Yes.

41,993. Was there any consideration of whether any particular proposal such as desertion would affect the idea of the permanency of marriage?—I do not know that that precise point was debated at all. The general conception of marriage that prevails amongst us is a high and an ideal one, and the feeling was that, although possibly the present law presses hardly on individual cases, and those were recognised frankly, desertion and the habitual criminal and the insane, yet the general feeling was that it was better that there should be individual suffering than that by a lowering of the Christian ideal of marriage damage should be inflicted on the community at large.

41,994. The idea was it would not be desirable to run possible risks?—Yes.

41,995. But whether the area of suffering was so large as to make it necessary to run risks was not considered?—No.

41,996. Out of the 200 to 250 present how many would be ministers? Both men and women were present?—There are no women on the Council, I believe.

41,997. Then Mr. Shepheard was wrong; he told us yesterday there were women?—Not at the Council.

41,998. He was not present, but you were?—I was in the chair.

41,999. How many were ministers, roughly?—Roughly, half and half.

42,000. In point of attendance, Mr. Shepheard said that the ministers were more numerous?—Yes, there would be a majority.

42,001. Mr. Shepheard said—he is evidently wrong—that there was a division of opinion, not only in regard to No. 1, but in regard to No. 4. That is a mistake, is it?—I do not think there was any division about it.

42,002. He was not present?—I was there.

42,003. You said you had not known a divorce case. Was that in connection with members of your own congregation?—That is so; I have never known one in my own congregation. I have had two congregations.

42,004. Where was the other one?—Lincoln.

42,005. Have you known it in connection with other Congregational churches?—My only recollection is of two divorce cases amongst Congregationalists, as far as I can recollect—there may be others—and one of annulment of marriage.

42,006. Only one, really?—Two, and one of annulment. That is all I remember.

42,007. (*Sir William Anson.*) Have you come across cases among the very poor in which divorce is desired, but is unprocurable by reason of expense?—I have had very little experience amongst the very poor. My pastorates have not taken me among them; but my brother ministers have said so, that expense has been a serious obstacle to them.

42,008. You have not considered the way in which the expense could be reduced?—No.

42,009. By change of tribunal?—No. I imagine that in the minds of those who know more about it there was the idea of setting up local tribunals, and so saving the expense of coming up to London.

42,010. As regards reports, would you exclude the Press altogether, and allow them only to publish a report furnished to them?—That was the idea in resolution No. 3, because it is so difficult to put any limit on the Press if they are inside. They will exercise their own discretion probably.

42,011. (*Sir George White.*) From your knowledge of your Union and kindred bodies would you not agree that there is a very large amount of opinion, if it does not amount absolutely to a majority, in favour of divorce in cases of incurable insanity and desertion?—It is not a majority in our body. I admit frankly there is a considerable amount of feeling that way.

42,012. You would not say it was a majority?—I should not say so.

42,013. It would be a very large minority?—Yes, there would be.

42,014. In speaking of the entire absence of divorce, does that apply to what we understand by the "congregation," as well as your membership; adherents as well as membership?—I am talking in a broad sense. I can only remember two cases, and one of annulment. My memory only goes back 21 years.

42,015. Yours have been very large congregations—Yes, and these cases have not been in my congregation.

42,016. Simply in the denomination?—Yes.

42,017. You have not known a case in either of your congregations?—No.

(*Chairman.*) We thank you very much for your attendance and for your evidence.

The Hon. Henry Gorell Barnes, re-called and further examined.

42,018. (*Chairman.*) I believe the last witness completes all the evidence you have been able to obtain of what I may term in general language the clerical witnesses?—That is so.

42,019. But you have before you a memorandum which shows that other bodies have been communicated with, and what they have said in reply?—Yes.

42,020. I think I may take it, may I not, that every recognised, or all that we have been able to ascertain as recognised, bodies of churches have been communicated with?—I think so.

42,021. Will you just take your memorandum and tell us the result of those who have not presented themselves for examination?—The British and Foreign Unitarian Association—The Committee of that Association do not feel that there is any occasion for the Association to be specially represented before the Royal Commission. The Baptist Union of Great Britain and Ireland do not think they can usefully give evidence. The Primitive Methodist Church addressed a letter to me stating that they do not propose to depute any person, but they would wish to say that in their opinion there should be equality as between the sexes in this relation, and that published reports of divorce proceedings should either give only the bare results or suppress all objectionable and prurient details, and they adhered, as the result of a subsequent communication, to their decision not to send a representative. The Salvation Army, after some considerable correspondence, on December 5th of this year wrote saying that Mr. Bramwell Booth confirmed what had previously transpired, and had to state, having regard to the evidence which had already been laid before the Commission, that the Salvation Army did not think

they could usefully occupy the time of the Commission further. The General Assembly of the Presbyterian Church of Wales passed a resolution, but stated that they did not desire to submit evidence. The resolution is in these terms: "This Assembly considers (1) that "whilst equal facilities should be afforded to all "classes of the community for obtaining divorce where "the bonds of marriage have been violated by either "party, great care should be exercised in any legal "changes that may be effected lest they should "diminish the sanctity and obligation of the marriage "vow. (2) That the legal and moral liability should "be the same with regard to both sexes. (3) That "newspaper reports of proceedings in matrimonial "cases should be limited by law to the publication of "the result of the actions." The Presbyterian Church of England, as the result of a communication addressed to them, wrote stating that the Committee of the Church, which a subsequent letter states to be the State of Religion and Public Morals Committee, could not depute anyone, but desired to say, firstly, "That "detailed reports of the proceedings in Divorce and "Matrimonial Causes should not be published; (2) "That breaches of fidelity to the marriage contract "should be treated by the law as being equally guilty "in both parties; (3) That if facilities for divorce "were provided by the law, such facilities should be "made equally available as between rich and poor," and the letter goes on to state that "In the course of "the discussion attention was called to the fact that "in the Appendix to the Articles of the Faith approved "by the Synod of 1892, as expressing the general "opinion and belief entertained in the Presbyterian "Church of England on the matters to which it refers, "there is the following reference to divorce: 'In the "'case of adultery, it is lawful for the innocent party "'to sue out a divorce; and after the divorce has "'been pronounced by a Public Court of Justice, to "'marry another as if the offending party were dead.' "Thus adultery is the only cause which the Church "recognises as a proper ground for divorce." I subsequently received a letter on the 20th May stating that there had been a Synod of the Presbyterian Church held at Cardiff, and sending a report and a memorandum which the Synod desired to be taken as the evidence of the Presbyterian Church of England.

42,022. You had better read that?—The memorandum is in this form:—"At Roath Park Church, "Cardiff, the fourth day of May, 1910, the Synod of "the Presbyterian Church of England met and was "duly constituted. *Inter alia.* The Synod took up a "Report from the Committee on the State of Religion "and Public Morals, to which was remitted the consi- "deration of the letter from the Secretary of the Royal "Commission on Divorce. The Report was submitted "by the Rev. Jas. G. Goold, Convener. In accordance "with its recommendations it was resolved as follows: "(1) The Synod acknowledges the courtesy of the "Royal Commission on Divorce in inviting from it a "statement of the position of this Church with regard "to the question of divorce. (2) The Presbyterian "Church of England recognises no ground of divorce "except adultery. (3) Believing adultery to be equally "sinful on the part of the husband and of the wife, "this Church regards adultery alone, even if unaccom- "panied by cruelty, as a sufficient ground of divorce. "(4) The Church has not considered the question of "extending the grounds of divorce. (5) The Synod "respectfully points out that, while civil law in Scotland "recognises desertion for four years as a reason "justifying divorce, it has no reasons for supposing (as "seems to be implied in the letter from the Secretary "to the Commission) that this is the view of the "Churches of Scotland, with whose attitude on this "matter this Church is in agreement. (6) The Synod "is of opinion that the mind of the Church is "adequately represented in these propositions. None "of its members, appearing before the Commission, "could possess authority to speak more fully in the "name of the Church."

42,023. Is that the resolution about which you say in your note "Resolution sent herewith"?—Yes. As to the Greek Church. I addressed a formal letter to the Great Archimandrite, but in his letters to me he stated he found it beyond his powers to either give evidence or prepare a memorandum on the subject which the Commission was considering. I think that exhausts all the bodies I could think of which were of sufficiently recognised importance.

Sir FREDERICK POLLOCK, Bart., called and examined.

42,024. (*Chairman.*) Your name is so well known I need only ask you this: You have enlarged on the legal history of marriage in England? May I put it in that way?—I have not made a very special study of it, but I am familiar with some of the leading authorities.

42,025. You have been good enough to send a short memorandum on a point which we had before us as a matter of fact, with regard to the time at which marriage is considered complete in the history of our law. Would it suit your convenience to read it and explain it?—That is the early part of the general history of Canon Law in Western Europe. The question was quite unsettled down to the 13th century, and there are various theories propounded by various learned persons, among others Vacarius, who lectured on Roman Law in the 12th century, who put forward a theory which Mr. Maitland discovered, and which Mr. Maitland and I thought was a much better doctrine than that which the Church adopted.

42,026. What was that?—Vacarius wanted something more than mere consent: he wanted an overt act, such as the wife going to the husband's house, something equivalent to the delivery of possession in the case of ordinary transfers of property.

42,027. If you will read your memorandum I think it explains fully what you have said?—The doctrine which ultimately did prevail was that consent was sufficient. Perhaps I had better read the memorandum from the beginning. A little of it is not relevant to the precise question you ask, but perhaps it will be less trouble to read it straight through.

42,028. I think we should see better what you mean?—It is uncertain at what point marriage was deemed complete by pre-Christian Germanic custom, that is the Germanic custom of Pagan times. Exclusive spiritual jurisdiction was established in England in the 12th century. To show the amount of doubt that prevailed down to that time, it was not settled till the first quarter of the 12th century that it was unlawful for a secular priest to be married. Secular priests were married down to that time.

42,029. You say here: "Exclusive spiritual jurisdiction established in England in the 12th century"?—Yes, that means from the 12th century onwards the secular courts would not undertake to say what was, or what was not, a valid marriage.

42,030. Then you go on: "Marriage of secular clergy thought wrong, but not void before A.D.1123"?—There was a growing opinion it was wrong, and that opinion was sanctioned by the Church in not allowing the marriage of ordained persons.

42,031. "And from the 12th to the 16th centuries only avoidable by decree of Court Christian in lifetime of parties"?—That was the case with all prohibited marriages.

42,032. The next point is important?—Yes. The Church did not prescribe any ceremony as essential to the validity of marriage; consent, provided it was consent to a Christian marriage, was sufficient. That is, of course, the consent must be consent to a monogamous marriage; the intention must be to contract a monogamous and Christian marriage, and any contrary intention will prevent the marriage being valid. I believe that is the Canon Law to this day.

42,033. Then you say, "even the presence of a witness was only a matter of evidence which could be dispensed with by admission of both parties"?—Yes.

42,034. Then paragraph 2 says, "Consent *de præsenti* makes a marriage"?—That is, the immediate consent

of the husband and wife makes a marriage, which will prevail against subsequent solemn celebration of marriage with another party, even followed by consummation. Curiously enough the decisive authority for that is the Decretal of Pope Alexander III., addressed to the Bishop of Norwich. That is quoted in Sir James Shaw Willes' opinion delivered to the House of Lords in *Beamish* v. *Beamish*, and also in our book, Maitland's and mine, on the History of English Law. The effect of that law is that the most solemn and public celebration of a marriage may be annulled by the discovery of what was called, in the language of the canonists, pre-contract.

42,035. Quite so?—The presence of a priest was recommended, and in some countries enjoined by secular legislation. That was what, if one may say so, led the House of Lords to err in the case of *The Queen* v. *Millis*, where they got rather confused about the difference between the secular and the spiritual jurisdiction, being imperfectly informed, and laid down that the presence of a priest was essential to the validity of a marriage by the law of England.

42,036. That differed from what Mr. Justice Willes said afterwards in *Beamish* v. *Beamish*?—Yes.

42,037. Is your view that those two decisions as they stand were not in accordance with the true law?—I have read that opinion of Mr. Justice Willes several times for various purposes, and it has seemed to me to be a conclusive exposition of the history of the law.

42,038. That was not authoritative?—There is not the least doubt that the law, as laid down by the House of Lords, is not the canon law of Western Europe, and if you are satisfied as a matter of general history that the marriage law of England was the canon law of Western Europe, and nothing else, then it is quite clear that those decisions of the House of Lords were wrong, but I do not know that it makes any practical difference in this country.

42,039. You probably agree that Mr. Justice Willes' judgment was right?—It is within your recollection that the House of Lords thought so in *Beamish* v. *Beamish* and decided the other way, only because, most unfortunately, as I think, Lord Campbell told them that they had no power to reconsider their own previous judgment.

42,040. You say "But the Church did not regard it"—that is, the presence of a priest as a necessary condition?—Not before the Council of Trent. It was a notorious matter of history.

42,041. May I take it that this is right: "But the Church did not regard it as a necessary condition before the Council of Trent"?—Yes.

42,042. And it is not credible?—That any temporal sovereign would have pronounced any marriage void which the Church held valid; the secular law might impose penalties, as the Church imposed penance, on irregular marriages. That is the explanation of some of the authorities which I think are misunderstood.

42,043. Will you proceed with your statement?—The common law, however, would for purposes affecting civil rights of property require marriage to be notorious. That was what the King's Courts regularly did when there was a question of dower being due.

42,044. Dower *ad ostium ecclesiæ*?—That means that they required a public ceremony in or in the presence of the Church. Secondly, the Common Law would recognise solemn marriage, that is, a marriage publicly celebrated, as a good *de facto* marriage without referring it to the spiritual court. That is, when there was a publicly celebrated and notorious marriage, the courts assumed that to be a good marriage, without thinking it necessary to ask for the Bishop's certificate as to whether it was correct.

42,045. Then you go on, "even the Canon Law admitted possessory marriage to a certain extent"?—That is rather a technical point, but there is authority, which is given in our book, that even in the canon law a *de facto* marriage was admitted for some purposes; that is, that solemnity and publicity did raise a presumption that everything was in order. Even the fact of people living together as husband and wife was evidence of real marriage, although not conclusive. Then the requirements of the Council of Trent were new legislation. Of course it has to be remembered that the decrees of the Council of Trent were not promulgated everywhere, and they were operative only in those countries where they were promulgated. They were not promulgated in England.

42,046. They were followed by similar civil legislation in France, where the Tridentine decrees were not received?—In France the decrees were not ever promulgated, or the civil authorities refused to receive them; I cannot say offhand which. At any rate they were not considered to be in force and the same results were obtained by secular legislation.

42,047. Then, your last point is with regard to divorce?—As to the history of divorce the earlier Penitentials, that is, the compilations of Canon Law for the use of the clergy which we have from Anglo-Saxon times, recognise the possibility of divorce in the strict sense—that is, of a valid marriage being dissolved by the authority of the Church.

42,048. Divorce *a vinculo*?—Yes.

42,049. That you say was obsolete in the 13th century at the latest, subject to one possible exception?—Yes, in the 13th century that doctrine was obsolete and practically the modern Canon Law of marriage was established.

42,050. You say, subject to one possible exception, in the case of marriage with an infidel?—That, I believe, is a question that the Roman clergy sometimes have to deal with in the South Sea Islands and such-like places; what is the effect of a marriage between a Christian and a heathen, or what becomes of a marriage between heathens when the parties are converted, or what is more awkward, when one is converted and one is not.

42,051. I think that is the end of your statement?—Yes.

42,052. (*Sir William Anson.*) What is the positive law of the Church during the pre-Reformation period about divorce? Was there any canon or any definite prohibition of divorce?—Not being a Canonist I cannot say.

42,053. There is no doubt it was recognised in the Penitentials?—I believe that is so. I have not verified the actual context, but the authorities are given in Pollock and Maitland.

42,054. After the Reformation, was the law of divorce altered in any way, either by secular or spiritual authority?—After the Reformation a great many different things happened in many countries. I think it is quite certain that, for a long time after the Reformation, the English Bishops did not consider themselves bound by the Canon Law.

42,055. As regards the possibility of divorce *a vinculo*, the canon which enables separation to be granted binds the parties not to re-marry. That suggests that re-marriage was possible?—I believe the history of the 16th and 17th centuries in England shows that there were a great many divergent opinions as to what was possible, and I am not quite sure—I am speaking in the presence of people who know more about the Canon Law than I do—but my impression is that during the period of the Reformation and as late as the Restoration some English Bishops thought it possible that there should be divorce *a vinculo*.

42,056. Divorce *a vinculo* granted by the Spiritual Court?—I am not quite sure whether such divorce was ever granted by a Spiritual Court, but one or two such divorces were granted by Act of Parliament, and the Bishops did not think it wrong, and I think some Bishops in the House of Lords supported it.

42,057. The law was regarded as unsettled for some little time after the Reformation?—I think it may be taken that all ecclesiastical law was unsettled in the countries which renounced the Roman obedience for some time after the Reformation.

42,058. Then we settled down to divorce by Parliament?—Yes. I think that is a comparatively modern practice, and dates from the 18th century.

42,059. I think the Bishops at one time definitely approved, when I say "approved" I mean they recognised it as not contrary to divine law?—I do not think there is any trace of the Bishops disapproving till the

second quarter of the 19th century, but I am speaking without book.

42,060. (*Lord Guthrie.*) I remember that Dr. Lushington puts it because there was no Statute after the Reformation expressly authorising divorce for any cause in England, therefore divorce for adultery could not be part of the law of England. Other people have held other views. Do you think that necessarily follows?—There you have to distinguish. Before 1857 in one sense divorce *a vinculo* was not part of the law of England, because there was no ordinary jurisdiction in any court to grant it; but in another sense it was, because, as a matter of fact, people did apply to the House of Lords for private Acts dissolving marriages, and the House of Lords dealt with those applications in a judicial manner, and it was a judicial proceeding in substance, although a legislative Act in form. I suppose there are people living who remember the practice of the House of Lords in divorce cases, and that practice still exists as far as Ireland is concerned, and it also exists in the Dominion of Canada. I understand that the proceedings with a Divorce Bill are for all substantial purposes judicial proceedings, that the House has a regular practice from which it does not depart. It is not free to vote on a general consideration of the merits on the grounds of natural justice. For all material purposes the proceeding is judicial, although unusually expensive and solemn. It is impossible to say categorically yes or no to the question Was divorce *a vinculo* part of the law of England before 1857? If Dr. Lushington meant there was no jurisdiction in any ordinary Court, either secular or spiritual, with regard to divorce *a vinculo*, I should humbly conceive he was right.

42,061. You would say in one sense it was part of the law of England, and in another sense it was not?—Yes.

42,062. Does that view of yours depend on this, that these private Acts of Parliament were not opposed on the right to get divorce, but only on the merits of the particular case?—That is so.

42,063. If they had been opposed on the question of right to give divorce at all, the mere fact that Parliament overrode that objection would not have settled the matter, because Parliament could do anything?—That is so. When I say that proceedings were judicial and regular, I mean so far as I know. Nobody ever heard of a peer in Parliament rising on a motion to bring in a divorce Bill to protest that the whole thing was against the law of the land or against the divine law, and that Parliament had no moral right to pass any such Act. As far as I understand, for about three-quarters of a century, more or less, it was a recognised practice, and I apprehend it is still so in the case of Irish Divorce Acts.

42,064. In the expression "No peer arose to oppose it" you include the Bishops?—Yes.

42,065. (*Sir Lewis Dibdin.*) You spoke about the Penitentials. Am I right in saying that there is a fundamental distinction between Canons of Councils and Penitentials in this sense: that while the Canons were general Church laws, the Penitentials were a body of regulations for the domestic dealing with souls by priests, really in confession?—You know a great deal more about it than I do, but that is certainly my impression, that the Penitential is a sort of domestic manual issued by a Bishop or Archbishop. He might be a great Archbishop, like Theodore of Tarsus. It is the manual for the clergy.

42,066. But not for the management of cases in Court, but the management of individuals by their directors, their priests?—The only value of a Penitential for legal purposes was that it was evidence of what that particular Bishop or Archbishop understood o be the law.

42,067. Not necessarily. There was a distinction, nd a marked one, on this subject of divorce in the Penitentials and the Canons, that while Canons of Councils were saying that divorce was impossible, and so on, at the same time Penitentials were being put out by the individual Bishops which at any rate enabled the priest in dealing with an individual penitent to tolerate a divorce. I think you will probably agree with me that there was that marked distinction running through the Canons and the Penitentials?—Yes. Of course a Canon is law as regards all persons on whom it is binding, and a Penitential is only an administrative direction.

42,068. Does it not look like this, that while the law of the Church was against divorce, Church people were forced by circumstances to make something like concessions in the matter in their dealing with individuals? That is the way I read it. I put it to you whether that is not the effect of your reading it?—That is very likely to be so, I should think. I should also think that great personages, both secular and ecclesiastical, in the early Middle Ages assumed much greater powers of dispensation than they would now think of doing.

42,069. You have been speaking of Archbishop Theodore of Tarsus, and I do not want to go into that particularly. He was of Greek training, his associations were with the East?—Yes.

42,070. The East had, and has still, a very much laxer view in regard to divorce than the Church in the West?—Yes, but at that time there was no separation.

42,071. Before the separation, the East was adopting a very much laxer view with regard to divorce than the West?—I know really nothing about the history of the Eastern Church.

42,072. That is ancient times, but let us come to the pre-Reformation Canon Law. There is no doubt that, both in the Church in the West and in England in particular, there was express prohibition of marriage after divorce for adultery. I will remind you of Gratian?—I do not profess to know Gratian, but taking it from the 12th century onwards I should conceive that there was no doubt at all.

42,073. There is a book I know you know, because you have quoted it in your "History of English Law." It is the "Pupilla Oculi," by De Burgh. I quote it because it is English Canon Law, and it says in terms, although a man may be divorced from his wife for adultery, he must not marry again. That corresponds with your view?—I should have thought that was elementary at any time after the settlement of the Western Canon Law.

42,074. Then we come to the Reformation. There was no change in the law at the Reformation with regard to divorce, either by canon or by statute?—I could not answer that question without having read through the statutes of Henry VIII., repealed and unrepealed, and all the canons after the Reformation, but my general impression is that it was so.

42,075. You have drawn attention to what I think is a very important point, that there was a great difference of opinion among writers of the Reformation—I mean ecclesiastical writers, Bishops and the great Churchmen—on this subject; that there was a very considerable body of opinion who thought that there ought to be divorce for adultery with power to re-marry. I gather from your evidence that in your view that existed?—Yes, but for the authorities I should like to refer to a very learned anonymous article published in the *Quarterly Review* several years ago, to which Sir William Anson has the reference. I cannot give it off-hand. [The Divorce Agitation, L.Q.R., xx., 363.]

42,076. I have, for what it is worth, collected a catena of those authorities, and had the advantage of reading the article you mention, and that does seem to me to be the result. While that was the opinion, none of those people supposed that divorce with power to re-marry could be granted by the Ecclesiastical Court, as far as I know?—I cannot assert off-hand what they supposed. I believe a great many people suppose many different things.

42,077. You do not recollect any of these authorities who treated it as a matter that could be then granted in the Ecclesiastical Courts, do you?—I cannot say whether or not any Bishop's Chancellor would have been adventurous enough to grant a decree. I think he would have been an adventurous man.

42,078. Enquiries have been made in all the Registries, and no evidence of that has been found. You do not know of any case in the Ecclesiastical

Courts where a divorce *a vinculo* for adultery was granted at or subsequent to the Reformation?—No, but I ought to say my ignorance is of no value, because I have never searched.

42,079. So far as it goes, that is my impression. I am not trying to use it as an authority. I do not understand you to suggest that there were such cases?—No; I should think it is very improbable.

42,080. With regard to marriage with an infidel, quoting your proof, that is the case that Canonists refer to as the Pauline privilege, which has been dealt with in a distinct way right through Church history?—It has, and is still. Some time ago I saw a very curious and learned opinion which had been pronounced by the authorities at Rome on a case sent up by a Vicar-General somewhere among the Pacific Islands, which went into the whole question in a businesslike manner.

42,081. It is a matter that constantly must arise in all missionary enterprise. With regard to what you said about a possessory marriage; all that comes to is this, that where there is a reputation of marriage, that is enough until it is disputed in some way—until there is some case raised against it?—I think that is what it amounts to in terms of common sense; but I have no doubt, knowing what one does about mediæval lawyers and the theory of possession, that you may find some very curious and subtle observations among the Canonist literature on that point.

42,082. That is an observation that would apply to most Canonists on most subjects?—Probably.

42,083. It has been a universal rule, since we have known anything about the Canon Law, that marriage *de facto*, no matter how irregular or how impossible, stands until it has been annulled by sentence?—Yes.

42,084. Even a bigamous marriage?—I suppose that is so.

42,085. Even a grossly incestuous union, until there has been a judgment to annul it, has to be treated as if it were a real marriage. Is not that so?—I suppose that was so in spiritual jurisdiction.

42,086. Is that not what modern writers mean when they talk of a marriage being voidable only, and void?—I suppose it is, generally.

42,087. That means, not that it ever was good, but that, until it has been annulled by sentence, you cannot take advantage of its being void?—I suppose that is so, but the word "voidable" has been used in a confused way by writers on many branches of law; sometimes they may mean merely irregular, sometimes they may mean invalid, but to be treated as valid till it is judicially annulled.

42,088. That is why I asked you, because it does lead to such confusion. In this context there is no doubt it means that when the sentence of annulment is pronounced the marriage is void *ab initio*, not from the date of the sentence: for instance, any children born beforehand are illegitimate?—I thought there was a certain amount of consideration shown for the children in some countries. I am not speaking with precise knowledge.

42,089. Take the case of an incestuous marriage. Supposing a man had entered into an incestuous relation with his niece: that is no marriage?—Excuse me, you assume there is no dispensation.

42,090. I assume that, and if we are to go into dispensations I think you would fail to show a dispensation for that particular case from the Pope; but do not let us go into the dispensation theory?—No, we will not.

42,091. Take a case which is undoubtedly incestuous. According to English ecclesiastical law up to recent times, if there was that relation and children were born, then, if either of the parents died before a decree occurred, those children were legitimate, were they not?—I believe so.

42,092. But if there was a suit for annulment and a sentence of annulment during the lifetime, as it must have been, of the parties, then the so-called marriage became void *ab initio*, not from the date of the sentence, so that the children born were illegitimate?—I believe that was so.

42,093. I am putting it to you in order to get on the Note what I do not think is open to doubt, really, as a matter of law. Without dealing with the question of bigamy my point is the effect of voidability. It is only an illustration?—I ought to explain, this is not the kind of law I profess to be familiar with.

42,094. I quite understand, and I am not trying to pin you down to positive views, but I am fearful lest your authority should be quoted for propositions I am sure you would not wish to propound?—As a matter of fact in what I wrote down I was not thinking of that question.

42,095. With regard to the private Divorce Acts, although they take the place of the judicial sentences, they were legislation?—Yes.

42,096. It is not accurate, therefore, to talk of them as if they were the sentences of the Court in the sense that a decision of the House of Lords is. In its judicial capacity the House of Lords is a law court now?—It would not be literally inaccurate, but it certainly would be misleading, to tell a foreigner that it was an act of legislation in every case and not to tell him at the same time that it was legislation according to judicial practice. You might tell a foreigner it was impossible to make a railway in this country without a special act of legislation, but if you told him that and did not tell him that the procedure on private Bills is a very elaborate and settled, or quasi-settled procedure, he would go away thinking we were still in the barbarous condition of not having made up our minds whether it was a good thing to have railways or not.

42,097. If you had to explain things to a foreigner, no doubt you must enter into a great deal of detail, but when you have got down to a matter of the Constitution, the one is a legislative act and the other is a judicial act?—It is a privilegium given by Parliament according to a regular practice.

42,098. Is it not right that they were much opposed?—I cannot remember.

42,099. Was it not the Rosslyn case, or the Duke of Norfolk's case, Burnet talks about in his history, which was very much opposed by the Bishops and practically, the Bishops were divided upon it? The Bishops who had been appointed after the Revolution supported it, and the Bishops appointed before the Revolution were all against it?—That is exactly what one would expect.

42,100. That shows it was sometimes, at any rate, a matter of debate?—Yes.

42,101. Whether those Bills should be passed?—When I said I had not heard of a Bill being opposed in principle I was referring to the settled practice from some time in the 18th century.

42,102. (*Sir William Anson.*) To clear up one matter, when you spoke of the evidence of uncertainty of law after the Reformation, with reference to what Sir Lewis Dibdin was asking you, that did not refer to conflicting decisions. There are no conflicting decisions on the subject in any court?—To the best of my very general knowledge on the subject I should say there were no decisions at all. Near the end of Elizabeth's reign, in 1602, it was decided in *Rye* v. *Fullcombe*, Log. 100, that divorce *a mensa et toro* in the ecclesiastical court did not dissolve the marriage.

42,103. The 107th Canon, for instance, is evidence that there was uncertainty in the minds of practical people as to what was the effect of a breach with Rome on re-marriage law?—I think so, but I do not remember that Canon in particular.

42,104. (*Chairman.*) With regard to Canon Law, am I right in thinking that was not applicable to the laity, but to the clergy and the ecclesiastical officers?—Of course, there are a great many rules of Canon Law which could only apply to the clergy and the ecclesiastical officers, because they regulated what those officers had to do, but there is no doubt that Spiritual Courts did exercise a great deal of jurisdiction over laymen down to the end of the 15th century, and in a great many matters which we should now consider quite secular. A man might be had up before the Bishop's or Archdeacon's Court and be put to penance and

threatened with excommunication because he had broken faith about a load of hay.*

42,105. It was not *proprio vigore* applicable to the laity, but only to the extent to which the common law applies it. I have seen that?—With great submission we know that the Ecclesiastical Courts were doing to a great extent what is now county court business in perfectly secular matters.

42,106. (*Sir Lewis Dibdin.*) And police court matters?—Yes, except the offences they deal with had something to do with the Church, such as being in an alehouse, instead of being in church, on Sunday. Also, there is no doubt that the Common Law courts did not like the exercise of this jurisdiction; in fact it was an instance of the regular mediæval competition for business between all authorities who thought they had or could take any jurisdiction. To put it in vulgar language, there was a scramble for fees going on all over England, and all over Europe, in all kinds of jurisdiction.

42,107. (*Chairman.*) My point was this. I have seen it repeatedly stated in the books that the Canon Law as laid down by the Canonites is not applicable except to the clergy and the law officers of the Ecclesiastical Courts; but, to some extent, the Common Law adopted it and recognised it. I think that is the statement?—I should think it is highly probable.

(*Sir Lewis Dibdin.*) The Canon Law was binding on everybody—lay and clergy. The old Canon Law to the extent to which it had been adopted as part of our Common Law, but in no other way. That was clergy and laity. The Canons of 1604 are only applicable to the clergy.

42,108. (*Chairman.*) That is what I mean. 1604 or 1603 was the one with 107 in it?—I am not so sure that Sir Lewis Dibdin has not technically the power to excommunicate you and me for certain offences. I know that Sir James Stephen thought so.

42,109. There is no Act of Parliament sanctioning the Canons of 1603 or 1604. That is, so as far as I know?—I think so.

42,110. You were asked about the difference between the law as recognised by the earlier Church and its application by virtue of Penitentials. I think you were asked a few questions about that. Would it be right to suggest—I do not want to put this as more than righting your answer—that while on the one hand the strict law was aimed at, the Penitentials recognised human necessity in departing from that strict law?—I should think that a great man like Theodore of Tarsus would claim to exercise powers of equitable dispensation exceeding what any modern Bishop or Archbishop under the present religion of the Roman Church would be allowed to claim.

42,111. I take it that would be exercised because, if you like to put it, of the weakness of human nature?—Yes, I should think so.

42,112. There is one question I should like to ask you, because of a letter you have written suggesting that there is an excellent article on the divorce law of Germany in the April number of "Comparative Legislation." Have you any definite knowledge of that?—That was merely sent for information and reference.

42,113. We are going to have someone who will deal with the German laws, but that would be an instructive article to peruse?—Yes.

(*Chairman.*) We must thank you very much for your evidence.

Sir EDWARD CLARKE, K.C., called and examined.

42,114. (*Chairman.*) I need hardly ask you who you are, but, just to get it on the Notes, you are one of his Majesty's Counsel?—Yes.

42,115. You have also had a long experience in the Courts of Law?—That is so, and a considerable experience in the Divorce Court.

42,116. You have had a number of cases in the Divorce Court?—A large number.

42,117. You have divided your memorandum into two heads, one law and the other practice?—Yes.

42,118. As I gather from it, it is a memorandum which requires a certain amount of exposition and perhaps the better course is to ask you to state your views?—If your Lordship pleases. The first point mentioned in my memorandum in regard to the question of law is as to the law of marriage which ought to prevail, and I have written a short memorandum on that, which I think I had better read, because it states my opinion more carefully than I should perhaps extemporaneously express it. It is proposed on one side to abolish divorce altogether, and on the other to extend divorce to other grounds than that of adultery. The cardinal, and in my judgment the conclusive, objection to these proposals is that each of them is contrary to the Christian law of divorce which was clearly laid down by Jesus Christ himself in the Sermon on the Mount. In that discourse our Lord declared the continued authority of the Law, but gave to its precepts an enlarged and higher meaning. He says he is come to fulfil the Law and declares that not a jot or tittle of the Law shall pass away. Six times in that chapter (Matthew, chapter v.) he quotes from Deuteronomy, in each case to correct and to extend. Two of the ten Commandments are quoted and expounded. "Thou shalt not kill" is "Thou shalt "not bear ill-will." "Thou shalt not commit adultery" is "Thou shalt not permit thyself impure "thoughts." Then comes the passage:—"It was said "also, Whosoever shall put away his wife, let him give "her a writing of divorcement: but I say unto you, that "every one that putteth away his wife, saving for the "cause of fornication, maketh her an adulteress: and "whosoever shall marry her when she is put away "committeth adultery." The law of God, which was from the beginning, and the rule of Moses, that a writing of divorcement must be given, are to remain but it is only for adultery that the divorcement shall take place. The same rule in the same terms is stated in St. Matthew, ch. xix., where the question put to our Lord is whether it is lawful to put away a wife for any cause. It was a question in dispute among the Jews; for one set of teachers among them maintained that the words of the Mosaic Law only authorised divorce in the case of adultery, while general usage, with the sanction of another school of teaching, had extended the practice to divorce for other causes. Our Lord's answer is, "No, not for any cause, but only "for the cause of adultery." Two other passages give the general prohibition, but not the authorised exception. In Mark, ch. x., vv. 11 and 12, we have an imperfect account of the conversation recorded by St. Matthew. The question is not fully stated, for the words "for any cause" are left out, and in the answer the qualifying words are omitted. The passage in St. Luke, ch. xvi., v. 18, is precisely the same as that in St. Mark. Many explanations of the difference have been suggested; but whatever be the true explanation, it is quite clear that an authorised exception is as much part of the Law as the prohibition itself, and unless the authority of the First Gospel is wholly rejected, the Christian law of divorce is quite clear. It appears to me also clear, and indeed I do not think it has ever been doubted, that the adultery of the husband is within the rule as well as the adultery of the wife. The words in St. Luke are apparently an interpolation. Their relation to the preceding verses is not very clear. If they are intended as a statement of the Jewish law (and they follow immediately on a declaration that it is easier for heaven and earth to pass away than for one tittle of the Law to fail) it is clear that Jesus could not have intended it to apply to cases where the wife was put away for adultery, for the Law, as laid down in Deuteronomy, ch. xxii., v. 1, quite clearly allowed divorce on that ground. There are two exceptions in Deuteronomy, xxii., vv. 13 to 19, and 28 to 29, unless he had seduced his wife before marriage or had made a false charge against her. This had never been doubted by any school of Jewish thought, and the only question was whether a wife might be put away on other grounds, and this

* "Pro convencione fcui bargen of hay": Hale, Precedents and Proceedings, No. 30. There are other cases of simple money debts.

passage, vindicating the authority and permanence of the Law, was doing away with the extension which Moses had permitted. This permission of Moses was not part of the Law. It was an indulgence which now, since the Gospel of the Kingdom of God had come, was no longer to exist. This Christian law of divorce, of which I have spoken, was accepted by St. Augustine and St. Jerome, and St. Ambrose, and by almost all the Reformation divines, and it is accepted by the whole of the Eastern Church, and in 1857, when the Divorce Court was established. it was acknowledged by all the Bishops of the English Church, with one exception (the Bishop of Salisbury). I will finish the memorandum and go back to that. Our Lord's words seem to me, by necessary implication, to convey that in the case of the dissolution of a marriage on the ground of adultery, either of the persons so divorced is free to marry again, for it is only where a marriage has been dissolved on some ground other than that of adultery that He brands as adulterous a subsequent marriage; but I can see no reason why a State should not prohibit, if thought desirable, remarriages, as to which, dealing with the religious aspect of marriage, we can only say that our Lord did not forbid them. In one respect then, our law of divorce differs from the Divine Law and from the practice of almost the whole of the civilised world, and that is in not granting divorce on account of the adultery of the husband without any other matrimonial offence. In France, Germany, Russia, Sweden, and the United States, and in Scotland, the husband's adultery is sufficient to entitle the wife to a divorce, and I am in favour of that law being adopted here. I should like to illustrate that memorandum by reference to a speech made by the Archbishop of Canterbury on the 19th May, 1857, in the discussion upon the Divorce Act. "He appealed to the Divine "Law. No one, he thought, would deny that accord- "ing to the tenor of that Law marriage once con- "tracted was deemed to be indissoluble—indissoluble "saving for one cause, a cause which destroyed the "purpose and intent of marriage—saving for the "cause of unfaithfulness. For that cause it was "declared lawful for a man to put away his wife, and, "by parity of reasoning, it would be lawful for the "woman to put away her husband." In the same debate the Bishop of Bangor said: "I believe that my "right reverend brethren are all agreed, with the "exception of the Bishop of Salisbury, that divorce is "permitted in Scripture in the case of the adultery of "the wife." Then one adds to that, that for 150 years the House of Lords granted divorces by Legislative Act, but it appears to me that the way in which those Bills were dealt with made them quite as much Judicial Acts as Legislative Acts, and I find it stated that in only two or three cases did the Bishops oppose a Divorce Bill, and I think that there was some special reason applying to the case. It was never contended, during those 150 years, by the Bishops that it would be contrary to the Divine Law to grant a decree of divorce. There were four cases in the 150 years where a divorce was granted by the House of Lords to the wife; in 1801 there was the case of Mrs. Addison, where a divorce was granted on the ground of the husband's incest. There is a notable observation of Lord Thurlow's with regard to that which is recorded in Campbell's "Lives of the Chancellors," 7th volume, page 145. "You give the "husband divorce because he ought not to forgive the "guilty wife, and separation is inevitable. Where the "wife cannot forgive and separation is inevitable by "reason of the crime of the husband, the wife is "entitled to the like remedy."

42,119. Does that bring us back to the memorandum?—It brings me back now to the memorandum.

42,120. You say that the rule should be the same for both sexes, and then "reasons for and against"?—Yes. It is a difficult question and I have put down some reasons for and against. Reasons against allowing divorce for husband's adultery. In wife's case bastard may be introduced into the family. Men and women appear to agree that a wife ought to forgive and that a husband ought not. There is a famous passage in Tennyson's "Idylls of the King" which says:

"I hold that a man the worst of public foes
Who either for his own or children's sake
To save his blood from scandal, lets the wife
Whom he knows false, abide and rule the house."

The offence is more serious in the woman. In man, the unfaithfulness is physical—the desire for the woman; in a wife it is physical and moral too, the desire for the man's affection. In man, in nine cases out of ten, it is a passing, often a quite sudden, physical appetite. In woman, in nine cases out of ten, it is an affection wholly destructive of any conjugal affection. In the great majority of cases a wife is wise as well as merciful in forgiving. Many husbands have been forgiven once and have never again been unfaithful. Again, there is little or no social stigma upon an unfaithful husband. If his wife does not forgive him other women do, and many husbands would be willing to be divorced if only adultery had to be proved, especially if they were free to marry the adulteress. This might considerably increase the number of divorces. I mention those to show that I have tried to consider both sides in this matter, but the conclusion I come to is that the husband and wife should be placed on equal terms, subject to this: I think no divorce petition in either case, certainly not in the case of the wife's petition on the ground of her husband's adultery, should be permitted until six months after the commission of the offence. It has been, I know, suggested to this Commission that there are certain classes of adultery where the adultery of the husband is so persistent or so irritating in its circumstances that the wife ought to have a remedy, which should not be given in the case of a single act of adultery. I think it is practically impossible to lay down any rule with regard to that, but I think not allowing a petition to be filed within six months of the offence would have the same effect; that petitions would very seldom be filed by wives who were entitled to complain of the unfaithfulness of the husband, and who had only to complain of a single act of unfaithfulness.

42,121. You mean that there would be time for reflection?—Yes, in that six months, if it were a single act and not accompanied by circumstances which aggravated it, and made it two seriously painful to the wife's feelings for the wife to forgive.

42,122. Do you confine your six months to any form of adultery or to the single act of intercourse?—To any form of adultery.

42,123. There is this practical difficulty. Assume the act is one which the wife at the moment intends to use against the husband, how do you propose that should be dealt with, because it is not till she presents her petition that she can get alimony, and during those six months she may starve?—I do not think that would be a serious difficulty. It would be one case in a thousand where it would present any hardship.

42,124. Might I suggest that in the poorer class of cases the first thing is the application for alimony, instantly, because what has the wife to live upon?—In the poorest class of cases she does not get alimony paid.

42,125. That class of case does not come before the court. The cases that come are where the husband has something, and I have seen numerous orders of 15*s.*, 1*l.*, or 2*l.* a week, and that sort of thing, which must be dealt with at once. Will you assume that the act is one for which the wife says, "I mean to proceed "on that." Of course she would not live with him during the process, otherwise she would vitiate her right. There is that practical difficulty, is there not?—Yes, but I do not think it is a serious one I confess. Another stipulation would be this. I think a decree ought not to be made absolute for a year. I think there would be great advantage in not having a decree of divorce made absolute for a year, instead of for six months. Then there is the very serious question of whether the guilty parties should be forbidden to marry each other.

42,126. I think you are going on a little too fast. The sentence that begins, "The doctrine that condones," is the next point?—I think that comes later on. There is another word I want to say about this:

the question about the guilty parties being allowed to marry each other.

42,127. That we would very much like to know your views about?—With regard to that there is a curious fact about the Divorce Acts that passed before 1857, that there always was a clause put in to prevent that.

42,128. So there is still in the Irish cases?—Yes and always struck out in the Commons as a matter of course.

42,129. It is struck out now in Committee in the House of Lords?—Yes. In the Bill of 1857, a clause was not introduced forbidding the marriage of the guilty parties, and the Lord Chancellor said that it would be a cruel punishment upon the woman, and in nine cases out of 10 a great boon to the adulterer. The Lords always inserted such a clause in the Divorce Bills and it was always struck out by the Commons, and the Lord Chancellor said, "That is the great "reason why I did not attempt to introduce this "proviso." The proviso was in the Bill of 1856. The proviso was put in by the Bishops in 1857, along with a provision which made the commission of adultery an offence and provided a punishment for it. Both those clauses were struck out by the House of Commons. I think on the whole that the divorce should be allowed to the wife on the ground of the husband's adultery alone. There is another reason to be mentioned, that the present requirement as to cruelty or as to desertion, especially now when desertion consists in non-obedience to a decree for the restitution of conjugal rights, makes the proof in many cases of cruelty and adultery very much a matter of form. I was in one very remarkable case where a wife, who had no title to a divorce at all, because of her own conduct, obtained a divorce and the only cruelty alleged against the husband was that, when she was talking to him upon the subject, he pushed her away from the chair and she fell on the floor. When cruelty so slight as that is allowed it practically does not become anything very serious.

42,130. The real position is that if there is adultery proved the tendency of juries, and possibly of judges, is to act on the very slenderest evidence of cruelty?—On very slender evidence.

42,131. That is in effect striving for what you maintain—an equality?—I think that is so.

42,132. You were indicating what you were going to say about the marriage of guilty parties. What conclusion have you come to about that?—As to that, my conclusion, on the whole, would be that it would prevent adultery, and a good deal of adultery, if the guilty parties were forbidden to marry.

42,133. Have you come across cases in which the inception of the adultery showed that people had in contemplation a rehabilitation by marriage afterwards?—Yes, I think, no doubt, in a great many cases I have had, that the subsequent marriage has been looked forward to all along.

42,134. You would regard it, then, as a great deterrent to a woman giving way if she felt there was no chance of marriage afterwards?—I think it would be a great deterrent and a valuable deterrent.

42,135. The next point you mention is that condoned offences are revived by a subsequent offence, which you think should be abandoned?—I think that is a very mischievous doctrine. At present a matrimonial offence having been once committed the wife is in the position of being able to avail herself of that matrimonial offence, although a very considerable time has passed, because of the occurrence of some minor matrimonial offence afterwards. Condonation, I think, ought to be full condonation, and completely wipe out the former offence. I think that a very mischievous state of things is set up by the existence of the present doctrine. The next point is that a divorce, or decree of nullity, pronounced by a competent court, should be followed everywhere. I hope I shall be forgiven if I say that I look upon the judgment in *Ogden* v. *Ogden*, which I have mentioned here, as one of the most unfortunate judgments that we find in our books of reports. I think it was contrary to law, but it certainly was very sad in its results, and such a case, I think, ought to be rendered impossible by some legislation.

42,136. That case followed the older cases?—With all respect I do not think so.

(*Sir Lewis Dibdin.*) I should like to know what that case was.

42,137. (*Chairman.*) I know about it, because I gave judgment in it myself, and I understand that Sir Edward Clarke differs from me. It was a case in which a young English girl married a Frenchman in some place in Lancashire, where he had been sent by his parents to learn a business. When he married her he was under age, or rather under the consent age of France. His father heard of it, and came over and took him out of the country, back into France, and there a decree of nullity was obtained on the ground that the marriage was without the parent's consent. Then the lady tried to get a divorce from him at a later period when he married somebody else, and, if I recollect rightly, Sir Francis Jeune held that, as he was a domiciled Frenchman, she would be obliged to pursue the remedy in France, that he could not give her a remedy in this country because he only had jurisdiction with regard to domiciled husbands and wives in England. Thereupon, I think I am right in my recollection, she considered she was entitled to marry again, and she did marry somebody else. Then a question arose between that somebody else and herself as to whether their marriage was good, and it depended upon whether her marriage with the first man still subsisted in England. I held, bound by *Simonin* v. *Mallac*, that the English marriage at the time was good according to the law of the land where it was made and celebrated, and that the French Courts might say what they pleased about it, but that in England it was a good marriage. I pointed this out, and this is a very important point, Sir Edward will allow me to remind him of it, that I thought, if she sued for a divorce on the ground of his desertion and adultery, adultery in a technical sense, because he had married again, the impossibility of proceeding for that in France, because the courts in France would not recognise the marriage, ought to make our courts abandon in that case the plea of domicile, and in order to do justice, declare the marriage at an end. I think that could have been done, but unfortunately she tried that petition before another judge?—Sir Francis Jeune dismissed her petition.

42,138. I do not think he ought to have dismissed the petition?—He dismissed it on the ground that he had no jurisdiction, she being a domiciled Frenchwoman.

42,139. My view was that the court had jurisdiction, because it only refuses to exercise jurisdiction when the domicile is foreign, but that is because the person who wishes to seek relief should go to the courts of the domicile in order to get it. If the courts of the domicile will not recognise it as a marriage, you get to the position in which it is absolutely necessary, to do justice, to say, "I, in my country, recognise you as "married, but I recognise that the grounds for divorce "have been given." For instance, where desertion has taken place, and the man goes away to a foreign country with the intention of creating a foreign domicile, we allow a suit to proceed here, and will not let him be heard to say that his domicile is in England?—Meanwhile this poor woman had a child by the French husband, and then she was refused the divorce from him because this court had no jurisdiction, and Sir Francis Jeune said he had a divorce in France.

42,140. No, a decree of nullity?—Then she married an Englishman and had a child by him, and then the Englishman repudiated her and got rid of her on the ground that her previous marriage had not been annulled.

42,141. I may be right or wrong, but the Court of Appeal supported it. They took the view the English marriage was a perfectly good marriage?—Your Lordship was the Court of Appeal.

42,142. No, it went to the Court of Appeal?—Yes, but your Lordship drew the judgment of the Court of Appeal.

42,143. It may have come to me. I was not alone, it was the Court of Appeal?—Your Lordship prepared the only judgment that the Court of Appeal delivered.

42,144. That is true, but the way out of the case was quite simple, the first petition should have been granted. The domicile is only for the purpose of going to the proper tribunal, and if that tribunal says you are not married, you must go somewhere else.

(*Sir Lewis Dibdin.*) It is startling for the court to have held that the marriage in Liverpool was not a good one.

42,145. (*Chairman.*) I could not decide that?—I did not contend that. I contended that the decree of nullity, granted by a court which admittedly was a competent court to deal with the husband's position, was operative here and should have been recognised here.

42,146. The difficulty was, it could not say according to our views, and that has been discussed in many cases, that a marriage in England which was legal and properly contracted was a bad marriage. That is the difficulty. You may take it that the point of the case of *Ogden* v. *Ogden* has been mentioned to us very fully, and the answer is, Deal with it in some way by which the court's decision abroad should be recognised in this country?—Your Lordship does not mind my having mentioned it.

42,147. No, I know that case has been very much discussed and very much criticised?—Then my memorandum goes on to the matters of practice.

42,148. Before you go to that, may I ask you one or two general questions. You have expressed your view about the re-marriage of guilty persons. That eliminates one note I had made. The other point is this, you have presented a view of the law based upon Christian doctrine?—Yes.

42,149. Have you considered in that that a large section is not governed at all by the Christian doctrine?—No, I think this is a Christian State and that we are bound by the Christian law.

42,150. You would not take into consideration the interests of those who did not profess Christianity?—No.

42,151. The second point is this. You probably are aware that there is a vast difference of opinion as to what is the Christian law. There are three views presented by very competent persons—one that marriage is indissoluble, secondly, that it is indissoluble except where there is adultery, thirdly, that it is dissoluble where the causes are so grave as to bring *de facto* to an end the matrimonial life. We have those three positions presented from the Christian point of view?—I am aware of that. As to the first, it appears to me that is contrary to the Christian law and can only be got rid of by dismissing St. Matthew, as he has been dismissed, as an untrustworthy compiler.

42,152. The second you agree to?—Yes. Then, with regard to the third, I think it would be a disaster if divorce were allowed for any other cause than adultery.

42,153. You think it would be contrary to Christian views?—Contrary to the Chritian view and practically productive of very great evils.

42,154. Although you have given us the benefit of some very clear criticisms of the contexts on the matter, I suppose that you would not put forward those views as based upon exact scholarship?—I cannot lay claim to exact scholarship.

42,155. We have had so many learned men who have discussed these points in minute detail?—I only put them forward as the view of a layman with some amount of capacity for considering the documents upon which the whole matter rests.

42,156. I want to ask you whether in stating that you do not differ from what has been found acceptable in the Scottish Churches, namely an addition of the ground of desertion to adultery, and a ground which has existed for 300 or more years?—I cannot say that. All I can say with regard to Scotland is what Lord Lyndhurst said in 1857 in the Debates:—"I find that "in Scotland adultery on the part of the husband "gives the wife a right to a divorce just as the adultery "of the woman gives the man a similar right and the "remedy extends alike to the lower as well as the "higher classes, and yet I believe that the state of the "law has had no demoralising effect in that country. "Why then should we assume that a similar provision "would be prejudicial to morality in this portion of "the United Kingdom."

42,157. That is not quite the point. Lord Lyndhurst was one of the strongest urgers of divorce being granted on the ground of desertion. Dealing with it from a Christian point of view, Scotland and its Churches have accepted that ground at any rate as not contrary to Christian principle. Have you considered that?—No, I should not accept that, but I have not considered it.

42,158. I think you might now proceed with the practice?—As to the practice, I think in my practice in the Divorce Court itself certain things have taken place which are very mischievous. The first is the mischief done by allowing agreement as to damages. When you have a case to be tried before the court and the parties have agreed beforehand what amount of damages should be paid, it produces a very demoralising effect upon the country in having that stated. It is a sort of bargain by which one man gets rid of his wife and the other man pays for her, and I think that it is very mischievious.

42,159. May I remind you of this in order to get your view complete; you know that the agreement has no binding effect, it has still to be stated to the jury that that agreement has been made and they need not accept it?—I think the effect of allowing the agreement and stating it to the jury as if it were part of the ordinary proceedure possible in the case is a mischievous effect. Secondly, by directing or permitting settlement of damages on the guilty wife. I think that the court has gone far too far in that. It is looked upon now as if the damages were to be a provision for the guilty wife which is not the idea with which damages were awarded originally. It was partly a punishment on the seducer and partly a consolation to the husband for the loss of his wife, but when an arrangement is made with the sanction of the court that the damages shall be settled on the guilty woman, it seems to me that very much of the moral effect of the judgment of the court is done away with.

42,160. May I point out that my recollection is that is usually done where the adulterer has deserted and left the woman penniless, and it has been thought right in the discretion of the judge to apply part of damages to keep her off the streets?—I do not think that has been my experience. I know that it has been done in cases where there is no desertion.

42,161. At any rate, that would not be an improper way of treating damages?—Within certain limits possibly some provision may be made.

42,162. At present the discretion rests with the judge as to what shall be done with the damages?—Yes.

42,163. When they have been brought into court?—Yes. I do not think that discretion ought to be considered so wide as it has been usually considered, and I do not think it has been wisely exercised in many cases. Then I think mischief is done by granting final decree before expiration of the six months. There was a curious and, as I think, a most regrettable case not very long ago—I doubt the legality of it—where a decree was made absolute in three months, and was made absolute with apparently the specific purpose that the child of adultery should be born in wedlock. I think it was a very serious incident.

42,164. My impression is that the time was discretionary?—I should have thought not.

42,165. My recollection is that it is discretionary but not less than three months. I think so, but I will ascertain?—It may be that it was legal. Even if it were within the authority of the Act, I think it was a most unfortunate thing.

42,166. Just to exhaust the point, there are, for instance, cases where a suit has been maintained successfully, but there is an appeal, and the appeal comes on and keeps the matter back for some time, and then if six months have to run, after that it is delayed beyond what would have been the original six if the case had gone through at first?—I think it would be reasonable

it should be within six months from the granting of the decree in the first instance. If that decree is sustained by the higher Court, I cannot see any necessity for further delay. Then the next point is a matter of practice. I think that in every suit for divorce all pleadings and particulars should be served on the King's Proctor, who should have the right to appear and cross-examine without being liable for costs to either party.

42,167. This is a point to which I personally attach considerable importance. Do you think that restriction of putting questions to the petitioner or the respondent, as the case may be, about their own misconduct should be maintained? You cannot cross-examine a person? —I do not think so, subject to this: I would not have any questions asked about offences that had been condoned.

42,168. Assume there was a proper answer to a suit on the ground of the petitioner's misconduct, at present, as you know, especially in the undefended cases, neither the judge nor anybody else can ask the petitioners, even though letters would suggest it, that they have been guilty. That is by the Act?—Yes.

42,169. You would remove that restriction?—Yes, and I think its removal would be very valuable. I have known cases, I have one special case in my mind now, where certainly wrong was done, unintentionally, by the court in consequence of that restriction.

42,170. It is rather a survival of the old idea that you should not incriminate people, the only incrimination in these matters being excommunication in those days, which can be left out of account now. That was the basis of it. I have now got the section of the Act about the decree *nisi*. It says: "Every decree of "dissolution, or nullity of marriage is, in the first "instance, a decree *nisi*, not made absolute till the "expiration of six calendar months from the pro- "nouncing thereof; unless the Court shall fix a "shorter time, which cannot, however, be less than "three months." There is an express discretion given? —I think probably that was with reference to the matter that was in your Lordship's mind, in the case of appeal.

42,171. You would abolish that?—I would certainly abolish that.

42,172. In no case less than six months?—From the granting of the original decree.

42,173. (*Sir Lewis Dibdin.*) Would you abolish it entirely, or in cases where there was not an appeal?—I would say in no case, it applies to both classes of cases, should the decree be made absolute less than six months after the granting of the original decree.

42,174. (*Chairman.*) There is one point on that: your evidence is so full of experience that I want to exhaust it. I recollect one case in which a lady applied to shorten the time between the three and the six months on the ground that her physical condition, through the anxiety of the matter, was so bad and she wanted to go abroad. I do not remember what was done in it. Would not that rather lead to some exercise of a discretion?—I do not think there should be any discretion.

42,175. You would not allow it to be exercised even though it might possibly legitimise a child?—Certainly not on that ground.

42,176. The next point is with regard to local trials?—As to local trials, I should like to say that I associate myself with the memorandum which has been put before the Commission by the General Council of the Bar, with regard to their objections to the matters being sent to the county courts. I agree with them, and I agree upon the grounds stated in that memoraudum.

42,177. May I ask about one point with regard to it. Would your objection be removed if something were done which is contemplated in the Divorce Act. It says that the Court of Divorce may sit in London or elsewhere according to an Order in Council? Would you object to it if the High Court dealt with these cases elsewhere than in London?—Certainly not. I am against the cases going to the county courts as at present existing. I should like to see them tried by order of the Court at Assize before a Judge of the High Court, or I should like to see the Divorce Court sitting occasionally in large centres of population in order to deal with them, and I personally look forward to the time when the county courts will be reconstituted as District Courts of the High Court.

42,178. Supposing that were done, assume we have got as far as that, and you had district courts sitting at convenient large centres, would you be adverse to that court dealing with the divorce cases?—No. I am speaking now with regard to a few district courts in large centres of population, assuming that a district court had been established, which was a portion of the High Court, subject to the authority and in direct communication with the High Court. I should see no objection to their being tried there.

42,179. Do you think that something of that kind is necessary to meet the poor cases?—I do not know that it would be necessary. I should like a little experience with regard to the trial of these cases at assizes before saying that so great a change would be rendered necessary for the purpose of dealing with divorce cases, but apart from divorce cases, I have a very strong opinion as to the desirability of remodelling the county court system and establishing a system of district courts.

42,180. That would probably meet, in your view, the case of the poorer people, who would get readily to it?—I think that would meet a great deal of the difficulty.

42,181. Then as to publication?—As to the publication of divorce cases, I do not think one can exaggerate the mischief that is done by the present methods of the publication of the cases. It is not merely that the facts of the case are published, but all the letters are published, the publication of which cannot conceivably be of any advantage to anybody; they degrade the reports and make them more exciting and mischievous. It is an extremely difficult question. I do not myself think that the fear of publicity has a deterrent effect.

42,182. On the commission of the act?—In preventing the actual commission of immorality. I think that is much exaggerated: but with regard to publication, it is an extremely difficult question, and the suggestions which I would make are these two: one, that no reports should ever be allowed of a case till it was finished. The mischief really is that we occasionally get what are called sensational cases, and day after day the papers are largely filled with detailed reports of those, and a great excitement is produced, which is in every way mischievous. It cannot in the least degree be advantageous to anybody. That would be very much checked if no report of a case were allowed to be published till that case was finished. Then I think that there should be an official publication of the full names and addresses and descriptions of persons found guilty of adultery. I have known in my experience a number of cases tried in the courts and never reported at all. The publicity has been avoided in different ways; I have known many such cases.

42,183. It is avoided in one respect compulsorily. If you have 20 cases in the day, which is quite common, no paper could find the space to report all of them, and a great many escape publication?—I am not referring to that sort of case. I have many instances in my recollection of applications, where I have often wondered that the judge was not suspicious, to take a case at half-past three or a quarter to four, and the general object of that is that it shall be taken quite quietly at the end of the day when the reporters have had enough to do, and no notice is taken of it and the names do not appear. I think it is extremely important, just as when solicitors go wrong and the court has to deal with them, it puts in the papers the name and address of the offending solicitor, that there should be an official statement of the names and addresses of all persons found guilty of adultery.

42,184. Would you be in favour of hearing all these cases in camera?—No, I think not. There are dangers in that direction, too. I know of a case which was heard in camera, and the carrying through of that case to a result which would have been extremely mis-

chievous, was only prevented by very strong steps being taken with regard to representation to the King's Proctor.

42,185. You always have the power to intimate to the King's Proctor in any suspicious case?—Yes, one always has the power to do that, but I have this case very strongly in my mind.

42,186. However, the point is that you regard this unlimited publication as a serious evil?—I do, very.

42,187. Has anything been brought before you that specifically shows its evil effects?—I do not say one could pick out a particular case, although I am not sure I could not do that even, but one's general knowledge of the effect of these cases and the eagerness with which people read them and talk about them, and the eagerness with which the papers are bought which contain these particulars, quite satisfy me that the present unlimited publication is a very grievous evil.

42,188. The other points are minor ones: you do not give evidence as to separation orders or costs?—No.

42,189. Those are outside your experience?—Yes.

42,190. (*Sir George White.*) I understand that you consider marriage indissoluble except from the one view of adultery?—Yes.

42,191. It would not modify your opinion a bit, the fact of having cases of permanent insanity, or persistent cruelty, or anything of that kind, however hard the case might be?—It would not modify my case at all. As a Churchman I am bound by the law of Christ.

42,192. So far as facilities under the existing divorce law are concerned, you are prepared to consider any reasonable proposals to bring the facilities within the reach of the poorer classes?—I strongly desire to make the relief in case of adultery more easily obtainable by the poorer people.

42,193. Do you think that by holding sessions of the High Court in the provinces, the expense would be sufficiently reduced under those circumstances to bring it within the reach of the poorer classes?—No, I do not think that alone would do.

42,194. Have you any other suggestion?—Yes. I did not mention specifically that subject, but I said that with regard to these matters, I concurred with the recommendation of the General Council of the Bar, and that contains specific suggestions as to costs, and so on.

42,195. (*Lady Frances Balfour.*) You are for making it equal as between man and woman?—Yes.

42,196. You said men and women had agreed that the crime was different between the sexes? Would you not rather put it that men had agreed that it was different with women than with men?—No.

42,197. Is there evidence that women agree?—I think both sexes agree as to that.

42,198. I should take exception to that. I think men have always said women should be chaste, and they need not be?—I think my experience is, and I thought everyone's was, that women were very much more indulgent to the faults of men than to the faults of their own sex.

42,199. We have heard a great deal about the forgiving wife?—I am not speaking of the forgiving wife, but the general tone of women's opinion or feeling with regard to this.

42,200. Is it your opinion that women think men should have less restraint than the women have themselves?—I think the women feel less keenly the mischief of the offence in the man's case than in their own.

42,201. Why do you think they think men have to give way to this so much more; it is that they are weaker morally?—I think that the explanation really is as suggested, that with the man there is a great deal more of the physical element in it than in the case of the woman.

42,202. I take exception to the form and I should like to put it in a form you could agree to. I should say, "Men believe there ought to be a difference," not "men and women"?—I am afraid I cannot accept the correction.

42,203. (*Sir Lewis Dibdin.*) You have told us that your view that the grounds of divorce should not be enlarged rests on the New Testament, but I gather your view is also that an enlargement of the grounds of divorce is undesirable on the grounds of general public policy?—Yes.

42,204. That would be apart altogether from the Scriptural argument, I will call it for shortness?—Apart altogether from that.

42,205. Is it your view that a multiplication of the different grounds on which a marriage could be severed must have the effect of making the public regard marriage as a less permanent institution?—I think that would be the tendency of any extension of the grounds.

42,206. That view, I suppose, applies equally to Christians and non-Christians; it applies to the whole nation?—That would apply to all, certainly.

42,207. So that your second reason for objecting to the enlargement of the grounds is one that affects the nation *quâ* nation, irrespective of its Christian character?—That is so. I have entirely failed to find any means of deciding where the line should be drawn with regard to relief directly you go outside the one specific question.

42,208. The other question I wanted to ask was with regard to county courts. You are against jurisdiction being given to the county courts as they exist to-day?—Yes.

42,209. I gathered you would be in favour of such an extension of the jurisdiction of the High Court to the provinces as would make at any rate certain county courts have High Court jurisdiction?—Yes, that would be so.

42,210. That would be not only in divorce matters, but in all matters?—I think in all matters. The system wants remodelling.

42,211. Would you be in favour of divorce jurisdiction alone being extended to certain of the county courts, giving them this jurisdiction before and apart from any extension of the High Court jurisdiction in other branches?—No, I think not, because my willingness to see jurisdiction in divorce cases given to any county court is dependent upon the status of those courts being altered and their relationship to the high court being altered.

42,212. Till that is done as a whole you would be against it being done for divorce only?—Decidedly.

42,213. (*Judge Tindal Atkinson.*) I understand you agree it is very essential that the poorer classes of the community should have some court to resort to in order to obtain a matrimonial remedy?—Yes. I am very anxious that poor circumstances should not deprive a man or woman of the remedy which is given by the Divorce Acts.

42,214. You know, after your years of experience, that any great reformation takes a great number of years to accomplish?—I do, unhappily.

42,215. And this question of the reconstitution of the county courts in combination with the high courts may still take some years?—I think that is very likely.

42,216. That being so, and it being urgent the poor should obtain some relief, that should be dealt with at once. Do you agree with that?—As to its being urgent, I think it very desirable.

42,217. Supposing it was proved to us that the denial of the facilities for divorce has lead to and is leading to a considerable amount of immorality throughout the country, it is obvious that should be put a stop to as soon as possible?—It is very desirable that should be put a stop to, if that is the fact, as I take it from your question.

42,218. Assume that for the question I am going to ask you. I appreciate, and I daresay you would if you were a county court judge, that the difficulty which the poor have is in reaching the courts that are some distance from their residence. It is not merely the expense, but it is the absence of witnesses from their work which is the great difficulty with them. If they had to go to the assizes or only a few towns in the country, you recognise that difficulty will still exist?—It would be only partially remedied.

42,219. And that it is essential. The county courts do at the present time give the poor people that relief in respect of which there is jurisdiction, which was the

very object with which county courts were created?—Certainly.

42,220. One other objection which the Bar Council took is the difficulty of technical collusion. Does that press you at all?—I think by sending divorce cases to be dealt with by county courts as at present constituted there would be a great risk, especially seeing that the county court judges are very heavily overworked now in many cases, of less consideration and care being given to the cases than they ought to receive.

42,221. Those are two separate propositions; the question of collusion and the question of the congestion of the work are separate matters?—They do connect themselves in this way, that the pressure of work in the anxiety to get through many cases makes the judge less watchful as to the conditions under which the case is being conducted.

42,222. The second point involves this. If the county courts have the jurisdiction they would fix special days to do the divorce work, and do no other work on those days, which would obviate that difficulty?—I doubt very much whether that would be found necessary in many county courts. I doubt whether there would be a very large number of cases.

42,223. I have no doubt special days could be specially arranged. With regard to the question of collusion, I suppose Sir George Lewis would be considered one of the greatest authorities on that subject?—Undoubtedly.

42,224. Sir George Lewis said if desertion is abolished, which you advocate, collusion disappears. That was his opinion. He said if you abolish desertion from the divorce procedure, collusion simply disappears?—That is, if you had simply divorce for adultery?

42,225. For adultery alone?—I do not understand that.

42,226. That was his opinion?—My experience is quite the contrary. My experience is that with regard to cases of adultery collusion is very frequent.

42,227. He said, "I do not believe there is collusion "in the Divorce Court, or, at least, very little "indeed." That was his evidence. I do not know whether you agree with it?—Sir George Lewis may apply a different meaning to the word "collusion," but I have known case after case where the defence, the respondent and his solicitors, have supplied to the petitioner the date and place at which they could get evidence of adultery, the adultery being, in fact, committed in order that the suit might go through.

42,228. I should think those are very rare cases?—I do not think they are very rare.

42,229. Sir George Lewis apparently thinks so himself, and he is much behind the scenes?—I think with regard to the three or four cases in my mind at the moment, Sir George Lewis and I are on equal terms as far as knowledge of the facts is concerned.

42,230. Then with regard to the King's Proctor, he says, "Although collusion may be suspected in a good "many cases, the suspicion is ill-founded, and the "cases of detected collusion are very small, perhaps "three in one year and one in another." Does that alter your opinion?—I can only say that I am surprised to hear it.

42,231. Lord Salvesen, a very experienced judge, said he does not think collusion exists, certainly amongst the poorer classes of the community in Scotland?—I would accept anything he said with regard to Scotland with great respect.

42,232. As to the doctrine of recrimination, I do not think you have been asked about that. Do you think it would be a good thing to abolish it?—No, I do not think so; it has not occurred to me as being desirable.

42,233. Supposing the petitioner is proved by the respondent, who is equally guilty, to have been guilty of adultery, do you think as a rule that ought to deprive the petitioner of a right to a decree?—I think that that is closely connected with my very strong view with regard to condonation. I think there should be no recrimination of an offence which has been condoned.

42,234. Supposing there is no condonation in the case, but a pure question of recrimination, is there any object in keeping that principle any longer in existence?—Yes. I do not see the advantage of doing away with it. It is true it prevents the people getting the divorce, but in that case I am not quite sure that it is to the advantage of anybody that the divorce should be granted and they should be free to marry other people.

42,235. That is a part of your opinion, apart from guilty parties not remarrying?—Yes.

42,236. Is there any object in keeping two persons married both of whom have made the marriage contract absolutely impossible by a breach arising from unfaithfulness? Why should you keep those people married?—I do not think that is a case in which the court can decently interpose to set them free.

42,237. (*Chairman.*) With regard to the constitution of the courts, is there any other class of case except the divorce cases in which the poor have not at present a court to which they can resort? What I mean by that is this. For the small debts which poor people incur, for the small torts they suffer, and for the crime with which they are concerned, there is always a local tribunal they can get to, or are forced to go to if it is crime?—Yes.

42,238. Is it not a fact that divorce is the only class of business which people without means of getting to London have no opportunity of presenting to the courts?—Yes, I think that is so.

42,239. Would that not rather indicate, if a form of giving some jurisdiction to the High Court in the country were desirable, some more urgent need for dealing with that matter than waiting till the whole jurisdiction of county courts was altered?—I answer that by saying I do not think, until the whole jurisdiction of the county courts and the system is altered, that you will get the same character of tribunal such as I think you ought to have in cases so serious as those which affect the status of the persons engaged in the case.

42,240. If that could be done, that would meet your difficulty?—Yes, and I look in the future to an alteration in the status and character of the court as giving local opportunities, and I also look to the suggestions made by the General Council of the Bar with regard to the fees and costs, and so on, as at all events mitigating the difficulty during the time that that reform has not been carried out.

42,241. With regard to the question one of the Commissioners put about the possibility of adding causes of divorce tending to lessen the respect for the marriage tie, might I ask you if you have given this your consideration. Assuming that there is a good deal of evidence of immorality produced by improper connections through there being no relief obtainable by poor people, assuming that there are cases where brutality is such as to make life impossible, assuming that there are cases where desertion has occurred such as that one person is left in this country and the partner has gone off and established himself in America, say, assuming that there are cases in which habitual drunkenness is such as to make life impossible, and assuming cases of insanity of which there are a considerable number, do you think it a possible view or not, that holding people to the tie of marriage in those cases as a legal tie where *de facto* it has ceased, may not degrade in their minds and the minds of the population, the idea of marriage as a tie held on to in circumstances which make it almost a mockery?—No, I do not think so. My view would be the other way, that the existence of those cases of undoubted hardship rather emphasize the sanctity of the marriage tie.

42,242. Do you think they do so where people come to disregard the tie, in consequence of the position, as one which they cannot stand?—I think the effect of the recognition of the sanctity of the marriage tie, where cases of hardship really do exist, but where the parties have not fallen into immorality, does much more to elevate the character of marriage than the lapse in certain cases from morals does to degrade.

42,243. (*Sir Lewis Dibdin.*) With reference to his Lordship's first question, is it quite the fact that divorce is the only civil matter there is no right of dealing with in the local courts? Is there any juris-

diction with regard to libel?—No, libel, breach of promise of marriage, and seduction.

(*Chairman.*) Those may be brought in the county court by consent.

(*Sir Lewis Dibdin.*) Can they?

(*Chairman.*) Any ordinary Common Law case of the High Court can by consent be brought in the county court.

(*Sir Lewis Dibdin.*) There is no jurisdiction?

(*Chairman.*) Not without consent.

(*Witness.*) There is one thing I wanted to mention: it is by way of correction. In the memorandum I read I referred to St. Augustine and St. Ambrose and St. Jerome as having held that marriage might be dissolved on the ground of adultery. I should have added, with regard to St. Augustine, he appears to have made the reservation, although I do not think it is clear, that the parties shall not marry again during the lifetime of the other.

42,244. (*Chairman.*) I think you may take it we have had before us the means of referring to all those authorities for ourselves?—I have no doubt you have, from higher authorities than myself.

(*Chairman.*) We thank you very much for your attendance and for giving so much thought to your evidence.

Dr. THOMAS HUTCHINSON TRISTRAM, K.C., called and examined.

42,245. (*Chairman.*) You are also one of His Majesty's Counsel?—Yes, I am a King's Counsel.

42,246. May I also assume I am right in believing you are the sole survivor of the original body of The Doctors Commons Bar?—I am.

42,247. You are really the only person who can tell us what the practice was in those days?—Yes.

42,248. Except so far as we could get it from books?—Yes.

42,249. You have prepared a short memorandum as to the practice in old Ecclesiastical Courts. May I read it and see whether there is any questions that should be asked you upon it?—Yes.

42,250. You say: "The Consistory Court in London was the Principal Court of First Instance in England for the trial of matrimonial causes, and it had jurisdiction to entertain such suits, not only where the parties to the suit were resident in the London Diocese but also where the parties were resident in any other Diocese in England, if they both elected to have the suit heard in the London Court instead of in the Ecclesiastical Court of their own Diocese?—Yes.

42,251. If the cases were in the Ecclesiastical Court of the diocese, was there not a process of letters of request to the London authority to hear it?—Not the Consistory Courts. They might send letters of request to the Dean of Arches.

42,252. It could be taken in that way by the Dean of Arches through letters of request, through the local court?—I do not think the Dean of Arches would have accepted them: he was not bound to accept them.

42,253. In looking through old books on practice in years gone by I have found the forms of letters of request which were issued. That would be only derogating an authority?—Yes.

42,254. You go on to say:—"Upon the pleadings in the case being filed in the Registry of the Court, witnesses were examined by one of the Doctors Commons Proctors, as Commissioner, either in London, or in any other place where the parties or witnesses were resident. The evidence was taken in private, and the depositions of the witnesses were filed in the Registry of the Court, copies of which were supplied to the Proctors of the parties to the suit." That evidence was taken entirely by the Proctor, who was deputed to take it without the presence of any advocates or solicitors, or anybody but the witnesses?—Yes, but I should state during the preparation of the pleadings they were laid before counsel and they put interrogatories, the petitioner would put interrogatories, and the respondent would put interrogatories on the different cases, which the examiner would put to the witnesses.

42,255. The result was that he took their answers from questions he framed, and from the interrogatories?—Yes.

42,256. The ultimate record of that was sent to the judge, who never saw the witnesses?—No.

42,257. I do not know whether, looking back over it from this point of time, you think that was a satisfactory means of getting at the truth?—No, but it was considered to be a very fair mode of obtaining the evidence at that time.

42,258. Perhaps it would not be thought so now?—If the witnesses lived out of London the examiner was able to examine them out of London.

42,259. Then you go on: "At the hearing of the case, where any evidence was unfit for publication it was the practice of the advocates to mention to the judge that this was so, and to refer him to the articles of the paragraph where it would be found. The judge, after perusing the evidence, directed counsel to proceed with his argument, which he did without mentioning objectionable details, which never appeared in the papers." That was a practical way of excluding from publication anything that was at all of an offensive character?—Yes.

42,260. Then you state: "On the Divorce Act coming into operation in January 1858, it was mentioned to the judges of the Divorce Court that if the evidence in all divorce cases was taken in open court it might lead to the publication in the Press of objectionable matter, which was precluded by the practice of the Ecclesiastical Courts. The judges, however, held that it was desirable to adhere in that court to the rules relating to evidence that prevailed in the common law courts." I believe they did so because, if I recollect rightly, the Act of 1857 provided that the hearing should be in open court?—Yes. With regard to that I should add that a few days before the Act came into operation I met Mr. Delane, the editor of the "Times," and he told me that he had consulted the sub-editors, and they decided that the only statement they would make in future would be to give the names of the advocates, the names of the parties, and what the charge was.

42,261. And the result?—Yes. He asked me what I thought of that. I said I thought it would be all that was necessary. Then I met Mr. Delane a few days after the court was established, and he said he regretted very much to say that his suggestion had failed to take effect. He said he found that the other newspapers gave full reports of each case, and that in self-defence he was obliged to do it in the "Times." I told Dr. Phillimore, who was leader of the Bar, what had passed between the editor of the "Times" and myself, and he said he would put a question to the court on a motion day, and he put a question. He asked Sir Cresswell Cresswell what would be the course with regard to publication of evidence, who said, "In "nullity suits we have always the cases heard in "camera." Then Dr. Phillimore asked with regard to the other cases. Sir Cresswell Cresswell said, "I will "speak to the judges, and mention it on next court "day," and he spoke to the Common Law judges, and they said they thought the evidence should be given in open court, just as in other cases in the courts.

42,262. This is the section I had in mind, Section 46 of the old Act of 1857: "Subject to such Rules and "Regulations as may be established as herein provided, "the witnesses in all proceedings before the Court "where their attendance can be had shall be sworn "and examined orally in open Court." However, the result was, except in nullity cases and, I think, in children's cases with regard to custody of children, it was decided that the cases should be heard in open Court?—Yes.

42,263. I gather from what you have said that you think, and it was thought at the time, to be undesirable that details should appear in the papers?—Yes.

42,264. Then you say: "With regard to my suggestion, that by adopting the practice of the Courts in New York and in other foreign countries——"

there is something omitted; I do not follow it. Perhaps you will state what you want to convey?—In other Divorce Courts, in New York and generally, as far as I could find out, the evidence was not taken in Court, but after the pleadings had been completed the judge made an order on a counsel to act as Commissioner and examine the witnesses privately, I mean in the presence of parties. The evidence is taken down carefully, and the Commissioner forwards that to the Court. When the case is called on for hearing the judge reads the evidence, he does not read it in Court, but he reads it himself, and says: "I am satisfied with the evidence "in this case; it establishes the charge of adultery," or whatever it might be, and he makes a decree accordingly.

42,265. You say that would be a saving of expense? — I calculate it in this way. If the judge were to give an order to a member of the local Bar to examine, his fee, if half a day, would be three guineas; if a whole day, five guineas. Then the evidence would be sent up and all the expense of sending the witnesses up to town would be saved, and if the judge is not satisfied with the evidence, he may require further questions to be put to the witnesses. That would be a very great saving of expense.

42,266. Is that quite clear? Take a case in London. With a case in London it would not cost anything like five guineas to bring the witnesses into Court and give their evidence *vivâ voce*?—It would cost much more than that.

42,267. Not in London?—No, but I mean in the country.

42,268. You also say: "Whether the suit is contested or uncontested, it would prevent the particulars, which only concern the parties in the suit and their family, but not the public, being published in the press." That is right?—Yes.

42,269. You also have this memorandum: "On the subject of the publication of the evidence in divorce cases in foreign countries, this is considered to be an injury to the children of the marriage, and in particular to the daughters, where the wife's chastity is impugned; and so much so, that it is a common practice for the husband in the latter case to separate himself permanently from the wife, and on her bringing a suit for restitution of conjugal rights for him not to defend the suit, and to refuse to comply with the Court's order on him to cohabit with her. This entitles her to apply for a divorce dissolving their marriage on the ground of his desertion." What countries do you refer to?—Sweden, Norway, and other countries. I know it is in Sweden, because I have had cases before me.

42,270. The next paragraph in your paper I do not think deals with the matter that comes really before us. May I pass on to another point on the next page, which you say is deserving of consideration?—Yes.

42,271. You say: "Where both the parties to a suit for a divorce or for a judicial separation, which has been set down to be heard before one of the judges of the Court desire that the suit should be heard in private, that it might be granted to them, on the ground that it is a suit which only concerns the parties to the suit and their family, and not the public." That is a view which you entertain whether it is separation or divorce?—Yes.

42,272. Would that not tend to enable parties to cloak up scandals in a way that might not be desirable?—I do not know that it would, if they were fairly conducting the case.

42,273. Then you say, further, that there is no other country in Europe where the particulars of the evidence in divorce suits are published as they are in the leading papers in England, which are in circulation on the Continent. May I take it your view is that it is extremely undesirable that details of these cases should be reported in the press?—At length. Of course when it is a question of character to either party, then it must be fought out, and if the people do not object to it; but I think very often it is undesirable, particularly when they have had a quarrel. I have seen it often in cases where there has been some difference between a husband and wife. When at the Bar I was leading Junior for about 10 years, I always endeavoured to urge a reconciliation, instead of going into court for a judicial separation.

42,274. I think that is all there is in your memorandum. Is there anything you would like to add?—I have always found, particularly persons in a good position of life, that they would consent, instead of getting a decree, to have a deed of separation. I very often found afterwards they came together again.

42,275. Is there any further point you desire to present to us?—No.

(*Chairman.*) We thank you very much for coming here to give evidence.

The Right Hon. AMEER ALI called and examined.

42,276. (*Chairman.*) You have had a long experience as a judge in India?—Yes.

42,277. And lately have been appointed to the Judicial Office in the Privy Council?—Yes.

42,278. And you have been sitting there some little time?—I have had nearly 16 years' experience on the bench of the High Court, and in the course of that I had a good many cases under the Indian Divorce Act.

42,279. You have written a short paper which I think it will be simplest if you read. I think it brings out all the points?—"The rules relating to dissolution of marriage among the Christian communities in India, whether European, domiciled or country born, are contained in Act IV. of 1869, usually called the Indian Divorce Act, framed on the provisions of the English Matrimonial Causes Acts, and the decisions of the English Courts. The jurisdiction, however, to grant 'any relief' under this Act is confined to cases where the petitioner not only professes the Christian religion, but also resides in India at the time of presenting the petition—nor can any court make a decree for dissolution of the marriage, or for nullity of the marriage unless the same shall have been 'solemnised' in India."

42,280. What are the grounds for divorce allowed by that Act?—Exactly the same grounds as are allowed under the English Matrimonial Causes Act.

42,281. It follows the English rule?—Yes. "This last provision, in many cases, causes very great hardship; it often deters injured parties who have married in Europe and gone out to India, from taking action owing to either want of means or the difficulty of leaving their work. In administering the Divorce laws I have often felt this provision as a serious blot in this Act, for I see no reason why if both husband and wife are residing in India and the offence alleged has been committed in India, the mere fact that the marriage was solemnised, say, in England, should deprive the Indian Courts of the jurisdiction to grant relief. The same objection applies to the provision depriving the Indian Courts of the power of making a declaration of nullity of marriage unless the marriage has been solemnised in India. The rules relating to the grounds for seeking a dissolution or nullity of the marriage are identical with the provisions of the English law, so also questions of connivance and condonation. There is no King's Proctor in India, but S. 16 declares that in the interim between the decree nisi and the final decree, 'any person' shall be at liberty . . . to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court. This provision appears to me less cumbersome and certainly less expensive than the English procedure. It is not abused, as the risk of having to pay costs keeps unnecessary interventions within bounds. As under the English law, nullity of the marriage may be obtained 'if either party was a lunatic or idiot at the time of the marriage.' But there is no rule for obtaining relief if either party becomes absolutely and permanently insane after the marriage. To my mind the provision of the Mussulman law which gives to the judge the power of dissolving the marriage where either party becomes permanently insane or becomes

affected with an incurable and malignant disease, is more humane. Under S. 22 a husband or wife may obtain an order of judicial separation on the ground of desertion without reasonable excuse for two years or upwards. I do not see why the relief should be restricted to judicial separation or why a wife, in order to obtain her release from the marriage tie, should have to prove adultery coupled with desertion. Again, I think the provision of Mahommedan Law is in advance of the English Law and the Indian Act. It gives to the judge the power of dissolving the marriage where the husband has deserted the wife without making any provision for her, and the desertion has lasted four years and upwards. Proceedings under the Indian Divorce Law are not costly and place the help of the courts within reach of the poorer classes, who, more often than the well-to-do, seek relief under the Act." I want to add one observation to this which I forgot at the time, and that is that under the Divorce Act of 1869 the jurisdiction in the Divorce Act to dissolve marriages, or grant decrees for nullity of marriage, is given both to the High Court and also to the District Courts. The District Court's decree is subject to the confirmation of the High Court, and that is found from experience to be most convenient and to meet the requirements of justice in all instances where the parties cannot, either owing to want of means or to the distance from the High Court, approach the latter court.

42,282. How is that confirmation obtained—simply by sending the decree?—The proceedings are sent up to the High Court by the District Court and the parties are entitled to appear if they like, but the High Court deals with the question of the propriety of the decree on the proceedings of the lower Court.

42,283. Does it take the findings of fact of the judge?—The findings are taken, unless any exception is taken to them on the ground that the evidence is insufficient, but the High Court has the power, if it considers the finding to be insufficient or the evidence to be defective, to send down the case to be retried or fresh evidence taken.

42,284. Assuming it is all considered right, it is passed on as a matter of form to the High Court, and the High Court records the decree and then it becomes operative?—Yes, after six months, the usual term.

42,285. You would be in favour of extending the grounds of divorce as you mention in this paper?—Decidedly.

42,286. You mention two particular cases, insanity and desertion?—And malignant disease. I think that it is an extreme injustice, certainly, in either case to keep them tied if one of the married parties becomes affected with a malignant disease like leprosy.

42,287. That particular disease we have not to deal with. In India it amounts to complete separation?—Yes, but any malignant disease ought to be a sufficient ground.

42,288. Apparently those are confined to the Mussulman law, insanity, malignant disease and desertion?—Yes.

42,289. Can you tell me to what extent those are put in force as causes?—So far as my experience goes, extending over 37 years at the Bar and on the Bench, in the Mohammedan community there are very few cases of divorce. There are some cases of divorce amongst the lower classes, emanating from the husband, but I have not come across a single case among the better classes based on either of these grounds, or any case, except perhaps three, arising on questions relating to inheritance, or things of that kind. Anyhow there is the provision.

42,290. Although the law exists, it is not very much enforced?—It is not used, but there is the provision to which a person can resort for the purpose of obtaining relief if the contingency arises.

42,291. Do you think that that not being used depends partly upon the fact, if I am right—correct me if I am wrong—that according to the Mohammedan law more wives than one can be taken?—What is called polygamy, the privilege of taking more than one wife, is tolerated as merely a privilege, but as a matter of fact in India among the Mohammedans, so far as my experience goes, it is extremely limited. I do not think more than 5 per cent. of the people have more than one wife.

42,292. The other point I should like to ask you about is this. You have pointed out that people in India find a difficulty in utilising the Indian Act because it does not necessarily dissolve the marriage in this country?—Yes.

42,293. That is because we regard domicile as the essential feature of the exercise of the jurisdiction?—The reason why the Courts do not take cognizance of many of the cases is this. Many of the European marriages are celebrated out of India, and the Act only gives jurisdiction to the Indian Courts in cases where the marriages are solemnised in India.

42,294. Do you think the Act should be amended by allowing the parties to sue, wherever the marriage had been celebrated?—Yes, if the offence is committed there.

42,295. Assume that power were given to dissolve the marriage, wherever it had been celebrated. If the parties were in India, according to our law, it would be an essential condition that they should be domiciled in India. Most English people who came before me in the Divorce Court when I sat there pointed out that although they may be in India many years they are not domiciled there, and that they have had to come to the English Courts for the purpose of obtaining a decree in a case where it was required?—The difficulty of domicile does arise, but it is very difficult to say how the Indian domicile can be acquired by a European. There is no distinct indication of legal opinion or judicial opinion on that point.

42,296. I want to see whether you have any suggestion about that. Even if the courts there had jurisdiction to dissolve the marriage wherever it was celebrated, they would not get that jurisdiction according to our law unless the parties were domiciled in India?—That question has not arisen, and I have not considered it. I do not like to give an opinion upon that without further consideration of the question. I do not see why an Englishman or an Englishwoman resident in India should not be treated as if domiciled in India for the purpose of relief under the Matrimonial Causes Act or the Indian Act.

42,297. Perhaps you would suggest that residence of both parties in India at the time should be sufficient?—That would be my suggestion on the point, because it would be a great relief to them. There is one other matter, but I do not know how far it will be relevant to the Commission. Many foreigners come to England and marry English girls in this country, and, of course, they go before the Registrar and take out a certificate and get married; but in many cases I have seen that a great deal of injury had been caused to the wife from the fact appearing afterwards that the man was not single when he married in this country. I therefore thought, if this is within the purview of the Commission, of making a suggestion to this effect, that when an application is made before a Registrar by a foreigner to marry an English girl domiciled in this country, it should be kept in abeyance for two or three months, and that the fact of the application should be advertised in the place where he comes from, or say, taking India, for example, in the Collector's Court as well, which would have jurisdiction in the district where the man is residing, so that the people of the place may have notice of the fact that there was an application for a certificate of marriage in this country. I should desire to press that suggestion very strongly in order to guard against those frequent cases which have arisen recently, and the gross injustice to women married in this country arising from the non-observance of any care in that respect.

42,298. Have you any other suggestion to make?—I cannot think of any other at the moment.

42,299. (*Judge Tindal Atkinson.*) I did not understand of what Province you were High Court Judge?—I was in the Calcutta High Court, which has jurisdiction over Bengal, Behar and Orissa.

42,300. How many District Courts are there in that Province?—Fifty-two.

42,301. Are they presided over by military men or by lawyers?—By members of the Civil Service, experienced, well-trained civilian judges.

42,302. In those courts is there a registrar and a set of officials?—There is.

42,303. Are the interlocutory proceedings taken in those District Courts?—They have the jurisdiction. The person seeking relief may either put in his or her petition in the District Court, or may come to the High Court, but very often for the want of means they prefer to take proceedings in the District Court to save the trouble of going to the High Court.

42,304. Have these District Judges power over the custody of the children?—They have the same powers as the High Court under the Act.

42,305. And also with reference to alimony?—Everything.

42,306. They have all the powers of the High Court?—All the powers vested in the High Court, subject to the confirmation of the High Court.

42,307. Have you any reason to believe that sometimes that does not work satisfactorily?—I have no reason to think it whatever. I have had several cases from the District Courts, and we have found that the proceedings had been conducted very carefully, and certainly to the satisfaction of the High Court.

42,308. Some witnesses have taken objection to local courts on the ground of want of uniformity of treatment that may arise from the different judges dealing with the case. Have you found that a difficulty?—There has been no difficulty in that respect: our laws are so uniform. We have this great advantage over the English procedure, which I venture to point out—our laws are codified. The law of evidence is contained in one uniform Act, for which we are indebted to Sir FitzJames Stephen. It is an Act of the very greatest use, especially in the subordinate courts. With respect to the procedure law, we have a uniform Code which does not enable one to indulge in discussion.

42,309. Do you find any difficulty in regard to collusion?—Objections have been taken, but we have found no difficulty. Sometimes the objections have been taken by interveners with reference to collusion, but we have had no difficulty. I am bound to say one thing, the majority of cases that come to the Courts in India are cases not from the upper classes: they are, general speaking, people such as foremen of works, guards on railways, and persons in charge of factories, and so forth. Few people belonging to the higher ranks come into the Divorce Court. Whatever may be said by poets and novelists, Anglo-Indian Society is extremely circumspect in its manners. Whatever cases have arisen have come to England.

42,310. I rather gather from that that you are of opinion that collusion does not exist amongst the poorer classes, although it may exist amongst the better ones?—Objections based on collusion have been taken, but they have generally been decided, so far as my recollection goes, on rules of evidence, and perhaps in one or two cases the collusion has been found, but in the majority of cases not

42,311. Do you think that collusion does exist amongst the poorer classes?—Yes.

42,312. (*Chairman.*) With regard to those classes of people you mention, if they had been married in England the English courts would have no jurisdiction?—That is so.

42,313. And these people might be too poor to come to England to get their divorce, although their domicile is still English?—Practically for a long time residing in India.

42,314. Technically domiciled in England?—Yes.

42,315. Your view is, to meet that sort of case, let the Act be amended so as to deal with marriages outside India as well as in India, if the people are resident in India?—Yes, that is what my suggestion comes to.

(*Chairman.*) I think we ought to thank you very much for your evidence which has brought one or two new points to our attention.

Adjourned.

Winchester House, St. James's Square, London, S.W.

FIFTY-THIRD DAY.

Monday, 19th December 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The Right Hon. THOMAS BURT, M.P.
Sir FREDERICK TREVES, Bart., G.C.V.O., C.B., LL.D., F.R.C.S.
Sir LEWIS T. DIBDIN, D.C.L.
His Honour Judge TINDAL ATKINSON.
EDGAR BRIERLEY, Esq.
J. A. SPENDER, Esq.
The Hon. HENRY GORELL BARNES (*Secretary*).

The Right Hon. EARL RUSSELL called and examined.

42,316. (*Chairman.*) I think, my Lord, you communicated with the Secretary with the view of giving evidence before this Commission?—I did, my Lord.

42,317. You have been interested in the question of divorce since 1890, and are familiar with the practice of the court?—I am.

42,318. I think you yourself, if I remember aright, are a member of Bar?—Yes.

42,319. And you have also studied the history of the question, the earlier part of which, you say, is naturally ecclesiastical?—I have.

42,320. Will you kindly read the next part, because it shortens matters?—"I am, however, of opinion that Parliament is not concerned in legislation with ecclesiastical views, but only with sociological considerations, and I do not therefore propose to go into them. In my view the State has no more right to dictate to me or my fellow citizens what shall be the nature of contracts of marriage from an ecclesiastical point of view, than it has to deal with the education of my children, with the exercise of the franchise, or with other matters, from an ecclesiastical point of view." I do not know whether your Lordship thinks I might read that quotation from Lord James that I give there.

42,321. Oh yes, I think so?—Lord James of Hereford, when speaking on the Deceased Wife's Sister Bill, said something very much to the same effect,

though on another point: "Guided by my own "conscience and seeking such guidance as will assist "me, I protest against this country, blessed with the "results of the great Reformation, going back to the "opinions of the early bishops and learned men of "narrow views for rules as to what is right or wrong "for the social life of to-day. What can be said on "this ground to our Nonconformist fellow countrymen? "How can they accept the opinions of a Church with "which they have nothing to do, as guides in the law "of marriage? There can be no law in this matter "but the law of Parliament."

42,322. That is quoted from Hansard on the 20th August 1907?—Yes, my Lord.

42,323. Perhaps you will proceed, and I will stop you when necessary to ask any questions that occur to me?—"The existing law is, of course, well known to members of the Commission. It suffers in my opinion from three great defects. 1. The premium placed upon adultery, and the advantage which the law gives to those who are willing to commit it."

42,324. Would you explain what you mean by that?—What I mean by that is that the relief of divorce in this country is afforded quite readily in the case of adultery where one spouse or another commits or is willing to commit it; but if both spouses are persons who prefer to live chaste lives, no matter how impossible their matrimonial life together may be, the law gives no relief; not even if the impossibility is so great that they feel it necessary to separate and live apart for the rest of their natural lives. "2. The practical denial of divorce to the poor." I think your Lordship has had evidence on that point.

42,325. Yes?—Probably the Commission is fully alive to the fact that a large proportion of the population is unable to get access to the Divorce Court.

42,326. We have had a great deal of evidence on that point?—"3. The provision of an illusory remedy in many cases of matrimonial hardship, such remedy itself being directly provocative of further adultery. To illustrate my first point, let us take the case of a wife who desires to elope with her lover. By a fairly simple process the husband can obtain an undefended divorce and the wife and the lover may marry. The lover will have to pay the costs, and may also (if the husband is that kind of person) be mulcted in damages. But the law itself puts no obstacle and no difficulty in the way, and within a year of the elopement a new matrimonial alliance may be formed. In the case of the adultery of the husband the matter is not so simple, for it is necessary that another offence should be added to give the wife her complete remedy, or, as a distinguished author once put it to me, 'It is 'necessary in these cases that the husband should not 'only be immoral, but should also cease to behave as a 'gentleman.'" That refers to the necessary addition of cruelty.

42,327. Or desertion?—Or desertion. "But the modern practice of the Divorce Court has whittled down the necessary quantum of cruelty to a very small amount, and if the husband is a consenting party, and the divorce is unopposed, the actual cruelty may be even smaller than the evidence.

"The second offence necessary may also be provided by desertion for two years. But the Weldon Act has provided the device of a fictitious action for restitution by which this period may be reduced to one year or even less."

42,328. I think that is the Act of 1884?—Yes, my Lord. "These are the remedies and luxuries which the law offers the well-to-do adulterer, and among sensible people there is not much difficulty in arranging the matter. If, however, both parties have committed adultery, showing in the clearest possible way that they are ready to make new alliances, the law refuses relief to either.

"Hardship arises at once if one or both of the spouses are virtuous and upright members of society. In such a case husband and wife may separate if they find life together intolerable, and, for all the law cares, may remain separate and celibate for the rest of their lives without any prospect of relief. Or it may be that the husband of an offending wife is a Catholic with religious convictions, or a mean-spirited person who desires to punish his wife, and he may refuse to take proceedings, or he may only ask for a judicial separation. Whatever the motive that actuates him, he has the entire control of the situation and is able to decide whether his wife shall or shall not be at liberty to regularise her position. The penalties imposed upon the party at fault are pecuniary and social, the latter of course varying infinitely according to his position, and falling very differently, for example, upon the schoolmaster or the journalist.

"All these remedies and luxuries are absolutely denied to the poor. The case may be perfectly clear, the petitioner may be in law fully entitled to his remedy, the respondent may be quite willing not to defend, but unless he can find a sum varying from 30*l.* to 70*l.* he must go without his remedy. This sum to be spent in one lump is probably out of the reach of four-fifths of the husbands and nine-tenths of the wives of this country. The proceeding *in formâ pauperis* does not adequately meet the case. In the first place, the initial steps are not easy unless the proposed petitioner is able to get in touch with a friendly solicitor and counsel. When this difficulty has been overcome and leave has been given to proceed *in formâ pauperis* money has to be paid for the travelling expenses of the witnesses and for the out-pockets of the solicitor. The most favourable case I ever knew of was from my own parish in Sussex, where the thing was made easy for the woman by her husband having been convicted of bigamy at the Liverpool Assizes. Being in prison it was easy to serve him with papers, and the evidence, collected at the expense of the police, was available cut and dried. Even here the cost to the woman was between 5*l.* and 10*l.*, of which the vicar of the parish contributed half. Moreover, the test as to means is fallacious."

The affidavit, as the Commission knows, is that the total possessions are not more than 10*l.* or 20*l.*

42,329. 25*l.*?—25*l.* is it?

42,330. And must set out the income?—Yes. Then I must correct this figure. "The furniture of a cottage may very well be worth more than 25*l.* and yet the occupant may not be able to put up 40*l.* for a non-pauper case. To my mind the obvious remedy is to give jurisdiction to the county courts sitting throughout the country, manned by very able judges who habitually try cases infinitely more difficult than those of divorce. In the vast majority of cases the evidence would be in the locality of the county court, thus reducing the expenses of witnesses. There should, I suppose, be some limit of income, say, 500*l.* a year, and I think it would be fair to prohibit a petitioner in the county court from seeking damages. However, on the general question of damages I agree with the protest of Lord St. Leonards in 1857."

42,331. Do you recollect what it is?—I am not sure if I have furnished a copy of it, but it will be found in Hansard as a protest in the Debates, and the words, I remember, are that he says, "How can any husband "deal with money of this sort or take money for the "sale of his wife? And how could he mix it with his "other money? I should as soon touch scorpions."

42,332. I think those expressions were before the clause was inserted that the money could be paid into court and dealt with by the court?—Oh, I think, very likely. It was during the discussion of the Bill; but none the less I take it the theory of damages is the old theory of the action of crim. con.—that is a solatium for the loss of a wife; and, looked at from that point of view, it is somewhat barbarous in the present day. "The remedy of judicial separation was provided to satisfy the consciences of Church people, although heartily condemned by an archbishop of the English Church."

42,333. Which is that? — That is Archbishop Cranmer, whom I quote in a moment. "It has been extended and kept alive to satisfy the feeling that something ought to be done to protect the feelings of husbands and wives while not offending the ecclesiastical conscience. To my mind judicial separation is a wicked provision of the law, with a very high probability of adultery by the separated parties."

42,334. May I say we have had a complete copy of the Reformatio Legum put in, and a translation of it; so perhaps it is not necessary to read that particular part?—No.

42,335. Of course, I mean so far as it relates to this subject?—Yes.

42,336. Then, perhaps, you might proceed from the bottom of the page?—Lord Palmerston said on the 6th August 1857, during the debate on the Divorce Bill—

42,337. Hansard, page 1194?—Yes, my Lord. He said: "The position in which man and wife were placed by these judicial separations was a most objectionable one, and if marriage were dissolved at all, he thought it should be dissolved altogether, that the parties should be entirely set free, and that they should be able to contract other engagements. He thought that parting man and wife by these judicial separations placed both of them in situations of great temptation, where they were liable to form connections which it was not desirable to encourage." Then, in the debate on the same Bill in the House of Lords—Hansard, 3rd March 1857—"The Bishop of Exeter said, 'With regard to 'the doctrine of divorce *a mensa et thoro*, he thought 'that it was wholly inapplicable to the nature of the 'offence and to the circumstances of the law. It was 'unknown by the Church of Christ at any period, 'except under the dominion of Rome; but they were 'now asked permanently to inflict the corrupt system 'of that Church upon the Church and the nation of 'England.'"

42,338. As to the next passage, we have had that judgment before us?—That I am sure the Commission have already heard.

42,339. Then, "Attempts at Reform." That is a point I want to ask about, because you yourself have been the introducer of several Bills on the subject into the House?—Yes.

42,340. I do not know that they need be formally put in; we can refer to them; but I should like you to give us the points in them to which you were directing the legislation?—Yes, my Lord. "The vexed question of divorce appears to have slumbered for about 50 years. In May 1902 I introduced a Bill into the House of Lords."

42,341. I should like to get on the note in short form what the objects were?—My Lord, it was a very comprehensive and ambitious measure. I do not say that I anticipated at any time that it would pass into law; but the object of the Bill was to increase considerably the causes for divorce; to assimilate the practice of the Divorce Court to some extent to the provisions of other divisions of the High Court, and do away with some of its peculiar practices; to relieve poor people, by enabling them to bring their suits in the County Court; and at the end there were two additional provisions; one, legitimation by subsequent marriage (clause 17 of Divorce Bill, 1902 [H.L. 43]).

42,342. And the other has already been ——?—The other, the Deceased Wife's Sister Bill, which has been dealt with in a separate Bill.

42,343. Perhaps you will let me consider later whether it is necessary to print these Bills in the Appendix?—Yes.*

42,344. But that it may be on the note, would you recapitulate for us simply the grounds that you then proposed for divorce?—The grounds are in clause 1.

42,345. That may be sufficient, practically, for our purpose?—Before I come to the first ground, I should point out that the clause begins, "Either party to "marriage may present a petition to the court"; so incidentally it involves equality between the two spouses. The first ground "(*a*) That since the "marriage the other party to the marriage has com- "mitted adultery or sodomy." Those are the exact words. "(*b*) That since the marriage the other "party to the marriage has been guilty of cruelty "to the petitioner. (*c*) That the other party to the "marriage is undergoing penal servitude for a term "of not less than three years. (*d*) That the other "party to the marriage has during the year preceding "the presentation of the petition been found or "certified to be of unsound mind under the Lunacy "Act, 1890. (*e*) That during the three years pre- "ceding the presentation of the petition the parties "to the marriage have lived apart, and that through- "out that period either of the parties did not intend "to resume cohabitation. (*f*) That during the year "preceding the presentation of the petition the parties "to the marriage have lived apart, and that the other "party concurs in the petition." That involves divorce by mutual consent, of course.

42,346. Then what was the position that that Bill got to?—I moved the second reading, and it was opposed by the Lord Chancellor, and there was an end of it. As a matter of fact, the Lord Chancellor, who was extremely indignant with the Bill and said it was a scandalous Bill to be presented to the notice of a Christian assembly, moved a very unusual motion, which your Lordship will find in Hansard, that the Bill be rejected for which he said there had been no precedent for a hundred years, or something of the kind.

42,347. That was in 1902?—That was in 1902. The second reading was on the 1st May 1902.

42,348. Then you introduced a Bill in 1903?—And I should like to put in the speech I made on the second reading.

42,349. I think we can look at it if necessary. It would be rather encumbering the notes. We are getting your views now?—Oh yes; I only meant for the Commission to look at.

42,350. Then in 1903 you introduced a Bill?—Then in 1903 I brought in a Bill which was practically a one-clause Bill. Oh, no! the 1903 one gives two additional grounds to the present grounds, the ground of cruelty, and the ground of three years' desertion, or, as I have phrased it, "three years living apart"; because, as your Lordship knows, there is sometimes a technical difficulty now as to whether living apart is desertion if it begins voluntarily.

42,351. Yes, but it is by either party?—By either party.

42,352. Is that the substantial distinction between that Bill and the old one?—Yes. The limitation of the grounds and the limitation of the miscellaneous provisions in the other Bill as to legitimation.

42,353. What was the history of that Bill?—That Bill was also unanimously rejected, Lord Halsbury being still Lord Chancellor, and again making a speech against it; and again, I may say, there was no discussion. In neither case was there any discussion.

42,354. Then the next is July 1905?—That is the one which I had in my mind when I said a one-clause Bill. This Bill provides—and it is the only operative clause—for the insertion of certain words in the Matrimonial Causes Act; for inserting after the words "his wife has since the celebration thereof been guilty of adultery," these words "'or of desertion with- "'out cause for two years and upwards,' and as if for "the words 'adultery coupled with desertion without "reasonable excuse for two years and upwards,' there "were substituted the words 'desertion without cause "for two years and upwards.'"

42,355. Does that mean in both cases, the husband and the wife, the grounds of divorce would be adultery, and also a ground for divorce, desertion for the period mentioned?—Yes, it would be leaving the law as it stands, but adding to it desertion for two years as a ground for divorce.

42,356. On either side?—Yes.

42,357. What was the history of that Bill?—I think there were three voted for it.

42,358. That is very much the same Bill that Dr. Hunter introduced at an earlier period?—Into the Commons.

42,359. Yes; I no not know whether you have seen that Bill?—No, I do not think I have.

42,360. And that Bill was rejected?—Yes, that was also rejected.

* It has been decided that as these Bills have been printed it is unnecessary to re-print them in the Appendix. Their reference numbers are: Divorce Bill, 1902 [H.L. 43]; Divorce Bill, 1903 [H.L. 65]; Matrimonial Causes Act, 1905 [H.L. 151]; Matrimonial Causes Act, 1908 [H.L. 108].—H. G. B.

42,361. Then you have one of June 1908?—Then in June 1908 I introduced the same Bill as the 1905 Bill.

42,362. The one-clause Bill?—Yes, and on that occasion a Liberal Government was in power, and Lord Loreburn was Chancellor, and he made a speech against it in which he said the practical effect would be to give divorce by consent, and he recommended that the House should vote against it, and be careful how they changed the marriage laws; and the Government whips were put on and it was rejected.

42,363. The effect of that was to put it on a par almost with the Scotch law?—Yes, that was the object I had in view.

42,364. Does that finish the Bills you are responsible for?—Yes.

42,365. Then you say "In December 1902, I founded the Society for Promoting Reforms in the Marriage and Divorce Laws of England." You have some pamphlet with regard to that?—Yes. Perhaps it would be well if I were to read the objects.

42,366. Yes?—"*Extensions of Divorce.*—(1) Legal divorce to be granted as is now done in Scotland when the home is destroyed by desertion for three years or upwards.

(2) "Legal divorce to be granted where the home is destroyed by permanent lunacy or long sentences of imprisonment.

"*Justice to Women.*

"(3) Women to have the same rights and to be enabled to claim the same remedies in the Divorce Court as men.

"(4) Mothers who have been divorced to have their claims for access to their children of tender years considered on their merits in each case.

"*Local and Inexpensive Tribunals.*

(5) "Jurisdiction in divorce to be given to the County Court, so that persons of moderate means may have local and inexpensive tribunals."

Then there were two other objects that I need not trouble the Commission with. One was on the survival of ecclesiastical procedure in the Divorce Court; and the other is legitimation by subsequent marriage.

42,367. And that society did proceed until——?—That society had a good many members, and it held two or three public meetings, or more than that, I think; and it had a good many members who, while they were willing to subscribe and were interested, did not care to have their names published; we never published a list of subscribers. Then in 1906 it was suggested that another society should be formed called the Divorce Law Reform Union, which I think is going to give evidence before your Lordship to-morrow.

42,368. We have had one witness?—Yes. Mr. Haynes, who was a very active and intelligent gentleman who took an interest in the matter, thought it better to start another society and proceed on a more moderate basis. I concurred in that view, and I turned over to that society all the funds we had in hand, and the literature, and vast masses of correspondence from distressed people all over the country.

42,369. You say here that "This work was taken up and continued in a half-hearted way by the Divorce Law Reform Union in 1906, who only pressed for the appointment of a Royal Commission." Are you right in saying that?—I think I am right in saying that is all its active propaganda went for. I think the witness you have had said that was all they were pressing for.

42,370. Then there is some reference to papers and books which I do not think we need trouble about. I will then ask you as to a matter which arises in the next page of my copy, with regard to a demand for divorce reform amongst the public. What experience have you had in connection with that?—Well, I have addressed, apart from the assemblies of this society for promoting reform, which held, I think, some three or four general meetings which were moderately attended—I have also addressed assemblies at other times; people who had regular weekly meetings of a society, or something of the kind, on the subject; and there I found that the general tenour of the reforms I advocated were received without opposition.

42,371. What are these meetings you refer to in this passage: "Nevertheless I have been present at at least a dozen crowded meetings where a strong and almost unanimous feeling has been expressed in favour of extending the facilities for divorce"?—That would include three or four general meetings of this society, and some six to ten different places I have lectured at in different parts of the country. I have given lectures where there have been large attendances.

42,372. What do you call large meetings?—Well, meetings up to a thousand people.

42,373. Have they been generally, as far as you could gather, in favour of the extension of facilities? Were there any resolutions passed?—No; no resolution was put. What I am going by is partly the way my observations were received, and partly by the fact that discussion and questions were invited after, and there has never been any opposition.

42,374. Meetings of men and women, or only of men?—Both. All the meetings I spoke at were meetings where both men and women attended.

42,375. Now you have, further, some observations about amending procedure in the Divorce Court?—Well, I do not know; I do not myself know of any particularly good reason why the pleadings in the Divorce Court should be sworn to as differing from pleadings anywhere else. The man has to prove his case afterwards when it comes into court, and I do not think much is gained.

42,376. May I suggest one reason. It is an extremely serious charge to make, and it may have been thought advisable nobody should make it without being prepared to swear it is true—like an information?—But I think I am right in saying the petitioner may have to swear to its truth when the evidence is entirely that of other people.

42,377. He has to swear that certain facts are true to his knowledge, and that the remaining facts are true to the best of his information and belief?—Yes.

42,378. And I know that some practitioners have thought that that is not even enough, because such hardships are imposed on persons who have to answer actions that may be utterly unfounded, and if there was no preliminary affidavit about it it would leave it open to anybody to make a charge and cause a great deal of pain?—Well, I entirely agree that it is a charge that should not be lightly launched in any sense of the word; and if those more familiar with what goes on (I am not familiar with the practice of that branch) think it deters persons from launching charges, then I think I would leave it.

42,379. But I know it has been suggested that there should be some preliminary form of enquiry even?—Yes.

42,380. Then you put the point that the person accused of adultery should have notice of proceedings?—Yes.

42,381. At present where the husband is charged, the woman with whom he is accused is not obliged to be notified?—Yes, that is so.

42,382. That I think we are fully alive to. Then with regard to the question of publication?—On the question of publication I feel very strongly the only thing that should be published is the result of the trial with the names of the parties. It is said that publicity is a deterrent to the person who is thinking of committing adultery. My Lord, I think that is open to a good deal of doubt. I do not suppose a man who is going to commit adultery stops at that moment to consider whether he will be found out and come into the Divorce Court and have his name in the newspapers; and I think as a deterrent it is over-rated. Then, it is a "great hardship for a man or a woman that all the details of an unsuccessful charge of adultery should be published. Even though acquitted the damage done is irremediable. There is a growing tendency on the part of newspapers to treat the Divorce Court as the fountain-head of sensational news." In addition to that there are private letters of a very intimate character constantly published which ought not to be of any interest to the general public, and which I think it is rather shocking to have published and discussed in the newspapers.

42,383. Then you state your conclusion?—My Lord, might I just for one moment first speak of this question of publication?

42,384. Certainly?—I have here a "Daily News" of the — October or November, I think it is the — October, which gives in one column some evidence given before you as to the advantage of publicity by journalists who are in favour of publicity. In the very next column there is a suit of divorce presented by ——, and there are letters published here dealing with a woman who was accused, and the name is mentioned, and all these things are brought out, matters that cannot be of any real interest to the public, piteous letters from the husband to the wife, and so on, which are only put in really for the sake of sensation; and I think everyone must notice, too, that the evening papers in particular, and many of the papers, have got into the habit of regarding it as almost essential to publish some little thing from the Divorce Court every day; and it is frequently on the placard: "Barmaid's Divorce," "A London Woman's Divorce," or "Baroness's Divorce," or something of the kind. All that seems pandering to the taste for the purely sensational and undesirable, and if something could be done to stop it without doing more harm than the publicity does, I think it would be very desirable.

42,385. Then you give your conclusion?—"To sum up I am of opinion that the present laws are bad for the reasons above stated. In considering legislation I refuse to have regard to the religious views of particular sects. I admit marriage to be a contract which affects not only the two parties to it, but the community, and I consider that the community is bound to have regard to the moral tendency of the marriage and divorce law and to the interests of the children. The sanctity of marriage and the sanctity of the home (both of which are expressions frequently used in this connection) I regard as having no particular meaning in the case of adulterous homes or establishments where husband and wife have long been separated. I suggest, therefore, that the test that should be applied is whether any of the attributes of marriage are still in existence between husband and wife. Where the spouses have been separated for a term of years, where the children, if any, have already made their home with one or the other, and where no element of the marriage tie remains except some financial relations and the legal bond, there I suggest the law should step in, and, recognising the existing state of things, should sever the legal bond and leave the parties free to create new homes. In this connection it is worth while remembering that since the decision of Jackson *v.* Jackson the wife may leave her husband at the church door, and unless one or other of the parties takes advantage of the privileges which the law reserves for adulterers they will both remain compulsory celibates for the rest of their lives. I still think that the only ideal state of the law would be that set out in the Bill I presented to the House of Lords in 1902." But as we always proceed piecemeal in this country (and it may be advantageous to do so, perhaps) I venture to submit this Commission might recommend, if they think the evidence makes it desirable, four advances which are all of very great importance:—

"(*a*) Equality of the sexes.

"(*b*) Insanity a ground of separation.

"(*c*) All judicial separation to be capable of being turned into divorce *à vinculo* on the motion of either party at the expiration of two years.

"(*d*) County court jurisdiction."

42,386. Might I ask you one question about equality. "Equality" there used is rather a wide term; because how would you deal with the question of costs, which you probably know about? If you put men and women on absolute equality a woman would get no security for her costs; whereas, although changes are taking place, and women working, as a matter of general practice the woman is the person that looks after the house, and the man is the person that earns the money?—I think there is no objection to the present practice of giving the wife security for costs.

42,387. May I suggest you mean equality of sexes with regard to grounds of divorce?—Yes, that is what I meant; but at the same time I think it is sometimes unfair, giving one litigant the opportunity of litigating at the expense of another. I have had experience of it myself; and the wife having no ground for proceeding is able to litigate at the expense of the husband.

42,388. Does not that involve only that there should be more inquiry before allowing the order for security to go?—I think that might be met by some inquiry of that sort, though I do not see how the court is to arrive at a result without trying the issues if a number of allegations are made.

42,389. Well, you cannot do that?—It is very difficult to do. The important advance is the advance that a judicial separation could be turned into a divorce *à vinculo* at the end of two years. I am strongly of opinion that persons who have legislated have satisfied their consciences too readily by saying "You have judicial separation" without realising how harmful it is to public morals. Having left the grounds of judicial separation as now, but including insanity, I give an opportunity, at the end of two years, of turning it into a divorce *à vinculo;* you would meet those cases, and it cannot be said, when persons have lived apart and then had a decree, and still lived apart for two years, that you are breaking up a home.

42,390. That in cases of desertion would be four years?—Yes.

42,391. Because they get judicial separation for two years now?—Yes.

42,392. And after that you would allow another two, and then get a divorce?—Yes.

42,393. With regard to the conflict of laws, I do not think we need enter into that. With regard to the Appendix, you refer to some original letters. You do not indicate what those deal with?—I thought I sent them in.

49,394. Might I suggest, if you state the points they indicate, it would be far better?—I think your Lordship will find the majority that are important in the speech I made in 1902. They are from people who say they are in one position or another of hardship owing to the present law. Some are women who have been deserted by their husbands who have gone abroad, and found themselves practically, so they say, left to starve, or form an irregular alliance with another man; and there are other cases of long periods of insanity.

42,395. I think you may take it we have had such masses of those letters that probably what you have are only samples of those?—Yes, I think your Lordship would have them; and perhaps Mr. Haynes will put in some more to-morrow.

42,396. How many have you had?—Well, I have not counted them; but speaking quite roughly from memory, I should say it would be of the order of two or three hundred.

42,397. Then what is the "Table of some previous Discussions"; because I do not want merely to encumber the notes with matters that we have already discussed?—I think that, my Lord, refers to the various discussions that have taken place, from the Reformatio Legum downwards. I do not know whether your Lordship would allow me to call attention to some of those extracts if they are not before the Commission.

42,398. Would you let me see them first—we have had such an enormous number of these?—Perhaps I might indicate the places where they are, that the Commission may refer to them.

42,399. Well, if you just like to state the reference to them anybody can look at them, but I do not think it is worth having them printed as part of the Appendix. None of these would have anything like the evidence we have had?—No, my Lord, I feel that.

42,400. If you would indicate where they are to be found?—There is, I think, a mention in my proof, "The Question of English Divorce," published by Grant Richards.

42,401. Published anonymously?—Yes, my Lord. Then in the "Law Quarterly Review" of 1889 there is an article by Howard W. Elphinstone called "Notes on the English Law of Marriage." In the "Law Quarterly Review," January 1892, there is an article by Professor Dicey. In the "Law Quarterly Review," 1885, there is an article on "Offences against Marriage and the Relations of the Sexes," by H. A. D. Philips. In the "Law Quarterly Review" of 1885 there is an article on "The New French Divorce Act," by Thomas Barclay.

(*Chairman.*) I think that is all I need trouble you about, Lord Russell.

42,402. (*Judge Tindal Atkinson.*) You would give no damages against a co-respondent, I understand?—I think it is rather a barbarous custom.

42,403. Then you leave the co-respondent without any punishment. Do you think that is desirable?—I do not know that you leave him without any punishment. He has the social exposure. I think it is more desirable than letting people think a wealthy co-respondent can buy another man's wife, which is what it comes to now.

42,404. It has been suggested that the court should have power, if the co-respondent has property, to make him make a settlement on the wife whom he has seduced?—Yes, I think that might be reasonable. It is damages to the husband which I think is so shocking.

42,405. (*Mr. Burt.*) Just one point, Lord Russell. You recognise that the expense of divorce makes an appeal to the Divorce Court practically prohibitive as far as the poor are concerned?—Yes.

42,406. And you suggest as an improvement giving the county court jurisdiction in cases of that kind?—Yes.

42,407. That, I suppose, is with the object of diminishing the cost of travel of the parties and the witnesses?—Yes, and also that the county court is a court that already exists in every locality with its machinery available.

42,408. It has been suggested to us by persons opposed to giving the county court jurisdiction that the case might be met by giving the assize court power to deal with divorce cases. What is your opinion with regard to that as an alternative to the county court?—I do not think it is a good alternative. It would certainly, I think, cost more; and I think the idea that underlies that suggestion is the same sort of notion that existed when the Divorce Act was passed in 1857, namely, that divorce is something so exceptional that you want some peculiar tribunal to deal with it. In the 1857 Act as it first passed not less than three High Court judges were required to pronounce divorce; and it is a survival of that sort of idea, that it is to be treated quite differently from any other legal contract.

42,409. (*Chairman.*) But very soon after it was reduced to one judge?—I think it was felt to be an absurdity, and I think it is equally absurd to suggest that a county court judge cannot try all these divorce questions. They are not difficult questions to decide from the point of view of law.

42,410. (*Mr. Burt.*) It is suggested by giving the jurisdiction to the county court you give it to a less qualified court than the High Court. Do you think there is anything in that?—Not at all unqualified, I think, to deal with the matter. There is this to be said about it, that you may get slightly differing practice in different courts, which you would not get in a court where there are only two judges in constant communication with each other, and who settle the practice. But I think the advantage of bringing divorce within the reach of the poor is that they may be able to avail themselves of it rather than make irregular unions as they do now, on account of the expense. I think the present expense drives them to irregular unions, which should be avoided if it can be done reasonably.

42,411. (*Sir Frederick Treves.*) You would make insanity, Lord Russell, a ground for separation?—Yes.

42,412. How would that act in cases of insanity that rapidly recover?—I think it is one year here. I think perhaps you ought to have a longer period than that. I have read the evidence given here by some doctors to the effect that it would be an additional hardship to the insane patient to know he might be divorced, or that proceedings might be taken which would end in a divorce. I think I should say that the interest of the sane person who has to live his life in the world ought to be considered also. After all, you do not compel anybody to obtain a divorce. If the desire is there to get rid of the husband or wife, as the case may be, who is insane, I do not know that very much is gained by compelling the person to remain legally bound to the other.

42,413. You are speaking of separation, not divorce?—But by the next paragraph you will see the separation should be made a divorce in two years.

42,414. But surely the insane spouse is as completely separated from the other as one can imagine?—Yes, if they are certified and in an asylum.

42,415. And if such separation were obtained it would automatically become a divorce in two years?—If either party desired it.

42,416. And you think separation might be made on insanity of twelve months' duration?—I think that might be extended.

42,417. Did you have medical advice in drafting that clause?—No.

42,418. That is your own conception?—Yes.

42,419. (*Chairman.*) Your separation is granted for insanity, and you say in the next sentence you would bring it into the line of divorce after a further period?—Yes, that is it, my Lord. The idea on paragraph C was that the present causes of judicial separation should give rise to divorce after two years, and that would still leave the question of insanity untouched; it was necessary to bring it in, and therefore I made it a cause for separation.

42,420. You would make it a cause for separation after a certain time?—Yes.

42,421. And at the end of that time give power to apply?—Yes.

42,422. That is to say if the insanity still exists?—Yes. If I may say so, I think the question of divorce is very intimately bound up with the question of marriage. I think if you had more careful marriages you might get fewer divorces; I think also there is the eugenic point to be considered. I have had a good deal of experience of asylums; I have been on the committee of several asylums for a good many years, and one knows cases of where husbands and wives are not permanently insane, but go out again and then have more children. I think that is very undesirable.

(*Chairman.*) Thank you for your evidence, Lord Russell.

Mr. ARTHUR WARREN SAMUELS, K.C., called and examined.

42,423. (*Chairman.*) You are one of His Majesty's counsel in Ireland?—Yes.

42,424. And a bencher of the Honourable Society of King's Inns?—Yes.

42,425. And a member of the English Bar as well?—Yes. Perhaps I should mention I was requested by the Bar of Ireland to give evidence, but not on behalf of the Council of the Bar.

42,426. No, I believe the Secretary of the Commission communicated with the authorities with the view of getting somebody sent from Ireland—a member of the Bar—and you have been selected?—Yes.

42,427. But you come really individually?—Certainly, my Lord. It is to be understood that the Council of the Bar have not considered the matter in any way. There are of course very varying views upon this subject.

42,428. You have had very considerable experience in matrimonial cases in Ireland, and in proceedings for parliamentary divorce instituted by persons resident in Ireland?—Yes, I have.

42,429. I may take it shortly. The old matrimonial ecclesiastical law remains still in Ireland?—Yes.

42,430. And the procedure is regulated by the Acts of 1870 and 1871?—Yes, as modified by the Judicature Acts; and the Probate and Matrimonial Division is now part of the King's Bench Division. We have not got a separate division now in Ireland.

42,431. No, since the Act of 1870?—1897.

42,432. Well, the effect of it is that the High Court in Ireland administers the old ecclesiastical jurisdiction of the Matrimonial Courts?—Yes, my Lord, and it has this effect that any judge of the King's Bench is able to take a matrimonial case and try it.

42,433. But there has been no extension of the law?—There has been no extension of jurisdiction whatever.

42,434. You say, however, that, "The procedure of the tribunal has been to a considerable extent simplified and cheapened; but except in a few matters of practice the powers in matrimonial causes of the High Court of Justice are as limited as ever were those of the old Consistorial Court"?—Yes, that is in the matter of pleadings. The old libels have been done away with, and we have powers of discovery and so on.

42,435. And you say, "The Matrimonial Causes Act of 1870 provides, section 13 (33 & 34 Vict. c. 110), that in all suits and proceedings the court shall proceed and give relief on principles and rules which shall be as nearly as may be conformable to the principles and rules on which the ecclesiastical courts of Ireland had given relief"?—Yes.

42,436. That relates "to suits for divorce *a mensa et thoro*, nullity of marriage, restitution of conjugal rights and jactitation of marriage"?—Yes, my Lord.

42,437. That leaves it that there is no conferring upon the courts in Ireland of such powers as are exercised by the Divorce Court in England?—No, my Lord, there is no power of dissolution whatsoever. Of course nullity of marriage is quite a different thing.

43,438. Just to complete that and to make it plain: the old practice that prevailed in England still prevails in Ireland of leaving the parties if they choose to apply for an Act of Parliament?—Yes, my Lord.

43,439. And the practice, I believe, with regard to that is similar to what it was in English cases prior to 1857?—Yes, my Lord.

42,440. There must be a suit in the court in Ireland. If it is a case for crim. con., there must be a crim. con. action, and lastly, a statutory decree obtained by a Bill passing through both Houses?—Exactly, my Lord.

42,441. Have you at the moment anything before you which will show the total number of Bills that have gone through the Houses latterly?—No, my Lord, I have not. I have not got the total number of Bills.

42,442. I think there was a return moved for by Lord Russell which shows the number of Bills?—I think Mr. Roberts can deal with that.

42,443. Well, then, I will leave it till Mr. Roberts comes. Now what do you say about any desire there may be in Ireland for any extension of the courts' power?—Speaking generally, I may say there is no desire whatsoever; in fact they would very strongly resist it. I say here in my note that "the whole body of the Roman Catholic clergy would oppose it very strongly and the vast majority of the Protestant clergy of all denominations in Ireland. Nor can there be said to prevail any desire on the part of the laity of any denomination to have such an Act passed for Ireland." I was recently in Belfast, and I took the opportunity of speaking to some of the leading members of the Presbyterian body there, and I was assured by them, and I have no doubt whatever that what they state is correct, that there is no desire whatever for anything in the nature of dissolution of marriage to be granted as you have it in England.

42,444. Why I want to get those figures that Mr. Roberts will give us is this; there are a certain number of cases that go through the courts, and ultimately come to an Act of Parliament?—Yes.

42,445. Have you any idea yourself what the cost of such proceedings is?—I have to a certain extent. An undefended case would cost something between 500*l.* and 600*l.*; that is the parliamentary procedure alone. Of that at least, you may say, 120*l.* will be House fees. I will give the details afterwards.

42,446. Can you tell us in addition the cost of carrying it through the court below?—That will depend on the amount of evidence, of course, and where you will have to bring your witnesses from. An undefended case would be got through for something like 50*l.* even with, say, five or six witnesses.

42,447. And the crim. con. action?—Well, the crim. con. action is very often undefended, but if it is a defended case it may run to anything. It is quite impossible to lay down a general figure.

42,448. What I wanted to get at was this with regard to Ireland. If there are any number of cases where people with sufficient wealth will incur those costs, and have carried through Bills in the Houses, does it not follow that there must be a large number, or a larger number, of persons in the country who, if they had the means, would take the same course?—I think there probably are. I have known instances myself, I have been frequently consulted in these cases, where people would have proceeded to the Lords and Commons and got a divorce if they had the means.

42,449. You have been consulted yourself?—Oh, yes; but the number is not large. There is a prevailing idea in Ireland of the sanctity of marriage amongst people of all denominations.

42,450. I quite appreciate that, but what view is taken of those persons who are prevented by reason of the cost?—Well I know a lady belonging to one of the best families in Ireland; the family met with disaster and became very poor, and she waited 20 years before she got a divorce. She went as a hospital nurse and accumulated funds and carried the case through; that was a case of great hardship. Then I knew a case of a master mariner who was involved in heavy expenses. The wife began to lead a very terrible life, and he determined to get rid of her, and it cost him 700*l.*; a very serious matter to him.

42,451. Do you mean the lady you speak of saved it up?—Yes. Her family were very largely hit by the land agitation, but they helped her as far as they could. However, it took her nearly 20 years.

42,452. But leaving aside some general matters, there is the machinery by which if you have money enough you can get rid of the guilty spouse?—Yes.

42,453. Although you are an Irish person?—Yes.

42,454. Why is it right that that should remain only the privilege of those who can afford that heavy cost, when there must be others who cannot?—I do not say it is right, but you would have a great difficulty in getting rid of it. I know it would raise a storm in Ireland if you introduced a Bill to dissolve marriage. As I point out in my memorandum, certain exceptional matters could be got over by introducing your practice as to judicial separation into Ireland, and making the man a co-respondent.

42,455. But out of those who object you must except those who are deprived for want of means?—Yes; well, you have to put up with that hardship. I think the House fees should be entirely abolished, or reduced very much.

42,456. You think they should be reduced?—Yes; you pay 1*l.* for each witness that is sworn; or I think it is 2*l.* it comes to, in the Standing Orders. The House of Lords' fees amount to about 75*l.* and the Commons to about 35*l.*

42,457. You say here: "They," that is the costs, "could be greatly reduced if certain reforms in Irish procedure were introduced, and individual hardship would be thus greatly mitigated." I suppose you include in the Irish procedure reduction of fees and so on in the House of Lords?—No, I am dealing entirely with matters before we get to the House of Lords. Under the Irish procedure you cannot make the adulterer a co-respondent. Then you have to take a crim. con. action if you are the husband before you can proceed for your divorce Act. That is a second procedure.

42,458. You mean you would join him in the first?—I would join him in the first, as you would here in a judicial separation, and you could get your damages

against him then and costs. Now, in our proceedure at present in Ireland you institute your proceedings, but you cannot bring in the adulterer. You have to pay all costs if you are the husband unless the wife has separate property (it is the same costs procedure as you have here), and the result is, as soon as you have your divorce from your wife, you then have to proceed, if you can, against the adulterer in a crim. con. case, a very expensive suit very often, and it involves a second trial in Nisi Prius and all that that costs.

42,459. What would be your object in reducing those expenses?—Well, I think it is a very great hardship on a litigant to have to bring two sets of proceedings when it could all be done in one action.

42,460. That is with a view of getting on to the Houses of Parliament after?—Yes, if he is the person who wishes to dissolve his marriage.

42,461. If the object of reducing it, and possibly reducing expenses in the House of Lords, is in order to bring the matter more home to people, it is to mitigate the hardship that must be felt?—Yes.

42,462. And that is really recognising the right of divorce?—It is. You may take it members of the Roman Catholic Church will hardly ever proceed; they have their religious objections.

42,463. Yes we know that, although the returns show they do in some cases?—Yes; well, it is very very rare. But take the other case. As I told your Lordship, there is not, as far as I know (and I have enquired very widely from people who ought to know a good deal about it), there is not in Ireland a general desire; there are individual cases in which people do wish to go to the House of Lords for divorce, and one has to deal with this matter looking at it from the Irish point of view; not so much as a case of individual hardship as what is wanted by the people.

42,464. But the difficulty I feel about the position is that the individual hardship is mitigated when there is money, but it is not mitigated where there is not enough money?—Certainly

42,465. That seems to me, with deference to the views you put, a very unsatisfactory position?—I am afraid it is the same with all litigation. There is a great deal of litigation, we all know, that cannot be promoted for want of means.

42,466. Then, passing on, you say: "Leaving, however, dissolution of marriage——"?—"Leaving, however, dissolution of marriage aside, I shall endeavour to point out briefly some powers that might with great advantage, and especially to poorer litigants, be conferred upon the Irish court. These powers are (1) To make the adulturer co-respondent in adultery suits. (2) To provide for the maintenance and custody of the children of the marriage. (3) To rectify marriage settlements. (4) To modify the relief decreed in suits for restitution of conjugal rights. (5) To grant relief in cases of desertion.

"*I.—Adulterer Co-respondent.*

"In a suit for divorce *a mensa et thoro* on the ground of adultery in Ireland the only parties are the two spouses. Supposing it to be well founded, it results in a decree of divorce *a mensa et thoro*, which is a sentence separating the husband and wife from cohabitation, and placing the wife in the position of a *feme sole* (*see* Married Woman's Property (Ireland) Act, 1865, 28 & 29 Vict. c. 43) in respect of property. Neither party can marry again during the lifetime of the other. A husband bringing a suit in Ireland for divorce *a mensa et thoro* from his wife on the ground of her adultery has no power to make the adulterer a party to that cause. He can (unless his wife has adequate separate estate) be made to pay all the costs of his wife before the cause comes to a hearing, but in this cause he can recover no damages and no costs against the man who has ruined his home. At the common law side of the court he can, indeed, if he is willing twice to submit to the prurient curiosity of the public the story of his domestic troubles, bring an action and recover damages measured by the worth of the wife he has lost, but in this action the wife is not a party. He can obtain no relief in the way of divorce; and he has thus to have recourse to two tribunals to obtain a full remedy for his wrong. If it is his intention to proceed for parliamentary divorce, he must under the Standing Orders of the Houses of Lords and Commons show that a crim. con. action has been brought or give satisfactory reason for not having brought it and obtained judgment (H.L. S.O. No. 177; H.C., S.O. No. 190). A petition for judicial separation in England corresponds to a petition for divorce *a mensa et thoro* in Ireland, and the court in such causes acts like the Irish court on the principles of the ecclesiastical courts (20 & 21 Vict. c. 85, section 22), but in England, in such a petition, as well as in a petition for dissolution of marriage a husband may claim damages from any person on the ground of his having committed adultery with his wife. The adulterer can be made to pay all the costs, and after the verdict has been given in the cause the court has power to direct in what manner the damages are to be applied, and to order in a proper case that the whole or part of them shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife. (20 & 21 Vict. c. 85, sections 33, 34, 35). There is no such power vested in any Irish court. In a divorce suit in Ireland the adulterer is never made a party. Damages are never recovered. If the wife is guilty no provision is made for her by way of alimony paid by the husband. If an action of criminal conversation is brought and damages are recovered, these damages are paid to the husband, they are not secured for the benefit of the wife or her children. The adulterer can throw aside the wife he has seduced from the shelter of her home, and contribute nothing to her maintenance. The husband cannot be compelled in any way to support her. The absence of any power to make an alleged adulterer a party to a matrimonial cause is also frequently a very great hardship upon a person unjustly accused of adultery."—I have known of several instances of this, my Lord.—"Such a person has no power of intervening in the proceedings. Cases occur where serious social and professional injury may be done to innocent persons by being named in a petition as guilty of adultery with the respondent. The proceedings may be settled between husband and wife, but the charge against the third parties is never disposed of and no opportunity of explanation or exculpation is given. If the cause proceeds to a hearing the persons so charged have no right to take part in it. They can neither examine or cross-examine witnesses, and the only position they can take up is the futile one of sending a watching brief to counsel who cannot intervene on their behalf. It would be most desirable to compel the petitioner to make parties charged with adultery parties to the cause and to have them served with the petition and permitted to appear and defend their interests." I do not think you in England make an adulteress a party, but there is a right to intervene?

42,467. No; we have often had that point brought before us?—"The necessity of bringing an action for crim. con. would thus be got rid of. The guilty party could be made to pay costs and damages and proceedings would be simplified and cheapened, and a multiplication of suits avoided, and persons unjustly aspersed could defend their reputations." With regard to the custody and maintenance of children, I do not know that I need read that.

42,468. May I take it there is no power to deal with custody and maintenance of children?—No; we must either make the children wards of court, or proceed under the Act of 1886 in the Chancery Division.

42,469. Then in matrimonial proceedings there is no power to deal with the custody or maintenance of children?—No.

42,470. And that ought to be dealt with?—Yes; and it is a matter of great grievance with a number of persons.

42,471. That is dealt with in a long paragraph?—Yes, my Lord.

42,472. Then may we pass to restitution of conjugal rights?—Yes, with regard to restitution of

conjugal rights, of course that jurisdiction is one that is quite altered here now by a recent Act.

42,473. Have you the old procedure?—Yes, and your Lordship is aware we cannot serve a petition out of the jurisdiction. That is decided in *Manning* v. *Manning* because the remedy is attachment.

42,474. Is attachment still permitted?—Attachment is the only remedy for enforcing a decree for restitution of conjugal rights.

42,475. Is that actually done now?—It is.

42,476. And how long is it maintained?—I cannot tell you. I do not know of a case in which it has actually been resorted to, because these things are generally settled afterwards.

42,477. Is there no power to make an order for money?—No, there is no power to make an order for money; and the result is when you proceed or threaten proceedings you generally get a settlement between the parties. My experience in Ireland is that most of these things are arranged if you have sensible solicitors and counsel on both sides, as you generally have; and you can stop it before it comes into court at all.

42,478. On that point it remains in much the same position as it was in the old days in England?—Yes, my Lord. I think we ought to have your recent Act introduced here, by which a money settlement could be made.

42,479. Do you mean the Act of 1884?—Yes. I do not see that it would offend against public opinion in any way. Then with regard to desertion; that is a very serious matter, there is no remedy for desertion in the court in Ireland.

42,480. Not even as there is here with regard to judicial separation in the 1857 Act?—No.

42,481. It is supposed to be remedied by a restitution matter?—Yes.

42,482. But that does not work satisfactorily?—Certainly not. I think we ought to have two years and upwards as a ground for separation, as you have it here.

42,483. Of course, if you go to the House of Lords desertion will be applied by way of nullity?—Yes, for the relief of the lady, if the lady proceeds in the Bill.

42,484. Then you refer to the Married Women's Property Act, 1865, 28 & 29 Vict. c. 43. That is similar to what we have with regard to protecting the wife's property?—Yes. The procedure under that is very rare. I was asking Mr. Swift, a most experienced Dublin magistrate, a few days ago, and he says under that Act he only has a case about once a year. Then we have the Vagrancy Act of 1847, "11 & 12 Vict. c. 84, section 2, a person deserting or wilfully neglecting to maintain his wife or child so that she becomes destitute and has to be relieved out of the workhouse can be sent to gaol for a period not exceeding three months." That is the procedure by the guardians to the poor.

42,485. Now you have another statute?—Yes, the Summary Jurisdiction (Married Women) Act of 1895. That is your English Act, and does not apply to Ireland. Under the Act, when there is violence or cruelty, as your Lordship knows, they can get what practically amounts to a separation. We have not that in Ireland, but indirectly we work it in this way in Ireland. We have the desertion clause of the Act——

42,486. Might I say desertion under the Acts of 1849 and 1850 Victoria?—Yes.

42,487. According to your note, you say, "But the statute 49 & 50 Vict. c. 52, Married Women (Maintenance in case of Desertion) Act, 1886"—that is in force now?—Yes, that is in force; but really the procedure is carried out through "58 & 59 Vict. c. 39, Summary Jurisdiction (Married Women) Act, 1895, although that Act does not apply to Ireland. The statute 49 & 50 Vict. c. 52, Married Women (Maintenance in case of Desertion) Act, 1886, is not repealed as regards Ireland (*see* schedule), and still remains in force in Ireland." It is not repealed in the 58 & 59 Vict. c. 39. "Under this Act, a woman who has been deserted may summon her husband before the justices of the peace, and if the justices are satisfied that the husband is able to maintain his wife or wife and family, and has wilfully refused to do so, or has deserted her, they can make an order that he shall pay a weekly sum not exceeding 2*l.* to his wife. Adultery by the wife is a defence to any such application."

42,488. Then the Act of 1866, which governed England until 1895, is still applicable in Ireland?—Yes, in the case of desertion.

42,489. How do you deal with cases of wife-beating or cruelty?—Well, if the wife leaves the house in the case of wife-beating, the magistrates hold that she is deserted. If she is compelled to leave the house, if he has made her residence in the house impossible, they look upon it as desertion.

42,490. Then all they can do is to give a payment of money?—Yes.

42,491. They cannot protect her?—No, except by binding the husband over to keep the peace.

42,492. That is under the criminal power?—Under the criminal jurisdiction which the magistrates possess; and if she is driven from the house by violence it is deemed desertion. But that is defective, and it is a matter of importance to the poor, of course. In Ireland we have not got what is called here an affiliation order, and we have there under the Married Women's Maintenance (In Case of Desertion) Act of 1886 to go in for a very roundabout process. What is done is this. Though the English Bastardy Act of 1872 does not apply to Ireland, yet the Act of 1886, the Maintenance in Case of Desertion Act, says the decree for it is to be enforced in the same way as an affiliation order. Therefore the magistrates in Ireland have adopted the affiliation procedure of England. That leads to great delay. In the first place, the woman, if she is deserted, has nothing to live on. She has to take out a summons before the stipendiary or justices, as the case may be, and she gets an order in the first instance that he is to pay her a weekly sum. That takes a week to start the process. If he does not pay then the first time she can appear again is four weeks after; that is under the Bastardy Act of 1872; a month has to elapse before she can come up again. Therefore, she may have been starving for five weeks; and before you can enforce the order it will take another week; so you may say she has nothing whatever to support her for six weeks. There seems to be no reason why that sort of thing should not be at once remedied, and that the order should not be made on the first summons to pay; and if he does not pay then, to bring it up the first week. I have spoken to Mr. Swift and one of the other stipendiary magistrates in Dublin, and he said he thought it would be very desirable to have that amended. I took from the police at Dublin the following statistics showing the number of applications. In 1905 there were 65 applications and 51 orders made.

42,493. For what?—For maintenance in case of desertion under that second Act, adopting the procedure I mentioned to your Lordship. In 1906 there were 92 applications and 72 orders made. In 1907 there were 100 applications and 82 orders made. In 1908, 109 applications and 89 orders made. In 1909 there were 163 applications and 80 orders made. Apparently the number of applications and orders are increasing, but I think that is probably on account of want of employment in the last few years.

42,494. In all these desertion cases there is no remedy except an order for payment of money?—No.

42,495. There is no order for separation?—No, no order for separation at all. The people are separate, practically.

42,496. Is that Dublin alone?—That is for Dublin alone.

42,497. Have you got any figures which would show us the number of desertion orders made in the whole country?—No. I have not.

42,498. Are they published?—I have not been able to ascertain. I should think in Belfast there would probably be more, but you would have to get evidence from some of the resident magistrates in Belfast with regard to it.

42,499. Is desertion, according to your experience, desertion in the country or through the man's leaving the country?—Well, I spoke to the Dublin magistrates about this; they told me that on the whole these orders are effective, but of course it results frequently

in the man going off from Dublin to Belfast or some other part of the country; and if so, it has been recently decided in the King's Bench that the warrants can be backed from Dublin and enforced in Belfast; that you may pursue him to wherever he may go. But that is an expensive process; the poor woman has to pay the expense of serving the process, and it will have to be proved to have been duly served; and it would cost a good deal of money for a woman who is starving.

42,500. Do you know if any of these desertion cases are cases where the person deserting goes abroad?—He does go abroad occasionally.

42,501. If he has gone there is no good applying?—No; if he goes to England even, you must come to England after him.

42,502. It is no good getting the order even?—No.

42,503. That is the only remedy with regard to desertion that a woman in Ireland has?—Yes.

42,504. Now take cruelty?—In cruelty you have the old matrimonial practice, which is a ground for *a mensa et thoro.*

42,505. Have you any idea what the cost for that is?—Well, they are not generally expensive suits, because we generally prove them by the wife and some servants or something of the kind——

42,506. Can those be bought anywhere except in Dublin?—No; but I was going to mention to your Lordship, particularly with regard to a question put by Mr. Burt to a witness I heard examined in this room, that in Ireland the cases are sent down to be tried at the assizes very often, and that certainly cheapens it very much.

42,507. Do you mean a suit on the ground of cruelty could be sent to the assizes?—Yes, I have acted in one or two at any rate.

42,508. That is to say, the jurisdiction exercised by the High Court is not confined to being exercised in Dublin?—No.

42,509. It may be taken at the assizes?—Yes, where the witnesses reside, and it cheapens proceedings very much. The preliminary proceedings are not very expensive.

42,510. But there is no summary procedure for protecting a woman from cruelty?—No; except this; that if she is driven out of the house by cruelty they will treat it as desertion and make a maintenance order.

42,511. Do you know how many cases of that there are in Dublin?—No, I could not give you that, nor do I think it could be easily ascertained through police statistics—I spoke to a gentleman of very great experience there, a clerk to the police courts, and he could not tell me. They are not segregated sufficiently.

42,512. If we wrote, who would be the authority in Dublin and in Belfast, or any other big town, to get the magistrates' statistics from?—I think if you were to write to Mr. Swift, who is the chief magistrate in Dublin, he would arrange to have it sent.

42,513. And from the different police?—Yes. We have the Metropolitan Police in Dublin, and there are the Royal Irish Constabulary in Belfast. But the resident magistrate there, Mr. Nagle, and another gentleman of experience—if you communicate to them, I think if you applied to the Constabulary Office or the Petty Sessions Office in Dublin Castle you would be able to get any information in regard to statistics.

42,514. One other question. You probably have read a good deal of the evidence given here. It has been suggested that insanity should be made a ground for divorce?—Yes.

42,515. Of course that is not the case in Ireland?—No.

42,516. Can you tell me at all what the statistics show as to the number of people confined for permanent lunacy in Ireland?—I could have got them at once. I did not think of doing so. The number is increasing, and increasing in a very alarming way. It is a most serious matter.

42,517. Could you tell me who would supply me with those statistics?—Well, the Census authority, if you apply to the Registrar-General, Charlemont House.

42,518. Dublin?—Yes; the Registrar-General has all those returns.

42,519. In Dublin?—Yes, and in the 1901 Census the matter was gone into very fully. A paper was read before the Statistical Society of Ireland by the late Registrar-General, Sir Robert Matheson, on 25th November 1904 which illustrates the subject by diagrams.

42,520. Is Charlemont House near Dublin?—It is in Dublin, in Rutland Square.

42,521. Then there is another point, though it is not within our cognizance, we should have on the notes, with regard to settlements?—I think whatever powers are vested in the English court with regard to judicial separation should be extended to Ireland, though you do not exactly rectify settlements in these cases, I think you can direct a settlement to be made. Again, in the case of nullity of marriage we have to take a specific proceeding in the Chancery Division where the marriage is null and void, instead of dealing with the matter before the divorce tribunal.

42,522. But the powers to deal with settlements are in case of divorce?—Yes, but you have power not to rectify settlements but to get settlements made in cases of judicial separation.

42,523. But what do you want?—I want to have a power given in cases of judicial separation that the settlements should be made instead of mere alimony orders.

42,524. Now as to county courts?—Well, "there is no necessity to extend any of the matrimonial jurisdiction to the county courts for the benefit of the poorer classes in Ireland. Matrimonial offences requiring the intervention of the courts in any class of the population are rare, and there can be little doubt that the public would object to any attempt to extend divorce jurisdiction to the county courts. As an example of the rarity of matrimonial offences in the county districts, I may mention that one of the most experienced resident magistrates in Ireland informed me recently that he only remembered one application being made to him for maintenance in case of desertion in a period of five years, and that this was the probable average. The district in which he acted as magistrate was a very extensive one in Leinster. Applications for maintenance are, however, much more frequent in the large cities, but no public demand has ever existed for facilitating divorce among the lower orders whether Protestant or Roman Catholic. Contentious divorce litigation is undoubtedly expensive, but the power of sending down a cause to be tried at the assizes is availed of to some extent, and where the case depends upon the evidence of local witnesses considerable expense is thus saved.

"If the existing law was reformed so that the expense of a multiplicity of proceedings could be avoided, and the whole domestic litigation decided in one cause, it would be of great public advantage.

"The Council of the Bar of Ireland had the matter under consideration during the years 1889 and 1890, and at their request I then drafted a Bill which was approved of and printed by the Council." Though, as I told your Lordship, at present they do not wish to take any part whatever in this matter, This Bill had been approved of, too, by Judge Warren, who was then President of the Matrimonial Division. Then I say: "If such a procedure Bill were introduced, it would probably be unopposed as it would not touch upon the question of dissolution of marriage in any way, but would tend to prevent the public disadvantage of recounting private scandals in different phases of a litigation which might well be terminated in a single cause."

42,525. All those amendments assume the present state of the law remaining except with regard to the House of Commons and the House of Lords?—Yes.

42,526. Then as to publication?—

"I do not think that at present it would be advisable in Ireland to interfere with the discretion of the Press in reporting divorce cases. The number of Irish matrimonial causes is few. Their comparative rarity has undoubtedly the effect of exciting undue curiosity about them when they do come to a hearing; but the Irish Press exercises reasonable reticence in

reporting the evidence in such cases. There is, however, a large circulation in Ireland of English Sunday papers which contain vivid accounts and objectionable details of proceedings in English divorce cases. Their circulation has a deleterious effect in Ireland, and there is no doubt that if the evil of over-reporting such cases can be checked in England, it would reflect advantageously in Ireland. If legislation to control reporting is introduced for England, it ought to be extended to Ireland. The Irish court always hears cases of nullity on the ground of physical defect in camera, and has power, following the practice of the ecclesiastical courts, to direct suits for divorce *a mensa et thoro* to be heard in private, if it thinks the circumstances of the case require it. This power has been recently exercised in a case where the offences charged were of an abnormal character; but the exclusion of the public is only resorted to in very exceptional cases.

"The judicial statistics show the very small number of matrimonial causes instituted in Ireland, and the still smaller number which are finally determined by decree.

"Cases where matrimonial troubles arise in Ireland are very frequently settled by family arrangement, and not by recourse to litigation; and even where petitions are filed for divorce, the great majority of cases are compromised before final hearing. Unless the parties desire to proceed for parliamentary divorce, arrangements can generally be effected through the legal advisers of the parties, which will practically secure all that can be gained by litigation, and the pain and family injury caused by the publication of domestic scandals is thus avoided." Then I set out the statistics.

42,527. Perhaps you will allow that schedule to be annexed and form part of your proof?—Yes.

The following is the schedule referred to:—

Year.	Petitions filed.	Petitions for Divorce *a mensa et thoro*.	Petitions for Nullity of Marriage.	Petitions for Restitution of Conjugal Rights.	Decrees granted.	Dismissals.
1901	22	21	0	1	4	4
1902	30	27	1	2	3	1
1903	17	16	1	0	2	0
1904	22	20	0	2	4	0
1905	21	18	1	2	3	0
1906	31	29	1	1	5	2
1907	25	25	0	0	6	0
1908	31	29	2	0	6	0
1909	21	18	0	3	3	0
Total for 9 years	220	203	6	11	36	7

42,528. Then you proceed to the Bill in Parliament?—Yes, my Lord; what I state about that is—

"Persons of Irish domicil who desire a dissolution of marriage must proceed by way of Divorce Bill introduced into the House of Lords. Witnesses are there examined on the second reading. The Bill is then carried through its stages in both Houses until it becomes an Act of Parliament. Relief is given on the principles applicable to suits for dissolution of marriage in the English Divorce Court.

"If the husband is the petitioner he can obtain a parliamentary divorce on the ground of adultery by his wife.

"If the wife is petitioner, she is required to prove not only adultery by the husband, but also that he has been guilty of desertion, cruelty, or other such matrimonial offence as would enable her to a dissolution of marriage under the English divorce law.

"A very oppressive burden is imposed upon suitors in parliamentary divorce proceedings by the heavy House fees charged in both the House of Lords and House of Commons under Standing Orders. They amount to at least 75*l.* in the House of Lords, and 35*l.* in the House of Commons. This is a tremendous tax upon redress to inflict upon a private suitor. If he is a husband, he has already incurred the heavy costs of a double litigation against his wife in divorce *a mensa et thoro* where he has probably had to pay all her costs, and against the adulterer in crim. con. where he possibly may have had to proceed against a defendant who may not be a mark for costs and damages. On the other hand unless a wife has considerable means, it is impossible for her to institute proceedings for parliamentary divorce. The greater portion of the expense in parliamentary divorce is caused by the enormous fees exacted on the different stages of the Bill under the schedules to Standing Orders. If these fees were reduced by 90 per cent., it would be an approach to what would be reasonable. It must be remembered that as the hearing of evidence takes place at Westminster, the expense of bringing witnesses there from Ireland is of itself considerable, and the imposition of such enormous House fees is unjustifiable."—Perhaps I might modify that to some extent. Frequently the witnesses are English witnesses, and sometimes witnesses from France too; and then the witnesses would be cheaper than in Dublin. Then I say: "I have obtained from the solicitor in two recent Divorce Bills, in which I was counsel, where a lady was in each case the petitioner, a note of the House of Lords and Commons fees. In the first of them the House of Lords' fees were 82*l.* 5*s.* 6*d.*, and the House of Commons, 40*l.* The petitioner in this case had been for years endeavouring to save enough money to enable her to promote a bill to dissolve her marriage."—That was the case I referred to. I was wrong in saying 20 years. It was 20 years from the act of adultery; but it was 13 years that she was laying by for proceedings.—"In the second case the House of Lords' fees were 78*l.*, and the House of Commons fees, 39*l.* Both Bills were unopposed."

42,529. (*Sir Lewis Dibdin.*) I gather from your exidence you are decidedly of opinion that public opinion in Ireland is against divorce?—Yes, certainly.

42,530. But not equally against what we now call judicial separation?—Oh, no, there is no feeling against that, except, I may say, this, that amongst the country people—the peasantry—it is always looked upon as a disgrace if there is any separation between husband and wife at all. If a wife lives away from her husband she is looked upon as a disgraced woman, but that is a matter of public feeling.

42,531. But there is no objection on principle to divorce *a mensa et thoro* or judicial separation?—No.

42,532. But I gather from your evidence that there are practical reforms necessary for the carriage of proceedings for judicial separation?—Yes, I think so.

42,533. Whether it is carried on to Parliament for a divorce or not?—Yes, that is it exactly.

42,534. I gather at present what can in England be done in one suit takes three proceedings, does it not?—Yes.

42,535. First, there is the suit for divorce *a mensa et thoro*; secondly, there is the action for crim. con.; thirdly, if necessary, there must be an independent proceeding for custody of children?—Yes.

42,536. And your view is that all might be done in one action?—Yes, the whole family litigation could be done in one thing.

42,537. Why is it that the Irish public opinion objects to conferring divorce *a vinculo* jurisdiction on the courts while it does exist in fact in Parliament?—Well, of course, you may take it the large body of the population is Roman Catholic, and they look upon dissolution of marriage as a violation of a sacrament. They look upon marriage as a sacrament. The Protestant bodies do not look upon it as a sacrament; but undoubtedly amongst the Irish people there does prevail a strong view of the sanctity of marriage. The marriage at the registry office is not looked upon as a right thing at all, though it is a legal marriage. There is that strong feeling that marriage is a very sacred thing.

42,538. Then it is recognised that the proceeding by legislation is a different thing in principle from judicial action of a court?—Yes; it is not the general law of the land but a private Act of Parliament got by the individual.

42,539. Parliament can do anything?—Yes.

42,540. And any responsibility for that Act is on Parliament?—Yes.

42,541. Is that the view?—Yes; and on the individual.

42,542. Is it the view that it tends to the recognition of the permanence of the marriage tie that divorce should not be part of the regular judicial system of the country?—I believe that is the view.

42,543. But you are in favour, if the present system is maintained that the fees in Parliament should be very much reduced?—Yes, I think it is a great hardship on the individual.

42,544. You regard them as unjustifiably high?—I do.

42,545. You say you have known of many hard cases in Ireland. But, recognising the hardship of those cases, public opinion in Ireland does not regard that as a sufficient reason for altering the law?—Yes. I think if hard cases make bad law, Ireland would think hard cases make bad legislation in that way.

42,546. You have told us that you used the power which I think was included in our Divorce Act of 1857 of sending judicial separation cases to assizes?—Yes.

42,547. In your view does that system work well?—Very well. I have known of cases where the expenses have been very considerably reduced.

42,548. And are the cases as satisfactorily heard in that way at assizes as in Dublin?—Oh yes, quite. I ought to mention, perhaps, with regard to the county court jurisdiction, which I see a good deal of your evidence has been directed to, an extension of it to divorce would not be satisfactory in Ireland (I do not say for a moment the county court judges are not gentlemen of great eminence and ability) but the procedure could not be very well adapted to it. The county court jurisdiction is an excellent one; it is very old. what is called Civil Bill procedure; and the cases are heard in a very cheap way; originally dealing with contracts or torts and now extended to a large number of equity cases. They are heard by the county court judge sitting alone. In a certain class of cases he can get a jury of six; but the method of appeal in Ireland is different to the English. You do not go up to Dublin on a case reserved as you do in London, but the whole case comes on for rehearing before the judge of assize; and most of the assize business in Ireland is now taken up by hearing those Civil Bills. The judge hears it, but he never has a jury. It costs very little money; it is most popular with the people; anybody can have a case decided by one of the highest judges of the land. But I do not think that is quite applicable to divorce proceedings, because it is very desirable—and I know judges wish—to be assisted, in cases of adultery particularly, by a jury; and an appeal case heard with a jury would be a new procedure, and an expensive one following on a trial before the county court. At present in divorce cases the preliminary procedure in Dublin is not very expensive, and by sending it to the assizes you can get a case tried satisfactorily.

42,549. Your county court procedure is very different from ours?—Yes.

42,550. But you are of opinion that hearing these divorce cases at assize courts will answer?—It does to the limited extent to which I have experience of it.

42,551. In Ireland?—Yes.

42,551A. (*Judge Tindal Atkinson.*) Is there a county court appointed for each county?—The county court judges are grouped. There used to be a county court judge for each county, but they are grouped now, and a county court judge deals with three or four different counties.

42,552. How often does he sit?—Four times a year—quarter sessions.

42,553. In one centre?—No, he goes about to different centres and sits in three or four places in each county, so that the procedure is brought home to the people's very doors. Then at assizes the appeals are heard at the county town, that is the assize town, in each of these counties.

42,554. How many inhabitants do you suppose there are in each county court district?—I should have to look into the statistics

42,555. Would they exceed 100,000?—I should not like to say.

42,556. They only sit three or four times a year?—I mean there are four different sittings at which you can institute proceedings, but they sit for a considerable time. I mean you have the January sessions, the April sessions, the July sessions, and the October sessions. They last till all the business is done in each town, and then he goes on to another town.

42,557. Perhaps a week at each sessions?—Yes, or a fortnight or three weeks.

42,558. It is a different system to ours, where the judge sits in so many different towns during the month?—Yes.

42,559. (*Mr. Brierley.*) You say that public opinion in Ireland is against the establishment of any divorce jurisdiction at all?—That is dissolution.

42,560. I mean dissolution of marriage?—Yes.

42,561. As a matter of fact, is there any public opinion against the granting of divorce by Parliament?—No, I do not think there is, because it is looked upon that the individual can do as he likes.

42,562. The result is that it does allow divorce for the wealthy?—Yes, certainly.

42,563. As a matter of interest, what did the Irish Parliament do before the Union in the matter of divorce? Did they entertain divorce Bills as in England?—Yes, they entertained divorce Bills. I do not know that I could mention one at present, but they were entertained by the Irish Parliament before the Union.

42,564. Although at one time the Irish Parliament would contain Roman Catholics?—No, Grattan's Parliament was entirely Protestant. Except in James II.'s time no Roman Catholic ever sat in the Irish Parliament. I mean, of course, since the Reformation.

42,565. Jnst one word about what you said as to the police courts. The police courts in Ireland have no power of granting separation at all?—No.

42,566. You had a conversation with Mr. Swift about it. Was it his opinion that that was a drawback?—I think not. They practically get all the remedy that would be possible to give according to Irish public opinion. As I said, if there is such cruelty as drives the unfortunate woman out of the house it is treated as desertion, and then she gets a maintenance order, but the procedure is very lengthy; she would have to wait perhaps six weeks.

42,567. That does not prevent the husband thrusting himself on the wife if he wishes?—No.

42,568. You do not think the need has been felt?—I think not; there is certainly no outcry about it.

42,569. (*Chairman.*) Would you tell me what the jurisdiction of county courts in Ireland is with regard to amount?—50*l.* in tort or contract, and then you go up to 500*l.* in equity.

42,570. That is where property is of that value?—Yes, property is 500*l.*

42,571. One other matter. You said to Mr. Brierley that there was no public opinion against proceeding by Bill for divorce?—I think not.

42,572. Then although theoretically it is a legislative Act, practically it is a judicial Act?—Well, as far as public opinion goes about the matter it is limited practically to Protestants, and I think the public opinion amongst Protestants is, that though it would be very undesirable to have a dissolution of marriage act passed for Ireland, yet if an individual chooses to go and get an Act of Parliament for himself there is no objection to doing it.

42,573. That leads me to ask you, why would you reduce the fees?—Because I know myself there are a number of people who are anxious to get this divorce. I do not say a very large number; but most people have very limited means in Ireland; money is a very hard thing to get in Ireland, and it is serious that you should have to pay 120*l.* for House fees.

42,574. But the logical position is this ——?—Oh! we have no logic in Ireland!

42,575. I was not suggesting you had; but if there is no public objection to taking proceedings which, though theoretically legislative, are practically judicial, and if the wish is to reduce the fees, it seems to me

there is no substantial difference between that and the constitution of the tribunal that would deal with the matter so that everybody could get it?—Well, all I can say is, I think I know public opinion pretty well in Ireland, and there would be a tremendous storm if such a suggestion was made that there should be a general Act ——

42,576. Would it be right to describe it as an illogical storm?—It may be; we have a great many illogical storms, and perhaps they are the angriest.

(*Chairman.*) I ought to thank you very much for your evidence, and for giving us the necessary information for following up the statistics that we may require.

Mr. LLEWELLYN ARCHER ATHERLEY-JONES, K.C., M.P., called and examined.

42,577. (*Chairman.*) You are one of His Majesty's Counsel, practising on the North-Eastern Circuit, and, of course, in London?—Yes.

42,578. You have been a Member of Parliament for a number of years?—Recorder of Newcastle-on-Tyne, and Bencher of the Inner Temple.

42,579. How long have you been in Parliament?—I have been in Parliament, I am grieved to say, for 25 years.

42,580. Always for the same constituency?—Yes.

42,581. Which is that?—North-West Durham.

42,582. You have taken some interest in this divorce question?—Yes.

42,583. I believe you framed a Bill for the purpose of introducing the matter to the House?—Yes, I prepared a Bill some years ago. That Bill was never introduced in the House, but I was very much interested in the subject. My view was it was more difficult, and still is more difficult, to obtain divorce now than it was in pre-Reformation times, and I therefore drafted in a Bill certain amendments of the divorce law. I made inquiries—informal inquiries—amongst the working-class population, as far as opportunity afforded, and to some extent, amongst representative persons; and the conclusion which I came to was this: that although, of course, it was most necessary to jealously guard the sanctity of marriage—I regarded it from an ethical standpoint rather than a religious standpoint, not as wishing to regard as anything but of the greatest importance the sanction which religion attaches to marriage—I came to the conclusion that to some extent the grounds on which divorce *a vinculo* might be conceded should be enlarged. I came to the conclusion that what is now called judicial separation should be abolished, subject to limitations. The conditions which now enable a person to obtain judicial separation should thenceforth enable him to obtain divorce *a vinculo*. I also came to the conclusion that the tribunal for granting divorce should be enlarged. If I remember aright, the Act of 1857 does contemplate (I now speak with reference to the evidence which was given to your Lordship) that judges on assize should try divorce cases.

42,584. No, judicial separation, not divorce?—Then I am wrong. I thought there was a provision in the Act as amended that the Lord Chancellor—no, by Order in Council, I mean—the divorce judge might travel on circuit.

42,585. The provision was that the Court of Divorce might sit in London or elsewhere according to Order in Council?—Yes.

42,586. But that the judges of assizes should have jurisdiction in judicial separation and restitution suits only?—It was my mistake. I meant that the judges of the Court of Divorce might sit elsewhere than in London by Order in Council. That is what I meant to say. My own view is that this jurisdiction in divorce might be granted, under limitations again, to judges of county courts. I do not say it should be granted indiscriminately to all county courts (because I quite recognise the vast importance of deliberation, gravity, and all that pertains to decency, the absence of hurry and haste, attaching to a court which performs the function of granting divorce), and my own view is that, although (and that is confirmed by the evidence I have read, and which has been given before this Commission) this jurisdiction might be conferred upon judges selected from the county court judges to sit and adjudicate, and to have that jurisdiction over certain areas. I do not think it would be necessary or desirable that every court judge should, in the ordinary course of his business, be enabled to deal with divorce cases, but I think there should be judges chosen from the county court judges appointed for that purpose, to hold their sittings at certain intervals which should cover a certain area.

42,587. Have you got a copy of the Bill you drew?—No, I am sorry to say I have not. I searched for it but I could not find it.

42,588. Can you tell us if it dealt with the matter from the point of view you have just expressed, or whether it was limited in any other way?—No, the point of view I have just expressed.

42,589. It embodied provisions which carried out that view?—Yes.

42,590. Why was it not introduced?—I am afraid it was not introduced for the simple reason that the opportunity for an un-official member passing legislation now is almost extinct, and much useful legislation is barred therefore, and I was not successful in the ballot, and I thought it useless to introduce it.

42,591. To what extent are you able to represent the general opinion of your constituency with regard to giving increased facilities for divorce in the district?—Of course, it is not a matter I have ever expressed my views upon (except, perhaps, in answer to a question) before my constituents; therefore my view has been obtained quite informally; but I may say this, I have found a general concurrence of opinion amongst those people I have asked, not in any way confined to my own constituency. I may parenthetically observe that since I have been in Parliament I have had about half a dozen—not more—letters written to me, more as a Member of Parliament than perhaps as a lawyer, from different parts of the country, complaining of the difficulties that confronted poor people in obtaining a divorce—the procedure *in formâ pauperis* not altogether fulfilling the conditions necessary to save expense, because there is still considerable expense involved *in formâ pauperis*, besides the great inconvenience of coming to town. The result of those inquiries which I made showed me this; that, although I believe the working classes of this country are distinctly moral, there is no doubt about it that there are a great many cases (we have no data as far as I know, except as far as the records of illegitimate births afford information) there is some percentage of persons who do not enter into matrimony, but live in concubinage; and that, to some extent, is due to the difficulty of obtaining divorce. I am speaking from the result of inquiries I have made. I think it was Bentham who said that prohibition to go out involves prohibition to go in, and I think to some extent the difficulty of obtaining a divorce does militate against marriage, though perhaps to a very small extent.

42,592. But to what extent are you able to say there is a feeling in your own district in favour of facilities to try these cases locally and at less expense?—If I understand your question, I have never tried to ascertain in any formal manner, but merely from conversation I have had with my constituents occasionally and very rarely (I do not profess to have made any investigation among my constituents) they are favourable to that jurisdiction being conferred on the county courts. I have not attempted anything in the way of a plebiscite, or anything of that kind, but merely casual conversations.

(*Chairman.*) I think these are all the points you have in your memorandum?

42,593. (*Judge Tindal Atkinson.*) While you think it would be good to have county court judges kept for specific districts, you still recognise the necessity of making the court accessible to the people?—Yes.

42,594. And I suppose your constituency give you this information that the poor people cannot afford to go any great distance, and take their witnesses any

great distance?—Yes; I regard that as the principal reason in my view.

42,595. Therefore, if you fix the centre for the judge you must fix a sufficient number of towns to bring the people within reach of his court?—Certainly. I quite conceive in these days of railway communication local conditions are not so important as they were formerly, but they are important to a considerable extent still.

42,596. That is that people should be able to get to the court and back again in one day?—Yes.

(*Chairman.*) Thank you very much for your evidence.

Mr. James Roberts called and examined.

42,597. (*Chairman.*) Your name is James Roberts?—Yes, of the Inner Temple; a member of the English Bar.

42,598. Are you a member of the Irish Bar too?—No; I completed my course as student there, but I did not get called. I came over here.

42,599. Your memorandum which you have been good enough to supply deals with Ireland?—Yes, my Lord, because I have had considerable experience in these cases. My first case, two or three weeks after my call, was one of these Bills, and that led me to take a great interest in the subject, and to go into it historically, and I have been engaged in about one-third of these cases since.

42,600. You have often been employed in the Bills in Ireland which come to the House of Lords?—Yes, my Lord; one-third of them since I was called.

42,601. How long have you been at the Bar?—Since January 1887, my Lord.

42,602. I think you communicated yourself with the Secretary with the view to giving evidence?—Yes, my Lord, I did. Shall I read the memorandum?

42,603. Yes, please?—"Divorce *a vinculo* of parties domiciled in Ireland is obtained (as in England before 1857) by private Acts of Parliament. Decrees of divorce *a mensa et thoro* were formerly granted by the Ecclesiastical Courts, Now the divorce *a mensa et thoro* is granted by the King's Bench Division of the High Court exercising the powers of the older Ecclesiastical Courts. Where the husband is petitioner, an action for crim. con. must also be brought if it is possible to do so. The circumstances under which the bringing of such an action would be excused are those in which a petitioner would be excused from making a co-respondent in England. Where the husband is petitioner, in most cases two distinct trials must be had in the King's Bench Division. The case against the respondent must be again proved by oral evidence (unless otherwise ordered on petition) in the House of Lords on the second reading of the Bill. Once more the guilt of the respondent must be proved to the satisfaction of a Committee of the House of Commons."

42,604. They do not take evidence there again, do they?—I wish to come to that in a moment, my Lord. "That Committee accepts, as a rule, the evidence given before the House of Lords, together with that of the petitioner and one other witness." They have recently made a rule within the last few years, under which they must have one witness to the adultery.

42,605. Besides the petitioner himself?—Yes. Formerly, before 1839, the Committee re-tried the case. In that year, through some accident, the agent in Allison's case had not any witnesses there at all. Hence the practice originated of reading and acting on the evidence given before the House of Lords. From 1840 the petitioner had to attend under the Standing Order of the House of Commons, with a view to being cross-examined in case of suspected condonation. That Standing Order was made before he was legally admissible as a witness. It was the same as the procedure in the House of Lords exactly. Then in later years, when he became admissible as a witness, the Committee of the House of Commons finding the Standing Order there, and finding the petitioner always in attendance, thought they must ask him something, as it was not logical to have him there and ask him nothing, and they asked him to prove his marriage and to produce the certificate; and in recent years they require one other witness.

42,606. The whole case has to be brought before the Committee of the House of Lords?—Before the House itself, not a Committee, on the second reading, and then again before the Divorce Committee of the House of Commons.

42,607. But it has to be proved by one witness to the adultery?—Yes, in the Commons. In the House of Lords the case must be fully proved as in the English court. In the only case in which I appeared before the Commons (as usually counsel do not appear) they required the petitioner to be called specially to give evidence to supplement the evidence before the House of Lords. They were not satisfied with the evidence before the House of Lords. It is really an independent hearing.

42,608. Is the matter taken before the Committee sitting as the House or in Committee?—Before the Divorce Committee of the House of Commons, sitting in one of the committee rooms.

42,609. That is the same as in the House of Lords, then?—Yes; practically it comes to the same thing, only it is a different form altogether.

42,610. I think, if I remember rightly, the House of Lords takes the evidence in Committee?—No; the evidence is given before the House itself on the second reading of the Bill, early in the morning, just before the noble and learned Lords hear the appeal cases, and the House is constituted as it would be constituted for hearing an appeal.

42,611. I have sat on it myself, but could not say if I was sitting as the House ——?—It is not a Committee in the case of the House of Lords, and in the House of Commons the Divorce Committee consists of the Law Officers, ex Law Officers, English and Irish, and the Lord Advocate and some other members, nine or ten in all. "Owing to the majority of the Irish people being of Roman Catholic religion, there is a determined opposition to a court in Ireland granting divorce *a vinculo*. This opposition is shared by the Protestant population generally." I have copied out the protest of Lord Ashbourne from Hansard if your Lordship thinks I might read it.

42,612. I do not think it is necessary. You say there was a protest?—Yes. The point of it is that from 20 years in public life at the Bar in the House of Commons and as Lord Chancellor of Ireland he said he found no section of the population in favour of a divorce court at all, either Protestant or Roman Catholic. "But the parties needing relief bitterly complain of the trouble and expense to which they are put."

42,613. Will you explain that a little more?—All my clients have always said, what a ridiculous position the whole system is, and what a tax it is on them having to find all this money and go through so many hearings. That is the view not only of the lay clients but the solicitors as well.

42,614. Your view is, though it is legislative, it is practically judicial?—Yes, my Lord, and that view was discussed in Shaw *v.* Gould. Lord Westbury held in that case that the English law recognised divorce before 1857, but by a special tribunal, that is. Parliament; but I do not think from the ultimate decision in the case that the House accepted that view.

42,615. Can you answer whether the Irish Parliament allowed proceedings of this kind before the Union?—Before the Union all Bills for Ireland came before the Irish Parliament with the previous consent of the English Council; no Divorce Bill passed until it was passed by the English Council. That was until 1782, and from that year until 1800 it was not necessary. There were nine Divorce Bills passed and one rejected in the Irish Parliament before the Union.

42,616. Between 1782 and 1800?—No, from 1729 up to 1800, altogether; most of them in the latter part of the century. There were nine altogether. Then in the year 1753 there was a Mr. Low, a barrister

of the Middle Temple who resided in Ireland, and he came to the English Parliament and got a divorce; and in 1768 a Mr. Daly, and a Mr. Martin in 1793, did the same thing, and there was no idea of their validity being questioned in Ireland. The practice of coming over to England is shown in those three cases to have existed although the Irish Parliament acted.

42,617. But they did before the Irish Parliament?—Yes; that was the proper way.

42,618. Did they go independently of getting a certificate from here?—Not until Grattan's Parliament in 1782, after the time of Poyning's Law.

42,619. After that they went ——?—At first they were initiated in the House of Lords, and at a certain stage the Bill received the approval of the English Council, and finally the Act was passed.

42,620. Was that practice general until the Union?—Until 1782.

42,621. Between 1782 and the Union the Irish Parliament dealt with it alone?—Yes, without any reference to the English Council.

42,622. How many Bills were there in that time?—I could not say how many out of that nine. Some of those nine were in that period, but there was no difference really in the procedure.

42,623. Now, you speak of your own clients who have complained of the trouble and expense. How does that enable you to judge how many people who have not the money might use the tribunal if it were constituted?—Shall I go through my memorandum? I was coming to that point later on.

42,624. Very well?—"Since the passing of the Matrimonial Causes Act of 1857 there have been 39 Irish Acts"—there was one this year, and I have brought it up to date—"all of the petitioners were Protestants, and all those Bills were undefended as far as the causes of divorce were concerned." There were defences with regard to settlement and custody of children and the like matters. "The last contested Bill in 1857 was an Irish one, and it was bitterly opposed in both Houses of Parliament. (Members of the House of Commons congratulated themselves that it was the last of the old régime.) However, it is a mere accident that none have been contested in Parliament since 1857.

"Besides the ordinary expenses attending such trials, there are the additional expenses caused by bringing the witnesses to London, as well as solicitors or counsel from Dublin.

"The parliamentary costs of the parties average 115*l.* A return showing such costs was ordered by the House of Lords to be printed on 8th August 1907." I sent the Secretary a copy of that return, and I have it here. In one respect the return is inaccurate; that is, the second and third columns, but not with regard to the figures. The printer has got them muddled, and the numbers do not apply to the proper cases. But that does not affect the evidence before the Commission. I have a corrected copy here. (*See* Supplement at conclusion of witness's evidence.)

42,625. This shows the costs?—This shows the costs as regards the parliamentary fees only.

42,626. 115*l.*?—That is the average; for the purpose of this inquiry the return is correct. I may say I did my best to get figures of my cases, my Lord, but the solicitors in most cases objected, and in most cases the expenses were heavy, owing to quite exceptional circumstances not connected with Parliament at all.—"As an illustration I give a case in which the witnesses called were only the petitioner, the solicitor, and one witness from the West of Ireland (another may have been in attendance). The following particulars have been supplied to me by a client for the purpose of this inquiry:—

	£	s.	d.
"The costs of the original divorce proceedings in Ireland amounted to about - - - - - - - -	100	0	0
"The English agent's bill of costs for the proceedings in Parliament amounted altogether (without including any charges of our own) to	429	8	1"

—This case is No. 5 in the printed return, my Lord, and out of that 429*l.* there is 122*l.* 5*s.* 6*d.* that is mentioned in the return, and which is included in that 429*l.*

42,627. For the fees?—Yes, that would be included.

	£	s.	d.
"The petition for the House of Lords was prepared by us, and all the evidence procured here, and certain portion of the briefs, &c., and our bill of costs, including the journey of our Mr. to London came to - - - - - - -	137	11	10."

—The cheapest case I ever heard of was between 450*l.* and 500*l.* altogether.

"I should explain that there was in this case a petition for substituted service in each House of Parliament, which increased the cost slightly over what it would otherwise have been. In any case the costs must be very much greater than under similar circumstances of an English case.

"The first result of this expense is delay. In one of my cases the petitioner was a mechanical engineer who could not afford to promote a Divorce Bill for 10 years after he had obtained his divorce *a mensa et thoro* in Dublin; the guilty parties meanwhile were living as husband and wife in America. In another, the petitioner could not proceed owing to the want of means for eight or nine years, and at the end of that period could not go on because it could not be proved whether the respondent was alive or dead. In a third case (one of those in the printed return) the petitioner only obtained an Act 13 years after the decree in Dublin, and even then only with financial assistance from friends."—That is the case my friend has already referred to. Mr. Samuels and I were both in that case, and that is the same case.—"There is, however, a more serious result of the great expense attending these cases. There is a great temptation to avoid it by obtaining a decree in England by taking a house there temporarily, and then the petitioner persuading himself that he wishes to remain so, that he may declare he has an English domicile; then he can change his mind again. I have known that course to have been advised, but it was before the decision in the case of *Le Mesurier*"—which was in 1895—"I was informed of another case (also before *Le Mesurier's*) in which eminent counsel advised the same course to be taken, because there was no direct precedent of a Bill being passed in the circumstances of that particular case. An English decree was obtained in due course.

"The validity of a decree so obtained was first questioned in 1896 (with respect to an English decree obtained in 1885) by the trustees of a settlement refusing to recognise the order of the English court varying the trusts."—This information is taken from the Law Reports.—"The petitioner then obtained a Divorce Act (1897), but the House of Lords refused to allow it to take effect as proposed in the Bill from 1885."—they were asked to do that, but declined.—"By that Act the same variations of settlements were made as had been ordered by the court in 1885. In a subsequent case the effect of the English decree was questioned in regard to a question of title to lands sold under the Irish Land Acts. As both parties to the suit 13 years before had married, and there was issue of the petitioner's second marriage, it was sought by the Divorce Bill to make it effectual as from the date of the English decree."—There is a note to that in the printed return, but it is put to No. 4 wrongly.—"Two years later a similar case arose and was dealt with by another 'Validation' Act"—that seems to be the practice now, to obtain a Validation Act in cases where an English divorce has already been obtained and has been questioned. "As there was no question of want of means in any of these three cases, there is little doubt that where money is not plentiful many cases exist of English decrees having been obtained for what they may be worth thereafter. Speaking generally, the lay mind is very hazy on the question of domicile and persons do not realise the risk of having a divorce and perhaps subsequent marriages declared invalid in after years. The extension of jurisdiction in England to either county courts or courts of summary jurisdiction would increase the facilities for decrees which, in the case of Irish

people (especially when suing in person), might prove disastrous to the parties or their children at a later time.

"The fact that the causes for divorce, bars, &c., are identical in both countries (the House of Lords having intimated it will give relief in circumstances in which relief could be obtained by English petitioners) and the circumstances connected with 'Validation' Acts mentioned above indicate a remedy,"—this is purely my own suggestion; I do not represent anyone in saying it—"namely, to give jurisdiction to the court in London to grant divorces in Irish cases." I should add, naturally, to give the right of audience to Irish counsel in these cases.—"The parties would then have only one journey to London and one trial. This they have to do already when coming to the House of Lords. The expenses in their cases would still be very great, but not more than one-fourth of what they have to bear at present."

42,628. Do you think that suggestion would meet with approval or not in Ireland?—I do not know, my Lord. It would completely meet the objection of those who did not want a divorce court in the country.

42,629. And I gather in practice you say they used it in that way by coming here?—It has been done. The first case I ever had illustrates it. A friend of mine, a solicitor, told me when I was a student that he had a divorce case coming on, and his client was advised to take a house and become a ratepayer in London for six months. We were out walking and just talking casually. I called his attention to the danger; I had the case of Deck *v.* Deck in my mind where a subsequent marriage was upset in like circumstances. Some months after he told me he did not realise what I said at first, and that he had got the late Mr. Searle's opinion, who said I was quite right and thereupon he asked me to undertake my first case.

42,630. Was that his case?—Yes; the first case I ever had was that particular case.

42,631. Your first case was conducted in the House of Lords, and that was what he had to go through in order to get a divorce?—Yes. Since Le Mesurier's case counsel are more careful, but at the same time there may be cases, and I have heard of cases, in which I have reason to believe that the same thing has been done; one was quite recently.

42,632. I think we understand the procedure pretty clearly. Although the opinion generally may be averse to divorce *a vinculo* in Ireland, what do you infer from the cases you have had as to the possible number of persons who cannot afford this extraordinary expense, and yet would really seek to obtain a divorce if they could?—I have no means of knowing, because not practising in Ireland I am not consulted about cases until they are practically ripe for Parliament. In a case of ten years' delay I was consulted in the beginning, *i.e.*, when the divorce *a mensa et thoro* was obtained, and then again ten years later, when the petitioner had found the money.

42,633. Does not the fact that there are a number of cases in which the expensive proceedings are gone through by those who can afford it lead to the inference that there must be in a large population a number of cases where it cannot be afforded?—I think so. I think that is the natural inference. Now, there is another point that I should like to mention. It bears on another point altogether, but it will be very short, and that is about the equality of the relief afforded to the two sexes. The origin of the difference is of course purely historical. I do not know that I need quote Mr. Macqueen's book "On the Appelate Jurisdiction of the House of Lords, &c.," published in 1842, but the whole thing was threshed out in Mrs. Addison's case, and Lord Thurlow laid down strong views there and converted some of the opponents to the measure to granting relief, and there were subsequent cases where the wife was petitioner and Mr. Macqueen says this (at p. 479), "Although these "two cases passed on different principles, yet I think it "may be held, that from them both this general rule "is derivable: namely, that wherever the husband's "delinquency has been such as reasonably to bar "reconciliation between the married parties, the Bill "of the wife will succeed." If the circumstances were such that reconciliation were possible or probable then the Bills were refused, and I think that is the origin of the distinction between the two sexes. With regard to that I have had occasion to go into the question of the Canadian procedure, which is by Private Bill, and also I have a book here that the author sent me in 1889, which completely deals with the Canadian position. There the Canadian Parliament has recognised the equality, and it was fully debated in the Senate in 1888, and they decided not to be bound by the English practice in the House of Lords, but to treat both sexes alike, and a wife can get divorce by a Private Act on the ground of the husband's adultery alone. Then they were met with the same difficulty. In the law, there, before the Dominion they could not get a Private Bill through because of the conscientious objection of the Roman Catholics. When the Dominion Act came the grounds of divorce were within the purview of the Dominion Parliament, and the local Parliaments ceased to exercise it, but the Dominion Parliament exercised it. The exception to that is British Columbia. It is decided that British Columbia has the ——

42,634. Some of the eastern colonies too are in the same position?—Yes.

42,635. May I ask what book that is?—The author was the late Mr. Gemmill.

42,636. Does he give the whole of Canada?—He gives an account of the eastern colonies, but does not say anything very much since the Federal Parliament; but he does distinguish British Columbia. In British Columbia an ordinance was passed incorporating the English law, and under that they incorporated our Act of 1857. That has been finally recognised by the Privy Council. I can leave this book with the Secretary if any members of the Commission would like to see it. It gives a full account of the debate on the Tudor-Hart case. One other question about the number of Divorce Acts. I have a return here. The Irish Divorce Acts since 1857; there were two in the first 10 years; three in the next 10 years; five in the next 10 years; 10 in the fourth 10 years; then 15 in 10 years; and then one a year since in the last three years, so that the average is only ·735 per annum scattered all over that long period. I had the curiosity to make a Canadian return and compare the two. The figures are worked out from 1867 to 1907. In the first 10 years there were four; in the next 10 years there were 18; in the third 10 years there were 36; in the fourth, 53, and there have been 20 since. There have been 15 in 1909.

42,637. Before the Canadian Parliament?—No, I start with 1867 from the creation of the Federal Parliament.

42,638. I know, but you said there were so many in 1909?—Yes, 15.

42,639. That is before the Federal Parliament?—Oh yes, all these are before the Federal Parliament. I attribute that increase in 1909 probably to that Scottish case which the newspapers were filled with about a year or two ago, in which title to property in Scotland depended on the recognition of an American divorce in Canada; that case probably brought home to the practitioners in Canada the importance of confining themselves to their own Parliament instead of going to the United States for divorce.

42,640. (*Judge Tindal Atkinson.*) Do you know anything as to the county court judges in Ireland?—I am not competent to speak on that. I practise here. I go backwards and forwards to Ireland of course, and I have my relatives there.

42,641. Would they be gentlemen that could try divorce cases?—I have no reason to suppose they could not. They are in a very responsible position, but I am not a competent witness on that.

(*Chairman.*) Thank you very much, Mr. Roberts, your evidence will be very useful.

Adjourned for a short time.

Supplement to Mr. Roberts's Evidence.

This is the corrected Return to an Order of the House of Lords, dated 16th July 1907, referred to in Qs. 42,624 and 42,625.

DIVORCE BILLS.—RETURN (omitting Names) of all PRIVATE BILLS presented during the last Five Years for effecting DIVORCES, showing whether the PETITION was presented by HUSBAND or WIFE, what was the MATRIMONIAL OFFENCE alleged, the Result, and the PARLIAMENTARY COSTS to the PARTIES.

Year.	Number.	At suit of Husband or Wife.	Offences alleged.	Parliamentary History.				Parliamentary Costs.								
				When presented.	When passed House of Lords.	When returned from House of Commons.	Date of Royal Assent.	House of Lords.			House of Commons.			Total.		
								£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
1902	Nil	—	—	—	—	—	—	—			—			—		
1903	„	—	—	—	—	—	—	—			—			—		
1904	„	—	—	—	—	—	—	—			—			—		
1905	5															
(1)	—	Husband	Adultery	Feb. 17	April 6	May 23	June 30	66	0	0	39	0	0	105	0	0
(2)	—	„	„	March 9	May 16	June 27	„ 30	*72	17	6	40	0	0	112	17	6
†(3)	—	„	„	„ 9	„ 15	„ 6	„ 30	*70	0	0	39	0	0	109	0	0
(4)	—	Wife	Adultery and Cruelty.	„ 21	June 6	July 6	July 11	*79	10	0	39	0	0	118	10	0
(5)	—	Husband	Adultery	April 10	May 16	June 6	June 30	*82	5	6	40	0	0	122	5	6
1906	1	Wife	Cruelty and Adultery.	March 1	March 19	April 30	May 29	*70	0	0	38	0	0	108	0	0
Total	6	—	—	—	—	—	—	—			—			675	13	0

* In these cases, owing to impossibility for various reasons of personal service of the Orders of the House, substituted service was sanctioned, thereby adding to the cost of the Bill.

† March 30th on hearing of Petition for leave to present Divorce Bill, leave given to present in lieu thereof a Divorce (Validation) Bill.

Mr. FRANK MARSHALL called and examined.

42,642. (*Chairman.*) Your name is Frank Marshall?—Yes.

42,643. Of 1, Mosley Street, Newcastle-upon-Tyne, a solicitor?—Yes.

42,644. I think your firm is the firm of Wilkinson and Marshall?—That is so.

42,645. Newcastle-on-Tyne, solicitors; and you have been in practice for 27 years?—28, I believe now.

42,646. I believe your evidence was invited at a time when you were abroad?—That is so.

42,647. At any rate it happened either by that or by the meetings of your society, that it was not convenient to take your evidence at the time we were taking this class of evidence?—That is so.

42,648. You are "the Honorary Secretary of the Newcastle-upon-Tyne Incorporated Law Society, have been a member of the Standing Committee since 1889, and served as Vice-President in 1897 and President in 1905." Have you been "requested by the society, which is composed of solicitors (200 members) practising in Newcastle-upon-Tyne and Northumberland, and in some of the neighbouring towns in the county of Durham, to give evidence before this Commission"?—That is so.

42,649. I do not know that we need read the next sentence. That only explains the reasons for your coming here?—And the efforts we have made to bring the request of the Commission to the notice of every member of the society in the neighbourhood. We sent out a special notice calling an extraordinary meeting of the society to consider the matter.

42,650. And then there was a general meeting?—A special general meeting to deal with this matter.

42,651. When was that held?—On January 13th.

42,652. At that general meeting there were recommendations which you have given on page 2 of your proof?—That is so.

42,653. With one addition they were adopted as the expressions of the opinion of the society on the questions mentioned in the letter from the Secretary of the Commission?—Yes.

42,654. Which is the addition?—The one requiring magistrates' clerks in all cases to keep a note of the proceedings.

42,655. Will you kindly read the recommendations?—The first is "*A.* (1) That the petitioner should have the power of beginning a divorce or matrimonial cause in the district registry of the High Court within the district of which either (*a*) the respondent resides, or (*b*) the petitioner and respondent resided together for the longest period during the six months immediately prior to ceasing cohabitation." I do not know whether I may mention anything that occurs to me as I go along.

42,656. Oh, if you please?—We have been following the evidence. There is the question as to the territorial jurisdiction either of a district registry or a county court, and that I think has not been very clearly dealt with. In the report of the County Court Committee over which your Lordship presided it suggested giving jurisdiction to county courts, but there is no suggestion of how the territorial jurisdiction is to be decided. One suggestion I saw was that wherever a petitioner had a permanent place of abode a cause might be brought. Well, the principle hitherto adopted has been that the plaintiff must seek the defendant or else go where the cause of action arose, and it seems to me that that ought to be the principle adopted if possible in determining the territorial jurisdiction either for district registries or for county courts. Otherwise you may have a petitioner going away to a distant part of the country with intent, and establishing a permanent abode (the question of what is a permanent abode I suppose is always a question of degree) and putting the respondent to a very great disadvantage.

42,657. Is not the safest plan the place where they were residing at the time the home was broken up?—That is practically what is aimed at in the second suggestion; either where the respondent is, or at the place where they resided immediately preceding the cessation of cohabitation.

42,658. There is one case that is not met by that. The petitioner might be a woman who might return to her parents, necessarily, and they might be in another part of the country. Would it be desirable that she should be compelled to sue where the respondent was, or where they lived. Why should not she sue where she is?—Well, her cause may or may not be good.

If it is not good it is a hardship that the husband should be brought from a considerable distance and have to bring witnesses from where they were living down to where she went to live with her parents. The subject is full of difficulty, of course.

42,659. Well, after all, that would be a matter for rules of proceedings?—The jurisdiction would be a matter for statute, I take it.

42,660. Not the jurisdiction, because the parties might be altogether in different parts?—But I mean as to which county court or district registry would have jurisdiction I should have thought would be settled by statute. I think it is in the present County Court Acts. Either the plaintiff has to go to the defendant or bring it in the court where the cause of action arose.

42,661. Well, your two suggestions are contained in No. 1.?—Yes, my Lord, that is so. Then—

"(2) That in any cause so begun appearance should be entered, and the proceedings continue in the district registry, unless removed by order to the principal or another district registry on good cause shown.

"(3) That any cause begun in the principal registry should be removable to any district registry by order on good cause shown.

"(4) That the procedure in the district registry should be the same as in the principal registry of the Divorce Division, minutes being kept of the proceedings by the district registrar.

"(5) That any divorce or matrimonial cause (whether proceeding in the principal registry or a district registry) should be triable at assizes, the place of trial being determined by order as in the King's Bench Division."

Those deal with the district registry. Then—

"(6) That it is most undesirable that jurisdiction in divorce and matrimonial causes should be conferred on any county or other local courts."

42,662. How many assizes have you at Newcastle?—Two civil assizes and three gaol deliveries.

42,663. That leaves some months between?—February, the end of June, and the end of November.

42,664. But civil work?—For civil work, two, February and June. We are agitating for more.

42,665. But you may not get it?—We may not get it.

42,666. Do not you think these cases require to be settled rather quicker than that?—I do not know that the cases would be so very, very numerous and I do not know that they suffer, broadly speaking, from a little delay. One has known it rather advantageous than otherwise in some cases.

42,667. One other point I would like to mention; you would have no judge in the locality during any part of the time except when the trial was on?—Yes.

42,668. How would you propose that interlocutory proceedings, which are numerous in divorce cases sometimes, should be dealt with?—Before the registrar in the first place, with an appeal to the judge.

42,669. Appeal to the judge in London?—In London.

42,670. That at once gives rise to expense and difficulty?—Yes; it is the same procedure as in all the other branches of the court though; we have common law and the Admiralty in the registry.

42,671. But you have the county court for smaller debts and the High Court only for the larger ones?—Yes.

42,672. One of the main objects in dealing with these local cases is to deal with cases that cannot afford to come to London?—We feel that, of course; the expense of witnesses, which is very great, coming from Newcastle to London. I may say there is only one member in the whole of our society who expressed an opinion in favour of the county court. The reasons were practically what you have had before you, the ideal being that divorce work should be strictly limited to an experienced court; but feeling it is necessary to increase the number of judges and the variety of views as little as possible, it is felt that trial at the assizes would probably meet what is desired.

42,673. You weigh, of course, that all the King's Bench judges are on the rota for assize?—Yes.

42,674. How do you propose to deal with a set of trials at assize if the judge coming round happens to be a Catholic, or, as in some instances we know, is entirely averse to divorce business?—That is a difficulty. And that is a difficulty I foresee in the county courts also.

42,675. It would not be necessarily so if what has been suggested by some witnesses were done, namely, a selected number of judges?—Well that can be done in the High Court, I suppose, too.

42,676. There is a difficulty there because circuits go round and deal with all the business?—Well, apart from getting a judge who would decline to take it, there may be very wide divergence between the discretion administered in divorce practice as between judge and judge. There are 55 county court judges, I think, and apart from getting a judge who may decline to try the cause, he may take some extreme view as to proof which would make it almost impossible to get a divorce, and you may have another judge in an adjoining district with whom it was comparatively simple.

42,677. Well, would you read on please?—

"The feeling of the society was that in dealing with this question the point to be considered was not so much the cheapening of the cost of divorce as the removal of the difference in cost between London and the provinces, due to the proceedings being conducted, and the hearing taking place, in London. It was thought that by allowing the proceedings to be conducted in district registries and the hearing to take place at assizes the difficulty would be sufficiently met, especially if the circuit system were remodelled for civil business on the lines suggested in the report of the committee which recently considered the question of county court procedure. With the exception of one member, who was unable to be present at the meeting, and wrote a letter expressing his views, no member suggested giving jurisdiction to county courts."

"The question of the terms on which jurisdiction should be given to county courts, if it were decided to give such jurisdiction, was considered by the standing committee, and their views were as follows."

42,678. Is that the same standing committee?—No, the previous one was a general meeting.

42,679. Can you tell us how many were at the general meeting?—No, I cannot. The first meeting was a considerable meeting. The second meeting after the recommendations were circulated was comparatively small; but that was because it was confirmatory rather than otherwise.

42,680. Well, the general meeting would be a substantial body of solicitors?—Yes.

42,681. And this committee; what is that?—17.

"1. Jurisdiction should only be given to specified courts, say, one on each circuit where the registrar is also a district registrar of the High Court."

I see it has been suggested in some evidence that all courts should have jurisdiction. In Northumberland there are several outlying courts which are only courts in name, the clerk receiving plaints and so on, and no resident registrar even. That seems to be entirely out of the question.

42,682. It is a fact that in Northumberland you have only one High Court registry?—Yes, that is so, but, of course, Newcastle is really the centre for all Northumberland.

42,683. But it is a long way from the north?—Yes.

42,684. Is there no place further north in the county which is big or important enough to have established a district registry?—Not as a district registry. Berwick, of course, is the extreme and Alnwick is about halfway.

42,685. There might be a bankruptcy registry?—No, that is in Newcastle.

42,686. Is there good communication by rail from most parts of Northumberland to Newcastle?—Oh yes, excellent.

42,687. A day would do it?—Oh yes.

42,688. Then No. 2?—

"2. The court in which a case might be begun would be determined as in *A.* (1) above."

That is the territorial matter which we have dealt with.

"3. The jurisdiction should be limited to cases where the joint incomes of the petitioner and respondent do not exceed the sum of 300*l.* per annum."

I may say the idea is that if jurisdiction is going to be given to the county courts, there is a class above the extremely poor and working classes who deserve consideration, and that is the clerk class, whose income may be a little more, but who find it very difficult to deal with a trial in London at present.

42,689. What limits would you place on that class of person?—We suggest a limit of 300*l.* here, my Lord.

42,690. That is 6*l.* a week?—Yes, my Lord. I think that is a little high perhaps, and I also see difficulty in requiring proof of the joint means.

42,691. Why?—More in the poorer classes. Probably a wife would swear that her husband was a working man earning so much, but if he deserted her I do not know how she is going to give evidence on that.

42,692. She could say what he had at the time he left?—Yes, I agree.

42,693. At any rate there would have to be some latitude about it?—Yes. Then:—

"4. Hearing should be before the judge alone.

"5. An appeal should be allowed on questions of fact.

"6. The damage to be recovered against a co-respondent should be limited to 100*l.*

"7. Solicitors should have the same right of audience as in other matters in county courts."

That deals with the first question put by the secretary of the Commission. The second was as to separation orders, and the recommendation was that the magistrates' jurisdiction "should continue, except that the power to grant an order for separation should be limited to cases in which such an order is necessary for the adequate protection of the complainant."

42,694. That is against the view of permanent separation orders?—Against separation orders.

42,695. By "adequate protection" you mean temporary protection?—Well, where it was so serious a case that it was felt nothing short of a separation was enough for the wife's protection; it might be a temporary order to come up for revision: in other cases only maintenance orders. This is the practice really before the magistrates at Newcastle (*Mr. Roberts gave evidence here*), and the proportion of separation orders made is very small.

42,696. Then would you read on?—

"This recommendation (which embodies, I am informed, the existing practice in many courts of summary jurisdiction) must be read in the light of the previous recommendation against giving jurisdiction to county courts. I cannot say whether or no the society would be in favour of transferring the magistrates' jurisdiction to the county courts in the event of general jurisdiction in divorce being given to the county courts. Reasons for retaining the magistrates' jurisdiction are (1) that the fees payable are less than the fees that would probably be exacted in county courts, and that the magistrates' clerks have the power, which is frequently exercised, of remitting the fees; and (2) that the cases can be brought to hearing more expeditiously. If only specified county courts were given jurisdiction in divorce, it would be necessary to preserve the magistrates' jurisdiction in other places, and it would probably be found that to transfer the magistrates' jurisdiction to county courts in populous centres would throw too much work upon the county courts."

42,697. Have you any light to throw on the question of enforcing the magistrates' orders?—None whatever, my Lord. I never had anything to do with that personally.

42,698. Then the same committee is it?—No, this is now the general meeting again; and so was the last one; "(*a*) conferring jurisdiction on local courts; (*b*) separation orders; (*c*) publication of reports;" "(*b*)" was a separate heading of the enquiry.

42,699. "(*b*)" is the general meeting?—Yes.

42,700. Now the general meeting deals with the publication of reports?—Yes:—

"1. That a register of all decrees in divorce, both *nisi* and absolute, should be kept in the central office of the Royal Courts of Justice, open to inspection on payment of a small fee.

"2. That in the public interest the publication, other than in the recognised law reports, of anything more than the bare statement of the result of the trial of divorce and matrimonial causes should be prohibited.

"There was a strong feeling against allowing the publication of the details of cases in the press. At the same time, it was thought that a readily accessible register of decrees was desirable." There was also a suggestion that it might be desirable to insist on local advertisements of the decree.

42,701. By whom?—By the successful party who obtained the decree in a prescribed form. That is rather from the point of view of a deterrent against the commission of matrimonial offences; the knowledge that publication to that extent would follow.

42,702. In order to prevent a petitioner putting in what he pleases, you would rather suggest he should pay a small fee to the registrar and let him put it in?—Yes, in a prescribed form. The same authority that sent the notice to the Royal Courts should arrange for the advertisement. Then the next point; this is the society in general meeting again:—

"(*d*) *Amendments.*

"The society recommended—

"1. That the procedure and the court fees payable in the Divorce Division should be assimilated to the procedure and court fees payable in the King's Bench Division."

42,703. Let me know what that means in substance. We know there is a different practice, but would that be more economical?—I think so.

42,704. Could you tell us the principal point that would show that?—Yes. I should start with a writ as in any other division. Serve a plain copy.

42,705. You go on to explain here?—Yes. "This recommendation has in view facilitating the procedure in the district registries, and reducing the cost in all cases." When I refer to the facility in procedure, it was the desirability of not having another form of procedure adopted in certain particular cases. I do not know why divorce cases were excepted by the Judicature Commission.

42,706. It was the old ecclesiastical procedure?—Yes, I know, but why it was preserved when the other special procedures were done away with, I do not know.

42,707. The Admiralty procedure was altered?—Yes, and the Chancery too; and the Divorce, as far as I know, is the only one preserved. "It is suggested that a writ should be substituted for the citation, and a plain copy served as in other divisions of the High Court, that a statement of claim, verified by affidavit, should be substituted for the petition"—verified by affidavit; now we suggest the verification by affidavit be dispensed with. We see no reason why——

42,708. As I said to one of the witnesses this morning, the reason why that has been put forward is to prevent claims being made to harass people?—I should respectfully say I doubt if it has any effect whatever in that respect nowadays. It is a sort of common form affidavit, which I am afraid is not much regarded, and harassing claims are allowed without similar protection in other divisions of the court, and are by no means infrequent.

42,709. I should have thought myself that removing even what affidavit there is would tend to allow claims

to be put forward for which there was absolutely no foundation?—Well, my Lord, feeling as I do very much doubt whether the affidavit in support of the petition is much, if any, protection in that respect——

42,710. It might be suggested that that should be strengthened by an affidavit of the solicitor, saying he has investigated the case and thinks it a reasonable case?—That might be useful if the object is to stop unfounded claims. But it is not applied in any other branch of legal procedure.

42,711. No; but there are immense differences. Take the case of a woman who sues, and then immediately after applies for costs against her husband to be secured. If she has not even to say on affidavit that she has a good case, she can put him to immense expense without any foundation at all?—I agree, but I doubt whether the affidavit stops—I was going to say—a fraction of one per cent. of the claims. Of course it is a cause of expense—both the affidavit to the claim and to the answer.

42,712. There is no affidavit required with regard to the answer, unless it makes a cross-charge?—Yes, and what we have been saying before applies to that. It further suggests "that the practice as to alimony might be simplified by permitting the application to be by summons in the cause without a separate petition, entry of appearance, answer, &c."; that alimony might be asked for in the writ. The petition for alimony is practically only the substance of the affidavits that will be used in support of it after.

42,713. It is a wasted expense, you mean?—Yes, and if one wants to reserve the power to enter appearance as to alimony only, a limited appearance could be allowed; an appearance only on that point. "That applications for orders for substituted service should be by summons and not by motion; that the procedure on motions should be modified by dispensing with the case on motion." That obtains in no other branch of the court, and it means settling the document and copying it, and filing it, and paying a fee, and all the information in the affidavits and the notice of motion which have to be filed; "and that the settling of the questions for the jury should be dispensed with." They are very plain questions.

42,714. The point really you make is that there is a lot of formality which by careful looking to it the procedure might be cheapened?—Yes, and the fees reduced. The removing of this formality would do away with a number of fees at the same time, of course. "(2) That there should be discretion as to dispensing with security for the wife's costs where it is shown she is possessed of sufficient separate estate." I do not know that the note on that is of much importance.

42,715. You say on that that you passed it without due consideration to rule 158 of the Divorce Rules. That does provide for it?—Well, it provides for the registrar postponing the decision till it is brought before the court, which means further expense. I should have thought the registrar could deal with it on his own discretion in the first instance, and leave it to either party to take it to the judge then.

42,716. I think he leaves it till after for the judge if there is any question?—Yes, it is tied up and referred to the judge if there is a question:—

> "3. That the High Court should be given the same jurisdiction as is given to courts of summary jurisdiction by section 5 of the Licensing Act, 1902, without any limit as to the amount of maintenance to be allowed.

"There seems to be no good reason why the remedy of a husband or wife of a habitual drunkard should be limited to courts of summary jurisdiction, or the amount of maintenance to be allowed should be limited to 2*l.* per week. A 'habitual drunkard' is a person not amenable to lunacy jurisdiction, who is by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself or others, or incapable of managing himself or his affairs. Cases of this kind are unfortunately not confined to the poorer classes, and in cases of people in better circumstances there is great hesitation in bringing the matter before the local police courts, and the maximum allowance for maintenance is insufficient."

42,717. I do not know why that comes about in that form. It may have been overlooked. People may be habitual drunkards where they possess means as well as where they do not?—I have had cases where people would not go to the local police courts to get a remedy, and would have had means to go to London if there had been that remedy here.

42,718. At present they cannot apply here?—No.

42,719. And if they go to the magistrate they can only get an award of 2*l.* or less a week?—Yes. Then the last is the addition made at the general meeting that I referred to:—

> "4. That in cases under the Summary Jurisdiction (Married Women) Act, 1895, and under section 5 of the Licensing Act, 1902, it should be made incumbent upon justices' clerks to to take a note of the evidence, and to supply a copy thereof to either side on payment of a prescribed fee."

Then there is reference to the fact—

"Notwithstanding repeated expressions of opinion by the judges of the Divorce Division, it is not infrequently found that no note is taken of the evidence before the magistrates, causing trouble and expense on appeal."

42,720. Have you found that yourself?—Personally I have not, but I have had it brought to my attention by practitioners who do practise in that class of work. More than one I have heard of. Not in Newcastle; I have to protect that. We have a very competent magistrates' clerk there. It is more before the country benches where no proper note is taken.

42,721. You omit from your resolutions one important matter which I myself have had to call attention to from the bench; the omission to give the reasons for the decision?—That would be a desirable addition.

42,722. We have indicated that from the bench on several occasions?—Yes.

42,723. Recollect, it is an appeal to the divisional court?—Yes.

42,724. Therefore one wants the real materials, namely, the evidence and the reasons for the decision. We have had to send cases back for that cause?—One view is it should be made incumbent on the clerk to take a note, and I agree a statement of the reasons should be given also.

42,725. On the last part of the suggestion, do you think that is a case in which there ought to be any fee at all?—For giving a copy?

42,726. The class of case is often where there is no means at all. Do you know at all what the cost of a copy of the notes of, say, three witnesses' evidence in an ordinary case of this character would be?—It would not be very much. If we take it at fourpence a folio, which I suppose is what would be asked—judging from ordinary depositions—a sovereign would cover 60 folios, which is a good deal of matter.

42,727. (*Mr. Spender.*) You say, Mr. Marshall, "In the public interest the publication other than in the recognised law reports of anything more than a bare statement of the result" should be prohibited. Do you contemplate in that a regular official report being taken?—No, I refer merely to the existing law reports, which give cases that have some question of real importance; not to keep a record of everything.

42,728. Do not you think in these circumstances that you contemplate it would be very important to have a full record of the court?—I do not see that the prohibition of publication in the press would render it any more necessary than it does now.

42,729. There would be no means of referring in any case to what actually occurred. There might be a difference of opinion as to the varieties of guilt on the one side and the other. People's characters and the characters of witnesses even might be in dispute?—One would never refer to a newspaper on a question of that kind, surely.

42,730. In certain cases a full report in newspapers is something that might be referred to?—My experience of newspaper reports is that they are invariably incorrect and incomplete and are of no use, and the report you get in a divorce case consists of what is supposed to be attractive so as to sell the paper and is

really valueless as a report. I should think they are of very little value.

42,731. But do not you think it is desirable in the view of possible different constructions being put on a trial in a divorce case affecting people's character to have some report that could be referred to?—The only thing I would suggest would be the official shorthand writer; and there is a good deal to be said for applying that to all courts.

42,732. (*Chairman.*) There is an official shorthand writer in the Divorce Court?—Yes, and he has his records which can always be referred to.

42,733. (*Mr. Spender.*) Well, suppose this sealing up of the court is practised, do not you think that official report should be accessible?—It is accessible. A year or two ago I applied to the official shorthand writer, and I got a report of the proceedings of a case.

42,734. But I mean accessible in the sense that it might be referred to by the public?—That I should think not. Anybody who wants a record now can get it by paying for it, and I think that is sufficient.

42,735. You do not regard the public as having an interest in the case?—Yes, I do to an extent; but I think the public are sufficiently protected by the judge and the counsel and the solicitors on the two sides, and the admission of the public.

42,736. Cannot you conceive a case where there was an innocent party to a suit of this kind, and the construction put on the case may entirely depend on what took place in court. You could not arrive at it by a mere statement of the result?—No, but if the innocent party was put to proving that the general impression was wrong he could always get a copy of the transcript of the official shorthand writer and use it.

42,737. How could he prove that apart from publicity. Take a common case before us here of a more or less distinguished public man, or a man well known in his locality who has got involved in proceedings of this kind. In a case of that sort a fully reported public cross-examination is of great value to him. If you supersede that, are you going to give him any other remedy?—Well, he could get it from the official shorthand writer, and print it and circulate it if he wished.

42,738. You would allow that to be printed and circulated?—I think so—an individual to protect his character. I do not see how you can prevent it—his own evidence.

42,739. Do you see any objection to allowing newspapers to do the same?—On the whole, I do. I do not think that is the point of view from which newspapers report these cases at all, if I may say so.

42,740. Do not you think the same class of consideration refers to a vast number of criminal cases?—I do, and I think it is very regrettable ——

42,741. Then you would extend your theory and principle of shutting these courts to those cases?—I do not suggest to shut the courts at all. Courts existed before newspapers, and I do not think by prohibiting a certain amount of publication I am shutting the court.

42,742. You withdraw a particular privilege from a particular court which belongs to the other courts?—Yes.

42,743. All I want to know is whether you think that would meet the case. I am assuming your objections to details which are presumably justified. I suggest if you do that merely for one court you leave open a very wide field still to the same class of matter?—In other courts?

42,744. Yes?—There is a certain amount, no doubt. If you take any criminal court there is a certain amount of matter not desirable to be published, and which I should be glad to see prevented being published. But because you cannot deal with all that, I do not see why you should not deal with this matter in the Divorce Court, which is a crying evil.

42,745. Do not you think there is a public interest in the Divorce Court. I am not using the word "interest" in the sense of curiosity; but that the public is to a certain extent a party to a divorce proceeding?—Yes. I agree it is, but I think the judge and the counsel there, and so on, are quite sufficient protection without such reports as you get in the newspaper. I have never seen them before, but about a month ago I was in town on a Sunday, and knowing I was coming here I bought a number of Sunday newspapers; and I think the more they are prevented from publishing this kind of thing the better.

42,746. I daresay we should agree with that, but the point is to find a remedy?—I cannot personally see that the community at large would suffer by this. That is our feeling in trying to look at it from a broad point of view.

42,747. I think you said in the course of your evidence, or you laid stress on the possible variety of decisions which might arise supposing jurisdiction were extended to county courts?—Yes.

42,748. Would that objection be modified in your mind supposing the grounds of divorce were simplified or extended in such a way as to eliminate some of the main difficulties?—Obviously the main difficulty is the question of discretion; therefore, so far as you remove that element you remove the objection. The objection is to the number of 55 judges of varying character, experience, and temperament and with little opportunity of intercommunication and consulting together, and the varying of the basis on which things would be done.

42,749. Supposing the grounds of divorce were equalised between the sexes, and the ground of cruelty were eliminated, by doing that do not you think it might become a very much simpler matter?—No doubt the matter would be simplified by that.

42,750. That might modify the view of your society?—Yes, of course, if you simplify the question to be submitted you leave less room for variance of opinion, and the objection to that extent falls.

42,751. You are merely suggesting this on the assumption that the law remains as it is?—Yes.

42,752. (*Sir Lewis Dibdin.*) Your society is definitely of opinion, I gather, that divorce cases had better be heard by assize than county courts?—That is so.

42,753. And they realise in that—I mention that as it adds influence to that decision—that that involves counsel being heard at the assizes?—Yes.

42,754. So to that extent it is a self-denying ordinance?—If there is any virtue in that I think, considering the distance we are from London, the whole recommendation is a self-denying ordinance, but I do not think we considered that.

42,755. But that adds emphasis to it?—Yes.

42,756. Then you know the Committee that Lord Gorell presided over reported that counsel were necessary?—Yes.

42,757. Have you a large local bar at Newcastle?—Not a large one. We have under half-a-dozen. I think five local barristers.

42,758. Well it is a small body?—Yes.

42,759. And I suppose it would not be practically possible to get counsel in the outlying county courts for divorce cases?—Oh, it is practical—but you come to the question of expense again.

42,760. You would have to pay them?—Yes.

42,761. But the view of your society is that if jurisdiction is given to county courts then it would be wrong that the right of audience which the solicitors now have in county courts should be restricted by not being applied to that part of their jurisdiction?—Well if it is decided to apply it to county courts we presume it is with a view to cheapening and simplifying the matter, and that that would not be accomplished unless you gave the solicitors the same right of audience that they have now; and I think, broadly speaking, solicitors, as a profession, claim that they ought not to be excluded from the county courts whatever jurisdiction is given.

42,762. From any of their jurisdiction?—Yes.

42,763. And that is one of the elements before the minds of the society in coming to the conclusion that the assize was a better forum for divorce?—Yes, and the idea was also—it is rather more sentiment than anything—that it was more seemly and that there was more dignity about it. In small country towns if it is known there is going to be a divorce day there will be

a crowd attracted, and a tendency, possible even to advocates, to play to the gallery, and conduct of that sort which one would not find in the case of experienced counsel in London. Cases of this kind should be treated with the gravity which they deserve.

42,764. Turning to publication of reports, I gathered from your evidence when you said you proposed that reports of cases in the law reports should continue you meant that where a report of a case was necessary for some legal purpose its publication should still be possible?—Yes.

42,765. Whether in the authorised law reports or in the unauthorised law reports?—Yes.

42,766. You were speaking of reports apart from newspapers?—Yes, we do not refer necessarily to the authorised law reports as distinct from the Law Journal and Law Times.

42,767. You mean as distinct from the ordinary press?—Yes.

42,768. It is suggested that there are cases in other courts that are unfit for publication, and that you admit?—Yes.

42,769. But would you say there is no other court except the Divorce Court where there is such a large proportion of cases the issues in which involve sexual matters and are quite *sui generis*?—That is the case. You get the record of any criminal court and a certain amount of material is objectionable; but in the Divorce Court it is involved in the very nature of the cases.

42,770. Then it was suggested to you that the difficulty might be removed with regard to the discretion exercised in different ways by these judges if the causes of divorce were multiplied. But is that quite so?—That was not quite the suggestion put to me. I gathered, if they were simplified and made more absolute, involving less discretion; that was the suggestion made by the other member of the Commission to me.

42,771. But the suggestion that is before the Commission is that they should be simplified by multiplication. For instance, instead of divorce being possible by a wife where there is adultery and cruelty or adultery and desertion, that divorce should be obtainable either for adultery, or for desertion, or for cruelty?—I gathered cruelty was to be done away with by the question put to me on the other side of the table.

42,772. Well, let me ask you an independent question then. Supposing cruelty became a sufficient ground of divorce by itself; I suppose your difficulty as to the different ways in which discretion might be exercised on the issue of cruelty would remain, would it not?—Yes. In the most recent case of cruelty before the President, which was the case of Cochrane *v.* Cochrane, a few weeks ago, one sees that.

42,773. Whatever discretion there was would remain?—Yes.

42,774. If the issue were cruelty instead of cruelty plus adultery?—Yes.

42,775. And if it were multiplied by having incurable insanity as a ground of divorce; there again the element of judicial discretion would come in, would it not?—Yes; and, of course, if that became a ground for divorce, it seems to me another reason against county courts, because, on a question of incurable insanity you would want high expert evidence, and that could only be had at expense.

42,776. And that evidence, though it might be produced on affidavit, would not be satisfactory unless it were open to cross-examination?—I should not think so. I should think such an issue could not be tried except on *viva voce* evidence, and to get that in the country would be necessarily expensive.

42,777. And rather difficult on the ground of expense?—Yes.

42,778. (*Judge Tindal Atkinson.*) I suppose you recognise that if jurisdiction were given to the county courts, that jurisdiction could be limited to cases where the only issue probably was adultery?—It could be, no doubt.

42,779. And supposing the sexes were made equal, and that adultery in the husband entitled the wife to divorce, then if jurisdiction was given to the county courts, and they were at liberty to hear cases only in which adultery was a ground, the issue would be comparatively simple, would it not?—Well, it is a plain issue of fact.

42,780. I mean it is a pure issue of fact?—Yes.

42,781. Then if the grounds of divorce were extended so as to include insanity and other grounds, they could be left to the higher tribunal to decide, still giving the poorer classes the opportunity of getting to the county court where the issue was simply adultery; that could be done?—It could. Personally, I have not heard it suggested before, and it does not strike me as desirable off-hand.

42,782. The difficulty at present is that it is pretty clear from the evidence that there is a grave denial of justice to the poor people because they cannot reach the divorce court?—That is so. I know it of my own experience.

42,783. And the courts that are most readily accessible are the county courts?—Well, I suppose the magistrates' are the most readily accessible, but I agree they are a less desirable tribunal.

42,784. As judges of record they are the most accessible judges in the kingdom?—Yes.

42,785. And if the poor people could get a remedy in case of adultery it is better than leaving the condition of things as it is at present?—Well, it is a matter of degree and how one looks at these things. I have known cases in which the impossibility of going to London—I had one last year—resulted in the parties coming together again, and they have lived together happily until now.

42,786. That would be a reason for not allowing divorce at all?—I think a little delay is not to be regretted.

42,787. Well, the expense is the question; not so much the delay. Now, take the assizes; I suppose you are aware that the London Law Incorporated Society objects to assize?—Yes, I think they did. I had a conversation with Mr. Winterbotham in the early part of the year about it, and I believe that is so.

42,788. Is not there this difficuly about the assizes. First of all it would be very difficult to get a special day fixed at the assizes to hear these cases; and in the next place the parties would have to go some distance to the assize town and wait till the case came on?—They are in exactly the same position as other litigants. If the litigant in other cases cannot get a fixed day——

42,789. The answer is that in other matters you do offer the county court for the poor people and that is why those courts were created?—Yes, to an extent, but we measure these other matters by money—you give jurisdiction up to 100*l.*; here it is not so; it is adultery or cruelty and the issue is the same whatever class it is, and the reason you are going to give the facilities is the position of the parties and not the question to be tried.

42,790. Originally in the county courts—in 1846—it was in reference to the access for the poor people?—I should keep the county courts myself more strictly to their original purpose and make a more reasonable arrangement for the assizes.

42,791. You would put the clock back?—I certainly would not put it above 100*l.* I should not increase it beyond what it is now. In populous places they could not deal with it.

42,792. One thing with regard to Northumberland. I think there are six or seven towns in the circuit, are there not?—Oh, more than that.

42,793. I have not got my returns here; I expected you to give evidence to-morrow?—Newcastle, Gateshead, Hexham, North Shields, Morpeth, Blyth, Alnwick, Wooler, Rothbury, Belford, Berwick, Bellingham. That is more than six and I may have missed one.

42,794. They are small places?—Alnwick is a county town; Hexham is a largish county town; North Shields is a place with large works and riverside industries. Blyth is a large shipping port, with docks and shipbuilding yards.

42,795. But it is strange you have not got a bankruptcy registry except at Newcastle?—I do not think it is needed, in my experience. There has been

no demand for it. Newcastle is perhaps, in a sense, the capital of the district and the Tyneside is where most of the business centres. You do not get much further north than Blyth for industrial matters, and that is about the limit of the colliery area. The south-east section is the industrial part; the other is mostly large farms and moors.

42,796. Then Newcastle; is that readily accessible to most of them?—Yes, to all of them of importance. There are some places, such as Rothbury, which are not very accessible. There are people there who do business in Newcastle, and come in by the early morning train and leave by the evening; and Bellingham the same. Belford is on the main line north, and most trains stop there.

42,797. But it is a hardship to the poor, and perhaps in fact an impossibility, to travel a great distance with their witnesses unless they are absolutely certain of getting their cases heard on the day they are fixed?—It is a hardship, and it must be a hardship until you can settle how much legal work you can get through in a day. We must all put up with it, whether it is in the High Court or the county court.

42,798. If it can be removed by giving the county court jurisdiction——?—I do not know how it can. You cannot now get special days in the county court, and if you do not a longish case may intervene, and you may have to wait a day or two.

42,799. That only requires an Act of Parliament to enable the county court judge to sit longer than he does. Your county court judge sits 128 days in the year?—He sits at Newcastle for a week each month, and it is a very full week, and if you have an exceptional case he is very good in giving special days, but he has then to rearrange work elsewhere. If the county court is to be mainly for small-debt collecting and that class of thing, the work that is put on them now and this proposed increase will interfere with its original function.

42,800. But they have ceased to be mere debt-collecting courts; there is bankruptcy business and workmen's compensation.

(*Chairman.*) Have not we gone over all this before?

(*Judge Tindal Atkinson.*) Yes, I think we have.

(*Witness.*) Might I just say, as you have mentioned workmen's compensation, when you come to deal with discretion in adultery and cruelty, one has seen how discretion works out when applying the Workmen's Compensation Act.

42,801. That would apply equally to every High Court judge that had jurisdiction?—To an extent, undoubtedly. It would be as 18 to 55, or something of that sort.

42,802. Do you think that the solicitors in Northumberland would be willing to conduct poor cases without payment?—That is a question of degree again. I have no doubt whatever, and this I have no hesitation in saying, that if a poor's roll were established we should find competent men who would be willing to do it.

42,803. (*Chairman.*) I just want to ask you one matter. You drew a distinction between law reports and the newspapers. I suppose you know, and probably have remembered, that the law reports are published many months after, when everything connected with the case is dead except the legal aspect of it?—Yes.

42,804. Then you mentioned a recent case with regard to cruelty. Is it your view that the fact that cruelty is an adjunct to adultery for the woman to prove, if the adultery is proved the tendency is to minimise the necessity for the proof of the cruelty as much as possible?—I think it is perfectly obvious.

42,805. Supposing a case rested only on cruelty, and there was an adequate definition, would not that make a great difference to the position?—I think so. A greater strictness would be required, and there would be a less desire to help the woman probably.

(*Chairman.*) Thank you very much for coming and giving your evidence, Mr. Marshall.

Adjourned.

Winchester House, St. James's Square, London, S.W.

FIFTY-FOURTH DAY.

Tuesday, 20th December 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The Right Hon. The EARL OF DERBY, G.C.V.O., C.B.
The Right Hon. THOMAS BURT, M.P.
Sir WILLIAM ANSON, Bart., M.P.
Sir FREDERICK TREVES, Bart., G.C.V.O., C.B., LL.D., F.R.C.S.
Sir LEWIS DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour JUDGE TINDAL ATKINSON.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

Dr. CARL NEUHAUS called and examined.

42,806. (*Chairman.*) You are a Doctor Juris, and a retired judge of the district court at Spandau, Prussia?—Yes, that is the last court I was at.

42,807. You are now practising as an adviser in German Law at 62, London Wall. You studied prior to your judicial work for three years at the Universities at Heidelberg, Berlin, and Göttingen in Germany?—Yes.

42,808. You took your degree as Doctor Juris at Göttingen in 1874, and after having passed the two examinations necessary for the Civil Service of Justice, being prepared by a period of four years, became a permanent judge, and you have for a period of 36 years officiated in the district courts of Gross-Strehlitz, Wittenberge and Spandau?—Yes.

42,809. During that period had you jurisdiction in matrimonial causes?—Yes, I had.

42,810. You are, therefore, fully able to express an opinion as to German law in respect of the questions which will be dealt with by you, and that opinion has been formed from your knowledge and experience?—Yes, I think so.

42,811. If it will be convenient to you I would like to ask you to read from the paper you have been good

enough to prepare, and then I will ask you any questions which arise?—" First, as to how marriages are contracted. For the last 40 years there has been—and is still existing—in Germany a law whereby it is compulsory that marriages take place before a civil registrar. This law was first introduced in Prussia, having subsequently been adopted by the whole German Empire, and thus became universally obligatory throughout the Empire and was confirmed by the German Civil Code on the 1st of January 1900. The Code governs only civil marriage, leaving it to the Church to secure compliance with its behests. The civil law, however, claims priority of compliance with its statute and prohibits by penalty any celebration of an ecclesiastical marriage before the clergyman has satisfied himself that the civil marriage has been duly contracted. The registrar is an employee of the local authority acting under the supervision of the Government. The engaged couple have to go to the registrar at a time appointed by him, and the contracting parties have there to state verbally that they desire to become husband and wife. It is merely by virtue of this declaration that the civil marriage is contracted; the signatures are not essential. If there is any legal impediment known to the registrar, he has to refute the celebration of the marriage. The number of civil impediments to marriage has been much reduced in comparison with those imposed by the Church. Persons are not allowed to get married if they are under 21 or 16 years respectively."

42,812. That is 21 for the man and 16 for the woman?—Yes. " If there is guardianship, or adoption, or too near a degree of relationship or affinity between them, or if one of the parties is already married. A civil marriage is valid and binding on the parties, whether the ecclesiastical marriage be sought in addition or not, but the civil law imposes no prohibition against any threats to disadvantages or punishment which the Church may direct against or inflict upon its members."

42,813. Your second heading is "Jurisdiction in Matrimonial Causes"?—Yes. "Divorce petitions are filed in county courts (Landgericht) and are decided by three judges in collegio. County courts in Germany are established for districts of about 250,000 inhabitants (rarely less, but very often more)."

42,814. A county court in England is a court of quite a limited jurisdiction, only up to a small sum of money; the county court in Germany is a court of unlimited jurisdiction?—Yes, there are no limits. It begins at 600 marks, or 30*l.* in money suits, and has no limit as to higher figures.

42,815. The term "county court" would not describe it?—No; it is only a free translation.

42,816. It means a court for the district?—There are about 15 county courts in a province like Brandenburg. It will be seen best from the fact that there are 250,000 inhabitants for the district of a county court.

42,817. The point is it has unlimited jurisdiction?—Yes. "The district has mostly such an area that a party in order to arrive at the court has not to travel a further distance than 50 kilometers (30 miles). Higher in jurisdiction than the county courts are the superior county courts (Oberlandesgerichte)—of these there is only one in each province—to which appeals are made. Every province has a superior county court, and there are 29 in all in the whole German Empire. Besides the county courts which have to deal with divorce cases, a preparatory function is conferred upon the district courts (Amtsgericht), in which single judges preside. According to the German civil law a divorce case can only be dealt with after an official effort to effect reconciliation has failed. A judge (Amtsrichter) is specially appointed to exercise this office. He is fitted for this function since the district courts have not a large district and the judge is amongst and acquainted with the population. A husband or wife must therefore first apply to the district court if he or she wishes to take proceedings to obtain a divorce against the other party. The district court summons both parties to appear and attempts to reconcile them. The judge has the power to refuse to see a proxy (lawyer, counsel). On the other hand, a judge in Prussia or Bavaria is obliged to inform the clergyman to whose parish the parties belong of the imminent attempt of reconciliation, in order that he may act hand in hand with the judge. If the defendant does not appear or an understanding is not come to, the party which has issued the writ receives a notification that the attempt was unsuccessful. These attempts at reconciliation when first introduced were considered to be of great advantage to the public, but experience has proved that reconciliation seldom occurs."

42,818. Is that the experience that you yourself have found?—I had it myself.

42,819. Is that the general opinion?—That is the general opinion, and I had it for about 30 years. Very seldom a reconciliation has taken place before this district court before the Amtsgericht. "But more important still and more successful in practice is the power of the court to summon the parties to appear and attempt a reconciliation at any stage of the proceedings, and this success is attributable to the fact that a time frequently arrives when all the evidence is taken, at which the parties are inclined to forgive one another."

42,820. Can you give any idea to what extent that is successful?—I have not read any statistics about that. I could not give an answer upon that, but I heard about it from the judges of the higher court that it seldom occurs, that when the evidence of both parties has been taken, and they see there is something wrong one against the other, they are prepared and willing for reconciliation. I heard it was seldom and in a few cases, but there are no statistics I could read.

42,821. My impression is that at some stage of this inquiry it was mentioned that there were some statistics showing that there was a considerable number?—I have read the statistics of the German Empire, the last edition, but there have been only the grounds of divorce; there are no statistics on this point.

42,822. Then will you read your next paragraph?—

"Facilities enjoyed by the Poorer Classes in taking Proceedings and obtaining Judgment in Divorce Cases.

"The facilities given by the German law are not only applicable to divorce cases but also to any other claim which may be enforced by law. There is first the advantage of being in reasonable neighbourhood to the courts, in no case is the district of a county court on which the jurisdiction in matrimonial matters is conferred so extended that it cannot be reached by everybody without much expense and loss of time. A much more important concession which should be taken into consideration is the passing of the Poor Law (Armenrecht) (the right of free legal assistance, which according to German process is granted to every plaintiff or defendant under certain conditions. Its effect is that the poor party is not compelled to pay court's and lawyer's fees and obtains the free services of a lawyer on his behalf."

42,823. Is every lawyer obliged to take the cases up, or are there a certain number who put their names down on a list as ready to take them up?—Every lawyer who has a practice in the county court is obliged to take this office. They are taken one after another.

42,824. How long does each take it for? You say each one after the other takes it?—One case after the other is attributed to a different lawyer.

42,825. Who does that?—The President of the Court in fixing the hearing and making the decree by which the Poor Law is given, at the same time puts down the name of the lawyer whose turn it is.

42,826. That may be every lawyer in the district?—Yes.

42,827. He takes them in order one after the other?—Yes. "In order to obtain the Poor Law the party has to produce a certificate of the local police to the court that he is not in a position to pay the fees of the court without affecting the maintenance of himself and that of his family. The court has further to convince itself before granting the Poor Law that the proceeding is not raised mischievously or that

there is no chance of success. Having satisfied itself on these points, the court where the proceedings have to take place, declares in an order that the party is permitted to take advantage of the Poor Law, and that he is exempt from the fees and receives the aid of a lawyer. A further facility for the poor party is connected with the manner of calculating the fees prescribed in Germany. The fees increase with the value of the object in question, process (such as divorce cases) for instance in which money is not the issue will be fixed at a certain amount. This estimate may be so low in divorce cases concerning the poor classes that the party, if the Poor Law has not been granted, is not much affected by the amount of the fees."

42,828. Is there any difference between the lawyer and the barrister in Germany, or is he one?—We know only the Rechtsanwaelte. They take over the proceedings from the parties and at the same time are acting before the court. There is no difference between lawyers and counsellors.

42,829. The lawyer, I suppose, has to render his services free when the order is made?—Yes; he is not entitled to any fees, and he has to postpone the claim of expenses too.

42,830. What happens about the expenses, for instance, of bringing witnesses and making copies of the papers?—The fees for the witnesses have to be paid by the court, by the Exchequer, by the royal cash.

42,831. Out of public money?—Yes. In any court we have our cash, and the cash has to pay all expenses for witnesses, and if the party is not poor, they are recovered from the parties; in any other case, if the Poor Law has been granted, they will not be recovered.

42,832. That would apply to other expenses besides witnesses, like copying the papers?—Yes, that is all the same; the court has to pay for it, if the Poor Law has been granted.

42,833. Where does the court money come from? Is that from the local taxation or the national taxation?—The cash is from the national taxation. There is a chief cash, for Prussia in Berlin, and all the cashes are under the supervision of the Minister of Justice, and it is from the common public cash.

42,834. The common fund of the country?—Yes.

42,835. The result is that the poor man, if he succeeds in getting this order, has his case carried through for nothing?—Yes.

42,836. Suppose he is successful and there is a defendant who might be able to pay, is he able to get anything back from that defendant?—Yes, he can get it from the defendant if he is well-to-do or has the means. In this case the Court fees also will be recovered from the defendant. When Judgment has been obtained against any party, they have to pay the fees of both parties and the costs of the court, so that if there is a convicted party in good means he has to pay the costs of the plaintiff, if the judgment is given for him, and the public costs too, the court fees.

42,837. If he had the means would he be obliged to pay those three things—the court fees, the lawyers' fees for services, and the expenses of witnesses, and so forth—everything?—Everything. In this case the lawyer, who is given on the ground of the Poor Law, has to claim his fees, too, and they will be paid by the defendant if the judgment is given against him.

42,838. That system is a complete one for enabling the poorest person to enforce his claim for practically nothing, and, if he succeeds against a person who has money, that person has to pay the expenses?—Quite so.

42,839. Will you continue with your next point, please?—

"*The Question of Publication of Detailed Reports of Divorce Cases.*

"There is no doubt that the reports in newspapers publishing details of divorce cases do a lot of harm. The people are accustomed to find these reports in their papers, and it is of no use any single newspaper omitting them unless all newspapers stop these publications. Germany is not used to these sensations and very rarely are there publications of divorce cases in every detail which has been brought before the court. The newspaper would, moreover, not be in a position to publish such reports, as the German courts may exclude the public from the hearing of civil and criminal causes if thereby in its opinion harm may be done to public morality or to the commonwealth. The courts usually make use of this power in matrimonial causes, so that the pleadings of the lawyers and the evidence of the witnesses are only heard by the court officials and there is therefore no chance for the papers to publish anything. Only the judgment must be published, and the judge can by doing this avoid everything which would endanger public morality. Complaints that the public is not permitted to hear proceedings of matrimonial causes are not made. My next point is

"*The Grounds which justify a Divorce of a Marriage according to German Civil Law.*

"First it must be mentioned that in Germany both sexes enjoy the same rights, and the wife is not obliged to suffer anything done by her husband which would, if done by herself, give him a reason for divorce. The following are the main grounds:—

"Adultery, bigamy and fornication contrary to nature (sodomy or bestiality). A single case of either of the above grounds is sufficient to give the other party the right of obtaining a divorce. A further ground for divorce is the attempt by husband or wife to kill the other. This ground is established if the one party does acts leading to the destruction of the other party's life. Threats or brutalities are not sufficient but there must be an actual attempt on the life of one party by the other."

42,840. Suppose the brutality which you refer to is violent blows and conduct which would not lead to the destruction of life, but which would be so violent as to injure and to leave marks, is that not a ground?—That would be a ground under the general clause: that would be a ground just as immorality in the general clause on the relative grounds, but that is not an absolute ground.

42,841. Not on the clause "attempt on life"?—No. "A further ground is malicious desertion if this state exists at least one year. In order to obtain a judgment for divorce on account of insanity it is necessary that illness should have lasted at least three years, and it must have been so serious that it is impossible to live in intellectual community, and that a recovery is not expected. The remaining ground of divorce under German Civil Code is the serious breach of his or her conjugal duties, or dishonourable or immoral conduct. The law directs that a husband or wife may obtain a divorce if the conjugal community is injuriously affected by conduct which is contrary to duty or dishonourable or immoral, and, if owing to this behaviour, the continuation of marriage is impossible. Under this general clause may be placed cruelties, threats, insults and indignities. All vices and bad habits may furnish a sufficient ground that the above-mentioned criterions exist and that a continuation of marriage cannot reasonably be expected. There is no doubt that by this general clause a great discretion has been conferred upon the courts, and judges of long years' experience are selected for the wise application of these provisions of the law. During the last ten years —since 1st of January 1900 —no complaints have been made of an abuse by a judge of his function or discretion in this respect."

42,842. That general clause about the violation of marital duties and dishonourable or immoral conduct, and so on, is discretionary?—Yes, that is relative in the one case or in the other. It depends on the standard of life, and whether they are of good education and of good means or not, and whether the cruelties are heavy or not. That is only relative. There is no absolute ground, but it depends on the gravity of the act.

42,843. It is in the discretion of the judge?—Yes.

42,844. The other grounds are not discretionary?—No, they are absolute grounds for divorce.

42,845. With regard to the selection of judges for this district, what steps are taken about that? You

say that the general clause gives a great discretion?—Yes.

42,846. What steps are taken to select special judges for that?—The president judges of any county court have to constitute the single chamber of the court, and that is the only possibility to make a choice of the judges. They will appoint in those divorce chambers judges who have great experience.

42,847. How many judges are there of what you term county courts?—In the single chamber are three judges who have to decide.

42,848. How many are there altogether?—That depends on the number of the inhabitants of the district. The least are eight judges—a president, a director, and six other judges, to form a criminal chamber and a civil chamber.

42,849. How many does the largest consist of?—In Berlin, the biggest, about 100 or more judges in one court.

42,850. It only means that the president in these discretionary cases has the most experienced judges?—Yes; they have periods to make the appointment. There are always reports given, and they have the supervision of the judgment and of the manner of hearing and acting. It is not only the president who makes the appointment, but also the presiduum, which consists of the president himself and all the directors, and the oldest judge. In Berlin there are about 30 in this presiduum who have to make every year the appointment of the judges for the single divisions.

42,851. You said there were about 100 judges in Berlin?—More than that.

42,852. About 30 of those would take these cases?—It may be.

(*Chairman.*) I think that gives us a sufficient idea. I will leave it to the other Commissioners, if they wish to ask about it.

42,853. (*Sir George White.*) We understand that every province has three courts of different degrees: first of all, the district court with one judge, a county court with three judges, and a superior county court?—Yes.

42,854. Is it before the county court of three judges that the divorce case must go?—Yes; they have to go at first to the county courts before three judges, and after that, if there is an appeal they go to the superior court, Oberlandesgerichte, and there are five judges sitting: and if there is any mistake about the laws, there is given a revision and a further remedy to the Imperial Court at Leipzig. There is a further hearing before the second court, before the superior Oberlandesgerichte. Then, if there is any ground of revision the parties must go to Leipzig to the Imperial Court.

42,855. That would be on points of law?—Yes; the district court, the Amtsgericht has only the preparatory hearing and the attempt at reconciliation. The principal and the first hearing is before the county court, the Landesgerichte, which consists of three judges.

42,856. Three judges sitting together?—Yes.

42,857. The poorer people, having proved their right to be on the Poor Law, can actually get a case through without any expense whatever?—Yes, without any expenses; they have not to pay any fees or expenses at all.

42,858. In the case of the district court which has to make the preliminary examination, supposing the parties have come before that court and have not proved their case sufficiently for it to go to the county court, would they still be paid their expenses although they failed?—In the district court there is no proof and no evidence. There are only the parties heard. The plaintiff states his grounds and gives his case for a divorce, and the defendant contends, or denies it, and they say whether they are willing for reconciliation or not. That is the hearing before the Amtsgericht, the district court. There is only one short hearing, and if there is no willingness to reconciliation there is an end of it, and they must go to the county court, and there is the proceeding.

42,859. There is simply the personal expense of the party applying? They would have to bear that if they failed to make their case good?—Yes.

42,860. There is no evidence called, except their own testimony?—Only the statement of one party and the other. They are asked if there is any willingness to reconciliation or not.

42,861. You give us the special grounds upon which divorce can be obtained, and then the general grounds. Is divorce very extensive in Germany? Do you know the statistics as compared with England?—No, there are not so many cases. In a year there are 30,000 marriages before the registrars, and there are, I think, between 5 and 10 per cent. of divorces of that number—about 2,000 to 3,000 divorces in the year.

42,862. You mean 30,000 marriages for the whole German Empire?—Yes.

42,863. (*Chairman.*) What is the whole population?—The population is 60,000,000. I have read there are about 30,000 marriages in a year.

42,864. Is that all?

42,865. (*Sir George White.*) Surely it cannot be so?—I do not think I make a mistake. I did not put down the figures.

42,866. I do not recollect the number of marriages in England, but I should have imagined it was a very much larger number than that. Are you right as to your percentage of divorces, 5 to 10 per cent.?—Yes. There is no comparison with the first number. They are not existing marriages, but the marriages contracted in one year. In one year it is quite another figure, 2,000 to 3,000.

42,867. You mean 5 to 10 per cent. of the existing married people?—No; the two figures are not to be compared. The marriages contracted in one year, not the marriages existing, and the others are the number of the per cent. of the existing marriages.

42,868. That I understand, but I think you must be wrong about the number.

42,869. (*Chairman.*) We have the statistics for Germany given in the great census book published in America, and unless you are quite sure about the figures, I think we had better be sure you are quite accurate?—You had better leave that.

42,870. If you have not the figures it is a little dangerous?—Yes, because I did not put them down.

42,871. (*Sir George White.*) So far as you know, no abuse has occurred in consequence of the wide discretion which the judges have upon the general grounds of divorce. There is no complaint against their discretion?—No, there has not been any complaint.

42,872. There is no lowering of the status of marriage in consequence of their decisions?—No, I do not think so.

42,873. (*Sir Frederick Treves.*) Could you tell us what is the position of the judges who try divorce cases as compared with the position of judges in England? Would they be High Court judges?—I do not follow.

42,874. Would the judges who deal with divorce cases correspond to the High Court judges in England?—I do not think they are in such a high position. In the first court in which every proceeding is taken they are not of a high position. If we have passed the second examination, a few years after that, we can become judges in the county courts. They are quite young judges, too, in this High Court, and they earn very low salaries, too; their position cannot be compared with the position of English judges at all. We have such a big number and small salaries only; it is quite another standard and quite another position.

42,875. With regard to the poor, the State bears what expense has to be borne?—Yes.

42,876. Does that come to a large sum per annum?—No, there are only the expenses of the witness who count almost. The fees are very low in these cases if the Poor Law has been granted.

42,877. With regard to the lawyer, he receives no fee from the petitioner: does he receive a fee from the State?—No, that is only in criminal cases if there is a lawyer appointed. In criminal cases, when a lawyer is necessary, the State pays the fees of counsel.

42,878. With regard to the grounds of divorce, is insanity commonly brought forward?—Not very often. It is not very easy to prove this ground. The insanity must have taken place during the matrimony, it must

begin during the matrimony and must last for three years, and there must be no hope that the insane party will recover.

42,879. Upon what evidence is that claim of incurability based?—By doctors. At first the acts of insanity have to be proved before the court, and then there is the expert evidence of the doctors.

42,880. The actual judgment rests with the court to decide whether he is curable or not?—Yes: it has only the aid of the experts and the evidence of the witnesses.

42,881. Is that evidence often conflicting, to your knowledge?—Yes, there are many conflicts, and it is not very easy for the court to find its way in the conflict.

42,882. Do you happen to know of any instance where a divorce has been granted and the person against whom the divorce has been granted has recovered?—No, I do not think so.

42,883. From the point of view of the insane, is there any feeling in Germany that it is hard upon the insane population?—Yes, there is a common feeling against this ground of insanity. It is not approved very much to take this ground of divorce.

42,884. The disapproval is based on the interest of the insane?—In the interest of the insane. It seems to be not a matter of equity to take this ground.

42,885. There is no limit of age. The insane person may be over 50?—There is no limit.

42,886. Do you think that this ground is made a cause of abuse?—I do not think so, but I can only say there is no great feeling for it.

42,887. (*Sir William Anson.*) I understand that the function of the Amtsgericht is merely to try to reconcile the parties, and on failure to send the case on for trial to the county court?—No, the Amtsgericht has not to send the case on to the county court: the Amtsrichter only has to give a certificate that before him there has been no success, that the attempt at reconciliation has not been successful. Then his business is done: it is only to give this certificate, and this certificate must be brought with a statement of claim to the county court.

42,888. So that a party could not go to the county court unless they had previously been to the Amtsrichter?—Yes, they have to go there.

42,889. As regards the three judges who sit *in collegio*, is any effort made to secure that the same three judges should always try divorce cases because they have acquired special experience?—I do not think so: they may be together for several years, for more than one year. It is in the interest of the judges to vary the functions.

42,890. Are the judges chosen from a professional class, from the persons who practice, the barristers?—No, there is another way with us. After having passed the two examinations in Germany we can make a choice whether we will become lawyers or judges; lawyers or Rechtsanwaelte we can be at once after the second examination, but to become judges we have to have several years' preparation as assistant judge: they are not on the permanent staff. The judges are not selected from the bar.

42,891. As regards an appeal, does an appeal lie on questions of fact as well as of law?—Yes, but the revision is only upon law. The Imperial Court at Leipzig have only to deal with revision of the law and not of the facts.

42,892. (*Mr. Burt.*) There is just one point on which I would like to be clear. I understand from your evidence that there is no difference as regards the sexes as to the grounds of divorce; that is, the unfaithful husband is placed on the same footing as the unfaithful wife?—Yes, there is full equality between the two sexes. The same grounds that give the right to the husband give it to the wife, one case or more. One case is sufficient for the wife as well as the husband. There is an equal condition for the two sexes.

42,893. (*Mrs. Tennant.*) Has that always been the law; has there always been equality between the sexes under the German law?—It has always been so. Also before the new Civil Code was valid it was always the same. It was also the case with the Code Napoleon that there should be equality. There was another legal condition. In our German laws it was the same for the wife and husband always.

42,894. Is there a feeling in Germany in favour of that equality?—Quite in favour. There is no idea to make a difference between the two sexes.

42,895. There is no expression of a contrary feeling?—No, not at all.

42,896. Are there any statistics which show the number of cases brought by the wife against the husband on the ground of unfaithfulness?—No, I do not think so.

42,897. I think I understand from you that a year's malicious desertion is sufficient ground for a divorce?—Yes.

42,898. Is so short a period considered to work well?—If there is no hope that the husband or wife will come back to the other party, it seems to be sufficient in our opinion.

42,899. I gather there is in Germany a body of opinion against insanity being a ground of divorce. Is there any similar body of opinion in respect to desertion?—No. There is a feeling more in the courts than in the public. There is no favour for this ground of insanity. There is always an opinion that is not quite fair to take this ground. If one party has fallen into illness it is not considered fair to take this ground for divorce. It is not taken easily and judgment is seldom given against the insane party unless there is a very strong case.

42,900. Is there a similar opinion that a year is a dangerously short period?—I have never heard of it.

42,901. (*Sir Lewis Dibdin.*) You told us that the German Civil Code started in 1900?—Yes.

42,902. And that the divorce law in that Code obtained in Prussia previously, it was established in Prussia before that date?—No, there was in Prussia das allgemeine Landrecht, and other parts of the Roman Law in different parts of Prussia. They were not the same grounds. The Prussian Landrecht had, for instance, more grounds for divorce than the German Civil Code now has.

42,903. How long was that going on in Prussia?—From 1786 till the end of the 19th century. It was valid for about 114 years. In Hanover and other Provinces we had Roman Law, the Corpus Juris till the Civil Code was introduced.

42,904. Was what you have called the relative ground of divorce, the last general heading, in existence in Prussia or any part of Germany before the German Code?—No, it is a new regulation to have this general clause. There was in some legislation misconduct, and it was different in different parts of Germany. It was new legislation.

42,905. Starting in 1900?—Yes.

42,906. Is it much used?—Very much used, and the different courts have different opinions. One goes further or not so far as another.

42,907. The discretion of one tribunal is different from the discretion of the other?—Yes.

42,908. Does that work well?—It does work very well.

42,909. Although there is a variation in the way the judges use their powers?—Depending on the standards of the different classes, and the degrees of cruelty and immorality, and misdemeanour, and so on.

42,910. Would it be right to say that the majority of divorce decrees in Germany are obtained under that power?—Yes.

42,911. How many judges are there in Germany dealing with divorce? I gather there is a very large number?—Yes, it must be. There is in each county court at least one chamber of three judges. In Berlin there may be about 18 or 21 judges in the one county court of Berlin.

42,912. I did not want to trouble you to go into detail with regard to different districts. I thought you might be able to tell me about how many judges there are altogether in the Empire dealing with divorce, county court judges and high court judges?—Between 300 and 400.

42,913. (*Judge Tindal Atkinson.*) There would be about 200 of these county courts dealing with these matters?—It may be nearly 200.

42,914. If you put three judges in each court it would bring it up to nearly 600 judges dealing with divorce?—Yes. In the smaller county courts they have to deal with divorce cases, as well as with other things.

42,915. (*Sir Lewis Dibdin.*) My question was not what judges dealt with it exclusively. I want to get how many judges there are who have divorce jurisdiction?—That is quite another thing.

42,916. Can you answer that?—That must be a higher number.

42,917. Can you give any idea of the number who have divorce jurisdiction although they may have other jurisdiction?—3,000 is not too high.

42,918. (*Judge Tindal Atkinson.*) In Germany, supposing the only ground is adultery, are most of the cases undefended?—There are a great many undefended cases.

42,919. Of course, when you get to the relative grounds they are defended?—Yes.

42,920. In the simple ground of adultery are they generally undefended proceedings?—Not generally, but there are more undefended cases with the ground of adultery.

42,921. (*Mr. Brierley.*) What is the rule in Germany as to the court to which a petitioner has to go for divorce?—He has to go to the court where the other party is domiciled. Between man and wife it is always the domicile of the husband.

42,922. Is that domicile in the sense of permanent residence?—Yes.

42,923. He cannot choose by change of residence?—No, it depends on his residence.

42,924. As to the relative grounds, there may be a very great difference in the standard of dishonourable conduct of the different judges. There is no practice in Germany of seeking a particular court?—No, you cannot do that; it is not possible.

42,925. (*Chairman.*) In the Landgericht, which is the court that takes the divorce cases, which you call the county court, the three judges sitting *in collegio*?—Yes.

42,926. Do the three judges sit in all cases, whether it is divorce or not?—Yes, in all cases the same number.

42,927. No jury?—No jury in civil cases—only in criminal cases.

42,928. With regard to their standing, what would be—if you do not mind telling us—the salary of each of those three judges, roughly?—It is between 250*l.* and 400*l.* per annum, beginning with 150*l.*, the Amtsrichter and the Landrichter. The judge of the district court and the judge of the county court are of the same standing. It begins with 150*l.* per annum, and the highest salary of the members of the county court and the district court is the same, 360*l.* with recompense for residence, so that it may be 400*l.* Only the president and the presiding judges and the directors have higher salaries, about 500*l.* to 600*l.*

42,929. You may become a member of the Landgericht at some time after the second examination?—Yes.

42,930. How long is the average time?—That depends on the faculties and how you pass the examination. It is always marked whether one judge has had a good examination and a good degree, and those who have better degrees will be appointed earlier as Landrichter.

42,931. Can you give an idea of what time a fairly competent young man would expect to elapse between his examination and becoming a member of the Landgericht?—The average age may be 28 years to pass the second examination, and the average time to become a member of the Landgericht, if he becomes a judge at once without practising in the district court, is three to five years. If he prefers to be an Amstrichter he will be at first a member of the district court, and then he can become a member of the Landgericht five to six years later on. The judges who pass the best examination will be preferred in the higher courts.

42,932. You passed your second examination when 28?—I was 26 when I passed: it was a little early.

42,933. How low down can you go in number of years before you pass your second examination?—It depends on the year when you go to the university. We leave the gymnasium, the high school, about 18 to 19, and then we have to have three years of university studies and the first examination, and four years of preparation service without salary, and then the second examination. The first examination takes three months, and the second examination about six months.

42,934. Would it be right to say that at 26 to 28 you may pass your second examination?—We had better say 28 to 30.

42,935. In three or four years or so afterwards you may be appointed?—It must be four years of preparation.

42,936. After the examination?—After the examination. I had to wait—they were bad times—four years before I became a judge on the permanent staff, and I have only been in the district court and only as assistant judge. I have taken part in several county courts during those four years when I was assistant judge.

42,937. You may become a Landgericht judge between the ages of 32 and 35?—Yes.

42,938. There is one other general matter I want to ask you about. What do you say as to the general working of the law of divorce in Germany? Does it meet with general satisfaction or not?—Yes, it gives great satisfaction generally.

42,939. I was not sure with regard to one matter connected with insanity, whether the feeling that you spoke of was a feeling confined to the judges who tried the cases or to the general population?—More in the courts than in the population.

42,940. The judges feel the difficulty of it, you mean?—The judges are very loth to give judgment on the ground of insanity.

42,941. How is it regarded by the general population as far as you are able to form any idea?—I recollect several cases in which there was no good feeling against this ground.

42,942. I am not sure what that means. Do you mean there was a feeling that it was not right?—It was not right to have this ground of divorce, to take proceedings for divorce on this ground.

42,943. You have known several cases?—Yes.

42,944. Speaking generally?—Yes, the feeling was general, and it was still a greater feeling in the court.

42,945. We were told that that question was very much debated in the German Parliament at the time of the passing of the Bill, and it was carried ultimately by a majority. I think, speaking from recollection, the figures were something like 160 to 130?—It was not with a great majority that this ground was granted.

42,946. Did you make any study of the numbers at that time?—No. I was only at that time in the preparation of the whole law, and I could not go into those details.

42,947. (*Sir George White.*) Bearing upon the salaries of these judges, is it not right to assume the fees and earnings of the legal profession generally are very much below the corresponding fees in this country, so far as you know?—Yes, they are low indeed, but the standard of life of the judges is not a high one. You will find in Germany that they are nevertheless content, and the idea of being judges is very high, and the judges generally are satisfied with the salaries. They have been altered and become higher in the last few years, but not much. Most of the judges are living in small towns, in very small places, in villages, I daresay, in places of 2,000 or 3,000 inhabitants, and they have not to spend so much money, so that they are content. The people think very highly of the judges and so they are satisfied.

42,948. They take the position for its own sake rather than for the salary?—Yes. If they want to earn a lot of money they can become lawyers.

42,949. We should not be justified in judging of their status or ability by the salary?—No.

42,950. (*Sir William Anson.*) Is the judge of the district court of the same status as the judges of the county court?—Yes, quite the same status.

42,951. A man does not begin in the district court and move up to the county court?—No, they do not move up: they remain in the same status, in the same class of salary.

42,952. (*Chairman.*) Who in Germany does the small debt work, 20*l.* cases, and things of that kind? If you have a suit for 10*l.* or 20*l.*, who does that?—The Amtsgericht.

42,953. That is the county court?—The district court. The district courts have jurisdiction up to 30*l.*

(*Chairman.*) I ought to thank you very much indeed for your valuable evidence. May I also mention the excellent way in which you speak English.

M. HENRI MESNIL called and examined.

42,954. (*Chairman.*) What is your legal qualification?—I am a French avocat and a doctor of law. I now practice in England. Before I practised in England I practised for 11 years as avocat in the Court of Appeal of Paris.

42,955. And, again, before that what did you do?—I began my professional career as avocat in the Court of Appeal of Paris and practised there for 11 years.

42,956. And then came to England?—Yes.

42,957. How long have you been in England?—Since 1897.

42,958. In France the profession of avocat and the judicial profession are quite separate?—Yes.

42,959. The training for one is not the training for the other?—Except this, before you can be appointed as a judge you must have been an avocat for three years.

42,960. You have been good enough to prepare a short memorandum upon the subject of divorce with regard to France. May I suggest that you should read it to us, and then we can ask you about it?—Yes. "The history of divorce is intimately connected with the history of the influence of the Roman Catholic Church. Divorce was introduced into our law during the Revolution, at a time when Catholic influence had not to be reckoned with in the sphere of politics, by the law of the 20th of September 1792, and this law was much used during the revolutionary period. Although the Concordat had been signed three years before the Civil Code came into force (in 1804), the Church was not strong enough at that time to prevent the institution of divorce from finding its place in the work of Bonaparte's commissioners. But the Restoration came, and one of the first laws passed under the then all-powerful inspiration of the clergy, was the Act of the 8th of May 1816, which abolished divorce. It was only after the Third Republic had been in existence for nearly 14 years and had begun to get the better of clerical opposition, that, on the 27th of July 1884, divorce resumed its place in the Civil Code. The law of 1884 did not reinstate the institution with all its features of 1804; a notable part of the Code Napoléon in this matter has remained repealed up to now, that is, Chapter III. of Title VI., which relates to divorce by mutual consent. The Legislature of 1884 would not go so far as the law of Bonaparte in that direction. It is, however, interesting to note that in Belgium divorce, as provided for by the Code Napoléon, has remained in force down to the present day; in spite of the long predominance of the Catholic party, dissolution of marriage by mutual consent is still possible in that country. I might say that, although possible, it is a very rare thing. I think only one case of divorce by mutual consent will be found amongst 400 cases in Belgium."

42,961. Is there a period during which they must maintain that desire to separate?—Yes. Divorce by mutual consent, according to the Code Napoléon, as it was in force for 12 years, could not be pronounced until more than a year had elapsed since the application was made, and the parties had to appear before the President four times, and to renew their application and say that they still wanted divorce.

42,962. Is there something similar to that in Belgium?—The Code Napoléon as it stood at the time is still in force in Belgium now.

"In France, arts. 229, 230, 231 and 232 of the Civil Code set forth the grounds for a petition for divorce.

"229. A husband may petition for divorce on the ground of his wife's adultery.—Le mari pourra demander le divorce pour cause d'adultère de sa femme.

"230. A wife may petition for divorce on the ground of her husband's adultery.—La femme pourra demander le divorce pour cause d'adultère de son mari (Loi 27 juillet 1884).

"231. Husband and wife may respectively petition for divorce on the ground of physical violence or grave ill-treatment or insult.—Les époux pourront réciproquement demander le divorce pour excès, sévices ou injures graves, de l'un d'eux envers l'autre.

"232. The infliction on one of the spouses of a punishment called 'peine afflictive et infamante' constitutes for the other spouse a ground for divorce.—La condamnation de l'un des époux à une peine afflictive et infamante sera pour l'autre époux une cause de divorce (Loi 27 juillet 1884).

"It is to be observed that adultery by the husband is a ground for divorce as well as adultery by the wife. In that respect, husband and wife are treated in the same way. This is one of the innovations of the law of 1884. During the period for which divorce was in force after the codification of 1804, that is to say, till 1816, a wife could not petition for divorce on the ground of the adultery of her husband except when his mistress had been kept in the house where husband and wife lived. It was thought in 1884 that the moral equality (should we say the equal immorality) of the sexes should be recognised. But the alteration of the old text of the Code has not met with universal approval, although generally accepted. The majority approve of that innovation. It has been maintained that, however similar from the moral point of view, the husband's adultery might rightly be considered as a less grave breach of conjugal duty because it cannot have the same physical consequences.

"In France, moreover, adultery is a criminal offence, and in spite of the new principle of the equality of the sexes within the domain of civil law, a distinction still remains in criminal law. The adultery of the wife renders her liable to imprisonment whilst the adultery of the husband is merely punishable by a fine and that only when he has kept his mistress in the conjugal dwelling-house (dans la maison conjugale). It must be confessed that the courts are generally very forbearing regarding that kind of offence; imprisonment is rarely inflicted and 25 francs is usually the amount of the fine which the offender of either sex is ordered to pay. Many think it would be better to strike the offence from our penal code altogether.

"By far the most frequent grounds for divorce on which the petitions are framed are those provided for in Art. 231, excès or sévices graves (violence, cruelty) and injures graves (grave insult) is the most frequent of all.

"The excès or sévices must be serious to support a petition for divorce.

"Serious also must be the insult (injure) to afford a good ground for the dissolution of a marriage.

"It is impossible to enumerate the cases which may come within the last heading. The courts have construed the article as giving them a discretionary power to decide what constitutes an insult (injure), and whether it is an insult serious enough to justify divorce. The following are instances in which divorce may be granted for 'injures graves':—

"(*a*) Desertion of the matrimonial domicile in circumstances which imply an insult to the petitioner; for instance, refusal by the wife to re-enter the house after a request to do so.

"(*b*) Refusal to consummate the marriage or to continue the relations of husband and wife (abstention du devoir conjugal).

"(*c*) Misconduct which, although not amounting to adultery, may compromise the dignity of the matrimonial tie.

"(*d*) On the part of the husband, refusal of maintenance or protection; or, on the part of the wife, refusal of obedience.

"(*e*) Abuse by word of mouth (propos blessants).

"(*f*) In certain circumstances, refusal to celebrate a religious marriage when the other spouse had good reason to expect that such religious marriage would take place after the civil solemnisation of the union.

"(*g*) Habitual drunkenness. The court in this case takes into consideration the social standing of husband and wife.

"In all these cases, the court has power to grant or to refuse divorce according to the degree of gravity of the act complained of.

"The courts also exercise the same discretion in the case of certain convictions for offences which are tried by correctional courts and do not entail a punishment of the kind specified in Art. 232.

"As to convictions for offences visited by punishments mentioned in Art. 232 (peines afflictives et infamantes), there is no place for the exercise of any discretionary power by the court. Divorce must be granted as of right as soon as evidence of the conviction is given. The 'peines afflictives et infamantes' are mentioned in Art. 7 of the Penal Code. (Art. 7: (Loi 28 avril 1832) Les peines afflictives et infamantes sont; (1) la mort; (2) les travaux forcés à perpétuité; (3) la déportation; (4) les travaux forcés à temps; (5) la détention; (6) la réclusion.) They always exceed five years, as they apply to crimes of the most odious character, such as murder, forgery, perjury in certain cases, burglary, arson, &c.

"It is to be noticed that mental alienation, insanity, contrary to what obtains in Switzerland and in Germany, is not in itself a ground for divorce.

"It may be pointed out that it is no defence to a petition for divorce to allege facts which, if proved against the petitioner, would be sufficient grounds for divorce; *e.g.*, in a petition for divorce on the ground of adultery it is no answer to the suit to allege that the petitioner has himself committed adultery. In such a case, the respondent may file a cross-petition on the ground of the adultery of the petitioner, and the court may render a decree pronouncing divorce in favour of both parties. As the effect of a divorce is to debar the guilty party from claiming from the other spouse the benefit of any gifts to which that party might be entitled under the marriage settlement or under a deed subsequent to the marriage, the result of a decree pronounced in favour of both parties is that both spouses being guilty, neither can claim such benefit.

"But to the foregoing principle as to the cross-petition, there is an exception; if both parties have been convicted of an offence visited by peine afflictive et infamante, neither of them can make the conviction a ground of divorce against the other.

"It may also be remarked that provocation or connivance is a sufficient defence to a petition for divorce on the ground of adultery.

"Before a divorce decree can produce its effects, it must first be submitted to the formality of transcription. This is an entry made by the Registrar (Officier de l'Etat Civil) in the register of marriages of the judgment rendered by the Court. If no transcription is made within two months after the judgment has become final, the judgment loses its legal effect. This provision of the law affords a last chance of reconciliation to the parties, who can nullify the decree by neglecting to enter it on the register. When the transcription has been made, a short marginal note thereof is made in the margin of the marriage certificate of the divorced spouses.

"This system of marginal notes tends to prevent bigamous marriages for the following reason; Article 70 of the Civil Code, as modified by the law of August 17th, 1897, provides that the intending spouses must before the marriage produce to the Registrar a copy of their birth certificates, which copy must not be more than three months old at the date of their declaration. When a marriage has been celebrated, a marginal note of its celebration is made in the registry of births, and no copy of the birth entry can be delivered without that marginal note. The result is that the Registrar of Marriages is necessarily informed before the celebration of each marriage of any marriage which may have taken place in France more than three months previously between either the intended husband or wife and another person, and he does not proceed to the celebration until evidence is produced of the dissolution of such previous union. This evidence is given by a copy of the transcription of the divorce decree or by the certificate of death of the deceased spouse or by the certificate of the previous marriage containing a marginal note of the divorce decree.

"*II. As to Judicial Separation.*

"Divorce is not the only remedy offered by the law to terminate or suspend the relations of husband and wife. Judicial separation, which allows the spouses to live apart, is also open to them.

"I say judicial separation, not mutual separation. A separation by mutual consent has no legal validity in France, separation can only be the result of a judgment.

"The grounds for judicial separation are the same as the grounds for divorce (Art. 300). (Loi 27 juillet 1884): Dans le cas où il y a lieu à demande en divorce, il sera libre aux époux de former une demande en séparation de corps.) Its effect differs mainly in this, that after separation re-marriage is impossible.

According to Art. 311, par. I. (Loi 6 fevrier 1893): Le jugement qui prononce la séparation de corps ou un jugement postérieur peut interdire à la femme de porter le nom le son mari, ou l'autoriser à ne pas le porter. Dans le cas où le mari aurait joint à son nom le nom de sa femme, celle-ci pourra également demander qu'il soit interdit au mari de le porter), the judgment of separation may forbid the wife to continue to use the name of her husband or may authorise her not to use it (whilst a divorced woman must resume her maiden name, Art. 299). Art. 299 is (Loi 27 juillet 1884): L'époux contre lequel le divorce aura été prononcé perdra tous les advantages que l'autre époux lui avaits faits, soit par contrat de marriage, soit depuis le mariage. (Loi du 6 fevrier 1893) Par l'effet du divorce, chacun des époux reprend l'usage de son nom.

"When separation has lasted for three years, an application may be made to convert it into a divorce. The text of the Civil Code passed in 1804 reserved the right to apply for conversion to the defendant in the action for separation, except when the separation had been obtained against the wife on the ground of adultery. The plaintiff, in all cases, was supposed to have made his choice of remedy for ever. The law of 1884 does not draw these distinctions; whatever may have been the ground for separation, either party is entitled to apply for the conversion after three years.

"Art. 310, as drafted in 1804, is still in force in Belgium.

"According to a recent Act (the 6th June 1908), when an application for conversion is made, the court is bound to give judgment in favour of the applicant. 'Le jugement sera de droit converti en jugement de 'divorce sur la demande formée par l'un des époux.'

"*III. The Costs of Divorce.*

"In order to estimate the amount of the expenses incurred in a petition for divorce, it is necessary to bear in mind that, in France, besides the costs which may be taxed by the Court (party and party costs), and which the losing party is, as a rule, ordered to refund to the winning party, every litigant has to pay to his counsel (avocat), and even to his solicitor (avoué), a remuneration called honoraires which is not determined by the law but is due according to custom. The amount of these 'honoraires' depends on the reputation of the 'avocat' or the 'avoué.' As regards the avocat, no part of his remuneration, which entirely consists of honoraires, is liable to taxation by the judge; each party has to pay his own counsel, and can

in no case be ordered to pay for the fees of the counsel of the other side.

"It follows that it is difficult to ascertain beforehand with accuracy what will be the costs of a litigation. An avocat may be satisfied with a fee of 20*l.* in a case for which another barrister might receive 100*l.* or more. In a petition for divorce the honoraires of the avocat and the avoué are rarely less than 15*l.*, I might perhaps say 20*l.*

"In a petition for divorce, leaving apart this very important question of honoraires, the other costs (party and party costs), which may be taxed, may be estimated according to the incidents of the case in the following way:—

"1. *Undefended Petition* (Divorce par défaut).—If the documentary evidence is sufficient for the Court to grant divorce de plano, that is to say, without any necessity of oral evidence (sans enquête), the party and party costs amount to 12*l.* to 15*l.*

"2. *Undefended Petition, but judgment given after the hearing of witnesses 'enquête.'*—The witnesses are not heard in court, but by a judge commissioned by the court, who has the deposition taken down by the clerk of the court. Such depositions are subsequently read in court. 16*l.* to 20*l.*

"3. *Defended Case without Cross Petition.*—If there is no enquête the costs may be from 25*l.* to 30*l.* for the petitioner, and 12*l.* to 15*l.* for the respondent.

"4. *Defended Case and Cross Petition.*—Witnesses heard in support of each petition, enquête et contre-enquête, about 40*l.* for each party.

"It is clear, however, that all these figures are liable to great variations, depending principally on the number of witnesses heard.

"With the considerable addition of the honoraires of the avoué and the avocat, these legal expenses would prevent the poorer classes from taking advantage of the law of divorce if the institution of 'assistance judiciaire' did not afford them a means of obtaining justice without first incurring these liabilities.

"*IV. Assistance Judiciaire.*

"The law now in force on the assistance judiciaire was passed in 1851 (22nd of January), and was amended in 1901 (10–12th of July), and in 1907 (4th of December).

"Assistance judiciaire may be obtained for all kinds of proceedings, but it is largely used in matrimonial cases. In the department of the Seine, in 1909, out of 19,414 applications for assistance judiciaire, 9,807 related to petitions for divorce, 386 to judicial separation.

"The population of the department over which the Court of the Seine has jurisdiction is (including Paris, which is its chef-lieu) 3,848,618 inhabitants.

"A person to whom the benefit of the assistance judiciaire has been granted is only provisionally released by law from the obligation to pay for the legal expenses involved in the proceedings for which such benefit was obtained if having lost his cause he is ordered by the Court to pay such costs. Theoretically he remains bound to pay, and if at a future time he comes into better circumstances the payment of the bill of costs may be enforced against him.

"There is a bureau d'assistance judiciaire attached to every court of first instance and also to every court of appeal. There is a court of first instance in each arrondissement and one in the department of the Seine (in all 375 Courts). There are 27 courts of appeal.

"Each of these bureaux is composed of five members or seven members, namely, five for the board of first instance, and seven for the board attached to the court of appeal.

"Amongst the members, there are, in any case:—

"1. A representative of the Treasury—directeur de l'enregistrement et des domaines. The duty of this official is to safeguard the interests of the State, which would be prejudiced if the assistance were granted too easily, since assistance judiciaire entails an exemption (at least provisionally) from the obligation of paying for stamp duty, court fees, and other taxes which otherwise would be due in reference to the legal documents drawn in the proceedings.

"2. A representative of the 'préfet' of the department. This gives a second vote to the representatives of the State. Besides, through the préfet information may easily be obtained as to the means of the applicants.

"On the board of first instance, the three other members are retired judges or representatives of the other branches of the profession selected, when the local bar comprises less than 15 members, by the court of first instance (tribunal d'arrondissement). When the local bar comprises at least 15 members, one of these three members of the board must be appointed by the council of discipline of the bar, and another by the chambre des avoués; the third member is appointed by the court.

"On the board of the court of appeal, the five members (other than the representatives of the Treasury and of the prefet) are selected in the following way: two are appointed by the Court, two by the council of discipline of the bar, and one by the Chambre des avoués à la Cour (council of the solicitors practising before the Court).

"I do not think it necessary to speak of the other bureaux (attached to the Court of Cassation, the Conseil d'Etat, the tribunal des conflits or the bureau superieur sitting at the Ministry of Justice) because they are connected with the special organisation of the French courts and are not of much interest in the domain of comparative law.

"A person who wishes to obtain the assistance judiciaire must first make an application to the procureur de la République of the district (arrondissement) of his domicile either directly or through the mayor of his town of village. The procureur de la République sends on the application to the bureau d'assistance of the district. The bureau gives notice to the applicant and to his opponent to appear. The applicant must give evidence as to his inability to pay the expenses of the proceedings which he wishes to take, and his opponent has the right to give evidence in contradiction. Though the bureau has no power to adjudicate on the merits of the case, a statement of the facts on which the contention of the applicant is founded must be made in order to enable the board to eliminate hopeless or ridiculous applications. If the board is satisfied that the assistance should not be granted, it must state the reasons for its decision. If, on the contrary, the board decides to grant assistance, it is not bound to give its reasons. The decision of the board is then communicated, with a statement of the facts of the case, to the Court having jurisdiction in the matter.

"The decision of the board of first instance cannot be appealed against by the parties themselves, but the procureur de la République may refer the decision to the bureau attached to the court of appeal, which has power to reverse it.

"Besides this power of entertaining appeals from the decisions of the bureau of first instance, the bureau attached to the court of appeal has power to hear applications for assistance of persons who wish to appeal to the court of appeal from decisions given by the tribunal of first instance.

"There is no need for a fresh application for assistance in the case of a person who has obtained it in proceedings before the tribunal of first instance, if such person is respondent to an appeal made by his opponent.

"The president of the Court which is to entertain the case, having received the notice of the decision of the bureau by which assistance has been granted, requires the bâtonnier (head of the bar) to appoint an avocat, the president of the chambre des avoués to appoint an avoué, and the syndic of the huissiers to appoint a huissier (process server), and these three gentlemen are bound to give their services.

"At the close of the proceedings a bill of costs is drawn up, taxed by the judge, and handed to the receveur de l'enregistrement. This bill indicates the sums which, according to the ordinary scale, are usually due for stamp duties and court fees, and the fees of the avoué and the huissier.

"If the assisté has won his case, the payment of these sums is demanded from the other side by the officials

of the administration of the enregistrement. If, on the contrary, the assisté fails in his action and is ordered to pay the costs, which he is assumed not to be able to do, the official of the enrigistrement does not demand payment unless it comes to his knowledge that the position of the assisté has improved in such a way as to permit him to discharge the liability. The administration of the enregistrement, like the officials of Somerset House, have many ways of being informed of the changes for the better in the fortune of the assistés. (For instance, as the déclarations de successions are made to them (affidavit for Inland Revenue), they are the first to know that a person has come into an estate by inheritance.) As between the assisté and his opponent, the assistance judiciaire does not release the assisté from the obligation to repay the party and party costs which the Court may have ordered the assisté to pay; but it must be confessed that the opponent will rarely obtain such costs, since the assistance is granted on the assumption that the assisté cannot afford to pay the expenses of the litigation.

"The number of applications for assistance judiciaire brought before the bureau attached to the tribunal of the Seine in respect of proceedings for divorce was 9,599 in 1907, 9,687 in 1908, and 9,807 in 1909. Assistance was granted in 1907 in 3,952 cases and refused in 2,903; in 2,744 the applications were dropped for various reasons; in some instances the parties were reconciled. It should be pointed out in this connection that when the parties appear together the bureaux have power to persuade them to come to an amicable settlement, and, in the case of a petition for divorce, they very frequently use this power successfully. In 1908, out of 9,687 applications, assistance was granted in 4,204 cases and refused in 3,282, and 2,201 applications were dropped. In 1909, out of 9,807 applications, assistance was granted in 4,390 cases and refused in 3,387 cases, and 2,030 applications were dropped.

ASSISTANCE JUDICIAIRE.

LOI DU 22 JANVIER 1851, MODIFIÉE ET COMPLETÉE PAR LES LOIS DU 10–12 JUILLET 1901 ET 4 DECEMBRE 1907.

TITRE I.—DE L'ASSISTANCE JUDICIAIRE EN MATIÈRE CIVILE.

Chapitre I.—Des formes dans lesquelles l'assistance judiciaire est accordée.

Art. 1er.—(Loi du 10–12 juillet 1901.) L'assistance judiciaire peut être accordée, en tout état de cause, à toutes personnes, ainsi qu'à tous établissements publics ou d'utilité publique, et aux associations privées ayant pour objet une oeuvre d'assistance et jouissant de la personnalité civile, lorsque, à raison de l'insuffisance de leurs ressources, ces personnes, établissements et associations se trouvent dans l'impossibilité d'exercer leurs droits en justice, soit en demandant, soit en défendant.

Elle est applicable: 1° à tous les litiges portés devant les tribunaux civils, les juges des référés, la chambre du conseil, les tribunaux de commerce, les juges de paix, les cours d'appel, la cour de cassation, les conseils de préfecture, le conseil d'Etat, le tribunal des conflits, et aux parties civiles devant les juridictions d'instruction et de répression; 2° en dehors de tout litige, aux actes de juridiction gracieuse et aux actes conservatoires.

Art. 2.—(Loi du 10–12 juillet 1901.) L'assistance judiciaire s'étend de plein droit aux actes et procédures d'exécution à opérer en vertu des décisions en vue desquelles elle a été accordée; elle peut en outre être accordée pour tous actes et procédures d'exécution à opérer en vertu de décisions obtenues sans le bénéfice de cette assistance ou de tous actes, même conventionnels, si les ressources de la partie qui poursuit l'execution sont insuffisantes; le tout sauf ce qui sera dit dans l'art. 4 ci-après.

Art. 3.—(Loi du 10–12 juillet 1901.) L'admission à l'assistance judiciaire est prononcée:

1° Pour les instances qui doivent être portées devant les justices de paix, les tribunaux de simple police, les tribunaux civils et correctionnels, les tribunaux de commerce, les conseils de préfecture, les cours d'assises, par un bureau établi au chef-lieu judiciaire de l'arrondissement où siège la juridiction compétente, et composé: 1° du directeur de l'enregistrement et des domaines ou d'un agent de cette administration délégué par lui, 2° d'un délégué du préfet; 3 (loi du 4 décembre 1907) de trois membres pris parmi les anciens magistrats, les avocats ou anciens avocats, les avoués ou anciens avoués, les notaires ou anciens notaires, les huissiers ou anciens huissiers, les anciens greffiers près les cours d'appel et près les tribunaux de première instance, les greffiers et anciens greffiers près les justices de paix; ces trois membres seront nommés par le tribunal civil. Néanmoins, dans les arrondissements ou il y aura au moins quinze avocats inscrits au tableau, un de ces trois membres sera nommé par le conseil de discipline de l'ordre des avocats, et un autre par la Chambre des avoués près le tribunal civil; le troisième sera choisi par le tribunal comme il est dit ci-dessus.

2° Pour les instances qui doivent être portées devant une cour d'appel, par un bureau établi au siège de la cour et composé: 1° du directeur de l'administration de l'enregistrement et des domaines au d'un agent de cette administration délegué par lui; 2° d'un délégué du préfet; 3° et de cinq autres membres choisis de la manière suivante: deux par la cour, en assemblée générale, parmi les citoyens des qualités énoncées sous le n° 3 du paragraphe précédent; deux par le conseil de discipline de l'ordre des avocats; et un par la chambre de discipline des avoués à la cour.

3° Pour les pourvois devant la Cour de Cassation, le Conseil d'Etat et le tribunal des conflits, par un bureau établi à Paris et composé de sept membres parmi lesquels deux délégués du ministre des finances; trois autres membres sont choisis, savoir: pour le bureau près la cour de cassation, par la cour en assemblée générale, parmi les anciens membres de la cour, les avocats et anciens avocats au conseil d'Etat et à la cour de cassation, les professeurs et les anciens professeurs de droit; et pour le bureau près le conseil d'Etat et le tribunal des conflits, par le conseil d'Etat en assemblée générale, parmi les anciens conseillers d'Etat, les anciens maîtres des requêtes, les anciens préfets, les avocats et les anciens avocats au conseil d'Etat et à la cour de cassation.

Près de ces deux bureaux, les deux derniers membres sont nommés par le conseil de discipline de l'ordre des avocats au couseil d'Etat et à la cour de cassation.

Art. 4.—(Loi du 10–12 juillet 1901). Dans le cas où l'assistance judiciaire s'étend de plein droit aux actes et procédures d'exécution, conformément à la première disposition de l'art. 2, le bureau qui l'a précédemment accordée doit cependant, sur la demande de l'assisté, déterminer la nature des actes et procédures d'exécution auxquels elle s'appliquera.

Dans le cas prévu par la deuxième disposition dudit art. 2, l'assistance judiciaire est prononcée par le bureau établi près le tribunal civil de première instance du domicile de la partie qui la sollicite, lequel détermine également la nature des actes et procédures d'exécution pour lesquels l'assistance est donnée.

Pour les instances que les actes et procédures d'exécution ainsi déterminés peuvent dans les deux cas faire naître, soit entre l'assisté et la partie poursuivie, soit entre l'assisté et un tiers, le bénéfice de la précédente décision du bureau subsiste en ce qui concerne la constatation de l'insuffisance des ressources, mais l'assistance sera prononcée au fond par le bureau compétent selon les distinctions établies en l'art. 3 qui précède.

Art. 5.—(Loi du 10–12 juillet 1901). Lorsque le nombre des affaires l'exige, tout bureau peut, en vertu d'une décision du ministre de la justice, prise sur l'avis de la juridiction près de laquelle ce bureau est établi, être divisé en plusieurs sections.

Dans ce cas, les règles proscrites par l'art. 3 relativement au nombre des membres du bureau et à leur nomination, s'appliquent à chaque section.

Art. 6.—Chaque bureau d'assistance judiciaire ou chaque section nomme son président.

Les fonctions de secrétaire sont remplies par le greffier de la cour ou du tribunal près duquel le bureau est établi, ou par un de ses commis assermentés; et pour le bureau établi près le conseil d'Etat et le tribunal des conflits, par le secrétaire général près le conseil d'Etat ou par un secrétaire de section délégué par lui.

Le bureau ne peut délibérer qu'autant que la moitié plus un de ses membres est présente, non compris le secrétaire qui n'a pas de voix délibérative. Les décisions sont prises à la majorité: en cas de partage, la voix du président est prépondérante.

Toutefois dans les cas d'extrême urgence l'admission provisoire pourra être prononcée par le bureau, quel que soit le nombre des membres présents, le président ou à son défaut le membre le plus ancien ayant voix prépondérante, et même par un seul membre.

Dans ces mêmes cas, par exception: 1° le magistrat du ministère public auquel doit être adressée la demande d'assistance judiciaire pourra d'office, s'il y a lieu, convoquer le bureau; 2° ce bureau, même s'il n'a, dans l'espèce, qualité que pour recueillir des renseignements dans les termes de l'art. 8, aura cependent, si les circonstances l'exigent, le droit de prononcer l'admission provisoire.

Lorsque l'admission n'aura été, dans les conditions qui précèdent, que provisoire, le bureau compétent statuera à bref délai sur le maintien ou le refus de l'assistance demandée.

Art. 7.—(Loi du 10–12 juillet 1901). Les membres du bureau, autres que les délégués de l'administration, sont soumis au renouvellement au commencement de chaque année judiciaire et dans le mois qui suit la rentrée; les membres sortants peuvent réélus.

Art. 8.—(Loi du 10–12 juilliet 1901). Toute personne qui réclame l'assistance judiciaire addresse sa demande, écrite sur papier libre, ou verbale, au procureur de la République du tribunal de son domicile.

Elle peut également addresser cette demande, écrite sur papier libre ou verbale, au maire de son domicile, qui la transmet immédiatement en ce cas, au procureur de la République ci-dessus indiqué, avec les pièces justificatives.

Ce magistrat en fait la remise au bureau établi près ce tribunal, lequel bureau doit statuer dans le plus bref délai possible. Si ce bureau n'est pas en même temps celui établi près la juridiction compétente pour statuer sur le litige, il se borne à recuellir des renseiguements, tant sur l'insuffisance des ressources que sur le fonds de l'affaire. Il peut entendre les parties. Si elles ne sont pas accordées, il transmet, par l'intermédiaire du procureur de la République, la demande, le résultat de ses informations et les pièces au bureau établi près de la juridiction compétente.

Art. 9.—(Loi du 10–12 juillet 1901). Si la juridiction devant laquelle l'assistance judiciaire a été demise se déclare incompétente, et que, par suite de cette décision, l'affaire soit portée devant une autre juridiction de même nature et de même ordre, le bénéfice de l'assistance subsiste devant cette dernière juridiction.

Celui qui a été admis à l'assistance judiciaire devant une première juridiction continue à en jouir sur l'appel interjeté contre lui, dans le cas même ou il se rendrait incidemment appelant. Il continue pareillement à en jouir sur le pourvoi formé contre lui en cassation, devant le conseil d'Etat ou le tribunal des conflits.

Lorsque c'est l'assisté qui émet un appel principale ou qui forme un pourvoi, il ne peut, sur cet appel ou sur ce pourvoi, jouir de l'assistance judiciaire qu'autant qu'il y est admis par une décision nouvelle. Pour y parvenir, il doit adresser sa demande accompagnée de la copie signifiée, ou d'une expédition délivrée avec le bénéfice de l'assistance judiciaire, de la décision contre laquelle il entend former appel ou pourvoi, savoir;

S'il s'agit d'un appel à porter devant le tribunal civil, au procureur de la République près ce tribunal;

S'il s'agit d'un appel à porter devant la cour d'appel au procureur général près cette cour;

S'il s'agit de pourvois, savoir: en cassation, au procureur général près la cour de cassation; devant le conseil d'Etat, au secrétaire général du conseil; devant le tribunal des conflits, au secrétaire du tribunal.

Le magistrat auquel la demande est adressée en fait la remise au bureau competent.

Art. 10.—Quiconque demande à être admis à l'assistance judiciaire doit fournir:

1° un extrait du rôle de ses contributions ou un certificate du percepteur de son domicile constatant qu'il n'est pas imposé;

2° une déclaration attestant qu'il est, à cause de l'insuffisance de ses ressources, dans l'impossibilité d'exercer ses droits en justice et contenant l'énumeration détaillée de ses moyens d'existence, quels qu'ils soient:

Le réclamant affirme la sincérité de sa déclaration devant le maire de la commune de son domicile; le maire lui en donne acte au bas de la déclaration.

Art. 11.—(Loi du 10–12 juillet 1901). Le bureau prend toutes les informations nécessaires pour s'éclairer sur l'insuffisance des ressources du demandeur, si l'instruction déjà faite par le bureau du domicile du demandeur, dans le cas prévu par l'art. 8, ne lui fournit pas, à cet égard, des documents suffisants.

Il donne avis à la partie adverse qu'elle peut se présenter devant lui, soit pour contester l'insuffisance des ressources du demandeur, soit pour fournir des explications sur le fond.

Si elle comparaît, le bureau emploie ses bons offices pour opérer un arrangement aimable.

Art. 12.—(Loi du 4 décembre 1907). Les décisions du bureau contiennent l'exposé des faits et moyens et la déclaration que l'assistance est accordée ou refusée, sans l'expression de motifs dans le premier cas; mais si le bénéfice de l'assistance est refusé, le bureau doit faire connaître les causes du refus.

Les décisions du bureau ne sont susceptibles d'aucun recours de la part des parties. Mais le procureur de la République, après avoir pris communication des décisions du bureau établi près son tribunal et des pièces à l'appui, peut, sans retard de l'instruction ou du jugement, déférer ces décisions au bureau établi près la cour d'appel du ressort pour y être réformées s'il y a lieu.

Auprès de la chancellerie siège un bureau supérieur composé: 1° d'un délégué du ministre des finances; 2° d'un délégué du ministre de l'intérieur; 3° du directeur des affaires civiles au ministère de justice; 4° d'un ancien membre de la cour de cassation choisi par la cour en assemblée générale: 5° d'un ancien conseiller d'Etat ou d'un ancien maître des requêtes choisi par le conseil d'Etat en assemblée générale; 6° de deux avocats au conseil d'Etat et à la cour de cassation nommés par le conseil de discipline de le'ordre.

Peuvent être déférées au bureau supérieur, savoir: par le ministre de la justice, les décisions du bureau d'assistance près le conseil d'Etat et le tribunal des conflits; par le procureur général près la cour de cassation, celles du bureau établi près les cours d'appel auxquelles ils sont attachés, celles des bureaux près les cours d'appel.

Le recours pourra s'exercer contre toute décision, quelle qu'elle soit, que l'assistance ait été refusée ou accordée, excepté s'il s'agit d'un bureau près d'une cour d'appel, si ce bureau a statué comme juridiction d'appel sur une décision d'un bureau près un tribunal de première instance.

Le procureur général près la cour de cassation, le secrétaire général du conseil d'Etat, le secrétaire du tribunal des conflits et le procureur général près la cour d'appel peuvent aussi se faire envoyer les décisions des bureaux d'asistance qui ont été rendues dans une affaire sur laquelle le bureau d'assistance établi près l'une ou l'autre de ces juridictions est appelé à statuer, si ce deruier bureau en fait la demande.

Le bureau supérieur a qualité pour statuer définitivement à la requête du procureur général près la cour de cassation sur l'admission au bénéfice de l'assistance judiciaire, lorsque deux ou plusieurs bureaux d'appel, saisis de demandes relatives au même litige, se seront déclarés incompétents.

Il en sera de même si, par suite de réeusations, d'abstentions ou de toute autre cause, il était impossible de constituer un bureau d'appel, le bureau près la eour de cassation, ou près le conseil d'Etat et le tribunal des conflits.

Hors les cas prévus par les paragraphes précédents, les décisions du bureau ne peuvent être communiquées qu'au procureur de la République, à la personne qui a demandé l'assistanee et à ses conseils, le tout sans déplaeement.

Elles ne peuvent être produites ni diseutées en justice si ce n'est devant la poliee correctionnelle dans le eas prévu par l'art. 26 de la présente loi.

Chapitre II.—Des effets de l'assistance judiciaire.

Art. 13. (Loi du 10–12 juillet 1901). Dans les trois jours de l'admission à l'assistanee judiciaire le président du bureau envoie, par l'intermédiaire du magistrat du ministère public, au président de la juridiction compétente ou au juge compétent, un extrait de la déeision portant seulement que l'assistance est accordée ; il y joint les pièces de l'affaire.

Si la eause est portée devant une cour ou un tribunal civil, le président invite le bâtonnier de l'ordre des avocats le président de la chambre des avoués et le syndic des huissiers, à désigner l'avoeat, l'avoué et l'huissier qui prêteront leur ministère à l'assisté.

S'il n'existe pas de bâtonnier ou s'il n'y a pas de chambre de discipline des avoués, la désignation est faite par le président de tribunal.

Si la cause est portée devant un conseil de préfecture, un tribunal de commerce ou devant un juge de paix, le président du eonseil, le président du tribunal ou le juge de paix se borne à inviter le syndic des huissier à désigner un huissier.

Si la cause est portée devant le eour de cassation, le conseil d'Etat ou le tribunal des conflits, le président de la cour de cassation, du conseil d'Etat ou du tribunal des conflits, selon le cas, invite le président du conseil de l'ordre des avocats près le conseil d'Etat à commettre un membre de l'ordre qui prêtera son ministère à l'assisté dans les affaires où ce ministère est indispensable, et le syndic des huissiers, s'il y a lieu, à désigner un huissier.

S'il s'agit d'actes et procédures d'exécution, les pièces sont transmises au président du tribunal civil du lieu ou l'exécution doit se poursuivre, lequel invite le syndic des huissiers et, s'il y a lieu, le président de la chambre des avoués, à désigner l'huissier et l'avoué qui prêteront leur ministère à l'assisté.

Ces désignations doivent être faites dans le plus bref délai.

Dans le délai de trois jours déterminé au paragraphe I^{er} qui pieèède, le secrétaire du bureau envoie un extrait de la décision au receveur de l'enregistrement.

Art. 14.—L'assisté est dispensé provisoirement du paiement des sommes dues au Trésor pour droits de timbre, d'enregistrement et de greffe, ainsi que toute consignation d'amende.

Il est aussi dispensé provisoirement du paiement des sommes dues aux greffiers, aux officiers ministériels et aux avocats pour droits, émoluments et honoraires.

Les actes de la procédures faite à la requête de l'assisté sont visés pour timbre et enregistrés en débet.

Le visa pour timbre est donné sur l'original au moment de son enregistrement.

Les actes de titres produits par l'assisté, pour justifier de ses droits et qualités, sont pareillement visés pour timbre et enregistrés en débet.

Si ees actes et titres sont du nombre de ceux dont les lois ordonnent l'enregistrement dans un délai déterminé, les droits d'enregistrement de ces actes et titres sont assimilés à ceux des actes de la procédure.

Le visa pour timbre et l'enregistrement en débet doivent mentionner la date de la décision qui admet au bénéfice de l'assistance judiciaire ; ils n'ont d'effet, quant aux actes et titres produits par l'assisté, que pour le procès dans lequel la production a lieu.

Les frais de transport des juges, des officiers ministériels et des experts, les honoraires de ces derniers, les taxes des témoins dont l'audition a été autorisée par le tribunal ou le juge, et en général tous les frais dus à des tiers non officiers ministériels, sont avancés par le Trésor, conformément à l'art. 118 du déeret du 18 juin 1811. Le paragraphe 6 du présent article s'applique au recouvrement de ces avances.

Art 15.—(Loi du 10–12 juillet 1901). Le ministère public est entendu dans toutes les affaires dans lesquelles l'une des parties a été admise au bénéfice de l'assistance judiciaire.

Art. 16.—(Loi du 10–12 juillet 1901). Les notaires, greffiers et tous autres dépositaires publics ne sont tenus à la délivrance gratuite des actes et expéditions réclamés par l'assisté que sur une ordonnance du juge de paix ou du président.

Art. 17.—(Loi du 10–12 juillet 1901). En cas de condamnation aux dépens prononcée contre l'adversaire de l'assisté, la taxe comprend tous les droits, frais de touts nature, honoraires et émoluments auxquels l'assisté aurait été tenu s'il n'y avait pas eu assistance judieiaire.

Art. 18.—(Loi du 10–12 juillet 1901). Dans le cas prévu par l'article précédent, la condamnation est prononcée et l'exécutoire est délivré au nom de l'administration de l'enregistrement et des domaines, qui en poursuit le recouvrement comme en matière d'enregistrement, sauf la droit pour l'assisté de concourir aux actes de poursuite, conjointement avec l'administration, lorsque cela est utile pour exécuter les décisions rendues et en conserver les effets.

Les frais, faits sous le bénéfice de l'assistance judieiaire, des procédures d'exécution et des instances relatives à cette exécution entre l'assisté et la partie poursuivie qui auraient été discontinuées ou suspendues pendant plus d'une année, sont réputés dus par la partie poursuivie, sauf justifications ou décisions contraires. L'exécutoire est délivré comformément au paragraphe I^{er} qui précède.

Il est délivré un exécutoire séparé au nom de ladite administration pour les droits qui, ne devant pas être compris dans l'exécutoire délivré contre la partie adverse, restent dus par l'assisté au Trésor, conformément au 6eme paragraphe de l'art. 14.

L'administration de l'enregistrement et des domaines fait immédiatement aux divers ayants-droit la distribution des sommes recouvrées.

La eréance du Trésor, pour les avances qu'il a faites, ainsi que pour tous droits de greffe, d'enregistrement et de timbre, a la préférence sur celles des autres ayants droit.

Art. 19.—(Loi du 10–12 juillet 1901). En cas de condamnation aux dépens prononcée contre l'assisté, il est procédé, conformément aux règles tracées par l'article préeédent, au recouvrement des sommes dues au Trésor, en vertu des paragraphes 6 et 9 de l'art. 14.

Art. 20.—(Loi du 10–12 juillet 1901). Les greffiers seront tenus, dans le mois du jugement contenant liquidation des dépens ou de la taxe des frais par le juge, de transmettre au receveur de l'enregistrement l'extrait du jugement ou l'exécutoire, sous peine de dix francs (10 frs.) d'amende pour chaque extrait de jugement ou chaque exécutoire non transmis dans ledit délai.

Chapitre III.—Du retrait de l'assistance judiciare.

Art. 21.—(Loi du 10–12 juillet 1901). Le bénéfice de l'asistance judiciare peut être retiré en tout état de cause, même après la fin des instances et procédures pour lesquelles elle a été accordée :

1° s'il survient à l'assisté des ressources reconnues suffisantes :

2° s'il a surpris la décision du bureau par une décision frauduleuse.

Art. 22.—Le retrait de l'assistance judiciaire peut être demandé, soit par le ministère publie, soit par la partie adverse.

Il peut aussi être prononcé d'office par le bureau.

Dans tous les cas, il est motivé.

Art. 23.—L'assistanee judiciaire ne peut être retirée qu'après que l'assisté a été entendu ou mis en demeure de s'expliquer.

Art. 24.—Le retrait de l'assistance judiciaire a pour effet de rendre immédiatement exigibles les droits, honoraires, émoluments et avances de toute nature, dont l'assisté avait été dispensé.

Dans tous les cas où l'assistance judiciaire est retirée, le secrétaire du bureau est tenu d'en informer immédiatement le receveur de l'enregistrement, qui procédera au recouvrement et à la répartition, suivant les règles tracées en l'art. 18 ci-dessus.

Art. 25.—L'action tendant au recouvrement de l'exécutoire délivré à la régie de l'enregistrement et des domaines, soit contre l'assisté, soit contre la partie adverse, se prescrit par dix ans.

La prescription de l'action de l'adversaire de l'assisté contre celui-ci, pour les dépens auxquels il a été condamné envers lui, reste soumise au droit commun.

Art. 26.—Si le retrait de l'assistance a pour cause une déclaration frauduleuse de l'assisté, relativement à son indigence, celui-ci peut, sur l'avis du bureau, être traduit devant le tribunal de police correctionnelle et condamné, indépendamment du paiement des droits et frais de toute nature, dont il avait été dispensé, à une amende égale au montant total de ses droits et frais, sans que cette amende puisse être au-dessous de 100 francs, et à un emprisonnement de huit jours au moins et de six mois au plus.

L'art. 463 c. pén. est applicable.

Art. 27.—Les dispositions de la lois du 7 août 1850 sont applicables:

1° à toutes les causes qui sont de la compétence des conseils de prud'hommes, et dont les juges de paix sont saisis dans les lieux ou ces conseils ne sont pas établis.

2° à toutes les contestations énoncées dans les numéros 3 et 4 de l'art. 5 de la loi du 25 mai 1838.

Titre II.—De l'assistance judiciaire en matière criminelle et correctionnelle.

Art. 28.—Il sera pourvu à la défense des accusés devant les cours d'assises ,conformément aux dispositions de l'art. 294 c. inst. crim.

Art. 29.—Les présidents des tribunaux correctionnels désigneront un défenseur d'office aux prévenus poursuivis à la requête du ministère public, ou détenus préventivement, lorsqu'ils en feront la demande, et que leur indigence sera constatée, soit par les pièces désignées dans l'art. 10 soit par tous autres documents.

Art. 30.—Les présidents des cours d'assizes et les présidents des tribunaux correctionnels pourront, même avant le jour fixé pour l'audience, ordonner l'assignation des témoins qui leur seront indiqués par l'accusé ou le prévenu indigent, dans le cas où la déclaration de ces témoins serait jugée utile pour la découverte de la vérité.

Pourront également être ordonnées d'offices les productions et vérifications de pièces.

Les mesures ainsi prescrites seront exécutées à la requête du ministère public,

Art. 31.—La présente loi pourra, par des règlements d'administration publique, être appliquée aux colonies et à l'Algérie.

The following Tables show the different cases in which assistance has been given during the years 1907, 1908 and 1909:—

(*See* Tables, pages 185, 186.)

42,963. Will you state shortly the effect of the Assistance Judiciaire?—The effect is that the persons to whom "assistance" is granted have not to pay anything while they remain poor. The advance is made by the State of all expenses relating to taxes which otherwise would be received from a litigant. It is made from the Treasury. The avocat and the avoué work for nothing. It is only when the poor litigant comes into better circumstances that he may be obliged to pay what he has been ordered to pay by the court. As to the other party, the assistance judiciaire has no effect upon him. He may claim his costs if the "assisté" was ordered to pay them, but this is more theoretical than practical. The assistance judiciaire being granted on the principle that the poor litigant cannot afford to pay, the other party is very rarely fortunate enough to get his costs.

42,964. If the poor litigant succeeds against a person who has some money, has that other person to pay for the costs which the poor litigant has had from the State, and so forth?—Yes, the other person who loses the case may be compelled to pay the costs of the poor litigant, including the fees of the avocat, the avoué, and the taxes due to the State.

42,965 I ask that because you said earlier that each party paid his own avocat and avoué, and they could not recover that from the other side?—What can be recovered is what could be recovered in any other case. If I have just mentioned the avocat, I must correct myself.

42,966. May I take it, if we read through what you have put in, it states fully the working of the assistance judiciaire?—That gives a resumé of the institution of assistance judiciarie.

42,967. And the way it works?—Yes.

42,968. Will you return to your proof?—Yes. "The number of divorces in France has increased very rapidly. In 1886, 2,950 decrees were pronounced: in 1888, 4,708; in 1902, 8,431; in 1904, 9,860; in 1906, 10,573. Out of 1,000 marriages, an average of 28 are dissolved by divorce. This average is taken on the whole of France; the figures much vary from one department to another. The proportion is 1 for 1,000 in the Hautes-Alpes and the Lozère; 2·5 in the Côtes du Nord: 78 (in 1899) at Paris; 63 in the Rhône. This increase may, I think, be ascribed to two principal causes in the domain of the law: (1) the grounds for divorce are not limited as narrowly as they should be; since the construction put upon the words 'injures graves' in article 231 has led the courts to consider as a ground for divorce practically every grave breach of duty of one spouse towards the other: 'on doit résumer le système actuel du droit français 'sur ce point de la façon suivante; le divorce est 'possible toutes les fois que l'un des époux manque '*gravement à ses devoirs envers l'autre.* La gravité 'de la faute est en principe appréciée par les juges, 'dans certains cas, la loi enlève ce pouvoir en ordon-'nant que le divorce soit prononcé après vérification 'matérielle du fait indiqué par elle (Planiol, traité 'élémentaire de droit civil, tome 1, p. 384)." (2) The courts have a regrettable tendency to grant divorce too easily. At the tribunal of the Seine more than 200 divorces have been decreed in a single day (*see* Planiol, *loc. cit.*). This scandalous rapidity is certainly incompatible with the due consideration of the case. It is in the working classes that divorce becomes more and more frequent. (*See* communication of Maître Nourrisson to the Académie des Sciences morales et politiques, August, 1910). M. Esmein, member of the Institute of France, and professor at the Faculty of Law of the University of Paris, whilst acknowledging that the frequency of divorce is 'un mal profond, un 'élément dissolvant du bon ordre social,' gives the following explanation of the existing state of things: 'Lorsque Mâitre Nourrisson a constaté la progression 'des divorces, leur nombre croissant, spécialement dans 'les ménages ouvriers, ce fait ne m'a point étonné. 'Le divorce, en 1884, a été rétabli dans notre droit en 'grande partie, principalement peut-être, en vue des 'classes ouvrières. Quand il s'agit des classes riches 'ou aisées, si la vie est devenue trop pénible et in-'supportable pour les époux, le divorce est un remède à 'des maux d'ordre moral; il fait cesser des souffrances 'morales, mais il n'est point une nécessité imposée par 'les besoins matériels. Alors, en effet, après une simple 'séparation de corps, la vie matérielle, les ressources 'nécessaires, restent assurées à chacun des époux et 'aux enfants qui peuvent être nés du mariage. Il en 'est autrement quand il s'agit d'un ménage d'ouvriers 'désuni. C'est une remarque pénétrante, une vue 'véritablement profonde que M. Léon Renault a 'produite dans la discussion de la loi de 1884. Là 'la séparation de corps est un remède tout à fait 'insuffisant, inapplicable le plus souvent. Un ouvrier 'séparé, en effet, à moins de vivre uniquement au 'cabaret, ne peut se passer d'une femme qui prépare 'sa nourriture et tienne son humble ménage. Une 'ouvrière mariée et séparée de son mari, ne peut, 'surtout si elle a des enfants avec elle, gagner par

ANNÉE 1907.

Nature des Affaires dans lesquelles les Demandes d'Assistance ont été formées.	Nombre des Demandes de chaque Espèce.	Nombre des Demandes			Résultat des Affaires admises au Bénéfice de l'Assistance judiciaire jugées par le Tribunal dans l'Année.				
		admises.	rejetées.	qui ont été l'Objet d'autres Solutions ou ajournées.	L'Assistance avait été accordée			L'Assisté a	
					au Demandeur.	au Défendeur.	aux deux Parties.	eu gain de Cause.	perdu son Procès.
État civil	572	355	23	194	261	—	—	261	—
Absence	56	34	2	20	20	—	—	20	—
Puissance maritale	94	55	15	24	40	—	—	40	—
Pension alimentaire	1,625	889	293	443	111	2	14	114	13
Divorce	9,599	3,952	2,903	2,744	2,063	162	491	2,628	88
Séparation de corps	408	190	115	103	92	4	8	98	6
Paternité et filiation	299	177	42	80	42	2	—	44	—
Tutelle	167	123	11	33	8	1	—	8	1
Interdiction	38	29	4	5	20	—	—	20	—
Revendication d'immeubles	14	4	9	1	—	—	—	—	—
„ de meubles	273	98	80	95	9	1	—	5	5
Servitudes	—	—	—	—	—	—	—	—	—
Successions	250	89	51	110	12	4	—	16	—
Actions en partage	78	38	11	29	26	6	—	31	1
Donations	6	1	—	5	1	—	—	1	—
Testaments	95	31	18	46	6	2	1	5	4
Contrats de sommes dues	192	82	42	68	23	3	3	16	13
	808	365	181	262	77	6	5	73	15
Reconnaissance d'écritures, restitution de titres.	85	36	25	24	19	2	1	12	10
Règlement de comptes	489	188	135	166	65	4	1	40	30
Dommages-intérêts — Accidents de travail.	—	—	—	—	1,424	6	2	765	667
Dommages-intérêts — Autres causes	2,172	790	783	599	176	6	4	93	93
Contrat de mariage, dot, communauté.	255	183	31	41	184	2	3	188	1
Séparations de biens	696	501	84	111	453	2	2	451	6
Vente	30	11	10	9	5	2	—	5	2
Louage	200	103	47	50	30	5	—	27	8
Hypothèques	17	8	3	6	—	—	—	—	—
Appel	431	196	119	116	109	50	7	54	112
Exécution de jugements	497	299	45	153	14	4	—	14	4
Saisies	430	252	54	124	78	13	4	88	7
Ordres	14	9	3	2	3	1	—	3	1
Faillites	4	3	1	—	—	—	—	—	—
Autres affaires	570	114	174	282	22	5	4	25	6
Totaux	20,464	9,205	5,314	5,945	5,393	295	550	5,145	1,093
		20,464			6,238			6,238	

ANNÉE 1908.

État civil	581	361	35	185	253	—	—	252	1
Absence	67	47	5	15	34	—	—	34	—
Puissance maritale	114	68	12	34	39	—	—	39	—
Pension alimentaire	1,534	961	198	375	75	3	11	75	14
Divorce	9,687	4,204	3,282	2,201	2,091	189	597	2,760	117
Séparation de corps	412	199	128	85	82	6	10	97	1
Paternité et filiation	343	211	68	64	28	3	1	26	6
Tutelle	260	156	44	60	28	2	3	28	5
Interdiction	52	35	10	7	22	1	1	24	—
Revendication d'immeubles	13	3	2	8	—	—	—	—	—
„ de meubles	299	95	108	96	10	2	—	7	5
Servitudes	—	—	—	—	—	—	—	—	—
Successions	263	94	59	110	9	—	—	9	—
Actions en partage	99	56	16	27	28	5	2	30	5
Donations	10	3	3	4	1	1	—	1	1
Testaments	133	61	33	39	8	2	1	6	5
Contrats et obligations	134	69	38	27	11	3	3	10	7
Paiement de sommes dues	964	493	209	262	82	7	6	82	13
Reconnaissance d'écritures, restitution de titres.	116	48	27	41	9	1	1	8	3
Règlement de comptes	544	225	126	193	28	3	2	22	11
Dommages-intérêts — Accidents de travail.	—	—	—	—	1,816	—	3	941	878
Dommages-intérêts — Autres causes	2,147	734	793	620	237	8	1	134	112

ANNÉE 1908—*suite.*

Nature des Affaires dans lesquelles les Demandes d'Assistance ont été formées.	Nombre des Demandes de chaque Espèce.	Nombre des Demandes			Résultat des Affaires admises au Bénéfice de l'Assistance judiciaire jugées par le Tribunal dans l'Année.				
		admises.	rejetées.	qui ont été l'Objet d'autres Solutions ou ajournées.	L'Assistance avait été accordée			L'Assisté a	
					au Demandeur.	au Défendeur.	aux deux Parties.	eu gain de Cause.	perdu son Procès.
Contrat de mariage, dot, communauté.	241	139	23	79	153	—	—	153	—
Séparations de biens -	507	407	76	24	354	—	—	350	4
Vente - - -	35	18	7	10	9	4	—	9	4
Louage - - -	171	76	45	50	24	6	—	29	1
Hypothèques - -	21	12	5	4	5	6	—	2	9
Appel - - -	465	219	135	111	93	54	9	74	82
Exécution de jugements -	636	386	83	167	8	5	1	10	4
Saisies - - -	545	359	64	122	80	10	2	85	7
Ordres - - -	20	8	6	6	5	1	—	5	1
Faillites - - -	9	7	—	2	—	—	—	—	—
Autres affaires - -	461	96	205	160	36	5	5	35	11
Totaux - -	20,883	9,850	5,845	5,188	5,658	327	659	5,337	1,307
		20,883			6,644			6,644	

ANNÉE 1909.

État civil - - -	642	354	41	247	206	—	—	203	3
Absence - - -	74	42	1	31	30	—	—	30	—
Puissance maritale -	87	59	—	28	43	—	—	42	1
Pension alimentaire -	1,581	900	232	449	120	1	16	109	28
Divorce - - -	9,807	4,390	3,387	2,030	2,036	212	853	2,777	124
Séparation de corps -	386	175	113	98	101	9	7	114	3
Paternité et filiation -	308	138	71	99	50	4	3	52	5
Tutelle - - -	280	119	19	142	29	1	—	29	1
Interdiction - -	102	71	3	28	27	—	—	27	—
Revendication d'immeubles	11	4	2	5	3	—	—	—	3
„ de meubles	295	91	74	130	12	—	—	5	7
Servitudes - -	2	1	1	—	—	—	—	—	—
Successions - -	263	107	74	82	8	—	—	8	—
Actions en partage -	91	49	2	40	28	6	—	28	6
Donations - -	25	8	3	14	—	—	—	—	—
Testaments - -	77	26	17	34	11	3	—	10	4
Contrats et obligations -	128	47	17	64	20	5	1	11	15
Paiement de sommes dues	890	432	164	294	107	22	4	108	25
Reconnaissance d'écritures, restitution de titres.	114	36	28	50	2	3	—	3	2
Règlement de comptes -	382	115	91	176	58	6	4	38	30
Dommages-intérêts - Accidents de travail.	—	—	—	—	1,856	3	—	891	968
Dommages-intérêts - Autres causes	2,018	795	710	513	269	3	2	108	166
Contrat de mariage, dot, communauté.	293	191	9	93	180	2	—	173	9
Séparations de biens -	585	409	97	79	402	—	—	395	7
Vente - - -	69	30	16	23	9	3	—	10	2
Louage - - -	174	86	20	68	25	10	—	22	13
Hypothèques - -	29	20	—	9	1	1	—	2	—
Appel - - -	595	322	146	127	141	92	25	113	145
Exécution de jugements -	645	413	59	173	8	19	—	14	13
Saisies - - -	570	378	62	130	82	15	3	90	10
Ordres - - -	26	12	6	8	—	7	—	1	6
Faillites - - -	34	11	3	20	—	—	—	—	—
Autres affaires - -	464	56	12	396	28	2	3	27	6
Totaux - -	21,047	9,887	5,480	5,680	5,892	429	721	5,440	1,602
		21,047			7,042			7,042	

' son seul salaire de quoi fournir à sa nourriture et ' à celle de ses enfants; il faut qu'à son faible salaire ' s'ajoute le salaire plus fort d'un homme. Si donc on ' ne veut pas, dans ces circonstances, condamner en ' quelque sorte à l'union libre l'ouvrier et l'ouvrière, si ' l'on veut leur ouvrir aussi et leur maintenir possible ' l'état du mariage, il faut leur ouvrir aussi la porte du ' divorce. C'est un solution imposée par les conditions ' de leur vie matérielle. Dans les ménages riches et ' aisés la vie matérielle est assurée après la séparation ' de corps, comme avant. S'il ne se fût agi que d'eux, ' on aurait pû maintenir sans grande injustice l'in- ' dissolubilité du lien conjugal en raison de l'intérêt ' supérieur de la famille et des enfants. L'indissolu- ' bilité se défend par des raisons très élevées et très ' fortes. Dans la discussion de la loi de 1884, elle a ' été défendue, non pas seulement au nom des principes ' religieux, mais aussi, par des esprits désintéressés, en ' dehors de tout credo religieux, pour sa valeur sociale ' et morale. Mais, pour les ouvriers, la simple sépara- ' tion est une solution inacceptable."—(Compte-rendu de l'Académie des sciences morales et politiques, August, 1910, pages 259–260.)

42,969. The summary of that is this, that divorce is not really so necessary, physically speaking, as it were, for the rich as for the poor?—That is what he says.

42,970. And that for the poor by reason of the necessities of life, in the case of the man, the man requiring the woman to look after his home, and in the case of the woman, the woman having the necessity for somebody to support her, separation is no good, but divorce is. That is the argument?—Yes, divorce is better.

42,971. Is that from M. Esmein, a great writer on law?—Yes.

42,972. What is his official position?—He is Professor at the Faculty of Law and a member of the French Institute.

42,973. His book is often quoted here. Will you read what you have to say about the publication of reports?—Yes. I have little to say about the publication of reports of divorce cases. By article 239 of the Civil Code, as modified in 1886, the publication of the report of the proceedings in divorce cases in the press is prohibited under penalty of a fine of from 100 to 2,000 francs. Though the penalty is not very heavy, and notwithstanding the eagerness that certain French papers have sometimes shown to publish prohibited matters, this provision has rarely, if ever, been infringed. As a matter of fact, I have not been able to find any record of a decision relating to that article.

42,974. (*Sir Lewis Dibdin.*) I think you said that the most common ground of divorce now is that of grave insult to the spouses?—That is the general ground.

42,975. That is the most frequent ground of divorce?—By far the most frequent.

42,976. That was brought in in 1884?—No, that existed in the Code Napoléon.

42,977. That went on from 1804 to 1816?—That is a ground for divorce, but it was a ground for separation from the time of the Code Napoléon to 1884.

42,978. As a ground of divorce I suppose it ceased in 1816?—Yes, from 1816 there was no longer any divorce in France.

42,979. That is why I say that ground must have ceased in 1816. It was revived in 1884 and has gone on ever since?—Yes.

42,980. You have brought to our attention a very remarkable increase in the number of divorces from 1884 onwards?—Yes.

42,981. So great that it seems to have increased from 2,000 odd to 10,000 in 20 years?—Yes.

42,982. Are you aware of the figures since 1906?—I think the figures have remained about the same, perhaps they have slightly increased, but there are no official statistics published.

42,983. They are not less since 1906?—No.

42,984. But rather more?—Probably more, I could not tell you. I have not seen the statistics, I do not think they have been published.

42,985. I gather that you attribute that increase to the grounds of divorce that were brought in in 1884 by the Civil Code?—I attribute the great number of divorces to the vagueness of that ground, injure grave, which, according to the construction given by the court, may apply to any breach of conjugal duty.

42,986. It gives a very large discretion to the judge who happens to try the particular case?—Yes, and probably too large, That is the general opinion.

42,987. That great increase in the number of divorce cases is causing a good deal of anxiety amongst the authorities in France?—It begins to cause anxiety.

42,988. How many judges are there, roughly, in France who have divorce jurisdiction?—Every tribunal d'arrondissement, that is to say, every court sitting in a district has a full jurisdiction, and that jurisdiction includes divorce jurisdiction. There are 375 courts of that kind and three judges in each of those courts.

42,989. Are there only three judges to each of those 375 courts?—At least three judges.

42,990. In some, more?—In some more, but it is necessary that there should be three judges to make it valid.

42,991. That is the minimum?—Yes.

42,992. Does that help one to tell the number of judges in France who have this divorce jurisdiction?—Yes, you may multiply by three.

42,993. That would be giving a minimum of rather more than 1,000?—More than 1,000, certainly.

42,994. Would it be as much as 2,000, do you think?—I could not tell you exactly, because at the Tribunal in Paris, for instance, there are many sections and two or three sections sit as a court of divorce.

42,995. I am safe in concluding that there are more than 1,000 judges in France who exercise this jurisdiction?—There are more than 1,000 judges, but only 375 courts,

42,996. I follow that. That means that this very wide discretion can be exercised by all that very large number of judges?—Yes.

42,997. I suppose, as in every other part of the world, the discretion is exercised in a different way by different individuals?—Certainly.

42,998. Does it appear to you that is a drawback to the administration of justice?—No.

42,999. You think not?—No, it is not complained of because the same discretion is used in other kinds of cases.

43,000. Is it not open to the objection that parties living in one arrondissement can get a divorce, whereas, if they were living in another, for the same grounds they could not get a divorce?—Such a thing will very rarely happen. Although the courts exercise discretion, if the evidence shows that there is what may generally be called an injure grave, a divorce will be obtained everywhere. The discretion is used as to the appreciation of the evidence more than as to the appreciation of the ground itself.

43,001. It does not strike you that it is open to a difference of opinion as to what is a sufficiently grave insult?—Yes, it may lead to that.

43,002. To justify divorce?—It may also be said what is a grave insult in a particular case, owing to the education of the spouses, may not be a grave insult in another case, where the people are not so well educated, for instance.

43,003. That is the sort of discretion which I should have thought would be exercised quite differently by different individuals?—Yes, probably.

43,004. So that to go back to my suggestion, whether spouses get divorce or not must depend on the particular district they are in?—It will depend on the judge of course.

43,005. That in itself surely is a defect?—It is a defect, but it is a general defect of any system of justice.

43,006. Where you have a very large number of judges exercising a discretionary jurisdiction?—Yes, or when two different judges have to give a decision even if they belong to the same court.

43,007. The margin of difference is much greater if you have 1,000 judges with that discretion than if you have two?—Of course that is a question of arithmetic.

43,008. With regard to the status of the judge who exercises this jurisdiction, were you present when the last witness was examined?—Yes.

43,009. Would what he said of the German system be true also of France, that the judicial profession is a separate profession from the profession of a barrister?—As a rule it is a separate profession.

43,010. I know that a judge has to qualify by being a barrister first, but quite early in life he leaves the bar and takes to the judicial profession?—Yes, that is the general rule. Sometimes there are exceptions. Barristers of high standing may be appointed to the Court of Appeal, but that is the exception.

43,011. Take one of the ordinary judges who deals with divorce in an arrondissement. Would he be generally a youngish man?—The court will consist of three judges, one of whom, the President, will be a man of about 45.

43,012. And the others younger?—Yes, the others may certainly be younger.

43,013. (*Mrs. Tennant.*) Can you say if the minority which disapproves of the equality between the sexes is increasing or diminishing in France?—I think the tendency is to approve more and more of the new status of the law.

43,014. (*Sir William Anson.*) Are these cases decided by one judge sitting alone or by three sitting together?—By three sitting together.

43,015. As a matter of fact, do you find that there is a great variety of discretion exercised in the interpretation of injure grave?—Not a very great variety on the appreciation of the ground, but according to the circumstances, as I have just said, insult may be held to have been committed in one case which would not be considered an insult in another case.

43,316. Where 200 divorces were granted in one day that hardly leaves much time for the exercise of any discretion?—I must say this, these cases were certainly undefended cases, and the court probably relied, and to my mind relied too much, on the preliminary examination of the case which was previously made by the Bureau Assistance Judiciaire. Those, no doubt, were cases of assistance judiciaire, and the Bureau Assistance Judiciaire has a right to examine the facts of the case, and to reject or admit the parties to the assistance judiciaire according to the seriousness of their contention.

43,017. Do you now find that public opinion among the working classes points to the desirability of divorce whenever a couple disagree?—I do not quite follow your question.

43,018. Is public opinion in favour of divorce whenever a married couple disagree and are not happy together?—It is difficult to gather what public opinion may say in such a case as that. The question has been studied by different institutions or institutes and it has generally been thought that divorce was granted too easily.

43,019. Do you think that can be the case if that number of divorces is granted in one day without giving any shock to public opinion?—It has been thought shocking since it has been noticed and published in many papers.

43,020. (*Sir Frederick Treves.*) What is the standing of the courts that deal with divorce cases as compared with the standing of courts in England? Do they correspond to the High Court?—Legally they correspond to the High Court, because these courts have full jurisdiction in all matters, but as a matter of fact, except as regards the Court of Paris, the Tribunal de la Seine, the standing of the judges could not be compared with the standing of the judges in the High Court here.

43,021. As far as the rich and the poor are concerned they have equal facilities in obtaining a divorce?—The facilities are even greater for the poor, since they have not to pay anything, thanks to the assistance judiciaire.

43,022. Is the sum paid by the State for this class of litigation a very large sum?—I do not think it is very large, because it only applies to the expenses of the witnesses and to some stamp fees. I should not think for each case of that kind it is more than 2*l.*

43,023. Do you think that the history of divorce in France would lead one to suppose that increased facilities for divorce have led to an increased number of divorce cases? By increasing the grounds for divorce have you increased the number of divorce cases?—I should think so.

43,024. That would be a reasonable inference?—Yes.

43,025. Is there any feeling that insanity should be a ground for divorce?—There has been some desire to make insanity a ground for divorce. I have found expression of that desire made in a report of a committee of the Société des études législatives, but even that association has not come to the conclusion that insanity should be made a ground of divorce. It would alter the principle of the Divorce Law immensely, because according to our law there can be no divorce where there is no guilty party, and if you make insanity a ground for divorce where is the guilty party in that case of disease?

43,026. Speaking of the equality of the sexes and adultery in the two sexes you say, "It has been maintained that, however similar from the moral point of view, the husband's adultery might rightly be considered as a less grave breach of conjugal duty because it cannot have the same physical consequence." What is meant by that last expression?—I mean as to strange children being brought into the family.

43,027. That is the point?—Yes.

43,028. Would you say that the unfaithful wife is more likely to contract disease than the unfaithful husband? That is another point?—I am not speaking of disease.

43,029. You are speaking of consequences. Apparently there is only one consequence?—I only speak of that particular consequence as to children.

43,030. I suppose with regard to what may be called physical consequences, one must consider the possibility of disease being acquired?—I should not express any opinion on that question.

43,031. Would you let us draw the inference that a woman is more likely to contract disease?—It is a medical question, and I do not wish to express any opinion on it. I should say with regard to adultery being made a ground of divorce, when it is committed by the husband, that the question should not be put on the ground of the equality of the sexes. It would be better, perhaps, to ask if the adultery of the husband, however different or less grave than that of the wife, is a sufficient breach of conjugal duty. If you put it in that way I should say yes. I may, perhaps, add this, that it is a good thing, if it is made a ground for divorce, if the effect would be only to deprive the wife of a bad pretext for retaliating.

43,032. (*Sir George White.*) You say adultery is a criminal offence in France. Whose business is it to put the law in motion in a case of that kind? Is it simply the business of the aggrieved parties, or do the police consider it their business to put the law in motion if they know of it?—No, the police cannot put the law in motion.

43,033. It is the business of the aggrieved parties only?—Yes, even when it is a question of bringing the case before a criminal court the police have no right to put the law in motion. A criminal action can only be put in motion in that particular case by the complaint of the party.

43,034. In your figures you have given an extraordinarily marked difference as to the number of divorce cases in the various arrondissements, varying from 1 to 60. Is there any reason why in certain parts of France the number of divorce cases rises to the number of 62 per thousand?—The reason is that divorce is more frequent in large towns for instance, comparatively, divorces are more frequent in Paris than they are in the country.

43,035. It is the comparison between the rural district and a large city?—Yes, in the figures I have given it may be noticed that the departments where divorce is more frequent are departments in which there are large towns.

43,036. In the case where you quote 200 divorces in a single day, is that before one court?—I hope there

were two courts sitting. Generally there are two courts sitting at the same time, at the Tribunal de la Seine. The statistics I have seen say 200 divorces in a day. I suppose two courts helped to that result.

43,037. As regards the publication of reports, newspapers are prohibited by fine from reporting the cases. Is no report of the case allowed at all?—Yes, but the law prevents the publication of the arguments and the evidence of the witnesses. The law does not prevent the publication of the judgment itself.

43,038. That is what is generally done, I suppose?—Yes.

43,039. You detail a number of grounds upon which divorce can be granted. Is one of these alone sufficient, such as, for instance refusal of obedience on the part of the wife?—I should think in a case like that the refusal of obedience must be accompanied by probably very bad words.

43,040. There may be more grounds than one. It does not follow that these are all separate grounds upon which divorce can be given?—Not necessarily.

43,041. I think you said, in answer to Sir Lewis Dibdin, that the increase in the number of divorces might be attributable to the alteration of the law in 1884?—Divorce was not possible before 1884.

43,042. Under any circumstances?—Between 1816 and 1884.

43,043. Is the increased number which is spread over some 12 years attributable to the exercise of a wider discretion on the part of the judges?—Partly to that and also partly to the fact that the idea of divorce had to be accepted step by step after it had first been re-organised.

43,044. Do the advocates who represent the poor get any pay from the State, or does the State simply pay the expenses of the witnesses?—They do not get any fee at all.

43,045. (*Sir William Anson.*) Is there any appeal either on law or on fact from the decision of the court of the arrondissement?—There is an appeal on law and on fact to the Court of Appeal, and there is an appeal on law from the Court of Appeal to the Court of Cassation.

43,046. (*Chairman.*) You have put in a set of tables for 1907, 1908, and 1909, showing the nature of the cases in which assistance was asked for, and the tables show in how many cases there were demands for assistance, how many were remitted, how many were rejected, and what happened to the cases afterwards?—Yes.

43,047. I notice that by far the greater number of cases in which assistance was given were divorce cases. The figures for divorce in 1907, 1908, and 1909 respectively are over 9,000 applications, and the largest figure for any other case I find is over 2,000 for accidents during work?—That is quite natural because poor people have very rarely to litigate with regard to their pecuniary interests.

43,048. It is chiefly divorce?—Yes.

43,049. To make quite sure that we are agreed about this there are in the list of causes of divorce which you have given five different causes?—Yes.

43,050. Adultery is one?—Yes.

43,051. That alone is a ground of divorce?—Yes.

43,052. Violation so as to endanger life?—Yes.

43,053. That by itself is a ground of divorce?—Yes.

43,054. Cruelty, sévice, that is physical cruelty, I take it?—Yes, sévice et excès may be translated by cruelty. It is difficult to distinguish between sévice and excès.

43,055. That is a ground of divorce?—Yes.

43,056. Leaving the injure grave, the condemnation to a punishment "peine afflictive et infamante," is also a ground?—Yes.

43,057. Are those grounds upon which there is any real difficulty as to a divorce in France?—About adultery and about convictions on the ground you have just mentioned, as soon as evidence is given of the existence of adultery or existence of a judgment convicting the person, divorce must be pronounced. In any other case the courts exercise their discretion.

43,058. Is it quite a discretion in the case, for instance, of excès?—Yes.

43,059. Is it not rather a discretion to find the fact, but if excès is found it is a right?—It is then the same as injure grave.

43,060. You must find the fact?—You find the fact and say that these facts are excès, and then you grant the divorce. It is the same for injure grave.

43,061. Is it the injure grave according to you that has created such a large increase in the number of divorces?—It is because the courts have held that there was injure in many cases which were very difficult to classify. For instance, they say that there is an injure grave when the wife who has been requested by the husband to return to the conjugal house, says, "I will not go back to you." If it is expressed categorically, for instance, by a letter written to the husband, or even to his avoué, it may be taken as an injure grave. It is very easy to guess that many collusions may take place in such a case as that.

43,062. The main difficulty in France seems to arise from there being no strict definition of injure grave, or excès, or sévice?—Yes.

43,063. If that were defined strictly so that there was no discretion, it might get rid of many difficulties?—There would not be so much difficulty at any rate.

43,064. It is the court of arrondissement?—The tribunal d'arrondissement.

43,065. That is composed of three judges?—Yes.

43,066. Can you tell me what salary the judges receive?—It depends upon the population of the town. Tribunals are divided into different classes according to the population.

43,067. What is the range of salary?—Their salaries may range from 120*l.* perhaps to 800*l.* (*See* Supplement below.)

(*Chairman.*) I am very much indebted to you, and I am sure that the Commissioners are, for your very valuable evidence which has put us in full possession of the state of things in France.

Supplement to Questions 43,064–67:—

SCHEDULE OF THE SALARIES OF THE JUDGES OF THE TRIBUNAUX D'ARRONDISSEMENT.

Tribunaux de 1ère *Instance.*

Tribunal of the Seine.

	Francs.	£
President	20,000	800
Vice-President	10,000	400
President of section	9,000	360
Judge	8,000	320

In the towns of 80,000 inhabitants, and Nice, Versailles, and Alger.

	Francs.	£
President	10,000	400
Vice-President	7,000	280
Judge	6,000	240

In the towns of 20,000 inhabitants, and Chambéry, Constantine, Oran, Blidah, Bône, Tlemcen.

	Francs.	£
President	7,000	280
Vice-President	5,500	220
Judge	4,000	160

In the other towns.

	Francs.	£
President	5,000	200
Vice-President	4,000	160
Judge	3,000	120

Mr. EDMUND SIDNEY POLLOCK HAYNES called and examined.

43,068. (*Chairman.*) You are a member of the firm of Hunter and Haynes, solicitors, of Lincoln's Inn?—Yes.

43,069. You are also a member of the Divorce Reform Union?—Yes, and I belonged to another society before that.

43,070. We have already had evidence from representative officers of the society, and, therefore, I do not propose to ask you any questions about the general matters with which it is concerned; but you have, yourself, I believe, made a careful study of one or two points which you propose to present for our information?—Yes.

43,071. I gather you have looked into many authorities and books, and corresponded with a number of people with a view to getting the information?—I have.

43,072. Perhaps you would read your proof as far as it is necessary?—I do not wish to keep the Commissioners longer than I can help, if they will tell me what I ought to skip.

43,073. It is prepared in a form which will be sufficiently clear?—I have made a number of inquiries as to what procedure exists for annulling marriages in countries where marriages cannot be dissolved.

43,074. That is the point. You see the position of things in countries where there is no divorce law?—Yes. Such facilities exist both in the Ecclesiastical Courts of the Catholic Church and under the Civil Law. In searching for this information I have not wished in any way to attack the Church of Rome. On the contrary, I much admire the ideal of marriage being indissoluble as an ideal, although I have never been able to understand the interpretation put upon Christ's words by the Church, especially in view of the conflicting opinions held by the Early Fathers and by all other Christian bodies. Nor do I wish to suggest that the Church has ever intentionally encouraged laxity in regard to the marriage tie, although there is no doubt that the uncertain conditions of marriage in medieval times and the complicated provisions of the Canon Law made marriage in the Middle Ages quite as uncertain as it is now in some of the American States. I principally wish to emphasise two points:—(1) That the facts of life make the ideal of indissolubility impossible to maintain in every case, and (2), that the Neo-Catholic party in the Church of England have not raised a finger towards solving the principal problem which must be solved by any Church or State which assumes the control of matrimony.

43,075. What exactly does that indicate?—I mean that in the Medieval Church they annulled marriages, and the State has given facilities for dissolution, but that the Neo-Catholic party in the Church of England proposes no solution at all that I am aware of. I mean they do not propose to take to themselves power to annul marriages for any reason whatever, whereas, on the other hand, Lord Halifax and his supporters wish to prevent the State giving facilities for divorce.

43,076. I wanted to be clear what you meant?—"The Catholic Church deals with marriage from the earliest moment, and has set up a system known as 'Sponsalia,' which is not compulsory, but which is strongly recommended to Catholics about to marry. It takes the form of an agreement to marry, which can be dissolved for good reasons before the marriage takes place. I submit that such agreements must have a wholesome effect in making parties about to marry very careful in considering what they are about, and that the custom might very well be adopted by any Church or State. It also involves the priest making a number of inquiries which would tend to disclose any want of consent or any relationship within the wide prohibited degrees of the Canon Law. Want of consent is very rarely heard of, in so far as this doctrine of the Canon Law has become part of the English law, and I am inclined to think that the Church gives the doctrine a wider application than the English Courts."

43,077. I think the next paragraph is not worth putting in?—"It must be remembered that dispensations are easily obtained by parties married against the provisions of the Canon Law, either before marriage or on the discovery of the marriage being void, but the Church does not force persons who have married in good faith and subsequently discover that they are unmarried, to invalidate the marriage if they do not wish it, although the Church does legitimate the children of such intercourse even where only one parent had acted in good faith. In another way, too, the Church strengthens the marriage tie by very strongly insisting on the duty of married persons to have children, and the ratio of divorce is everywhere indisputably higher among childless couples than among others. A childless couple, with no particular interests or occupations, frequently seem to become tired of each other after about ten years of married life, and feel the attraction of younger persons than themselves. On the other hand, I think that the influence of Catholicism on sexual morality is exaggerated by those who dwell only upon the state of things in Ireland. In Latin countries in the South of Europe the standard of sexual morality cannot be considered high, and there is reason to suppose that Irish girls who get into trouble are spirited off to Glasgow, Liverpool, and sometimes New York, so that there is no record of such illegitimate births in Ireland itself."

43,078. On what is that founded?—I have not been able to get authority for the Irish girls being taken off to Glasgow and Liverpool, but I am told the authorities in Glasgow will support that. I have not been in communication with them myself, but the Union has, and another friend of mine has too.* "The general conclusion I draw is that the rules as to nullity are more strictly enforced nowadays, but must afford chances for unhappy married couples to get free of their union. It is quite as difficult to say in what proportion of cases marriages are annulled by worthy persons for worthy motives, as it would be in the English Divorce Court. I should think, however, that it would be very difficult for a married couple to get rid of the marriage tie in a case where they had been happily married for the first five or ten years of married life, and there certainly seems more reason for abolishing the union of persons who have never been very happy together than of persons who have been happily associated for 10 or 20 years. There is a further point to be remembered, which is, that Roman Catholics, like many of the English poor, regard concubinage with less disapproval than any rupture of the marriage tie. Concubinage is technically a mortal sin, but I gather that most Roman Catholics (especially in Latin countries) would judge it more tenderly than a civil divorce. This is a quite different attitude to the rather ostrich-like position of many Anglicans who shut their eyes to the facts of life and human nature, while the hardship on the children of irregular unions is mitigated because they can always be legitimated by subsequent marriage unless they are the offspring of an unfaithful wife. (According to strict Canon law, adultery necessitates the participation of a married woman, and the intercourse of a married man with a single woman is not adultery.) Where the ecclesiastical court pronounces a nullity decree the successful party can always obtain a civil divorce or nullity decree according to the Civil law, and this regulates rights of property and succession. In every country where the Civil law does not permit divorce *a vinculo* facilities exist under the Civil law for obtaining a civil decree of nullity for similar reasons to those sanctioned by the Canon law, and in some cases beyond the Canon law. My information on this point is mainly derived from the report to the Foreign Office on Foreign Marriage Laws in 1894, and it may not be correct in every detail, but it is on the whole correct, and in some cases it is supplemented by the opinions of foreign lawyers to whom I have written. Taking Europe first, I begin with Italy, where, to my knowledge, the lawyers have been agitating for a divorce law since 1904. I am told two Bills have been rejected by the Upper House in the last six years."

43,079. To what extent were they supported?—They were passed by the Lower House, and all the lawyers I imagine are naturally very anxious to have a divorce law. They know cases of hardship.

43,080. Two Bills passed the Lower House?—And were rejected by the Upper House.

43,081. Were they Bills for giving divorce on certain grounds such as we have been considering?—I am afraid I only came across the information the other

* *See* supplemental letters (marked A) annexed hereto at conclusion of witness's evidence.

day, so that I do not know the details of them. They were Bills probably, I should think, on the lines of the Code Napoléon. I was recommended by an Italian friend to consult Signor Cesare Carocci in Florence, and in reply to my inquiries he wrote as follows.

43,082. What is he?—He is an advocate in Florence.

43,083. Of position?—Yes.

43,084. He gives you the account about Italy?—Yes. "In Italy, where no divorce exists, and matri-" mony ends only with the life of husband or wife, the " civil law admits the nullity of marriage in some " cases specially mentioned in paragraphs 104 and " following ones of the Civil Code. One must bear " in mind that in Italy ecclesiastical laws and regula-" tions concerning matrimony and cases of nullity of " marriage have no value in Italian civil law. It is " only the Civil Code which rules and regulates all cases " in which nullity of marriage may be admitted. " According to the Italian Civil Code, nullity of " marriage may be granted in the following cases " only:—1—(*a*) When the man has contracted marriage " before the 18th year of age and the woman before " the 15th year of age, without having been grauted " special licence by the King; (*b*) When one of the " parties is already married; (*c*) When the parties are " connected in a direct liue between legitimate " or natural ascendants or descendants and kindred " of the same line; or in a collateral line between " legitimate or natural sisters and brothers, and when " without having been granted a King's licence the " marriage has been contracted between relations of " the same degree between uncle and niece, aunt and " nephew; (*d*) When the husband and wife are con-" nected as follows:—the adopting parent and adopted " child, and his or her descendants, between the " adopted children of the same person, between the " adopted child and the subsequent children of the " adopted parent; between the adopted child and " the widow or widower of the adopting person; " between the adopting parent and the widow or " widower of the adopted child; (*e*) When one of the " parties has been convicted in a penal action for " wilful murder, committed, failed or attempted, or as " an accomplice thereof, against the person already " married to the other party."

43,085. That is a conviction after marriage, as I follow it?—Yes.

43,086. Do you say the Code which he sets out there permits a nullity for that?—Yes.

43,087. That is practically really divorce?—It is really divorce.

43,088. The other case, want of consent or being married already, are true grounds of nullity, but this ground looks as if it were, on the face of it, really divorce?—You mean that there is a distinction between nullity and divorce? Nullity assumes no marriage from the beginning, and divorce assumes dissolution of a bond already existing.

43,089. Yes?—In this case it is an odd twisting of the nullity doctrine.

43,090. If it is an offence committed since the marriage against the person already married, of a penal character like murder, attempted murder, and so on, that is an offence which cannot be properly spoken of as a nullity ground, but a divorce ground?—"It abandons " the ecclesiastical doctrine in saying there never was " any marriage at all."

43,091. You are quoting there from Carocci?—Yes.

43,092. That is quoted from the Code. We can see that for ourselves?—Yes.

43,093. Is your next paragraph still the letter?—Yes. "When the marriage was performed before an " unauthorised (noncompetent) or incompetent official " of the Stato Civile, or without the presence of the " necessary witnesses. After the lapse of one year " from the date of the marriage no application for " nullity due to the incompetence of the registrar can " be admitted. (3) When the contracting parties or " either of them have not obtained a free consent " (from parents or guardians). (4) When a mistake " occurred in the identity of the person. But no " application for nullity of marriage is admitted for " mistaken or not freely given consent as by No. 3 " and 4, if there has been continual cohabitation for " one month from the date on which the party regained " his or her full freedom or found out the mistake. " (5) When the party is manifestly permanently " impotent previous to the marriage. (6) When the " marriage has been contracted without the consent " of the ascendant relations or of the family council, " or of the council of guardians, in all cases where the " law requires such consent. (7) When at the time " of marriage one of the contracting parties had " already been found by the law *non compos mentis*, " or if the mental disease as to which judgment was " afterwards given is proved to have existed at the " time of the marriage. Having thus shown the law " relating to the dissolution of marriage according to " the laws of Italy, I must necessarily come to a " conclusion entirely opposite to the opinion of " Mr. Haynes."

43,094. What is that?—I had studied the Code before, and it seemed to me it was very odd that the ecclesiastical suit of nullity should have any analogy with annulling a marriage for a crime after marriage, and I had also reason to suspect there was collusion in the Italian Courts, and that it was very easy to throw dust in the eyes of the judges. I suggested divorce was not in practice difficult in Italy, because it would be easy to get a collusive nullity suit on one of the lines in the Code.

43,095. At any rate, he is answering suggestions you had made?—In his second letter he withdraws that.

43,096. Then he goes on?—"Nullity of marriage " cannot in any manner whatsoever take the place of " divorce, which is an essentially different institution, " by which perfectly valid marriages can be dissolved. " In Italy, too, a large number of scientists and lawyers " have for a long time asked for a law of divorce, " which proves that 'nullity of marriage' is not suffi-" cient to give the beneficial effects of divorce. I " cannot share Mr. Haynes' opinion that causes of " nullity are more subject to abuse and frivolous " reasons than ordinary separation suits for adultery or " desertion, because in Italy, at least in the matter of " annulment, jurisprudence has always been and is of " even excessive severity. A question has been raised " in Italy whether Italian subjects, duly married, who " for the purpose of enjoying the benefits of divorce " laws have become foreign subjects or citizens, and " as such have been divorced abroad, may obtain in " Italy the recognition of such a foreign divorce, " Until lately the law was very uncertain. I may even " say that in Italy the principle prevailed that no " execution could be granted to foreign judgments, " because it was held that such judgments contained " dispositions contrary to the internal public law of " Italy. Lately, however, since the Hague Convention " dated 12th June 1902, which was given legal effect " in Italy by the law of September 7th, 1905, by which " the contracting States have bound themselves to " recognise divorce judgments, provided that all the " clauses of the Convention are duly observed, the " Italian law has decided to limit the inquiry to the " point whether the articles of the Convention of the " Hague conflicted with Article 941 of the Civil Code, " and in the event of there being no conflict to grant " the execution of foreign divorce judgments. As a " slight and insufficient corrective in lieu of divorce in " Italy we have separation, which, without the disso-" lution of the marriage tie, separates the parties when " discord has come between them and they can no " longer live together. This is also very strictly re-" gulated by the Civil Code, which, besides the case " of separation by mutual consent, grants separa-" tion decrees only on some specified reasons, such as " adultery or wilful desertion, excesses, cruelty and " grievous offences, sentence for criminal conviction " and want of permanent abode. A suit by the wife " for adultery by the husband is not admitted, unless " the husband keeps the mistress in the house or " notoriously elsewhere, or there are such circum-" stances as to constitute a serious offence to the

" wife." That finishes his first letter. I wrote again pressing my inquiries on the question of collusion, especially as I had heard there was a good deal of corruption in the Italian Courts, and he replied as follows:—" Replying to Mr. Haynes' queries, I may " add that it has happened that the parties have " attempted to avail themselves collusively of some " cases of nullity to have their marriage annulled; in " some cases, misleading the good faith of the judges, " they have succeeded even in obtaining a decree of " nullity." Then he quotes the Hague Convention and Article 941 of the Civil Code. Article 941 says:— " Execution of foreign judgments is granted by the " Court of Appeal, in the jurisdiction of which such " judgments are to be executed after a judicial hearing " in which the Court examines: (1) If the judgment " was issued by a competent judicial authority; (2) if " it has been pronounced after the parties have been " duly cited; (3) if the parties have been legally re- " presented or have denied the authority of the " Court."

43,097. Where does the letter finish?—That is an appendix.

43,098. Are you still reading from his letter?—No. I do not remember whether his letter included that, but I got the article and put it out in full so as to have no mistake.

43,099. Will you kindly show, when you have your print before you, where the letter ends?—I think he set out this Article 941.

43,100. Perhaps you will verify that in the proof. The next is your own point?—Yes. " An Anglo-Italian friend of mine informs me that the wealthier Italians adopt Swiss or Hungarian nationality to obtain divorce and then return to Italy after the lapse of some years and the foreign judgment is admitted. He adds: 'I think on the whole they manage very ' well without divorce. They (*i.e.*, husband and wife) ' each go their own way immediately after marriage ' and the husbands are quite happy, especially if the ' wife turns an honest penny anyhow and anywhere.' He thinks that there is not much collusion on questions of kinship (though this opinion is disputed by others), but that there is a certain amount of collusion in regard to pretended impotence, and this opinion is confirmed by another Anglo-Italian friend living in Capri. My general conclusion in regard to Italy is that when people want marriages annulled or dissolved and are rich enough they get what they want, but that they do not often want it and that a great deal of adultery goes on all round in spite of its being a criminal offence.

" *In regard to Austria*: I was recommended by the English Consul to take the opinion of Dr. Maximilian Krenn, who wrote to me as follows:—

" Vienna, March 23, 1910.

" SIR,—REPLYING to yours of the 9th inst., I cannot give an answer offhand, as the Austrian Marriage Law is complicated. I shall be very glad to assist you, but you must either put a special case or give me detailed questions to answer. Till some decades ago we had in Austria the Canon Law binding on all Catholics."

I have in my pocket a pamphlet by the Austrian Marriage Law Reform Union, if the Commissioners would like to see it.

43,101. I do not think we want that?—" A State " Law subsequently took its place, which repealed a " number of provisions of the Canon Law, but con- " firmed others. In general one can say that the " marriage laws here are different according to the " religion of the parties. The classification is Catholic, " Protestant, Jewish and 'Confessionslos.' A marriage " between Catholics is indissoluble except by death, " although a question as to the vadidity of the marriage " may be raised under some circumstances. This is " quite different from the question whether a valid " marriage can be dissolved. There is so-called " 'separation from bed and board' between Catholics; " the marriage then continues to exist, though the " parties are separated." They may join together again at any time without a new marriage.

43,102. I do not know that this is of value, because we have already had put in the law in Austria from the Blue Books. I do not think this helps us. I do not know whether it deals separately with nullity. We have only the divorce law?—I quote a hard case the Marriage Law Union sent me.

43,103. (*Mr. Brierley.*) Does this letter deal with the question of nullity?—Yes.

43,104. (*Chairman.*) Will you read the paragraph beginning " Whether a marriage can be declared invalid"?—Yes. " Whether a marriage can be declared " invalid depends on the special case. The grounds " are such as the incapacity of one of the parties to " enter into a valid marriage contract (madness, idiocy, " infancy without permission of parents or guardians), " or again because consent has not been really given " (terror, mistake, or when the husband finds his wife " already with child by another man). There are other " impediments such as permanent impotence at the " time of the marriage, or previous marriage to a third " party, Catholic Orders, difference of religion (Chris- " tians cannot marry non-Christians), relationship, " adultery, murder of former husband, non-performance " of necessary formalities (banns or notice or solemn " declaration of consent)." Then it goes on to separation.

43,105. He says Christians cannot marry non-Christians?—Yes.

43,106. That would be a ground of nullity?—Yes, and anybody who does not belong to a Christian body is called " Confessionslos." Then the letter continues: " —The separation from bed and board can be " effected by common consent of the spouse or be ob- " tained by one against the will of the other; the pro- " cedure before the court differs accordingly. The " reasons for which a separation can be given are " adultery, desertion, or irregular life, endangering the " property of the petitioner or the morals of the family, " attacks on life or health, bodily or aggravated moral " cruelty, permanent contagious affections. The court " decides according to the evidence whether such a " reason for separation exists and can grant it for the " fault of one or both parties. For completeness I " may add that Catholic marriages can be declared " dissolved when one spouse is declared by the court " to be dead or disappeared. The above gives a general " account of the chief points regarding the invalidity, " divorce and separation of the Catholic marriage." Then I have a long story which does not apply to English conditions.

43,107. Do not let us have anything of that kind?—It shows the evils that result from applying the law on the religious classification.

43,108. If it is only an illustration of that kind I do not think we care about it. Will you go on to page 11. I would like to know what the statistics are?—These have all been supplied to me by the Divorce Law Reform Union, and they have been in communication with the authorities.

43,109. In Austria?—Yes. The statistics show that there are about half a million separated Catholics in Austria, and that the illegitimacy figures are far higher than in any other European country.

43,110. I would like to know exactly whether we can see what that comes from?—Yes, I can get the authorities, certainly.*

43,111. It is a remarkable statement and I should like to see what it is founded on. If you will send the book of statistics for us to examine, I should be glad. We want to be careful not to get general statements without seeing the authority for them?—" Such figures " never include adulterine bastardy and they depend to " some extent on the prevalence of artificial restraints " of conception, but they undoubtedly point to a " general looseness and licence which would naturally " result from the operation of such laws. Fairly " reasonable facilities for divorce exist for Protestants, " Jews, and persons of no denomination, but the popu- " lation is mainly Catholic. It is clear that Hungarian " nationality is freely adopted for the purposes of " divorce, for from 1898 to 1906, 7,470 Roman Catholic " husbands and 7,642 Roman Catholic wives obtained

* *See* supplemental letters (marked B) annexed hereto at conclusion of witness's evidence.

" divorces in preference to separations in Hungary (as " opposed to Greek Catholics and members of the " Greek Church)." I was careful to find out that a " Catholic " was not a member of the Greek Church.

43,112. There are several differences, there are Protestants. Greeks, and Jews. What does this show ?—That the people who are called Roman Catholics are Roman Catholics and not Greek Catholics.

43,113. In Hungary there is no limitation for Catholics ?—No ; that is why they go to Hungary.

43,114. I want to know where those figures come from ?—I am satisfied they are reliable, but I will put before the Commissioners my authority. I knew it was important, and I satisfied myself that it was reliable authority before I came here.

43,115. Still, I think it is a very remarkable statement, and we ought to see exactly what statistics it is based on ?—" There is no official explanation how " these Roman Catholics reconcile their divorces with " membership of their Church, but the fact re- " mains that they do obtain the divorces. The Ehe- " rechtsreformverein, that is the Marriage Law Union " Association, write that they merely cut themselves " away from the Church." I have a good deal of information from the Marriage Law Reform Union in Vienna. Mr. Krenn subsequently wrote and said there was no collusion, and that a special official is employed by the Courts, as in the Ecclesiastical Courts of the Catholic Church, to uphold the validity of any marriage that is impeached, a sort of King's Proctor. The expense of these suits appears to be prohibitive for ordinary citizens. The Austrian Law also applies to Croatia.

43,116. We will leave out Portugal, because we have had put in the new law of Portugal ?—Has it become law, or only a Bill ?

43,117. We have had it supplied by the Home Secretary ?—It is law now ?

43,118. I think so ?—Taking Spain only, the Church here controls marriage in the ecclesiastical courts. The grounds of nullity are a vow of chastity, consanguinity, conviction of adultery, responsibility for murder of former spouse, relation of adoptive parent and child, mistake and coercion. With regard to Ireland, you have had evidence. I have been told—I cannot quote official authority—that Canadians resort to the United States of America for divorce, and, of course, Irish people can change their domicile.

43,119. I do not think you need trouble about the United States of America, because we have had full evidence about that, but I do not think we have had any particulars about South American States ?—Was there any evidence given about South Carolina ?

45,120. Yes ?—In Brazil (it is the Law in 1894 in most cases) there is no " divorce but the grounds for " nullity are conviction of adultery, responsibility for " murder of previous spouse, want of consent, relation " of guardian and ward, marriage with another person " within period of less than 20 months after nullity " decree. To these are added *within two years of* " *marriage being celebrated.*—(1) Ignorance of the " other spouse having committed a crime. (2) Physical " defect or incurable contagious disease. (3) Ignorance " of the other spouse's ' condition.' "—I suppose that means with regard to money or property or social rank. I have not been able to make out what that means—" European legislation might profitably imitate a " statutory provision that the parents of a spouse may " demand a medical certificate of health and vaccina- " tion as a condition of consent." In Chile there is no divorce, but the grounds for nullity are want of consent, insanity, and are generally similar to those in Argentina. In Argentina there is no divorce, but marriages are annulled for consanguinity between ascendants and descendants without limitation, affinity in the direct line in all degrees, insanity (when fraud is practised), responsibility for death of former spouse, want of consent, or mistake or fraud. The children of all annulled marriages are legitimate. Then, after sending in my first notes, I got some further information as regards Argentina. I am informed that divorce is not much in demand. The men are usually unfaithful to their wives, though a high standard exists for the women. Divorce, however, can be obtained at Monte Video, and those who wish for it frequently go to Monte Video and remain there. Then there is a long letter.

43,121. Is it sufficiently material to put in that long letter ?—I do not think it is.

43,122. When you say the men are usually unfaithful, is not that rather too sweeping a statement ? Where do you get it ?—I have more than one friend in Argentina, and I am told that the wife can only get a separation, and that as she can only get a separation, she necessarily connives at her husband's conduct, and therefore a loose standard exists for the men although a high standard exists for the women.

43,123. That is very much more modified. It might justify the statement that not infrequently the law results in the man being immoral and the woman moral, but when you say " usually," it is rather sweeping ?—I admit the language is strong, but it seemed to me where the man had such powers it usually led to this laxity. There is the question of what goes on in Monte Video. I thought that was important, because it shows that the law is very loose. A very liberal divorce law has been introduced in Monte Video in 1908. This is the Uruguayan Republic, and the town has a population of 300,000. Divorce by consent is allowed, and residence is a sufficient test of jurisdiction. I wanted to emphasize the fact that there was a Divorce Bill in Argentina which was defeated three years ago by a small majority of five or six votes in the House of Deputies. That is the Lower House. " It will be observed that the law of Argentina gives " liberal facilities for easy divorce in Monte Video if " only the parties remarry outside Argentina. This is " analogous to the provision of the Scottish law which " prohibits the remarriage of the respondent and co- " respondent, but the prohibition does not extend to " marriages contracted outside Scotland." The Roman Catholic attitude seems less rigid than in England. This Argentine lawyer told me, that although he was a Roman Catholic, he considered that the priests of his religion should not interfere with the civil institutions of the nation. " In regard to the Roman " Catholic Church, historians are unanimous in con- " demning the uncertainty of marriage during the " middle ages, and it appears that fictitious genealogies " were resorted to where even the complications of the " Canon Law were insufficient. In spite of the uncom- " promising declarations of the Council of Trent in " 1563, we find Pope Benedict XIV., in 1741, sternly " condemning the laxity of the ecclesiastical courts." I have put in the actual Latin words. He says that women are known to marry four husbands with this nullity process. " After speaking of the facility with " which decrees were obtained, he writes in his " ' Constitutio ' : ' Nobis . . . indicata sunt exempla " ' nonnullorum virorum, qui post primam et secundam " ' et tertiam, quam duxerant, uxorem ob nimian judi- " ' cum præcipitantiam in nullitate matrimoniorum " ' declaranda, adhuc illis primis uxoribus superstitibus, " ' ad quartas contrahendas nuptias devenerant,' and " he says that even women are known to marry four " husbands in the same way. He also complains of " obvious collusion, especially in undefended cases, and " proceeds to lay down certain safeguards which prevail " to-day. An official is deputed to defend the marriage " and no doubt many precautions are taken to prevent " collusion. The ecclesiastical cases to-day are heard " in each diocese and the decisions are sent to Rome " for confirmation. It is impossible to obtain infor- " mation as to the number of decrees that are given, " but the poor at any rate have no apparent grievance, " as a specially low rate of fees is allowed for them." I think a witness has already given evidence about it and he may have given some figures.

43,124. Not as to cost. As to the number of cases, they are very low. I do not think he did ?—" It would " not be surprising if the number of Ecclesiastical " cases were few (1) because of the looser ideals of " sexual morality that prevail in Latin countries ; (2) " because civil divorce can always be used by any " Catholic who postpones his religious feelings to " his domestic happiness, or who chooses to leave

" the Church altogether. In this connection the " considerable leakage from the Church of Rome " during the last 50 years is well illustrated in " Mr. Joseph McCabe's book on the subject. The " Pauline privilege of dissolving a marriage between " a baptised person and non-baptised person ap- " pears to be confined to heathen lands, though it " appears in the civil law of Austria and Hungary." That is the marriage between Christians and non-Christians which we had before. "The difficulty " of obtaining information is enhanced by the fact " that grave changes appear to be contemplated, such " as diminishing the impediments of consanginity " and affinity, the impediment of spiritual affinity " arising from baptism or confirmation, and of legal " affinity arising from adoption. The Church is, in " fact, rumoured to be clearing up a number of points, " and it would, therefore, perhaps, be unfair to deal " with the present ecclesiastical law as a permanent " state of things. However meagre my information is, " I think it serves to show (1) that countries where " there is no divorce, are not morally superior, but " rather inferior, to countries where there is divorce; " (2) that in most countries where there is no divorce, " the law is evaded by the adoption of foreign nation- " ality or collusive nullity suits; (3) that the absence " of reasonable divorce creates a lax state of public " opinion in regard to adultery and irregular unions."

43,125. You have drawn those conclusions on what you say is legal information?—Necessarily; otherwise one would have to take a tour round the world, and live in each country.

43,126. You think the investigation you have made is sufficient to justify those conclusions in your own mind?—Yes.

43,127. (*Mr. Brierley.*) You say, with regard to Spain and Brazil, that conviction of adultery is a ground of nullity. What does that mean? Adultery must be committed after marriage?—I think that is separation I was dealing with.

43,128. You have given the grounds of nullity in both Spain and in Brazil; conviction of adultery is one of the grounds?—That must be some mistake.

43,129. I do not see the distinction between nullity and divorce?—I think probably how it crept in is this ——

43,130. I am afraid you have it in the Austrian gentleman's letter also. He gives the grounds on page 9 of your proof upon which marriage can be declared invalid, and amongst various grounds he mentions adultery. "There are other impediments, such as per- " manent impotence at the time of the marriage, or " previous marriage to a third party, Catholic Orders, " difference of religion (Christians cannot marry non- " Christians), relationship, adultery"?—I think it was where the party had been guilty of adultery before the marriage.

43,131. You mean where he had been married before?—Yes.

43,132. Adultery in his previous marriage?—Where adultery is a criminal offence there might have been a criminal conviction, and a person so convicted might have married again.

43,133. That may be the explanation.

43,134. (*Chairman.*) What do you take these Brazillian, Hungarian, and Spanish laws from?—From the Foreign Office Return of 1894, except where it has been supplemented by letters from foreign lawyers.

43,135. Was there anything you wished to add?—I cannot remember anything more at the moment.

43,136. I can only thank you for paying so much attention to these matters. Will you send a verification of your figures in some form or other? You can either send it, or add it on to your evidence when you receive the printed proof?—Yes, I will do so.

(A) These are the supplemental letters referred to in the footnote to Question 43,078:—

9, New Square,
Lincoln's Inn, W.C.,
24th December 1910.

DEAR MR. GORELL BARNES,

I ENCLOSE all the correspondence which has reached me in regard to the figures which I gave at the Commission. I may be able to get some further information, and if so I will send it along. I shall be glad to have the documents back when you have done with them, since, strictly speaking, they belong to the Divorce Law Reform Union. I am writing to the Registrar-General at Dublin.

Yours sincerely,
E. S. P. HAYNES.

The Hon. H. Gorell Barnes,
The Divorce Law Reform Commission,
Winchester House,
21, St. James' Square, S.W.

DEAR SIR, 31st January 1910.

As I am at the present time preparing evidence for the Royal Commission on Divorce and Matrimonial Causes, I am desirous in consequence thereof of obtaining certain information in regard to illegitimacy, and I should esteem it a very great favour indeed if you could furnish me with any information to elucidate the following rather remarkable fact.

In England and Wales the illegitimacy birth-rate is approximately 40 per 1,000 total births, whilst in Ireland it is but 2·5 per 1,000 births.

It has been suggested to me that in Ireland the power of the priests, the confessional, and the temperament of the people exercise a salutary effect in this direction, but it seems to me it is hardly possible these factors should account for the wide difference in the figures above mentioned.

It has been further stated to me as an explanation that girls in a state of pregnancy are transported from Ireland to English, Scotch, and Welsh ports, to be there delivered of their illegitimate children.

I have been in communication with the inspector and clerk of Glasgow, who informs me that he knows for a fact from the cases that become chargeable to his parish that women go from Ireland to that city to be confined, and in view of this I shall be greatly obliged if you can give me any information substantiating that the same thing occurs in regard to Liverpool.

Trusting you will excuse my troubling you without other introduction than the subject affords, and thanking you in anticipation,

I am, Sir,
Yours obediently,

Hon. Secretary.

Edmund R. Pickmere, Esq., M.A., J.P.,
Town Clerk, Liverpool.

Also—
J. L. Wheatley, Town Clerk, Cardiff.
Edmund J. Taylor, Town Clerk, Bristol.
John Thomas, Town Clerk, Swansea.

St. Peter's Hospital, Bristol,
DEAR SIR, 16th February 1910.

WITH reference to your letter of the 31st ultimo to the town clerk, which he has informed you was sent on to me, I beg to say that we have only known of one case of a girl admitted practically direct from Ireland to the lying-in wards within the last five years, and this would scarcely be a case in point, as she came to us to evade apprehension on another charge, so that our position is not as stated by the inspector of Glasgow to be the case there.

Yours truly,
The Hon. Secretary, J. J. SIMPSON.
Divorce Law Reform Union,
20, Copthall Avenue, London, E.C.

The Council House, Bristol,
DEAR SIR, 2nd February 1910.

YOUR letter of the 31st ultimo, with its enclosure, was duly received, but I think you intended to send it to the Clerk to the Guardians, to whom I have forwarded it.

Yours truly,
R. T. Gates, Esq., EDMUND J. TAYLOR,
Hon. Secretary, Town Clerk.
The Divorce Law Reform Union,
20, Copthall Avenue, E.C.

Dear Sir, February 8th, 1910.

I am extremely obliged to you for your letter of the 4th instant, and for the information contained therein.

Believe me,
Yours faithfully,

Hon. Secretary.

Dr. E. Walford, M.O.,
Medical Officer of Health,
City Hall, Cardiff,

City Hall, Cardiff,
Dear Sir, 4th February 1910.

The Town Clerk has handed me your letter of the 31st ultimo, asking me to help you in the matter to which you refer. Unfortunately I have not in my possession any definite information as to the number of Irishwomen confined in Cardiff, but I have reason to believe that there is some foundation for the suggestion that they come from Ireland to be confined. I am inclined to think, however, that the question of religion has some connection with the low illegitimate birth-rate in Ireland. I believe that if you were to make application to the Clerk of the Cardiff Union, Mr. A. J. Harris, Queen's Chambers, Cardiff, he would be able to give you the information you require. In the event of his not being able to do so, Mr. Pritchard, Warrant Officer, Cardiff Union Workhouse, would probably be able to give you definite information upon the subject.

I am,
Yours faithfully,
Edward Walford.

R. T. Gates, Esq.,
Hon. Secretary,
The Divorce Law Reform Union,
20, Copthall Avenue,
London, E.C.

Town Clerk's Office, Swansea,
1st February 1910.

Divorce Law Reform.

Dear Sir,

I have seen our Chief Constable respecting your letter of the 31st ultimo, and he informs me that he is unable to give any information substantiating that the same occurs in regard to this borough as what you state prevails at Glasgow.

In fact he says there is no justification for any such a conclusion so far as Swansea is concerned.

Yours faithfully,
Jno. Amery,
Town Clerk.

Richard T. Gates, Esq.,
Hon. Secretary,
The Divorce Law Reform Union,
20, Copthall Avenue,
London, E.C.

Parish Council Chambers,
266, George Street, Glasgow,
8th January 1910.

Illegitimate Births.

Dear Sir,

I am favoured with yours of 5th instant on this matter. The points to which you refer are most important, but I fear I can give you little or no information of a reliable character, which could be founded upon in your inquiry. I know for a fact that women come over here from Ireland to be confined, but beyond the few cases chargeable to *this* parish I am not aware of any figures relating to Scotland as a whole. I should fancy that Liverpool and other ports will have the same grievance, where the women not only become chargeable to poor law authorities, but are confined in maternity hospitals and other private homes. In my evidence before the Poor Law Commission I mentioned the subject and gave a few figures, but they were not, of course, of sufficient importance in themselves to suggest any remedy. If you think I can assist you further in the inquiry I shall be very pleased.

Yours truly,
Jas. R. Motion,
Inspector and Clerk.

W. Y. Ramsay Fairfax, Esq.,
Clint Lodge,
Saint Boswells, N.B.

9, New Square,
Lincoln's Inn, W.C.,
Dear Mr. Gorell Barnes, 26th January 1911.

Following on my letter, I beg to inform you that Mr. Motion writes to me as follows to-day:—"My evidence on the point is referred to in the Scottish Report of the Poor Law Commission, page 141, first paragraph. My evidence thereon is there quoted as Question 58,087 in the separate volume of evidence for Scotland, to which I presume you will have access." Fifteen applications were made during the year ending 15th May 1906 by women who had "purposely come from Ireland."

Yours sincerely,
E. S. P. Haynes.

The Hon. H. Gorell Barnes,
Winchester House,
21, St. James' Square, S.W.

9, New Square,
Lincoln's Inn, W.C.,
29th December 1910.

Dear Mr. Gorell Barnes,

I enclose a letter which I have received from Mr. William Thompson. You will observe that he can give me no figures. I do not suppose that anyone knows the figures, but only of isolated cases. If I had been prepared for the question that was asked I should have replied that I had evidence but no statistics.

Yours sincerely,
E. S. P. Haynes.

The Hon. H. Gorell Barnes,
Winchester House,
21, St. James' Square, S.W.

Dear Mr. Haynes, 28th December 1910.

In reply to your letter of the 24th instant, received here to-day, I regret to say that there is no information in this department as to the number of unmarried women who leave Ireland and go to Glasgow or other places for their confinement.

The only statistics of illegitimacy which are here are those published in my Annual Reports—*see* page xi. in last year's report—the figures of which, of course, relate exclusively to Ireland.

Yours very truly,
William J. Thompson.

E. S. P. Haynes, Esq.,
9, New Square,
Lincoln's Inn, London, W.C.

9, New Square,
Lincoln's Inn, W.C.,
Dear Mr. Gorell Barnes, 3rd January 1911.

I enclose a letter which I have received from my friend, Joseph McCabe, whose honesty is beyond doubt.

You will see how difficult it is to get information of the kind required; yet the facts are probably correct.

Yours sincerely,
E. S. P. Haynes.

The Hon. H. Gorell Barnes,
The Divorce Law Reform Commission,
Winchester House,
21, St. James' Square, S.W.

16, Elm Grove,
Cricklewood, N.W.,
Dear Haynes, 2nd January 1911.

I find it difficult to get precise evidence on the question of Irish girls carrying their tears to Glasgow. The friend, in Glasgow, who told me it was stated in some municipal document could carry me no further; when I pressed him, though, he and others say the fact is well known there. On the other hand, I have since heard that Glasgow is not the only place. An American friend (ex-priest and head of a college) told me that

New York has the same experience. This man is travelling somewhere, and I can do nothing till he turns up again in London. Then one of those anti-papal secretaries (Mr. Le Lievre, Protestant Press Bureau, 132, Wanstead Park Road, Ilford) sent me word that Mgr. Nugent—the idol of the Liverpool Catholics—admitted it for Liverpool. If you could get the exact reference to the latter it would be a strong point, and, I am afraid, all that can be got.

I will try at the Museum some time to see if anything is to be found, but it is hardly likely there. The difficulty is that municipal authorities are not supposed to notice any such point, and the Catholics may make it hot for any man who does. I shall not be in Glasgow again for two months, but will go into it then if any good.

Yours,
J. MCCABE.

Excuse delay. Had heavy work to get off my "Empresses" for end of year.

9, New Square,
Lincoln's Inn, W.C.,
DEAR MR. GORELL BARNES, 30th January 1911.

I ENCLOSE extracts from a book which has just reached me in further confirmation of my evidence.

Yours sincerely,
E. S. P. HAYNES.

The Hon. H. Gorell Barnes,
Winchester House,
St. James' Square, S.W.

Extracts from "The Protestant's Treasury," published by Arthur H. Stockwell (pp. 67–69).

"Are Irish women more virtuous than their sisters in other lands?—No! Monsignor Nugent—'save us from our friends!'—in an appeal headed 'Fallen, Friendless, Homeless,' printed in the 'Catholic Times' of 16th and 23rd July 1897, admitted that 'the strong public opinion in Ireland is constantly driving girls who are on the eve of becoming mothers into Liverpool.'

"The Prosecutor-Fiscal said that within the last year no fewer than a score of women had come from Ireland to Glasgow and given birth to illegitimate children.

"America, too, is the dumping-ground of Hibernian female outcasts.

"According to 'Reynolds's Newspaper' of 22nd June 1902, a New York physician, Dr. W. H. Sanger, published 'The History of Prostitution.' He interrogated 2,000 New York outcast women. Question put: Were your parents Protestants, Catholics, or non-professors? 960 were Protestants, 977 Roman Catholics, and 63 non-professors. To the query: Were you trained in any religion? If so, was it Protestant or Catholic? 972 of the prostitutes said that they were Protestants, 977 Roman Catholics, and 51 were 'godlessly' trained. Of the Catholic outcasts no fewer than 706 were born in Ireland!"

(B) These are the supplemental letters referred to in the footnote to Questions 43,109–11:—

The Divorce Law Reform Union,
20, Copthall Avenue,
London, E.C.,
DEAR HAYNES, 23rd December 1910.

THE particulars, authorities, statistics, &c. which you require relating to Austria, Hungary, &c. are as follows:—

At page lx., 71st Annual Report of the Registrar-General of Births, Deaths, and Marriages in England and Wales (1908), pub. 1909, the table of international vital statistics therein set forth shows that in Austria the proportion of illegitimate births per 1,000 unmarried and widowed women, aged 15 to 45 years, was for the approximate periods 1880–82, 43·4 per 1,000; 1890–92, 42·7 per 1,000; and 1900-02, 40·1 per 1,000; or at each period more than 12 per 1,000 higher than any other of the 15 European countries whose illegitimacy statistics are enumerated.

At page 412, Part I., Special Report on Marriage and Divorce, 1867–1906, issued by the U.S.A. Department of Commerce and Labour Bureau, 1909, shows the religious confessions of husbands and wives in the 24,324 divorces, separations, and annulments which took place in Hungary proper from 1898 to 1906 to be as follows:—

	Husbands.	Wives.
Roman Catholics - -	7,470	7,642
Greek Catholics - -	972	909
Oriental Greek - - -	2,755	2,996
Augusburg Protestants -	2,785	2,467
Evangelical Reformed -	7,639	7,595
Unitarian - - - -	415	384
Hebrew - - - -	2,252	2,291
Other confessions - -	3	3
Unknown - - - -	33	37

In considering the foregoing figures it is necessary to bear in mind that only 15 of the cases were separations, although no doubt separation was especially included in the New Hungarian Code to legislate for the Catholics, who would seem to prefer divorces.

The statistics above quoted were obtained by the U.S.A. Census Bureau from statistics compiled and published in the "Annuaire Statistique Hongrois," by the Central Statistical Office of the Kingdom of Hungary.

With regard to illegitimacy in Ireland, I enclose herewith copy of letter I sent to various town clerks of western seaports, with their replies. I received, however, no reply at all from Liverpool. I also send you letter from inspector and clerk of Glasgow.

Kindly return me the correspondence enclosed at your leisure.

My best wishes to you for Xmas and the New Year.

Yours very sincerely,
RICHARD T. GATES.

9, New Square,
Lincoln's Inn, W.C.,
13th January 1911.

DEAR MR. GORELL BARNES,

I ENCLOSE a letter from Mr. Gates, which seems to me to cover what I wanted to show in regard to the 50,000 separated Catholics. You will see the references are to a special census in the United States.

Yours sincerely,
E. S. P. HAYNES.

The Hon. H. Gorell Barnes,
Winchester House,
21, St. James' Square, S.W.

The Divorce Law Reform Union,
Central Office, 20, Copthall Avenue,
London, E.C.,
DEAR HAYNES, January 12th, 1910.

I FIND it will be unnecessary for me to write to Austria for the statistics relating to Roman Catholics separated from each other after marriage, as I have the figures here in the office, and they are as follows:

The total number of separations in Austria *without mutual consent* for the 20 years 1887 to 1906 numbered 6,260.

Of the above number the religious confession was Roman Catholic in 5,826 cases.

Reference for the above, page 399, Part I., Special Report U.S.A. Census Office, Marriage and Divorce in Foreign Countries, published 1909.

The total number of separations in Austria *by mutual consent* for the 20 years 1887 to 1906 numbered 16,379.

Of the above number the religious confession was Roman Catholic in 14,583 cases.

Reference, page 400 same report as above mentioned.

From the foregoing it therefore appears that the Austrian courts in the 20 years enumerated granted 22,639 separations, the religious confession of the parties in 20,409 cases being Roman Catholic.

I trust this is the information you require.

Yours sincerely,
RICHARD T. GATES.

9, New Square,
Lincoln's Inn, W.C.,
28th January 1911.

Dear Mr. Gorell Barnes,

I enclose copy correspondence between the Divorce Law Reform Union and the corresponding society in Vienna, together with two other documents which I think might be appended to my evidence. I only found them last night.

Yours sincerely,
E. S. P. Haynes.

The Hon. H. Gorell Barnes,
Winchester House,
21, St. James' Square, S.W.

The Divorce Law Reform Union,
Central Office, 20, Copthall Avenue,
London, E.C.,
April 4th, 1910.

Dear Haynes,

As I happen to be here late to-night, I have received your letter of this afternoon, for which many thanks.

I have already replied to the Austrian Union, and enclose herewith copy of the letter I sent on Saturday, and which may be useful for you to have by you, inasmuch as there are interesting figures contained therein.

The questions I have put to the Austrians I hope cover the ground you desired.

With regard to Old Catholics, in Hungary, the statistics I have do not set them out, the following being the religious confession of husbands and wives in the 24,324 divorces, separations, and annulments which took place from 1898 to 1906:—

	Husbands.	Wives.
Roman Catholics - -	7,470	7,642
Greek Catholic - - -	972	909
Oriental Greek - - -	2,755	2,996
Augsburg Protestant - -	2,785	2,467
Evangelical Reformed -	7,639	7,595
Unitarian - - - -	415	384
Hebrew - - - -	2,252	2,291
Other confession - -	3	3
Unknown - - - -	33	37

Out of the foregoing figures it should be borne in mind there were only 15 separations, although, no doubt, separation was especially included in the new Hungarian code to legislate for the Catholics, who would seem to prefer divorces.

Yours very sincerely,
Richard T. Gates.

Dear Sir,

April 2nd, 1910.

I beg to acknowledge the receipt of your letter of March 20th, together with various pamphlets and literature issued by your Society, for which I am much obliged.

I am forwarding you under separate cover some literature published by my Union, as also a copy of an essay entitled "The Question of English Divorce," and from these publications you will see that the object of my Union has been to press the authorities for the appointment of a Royal Commission to investigate the English law of divorce, with a view to its reform.

As you are doubtless aware such a Commission has been recently appointed by the King, and during the last month or so has heard much evidence on the subject, the net result of which, to date, has been to vindicate in great measure the agitation carried on by my Union. This Commission has adjourned its sittings till the end of May, when it will again hear evidence, after which it will doubtless issue an interim report. In the meantime it is not possible to judge as to what its recommendations will be, although it will doubtless recommend several alterations in the present law, the principal and most urgent of which is to grant facilities to poor persons whereby they may be able to obtain a divorce, this at the present time being denied to them owing to the prohibitive cost of suing, and the fact that all cases are tried in but one court here in London.

My Union has no similar publication to your organ "Die Fessel," our agitation having been carried on by constantly circularising our legislators and other public men, and by the aid of the Press, who have almost universally supported us and granted us facilities for voicing the inequalities and injustice, &c. of our Divorce Law.

I shall be much obliged if you can enlighten in regard to the following points.

I find from statistics which I have available that in Hungary proper from 1898 to 1906 there were granted 24,324 divorces, separations, and annulments, of which 24,072 were absolute divorces, only 15 separations, and the rest annulments, and this in face of the fact that three-fifths of the population of Hungary proper are Roman Catholics, and that out of the 24,072 absolute divorces granted the religious confession was Roman Catholic in the case of 7,470 husbands and 7,642 wives. Does this mean that these Roman Catholics absolutely ignore the priests and the doctrine of the Roman Catholic religion that marriage is indissoluble, or are the priests parties to these divorces? Further, can you inform me whether nullity suits are obtained by agreement, without good reason being shown.

In Croatia and Slavonia I understand marriage and divorce are still upon a confessional basis, and that the Roman Catholics, who constitute 71·2 per cent. of the population, are by the law of their Church excluded from divorce. From statistics which I have, however, I see that 389 divorces and annulments were granted in the nine years 1897 to 1905, and I should be much obliged if you could inform me how many of those divorces and annulments were obtained by Papal dispensation, and the grounds upon which these dispensations are or were granted.

As Roman Catholics are prohibited from obtaining divorce in Austria I should also be obliged if you could give me any information as to whether persons of that religion obtain nullity suits by agreement without good cause, or by Papal dispensation, or whether you have occasion to believe that Roman Catholics proceed to Hungary and there obtain divorces. From statistics I see that the population of Austria in 1900 was 26,150,708, of which number 23,796,814 were of the Roman Catholic faith, while during the nine years 1897 to 1906 there were granted in Austria only 316 annulments. Does this mean that the Roman Catholics invariably make happy marriages, and that there is no desire among them to sever the matrimonial bond, or is it that to obtain a Papal dispensation of a decree of nullity is a cumbrous and costly procedure, in consequence of which those who would obtain relief are thereby debarred from so doing. Further, if you are sufficiently wealthy, is it fairly easy to obtain a Papal dispensation, and can you cite me any case or cases of which you have knowledge where but recently such Papal dispensation has been obtained, and the grounds therefor.

With many apologies for asking you so many questions, and assuring you that if there is any information in regard to divorce law in England which I can supply you with, I shall be very happy to do so.

Yours, &c.
(Signed) Richard T. Gates.

The President, &c.

Letter from Austrian Society to Divorce Law Reform Union.

(Translation of Letter, dated the 18th April 1910.)

We have your letter and your pamphlets and have read the account of your exertions with much interest. The chief difference lies in the enemy. While you fight the opposition of insular conservatism, our enemy is the Catholic Church and the clerical party, which is predominant at present in Austria.

Our agitation takes quite a different form to yours, and that is a political form.

In answer to your questions:

The reason that so many marriages are dissolved in Hungary is that civil marriages are obligatory according to Hungarian law, and those Catholics who

suffer shipwreck in their marriage simply do not trouble about Catholic dogmas. There can be no question of indulgence from the priests. On the contrary, the clergy are agitating for the abolition of compulsory civil marriage and the restoration of religious marriage. Nullity decrees in Hungary, as well as in Austria, should only be obtained under very strict conditions. In Croatia, which belongs to Hungary, the Hungarian marriage law does not apply, since in this country, since the Concordat of 1855, the same law applies to Austria as to Croatia. Hence the small number of divorces.

There are very few nullity suits in Austria, because they are of enormous expense for ordinary men. Persons of some means who adopt Hungarian nationality and contract a new marriage can be prosecuted while in Austria. As to the great majority we have half a million human beings condemned to live either in concubinage or celibacy.

We send by this post a specimen of our newspapers, which will show the character of our judicature, and the unhappiness caused by our marriage laws.

We shall always be glad to keep up an exchange of views.

No Return of Illegitimate Children of Married Women.

International Table of Illegitimate Births, 1909.

COUNTRIES. (Arranged in order of Rates in 1900-02.)	Proportion of Illegitimate Births per 1,000 Unmarried and Widowed Women aged 15–45 years. Approximate Periods. 1880–82.	1890–92.	1900–02.	Increase (+) or Decrease (—) per Cent. in Illegitimacy during 20 Years.
Austria	43·4	42·7	40·1	— 7·6
German Empire	29·6	28·7	27·4	— 7·4
Sweden	22·6	22·9	24·3	+ 7·5
Denmark	26·9	24·5	24·2	—10·0
Prussia	25·8	25·1	23·7	— 8·1
Italy	25·4	—	19·4	—23·6
France	17·6	17·7	19·1	+ 8·5
Belgium	20·0	20·6	17·8	—11·0
Norway	19·7	15·9	17·2	—12·7
Spain	16·0	17·5	15·5	— 3·1
Scotland	21·4	17·1	13·4	—37·4
Australian Commonwealth	14·5	15·9	13·2	— 9·0
Switzerland	10·8	10·0	9·8	— 9·3
England and Wales	14·1	10·5	8·5	—39·7
The Netherlands	9·7	9·0	6·8	—29·9
Ireland	4·4	3·9	3·8	—13·6

The Right Hon. Sir DAVID BRYNMOR JONES, K.C., M.P., called and examined.

43,137. (*Chairman.*) You are one of His Majesty's counsel; you have also been an M.P. since 1892, and Recorder of Merthyr Tydfil?—Yes.

43,138. You were at one time a county court judge, from 1885 to 1892, and have been for several sessions a member of the Select Committee on Divorce Bills?—Yes.

43,139. You were the chairman of the Metropolitan Police Commission, and are joint secretary with Sir J. Herbert Roberts, M.P., of a group of members who usually act together in regard to matters affecting Wales and Monmouthshire, and who are commonly referred to as the Welsh Liberal Parliamentary Party?—Yes.

43,140. Did that group comprise in the last Parliament 32 out of the 34 members for the constituencies of Wales and Monmouthshire?—Yes.

43,141. You do not appear here in an individual capacity?—Not as to the first part of my evidence.

43,142. Do you represent the group of members I have referred to?—I represent the group in the sense that appears in what I have sent in. I am the secretary of the group, and the meeting which is referred to was duly convened; notice had been duly given that this question of divorce, or rather of extending the facilities for obtaining divorce, would be raised at the meeting.

43,143. That meeting was held on the 26th July last?—Yes.

43,144. The question of the administration of the jurisdiction in divorce and matrimonial causes under the Act of 1857 as affecting Wales was considered, and it was also considered whether there should be a tendering of evidence before this Commission?—Yes.

43,145. There were present:—"Sir Alfred Thomas (in the chair), Mr. Herbert Lewis, Mr. Lloyd Morgan K.C. (now Judge Lloyd Morgan), Mr. Ellis Griffiths K.C., Mr. Walter Roch, Mr. J. W. Summers, Sir J. Herbert Roberts, and yourself"?—Yes.

43,146. Notification of the meeting had been sent to the rest of the members of the group, and those who are mentioned attended. Is that right?—That is so. I ought to say that we do not regard any individual member as bound in regard to his parliamentary action by any resolution that may be passed. They are purely friendly discussions between men who usually act together in the House of Commons. When notice has been given and a discussion has taken place, the result fairly represents what is the general opinion of the members for that part of the country.

43,147. Then a discussion took place, and as a result a resolution was passed. Will you kindly read the terms of it?—*Resolved*—"That it is expedient to amend "the law in regard to the administration of divorce "and matrimonial cases by giving jurisdiction to "county courts to deal with such causes or making "other suitable provision for the bringing and trial of "such causes at convenient places in Wales and "Monmouthshire, and thereby diminishing the costs "and expenses incidental to such causes and removing "the hardship inflicted on the poorer classes of person "in that part of the country under the existing "centralised system of administering the law in regard "to such causes."

43,148. There is an alternative to the county courts, namely, "other suitable provisions." I daresay you would agree that if the High Court could deal with the cases, you would welcome that as well as the county courts dealing with them?—That matter was discussed

at this meeting, and I am not authorised to say what the individual opinion of any member of Parliament on that question was, but if your Lordship asks me what I think ——

43,149. Yes?—I confess that I do not think that any amendment of the existing practice of the High Court would so well meet the case as the extension of the county court jurisdiction under proper safeguards. I refer to that a little later on. "I was requested and authorised to attend before this Commission to lay before you the resolution, and to state briefly the grounds on which these members recommend this practical reform." The other suitable provision thought of was some amendment of the law and practice relating to the High Court which might enable petitioners to issue their process in the district registries of the High Court, and to have the causes, whether defended or undefended, tried at the assize towns. That was the other practical provision suggested.

43,150. Would you mind just reading the next few sentences in your paper?—"I therefore desire to say that we look upon this question of the localisation of the administration of the law in divorce and matri-causes in the Principality as one urgently needing the attention of Government. Under the present centralised system the people do not, in our opinion, possess reasonable facilities for obtaining the relief to which they are entitled under the Act of 1857. We have no reason to believe that the percentage of persons living in Wales who desire to obtain relief under that Act is larger than that of persons similarly desirous of relief living in other areas of the United Kingdom of equal population, but the mere number of possible petitioners is, we submit, immaterial. We urge that so far as is practicable persons residing in all parts of the Kingdom shall have equal facilities for judicial redress of grievances and enforcement of rights. Further, we are of opinion that for judicial purposes Wales should be regarded as a self-contained area on racial, linguistic and historical grounds, though in the practical application of this principle we do not desire to advance proposals of an extravagant character involving any undue financial burden on the Treasury. I may mention here that the history of the Principality as to the administration of justice is special. I will not advert to the very early arrangements, as you would probably think them quite irrelevant. The existing arrangements only date from the last century. Before the 27th Henry VIII., c. 26, the shire system had been only partially applied in the Dominion or Principality of Wales. By that Act the present twelve counties and Monmouthshire were constituted or reconstituted—there had been some old counties before that—and by the 34th and 35th Henry VIII., cap. 26—commonly called The Act of Union—the county of Monmouth was added to England for judicial purposes and new courts of unlimited jurisdiction called 'The King's Great Sessions in Wales' were created and Chanceries established at Chester (for Flintshire), Carnarvon, Denbigh, Brecon, and Carmarthen. These courts continued to exist until 1830, when they were abolished and the jurisdiction of the English Superior Courts extended to Wales by the II. Geo. IV. & I Will. IV. c. 70. The immediate result was to inflict great hardships on Welsh suitors. To recover a debt of 5*l.* a man living, *e.g.*, at Aberystwyth had to get process issued in London about 240 miles away, and might have to wait five or six months before the suit if contested could be tried, and the estate of an Anglesey farmer no more than 200*l.* or 300*l.* in gross value might have to be administered at Lincolns Inn. This state of things was partially remedied by the County Courts Act, 1846; and by the gradual extension of county court jurisdiction (especially the conferring of equitable jurisdiction on all county courts in regard to estates not exceeding 500*l.* in value, and of Admiralty jurisdiction up to 300*l.* on some of those courts), grievances special to Wales in regard to all ordinary actions have been removed. We are (broadly speaking) satisfied with the administration of justice in the Welsh County Courts, especially since it has become the rule only to appoint judges with an adequate knowledge of the Welsh language for the courts in districts where the population is largely Welsh-speaking. We believe that no good reason exists for not extending divorce and matrimonial jurisdiction to these courts, or for putting Welsh petitioners to the inconvenience and added expense involved in having to bring and to try their actions in London. The expense even of divorce proceedings which are undefended prevents persons residing in these distant counties from obtaining relief to which they are by law entitled. In making these observations I have been thinking rather of persons of the middle class (such as tradesmen, commercial travellers, clerks, shops assistants and the like), than of those who are usually referred to as the 'working classes,' under which are included those who are paid for manual labour by weekly or fortnightly wages (such as artisans in various trades, mines, and agricultural labourers). But experience of the working of the Summary Jurisdiction (Married Women's) Act, 1895, in Glamorganshire and Monmouthshire, which are large and important industrial area and comprise probably more than half of the population of Wales and Monmouthshire, makes one raise the question whether greater facility for obtaining divorce is not desirable in the interests of persons belonging to these classes. There can, in my opinion, be no doubt that the powers of this Act are necessary for the protection of the married women to whom it is intended to apply. I have no reason to think that the petty sessional courts in Wales exercise their powers either indiscreetly or inefficiently, and in nearly all cases the operation of the Act is of some material benefit to the applicant. But experience shows that in a good many cases ill effects (such as concubinage, prostitution, birth of illegitimate children) follow, and this raises the question whether in some of the cases dealt with (necessarily from the poverty of the applicant) under this Act the true remedy ought not to be divorce instead of a separation order. It is not suggested that the petty sessions should have divorce jurisdiction, but I suggest that it is worthy of consideration, whether in cases in which the justices think there is ground for divorce they might not have the power to remit the case to a court having full divorce and matrimonial jurisdiction. I desire to say that in making that suggestion I am doing so on my own responsibility. Except in regard to that, I believe that all my foregoing observations would be concurred in by my colleagues who joined in the resolution on July 26th. It will be noticed that the resolution contains the words 'or other suitable provision, &c.' They were inserted to indicate that if the proposed extension of divorce jurisdiction to county courts should be deemed undesirable or difficult for any reason, we think some other way of meeting Welsh requirements in the matter ought to be adopted—*e.g.*, the conferring on the judges of assize of jurisdiction to deal with divorce and matrimonial cases at the assizes."

43,151. That ends practically what you put before us as the result of the meeting?—Yes.

43,152. Is there anything you individually wish to add?—I am very much in the hands of the Commission about that. I understand that the Commission has received some historical evidence from Sir Frederick Pollock, amongst others.

43,153. If there is any point you think worthy of attention I should like to have it, and I am sure the Commission would?—Following on Sir Frederick Pollock's contributions to the history of the institution of marriage, I should like to say that in the western part of the country there is a special kind of history, if you think it sufficiently material.

43,154. I think probably it would be very interesting?—I have made some notes on the point. In dealing with suggestions for legislation about an institution like marriage, it seems to me that the history of the legal rules and customs affecting it should be taken into consideration, and I understand the Commission has taken some historical evidence. This is very necessary as to marriage, because I notice that the exponents of the views of some religious organisations use language which seems to imply that the opinions which they urge as authoritative as to the indissolubility of marriage have been entertained and realised in practice in Christian States for a very much longer time than is in fact

the case. I do not claim to be an expert in regard to the laws and usages of the Teutonic races, but I made some years ago a study of the ancient laws and customs in use in Wales, or a large part of it, down to the time of the Edwardian Conquest of North Wales. It should be observed that Christianity had a footing in that part of the country before the island ceased to be administered as a Roman province, and in regard to the 5th and 6th centuries there is ample evidence that a Christian Church, sometimes called the Celtic Church or the British Church, flourished. This Church, after a long struggle, became merged in or indistinguishable from the Latin Church, or the English branch of the Roman Church. The laws to which I wish to call your attention were in operation for a very long time side by side with a very complete church organisation. The Welsh laws were collected first by Howel Dda in the 10th century, and are known as the "Cyfreithiau Howel Dda," but the manuscripts handed down to us are later than his time and contain emendations and additions, but in regard to the marriage law there seems to have been little change. Looking at these laws, it is noticeable that no religious ceremony is prescribed as essential to the validity of marriage; there is nothing about the sanction of the church or requiring the presence of the priest at any ceremony. Marriage under this law was a verbal contract between the kindred or father of the bride and the bride herself of the one part and the bridegroom of the other part, entered into in the presence of witnesses. In general when the bride was young and in tutelage of her kin it was a formal delivery of the woman by her kindred, together with her gwaddol and agweddi.

43,155. What are those?—Those are technical terms. The gwaddol appears to have been equivalent to the dowry used in the sense of the French dot, that is to say, it was the wife's or the wife's people's share of the goods and chattels with which the new family started.

43,156. What was the "agweddi"?—The agweddi appears to have been the pecuniary gift or present from the kindred or father of the bride to the bridegroom. The present from the bridegroom to the bride was called a cowyll, and that was equivalent to the "morgengabe" of the German or Teutonic law, and regularly mutual suretyships or warranties were exchanged between the parties. As to divorce, I will just read a passage in a work in which I embody the result of my studies, and which is more important than anything I might say, because it received the endorsement of of Sir John Rhys, the Principal of Jesus College, who is a great authority.

43,157. What is the name of the book?—"The Welsh People," published in 1900. I am reading the passage about divorce at page 212. "Practically either "husband or wife might separate whenever one or "both chose. There seems to have been no legal "method of bringing the parties again together; but "the time and circumstances of the separation entailed "different consequences in regard to the division of "the household goods. Separation of husband and "wife might take place by agreement or by the act of "one party without lawful cause." That is a statement of fact, of course. "In regard to separation by agree-"ment, the period of seven years less three days was "crucial. If the separation was voluntary on both sides "and took place before the wife had attained 'three "'nights of the seventh year,' the wife was only "entitled to take away from the house her agweddi "(seemingly including her gwaddol, her argyvreu "(paraphernalia), and her cowyll). If they cohabited "till after there were three nights wanting of the "seventh current year, and afterwards separated by "agreement, everything belonging to them was divided "into two portions. The laws set out minutely the "things that were to go to the wife and to the husband "respectively, and as to the things which the law did "not specifically allot, the wife had the right to divide "them, and the husband chose which portion he would "take. Of the children two shares went to the father "and one to the mother—the eldest and the youngest "to the former and the middlemost to the mother. "The debts were payable in equal shares, and the "household goods that were to go to the wife and "husband respectively are enumerated with particu-"larity. If a wife left her husband before the seventh "year without good cause, she lost all her property "except her cowyll"—that was the gift of her husband —"and her right to any fine due from the husband for "having committed adultery. The good causes for "which she might repudiate her husband without any "loss of property were, his being affected with leprosy, "his having fetid breath, or his impotence. On the "other hand, if a wife were 'guilty of an odious deed "along with another man, whether by kiss, *aut coitu* "*aut palpando*,' the husband could repudiate her, and "she forfeited all her property rights. Many other "rules as to the relations of the sexes are given which "we cannot stop to explain. The separation of husband "and wife under these rules does not seem at once to "have operated as a complete divorce, and it seems "that it was only on the subsequent marriage to "another person of one of the parties that the "relationship was finally determined."

43,158. At any rate that recognised in some form or another, no matter how worked out, that there was a divorce between them?—Certainly, and that side by side with a system under which the Church rites are fully recognised. The laws draw a distinction between the clergy and the laity, according great privileges and immunity to the clergy. It draws a distinction between Church land and other land, and in regard to Church land it gives the usual immunities which are commonly found in codes applying to other parts.

43,159. At what date do you make out that Common Law, if I may call it such, existed?—I should say it existed in North Wales in fairly full operation in regard to all private law up to 1282, when Edward I. conquered North Wales. At that time the rest of Wales, apart from what was called Gwynedd or North Wales, had passed into the hands of the Normans or English Barons. The name that is commonly given to the Lordships existing in the western part of the Island is the name of Lordship Marcher. Those lords marchers had much larger rights than the lords of an ordinary English manor or honour. They had complete jurisdiction as to life and limb in regard to criminal matters, and such civil jurisdiction as existed. In practice, as far as I can gather the condition of things in these Norman marcher lordships, the old Common Law was allowed to apply as between the humbler tenants. No process was issued in those days from the King's Courts at Westminster or elsewhere in Wales except where the Church was concerned, and where there were disputes between the lords marchers themselves. In regard to North Wales, the independence of the Welsh princes remained a much longer time than in other parts, and there I fancy—that is our inference from the documents we can come across—that the Common Law applied till the time of Edward. Then by the Statute of Rhuddlan the English law applied, except so far as the old law was allowed to continue by the terms of the Statute.

43,160. At any rate, in North Wales this law of divorce prevailed till the time of Edward I.?—I think so, but it is a matter of historical inference.

43,161. It did not continue for so long a period in other parts of Wales?—No. I think the Church was more powerful where the Norman rule had become fixed and was carried out effectively. There is not the least doubt that the clergy and the Welsh princes were often in conflict about these things. Our last prince, Prince Llewelyn, when he married Eleanor of Montfort, was married in the Cathedral Church at Worcester, and not according to the Welsh custom, but probably he had to submit to that. I need hardly point out, in a state of society in which the different classes were very marked, that the existence of such a Common Law as I have been describing is quite likely among the tenants themselves.

43,162. Will you please continue with your paper?—I do not propose to give evidence at any great length, but if the Commission would like me to do so, I will express my opinion upon one or two of the points to which you have been giving attention. I should like to add some remarks in reference to some suggested amendments of the law of a practical character.

Marriage is an institution so fundamental in the structure of civil society and touches the life of the individual at so many points, that when questions are raised as to any alterations of the positive laws of the State on which it depends, one is soon led into a very wide field of controversy. Since people approach the solution of the problems which may be raised with very different presuppositions, or postulates, discussion often becomes impossible or fruitless, and one is soon forced to say, *contra negantem principia non est disputandum.* It is necessary, therefore, to say that I make my remarks from the standpoint of the practical legislator, and ask myself the question whether any particular amendment of the law is at this time, having regard to the condition of the people, just and expedient in the interests of the community, or whether it is likely or not likely to increase the prosperity and happiness of the people of England and Wales as a whole. I postulate more particularly two things: (1) that it is desirable that any amendments of the law should be applicable to all persons without distinction of class or financial position: (2) that the dogmas or ethical rules of any particular religious body ought not to have any over-ruling or conclusive authority. There is another set of considerations which, when I approach the matter from this standpoint, ought, in my judgment, to be taken into account in deciding what, if any, amendments should be made in the law of divorce. I refer to the changes made by Statutes and the course of judicial decisions in the legal relationship of husband and wife. The doctrine of the merger of the wife's personality in that of the husband has in practice disappeared. The Married Woman's Property Acts of 1870, 1874 and 1882 have profoundly altered the status of the married woman. Since the Clitheroe case was decided it may be taken as settled law that a husband has no right to chastise his wife, and that he has no such dominion over her as to entitle him to imprison her in his house or force her to remain with him.

43,163. That is the case commonly referred to as Jacksons?—Yes. In fact, in Mr. Justice Montague Lush's words, I may say that married women have been emancipated and set free from the restraints imposed upon them by the Common Law and placed in a position which they were long ago entitled to occupy—a position of independence and equality with their husbands. I ought to say, as county court judge, especially in view of the Welsh laws, I was interested on one occasion in having to take quite a long time in settling a dispute between a husband and wife who had voluntarily agreed to separate, and the question was to whom different articles of furniture and so on in the house belonged. Jurisdiction is given to the county court under recent Acts to settle that kind of question, so that quite apart from the special jurisdiction of the Probate, Divorce and Admiralty Division, county courts may at any moment be deciding very difficult and delicate questions in the case of a voluntary separation between husband and wife which will have the practical effect of divorce, except that the parties are not free to marry again. I think that the law ought to be so amended as to place the sexes upon an equality as regards the grounds upon which divorce may be decreed. This opinion is not advanced by me as a deduction from any abstract theory of the legal equality of the sexes. My view is that having regard to the accentuation of the contractual aspect of marriage by recent legislation to which I have referred, there is no valid reason why the ordinary principles of the law of contract should not be applied equally as between man and wife. No one can deny that the conjugal fidelity of both parties is of the essence of the contract. It is a principle of law that if one party to an executory contract commits a breach of the contract or fails to fulfil his side of the agreement in some particular that is essential, the other party may rescind it. That principle is applied in the husband's favour in the case of the wife's adultery, and I see no justification for not applying it to the case of the husband. It is not, be it observed, the question whether the marriage is to be made void *ipso facto* if the husband is guilty of adultery; the question is, shall the wife have the right to a divorce on proof of her husband's adultery; whether she ought or ought not to exercise the right is a matter for her discretion, and the propriety or wisdom of her exercise of the right must depend on the particular circumstances of the case. Arguments tending to show that adultery is less blameworthy in the case of a husband than a wife seem to me irrelevant. The argument from biological evidence is also beside the mark. Sir James Crichton-Browne said, "Not only were the consequences of "conjugal infidelity different in the two sexes, but "the two sexes were not and could not be on an "equality in their sexual relations," and quoted Professor Geddes as having said, What was decided among the prehistoric protozoa cannot be annulled by Act of Parliament. I do not admit that vertebrate mammals are bound by the decision of any assembly of prehistoric protozoa. He is also quoted as having said, "The male animal is subjected to the stronger temptation." This distinction does not seem to be sufficient ground for creating an inequality of rights as between two freely contracting persons. If adultery were a criminal offence and the question were one of punishment, this distinction, if well-founded, might have to be taken into account in considering the sentence in any particular case. With regard to suggestions for extending the grounds or causes for which a decree for divorce may be granted, I think legislation should proceed with caution. While I recognise that the laws relating to marriage, like those relating to all the other institutions which go to form a civil society, ought to be modified from time to time in order to attain the ends for which the State exists and is maintained, great care should be taken in regard to serious alterations of the laws affecting the family relationships and its incidents. I regard changes in what I may call private law as more important in their effect on the happiness of the lives of individual citizens than changes in constitutional or public law. Approaching the matter from this standpoint, I am of opinion that it would be well to extend the grounds of divorce to cases in which one of the parties has been found or certified to be of unsound mind, and in which the insanity appears to be incurable or permanent, and cases in which one of the parties has been sentenced to penal servitude for life or a long period of years. As to the ground of insanity, it should be noted that a person of unsound mind loses his legal status and is placed in a special judicial category. This distinguishes his case from that of a person afflicted with bodily ailments. As to conviction and long sentence cases, it should be borne in mind that at Common Law a woman whose husband was convicted of felony recovered her freedom or personality, for the felon became *civiliter mortuus.* In both these cases it is not a question of the marriage being *ipso facto* void. It is purely a question of the right of the innocent suffering party, and in regard to them I should give a right to petition for divorce, but should vest in the court a judicial discretion as to the granting of the relief asked for. I have no other practical amendments.

43,164. I do not know whether you have thought about it, but you have not dealt with two points as regards grounds for divorce which have been very much put before us: at least one has been put before us very largely, the one adopted in Scotland of malicious desertion lasting for four years. Have you considered that at all?—I did consider it, but I am rather affected in expressing this opinion by my own experience, that is to say, by cases that have come under my own notice, both in regard to incurable insanity and in regard to conviction followed by a long sentence. Cases have come under my notice in which I think it would be of immense benefit if the innocent party could have obtained a divorce. I do not know, either in my professional capacity or in my private observation, of any case in which desertion alone ought to form a ground for petitioning for divorce, but I do know this, that many of those who are interested in government,—I refer more particularly to the part of the country I am acquainted with, Glamorganshire and Monmouthshire—do think that the operation of the Act of 1895 is giving rise to the question whether, when the separa-

tion order has been in force, say, three or four years, the wife might not have the right to come and ask for a divorce. While I am not prepared to say that simple desertion without more on the part of either party ought to be a ground for divorce, I think if a wife has obtained a separation order under the Act of 1895 and the matter is not arranged with her husband, that after three or four years she might well have the right to ask the tribunal to relieve her from the marriage relationship.

43,165. The other subject which has been put before us is cases of great brutality where it is no longer safe for a woman to live with her husband?—For myself, I should hesitate to give the right to petition for a divorce simply on the ground of one crime of brutal assault, or anything of that kind. In some cases the parties come together afterwards.

43,166. I was not thinking so much of one brutal assault, but where the tribunal, if the case arose, was satisfied that the treatment had been such and lasting for so long that there was no reasonable probability of safe living?—I do not think in that case I should give an absolute right to the wife to ask for a divorce, but I should certainly vote for amendment of the law which would give her the right to ask for it, provided the court should have a discretion whether it is wise to exercise it in the particular case.

43,167. Does that finish the suggestions you have to offer?—That is all I think it is material to say. I am carefully guarding myself from simply airing speculative opinions. I have endeavoured to give opinions founded on my own experience in reference to the qualifications I have the honour to lay before you.

43,168. You speak from personal experience with regard to the lunacy and criminal cases?—Yes, one or two: I should not like to mention names.

43,169. Upon the others you speak rather more theoretically?—With regard to long sentences.

43,170. No, I include that?—Yes, I think I have cases here I could point to.

43,171. The other cases have not come so much before you?—No. I practised at Quarter Sessions for nearly 10 years as a junior barrister, and I have been occasionally in the criminal courts since on the part of the Crown, and I am a recorder. In fact, only at my last sessions there was a case, or rather two cases, that came before me in which I felt that my colleague, the stipendiary magistrate for Merthyr Tydfil, ought to have the right of giving a divorce.

43,172. What class of case was that?—It was the class of case in which a mother and her daughter were brought up before me as a recorder as incorrigible rogues. In that class of case Quarter Sessions only have the power to sentence. The justices of petty sessions, after a large number of convictions for small police offences chiefly, when people have come under statute first into the class of rogue and vagabond, and after that into the class of incorrigible rogue, have the power to send the case to Quarter Sessions to be dealt with, so that a more exemplary sentence may be given and more emphasis given to the conduct of the defendant. I was very much struck with a case that came before me under those sections for sentences as incorrigible rogues of a mother and a daughter. The mother was about 42, I think, and the daughter was a comparatively young girl just about 21. Three or four years ago, I cannot recollect the exact date of the separation order, a separation order had been made by justices, and the mother had taken to evil courses, and there was a tremendously long list of convictions against the mother and against the daughter, convictions for drunkenness, improper solicitation under the prostitute byelaws, conviction for general disorderly conduct—quite a long string: and then followed the more serious cases under the rogue and vagabond clauses, and finally under the incurable rogue clause. I examined both prisoners most carefully, and I really could not help feeling very considerable sympathy for the woman, but still more sympathy for the daughter, because she had been dragged into these evil ways simply and solely because of the surroundings of her life. The mother was the wife of a working man, I believe he was working 20 or 30 miles away. He appears not to have kept up any payments, and it is difficult to say what a woman of her age was to do.

43,173. On what ground had she got the separation at the beginning?—Without refreshing my memory I could not give you the exact details, but it was one of that class of cases in which the husband was drunken and violent.

43,174. Do you mean you are led to the view, in a case like that, that all this happens because a woman does not get a divorce?—No, but when the separation order was made, this man, who is a collier, went away to some other part, probably there was desertion as well, and he was away working in some distant pit. But when that took place, the woman, who was 38, had to ask herself: "What could I do"? In a place like Merthyr Tydfil it is not easy for a woman to get work. If the woman could have obtained a divorce, and she had met some other man in some respectable work, who was willing to marry her, she might have married. As it is, there she was about Merthyr practically from the time the order was made, as far as I could make out from what the police told me, one of a considerable number of women who live about the streets. They may get a week's work every now and then.

43,175. (*Sir George White.*) Does that not rather lead you to the idea that cases of wilful desertion of that kind should also be included in causes for divorce? According to the evidence you give us, this woman was driven into immoral and other bad courses because her husband was separated from her and paid nothing for her maintenance and so on?—Yes.

43,176. You feel that had she been able to form a fresh marriage she might have been saved?—I think it is quite possible that in that case she might have been able to marry again. I should like, in answer to your question, to say that I am endeavouring to frame a rule for all classes of persons. The number of the working classes who are in such circumstances as were disclosed in the case to which I have referred is comparatively small, I am thankful to say. If you were to say that the wife of a working man should obtain a divorce simply because of desertion, say for three, four or five years, simply on that ground, you are getting very near to dissolution of marriage by consent, because as a matter of fact the better class of workmen in Glamorganshire often have to go abroad and leave the wife and young children. We have known of cases of going to Russia, where some new industry is developing, and they may be away three or four years.

43,177. (*Chairman.*) That would not be malicious desertion?—No. It is always open to the wife to write and say, "Come back," and the husband writes and says: "I cannot; I am getting 4*l.* a week, and I "will send you half my wages."

43,178. (*Sir George White.*) Would you not give a discretionary power to the judge to determine what is malicious desertion where there is no possible likelihood of the parties coming together again?—I rather think, in answer to my Lord, I said in cases to which the Married Women's Act of 1895, the Separation Order Act, applied, after a time if the parties had not come together, I think divorce might be given. In the case you are putting I should say if the wife obtained from the justices a separation order and the parties never came together for some years, I should not be disinclined to allow a discretionary power to the tribunal to give a divorce. I rather meant to cover that by what I said to the Chairman.

(*Chairman.*) I think you did.

43,179. (*Sir George White.*) Do Welshmen have to come now to the London High Court for divorce?—Certainly. I asked the district registrar at Swansea, where there is a district registry of the High Court, as it is called, if he had been asked to seal a writ for divorce. He said: "No such application has been "made, but though I should probably seal the writ, "as a matter of fact, the interlocutory proceedings "would, according to my view of the rules, have to "take place in London."

43,180. (*Chairman.*) It could not be commenced by sealing a writ?—I am not an expert in the matter, and

I must not do an injustice to him. He did not say such a writ could be issued. His evidence was negative; he said nobody had brought a writ.

43,181. (*Sir George White.*) On those grounds the party you represent conclude that there are no reasonable facilities for the poorer classes obtaining relief under our Act?—Yes. I have been told that it costs something like 50*l.* or 60*l.* in an undefended case for a person in Cardiff or Swansea to obtain a divorce. I have never verified that, but I could if the Commission would like it.

43,182. I think we may judge, from the distance of Wales from London, that that would be so. Would you have any check whatever in regard to giving county courts jurisdiction in these cases? Would you give every county court in Wales jurisdiction?—No, that would not be convenient for the working of the Courts. The limitation does not mean any reflection on the county court judges. I think from a practical point of view I would suggest that wherever there is a district registry, there should be also a county court jurisdiction in divorce, if that should be the method adopted. They are the large courts like Swansea, Cardiff and Camarthen. In taking the principal South Wales Courts, there they have what is called full county court jurisdiction; each of those has Admiralty, Bankruptcy, Liquidation of Companies, and so on.

43,183. Do you know how many there would be of those courts in Wales?—There is, I think, at least one in every county, except that the Admiralty jurisdiction exists only in maritime counties.

43,184. Are they geographically well distributed for the people to get to them?—Yes. That would be as to trial. The question of the concentration of county court business to one court has been raised a good many times. When I was a county court judge I remember in one case the jurisdiction under the Agricultural Holdings Act arose technically in quite a small country court, and the parties had valuers and solicitors from a distance, and everybody asked me to try it at Cheltenham. That kind of thing is continually taking place, I believe, but Judge Tindal Atkinson will know all that.

43,185. I was not quite clear whether you condemned or approved the present powers of summary jurisdiction for separation. You suggested it produced immorality. Are you for the continuance of that power?—Most assuredly. It is necessary for the protection of the women to whom the Act was intended to apply.

43,186. You suggest in certain cases the justices should have power to remit these cases to the Divorce Court which might be established in the district?—Quite.

43,187. (*Sir William Anson.*) Is your view that long imprisonment should be a ground of divorce based on the observation of individual cases?—Yes.

48,188. Have you known cases of long imprisonment?—Yes. I am not prepared to give the exact wording of a proposed amendment of the Statute, but I can tell you the case I have in mind. Where a man is sentenced to seven years' penal servitude he is generally a thoroughly bad fellow, and when you sit as judge, you know as well as I do, and look over the record of his convictions, you find a man who gets that sentence is a pretty bad fellow. If his wife wants—I daresay some would be misguided enough not to want it—but if a woman says, "I want a divorce," I think she should get it. I do not limit myself to seven years.

43,189. We have had evidence to the effect that the prospect of a home to return to has a useful effect on his character and gives him a better chance when he comes out?—I think that would be so in the case of some men, like a clerk who on one occasion has been guilty of the crime of embezzlement yielding to temptation and gets a long sentence. Five years is a very common sentence in that class of case. I think in his case the prospect of getting back to his home might tend towards the reforming of his character, but that is quite an exceptional case. One does one's best to talk to other recorders and to judges when one gets the opportunity, about the principle on which they give sentences, and there has been a general tendency lately not to give these very severe sentences except in cases where the man is practically an habitual criminal.

43,190. Might it not be an embarrassment to the judge in pronouncing sentence to feel if it was of a certain duration that it carried the liability to divorce with it, that he was doing two things and not one?—I do not think that it would be an embarrassment. I think that is too strong a term. I think it is something which the judge would take into account in apportioning his sentence. In regard to young people now, one thinks in sentencing them how best to reform their lives a great deal, and even in some cases it is expedient to give, strange as it may appear, a rather long sentence because it gives a greater chance for the good influences that are brought to bear upon prisoners by modern discipline. Supposing I say yes in answer to your question, it is an additional embarrassment to a judge in sentencing, still I do not think it is a consideration which ought to weigh as against the question of the wife who is bitterly wronged under the circumstances.

43,191. Have you come across cases of women who desire a divorce from their husbands? We have had evidence of another sort, that they do not?—I appeared for the petitioner in two or three cases long ago, and in those cases the wives certainly desired a divorce. If you ask me my experience in Society——

43,192. No, I was asking whether you had heard of cases of women who were subject to that hardship who did not desire it?—I do not think so. The woman is never heard by the court, or practically never heard.

43,193. (*Mr. Burt.*) You would give jurisdiction to the county courts in divorce cases?—Yes.

43,194. Mainly, I understand, on the ground of making the court easier of access and cheaper to the poor?—Yes.

43,195. I think you said, in answer to Sir George White, that you would not give power to all the county courts in Wales. You would be in favour of making a selection?—Yes. There is ambiguity there, if I may point it out. Each county court is a distinct court which has jurisdiction over a definite area called a district. These county courts are grouped together and placed under one judge. In my suggestion that only some of the courts should have jurisdiction there is no kind of reflection on the judge of the court, because it is the same judge who will be trying the case at the court which has county court jurisdiction, and who goes to the other courts on his circuit. The point is simply one of convenience. Nor is it simply a question of trial. You have to consider the issue of the process and the interlocutory proceedings incident to the exercise of the jurisdiction. In my view this is a matter of machinery pure and simple, I may observe. It is more convenient that these less ordinary cases should be dealt with in one place in each county, or in two counties, than at the small courts to which a judge goes once only in two months and has only a limited number of hours at his disposal, and may have a number of small cases to deal with. Then, again, you have the question of the Bar and solicitors, which is not an unimportant matter. In order to get a barrister to go to a remote county court naturally you have to pay a higher honorarium, and, again, about the attendance of a competent solicitor. Where there is a large county court business, where the court has the full county court jurisdiction, like Swansea and Cardiff, you have your local Bar. We have a large local Bar at Cardiff now, and several gentlemen practise at Swansea also. Others practise at Chester.

43,196. There would not be any invidious distinction between one judge and another?—Not in the least.

43,197. We have had suggestions of a similar kind with regard to England. I suppose the same principle would apply?—In my individual opinion, yes. When I was talking about Wales I was doing it as the delegate of my honourable colleagues.

43,198. You had some experience as a county court judge?—Yes, for seven years.

43,199. (*Mrs. Tennant.*) Would it be fair to assume that the wife of the hardened criminal was probably

aware of her husband's mode of life before she married him?—I should not assume anything. If I understand the question aright, I should not assume any such thing.

43,200. Is it not probable he has begun his career of crime early? I am excluding the case of the clerk who has committed what we may call an accidental crime; but take the man who gets seven years' sentence, has he not probably begun his career early in life?—I think that is a very common case. I was very much impressed, as Chairman of the Metropolitan Police Commission, with the existence of a very undesirable class of young men, more particularly boys, who had had all the advantages of the public elementary schools, and yet seemed to get off the rails and commence a bad career at a very early point, young men from 17, 18, 19, or 20 years of age. They form gangs among themselves. We had a very large body of evidence which I will not trouble the Commission with, as to the existence of gangs of hooligans, as they are commonly called, and these young men commit, as you are suggesting, petty crimes from a very early time. They often marry, and sometimes the girls they marry do not know anything about it.

43,201. Do you think it likely the girl may marry knowing nothing of the mode of life of her future husband?—She may, but I should think that in most cases she pretty well knows whether the young man is an honest workman or not—I should think so.

43,202. If she pretty well knows, is not his imprisonment almost one of those possibilities she may bear in mind when she promises to take him for better or worse?—Certainly. I frankly admit that, but the mere fact that a girl at 19 looks upon that as a possibility hardly justifies refusing her what is fair redress to her when she is 28 or 29.

43,203. It does modify your opinion of the hardship to her?—The case you are putting is really the case of a woman who does not care whether the man she marries is or is not a criminal. The case you put seems to me to be that of a girl who is willing to marry a criminal and aid and abet him in his criminal career.

43,204. At any rate, who has a low standard of that form of morality?—I should say that unfortunately there is a class of young women as well as a class of young men whose standard of morality is extremely low.

43,205. You spoke of the bitter hardship, which one can understand, to the girl who is married and believes her husband to be an honest workman and finds him to be a criminal. I wanted to know whether you held the same opinion about a girl who married with a full knowledge of the man's mode of life?—As far as the principle of right is concerned, yes, but I think you did not observe in that class of case I did not suggest that the wife should have an absolute right to divorce, but that it should be left to the discretion of the court. If it were brought to the knowledge of the court that the wife, even before marriage, knew the character of her husband, I should think the court would say:—"This "is not a case in which we propose to give you "relief."

43,206 I had not realised that. Do you distinguish between the cases in which the women had known beforehand, or would you include all cases of prolonged imprisonment?—In regard to the new grounds of divorce I suggested both in regard to incurable insanity and convictions followed by long sentences, that the right of the petitioner should not be an absolute right, but a right to petition the court for the exercise of divorce power in the discretion of the court.

43,207. You do not include in that list the cases of malicious desertion even though for four or five years?—I explained, in answer to Sir George White, that I do not think that mere desertion ought to be a ground. I think that case is covered adequately by providing that where a separation order has been made under the Act of 1895, and the parties have not for, say, four years, come together, there might be divorce in that case.

43,208. Where there has been no separation order, what do you say?—I think I must answer the question as to simple desertion in the same way I answered Sir George White. I believe that would be practically tantamount to giving a right to dissolve the marriage by consent, in practice.

43,209. We have had evidence of cases of desertion that sounded very hard. Would you refuse relief to them and give it in the case I have been putting before you of the girl who knows what she is doing, and may well be said to take the man for better or worse, realising the worse as a probability?—I was careful to guard myself by reference to postulates or presuppositions. The words "for better or worse" do not affect me with regard to this matter. That is a part of the ceremony.

43,210. (*Judge Tindal Atkinson.*) You fix the district registry as a centre for divorce. I suppose that is only a matter of detail?—A mere matter of detail.

43,211. The course adopted under the Extended Jurisdiction Act might be applied of the Lord Chancellor fixing centres?—Whatever convenience dictates ought to be done in reference to a mere matter of machinery of that kind.

43,212. Do you see any advantages in the county court judge having jurisdiction with regard to the accessibility for poor people over the assizes?—They are held more frequently, for one thing, and, again, as a matter of fact, the business in the county court is done with greater punctuality than the business at the assizes, that is to say, taking a typical county court action, by the process a man is summoned to appear at a given hour and place. He goes there, and, in the great majority of cases, in the course of the day the cause is determined. Again, if it is a very big case, a remitted action, and you are going to have counsel, the registrar is informed and he communicates with the judge, and there is an arrangement made that the case will be taken at 12 o'clock, if a jury case, on such and such a day. The parties come at 12 o'clock, and the jury is summoned, and the case is decided at the hour at which it is arranged. At the assizes, where you sometimes have a long list, as we have in Glamorganshire, sometimes 40 and sometimes as many as 50 causes, although that is rather rare, you may be kept several days waiting for the case to come on. That ill at the Assizes has been remedied to a large extent by new arrangements. There is a Cause List at Cardiff and Swansea; we have a Cause List put up every day.

43,213. With regard to criminal trials at Assizes, it is impossible to know when they will come to an end?—In criminal cases, barring exceptional criminal matters, you appear before the Grand Jury, and after the first or second day the cases are put in lists, as the civil cases are.

43,214. The parties never know when they will come to an end. The parties in divorce cases would not know the exact day the cases would be taken?—No; they would be entered in order in the Cause List.

43,215. Having had experience as a county court judge, you know in the county court you can fix your days for the cases so as to make certain they will be reached?—Certainly. On both the circuits of which I was judge, as to the ordinary small courts there was no occasion, except very rarely, to make special arrangements; but with regard to the bigger places, where there were remitted actions and bankruptcy jurisdiction, the cases out of the ordinary course were usually fixed for a special day and counsel attended.

43,216. With reference to the registrar for the purpose of doing interlocutory work, do you think that there is any difference between the registrar in one court or another? Are they all practically the same competent kind of men?—It would be a bold thing to say that registrars of all the county courts are equally competent. While in my experience the registrars of the county court are thoroughly competent men, yet there can be no doubt I think that the registrars in the bigger courts who devote their whole time to their work, who are in many cases bound not to take private

practice, do get a facility in dealing with summonses, and so on, from experience that other registrars do not possess.

43,217. There are many registrars in a circuit equally competent in a particular district registry who are combined high court and county court registrars?—Yes, they generally are.

(*Chairman.*) We thank you very much for your evidence and the great thought you have bestowed upon it.

Dr. Willem Roosegaarde Bisschop called and examined.

43,218. (*Chairman.*) You are a barrister of Lincoln's Inn?—Yes.

43,219, You are also a LL.D. Of what University?—Leiden.

43,220. You are Doctor of Laws at that University, and you were admitted as a member of the Amsterdam Bar in 1896, and you have remained a member since that time?—Yes.

43,221. You have practised as an advocate in the Dutch Courts?—I have.

43,222. And you still could do so?—I could do so, but I am not practising.

43,223. You were called to the English Bar in 1901, and you are now practising as an English barrister in England?—Yes.

43,224. I take it that you are familiar with the Dutch laws as the result of your studies and your experience?—Yes.

43,225. Would you continue your proof?—"My attention has been drawn towards the fear expressed by a number of persons that, if the granting of divorce were no longer centred in one court but decrees *nisi* could be pronounced by different courts all over the country, this would lead to the adoption of as many standards for divorce decree as there would be courts pronouncing them. On that point it might interest the Commission to know something about the practice of divorce courts and the dissolution of marriages in the kingdom of the Netherlands, where 23 local courts have the right to pronounce such decrees. The High Court of the Netherlands consists of 23 local courts of first instance, which have, each of them, exclusive jurisdiction in their districts. Each of them has the full powers of a high court, that is to say, each of them can hear all suits from claims of 50 guilders (about 4*l.*) upwards. Each of them has, in fact, the full powers of the English High Court of Justice. From them appeal lies, in all causes, to a court of appeal. There are five courts of appeal. In matters of divorce the petitioner has to bring his or her action before the court of the district where the husband is domiciled. This prevents the petitioner from choosing any particular court. The fact that the petitioner cannot choose his or her own court and that there is always a possibility of appeal are two reasons why the standard for divorce decrees in the Netherlands is everywhere pretty well the same. It is impossible to reduce this to figures, nor is it possible to give minute details, but the general standard is considered by the lawyers of Holland as pretty well the same in all courts.

43,226. How many judges sit together to hear a divorce case?—Three judges.

43,227. And no jury?—No. I enclose statistics of the number of divorce proceedings which have been taken in each of the years 1904–9 before each of the 23 courts. I have since then been able to collect better and more ample statistics, but unfortunately not for all the courts. I have not had answers from one of the courts, but I will place those which I have before you directly in order to explain them. I think that the new statistics will give you the results of the different proceedings before the different courts, and especially on a point with which I will deal later on, the difference between *in formâ pauperis* proceedings and ordinary proceedings.

(*The witness handed a table to the Chairman which will be found in Appendix XIX., page* 148.)

43,228. May we substitute that for what you have sent?—I should like to elaborate my statement before I deal with it.

43,229. Will you continue your statement?—From these statistics it will be seen that the dissolutions of marriages in groups C. and D. were proportionally the most numerous, but these groups contain (C.) the districts of the Hague and Rotterdam, and (D.) of Amsterdam. I have divided them into five groups.

43,230. C. and D. have vanished off the new statistics?—Yes.

43,231. The statement does not identify them?—The statement refers to the old statistics.

(*Sir Lewis Dibdin.*) We have not got either the new or the old statement. Would the witness explain what A., B. and C. refer to?

43,232. (*Chairman.*) I think if you come and look at this you will follow it. On the old one you have put the letters A., B., C., and D. If you will give your evidence by marking the new statistics with those letters at once it will be clear?—I have divided these statistics of the 23 courts into five groups, grouping them together as much as possible according to the similar circumstances in which they are situated.

43,233. It shows on the face of it that there are five groups?—I want to explain the different groups.

43,234. The new statistics which you have prepared more fully are divided into five groups?—Yes, the first consists of four courts situated in the southern part of the Netherlands. I have grouped those together because they are entirely situated in the provinces where the Roman Catholic faith is predominant. The result is that the number of divorces there is extremely small. Although all the citizens are under the same civil laws the Church has a greater influence in those provinces and prevents the people suing for divorce, because the Church will not allow them to do so.

43,235. Taking the year 1904, what does "Ord." mean?—I have grouped them in two different groups. "Ord." means ordinary—that means where parties are able to pay the Court fees; and I.F.P. means *in formâ pauperis.*

43,236. (*Sir William Anson.*) What about A., B., C., D., and E. What do they mean?—A. is the first group, B. the second, and C. the third.

43,237. What is the second group?—I am coming to that.

43,238. (*Chairman.*) I think if you follow this, Sir William, you will understand it?—The second group are courts which I might call situated in the different Provinces. They are provincial courts. They would be more of the nature of county courts in England.

43,239. There is a larger number of divorces there?—Yes, about the same as in the last group, the fifth. One is in the northern part of the country and the other in the eastern. Those are more or less county courts. I want to direct your attention to the third and fourth groups which contain the big towns. One is Rotterdam. Unfortunately, I have not been able to obtain statistics for Rotterdam with the division between ordinary and *in formâ pauperis* cases, but you will find Amsterdam there. I do not remember what number it is.

43,240. Amsterdam is number 15?—You will see a great difference between Amsterdam and the Provincial courts. There is the difference between the people living in the country and the people living in the big towns. In the latter there is an immediate rise in the number of divorces.

43,241. There are a very large number of pauper cases?—Yes. From Rotterdam the Registrar informed me that he had no time, owing to the special work which he had to do, to collect all the cases, but he stated that the proportion between the *in formâ pauperis* cases and the ordinary cases was this. If the ordinary cases were 10 to 15 in 100 the *in formâ pauperis* cases were 90 to 85.

43,242. Take 1909. In Amsterdam there were 56 ordinary cases and 230 *in formâ pauperis* cases?—Yes.

43,243. To return to your proof, you proceed to deal with the grounds for the dissolution of marriages in

the Netherlands?—Yes, the grounds are (1) adultery, (2) malicious desertion, (3) imprisonment for four years or more, (4) criminal assaults whereby the life of the assailed is endangered, (5) a lapse of five years after a judicial separation (*separatio a mensâ et thoro*) has been granted between the same parties, without reconciliation having taken place.

43,244. Is adultery the same for both sides?—Yes, all these grounds are the same for both sides. Before I proceed may I give you a little historical explanation as to how these grounds became to be the law of Holland.

43,245. If you please?—Some of these grounds are based upon the Roman Dutch law, which is still the common law of certain British Colonies, and they remain the grounds upon which dissolution of marriage can be obtained in those Colonies. Divorce has always been known in Holland. I will not take you further back than the time when the Roman Catholic Church, as in England, obtained great influence in the various Dutch provinces, which were afterwards combined as the provinces of the Netherlands, and the Church had in fact the whole of the divorce proceedings in hand. In those days, before the Reformation, there was practically no divorce allowed by the courts, although the common law did allow it. It was only then that *separatio a mensâ et thoro* was introduced into and became popular in Holland. With the Reformation divorce proceedings revived, or rather proceedings for the dissolution of marriage revived, on two grounds. The first one was adultery, and the second was malicious desertion, founded, as your Lordship very well knows, on the passage in Scripture in Chapter 1 of the Book of Corinthians.

43,246. On the same grounds as the Scotch did?—On the grounds of the interpretation given by the Calvinists to those particular parts of the Scripture. Those two grounds are grounds which have been recognised by the Roman Dutch law till the present day, and they have remained the law of Holland. In the beginning of the 19th century, after the French occupation of Holland, there was a third ground allowed for the dissolution of marriage. *Separatio a mensâ et thoro* was retained, as it is retained at the present day, but in order to render divorce proceedings easier it was provided in the Civil Code of Holland in 1838 that if *separatio a mensâ et thoro* had been pronounced and remained in existence for five years without reconciliation having taken place, the parties could ask the court to grant them a dissolution of their marriage. *Separatio a mensâ et thoro* may also be asked for by common consent. That also was introduced in the beginning of the 19th century, and is similar to an English deed of separation. The sanction of the court may be asked upon that deed of separation. In that case the deed constitutes a valid *separatio a mensâ et thoro* which also allows parties, after five years without reconciliation, to go to the court and sue for a dissolution of their marriage.

43,247. That comes to divorce by mutual agreement after a five years' interval?—That is practically the case. I wanted specially to point this out to you, because although theoretically it amounts to divorce by mutual agreement, in practice—as you will see from these statistics—it hardly ever takes place.

43,248. You have given in your table a column headed Dissolution of marriage after *separatio a mensâ et thoro*?—The second column is dissolution of marriage after *separatio a mensâ et thoro*, and there is only one case in a year, as you will notice.

43,249. There are very few?—Yes.

43,250. In Amsterdam, with a big population, there are none in 1904, one in 1905, one in 1906, one in 1907, one in 1908, and eight in 1909?—Yes.

43,251. Do you mean there is no social danger in introducing that?—I think so, but I have to qualify my answer, because I have to point out that although the law is so, the jurisdiction since 1883 is somewhat otherwise. In 1883 the Supreme Court of the Netherlands, which takes the place of the Cour de Cassation of France, and is equivalent to the House of Lords here, decided that in undefended divorce proceedings the petitioner would not be obliged to prove his or her case. That decision has been gradually adopted by all 23 courts of first instance in the Netherlands, and at the present moment it is the standing practice that in any divorce proceedings, if the respondent does not appear, the petitioner has not to prove his or her case, and obtains divorce by default. The result is that if husband and wife want a divorce by mutual consent one party has only not to appear and allow judgment to go by default, so that it is questionable whether dissolution of marriage after *separatio a mensâ et thoro* would not be more practised if that had not been the case since 1883.

43,252. The petitioner can allege adultery on the part of the respondent, and that does not require any proof, and therefore they naturally use that instead of waiting five years?—That is so, but if you look at the figures of the ordinary proceedings where the proceedings are not *in formâ pauperis*, even then you will see that the number of divorce proceedings is not extraordinarily great.

43,253. Where it is undefended, does not the petitioner who files a petition require to verify that by affidavit?—The petitioner has not to call witnesses. The facts are not gone into.

43,254. Have they to file an affidavit?—They have to make out a *primâ facie* case.

43,255. That is not quite the same thing?—Affidavits are not known in Dutch proceedings.

43,256. Has the petitioner to be called as a witness?—No, the petitioner is not called.

43,257. How do you make out a *primâ facie* case—by simply launching a petition?—The statement which is made, the petition rather, must have on the face of it the probability of being true.

43,258. Supposing the petition simply says that the respondent has committed adultery with somebody else?—Generally the petition does say that.

43,259. It must, of course, in the case of adultery. If there is no verification of that of any kind do you mean that then the court will pronounce a decree?—Yes, it may do so.

43,260. That shortens the five years very quickly?—Yes.

43,261. Will you return to your proof?—It has been decided by the Supreme Court of the Netherlands that a petitioner, in an undefended action for divorce on account of adultery, is not obliged to prove the adultery. This is only with regard to adultery. "Curiously enough this rule has apparently not led to an increase in the number of divorces, although it might seem to open the door to collusion. The reason is, I think, the possibility to obtain a divorce on the fifth of the above-mentioned grounds. A judicial separation is obtainable on each of the first four grounds enumerated above, and also on the ground of offensive conduct or assault committed by either of the spouses against the other. Either spouse who finds it unbearable to live together with the other, but is unable to institute divorce proceedings on any of the first four grounds above enumerated, may obtain a judicial separation, and after five years (if no reconciliation has taken place in the meantime) a dissolution of the marriage. The principal effect of the decision of the Supreme Court has been to shorten this period. This fact was pointed out, as recently as April 1910, in a resolution passed by the Amsterdam Bar in view of a Bill which has been introduced in the States General to reverse the decision of the Supreme Court and to make it compulsory in undefended suits" for divorce on the ground of adultery, to prove the adultery. I enclose a copy of that resolution.

43,262. You have substantially stated it in what you have said?—Yes. The feeling of the Bar not only in Amsterdam, but also in The Hague and Rotterdam, is that a reversion of the Supreme Court decisions would simply mean that persons would have to wait five years, and therefore they are not in favour of it. My impression is that the Bill will pass.

43,263. Is that being introduced by the Government?—It has been introduced by the Government. It was introduced by the Minister of Justice, but since its introduction the then Minister of Justice has resigned, and I do not know whether his successor has taken it over.

43,264. The resolution was against altering the judgment?—Yes. Not only is that the feeling in Amsterdam, but also in The Hague.

43,265. Then you say that the grounds for divorce and judicial separation are the same for both spouses?—Yes. "I am sorry that I cannot give more detailed statistics regarding divorce decrees in the Netherlands. I regret this especially, as it prevents me from giving the number of divorce proceedings *in formâ pauperis* as compared with those where the parties can pay for the legal expenses of such proceedings." That I wrote before the Registrars of the different courts had been kind enough to supply me with new statistics. With regard to *in formâ pauperis* proceedings, I think there is hardly any country where the *in formâ pauperis* proceedings are better regulated than they are in Holland. Every person who has a claim, or considers that he has a claim, for which he wants the assistance of the court, can one day a week appeal to the President of any of the 23 courts and ask him for a solicitor and barrister. The profession of solicitor and barrister is combined in Holland, and the petitioner generally needs only one person to help him in his difficulty. On taking the oath as an advocate in one of these courts the barrister promises to help any poor person whom the President sends to him gratuitously. "Every solicitor, on his admission, undertakes to deal gratuitously with all cases which are forwarded to him for that purpose by the President of the court where he practises, and every barrister, on his being called, undertakes to appear gratuitously—in civil as well as in criminal proceedings—for such clients for whom the President of the court where he is domiciled asks his services. Every poor person, whose incapacity to pay for legal proceedings is properly proved by the Commissioners for the Poor in the town or district where he or she is domiciled, can request the President of the court of the district for a solicitor and barrister to assist him or her with his or her case. The President has to satisfy himself that the applicant has *primâ facie* a good cause of action or ground of dfeence, and—as I said—the lawyers who are requested by the President to undertake the task for these poor clients have to do so without being able to charge for their services. No legal charges whatever are payable in these cases. The preponderance of *in formâ pauperis* cases in matters of divorce over others, is not due to the fact that the law is stretched on behalf of the poor or that it is easier for the poor to obtain a divorce, but simply to the fact that poor people greatly preponderate over those who can pay for legal proceedings. Divorce suits *in formâ pauperis* cost, at the utmost, two guineas, mostly for fees payable to witnesses. These fees are fixed by the judge for each witness after the hearing of his or her evidence in court. Proceedings between persons who can pay for their legal expenses cost, on an average, from 25*l.* upwards."

43,266. Then the next point is with regard to divorce proceedings being held *in camera*?—Divorce proceedings are dealt with *in camera* and never revealed in the newspapers. Neither during my practice as counsel at Amsterdam, nor afterwards, have I ever seen any disclosure of divorce proceedings in Dutch newspapers. The law renders it compulsory that the decrees are published, but this is done in as simple a manner as possible. I enclose some examples.

43,267. I have one here?—May I point out what they contain. They contain nothing else but the decree.

43,268. Would you translate the first one?—Yes. At the top is put "second publication." They have to be published three times with a month's interval. "*In formâ pauperis.* By decree of the Divorce Court " of Rotterdam of the 13th June 1910, on the ground " of misconduct a separation *a mensâ et thoro* has been " pronounced between H.B. and H.A.V.D.F., both " without a profession, living at Rotterdam, with all " the consequences attached thereto by law." Then it gives the name of the solicitor.

43,269. That is an instance of the style of thing?—Yes.

43,270. Who has to do that? Is it compulsory upon someone to put it in the paper?—Yes, it is the petitioner who has been successful who has to do that.

43,271. How do you insist upon his doing it?—If he does not do it the decree cannot be registered.

43,272. The decree cannot be registered?—The decree can only be registered after these three publications with a month's interval have taken place, after the decree has been pronounced.

43,273. You have sent in examples, but I do not think they need all be put in?—They are different. Some are divorce and some are separation.

43,274. Perhaps we might select one which is divorce and have that put in. Will you take one and read it in English?—"First publication. *In formâ pauperis.*"—I may tell you that if the words "*in formâ pauperis*" are inserted the newspapers also publish it gratuitously—"By decree of the District Court of Rotterdam of the " 13th July 1910, given in the case of J.D.V. without " profession, living at Rotterdam, as plaintiff, against " J.J., living at Rotterdam, as defendant, the marriage " existing between the parties has been dissolved by " divorce."

43,275. That does not say for what fault or whose fault it is?—No.

43,276. Does it never do that?—It does sometimes, but it is not necessary. I have here five cases in which the ground of divorce has not been given. I have also three more cases where the ground of divorce has not been named. It is not necessary.

43,277. You say in your proof they only contain the names of the parties, the ground on which the divorce was pronounced, in as little words as necessary. That does not seem to me to mean anything?—No, the facts depend on the practice of the town very often. In Amsterdam I have seen it sometimes published, whether the case was *in formâ pauperis* or not, the name of the court, dates of the decree and name of the lawyer who appeared on behalf of the petitioner. A co-respondent is never found in divorce proceedings in the Netherlands.

43,278. Do you mean that he is not made a party?—Never. In cases of adultery the name of the guilty party is generally not revealed. There are two reasons for this practice. In the first place, in Dutch proceedings the parties can never be called as witnesses. If a co-respondent were made a party he could not be called as a witness. Therefore, as a rule, in cases of adultery the petition only contains the fact that the defendant has committed adultery with some person, and then when the witnesses are called the co-respondent may be called as a witness, because he has not been named in the petition. He has not been made a party. Another thing is that damages would not be granted against a co-respondent in Holland. The usual allegation is: adultery committed by having had carnal connection with some person other than (the wife or husband). In the second place, this mode of proceeding gives the guilty persons an opportunity to marry each other afterwards, which, otherwise, the law would prevent.

43,279. Do you mean if they were named in the decree there would be no right to marry?—That is so.

43,280. That is very much like it is in Scotland?—Yes. This also is an old rule of Roman-Dutch law which is still in force in the above-mentioned British Colonies.

43,281. What is the next part of your memorandum?—That is a translation of the petition of the Order of Advocates at Amsterdam.

43,282. I think you had better read it?—

"*The Order of Advocates at Amsterdam*

"having taken cognisance of the Bill for the prevention of a divorce decree being pronounced by the court unless the court is convinced by legal evidence of the existence of the grounds mentioned in the petition of divorce;

"considering itself justified on account of the daily experience obtained by the members of the Order with regard to the working of the law of divorce to bring the following to the notice of the Legislature;

"Express as their opinion:

"That the practice which the Bill attempts to bring to an end finds its origin in the wish of both spouses to see their marriage dissolved within a much shorter time than the legal provisions allow with regard to

separatio a mensâ et thoro followed by dissolution of the marriage and without either of the spouses, in order to obtain this result, committing an act which according to our legislation gives the other spouse the right to petition for divorce;

"That if the Bill becomes law two means will be "used to obtain dissolution of the marriage within "not too long a period, if such dissolution is desired "by both parties, viz., the real committal of adultery "so that it can be proved, or the obtaining of evidence "to prove an act of adultery which in reality is not "committed; That the fear is justified that either "of these means shall so much the easier be used "as the spouse against whom the divorce has been "pronounced—as far as his or her relation to the "children is concerned—is legally on exactly the same "footing as the spouse who petitions for the divorce." This refers to the Children's Acts which were recently introduced in the Netherlands in favour of children and their relation towards their parents. "That it "is certainly not the intention of the legislators to "encourage the use of either of these means. That "the adoption of those means may be the cause "of considerably shortening the period of five years "named in Article 255 of the Civil Code." This refers to the period of five years which had to elapse in order to obtain dissolution of the marriage after judicial separation without reconciliation having taken place. "That in this respect it may be observed that—if that "period were fixed at one year—yet a considerable "time would have to elapse between the date of the "petition for a judicial separation until the time when "the dissolution of the marriage is pronounced; invites "the Council of Supervision and Discipline"—this Council is elected from amongst the advocates themselves—"To bring this resolution to the notice of the "Second Chamber of the States-General."

43,283. (*Mr. Brierley.*) With regard to the *in formâ pauperis* procedure, I understand in the Netherlands that the pauper petitioner has to pay his witnesses?—Yes.

43,284. The lawyer makes no charge, and then you say that no legal charges are payable in these cases. I suppose that refers to the fees of the court?—Yes.

43,285. The expenses of witnesses have to be defrayed?—By the petitioner. As a rule these are not very heavy, because there are so many courts. The witnesses have not to travel very far. I have made inquiries in Holland and asked what the utmost costs were of an *in formâ pauperis* proceeding, and I have been informed that it is a very rare case which exceeds 2*l.* for all expenses.

43,286. You might get an exceptional case where the witnesses may have to be brought from a distance?—I was informed that 2*l.* was the highest.

43,287. Whatever they cost, the petitioner has to provide?—Yes.

(*Mr. Brierley.*) I do not know that the system in the Netherlands is as favourable to the poor man as in Germany, because in that respect he has to find that.

43,288. (*Sir Lewis Dibdin.*) The Dutch Bar are unanimous against a change of the law which would make it necessary in an undefended action for divorce on the ground of adultery, to prove the adultery?—I will not say that they are unanimous in favour of the retention of the present practice. It has so much become a common practice that they do not like at the present moment to change the practice, because they say it would only mean that the other method would be followed.

43,289. With regard to the Order of the Advocates of Amsterdam, what is the point you make upon it, that they do not want the law changed so as to make it necessary to prove adultery in an undefended suit on the ground of adultery?—You used the words "the Dutch Bar."

43,290. I beg your pardon. It is my ignorance. I meant the Order of the Advocates of Amsterdam?—Yes, that is so.

43,291. Is that opinion shared by the Dutch Bar generally?—No, not generally. I am certain that there are towns where they would not adopt it, but I think it is shared by the Hague and Rotterdam.

43,292. The ground of that is that it would make it harder than it is now to get a divorce if you had to prove the adultery?—The ground of it is that it would not change the system. It would make the obtaining of divorce longer. Instead of using the one method the parties would use the other method.

(*Chairman.*) Would you look at the bottom of page 6, where they say that if the Bill becomes law two means will be used to obtain dissolution of the marriage.

43,293. (*Sir Lewis Dibdin.*) I was referring to this: "That if the Bill becomes law, two means will be used "to obtain dissolution of the marriage within not too "long a period if such dissolution is desired by both "parties, namely, the real committal of adultery so "that it can be proved, or the obtaining of evidence to "prove an act of adultery which in reality is not "committed." Does not that suggest an extraordinarily low state of morality in Holland?—I agree that, if so read, it might induce the reader to think that the state of morality is a low one; yet, I am personally of opinion that, with regard to Holland, the state of morality is pretty high. The Dutch people are very homely. They are not given to suing for divorce, and the easier method of proceeding is mostly taken, not because there is not sufficient ground for divorce, but to make the proceedings as little repulsive as possible.

43,294. As a means of getting divorce easily?—Yes, but not that there is not sufficient proof. The parties do not want to reveal too much of the unhappy circumstances in which they are living, and it is simply agreed between them that one party will bring the proceedings and the other party will not defend them.

43,295. What is at the back of this is that the gentlemen who give this opinion think that divorce ought to be granted in the easiest way possible when people want it?—I will not say that, although it may be so.

43,296. Is not that what they say?—I think that they want to leave this to the court to decide. They think that they should have the least trouble to bring the matter before the court.

43,297. Apart from that, you can get, generally speaking, in Holland, I understand, at the option of the parties, if they find their life intolerable, a judicial separation?—Yes, but it is rarely done.

43,298. If that goes on for five years they can get a divorce?—Yes.

43,299. The foundation for divorce being the judicial separation which has begun simply on incompatibility?—Yes.

43,300. That takes five years?—Yes.

43,301. This is a shorter way of doing the same thing. Is not that it?—Yes.

43,302. That is the argument. The method is that you allege an offence without proving it, and the drawback of making you prove it is that it might be necessary to commit the offence or commit perjury and say you had committed it when you had not?—Yes, but not to commit perjury, because it remains only an allegation without any proof and without an affidavit, as affidavits are not known in the Dutch courts. At the same time I want to point out that these cases of separation by mutual consent rarely turn into a dissolution of the marriage. Otherwise it might be alleged that I had committed a slander in saying that the Dutch people are given to immorality. In the column of separations by mutual consent you will find very few cases.

43,303. Is that after five years?—No, not ordinary separation, a deed of separation.

43,304. That is not divorce at all?—One can obtain separation *a mensâ et thoro* by mutual consent. After five years it can be turned into divorce, but I want to point out that that separation by mutual consent is very rarely resorted to.

43,305. (*Chairman.*) You have another column of separation by mutual consent?—That is what I refer to.

43,306. Is that where it is turned into divorce?—Afterwards it can be turned into a divorce, after the parties have obtained separation *a mensâ et thoro*, either on the grounds mentioned in the law or by

mutual consent. After that has lasted five years it can be turned into a divorce.

43,307. You have a column for the dissolution of marriage after separation *a mensâ et thoro*. That is the class Sir Lewis Dibdin has been asking you about. Those are the ones that are in fact turned into dissolution. Then you have a column on *separatio a mensâ et thoro*: that is where there has been a judicial separation and nothing more, and then you have a column, separation by mutual consent, where there is nothing but separation?—Yes, but the second column covers these two, the third and the fourth.

43,308. They gradually may get into that other column?—Yes, from the third and fourth they might come into the second column. I want to point this out, otherwise from my evidence it might be taken that dissolution of marriage by common consent was very easy and often resorted to in Holland. I want to point out that it is very seldom done, because the separation by mutual consent is very rarely resorted to.

43,309. Is this column of separation *a mensâ et thoro* on grounds which are not mutual consent?—Yes. Those are on legal grounds.

43,310. (*Mrs. Tennant.*) Are your criminal laws in the Netherlands similar to ours?—Yes.

43,311. The terms of imprisonment would be for similar offences?—Yes.

43,312. Is there any feeling that imprisonment for four years is rather a short term to justify a ground of divorce?—No, I do not think so.

43,313. Has that always been the law?—Yes. That was introduced also at the beginning of the 19th century.

43,314. What do you hope for from your prison system?—It was changed into four years in 1884. It was formerly under the Code Penal. It is really taken from the French law.

43,315. Do you hope for any curative result from your present system, or is it only punitive?—That part of the present system to which this refers is punitive.

43,316. Is any effort made in prisons to reform the prisoners?—Yes.

43,317. Is there no feeling that it is rather hard on a prisoner committed for four years, who has reformed, that he should find his wife has taken divorce proceedings against him?—It is really an extension of the grounds of malicious desertion. In the case of a person who has been away for a long time and has not been heard of, the person who remains behind can ask the court to pronounce that this person of whom nothing has been heard of for so long is dead, and then the person who remains behind can marry again and that marriage dissolves the former marriage. That is the same reason as the reason why a person can get a dissolution of marriage by malicious desertion. It is an extension of that reason that, if a person has been in prison for four years, the other spouse can ask for a dissolution of the marriage on that ground.

43,318. Surely there is a confusion of ideas in that. What is the definition of absent for a long time, or deserted for a long time?—About seven years. It depends on circumstances. It is for ten years, three years, and one year. Supposing a ship has been wrecked on which people knew that the particular person had embarked, then three years is enough. Sometimes it is ten years, sometimes three years, and sometimes one year.

43,319. In ten years there is an assumption that the person is dead?—Yes.

43,320. There cannot be an assumption in the case of a person committed to prison?—That comes under the malicious desertion. If a person is sent to prison for four years, or longer, that comes into the same category as a person who has maliciously deserted the other spouse.

43,321. Unless you assume he has committed the crime for the purpose of being committed to prison and deserting his wife, it seems hardly malicious desertion?—That may be one view. I am in favour of that ground myself from the experience I have had as a barrister. I am speaking of the *in formâ pauperis* cases, which are the most numerous as far as Holland is concerned. In those cases imprisonment often leads to immorality. If a man has gone to prison, I am speaking here of the lower classes, where the wife is dependent on the earnings of her husband, the wife is often left behind without any resources. I remember one case which came before me, which was sent to me, where the husband came home and found a child which was not his child. He asked me to institute divorce proceedings against his wife, and I put to him the question: "Whose fault is it; is this the fault of your "wife, or is it your fault because you were sent to "prison?" My experience is that in such cases if imprisonment is no ground for divorce and the wife has to help herself it often leads to immorality.

43,322. Have you any societies for helping the wives in those circumstances?—Yes.

43,323. With regard to publication, if proceedings have been taken and have failed, is there any compulsory notice of the failure?—No, there is no notice of the failure.

43,324. Is it possible in the case of famous people for it to be known that proceedings were contemplated?—No, it is impossible. All these cases are heard *in camera*.

43,325. We have only reached the stage of gossip. We have not got to the case?—That would come under the ordinary law against libel, I should think, if anything of that kind was published.

43,326. Would it, if it is well known that a petition has been filed?—How could they know?

43,327. People may talk?—Not the registrar of the court; he is not allowed to talk.

43,328. I mean people's friends. I am speaking of famous people?—It may be. That may occur. I will not say it is impossible, but I have never heard of it. I know as common talk if the persons are very well known and they have been divorced, nearly the whole town will know it, but I have never seen a statement in the papers beyond the publication above referred to.

(*Sir George White.*) Following up the question Sir Lewis Dibdin put to you, one can understand your desire not to say anything that might be held as libelling your countrymen, but I do not quite understand when you say that the result of divorce after five years' separation is proved by statistics to be extremely rare. Is not this new law contemplated because those cases are so very rare and are felt to be a hardship to wait the five years? Does not the law contemplate removing what is felt to be a hardship?

(*Chairman.*) No, it is the other way round. That is the law at present as laid down by the Court of Appeal, that they need not prove anything, and the motion by the present Minister of Justice is to alter that and to require them to prove matters, so as to force either the proof or the five years' duration. At present they need not wait five years.

(*Sir Lewis Dibdin.*) The Bar object to the alteration.

(*Sir George White.*) I took it the other way round.

(*Witness.*) But only as a matter of procedure.

43,329. (*Chairman.*) Although the number of cases where a dissolution after separation has taken place is very small, I see there are a good many cases of separation *a mensâ et thoro*?—Yes.

43,330. Those cases remain so?—As a rule they remain so or lead to reconciliation. I may tell you at the same time that the manner of proceeding in Holland is the following:—Before a petition can be lodged the parties have to come before the President of the court, and it is the duty of the President of the court to attempt to reconcile the persons if he can. A deed of separation *a mensâ et thoro* is to give time for consideration. The reason why so few end in dissolution of marriage is that a separation *a mensâ et thoro* often, I will not say always, leads to a reconciliation.

43,331. Those are all cases where the ground is not consent?—Yes. Those consents are very rare.

43,332. Then the next column, separation by mutual consent, are extremely rare?—Yes.

43,333. You said cases of divorce are taken before three judges?—Yes.

43,334. What sort of income has a judge of that position?—The income of all civil servants in Holland

is small. The highest judge, the President of the Supreme Court in the Hague, only receives a salary which amounts to not yet £700, and these ordinary judges in the district courts receive, I believe, from £200 to £250 or £300. Before I conclude may I make an appeal to you?

43,335. Yes?—It is this. If you are laying down new rules or recommending that new rules shall be laid down, I want to direct your attention to the rights of the wife towards her children. The first case which I had in England made a great impression upon me. It was a case where the two parents quarrelled and the mother, according to my opinion, was in the right, but the husband was, on account of being the husband, absolutely in power with regard to the children. It was impossible for the mother to obtain any rights over her children either in this country or in Holland, to which the father departed with the children.

43,336. Are you speaking of a case where a divorce had taken place?—No; but as a general rule in divorce proceedings the petitioner obtains the children, has a right to the children, and I wanted to express my view that that is not always the most equitable way of dealing with the children or dealing with the right of the mother to the children.

43,337. If the mother has been guilty of adultery, as a general rule she will be deprived of the custody of the children?—Yes, but it is not always the rule which is best for the children or which is the most equitable to the mother.

43,338. You mean there are cases in which a wife might be guilty and yet she still ought to be left with the custody of the children. That is the point?—Yes.

(*Chairman.*) I ought to thank you very much for your evidence, which has been very interesting, and which you have given with very great care.

Adjourned.

Winchester House, St. James's Square, London, S.W.

FIFTY-FIFTH DAY.

Wednesday, 21st December 1910.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

The Right Hon. the EARL OF DERBY, G.C.V.O., C.B.
The Right Hon. THOMAS BURT, M.P.
Sir WILLIAM R. ANSON, Bart., M.P.
Sir FREDERICK TREVES, Bart., G.C.V.O., C.B., LL.D., F.R.C.S.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour Judge TINDAL ATKINSON.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).

Mr. SIDNEY LOW called and examined.

43,339. (*Chairman.*) I am not sure, Mr. Low, at the moment, whether you are editing any paper or only engaged in general literary work?—No, I am not editing any paper, I am engaged in literary work. I have been concerned with editorial work for many years.

43,340. You were at one time editor of the "St. James's Gazette"?—Yes.

43,341. You have noticed the expressions of views of witnesses before us as to the possibility, or desirability, of suppressing reports of cases in the Law Courts which deal with subjects and details which it is not desirable to publish?—Yes.

43,342. The point you want to make is to show that an attempt was actually made by the "St. James's Gazette" with that object in view?—It was, years ago. The attempt was made to suppress——

43,343. You were good enough to communicate with the Secretary, and as the result of your communication you were invited to come and give evidence?—Yes.

43,344. Would you kindly tell us about the attempt that was made in May 1895, while you were the editor of the "St. James's Gazette"?—It was on the occasion of the criminal trial of Oscar Wilde at the Old Bailey.

43,345. If you have got it exactly as you wish to say it, you can read your proof on it?—Shall I read the passage?

43,346. Yes; I think that gives it?—

"In May 1895 I was the editor of a London evening newspaper, the 'St. James's Gazette.' At the time mentioned Oscar Wilde was tried at the Central Criminal Court. The trial was reported at great length, and in excessive detail in most of the newspapers. Much indignation was expressed at this publication of extremely repulsive matter; but the popular interest in the trial was intense, and the papers, especially the evening papers, some of which gave a dozen columns daily of the evidence, made it as prominent as possible.

"After the first few days I decided that the 'St. James's Gazette' should have no part in this public scandal; we issued a 'contents bill' announcing that no report of the evidence would appear in our journal; and thenceforward we printed nothing but the brief statement that the trial was proceeding. When it concluded we gave a short abstract of the judge's summing up, and announced the verdict and sentence." I notice, on referring to the paper, we give the judge's summing up, and also a short statement made by the judge, and short statements made by counsel which bore upon the matter, and then we give the verdict and sentence. "Our experiment was so far successful that we did not lose circulation by it; that is to say, we sold about our normal number of copies for that period of the year. Our action was generally approved, and it had some effect on our contemporaries; for one or two of them, though they continued to print the evidence, did so in less detail. An unexpected result was a certain increase in our advertisements, several advertisers showing their approval of our conduct by giving us new or enlarged orders.

"I note that Mr. St. Loe Strachey has suggested to the Commission that a judge should have the power to forbid the publication of any part of the proceedings in a suit, and that disobedience in this direction should be treated as contempt of court. The suggestion is not new. It was made by me at the time mentioned. The Lord Chancellor (Lord Halsbury) consulted me as to

the best method of preventing such scandals in the future."—I ought to say Lord Halsbury was not actually Lord Chancellor at the time; he became Lord Chancellor a little later in the year. This trial ended in May 1895, and Lord Halsbury became Lord Chancellor in July—"and drafted a Bill which would have conferred on the judges of the Divorce Court, and other divisions, the powers which Mr. Strachey wishes to bestow on them. (I believe some lawyers held that their Lordships already possessed this power.) The Bill was introdced into the House of Lords, but it was not regarded favourably by some of the newspaper proprietors, and was abandoned, I believe, after a short second reading debate; but I am writing without access to any references, and it is possible that I may be mistaken on this latter point."

43,347. You may take it I have procured a copy of that Bill, and that will be before the Commissioners in due course?—I am glad to hear that. I did not know whether it would be accessible, so I had copies made; but you have a copy?

43,348. Yes?—And what happened, as your Lordship will remember, was that the Bill was introduced, not in 1895, but it was introduced in 1896, by the Lord Chancellor, and it was read a second time, after a debate, in which Lord Russell of Killowen, and Lord James, and the late Lord Salisbury, and Lord Rosebery and Lord Glenesk took part, and it received a certain amount of support; but it was very strongly condemned by Lord Russell of Killowen, and what proved fatal to it, perhaps, was the attack made upon it by Lord Glenesk, representing particularly, as it was supposed, the newspaper interest; and also Lord Halsbury told me that he received representations from some of the people specially concerned with the newspaper interest, and I believe the Newspaper Society at the time made very strong representations to some noble lords, and so the Bill, after being read a second time, was abandoned.

43,349. I daresay you will recollect, though, that that Bill was not confined to the Divorce Court, but was a general Bill?—Yes, my Lord, that is so. Really the whole point with which I was dealing at the time was not concerned specially with the Divorce Court. On that point I should like to say a word or two. Shall I conclude reading this?

43,350. Well, would you finish the subject about that Bill?—That is rather the point I wanted to bring before the Commission. It appears to me——

43,351. If it is dealt with further on we need not trouble at the moment, but if it is not, would you kindly deal with it now?—I am not dealing specially with the Bill, but with the whole question.

43,352. Well, perhaps that might come afterwards. I am going to circulate the Bill?—I have some copies.

43,353. I dare say you know some other Bill was introduced before that, backed by Sir Robert Finlay and several others?—Yes, it was introduced some years before. I am not acquainted with that Bill, but it was referred to.

43,354. I have a copy of that too?—I go on to say: "I venture to express the opinion, based on a very long and intimate connection with the London daily press, that it is futile to expect any limitation of objectionable reports from the voluntary action of the newspapers. Most editors and journalists would prefer to conduct their papers with dignity and decorum. But a newspaper is usually a business concern run for profit, and an editor will not often be in a position to sacrifice the pecuniary interests of his employers in order to safeguard the morals and manners of the public. A sensational or painful divorce suit or criminal trial will send up the circulation of some newspapers by tens of thousands of copies daily, and the newspaper proprietor will not often be willing to forego his share of the harvest while it can be gathered in by his competitors.

"In my own case in 1895 the proprietor of the 'St. James's Gazette' pointed out to me that such credit as I myself and my associates derived from our reticence was gained at his expense, for though, as I have said, we did not lose circulation, we had no share in the substantial increase which some other evening papers obtained during the trial." During that trial some of the evening papers very nearly doubled their circulation. "Our paper, however, had a limited and 'high-class' public; it appealed particularly to an educated clientèle like that of the 'Spectator,' so that our experiment was not so venturesome as it seemed. Had we depended on a great body of readers drawn from all classes I should not perhaps have felt justified, with due regard to the interests of the proprietors, in taking the course I did.

"I think, therefore, that if it is deemed advisable to prevent or curtail the publication of scandalous or objectionable matter it can only be done by making such publication a penal offence, or by giving such discretion as is suggested above to the courts, or by hearing divorce suits and certain criminal trials *in camera*. To throw the responsibility upon the conductors of newspapers would be unfair and, I think, impracticable.

"Many journalists, and I suppose other persons, would hold that any suppression or limitation of the reports of Divorce Court proceedings would be contrary to the public interest, since the real punishment for matrimonial offences is the exposure in the newspapers. In any case the Divorce Court scandal is not the worst evil of the kind. The elaborate and detailed reports of criminal trials, especially in some of the Sunday and weekly papers, are far more mischievous." Then I have added: "I do not now think it would be desirable for the judges to have or to exercise the power of ordering specified portions of the evidence in public trials to be suppressed."

43,355. You do not explain why?—Well, no. At the time I thought that that method might possibly be adopted with advantage; but since then, on considering the matter further, I see many objections to it. I think, besides giving the judge an exceptional power, which perhaps is objectionable on public grounds, it enables him to try a person according to his own opinion. Apart from that, I think there would be a great difficulty with regard to the newspapers, because in the case of these trials, what attracts the public is not, I believe, so much depraved or improper details, but the interest of the story. I think some injustice has been done to the public in this matter, when it is suggested that the public buys these reports to such an enormous degree because of its prurient or improper delight in some of the offensive matter. Well, I think that is not so; but the public find that great many of these cases have all the interest—the kind of romantic and dramatic interest—which they get from fiction or on the stage, and they naturally like to read the story. Any person who has been concerned with the actual conduct of newspapers will know that the real difficulty is not to give as much objectionable detail as possible, but to tell the story with as little of that detail as may be necessary. It will constantly happen that a subordinate will come to his chief when the report of a trial of that sort is coming in, and he will say, "Look at this passage; I suppose we cannot possibly put that in." And then a consultation will take place as to whether it is possible to leave out the objectionable matter and yet continue to keep the continuity of the story. I have often heard anxious discussion on this point. The editor and the sub-editor, and everybody concerned, while anxious to maintain the decorum of the paper, will still have to consider whether there is not something in a particular passage of evidence which might advantageously be suppressed, but which carries on the story, and would be given in other papers; so that the impression would be conveyed that other people are telling the story better than the particular publication concerned. Now, if you arm the judge with power to suppress portions of the evidence, then the judge occupies a kind of external editorial position; it is he who is editing this story, and he naturally looks at the evidence mainly from the point of view of public morals. He would have no particular interest in the way the story was told and in the stress of carrying on the case he naturally would not consider whether the report was being given in such a way that it would be intelligible to the public; and he might

direct a particular piece of evidence to be suppressed which would make the whole case unintelligible as given to the newspapers, and so would sometimes throw them into almost intolerable embarrassment. That is one difficulty I see. Then another difficulty that had not occurred to me so strongly in 1895 is the objection to enforcing it in practice; because the judge must either direct the evidence to be suppressed as the case proceeds, or he must do so at the close of the day's proceedings, or at the conclusion of the whole trial. Now I hardly see how he could exercise this kind of censorship as the case was going on under the conditions of modern journalism. Almost before his Lordship would have time to consider the effect of the evidence it is out in print in Fleet Street; the reports go so fast. If the judge were to direct a sort of stay of proceedings while he was considering the point, that would be almost tantamount to suppressing the report altogether. And, again, if he is to wait till the day's proceedings are over, or until the trial is concluded, that is equivalent to suppression. So I think the practical difficulty in working the system would be very great indeed.

43,356. There is this suggestion too, is there not, that the judge's mind ought to be entirely on the question of trying the case?—That is so.

43,357. If he has to keep his mind open as a sort of censor all the time, he would have a very great difficulty?—I am afraid so; and I am afraid his duty as censor might be peformed sometimes in a perfunctory manner.

43,358. Then there is another paragraph of your paper, and then I will ask you some questions?—

"I should not object to a general rule forbidding the publication of proceedings in divorce causes, breach of promise actions, and certain classes of criminal trials; provided that a brief report of every such case were drawn up by official reporters with legal knowledge, and placed at the disposal of the newspapers and press agencies. The report should give the names of the parties, ground of action, nature of the defence, verdict and judgment, and other material particulars together with any observations from the bench which the presiding judge may order to be included in this record. In divorce proceedings the judge will sometimes comment unfavourably upon the conduct of one or more of the parties concerned. Such judicial censure may be the only punishment which can be inflicted upon guilty persons. In such cases there seems no reason why the offender should escape the penalty of publicity. This penalty would not, as at present, be visited upon the innocent and the guilty alike but only upon those who, in the opinion of the judge, deserve to suffer for their misconduct by being held up to public opprobrium." I suggest that as an alternative.

43,359. Now I would like to ask you, broadly: do you think there is in fact an existing evil with regard to publication?—Of reports in divorce cases?

43,360. Yes?—Yes, my Lord, I think there is an evil with regard to the excessive publication in certain newspapers, and the unnecessary publication in certain other newspapers. I think that, as a general rule, the great majority of papers treat these reports as matters of news interesting to the public, and are desirous of making them as little objectionable or offensive as the circumstances permit. There are, however, certain newspapers which deliberately report them in greater detail than is necessary; and there is a great and very scandalous evil in the case of certain weekly papers with very large popular circulations, which make it their business to report divorce cases and criminal cases in as great detail as possible, undoubtedly catering to certain baser instincts, and obtaining a profit by so doing. These reports are frequently not matters of news at all, because they deal with cases that have been tried days, and sometimes weeks, previously; and they sometimes publish cases that have not been tried in England at all, but are reproduced for the sake of the sensational or the interesting matter from foreign newspapers.

43,361. Then you regard that as bad for the readers, I take it?—I think undoubtedly those are demoralising reports; reports of matters of that sort are demoralising

43,362. Then the question really is exactly the right form of remedy?—I think so.

43,363. You have suggested various alternatives as you have already noticed in your paper?—I should like to say, if I may, my Lord, that I think the question of suppression has to be approached from two different points of view. I think it ought to be determined by the consideration of whether these reports are to be suppressed or curtailed simply in the interests of public morality, or whether divorce court proceedings are to be treated differently from other proceedings in the Law Courts. Because in the former case, if proceedings in the Divorce Court are simply on the same footing as other legal proceedings with regard to reports, and the only object is to secure that the public shall not be demoralised by an excessive amount of offensive detail or a gross presentation of it, then it appears to me that the existing law, or a very trivial amendment of the existing law, would meet the difficulty; since the Newspaper Press Act explicitly declares that reports of legal proceedings are privileged so long as they deal—I have the words here—the Act lays down: that a fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority should, if published contemporaneously with such proceedings, be privileged, provided that nothing in the section should authorise the publication of any blasphemous or indecent matter

43,364. But you have been pointing out that they are not indecent, in the sense that they would come within that section. They are harping on one subject, but not in a form in many cases such as might be called indecent. What is the trifling amendment you suggest?—I was under the impression that the matter really complained of might be regarded as indecent; and the particular evil I have alluded to, the excessive reproduction of such cases in weekly newspapers, I should have thought could certainly be punishable under that Act, because it cannot be called a reproduction of news matter. The expression in the Act, that the privilege only exists when the reports are published contemporaneously, clearly means, I should have thought, that they must be treated as news.

43,365. That is rather a difficult point, whether a case published at the end of the week is contemporaneous with a trial at the beginning of the week. That would be difficult. But with regard to the indecency; if that is left as it is, is it not difficult to say that the reports are indecent, but is it not rather the continual harping on matrimonial troubles and so generally degrading the notion of marriage by repeating the way in which people regard marriage sometimes; that is the trouble?—Yes, I think that is so. Still I do think the excessive detail in which these reports are sometimes given is demoralising. I do not think it specially applies to divorce courts but to criminal courts also; and that is why I think the existing law might meet the case.

(*Chairman.*) Well, it has been in force a long time and it has never been put in motion.

43,366. (*Sir George White.*) Do you think it is possible to prevent the publication of objectionable evidence as long as the cases are taken in open court?—No, I do not. That is, I think the cases should be taken in open court but only on the condition that a full report is published. I think the only method of preventing the publication of what may be called objectionable matter, if it is desirable to do so, is to prohibit open publication altogether, and to substitute for it a brief official report.

43,367. That is the question I asked you, whether you think it is possible to prevent this being published so long as the court is open. In following your evidence I do not see that you give us any real way out of the difficulty?—I suggest that the way out of the difficulty is to prohibit full publication by the newspapers and to substitute a brief official report. I think that is the way out.

43,368. By whom?—By an officer of the court or official reporter appointed for the purpose.

43,369. Not really giving the evidence at all?—I see no reason why the public should have the evidence.

The public is concerned only in knowing the result. It is desirable, I think, when a marriage is dissolved that the public should be informed; that is to say, that there should be a public record of the names of the parties and cause of action, and any remarks which may be made from the bench, because they may often have a penal or semi-penal effect. The evidence, it appears to me, is not a matter with which it is desirable the public should be made acquainted.

43,370. Then if any attempt was made to report any of the evidence you would treat it as contempt of court and punishable as such?—Yes, if contempt of court is the only convenient method of dealing with it I should punish it as such; but I suppose a statutory penalty might also be provided.

43,371. That would also have to apply to police court cases, which are often quite as objectionable, or more so, than divorce cases?—I think not, because so far as they are objectionable there I maintain they could be met by the enforcement of the present statute law or the present common law, or possibly some amendment of it. But in the case of divorce proceedings I hold that they should not be published, not only because they are objectionable but because they are undesirable. It seems to me it is not a matter with which the public are especially concerned to know the specific reasons for which a certain private and intimate contract is dissolved.

43,372. (*Sir William Anson.*) I suppose you would admit there is this difference between proceedings in the Divorce Court and proceedings in other courts; that the proceedings in the Divorce Court are uniformly concerned with sexual questions and the breach of the marriage obligation?—That is so, yes.

43,373. And that the continuous publication of those matters, indecent or otherwise, might tend to weaken the sense of the marriage obligation in the public mind; I mean apart from the question of actual indecency?—I certainly object to the publication of proceedings in the Divorce Courts for promiscuous circulation. I think the point you mention is of some validity; but the important point in my mind would be that the public has no special concern with the precise details, and that great injury and great hardship may be inflicted on some of the parties by such publication. An innocent party in a case, who in the result is vindicated from blame, has nevertheless, perhaps for days, been compelled to see very painful and offensive charges circulated about him or her through all the papers in the kingdom.

43,374. What the public is concerned with is to know the fact that a divorce has or has not been granted?—That is my point of view certainly.

43,375. And anything which would exonerate innocent parties—the fact that innocent persons, whether parties or witnesses, had been brought into the matter and that they were exonerated; that would be important to publish, would it not?—I should go so far as to say that in the official report the names of innocent parties, exonerated in the course of the proceedings, should not be mentioned. I see no reason why they should even be published.

43,376. But might not it be a matter of fairly general knowledge that A or B had been concerned in a divorce case; and if that was so, would not it be fair that their exoneration from all concern in the matter should be published?—Well, I suppose if A and B were petitioners or respondents or co-respondents, I take it their names would be published in the official report, and the exoneration, if there were such, would also be published; and if the judge felt that the names of certain persons ought to be commented on or censured, then that would also be included. But the evidence on which all this was based I think should not be published.

43,377. I am asking whether the bare fact of the result and the exoneration of innocent parties should not be made public?—Yes, I think so. I think the results should be made public; and, as I say, such other matter as the Judge desires to be recorded.

43,378. And any matter of law which the judge considers to be of permanent interest?—Undoubtedly.

43,379. Then you would meet that by saying that the publication of anything except what was authorised by the judge should be penalised?—I would go so far, I think, as to exclude unofficial reporters.

43,380. That is a different matter. Would you have all divorce proceedings dealt with *in camera* then?—Well, I do not know how far the technical expression "*in camera*" would carry you. I am not aware whether that means——

43,381. (*Chairman.*) That technical expression excludes everybody except the parties and the solicitors and counsel, and the officials of the court?—In that case, I should not wish the trial to be *in camera*, not in that technical sense; because I think the public might well be admitted; not merely the parties and their friends but the public in general. I do not quite like the idea of excluding everybody except the persons connected with the case. But I should like some method to be devised by which reports in the newspapers should not be permitted; I think that could be done by excluding reporters, and by treating unauthorised reports as contempt of court, or by an Act of Parliament imposing a penalty on such unauthorised reports.

43,382. (*Sir William Anson.*) You would allow the courts to be open to the public, but you would forbid reporting except the authorised report which the judge had sanctioned?—I think so. I do not believe any practical difficulty would arise, because if the unofficial reporter is not allowed to come, it would be very difficult to get any sort of report.

43,383. Then do you draw any distinction between the moral effect on the reader and the moral effect upon the hearer; the casual public who stray in to hear a divorce case dealt with and the person who reads the weekly paper, mainly with a view to the exciting details?—No, I should not draw that distinction; but I do not think the casual public would stray in very much, and it would not be encouraged to come; but I do not quite like the idea that persons who are interested—though not legally and technically interested but who might be friends of different parties and might take an interest in their affairs—I do not like the idea that they should be excluded I am not very much opposed to the hearing *in camera*, but on the whole I do not approve of the idea that these cases should be taken in absolute privacy and secrecy.

43,384. But you would prefer to limit the audience, if I may so call it, to persons who had a reasonable right to be present?—That is my view.

43,385. That might be done with the sanction of the judge. Permission to be present might be a matter for the exercise of judicial discretion?—Yes. I lay no great stress on it; I have no great objection to taking the cases *in camera*, because my view is that divorce proceedings ought, as far as possible, to be private; they are mainly the concern of the parties; always provided there is proper judicial control.

43,386. Then, whether by contempt of court or otherwise, you would make unauthorised publication penal?—I should, certainly. That is my view.

43,387. (*Sir Lewis Dibdin.*) Just one question only. In the case of an official report such as you have described, would it get into the newspapers at all. What is in my mind is, would there be any—what is called—news value in your authorised report? If there was not, of course a newspaper does not exist for public purposes but for business, and would not put it in?—I think there would be a certain news value in the case of certain trials where the parties are people well known and considered of public importance and standing; and that is the only legitimate news value that exists at present.

43,388. No; what I mean is, you attach weight to the fact of a divorce having been decreed appearing. That I follow, and I will not worry you with questions on that. But taking that as an axiom, starting from that, I do not see how you would get it with your authorised reports; because in an ordinary case it seems to me it would have no news value, and then I do not see how the newspaper is going to put it in; and if you do not get it in you do not get the publicity that

you think is necessary?—You mean the official report would be so dull that no newspaper would put it in.

43,389. Well every inch of a newspaper has some value (the space and the putting up and so on), and unless a matter has some news value they would not put it in, and you cannot make them?—But that is only an extension of what happens now. Newspapers do not report all divorce cases, or many of them, but those few that are interesting, either because of the position of the parties or the sensational nature of the evidence; so you only get a partial publication at present.

43,390. That is quite true, but you get a very considerable amount of publication, say in all opposed cases. They generally appear somewhere. I may be wrong, but what I suggest to you is that by the plan you are putting forward probably a large proportion of the cases that are now reported would not be reported at all; the official paragraph would not appear?—No doubt that would happen in many cases; but where those cases are only reported at present, not because of the position of the parties but because of the horrible nature of the evidence, then I do not think there would be any public disadvantage in their not being reported.

43,391. I am not referring to exceptional cases where there are horrible details, but only cases that are reported in every great London paper every day. If you have simply the bare fact of the result, the parties, and so on, it seems to me it probably would not be worth the newspaper's while to print that?—But at the present moment you are only getting a small fraction. This remedy or sanction of publicity is very imperfect, because no newspaper reports anything like a large proportion of the suits that are tried. Most are unimportant and are not reported. Where a case is concerned with persons holding a high social position or well known in the world, then it is reported. When a case, though concerned with other persons has some specially interesting dramatic or sensational or painful features, then also it may be reported. But the great majority of cases are not reported at all at present.

43,392. (*Chairman.*) I am not quite sure whether it is realised sufficiently by everybody what a public hearing means. Have you ever watched the queue of people standing to get into the Court, as a rule long before the doors open?—I have even taken part in that myself in early days.

43,393. But have you seen what the gallery generally consists of. There may be exceptions, but it is generally the loafers, is it not?—Yes, I think it is sometimes.

(*Chairman*). Thank you very much, Mr. Low. We are much obliged to you for coming and giving us your evidence.

Mr. William Thomas Stead called and examined.

43,394. (*Chairman.*) You have had a large experience in the journalistic world?—40 years.

43,395. And you have been asked to give evidence here in connection with the subject which we have under consideration, but really on the point of publication of reports of cases?—I was asked by the Secretary to state any matters on which I wished to express an opinion, and I sent in my opinions; but of course primarily I was called on the other matter.

43,396. Have you got your memorandum before you?—Yes.

43,397. It is a considered paper, is it not?—Yes.

43,398. Then might I ask you to read it?—Read it from the beginning?

43,399. Yes, I think so.—Will it not bore you?

43,400. I do not think so. I find in asking questions where anybody has prepared a careful paper, one wastes more time than if one has it read and asks a question here and there?—Yes, quite so. "The old Nonconformist idea repudiates right of Church to ask State to enforce law of Kingdom of Heaven on Kingdom of this world. Christ's law is for Christ's people, to be voluntarily obeyed by them out of loyalty and love to Him. The State should no more enforce indissoluble marriage in this world than it should enforce attendance at church or the taking of Holy Communion.

"With the domain of conscience and the law of Christ the so-called Christian State has nothing to do. A Royal Commission is of the world worldly, with no spiritual jurisdiction. The only question before you is how far, like Moses, for the hardness of our hearts, divorce, like war, may be permitted by the law-givers of our time as a necessary evil.

"But here at the outset I wish to record my emphatic protest against the assumption that any recommendations you may arrive at should be passed into law until the legislature is representative of both sexes. No subject so vitally concerns women as the law of marriage, and it would be an outrage upon the fundamental ideas of justice and of right, if this law should be remodelled by any legislature which women had no share in electing, and over which women have no control."

43,401. Would that be quite sound if the recommendations were such that women approved of them?—How would you know if women approve of them or not? You ask your wife and I ask mine, but that does not amount to much.

43,402. I was asking you whether you would agree that it is not absolutely necessary to wait for such a legislative change to produce that which might be produced?—I think it is necessary.

"The question of divorce assumes that in some cases marriage is a failure. This is not surprising. The closer the contact the greater the friction. The surprising thing is that so many marriages are not failures, for the Church and the State have so confused their functions and neglected their duties that marriage has hardly had a fair chance.

"The Church, while attempting to compel the State to enforce on the world Christ's law of marriage which was only given to His own disciples, has in this department of life practically abdicated, with few exceptions, its duties as teacher and moral director of the nation. On matters pertaining to marriage the Churches neither instruct the young, exhort their congregations, nor rebuke the evil-doers. They neither glorify the ideal nor explain the responsibilities of conjugal union.

"The State, if possible, offends even more shamelessly. For the State marriage is only a civil contract. But whilst insisting that the contract shall be life-long, it takes no steps, before sanctioning that contract, to ascertain that both the parties entering into so binding an engagement are fully aware of the conditions they are accepting. Marriage hands over the person of one of the contracting parties to be used or abused for ever for the satisfaction of the passion of the other without regard to the wishes of the first, even although it should become physically and morally loathsome. No attempt is made to ascertain whether the woman realises what is meant by the perpetual surrender of her person, or the acceptance of unlimited and involuntary motherhood.

"A good deal has been said about the equality of the law between the sexes. I go much further than to demand equality. The physical disabilities of woman, combined with her lack of economic independence, place her so completely at the mercy of the man that the law instead of, as at present, increasing the handicap against her, should be not so much equalised as made much more stringent against the man. You need much stronger bars to restrain a man-eating tiger than to confine a mild gazelle. The greater the temptation to passionate excess on the part of the man the more severe the penalties that should be imposed for purposes of restraint. I would give much greater liberty of divorce to woman than to man, for her economic position and physical disabilities would operate as a more effective restraint on the woman than the utmost the law could enforce on man.

"When woman attains full citizenship, and realises the corollaries of the doctrine that she has an immortal soul, she will refuse to marry unless assured of a legal

right to impose some check upon unlimited cohabitation and an absolute veto at any time during her married life, upon being made a mother against her free and full consent. I admit that no legal right can secure woman, the only female mammal not endowed by nature with an absolute veto on all unwanted intercourse or maternity, against being starved into surrender. But it would be a distinct gain if her legal right to her own person, even though married, were established, and if, as the first article in the Magna Charta of womanhood, it were enacted that unlimited liability to compulsory motherhood were no longer exacted from the wife.

"I cannot understand women who wish to increase facilities of divorce for men. For themselves it is another matter. The marriage law in effect declares that the person of a woman is so sacred and so valuable that no man can lawfully enter into a contract for acquiring conjugal rights unless he stands up before all men, and publicly swears to give her his name and to provide for her till death, and all children which she may bear to him. That is what may be described as the legal trades union fair price of a woman's person. Any woman who consents to intimacy on terms less advantageous to herself undercuts the market. It is this instinctive, half-unconscious sentiment which makes women so much harder on erring sisters than on erring brothers. They are both equally sinners, but one is a blackleg and the other is not. Hence the difference of the censure passed.

"If there were no children and women were economically independent, the State might allow the relation of the sexes to be governed like the relations between any other partners, by free bargaining and mutual consent. But as women are not economically independent, and as there are children, the State ought to protect the weaker partner and to secure the interests of the children. It can best do this by frankly abandoning the attempt to preserve the family upon the old basis of male domination. It can only be saved by re-establishing it on the basis of equality of the rights and liberties of both parties. The wife, apart from the question of status, ought not to be worse off than the mistress. At present she is worse off except in the one particular of a permanent engagement.

"Every additional liberty of divorce conceded to man tends to deprive the wife of the one advantage she has over the mistress, without at the same time extending to her any of the mistress's privileges.

"Briefly, I think that for real, as opposed to merely nominal Christians, marriage should be indissoluble. It is so practically regarded by Catholics and Nonconformists. But the State has no right to enforce this ideal standard upon those who do not voluntarily accept it.

"For the ordinary nominally Christian but really heathen man, the State can only adopt a standard which may be regarded as the common denominator of the ethical conceptions of the community at large.

"With marriage as a sacrament the State has nothing to do. Marriage as a civil contract might be dissolved for (1) adultery; (2) desertion for a term of years; (3) failure or refusal to maintain wife and children; (4) incurable insanity; (5) penal servitude.

"The State would be within its rights in discouraging divorce, in providing opportunity for the intervention of an official peacemaker or reconciler, in postponing the decree absolute for one year or two, in imposing adequate penalties for breach of contract, and in disqualifying guilty parties from holding offices of public trust. A fraudulent breach of the marriage contract might properly be treated like fraudulent breaches of other contracts, and all divorce cases should be tried by mixed juries of men and women. The insufferable arrogance of the male who constitutes himself not only the sole law-giver, but the sole judge both of the law and the facts, is slowly becoming intolerable when the question at issue is one between the two sexes.

"Where, as is usually the case, the wife and children are economically dependent upon the guilty husband, the dissolution of the marriage should in no way diminish the liability of the divorced husband to provide adequately according to his means for the maintenance of the woman and her children. The fact that he has violated one article of the contract is no reason why he should be released from fulfiling other articles in the contract which can be enforced by law, even if the contract has been annulled, when the other party is saddled with obligations or disabilities incurred on the strength of the contract. This would, of course, be applied equally to the guilty wife in those rare cases in which the man and his children are dependent upon her for their livelihood."

43,403. Regarding the guilty man, the State makes provision for the guilty husband to provide for the wife and children?—Yes, I know. I was only laying down general principles without raising the question of altering the law. "I now come to the question of the publication of divorce proceedings. If the State desires to encourage divorce by all means let all divorce cases be heard *in camera*. If on the other hand the true policy is to discourage divorce, there should be no interference with the liberty of the press to report, at its discretion, the proceedings of the Divorce Court. Whatever evils result from the publication of filthy evidence, they are as dust in the balance compared with the evils which would result from any attempt to restrict, by law, the reporting of the proceedings of the court. As an old journalist—I have been editing papers and magazines for 40 years—I give it as my deliberate judgment that far more harm has been done to public morals by suppressing unpleasant news than by printing it. I am a puritan and am proud to bear the name. I have worked all my life against vendors of obscene books, pictures, and prints; but the deadliest enemies of public morality are those who persistently ignore the existence of vice, who suppress the evidence as to its prevalence, and who prefer that innocent victims should go down into the pit in silence rather than that their refined ears should be shocked by even so much as one despairing cry.

"We are face to face with the fact that the Church has practically ceased to exist as a living force in combating the corruption of morals. Her old weapons, excommunication, refusal of the Sacrament, denunciation from the Altar, and in more recent days the Cutty Stool and the Scarlet Letter, have rusted from disuse. The simple faith of our forefathers in the All-seeing Eye of God has departed from the man in the street. Our only modern substitute for Him is the press. Gag the press under whatever glozing pretexts of prudish propriety you please, and you destroy the last remaining pillory by which it is still possible to impose some restraint upon the lawless lust of man.

"Let in the light! A good arc lamp does more for morality than two policemen. The eye of man is still a potent deterrent to those who love the darkness rather than the light, because their deeds are evil. The Divorce Court is the modern substitute for the Day of Judgment, not because of the decrees which it pronounces, but because of the publicity which it secures. Close its doors, curtail the possible fulness of its reports, and you will give a far more enormous impetus to the corruption of morals than results from the combined efforts of all the proprietors, editors, and reporters of the 'News of the World,' the 'Umpire,' the 'Globe,' and their fellows.

"I have no objection to the prosecution before a jury of any book, magazine, or newspaper which publishes obscenity, even in a privileged law report, unless it can be proved that without such obscenity the case could not be intelligibly reported. But instances of downright obscenity in law reports are very rare. Even the 'News of the World' is said to have somewhat bowdlerised its reports, and obscene reporting in the daily press is practically unknown. Even if it were more frequent, it would be better to run the risk of such occasional outrages than to gag and fetter the press of the whole country.

"I have always found that it is the man who does a woman cruel wrong who dreads publicity for himself, and whenever I have had a chance I have pillorised them as pests of society.

"Let no one think that because I insist upon the use of publicity, I would not do my uttermost to

prevent its abuses. But no mistake is more common than to assume that unless you can use the policeman and the gaol you can do nothing. To repress crime by the pains and penalties of the law is necessary. To use the same weapons for dealing with ordinary vice usually aggravates the evil. The force of public opinion could be brought to bear, and ought to be brought to bear, upon those evil-doers who, in order to earn a dirty penny, rake the sewers of our courts in order to minister to the salacious appetite of their Sunday public. If, for instance, a man were proved to be guilty of such an offence, and was treated as if he were caught cheating at cards, the evil would soon be abated. Titles of honour might be forfeited by newspaper proprietors who publish such papers. The purveyor of filth should not be received at court, or elected to any office of public trust. The boycott applied by advertisers is a potent weapon, and if the Church still aspires to be a director of the moral forces of the nation, what an opportunity is afforded it of rallying the conscience of the community to cleanse the journalism of the land from the mercenary vendors of putrid garbage. But since Cardinal Manning died, I have never met a bishop or parson who ever seemed to think that even editors had souls.

"Some previous witnesses have referred to the practice of the American postal laws in relation to this subject. I do not think that anyone who has any regard for liberty or justice, would ever advocate the introduction of the American laws into this country. An unknown clerk is told off by the postal authorities to decide what is and what is not obscene. On his *ipse dixit* any book, pamphlet, or newspaper can be declared unfit for transmission through the mails. A friend of mine interviewed him some time ago and found him a well-meaning officer, whose fundamental idea seemed to be that any work which mentioned the organs or the act of generation was *ipso facto* obscene, a principle which, if strictly applied, would cause the Bible to be declared unmailable matter. When this unknown censor has given his decision there is no appeal to any jury, and persons who send such a condemned book through the mails are liable to be sent to prison for three months under the State Law, and after serving that term, to be condemned to five years penal servitude under the Federal Law for the same offence. As this subject is of some importance, I should be glad to give an illustration as to how the system actually works in practice."

43,404. Might I just ask you this. In a paragraph on page 7, you deal with what you consider to be an abuse of publication; the paragraph beginning, "Let no one think," down to the word "souls." You have that before you?—Yes.

43,405. You are referring then to what I may call excessive publication of details in certain classes of papers?—Yes. Not only in divorce cases, but in all cases. What I call "smut."

43,406. That I understand you disapprove of?—And I think, according to what Mr. Low read from the Newspaper Press Act as it stands at present, it would be sufficient to suppress that.

43,407. Has it ever been attempted to put it into force?—That may be the fault of the administrators of the law; it is not the fault of the law.

43,408. I daresay in reading these cases through you have been able to notice that indecency is not necessarily the right word, but rather a harping upon a subject which is not one it is desirable to be perpetually bringing before the public?—I think it is desirable to bring it before the public. I think it is a great pity, as long as adultery, fornication, and other sins go on around us, that we should put our heads in a bandbox, as it were, to hide ourselves from the facts, and I think the daily papers go wrong in not reporting them enough.

43,409. Would you be in favour of doing away with the Incest Act, which enables those cases to be tried in private?—I do not know that Act.

43,410. It is the Act of 1908 which makes incest—that is intercourse between persons of certain prohibited relations—a criminal offence; and one section says that all those cases should be heard *in camera*?—Well, I disapprove of that Act; that is straight. It is one of those instances in which an insidious encroachment upon——

43,411. Do you mean you disapprove of making it a criminal offence?—No; as to the publication—hearing it *in camera*.

43,412. You would think all these cases should be heard in public?—I consider the publicity of the courts is the greatest security we have for justice. I feel as if I were in a den of conspirators who are contemplating curtailing the liberty of the country. You might as well attack trial by jury. When I heard Mr. Low's evidence I was appalled to think of a man of my own profession coming in here and discussing how best to relieve editors of their responsibility and putting it on judges. Now I have no faith in judges, though there are good judges.

43,413. Now assume, as you do in the paragraph on page 7 to which I have referred, that there are cases in which there is what you may call an excess of the journalistic privilege, how do you propose to deal with that?—By moral suasion only, but you have not got any machinery for its application; the Church has practically abdicated its function. Nobody thinks it is their duty to do anything, and they throw everything on the policeman. Now I am against relying on the policeman as the only custodian of morals. He is all right for order, but morals is another question.

43,414. (*Sir Lewis Dibdin.*) On page 3 of your proof, Mr. Stead, you say you think there ought to be some causes of divorce open to women and not open to men. What are those particular causes? What are the particular causes that should be open to women and you think ought not to be open to men?—I think desertion by a husband is a much more serious offence than desertion by a wife. I mean desertion by a husband which usually entails starvation of the family——

43,415. You would make that a cause for divorce?—More severe as against the man.

43,416. But if a wife runs away from the husband you would not make that a cause of divorce?—If the wife ran away for three years, or the man ran away for one year; that is what I mean.

43,417. Are there any other differences you make?—I would generally apply the principle——

43,418. No, I do not want "generally"?—No, I cannot give you a definition. I have not framed it.

43,419. I gather you would not be in favour of what Mr. Low has brought before us, namely, that only an official statement of the result of a divorce case be allowed to appear?—You might as well suppress reports altogether. The point you put to Mr. Low was perfectly well taken. The official report would be absolutely worthless as copy for the papers.

43,420. May I ask you just to deal with my question?—I agree.

43,421. I gather your view is that a mere official report is inadequate?—Absolutely useless unless you want to suppress reports altogether.

43,422. And the present system you approve of, except that you think particulars ought to be given in greater detail than they are?—I would leave it absolutely to the discretion of the editors. That is the responsibility of the newspaper.

43,423. I think I heard you say that you thought the details were not given really fully enough?—By the daily papers, very frequently not sufficiently fully.

43,424. Would you explain how you think public morals are advantaged by the details—take a case where the issue is adultery—of where the parties went to, what they did at a particular hotel, and so on. How are public morals served by that kind of publication over and above the publication of the mere result that the woman or the man, as the case may be, is found guilty of adultery and divorced?—All the difference there is between the seeing of a play on the stage and merely stating the result.

43,425. Then you think it is of advantage to public morals that the public should see, as in a play, adultery enacted before them?—Occasionally, when it is adultery on the pillory.

43,426. What do you mean when you say the Church has abdicated its functions as affecting public morals; what is it you are really thinking of, apart from rhetoric?—Apart from rhetoric I am thinking of the action which was taken in Ireland about 100 years ago, which led to a very great improvement in the morality of the Irish people, which is remarkable; that is, any evil-doer was publicly denounced from the altar as an offender against the laws of God and man. That was the primary thing I was thinking of. I do not ask for that now.

43,427. You are thinking of the time when the Church of England had powers of discipline over the laity?—Yes.

43,428. Do you think those powers ought to be revived? I suppose you would agree that they are not enforceable now?—You know I am a Nonconformist, and I do not wish to express an opinion about the Church of England, because I do not think it is a Church in which discipline exists, or which is a Church, from a Nonconformist point of view, at all.

43,429. But you have expressed an opinion, because you say the Church has abdicated its functions as affecting public morals?—Yes.

43,430. Well, I want to know, apart from the general statement, what you are thinking of?—I was really thinking of this, and I am speaking now of Nonconformist churches as well as the Church of England. You may go to a thousand churches and hear a thousand sermons, and never hear one reference in any way whatever to the sin of adultery. Father Vaughan is about the only person who has preached upon the subject.

43,431. I think you have been unfortunate in your selection of churches, if I may venture to suggest it?—I am very glad if your experience has been better than mine.

43,432. You, yourself, are a Nonconformist?—Yes.

43,433. Have you a very large experience of sermons in the Church of England?—It has been my duty, professionally, to attend many such services.

43,434. But you spoke of thousands?—Well, I do not suppose I can remember a thousand of the sermons I have heard; but I think I have heard most of the prominent preachers.

43,435. But you think the clergy do not rebuke the sins of the flesh?—In my experience, never, and it is the greatest difficulty in the world to get them to do anything when you have a great social movement on—the greatest difficulty.

43,436. What occurs to me with regard to your view of the law of indecency is this: it covers what you admit is objectionable in some reports. There is a great difference, is there not, between what is indecent and what may lead to undesirable results by suggestiveness?—Yes.

43,437. Now, is it not the fact that the reports which I think you yourself deplore in some of the Sunday newspapers—you have mentioned them here—are not indecent, but they are suggestive in an evil sense. Those cannot be dealt with, can they, under the existing law?—No, and I would not deal with them; but I think the bishops and clergy and ministers and mayors who live where the proprietors of papers and editors live might bring their moral influence to bear upon them. But moral influence is so much——

43,438. That is a fine phrase, "moral influence;" but what do you want to do?—May I mention a name?

(*Chairman.*) I think it is better not.

(*Witness.*) You asked me for a concrete case.

43,439. (*Sir Lewis Dibdin.*) No, I did not ask for a concrete case. I asked what action you think should be taken to bring moral pressure to bear. What is the moral pressure you are thinking of?—I will give you an instance that comes home to you all. You are sitting in judgment on this question; therefore I presume you represent some moral authority. I think the first way in which moral pressure is to be exercised is for you, in your report, to express a deliberate and considered opinion as to whether the publication of those things is contrary to morals and ought to be abated. That is the thing you ought to do. The second thing I think you ought to do is to call upon all persons who care for the morals of the country, whether newspaper men, bishops, mayors, clergy, and ministers of all denominations, to use their influence to abate what you think is a crying moral evil by the use of all moral means in their power. If you would do that you could do it.

43,440. What do you mean by moral influence?—Well, when I speak in generalities you say you do not want rhetoric, and when I say I will give a concrete case, you say I am not to mention names: what the mischief am I to do?

43,441. I quite follow your suggestion that it is a matter where this Commission can exercise some moral influence, but beyond that what I want to suggest to you is that what you are telling us, as if it were a sort of revelation or new matter, is not only admitted, but every avenue of public opinion that is open to men of influence, speaking generally, is used in the very direction that you desire. The clergy, the ministers, the bishops, the magistrates, and all public authorities, taken as a whole, are desirous to produce the result which you desire to produce; but what I want to draw your attention to, and what I want to ask you is this, that this thing has been going on for years with, at any rate, a very great amount of moral reprobation, by a very very large number of people, of the kind you desire, but it has not been successfully stopped. Can you suggest any means of stopping it which has not yet been tried?—Well, I think that the Free Church Council, the bishops of the Church of England, and any other religious bodies—the Catholic Church too—if their attention was drawn to the question of bringing to bear moral pressure——

43,442. Do you think their attention has not been brought to it?—My dear sir, I have been fighting for 30 years about it, and it is a precious difficult thing.

43,443. Do you suggest that the bishops and the Free Church Council are not as anxious to put a stop to it as you are?—They may be, but they do nothing. Take the people who are accused—the "News of the World" and the "Umpire" which have been mentioned—do you think the Bishop of London has ever been round and said, "I think you are doing a great harm." Cardinal Manning would have done it like a shot.

43,444. I think you are probably in error in assuming that no such action has been taken. But that is not the question. Here is the evil which you admit, when we get to the bottom of your evidence, exists. One way of dealing with it, it has been suggested, is the limiting of publication which would leave out all objectionable details. That does not meet with your approval. What do you suggest?—Nothing; absolutely nothing. You cannot do anything by law that is not——

43,445. You have no remedies to suggest at all?—Only moral suasion. Any legal action you may take will aggravate the evil.

43,446. (*The Earl of Derby.*) To use your words—absolute veto. You say a woman should have the right of absolute veto at any time during her married life against being made a mother against her free and full consent. If she exercised that right would you give the husband a right of divorce?—No, certainly not.

43,447. Then you mean to say if a man would like to have a large family, and he marries a wife who says "I will have none," that that man should be in the position of not having a family?—Certainly. I say they should arrange that beforehand. I say you ought to discuss the terms of contract before you marry them and bind them for ever.

43,448. Do you say that a man marrying a girl is to discuss beforehand how many children he is to have?—If I were a girl I should make it very clear to any man who wanted to marry me, that I would never marry without an absolute gaurantee that "that "marriage did not entail upon me an endless liability, "to have an indefinite multitude children. I am not "going to have more children than my health will "stand and than I can bring up reasonably."

43,449. You leave it to her entirely?—Absolutely, she has all the pain and all the misery.

43,450. Then you are very strong in your denunciation of Sunday newspapers?—I say they publish an excessive proportion of this stuff; but I would let them do it rather than interfere with them by law.

43,451. You agree it is a mistake, that they go to an excess?—From my point of view, yes.

43,452. And you add at the same time that the daily papers do not publish enough?—There is a golden mean. I will give you an instance. Take the international white slave traffic. There was a most important conference in Madrid, and it was practically boycotted by all our newspapers; only about three lines were published; yet it was most important. Murders pays the best of all things for newspapers but obscenity does not. The dramatic story, as Mr. Low said, tells.

43,453. But surely the reason why the Sunday newspapers publish these things is because it sells its papers?—Yes I know, the dramatic thing, as Mr. Low says; but, as has been already said, there is not much indecency in these reports.

43,454. But you say it does not pay the newspaper to publish these reports, and in the same breath you say the Sunday newspapers publish them because it helps to sell?—No, I say the public get their drama as they get it on the stage, mixed up with adultery. You cannot take it out because it is there. But it is a mistake to say that the ordinary daily newspapers find profit in publishing indecent matters. I should mention the case of "Le Petit Journal" which has a circulation of a million. The wife of the proprietor used to go through every serial novel and cut out anything that in the least degree would be calculated to be offensive to *la jeune femme*. It is not a pleasant or profitable thing to publish anything relating to the social evil when you have to deal with it seriously. But when you can deal with it as part of a drama or story it can be done.

43,455. I quite agree it probably does not pay the newspaper to publish these details, but does it not show that the general public does not want these details, but that there is a certain class of public to whom the Sunday newspapers pander who do want it?—Well, you had better let him have it than stop it by the policeman.

43,456. You think the class of persons who do clamour for it are to be encouraged by giving fuller details?—No, they would be surfeited in time. The persons that I refer to are not the persons that ought to have longer reports in the daily papers. The daily paper report is a great pillory. Constantly proprietors are approached by persons begging them not to publish things.

43,457. Do not you think this Sunday class of paper panders to this taste?—I should prefer they were not pandered to, but I am sure you would do more mischief than good if you tried to interfere with them by law.

43,458. (*Mr. Burt.*) Just one point on which I want to be clear. On the first page, the third paragraph, I understand you to suggest that there should be no new legislation on this subject until women have votes?—Yes.

43,459. Now, as you are aware, a Royal Commission does not legislate but simply recommends. You do not suggest that we should make no recommendation until women have votes?—On the contrary I should say: "We recommend the following changes should be adopted by the legislature as soon as it is clearly represented by both sexes." That is the form of recommendation I should adopt if I were in your place.

43,460. But we may recommend before women get votes?—Certainly, but it was the assumption that your recommendations were to be passed into law that I objected to.

43,461. (*Sir William Anson.*) You do not suggest that our recommendations should all be conditional?—Yes.

43,462. Then we should, though it is not in the terms of Commission, say that everything we suggest or recommend must be treated as subject to this great change in the franchise?—In relation to law but not in relation to moral suasion which I suggest you should exercise, because that is not a question of votes.

43,463. (*Sir George White.*) In the last paragraph on the first page, Mr. Stead, you say, "The Church, while attempting to compel the State to enforce on the world Christ's law of marriage which was only given to His own disciples." You do not refer there to His immediate disciples, but all disciples of the Church in subsequent ages, I presume?—Certainly.

43,464. Then with regard to the charges you levy against the Church as not dealing with these questions. Do you think it possible, or is it in your desire, that in promiscuous assemblies such sins as adultery and fornication and those things should be dealt with more specifically than the general sins and errors of mankind?—I think they can be dealt with much more profitably in mixed assemblies, and quite as judicially and forcibly as in separate assemblies. I dislike separate assemblies. I would have faithful admonitions from the pulpit on all questions of the sexes; and I would have also preparation classes for matrimony as they have for Confirmation. Matrimony is much more important than Confirmation.

43,465. You seem to take a strong exception to anything being done except by what you call moral influence. What would you do in the case of age. Would you settle the law with regard to age, or leave that entirely to moral influence, as to at what age marriage should take place?—No, that is a matter the State can perfectly well decide.

43,466. You would invoke the law in a matter of that kind?—Yes; you can get the common denominator of the ethical conception of the whole community there.

43,467. (*Chairman.*) You sent a paper to me which showed an error on your part in thinking that we had not attempted to secure the attendance here of representatives of a number of weekly papers?—Yes, I missed the report of that day of the Commission, and then I saw you had done just what I desired you to do.

43,468. The Secretary produced the correspondence that we had?—Yes, that is perfectly right.

43,469. I dare say you regret you made the error?—Shall I formally stand and confess?

43,470. Oh, no?—I accused you of not having done what I afterwards found you had done. You had done as well as I hoped. I hope you will continue to do better.

(*Chairman.*) We will try.

Mr. Charles Prestwich Scott called and examined.

43,471. (*Chairman.*) Are you the editor of the "Manchester Guardian"?—I am, my Lord.

43,472. Have you been for 40 years connected with the paper?—For nearly 40 years.

43,473. And you have been asked to give evidence before the Commission?—I have.

43,474. I think your evidence relates solely to the question of the publication of reports?—Yes, that was all I was asked to give evidence about.

43,475. And you discuss "the reasons for or against prohibiting or limiting the publication of the proceedings in divorce cases, and the methods by which such limitation might be effected"?—Yes, that is so.

43,476. If you have carefully prepared this paper, perhaps you will kindly read it from where I have got to?—Do you wish me to read the memorandum?

43,477. Yes, if it expresses your considered opinion?—Yes, I think it does. "I approach the matter from the point of view (1) of the public interest, (2) of the press.

"I. On the question of public policy I hold strongly as a fundamental principle to the liberty of unlicensed printing subject only to responsibility, after publication, to the law. I should view with great jealousy any invasion of this liberty, and I do not think that any incidental evils should lead us, unless for the clearest

and strongest reasons, to limit or to abrogate it in a particular class of cases.

"I do not think that public opinion in this country would tolerate the complete suppression of reports of proceedings in divorce cases, and the publication merely of the names of the parties and the verdict. Such suppression might involve great hardship to innocent persons who were known to be involved in the case, and injustice to the parties by the suppression of everything that might explain or extenuate. In the case of persons in high and responsible positions it would deprive the public of information as to character and as to facts which might be necessary for its guidance, and might have a vital bearing on national affairs.

"The alternative to suppression is a censorship. A censorship would appear to be open to a large extent to the same objections as apply to suppression. The reports supplied under it would not be independent, and they might not be adequate. Further, if there is to be a censorship of reports of divorce cases, why should there not be a censorship also of reports of police cases, which on the whole afford opportunity for the publication of far more objectionable matter, or of murder trials which constantly also bring to light terrible and demoralising conditions, or of other classes of cases of which the same thing may be said? Why is there not to be a censorship also of printed books? Many modern novels contain pictures of life and suggestions on conduct far more subtly demoralising than even the most sordid picture of domestic misery and wrong in the Divorce Court, and a whole class of so-called historical biographies has lately come into fashion whose primary object appears to be to rake up and gather together all the unsavoury scandals of the past. These also would appear to stand not less in need of a censor.

"Nor, even granting that a censorship were desirable, have I seen any suggestion for applying it which would appear to me to be practicable and unobjectionable. To license reporters would be useless; the persons who would have to be licensed would be sub-editors or editors. An official report could not be produced in time for newspaper use and would not be adapted to the varying needs of different newspapers."

43,478. What do you mean by the varying needs of different newspapers?—Well, there are different classes of newspapers; the evening newspapers have a totally different need from the morning papers, and the weekly from either of them.

43,479. That is looking at it from the newspaper point of view?—It is a little difficult to separate the two. I was considering the various practical suggestions that have been made for carrying it out. Strictly speaking, perhaps it should have come under the second head. "If county courts were given jurisdiction in divorce cases, both these expedients would become doubly difficult. To limit publication to the judge's summing-up would be to confuse his function and to throw upon him a responsibility properly belonging to others.

"2. As regards the press, it would undoubtedly be an immense relief to many of the better conducted papers if the less scrupulous were subject to some check, and there would be a clear gain to the public in the cessation of a highly undesirable competition in sensationalism and suggestiveness. But divorce cases are only one, and not the most important, of the features by which a cheap popularity is sought and achieved. Shut out from this field those for whom a check is needed would the more industriously explore others, and they might be trusted to defeat any attempt to make them better than they want to be, or than they suppose their readers to desire.

"Nor must we exaggerate the actual extent of the particular mischief. There is a legitimate as well as an illegitimate interest in certain divorce cases. They hold the mirror up to life, even though it be the seamy side of life, and there are ugly things which ought to be known, in order that they may be stamped upon. I do not believe that the chief interest taken in this kind of case is a prurient interest; I think it is largely the same as the interest in sensational fiction, with the additional zest of the story being true, and the issue unknown. Nor ought the effect to be wholly demoralising. At least it must become plain to all who read much of such matter, that sin and sorrow go together.

"Nor, again, ought the offence, even of the worst offenders, to be exaggerated. They may be sensational, but they are not indecent. A clear and sharp line is, as a rule, drawn by every competent reporter and sub-editor between what is, and what is not, possible for publication. If any of them should at times forget, the law should remind them."

43,480. I see you say at the beginning of that second paragraph, "It would undoubtedly be an immense relief to many of the better conducted papers if the less scrupulous were subject to some check." How would you propose to put that check on?—I am not proposing to do so at all. I merely say if it could be done, it would be a great relief. I do not think it is practicable; at least, I do not think it is desirable to attempt it; there would be greater evil involved than good. I admit there would be good, but I think there would be much greater evil.

43,481. Would you tell us what you think the evil is?—The evil in curtailing them?

43,482. Yes?—Well, I think, as a general principle, publicity is wholesome. I think a complete suppression of this class of cases would be attended with greater mischief than with good.

43,483. Let us get the definition more clearly. What mischief do you refer to? I have sat in a great many of these cases, and one might safely say the vast majority of them are of no public interest whatever?—With the great majority that is true, but there are some cases in which the matter is of public interest, and how are you going to discriminate?

43,484. Let us deal with one thing at a time. Supposing they are not matters of real public interest but yet are the foundation for such matters as we have heard of in Sunday publications in considerable volume. What is the advantage on the one hand of allowing that to proceed, and what is the evil that would arise from suppressing it?—I think there is an enormous difficulty in discrimination. I do not see how you can say that this case may be reported, and that case may not be reported. I think it would be quite impossible to discriminate in that way judicially. I think certain cases should be reported, and therefore I say you cannot interfere judicially.

43,485. You cannot devise any means of discrimination?—None; I think it is impossible.

43,486. In these cases which you say should be reported, what is the advantage to the public in having them reported?—Of course there is a legal interest, I mean to say the question of law, which no doubt might be met to some extent by a subsequent selected official publication under the direction of the judge.

43,487. It has been suggested, of course, that the proper law reports should not be interfered with because they only report the matter months after, for the purpose of dealing with any legal point?—I think in cases of persons occupying high and responsible positions in the State, that if they are involved in a case of this kind the public ought to know the whole of the facts, firstly, in their interest, if they are innocent or if their conduct is not such as it might appear to be; and, secondly, in the interest of the public, if they are guilty. I think the public ought to know what kind of men exercise great functions in the State.

43,488. I would ask you to eliminate the consideration of any cases where it might be truly said: This is a public matter that the public ought to know. But take the whole of the rest of the cases, what advantage is there in the public knowing anything about them?—I think there would be great hardship to persons whose names were known to be involved in a case, and who would have no opportunity of showing that their part was really an innocent part, or an accidental part. I think it would be hard on them.

43,489. I was asking about the public interest?—The public interest is in the general principle of liberty of publication, which I think is a very great public interest indeed.

43,490. What is the justification for that principle?—It is the same as that for the permitting of unlicensed printing generally.

43,491. I suppose it would be for the public benefit?—Yes, on the whole for the public benefit, certainly, but not all printed matter is for the public benefit; it is also for the public amusement.

43,492. Assuming you have come to the conclusion that it is not to the public benefit to publish a vast number of those cases——?—I am strongly of that opinion.

43,493. That it is to the public benefit?—That it is not to the public benefit to publish them. I think many of them should be published in a much more restricted form.

43,494. Well, if it could be done, would it not be better that the whole of that mass of stuff should not be published?—I cannot make the assumption to begin with; and, secondly, I prefer to trust myself to a large principle which appears to me sound, rather than to any pettifogging interference with it.

43,495. But you do agree that there is a large mass of this material that would be better not published?—Oh, yes.

43,496. (*Sir George White.*) I presume there are not an inconsiderable number of cases that might not in the Divorce Court be thought to be of public interest, but that are of public interest in a certain limited sense in the localities where they come from?—That is undoubtedly so, and I should have perhaps referred to that in reply to the Chairman. People's names are mentioned; people are important in a locality who are not important nationally, and they may hold positions which are relatively important in their locality, and the public may have a legitimate desire to know what are the facts in relation to their conduct.

43,497. And therefore it would be a very difficult matter to decide whether a case was of sufficient public interest?—It would be impossible almost, I think, for the judge or anybody sitting in a central court in London to say what was or was not of public interest in the locality.

43,498. Then I understand, while you admit there are details which on various grounds could be better left out, you do not see how to check these details without interfering with the great principle of the liberty of the press?—That is so.

43,499. And therefore you feel constrained to adhere to that principle rather than to attempt to cut down these details and interfere with the general principle?—I feel also that it is perfectly arbitrary to interfere with the publication of these facts in divorce cases and not in other cases. Far worse and more demoralising matter comes out in police courts. A divorce matter very often comes up in the Central Criminal Court—sexual matters arise in murder cases; they arise before the coroners' courts, and unless you are prepared to go the whole length with regard to the whole of these courts it is useless to begin with any particular court.

43,500. (*Sir William Anson.*) I understand there is a great deal published that you regret?—A very great deal indeed, sir. An enormous quantity I think is extremely to be regretted, and I think it is extremely reprehensible.

43,501. And your wants would be satisfied if the result of the case were announced, the names of the parties, and the exoneration of innocent parties; would not that satisfy you?—I do not think it would. I think the public ought to have sufficient facts before them to be able to form their own opinion.

43,502. Whether it was desirable that those facts should be known or not?—I think the good and the evil go together; you cannot discriminate between them. It is so in human affairs generally.

43,503. And, on the whole, you attach primary importance to the freedom of the press?—It is an enormous benefit—an incalculable benefit.

43,504. And that its freedom is of more consideration than its decency?—I think its decency should be safeguarded by the applications of the law; but I do not think, on the whole, it is its decency which is in question. I think there is a good deal of misapprehension on that. I think it very rarely happens that any indecent matters are published in the newspapers; and not more in the weekly than in the daily, on the whole.

43,505. But, on the whole, you think the disadvantage of any restriction would outweigh any advantage?—Very much so.

43,506. (*Mr. Burt.*) Only one point, Mr. Scott. On page 2 of your proof, you make a comparison between books and newspapers?—Yes.

43,507. And you say, as I think quite correctly, that in many cases novels are more insidious and more demoralising than any reports in the newspaper?—Far more.

43,508. Well, the point I want to put to you is this, Speaking generally, would it not be correct to say that books—novels and such like—would be much more likely to get into the hands of young people—boys and girls—than the newspapers?—I cannot say that, because many newspapers publish stories—and also cheap fiction has an enormous circulation; and, secondly, I think that the impression you produce on the educated classes is more important and more penetrating than the impression you produce on the uneducated classes. If you demoralise your educated classes you demoralise your whole population—or you tend to.

43,509. You think there is not really that distinction that I have suggested in the question?—I think there is a distinction, but that it is not a very deep one.

43,510. (*The Earl of Derby.*) Only one word. In the last paragraph of your evidence you say: "A clear and sharp line is, as a rule, drawn by every competent reporter and sub-editor between what is and what is not possible for publication. If any of them should at times forget, the law should remind them." Who is to say that they have forgotten and overstepped the line?—I am not aware what the legal process would be, who would be the proper person to take action. I presume that under the existing law somebody would take action in a case of obscenity or in a case of sedition. Those are punishable offences.

43,511. But supposing there was some particular divorce case with very bad details, would you call it obscenity if it was reported verbatim?—I think that would be a question for a jury.

43,512. You think the State in such a case ought to take action?—I think it should; I think the law should be enforced. There is a law which seems to be somewhat of a dead letter; I do not see why it should not be enforced.

(*Lord Derby.*) Is there a law that a verbatim report of that kind would come under?

(*Chairman.*) Yes, if it was indecent; but the difficulty is to know if it was indecent.

(*Witness.*) I understand there is no privilege for the report of a trial in any court. There is no privilege for matters which ought not to be published under the law.

43,513. (*Chairman.*) Which is indecent?—Yes, which is in a legal sense indecent or libellous or seditious.

43,514. (*Lord Derby.*) You would contend that however indecent really it might appear, that it was justifiable to publish it because by so publishing it you might either exonerate certain innocent people, or you might show up people who you think ought to be shown up?—I think that is inconceivable. I do not think the publication of indecent details could come in in that connection. I think a matter of fact colourless report would be sufficient.

43,515. I admit the "Manchester Guardian" would take that view, but would some of the Sunday papers do so?—They might not take that view, but I am contending it is possible to do it.

43,516. But I am contending we should be in such a position to strengthen the Act so that action should be taken under such circumstances. You would not be opposed to that?—If the law can be made more effective for the purpose for which it exists, I should rejoice.

43,517. (*Judge Tindal Atkinson.*) I understand you, Mr. Scott, to say there is no halfway house between the present system of publication and the closing of the Divorce Court doors to the public?—I have been unable to discover any. I have read carefully such evidence as has been published—the evidence given by journalists and others before this Commission, and all the suggestions made seem to me either undesirable or impracticable.

43,518. Then, from your knowledge, do you think the public would tolerate a court of justice with closed doors?—I do not think they would, and I do not think they ought to.

43,519. (*Chairman.*) There are one or two cases in which they do tolerate it without any difficulty?—I am speaking of the complete closing of the court.

43,520. Yes?—There are, of course, cases which are heard *in camerâ*, and rightly heard *in camerâ*, but I never heard that that jurisdiction of the court was exercised purely in the interests of public decency.

43,521. Take for instance an incest case. Why do you suppose the statute expressly excluded them from public hearing—the Act of 1908?—I always imagined it was partly at least because you could not get evidence in terrible cases of that kind; you could not get evidence unless the court was closed. I do not know whether that is the case.

43,522. Well, take the nullity cases, and all cases in the old Ecclesiastical Courts. The nullity cases always, and any other cases in the Ecclesiastical Court that the judge thought fit. They were always closed if he thought fit, and always closed in nullity cases for hundreds of years without any objection by anybody?—Those are very special classes of cases involving very horrible details, and very little, I imagine, which can be regarded as of genuine public interest. In any case the newspapers would refuse to publish cases of that kind; they would not be tolerated by their readers.

43,523. At any rate the principle is not a novel one?—No, not a novel one. I should have no objection to a judicial discretion with regard to cases which are or are not fit for publication on whatever ground.

43,524. But you feel a practical difficulty in dealing with it?—The practical difficulty I feel to be very great. There is a point on which I should like to say a few words. Several references have been made to the weekly newspapers, and they have been held up as special offenders. I think that is entirely erroneous. I think if the matter is looked into it will be found that by far the greater offenders are the daily papers, particularly one or two. Some statistics, I think, have been collected by the Secretary to the Commission, and a weekly paper, the "Umpire," comes far at the head of that list, with, I think, over 300 columns, as against the "Daily Telegraph" 165, and the "Times" about 100. But that is entirely misleading. I think the reason why these weekly papers come so very high up in the list is that they report all kinds of divorce cases. They rake them together from every quarter, at home and abroad, and they get a great mass. But though the quantity is great I do not think the quality is any worse than in the daily papers; and the quantity is not so great nearly in the sensational cases as it is in the daily papers; and it is the sensational cases which excite the public interest, and if anything is demoralising they are demoralising I had an impression that was the case, and in order to test it I had the columns of a few papers examined in relation to the Stirling case—the most recent sensational divorce case. The greatest offender with regard to the raking together of these cases is the "Umpire"; it comes far away at the head of the list. Well, I looked at the "Umpire." A weekly paper cannot possibly report a thing that is on from day to day as fully as the daily papers. The "Umpire" had 23 columns; the "Daily Telegraph" 69. The "Daily Telegraph" column is more than one-fourth larger than the "Umpire" column; therefore that is something like the proportion of 100 to 23. You are getting on towards 100 columns as against 23. Practically it is four times as much in the "Daily Telegraph" as in the "Umpire." I wish to give the devil his due, and I think the weekly papers are not the chief offenders in this matter.

43,525. (*Sir Lewis Dibdin.*) That is in the six days?—Yes.

43,526. (*Chairman.*) Would you just tell us what advantage there was to the public in the publication of one word of that case?—I think it threw an extraordinary light upon the social conditions in certain strata of society.

43,527. And that that is a benefit to the community at large?—I think it is a moral document of extraordinary interest—the spectacle of these people who had every luxury that wealth could produce and never did a day's work for themselves or anybody, and spent their time in this fashion; I think it is an appalling thing, and I think it is wholesome——

43,528. Wholesome reading to be before the public?—No, but I think it is a matter that concerns the nation and that the nation ought to know.

(*Chairman.*) I think you have expressed your views very clearly, Mr. Scott, and I thank you very much.

Mr. David Edwards called and examined.

43,529. (*Chairman.*) Are you Managing Director of the Nottingham Daily Express Company, Limited; and were you formerly the General Manager and Editor of the "Daily News"?—Yes.

43,530. I gather from the memorandum you have sent, you do not express any opinion as to the desirability of facilitating divorce generally?—I do not.

43,531. That is not a point you wish to deal with?—That is so.

43,532. You are dealing here with the subject of the publication of divorce cases, and on that you desire to express your views?—That is so.

43,533. How long have you had journalistic experience?—30 years.

43,534. And at Nottingham how long?—About 11 years.

43,535. Then before that, you have told us, you were with the "Daily News"?—About five years on the "Daily News."

43,536. Did you communicate direct to the Secretary?—Yes.

43,537-8. Or was the communication addressed to you?—No, I communicated with the Secretary.

43,539. With the object of presenting your views?—Yes.

43,540. Are you of opinion that the time has arrived when anything ought to be done by the legislature with regard to the publication of divorce cases?—I am.

43,541. Would you tell us on what that is founded?—Well, my own opinion about this is that there can be no freedom of the subject where the collective is permitted to be tyrannical. I can understand that the press might exercise tyranny over the individual, and I am quite satisfied that that is what is taking place in such cases as affiliation cases. Take an ordinary affiliation case. I have no doubt whatever, myself, that there are plenty of young women who never bring a case into court for the simple reason that they do not want to incur the obloquy of their own immediate friends; the scandal is so great that the young woman prefers not to bring the action at all. And I am quite satisfied, on the other hand, that many defendants settle where they have a good defence, because the scandal of a successful defence would be a greater injury than the payment of money.

43,542. You think that would apply also to divorce cases?—I certainly do. I do not take the orthodox view with regard to the freedom of the press, that some of my brethren do. I daresay I shall hear about this, but at the same time I think we have to be true to our own opinions; and I am quite satisfied it is impossible for the press to claim a right to punish on behalf of the public, and thus assume that it stands in a kind of judicial position representing the whole public. As a matter of fact the newspaper man is in the newspaper publishing for business, just as a lawyer is in his pro-

fession for business; and I am not at all sure that some newspaper men do not allow that which is the best business policy to govern them in their conduct, in which procedure they are helped by others who mistakenly believe that that is also the best public policy, which I am sure is not the case. I remember not very long ago there was an action brought by the London and North Western Railway against a man for travelling without a ticket. The stipendiary fined him. I do not remember the exact amount of the fine—5*s.* or 7*s.* 6*d.* A little later on there was another case brought before the stipendiary, and by this time the stipendiary had found out that in the previous conviction the name of the man had been placarded all over the system of the London and North Western Railway; and the stipendiary, when the second case came before him, said, "Are you going to publish the name of this man who "has travelled without a ticket, all over your system?" and the solicitor said in the ordinary course it would be so. "Then," he said, "I shall not fine him; that is punishment enough." And I am perfectly certain that newspapers in a great many cases punish very much more severely than the law ever intended punishment should go, that is to say, in the case specially of men of position. If a man is a mere nobody there is no punishment, but it is relative to the position of the man that the punishment is severe; and I maintain that this is a question really not for newspaper men at all; it is a question for men who are not newspaper men; because the newspaper man, when he talks about the freedom of the press, is naturally to some extent prejudiced, while there is a kind of freemasonry amongst press men like all other men. If a man comes here and speaks against the press he is not considered to have done just the thing; and I maintain the question with regard to the divorce proceedings is essentially a matter for other people, and not for members of the press.

43,543. You think that that sort of pressure applies to affiliation orders, separation orders, and to divorce?—I am satisfied it is a grievance felt by the individual; I am quite satisfied as to that.

43,544. You say at the end of your note here: "Plaintiffs abstain from taking advantage of the law, and defendants agree to settlements that are unjust rather than incur the greater injury and odium of a public scandal. Parties concerned are thus deprived of their redress at law, and the wider public that are in no way concerned have purveyed to them reports that cannot help being demoralising." That is a summary of it?—Yes; that is precisely my view.

43,545. Do you think that the publication of the details of these divorce cases has a demoralising effect on the public generally?—I am sure of it; and I may say, while I am speaking about this, some reference has been made to some of the Sunday papers. It is not very long ago that I read in a Sunday paper a report of a case in which nine young men were charged with having committed, in succession, nine criminal assaults upon a young woman; that occurred in Australia, and there was about a column of it in a London Sunday paper. Now there was no news value in that so far as the immediate occurrence of the thing was concerned, because it must have been at least six weeks previously that the thing occurred. So it must have been clipped out of an Australian paper for the simple reason that it was a prurient sexual item of news, and I am sure there is too much of it done.

43,546. What is the remedy you would apply if you had this divorce question to consider?—Well, of course I admit that it is rather a difficult problem.

43,547. Of course it is; that is exactly why I ask the question?—I must admit that I have not anything that to my own mind is an ideal plan. It has been suggested that there might be an official report. I should favour, myself, that reports of divorce cases should be published giving anything that is of value from a legal point of view. I do not believe what you may call the dramatic value ought to be considered for a moment, because if a newspaper gives a report, say, of a wedding, it would be very much more dramatic if they could give the courtship as well with it, but they never do. So the question of the value of a report from the dramatic point of view I do not think ought to be considered at all. That is purely a selfish newspaper way of putting it, and I should be inclined to report only what might be of value in the case as governing certain aspects, for reference in similar cases. The law cases are being kept for the purpose of seeing how certain aspects are to be interpreted. I would only go that length myself; I would not consider how much dramatic value it might contain.

43,548. You practically recognise the evil, but you, like others, feel a difficulty in the exact mode of dealing with it?—Well, I would not hesitate even to go the length of suppression in these cases. I am referring now to the Divorce Court alone, because that is peculiar; it is always of the same character; whatever appears in that court is more or less objectionable; so I should be quite prepared to go the length of absolute suppression so far as that court is concerned.

43,549. You regard the Divorce Court as standing on its own peculiar footing, and being connected with a branch that it is not advantageous to have about the world at large?—I do. I consider the Divorce Court is a court that pries into private affairs that ought to be kept absolutely secret and the publication of which is in itself a punishment; I maintain, as a newspaper proprietor, it is not my duty or province to punish parties seeking the redress they are entitled to at the hands of the justices.

43,550. (*Mr. Brierley.*) Then would you abolish any report of any kind whatever of a divorce case?—No. I have said how much I would publish; but I should have no personal objection to go that length. I do not advocate it. I should not be sorry myself if they were suppressed, but I do not advocate it.

43,551. Do you say there is no public interest whatever in knowing who has been divorced and who has not?—I do not think that ought to be the deciding point at all. You see my friends here in the newspaper world come and say public interest demands this and public interest demands that. You know they are newspaper proprietors, and you and I know they are honourable conscientious men, but are they sufficiently magnanimous?

43,552. But apart from that, is not it right that a man's neighbours should know if he was divorced or not?—But the neighbourhood would be as much interested to know about the courtship as well.

43,553. But is not it a matter of some importance that they should know?—I cannot admit it. I must say the thing is not to be decided on that ground. The public may become a tyrant against the individual; that is my point.

43,554. (*Judge Tindal Atkinson.*) Supposing a man who is in a public position in the State is a co-respondent; is not it essential that the public should know what his conduct has been?—If you publish that part which implicates the man, I recognise that the part which exonerates ought to be published; but if the whole thing is suppressed there is no complication.

43,555. But the public want to know of the character of that particular man, and of the circumstances which happened to bring him into the Divorce Court. You would not save such a man as that from punishment, would you?—No; but I recognise that publication in the newspapers, as I said with regard to the fine inflicted by the stipendiary, is sometimes much greater than the crime, and especially so in the case of a very prominent man; indeed, I recognise the newspaper is capable of ruining a man, if he is prominent enough, by publishing confidential statements.

43,556. (*Sir George White.*) I would just ask you this question, Mr. Edwards. If no remedy could be found by way of an approved report, do you go so far as to advocate that all divorce cases should be heard *in camerâ*?—No, I do not advocate it; I say I have no personal objection to it. I know plenty of other newspaper proprietors take the same view.

43,557. That is your personal feeling only. Then with regard to the co-respondents in the cases just mentioned by Judge Atkinson. You say, with perfect fairness, that if the name is mentioned in the charge, that any exoneration should also be published?—Yes.

43,558. But of course you would be aware that in country districts, particularly if there is a divorce case in which a man is sued as co-respondent, that is known to his immediate neighbours, and it is a good deal wider than that, that he is charged; and is it not desirable in such a case that his defence and acquittal should be made public? It does not depend altogether upon the newspaper publishing the charge, you see, but it is the knowledge of the neighbourhood?—Yes; but I do not think myself that any question of that kind is of a twentieth part of the importance of the other. I admit it might be, but it would be so infinitesimal as compared with the other, that I think you must take the least evil of the various evils.

43,559. You mean the publication by the newspapers in referring to "the other"?—Yes. What I mean to say is this: whatever you do there is a conceivable injustice to somebody, and I regard the publication of detailed reports as the worst thing of all.

(*Chairman.*) I think that is all. I have to thank you very much for your evidence; it will be of great value to us

Mr. MAURICE HEWLETT called and examined.

43,560. (*Chairman.*) Your name is very familiar to us, but may I describe you as being a well-known writer?—Yes, I think I may admit that.

43,561. You have prepared a summary of evidence, with certain conclusions and certain proposals which seem to you to follow from your evidence?—Yes.

43,562. I think your claim to be heard "is that of "a writer whose business it is to express human life "and human nature"?—Quite; yes, certainly.

43,563. And you say you would be ill-equipped for success if you did not know something about your subject?—Yes.

43,564. Now you were asked to give your evidence here?—Yes.

43,565. If you do not mind, I am going to ask you to take the conclusions and the proposals first because that makes it clear; and then the arguments on which you found them, as to which I can ask you after?—Certainly. I should like to say that I took great pains in preparing this, and that I do not pretend it is based on anything but the idealistic view of life, and such knowledge of human nature as I, by experience and study and intuition, have acquired.

43,566. I quite appreciate that. That is why I want to get the conclusions and proposals rather in advance of the arguments?—Quite so. I may, I hope, support them afterwards by the preparatory matter.

43,567. Certainly. Would you read the conclusions and the proposals first then?—

"*Conclusion.*

"Let me repeat that I am putting the case of the honest-minded only, who consider that desire and intention in both parties are the *sine quâ non* of marriage. A system or code of law which protects the base in their baseness, and inflicts moral wrong and spiritual anguish upon those *bonæ voluntatis*, cannot be beneficial to a State, and if persisted in would be justly held as such an irrational tyranny as to result in the disregard of marriage as a sacrament, or a contract either."

"*Proposals.*

"1. That marriage be voidable by agreement of the parties."—I should like to add, "In the discretion of the court," as that was put there originally.

43,568. Might I ask you what that exactly means, after you have finished the paragraph?—"That marriage be voidable by agreement of the parties, and evidence from one of them that desire and intention are absent or elsewhere engaged, saving always the interests of the children of the marriage, if any."

43,569. I do not quite know what the modification you introduce; "In the discretion of the court," exactly means?—It may be a redundancy, because one may assume that the court had discretion. I thought for the sake of clearness that should be added.

43,570. The effect would be to make the court only a recording instrument?—The court would only be a recording instrument unless it had full discretion to accept or ratify the parties' agreement.

43,571. But on what basis is the court to exercise that discretion?—On the basis entirely of the evidence that may be given by those parties of an agreement based on the absence of desire and intention to perform the marriage.

43,572. But that would hardly leave a discretion; if that agreement be approved the judge would have to act upon it?—Well, I might take an imaginary case. You might have people who were disclosed by their evidence to be low and debased, and who did low and base things, and came before the court on a frivolous basis and for unworthy reasons. In that case the court would say, "The evidence is entirely unworthy"; in which case——

43,573. You mean if they were satisfied it was a *bonâ fide* case?—Yes. Then:—

"2. That in the absence of agreement such dissolution to be in the full discretion of the court upon hearing of the parties; but that in any event a married woman be protected against conjugal rights if she can show that desire and intention cannot be accorded."

"3. That where it is sought upon these grounds to make void a marriage with issue, any agreement between the parties as to their custody shall weigh with the court. In the absence of agreement, the custody shall be in the discretion of the court, which may also refuse divorce, while protecting the wife against her husband's conjugal rights."

"4. That in all cases of divorce the court shall be assisted by two lay-assessors, one male, one female."

"5. That whatever local court may be empowered by the State to adjudicate divorce between persons who seek it there, similar lay-assessors shall be appointed, at least in cases contemplated in these proposals."

43,574. That enables us to see exactly what the argument is addressed to?—Quite so.

43,575. Then perhaps you will start at the beginning?—Yes, I will leave out the preface.

43,576. I have read this very carefully through and I think there are some points in it that are not in the scope of our inquiry, and I will point these out when I come to them?—Yes, my Lord, I feared that might be so:—

"*Scope of this Memorandum.*

"I have been struck by the fact that the witnesses before this Commission, and the Commissioners themselves, have confined the evidence almost wholly to the social aspect of marriage, and the social effect of divorce. They do not seem to have allowed for great diversity of character and temperament in individuals, nor to have considered what must be called the psychical welfare of the married. To serious minds marriage is one of the most serious acts of life, to the frivolous it may be an episode, to the base a means of base gratification. But the more serious the nature of men the more injury may be inflicted upon them by an endeavour to reduce the laws to which they must be subject to rigidity; and in the case particularly of refined and serious natures the tendency of English public opinion to preserve in all events what are called the 'outward decencies' often results in fostering inward indecencies which are shocking to conceive. Insincerity is in my eyes a deadly sin, and such a tendency breeds and must breed insincerity. I am here to plead for the serious and sensitive against the frivolous and base, and to suggest that the maxim *de minimis* should not be applied to the law of marriage and divorce further than is absolutely necessary to keep the base from criminal baseness. Marriage is no doubt a social contract, and properly so; but it is in the eyes of the serious minded, as it is in the eye of the Latin Church, a sacrament also. I think that the evidence so far has treated the social contract as preponderant, the sacrament as subservient to that, and that while this may be necessary in a majority of cases, it would be inequitable not to recognise a perceptible number to whom the sacrament is of greater force than the con-

tract. Assuming again that the State and the English Church admit marriage to be a sacrament, I suggest that the sacrament does not lie in the contract, but elsewhere. Finally, I consider that, by omitting evidence (so far as there may be evidence) concerning the nature and force of love, the Commissioners have been in danger of overlooking not only what is, according to me, of the essence of the sacrament, but what is also in this country, the mainspring of all serious marriages. The scope of this memorandum, therefore, is confined to the serious-minded and to persons *bonæ voluntatis*, as against the frivolous and base.

"Let me add here that I have confined myself in the following pages to matters which have not as yet been presented for the consideration of the Commissioners. Such questions as those of the equality of the sexes in the eye of the court, or the equal rights of the poor to the relief it may afford have received the attention which they deserve from those who are qualified to give it. Perhaps, I may say, however, in order that there may be no misconception as to my attitude, that I am strongly of opinion that infidelity in the husband should entitle the wife to the full measure of relief which is at present given to the husband of an unfaithful wife. No person who takes the serious view of the marriage contract which I am about to put forth could conceive of the man's immunity from the consequences of his action as it regards his wife. The notion or pretence that a woman can be in any real sense subject to a man, and the notion that a man may have licence to break an understanding while a woman may not are repugnant to my sense of moral law. With respect to the privileges of the poor also, it is impossible for me to believe that they are not in every respect similar to those of the rich. The days of autocracy, however benevolent in intention, seem to me to be over. It would be more discreet in the State to concede in advance what will undoubtedly be claimed as a right.

"PART I.—CHILDLESS MARRIAGES.

"*Proposition I.—Love.*

"Love is the strongest and most universal passion of created nature. It is based, of course, upon sex; but in man it has diverged from the basal instinct of reproduction or continuance of species. All animals (with rare exceptions) mate when they are in a condition to generate. Man does not. But in him the sexual desire, which is the physical side of the love passion, is inseparable from a spiritual or intellectual desire to unite with the beloved object. Plato's illustration in the Symposium will be remembered and is a good one. Imagination, working upon both desires, finds a means of satisfying each. This is the nature of a force in man which may become irresistible, may produce extreme happiness and extreme misery, the utmost benevolence or the utmost illwill. For it is in the power of man, when moved by it to transcend his nature or to fall below it. He can raise the passion of love to a spiritual rapture inexpressible in poetry, or even in music, or degrade it to lust and perverse appetite which the beasts assuredly cannot parallel.

"*Proposition II.—Love and Marriage.*

"Such as this force is, it is the governing cause of marriage in England, for, in England, marriages are made in all classes by selection of the parties themselves. The parental or progenitive instinct is not the governing cause, nor, as in other countries, the social or prudential instinct. In nine-tenths of the marriages in England love or liking (more or less serious according to the nature of the persons) on one side or the other must be presumed. Among the highest order of minds love on both sides must be presumed. Marriage in England, therefore, may be defined in its essence as the *social sanction of the mutual desire of a man and a woman to unite their souls through their bodies.* In all cases bodily desire and spiritual intention to unite are proper to a good marriage; but with the serious-minded they are essential, and the absence of the one or the other would vitiate the marriage.

"*Proposition III.—Love and the Contract.*

"If the above be true, and the contract be in such cases dependent upon desire and intention, the contract cannot be regarded as necessarily perpetual, since it is contingent upon the presence of the bodily desire and spiritual intention which are essential to the marriage. To a great extent the Latin Church, to some extent the English Church and English Law, admit this conclusion. The State and the Church in England will annul a marriage which is not consummated, and admit impotence in a man to be a cause for quashing a marriage contract. But if a marriage is consummated once the Church regards it as perpetual, and the State will only dissolve it for certain reasons—infidelity, cruelty, and the like. It is now suggested that, if the State will dissolve a marriage for non-consummation at one time, it should so act at any stage of the marriage, or for any defect of potency in either party. If a man cease to desire his wife, or if he desire another woman, he becomes *ipso facto* an unwilling partner. Either kind of desire may fail him, either the bodily or the spiritual. He cannot be urged or persuaded to fulfil this essential part of his contract, which should, therefore, be voidable. In the case of the woman, it should be remembered that desire on her part, bodily and spiritual, is also contemplated in the contract. But she is so made, physically, that she is capable of receiving what she may not at all desire. Moral compulsion, exhortation, cajolery, or kindness may tempt her to what she regards as wrong doing. She may be impotent in intention though not in fact. Should she have neither bodily nor spiritual desire towards her husband she may be persuaded to submit to him. Should she, having had it once, subsequently lose it, she may still be bound. Should her desire turn to loathing, horror, and physical repulsion, she may still be bound. The effect of this upon a sensitive, imaginative, or nervous woman (and nothing acts and re-acts so immediately upon the nervous system) may be grievous. No marriage law can be good which can inflict rigidly and by routine such anguish upon the refined, sensitive, and honest-minded members of the community.

"*Proposition IV.—Love and the Sacrament of Marriage.*

"But for the serious-minded there is another and still more unhappy result of a marriage indissoluble for failure of desire and intention. It seems uncertain wherein the English Church declares the sacrament of marriage to reside, whether in the words of plighting, giving and receiving of the ring, or in the marital act. The serious minded place it without doubt in the consummation and continued consummation of the marriage. They say that the sacrament is not taken once only, but whenever desire and intention, being present in both parties, are expressed mutually. They say that the outward and visible sign is the marital act, the inward and spiritual grace the intellectual union of two souls. They say that this sacrament is essential to a marriage, and the profanation of it, that is the absence of intention in one party or the other, or failure of it (that is, the absence of desire), should be admitted as a good reason for divorce. There must be, they say, mutual bodily desire, mutual spiritual intention. If the man desire physical gratification, he degrades himself and insults his wife. If she invite him for the same reason, she degrades herself and tempts him to degradation. If the man be unfaithful to the wife by indulgence of his appetite with another woman, she should be released. If he cease to love his wife because he honestly and sincerely loves another woman, it should be in her power to release him. So with her. If she be unfaithful, the law gives him relief. But if she honestly and sincerely love another man, it should be in the husband's power to give her relief. For in this case, although she might not have been unfaithful in body, she cannot give him spiritual intention, and so complete the sacrament, to which her whole participation is as necessary as his. This is high doctrine, but is undoubtedly believed by a large number of

persons, whose serious attitude towards love and marriage should be respected by the State. It is certainly true that the more seriously one regards marriage the more serious is the need of a legal means of dissolving marriage.

"*Proposition V.—Love and Adultery.*

"The passion of love, being a passion founded on instinct and fostered by imagination, is irrational, unreflecting, spontaneous and not amenable to the law. Undoubtedly it changes its object, and reasonably so. If a youth of twenty-six and a girl of twenty-two, with no experience, little knowledge of each other and none of the rest of their fellow creatures, fall in love, it is not to be supposed that they will always be of the same mind; if they marry, it is not in the nature of things that marriage, as such, should prevent their changing their affections. If either of them do change, subsequently to marriage, it must certainly be the case that the sacrament, as here conceived of, must be profaned, and is to be suggested that the contract should be voidable. It has been said in the scripture that the man or woman married who looks upon another with desire, commits adultery in the heart. It would be equally true to say that the husband or wife who loves somebody else, and nevertheless lives maritally with wife or husband, equally commits adultery. In the sacrament of the Lord's Supper the partakers are warned lest they eat and drink their own damnation. So it is with the sacrament of marriage to those who regard it seriously. Such persons say the contract should be voidable, and can only be insisted upon by the law at the soul's peril. They regard as a superficial view of the social effect of this proposal the objection that the result would be debauchery and indulgence of appetite. It is worse to keep two persons tied to an incongruous, and indeed shocking, union of this nature than to credit them with sincerity to themselves and to each other. Nothing can be more repugnant to humanity than to stimulate or persuade a man to do or a woman to suffer an act of such a significant intimate and nervous a nature for the sake of outward decorum. Outward conformity at the expense of inner revolt is as unwholesome as it is immoral. It should be pointed out to those who wish to abolish divorce altogether, or to withhold it from the poor, that by so doing they are laying mines at the foundations of marriage itself, and going a distinct step towards the abolition of that. If men and women, in deference to a social convention, strangle at 40 a passion which at 20 was considered honourable, they are being hardly used themselves and are using hardly their inoffending partners. It is better to marry than to burn, better also by far to divorce than to burn for one and use another. The base will act basely, however strict the marriage law, and not the less basely for being enabled to do so in secret. They have their reward. Under our present system the honourable and sincere are tempted to dishonour and insincerity. Marriage, therefore, ought to be voidable in all cases where desire and intention in either party have ceased; for in the case of base natures the inoffending party may fairly claim to be freed from degrading use, and in the case of higher natures will ardently desire it. It is reasonable also to suppose (in higher natures) that the inoffending party, if still in love with the party desiring release, will be actuated by the generous promptings of affection, and desire to release the beloved from an intolerable position. If there should be consent, added to good reason, it would seem difficult for the State to refuse relief.

"Part II.—Marriages with Issue.

"*Proposition VI.—Conjugal Rights.*

"The instinct to beget may be, in rare cases, a conscious factor in the desire of a man for a woman. It is generally so in that of a woman for a man. It is a symptom of love in serious women that they desire a child by the man beloved, and a common case that the desire to have the child is stronger than the desire to enjoy the man. In these cases, when the desire for the child is fulfilled, desire and intention for the man cease altogether; but the presence of the child, or the hope for more, may be enough to keep the wife's affections from another man. Even if they are not strong enough for that, they may keep her from seeking divorce; but she ought not on that account to be compellable to the man's desire. If she can show that desire and intention on her part are no longer in her power, that should be sufficient answer to a petition for restitution of conjugal rights. Such restitution is hardly more than a legal fiction; it allows a case for damages. There are, however, cases within knowledge where a woman would have been thankful to have had her position regularised by the law; where she was willing to forego her lover and remain in her husband's house to care for the children, but most unwilling to participate in an act to which she could contribute neither desire nor good intention. It is extremely important that some legal means should be afforded for recognising this particular hardship of women, which, though it has custom and law to support it, cannot be justified by any theory of morals or ideal of humanity.

"*Proposition VIII.—Divorce for Mothers.*

"It is rarely that a woman *bonæ voluntatis* will leave her children for the sake of her lover. When she does it is because (*a*) the passion of love overmasters her reason and instinct, or (*b*) because her home is made intolerable to her by the attentions, claims, jealousy or suspicion of the husband. In neither of these cases, clearly, can she contribute desire and intention to the sacrament of marriage, and in each, therefore, the State should afford her the relief she would regard as indispensable—relief from her husband's bed. In the first case, however, the State should not give her divorce unless she had her husband's consent to it; in the second, if release from his bed did not release her from moral torment, she should be relieved by divorce. Where there was consent the custody of the children would have been agreed upon between the parties; but in the absence of consent the State should have discretion how to act, as it has, in fact, now.

43,577. The next paragraph——?—I fear the next paragraph is out.

43,578. Yes, you suggested that yourself?—Yes, I was afraid it might be. Then I go on to Proposition IX.:—

"*Proposition IX.—Composition of the Divorce Tribunal.*

"The Court of Admiralty, owing to the technical nature of the evidence brought before it, is assisted by seamen who are known, I think, as lay-assessors. Intricate and particular as the economy of seamanship may be, it cannot approach in difficulty, delicacy and importance the questions which are daily before the Divorce Court. The diversity of human nature, the call for insight, sympathetic observation, adjustment of fact to the promptings of temperament and character—these are things quite beyond the capacity of a jury, and demand a knowledge of men and a discernment of personality of the highest order. It is certainly a case where the judge should have the benefit of lay-assessors, who should always be two—one male and one female. The judgment of impartial, educated persons of age, weight and experience, upon such intimate matters as love and temperament are essential to a good and equitable divorce court."

43,579. That brings us to the conclusion which you read before?—Yes, quite so.

43,580. May I ask you two or three questions to get a little more what your direct opinion is?—Certainly.

43,581. You really summarise your point at the top of page 6, "There must be, they say," that is your own view?—My own view.

43,582. "Mutual bodily desire, mutual spiritual intention. If the man desire physical gratification, he degrades himself and insults his wife"?—Yes, I follow.

43,583. That is the substance of the point?—Yes, quite; that it is the essence of the agreement. It has two parts, the bodily desire and the spiritual intention.

43,584. I quite appreciate that. Does that involve a right to dissolve a marriage on either party when these two conditions have ceased to co-operate?—I think so. I do not mean if there is a momentary distaste or a distaste for a short period, that it cannot be accommodated; but I think if it is likely to continue it certainly should form a ground.

43,585. If a personal dislike enters in?—If a personal dislike enters in very strongly or even if physical dislike——

43,586. Might I just ask this. This strikes me as written from the point of view of a very fine high mind. How would you suggest that that proposition would work amongst the practical rough and tumble people of life and amongst the lower classes?—Well, I think the feelings which I suggest as common to humanity are present naturally in all classes of the community, but expressed in a different way. I think it is unjust to assume that because the lower classes, or the poorer classes, express their ideas or feelings coarsely and brutally that they are necessarily coarse and brutal themselves. I do not think so. I think they are trying to say the same thing as we are, that they feel the same thing, and that their marriage proceeds on the same thing. We call it love, they call it liking, and men and women choose each other, or one chooses the other, and the other is influenced by his mind.

43,587. Then you would be prepared to accept that as a law applicable to the whole of the people?—I would, certainly, subject to the evidence and the discretion of the court.

43,588. Have you considered in thinking of such a proposition that, on the average, the man remains a, I will say, masculine creature until a much later period than the woman, and that this proposition might almost inevitably lend itself to men desiring younger partners as their wives advance in life?—Well, as I said in presenting this evidence, I exclude the base from my purview, because I thought there was ample means at the disposal of the State and of the court for dealing with the base. My point was to see if while preventing the base from devastating society, the State could not help the serious and the honest minded. I do not think your point would apply in the case of the serious minded, because I think by the time the female partner of such a marriage was too old, the better and the higher side of the married life would apply to the man and keep him faithful to her. I think so.

43,589. All I wanted to put was, does not that indicate a danger in applying a proposition of that kind to the general State?—Yes, it would if I had suggested that marriage should be *ipso facto* void. I only suggest it should be voidable. I think it is entirely a question for the discretion of the court.

43,590. Do not you think that might work very adversely to women?—No, I do not think so. I regard as the whole crux of that case the presence of a lay assessor—a woman assessor.

43,591. But they would have no option if the cessation of desire and spiritual intention were enough?—Oh, I think there would be option. The question you put to me as to the relationship of these two people for a long period of years; that is such a serious matter that the court would want evidence——

43,592. I do not see what you think the lay assessor would have to determine?—The lay assessor would have to determine the psychical condition of the parties.

43,593. Of both?—Yes.

43,594. Suppose the psychical condition of the man was for the divorce, but the psychical condition of the woman was full of attachment to the tie?—Then I meet that in this way. If it is the woman wanting to be relieved, I protect her by refusing divorce, but regularising her position in the household with regard to the conjugal rights of the husband.

43,595. Do you think this proposal takes adequate consideration to the position of children of a marriage who are entitled to the proper care of their parents?—They are, of course.

43,596. But if this diminution or cessation of bodily desire and spiritual intention arose and was applied, the children would be left entirely out?—No, in my view in all these cases where there were children, as I say here, they could not come to the court at all without producing the arrangements which they may have made between themselves; and any arrangement they may have made and may produce before the court would be entirely subject to the discretion of the court as to whether it was good for the children, considering the state of the parties.

43,597. That does not give the children much voice, nor anybody on their behalf. The parties are to make what arrangements they please to satisfy their own views of life?—Yes, well, I should be very unwilling to assume that one of the parents at all events had not got the children's interest paramount in his or her mind.

43,598. Well I think you have made the position you suggest extremely plain. Whether it is a practical matter is another point?—Yes, I quite agree that is so.

(*Chairman.*) Thank you very much for your evidence. You have presented a certain view of this matter which will have to be considered of course.

(*Chairman.*) I am happy to say we have now practically completed the evidence in this matter. I do not say we have absolutely done so because there are certain materials to be obtained after, but chiefly of the statistical and documentary character. However, practically we have concluded the public inquiry so far as it is to be held in public, and it is interesting to know that during these 20 days we have sat lately we have disposed of 102 witnesses. The figures which I gave on the last adjournment I think are pretty well known. We have taken an enormous number of witnesses on each of these sittings. I would like to say only one word to the Press, namely, that I have felt they have had to labour under two disadvantages; first, that they have had some extremely complicated evidence to listen to, much of it extremely difficult to follow; and I also think being placed (which we could not help) behind the witnesses has not been a position for them which has made it always possible to hear with accuracy everything that has been said. We could not help ourselves in that respect. I should like to say this one word. I have not had the time or the opportunity of reading all that has been reported, but speaking generally it seems to me from what I have seen that the Press have very satisfactorily discharged their duty.

Adjourned.

Winchester House, St. James's Square, London, S.W.

FIFTY-SIXTH DAY.

Wednesday, 17th May 1911.

PRESENT:

THE RIGHT HON. LORD GORELL (*Chairman*).

HIS GRACE THE LORD ARCHBISHOP OF YORK.
The Lady FRANCES BALFOUR.
The Right Hon. THOMAS BURT, M.P.
The Hon. LORD GUTHRIE.
Sir WILLIAM R. ANSON, Bart., M.P.
Sir FREDERICK TREVES, Bart., G.C.V.O., C.B., LL.D., F.R.C.S.
Sir LEWIS T. DIBDIN, D.C.L.
Sir GEORGE WHITE, M.P.
His Honour Judge TINDAL ATKINSON.
Mrs. H. J. TENNANT.
EDGAR BRIERLEY, Esq.

The Hon. HENRY GORELL BARNES (*Secretary*).
J. E. G. DE MONTMORENCY, Esq. (*Assistant Secretary*).

The Right Hon. LORD GORELL, called and examined.

(*Chairman.*) I should like to put in as part of the evidence some Notes which I have prepared on the question of the principles to be applied in divorce legislation. I have given considerable time, study, and research to the matters with which I have dealt, and trust that the Notes may prove of some service. In putting in the Notes in this way, I am following the course adopted by Sir Lewis Dibdin with regard to his excellent Notes on the Reformatio Legum Ecclesiasticarum.

(*The Archbishop of York.*) As you are now in the position of a witness and not in that of Chairman, I beg to take this opportunity of thanking you, on behalf of the Commissioners, for your labours.

NOTES PREPARED BY LORD GORELL AS TO THE PRINCIPLES UPON WHICH DIVORCE LEGISLATION SHOULD PROCEED.

Object of the Notes.

1. Before the appointment of this Commission, my attention had been specially directed to three questions: (1) as to whether or not it was desirable and possible to afford further facilities than at present exist for the purpose of enabling persons of little means to bring their matrimonial cases before the courts, (2) as to whether wives should not have the same rights of divorce as husbands, and (3) as to whether the present system of newspaper reporting of divorce cases should not be restricted or prohibited. But the inquiry upon which the Commissioners have been engaged extends over a far wider range of subjects, and questions of the most far-reaching kind are raised and have been presented for consideration by the terms of the Commission. In order to answer these it is necessary to form clear views upon the principles to be applied in their determination.

2. Since the appointment of the Commission, I have therefore endeavoured, so far as my powers have enabled me to do so, by a careful study of the very interesting, learned, and exhaustive evidence which has been laid before the Commission by experts, representative of all shades of opinion and of all kinds of experience; and of the history of the laws of marriage and divorce from early times to the present; by an examination of the writings of numerous authors, both ancient, mediæval, and modern; and, by most anxious reflection, to elucidate for my own satisfaction the fundamental principles which require to be ascertained. And I venture to express the hope that, in placing before the Commissioners the results of my investigations, study, and research, I may afford some assistance in laying down the lines upon which legislation should proceed.

3. I confess that I do so with great diffidence, not only because of the complex nature of the problems involved, the vast mass of historical and other literature to be examined, and the large volume, weighty character, and conflicting nature of the evidence, both of opinion and of experience, which has been given, but also because the questions raised on the inquiry touch not merely upon human laws and institutions but upon matters which are affected by religious beliefs and opinions, and are regarded by very many as concerned with man's spiritual welfare as well as with his social conditions.

4. It has, indeed, been impossible to avoid being at times daunted by the gravity of the task which has been set before the Commissioners, but that task has been faced by them with such serious and engrossing attention and earnest determination to make a great effort to solve problems which have perplexed the Christian world for centuries, as to make me feel confident that the result of the discussions will be to produce, if not a final solution of those problems, at any rate recommendations which, it may be hoped, will prove that steps should be taken sufficient to meet the most crying evils and the most pressing grievances disclosed by the witnesses who have appeared before the Commission.

First Full Inquiry.

5. Numerous and vital changes have been made during the last century in the divorce laws of some foreign countries and of some British colonies, but, so far as I can learn, this is the first time that a formal and exhaustive inquiry has been made in this country, or, indeed, in any country, into the questions submitted for consideration. I have been unable to discover from the learned and deeply interesting account of the document known as the "Reformatio legum Ecclesiasticarum" prepared and put in evidence by Sir Lewis Dibdin that any evidence in the nature of that laid before the Commission was taken before the abortive Commissions of Henry VIII. and Edward VI.—I mean with regard to social and economic conditions, the state of morality in the country or the effect thereon of the laws, or with regard to other matters upon which so much evidence has been given before the Commission. It is sufficient for present purposes to say that the aforesaid document, according to Sir Lewis Dibdin, represents only the views of "certain individual Church- "men of great eminence and influence" (Q. 34,940, lix). He states that they "were no doubt also "adopted by the rank and file of a section of extreme "Protestants in this country, but, except during a "few years of Edward the Sixth's reign, were never

" dominant in the Church of England." English theologians were probably largely influenced by the opinions expressed by the great continental reformers and the greater freedom of thought which resulted from the Reformation, and it seems also probable that the views referred to were shared by many of the laity but to what extent they were generally adopted does not appear at all clear.

6. General evidence of the aforesaid character was not taken by the Royal Commission of 1850–1853, though a few questions as to the principle of the equality of the sexes may be found addressed to some of the six witnesses whose evidence that Commission had. The object of that Commission was mainly, if not entirely, to deal with the establishment through the courts of law of a more reasonable and satisfactory system of procedure in divorce than that which then obtained by means of private Acts of Parliament, and that object was kept steadily in view by the Government in the debates in the year 1857, when, for this reason only, substantial changes in the law as administered by Parliament were opposed by them, with the exception that desertion for two years was added to the existing grounds for judicial separation and as a ground which, added to adultery, would give a wife a right to sue for a divorce against husband.

7. This Commission is indebted to the witnesses who have been called before it for an immense mass of information and learning as well as statements based on practical experience relating to all parts of the matters inquired into, much of which has evidently been the result of very careful investigation and thought.

Difference between an Inquiry held to-day and in former Times.

8. But, further, it is of the utmost importance in considering much that has been thought and has taken place with regard to these matters to keep in mind the immense difference there is between the circumstances under which an inquiry is held in the years 1910 and 1911 and those existing at any period of the world's history prior, say, to the last 50 years.

9. We live in a world which would be hardly recognised even by our grandparents. To-day, astronomy, geology, biology, and other sciences have revealed secrets of the heavens and earth which were unknown to, and undreamed of by, man in former days; more especially have they given to him some conception of the immeasurable periods of time through which the earth must have revolved on its orbit; disclosed traces of the existence of human life upon it from vastly remote times; and manifested the impossibility of accepting in an historical and not an allegorical sense the Biblical account of the creation of the world and man. The habitable globe is now fairly known throughout; communication from one part of it to another by transit is extremely rapid, and by message is instantaneous, so that people at one extremity of it know daily and even hourly what is going on at another extreme. The sea has been conquered, and even the conquest of the air is at hand. Diseases, plagues, and pestilences have been traced, or are in process of being traced, to their sources, and are no longer attributed directly to a supernatural origin. Although much remains to be clearly discovered, man's habitat is understood to-day to an extent which, to the former dwellers upon earth, must have been inconceivable. Heavenly bodies have also been mapped out, counted, examined as to their motions, structure, distance, inter-relationship and other properties, and, although discovery may be still in its infancy and mysteries of the universe are still undiscovered and may perhaps remain insoluble, much has been done to free the human mind from superstitious beliefs and terrors and from that dark ignorance which for so long overshadowed human life.

10. Contrast the state of knowledge which to-day exists with that which prevailed in the days of which we have first any reasonably reliable records, whether by monuments, writings, or otherwise; and even with that which prevailed in later historic times, whether Jewish, Greek, Roman, early Christian, mediæval, or indeed even with that of 50 years ago, and then consider how the state of knowledge at various times has influenced beliefs, thoughts, and actions, and how there has been a gradual, insensible, yet radical modification of the habits of thought prevailing in Europe. The change is still, no doubt, in progress. Its limits have not yet been reached, and it would be idle to attempt to forecast the developments which time will bring forth; but the change itself is profound and fundamental.

11. When we face to-day problems of human life, it is necessary to consider what reliance we are to place upon the opinions of legislators, scholars, divines, and others in earlier days upon those problems, when their opinions were unavoidably affected by their beliefs as to many matters which were mysterious to them, but with regard to which we have now actual and accurate knowledge; when men believed that the earth was the centre of the universe, and all the heavenly bodies were its attendants, and that any deviation from the ordinary daily course of those bodies, as, for instance, the appearance of a comet or the occurrence of an eclipse, portended something disastrous to the dwellers upon earth, and was specially directed against them; when they attributed the devastation of countries by plague or other diseases to what used to be regarded as a special interposition of divine power, and termed a "visitation from God," instead of in some cases to their own neglect of proper precautions, and in others to the workings of microbes or modifications of structure discovered by modern scientists; when it was thought that human power and duty were effectively discharged by offering up prayers for deliverance from physical evils which are now recognised as due to natural causes and human weaknesses, and are combatted and controlled by human action properly directed even with the knowledge already attained; and when their superstition was such that they condemned or censured those who advanced scientific theories, now recognised to be sound, but not then acceptable even to the enlightened, or sent to the stake those unfortunates to whom they attributed evil powers derived from an infernal spirit. It seems in these circumstances not unreasonable to attach less importance and weight to the opinions of men of early times, including the Fathers of the Church, and of later divines and scholars than were attached thereto in days which were less enlightened than our own, and even up to comparatively recent times. The effect of these erroneous views and of this ignorance was not confined to the particular matters involved: they affected men's whole outlook on human life.

Two Illustrations.

12. It is not necessary to elaborate these observations, but it may be useful to give two well-known illustrations of the wide difference between views generally accepted to-day and those entertained even as late as the 17th and 18th centuries.

13. Even after the minds of men had been stirred by the great movement of the Reformation, we find that the discoveries and theories of eminent experimental philosophers, such as Hipparchus or Ptolemy, were generally forgotten or overlooked; that the promulgation by Copernicus of the system which goes by his name was regarded as a danger to religion, and that on the 24th of February 1616 consulting theologians of the holy office characterised the two propositions that the sun is immovable in the centre of the world, and that the earth has a diurnal motion of rotation—the first as "absurd in philosophy and formally heretical "because expressly contrary to Holy Scripture," and the second as "open to the same censure in philosophy "and at least erroneous as to faith," and that on the 22nd June 1633 Galileo, whose discoveries are so well known and who extended and improved upon the discoveries and theories of his predecessors, was condemned by seven cardinals "as vehemently suspected of heresy" to incarceration at the pleasure of the tribunal, and by way of penance was enjoined to recite once a week for three years the seven penitential psalms. The decree, however, fortunately for him, did not receive papal ratificatiou.

14. Another illustration is the persistent continuance of the belief in witchcraft. One of the last executions for this offence in our enlightened country took place in 1665, when two wretched women were hanged at Bury St. Edmund's under a sentence of Sir Matthew Hale, then Lord Chief Baron. Sir Thomas Browne, a great physician as well as a great writer, was called at the trial as a witness, and swore that he was clearly of opinion that the persons were bewitched. The trial is reported in State Trials, vol. VI., 647–702), and a concise account of it is given in Lord Campbell's "Lives of the Chief Justices," vol. I., p. 563 *et seq.* (ed. 1849).

15. Dalyell, in his "Superstitions of Scotland," pp. 669, 670, notices having seen nine women burning together at Leith in the year 1664, and even as late as 1773 the Divines of the Associated Presbytery of Scotland passed a resolution declaring their belief in witchcraft and deploring the scepticism which was general (Macaulay's History, vol. III., p. 706, ed. 1855). Executions for this offence took place in England and Scotland as late as the end of the 17th or beginning of the 18th century (1712), but the burning of a sorcerer in Spain appears to have taken place as late as 1780. I may refer for these dates to Sir William Lecky's work, "Rationalism in Europe," pp, 122, 135, 136, and p. 5. The first volume, chap. I., gives a full account of the history of the belief in magic and witchcraft and the consequences thereof.

Change in Conceptions.

16. It has seemed to me desirable to make these preliminary observations, because they appear to be necessary when approaching the consideration of problems which have been discussed from time to time for centuries, and can now, for reasons above indicated, be looked at from an entirely new point of view, unfettered by many difficulties which our forefathers must have felt. Although at first their materiality may not be readily apparent, the bearing which they have upon the subject will become clear as I proceed.

It is right to add that not only have our increase in knowledge and our abandonment or modification of old beliefs and opinions completely altered our standpoint from that of our forefathers, but results similar in character have followed from modern conceptions of the relations between the sexes. In times not so very remote it was considered that a wife was the property of her husband, or more or less under his dominion, and that her lot was to endure treatment at his hands, even though it might be destructive of her happiness and disastrous to her health, which nearly every witness examined before the Commission thought entitled her now-a-days not only to remonstrate but to terminate cohabitation. Further, even in the present day, the idea which used to be universal is not yet extinct, that a woman ought to continue cohabitation in the interest of her husband and out of deference to her marriage vows, although her husband's vicious example and teaching may be ruinous to her children already born and intercourse with him may result in the production of diseased and degenerate offspring.

Different Views to be considered.

17. I pass on to matters with which the State is immediately concerned. What view should be adopted with regard to the principles to be applied to the formation and dissolution of matrimony?

18. If marriage ought to be considered by the Legislature as indissoluble, the Act of 1857 ought to be repealed, and no private Acts of Parliament dissolving marriages ought to be passed, and it would be unnecessary to attempt to answer any of the questions raised, except on some minor points and as to the jurisdiction and procedure of courts of summary jurisdiction. The result of this position cannot be shirked. England would then be the scene of unredressed matrimonial wrongs to an extent greater than in any previous period of her history, unless resort were had to the revival of the extensive mediæval powers of annulment and the abuses which would arise therefrom.

19. If marriage ought to be considered by the Legislature as indissoluble, except for the cause of adultery, questions raised as to means of enabling the poorer classes to bring their cases before the courts, as to publication, as to the equality of the sexes with regard to adultery, and as to some amendments in the administration of the law in the High Court and in courts of summary jurisdiction, will require to be considered.

20. If, however, marriage ought to be regarded by the Legislature as dissoluble upon grounds in addition to adultery, it will then be necessary to deal with the question of what ought to be the other grounds, and the conditions and restrictions under which they ought to be allowed, as well as with all the questions aforesaid.

21. It is then necessary to determine on what principles the Legislature should proceed in enacting laws on the subject of marriage and divorce; or, dividing the question, should the Legislature proceed in enacting such laws on the principle that marriage is—

(*a*) indissoluble; or
(*b*) is dissoluble only on the ground of adultery; or
(*c*) is dissoluble on some grounds in addition to adultery.

22. The first important point to notice is that questions relating to marriage and divorce affect all the inhabitants of this country, whether they are believing Christians, nominal Christians, or do not belong to any Christian church, and the Legislature cannot allow its consideration of these questions, even in a country in which the larger proportion of the inhabitants are Christians, or nominally such, to be limited by the views expressed by representatives of Christian churches, especially where so much difference exists between them as the evidence before the Commission shows. I shall revert to this point later on, but I shall at first proceed to deal with the questions mainly from the points of view in which they may be regarded by Christians.

Question as regarded by Christians.

23. I notice that with regard to the three entirely different principles above stated, it may be necessary, even from a Christian point of view, to differentiate between marriages contracted between Christians and marriages outside Christianity, for I understand that a number of members of the Church of England who maintain that the bond of Christian marriage is indissoluble except by death, agreeing in this respect with the doctrines of the Roman Catholic Church, do not regard marriages contracted outside Christianity as *essentially* indissoluble. This is expressed as a conclusion by Mr. Watkins in his work on "Holy Matrimony" at page 589, and I gather that this is in accordance with the evidence of the Bishop of Birmingham, from which I quote the following questions and answers:—

> "21,243. (*Chairman.*) Is your view now, as a conclusion, that marriage should be treated as indissoluble?—In the Church—yes.
>
> "21,244. In the Church?—Yes. I will not say what I think is possible in civil society, but in the Church.
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> "21,258. How would your view apply to the the cases, which undoubtedly would be numerous in England, of persons who are not Christians at all and yet are married according to their own rights or according to the registrar's form of celebration. I mean the State must consider all its citizens?—Quite so. The early Christians regarded those marriages very largely as marriages which might be rendered Christian if the parties became Christians, but which were, so to speak, voidable. St. Paul, for example, maintains that if two parties had been married, being Pagans, and had subsequently become Christian, it was a matter of choice between them whether they maintained or did not maintain the marriage.

"21,259. I wanted to get at this, whether the view you present at the moment is that a Christian marriage should be treated as indissoluble, but that any other marriage should be treated as dissoluble by the State, in considering the matter?—I should respectfully propose that the State would have to (taking the matter in its broadest sense) pay great regard to the fact of differences of conception. I conceive that in India the State does that. It recognises there that the marriage contract or agreement means a great many different things. Unhappily, as I should think, the modern State would have to pay regard to that.

* * * *

"21,504. (*Lord Guthrie.*) My Lord, do you think that all marriages entered into in England are indissoluble for any cause, or only what have been called Christian marriages? — Not all marriages, because, of course, Jewish marriages would not be, I suppose."

24. The result of this differentiation is thus expressed by the witness:—

"21,442. How far, under those circumstances, would you think that the State was bound to consider, with regard to its marriage law, the large numbers of its citizens who do not wish for Christian matrimony, or who were not, because they were not Christian, capable of Christian marriage?—Oh, certainly.

"21,443. You think the State is bound to consider that?—Oh, most certainly. I do not think the State law can be maintained at a level much higher than the average public opinion of the citizens at any time.

"21,444. So would you consider it as inconsistent that the principles you have laid down this afternoon that the State should have regard in its public law to these citizens who cannot be regarded as desiring or capable of Christian marriage?—Of course a Christian citizen would try to influence public opinion, but he cannot complain at the State law following public opinion."

25. It is to be observed that the Rev. Edmund Wood, who gave evidence on behalf of the English Church Union, appeared to be of opinion that for reasons he put forward with regard to the original institution of matrimony, all marriages should be regarded as indissoluble (Q. 40,384–5).

26. Those who maintain that Christian marriage is indissoluble argue that, however aggravated and however widespread the hardships and personal injustice may be that arise from the application of this principle, these wrongs must remain without a remedy other than mere separation between the parties, and their sufferings must be tolerated as belonging to the necessary order of things, inasmuch as there is a specific law of marriage instituted by God Himself at the Creation and expressly adopted and confirmed by Christ; a law incapable of variation; a law set forth in definite terms and so clear that any municipal variation of it is as much a defiance of the order of things as a breach of what are known as natural laws.

27. Then, again, other members of Christian Churches accept the view which has been acted on in England for about 200 years and is recognised by the present Statute Law that Christian as well as non-Christian marriage is dissoluble on the ground of adultery, and found this view upon the interpretation of St. Matthew's Gospel, in which they consider that Christ is represented as allowing this exception. But, save with regard to this exception, their attitude towards the hardships and personal injustice caused by other matters, which break up a home even as much or more than adultery, is similar to that of those who maintain the absolute indissolubility of marriage.

28. And, again, other members of Christian Churches admitting broader views maintain that the conditions of divorce are properly to be determined by the State in the light of Christian principle with reference to the actual necessities and circumstances of men. This is shown by the following passage from the evidence of Canon Hensley Henson, who maintained that the mass of the communicants in England would not sustain the rigid view of the clergy (Q. 22,678):—

"22,585. * * * * * *

It will be sufficiently apparent that when the sacramental view of marriage is frankly abandoned, and the permanence of the marriage bond is seen to be contingent on conditions which may cease, there emerges the grave and difficult practical question as to the circumstances which shall be held to imply such a destruction of the marriage bond. All Christians hold that *death* destroys the bond; most Christians hold that *adultery* does so. Beyond that point there is less agreement, but most Protestant Christians agree in the principle that whatever can be shown to render impossible the primary objects of marriage is *primâ facie* a sufficient ground for divorce. If it be rightly contended that there is nothing in the Gospels which can fairly be described as 'a definite and detailed social law,' and if it is not the case that Christ's words with respect to marriage are in such sense 'plain and direct' as to close the question for His disciples, then it would seem to follow that the conditions of divorce are properly to be determined by the State in the light of Christian principle with reference to the actual necessities and circumstances of men. So long as the marriage law does not violate Christian principle it can claim from the Church respect and obedience."

29. Those who would affirm the first principle (that marriage is indissoluble) are naturally opposed to any extension of the present law and system of its administration, and those who would affirm the second (that marriage is dissoluble only on the ground of adultery) would naturally be in opposition to an extension of the law to other grounds of divorce besides adultery, but are not necessarily averse to an improvement in its administration; whereas those who would favour the last alternative would not necessarily find themselves opposed to either reform.

30. Two important points may be noticed before proceeding to examine the proper principles to be applied One is the remarkable diversity of view in the Church of England with regard to these principles—and there are other churches which differ still further—and yet all churches have identically the same sources from which to draw their conclusions; and, although there is a whole world of literature upon the subject, the original materials on which the question depends are extremely limited. If these materials in the Old and New Testaments are examined without partiality or preconceived inclination to arrive at one result rather than another, and with adequate regard as to the origin of these materials, there ought to be no reason for such wide diversity of opinion.

31. The other point is that where Christians affirm either of the first two principles and apply them only to Christians and not to non-Christians, they do not affirm any general ordinance applicable to all mankind, or any general principle as governing monogamous union; a remarkable, and, as it seems to me, illogical position to adopt if there be any express divine law which should be applied originating in a principle enunciated at the Creation. On the other hand, those Christians who would affirm the last alternative would probably find that, commencing with a general principle of indissolubility, and admitting exceptions according to human necessities, they would be in practical accord with non-Christians who would settle the difficulties by human principles, that is to say, by basing their conclusions upon a consideration of the conditions of human life, and of what would best tend to the social and moral well-being of the people. They would be unable to regard any law as of divine origin which did not show an adequate consideration of such matters, or any appreciation of evolution in human relations. Such a law would involve a contradiction in terms.

32. It is, therefore, in the first instance desirable to come to a reasonably certain conclusion as to whether or not the views, either of those who affirm the principle first stated, or of those who affirm the second, are supported by divine ordinance, and if so which view is so supported; and then, if no reasonably certain conclusion can be reached in favour of either of those views, to proceed to consider the principles by which those who would support the last alternative principle (whether they do so from a Christian or a non-Christian point of view, influenced both on grounds of religious and public policy or out of regard to considerations of public policy only) should be guided.

33. An answer in the affirmative to either of the first two questions stated will be found to rest mainly upon the views entertained by ecclesiastics and those following their views, which declare that, according to the teaching of the Founder of Christianity, divorce is absolutely forbidden to Christians entirely, or at any rate, for any cause except one, that is to say, adultery; or, in other words, that Christian marriage is indissoluble, or, at any rate, indissoluble except for the said one cause. Passages in the Holy Scriptures are used in support of these views. The most important in addition to the verses 1–4 of the 24th chapter of Deuteronomy, are the following taken from the Revised Version:—

St. Matthew.

V., 31. It was said also, Whosoever shall put away his wife, let him give her a writing of divorcement:

32. But I say unto you, that every one that putteth away his wife, saving for the cause of fornication, maketh her an adulteress; and whosoever shall marry her when she is put away committeth adultery.

XIX., 3. And there came unto Him Pharisees, tempting him and saying, Is it lawful for a man to put away his wife for every cause?

4. And He answered and said, Have ye not read, that He which made them from the beginning made them male and female.

5. And said, For this cause shall a man leave his father and mother, and shall cleave to his wife; and the twain shall become one flesh?

6. So that they are no more twain, but one flesh. What, therefore, God hath joined together, let not man put asunder.

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

8. He saith unto them, Moses for your hardness of heart suffered you to put away your wives: but from the beginning it hath not been so.

9. And I say unto you, Whosoever shall put away his wife, except for fornication, and shall marry another, committeth adultery: and he that marrieth her when she is put away committeth adultery.

10. The disciples say unto Him, If the case of the man is so with his wife, it is not expedient to marry.

11. But He said unto them, All men cannot receive this saying, but they to whom it is given.

12. For there are eunuchs, which were so born from their mother's womb: and there are eunuchs, which were made eunuchs by men: and there are eunuchs, which made themselves eunuchs for the Kingdom of Heaven's sake. He that is able to receive it, let him receive it.

St. Mark.

X., 2. And there came unto him Pharisees, and asked him, Is it lawful for a man to put away his wife? tempting him.

3. And He answered and said unto them, What did Moses command you?

St. Mark.

X., 4. And they said, Moses suffered to write a bill of divorcement, and to put her away.

5. But Jesus said unto them, For your hardness of heart he wrote you this commandment.

6. But from the beginning of the Creation male and female made He them.

7. For this cause shall a man leave his father and mother, and shall cleave to his wife;

8. And the twain shall become one flesh: so that they are no more twain, but one flesh.

9. What, therefore, God hath joined together, let not man put asunder.

10. And in the house the disciples asked Him again of this matter.

11. and He saith unto them, Whosoever shall put away his wife, and marry another, committeth adultery against her;

12. And if she herself shall put away her husband, and marry another, she committeth adultery.

St. Luke.

XVI., 18. Everyone that putted away his wife and marrieth another, committeth adultery: and he that marrieth one that is put away from a husband committeth adultery.

1. Corinthians.

VII., 1. Now concerning the things whereof ye wrote: It is good for a man not to touch a woman.

2. But, because of fornications, let each man have his own wife, and let each woman have her own husband.

3. Let the husband render unto the wife her due: and likewise also the wife unto the husband.

4. The wife hath not power over her own body but the husband: and likewise also the husband hath not power over his own body, but the wife.

5. Defraud ye not one the other, except it be by consent for a season, that ye may give yourselves unto prayer, and may be together again, that Satan tempt you not because of your incontinency.

6. But this I say by way of permission, not of commandment.

7. Yet I would that all men were even as I myself. Howbeit each man hath his own gift from God, one after this manner, and another after that.

8. But I say to the unmarried and to widows, It is good for them if they abide even as I.

9. But if they have not continency, let them marry: for it is better to marry than to burn.

10. But unto the married I give charge, yea not I but the Lord, That the wife depart not from her husband.

11. (But, and if she depart, let her remain unmarried, or else be reconciled to her husband); and that the husband leave not his wife.

12. But to the rest say I, not the Lord: If any brother hath an unbelieving wife, and she is content to dwell with him, let him not leave her.

13. And the woman which hath an unbelieving husband, and he is content to dwell with her, let her not leave her husband.

14. For the unbelieving husband is sanctified in the wife, and the unbelieving wife is sanctified in the brother; else were your children unclean; but now are they holy.

15. Yet if the unbelieving departeth, let him depart: the brother or the sister is not under bondage in such cases: but God hath called us in peace.

I. Corinthians.

VII., 16. For how knowest thou O wife, whether thou shalt save thy husband? or how knowest thou O husband, whether thou shalt save thy wife?

Romans.

VII., 2. For the woman that hath a husband is bound by law to the husband while he liveth; but if the husband die, she is discharged from the law of the husband.

3. So then if, while the husband liveth, she be joined to another man, she shall be called an adulteress: but if the husband die, she is free from the law, so that she is no adulteress, though she be joined to another man.

34. For the 19 centuries which have elapsed since the commencement of the Christian era controversies have raged as to the meaning to be placed on these passages. The literature on the subject is enormous, including as it does the writings of the early Fathers of the Church, divines, and lay scholars of different ages, opinions of the great Protestant reformers and others, conflicting decrees of councils, &c. It may be interesting to note that Mr. W. E. Gladstone in his speech of July 31st, 1857, in opposition to the second reading of the Bill of 1857 in the House of Commons, gives seven different constructions, as the following extract from the speech will show: "Now, Sir, it is "not to be dissembled that a very great diversity of "opinion prevails with respect to the due construction "to be put on Scripture in this matter. There are, in "the first place, those who think that the prohibition "of divorce—that is, divorce carrying with it the "power of re-marriage—is absolute. There are those "who think that there is in Scripture permission to "marry after divorce in case of adultery alone, but "that the permission is limited to the innocent man, "and that there is not given to the woman under any "circumstances liberty to marry. That I believe to be "the most ancient opinion of the Christian Church "after the old law, as I shall call it, of indissolubility. "There are those who go one step further. They "give liberty of divorce and re-marriage both to "the innocent man and to the innocent woman. "There are others who give liberty of divorce "after adultery to both parties if they are innocent, "and to the man although he is guilty. There "are others, and that is the description of the "Scotch law at the present moment, who give it to "both whether innocent or guilty, provided there is "no intermarriage between the guilty parties. There "is another class that permits the intermarriage of "the guilty parties, and there is another which con-"siders that divorce may be permitted not only for "adultery but for other causes . . . . We have "many causes far more fatal to the great obligations "of marriage, as disease, idiocy, crime involving "imprisonment for life, and which, if the bond be "dissoluble, might be urged as a reason for divorce. ". . . . With respect to the great question of the "indissolubility of marriage, let me observe we had "too much dogmatism, but the length to which I "would push the argument is this—That the Gospel "was intended to work out a certain great and "provident result; and the mode of attaining this "result, the most blessed and precious for mankind "at large, was, in the wisdom of God, not by means of "commands and forms in a rigid shape, but rather "by the infusion of a new spirit into the precepts of "the law, a spirit that pervaded every artery and vein "of society, raised its tone from the degradation of "heathenism, abolished the cruel sacrifice of human "life, abolished the exposure of children, abolished "polygamy, abolished slavery."—(Hansard, vol. 147, p. 838–841.)

35. No common accord or understanding has been reached even at the present day, although the controversies have turned, and according to witnesses before the Commission, still turn mainly, if not entirely, upon the actual words used in the passages referred to. Mr. Watkins, whose work on "Holy Matrimony" has been already mentioned, at p. 151 thereof, says: "The "evidence of Holy Scripture is difficult to understand, "the appeal to Christian tradition is not quite "uniformly answered, and from the standpoint of "reason it may be conceded that there are arguments "of weight on both sides." This want of accord is perhaps not so strange when it is remembered that to-day's controversies are inherited from times of ignorance and superstition, from periods of violent recoil from prevailing licence, when ascetic doctrines prevailed and celibacy was glorified at the expense of marriage, when the the theory of verbal inspiration and the consequent inerrancy of the Scriptures were universally accepted and free criticism of those writings and inquiries as to their authorship and source and comparative values were considered inadmissible, and when the limits of man's knowledge and the depth of his ignorance may be easily understood from what I have already stated: if any one requires ocular demonstration of this, let him look at the celebrated Mappa Mundi in Hereford Cathedral, designed, according to M. D'Avezac, the French geographer, early in 1314.*

36. At the present day the Scriptures are no longer looked on as outside the region of critical investigation, and partly owing to the development of textual and historical criticism, and partly to the progress of modern geological, archæological, biological and other scientific knowledge,† and to the discovery of the Assyro-Babylonian and other cosmogonies and to other causes,† they can now be criticised in a way that was impossible in former days, and there are considerations to-day which were formerly either unknown or considered without weight, but which now seem to show grounds upon which religious and ecclesiastical difficulties which the question under discussion present may be lightened or overcome.

37. The present position is that—

The Roman Catholic Church does not permit divorce *a vinculo*.

The Scottish law, accepted by the Protestant churches of Scotland, allows divorce to either sex for adultery or malicious desertion for four years.

The Greek Church allows divorce to either sex for adultery, and other causes are recognised in Greece, as shown by the synopsis, Minutes of Evidence, p. 4.

The law of England recognises adultery as a ground of divorce, coupled, in the case of a wife's suit, with certain added circumstances.

The laws of other Christian countries appear in the synopsis aforesaid.

38. The evidence given by witnesses who appeared before the Commissioners discloses that there is not unanimity in the Protestant churches, and that even in the Church of England there are at least the three different opinions stated above held by the clergy and members of that Church on the subject, but which of these opinions is supported by a larger number of persons it is difficult, if not impossible, to judge; nor are there available means of determining the number of the clergy who hold one opinion rather than another, nor the numbers of the laity who agree in one opinion or another, nor the relative proportions of clergy and laity in each case. I restate these opinions for convenience in this form:—

(1) That marriage is indissoluble.

(2) That marriage is dissoluble on the ground of adultery.

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* *See* "Gentleman's Magazine," May 1863, and Murray's *Handbook to the Cathedrals of England*, p. 113.

† I refer to the Creation tablets deciphered by the late eminent Assyriologist, George Smith, and brought to the British Museum along with other treasures from the famous library of Assurbanipal (668–626 B.C.) excavated at Kouyunjik (Nineveh) and to Sayce's "Fresh Light from the Ancient Monuments"; Schrader's "Cuneiform Inscriptions in the Old Testament" (translation by Professor O. C. Whitehouse) and "Records of the Past" (edited by Sayce), second series, vol. 1, pp. 122, 153; and Boscawen in "The Babylonian and Oriental Record, October, 1890."

(3) That marriage is dissoluble for such grave causes as render joint married life actually or practically impossible.

The witnesses base these opinions mainly on questions of construction of the Scriptures, and have very fully discussed them. This is important, because none of the witnesses, including eminent biblical scholars among the clergy, have claimed any special powers, other than those acquired by study, which enabled them to consider the matters more effectively than can be done by adequately informed reasonable laymen. For this reason, although the legislature is not likely to examine into questions of theology, yet, as the views aforesaid are material and the grounds upon which they have been formed have been very fully gone into and explained by many learned men before the Commission, I think it right to point out certain matters which may assist open minds in coming to a conclusion upon these questions, if they approach them as I have endeavoured to do, without allowing pre-conceived opinions to overrule reason.

39. The points and suggestions which I venture to make are put forward with the utmost diffidence, for they are within the province of the theologian rather than within that of one whose training and work have been of a legal character; but the original materials referred to by the witnesses, and upon which comments have been made from time to time by numerous writers, are after all of a very limited nature, and I think it may be useful to make in these notes observations which have occured to me from a consideration of the evidence and writings and documents, including certain points arising out of the consideration of the scriptural texts pertinent to this matter which do not seem to me to have been raised by any of the witnesses, or in any of the works cited by them.

Notes on various Material Points.

40.—(1) The English text is derived from a large number of varying manuscripts and versions in the Greek language,* which seem to have been derived from words spoken in Aramaic, and not from any contemporaneous writings. There does not appear to have been any commitment of the Gospels to a written form until some uncertain number of years after the Crucifixion, though a document known to critics as "Q" (Quelle, source), the existence of which at some time is presumed by them, is regarded as of very early but uncertain date. The Epistle to the Corinthians referred to is supposed to be of a date some 25 years after the crucifixion.† It is stated that owing to the length of time which elapsed between the happening of the events recorded and the dates of the written records and the unreliability of human memory it is impossible to be certain that we now have a precise or full account either of what took place or of what was said.

(2) The state of Jewish society and practice with regard to divorce has been placed before us,‡ and seems to be better understood by scholars at the present day than at former times. We are thus assisted in understanding the bearings of the passages in question on the disputes which existed between the Jewish schools, and more especially between the school of Shammai and that of Hillel. The former contended for a strict reading of the passages in the Old Testament, while the latter maintained a view which practically permitted a man to put away his wife whenever he chose to do so. Upon this I may refer to the 24th chapter of Deuteronomy, v. 1–4, and the comments thereon by that well-known and very learned writer Dr. Driver, Regius Professor of Hebrew and Canon of Christ Church, Oxford, in his work on Deuteronomy (ed. 1909) at pp. 269–273.

(3) The first and second chapters of the Book of Genesis, which contain what has been termed the Mosaic account of the Creation, are, according to what I understand, to be the best modern opinion composed of distinct documents or sources which have been welded together by a later compiler (or "redactor") into a continuous whole. C. I.–II., v. 4^a, and C. II., v. 4^b–25, contain a double narrative of the origin of man upon earth; the former belonging to the age of Ezekiel and the exile (6th century B.C.) forming part of what is commonly called the priestly narrative, denoted for brevity by the letter P, and the latter belonging probably to the 9th century B.C., and forming part of what from its use of the name Jahweh is generally denoted as "J." Dr. Driver, from whose great work on "The Book of Genesis" these statements are taken (pp. iii, iv, xvi, Introduction), says at page xlii of the Introduction: "We are forced "therefore to the conclusion that though, as may "be safely assumed, the writers to whom we owe "the first 11 chapters of Genesis, *report faithfully* "*what was currently believed among the Hebrews* "respecting the early history of mankind, at the same "time, as is shown in the notes, making their narra- "tives the vehicle of many moral and spiritual lessons, "yet there was much which *they did not know and* "*could not take cognisance of:* these chapters, conse- "quently, we are obliged to conclude, incomparable "as they are in other respects, contain no account of "the *real* beginnings either of the earth itself, or of "man and human civilization upon it," and again at p lxi: "we have found that in the first eleven "chapters there is little or nothing that can be called "historical in our sense of the word: there may be "here and there dim recollections of historical occur- "rences; but the concurrent testimony of geology "and astronomy, anthropology, archæology, and com- "parative philology, is proof that the account given "in these chapters of the Creation of heaven and earth, "the appearance of living things upon the earth, the "origin of man, the beginnings of civilization, the "destruction of mankind and of all terrestrial animals "(except those preserved in the ark) by a flood, the "rise of separate nations, and the formation of different "languages, is no historically true record of these "events as they actually happened. And with regard "to the histories contained in chapters xii–l, we "have found that, while there is no sufficient reason "for doubting the existence, and *general* historical "character of the biographies, of the patriarchs, "nevertheless, much uncertainty must be allowed to "attach to *details* of the narrative: we have no "guarantee that we possess verbally exact reports of "the events narrated; and there are reasons for "supposing that the figures and characters of the "patriarchs are in different respects *idealized.* And, "let it be observed, not one of the conclusions reached "in the preceding pages is arrived at upon arbitary "or *à priori* grounds; not one of them depends upon "any denial, or even doubt, of the supernatural or of "the miraculous; they are, one and all, *forced upon us* "by the facts; they follow directly from a simple "consideration of the facts of physical science and "human nature, brought to our knowledge by the "various sciences concerned, from a comparison of "these facts with the Biblical statements, and from "an application of the ordinary canons of historical "criticism. Fifty or sixty years ago, a different "judgment, at least on some of the points involved, "was no doubt possible: but the immense accessions "of knowledge, in the departments both of the "natural sciences and of the early history of man, "which have resulted from the researches of recent "years, make it impossible now: the irreconcilability "of the early narratives of Genesis with the facts "of science and history must be recognised and "accepted."*

I find in this passage, from a work by one of the greatest living authorities in the Established Church, a statement as to the immense change in thought which

* A short account of this is to be found in Mr. Watkins' book, pp. 152–164.

† *See* the evidence of the Bishop of Ely (Q. 23,055, 23,058) and other witnesses.

‡ *See* evidence of Mr. Abrahams and Dr. Adler.

* Reference is also made to pp. 33, 36, and 51–56 of the same work. *See also* "Early Narratives of Genesis" by Bishop Ryle and the article by Whitehouse in Hasting's Dictionary, vol. 1, "Cosmogony." *See also* Cambridge Biblical Essays.

has taken place in the last half century, and that the account of the Creation given in the first two chapters of Genesis is no longer regarded as an inspired revelation in the sense of a record of real facts. The bearing of this upon the construction of the already-mentioned passages in the New Testament, upon which so much reliance is placed by those who base their opposition to any reform of the law on scriptural grounds, is of the utmost importance, for it will be seen upon a close examination of those passages that a construction of them is possible and reasonable to-day, to which in former days orthodox Christians might have felt it difficult or even impossible to assent.

(4) A difficulty which has been felt by the Western Church throughout the ages with regard to the treatment of the subject of divorce in the first of the Gospels may, according to certain modern critics, be eliminated if their views be accepted. That difficulty arises from the exception, "except for fornication," in the ninth verse of the 19th chapter of St. Matthew; and the exception, "saving for the cause of fornication," in the 32nd verse of the 5th chapter of the same Gospel, the specification of which exception has been and is regarded by the second category of Christians above alluded to as limiting divorce to one cause only. This exception has been a stumbling block, on the one hand, to those who oppose divorce altogether, and on the other hand, to those who advocate divorce for other grounds.

Competent critics point to certain inconsistencies in the account in St. Matthew xix., and maintain that they show that the account in St. Mark is original and that *εἰ μὴ ἐπὶ πορνείᾳ* and *παρεκτὸς λόγου πορνείας* are insertions by the editor of St. Matthew into St. Mark's narrative. With regard to this I refer to the evidence of the Bishop of Ely (Minutes of Evidence, Vol. II., p. 435), of Dr. Paterson (*ib.*, p. 442), of the Bishop of Birmingham (*ib.*, p. 347), of Canon Hensley Henson (p. 411), and of Dr. Sanday (Q. 38,476 *et seq.*), Dr. Inge (Q. 38,672 *et seq.*), Dr. Denney (Q. 38,777 *et seq.*) and others. I may also refer to the notes on these verses by W. C. Allen, M.A., Chaplain, Fellow and Lecturer in Theology and Hebrew, Exeter College, Oxford, in "A Critical and Exegetical "Commentary on the Gospel according to St. Mat- "thew," pp. 52, 201–206. At page 52 he says: "It "is, however, open to question whether this exception "(in v. 32) is not an addition of the editor, repre- "senting no doubt two influences, viz., Jewish custom "and tradition, and the exigencies of ethical necessity "in the early Christian Church. A similar exception "is made in xix. 9, and it will there be seen that the "clause is clearly an interpolation. There is, there- "fore, a presumption that it has also been interpolated "here. Moreover, the teaching of Christ as recorded by "St. Mark (x. 11) seems to preclude any such exception.

I gather that the exceptions are now regarded by high authorities as interpolations or interpretations of Christ's teaching according to the view of it held by the writer of the first Gospel, and that if these exceptions are eliminated the passages are brought into consistency with those in St. Mark and St. Luke, to which I refer later on. If these views are not accepted, then it is to be noticed that several different interpretations have been given to the word *πορνεία*, which are referred to by the Bishop of Ely in his evidence (Vol. II., p. 434); and that by some the exception has been treated as illustrative and not exclusive. The contention of many eminent theologians seems reasonable, that the introduction of the exception clearly shows that the writer, who recorded the account with the exception, did not consider that Christ laid down a principle of indissolubility absolutely regardless of any exceptions. This last consideration, as bearing on the proper interpretation of the teaching, is of the greatest importance; upon this, *see* the evidence of Dr. Sanday, Dr. Inge, Dr. Denney, &c.

(5) The evidence appears to show that modern critics regard the Gospel according to St. Mark as the earliest written record which we now have of the words and deeds of Jesus Christ, though the document known as "Q" already referred to is thought to have been earlier than St. Mark's Gospel.* This Gospel is attributed to the Mark mentioned in the Acts, and Papias, who was martyred at Pergamos in 163 A.D. mentions a tradition that Mark, who neither heard nor accompanied Christ, committed to writing what he heard from St. Peter. The date and place of the writing seem to be uncertain. There is some tradition that it was written at Rome. (Principal Lindsay, "The Gospel according to St. Mark," pp. 14–17.)

(6) From the general character of the discourses it seems clear that Christ spoke, not as a legislator, but as indicating general principles, and without expressing exceptions thereto. Clear instances of this are found in the 5th chapter of Matthew, verse 34, "Swear not at all"; verse 39, "Resist not evil" (R.V., "Resist not him that is evil"); verse 40, "And if any man will sue "thee at law, and take away thy coat, let him have thy "cloke also"; verse 42, "Give to him that asketh thee"; chapter vi., verse 19, "Lay not up for your- selves treasures upon earth"; verse 25, "Take no "thought for your life, what ye shall eat, or what ye "shall drink; nor yet for your body, what ye shall "put on."

Those who would forbid divorce in all circumstances because of Christ's unqualified words (supposing they were unqualified) seem to fall into the same error as the Society of Friends, who consider war and litigation absolutely forbidden by Christ's express command, "Resist not evil," and who refuse to take an oath in a court of justice because of his injunction, "Swear not at all." None of the witnesses who were examined on this point were able to give a satisfactory explanation why words, equally unambiguous and unqualified in each case, should be subject, when carried into application, to exceptions in the one case and not in the other (*see* the evidence of the Bishop of Ely, p. 437).

Christ's teaching was spiritual. He taught, preaching the Gospel of the Kingdom of Heaven. To Pilate, He said, "My Kingdom is not of this world," and there are no indications in the Gospels of any interference by Him with the institutions and government of the country. Indeed, when, as it is recorded, the Pharisees sought to entangle Him (and it must be remembered that, in the question of divorce, a similar entanglement was attempted) with a question as to the lawfulness of giving tribute to Cæsar, the often-quoted reply is attributed to Him: "Render therefore unto "Cæsar the things that are Cæsar's, and unto God the "things that are God's." Further, He inculcated great general moral principles without giving forth any detailed or definite social laws and without referring to exceptions to general principles, though in the passages which deal with His comments on the Sabbath Day, He inculcates an exception to a general principle in case of necessity. Cf. Matthew, chapter xii., verses 1–13.

I may also refer to the copy of the late Bishop Creighton's letter written from Peterborough on the 18th March 1895 to the Rev. Canon Stocks in his "Life and Letters" by his widow. He says: "The "marriage question is dreadfully difficult, and would "require a volume. I am sorry for the attitude "recently taken up by Luckock and others. It is not "founded on sound knowledge. Speaking generally, "the question raises in its extremest form the problem "of the actual application to life of the principles "of the Gospel. We must remember—it cannot be "remembered too much—that the Gospel consists "of principles, not of maxims. The only possible "principle concerning marriage is that it is indis- "soluble. But all principles are set aside by sin; and "our Lord recognised that as regards marriage. (The "interpretation of *πορνεία* as prenuptial unchastity "will not do. Such a man as the Bishop of Lincoln "is against it on patristic grounds. It is untenable.) "I must own myself to a strong indisposition to set "the Church against the State on such a point as the "interpretation of the latitude to be assigned to the "permission of dissolution which our Lord's words "imply. It has always been found difficult to adjust

* "Oxford Studies on the Synoptic Problem." Edited by Dr. Sanday, 1911.

" law and equity. But is the Church on this point " to admit of no equity? The mediæval system was " a mass of fictions or dispensations and subterfuges. " The question has always troubled the English " Church. Cranmer, Andrews, Laud, alike, had no " fixed principles. Now the State has taken matters " into its hand and marriages are primarily civil " contracts. We as Christians abhor divorce. But " when a divorce has been judged necessary, are we to " refuse any liberty to the innocent and wronged " party? It seems to me a matter for our discretion " on equitable grounds in each case. I could not " advise any of my clergy to refuse to solemnize a " marriage of an innocent person who genuinely " desired God's blessing. I prefer to err on the side " of charity."

(7) The last matter to which I would draw attention is the necessity for bearing in mind the circumstances in which the words attributed to Christ are recorded as having been uttered and the context as bearing upon their construction. The importance of this was recognised by the Bishop of Birmingham in the following answers:—

Q. 21,533.

* * * *

"(*Lord Guthrie.*) I suppose the view we take in the civil courts would not be dissented from by you with regard to the Christian question, namely, this: in considering any utterances of Christ's we must, must we not, consider exactly what was the question under discussion in reference to which He speaks?—Most certainly.

"21,534. You see it happens every day in the courts that the opinion of a great judge or a great authority is quoted; the judge at once asks: what was he talking about; what was the context?—Yes.

"21,535. And the general opinion of a great priest or a great judge is represented or controlled by the particular circumstances?—Yes.

"21,536. Do you agree to that?—Entirely."

41. I have now stated those matters which it has occurred to me should be borne in mind before approaching the consideration of the written records, and I now proceed to examine first the account which is considered, as already stated, to be the most original representation of the teaching of Christ on the subject of divorce, viz., the 10th chapter of the Gospel according to St. Mark, and in my citations I use the revised version. For close textual criticism and biblical exegesis, reference must be made to the scholarly evidence of Dr. Sanday, Dr. Inge, and others, but there are further matters which seem to me to require careful consideration.

42. The scene of the incident related in St. Mark is laid in the country over which Herod Antipas ruled, who had divorced his wife in order to marry his own niece, the wife of his brother Herod Philip, and had beheaded John the Baptist for denouncing his conduct. It must be borne in mind that the Pharisees sought to set Herod against Jesus, and no doubt questions were being raised as to the unlimited right to divorce which were likely to affect morals in Judæa as well as throughout the Roman Empire at that time (Principal Lindsay, *op. cit.*, p. 166). The state of the Jewish law and practice, as described by Mr. Abrahams, must also be remembered. This made the question put before Christ (which did not deal with divorce in our sense of the word, but with "putting away") different in essence from the question which has now to be considered. Broadly speaking, divorce was the unrestricted privilege of the man who could either force his wife's consent to a divorce, or proceed against her if she were unwilling. She had no strict rights, but could practically force him, by pressure brought to bear upon him, to file a bill of divorce in certain circumstances, which did not include mere infidelity, if she wished to be free. But how far this position of a wife was a reality as early as the days of Christ seems from Mr. Abrahams' evidence doubtful. It is in these circumstances that the discussion recorded (Mark x., 1–12) appears to have taken place. The writer, indeed, if what is above stated be correct, was certainly not present. He does not indicate who were present, except in general terms; nor what school of thought the Pharisees referred to represented. He gives a fragmentary account, for it is hardly reasonable to suppose that, with ample opportunity, and having regard to the conduct of the ruler of the country and the disputes between the different schools of Jewish thought, the discussion was confined to the few sentences which have reached us, and he gives an account differing materially from that recorded in the Gospel according to St. Matthew.

43. It is to be noted that at the commencement of the 10th chapter it is stated that the Pharisees came to Jesus into the borders of Judæa beyond Jordan and asked Him a question, "Is it lawful for a man to put " away his wife? tempting Him." It may be considered reasonable to suppose that this brief account is referring to an attempt to entrap Him into an exposition in reference to the conduct of Herod and the disputes existing at the time which might be used against Him. No other explanation has been suggested, so far as I am aware, of why this question should have been put to "tempt Him." What follows after the question appears to be regarded by some who maintain the indissolubility of marriage as indicating that a new command wider than was necessary for the determination of the immediate question was given by Christ, which was to govern the Christian Church in all circumstances and for all time to come. But it may be answered that a close study of verses 3–12 shows that this cannot have been His intention—that no new command was introduced, that no legislation was attempted, and that He was merely placing before His questioners arguments derived from the Jewish Scriptures. Mr. Watkins observes: "If the copula " was an essential feature of the original Divine " institution, it must be no less so of Christian " marriage, which is no new institution, but the " original marriage of Eden taken up into a new " hallowing. All that was essential in Eden must be " essential now." (Watkins, *op. cit.*, p. 114.) If the opinions thus expressed by this writer are to be considered as indicating the views entertained by any considerable body of opinion, we are relegated to the consideration of the Old Testament records in the early chapters of Genesis for the account of the institution of matrimony. But these are not records of real facts. If, however, these opinions are not to be so considered, then it will be seen from the following observations that, if anything in the nature of a general ordinance was promulgated by Christ, it may be regarded as applicable to the then existing Jewish customs, because it was based upon the current interpretation placed upon these chapters by the Jews who regarded them as the records of historical facts, though, if so regarded, they are now known to be irreconcilable with the discoveries of modern times, and can be more naturally regarded as the parabolic and philosophical presentment of the author's conception of truth. It was not part of Christ's mission to correct popular impressions of the Jewish Scriptures. For the purpose of dealing with His hearers, He met them on their own ground and with their own weapons. His answer to the question is thus recorded: "What did Moses command you?" and the reply is obviously a reference to the aforesaid chapter of Deuteronomy,* which placed some restriction on the then existing freedom

* Dr. Driver states that the composition of Deuteronomy must thus be placed at a period long subsequent to the age of Moses, and he places it as a work of the 7th century B.C. "Deuteronomy, p. XLIV. *et seq.*, Introduction," and (at p. LVI. he explains that "all Hebrew legislation, both civil " and ceremonial, however, was (as a fact) derived ultimately " from Moses, though a comparison of the different codes in " the Pentateuch shows that the laws cannot all in their " present form be Mosaic; the Mosaic nucleus was expanded " and developed in various directions as national life became " more complex and religious ideas matured. Nevertheless, " all Hebrew laws are formulated under Moses' name, a fact " which shows that there was a continuous tradition em- " bracing a moral, ceremonial, and a civil element; the " new laws or extensions of old laws, which, as time went " on, were seen to be desirable, were accommodated to this " tradition and incorporated into it, being afterwards enforced " by the priestly or civil authority, as the case might be."

of divorce by requiring a bill of divorcement. It is: "Moses suffered to write a bill of divorcement and to "put her away." It is then recorded that He gave a reason for Moses suffering the writing of a bill of divorcement and the putting away, thus: (Verse 5) "For your hardness of heart he wrote you this com- "mandment." (Verse 6) "But from the beginning of "the Creation male and female made He them." (Verse 7) "For this cause shall a man leave his father "and mother, and cleave to his wife." (Verse 8) "And the twain shall become one flesh; so that they "are no more twain, but one flesh." It seems clear that He is recorded as quoting from the Book of Genesis I. 27, "Male and female created He them," and from the second chapter of the same Book, verse 24, which contains the words, "Therefore shall "a man leave his father and his mother, and shall "cleave until his wife; and they" (lxx., "the twain") "shall be one flesh." But it is of great importance to notice the concluding words of the 8th verse of the 10th chapter of St. Mark, "*so that* they are no more "twain, but one flesh." These words are not a quotation, but show an inference drawn from the previous words quoted. The words of the said 24th verse in the 2nd chapter of Genesis appear to be a comment by the narrator upon the account of the creation of woman from a rib of man, which he has given in the previous verses. Dr. Skinner, Professor of Old Testament language and literature, in his work on Genesis, page 70, terms this verse "an ætiological observation of the narrator," and adds, "It is not a "prophecy from the standpoint of the narrative; nor "a recommendation of monogamic marriage (as applied "in Matthew xix. 4 *ff*, Mark x. 6 *ff*, 1 Cor. vi., 16, "Eph. v., 31); it is an answer to the question, What "is the meaning of that universal instinct which "impels a man to separate from his parents and cling "to his wife? It is strange that the man's attach- "ment to the woman is explained here, and the "woman's to the man only in iii., 16." Dr. Driver's note on this verse is: "The narrator's comment, "explanatory of the later existing custom (*cf.* x., 9, "xxii., 14[b], xxxii., 32). *Therefore*—viz., because man "and woman were originally one, and hence essentially "belong together,—*DOTH a man leave his father and "his mother, and* CLEAVE *unto his wife; and they "*BECOME *one flesh*: the attachment between them "becoming greater, and the union closer, even than "between parent and child. Marriage,—and, more- "over, *monogamic* marriage,—is thus explained as the "direct consequence of a relation established by the "Creator. *Cf.* Matt. xix., 4–6 (Mark x., 6–8); 1 Cor. "vi., 16, xi., 8–12; Eph. v., 28–33; 1 Tim. ii., 12–14." ("The Book of Genesis," p. 43). I shall have to refer to the words "one flesh," but reserve my observations thereon until later.

44. It will be observed that the quotation from the said 24th verse is not recorded in precisely the same terms as the original. The 24th verse begins with the word "Therefore." In the previous verses of the 2nd chapter of Genesis the writer expresses his conception of the formation of man, the planting of a garden in Eden, the placing of a man in it, and the making of a woman from a rib taken from Adam while he slept, and proceeds in the 23rd verse thus: "And the man "said, 'This is now bone of my bones, and flesh of my "'flesh: she shall be called Woman, because she was "'taken out of Man,'" and then the writer adds, "*Therefore*," &c.

45. Christ appears to have been referring to the beginning of Creation as it was then believed by the Jews to have taken place, and to the Mosaic account, which, as already pointed out, is not now accepted as other than poetical and allegorical, and He was, in effect, arguing that, from the account given in their own scriptures as they then accepted them, the inference is that from the fact of a male and female creation and union, that union should be monogamous and continuous. The Jews would appear to have treated the Mosaic account of Creation as an account of real facts, and throughout the whole of the Gospels there is no suggestion of any disclosure by Christ of (to use Dr. Driver's words) "the irreconcilability of the early "narratives of Genesis with the facts of science" (p. lxii.), or that in the human capacity in which He appeared on earth he claimed any greater historical or scientific knowledge than those among whom He moved, and therefore it is suggested that His dicta on this matter may be regarded as affected by being statements of inferences from what were then regarded as historical facts but were not in fact such. It does not seem as if sufficient weight has yet been given to the fact that doctrines put forward by Christian churches as if they emanated from Christ are in reality founded upon an Old Testament account of what we now realise were not real facts. General principles may well be founded upon allegorical teaching, but precise enactments are not based on such materials. However much spiritual thoughts may be drawn from the conceptions so marvellously expressed in the early chapters of Genesis, and, though some may regard them as part of a progressive revelation to man, the account is not necessarily a sound basis for theories and laws relating to the temporal life of man upon earth.

46. That the discussion is recorded as argumentative is made still clearer by the 9th verse of the 10th chapter, "What therefore (Gr. *οὖν*, therefore, consequently) "God hath joined together, let no man put asunder." These words are generally relied upon by objectors to dissolution, but are often misquoted by them, thus: "Those whom God hath joined together, let no man "put asunder." The word in the original refers to the institution of marriage in general, not to the particular individuals concerned. An instance of their use in the form just set out is to be found in the Anglican Marriage Service, and they have been not infrequently misquoted in the course of the proceedings before the Commission. In general quotation the word "*therefore*" is omitted. But this omission is of the highest moment, because the word omitted shows beyond all question that Christ was not laying down any new principle, but was drawing an argumentative inference Himself from the aforesaid passages in Genesis, which, as the Jews accepted the Mosaic account, gave them a guide on which to found their views on the question which He had been asked. This may be made still plainer by turning back to the second sentence in verse 8, "*so* "*then* they are no more twain, but one flesh," which is followed by the "*therefore*" of the 9th verse. It will be seen that, addressing the Pharisees on their own Scriptures, He only drew a general inference for them from the account of the Creation of man and woman in Genesis as to the normal relationship of the sexes, and that, in the most important verse quoted by Him, an inference was drawn by the narrator. We have thus what may be looked upon as an inference upon an inference, which again is drawn from a poetical conception which was concerned with general sex relations, and not in the least with any question of divorce.

47. So much seems torest upon the Old Testament records quoted by Christ that I pause to notice that, even if they were treated, as in former days they were, as inspired statements of real sayings and doings of the time of Creation, there seems to be nothing in them to justify the conclusion that in no circumstances could the normal relationship of husband and wife be put an end to; and when we now appreciate that they were compiled some few centuries before the Christian era, and when polygamy, in all probability, extensively prevailed, and the putting away of wives was recognised, I confess it seems to me almost impossible to believe that the writer was doing more than express his conception of how the world and men and women on it were created; or that he was intending to deal with, or that he had in the slightest degree in mind, questions of dissolution of marriage.

48. To return to the record in the said 10th chapter —the conversation regarded as above suggested is argumentative, and the argument is based on assumptions accepted by His auditors, but which are not in fact tenable now. The account in St. Mark seems to indicate that the conversation with the Pharisees closed at this point, and it is most remarkable, if Christ intended to lay down publicly a distinct prohibition against divorce and re-marriage in any circumstances, to find no plain statement to this effect recorded in

that part of the account which deals with what appears to have been a public discussion.

49. The discussion appears to have been resumed "in the house" (verse 10), where it is stated that the Disciples asked Him again of this matter. The question put by them is not given, but the answer recorded is found in verses 11 and 12. It is always important to know the actual question put if any dispute arises as to the meaning to be given to an answer. If the two conversations are read by the light of the circumstances in which, and the place at which they took place, and of the matters already stated, and, further if they are read without any pre-conceived opinions, it seems reasonably clear that Christ was dealing with the impropriety of a man or woman, whenever he or she chose, putting away the other with the object merely of marrying another person; for He says, "Whosoever shall put away his wife, and marry another, "committeth adultery against her. And if she herself "shall put away her husband and marry another, she "committeth adultery." The collocation of the words "put away" and "marry another" shows that the point was putting away a wife or husband, as the case might be, in order to marry another person. The words "against her" which, however, are not to be found in Matthew, may perhaps be considered not very intelligible; possibly they are indicative of a wrong done to the wife by putting her away without proper cause. There is absolutely no reference to any case in which the circumstances are such that the marriage tie has been sundered *de facto* though not *de jure*, and a man and his wife are no longer living together, and it has become impossible for them to do so through the misconduct of one of them, nor to the interference of public justice in such cases, and it seems extraordinary that the record should be entirely silent upon such points if they had ever been present to the mind of anyone who took part in the discussion from which the statement made to the Disciples originated. It may not be unreasonable to suppose, having regard to the brevity of the record, though the subject discussed was one of great importance, that only a fragment has been preserved. It may be noticed that the clause, verse 12, is omitted in the account of Matthew xix., 9, probably because it was inconsistent with the Jewish law, which did not permit a woman to divorce her husband, though upon this see the evidence of Mr. Abrahams already referred to, and Dr. Driver states that "By the later "Jews a wife was *permitted in certain cases* . . . . "*to claim a divorce.*" But there may be doubts about the 12th verse representing correctly what was said, and the difference between the two Gospels in this respect shows how difficult it is to rely on either of them giving an exact account of what occurred. This is usually the case where more than one account is given from memory of conversations years after they took place. Possibly St. Mark, writing as has been suggested for Gentile Christians, may have written the 12th verse in the form in which we have it as a correlative to the 11th verse.

50. The account in St. Matthew appears to be of the same occasion as that mentioned by St. Mark. It is said by some that this account records the conversation as taking place at one and the same time, whereas in St. Mark it is recorded as taking place partly with the Pharisees and partly with the Disciples, but, although the former account is somewhat transposed, it seems clear from verse 10 that there is recorded a conversation with the Disciples subsequent to that with the Pharisees. The differences are pointed out in the evidence of the witnesses already referred to, and I call attention to that evidence. The general opinion seems to be that this Gospel, as we have it, is much later than that of St. Mark, that the writer may have had the Marcan Gospel before him, and the document, which critics denominate "Q.," as to which there is necessarily much uncertainty.

51. The great difference between the teaching of this Gospel and that of Mark, is that in the former the exception of fornication is expressly introduced both in the 19th and the 5th chapters. In the 19th chapter, verse 9, the words "except for fornication" are introduced (it may be noted that they are, according to the authors of the Revised Version, in some ancient authorities followed by the words, "maketh her an "adulteress," instead of by the words, "and shall "marry another, committeth adultery," and that the former words seem to indicate a wrongful putting away). In chapter 5, verse 32, the words, "saving for "the cause of fornication," are introduced. Critics, as I have noticed, consider, and give reasons for considering, that these words thus introduced, and also the words, "for every cause," in chapter 19, verse 3, and "except for fornication," in the same chapter 19, verse 9, have been added to St. Mark's account, but if they are to be regarded as authoritative, it is to be noted that one school consider the exception aforesaid as illustrative, while another regards it as allowing of divorce for adultery and for that alone. There have also been suggestions that it related to ante-nuptial inconstancy, and not to adultery only, or to prostitution of the wife, or to general misconduct, or to idolatry; and, lastly, the Roman Catholic Church and others consider that it justifies the putting away, which is a separation only and not a divorce. The most weighty modern opinion appears to be in favour of regarding the exception as not mentioned specifically in the discussion and discourse, but that if it were so mentioned it was not referred to as an exclusive exception.

52. Confusion is introduced by the use of the Greek word *πορνεία*, which is the generic form for fornication instead of the word *μοιχεία*, which means adultery. Gibbon pointed out that the former word is not in pure Greek a common word, and is only a translation of some word used by Christ, the original of which is unknown, nor can its proper meaning be strictly applied to matrimonial sin. He observed, "the ambiguous "word, which contains the precept of Christ, is flexible "to any interpretation that the wisdom of a legislator "can demand."*

53. I have already referred to the question of the construction if the exception I have discussed be omitted, and to the position maintained by the witnesses and writers if it is to remain. The general observations I have already made on St. Mark's account are applicable to the account in St. Matthew, though perhaps with even more force for the passages in verses 4 and 5, chapter xix., beginning, "Have ye not read," are clearly shown by these words to be quotations from the Jewish Scriptures, though verse 5, as we have it, incorrectly treats the words as having been attributed to the Creator. And, further, verse 6 shows, even more clearly than is the case with the account in the 5th chapter of St. Mark, the inferential character of the discussion, for after the quotations from Genesis, the said 6th verse runs thus: "*Wherefore* they are no "more twain, but one flesh, What *therefore* God hath "joined together let not man put asunder." It will be observed that the account in St. Matthew concludes with verses 10, 11, and 12, which are not to the same effect as the 10th, 11th, and 12th verses of the 10th chapter of St. Mark. Much difficulty appears to have been felt as to the interpretation to be placed upon the former, for it is not clear what "the saying" referred to is, and in one view they seem to relate to the advocacy of celibacy, but whatever "the saying" to which reference is made may be, Christ contemplates that "all men cannot receive" it, and would appear to indicate the necessity of taking human needs into consideration. (*See* on this point the evidence of Dr. Sanday, Minutes of Evidence, Q. 38,476, *et seq.*)

54. A last point to notice in the account in St. Matthew's Gospel, is that chapter xix., verses 5–9, is regarded by the Roman Catholic Church and others as permitting a separation from bed and board by legal authority, but I can find no trace in Jewish law and tradition of any such proceeding which is regarded by competent writers as an

* "Decline and Fall of the Roman Empire," vol. 8, ch. 14, edition 1791, p. 67 (and also Bury's edition, vol. 4, 481–2, and *see* note 132, p. 481, note). In this note Gibbon says: "Some "critics have presumed to think, by an evasive answer, he "avoided the giving offence either to the school of Sammai "or to that of Hillel (Gelden, lex. or Ebraica l. iii. c. 18–22, 28, 31)."

invention of a later period by the churches; and, further, the words of the verse are so obviously dealing with the divorce of that time that it is extremely difficult to-day to understand how any other interpretation came to be adopted, except by forcing a construction in order to support the advocacy of enforced celibacy. It may be asked, as it was asked by Sir George Grey in the debate in the House of Commons in 1857 (July 31st), how it is that the putting asunder of husband and wife, which is the result of such a separation as aforesaid, can justly be said to be in accordance with the law of God, while the more complete separation, which takes place as a consequence of divorce *a vinculo*, is maintained to be in direct opposition to that law (Hansard, Vol. 147, p. 857. Moreover, when the question with which the discussion started and the whole conversation is considered, it is perfectly clear that the putting away refers to divorce *a vinculo* and not to a mere separation from bed and board. It may be further observed that to follow the Roman Catholic construction logically the right to separation *a mensâ et thoro* should be confined to fornication, but they extend it, at any rate, to cruelty and possibly desertion. Q. 22,933.

55. If these suggestions be correct, it seems unnecessary to examine St. Matthew v., 31, 32, with minuteness, for those verses form part of what is known as the Sermon on the Mount, when a number of general precepts were stated such as would be natural to a moral discourse, but it seems impossible to read the whole of this chapter together, without concluding that general principles were being stated in general terms, and exceptions thereto were not being discussed; indeed, it would be unreasonable to expect, that on such an occasion, precepts would be expressed with the precision requisite if positive rules of law were being laid down.

56. The short passage in St. Luke xvi., 18, consists of one verse only, which is inserted without any indication of how what it states came to be said, and without connection with what precedes or follows. It has been suggested that the writer has taken it from the source "Q," which was common to him, and to the writer of the work attributed to St. Matthew. The observations already made upon statements of general principles apply here also.

57. The Gospel of St. John contains no account of the teaching in question. With regard to the 7th chapter of the First Epistle of St. Paul to the Corinthians, I cannot discover any adequate reason for considering that its language justifies any proposition that marriage was regarded by the writer as indissoluble. The general effect of it appears to be in the opposite direction, and was evidently so regarded by those who framed the heading of the chapter in the Old Version, which states: "2. He treateth of marriage, 4. showing "it to be a remedy against fornication: 10 and that "the bond thereof ought not lightly to be dissolved." It is upon this chapter that so much stress is laid by Scottish and Continental theologians as supporting the view by analogy that desertion may be a ground for divorce, upon which point I refer to the evidence of Dr. Paterson (Minutes of Evidence, p. 445).

58. Those who maintain that marriage is indissoluble, consider that they base their views upon divine teachings in the Scriptures, to which I have referred, and I have now pointed out reasons for doubting the soundness of their conclusion, and for attributing the original foundation of these views to Old Testament teaching, based upon the poetic conceptions of ancient Jewish writers.

59. I have now examined what appear to be the main features of the records on which the Christian doctrines of the formation and dissolution of marriage are rested. In the evidence is to be found much minute and most learned criticism upon these records, and therefore I have confined myself to what appear to be the most striking matters.

60. I confess that to a lawyer the admitted uncertainty, not merely as to what Christ meant by what he is recorded as having said, but as to what he actually did say, makes it incredible that He could have intended His words to be used as indicating principles for legislation. Lawyers are familiar with difficulties arising in the construction of statutes, but the idea is unknown that it should be impossible to ascertain what were the exact terms of the statute itself.

Conclusions from the Records.

61. The conclusions I draw from the records by the light of the general considerations which I have presented are these:—

I think it must be borne in mind at the present time that the records differ; that we have no reasonable certainty that we have an exact or full account of what was said; that there were undoubtedly disputes of an important character amongst the Jews at the time of Christ; that these disputes related to the right of a man, without cause assigned or existing, to put away his wife, by his own act, and not to the question now under consideration, namely, the right of a man or woman, the victim of grave wrong on the part of his or her spouse, which makes it impossible for the marriage relation to continue, or where other circumstances have supervened which produce the same result, to ask a court of law, before which the said wrong or circumstances are legally proved, to declare at an end in law, the relation which is already determined in fact; that these disputes were the cause of the inquiry addressed to Him in order to entrap Him, as in other cases, into some compromising answer; that no direct answer was given, but that He argued with his inquirers upon the basis of such knowledge of their history and such beliefs as they possessed; that He made some statement afterwards to His Disciples which is differently reported in the records as we have them; and that He followed His usual course of dealing with general, moral, and spiritual principles, but made no legislative suggestions.

62. It is, indeed, not reasonably possible to find in the records any plain and clear statement which directs that, while marriage may be freely entered into by the voluntary action of the parties, a state or church is bound to prohibit its dissolution for any cause or only for one cause. Nor does it appear that the great teacher was Himself considering the matter from such a point of view, for otherwise it would seem difficult to account for the complete omission of all reference to the position of the children of a marriage which was sundered in fact.

Observations on Christian Teaching.

63. I would suggest that Christ's whole teaching was concerned with man's moral character and his spiritual life here and hereafter, and not with the actual working or necessary evolution of institutions by which man's temporal life is regulated; and when one reflects on this, and the beliefs and state of knowledge at the time and the circumstances in which the discussions referred to took place, it would seem that what is really to be found in this teaching is that from the creation of man and woman it may be inferred that some union should be formed between them; that that union should, in the best interests of humanity, be of a monogamous character, from which it should naturally follow that it should be continuous and that each person entering into such a union ought to be faithful to the other. Faithfulness to the union seems to be the keynote to the teaching which He intended to address to the inquirers. A man was not to put away his wife and marry another, nor was a woman to put away her husband and be married to another. But in this, while we find a guiding principle of conduct aiming at the realisation of a high ideal of marriage—an ideal, the universal attainment of which, if human nature remains as it has been and is, however much it may be devoutly wished and striven for, is not likely to be completely realised—it is obvious that underlying it, as an assumed but necessary condition, is the correlative duty of faithfulness, without which no ideal union can be realised. In the first part of the recorded discussion, it seems to be assumed that while each remains faithful there should be no putting asunder. The idea of "putting asunder" is in a certain sense inapplicable to a tie which has already been sundered in fact. And in the second part of the discussion, unless a very constrained construction is placed on the

words recognised as being the most original account, there is, when reasonably construed, absolutely no prohibition of a complete severance of the marriage bond when the assumed condition is broken and either party becomes in fact unfaithful to the bond.

64. When one realises what human nature is, of what horrible conduct human beings are capable under the influence of lust, anger, greed, or drink (witness, for instance, some of the evidence given by Mr. Parr, Director of the Society for the Prevention of Cruelty to Children, and the evidence relating to cases under the Aliens Act), and the frightful sufferings they can inflict on each other and upon children, and when Christians have in mind the intense pity and superhuman sympathy with which Christ regarded the suffering, the poor and the needy, and His tender regard for little children, it seems impossible to credit, that, in teaching the doctrine of faithfulness, He was condemning those who suffer from a breach of it and cannot hope to realise an approach to the ideal nor even a bearable existence, to life-long misery and moral deterioration, if not ruin, when their ideal is shattered by conduct which He condemned, or by supervening circumstances which rendered its realisation hopeless and life intolerable. How His teaching, which was founded on considerations applicable to the whole human race, was appropriated as peculiar to Christians, and was translated by interpretations thereof into doctrines which have been established in certain sections of the Church, is matter of history. That it was not at the outset so treated is plain from the fact of the introduction of the exception in St. Matthew, and the fact of the introduction by St. Paul of an exception to meet a case which had not been before Christ. The exception introduced by the editor of the Gospel according to St. Matthew, as Mr. Allen, expressing views many entertain, says, "representing, no doubt, two influences, viz., Jewish "custom and tradition and the exigencies of ethical "necessity in the early Christian Church," shows the sense in which the teaching was understood by those who lived at the time, and in the same environment as the teacher or writer. Moreover, the importance of this is extremely great, for this Gospel has been commonly attributed to St. Matthew (the only one of the three Evangelists whose records refer to the points in question, who was associated with Christ throughout His ministry), though I gather that this attribution is no longer generally accepted, and if the writer, who, according to Dr. Inge, wrote or compiled the Gospel as we now have it about the year 90 A.D. from the Marcan account, and from some prior document possibly written by St. Matthew himself for the Jewish communities, felt himself justified in introducing the exception (and it has not been suggested that it was not introduced in good faith), it must have been because he considered he was copying or introducing an allowable exception to a declared general principle to meet the necessities of Jewish life according to Jewish customs and mode of thought. It would seem necessarily to follow that other exceptions might in the same way be introduced which are required to meet the necessities of a different civilisation.

65. Later, when we turn to the writings of the early Christian Fathers, who did not live in Christ's time, but in conditions which were not those of Jewish society in that time, we find that, while they based their opinions on the records of the Bible, their interpretations in times in which general morality reached to the utmost laxity—times which were full of trouble and disturbances, and when there was much ignorance and superstition—resulted in the putting forward of views which may be regarded as expressing an exaggerated recoil from the licence of the Roman laws. These views were asserted in an endeavour to combat the deplorable state of things which existed in the society of the times in which the writers lived, and were dictated largely, though unconsciously, by mistaken and irrelevant assumptions which necessarily coloured their whole views on the relations between the sexes, and therefore on all subjects connected with marriage and divorce. They, or some of them, were celibates by choice; they forbade the clergy to marry, and lauded the superior sanctity of the celibate state both for clergy and laity. Most of them condemned second marriages, and therefore, of course, condemned the marriage of divorced persons, whether innocent or guilty. Thus Origen (186–254), who has been called "the most learned and original of the "early Church Fathers, and perhaps the noblest "figure among them all," was not only a celibate, but, according to Eusebius, mutilated himself, following a judaically literal interpretation of Matthew xix., 11, "there be eunuchs, which have made themselves "eunuchs for the kingdom of heaven's sake." It should be added, however, that he was young when he did this and his action was condemned by the Church generally. Origen wrote, in regard to second marriages, "I think that a monogamist, and a virgin, and "he who perseveres in chastity, are of the Church of "God. But he who is a bigamist, albeit his con-"versation is honest, and he excel in virtues other "than chastity, is yet not of the Church, and of the "number of those who have not 'spot or wrinkle or "any such thing,' but that he is of the second degree, "and of those who call upon the name of the Lord, "and who are saved in the name of Jesus Christ, yet "are in no wise crowned by Him." Tertullian, who subsequently changed his mind and admitted the second marriage after divorce of the innocent woman as well as of the widowed (*see* C. Dodson's English edition of "Tertullian," p. 432), devotes a whole treatise, De Monogamia, to prove that second marriage is "sin"; Athenagoras calls second marriage "reputable adultery"; and St. John Chrysostom, referring to marriage in general, asks, "What can be more bitter than this bondage?"

66. Confusion also resulted from false analogies drawn from the figurative language of Scripture, comparing Christ and the Church to husband and wife, and many other fanciful Scriptural arguments are contained in the writings of the early Fathers.

67. It must also be remembered that, while the Fathers forbade re-marriage, they, or some of them, forbade an innocent husband to forgive an adulterous wife, and insisted that it was not merely his right, but his duty to separate himself finally from her. This principle, which was the logical outcome of the Father's opinions, is repudiated by Protestant supporters of the Fathers' views, some of whom seem to go to the opposite extreme by enforcing on husbands and wives that they ought to continue to live together, although the result may be to produce misery to themselves and their children. The general remark may here be made that certain views about marriage and divorce are defended, on the alleged authority of the early Christian Church. But those who so argue are ready, as in the case of the marriage of the clergy, and the second marriage of clergy and laity, to throw over, or ignore, the same Fathers, when their opinions or practices do not suit them. It may be here remarked that Christian churches recognise fully second and even subsequent marriages both for the laity, and also for the clergy in Protestant churches, and this is frequently acted on. The churches, therefore, act on the view that the marriage relationship is of a temporal character and do not attach to it that spirituality which Mr. Frederic Harrison states is attributed to it by the Positivists, who are entirely against second marriages. (Minutes of Evidence, Q. 40,226 *et seq.*)

68. The Fathers, and their mediæval and modern followers, seem to look at the questions of marriage and divorce chiefly from the point of view of the spouses and of the Church, and to ignore largely the interests of the family and the State, which most people nowadays consider of the utmost importance. The same tendency, in a modified form, is suggested by the sparse reference in the proofs of certain witnesses submitted to the Commission, to any interest other than those of the spouses and the Church. In this connection remark may be made about the immorality which is produced directly and indirectly, where divorce is prohibited, and spouses, severed for life, but unable to re-marry, are as a matter of fact led, in a large proportion of cases, into improper sexual relations with others. This aspect of human life is ignored both

by the ancient and modern advocates of the absolute indissolubility of marriage.

69. The writings of the early Fathers have naturally not been without their effect on later times. Subsequent writers founded on their opinions and attached an importance to them which, for reasons already given, cannot be now recognised. The belief developed that marriage was a sacrament, and therefore results in a bond which, as formed by God, cannot be severed by man. The condemnation of this belief contained in Article 25 of the Thirty-nine Articles does not seem to have prevented its adoption in substance by some clergy of the Church of England.

70. It is submitted that it cannot be established that there has been any continuous and unanimous consensus of opinion in the Christian Church in favour of the view that absolute indissolubility of marriage is the necessary result of Christ's teaching.

Opinions entertained at Different Periods.

71. It may be convenient to divide the different periods as follows:—

(1) Early Christian Church.
(2) The Latin and Greek Churches.
(3) The Protestant Reformers, British and Continental.
(4) The English scholars and divines, Anglican and Nonconformist, from the Reformation to the end of the eighteenth century.

I shall now briefly summarise the opinions entertained in these periods, but, for reasons already given, I do not think that the importance ought now to be attached to them which would be given to them in the days when they were respectively expressed.

1. *Early Christian Church.*

72. Opinions both ways may be quoted, subject to any questions which may be raised by scholars as to whether we now have the true text of the authors to whom the writings are attributed, as to whether the same author is always consistent in his opinions, and as to whether an author who condemned matrimony or divorce, maintained his opinions outside the scholar's study, and the hermit's cell, in face of the facts and necessities of life. The opinions of the Fathers were largely founded on reasons now abandoned by the best modern scholarship, British, American, and Continental, and, as has already been pointed out, the attitude of that scholarship towards all questions of biblical interpretation is so entirely different from that of the Fathers, that their opinions have no longer the authority which they exercised on our forefathers.

73. The question is much debated, but there are grounds for asserting that the views and practices of the Apostolic age, and the age immediately subsequent, were in accordance with the ordinary understanding of St. Matthew's Gospel, and of St. Paul's First Epistle to the Corinthians, that is to say, divorce for adultery, with right to re-marry was permitted, at least, to the husband, and that divorce for desertion was permitted, at least in the case of a Christian husband and a non-Christian wife. In regard to the age beginning with, say, the third century, it may be said generally that, in the early Christian Churches, both of the East and West, the best known and most representative names are on the side of indissolubility. In the West, with some notable exceptions, the tendency of opinion was later in favour of indissolubility; while, in the East, opinion was developed into the views which were, and are, entertained by the Greek Church. As an instance of those who favoured dissolubility, I may take St. Epiphanius (310–403), Bishop of Salamis in Cyprus, who, it may be worth noting, was born of Jewish parents. He states, in his "Panarion," that it is lawful for a man who is living in separation—for whatever ground, fornication or adultery, or other "evil cause"—to marry again. He says: "Him the Word of God "censures not, though he be joined to a second wife, "or a wife to a second husband, neither doth it declare "him cast out from the Church, and from life, but "bears with him by reason of his infirmity."

74. On the other hand, take St. John Chrysostom (347–407 A.D.), in favour of indissolubility. He argues against marriage and in favour of virginity, and uses strong expressions as to the indissolubility of the marriage bond. In the case of a woman, he says: "Let "her remain unmarried or be reconciled to her husband. ". . . What then if he will never be reconciled? one "may ask. Thou hast one more mode of release and "deliverance. What is that? Await his death. For "as the (consecrated) virgin may not marry, because "her spouse liveth always, and is immortal; so to her "that hath been married it is then only lawful when "her husband is dead. . . . Seest thou the restraint, "the inexorable bondage, the chain which compasses "both parties?"*

75. Augustine, writing in the beginning of the fifth century, found great difficulty in the interpretation of the Scriptures. He admits, after discussing the scriptural texts, that the question of divorce and re-marriage is surrounded with difficulties: "His ita pro meo "modulo pertractatis atque discussis, quæstionem "tamen de conjugiis obscurissimam et implicatissimam "esse, non nescio. Nec audeo profiteri omnes sinus "ejus, vel in hoc opere, vel in alio me adhuc explicasse, "vel jam posse, si urgear, explicare" (de Conjugiis Adulterinis ad Pollentinum, cap. xxv. (end), paragraph 32 in Paris edition, 1838, vol. x., col. 680. Basle edition, 1556, tom. 6, col. 854).

76. Although his opinions varied somewhat, his conclusions were that Christian marriage was indissoluble by reason of its sacramental character.

77. It ought to be added, in the case of some of the passages usually quoted from the Fathers in favour of indissolubility, the same question arises as in the case of Christ's teaching—did the writers, while laying down general principles, mean to exclude all possible exceptions? Equally strong passages against resorting to divorce will be found in the writings of divines who maintain the lawfulness of divorce, including Martin Luther, who wrote in one passage, "I detest divorce." It should, perhaps, be added here that the Anglo-Saxon Church seems to have recognised divorce and made special provision as to the devolution of property in case of divorce (Aethelbert, § 79; Theodore's Pœnitential, xix. §§ 18, 20, 23). *See also* Cnut's Law 54, which gave the husband all the property in the event of the wife's infidelity. *See also* the evidence of Sir David Brynmor Jones. (Minutes of Evidence, Q. 43,137, *et seq.*)

2. *The Latin and Greek Churches.*

78. The Western Church, subsequent to its rupture with the Eastern Church in 1054 A.D., adhered to the indissolubility of marriage, both in principle and in practice, subject to the relief afforded by decrees of nullity for causes not recognised by any other Church as sufficient.

79. But the Greek Church, the Eastern division of Christendom, although holding equally with the Western Church that marriage is a sacrament, has acted throughout on the principle that marriage is not indissoluble. Dr. Lucock, formerly Dean of Lichfield, put the matter thus: "At the beginning of the eleventh "century [1030 A.D.] . . . . Alexius, Patriach "of Constantinople, drew up a series of Canons on "the Dissolution of marriage; and these have been "considered binding ever since. They are as follows:—

"(1) The Priest who gives the marriage blessing to a woman divorced from her husband is not to be condemned if the man's conduct was the cause of the separation.

"(2) Women divorced from husbands whose conduct was the cause of separation are blameless, if they wish to marry again; and so are the Priests who give them the blessing on the union; the same rule applies to men.

"(3) The man who marries a woman divorced for adultery, whether he has himself been

* *See also* In cap. Matthaei xix. Homilia xxxii., Antwerp. 1542, p. 178. (In this Homily S. Chrysostom discusses the whole divorce question.)

married before or not, is an adulterer, and must submit to the penance of adulterers.

"(4) The Priest, who gives his blessing on second marriages for those who have dissolved their marriage by mutual consent, which is not sanctioned by the laws, shall be deprived of his office."

These rules are translated by Dr. Luckock from John Selden's *Uxor Hebraica, seu de nuptiis et divortiis ex jure civili, id est, divino et Talmudico veterum Hebraeorum*, Book III., chapter 32. (*Seldeni Opera Omnia*, vol. ii., p. 855 [ed. 1726], where the Rules are set out in Greek and Latin.)

3. *The Protestant Reformers, British and Continental.*

80. To some Protestants, neither the opinions of the Reformers (whether Episcopalian, Presbyterian or Lutheran, whether English, Scottish, French, German, Swiss, Dutch or Scandinavian) nor of the great divines and scholars, like Erasmus, who, although remaining in the Church of Rome, concurred with the Reformers in their views in favour of the dissolubility of marriage, nor of the Greek Church, seem to be of any importance, compared with the opinions and practice of certain of the Early Fathers and of the Post-Tridentine Roman Catholic Church. In a recent work entitled the "History of Divorce and Marriage" by the Rev. H. J. Wilkins, D.D., 1910, published since this Commission began its labours, and referring to some of the evidence given before it, I find that practically every writer since the Reformation in favour of the lawfulness of divorce is ignored, except Dr. Hammond (1644), Bishop Cosin and Milton; and Mr. Watkins (whose work, while it is valuable for its collection of extracts from numerous early writers, decrees of councils, &c., appears to assume the historical truth of the narratives in Genesis of the Creation and Fall, pp. 2, 3, and 25) prints the following paragraph, at page 394 of his book: "From the time "of Gratian, the teaching of the *Decretum* (published "about 1140) on the subject of divorce and re-marriage, "was practically the teaching of the whole Western "Church. The controversy was, in fact, closed and, "for the purpose of this treatise, it is useless to pursue "the investigation farther. For the past 700 years "the historic churches of Western Christendom have "declined to recognise re-marriage after divorce." This view is not followed in this memorandum.

(1) *English.*

81. At the Reformation it may be inferred from the preparation of the abortive "Reformatio Legum Ecclesiasticarum" that those concerned in its preparation were in favour of the dissolubility of marriage on several grounds. And there certainly has been from that time a strong party in the Church of England agreeing with the views of the continental and Scottish divines on the dissolubility of marriage, but differing from them and from each other in regard to the causes on account of which marriage might be dissolved. That party construed the expression "for better or worse" introduced into the Anglican marriage service as applying to the ordinary incidents of life for instance, such, as sickness or health, poverty or wealth; while those who have preferred the doctrine of indissolubility have considered that that expression equally compelled the subsistence of the marriage tie in adultery, even where no self-respecting person could be expected to continue co-habitation, and in desertion, where the continuance of co-habitation had been permanently rendered impossible.

82. No action for divorce was brought in the English courts till the passing of the Divorce Act of 1857. It has been said that divorce *a vinculo*, admittedly incompetent before the Reformation, must have remained so after the Reformation, seeing that no statute was passed (till 1857) making it competent. But in Scotland, where, before the Reformation, the same rule of indissolubility attached as in England, divorces for adultery were granted from the Reformation, without any statute authorising them.

83. Further, the 250 Acts of Parliament granting divorces, passed year by year, for at least 150 years prior to 1857, while fought on the merits, were not resisted on the ground that marriage was *ipsa natura* indissoluble.

84. It is not necessary for present purposes to set out the passages from the works of the English Reformers. But it may be remarked generally that whatever opinions may possibly have been held by individuals in the Reformed Church, there are recorded opinions of English Reformers in favour of the lawfulness of divorce. Reference is made to Sir Lewis Dibdin's valuable memorandum.

(2) *Scottish.*

85. If the opinions of English Reformers, and the post-Reformation history of divorce in England, cannot be set aside, neither is it reasonable to ignore the views held in Scotland at the Reformation, and the post-Reformation law and practice of that country. Yet in the learned work, already referred to, by Dr. Luckock, while the law of the United States and the British Colonies, and of Germany, Belgium, Switzerland, Denmark, and Austria are discussed, no reference whatever is made to the fact that in Scotland, for 350 years, the working of a law allowing divorce for adultery and desertion has been put to a practical test among a population, the conditions of whose life more nearly resemble those of the people of England than the conditions obtaining in any other country in the world. Generally speaking, the Scots Reformers were more in accord with the Reformers of France, Germany and Switzerland than were the English Reformers, but I do not think it necessary for the purposes of these notes to go in detail into their writings at present, except to say that so far as their writings show they were unanimously opposed to the doctrine of the absolute indissolubility of marriage.

86. For more than three centuries, adultery and desertion have been grounds of divorce in Scotland. John Knox in his "First Book of Discipline" confines the remedy of divorce to cases of adultery, but in April 1573 a statute was passed declaring wilful desertion for four years to be a ground of divorce. It is understood that although the statute may have been passed partly to serve the personal interests of the Duke of Argyle, Chancellor of Scotland, it was accepted in Scotland as conformable to Scripture, and as demanded by public policy.

87. The Westminster Confession of Faith was adopted by the Church of Scotland in 1647 and ratified by Act of the Parliament of Scotland in 1690. That confession was mainly the work of English divines, most of them members of the English Universities. Fourteen were Doctors of Divinity, and the Assembly included Arrowsmith and Tuckney, Professors of Divinity at Cambridge, Dr. Hoyle, Professor of Divinity at Oxford, and such scholars as Twisse, Lightfoot, Coleman, Edmund Calamy the elder, Godwin and Gataker among the English clerical members, and Gillespie and Rutherford among the Scottish. During part of the sittings, John Selden was one of the English lay members.

88. Chapter 24 is headed "Of Marriage and Divorce." Articles 5 and 6 run thus:—"5. Adultery or fornica-"tion committed after a contract, being detected "before marriage, giveth just occasion to the innocent "party to dissolve that contract. In the case of "adultery after marriage, it is lawfull for the innocent "party to sue out a divorce, and, after the divorce, to "marry another, as if the offending party were dead." "6. Although the corruption of man be such, as is apt "to study arguments, unduly to put asunder those "whom God hath joyned together in marriage, yet "nothing but adultery, or such wilfull desertion as can "noway be remedied by the Church or Civil Magistrate, "is cause sufficient of dissolving the bond of marriage, "wherein a publick and orderly course of proceeding is "to be observed, and the persons concerned in it, not

" left to their own wills and discretion in their own " case."*

89. In the writings of Scottish divines, Presbyterian and Episcopalian, Established Church and Dissenting, from the Reformation down to the present day, divorce is alluded to as a remedy to be used only in the last resort; and, contrary to the view of many of the Early Fathers, the duty of forgiveness, even in the case of unfaithfulness, is inculcated. But there seems to be no passage in which the legal right of the innocent spouse to obtain divorce *a vinculo* is said to be contrary to Scripture, or otherwise excluded; nor is any case known, during the 350 years from 1560 to 1910, in which any member of the Protestant Church in Scotland has been subjected to discipline, or refused the privileges of the Church, for having availed himself or herself of the remedy of divorce *a vinculo* provided by the law of Scotland for adultery and desertion; or for having remarried, subsequent to divorce. The sin of the guilty spouse, apart from any question of divorce, involved church censure and refusal of the sacraments, and the practice was and is, for Scottish ministers, Presbyterian and Episcopalian, to refuse to remarry the divorced guilty spouse, at all events to the paramour.

90. During the period when the Church of Scotland was established under Episcopal Church government, that is to say, from 1610 to 1638, and from 1660 to 1688, the law as to divorce remained unaltered, and no proposal was made for its alteration. At that time, there was a body of learned divines in Aberdeen, connected with the University, known in ecclesiastical history as " The Aberdeen Doctors." Of these, John Forbes of Corse (1593–1648), D.D., Professor of Divinity in the University, was the most eminent. He wrote in Latin, and his reputation was European; his " Irenicum amatoribus veritatis et pacis in Ecclesia Scoticana " was warmly commended by Archbishop Ussher. Forbes was a strong Episcopalian and, when the Presbyterians came into power, suffered the loss of his Professorship rather than sign the National Covenant of 1638, and exile rather than sign the Solemn League and Covenant of 1643. His views on divorce are to be found in his " Theologia Moralis, " libri decem, in quibus precepta Decalogi exponuntur, " et casus conscientiæ explicantur." That work, written in Latin, contains a learned citation of authorities, and a discussion of the whole question of divorce, in relation to the teaching of the Old and New Testaments, and the views of the early Christian Fathers, and also from the point of view of civil polity. Forbes maintains the lawfulness of divorce both for adultery and desertion. See the passages from the Theologiae Moralis printed on pages 456 and 457 of the evidence, Vol. II., at the end of Professor Paterson's examination.

91. The same attitude has been taken in Scotland among divines of dissenting communions, Presbyterian and Independent.

(3) *Continental Reformers.*

92. The views of some of the principal reformers are given very fully in the interesting evidence of Professor Whitney, and it is not necessary in these notes to refer more fully to them. Without exception they all, Lutheran, Calvinistic, Zwinglian, allowed divorce for adultery, most of them allowed divorce also for desertion, and some of them also allowed divorce for other causes; and whenever they allowed divorce they allowed re-marriage.

4. *English Divines and Scholars, Anglican and Nonconformist, from the Reformation to the end of the Eighteenth Century.*

93. It has been said by some that the Church of England has always asserted that divorce is contrary to Christ's teaching, and, therefore, that marriage, or at least marriage between Christians, is *sua natura* indissoluble. Thus Dean Luckock writes: " Though " the East subsequently fell away from the teaching " of antiquity, and though at times the Latin Church " in Provincial Synods may have accepted some " questionable canons, yet the Anglican branch has " approached very near to an uniform consistency all " through her lengthened history."

94. What is meant by the Church of England, or the " Anglican branch "?

1. If its constitution is meant, as contained in its constitutional documents, absolute indissolubility as distinguished from normal permanency is not in its Articles or Prayer Book. Some witnesses founded on Canon 107, the effect of which has been variously stated, and it must be remembered that the Canons do not *proprio rigore* bind the laity, but bind the clergy and the law officers of the Ecclesiastical Courts (Bishop, On Marriage, Divorce, and Separation, Ed. 1891, sec. 103). Canon Hensley Henson states his concurrence with the view enunciated by Dr. Hammond, Chaplain to Charles the First, namely, that the terms of the Canon presuppose that marriage is not indissoluble by the law of the Church of England; but see the memorandum of Sir Lewis Dibdin on this point. As to the Prayer Book, the words of the marriage service were referred to, but they certainly have not in practice been read as negativing the right to divorce on the ground of adultery, which has been treated in England as a good ground for divorce for two or three centuries, and similar words have been used in the marriage service of the Churches in Scotland, where divorce, both for adultery and desertion, has been allowed for some 350 years.

2. " The Church of Scotland " may be used as synonymous with the general assembly of that Church, which is a legislative and judicial body representative of clergy and laity, and recognised by the law as entitled to express the opinion of the Church. But " the Church of England " cannot be used in that sense, for it has no such body. So far as the Church can express itself through the Convocations of York and Canterbury, and through Church Congresses, the indissolubility of marriage has never been affirmed. The deliverances of the Lambeth Conferences of 1888 and 1908 are inconsistent with the indissolubility of marriage being a part of the constitution of the Church of England.

95. But if by the Church of England be meant its leading dignitaries, scholars and preachers, the dissolubility of marriage has been as fully maintained as its indissolubility. It is sufficient for the purposes of these notes to refer to the division of opinion amongst the Bishops, expressed in the debates on the Bill of 1857, and in support of dissolubility, to Bishops Joseph Hall (1574–1656), Jeremy Taylor (1613–1667), John Cosin (1594–1672), Gilbert Burnet (1643–1715), and Archdeacon Paley (1743–1805).

96. The views of English Nonconformist scholars and divines like John Owen (1616–1683), Richard Baxter (1615–1691), and John Milton (1743–1805), have generally been in favour of allowing divorce, at least for adultery. *See also* the evidence of the Nonconformist ministers who have appeared before the Commission and the resolutions passed by certain churches.

Different Conclusions of Theological Writers.

97. I have briefly examined the views of theological writers from age to age, and I think that no one can fail to be struck by the fact that, starting from the same sources, they have reached totally different conclusions; some, that, according to Christ's teaching, marriage is to be regarded as indissoluble, others that it is dissoluble on one ground; others that is dissoluble on two grounds; others, again, have gone further and admit other grounds. The result of this distracting diversity of opinion is manifest in the difference in the laws adopted in various countries. This diversity, it seems reasonably clear, arises mainly from differences in the interpretation of Christ's teaching as recorded. I think it is impossible, after a study of the numerous writings, for anyone who examines them to-day not to

* *See* " Act ratifying the Confession of Faith and settling " Presbyterian Church Government," June 7th, 1690. (The law and Acts made in the second session of the first Parliament of our high and dread Sovereigns William and Mary. Edinburgh, 1690.) Also the Acts of the Parliament of Scotland, vol. x., p. 128 (May 26, 1890).

feel how these writers of former days have been affected by the mere letter of the records, and how they have been unable to take a wide view of the circumstances of the origin and nature of the records, and the state of belief and knowledge which prevailed at the time of the foundation of Christianity; and how, in endeavouring to place their interpretations on the records, they have been not unnaturally influenced by the condition of society in their own day, by the existence of abuses which have passed away, and by their opinions on matters as to which their conceptions were affected by their own state of knowledge and the beliefs which then prevailed. Writers, prior, say, to the last half century, had not the advantages which we possess; and they were hampered and hindered in forming just and sound conceptions by the want of them. Even to-day there are to be found writers and others who seem unable to realise the difference of attitude towards problems of life existing to-day and in times which preceded the research of the past century, and who still seem as if they lived in the Middle Ages.

98. Criticism and discoveries have taught us much that was inconceivable by writers of past times. Although some critical work was undertaken by John Spencer and Thomas Hobbes, it was not until about a century ago that any real progress was made in the critical study of the Old Testament. The progress which has now been made may be gathered from the extracts from Dr. Driver's work on Genesis above set out. Those who would appreciate the steps in that progress may consult the article by Mr. Stanley Arthur Cook, in the "Cambridge Biblical Essays," where the works of De Wette, Ewald, Graf, Williamson, Robertson Smith, and others, are reviewed, and in which Mr. Cook remarks that "we have Israelite science and history, "the details of which prove to be neither scientific nor "historically authentic" (p. 64). The same book of essays also contains one entitled, "Our Lord's Use of the Old Testament," which deserves close study. I have already gone somewhat fully into the reference to the Old Testament account of Creation in the accounts of Christ's teaching on divorce, and will only add that throughout all the works of the writers on this subject, which I have been able to examine, I have noticed how much they depend upon interpretation of sentences in the accounts, and how they do not seem to me in any way adequately to consider the context, and what were the foundations on which rested so much of what was recorded in those accounts.

Some further points.

99. Before stating the general conclusions at which it seems possible to arrive, it is desirable to refer to a few other points which bear more or less on the question of principle. The first has been already noticed. It is that those, or some of those, who base their views upon Divine teachings in the Scriptures confine the application of these principles, so far as they are based on religious grounds, to persons who are baptised Christians, that is to say, persons who are baptised with such baptism as the Churches can recognise as valid. It is not necessary for the purpose of these notes to enter upon a consideration of the interesting problems which arise from these views as to marriages contracted between Christians and non-Christians, and as to the position of converts, or those who depart from the Church. These will be found very fully considered by various writers, amongst others, Mr. Watkins.

100. A second point is that these views are applied to Christians, whether the marriage has been entered into before the Church with a religious ceremony or in any other form; in fact, no difference in this respect is made between a civil and religious ceremony, and this is because a religious ceremony has not, except where the ruling of the Council of Trent has been adopted, been regarded as essential. I think we may rely on the evidence on this point of the first 1,000 years of Christianity being correctly summed up by one of the writers already mentioned thus:—

> "(1) That where a marriage has been celebrated by Christians with the usual civil forms, there being no bar which, by Christian rule, would hinder the marriage, it was accepted as valid, and no priestly benediction was required as a condition of validity."
>
> "(2) That notwithstanding from the early stage of Christianity the priestly benediction was a usual accompaniment of marriage between Christians, there can be no doubt that prior to the Council of Trent, in the 16th century, priestly solemnisation was not required by the Canon law as a condition of validity." (Watkins, p. 101.)

101. This has always been the case in Scotland, and was the case in England until the passing of Lord Hardwicke's Act in A.D. 1753. I may add, however, that there was a difference of opinion upon this point in the House of Lords in 1843–4 in the case of Regina *v.* Millis, 10 Cl. and F., 534; but the more modern view is that the statement above is correct, as was indicated in 1865 by the Judgment of Mr. Justice Willes in the case of Beamish *v.* Beamish, 9 H.L.C. 274, and upon this point I refer to the evidence of Sir Frederick Pollock. The materiality of this point would seem to be that the recognition of civil marriage must appear to involve the recognition of the right of the State to place its conditions upon the bond.

102. A third point is that the principle of indissolubility appears to be only applied by those who support it as applicable to a consummated marriage. Consummation is regarded at being essential to a complete marriage. The foundation for this view may be traced to the 2nd chapter of Genesis, and especially to the words which describe the man and woman as becoming "one flesh," which some appear to regard as a distinct divine ordering, and to have the consequence which is maintained by them, but which, if regarded as a mere inference drawn by an early Jewish writer from the fact of the creation of woman out of man would not lead to any necessity for arriving at such a conclusion. Dr. Skinner points out that "both in Hebrew and in "Arabic 'flesh' is synonymous with 'clan' or 'kindred "group'" (Genesis p. 70). It may be suggested that we have here a reference to the Beena marriage, but I gather from the evidence of Mr. Abrahams that that form of marriage was probably at a different period from the date of the compilation of the early part of Genesis.

103. I have, in an earlier part of these notes, set out the comments of Dr. Driver and Dr. Skinner on the verse in Genesis in which the words in question occur, and show how they are quoted in St. Matthew and St. Mark in the accounts of the discussion which is there recorded, and it is very remarkable that, while we have these comments by very learned theologians, and also at the present day the general considerations which I have ventured to present, there seem still to be found persons who regard the 24th verse of the 2nd chapter of Genesis, which expresses the conclusion of a writer of the 9th century B.C. drawn from the poetic conception of the creation of woman from man, as "the utterance of God."* It seems probable that the words used in this verse have had a very powerful influence in the production of views with regard to matrimonial relations and as to the *copula carnalis*, as well as mutual consent, being essential to a complete and indissoluble marriage. It would be outside the purpose of these notes to examine this doctrine at length—a doctrine which gives effect to sexual connection after consent to a marriage, but which, while the act is of precisely the same nature, and has the same physiological results, whether there be or be not such consent, would not hold that an act of intercourse in the latter case had any effect in uniting the parties, unless they adopt the view that the remarkable conclusion indicated in 1 Corinthians, c. 6, v. 16 is the consequence. I will only remark that it is probable that this doctrine led to the exercise of the power of the ecclesiastical courts to declare a marriage null on the ground of impotence, though at the present day, according to the legal aspect of this matter, that deficiency is regarded as justifying a declaration of nullity on the ground that the party against whom the charge is made has entered into a contract which he or she is wholly unable to perform.

* *Cf.* Watkins, p. 3.

104. How much the primitive beliefs to which I have referred have affected the views entertained in former days and at the present time with regard to the matrimonial relationship may be judged by their introduction to a certain extent into the Anglican marriage service, which consists in substance of two parts, the expression of the legal contract by consent of the two parties and the religious service by which it is blessed. In the latter, these beliefs will be traced in the address where the institution of matrimony "in "the time of man's innocency" is referred to, and in the last two prayers where the creation of woman from man and the creation of "our first parents Adam and Eve" are mentioned. These are obviously taken from the account in Genesis, which has been accepted as the true statement of facts by compilers of the service, who evidently compiled it on that basis. To-day this basis must be rejected, though it is sought to treat the matters which the compilers regarded as matters of historical fact, as merely symbolical. The service seems to be out of keeping with modern thought and to need reconsideration.

105. Another point which seems to require indicating is that when Christian Churches recognise marriage as binding on Christians in an equal degree, whether entered upon with or without a religious ceremony, and also hold that marriage is terminated by the death of either party, and that second marriages are admissible, the question arises whether they really can regard marriage as truly governed by religious considerations, using the term "religious" in its strict sense, or whether they ought to regard it as a relationship created for temporal purposes, which should be regulated by considerations of what is for the best interest of humanity, and whether the teaching of Christ must not be interpretated on the footing of this relationship, and regarded as inculcating faithfulness on a moral basis and not as laying down religious principles.

106. The last point is that the view has been presented that the Christian ideal of marriage is higher than that which the State may see fit to adopt. I think it should be observed first that if the teaching is to apply only to Christians, it seems difficult to understand the general reference in it to the male and female creation which was treated as embracing the ancestors of both Christians and non-Christians. And secondly, it does not follow from the mere fact of a male and female creation of man that the inference is that the union of man and woman should be monogamous, though this inference has been generally accepted by a large portion of the human race in its best interests. It would seem that teaching based on this inference should apply to all alike.

107. If, however, the teaching is to apply only to baptised Christians, is there any ground for holding that the ideal which a State should endeavour to maintain for its other members should be of a lower standard? I conceive not. There is no reason why the State should not accept the well-expressed sentence of Modestinus, one of the five great *juris consulti* of the Roman Empire, as a definition of marriage, "Nuptiae sunt "conjuntio maris et feminae et consortium omnis "vitae, divini et humani juris communicatio." The question appears to be what is the best method of attaining to the ideal? Is it by declaring the marriage tie legally indissoluble in every case, notwithstanding the fact that events have supervened upon the marriage which have in fact ended the joint life, and notwithstanding that human beings are not ideal, and that adulterous relations may be formed, appalling sufferings and misery may be inflicted upon innocent people and their children, and a general disregard of the law be developed by maintaining a legal tie when the actual tie has ceased to exist? Or is it better to recognise the deficiencies of human nature and their consequences and, in the interest of the parties, their children, and the State, to permit the dissolution of a legal tie when the whole objects of its formation have been frustrated?

108. In England, the Legislature, affected, no doubt, by that theological opinion which has permitted divorce for one cause only, has at present given a qualified answer, and one of the main questions to be considered is whether this meets the exigencies of life.

109. It is one of the most striking features of the evidence which has been taken by the Commission that theological difficulties have weighed little with the great mass of the witnesses, and among those who feel them there are differences of opinion. It seems to be not too much to say that, with extremely few exceptions, the lay witnesses pass by questions of doctrine as if they concerned theologians rather than the practical legislator.

110. I cannot but feel that this leads to the inference that the prevalent lay opinion is not in accord with the more rigid views of certain sections of the clergy, and regards theological perplexities as theoretical or academical and not practical. This is specially illustrated in the evidence of several very important witnesses. The clerical witnesses, however, seem to assume the religious character of the questions, but I would refer to what I have above said as to whether the questions are to be considered as truly of a religious character or not. If theoretical and practical views could be reconciled in the manner suggested later on, it would no doubt be a satisfaction to many who may feel some doubt whether their practical views are antagonistic to Church teaching, and yet are impressed with the necessity of entertaining those views in the interests of virtue and humanity.

111. The attitude of the lay witnesses referred to seems also to show what anyone with the experience of, say, the last 40 or 50 years must have noticed, namely, the gradual but increasing decline of ecclesiastical ideas among the laity; further, there are those who maintain that the influence of the clergy over the intellectual life of the nation has been constantly declining.

Result of Examination into Question of Principle.

112. The result of my lengthy examination into the question of principle, so far as it is affected by considerations peculiar to Christians, is that, in the absence of any certain guidance from Scripture, and in view of the differences of opinion which have existed ever since the time of Christ among learned men in all branches of the Christian Church, the English people of the present day, not ignoring but untrammelled by appeals to the letter rather than to the spirit of Christ's teaching, or to the theoretical opinions rather than to the practice of early Christians, or to Roman Catholic views based on a dogma which is condemned by the Articles of the Church of England, may follow the course taken by all other non-Roman Catholic countries in the world. They may regard this most important and most difficult question as a matter of civil polity to be settled under the control of the great principles laid down by Christ, on grounds of expediency, in relation to the present circumstances of the people and with due regard for the conscientious difficulties of the minority.

113. I am thus brought to the point that, on true Christian principles, we may arrive at the third alternative proposition above stated, namely, that marriage is dissoluble on some grounds in addition to adultery, and that its adoption is much assisted by the remarkably interesting and learned evidence of Dr. Sanday, Professor Inge, and other critics who have given evidence.

114. The question remains as to what conclusion should be reached if the questions to be considered are regarded from a purely human point of view. It is necessary to consider this because members of Christian Churches are not alone concerned, but the State has to consider the position of large bodies of its subjects who do not belong to any Christian communion and are not interested in the theological points which have been discussed. It was stated by Canon Hastings Rashdall that those who nominally belonged to the Church of England, would probably be a small majority of the inhabitants of this country, though I suppose those who would claim to belong to some Christian body would be in a considerable majority.

115. Laws, which human communities make for themselves, if they are not founded on what are regarded as Divine commands, or are laid down by a dictator or

other over-riding power, will naturally be the result of human experience, which dictates to those who have to frame the laws what rules should be adopted in the general interest. Such experience will naturally be progressive, according to the length of time during which it has been gathered, the increase of knowledge in all departments, and the general development of the community; but as it is gained, certain clear and definite principles emerge, and in the end become so well established that the community in general acts upon them, and is able to express them in distinct legislation.

116. It would be too long for the purpose of these notes to show in detail how the peoples of the world, unless controlled by some superior authority, have applied principles which they have acquired in this manner. I confine my remarks to the subject of matrimonial relations, and would only suggest that on this head Mr. Westermarck's "History of Human Marriage," in which he traces the origin of human marriage, is of very high value.

117. I shall content myself with pointing out certain results which have been reached in the Western world.

118. Marriage has been defined by various legal writers, but I am not concerned with technical definitions. Its substance is a relationship voluntarily entered into by a man and a woman for purposes which are well recognised, and such relationship is regarded as creating a status, resulting from the joint life which alters the position of the parties towards each other and the community.

119. Polygamy had generally ceased to exist in the Western world before the commencement of the Christian era, though it still prevails in many parts of the world, and although there is no law of nature which dictates that the union of man and woman should be monogamous or continuous, it may safely be inferred that, as civilisation in the West advanced, it was found by experience that a monogamous union was that which best promotes the interests of humanity, and no doubt this appreciation was intensified by the influence of Christianity.

120. It was, further, a reasonable consequence of a monogamous union that it should be regarded as for the best interests of the children of a marriage and of the parties and community that such a union, when once formed, should be continuous.

121. While, therefore, the marriage union could be freely entered into by parties competent to agree, States have considered that it could not be treated as an ordinary simple contract in which no one is concerned except the parties, and that it ought not to be put an end to at the simple will of the parties. States have considered that the children of a marriage are interested in the maintenance of the status of the parents which is created by it, and that so also is the community in general.

122. The result has been that it has been regarded as generally desirable that the incidents of the relationship should be regulated by the State, and that limitations upon its determination at the will of the parties should also be determined by the same authority.

123. It has followed, therefore, that from a purely civil point of view, the relationship, when once constituted, has been regarded as continuous, and to continue unless circumstances have arisen which render its continuity practically impossible and frustrate its objects.

124. It is thus found that by a process of experience the same position can be reached as that which is arrived at by laying down a broad Christian principle of indissolubility, with exceptions to meet the necessities of human life.

125. If it can be properly maintained that a Divine law, if any such were in fact laid down for the guidance of human beings, and a human law arrived at as the result of human experience and passed with the object of promoting the highest morality and well-being of the people, would be in accord, such a proposition would go far to solve the problems which have perplexed the race.

126. My conclusion is that it can and ought to be so maintained.

I conceive that if this consummation, devoutly to be wished, were to result from the labours of this Commission, a great work would have been achieved, probably one of the greatest possible. It may well be asked should not any law, from whatever source it is derived, which has to deal with a subject in which the social, moral, intellectual, and spiritual welfare of men and women, their offspring and society in general, are concerned, be framed in the best interests of all, and not be left to depend upon which of the conflicting opinions, as to the meaning of certain doubtful passages in the Scriptures, has most adherents? While the various sections of the Churches adhere with rigidity to opinions which they have derived in the manner which has been indicated, complete unanimity on the broad lines I suggest may not be possible, though the State may act upon them. But is it not reasonable to suggest that, in view of the remarkable evidence which has been given before this Commission, more especially that of the learned theologians and scholars, and of the general considerations collected in these notes, many opinions, still tenaciously held, require and ought to receive reconsideration?

127. If the result should be that, whether the principle be reached by one mode or the other above suggested, legislation should be framed in the best interests of the morality and welfare of the people, then the question will be how the interest concerned and objects to be attained will be best secured.

128. In these notes I am mainly considering the principle to be applied, and I do not propose therein to go into the question of the application of the principle at any very great length. I will, however, proceed to direct attention to the following principal points.

129. Some maintain, that independently of religious considerations, the interests concerned and objects to be attained are best secured by declaring marriage absolutely indissoluble. They seem to consider that hard cases may make bad laws, and that it is of less importance to regard the occasional failure and suffering than the stability of what is ordinary and normal, and that such stability may be seriously shaken by permitting marriage to be in any case dissolved, or by permitting extension of the grounds for dissolution. It is probably extremely difficult for such persons to realise how much they are influenced in holding these views by religions considerations.

130. On the other hand it is strongly urged that those who hold these views do not sufficiently recognise the existing facts, those facts being that human beings are not ideal, that events occur which in fact end married life, that adulteries, desertions, cruelties, &c. take place, that dreadful misery is inflicted on innocent people and their children, and that a disregard of law takes place if release cannot be obtained, and that these matters do not occur in solitary instances, but to an extent which affects large numbers of people; and, further, that the necessity for intervention exists, and has always been recognised even by ecclesiastical authorities who provide the inadequate remedy of separation in certain cases, and that the stability of society will be rendered firmer by mitigating the harshness of the law. In effect this contention is that the interests concerned and objects to be attained will be best secured by recognising the general permanency of the marriage bond, and, at the same time, recognising how in actual human life the objects with which that bond is formed may be wholly frustrated with miserable and disastrous results.

131. Some of the witnesses called before this Commission have thought that additional grounds of divorce would tend to diminish the regard which should be entertained for the sanctity of marriage, and be therefore adverse to public policy; but another view to which the unhappy state of affairs spoken to by many witnesses, and in certain respects the painful accounts given by them as to the existing state of immorality, and the miseries of innocent parties and their children produced by adulterous connections, gross violence, drunkenness, desertion, &c. may lead, is that to maintain the legal tie of marriage in circumstances where

joint life has become practically impossible, may reduce the idea of sanctity to mockery, and may cause the degradation of the regard which should be entertained towards the marriage tie if there are no means of being legally freed from it.

132. It may be noted that the evidence before the Commission is full of illustrations of the sad state of things which results from the impracticability of dissolving the legal tie when it has been dissolved *de facto*, and it seems reasonable to expect that no improvement will take place without the establishment of a reasonable law sufficient to meet really serious needs, and that there is no danger by adopting such a course of adversely affecting the stability of the ordinary and normal, but rather that the strengthening of the regard for the marriage tie and morality should result.

133. The real difficulty will be in arriving at the causes which the State should recognise as sufficient to justify its interference on the application of the sufferer on account of the frustration of the objects with which the tie has been formed.

Suggestions for arriving at a proper Law.

134. The general principles by which causes for dissolution of marriages should be ascertained may be gathered from the foregoing observations, to which I add the following.

135. The State should consider what law should be laid down in the best interests of the whole community, and should be guided by two principles: (1) no law should be so harsh as to lead to its disregard; (2) no law should be so lax as to lessen the regard for the sanctity of marriage.

136. I will briefly make some suggestions as to the proper law to apply upon the basis of these principles. Starting with the fact that monogamy, that is the union of one man with one woman, best secures family life, the interests of the children of the marriage and the interests of the State, that the State is interested in its citizens maintaining proper standards for themselves, and especially in bringing into existence healthy children, and maintaining and educating them, it may be observed that great importance should be attached to the proper formation of the marriage tie. A great deal of evidence has been given on this point, and it may be desirable that the Legislature should consider it, but, for the moment, I am only dealing with the principles upon which marriage may be dissolved, if at all.

137. It may then further be observed that, marriage having been properly formed, if the world were ideal, there would be no necessity for any laws which would put an end to the tie; but we have to deal with human nature as it always has been, as it is, and in all probability will be. It is found that, for various reasons, some marriages become complete failures, and life together becomes either morally or physically, in some cases both morally and physically, impossible. Unless the unions formed by such marriages which have already ceased in fact can be dissolved in law, lives become hopelessly miserable, illegal unions are formed, immorality results, and illegitimate children are born. What course then should be taken? Some have suggested that it is desirable that no marriage should be dissolved, but that the utmost remedy which the parties should be allowed to pursue should be that of judicial separation if they cannot live together, thus leaving the marriage tie to exist. The evidence that has been given shows that this will not meet the difficulty.

138. The history in connection with this matter from very early times has been placed before the Commission. Attention has been drawn to the old powers of annulment, by which in Roman Catholic times escape from the tie was possible for nobles and rich people where the necessity arose; and to the private Acts of Parliament which were passed in England; and a great body of evidence has been given as to the state of immorality which results, especially amongst the poor who cannot afford the present cost of divorce proceedings, from holding parties to a tie which has in fact been broken, though not legally put an end to. This is one side of the problem.

139. At the other extreme of the problem, there is the suggestion which has been made, but made by very few witnesses, that dissolution of the tie by mutual consent might be permitted. The first observation to make upon this is that it does not seem to have met with favour from the great bulk of the witnesses who have been called, and would probably not meet with any general favour if suggested; and, secondly, it may be said that, in the present state of English Society, or indeed of any society of a similar character, such a ground for dissolving a marriage would probably lead to disastrous results, analogous to those which history records were produced in the times of the Roman Empire. It is, of course, possible that some high minds are to be found amongst those who have written and advocated the power of dissolving a marriage on this ground, who might perhaps without danger be trusted with such a law, but would it be reasonably safe so to trust the great bulk of the community? It might perhaps work, under proper conditions, to ensure deliberation and to prevent forced consents. The last Norwegian law shows how it is to be tried in that country (*see* Appendix). In practice it would probably prove to amount to divorce at the will of either party who could make the other's life unbearable in order to force a consent. It may be of interest to refer to the observations which were made by Sir James Mackintosh, and also by Mr. Bishop, on the two extremes which I have pointed out. Those made by Mr. Bishop in his well-known work on Marriage, Divorce, and Separation will be found in Vol. I., ed. 1891, Chapter 3, Sections 38 to 60, under the title "The Rights and Wrongs of Dissolution by Divorce," and will well repay a careful perusal. The following is an extract from Sir James Mackintosh's "History of England," Vol. II., page 274. "It must "be admitted that the intrinsic difficulties of the "subject are exceedingly great. The dangerous "extremes are absolute and universal indissolubility, "which has been found to be productive of a general "connivance at infidelity, and consequently, of a "general dissolution of marriages on the one hand, "and on the other, of a considerable facility of "divorce in cases very difficult to be defined—a "practice, to say nothing of other evil consequences "which would be at variance with the institution of "marriage—intended chiefly to protect children from "the inconstancy of parents, and next, to guard women "against the inconstancy of husbands who, if divorce "were procurable for any but clearly defined and most "satisfactorily proved facts, would be enabled, as soon "as they were tired of their wives, to make the "situation of the helpless females, so uneasy that they "must consent to divorce. To make the dissolution "of marriage in the proper case alike accessible to all "is one of the objects to which in great cities and "highly civilised countries it is hardest to point out a "safe road."

140. Suppose, then, neither of the extremes are suitable, what other course is there?

I have already referred shortly to what marriage is, the interests of the parties, of their offspring, of the State, and, of course, it is appreciated how the object of marriage is to provide for the mutual society of the parties, for the procreation bringing up, and education of children, the prevention of vice, and the general attainment of that family life upon which society rests. Those who refer to Scripture will find how all these considerations are summed up by the old writer in the 18th verse of the 2nd chapter of Genesis: "It is not good that man should be alone; I will make a helpmate for him."

141. Then are the interests of the parties, their children, and the State properly served, and the aforesaid objects attained where continuance of marriage relations, through supervening causes which frustate the objects of marriage, has become practically impossible, by maintaining a legal tie when the tie is *de facto* ended? My own studies and experience, and a very careful consideration of the facts and evidence placed before the Commission, lead me to suggest that this question should be answered in the negative.

142. The question, then, seems to be, first, what the Legislature would be justified in considering as circumstances rendering married life practically impossible? At the present time, in this country, adultery is certainly so considered. But there are certain other causes which frustrate the objects of marriage even more than adultery in some cases. The Commission has had before it a great body of evidence which demonstrates this in a way which is impossible of contradiction. Even in 1857 this was recognised by some speakers on the Bill of that year; for instance, the Bishop of London said that he was prepared to maintain the opinion of universal Protestant churches that, in some grave cases, marriage might be dissolved; and Mr. Gladstone, at that time, remarked that "we have many "causes far more fatal to the great obligations of "marriage (than adultery) as disease, idiocy, crime "involving imprisonment for life, and which if the "bond be dissoluble might be urged as a reason for "divorce." There are persons who have contended as grounds for dissolution of marriage mere disinclination of the parties to each other, usually termed incompatibility of temper or unconquerable aversion; but it may be suggested that the introduction of such a cause might endanger the stability of married life and lead to the relaxation of effort to continue it, and that such a cause might in fact lead to the termination of the marriage relationship by mutual consent for trifles which might be magnified in evidence to prove the case. This ground has been introduced in some foreign laws, and the advantages and disadvantages may need consideration.

143. In practical life certain grave causes have been generally recognised, and probably will continue to be recognised, as putting an end *de facto* to married life and as entitling or compelling a reasonable and right-thinking person to take legal action accordingly.

It is also desirable to consider what remedy should be applied in cases where such causes intervene; some urge that only separation should be permitted, others that a complete severance of the marriage tie should be allowed. This has been very fully dealt with in the evidence, and strong expressions from some writers are also to be found upon the subject. I think it may be taken that the great body of the evidence given is in favour of complete dissolution, though there is evidence the other way.

Result of Consideration of the Matter.

144. The result of this consideration of the matter is that it has to be determined whether to affirm or reject the proposition that there are certain grave causes which render married life practically impossible, and that the State is justified in interfering, at the instigation of the injured party, to put an end to the marriage tie on the ground of one or other of such causes. If the proposition is affirmed, it is then necessary to consider what are those causes.

145. I may make the foregoing observations clearer if I state the position thus. There is in human beings a sexual difference in approximately equal numbers of persons. The result has been that unions have been formed with certain well-recognised objects. The western world has recognised that such unions should in the best interests of all concerned be monogamous, and that a monogamous union ought to be continuous until the death of one of the parties. Christian doctrine and Western human views of life are so far in complete accord. Experience of life teaches that causes other than death do in fact intervene to make continuous married life practically impossible, and the objects of the formation of the union are frustrated. It is useless to maintain a tie in theory which is broken in fact, when an attempt to maintain it leads to disastrous results to the parties, their children, and the State.

146. According to modern critical opinion and for reasons already given, it may be asserted that Christian doctrines do not necessarily conflict with human principles on these points, and it is common knowledge that many of the community are not governed by the theological doctrines of any Christian church, or of a particular section thereof. And, therefore, the principle may be laid down for the guidance of the State that, while marriage should be regarded as normally indissoluble, it should be capable of dissolution if the continuity of the relationship has become practically impossible so as to frustrate the objects with which it was formed.

147. Experience teaches that some grave causes generally recognised by the community do produce these results.

148. Parties entering into the married relationship may be regarded as contemplating its continuance notwithstanding many difficulties, but not that it shall be continued in theory when circumstances intervene, which in fact put an end to it and which the world, acting by experience gained, recognises as doing so.

The only difficulty, then, is in arriving at the causes which should be so regarded. The difficulty is more apparent than real. If two people were able to consider with fulness what their union meant as they stood to be married, they would be able to appreciate that they must contemplate in the circumstances a future extending over a number of years in which the usual vicissitudes of life *must be expected*, such as are brought about by increase or diminution of means, by illness, by family difficulties with children and otherwise; but would they naturally have in contemplation that either would absolutely break the vow of fidelity, would treat the other with such violence as to render joint life unsafe, would break up the home and leave for another part of the world, or would be placed shortly afterwards in a lunatic asylum or confined as a hopeless drunkard or criminal? The answer must be no. The world at large takes, and has always taken, the same view of the facts, and so have churches though they have differed as to the remedy.

149. Take, for example, adultery—the unfaithfulness of a partner to the vow of fidelity—laws of all churches and States which need be considered recognise adultery as constituting not only a moral but also a legal wrong entitling the innocent party to legal relief. So they do in cases of cruelty. The ecclesiastical courts in England have always enforced separation at the suit of the injured party, on the grounds of adultery and cruelty. Desertion is on a similar footing, and since 1857 has been added as a ground in England. More lately habitual drunkenness has been added. The law in Scotland has already been noticed.

150. There are thus already four causes for which the community has recognised the right of one party to a marriage to a separation by order of court from the other *and to maintain that position through life.* There are two causes in which separation *de facto* is brought about which are analogous, for instance, to desertion, *e.g.*, long criminal imprisonments, and lunacy long continued and incurable; in both of these cases married parties are compulsorily separated. With regard to matters which are ordinarily contemplated as part of the experienced incidents of family life the community has not been willing to regard them as justifying its interference to separate married parties from each other.

151. In reality there is not much difficulty in stating what causes require consideration. The question is rather, what is the remedy? Divorce or only separation?

152. Both reason and the weight of opinion and experience lead to the conclusion that judicial separation is an undesirable and inadequate remedy, and that where joint life has become practically impossible from certain grave causes, dissolution of marriage should be permitted.

153. In concluding these notes I desire to observe that it may have to be considered whether the Legislature, while providing additional remedies for matrimonial wrongs, ought not to leave the State Church and other churches a measure of liberty—to co-operate or not to co-operate with the State in carrying out these additional remedies, and also a measure of liberty to deal with their own members who avail themselves of these additional remedies, as they think proper. Of course, if sound human principle and all theological doctrines were in accord, no difficulty in these respects would arise; but we have not yet, unfortunately, reached that position, though it is obvious from what

has been stated that the opening for its attainment exists, and possibly some day the difficulty may be removed. With regard to the Established Church, it may be that in considering such liberty as aforesaid the question will arise how the opinions of substantial minorities may be safeguarded, for in view of the fact that there exist at least three definite opinions in that Church, it would be necessary to consider how far minorities are to be protected against a dominant majority so as to ensure freedom of opinion and action for each body.

154. In concluding these notes I desire to observe that, however rigidly certain views may be held at present, we live in times of great changes of thought, that difficulties in the relation of Church and State which may occur if certain changes in the law take place, might not be difficulties if Christian teaching and sound human principles came to be regarded in the future as being in accord, and that the present time may possibly afford an opportunity for the leaders of religious thought, which has not occurred before and may not occur again, of strengthening the relation between Church and State rather than weakening or severing it, especially when they remember the diversity of opinion which exists and the imperfect and slender materials upon which the more rigid opinions are founded. It may be that, at present, the prospect of attaining to greater unanimity of Christian opinion is somewhat remote, but the silent progress in general intellectual development, which is continually taking place, has already caused some opinions and beliefs which in an earlier age were regarded as sound and of high importance, to be now considered unsound and irrational, and may in the future lead to more common accord among the churches and their members respectively than now exists.

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N.B.—*The figures in heavy type refer to the paragraphs in Lord Gorell's statement (pages 527 to 548).*

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APPENDICES.

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APPENDIX I.

AN INTRODUCTION TO THE HISTORY OF DIVORCE.

Modern Western notions upon the subject of marriage and divorce have been largely influenced by the views of the Christian Fathers and early mediæval theologians. It is therefore necessary to examine the systems of law that helped to mould the views of these various Christian thinkers. This will involve some brief consideration of the systems of marriage and divorce adopted by—

A. The Cretan and Ancient Greeks;
B. The Romans;
C. The Jews.

It will then be necessary to consider—

D. The Early Christian Doctrine and Practice of Divorce;
E. The Practice and Doctrine of Divorce under the later Roman Empire;
F. The Romano-Germanic Law of Divorce;
G. The later Canon Law of Divorce;

and then to trace the history of divorce in England from the Reformation down to the Divorce Act of 1857.

A. *The Cretan and Ancient Greek Practice of Divorce.*—The Cretan and Ancient Greek practice as to marriage and divorce requires comparatively brief treatment, for although the Athenian law is stated not to have been entirely supplanted by the Roman until the beginning of the third century A.D.* its influence in Christian times can only be measured by its effect on Roman law. We may say generally that marriage was treated among the Cretans and Greeks as a free contract, and its dissolution was freely allowed, though definitely kept in check by rules as to the devolution of property on divorce.

Some writers have suggested that in the Homeric age divorce was entirely unknown, but our modern evidence as to divorce among the Cretans (which does not appear to have been considered by Dr. Howard, though he regards the evidence on which the absence of divorce is alleged as slender) almost certainly rebuts this conclusion. Thus the Leges Gortyniorum, discovered in 1884, contain some important provisions as to divorce. Divorce at will was nominally allowed, but if capricious it involved heavy money penalties. Moreover, if a husband by his bad conduct compelled his wife to leave him these penalties attached and *vice versâ*. The wife took with her on her departure not only the property that she had brought to her husband, but at any rate a portion of the extant produce on that property and also the results of all work (such as weaving) that she herself had done. If the husband was responsible for the divorce and was not justified he had also to pay her a fine of five staters.

With respect to a child born after the divorce the Gortynians devised a procedure to ascertain paternity, which foreshadows that contained in the Senatus Consultum Plancianum.† We thus see that the divorce law in force in the Cretan city in the sixth century before our era compares favourably with the later Greek laws,‡ and had a certain influence on Roman law.

By the Athenian Law divorce could be granted either to the husband or to the wife. For each there was a special type of procedure. The divorce pronounced by the husband was called *ἀποπομπή* (the sending away), while that secured by the wife was called *ἀπόλειψις* (the abandonment). But the latter term is sometimes used in the sense of Repudium. In the case of the husband's action no legal decision was required. The wife returned to her father or her *κύριος* and the husband retained the children. It was, however, usual for the husband to dismiss his wife before witnesses.

This class of divorce was closely restricted by the duty on the husband to return the wife's dowry.* It is probable that in practice divorce was largely the privilege of the husband alone, owing to the legal requirements that rendered necessary the personal attendance of the wife desiring a divorce before the Archon and the filing by her of a written statement in support of her plea.† In a society that subjected married women to an almost Oriental seclusion these formalities must have presented no slight difficulty to wives desirous of exercising their legal rights; and the example of Alcibiades, who "collected a band of men and dragged" his wife Hipparete from the Archon when she attempted to obtain a divorce,‡ is significant of a distinction drawn as regards the sexes between the abstract legal rights and their enforcement.§ Either party possessed a right of action, but whether this was merely an action for "variation of settlements" or for the re-establishment of marriage is doubtful.‖ In one point the Greek law of divorce has no modern parallel (other than the necessity of parental consent), though it was followed in Roman times. A third party, namely, the father or his legitimate heir, could end the marriage either with the intention of taking the wife home again or of finding her another husband.¶ When the husband repudiated his wife it was his duty to find her another husband, and it seems probable that she had no choice in the matter.

As we have said, the dowry had to be returned (though probably not in the case of the adultery of the wife), and until it was returned, 18 per cent. per annum (9 obols a month) on the dowry had to be paid. The rather low position of women in practice in the matter of divorce was attacked by Plato, who in his Republic sets forth a higher ideal.** The Athenian law seems to have been finally supplanted by the Roman law about the year 212 A.D.††

A brief reference must be made to States other than Athens. At Thurium both parties had the right to divorce according to the laws of Charondas, but by a later law in either case the party repudiating the other was not allowed to marry a younger person than the repudiated spouse (Diodor. Sicul., xii. 18). At Sparta an unsuccessful attempt was made to authorise divorce for sterility.

B. *The Roman Practice of Divorce.*—The Roman law requires a more detailed discussion; for, as Dr. Howard maintains, in its later development it had negatively "most to do with shaping the ideas of the Christian "Fathers relative to the nature of marriage and the "doctrine of divorce."

The earliest forms of marriage known to ancient Rome formed a holy relationship,‡‡ and could only be contracted between persons possessing the *connubium*, in other words, the patricians. The consent was supplemented by the ceremony of confarreation, and the wife passed under the power of the husband and stood towards him *in loco filiæ*. The children of persons sharing the connubium were *in patria potestate*. Before the Servian reforms the plebeians not being citizens had not the *connubium*, and therefore possessed no marriage form. Their marriage or unions were not *justæ nuptiæ*

* See *A History of Matrimonial Institutions chiefly in England and the United States with an introductory analysis of the literature and the theories of primitive marriage and the family* (three volumes), by George Elliott Howard, Ph.D., at pp. 239, 240 of vol. I.; pp. 3 and 12 of vol. II., where Dr. Howard refers to Meier-Schömann's Der attische Process (II., 510–13), Geffcken's Ehescheidung vor Gratian, 12 *et seq.*; Odyssey, X. 58; XXII. 38; Hruza, Die Ehebegründung nach attischem Rechte, 21, 22 (on the unfavourable position of Athenian women), &c.

† De agnoscendis et alendis liberis, Digest 25, 3. Mömmsen, vol. I. p. 736.

‡ Gortyniorum Leges, Tab. II. 45, 46 *et seq.*, 53, 54 *et seq.* *See* generally as to the Greek law and practice of divorce the elaborate article by M. E. Caillemer contained in the *Dictionnaire des Antiquités Grecques et Romaines d'après les Textes et les Monuments*, edited by M.M. Ch. Daremberg et Edm. Saglio avec le concours de M. Edm. Pottier, vol. II, pp. 319-21 (Paris, 1892).

* Isaeus, De Pyrrhi hereditate, par. 28, Didot, p. 253; *see also* Demosthenes c. Eubulidem, par. 41, Reiske, 1311; c. Neaeram, par. 54 and 86, R. 1362 and 1374; and Lysias c. Alcibiadem, 1, par. 28, D. 136.

† Demosthenes *c. Onetorem*, I., par. 8, R. 866.

‡ Howard, vol. II., 12.

§ Andocid. c. Alcibiad, par. 14. D. 87; Plut., Alcibiades, 8.

‖ Pollux, *Onomasticon* III. 7.

¶ Demosthenes c. *Spudiam*, par. 4, R. 1029; Isae. *De Aristarchi hereditate*, par. 19, D. 308.

** Leges, XI., 929*e* and 930*a–b*.

†† Geffcken, op. cit., 15.

‡‡ Moyle, J. B., Imperatoris Justiniani Institutionum, 4th edition (1903), lib. I. tit. 10, de nuptiis, pp. 127 *et seq.*; Roby, H. J., *Roman Private Law in the Times of Cicero and of the Antonines*, vol. I., pp. 68–71, 133–6.

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and did not create either *manus* or *potestas*, though something analogous to both must have existed before Servius Tullius in 445 B.C. gave the plebeians the *connubium* (Lex Canuleia: Liv. 14, 6) and invented for them the formal marriage by coemption, which, like the marriage by confarreation, brought the wife under the power of the husband. Before the reforms of Servius and before the Twelve Tables (451 B.C.) we find that formless marriages took place between persons possessing the connubium as well as between plebeians, since the Twelve Tables [VI.] makes it quite plain that such marriages by a species of prescription created *manus*; and the Tables provided that if a woman desired to retain her independence she must absent herself from her home for three nights yearly. Directly that the Servian reforms gave the *connubium* to the plebeians this marriage *usu* (as it was called) was open to the plebeians, and by its means the husband obtained *manus*. Thus in the fifth century before Christ we have three forms of regular marriage creating *manus* and *potestas*, and in addition an irregular form, used by those who had not the *connubium*, which did not create *manus* or *potestas*.

The first form, marriage by confarreatio, is said to have been indissoluble in the earlier ages,* and the fact that the flamen and the flaminia were never allowed a divorce is some evidence of this. But the idea of divorce must have been introduced quite early since Plutarch attributes to Romulus a law forbidding divorce under ruinous penalties except for adultery or for one of two or three other grave causes,† and eventually (in, probably, the time of Domitian) divorce was formally recognised and took place by a religious ceremony called *diffareatio*.‡ There was divorce also in the case of marriage by *coemptio* by means of remancipation in a family council including the wife's relations.§ In the second century of our era, by the time of Gaius, a coemptionate marriage might be dissolved by either party by simple repudiation, and apparently the wife, having repudiated the husband, could insist on a remancipation to release his *manus* over her. Probably, in the case of a marriage in which *manus* had been created by use or lapse of time divorce could also be had, but we have no evidence as to the way in which it took place. No doubt it could be ended by repudiation, but if so, how did the *manus* come to an end? Could it end, as it came into existence, by prescription, or more probably, as in the case of a daughter by a single mancipation? The fact that there seems to be no evidence on the point shows that even in early times women rarely allowed the prescriptive period to run so as to give *manus* to their husbands.

The last question is of considerable importance in the history of marriage, as it is out of the inchoate marriage *usu* and similar but irregular marriages between those who had not the *connubium* that the mediæval marriage arose. In the prae-Servian plebeian marriage we find the origin of *matrimonium* as distinguished from *justæ nuptiæ*, and, as we have seen, these marriages were not ended by the invention of the coemptionate marriage. Formless unions continued to be made both between those who had and those who had not the *connubium*, and in the first case *manus* was prevented from coming, and in the second case *manus* could not come into existence. Where *manus* could have come into existence, namely, where the *connubium* existed, the better opinion is that the father has *potestas* over the issue of the union, though this had been denied by Dr. Karlowa.‖ *Potestas* was an incident springing not from *manus* but from the *connubium*. Hence the children of such a union were legitimate for all purposes, and when in the beginning of the third century (212 A.D.) the *civitas* and consequently the *connubium* had been extended to all free subjects of the Empire the distinction between *justæ nuptiæ* and *matrimonium* disappeared for all free persons, and there was practically no significance in the distinction in the time of Justinian.

We have seen how the confarreate and coemptionate marriage could be ended, and it is clear enough that the marriage *usu* could be ended in some formal way. But the marriage involving *manus* had actually disappeared (except in some special cases) before the end of the second century of our era, and had practically disappeared far earlier. Though the formless marriage was for a long while only recognised as *matrimonium juris gentium*, yet it rapidly became common, and after the second Punic War it attained the status of *matrimonium justum* and was soon the usual form of Roman marriage in ages that were swiftly sweeping away class distinctions and creating aristocracies of merit or of wealth. How then was the formless marriage ended? Apparently from the time of the Twelve Tables it was ended by a formal dismissal before witnesses* by the husband, while the Twelve Tables also show us that the wife, if the *manus* had not attached, could leave her husband at will. We must also notice that the Greek practice, by which a third party, namely, the father or other ascendant of either party who was *in patria potestas*, could end the marriage even against the will of the parties, was in force in Rome until the time of Marcus Aurelius.† No doubt the rapid extension of the formless marriage made some such check necessary, and perhaps to this origin we can trace the consent of the parent which under the French code is as a rule a condition precedent to a valid marriage.

With the disappearance of *manus* marriage became a union dependent for its legality on *connubium*, *pubertas*, and *consensus* of both parties. *Justæ nuptiæ* of this type could be ended by the voluntary action of either or both of the parties. A divorce by mutual consent was called *divortium bona gratia*, one-sided action was *repudium*, but the term *divortium* was also used (*Roby* i., 134). The husband and wife in such marriages were placed upon an equal footing. The wife retained full control of her property and had the same right of dissolving the marriage as the husband.‡ No formality of any sort (except a formal declaration of divorce such as *Tuas res tibi habeto*—or *agito*, and perhaps the reply *Redde meas*), nor the intervention of any court of magistrate was required.

Facility of divorce was increased by the Mænian law (167 B.C., 586 A.U.C.). Mr. Muirhead tells§ us that it (*inter alia*) "displaced the family council as a "divorce court, and transferred its functions in that "matter to a *judicium de moribus*,—a court of inquiry "nominated by the prætor, and whose duty it was "to decide to what extent there should be forfeiture "of the nuptial provisions in case of separation or "repudiation. The motives of the statute may have "been of the best, but its tendency was injurious; "for not only did it indirectly facilitate divorce, but "it rendered the idea of it familiar, and overthrew "that respect for the domestic council which had "hitherto been a check upon it." So far, indeed, was the theory of absolute freedom carried that Cicero (in the case where a man left his wife pregnant in Spain and without sending her a message of divorce (nec nuntium remisit) married in Rome and died intestate, leaving a son by each marriage) raises the question whether divorce did not arise *ipso facto* through the consummation of a second marriage of one of the parties or only *certis quibusdam verbis*.¶ Among causes for agreed divorce were barrenness, old-age, ill-health, service in the army, sacerdotal office.‖

The law of marriage and divorce was fully dealt with by Augustus a little before the opening of the

* Fest. Ep. s. v. flammeo; Gell. Noct.. Att. 10, 15.

† Plut. Rom. 22.

‡ Plut. Rom. 50. (*See* inscription No. 2648 Orelli.)

§ Gaius. i. 137*a*; James Muirhead's Historical Introduction to the Private Law of Rome, 1899, p. 112. *Cf.* the public sale of a wife in England and elsewhere, an illicit practice which is a survival of the Roman divorce by mancipation in the case of a coemptionate marriage. As late as the 14th century cases occurred among the aristocracy, and the practice was declared invalid by the King's Court in 1302 (Rot. Parl. i., 140, Pollock and Maitland vol. ii., 395-6). Instances are still reported in remote country districts.

‖ Röm. Ehe, p. 71. Muirhead, 114.

* Cic. *Phil.*, ii. 28, par. 69.; De orat., i. 40, par. 183: Gaius, Dig. XXIV. 2. 2. 1.

† Codex V. 17 fr. 5; Digest XXIV. 1. 32. 19.

‡ Howard, op. cit. 15, 16, where he refers *inter alia* to Geffcken, op. cit. 11; Tacitus, Annales, IV. 16. But the wife's fortune was penalised in the event of adultery (Ulpian Reg. 6, 9 *et seq.*).

§ *Historical Introduction to the Private Law of Rome*, by J. Muirhead, pp. 233–4. *Roby*, i., 135.

¶ Cicero, De Orat., I. 40, par. 183; *see also* Roby, vol. i., p. 135*n*.

‖ Dig. XXIV. 1. 60-62.

Christian era. The first of his statutes on this subject was the *lex Julia de maritandis ordinibus* of the year 28 B.C. This was violently opposed, and did not pass the Comitia till 18 B.C. In the same year the *lex Julia de adulteriis coercendis* was passed. In the year 4 A.D. the Lex of 28 B.C. was amended, but only accepted in the new form by the postponement of the operation of the Lex for three, and eventually five, years. It came into operation in 9 A.D., in which year a supplement to it was carried by the Consuls M. Papius and Q. Poppæus. This Lex Julia et Papia Poppæa* "a voluminous matrimonial code—" for two or three centuries exercised such an influence " as to be regarded as one of the sources of Roman " law almost quite as much as the XII. Tables or " Julian's consolidated Edict." By the legislation of Augustus† important changes were introduced into the practice of divorce with a view, it would seem, of remedying the inconvenience arising in social life through the uncertainty as to whether persons were single or married, and, if married, to whom. It was accordingly provided that the party requiring a divorce (*repudium*) should deliver a written bill to the other in the presence of seven witnesses, who must be Roman citizens of full age; otherwise the divorce was to be void. The law also provided for the imposition of pecuniary consequences on divorce, whether by husbands or wives. If the wife was guilty of adultery, her husband in divorcing her could retain one-sixth of her dos, but if of a less offence, one-eighth, while the husband might retain in respect of each child born of the marriage a sixth of the dos, though the whole amount thus retained might not exceed one-half of the dos. If the husband occasioned the divorce, he had to make immediate or early restitution of the wife's dowry. If both parties were in fault, no penalty fell on either.

It is to be observed that this legislation was introduced in the main with a view to publicity, and that there was no intention either to establish a State jurisdiction in matters of divorce, or (except so far as the pecuniary provisions might effect that object) to impose any material restriction upon the freedom of its exercise. One exception to this liberty was indeed imposed by the Lex Julia et Papia Poppæa of A.D. 9; the freed woman might not repudiate her former master had he taken her in marriage.‡ In all other cases divorce, however unjust, was legal; moreover, bargains or penal stipulations against divorce, or for a different penalty from what the general law contained were not held valid. "No modern law of divorce, so far as I know," says Sir John Macdonell in his memorandum prepared for this Commission, "has been so lax as the Roman." That it was largely taken advantage of is not surprising, and the following passage from a well-known modern writer, Sir William Lecky, clearly indicates the looseness to which it led:—

> "We find Cicero repudiating his wife Terentia, because he desired a new dowry; Augustus compelling the husband of Livia to repudiate her when she was already pregnant, that he might marry her himself; Cato ceding his wife, with the consent of her father, to his friend Hortensius, and resuming her after his death; Mæcenas continually changing his wife; Sempronius Sophus repudiating his wife, because she had once been to the public games without his knowledge; Paulus Æmilius taking the same step without assigning any reason, and defending himself by saying, 'My shoes are new and well-made, but no one knows where they pinch me." . . . . Christians and Pagans echoed the same complaint. According to Tertullian, 'divorce is the fruit of marriage.' Martial speaks of a woman who had already arrived at her tenth husband; Juvenal, of a woman having eight husbands in five years. But the most extraordinary recorded instance of this kind is related by St. Jerome, who assures us that there existed at Rome a wife who was married to her twenty-third husband, she herself being his twenty-first wife."*

On the other hand, it is necessary to point out that some check was placed on reckless divorce from the time of Constantine to that of Justinian. "The " acceptance of Christianity as the State religion " brought with it a large amount of imperial legisla- " tion on this subject. On divorce by mutual consent " no restraint was imposed until Justinian,† as a " penalty, forced the parties into the retirement " of a religious house. Constantine‡ enumerated the " grounds on which repudiation should be deemed " justifiable, and additions to the list were made " by his successors. The penalties inflicted on the " guilty parties, as fixed by Honorius, were loss of " dos and donatio propter nuptias respectively. " Repudiation without any such good reason was still " more severely punished with enforced retirement to a " cloister, and forfeiture of the whole property in " favour partly of the cloister, partly of the guilty " person's statutory heirs."§ To this we may add that Justinian forbade persons convicted of adultery to intermarry.‖ "The legislation of Justinian's prede- " cessors and the bulk of his own were levelled at " one-sided repudiations, imposing penalties, personal " and patrimonial, (1) upon the author of a repudiation " on some ground the law did not recognise as " sufficient,—and the lawful grounds varied from reign " to reign,—and (2) upon the party whose misconduct " gave rise to a repudiation that was justifiable."¶ However, we must notice that Justinian introduced a new check upon marriage itself that was destined to be a fruitful source of matrimonial difficulties and nullity suits for a thousand years after his time. This was the doctrine of spiritual affinity (*cognatio spiritualis*) which extended the bars to marriage implied in certain natural and adoptive relationships to the affinities that were considered to arise from the relationship of god-parent and god-child.**

No doubt the extreme views of various Greek and Latin Fathers upon the questions of marriage and divorce were the inevitable reaction from the moral and social results of an entirely corrupt social state in which the most evanescent unions were dignified by the name of marriage. The law of marriage, indeed, had been tightened rather than relaxed, and the abuse of the system of divorce was probably the result rather than the cause of the gradual decline of Roman morals which followed the Punic Wars. It was the desire for, not the opportunities of, divorce that had increased. The intervention of the State by the Mænian law (lex Mænia de dote††) in 166 B.C., which ousted the prehistoric domestic tribunal, indeed, seemed to increase the very evil that it desired to destroy. The inquiry by the prætor under this lex as to the variation of nuptial settlements after divorce did nothing whatever to check the practice of divorce. The age was corrupt, and neither the family nor the State could curb the evil. "A vast wave of corruption " had flowed in upon Rome, and under any system of " law it would have penetrated into domestic life. " Laws prohibiting all divorce have never secured " the purity of married life in ages of great corruption. . . ."‡‡

Such, shortly, was the state of the law of divorce in the Roman world in the first centuries of the Christian era. Before pursuing it into later ages when Roman law was profoundly modified by the doctrine and practices of the mediæval Church, it is necessary to state the Jewish law of divorce and the views as to the teaching of Our Lord on marriage entertained by the

* For account of its provisions, *see* Rudorff, Röm. RG., vol. i., p. 64, *et seq.* and Muirhead, 2nd Ed., p. 285. Karlowa (Röm. RG., vol. i., p. 618 *et seq.*) discusses juristic comments on this law.

† Lex Julia de Adulteriis, Dig. xxiv., 2. 9.

‡ D. xxiii. 2. fr. 45, 46, 48, 50, 51; xxiv. 2, fr. 11.

* *Lecky*, "History of European Morals," II., 306.

† Novellæ, 117. 10, and 134. 11.

‡ Cod. 6. 13. 1.

§ Moyle, p. 130. (Nov. 134. 11.)

‖ Novellæ, 134. 14.

¶ Muirhead, p. 357; and *see* Wächter, *Ueber Ehescheidungen bei den Römern* (p. 184 *et seq.*).

** Cod. 5. 4. 26; and *see* Inst. Lib. i., Tit. 10, &c.

†† *See* Voigt, *Die lex Mænia de dote*, and criticism by Arndts in the *Z. f. RG.*, vol. VII. (1867), p. 1 *et seq.*; and Muirhead, p. 234.

‡‡ Lecky, op. cit. II. 308. *See also* Dill, "*Roman Society from Nero to Marcus Aurelius.*"

early Church. We can then pass on to consider later developments under Christian rule of the law and practice of marriage and divorce.

C. *The Jewish Practice of Divorce.*—By the earliest Jewish law the husband could discard his wife at will. The Pentateuch introduced the formality of the written letter of divorce, and this was a limitation of the earlier freedom of divorce. Divorce, according to the Pentateuch, was the exclusive privilege of the husband, though "in the Babylonian Code of Hammurabi the wife had some power of initiative,"* and Egyptian papyri of the fifth century B.C., written in Aramaic, show that a Jewish woman could under certain circumstances *claim*, though she could not declare a divorce. Mr. Abrahams states that "This "condition remained unaltered in the first Christian "century." Dr. Driver says, "By the later Jews the "wife was permitted in certain cases to claim a "divorce, viz.: if her husband were a leper, or afflicted "with a polypus, or engaged in a repulsive trade "(Kethuboth VII., 10)."†

If a man ravished a virgin he was compelled‡ to enter into an indissoluble union with her, and if he accused his wife wrongfully of ante-nuptial incontinence, she could compel him to retain her or could accept a divorce. The Mishnah extended these exceptions to the cases where the wife was insane, or a captive, or a minor.§ But though there were only these formal exceptions to the freedom of divorce, yet in Jewish, as in Cretan, Greek, and Roman, law the question of the dowry was used as a practical check. Up to the first century before Christ the wife's father kept her Kethubah or marriage settlement funds, and the husband being free of all financial responsibility could dismiss the wife to her father's house. But in the first century the Pharasaic leader, Simon b. Shetah, enacted that the Kethubah should be merged in the husband's fortune, and since in practice he would have great difficulty in refunding the money, divorce could rarely take place.

The foundation of the formal Jewish law of divorce is to be found in Deuteronomy, chapter 24, verses 1–4:—

(1) "When a man hath taken a wife, and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness‖ in her: then let him write her a bill of divorcement, and give it in her hand, and send her out of his house.

(2) "And when she is departed out of his house, she may go and be another man's wife.

(3) "And if the latter husband hate her, and write her a bill of divorcement, and giveth it in her hand, and sendeth her out of his house; or if the latter husband die, which took her to be his wife;

(4) "Her former husband, which sent her away, may not take her again to be his wife, after that she is defiled; for that is abomination before the Lord: and thou shalt not cause the land to sin, which the Lord Thy God giveth thee for an inheritance."

Commentators have been much divided upon the meaning of the words, "some uncleanness." Literally the words mean "the nakedness of a thing," and signify most probably some indecent or improper behaviour. The school of Shammai,¶ who lived a short time before Christ, taught that a man could not divorce his wife except for immorality; but the school of Hillel, who was a disciple of Shammai, founding their interpretation upon the word "thing" and the clause "if she find no favour in his eyes," taught that it was permissible to do so for the slightest of reasons: for example, if a wife's cooking was unsatisfactory. This apparently deep inconsistency is fully dealt with by Mr. Abrahams. He says:—

> "Hillel's language: 'Even if she spoiled his food,' is, of course, figurative, and may point to indecent conduct, a sense which similar metaphors sometimes bear. . . . Hillel was a teacher noted for his tender humaneness; it was he who popularised in Pharasaic circles the negative form of the Golden Rule before Jesus stated it positively. Hence it is not just to speak of his view on divorce as 'lax' or 'low,' even if (as no doubt later Rabbinic authority assumed) Hillel used this forcible language to preserve as inalienable the ancient norm that a husband possessed complete right to divorce his wife for any cause. For it must be observed that his 'lax' and 'low' view of divorce was also a more rigid and elevated view as to the necessity of absolute harmony in the marriage state." (Q. 38,397.)
>
> "Still his view (or its interpretation) did produce a condition of subjection in the women's status, and left room for much arbitrariness on the part of the husband. 'Aqiba, who went beyond Hillel in maintaining the husband's arbitrary powers ('even if he find another woman more beautiful'), was in fact no friend of divorce, for he applied the severest rules in estimating the pecuniary rights of the wife under the marriage settlement . . . . it is true, however, that their (Hillel and Aqiba) statement of the law helped to make and perpetuate it for future times. The injurious effect was much mitigated, though never theoretically removed, by subsequent modifications" and customs such as the reforms introduced in the year 40 A.D. by Gamaliel, who ordained that 'the *Get* or divorce letter must be subscribed by the witnesses.' (Q. 38,397.)

Mr. Abrahams lays stress on the fact that while the wife's consent was necessary to marriage, neither it nor rabbinic sanction was necessary to divorce* at the beginning of the Christian era.

> "The rule in the first century was (Yebamoth, XIV. 1): 'Woman may be divorced with or 'without her will, but a man only with his will.' If, however, the wife contested the divorce, it is highly probable that the husband had to specify his reasons and bring the matter before a regularly constituted Beth Din or Court of three. This was certainly the case if he suspected her of adultery (Sota, I. 3–4). The accusing husband took his wife before the local Beth Din or court of three, and after a first hearing two Rabbis would conduct the accused to the Supreme Court in Jerusalem, which alone could deal finally with such charges. If she confessed, she forfeited her marriage settlement and was divorced; otherwise the ordeal of the waters (Numbers, V.) was applied." The ordeal decided her guilt or innocence. (Qs. 38,387–9.)

"The penalty for proven adultery, when the capital punishment was abolished" (not later than the year 30 A.D., says Mr. Abrahams†), "was mitigated into the divorce of the woman" (the husband having no option since the rabbis forced him to present a Bill); the wife also lost all her rights under the marriage contract and was not permitted to marry her paramour.‡ The husband could, indeed was compelled to, divorce her on suspicion, but her settlements would be intact. The husband, however, had to give some reasonable ground for his suspicions.

> "It would therefore be to his advantage sometimes to prefer a public charge against her. The male adulterer was scourged, but was not compelled to divorce his own wife unless she insisted . . . . other consequences followed from the theory that divorce was the willing act of the husband. The divorce of the insane husband of a sane wife would be impossible (Yebamoth, XIV. 1), as he could not execute the deed of divorce. Nor could the insane wife of a sane husband be divorced by him, because she stood in all the

* Evidence of Mr. Abrahams, Q. 38,385.

† A critical and exegetical commentary on Deuteronomy, p. 271. *See also* on Jewish law in general, Stubbe, "Die Ehe im alten Testament," 31; and Amram, "The Jewish Law of Divorce."

‡ Deuteronomy, xxii.

§ The Rev. Dr. Hermann Adler, Q. 41,369.

‖ *Revised Version*, "Some unseemly thing."

¶ *See* as to these schools "Cruden's Concordance" under 'Divorce." It is not at all certain whether these schools represented the views of their respective masters, nor is there evidence from Talmudic sources to show that acute controversy on the subject of divorce existed in the time of Christ. *See* the late Dr. Adler's evidence (Qs. 41,433–4).

* Driver, *Genesis*, p. 270.

† Q. 38,397.

‡ Qs. 38,397A, 38,398; *Sota*, V. 1.

greater need of his protection. . . . (If the insanity were proved to have existed before marriage, the marriage could be pronounced initially void, for the marriage of the insane was illegal.)" (Q. 38,403.)

As we have seen in certain other cases of disease (though not of mere infirmity), either could claim a divorce, and in certain cases of infirmity (such as when the wife became a deaf-mute or was barren after ten years of marriage) the husband could claim a divorce.

Divorce was a private transaction, but certain formalities had to be observed in connection with the "Get" or Bill of Divorce, and, in case the wife was unjustly repudiated, what answered to her dowry had to be repaid to her from her husband's property.* This, as we have seen, was an effective check on divorce. Moreover, it must be remembered (as Mr. Abrahams points out) that "he could not secure himself against "the divorced wife's claim for maintenance unless he "satisfied the court that the divorce had been properly "executed, and that the wife's just rights had been "satisfied. In that sense, the courts would have a "power to revise his personal acts" even in the first century of our era.†

It would seem that in the time of Christ the best ethical sentiment among the Jews was against great freedom of divorce, and it was the rabbis' duty to effect a reconciliation between husband and wife where possible. Moreover, "the husband was expected to "show every possible considerateness to his divorced "wife. She was, of course, no longer under his "jurisdiction, she was *sui juris*, and her husband lost "the usufruct of her estate. This last fact was a "constant preventive of arbitrary divorce."‡ Moreover, "the charge on his estate for the settlement went "much further than his own estate; any property he "had ever possessed and had passed into the hands of "third parties might be seized by the wife for payment "of the settlement."§ The husband was expected to preserve the divorced wife from want. The question of the children of the marriage was an additional check on divorce among the Jews. If the wife retained the children, the former husband had not only to maintain his late wife but to pay her for her services to the children. "It is clear that a husband was very reluctant "to divorce his wife if she were also the mother of his "children."‖ There was no divorce for desertion, though the courts offered special facilities for the presumption of the death of the deserter, and every effort, rendered possible by "the excellence of inter-communication between Jewish settlements," was made to trace the fugitive.¶

New Testament Teaching.—The teaching of Our Lord as recorded in the New Testament is fully dealt with elsewhere, and it will be sufficient to set out here the principal passages bearing on the subject, namely, those in the Gospel according to St. Matthew (V., 31 32; XIX., 3–12), the Gospel according to St. Mark (X., 2–12), the Gospel according to St. Luke (XVI., 18), St. Paul's First Epistle to the Corinthians (VII., 1–16), and St. Paul's Epistle to the Romans (VII., 2 and 3).

St. Matthew.

V., 31. It was said also, Whosoever shall put away his wife, let him give her a writing of divorcement:

32. But I say unto you, that every one that putteth away his wife, saving for the cause of fornication, maketh her an adulteress: and whosoever shall marry her when she is put away committeth adultery.

XIX., 3. And there came unto Him Pharisees, tempting him, and saying, Is it lawful for a man to put away his wife for every cause?

4. And He answered and said, Have ye not read, that He which made them from the beginning made them male and female,

St. Matthew.

XIX. 5. and said, For this cause shall a man leave his father and mother, and shall cleave to his wife; and the twain shall become one flesh?

6. So that they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder.

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

8. He saith unto them, Moses for your hardness of heart suffered you to put away your wives: but from the beginning it hath not been so.

9. And I say unto you, Whosoever shall put away his wife, except for fornication, and shall marry another, committeth adultery: and he that marrieth her when she is put away committeth adultery.

10. The disciples say unto Him, If the case of the man is so with his wife, it is not expedient to marry.

11. But He said unto them, All men cannot receive this saying, but they to whom it is given.

12. For there are eunuchs, which were so born from their mother's womb: and there are eunuchs, which were made eunuchs by men: and there are eunuchs, which made themselves eunuchs for the Kingdom of Heaven's sake. He that is able to receive it, let him receive it.

St. Mark.

X., 2. And there came unto Him Pharisees, and asked Him, Is it lawful for a man to put away his wife? tempting him.

3. And He answered and said unto them, What did Moses command you?

4. And they said, Moses suffered to write a bill of divorcement, and to put her away.

5. But Jesus said unto them, For your hardness of heart he wrote you this commandment.

6. But from the beginning of the Creation, male and female made He them.

7. For this cause shall a man leave his father and mother, and shall cleave to his wife;

8. And the twain shall become one flesh: so that they are no more twain, but one flesh.

9. What therefore God hath joined together, let not man put asunder.

10. And in the house the disciples asked Him again of this matter.

11. And He saith unto them, Whosoever shall put away his wife, and marry another, committeth adultery against her:

12. and if she herself shall put away her husband, and marry another, she committeth adultery.

St. Luke.

XVI., 18. Everyone that putteth away his wife, and marrieth another, committeth adultery: and he that marrieth one that is put away from a husband committeth adultery.

I. Corinthians.

VII., 1. Now concerning the things whereof ye wrote: It is good for a man not to touch a woman.

2. But, because of fornications, let each man have his own wife, and let each woman have her own husband.

3. Let the husband render unto the wife her due: and likewise also the wife unto the husband.

4. The wife hath no power over her own body, but the husband: and likewise also the husband hath not power over his own body, but the wife.

5. Defraud ye not one the other, except it be by consent for a season, that ye may give yourselves unto prayer, and may be together again, that Satan tempt you not because of your incontinency.

* *See* Howard, op. cit., vol. ii., 14, where he refers to *Amram*, op. cit., 47, 48, 111–31; *see also* 25, 45, 78 ff. and the evidence of Mr. Abrahams.

† Q. 38,405.

‡ Q. 38,405; T. B. Pesahim, 113*b*.

§ Q. 38,405.

‖ Q. 38,407.

¶ Q. 38,411.

I. Corinthians.

VII., 6. But this I say by way of permission, not of commandment.

7. Yet I would that all men were even as I myself. Howbeit each man hath his own gift from God, one after this manner, and another after that.

8. But I say to the unmarried and to widows, It is good for them if they abide even as I.

9. But if they have not continency, let them marry: for it is better to marry than to burn.

10. But unto the married I give charge, yea not I, but the Lord, That the wife depart not from her husband,

11. (but and if she depart, let her remain unmarried, or else be reconciled to her husband); and that the husband leave not his wife.

12. But to the rest say I, not the Lord: If any brother hath an unbelieving wife, and she is content to dwell with him, let him not leave her.

13. And the woman which hath an unbelieving husband, and he is content to dwell with her, let her not leave her husband.

14. For the unbelieving husband is sanctified in the wife, and the unbelieving wife is sanctified in the brother: else were your children unclean; but now are they holy.

15. Yet if the unbelieving departeth, let him depart: the brother or the sister is not under bondage in such cases: but God hath called us in peace.

16. For how knowest thou, O wife, whether thou shalt save thy husband? or how knowest thou, O husband, whether thou shalt save thy wife?

Romans.

VII., 2. For the woman that hath a husband is bound by law to the husband while he liveth; but if the husband die, she is discharged from the law of the husband.

3. So then if, while the husband liveth, she be joined to another man, she shall be called an adulteress: but if the husband die, she is free from the law, so that she is no adulteress, though she be joined to another man.

These passages have been subjected to endless analysis from the days of the Early Fathers to the present time, and from these passages have been derived, in the main, the various teachings of the various branches of the Church on the subject of divorce. The evidence of a series of theological thinkers of the highest eminence and representing many schools of religious thought has presented to the Royal Commission a very great variety of views as to divorce based upon these passages. These views present a continuous line of opinion, from the view that marriage, whether it be undertaken by a Christian or a non-Christian, is absolutely and under all circumstances whatsoever indissoluble, to the view that marriage is not a specifically Christian institution at all and must be dissoluble whenever it has *de facto* ceased to exist. It will be convenient therefore to trace the evolution of opinion and practice among Christians on the subject of divorce.

D. *Early Christian Doctrine and Practice.*—The first four centuries of the Christian era were a period of indecision and uncertainty as to the principles that should govern the dissolution of marriage.* The theologians of that age being as yet unprovided with any formulated doctrine on the subject endeavoured to derive principles from the text of the New Testament and were at once met by many of the same difficulties that have been explained by various witnesses before the Royal Commission. The literature of the period extends from Hermas, a writer of the earlier part of the second century, to the age of St. Augustine, who died in the year 430.* The fact that the cause named in St. Matthew for divorce was accepted by many of the most distinguished commentators in this period incidentally gave rise to the acceptance by the Church in this epoch of many causes for divorce. Thus Hermas admits idolatry, apostacy, and covetousness equally with carnal transgressions as grounds for divorce, though he condemns remarriage, and it must be noted that such great thinkers as Origen and St. Augustine took even a wider view. Thus Origen in his Homily on St. Matthew says that "if a woman was guilty of "other crimes equal to or greater than fornication, as "if she were a sorceress, or a murderer of her children, "or the like, that for such crimes she might be law-"fully divorced"; and Augustine says† "that for "unlawful lusts, not only such as are committed by "carnal inclination with other men or women, but also "for any other lusts, which make the soul, by the "ill-use of the body, go astray from the law of God, "and perniciously and abominably corrupt it, a man "may, without crime, put away his wife, and a wife "her husband, because the Lord excepted the cause "of fornication, which fornication we are compelled to "take in the most general and universal sense." The fact that St. Augustine, as will appear directly, changed his view, adds to the general confusion of practice that marks this period. To Hermas succeeds Tertullian (c. 155–c. 222), who in his treatise on monogamy rejected all second marriages as unchristian. In the second book addressed to his wife he retracts this position and allows of remarriage after divorce.‡ It is to be noted that Marcus Minucius Felix, one of the earliest Latin apologists for Christianity, also condemns second marriages, and the notion that there is something blameworthy in successive marriages, the previous spouse or spouses being dead, was developed until fourth marriages were declared to be adultery. St. Augustine repudiated the whole idea as unscriptural. Origen (c. 185–c. 254 A.D.) declares (vii. in Matt.) that some bishops permitted women to marry again while their husbands were living. He condemns the practice as unscriptural. Lactantius Fermianus (c. 260–c. 340 A.D.), in his *Divinarum Institutionum* (vi. 23, fin.), considers that scripture allows divorce in the case of a man. He is silent concerning women. The Council of Elvira (305–6 A.D., can. viii. and ix.) excommunicates the woman who re-marries after divorcing a guilty husband, but does not attempt to declare a nullity; while the Council of Arles (314 A.D. can. x and [can. xxiv.]) asserts the general principle of indissolubility and advises the youthful husband who divorces his guilty wife not to marry again in her lifetime. A little later, Epiphanius,§ extending the principle laid down by Lactantius, allowed re-marriage when the previous marriage has been dissolved by fornication, adultery, or any such cause. St. Basil (329–379 A.D.) considered that re-marriage by a husband was pardonable, and his second wife not to be condemned; but that the woman is prohibited from re-marriage by the custom of the Church. (Ep. Can. i. can. 9.)

These witnesses forerun a group of great thinkers whose opinions prove that the mind of the Church in the fourth century was absolutely unsettled on the whole subject. St. Jerome (c. 340–420 A.D.), like Hermas, admitted idolatry, apostacy, and covetousness as well as adultery as grounds for divorce. But he considered‖ divorce forbidden to the wife by the passages in the Epistle to the Romans (cap. vii.) and in the First Epistle to the Corinthians (VII., v. 39). The fact that he speaks of the infliction of penance for remarriage as remarkable¶

* It should, however, be noted that Mr. Watkins, in his learned work *Holy Matrimony* [1895], asserts that "No writer "of the first three centuries is found to advocate or admit "the re-marriage of the innocent husband" (p. 225).

* As to this period, *see* the Notes of Cotelerius upon Hermas (*see* Bingham, vi. 249); Selden (ed. 1726, vol. ii., p. 807). "Uxor Hebraica," lib. iii., cc. 26, etc.; Bingham's *Origines Ecclesiasticae*, vols. vi. and vii.; and the authorities cited in the following works:—A. Esmein, "Le Mariage en Droit canonique," vol. ii. cap. ii. p. 45; Héfélé *Histoire des Conciles*, Paris 1870; "Le Divorce et la Séparation des Epoux" (Paris, 1891); Holtzendorff's Encyclopædia, article "Kirchen recht," by U. Stutz, vol. ii., p. 811; the authorities cited by Howard, op. cit., vol. ii., p. 24; Burge's Colonial and Foreign Law, vol. iii. (ed. 1911), pp. 4–75, 806–904.

† *De Sermo Dom. in Monte*, lib. i., c. xvi.

‡ *Tertullian*, translated by the Rev. C. Dodgson, vol. i. [no other issued], Apologetic and Practical Treatises, Oxford, 1842, p. 421, and note on pp. 431–33.

§ Haer. 59, c. 4, Ed. Colon., 1682, vol. i., p. 496.

‖ Ep. 55, Amand., par. 3.

¶ Ep. 77, Ad Oceanum de Morte Fabiolæ.

seems to show that the Church did not regard re-marriage as a matter for penalties at that date.* He describes such a marriage as "a fault" only (par. 3 and 4), excuses it on the ground of "necessity," and describes it as "the shadow of a miserable marriage." Again, in his Commentary on St. Matthew, he says "the wife is not to be dismissed but only for fornication." This is also the view of St. Ambrose (d. 397).

The views of St. Chrysostom (c. 347–407 A.D.) are somewhat difficult to grasp. In his 17th homily on the Gospel according to St. Matthew he accepts the exception in Matthew V., 32.† He says that Christ "added in good time this corrective, in one way "only giving leave to cast her out, but no other-"wise." But he also declares in an earlier passage of the same homily that "when cast out she continues to be the wife of him that expelled her." This seems to refer to dismissal for causes other than adultery. So when he turns to his 19th homily on the First Epistle to the Corinthians [vii., 1, 2] he asserts that in the case of adultery "the marriage has already been dissolved." The final view of St. Chrysostom seems to have been that marriage is absolutely dissolved by adultery, and this view was also held by Gelasius of Poictiers (c. 367), Theodoret (c. 387–c. 45 A.D.), and Asterius of Amasea (c. 400 A.D.). It is interesting to note that St. Chrysostom specially recognises that the introduction of the Letter of Divorce by the Jews was a step forward; that it was necessary to have a formal divorce to prevent confusion of spouses. Some modern writers have regarded the introduction of the Letter of Divorce as a step away from an earlier stage of indissolubility. St. Chrysostom did not hold this opinion, despite his view of the texts of Genesis. It is perhaps desirable to note the views of the spurious Apostolical Constitutions,‡ a fourth century document, which speaks of the loss of a husband by ways other than death, and those of the so-called Ambrosiaster,§ the pseudo-Ambrose (c. 380), who allowed re-marriage when the heathen party departed (in pursuance of 1 Cor. VII., 15), but considered that in the case of adultery remarriage was permitted to the man alone (in accordance with 1 Cor. VII., 11).

It has already been seen that St. Augustine at one time held not only the view that adultery was a good ground for divorce, but that there were other grounds based on the doctrine of spiritual fornication. He changed his view with hesitation, and adopted the intermediate position, that there can be divorce without the right of remarriage. St. Chrysostom apparently at one time held this view, which had long been held by a section of the Church. Three centuries earlier, Hermas had condemned remarriage as adultery, and St. Jerome, who held practically the same views as Hermas as to the grounds of separation, appears to have adopted his doctrine as to remarriage. Pope Innocent I. (who died in 417), in his third letter to Exuperius, Bishop of Toulouse, has no hesitation in calling remarriage after divorce adultery,‖ and in 407 the Fourth Council of Carthage at last proclaimed the strict theory of indissolubility.¶

Thus as the great fourth century grew to its close the Church was gradually making up its mind after long hesitation and on grounds of expediency that there should be no remarriage after divorce. The corrupt state of the Roman world painted in such bitter and pungent language by Asterius of Amasea (c. 400 A.D.) made some strong step seem necessary, and by this date the Church was free to legislate for itself without the fear of persecution. The action of St. Augustine finally settled the matter. The Papacy was with him, and that fact was not without importance. The long hesitation through which both St. Chrysostom and St. Augustine passed is a most significant fact in the history of theological development. It is difficult to dogmatize upon a question of construction when it is found not only that St. Chrysostom and St. Augustine differed, but that eventually each held the view originally held by the other.

St. Augustine seems to have felt that the solution was a question of statesmanship rather than of construing certain passages of scripture; that the age called for the exercise of what Dr. Sanday has called "the higher expediency." Yet he adopted the strict doctrine of the indissolubility of marriage with great hesitation. He first doubted his own doctrine of spiritual fornication which let in many causes of divorce and slowly came to the position that marriage is a sacrament, that it can only be ended by adultery and that it is not ended in such a fashion as to admit of remarriage. On the mere question of the construction of the scriptural texts he admitted to the last that the question of divorce and remarriage is surrounded with difficulties. He says in the most modest terms that he is really unable to solve the problem: "though "in my humble fashion I have thus investigated and "discussed these matters, nevertheless, I am not "ignorant that the question of marriage is most "obscure and most involved. I dare not profess to "have explained as yet, either in this or in any other "work of mine, all its complexities, nor if urged to "do so am I now able to explain."* Yet he did not hesitate, on the grounds of "the higher expediency," to formulate a law of marriage that has survived since his time. He gave the doctrine of indissolubility of marriage, says Esmein,† "a solid and in a measure a "scientific basis. He gave it a consistency forced "from the sacrament of marriage. He set aside at "one stroke all causes of divorce or of dissolution "other than death admitted by the secular law: "sickness, captivity, or prolonged absence. He was, "one may say, the artisan who gave the final touch "to the theory of indissolubility."

But while the great influence exercised by Augustine must be weighed, it must also be remembered that the final law of the Church as to marriage and divorce was not settled for many centuries after his time, not, indeed, for more than seven centuries after the time of Augustine, in the days of Gratian and Peter Lombard and Vacarius. This fact, coupled with the hesitation of the great Fathers of the Church on the subject, deprives historians of the evidence involved in continuous Church doctrine. There is no post-apostolic tradition with which to deal. We have rather a matter of Church policy that slowly took definite shape, but was not universally formulated until three centuries before the Reformation.

E. *Later Roman and Germanic Doctrine and Practice of Divorce.*—It will now be convenient to discuss shortly the trend of later Roman legislation. After the lex Julia, which has been discussed in a preceding section, there was little change in the law of divorce until the important edict promulgated by Constantine in 331. This law limited the cases for which divorce could take place without pecuniary penalties to three in the case of both husband and wife. The wife could obtain a divorce without penalties where the husband had been guilty of (1) murder, (2) poisoning, and (3) the violation of tombs. If she divorced her husband for any other reason, *e.g.*, for being a drunkard or a gambler, or for frequenting the society of loose women, the divorce seems to have been good in law, but she forfeited her dowry and was punishable with deportation. The husband could obtain a divorce without penalties in cases of (1) adultery, (2) poisoning, and (3) acting as procuress. If a husband divorced his wife for any other reason, the divorce seems to have been good in law, but he forfeited all interest in his wife's dowry and, if he

* Cf. Bingham, vol. vii., p. 304, and Dodgson, *op. cit.*

† Oxford ed., 1843.

‡ iii., 1.

§ The unknown author of Commentaria in xiii. Epistolas beati Pauli.

‖ Para. iv. (Sacrosancta Concilia, vol. ii., cols. 1255-6).

¶ Canon 102 in Integer Codex Canonum Ecclesiæ Africanæ (Sacrosancta Concilia, vol. ii, col. 1117). The canon runs as follows: "Placuit, ut secundum evangelicam et "apostolicam disciplinam, neque dimissus ab uxore, neque "dimissa a marito, alteri conjungatur; sed ita maneant, aut "sibimet reconcilientur: quod si contempserint, ad pœniten-"tiam redigantur. In qua causa legem imperialem petendum "est promulgari."

* "His ita pro meo modulo pertractatis atque discussis, "quæstionem tamen de conjugiis obscurissimam et implicatis-"simam esse non nescio. Nec audeo profiteri omnes sinus ejus, "vel in hoc opere, vel in alio me adhuc explicasse, vel jam "posse, si urgear explicare." De conjugiis adulterinis ad Pollentium, lib I., cap. XXV. (end), paragraph 32, in Paris ed., 1839, vol. VI., col. 680; Basle ed., 1556, tome 6, col. 854.

† II., 53.

married again, the divorced wife was authorised to seize the dowry of the second wife.*

In 449 Theodosius II. and Valentinian introduced further legislation. The following principle was laid down: "Consensu licita matrimonia posse contrahi, contracta non nisi misso repudio solui præcipimus. Solutionem etiam matrimonii difficiliorem debere esse favor imperat liberorum. The following were the grounds for divorce. The wife could obtain a divorce for the following offences:—(1) treason; (2) adultery; (3) homicide; (4) poisoning; (5) forgery; (6) violating tombs; (7) stealing from Church; (8) robbery or assisting, or harbouring robbers; (9) cattle stealing; (10) attempting a wife's life; (11) beating or whipping wife; (12) introducing immoral women into the house. The husband could obtain a divorce for any of the above except, of course, Nos. 11 and 12, and also for additional reasons:—(1) going to dine with men other than her relations without his knowledge or against his wish; (2) going from home at night against his wish without reasonable cause; (3) frequenting the circus, &c., after having been forbidden by him to do so.†

The importance of this last enactment lies in the fact that it remains at the present day with certain modifications the law of Greece, and is accepted by the Greek Church.‡

Thus under the growing influence of the Church Justinian forbade by the 22 Novel (6 and 7) and the 134th Novel (39) divorce by mutual consent, with the three following exceptions: (1) when the husband was impotent;§ (2) when either husband or wife wished to enter a monastery;‖ (3) when either was in captivity for a certain length of time.¶ By chapter 11 of the 127th Novel Justinian practically abolished divorce by mutual consent, and enacted that all who dissolved their marriages in this way should forthwith retire into monasteries and should forfeit the whole of their estates. It is interesting to note that on this forfeiture if there were children, one-third, if there were only ascendants, two-thirds, and if neither, the whole of the estate of the parties was to pass to the monastery.**

Justinian's successor, Justin, found it necessary, however, to repeal the prohibition of divorce by mutual consent, for, says this Novel of Justin II. (566 A.D.), "it was difficult to reconcile those who once "came to hate each other and who, if compelled to live "together, frequently attempted each other's lives." It will be noticed that throughout this legislation the strict principle of the indissolubility of marriage already conceived by the Church is completely ignored. Mr. Watkins shows* that by the Eclogue of Leo III. (the Isaurian) and his son Constantine (740 A.D.) a civil statute of the Empire abolished the licence of divorce by consent, and a little later (776–780 A.D.), under the Emperors Leo IV. and Constantine, every divorce effected by "vicious agreement" (*κακῇ συμφωνίᾳ*) was forbidden under the penalty of a sensible fine, and carried with it the annulment of any subsequent marriage. But by the beginning of the ninth century (806–815 A.D.) the canons of the Patriarch Nicephorus recognise that divorce by consent is again good before the secular law, and by the time of Basil the Macedonian (867 A.D.) divorce by consent is clearly recognised as valid. But the law changes again, and by the Prochiron of 870 A.D., the Epanagoge of the Emperors Basil, Leo and Alexander (c. 884 A.D.), and the Basilica (905–11) divorce by consent is forbidden.

It seems certain that the Roman law as enunciated from Constantinople affected in some measure the law of divorce that became operative in Constantinople from the date of its occupation by the Turks in 1453.

Sir Edwin Pears has given us a brief account of the Mahometan law of divorce that may be quoted here:—

> "Under a system of law which recognises polygamy and the practice of making marriages without consulting both parties, easy divorce was a necessity. Accordingly Mahomet provided a regular and systematic legal manner of obtaining it. But in Mahometan countries generally, and certainly in Turkey, this method was found much too slow, and in its place 'repudiation' has been substituted. The husband pronounces three times a simple formula by which he puts his wife away, and then, without the intervention of any kind of law-court, the woman ceases to be his wife. Eminent Moslem legal authorities, both of Turkey and India, recognise that the practice of repudiation is an abuse, but it exists; it is *adet* (custom), and has the force of law. I believe that in Turkey there are no cases of divorce, at least I never heard of one. The wife is simply put away . . . . The abuse in past years became so great that the lawyers who have generally been the defenders of women's rights came to their aid and invented a method which to some extent prevents the abuse of repudiation. When a Turk of any position marries, he now usually gives a bond to the wife or her father to the effect that if he repudiates her he shall forthwith pay a fixed sum as liquidated damages. In addition to such sum, the fact that the wife's property is safe from her husband's grasp makes a husband hesitate before he repudiates his wife. . . . . Moslems took much of their law from that of New Rome, which was more favourable to women than that of mediæval Europe. Probably also the system of polygamy rendered it necessary to strengthen the wife's hold over her property. Thus it comes about that upon repudiation the husband, with the aid of the lawyers, is compelled to give up all the property which his wife may have voluntarily brought into the common stock, and to pay the amount of the bond which he has signed."†

F. *The Romano-Germanic Law of Divorce.*—It would seem that among the Teutonic races marriage was in the earliest times a matter of purchase, under which the wife at first in fact, and later in theory, became the husband's chattel. With regard to the primitive law of divorce "it is highly probable that "among the German nations, so long as they were "heathen, the husband and wife could dissolve the

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* III. Cod. Theod. Tit. xvi. 1 (de Repudiis) (ed. Jacobi Gothofredi, 1665, vol. i., p. 310).

† *See* Codex Justinianus, V., 17, 8. *See also* Legum Novellarum Divi Theodosii, lib. i., tit. xvii. (Gothofred. vol. VI., app., p. 9). In Cod. V., 18, the law as to the rights to property on divorce is laid down. *See also* Legum Novellarum Divi Theodosii, lib. I., Tit. xvii. (Gothofred. vol. VI., app., p. 9).

‡ The law of divorce under the Greek Church is fully discussed in vol. III. of Burge's Foreign and Colonial Law (published in 1911), pp. 54–64; (The Eastern Canon Law) on pp. 840–844 (Divorce). In Russia, members of the Orthodox Church may seek divorce for (1) adultery; (2) impotence; (3) loss of civil rights and deportation under certain limitations; (4) desertion for five years. In Servia the old law given above is more closely followed. In Greece Novel. 127 of Justinian is mainly followed. In the Eastern Church there is no separation *a mensâ et toro*.

§ Cod. Jus., V. 17. 10, and Novella, 22. 6.

‖ Novella, 134. 39.

¶ Novella, 22. 7.

** *See* G. E. Heimbach's edition of the Novels (Leipzig, 1851). Novels 22 (*de nuptiis*), 127 (cap. 10 and 11), and 134 (cap. 39). Novels 117 (cap. 10) and 134 (cap. 11) are referred to in various text-books as authorities on this point, but in Heimbach's edition of the Novels Novel 117 has only four chapters, and the 11th chapter of Novel 134 does not deal with the subject. Chapters 10 and 11 of Novel 127 are the important enactments. If we adopt the text of the Corpus Juris Civilis followed by Dionysius Gothofredus, we find that the following was the order of legislation: Lex 9 of the section of the Code entitled *De repudiis* (liber v. Tit. xvii.), and Novella 22 (*De nuptiis*), cap. iv., allowed divorce by mutual consent. Novella 117 contained the following chapters dealing with divorce:—c. 8, *De justis divortiorum causis marito permissis*; c. 9. *De justis divortii causis mulieri concessis*; c. 10. *Ut non liceat consensu matrimonium dissolvere, nisi ex causa probabili*. cc. 11 and 12 give the exceptions to this rule. The provisions of chapter 10, forbidding divorce by mutual consent, were reinforced by Novella 127, chapter 4, *Matrimonium sine causa dissolvendum non esse*, and Novella 134, chapter 11, *Pœna injusti repudii*.

The effect of this legislation was to prohibit divorce by mutual consent, except in the three cases mentioned in the text, and to impose property penalties if the rule was infringed. This rule was reversed by Novella 140, chapter 1. *ut consensu matrimonium solvi possit*, passed by Justin, Justinian's successor. (Corpus Juris Civilis, ed. 1663, vol. 2.)

* *Holy Matrimony: a treatise on the Divine Laws of Marriage*, by Oscar D. Watkins, pp. 349–352.

† *Turkey and its People*, by Sir Edwin Pears (pp. 69–70).

" marriage by mutual consent, also that the husband " could put away his wife if she was sterile or guilty of " conjugal infidelity or some other offences and could " marry another woman."* The Roman law with its ancient doctrine of divorce by mutual consent springing as we have seen out of the inchoate marriage *usu* was gradually amalgamated with these local customs as Roman control was extended.

Thus the Burgundian law says: "Consensu partis " utriusque repudium dari et matrimonium posse " dissolvi"; and the Bavarian laws†: "Si quis liber " uxorem suam sine aliquo vitio per invidiam di- " miserit, cum 40 et 8 solidis componat parentibus." But the Burgundian laws sharply distinguish between the rights of husband and wife thus: "(1) Si qua mulier " maritum suum, cui legitime est juncta, dimiserit, " necetur in luto"; and "(2) si quis uxorem suam sine " causa dimiserit, inferat ei alterum tantum, quantum " pro pretio ipsius dederat, et multa nomine sol. 12."‡ There has also to be taken into account the compromise with Christian doctrine. It is clear that marriage after divorce was not absolutely prohibited, but the severity of the penalties for putting away a wife unjustly, show the influence of the Church. Accordingly, though a one-sided divorce on the part of the husband is not entirely taken away, the grounds upon which he may act are more or less restricted in harmony with Roman ideas, and the wife is herself given the rudimentary right of one-sided repudiation where the husband is guilty of very grave crimes. These modifications are derived from the Theodosian Code, and are preserved in MSS. such as the *Epitome Codicis Guelpherbytani* or the *Epitome Monachi*. In the Law of the West Goths, for instance, where Christian influence is more marked than in other Codes before the close of the 8th century, the right of the man to put away his wife is restricted to cases of adultery, and malificia or certain other offences, while for three scandalous wrongs (murder, malificia, or violation of tombs) the woman may repudiate the husband and (according to some MSS.) contract another marriage:§ but the manuscripts vary on several points, the authorities are obscure, and all that can be said is that these laws show a growing strictness both as to divorce and remarriage which reflects the same movement in Roman law that became noticeable from the time of Theodosius in the mid-fifth century.

It appears that in Ireland, Wales, and England the doctrine of dissolubility had a prolonged struggle with the Church with, however, the same tendency towards restriction of divorce which was visible elsewhere. In Ireland "there were seven cases in which " the wife could legally separate from her husband " and retain the whole or part of her *Coibche*, and " obtain special damages for injury."‖ The Roman influence seems plain in England: "the dooms of our " own Æthelbert. Christian though they be, suggest that " the marriage might be dissolved at the will of both, " or even at the will of one of the parties to it."¶

"The Anglo-Saxon and Frankish penitentials allow a " divorce *a vinculo matrimonii* in various cases:—if the " wife is guilty of adultery, the husband may divorce " her and marry another and even she may marry " after five years of penance; if the wife deserts her " husband, he may after five years and with the " bishop's consent marry another; if the wife is " carried into captivity, the husband may marry another, " 'it is better to do so than to fornicate.'"* In the case of Wales it is also possible to recognise the Roman influence, surviving, it may be, from the Roman occupation of Britain. There was freedom of divorce to either party for definite causes, but settlements and fines, in fact, checked divorce at every turn.†

G. *The Later Church and Canon Law of Divorce.*—It will now be convenient to consider the attitude of the Church onward from the time of Augustine, where it was left for the sake of following some rough order of chronology, and to trace it, through the final settlement of the Christian doctrine of divorce in the Canon law, down to the Reformation.

From the time of the decree of Innocent I. and the Council of Carthage there is more or less wavering on the part of the ecclesiastical authorities, but in general the tendency is to uphold the strict doctrine of indissolubility. This is shown by the Councils of Angers (453), Canon VI.; Irish Synods under St. Patrick (c. 453), Canon 19 (first Synod), Canon 26 (second Synod); Orleans (533), cap. XI., forbidding divorce at will (cap. 19 forbids marriages between Jews and Christians); Nantes (658 A.D. Can. 12); the Synod of Aix la Chapelle in 789 (43) forbidding re-marriage in the lifetime of the other spouse. The Diet of Worms of 829 adopted the same position (Héfélé, v. 270–3); as also Friuli (796 A.D.), Canon 10; Paris (829 A.D.), Canon 2. The second Council of Toletana in 531 forbade the marriage of close relatives. The third Council of Paris (557 A.D.) forbade marriage with deceased wife's sister or brother's widow, following the Theodosian Code and the Council of Agde (505) and the first Council of Orleans (511).‡ On the other hand, the Council of Vannes (465 A.D.), Canon 2, expressly exempts from anathema those men who marry again after putting away their wives for adultery, and the Council of Agde (505 A.D.), Canon 25, while expressly allowing more than one cause of separation *a vinculo*, threatens with excommunication only those secular persons who repudiate their wives for the sake of remarriage "without establishing in " advance before the bishops of the Province the " causes of their divorce." In 692 Canon 87 of the Council in Trullo (692), following the 57th Canon of S. Basil, made second marriage after abandonment the ground of penance for four years; in 726 A.D. Gregory II., in a letter addressed to St. Boniface, permits a man to contract a new marriage because his wife by reason of infirmity is unable to perform her conjugal duty. This, however, is contrary to a previous decision of the same pontiff, and is suggested by Freisen§ to have been a permission in a case of a marriage void *ab initio*.

In 744 A.D. the Synod of Soissons (Canon IX.) again forbids divorce, except that it allows the husband to put away a guilty wife on scriptural grounds, but nothing is said as to remarriage (and *see* Epis. vii. cap. 12 of Pope Zacharie c. 743). The Synods of Verberie (752 A.D.) and Compiègne (757 A.D.),‖ however, proclaim again the more tolerant view. According to the former, the man whose wife plots against his life may put her away and take another spouse, but the divorced woman may not remarry¶; so also a man may form a new marriage if his wife refuse to accompany him on flight from danger, or if he has to follow his lord into another duchy or province, but the woman

* Geffcken, op. cit., 33. 34, 45, 44; Freisen, 778–80; Heusler, Institutionen, II., 291; Pollock and Maitland, History of English Law, II., 392, 2nd ed.; and the additional references given by Sir John Macdonell in his Memorandum: Schröder. 316; Löning, 617; Wessel's History of Roman Dutch Law, 467.

† Pertz. XV., 300; *see* Memorandum by Sir John Macdonell, entitled, "Some Notes on the Legal History of Divorce."

‡ Memorandum of Sir John Macdonell.

§ The various folk laws are reviewed by *Meyrick*, "Dictionary Christ. Ant.," II., 1111. The Codes are discussed by Freisen, "Geschichte des canonischen Eherechts," 776–8, and *Geffeken*, op. cit., 35, 39, 41. *See* lex Romana Visigothorum in the very learned edition of Gustavus Hänel (Leipzig, 1849), pp. 92–95. *See also* the laws derived from the sentences in Paul as to the right to kill a wife taken in adultery (p. 372). *See also* the Memorandum by Sir John Macdonell, p. 33.

‖ O'Curry, "Manners and Customs of the Ancient Irish," I. CLXXV.

¶ Pollock and Maitland, II., 393 (2nd ed.).

* Pollock and Maitland, II., 393; Theodore's "Penitential" (Haddan and Stubbs' "Councils," iii. 199–201); Holdsworth's "History of English Law," II., 78.

† *See* "Welsh Mediæval Law" (The Laws of Howel the Good), by A. W. Wade-Evans (pp. 235–240), ed. 1909.

‡ "Marriage with a wife's sister or a brother's wife was " held lawful until Constantine's law of A.D. 355 (Cod. " Theod. iii. 12)." Roby, vol. I., p. 129.

§ Op. cit., 331, *ff.*, 782. *See* Sac. Conc., vol. VI., col. 1448.

‖ These dates are uncertain. *See* generally as to these Synods, Freisen, op. cit., 782-4; Geffcken, op. cit., 55–7; Esmein, op. cit., II., 64–9. A Canon (XV.) of 755 Concilium Vernense directs all marriages to be public.

¶ Si qua mulier mortem viri sui cum aliis hominibus consiliavit, et ipse vir ipsius hominem se defendendo occiderit, et hoc probare potest, ille vir potest ipsam uxorem dimittere, et si voluerit aliam accipiat (Concilium Vermeriense, Canones V. et VI.; 752 A.D. Pippinus Rex Franc., Sacrosancta Concilia, vol. VI., col. 1657; and Concilium Compendiense, Canons VIII. and X., 757 A.D.; Sac. Conc., vol. VI., col. 1696). The Statutes of St. Boniface (2nd collection, 35) appear to recognise divorce by mutual consent in two cases (Héfélé, vol. 4, pp. 491–2).

must remain unmarried while her husband lives. Again, if either party in the course of wedded life falls into slavery the other is free to marry again. The Council of Compiègne (Canon XIII.) has also a decree to the effect that where by agreement either party enters the cloister the other has the right of remarriage.

So far as England was specially concerned, the Council of Hertford (673), Canon 10, decreed that divorce should not be permitted except on the ground assigned by the Holy Evangel, but should a man "put "away the wife united to him in holy wedlock, and "if he wish to be rightly a Christian, let him not be "joined to another, but remain as he is or else be "reconciled to his wife."* This must be compared with the "Answers of Ecgbriht" (740 A.D.), question 13: "If a lawful marriage be dissolved, by consent of both "parties on account of the (temporary) impotency of "the man or woman, is it lawful for the sound party "(being incontinent) to marry, the impotent party "giving consent, and promising to live in perpetual "continency? The answer was doubtful, but probably "'Yes.'"† The Synodus Romana of 826 (Pope Engenius II.) allowed divorce and remarriage in the case of adultery (Can. 36, Sac. Conc. vol. viii. col. 112).

Nearly a century and a half (950) later the rule of indissolubility is proclaimed by the "Laws of the Northumbrian Priests" (54); the Penitential Canons of 963 (27) are equally strong, and subsequently the Council of Eanham (1009) and others decreed the indissolubility of marriage.‡

By the Ecclesiastical Laws of Howell the Good, of Wales (928),§ however, much more latitude is shown, and the curious regulations as to compensations and fines there laid down show the compromise which force of circumstances compelled the Church to make with the barbarians.

At the Synod of Bourges in 1031 it was declared (Canon 16) that there was no right of remarriage except in the case of adultery (Héfélé, vi., 272); at the Synod of Reims in 1049, this ground was abandoned (Canon 12, *ibid.*, p. 309), but the Synod of Tours of 1060 (Canon IX., *ibid.*, p. 401) seems to allow the Bishop to grant a divorce with a right of remarriage.

There is, moreover, a curious class of evidence as to actual practice in daily life, apart from the decrees laid down by Councils, in the Pœnitentials, namely, the Manuals designed for the guidance of priests in their daily ministrations. One of the most important of these, that by Theodore of Tarsus,‖ Archbishop of Canterbury and the President of the Council of Hertford, by which as has been seen the strict rule as to the indissolubility of marriage was announced, allows divorce on various grounds. Johnson comments on this inconsistency and says that perhaps in the Pœnitential Theodore speaks of what may be done without direct sin, while in the Canons of the Council the conduct that best becomes a Christian is explained. Theodore, like Chrysostom and Augustine, has two minds on the subject; indeed, like Ecgbriht, he was "very loose as to the point of matrimony."¶

According to Theodore's Pœnitentials in the case of adultery, the husband may repudiate the wife, and, if it be a dissolution of the first marriage, he may remarry at once; even the guilty wife may remarry after a penance of five years, but a wife is forbidden to send an adulterous husband away except to enter a monastery. Again, for malicious desertion on the part of the wife the man may contract a second marriage with the consent of the bishop, and a woman whose husband is in prison can remarry after a year if it be the first marriage that is dissolved. Remarriage is also allowed in case either party is captured in war, and amongst other grounds of divorce the right is given to anyone who has ignorantly married a person in servile condition. Divorce by mutual consent is also recognised. A number of other Pœnitentials containing similar regulations are also known.*

The practice of the Church in England even appears to have extended so far as to recognise divorce by mutual consent: legitimum conjugium non licet frangi sine consensu amborum (Pœnit., Theodore, II., c. 12, 7).

This evidence must be borne in mind, because, though the Pœnitentials have not necessarily official sanction, and though the statements in them were sometimes condemned by Councils, yet, as Sir John Macdonell has pointed out, they record the actual practice of the time; and show in a striking way that up to the 9th century the Church permitted in practice great laxity in divorce, in spite of the weighty Councils which decreed the indissolubility of marriage, and divorce *a vinculo* for adultery still is found in the late Eleventh Century.

With the growth of the Canon law† the various decrees of Councils and utterances of Popes and Fathers on the subject of marriage and divorce were being gradually worked into a system of jurisprudence and the more stringent rules laid down gradually assumed their final form, allowing divorce *a mensâ et thoro, i.e.*, judicial separation only, for (1) adultery, (2) heresy and apostasy, and (3) cruelty, and abolishing, theoretically at least, all absolute divorce from the Western Church.

The Church also assumed control of divorce procedure which hitherto, it is important to bear in mind, had been a private transaction. It would seem by the 11th century that the Court of the Bishop was gradually becoming the ordinary tribunal for divorce cases.‡ "That eminently Christian king Cnut legislated about "marriage in an ecclesiastical spirit. The adulterous "wife, unless her offence be public, is to be handed "over to the bishop for judgment. The adulterous "husband is to be denied every Christian right until "he satisfied the bishop. The bishop is becoming "the judge of these sinners, and the judge who "punishes adultery must take cognizance of marriage."§ After William the Conqueror had separated the spiritual and lay courts the ultimate result was not in doubt; but there was no haste. In Henry I.'s time the King's Court had still some voice, and it was not until the middle of the 12th century that marriage and divorce were fully under the Canon law. Gratian and Peter Lombard, the masters of the Canon law, finally elaborated the strict ecclesiastical doctrine of divorce, and we see the system at work in England in Richard de Anesty's suit in 1143.

In practice it will be seen that under the Canon law marriages were still dissolved, and the method and subterfuge by which this was done will require to be considered at some length. Richard de Anesty's case in which "a marriage solemnly celebrated in church, a "marriage of which a child had been born, was set aside "as null in favour of an earlier marriage constituted "by a mere exchange of consenting words," proves this. First, it is to be observed that though, as has been stated, divorce *a vinculo* was eliminated from the law of the Western Church, the word "divorce" was still used in the Canons and in two different senses:

* Haddan and Stubbs, "Councils," III., 120-1. *See also* Johnson's English Canons, vol. I., p. 95.

† (Johnson, vol. I., p. 170; Latin text, Wilkins, vol. I., p. 82; Thorpe, p. 320). The Excerptions of Ecgbriht (111-130) are important. The excerption 122 apparently permits in the case of desertion by the wife the husband to remarry with the Bishop's consent after five or seven years.

‡ For details of the Canons of many of the Councils and observations thereon *see* Watkins, p. 364. 394. *See also* Lyndwood's Provinciale (ed. Oxford, 1679), lib. IV., tit. i., de Sponsalibus et Matrimonio (p. 270). Lyndwood, writing early in the 15th century, lays stress on the fact that marriage is a sacrament.

§ Haddan and Stubbs, op. cit., I., 246: Wade-Evans, op. cit., pp. 235-240

‖ This is contained in Haddan and Stubbs, op. cit., III., pp. 173-213.

¶ Johnson's *English Canons*, p. 171.

* References to them are given in Howard, vol. ii., 45. The material sentences of two books of the Pœnitential of Theodore will be found in Haddan and Stubbs (Councils, &c., vol. III., p. 199), who have taken their copy from the existing documents in the library of Corpus Christi College, Cambridge. Johnson also prints these passages (*English Canons*, Part I., p. 94).

† For an account of the growth of the Canon law generally, *see* Maitland's article in "The Encyclopædia of the Laws of England," II., 541; the evidence of Sir Frederick Pollock; and Pollock and Maitland's *History of English Law*.

‡ Pollock and Maitland, II., 367 (2nd ed.); Cnut, II., 53. 54.

§ Geffcken, op. cit., 77-79. Pollock and Maitland ("History of English Law," II., 367) think that the complete ecclesiastical jurisdiction was established in England about the middle of the 12th century.

(1) It was used to designate the judicial declaration of nullity of a marriage which, on account of some impediment, was void or voidable from the beginning.* (2) It was used to designate the "judicial separation" for the three causes above mentioned.†

With regard to the theoretical prohibition of all divorce *a vinculo* by the Canon law, two exceptions always existed. First, if a Christian convert is abandoned by his partner, he is allowed to contract a second marriage‡; and secondly, the theory is evolved that an unconsummated marriage may be dissolved through papal dispensation, or, *ipso facto*, by taking Orders.§ But it was through the abuse of the power to dissolve a marriage on account of some supposed invalidity for consanguinity or affinity that the doctrine of indissolubility was evaded by those who were in a position to do so. Thus throughout the Middle Ages from the time of Gratian there existed a very wide liberty of divorce in our modern sense. Moreover, it must be noticed that, at any rate till the middle of the fourteenth century, the children of a divorced pair could be and frequently were held to be legitimate and capable of succeeding to land.‖

Hence in pre-Reformation times there was in fact the exact modern position: A marries B and has issue; B is divorced and A remarries and has children in the lifetime of B. The issue of both marriages are legitimate. The following cases illustrate the mediæval position. Joan Cryspyn, seised in her own right of certain lands, had two children, Roger and Joan. Roger married Margaret and had a son, Thomas. Five years later a divorce from Roger "was celebrated at the suit of the said Margaret," and then Roger died in the lifetime of his mother. His sister Joan, the wife of Walter de Badeston, on the death of her mother claimed the lands, alleging that Thomas in consequence of the divorce was a bastard. The question was referred to a jury and inquisition made. On 25th October 1320 the Bishop of Bath and Wells in answer to a writ declared that Thomas "was and is the lawful son of the said Roger" and not a bastard.¶

Hence the divorce, though made on the basis of nullity, had the precise effect of a modern divorce. Another case of about the same date illustrates this. Margaret, the daughter of John de Wygeton, claimed her dead father's lands as next heir. Other persons claimed to be next heirs because "a divorce was "pronounced between the said John and Denise his "wife, mother of the said Margaret, because of her "pre-contract with John Paynel." Hence it was argued at the inquisition that Margaret was a bastard. In answer to a writ, the Bishop of London held (on St. John Baptist's Day 1320) that Margaret was the lawful daughter of the said John. "This record was "delivered into the Chancery at Westminster July 24th "in the 14th year (of Edward II.) by the hands of Sir "Henry de Scrop, Chief Justice."** Here we have a case in which marriage was held null and void because of a previous contract of marriage, and yet the issue of the second marriage was held legitimate for the purpose of succession to land. No modern State has gone so far as this, even in America. But there was no certainty in the administration of the law. Thus in 1268 Walter de Beauchamp married, in the diocese of Worcester, Alice de Tovy, who was related to him within the fourth degree of consanguinity. Bishop Giffard held that, since at the date of the contract the parties were ignorant of the impediment, the marriage was valid, and the issue legitimate.*

Canon II. of Hubert Walter's Canons, passed at Westminster in the year 1200, shows how narrow the compass of legal marriage was becoming. It says: "Let "not a man contract with a relation of his former wife, "nor a woman with a relation of her former husband; "nor a godson with a daughter of the baptizer, or of "the godfather, whether born before or after."†

The age, indeed, was comparable with the worst Roman period. Indeed in the days of Edward II., a satirist describes the "prodigious traffic" in divorces; any husband having "selver among the clerkes to send" could rid himself of his wife, "bringing her to the constery" with two false witnesses to support his declaration.‡ Sir Frederick Pollock and Professor Maitland, in their History of English Law, state that "spouses who had quarrelled began to investigate their "pedigrees and were unlucky if they could discover "no *impedimentum dirimens*" which would invalidate the marriage;§ and Thwing writes, "The canons "prescribing the prohibited degrees of relationship "were marvels of ingenuity. Spiritual relationships, "those gained in baptism, were recognised no less than "natural relationships, and equally with them served as "barriers to legal marriage.‖ Marriage was prohibited "within seven degrees of relationship and affinity; "and none but the astutest students of the law were "able to unravel so complicated a system. The "annulling of marriages, which had been contracted "within the prohibited degrees, became a flourishing "business of the Church. No exercise of its power "yielded more money, or caused more scandal. So "tangled was the casuistry respecting marriage at the "beginning of the 16th century, that it might be said "that, for a sufficient consideration, a canonical flaw "could be found in almost any marriage."¶

It has, however, to be remembered that, if the marriage though bad was not in fact dissolved, the issue were legitimate. After the Reformation this principle was acted upon, and in the reign of James I. it was held by the courts that the nullity action must be brought in the joint lives of the spouses. This law made the marriage with a deceased wife's sister possible till the passing of Lord Lyndhurst's Act of 1835. That Act abolished voidable marriages in England and Ireland. Such marriages were never recognised in Scotland.**

The Council of Trent (1545 to 1563) finally settled the Canon Law of Divorce; and while preserving the essential features of that law abolished in a large measure from the continent of Europe the scandal of the clandestine marriage or pre-contract as a ground of divorce.

One incident at the Council requires separate mention. The Greek Church (separated finally from the Western in 1054, just after the completion of the Canon Law) has always permitted divorce for the causes with modifications laid down by the Edict of Theodosius II. and Valentinian in 449. The Council of Trent, out of respect, as it is stated, to the views of Ambrose and other Greek Fathers, modified the anathema pronounced against those who taught that marriage could be dissolved and limited, such pronouncement being made only against those who, like the Lutherans, maintained that the Church erred in teaching that marriage could not be dissolved. It should be stated that this modification was made at the instances of the Envoys of Venice, which at that time ruled islands in the Adriatic and Mediterranean inhabited by Greek Christians who had contracted

* *See* Kenn's case, 7, Co. Rep. 42*b* (1607).

† *See* as to this Esmein, op. cit., II., 73, 85–9. We find this as late as the fifteenth century. In 1433 we read (in the Oratio Joannis de Ragusio O.P. de Communione sub utraque specie: Sacrasancta Concilia, vol. XII. 1152*b*), after a reference to the phrase "Nisi ob causam fornicationis," this passage: "Et nihilo minus sancta ecclesia catholica non solum ex hac "causa, sed ex pluribus aliis permittit et facit rationabiliter "divortia fieri, ut patet infrigidis et maleficiatis, de affinibus, "ex causis hæresis, et pluribus aliis causis."

‡ Decret. Grat. II. caus. XVIII. qu. 2 C. 2; and Decretals IV. 19. de divortiis. c. 7. (Howard, vol. ii., 54.)

§ *See* as to this, Freisen, op. cit., 826.

‖ *See* Pollock and Maitland, vol. II., pp. 374–7.

¶ *See* Calendar of Inquisitions. Rolls series (233), 14 Edw. II.

** Inquisitions: Rolls Series (531) 8 Edw. II. Cf. the writ *Cui ante Divortium*, which when issued by the heir assumed the legitimacy of the issue of the marriage, (*See* Rastall's *Entries*.)

* *See* Worcester Episcopal Registers (1268–1301, vol. i., p. CXXXIV., J. W. Willis Bund).

† Johnson's English Canons, vol. II., p. 91.

‡ Percy Society's Publication. (Howard, vol. ii,, 58.)

§ Op. cit., II., 393., note 5. As instances of the mediæval divorces, *see*—

(1) Exch. King's Remembrancer, bundle 7/4, anno 1333.
(2) Chancery Miscellanea. Bundle 15, file 4, &c.

‖ As we have seen above, the conception of spiritual affinity (Cognatio spiritualis) was introduced (Cod. V. 4. 26) by Justinian and adopted by the Church.

¶ Thwing, C. F. and C. F. B., "The Family," 83. For an instance of a so-called divorce by writ and inquisition in the year 1495–6, *see* the case of Margery Wellesbourne (Calendar of Inquisitions, Hen. VII. vol. I., pp. 426–7, Rolls series).

** *See* Howard, vol. II., pp. 94–6. Fraser on *Husband and Wife according to the Law of Scotland*. 50.

second marriages after divorce, in accordance with the law of their Church.*

The position taken by the Roman Catholic Church at the present day is thus stated by Monsignor Moyes, who gave evidence before the Royal Commission at the request of the Archbishop of Westminster:—

"The whole doctrine of the Catholic Church to which I belong may therefore be further summarised in the three following statements. 1. Christian marriage ratified and consummated is one and indissoluble except by the death of one or other of the parties. 2. Christian marriage, ratified verbally, but not consummated, may be dissolved by Church authority. 3. Non-Christian marriage is dissoluble in cases in which one of the parties is converted and the other refuses to dwell peacefully with the convert."†

The Abolition of Papal Authority in England.—The series of Statutes in the reign of Henry VIII. that abolished Papal appellate authority in England in all matters, including all questions of marriage and divorce, forms an important stage in the history of divorce in England, and it is therefore desirable to set out somewhat fully the Statutes in question. The first Act, that of 1532–3 (24 Hen. VIII. c. 12, which is still in force), provides that appeals to Rome in "causes testamentarie, Causes of Matrimony, and Divorces" should be within the King's authority and supplies the appellate machinery. This was followed by an Act of 1553–4 (25 Hen. VIII. c. 19, which is still in force) *inter alia* providing that there should be no appeals to Rome, and that appeals in "causes of matrimonye" should be made in accordance with the Act of 1532. A further Act of 1533–4 (25 Hen. VIII. c. 21, which is still in force) forbids any person to sue for dispensations or licences from the Pope, and substitutes the Archbishop of Canterbury for "causes not being "contrary or repugnant to the holy scriptures and "lawe of God," and a further statute of the same year (25 Hen. VIII. c. 22) regulating the succession to the Crown, in its third section gives a list of the "degrees of mariage prohibited by God's lawes."

The Act 25 Hen. VIII., c. 19 (s. 2), which abolished appeals to Rome, provided machinery for a revision of the existing Canon Law. Acts of 1535–6 (27 Hen. VIII. c. 15) and 1549 (3 & 4 Edw. VI. c. 11) provided commissions to examine the canons in accordance with the Act of 1533–4, and the last of these commissions revised or actually produced the draft code of law known as the "Reformatio Legum Ecclesiasticarum." In 1540 the Marriage Act (32 Hen. VIII. c. 38) *inter alia* abolished the existing law of pre-contracts and declared that consummated marriages between lawful persons were indissoluble notwithstanding any unconsummated pre-contract of matrimony. The law of pre-contracts was revived by an Act of 1548 (2 & 3 Edw. VI. c. 23, which is still in force), and was only abolished (if it is abolished) by implication by Lord Hardwicke's Act in 1753 (26 Geo. II. c. 33).

The pre-contract survives in Scotland where the principles of the Canon Law are still in force, "subject "only to such modifications as it has undergone from "time to time by the application of the rules of "evidence established in that country, and the course "of judicial decisions,"‡ and subject to the provisions of the Scottish Marriage Act of 1856 (19 & 20 Vict. c. 96), making it necessary to the validity of the contract that one of the parties have been resident in Scotland at least 21 days next preceding the ceremony. Subject to this rule, there are three kinds of marriage still recognised in Scotland: (1) Regular marriages before a minister according to custom or Statute and according to the forms for a civil marriage, (2) the marriage *per verba de praesenti*, and (3) the marriage *per verba de futuro, subsequente copulâ*. In this last case the contract must be written or proved by confession on oath. After the Reformation the Commissary Court—representing the old Ecclesiastical Courts—without any statutory authority, began to grant divorces *a vinculo*, and the right to do this was recognised by Statute in 1563. The statutory right to divorce for desertion (which, however, professed only to declare a common law right) followed in 1573.§

The following are the Statutes of the reigns of Henry VIII. and Edward VI.:—

The Statute of 1532–3 (24 Henry VIII. c. 12) recites that appeals to Rome in "Causes testamentarie, Causes of Matrimony and Divorces," &c. having caused great trouble and cost, henceforward all causes determinable by any spiritual jurisdiction shall be adjudged within the King's authority (s. 1). Appeals from the archdeacon or his official shall be to the Bishop diocesan of the See. If the case is begun before the Bishop, then the appeal is to the Archbishop of the Province. If the case is begun before the Archdeacon, or the Archbishop, or his commissory, the appeal is to the Court of Arches or audience of the Archbishop and thence finally to the Archbishop. If the case is begun before the Archbishop there is no appeal. In cases touching the King there is a final appeal to the spiritual prelates, abbots, and priors of the Upper House of Convocation (s. 3).

The Act of 1533–4 (25 Hen. VIII. c. 19) is entitled "The submission of the clergie to the Kynges Majestie." It recites that the clergy have acknowledged that the convocations can only be assembled by the King's writ, and can only promulgate canons, &c. by the King's assent and authority; and that existing canons, &c. should be submitted to the judgment of the King and 16 from the Houses of Parliament with 16 of the clergy all to be chosen by the King, who should abolish such as they thought proper. The Act goes on to make the necessary statutory provision for this and provides that no canon shall be put into execution which is contrary to the prerogative or the law of the realm. The Act further provides that there shall be no appeals to Rome, and that appeals in "causes of matrimonie," &c. shall be made in accordance with Statute 24 Hen. VIII. c. 12. All appeals from the Archbishop's court and certain other courts are to be made into the Court of Chancery. Section 7 of this Act runs as follows:—

> "Provided also, that such canons, constitutions, ordinances, and Synodals provincial being already made, which be not contrariant or repugnant to the laws, statutes, and customs of this realm, nor to the damage or hurt of the King's Prerogative Royal shall now still be used and executed as they were afore the making of this Act, till such time as they be viewed, searched, or otherwise ordered and determined by the said two and thirty persons, or the more part of them, according to the form tenor and effect of this present Act."*

A further Statute of the same year (25 Hen. VIII. c. 21) forbids any person to sue for dispensation or licence to the Pope and substitutes the Archbishop of Canterbury for the Pope "for causes not being contrary "or repugnant to the Holy Scriptures and lawes of "God," (s. 2) provided that in "causes unwonte" dispensations shall require the approbation of the King or his council.

Section 4 provides that "all children procreated "after solemnization of any marriages to be had or "done by virtue of such licences or dispensations shall "be admitted, reputed, and taken legitimate in all "courts, as well spiritual as temporal," with full power of inheritance.

A third Statute of 1533 (25 Hen. VIII. c. 22) goes on to give (section 2) a list of "the degrees of mariage prohibited by God's lawes." Persons can have no dispensation to marry within the degrees, and if any are already married they shall be separated "from the bondes of suche unlawfull mariage by sentence of the ordinary."

An Act of 1535–6 (27 Hen. VIII. c. 15) gives the King power to name 32 persons (16 spiritual and 16 temporal) to examine the canons and constitutions according to the Statute 25 Hen. VIII. c. 19. This was repealed by an Act of 1543–4 (35 Hen. VIII. c. 16), by which the King was given authority during his life to name two and thirty persons, viz., sixteen spiritual and sixteen temporal, to examine all canons, constitutions, and ordnances, Principal and Synodal, and to establish all such laws ecclesiastical as should be thought by the King and them convenient to be used in all Spiritual Courts. In pursuance of a third Act on the subject passed in 1549–50 (3 & 4 Edw. VI.

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* *See* Sarpi's History of the Council of Trent (Courayer's translation, Vol. II., 562–3).

† Q. 22,921.

‡ Hammick. 221. Fraser on *Husband and Wife according to the Law of Scotland* (322, 358, 360).

§ Lord Salvesen's evidence (Q. 6327, &c.).

* This Act was repealed by 1 & 2 P. & M. c. 8 and revived by 1 Eliz. c. 1, s. 2.

c. 11) the commission was appointed which issued the *Reformatio Legum Ecclesiasticarum*, a revised version of the Code (not now extant) prepared under the Act of 1543. The *Reformatio Legum* is dealt with at length by Sir Lewis Dibdin in the paper that he has prepared on the subject for this Commission.

In 1540 (32 Hen. VIII. c. 38) was passed the Act "For marriages to stand notwithstanding pre-contracts." The preamble runs as follows:—

> "Whereas heretofore the usurped power of the Bishop of Rome hath always intangled and troubled the mere jurisdiction and regal power of this realm of England, and also unquieted much the subjects of the same, by his usurped power in them, as by making that unlawful which by God's word is lawful, both in marriage, and other things, as hereafter shall appear at more length; and till now of late in our Sovereign Lord's time, which is otherwise by learning taught than his predecessors in times past of long time have been, hath so continued the same, whereof yet some sparks be left, which hereafter might kindle a greater fire, and so remaining, his Power not to seem utterly extinct.
>
> "II. Therefore it is thought most convenient to the King's Highness, His Lords Spiritual and Temporal, with the Commons of this realm, assembled in this present Parliament, that two things specially for this time be with Diligence provided for, whereby many inconveniences have ensued, and many more else might ensue and follow."

The Act goes on to say that many marriages that were apparently perfect, valid, and blessed with children—

> "have nevertheless, by an unjust law of the Bishop of Rome, which is, that upon pretence of a former contract made, and not consummate by carnal copulation (for proof whereof two witnesses by that law were only required) been divorced and separate, contrary to God's law and so the true matrimony, both solemnized in the face of the Church, and consummate with bodily knowledge, and confirmed also with the fruit of children had between them, clearly frustrate and dissolved."

The Act further attacks the Roman system of prohibitions and dispensations ("for their lucre by that Court invented") in respect to kindred and affinity since it had led to discord among married persons, "and many just marriages brought in doubt "and danger of undoing, and also many times undone, "and lawful heirs disherited," and—

> "marriages have been brought into such an incertainty thereby, that no marriage could be so surely knit and bounden, but that it should lie in either of the parties' power and arbiter, casting away the fear of God, by means and compasses to prove a pre-contract, a kindred and alliance or a carnal knowledge, to defeat the same, and so under the pretence of these allegations afore rehearsed, to live all the days of their lives in detestable adultery, to the utter destruction of their own souls, and the provocation of the terrible wrath of God upon the places where such abominations were suffered and used.
>
> "Be it therefore enacted . . . . that . . . all and every such marriages as within this Church of England shall be contracted between lawful persons (as by this Act we declare all persons to be lawful, that be not prohibited by God's law to marry), such marriages being contract and solemnized in the face of the Church, and consummate with bodily knowledge, or fruit of children or child being had therein between the parties so married, shall be . . . . deemed judged and taken to be lawful, good, just and indissoluble, notwithstanding any pre-contract or pre-contracts of matrimony not consummate with bodily knowledge, which either of the parties so married, or both shall have made with any other person or persons before the time of contracting that marriage which is solemnized and consummate, or whereof such fruit is ensued, or may ensue, as afore; and notwithstanding any . . dispensation, prescription, law, or other thing granted or confirmed by Act or otherwise; and that no reservation or prohibition, God's law except, shall trouble or impeach any marriage without the Levitical degrees; and that no person of what estate degree or condition soever he or she be, shall . . . be admitted in any of the Spiritual Courts within this the King's realm, or any his Grace's other lands and dominions, to any process, plea or allegation, contrary to this foresaid Act."

This Act "concerning pre-contracts and degrees of consanguinite" was repealed by 2 & 3 Edw. VI. c. 23. and 1 & 2 P. & M. c. 8. s. 4. and in part revived by 1 Eliz. c. 1. s. 3. as to so much as was not repealed by 2 & 3 Edw. VI. c. 23. Statute 2 & 3 Edw. VI. c. 23. s. 2 repealed so much of Statute 32 Hen. VIII. c. 38 as made indissoluble a consummated marriage which has been solemnized in the Church. In fact, the Act of 1548, in combination with 1 Eliz. c. 1. s. 3, restored the whole doctrine of pre-contracts and directed the ecclesiastical courts to enforce them. Lord Hardwicke's Act of 1753 (26 Geo. 2. c. 33) apparently abolished by implication this doctrine of pre-contracts in England, but, as we have seen, it still survives in Scotland if followed by consummation.

The Survival of the Law of Nullity.—At this point it will be convenient to set out Sir Edward Coke's view of the effect of the Statute of 1540 (32 Hen. VIII. c. 38) on the law of marriage.

In his notes upon Littleton (235*a*) Coke has the following passage:—

> "There bee two kinde of divorces, viz., one *a vinculo matrimonii*, and the other *a mensâ et thoro*. . . . Divorces *a vinculo matrimonii* are these: *causa precontractus, causa metus, causa impotentiæ seu frigiditatis, causa affinitatis, causa consanguinitatis, &c.* . . . . It is further to be understood, that many divorces that were of force by the canon law when *Littleton* wrote, are not at this day in force; for by the Statute of 32 Hen. VIII. ca. 38 it is declared that all persons be lawfull (that is, may lawfully marry) that be not prohibited by God's law to marry, that is to say, that be not prohibited by the Leviticall degrees."
>
> "Sir Edward Coke also in his *Institutes* (II. 683) gives us 'an exposition upon the Statute ' of 32 Hen. VIII. cap. 38. concerning what ' Marriages be lawful, and what not.' He says that since the Act various causes of nullity have disappeared, such as:—
>
> (1) Fornication before marriage with kindred of the wife (Chadworth's case, 30 Edw. I.).
>
> (2) Godfather to cousin of wife or godmother to cousin of husband.
>
> "Divorces causa conpaternitatis et commaternitatis (called in 1 & 2 P. and M. c. 8 cognatio spiritualis).
>
> (3) Causa professionis.
>
> (4) Causa cognationis legalis, *i.e.*, jure adoptionis et sic de similibus.
>
> (5) Causa præcontractus: but this was restored as a cause for nullity by 2 & 3 Edw. VI. c. 23 and 1 Eliz. c. 1."

Coke then discussed the legality of the marriage of ecclesiastical persons and holds that the Statutes 2 Edw. VI. c. 2 and 5 Edw. VI. c. 12 making the marriages of such persons lawful are still in force. Before the Reformation the marriage of a priest was voidable *causa professionis*, but that of a monk or nun was absolutely void on account of the vow of chastity.

It is interesting to compare with this view the view of the law contained in an undated and unprinted paper of the reign of Queen Elizabeth at the Record Office.* The paper which is entitled "Devorce" deals with the question of the wife's property after divorce, and concludes with the following statement as to causes:—

> "Devorce propter causam castitatis. *Roe in le cace.*

* State Papers, Domestic Series. Elizabeth, vol. 288. Undated papers, No. 10.

"Devorce propter rixa et jurgia. *Roe in le cace de Bek et sa feme.*

"Devorce a mensâ et thoro propter fornicationem. *Roe in le cace W. Shiard et sa feme.*

"Devorce propter pre-contract.

"Devorce propter consanguinity."

The instances of grounds for nullity of marriage given by this anonymous writer and by Sir Edward Coke are important as being the sources of the voidable marriages that existed in English law until 1835. But they also make it necessary to lay stress on the fact that the mediæval system of divorce, the so-called nullity divorce which, as we have seen, was not inconsistent with the legitimacy of the first as well as the second family, long survived the Reformation. This becomes clear when the Visitation articles and Injunctions from 1547 onwards are examined. The following articles are salient but not exhaustive examples of the position between 1547 and 1569. Nor did this system end with the last year mentioned as will appear from the instance of a divorce and remarriage in 1576 given below after the following articles:—*

1. Royal Articles of Edward VI., 1547:—

(61) Whether you know any to be married within the degrees prohibited by the law of God; or that be separated and divorced without any just cause, approved by the law of God. And whether any such have married again.

(This apparently refers to the Act of 1533 prohibiting marriages within the degrees named in Leviticus and forbidding dispensations within these degrees.)

2. Archbishop Cranmer's Articles for Canterbury Diocese (1548). Art. 81 (the same as the article above of 1547).

3. Queen Mary's Articles (1554):—

(9) *Item* that every bishop, and all other persons aforesaid, do foresee that they suffer not any religious man having solemnly professed chastity, to continue with his woman or wife, but that all such persons, after deprivation of their benefice or ecclesiastical promotion, be divorced, every one from his said woman, and due punishment otherwise taken for the offence therein.

4. Cardinal Pole's Articles for Canterbury Diocese (1557):—

(Art. 17.) *Item* Whether any of them (priests) that were under the pretence of lawful matrimony, married and now reconciled, do privily resort to their pretensed wives, or that the said women do privily resort unto them?

5. Interrogatories of 1560 (no Ordinary named):—

(Art. 13.) Whether that any minister or priest, in the time of trouble, hath divorced himself from his wife; and whether his wife hath married to another man since, or no?

6. Archbishop Parker's Diocesan Articles of 1560 and 1563. Parker's Articles of 1560 asked:—

(Art. 21.) *Item* Whether there be any in these parts that have married within degrees of affinity or consanguinity, by the laws of God forbidden; any man that hath two wives, any woman that hath two husbands (the Articles of 1563 add here, "any that being divorced or separated aside have married again"); any married that have made pre-contracts; any that have made privy or secret contracts; any that have married without banns thrice solemnly asked; any couples married that live not together, but slanderously live apart; any that have married in times by the laws prohibited, or out of the parish church where they ought to have the same solemnized.

7. Guest's Articles for Rochester Diocese, 1565:—

(Art. 11.) *Item* Whether ye know any to be married within the degrees of affinity or consanguinity exhibited by the laws of God or that be separated or divorced without the degrees prohibited in the laws of God and whether any such have married again.

8. Parkhurst's Injunctions for Norwich Diocese, 1569:—

(Art. 42.) Whether there be any that hath two wives, or woman that hath two husbands, any married where a pre-contract was to any other, any divorced, or otherwise separated, that married again.

It will be noticed that the first and second of these articles speak of separation or divorce "without a just cause approved by the law of God," and ask if any persons so divorced have married again; that the third article separates a married religious; that the fourth declares by the use of the word "pretensed" that the marriage of priests is a nullity; that the sixth deals in detail with the causes of double marriages. The article of 1565 institutes an inquiry into cases of divorce where there has been no nullity, while that of 1569 again deals with the question of double marriages. It is plain that the pre-Reformation practice had led to a great confusion and that in the second half of the sixteenth century there were grave doubts as to what marriages were binding and what were not binding. The close inquiries made by the bishops and the Crown in all parts of England show that the problem was one of serious difficulty in the daily life of the people. It is clear, moreover, that in certain cases—and it seems possible that these were not only nullity cases—the Church Courts formally divorced married couples *a vinculo*.

The following instance recorded in the register of S. Michael le Belfrey York* is of some importance. First we have in the Wedding Book the following entry:—

"1568. Rychard Cowpland and Bettris Atkinson, the xvj day of Januarie Devorsed by order of lawe, 1576, in the deane and chapt'r courte of the Cathedrall church of Yorke; me Rob'to Burland occulat. teste hmo repudii."

This is followed by an entry as to the remarriage of Beatrix:—

"Thomas Cooke s'vaunte to Mr. Anthony Rookbye. and Beatrix atkinson als Couplande weare maryed together in this p'ish church at lawfull tyme of the day, the bannes first lawfully asked the xxvij th day of January, 1576, the said beatrix being first devorced from Richard couplande, by lawe, and lycensed to marye."

The wife apparently had issue by both marriages (Kateren, christened April 2nd, 1574; and Susane, christened 14th June 1577; Frances, christened 27th July 1578). Beatrix died in June 1619. It is not clear on what ground the second marriage was allowed, though the fact that there were two families by marriages solemnized in church would seem to suggest two good marriages. If this was not a divorce *a vinculo* after a lawful marriage then it must have been an instance of nullity. In considering the nature of divorce it is necessary to keep in mind the fact that the mediæval doctrine of nullity, which had such a wide area of operation before 1535, did not disappear with the Reformation, but existed for some time side by side with the system of parliamentary divorce, and apparently had a far wider vogue than the modern doctrine of nullity. But on the whole the York case of 1576, in view of the facts that the parties were apparently in a humble position, and that the wife had a family by each husband, almost seems to be a case of divorce *a vinculo*. This view is strengthened by a case, the particulars of which appears in the Register (Marriage) of Christchurch, Newgate, Street (1538–1754). It is the entry of a marriage solemnized on November 2nd, 1579, and runs as follows†:—

"John Skynner and Margery Conaway from St. Andrewes in the Wardrap, and having another wyf alive, did penance at Poles Crosse."

This entry seems to suggest that the Church performed the second marriage with full knowledge of a

* See *Visitation Articles and Injunctions of the Period of the Reformation*. Edited by G. Walter-Howard Frere (1910).

* Full particulars of which have been supplied by the vicar, the Rev. George H. Stock; the text is also printed in the publications of the Yorkshire Register Society, and this particular entry has appeared in Notes and Queries for March 25, 1911. *See also* Notes and Queries for June 17, 1911, and Athenæum, May 27, 1911, as to the second marriage of John Stawell in 1572.

† Harleian Society Registers, vol. 21, p. 203.

previous marriage, and imposed penance, but did not refuse to marry the parties.

In this period such cases were not uncommon, if we may judge from register entries, in which a man married "the former wife" of another man (this can hardly mean "widow," as the word "widow" is frequently used on the same page as the phrase "the former wife"). Such cases suggest a great confusion in practice between the years 1550 and 1660. To this confusion later reference will be made. It will, however, be convenient to add in this place an item of evidence as to the practice of marriage after divorce in Elizabethan times; this is an attack on the existing practice by Edmund Bunney (1540–1612) in the year 1595. In the year 1610 he issued from Oxford—and a second edition followed in 1613—"a "Treatise of divorce and marrying again, that there "is no sufficient warrant to do so." He was violently opposed to any such practice, and therefore is a credible witness of the practice. The book is dedicated to the Archbishop of Canterbury. In the preface dated from Bolton—Derby, December 13, 1595—he says: "6. Hereupon, when time was, in a Sermon I "briefly noted, and the present occasion did so require, "that the libertie, that in these our daies many doe "take of divorcing their wives for adulterie and "marrying of others, had not such warrant in the "worde of God as they thought that it had." The "Advertisement to the Reader" gives certain instances and a remarkable example of the views of those in high places. It says that a certain "honourable personage, who then was in chiefe place for "the execution of justice here, said the laws of "our country allowed of it, and was contradicted by "some of the council." In view of such a difference of opinion, the ignorant laity and even some church courts might well have regarded divorce *a vinculo* as legal. Bunney was not the only writer. John Reynolds, in 1610, appeared (in a second edition) on the other side, and issued a "defence" of great learning "of the judgment of the Reformed Churches, "that a man may lawfullie not only put away his wife "for adulterie, but also marrie another." It has to be remembered in considering the English practice and the possibility of the church courts granting divorces *a vinculo* without statutory authority that this actually happened at this very time in Scotland. Lord Salvesen in his evidence states that divorce *a vinculo* for adultery was introduced after the Reformation partly by the Scottish courts "and by "public opinion treating the bar which previously "existed to the dissolution of marriage as non-exis"tent, in consequence of the triumph of the re"formed principles."* This practice was recognised by Statute in 1563 as an existing institution. In England what seems like a similar practice was gradually suppressed.

The Reformers and Divorce.—With the Reformation the rejection by Protestants of the sacramental theory of marriage brought about a great change in the prevailing ideas upon the subject of divorce.

The charges against the Church which we find among the writings of the Reformers were: (1) the fostering of vice by the profession of a too severe doctrine of indissolubility; and (2) the abuse of a jurisdiction exercised by the Church with regard to the annulment of marriages on the ground of having been contracted within so-called forbidden degrees, the effect of which was to open for the rich and powerful an easy door to divorce.†

The Reformers were not, however, by any means agreed upon the remedy for this state of things. It is necessary to consider the views of some of the leading continental Protestants, then those of English birth, which will lead to the discussion of the futile attempt which was made at legislation; some leading cases which arose during the 16th and 17th centuries; and the rise of the practice of private Acts of Parliament, which remained the only means of absolute divorce in England down to 1857.

The Protestant doctrine of divorce was shaped, like the Protestant doctrine of marriage, mainly by Luther. He admitted divorce *a vinculo* upon the two grounds only of adultery and desertion; he also sanctioned temporary separations. The theologians, Brenz, Bugenhagen, Chemnitz, Calvin, and Beza, with the jurists, Kling, Beust, and Schneidewin, all agree with him that absolute divorce should be granted for adultery, but some, like Chemnitz, would discriminate against the woman; malicious desertion is also generally admitted as a cause for dissolution.*

On the other hand, Erasmus, Zwingli, and Bullinger, with Melancthon and others, favoured the more liberal view. All accept the two grounds mentioned, and each admits several other grounds. Zwingli and Bullinger argue that in admitting adultery as a cause of divorce the Scriptures sanction as such all equal or graver offences†; and, according to the Zurich Marriage Ordinance of 1525, "adultery, malicious "desertion, and plotting against the life of a consort "are not regarded as the only causes, but rather as the "standard causes of divorce, and to the judge it is left "to decide what others shall be put by their side. And "not only this, but cruelty, madness, leprosy, are "mentioned as causes which the judge can take into "account."‡ Lambert, of Avignon, holds that when a wife is forced by intolerable suffering to leave the husband who mistreats her, this should be counted as repudiation by the man and not as desertion by the woman.

With no exception remarriage is allowed to the innocent party, but with regard to the guilty party the Protestant reformers were not agreed, and several advocate the summary solution to the question by putting him or her to death.§ The legislation in Protestant countries on the Continent followed in the main the stricter view, allowing divorce usually only for adultery and desertion, but in some instances only for adultery.‖

The English reformers accept the stricter doctrine of the continental theologians above cited, but most of them agree that marriage should be absolutely dissolved for adultery;¶ that this should carry with it the right of remarriage, at least for the innocent party; and that "judicial separation" should be abolished. The following opinions quoted by Sir John Macdonell in his memorandum may be referred to:—Henry Smith, "Preparative to Marriage," 1591: "Divorcement, "which is the rod of marriage, and divideth them which "were one flesh, as if the bodie and soul were parted "asunder. But because all performe not wedlocke "vowes, therefore He which appointed marriage hath "appointed divorcement, as it were, taking our privi"ledge from us when we abuse it. . . . The "disease of marriage is adultery, and the medicine "thereof is divorcement. Thus, He which made mar"riage did not make it inseparable."

Tyndale, in his "Exposition and Notes," says: "If "he may not find in his heart (to forgive his wife) "he is free no donbt to take another, "while the law interpreteth her dead; for her sin "ought of no right to bind him."

Hooper's opinion is thus expressed: "Thou seest that "the Lord (Matthew, v. 19) giveth licence to divorce for "adultery, and marry again, one soul for infidelity."

Milton's views on the subject are well known, and the famous theologian, Martin Bucer, of Strassburg, who, as a professor at Cambridge, may perhaps be treated as a representative of English Protestant thought, dedicated a book on divorce to Edward VI., in which he advocated an even more liberal system. A translation of this work by Milton is to be found in Milton's Prose Works.

* Lord Salvesen's evidence, Q. 6327.

† Howard, II., 60, 61, where he quotes from "The Judgment of Martin Bucer" in Milton's "Doctrine and Discipline of Divorce," Prose Works.

* The references are given in Howard, op. cit., vol. ii., 62 *ff.*, and *see also* the Memorandum by Sir John Macdonell, p. 34.

† He puts the question, "What," &c. (Werke, VI., 516). Evidence, p. 34.

‡ For Ordinance, *see* Richter, "Beiträge," 6, 7. Howard, op. cit., 64, 65.

§ Richter, op. cit., 45, 46.

‖ References to such legislation are given in Howard, op. cit., 67, 68.

¶ John Howson (1557?—1632, Bishop of Durham), in 1602, however, issued from Oxford a powerful plea for absolute indissolubility, except in case of adultery, entitled "Uxore "dimissa propter fornicationem aliam non licet superin"ducere" (Copy at Middle Temple Library), and argues that it is not lawful for a divorced wife to remarry. This seems to suggest that the Bishop was attacking an existing practice.

THE REFORMATIO LEGUM ECCLESIASTICARUM AND THE PRACTICE OF DIVORCE, 1550–1600.

Of more importance, perhaps, than the views of these learned persons are the positive recommendations of the commission appointed under the provisions of 3 & 4 Edward VI. cap. 11 to examine the Canons, Constitutions, and Ordinances, with a view of seeing what ought to be retained. The result of the labours of this commission, which was presided over by Archbishop Cranmer, and included Peter Martyr amongst its members, was a draft code, entitled "Reformatio Legum Ecclesiasticarum." This provided amongst many other things, that absolute divorce should be permitted in cases of adultery, desertion after two years, long absence, and "the constant perverseness or fierceness of a husband to his wife." It also proposed that separation *a mensâ et thoro* should be abolished, and provided that no divorce should be allowed without the sentence of an ecclesiastical court. This code never became law. But, whatever the cause, the document remains, in Dr. Cardwell's words, "the mature sentiments of Archbishop Cranmer on the avowed constitution of the Church of England at that period"; and has been regarded by some as a statement of what, in the official view of a body of opinion in the Church in England at that time, ought to have been the law on the subject of divorce. On the other hand, Sir Lewis Dibdin, in the memorandum that he has presented to the Royal Commission, says, "the conclusion seems to me to be inevitable that the Reformatio Legum, as we have it, so far as the section on Divorce is concerned, is merely a literary relic representing the views derived from continental sources of certain individual Churchmen of great eminence and influence. These views were no doubt also adopted by the rank and file of a section of extreme Protestants in this country, but, except during a few years of Edward VI.'s reign, were never dominant in the Church of England. On the other hand, the opinion that adultery was on biblical grounds a valid reason for the complete dissolution of marriage seems to have been widely, I should even say generally, held by English divines in the latter half of the 16th century."

Whether the principles represented by this draft code were ever at any period carried into practice in this country as they were in Scotland by the granting of absolute decrees of divorce has been and is much disputed. Sir Lewis Dibdin answers the question in the negative and holds "that the law of the Church of England as to the indissolubility of marriage and the corresponding practice of the Church courts remained unchanged throughout the period under notice, that is, from before the Reformation until after the present Canons in 1603–4 came into operation." On the other hand, there are opinions and evidence contrary to this weighty view.

On evidence which can hardly now be considered as conclusive, unless it is amply supplemented, the Divorce Commissioners appointed in 1850 answered the question in the affirmative as regards the period from 1550 to 1602. In arriving at this conclusion, the Commissioners appear to have been impressed with the evidence of Sir John Stoddart given in 1844 before a Select Committee of the House of Lords appointed to consider Lord Brougham's Bill to amend the constitution of the Judicial Committee of the Privy Council, in the course of which, on page 52,* he says: "Therefore I apprehend that the *Reformatio Legum*, having been published as a work of authority, although not of absolute legislative authority, it must have been, and in all probability was, followed, and that for that reason in the spiritual courts there were dissolutions of marriage, because I believe that from about the year 1550 to the year 1602 marriage was not held by the Church, and therefore not held by the law, to be indissoluble." They also cite, in support of their conclusion, the Marquis of Northampton's case referred to below, and the Canons of 1603.

The 105th Canon is as follows:—"Forasmuch as matrimonial causes have been always reckoned and reputed among the weightiest, and therefore require the greater caution when they come to be handled and debated in judgment, especially in causes wherein matrimony is required to be dissolved or annulled. . . . . ." The Commissioners lay stress on the words "dissolved or annulled" as supporting their conclusion.*

The 107th Canon is as follows:—"In all sentences pronounced only for divorce and separation *a mensâ et thoro* there shall be a caution and restraint inserted in the act of the said sentence, That the parties so separated shall live chastely and continently, and neither shall they, during each other's life, contract matrimony with other persons. And for the better observance of this last clause the said sentence of divorce shall not be pronounced until the party or parties requiring the same have given good and sufficient caution and security into the court that they will not any way break or transgress the said restraint or prohibition." The Commissioners lay stress on the fact that enjoining a prohibitory bond implies that the marriage which the bond was intended to prevent would have been valid.

They refer to the Statute of Bigamy, 1604 (1 Jac. 1. cap. 11), which makes that offence a felony, but in addition to section 2, which deals with an exception in cases of seven years elsewhere, section 3 expressly provides that the Act shall not extend to any person divorced by sentence of the Ecclesiastical Court. Upon this the Commissioners say: "We can hardly suppose that the Legislature intended to declare in one and the same breath that bigamy was felony, and yet that a second marriage after divorce, living the first wife, was not to be considered in that light, unless it conceived that the sentence passed in the Ecclesiastical Court had worked a dissolution of the marriage contract."

It has been conjectured, upon evidence which the Commissioners considered too loose to be authoritative, that the Court of Chancery in early times granted divorces *a vinculo*†; and Sir John Macdonell has collected a few cases of the 17th century where the courts of law, in deciding other matters, seem to have felt some doubts as to absolute divorces.‡ In view of these differences of opinion it will be convenient to consider shortly the legislation, the attempted legislation and law cases, marriage registers, and other evidence bearing upon the question of divorce between 1532 and the beginning of the 18th century. First, attention must be drawn to the Acts dealing with the numerous marriages of King Henry VIII. In 1532 (25 Hen. VIII. c. 22) the marriage with his first wife, Katherine, was "declared void and their separation valid." In 1535 (28 Hen. VIII. c. 7) the marriage with Anne Boleyn was found to be "utterly voyde and of non effecte; By reason whereof your Highness was and is lawfully devorced and separated from the bonds of the said marriage in the lyffe of the said Lady Anne." In 1539 there is "The dissolution of the pretensed marriage with the Lady Anne of Cleves" (32 Hen. VIII. c. 25). It was declared to be "Itselfe nought and of noo force," and the parties were at liberty and pleasure "to contracte matrimony and marry." These divorces were all in form nullity suits, but in fact they were nothing of the sort, and needed an Act of Parliament. In two other cases Henry cut the knot differently, and at his death his then wife survived him.

In 1542 there were two bastardy Acts, which should be compared with the *Roos* case mentioned later: these were an Act (34 & 35 Hen. VIII. cap. XL.) (No. 32) "for the declaration of Elizabeth Burgh's children to be bastards"; and an Act (34 & 35 Hen. VIII. cap. XLIV.) (No. 40) "whereby the Ladye Parre's children be made bastards." The last Act is the first stage of the famous Northampton case. These private Acts were certified into Chancery, and the originals are in the Record Office (the Rolls Chapel Series, Bundle 3 (44 & 50).)

Sir Ralph Sadler's Case (1545).

In 1528, Matthew Barr of Sevenoaks, in Kent, married at Dunmow, in Essex, Elene, daughter of John Michel of Dunmow. There were two daughters born of the marriage. In 1530 Matthew deserted his wife

* Divorce Commission Report.

* Sir Lewis Dibdin lays stress on the Latin as well as the English text of the Canon.

† Report 7.

‡ One of these is "Porter's Case" (1637, Crok. Car. 461).

and wandered away to Wales and Ireland. Elene heard from him three months after his departure, but not again. For a year she worked to earn her living, and then hearing that Matthew was dead she took shelter in Clerkenwell Nunnery. But the Prioress refused to allow her to become a nun, and placed her in the service of Mistress Prior, mother-in-law of the Earl of Essex. There she met Ralph Sadler, who was in the service of the earl. They satisfied themselves after many inquiries that Matthew was dead, and married about the year 1534. In all they had nine children. Two years after the marriage Matthew came to London, and in 1541 he disclosed the fact that he was the first husband. The facts slowly became public, and in 1545 a Commission, consisting of the Archbishop of Canterbury and the Bishops of Worcester and Chichester was appointed "to inquire "into and settle the matter of the marriage of Sir "Ralph Sadler and Helen his consort, which by reason "of a previous marriage between her and one Matthew "Barr is rendered doubtful." (Pat. Roll 785, memb. 18.) This was followed by an Act in the same year to legitimise the issue of Elene and Ralph, and this Act provided that if any divorce should be made between the said Elene and Matthew, she should be reputed a woman sole, as if her marriage with him "had never bene made ne solempnised and as if there "had never bene any contracte of matrimony between "the said Elene and Matthew," and as Elene Michel be enabled during the life of the said Matthew to hold lands in fee simple and all manner of goods and chattels. (Parliament Roll 153(19). 37 Hen. VIII. cap. XXX.* It is suggested that this Act was the model for the Northampton Act and all subsequent private legislation.

We next have on January 9th, 1548, a Bill dealing with adultery which was introduced into the Commons, but it proceeded no further. On March 6th, 1549, a Bill for divorce *vinculo matrimonii* in causes of adultery was introduced, but was not carried forward. In the meantime the Marquis of Northampton's case came up, and pending the discussion legislative action was suspended.

The Marquis of Northampton's Case (1548).

The Marquis of Northampton, brother of Queen Catherine Parr, obtained a decision from the Ecclesiastical Court separating him from his wife. The ecclesiastical divorce was based on the adultery of the wife, who had confessed that her children born since the marriage were not her husband's children. In 1547 or 1548 Lord Northampton petitioned King Edward VI. for a commission of learned men to determine whether he might lawfully marry again, his first wife, the Lady Anne Bourchier, from whom he had been divorced, being still alive.† We have seen that in 1543 his first wife's children ("The Lady Parre's children") had been declared illegitimate by Act of Parliament. Lord Northampton did not wait for the appointment of the commission, but at once contracted another union with Elizabeth, daughter of Lord Cobham. Subsequently a commission of delegates, headed by the Archbishop of Canterbury, was appointed and declared the second marriage valid "because the former contract had been absolutely destroyed" by the first wife's infidelity, and in 1552 this decision was confirmed by an Act of Parliament, "An Acte touching the marriage of the Marquis of "Northampton and the Lady Elizabeth his Wief" (1551–2, Edw. VI. An. 5 & 6)‡; which declared the marriage valid "the former marriage and any decretal, "canon constitution ecclesiastical law statute usage "prescription or custom of this realm to the contrary "in anywise notwithstanding," and "theire children legittimate." It will be noticed that this Act did not divorce the parties, but merely declared them to be already divorced by the ecclesiastical sentence sufficiently to admit of the Marquis marrying again ["being "seperate divorsed and at libertie by the Lawes "of god to marrye."] This Act was subsequently repealed when the Roman Catholic religion was re-established under Queen Mary,* but the second marriage was not invalidated. On the whole the Northampton case is some evidence that the Church could and did sanction remarriage after divorce for adultery.

On 9th March 1552 there was introduced into the House of Lords and read the first time a Bill to the effect that "no Man shall put away his Wife, and marry "again, unless he shall be lawfully divorced before "some competent Ecclesiastical Judge." On 17th March 1552 the Bill was read a second time and committed, and on Sunday, March 19th, it was read the third time and passed, Thomas Thirleby, then Bishop of Norwich, dissenting. On the same day the Bill was brought into the Commons from the Lords (with the Marquis of Northampton's Bill) by Mr. Broke and the Solicitor-General. It was read the first time on March 22nd, 1552, the second time, on the motion of Sir Thomas Smith, on the 30th March. It was re-introduced into the Commons and read the first time on April 5th, 1552, the second time on April 7th, and the third time on April 11th, and passed. It was re-introduced into the Lords on April 12th and read the first and second time, and then it was dropped. This Bill appears to throw some light on the general question in dispute. It assumes that a lawful divorce could be made, involving a right of remarriage, by an ecclesiastical court, and appears to explain the case of Richard Coupland and Beatrix Atkinson and the case of John Skynner and Margery Conaway and the other cases referred to above, as well as the Northampton case, and to confirm Salkeld's note in Foljambe's case. The fact that the Bill was introduced with the Northampton Bill cannot be overlooked.

In 1558–9 (1 Eliz., No. 31) there was "An Act for the "ratification of the marriage between the Duke of "Norfolk and Lady Margaret now his wife and for "the assurance of certain lands for her joynture." In 1585 it was decided in *Bunting* v. *Lepingfield*, 4 Rep. 29a, that a contract *per verba de præsenti*, though not attended by consummation, was sufficient to avoid a second marriage though followed by consummation. In *Webber* v. *Bury*, 5 Rep. 98b (1598), it was held that if a man divorced by reason of perpetual impotency in himself marries again, the issue of the second marriage is legitimate, for the first marriage was dissolved *a vinculo matrimonii*. A voidable marriage continues a marriage till it is dissolved. In 1594 it was decided in the case of *Barrow* v. *Butten* (Tothill, page 81) that in such a case the wife could recover her marriage portion. (*See also* Dyer, 13a.) Henry Rolle (1589?–1656) in his *Abridgment* (pp. 680–1) states (on the authority of year book 47 Edward III., plea 78) that a wife has no right to dower where a divorce is granted on the grounds of pre-contract, consanguinity, affinity, or physical incapacity, but that she has a right to it if the marriage is dissolved *causa professionis*. And he states, moreover, that adultery is a bar to dower, though it does not by the Canon Law or the law of "our church" dissolve the marriage bond. He is clearly basing his view on pre-Reformation law, and it is therefore strange, in view of the decision in *Powel* v. *Weeks* (*infra*), that he should say that divorce for adultery bars dower. It would seem to show that the later view as to the effect of adultery weighed with him. This makes it difficult to dismiss the dictum as to the Elizabethan view given by Salkeld in his report of *Foljambe's Case* (1601). As we have seen, that dictum is confirmed by the Divorce Bill of 1552 and by various cases.

The following are the three notes upon this case:—

(1) *Salkeld's Reports*, vol. 3, p. 137.—"A divorce *a* "*vinculo matrimonii* is a bar of *dower*; but a divorce "*a mensâ et thoro* is not, for the marriage still con- "tinues, and therefore the parties thus divorced cannot "marry again during their joint lives. A divorce for "*adultery* was anciently *a vinculo matrimonii*; and "therefore, in the beginning of the reign of Queen "Eliz., the opinion of the *Church of England* was, "that after a divorce for adultery the parties might

* Record Office Certiorari Bundles, Rolls Chapel Series. Bundle 2 (29).

† State Papers, Domestic, Edw. VI., vol. 2, 32 (p. 5).

‡ The MS. of this Act is at the Record Office. No. 30. Certiorari Bundles, Rolls Chapel Series, Bundle 4, 11.

* 1553, Mariae Ano I. Stat. 2, No. 30. "An Acte for the "repeale of a statute made in the vth year of King Edwarde "the Sixth touching thapproving of the maryage bitwen the "Lorde Marques of Northampton and Lady Elizabeth his "Wief and for the legitimation of their children."

"marry again; but in *Foljamb's case, anno* 4 Eliz., "in the Star Chamber, that opinion was changed; "and Archbishop *Bancroft* [Qu. Whitgift] upon the "advice of Divines, held that adultery was only a "cause of divorce *a mensâ et thoro*."

(2) *Noy's Reports, p.* 100.—Rye *v.* Fullcumbe (in camera stellata). "F., being divorc'd for the incon- "tinence of the wife, he afterwards marries P., the "daughter of Rye, living the first wife. By the "whole Court that is a void marriage; for the "divorce is not, but *a mensâ et thoro*, and does not "dissolve *vinculum matrimonii*. And by Whitguift, "Archbishop of Canterbury. So is the opinion of "Divines and Civilians." *

(3) *Moore's Reports, p.* 683.—Rye *v.* Fuliambe. "Feb. 13, anno 44 Eliz., in Camera Stellata, it was "declared by all the Court that, whereas Fuljambe "was divorced from his first wife for incontinence of "the woman and afterwards he married Sarah Poge, "daughter of Rye, in his former wife's lifetime, this "was a void marriage, because the first divorce was "only *a mensâ et thoro* and not *a vinculo matrimonii*. "And John Whitgift, then Archbishop of Canter- "bury, said that he had called to himself at Lambeth "the most sage Divines and Civilians, and that they "had all agreed thereon." † [Trans. from Law French.]

These facts, and the fact that the English divines in the latter half of the sixteenth century (up to *Foljambe's Case* in 1601) widely held the view that adultery was a valid reason for the complete dissolution of a marriage have to be considered in arriving at any definite conclusion as to the practice in Elizabethan times. The Bill "to prevent causeless "divorces and separations of man and wife; and "to continue the rights of lawful matrimony" (introduced into the Commons on December 9, 1606, and rejected on December 16) points to considerable alarm. It seems clear that among the laity there was a general impression that marriage after divorce was moral and legal, and it may be that the clergy took upon themselves to celebrate second marriages after a divorce *a mensâ et thoro* for adultery in view of the opinions of the great divines. In any event the marriage *per verba de præsenti* without any church ceremony was open to divorced persons for what it was worth, and its validity was not likely to be questioned. In Scotland, as we have seen, the general opinion of the reformers and the public was, without any statutory authority, put into force by the ecclesiastical courts; but in England the Commonwealth finally checked these practices, and from the Restoration onwards to 1857 the Legislature alone granted the complete divorce.

Later Cases, 1601–1701.

On February 22nd, 1625, a Bill against Adultery and Fornication was introduced into the Commons and was committed on 4th March 1625, but went no further. A new Bill for the further punishment of Adultery and Fornication was introduced and read the first time in the Commons on 11th May 1626, and the second time on 1st June 1626, when it was committed but it went no further. On 7th April 1628 a similar Bill was introduced into the Commons and read the first time. On April 22nd, 1628, it was read the second time, and was committed, but was not carried further. On March 3rd, 1647, it was resolved by the Commons that it be referred to the Committee formerly appointed to prepare an ordinance for the punishment of adultery and incest, to consider of punishing the same; and to bring in an ordinance concerning divorce; and to bring in the said ordinance on the next fast day. On January 19th, 1656, a Bill was ordered to be prepared and presented to the Commons "Concerning Divorces and Alimony; and "on whom if is fit to place the same."

"An Act for illegitimation of the children of the Lady Ann Roos" was introduced into the Lords and passed by the Commons on 29th January 1666–7, and her husband, Lord Roos, subsequently obtained from the ecclesiastical court a divorce *a mensâ et thoro*. But these proceedings were incomplete for his purpose, since, as the Act recites, "there was no probable "expectation of posterity to support the family in the "male line, but by the said John Manners Lord Roos," so a further Act, entitled "An Act for Lord Roos to marry again," was introduced in the Lords and passed by the Commons (31st March 1670).*

It was on the hearing of this case that Bishop Cozen delivered his successful argument in favour of absolute divorce, which, however, is stated by Sir Lewis Dibdin to be "so full of inaccuracies that in the "critical edition of his works the editor gives it up over "and over again, and says it must be misreported." It is wrongly stated in the Divorce Commission Report to have been delivered in the Duke of Norfolk's case, the mistake arising no doubt from the fact that it appears in the volume of State Trials as one of the documents used in the latter case.† In 1690 (1 & 2 Will. & Mary) was passed "An Act to annul "and make void a marriage between *Mary Wharton*, "an infant, and *James Campbell*, esquire," and this was followed by an Act of 1696–7 (8 & 9 Will. III.) "for annulling the marriage of *Hannah Knight*, an "infant, and directing the guardianship of the said "infant." In both these cases the lady had been carried off by force, and it was the better opinion that a marriage by duress was good (*see* Dyer, 13*a*). Hence in the case of Mary Wharton an effort had been made to give her relief by a special clause in the Clandestine Marriage Act, 1690, but as this failed a separate Act was passed (10 H.C.J., 493, etc.; 14 H.L.J., 583, 591).‡

Lewknor's Case, 1689, falls in date between Wharton's case and Knight's case.

Mrs. Lewknor (or Lewkner) eloped and was alleged to be living in open adultery. She petitioned to appear before the Committee of the House of Lords in order, apparently, to deny this. The Act was passed on the application of the husband to illegitimise any issue born during the elopement from him of his wife, against whom a sentence of divorce, *a mensâ et thoro* had been obtained, but it did not dissolve the marriage or allow the innocent party to marry again.

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* And *see* Noy's Reports, page 108. Dame Powel *v.* Weeks, 2 James I (1605). "In dower it was resolved, that a divorce "*causa adulterii* is no bar, of dower. Because it is but *a mensâ* "*et thoro* and not *a vinculo matrimonii*. And it was said by "Daniel, that an Elopement is not a bar of Dower ad ostium "ecclesiæ. And judgment for the Plaintiff."

In Stephens *v.* Totty, 44 & 45 Eliz. 1, Cro. 908, it was held that a divorce *causa adulterii* does not avoid the marriage absolutely, and that the cases which say that the wife shall have again her goods after divorce are to be intended of an absolute divorce *ab initio*. (But *see* the Report in Noy, p. 45.) The undated paper of Elizabeth's time referred to above says: "Yf a man take a woman which hath goodes and marry hir "the husbond may give or sell the goodes at his pleasure "during the marriage, but if they be devorcid then she shall "have hir goodes ayen for the law give the goodes of the wief "to the husbond for cause of the marriage *et cessante causa*, "&c." (State Papers Dom. S. [unprinted], Eliz., vol. 288, 10.) Reference must be made to the mediæval writ *Cui ante divortium*, which issued when the husband alienedt "the wife's "lands whereof she was seised in fee simple, tail, or for life, "and after they are divorced, the wife may have this writ to "recover the lands, as she might have the Cui in Vita after "the husband's death. . . . The heir may have sur cui "ante divortium, except his mother had an estate tail, and "then he is put to his formedon (F. N. B. 510) . . . "In this writ the tenant may plead the divorce repealed "(*Rast. Entr.* Cui Ante divor.)." (See *The Nature and Practice of Real Actions*, by George Booth, 2nd ed., 1811, pp. 188–9.) It is to be observed that this writ assumes the legitimacy of children born of the marriage.

† This case is probably explained by the case of Burdet *v.* Burdet (Year Book 18 Edw. IV. de Ter. Hill. case 28) dealing with the question of bastardy after divorce and by the reference to Glanvil, 44, Bracton, 92, given in Salkeld's Report. It is to be noticed that the courts leaned against separation.

In the case of R. *v.* Lord Lee (Levinz's Reports, vol. 2, p. 128; 3 Salkhead, 138), 26 & 27 Car. II., the court refused to grant Lady Lee a separation despite the violence and cruelty of her husband.

* (*See* Commons Journal.) The MSS. of these Acts are in the Record Office, Certiorari Bundles, Parcel 15, 20; Parcel 15, 21.

† 13, State Trials, p. 1332. The text of the Bishop's speeches. "Taken from original papers writ in the Bishop's "own hand" is printed by Macqueen, *see* Practice of Parliamentary Divorce (1842), pp. 544–61, and *see Ibid.*, pp. 472–3.

‡ As to Hannah Knight's case, *see* 11 H.C.J., etc., 753, and 16 H.L.J., 146, etc. As to both cases *see* "Divorce Bills in the Imperial Parliament," by James Roberts (Dublin, 1906), an important work on Irish Divorce Bills.

On January 20th, 1689, John Lewknor petitioned the House of Commons "that Jane, his wife, for her "adulterous violation of her marriage vow, and other "debauched practices, to the dishonour of her family, "hath been by the Ecclesiastical Court divorced from "him: and that in regard, in such her debauched "living, she may have children, which will inherit his "estate, and thereby bring desolation to his family, "and praying, that he may have leave to bring in a "Bill to prevent so great a mischief to him and his "family: *ordered*, that leave be given to bring in a "Bill to illegitimate any children the wife of the said "*John Lewknor* hath had, or shall have, during her "elopement from him." The Bill was read the first time on January 21st, 1689; the second time on January 23rd, and committed to a committee of 40, together with all the members that serve for Kent and Sussex. The committee was empowered to send for persons, papers, and records.* This Bill was dropped, and a new Bill was introduced on 27th March 1690, and received on March 28th. It was read the first time on April 3rd and the second time on April 5th, when it was committed. On 8th April Mr. Harcourt reported from the committee that they agreed to the Bill without any amendments, and it was ordered to be engrossed, and on April 10th read the third time and resolved—"that the Bill do pass: and that the title be, "an Act to illegitimate any child or children, that "*Jane* the wife of *John Lewknor*, Esquire, hath had, "or shall have during her elopement from him. "*Ordered*, that Mr. *Harcourt* do carry up the Bill to "the Lords for their concurrence thereunto."† The Bill was brought up to the Lords by Mr. Harcourt and others on April 10th and read the first time.‡ It was read a second time on April 11th, and committed to a committee of 38 peers, temporal and spiritual (including the Bishops of London, Durham, Winchester, St. Davids, Bangor, Worcester, and Chichester). The wife had petitioned that she might be heard before the Bill was passed, and this petition was on April 11th referred to the same committee as the Bill (p. 460). On April 15th the Bishop of Winchester reported: "that the opinion of the committee is, that the "Bill to illegitimate any child, or children, which "*Jane* the wife of *John Lewknor* hath had, or shall "have, during her elopement from him, do pass as it is, "without any amendment." The House agreed with the committee thereon and the Bill was read a third time, and the question being put, "whether the Bill shall pass into a law," it was resolved in the affirmative (p. 464), and a message sent to the House of Commons by Sir Miles Coke and Mr. Meredeth that the House had passed the Bill (p. 465), and the message is announced to the Commons by the Speaker (H. of C. Journal, vol. X., p. 379). On April 23rd, 1690, the King gave in person his assent to the Bill in the House of Lords.§ In this case the Bishops took an active part in the passing of the Bill.

In the Earl of Macclesfield's case (1697) the help of the Legislature was sought because, in consequence of the opposition set up by the Countess in the Ecclesiastical Court, she contrived to baffle all her husband's efforts to obtain a divorce *a mensâ et thoro*, and it was to remedy a flagrant injustice that the Act was passed. At the same time, it was considered a novel proceeding to pass an Act of this nature before a sentence of divorce *a mensâ et thoro* had been obtained in the Ecclesiastical Court, and a protest was entered by certain of the Lords.

The Duke of Norfolk's case (1700) was also one where a sentence of divorce had been refused by the Ecclesiastical Court, and an Act was passed to remedy the injustice: "An Act to dissolve the Duke of Norfolk's "marriage with the Lady Mary Mordant and to enable "him to marry again.‖"

In 1701 came the first separation (as apart from divorce) Act: "An Act for separating James Earl of "Anglesey from Katharine Countesse of Anglesey his "wife for the cruelty of the said Earl."* The Act made elaborate provisions as to the portion (16,500*l.* beside jewels) brought into settlement by the Countess. This lady subsequently married the Duke of Buckinghamshire. Sir John Dillon's case in 1701 should also be recorded. In this case Lady Dillon was represented before the House of Lords by solicitor and counsel, and witnesses were called. This is the beginning of the judicial method of legislation which lasted till 1857.

Box's case (1701), as the Divorce Commissioners in 1853 point out, was the first case where, without any special circumstances, the Legislature granted a divorce *a vinculo* after sentence in the Arches' Court.†

Summary.

A few words summarising the conclusions arrived at in the above paragraphs are necessary.

It has been seen that, from the earliest times onwards in the Greek world the idea of divorce and remarriage, at the instance (with various restrictions) of either party to a marriage or of the parents of the parties, was fully recognised; that in the Roman world from the age which preceded the Twelve Tables there was a formless marriage of which the essence was cohabitation and that this marriage could be freely ended with a right of remarriage subject to checks imposed by considerations arising from questions of property, and later, from about the Christian Epoch, by statutory checks on one-sided divorce; that in the Jewish peoples the earlier ideas of perfectly free divorce was checked by the formalities introduced in the Deuteronomic age, and that though in the time of our Lord divorce was regarded as a concession to the weakness of human nature, yet divorce was then, as always, fully recognised as a necessity in certain cases and as involving the right and perhaps the duty of remarriage; that the Church in various parts of the Roman world was subject to the influence of Greek, Roman, Hebrew, and Germanic ideas on the subject of marriage and divorce and evolved its law of marriage under these influences combined with the recorded views of Our Lord and St. Paul on the subject.

It has been seen that the Church accepted in the East, with comparatively few modifications, the law of the Eastern Empire on the subject of marriage and divorce; that in the West she accepted (for many centuries) the Roman law of a formless marriage as modified by the Western Codes, which combined the old Roman law with local usages, but that on the question of divorce fundamental differences of opinion among the most profound theologians existed, and that these differences led to uncertain local practice on the question, until late in the eleventh century the law of absolute indissolubility of marriage was made universal subject to an elaborate system of modifications which, in fact, rendered remarriage after the dissolution of marriage possible. These modifications involved important changes in the ancient formless marriage; cohabitation was no longer necessary to the proof of marriage; consent only was necessary by "words of the present tense"; and every marriageable person was ringed by a Taboo law forbidding intermarriage with a vast class of relations by blood or by affinity, natural or spiritual. It is true that relations by adoption were no longer in practice, though they were in theory, barred, but Justinian's invention of the doctrine of spiritual affinity more than took their place. The result was that there were few marriages incapable of attack; a pre-contract or a spiritual affinity could almost always be found. In England the common law courts boldly met the difficulty of a position which involved the possibility of bastardy arising at any time. It invented the doctrine of possessory marriages, with the result that a man or woman could and often did marry twice and have two legitimate families during the lifetime of two spouses. The abuses that necessarily sprang from the mediæval canon law of marriage were for the moment checked in England by the Act of 1540, which abolished divorces on the ground of

* H. of C. Journal, vol. X., pp. 336, 338, 339, 340.

† H. of C. Journal, vol. X., pp. 357, 358, 365, 368, 371, 373.

‡ H. of L. Journal, vol. XIV., p. 458, 460.

§ H. of C. Journal, vol. X., p. 386; H. of L. Journal, vol. XIV., p. 472. Private Act: Title in Public General Statutes (2 W. & M.).

‖ Private Act: Title in Public General Statutes (9–12 Will. III.).

* The MS. Act is in the Record Office (Certiorari Bundles, Chancery Rolls Chapel Office, Parcel 16, 2).

† 13 State Trials, 1283. The MS. of the Act is to be found in the Record Office Certiorari Bundles, Chancery Petty Bag Office, Parcel 9, Roll 82 (12 & 13 Will. III): "An Act to dissolve the marriage of Ralph Box,"

pre-contract, and were permanently checked in Catholic Europe by the provisions of the Council of Trent (Sess. xxiv. c. i.) making clandestinity an invalidating impediment to marrrage whenever the decree *Tametsi* had been duly promulgated. In England, however, pre-contracts were revived as a ground of divorce by a Statute of 1548, and the only improvement of the law produced by the Reformation in England was the abolition of certain grounds of nullity.

On the other hand, a new confusion was introduced by the view of many reformers and divines that adultery was a ground for divorce *a vinculo*, and during the second half of the sixteenth century this view carried much weight in English practice. The definite views of English theologians, various Diocesan Articles, cases like the Northampton case, the Atkinson case. and the Conaway case, the Bill of 1552, providing that "no man "shall put away his wife, and marry again, unless he "shall be lawfully divorced before some competent "ecclesiastical judge," the definite statement as to the practice of divorce and remarriage coutained in Edmund Bunney's pamphlet written in 1595, the form of the Canons of 1603, various marriage registers, and Salkeld's dictum, are evidence of this confusion. The Diocesan Articles, the Bill of 1552, and the above-mentioned pamphlet, seem to indicate that the laity were regarding adultery as *ipso facto* destroying marriage, and in such cases they remarried in or out of Church after formal divorce, or without any formal divorce at all, on the ground that the original formless marriage had ceased to exist. The Bill of 1552 recognised the right of the Ecclesiastical Courts to grant a licence for remarriage, and was intended to forbid the existing practice of remarriage without divorce and licence. The Canons of 1603–4 seem to be further evidence of this. The Canons ignore the divorce *a vinculo;* the Church had at last made up its mind definitely to forbid such divorces and to create machinery to prevent separated persons contracting second marriages. These canons are not inconsistent with a period in which the Church courts sanctioned remarriage after divorce, and seem to indicate that there may have been such a period. The Statute of Bigamy (1604) also lends weight to this view, while the evidence of Edmund Bunney makes it clear that up to 1595 remarriage after divorce was a known practice. The Bill against Divorce of 1606, moreover, must be taken into account. Indeed, there is no period in the history of England previous to the Commonwealth during which a second marriage of complete validity was either impossible or even impracticable. But the mind of the Church in England was at last convinced that there could be no divorce *a vinculo*, and after the Restoration the Legislature alone, acting *ad hoc*, could end a marriage unless it was ended under those laws of nullity which continued to make many marriages uncertain until at any rate the year 1753. Thus it was only for a period of about two centuries—from 1660 to 1857—that the absolute doctrine of indissolubility of marriage was in force in England. In the first of these centuries the old law of nullity and of pre-contract still made marriage, in fact, dissoluble in many cases where hardship demanded relief, and we may therefore say that it was only from 1753 to 1857 that the doctrine of indissolubility was really effective and incapable of any evasion, save the evasion afforded to the rich by the Legislature and to all by the closely limited law of nullity still in force.

J. E. G. DE MONTMORENCY.

APPENDIX II.

CRANMER'S "REFORMATIO LEGUM ECCLESIASTICARUM."*

DE ADULTERIIS ET DIVORTIIS.—CONCERNING ADULTERY AND DIVORCE.

Cap. I.—*Adulteria severe punienda esse.*

Turpitudo tam horribilis adulteriorum est, ut aperte decalogi praecepto confossa sit, et etiam veteribus divinis legibus per Mosen latis publica populi lapidatione obruta et consepulta esset: Denique iure civili etiam capite plecteretur. Rem igitur Deo tam odiosam et a sanctissimis maioribus nostris singulari cruciatu crucifixam, Ecclesiastici iudices nostris non debent sine gravissima poena dimittere,

I.—*That Adultery ought to be severely punished.*

So heinous is the guilt of adultery that it is attacked in expressed terms by one of the Ten Commandments; and also, under the ancient divine laws promulgated through Moses, it was punished by the culprit's being publicly stoned to death by the people and buried beneath the stones; while finally by the civil law also it was punished with death. It follows therefore that a crime so hateful to God and visited by our pious forefathers with a punishment specially appropriated to it, ought not to be passed over by our Ecclesiastical Judges without the most condign punishment.

Cap. II.—*Ministri de Adulterio convicti quomodo puniendi sunt.*

Ordiamur ab Ecclesiarum ministris, quorum vitae praecipua quaedam integritas esse deberet. Itaque si quis ex illis adulterii, scortationis, aut incestus convictus fuerit, si propriam habuerit uxorem, omnes eius opes, et bona devolventur ad eam, et ad liberos, si qui sint ex ea, vel ex aliquo priore matrimonio legitime nati. Si vero nec suam uxorem nec liberos habeat, omnes eius facultates arbitratu iudicis, vel inter pauperes dispertientur, vel in alia pietatis officia conferentur. Deinde si quod illi beneficium fuerit, postquam adulterii vel incestus, vel scortationis convictus fuerit, ex eo tempore protinus illud amittat, nec illi potestas ullum aliud accipiendi. Praeterea vel in perpetuum ablegetur exilium, vel ad aeternas carceris tenebras deprimatur.

II.—*How Ministers who have been convicted of adultery ought to be punished.*

Let us begin with Church Ministers, whose lives ought to be characterised by especial rectitude. If, therefore, any one of them be convicted of adultery, fornication, or incest, if he has had a wife of his own, all his goods and property shall pass to her and to the children, whether born of her, or the lawful fruit of any previous marriage. Should he, however, have neither wife nor children of his own, all his property shall, at the pleasure of the judge, either be divided among the poor, or applied to some other works of piety. In the next place, should he have held any benefice, he is, after being convicted of adultery, incest, or fornication, to lose it as and from that time, and to have no power of receiving any other. Furthermore, he is either to be condemned to perpetual banishment, or to be consigned to the darkness of the dungeon for life.

* In this translation the word "party" is used to imply either husband or wife, and the masculine pronoun, when replacing it, in the same sense.—C. H. W. (Translator).

Cap. III.—*Laicus quomodo puniendus.*

Laicus adulterii damnatus uxori suae dotem restituito. Deinde bonorum universorum dimidiam partem eidem uxori concedito. Praeterea vel in perpetuum exilium ito, vel aeternae carceris custodiae mancipator.

III.—*In what manner the layman is to be punished.*

The layman convicted of adultery is to restore his wife's dowry to her. He is also to give up to her the half of all his goods. Furthermore, he is either to be condemned to perpetual banishment or committed to prison for life.

Cap. IV.—*Uxores sive ministrorum, sive laicorum, quomodo puniendae.*

Uxores ex contraria parte, tam laicorum quam ministrorum, si crimen adulterii contra illas probatum fuerit, et iudex adversus illas pronunciaverit, dotibus carebunt, et omnibus emolumentis quae vel ullo Regni nostri iure, vel consuetudine, vel pacto, vel promisso poterant ex bonis maritorum ad illas descendere, tum etiam vel in sempiternum exilium eiicientur, vel perpetuae carceris custodiae mandabuntur.

IV.—*In what manner wives, either of ministers or of laymen, are to be punished.*

On the other hand, wives, whether of laymen or of ministers, if the crime of adultery be proved against them and the judge give his decision against them, shall be deprived of their dowries and of all benefits which might accrue to them from the property of their husbands, either under any law of our realm, or by custom, or contract, or covenant; and shall, moreover, either be condemned to perpetual banishment or imprisoned for life.

Cap. V.—*Integra persona transit ad novas nuptias.*

Cum alter coniunx adulterii damnatus est, alteri licebit innocenti novum ad matrimonium (si volet) progredi. Nec enim usque adeo debet integra persona crimine alieno premi, coelibatus ut invite possit obtrudi, quapropter integra persona non habebitur adultera, si novo se matrimonio devinxerit, quoniam ipse causam adulterii Christus excepit.

V.—*The innocent party may contract a fresh marriage.*

When one of the parties has been convicted of adultery, the other, being innocent, shall (if desirous), be allowed to proceed to a fresh marriage. For the innocent party ought not to suffer for another's crime to such an extent that celibacy should be forced upon him against his will, and, therefore, the innocent party is not to be considered guilty of adultery if he bind himself by a fresh marriage, since Christ, himself, excepted adultery as a reason.

Cap. VI.—*Reconciliationem esse optandam.*

Quoniam in matrimonio summa coniunctio rerum omnium est, et tantus amor quantus potest maximus cogitari, vehementer optamus ut integra persona damnatae veniam indulgeat, et illam ad se rursus assumat, si credibilis melioris vitae spes ostendatur; quam animi mansuetudinem licet nullae possint externae leges praecipere, tamen Christiana charitas saepe nos ad eam adducere potest. Quod si damnata persona non possit ad superiorem conditionem admitti, nullum illi novem matrimonium conceditur.

VI.—*The desirability of reconciliation.*

Since in matrimony there is the closest possible union, and the highest degree of love that can be imagined, we earnestly desire that the innocent party should forgive the guilty and take him back again should there seem to be any reasonable hope of a better way of life; and although this forgiving disposition cannot be learnt from any external laws, nevertheless Christian charity may often guide us to it. But should it be impossible for the guilty party to be allowed to renew the old relations, no fresh marriage is permitted him.

Cap. VII.—*Nemo coniugem arbitratu suo potest relinquere.*

Magna res est, et ingentem affert totius familiae perturbationem, cum uxor a viro distrahitur. Quapropter adulterii respectu, nemo suam a se coniugem authoritate propria removeat, et aliam adsciscat, nisi iudex Ecclesiasticus totam causam rite prius cognoverit et definiverit. Quod si facere quispiam ausus fuerit, ius omne agendi adversus coniugem amittat. Iudex autem quoties alterum coniugem adulterii condemnat, alteri sincerae personae libertatem denunciare debet ad novum matrimonium transeundi, cum hac tamen exceptione, certum ut tempus assignet in quo superiorem ad coniugem (si velit) redire possit; quod si tempore iam absumpto recuset facere, tum ad aliud matrimonium descendere potest. Et hoc tempus quod iudex indulgebit, omnino volumus anni spatio vel sex mensibus definiri.

VII.—*No husband or wife may abandon the other of his or her own free will.*

The separation of husband and wife is a serious matter, and brings about grievous disturbance of the whole family. Wherefore, with respect to adultery, no one may put away his wife on his own authority and take another, unless an ecclesiastical judge shall first have duly examined the whole case and given his decision. But if anyone should dare to do this, he is to lose all right of action againt his wife. Whenever the judge convicts either husband or wife of adultery, he must give notice to the other, the guiltless party, of his freedom to proceed to a fresh marriage; but with this reservation, that he shall fix a certain time in which the injured party may (if desirous) return to his former marriage partner, and if he should refuse to do this on the expiry of the period, he may then contract another marriage. And we explicitly decree that this period which the judge shall grant, shall be limited by the space of a year or possibly six months.

Cap. VIII.—*Divortium propter desertum matrimonium.*

Cum alter ex coniugibus aufugerit, seque abalienarit ab altero, si persona absens possit inveniri, consiliis, hortationibus, et poenis cogatur ut ad coniugem se rursus adiungat, et una cum illo convenienter vivat; quam ad rem si nulla ratione potest adduci, contumax in eo persona debet accipi, legumque divinarum et humanarum contemptrix: et propterea perpetuae carceris custodiae dedatur, et deserta persona novarum potestatem nuptiarum ab Ecclesiastico iudice sumat. Cum autem contumax non possit absens investigari nec erui nec locus ullus in hoc crimine levitati vel temeritati relinquatur; Primum absentem personam nominatim requiri volumus, illa iuris formula, quam viis et modis appellant: quo tempore si se non ostenderit, aut eius

VIII.—*Desertion a ground for Divorce.*

When either of the parties deserts and withdraws himself from the other, if the absent party can be found, advice, exhortations and penalties are to be employed to compel him to return to his marriage partner that they may live harmoniously together; if he cannot in any way be induced to adopt this course, he is to be considered a contumacious person in the matter, and a scorner of divine and human laws, and for that cause he is to suffer perpetual imprisonment, and the deserted party may claim the right, from the ecclesiastical judge, to contract a fresh marriage. But when the contumacious person, being absent, cannot be found, or his whereabouts ascertained, and is clearly guilty of more than light and heedless behaviour, then it is our will

aliquis vicarius qui causam eius velit agere. Iudex illi biennium vel triennium indulgebit in quo persona possit absens se repraesentare; quo tempore consumpto, si se ipse non sistat et iustas afferat absentiae tam diuturnae causas, destituta persona nuptiarum vinculis liberabitur, et novum sibi coniugem (si velit) sumat. Desertrix autem persona, si iudicio iam peracto novisque consequutis nuptiis, sero, post biennii vel triennii spatium expletum sui potestatem fecerit, in aeternas carceris tenebras detrudatur, et secundum matrimonium plenissimo iure valeat.

that the absent person be first summoned to appear by name, according to the form of legal procedure, known as *viis et modis*, and if, on this being done, no appearance is entered either by him personally or by anyone acting on his behalf and willing to plead his cause, then the judge shall grant him a stay of two or three years, during which it is to be competent for the absent party to come forward. On the expiry of this period if he does not appear himself and adduce just causes for so long an absence, the deserted person shall be freed from the bonds of matrimony and (if desirous) allowed to marry again. But if, when the proceedings are at an end, and a fresh marriage has taken place, the deserting party should, when too late and after the expiry of the two or three years, come forward, he is to be thrust into the darkness of the dungeon for life, and the second marriage shall be entirely legal.

Cap. IX.—*Divortium propter nimis longam coniugis absentiam.*

Quando non aufugerit coniunx, sed militiam aut mercaturam aut aliquam habet huiusmodi legitimam, et honestam peregrinationis suae causam, et abfuerit diu domo, nec illius vel de vita vel quicquam certo sciatur, largientur alteri coniugi iudicis (siquidem hoc ab illis requirat) bienii vel triennii spatium in quo mariti reditum expectet. Quo tempore toto si non revertatur, nec de vita possit illius aliquid esse explorati, cum diligentissime de ea fuerit interim perquisitum, alteri coniugi novas concedi nuptias aequum est; cum hac tamen conditione, prior ut maritus si tandem se repraesentet, uxor illum rursus ad se recipiat, si quidem ostendere possit culpa sua factum non esse quod fora stam diu peregrinatus sit; tantam enim et tam longi temporis absentiam nisi plena magnaque cum ratione possit excusare, custodiam in perpetuam carceris dimittatur, nullum ad uxorem reditum habeat, et illa secundis in nuptiis rite permaneat.

IX.—*The unduly protracted absence of the husband a ground for Divorce.*

When the husband has not deserted, but has military service or his business as a merchant or some legitimate and honourable reason of this sort for travelling abroad, and has been absent from home a long time and nothing is certainly known either about his being alive or in any other way, the judges shall fix for the wife (if indeed she should ask this from them) a space of either two or three years during which she is to await her husband's return. Should he not come come back during the whole of this time, and if it should be impossible to obtain any information as to his being alive, although the most diligent inquiry has been made in regard to this in the meanwhile, it is right that the liberty to contract a fresh marriage should be granted to the wife, but with this condition, that if in course of time the first husband should return, the wife is to take him back to her, provided he can prove that his having stayed so long abroad was not by his own fault. For unless he should be able to explain so serious and lengthy an absence by some full and sufficient reason, he is to be imprisoned for life and have no right of return to his wife, and she is to continue legally in her second marriage.

Cap. X.—*Inimicitiae Capitales divortium inducunt.*

Inter coniuges si capitales intercedant inimicitiae, tamque vehementer exarserint, ut alter alterum aut insidiis, aut venenis appetat, aut aliqua vel aperta vi, vel occulta peste, vitam velit eripere, quamprimum tam horribile crimen probatum fuerit, rite in iudicio divortio volumus huiusmodi personas distrahi: maiorem enim coniugi facit iniuriam persona, quae salutem et vitam oppugnat, quam ea quae ex consuetudine se coniugis eximit, aut corporis sui potestatem alteri facit. Nec inter illos ullum consortium esse potest, inter quos capitale periculum cogitari coepit et metui. Cum igitur una non possunt esse, iuxta *Pauli* doctrinam dissolvi par est.

X.—*Deadly hostility a ground for Divorce.*

If deadly hostility should arise between husband and wife, and become inflamed to such an intensity that one attack the other, either by treacherous means or by poison, and should wish to take his life in some way, either by open violence or by hidden malice, we ordain that, as soon as so horrible a crime be proved, such persons should be by law separated by divorce in the courts: for the person does greater injury to his marriage partner who attacks health and life than the one who separates himself from the other's society, or commits adultery with another. For there cannot be any sort of fellowship between those who have begun the one to plot and the other to dread mortal harm. When, therefore, they cannot live together, according to the teaching of *Paul*, it is right that they should be separated.

Cap. XI.—*Malae tractationis crimen tandem divortium inducit.*

Si vir in uxorem saeviat, et acerbitatem in eam nimiam factorum et verborum expromat, quam diu spes ulla placabilitatis est, cum illo iudex Ecclesiasticus agat, nimiam ferociam obiurgans, et si non potest monitis et hortationibus proficere, pignoribus oblatis, aut fideiussoribus acceptis, eum cavere compellat de nulla vehementi coniugi inferenda iniuria, et de illa tractanda quomodo matrimonii intima coniunctio postulat. Quod si ne pignoribus quidem, aut fideiussoribus coerceri potest maritus, nec asperitatem velit isto modo deponere, tum capitalem illum coniugis inimicum esse existimandum est, et illius vitam infestare. Quapropter divortii remedio periclitanti succurrendum erit, non minus quam si vita manifeste fuisset oppugnata. Nec tamen praeterea iuris dempta est potestas coercendi uxores quibus modis opus fuerit, si rebelles, contumaces, petulantes, acerbae sint et improbae, modo rationis et

XI.—*The crime of ill-treatment, if prolonged, a ground for Divorce.*

Should a man be violent to his wife and display excessive harshness of word and deed in his dealing towards her, as long as there is any hope of improvement, the ecclesiastical judge is to reason with him, reproving his excessive violence, and if he cannot prevail by admonitions and exhortations, he is to compel him by giving bail or by submitting to sponsors to give security, that he will not inflict any violent injury on his wife, and that he will treat her as the intimate union of marriage requires. But if, however, the husband cannot be restrained, either by bail or sponsors, and refuses to abandon his cruelty by these means, then he must be considered his wife's mortal enemy and a danger to her existence. Wherefore she, in her peril, must be helped by the remedy of divorce, no less than if her life had been openly attacked. On the other hand, however, the power given by the law is

aequitatis fines mariti non egrediantur. Et cum in hoc, tum in his superioribus delictis hoc teneri placet, ut solutae personae novas (si velint) nuptiarum conditiones legant, convictae vero priorum criminum vel exiliis perpetuis, vel aeterna carceris custodia plectantur.

not abrogated, of restraining wives in whatever ways are necessary, should they be rebellious, obstinate, petulant, scolds, and of evil behaviour, provided that the husband does not transgress the limits of moderation and equity. Both in this and in the above-mentioned offences it is our will that this principle should be followed, that parties thus set free (if desirous) may contract a fresh marriage, while those convicted of the previous crimes are to be punished by perpetual exile or imprisonment for life.

Cap. XII.—*Parvae contentiones, nisi perpetuae sint, divortium non inducunt.*

Si minores quaedam contentiones, aut offensiones obrepserint in matrimonio, *Pauli* sententia moderatrix earum esse debet, ut aut uxor marito se reconciliet, quod omnibus poenarum et hortationum ordinariis, et extraordinariis viis procurari debet, aut absque novo coniugio maneat, id quod et viro pariter faciendum statuimus.

XII.—*Slight disagreements, unless permanent, no ground for Divorce.*

If trifling disagreements or grounds of offence creep into the marriage life, the words of *Paul* should act as a check upon them, namely, that either the wife should be reconciled to the husband, a result which ought to be sought after by all ordinary and extraordinary methods of penalties and exhortations, or she is to be debarred for the future from a fresh marriage, a penalty which we decree to be equally binding on the man.

Cap. XIII.—*Perpetuus morbus non tollit matrimonium.*

Si forte coniugum alteruter perpetuum aliquem morbum contraxerit, cuius nulla levatio potest inveniri, tamen matrimonium in omnibus huiusmodi difficultatibus perdurabit. Quoniam hoc unum esse debet praecipuum et eximium matrimonii commodum, ut multa mala mutuis coniugum officiis sedari, lenirique possint.

XIII.—*Incurable disease does not annul marriage.*

If by chance either of the parties shall have contracted any incurable disease for which no alleviation can be found, the marriage will, nevertheless, hold good in spite of all difficulties of this kind. Seeing that this, above all, ought to be the principal and distinguishing advantage of matrimony, that many troubles may be soothed and alleviated by mutual acts of kindness on the part of the marriage partners.

Cap. XIV.—*Durante lite quomodo rea persona sustentabitur.*

Quoniam saepe magnam controversiam habent, et longissimi sunt temporis lites adulteriorum, veneficiorum, capitalium insidiarum, et malae tractationis, vir uxorem interim honestis et convenientibus impensis sustentet, habita ratione dignitatis et conditionis in qua est.

XIV.—*In what manner the defendant is to be supported during the lawsuit.*

Since cases involving charges of adultery, poisoning, mortal treachery and ill-treatment frequently entail serious controversy and are of very great length, the man is in the meantime to maintain his wife by a seemly and fitting allowance, account being taken of the rank and circumstances in which she is.

Cap. XV.—*Poena falsae accusationis.*

Multorum libidines huiusmodi pruritum habent, ut nova subinde matrimonia consectentur, et ad varias uxores devolare concupiscant. Quapropter falsas innocentibus calumnias struent adulteriorum, et aliorum huius generis criminum, nisi sceleribus illorum supplicium acerbitate fuerit occursum. Itaque si vir uxorem adulterii, vel veneficii ream fecerit, et post causa cadat, dimidia bonorum pars ad uxorem sevocetur. Nec in illis vendendi, distrahendi, legandi, permutandi, donandi, vel alienandi quacunque ratione ius ullum habeat, nisi uxor in id consentiat. Et uxor ex altera parte si maritum adulterii, vel veneficii, capitalis iniuriae vel malae tractationis postulaverit, et litem amittat, dote primum careat; Deinde orbetur omni emolumento quod iure per maritum debuit ad illam pervenire, nisi maritus illi sponte voluerit aliquid aspergere; postremo matrimonium inter illos, ita ut erat, integrum conservetur.

Si non coniunx coniugem, sed alterum ex his externa quaedam persona reum faciat, et in iudicio succubuerit, Ecclesiasticus iudex illum arbitratu suo, magna tamen et acri poena feriat, et etiam coniugi satisfaciat cui damnum dedit. Denique calumniatores huiusmodi nec ad Ecclesiam redeant, nec admittantur ad sacramenta, nisi famam eius personae, quam calumnia et mendacio dedecoraverunt plene restituerint quantam possint; et paenitentia scelere digna perfuncti fuerint. Et has in hoc genere poenas omnibus sive laicis sive clericis communes esse volumus.

XV.—*The penalty for false accusation.*

The sensual desires of many men have a craving of this character, that they pursue a succession of fresh marriages and long for a constant change of wives. Wherefore they will devise slanderous charges of adultery and other crimes of that kind against the innocent, unless the punishmeut for their offences is made sufficiently severe to act as a deterrent. Therefore, if a man shall charge his wife with adultery or poisoning, and if subsequently the case fail, then the half of his property is to be assigned to the wife. Nor shall he in any circumstances have any right of selling, dividing, bequeathing, exchanging, giving or alienating that property, unless the wife consent thereto. And on the other hand, if the wife shall prosecute the husband for adultery or poisoning, mortal injury or ill-treatment, and lose her case, in the first place, she shall forfeit her dowry, then she is to be deprived of all emoluments which would legally have accrued to her from her husband, unless the husband is of his own accord willing to make some provision for her; finally, the marriage between them is to be maintained intact, as it was before. If it is not the husband or wife who accuses the other, but some other third party from outside accuses one of them, and his case breaks down, the ecclesiastical judge is, at his own discretion, to inflict some heavy and exemplary punishment on him, and he is furthermore to give satisfaction to the party to whom he did the wrong. Lastly, such slanderers may neither return to the Church nor may they be admitted to the Sacraments, unless they have, as far as in them lies, restored the reputation of that person, whom they have discredited by calumny and falsehood, and shall have done penance in proportion to the crime. And we decree that these penalties, under this heading, shall be common to all, whether laymen or clergymen

Cap. XVI.—*Mariti poena suadentis uxori adulterium.*

Si maritus uxori suasor aut author ulla ratione fuerit adulterii committendi, damnabitur illa quidem adulterii, sed et maritus lenocinii reus pronunciabitur, et matrimonii coniunctione neuter liberabitur. Quod et de uxore similiter intelligi volumus.

XVI.—*The penalty of the husband who incites his wife to adultery.*

If the husband shall have been in any way the inciter or instigator of his wife's committing adultery, she, indeed, shall be convicted of adultery, but the husband shall be declared guilty of procuring, and neither shall be released from the bonds of matrimony. And this, we decree, is to be understood of the wife likewise.

Cap. XVII.—*Quae poena sit cum par adulterium est in utroque coniuge.*

Si persona quae fuerit adulteriii convicta crimen in altero coniuge possit idem ostendere et ostenderit priusquam coniunx ad novas nuptias diverterit, utriusque coniugis culpa par in pares incidet poenas, et prius inter illos firmum manebit matrimonium.

XVII.—*What the penalty is to be when both parties are equally guilty of adultery.*

If the person who has been convicted of adultery should be able to prove the same crime against the other marriage partner, and prove it before that party has proceeded to a fresh marriage, the equal guilt of each party shall involve equal punishment, and the former marriage between them shall remain valid.

Cap. XVIII.—*Receptatorum et fautorum adulterii, quae poena sit.*

Ne illi quidem iudicum Ecclesiasticorum diligentiam subterfugere debent qui receptatores sunt adulteriorum, aut illorum flagitia, ope, opera, vel consilio quacunque ratione procurant; quo in genere sunt exempli causa qui domum adulteris scientes expediunt, vel locum qualemcunque, qui sermonum, literarum aut munerum cuiuscunque generis sint internuncii. Quapropter omnem huiusmodi faecem, quae caenum adulterii quacunque parte commovet, Ecclesiasticis poenis et arbitriis etiam iudicis constringendum esse decernimus.

XVIII.—*What the penalty is to be for the harbourers and abettors of adultery.*

Of a surety those ought not to escape the vigilance of the ecclesiastical judges, who are the harbourers of adultery, or who in any way promote the disgrace of it by their help, action, or advice; in which class are, for example, those who wittingly lend their houses to adulterers, or a place of whatsoever description, and who are intermediaries of messages, letters or presents of any sort. Wherefore we decree that all reprobates of this kind, who encourage the uncleanness of adultery in whatever respect, must be restrained by ecclesiastical penalties and also by the pronouncements of the judge.

Cap. XIX.—*Separatio a Mensâ et Thoro tollitur.*

Mensae societas et thori solebat in certis criminibus adimi coniugibus, salvo tamen inter illas reliquo matrimonii iure; quae constitutio cum a sacris litteris aliena sit, et maximam perversitatem habeat, et malorum sentinam in matrimonium comportaverit, illud authoritate nostra totum aboleri placet.

XIX.—*The separation* a Mensâ et Thoro *to be abolished.*

It was formerly customary in the case of certain crimes to deprive married people of the right of association at *bed and board*, though in all other respects their marriage tie remained intact; and since this practice is contrary to the Holy Scriptures, involves the greatest confusion, and has introduced an accumulation of evils into matrimony, it is our will that the whole thing be, by our authority, abolished.

Cap. XX.—*Incestus et Scortationes laicorum quomodo puniuntur.*

Incestus, nominatim autem is qui primum ad gradum ascendit, afficietur poena sempiterna carceris. Deinde scortationes et vagae licentiosaeque libidines omnis generis magna suppliciorum acerbitate compraehendantur, ut tandem aliquando radicitus ex regno nostro extirpentur. Ecclesiastici igitur iudices diligenter eviligent, ut quascunque personas et cuiuscunque sexus flagitiosis et impuris libidinum congressibus implicatas in excommunicationem eiiciant; nisi mature moniti resipuerint. Et licet si ipsi correxerint, tamen publice cogantur Ecclesiae Satisfacere. Praeterea decem libras in pauperum cistam Ecclesiae suae propriam imponant, vel si minores illorum facultates sunt, tantum imponant quantum de bonis illorum commode detrahi potest.

XX.—*How incest and fornication of the laity are to be punished.*

Incest, by which is particularly meant that which has reached the worst form of sin, is to be visited with the penalty of imprisonment for life. Then fornication and indiscriminate and licentious lusts of every kind are to be checked by great severity in the punishment, so that they may eventually be completely rooted out from our kingdom. Therefore the ecclesiastical judges must take vigilant care that they visit with excommunication whatever persons of whichever sex have been involved in sensual associations of an impure and dissolute character, unless after timely warning they repent. And even though they have themselves amended their ways, they are nevertheless to be compelled publicly to make atonement to the Church. Moreover, they must place ten pounds in the box set apart for the poor of their Church, or if their means are insufficient, they must place there as much of their goods as can conveniently be spared.

Cap. XXI.—*Filius non legitimus quomodo sit alendus.*

Filius ex adulterio susceptus, aut ex simplici scortatione, quemadmodum appellant, patris impensis alatur, si quidem is inveniri poterit. Qui si non poterit erui, mater suum ipsa foetum propriis impensis sustentet.

XXI.—*How an illegitimate child is to be maintained.*

A child born of adultery or of mere fornication, to use the common term, is to be maintained at the father's expense, if, indeed, he can be discovered. But if he cannot be found the mother is herself to support her offspring at her own expense.

APPENDIX III.

Tables handed in by Sir John Macdonell, C.B.

TABLE I.

Matrimonial Petitions Filed, 1859–1909.

—	Annual Averages.						1889.	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.	1909.
	1859 to 1863.	1864 to 1868.	1869 to 1873.	1874 to 1878.	1879 to 1883.	1884 to 1888.																					
For dissolution of marriage :																											
Husbands' petitions -	129	133	169	254	277	305	314	326	306	305	309	309	353	393	414	401	383	360	491	596	488	448	429	442	419	472	451
Wives' ,, -	75	100	120	179	205	224	208	215	220	234	207	238	220	280	269	243	262	249	259	293	337	272	323	325	315	374	336
Total -	204	233	289	433	482	529	522	541	526	539	516	547	573	673	683	644	645	609	750	889	825	720	752	767	734	846	787
Percentage of husbands' petitions.	63	57	58	59	58	58	60	60	58	57	60	56	62	58	61	62	59	59	65	67	59	62	57	58	57	56	57
Percentage of wives' petitions.	37	43	42	41	42	42	40	40	42	43	40	44	38	42	39	38	41	41	35	33	41	38	43	42	43	44	43
For judicial separation :																											
Husbands' petitions -	3	7	7	10	7	6	10	6	1	2	6	7	4	3	2	4	4	3	3	2	4	5	5	2	3	1	4
Wives' ,, -	50	60	72	105	115	125	115	111	84	106	104	96	106	96	96	102	78	86	95	96	86	97	87	74	82	66	89
Total -	53	67	79	115	122	131	125	117	85	108	110	103	110	99	98	106	82	89	98	98	90	102	92	76	85	67	93
Percentage of husbands' petitions.	5	10	10	9	6	4	8	5	1	2	5	7	4	3	2	4	5	3	3	2	4	5	5	3	4	1	4
Percentage of wives' petitions.	95	90	90	91	94	96	92	95	99	98	95	93	96	97	98	96	95	97	97	98	96	95	95	97	96	99	96
For nullity of marriage -	4	8	8	12	13	14	21	10	23	14	11	29	32	27	20	24	22	26	20	30	16	30	30	29	36	32	31
For restitution of conjugal rights.	11	15	15	19	19	22	25	14	13	16	22	23	19	20	20	22	21	23	30	33	31	35	43	54	49	65	72
Other petitions* - -	2	1	2	1	1	1	3	1	1	2	—	—	—	1	1	2	—	—	1	—	1	—	4	2	3	1	1
Total petitions filed	274	324	393	580	637	697	696	683	648	679	659	702	734	820	822	798	770	747	899	1,050	963	887	921	928	907	1,011	984

* Exclusive of petitions for damages only.

TABLE II.

Decrees granted for Dissolution of Marriage, 1858–1909.

Number granted on Husbands' and Wives' Petitions.

Year.	Decrees granted			Year.	Decrees granted		
	On Husbands' Petitions.	On Wives' Petitions.	Total.		On Husbands' Petitions.	On Wives' Petitions.	Total.
1858	109	70	179	1885	180	136	316
1859	89	52	141	1886	217	170	387
1860	68	59	127	1887	220	170	390
1861	79	39	118	1888	226	166	392
1862	105	48	153	1889	226	144	370
1863	95	65	160	1890	231	169	400
1864	100	66	166	1891	195	147	342
1865	88	59	147	1892	194	160	354
1866	88	58	146	1893	207	155	362
1867	87	57	144	1894	208	173	381
1868	93	88	181				
1869	101	85	186	1895	478		478
1870	113	81	194				
1871	111	79	190	1896	299	187	486
1872	109	94	203	1897	328	255	583
1873	140	98	238	1898	260	176	436
1874	170	111	281	1899	304	221	525
1875	184	120	304	1900	295	199	494
1876	159	124	283	1901	373	228	601
1877	191	131	322	1902	389	219	608
1878	225	155	380	1903	394	220	614
1879	148	152	300	1904	350	284	634
1880	197	143	340	1905	362	261	623
1881	179	123	302	1906	364	286	650
1882	180	165	345	1907	332	266	598
1883	231	130	361	1908	365	307	672
1884	198	139	337	1909	380	305	685

TABLE III.

Decrees granted for Dissolution of Marriage, 1858–1909.

Percentage of Petitions successful.

Year.	Percentage.		Year.	Percentage.		Year.	Percentage.	
	Husbands' Petitions.	Wives' Petitions.		Husbands' Petitions.	Wives' Petitions.		Husbands' Petitions.	Wives' Petitions.
1858	69·87	72·16	1876	69·13	72·09	1894	67·31	72·69
1859	68·99	73·24	1877	74·32	70·43			
1860	61·82	74·68	1878	75·76	70·45	1895	83·42	
1861	68·10	65·00	1879	64·07	72·38			
1862	75·54	73·85	1880	71·64	67·77	1896	76·08	66·79
1863	63·76	65·00	1881	65·57	66·13	1897	79·23	94·80
1864	67·57	71·74	1882	71·43	78·57	1898	64·84	72·43
1865	67·69	56·19	1883	65·44	63·11	1899	79·37	84·35
1866	66·17	61·05	1884	66·22	68·81	1900	81·94	79·92
1867	68·50	59·38	1885	70·87	69·39	1901	75·97	88·03
1868	73·81	78·57	1886	64·39	69·67	1902	65·27	74·74
1869	68·71	73·28	1887	67·48	66·93	1903	80·90	65·28
1870	71·52	77·14	1888	73·14	73·78	1904*	78·13	104·41
1871	64·91	64·75	1889	71·98	69·23	1905	†84·38	80·80
1872	63·74	74·02	1890	70·86	78·60	1906	82·35	88·00
1873	70·00	76·56	1891	63·73	66·82	1907	79·24	84·44
1874	72·65	78·72	1892	63·61	68·38	1908	77·33	82·09
1875	73·31	68·97	1893	66·99	74·88	1909	84·26	90·77

* The number of decrees nisi granted in 1904 exceeded the number of petitions presented during the same year.

TABLE IV.

DECREES GRANTED FOR DISSOLUTION OF MARRIAGE, 1858–1909.

~~Population~~ Proportion per 100,000 of estimated Population.

Year.	Proportion of Decrees per 100,000 of Population.	Year.	Proportion of Decrees per 100,000 of Population.	Year.	Proportion of Decrees per 100,000 of Population.
1858	·92	1876	1·16	1894	1·27
1859	·72	1877	1·30	1895	1·57
1860	·64	1878	1·52	1896	1·58
1861	−·59	1879	1·18	1897	1·87
1862	·75	1880	1·32	1898	1·38
1863	·78	1881	1·16	1899	1·65
1864	·79	1882	1·31	1900	1·53
1865	·70	1883	1·36	1901	1·84
1866	·72	1884	1·25	1902	1·85
1867	·70	1885	1·16	1903	1·84
1868	·82	1886	1·41	1904	1·88
1869	·84	1887	1·40	1905	1·83
1870	·86	1888	1·39	1906	1·89
1871	·83	1889	1·30	1907	1·72
1872	·88	1890	1·39	1908	1·92
1873	1·02	1891	1·18	1909	+1·93
1874	1·18	1892	1·20		
1875	1·26	1893	1·22		

TABLE V.

STATEMENT SHOWING THE PROPORTION OF DIVORCES TO MARRIED POPULATION AT EACH CENSUS YEAR FROM 1861 TO 1901.

(1.) Census Year.	(2.) Enumerated Married Population.	(3.) Decrees for Divorce.	(4.) Married Population to each Decree.	(5.) Decrees per 10,000 of Married Population.
1861	6,917,395	140	49,410	−2·02
1871	7,831,890	202	38,772	2·58
1881	8,814,860	330	26,712	3·74
1891	9,768,197	366	26,689	3·75
1901	11,328,918	568	19,945	+5·01

NOTE.—Column 2 represents the total husbands and wives enumerated. Column 3 the annual average for the five years in which the Census year is the middle year.

TABLE VI.

Decrees granted for Judicial Separation, 1858–1909.

Number granted on Husbands' and Wives' Petitions.

Year.	Decrees granted			Year.	Decrees granted		
	On Husbands' Petitions.	On Wives' Petitions.	Total.		On Husbands' Petitions.	On Wives' Petitions.	Total.
1858	2	39	41	1885	2	40	42
1859	3	30	33	1886	1	53	54
1860	1	10	11	1887	2	48	50
1861	—	14	14	1888	—	39	39
1862	—	16	16	1889	4	40	44
1863	—	11	11	1890	1	38	39
1864	4	21	25	1891	—	18	18
1865	2	26	28	1892	—	33	33
1866	1	19	20	1893	4	21	25
1867	2	24	26	1894	1	23	24
1868	1	22	23				
1869	3	20	23	1895		27	27
1870	4	21	25				
1871	3	32	35	1896	2	42	44
1872	6	17	23	1897	2	25	27
1873	4	27	31	1898	—	24	24
1874	5	33	38	1899	—	34	34
1875	2	33	35	1900	—	19	19
1876	3	38	41	1901	—	27	27
1877	3	49	52	1902	—	29	29
1878	5	38	43	1903	—	18	18
1879	2	34	36	1904	1	21	22
1880	5	52	57	1905	—	25	25
1881	6	29	35	1906	1	19	20
1882	3	37	40	1907	2	29	31
1883	3	46	49	1908	1	27	28
1884	—	31	31	1909	1	24	25

TABLE VII.

Decrees granted for Judicial Separation, 1858–1909.

Percentage of Petitions successful.

Year.	Percentage.		Year.	Percentage.		Year.	Percentage.	
	Husbands' Petitions.	Wives' Petitions.		Husbands' Petitions.	Wives' Petitions.		Husbands' Petitions.	Wives' Petitions.
1858	33·33	48·15	1876	23·08	30·40	1894	14·29	23·96
1859	50·00	44·78	1877	33·33	41·18			
1860	100·00	19·61	1878	35·71	38·38	1895	24·55	
1861	—	32·56	1879	28·57	34·34			
1862	—	32·65	1880	50·00	37·96	1896	66·67	43·75
1863	—	27·50	1881	85·71	26·36	1897	100·00	26·04
1864	44·44	32·81	1882	42·86	34·91	1898	—	23·53
1865	40·00	53·06	1883	50·00	38·02	1899	—	43·59
1866	33·33	32·76	1884	—	27·68	1900	—	22·09
1867	25·00	35·82	1885	40·00	33·90	1901	—	28·42
1868	12·50	35·48	1886	14·29	42·06	1902	—	30·21
1869	37·50	27·03	1887	50·00	33·80	1903	—	20·93
1870	44·44	29·17	1888	—	30·23	1904	20·00	21·65
1871	60·00	45·07	1889	40·00	34·78	1905	—	28·74
1872	100·00	24·29	1890	16·67	34·23	1906	50·00	25·68
1873	57·14	38·03	1891	—	21·43	1907	66·67	35·37
1874	62·50	40·24	1892	—	31·13	1908	100·00	40·91
1875	28·57	33·33	1893	66·67	20·19	1909	25·00	26·97

TABLE VIII.

DECREES GRANTED FOR JUDICIAL SEPARATION, 1858–1909.

Proportion per 100,000 of estimated Population.

Year.	Proportion of Decrees per 100,000 of Population.	Year.	Proportion of Decrees per 100,000 of Population.	Year.	Proportion of Decrees per 100,000 of Population.
1858	·21	1876	·17	1894	·08
1859	·17	1877	·21	1895	·09
1860	·06	1878	·17	1896	·14
1861	·07	1879	·14	1897	·09
1862	·08	1880	·22	1898	·08
1863	·05	1881	·13	1899	·11
1864	·12	1882	·15	1900	·06
1865	·13	1883	·18	1901	·08
1866	·09	1884	·12	1902	·09
1867	·12	1885	·15	1903	·05
1868	·10	1886	·20	1904	·07
1869	·10	1887	·18	1905	·07
1870	·11	1888	·14	1906	·06
1871	·15	1889	·15	1907	·09
1872	·10	1890	·14	1908	·08
1873	·13	1891	·06	1909	·07
1874	·16	1892	·11		
1875	·15	1893	·08		

TABLE IX.

STATEMENT SHOWING THE PROPORTION OF JUDICIAL SEPARATIONS TO MARRIED POPULATION AT EACH CENSUS YEAR FROM 1861 TO 1901.

Census Year.	Enumerated Married Population.	Number of Judicial Separations	Married Population to each Separation.	Number of Separations to 100,000 of Married Population.
1861	6,917,395	17	406,906	·25
1871	7,831,890	27	290,070	·34
1881	8,814,860	43	204,997	+ ·49
1891	9,768,197	32	305,256	·33
1901	11,328,918	25	453,157	− ·22

NOTE.—Column 2 represents the total husbands and wives enumerated. Column 3 the annual average for the five years in which the Census year is the middle year.

TABLE X.

INDEX NUMBERS SHOWING THE NUMBER OF DECREES NISI GRANTED FOR DISSOLUTION OF MARRIAGE AND JUDICIAL SEPARATION.

The Number for 1858 being taken as 100.

Year.	Dissolution of Marriage.	Judicial Separation.	Year.	Dissolution of Marriage.	Judicial Separation.
1858 - - -	100	100	1907 - - -	334	76
1904 - - -	354	54	1908 - - -	375	68
1905 - - -	348	61	1909 - - -	383	61
1906 - - -	363	49			

TABLE XI.

SEPARATION ORDERS GRANTED BY MAGISTRATES.

	1907.	1908.	1909.
Orders granted to wives under Summary Jurisdiction (Married Women) Act, 1895, section 5, and Licensing Act, 1902, section 5 (2) - - - - - - - -	6,734	6,697	5,009
Orders granted to husbands under Licensing Act, 1902, section 5 (2) - - - - - - - -	273	289	218
	7,007	6,986	5,227

TABLE XII.

JUDICIAL SEPARATION—DECREES NISI GRANTED BY HIGH COURT AND SEPARATION ORDERS GRANTED BY COURTS OF SUMMARY JURISDICTION.

	Total Decrees for Separation.		Total Orders granted by Courts of Summary Jurisdiction.	
	Number.	Proportion per 100,000 of Population.	Number.	Proportion per 100,000 of Population.
1907	31	0·89	7,007	20·05
1908	28	0·79	6,986	19·76
1909	25	0·70	5,227	14·62

TABLE XIIa.

STATEMENT SHOWING THE NUMBER OF SEPARATION ORDERS GRANTED IN EACH COUNTY BY COURTS OF SUMMARY JURISDICTION AND PROPORTIONS PER 100,000 OF ESTIMATED POPULATION IN EACH OF THE YEARS 1907, 1908, AND 1909.

County.	1907.	1908.	1909.	Proportion per 100,000 Population.		
				1907.	1908.	1909.
ENGLAND.						
Bedford	25	12	15	13·95	6·65	8·25
Berks	15	23	22	5·67	5·63	8·19
Bucks	14	20	7	6·84	6·79	3·37
Cambridge	6	10	7	3·23	5·38	3·76
Chester	203	164	128	22·68	18·12	13·99
Cornwall	15	13	13	4·66	4·04	4·03
Cumberland	16	23	23	5·95	8·54	8·53
Derby	106	114	89	16·14	17·12	13·18
Devon	44	63	32	6·43	9·15	4·62
Dorset	9	7	12	4·31	3·34	5·69
Durham	493	471	404	37·86	35·65	32·57
Essex	48	58	58	3·75	4·42	4·32
Gloucester	151	160	126	20·22	21·24	16·59
Hereford	7	10	4	6·15	8·79	3·52
Hertford	15	19	19	5·36	6·70	6·61
Hunts	—	5	2	—	9·27	3·71
Kent	92	79	66	8·77	7·43	6·12
Lancaster	1,877	1,822	1,393	39·87	38·27	24·37
Leicester	60	49	33	12·53	10·09	6·70
Lincoln	61	67	62	11·74	12·82	11·78
London	832	802	610	17·49	16·72	12·62
Middlesex	93	85	60	9·75	8·67	5·69
Monmouth	36	33	21	11·08	10·02	6·29
Norfolk	45	51	48	9·29	10·49	9·85
Northampton	39	30	23	10·82	8·23	6·24
Northumberland	159	149	98	23·81	21·96	14·24
Nottingham	230	191	137	41·00	33·59	23·77
Oxford	18	11	7	9·69	5·93	3·77
Rutland	—	2	2	—	10·44	10·05
Salop	19	20	12	7·82	8·20	4·91
Somerset	19	29	19	4·31	6·56	4·29
Southampton	73	55	54	8·37	6·22	6·02
Stafford	370	353	309	27·63	26·03	22·50
Suffolk	14	21	18	3·66	5·46	4·66
Surrey	55	76	65	7·43	10·06	8·45
Sussex	59	58	39	9·21	8·97	5·97
Warwick	266	268	122	26·34	26·24	11·81
Westmorland	3	5	4	4·71	7·86	6·30
Wilts	17	15	6	6·10	5·36	2·13
Worcester	83	78	51	16·63	15·40	9·92
York, East Riding	81	96	50	23·15	12·21	11·77
York, North Riding	73	90	94	23·03	23·91	19·48
York, West Riding	885	913	588	29·85	29·50	19·31
Total, England	6,726	6,620	4,952	20·33	19·78	14·63
WALES.						
Anglesey	10	3	8	17·47	5·84	15·54
Brecon	7	12	6	12·43	21·17	10·52
Cardigan	—	7	2	—	11·71	3·35
Carmarthen	15	8	14	10·78	5·72	9·96
Carnarvon	13	19	6	9·89	14·34	4·49
Denbigh	9	19	10	6·41	13·40	6·98
Flint	10	12	8	11·79	14·06	9·31
Glamorgan	202	268	202	20·74	27·00	19·97
Merioneth	1	3	5	2·05	6·14	10·24
Montgomery	4	3	3	7·51	5·66	5·68
Pembroke	9	9	11	10·27	10·27	12·56
Radnor	1	3	—	4·10	12·22	—
Total, Wales	281	366	275	15·18	19·53	14·50
Total, England and Wales	7,007	6,986	5,227	20·05	19·76	14·62

TABLE XIII.

Duration of Marriage of Parties in Matrimonial Suits commenced in each Year, from 1897 to 1909.

Duration of Marriage.	1899.		1900.		1901.		1902.		1903.		Annual Average, 1899–1903.		1904.		1905.		1906.		1907.		1908.		Annual Average, 1904–08.		1909.	
	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.
Less than one year	1	—	—	—	—	2	1	1	3	3	1	1	6	6	1	5	2	1	2	1	2	1	3	3	1	—
One year and less than 2	16	18	9	9	10	17	5	10	11	12	10	13	7	8	10	9	8	13	6	7	11	10	8	10	13	11
2 years „ „ „ 5	41	47	50	54	67	43	77	41	57	49	58	47	44	57	59	67	72	62	51	49	64	58	58	59	66	50
5 „ „ „ „ 10	124	103	125	98	163	99	207	141	160	121	156	113	151	116	168	137	152	135	133	153	169	145	155	137	137	155
10 „ „ „ „ 20	184	143	159	155	225	173	257	179	210	194	207	169	207	170	169	193	183	175	189	181	191	227	188	189	204	227
20 „ „ upwards	34	59	38	50	41	58	61	70	62	80	47	63	54	61	46	53	50	72	53	79	51	81	50	69	54	65
Unknown	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—	—	—	—	—
Total	400	370	381	366	506	392	608	442	503	459	479	406	469	418	453	464	467	459	434	470	488	522	462	467	475	508
	770		747		898		1,050		962		885		887		917		926		904		1,010		929		983	

Note.—"H" signifies husband's petition. "W" signifies wife's petition.

TABLE XIV.

Age and Condition of Parties before Marriage.

Condition of Parties.	1899.		1900.		1901.		1902.		1903.		Annual Average, 1899–1903.		1904.		1905.		1906.		1907.		1908.		Annual Average, 1904–08.		1909.	
	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.	Under 21.	21 and above.
Bachelor	58	666	37	645	48	787	77	920	69	882	58	780	47	833	48	835	45	828	58	789	52	899	50	837	51	882
Spinster	214	530	204	491	243	616	350	662	287	661	260	592	239	638	246	642	240	646	270	595	232	725	246	649	252	683
Widower	1	44	—	54	1	55	1	51	—	10	1	43	—	5	—	29	—	47	—	40	—	42	—	33	—	43
Widow	—	23	—	38	2	23	—	34	—	12	—	26	—	8	1	24	—	31	—	22	1	36	—	24	2	32
Divorced Husband	—	—	—	2	—	4	—	2	—	1	—	2	—	—	—	1	—	2	—	8	—	9	—	4	—	6
„ Wife	—	2	1	6	1	7	—	1	—	2	—	3	—	—	—	—	—	5	—	8	—	8	—	4	—	13
Unknown	—	2	—	16	1	8	1	1	—	—	—	5	—	4	—	8	—	8	—	18	—	16	—	11	—	2
	273	1,267	242	1,252	296	1,500	429	1,671	356	1,568	319	1,451	286	1,488	295	1,539	285	1,567	328	1,480	285	1,735	296	1,562	305	1,661
Total	1,540		1,494		1,796		2,100		1,924		1,770		1,774		1,834		1,852		1,808		2,020		1,858		1,966	

TABLE XV.

Number of Children of Marriage.

Number of Children.	1899.		1900.		1901.		1902.		1903.		Annual Average, 1899–1903.		1904.		1905.		1906.		1907.		1908.		Annual Average, 1904–08.		1909.	
	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.	H.	W.
No children	175	147	167	156	188	166	230	185	183	170	188	165	178	147	180	167	201	161	169	182	198	235	185	178	213	197
One child	97	83	80	84	129	91	140	115	105	133	110	101	110	116	114	137	120	127	91	128	119	136	111	129	104	137
Two children	58	57	59	53	93	57	98	62	76	75	77	61	78	82	73	86	73	80	84	83	86	67	79	80	75	89
Three to six children	66	69	68	63	86	67	131	65	128	70	96	67	97	66	83	69	62	78	84	70	82	71	82	71	80	79
Above six children	4	14	6	9	10	11	9	15	11	11	8	12	6	7	3	5	9	12	6	7	3	11	5	8	3	6
Number unknown	—	—	1	1	—	—	—	—	—	—	—	—	—	—	—	—	2	1	—	—	—	2	—	1	—	—
Total	400	370	381	366	506	392	608	442	503	459	479	406	469	418	453	464	467	459	434	470	488	522	462	467	475	508
	770		747		898		1,050		962		885		887		917		926		904		1,010		929		983	

NOTE.—"H." signifies husband's petition. "W." signifies wife's petition.

TABLE XVA.

Statement of the Number of Petitions presented by Persons apparently belonging to the Working Classes (compiled from the Occupations of Husbands at Date of Marriage).

Classification of Occupation at Date of Marriage.	Number.	
	1907.	1908.
Agriculture	3	5
Mining and Quarrying	12	18
Manufactures, &c.:—		
Building, &c.	21	5
Metal Work	14	17
Furniture and Wood	5	22
Textile Fabric	10	12
Clothing	13	17
Brewing	2	—
Food	—	1
Printing	4	3
Labourers	17	24
Miscellaneous	41	32

Classification of Occupation at Date of Marriage.	Number.	
	1907.	1908.
Navigation and Fishing:—		
Seamen	9	2
Fishermen	3	2
Others	6	6
Inland Transport:—		
Railways	13	16
Road	14	17
Postal Employés	1	3
Others		
Trade:—	3	2
Shop Assistants, &c.	3	5
Porters, Messengers	7	5
Waiter, Barman, &c.	4	6

Classification of Occupation at Date of Marriage.	Number.	
	1907.	1908.
Trade—*continued.*		
Dealers in Articles of Food	6	1
Dealers in Articles of Clothes	—	1
Other Dealers	1	2
Domestic Service	10	12
Prison Warder	—	1
Soldier and Sailor	29	20
Policeman	7	4
Out of Employment and Miscellaneous.	3	3
Prisoner	—	2
Total	261	266

NOTE.—The proportion of Petitions presented by members of the working classes to the total Petitions are as follows:—1907—28·87; 1908—26·33.

TABLE XVI.

Divorces, 1887 to 1908, in certain Countries.

Country.	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.
Austria - -	111	86	108	106	116	129	130	133	136	139	150	169	156	163	187	222	206	285	262	290	—*	—*
Belgium - -	292	356	379	373	402	441	497	477	492	548	625	747	563	690	821	703	734	932	901	618	—*	—*
Bulgaria - -	204	234	263	238	279	259	283	365	355	404	430	472	380	292	—*	—*	—*	—*	—*	—*	—*	—*
Denmark - -	—*	—*	—*	—*	—*	—*	—*	—*	—*	316	344	349	368	381	375	481	449	473	549	589	—	—
England and Wales	390	392	370	400	342	354	362	381	478	486	583	436	525	494	601	608	614	634	623	650	598	672
France - -	5,797	5,482	6,249	6,557	6,431	7,035	6,937	7,893	7,700	7,879	7,999	8,100	8,042	7,820	8,841	9,431	10,186	10,850	10,860	—	—	—
Germany - -	6,357	6,618	6,457	6,220	6,677	6,513	6,694	7,502	8,326	8,460	8,878	9,008	9,433	7,928	7,964	9,069	9,933	10,868	11,147	12,180	—	—
Hungary - -	1,000	1,165	1,128	1,137	1,107	1,305	1,339	1,433	1,334	420	694	1,412	1,940	2,100	2,541	2,659	2,905	3,626	3,638	—	—	—
Ireland (Private Acts).	—	1	—	—	—	1	1	2	2	3	2	2	—	—	—	—	—	2	1	1 5	5	—
Netherlands, The -	333	409	360	383	414	354	405	391	473	463	453	509	484	551	561	570	610	642	717	821	—	—
Norway - -	28	33	42	40	58	76	102	109	114	97	94	140	123	106	138	139	185	183	235	208	—	—
Roumania - -	722	758	879	816	803	665	869	880	938	986	1,079	1,083	1,194	1,252	1,329	1,301	1,670	1,800	—	—	—	—
Scotland - -	—	—	—	—	—	—	—	—	—	—	—	145	165	142	161	216	192	187	170	169	197	191
Servia - - -	297	357	284	194	173	306	285	269	316	290	273	268	329	305	263	393	387	426	—	—	—	—
Swedeu - -	233	252	240	296	276	316	293	292	305	349	349	409	387	405	359	391	418	442	448	534	—	—
Switzerland - -	925	841	865	880	877	881	903	932	897	1,057	1,011	1,018	1,091	1,025	1,027	1,105	1,182	1,243	1,206	1,343	1,494	—
United States -	27,919	28,669	31,735	33,461	35,540	36,579	37,468	37,568	40,387	42,937	44,699	47,849	51,437	55,751	60,984	61,480	64,925	66,199	67,976	72,062	—	—

* Figures not available.

Note to Table XVI.—There are discrepancies in the returns as to some countries. The figures for Germany include separations; those for France are the decrees granted by the Courts, not those inscribed upon the marriage record. Some of the figures appear to include annulments.

TABLE XVII.

Statement showing Quinquennial Averages for Divorces in certain Countries for the Years 1887–1891 and 1902–1906.

Country.	Annual Average, 1887 to 1891.	Annual Average, 1902 to 1906.	Increase per Cent.	Country.	Annual Average, 1887 to 1891.	Annual Average, 1902 to 1906.	Increase per Cent.
Austria - - - -	105·4	253·0	140·0	The Netherlands - - -	379·8	672·0	76·9
Belgium - - - -	360·4	777·6	115·8	Norway - - - -	40·2	190·0	372·6
Bulgaria - - - -	243·6	395·6*	62·4	Servia - - - -	261·0	402·0	54·0
Denmark - - - -	360·5†	488·0	35·4	Roumania - - - -	795·6	1,590·3	99·9
England and Wales - - -	378·8	625·8	65·2	Scotland - - - -	166‡	183‡	10·4
France - - - -	6,103·2	10,331·8	69·3	Sweden - - - -	259·4	446·6	72·2
Germany - - - -	6,465·8	10,639·4	64·5	Switzerland - - - -	877·6	1,215·8	38·5
Hungary - - - -	1,107·4	3,207·0	189·6	United States - - - -	31,464·8	66,528·4	111·4

* Average for 1896 to 1900. † Average for 1897 to 1900. ‡ Averages for 1898 to 1902 and 1904 to 1908.

TABLE XVIII.

Divorces per 100,000 of Population.

Country.	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.
Austria	—*	—*	—*	—*	—*	1	1	1	1	1	1	1	1	1	1	1	1	—*	—*	—*	—*	—*
Belgium	5	6	6	6	7	7	8	8	8	8	9	11	8	10	12	10	11	13	13	—*	—*	—*
Denmark	—*	—*	—*	—*	—*	—*	—*	—*	—*	14	15	15	15	16	15	19	18	19	21	23	—*	—*
England	1	1	1	1	1	1	1	1	2	2	2	1	2	2	2	2	2	2	2	2	2	2
France	15	14	16	17	17	18	18	21	20	20	21	21	21	20	23	24	26	28	28	—*	—*	—*
Germany	13	14	13	13	13	13	13	15	16	16	17	17	17	14	14	16	17	18	19	—*	—*	—*
Hungary	6	7	7	7	6	7	8	8	7	2	4	8	10	11	13	14	15	18	18	—*	—*	—*
Netherlands	8	9	8	8	9	8	9	8	10	9	9	10	9	11	11	11	11	12	13	—*	—*	—*
Norway	1	2	2	2	3	4	5	5	6	5	4	7	6	5	6	6	8	8	—*	—*	—*	—*
Roumania	14	15	17	—	—	12	16	16	17	17	19	18	20	21	22	21	27	28	—*	—*	—*	—*
Scotland	—*	—*	—*	—*	—*	—*	—*	—*	—*	—*	—*	3	4	3	4	5	4	4	4	4	4	4
Servia*	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Sweden	5	5	5	6	6	7	6	6	6	7	7	8	8	8	7	8	8	8	—*	—*	—*	—*
Switzerland	32	29	30	30	30	29	30	30	29	34	32	32	33	31	31	33	35	36	35	38	—*	—*
United States	47	48	52	53	55	56	56	55	58	61	62	65	69	73	79	78	81	81	82	86	—*	—*

Note.—Less than 1 per 100,000 not given.

* Figures not available.

TABLE XIX.

United States.—Divorces—Percentage of Increase.

	Increase over preceding 5-year Period.		Increase over preceding 5-year Period.
1902–1906	27·6 per cent.	1882–1886	31·4 per cent.
1897–1901	33·7 „	1887–1881	30·3 „
1892–1896	23·9 „	1872–1876	27·9 „
1887–1891	34·1 „	1867–1871	

TABLE XX

Divorces in various States and Territories of the United States.

Rank according to Annual Number of Divorces							Annual Average Number of Divorces					
Per 100,000 Married Population.		Per 100,000 Population.					Per 100,000 Married Population.		Per 100,000 Population.			
1890.	1900.	1870.	1880.	1890.	1900.		1890.	1900.	1870.	1880.	1890.	1900.
3	1	4	11	3	1	Washington	316	513	88	75	109	184
2	2	7	2	2	2	Montana	430	497	73	125	139	167
1	3	12	1	1	3	Colorado	561	409	60	138	197	158
9	4	28	18	9	5	Arkansas	269	399	24	53	90	136
10	5	31	20	14	7	Texas	253	391	21	49	82	131
4	6	6	7	4	6	Oregon	312	368	80	92	108	134
8	7	1	4	11	11	Wyoming	272	361	99	111	86	118
7	8	8	13	5	4	Indiana	277	355	69	70	104	142
6	9	9	17	8	9	Idaho	280	347	67	58	93	120
33	10	—	—	34	8	Okahama	122	346	—	—	46	129
19	11	38	23	21	9	Arizona	201	344	10	47	67	120
38	12	—	—	39	13	Indian Territory	98	326	—	—	33	113
5	13	1	5	9	15	Nevada	306	315	99	106	97	111
11	14	14	9	12	17	California	247	297	52	84	84	108
13	15	16	26	12	16	Kansas	226	286	51	44	84	109
15	16	11	10	10	12	Maine	212	282	61	78	88	117
18	17	23	29	19	20	Missouri	202	281	29	40	71	103
17	17	3	6	15	18	Rhode Island	203	281	89	93	76	105
14	19	10	3	17	24	Utah	225	274	62	114	74	92
12	20	13	8	6	14	New Hampshire	240	272	53	85	100	112
23	21	26	21	24	22	South Dacota	181	270	25	48	65	95
32	22	48	25	33	27	North Dacota	135	268	—	46	47	88
16	23	16	14	16	21	Illinois	307	267	51	68	75	100
21	24	28	30	26	26	Tennessee	189	261	24	38	62	89
24	25	19	12	18	19	Michigan	179	257	47	72	72	104
22	26	18	16	21	23	Iowa	183	246	49	60	67	93
25	27	25	31	27	28	Kentucky	172	237	28	35	58	84
26	28	21	21	25	25	Ohio	171	231	37	48	64	91
28	29	30	18	28	30	Florida	167	226	23	53	57	79
20	29	23	27	19	29	Nebraska	199	226	29	43	71	82
30	31	36	33	32	32	Mississippi	151	225	12	30	48	74
28	32	38	35	29	34	Alabama	167	208	10	27	54	69

35	33	46	42	34	33	-	-	New Mexico	-	-	120	193	1	12	46	73
33	34	33	37	36	36	-	-	West Virginia	-	-	122	183	18	25	41	64
31	35	20	28	30	35	-	-	Wisconsin	-	-	142	180	38	41	51	65
37	36	15	23	31	31	-	-	Vermont	-	-	116	177	50	47	49	75
38	37	22	32	38	37	-		District of Columbia		-	98	162	30	31	34	58
36	38	31	35	36	38	-	-	Minnesota	-	-	119	161	21	27	41	55
26	39	5	15	23	39	-	-	Connecticut	-	-	171	130	84	61	66	50
40	40	44	45	41	41	-	-	Louisiana	-	-	91	127	5	10	29	41
41	41	26	33	40	40	-	-	Massachusetts	-	-	85	124	25	30	32	47
43	42	43	44	45	43	-	-	Virginia	-	-	72	117	6	11	22	38
45	43	36	42	43	42	-	-	Maryland	-	-	69	114	12	12	24	40
42	44	33	38	42	44	-	-	Pennsylvania	-	-	75	94	18	21	27	35
43	45	38	40	43	45	-	-	Georgia	-	-	72	78	10	14	24	26
49	46	45	47	49	46	-	-	North Carolina	-	-	37	75	3	6	12	24
47	47	41	41	46	47	-	-	New Jersey	-	-	46	60	9	13	18	23
48	47	35	39	48	47	-	-	New York	-	-	45	60	16	16	17	23
46	49	42	45	46	49	-	-	Delaware	-	-	50	43	7	10	18	16
50	50	47	48	—	—	-	-	South Carolina	-	-	—	—	—	1	—	—

TABLE XXI.

AUSTRALASIA.—DECREES OF DIVORCE.

——	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.	1909.
New South Wales	29	41	56	55	66	102	305	311	299	233	245	244	230	216	252	245	206	216	176	175	223	195	275
Victoria -	18	28	22	40	99	91	85	81	85	106	117	87	105	93	83	109	101	140	136	123	134	151	138
Queensland -	—	6	11	8	5	6	5	6	4	3	10	7	10	12	14	6	8	13	5	14	12	11	16
South Australia -	3	2	6	2	5	9	8	5	5	6	3	7	11	7	6	2	10	4	6	1	11	8	12
Western Australia	—	1	1	3	2	1	1	1	2	1	4	3	3	16	12	8	10	16	11	18	16	19	13
Tasmania -	—	4	3	2	3	3	6	5	3	3	4	2	4	4	11	3	3	2	2	5	—	7	12
New Zealand -	16	32	17	21	20	18	25	20	18	36	33	31	46	85	101	90	124	99	114	125	147	171	163

TABLE XXII.

AUSTRALASIA.—DIVORCES PER 100,000 OF POPULATION.

——	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.
New South Wales	3	4	5	5	6	9	25	25	24	18	19	18	17	16	18	17	14	15	11	11
Victoria	2	3	2	4	9	8	7	7	7	9	10	7	9	8	7	9	8	12	11	10
Queensland	—	2	3	2	1	1	1	1	1	1	2	1	2	2	3	1	2	2	1	2
South Australia	1	1	2	1	2	3	2	1	1	2	1	2	3	2	2	1	3	1	2	—
Western Australia	—	2	2	6	4	2	2	1	2	1	2	2	2	9	6	4	4	7	4	7
Tasmania	—	3	2	1	2	2	4	3	2	2	2	1	2	2	6	2	2	1	1	—
New Zealand	3	5	3	3	3	3	4	3	3	5	5	4	6	11	13	11	16	13	14	17

TABLE XXIII.

AUSTRALASIA.—JUDICIAL SEPARATIONS.

——	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.	1909.
New South Wales	1	2	4	4	7	11	9	14	11	8	13	17	17	14	20	21	14	8	15	10	14	15	12
Victoria	5	1	3	—	--	1	7	2	—	2	—	—	2	—	—	—	—	1	1	2	—	1	1
Queensland	1	—	—	2	1	—	2	—	—	2	1	—	1	1	—	—	1	1	1	3	1	2	—
South Australia	—	—	—	—	—	—	1	1	—	1	—	1	—	1	—	—	—	—	—	1	—	—	1
Western Australia	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	—	1	—	1	—	—	—	1
Tasmania	—	—	1	—	—	1	—	—	1	—	1	—	—	—	—	—	—	—	—	—	—	—	1
New Zealand	1	—	1	3	3	1	1	4	5	2	1	2	16	3	1	—	3	2	—	1	1	3	—

TABLE XXIV.

CANADA.—DECREES OF DIVORCE.

——	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.	1909.
Ontario	2	2	3	2	4	1	3	5	3	—	1	2	2	2	2	2	2	5	2	10	3	8	8
Quebec	3	1	1	—	—	1	4	1	—	—	—	1	1	1	—	—	1	1	3	3	1	—	4
N.W. Territories	—	—	—	—	—	1	—	—	—	—	—	—	1	1	—	—	1	—	2	1	—	—	2
Manitoba	—	—	—	—	—	1	—	—	—	—	—	—	—	1	—	—	2	—	2	—	1	—	2
Nova Scotia	1	3	3	4	3	3	5	1	5	6	2	2	5	1	10	9	8	6	6	5	7	4	7
New Brunswick	3	1	6	3	—	5	2	—	5	1	—	5	3	1	—	1	4	2	2	1	3	5	6
British Columbia	1	2	2	3	3	3	1	2	—	3	3	6	2	4	7	3	4	5	18	17	9	12	22
Prince Edward's Island	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

APPENDIX IV.

BILLS OF COSTS IN WORKMEN'S COMPENSATION CASES SUPPLIED BY MR. GOUGH AS REQUESTED IN QUESTION 3376.

No. 1.

Applicant's Costs ordered to be taxed on Scale "A."

1909.		£ s. d.	£ s. d.
	Instructions to sue		0 3 4
	Letter before action		0 3 6
	Preparing particulars of claim		0 6 0
	Attending to enter		0 3 4
	Notice to produce and copy		0 3 0
	Examining and taking minutes of evidence—applicant and two witnesses		0 6 0
Sept. 10.	Attending court, conducting case when judgment given for 3*l.* and costs ordered to be taxed on scale "A"		0 15 0
	Drawing bill of costs and copy		0 1 0
	Attending for appointment to tax		0 2 0
	Attending taxation		0 3 4
	Witnesses:		
£ s. d.	*Miss Gertrude May Randall*—		
0 4 0	Applicant, attendance and mileage	0 7 6	
	Dr. Jamison, Tottenham Hospital	1 1 0	
	Mileage	0 2 0	
0 4 6	*Mr. Blake*, High Cross Road, Tottenham, assistant	0 7 6	
	Mileage	0 1 0	
0 8 6		1 19 0	2 6 6
			1 19 0
			4 5 6
	Taxed off		0 8 6
			3 17 0
	Taxing fee		0 10 0
			4 7 0

No. 2.

Costs of Applicant under Award. Scale "B."

1909.		£ s. d.
Aug. 20.	Letter before action	0 6 6
Sept. 17.	Instructions to apply for an arbitrator	0 6 8
	Preparing form application and particulars	0 7 0
	Attending filing same	0 6 8
	Notice to produce	0 4 0
	The like to admit	0 4 0
	Service	0 1 6
	Perusing respondents' notice to produce	0 5 0
£ s. d.	The like to admit	0 5 0
0 6 8	Attending inspecting respondents' documents	0 6 8
0 6 8	Attending respondents—inspecting documents	0 6 8
0 1 8	Perusing answers	0 5 0
0 1 8	Perusing amended answers	0 5 0
	Minutes of evidence—one witness	0 3 4
	Copy documents, folios 3	0 1 0
Oct. 25.	Attending at the court—conducting case without counsel	1 1 0
Nov. 22.	Attending to hear deferred judgment	0 6 8
0 3 4	Drawing award	0 3 4
0 3 4	Attending lodging	0 3 4
	Drawing bill of costs, folios 4	0 2 8
	Copy	0 1 4
0 3 4	Attending obtaining appointment to tax	0 6 8
	Attending taxation	0 6 8
	Letters	0 5 0
1 6 8		6 7 8
	Taxing fee	0 10 0
		6 17 8
	Taxed off	1 6 8
		5 11 0

No. 3.

Applicant's Costs to be taxed under Scale "B."

1907.		£ s. d.	£ s. d.
Feb. 5.	Letter before action		0 3 6
	Instructions to sue		0 6 8
	Preparing particulars of claim and copies		0 12 0
	Fair copy particulars for use of judge		0 2 0
£ s. d.	Attending issuing arbitration		0 6 8
0 3 4	Attending respondents' Insurance Co. on the telephone on their requesting examination of applicant		0 3 4
	Attending applicant thereon and advising him to submit himself for examination again		0 6 8
0 3 6	Attending respondents' Insurance Co. and arranging an appointment for applicant to call on their doctor. Writing applicant instructing		
June 1.	him to attend appointment		0 3 6
0 3 4	Perusing respondents' answer herein		0 6 8
	Attending applicant thereon		0 6 8
0 6 8	Attending him and arranging for him to attend at Dr. Brown's surgery to be examined		0 6 8
1 1 0	Paid Dr. Brown's fee for examination and report	3 3 0	
June 3.	Attending issuing subpœna for attendance of Dr. Borland		0 3 0
0 6 8	Attending to serve him therewith when we were informed that he was away in Scotland and would not be returning until the middle of June		0 6 8
0 3 4	Attending respondents' solicitors on the telephone and requesting them to consent to an adjournment of the case, which they agreed to do		0 3 4
0 3 4	Attending them with consent on their signing same		0 3 4
0 6 8	Attending at the office of the court and filing consent		0 6 8
	Instructions to counsel to advise on evidence		0 3 4
	Paid his fee and clerk	1 3 6	
0 4 0	Drawing fair copy notice amending applicant's particulars herein		0 4 0
0 6 8	Attending filing same at the court		0 6 8
0 1 0	Fair copy for respondents' solicitors		0 1 0
0 2 6	Attending serving them therewith		0 2 6
0 5 0	Attending Mr. Odger, senr., arranging for his attendance at the court without a subpœna		0 5 0
0 5 0	The like attendance on Dr. Brown		0 5 0
	Service of subpœna on Dr. Borland		0 2 6
	Instructions for brief		1 11 6
0 5 0	Drawing same, folios 35		1 15 0
0 1 8	Fair copy same for Mr. P. T. Blackwell, folios 35		0 11 8
	Fair copy following documents to accompany brief		
	Particulars of claim		0 2 0
	Notice amending particulars		0 1 0
	Respondents' answer, folios 4		0 1 4
	Correspondence, folios 10		0 3 4
	Report of Dr. Brown, folios 3		0 1 0
0 3 4	Attending counsel with brief		0 6 8
	Paid his fee and clerk	3 5 6	
	Attending arranging conference with counsel and subsequently attending thereon		0 6 8
	Paid his fee and clerk	1 6 0	
July 2.	Respondents' solicitors having requested medical examination of applicant. Writing applicant to attend court at 9.45 for this purpose		0 3 6
0 2 6	Writing Dr. Borland to attend court at 9.45 so that he might attend examination		0 3 6
July 3.	Attending respondents' solicitors as to examination and attendance on applicant thereon and subsequently attending on examination of applicant by Dr. Ettles		0 6 8
	Attending respondents' solicitors again on their requesting examination by Dr. Gibbons and arranging with Dr. Borland for him to attend and attending applicant, instructing and advising him as to another examination		0 6 8
1 1 0	Paid Dr. Borland's fee for consultation and examination with Drs. Gibbons and Ettles	1 1 0	
	Attending court with counsel when, after hearing the evidence, the judge made an award in favour of the applicant for 6*s.* 3*d.* per week from 1st January to 1st July, costs on "B" scale, qualifying fee for Dr. Brown, and advice on evidence		0 15 0
	Paid witnesses:—		
	Applicant	0 5 0	
	Travelling expenses from Leyton	0 1 0	
	Mr. W. Odger, traveller	0 10 0	
	Travelling expenses from Leyton	0 1 0	
	Dr. Borland	1 1 0	
	Travelling expenses from Walthamstow	0 1 0	
	Dr. Brown	2 2 0	
	Travelling expenses from Goswell Road, E.C.	0 2 6	
	Drawing these costs and copy folios 14		0 9 4
	Fair copy for respondents' solicitors, folios 14		0 4 8
	Attending for and obtaining appointment to tax		0 3 4

1907. July 3.					
£ s. d.		£ s. d.	£ s. d.		
	Notice thereof			0 1 6	
0 1 0	Copy and service on respondents' solicitors			0 2 6	
	Attending taxation of costs			0 6 8	
	Paid taxing fee	0 10 0			
	Letters, &c.			0 5 0	
5 16 6		14 12 6		14 5 10	
	Disbursements	- -		14 12 6	
				28 18 4	
	Taxed off	- -		5 16 6	
	Allowed at	- -		23 1 10	

APPENDIX V.

Translation of Norwegian Divorce Law supplied by Lord Salvesen.

Law with regard to the Dissolution of Marriage.

We, Haakon, King of Norway, make known that there has been laid before Us a resolution of the Storting, duly assembled, dated 17th August 1909, in these terms :—

1. When both spouses are agreed to suspend the conjugal relations, a grant to this effect may be communicated to them, on their application, by the duly constituted authority. Before such grant is made the Commission of Conciliation, or, if both parties are agreed, the clergyman of the congregation to which they belong or the Ruling Elder (?) must have tried to effect a reconciliation between them on their personal attendance. If the spouses are residing at different places, the proceedings may take place for each of them separately. For sponses who do not reside in this Kingdom conciliation proceedings are not necessary.

2. The King may, on application of one of the spouses, make a grant authorising the suspension of the conjugal relations where the other spouse has continuously or repeatedly neglected his duty of maintenance, or has been guilty of gross or continuous violation of the duties arising from marriage, or has become addicted to the habitual misuse of alcohol or other means of intoxication, or lives a criminal life, or has repeatedly received a sentence which has involved loss of the rights of citizenship, or when there has arisen between the spouses such want of agreement or harmony as, that having regard both to the spouses as well as to the children, where such exist, it cannot reasonably be demanded that the conjugal relations shall continue.

3. A marriage may, on the application of one of the spouses, be dissolved when the other spouse, at the time when the marriage was contracted, without the knowledge of the other, has—

(*a*) Suffered from a physical defect which made him or her unsuited for marriage; or

(*b*) Suffered from epilepsy or leprosy, or a venereal disease in an infectious form; or

(*c*) Suffered from, or had suffered from insanity; or

(*d*) Had been made pregnant by some other than the husband.

The application must be made within six months after the spouse has obtained knowledge of the circumstance; and, in every case, not later than five years after the date of the marriage. Dissolution on the grounds mentioned under (*a*) and (*b*) cannot, however, be demanded after the defect has been removed, or the illness cured.

4. The marriage may, on the application of one of the sponses, be dissolved when the other spouse, during the marriage, has been guilty of—

(*a*) Such crimes as are dealt with in the General Criminal Code, section 155, subsection (1), 191 to 199, 202 to 209, 213 to 220; or

(*b*) Such crimes as are dealt with in the Criminal Code, sections 216, 217, and 223 to 225, if the crime has been committed with indecent intent; or

(*c*) A crime involving bodily injury (Criminal Law, section 229) of the other spouse, or of any other deliberate crime by which the other spouse suffers injury in body or in health; or

(*d*) Cruelty to the children, or in their presence such conduct as is dealt with in section 380 of the Criminal Code.

Provided that no spouse who has willingly assisted in or has approved of the criminal act can apply for the dissolution of the marriage on that ground.

The application must be made within six months after the spouse has obtained knowledge of the criminal act, and, at latest, within five years after it has taken place. If the criminal conduct leads to conviction, the application may be made even later than this, so long as it is within three months after the spouse has been informed of the sentence, and within one year after it has been pronounced.

5. A marriage may be dissolved on the application of one of the spouses, when the other spouse is sentenced to loss of liberty for three years or upwards, or has been repeatedly convicted under section 65 of the Criminal Law, or has been convicted repeatedly under sections 4, 5, 18, and 19 of the law with regard to vagrancy, mendicancy, and drunkenness, of 31st May 1900, in cases where the sentence authorises imprisonment with hard labour, or in a home for inebriates. Provided that the marriage cannot be dissolved at the instance of a spouse who, of his own free will, assisted in or has approved of the criminal conduct.

The application must be made within one year after the spouse has become aware of the sentence; and, at latest, within three years after the sentence has been pronounced.

6. A marriage may, on the application of one spouse, be dissolved when the other spouse, during two years, against the wishes of the first, has obstinately withdrawn from the conjugal life, and this has not later been renewed.

7. A marriage may, on the application of the spouses, be dissolved when the other spouse, according to the concurring declaration of two experts, suffer from insanity, which has lasted for at least three years, and which there is no reasonable prospect of curing.

As experts, medical men must be selected who are competent to serve as medical legal experts in questions relating to lunacy.

8. A marriage may, on the application of one of the spouses, be dissolved when they have lived separate for at least two years after a grant has been made either by the constituted authority or by the King, and the conjugal relations have not later been renewed.

Provided that the marriage may be dissolved after one year's such separation, if it is demanded by both spouses.

A marriage may, on the application of one of the spouses, be dissolved when the other, without such grant as above named, has lived separate for at least three years, and has not later renewed conjugal relations.

9. Dissolution of the marriage, in terms of sections 7 and 8, takes place by authority of the King. In other cases the application of a spouse for the dissolution of the marriage, under the provisions of this law, must be made in an action directed against the other spouse.

10. The rules laid down in the Criminal Procedure law of 1st July 1887, apply to applications for the dissolution of the marriage so far as relating to cases of crime; though an action for the dissolution of a marriage under the foregoing provisions may, if the defender is not domiciled in the Kingdom, be brought in the court of his last domicile here, or in the court of the pursuer's domicile.

11. In ordinary actions for the dissolution of marriage, the court will attempt to reconcile the parties. The court must, *ex propria motu*, see that the case has been fully proved, and can, with this object, put questions to the parties and require further evidence. The court is not bound by the parties' pleas or admissions. The court will be held with closed doors.

Both spouses are required to attend while the trial is being conducted; and at other times that the court may think necessary if they are living within the jurisdiction; if outside the jurisdiction, they must be cited to attend at the court of that place where they have their domicile or may be living for the time being.

If the defender does not attend, and there is reason to believe that he has not timeously obtained knowledge of the citation, or on lawful grounds has been prevented from personally attending, the court, if it does not on this ground postpone the trial, must appoint a duly qualified solicitor to act for the defender. The proceedings ought to be adjourned if it appears that the defect may be remedied or the hindrance removed in the course of a short time.

12. The judgment, by which a marriage is dissolved, takes effect only from the time when it becomes final.

When a marriage is dissolved by a judgment or grant, the wife must not enter into another marriage until 10 months have elapsed, in which she has lived completely separated from her husband. This matter, as to the time which must elapse before the wife can enter into a new marriage, ought to be expressed in the judgment or the grant.

13. On the dissolution of the marriage, as well as when it is terminated by grant, the *communio bonorum* ceases.

The common property ought, as a rule, to be divided equally between them.

Provided that in those cases which are dealt with under section 3, the spouse, on whose application the marriage has been dissolved, may demand that the common goods shall be divided in such a way, that each of the spouses receives what he or she has brought into communion at the date of the marriage, or has succeeded to during its continuance. If the property is not sufficient for this purpose, each of the spouses must bear a proportionate amount of loss. The regulations and laws, with regard to the division of the common property between spouses, of date, 29th June, 1888, must in every case be applied.

A precontract entered into, before a grant for the dissolution of the marriage has been made, with regard to the division of the property must, in order to become binding, be proved to the duly constituted authority.

14. In an action for the suspension of the marriage relations, the husband may be compelled to make a contribution to the wife's maintenance so long as the marriage lasts. A contract entered into before such action, with regard to such maintenance, is only binding so long as the marriage lasts. When a marriage is dissolved by grant or judgment, the husband may be compelled to make a contribution to his wife's maintenance, so long as she does not enter into a new marriage; provided that such obligation shall not be granted when the marriage is dissolved under the provisions of section 3, on the application of the husband; nor where the desertion, wholly or mainly, is attributable to misconduct on the part of the wife. In such cases the husband shall not be required to maintain her, unless on special grounds.

The contribution for maintenance shall be fixed and enforced in accordance with the rules which the law lays down with regard to the maintenance of wife and legitimate children. In fixing the amount, regard shall be had to the husband's means; and shall be made on the footing that, as far as possible, the wife is secured in an adequate maintenance—having in view the income which she herself has or may be presumed to earn for herself.

In a grant for suspension of conjugal relations, and in a grant or judgment for dissolution of marriage, the wife may, in exceptional cases, be compelled to make a contribution to the husband's maintenance when the latter is without means, and on account of illness or the like, must be regarded as unable to earn enough for his own maintenance, while the wife, owing to her having separate means, or in other ways, has secured an income which may be considered as more than sufficient for her own maintenance. Such a contribution must, in no case, be required when the marriage is dissolved on the wife's application, under the provisions of section 3; or where the dissolution of the marriage or the suspension of conjugal relations is due to fault on the part of the man. With regard to the mode of fixing and enforcing the contribution, and the duration of the liability to contribute the same rules apply as with regard to the husband's contribution to the wife's maintenance.

15. When it has been determined, in accordance with the rules with regard to the contribution for maintaining a wife and legitimate children, which of the spouses is to have the custody of the children after the conjugal relations have been suspended, or the marriage dissolved, regard must, in the first instance, be taken to the welfare of the children. Thus, they ought, especially when they are young, as a rule to follow the mother unless she be regarded as unfit to look after their upbringing. In addition, regard ought to be had to the wishes of the parents.

The parents are bound to contribute to the children's maintenance and upbringing in proportion to their means. The parent who does not fulfil his or her proportionate part of the burden for the maintenance or upbringing of a child of which he or she has the custody may be required to provide a yearly contribution for this or the other children. The contribution is fixed and enforced in accordance with the before-mentioned rules.

An agreement between the parents, with regard to the division of the children, or for the provision of maintenance, shall not prevent the duly constituted authority making other arrangements on the demand of either of the parents.

The above regulations make no change in the present rules, with regard to the obligation of parents to maintain their children, in case of necessity, in accordance with the provisions of the poor law.

16. With regard to the right of the one spouse to obtain a marriage dissolved by the judgment of the court when the other has disappeared, the provisions in the law of 12th October 1885, with regard to persons who have disappeared or are absent, shall continue to apply Provided that, at the trial of the action, the regulations of the present law—section 11—ought to be applied, so far as practicable

17. This law takes effect from 1st January next year, so that its regulations apply to the conduct and decision of applications for suspension of the conjugal relations, or for dissolutions of marriage, which are made after that date, notwithstanding that the grounds of action, wholly or partly, have arisen before the law came into force. Provided that dissolution of marriage, in terms of section 4, based on a crime committed earlier, can only take place if the act or the sentence would have given right to the dissolution of the marriage under the law as it formerly stood. In applying section 8, grants of separation *a mensâ et*

thoro by the magistrate in Christiania, in accordance with the Instruction of 14th September 1798, section 6 (*d*), are to be construed as equivalent to those of a duly constituted authority.

With regard to the results flowing from the suspensions of the conjugal relations, or dissolution of the marriage with regard to the spouse himself, obligation to maintain, and the custody and maintenance of the children, the regulation contained in this law shall come into effect if the suspension or dissolution takes place after the law has come into force.

The right to enter into a new marriage, for persons whose earlier marriage is dissolved by judgment or grant, must be determined according to the regulations contained in this law, when these have come into force, even if the dissolution has taken place before that date.

18. From the date when this law comes into force the following statutes are repealed, so far as they are still valid. (Here are enumerated a list of statutes and regulations.)

For We have adopted and confirm, like as We hereby adopt and confirm this resolution as law, under Our own hand and the seal of the Kingdom.

Given at the Palace at Christiania the 20th August 1909.

HAAKON.

TRANSLATION OF EXTRACTS FROM LETTER FROM HÖIESTERETSASSESSOR BULL, CHRISTIANIA.

The Law of 28th August 1909 is exhaustive in its enumeration of the grounds of divorce. Accordingly marriage can only be dissolved by Royal Grant (section 9) in the cases which are mentioned in sections 7 and 8. In all other cases the dissolution can only be effected by judicial decree, either in conjunction with criminal proceedings (where these relate to crimes which give right to the dissolution of the marriage), or in separate civil proceedings. This latter method (a civil action) may also be selected in the case of a crime which may be the foundation of divorce, and in respect of which criminal proceedings are being or have been taken.

The grounds upon which marriage can be dissolved by a judicial decree may be grouped as follows:—

I. Where one of the spouses has been guilty of (*a*) adultery (Criminal Code, section 209); (*b*) a serious offence against decency, such as rape and the like, immoral conduct with a child below 16 years, or with one's own ward or the like, incest, unnatural offences, &c. (*see* the Criminal Code, sections 191–199, 202–208, and 213); (*c*) bigamy (section 220); (*d*) the contracting and transmitting, or exposing any others to an infectious sexual disease which has been contracted in consequence of immoral conduct (section 155, first paragraph); (*e*) the following crimes, when they are committed for immoral reasons; abduction of children and minors from the care of their parents or guardians, &c. (*see* sections 216 and 217 and 223–225); (*f*) bodily injury, but not blows or the like, which do not cause any serious injury to the person of the other spouse (*see* Law of 1909; 4 (*c*)); (*g*) cruelty to children, or exposing them to conditions which are clearly dangerous to their morals (*see* 1909 (4) (*d*), and Criminal Code, section 380).

In all the cases under I. it is not necessary that any penal sentence should have been pronounced. It is sufficient if any of the grounds of divorce enumerated is established.

II. When the one spouse has been sentenced (*see* Law 1909, section 5)—(*a*) for any kind of crime which results in imprisonment for three years or more; (*b*) to an indefinite punishment under the provisions of the Criminal Code, section 65, which applies to persons who are specially dangerous to the community or to some individual; (*c*) repeated acts of vagrancy or drunkenness, where the sentence authorises the convicted person to be imprisoned with hard labour, or to be confined in an inebriate home.

III. Where the one spouse, at the time the marriage was entered into, suffered from any such defect as is enumerated in the Act of 1909, section 3 (*a*) to (*d*)

The law makes no exception in the case of both spouses having been unfaithful towards each other. In such cases each of the spouses has a right to have the marriage dissolved, even if the other does not consent. (On the other hand, it will be seen from the Law of 1909 that a spouse who has connived at any of the offences enumerated in I. and II. cannot demand a dissolution of the marriage on such grounds.)

APPENDIX VI.—Returns in response to a Circular despatched to all Clerks to

Borough or Division.	1. Number of Applications made under Summary Jurisdiction (Married Women) Act, 1895, s. 5.			1. Under Licensing Act, 1902, s. 5.			2. Number of Orders made thereon. For Maintenance only.			2. For Maintenance and Separation combined.			3. Whether it has been the practice to grant Separation Orders as a matter of course, along with Maintenance Orders, or only grant the former where the safety of the Wife requires such protection?
	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	
Liverpool	651	646	683	57	70	72	260	301	280	24	20	23	Was practice to make separation orders as a matter of course with maintenance orders, until the decision in Harriman *v.* Harriman. Since then in almost all the desertion cases, maintenance orders have been made without separation orders, but on other grounds separation orders granted as a matter of course.
			1907.	1908.	1909.								
Cockermouth	—	—	4	1	5	—	—	—	1	—	—	2	Yes. As a matter of course when applied for.
Bradford-on-Avon P.S.D.	2	3	1	—	—	—	—	—	—	1	2	1	Separation orders, when made, have been combined with maintenance.
Freebridge Lynn P.S.D.	1	—	2	—	—	—	1	—	2	—	—	—	——
			1907.	1908.	1909.								
Dursley and Whitminster P.S.D.	—	—	2	3	1	—	—	1	1	1	2	—	Only where safety of wife requires protection or there is some special reason.
			1907.	1908.	1909.								
Warrington	—	—	60	38	42	—	—	—	1	24	14	12	Yes. Unless on application to the contrary.
P.S.D.'s of Mold, Hope, Hawarden, and Northop.	12	14	3	—	—	—	—	—	—	7	7	1	Separation orders granted as a matter of course.
			1907.	1908.	1909.								
Berkeley P.S.D.	—	—	—	—	1	—	—	—	1	—	—	—	——
Bury	20	18	23	—	—	—	—	—	5	20	18	18	Up to recently practice to grant separation orders as a matter of course.
Hereford P.S.D.	1	2	1	—	—	—	—	1	—	1	1	—	Been the practice to grant separation orders with maintenance orders until the decision in *re* Harriman.
Grantham	7	4	1	—	—	—	—	—	1	2	3	—	Separations in all cases were granted, except the one in 1909.
Dacorum P.S.D. of Hertford.	5	2	3	—	—	—	—	—	—	3	3	—	It has been the practice to grant separation orders with maintenance orders.
			1907.	1908.	1909.								
Chichester	—	—	1	4	2	—	1	—	—	—	2	1	Only where the safety of the wife requires it.
Folkestone	4	—	—	—	—	—	—	—	—	3	—	—	It has been the practice to grant separation orders as a matter of course, along with maintenance orders.

JUSTICES THROUGHOUT ENGLAND AND WALES REQUESTING REPLIES TO THE FOLLOWING QUESTIONS :—

4.	5.					6.		7.	8.
Whether it is the practice to order the Maintenance Allowance to be paid through the Court or through the Police?	Proportion of Orders made on the grounds following, viz.:—					Proportion of Cases in which Parties resume Cohabitation.		Has it been proved or is there reason to suppose that the Grant of Orders of Separation leads to Immorality?	Whether in favour of the present jurisdiction of the Justices being transferred to the County Court?
	Desertion.	Cruelty.	Neglect to Maintain.	Habitual Drunkenness.	Aggravated Assault.	Before the Hearing.	After Orders have been made by the Court.		
Through the court.	360	391	58	67	32	30 per cent.	50 per cent.	No	No.
	(The above figures are for the years 1907, 1908, and 1909.)								
No; direct	—	1	1	—	1	6 out of 10	1 out of 3	No	Yes.
Through the police or a mutual friend of both parties.	1	(3)		—	—	—	—	No	No.
Direct to wife	3	—	—	—	—	—	—	—	No.
To wife or person nominated by wife.	2	—	1	—	2	—	2 out of 5	No evidence either way.	No.
Neither, but sometimes through the police court missionary.	19	11	4	12	5	Cannot say		No	No.
	(These figures are for the years 1907, 1908, and 1909.)								
Direct	6	9	—	—	—	14	5	Aware of no specific instances.	No.
Direct	—	1	—	—	—	—	—	—	No reason for depriving justices of jurisdiction, but county courts should have jurisdiction in respect of divorce and concurrent jurisdiction in respect of separation orders.
Through the court.	26	24	7	4	—	5 per cent.	50 per cent.	In some cases, yes.	No.
No; direct	1	2	—	—	—	Have no knowledge		Have no knowledge.	Of opinion that magistrates more competent to deal with these cases than county court judges.
Direct to wife	2	3	1	—	—	Have no knowledge		Have no knowledge.	Of opinion that power of granting divorce should *not* be given to justices. If divorce laws extended locally, should be vested in county courts or assize.
Direct to wife	10 per cent.	60 per cent.	30 per cent.	—	—	Unable to say		No	No.
No	50 per cent.	50 per cent.	—	—	—	25 per cent.	Not known	No	No. Justices are better judges of humanity and acquainted with real needs of the parties.
Direct	—	1	2	—	—	—	1 out of 3	"Yes," in the case of the man, but "No" in the case of the woman The latter is aware that if she commits adultery subsequent to the date of the order the same would be discharged on the application of the husband.	Yes.

Returns in response to a Circular despatched to all Clerks to Justices

Borough or Division.	1. Number of Applications made under Summary Jurisdiction (Married Women) Act, 1895, s. 5.			1. Under Licensing Act, 1902, s. 5.			2. Number of Orders made thereon. For Maintenance only.			2. For Maintenance and Separation combined.			3. Whether it has been the practice to grant Separation Orders as a matter of course, along with Maintenance Orders, or only grant the former where the safety of the Wife requires such protection?
	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909	
Kesteven P.S D. of Lincoln.	—	2	1	—	—	—	—	—	—	—	1	—	Practice to grant separation orders along with maintenance orders.
			1907.	1908.	1909.				1907.	1908.	1909.		
Stroud P.S.D. -	—	—	4	2	2	—	—	—	1	1	1	—	——
Lancaster - -	10	8	9	1	—	—	—	—	2	4	4	6	Since 1909 it has been the practice in cases of desertion to grant only maintenance orders, except in cases where wife requires protection.
			1907.	1908.	1909.								
Leicester P.S.D. -	—	—	6	6	6	—	—	—	—	5	3	2	Usual practice to grant separation orders when an order has been made.
			1907.	1908.	1909.								
Matlock P.S.D. -	—	—	(	10	)	—	—	—	—	(	4	)	Yes - - - - - - -
			1907.	1908.	1909.								
Salisbury - -	—	—	1	6	—	—	—	—	—	1	4	—	In all cases separation orders were asked for and granted.
Market Harboro' -	—	—	—	(3	)	—	—	—	—	(	3	)	Only where safety of wife requires it.
Oldham - -	114	124	74	—	—	—	—	—	—	112	112	73	Orders invariably made for maintenance and separation combined.
Bulmer P.S.D. of N.R. of Yorks.	—	—	—	—	—	—	—	—	—	—	—	—	——
			1907.	1908.	1909.								
Buxton - -	—	—	(	3	)	—	(	2	)	(	3	)	Separation orders granted only in special cases.
			1907.	1908.	1909.								
Sunderland - -	—	—	102	68	86	—	—	—	—	74	49	36	It has *not* been the practice to grant separation orders as a matter of course along with maintenance orders.
			1907.	1908.	1909.				1907.	1908.	1909.		
Bridpend - -	About		30	40	40	—	About		20	30	30	—	Usually orders for maintenance alone are made.
Nailsworth P.S.D. -	1	—	1	—	—	—	1 (separation only.)	—	1	—	—	—	Not as a matter of course—it depends upon the facts of the case.
			1907.	1908.	1909.								
Devizes P.S.D. -	—	—	—	2	1	—	—	—	—	—	1	1	——
Launceston - -	(	2	)	—	—	—	—	—	—	--	—	—	Separation orders not granted unless the safety of the wife requires it.
Braunton P.S.D. of Devon.	3	2	2	—	—	—	1 (1 separation only.)	—	1	1	1	1	Not as a matter of course—depends upon circumstances of the case.
			1907.	1908.	1909.								
Cumberland Ward P.S.D.	—	—	1	1	3	—	—	—	—	—	1	3	Yes, separation orders combined with maintenance.
Peterborough P.S.D. and Norman Cross P.S.D.	5	7	4	—	—	—	—	4	2	5	3	2	Not as a matter of course - -
Scilly Isles - -	1	—	2	—	—	—	—	—	—	1	—	1	Maintenance orders given with separation order unless unnecessary.
Samford P.S.D. of Suffolk.	—	—	1	—	—	—	—	—	—	—	—	1	——
Lawford's Gate P.S.D. of Gloucester.	16	6	8	—	1	—	—	—	—	12	4	6	Separation orders *not* granted as a matter of course.
			1907.	1908.	1909.				1907	1908.	1909.		
Southampton P.S.D.	—	—	12	19	14	—	—	—	6	9	4		Usual practice to grant separation orders along with maintenance orders as a matter of course.
Guiltcross and Shropham P.S.D.'s of Norfolk.	2	1	6	—	—	—	—	—	—	1	1	3	Separation orders only made where safety of wife requires it.
									1907.	1908.	1909.		
Birmingham - -	201	225	195	—	—	—	—	—	164	179	144	—	Since the decision in Harriman *v.* Harriman maintenance orders on the ground of desertion are only granted where the safety of the wife requires such protection.

throughout England and Wales requesting Replies to the following Questions—*cont.*

4.	5.					6.		7.	8.
Whether it is the practice to order the Maintenance Allowance to be paid through the Court or through the Police?	Proportion of Orders made on the grounds following, viz.:—					Proportion of Cases in which Parties resume Cohabitation.		Has it been proved or is there reason to suppose that the Grant of Orders of Separation leads to Immorality?	Whether in favour of the present jurisdiction of the Justices being transferred to the County Court?
	Desertion.	Cruelty.	Neglect to Maintain.	Habitual Drunkenness.	Aggravated Assault.	Before the Hearing.	After Orders have been made by the Court.		
Usual practice to order payment direct.	—	—	1	—	—	2	—	No	These proceedings being of a civil nature might well be transferred to the county court.
—	1	1	—	1	—	—	—	No	No.
No	7	5	—	—	2	Have no knowledge		No	No.
Direct	9	7	1	1	—	In a large proportion of cases the parties resume cohabitation.		Of opinion that there is a tendency to immorality caused by orders when parties do not come together again.	No.
No	—	4	—	—	—	5 out of 10	2 out of 4	No	Yes
Direct to wife	1	2	1	1	—	Have no knowledge.	Only know of 2 cases in which cohabitation was resumed.	No	No.
Usually through police.	1	1	—	—	1	—	2	No	No.
Direct	121	144	18	8	6	20 per cent.	50 per cent.	No	Yes.
—	—	—	—	—	—	—	—	—	Yes.
Direct	2	3	—	—	—	None	About half	—	—
No	19	14	2	—	1	One-third	Two-thirds	No	No.
	(These figures are for the year 1909.)								
Direct to wife	45 per cent.	45 per cent.	4 per cent.	4 per cent.	2 per cent.	40 per cent.	40 per cent.	Have no proof	No.
Direct	—	—	2	—	—	Have no knowledge		No	Yes.
—	—	1	—	1	—	—	1 out of the 2 cases.	—	Yes.
Through the court	—	—	—	—	—	—	—	Of opinion that granting separation orders leads to immorality.	No.
Direct	3	2	—	—	1	1 during last 3 years.	—	No	No.
Paid through applicants' solicitors.	3	—	1	—	—	Have no knowledge		Have no proof	No.
Direct	9	4	3	—	—	—	Only know of 2 cases.	No	No.
Through an officer of the court.	—	2	—	—	—	One-third	One-third	No	—
Direct to wife	—	—	—	—	—	—	—	No	No.
—	14	3	13	1	—	4	6 (about)	No	No.
Direct	—	—	—	—	—	—	—	—	—
Generally direct	—	2	2	—	1	4 out of 9	—	Have no proof	No.
Direct	70 per cent.	25 per cent.		5 per cent.		Cannot say	At least 15 per cent.	—	Present jurisdiction of the justices efficient. Not desirable that courts of summary jurisdiction should be empowered to grant a divorce.

Returns in response to a Circular despatched to all Clerks to Justices

Borough or Division.	1. Number of Applications made under Summary Jurisdiction (Married Women) Act, 1895, s. 5.			1. Under Licensing Act, 1902, s. 5.			2. Number of Orders made thereon. For Maintenance only.			2. For Maintenance and Separation combined.			3. Whether it has been the practice to grant Separation Orders as a matter of course, along with Maintenance Orders, or only grant the former where the safety of the Wife requires such protection?
	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	
Westbury P.S.D.	—	—	1907. (	1908. 4	1909.)	—	—	—	—	(	3	)	Separation orders only granted where safety of wife requires it.
Marlborough and Hungerford P.S.D.	1	1	1	—	1	—	—	—	—	—	1	—	Separation granted where safety of wife requires it.
Bingham P.S.D.	1	2	1	—	—	—	—	—	—	—	1	1	Since the decision in the case Harriman *v.* Harriman the attention of justices has been called to that case in dealing with applications.
Basingstoke	—	2	—	—	—	—	—	—	—	—	2	—	Has been the practice to grant separation orders as a matter of course. Intends in future to advise justices to grant them only where safety of wife requires it.
Chertsey P.S.D.	—	—	1907. 5	1908. 6	1909. 3	—	2	2	—	1	2	2	Separation orders only granted where safety of wife requires it.
Bilston	—	—	1907. 23	1908. 14	1909. 27	—	—	—	1907. 8	1908. 5	1909. 14	—	Separation orders granted as a matter of course along with maintenance orders.
Newport (Salop) P.S.D.	2	3	1	—	1	—	—	—	—	1	2	—	Separation orders always been granted.
Evesham	—	1	1	—	—	—	—	1	—	—	—	—	Separation orders only granted where safety of wife requires it.
Evesham P.S.D.	1	4	1	—	—	—	—	2	—	—	1	—	
Houghton-le-Spring P.S.D.	27	36	25	1	1	—	—	—	11	15	18	2	Separation orders recently granted only where the safety of the wife requires it.
Congleton P.S.D.	—	—	1907. 2	1908. 2	1909. 2	—	—	No orders made				—	Separation orders only granted where safety of wife requires it.
Croydon P.S.D.	4	6	3	—	—	—	—	—	1907. 4	1908. 6	1909. 2	—	Bench been recently advised to grant separation orders only where safety of wife requires it.
Kingston-on-Thames.	3	6	11	1	3	1	—	—	—	4	8	10	The woman almost invariably asks for and receives a separation order when she makes out her case. In suitable cases attention is called to the decision in Dodd *v.* Dodd.
Sheffield	—	—	1907. 289	1908. 312	1909. 255	—	—	1	96	144	174	67	Separation orders only granted where safety of wife requires it.
Halifax P.S.D.	9	14	13	—	—	—	2	3	3	—	—	3	Ditto
Kenilworth P.S.D.	2	1	1	—	—	—	2	1	1	—	—	—	Ditto
Leicester	83	75	78	5	2	1	31	13	32	38	36	19	Latterly, separation orders only granted when the safety of the wife requires it.
Retford	1	9	7	—	—	—	—	—	5	—	6	—	Had been the practice up to 1909 to grant separation orders as a matter of course along with maintenance orders.
Cerne (Dorset) P.S.D.	(		2		)		—	—	—	(	1	)	Separation orders only granted where safety of wife requires it.
South Aylesford P.S.D.	—	—	—	—	—	—	—	—	—	—	—	—	Bench exercise discretion
Wolsingham P.S.D.	(	5	)	(	1	)	(	1	)	—	—	—	Separation orders usually granted most of cases been on the ground of cruelty.
Blaenau Festiniog P.S.D.	—	—	1907. —	1908. —	1909. 2	—	—	—	—	—	—	2	Justices exercise discretion
Ludlow	—	—	1907. 2	1908. 3	1909. —	—	—	—	—	2	3	—	Separation orders granted with maintenance.
Spelthorne	—	—	1907. 10	1908. 9	1909. 8	—	—	—	—	7	9	6	Separation orders granted with maintenance orders as a matter of course.
Kirton and Skirbeck P.S.D. (Lincolnshire).	3	3	4	1	—	—	—	—	—	2	3	1	Separation orders granted as a matter of course with maintenance orders.
							(1 separation only; no allowance).						
Axminster P.S.D.	—	—	1907. 1	1908. 1	1909. 1	—	—	—	—	1	1	1	——
Edeyrnion P.S.D. of Merioneth.	—	—	1907. —	1908. 1	1909. —	—	—	—	—	—	1	—	Separation orders granted with maintenance orders.

throughout England and Wales requesting Replies to the following Questions—*cont.*

4.	5.					6.		7.	8.
Whether it is the practice to order the Maintenance Allowance to be paid through the Court or through the Police?	Proportion of Orders made on the grounds following, viz.:—					Proportion of Cases in which Parties resume Cohabitation.		Has it been proved or is there reason to suppose that the Grant of Orders of Separation leads to Immorality?	Whether in favour of the present jurisdiction of the Justices being transferred to the County Court?
	Desertion.	Cruelty.	Neglect to Maintain.	Habitual Drunkenness.	Aggravated Assault.	Before the Hearing.	After Orders have been made by the Court.		
—	—	3	—	—	—	None have resumed cohabitation.		No	No.
Direct	—	—	1	—	—	1	—	No	No.
Direct	—	2	—	—	—	2	—	—	—
Direct	—	—	—	—	2	Neither have resumed cohabitation.		No	No.
Direct	4	2	1	—	2	No knowledge		There is reason to suppose that separation orders between young people leads to immorality.	No.
No	15	10	1	—	—	21	Cannot say	No	No.
Usually direct, never through police.	1	1	1	—	—	3	—	No evidence	No.
No	—	1	—	—	—	—	—	No	No.
	1	1	1	—	—	No knowledge			
Direct	30	13	1	—	1	29	12	No	No.
Direct	1 (The six summonses were issued on above grounds.)	2	—	—	3	—	—	No	No.
—	6	2	1	—	3	—	—	—	Yes.
Generally direct, but through the court if desired.	10	5	4	5	1	50 per cent.	40 per cent.	No	No.
No	285	119 (Cruelty and neglect 42)	25	9	2	268	About 40 per cent.	Yes	No.
Neither	8	3	—	—	—	9	1	No	No.
No	Equally divided					—	—	No	No.
No	89	44	19	8	9	About 75	About 35	No	No.
No	3	6	2	—	—	(About 1 in 3)		No	No.
—	—	—	1	—	—	1	—	No	No.
Direct	Majority of orders made for cruelty, neglect, and desertion.					—	—	No	Yes.
Direct	—	1	—	—	—	5 out of 6	—	—	No.
Through the clerk	1	—	1	—	—	—	—	No	Yes.
—	(5)		—	—	—	—	—	No	No.
Direct	10	6	5	1	—	—	—	No	No.
Wishes of complainant usually complied with.	1	6	2	1	1	—	—	No	No.
Direct	—	3	—	—	—	—	—	No	No.
Police	—	—	—	1	—	—	After orders, if at all.	—	Yes.

Returns in response to a Circular despatched to all Clerks to Justices

Borough or Division.	1. Number of Applications made under Summary Jurisdiction (Married Women) Act, 1895, s. 5.			1. Under Licensing Act, 1902, s. 5.			2. Number of Orders made thereon. For Maintenance only.			2. For Maintenance and Separation combined.			3. Whether it has been the practice to grant Separation Orders as a matter of course, along with Maintenance Orders, or only grant the former where the safety of the Wife requires such protection?
	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	
Rugby P.S.D.	—	—	1	9	12	—	—	—	1	1	4	5	Separation orders only granted when asked for by wife.
Ilminster P.S.D.	—	—	—	2	1	—	—	—	1	—	2	—	Separation orders granted as a matter of course along with maintenance orders until last year.
Dewsbury P.S.D.	—	—	12	26	20	—	1	4	8	8	7	3	Separation orders granted as a matter of course in cases of persistent cruelty.
Henley-in-Arden P.S.D.	2	1	2	—	—	—	—	—	—	1	—	—	Separation orders granted as a matter of course with maintenance orders.
Langbaurgh East (N.R. of Yorkshire) P.S.D.	—	—	7	7	7	—	1	—	2	4	3	4	Separation orders only granted where safety of wife requires it.
Spalding	—	—	—	1	4	—	—	—	—	1	1	—	Each case taken on its merits
Bridgwater	5	10	8	—	—	—	2	4	1	—	2	1	Only where safety of wife requires protection.
Altrincham P.S.D.	—	—	17	19	13	—	—	—	1	10	11	6	Usually granted together
Pembroke Dock	4	1	3	—	—	—	—	—	—	2	1	1	Ditto
Lutterworth P.S.D.	—	—	(1)			—	—	—	—	(1)			Ditto
Wednesbury	—	—	9	11	11	—	—	—	—	5	5	8	Granted together
Eddisbury P.S.D.	5	3	4	1	—	—	—	—	1	2	1	3	Separation orders only granted where safety of wife requires it.
Saddleworth (N.R. of Yorkshire) P.S.D.	—	—	4	6	5	—	—	—	—	3	3	2	Granted together
Middleton P.S.D.	6	6	5	1	—	—	1 (separation only)	—	2	3	4	—	Since the decision in Harriman *v.* Harriman separation orders only granted where safety of wife requires it.
Wakefield	30	20	32	—	—	—	—	—	18	11	16	—	Ditto
Stoke-upon-Trent	11	16	8	—	—	2	2	8	9	7	4	—	Ditto
Howden P.S.D.	3	3	6	—	—	—	—	—	3	1	3	—	Separation orders only granted where safety of wife requires it.
Glossop	1	—	5	—	—	—	—	—	4	—	—	—	Yes, formerly, but not recently
Chapel-en-le-Frith P.S.D.	—	—	—	3	5	—	—	—	—	—	3	4	Separation orders, as a rule, made along with maintenance orders.
Newark	1	3	5	—	—	—	—	—	1	1	2	2	Since the observations in Dodd *v.* Dodd separation orders only granted when required.
Menai Bridge P.S.D.	5	6	4	—	—	—	1	2	—	—	3	2	Separation orders only granted when circumstances seem to call for same.
Durham	7	18	9	1	—	—	—	—	—	5	8	6	Separation orders granted with maintenance orders as a matter of course.
Jarrow	—	—	56	51	34	—	—	—	—	23	17	14	Ditto
Tynemouth	44	47	44	—	—	—	2	12	7	23	21	12	Separation orders only made where safety of wife requires protection.
Rochester P.S.D.	9	7	13	—	—	1	—	—	3	8	3	8	Until about June, "Yes," but no separation orders are now made in desertion cases.
Bromley, Kent	—	—	13	10	14	—	—	—	6	6	6	—	Separation orders granted as a matter of course with maintenance orders.
Lower Agbrigg P.S.D. of W.R. of York.	28	28	39	1	—	—	4	6	5	10	11	11	Since the decision in Harriman *v.* Harriman separation orders only granted where safety of wife requires it.
Wigan P.S.D.	86	82	55	1	1	1	—	—	—	38	37	27	Separation orders granted as a matter of course with maintenance orders.
Conway	2	4	3	—	—	—	—	—	2	4	2	—	Separation orders granted where safety of wife requires protection.

throughout England and Wales requesting Replies to the following Questions—*cont.*

4.	5.					6.		7.	8.
Whether it is the practice to order the Maintenance Allowance to be paid through the Court or through the Police?	Proportion of Orders made on the grounds following, viz.:—					Proportion of Cases in which Parties resume Cohabitation.		Has it been proved or is there reason to suppose that the Grant of Orders of Separation leads to Immorality?	Whether in favour of the present jurisdiction of the Justices being transferred to the County Court?
	Desertion.	Cruelty.	Neglect to Maintain.	Habitual Drunkenness.	Aggravated Assault.	Before the Hearing.	After Orders have been made by the Court.		
Direct	About equal					About half		No	No.
Direct	1	—	—	—	2	—	1	No	No.
Direct	21	7	3	—	—	Cannot say		No	Yes.
No, neither	1	—	—	—	—	3	—	Yes	No.
Neither	5	8	1	—	—	7	—	No	Yes.
Neither	—	1	1	—	—	—	1	No	No.
Generally direct	3	4	3	—	—	9	6	No	No.
Direct	10	7	6	1	4	13	About one-third.	No	No.
Direct	1	3	—	—	—	4	2	No	No.
No, neither	1	—	—	—	—	—	1	No	No.
Direct	7	5	2	3	1	No		No	No.
Direct	1	3	2	—	1	6	—	No	No.
Direct	2	4	1	1	—	—	—	No	No.
Direct	5 in 10	4 in 10	—	1 in 10	—	5	—	—	No.
Direct	19	25	1	—	—	31	29	—	No.
No	18	13	2	2	2	Probably 1 in 6	—	No	No.
Direct	3	3	1	—	—	4	1	No	No.
No	3	—	1	—	—	—	—	—	No.
Direct	3	2	2	—	—	1	About 50 per cent.	No	No.
No	2	5	1	—	—	—	—	No	No.
—	One-third.	Two-thirds.	—	—	—	One-third	—	No	No.
Direct	8	10	—	1	—	—	—	No	No.
No	15	27	4	1	7	—	—	No	No.
No	41	24	6	—	6	—	—	No	No.
In most cases through the police, never through the court.	9	12	—	1	—	About 7 out of 30.	—	No proof	No.
Direct	4	12	1	1	—	12	—	No	No.
Direct	15	28	3	1	—	43 out of 96.	—	No	No.
Direct	43	45	12	2	1	110	—	No	No.
No	3	5	—	—	—	Small proportion.	No	No proof	No.

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Borough or Division.	1. Number of Applications made under Summary Jurisdiction (Married Women) Act, 1895, s. 5.			1. Under Licensing Act, 1902, s. 5.			2. Number of Orders made thereon. For Maintenance only.			2. For Maintenance and Separation combined.			3. Whether it has been the practice to grant Separation Orders as a matter of course, along with Maintenance Orders, or only grant the former where the safety of the Wife requires such protection?
	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	
Seaham Harbour P.S.D.	12	18	29	—	—	—	—	—	9	13	15	—	Separation orders granted as a matter of course with maintenance orders.
			1907.	1908.	1909.								
Ipswich - -	—	—	13	11	10	—	—	—	3	9	8	5	Separation orders only granted where safety of wife requires it.
			1907.	1908.	1909.								
West Castle Ward P.S.D., county of Northumberland.	—	—	51	27	30	—	—	—	—	18	14	12	Separation orders granted as a matter of course with maintenance orders.
			1907.	1908.	1909.								
Allerdale - above - Derwent P.S.D.	—	—	20	15	15	—	4	1	5	4	3	5	Separation orders only granted where safety of wife requires protection
Blackburn P.S.D. -	19	13	10	—	—	—	—	—	1	8	8	4	Ditto - - - - -
			1907.	1908.	1909.				1907.	1908.	1909.		
Worcester - -	—	—	13	13	12	—	—	—	13	10	8	—	Ditto - - - - -
			1907.	1908.	1909.								
Burnley - -	—	—	93	79	82	—	—	—	8	64	55	47	Since the decision in Harriman *v.* Harriman separation orders only granted where safety of wife requires protection.
			1907.	1908.	1909.								
Kidderminster -	—	—	5	7	8	—	—	—	—	4	5	6	Separation orders granted as a matter of course.
			1907.	1908.	1909.								
Kidderminster P.D.S.	—	—	1	2	2	—	—	—	—	—	2	1	Ditto - - - - -
			1907.	1908.	1909.								
Crewe - - -	—	—	27	19	19	—	5	6	3	3	4	7	Separation orders only granted where safety of wife requires protection.
			1907.	1908.	1909.								
Abergavenny -	—	—	6	2	6	—	—	—	—	2	—	1	Ditto - - - - -
Scarborough - -	39	30	26	2	1	2	5	4	8	7	11	7	Ditto - - - - -
			1907.	1908.	1909.								
Loughborough P.S.D.	—	—	10	10	6	—	—	—	—	9	8	5	Separation orders granted with maintenance orders as a matter of course.
			1907.	1908.	1909.								
Droxford P.S.D.	—	—	1	1	3	—	—	—	—	1	—	2	Ditto - - - - -
Ledbury P.S.D. -	—	4	2	—	—	—	—	1	—	—	3	2	Separation orders only granted where safety of wife requires it.
Louth - - -	—	—	2	—	—	—	—	—	2	—	—	—	Ditto - - - - -
			1907–8–9.							1907–8–9.			
Chatteris P.S.D. -	—	—	(5)			—	—	—	—	(1)			Separation orders granted as a matter of fact with maintenance orders.
Sunderland P.S.D.	24	24	21	1	—	—	—	—	—	15	9	12	Ditto - - - - -
			1907–8–9.							1907–8–9.			
Bromsgrove P.S.D.	—	—	(12)			—	—	—	—	(6)			Separation orders granted according to facts of each case.
			1907.	1908.	1909.								
Newport, Mon. -	—	—	10	10	9	—	—	—	—	9	9	9	Separation orders granted with maintenance orders as a matter of fact.
			1907-8-9.							1907-8-9.			
Alcester P.S.D. -	—	—	(3)			—	—	—	—	(3)			Separation orders granted according to facts of each case.
Boston - - -	9	2	9	—	1	—	—	—	3	3	2	2	Latterly, separation orders only granted where safety of wife requires protection.
Exeter - - - -	12	12	9	—	—	—	2	3	3	7	7	4	Ditto - - - - -
Orsett P.S.D., Essex	7	9	8	—	—	—	—	—	—	3	4	4	Separation orders granted as a matter of course in all cases.
Hyde - - -	35	30	25	3	1	3	—	—	5	26	23	10	Separation orders only granted where safety of wife requires protection.
			1907.	1908.	1909.								
Pontypool P.S.D. -	—	—	18	19	11	—	1	1	—	7	7	4	Separation orders granted with maintenance orders as a matter of course.
			1907.	1908.	1909.								
Sleaford P.S.D. -	—	—	5	1	5	—	—	—	—	3	—	4	Ditto - - - - -
			1907.	1908.	1909.								
Dorchester - -	—	—	1	1	1	—	—	—	—	1	—	1	—
			1907.	1908.	1909.								
Dorchester P.S.D. -	—	—	2	1	3	—	—	—	—	1	1	—	—

throughout England and Wales requesting Replies to the following Questions—*cont.*

4.	5.					6.		7.	8.
Whether it is the practice to order the Maintenance Allowance to be paid through the Court or through the Police?	Proportion of Orders made on the grounds following, viz.:—					Proportion of Cases in which Parties resume Cohabitation.		Has it been proved or is there reason to suppose that the Grant of Orders of Separation leads to Immorality?	Whether in favour of the present jurisdiction of the Justices being transferred to the County Court?
	Desertion.	Cruelty.	Neglect to Maintain.	Habitual Drunkenness.	Aggravated Assault.	Before the Hearing.	After Orders have been made by the Court.		
No	—	—	—	—	—	—	—	No	No.
Sometimes through the court, but never through police.	15	7	1	1	1	—	—	—	—
No	13	29	1	—	1	—	—	No	No.
Direct	13	3	1	—	5	Rather more than half.	—	No	No.
Direct	6	7	5	2	1	—	—	Of opinion, yes	No.
Never through police, but through court upon request.	16	9	1	4	1	—	—	No	No.
Direct	50 per cent.	33 per cent.	13 per cent.	2 per cent.	2 per cent.	About 25 per cent.	From 20 per cent. to 30 per cent.	Yes	No.
No	8	2	3	—	2	—	—	No	No.
No	1	—	—	—	2	—	—	No	No.
Direct	14	6	4	—	4	28 out of 63	—	No	No.
Direct	—	3	—	—	—	50 per cent.		No	No
Direct	13	14	14	—	1	—	70 per cent.	Not to any great extent.	No.
Direct	7	11	1	1	2	1	9	No	—
No	—	3	—	—	—	No		Cannot say	—
Direct	1	4	1	—	—	None		No	No.
Direct	2	—	—	—	—	1	—	No	No.
Through police	1	—	—	—	—	2	1	—	—
No	19	13	3	1	—	—	—	No	Yes.
Direct	4	1	1	—	—	4	4	No	No.
Direct	13	14	—	—	—	About 9 out of 10.	—	Yes	Yes.
Direct	—	3	—	—	—	—	2	No	No
Through police	10 per cent.	50 per cent.	10 per cent.	10 per cent.	20 per cent.	About 14 per cent.	100 per cent.	No	No
Generally direct	13	10	1	1	1	1	2	No	No.
Direct	5	1	—	—	5	About half	—	—	No.
Through the clerk.	36	44	9	7	1	14	—	—	No.
Direct	—	—	—	—	—	—	—	No	Yes.
Direct	1	3	—	2	1	1	1	No	—
Direct	1	—	—	—	1	—	1	—	No.
Direct	1	1	—	—	—	2	—	—	No.

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Borough or Division.	1. Number of Applications made under Summary Jurisdiction (Married Women) Act, 1895, s. 5.			1. Under Licensing Act, 1902, s. 5.			2. Number of Orders made thereon. For Maintenance only.			2. For Maintenance and Separation combined.			3. Whether it has been the practice to grant Separation Orders as a matter of course, along with Maintenance Orders, or only grant the former where the safety of the Wife requires such protection?
	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	
Redditch P.S.D.	6	13	5	1	—	—	—	—	—	5	13	3	Separation orders granted with maintenance orders as a matter of course.
			1907.	1908.	1909.								
Carnarvon	—	—	6	3	2	—	—	—	—	2	2	—	Ditto
Hereford	20	16	6	—	—	—	—	—	—	5	2	1	Separation orders only granted where safety of wife requires protection.
			1907–8 9.							1907–8–9.			
Tywardreath P.S.D of Cornwall.	—	—	(1)			—	—	—	—	(1)			Ditto
Bingley	(16)			(1)			(3)			(6)			Ditto
			1907–8–9.							1907–8–9.			
Rhyl P.S.D.	—	—	(13)			—	—	—	—	(5)			Separation orders granted as a matter of course with maintenance orders.
Leamington	3	7	6	2	2	—	—	—	2	5	9	3	Separation orders only granted where safety of wife requires protection.
									1 (separation only).				
Llanelly	26	22	20	—	—	—	4	3	6	8	4	5	Ditto
									1 (separation only).				
Forehoe P.S.D. of Norfolk.	—	2	3	—	—	—	—	1	1	—	—	—	Ditto
			1907.	1908.	1909.				1907.	1908.	1909.		
Roose-and-Dungleddy P.S.D.'s of Pembroke.	—	—	10	6	5	—	—	—	3	4	5	—	——
			1907.	1908.	1909.				1907.	1908.	1909.		
Carlisle	—	—	16	8	5	—	—	—	8	5	3	—	Separation orders generally
Allerdale-below-Derwent P.S.D.	1	5	2	—	—	—	—	—	—	1	2	1	Separation orders granted as a matter of course with maintenance orders.
Blofield and Walsham P.S.D.'s.	1	—	1	—	—	—	—	—	1	1	—	—	Only where safety of wife requires it.
Reading	10	16	19	—	—	—	1	2	8	7	11	8	Ditto
			1907.	1908.	1909.				1907.	1908.	1909.		
Ashton-under-Lyne	—	—	34	58	42	—	—	—	20	33	25	—	Ditto
			1907.	1908.	1909.				1907.	1908.	1909.		
Ashton-under-Lyne P.S.D.	—	—	24	41	30	—	—	—	11	24	17	—	Ditto
Brynmawr P.S.D.	2	7	4	—	—	—	—	—	—	2	7	4	Separation orders granted with maintenance orders as a matter of course.
			1907.	1908.	1909.								
Beacontree P.S.D.	—	—	57	67	59	—	8	10	14	14	17	15	Only where safety of wife requires it.
									1907.	1908.	1909.		
Stockton-on-Tees	83	75	83	—	—	—	—	—	45	29	43	—	Separation orders granted as a matter of fact with maintenance orders.
									1907.	1908.	1909.		
Stockton Ward P.S.D.	5	6	10	—	—	—	—	—	1	3	6	—	Ditto
									1907.	1908.	1909.		
Thornaby Yarm P.S.D.	8	10	15	—	—	—	—	—	3	1	10	—	Ditto
			1907.	1908.	1909.								
Llanrwst P.S.D.	—	—	6	3	1	—	1	—	—	—	1	1	Cases considered on their merits
			1907.	1908.	1909.								
Brecon	—	—	6	2	1	—	—	—	—	3	1	—	Only where safety of wife requires it.
			1907.	1908.	1909.					1907–8–9.			
Kibbor P.S.D.	—	—	3	7	5	—	—	—	—	(9)			——
Blackburn	131	133	120	1	2	2	—	108	111	122	17	2	Separation orders only granted where safety of wife requires protection.
East Staincliffe P.S.D. of W.R. of York.	7	9	3	—	—	—	—	1	1	4	5	1	Separation orders granted with maintenance orders as a matter of course.
			1907.	1908.	1909.								
Hastings	—	—	10	12	11	—	—	—	—	10	12	11	Ditto
Rochdale	52	64	51	1	2	2	—	—	2	30	32	30	Separation orders granted along with maintenance orders as a matter of course.
			1907.	1908.	1909.								
Mortlake P.S.D.	—	—	5	7	6	—	2	2	1	—	1	1	Separation orders only granted where safety of wife requires it.
Rossendale P.S.D. of Lancs:—													
Bacup	12	12	7	—	—	—	—	—	—	8	9	5	Separation orders granted along with maintenance orders as a matter of course.
Rawtenstall	12	11	11	—	—	—	—	—	1	7	4	8	
							(separation only).						
Haslingden	6	4	5	—	—	—	2	1	—	1	2	3	
							(separations only)						

throughout England and Wales requesting Replies to the following Questions—*cont.*

4.	5.					6.		7.	8.
Whether it is the practice to order the Maintenance Allowance to be paid through the Court or through the Police?	Proportion of Orders made on the grounds following, viz. :—					Proportion of Cases in which Parties resume Cohabitation.		Has it been proved or is there reason to suppose that the Grant of Orders of Separation leads to Immorality?	Whether in favour of the present jurisdiction of the Justices being transferred to the County Court?
	Desertion.	Cruelty.	Neglect to Maintain.	Habitual Drunkenness.	Aggravated Assault.	Before the Hearing.	After Orders have been made by the Court.		
Direct	(	19	)	1	1	—	9	Of opinion "Yes."	No.
Direct	1	1	1	1	—	—	—	—	Yes.
Direct	4	2	2	—	—	25	3	Of opinion "Yes."	No.
Police	—	—	—	—	1	—	1	No	No.
Direct	7	2	—	—	—	7	4	Yes	No.
Direct	1	2	2	—	—	—	—	No	No.
Direct	8	6	—	4	2	—	—	Yes	No.
Direct	42 per cent.	52 per cent.	6 per cent.	—	—	28 per cent. at least.	12 per cent. at least.	No	No.
Direct	—	Great majority.	In all other cases.	—	—	—	About one-sixth.	Yes	No.
—	2	8	1	—	—	—	—	—	—
Either, or direct	3	8	4	—	1	—	About one-half.	No	No.
Solicitor	2	2	—	—	—	3	1	No	No.
Direct	—	Great majority.	In all other cases.	—	—	—	About one-sixth.	Yes	No.
Direct	23	8	3	2	1	—	About 50 per cent.	No	No.
Direct	34	27	2	5	10	40	About 50 or 60 per cent.	No	No.
Direct	16	21	6	2	7	35	About 50 or 60 per cent.	No	No.
Direct	5	8	—	—	—	—	5	No	No.
Direct	32	21	13	3	8	—	—	No	No.
Direct	17	49	40	1	10	25	47	No	No.
Direct	2	7	1	—	—	—	1	No	No.
Direct	5	4	5	—	—	13	1	No	No.
No	1	1	1	—	—	Probably one-half to two-thirds.	—	No information	No
Direct	1	2	—	1	—	—	—	Yes	If a question of obtaining a divorce, "Yes."
Direct	4	4	1	—	—	—	—	—	Doesn't mind.
Direct	228	58	53	3	18	Very few	About one-third.	—	No.
Direct	8	3	1	—	—	—	—	No	No.
Direct	21	8	4	1	—	Very rarely	About 33 per cent.	Yes	No.
Direct	18	12	2	—	—	16 out of 53	—	No	No.
Direct	(These figures were for the year 1909.) 5	—	1	1	—	5 out of 18	—	No	No.
Police	6	6	1	—	9	9	14	No	No.
Police	1	16	1	—	2	14	8	No	No.
Police	—	7	—	2	—	6	7	No	No.

Returns in response to a Circular despatched to all Clerks to Justices

Borough or Division.	1. Number of Applications made under Summary Jurisdiction (Married Women) Act, 1895, s. 5.			1. Under Licensing Act, 1902, s. 5.			2. Number of Orders made thereon. For Maintenance only.			2. For Maintenance and Separation combined.			3. Whether it has been the practice to grant Separation Orders as a matter of course, along with Maintenance Orders, or only grant the former where the safety of the Wife requires such protection?
	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	1907.	1908.	1909.	
Darlington	—	—	1907. 31	1908. 19	1909. 14	—	7	1	1	10	5	2	Separation orders granted in all cases except "desertion."
Newcastle-upon-Tyne.	177 summonses issued, 123 applications heard in court. 1909.						—	—	49	—	—	45	No. Only when necessary for protection of wife.
Halifax	25	16	27	—	5	2	—	2	5	12	6	10	Not as a matter of course. If a separation order is asked for it is invariably granted.
Bristol	Number of applicants for summonses for the last five years not less than 700 per annum. Number of orders of separation made on an average of five years, about 140 per annum.						Number of summonses granted and issued, about 200 per annum.						Number of cases heard by justices, about 150 per annum.
Abingdon (Berks)	None.						—	—	—	—	—	—	—
Manchester (County).	—	—	—	—	—	—	—	—	—	—	—	—	Before decision in *re* Harriman *v.* Harriman a non-cohabitation clause was inserted in orders, but not since that decision, unless the court has been satisfied that the wife's safety has been in peril.
Linton P.S.D. (Cambs).	—	—	—	—	—	—	—	—	—	—	—	—	—
Tunbridge Wells	Average of four or five cases a year at the outside.						Orders made for separation and maintenance combined in nearly every case.						Practically every case is based on the cruelty of husband.
Tetbury P.S.D.	—	—	1907-8-9. (1)			—	—	—	1907-8-9. (1)			—	—
Erpingham (North) P.S.D. of Norfolk.	—	—	—	—	—	—	—	—	—	—	—	—	—
Earsham P.S.D., Norfolk.	—	—	—	—	—	—	—	—	—	—	—	—	—
Tamworth Borough and P.S.D.	1	—	1	—	—	—	—	—	—	1	—	1	—
Manchester	The Stipendiary Magistrate being a member of the Commission, and the Chief Constable President of the Chief Constables' Society, and expecting to give evidence before the Commission, these statistics have been prepared for them and will be presented by them to the Commission.												Yes. An order for separation is usually asked for and granted.
Wantage P.S.D.	—	—	1907-8-9. (1)			—	—	—	1907-8-9. (1)			—	—
Taunton P.S.D.	—	—	—	—	—	—	—	—	—	—	—	—	Not the practice to grant separation orders as a matter of course along with maintenance orders.
Huntingdon P.S.D.	—	—	—	—	—	—	—	—	—	—	—	—	—
South Greenhoe and Grimshoe P.S.D.'s of Norfolk.	—	—	1907-8-9. (4)			—	—	—	1907-8-9. (—)			—	—
Keynsham P.S.D. of Somerset.	None						None						According to circumstances
Pickering Lythe, East, P.S.D. (N.R. of Yorks).	—	—	—	—	—	—	—	—	—	—	—	—	—
Ringwood, P.S.D.	—	1	1	—	—	—	—	—	—	—	—	—	—
Haug West P.S.D. of N.R. of Yorks.	—	—	—	—	—	—	—	—	—	—	—	—	—
Ruthin	—	—	—	—	—	—	—	—	—	—	—	—	Separation orders granted with maintenance orders.
High Wycombe	—	—	—	—	—	—	—	—	—	—	—	—	—
Haywards Heath	—	—	1907-8-9. (3)			—	—	—	1907-8-9. (1)			—	—
Brackley P.S.D.	—	—	—	—	—	—	—	—	—	—	—	—	Separation orders only granted where safety of wife requires protection.
Bootle P.S.D. of Cumberland.	—	1	—	—	—	—	—	—	—	—	1	—	—
Whitby P.S.D.	2	1	1	—	—	1907-8-9. —	—	—	—	1	—	—	—
Coleshill P.S.D. of Warwick	—	—	1907-8-9. (5)			1907-8-9. 1	—	—	1907-8-9. (1)			—	Separation orders granted as a matter of course along with maintenance orders.

throughout England and Wales requesting Replies to the following Questions—*cont.*

4.	5.					6.		7.	8
Whether it is the practice to order the Maintenance Allowance to be paid through the Court or through the Police?	Proportion of Orders made on the grounds following, viz.:—					Proportion of Cases in which Parties resume Cohabitation.		Has it been proved or is there reason to suppose that the Grant of Orders of Separation leads to Immorality?	Whether in favour of the present jurisdiction of the Justices being transferred to the County Court?
	Desertion.	Cruelty.	Neglect to maintain.	Habitual Drunkenness.	Aggravated Assault.	Before the Hearing.	After Orders have been made by the Court.		
Direct	9	15	1	1	—	27	1	—	No.
Through court officer.	44	32	11	2	5	Approximately 30 per cent.	Possibly 70 to 75 per cent.	No	No.
Through the police in some cases. Generally direct.	22	6	6	1	—	About 43 per cent.	No information.	No knowledge	No.
Through court officer.	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—
If so desired, at a police office.	—	—	—	—	—	—	—	No evidence	No.
—	—	—	—	—	—	—	—	—	Yes; with extended powers.
—	—	—	—	—	—	—	1	No evidence	No.
Direct	1	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	No.
—	—	—	—	—	—	—	—	—	No.
Parties make their own arrangements.	—	—	—	—	—	No information		No information	No.
No.	(*See* answer to 1 and 2)					No; but about a third of the summonses never come to a hearing.		The living apart of husbands and wives undoubtedly leads to immorality.	No.
—	—	1	—	—	—	—	—	—	No.
Police.	—	—	—	—	—	—	—	No reason to suppose so.	No.
—	—	—	—	—	—	—	—	—	Yes.
—	—	—	—	—	—	—	—	—	Yes.
Direct	—	—	—	—	—	—	—	No	No.
—	—	—	—	—	—	—	—	—	No.
—	—	—	—	—	—	—	—	No	Civil court the proper tribunal.
—	—	—	—	—	—	—	—	—	No.
Direct	—	—	—	—	—	—	—	—	Yes.
—	—	—	—	—	—	—	—	—	Yes.
Direct	2	—	—	1	—	—	—	—	No.
Direct	—	—	—	—	—	—	—	—	No
—	1	—	—	—	—	—	—	—	—
—	1	—	—	—	—	—	—	—	—
Direct	3	2	—	1	—	4	—	No	No.

APPENDIX VII.

SUPPLEMENTAL STATEMENT BY THE GENERAL COUNCIL OF THE BAR.

Royal Commission on Divorce and Matrimonial Causes.

Winchester House,
21, St. James' Square, S.W.,
12th April 1910.

DEAR BINGLEY,

IN the Report of the General Council of the Bar prepared for the purpose of the Chairman giving evidence before the Commission attention is drawn in paragraph 4, sec. (4), to "The present congested con- "dition of business in many of the county courts, "the difficulty of obtaining continuity of trial, and the "consequent expense," and in the evidence of the Chairman that matter is dealt with. It has been suggested that it would be of considerable assistance to the Commission if you, on behalf of the Chairman and council, could send me the names of those county courts to which that paragraph refers, and such statistics or other facts as led the council to arrive at that conclusion.

Yours very truly,
H. GORELL BARNES,
Secretary.

H. C. A. Bingley, Esq.,
General Council of the Bar,
2, Hare Court, Temple, E.C.

2, Hare Court, Temple, E.C.,
May 12th, 1910.

DEAR BARNES,

I BROUGHT your letter of the 12th April to the notice of the General Council of the Bar, and in reply I am desired to say as follows:—The statement in the council's report to which you refer was founded upon what is common knowledge in the profession as to the condition of things existing in many of the county courts, fortified by the information supplied to the council by those of its members who have practised, or are practising, in county courts.

The council are not aware of any statistics bearing on the subject.

With a view of affording assistance to the Commission the council have approached several members of the Bar, known to the council as gentlemen of weight and experience in this class of work, and as having particular and personal knowledge of the conditions prevailing in the county courts. The council have invited them to mention some of their individual experiences.

The council think it right to transmit to the Commission without comment all such statements, in the order, and in the precise form, in which they have been received.

The council have good reason to believe that these statements could, if necessary, be largely supplemented.

Yours very truly,
HENRY C. A. BINGLEY,
Secretary.

Hon. H. Gorell Barnes, Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James' Square, S.W.

STATEMENTS REFFERED TO IN THE ABOVE LETTER.

I. HAMPSHIRE COUNTY COURT (ISLE OF WIGHT).

A King's Counsel mentions a case of wrongful dismissal in which he was engaged, which lasted the whole of the following five days, and in which counsel on both sides were obliged to go down from London on each occasion:

1st December 1909.
11th „ 1909.
7th January 1910.
10th „ 1910.
15th „ 1910.

This case appears illustrative of the time occupied nowadays by individual cases in the county court, of the want of continuity of trial, and of the consequent inconvenience and expense incurred.

II. BARRISTER "A" supplies the following statement:—

(1) At Watford, October 1908, I went down, arrived there at 10.40 a.m. There were present five other counsel besides myself. We were all summoned for 10 o'clock. There were 200 judgment summonses, which lasted from 11 a.m. till about 3 p.m. My case was called on at 5 p.m. (the other counsels' cases being adjourned), and at 6.30 p.m. was adjourned for a fortnight. The other cases were adjourned, I think, for one month. I know that all the heavy cases except mine were adjourned unheard, and mine was part heard.

(2) I have several times had cases adjourned for at least six weeks at Clerkenwell.

(3) At Hayward's Heath I had a jury case on November 25th, I think, 1907. It began at 3.30 p.m., adjourned at 5 p.m. till January 25th, all the jurors of course being in the neighbourhood of the dispute.

(4) I went to Llanrwst (1908) at great expense to my client, arrived at 10.30, and was immediately told my case could not be taken, and it was adjourned for one month, when I could not go, and my client had to pay another counsel.

(5) Clerkenwell, April 28th, 1910. Registrar requested self and witnesses to be at the court at 10.30. Five ladies (witnesses) came up from the country.

I got to the court at 10.30 and was then told that there were two adjourned cases, one a running down case, with a jury, which would probably last all day. All the day's cases were adjourned till 2 p.m. on the spot. At 2 p.m. we all reassembled and all the cases (the whole day's list) were then adjourned for some indefinite period.

III. BARRISTER "B" supplies the following statement:—

1908, October, November, December: County Court of Surrey:—

In case by wife to recover arrears of allowance under separation deed—defence raised breach of *dum casta* clause.

Four visits of counsel and solicitor and witnesses necessary before the action could be heard owing to congested state of list, viz.:—

October 17th—Guildford.
November 17th—Godalming.
December 7th—Guildford.
December 18th—Guildford. (Case heard.)

October (about 14th):—

(*a*) Action (about fifteen witnesses—all poor people). For hearing at Newbury County Court. Not reached (majority of witnesses came six or eight miles by road).

(*b*) Adjourned to November court. In November, it being ascertained that case could not possibly be reached at November court, application made to judge (at another court) to adjourn it to December court, and granted.

(*c*) December court: action heard and concluded.

N.B.—Action concerned a small estate of a deceased farmer, most of which was spent in costs.

IV. BARRISTER "C" supplies the following statement:—

Date.	Name of Case.	County Court.	Remarks.
1908. June 3rd - -	Dyke *v.* Stabb Johnson -	Bromley C. C. -	Judge sat till nearly midnight to finish an ordinary case of personal injuries.
1908. September 9th, adjourned to October 24th.	Kettle *v.* Mustard - -	Ipswich C. C. -	Counsel, solicitor, &c. had to go down twice. Hence much increased expense.
1909. April 5th, adjourned to April 30th.	Elliott *v.* Gt. E.L.M.O. Company.	Shoreditch C. C. -	Negligence.
1909. July 21st, adjourned to November 5th.	Mawby *v.* Mawby - -	Westminster C. C.	Wrongful dismissal and a/c.
1909. July 28th, adjourned to December 9th.	Lindsey *v.* Perfect Mantle Company.	Shoreditch C. C. -	Goods sold and d/d.
1909. October 20th, adjourned to November 18th.	Corderoy *v.* Carter Patterson.	Clerkenwell C. C. -	Personal injuries.
1909. November 24th, adjourned 1910, January 13th.	McIntyre *v.* Metropolitan Building Company.	City of London Court.	
1909. December 3rd, adjourned to December 18th.	Weston *v.* Dunkley -	Wandsworth C. C.	Workmen's compensation case.
1910. February 14th, adjourned to March 15th.	Stanway *v.* Edmondson, Limited.	Barnet C. C. -	Workmen's compensation case.
1910. March 4th, adjourned to April 22nd.	Betgemann *v.* L.G.O. Company.	Westminster C. C.	Personal injuries.
1910. March 31st, adjourned to May 22nd.	Parkinson *v.* G.E. Rly. -	Mildenhall C. C. -	Counsel, solicitor, and witnesses from London will have to go down twice. 31st March case part heard and adjourned for want of time to 22nd May.

NOTE.—I could, if necessary, increase this list very considerably. These cases are taken at random in five minutes. No one with any considerable practice in the county courts could dispute their congested state, though nearly all judges sit till at the earliest 5 p.m., and many of them sit much later.

V. BARRISTER "D" supplies the following statement:—

As regards heavy cases in the county court on November —, 1906, December 8th, 1906, and January 31st, 1907; I was at Nottingham in a case lasting all the above three days, by name Bingham Urban District Council *v.* Snaith Plaster Company.

At Brentford last year I was in the case of Chiswick U.D.C. *ats.* Davidson, which was tried on January 29th, February 12th, February 19th, and retried April 15th, April 28th, until 10.15 at night, and a motion for a new trial heard on May 8th, 1909.

As regards adjournments:—

Westminster: Walton, Hassall, and Port *v.* L.G.O. Company:—
July 21st, 1909, adjourned to October 25th, 1909.

Westminster: Parsons *v.* Thornton Smith:—
November —, 1909, adjourned.
February 4th, 1910, adjourned.
March 14th, 1910, heard.

Lambeth: Alderman *v.* Hyams:—
Adjourned first prior to January 1910.
January 25th, 1910, adjourned.
March 3rd, 1910, tried.

Croydon: Bruce *v.* Fox and Lyon:—
March 15th, 1910, adjourned.
April 21st, 1910, heard.

City of London Court: Trew *v.* Williamson:—
January 6th, 1910, adjourned.
February 24th, 1910, heard.

City of London Court: Society of Laundry Engineers *v.* Steinberg:—
April 9th, 1910, adjourned indefinitely.

VI. BARRISTER "E" makes the following statement:—

You have asked me to give you any information I can as to the desirability or otherwise of conferring divorce jurisdiction upon the county courts, having regard to the state of business already existing in them.

My experience is practically limited to the London courts, and I cannot speak with any certainty regarding those in the country.

So far as the London courts are concerned, I say without hesitation that each of them has as much business already as can be dealt with satisfactorily.

To give divorce jurisdiction would seriously interfere with their present usefulness; moreover, the length of time required by most divorce cases would necessitate their being adjourned part heard. This would be very inconvenient in those of the courts which do not sit from day to day, and would mean bringing jurors and others back after some days' interval.

VII. BARRISTER "F" supplies the following statement:—

Chelmsford: *Re* D.:—
July 11th, 1905 (part heard and adjourned).
September 15th, 1905 (part heard and adjourned).
October 28th, 1905 (hearing concluded).

Grays Thurrock: P. *v.* U.:—
July 11th, 1906 (not reached).
October 10th, 1906 (not reached).
November 7th, 1906 (2—5.30 p.m.).

R. *v.* G. (jury case):—
October 10th, 1906 (2—6), adjourned.
November 7th, 1906 (11—1.30 p.m.).

Clerkenwell: C. *v.* M.:—
November 28th, 1908 (not reached).
January 17th, 1909 (not reached).
March 6th, 1909 }
April 9th, 1909 } Hearings.
April 30th, 1909 }
May 7th, 1909 }

VIII. BARRISTER "G" supplies the following statement:—

Vergette *v.* Ormond:—This was an action in the high court remitted for trial in the court of Waltham Abbey about 12 miles from London. The plaintiff, his solicitor, and witnesses lived about 80 miles from London, near Peterborough. The defendant and most of his witnesses lived near Waltham Abbey, some of them came from near Peterborough.

On February 5th, 1909, the day fixed for the hearing, the parties, with their counsel, solicitors, and witnesses (of whom there were eight or nine each side), attended at Waltham Abbey. About 3 p.m. or 4 p.m. it became obvious there was no possibility of the case being reached, and on application to the judge he kindly granted a special day for the hearing in London.

According on February 22nd the hearing began in London, and when the judge rose about 4 p.m. was rather more than half-way through. The judge again kindly gave a second special day for this case, and for another from one of his courts.

On March 9th the hearing was resumed in London and concluded, this being the third occasion on which plaintiff (who was defendant on the issue), his solicitor, and witnesses (except one whose evidence was taken on February 22nd) had come from Peterborough. Judgment was reserved, and on April 1st was delivered in London.

N.B.—All this time the horse, whose sale on warranty gave rise to the action, was standing at livery at Peterborough.

The judge was His Honour Judge Tindal Atkinson, and the court was Waltham Abbey.

IX. BARRISTERS "H" and "H[1]" give the following instances:—

Edmonton County Court: Oldfield Advertising Co. *v.* Hawkins Interpleader Hester (claimant):—
January 31st, 1910, for hearing, adjourned to February 4th at 10.15.
Adjourned to March 4th } for judge's health.
Adjourned to March 7th }
Adjourned hearing to April 19th, at Middle Temple Library.

Westminster County Court: Rainbird *v.* L.G.O. Company and Humbers, Limited:—
Hearing for December 8th, 1909.
Adjourned to February 14th, 1910.
Adjourned to March 21st, 1910.

X. BARRISTER "I" supplies the following statement:—

(1) Banbury County Court: Doe *v.* Fox:—
This is one of the worst examples I know. It was a simple case of detinue, with a difficult but short point on the measure of damages. The facts occurred in March 1908.
1st day of trial, 29th May 1908. Began about 2.30, adjourned part heard about 4.45.
Adjourned hearing, 18th December 1908. (It was adjourned against the wishes of the parties till October 1908, and subsequently for the convenience of one side till December.)
Appeal heard by Div. Court, 13th May 1909. Ordered to be tried in London by Judge Bray at Clerkenwell County Court.
New trial first hearing, 7th July 1909. Part heard.
New trial adjourned hearing 28th July 1909. Judgment ultimately given (I think October 1909) for 18*l.*

(2) Newbury County Court: Jones *v.* Horne. Question of water rights at a mill:—
Facts occurred April 1908.
1st day, 21st October 1908. Began late; adjourned part heard.
2nd day, 18th November 1908. Began late again; adjourned part heard.
3rd day, 9th December 1908. Lasted most of day; adjourned part heard.
4th day, 9th January 1909. Finished at judge's private house.
Judgment, 10th March 1909.

(3) Newbury County Court: Jewell *v.* Jewell:—
Adjourned for want of time being after Jones *v.* Horne, 21st October 1908.
Adjourned for want of time being after Jones *v.* Horne, 18th November 1908.
Adjourned for want of time being after Jones *v.* Horne, 9th December 1908.
Adjourned hearing, 20th January 1909.
Judgment, 10th March 1909.

(4) Oxford County Court: Coppock *v.* Cooper. Dilapidations:—
1st day not reached, 10th August 1906.
Referred to arbitration by consent, part heard, 29th October 1906.
1st day of arbitration, 21st November 1906.
2nd day of arbitration, 28th November 1906.
3rd day of arbitration, 29th November 1906.
4th day of arbitration, 6th December 1906.

(5) Banbury County Court: Coleman *v.* Miles. Right of way:—
1st day, 15th October 1909. Part heard (began late).
2nd day, 14th November 1909. Part heard (began late).
3rd day, 18th December 1909. Took nearly all day.
4th day, 10th March 1910. Judgment reserved.
Not yet given: 2nd May 1910.

(6) Reading County Court: Tantard *v.* White. Building dispute (jury):—
1st day, 16th January 1908.
2nd day, 23rd January 1908.
3rd day, 28th January 1908.
Judge appointed two special days to hear it out. Lasted most of each day.

(7) Southend County Court: Rees *v.* Gurney:—
Case opened, 8th January 1908.
Adjourned hearing, 15th March 1908.
Final hearing, 22nd March 1908 (in London; Judgment reserved).

XI. BARRISTER "J" supplies the following statement:—

I have had considerable experience in the county courts, both in the metropolis and in the country.

My county court practice at the present time consists of substantial actions. In metropolitan county court cases my invariable practice is when my clients have the conduct of the action to advise them to communicate with the registrar before the return day and to inform him that in my opinion the case will take two or three hours, as the case may be, and that to avoid expense the case should be adjourned to an open day when it is likely to come on. The consent of the other side is obtained, and in nine cases out of ten the action stands adjourned from the first return day.

This is invariably my experience at Brentford and Westminster. The other day an adjourned jury came on at Brentford at 3 p.m., and the jury returned their verdict with judge still doing other work after six.

It is a matter of common knowledge that the courts are congested. The increased jurisdiction has added enormously to the work. Small cases stand adjourned at great cost.

It is impossible to get any record of cases settled at a sacrifice rather than incur expense of adjournments. Moreover, many judges sit to late hours to finish their work, *e.g.*, Judges Bacon (Bloomsbury, Whitechapel), Smyly (Bow and Shoreditch), Tindal Atkinson.

To-day (28th April, 1910) at Clerkenwell an ordinary action for damages third in the list after jury action stands adjourned generally for want of time, and may come on in June. An action, 8th April, 1910, City of London Court, before Lumley Smith goes over for want of time until June.

When before Judge Tindal Atkinson at Colchester (the judge sits two days running), my case fixed for the first day came on the next day. A case at Southend was dealt with as I have suggested. It was adjourned before the return day so as to be heard.

The pint pot of the metropolitan courts is overflowing with the quart of increased jurisdiction, and it is impossible to expect that it can absorb the gallon of divorce.

A substantial defended divorce with a jury or without would throw the courts out of gear for months. On the score of expense only a divorce case must be tried *de die in diem*, moreover, the nature of the action renders this course highly desirable.

Now with regard to provincial courts, these are to be divided into:—

(*a*) Those in big industrial centres.
(*b*) Those in rural and small provincial towns.

As to (*a*), my experience is as in London, and I would only observe the good judges make work.

A county court is a small cause court and a judge who commands confidence makes work. In other words, the better the tribunal the less time there is for any additional work.

As to (*b*), the same observation applies although in a lesser degree because the work is not so heavy. But the courts are more numerous, and the difficulty of

completing the circuit and trying a defended divorce *de die in diem* would be practically insurmountable. My experience of heavy cases (*e.g.*, a right of way at Huntingdon) is that one is practically forced to a settlement. Part of a day is no use for substantial cases. It would be cheaper to try at assizes. Moreover, one cannot help criticising the personnel of the provincial bench, and one shudders to think of the effect of the administration of the law, often remarkable in civil actions, when administered by the same tribunal in a contract which, whether regarded as sacred or civil, affects "status" and goes to the bedrock of society. Of course one sees how the law is administered on appeal in the divisional court.

There is a further point to be considered, and one that is applicable to all county courts, and more especially to country county courts. In divorce work there is an amount of practice and work before the registrars of the Divorce Court, both before and after decree, which has not its parallel in ordinary actions. My own experience of interlocutory work in civil actions before county court registrars is not such as to give one confidence as to their ability to deal with such work as divorce. They have neither the training nor experience. And in the country the leading solicitor with the largest family practice is the registrar.

I append a cutting from the "St. James and Evening Standard," Saturday, April 30th, 1910, which confirms my view as to congestion. I may mention that when the question of appointing Judge Bray was under consideration, and Judge Edge was speaking of the overwork of the courts, I spoke to Judge Bacon, who then said he could get through his work. I told him I supported Judge Edge's views and considered late hours unfair to litigants. I have spoken to Judge Edge on the subject of divorce in metropolitan courts, and he holds my view and has allowed me to say so.

"A Battle of Litigation.

"'Workmen's compensation is causing a battle
" of litigation,' Judge Bacon declared at the
" Whitechapel County Court. 'The Legislature
" 'never intended that this should be the case,
" 'and I shall have to make representation to the
" 'effect that my ordinary work is so considerable
" 'that I cannot undertake these cases.'"

XII. BARRISTER "K" supplies the following statement:—

Clerkenwell County Court (H. H. Judge Edge.): Grimshaw, Baxter, & Co. *v.* Parker:—

Plaint:—
June 1909.

Hearing:—
July 16th, 1909. Part heard and adjourned.
September 29th, 1909. Part heard and adjourned.
November 2nd, 1909. Part heard and adjourned.
December 9th, 1909. Part heard and adjourned.
December 10th, 1909. Part heard and adjourned.
January 6th, 1910. Part heard and adjourned.
January 7th, 1910. Part heard and adjourned.
February 1st, 1910. Part heard and adjourned.
February 4th, 1910. Part heard and adjourned.
February 18th, 1910. Part heard and adjourned.
March 14th, 1910. Part heard and adjourned.
April 15th, 1910. Judgment.
Notice of appeal served 29th April.

The learned county court judge when delivering judgment in this case remarked as follows:—

" The hearing of the evidence and the speeches
" of counsel occupied eleven full days, in addition
" to the time in which he had been engaged in
" looking up and considering the cases cited by
" the respective counsel on points of law. He
" mentioned that in order to say that the time
" taken up could and would have been very
" materially shortened if it had been possible to
" proceed with the hearing *de die in diem*, but as
" in that court the lists were usually filled up
" from a month to six weeks in advance, the
" adjournments had to be for long intervals,
" necessitating not only the reading of the
" evidence previously given, but often causing
" the duplication of evidence which was not in
" dispute, but which both the court and counsel
" had overlooked or could not find without much
" search through voluminous notes."

Romford and Ilford County Court (H.H. Judge Tindal Atkinson):—

Plaint:—
January 1910.

Hearing:—
8th February (Romford). Part heard.
21st April (Temple). Part heard.
22nd April (Temple). Part heard.
3rd May (Ilford).

XIII. BARRISTER "L" supplies the following statement:—

Hants County Court (H.H. Judge Gye), Ryde and Newport, I.W.: Grimsdick *v.* Sweetman:—
July 1908. Case not reached.
August 1909. Case heard c.a.v.
September 1908. c.a.v.
October 1908. c.a.v.
November 1908. Re-argued c.a.v.
December 1908. c.a.v.
January 1909. Judgment for defendant.
July 1909. Judgment reversed on appeal.

Surrey County Court (H.H. Judge Harington), Guildford and Godalming: Colwell *v.* Churchill:—
October 1909. Case not reached.
November 1909. Part heard and adjourned.
December 1909. Not reached.
January 1910. Not reached.
March 1910. Concluded and judgment.

Appeal entered—abandoned owing to bankruptcy of successful defendant.

XIV. BARRISTER "M" supplies the following statement:—

Since June last year I have only twice been briefed in the City of London Court. Details follow:—

(1) Frankau *v.* Allsopp (non-jury).
1909, 5th July. Case not reached for want of time; adjourned to the last week in September.
1909, 30th September. Case part heard (about 3½ hours occupied).
1909, 15th November. Case part heard (full day occupied).
1910, 21st February. Case part heard (full day occupied).
Further hearing fixed for May 4th; another full day will be occupied.

(2) Steinberger *v.* Wylde (jury).
1910, March 14th. Not reached for want of time; adjourned to 26th April, before which the case was settled.

The above cases showed me that where a case is not reached for want of time, or is adjourned part heard, the state of business at the court is such, that the normal period which must elapse before the case can be in the list again is from six weeks to two months. One of the above cases, as will be seen, has turned out to be a four-day case, and I have a leader in it.

I should like to add that on more than one occasion —in all for 20 days—I have sat as deputy for His Honour Judge Philbrick, on County Court Circuit, No. 55 (Dorset, &c.), where I have twice taken all his more important courts, as well as many of the smaller ones. Judging from that experience I am strongly of opinion that, although in the smaller courts, where divorce cases would very rarely crop up, there would be ample time to deal with them, yet in the larger centres (*e.g.*, Bournemouth, Poole, Weymouth, and Salisbury) where they might be anticipated, there would not be time to deal with them. Judge Philbrick has given me permission to state the impressions I have formed from my experience as his deputy.

XV. Barrister "N" supplies the following statement:—

My experience has been that the county courts are frequently blocked with cases which they are unable to dispose of as and when they come into the list, or within a reasonable time thereafter.

Without going into detail let me give you as illustrations the fortunes of four cases I recently had in the Guildford and Godalming County Courts:—

(1) Law *v.* Abram. This was a heavy case for a county court involving title to land, and the attendance of very numerous aged witnesses and eminent surveyors from London. It was in the list of the county court:

22nd October 1909.
2nd December 1909.
10th December 1909.
28th January 1910.

Wills *v.* Austin (a workmen's compensation case):
In the list 22nd October 1909.
19th November 1909.
10th December 1909.
28th January 1910.

Trist *v.* Andrews (a case needing speedy trial as it prevented a receiver realising):
In the list 22nd October 1909.
19th November 1909.
22nd December 1909.

Coleville *v.* Churchill (a remitted action):
In the list 19th November 1909.
10th December 1909.
28th January 1910.

The amount of expense, inconvenience, and annoyance all this caused I need not point out.

XVI. Barrister "O" supplies the following statement:—

Edmonton County Court: Hayes *v.* Holmes:—
This action was fixed for April 1st, 1909, was adjourned for want of time till May 6th.

Kingston County Court: Van Praagh *v.* Penny:—
This case was fixed for October 8th, 1909, and adjourned for want of time on three occasions: October 23rd, November 3rd, and November 6th.

Westminster County Court: Gross *v.* Ward:—
Fixed for April 21st, 1909, adjourned for want of time till April 28th, when case part heard and two short afternoon appointments given before judgment given.

Wandsworth County Court: Cato *v.* Richards:—
Action fixed for April 16th, 1910, adjourned for want of time till May 3rd.

The above are a few instances of delay in the hearing of cases in county courts.

XVII. Barrister "P" supplies the following statement:—

For my own part, I have been very little to county courts of recent years, so that my recent experience is not of much value. I have, however, had a list of cases got out for the year 1907, 1908, and 1909, and three months of 1910. I find I have held 72 county court briefs during those years, and that 12 cases were adjourned for want of time. I am assured by my clerk that in every instance the adjournment was for want of time, and I believe this to be correct. This would mean one case in six adjourned for want of time. This roughly accords with my general recollection.

One of the curious facts to be borne in mind is that the painstaking careful judge, who tries cases thoroughly out, and takes more time over his cases than a less painstaking judge—his courts are therefore more likely to be unable to get through their cases than those of less painstaking judges. Other things, therefore, being equal, the more careful and painstaking a judge is the less time he has to undertake new business. Some judges who have plenty of time to try divorce cases, or any other cases, may possibly have that time because they may despatch their work hurriedly. An able, learned, painstaking, and courteous judge soon gains the confidence of suitors and solicitors, and work flows into his court which otherwise might be arbitrated or settled, or go to the assizes. I know a judge of this description—I abstain from mentioning his name—who is so highly regarded that people in his district would rather try before him than go to the assizes or arbitration. What is the result? His courts are choked with work although he sits pretty nearly every day in the week. Adjournments for want of time are frequent at his principal courts. If he were as bad a judge as he is a good one he would have plenty of time to try divorce cases. As it is, any serious increase of his business would produce complete congestion in his courts.

I am informed that the particular judge I refer to is understood to favour the conferring of jurisdiction in divorce on county courts.

I may say that before Judge Howland Roberts' time Brentford County Court was so choked with work that cases had to be adjourned as a matter of course court after court. No case had a chance to be tried at the court for which it was entered. In those days so notorious was this that I never accepted a brief for Brentford without first ascertaining how many times it had already been adjourned and whether it was certain to come on.

I may say with reference to my figures for 1907, 1908, and 1909, I have never accepted a brief for a county court without doing all I could to make sure that the case would really be heard and not adjourned for want of time. If I thought it at all likely that I might not be reached I have not accepted the brief.

XVIII. Barrister "Q" supplies the following statement:—

Clerkenwell is the chief offender. I had two cases there last year in which there were many adjournments.

F. *v.* McC.:
12th January 1909. Adjourned for want of time to try it.
29th January. Began late, part heard.
19th February. Part heard, referred to registrar.
26th March. } Hearing before registrar.
5th April. }
18th June. Argument on registrar's findings.

P. *v.* W.:
1909, 24th September. Adjourned for want of time to try it.
1909, 15th October. Part heard.
1909, 25th October. Hearing concluded.
1909, 13th December. Argument as to costs.

In neither case were the parties people of means, except the defendant in the latter case, and they could ill afford the expense of the adjournments and prolonged litigation.

Southampton County Court:—

U. C. L. *v.* P. Workmen's compensation case. 1st January 1910, hearing began at two o'clock and lasted until six, when it was ajourned as the judge had to get back to Winchester. 11th February 1910, adjourned hearing concluded. This adjournment entailed the usual expense of counsel, solicitors, and some witnesses attending twice over.

Epsom County Court:—

I had a light and air case in this court last year. It began about 2.30, and the hearing was adjourned at 5.30, all the evidence was concluded, and the judge gave a special appointment at his house to hear the speeches of counsel. Recently I have been in a case at Lewes County Court about a dispute of 70*l.* which has occasioned seven days hearings. As the case has been tried before the registrar, it has not occasioned any delay to other litigants, but it is a type of the kind of case which is not now infrequent in county courts.

XIX. Barrister "R" supplies the following statement:—

1. Cullen *v.* Aldridge. Suffolk County Court:—
25th April, 1908. The case was down for hearing, but was not reached for want of time. The place of hearing was Framlingham.
19th May, 1908. The case was heard at Saxmundham. If the case had been taken in due course at Framlingham, it would not have been reached until the middle of June.

N.B.—The county court judge did not sit until twelve, otherwise I think the case might well have been heard on the first occasion.

2. Doe *v.* Fox. Banbury County Court:—
29th May, 1908. Case commenced and adjourned part heard.
18th December, 1908. Further hearing.

3. Taylor *v.* Rowhedge Iron Works Co. Colchester County Court:—
13th June 1908. Case commenced and part heard.
22nd July 1908. Case continued and part heard.
28th October 1908. Case continued and part heard.
29th October 1908. Case continued and part heard.
1st December 1908. Case concluded.

4. Sage *v.* Crown Metal Syndicate. City of London Court:—
19th November 1909. Case commenced and part heard.
14th March 1910. Case concluded—it had to be practically re-heard.

N.B.—The intervention of the General Election partly accounts for the delay.

5. Fenna *v.* Pryke. Colchester County Court.
21st October 1909. Case commenced.
24th November 1909. Case concluded.

In many cases, *e.g.*, 3 and 5, the delays were due to the fact that the court did not sit at the place of trial during the interval.

XX. Barrister "S" supplies the following statement:—

Case in the county court of Essex at Southend. This case began on January 2nd, 1909, and necessarily occupied four days owing to evidence of the experts. Owing to the judge giving special sittings for the adjourned hearing no inconvenience was caused to any of the ordinary suitors.

Case in the Southend County Court for breach of contract for the supply of a motor engine. This case took two days, February 14th and 15th, 1910, to try, and ended about 7.45 p.m. on the second day.

XXI. Barrister "T" supplies the following statement:—

In 1908 I appeared with a leader in the Hampshire County Court for the plaintiff in Haywood Slade *v.* Fullerton. The claim was for repairing a motor car, and there was a counter-claim for bad workmanship. The case was heard at Basingstoke on four days, viz., 2nd March (three parts of this day), 7th, 14th, and 21st March (these being special days, the whole of which were devoted to the case). I estimate that in the high court the case would have taken at most a short day at about one-third of the costs incurred in the county court.

A case, of which I understand you have some particulars, Gilbert *v.* Shutler, was recently tried at the Isle of Wight, and took five days. Plaintiff's counsel did not appear on the first day, which was an ordinary court day, but the other four were special days, viz., the 11th December, 1909, 7th, 10th, and 15th January 1910. I estimate that in the high court this case could easily have been finished at the outside in a day and a-half. I would add that on appeal the judges stated that injustice had undoubtedly been done by the decision appealed from which they were unable to remedy, because there was no appeal on decisions of fact if there were the slightest evidence to support the finding.

I don't think this result is a solitary instance of injustice arising from this state of the law.

The majority of county court cases in which counsel are engaged are adjourned part heard at least once, and not infrequently twice. My experience is the country rather than London county courts. The result of this is that refreshers necessarily largely come almost entirely out of one's client's pocket in any event, rendering litigation in the county court in any but the simplest and shortest cases as expensive if not more so than in the high court.

XXII. Barrister "U" supplies the following statement:—

My experience unquestionably is that there is serious congestion of business in the county courts, and a few years ago I could have mentioned a good many specific instances of difficulty and delay in getting cases tried in consequence. I have, however, not been very much to county courts of late, and therefore I am afraid my information must be more general than particular.

When I attended county courts more often, I have over and over again either sat all day and failed to be reached, or on information from the registrar as to the state of the list, have adjourned my case on getting to the court by agreement with my opponent. Frequently then adjournments have, on the registrar's advice, been for considerable periods.

Amongst the courts at which I well remember this kind of thing happening are Westminster, Brompton, Clerkenwell, Edmonton, Wandsworth, and Southwark; and the main cause of delay, more often than not, was a huge batch of judgment summonses, preventing the trial of actions beginning before the middle of the day or past.

As recently as last February my clerk accepted a brief for the Wandsworth court on information that it was expected to be taken quite early. I got there at 10.30 by request, only to find that the case was not reached until after 3. It was left part heard, and finally dealt with several weeks later.

No doubt you want facts rather than "views," but perhaps I may say that as far as my experience goes, any substantial addition to the work of county courts would render it impossible for them to properly get through their ordinary work. Either that work would have to stand aside, or the parties and witnesses in matrimonial cases would be kept waiting for hours, and often have to come to the court several times.

XXIII. Barrister "V" supplies the following statement:—

My clerk has been investigating my diaries from 1905 to date, and taken out the county court cases for that period. As far as I can ascertain out of 11 cases (including Mayor's Court cases), 9 were adjourned either before the day because there was no chance of their being reached or on the day because they were in fact not reached. Two were reached so late that they were part heard, and went over one for four days and the other for over three months. The latter has a good history from the point of view of economy. It was heard at the Westminster County Court, and was part heard on the 25th July. It was adjourned on the 26th July until the 5th November, when it was not reached, and was adjourned until the 9th. Speaking quite generally, and from memory, as my diaries before 1905 have been destroyed, my experience has been that more often than not, cases with counsel are adjourned if there is any substance in them. The time when you will be reached in a county court is always a matter of speculation, because there are no sufficient pleadings to guide the tribunal, and the most simple looking cases not infrequently turn out unexpectedly lengthy. Further, there are a large number of cases with litigants in person, and these take up a great deal of time. I have been in county courts until 7.30 p.m. If the county courts are to have divorce jurisdiction the congestion in the metropolitan courts will be greatly increased, and if these cases are to be tried by juries there is the additional objection that you will get on the whole a very bad class of jury, and necessarily a very varying jury, *e.g.*, in Shoreditch and Whitechapel, and such like courts, you would get as bad a jury as you could find, whilst in Westminster and Marylebone you might get a good one. The judges vary almost as much as the juries. In some of the country districts the courts are held at inaccessible places, and at intervals of a month, and an adjournment in such a case would involve very considerable expense. County courts are always supposed to be economical, but that is by no means always the case. I recollect one case in which the claim was for 2*l.* 14*s.* 6*d.* It involved a rather nice point of law as to the rights of advertising agents, and the taxed bill of costs came out at over 30*l.* Another objection to county courts is the very bad accommodation both for counsel and witnesses. The serious feature of an adjournment in a county court is that it almost invariably means going over to some more or less distant date, because the lists are arranged for each day weeks beforehand, and the unhappy litigant who has his case adjourned has to

TABLE II.—HERTS COUNTY ASYLUM, HILL END, ST. ALBANS.

Questions 12,136, 12,139.

HISTORY OF THE RELAPSES AFTER RECOVERY OF PERSONS ADMITTED AS DIRECT ADMISSIONS—FROM THE OPENING OF THE ASYLUM FOR DIRECT ADMISSIONS (1901) TO THE END OF 1909.

(This Table refers to Persons as distinguished from Cases.)

Ages and Civil States at the Time of First Admission to Hill End Asylum.	Total Persons Admitted, 1901–09. The First Admission to Hill End only recorded.		Total Persons Discharged Recovered, 1901–09. The Result of the First Admission to Hill End only recorded.		The Number of Recovered Persons who *Relapsed* from their First Recovery at Hill End and were Readmitted to Hill End after an Absence from any Asylum of								Subsequent History of Persons Relapsed (as far only as Hill End records show). On December 31st, 1909, there were							
					Under 1 year.		Over 1 year and under 5 years.		Over 5 and under 9 years.		Total Persons Relapsed.		Discharged Recovered.		Discharged not Recovered.		Died in Hill End.		Remaining in Hill End.	
	Male.	Female.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
Under 15 years :— Single	20	5	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
15 to 19 years :— Single	25	29	6	8	1	1	–	–	–	–	1	1	–	–	–	–	–	–	1	1
20 to 24 years :— Single	29	33	11	9	1	1	1	2	–	1	2	4	–	1	–	–	1	–	1	3
Married	3	8	3	5	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
25 to 34 years :— Single	54	70	22	24	–	1	1	3	1	1	2	5	–	–	–	–	–	–	2	5
Married	18	37	9	13	1	–	1	–	–	–	2	–	–	–	–	–	–	–	2	–
Widowed	3	2	1	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
35 to 44 years :— Single	33	33	13	8	–	1	1	–	–	1	1	2	–	1	–	–	–	–	1	1
Married	64	64	23	31	–	4	–	1	–	–	–	5	–	3	–	–	–	–	–	2
Widowed	2	3	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Unknown	4	–	3	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
45 to 54 years :— Single	36	33	10	7	1	1	–	–	–	1	1	2	1	1	–	1	–	–	–	–
Married	53	53	20	22	2	3	2	4	–	–	4	7	2	1	–	1	–	2	2	3
Widowed	8	13	2	3	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Unknown	2	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
55 to 64 years :— Single	14	16	4	3	–	1	1	–	–	–	1	1	1	–	–	–	–	–	–	1
Married	41	40	12	19	–	2	1	2	–	–	1	4	–	2	–	–	–	1	1	1
Widowed	6	16	2	6	–	–	–	2	–	–	–	2	–	–	–	–	–	1	–	1
Unknown	2	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
65 to 74 years :— Single	9	6	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Married	23	21	1	3	1	1	–	–	–	–	1	1	–	1	–	–	1	–	–	–
Widowed	16	22	4	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
75 years and upwards :— Single	1	5	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Married	12	6	1	–	1	–	–	–	–	–	1	–	–	–	–	–	1	–	–	–
Widowed	20	21	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Totals :— Single	221	230	66	60	3	6	4	5	1	4	8	15	2	3	–	1	1	–	5	11
Married	214	229	69	93	5	10	4	7	–	–	9	17	2	7	–	1	2	3	5	6
Widowed	55	77	9	15	–	–	–	2	–	–	–	2	–	–	–	–	–	1	–	1
Unknown	8	–	5	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Totals of each sex	498	536	149	168	8	16	8	14	1	4	17	34	4	10	–	2	3	4	10	18
GRAND TOTALS	1,034		317		24		22		5		51		14		2		7		28	

APPENDIX X.

INFORMATION SUPPLIED AS REQUESTED IN ANSWER TO QUESTIONS 14,115, 14,177, 14,342-3.

1. Great James Street, Bedford Row.

London, 2nd August 1910.

DEAR SIR,

ENCLOSED I return you proof as requested together with the details of the out-of-pocket expenses in the case of Logan *v.* Logan.

I also enclose the taxed bill of costs in the case of Measures *v.* Measures, the first bill being costs up to setting down and the second being the costs of the trial.

You will see in this, a case which lasted over one day, and the whole of the costs of the respondent amounted to 64*l.* 12*s.* 2*d.*

This was a case from the country, and was contested at every point, with the exception of the question of alimony *pendente lite*, the amount of which was agreed.

Yours truly,

JOSEPH SYKES.

Logan v. *Logan and Stockwell.*

1908.		£	s.	d.
January	Forms, letters, telegrams, &c.	0	10	0
	Affidavit in support of petition	0	1	6
	Filing, &c.	1	17	0
	Notarial fees on affidavit of service	0	10	6
	Affidavits of service and affidavit of search	0	19	6
July 17	Setting down for hearing	3	2	6
	Fare from Pudsey to London	2	0	0
	Counsel's fee on brief	2	4	6
	Fare from Pudsey to London day of trial	2	0	0
	Decree absolute	0	10	2
		£13	14	8

Cash 25*l.*

In the High Court of Justice.
Probate, Divorce, and Admiralty Division.
(Divorce.)

Measures *v.* Measures, Lamberton, and Holland.

Respondent's Costs of Trial.

Michaelmas Sittings.

£ s. d.		£ s. d.	£ s. d.
	Perusing petitioner's notice to inspect and admit		0 6 8
0 13 4	Attending inspecting and bespeaking copy summons		0 13 4
	Paid for copy	0 1 4	
0 1 4	Preparing notice to admit and copy		0 7 6
0 2 6	Service		0 2 6
	Preparing notice to produce		0 7 6
0 2 6	Service		0 2 6
	Instructions for brief, including journey to Wellingborough to take evidence of respondent's parents, and making inquiries as to whereabouts of the servant and shop assistant, and subsequently at Herne Hill, taking her evidence, and also the evidence of respondents, &c.		7 7 0
	Drawing same for, 65		3 5 0
	Fair copy		1 1 8
	Fee to counsel therewith	5 10 0	
	Attending him		0 6 8
	Conference fee	1 6 0	
0 3 4	Attending appointing conference		0 6 8
	Attending conference		0 13 4
	Copy documents to accompany brief petition, folios 7		0 2 10
	,, particulars of petition, folios 3		0 1 0
	,, answer, folios 8		0 2 8
	,, particulars of answer, folios 6		0 2 0
0 0 4	,, reply, folios 5		0 1 8
0 0 3	,, affidavit of documents, folios 9		0 3 0
	,, police court summons, folios 4		0 1 4
	,, documents disclosed, folios 10		0 3 4
1 7 0	,, correspondence, folios 90		1 10 0
0 2 0	,, petitioner's notice to produce		0 2 0
0 0 8	,, respondent's notice to produce		0 2 0
0 3 4	,, petitioner's notice to admit		0 4 0
0 0 8	,, respondent's notice to admit		0 2 0
	Drawing præcipe and subpœna and issuing		0 6 8
	Paid	0 5 0	
0 1 0	Copy for service		0 2 0
0 1 0	Service of same on one witness		0 5 0
	Mileage, Herne Hill, five miles		0 5 0
	Attending searching cause lists		0 13 4
	Notice to respondent to attend court to-morrow		0 3 4
	The like, three witnesses		0 4 6
Dec. 14.	Attending court case in paper, but owing to a misunderstanding petitioner not present, and case stood over to bottom of list, and finally		
2 2 0	sent over to following Thursday. Engaged all day		3 3 0
Dec. 20.	Attending court case, part heard, and adjourned to following day		3 3 0
	Refresher to counsel	3 5 6	
	Attending him		0 6 8
Dec. 21.	Attending court when case finished and order made for decree nisi.		
1 1 0	Costs against both co-respondents. Husband found guilty of cruelty. Decree not to be made absolute until the husband provides a weekly allowance to wife *dun sola*, &c. Custody of child referred to chambers. Wife to have usual order for costs as to decree of adultery. Full costs on question of cruelty		2 2 0

Dec. 21. £ s. d.		£ s. d.	£ s. d.
	Drawing this bill and copies, folios 11		0 11 0
	Attending filing		0 6 8
	Paid	0 2 6	
	Notice of taxing copy and service		0 4 0
0 6 8	Attending taxing		0 13 4
	Attending agreeing amount		0 6 8
1 0 0	Attending registrar with authority for payment out		0 6 8
	Attending at paymaster, lodging same on understanding that costs are paid		0 6 8
	Attending for cheque		0 6 8
	Sittings fee		0 15 0
1 1 0	Letters, &c.		2 2 0
	Paid witnesses:		
	Mrs. Measures, 2 days	1 10 0	
	Fare from Brighton	1 0 0	
0 10 0	*Mr. Buckler* (fitter in employ of Midland Railway Company), 2 days	1 10 0	
0 11 0	Fares from Wellingborough	1 1 2	
0 5 0	*Mrs. Buckler*, 2 days	1 0 0	
0 11 2	Fares from Wellingborough	1 1 2	
0 5 0	*Miss Starmer* (domestic servant), 2 days, and expenses from Herne Hill	1 0 0	
10 15 0		18 12 8	34 10 10
	Disbursements	- -	18 12 8
			53 3 6
	Taxed off	- -	10 15 0
			42 8 6
	Paid taxing	- -	1 2 0
			43 10 6

In the High Court of Justice.
Probate, Divorce, and Admiralty Division.
(Divorce.)

Measures *v.* Measures, Lamberton, and Holland.

Respondent's Costs up to Setting Down.

Trinity Sittings.

1906. May 30. £ s. d.		£ s. d.	£ s. d.
	Instructions to defend		0 6 8
	Attending, retaining Mr. Morle		0 6 8
	Paid his fee and clerk	1 3 6	
	Perusing petition		0 6 8
	Perusing citation		0 1 8
	Attending entering appearance		0 6 8
	Paid	0 2 0	
	Notice of appearance		0 4 0
0 6 8	Instructions for petition for alimony		0 6 8
1 0 0	Drawing same		1 0 0
0 1 4	Engrossing fair copy, folios 4		0 1 4
0 3 4	Attending counsel to settle		0 3 4
1 3 6	Paid his fee and clerk	1 3 6	
June 16. 0 3 6	Writing petitioner's solicitor prior to filing petition, asking what provision petitioner would make with a view of saving this expense of filing petition, &c.		0 3 6
June 21.	Drawing and engrossing summons for particulars of paragraphs 4 and 5 of the petition		0 5 0
	Attending issuing same		0 6 8
	Paid issuing	0 8 0	
	Copy and service		0 3 6
	Attending hearing order made		0 6 8
	Attending obtaining order		0 6 8
	Copy and service		0 3 6
June 30. 0 3 6	On receipt of your letter offering the sum of 10*s.* per week. Alimony *pendente lite*. Writing my client thereon		0 3 6
0 6 8	Attending respondent and discussing the question of alimony, and I was instructed to ask for 25*s.* a week seeing that the respondent was maintaining the child		0 6 8
July 3. 0 3 6	Writing Messrs. Nicholson thereon. On receipt of reply that their client could not offer more than 10*s.* a week		0 3 6
0 6 8	Attending respondent, who finally instructed me to accept the offer rather than delay the proceedings		0 6 8

£ s. d.		£ s. d.	£ s. d.
July 18.	Writing the petitioner's solicitors thereon, and requesting them to pay		
0 3 6	the alimony to respondent's mother, who had the child with her -		0 3 6
0 1 0	On receipt of reply requiring a formal authority for them to pay the mother - - - - - - - - -		
	Drawing authority - - - - - - - -		0 1 0
July 26.	Writing respondent to give me a call and that she was required a formal		
0 3 6	authority - - - - - - - - -		0 3 6
0 6 8	Attending on her calling and signing the authority - - -		0 6 8
July 28.			
0 3 6	Writing petitioner's solicitors, enclosing same - - - -		0 3 6
	All proceedings in alimony - - - - - -		1 10 0
	Perusing petitioner's affidavit as to particulars, 3 folios - - -		0 1 0
	Instructions for answer - - - - - - -		0 6 8
	Drawing same and copy - - - - - - -		1 0 0
	Attending counsel to settle same - - - - -		0 3 4
	Paid his fee and clerk - - - - - -	1 3 6	
	Instructions for affidavit. Verifying answers - - - -		0 6 8
	Drawing same - - - - - - - -		0 6 8
	Attending respondent to be sworn - - - - -		0 6 8
	Paid oath - - - - - - - -	0 1 6	
	Attending filing answer and affidavit - - - - -		0 6 8
	Paid - - - - - - - - -	0 5 0	
	Copy answer for service, folios 8 - - - - -		0 2 8
	Attending service - - - - - - -		0 3 4
	Summons for discovery - - - - - - -		0 6 8
	Attending issuing - - - - - - - -		0 6 8
	Paid - - - - - - - - -	0 8 0	
	Copy and service - - - - - - -		0 3 0
	Attending summons order made - - - - -		0 6 8
	Attending for order - - - - - - -		0 6 8
	Copy and service - - - - - - -		0 3 6
	Paid for copy, petitioner's affidavit of discovery - - - -	0 3 0	
0 3 8	Perusing same - - - - - - - -		0 6 8
0 0 6	Notice to produce documents, copy and service - - - -		0 4 6
	Attending inspecting documents - - - - -		0 13 4
	Paid for copies of documents - - - - - -	0 3 4	
	Sittings fee - - - - - - - -		0 15 0
	Michaelmas Sittings.		
	Attending, giving further time for reply - - - -		0 6 8
	Perusing reply - - - - - - - -		0 6 8
	Perusing notice cause set down - - - - - -		0 1 0
	Drawing bill of costs and copy, folios 12 - - - -		0 12 0
	Attending filing bill - - - - - - -		0 6 8
	Paid - - - - - - - - -	0 2 6	
	Notice of taxing copy and service - - - - -		0 4 0
	Attending taxing - - - - - - -		0 13 4
	Attending agreeing amount - - - - - -		0 6 8
	Attending fixing amount of future costs - - - -		0 6 8
	Attending for order - - - - - - -		0 6 8
	Paid for same and fixing security - - - - -		0 15 0
	Copy and service - - - - - - -		0 3 6
	Sittings fee - - - - - - - -		0 15 0
5 1 0		5 3 10	20 7 10
	Disbursements - - -	- -	5 3 10
			25 11 8
	Taxed off - - -	-	5 1 0
			20 10 8
	Paid taxing - - -	- -	0 11 0
			21 1 8

APPENDIX XI.

(A.)

EXHIBITS MARKED "D. 1" TO "D. 70," REFERRED TO IN THE EVIDENCE OF MR. HERBERT GREENWOOD WRIGLEY; being notes of Cases specially investigated by the following Solicitors:—

Mr. Frank Barratt.
„ Gilbert Barratt.
„ Jas. Brooke Garner.
„ Charles Grundy.
„ A. E. Hanson.
„ Harold Scholfield.
„ H. Greenwood Wrigley.
„ Edgar Youatt.

At the Art Museum and University Settlement, Ancoats, Manchester.

D. No. 1.

20th November 1909.

Name.—G. A. A.
Occupation.—Cabinet maker, 30*s.* a week.
Date of marriage.—March 1901. Age when married, 20; wife, 18.
Place where married.—Church of England.
Nature of relief required.—Divorce.
Reason for requiring relief.—Wife committed adultery with friend of applicant of 15 years' standing. Applicant discovered offence after a child had been born to this man. Wants custody of his second child. Wife now living in adultery.
Solicitor's observations.—Might be able to raise 10*l.* to 15*l.* to pay for a divorce.
Solicitor's initials.—H. G. W.

D. No. 2.

17th November 1909.

Name.—S. A.
Occupation.—Tram conductor.
Date of marriage.—February 1903. Age when married, 22 years.
Place where married.—Registry Office.
Nature of relief required.—As to liability to support wife. ? Divorce.
Reason for requiring relief.—Applicant's wife emigrated to Canada three years ago (being unsatisfied with applicant's position) under Salvation Army Scheme. Afterwards applied to applicant for support. It is known that she is dressing expensively and living extravagantly, an army officer being responsible for this. Inquiry if made would no doubt reveal grounds for divorce. Wife refuses to return. One child of marriage in custody of applicant.
Solicitor's observations.—Applicant earns 26*s.* per week and has no means for procuring divorce.
Solicitor's initials.—H. G. W.

D No. 3.

10th November 1909.

Name.—H. B.
Occupation.—Fitter, 37*s.* per week.
Date of marriage.—October 1902. Age when married, 19 years.
Place where married.—Registry Office.
Nature of relief required.—Divorce.
Reason for requiring relief.—Wife left applicant 10th April. Wife has been living with a man for the last five months at various addresses. Previously, about four years ago, his wife had a child by another man, but applicant forgave her.
Solicitor's observations.—Applicant not called on to support his wife because she can get more out of the other man. Could pay a small sum for divorce, but expense of taking witnesses to London would be too great.
Solicitor's initials.—H. G. W.

D. No. 4.

10th November 1909.

Name.—E. B., wife of P. B.
Occupation.—Rag sorter.
Husband.—Living apart.
Date of marriage.—October 1897. Age when married, 24.
Place where married.—Roman Catholic Church.
Nature of relief required.—Maintenance.
Reason for requiring relief.—Husband deserted her December 26th, 1908, leaving her with one child aged eight years. No proceedings taken. Cannot definitely state if living with anyone else, but believes so. Wages not exceed 10*s.* per week.
Solicitor's observations.—Would avail herself of opportunity for divorce but is penniless. Unless same absolutely free would be unable to avail herself of same.
Solicitor's initials.—C. G.

(MEMO.—In a case like this it would be impracticable to look to husband to reimburse costs.—H. G. W.)

D. No. 5.

17th November 1909.

Name.—L. B., wife of W. E. B.
Occupation of husband.—Labourer.
Husband.—Living apart.
Date of marriage.—May 1892. Age when married, 31.
Place where married.—Church of England.
Nature of relief required.—Maintenance.
Reason for requiring relief.—Desertion by husband nine years ago. Originally allowed 14*s.* per week. Now 5*s.* per week. Now living with another woman. Cannot say as to any children born, but reason to believe so. Never applied for summons, mutually arranged with husband for maintenance to be paid. Applicant has three children, eldest 17 years, youngest 10 years.
Solicitor's observations.—Income under 1*l.* a week.
Solicitor's initials.—J. B. G.

(*See* Memo. on D. 4.)

D. No. 6.

10th November 1909.

Name.—A. B., wife of J. B.
Occupation of husband.—Manager of shop.
Date of marriage.—October 1887. Age when married, 20.
Place where married.—Roman Catholic Church.
Nature of relief required.—Maintenance.
Reason for requiring relief.—Husband not worked for three months. Not really worked since September 1908. Never sober. She earns 7*s.* a week. Family four (21, 16, 14, 12). Children earning 18*s.* 6*d.* a week.
Solicitor's observations.—This is a case where the wife would be much better off if rid of husband, but he has not done anything which entitles her either to separation or divorce. No case for divorce.
Solicitor's initials.—C. G.

(MEMO.—Separation would adequately meet this case.—H. G. W.)

D. No. 7.

10th November 1909.

Name.—E. B., wife of J. B.
Occupation of husband.—Iron turner.
Husband.—Living apart.
Date of marriage.—November 1888. Age when married, 20.
Place where married.—Registry Office.
Nature of relief required.—Divorce.
Reason for requiring relief.—Husband cohabited with woman for the past seven years. Separation order granted in 1892. Husband is over two years in arrear.

Solicitor's observations.—Expense of investigating and taking proceedings in London precludes applicant from moving for divorce.

Solicitor's initials.—H. G. W.

(MEMO.—If applicant were helped to obtain divorce, some part of the costs could be recovered from the husband.—H. G. W.)

D. No. 8.

20th November 1909.

Name.—W. B.

Occupation.—Labourer.

Date of marriage.—December 1906. Age when married, 29; wife, 23.

Place where married.—Registry Office.

Nature of relief required.—Divorce or separation with custody of children.

Reason for requiring relief.—Deserted by wife, who is living with another man.

Solicitor's observations.—Cannot afford the luxury of divorce or separation; hence, cannot obtain custody of his child.

Solicitor's initials.—H. G. W.

(MEMO.—Would it be possible to have a simple order for custody of child in a case like this, without the necessity for proceeding for divorce or separation? —H. G. W.)

D. No. 9.

20th November 1909.

Name.—S. E. C., wife of J. C.

Occupation of applicant.—Laundress.

Husband.—Living apart.

Date of marriage.—November 1907. Age when married, 35.

Place where married.—Registry Office.

Nature of relief required.—Separation and (if possible) divorce.

Reason for requiring relief.—Now living apart from husband owing to his drunken habits. Children by her first husband refused to live with him. Husband very sottish, and no doubt misconducts himself with other women, but as yet no direct evidence.

Solicitor's observations.—No means whatever of taking any proceedings. Earns 5*s*. to 10*s*. per week by washing.

Solicitor's initials.—H. G. W.

D. No. 10.

10th November 1909.

Name.—J. C., wife of H. C.

Occupation of applicant.—Cook, in service (living at home).

Husband.—Living apart.

Date of marriage.—20 years ago. Age when married, 18.

Place where married.—Registry Office.

Nature of relief required.—Wishes to know if can re-marry.

Reason for requiring relief.—Husband went to America, 1903. Corresponded for 12 months, since then no information. Four children, ages 20, 18, 11, and 7. Strictly chaste since husband deserted her.

Solicitor's observations.—This is a case where an amendment of the law is necessary.

Solicitor's initials.—C. G.

D. No. 11.

10th November 1909.

Name.—E. C., wife of C. H. C.

Occupation of applicant.—Dressmaker.

Husband.—Living apart.

Date of marriage.—April 1897. Age when married, 21.

Place where married.—Independent Chapel.

Nature of relief required.—Separation.

Reason for requiring relief.—Husband and wife by mutual agreement agreed to separate, 2nd October 1907. 7*s*. a week. Not paid since April 1908. Reason for separation, another woman; believe still with her, although not living together.

Solicitor's observations.—Wife would like divorce if able to obtain same cheap. Am, however, of opinion that this is a case which would require much further inquiry as wife has only suspicions as to other woman. No direct evidence.

Solicitor's initials.—C. G.

D. No. 12.

22nd November 1909.

Name.—E. C., wife of F. C.

Occupation of husband.—Unknown.

Husband.—Living apart.

Date of marriage.—May 1907. Age when married 20; husband, 23.

Place where married.—Church of England.

Nature of relief required.—Maintenance for child (15 months old).

Reason for requiring relief.—Desertion, coupled with cruelty. ? Adultery.

Solicitor's observations.—Applicant says she can keep herself and only wants support for the child. If she had grounds for divorce would try to obtain same, but has no means of doing so; hence had not tried to get evidence.

Solicitor's initials.—H. G. W.

D. No. 13.

10th November 1909.

Name.—S. C., wife of R. C.

Occupation of applicant.—Cotton operative.

Husband.—Living apart.

Date of marriage.—1878. Age when married, 25; husband, 26.

Nature of relief required.—Divorce.

Reason for requiring relief.—Husband constantly going after other women. Had one child (son). After 17 years of married life husband went to America and has not since been heard of.

Solicitor's observations.—This is a case where, if divorce had been cheaper, the wife might have obtained one, as the husband had previously deserted her and also been guilty of misconduct.

Solicitor's initials.—E. Y.

D. No. 14.

20th November 1909.

Name.—N. D., wife of J. D.

Occupation of husband.—Fitter.

Husband.—Living apart.

Date of marriage.—1898. Age when married, 18.

Place where married.—Registry Office.

Nature of relief required.—Divorce.

Reason for requiring relief.—Husband had two children to another woman after deserting applicant. Only lived five weeks together. One child of marriage.

Solicitor's observations. — Applicant a weaver. Could not afford a divorce. Might be able to raise 10*l*. to 15*l*. if could get cheap divorce.

Solicitor's initials.—H. G. W.

D. No. 15.

13th November 1909.

Name.—E. A. D., wife of J. D.

Occupation of applicant.—Weaver.

Husband.—Living apart.

Date of marriage.—November 1901. Age when married, 20.

Place where married.—Registry Office.

Nature of relief required. — Maintenance order obtained but not complied with.

Reason for requiring relief.—Warrant out for husband's arrest. Deserted wife four years ago and has been living with another woman over two years. Child born to her 2nd May 1908. Applicant has one child born June 1906; order, 7*s*. a week.

Solicitor's observations.—This is clearly a case for divorce, but applicant has no means. There is no evidence of any cruelty.

Solicitor's initials.—C. G.

D. No. 16.

20th November 1909.

Name.—W. D.
Occupation.—Warehouseman.
Date of marriage.—November 1883. Age when married, 25; wife, 26.
Place where married.—Roman Catholic Church.
Reason for requiring relief.—Wife left applicant, and he hears that she is drinking and living as a prostitute. Two children.
Solicitor's observations.—Could find about 15*l.* for divorce if he could get one for that amount.
Solicitor's initials.—H. G. W.

D. No. 17.

13th November 1909.

Name.—M. D., wife of J. H. D.
Occupation of husband.—Warehouseman.
Husband.—Living apart.
Date of marriage.—July 1897. Age when married, 23.
Place where married.—Registry Office.
Nature of relief required.—Maintenance.
Reason for requiring relief.—Husband left England for Australia some years ago and has not heard of him since.
Solicitor's observations.—Husband left for Australia, saying he hoped to improve his position. Since his departure applicant has lost sight of him as he has not communicated with her. (?) Should not such desertion constitute civil decease of the offending party so as to enable the innocent party to re-marry.
Solicitor's initials.—H. G. W.

D. No. 18.

13th November 1909.

Name.—T. D., wife of J. D.
Occupation of husband.—Tailor.
Husband.—Living apart.
Date of marriage.—May 1904. Age when married, in 16th year.
Place where married.—Roman Catholic Church.
Reason for requiring relief.—Two children. Husband left her and gone to America.
Solicitor's observations.—Husband went to America to improve his position, leaving the two children with his parents in Ireland. Applicant would like her two children, but his parents won't give them to her. She is now only 21 years of age, and the consequences of a separation at such an age may be very serious.
Is not the husband in this case practically dead so far as the applicant is concerned?
Solicitor's initials.—H. G. W.

D. No. 19.

13th November 1909.

Name.—L. E., wife of J. E.
Husband.—Living apart.
Date of marriage.—January 1896. Age when married, 18.
Place where married.—Church of England.
Reason for requiring relief.—Husband left her in 1902, with three children living, applicant being pregnant. Last child died. Joined Army, then she got 10*s.* a week allowance. Now left Army, but receiving reserve pay. Never paid anything since left Army. Threatened to take children. Last Easter took possession. Mother wants children back. Children now 12, 11, and 9. Divorce wished for, but under present law impossible. No proof of adultery by husband.
Solicitor's observations.—This is a case which shows a very serious defect in the practice of granting summonses for maintenance. The husband is daily at a well-known hotel, and takes out commercial travellers' samples, &c., and is well known to the management, &c., but as the wife cannot give a definite address for service a summons will not be granted.
Solicitor's initials.—C. G.
(No case for divorce.—H. G. W.)
(The solicitor who investigated this matter informs me that the applicant emphatically stated that she was informed that the summons would not be granted unless her husband's "residence" was given. If this is so it shows laxity either in the magistrate's clerk's department or on the part of the lay magistrates.—9.6.10., H. G. W.)

D. No. 20.

13th November 1909.

Name.—F. F.
Occupation.—Sheeting Department (L. and N.W. Railway). Wages, 24*s.*
Wife.—Living apart.
Date of marriage.—August 1889. Age when married, 28; wife, 21.
Place where married.—Church of England.
Reason for requiring relief. — Wife left him 13 months ago and returned for one month last March. and then left again. Has not been seen since.
Solicitor's observations.—It is probable that wife is living in adultery, only applicant has no proof. He has not attempted to get any proof up to the present time. Applicant could not possibly find more than 10*l.*
Solicitor's initials.—F. B.

D. No. 21.

10th November 1909.

Name.—L. F., wife of J. F.
Occupation of applicant.—Shirtmaker.
Husband.—Living apart.
Date of marriage.—January 1895. Age when married, 21.
Place where married.—Registry Office.
Nature of relief required.—Divorce.
Reason for requiring relief.—Husband deserted her October 1898. Has obtained separation order and maintenance, 10*s.* a week. Never paid. No information as to husband.
Solicitor's initials.—C. G.

D. No. 22.

20th November 1909.

Name.—E. F., wife of G. F.
Occupation of applicant.—Mantle maker.
Husband.—Living apart.
Date of marriage.—December 1896. Age when married.—22.
Place where married.—Church of England.
Nature of relief required.—Separation order.
Reason for requiring relief.—Persistent cruelty.
Solicitor's observations.—Applicant was not aware that husband had ever been guilty of adultery. If applicant had any ground for divorce she could not afford to pay anything; only earning 10*s.* per week. Helped by father, aged 82, who had a pension of 5*s.* per week, and another source of income which brought in 5*s.* per week.
Solicitor's initials.—G. B.
(No case for divorce —H. G. W.)

D. No. 23.

13th November 1909.

Name.—J. F.
Occupation.—Insurance agent.
Wife.—Living apart.
Date of marriage.—December 1893. Age when married, 20; wife, 20.
Place where married.—Church of England.
Reason for requiring relief.—Children two, aged 14 and 15 respectively, living with applicant.
Solicitor's observations. — Wife left applicant in July 1898, and has not seen her since. He is quite certain that she is living with some other man (if she is alive), for subsequently to her leaving him he found out that in her previous life, when living with him, she was guilty of misconduct. Although applicant has no desire to be married again he is most anxious to obtain

a divorce on account of his children. The expense of divorce to applicant is too great. He could afford about 20*l.* at the very most.

Solicitor's initials.—F. B.

D. No. 24.

22nd November 1909.

Name.—T. J.

Occupation.—Ring doubler.

Date of marriage.—August 1901. Age when married, 22; wife's age, 21.

Place where married.—Church of England.

Nature of relief required.—Separation (? divorce) and custody of child (5 years old).

Reason for requiring relief.—Adultery of wife.

Solicitor's observations.—Applicant could pay a small sum for divorce, but, owing to his financial position, his child has to be left with his wife who is living in adultery.

Solicitor's initials.—H. G. W.

D. No. 25.

13th November 1909.

Name.—J. L., wife of M. L.

Occupation of husband.—Music hall artist.

Husband.—Living apart.

Date of marriage.—February 1882. Age when married, 17.

Reason for requiring relief.—Number of children five, all living with applicant, aged 27, 24, 20, 14, 9. Husband left applicant six years ago. He is at present living with another woman. No means for separation, much less divorce.

Solicitor's initials.—F. B.

D. No. 26.

13th November 1909.

Name.—E. M., wife of T. M.

Occupation of husband.—Labourer.

Date of marriage.—October 1909. Age when first married, 19.

Place where married.—Church of England.

Memo.—Department had been previously consulted by applicant's present husband before they were married as to whether or not he could safely marry applicant.

Solicitor's observations.—Applicant was previously married 17 years ago at the same church to a man who left her six weeks after marriage. She has not heard of him for the last 10 years.

Solicitor's initials.—H. G. W.

D. No. 27.

13th November 1909.

Name.—J. M.

Occupation.—Carter, 22*s.* per week.

Date of marriage.—December 1896. Age when married, 24.

Place where married.—Church of England.

Nature of relief required.—Divorce.

Reason for requiring relief.—Wife left applicant first week in April last, leaving with a man who was lodging with them and is now living with him. One child of marriage, 13 years of age (boy).

Solicitor's observations.—Would be able to pay a small sum for a divorce (up to 10*l.*).

Solicitor's initials.—H. G. W.

D. No. 28.

13th November 1909.

Name.—S. M.

Occupation.—Labourer; wages, 32*s.*

Date of marriage.—1883. Age when married, 27.

Place where married.—Church of England.

Solicitor's observations.—Separation order made against applicant on ground of desertion in December 1908. 7*s.* 6*d.* per week. Cause of desertion, money differences. Wife is now living in adultery.

Solicitor's initials.—F. B.

D. No. 29.

13th November 1909.

Name.—W. M., wife of J. W. M.

Occupation of applicant.—Caretaker.

Husband.—Living apart.

Date of marriage.—March 1899. Age when married, 20.

Place where married.—Church of England.

Reason for requiring relief.—Separation order, February 2nd, 1909. 5*s.* a week. No children. Earning 17*s.* 6*d.* Rent, coal, and gas. Husband has taken furniture. Husband not paying. Husband wants to return; very drunken. If returns to husband position of caretaker lost.

Solicitor's observations.—Wife has not considered question of divorce; states that she has had enough of husbands.

Solicitor's initials.—C. G.

(Memo.—No reason for divorce as no suggestion of adultery.—H. G. W.)

D. No. 30.

13th November 1909.

Name.—C. M.

Occupation.—Warehouse porter.

Wife.—Living apart.

Date of marriage.—September 1884. Age when married, 19.

Place where married.—Church of England.

Nature of relief required.—Guilty party.

Reason for requiring relief.—Took drink, and hence separation. Wife now living with another man. Supposed to be lodger. Another married man frequently calling there.

Solicitor's observations.—No absolute evidence, but very strong suspicions. If the man were able to have wife watched, no doubt evidence could be found.

Solicitor's initials.—H. G. W.

D. No. 31.

20th November 1909

Name.—C. W. N.

Occupation.—Cook.

Wife.—Living apart.

Date of marriage.—July 1900. Age when married, 28.

Place where married.—Church of England.

Nature of relief required.—Divorce.

Reason for requiring relief.—Wife living with lodger for past two years; had child by lodger 11th May 1909.

Solicitor's observations.—Might be able to raise 10*l.* for a divorce, but this would be maximum; number of witnesses.

Solicitor's initials.—H. G. W.

D. No. 32.

13th November 1909.

Name.—E. O., wife of A. E. O.

Occupation of applicant.—Office cleaner.

Husband.—Living apart.

Date of marriage.—April 1896. Age when married, 24.

Place where married.—Church of England.

Reason for requiring relief.—Separation order granted May 1905, on grounds of cruelty and neglect.

Solicitor's observations.—Husband left the kingdom and has not complied with separation order. This is a very hard case, as the applicant is of a very superior class of woman, and if she had been free could have made a good marriage. She has to clean offices for a living.

Solicitor's initials.—H. G. W.

D. No. 33.

29th November 1909.

Name.—H. P., wife of G. P.

Occupation.—Unknown.

Husband.—Living apart.

Date of Marriage.—August 1874. Age when married, 21.

Place where married.—Church of England.

Nature of relief required.—As to separation obtained.

Reason for requiring relief.—Married 35 years. Seven children born, four living. On 21st January

1898, order made by magistrates for payment of 12*s.* 6*d.* per week, in consequence of desertion. Payments made irregularly. Husband been living with another woman, one child having been born but since died. On account of quarrels husband approached applicant and induced her to resume cohabitation. Now again deserted applicant. Husband resumed cohabitation with woman.

Solicitor's observations.—A fit case for divorce.

Solicitor's initials.—J. B. G.

D. No. 34.

15th November 1909.

Name.—S. A. P., wife of T. P.

Occupation of husband.—Hawker.

Husband.—Living apart.

Date of marriage.—November 1896. Age when married, 19.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief.—Desertion, has been cohabiting with woman.

Solicitor's observations.—Four children (10, 5, 2 years, and 3 months); two children deceased. Cannot afford even to pay a solicitor to appear for her on application for separati n. Husband has served six months out of last 12 months for neglect of family.

Solicitor's initials.—H. G. W.

D. No. 35.

19th November 1909.

Name.—W. R.

Occupation.—Railway goods porter.

Wife.—Living apart.

Date of marriage.—July 1897. Age when married. 21 years.

Place where married.—Church of England.

Nature of relief required.—Divorce.

Reason for requiring relief.—Two weeks after marriage wife left home and remained away three nights. Afterwards brought home by applicant: stayed at home three weeks and when applicant arrived home on the following Saturday (at end of three weeks), found house empty, furniture sold by wife which belonged to applicant. Afterwards saw wife Easter, 1899, then gave her 8*s.* per week. Afterwards found living with another man. Since ascertained had four children by other men. Wife has no children by applicant. Applicant in lodgings. Wages, 19*s.* 10*d.* per week.

A deserving case and one fit for divorce.

Solicitor's initials.—J. B. G.

D. No. 36.

13th November 1909.

Name.—M. A. R., wife of W. H. R.

Occupation of husband.—Moulder.

Husband.—Living apart.

Date of marriage.—August 1905. Age when married, 18.

Place where married.—Church of England.

Reason for requiring relief.—Desertion: husband has cohabited with another woman. Two children.

Solicitor's observations.—Order made, 5*s.* per week, November 1908. If could afford a divorce would prefer one. Earns 8*s.* per week by working in warehouse.

Solicitor's initials.—H. G. W.

D. No. 37.

10th November 1909.

Name.—I. R.

Occupation.—Tailor, earns 20*s.* to 25*s.* per week.

Wife.—Living apart.

Date of marriage.—August 1908. Age when married, 26 years.

Place where married.—Synagogue.

Nature of relief required.—Divorce.

Reason for requiring relief.—Wife cohabiting with lodger in her mother's house. One child of marriage left with applicant.

Solicitor's observations.—Applicant could not afford to take witnesses to London even if he had a free divorce.

Solicitor's initials.—H. G. W.

D. No. 38.

17th November 1909.

Name.—E. A. S., wife of F. S.

Occupation of applicant.—Charwoman.

Husband.—Living apart.

Date of marriage.—December 1892. Age when married, 29.

Place where married.—Church of England.

Nature of relief required.—Desired to know if could re-marry or could obtain divorce.

Reason for requiring relief.—Not seen husband for last 12 years. Heard of him last three years ago. Have obtained three magistrates' orders against husband for maintenance in consequence of assaults committed. Husband been convicted on many occasions for felony and other offences (stealing fowls, lead, &c.). Orders made against husband on bastardy summons.

Solicitor's observations.—Advised applicant she could obtain divorce, but could not re-marry (unless divorced) without being liable to prosecution for bigamy.

Solicitor's initials.—J. B. G.

D. No. 39.

10th November 1909.

Name.—H. S.

Occupation.—Fitter.

Wife.—Living apart.

Date of marriage.—July 1904. Age when married, 24.

Place where married.—Registry Office.

Nature of relief required.—Divorce.

Reason for requiring relief.—Wife left him about April 1905. No children. Previously married; one child. Wife has been living with other men. At present in prison for assaulting man with whom she has gone through marriage ceremony. Husband has been requested to give evidence for bigamy. Wages, 25*s.* per week.

Solicitor's observations.—This is a very suitable case for divorce, but husband unable to pay any expenses.

Solicitor's initials.—C. G.

(Memo.—I have seen this applicant on several occasions and believe he ought to be able to pay 10*l.* towards cost of divorce.—H. G. W.)

D. No. 40.

8th November 1909.

Name.—R. S.

Occupation.—Engineer (when working); at present unemployed.

Date of marriage.—April 1890. Age when married, 24 years.

Place where married.—Church of England.

Reason for requiring relief.—After birth of three children wife became infatuated, leaving applicant with two children, taking the youngest child, 6 months old, with her, and lived with another man. Subsequently one child was born, this man being the father. Arrangements were made by applicant for his parents to take care of his two children, he going to Canada. On returning to England, 12 months last March, saw wife and she begged to resume cohabitation, pleading that she would reform and atone for past offences. Applicant forgave his wife on condition that the illegitimate child should not be brought to the house. After resuming cohabitation wife now threatens to bring illegitimate child to the house, and this has caused trouble between applicant and his wife who has had to leave. Wife now threatens to commence proceedings unless she receives 15*s.* per week maintenance.

Solicitor's initials.—J. B. G.

D. No. 41.

20th November 1909.

Name.—S. T., wife of W. H. T.

Occupation of husband.—Iron turner. Wages, 2*l.* and bonus.

Date of marriage. — June 1882. Age when married, 18.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief.—For cruelty; advised no case. Children, three living, all under 21.

Solicitor's observations.—Applicant's husband has been for some time living in adultery. Could possibly pay 10*l.*

Solicitor's initials.—F. B.

D. No. 42.

10th November 1909.

Name.—M. T., wife of W. J. T.

Occupation of husband.—Sawyer.

Date of marriage. — July 1899. Age when married, 18.

Place where married.—Church of England.

Nature of relief required.—To be enabled to marry again.

Reason for requiring relief.—Not heard of husband for last seven years. Husband went to the war 10 years ago. Up to declaration of peace applicant received pay from War Office. Then War Office reported that he had been drafted home. Not heard of or from him since. Now wants to re-marry.

Solicitor's observations.—Neither War Office nor husband's people know of his whereabouts. After married short time, husband communicated venereal disease to applicant, which has since been cured. Applicant is only 28 years of age now. What will be the result of her not being in a position to enter into a valid marriage?

Solicitor's initials.—H. G. W.

D. No. 43.

10th November 1909.

Name.—W. W.

Occupation.—Drainer.

Date of marriage.—September 1895. Age when married, 23; wife, 21.

Nature of relief required.—Divorce.

Reason for requiring relief.—Wife is pregnant by a youth, aged 18. Husband positive he is not the father, but knows that proof would be difficult. This couple had 11 children in 12 years!! Four only are now living.

Solicitor's observations.—Husband seems respectable working man and is greatly incensed against the youth, but sees that his wife is probably most to blame. If the youth had means he would go in for a divorce, but is unable to do so on ground of expense, and the matter will probably end in desertion, and if the husband takes the children, as he probably would, it would probably mean a life of immorality for the wife.

Solicitor's initials.—E. Y.

D. No. 44.

29th November 1909.

Name.—J. H. D.

Occupation.—Labourer.

Wife.—Living apart.

Date of marriage.—March 1893. Age when married, 20; wife, 19.

Place where married.—Church of England.

Nature of relief required.—Custody of son aged 15½. Divorce *in formâ pauperis* desired.

Reason for requiring relief. — Wife living with another man. Four illegitimate children. Wife has caused son to leave his father. Applicant wishes to marry again (if possible).

Solicitor's observations.—The applicant has been a soldier (Garrison Artillery), 15 years' service. On return found wife living with another man. Son came to father on his return, placed with aunt, mother caused lad to come back to her. Applicant has allowed wife regular maintenance during married life up to discovery of misconduct, but nothing since. Advised to obtain custody of son.

Solicitor's initials.—H. S.

D. No. 45.

29th November 1909.

Name.—A. K., wife of A. J. K.

Occupation of husband.—Builder and contractor.

Husband.—Living apart.

Date of marriage.—July 1890. Age when married, 25.

Place when married.—Church of England.

Nature of relief required.—Maintenance or divorce.

Reason for requiring relief.—Husband deserted. Gone to Australia with another woman with whom he had married (bigamously).

Solicitor's observations. — Case for divorce but unable to bear expense.

Solicitor's initials.—A. E. H.

D. No. 46.

20th November 1909.

Name.—A. R., wife of A. R.

Occupation of husband.—Labourer.

Husband.—Living apart.

Date of marriage.— Christmas day, 1885. Age when married, 24.

Place where married.—Church of England.

Nature of relief required.—Divorce.

Reason for requiring relief.—Cruelty. Husband committed for common assault 13 years ago. Is living with a woman by whom he has a child.

Solicitor's observations. — Has no means, consequently divorce impossible.

Solicitor's initials.—H. G. W.

D. No. 47.

20th November 1909.

Name.—T. S., wife of G. E. S.

Occupation of applicant.—Housekeeper.

Husband.—Living apart.

Date of marriage.— June 1870. Age when married, 18.

Place where married.—Church of England.

Nature of relief required.—Divorce or separation.

Reason for requiring relief.—Husband deserted applicant December 1907 (leaving her with seven children); living with another woman.

Solicitor's observations.—Applicant might be able to raise a sum up to 10*l.* if she could obtain a divorce for that sum.

Solicitor's initials.—H. G. W.

D. No. 48.

20th November 1909.

Name.—M. S., wife of A. S.

Occupation of husband.—Insurance agent.

Husband.—Living apart.

Date of marriage. — August 1896. Age when married, 19.

Place where married.—Wesleyan Church.

Nature of relief required.—Separation agreement.

Reason for requiring relief.—Husband now living with another woman.

Solicitor's observations.—Husband also came and said his wife nearly ruined him by extravagant living and says that when separated he was compelled to get a housekeeper. Hence his present condition of life. Wife is not at present anxious for a divorce.

Solicitor's initials.—H. G. W.

D. No. 49.

20th November 1909.

Name.—E. V., wife of M. V.

Occupation of husband.—Photographer.

Husband.—Living apart.

Date of marriage.—June 1907. Age when married, 19.

Place where married.—Registry Office.

Nature of relief required.—Divorce.

Reason for requiring relief.—Husband deserted applicant 16th October 1907, and went back to Belgium. Has since married again in Paris.

Solicitor's observations.—No means of obtaining divorce owing to poverty. Wants to marry again. Fear that inability will lead to immorality.

Solicitor's initials.—H. G. W.

D. No. 50.

20th November 1909.

Name.—G. W.
Occupation.—Labourer.
Wife.—Living apart.
Date of marriage.—1895. Age when married, 23.
Place where married.—Church of England.
Reason for requiring relief.—Wife living in adultery, and when consulted before was pledging his credit.
Solicitor's observations.—Has no immediate necessity for divorce.

Solicitor's initials.—H. G. W.

D. No. 51.

13th November 1909.

Name.—W. B.
Occupation.—Labourer.
Wife.—Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief. — Wife living in adultery.
Solicitor's observations.—Applicant earning 15*s.* to 20*s.* per week. Might raise very small sum if able to obtain divorce.

Solicitor's initials.—H. G. W.

D. No. 52.

13th November 1909.

Name.—S. E. C., wife of J. C.
Husband.—Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief.—Husband now serving time for bigamy.
Solicitor's observations.—Applicant deprived of her rights by reason of her impecunious position.

Solicitor's initials.—H. G. W.

D. No. 53.

13th November 1909.

Name.—J. C.
Occupation.—Labourer.
Wife.—Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief.—Wife living with another man by whom she has had four children.
Solicitor's observations.—Applicant would do his utmost to raise (say) 10*l.* (which would be his limit), if he could get a divorce.

Solicitor's initials.—H. G. W.

D. No. 54.

13th November 1909.

Name.—J. H.
Occupation.—Moulder.
Wife.—Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief.—Wife living in adultery.
Solicitor's observations.—This applicant might be able to raise 20*l.* towards costs of divorce. He is clearly entitled to one.

Solicitor's initials.—H. G. W.

D. No. 55.

13th November 1909.

Name.—J. M.
Occupation.—Labourer.
Wife.—Living apart.
Nature of relief required.—Separation or divorce.
Reason for requiring relief.—Wife living in adultery.
Solicitor's observations. — Applicant wanted a separation in police court for his children's sake. Could not obtain same. If had been wealthier could have obtained divorce.

Solicitor's initials.—H. G. W.

D. No. 56.

13th November 1909.

Name.—E. A. P., wife of J. N. P.
Occupation of husband.—Architect.
Husband.—Living apart.
Nature of relief required.—Maintenance. Divorce.
Reason for requiring relief.—Husband deserted her and is now living in Paris.
Solicitor's observations.—Misconduct could surely be inferred from surrounding circumstances and might easily be proved if applicant were in a financial position to do so.

Solicitor's initials.—H. G. W.

D. No. 57.

13th November 1909.

Name.—G. A. P.
Occupation.—Salesman.
Wife.—Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief.—Wife has left him and he hears that she is misconducting herself with men.
Solicitor's observations.—Applicant could be able to raise 20*l.* (at the utmost) towards cost of a divorce.

Solicitor's initials.—H. G. W.

D. No. 58.

13th December 1909.

Name.—A. N., wife of A. N.
Occupation of husband.—Railway guard; wages 30*s.*
Date of marriage.—1900. Age when married, 25.
Place where married.—Church of England.
Nature of relief required.—Separation. Preferably divorce.
Reason for requiring relief.—Husband contracted venereal disease and infected applicant. Still goes with women, and tells his wife to leave him, using very filthy language.
Solicitor's observations.—When applicant infected with disease she would have left her husband and commenced proceedings for divorce if she had known it had been possible and she had possessed sufficient money. Ignorance and poverty prevented her acting. Now she cannot even obtain separation order.

Solicitor's initials.—H. G. W.

D. No. 59.

6th December 1909.

Name.—W. B.
Occupation.—Carter.
Wife.— Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief.—Wife left applicant and believed to be leading an immoral life.
Solicitor's observations.—Applicant could find small sum for divorce.

Solicitor's initials.—H. G. W.

D. No. 60.

6th December 1909.

Name.—W. D.
Occupation.—At present unemployed.
Wife.—Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief. — Wife living in adultery.
Solicitor's observations.—Applicant has no means whatever.

Solicitor's initials.—H. G. W.

D. No. 61.

6th December 1909.

Name.—J. F., wife of W. A. F.
Occupation of husband.—Dairyman.
Husband.—Living apart.
Date of marriage.—December 1904. Age when married, 24.
Place where married.—Registry Office.
Nature of relief required.—Separation.
Reason for requiring relief.—Desertion and alleged adultery.

Solicitor's observations. — Applicant entitled to separation order.

Solicitor's initials.—J. D. R.

D. No. 62.

6th December 1909.

Name.—E. H., wife of C. W. H.
Occupation of husband.—Unknown.
Husband.—Living apart.
Nature of relief required.—Declaration of decease of husband.
Reason for requiring relief.—Not heard of husband for past five years.
Solicitor's observations.—Applicant desires to remarry. It is feared that her inability to do so will lead to immorality.

Solicitor's initials.—H. G. W.

D. No. 63.

6th December 1909.

Name.—E. McN.
Occupation.—Warehouseman.
Wife.—Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief. — Wife living in adultery.
Solicitor's observations.—Applicant might be able to raise 10*l.* to 15*l.*

Solicitor's initials.—H. G. W.

D. No. 64.

6th December 1909.

Name.—M. A. P., wife of J. T. P.
Occupation of husband.—Collier.
Husband.—Living apart.
Nature of relief required.—Divorce (?).
Reason for requiring relief.—Husband left applicant four years ago and lived with another woman. Applicant two years later went to live with another man. Children, three by husband, and one illegitimate.
Solicitor's observations.—If wife had been able to obtain cheap divorce would this have happened?

Solicitor's initials.—H. G. W.

D. No. 65.

6th December 1909.

Name.—W. P.
Occupation.—Colour maker.
Nature of relief required.—Divorce.
Reason for requiring relief.—Wife has misconducted herself with the lodger.
Solicitor's observations.—Applicant might be able to find small sum towards costs of divorce.

Solicitor's initials.—H. G. W.

D. No. 66.

6th December 1909.

Name.—M. P., wife of G. P.
Occupation of husband.—Butcher.
Husband.—Living apart.
Date of marriage.—October 1907. Age when married, 22.
Place where married.—Church of England.
Nature of relief required.—Separation.
Reason for requiring relief.—Children, two; both aged under 15 months. Cruelty and adultery.
Solicitor's observations.—Good case for divorce. No means whatever. Has land. Only earning 30*s.* per week.

Solicitor's initials.—F. B.

D. No. 67.

6th December 1909.

Name.—M. R., wife of J. R.
Occupation of husband.—Warehouseman.
Husband.—Living apart.
Nature of relief required.—Divorce.
Reason for requiring relief.—Husband living with another woman. Two children of the marriage. Husband allows applicant 7*s.* per week for maintenance of herself and the children.
Solicitor's observations.—No means for divorce.

Solicitor's initials.—H. G. W.

D. No. 68.

6th December 1909.

Name.—E. W., wife of J. W.
Occupation of husband.—Clerk.
Husband.—Living apart.
Date of marriage.—August 1906. Age when married, 30.
Place where married.—Registry Office.
Nature of relief required.—Divorce.
Reason for requiring relief.—Two children, aged 2 and 3. Adultery and desertion.
Solicitor's observations.—No money for divorce. Could afford 5*l.* or 10*l.*

Solicitor's initials.—F. B.

D. No. 69.

6th December 1909.

Name.—M. T., wife of W. T.
Occupation of husband.—Soldier (when last heard of).
Date of marriage.—1899. Age when married, 18.
Nature of relief required.—Declaration of decease of husband.
Reason for requiring relief.—Not heard of husband for three years, since he left the country.
Solicitor's observations.—Applicant desires to remarry. What will be the result seeing that she cannot?

Solicitor's initials.—H. G. W.

D. No. 70.

13th November 1909.

Name.—A. H., wife of W. H.
Occupation of husband.—Pavior.
Date of marriage.—October 1895. Age when married, 23.
Reason for requiring relief.—One child of marriage.
Solicitor's observations.—Applicant separated from her husband by reason of cruelty and desertion. During separation husband cohabited with another married woman, who also was living separate from her husband. At the time applicant would have desired a divorce if it had been within her means. She has since forgiven her husband for the sake of this child. He still ill-uses her, and she does not know if she can continue to live with him.

Solicitor's initials.—H. G. W.

(B.)

EXHIBITS MARKED "M. 1." to "M. 90.," REFERRED TO IN THE EVIDENCE OF MR. HERBERT GREENWOOD WRIGLEY;

being notes of cases specially investigated by the following solicitors:—

Mr. Frank Barratt.
" Gilbert Barratt.
" William Dutton.
" Wm. Bowker Farrington.
" Jas. Brooke Garner.
" Charles Grundy.
" H. Gilman Jones.
" Wilfred H. Sell.
" S. A. Smith.
" H. Greenwood Wrigley.
" Edgar Youatt.

At the Art Museum and University Settlement, Ancoats, Manchester.

M. No. 1.

22nd November 1909.

Name.—E. A., wife of A. E. A.
Occupation of husband.—Labourer.
Husband.—Living apart.
Date of marriage.—November 1908. Age when married, 22; husband, 21.
Place where married.—Registry Office.
Nature of relief required.—Support.
Reason for requiring relief.—Child born, 23rd November 1908. Now six months pregnant. Husband left last Tuesday and refused to help her. Army

reservist. Has tried summons, but unable to find money to pay for summons.

Solicitor's observations. — Hard case; requires amendment of law.

Solicitor's initials.—C. G.

M. No. 2.

17th November 1900.

Name.—S. J. A., wife of J. A.

Date of marriage.—April 1908. Age when married, 21.

Place where married.—Church of England.

Reason for requiring relief.—That husband accused applicant of being immoral, she having a complaint the result of a previous illness.

Solicitor's observations.—Applicant was referred by Department to one of the charity organisations in the district, who satisfied the husband, after obtaining a medical certificate, that applicant's story was correct. Now living together again.

Solicitor's initials.—H. G. W.

M. No 3

10th November 1909.

Name.—H. A., wife of J. H. A.

Occupation of husband.—Cabinet maker.

Husband.—Living apart.

Date of marriage.—June 1900. Age when married, 18.

Place where married.—Wesleyan Chapel.

Nature of relief required.—Separation.

Reason for requiring relief.—Husband was jealous of her without cause, but did not do anything which would give her ground for obtaining separation order. She left him and he now maintains the two children of the marriage who live with his mother, and wife has access to them. Neither party is cohabiting with another person.

Solicitor's observations.—This is a case of "incompatibility of temper," which would have been best met by a separation agreement.

Solicitor's initials.—E. Y.

M. No. 4.

10th November 1909.

Name.—A. A.

Occupation.—Iron turner.

Date of marriage.—April 1907. Age when married, 24; wife 23.

Nature of relief required.—Separation.

Reason for requiring relief.—Could not agree with wife who was very quarrelsome from beginning. Allowed wife to obtain summons and order for 8s. a week. One child which wife took. Had courted wife five years before marriage. Wife now living in the Midlands. Husband does not know with whom or mode of life.

Solicitor's observations.—Husband appears respectable, and this seems a case where if parties had been in higher social position separation agreement would have been entered into. If wife's people had not interfered matters would probably have been "patched up" more or less satisfactorily.

Solicitor's initials.—E. Y.

M. No. 5.

10th November 1909.

Name.—M. A., wife of G. A.

Husband.—Living apart.

Date of marriage.—November 1907. Age when married, 28.

Place where married.—Church of England.

Nature of relief required.—Maintenance.

Reason for requiring relief.—Husband left her March 18th, 1909; ran her out of the house with razor after hitting her. No children. Has been advised to apply for summons. Summons refused until husband's address obtained.

Solicitor's initials.—C. G.

M. No. 6.

10th November 1909.

Name.—M. B., wife of W. B.

Occupation of husband.—Upholsterer.

Husband.—Living apart.

Date of marriage.—May 1907. Age when married, 48.

Place where married.—Registry Office.

Nature of relief required.—Separation.

Reason for requiring relief.—Husband drinks and uses filthy language, and has assaulted her when no one present. Cannot obtain separation order.

Solicitor's observations.—The applicant appeared to be a hard-working woman, and respectable. The language used was of such a vile nature that it amounted to gross cruelty. The husband cannot be considered a habitual drunkard. Hence she has no relief.

Solicitor's initials.—H. G. W.

M. No. 7.

10th November 1909.

Name.—P. B., wife of S. B.

Husband.—Living apart.

Date of marriage.—February 1872. Age when married, 18.

Place where married.—Church of England.

Reason for requiring relief.—Has obtained separation order, about 18 months ago. Reasons, cruelty and drunkenness. Is not getting any money from husband. Had been advised by solicitor.

Solicitor's observations.—This case shows the hardship which often arises. Court not issue a warrant unless the defendant's "residence" given at time of application.

Solicitor's initials.—C. G.

(*See* Note on D. 19.—H. G. W.)

M. No. 8.

20th November 1909.

Name.—D. L. B., wife of W. B.

Occupation of husband.—Unknown.

Husband.—Living apart.

Date of marriage.—May 1905. Age when married, 25.

Place where married.—Wesleyan Chapel.

Nature of relief required.—Separation or (?) divorce.

Reason for requiring relief.—Desertion for 12 months. Husband believed to be living in adultery.

Solicitor's observations. — Owing to applicant's position (cook in factory earning 15*s.* per week), she has not the means of tracing her husband. If she could get a divorce she would endeavour to raise 20*l.*

Solicitor's initials.—H. G. W.

M. No. 9.

15th November 1909.

Name.—J. B.

Occupation.—Warehouseman.

Date of marriage.—December 1888. Age when married, 29; wife 23.

Place where married.—Church of England.

Solicitor's observations.—Three children—20, 17, and 9 years. Separation order made July 1902, 10*s.* per week. While out of work was arrested for arrears. Order reduced to 8*s.* in 1903.

Solicitor's initials.—H. G. W.

(*See* M. 10.)

M. No. 10.

8th November 1909.

Name.—E. A. B., wife of J. B.

Occupation of husband.—Warehouseman.

Husband.—Living apart.

Date of marriage.—1890. Age when married, 23.

Place where married.—Church of England.

Reason for requiring relief.—On account of persistent cruelty applicant took out summons against husband. Orders made, and afterwards in each case applicant resumed cohabitation. Now separated;

order made for payment of 10*s.* per week, subsequently reduced to 8*s.* per week, which is still being paid.

Solicitor's initials.—J. B. G.

(*See* M. 9.)

M. No. 11.

20th November 1909.

Name.—M. H. B., wife of J. T. B.

Occupation of husband.—Dairyman.

Husband.—Living apart.

Date of marriage.—December 1905. Age when married, 31.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief.—Obtained separation order in February 1909, and maintenance of 10*s.* per week. One child aged three months. Applicant separated from husband Christmas 1908.

Solicitor's observations.—From inquiries made it appears that the applicant's mother-in-law is the cause of the trouble between applicant and her husband, as she did not desire the applicant's husband to marry her.

Solicitor's initials.—J. B. G.

M. No. 12.

10th November 1909.

Name.—A. B., wife of W. B.

Occupation of husband.—Night watchman.

Husband.—Living apart.

Date of marriage.—June 1906. Age when married, 24.

Nature of relief required.—Advice as to liability of husband to pay expenses of confinement in respect of child born after voluntary separation.

Reason for requiring relief.—In this case the husband, after three months of married life, shirked work and habitually pretended to be ill in order that wife might support him. This went on for some considerable time and ultimately wife consulted the relieving officer who bluffed husband into paying 2*s.* 6*d.* a week. Wife is now keeping house for her sisters. Her only child is now dead.

Solicitor's observations.—This is a case which would have been suitable for a separation agreement if the parties had been advised at the proper time.

Solicitor's initials.—E. Y.

M. No. 13.

10th November 1909.

Name.—F. B., wife of F. R. B.

Occupation of husband.—Market porter.

Husband.—Living apart.

Date of marriage.—November 1899. Age when married, 23.

Place where married.—Registry Office.

Nature of relief required.—Separation order.

Reason for requiring relief.—Cruelty and desertion.

Solicitor's observations.—Applicant cannot work owing to heart trouble. Husband says he will save up for a new home and will live with applicant again but she fears he will be cruel to her.

Solicitor's initials.—H. G. W.

M. No. 14.

10th November 1909.

Name.—E. E. C., wife of E. G. C.

Occupation of husband.—Railway goods guard.

Date of marriage.—April 1896. Age when married, 30.

Nature of relief required.—Separation.

Reason for requiring relief.—Assault and abusive language.

Solicitor's observations.—Parties are living together again, having been advised to settle their differences when applicant consulted department in May last.

Solicitor's initials.—H. G. W.

M. No. 15.

22nd November 1909.

Name.—A. C., wife of F. C.

Occupation of husband.—Joiner.

Husband.—Living apart.

Date of marriage.—October 1888. Age when married, 24.

Place where married.—Registry Office.

Nature of relief required.—Advice.

Reason for requiring relief.—Wife wants to go to Hyde to live, but does not want her husband to know address, for she is afraid of him coming and annoying her; yet she does not want to lose the maintenance allowance of 7*s.* per week.

Solicitor's initials.—H. G. J.

M. No. 16.

20th November 1909.

Name.—S. J. C., wife of J. C.

Occupation of husband.—Labourer, 25*s.* a week.

Husband.—Living apart.

Date of marriage.—May 1884. Age when married, 22; husband, 33.

Place where married.—Congregational Chapel.

Solicitor's observations.—Obtained separation order on ground of persistent cruelty. Order, 5*s.* per week. Husband's wages, 25*s.* a week (about). This with the wages of a small boy, 10*s.* 6*d.* a week, is the total amount applicant and boy have to live on. Applicant does not know whether he is living in adultery or not.

Solicitor's initials.—F. B.

M. No. 17.

13th November 1909.

Name.—M. C., wife of J. C.

Occupation.—Cleaner.

Husband.—Living apart.

Date of marriage.—About 20 years ago. Age when married, 33.

Place where married.—Registry Office.

Nature of relief required.—Maintenance.

Reason for requiring relief.—Summoned husband about 10 years ago. Order—keep peace for six months and maintenance 6*s.* per week. Maintenance paid up to July 1908.

Solicitor's observations.—Has no information as to husband, and does not care whether she gets a divorce or not so long as her money is paid regularly.

Solicitor's initials.—C. G.

M. No. 18.

10th November 1909.

Name.—M. C., wife of P. C.

Occupation of husband.—Bookmaker's clerk.

Date of marriage.—October 1904. Age when married, 27.

Place where married.—Roman Catholic Church.

Nature of relief required.—Separation order.

Reason for requiring relief.—Husband assaults applicant and leads a "fast" life. Betting and gambling. Applicant does not think that he lives with other women.

Solicitor's observations.—Applicant would be quite willing to live with her husband, but he will neither give up betting and gambling nor settle down to live at home.

Solicitor's initials.—H. G. W.

M. No. 19.

10th November 1909.

Name.—M. A. C., wife of J. C.

Occupation of husband.—Tinplate worker.

Husband.—Living apart.

Date of marriage.—January 1901. Age when married, 22.

Place where married.—Roman Catholic Church.

Nature of relief required.—Maintenance.

Reason for requiring relief.—Husband deserted her July 6th, 1909; received nothing from him; summons refused.

Solicitor's observations.—This is another of the cases where nothing can be done unless husband's address obtained, as summons refused.

Solicitor's initials.—C. G.

(*See* note on D. 19.)

M. No. 20.

10th November 1909.

Name.—J. C.

Occupation.—Carter.

Date of marriage.—June 1905. Age when married, 21.

Place where married.—Registry Office.

Nature of relief required.—Separation order.

Reason for requiring relief.—Persistent cruelty.

Solicitor's observations.—Settled before summons heard and parties living together again in conjngal bliss.

Solicitor's initials.—G. B.

M. No. 21.

13th November 1909.

Name.—J. H. D.

Occupation.—Labourer.

Date of marriage.—June 1874. Age when married, 19.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reasons for requiring relief.—Summons taken out by wife in July last and order made for 7*s.* 6*d.* per week. Desertion.

Solicitor's initials.—F. B.

M. No. 22.

15th November 1909.

Name.—F. D., wife of R. D.

Occupation of husband.—Wireworker.

Husband.—Living apart.

Date of marriage.—June 1903. Age when married, 21.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief.—Cruelty and desertion. Drinks, and will not work.

Solicitor's observations.—Applicant is a packer at jam works, and earns about 10*s.* per week, average.

Solicitor's initials.—H. G. W.

M. No. 23.

13th November 1909.

Name.—M. H. D., wife of B. D.

Occupation of applicant.—Winder.

Date of marriage.—November 1901. Age when married, 36.

Place where married.—Registry Office.

Reason for requiring relief.—Husband on short time for last three years, now out of work. Husband ought to have at least 10*s.* a week from society; generally drinks same. Largest amount contributed to household, 4*s.* 7*d.* a week. Wife often has to leave home to avoid assault. Has sold up house several times. Never takes him before magistrates.

Solicitor's observations.—As wife has not taken advantage of the remedies which she at present has, cannot but think that she would not take advantage of any alteration of the law.

Solicitor's initials.—C. G.

M. No. 24.

20th November 1909.

Name.—S. D.

Occupation.—Striker.

Date of marriage.—August 1875. Age when married, 20.

Place where married.—Church of England.

Nature of relief required.—Separation (now not required).

Reason for requiring relief.—Owing to wife being a Roman Catholic there is continuous friction.

Solicitor's observations.—Since previous consultation applicant has settled matters in dispute with his wife, and they are trying to live together.

Solicitor's initials.—H. G. W.

M. No. 25.

13th November 1909.

Name.—R. E., wife of S. E.

Occupation of husband.—Driller.

Date of marriage.—September 1880. Age when married, 22.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reasons for requiring relief.—Husband drunken and dirty.

Solicitor's observations.—Since applicant consulted us her husband has improved; has become more sober and living fairly happily together.

Solicitor's initials.—H. G. W.

M. No. 26.

13th November 1909.

Name.—A. F., wife of M. F.

Husband.—Living apart.

Date of marriage.—October 1878. Age when married, 23.

Reason for requiring relief.—Separation order obtained, maintenance 5*s.* a week and furniture. Husband very insulting when paying maintenance. Advised to see magistrates if money could not be paid into court.

Solicitor's observations.—Application refused, but effect has been no further trouble.

Solicitor's initials.—C. G.

M. No. 27.

13th November 1909.

Name.—E. F., wife of A. F.

Occupation of husband.—Scythemaker.

Date of marriage.—August 1895. Age when married, 20.

Place where married.—Church of England.

Reason for requiring relief.—Husband drinks.

Solicitor's observations.—Husband has reformed, and parties are living happily.

Solicitor's initials.—H. G. W.

M. No. 28.

13th November 1909.

Name.—C. G., wife of S. G.

Occupation of husband.—Drainer.

Date of marriage.—March 1872. Age when married, 22.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief.—Husband drinks and pawns everything; will not work. Seven children.

Solicitor's observations.—Applicant has been advised to leave her husband, it being understood that her sons would look after her.

Solicitor's initials.—H. G. W

M. No. 29.

20th November 1909.

Name.—E. G., wife of J. H. G.

Occupation of husband.—Joiner.

Husband.—Living apart.

Date of marriage.—December 1869. Age when married, 18.

Place where married.—Church of England.

Nature of relief required.—Maintenance.

Reason for requiring relief.—Deserted.

Solicitor's observations.—Husband paying fairly regularly under order. No cause to interfere.

Solicitor's initials.—H. G. W.

M. No. 30.

20th November 1909.

Name.—L. G., wife of W. G.

Occupation of applicant.—Household duties.

Husband.—Living apart.

Date of marriage.—April 1879. Age when married, 20 years.

Place where married.—Church of England.

Nature of relief required.—Increase of payment of maintenance.

Reason for requiring relief.—Applicant not lived with husband for seven years. No proceedings have

been commenced, but applicant receives money from her husband. Originally arranged for payment of 10*s.* per week. Now averages 5*s.* per week. Husband living in Yorkshire, and about 10 years ago he was "walking out" with a single woman; later a child was born.

Solicitor's observations.—Visits applicant yearly on his holidays. Applicant would decline to live with him. Informed applicant that court would not make an order as she declines to resume cohabitation. Thirteen children all living. Three married. One left home and eight living at home.

Solicitor's initials.—J. B. G.

M. No. 31.

13th November 1909.

Name.—S. G.

Occupation.—Legging fitter.

Date of marriage.—July 1906. Age when married, 21.

Place where married.—Church of England.

Solicitor's observations.—Summoned for separation order on ground of desertion. Case dismissed. Now living again with wife. This shows the hardship which is occasionally met with by husbands owing to summons being granted to wives without proper inquiry into the matter. Husband says that if wife could have got an allowance she would have returned home, and probably better off financially than when living with husband.

Solicitor's initials.—C. G.

M. No. 32.

13th November 1909.

Name.—A. J. W. G.

Occupation.—Labourer, out of work.

Place where married.—Church of England.

Reason for requiring relief.—Wife left him Saturday, 23rd August 1908. Slept out all night. Since May last wife living with another man. No children. No claim for support.

Solicitor's observations.—Does not want divorce.

Solicitor's initials.—C. G.

M. No. 33.

22nd November 1909.

Name.—R. H., wife of H. H.

Occupation of husband.—Carter.

Husband.—Living apart.

Date of marriage.—April 1904. Age when married 17.

Place where married.—Registry Office.

Nature of relief required.—Separation order.

Reason for requiring relief.—Cruelty, neglect, drink.

Solicitor's observations.—One child; wife works, and has had to keep the home going.

Solicitor's initials.—H. G. W.

M. No. 34.

13th November 1909.

Name.—M. A. H., wife of G. H.

Husband.—Living apart.

Date of marriage.—August 1876. Age when married, 18.

Place where married.—Church of England.

Nature of relief required.—Separation order obtained 1905 enforcing.

Reason for requiring relief.—Husband left 13th September 1905. Now in arrear with payments.

Solicitor's initials.—C. G.

M. No. 35.

13th November 1909.

Name.—A. H., wife of H. H.

Occupation of husband.—Labourer.

Husband.—Living apart.

Date of marriage.—January 1907. Age when married, 25.

Place where married.—Registry.

Nature of relief required.—Maintenance.

Reason for requiring relief.—Threats, and starved applicant.

Solicitor's observations.—Employed as a stick varnisher; earns about 10*s.*

Solicitor's initials.—H. G. W.

M. No. 36.

17th November 1909.

Name.—A. J., wife of J. J.

Occupation of husband.—Grinder.

Husband.—Living apart.

Date of marriage.—1879. Age when married, 21.

Place where married.—Church of England.

Nature of relief required.—Separation order.

Reason for requiring relief.—Husband drunkard and abusive. Obtained separation and husband paid fairly regularly 16*s.* a week. Husband incapable of reformation. Wife would like to be free. Four children; one a cripple. No allegation of immorality.

Solicitor's observations.—Separation order seems to have met this case fairly well, but wife would prefer to be free. Drink sole cause of trouble.

Solicitor's initials.—S. A. S.

M. No. 37.

13th November 1909.

Name.—R. J.

Occupation.—Labourer.

Date of marriage.—August 1907. Age when married, 25.

Place where married.—Church of England.

Reason for requiring relief.—Separated from wife (1) November 1908; (2) April 1909; (3) September 1909. (1) six weeks; (2) three months; (3) still apart. Wife did not keep clean. Violent temper. Assaulted husband. Attempted life. One child born 31st January 1908, with wife. Had connection with wife before marriage. Wife denies his paternity. Wife at present with mother living chaste life. Wages 1*l.* a week, wife 15*s.* to 1*l.*

Solicitor's observations.—This is a case where probably a divorce is the only remedy. The husband has, however, only himself to blame, as he admits that he knew before marriage that his wife was little better than a prostitute, and that he himself had often had connection with her.

Solicitor's initials.—C. G.

M. No. 38.

13th November 1909.

Name.—E. J., wife of W. J.

Occupation of applicant.—Velvet finisher, 30*s.*

Husband.—Living apart.

Date of marriage.—August 1908. Age when married, 21.

Place where married.—Church of England.

Reason for requiring relief.—Agreement entered into by wife and husband for separation. Weekly allowance, 7*s.* There is one child of the marriage. Cruelty. No adultery.

Solicitor's observations.—No observations of interest.

Solicitor's initials.—F. B.

M. No. 39.

20th November 1909.

Name.—F. K., wife of R. J. K.

Occupation of applicant.—Machinist.

Husband.—Living apart.

Date of marriage.—September 1895. Age when married, 24.

Place where married.—Registry Office.

Nature of relief required.—Separation order obtained and required to be enforced.

Reason for requiring relief.—Maintenance not kept up.

Solicitor's observations.—Separation order obtained about six years ago on the ground of desertion. Two previous separation orders had been obtained, but in each case applicant had subsequently commenced living again with her husband. Four children (three dead). Husband had not, ever since separation or before, lived in adultery.

Solicitor's initials.—G. B.

M. No. 40.

13th November 1909.

Name.—H. L., wife of C. L.
Occupation of husband.—Tinplate worker.
Husband.—Living apart.
Date of marriage.—August 1884. Age when married, 18.
Place where married.—Church of England.
Nature of relief required.—Separation.
Reason for requiring relief.—Husband would not work and drinks what he earns.
Solicitor's observations.—Matter heard by lay magistrate at City Police Court, who told her to go back to her husband, saying it was a pity to separate after 25 years married life. Could not afford to have a solicitor on the hearing. Applicant does a little charing.

Solicitor's initials.—H. G. W.

M. No. 41.

13th November 1909.

Name.—H. L., wife of R. L.
Date of marriage.—1885. Age when married, 37.
Place where married.—Church of England.
Nature of relief required.—Separation for drunkenness.
Solicitor's observations.—No observations which would be of any material use.

Solicitor's initials.—F. B.

M. No. 42.

13th November 1909.

Name.—A. L., wife of T. L.
Occupation of husband.—Labourer.
Husband.—Living apart.
Date of marriage.—August 1898. Age when married, 17.
Place where married.—Church of England.
Reason for requiring relief.—Husband deserted and was habitually cruel.
Solicitor's observations.—Since consulting us applicant has been granted a separation order with 8*s*. per week, dated 13th October; received so far 11*s*.

Solicitor's initials.—H. G. W.

M. No. 43.

13th November 1909.

Name.—S. A. L., wife of E. L.
Husband.—Living apart.
Date of marriage.—December 1878. Age when married, 24.
Nature of relief required.—Maintenance.
Reason for requiring relief.—Husband left about six years ago. Has paid on account of maintenance up to June last. Since then nothing and no information. Application lately (August) to police; no trace of husband. At present dependent on unmarried daughter.

Solicitor's initials.—C. G.

M. No. 44.

22nd November 1909.

Name.—E. L., wife of W. H. L.
Occupation of applicant.—Machinist.
Husband.—Living apart.
Date of marriage.—23rd November 1901. Age when married, 40; husband, 44.
Place where married.—Church of England.
Nature of relief required.—Maintenance.
Reason for requiring relief.—Owing to cruelty applicant left husband in 1904. He agreed to make her an allowance and only paid her 2*s*. Has already summoned husband, but not being represented, could not obtain order.
Solicitor's observations.—Applicant's only remedy is to accept parish relief and then guardians will compel husband to support. Need of cheap or even free relief shown.

Solicitor's initials.—H. G. W.

M. No. 45.

20th November 1909.

Name.—R. L., wife of P. L.
Occupation of husband.—Mill worker.
Husband.—Living apart.
Date of marriage.—October 1906. Age when married, 58.
Place where married.—Registry Office.
Solicitor's observations.—Separation on the ground of cruelty. Dismissed at the police court. No observations of any moment.

Solicitor's initials.—F. B.

M. No. 46.

17th November 1909.

Name.—M. McD., wife of J. McD.
Occupation of husband.—Railway labourer (in England).
Husband.—Living apart.
Date of marriage.—June 1905. Age when married, 26; husband, 25.
Place where married.—Roman Catholic Church.
Nature of relief required.—Separation.
Reason for requiring relief.—Desertion. Husband now in Ireland. When he returns she proposes to issue summons for desertion.
Solicitor's observations.—This is not a case where divorce would be applicable.

Solicitor's initials.—E. Y.

M. No. 47.

13th November 1909.

Name.—E. McG., wife of P. McG.
Occupation of husband.—Painter.
Husband.—Living apart.
Date of marriage.—August 1889. Age when married, 20.
Place where married.—Roman Catholic Church.
Nature of relief required.—Separation.
Reason for requiring relief.—Husband would drink, and would not work, and deserted family. Nine children.

Solicitor's initials.—H. G. W.

M. No. 48.

13th November 1909.

Name M. M., wife of C. M.
Date of marriage.—October 1887. Age when married, 22.
Place where married.—Church of England.
Nature of relief required.—Separation.
Reason for requiring relief.—Husband uses bad language and had assaulted her when first application made. Summons refused.

Solicitor's initials.—C. G.

M. No. 49.

20th November 1909.

Name.—E. M., wife of J. M.
Occupation of applicant.—Mantle maker.
Husband.—Living apart.
Date of marriage.—February 1900. Age when married, 30.
Place where married.—Roman Catholic Church.
Nature of relief required.—Separation order obtained, required enforcing.
Reason for requiring relief.—Order made by magistrates on the 2nd February 1906, for payment of 4*s*. per week towards maintenance of applicant and two children, aged 8 and 4 respectively, on grounds of persistent cruelty and assaults. Maintenance in arrear and advised as to applying for warrant.

Solicitor's initials.—J. B. G.

M. No. 50.

13th November 1909.

Name.—E. M., wife of R. M.
Occupation of husband.—Collier.
Husband.—Living apart.
Date of marriage.—February 1902. Age when married.—Then a widow.

Place where married.—Church of England.
Nature of relief required.—Maintenance.
Reason for requiring relief.—Left and does not support.
Solicitor's observations.—Since seeing us he has regularly paid 5*s*. per week.
Solicitor's initials.—H. G. W.

M. No. 51.

17th November 1909.

Name.—M. A. M., wife of —. M.
Occupation of husband.—Professional footballer.
Husband.—Living apart.
Date of marriage.—June 1900. Age when married, 21; husband, 22.
Place where married.—Church of England.
Nature of relief required.—Separation.
Reason for requiring relief.—Husband guilty of cruelty, but summons was dismissed as he alleged she was drunkard. Three children. Husband took two children. Husband footballer, 3*l*. per week. Wife is looking after one child.
Solicitor's observations.—Advised applicant that there were no means of making the husband pay for the support of child or children in her custody unless she and they became chargeable to the Poor Law Guardians.
Solicitor's initials.—E. Y.

M. No. 52.

22nd November 1909.

Name.—A. M., wife of E. M.
Occupation of husband.—Fitter.
Husband.—Living apart.
Date of marriage.—January 1907. Age when married, 27.
Place where married.—Registry office.
Nature of relief required.—Separation and maintenance.
Reason for requiring relief.—Husband very cruel. Applicant has been compelled to leave him and take out summons.
Solicitor's observations.—Applicant reports order made for payment of 5*s*. per week.
Solicitor's initials.—H. G. W.

M. No. 53.

20th November 1909.

Name.—J. M.
Occupation.—Labourer, gas department.
Date of marriage.—July 1904. Age when married, 26.
Place where married.—Church of England.
Nature of relief required.—As to position with regard to wife having taken furniture.
Reason for requiring relief.—On 17th April 1907, wife took furniture away and lived with her parent. Applicant residing with his parents. Wife took ont summons against applicant for desertion, dismissed. Wife having furniture at present time. Two children of marriage. Applicant paying wife 6*s*. per week and having custody of children. Applicant's earnings 25*s*. per week.
Solicitor's observations.—Applicant at present time suffering from dyspepsia and rheumatism. Wife threatening to commence proceedings against applicant who states he intends leaving the country.
Solicitor's initials.—J. B. G.

M. No. 54.

20th November 1909.

Name.—M. E. N., wife of J. A. N.
Occupation of husband.—Painter.
Husband.—Living apart.
Date of marriage.—June 1889. Age when married, 22.
Place where married.—Church of England.
Husband left on Good Friday, 1906.
Solicitor's observations.—Does not desire any proceedings. Since applicant consulted, husband has regularly paid 15*s*. per week.
Solicitor's initials.—H. G. W.

M. No. 55.

20th November 1909.

Name.—S. J. N., wife of T. N.
Occupation of husband.—Tram guard.
Date of marriage.—November 1903. Age when married, 29.
Place where married.—Church of England.
Nature of relief required.—Separation order.
Reason for requiring relief.—Cruelty and desertion. No immorality within applicant's knowledge.
Solicitor's observations.—Applicant would have preferred to be absolutely free from her husband.
Solicitor's initials.—H. G. W.

M. No. 56.

13th November 1909.

Name.—H. N., wife of J. N.
Husband.—Living apart.
Date of marriage.—June 1901. Age when married, 21.
Place where married.—Church of England.
Reason for requiring relief.—Obtained separation order 10*s*. per week. Custody of child eight years old. Husband disappeared.
Solicitor's initials.—C. G.

M. No. 57.

13th November 1909.

Name.—J. O.
Occupation of applicant.—Fitter. Wages 39*s*. per week.
Date of marriage.—March 1883. Age when married, 20.
Place where married.—Roman Catholic Church.
Nature of relief required.—Separation.
Reason for requiring relief.—Wife habitual drunkard. Seven children, five sons and two daughters.
Solicitor's observations.—Has not yet applied for separation, but will do so shortly.
Solicitor's initials.—H. G. W.

M. No. 58.

20th November 1909.

Name.—M. P., wife of J. E. P.
Occupation of husband.—Fitter.
Date of marriage.—November 1890. Age when married, 22.
Place were married. Church of England.
Nature of relief required.—Separation.
Reason for requiring relief.—Husband drank heavily, used bad language, illused applicant.
Solicitor's observations.—Since consulting us her husband has been more amenable to reason.
Solicitor's initials.—H. G. W.

M. No. 59.

13th November 1909.

Name.—E. P., wife of A. P.
Date of marriage.—Whit Thursday, 1902. Age when married, 18.
Place where married.—Church of England.
Nature of relief required.—Maintenance.
Reasons for requiring relief.—Husband left Saturday before first call, came back on Wednesday. Now signed pledge.
Solicitor's initials.—C. G.

M. No. 60.

13th November 1909.

Name.—C. P., wife of A. E. P.
Occupation of husband.—Mill hand.
Husband.—Living apart.
Place where married.—Church of England.
Reason for requiring relief.—Obtained separation order, default made, summons taken out for commitment not attended, advised second summons, now paying 10*s*. a week. No children. Husband's wages, 24*s*. all found.
Solicitor's observations.—This is a case where the assistance of the Department ought not to be invoked,

as wife is well aware of her remedies, and is negligent in exercising same. No question of divorce.

Solicitor's initials.—C. G.

M. No. 61.

13th November 1909.

Name.—E. P., wife of W. P.

Date of marriage.—March 1900. Age when married, 23.

Place where married.—Registry office.

Reason for requiring relief.—Is living with husband at his mother's; never had real home. Husband pays household expenses, but will not allow her any money. Has applied to Poor Law authorities. No satisfaction. Two children, 9 and 1½. Wages unknown. Pregnant; another child January. Husband won't give any assistance for necessities.

Solicitor's observations.—In this case there ought to be power to the Poor Law authorities, on the facts stated being properly verified, to take proceedings to compel husband to do his duty. Otherwise possible that both the mother and child may lose their lives in childbirth.

Solicitor's initials.—C. G.

M. No. 62.

13th November 1909.

Name.—A. P., wife of J. P.

Occupation of husband.—Moulder, 22*s*. per week.

Date of marriage.—November 1907. Age when married, 19.

Place where married.—Church of England.

Solicitor's observations.—Parties living happily together by reason of letter written by the Department to husband.

Solicitor's initials.—H. G. W.

M. No. 63.

15th November 1909.

Name.—M. P., wife of T. P.

Occupation of husband.—Labourer.

Husband.—Living apart.

Date of marriage.—Easter Saturday, 1908. Age when married, 18.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief.—Cruelty and desertion.

Solicitor's observations.—One child. Applicant works at nut and bolt works, earns 5*s*. per week. Not money for summons.

Solicitor's initials.—H. G. W.

M. No. 64.

13th November 1909.

Name.—J. W. Q.

Occupation.—Labourer.

Date of marriage.—May 1901. Age when married, 26.

Place where married.—Roman Catholic Church.

Reason for requiring relief.—Children of the marriage, one aged 7 years, living with wife.

Solicitor's observations.—Question as to whether husband (applicant) could have an allowance reduced which he had to pay to his wife under the S.J. (M.W.) Act. No misconduct on either side.

Solicitor's initials.—F. B.

M. No. 65.

13th November 1909.

Name—K. R., wife of H. R.

Date of marriage.—May 1886. Age when married, 25.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief.—Husband scarcely ever sober. Very violent and abusive. Family of six (eldest 23) all at home. Applicant is in bodily fear.

Solicitor's observations.—Husband apparently does not go with other women. Probably not a case for divorce, even if applicant could afford it.

Solicitor's initials.—W. H. S.

M. No. 66.

20th November 1909.

Name.—S. J. R., wife of J. R.

Date of marriage.—Over 30 years ago. Age when married, 21 (?).

Nature of relief required.—Separation order.

Reason for requiring relief.—Persistent cruelty.

Solicitor's observations.—Applicant obtained the separation order asked for. Parties lived together two weeks after the order was made and they had lived together ever since. Applicant had no cause to complain of her husband except with regard to his cruelty when he was drunk, and matters in this respect had improved very much since the parties lived together after the separation order was made.

Solicitors' initials.—G. B.

M. No. 67.

17th November 1909.

Name.—L. S., wife of S. S.

Occupation of husband.—Formerly a greengrocer.

Date of marriage.—December 1904. Age when married, 20 years; husband, 29.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief.—Was deserted by husband and obtained a separation order with allowance of 5*s*. per week. Husband does very little work, but has army pension of 10*s*. 6*d*. per week. He has been imprisoned once for non-payment, and is very irregular in his payments. Woman has custody of the only child.

Solicitor's observations.—The wife has no knowledge of his living with another woman, and this is a case that seems adequately dealt with by means of a separation order.

Solicitor's initials.—E. Y.

M. No. 68.

17th November 1909.

Name.—E. A. S., wife of J. S.

Occupation of husband.—Bookmaker.

Date of marriage.—May 1897. Age when married, 20.

Place where married.—Church of England.

Nature of relief required.—Separation on ground of drunkenness and cruelty.

Reason for requiring relief.—Husband got drink regularly and ill-treated wife. One child of the marriage. Order for 8*s*. a week paid regularly. Are now cohabiting again. Habits of drinking only come on last two years.

Solicitor's observations.—Drink cause of trouble. Order obtained but abandoned; permanent settlement questionable, as husband has already had other bouts.

Solicitor's initials.—S. A. S.

M. No. 69.

17th November 1909.

Name.—C. S., wife of W. H. S.

Occupation of applicant.—House duty.

Date of marriage.—May 1889. Age when married, 20.

Place where married.—Church of England.

Solicitor's observations.—Applicant left husband in consequence of assault and abusive and threatening language. Summoned husband on four occasions but obtained no orders. Applicant agreeing to resume cohabitation. Five children, two working, two going to school and one cripple in Swinton Schools; husband paying applicant 6*s*. per week and desires to resume cohabitation, but applicant declines on account of language used by husband. The 6*s*. per week is paid by husband on account of husband being threatened by the Guardians to take proceedings.

Solicitor's initials.—J. B. G.

M. No. 70.

10th November 1909.

Name.—E. S.

Occupation.—Labourer on L. & Y. Co. Wages, 18*s*. 10*d*. a week.

Date of marriage.—May 1905. Age when married, 23.

Place where married.—Registry office.

Reason for requiring relief.—Gave wife wages on 8th (18*s.* 10*d.*); on Saturday, 9th October 1909, when returned from work wife gone. Wife wrote to works and stated he had agreed to pay 9*s.* a week. No agreement had been entered into, and husband had no idea that wife was leaving him. Never assaulted wife, and had always paid her his full wages for the household. Three children taken away by mother. No order for payment from Guardians (*see* letter). Mother-in-law living with applicant is real cause of dispute.

Solicitor's initials.—C. G.

M. No. 71.

17th November 1909.

Name.—A. T., wife of T. T.

Occupation of husband.—Labourer.

Age when married.—17.

Nature of relief required.—Advice as to maintenance.

Reason for requiring relief.—Applicant's husband had struck her and left her in consequence of her inability to keep out of debt. He allowed her 19*s.* per week. She obtained order for separation, but he returned before hearing and have lived together satisfactorily since on 1*l.* a week.

Solicitor's observations. — Separation order easily obtained, but not taken advantage of. Early marriage case.

Solicitor's initials.—S. A. S.

M. No. 72.

20th November 1909.

Name.—M. E. V., wife of J. V.

Occupation of applicant.—Charing.

Husband.—Living apart.

Date of marriage.—August 1895. Age when married, 23.

Place where married.—Church of England.

Reason for requiring relief.—Husband left applicant, who will not resume cohabitation on account of assaults committed upon her. Husband refused to pay any sum towards maintenance of applicant and three children, eldest aged 12 years and youngest 3 years.

Solicitor's observations.—Informed applicant that no order against husband would be made if she declined to resume cohabitation, as he was out of work, earning no wages, but could earn 35*s.* per week.

Solicitor's initials.—J. B. G.

M. No. 73.

20th November 1909.

Name.—A. W.

Occupation.—Tailor's machinist.

Date of marriage.—May 1907. Age when married, 20.

Place where married.—Synagogue.

Nature of relief required.—As to relief against order made by magistrates.

Reason for requiring relief.—Order made against applicant by magistrates on wife's summons for payment of 5*s.* per week, which is second summons. First order made was for 7*s.* 6*d.* Applicant declines to resume cohabitation on account of wife's filthy habits.

Solicitor's observations. — Advised applicant to continue payments, otherwise warrant would be granted against him.

Solicitor's initials.—J. B. G.

M. No. 74.

20th November 1909.

Name.—G. W.

Occupation of applicant.—Labourer.

Date of marriage.—May 1906. Age when married, 39.

Place where married.—Church of England.

Nature of relief required. — Against applicant Separation order.

Reason for requiring relief.—Desertion.

Solicitor's initials.—F. B.

M. No. 75.

15th November 1909.

Name.—M. W., wife of J. W.

Date of marriage.—About Christmas, 1894. Age when married, 29.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief.—Husband heavy drinker and very violent and abusive. Struck applicant frequently. Husband already fined for assaulting applicant. Family of six; eldest 14; very abusive to them.

Solicitor's observations.—No evidence of misconduct; no desertion. Proper case for separation.

Solicitor's initials.—W. H. S.

M. No. 76.

19th November 1909.

Name.—H. W., wife of J. W. W.

Occupation of husband.—Employed by firm of grocers.

Husband.—Living apart.

Date of marriage.—September 1905. Age when married, 22 years.

Place where married.—Church of England.

Nature of relief required.—Maintenance.

Reason for requiring relief. — Husband deserted applicant, 12th October 1908, on account of applicant complaining of his not working. No assault. Summons applied for and order made by magistrates on the 29th June 1909, for payment of maintenance at the rate of 5*s.* per week. Husband in arrear with payment. Warrant granted against husband for arrears of maintenance, and served 14 days' imprisonment.

Solicitor's observations.—Husband living with his mother. No children. Advised applicant to apply to Court for further warrant for amount of arrears.

Solicitor's initials.—J. B. G.

M. No. 77.

17th November 1909.

Name.—E. W., wife of E. W.

Occupation of husband.—Iron turner.

Husband.—Living apart.

Date of marriage. — August 1908. Age when married, 24; husband, 28.

Place where married.—Church of England.

Nature of relief required.—Separation.

Reason for requiring relief.—Desertion. Magistrates gave husband a warning, and she arranged to give him a further trial and is now living with him and getting on all right.

Solicitor's observations.—This is a case where the magistrates have successfully acted as peacemakers, a course frequently attempted with varying success in the case of young married couples.

Solicitor's initials.—E. Y.

M. No. 78.

17th November 1909.

Name.—A. W., wife of R. W.

Occupation of husband.—Porter.

Husband.—Living apart.

Date of marriage. — April 1900. Age when married, 19.

Place where married.—Church of England.

Nature of relief required.—Separation order and maintenance.

Reason for requiring relief. — Husband deserted applicant four years ago. Prior thereto assaulted her and threatened to take her life, and said he would put knife through her. Husband not paid any maintenance since leaving applicant. Husband met applicant in street since desertion (last Whit-week), and without any provocation or cause kicked her in back and sprained her arm. Summons taken out, and magistrates ordered him one month's imprisonment. No order for maintenance being made. Applicant receiving no maintenance from husband. No children.

Solicitor's initials.—J. B. G.

M. No. 79.

17th November 1909.

Name.—F. W., wife of W. W.
Occupation of husband.—Clogger.
Husband.—Living apart.
Date of marriage.—1907. Age when married, 24.
Nature of relief required.—Summons for desertion.
Reason for requiring relief.—Husband had left her several times and gone out of the country. Unable to find exact whereabouts. Applicant was in service and now living with parents, who will, however, be unable to keep her.
Solicitor's observations.—Unable to obtain separation order or payment of maintenance in consequence of husband's absence from the country.
Solicitor's initials.—S. A. S.

M. No. 80.

29th November 1909.

Name.—A. B.
Occupation of applicant.—Labourer.
Date of marriage.—November 1893. Age when married, 24; wife's age, 21.
Place where married.—Registry Office.
Reason for requiring relief.—Wife deserted applicant and is living with her people.
Solicitor's initials.—H. G. W.

M. No. 81.

20th November 1909.

Name.—S. H., wife of J. H.
Occupation of husband.—Screw and bolt fitter.
Nature of relief required.—Separation.
Reason for requiring relief.—Cruelty.
Solicitor's observations.—Since applicant's attendance matters have been amicably settled and the parties are living together again.
Solicitor's initials.—H. G. W.

M. No. 82.

13th November 1909.

Name.—M. E. B., wife of H. J. W. B.
Occupation of husband.—Labourer.
Husband.—Living apart.
Nature of relief required.—Separation.
Reason for requiring relief.—Desertion
Solicitor's observations.—Applicant cannot obtain summons, because she does not know husband's address although she knows where he works.
Solicitor's initials.—H. G. W.

M. No. 83.

13th November 1909.

Name.—J. F.
Occupation.—Labourer.
Nature of relief required.—Separation order.
Reason for requiring relief.—Wife habitual drunkard.
Solicitor's initials.—H. G. W.

M. No. 84.

13th November 1909.

Name.—M. G., wife of M. G.
Occupation of husband.—Fireman.
Husband.—Living apart.
Nature of relief required.—Separation.
Reason for requiring relief.—Husband cruel.
Solicitor's observations.—Order 6*s.* per week. Payments being made.
Solicitor's initials.—C. G.

M. No. 85.

13th November 1909.

Name.—E. R., wife of J. R.
Occupation of husband—Case Dealer.
Husband.—Living apart.
Nature of relief required.—Increase of order for maintenance.
Solicitor's observations.—Applicant has not taken any steps.
Solicitor's initials.—C. G.

M. No. 86.

Name.—A. T. 20th November 1909.
Occupation.—Packer.
Date of Marriage.—July 1906. Age when married, 22; wife's age 19.
Place where married.—Registry Office.
Nature of relief required. — Separation (wife's application).
Solicitor's observations.—Separation granted but parties are living together again.
Solicitor's initials.—H. G. W.

M. No. 87.

6th December 1909.

Name.—G. A., wife of A. G. A.
Occupation of husband.—Cabinet maker.
Husband.—Living apart.
Age when married.—18.
Nature of relief required.—Custody of children.
Reason for requiring relief.—Husband living with another woman. Applicant living with another man, by whom she has had three children. Children of marriage, three. Husband habitually cruel.
Solicitor's observations.—This note is inserted as an example of the crude ideas of morality. Applicant told me that one day her husband brought another man, and told her that this man would look after her for the future, and that he was going. Applicant says that this man has been very kind to her, and also to all the children, and that she "could not wish for a better husband."
Solicitor's initials.—H. G. W.

M. No. 88.

6th December 1909.

Name.—M. D., wife of I. D.
Occupation of husband.—Labourer.
Husband.—In prison.
Date of marriage.—October 1903. Age when married, 17.
Place where married.—Church of England.
Nature of relief required.—Separation order and maintenance.
Reason for requiring relief.—Husband at present serving three months for neglect of wife and family consisting of two children.
Solicitor's observations.—Husband spent all his money in betting on horses.
Solicitor's initials.—W. B. F.

M. No. 89.

6th December 1909.

Name.—A. H., wife of T. H.
Occupation of husband.—Labourer.
Husband.—Living apart.
Date of marriage.—January 1906. Age when married, 16.
Place where married.—Registry Office.
Nature of relief required.—Separation.
Reason for requiring relief. Failure to supply sufficient maintenance. Cruelty, compelling wife to have connection with him notwithstanding that she is enciente.
Solicitor's observations.—Since consulted the matter has been in the hands of the Manchester City League of Help, who have brought the parties together again.
Solicitor's initials.—H. G. W.

M. No. 90.

20th December 1909.

Name.—E. A. W., wife of W. W.
Occupation of husband.—Checker on Railway.
Husband.—Living apart.
Date of marriage. — April 1909. Age when married, 23.
Place where married.—Registry Office.
Nature of relief required.—Maintenance for self and infant daughter.
Reason for requiring relief.—Husband has deserted her.
Solicitor's observations.—Date of desertion, 10th September 1909. Payment 6*s.* a week regularly. Wife estimates wages at 25*s.* a week. Letter written by this department claiming 10*s.* a week, to which no reply received.
Solicitor's initials.—W. D.

APPENDIX XII.

A.

Replies by Legal Aid Societies of various States of the United States.

TABLE OF CONTENTS.

Copy Letter by Mr. J. Arthur Barratt.

DEAR MR. GATES, 17th March 1910.

I HAVE been asked to give evidence before the Royal Commission appointed to consider the reform of the Divorce Laws in England.

One of the abuses to be dealt with is the fact that poor people are unable to get divorce here because of the great cost to them, amounting at least to 100 dollars to 150 dollars. The result is that they apply for mere separation orders, and then live apart without the possibility of contracting a valid marriage. Of course this leads to the greatest difficulties and dangers.

As you have had so much experience in giving legal advice to the poor, I should much appreciate it if you can let me know what is the average cost in your experience of procuring a divorce for poor people. Do you know of any cases where such persons have been prevented from procuring a divorce by reason of the expense in doing so?

Do you find that there is any extensive recourse to the Divorce Courts by the poor in New York?

I should also like to get the fees of the legal aid societies in other parts of the United States, in say six of the chief cities, and I have accordingly enclosed letters ready to be addressed to such societies. Might I ask you to forward the same for me, and thus save time as I need the answers at an early date.

Thanking you in advance for any trouble you may take.

Believe me,
Yours, &c.,

Merrill E. Gates, jun., Esq.,
Legal Aid Society,
239, Broadway,
New York City, U.S.A.

DEAR SIR, 19th March 1910.

I HAVE been asked to give evidence before a Royal Commission of the House of Lords on Divorce Law Reform. One of the questions before the Commission is the provision for divorce at less cost than at present, so that the poor may have equal facilities with the rich for divorce if necessary. One of the evils here is that divorce is so expensive that the poor cannot afford it. They consequently simply get separation orders, live apart, and then contract relations with someone else, live as man and wife, and bring up another family.

From your great experience amongst the poor will you kindly say whether any such state of fact exists amongst them in your neighbourhood, and also what in your opinion is the average cost of a divorce for poor people.

Do you find divorce increasing amongst the poor?

I shall be pleased to put your replies before the Commission, and shall be glad of an answer to this letter at your early convenience. I shall also be glad of any suggestion as to reform you may have in mind.

Yours, &c.,

The Legal Aid Society of
the City of Boston,
Chicago, St. Louis,
New Orleans, San
Francisco, Philadelphia.

P.S.—Forwarded by Merrill E. Gates, jun., Esq., Secretary of the Legal Aid Society of New York.

(1.)

BOSTON LEGAL AID SOCIETY (INCORPORATED).

Boston, Massachusetts,
DEAR SIR, 20th April 1910.

YOUR inquiry dated 19th March forwarded by the New York Legal Aid Society reached this office a few days ago. I have obtained some further information than we could give ourselves, and hope that it may be of assistance to you.

In order to answer your questions satisfactorily, it is necessary to explain, first, that in Massachusetts divorces may be obtained for any one of the following causes:—(1) adultery; (2) impotency; (3) extreme cruelty or cruel and abusive treatment (an unfortunate and useless distinction), or gross and cruel neglect to support the wife; (4) utter desertion for three years; (5) gross and confirmed habits of intoxication or use of drugs; (6) conviction and sentence to hard labour for five years or more. Further, the probate courts are empowered to find as a fact that the woman is living apart from her husband for justifiable cause, and upon the foundation of such finding to order the husband to impose no restraint upon his wife, to make payments for her support or his children's, to give her the custody of the children. Failure to obey such an order is punished as contempt. The police courts treat non-support as a criminal offence, usually putting the husband on probation, on conviction, with the consequence that he has to make regular payments for the term of his probation under the direction of the probation officer.

Cost of Divorce.—It is occasionally possible for a poor person to obtain counsel in an uncontested divorce case where the grounds for divorce are easily proved (*e.g.*, desertion or imprisonment for five years) for as little as 25 dollars. The usual minimum charge in this Commonwealth seems to be 50 dollars. This is a not uncommon charge, however. The court costs, being included in such charges, amount to 3 dollars for entering the libel and from 1.50 dollar to 5 dollars or 6 dollars for serving it or publishing an advertisement. Witness fees vary. You will bear in mind in this connexion that the distinction between solicitor and barrister does not exist in this country, and for this reason our procedure is less expensive than English procedure. Divorce cases are heard by a single justice sitting without jury. The expense is undoubtedly

often deterrent, but in many of the larger cities Legal Aid Societies exist which take up meritorious cases of the greatest hardship. The Boston Society proceeds only in these extreme cases, making it a general rule not to do divorce work on charitable terms.

Results of inability to pay for Divorce.—Probably a moderate number of men simply desert their families and subsequently contract irregular relations with other women, but in our experience it has appeared that the expense of procedure is a frequent or principal cause of such behaviour. On the other hand, a woman who has children and who is deserted or maltreated by her husband is often in the worst situation. But if she is a Catholic (and a good proportion of the poor in the cities of the State are now Catholic) she probably does not want a divorce any way. This office has seen no evidence, however, that women under such conditions are often forced by economic necessity into immoral alliances with other men. If a woman has children and her husband has maltreated her, her usual desire is to establish a home alone with her children. For this she often needs legal protection. Without being divorced she can obtain a separate support decree from the Probate Court, often for an expense not exceeding 15 dollars to 25 dollars, there being in such proceedings no court costs except possible witness fees, and these are often unnecessary. Legal work at this rate is, of course, more or less charitable on the attorney's part. The Legal Aid Society prosecutes such cases for nothing or a nominal charge when the circumstances call for such action. But I have been impressed by the frequency with which attorneys undertake such petty cases when they are meritorious for a very small sum. One quarter to one third of the Boston Legal Aid Society's cases have been such cases, and the Society considers that it does no more useful and important work than in attending them.

I realize, however, that only the more worthy and deserving women would come to an institution like the Legal Aid Society; and, therefore, in order to supplement the, perhaps, too limited experience of this office, I have asked officers of the two largest charitable organizations in Boston, which annually enter and investigate hundreds of homes among the very poor irrespective of the virtue and deserts of the visited, for their opinions. I should consider their opinions as the most trustworthy obtainable in the city. The answers confirm my impressions, and I enclosed one received in writing.

As to the increase of divorce.—There are public statistics about the increase of divorce, but I do not think they discriminate between divorce among the poor and the rich. It is my impression that during the last ten years there has been no very marked increase in divorce among the very poor. Among the rural population in certain parts of the country, New England for instance, there has probably been a very considerable increase. This, however, is due to social changes, which, I believe, have little to do with any recent change of the law, My experience with these cases among the city poor in Boston is based on 400 to 500 cases in which I have examined the papers or talked with the witnesses myself during the last two years. This experience has led me to believe heartily in the importance and value of some such proceedings as our separate support proceedings in the Probate Court. These are cheap, speedy, and of great benefit to poor but honest women who have children whom they wish to bring up undisturbed by brutal and drunken husbands. Such are the clients on whom the marriage tie, if it cannot be dissolved or relaxed, weighs most heavily, and I am also much impressed by the fact that it is not for the wife's interest alone, but also greatly for the interest of the children that homes should be easily protected from the influence and bad example of drunken and brutal fathers and husbands. I have been impressed by the fact that it is very seldom that a woman in this situation really needs a divorce. She does not want to have another man in the house. It is true that the husband is probably irregular in his habits when shut out of his own home, but also it is my impression that his irregularities outside of his own home are not of the kind that increase the population, whether he is divorced or not.

Occasionally, although a woman does not wish to marry again, her husband is of so unruly and vindictive a type that a separate support order does not protect her from his incursions into her home and his various interferences with her. In such cases the possibility of securing a divorce for her cheaply is of great value to her and her children. Even the most violent and spiteful husband seems to acquiesce in the finality of a divorce.

Cost of living.—The following facts may help you in understanding the bearing of some of the information above. The city of Boston pays 2.25 dollars a day for unskilled labour. The expense of living is such that the judges appear generally to believe that a man separated from his family cannot be expected to keep himself in such health that he can work regularly unless he has 8 dollars a week. Therefore separate support orders and divorce proceedings do not result in payments to the wife unless the husband is earning more than 8 dollars or 9 dollars a week. A woman being the better manager can live somewhat more cheaply—observe the last paragraph in the letter from the Associated Charities.

Yours, &c.,
HENRY JAMES, jun.

J. Arthur Barratt, Esq.,
3, Temple Garden, Temple,
London, England.

(2.)

THE ASSOCIATED CHARITIES OF BOSTON.

Boston,
8th April 1910.

MY DEAR MR. JAMES,

I TALKED with the secretaries yesterday. There was a large attendance, covering the whole city, and only two instances were cited where we know of a man and woman living together illegally, because, owing to poverty, they could not get a divorce, and in one of these it is doubtful if that is the reason. In my own personal experience with poor families I can only recall one instance, and when I offered to help the woman get a divorce in order to legalise the present situation the couple disappeared.

In answer to your last query, roughly speaking, an able-bodied woman can usually earn enough to support herself and two children. When it comes to a definite statement of what she should be allowed in order to do this without working for compensation on her part it is tremendously difficult, as you can see, depending on previous spending, age of the children, health, &c. With two small children I should think a minimum would be 6 dollars a week, and the mother would have to supplement that with small earnings, or live with friends in a co-operative sharing of expenses. Please use this letter in any way that seems wise to you.

Yours, &c.,
ALICE L. HIGGINS.

Mr. Henry James, jun.,
84, State Street,
Boston, Massachusetts.

(3.)

LEGAL AID SOCIETY OF CHICAGO.

Chicago, Illinois,
4th April 1910.

DEAR SIR,

IN answer to your inquiry with regard to the question of divorce among poor persons in this community, I would say that there is a provision in the statutes of the State of Illinois which enables poor persons to start what is called a "pauper suit" for divorce. No advance payment of costs is necessary, but the attorney is required to make affidavit to the effect that he is receiving nothing for his services in prosecuting the suit, and that he expects to receive nothing. The litigant must sign an affidavit stating that he has no money to advance for the payment of costs and promising to pay the court costs out of the first money obtained from the defendant in the suit, if any is obtained. Upon such a showing the court will allow a pauper's suit to be started, and proceedings can be taken in the usual way toward securing a divorce.

You will see that this provision in the statutes enables poor persons to obtain a divorce almost as readily as rich persons, provided the attorney can be found who will undertake to handle the matter. It very rarely happens that the husband is not earning enough so that he can pay his attorney some small fee; or, if he is a defendant, he can be required by order of the court to pay a small fee to the attorney who is handling the matter for his wife.

There are many lawyers in this city who, through one cause or another, are glad to handle these small matters, so that it may be said that we are hardly confronted with the situation of which you speak in your letter (*i.e.*, poor persons living in adultery because of expense of divorce suit).

The policy of this society with regard to divorce is somewhat conservative. The Board of Directors take the position that a divorce is a luxury. They feel that in almost every case persons seeking divorces should pay for services rendered in securing them. Unless the husband is conducting himself in such a way as to place the wife or children in actual physical danger, or is interfering with the education of the children, the Legal Aid Society will not undertake to secure a divorce. Of course where there are such cases and we do undertake to secure a divorce, no charge whatever is made.

As to your inquiry about whether divorce is increasing amongst the poor, I would answer that there has been no apparent increase in this community. I believe that the figures show an increase of divorce amongst all classes of people within the last few years, but I do not believe that divorces, or the conditions which bring about the necessity for divorces, are increasing; especially amongst the poor.

Yours, &c.,
GUY M. BLAKE,
Attorney for the
Legal Aid Society
of Chicago.

Mr. J. Arthur Barratt,
3, Temple Gardens,
London, England.

(4.)

THE LEGAL AID SOCIETY.

New York,
26th March 1910.

MY DEAR Mr. BARRATT,

YOUR letter of 17th March, addressed to Mr. Merrill E. Gates, has been forwarded to me. Mr. Gates resigned as Attorney-in-Chief of the Legal Aid Society on the 1st of January 1910, and I was appointed his successor. In regard to obtaining evidence to present before the Royal Commission on the question of Divorce Law, permit me to state that I will be very glad to assist you in every way possible and have to-day mailed to the various Legal Aid Societies throughout the United States the letters which you enclosed. I will forward you a brief report on the question the early part of next week and will mail you, as the same are received, the various articles from the other Legal Aid Societies in America.

Yours, &c.,
LEONARD McGEE,
Attorney for the
Legal Aid Society.

J. Arthur Barratt, Esq.,
3, Temple Gardens,
London, England.

THE LEGAL AID SOCIETY.

New York.
13th April 1910.

MY DEAR Mr. BARRATT,

I AM enclosing you herewith articles I have received from the Chicago Legal Aid Society, the Legal Aid Society of Pittsburg, the Legal Aid Society of Philadelphia, and one I have prepared on the question of Divorce. I trust the enclosed will serve their purposes, and when I receive the articles from the other societies I have written to, I will be very glad to forward the same to you.

Yours, &c.,
LEONARD McGEE,
Attorney for the
Legal Aid Society.

J. Arthur Barratt, Esq.,
3, Temple Gardens,
London, England.

THE LEGAL AID SOCIETY,

New York,
13th April 1910.

MY DEAR SIR,

IN compliance with your request of 17th March, I will outline briefly the law and practice in divorce, annulment, and separation proceedings in this State, and give you such statistics and figures on cost as I have.

Divorces may be obtained in this State only on the ground of adultery. Separation may be obtained for cruel and inhuman treatment, drunkenness, abandonment, &c. A marriage may be annulled where one of the parties had a former husband or wife living at the time of the marriage, where one of the parties to the marriage was under the age of 18 years, and has not cohabited with the other party after attaining that age, or where the marriage was contracted through fraud or duress, &c.

These actions are commenced by either the personal or the substituted service upon the defendant of a summons, or a summons and complaint. If the service is made by substitution, that is, by publishing the summons in two newspapers for six consecutive weeks, the cost runs from 20 dollars to 30 dollars for that item alone. This is not a very satisfactory way of proceeding, however, owing to the strictness required in proving service, and the leeway allowed in opening defaults. The great majority of cases are commenced by personal service of a summons on the defendant, and where this is done the person serving the summons must be examined as to the service in open court.

If the defendant appears and defends the case, it is possible for either of the parties to move for the appointment of a referee to take the testimony. This is an expensive proceeding, as the referee's fees range over 10 dollars for every hearing. As the party securing the reference must pay the cost of such reference, no one would make such an application unless he or she had the means to do so. Where no reference is ordered, the case is tried in the Supreme Court, Special Term, which is the equity side of the Court, before a justice or before a justice and a jury, at the election of the parties. If the case is undefended, an inquest is taken by the justice sitting in Special Term, and as strict proof is required as though the case were defended.

After the testimony in either defended or undefended cases has been taken in open court, the stenographer's minutes are submitted to the justice together with specific findings of fact and law, and a proposed interlocutory decree, except in a separation suit, in which case final judgment may be at once entered. The procedure slightly differs where there is a jury, which decides these specific questions of fact presented, and the interlocutory decree is entered on their findings. This interlocutory decree, the findings, and testimony are then filed in the county clerk's office, and final judgment is entered three months later.

In New York County there is a special calendar of undefended divorce, separation, and annulment cases which is called every Wednesday, and inquests taken. In this way it is possible to bring a case to hearing within a month or six weeks after it has been placed on the calendar. A defended case cannot be brought on so quickly owing to the crowded condition of the calendar in this county, and it sometimes takes eight months or a year before the case is reached for trial.

Except where a reference is ordered or service by publication is required, the chief expense in these cases is the cost of the stenographer's minutes. Where the case is defended, there is no way to tell what this cost will be, as it depends entirely on the amount of testimony produced. In this connexion I can only say that I tried a case a few weeks ago, in which nine witnesses testified, the trial lasting approximately three hours, and the costs of the minutes amounting to 25 dollars. That I believe can be taken as a fair sample of the class of defended cases in which this Society appears. According to the statistics that were compiled in this office for work done in divorce, separation, and annulment cases handled between 1st January 1907 and 20th November 1909, the total average cost in 16 undefended cases was 5.86 dollars. In similar cases concluded between 29th November

1909 and the present date, the average cost in seven undefended cases was 6.71 dollars. These items are made up of a calendar fee of 3 dollars, a trial fee of 1 dollar, the cost of the stenographer's minutes, and 50 cents for entering the final judgment. Service in these cases was made by some friend of the plaintiff, and consequently there was no expense in that connexion.

Statistics furnished me by the Clerk of the Supreme Court in New York County shows that there were 646 undefended cases disposed of in 1909. From January 1909 to April 1910 there have been either disposed of or there are still waiting trial 213 defended divorces, 183 defended separations, and 30 defended annulments. It is impossible to tell from these statistics, and I believe any statistics on the subject are very unreliable, whether divorce is on the increase in this State or not. My own personal observation made possible through frequent attendance at the Special Term of the Court, where such cases are disposed of, leads me to believe that a large proportion of the parties seeking relief in such cases are people of very moderate means. In the ordinary case I doubt whether it is often possible to get an attorney of any responsibility to handle a case for less than 100 dollars. The average fee will range from 100 dollars to 200 dollars.

In conclusion I wish to say that the laws of New York offer the possibility of relief to even the poorest, although the grounds for which an absolute divorce may be obtained seem to me unduly restricted.

Yours, &c.,

J. Arthur Barratt, Esq.,
3, Temple Gardens,
London, England.

LEONARD McGEE,
Attorney for the
Legal Aid Society.

THE LEGAL AID SOCIETY.

New York,
5th May 1910.

DEAR SIR,

IN reply to your inquiry of April 25th, in reference to the proportion of poor persons desiring divorce, who are living with others improperly without marrying, I can safely say that my experience here and the information I receive from several charity workers that I know, leads me to believe that this proportion is very small. As I set forth in my previous letter, the actual cost of divorce in New York is not much, and ordinarily within reach of most persons. You will remember, however, that divorce is allowed in New York only on a ground of adultery, and for that reason there are many persons living in adultery because it is impossible to secure a divorce. This, however, is due to the stringency of the law, and not to any question of cost.

Trusting that this meets your question,

I am,

Very truly yours,
LEONARD McGEE,
Attorney for the Legal Aid Society.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(5.)

LEGAL AID SOCIETY OF PHILADELPHIA.

Philadelphia,
29th March 1910.

DEAR SIR,

I HAVE received your letter of 26th March with enclosure of letter of J. Arthur Barratt, Esq., of London. I can answer the questions asked in brief form.

We say the average cost of obtaining a divorce is one hundred dollars (100 dollars). This does not include counsel fees. Under Pennsylvania law fifty dollars (50 dollars) has to be deposited in court at the time the application for a master's appointment is made, and the master is entitled to claim the 50 dollars as a fee for the first meeting, and to charge ten dollars (10 dollars) for each subsequent meeting. The other costs are 2.50 dollars at the time the suit is started and a similar amount to the sheriff for the subpœna to be personally served. The same fee is paid the sheriff for serving the notice of the final decree, and a fee of ten dollars (10 dollars) is paid to the clerk of the court when the decree is granted. In cases where the sheriff cannot make personal service the law requires advertising both of the original subpœna and of the rule for the final decree. The cost of this advertising comes to between 10 dollars and 20 dollars, depending on the newspapers' charges.

We, therefore, generally state that the costs will come to 100 dollars, although in some cases it may be slightly less and in some will exceed this amount. It is undoubtedly true that the costs of obtaining a divorce do prevent many poor people from securing such relief. I cannot say from my own experience that this happens in a great many cases, and am inclined to believe that where the injured person is really desirous of obtaining a divorce he or she can find the means to do so. I believe that divorce is increasing among all classes of people, the poor as well as the rich. I have no figures to show this, but draw the conclusion from the cases which have come to the attention of our Society.

I trust this answers the questions fully enough. Should you wish any more detailed information we would be very glad to furnish it to you.

Yours, &c.,

Leonard McGee, Esq.,
Legal Aid Society
of New York,
239, Broadway,
New York City.

RUPERT S. HOLLAND.

(6.)

LEGAL AID SOCIETY OF PITTSBURGH.

Pittsburgh, Pennsylvania,
8th April 1910.

DEAR SIR,

I BEG to acknowledge receipt of your letter of 19th March 1910, concerning the question of divorce among the poor, asking as to its cost and whether it is increasing. In reply I beg to submit the following report:—

Under the laws of the State of Pennsylvania absolute divorce is permitted for impotence, bigamy, adultery, desertion, cruelty, and conviction for forgery or other infamous crime. Under our method of procedure such cases may be tried in one of three ways, depending on the choice of the parties, with the right always to demand a trial by jury.

1st. By the Court sitting as a Chancellor.

2nd. By the Court and jury.

3rd. By a master appointed by the Court, who hears the evidence in private sittings, and submits a report to the Court.

An average of the costs taxed in a considerable number of cases shows the average to be about as follows:—

	Dollars.
Before the Court sitting as a Chancellor -	18.01
In cases where a master is appointed -	47.59
In cases of jury trial - - -	25.00

The average charge made by an attorney for obtaining a divorce is, so far as I can judge, in the neighbourhood of 100 dollars. Of course this latter figure varies, and I do not consider that, apart from the Court costs, it would be impossible for a poor person to find an attorney who would take a divorce case and charge a fee in proportion to the means of the client.

This Society does not handle divorce cases, and consequently has not had a great deal of experience along this line. Many of the persons who have applied to the Society for assistance have discussed with our attorney the question of divorce, and many of them have said they cannot afford to apply for a divorce, but just as many have said that they would save up their money for that purpose. My personal opinion is that the cost of divorce in the State of Pennsylvania is as cheap as it should be made, and that any further material cheapening of the process would result in detriment to the community at large in encouraging hasty applications for divorce.

I am unable to answer your question as to whether the cost of divorce compels poor people to live in adultery. This question, however, I have had up with several social workers in Pittsburgh, and two of the most experienced have advised me that it is their opinion that a considerable number of poor persons are living in open adultery because they cannot afford the luxury of a divorce.

As to your second question, I think it is a well-established fact that divorce has increased greatly in the past decade in the United States generally. Whether the ratio of increase has been higher among the poor than the well-to-do I am unable to say definitely. It is my opinion, however, from general observation, that it has been about stationary with the lower classes and has increased largely with the well-to-do. This, however, may be an error resulting from the greater notoriety attached to the divorces of the well-to-do as opposed to those of the poor. I would therefore suggest that you do not place reliance upon this last observation.

Trusting this information may be of assistance to you in appearing before the Royal Commissioners of the House of Lords, and assuring you of our desire to assist you in any other way we can.

Yours, &c.,

J. Arthur Barratt, Esq., 3, Temple Gardens, London, England.

H. V. Blaxter, Secretary to the Legal Aid Society.

P.S.—I, perhaps, should add that the costs shown above are only those taxed by the county, and do not include the witness fee bill or other incidental expenses, which vary with the particular case, and might often double or treble the above amounts.

Yours, &c.,
H. V. B.

B.

Replies by American Jurists to Questions submitted by Mr. J. Arthur Barratt.

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Questions submitted by Mr. Barratt.

DIVORCE.

1. What is the state of public opinion in your neighbourhood—

(*a*) As to whether the existing causes for divorce should be changed in any way.

(*b*) As to the existing laws tending or not to lack of respect for the marriage tie.

(*c*) As to its tendency to lead to hasty marriages.

(*d*) As to the advisability of publishing details of divorce actions in the newspapers.

(*e*) As to the attitude of the community toward citizens who are divorced in the States where so-called "easy divorce" is procured, on their return to your home State.

2. What should you say is the average cost of procuring a divorce—

(*a*) To a person of moderate means.

(*b*) To a poor person.

Is divorce oftener resorted to by the poor, the rich, or persons of moderate means?

3. Is the tendency to divorce or separation on the increase or decrease?

4. What courts have jurisdiction to grant divorce? Have your minor or county courts such jurisdiction?

5. Is the divorce decree, when first entered, a final decree, or is it simply interlocutory, to be followed by a final decree after a certain period of time?

6. Is there any public officer in your State having authority to intervene in divorce actions on behalf of the State, or otherwise, to prevent collusion or fraud?

7. Is the husband or the wife more frequently the plaintiff in divorce actions?

8. Has the fact (if so) that citizens of other States frequently resort to your State to bring actions for divorce, the effect of lessening the respect for the marriage tie in your State?

9. State your views on divorce generally, including any suggestion for reform in your divorce laws.

10. Have your courts power to order divorce actions to be heard privately in court or before a referee, and, if so, are such actions more commonly heard in private or before a referee or in open court?

11. Do clergymen refuse to marry divorced persons?

(In all the above questions suits for nullity or separation are to be included under the name "divorce.")

Replies.

(1.)

ALABAMA.

Mobile, Alabama,
12th April 1910.

DEAR SIR,

YOUR favour of 5th March, addressed to the President of our Local Bar Association, was handed me a few days ago, and I take pleasure in replying to your inquiries, although I regret my inability to answer all of them fully. The answers are in the order of the questions.

1.—(*a*) Public opinion in this neighbourhood has not been aroused to an extent which would indicate any general sentiment as to whether the existing causes of divorce should be changed in any way. My own opinion is that the grounds for divorce in this State are proper, but divorces are too often granted on what seems to me to be mere formal proof.

(*b*) The laxity with which divorces are granted undoubtedly tends to disrespect for the marriage tie.

(*c*) The knowledge that a divorce may be easily obtained probably leads, in many instances, to hasty marriages.

(*d*) There is a general sentiment against publishing details of divorce proceedings in the newspapers.

(*e*) Public opinion is sufficiently strong to frown with disfavour upon persons obtaining a divorce in those States where so-called "easy divorce" is procured, but the incident is soon forgotten, and the party does not permanently lose social caste.

2.—(*a*) The average cost of procuring a divorce to a person of moderate means is 75 dollars and (*b*) 40 dollars to a poor person. Proceedings for a divorce are seldom resisted, and when they are the costs are probably double or triple the above figures. The rich, the poor, the high and the low, likewise resort to the divorce courts, but there is probably a larger percentage of divorces among persons of moderate means than among persons of other classes.

3. The tendency to divorce is on the increase.

4. Only superior courts have jurisdiction of divorce proceedings.

5. The divorce decree is final when granted on personal service, except that neither party may marry within sixty days thereafter, and, as a rule, the decree permits only the complainant to marry again, and if the respondent desires to marry again he, or she, must file a petition for such purpose, and, if a man, must show to the court that he is financially able to maintain a family, and that the cause for which the divorce was granted will not likely again occur. When service is had by publication, as for instance, where the respondent is a non-resident, the decree remains in abeyance for twelve months subject in the meantime to be set aside by proof that no notice of the proceedings was actually received.

6. There is no such public office in this State.

7. The majority of proceedings for divorce are instituted by the wife.

8. It is not a fact that citizens of other States frequently resort to the courts of this State for action for divorce. Where the respondent is a non-resident, the other party to the marriage must have been a *bonâ fide* resident of this State for one year next before the filing of the bill. Where the ground for divorce is abandonment by the respondent, the complainant must have been a *bonâ fide* resident of this State for three years next before the filing of the bill.

9. I am in favour of a divorce on any one of the following grounds:—(1) In favour of either party when the other was, at the time of the marriage, physically and incurably incapacitated from entering into the marriage state; (2) adultery; (3) voluntary abandonment from bed and board for two years next preceding the filing of the bill; (4) the commission of the crime against nature; (5) becoming addicted after marriage to habitual drunkenness; (6) in favour of the husband when the wife was pregnant at the time of marriage, without his knowledge or agency; (7) in favour of the wife when the husband has committed violence on her person, attended with danger to life or health, or when from his conduct there is reasonable apprehension of such violence.

I am not in favour of permitting either party to a divorce proceeding to marry again, except the innocent party who has obtained a divorce on the ground of adultery.

10. Our courts have power to order divorce actions to be heard privately in court, or before a referee, but private proceedings are infrequent.

11. A large number of clergymen refuse to marry divorced persons, and this is especially so in reference to clergymen of the Roman Catholic and Episcopal Churches; except that the Episcopal clergymen, as a rule, do not withhold their sanction to the marriage of the person who has obtained a divorce on the ground of adultery of the other party to the marriage.

Trusting that the above answers will be of some service to you, and assuring you of my desire to render any further assistance in my power, I beg to be,

Yours, &c.,
JNO. E. MITCHELL,
President Mobile Bar Association
(Address merely Mobile, Ala.).

Mr. J. Arthur Barratt,
London, England.

(2.)

CALIFORNIA.

San Francisco,
17th February 1910.

MY DEAR SIR,

RESPONDING to your favour of the 1st instant, asking my responses to a series of questions on the subject of divorce, you will find my replies appended below:—

1.—(*a*) There does not seem to be any popular outcry against the present "liberal" system.

(*b*) Naturally such tendency exists in a large degree.

(*c*) Tendency in this direction not marked.

(*d*) It is inadvisable, but newspapers revel in this class of sensational "news."

(2) The divorced individual is not socially ostracised, unless it is the woman who is divorced for adultery. In certain church circles where divorce is not recognised as being sanctioned by religious dogma, the divorcee is to some extent *persona non grata*.

There is no migration from this State for divorce purposes. It is easy enough here.

2.—(*a*) and (*b*) Statistics are wanting. It depends on magnitude of property interest and question of control of offspring. An average divorce without these elements can be obtained for 125 dollars. Where wealthy people are involved, large fees are paid. Usually property interests are adjusted out of court. Probably the larger proportion of divorces are sought by the last two classes.

3. On the increase, perceptibly.

4. Superior courts, *i.e.*, courts of general jurisdiction, with right of appeal. Our next lower courts are police or municipal, and justices of the peace. They have no divorce jurisdiction.

5. Interlocutory—final follows in a year.

6. No. Legislation of this kind has been attempted but failed.

7. Probably the wife.

8. Outsiders rarely come to this State for this purpose. The interlocutory feature of the decree is deterrent. Nevada is the popular state for "transient" applicants.

9. I have no criticism to make of our divorce laws. I have, however, of their administration. In some courts the law is too loosely administered. There is a

temperamental difficulty, which legislation cannot obviate.

10. Courts have the power, but in later years it has not been exercised to any large degree. Actions are ordinarily heard before a judge in open court. The judge has power to order private hearings or hearings with closed doors, but this power is rarely exercised.

11. Yes. Of certain denominations, *i.e.*, Catholic and Episcopal.

Yours, &c.,
CURTIS H. LINDLEY,
President,
Bar Association of
San Francisco.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(3.)

CONNECTICUT.

New Haven, Connecticut,
25th April 1910.

MY DEAR SIR,

I AM in receipt of a letter or circular from you addressed "H. L. Stoddart," but in view of the fact that the doctrine of reciprocity calls loudly upon me to do anything I can to aid you, I assume that the letter was intended for me, and therefore I hastily answer your various questions stated in your schedule headed "divorce."

As to Question 1, with the subdivisions *a–e* both inclusive, I doubt whether there is any settled public opinion in my "neighbourhood," understanding neighbourhood to mean the State of Connecticut. Such public opinion as there is in this State differs very greatly in different localities. The religious factor is important. We have a very large Roman Catholic population in certain localities. Among the members of most of the other religious communities divorce is resorted to freely; yet, speaking broadly, divorce is unfavourably regarded, and from a social point of view every divorced person assumes the burden of proof and is put upon his or her justification or palliation. I do not think there is any public demand for a change in our divorce laws, nor do I think that public opinion is that our divorce laws lead to hasty marriages. Whether the divorce is obtained in the home State or any other, the "attitude of the community" is directed toward the individual person rather than the fact of divorce. I am inclined to think that public opinion as a whole justifies our divorce laws, and upon the whole they work with fair satisfaction. Doubtless many can be found in our State who will regard any law permitting divorce to be pernicious, and you will find many who think that the divorce law ought to be broadened and divorce made easy, As to all of the above matters we have extremists on both sides.

As to your second question, it is impossible to answer as to the average cost. I do not suppose it can be approximated even. I imagine the minimum cost is probably about 50 dollars.

As to the third question, I think there is no marked tendency to increase or decrease divorce.

As to the fourth question, the Superior Court, which is our Court of highest original jurisdiction. has exclusive jurisdiction in divorce cases.

And, answering Question 5, the final decree is entered at first like any other action.

Answering Question 6, there is no public officer having special authority to intervene in divorce actions on behalf of the State or otherwise, to prevent collusion or fraud, although I apprehend that our State Attorney, so-called, would by virtue of his office have that authority, and I think it probable that it would be his official duty so to do if his attention were called to any such action.

As to Question 7, the wife is more frequently the plaintiff. A very large proportion of divorce actions are brought by the woman.

As to Question 9, I presume my views on divorce are perhaps on a general level with that of the community in general, and stated very broadly, perhaps the following theory is accurate enough for the purpose. I believe that in special cases divorce ought to be granted, but only when the marriage relation is substantially intolerable and not to be endured. I have no suggestion for reform in our divorce laws, and believe that the only real reform lies in the selection of good judges. No judge ought to grant a divorce until he is satisfied that it is for the best interests of the parties concerned that it should be granted, and this without much reference to the alleged cause. In other words, I think that the administration of divorce laws is the principal thing.

As to Question 10, the courts have power to hear the case privately or to send it to a referee or committee, so-called, and this is sometimes done, but usually the cases are heard in open court.

As to Question 11, some clergymen do and some do not refuse to marry divorced persons.

I am, &c.,
HENRY STODDARD.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(4.)

GEORGIA.

ATLANTA BAR ASSOCIATION.

Atlanta, Georgia,
7th May 1910.

DEAR SIR,

I AM in receipt of your favour of the 28th of April advising that you had been called upon to appear before a Committee of the House of Lords on the subject of American divorce laws, and requesting replies to certain questions therein enclosed.

Assuming that you have retained copies of these questions, I will endeavour to answer them by reference to their numbers only.

1.—(*a*) The existing grounds for divorce in this State are (1) intermarriage within the prohibited degrees of relationship; (2) mental incapacity at the time of the marriage; (3) impotency at the time of the marriage; (4) force, menaces, duress or fraud in obtaining the marriage; (5) pregnancy of the wife at the time of the marriage, unknown to the husband; (6) adultery in either of the parties after marriage; (7) desertion continuing three years; (8) conviction of felonies involving moral turpitude; (9) cruel treatment or habitual intoxication (discretionary as to total or partial); (10) (partial) on any ground which was held sufficient in the English courts prior to 4th May 1784.

As each of these grounds is founded in sound reason, I do not believe public opinion desires any change.

(*b*) The existing laws do not tend to a lack of respect for the marriage tie.

(*c*) They do not tend to too hasty marriages.

(*d*) Personally I doubt the advisability of publishing details of divorce actions in the newspapers, but I doubt whether this voices the general sentiment on the subject. The vicious appetite for prurient news will not be likely to be abated in this country until we have progressed much further along lines of ethical culture.

(*e*) There are not a sufficient number of cases referred to herein to form the basis for an attitude of the community on the subject.

2.—(*a*) About 100 dollars. A deposit of 6 dollars is required in all cases to cover minimum court costs. The additional expense includes advertising in case of non-residence and service by publication, and counsel fees.

(*b*) 25 dollars to 50 dollars. The great majority of parties to divorce cases here are poor people or persons of moderate means, a large number of them being negroes.

3. Without any definite statistics on the subject, my observation is that the increase in divorce cases, taking the State as a whole, is not out of proportion to the increase of population.

4. Our superior courts being courts of general jurisdiction, including both equity and common law, are the only courts having jurisdiction in divorce cases. Our minor, or county courts, have no jurisdiction whatever in connection with divorce cases.

5. Our law requires two verdicts rendered at separate terms of the court, with an interval of not less than six months between these terms, before the final decree of divorce is entered. An adverse verdict at the first term, unless excepted to and reversed, would

defeat the action entirely. In like manner a favourable verdict on the first trial followed by an unfavourable one on the second trial, unless the latter is excepted to and reversed, would defeat the action of the plaintiff.

6. In divorce cases proceeding *ex parte* it is the duty of the judge to see that the grounds are legal and sustained by proof, or to appoint the Solicitor-General, or some other attorney of the court, to discharge that duty for him.

7. It would take a very tedious amount of investigation to answer this question definitely. My impression is that the greater number of cases are instituted by the wife against the husband.

8. It is not true that citizens of other States frequently resort to our State for the purpose of bringing actions for divorce, and hence the effect of lessening the respect in our State of the marriage tie is not produced by this cause.

9. Speaking generally, I consider the laws of this State, both as to the ground for divorce and the procedure for granting the same, very admirable and about as well adjusted to the difficult problem as any which could be practically devised and administered.

10. Our superior courts have the power, in any case of seduction or divorce, or other case where the evidence is vulgar or obscene, or relates to the improper acts of the sexes, and tends to debauch the morals of the young, in the discretion of the judge presiding, and on his own motion, or on motion of either of the parties or of their attorneys, to hear and try the case after clearing the court-room of all or any portion of the audience. This power is not often exercised, and there is no opinion of approval or disapproval of the practice. There is no question that the power is rightfully vested, and on proper occasion would be exercised with the entire approval of the public.

11. Whether or not any given clergyman would refuse to marry divorced persons would depend upon the tenets of his own church. I believe the Catholic church declines to recognise civil divorce, and the Episcopal church declines to recognise any except those granted on scriptural grounds. There may be other denominations whose clergymen would have scruples on the subject. As the civil law provides for the performing of the marriage ceremony by a clergyman of any denomination or by our magistrates, there is no embarrassment about obtaining the execution of the licence to marry when once it has been granted.

12. A large percentage of our population consists of the negro race, either of the pure blood or of the various degrees of infusion of the white blood, producing what we term the "mulatto" of varying shades of colour. In even the smallest degree, the negro blood inexorably classes the person with the negro race. In my opinion, the greatest reservoir of material for all trouble about divorces springs from this mixed product. Their state of hopelessness is intensified as the infusion of Caucasian blood in their veins increases. Many of them are endowed with the aspirations of the white race and cursed with the depravity of the negro race, and out of the infractions of the marriage laws which afflict us a very large percentage is caused by this class of our population. Among the full-blooded whites it is exceedingly rare that unlawful cohabitation occurs. Among the blacks and the mulattoes the marriage tie is treated with the utmost indifference. Their only desire, in a great majority of cases, is to avoid the penalty of the criminal laws on the subject, and this they do not always succeed in doing. This view is but one of the many phases of the appalling race question which confronts and overshadows, and sometimes threatens to overwhelm, this section of the United States.

My time is such that it would not be practicable for me to make the necessary investigation to have answered some of your statistical questions. I trust that the foregoing generalities may prove of some service.

Yours, &c.,
ALEX. W. SMITH,
President,
Atlanta Bar Association.

Mr. J. Arthur Barratt,
3, Temple Gardens, Temple,
London, England.

(5.)

ILLINOIS.

REPLIES OF HON. GEO. A. DUPUY, CHANCELLOR OF THE SUPERIOR COURT OF COOK COUNTY, ILLINOIS (THAT IS CHICAGO).

DIVORCE.

1. What is the state of public opinion in your neighbourhood—

(*a*) As to whether the existing causes for divorce should be changed in any way?—I do not believe any change of law is demanded.

(*b*) As to the existing laws tending or not to lack of respect for the marriage tie?—I do not think existing laws tend toward lack of respect for marriage.

(*c*) As to its tendency to lead to hasty marriages?—I cannot say that it does.

(*d*) As to the advisability of publishing details of divorce actions in the newspapers?—As between publication and suppression, I favour the former.

(*e*) As to the attitude of your community towards citizens who are divorced in States where so-called "easy divorce" is procured, on their return to your home State?—Very few such cases exist. I have not come in personal contact with any.

2. What should you say is the average cost of procuring a divorce—

(*a*) To a person of moderate means?—50 to 75 dollars.

(*b*) To a poor person?—35 to 50 dollars.

Is divorce oftener resorted to by the poor, the rich, or persons of moderate means?—

Poor people are 60 per cent. of the whole.
Rich people are 5 per cent. of the whole.
Others 35 per cent of the whole (estimated).

3. Is the tendency to divorce on the increase or decrease?—Probably on the increase.

7. Is the husband or wife more frequently the plaintiff in divorce actions?—Wife, 78 per cent.; husband, 21 per cent. (Actual statistics in 181 consecutive cases in the Superior Court (Chicago), Cook County, Illinois.)

8. Has the fact (if so) that citizens of other States frequently resort to your State to bring actions for divorce, the effect of lessening the respect in your State for the marriage tie?—This is not the case in Illinois.

9. State your views on divorce generally, including any suggestions for divorce reform in your divorce laws?—I do not think the divorce laws of Illinois are defective. There is need in default cases that counsel representing the public should participate in the trials to prevent collusion. The absence of such counsel leads to divorces by collusion and to imposition upon the courts. I have presided at the trial of many hundreds of cases, and I do not believe that many divorces are granted when the interests of society demand that they be withheld.

10. Have your courts power to order divorce actions to be heard privately in court or before a referee, and, if so, are such actions more commonly heard in private or before a referee or in open court?—Nothing but public hearings in open court.

11. Are private hearings generally approved of?—

12. Do clergyman refuse to marry divorced persons?—Not generally; some Episcopal clergymen do.

(In all the above questions suits for nullity or separation are included under the name "divorce.")

SUPERIOR COURT OF COOK COUNTY, CHICAGO.

GEORGE A. DUPUY, Judge.

In Chambers, 811, Court House, Chicago.
DEAR SIR, Feb. 19th.

YOUR favour of recent date to the President of the Chicago Bar Association was handed by him to me with request that I reply thereto. I take pleasure in complying with his request. He sent it to me as Chancellor of the Superior Court of Cook County,

Illinois (Chicago), because in my regular chancery court work I try about 20 divorce cases per week through the year. I hope this may be of service to you.

Very respectfully,
GEORGE A. DUPOY,
Chief Justice, Superior Court.

To Mr. J. Arthur Barratt,
3, Temple Gardens,
Temple, London.

(6.)

ILLINOIS, CHICAGO.

DIVORCE.

1. What is the state of public opinion in your neighbourhood—

(*a*) As to whether the existing causes for divorce should be changed in any way?—The majority of the public, I think, are satisfied with the causes as they now exist in this State.

(*b*) As to the existing laws tending or not to lack of respect for the marriage tie?—That they do not so tend.

(*c*) As to its tendency to lead to hasty marriages?—That they have no such tendency.

(*d*) As to the advisability of publishing details of divorce actions in the newspapers?—Opinion would be very much divided. I think the better reasoning is against publishing details of such actions on the ground that the harm done by such publication is greater than the good accomplished by the deterrent effect upon those contemplating divorce.

(*e*) As to the attitude of your community towards citizens who are divorced in States where so-called "easy divorce" is procured, on their return to your home State?—I have no acquaintance with any such.

2. What should you say is the average cost of procuring a divorce—

(*a*) To a person of moderate means?—50 to 500 dollars, depending upon whether there is a contest.

(*b*) To a poor person?—25 to 75 dollars.

Is divorce oftener resorted to by the poor, the rich, or persons of moderate means?—I think by persons of moderate means.

3. Is the tendency to divorce on the increase or decrease?—Large increase.

4. What courts in your State have jurisdiction to grant divorce?—Only our courts of general jurisdiction, by the chancery side thereof.

5. Is the divorce decree when first entered a final decree?—Yes, final.

6. Is there any public officer in your State having authority to intervene in divorce actions on behalf of the State or otherwise, to prevent collusion and fraud?—No public officer is charged with such a duty.

7. Is the husband or wife more frequently the plaintiff in divorce actions?—The wife, but occasionally the fact she is plaintiff is a matter of gallantry on the part of the husband.

8. Has the fact (if so) that citizens of other States frequently resort to your State to bring actions for divorce, the effect of lessening the respect in your State for the marriage tie?—It is not the fact.

9. State your views on divorce generally, including any suggestions for divorce reform in your divorce laws?—I am in favour of divorce, and think the statutes in this State adequate in that respect.

10. Have your courts power to order divorce actions to be heard privately in court or before a referee, and, if so, are such actions more commonly heard in private or before a referee or in open court?—The statute requires default cases to be heard in open court, and in practice all trials are heard in open court.

11. Do clergymen refuse to marry divorced persons?—I know of no clergyman except Roman Catholic and Episcopalians refusing to marry divorced persons.

12. Are private hearings generally approved of?—No.

JOSEPH H. DEFREES,
President of Chicago Bar Association.

(7.)

ILLINOIS, CHICAGO.

Judge WALKER.

DIVORCE.

1. What is the state of public opinion in your neighbourhood—

(*a*) As to whether the existing causes for divorce should be changed in any way?—I do not think public opinion demands any change. By "public opinion" I mean the opinion of the great majority.

(*b*) As to the existing laws tending or not to lack of respect for the marriage tie?—That they do not so tend.

(*c*) As to its tendency to lead to hasty marriages?—That they have no such tendency.

(*d*) As to the advisability of publishing details of divorce actions in the newspapers?—Opinion seems divided; there are good reasons why, on grounds of decency, they should be suppressed: there are also good reasons why, as warnings, they should be published.

(*e*) As to the attitude of your community towards citizens who are divorced in States where so-called "easy divorce" is procured, on their return to your home State?—I know of no such citizens.

2. What should you say is the average cost of procuring a divorce—

(*a*) To a person of moderate means?—About 100 dollars.

(*b*) To a poor person?—About 35 dollars.

Is divorce oftener resorted to by the poor, the rich, or persons of moderate means?—Of moderate means.

3. Is the tendency to divorce on the increase or decrease?—Largely on the increase, but not so much so as in most of the other States of the U.S. (*see* Federal Census).

7. Is the husband or wife more frequently the plaintiff in divorce actions?—The wife—much more so.

8. Has the fact (if so) that citizens of other States frequently resort to your State to bring actions for divorce, the effect of lessening the respect in your State for the marriage tie?—It is not the fact.

9. State your views on divorce generally, including any suggestions for divorce reform in your divorce laws?—I assume from Mr. Defrees' letter that this question is to be answered by him personally.

10. Have your courts power to order divorce actions to be heard privately in court or before a referee, and, if so, are such actions more commonly heard in private or before a referee or in open court?—Our statute requires default cases to be heard in open court. All trials are held in open court.

11. Are private hearings generally approved of?—No.

12. Do clergyman refuse to marry divorced persons?—None but Roman Catholics and Episcopalians.

(In all the above questions, suits for nullity or separation are included under the name "divorce."

CHARLES M. WALKER,
Judge Circuit Court, Cook Co., Chicago.

(8.)

ILLINOIS, CHICAGO.

Judge WINDES.

DIVORCE.

1. What is the state of public opinion in your neighbourhood—

(*a*) As to whether the existing causes for divorce should be changed in any way?—Cannot answer—have heard no discussion of the subject and very few opinions.

(*b*) As to the existing laws tending or not to lack of respect for the marriage tie?—Same answer.

(*c*) As to its tendency to lead to hasty marriages?—Same answer.

(*d*) As to the advisability of publishing details of divorce actions in the newpapers?—Have heard frequent criticisms of such publications,

and think that the opinion is quite general that such details should not be made public.

(*e*) As to the attitude of your community towards citizens who are divorced in States where so-called "easy divorce" is procured, on their return to your home State?—That such citizens are not "desirable."

2. What should you say is the average cost of procuring a divorce—

(*a*) To a person of moderate means?—50 to 100 dollars when not contested.

(*b*) To a poor person?—10 to 20 dollars when not contested.

Is divorce oftener resorted to by the poor, the rich, or persons of moderate means?—The last named.

3. Is the tendency to divorce on the increase or decrease?—Increase.

7. Is the husband or wife more frequently the plaintiff in divorce actions?—The wife.

8. Has the fact (if so) that citizens of other States frequently resort to your State to bring actions for divorce, the effect of lessening the respect in your State for the marriage tie?—Do not know.

9. State your views on divorce generally, including any suggestions for divorce reform in your divorce laws?—I am opposed to divorce generally, and think before one should be granted, the Chancellor should be satisfied beyond all reasonable doubt that the evidence establishes a clear right to relief under the law. Under such practice I would not change the statutory causes for divorce in Illinois.

10. Have your courts power to order divorce actions to be heard privately in court or before a referee, and, if so, are such actions more commonly heard in private or before a referee or in open court?—Only the court has power, but to exercise such a power is entirely wrong. There should be no secrets in such cases. They are generally heard in open court.

11. Are private hearings generally approved of?—No.

12. Do clergymen refuse to marry divorced persons?—Do not know.

THOMAS G. WINDES,
Judge of Circuit Court, Chicago.

17th February 1910.

(In all the above questions suits for nullity or separation are included under the name "divorce.")

(9.)

INDIANA.

DIVORCE.

Answers by Charles Martindale, Esq., President of the Indianapolis Bar Association.

1.—(*a*) As to whether existing causes for divorce should be changed in any way, is a matter of some discussion generally mooted in church gatherings and most exhaustively discussed by those who have least knowledge of sociology. My observation is that the trend of opinion is not in favour of either extending or restricting the existing statutory causes for divorce in this State. It appears to me that there is a demand for a stricter application of the law to the facts in each case.

(*b*) As to the existing laws tending or not to a lack of respect for the marriage tie, it is a matter of general observation that there is not as great a respect for the marriage tie throughout the States as in former years, but as to whether the cause of this is the possibility of divorce is a matter upon which there is doubt.

(*c*) The weight of opinion seems to be that the possibility of divorce tends to ill-considered marriages, but it is also a question as to whether if the marriage and divorce laws were made quite strict, illegitimacies would not be largely increased.

(*d*) It is quite the general opinion that the publishing of details of divorce actions in the newspapers is harmful and that many of our social ills are due to what we call "yellow" journalism.

(*e*) The attitude of the community towards citizens who are divorced in the States where so-called "easy divorce' is procured on their return to their home State, is, I dare say, much the same as in the cities of the older States or of Europe. Much depends upon the facts of each case and the conduct of the parties. One or both of the parties is apt to be sent to Coventry for a period of probation, and whether they regain their former social status depends largely upon conduct. It is observable that in suburban communities, where life is simpler, the feeling towards persons who have been divorced is much more severe.

2.—(*a*) The cost of procuring a divorce to a person of moderate means is from 25 dollars to 50 dollars. This means that the taxable court costs are about 15 dollars and the fees of the attorney range from 10 dollars upward.

(*b*) The costs to a poor person are 2 dollars, which is the fee of the sheriff for the service of the writ of summons and whatever fee his attorney may require. We have professional shysters who seek this sort of business at fees of 5 dollars to 10 dollars. The taxable court costs are taxed against the losing party, but if the plaintiff or defendant has no property subject to execution above the exemption, the costs cannot be collected. Divorce is oftener resorted to by the poor because the poor are the larger class, and I think because the conditions of life make a larger demand upon mutual tolerance and also offer greater temptations.

3. Divorce is very greatly on the increase in this State, although there has been no change in the statutory causes of divorce for 37 years. Whether this increase is in a ratio to the increase of population I cannot say.

4. General jurisdiction of civil and criminal nature is in our county courts which bear the title of circuit courts for the reason that the same judge presides over a circuit sometimes composed of more than one county. These are the trial courts for all causes, and the distinctions between actions at law and suits in equity have been abolished by the code of procedure in this State.

In some of the counties of this State we have additional courts of concurrent jurisdiction which are entitled superior courts, and in one or two counties of the State probate jurisdiction is conferred on a probate judge. All of these courts have jurisdiction of petitions for divorce.

5. The decree of divorce is in the first instance a final decree.

6. The public prosecutor or prosecuting attorney, as he is called, has authority to intervene in all divorce actions for the purpose of preventing collusion.

7. Without accurate knowledge of statistics it appears that the wife is more frequently the plaintiff in divorce actions.

8. In this State the petitioner for divorce must make an oath that he has been a *bonâ fide* resident of the State for the last two years previous to the filing of the petition and a *bonâ fide* resident of the county at the time of and for at least six months immediately preceding the filing, which *bonâ fide* residence shall be duly proven by such petitioner to the satisfaction of the court trying the same by at least two witnesses who are resident freeholders and householders of the State. As it is difficult to find two persons who are freeholders and householders who are willing to perjure themselves, it rarely happens that citizens of other States come to this State to bring actions of divorce. There are other States, like Nevada, which are much more inviting.

9. My personal view in relation to divorce is in favour of restricting the causes and requiring strict proof as to the facts.

The causes in this State are adultery, impotency existing at the time of marriage, abandonment for two years, cruel and inhuman treatment, habitual drunkenness, failure of the husband to make reasonable provision for his family for a period of two years, conviction of an infamous crime.

The causes upon which divorce are most frequently granted are adultery, cruel and inhuman treatment, and failure to make provision.

10. Courts in this State have power to order divorce actions to be heard privately in court. Private hearings are not generally approved of, and, although sometimes allowed, are not common.

11. Clergymen, as a rule, do not refuse to marry divorced persons. I have only observed two instances —one by the rector of a Protestant Episcopal Church and the other by a Catholic priest.

Divorce is so inexpensive and easy that poor persons have no need to live with others without ceremony. Such cohabitation is not infrequent, but such relations are sure to be broken up by police interference within a very short time.

(10.)

LOUISIANA.

DEAR SIR, 17th February 1910.

UPON my return to Shreveport I find your letter addressed to the President of the Bar Association of New Orleans, and same was forwarded to me here, and I beg to send you the information desired as accurately as possible under the pressure of the necessity of your having it early in March.

In answer to the first question subdivided under (*a*), (*b*), (*c*), (*d*), (*e*), I beg to answer as follows:—

The state of public opinion does not favour changing the existing causes for divorce.

The existing law tends to a respect of the marriage tie, and they do not lead to hasty marriages.

Public sentiment is against the advisability of publishing the divorce evidence in the newspapers.

The attitude of our community towards citizens who are divorced in States where so-called "easy divorce" is procured is not very friendly.

2nd. As to the average cost of procuring a divorce, to a person of moderate means is from 10*l.* to 20*l.*, to a poor person 5*l.* Divorce is oftener resorted to by the poor.

3rd. The tendency of divorce in this community is not on the increase. It has been confined mainly to the negro population.

4th. The courts in our State having jurisdiction over divorce are the district courts, from which an appeal lies to the supreme court of the State.

5th. The divorce decree when first entered is not always a final decree. The only case where divorce is absolute in the first instance is where the defendant has been condemned to an infamous punishment or has been guilty of adultery. All the other causes for divorce are provisional, and the first degree is called a separation from bed and board, and at the end of a year from the date of which if there has been no reconciliation between the parties the divorce follows, but has to be made the subject of a second suit, and the proof of lack of reconciliation made.

6th. There is no public officer in our State having authority to intervene in divorce actions on behalf of the State or otherwise.

7th. The wife is more frequently the plaintiff in the case.

8th. Citizens of other States do not frequent our State to bring actions for divorce, as our law and jurisprudence of the State is hostile to the granting of divorces.

9th. In accordance with the general sentiment of the country, I am in favour of a national divorce law harmonising all the various conflicting rules in the various States. This to be made the subject of a constitutional amendment to the United States Constitution.

10th. Our courts have no power to order divorce actions to be heard privately, but must be heard as all other litigations are under our Constitution in open court.

11th. Clergymen do not refuse to marry divorced persons. It is optional, of course, with them whether they will celebrate second marriages of divorced persons, and some clergymen do refuse.

Yours, &c.,

J. Arthur Barratt, Esq.,
Temple Gardens,
London, England.

E. H. RANDOLPH,
President,
Louisiana Bar Association.

(11.)

MAINE.

UNITED STATES COURTS, JUDGE'S CHAMBERS,
PORTLAND, MAINE.

22nd February 1910.

MY DEAR MR. BARRATT,

THE pressure of judicial engagements has prevented my answering at length your favour of the 1st instant and the interrogatories therein enclosed.

As to the first question which asks not my views, but "the state of public opinion": As to all the sub-heads, (*a*) to (*e*), each inclusive, there is no crystalised public opinion at present which has any practical force with regard to each of the sub-topics. The diversified condition of public opinion in any particular neighbourhood, outside perhaps of South Carolina, is as well represented by what appears on pages 249 to 251 of The World's Almanac, 1909, which I am mailing you, as could be represented in any other way. Generally speaking, you will find in every neighbourhood as much diversity of opinion between persons as appears in the various laws of the States of the Union with regard to causes for absolute divorce, which this book points out.

Of course, this is limited by two facts: The clergy of the Protestant Episcopal Church and the clergy of the Roman Catholic Church are everywhere united in hostility to the granting of any absolute divorce, except for adultery, and refuse to re-marry persons divorced except for that reason. There are a few exceptions as to the latter with reference to the Protestant Episcopal clergy. The clergy of the other denominations are generally united in opposition to divorce except for adultery, but do not go so far as to refuse to marry. Indeed, I know of some clergymen who take the position that they are bound to marry persons applying for marriage where the law of the State does not interfere.

There is no formulated opinion with reference to the tendency of divorces to lead to hasty marriages, because the prime cause of hasty marriages is the loose laws permitting such marriages. Of course, there is a general weak sentiment against the advisability of publishing the details of divorce in the newspapers; but the classes of newspapers which do publish them have a larger circulation than those which do not.

Letter (*e*) is answered by the fact that the attitude of the better class of the community is generally adverse to all divorced persons, except those who have been divorced where the justice of the case makes a loud demand; and no distinction is made between those who were divorced in States where so-called "easy divorces" are procured, and those who were divorced in other States. So fine a distinction is not made, that I am aware of, beyond creating a *primâ facie* prejudice of not much endurance. Other classes of the community are not at all troubled by questions of that kind.

As to the second interrogatory: It is impossible to estimate the cost any more than to estimate the cost of any litigation in a country like ours where there are no fixed retainers or refreshers. Court disbursements are everywhere very small.

As to the third question: I refer you to the statistics on page 251 of The World Almanac. There are no observations of value I can add thereto or take therefrom.

As to the fourth question: The answer is the highest court of judicature, the supreme judicial court only.

As to the fifth question: The statute is changed from time to time, as public opinion changes.

As to the sixth question: I answer in the negative.

As to the seventh question: I should say the husband was more apt to be brutish than the wife.

As to the eighth question: I should say there is no definite answer to be given. The matter is hardly considered.

As to the ninth question: My personal views would not be of any value for your purposes. I have never shown any disposition to be a teacher in reference thereto.

As to the tenth question: Our own courts often hear divorces in chambers, and might, under some circumstances, hear them quite privately; but what are regarded by the law as "private hearings" are unknown to us. Our courts may, of course, appoint referees, but I have never known one to be appointed in a divorce suit.

As to the eleventh question: I have already answered.

Of course, you understand that I am a Federal Judge, and we have nothing to do with divorce proceedings except incidentally, as in Haddock *v.* Haddock, 201 United States Supreme Court Reports, 562.

My jurisdiction extends over four States, Maine, New Hampshire, Massachusetts, Rhode Island. What I write you refers to the local courts of the State of Maine.

I am only too happy to assist you in any way, and I would be very glad to write you further if you desire.

Yours, &c.,
WILLIAM S. PUTMAN
(U.S. Circuit Judge).

STATE OF MAINE.

Notice.

SAGADAHOC, ss.—SUPREME JUDICIAL COURT.

April Term, 1910.

To the Honourable Justice of the Supreme Judicial Court next to be held at Bath, within and for said County, on the first Tuesday of April, A.D. 1910.

Edith L. Mariner of Topsham in said County of Sagadahoc, in said State, wife of Herbert Q. Mariner of said Topsham, respectfully represents:

That her maiden name was Edith L. Lancaster; that she was lawfully married to Herbert Q. Mariner, in Boston, State of Massachusetts, on the sixth day of December, A.D. 1899, by Franklin D. Rideout, a Justice of the Peace in and for the County of Suffolk, in said State of Massachusetts; that thereafterwards they lived together as husband and wife in Brunswick in the County of Cumberland, and later in Topsham in the County of Sagadahoc from the time of their said marriage until the sixth day of December, A.D. 1909, that your libellant has always conducted herself toward her said husband as a faithful true and affectionate wife.

That said Herbert Q. Mariner, libellee, on the first day of June, A.D. 1908, and on divers other days and times between said first day of June and the filing of this libel, to wit: on June 17th, August 14th, 15th and 17th, September 25th, December 25th and 31st in the year 1908; and on January 4th, August 7th, 12th and 13th, September 15th, and December 6th in the year 1909, committed the crime of adultery with one Pansy B. Straw of Portland, said County of Cumberland; and on other days and time in said months of June, August and September at said Brunswick and Topsham, and in the month of December in said City of Portland in the year 1908; and in the months of August, September, October, November and December in said Brunswick and Topsham in the year 1909.

That there has been born to your libellant and said libellee two children, Inez G. Mariner now eight years of age, and Herbert Q. Mariner now three years of age; that said libellee is not a suitable person to have the care and custody of said children; *that said libellee has departed to parts unknown and that his present residence is unknown to your libellant and cannot be ascertained by reasonable diligence*, and that there is *no collusion* between your libellant and said Herbert Q. Mariner, libellee, to obtain a divorce.

Wherefore said libellant, Edith L. Mariner prays that a divorce may be decreed between her and her said husband, Herbert Q. Mariner, libellee, for the cause above set forth; that she may have the custody of her said minor children Inez G. Mariner and Herbert Q. Mariner, and that the Honourable Court may further decree to her reasonable and sufficient alimony for the care of her said children and for her support.

Dated February 10, 1910.

EDITH L. MARINER.

STATE OF MAINE.

CUMBERLAND, ss.

February 10, 1910.

Personally appeared, before me, Edith L. Mariner, who subscribed and made oath to the foregoing libel that the same is true.

JOSEPH H. ROUSSEAU,
Notary Public (Seal).

STATE OF MAINE.

SAGADAHOC, ss.—SUPREME JUDICIAL COURT.

In vacation February 11, A.D. 1910.

Upon the foregoing libel, Ordered, That the libellant give notice the said Herbert Q. Mariner to appear before the Justice of our Supreme Judicial Court, to be holden at Bath, within and for the County of Sagadahoc, on the first Tuesday of April, A.D. 1910, by publishing an attested copy of said libel, and this order thereon, three weeks successively in The Bath Daily Times, a newspaper printed in Bath in our County of Sagadahoc, the last publication to be twenty days at least prior to said first Tuesday of April that he may there and then in our said Court appear and show cause, if any he have, why the prayer of said libellant should not be granted.

HENRY C. PEABODY,
Justice of the Supreme Judicial Court.

A true copy of the Libel and Order of Court thereon.

Attest: SANFORD L. FOGG,
14.21.28. Clerk.

MAINE.

PERKINS' DIVORCE WAITED BY WIFE.

Obtained Decree in South Dakota which was not recognised here, and Present Suit "Is to please me," she says.

Rumour says she will marry Cattle King.

[Special Dispatch to the *Boston Herald.*]

Colorado Springs, 13th February 1910.—The wife of Robert F. Perkins, according to her friends, left the luxury of her Boston drawing room and came to Colorado, where, living in a cottage at the foot of Cheyenne mountain, she will quietly remain until the divorce court of Massachusetts releases her from the bonds of matrimony and paves the way for her marriage, it is said, to Bronson Rumsey, the rich cattle baron of Cody, Wyo.

Robert F. Perkins is the son of the late Charles E. Perkins, former president of the Burlington railroad.

The sheriff's office served summons on Mrs. Perkins yesterday in the suit begun by her husband in Middlesex county, Mass. It now developes she came here from Hot Springs, S.D., where she obtained a divorce last October, but the Massachusetts court do not recognise the decree, "and to please me," said Mrs. Perkins, "my husband is obtaining a divorce in Massachusetts."

"It's true, I know Mr. Rumsey," continued Mrs. Perkins, "and I am not surprised that our marriage is rumoured. All I can say is we are not married yet, and I do not care to talk about the matter."

Perkins is a rich banker of Boston. There are four little Perkinses, three of whom are in the East attending school. The fourth, a year-old baby, is with Mrs. Perkins.

(12.)

MASSACHUSETTS.

735, Exchange Building, Boston,
15th February 1910.

MY DEAR SIR,

I HAVE your letter of February 1st, in which you ask me to answer certain questions which are very far reaching. I will answer them as nearly as I can, without making an investigation that would occupy more time than I could readily give.

1. Your first question relates to the state of public opinion in my neighbourhood upon five points:

(*a*) As to whether the existing causes for divorce should be changed in any way, I would say that our statute has stood for many years, and I am aware of no feeling that it should be changed in that respect.

(*b*) As to whether or not the laws tend to cause a lack of respect for the marriage tie?—So far as I am able to judge from the absence of any serious agitation for a change in the law, from the silence of the press, and from the conversation of the people whom I meet, I do not think there is any general belief that the existing laws promote any lack of respect for the marriage tie. There are some people who are entirely opposed to divorce on any ground, but I think the general opinion is in favour of the law as it stands, and that would not be the case if it was felt that it weakened respect for the institution of marriage.

(*c*) I do not think there is any belief that our divorce law leads to hasty marriages.

(*d*) As to the advisability of publishing the details of divorce actions in the newspapers, I think the general feeling is that this should be done; that the publicity which attends a divorce trial has a tendency to keep people from seeking divorce for light reasons, and that it would lead to very evil results if divorces were granted after a secret hearing. This has been done in one or two prominent cases within a few years, but generally opinion has been strongly against it.

(*e*) The question as to the attitude of the community towards citizens who have obtained a so-called divorce in other States upon their return to their home State. I should answer briefly thus: Wherever a person goes out of the State in which he or she resides, and obtains a divorce in another State, the Supreme Court has held the divorce binding only in the State where it is granted. Consequently persons having obtained such a divorce in another State come back in a very questionable position, and are not received as persons of unquestioned status.

2. Your second question relates to the average cost of procuring a divorce. This depends so entirely on circumstances, whether the divorce is uncontested or contested, and on the eminence of the counsel employed, that no figures which I can give you would be enlightening. The ordinary uncontested divorce would perhaps cost from 50 dollars to 150 dollars.

I do not think it possible to say whether a divorce is more often "resorted to by the poor, the rich, or by persons of moderate means," but I should be inclined to think there is very little difference between the classes, and I know of no statistics. In certain rich classes in a few of our larger cities divorce has become rather a scandal, but I fancy that if the statistics were gathered, it would be found that persons of moderate means seek it as often as the rich. Really poor people, as a rule, are not found in the divorce courts.

3. Whether "the tendency to divorce is on the increase or decrease" is a question which it is difficult to answer. As the population increases the number of divorces undoubtedly increase, but whether the percentage within 10 years is greater or less I should find it hard to say. My impression is that on the whole divorce is more frequent than it was.

4. In answer to your fourth question the Superior Court in Massachusetts alone has jurisdiction to grant divorces. This is the tribunal in which our jury trials are had, except in a few cases, and corresponds perhaps as nearly as may be to your court sitting on circuit. No court which corresponds to your minor or county court has that jurisdiction.

5. The divorce decree with us becomes final automatically six months after it is entered, unless some stay has been granted by the court.

6. There is no public officer in our State who is authorised to bring divorce actions on behalf of the State or otherwise.

7. In answer to this question, it is impossible to say whether husband or wife is most frequently complainant.

8. Citizens of other States do not resort to our State "to bring actions for divorce."

9. I am inclined to believe that our divorce laws are wise, and that nothing is gained by preventing the separation of persons whose life together is unhappy.

10. Our courts may order divorce cases "to be heard privately," but the practice is very exceptional, and the court is not inclined to extend it. As I have already said, public opinion is against private hearings.

11. In answer to this question, some clergymen refuse to marry divorced persons, but there is no general rule.

Believing that this answers the questions you put.

Yours, &c.

MOORFIELD STOREY,
President,
Boston Bar Association
(Massachusetts).

J. Arthur Barratt, Esq.,
3, Temple Gardens,
London, England.

(13.)

MINNESOTA.

Saint Paul,
17th March 1910.

DEAR SIR,

ANSWERING yours of the 5th instant addressed to the President of the Bar Association of St. Paul, beg to say that I was formerly the President of the Minnesota State Bar Association, and assume that your letter was intended for the present president, who is Mr. James D. Shearer, of Minneapolis.

I have some interest in the subjects of your inquiry, and take this opportunity (notwithstanding you intended to communicate with my successor) to express to you my impressions with reference to the questions asked.

There is no active public opinion in Minnesota upon the question whether or not existing causes for divorce could be changed in any way, but I am inclined to think there is a considerable latent opinion to the effect that divorce should be less easily obtained.

I think that the existing laws do tend in some degree at least to create a want of respect for the marriage ties, but I do not think the condition of our laws lead to hasty marriages. There are hasty marriages, no doubt, but I think the cause is to be found elsewhere than in the divorce laws.

I think details of divorce actions should not be published in the newspapers. I think the facts of suit and its result should be published.

Persons divorced in States where so-called easy divorce is procured are not ostracised socially, though I think it fair to say that social standing is, as a rule, somewhat impaired.

It is difficult to state what is the average cost of procuring a divorce. To persons of moderate means in case of default I would say from 50 dollars to 100 dollars. I think there is no ground for saying that divorce is oftener resorted to by the poor than by the rich, or *vice versâ*.

Generally speaking, I think the tendency to divorce is somewhat—though not markedly—on the increase.

The district courts of this State, *i.e.*, the courts of general jurisdiction, alone have jurisdiction of such cases.

The divorce decree when entered is final. Parties are disabled from marrying in this State for a period of six months after the decree.

No public officer in this State has the power to intervene in a divorce action.

I have no means of saying whether divorces are more frequently applied for by husbands or by wives.

Minnesota is not resorted to by non-residents for the purpose of obtaining divorces.

I am not certain that I have views which I can successfully defend on the subject of divorce, but am strongly inclined to think that persons divorced ought not to be permitted to re-marry.

In our courts divorce actions are heard publicly. Our courts sturdily refuse private hearings.

Clergymen, excepting Catholics, do not refuse to marry divorced persons.

I recommend that you write to Mr. Shearer, above referred to, for his views.

Honourable E. A. Jaggard, Associate Justice of the Supreme Court of this State, of St. Paul, Minnesota, has, I think, given all the subjects to which you refer painstaking attention, and I am sure would be glad to write you his views.

Yours, &c.,
PIERCE BUTLER
(formerly President of Bar Association of State of Minnesota).

Mr. J. Arthur Barratt,
3, Temple Gardens, Temple,
London, England.

(14.)

MINNESOTA STATE BAR ASSOCIATION.

Austin, Minneapolis,
19th April 1910.

DEAR SIR,

YOUR communication directed to Mr. James D. Shearer, of Minneapolis, Minnesota, has been referred to me with a request that I answer your questions.

1. In regard to the state of public opinion:
   (*a*) As to whether the existing causes for divorces should be changed in any way, I answer that I think the causes for divorce are satisfactory.
   (*b*) Public opinion is to the effect that there is lack of respect for the marriage tie, but that grows out of the mode or manner in which the law is enforced rather than the law itself.
   (*c*) I do not think it leads to hasty marriages.
   (*d*) Public sentiment is in favour of the publication of divorce actions for the reasons it gives publicity as to who are divorced, on what ground, and I think such publicity serves as a deterrent.
   (*e*) In regard to the attitude of the community towards citizens who are divorced in the States where so-called "easy divorce" is procured, on their return to their home State, is one of a hostile nature, and the community frowns upon any such procedure.

2. The average cost of procuring a divorce of a person of moderate means is from 75 dollars to 300 dollars, and that of a poor person from 30 dollars to 50 dollars. Divorce is oftener resorted to by the rich or of moderate means.

3. Divorces are decidedly on the increase.

4. In our State the district courts have original jurisdiction to grant divorces, the minor or county courts have no jurisdiction, and the legislature is prohibited by the constitution from granting divorces.

5. The divorce decree is final, but the court has jurisdiction to modify the decree as to alimony or the custody of children.

6. There is no public officer in this State having authority to intervene in divorce actions on behalf of the State or otherwise to prevent collusion or fraud. The law is deficient in this respect. Divorces would not be so easily granted if the County Attorney, who is the law officer of his county, could intervene in divorce cases tried in his county to see that there was no collusion or fraud.

7. Where the parties are wealthy I think that the husband more frequently resorts to divorce action, but among the poor class the wife is more frequently the plaintiff. Intoxication and lack of support being the chief reasons for the wife resorting to a divorce action.

8. The plaintiff has to be a resident for one year in this State. Citizens of another State cannot resort to an action for divorce, except there is collusion or fraud.

9. In my judgment there ought to be a uniform law relating to divorce throughout the Union. Forty-five separate and sovereign States have supreme power over the subject of divorce. What may be the ground for a divorce in this State may not be a ground in some other State. Some of the States require a residence much shorter than others, thereby opening the door to fraud and collusion. The law as to residence should be uniform. Provision ought to be made for some officer to intervene in divorce actions to see that no collusion or fraud between the parties occur, and that the rights of the State are protected in this regard. Divorce parties should not re-marry until the expiration of one year. In this State we have a statute to the effect that the parties should not re-marry for six months, but it is not an unusual thing for the parties to get married the next day or two after the divorce is granted in some adjoining State. I think that our courts are more at fault than the laws. In some jurisdictions divorces are easily granted. The judges are slack in this regard.

10. The court has power to order divorce actions to be heard privately in court or before a referee. They are usually heard in private or before a referee instead of being heard in open court, as in my judgment they ought to be.

11. Generally speaking I think that all clergymen, except the priest of the Catholic Church and the Episcopalian, clergymen have no objections to marrying divorced persons. Occasionally some Protestant clergyman has scruples, but generally performs the marriage ceremony.

I have answered your questions as fully as the limited time will permit me. If I can be of any further service please advise me.

Yours, &c.,
LAFAYETTE FRENCH,
President,
S.B. Association.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(15.)

MISSISSIPPI.

DEAR SIR,

27th April 1910.

IT gives me great pleasure to comply with your request of the 16th instant with reference to the divorce laws and general sentiment on the subject of divorce in our State. Regarding everything except the actual laws, my answers necessarily are general, and possibly in a few instances are slightly incorrect. I am enclosing the answers on a separate sheet.

Yours, &c.,
ALEXANDER AND ALEXANDER.

Mr. J. Arthur Barratt,
3, Temple Gardens,
London, England.

1.—(*a*) In my opinion there is no necessity for a change of the divorce laws of Mississippi.

(*b*) Our statutes on the subject of divorce are so stringent that there is a healthy respect in our State for the marriage tie among the white people.

(*c*) I do not think that our laws in any way have a tendency to bring about hasty marriages.

(*d*) It is the general opinion in our State, and the newspapers seem to follow it reasonably well, that the details of divorce suits should not be published in the newspapers. Very few, if any, of the divorces in our State are aired in this way.

(*e*) Among the white people of our State the social standing of divorced persons is greatly affected, and I believe the general opinion on this subject greatly deters divorces among the white people.

2.—(*a*) A person of moderate means can procure a divorce for 25 dollars, including attorney's fees and costs of court.

(*b*) There are lawyers in this city especially who take cases for poor persons, and especially negroes, for 10 dollars. Divorce is very often resorted to by the negroes, which compose about 1,000,000 people out of our 1,850,000 population. Among the lower class of white people there is a small proportion of divorces, but it is very rare in our State for the better class of people to apply for a divorce.

3. Numerically divorce is on the increase, but when taken in proportion to the increase in population and the number of marriages it is on the decrease.

4. The county chancery courts only.

5. There is no interlocutory divorce decree in our State, and when the divorce decree is entered it is final so far as that petition is concerned. Of course, we have the two classes of divorce, absolute and *a mensâ et thoro*. The latter can be by petition and the decree ripened into the former.

6. No.

7. Husband.

8. Our divorce laws are so stringent and our courts so strict regarding divorces, especially with reference to white people, that it very rarely, if ever, happens that citizens of other States come to our State to obtain a divorce. In fact, I cannot recall a single instance.

9. Presuming that you have before you our recent statutes touching upon divorce, I will not go into details regarding same. I believe that you will agree with me that if divorce is to be allowed at all that the laws could not be closer drawn than our own statutes draw them, and in our State I believe that any one of the grounds of divorce as set forth in our statutes, if unequivocally proven, should result in a decree of divorce. The only suggestion of a change that I would make would be in the matter of procedure. Among the negroes of our State, the county chancery courts are often very lax in requiring proof, and it is very easy for them to obtain divorces. This is frequently true with reference to the better class of white people. I think that the chancellor ought to be very careful to require strict proof in order to make the case before a decree is entered to come within the strict purview of the statute.

10. Yes. These actions are nearly always heard in private, especially when the parties to the suit are of any social standing. I think it is the general opinion that these secret hearings are better. While there are some objections to them and the notoriety attendant upon a public hearing might frequently deter applicants from taking the step, at the same time, if any one of the grounds outlined in our statute is proven, as I have stated before, I think the party would be entitled to a divorce. This seems to be the general impression. On the other hand, private hearings keep the details out of the newspapers, and for that reason divorces are seldom talked of and are uncommon. The negroes of our State are so constituted that they have no pride whatever, and I believe that negroes would much prefer a public hearing in order to obtain notoriety.

11. Many of the clergymen in our State refuse to marry divorced persons. However, there is no statute in our State prohibiting such a marriage.

Personally I would suggest that the persons of our State authorised by statute to marry persons should be greatly restricted, and required by statute to have in hand more strict proof regarding age, consent of parents, &c. You are doubtless aware that the further south people live the younger is the average age of the contracting parties. People in our section marry very young, many of them under 20. I think a restriction along this line would tend to lessen the divorce evil.

None of my remarks made above touch directly on the negro situation. The whole negro race is a great problem in itself, as you doubtless know. They have no regard for the sanctity of the home; a very small proportion of them are ever married; and nine-tenths or more of the divorce cases are filed by negro men after a short term of married life. This is necessarily so, and it is impossible to frame laws which will lessen this evil, because we are required under the constitution to give everybody equal protection of the laws, and no special statute could be passed with reference to them. Nearly all of the negroes (I am ashamed to say) are guilty of at least two of the grounds of divorce. The fact is that as late as 1864 none of the negroes in the State were ever married, and the fact also is that as a whole they are a shiftless uneducated class, and to a large extent criminally inclined, and absolutely irresponsible, and this makes the divorce evil among them alarmingly large. A greater evil, however, among the negroes is their not marrying at all.

CHARLTON A. ALEXANDER,
President of the Bar
Association of Jackson,
Mississippi.

(16.)

MISSOURI.

THE BAR ASSOCIATION OF SAINT LOUIS.

Missouri,
DEAR SIR, 22nd February 1910.

REPLYING to your letter of 1st February 1910 and the questions enclosed therewith, I would respectfully state:—

I.

(*a*) Public opinion in Missouri does not demand any change in the legal causes for divorce.

(*b*) I believe there is a general opinion that existing laws tend to a lack of respect for the marriage tie.

(*c*) That these laws do lead to hasty marriages.

(*d*) That publishing the details of divorces is inadvisable, and tends to create a disrespect for the marriage ties and increase the number of divorces.

(*e*) The attitude of the community is more or less hostile to divorced persons wherever the decree may have been obtained.

II.

The average cost to a person of moderate means for a divorce is about 100 dollars. To a poor person, about 40 dollars. Persons of moderate means more frequently resort to divorce.

III.

The tendency to divorce is on the increase.

IV.

Courts of general jurisdiction alone have jurisdiction to grant divorce. Minor and county courts have no such jurisdiction.

V.

The only decree entered in divorce cases under our practice is a final decree.

VI.

There is no public officer having authority to intervene in divorce actions on behalf of the State to prevent collusion or fraud, though the courts do at times appoint lawyers in particular cases.

VII.

In the large majority of the cases the wives are plaintiffs.

VIII.

Comparatively few citizens of other States resort to this State to bring action for divorce.

IX.

I am of the opinion that under existing social conditions divorces should be granted under circumstances where the conduct of either party is such as to render the condition of the other intolerable, and that a wide discretion should be given to the presiding judge in each case with express provision entitling an applicant absolutely to a decree upon clear proof of certain specific acts. I believe the laws of the State of Missouri as existing are entirely reasonable and meet the conditions.

X.

Under the laws of this State, divorces must be heard publicly, and the courts have no power to either refer them or provide for private hearings.

XI.

Generally speaking, clergymen do not refuse to marry divorced persons. However, priests of the Roman Catholic Church, ministers of the Episcopal Church, in some cases, and, in some instances, Jewish Rabbis do refuse to perform ceremony for such persons.

Trusting that I have fully answered your questions, I beg to remain,

Yours, &c.,
DANIEL G. TAYLOR (A.B.),
President.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(17.)

NEVADA.

Reno, Nevada,
15th February 1910.

My dear Sir,

I received your letter of 1st February to-day.

First, to answer your questions :—

1.—(*a*) There is a pretty strong sentiment that the period of residence necessary to confer jurisdiction should be extended from six months, the present period, to one year.

(*b*), (*c*), (*d*). Public opinion is divided on these points, but as to (*b*) and (*c*), I think that religious convictions have more to do with the opinions of the individuals than the real facts in the case. As to (*d*), I think the opinion of the better class of people is that details should not be published.

(*e*) As Reno is at present the most popular so-called divorce centre, none of our citizens go elsewhere and return hence.

2.—(*a*) 300.00 dollars.
(*b*) 150.00 dollars.

I can discover no distinction in the frequency of divorce applications dependent upon their wealth or poverty.

3. Under the peculiar circumstances existing here, it is on the increase, but eliminating those circumstances, I think it is not increasing.

4. The only court having jurisdiction is the district court.

5. The decree is always final.

6. No. But the judges invariably cross-examine the parties and exercise considerable discretion.

7. The wife is usually the plaintiff.

8. I think not.

9. *See* below.

10. The courts have such power, and it is frequently exercised, although the majority of cases are tried in public. I know of no general sentiment, one way or the other, as to private hearing.

11. Clergymen of the Catholic and Episcopal Churches invariably do. Sometimes, but not often, clergymen of other denominations refuse.

Answering your 9th inquiry, you are doubtless aware that just at present Reno is the so-called "Refuge of Restless Hearts," as it has been named by a writer in one of the popular magazines, and the town and the divorce colony here are the constant subject of newspaper and music-hall jokes, and the town and the people of more or less note from other places, who are here ostensibly for the purpose of securing a divorce, are the constant subjects of Sunday newspaper stories.

Of course there is no doubt that many of the people who have come here, and who have secured divorces, and many of those who are here now, have come for the sole purpose of being relieved from the marriage relation. Their residence here has not been and is not *bonâ fide*, and these people are guilty of fraud upon our courts, and the decrees which they have obtained are worthless both here and in any other court in this country or in England, where the decree might afterwards be questioned. On the other hand, there is much to be said in defence of the conduct of persons who come from other States to secure an easy divorce in Nevada. As you know, in our most populous State, absolute divorce is granted on one ground only, and this is true of some of the other States; and in nearly all of them the conditions upon which an absolute decree may be obtained are more or less drastic. Besides, there are many times conditions which make it expedient from social, family, and other weighty considerations not to sue for and obtain a decree upon the statutory ground of adultery. Where that ground exists desertion, cruelty, or lack of support usually exist also, and the last-mentioned grounds are sufficient in this State upon which to secure an absolute divorce. So that in many cases where the statutory ground exists in, say, New York, the party aggrieved, out of respect for her children or her family, or other considerations, comes here, secures a residence, and a divorce follows, upon the ground of cruelty or desertion, no mention being made of the graver offence.

As I have intimated before, religious conviction has much to do with the attitude of individuals toward the subject of divorce. For my own part, and I believe my opinion reflects that of the majority of people with whom I have come in contact here and elsewhere, whose judgment is unaffected by religious scruples, I not only see no harm, but, on the contrary, I believe that much good results to society, and certainly to the individuals, by relieving a man and woman legally by absolute decree from a relation that has become intolerable and where the marriage has, in fact, ceased to exist. As I say, I think the State is not harmed, but is benefited by declaring by judicial decree a state of facts which already does, in fact, exist.

Believing I have answered your inquiries,

I am, &c.,
C. L. Harwood,
Counsellor-at-Law.

J. Arthur Barratt, Esq.,
3, Temple Gardens,
The Temple,
London, England.

(18.)

NEW JERSEY.

The Prudential Insurance Company of America, New Jersey.

Home Office, Newark, N.J.,
29th April 1910.

Dear Sir,

Your letter of April 16th addressed to the President of the Bar Association has been handed to me for reply. I cannot answer your questions as fully as you would desire, but comply with your request to the best of my ability.

The causes for absolute divorce in this State are (1) adultery, (2) desertion. For cruelty a divorce from bed and board may be obtained.

1. I do not think there is any public opinion looking toward a change in the existing causes for divorce. These have existed in the State for many years, and I have heard of no suggestion as to changing them. I do not think that they tend to a lack of respect for the marriage ties or that they lead to hasty marriages. As to the advisability of publishing details of divorce actions in newspapers. I think that this is a matter which should be regulated by due sense of propriety, but under our system of government there is no method by which the press can be restricted from publishing such evidence in divorce cases as it may desire. I am unable to reply at all to your inquiry (*e*), as I have no data whatever on which to base an opinion.

2. The average cost of procuring a divorce to a person of moderate means, I should say, would amount to about 200 dollars. A poor person may obtain an order assigning counsel and providing for the conduct of the suit without cost. I cannot say whether divorce is oftener resorted to by the poor, rich, or persons of moderate means, but if I hazarded an opinion I should say that those of moderate means most frequently resorted to a divorce court.

3. I do not think that the tendency to divorce has changed very materially in this State. It is not a State in which a divorce is easily obtained, and I think that such suits as are brought are brought in good faith.

4. The only court having jurisdiction to grant divorce in this State is the Court of Chancery. No minor court has such jurisdiction.

5. Under our present practice the divorce decree when first entered is an interlocutory decree to be followed by a final decree after six months.

6. No public officer has authority to intervene in any divorce action.

7. I am unable to state whether the husband or wife is most frequently the plaintiff in divorce actions.

8. I do not think that citizens of other States resort to this State for the purpose of bringing actions for divorce.

9. I do not think it necessary to state my personal views on divorce beyond suggesting that I think our Divorce Act at the present time needs no substantial changes. I believe that the grounds for divorce permitted in this State are proper, and that the procedure is dignified, and that no criticism has ever been made in connection with the matter.

10. In uncontested divorce cases the usual practice is to refer the matter to a Master in Chancery, who advises the Chancellor whether a decree of divorce should be made. These hearings are generally in private, but the testimony is reduced to writing and filed with the Master's report in the office of the clerk, where it is open to public inspection. Contested divorce cases are heard in open court. I know of no practice which permits a contested divorce case to be heard privately. I have known of some few cases in which the court has directed the testimony taken before the Master to be sealed so that it is not open to public inspection.

I trust that the above will answer your purpose, and am,

Yours, &c.,
EDWARD D. DUFFIELD,
President of the
Bar Association of Newark,
New Jersey.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(19.)

NORTH DAKOTA.

Wahpeton, North Dakota,
18th February 1910.

MY DEAR ARTHUR,

YOUR letter of the 12th instant, with enclosure, was forwarded to me here, and received to-day.

Answering your questions which you propound, I would state in answer to Question 1:—

(*a*) That public opinion in this State does not seem to call for a change in the existing causes for divorce.

(*b*) Existing laws do not seem to tend towards a lack of respect for the marriage tie.

(*c*) I have never heard it asserted that it tends to lead to hasty marriages.

(*d*) But very few advise the publishing of details of divorce actions.

(*e*) Communities generally here do not look with favour on citizens who go to South Dakota, where divorces are more easily secured than in our State, obtaining a divorce, and then return to this State.

In answer to Question 2:—

(*a*) The average cost to a person of moderate means is probably 200 dollars.

(*b*) To a poor person probably 50 dollars. In this State, at the present time, divorce is seldom resorted to by people of standing in the community, and not often by the rich, but more often by the poor and those of moderate means.

In answer to Question 3, I would say that the tendency here is on the decrease.

In answer to Question 4, I would state that the district courts, such as the court over which I preside, have exclusive original jurisdiction, but there is the right of appeal to the Supreme Court.

5. The divorce decree in this State, when first entered, is final.

6. There is no public officer in this State having the authority stated, but the judges of the district courts inquire very fully in regard to this class of cases, and applicants knowing that to be the fact, rarely begin an action, except in good faith.

7. Divorce actions prosecuted by the wife probably number twice as many as those begun by the husbands.

8. Citizens of other States do not resort to North Dakota to procure divorces, as a *bonâ fide* residence of one year is required, whereas numerous States, including South Dakota, require a residence of one-half, or less than half that time.

9. It would take some time for me to express fully my personal views in regard to divorces, but I have given it much thought, and especially during the last six years that I have been upon the Bench, and come to the conclusion that the difficulty lies not so much with our law with reference to the securing of a divorce, as it does with the fact that marriages are too hastily consummated. I have no particular fault to find with our divorce laws, but from the fact that my experience has taught me that the great majority of those suing for a divorce were married in haste, I would strongly advocate the throwing of more safeguards around those contemplating marriage.

10. Our courts have power to order divorce actions to be heard before a referee, and in private, but if the testimony is taken before a referee, it must be acted upon independently by the court ordering the reference. If I remember rightly I have referred three such cases during the time I have been upon the Bench; and these were all default matters where the plaintiff was very poor, and it would have been a hardship for her and her witnesses to have travelled the long distance to the county seat where court was held.

11. I understand that clergymen of the Episcopal Church and Catholic priests refuse to marry divorced persons.

The majority of cases that have come under my personal observation have been prosecuted by women whose husbands had deserted them or treated them with such cruelty that they had been, or could be, prosecuted criminally; and in many cases the action for divorce is not brought with the idea of re-marrying, but so that the wife may be protected in the care and custody of minor children, and not be interfered with by a drunken and dissolute husband. There seems to be an impression in some localities that a husband or wife can apply for a divorce, and that if no appearance is made by the defendant, a decree will be granted as a matter of course, but that is not true, as I have personally refused to grant decrees in a number of cases, even though there was no defence whatever. And by following up the matter, I am quite certain that I have never granted a divorce to anyone who came to North Dakota for that purpose. And I am quite positive in regard to this matter, because of the fact that after I grant a decree at one term of court, I make inquiry at the next term in that county, which is about six months subsequent, in reference to the whereabouts of the parties to whom a divorce was granted, and in every instance I have found that they were still residing in the neighbourhood.

I was very glad indeed to hear from you, as it brought back to me our youthful days on 46th Street in New York. My wife and I visited father and mother last April, and found them both hale and hearty, considering their age.

With kindest regards, I am,

Yours, &c.,
FRANK P. ALLEN
(District Judge, Fourth Judicial
District, North Dakota).

Mr. J. Arthur Barratt,
Temple Gardens,
Temple, London.

(20.)

OHIO.

DIVORCE.

1. What is the state of public opinion in your neighbourhood:—

(*a*) As to whether the existing causes for divorce should be changed in any way. *See* letter.

(*b*) As to the existing laws tending or not to lack of respect for the marriage tie. *See* letter.

(*c*) As to its tendency to lead to hasty marriages. *See* letter.

(*d*) As to the advisability of publishing details of divorce actions in the newspapers?—This is a matter of good taste. Our newspapers seem to be giving less attention to such cases than formerly.

(*e*) As to the attitude of the community towards citizens who are divorced in the States where so-called "easy divorce" is procured, on their return to your home State?—The cases referred to are so rare that there is no general attitude. Divorces are easily obtained here.

2. What should you say is the average cost of procuring a divorce—

(*a*) To a person of moderate means.

(*b*) To poor persons.

(*a*) 50 dollars.

(*b*) 30 dollars.

Is divorce oftener resorted to by the poor, the rich, or persons of moderate means?—By the poor, because there are more of them.

3. Is the tendency to divorce or separation on the increase or decrease?—An increase compared with 20 years ago, but no increase now compared with recent years.

4. What courts have jurisdiction to grant divorce? Have your minor or county courts such jurisdiction?—Courts of Common Pleas, which court in this county is composed of eleven judges. The Court of Insolvency, in this county, also has jurisdiction, but no cases are brought in it.

5. Is the divorce decree, when first entered, a final decree, or is it simply interlocutory, to be followed by a final decree after a certain period of time?—A final decree.

6. Is there any public officer in your State having authority to intervene in divorce actions on behalf of the State, or otherwise, to prevent collusion or fraud?—No.

7. Is the husband or the wife more frequently the plaintiff in divorce actions?—The wife, but I think that the suit is often brought by her through arrangement.

8. Has the fact (if so) that citizens of other States frequently resort to your State to bring actions for divorce, the effect of lessening the respect in your State for the marriage tie?—This is not frequent enough to have any marked effect. A *bonâ fide* residence of one year is required in this State.

9. State your views on divorce generally, including any suggestion for reform in your divorce laws?—*See* letter.

10. Have your courts power to order divorce actions to be heard privately in court or before a referee, and, if so, are such actions more commonly heard in private or before a referee or in open court?—Almost always in open court. There is power to refer to a referee, but it is rarely done.

11. Do clergymen refuse to marry divorced persons?—The Roman Catholic and most all of the Protestant Episcopal clergy refuse. The great majority of the others do not refuse, but do not like to marry divorced persons.

(In all the above questions, suits for nullity or separation are to be included under the name "divorce.")

Yours, &c.,
JAMES LAWRENCE,
President,
Bar Association of Cleveland, Ohio.

OHIO.

Cleveland, Ohio,
15th March 1910.

DEAR SIR,

IN reply to your letter of 5th March, I add the following to the answers written after the questions submitted and herewith returned.

It is not my own view, but I believe it is the view of a majority of the people in this city that, where husband and wife cannot live in some degree of harmony, they are better separated, and, if separated, that an absolute divorce is better both for them and the public. The consequence of this feeling is, in my opinion, a loose interpretation by the courts of the statutes upon the subject, and the frequent granting of divorces on insufficient evidence. For the most part suits are uncontested, and I believe that practically anyone who wishes for a divorce can obtain it. It appears to me, however, that this situation has not as yet produced a lack of respect for marriage or tended, in any marked degree, to hasty marriages, although I confess that the opposite of this would naturally be expected. The only explanation of the seeming paradox must be found in the deep seated regard for the family relation and the feeling against immoral conduct, which still exist amongst the great mass of the American people, notwithstanding some flagrant instances to the contrary which occasionally occur, and which, according to our custom, usually receive the most sensational publicity. After all, divorces are not relatively so frequent as would seem, because the statistics are based on the number of divorces granted compared with the number of marriage licenses, whereas in a rapidly growing city a large proportion of marriages occurred elsewhere. In my personal association with people I meet very few persons who have been divorced, although I do not avoid such persons.

In my judgment the cause of the frequent divorces here is the feeling that the individual has the right to happiness if he can find it, and if a marriage is a failure for him, he has a right to have it dissolved. A considerable number of divorces also occur amongst the more recent immigrants, generally because the woman learns that she does not have to stand ill-treatment here, and sometimes because the wife is unwilling to leave the old country to follow her husband here I fear that the idea of marriage as a social institution has lost ground, and the obligation to society and the common interest is too often disregarded.

The statutes of Ohio permit divorces on the grounds of wilful absence for three years, adultery, extreme cruelty, habitual drunkenness for three years, any gross neglect of duty, and a few other grounds which need not be considered. It is the "gross neglect of duty" which makes divorces so easy, especially where there are eleven judges having power to grant them. Inevitably some of these can find some "gross neglect," and divorces are occasionally granted for the most trifling reasons. This ground of divorce ought certainly to be abolished, but then I suppose the easy going judge would seize upon "extreme cruelty" as a substitute. The fact that the statute is not amended, and the fact of its exceedingly liberal interpretation indicate, however, that the prevailing public sentiment does not wish for a change.

Yours, &c.
JAMES LAWRENCE,
President of the
Cleveland Bar
Association.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(21.)

PENNSYLVANIA.

DIVORCE.

Philadelphia,
14th February 1910.

1.—(*a*) I do not think that there is any general feeling that existing causes for divorce should be changed. In a great majority of the States (upwards of three-fourths) the causes are practically the same. (*See* Report of Divorce Congress of 1906.)

(*b*) Existing laws do tend to promote a lack of respect for the marriage tie. The statistics for the last forty years, prepared under the direction of the United States Census Bureau, show a constantly accelerating increase in the number of divorces as compared with marriages, there being now about one to twelve.

(*c*) I would not say that divorce laws tend to promote hasty marriages. These arise more by reason of lax marriage laws existing in some of the States, especially with regard to the requirements of license.

(*d*) It is not desirable to publish details of divorce actions in newspapers, of course, but that risk must be taken in order to secure the rights of the public, which can only be obtained by open hearings in the presence of the court, and not of any delegated representative of it.

(*e*) The attitude of the community towards divorced persons is gradually changing. Not long ago social ostracism was the penalty, but gradually tolerance has been extended, until now the guilty party in suits for adultery is not infrequently received in society eminently respectable, and this applies to those persons who have become divorced in foreign jurisdictions and have returned thereafter to their own State,

2. The average cost of procuring a divorce to a poor person or to a person of ordinary means is the same. Where service can be obtained in this jurisdiction it would not exceed 100 dollars in an uncontested case. In contested cases, of course, the amount depends very much upon the circumstances of each case. Divorce is more often resorted to by persons of moderate means than by the rich or the poor, if I may hazard a generalisation without any statistics to base it upon.

3. The tendency to divorce in Pennsylvania is markedly on the increase; at least, such is the case in the principal city of Philadelphia.

4. In Pennsylvania the Courts of Common Pleas have jurisdiction to grant divorce. They are the courts of first instance above the grade of magistrate's courts, the latter having jurisdiction only in cases where the amount of controversy does not exceed 100 dollars.

5. In Pennsylvania the divorce decree first entered is a final decree, with a right of appeal to the Supreme Court.

In some States an interlocutory decree is first entered; a final decree after a certain period of time.

6. There is no public officer in our State having authority to intervene in divorce actions on behalf of the State, or otherwise to prevent collusion or fraud.

7. The statistics show that in 66 per cent. or thereabouts of divorce cases in the whole of the United States the wife is the plaintiff.

8. To this question I should say, in a general way, yes.

9. My personal views on divorce are, that so long as the temper of the community requires absolute divorce, the various provisions embodied in the uniform statute should be made a part of the law, in order to secure the community from imposition and fraud and remove the temptation for divorce on trifling causes. Unless the tide of divorce is checked, a social revolution is impending. In my apprehension the evils connected with an abolition of all divorce laws permitting re-marriage are far less than those attendant upon the present system.

10. Our courts have the right to hear cases privately, excepting where they are contested, when they must go through a jury trial as in other cases. The common practice is to refer to a Master, who takes the testimony privately and reports to the court. Difference of opinion exists on this subject. Those favouring divorce would prefer private hearings. Those opposed favour public hearings.

11. All Catholic clergymen and some Episcopalians and others refuse to marry divorced persons, but for the most part there is no difficulty in obtaining a minister to officiate in such cases.

I am, &c.,
WALTER GEO. SMITH,
Chairman of Resolutions Committee of the United States National Congress on Uniform Divorce Laws.

Note.—In the answer to the questions above given, suits for nullity and separation are expressly not included under the name of divorce, as the views that I would express on those subjects are very different, and cannot be included in the same reasoning as applies to suits for absolute divorce strictly so-called.—W. G. S.

(22.)

SOUTH DAKOTA.

Sioux Falls, South Dakota,
DEAR SIR, 16th February 1910.

I HAVE received your letter of February 1st, 1910, enclosing certain questions in regard to the subject of divorce which you wish me to answer as soon as possible. Such answers as I shall give are, of course, not based upon any particular study of the question involved, but are based upon such information as my experience has brought to my attention. My answers also will relate only to the conditions in South Dakota.

1.—(*a*) There is no particular demand by the people of South Dakota for a change in the existing causes for divorce.

(*b*) I do not think the existing laws have any tendency one way or the other to produce a lack of respect for the marriage tie. (*c*) I do not think the existing causes for divorce are ever thought of when marriage is contemplated. (*d*) I see no good reason for publishing the details of divorce actions; on the contrary, I believe such publication to be harmful. (*e*) There are no such persons in this State.

2.—(*a*) From 50 dollars to 150 dollars. (*b*) From 25 dollars to 50 dollars. This does not include court costs, which differ as between default cases and those which are contested. The average court costs would be from 20 dollars to 40 dollars. Among the divorce cases which are denominated foreign, being where persons come to this State from other States to seek a divorce, rich persons are greatly in the majority. Among *bonâ fide* residents those of moderate means would seem to be in the majority. I will say that since the laws of South Dakota were changed, so as to require a residence in good faith of one year before a person could commence an action for divorce, what are called foreign divorces have ceased altogether.

3. Among the average citizens of this State I do not think there is any increase in the tendency to obtain divorces.

4. The Circuit Court for each county is the court of original general jurisdiction in this State and, subject to the right of appeal to the Supreme Court of the State, is the only court in which a divorce action may be commenced.

5. A divorce decree in this State is final as soon as made.

6. There is no public officer in this State having authority to intervene in divorce actions on behalf of the State or otherwise.

7. The wife is more frequently the plaintiff in divorce actions than the husband.

8. During the time that citizens of other States were resorting to this State for the purpose of bringing actions for divorce, I think such practice had a great tendency to lessen the respect for the marriage tie in the particular locality where the foreign residents lived.

9. The causes for divorce in this State are adultery, extreme cruelty, wilful desertion, wilful neglect, habitual intemperance, conviction for felony. Excepting those persons of religious denominations who think there should be no ground for divorce except that of adultery, most people approve of divorces for the above reasons, basing their belief upon the fact that mankind ought to be taken as it is and not as it ought to be, and that a reasonable liberality in granting divorce is productive of more happiness than otherwise. The great question in this country is the obtaining by appropriate legislation of uniformity in causes for divorce and in divorce procedure. As the laws now stand, each State of the United States regulates the divorce question to suit itself, and it thus results that parties may be married in one State and living in adultery in another, all depending upon whether a particular State shall recognise as valid a divorce obtained in a sister State.

10. The divorce cases are heard in open court. Private hearings are not approved of.

11. Clergymen of the Catholic and Episcopalian Churches do not marry divorced persons if they are aware of the fact that either one of the parties have been divorced.

I submit the above as a hurried response to your inquiry.

Yours, &c.,
JOHN E. CARLAND
(United States District Judge for South Dakota).

J. Arthur Barratt, Esq.,
London, England.

(23.)

TENNESSEE.

Knoxville,
DEAR SIR, 23rd May 1910.

IN reply to your letter of several days ago, enclosing a list of questions touching divorce law and practice in the State of Tennessee, we respectfully reply as follows:—

1.—(*a*) There is no general feeling or movement in our State looking to the changing of divorce laws therein.

(*b*) We do not think the existing laws on divorce in our State tend to a lack of respect for the marriage tie, although the ease with which these laws are applied by certain courts may possibly have that effect.

(*c*) The laws of our State on divorce are not so lax as to tend to lead to hasty marriage; undoubtedly many hasty marriages are entered into, but these are probably not affected in our State by any laxity of divorce laws as they are written on the statute books.

(*d*) Sentiment is divided as to the advisability of publishing details of divorce actions in the newspapers; perhaps the better sentiment is against the publishing of unpleasant details.

(*e*) The attitude of citizens in this State toward those who are divorced in those states where "easy divorce" is procured is, generally speaking, that of condemnation. Generally speaking, these divorcees are not admitted to best circles, and are rather looked down upon.

2.—(*a*) Perhaps a fair average of the cost of procuring a divorce to a person of moderate means would be $250.00.

(*b*) A poor person may procure a divorce at various costs from $25.00 to $100.00.

By a person of moderate means we mean those persons worth from, say, $5,000 to $15,000.

Divorce is oftener resorted to by the rich, or by the very poor, much more seldom by persons in moderate circumstances, or what we call the middle classes.

3. The tendency to divorce in our State is possibly slightly on the increase, though not materially so.

4. The courts having jurisdiction to grant divorces in our State are the chancery courts and the circuit courts; our minor, or county courts, have no such jurisdiction.

5. Ordinarily the divorce decree when first entered is final. We have in our State what is known as divorce "*a mensâ et thoro*," and also what is known as absolute divorce. The court may enter either of these decrees, but the decree for absolute divorce is entered 10 times, where the other decree is entered once.

6. The judge trying a divorce suit is supposed to represent the State, and to prevent collusion and fraud in the procurement of divorce.

7. Wives are more frequently plaintiffs in divorce actions in this State.

8. Citizens of other States do not resort to this State to bring action for divorce, as our laws are, perhaps, more stringent than those of most of the States in the Union.

9. We do not care to make any suggestions for the betterment of divorce laws, except we believe that there ought to be a universal divorce law throughout the United States, so as to make it impossible for citizens of one State to resort fraudulently, and with collusion, to the courts of another State to procure "easy divorce."

10. Our courts have the power to order divorce actions to be heard privately, and this is very frequently done, and where there are unpleasant details this practice is generally approved of. It is not, however, by any means universally followed.

11. Clergymen do not generally refuse to marry divorced persons, but this rule also has exceptions. We do not believe the Episcopal Church permits its clergymen to marry divorced persons.

12. We do not think there is any considerable breach of the law in the respect you mention in this question that is caused by the expense of divorce proceeding.

We have, of course, answered your questions only superficially, and without citing instances and cases, but we presume you would prefer this direct method of answer to a more extended one.

Hoping the information given may be of value to you, we remain,

Yours truly,
LUCKY, FOWLER, ANDREWS, AND TATE,
By HUGH M. TATE.

Mr. J. Arthur Barratt,
3, Temple Gardens, Temple,
London, England.

(24.)

TEXAS.

Dallas, Texas,
16th February 1910.

MY DEAR SIR,

I AM in receipt of your letter of 1st February, directed to the President of the Dallas Bar Association. As the time available for a reply is so limited, I will be unable to give some information which could be secured if I had more time. However, I will cover as fully as I can the subjects outlined in your communication.

1. As to the state of public opinion in this community, I will state:—

(*a*) The general opinion among more enlightened people is that our divorce laws are two liberal in the manner in which they are enforced. However, I cannot say that there is a public sentiment demanding any change in the existing causes for divorce. Texas limits the causes to four: cruelty, adultery, abandonment and conviction for crime.

(*b*) While our divorce laws are not considered as lax, yet there is no doubt that the ease with which divorces can be secured under these laws tends to a lack of respect for the marriage tie.

(*c*) The general impression is that the ease of divorce under existing laws does lead to hasty marriages. Yet my personal opinion is that the law has very little effect in producing hasty marriages, but they are due mostly to other causes, such as want of parental control, disregard of religious obligations, &c.

(*d*) Enlightened sentiment is against the publishing of details of divorce actions in the newspapers. Our leading papers, I am glad to say, refuse to publish these details. However, there is a public demand for the sensational, and that demand is pandered to by our yellow journals.

(*e*) Candour compels me to state that the general attitude of the community toward those who have secured easy divorces in other States is more favourable to the divorced parties than it should be. While the more enlightened deprecate these things, yet there is a general lax sentiment which does not look with disfavour upon such cases.

2. As to the average cost of procuring a divorce, I would say 50 dollars to 100 dollars for persons of moderate means and 20 dollars to 30 dollars for poor persons. These figures are based upon uncontested cases; in case of a real contest, which seldom occurs, of course the cost is much higher. Our divorce courts are resorted to by people of all classes, although by far the largest proportion is among the poor and ignorant classes, especially among the negroes. As a rule, divorces among well-to-do people are not so common in Texas as in most of our States.

3. The tendency to divorce seems to be on the increase in this State.

4. The courts having jurisdiction of divorce matters are our district courts, the courts of original general jurisdiction for the trial of causes at law and in equity. Our county and inferior courts do not have such jurisdiction.

5. The divorce decree when entered is a final decree, and not merely interlocutory, in this State.

6. There is no public officer charged with the duty of representing the State to prevent collusion or fraud. However, in all cases in which the defendant is cited by publication and not personally, some praticising attorney of the Bar is appointed by the court to represent the defendant so constructively served with summons. This duty, however, is usually discharged in a perfunctory way, and does not often serve the purpose intended, that is, to protect against fraud or collusion.

7. The clerk of our district courts tells me that the respective numbers of men and women applying for divorce has been practically the same for a number of years past.

8. As the causes for divorce in this State are very limited as compared to other States, citizens of other States do not resort to Texas to bring actions for divorce. To a limited extent our citizens have so used the divorce courts of other States.

9. I would not attempt, with the time at hand, to answer specifically this inquiry.

10. Divorce cases are with us heard by the court publicly, like any other causes. We have not the practice of private hearings nor of hearings before a referee.

11. Some clergymen refuse to marry divorced persons, but, as a rule, no questions are asked on this line. If the parties have a license to wed, issued by the proper authority, that is usually taken as conclusive. However, a few clergymen make further inquiries and refuse to perform such ceremonies unless they are fully satisfied.

With apologies for necessarily having to cover these matters in a hurried way, I remain,

Yours, &c.

THOS. T. HOLLOWAY,
President,
Dallas Bar Association.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(25.)

UTAH.

Salt Lake City, Utah,
18th March 1910.

DEAR SIR,

YOURS of 5th March has been handed to me for reply. Taking up your questions in order:

I do not know that there is any special public opinion in my neighbourhood. My personal opinion is that there is not so much objection to present existing causes of divorce as to the execution of the law by the courts.

Divorces are too easily obtained. It is hard to say how the matter could be cured. Undoubtedly the great majority of people who apply for divorces ought to be separated, but if divorces were more difficult to obtain there would be less hasty marriages and people would try harder to get along together if they knew they could not be separated.

Details, of course, ought not to be published in the newspapers, but the more objectionable they are for general reading, the more the newspapers are inclined to publish them.

I do not know of anyone having left Utah to procure an easy divorce.

I think all serious-minded people are inclined to look on people who have been divorced with suspicion until they know they are not at fault.

The "costs" in our court for a divorce where there is no contest are 10 dollars, unless there is a referee appointed. The court allows him 5 dollars. Attorney's fees are anywhere from 30 dollars up.

More poor people than rich get divorces. There are more poor people than rich, and then the conditions of life are harder.

It looks to me as though more people are being divorced than in the years past; however, I do not know what statistics show.

Our State district courts have jurisdiction. No minor courts have.

The first decree is interlocutory; is made final after six months.

There is no officer authorised to intervene in the case. The judge is supposed to see there is no collusion.

I would say, without having the figures, quite two-thirds of divorces are obtained by women.

I do not know of citizens of other States coming to ours for purpose of getting divorces.

In reply to your ninth question: I think our divorce laws ought to be uniform, and the causes ought to be the same in all States.

I am not sure, if I had the power, I would eliminate any cause now on our statute, but I would, if possible, make every judge be very certain that there was good cause before he granted a divorce.

It is a very sad thing that there are so many people that cannot live together, but I am persuaded that it would be quite as bad if they were compelled to live together if they cannot get along.

Our courts have power to order private hearings, but our judges here have discontinued the practice.

I never knew of any clergyman here excepting Catholic and Episcopal refusing to marry divorced persons.

CHARLES BALDWIN,
President,
Utah Bar Association.

J. Arthur Barratt, Esq.,
3, Temple Gardens, Temple,
London, England.

(26.)

VIRGINIA.

Richmond, Virginia,
5th March 1910.

DEAR SIR,

I HAVE recently been elected President of the Bar Association of the City of Richmond, and your letter of February 1st, addressed to the President of the Bar Association of Richmond, has been handed me with the request that I reply to it.

We have, in Virginia, divorce *a vinculo*, and divorce from bed and board. The grounds for the first are the usual common law grounds, sentence to the penitentiary, conviction of an infamous offence prior to marriage without the knowledge of the other, and desertion and abandonment for three years.

The grounds for divorce *a mensa* are cruelty, reasonable apprehension of bodily hurt, abandonment or desertion.

I give below answers to your questions, in the order in which they are asked, as accurately as it is possible for me to do so.

1.—(*a*) Our Legislature, which is now in session, has recently shown its opposition to changing the existent causes of divorce so as to broaden their scope. The expression of opinion was strongly against any law that would make divorces easier, or give greater liberty to the guilty party.

(*b*) In my experience as a practitioner for some 30 years, I have found a great change in the attitude of the public towards divorce. When I first grew up, a divorced person in Virginia was looked upon as disgraced. This opinion followed the innocent party as well as the guilty one. Such persons in society were more or less ostracised. There has been a great change in this respect, however, and I regret to say that it is not unusual to have divorced persons mixing in the best circles, irrespective of their being the plaintiff or defendant. Divorces have been too often gotten simply because the persons could not get along together.

(*c*) Loose divorce laws are thought to lead to hasty marriage. If the parties know that they cannot be separated on slight grounds they are much more apt to give the question of marriage serious consideration.

(*d*) The publication of the details of divorce actions in a newspaper can do no possible good, and often lead to harm.

(*e*) We have not had a great number of cases in which the parties have left the State and gone to some State where divorce can be procured more easily. In cases in which this has occurred, I do not see that the parties are treated any differently on their return from those who have obtained divorces in Virginia.

2. It is impossible to state what is the average cost of procuring a divorce. I have no doubt that many divorces are obtained for poor people at a cost of less than 50 dollars. Our minimum fee for such a suit, where there is any contest, is 50 dollars, and the cost of depositions in a contested suit would vary so largely that it is impossible to say what it would be. If there is no contest in a case, a person of moderate means should obtain a divorce for from 100 dollars to 150 dollars.

Naturally there are more cases of divorce among the poor than among the rich or persons of moderate means. This is due to the fact that we have more poor persons than persons of moderate means or rich in our community. There are more divorces with the coloured people than the white people. They, as a rule, are among the poorer classes in the community.

3. I think the tendency to divorce has been on the increase in Virginia for the past thirty years. There

seems at present to be a reaction against this tendency.

4. Divorces are granted in Virginia by our Circuit or Corporation Courts. We have no minor or county courts.

5. The divorce decree as entered under our law is final. In cases of divorce for abandonment or desertion, a decree *a mensa*, after three years, can be converted into a decree *a vinculo* upon the motion of the innocent party.

6. There is no public officer in Virginia with the authority to intervene in divorce actions on behalf of the State, or otherwise, to prevent collusion or fraud.

7. In my opinion, the wife is more frequently than the husband the plaintiff in a divorce action.

8. The divorce laws of Virginia are not broad enough to induce persons from other States to come to Virginia for the purpose of seeking a divorce.

9. I have always been prejudiced against divorces; I believe that if people realise that they have to live together, and that they cannot get a divorce except upon scriptural ground, they will manage to get along in the majority of instances. I realise that there are cases in which it is absolutely necessary for persons to separate. In such cases, I think it is much better for them to separate without having the right to re-marry. Our divorce *a mensa* covers such cases. I do not think that there should be any radical change in our present divorce laws.

10. The evidence in divorce cases is by depositions. These depositions are taken before a Commissioner in Chancery. They are generally private. It is in the discretion of the Commissioner to admit or exclude parties from the hearing. As a rule, the only persons present are those interested and the witness. I consider the private hearing infinitely preferable to a public hearing. The latter is apt to attract the morbidly curious, and to lead to newspaper publication.

11. Clergymen in the Episcopal Church are forbidden to marry divorced persons except the innocent persons in cases of divorce for adultery. The minister officiating is required, under the Canons of the Church, to get the permission of the Bishop, who is required to have the Chancellor of the Diocese examine the records of the divorce suit and satisfy him that the party has a right to re-marry. The Roman Catholic Church is even more stringent. In other Churches, so far as I am informed, it is within the discretion of the minister.

I will be pleased to give you any further information that may be within my power.

I am, &c.,
B. RAND WELLFORD,
President of Bar Association of Richmond, Virginia.

J. Arthur Barratt, Esq.,
3, Temple Gardens,
London, England.

Richmond, Virginia,
25th March 1910.

DEAR SIR,

YOUR favour of March 16th was received by me this morning.

It will give me pleasure to answer the question asked by you in reference to parties living apart without getting a divorce because of the expense of divorce proceedings.

I do not think that there are many cases of this sort with us. As I stated in my previous letter, we have cases of people living apart, because the innocent party does not wish to institute divorce proceedings.

The court fees in divorce cases, where there is no contest, are very small, and we have a class of divorce lawyers who take such cases at almost any price.

Yours, &c.,
B. RAND WELLFORD,
President of Bar Association of Richmond, Virginia.

J. Arthur Barratt, Esq.,
3, Temple Gardens,
Temple, London,
England.

(27.)

STATE OF WASHINGTON.

1. I believe the trend of public opinion in this community to be—
   (*a*) Towards restricting legally recognised grounds for divorce.
   (*b*) That existing laws tend to disrespect for the marriage tie.
   (*c*) The tendency is to lead to hasty marriages.
   (*d*) That it is inadvisable that divorce actions be published in the newspapers.
   (*e*) Our own divorce laws are so easy that our citizens, as a rule, patronise the home market.
2. The average cost of procuring a divorce:—
   (*a*) One hundred dollars.
   (*b*) Fifty dollars.

I cannot say that divorce is more often resorted to by the rich than by the poor, except as there are more of the poor than of the rich.

3. The tendency seems to be on the increase.

4. Jurisdiction to grant divorces is confined here to the court of first resort, entitled the Superior Court of the State of Washington for King County. It is a court of general jurisdiction.

5. The divorce decree is final when entered, but by statute re-marriage is forbidden within six months following the entry of decree.

6. Yes, the public prosecutor, entitled prosecuting attorney, of each county is required to intervene in default divorce cases. There is no public officer having authority to intervene on behalf of the State in other than divorce cases in which the defendant suffers default.

7. I cannot answer.

8. Citizens of other States are not permitted to resort to our State to bring actions for divorce. Our statute requires a *bonâ fide* residence of one year on the part of the plaintiff.

10. Our courts have the power to hear divorce actions privately in court, or to have them tried privately before a referee, but it is seldom done.

11. No.

Nullity decrees are granted only when the plaintiff is proven incapable of consenting to the marriage contract for want of legal age or sufficient understanding, or where such consent shall have been obtained by force or fraud.

HAROLD PRESTON,
President of Seattle Bar Association.

(28.)

WISCONSIN.

MILWAUKEE BAR ASSOCIATION.

Milwaukee,
23rd March 1910.

MY DEAR SIR,

I HAVE your communication of March 5th relating to divorce before me, and I will endeavour to answer your questions as best I can:—

(1) What is the state of public opinion in your neighbourhood on each of the specific questions you put. In my opinion public opinion is somewhat divided. The better opinion, however, in which I share, is in favour of the answers given below:—

(*a*) As to whether the existing causes for divorce should be changed in any way?—In my opinion the existing causes for divorce do not require any modification.

(*b*) As to the existing laws tending or not to lack of respect for the marriage tie?—In my opinion the present laws do not have a tendency one way or the other.

(*c*) As to its tendency to lead to hasty marriages?—The existing divorce laws have no tendency to lead to hasty marriages, but hasty marriages seem to strain those laws at times.

(*d*) As to the advisability of publishing details of divorce actions in the newspapers?—In my opinion it is detrimental to public morals and welfare to have details of divorce actions published in the newspapers.

(e) As to the attitude of the community towards citizens who are divorced in the States where so-called "easy divorces" are procured on their return to the home State?—I think all such divorces are looked upon with disfavour.

(2) The average cost of procuring a divorce depends largely upon the lawyer employed to procure it. The court costs are nominal. There are a large number of lawyers of no particular standing who seek divorce causes and carry them through for quite moderate charges, while other lawyers of standing either keep out of the practice altogether or, when occasionally employed, charge for their services sums which relatively are large. In my opinion divorce is much oftener resorted to by the poor than by the rich, or by persons of moderate means. The causes of the differences which usually lead up to divorce are "failure to support" on the part of the husband, or "desertion" by him to evade the responsibility of the relation.

(3) The tendency to divorce or separation has been largely on the increase for several years past.

(4) Our circuit courts are courts of original general jurisdiction, and have exclusive jurisdiction to grant divorces. The minor or county courts have no such jurisdiction.

(5) The divorce decree when first entered is an interlocutory judgment which fully determines the rights of the parties, provides for the care, custody and maintenance of the children, fixes the amount of alimony, and the amount of suit money and attorneys' fees.

At the expiration of one year from the entry or from the last modification or revision of such interlocutory judgment, the final judgment may be entered unless such interlocutory judgment shall be reversed or so modified on appeal as to prevent the entry of such final judgment, or unless the court, for sufficient cause, upon its own motion or upon the application of a party to the action, shall otherwise order before the expiration of such period.

(6) I enclose you a recent Act of our legislature providing for a public officer with authority to intervene in divorce actions on behalf of the State.

(7) I think the wife is more frequently the plaintiff in a divorce action than is the husband, because the most frequent ground claimed for divorce is desertion or failure to support.

(8) Citizens of other States very rarely resort to this State to bring actions for divorce because the statute provides:—"No divorce shall be granted unless "the plaintiff shall have resided within this State for "one year immediately preceding the time of the "commencement of this action, except for adultery "alleged to have been committed while the plaintiff "was a resident of this State; or unless the marriage "was solemnised in this State, and the plaintiff shall "have resided therein from the time of such marriage "to the time of the commencement of the action; or "unless the action be brought by the wife and the "husband shall have resided in this State for one year "next preceding the commencement thereof."

(9) I have no suggestions to make as to the reform of any of the divorce laws of this State. Personally my view on divorce generally is this: That it is better to provide a legal way for separation or divorce than to compel persons to continue to live together under the marital tie when the causes for divorce now provided in our statute exist.

(10) Our rule of court is as follows: "No judgment "of divorce shall be granted except upon testimony "taken in open court, unless upon reference by order of "the court for cause shown." The common practice is to deny a reference except for very particular reasons and a reference is almost an unknown practice, all actions for divorce being heard upon testimony taken in open court. Secrecy is only permitted to this extent: "No officer of court with whom the pro-"ceedings in an action for divorce in which adultery "has been charged against either party are filed or "before whom the testimony is taken, and no clerk "of such officer, either before or after the termination "of such action, shall permit a copy of any of the "testimony or pleadings, or the substance of the "details thereof, to be taken by any person, except "either party or the attorney or counsel for such "party who has appeared therein, without the special "order of the court." It is common practice for the court in such actions to order the pleadings and testimony to be sealed and filed. *See* Section 2360j.

(11) Some clergymen refuse to marry divorced persons, but it is rather the exception than the rule.

Yours, &c.,
GEO. D. VAN DYKE,
President of Milwaukee,
Wisconsin,
Bar Association.

Mr. J. Arthur Barratt,
3, Temple Gardens, Temple,
London, England.

No. 191, S.] [Published 11th June 1909.

CHAPTER 323, LAWS OF 1909.

AN ACT to repeal sections 2349, 2350, 2351, 2353, 2354, 2355, 2359, and 2360 of the statutes; to amend sections 2330, 2362, 2366, 2370, 2371, and 2373 of the statutes; and to create sections 2351, 2353, 2354, 2355, 2360, and 2360f, 2360g, 2360h, 2360h—1 to 2360h—4, inclusive, 2360i, 2360j, 2360k, 2360l, 2360n, 2360r, and 2360s of the statutes providing for divorce laws uniform with those of other States.

THE people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:—

Section 1. Sections 2349, 2350, 2351, 2353, 2354, 2355, 2359, and 2360 of the statutes are repealed.

Section 2. Section 2330 of the statutes is amended to read: Section 2330. 1. No marriage shall be contracted while either of the parties has a husband or wife living, nor between . . . persons who are nearer of kin than first cousins, computing by the rule of the civil law, whether of the half or of the whole blood; and no insane person or idiot shall be capable of contracting marriage.

2. . . . It shall not be lawful for any person . . . . who is a party to an action for divorce from the bonds of matrimony . . . in any court of this State to marry again . . . until the final judgment of divorce is entered; and the marriage of any . . . such person solemnised . . . before the entry of the final judgment of divorce shall be null and void. . . .

3. It shall not be lawful for any person divorced from the bonds of matrimony by the judgment of any court of this State prior to the time this Act shall go into effect to marry again within one year from the date of the entry of such judgment or decree, and the marriage of any such person solemnised within one year from the date of entry of any such judgment or decree of divorce shall be null and void.

Section 3. Section 2362 of the statutes is amended to read: Section 2362. In rendering a judgment of nullity of marriage or for divorce, whether from the bond of matrimony or from bed and board, the court may make such further provisions therein as it shall deem just and proper concerning the care, custody, maintenance, and education of the minor children of the parties, and . . . give the care and custody of the children of such marriage to one of the parties to the action, or may, if the interest of any such child shall demand it, and if the court shall find that neither of the parents is a fit and proper person to have the care and custody of any such child, give the care and custody of such child to any fit and proper person, who is a resident of this State and willing to receive and properly care for such child, or to any institution incorporated for such purposes and willing and authorised to receive and care for such child, having due regard to the age and sex of such child. Whenever the welfare of any such child will be promoted thereby, the court granting such decree shall always have the power to change the care and custody of any such child, either by giving it to or taking it from such parent or other person or such institution, provided that no order changing the custody of any child shall be entered until after notice of such application shall have been given the parents of such child, if they can be found, and also to the person or institution that then has the custody of such child.

Section 4. Section 2366 of the statutes is amended to read: Section 2366. In a judgment in an action for a divorce . . . although such divorce be denied, the court may make such order for the support and maintenance of the wife and children, or any of them, by the husband or out of his property as the nature of the case may render suitable and proper.

Section 5. Section 2370 of the statutes is amended to read: Section 2370. . . . In all cases of divorce from bed and board for any of the causes specified in section 2357, the court may decree a separation forever thereafter, or for a limited time, as shall seem just and reasonable, with a provision that in case of a reconciliation at any time thereafter, the parties may apply for a revocation or suspension of the decree; and upon such application the court shall make such order as may be just and reasonable.

Section 6. Section 2371 of the statutes is amended to read: Section 2371. Upon rendering a judgment annulling a marriage the court may make provision for restoring to the wife the whole or such part, as it shall deem just and reasonable, of any estate which the husband may have received from her or the value thereof, and may compel him to disclose what estate he shall have received and how the same has been disposed of . . .

Section 7. Section 2373 of the statutes is amended to read: Section 2373. When a marriage shall be dissolved by the . . . granting of a decree of divorce from the bonds of matrimony, the wife shall not be entitled to dower in any lands of the husband.

Section 8. There are created 19 new sections of the statutes to read. Section 2351. A marriage may be annulled for any of the following causes existing at the time of marriage:—

1. Incurable physical impotency or incapacity of copulation at the suit of either party, provided that the party making the application was ignorant of such impotency or incapacity at the time of marriage.

2. Consanguinity or affinity where the parties are nearer of kin than the first cousins, computing by the rule of civil law, whether of the half or of the whole blood, at the suit of either party; but when any such marriage shall not have been annulled during the lifetime of the parties the validity thereof shall not be inquired into after the death of either party.

3. When such marriage was contracted while either of the parties thereto had a husband or wife living, at the suit of either party.

4. Fraud, force, or coercion, at the suit of the innocent and injured party, unless the marriage has been confirmed by the acts of the injured party.

5. Insanity, idiocy, or such want of understanding as renders either party incapable of assenting to marriage, at the suit of the other, or at the suit of a guardian of the lunatic or incompetent, or of the lunatic or incompetent on regaining reason, unless such lunatic or incompetent, after regaining reason, has confirmed the marriage; provided that where the party *compos mentis* is the applicant, such party shall have been ignorant of the other's insanity or mental incompetency at the time of the marriage, and shall not have confirmed it subsequent to such person's regaining reason.

6. At the suit of the wife when she was under the age of 16 years at the time of the marriage, unless such marriage be confirmed by her after arriving at such age.

7. At the suit of the husband when he was under the age of 18 at the time of the marriage, unless such marriage be confirmed by him after arriving at such age.

Section 2353. Divorce shall be of two kinds:—

1. Divorce from the bonds of matrimony, or divorce *a vinculo matrimonii*.

2. Divorce from bed and board, or divorce *a mensa et thoro*.

Section 2354. For the purposes of annulment of marriage, jurisdiction may be acquired by publication as provided in the statutes, or by personal service upon the defendant within this State, when either party is a *bonâ fide* resident of this State at the time of the commencement of the action.

Section 2355. For purposes of divorce, either absolute or from bed and board, jurisdiction may be acquired by publication as provided in the statutes or by personal service upon the defendant within this State, under the following conditions:—

1. When, at the time the cause of action arose, either party was a *bonâ fide* resident of this State and has continued so to be down to the time of the commencement of the action, except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless one of the parties has been for the two years next preceding the commencement of the action a *bonâ fide* resident of this State.

2. If, since the cause of action arose, either party, for at least two years next preceding the commencement of the action, has continued to be a *bonâ fide* resident of this State.

Section 2360. No decree for divorce shall be granted if it appears to the satisfaction of the court that the suit has been brought by collusion, or that the plaintiff has procured or connived at the offence charged, or has condoned it, or has been guilty of adultery not condoned; provided that the parties may, subject to the approval of the court, stipulate for a division of estate, for alimony, or for the support of children, in case a divorce be granted or a marriage annulled.

Section 2360f. Anyone charged as a *particeps criminis* shall be made a party, upon his or her application to the court, subject to such terms and conditions as the court may prescribe.

Section 2360g. All hearings and trials to determine whether or not a decree shall be granted shall be had before the court, and not before a referee, or any other delegated representative, and shall in all cases be public.

Section 2360h. In each county of the State the circuit judge or judges in and for such county shall by order filed in the office of the clerk of the circuit court on or before the first Monday of July of each year, appoint some reputable attorney, of recognised ability and standing at the Bar, divorce-counsel for each county. Before entering upon the discharge of his duties, such counsel shall take and file in the office of the clerk of the circuit court, an oath to support the constitution of the United States and of the State of Wisconsin, and to faithfully, fearlessly, and impartially discharge the duties of such office. The person so appointed shall continue to act until his successor is appointed and duly qualified, but such counsel may be removed at any time by an order signed by the judge or judges who appointed him, and filed in the office of the clerk of the circuit court of such county. Provided that in any county having a population of two hundred and fifty thousand or more according to the last State or national census, there shall be no appointment of divorce-counsel, but the district attorney or any assistant district attorney shall be the divorce-counsel thereof and perform all the duties of such office.

Section 2360h—1. In any action to affirm or annul a marriage, or for a divorce, the plaintiff shall, within ten days after making service on the defendant, serve a copy of the summons and complaint upon the divorce-counsel of the county in which the action is begun.

Section 2360h—2. No decree in an action to affirm or annul a marriage, or for divorce, shall be granted in any action in which the defendant shall not appear, and contest the right to a divorce in good faith, until such divorce-counsel or the divorce-counsel of the county in which the action is tried shall have appeared in open court and on behalf of the public made a fair and impartial presentation of the case to the court and fully advised the court as to the merits of the case and the rights and interests of the parties and of the public, nor until the proposed findings and judgment shall have been submitted to such divorce-counsel.

Section 2360h—3. Neither such divorce-counsel nor any law partner of such divorce-counsel shall appear in any action to affirm or annul a marriage, or for a divorce, in any court of the county in which he shall be acting as such divorce-counsel, except as herein provided. In case such divorce-counsel or his partner shall be in any way interested in any such action, the presiding judge shall appoint some reputable attorney to perform the services enjoined upon such divorce-counsel herein, and such attorney so appointed shall take and file the oath and receive the compensation provided for herein.

Section 2360h—4. For each case in which such divorce-counsel appears as provided herein, excepting counties having a population of two hundred and fifty thousand or more, he shall receive the sum of ten dollars, to be paid by the county wherein the action was tried, upon the order of the presiding judge, and the certificate of the clerk of the circuit court; provided that when any case shall occupy more than one day of the time of such divorce-counsel, the court may, in its discretion, require the parties to the action or either of them to pay such additional sum to compensate such divorce-counsel, as the justice of the case may require, having due regard to the financial ability of such parties, which additional sum in counties having a population of two hundred and fifty thousand or more shall be paid in the treasury of the county.

Section 2360i. No decree for annulment of marriage, or for divorce, shall be granted in any action in which the defendant does not appear and defend the same in good faith unless the cause is shown by affirmative proof aside from any admission to the plaintiff on the part of the defendant.

Section 2360j. No record or evidence in any case shall be impounded, or access thereto refused except by special written order of the court made in its discretion in the interests of public morals.

Section 2360k. 1. In every action brought to affirm or annul a marriage, or for divorce from the bonds of matrimony, in which it shall be determined by the verdict of a jury or by the findings of a court that the marriage be annulled or the divorce granted, an interlocutory judgment shall be entered which shall fully determine the rights of the parties, provide for the care, custody, and maintenance of the minor children of such marriage, fix the amount of alimony to be paid for the support of the wife, and the amount of suit money and attorney fees.

2. Such judgment shall also determine the status of the parties to such action, but such determination of the status of the parties shall not be effective except for the purposes of an appeal to review the same, until after one year from the date when such interlocutory decree was entered.

3. Any of the provisions of such interlocutory judgment may be reviewed by an appeal therefrom, if taken within one year from the date on which such interlocutory judgment was entered or from the date of the last modification or revision of the same, if it shall be modified or revised by the court after it is first entered.

Section 2360l. 1. At the expiration of one year from the entry or from the last modification or revision of such interlocutory judgment, the final judgment may be entered, unless such interlocutory judgment shall have been reversed or so modified on appeal as to prevent the entry of such final judgment, or unless the court, for sufficient cause, upon its own motion, or upon the application of a party to the action, shall otherwise order before the expiration of such period.

2. If an appeal from such interlocutory judgment be pending at the expiration of said year no final judgment shall be entered until such appeal shall have been finally determined.

3. Such final judgment shall be entered by the court upon application of either party, or of their heirs or personal representatives, if they are deceased, and shall, when entered, be final and conclusive, and no appeal shall be taken therefrom; but such final judgment shall be subject to modification upon application to the court granting the same, so far as it shall have provided for alimony or for the care, custody, and maintenance of the children of such marriage. An appeal may be taken from any determination of the court made upon such application to modify the judgment after such final judgment shall have been entered.

Section 2360n. The court, upon granting a divorce from the bonds of matrimony, may allow the wife to resume her maiden name or the name of a former deceased husband in case there be no children of the marriage.

Section 2360r. Full faith and credit shall be given in all the courts of this State to a decree of annulment of marriage or divorce by a court of competent jurisdiction in another State, territory, or possession of the United States, when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in sections 2358 and 2359. Nothing herein contained shall be construed to limit the power of any court to give such effect to a decree of annulment or divorce by a court of a foreign country as may be justified by the rules of international comity; provided that if any inhabitant of this State shall go into another State, territory, or country for the purpose of obtaining a decree of divorce for a cause which occurred while the parties resided in this State, or for a cause which is not ground for divorce under the laws of this State, a decree so obtained shall be of no force or effect in this State.

Section 2360s. Nothing in this Act contained shall affect or apply to any action for annulment of marriage or for divorce now pending.

Approved 9th June 1909.

C.

SUPPLEMENT TO MR. J. ARTHUR BARRATT'S EVIDENCE.

SUMMARY OF UNITED STATES STATUTES RELATING TO INSANITY AS A GROUND FOR DIVORCE.

Insanity is now a ground for absolute divorce only in Idaho, Maine, Utah and Washington. I do not find it was a cause in California.

The United States Census Report, vol. 2, pp. 4–164, gives statistics of divorce for insanity between 1867 and 1906 in Arkansas, District of Columbia, Florida, Indian Territory, Indiana, Maryland, Mississippi, Nebraska, North Dakota, South Dakota, Virginia, West Virginia and Wisconsin, in addition to the states above mentioned.

I have carefully examined the statutes, however, in all these states, but the only states now making insanity a ground for absolute divorce by statute are those first mentioned above. It was a cause for divorce absolute in Arkansas from 1873 to 1895; in Florida from 1901 to 1905; in North Dakota from 1899 to 1901, and in Wisconsin from 1881 to 1882, in which latter years respectively the statutes were repealed in those states. It is obvious, therefore, that the statistics given in the Census Report in those states since the date of repeal must be statistics of nullity suits and not of divorce, as I do not find that insanity is a cause for judicial separation in any state. It is also obvious that the Census Report statistics of divorces in the states in which there is not now and has not been any statute making insanity a ground for divorce, and also in any state for the period prior to the enactment of such a statute, must be statistics of nullity suits only.

I have carefully gone over the number of cases in the Census Report, and find that the entire number of "divorces" (so-called) for insanity in all the above-mentioned states for the 40 years between 1867 and 1906 was 309. And in the states which do not make insanity a ground for absolute divorce, the following number of divorces (so-called) were granted for that cause:—

In Arkansas, 1873–1895, for the insanity of the husband	48
In Arkansas, 1873–1895, for the insanity of the wife	35
In Florida, 1901–1905, for the insanity of the husband	7
In Florida, 1901–1905, for the insanity of the wife	1
In North Dakota, 1899–1901, for the insanity of the husband	12
In North Dakota, 1899–1901, for the insanity of the wife	3

In Wisconsin, 1881–1882, this year is not given separately; but from 1877–1886 there were of the

husband, 17, and of the wife, 3. But it is not possible to tell from the Census Report what proportion of these "divorces" are absolute and what number are nullity suits.

Arkansas.—The statute of Arkansas, enacted in 1873, read, while in force, that divorce absolute could be had "where either party shall, subsequent to such marriage, have become permanently or incurably insane." (Repealed in 1895.)

Washington.—The statute of Washington read, "in case of incurable chronic mania or dementia" of either party having existed for ten years or more, the court may, in its discretion, grant a divorce.

Florida (enacted 1901, *repealed* 1905).—The statute of Florida provided that divorce absolute could be had for "incurable insanity," but only if it has existed for at least four years prior to the bill, and if the party has been an inmate of some asylum, hospital, home or retreat for the cure of the insane, and shall have been adjudged a lunatic by a competent court, and a committee or guardian of the person and property of the lunatic has been appointed before filing the bill. The superintendent of the asylum or home must be examined as a witness as to the insanity, and the defendant must be proven to have been incurably insane for four years, and that the particular form of insanity must be one generally recognised as incurable. Service of process must be made on the defendant and on the guardian. It is the duty of the court to appoint a competent counsel to act as guardian *ad litem* to appear and defend the suit, and his compensation is taxed as costs. The committee or guardian may also appear and defend. It is the duty of the court in making the decree to require the husband to provide for the insane wife for life if her property is insufficient for that purpose, and supplemental orders therefor can be made if the provision is inadequate. The petitioner must state in his bill what the wife's means are.

Idaho.—The law of Idaho as amended in 1903 provides for divorce absolute when either husband or wife has become "permanently insane," provided he or she shall have been regularly confined in an insane asylum in the United States for one year (formerly six years) next preceding the filing of the bill, and "it "shall appear to the court that such insanity is "permanent and incurable." Plaintiff must have been an actual resident for one year next preceding the action. The court must appoint a guardian *ad litem*; process must be served on the defendant and on the guardian, and also on the county attorney of the district. The latter must appear and defend the action, and no such divorce can be granted in his absence. The plaintiff must pay all the costs of court, the expenses of the county attorney and the expenses and fees of the guardian as fixed and allowed by the court.

Maine.—The laws of Maine provide that divorce absolute may be granted for "insanity" where the party has been confined in a state asylum for the insane for 15 consecutive years next prior to the filing of the bill and is found incurable. The decree will not affect the liability of the plaintiff or petitioner for the support of the defendant, and the court may require the former to furnish security therefor. The decree does not entitle the plaintiff to any portion of defendant's property. Process must be served on the defendant and on the guardian, and if the latter does not appear in court or defendant has no guardian the court must appoint a guardian *ad litem*.

North Dakota.—The laws of North Dakota provided for absolute divorce where defendant confined in an asylum for two years and proven incurably insane.

Wisconsin.—I cannot procure the full text of the law of Wisconsin. It provided for care and maintenance of the defendant and also for a guardian *ad litem* —some competent lawyer appointed by the court.

Pennsylvania.—Pennsylvania in 1905 passed a peculiar statute providing for divorce from an insane husband or wife when the latter has committed an act recognised in that state as a cause for divorce, but insanity itself is not a ground for divorce. It must be proven that the husband or wife of the petitioner is "hopelessly insane," but if he or she "has been for 10 "or more years an inmate of an asylum for the insane, "it shall be conclusive proof of hopeless insanity." The lunacy must be fully established by expert testimony, and the issue tried before the court, a master, or by a jury. Where the wife is insane the court has power to require the husband to enter into a bond to provide for her support during life, and likewise if the wife has sufficient means, the same bond may be required of her if the estate of the husband is insufficient for his support. The Act also provides for an insane wife obtaining a divorce from her husband by means of a petition presented through any relative or next friend of the wife. The insanity must be proven as any other fact in a divorce action.

Utah.—The law of Utah provides that divorce absolute may be granted for "permanent insanity of defendant," who must first be "duly and regularly adjudged to be insane," for at least five years prior to the commencement of the action, and it must appear to the satisfaction of the court, by competent witnesses, that the insanity of the defendant is incurable. A guardian *ad litem* must be appointed for the defendant and service of process must be made on him, on the defendant, and on the county attorney, whose duty it is to investigate the merits of the case, attend the trial of the cause and make such defence as is "just and "proper to protect the rights of the defendant and "the interests of the state." Either plaintiff, or defendant, or legal representatives, are entitled to have defendant brought into court on the trial, or have an examination of defendant by two or more competent physicians to determine the mental condition of the defendant, and for that purpose may have process to enter any asylum or institution where defendant is confined. The court is to assess or apportion the costs "according to the equities of the case."

I take pleasure in sending herewith the full statutes above-mentioned relating to insanity, as a cause for or connected with divorce.

27th June 1910. J. ARTHUR BARRATT.

Full Text of Statutes as to Insanity a Ground for Divorce.

FLORIDA.

This law was repealed by the Act 11th May 1905, Chapter 4972 (No. 88).

An Act making Incurable Insanity a Ground for Divorce of Husband and Wife, and Regulating Proceedings in such Cases.

Be it enacted by the Legislature of the State of Florida:

Section 1. Incurable insanity in either husband or wife shall be a ground for the dissolution of, and divorce from, the bonds of matrimony upon the application of the other party to the marriage; Provided, however, that no divorce shall be granted upon such ground unless such condition upon the part of the defendant, or party so insane, shall have existed for at least four years prior to the filing of the bill for divorce; nor unless such party shall at the filing of the bill be, and shall have been for such period, an inmate and in the care of some asylum, hospital, home, or retreat for the treatment and care of insane persons located in or out of this state, and shall have been, before the filing of such bill, adjudged a lunatic by a competent court within or without this state, and a committee or guardian of the person or property, or both where there is any property of the lunatic, shall have been appointed before the filing of such bill. No such divorce shall be granted unless the superintendent or other principal officer of the asylum, hospital, home, or retreat in which the defendant may be at the time of the trial shall be examined as a witness upon the issue of such insanity, nor unless it be proved that the defendant is and has been for the period last above mentioned incurably insane, and that the class or form of insanity of which the defendant may be suffering is one which is generally recognised as incurable. Nothing in this Act shall be construed to require the appointment of, in any case, any guardian or committee of the person in more than one state or jurisdiction.

Section 2. In all such suits for divorce actual service of the subpœna in chancery shall be made upon the defendant and upon the committee or guardian of the person, and also upon the committee or guardian of the estate of such lunatic, where there is such a

committee or guardian, whether such committee, guardian, or guardians have been appointed by a court of this state or a court without this state; and where such service is made out of this state, proof of service shall be made by affidavit of the party making the service of the time and manner of service, and the copy of subpœna delivered in making such service shall have endorsed thereon the title of the cause and the words "copy of subpœna," and the name of the complainant's solicitor.

Section 3. Whenever the defendant shall at the time of the filing of the bill of complaint be confined in some such asylum, hospital, home, or retreat out of this state there shall be made, whether such defendant shall either be domiciled in or a citizen or resident of this state, but absent therefrom, or shall not be domiciled in nor a citizen nor resident of this state, an order for publication, to be made by the court and to be published and mailed as is provided by section 1413 of the Revised Statutes of the State of Florida as amended by chapter 4129 of the Laws of said state, approved May 31st, 1893, as is provided herein for cases of defendants residing without the United States as distinguished from defendants residing therein, and persons whose residence is unknown; Provided, however, that the only affidavit which shall be necessary for obtaining such an order of publication shall be one to be made by the complainant to the effect that the facts stated in the bill of complaint are true, and setting forth the place of confinement and post office address of the defendant and the names and residences and post office addresses of the committee or committees, guardian or guardians, of such defendant.

Section 4. The return day of the subpœna in chancery in such cases shall be the same as that fixed in the order of publication.

Section 5. It shall be the duty of the court to appoint some competent attorney at law to act as guardian *ad litem* and appear for and defend the suit for the defendant, and his compensation shall be fixed by the court and shall be taxed as other costs of the suit. Any such committee or guardian of the person, whether appointed within or without this state, may also appear and defend any such suit on behalf of the defendant.

Section 6. In case of any suit of a husband against an insane wife under the provisions of this Act, it shall be the duty of the court to inquire into the pecuniary condition of the wife, and if it shall be found that she has no property, or not sufficient property in her own right for her proper care and maintenance during her probable life, the court shall in the decree of divorce require that the husband shall make ample provision therefor, specifying the same; and the decree of divorce shall be of no effect until there has been a decree affirming and approving the provision made by the husband in accordance with such former decree. In determining upon such provision the court shall take into consideration any property which the wife may have in her own right. In case from any cause the provision made for the wife shall at any time become inadequate for her proper care and maintenance, the court may, by supplemental proceedings, require the husband to make necessary provision for her care and maintenance. Should the court find that the wife has sufficient means for her care and maintenance, it shall so adjudicate in the decree for divorce. It shall be the duty of the complainant to state in his bill of complaint what the wife's means of support in her own right are, and whether or not they are sufficient for her support and proper care, or that she has no means as the case may be; Provided, however, that whenever it shall be found that the husband is not able to make such provisions, no requirement of such provisions shall be made in the decree further than the means of the husband will justify.

Section 7. This Act shall take effect immediately upon its passage and approval by the Governor, or upon its becoming a law without the approval of the Governor.

Approved, April 25, 1901.

IDAHO.

H.B. No. 108.

DIVORCE.

An Act authorizing Divorces to be Granted in cases of Insanity, and regulating the Duties of the District Attorney therein.

Be it enacted by the Legislature of the State of Idaho:

Section 1. That in addition to the causes for divorce mentioned in section 2457 of the Revised Statutes of this state, a divorce may be granted when either husband or wife has become permanently insane. Provided, that no divorce shall be granted under the provisions of this Act unless such insane person shall have been duly and regularly confined in the insane asylum of this state for at least six years next preceding the commencement of the action for divorce; nor unless it shall appear to the court that such insanity is permanent and incurable. And provided further, that no action shall be maintained under the provisions of this Act unless the plaintiff shall be an actual resident of this state and shall have resided therein for six years next preceding the commencement of such action.

Section 2. The district courts of the several judicial districts of this state shall have jurisdiction of actions for divorce under the provisions of this Act; and such action shall be brought in the county of this state in which the plaintiff resides. And the court in which such action is about to be commenced shall, upon the filing by the plaintiff of a petition duly verified showing that a cause of action exists under this Act, appoint some person to act as guardian of such insane person in such action, and the summons and complaint in such action shall be served upon the defendant by delivering a copy of such summons and complaint to such guardian and by delivering a copy thereof to the county attorney of the district in which such action is brought.

Section 3. It shall be the duty of the county attorney upon whom the summons and complaint in such action shall be served, to appear for such defendant in such action and defend the same, and no divorce shall be granted under the provisions of this Act except in the presence of the county attorney.

Section 4. In any action brought under the provisions of this Act, the said courts and the judges thereof shall possess all the powers relative to the payment of alimony, the distribution of property and the care and custody of children of the parties that such courts now have, or may hereafter have in other actions for divorce.

Section 5. All the costs of the court in such action, as well as the actual expenses of the county attorney therein, together with the expenses and fees of the guardian therein, shall be paid by the plaintiff; such expenses of the county attorney and the expenses and fees of the guardian shall be fixed and allowed by the court, and the court, or the judge thereof, may make such order as to the payment of such fees and expenses as to the court or judge, may seem proper.

Section 6. Whereas an emergency is declared to exist this Act shall take effect and be in force from and after its approval by the Governor.

Approved February 14th, 1899.

(Sec. 1 amended by Act of 27th February 1903.)

SENATE BILL No. 4.

An Act to amend section one of an Act entitled "An "Act authorising Divorces to be Granted in cases of "Insanity, and regulating the Duties of the District "Attorney therein." Approved February 14th, 1899.

Be it enacted by the Legislature of the State of Idaho:—

Section 1. That section 1 of an Act of the Legislature of the State of Idaho, entitled, An Act authorising Divorces to be Granted in cases of Insanity, and regulating the Duties of the District Attorney therein, approved February 14, 1899, be, and the same is hereby, amended to read as follows:—

That in addition to the causes for divorce mentioned in section 2457 of the Revised Statutes of the State of Idaho, a divorce may be granted when either husband or wife has become permanently insane: Provided, that no divorce shall be granted under the provisions of this Act unless such insane person shall have been duly and regularly confined in the insane asylum of this state, or of a sister state or territory, for at least six years next preceding the commencement of the action for divorce, nor unless it shall appear to the court that such insanity is permanent and incurable. And provided further, that no action shall be maintained under the provisions of this Act unless the plaintiff shall be an actual resident of this state and shall have resided therein for one year next preceding the commencement of such action.

Approved the 27th day of February 1903.

MAINE.

Section 2. A divorce from the bonds of matrimony may be decreed by the supreme judicial court in the county where either party resides at the commencement of proceedings, for causes of adultery, impotence, extreme cruelty, utter desertion continued for three consecutive years next prior to the filing of the libel, gross and confirmed habits of intoxication from the use of intoxicating liquors, opium, or other drugs, cruel and abusive treatment, insanity, when in consequence thereof the libellee has been committed to and confined in a state asylum for the insane for fifteen consecutive years next prior to the filing of the libel and is found to be incurable, or on the libel of the wife where the husband being of sufficient ability or being able to labor and provide for her, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her; provided that the parties were married in this state or cohabited here after marriage, or if the libellant resided here when the cause of divorce accrued, or had resided here in good faith for one year prior to the commencement of proceedings, or if the libellee is a resident of this state. But when both parties have been guilty of adultery, or there is a collusion between them to procure a divorce, it shall not be granted.

"Either party may be a witness. But a divorce granted for cause of insanity shall not affect the liability of the libellant for the support of the libellee, unless, upon proof that the libellee is possessed of property sufficient for such libellee's maintenance, the court shall otherwise decree; nor shall it entitle the libellant to any portion of the libellee's property; and the court in its discretion may order the libellant to provide for or contribute to the support of the libellee and to furnish security therefor. Where insanity is alleged as a cause for divorce, a copy of the libel shall be served on the libellee and on the guardian, if any, of the libellee, and if such guardian does not appear in court, or if the libellee has no guardian, the court shall appoint a guardian *ad litem* for such libellee."

Section 2. This Act shall take effect when approved.

Approved March 26th 1907.

NORTH DAKOTA LAWS, 1899, CH. 77.

"Incurable insanity" a cause for divorce absolute. Revised Code, section 2737.

Section 2743. "Incurable insanity must continue " for two years, the person so affected to have been " confined in an asylum for the insane during such " time, before it is a cause for divorce, and the " testimony of the superintendent of such asylum " showing such person to be incurably insane must be " produced before the court granting such divorce " before the same shall be granted."

(*Repealed* in 1901.)

LAWS OF WASHINGTON.

In effect 1887.

Divorce a vinculo.

"8. In case of incurable chronic mania or dementia of either party having existed for ten years or more the court may in its discretion grant a divorce."

LAWS OF ARKANSAS, CODE 1873, SECTION 464.

Divorce a vinculo.

"7. Where either party shall, subsequent to such marriage, have become permanently or incurably insane."

PENNSYLVANIA LAWS OF 1905.

No. 152.

An Act to amend section 8 of the Act approved the 13th day of April 1843, entitled, "An Act to convey " certain Real Estate, and for other purposes," so as to extend its provisions to the husband or wife of a lunatic or *non compos mentis*, and to further regulate the procedure in action for divorce.

Section 1. Be it enacted, &c., that section 8 of an Act approved the 13th day of April 1843, entitled " An Act to convey certain Real Estate, and for other " purposes," which reads as follows:—

"Section 8. That in cases where the wife is a " lunatic or *non compos mentis*, the courts of common " pleas of this Commonwealth are invested with " authority to receive a petition or libel for a divorce, " which may be exhibited by any relative or next friend " of the wife; and the affidavit required by the Act " concerning divorces may be made in the manner " required by the Act by such relative or next friend; " and all the provisions of the several Acts relating " to divorces shall apply to all applications made under " the directions of this section: Provided, that the " fact of the lunacy of the wife and such circum- " stances as may be sufficient to satisfy the mind of " the court as to the truth of the allegation shall " be set forth in the statement; and upon the hearing " of the case before the court, or upon an issue to be " tried by jury, the question of lunacy, with every " other matter of fact that is affirmed by one side " and denied by the other, shall be heard and investi- " gated in the manner prescribed by the provisions " of the several Acts concerning divorces," be and the same is hereby amended so as to read as follows:—

Clause A. That from and after the passage of this Act, in cases where the husband or wife is a hopeless lunatic or *non compos mentis*, the courts of common pleas of this Commonwealth are invested with the authority to receive a petition or libel for divorce; the affidavit as now required by law to such petition for libel to be made by the petitioner; and the service of subpœna in divorce shall be made as now provided, such service to be made upon the committee of such lunatic; and all the provisions of the several Acts relating to divorces shall apply to all applications made under this Act.

Clause B. That the fact of the lunacy of the husband or wife, and such circumstances as may be sufficient to satisfy the mind of the court as to the truth of the allegation, shall be set forth in the petition; and upon the hearing of the case before the court, a matter, or issue to be tried by jury, the question of lunacy shall be fully established by expert testimony, together with every other matter of fact that is affirmed by one party and denied by the other, and the same shall be heard and investigated in the manner prescribed by the provisions of the several Acts concerning divorces.

Clause C. No divorce shall be granted under this Act to any petitioner or libellant unless it be proved beyond a reasonable doubt that the husband or wife of the petitioner is hopelessly insane; Provided, however, that if the husband or wife has been for 10 or more years an inmate of an asylum for the insane, it shall be conclusive proof of hopeless insanity.

Clause D. In case of the application of a husband for divorce from an insane wife, under the provisions of this Act, the courts of common pleas of this Commonwealth, or the judges thereof to whom application is made, are hereby invested with full and complete authority to provide alimony for the support of such insane wife during the term of her natural life, by requiring the petitioner to file a bond, with surety or sureties if necessary, in such sum as they may direct, conditioned as aforesaid, before granting the divorce prayed for. And if the wife be the petitioner, and have sufficient means, the courts aforesaid, or the judges thereof, may provide for the support of

the insane husband as in this section required for an insane wife; provided the insane husband has not sufficient estate in his own right for his support.

Clause E. This Act shall in no way interfere or prevent an insane wife from obtaining a divorce from a husband, as provided in the Act of April 13th, 1843, to which this is a supplement.

Approved the 18th day of April 1905.

(*Note.*—It has been held by the Supreme Court that this Act does not make insanity a ground for divorce.)

UTAH.

Chapter 43.

Divorce.

An Act to amend section 1208 Revised Statutes of Utah, 1898, and providing for Divorce upon grounds of permanent Insanity.

Be it enacted by the Legislature of the State of Utah . . . . § 8. Permanent insanity of defendant; Provided, that no divorce shall be granted on the grounds of insanity unless, first, the defendant shall have been duly and regularly adjudged to be insane by the legally constituted authorities of this state, or some other state, at least five years prior to the commencement of the action; second, unless it shall appear to the satisfaction of the court, by the testimony of competent witnesses, that the insanity of the defendant is incurable. In all such actions, the court shall appoint for the defendant a guardian *ad litem*, who shall take such measures as may be necessary and proper to protect the interests of the defendant; and a copy of the summons and complaint must be duly served on the defendant in person, on his guardian *ad litem*, and on the county attorney for the county in which such action is prosecuted; it shall be the duty of such county attorney to make an investigation into the merits of the case, and to attend the court upon the trial of said cause, and make such defence therein as may be just and proper to protect the rights of the defendant, and the interests of the state.

In all such actions the court and judge thereof shall have all the powers relative to the payment of alimony, the distribution of property, and the custody and maintenance of minor children, which such courts now have or may hereafter possess, in other actions for divorce.

Either the plaintiff or defendant, or legal representatives, shall, upon proper notice, be entitled to have the defendant brought into court upon the trial, or to have an examination of the defendant, by two or more competent physicians, to determine the mental condition of the defendant, and for such purpose either party may, upon application, have process from the court to enter any asylum or institution within the state where such defendant may be confined.

The costs of court in such action shall be assessed or apportioned by the court according to the equities of the case, as may be just and proper.

Approved this 9th day of March 1903.

D.

SUPPLEMENT TO MR. J. A. BARRATT'S EVIDENCE.

Marriage licence laws were not enacted till—

1887 in Arizona.
None in Alaska.
1899 in Idaho.
1887 in Michigan.
1887 in Montana.
1897 in New Jersey (for non-residents only; none yet for residents).
1905 in New Mexico.
1907 in New York.
1891 in North Dakota.
1890 in South Dakota.
1897 in Oklahoma.
None in South Carolina.
1888 in Utah.
1899 in Wisconsin.

LAWS OF PENNSYLVANIA, 1815.

Marriage with particeps criminis.

Section 29. The wife or husband who shall have been guilty of the crime of adultery shall not marry the person with whom the said crime was committed during the life of the former wife or husband; but nothing herein contained shall be construed to extend to or affect or render illegitimate any children born of the body of the wife during coverture.

Section 30. When any woman shall be divorced as aforesaid and shall afterwards openly cohabit at bed and board with the person named in the petition or libel and proved to be partaker in her crime, she is hereby declared to be incapable to alienate directly or indirectly any of her lands, tenements or hereditaments; but all deeds, wills, appointments, and conveyances thereof shall be absolutely void and of none effect, and after her death the same shall descend and be subject to distribution in like manner as if she died seized thereof intestate.

Incompatibility of Temper.

Incompatibility of temper is not a cause for divorce *specifically* mentioned in the statutes of the States for which statistics of this cause are given in the Census Report, vol. 2, nor, indeed, in the statutes of any states at present. Divorces solely for this cause, therefore, must have been deemed to come under some broad ground mentioned in the statutes. Statistics for this cause solely cease in Arkansas, Maine, and Utah in 1886, and continue to 1905 in Indiana and 1906 in Washington, the total in those two states being 380, as stated in my evidence. (Census Report. vol. 2, pp. 22 and 73.)

APPENDIX XIII.

Statutory Causes for Absolute Divorce, for Limited Divorce, and for Annulment, Marriage and Divorce,

[D represents absolute divorce or divorce *a vinculo matrimonii*; S, legal

	CAUSE.	New England.						Southern North Atlantic.			Northern South Atlantic.					Southern South Atlantic.				Eastern North Central.				
		Maine.	New Hampshire.	Vermont.	Massachusetts.	Rhode Island.	Connecticut.	New York.	New Jersey.	Pennsylvania.[1]	Delaware.	Maryland.[2]	District of Columbia.	Virginia.	West Virginia.	North Carolina.	South Carolina.	Georgia.[3]	Florida.	Ohio.	Indiana.	Illinois.	Michigan.	Wisconsin.
	Desertion:																							
1	Abandonment or desertion	D	[4]D	DS	D	DS	D	S	D	DS	D	DS	S	DS	DS	S	–	D	D	D	DS	D	DS	DS
2	Refusal to move to state	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
	Cruelty:																							
3	Extreme cruelty	D	[5]D	DS	D	DS	D	S	S	S	D	S	S	[6]S	[6]S	S	–	DS	D	D	DS	D	DS	DS
4	Attempt to take life	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	D	–	–
5	Violence endangering life	–	–	–	–	–	–	–	–	DS	–	–	–	–	–	S	–	–	–	–	–	–	–	–
6	Indignities and defamation	–	–	–	–	–	–	–	–	DS	–	–	–	–	–	S	–	–	–	–	–	–	–	–
	Sexual immorality:																							
7	Adultery	D	D	DS	D	DS	D	D	D	DS	D	D	D	D	D	D	–	D	D	D	DS	D	D	D
8	Crime against nature	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
	Lewd conduct	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
10	Loathsome disease	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
	Intemperance:																							
11	Habitual drunkenness	D	D	–	D	DS	D	–	–	–	D	–	S	–	S	S	–	DS	D	D	DS	D	D	DS
12	Habitual use of drugs	D	–	–	D	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	S	–	–	–
	Neglect of responsibilities:																							
13	Neglect to provide	D	–	DS	D	DS	–	S	–	–	DS	–	–	–	–	–	–	–	–	–	DS	–	DS	DS
14	Neglect of duty	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	D	S	–	–	–
	Defects of disposition:																							
15	Violent temper	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	D	–	–	–	–	–
16	Intolerant religious belief	–	D	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
	Crime:																							
17	Conviction or imprisonment	–	D	DS	D	–	D	–	–	D	D	–	–	D	D	–	–	D	–	D	D	D	D	D
18	Fugitive from justice	–	–	–	–	–	–	–	–	–	–	–	–	D	–	–	–	–	–	–	–	–	–	–
	Lack of real consent to marriage:																							
19	Duress or force	–	–	A	–	–	–	A	–	D	–	–	A	–	–	–	–	D	–	–	–	–	A	A
20	Fraud or fraudulent contract	–	–	A	–	–	D	A	–	D	–	–	A	–	–	–	–	D	–	D	–	–	A	A
	Incapacity to contract marriage:																							
21	Mental incapacity	A	–	A	A	–	–	A	D	D	A	–	A	A	A	A	–	D	–	–	–	–	A	A
22	Want of age	A	–	A	A	–	–	A	–	–	DS	–	A	A	A	A	–	–	–	–	–	–	A	A
	Personal unfitness to contract marriage:																							
23	Impotency or physical incapacity.	D	D	A	D	DS	–	A	D	D	D	D	A	DA	DA	DA	–	D	D	D	D	D	DA	D
24	Pregnancy before marriage	–	–	–	–	–	–	–	–	–	–	–	–	D	D	D	–	D	–	–	–	–	–	–
25	Illicit carnal intercourse before marriage.	–	–	–	–	–	–	–	–	–	–	D	–	D	D	–	–	–	–	–	–	–	–	–
	Illegality of marriage:																							
26	Bigamy	A	–	A	A	–	–	A	A	DA	A	A	A	A	A	A	–	–	D	D	–	D	A	A
27	Consanguinity	A	–	A	A	–	–	–	A	D	A	A	A	A	A	A	–	D	D	–	–	–	A	A
28	Miscegenation	–	–	–	–	–	–	–	–	–	A	–	–	A	A	A	–	–	–	–	–	–	–	–
	Other causes:																							
29	Void and voidable marriages (not otherwise specified).	–	A	–	–	DS	A	–	–	–	–	D	–	–	–	–	–	–	–	–	–	–	–	–
30	Previous divorce in another State.	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	D	D	–	–	D	–
31	Misconduct	–	–	–	–	DS	–	S	–	–	–	S	–	–	–	–	–	–	–	–	–	–	–	DS
32	Vagrancy	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
33	Voluntary separation	–	–	–	–	[6]DS	..	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	D
34	Civil death	–	–	–	–	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
35	Presumption of death	–	–	–	–	DS	D	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
36	Causes deemed sufficient by court.	–	–	–	–	S	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–

[1] After hearing any cause for divorce the court may decree the divorce or that the marriage is null and void.
[2] Limited divorce may be decreed in a case where absolute divorce is prayed, if the causes prove to be sufficient to entitle the party to the same.
[3] Limited divorce may be granted on any ground which was held sufficient in the English courts prior to May 4, 1784.
[4] There are six provisions dealing with different phases of desertion.

APPENDIX XIII.

BY STATES AND TERRITORIES—extracted from the United States Census Report, 1867–1906 (p. 268).

separation, limited divorce, or divorce *a mensa et thoro*; and A, annulment.]

Western North Central.							Eastern South Central.				Western South Central.					Rocky Mountain.					Basin and Plateau.			Pacific.			
Minnesota.	Iowa.	Missouri.	North Dakota.	South Dakota.	Nebraska.	Kansas.	Kentucky.	Tennessee.[1]	Alabama.	Mississippi.	Louisiana.	Arkansas.	Indian Territory.	Oklahoma.	Texas.	Montana.	Idaho.	Wyoming.	Colorado.	New Mexico.	Arizona.	Utah.	Nevada.	Washington.	Oregon.	California.	
DS	D	D	D	D	DS	D	DS	DS	DS	D	DS	DS	DS	D	D	D	D	D	D	D	D	D	D	D	D	D	1
–	–	–	–	–	–	–	–	D	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	2
DS	–	–	D	D	DS	D	DS	DS	S	D	DS	–	–	D	D	D	D	D	D	D	D	D	D	D	D	D	3
–	–	–	–	–	–	–	–	D	–	–	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	4
–	D	D	–	–	–	–	DS	–	DS	–	–	DS	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	5
–	–	D	–	–	–	–	–	DS	–	–	DS	DS	DS	–	–	–	–	D	–	–	–	–	–	D	D	–	6
D	D	D	D	D	D	D	DS	D	DS	D	DS	DS	DS	D	D	D	D	D	D	D	D	D	D	D	D	D	7
–	–	–	–	–	–	–	–	–	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	8
–	–	–	–	–	–	–	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	9
–	–	–	–	–	–	–	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	10
D	D	D	D	D	D	D	DS	D	DS	D	DS	DS	DS	D	–	D	D	D	D	D	D	D	D	D	D	D	11
–	–	–	–	–	–	–	–	–	–	D	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	12
S	–	–	–	–	DS	–	–	DS	–	–	–	–	–	–	–	–	–	D	D	D	D	D	D	D	–	–	13
–	–	–	D	D	–	D	–	–	–	–	–	–	–	D	–	D	D	–	–	–	–	–	–	–	–	D	14
–	–	–	–	–	–	–	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	15
–	–	–	–	–	–	–	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	16
D	D	D	D	D	D	D	DS	D	DS	D	DS	DS	DS	D	D	D	D	D	D	D	D	D	D	D	D	D	17
–	–	–	–	–	–	–	–	–	–	–	DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	18
A	–	–	A	A	A	–	DSA	–	–	–	A	A	A	–	–	A	A	A	–	–	–	A	–	D	A	A	19
A	–	–	A	A	A	D	DSA	–	–	–	–	A	A	D	–	A	A	A	–	–	–	A	A	D	A	A	20
A	A	–	A	A	A	A	–	–	–	D	–	A	DSA	A	–	A	DA	A	–	–	–	D	A	D	A	A	21
A	–	–	A	A	A	A	A	–	–	–	–	A	A	A	–	A	A	A	–	A	–	A	A	–	A	A	22
D	A	D	A	A	AD	D	DS	D	DS	D	–	DSA	DSA	D	A	A	A	D	D	D	DA	D	D	D	D	A	23
–	D	D	–	–	–	D	DS	D	DS	D	–	–	–	D	–	–	–	D	–	D	D	–	–	–	–	–	24
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	25
A	[7]A	D	A	A	A	D	–	D	–	D	A	DS	DS	D	–	A	A	A	D	–	–	–	–	–	A	A	26
A	A	–	–	–	A	–	–	–	A	D	A	–	–	–	–	A	–	A	–	A	–	–	–	–	A	A	27
–	–	–	–	–	A	–	–	–	–	–	A	–	–	–	–	–	–	–	–	–	–	–	–	–	A	–	28
–	A	–	–	–	–	–	–	–	–	–	–	–	–	–	A	–	–	–	–	–	–	–	–	A	–	A	29
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	30
S	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	31
–	–	D	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	D	–	–	–	–	–	–	–	–	32
–	–	–	–	–	–	–	[9]DS	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	33
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[5] Includes "treatment endangering reason or injuring health."
[6] Also for "reasonable apprehension of bodily hurt."
[7] Provided they have not lived and cohabited together after the death of the former husband or wife.
[8] Living separate and apart for the space of at least 10 years.
[9] Living apart without any cohabitation for five consecutive years next before the application.

APPENDIX XIV.

Decree "Ne Temere" on Marriage.

Instruction of the Archbishop and Bishops of England and Wales. With the Latin Text of the Decree of the S. Congregation of the Council, 2nd August, 1907, a translation of the same, and a Letter addressed to the Bishops, 5th March 1908, by His Eminence the Cardinal Prefect of Propaganda. Lent, 1908.

The New Law of Marriage.

The decree "Ne temere" has now reached the Archbishops and Bishops of the Province of Westminster, and by the terms of the decree ("Praesens "decretum legitime publicatum et promulgatum "habeatur per ejus transmissionem ad locorum "Ordinarios") it is now promulgated, and its provisions will have the force of law throughout England and Wales from Easter Sunday next.

A copy of the decree in Latin, and of an English translation, is sent herewith; and in addition a copy of a letter from Propaganda, dated 5th March 1908, containing the answer of the S. Congregation of the Council to the question which arose out of the words "nisi pro aliquo particulari loco aut regione aliter a S. Sede sit statutum."

The duty is laid upon the Bishops of taking care that, in all the public Churches of their dioceses, the decree shall be explained to the people in order that all may understand this important law. Instruction should, therefore, be given in every Mission as soon as possible on all the points which the faithful ought to know, particularly as to the conditions required for *validity* and *lawfulness*, the change of the law with regard to *mixed marriages* in England, and the *invalidity* of every marriage which is not celebrated with the assistance of the proper priest (except as provided in VII. and VIII.).

With regard to the Clergy, it is thought well to draw attention to some points which seem to require explanation.

1. In Section II., which gives the definition of *Parochus* in its new and extended meaning for the purpose of the new law of clandestinity, there is firstly the *Parochus* who has *ordinary* jurisdiction strictly so-called. There are none in England.

2. As England has not any canonically erected parishes, but only missions, the priests serving the districts are, for the purpose of this law, to be considered to be on the same level as *Parochi*, in virtue of the "cura animarum" committed to them by the Bishop in the faculties granted to them. Thus they become the valid assistants at all marriages "intra "limites dumtaxat sui territorii," whether the parties are or are not their subjects. As identical faculties are usually granted to both head priests and assistants in missions, some difficulty arises as to the powers of assistant priests, which Propaganda has been considering, and upon which an authoritative decision is expected. Meanwhile, it will be safe to follow what is in accordance with present practice: namely, that in each mission the head priest is the valid and lawful assistant at marriages; and that, with his authority and consent, the other priests of the mission, and other priests of the diocese, may lawfully and validly assist.

Section V. calls attention to the *free state* of those who contract marriage.—The banns must be published as heretofore. But most careful enquiries must be made into the freedom of each party; and such enquiry should extend back over a sufficient number of years, so that the priest may be morally certain of their freedom.

Section IX. introduces fresh duties:

1. As to the Register of Marriages.—The entry is now to be made by the priest in charge of the Registers; and therefore the form in our present Registers should be slightly altered, if need be, so as to read "conjunxit," and not "Ego conjunxi."

2. As to the Register of Baptisms.—This entirely new regulation is considered to be binding *sub gravi*, in exactly the same way as the regulation of making the usual entries in the Register of Marriages. The obligation is now imposed on the head priest of each mission of forwarding a notification of the marriage to the priest in charge of the parish or mission where each of the married parties was baptised. The object of this regulation is to provide a ready means, in the future, of discovering by reference to the Register of Baptisms whether parties who wish to contract marriage have at any time in their lives, or in any part of the world, been married to any one else.

Without express direction to the contrary, it must be presumed that the Episcopal officials of a diocese will not undertake to forward these notices of marriages to their destination, so that this duty will rest upon the local clergy.

The only satisfactory way of fulfilling this onerous duty will be for the clergy of the mission where a marriage is to be celebrated to insist that, as a preliminary to the marriage, each of the parties shall produce either a certificate of baptism, or a note from the priest of the church where the baptism took place, stating that he has ascertained by investigation that the party was baptised in that church. In the case of married converts, if they receive baptism on their reception into the Church, when the entry is made in the Register of their baptism, details should be added with respect to their marriage.

Until new Registers are in use, an entry must be made in the existing Registers according to the following form:

Ipse (or *Ipsa*) *die mensis anni matrimonium contraxit cum in Ecclesia apud*

Signed on behalf of the Bishops of the Province.

✠ FRANCIS, *Archbishop of Westminster.*

Decretum

De Sponsalibus et Matrimonio, iussu et Auctoritate SS. D. N. Pii Papae X., a S. Congregatione Concilii Editum.

Ne temere inirentur clandestina coniugia, quae Dei Ecclesia iustissimis de causis semper detestata est atque prohibuit, provide cavit Tridentinum Concilium, *cap. I., Sess. XXIV. de reform. matrim.* edicens: "Qui aliter quam praesente parocho vel alio sacerdote de ipsius parochi seu Ordinarii licentia et duobus vel tribus testibus matrimonium contrahere attentabunt, eos Sancta Synodus ad sic contrahendum omnino inhabiles reddit, et huiusmodi contractus irritos et nullos esse decernit."

Sed cum idem Sacrum Concilium praecepisset, ut tale decretum publicaretur in singulis paroeciis, nec vim haberet nisi iis in locis ubi esset promulgatum; accidit ut plura loca, in quibus publicatio illa facta non fuit, beneficio tridentinae legis caruerint, hodieque careant, et haesitationibus atque incommodis veteris disciplinae adhuc obnoxia maneant.

Verum nec ubi viguit nova lex, sublata est omnis difficultas. Saepe namque gravis exstitit dubitatio in decernenda persona parochi, quo praesente matrimonium sit contrahendum. Statuit quidem canonica disciplina, proprium parochum eum intelligi debere, cuius in paroecia domicilium sit, aut quasi domicilium alterutrius contrahentis. Veram quia nonnunquam difficile est iudicare, certo ne constet de quasi-domicilio, haud pauca matrimonia fuerunt obiecta periculo ne nulla essent: multa quoque, sive inscitia hominum sive fraude, illegitima prorsus atque irrita deprehensa sunt.

Haec dudum deplorata, eo crebrius accidere nostra aetate videmus, quo facilius ac celerius commeatus cum gentibus, etiam disiunctissimis, perficiuntur. Quamobrem sapientibus viris ac doctissimis visum est expedire ut mutatio aliqua induceretur in iure circa formam celebrandi connubii. Complures etiam sacrorum Antistites

omni ex parte terrarum, praesertim e celebrioribus civitatibus, ubi gravior appareret necessitas, supplices ad id preces Apostolicae Sedi admoverunt.

Flagitatum simul est ab Episcopis, tum Europae plerisque, tum aliarum regionum, ut incommodis occurreretur, quae ex sponsalibus, id est mutuis promissionibus futuri matrimonii privatim initis, derivantur. Docuit enim experientia satis, quae secum pericula ferant eiusmodi sponsaliia: primum quidem incitamenta peccandi causamque cur nexpertae puellae decipiantur: postea dissidia ac lites inextricabiles.

His rerum adiunctis permotus SSmus D. N. Pius PP. X. pro ea quam gerit omnium Ecclesiarum sollicitudine, cupiens ad memorata damna et pericula removenda temperatione aliqua uti, commisit S. Congregationi Concilii ut de hac re videret, et quae opportuna aestimaret, Sibi proponeret.

Voluit etiam votum audire Consilii ad ius canonicum in unum redigendum constituti, nec non Emorum Cardinalium qui pro eodem codice parando speciali commissione delecti sunt: a quibus, quemadmodum et a S. Congregatione Concilii, conventus in eum finem saepius habiti sunt. Omnium autem sententiis obtentis SSmus Dominus S. Congregationi Concilii mandavit, ut decretum ederet quo leges a Se, ex certa scientia et matura deliberatione probatae, continerentur, quibus sponsalium et matrimonii disciplina in posterum regeretur, eorumque celebratio expedita, certa atque ordinata fieret.

In executionem itaque Apostolici mandati S. Concilii Congregatio praesentibus litteris constituit atque decernit ea quae sequuntur.

De Sponsalibus.

I. Ea tantum sponsalia habentur valida et canonicos sortiuntur effectus, quae contracta fuerint per scripturam subsignatam a partibus et vel a parocho, aut a loci Ordinario, vel saltem a duobus testibus.

Quod si utraque vel alterutra pars scribere nesciat, id in ipsa scriptura adnotetur; et alius testis addatur, qui cum parocho, aut loci Ordinario, vel duobus testibus, de quibus supra, scripturam subsignet.

II. Nomine parochi hic et in sequentibus articulis venit non solum qui legitime praeest paroeciae canonice erectae; sed in regionibus, ubi paroeciae canonice erectae non sunt, etiam sacerdos cui in aliquo definito territorio cura animarum legitime commissa est, et parocho aequiparatur; et in missionibus, ubi territoria necdum perfecte divisa sunt, omnis sacerdos a missionis Moderatore ad animarum curam in aliqua statione universaliter deputatus.

De Matrimonio.

III. Ea tantum matrimonia valida sunt, quae contrahuntur coram parocho vel loci Ordinario vel sacerdote ab alterutro delegato, et duobus saltem testibus, iuxta tamen regulas in sequentibus articulis expressas, et salvis exceptionibus quae infra n. VII. et VIII. ponuntur.

IV. Parochus et loci Ordinarius valide matrimonio adsistunt:

§ 1° die tantummodo adeptae possessionis beneficii vel initi officii, nisi publico decreto nominatim fuerint excommunicati vel ab officio suspensi.

§ 2° intra limites dumtaxat sui territorii: in quo matrimoniis nedum suorum subditorum, sed etiam non subditorum valide adsistunt.

§ 3° dummodo invitati ac rogati, et neque vi neque metu gravi constricti requirant excipiantque contrahentium consensum.

V. Licite autem adsistunt:

§ 1° constito sibi legitime de libero statu contrahentium, servatis de iure servandis.

§ 2° constito insuper de domicilio, vel saltem de menstrua commoratione alterutrius contrahentis in loco matrimonii.

§ 3° quod si deficiat, ut parochus et loci Ordinarius licite matrimonio adsint, indigent licentia parochi vel Ordinarii proprii alterutrius contrahentis, nisi gravis intercedat necessitas, quae ab ea excuset.

§ 4° quoad *vagos*, extra casum necessitatis parocho ne liceat eorum matrimoniis adsistere, nisi re ad Ordinarium vel ad sacerdotem ab eo delegatum delata, licentiam adsistendi impetraverit.

5° in quolibet autem casu pro regula habeatur, ut matrimonium coram sponsae parocho celebretur, nisi aliqua iusta causa excuset.

VI. Parochus et loci Ordinarius licentiam concedere possunt alio sacerdoti determinato ac certo, ut matrimoniis intra limites sui territorii adsistat.

Delegatus autem, ut valide et licite adsistat, servare tenetur limites mandati, et regulas pro parochus et loci Ordinario n. IV. et V. superius statutas.

VII. Imminente mortis periculo, ubi parochus, vel loci Ordinarius, vel sacerdos ab alterutro delegatus, haberi nequeat, ad consulendum conscientiae et (si casus ferat) legitimationi prolis, matrimonium contrahi valide ac licite potest coram quolibet sacerdote et duobus testibus.

VIII. Si contingat ut in aliqua regione parochus locive Ordinarius, aut sacerdos ab eis delegatus, coram quo matrimonium celebrari queat, haberi non possit, eaque rerum conditio a mense iam perseveret, matrimonium valide ac licite iniri potest emisso a sponsis formali consensu coram duobus testibus.

IX. § 1° Celebrato matrimonio, parochus, vel qui eius vices gerit, statim describat in libro matrimoniorum nomina coniugum ac testium, locum et diem celebrati matrimonii, atque alia, iuxta modum in libris ritualibus vel a proprio Ordinario praescriptum; idque licet alius sacerdos vel a se vel ab Ordinario delegatus matrimonio adstiterit.

§ 2° Praeterea parochus in libro quoque baptizatorum adnotet, coniugem tali die in sua parochia matrimonium contraxisse. Quod si coniux alibi baptizatus fuerit, matrimonii parochus notitiam iniit contractus ad parochum baptismi sive per se, sive per curiam episcopalem transmittat, ut matrimonium in baptismi libri referatur.

§ 3° Quoties matrimonium ad normam n. VII. aut VIII. contrahitur, sacerdos in priori casu, testes in altero, tenentur in solidum cum contrahentibus curare, ut initum coniugium in praescriptis libris quam primum adnotetur.

X. Parochi qui heic hactenus praescripta violaverint ab Ordinariis pro modo et gravitate culpae puniantur. Et insuper si alicuius matrimonio adstiterint contra praescriptum 2i et 3i n. V., emolumenta *stolae* sua ne faciant, sed proprio contrahentium parocho remittant.

XI. § 1° Statutis superius legibus tenentur omnes in catholica Ecclesia baptizati et ad eam ex haeresi aut schismate conversi (licet sive hi, sive illi ab eadem postea defecerint), quoties inter se sponsalia vel matrimonium ineant.

§ 2° Vigent quoque pro iisdem de quibus supra catholicis, si cum acatholicis sive baptizatis, sive non baptizatis, etiam post obtentam dispensationem ab impedimento mixtae religionis vel disparitatis cultus, sponsalia vel matrimonium contrahunt; nisi pro aliquo particulari loco aut regione aliter a S. Sede sit statutum.

§ 3° Acatholici sive baptizati sive non baptizati, si inter se contrahunt, nullibi ligantur ad catholicam sponsalium vel matrimonii formam servandam.

Praesens decretum legitime publicatum et promulgatum habeatur per eius transmissionem ad locorum Ordinarios; et quae in eo disposita sunt ubique vim legis habere incipiant a die solemni Paschae Resurrectionis D. N. I. C. proximi anni 1908.

Interim vero omnes locorum Ordinarii curent hoc decretum quamprimum in vulgus edi, et in singulis suarum diocesum parochialibus ecclesiis explicari, ut ab omnibus rite cognoscutur.

Praesentibus valituris de mandato speciali SSmi D. N. Pii PP. X., contrariis quibuslibet etiam peculiari mentione dignis minime obstantibus.

Datum Romae die 2a mensis Augusti anni 1907.

† VINCENTIUS Card. Ep. Praenest, *Praefectus.*

C. DE LAI, *Secretarius.*

DECREE CONCERNING SPONSALIA AND MATRIMONY.

Issued by the Sacred Congregation of the Council by the Order and with the Authority of Our Holy Father Pope PIUS X.

The Council of Trent, *cap I., Sess. XXIV. de reform. matrim.*, made prudent provision against the rash celebration of clandestine marriages, which the Church

of God for most just reasons has always detested and forbidden, by decreeing: "Those who otherwise than " in the presence of the parish priest himself or of " another priest acting with the licence of the parish " priest or of the Ordinary, and in the presence of " two or three witnesses, shall attempt to contract " matrimony, the Holy Synod renders them altogether " incapable of contracting marriage thus, and decrees " that contracts of this kind are null and void."

But as the same Sacred Council prescribed that the said Decree should be published in all the parishes and was not to have force except in those places in which it had been promulgated, it has happened that many places in which the publication has not been made have been deprived of the benefit of the Tridentine law, and are still without it, and continue to be subject to the doubts and inconveniences of the old discipline.

Nor has all difficulty been removed in those places where the new law has been in force. For often there has been grave doubt in deciding as to the person of the parish-priest before whom a marriage is to be celebrated. The canonical discipline did indeed decide that he is to be regarded as the parish-priest in whose parish one or other of the contracting parties has his or her domicile or quasi domicile. But as it is sometimes difficult to judge whether a quasi-domicile really exists in a specified case, not a few marriages were exposed to the danger of nullity; many too, either owing to ignorance or fraud, have been found to be quite illegitimate and void.

These deplorable results have been seen to happen more frequently in our own time on account of the increased facility and celerity of intercommunication between the different countries, even those more widely separated. It has therefore seemed expedient to wise and learned men to introduce some change into the law regulating the form of the celebration of marriage, and a great many Bishops in all parts of the world, but especially in the more populous states where the necessity appears more urgent, have petitioned the Holy See to this end.

It has been asked also by very many Bishops in Europe, as well by others in various regions, that provision should be made to prevent the inconveniences arising from *sponsalia*, that is mutual promises of marriage, privately entered upon. For experience has sufficiently shown the many dangers of such *sponsalia*, first as being an incitement to sin and causing the deception of inexperienced girls, and afterwards giving rise to inextricable dissensions and disputes.

Influenced by these circumstances, our Holy Father Pope Pius X. desiring, in the solicitude he bears for all the churches, to introduce some modifications with the object of removing these drawbacks and dangers, committed to the S. Congregation of the Council the task of examining into the matter and of proposing to himself the measures it should deem opportune.

He was pleased also to have the opinion of the commission appointed for the codification of Canon Law, as well as of the Eminent Cardinals chosen on this special commission for the preparation of the new code, by whom, as well as by the S. Congregation of the Council, frequent meetings have been held for this purpose. The opinions of all having been taken, His Holiness ordered the Sacred Congregation of the Council to issue a decree containing the laws approved by himself on sure knowledge and after mature deliberation, by which the discipline regarding *sponsalia* and marriage is to be regulated for the future and the celebration of them carried out in a sure and orderly manner.

In execution, therefore, of the Apostolic mandate the S. Congregation of the Council by these letters lays down and decrees as follows :—

Concerning Sponsalia.

I. Only those are considered valid and produce canonical effects which have been contracted in writing signed by both the parties and by either the parish-priest or the Ordinary of the place, or at least by two witnesses.

In case one or both the parties be unable to write, this fact is to be noted in the document and another witness is to be added who will sign the writing as above, with the parish-priest or the Ordinary of the place or the two witnesses.

II. Here and in the following articles, by parish-priest is to be understood not only a priest legitimately presiding over a parish canonically erected, but in regions where parishes are not canonically erected the priest to whom the care of souls has been legitimately entrusted in any specified district and who is equivalent to a parish-priest; and in missions where the territory has not yet been perfectly divided, every priest generally deputed by the superior of the mission for the care of souls in any station.

Concerning Marriage.

III. Only those marriages are valid which are contracted before the parish-priest or the Ordinary of the place or a priest delegated by either of these, and at least two witnesses, according to the rules laid down in the following articles, and saving the exceptions mentioned under VII. and VIII.

IV. The parish-priest and the Ordinary of the place validly assist at a marriage :—

(i) only from the day they have taken possession of the benefice or entered upon their office, unless they have been by a public decree excommunicated by name or suspended from office

(ii) only within the limits of their territory: within which they assist validly at marriages not only of their own subjects, but also of those not subject to them;

(iii) provided when invited and asked, and not compelled by violence or by grave fear, they demand and receive the consent of the contracting parties;

V. They assist licitly : —

(i) when they have legitimately ascertained the free state of the contracting parties, having duly complied with the conditions laid down by the law;

(ii) when they have ascertained that one of the contracting parties has a domicile or at least has lived for a month in the place where the marriage takes place;

(iii) if this condition be lacking, the parish-priest and the Ordinary of the place, to assist licitly at a marriage, require the permission of the parish-priest or the Ordinary of one of the contracting parties, unless it be a case of grave necessity which excuses from this permission;

(iv) concerning persons without fixed abode (*vagos*), except in case of necessity it is not lawful for a parish-priest to assist at their marriage, until they report the matter to the Ordinary or to a priest delegated by him and obtain permission to assist;

(v) in every case let it be held as the rule that the marriage is to be celebrated before the parish-priest of the bride, unless some just cause excuses from this.

VI. The parish-priest and the Ordinary of the place may grant permission to another priest, specified and certain, to assist at marriages within the limits of their district.

The delegated priest, in order to assist validly and licitly, is bound to observe the limits of his mandate and the rules laid down above, in IV. and V., for the parish-priest and the Ordinary of the place.

VII. When danger of death is imminent and where the parish-priest or the Ordinary of the place or a priest delegated by either of these cannot be had, in order to provide for the relief of conscience and (should the case require it) for the legitimation of offspring, marriage may be contracted validly and licitly before any priest and two witnesses.

VIII. Should it happen that in any region the parish-priest or the Ordinary of the place or a priest delegated by either of them, before whom marriage can be celebrated, is not to be had, and that this condition of things has lasted for a month, marriage may be validly and licitly entered upon by the formal declaration of consent made by the spouses in the presence of two witnesses.

IX.—(i) After the celebration of a marriage the parish-priest, or he who takes his place, is to write at once in the book of marriages the names of the couple and of the witnesses, the place and the day of the celebration of the marriage, and the other details, according to the method prescribed in the ritual books or by the Ordinary; and this even when another priest delegated either by the parish-priest himself or by the Ordinary has assisted at the marriage.

(ii) Moreover, the parish-priest is to note also in the book of baptisms, that the married person contracted marriage on such a day in his parish. If the married person has been baptised elsewhere the parish-priest who has assisted at the marriage is to transmit, either directly or through the episcopal curia, the announcement of the marriage that has taken place, to the parish-priest of the place where the person was baptised, in order that the marriage may be inscribed in the book of baptisms.

(iii) Whenever a marriage is contracted in the manner described in VII. and VIII., the priest in the former case, the witnesses in the latter are bound conjointly with the contracting parties to provide that the marriage be inscribed as soon as possible in the prescribed books.

X Parish-priests who violate the rules thus far laid down are to be punished by their Ordinaries according to the nature and gravity of their transgression. Moreover, if they assist at the marriage of anybody in violation of the rules laid down in (ii) and (iii) of No. V. they are not to appropriate the stole-fees, but must remit them to the parish-priest of the contracting parties.

XI.—(i) The above laws are binding on all persons baptised in the Catholic Church and on those who have been converted to it from heresy or schism (even when either the latter or the former have fallen away afterwards from the Church) whenever they contract sponsalia or marriage with one another.

(ii) The same laws are binding also on the same Catholics as above, if they contract sponsalia or marriage with non-Catholics, baptised or unbaptised, even after a dispensation has been obtained from the impediment *mixta religionis* or *disparitatis cultus*; unless the Holy See decree otherwise for some particular place or region.

(iii) Non-Catholics, whether baptised or unbaptised, who contract among themselves, are nowhere bound to observe the Catholic form of *sponsalia* or marriage.

The present decree is to be held as legitimately published and promulgated by its transmission to the Ordinaries, and its provisions begin to have the force of law from the solemn feast of the Resurrection of Our Lord Jesus Christ, next year 1908.

Meanwhile let all the Ordinaries of places see that this decree be made public as soon as possible, and explained in the different parochial churches of their dioceses in order that it may be known by all.

These presents are to have force by the special order of our Most Holy Father Pope Pius X., all things to the contrary, even those worthy of special mention, notwithstanding.

Given at Rome on the 2nd day of August in the year 1907.

† VINCENT, Card. Bishop of Palestrina, *Prefect.*
C. DE LAI, *Secretary.*

ILLMĒ AC RMĒ DOMINE.

Post latum a S. Congregatione Concilii die 2 mensis Augusti superioris anni, iussu et auctoritate SS. D. N. Pii PP. X. Decretum "*Ne temere*" de Sponsalibus et Matrimonio, quamplures Ordinarii huic S. Consilio Propagandae Fidei subiecti petierunt utrum vim suam adhuc retineret Declaratio a Benedicto PP. XIV. data die 4 Novembris anni 1741 pro matrimoniis in Foederatis Belgii provinciis inter haereticos contractis et contrahendis, quae deinde a S. Sede multis aliis regionibus extensa fuit. Haec Ordinariorum petitio cum iudicio EE. Patrum S. Congregationis Concilii subiecta fuerit in causa *Romana et Aliarum*, iidem E.E. Patres in generali conventu habito die 1 Februarii u. p. ad Dubium IV.: "*An sub art. XI.* § 2, *in exceptione* "*ennuciata illis verbis* '*nisi pro aliquo particulari loco* "*aut regione aliter a S. Sede sit statutum*' *comprehendatur tantummodo Constitutio* Provida *Pii P P. X.*; "*an potius comprehendantur quoque Constitutio Benedictina et cetera eiusmodi indulta impedimentum* "*clandestinitatis respicientia*" respondendum censuere: "*Comprehendi tantummodo Constitutionem* Provida; "*non autem comprehendi alia quaecumque Decreta, facto* "*verbo cum Sanctissimo*": quae resolutio a SSmo Dño. Nro. confirmata et approbata fuit.

Haec pro meo munere cum Amplitudine Tua communico, et precor Deum ut Te diu sospitem incolumemque servet.

Datum Romae ex Aedibus S. C. de Propaganda Fide die 5 Martii 1908.

Amplitudinis Tuae
addictissimus servus
HIERONYMUS CARD. GOTTI, Praefectus
ALOISIUS VECCIA, *Secretarius.*

OBSERVATIONS UPON THE DECREE "NE TEMERE."

The Decree "Ne Temere" was issued by the Holy See on August 2nd 1907, and came into force generally on Easter day, April 19th 1908. (A delay was granted for Scotland until September 1st 1908, and for all China, until Easter 1909.)

(1) It is binding upon all Catholics, except Uniates (Catholics of the Oriental rites) and Catholics in any particular countries "for which the Holy See has otherwise ordered." This last exception applies to Catholics in the German Empire for which the Holy See only a short time before (January 1906) had already provided new marriage regulations in the Bull "Provida." This exemption and special provision has been extended to Catholics in the Austro-Hungarian Empire.

The Decree *Ne Temere* does not affect in any way the marriage contracts of Non-Catholics between themselves.

The Decree bears upon—

(*a*) Promises of marriage that are called espousals or *Sponsalia*, and

(*b*) Marriages in which both parties and Catholics or one party is Catholic (viz., mixed marriages).

(2) The gist of the Decree—

1. Espousals, viz., solemn promises of marriage between Catholics—or between a Catholic and a non-Catholic—are declared to be canonically invalid, unless they are—
   (*a*) made in writing, and signed by the parties,
   (*b*) and signed either by the parish priest, or at least by two witnesses.
2. Marriages between Catholics, or between a Catholic and a non-Catholic (mixed marriages) are declared to be invalid,* unless—
   (*a*) the marriage be celebrated before the Catholic bishop or priest of the place, or a priest delegated by him,
   (*b*) in the presence of at least two witnesses.

(3) Espousals (*sponsalia*) are promises of marriage to be contracted at a future time.

Such promises, if solemnly made and accepted between qualified persons have entailed in Church law certain canonical effects, viz.:—

1. The parties are so bound to each other that the marriage of either to any other person is barred or prohibited. (The bar is merely prohibitive, and not diriment or invalidating, so that if either party did marry another person, the marriage, although sinful, would be valid.)

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* When the Church declares a marriage to be null and invalid, it does not follow that she declares the children of the marriage to be illegitimate. In Canon Law, the children of an invalid marriage are held to be legitimate, if either of the two parties has contracted the marriage in good faith and believing it to be valid. *Cf.* De Angelis. Praelectiones Juris Canonici, vol. III., p. 270.

2. The parties are so bound to each other, that if either party marry any blood-relation of the other in the first degree, such marriage is invalid.

(4) The result of the new Decree "*Ne Temere*" is to require that all such espousals or promises of marriage between Catholics, or between a Catholic and a non-Catholic, shall be made by the parties—

1. in writing,
2. and attested by the parish priest, or at least two witnesses.

And that such espousals or promises not fulfilling these conditions are in the law of the Church invalid and deprived of the canonical effects above mentioned.

(5) This invalidity the Church affirms to be in the sphere of conscience and of Church law. It involves no incursion on the domain of civil law, which in this country is quite independent of Catholic Canon law. The Civil law is free within its own sphere to treat such promises of marriage according to its own principles of contract, to determine their validity according to its own standards, and to punish by civil penalties all breaches of law or justice from its own point of view.

(6) The right of the Church to determine for her members in these matters the conditions of canonical validity, viz., validity in conscience, and in the sight of God, is based upon her claim to have Divine Authority over Christian Marriage as a Sacrament, and therein over the contract which is its basis, as well as over the contract of espousals which is prefatory to it.

(7) While the Church teaches that she holds from God this power for the good of the Christian people, she teaches that her laws can never override, or be meant to override, any right or obligation of natural justice. Thus, in cases in which A, a Catholic, has made a promise of marriage either to B, a Catholic, or to C, a non-Catholic, outside of the required conditions, the Church holds that such promise is invalid in Church law, and in conscience, but that, in so far as A, by non-fulfilment of the promise, has inflicted injury on B or C, he is bound in conscience to make all due compensation for such injury, and that he cannot be absolved by the Church, or admitted to Sacraments, until he has pledged himself to do so. Thus Cardinal Gennari, in his commentary upon the Decree, says "It "does not follow that the deceiver of another in this "matter is under no obligation in conscience. He is "bound to make reparation for all the injuries he has "caused through his invalid promise, and he may not "be absolved until he has made this reparation." *Commento.* p. 20.

(8) The same obligation of conscience applies to cases of marriages which are invalid, by non-fulfilment of the conditions required by the Decree.

(9) The purpose and object of the Decree as well as the separate provision made for the German Empire, and extended (23rd February 1909) to the Kingdom of Hungary, can be best understood from the following facts:—

(*a*) From the earliest times: it had been the rule and custom of the Catholic people to have their marriages blessed by a priest in their churches.

(*b*) Nevertheless, before the time of the Council of Trent (1563), marriages made, not in church, but privately by the parties themselves, each taking the other, were held by the Church to be *valid*, if, upon other grounds, no invalidating impediment existed. Such clandestine marriages were discouraged and forbidden, but if made and proved, they were recognised as valid.

(*c*) The reason of this recognition lay in the fact that the Church teaches that marriage is a sacrament, in which the *contracting parties themselves are the ministers*, and that they administer this Sacrament to themselves to their mutual consent, and that the officiating priest is only the *witness*, and not the effector of the sacrament.

(*d*) Many evils and abuses in the course of time were found to arise from these clandestine marriages, which were liable to be disavowed by the parties later on, or to become incapable of being juridically proved owing to death or absence of witnesses. For this reason, the Holy See at the Council of Trent felt bound to take order against the evil, and the Christian States, notably France, urged strongly upon the Council the necessity of treating as invalid all clandestine marriages.

(*e*) It was felt to be necessary in the interest of society, that all marriages, under pain of nullity, should be celebrated before some official authority. The proposition that marriages might be celebrated before any three witnessss or before public notaries was rejected in favour of the plan that the parish priest of the parties should be one of the required witnesses on the grounds that the parish priest was the more competent judge as to Church marriage law, and that the marriages thus celebrated before him would be public in the highest sense as celebrated and attested "before the face of the Church" as a sacramental act ought to be.

(*f*) At the same time, the Council wished to safeguard the liberty of contract, and refused to enact as a condition of validity that the parish priest should "preside over the marriage," and even though the Ambassadors of the French King were most pressing upon this point, the Church would only consent to require that the marriage should be contracted *in the presence of* the parish priest of the parties, and at least two other witnesses. (Pallavicini, Istoria del Concilio di Trento. V. 8.)

(*g*) The Council of Trent (Session xxiv., c. 1) thus issued the Decree well-known as *Tametsi*, which declared clandestinity to be in future an invalidating impediment to marriage, and that a marriage, *under pain of nullity, must be celebrated in the presence of the parish priest of the contracting parties and at least two witnesses.*

(*h*) As in 1563, when this Decree (*Tametsi*) was made, many countries had already separated from the Church and followed the Reformation, the Council, out of consideration of the difficulties which might be created in non-Catholic Countries, caused that it should be promulgated only in those countries in which the bulk of the population was Catholic, and that in mixed districts it should not come into force until 30 days after promulgation, so that Protestants living in such districts would have time to form themselves into a separate congregation and so exempt themselves from the effect of the promulgation.

(*i*) It thus came to pass that over a large area of the Catholic Church—representing broadly the Catholic nations—the marriage law was regulated by the decree *Tametsi*, and in it marriages of Catholics and mixed marriages not celebrated before the Catholic parish priest were adjudged to be not only sinful but *invalid.*

(*j*) At the same time, over another area—representing broadly the non-Catholic countries or districts—the marriage law continued to be regulated by the Pre-Tridentine legislation, and in it, marriages of Catholics or mixed marriages not celebrated before the Catholic parish priest were adjudged sinful, but *valid.*

(*k*) This latter or non-Tametsi area, in which the Decree of Trent was not promulgated, included England, Scotland, Prussia, and Protestant States of Germany and Cantons of Switzerland Norway, Sweden and Denmark, Turkish Empire, Abyssinia, a great part of the United States, and some parts of Canada.

(*l*) This area was further exteuded by the action of the Holy See. Pope Benedict XIV. issued a Declaration (4th November 1741) to the effect that in the Federated States of Holland and Belgium, the Decree *Tametsi*, although promulgated under Philip II., was to be taken as not promulgated owing to the altered political and religious circumstances of the

country, and that consequently mixed marriages not celebrated before the Catholic priest were to be recognised as valid.

(*m*) This Declaration, known as the Benedictine Declaration, was extended to other countries, viz., to *Ireland* (in 1795), Hungary, Bavaria, Prussian Poland, Russia and Russian Poland, Canada, parts of United States, and certain Catholic districts in Germany and Rhine Provinces.

(*n*) On January 18th, 1906, with a view towards the simplification of the Canon law, in Germany, where the Tametsi and non-Tametsi area was much mixed, the present Pope issued a Bull ("*Provida*"), by which—

1. All marriages between Catholics in the German Empire must, under pain of nullity, be celebrated before the Catholic parish priest, as required by the Decree *Tametsi*.

2. Marriages between Protestants and *mixed marriages are recognised as illicit but valid.*

(*o*) In August 1907, as many questions were found to arise in many parts of the world as to domicile and as to who was the parish priest of the *contracting parties*, and as to delegation of his authority, the Holy See, with a view to meet these difficulties and to simplify the law, issued the Decree *Ne Temere*, by which Catholics can contract marriage before the Catholic parish priest of the *place*, and such celebration is required for Catholics under pain of *nullity*, whether the marriage be between Catholics or a mixed marriage.

(*p*) As only a few months before (January 1906) arrangements had been made with Germany, and a simplification of the law had already been provided under the Bull "Provida," the Holy See, in issuing the Decree *Ne Temere*, exempted from certain provisions as to mixed marriages "any particular place or country "for which the Holy See had otherwise "regulated" (*nisi pro aliquo particulari "loco aut regione aliter a S. Seda sit statu- "tum.*"—Decree *Ne Temere*, XI., 2).

(*q*) More recently (23rd February 1909) the exemption provided for the German Empire has been extended to the Kingdom of Hungary.

(10.) The motives of the Ne Temere Decree have been—

1. To simplify and unify the Catholic marriage law throughout the world, and obviate doubts and uncertainties implicated by the requirements of domicile.

2. To make certain the conditions of espousals, and thus prevent the evils complained of in many parts of the Catholic world, by which innocent girls have been deceived and misled by fictitious or merely verbal promises of marriage.

(11) The following are standard authors upon the subject:—

The New Matrimonial Legislation, by the Rev. T. Crouin, D.D., Vice-Rector of the English College, Rome. 8vo. pp. 340. (R. and T. Washbourne.)

De Forma Sponsalium ac Matrimonii post Decretum "Ne Temere." Rev. Arthurno Vermeersch, S.J., Professor I.C. Lovanii. 8vo. pp. 75. (Lethielleux, Paris.)

Commentarius im Decretum "Ne Temere." Rev. Ludovicus Wouters, C.S.S.R. 8vo. pp. 64. Amsterdam (C. L. Van Langenhuysen).

Le Mariage et les Fiançailles, Commentaire du Décret "Ne Temere," par l'Abbé Boudinhon, professeur à l'Institut Catholique de Paris. 8vo. pp. 132. (Lethielleux, Paris.)

Die Verlobungs-und Eheschliessungsform nach dem Dekrete "Ne Temere." Prof. Leitner. (Regensburg.)

Les Espousales y el Matrimonio Segum la novíssima disciplina. R. P. Ferreres. (Barcelona.)

Breve Commento della nuova legge sugli Sponsali e sul Matrimonio. Cardinal Gennari. (Rome.)

Die neuen eherechtlichen Dekrete "Ne Temere" und "Provida." R. D. Aug. Knecht. (Cologne.)

I. MOYES.

Cathedral Clergy House,
Westminster,
March 10th, 1911.

APPENDIX XV.

NOTE BY SIR JAMES CRICHTON-BROWNE.

In my memorandum submitted, I set forth that to recognise insanity of any kind or duration, as under any circumstances a valid ground for the disruption of the conjugal tie, would, in my opinion, be to encourage imprudence in marriage, conduce to instability of the matrimonial state, and to still further impair the sanctity of family life.

Insanity is simply a bodily disease, manifesting itself in mental derangement, and although by reason of the many disabilities it involves it interferes more than most other diseases with married life, the question is merely one of degree, and if it be once admitted that disabling disease of any kind is to justify divorce, it would, it seems to me, be impossible to continue to draw the line at diseases of the highest nervous centres. To allow any disease, no matter what its nature or extent, to annul a mutual contract explicitly or tacitly acknowledged hitherto by all who enter into it to be "for better and for worse, in sickness and in health," would be, it seems to me, to truckle to selfishness and to undermine those altruistic sentiments which have played so great a part in human progress, and to be in some measure a reversion to the ruthlessness of savage life. It would also be to lift divorce generally into a less objectionable position than it has hitherto occupied by associating it with infirmity, and so reducing the stigma which now attaches to it as being invariably connected with vice.

I do not suggest that anyone contemplating matrimony would make the deliberate calculation "if my "intended husband or wife should hereafter go mad I "can divorce him or her" would weigh. But the knowledge that in such an event divorce would be practicable must in some measure diminish the sense of responsibility with which marriage is and ought to be contracted. To provide remedies for the consequences of rash or inconsiderate conduct is to discount caution and self-control, and to allow divorce on the ground of insanity would be to withdraw one check on injudicious marriage, just in these cases in which in the interests of the community it is most desirable it should be maintained, where, for instance, a family predisposition to insanity exists on one side or on the other, or on both. So all who are capable of looking "before and after," that indissolubility of marriage is one of the guaranties that it will be undertaken with discretion. Just in proportion to the difficulty in setting it aside will, I think, be the circumspection with which its obligations will be undertaken. It is desirable by all possible means to increase care and forethought in marriage selection.

No doubt it is a grievous fate for any man or woman to be bound to a helpmate who is no longer helpful, in some cases to be linked to what is practically a corpse; but sadness and suffering wait on all forms of disease and are not without their compensations, for they often elicit and foster fine moral qualities. I have seen many instances of most touching and heroic devotion displayed by a wife towards a husband, or a husband towards a wife, stricken with life-long insanity. The faithfulness of sane towards insane spouses has been in my experience quite remarkable, and I do not believe that if divorce on account of insanity were legalised to-morrow it would be taken advantage of to any considerable extent. A few selfish, heartless, or indifferent persons might avail themselves of the opportunity of shaking off their bonds, but I am under the impression that the demand for divorce in insanity

has arisen not so much from those who suffer from existing limitations, but from doctrinaire reformers, and short-sighted philanthropists. And that social sentiment, amongst the humble classes at any rate would be against it and restrict resort to it.

It is unquestionably hard that a man of perhaps straitened means, or a wage earner, should have to contribute for years to the maintenance of an insane wife in an asylum, while he has also to pay for supplying her place in the household. But it would be hard, also, that he should be able by divorce to throw on the rates the cost of maintenance of his lawful wedded wife simply because she is suffering from incurable disease; and if divorce on the ground of insanity did not carry with it relief from maintenance charges, then I believe it would be but little resorted to by the humble classes. It is hard that a father perhaps in straitened circumstances has to contribute to the support of a child in a lunatic asylum, and that a son should have to contribute to the support of a father, but I have not heard it suggested that filial and paternal obligation should be wiped out by mental disease.

But whatever might be the relief, pecuniary or domestic, afforded to a few husbands and wives of chronic lunatics, what would be the effect of such legislation on their children where there are any? Disastrous I do not doubt. Childreu often remain tenderly attached to an insane parent, even after years of insanity, and would resent divorce as an indignity to that parent and to themselves. Constant suspicions as to the sane parents' intentions would be introduced into family circles, and when effect was given to these intentions, the family circle would sometimes be broken up. The position of the unoffending children would often be painful and intolerable, and the difficulty of the stepmother's rôle would be considerable. And what would be the effect of such legislation on the insane generally? Disastrous, again, I feel sure. It would deepen the shadow that already rests and must always rest on our lunatic asylums, and would add a new slur and pang to insanity, already opprobrious and distressing enough. Many lunatics, and especially recent and acute cases are hypersensitive, and the possibility of divorce in course of time would in many instances mingle with their delusions, and retard their recovery, if indeed it did not prevent it altogether. In case of divorce proceedings being taken on the ground of insanity it would, I presume, be necessary to serve notice on the lunatic from whom divorce was sought. In a number of cases the notice or citation would not be understood or attended, but there are many chronic lunatics who, although lunatic, would be able to grasp its meaning, and to them it would be an aggravation of their sufferings. Some of them entirely denying their own insanity would regard it as a wanton outrage. Although insanity is for the most part highly egotistic, some chronic lunatics retain undimmed their family affections, and to them the divorce notice would be humiliating, distressing, and cruel.

If insanity is to justify divorce then à fortiori, dipsomania and habitual drunkenness should do so, as in their etiology there is generally more of a voluntary element. In some of the United States drunkenness is accepted as a ground for divorce. The insurmountable difficulty must be to determine what constitutes habitual drunkenness? What frequency of intoxication amounts to it. I have known spells of habitual drunkenness with complete recovery. In many cases to divorce and disgrace the alleged habitual drunkard would be to extinguish saving grace and seal his or her ruin where that was not already sealed.

As regards divorce generally—apart from lunacy—I am not entitled to express an opinion any more than the man in the street, but I cannot help thinking that instead of allowing greater laxity in divorce and popularising it, the sound policy in the long run would be to abolish it altogether, and to hold men and women to their matrimonial bargains, however foolish or bad they may be. I am aware that that is not at present within the range of practical politics. The abolition would, in many cases, cause hardship and misery, but it is expedient that a few hundreds should suffer for the people. The trend of public opinion is, I suppose, at present, in the opposite direction, towards giving greater facilities for divorce, and granting it on grounds not hitherto recognised. That there is some lowering and materialization of the conception of marriage is, I think, indicated by the continuous decrease during the last 60 years of marriages solemnized in places of worship; and by the continuous increase of civil marriages in the office of the Superintendent-Registrar.

Increased facilities for divorce would, I fear, put the thought of it in the minds of married people when it would not otherwise occur to them on trifling differences and irritations. One becomes reconciled to the inevitable but is prone to fidget under terminable worries.

No doubt pitiful blunders are made in entering into the marriage contract, unforeseen difficulties are encountered, cruel desecrations of its vows and abandonment of its most hallowed duties occur. In many cases unspeakable individual relief would be afforded by the judicial severance of its bonds, and yet, from my point of view, it would be for the benefit of the community at large that it should be held inviolable. Nothing should, in my opinion, be done to weaken its obligations, or diminish its solemnity, for the easier the annulment is made, the more lightly will it be covenanted, the less scrupulous will be the observance of these conditions upon which its success and happiness depend. This has, I understand, been found to be the case in these American states, in which divorce has been made cheap and easy.

Ideals still count for much, and our object should be to idealise marriage, and raise it above the level of mere actual cohabitation, or a business co-partnery. It is a good old superstition that the wedding ring should never be taken off, as a symbol of fixity of tenure.

The total abolition of divorce would put an end to these suggestive and prurient newspaper reports of divorce cases which are admittedly pernicious in their effects.

APPENDIX XVI.

RETURNS SUPPLIED TO THE COMMISSION BY THE SECRETARY OF STATE FOR FOREIGN AFFAIRS AS TO LAW AND PRACTICE WITH REFERENCE TO THE PUBLICATION OF REPORTS IN CERTAIN FOREIGN COUNTRIES.

Royal Commission on Divorce and
Matrimonial Causes,
Winchester House,
21, St. James's Square,
January 12th, 1910.

SIR,

I HAVE been directed to ask whether you will be good enough to cause inquiries to be made in foreign countries as to "whether there are any, and if "so, what laws, regulations, or rules dealing with the "publication in the public Press of reports of pro-"ceedings in divorce and matrimonial causes," since the question of the publication in the Press of such reports in this country is one which has been referred to this Commission for consideration, and it is deemed of importance to know what are the provisions of other countries with reference thereto. Annexed is a list of those countries as to the laws of which I venture to suggest inquiries might be made, the result of which would be of considerable assistance to this Commission.

I am also desirous of obtaining the same information with regard to the various States of the United States of America. With regard to this Mr. Secretary Gladstone has recently supplied for the use of the Commission a "Special Report of the Census Office—Marriage and Divorce, 1867–1906," prepared by the Department of Commerce and Labour Bureau of the Census at Washington, and I apprehend that probably

that department would, on inquiries being made of it, be able and willing to supply the required information, and this appears to me to be the most convenient method by which it can be obtained. I am not, however, sure whether a request of this character should be addressed to you or to Mr. Secretary Gladstone. Perhaps you will be good enough to inform me whether the above suggestion appears feasible, and, if so, with whom I ought to communicate with the view of attaining that object.

I am, Sir,
Your obedient servant,
(Signed) H. GORELL BARNES,
Secretary.

The Under Secretary of State for Foreign Affairs,
Foreign Office,
Whitehall, S.W.

Austria-Hungary.	Norway.
Belgium.	Portugal.
Denmark.	Russia.
France.	Spain.
Germany.	Sweden.
Greece.	Switzerland.
Italy.	United States.
Netherlands.	

Foreign Office,
SIR, January 18th, 1910.

I AM directed by Secretary Sir E. Grey to acknowledge the receipt of your letter of the 12th instant, requesting that inquiries may be made in certain foreign countries as to "whether there are any, "and if so, what laws, regulations, or rules dealing "with the publication in the public Press of reports of "proceedings in divorce and matrimonial causes."

In reply, I am to inform you that, in accordance with your request, His Majesty's representatives at Vienna, Brussels, Copenhagen, Paris, Berlin, Athens, Rome, The Hague, Christiania, Lisbon, St. Petersburg, Madrid, Stockholm, and Berne have been instructed to furnish a report on any laws, regulations, or rules concerning this subject which may exist in the country to the Government of which they are accredited.

I am to add that His Majesty's Ambassador at Washington has been instructed to inquire of the United States Government whether the information desired by the Royal Commission can be obtained with regard to the various States of the Union.

I am, Sir,
Your most obedient humble servant,
(Signed) W. LANGLEY.

The Secretary,
Royal Commission on Divorce and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

AUSTRIA.

Consular, No. 3.
SIR, Vienna, January 26th, 1910.

WITH reference to your circular despatch of this series of the 18th instant, I have the honour to report that, according to the law of Austria, all divorce and matrimonial causes must take place in public, and the proceedings may consequently be published in the Press.

Exceptions to this rule are, however, provided for in the following paragraph (section 172 of the Law No. 113 of August 1, 1895), which runs as follows:—

"The proceedings are not to be conducted in public, if morality or public order appear to be endangered thereby, or if there is reasonable ground for apprehension that publicity may be misused with the object of disturbing the proceedings or of interfering with the conduct of the case.

"The Court may moreover on the appeal of one only of the parties exclude the proceedings from publicity if private family affairs have to be proved or discussed in order to settle the dispute.

"Publicity may be excluded for the whole or part of the proceedings; but in every case the verdict must be given in public. In so far as publicity is excluded from the proceedings the publications of those proceedings is also forbidden."

It will thus be seen that the advisability of conducting any proceedings in private lies within the jurisdiction of the Court. The publication in the Press of any such proceedings is punishable under section 309 of the Austrian Penal Code by imprisonment from one to three months. Any proceedings not conducted in private may be published without restriction in the Press.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) FAIRFAX L. CARTWRIGHT.

The Right Hon. Sir E. Grey, Bart., M.P.,
&c. &c. &c.

BELGIUM.

Consular, No. 7.
SIR, Brussels, January 20th, 1910.

WITH reference to your circular despatch of this series (1436) of the 18th instant with regard to the publication in the public Press of reports of proceedings in divorce and matrimonial causes, I am informed by the Legal Adviser to His Majesty's Legation that there are no special laws or regulations in Belgium on this subject. The Press being free, any journalist may report what is said in *open* court, though if the report is incorrect the damaged party can bring an action against the paper. As a rule the Belgium Press does not report divorce cases unless they present a real and special public interest, and even then the names are not mentioned. The witnesses in Belgian divorce cases are heard *in camera*, and therefore no report of their evidence can get into the Press unless a lawyer gives it, which is entirely against the etiquette of the Bar, and there is believed to be no instance of such a thing happening.

I should point out that divorces are frequently granted in Belgium for incompatibility of temper or by mutual consent, and these cases being undefended give no opportunity for Press reports.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) ARTHUR H. HARDINGE.

The Right Hon. Sir E. Grey, Bart., M.P.,
&c. &c. &c.

DENMARK.

Consular, No. 5.
SIR, Copenhagen, February 21st, 1910.

WITH reference to your circular despatch in this series (1436/10) of the 18th ultimo, requesting information as to whether any "laws, regulations or "rules dealing with the publication in the public "Press of reports of proceedings in divorce and "matrimonial causes" exist in Denmark, I have the honour to enclose, herewith, copy of a note which I have received from Monsieur Scavenius, stating that there are no laws or regulations of that nature in Danish legislation.

His Excellency proceeds to explain that in Denmark matrimonial causes are very seldom carried before the courts of law, divorces being pronounced by the administrative authorities.

I have the honour to be, with the highest respect.
Sir,
Your most obedient, humble servant.
(Signed) ALAN JOHNSTONE.

The Right Hon. Sir E. Grey, Bart., M.P.,
&c. &c. &c.

Enclosure in Sir A. Johnstone's No. 5 Consular of February 21st, 1910.

Copenhague, le 19 février 1910.

MONSIEUR LE MINISTRE,

PAR sa note en date du 23 janvier dr. M. Vaughan a exprimé le desir de savoir si en Danemark il y a des règles et prescriptions à l'égard de la publication dans la presse des rapports sur la procédure dans les causes matrimoniales.

En réponse, j'ai l'honneur de vous faires connaître qu'il n'existe pas de règles ou prescriptions de cette nature dans la legislation danoise. Cela s'explique par le fait que les litiges matrimoniaux ne sont portés devant les tribunaux que très rarement.

En effet, les divorces sont soumis—pour la plupart—à la décision administrative et les séparations de corps et de biens ne trouvent leur solution que par cette voie. En outre est à remarquer que dans les rares cas où une affaire de divorce est portée devant les tribunaux, la procédure n'est orale qu'à la cour suprême, et que cette cour est autorisée à décréter le huit-clos lorsqu'elle le juge convenable.

Veuillez agréer, &c.,

(Signed) ERIK SCAVENIUS.

Sir Alan Johnstone,
Ministre de Sa Majesté Britannique.

FRANCE.

Consular, No. 5.

SIR, Paris, January 27th, 1910.

IN compliance with the instructions contained in your circular despatch of this series of the 18th instant (1436/10), I have the honour to transmit to you herewith a memorandum in regard to the laws and regulations in force in France in regard to the publication in the public Press of reports of proceedings in divorce and matrimonial cases.

I have the honour to be, with great truth and respect, Sir,

Your most obedient, humble servant,

(Signed) FRANCIS BERTIE.

The Right Hon. Sir Edward Grey, Bart, M.P.,
&c. &c. &c.

MEMORANDUM.

Publication in the Press of Proceedings in Divorce and Matrimonial Causes in France.

The publication in the Press of proceedings in divorce causes is prohibited by Article 239 of the Civil Code, which states that:

> "The publication in the Press of proceedings in actions for divorce is prohibited under penalty of a fine of from Fr. 100 (4*l.*) to Fr. 2,000 (80*l.*) as provided by Article 39 of the Law of July 30, 1881."

This is the principal law relating to the Press, and Article 39 is worded as follows:—

> " . . . . In all civil causes the Courts and Tribunals may prohibit the report of the proceedings. Such prohibition shall not be applicable to the judgments, which may always be published. It is similarly forbidden to report the private deliberations of the jury or of the Courts and Tribunals. Every infraction of these provisions is punishable by a fine of from Fr. 100 to Fr. 2,000."

This prohibition is made applicable to actions for separation by Article 307 of the Civil Code.

In either case the publication is permitted of all judgments, either preparatory, interlocutory or on the merits, and it has been held that it is also permissible to publish such portions of the pleadings as may be of interest from a juridical point of view.

Applications for the conversion of judgments of separation into judgments of divorce are argued in Chambers to which the public is not admitted.

The Tribunal in whose jurisdiction publication has taken place is alone competent to deal with infractions of the laws above-mentioned.

Paris, January 27th, 1910.

GERMANY.

Consular, No. 14.

SIR, Berlin, March 2nd, 1910.

WITH reference to your circular despatch (1436/10) of the 18th January last, relative to the regulations in force in Germany dealing with the publication in the public Press of reports of proceedings in divorce and matrimonial causes, I have the honour to inform you that I have received a Note Verbale from the Imperial Foreign Office in reply to the enquiry which I addressed to them on the subject.

The Note Verbale states that, in the absence of special Imperial legal regulations, Press reports of Divorce Court proceedings are only subject to the general provisions laid down in the Criminal Code (*Strafgesetzbuch*). In this connection section 184*b* may be noted, by which a fine not exceeding 300 marks or imprisonment not exceeding six months is inflicted for the publication of legal proceedings which, for the sake of public morality, have been held *in camera*, or for publishing from official documents connected with these proceedings anything which may be of a vexatious nature.

I have the honour to be, with the highest respect, Sir,

Your most obedient, humble servant,

(Signed) W. E. GOSCHEN.

The Right Hon. Sir Edward Grey, Bart., M.P.,
&c. &c. &c.

GREECE.

Consular, No. 4.

SIR, Athens, February 15th, 1910.

IN reply to your circular despatch of this series of the 18th ultimo, inquiring "whether there are any, "and if so, what laws, regulations, or rules dealing with "the publication in the public Press of reports of "proceedings in divorce and matrimonial causes," I have the honour to report that there are no such laws, regulations, nor rules in Greece.

Article 14 of the Constitution, however, provides that any person has the right to publish his opinions . . . . in the Press, provided only that he observe the laws of the State, while Article 21 of the Press Law of the 6th/18th of September 1833 prohibits the publication of anything hurtful to religion or to public morals.

It would seem that it would thus be possible under the combined provisions of the Constitution and the Press Law of 1833 to suppress the publication of reports of proceedings in divorce cases on the ground of their being harmful to public morals, but I may state that in the course of my long experience in this country I cannot remember ever having seen such reports in the newspapers.

I have the honour to be, with the highest respect, Sir,

Your most obedient, humble servant,

(Signed) F. ELLIOT.

The Right Hon. Sir Edward Grey, Bart., M.P.,
&c. &c. &c.

ITALY

Consular, No. 7.

SIR, Rome, April 4th, 1910.

WITH reference to your circular despatch consular of January 18th, I have the honour to enclose herewith a translation of a note which I have received from the Italian Government containing the desired information with regard to the laws and regulations dealing with the publication in the Press of proceedings in matrimonial causes.

The information has reference only to causes for judicial separation, as there is no divorce in Italy.

I have the honour to be, with the highest respect, Sir,

Your most obedient, humble servant,

(Signed) RENNELL RODD.

The Right Hon. Sir E. Grey, Bart., M.P.,
&c. &c. &c.

(Translation.)

Rome, March 22nd, 1910.

MONSIEUR L'AMBASSADEUR,

WITH reference to the note of January 21st last, in which your Excellency desired from me information in regard to the rules which in Italy govern the publication of reports of proceedings in suits for legal separation between married persons, I have the honour to make the following communication :—

It is necessary first of all to point out that a distinction is drawn in regard to proceedings with a view to personal separation between married persons, according as to whether it is a question of voluntary separation (Civil Code, Article 158; Code of Civil Procedure, Article 811), or of contentious proceedings (Civil Code, Article 149 and following; Code of Civil Procedure, Articles 806–810). In the case of both these classes of proceedings, the president of the tribunal has to hear the parties and endeavour to reconcile them; this takes place without any publicity, the parties being forbidden even to invoke the assistance of solicitors or of counsel. If a reconciliation is effected a procès verbal of the same is drawn up and signed by the parties concerned, the president, and the clerk. Otherwise, if it is a question of voluntary separation, the failure of the attempt at reconciliation is recorded in the procès verbal, and the tribunal, sitting *in camera*, is called upon to ratify the separation mutually agreed to. Only in the case of contentious proceedings, after the effort to reconcile has failed, does the president remand the parties to a public hearing of the court.

Consequently there is no special regulation in Italy governing the publication in newspapers of reports of separation proceedings. A provision of a general nature (Article 10 of the Edict regarding the Press, 26th March 1848, No. 695) only forbids the publication of trials before magistrates or courts, which have taken place with closed doors in virtue of Article 52 of the Code of Civil Procedure, which provides that "when publicity may be dangerous to "public order or morals by reason of the nature of "the case . . . . the judicial Authority, on the request "of the public prosecutor or of its own motion, order "the discussion to take place with closed doors. The "measure is announced in public audience, and "inserted, together with the reasons for its adoption, "in the procès verbal of the hearing." This provision, however, concerns the discussion and not the sentence, which has to be read in public audience (Article 366 of the Code of Civil Procedure) and of which a copy can be obtained even by those who are not parties to the suit (Code of Civil Procedure, Article 913 and Article 916). Consistently with this provision, Article 72 of the general regulations for the Archives of State (Royal Decree of September 9, 1902, No. 445) states that "the sentences and rulings of "magistrates . . . . are public, whatever be their "nature."

As regards documents produced by the parties before a magistrate, Article 32 of the above-mentioned Press Edict provides that "no action shall lie in "respect of the publication of documents produced "before the Courts. The magistrate or Court, pro-"nouncing on the merits of the case, can order the "suppression of harmful documents and can declare "the guilty party responsible for damages." Analogously it is laid down by the Code of Civil Procedure, Article 63, that "the judicial Authority can, according "to the circumstances, order, on its own initiative, "the suppression or cancellation of documents offensive "or contrary to public order or morals."

I avail, &c.

(For the Minister),

(Signed) BOLLATI.

NETHERLANDS—LUXEMBURG.

Consular, No. 6.

SIR, The Hague, February 16th, 1910.

UPON receipt of your circular despatch (1436/10) of this series of the 18th ultimo, I did not fail to apply to the Netherland and Luxemburg Governments for information as to the provisions which might exist in the Kingdom and Grand Duchy respectively regarding regulations or rules dealing with the publication in the Press of reports of proceedings in divorce and matrimonial causes.

Monsieur de Swinderen informs me, in reply, that no provisions exist in the Netherlands of the nature indicated. Matters concerning divorce and separation are dealt within closed doors, so that it is impossible to publish reports of the proceedings in the Press.

In the Grand Duchy of Luxemburg, too, Monsieur Eyschen states, no law, regulation, or statute exists regarding the publication of such matters in the Press.

I have the honour to be, with the highest respect,

Sir,

Your most obedient, humble servant,

(Signed) GEORGE W. BUCHANAN.

The Right Hon. Sir Edward Grey, Bart., M.P.,

&c. &c. &c.

NORWAY.

Consular, No. 3.

SIR, Christiania, March 3rd, 1910.

I HAVE the honour to transmit to you herewith translation of a Memorandum which I have received from the Norwegian Government supplying the information called for in your circular despatch of this series (1436) of January 18th last, on the subject of the laws, regulations, or rules in force in Norway dealing with the publication in the public Press of reports of proceedings in divorce and matrimonial causes.

I have the honour to be, with the highest respect,

Sir,

Your most obedient, humble servant,

(Signed) ARTHUR HERBERT.

The Right Hon. Sir E. Grey, Bart., M.P.,

&c. &c. &c.

Enclosure in Sir A. Herbert's No. 3 Consular of March 3rd, 1910.

MEMORANDUM.

On Norwegian Regulations, &c., regarding the Publication in the Press of Reports on Matrimonial and Divorce Causes.

No special regulations exist regarding such publication; in this country divorces are, as a rule, granted by Royal licence. According to the rescript of August 19, 1735, cfr. the High Court Law of September 12, 1818, Para. 8, civil cases in general are, however, subject to the rule that the trials are to be held with closed doors if the matter can give rise to "scandal" or "offence." In Para. 11 of the new law of August 20, 1909, regarding facilities for the dissolution of marriages, it is also stated that trials of such cases shall always be held with closed doors. A further rule exists with regard to all civil cases, according to which none but persons concerned shall have access to the documents.

In the second section of Para. 128 in the Bill regarding Courts of Justice which has this year been laid before the Storthing, it is determined that trials of matrimonial causes (*i.e.*, causes dealing with the invalidity, the continuance, or the dissolution of marriages) shall be held with closed doors.

Para. 131 also contains the following rule: "If a "trial is held with closed doors and the Court should "consider it advisable that the proceedings or any "portion of them should for special reasons be kept "secret until further notice or altogether, the Court "shall enjoin those present, to this effect."

PORTUGAL.

Consular, No. 4.

SIR, Lisbon, December 6, 1910.

WITH reference to your Consular despatch (41050/1910) of the 16th ultimo, I have the honour to state that I have not succeeded in obtaining complete information as to the rules and regulations which deal with the publication in the Portuguese press of reports of proceedings in divorce and matrimonial causes.

Senhor Villaça, who was Minister for Foreign Affairs in February last, returned a reply to my enquiries which seemed to contain a contradiction, and I have not yet been able to clear up some doubtful points. I have now addressed a note to Senhor Bernardino Machado, who will, I hope, furnish without delay the explanations for which I have asked.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) F. H. VILLIERS.

The Right Hon.
Sir E. Grey, Bart., M.P.,
&c., &c., &c.

Consular, No. 2.

SIR, Lisbon, February 25, 1911.

I REGRET to state, with reference to my despatch, No. 4 Consular of December 6, that I have not been more successful with Senhor Bernardino Machado than with his predecessors in my endeavour to obtain clear information in regard to the rules and regulations respecting publication in the Portuguese press of proceedings in divorce and matrimonial causes. I understand that the Royal Commission have practically concluded their labours and do not intend to receive further evidence, so I imagine that it is not worth while to pursue the matter further with the Portuguese Government.

The copies of correspondence which I enclose show what has passed. Notes are annexed upon the various Articles of the Codes, &c., to which allusion is made.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) F. H. VILLIERS.

The Right Hon.
Sir Edward Grey, Bart., M.P.,
&c., &c., &c.

Enclosure No. 1 in Sir F. Villiers' No. 2 Consular, of February 25, 1911.

His Britannic Majesty's Legation,

YOUR EXCELLENCY, Lisbon, February 7, 1910.

I HAVE the honour, by direction of Sir Edward Grey, to inform you that the Royal Commission on Divorce and Matrimonial Causes have expressed a desire that enquiries should be made in certain foreign countries as to whether there are any, and if so what, regulations or rules dealing with the publication in the press of reports of proceedings in divorce and matrimonial causes.

I am aware that no law of divorce is contained in the Portuguese Code, but it occurs to me that provision may be made with regard to the publication in the Portuguese press of divorce proceedings instituted in countries other than Portugal, and I shall be much obliged, should this be the case, if Your Excellency will furnish me with copies of the regulations in force.

I avail, &c.,
(Signed) F. H. VILLIERS.

His Excellency
Senhor Eduardo Villaça,
&c., &c., &c.

Enclosure No. 2 in Sir F. Villiers' No. 2 Consular of February 25, 1911.

(Translation.) Ministry for Foreign Affairs,

YOUR EXCELLENCY, Lisbon, February 22, 1910.

IN reply to the note which you were good enough to address to me on the 7th instant, I have the honour to inform Your Excellency that the Portuguese Code of Civil Procedure provides for secrecy with regard to the ground of action in causes for matrimonial separation; but no provision is made as regards the publication in the press of any facts or circumstances connected with such actions instituted either here or abroad except in cases of defamation, calumny or abuse, which are punishable under the Penal Code and the law of the 11th of April 1907.

I avail, &c.,
(Signed) EDUARDO VILLAÇA.

The Hon.
Sir Francis H. Villiers,
&c., &c., &c.

Enclosure No. 3 in Sir F. Villiers' No. 2 Consular of February 25, 1911.

(Translation.)

In continuation of the note of the 22nd of February last, the Minster for Foreign Affairs has the honour to inform Sir Francis Villiers that the legal provisions which in this kingdom enforces secrecy with regard to the grounds of action in causes for matrimonial separation, are contained in Articles 64, 67, 461, 464, 468 and 470 of the Code of Civil Procedure; and cases in which publicity may involve criminal accusation, defamation, calumny or abuse are dealt with in Articles 407 to 412 and 414 to 420 of the Penal Code, to which reference is made in Article V. of the law of the 11th of April 1907.

Lisbon, April 1, 1910.

Enclosure No. 4 in Sir F. Villiers' No. 2 Circular of February 25, 1911.

His Britannic Majesty's Legation,

YOUR EXCELLENCY, Lisbon, December 6, 1910.

ON the 7th of February last I informed Senhor Villaça, in accordance with instructions received from Sir Edward Grey, that the British Royal Commission on Divorce and Matrimonial Causes had expressed a desire that inquiries should be made in certain foreign countries as to whether there are any, and if so what, regulations or rules dealing with the publication in the press of reports of proceedings in such causes.

I was aware, of course, that at that time no law of divorce was contained in the Portuguese Code, but it occurred to me that regulations dealing with the publication in the Portuguese press of divorce proceedings instituted in countries other than Portugal might be in force, and I requested, if this were the case, to be furnished with copies of the regulations.

Senhor Villaça replied on the 22 of February that the Portuguese Code of Civil Procedure provided for secrecy with regard to the ground of action in causes for matrimonial separation, but that no provision was made as regards the publication in the press of any facts or circumstances connected with such actions instituted either here or abroad except in cases of defamation, calumny, or abuse, which were punishable under the Penal Code and the law of April 11th, 1907.

I pointed out to Senhor Villaça that this answer apparently contained a contradiction—the Code provided for secrecy, though no provision was made, except the risk of penalty, as regards the publication of facts or circumstances in the press—but I was unable, in spite of repeated requests, to obtain any more precise information than that contained in a note of the 1st of April, which called my attention to various Articles in the Civil and Penal Codes.

I have now received a despatch from Sir Edward Grey referring to my instructions, and I must therefore address Your Excellency on this matter. The particulars with which I would beg to be furnished are:—

1. Whether causes for matrimonial separation are always heard in camera, or whether the public and representatives of the press are admitted.

2. Whether the Codes provide any means of enforcing secrecy (*a*) as to proceedings in court or as to facts and circumstances if the public and the press are admitted, or (*b*) as to facts and circumstances which may by any means come to the knowledge of the press, or, whether the newspapers are at liberty in any case to publish facts and circumstances of

which they may become cognizant, subject only to the risk of penalty for defamation, calumny, or abuse, under the Penal Code and the Press Law.

I avail, &c.

(Signed) F. H. VILLIERS.

His Excellency
Senhor Bernardino Machado.
&c., &c., &c.

Enclosure No. 5 in Sir F. Villiers' No. 2 Consular of February 25, 1911.

His Britannic Majesty's Legation,
Lisbon, January 14, 1911.

YOUR EXCELLENCY,

I OBSERVE that the decree respecting the law of marriage published in the Diario do Governo of the 27th ultimo prohibits in Article XXIX. the publication of the evidence in proceedings for nullity or annulment of marriage, with the exception of the sentence, and prescribes certain penalties for offences against this prohibition.

I shall be glad if Your Excellency will let me know whether this furnishes a complete reply to my note of the 6th ultimo, and to my previous communications respecting the information required by the British Royal Commission on Divorce and Matrimonial Causes. I venture to ask for an early reply, as my original enquiry on this matter was made nearly a year ago.

I avail, &c.

(Signed) F. H. VILLIERS.

His Excellency
Senhor Bernardino Machado,
&c., &c., &c.

Enclosure No. 6 in Sir F. Villiers' No. 2 Consular of February 25, 1911.

(Translation.) Ministry for Foreign Affairs,
Lisbon, January 28, 1911,
(Received February 14, 1911.)

YOUR EXCELLENCY,

I HAVE before me your notes of the 6th of December last and 14th instant, in which Your Excellency, in referring to previous correspondence between your Legation and this Department of State, expresses the desire to have fuller information respecting the legal provisions by which in this country secrecy is observed with regard to proceedings in cases for matrimonial separation, divorce and annulment of marriage.

As regards proceedings for separation—both of persons and property—the provisions of the Code of Civil Procedure, Articles 64, 67, 461, 464, 468 and 470, are applicable, and these, in the case of divorce, correspond to Articles 8 and 19 of the decree of November 3rd, 1910.

In view of the provisions of Article 5 of the Penal Code, the penalty prescribed in Article 29 of the decree No. 1 of December 25th, 1910, is applicable only in cases of proceedings for nullity or annulment of marriage.

The application of the penal law and of the decree of the 28th of October 1910, regarding liberty of the press, to cases of publication of evidence in divorce proceedings or in cases of separation of persons and property, depends on the circumstances of the case which the tribunals alone are competent to determine.

I avail, &c.

(Signed) BERNARDINO MACHADO.

The Hon. Sir Francis H. Villiers,
&c., &c., &c.

Code of Civil Procedure.

Article 64.—The registrar or the secretary may issue certified copies of all judicial acts and statements without the previous sanction of the judge.

§ 1. Exception is made with regard to:—

1. . . . . .
2. Procès verbaux in actions for matrimonial separations of persons and division of property, of which only certified copies may be taken, pursuant to the judge's order, of such parts as relate to alimony, as well as of the report of the decision of the family council and of the sentence approving such decision, or of the judgment of the action or any of its points.

Article 67.—Registrars or secretaries shall not refuse the examination by any person at the registrar's office of procès verbaux either pending or on which judgment has been pronounced.

§. An exception is made in the case of procès verbaux for separation; these may only be shown to the parties thereto and their attorneys; . . . . . .

**Article* 461.—Cases shall be tried in camera, and the following precedure shall be observed:—†

. . . . . .

Article 464, *sub-clause* 3.—The depositions of the parties, the examination of witnesses, and the discussions shall be held in camera.

Article 468.—Final decisions shall be published and announced in the manner provided for in Article 448, the names and residences of the parties, whether the separation was authorised or not, and what effect it has produced on the property, only being declared.

(Sub-article of Article 448 states that the notices to be published shall only declare the names and residences of the parties and the nature of the action, the grounds therefor being omitted.)

Article 470.—The action having been definitely decided, all depositions which do not deal with alimony shall be destroyed in the presence of the judge and Crown prosecutor, an act thereof being drawn up to be kept with the procès verbal.

Penal Code.

Articles 407 to 412 and 414 to 420 provide generally for penalties in cases of criminal accusation, &c., and do not refer specially to matrimonial causes.

Law of April 11th, 1907.

This is the press law passed in the time of Senhor João Franco. Article V. lays down certain offences, among which are defamation, calumny, &c.

Decree of November 3rd, 1910.

A summary of this law instituting divorce was forwarded in my despatch, No. 69, of November 19th, 1910.

Article VIII. provides that the sentence shall not describe the nature of the case or the evidence, but shall mention without comment the names of the parties, the causes of action, the law applicable to the case, and the grounds of decision.

Article XIX. provides that the sentence shall be published in the Official Gazette and in local papers.

Decree of December 25th, 1910.

A translation of this Decree was forwarded in my despatch, No. 3, of January 11th. Article 29 prohibits the publication of the evidence in the proceedings for nullity or annulment of marriage with the exception of the sentence.

Penal Code.

The following is a translation of Article V.:—

"Any fact, consisting of an act or of an omission, shall not be considered as a criminal offence until it has been qualified as such by a previous law.

Decree of October 28th, 1910.

This is the new press law, which re-enacts more or less the penalties for defamation, &c., prescribed in the former law.

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* This article and the three following Articles relate to separation cases.

† The remainder of the Article refers to procedure only.

PORTUGUESE DECREE OF DECEMBER 25, 1910.

(Translation.)

Article 29.—The publication in any way of the evidence in the proceedings for nullity or annulment of a marriage, with the exception of the decision, is hereby prohibited, and the offenders will be subject to the penalties mentioned in Articles 407* and 410† of the Penal Code and in the decree of October 28, 1910, as the case may be.

RUSSIA.

Consular, No. 4.

SIR, St. Petersburg, January 27th, 1910.

ON the receipt of your circular despatch (1436/10) of this series of January 18th last I caused inquiry to be made of the Legal Adviser of this Embassy with regard to the laws, regulations or rules existing in Russia on the subject of the publication in the Press of reports of proceedings in divorce and matrimonial causes.

I am informed that the Russian Penal Code (Article 1038 (1), Vol. XV. of the "Corps des Lois") and the Press and Censure Statute (Article 78, Vol. XIV. of the "Corps des Lois") forbid the publication of all reports of proceedings which are conducted "*in camera.*" As the proceedings of the Ecclesiastical Consistories, to whom jurisdiction in divorce cases is assigned, are conducted "*in camera,*" it follows that the publication of any details in divorce proceedings constitutes a penal offence.

With regard to other matrimonial cases, it is enacted by Article 325 (1) of the Code of Civil Procedure that suits for the maintenance of illegitimate children should be held "*in camera.*"

Lastly, in virtue of Article 325 of the Code the tribunal may decide that proceedings be held in "*in camera*" if it considers that publicity would be prejudicial to religion, order, and public morals, and according to Article 326 the same procedure may be followed if the two parties to the suit express a desire to that effect, and if the tribunal consider it admissible.

In all these cases the fact of proceedings being held "*in camera*" makes it illegal for the public Press to publish any details of them.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) A. NICOLSON.

The Right Hon. Sir Edward Grey, Bart., M.P.,
&c. &c. &c.

SPAIN.

Consular, No. 2.

SIR, Madrid, January 28th, 1910.

I DULY received your circular consular of the 18th instant inquiring whether there are any, and if so, what laws, regulations, or rules dealing with the publication in the public Press of reports of proceedings in divorce and matrimonial causes.

In reply, I have the honour to inform you that civil divorces are very rare in Spain, and that there are no special rules regarding the publication of proceedings connected with them. Generally speaking, the newspapers may publish anything they hear in the public sessions at the Law Courts, but if the president of the court thinks that anything not fit for publication is about to take place, he may close the court and further proceedings remain secret.

In Ecclesiastical Courts divorce cases are generally heard with closed doors.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) MAURICE DE BUNSEN.

The Right Hon. Sir Edward Grey, Bart., M.P.,
&c. &c. &c.

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* Four months' imprisonment and fine.
† Two months' imprisonment and fine.

SWEDEN.

Consular, No. 6.

SIR, Stockholm, February 24th, 1910.

WITH reference to your circular despatch of this series of the 18th ultimo, I have the honour to transmit to you herewith a translation of a Memorandum on the rules and regulations in force in Sweden respecting the publication of proceedings in divorce and matrimonial causes, which has been furnished me by the Swedish Government.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) CECIL SPRING RICE.

The Right Hon. Sir E. Grey, Bart., M.P.

Duplicate Enclosure in Sir C. Spring Rice's
Consular, No. 6.

MEMORANDUM.

(Translation.) Stockholm.

According to section 2, paragraph 4, of the statute in force respecting the liberty of the Press, it is expressly allowed, subject to the exceptions and conditions hereinafter mentioned, that all proceedings, protocols and decisions, of whatever designation or character they may be, in any trial coming before the Swedish courts, may be published in the general Press. In the same provision it is further laid down that the courts shall give information without delay concerning the proceedings in question to anyone who asks for it; and that everybody, whether he is concerned in the trial or not, shall have free access to the archives of the court so as to be able to take a copy of the proceedings. Copies of the latter may also be obtained on payment of a fee.

With regard to the restrictions which exist to the right to publish the proceedings in question, the following should be noted.

A party to a trial has a full right, before sentence or judgment is pronounced, to publish according to his own choice the petition, complaint, and the accusation. But it is incumbent on such party to make public at the same time, by means of the Press, the declarations of the opposing party together with the pronouncement of the court thereon and the opinions of the individual judges, so that all that is necessary for a full comprehension of the case itself, of its course and result, may come to the knowledge of the public.

Anyone who has a case pending in court has a right to have a report printed—called the "species facti," *i.e.*, a short and accurate written account of the nature and course of the trial. But he must confine himself to what is true and proper.

It is further laid down that the protocols and proceedings in cases under the Criminal Act which have been settled by compromise, among which in some respects are included divorce cases, may not be published as long as any of the parties are alive, without their consent, or, if the parties are dead, for 50 years after their death.

Anything in such proceedings which "is of a disgusting character" or is highly offensive to modesty, or which concerns persons who are not parties to the case and is unreasonably offensive or defamatory, may not be published, unless it is so ordered by the judge on the ground that it is necessary to throw light on the affair in question.

Breach of these regulations is punished by a fine.

The above regulations apply to the publication of the judge's sentence in the trial, either in the Press or otherwise.

The law contains no provisions concerning the publication of reports on the course of the trial. But in common with other publications and in accordance with the regulations respecting the freedom of the Press, such reports must not overstep the bounds of decency and morality.

SWITZERLAND.

No. 9.

SIR, Berne, February 5th, 1910.

IN reply to your circular (1436/10) of the 18th ultimo, I have the honour to transmit herewith a copy of a note from the Federal Government stating that no special regulations exist in Switzerland dealing with the publication in the public Press of proceedings in divorce and matrimonial causes, but explaining how in many of the cantons causes of this nature are not heard in public.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) H. O. BAX-IRONSIDE.

The Right Hon. Sir E. Grey, Bart., M.P.,
&c. &c. &c.

Enclosure in Mr. Bax-Ironside's No. 9 of February 5th, 1910.

Berne, le 3 février 1910.

MONSIEUR LE MINISTRE,

EN réponse à la note du 24 janvier dernier, nous avons l'honneur de faire savoir à Votre Excellence qu-il n'existe en Suisse, à notre connaissance, aucunes dispositions spéciales concernant les *comptes-rendus dans la presse des débats judiciares sur les affaires de divorce.* Mais ces comptes-rendus sont tout naturellement restreints par le fait qu'en bien des endroits les débats judiciares sur les affaires de cette nature ne sont pas publics. Tel est le cas dans les cantons suivants :

Zürich (loi concernant l'administration de la justice zuricoise du 19 décembre 1874, para. 144, 2e alinéa), pour les actions en divorce et en paternité ;
Glaris (code de procédure civile du 5 mai 1895, para. 144), pour les actions en paternité, pour celles en indemnité pour rupture de promesse de mariage et pour celles en divorce ;
Bâle-ville (loi sur l'organisation judiciare du 1er février 1875, para. 34, 2e alinéa), pour les actions en divorce et en paternité ;
Schaffhouse (code de procédure civile du 25 juin 1869, para. 61), pour les actions en divorce et en paternité ;
Appenzell Rh. Ext. (constitution cantonale art. 68), pour les procès en divorce ;
St. Gall (loi concernant l'administration de la justice civile du 31 mai 1900, art. 105), pour les actions en divorce et en paternité ;
Thurgovie (code de procédure civile du 1er mai 1867, para. 130), pour les procès en paternité et en divorce.

Dans le canton d'Argovie, suivant le code de procédure civile du 12 mars 1900, le huis-clos doit être prononcé sur la demande d'une des parties, lorsqu'il s'agit de contestations entre époux ou entre parents et enfants ; dans le canton du Valais, le huis-clos doit, en pareil cas, être prononcé sur la demande des deux parties (code de procédure civile du 30 mai 1856, art. 659).

En outre, dans tout les cantons on a pour principe d'exclure la publicité des débats dans les procès qui pourraient offenser la morale publique.

Veuillex, &c.,
Au nom du Conseil Fédéral Suisse :
Le président de la Confédération,
(Signed) COMTESSE.
Le chancelier de la Confédération,
(Signed) SCHATZMANN.

Son Excellence Monsieur H. O. Bax-Ironside,
&c. &c. &c.

Consular, No. 4.

SIR, Berne, February 11th, 1910.

WITH reference to my despatch Number 3, Consular, of the 5th instant, enclosing copy of a note from the Swiss Government giving a list of the cantons in which provisions exist for preventing matrimonial causes being heard in public, I have the honour to report that I have received a further note informing me that by the marriage law of the Grisons of March 1, 1876, III. 2, divorce cases are heard *in camera* ("à huit-clos") in that canton.

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) H. O. BAX-IRONSIDE.

The Right Hon. Sir E. Grey, Bart., M.P.,
&c. &c. &c.

UNITED STATES OF AMERICA.

Consular, No. 18. British Embassy,

SIR, Dublin, N.H., June 20th, 1910.

WITH reference to your despatch of this series of January 18th last, I have the honour to transmit herewith a short summary of such laws as restrict in any way the rights of the Press to publish the proceedings in divorce and matrimonial cases.

It will be seen that these are very few, and indeed the general feeling throughout the country is antagonistic to any interference with the so-called liberties of the Press such as would ensue from a restriction of the right to publish divorce proceedings, except in the interests of public decorum and good morals. At least this is what the Press endeavour to convey.

An illustration of this feeling was furnished recently when a case, tried quite legally and properly in New York, in which two very wealthy and prominent persons sought and obtained a divorce from one another, was conducted with such secrecy without either party being even present that an outcry was raised by the newspapers concerning the privileges of the wealthy classes even in matters of this kind, where the power of their wealth was suspected as the principal agency in securing a private "washing of dirty linen."

I have the honour to be, with the highest respect,
Sir,
Your most obedient, humble servant,
(Signed) JAMES BRYCE.

The Right Hon. Sir Edward Grey, Bart., M.P.
&c. &c. &c.

Publication in the Public Press of Proceedings in Divorce and Matrimonial Cases.

There are practically no laws denying to the Press in any of the States of this country the right to publish such accounts of divorce proceedings as they may wish to print, with the exception of such statutes as have been enacted to prevent offences against the laws of decency and of libel.

Such restrictions as exist are set forth below :—

In the State of New York there is a regulation to the following effect :—

"Section 4, Judiciary Law : Sitting of courts—to be public. The sittings of every court within this State shall be public and every citizen may freely attend the same, except that in all proceedings and trials in cases for divorce, on account of adultery, seduction, abortion, rape, assault, with intent to commit rape, criminal conversation and bastardy, the court may, in its discretion, exclude therefrom all persons who are not directly interested therein, except jurors, witnesses, and officers of the court.

"In an action for a divorce or for an annulment of a marriage where the defendant fails to answer, no reference shall be granted to take proof of the facts stated in the complaint, but before a judgment shall be granted the proof of such facts must be made to the court in open court, and a copy of the evidence written out and filed with the judgment roll.

"The court may, however, in case the evidence is such that public interest require that the examination of the witnesses should not be public exclude all persons from the court-room except the parties to the action, their counsel and the witnesses, and shall order such evidence when filed with the clerk sealed up and exhibited only to the parties to the action, or some one specially interested upon order of the court.—Rule 72, General Rules of Practice."

A further regulation is as follows:—

Rules of Supreme Court, No. 76.—" . . . . but " where no person appears on the part of the " defendant, the details of the evidence in adultery " causes shall not be read in public, but shall be " submitted in open court. No officer of any " court, with whom the proceedings in an adultery " cause are filed, or before whom the testimony " is taken, nor any clerk of such officer, either " before or after the termination of such suit, " shall permit a copy of any of the pleadings or " testimony, or the substance of the details " thereof, to be taken by any other person than " a party or the attorney or counsel of a party, " who has appeared in the cause, without a special " order of the court. . . ."

In the State of Colorado.—The clerk of the court may upon request keep the proceedings in such cases from off the docket for the purpose of preventing newspapers getting hold of the matter, but this law is reported to have little or no effect. The court can also order a hearing to be held with closed doors. This latter applies also to—

The State of Minnesota.

In the Territory of New Mexico there is a regulation to the effect that "the details of the evidence in " adultery causes shall not be read in public, but shall " be submitted to the court. No officer of the court " with whom the proceedings in adultery causes are " filed or before whom the testimony is taken, nor any " clerk of such officer either before or after the termina- " tion of the suit, shall permit a copy of any of the " pleadings or testimony or of the substance of the " details thereof to be taken by any other person than " a party, or the attorney or counsel of a party, who " has appeared in the cause, without a special order of " the court."

In the State of California likewise there are statutes as follows:—

Code of Civil Procedure, section 125: Sittings when private.—" In an action for divorce, criminal " conversation, seduction, or breach of promise " of marriage, the court may direct the trial of " any issue of fact joined therein to be private, " and may exclude all persons except the officers " of the court, the parties, their witnesses, and " counsel; provided that in any cause the court " may in the exercise of a sound discretion, during " the examination of a witness, exclude any or " all other witnesses in the cause."

Political Code, section 1032: Records open to public inspection, exceptions.—" The public " records and other matters in the office of any " officer are at all times, during office hours, open " to the inspection of any citizen of this State. " In all actions for divorce the pleadings and the " testimony taken and filed in said actions, shall " not be by the clerk with whom the same is " filed, or the referee before whom the testimony " is taken, made public, nor shall the same be " allowed to be inspected by any person except " the parties that may be interested or the " attorneys to the action, or by an order of the " court in which the action is pending; a copy " of the said order must be filed with the clerk." In cases of attachment, the clerk of the court with whom the complaint is filed shall not make public the fact of the filing of such complaint, or of the issuing of such attachment, until after the filing of return of service of attachment.

Idaho.—Revised Codes, section 3861: Exclusion of persons in certain cases.—" In an action for divorce, " criminal conversation, seduction or breach of promise " of marriage, the court may direct the trial of any " issue of fact joined therein to be private, and may " exclude all persons except the officers of the court, " the parties, their witnesses, and counsel: provided " that in any cause the Court may, in the exercise of " a sound discretion, during the examination of a " witness, exclude any and all witnesses in the cause."

Montana.—Revised Codes, section 6291: Sittings, when private.—" In an action for divorce, criminal " conversation, seduction, or breach of promise of " marriage, the court may direct the trial of any issue " of fact joined therein to be private, and exclude all " persons except the officers of the court, the parties, " their witnesses, and counsel: provided that in any " cause the court may, in the exercise of a sound " discretion during the examination of a witness, ' exclude any or all witnesses in the cause."

Vermont.—Public Statutes of 1906, section 3082: Testimony in divorce cases, how given; exclusion of public.—" The testimony of witnesses shall be given " orally in court and by deposition as in other cases: " and the court may in its discretion, exclude from " the trial all persons except the officers of the court " and the parties in interest."

Wisconsin.—Circuit Court Rule 28, section 4: Actions for divorce.—" No other officer of the court " with whom the proceedings in an action for divorce, " in which adultery has been charged against either " party, are filed, or before whom the testimony is " taken, and no clerk of such officer, either before or " after the termination of such action, shall permit a " copy of any of the testimony or pleadings, or the " substance of the details thereof, to be taken by any " person other than a party to the action, or the " attorney or counsel of such party who has appeared " therein, without the special order of the court."

British Embassy,
Dublin, N.H.,
June 20th, 1910.

APPENDIX XVII.

Digest by Mr. J. S. R. Phillips of Memorandum.

The following is a digest of a memorandum by Mr. J. S. R. Phillips, Editor of "The Yorkshire Post," on reporting of divorce cases, issued to members of the Commission:—

He said at the outset that he did not represent any definite newspaper organisation. The opinions of newspaper proprietors and of journalists vary so very greatly upon this subject that it has been found impracticable to appoint any one person as the representative of a large majority. Some are in favour of the total abolition of reports, save only the names of the parties and the decisions, presumably as advertisements for the insertion of which the newspaper would be paid. There is a general feeling that if only names and decisions were published they would not be, what we newspaper men call, readable matter, and from this point of view would not be worth our space; so that we should, I think, almost universally, publish nothing rather than give a mere list. Another section believe in limited and official publication. They do not think it would be consistent with public interest that there should be no reporting; but they are very strongly of opinion that some of the reports printed at the present time—mainly, they say, by a few weekly papers which do not rank in high-class journalism, although they may have large circulations—are much to be deprecated. I have not examined these weekly papers, but Sir George Riddell, of the "News of the World," tells me he has made a large collection of reports, and that those appearing in the London weekly papers are not more extensive or in any way worse than those in "The Times," "Daily Telegraph," and other daily papers which have not been called in question. Some of my friends feel that unchecked publication is very apt to run into indecency, and that reports of the kind which they deprecate tend to degrade the readers, and, possibly, to encourage immorality. Those who hold this have no experience of official reporting, and they are not eager to define precisely what kind of a report for publication an official reporter ought to issue.

There are other journalists of standing who, while holding strongly that matter of the kind is injurious to the national life, are yet afraid that restraint would tend to defeat the interests of justice; they have known very many cases where publication has led to the discovery of fresh evidence, one way or the other. I have been told recently of a case in which the publication of an action for the restitution of conjugal rights was followed by certain information being tendered to solicitors, which proved that one of the parties had long and constantly been guilty of adultery. The fear lest restraint of publication should thus prevent the discovery of evidence had perplexed these journalists, who otherwise were in favour of suppression. So far as I can learn, none of them is able to lay down any clear principle which might serve as the basis of a legal enactment. Nor do I think that it is possible to lay down any clear principle if we get away from that which I regard as fundamental — that no indecent matter should be allowed to be published. This principle ought to be applied with even-handed justice to plays and novels, just as to newspaper reports. To set up a distinction between the two classes is, to my mind, invidious, and somewhat of an insult to British journalism, which, I maintain, is by no means the worst offender in this direction. I am aware that some newspapers act as if they thought it natural they should feed upon garbage, but these are very few in proportion to the journals which are pure and well conducted, and to enact a law specifically directed against any form of publication of this class of report in newspapers, whether or no such reports are carefully sub-edited to remove indecency from them, would be a distinct slur upon a profession which, as I have said, is not at all a bad offender. Besides, I am doubtful if the worst reports that are published in newpapers are those of divorce trials; the grossest case reported by newspapers in the current year has not had to do with divorce. It was a charge of criminal libel. There have been other cases in England which involved issues equally gross; and one may add that the famous Thaw case, reported very fully in (some of) our English newspapers, was not a divorce case, though the reports sent from America contained statements much more striking in their sexual relation than any that I have seen in recent reports of divorce actions.

If your object is to prevent the publication and wide dissemination by newspapers of objectionable matter involving sexualism and, one may add, abnormality, you must throw your net much more widely than has been suggested by any of the witnesses whose evidence I have seen. You must aim, not against the publication of reports of divorce cases, but against that of this much more extended class of reports, many of them far worse than the mere giving of such details as are ordinarily reported in connection with applications for divorce. It would be impracticable to set up any law against the reporting of libel actions or of such criminal cases as the charge against Mr. Oscar Wilde, and all you can do in regard to these matters is to enact, if the existing law is not plain enough—and see that the enactment is carried out—that there should be no publication of indecent matter. When we have arrived at this point, I would further urge that legislation of the kind must include novels and plays; for it would be absurd to say that a newspaper may not publish the report of a divorce case, while it may publish, in the form of a novel, written more attractively from the point of view of immorality, a story precisely on all fours with the divorce case which it is sought to bar. There is one striking distinction between newspaper reports of divorce cases and plays and novels, in this: that the reports of the divorce case may, and often do, serve a very useful purpose in either rehabilitating the character of some person who has been attacked, or in showing a prominent person in his true character, and, further, that the fear of publicity may exercise some deterrent effect; whereas in the novel, where all the personages are fictitious, publication does not provide any equivalent benefits. Fiction is not, and cannot be, in the same category as the advocacy of political or social charge. No serious student could regard it in that light, nor is it written for serious students. I would not interfere with liberty of discussion—nothing is further from my thought. The thing advocated may be good or bad—within recognised legal limits, I would not ask for interference. But a novel proves nothing; it is not scientific from the social or political standpoint, and this for the reason that the writer postulates what he pleases; he manufactures his own facts, and can arrange his argument, and, therefore, must be a numskull if he cannot draw the conclusions he had in mind at the beginning. May I give a few extracts from novels published recently, to show the class of matter I have in mind? Most of the writers of this class of fiction are, one may note, ladies; and it is curious that if one looks back to earlier periods in the history of English literature, such as the Restoration period and the Augustan period of Queen Anne, one finds in the earlier that Mrs. Aphra Behn's plays were the worst of a very immoral set, and among the Queen Anne writers Mrs. Manley shines conspicuous. Even a little later, the famous Mrs. Letitia Pilkington, with her memoirs, out-did all male rivals. (Mr. Phillips here included extracts from novels by a certain class of writers of the present day, scattered broadcast at low prices.) In all of these the moral is preached (by no means for the first time in the history of the world) that—if I may quote the famed Mrs. Letitia Pilkington—

> The name of Marriage is the Bane of Pleasure,
> And Love should have no Tie, but Love to bind it.

And the purpose of the books, so far as one can see, is distinctly to eulogise the fact of men and women living together in what the north-country artisan folk call "living tally"—that is, without the sanction of the Church or of the law of the land. One might almost suppose there was a definite and organised crusade in this direction, its leaders being both men and women. Like most of the indecent fiction in times past—such as "The Sisters," by the Parson Dodd, who was hanged for forgery—they profess to have a moral or social purpose. As a rule, the profession is a mere pretext for publishing what the writers (or publishers) think will sell; and we all know that there is a large market for indecent photographs and postcards, when the police do not spoil it by interference. In my researches in literature of this class—a literature of whose fulness I had no knowledge—I have been struck by the fact that these novels, having done duty in the higher-priced form in circulating libraries and among the wealthier classes, are now spread broadcast at the price of one shilling, or even sixpence. I am informed that it is the habit of librarians of circulating libraries to watch carefully what novels are in the greatest demand, and temporarily to suspend these from circulation until the librarian has read them. The other day, in skimming over a book review page in an illustrated weekly paper, I found the statement that there were in such and such a novel—which the reviewer was praising in protest against the, in my opinion, thoroughly justified action of the circulating libraries—certain chapters which, he said, would be read with great zest again and again by young people, and the more so because their elders had condemned the novel; and it is notorious that in books of this class certain chapters are regarded by publishers and public as those which will actually sell a novel, no matter how feeble and futile it may be as a work of art. I venture to press most strongly that if you enact a law against the publication of divorce cases, while you allow literature of this kind to be spread broadcast, you are straining at a gnat and swallowing a camel. It may, of course, be said that these novels are sold at a shilling or sixpence, whereas the report of the divorce cases may be bought for one penny, or even a halfpenny, and that the newspapers have a much larger circulation. But while this is true, there is nothing in the proposed change of the law to prevent a newspaper from publishing novels of the kind if they are found to sell that newspaper, and there can be nothing unless you adopt the principle I have suggested, namely, that of basing any legislation or administration upon the prohibition of indecent matter, without regard to the form which such publication may take. I have here an extract from an address given on St. George's Day by Canon Rawnsley:—

> "As long as the world stood there would always be need of St. Georges. £250,000 less money was wasted last year in whisky, but no sooner did one evil seem to be trampled under

> foot by the gallant St. George of the temperance crusade than another dragon-form of evil took its place. The illustrated papers, the filthy sex novels, the grossly vulgar and often obscene postcards, indecent prints, the entirely indecent photographs, were corroding the people's life—were dragons abroad poisoning ideas of modesty and manly self-control and noble thoughts on courtship and marriage. He had a "black list" of 120 novels, every one of them corrosive and abominable in their pandering to animal passions and immorality, and all of them were largely in circulation during the past two years."

May I point out, for the sake of a parallel with the reporting of divorce cases, that novels dealing with illicit connections are not necessarily objectionable. One need only name Scott, George Eliot, Dickens, and Thackeray as writers capable of treating what it is the fashion to call problems of humanity in a manner to which no person can possibly object. It is true these great writers did not set themselves up as preachers of a creed; they were content to draw pictures of life, and to be regarded as novelists. In so far as they teach, they teach morality and chastity. In like manner as we do not regard their treatment of sexual passion as immoral, and leading to the degradation of those who read their stories, but entirely pure and beneficial, so the question whether a newspaper report of a divorce case—or any other involving sexual or abnormal causes—is or is not objectionable, depends, entirely upon the way in which it is handled, and, as a rule, not upon the mere fact of the reporting. I wish to lay stress upon this, for I base upon it my principle that, while it is right for the law to prohibit or punish the publishing of indecent matter and matter encouraging immorality, it is not the business of the law to prohibit the reporting of any special series of cases which come before the courts.

I have made a little study of the evidence already given before this Commission, and I find among the witnesses, just as there is among journalists and newspaper proprietors, very great diversity of opinion as to whether divorce cases should or should not be reported. I note that in France, as, I may say, in Norway, the publication of divorce cases is prohibited. According to a Norwegian writer, whose articles appeared in April in the London "Daily News," the reason for forbidding reports in Norway seems to be the belief that it is a needless cruelty to the parties.

Divorces in Norway are obtained on very slight grounds; whereas in this country divorce is only to be had for causes which one may call serious. I do not think it can be alleged that the people of Norway, or of France, are more moral than ours; indeed men who have investigated student life in Norway — where "mixed" education is common—assure me that there is very great laxity in this respect among male and female students. So far as I can gather, there is no definite principle running through the opinions which have been given before your Commission upon this question of reporting. Many witnesses have represented that there ought to be no publication, and have made the somewhat vague statement, entirely unsupported by evidence, that immorality is caused by reading reports of the kind. A search through the evidence shows that in certain instances witnesses have alleged certain definite causes as operating to produce immorality and so bring persons into the divorce courts. We have heard of overcrowding and the like as operating here, and Mr. Douglas Eyre spoke of impossible relationships as established by early marriages; but no one witness has adduced a single instance in which it can be said that adultery had been committed as a consequence of reading reports of divorce cases. From time to time we have had complaints of boys being led away into crime, theft, and burglary by reading stories of criminals who are made into heroes; but, as I have said, there is no instance given anywhere of a person being demoralised and indulging in immorality as a consequence of reading divorce court reports. I would urge strongly that, if seduction and adultery can be traced to the reading of literature at all, one must look for the operative cause in these novels to which I have referred, rather than in the stories told in the divorce courts.

Lord Alverstone, in his evidence against publication said that "the best of the Press entirely agreed with "the view, and did not publish these things." His Lordship is, I venture respectfully to suggest, better acquainted with law than with journalism. In "The Times," the "Daily Telegraph," "Standard," the "Morning Post," there are frequently long reports giving details of divorce cases. They are given not for any purely legal questions involved, but because the public will read them. It will be within the memory of most members of the Commission that there were long reports in certain well-known cases involving persons of eminence in the political world, and the fact is equally true of all cases which affect persons well known in society, on the stage, or in the commercial world—in short, cases are reported in the "best newspapers" if those cases are likely to interest the class of readers for whom the newspapers cater. More than this, his Lordship did not give any facts in support of his supposition that the reporting of these cases has increased, or that more details are published now than formerly. I believe there is no foundation for that supposition; my own observation and professional experience, extending to nearly 32 years, are against it. The letter from her late Majesty Queen Victoria to Lord Campbell, in 1858, in the early days of the operations of the Divorce Court, indicates the character of the reports then published. Lord Alverstone ignored the effect of novels such as I have referred to, and especially stories and obscene jokes published in certain weekly papers which do not publish divorce reports. The Joint Select Committee, of 1908, over which Earl Beauchamp presided, had before it evidence by Mr. Byrne, C.B., of the Home Office, Mr. Corfe, Mr. Coote, of the National Vigilance Society, and others, who complained of these stories, jokes, and illustrations in eight weekly papers, which, they said, demoralised the public, if what they published were not legally obscene or indecent; and if it were the fact—of which we have no evidence—that immorality has increased among the class of people who read weekly papers, that might be due to the new developments in fiction, and not to divorce reports, which, as my investigation shows, have not become worse.

An earlier witness had laid stress upon the fact that Queen Victoria was very emphatic in her condemnation of such reports; but as against that I may set the fact that in Lord Morley's "Life of Gladstone," there is a footnote which says, "Mr. Gladstone used to "desire the prohibition of publicity in these proceedings "until he learned the strong view of the President of "the Court, that the hideous flare of this publicity acts "probably as no inconsiderable deterrent." This, however, introduces a factor with which I propose to deal later. It is the demoralising tendency with which I am yet concerned; and I may remind you that Lord St. Helier on several occasions paid a high tribute to the discretion with which reporters discharge their duties. I believe he did this distinctly in his farewell to the court when he retired, and I take it that this praise of the reporters meant that, in his opinion, while dealing with dubious relationships, they exercised their skill wisely, and avoiding the publication of indecencies or anything which might tend to encourage immorality.

I turn now to the question of publication as a deterrent. Several witnesses have spoken strongly of the desirability of publishing somewhat of these divorce cases, because that is regarded here—as in Norway—as a punishment inflicted upon the parties. Several of your witnesses have protested that no publication of evidence or general facts should be allowed, but that we should have the names and permanent addresses of all the parties, with the result of the proceedings. They recognise here that publication is obnoxious to those whose names are concerned. I myself have known many instances. Within the present year I had a letter from a firm of solicitors begging me not to publish a report of a certain divorce case, because, they said, the co-respondent was an inspector of secondary education under a county authority, and if this matter got to the ears of the authority he would lose his situation. Of course, the stopping of publication in a case of that kind seemed to me to be distinctly against the public interest; I think not merely the

county authorities, but the public concerned had a right to know something of what this education inspector had been doing.

I note that Mr. Pickstone, the Registrar of the Bury County Court, while advocating prohibition of publication, frankly said that he thought there would be more divorce cases as a result of prohibition; and he had been professionally concerned in cases where the parties had begged him to secure the suppression of details. Mr. Thomas Griffithes was of opinion that some petitioners — presumably innocent persons — would not go into court because of the fear of publication, and that witnesses objected to having their names brought before the public; and it seems to me, that if these persons are ashamed to appear in the Divorce Court when they are entirely innocent of offence and nothing is to be charged against them, a similar fear must operate very strongly when persons are subject to temptation, and that we have here fair argument that publication does act as a deterrent.

I would lay stress upon the opinion of Mr. Justice Bigham (Lord Mersey) and Mr. Barnard, K.C., as men of experience professionally in divorce cases, that publication has a wholesome check upon people who know that if they misconduct themselves it will be published to the world.

Mr. J. C. Priestley, K.C., was of the same opinion; and he further urged that if a case were tried in open court, and there was no report of it, all sorts of stories would get about as to the nature of the evidence, and perhaps an innocent person, wrongly charged, would suffer harm. It was only fair, he held, that in country districts, or in town, where people had discussed these cases before they went into court, it should be known what was actually proved or disproved.

May I say that in a recent case, which came within my own knowledge, in which the wife of a gentleman well known in his own locality, was divorced for persistent misconduct and elopement with a gentleman from another part; there had been many false rumours respecting the attitude of the husband towards the wife. In the neighbourhood where he lived, it was said that he treated her unkindly, and without any sort of consideration; whereas the evidence given in the Divorce Court, which was published pretty fully in the newspapers, showed that he had been not only considerate, but even most anxious, after she had eloped with the other man, that she should return to her children and to him. It was, indeed, proved that his affection for her was maintained down to the time when—after one elopement abroad, and he and some friends of hers had followed and induced the couple to return to England—she finally determined that she would live with the other man.

I may point, perhaps, to another case, well within my recollection, in which an action for divorce was brought and failed. Certain charges, not amounting to infidelity, were brought against the husband. The case was talked over in a large district, and but for the publication of a fairly full report of the case, it may easily have been held, by a verdict for the lady, that the husband had not acted properly. The evidence, however, produced, I think, a general opinion that the verdict was not quite accurate, and, as a matter of fact, a fresh action was brought some months later, when it was abundantly proved that the husband had full grounds for demanding the divorce which he obtained.

The question is, however, larger than its bearing on the parties directly concerned, and I should like to name a case in which I think full publication, avoiding indecency, was a matter of first importance in the public interest. I refer to the case of Lord Melbourne, in June 1836, when an action for Crim. Con. was brought against him by the husband of the Hon. Caroline Norton. There had been many rumours connecting the name of the Whig Prime Minister with Mrs. Norton, who was notoriously unhappy in her marriage, and entirely at outs with her husband. Lord Melbourne had unquestionably been a constant visitor at her house; he had sympathised with her; his attentions to her were such that rumour suggested a further and improper interest. The statement made by the Attorney-General in behalf of Lord Melbourne and the characters of certain of the witnesses for Mr. Norton seem to have disposed of the accusations, and the verdict was in his favour, Am I going too far when I say that if that trial had been with closed doors, or if it had been impossible to publish a full report of the case, a large section of the public would have said, "Of "course, they would not give a verdict against the "Prime Minister"? My opinion is that, in a case of this kind, it is essential for the rehabilitation of the prominent politician that there should be free publication of the evidence given.

I may add that the report of this trial was very full —probably in nearly all the papers in the country— certainly in the one whose files I have consulted, the "Leeds Intelligencer," which is the ancestor of "The Yorkshire Post." I find that the case is reported practically verbatim, so far as concerns the opening speech of council—Sir W. Pollitt—and the evidence against Lord Melbourne and Mrs. Norton. The case, I may say, was tried in the Court of Common Pleas. Some of the evidence is such as would certainly not be reported in any newspaper, daily or weekly, at the present time. The report itself would occupy at least six columns of "The Yorkshire Post," Sir William Pollitt's speech filling two columns.

I do not ask for the Press liberty to publish such evidence as was published in the Melbourne case, but I do maintain that in a divorce court, where two persons of eminence are concerned, one of them occupying the highest position in the political world, it would be intolerable to place obstacles in the way of the publication of a very full report.

My next case is that of Sir Charles Dilke. I am not going to say that the country did not suffer a loss by the eclipse of a brilliant politician, but without expressing any opinion beyond this, and without going into the merits, it must certainly be held that here was a case in which the public were entitled to full information so that they might form their own opinion. Perhaps I may add that had there been merely a statement published of the result of the first trial, there could not have been a demand for those second proceedings, which most people afterwards thought were entirely justified.

My third case is that of Mr. Parnell. Here, too, we had a brilliant politician, the leader of a national party, whose career was undoubtedly stopped by a divorce action, and especially by the publication of details. You may recollect that certain important members of the Liberal party were—rightly or wrongly —endeavouring to work with Mr. Parnell as if nothing had occurred. They would certainly have done so had there been no publication of details.

I maintain, further, that to report divorce actions may be necessary in the public interest where high naval or military officers are concerned. One has read allegations against great commanders of past ages, that they promoted officers on account of the attractive qualities and easy virtue of the wives of these officers; and in this matter, until human nature is changed, it is to be feared that what has been may be. A divorce case affecting a soldier or sailor of high rank and unquestioned ability in the field might bring in question his appointments, and unless the facts were brought clearly before the public, the Government could not deal with him; a Nelson could not be set aside simply because of adultery. Public opinion would not allow anything of the kind.

There are even cases, other than actions for divorce, where newspapers of the highest standing have thought it needful, in the public interest, to publish details which, to say the least, verged closely upon indecency. I recollect one series of reports, published by the "Manchester Guardian," which described certain orgies said to have taken place in a theatre after the close of the performances, when the lights were turned down, and men and women of loose character were supplied with liquor in private boxes, and of immoral conduct alleged to have taken place in the manager's office between him and certain women employed on his stage. The reports were published in justification of the demand for the withdrawal of the licence of the theatre —a matter which had aroused much feeling in Manchester. The evidence was not published by the "Manchester Guardian" as a means of selling the paper, but solely in the performance of what its proprietors and editor believed to be a public duty; and

I suggest that, although I hold that the publishers of indecent matter should be punished, there may be circumstances in which a newspaper ought to be able to plead justification—that publication was necessary in the interest of public morality.

And this brings me to the suggestions made before you, that there should be official reports, or that newspapers should report only such bald details as presumably would be consistent with the dignified authorisation by one of His Majesty's judges. Reports of this kind would be looked upon by the public as garbled. If the judge, exercising his right, ruled out from publication evidence given by persons of high social or courtly standing, I am afraid the public would attribute improper motives, and it is conceivable that serious conditions might grow out of rumour. I maintain, respectfully, that if some member of our Royal family, or some bishop or cabinet minister, were co-respondent in a divorce action, and no report—or only a guarded official report—were allowed to be published, a very serious state of things would arise. We should have questions, if not a debate, in the House of Commons, and discussion throughout the country, with statements made—not on oath. Were a judge to exercise the right of trying "in camera" a case other than a nullity suit, or certain classes of evidence, and there was reason to believe he did so to cover the misdeeds of individuals, his conduct would probably be the subject of a motion in Parliament.

On the other hand, it would be impossible to allow a judge the right to say that the report of a divorce case affecting a well-known politician must be published, while he disallowed the publication of one affecting, shall I say, an army or naval officer, or some wholly private person. There is, in short, a lack of definite principle about all these proposals for limiting reporting. That which would allow a judge to summon a newspaper editor or proprietor, and penalise him for contempt of court, would be unsatisfactory in this—that no distinct principle is suggested by which the editor or proprietor could tell, when the report was before him, that he was or was not going outside that which the court would allow. You could have no standard by which to foretell the working of the judicial mind, for in this respect judges differ much as other and less distinguished persons. Newspaper men, I think, are entitled to some definite and adequate means of knowing whether they are inside the law or without it. I do not see that in this respect you can treat them in a manner different from that in which the general public are treated, and, therefore, I must come back to where I started, and say that if you want to restrict within the bounds of propriety the reports of divorce cases, you can do so only by laying down the general principle that they shall not publish anything which is indecent, or which directly incites to immorality. In this matter the editor of a newspaper is not protected by privilege, nor should he be. If he reports accurately what passes in open court, he is protected against actions for libel. That is well understood. But he is not protected against prosecution on account of the indecency or immoral tendency of what he publishes; he cannot shelter behind the plea that he is only reproducing what was said by a witness, by counsel, or by the judge. May I add, that for publication, the editor and proprietor (or publishers), if directly concerned, must be held responsible—not the reporter? It is the obvious duty of the editor to strike out of the report what passages he pleases, and to instruct the reporter what, if any, additional facts to give. If the editor hears of evidence not reported and asks the reporter why he did not report it, it would be no excuse for the reporter to say he did not think its publication would be legal—he would get his month's notice all the same.

It may be true that reports like those of the Melbourne case demoralise the public—and, in any event, I think they should be prevented, just as similar indecency in novels should be—but I fancy that an objector to this opinion might ask how it is that there has been a gradual but steady improvement in the character of the reports given by newspapers. Did those earlier reports really demoralise the nation, or did the improving morality of the nation impress itself upon newspaper reporting?—it being found that the public who purchase newspapers of the better class objected to having evidence such as I have indicated being thrust in their eyes, and especially under the eyes of their unmarried daughters. The great interest in these cases is shown in the fact, as reported by the "Leeds Intelligencer," that when the case of Lord Melbourne was before the Court of Common Pleas, as much as five guineas was paid for a seat.

If once you go outside that general principle—prohibit indecency and the teaching of immorality, but do not try to go further than this—you run up against a great variety of opinions and cases which seem to be irreconcilable one with the other. I agree that extensive publication of matters of the kind, even when actual indecency is avoided, is not of the most elevating character. If it were possible to run newspapers devoted solely to politics, art, sermons, science, literature—Shakespeare and the musical classes—and to principles of law, that no doubt would be excellent from many points of view, but with the exception of the "Spectator," the "Nation," the "Saturday Review," the "Athenæum," and "Punch," the ideal appears to be impossible of realisation. The public read the reports of murders, of libels, of horse racing, and football matches, and I do not know that devotion to these is any less detrimental than the occasional reading of divorce court reports, always provided that there is an absence of indecency and incitement to immorality. You can single out these two offences for punishment, and I think it should be done, but if you go beyond that, as I have said, you are very soon in difficulties. Finally, in behalf of my profession, I would again lay stress upon the fact that, though there may be certain weekly newspapers which I and most journalists would like to see restrained, I must protest against legislation which would seem to be based on the erroneous supposition that in these matters newspapers are the worst offenders. We are not. The worst offenders are the class of novelists with which I dealt in the earlier part of this memorandum.

APPENDIX XVIII.

Statistics as to Divorce in Scotland.

Prepared by Dr. J. C. Dunlop, Superintendent of Statistics in the Office of the Registrar-General of Scotland.

Source of Information.

In every case in which the status of any person is altered by the decree of a competent court, the Act 18 Vict. cap. 29, sec. 5, provides that the decree shall be reported to the Registrar-General, who then places a note on the margin of the entry in the marriage register relating to the case. Accordingly, all decrees of divorce are reported to the Registrar-General by the clerks of court, on a form supplied by him, in which the place and date of marriage, the particulars of the action, and sometimes the occupation of the husband are stated. By reference to the marriage registers the following additional information is obtainable, viz., the civil condition of the spouses at the time of marriage, their ages, their occupations

whether the marriage was regular, *i.e.*, preceded by banns or publication of notice and celebrated by a clergyman, or irregular, *i.e.*, not so preceded by banns or publication and not celebrated by a clergyman, but registered on a warrant of the Sheriff, granted under the provisions of Lord Brougham's Act.

The figures in the tables appended are based on an examination of the decrees pronounced during ten years, 1900 to 1909. Decrees during that period numbered 1,801; of these the marriages in 147 cases had been contracted outside Scotland, and in 1,654 cases the marriages had been contracted in Scotland and were thus traceable in the Scottish marriage registers. The 1,654 divorces included two cross actions, in which decree was given both to the husband and to the wife, and thus the total number of persons affected was 3,304.

For the purpose of comparison of the statistics based on the examination of these ten years' divorces with marriage statistics, the marriage statistics of the year 1892 have been taken. The average duration of the marriages dissolved by divorce during the ten years is found to be 11½ years, and the middle of the year 1892 being 11½ years before the end of 1904, is taken as the mean date of marriage of those persons who were divorced in the years 1900 to 1909.

Many of the figures stated are given with reservation, as in many instances the numbers dealt with are too small to exclude the possibility of error from paucity of data. Another source of error arises from the fact that no allowance has been made for Scottish marriages dissolved by divorce in courts outside Scotland.

Frequency of Divorce.

One marriage out of 174 is dissolved by divorce, 1 out of 400 at the instance of the husband, and 1 out of 307 at the instance of the wife. This frequency is greater in the case of marriages of those previously unmarried at the time of marriage than in the case of marriages in which one or both of the spouses were widowed at the time of the marriage. Thus of all those who were bachelors at the time of marriage 1 in 166 is divorced, and of those who were widowers 1 in 277 is divorced; of those who were spinsters at the time of marriage 1 in 170 is divorced, and of those who were widows 1 in 278 is divorced. Of marriages between bachelors and spinsters, 1 in 164 is dissolved by divorce, and of those between bachelors and widows, 1 in 265. Of marriages between widowers and spinsters, 1 in 272 is dissolved by divorce, and of those between widowers and widows, 1 in 292. (Table I.)

Duration of Marriage before Divorce.

Taking the statistics of the same ten years, the period elapsing between marriage and divorce was found to vary from four months to 40 years, and to average 11·6 years. In actions raised by husbands the average duration was 11·1 years, and in those raised by wives 12·0. The average duration was longer in those cases in which both spouses were unmarried at the time of the marriage than in those in which one or other or both of the spouses were widowed at the time of marriage. Thus the average duration of those cases in which the husband was a bachelor at the time of marriage was 11·6, and in which he was a widower 10·5, and in those cases in which the wife was a spinster at time of marriage, 11·7 years, and in which she was a widow, 8·8. (Table II.)

Divorce Rate in each Year of Married Life.

There are no records, censal or other, showing the number of marriages of each year's duration existing in Scotland. For the purpose of estimating the chance of divorce in each year of married life, I have, by applying suitable death-rates to the recorded marriages of one year, estimated the probable number of marriages dissolved by death annually, and thus estimated the probable number of existing marriages of each year's duration. The marriages of the year 1892 were selected for the basis of the calculation, and those marriages were all assumed to be between men aged 27 and women aged 26, those ages being the average ages of all marrying during that year. The chances of divorce have been calculated by comparing the mean annual number of divorces of each year's duration of married life with the corresponding estimated number of existing marriages, The results of the calculation are shown in Table III., and in the chart. The divorce rate expressed as per 10,000 existing marriages is found to reach a maximum of 4·9 in the sixth year of marriage, and another maximum of 4·9 in the ninth year of marriage. The divorce rate of actions raised by husbands reaches a maximum of 2·4 in the ninth year of marriage, and that of actions raised by wives a maximum of 2·9 in the sixth year of marriage. The chance of divorce is found to increase rapidly during the first six years of marriage, and to fall gradually after the ninth year of marriage. (Table III., and chart.)

Age of Husband at Time of Divorce.

Their ages ranged from 20 to 73 years, and averaged 37·5. In actions raised by wives the average age of the husbands was 37·5, and in actions raised by husbands, 37·5. The average age of the husbands in those cases in which they were bachelors at the time of marriage was 36·8, and in those cases in which they were widowers at the time of marriage, 47·4. (Table IV.)

Age of Wife at Time of Divorce.

The ages of the wives ranged from 16 to 69, and averaged 34·6. In actions raised by the husbands, the average age of the wives was 34·1, and in those raised by the wives, 35·1. The average age of wives in cases where the wives were spinsters at the time of marriage was 34·4, and in those cases in which they were widows at the time of marriage, 41·9. (Table V.)

Age of Husbands at Time of Marriage.

The ages of the husbands at the time of marriage ranged from 16 to 56, and averaged 25·8. The rate of divorce is higher among those married young than among those married older. Of marriages ending in divorce 13·7 per cent. were of men of less than 21 years old, while the corresponding proportion of all marriages is only 6·2 per cent.; and the proportion of marriages ending in divorce in which the men were less than 25 years old was 55·8 per cent., the corresponding proportion of all marriages being 37·5. (Tables VI. and VII.)

Age of Wives at Time of Marriage.

Their ages ranged from 14 to 52, and averaged 22·9. The rate of divorce is higher among those married young than among those married older. Of marriages ending in divorce 38·6 per cent. were of women of less than 21 years old, the corresponding proportion of all marriages being 19·7, and the proportion of marriages ending in divorce in which the women were less than 25 years old was 77·3 per cent., the corresponding proportion of all such marriages being 55·9. (Tables VIII. and IX.)

Age at Marriage and Duration previous to Divorce.

In actions raised by husbands, the average duration of the marriage is found to be longer where the ages of the wives are younger, and the average duration shorter when the ages of the wives are older. The maximum duration is found when the ages of the wives are 19, and the duration markedly decreases when the ages of the wives exceed 30. Similarly with divorces raised at the instance of the wives, the maximum average duration of marriage is found to be when the husbands' ages are 19, and the average duration is found to markedly decrease when the husbands' ages are over 35. Young marriages more frequently end in the divorce court than older marriages, but older

marriages which end in the divorce court come into that court after a shorter period than younger marriages which end there. (Table X.)

Comparative Frequency of Divorce in Regular and Irregular Marriages.

Of the 1,654 divorces traceable in the Scottish marriage registers, 1,424 were of persons regularly married, and 230 of persons irregularly married. The divorce rate of persons regularly married is found to be 1 in 193, and of those irregularly married is found to be 1 in 52. Regular marriages where divorce follows at the instance of the husband are 1 in 444, and at the instance of the wife, 1 in 341. The corresponding rates in the case of irregular marriages are 1 in 123, and 1 in 91. Thus divorce is nearly four times as frequent in irregular marriages as in regular marriages. (Table XI.)

Frequency of Divorce in Marriages in Stated Denominations.

Divorce is relatively most frequent among those married according to the rites of the Episcopalian Church, 1 in 101, and least so among those married according to the rites of the Roman Catholic Church, 1 in 548. In Established Church marriages the rate is 1 in 180, in Free Church, United Presbyterian Church, and United Free Church combined, 1 in 199, and in churches of other denominations combined, 1 in 155. (Table VIII.)

Frequency of Divorce in Stated Occupations.

The occupations most frequently mentioned in the 10 years' records of divorce are:—(1) Iron manufacture, engineering, &c., (2) food trades, (3) building trades, (4) mining, (5) farming, and (6) horse transport. To construct rates for comparison, the number of divorces in specified occupations, or in groups of occupations, have been compared with the number of men found in those occupations, or groups of occupations, at the time of the 1901 census. Rates thus obtained show that divorce was relatively most frequent among (1) soldiers, (2) indoor domestic servants, (3) seamen, (4) commercial men, (5) hotel service, and (6) police; and that divorce was relatively least frequent among (1) farmers, agricultural labourers, &c., (2) general labourers, (3) outdoor domestic servants, (4) clergy, (5) miners, and (6) building trades. (Table XII.)

Actions instituted by husbands were relatively to those instituted by wives most numerous in (1) hemp, jute, coir, &c. manufacture, 14 to 5; (2) soldiers, 26 to 14; (3) textile manufacture, 53 to 38; (4) general labourers, 16 to 12; and (5) building trades, 66 to 51. Occupations in which the proportion of the total divorces to be instituted by wives was greatest were, (1) indoor domestic servants, the proportion being 5·50 actions by wives to 1 by a husband; (2) outdoor domestic servants, the proportion being 4·00 to 1; (3) clerks, 3·43 to 1; (4) clergy, 3·00 to 1; (5) medical practitioners, 2·50 to 1; and (6) butchers, 2·11 to 1. (Table IX.)

TABLE I.

GENERAL STATISTICS.

All Marriages.

——	Number of Divorces.	Number of Marriages in which 1 Divorce occurred.
Instance of husband -	717	400
„ wife - -	935	307
Total - -	1,652	174

Marriages of Bachelors.

——	Number of Divorces.	Number of Marriages in which 1 Divorce occurred.
Instance of husband -	654	392
„ wife - -	891	288
Total - -	1,545	166

Marriages of Widowers.

Instance of husband -	63	480
„ wife - -	46	657
Total - -	109	277

Marriages of Spinsters.

Instance of husband -	685	396
„ wife - -	913	297
Total - -	1,598	170

Marriages of Widows.

Instance of husband -	32	487
„ wife - -	24	650
Total - -	56	278

Marriages between Bachelors and Spinsters.

Instance of husband -	640	389
„ wife - -	876	284
Total - -	1,516	164

Marriages between Bachelors and Widows.

Instance of husband -	14	549
„ wife - -	15	513
Total - -	29	265

Marriages between Widowers and Spinsters.

Instance of husband -	45	496
„ wife - -	37	604
Total - -	82	272

Marriages between Widowers and Widows.

Instance of husband -	18	439
„ wife - -	9	878
Total - -	27	292

TABLE II.

DURATION OF MARRIAGE BEFORE DIVORCE.

All Marriages.

—	Number of Divorces.	Maximum Duration.	Minimum Duration.	Average Duration.
Instance of husband	717	40 years	4 months	11·1
„ wife -	937	39 „	7 „	12·0
Total - -	1,654	—	—	11·6

Marriages of Bachelors.

Instance of husband	654	40 years	7 months	11·2
„ wife -	891	39 „	7 „	12.0
Total - -	1,545	—	—	11·6

Marriages of Widowers.

Instance of husband	63	28 years	4 months	9·8
„ wife -	46	29 „	1 year -	11·3
Total - -	109	—	—	10·5

Marriages of Spinsters.

Instance of husband	685	40 years	4 months	11·3
„ wife -	913	39 „	7 „	11·2
Total - -	1,598	—	—	11·7

Marriages of Widows.

Instance of husband	32	24 years	7 months	9·1
„ wife -	24	25 „	1 year -	7·6
Total - -	56	—	—	8·5

Marriages of Bachelors and Spinsters.

Instance of husband	640	40 years	7 months	11·2
„ wife -	876	39 „	7 „	12·1
Total - -	1,516	—	—	11·7

Marriages of Bachelors and Widows.

Instance of husband	14	22 years	7 months	8·6
„ wife -	15	12 „	3 years -	6·5
Total - -	29	—	—	7·6

Marriages of Widowers and Spinsters.

Instance of husband	45	28 years	4 months	10·0
„ wife -	37	29 „	1 year -	11·8
Total - -	82	—	—	10·8

Marriages of Widowers and Widows.

Instance of husband	18	24 years	3 years-	9·5
„ wife -	9	25 „	2 „ -	9·3
Total - -	27	—	—	9·4

TABLE III.

DIVORCE RATE IN EACH YEAR OF MARRIED LIFE.

Duration of Marriage.	Estimated No. of Marriages.	Average Yearly Divorces.		Ratio of Divorces to 10,000 estimated existing Marriages.		
		Instance of Husband.	Instance of Wife.	Instance of Husband.	Instance of Wife.	Total.
—1	28,670	0·9	0·3	0·3	0·1	0·4
1	28,348	1·1	0·8	0·4	0·3	0·7
2	28,019	1·9	0·9	0·7	0·3	1·0
3	27,682	2·6	1·8	0·9	0·7	1·6
4	27,334	3·9	3·0	1·4	1·1	2·5
5	26,973	4·9	6·2	1·8	2·3	4·1
6	26,598	5·2	7·8	1·9	2·9	4·9
7	26,206	4·2	7·0	1·6	2·7	4·3
8	25,797	4·1	6·5	1·6	2·5	4·1
9	25,375	6·0	6·4	2·4	2·6	4·9
10	24,937	4·2	4·9	1·7	2·0	3·7
11	24,481	4·3	5·3	1·7	2·2	3·9
12	24,008	3·2	5·5	1·3	2·3	3·6
13	23,518	3·8	4·3	1·6	1·8	3·4
14	23,016	2·1	4·3	0·9	1·9	2·8
15	22,503	2·9	4·3	1·3	1·9	3·2
16	21,984	2·0	3·2	0·9	1·4	2·3
17	21,458	2·1	2·4	0·9	1·1	2·0
18	20,925	2·1	3·2	0·8	1·4	2·2
19	20,383	1·6	2·0	0·8	0·9	1·8
20	19,830	0·9	2·5	0·5	1·3	1·7
21	19,265	0·9	2·4	0·4	1·2	1·7
22	18,672	1·4	0·9	0·6	0·5	1·1
23	18,083	0·7	1·9	0·4	1·1	1·4
24	17,481	1·0	0·9	0·5	0·5	1·0
25	16,868	0·7	1·4	0·4	0·7	1·1

TABLE IV.

AGE OF HUSBAND AT TIME OF DIVORCE.

All Marriages.

—	Number of Divorces.	Minimum Age.	Maximum Age.	Average Age.
Instance of husband	717	20	73	37·5
„ wife -	937	22	65	37·5
Total - -	1,654	—	—	37·5

Marriages of Bachelors.

Instance of husband	654	20	66	36·4
„ wife -	891	22	65	37·1
Total - -	1,545	—	—	36·8

Marriages of Widowers.

Instance of husband	63	30	73	48·6
„ wife -	46	31	64	45·7
Total - -	109	—	—	47·4

Marriages of Spinsters.

Instance of husband	685	20	73	37·1
„ wife -	913	22	63	37·4
Total - -	1,598	—	—	37·3

Marriages of Widows.

—	Number of Divorces.	Minimum Age.	Maximum Age.	Average Age.
Instance of husband	32	23	64	44·1
„ wife -	24	28	65	42·3
Total - -	56	—	—	43·3

Marriages of Bachelors and Spinsters.

Instance of husband	640	20	66	36·4
„ wife -	876	22	63	37·1
Total - -	1,516	—	—	36·8

Marriages of Bachelors and Widows.

Instance of husband	14	23	50	35·0
„ wife -	15	28	65	37·2
Total - -	29	—	—	36·1

Marriages of Widowers and Spinsters.

Instance of husband	45	30	73	47·6
„ wife -	37	31	60	44·4
Total - -	82	—	—	46·2

Marriages of Widowers and Widows.

Instance of husband	18	39	64	51·1
„ wife -	9	42	64	50·8
Total - -	27	—	—	51·0

Table V.

Age of Wife at Time of Divorce.

All Marriages.

—	Number of Divorces.	Minimum Age.	Maximum Age.	Average Age.
Instance of husband	717	16	63	34·1
„ wife -	937	18	69	35·1
Total - -	1,654	—	—	34·6

Marriages of Bachelors.

Instance of husband	654	16	60	33·4
„ wife -	891	18	61	34·8
Total - -	1,545	—	—	34·3

Marriages of Widowers.

Instance of husband	63	19	63	40·5
„ wife -	46	23	69	39·5
Total - -	109	—	—	40·1

Marriages of Spinsters.

—	Number of Divorces.	Minimum Age.	Maximum Age.	Average Age.
Instance of husband	685	16	60	33·7
„ wife -	913	18	61	34·9
Total - -	1,598	—	—	34·4

Marriages of Widows.

Instance of husband	32	23	63	41·6
„ wife -	24	29	69	42·3
Total - -	56	—	—	41·9

Marriages of Bachelors and Spinsters.

Instance of husband	640	16	60	33·4
„ wife -	876	18	61	34·8
Total - -	1,516	—	—	34·2

Marriages of Bachelors and Widows.

Instance of husband	14	23	46	35·4
„ wife -	15	29	57	38·8
Total - -	29	—	—	37·2

Marriages of Widowers and Spinsters.

Instance of husband	45	19	57	38·1
„ wife -	37	23	49	37·4
Total - -	82	—	—	37·8

Marriages of Widowers and Widows.

Instance of husband	18	30	63	46·4
„ wife -	9	37	69	48·1
Total - -	27	—	—	46·9

Table VI.

Age of Divorced Men at Time of Marriage.

All Marriages.

—	Number of Divorces.	Minimum Age.	Maximum Age.	Average Age.
Instance of husband	717	16	55	26·4
„ wife -	937	17	56	25·4
Total - -	1,654	—	—	25·8

Marriages of Bachelors.

—	Number of Divorces.	Minimum Age.	Maximum Age.	Average Age.
Instance of husband	654	16	48	25·2
„ wife -	891	17	56	24·9
Total - -	1,545	—	—	25·0

Marriages of Widowers.

Instance of husband	63	22	55	38·9
„ wife -	46	24	52	34·3
Total - -	109	—	—	37·0

Marriages of Spinsters.

Instance of husband	685	16	55	26·0
„ wife -	913	17	46	25·1
Total - -	1,598	—	—	25·5

Marriages of Widows.

Instance of husband	32	21	52	35·0
„ wife -	24	21	56	35·2
Total - -	56	—	—	35·1

Marriages of Bachelors and Spinsters.

Instance of husband	640	16	48	25·2
„ wife -	876	17	46	24·8
Total - -	1,516	—	—	25·0

Marriages of Bachelors and Widows.

Instance of husband	14	21	33	26·0
„ wife -	15	21	56	30·8
Total - -	29	—	—	28·5

Marriages of Widowers and Spinsters.

Instance of husband	45	22	55	37·7
„ wife -	37	24	46	32·4
Total - -	82	—	—	35·3

Marriages of Widowers and Widows.

Instance of husband	18	28	52	41·9
„ wife -	9	32	52	42·5
Total - -	27	—	—	42·1

TABLE VII.

AGES OF MEN AT MARRIAGE.

Age of Husband.	Divorce at instance of		Total.	Percentage at each Age Group to Total.	
	Husband.	Wife.		Men divorced.	All Men married in 1892.
Under 16	—	—	—	—	—
„ 17	1	—	1	0·06	0·01
„ 18	2	2	4	0·24	0·05
„ 19	15	13	28	1·69	0·53
„ 20	33	40	73	4·41	1·83
„ 21	59	61	120	7·26	3·80
„ 25	280	417	697	42·14	31·32
„ 30	183	271	454	27·45	33·21
„ 35	74	80	154	9·31	14·12
„ 40	36	39	75	4·54	6·83
„ 45	16	8	24	1·45	3·42
„ 50	12	4	16	0·97	2·05
„ 55	5	1	6	0·36	1·29
„ 60	1	1	2	0·12	0·77
Over 60	—	—	—	—	0·77
Total -	717	937	1,654	100·00	100·00

TABLE VIII.

AGE OF DIVORCED WOMEN AT TIME OF MARRIAGE.

All Marriages.

—	Number of Divorces.	Minimum Age.	Maximum Age.	Average Age.
Instance of husband	717	15	52	22·8
„ wife -	937	14	49	23·0
Total - -	1,654	—	—	22·9

Marriages of Bachelors.

Instance of husband	654	15	37	22·1
„ wife -	891	14	48	22·8
Total - -	1,545	—	—	22·5

Marriages of Widowers.

Instance of husband	63	18	52	30·6
„ wife -	46	17	49	27·9
Total - -	109	—	—	29·5

Marriages of Spinsters.

Instance of husband	685	15	52	22·4
„ wife -	913	14	43	22·7
Total - -	1,598	—	—	22·6

Marriages of Widows.

Instance of husband	32	22	46	32·6
„ wife -	24	25	49	34·8
Total - -	56	—	—	33·5

Marriages of Bachelors and Spinsters.

—	Number of Divorces.	Minimum Age.	Maximum Age.	Average Age.
Instance of husband	640	15	37	22·0
„ wife -	876	14	43	22·6
Total - -	1,516	—	—	22·3

Marriages of Bachelors and Widows.

Instance of husband	14	22	34	26·6
„ wife -	15	25	48	32·5
Total - -	29	—	—	29·7

Marriages of Widowers and Spinsters.

Instance of husband	45	18	52	27·9
„ wife -	37	17	38	25·3
Total - -	82	—	—	26·8

Marriages of Widowers and Widows.

Instance of husband	18	24	46	37·2
„ wife -	9	30	49	38·6
Total - -	27	—	—	37·7

TABLE IX.

AGES OF WOMEN AT MARRIAGE.

Age of Wife.	Divorce at instance of		Total.	Percentage at each Age Group to Total.	
	Husband.	Wife.		Women divorced.	All Women married in 1892.
Under 15	—	1	1	0·06	0·00
„ 16	1	1	2	0·12	0·02
„ 17	10	7	17	1·03	0·21
„ 18	25	37	62	3·75	1·34
„ 19	72	77	149	9·01	3·55
„ 20	101	103	204	12·33	6·45
„ 21	83	121	204	12·33	8·12
„ 25	275	364	639	38·63	36·25
„ 30	104	165	269	16·26	26·03
„ 35	20	40	60	3·63	9·38
„ 40	17	16	33	2·00	4·28
„ 45	4	3	7	0·43	2·26
„ 50	4	2	6	0·36	1·15
„ 55	1	—	1	0·06	0·54
Over 55	—	—	—	—	0·42
Total -	717	937	1,654	100·00	100·00

TABLE X.

AGE at MARRIAGE and DURATION of MARRIAGE previous to DIVORCE.

Action at Instance of Husband.		Action at Instance of Wife.	
Age of Wife at Marriage.	Average Duration.	Age of Husband at Marriage.	Average Duration.
17	11·3	17	11·0
18	12·8	18	10·2
19	13·0	19	15·2
20	11·1	20	12·5
21–24	11·5	21–24	13·0
25–29	11·0	25–29	12·1
30–34	6·7	30–34	10·9
35–39	7·9	35–39	9·9
40–44	8·6	40–44	8·3
45–49	7·0	45–49	7·9

TABLE XI.

TABLE showing FREQUENCY of DIVORCE in REGULAR and IRREGULAR MARRIAGES, and in MARRIAGES according to the RITES of different DENOMINATIONS.

—	Number of Divorces.			Number of Marriages in which there is one Divorce.		
	Instance of Husband.	Instance of Wife.	Total.	Instance of Husband.	Instance of Wife.	Total.
Regular - - - - -	619	805	1,424	444	341	193
Irregular - - - -	98	132	230	123	91	52
Established Church - - -	313	401	714	411	321	180
Free Church - - - -						
United Presbyterian Church - -	202	248	450	443	361	199
United Free Church - - -						
Roman Catholic Church - -	22	30	52	1,295	950	548
Episcopalian Church - - -	36	44	80	176	184	101
Other denominations - - -	46	82	128	431	242	155

DIVORCE RATES PER 1000 MARRIAGES.

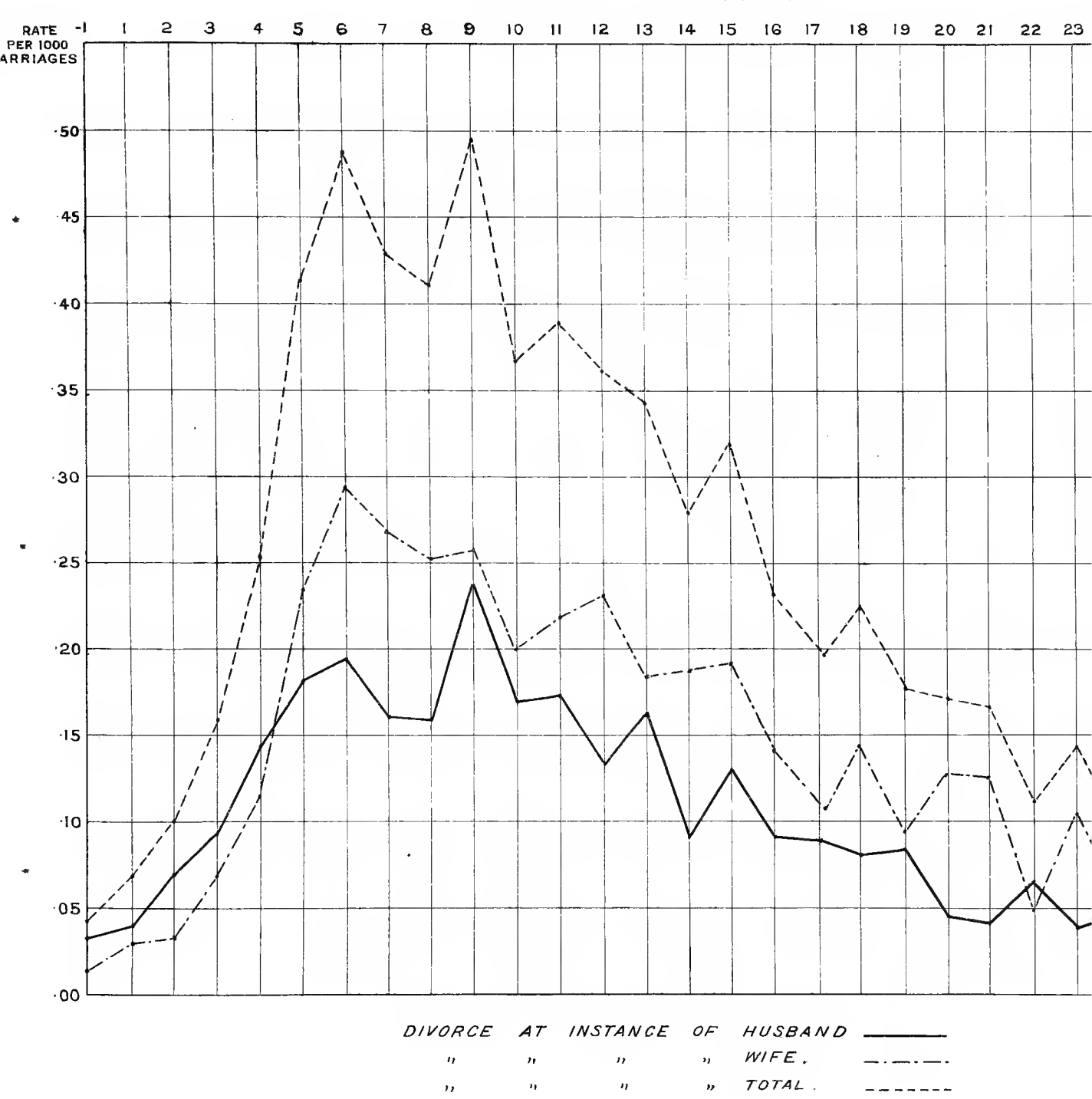

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Table XII.

Table showing Frequency of Divorce in Selected Occupations.

Occupation.	Divorces.			Ratio of Population to each Divorce.		
	Instance of Husband.	Instance of Wife.	Total.	Instance of Husband.	Instance of Wife.	Total.
Soldiers	26	14	40	246	457	160
Indoor servants	2	11	13	1,045	190	161
Seamen	30	46	76	681	444	269
Merchants, &c.	22	21	43	660	691	338
Hotel service	14	27	41	1,050	583	375
Police	6	7	13	873	749	403
Butchers	9	19	28	1,285	609	413
Medical practitioners	2	5	7	1,453	581	415
Bakers	17	31	48	1,248	685	442
Hemp, &c. manufacture	14	5	19	754	2,110	555
Dress manufacture	20	60	80	2,285	761	571
Grocers	15	28	43	1,677	862	585
Food trades	75	90	165	1,335	1,112	607
Clerks	14	48	62	2,751	802	621
Legal profession	6	9	15	1,600	1,066	640
Textile manufacture	53	38	91	1,225	1,708	713
Engine-drivers	10	12	22	1,724	1,437	749
Wood, furniture	23	17	40	1,464	1,980	842
Horse transport	33	26	59	1,628	2,066	911
Schoolmasters	3	5	8	2,511	1,507	942
Railway service	20	23	43	2,121	1,844	986
Iron, &c. manufacture, &c.	92	109	201	2,198	1,855	1,006
Building trades	66	51	117	2,063	2,669	1,166
Miners	45	54	99	2,897	2,460	1,322
Clergy	1	3	4	5,333	1,777	1,333
Outdoor servants	2	8	10	9,444	2,361	1,888
General labourers	16	12	28	3,439	4,585	1,965
Farming, &c.	41	42	83	4,185	4,027	2,038

APPENDIX XIX.—Statistics put in by Dr. Bisschop.

Arrondissement.	Population.		Divorce.											
	1899.	1909.	1904.		1905.		1906.		1907.		1908.		1909.	
	31st Dec.	31st Dec.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.
A. 1. 's Hertogenbosch.	276,052	304,132	4	2	—	—	—	5	1	3	1	—	3	2
2. Breda -	242,769	279,367	3	6	1	9	1	6	3	4	1	11	1	5
3. Maastricht -	149,819	179,849	—	—	1	2	—	3	1	2	2	9	—	3
4. Roermond -	165,826	190,340	1	—	—	1	1	—	3	—	—	1	—	1
Total -	834,466	953,688	8	8	2	12	2	14	8	9	4	21	4	11
B. 5. Arnhem -	281,309	322,751	9	9	14	10	19	13	7	10	14	21	10	20
6. Zutphen -	185,266	210,117	1	13	5	15	2	11	7	14	7	14	5	13
7. Tiel - -	117,897	123,923	—	2	—	1	1	4	1	4	1	4	—	5
8. Zwolle -	164,351	179,447	1	10	4	9	2	14	4	17	5	15	—	12
9. Almelo -	146,957	182,237	1	12	4	4	—	5	2	8	1	9	1	9
Total -	895,780	1,018,475	12	46	27	39	24	47	21	53	28	63	16	59
C. 10. 's Gravenhage	403,547	504,042	27	70	31	65	50	78	56	83	53	83	41	90
11. Rotterdam -	527,053	650,540	168		170		207		211		199		220	
12. Dordrecht -	175,728	187,326	6	19	4	22	6	19	2	16	2	23	5	21
13. Middelburg -	176,671	191,134	4	7	1	11	7	8	5	13	5	11	6	9
14. Zierikzee -	39,824	41,379	—	1	—	2	1	3	—	3	1	1	1	2
Total, with the exclusion of Rotterdam	1,322,623	1,574,421	37	97	36	100	64	108	63	115	61	118	53	122
D. 15. Amsterdam -	592,613	678,471	27	185	33	203	46	194	55	191	41	183	56	230
16. Alkmaar -	169,124	183,704	6	10	9	10	11	15	4	17	1	20	6	18
17. Haarlem -	217,019	261,035	3	13	10	29	12	34	10	38	11	37	14	41
18. Utrecht -	260,586	300,188	7	15	9	16	4	34	5	24	8	24	9	41
Total -	1,239,342	1,423,398	43	223	61	258	73	277	74	270	61	264	85	330
E. 19. Leeuwarden -	245,466	256,988	4	12	2	9	2	9	2	6	6	11	—	12
20. Heesenveen -	117,556	122,478	1	1	1	5	1	4	4	5	1	7	1	10
21. Groningen -	183,274	199,547	6	18	8	15	5	23	1	29	3	14	5	21
22. Winschoten -	116,328	128,422	3	2	—	7	3	3	—	1	3	4	4	3
23. Assan -	148,544	173,314	5	18	5	22	4	11	2	10	4	17	3	16
Total -	811,168	880,749	19	51	16	58	15	50	9	51	17	53	13	62
Total in the Kingdom, with the exclusion of Rotterdam -	5,103,379	5,850,731	119	425	142	467	178	496	175	498	170	519	169	584

APPENDIX XIX.—Statistics put in by Dr. Bisschop.

Dissolution of Marriage after Separation *a Mensa et Thoro*.												*Separatio*					
1904.		1905.		1906.		1907.		1908.		1909.		1904.		1905.		Arrondissement.	
Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.		
—	—	1	—	—	—	—	—	—	—	—	—	—	4	5	7	s Hertogenbosch.	1. A.
—	—	—	—	—	1	—	1	—	—	1	—	1	2	—	3	Breda.	2.
—	—	—	—	—	—	—	—	—	—	—	—	—	1	1	1	Maastricht.	3.
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	Roermond.	4.
—	—	1	—	—	1	—	1	—	—	1	—	1	7	6	12	Total.	
1	—	—	1	—	1	—	—	—	—	—	1	3	8	3	8	Arnhem.	5. B.
—	—	—	—	—	—	—	—	—	—	—	—	3	—	—	2	Zutphen.	6.
—	—	1	—	—	—	—	—	—	1	—	—	—	1	1	1	Tiel.	7.
—	—	—	—	—	—	—	—	—	—	—	—	—	1	—	1	Zwolle.	8.
—	—	—	—	—	—	1	—	—	—	—	—	—	1	3	—	Almelo.	9.
1	—	1	1	—	1	1	—	—	1	—	1	6	11	7	12	Total.	
—	2	—	1	—	1	—	2	—	1	—	2	6	8	3	14	s Gravenhage.	10. C.
—	—	1		—	—	3		2		—	—	34		24		Rotterdam.	11.
—	—	—	—	—	—	—	—	—	—	—	1	1	1	1	2	Dordrecht.	12.
—	—	—	—	—	—	—	—	—	—	—	—	—	4	2	2	Middelburg.	13.
—	—	1	—	—	—	—	1	—	—	—	—	—	3	—	1	Zierikzee.	14.
—	2	1	1	—	1	—	3	—	1	—	3	7	16	6	19	Total, with the exclusion of Rotterdam.	
—	—	—	1	1	—	—	1	—	1	3	5	8	23	3	44	Amsterdam.	15. D.
—	1	—	—	—	1	—	—	1	—	—	—	1	2	—	2	Alkmaar.	16.
1	—	—	—	3	—	—	—	—	—	—	1	3	4	6	8	Haarlem.	17.
1	—	—	3	—	1	2	—	—	—	1	—	8	5	4	4	Utrecht.	18.
2	1	—	4	4	2	2	1	1	1	4	6	20	34	13	58	Total.	
1	1	—	1	—	1	—	—	1	—	1	—	2	4	—	1	Leeuwarden.	19. E.
—	—	—	—	—	1	—	—	—	—	—	—	—	2	—	—	Leeuwenveen.	20.
—	—	—	—	—	—	1	—	1	—	1	—	—	6	—	8	Groningen.	21.
—	—	—	—	—	1	—	—	—	—	—	—	2	—	2	—	Winschoten.	22.
—	—	—	—	—	—	—	—	—	1	—	1	3	—	1	—	Assen.	23.
1	1	—	1	—	3	1	—	2	1	2	1	7	12	3	9	Total.	
4	4	3	7	4	8	4	5	3	4	7	10	41	80	35	110	Total in the Kingdom, with the exclusion of Rotterdam.	

APPENDIX XIX.—Statistics put in by Dr. Bisschop.

Arrondissement.	*a Mensa et Thoro.*								Separation by							
	1906.		1907.		1908.		1909.		1904.		1905.		1906.		1907.	
	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.
A. 1. 's Hertogenbosch.	2	8	—	2	4	—	—	2	—	—	—	—	—	—	—	—
2. Breda	1	2	2	3	4	7	3	3	—	—	—	—	—	—	—	—
3. Maastricht	—	3	—	1	—	1	—	2	—	—	—	—	—	—	—	—
4. Roermond	—	2	1	1	—	1	—	1	—	—	—	—	—	—	—	—
Total	3	15	3	7	8	9	3	8	—	—	—	—	—	—	—	—
B. 5. Arnhem	3	2	5	5	2	4	6	5	2	—	—	—	—	—	—	—
6. Zutphen	—	—	—	1	—	4	2	3	—	—	—	—	1	—	—	—
7. Tiel	1	—	—	1	1	1	1	—	—	—	—	1	—	—	—	—
8. Zwolle	—	4	1	2	3	1	1	1	—	—	—	—	—	—	—	—
9. Almelo	2	—	1	2	1	—	3	3	—	—	—	—	—	—	—	—
Total	6	6	7	11	7	10	13	12	2	—	—	1	1	—	—	—
C. 10. 's Gravenhage	4	17	6	7	5	19	7	13	—	—	1	—	—	—	—	—
11. Rotterdam	29		25		24		36		—	—	—	—	—	—	—	—
12. Dordrecht	1	2	1	1	2	1	1	1	—	—	—	—	—	—	—	—
13. Middelburg	—	1	2	7	4	1	—	2	—	—	1	—	—	—	—	—
14. Zierikzee	—	3	—	4	1	2	—	2	—	—	—	—	—	—	—	—
Total, with the exclusion of Rotterdam	5	23	9	19	12	23	8	18	—	—	2	—	—	—	—	—
D. 15. Amsterdam	11	32	10	38	14	31	4	37	—	—	1	—	—	—	2	—
16. Alkmaar	—	1	2	1	—	2	—	1	—	—	1	—	—	—	—	—
17. Haarlem	2	7	6	18	9	11	3	17	—	—	—	—	1	—	—	—
18. Utrecht	1	11	—	13	—	9	2	13	1	—	—	—	1	—	—	—
Total	14	51	18	70	23	53	9	68	1	—	2	—	2	—	2	—
E. 19. Leeuwarden	2	5	2	5	1	5	4	4	1	—	—	—	—	—	—	—
20. Heesenveen	—	—	1	1	—	—	—	—	—	—	—	—	—	—	—	—
21. Groningen	—	6	5	7	2	5	4	5	—	—	1	—	—	—	—	—
22. Winschoten	1	2	—	1	—	2	—	1	—	—	—	—	—	—	—	—
23. Assan	4	—	1	—	1	—	—	2	—	—	1	—	—	—	—	—
Total	7	13	9	14	4	12	8	12	1	—	2	—	—	—	—	—
Total in the Kingdom, with the exclusion of Rotterdam	35	108	46	121	54	107	41	118	4	—	6	1	3	—	2	—

APPENDIX XIX.—Statistics put in by Dr. Bisschop.

Mutual Consent.				*Separatio bonorum.*													
1908.		1909.		1904.		1905.		1906.		1907.		1908.		1909.		Arrondissement.	
Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.	Ord.	I.F.P.		
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	's Hertogenbosch.	1. A.
—	—	—	—	—	—	—	—	—	1	1	—	—	—	1	—	Breda.	2.
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	Maastricht.	3.
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	Roermond.	4.
—	—	—	—	—	—	—	—	—	1	1	—	—	—	1	—	Total.	
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	Arnhem.	5. B.
—	—	1	—	1	—	—	—	—	—	—	—	—	—	—	—	Zutphen.	6.
—	—	—	—	—	—	—	—	—	—	—	—	1	—	—	—	Tiel.	7.
1	—	—	—	—	—	—	—	—	1	1	—	1	—	—	—	Zwolle.	8.
—	—	—	—	—	—	—	—	—	1	—	—	—	—	—	—	Almelo.	9.
1	—	1	—	1	—	—	—	—	2	—	—	2	—	—	—	Total.	
—	—	—	—	1	—	2	—	—	—	1	—	—	—	—	—	's Gravenhage.	10. C.
—	—	—	—	—	—	—	—	12		1		1		—	—	Rotterdam.	11.
1	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	Dordrecht.	12.
—	—	—	—	1	—	—	—	1	—	—	—	2	—	—	—	Middelburg.	13.
—	—	—	—	1	—	1	—	3	—	—	—	—	—	—	—	Zierikzee.	14.
1	—	—	—	3	—	3	—	4	—	1	—	2	—	—	—	Total, with the exclusion of Rotterdam.	
2	—	—	—	1	—	—	—	—	—	—	1	—	—	—	—	Amsterdam.	15. D.
1	—	1	—	—	—	—	—	—	—	—	—	—	—	—	—	Alkmaar.	16.
—	—	1	—	—	—	—	—	—	—	—	—	—	—	—	—	Haarlem.	17.
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	Utrecht.	18.
3	—	2	—	1	—	—	—	—	—	—	1	—	—	—	—	Total.	
—	—	—	1	—	—	—	—	—	—	—	—	—	—	—	—	Leeuwarden.	19. E.
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	Heeseuveen.	20.
—	—	—	—	1	—	1	—	3	—	3	—	3	—	—	—	Groningen.	21.
—	—	—	—	—	—	—	—	—	—	1	—	—	—	—	—	Winschoten.	22.
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	Assen.	23.
—	—	—	1	1	—	1	—	3	—	4	—	3	—	—	—	Total.	
5	—	3	1	6	—	4	—	7	3	6	1	7	—	1	—	Total in the Kingdom, with the exclusion of Rotterdam.	

APPENDIX XX.

Returns as to Criminal and other Statistics from Ireland.

Dublin Metropolitan Police Court,
Inns Quay,
10th February 1911.

Sir,

In reply to your letter of yesterday's date, I beg to say that our statistics in cases of assault do not distinguish between assaults by males on their wives and on females not so related to them, and I am therefore unable to give you any reply to question 1 (*a*). As regards 1 (*b*) I give you the number of males convicted of such offences, and as regards 1 (*c*) I give the number of females convicted. For all practical purposes it may be assumed that the males referred to are husbands and the females wives; the error, if any, is very slight. I also give the number of maintenance orders made. The figures are for the years 1907, 1908, and 1909, and are for the whole of this police district.

I trust that this information will be sufficient for the purpose for which you require it.

I have the honour to be, Sir,
Your obedient servant,
Ernest G. Swifte,
Chief Magistrate.

The Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
21, St. James's Square,
London.

Police District of Dublin Metropolis.

——	1907.	1908.	1909.
Males convicted of cruelty to children or neglect to maintain wives.	21	15	29
Females convicted of cruelty to children.	10	17	45
Maintenance orders made against husbands on the ground of desertion, or otherwise.	82	89	80

(No. 3882.) Dublin Castle,
3rd March 1911.

Sir,

With reference to your letter of the 22nd ultimo, addressed to the Superintendent, Judicial and Criminal Statistics Department, Dublin, I am directed by the Lord Lieutenant to state, for the information of the Royal Commission on Divorce and Matrimonial Causes, that the Irish police returns give the number of maintenance orders made by courts of summary jurisdiction against husbands on the ground of desertion or other causes.

The criminal statistics, however, do not contain particulars as to the number of husbands convicted of assaults on wives, or as to the number of husbands or wives convicted of cruelty to children; and to obtain this information it would be necessary to refer to the local police throughout Ireland, and much labour would be involved in the compilation of the statistics.

I am, Sir,
Your obedient servant,
J. B. Dougherty.

The Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square,
London, S.W.

(No. 3/M/559.) General Register Office,
Charlemont House, Dublin,
10th February 1911.

Sir,

I beg to acknowledge the receipt of your letter of the 9th instant, and to state that a communication will be sent to you in due course on the subject referred to.

I am, Sir,
Your obedient servant,
Daniel S. Doyle,
Asst. Registrar-General.

The Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square,
London, S.W.

(No. 3/M/559.) General Register Office,
Charlemont House, Dublin,
21st March 1911.

Sir,

With reference to my letter of the 10th ultimo, I now have pleasure in replying to the inquiries contained in your letter referred to therein.

(1) *Lunacy in Ireland.*—I would suggest that inquiry might be made from the Office of the Inspectors of Lunatics, Dublin Castle, where the latest figures are available, those obtainable from this department being for the census of 1901.

(2) *Marriages in Ireland.*—I beg to refer you to my annual report (copy enclosed) for 1909, page ix, and tables on pages 16 and 17, and to say that the ages at marriage are not furnished with the same exactness in Ireland as in England, "Full age" or "Minor" being sufficient for statutory requirements.

(3) *Criminal Statistics (Ireland).*—I beg to state that:—

(*a*) This information is not shown separately in the reports.

(*b*) There were 274 applications made by married women for maintenance in 1909, 176 orders were granted.

(*c*) Not shown in reports.

(*d*) Orders for maintenance under Children's Act—289 applications and 272 orders. (Table XVIII, Criminal Statistics, 1909.)

The annual report on Judicial Statistics (Civil and Criminal), containing the figures given above, can be obtained through His Majesty's Stationery Office. I regret that I have not a copy available to forward.

The total number of persons tried at assizes and quarter sessions for neglect and cruelty to children was 25, two of males and 23 of females.

The total number of such cases tried by summary jurisdiction was 1,299 cases, and there were 76 cases of neglecting to maintain family, &c. (Table XV.)

I beg to add that Sir R. E. Matheson's paper to which you allude was published in 1905, by Messrs. Sealy, Bryers, and Walker, 94–96, Middle Abbey Street, Dublin.

I am, Sir,
Your obedient Servant,
William J. Thompson,
Registrar-General.

The Secretary,
Royal Commission on Divorce, &c.,
Winchester House,
21, St. James's Square,
London, S.W.

APPENDIX XXI.

Royal Commission on Divorce and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.,
8th February 1910.

DEAR MR. WATERTON,

I UNDERSTAND from the Chairman of this Commission that you have had considerable experience as one of the head clerks of the Divorce Department of the Principal Probate Registry in difficulties as to procedure in poor cases and particularly *in formâ pauperis*, and that you may be able to assist this Commission with some views or information with regard thereto, more particularly as to simplifying and cheapening procedure in such matters.

If so, I am directed to inquire whether you will be good enough to send to me a short memorandum dealing with the difficulties, if any, and any views you may entertain and method you may have to suggest as to simplifying and cheapening divorce procedure, more particularly possibly with reference to *in formâ pauperis* proceedings.

Yours very truly,
H. GORELL BARNES,
Secretary.

W. Waterton, Esq.,
Principal Probate Registry,
Somerset House,
Strand, W.C.

Principal Probate Registry,
Somerset House, London, W.C.,
10th February 1911.

DEAR MR. GORELL BARNES,

IN answer to your letter I beg to enclose a memorandum on alterations in divorce practice on the lines suggested by you. I have been sixteen years in this department and during that period have had frequent interviews with paupers, and am fully acquainted with the difficulties they have in conducting their suits. I wish to point out that the alterations I have suggested are given in outline only. If the Commission should seriously consider them I am quite prepared to give fuller details.

I am,
Yours faithfully,
WATERTON.

The Hon. H. Gorell Barnes.

Memorandum on Divorce Practice.

Contentious Department,
Principal Probate Registry,
Somerset House, London, W.C.,
10th February 1911.

I BEG to recommend to the Royal Commission on Divorce and Matrimonial Causes for their consideration the following alterations in the present practice in divorce suits with a view to simplifying and cheapening the procedure in such matters :—

(1) The establishment of a personal application and correspondence department in divorce suits on similar lines to the present personal application department in probate matters.

Under the present system, when a petitioner obtains an order to sue *in formâ pauperis*, he is obliged to get assistance to draw up his petition, affidavit and citations, as he is totally ignorant of the practice, and he must attend personally at the registry to file his papers. After the petition is filed he is again obliged to call for the sealed copies of the petition and citation. Again he must attend to make the necessary search for appearance of respondent, and apply for the registrar's certificate, and after that he must attend again to set the cause down for trial. This is the present procedure in an ordinary undefended suit where no appearance is entered. Thus the petitioner is obliged to attend no less than five times at the registry in order to set his cause down. If the petitioner resides at a considerable distance from London, the cost of the journey to London and the consequent loss of work is prohibitive, and in many cases petitions are abandoned on this account.

If the department, as I have suggested, were established, it would not be difficult for the clerks in the department to draw up the necessary papers on printed forms. The petition could be then filed, and the sealed copies for service forwarded by post. After the time for appearance had expired, a search could be made by a clerk in the department, and the cause set down for trial. Notice could then be sent to the petitioner that this had been done. I do not anticipate there would be any difficulty in drawing up the necessary forms and instructions for applicants. If this method were adopted the petitioner would only have to attend once at the registry to obtain his order to sue *in formâ pauperis*, and give his instructions for the drawing up of his petition. In many cases the applicants are unable to pay the necessary fees for counsel's certificate in pauper causes, and I think that the statement of facts could be drawn up in the registry, and the certificate given by one of the registrars. It often occurs, especially if women are the petitioners, that the respondent has gone abroad, or that his present address is unknown. This necessitates a motion to court for substituted service by advertisement. The cost of these advertisements are often totally beyond the means of the petitioner. I suggest, therefore, that the necessary papers for the motion should be drawn up in the registry, counsel assigned to the petitioner for the motion, and that the advertisements should be limited to insertion of once only in one newspaper. In support of this suggestion I may say that I have never known an appearance to be entered in answer to an advertisement.

I am assuming that these pauper causes would be undefended, and from my experience, I am quite sure that the percentage of defended causes would be extremely small, and in defended causes I do not see any difficulty in dealing with them by correspondence, provided that a department was adequately equipped for that purpose. I fully anticipate that, if this department were established, it would lead to a considerable increase in pauper cases, and that the present department would have to be enlarged. I also wish to suggest that citations in all cases should be abolished, and that the petition should be treated in the same manner as a writ in the King's Bench Division. This would simplify the practice not only in pauper cases, but in all others.

(2) *Trial of Pauper Causes.*—I wish to suggest that in each term a special day should be appointed for the trial of these causes. I do not think that they would amount to 20 in each term, and could be easily heard on one day. It frequently happens that these causes are struck out owing to the non-appearance of the petitioner, and letters are often received at the registry asking for information when causes are likely to be heard. It is impossible to give the information required, and it is useless to tell them to watch the cause list, as when parties reside at a long distance from London they have no opportunity of doing so.

W. WATERTON.

APPENDIX XXII.

(No. 69.)

SIR, Lisbon, November 19th, 1910.

I HAVE the honour, with reference to my despatch No. 64 of yesterday's date, to forward a very valuable and interesting memorandum prepared by Mr. Gaisford showing the principal provisions of the new Divorce Law.

Decisions pronounced under the law become operative at once—that is to say, after the lapse of ten days, subject to the restrictions as to re-marriage laid down in Article 55. No provision is made to prevent the institution of proceedings, or reversal of a decision, in cases where the petitioner has, himself or herself, been guilty of any of the offences for which divorce or separation is permitted.

The publication of an enactment which creates such a fundamental change in the condition of social life has naturally produced a profound impression.

I have the honour to be, with the highest respect,
Sir,
Your most obedient humble servant,

The Right Hon. (Signed) F. H. VILLIERS.
Sir Edward Grey, Bart., M.P., &c.

PORTUGUESE LAW OF DIVORCE, NOVEMBER 4TH, 1910.

**Article* 4. The legitimate causes for divorce are: 1, adultery; 2, conviction of one of the major crimes† specified in Articles 55 and 57 of the Penal Code; 3, ill-treatment; 4, abandonment of home for not less than three years; 5, absence for not less than four years during which the absentee gives no tidings of him or herself; 6, incurable lunacy, three years after the date on which insanity has been declared by the competent authorities; 7, separation *de facto* by mutual consent for ten years; 8, inveterate gambling habits; 9, incurable contagious disease or any disease which induces sexual aberration.

§ . Divorce for cause No. 2 cannot be admitted if the petitioner has been convicted of complicity in the crime committed by the defendant.

§ . Referring to cause No. 9, the nature and character of the disease must have been verified beforehand.

Article 6. The plaintiff shall bring forward in the petition some one of the causes specified in Article 4 as a legitimate cause for divorce, and shall produce the marriage certificate and also a copy of the judicial sentence if the petition is based on causes No. 2 or No. 6.

Article 8, § 2. There cannot be more than five witnesses to each fact alleged, and the total number of witnesses on each side cannot exceed 30.

§ . The decree of divorce shall contain a summons from the judge to both parties to confer with him respecting the destiny of the children under age, their maintenance, and any other point it may be necessary to settle with regard to them.

Article 19, § 2. A divorced woman cannot use the name or names she has derived from her husband.

The Children.

Article 21. The children shall for preference be confided to the parent in whose favour divorce has been pronounced. When this is obviously undesirable they shall be put under the charge of some third person, preferably a near relative.

Article 22. Nevertheless the father and mother retain their parental rights until deprived of them,‡ and the right to see to the education of the children.

Article 24. Both father and mother are obliged to contribute towards the maintenance of the children in proportion to their means. Such contribution is a first charge on the parents' estate.

The Estate.

Article 26. Divorce always entails separation of property, each party obtaining full rights over that which remains in his or her possession.

The separation and division of the estate can be settled *à l'aimable.*

Article 27. The guilty party loses all benefits derived from the innocent party, whether received under the ante-nuptial contract or subsequent to it. Similarly the innocent party retains all such benefits. The innocent party can, however, renounce such right, but should there be children only, in the latter's favour.

Alimony.

Article 29. Either party can claim alimony from the other if in need thereof. The amount of such alimony must be settled in accordance with the needs of the person receiving it, but can never exceed one-third of the net income of the other.

Article 31. The amount of alimony can be reduced at the request of the person contributing it if unable to continue to pay the original amount or if the other party no longer needs it. Similarly the amount can be increased if the receiving party is in need, or if the circumstances of the other have improved, unless such improvement is derived from a subsequent marriage.

Article 32. The right to receive or the obligation to provide alimony ceases when the receiving party contracts another marriage or becomes through immoral behaviour unworthy to receive it, and when the contributing party is no longer able to provide it.

Article 33. The contracting of a fresh marriage by the contributing party does not exempt him or her from the obligation to contribute alimony, nor can it be used as a pretext to have the amount reduced.

Article 34. If the decree of divorce is not pronounced the petitioner cannot renew his suit for two years on the same count, but is not prevented from doing so on a different one.

The non-success of a divorce suit brought on account of causes 1, 2, 3, 4, 8, 9 constitutes presumption of grave injury to the defendant, and is a sufficient basis for the latter to bring an action petitioning for divorce or separation of persons and property.

Divorce by Mutual Consent.

Article 35. Divorce by mutual consent can only be obtained by persons of over 25 years of age who have been married for at least two years.

Article 36. The following documents must be exhibited:—(1) Certificate of marriage; (2) birth certificate; (3) specific and detailed declaration of all property; (4) agreement come to with regard to the possession of the children under age; (5) declaration as to the sum which each parent will contribute towards the maintenance and education of the children; (6) certified copy of ante-nuptial contract.

Article 37. The petition is disallowed if the terms of Article 36 are not complied with. If the petition is allowed the judge shall summon the parties to appear before him, and if they are not reconciled and persist in their determination, he shall cause a deed of agreement to be drawn up in the presence of two men of good faith designated by himself, who shall sign as witnesses.

Article 39. The judge shall ratify the deed and authorise provisional divorce for one year.

§ . This provisional divorce does not allow the parties to exercise any right resulting from the dissolution of the marriage either with regard to persons or estate.

Article 40. After the year has elapsed the parties shall, spontaneously or at the instance of one of them, appear once more in person before the judge and declare that they adhere to their determination. If at this juncture a reconciliation is effected the provisional divorce shall be annulled; if not, their agreement shall be ratified once more, and definite divorce will then be decreed.

* Articles not mentioned in this summary are not of effective importance.

† Such as murder, assaults, robbery, offences against morality.

‡ Presumably under the provisions of Article 21.

Article 41. Parties who, having petitioned for divorce by mutual consent, are reconciled, cannot obtain it on a subsequent occasion, but they are at liberty to sue for a divorce in the ordinary way.

Separation of Persons and Estate.

Article 43. Separation is open to the contending parties on the same grounds as in actions for divorce,*

Article 44. The innocent party can opt for divorce or separation.

Article 46. Either of the parties can, five years after the sentence authorising separation has been passed, claim the conversion of the separation order into a decree of divorce.

Article 47. The separation of parties who have become reconciled does not prevent one of them from bringing a divorce action against the other, nor does it prevent both parties from petitioning for a divorce by mutual consent.

General Provisions.

Article 54. No provision can be inserted in an antenuptial contract or a will which prevents the beneficiary from suing for a divorce or imposes any penalty for so doing.

Article 55. A divorced woman cannot contract a fresh marriage until a year has elapsed since the dissolution of her previous marriage; the husband can remarry after six months.

§ 1. This article is inoperative in cases where divorce has been granted for causes 6, 7, or 9.

§ 2. The party proved to be suffering from one of the diseases mentioned in Article 4, is forbidden to contract a fresh marriage, but the other party can do so after the period stipulated in this Article.

Article 56. The provisions of the Civil Code (Article 101, &c.)† are applicable to the child born of a divorced woman within 300 days of the dissolution of her marriage.

Article 57. Matrimony legitimizes all children born previous to the marriage of their parents.

Article 58. A child born in wedlock and repudiated by the husband can also be legitimized by the subsequent marriage of its parents.

Article 59. The legitimate children of divorced persons can succeed their parents or grandparents without distinction of sex or age even if they are the issue of different unions.

Article 60. The children of divorced persons of between 18 and 21 years shall be considered of full age for all legal purposes.

(No. 84.)

SIR, Lisbon, December 30th, 1910.

WITH reference to my despatch No. 69 of the 19th ultimo, enclosing a memorandum respecting the new Portugese Divorce Law, I have the honour to forward translation of a decree, published in the "Diario do Governo," of the 22nd instant, which provides that any period passed since a declaration of incurable lunacy shall be taken into account for the fulfilment of the condition laid down in section IV. of the law—namely, that three years must elapse before proceedings for divorce can be taken.

I have the honour to be, with the highest respect, Sir,

Your most obedient humble servant,

(Signed) F. H. VILLIERS.

The Right Hon.
Sir Edward Grey, Bart., M.P.,
&c., &c., &c.

Enclosure in Sir F. VILLIERS' No. 84 of December 30th, 1910.

(Diario do Governo of December 22nd, 1910.)

(Translation.)

Decree.

Whereas it is necessary to explain No. 7‡ of Article IV. of the decree, with force of law, of November 3, 1910, in order that, in the absence of a sentence for privation of civil rights owing to insanity at the time when incurable lunacy was declared, the party affected shall not be obliged to wait for three years more before instituting proceedings, which would be to the grave detriment of him or herself and the children, and without the least advantage to the other party, and would not further the objects the legislator had in view in fixing that period, the Provisional Government of the Portuguese Republic make known in the name of the Republic, that the following has been decreed to have the force of law:—

Article I.—For the purposes of No. 7 of Article IV. of the decree, with force of law, of the 3rd of November 1910, the judge shall, when possible, designate, in the sentence therein mentioned, the minimum space of time of incurable lunacy already elapsed, the assent of the competent experts being essential therefor; and as soon as three years of incurable lunacy have passed, the other party may bring an action for divorce.

§ . In cases where it is mentioned in the action for privation of civil rights that three years of incurable lunacy have elapsed, the action for divorce may be instituted at any time from the day immediately following that on which the sentence for privation of civil rights has been filed.

Article II.—This decree will come into force immediately, and will be submitted for consideration to the Constituent Assembly.

Article III.—Legislation to the contrary is hereby revoked.

It is therefore ordained that all the authorities to whom the knowledge and execution of this decree may appertain shall fulfil it and cause it to be fulfilled in its integrity.

The ministers of all the departments shall cause it to be printed, published, and circulated.

Given at the seat of the Government of the Republic this 21st day of December 1910.

JOAQUIM THEOPHILI BRAGA.
AFFONSO COSTA.
JOSE RELVAS.
ANTONIO XAVIER CORREIA BARRETO.
AMARO DE AZEVEDO GOMES.
BERNANDINO MACHADO.
MANOEL DE BRITO CAMACHO.

APPENDIX XXIII.

Royal Commission on Divorce and Matrimonial Causes,
Winchester House, 21, St. James's Square, S.W.,
22nd June 1910.

SIR, LORD GORELL, the Chairman of this Commission, has recently received a letter in which it is stated that in India adultery has been made a criminal offence.

It would be of considerable assistance to the Commissioners, to whom some such suggestion has been made by various witnesses, if you would be good enough to inform me whether this is so, and to give

* On the same grounds and with the same effect as regards children and property as in actions for divorce.

† Provisions for establishing legitimacy.

‡ No. 6 in the summary forwarded in despatch No. 69 of November 19th, 1910.

me any details of such law; and either be good enough to inform me whether I can obtain, or yourself supply me with, reports, if any, from the Government of India upon it, and any further documents, as, for instance, expressions of opinion from commissioners or magistrates and others with regard thereto, which would be of interest and assistance to the Commission.

I am, Sir,
Your obedient servant,
H. GORELL BARNES,
Secretary.

The Under Secretary of State for India in Council,
St. James's Park, S.W.

India Office, Whitehall, S.W.,
27th July 1910.

SIR,

IN reply to your letter of the 22nd ultimo, on the subject of the treatment of adultery in Indian law, I am directed by Viscount Morley to transmit, for the information of the Chairman of the Royal Commission on Divorce and Matrimonial Causes, a copy of a Note by the Legal Adviser to the Secretary of State.

It is presumed that the texts of the Indian Law Commission Report, Indian Penal Code, and the Indian Divorce Act are accessible to the Royal Commission. Search has been made in the records of this Office for reports or expressions of opinion by magistrates or judges on the results of the change introduced into the Indian Penal Code in 1860, but without result. Lord Morley hopes, however, that the Note furnished may be of assistance to the Commissioners.

I am, Sir,
Your obedient servant,
COLIN G. CAMPBELL.

The Secretary,
Royal Commission on Divorce,
Winchester House, St. James's Square, S.W.

Note on Adultery as an Offence under the Indian Penal Code.

Under the Indian Penal Code the offence of adultery is made punishable, not as regards the husband or the wife, but in the person of the stranger or third party, the man who knowing or having reason to believe a woman to be the wife of another, has sexual intercourse with her. (*See* sec. 497 I.P.C.)

The guilty wife is not punishable as an abettor, nor is the guilty husband if he commits adultery with an unmarried woman.

Adultery is a criminal offence only in the case of a man, who has illicit intercourse with a woman who is, and whom the man knows or has reason to believe to be, the wife of another man, without the consent or connivance of the husband.

The question whether adultery should be made a criminal offence was carefully and exhaustively considered by the Indian Law Commission, of which Lord (then Mr.) Macaulay was chairman. A large body of evidence on the subject was collected, as we are told in Note Q. to the Report, and on consideration the Commissioners decided that adultery should, so far as the Anglo-Indian law was concerned, be classed as a civil injury only, and not as a criminal offence.

The reason on which this opinion was mainly based was that, having regard to the social conditions prevailing amongst Indians (both Mahomedans and Hindoos) and also among Europeans and Eurasians, the law making adultery punishable as a criminal offence was likely to prove quite ineffective as a remedial measure. It was thought that the upper classes of society would not have recourse to the law as a protection from injury or as a vindication of family honour, while the lower classes would use the criminal court as a means of enforcing compensation to the injured husband for the loss of his wife's services. Twenty-three years afterwards, when the report of the Law Commission came to be considered by the Select Committee appointed by the Legislative Council of India, the Committee (Sir Barnes Peacock being the chairman) took a different view. The Committee thought that adultery as now restrictively defined in the Indian Penal Code should be made a criminal offence. Sir Barnes Peacock as vice-chairman of the Council, in moving that the Bill as founded on the Report of the Select Committee should be passed, said, "The law provided protection to a man "in respect to his property, but that was a small "matter as compared with the protection which a man "required in respect of what was far nearer and "dearer to him, namely, his family honour. A man "who entered another's house and robbed him of his "property would be punished, and he saw no reason "why a man who seduced another's wife and thereby "rendered him miserable for life ought not to be "punished also."

There can be no question, I think, that the experience of 50 years, the period during which adultery has been punishable as a criminal offence, has justified the wisdom and soundness of the opinion of Lord Macaulay's Commission, rather than that of the Select Committee who framed the law as it now stands. This law, which makes adultery punishable with imprisonment of either description (*i.e.*, rigorous or simple) for a term which may extend to five years, or with fine, or with both, has in effect remained a dead letter. Very rarely, indeed, has recourse been made to this law as a protection from injury to, or in vindication of family honour. It is safe to say that the higher classes, whether Indian or European, have, as a rule, avoided the criminal court as a form for seeking reparation for family dishonour. So far as these classes are concerned, honour has been vindicated, or reparation obtained in other ways.

During 30 years of legal experience in India, I remember only one case where a charge of adultery came before the criminal sessions of the High Court. An Indian attorney was tried and convicted before the High Court on a charge of adultery with a niece, a young married woman, who was living in his house. It was a gross case, no doubt, but it was the very grossness and notoriety of the offence which compelled the family, very reluctantly, to take criminal proceedings.

Occasionally, persons of the lower classes, both Indians and Eurasians, have brought charges of adultery in the magistrates' courts, but even in these cases, very rarely have the charges proceeded to trial and conviction. Almost invariably an arrangement has been arrived at, and the case compounded for a money payment.

The fact is, the section has been used, as the Indian Law Commissioners anticipated, as a means of obtaining compensation for what was in reality regarded as a civil injury only.

There are certain special circumstances which have, perhaps, contributed to this result.

Nine years after the Penal Code became law, the Divorce Act was passed. This was Act 4 of 1869, which affects Christian marriages only. By this Act the English law as regards adultery as a ground for dissolution of marriages or for judicial separation was introduced to India, and the Christian husband whose wife was guilty of adultery preferred to seek relief under this Act, rather than have recourse to the criminal court for the purpose of punishing the adulterers.

As regards Hindu and Mahomedan society, amongst the upper classes, adultery on the part of a wife is of very rare occurrence. The seclusion of the Purdah system tends, no doubt, to preserve the purity of the family life, so far as the females are concerned. The Mahomedan law allows the husband to divorce an erring or faithless wife in a simple and easy manner, without recourse to the law courts. The Hindu law, on the other hand, does not provide for divorce, but regards marriage as indissoluble, but rigid caste rules and social customs provide drastic methods for punishing a faithless wife. On the whole, therefore, Indian experience would seem hardly to justify the proposal to make adultery a criminal offence under the English law.

(Signed) S. G. SALE.

28th June 1910.

APPENDIX XXIV.

Royal Commission on Divorce and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.,
14th November 1910.

SIR,

As you are perhaps aware, a Royal Commission was appointed by his late Majesty—

" to inquire into the present state of the law " and the administration thereof in divorce and " matrimonial causes and applications for separa- " tion orders, especially with regard to the " position of the poorer classes in relation " thereto, and the subject of the publication " of reports of such causes and applications; " and to report whether any, and what, amend- " ments should be made in such law, or the " administration thereof, or with regard to the " publication of such reports."

Questions have been raised with reference to payments for maintenance under orders made under the Summary Jurisdiction (Married Women) Act, 1895.

A suggestion has been made to the Commissioners that, in view of the great difficulty frequently found by married women in enforcing payment of the amount which they are by the orders of magistrates or justices to receive, it might be advisable that the magistrates or justices should have power to make an order to attach the wages of a respondent husband against whom such an order as aforesaid has been made, and to direct that notice may be given to the employer of such husband that a certain proportion of his wages should be paid direct to the applicant wife, or to some officer of the court appointed for that purpose.

On the other hand, it has been stated that, if such a course were adopted, the employee's employment might be jeopardised, since the employers, in such cases, might take the view that it was undesirable to retain in their service an employee, in respect of whose wages it would be necessary that they should deal in the manner above indicated.

The matter is one to which the Commissioners attach considerable importance, and one upon which they feel that it would be of advantage and should prove of assistance to them to have the views of the London County Council, since it has so many employees under its direction, with regard to the suggestion above stated.

I have, therefore, been directed by the Chairman, on behalf of the Commissioners, to communicate with you to inquire whether you would be good enough to inform me what are the views entertained by the London County Council upon the matter, in order that I may be in a position to bring them before the Commissioners.

I am, Sir,
Your obedient Servant,
H. GORELL BARNES,
Secretary.

The Clerk of the Council,
London County Council,
Spring Gardens, S.W.

London County Council,
(47146.) County Hall, Spring Gardens, S.W.,
16th November 1910.

SIR,

I HAVE to acknowledge the receipt of your letter of the 14th instant as to payments for maintenance under orders made under the Summary Jurisdiction (Married Women) Act, 1895. The request of the Royal Commission shall be laid before the appropriate Committee of the Council early next week, and I will communicate with you again as soon as a decision shall have been arrived at.

I am, Sir,
Your obedient Servant,
G. L. GOMME,
Clerk of the Council.

The Secretary of the Royal Commission
on Divorce and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

London County Council,
(50088.) County Hall, Spring Gardens, S.W.,
30th November 1910.

SIR,

THE Council has had under consideration your letter of the 14th instant, asking for the opinion of the Council on the proposal to empower magistrates and justices to make an order to attach the wages of a respondent husband, against whom an order for maintenance under the Summary Jurisdiction (Married Women) Act, 1895, has been made, and to direct that notice may be given to the employer of such husband that a certain proportion of his wages should be paid direct to the applicant wife, or to some officer of the court appointed for that purpose.

The Council at its meeting on the 29th instant passed a resolution on the subject as follows:—

That the Council does not desire to express an opinion upon the proposal that magistrates and justices should be empowered to make an order to attach the wages of a respondent husband, against whom an order for maintenance under the Summary Jurisdiction (Married Women) Act, 1895, has been made, and to direct that notice may be given to the employer of such husband that a certain proportion of his wages should be paid direct to the applicant wife, or to some officer of the court appointed for that purpose; and that the Royal Commission on Divorce and Matrimonial Causes be so informed.

I am, Sir,
Your obedient Servant,
G. L. GOMME,
Clerk of the Council.

The Secretary, Royal Commission on
Divorce and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

Royal Commission on Divorce and Matrimonial Causes,
Winchester House,
21, St. James' Square, S.W.,
10th November 1910.

SIR,

As you are perhaps aware, a Royal Commission was appointed by His late Majesty—

" to inquire into the present state of the law " and the administration thereof in divorce and " matrimonial causes and applications for separa- " tion orders, especially with regard to the position " of the poorer classes in relation thereto, and the " subject of the publication of reports of such " causes and applications; and to report whether " any, and what, amendments should be made in " such law, or the administration thereof, or with " regard to the publication of such reports."

Questions have been raised with reference to payments for maintenance under orders made under the Summary Jurisdiction (Married Women) Act, 1895.

A suggestion has been made to the Commissioners that, in view of the great difficulty frequently found by married women in enforcing payment of the amount which they are by the orders of magistrates or justices to receive, it might be advisable that the magistrates or justices should have power to make an order to attach the wages of a respondent husband against whom such an order as aforesaid has been made, and to direct that notice may be given to the employer of such husband that a certain proportion of his wages should be paid direct to the applicant wife, or to some officer of the court appointed for that purpose.

On the other hand, it has been stated that, if such a course were adopted, the employee's employment might be jeopardised, since the employers, in such cases, might take the view that it was undesirable to retain in their service an employee, in respect of whose wages it would be necessary that they should deal in the manner above indicated.

The matter is one to which the Commissioners attach considerable importance, and one upon which they feel that it would be of advantage and should prove of assistance to them to have the views of various corporations with numerous employees with regard to the suggestion above stated.

I have, therefore, been directed by the Chairman, on behalf of the Commissioners, to communicate with you to inquire whether you would be good enough to inform me what are the views entertained by the Corporation on the matter, in order that I may be in a position to bring them before the Commissioners.

I am, Sir,
Your obedient Servant,
H. GORELL BARNES,
Secretary.

To the town clerks of—

Liverpool.	Birmingham.
Bristol.	Manchester.
Hull.	Salford.
Leeds.	Sheffield.
Leicestsr.	West Ham.
Newcastle.	Bradford.
Nottingham.	

Town Clerk's Office (Leasing Department),
Municipal Buildings, Liverpool,
22nd November 1910.

SIR,

I DULY submitted to the Committee dealing with the matter your circular letter of the 10th instant asking the Corporation for an expression of their views on certain questions under the consideration of the Commission with reference to the payment for maintenance under orders made under the Summary Jurisdiction (Married Women) Act, 1895.

I was instructed by the Committee to inform you that they do *not* approve of the suggestions contained in your letter.

I am, Sir,
Your obedient Servant,
EDWARD R. PICKMERE,
Town Clerk.

H. Gorell Barnes, Esq.,
Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James' Square, S.W.

Town Hall, Hull,
22nd November 1910.

SIR,

ADVERTING to your letter of the 10th instant with reference to the proposal that has been made before the Royal Commission on Divorce and Matrimonial Causes to empower justices to make an order to attach the wages of a respondent husband in the hands of the employers, I beg to inform you that my Council does not meet until the 1st December. The subject of the letter is one which it appears to me the Council would be most likely to refer to one of their Committees, no doubt chosing one which has the control of a large amount of labour. My object in writing to you is to ask you whether the delay in answering your question entailed by this method would lead to the Corporation's reply, if any, being useless to the Commission.

I am, Sir,
Your obedient Servant,
H. A. LEAROYD,
Town Clerk.

The Hon. H. Gorell Barnes,
Secretary,
Royal Commission on
Divorce and Matrimonial Causes,
Winchester House,
21, St. James' Square, S.W.

Town Hall, Hull,
2nd December 1910.

SIR,

I SUBMITTED your letter of the 10th November to the Council at their meeting yesterday, when they referred the same to the Parliamentary Committee for consideration and report. I will bring the matter before the Parliamentary Committee at their next meeting, and after the Committee's report has been presented to the Council I will inform you of the views entertained by the Corporation upon the matter to which you refer.

I am, Sir,
Your obedient Servant,
H. A. LEAROYD,
Town Clerk.

The Hon. H. Gorell Barnes,
Secretary,
Royal Commission on
Divorce and Matrimonial Causes,
Winchester House,
21, St. James' Square, S.W.

Town Hall, Hull,
9th January 1911.

Royal Commission on Divorce and Matrimonial Causes.

SIR,

ADVERTING to your letter of the 10th November last, I beg to set out below the terms of a resolution which was passed by the Parliamentary Committee of this Corporation and duly confirmed by the City Council at their meeting held last Thursday :—

"That this Corporation are of opinion that in "case any person against whom an order has "been made for the maintenance of his wife, or "his wife and children, shall make default for a "period of one month to comply with the terms "of such order, the court should have power, on "the application of the wife, to direct the "employer of such person to pay to the wife "from time to time such part of his wages as "may be specified in such order."

I am, Sir,
Your obedient Servant,
H. A. LEAROYD,
Town Clerk.

The Hon. H. Gorell Barnes,
Secretary,
Royal Commission on
Divorce and Matrimonial Causes,
Winchester House,
21, St. James' Square, London, S.W.

Town Clerk's Office, Town Hall, Leeds,
6th January 1911.

SIR,

IN reply to your circular letter of the 20th November last, I beg to enclose copy of a resolution passed by the Finance Committee of the City Council, and approved by the latter on Wednesday last.

I am, Sir,
Your obedient Servant,
ROBERT E. FOX,
Town Clerk.

The Secretary,
Royal Commission on Divorce,
Winchester House,
21, James' Square, S.W.

Enclosure.

Finance Committee,
9th Deeember 1910.

Submitted letter from the Secretary to the Royal Commission on Divorce and Matrimonial Causes asking for the views of the Corporation on a suggestion made to the Commissioners that the justices should have power to make an order to attach the wages of a respondent husband against whom an order to maintain his wife has been obtained, and to direct that notice may be given to the employer of such husband that a certain proportion of his wages should be paid direct to his wife or to some officer of the court appointed for that purpose.

Resolved :—

That, in the opinion of the Committee, the Council, as employers of labour, ought not to be called upon to undertake the duty and responsibility referred to in the letter from the Commissioners.

Town Hall, Leicester,
Town Clerk's Office.
SIR, 29th November 1910.

IN reference to your letter of the 10th instant, upon the subject of attachment of wages, I placed the matter before my Finance Committee. I am requested to inform you that, in the opinion of the Committee, the suggested power to attach wages would *not* be desirable, and they are unable to see how it would prove effective.

I am, Sir,
Your obedient Servant,
H. Gorell Barnes, Esq., H. A. PRITCHARD,
Secretary, Town Clerk.
Royal Commission on Divorce and
Matrimonial Causes,
Winchester House,
21, St. James' Square, London, S.W.

Town Clerk's Office, Town Hall,
Newcastle-upon-Tyne,
SIR, 25th November 1910.

YOUR letter of the 10th instant has been considered by the Town Improvement and Streets Committee of my Corporation, who supervise the largest number of the workmen of the Corporation, and they desire me to inform you that, in their opinion, it is very desirable that magistrates should have power to make orders attaching the wages of respondent husbands in order to enforce payments under orders made under the Married Women Act of 1895.

I am, Sir,
Your obedient Servant,
H. Gorell Barnes, Esq., A. M. OLIVER,
Secretary, Town Clerk.
Royal Commission on Divorce,
21, St. James' Square, London, S.W.

The Council House, Birmingham,
Town Clerk's Office,
November 23rd, 1910.

Royal Commission on Divorce and Matrimonial Causes.

SIR,

I HAVE laid your letter of the 10th instant before the General Purposes Committee of the Birmingham City Council, and am instructed to inform you that the Committee see no reason for any alteration in the present law with respect to payment under maintenance orders.

I am, Sir,
Your obedient Servant,
H. Gorell Barnes, Esq., E. V. HILEY,
Winchester House, Town Clerk.
21, St. James' Square, S.W.

Royal Commission on Divorce and Matrimonial Causes,
Winchester House,
21, St. James' Square, S.W.,
DEAR SIR, November 30th, 1910.

I HAVE had an opportunity to-day of placing your letter of the 23rd instant before the Commissioners, and am directed to state that your letter hardly seems to them to be directed expressly to the question whether, if they were to recommend that power should be given to attach a portion of a husband's wages, such recommendation would be agreed to by employers, and would be found to jeopardise the man's employment, the possibility of which is suggested in my previous letter of 10th inst. If you can communicate to me any views on this point, it would be useful.

H. GORELL BARNES,
The Town Clerk, Town Clerk's Office, Secretary.
The Council House, Birmingham.

The Council House, Birmingham,
Town Clerk's Office,
DEAR SIR, December 7th, 1910.

REFERRING to your letter of the 30th ultimo, I have communicated with the chief officials of the several municipal departments in which labour is largely employed upon the point mentioned by you, and the general opinion appears to be that while in the case of reasonable employers the attachment of a portion of a husband's wages under a maintenance order should not in itself be allowed to jeopardise the man's employment, it would in practice be found that a man who had no such order against him would be preferred.

In some instances where men have the handling of monies, or, as in the case of gas meter and water inspectors, where men have to visit a private house during the absence of the master, it would be *undesirable* to employ a person with a stigma on his moral character.

Yours faithfully,
The Hon. H. Gorell Barnes, E. V. HILEY,
Secretary, Town Clerk.
Royal Commission on Divorce, &c.

Town Hall, Manchester,
SIR, November 15th, 1910.

I HAVE to acknowledge receipt of your letter of the 10th instant. which shall be laid before the Parliamentary Sub-Committee of the Corporation.

I am, Sir,
Your obedient Servant,
H. Gorell Barnes, Esq., THOMAS HUDSON,
Secretary, Town Clerk.
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James' Square, London, S.W.

Town Hall, Manchester,
DEAR SIR, 1st February 1911.

Royal Commission on Divorce and Matrimonial Causes.

I AM desired to inform you that the Parliamentary Sub-Committee of this Corporation have had under consideration your letter of November 10th last, and at their meeting on the 13th ultimo they adopted the following resolution:—

"Resolved,—
"That the Corporation are of opinion that
"magistrates should have power to make an
"order against employers to retain and pay out
"of the wages of a respondent husband to the
"parties entitled the amount receivable under
"an order under the Summary Jurisdiction
"(Married Women) Act, 1895, in the event of
"the respondent husband being in default."

The proceedings of the Committee were approved by the City Council at its meeting held to-day.

Yours faithfully,
H. Gorell Barnes, Esq., THOMAS HUDSON,
Secretary, Town Clerk.
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, London, S.W.

Town Hall, Sheffield,
SIR, 15th November 1910.

Royal Commission on Divorce and Matrimonial Causes.

I DULY received your circular letter of the 10th instant, which I am laying before my Corporation. As soon as I have obtained their instructions upon it, I will write you further.

I am, Sir,
Your obedient Servant,
H. Gorell Barnes, Esq., R. M. PRESCOTT,
Secretary, Town Clerk.
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, London, S.W.

Town Hall, Sheffield,
13th January 1911.

SIR,

Royal Commission on Divorce and Matrimonial Causes.

I DULY received your circular letter of the 10th November last, stating that a suggestion had been made to the Commissioners that in view of the great difficulty frequently found by married women in enforcing payment of the amount which they are, by the orders of magistrates or justices, to receive, it might be advisable that the magistrates or justices should have power to make an order to attach the wages of a respondent husband against whom such an order had been made, and to direct that notice may be given to the employer of such husband that a certain proportion of his wages should be paid direct to the applicant wife, or to some officer of the Court appointed for that purpose.

As desired, the matter has been brought to the notice of the Establishment Committee of the Council of this city, who have passed a resolution as follows :—

"That in the opinion of this Committee it is
" desirable that the City Council should *not approve*
" of the proposed change in the law,"

and such resolution was approved and adopted by the Council.

I am, Sir,
Your obedient Servant,
R. M. PRESCOTT,
Town Clerk.

The Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, London, S.W.

Town Hall, West Ham, E.,
20th December 1910.

SIR,

I AM directed by the Council to inform you that they have under consideration your circular letter of the 10th ultimo, with reference to a suggestion that payments for maintenance under separation orders should be enforced by magistrate's order to attach the wages of a respondent husband, and to state in reply that the Council do not desire to offer any opinion thereon.

I am, Sir,
Your obedient Servant,
FRED. E. HILLEARY.

H. Gorell Barnes, Esq.,
Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

Town Hall, Bradford,
14th November 1910.

SIR,

Attachment of Wages.

I BEG to acknowledge the receipt of your letter of the 12th instant with reference to this matter, and to state that it shall receive attention.

I am, Sir,
Your obedient Servant,
FREDERICK STEVENS,
Town Clerk.

The Secretary,
Royal Commission on Divorce,
Winchester House,
21, St. James's Square, London, S.W.

Town Hall, Bradford,
16th January 1911.

SIR,

YOUR letter of the 10th November last, asking for the views of the Corporation with regard to the difficulty arising on the enforcement by married women of the payments awarded by justices in cases of separation, has been carefully considered by the Corporation, who do not feel that they can express any opinion on the general question, but the practice has recently been adopted here under which the payments are made to the court, and are taken out by the women, thereby to some extent relieving the difficulties which frequently arise as regards collection by the women themselves.

I am, Sir,
Your obedient Servant,
FREDERICK STEVENS,
Town Clerk.

The Secretary,
Royal Commission on Divorce,
Winchester House,
21, St. James's Square, London, S.W.

Winchester House,
21, St. James's Square, S.W.,
10th November 1910.

SIR,

As you are perhaps aware, a Royal Commission was appointed by His late Majesty—

" to inquire into the present state of the law and
" the administration thereof in divorce and matri-
" monial causes and applications for separation
" orders, especially with regard to the position of
" the poorer classes in relation thereto, and the
" subject of the publication of reports of such
" causes and applications; and to report whether
" any, and what, amendments should be made in
" such law, or the administration thereof, or with
" regard to the publication of such reports."

Questions have been raised with reference to payments for maintenance under orders made under the Summary Jurisdiction (Married Women) Act, 1895.

A suggestion has been made to the Commissioners that, in view of the great difficulty frequently found by married women in enforcing payment of the amount which they are by the orders of magistrates or justices to receive, it might be advisable that the magistrates or justices should have power to make an order to attach the wages of a respondent husband against whom such an order as aforesaid has been made, and to direct that notice may be sent to the employer of such husband that a certain proportion of his wages should be paid direct to the applicant wife, or to some officer of the court appointed for that purpose.

On the other hand, it has been stated that, if such a course were adopted, the employee's employment might be jeopardised, since the employers, in such cases, might take the view that it was undesirable to retain in their service an employee in respect of whose wages it would be necessary that they should deal in the manner above indicated.

The matter is one to which the Commissioners attach considerable importance, and one upon which they feel that it would be of advantage and should prove of assistance to them to have the views of bodies such as your federation with regard to the suggestion above stated.

I have, therefore, been directed by the Chairman, on behalf of the Commissioners, to communicate with you to inquire whether you would be good enough to inform me what are the views entertained by members of your federation upon the matter, in order that I may be in a position to bring them before the Commissioners.

I am, Sir,
Your obedient Servant,
H. GORELL BARNES,
Secretary.

To the Secretaries of—

The National Federation of Building Trades.
The Drapers' Chamber of Trade.
The Mining Association of Great Britain.
The Cleveland Mine Owners' Association.
The North of England Iron and Steel Manufacturers' Association.
The Engineering Employers' Federation.
The Shipbuilding Employers' Federation.
The Federation of Master Cotton Spinners' Association.
The North and North-East Lancashire Cotton Spinners and Manufacturers' Association.
The Huddersfield and District Woollen Manufacturers' Association.
The Incorporated Federated Associations of Boot and Shoe Manufacturers of Great Britain and Ireland.

The National Federation of Merchant Tailors.
The Shipping Federation, Limited.
The Master Printers and Allied Trades' Association.
The Staffordshire Potteries Manufacturers' Association.
The National Association of Master Bakers and Confectioners of Great Britain and Ireland.
The Co-operative Wholesale Society, Limited.

The National Federation of Building Trades' Employers of Great Britain and Ireland,
Koh-i-Noor House, Kingsway,
SIR, London, W.C., 14th November 1910.

Royal Commission on Divorce and Matrimonial Causes.

I BEG to acknowledge receipt of your inquiry of 10th November.

As my Committee does not meet until 13th December, and I presume an early reply is desired, I am laying your communication before my President, who may desire to consult some of his colleagues, and will write you further as soon as possible.

Yours faithfully,
A. G. WHITE,
Secretary.

H. Gorell Barnes, Esq.,
Winchester House,
21, St. James's Square, S.W.

The National Federation of Building Trades' Employers of Great Britain and Ireland,
Koh-i-Noor House, Kingsway,
SIR, London, W.C., 16th November 1910.

Royal Commission on Divorce and Matrimonial Causes.

IN further reply to your letter of 10th November. The subject matter of your inquiry has not, so far, engaged the attention of this federation, and to fully ascertain it would take some time, since the question would have to be considered by our various branches, and finally dealt with at a general meeting.

We think, however, that the following observations will sufficiently indicate the views likely to be held by our members in regard to the suggestion "that "magistrates or justices should have power to make "an order to attach the wages of a respondent "husband against whom such an order as aforesaid "has been made, and to direct that notice may be "given to the employer of such husband that a "certain proportion of his wages should be paid direct "to the applicant wife or to some officer of the court "appointed for that purpose."

So far as the building trade is concerned, the employment is a very fluctuating one; men are taken on frequently in large numbers for short periods, and paid off as soon as done with. Any man can be discharged or leave at an hour's notice.

The workmen move about the country a good deal, following the chances of employment. No system of discharge or character notes obtains in this industry, so that men once discharged are quickly lost sight of.

Under these circumstances we think the difficulty of following up a man who desired to evade an order of the kind suggested would be such as to make the order futile, and, in our opinion, the suggestion would be impracticable in the building trade.

As regards the suggestion that the employee's employment might be jeopardised, we think it is quite likely that it would, because there is usually a surplusage of labour in the building trade, and employers would naturally, therefore, avoid those workmen in respect of whose wages it would be necessary that they should deal in the manner above indicated, and because workmen, who as a consequence of such an order felt they were not to receive the whole of their earnings, would be likely to let their "output" fall off to correspond, and so prejudice employers against them.

Yours faithfully,
SAMUEL SMETHURST,
President.

H. Gorell Barnes, Esq.,
Winchester House,
21, St. James's Square, S.W.

A. G. WHITE,
Secretary.

The Mining Association of Great Britain,
18, King Street, Wigan,
DEAR SIR, 15th November 1910.

I AM unable to give you the collective opinion of the coal owners on the subject of your letter until I can submit it to a meeting of the executive council of the Mining Association of Great Britain. It is very likely that within the next few weeks I shall have business necessitating such a meeting, at which there will be present representatives from the different mining districts of the kingdom, and I should then be able to get the general opinion.

My own view is that, provided the employers are not put to any expense, and are kept clear of any complications with reference to the Truck Acts, the course suggested in your letter would not interfere with a man's employment. It must be remembered that a man who refused, except under compulsion, to pay towards the maintenance of his wife, might not be in other respects a very desirable employé.

If you will refer to section 10 of the Coal Mines Regulation Act, 1887, you will see that there is a somewhat analogous provision with reference to the payment of school fees.

Believe me,
Very faithfully yours,
THOS. RATCLIFFE ELLIS.

H. Gorell Barnes, Esq.,
Royal Commission on Divorce
and Matrimonial Causes,
21, St. James's Square, London, S.W.

The Mining Association of Great Britain,
18, King Street, Wigan,
SIR, 1st December 1910.

AT the meeting of the Parliamentary Committee of the Mining Association on Tuesday last, I read your letter of the 10th ultimo, and also the letter which I wrote to you in reply, and was instructed to say that the Committee approved what I had written.

Faithfully yours,
THOS. RATCLIFFE ELLIS.

H. Gorell Barnes, Esq.,
Royal Commission on Divorce
and Matrimonial Causes,
21, St. James's Square, London, S.W.

Cleveland Mine Owners' Association,
Middlesbrough,
SIR, November 22nd, 1910.

I RECEIVED your letter of the 10th November on the subject of attaching wages. The matter will come before a meeting of the Cleveland Mine Owners at an early date, after which you may expect an expression of their views to be sent to you.

I am, Sir,
Your obedient Servant,
JOHN DENNINGTON,
Secretary,

H. Gorell Barnes, Esq., Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, London, S.W.

Cleveland Mine Owners' Association,
Middlesbrough,
SIR, 17th January 1911.

I HAVE brought your circular letter of the 10th November 1910 before this association, and I am requested to state that the Cleveland Mine Owners *are not* in favour of making deductions from men's wages in connection with magisterial orders and similar matters.

I am, Sir,
Your obedient Servant,
JOHN DENNINGTON,
Secretary.

H. Gorell Barnes, Esq.,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, London, S.W.

North of England Iron and Steel
Manufacturers' Association,
Royal Exchange, Middlesbrough,
DEAR SIR, November 21, 1910.

I HAVE submitted your communication of the 10th inst. to the members of the above-named association, and their unanimous opinion is that an arrangement such as is suggested would be distinctly objectionable, and it would certainly be opposed by them. Further, it is their view that it would undoubtedly be detrimental to the interests of an employee in respect of whose wages a magistrates' order of the nature described was made.

Yours faithfully,
J. R. WINPENNY,
Secretary.

H. Gorell Barnes, Esq., Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

The Engineering Employers' Federation,
24, Abingdon Street, Westminster, S.W.,
DEAR SIR, 12th November 1910.

Royal Commission on Divorce and Matrimonial Causes.

I AM in receipt of your letter of 10th November in regard to this matter, which is having attention.

Yours faithfully,
ALLAN M. SMITH,
Secretary.

The Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

The Engineering Employers' Federation,
24, Abingdon Street, Westminster, S.W.,
DEAR SIR, 15th November 1910.

Royal Commission on Divorce and Matrimonial Causes.

I HAVE had an opportunity of consulting the Chairman in regard to your letter of 10th November, who has instructed that same should be brought before the next meeting of the committee.

Yours faithfully,
ALLAN M. SMITH,
Secretary.

The Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

The Engineering Employers' Federation,
24, Abingdon Street, Westminster, S.W.,
DEAR SIR, 26th November 1910.

Royal Commission on Divorce and Matrimonial Causes

YOUR letter of 10th November has been brought before a meeting of my committee, and I am desired to say that they are of opinion that employers in the engineering industry would look with disfavour upon the suggestion contained in your letter.

Yours faithfully,
ALLAN M. SMITH,
Secretary.

The Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

The Shipbuilding Employers' Federation,
Fyfe Chambers,
105, West George Street, Glasgow,
DEAR SIR, 14th November 1910.

Royal Commission on Divorce and Matrimonial Causes.

WE duly received your Circular of the 10th inst., which will be laid before the first meeting of the Committee.

Yours faithfully,
THOMAS BRIGGART,
HARTLEY B. MOTHERSOLE,
Joint Secretaries.

H. Gorell Barnes, Esq.,
Winchester House,
21, St. James's Square, London, S.W.

The Shipbuilding Employers' Federation,
Fyfe Chambers,
105, West George Street, Glasgow,
DEAR SIR, 24th November 1910.

Royal Commission on Divorce and Matrimonial Causes.

YOUR letter of the 10th inst. has now been considered by the Executive Board of this Federation.

The Board are favourable to the suggestion that magistrates should have the power to make an order to attach the wages of a respondent husband and to direct his employer to pay a certain proportion of his wages to the applicant wife or an officer of court. We were instructed to advise you of this, and to state that the employers will be pleased to assist in the manner indicated.

Yours faithfully,
THOMAS BRIGGART,
HARTLEY B. MOTHERSOLE,
Joint Secretaries.

H. Gorell Barnes, Esq.,
Winchester House,
21, St. James's Square, London, S.W.

The Federation of Master Cotton Spinners'
Associations, Ltd.,
Commercial Buildings, 15, Cross Street,
DEAR SIR, Manchester, 18th November 1910.

I BEG to acknowledge receipt of your letter of the 10th inst., which will be placed before my committee in due course.

Yours faithfully,
JOHN SMETHURST,
Secretary.

H. Gorell Barnes, Esq.,
Winchester House,
21, St. James's Square, London, S.W.

The North and North-East Lancashire Cotton
Spinners and Manufacturers Association
12, Exchange Street, Manchester,
DEAR SIR, February 2nd, 1911.

I BROUGHT your letter of the 10th November last before the central committee of this association at a meeting held on Tuesday last, and I was instructed to inform you that this association is of opinion that the suggestion made to the Commissioners that magistrates or justices should have power to make an order to attach the wages of a respondent husband is *most objectionable*, and might easily become a precedent for the attachment of wages of an employee for payment of debts owing to tradesmen, but if the suggestion made to the Commissioners were adopted the committee of this association do not think the employee's employment would be likely to be jeopardised in such cases.

Yours faithfully,
F. A. HARGREAVES,
For self and Co-Secretary.

H. Gorell Barnes, Esq.,
Royal Commission on
Divorce and Matrimonial Causes,
Winchester House,
21, St. James' Square, London, S.W.

The Incorporated Federated Associations of
Boot and Shoe Manufacturers of
Great Britain and Ireland,
41, Friar Street, Leicester,
25th November 1910.

DEAR SIR,

I AM obliged by your letter of November 10th requesting information as to the views entertained by the members of the Boot and Shoe Manufacturers' Federation with regard to the suggestion made to the Royal Commission on Divorce and Matrimonial Causes that magistrates should be empowered to make orders to attach the wages of workmen being respondent against whom maintenance orders have been made, whereby a proportion of their wages would be ordered to be paid direct by their employers to or for the benefit of the wives of such workmen.

I have discussed the matter with the President and Vice-President of the federation, and have ascertained the views thereon of representative members in the principal centres of the industry, and I find that as employers of labour they are unanimously of opinion that the attachment of wages as suggested would aggravate the difficulty experienced in enforcing maintenance orders against respondent husbands, because they think it would be objected to by employers generally as likely to add to the labour difficulties they have to contend with as employers, and would in consequence cause the workmen concerned to be frequently out of employment, and further some employers, whilst sympathising with the wronged wives of such workmen, think it would be an injustice to men engaged on certain definite terms to deduct from their wages without their consent.

I am also desired to say that the opinion is generally expressed that, as a matter of public policy, it is very desirable there should be as few occasions as possble for employers to make deductions from the wages of their workpeople, and that the tendency of recent actual or proposed legislation upon this subject is in the direction of restricting or abolishing deductions.

I am, Sir, your obedient Servant,
A. E. W. CHAMBERLIN,
Secretary.

H. Gorell Barnes, Esq., Secretary,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

The National Federation of Merchant Taylors,
8 and 10, York Street, Manchester.
16th November 1910.

SIR,

I AM in due receipt of your inquiry as to the advisability of conferring power upon magistrates or justices to make an order to attach the wages of a respondent husband and enforcing such order by directing the employers of such husband to pay a certain proportion of his wages direct to the applicant wife.

I am instructed to say that while the sympathies of our members are with the unhappy and ill-used partners of such marriage, they feel assured if the husband's employers were notified and his wages attached, his employment would certainly be jeopardised, and in many cases would lead to prompt dismissal.

Our members fully recognise the difficulty experienced in enforcing many orders, but are decidedly of opinion the respondent husband's employment should not be imperilled.

I am, Sir, yours truly,
JOHN GORDON,
Hon. Secretary.

H. Gorell Barnes, Esq.,
Secretary,
Royal Commission on Divorce
and Matrimonial Causes.

The Shipping Federation, Limited,
Exchange Chambers,
24, St. Mary Axe, London, E.C.,
12th November 1910.

SIR,

I BEG to acknowledge receipt of your letter of yesterday in reference to the Royal Commission on Divorce and Matrimonial Causes, which I will submit to the Executive Council of the Shipping Federation next week.

Yours faithfully,
MICHAEL BRETT,
Secretary.

H. Gorell Barnes, Esq.,
21, St. James's Square, S.W.

The Shipping Federation, Limited,
Exchange Chambers,
24, St. Mary Axe, London, E.C.,
1st December 1910.

DEAR SIR,

REFERRING to my letter of the 12th ulto., I have duly submitted your letter of the 10th ulto. to the Executive Council of the Shipping Federation, who see no objection to the proposal that a certain proportion of the wages of a seaman should be attached for the benefit of his wife.

Yours faithfully,
MICHAEL BRETT,
Secretary.

H. Gorell Barnes, Esq.,
21, St. James's Square, S.W.

The Master Printers' and Allied Trades Association
24, Holborn, London, E.C.,
18th November 1910.

SIR,

IN reply to yours of the 10th inst. addressed to Major Vane Stow, I have consulted many of the leading master printers in the United Kingdom with reference to the suggestion that the wages of a respondent husband might be attached in cases where an order has been for payment of maintenance to the wife. Universal sympathy is expressed with wives who are unable to enforce payment for such allowances, but some objection is not unnaturally felt by employers to any interference with the payment of wages to their workpeople, and the opinion unanimously expressed is that the making of such attachment orders would inevitably result, in a great majority of cases, not only in the husband being discharged from his situation, but in his finding difficulty in obtaining work elsewhere.

I am, Sir, yours obediently,
REGINALD J. LAKE,
Secretary.

The Hon. H. Gorell Barnes,
Royal Commission on Divorce
and Matrimonial Causes,
Winchester House,
21, St. James's Square, S.W.

Staffordshire Potteries Manufacturers' Association,
Secretary's Office, Piccadilly, Tunstall,
12th November 1910.

SIR,

I BEG to acknowledge the receipt of your letter of the 10th inst., which I will lay before my association at their next meeting and afterwards write you again.

I am, Sir,
Your obedient Servant,
ARTHUR P. LLEWELLYN.

The Secretary, Royal Commission on
Divorce and Matrimonial Causes,
Winchester House,
St. James's Square, S.W.

Staffordshire Potteries Manufacturers' Association,
Secretary's Office, Piccadilly, Tunstall,
28th November 1910.

SIR,

WITH further reference to your letter of the 10th instant, I have ascertained the views of some of the leading members of this association regarding the proposal to give power to magistrates or justices to make an order to attach the wages of a respondent husband against whom an order had been made under the Summary Jurisdiction (Married Women) Act, 1895, and in their opinion such a course would, as is suggested in your letter might be the case, seriously prejudice any operative against whom such an order might be made.

In the first place, an employee who knew that a proportion of his wages would be retained by the

employer at the end of the week (for whatever purpose), would not perform his duties with the same zeal as one who would receive the full amount he earned, and such an employee would, of course, not be desirable.

Further, it is thought to be scarcely fair to the employers to expect them to act as collectors of the money.

I am, Sir,
Your obedient Servant,
ARTHUR P. LLEWELLYN.

The Secretary, Royal Commission on
Divorce and Matrimonial Causes,
Winchester House,
St. James's Square, S.W.

Co-operative Wholesale Society, Ltd.,
Central Offices, 1, Balloon Street, Manchester,
SIR, 22nd November 1910.

Royal Commission on Divorce and Matrimonial Causes.

IN answer to your circular letter, dated November 10th, we may explain that only our general committee here can act on behalf of the society, and, of course, there is a very great divergence of opinion amongst our members on this question, which has been very much before the public for some time past. Therefore, as a committee, they prefer not to express any opinion about it.

Yours truly,
Pro Committee,
THOMAS BRODRICK,
Secretary.

H. Gorell Barnes, Esq.,
Winchester House,
21, St. James's Square, S.W.

APPENDIX XXV.

A (1).

Church House, Westminster,
DEAR MADAM, London, S.W.

THE Mothers' Union has been permitted to send three witnesses to the Royal Commission on Divorce, who are likely to be called after Whitsuntide. Two of them will testify to the opinions of a large number of the working women of England and Wales, as expressed at meetings held to consider the question of the extension of facilities or grounds for obtaining divorce.

We are further anxious to send in as many names as possible of wives and mothers of the educated classes, who are also entitled to be heard on this matter which so vitally affects the womanhood of our country. Such names need not be in any way restricted to members of the Mothers' Union.

A protest is enclosed, with space for ten signatures, and you are earnestly requested to obtain as many signatures as you can from personal friends or others. These will be laid before the Royal Commission by our third witness in support of our protest against any extension of the divorce laws.

The forms should be returned, not later than May 20th, to the Hon. Mrs. Evelyn Hubbard, Church House, Westminster, S.W., who will supply additional forms as required.

Yours truly,
ALICE CHICHESTER,
Central President of the Mothers' Union

Protest.

I desire to add my earnest protest against the extension of facilities for divorce. I believe that to cheapen or extend the grounds for divorce would be against the moral and social interests of rich and poor alike, and would encourage the seeking of divorce for trivial reasons.

Signatures:

Collected by

N.B.—No one should sign one of these papers more than once.

A (2).

MOTHERS' UNION.

Resolution.

The members and associates present earnestly protest against any extension of the facilities or grounds for obtaining divorce, believing that any such extension would lower the ideal of marriage in the minds of the people and injure the home life of the country.

Number present
Parish
Diocese
Name of Branch Secretary
or Enrolling Member.
Date

B.

FORM OF PROTEST FROM THE CHURCH OF ENGLAND WOMEN'S HELP SOCIETY, SIGNED BY OVER 2,000 MEMBERS THEREOF.

Church House, Dean's Yard,
Westminster, S.W.

WE, members of the Church of England Women's Help Society, desire to make an earnest protest against the extension of facilities for divorce, believing that to cheapen or extend the grounds for divorce would be detrimental to the moral and social interests of both rich and poor, and would tend to encourage the seeking of divorce for trivial reasons.

Signatures:—

C.

RESOLUTIONS FROM CLERICAL BODIES.

(1) Ashton-under-Lyne Rural Deanery.
(2) Burford Ruri-decanal Chapter.
(3) Burford Ruri-decanal Conference (Hereford Diocese).
(4) Burnley Rural Deanery.
(5) Charterhouse Mission Southwark (Working Men).
(6) Chester Rural Deanery.
(7) Corringham Rural Deanery.
(8) Finsbury Ruri-decanal Conference.
(9) Leicester Rural Deanery.
(10) Liverpool "Churchmen's Conference."
(11) Manchester Church Social Workers.
(12) Manchester Diocesan Lay Readers' Union.
(13) Paddington Rural Deanery.
(14) Powder Ruri-decanal Conference.
(15) St. George's Association of Manchester and Salford Church Rescue and Preventive Society.
(16) St. John's Truro Bible Classes.
(17) Stepney Ruri-decanal Conference.
(18) Upper House of the Convocation of Canterbury.
(19) West Drayton Church Council.
(20) West Ham Rural Deanery Conference.
(21*a*) Westminster Catholic Federation..
(21*b*) Westminster Catholic Federation
(22) Wirral Ruri-decanal Conference.
(23) Women Church Workers.
(24) Worcester Diocesan Conference.

(1.)

Bardsley Vicarage,
Ashton-under-Lyne,
DEAR SIR, 23rd June 1910

I AM requested by the Chapter of the Rural Deanery of Ashton-under-Lyne to forward to you the subjoined resolution.

Yours faithfully,
C. BERESFORD KNOX,
Chapter Clerk.

"That this Chapter believing in the sacredness of the marriage tie protests against any extension of the

causes and facilities for divorce and advocates the repeal of the divorce laws."

(2.)

Coveley Rectory, Tenbury.
23rd September 1910.

DEAR SIR,

AT the request of the Burford Ruri-decanal Chapter I send you a copy of a resolution passed by them unanimously at their meeting of yesterday's date.

Yours faithfully,
JAMES B. JOYCE,
Rural Dean.

Secretary,
Divorce Commission.

"That the meeting of the Burford Ruri-decanal Chapter hereby desires to enter its strongest protest to any increased facilities for divorce: and, further, believes the only true solution of present difficulties to be the repeal of the Divorce Act of 1857; and copies of this resolution he sent to the Bishop, the Secretary of the Divorce Commission, and the members of the division."

(3.)

The Rectory, Rochford, Tenbury.
9th December 1910.

DEAR SIR,

I HAVE been requested to forward you the two resolutions passed at a meeting of the Burford Ruri-decanal Conference (Hereford Diocese) on Wednesday last. The vote was unanimous, the numbers present being clerics 9, laymen 15.

I am, dear Sir,
Faithfully yours,
J. TOMSON,
Hon. Sec. B.R.C.

The Secretary,
Royal Commission on Divorce, &c.

II.—The Christian Law of Marriage, and Divorce.

The Rev. T. Outram Marshall will move:—(1) "That, in the interests of the purity of the family and "for the unimpaired maintenance of the teaching of the "Church as to the indissolubility of holy matrimony "and the reality of the relationship of affinity, it is the "duty of the clergy and laity alike to insist on the "observance of that teaching in its entirety by members "of the Church, whatever may be allowed to the "contrary by civil law or public opinion."

(2) "That this Conference insists that the State "has no authority to dictate the terms of admission to "Holy Communion in the Church of England, and "that any such claim must be resisted."

(4.)

DIOCESE OF MANCHESTER, RURAL DEANERY OF BURNLEY, REV. A. W. M. WEATHERBY, RURAL DEAN.

Worsthorne Vicarage, near Burnley,
Lancashire, 18th November 1910.

MY DEAR SIR,

I AM directed most respectfully to convey to you, sir, the terms of a resolution which was passed unanimously by the clergy and official laity of the Rural Deanery of Burnley, in the Diocese of Manchester, at their annual conference held on the 17th instant.

The terms of the resolution are as follows:—

"That it is the duty of Churchpeople not merely to uphold the sanctity of the marriage law of the Church, but to use their utmost endeavours to restore the marriage law of the land to a Christian level."

I am, Sir,
Your most obedient servant,
(Rev.) J. A. LATHAM,
Chapter Clerk.

To the Secretary,
H.M. Commission on Divorce.

(5.)

The Charterhouse Mission,
40, Tabard Street, Southwark, S.E.,
29th June 1910.

SIR,

I HEREWITH enclose copy of a resolution passed unanimously at a meeting of about 40 working men, held on Sunday afternoon last in our mission hall. The Rev. F. G. Croom in the chair.

I was requested to forward the same to you to be put in as evidence before the Royal Commission now sitting.

Yours faithfully,
PERCY S. WILSON,
Hon. Sec.

To the Secretary
of the Royal Commission on Divorce.

Resolution unanimously passed at a meeting of about 40 working men, held in the Charterhouse Mission Hall, on Sunday, June 26th, 1910. The Rev. F. G. Croom, missioner, in the chair:—

"That this meeting of working men earnestly opposes the granting of any further facilities for divorce. Rather than that divorce should be made easier for the poor, it should be made harder for the rich."

PERCY S. WILSON,
Hon. Sec.

(6.)

St. John's Rectory, Chester,
11th July 1910.

DEAR SIR,

AT a chapter meeting of the Rural Deanery of Chester, the following resolution was passed unanimously:—"That this chapter expresses its earnest hope "that the Royal Commission now sitting will not "make any recommendations which involve an increase "of facilities for divorce," and I was asked to forward a copy of the resolution to the Commissioners.

I am, your obedient servant,
S. COOPER SCOTT,
Rural Dean.

To the Secretary
of the Royal Commission.

(7.)

East Stockwith Vicarage,
Gainsborough,
5th November 1910.

SIR,

I AM desired by the Ruri-decanal Chapter of Corringham in the Diocese of Lincoln, of which I am clerk, to send you the accompanying resolution which was carried unanimously by the chapter on Wednesday, November 2nd, inst.

I remain,
Yours faithfully,
J. GURNHILL,
Chap. Clerk.

To the Hon. Henry Gorell Barnes,
Secretary of the Royal Commission on Divorce.

Resolved:—

I. "That this meeting of the clergy of the Rural Deanery of Corringham in chapter assembled hears with growing concern of the proposals now being considered to extend the grounds of divorce, and earnestly trusts that such proposals will meet with strenuous resistance on the part of Church people throughout the country, as being highly dangerous to the cause of religion, public morality, and family life."

(8.)

Thorndon, Antrim Street,
Haverstock Hill, N.W.,
31st May 1910.

MY LORD,

I, as honorary lay secretary to the Finsbury Ruri-decanal Conference, have been instructed to inform you that, at a meeting of the conference held yesterday, the Rev. Prebendary Perry presiding, the

following resolution was passed and ordered to be sent to your Lordship:—

"That this conference, while recognising that inequalities exist as to facilities for divorce between rich and poor, considers that the right way to remove such inequalities is to prohibit divorce altogether."

I am, my Lord,
Your obedient servant,
ST. JOHN BROWNE.

The Right Honourable Lord Gorell, P.C.,
Chairman of the Royal Commission on Divorce and Matrimonial Causes,
Winchester House, S.W.

(9.)

St. Mary's Vicarage, Leicester.

At a meeting of the Ruri-decanal Conference of the Rural Deanery of Christianity (or Leicester) the following resolutions were carried unanimously, on Monday, July 11th, 1910:—

"(1) That there should be no further facilities for divorce.

"(2) That if any change in the law is made, the present Divorce Act should be repealed.

"(3) That separation orders should be only granted for a limited period."

J. T. NANCE,
Rural Dean.

(10.)

32, Clevedon St., Liverpool, S.,
6th October 1910.

DEAR SIR,

I AM instructed to forward you the enclosed resolution, which I trust is in order.

I am, honourable Sir,
Yours faithfully,
E. DOWNEY, Hon. Sec.,
"Churchmen's Conference."

"The Churchmen's Conference,"
Knotty Ash, Liverpool,
17th September 1910.

"The 'Churchmen's Conference' feeling that divorce is so chief an evil and contrary to the teaching of our Lord Jesus Christ, strongly hopes for the repeal of the Act of 1857 which sanctions divorce."

Carried *nem. con.*

(11.)

UNIVERSITY OF MANCHESTER.

SIR, 27th April 1910.

AT a meeting of 600 Church social workers—men and women—held in Manchester on Thursday, March 31st, to consider the question of Christian marriage, the accompanying resolution was moved and carried unanimously. This we are requested by our committee to forward.

We have the honour to be,
Your obedient servants,
CUTHBERT E. A. CLAYTON,
WILBY M. L. ROW,
Honorary Secretaries.

To the Hon. H. Gorell Barnes,
Secretary to the Royal Commission on Divorce,
Winchester House,
21, St. James's Square, S.W.

Resolution passed March 31st at a Meeting of 600 Church Social Workers in Manchester.

"1. That this meeting of Church social workers, believing that the Divorce Act of 1857 has caused grave injury to family life and to the morality of the nation, strongly protests against any extension of divorce facilities.

"2. From wide experience of actual facts of life among the poor, it is also in favour of the amendment of the methods of judicial separation, especially as to the following points:—

(*a*) Equality of cause for both sexes.
(*b*) Payment of maintenance money through official or court, and not direct from one party to the other.

"3. That this meeting, while advocating as a deterrent the necessity of names being made known, strongly protests against the publication of details as being most corrupting to the youth of the nation."

(12.)

MANCHESTER DIOCESAN LAY READERS' UNION.

Patron: The LORD BISHOP.

Cliff Point, Lower Broughton Road,
Manchester,
SIR, 25th October 1910.

I AM instructed to inform you that at a meeting of our union held on 22nd October the following resolution was unanimously adopted.

I am,
Yours faithfully,
HENRY BROXALL,
The Secretary, Hon. Sec.
The Royal Commission on Divorce.

"That this quarterly conference of the Lay Readers' Union of the Manchester diocese, recognising that the law of Christ and the Church provides for the indissolubility of the marriage law—except by death—protests against divorce and especially against any increased facilities for the same, and earnestly desires that, when possible, the Divorce Act of 1857 may be repealed."

(13.)

RURAL DEANERY OF PADDINGTON.
CLERICAL AND LAY CONFERENCE.

Divorce Act of 1857.

At a meeting of the above conference held on Tuesday, 21st June 1910, the Rev. Prebendary F. Gurdon, Rural Dean, presiding, the following resolution was proposed, seconded, and carried with one dissentient:—

Resolution:

"That this conference of clergy and laity, convened for the purpose of considering the question of divorce, strongly protests against any extension of facilities for divorce and expresses an earnest desire for the repeal of the Divorce Act of 1857."

We are requested to send a copy of the above resolution to every member of the Royal Commission on Divorce and to the Lord Bishop of London.

We are,
Very faithfully yours,
CECIL E. WHITE,
Hon. Clerical Secretary,
170, Gloucester Terrace, W.
JAS. A. MCINTYRE,
Hon. Lay Secretary,
92, Inverness Terrace, W.

(14.)

The Vicarage, S. Clement,
DEAR SIR, Truro, 4th April 1910.

I ENCLOSE copies of resolutions passed at the Ruri-decanal Conference of the Deanery of Powder.

Yours faithfully,
W. E. GRAVES,
Rural Dean.

Copy of resolution passed unanimously at the Ruri-decanal Conference of the Deanery of Powder, Truro, 1st April 1910.

"That in the opinion of this Conference the publication of the evidence tendered at the sessions of the Commission in the daily press is likely to have an injurious effect on public morality, and that if any evidence is so published it should be under strict supervision."

Resolution :

"That the Ruri-decanal Conference of the Deanery of Powder in the Diocese of Truro in session assembled deplore the existing facilities for divorce and would prefer to see the Act repealed than its provisions extended to the county courts of the country, and desire to support His Grace the Archbishop of York in any efforts he may be able to make on the Commission in furthering the cause of morality."

From the Deanery of Powder,
Truro.

(15.)

Homeleigh, Range Road,
Whalley Range, Manchester,
2nd May 1910.

DEAR SIR,

I AM instructed to send you the enclosed resolution for the Royal Commission on Divorce, passed at the annual joint conference of the St. George's Association (White Cross League) and the Manchester and Salford Church Rescue and Preventive Society.

I remain,
Yours obediently,
W. H. NEWETT.

The Hon. H. Gorell Barnes,
Sec., Royal Commission on Divorce,
Winchester House, 21, St. James's Square,
London, S.W.

Resolution passed April 22nd, 1910, by members of joint conference of St. George's Association (Local Branch of White Cross League), and of Manchester and Salford Church Rescue and Preventive Society.

"That the members of this conference, believing that the existing divorce laws have not only proved injurious to the morality of our people, but have also weakened the national conception of the binding nature of the marriage tie, are of opinion that the remedy for the inequality of facilities for rich and poor is to be found in the repeal of the Divorce Act of 1857, and not in the extension of its operations.

"The members of the conference, believing that judicial separation should be maintained in the interests of the general morality of the nation, further beg the Royal Commission to do its utmost to secure wise and much needed amendment in the methods of granting the same, and especially on the following points :—

(*a*) An equal standard of purity for both sexes.
(*b*) Payment through court or official, instead of direct, as at present.
(*c*) The compulsory suppression in the public press of *details* of cases liable to corrupt the youth of the nation—the publication of *names* only being necessary as a deterrent."

(16.)

Penarth, Truro, Cornwall,
22nd September 1910.

SIR,

MAY I please ask you to do the proper thing with the enclosed petition, and may I also say the signatures are those of working men, with three exceptions.

Thanking you,
I remain, Sir,
Yours faithfully,
A. DAINE.

To the Hon. H. Gorell Barnes.

WE the undersigned members of the Community of the Epiphany and St. John's, Truro, Bible classes, wish to express our earnest desire that as a result of the Royal Commission on Divorce there will be no extension of facilities and grounds for divorce as such would be most harmful to the home-life and morality of the nation. We further express our conviction that the Divorce Act should be repealed and the sanctity of marriage fully recognised.

A. Daine, Penarth, Truro.
Jules Vincent, Petherton, Truro.
Thomas F. Webber, 18, New Bridge Street, Truro.
W. J. Webb, 4, St. Dominic Street.
F. Tabb, 4, Cook's Row, Truro.
A. Grose, Lotar Row, Truro.
W. A. Parker, 5, Cook's Row, Truro.
George Paxol, St. Dominic Street, Truro.
A. H. Skinner, 13, St. Dominic Street, Truro.
Hy. Dryden, 89, Kemoyn Street, Truro.
James Kier, 18, New Bridge Street, Truro.
James Bailey, 3, The Avenue, Truro.
William Collett, 21, St. Clements Terrace, Truro.
Edwin Wearne, 36, St. Clements Street, Truro.
Wm. Alford, 3, Penrose Cottages, Moresh Rd., Truro.
Percy Baron, 4, Daniel Road, Truro.
James Henry Kastell, Trethellan, Truro.
William G. N. Earthy, Malpas Road, Truro.
Sydney Luly Rushworth, 36, Charles Street.
Richard Joseph Warren, 4, Walsingham Place, Truro.
Ernest Henry Rouse, 26, Lemon Street.
James Annear, 5, Lemon Row, Truro.
William Stephens, 3, Carclew, Truro.
Robert Williams, 1, Carclew Place, Truro.
Lewis Charles Gatley, 20, Carclew Street, Truro.
Archibald Trudgen, 31, Carclew Street.
Ernest Alfred Truscott, 23, Carclew Street, Truro.
Henry Barnicoat, 47, Charles Street, Truro.

(17.)

The Rectory, Stepney, E.,
22nd June 1911.

DEAR SIR,

THE following resolution was passed at a meeting of the Stepney Ruri-decanal Conference of clergy and laity held on Monday, June 20, and I was asked to send a copy to the Divorce Commission :—

"That this conference protests against any extension of facilities for divorce, feeling confident that there is no real demand for it from the poorer classes, and calls for the repeal of the Divorce Act of 1857."

I am, very faithfully yours,
G. C. WILTON,
Rector of Stepney and Rural Dean.

The Secretary,
Divorce Commission.

(18.)

UPPER HOUSE OF THE CONVOCATION OF CANTERBURY.

Lambeth Palace, S.E.,
17th February 1911.

DEAR Mr. BARNES,

I THINK the Royal Commissioners ought to have before them a copy of the resolutions which have this week been passed with virtually complete unanimity by the Upper House of the Convocation of Canterbury—that is to say by the whole diocesan episcopate of the province. The Bishop of Hereford took exception to details in resolutions 1 and 4, but this was the only breach in full unanimity. It will be observed that the wording is careful. The first resolution does not say that the re-marriage of the innocent party in church is impossible, but that it ought not to be claimable as a right. Similarly in resolution 4 the Bishops do not say that there ought to be no change in the direction of making it possible for a poor man to obtain such a divorce as a rich man could obtain. But they deprecate the multiplication of courts possessing divorce jurisdiction as the means of making divorce easier. There are other points in the resolutions which I could explain if necessary, but I think they are probably sufficiently clear.

I am,
Yours very truly,
RANDALL CANTUAR.

Resolutions.

"1. That the right of parishioners to claim the use of the church or the services of the incumbent for the solemnisation of marriages ought not to extend to divorced persons whether innocent or guilty.

"2. That persons domiciled elsewhere than in England who have obtained a divorce in their own country on grounds not acknowledged by English law ought not to be married in any English churches, and cannot be so married without causing just offence to the consciences of English Churchmen.

"3. That this House opposes, as detrimental to the social, moral, and religious interests of the nation, any extension of the grounds on which divorce can now be legally granted.

"4. That while holding to the plain principle of justice that poverty ought not to be in itself a bar to obtaining all the protection which just laws afford, this House strongly deprecates any attempt to increase the general facilities for divorce by the multiplication of courts possessing divorce jurisdiction.

"5. That this House desires to press for such amendments of the law as may be necessary in order to give practical effect to any of the foregoing resolutions."

February 16th, 1911.

(19.)

The Vicarage, West Drayton,
Middlesex, 25th June 1910.

SIR,

I AM directed by the Church Council of West Drayton to forward to you the resolution given on the other side. The council consists of twelve members—the vicar and two churchwardens being members *ex officio*, and the other nine being elected annually at Easter by all parishioners who have been confirmed.

Eight members were present at the meeting on June 20th; of the eight, six were elected members, and the resolution was passed with one dissentient.

I am, Sir,
Your obedient servant,
A. W. S. A. Row,
Chairman of the meeting.

The Secretary of the
Divorce Commission, London.

Resolution passed by the West Drayton Church Council on June 20th, 1910.

"The Church Council of West Drayton protests against any extension of either the grounds or of the facilities for divorce, believing that indissolubility of marriage is the best guarantee for the maintenance of religion, family life and public morality. It further is of opinion in regard to the alleged inequalities as between rich and poor, which are advanced as a reason for a wider extension of divorce, that it would be better for religion, the State, and the family that the existing divorce laws should be repealed."

(20.)

Pelly Memorial School, West Ham,
21st June 1910.

MY LORD,

AT a conference of duly elected Churchmen of every parish church and mission within the county borough of West Ham, held on Friday, June 10th, 1910, at which about 120 representatives were present, consideration was given to the subject of the present divorce laws. I have been instructed to forward your Lordship a copy of a resolution passed unanimously at this meeting, namely: "This conference is opposed to "the granting of any facilities for divorce, and "would rather approve the repeal of the Divorce Act "of 1857."

Believe me to be,
Faithfully yours,
D. FASSAM.

The President of the
Royal Commission on Divorce.

(21*a*.)

37, Norfolk Street, Strand, W.C.,
10th November 1910.

DEAR SIR,

I BEG to enclose you a copy of a resolution which was passed unanimously by the central council of this Federation at the last council meeting.

I am, yours faithfully,
W. P. MARA.

"That the council of the Westminster Catholic Federation, representing mainly Catholic working men and women, is of opinion that the suggested extension of facilities for divorce would tend to shatter the domestic life of the nation and would be morally most injurious."

(21*b*.)

37, Norfolk Street, Strand, W.C.,
16th November 1910.

DEAR SIR,

I AM very sorry to trouble you with reference to another resolution passed by my council. I should have forwarded this with the one I sent you on the 10th inst.

I am, yours faithfully,
W. P. MARA.

"That the Westminster Catholic Federation protest against the publication in the press of the detailed evidence in applications for divorce as constituting a grave danger to morals and submit that only the names of the parties concerned and the result of the application be published."

(22.)

The Vicarage, Willaston,
Near Chester, 12th May 1910.

DEAR SIR,

I BEG leave to enclose you a copy of a resolution passed at the last meeting of the Wirral Ruri-decanal Conference composed of clergy and laity.

Kindly acknowledge safe receipt of same and oblige

Yours very truly,
WALSHAM POSTANCE,
Hon. Secretary.

To the Secretary,
Royal Commission on Law of Divorce.

Copy of resolution passed at the Spring Conference of the Wirral Rural Deanery (with one dissentient), held at Rock Ferry, Cheshire, on Wednesday, 11th May 1910, under the presidency of the Rev. T. H. May, Rural Dean.

"That this conference expresses its most earnest hope that the Royal Commission on the Law of Divorce, now sitting, will not make any recommendations which involve any increase of facilities for dissolving the marriage tie: and further believes that it would be for the best interests of the nation that the Divorce Act of 1857 should be repealed."

(23.)

Lambeth Palace, S.E.,
23rd June 1910.

DEAR SIR,

I AM asked, as the president of this Committee, to forward to you the enclosed resolution, and to ask you to be so kind as to take the necessary steps for presenting it to the Royal Commission on Divorce and Matrimonial Causes.

Believe me to be,
Yours sincerely,
EDITH M. DAVIDSON.

H. Gorell Barnes, Esq.

"The Central Committee of Women Church Workers, consisting of representatives of Churchwomen from Dioceses in every part of the world, desire to express to the members of the Royal Commission the earnest hope that there may be no increase either of the courts which have jurisdiction in divorce proceedings, or of the grounds upon which divorce may be legally obtained, as they believe that any such increase would weaken the sense of the sanctity of marriage in the minds of the people, and the strength and stability of family life."

Signed on behalf of the Committee,
EDITH M. DAVIDSON, President.
LOUISE CREIGHTON, Chairman.
MAUD MONTGOMERY, Hon. Secretary.

June 23, 1910.

(24.)

WORCESTER DIOCESAN CONFERENCE.

Avonbank, Stratford-on-Avon.
DEAR SIR, 17th June 1910.

I AM directed by the Lord Bishop and the diocesan conference to forward to you the enclosed resolutions which were adopted *nem. con.* by the conference at their session on Wednesday, June 15th last.

I am, yours faithfully,
(Signed) WILLIAM G. MELVILLE,
Hon. Clerical Secretary.

WORCESTER DIOCESAN CONFERENCE.

"(1) This conference maintains that the Matrimonial Causes Act, 1857 (commonly called the Divorce Act) has had a harmful effect on the morals of the nation, particularly in unsettling family life and in doing harm to children. Its opinion that further facilities for divorce would increase existing evils is strengthened by its observation of the case of other countries, and it prays His Majesty's Government to propose no further enactment which will cause divorce to be more frequent.

"(2) It further prays His Majesty's Government to restrict by law the publication of details of cases in the divorce court by the public press."

D.

FORM of LETTER and RESOLUTION of the NATIONAL BRITISH WOMEN'S TEMPERANCE ASSOCIATION.

MY LORD, 11th June 1910.

WE beg leave to approach your Lordship as Chairman of the Royal Commission on Divorce on a matter vitally concerning the moral and legal status of women in respect of divorce. They do not desire that divorce should be made easier or that facilities for divorce should be extended, or that a merely superficial sex-equality should be brought about by lowering the moral standard on one side or the other; but they desire to register a respectful protest against the grounds upon which the present inequality in respect of misconduct has been defended in the evidence given before the Commission by certain witnesses.

It is alleged broadly that moral temptations press more heavily upon men in general than upon women; that failure on the part of the man is more or less accidental; that whereas misconduct on the part of a wife would be inconsistent with continued love for her husband, it is not so on the part of a husband; that the injury inflicted by the wife's offence is greater than that inflicted by the husband's; and that the keeping of a separate establishment by a man would not be inconsistent with the proper respect and affection due to his wife.

With regard to these opinions we venture to submit:

(i) That throughout the whole of the literature touching upon the significance of marriage, and upon the social and moral and religious import of the relations between men and women, no sanction will be found for the views herein expressed. On the contrary the picture constantly drawn is not merely that of fidelity after marriage, but of fidelity to the future wife before marriage. We venture to think that the appeal to the literature of the question should carry considerable weight as to the best opinion on the subject, and cannot in wisdom be set aside.

(ii) That an attempt to estimate the injury inflicted by the misconduct of either of the parties upon the other misses the vital point of the moral and social problem involved; namely, the well-being of family and child life, as conditioned by the moral and physical health of parents. Monogamic marriage as a legal institution appears to rest upon consideration for the nurture and protection of the offspring. Only within its pale is parentage legitimate; and all the institutions of society rest on the integrity of the family unit and the purity of the family life. Immoral conduct on the part of either parent is not merely an injury to the other party in the solemn contract thus violated, it is in spirit, and often in point of fact, a grievous injury to the offspring, and to the whole fabric of social life.

If it were within the scope of your Lordship's Commission to take cognizance of the serious national import of that form of unwillingness to beget children which has been termed "race suicide," of the large percentage of divorce suits associated with childless marriages, and of the effects of venereal disease in producing sterility, immaturity, congenital malformations, infantile disease, and its bearings on the serious problem of infantile mortality, the question of the injury inflicted by misconduct would transcend all distinctions of man or woman, and might perhaps even throw the greater burden of blame on the man, since his misconduct may result in the communication of venereal disease not only to his wife—a very serious injury—but also to the innocent and helpless offspring in whom the health of the next generation of the community dwells.

(iii) Whether, and how far, misconduct on the part of a man may be regarded as accidental, may perhaps be considered in the light of the question as to with whom such "accidental" misconduct is likely to take place. Misconduct with a pure woman would imply a very deliberate and sedulously pursued intention; with an immoral one, a choice of company, which in itself, even before the commission of the act, could not be held consistent with due regard for the rights of wife, or family, or of society. Along the path of dalliance "accidents" belong to the category of high probabilities.

(iv) As to whether the maintenance of a separate establishment by a man would be consistent with the affection due to his wife. An offer of marriage carrying with it provision for such a condition would, by the overwhelming majority of women, be rejected with scorn, and we suspect that there would be few men who would be cynical or depraved enough to make the suggestion.

For these and other similar reasons we desire heartily to endorse the weighty opinion expressed by many eminent witnesses before your Lordship's Commission in favour of making the legal no less than the moral significance of misconduct similar for both the sexes. Nothing could more happily strike the general sentiment among the average population than the testimony of Sir John Bigham that "Juries were "influenced by all sorts of conditions which, in the "opinion of a lawyer, should not influence them at all. "*They were always in favour of the lady.*" ("Daily News," 1st March 1910.) General sentiment appears to assess the injury with a fair amount of rough and native justice.

We are,
Your Lordship's humble Servants,

To the Right Hon. Lord Gorell.

(1) LIST of BRANCHES of the said ASSOCIATION submitting the above.

Abergavenny.
Alford (Lincs.).
Barrow-in-Furness.
Batley.
Bedford.
Bishop Auckland.
Bootle.
Bradford.
Bridport.
Carlisle.
Chesterfield.
Dewsbury.
East London Union.
Exmouth.
Halton and Crossgates.
Harrogate.
Harrow.
Havant.
Hexham.
Howden-le-Wear.
Keighley.
Lincoln.
Liverpool Centre.
Liverpool, Women's Life Society.
Middlewich (Cheshire).
New Barnet.
Newport.
Old Barrow.
Oxford.
Parkstone.
Penarth.
Peterborough.
Redhill.
Romford.
Salisbury.
Southampton.
Southend-on-Sea.
South Shields.
Staffordshire County Union.
Stoke Newington.
Tunbridge Wells.
Tyne Dock.
Wallasey.
Wellingborough (Northants).
Wellington (Salop).
West Hartlepool.
West Hull.

(2) LIST of BRANCHES of the said ASSOCIATION submitting LETTERS and RESOLUTIONS substantially similar to the above.

Beeston Hill (Leeds).
Birkdale.
Birmingham, Warwick and District Union.
Blackheath.
Burslem.
East Dulwich.
Grantham.
Hither Green.
Kingston-on-Thames.
London (Central).
New Street and Rosemary (Bristol).
North Finchley.
North Wales.
Plumstead.
Pontypridd.
Rock Ferry.
Shrewsbury.
Sidcup.
South Metropolitan Union.
Southport.
Stoke Newington.
Stourbridge.
Stratford and West Ham.
Sutton Coldfield and Erdington, Four Oaks and Hill.
Wallasey.
Waterloo and Blundellsands.
Waverley Park.

E.

RESOLUTIONS FROM ASSOCIATIONS, &c.

ASSOCIATIONS from which RESOLUTIONS have been received.

(1) Birkenhead and District Women's Guild.
(2) Birkenhead and District Women's Suffrage Society.
(3) Birkenhead Women's Adult School.
(4) Birkenhead Women's Local Government Association.
(5) British Temperance League.
(6) Coventry and District Women's Liberal Association.
(7) Glasgow City Branch of the Independent Labour Party.
(8) Liscard Branch of the Women's Labour League.
(9) Liverpool Branch of National Union of Women Workers.
(10) Liverpool Union of Women Workers.
(11) Manchester, Salford, and District Branch of National Union of Women Workers.
(12) National Council of P.S.A.'s Brotherhoods and Kindred Societies (Women's Committee), Peterborough.
(13) National Women's Labour League—Durham and Northumberland Branches.
(14) Pontypridd and District Women's Liberal Association.
(15) Seacombe Branch of Independent Labour Party.
(16) Wallasey and Wirral Women's Suffrage Society.
(17) Wallasey Socialist Society.
(18) Women's Cottage Guild, Liscard, Cheshire.
(19) Women's Industrial Council.
(20) Women's Liberal Federation.

(1.)

BIRKENHEAD AND DISTRICT WOMEN'S GUILD.

122, Woodchurch Lane, Birkenhead,
SIR, 28th May 1910.

WILL you kindly place before the Royal Commission on Divorce the following resolution, which was passed unanimously at the above guild meeting held in the Co-operative Hall, Catherine Street:—

"That this branch of the Birkenhead Women's Guild strongly urges that the divorce laws shall be made equal for women and men, as they have been for centuries in Scotland."

Thanking you for the same,

Yours sincerely,
(MRS.) M. RUSSELL,
Hon. Secretary.

(2.)

BIRKENHEAD AND DISTRICT WOMEN'S SUFFRAGE SOCIETY.

4, Mather Road, Oxton, Birkenhead,
SIR, 31st May 1910.

I BEG respectfully to draw your attention to the following resolution, which was passed by the committee of the above-named Society in the hope that it would be placed before Lord Gorell:—

"That this branch of the National Union of Women's Suffrage Societies urges that the divorce laws shall be made equal for women and men, as they have been for centuries in Scotland."

Yours obediently,
(Miss) A. WYSE,
To the Secretary, Hon. Sec.
Divorce Commission.

(3.)

MY LORD, Birkenhead, 25th May 1910.

THE Women's Adult School, Oxton Road, Birkenhead, desires very strongly to emphasise the main points of the letter addressed to your Lordship by the Women's Life Society, Liverpool, where it is urged that the legal, no less than the moral, significance of misconduct should be made similar for both sexes.

The present inequality in the divorce law is morally indefensible.

We are,
Your Lordship's humble servants,
EDITH J. WILSON, President.
CECILE A. FLEMING, Vice-President.

Lord Gorell.

(4.)

BIRKENHEAD WOMEN'S LOCAL GOVERNMENT ASSOCIATION.

DEAR SIR, 30th May 1910.

I AM instructed by my committee to forward to you the following resolution passed at a meeting of the committee of the Birkenhead Women's Local Government Association held to-day.

I am, yours faithfully,
LUCY E. ABRAHAM,
Hon. Sec.

Resolved:—

"That this committee of the Birkenhead Women's Local Government Association strongly urges upon the members of the Divorce Commission the desirability of recommending, in their report, that the divorce laws of this country shall be made absolutely equal for both sexes, as they have been for centuries in Scotland."

(5.)

THE BRITISH TEMPERANCE LEAGUE.

29, Union Street, Sheffield,
DEAR SIR, 19th July 1910.

AT the 77th annual conference of this League, held in Caxton Hall, Westminster, the following resolution on the divorce question was passed unanimously, and we are forwarding you a copy by the direction of the conference:—

"In view of the emphatic testimony of witnesses before the Royal Commission on Divorce and Matrimonial Causes, that addiction to the enslaving drug alcohol is more potent in promoting impurity in thought and conduct (thus leading to the sundering of the marriage tie, and the breaking up of the home) than all other causes put together, this conference appeals to the statesmen of all parties, and to the leaders of the Christian Church, for personal example against the use of the intoxicating drug, and for associated action against its sale and distribution: thus solving the anxious problem now before the Divorce Commission in the best of all fashions—the removal of the evil causation."

We are also enclosing a copy of the "British Temperance Advocate" for June, and beg to solicit the favour of a careful perusal of the article, "Three Voices on the Divorce Question." The example of personal abstinence from the intoxicating drug, in the home and in public life, on the part of all Christian and patriotic people, would purify and protect family life from this great evil, and the conference respectfully invites all such to adopt that course.

We are, yours very faithfully,
EDWIN RICHMOND, Hon. Secretary.
CHARLES SMITH, Secretary.

H. Gorell Barnes, Esq.

(6.)

COVENTRY AND DISTRICT WOMEN'S LIBERAL ASSOCIATION.

13, Grosvenor Road, Coventry,
DEAR SIR, 5th April 1911.

AT a meeting of the committee of the above association on Monday evening, April 4th, it was unanimously resolved that the annexed resolution which was then passed should be sent up to you.

Yours truly,
M. A. STREETLY,
Secretary to the Secretary.
Divorce Commission, London.

Resolution :—

"That this meeting (representing upwards of 900 women of Coventry and district) considers that the divorce laws should be so amended as to place the sexes in a position of perfect equality in all respects, and is also of opinion that if possible there should be a cheapening of procedure so as to be of assistance to really necessitous cases, but that great care should be taken in any proposed amendment of the law, not to make divorce so easy for any class of people as to encourage the tendency to make marriage a civil contract, dissoluble at the will of the parties."

(7.)

INDEPENDENT LABOUR PARTY
(GLASGOW CITY BRANCH).
126, Bothwell Street, Glasgow,
DEAR SIR, 4th April 1910.

I BEG to advise you that at a meeting of this branch held here on Sunday the enclosed resolution was passed.

Yours truly,
JAMES MCKINLEY,
The Secretary, Secretary.
Royal Commission on Divorce,
London.

Resolution :—

"That this branch of the I.L.P. regret the necessity of writing the Royal Commission on Divorce, and wish to state our disapproval of the statement made by one of the witnesses that the marriage tie is held lightly by the poor. We emphatically deny that the marriage tie is held lightly by this class, and as such a statement made regarding the most tender relationship between working men and women is misleading and a libel on the working classes, as there is no other reason for marrying than love and respect, for neither party to such a contract has anything to gain, we are shocked that a single man holding a Government appointment should be found willing to make such a statement. We also desire to protest against the opinions expressed giving preference to one sex with regard to infidelity, and claim an equality for the sexes in dealing with cases for divorce on these grounds."

(8.)

21, Mount Road, New Brighton,
SIR, near Liverpool, 10th June 1910.

I MUCH regret that two resolutions passed by this branch of the Women's Labour League were put into wrong envelopes. The enclosed should have been sent to you.

With apologies,
Yours truly,
LEONORA STALLYBRASS.

"That this meeting of the Liscard branch of the Women's Labour League earnestly desires that there should be equality of reasons for divorce for both sexes."

And further,

"That divorce should be placed within the reach of the poor."

(9.)

Ashfield, Knotty Ash,
MY LORD, Liverpool, 17th June 1910.

AT a meeting of the council of the Liverpool Branch, National Union of Women Workers, specially called this month to consider the present position of women under the divorce laws, the following resolution was unanimously passed, and I was instructed to forward it to your Lordship :—

"That this council most earnestly protests against the present inequality of the divorce laws, and prays for its equalisation between the sexes."

I am, my Lord,
Yours faithfully,
EDITH BRIGHT
(Mrs. Allan H. Bright),
Hon. Sec., Liverpool Branch
National Union of Women Workers.

To the Right Hon. Lord Gorell.

(10.)

15, Rutland Avenue, Sutton Park,
Liverpool, S., 29th June 1910.

MRS. SHILSTON WATKINS begs leave to forward an account of a meeting held under the auspices of the Liverpool Union of Women Workers, on Monday, the 27th instant, when the Rev. John Wakeford advocated the repeal of the divorce laws, and an amendment that the laws be *not* repealed, but amended and made equal between men and women, rich and poor, was carried by 73 votes to 17.

The mover and seconder of the amendment did not press for its being put as a substantive motion, and forwarded to the President of the Divorce Commission in view of the fact that the Honorary Secretary of the Union and some of the other officials supported the resolution moved by the Rev. J. Wakeford.

(11.)

65, Barton Arcade, Manchester,
DEAR MADAM, 5th May 1910.

AT the request of the London Legislation Sectional Committee of the National Union of Women Workers, a joint meeting was held of the Executive and Legislation Committees of the Manchester, Salford and District Branch of the National Union of Women Workers, at which the enclosed suggestions for evidence before the Royal Commission on Divorce were offered, which I am asked to lay before you.

These resolutions were all unanimously passed with the exception of No. 4, which was carried *nem. con.*

I am, dear Madam,
Yours faithfully,
EDITH MOORHOUSE,
To Lady Frances Balfour. Secretary.

Resolutions :

"1. Equal rights for men and women.

"2. The payment of maintenance money through a recognised officer of the court.

"3. Avoidance of publication of undesirable details in the daily press.

"4. That so long as divorce remains the law of the land, it should be as possible for the poor as for the rich.

"5. Separation orders should be granted only after a time of probation, and that experienced men and women should be appointed to investigate into the circumstances; further that the cases should be heard by a special sitting of magistrates."

(12.)

23, Belmont Drive, Newsham Park,
Liverpool, 14th June 1910.

My Lord,

I have the honour to place before you and the members of the Commission, the enclosed resolution which was passed with enthusiastic unanimity at the June meeting of the executive of the National Council held in Peterborough on Saturday, the 11th instant.

I have, &c.,
Maggie G. Forson, Hon. Sec.,
Women's National Committee.

To the Right Hon. Lord Gorell,
President of the Divorce Commission.

Resolution:

"That this executive of the National Council of P.S.A.'s, Brotherhoods, and Kindred Societies, regards with serious apprehension the views expressed at the Divorce Commission by Mr. Justice Bigham (Lord Mersey) and others relating to the difference in the standard of morality between the sexes.

"It expresses its indignation at the doctrine of 'accidental misconduct,' and demands the same standard for men as for women."

Maggie G. Forson.

(13.)

15, Oakfield Terrace, Gosforth,
Northumberland,
15th September 1910.

Sir,

I am directed to forward to you the enclosed resolution which was passed at a conference of delegates from the N.E. branches of the National Women's Labour League, held at Sunderland on September 10th, 1910.

I am, sir,
Yours respectfully,
(Mrs.) L. E. Simm,
Org. Sec.

H. Gorell Barnes, Esq., Sec.,
Royal Commission on Divorce.

At Sunderland, Sept. 10th, 1910.

Resolved:

"That this conference of the Durham and Northumberland branches of the National Women's Labour League, after having heard an address on the divorce laws of this and other countries, is of opinion that divorce should be granted for—

> "Adultery, wilful desertion for two years or more, incurable insanity, habitual drunkenness, continued cruelty or murderous assault, condemnation to penal servitude, judicial or voluntary separation for two years or more, and mutual consent or incompatibility of temperament.

"We are also of opinion that women should be admitted as assessors to act along with the judge, and that women should sit on all juries in divorce cases, but,

"We especially urge that whatever change, if any, be made in the law, it shall be in the direction of putting men and women on an absolute equality."

(14.)

Tophill, Pontypridd (Glam.),
8th July 1910.

Dear Sir,

I have the honour to forward you the accompanying resolution from the Pontypridd and District Women's Liberal Association, and to request that you will lay it before the Commission:—

"That this meeting of the Pontypridd and District Women's Liberal Association, representing 80 members, protests with indignation against the statements made by Mr. Justice Bigham and others in their evidence before the Royal Commission on Divorce that a different standard of morality should govern the actions of men and women."

Yours faithfully,
Sadie E. Lewis,
Hon. Sec.

H. Gorell Barnes, Esq.

(15.)

37, St. Paul's Rd., Seacombe,
nr. Liverpool,
20th June 1910.

Your Lordship,

The following resolution was carried unanimously at a meeting of the Seacombe Branch of the I.L.P. on the evening of June 18th, and I was requested to send it up to you.

Yours obediently,
C. F. Rymer,
Hon. Sec. Seacombe I.L.P.

"That there should be equality of reasons for divorce as between men and women."

And also—

"That divorce should be placed within the reach of the poor."

(16.)

Wallasey and Wirral Women's Suffrage Society.

16, Newland Drive, Liscard, Cheshire,
20th May 1910.

Sir,

I am instructed by the committee of the above Society to forward to you the enclosed resolution which was passed unanimously.

Yours faithfully,
Eleanor F. McPherson.

The Secretary of the
Royal Commission on Divorce.

To the Royal Commission on Divorce,
sitting at Westminster.

Resolution:

"That in the opinion of the committee of the Wallasey and Wirral Women's Suffrage Society (representing over 250 women) the grounds for divorce should be made equal for men and women.

"That the possibility of divorce should be brought within the reach of the poor."

(17.)

Wallasey Socialist Society.

Fairhaven Institute, Seaview Road,
Liscard, Cheshire,
22nd June 1910.

Gentlemen,

At the last meeting of the above Society the following resolution was proposed and carried unanimously:—

"That this Society regards the present law of divorce as unjust to women, and considers that no alteration of the law will be satisfactory or just which does not establish the equality of both sexes in all matters concerned with the law of divorce.

Yours faithfully,
A. Weare.

To the Royal Commission on the
Law of Divorce, London.

(18.)

Breck Hey, Liscard, Cheshire,
15th June 1909.

At a meeting of a Women's Cottage Guild, with 125 women present, it was unanimously resolved —

"That in the opinion of this meeting, held at Breck Hey, Liscard, Cheshire, the laws of divorce should be made equal between the husband and the wife."

To the President of the
Divorce Commission, now sitting.

(19.)

7, John Street, Adelphi,
Sir, Strand, W.C., 11th July 1911.

At the statutory business meeting of the Women's Industrial Council (Incorporated) held on Monday, June 19th, the accompanying resolution was unanimously adopted, and I was instructed to forward it for your kind consideration.

I am.
Yours faithfully,
L. Wyatt Papworth,
Secretary and Treasurer.

To H. Gorell Barnes, Esq.,
Royal Commission on Divorce
and Matrimonial Causes.

3. "That in view of the present unsatisfactory results of maintenance grants under separation orders, the Women's Industrial Council urges upon the attention of H.M. Government :

"(*a*) That in the case of a separation order, which necessarily implies bad behaviour on the part of the husband (or wife), the couple should not be obliged to come in personal contact or to communicate by means of the children for the payment of the maintenance. It should be payable into court or through some official, at the option of the parties concerned.

"(*b*) That the wife should not be at the expense of summoning the husband for making default in payment. A way should be arranged by which, without a large amount of trouble, she should be able to get her summons free.

"(*c*) That it should be made optional for the wife to put upon the court the responsibility for summoning the husband when the maintenance payable by him is in arrear, and for tracing him if he leaves the neighbourhood. The machinery appointed to carry out (*a*) would naturally also be utilised for this purpose of enforcing payment, particularly when there are children.

"(*d*) That orders for the wife's maintenance might be served on the husband's employer for the payment direct to the wife of the maintenance out of the man's wages (if so ordered by the court)."

(20.)

Women's Liberal Federation.

72, Victoria Street, Westminster, S.W.,
Dear Sir, 20th June 1910.

I am instructed by the Executive Committee to send you the following resolution, which was unanimously carried by delegates of Women's Liberal Associations affiliated to the Women's Liberal Federation (representing approximately 95,000 women) assembled in council on June 15th, 1910 :—

"This council approves the Marriage Law Amendment Bill now before Parliament, which provides that the law of divorce shall be amended so as to entitle either party to a divorce on the grounds of unfaithfulness alone."

With further reference to this resolution, my committee ask that they may be permitted to send a representative to lay their views before the Divorce Commissioners.

Yours faithfully,
Irene McArthur,
Secretary.

Lord Gorell.

APPENDIX XXVI.

The following are copies of some of the large number of letters received by the Commissioners as stated in the Report. Of those received a large proportion deal with individual cases. It has not been thought necessary to copy all of them, but sufficient have been copied to afford means of arriving at an appreciation of the grievances complained of, or some of them. Most of the letters dealing with particular cases, including all those copied, gave the names and addresses of the writers and of persons and places referred to by them, but for obvious reasons these are omitted in the copies.

The copies do not include any of the anonymous letters, of which many were received, nor of argumentative letters, nor of letters which did not seem of sufficient importance or were of excessive length, nor of letters marked private or not for publication.

My Lord,

With reference to divorce for the poor in which I have seen from time to time that you are interested, may I cite my own case as one which can claim sympathy? Ten and a half years since my wife deserted me without cause, and all attempts to find her have failed. The law will not allow me to marry for I know my wife is alive.

An application for restitution of conjugal rights would be expensive and would do no good and a judicial separation would probably do more harm than good.

I lead a lonely and loveless life, and while obeying my country's laws my country in this respect does not help me. It is, I consider, a gross injustice. I could, if necessary, give you a dozen references as to my good standing and respectability, for instance, . . . has known me for thirty six years.

I am, my Lord,
Respectfully yours,

To His Honour the Ex-President of the Divorce Court.

My Lord,

I have read with great interest your appeal for cheaper divorce and I should like to state my case to you.

Nearly 15 years ago my husband went to South Africa and left me with 4 young children, for the first 3 years he sent regular but since that time I have had no money or letters from him and I have had to work very hard to bring up my family and could not have done it if my parents and his had not helped me, my youngest child is nearly 15 and I am only 41 but I must not marry because I cannot afford to get a divorce. I have thought sometimes he must be dead but could not quite realise it was so, about 12 months ago I had an offer of marriage and was almost tempted to think he was dead but could not make up my mind to get married without waiting a little longer for fear he might return, about 3 months ago his parents received a letter from someone in Africa asking for help for him as he was ill, a friend of ours was going to . . . and made inquiries at . . . where he is residing and found out he had not been ill and the woman in whose house he is living wrote the letter, and I am bound to a villain like that in this country, but if I was in

America I could have got a divorce for desertion long ago for quite a small sum. I know many more similar cases around here. I might say it was nothing in my character that induced him to stop sending. Now my Lord I should like to ask you if you would be so kind as to tell me if I could get a divorce for desertion as I could not afford to get evidence of adultery and shall not be able to get the divorce without the fee is very much lower than it is now.

I have the honour to be my Lord,
Your most obedient servant,

SIR,

I WOULD be extremely obliged if you would kindly advise me the cheapest way of obtaining freedom from my husband . . . an English subject. I was married to him at the register office . . . I was quite happy with him up until about 1904 when he began to give away drinking to the excess, gambling, and got into difficulties in money matters, as the result that he lost his situation as a butler. He went to America promising of reforming himself and would have sent for me and our child, as soon as he would have found a situation. At first I hear from him once, then elapsed about 8 months without a single line in answer to my letters. Not knowing what became of him I wrote to the British Consulate at . . . who has found my husband in a good situation but soon lost it through his master having found out that he had a woman frequently coming in the house after him, and made her pass as Mrs. [writer's name]. In the meantime I have heard then from my husband excusing himself but with quite a different tale of the fact. Since then I have heard nothing more from him. I again enquired through the Consulate, but could not be traced. On the whole it is over five years since I had a penny from him towards mine and our child's keep. I may add that soon after he left England I heard that he had carried on with another married woman, whose husband acknowledged the fact to me by letter which I still possess. I beg to apologise Sir for troubling you. Please accept my sincere thanks in advance,

Yours respectfully,

Hon. H. Gorell Barnes,
Secretary, Royal Commission on Divorce.

SIR,

I TAKE the liberty of putting my case before you. I was married on . . 1878 and at that time was . . . My wife shortly after took to drinking, pawned everything she could lay hands on, even the bedding, and my clothes, she committed theft in the . . . and was associating with men. I was nearly driven mad by her conduct. Could have got plenty of evidence of misconduct, but owing to the want of money could not apply for divorce. In . . . 1881 she left me taking with her my son another child was born at . . . in . . . She then went to London and in order that the children might not want I allowed her 15*s*. a week. On visiting them at . . . I found her and the children sleeping in an empty house. She also committed theft here. Very shortly after this she deserted the two children having left them with her brother at . . . I then claimed the children and brought them up, my son served his time to be an engineer, and my daughter is now married. I have not heard from or seen my wife since the middle of 1883, over 26 years. About 4 years ago I heard she was in an institution and some 3 months ago got her address she having left it. I am now financially in a position to apply for a divorce but her associates are dead, and others left here. I am afraid I shall have some difficulty in proving adultery.

I am at present the . . . and have been in the employment of that corporation for over 31 years. I feel very much grieved at my position and think that it is a great hardship that after such shameful conduct and desertion of over 28 years I should still be tied to such a woman who also ruined my prospects at that time.

Trusting these particulars may be of some service to you,

I remain Hon. Sir,
Yours truly,

SIR OR GENTLEMEN,

I BEG to ask the favour of laying my case before you and to ask, if you think there is any hope for me. it is this in 1904 . . . I was married at . . . Church . . . on the 3rd day He began to beat and abuse me and continued it many times broke up a nice home which my Mother and I provided as He did not and Burnt my clothes etc. and ilused me. I ran away and at 10 weeks was granted a Seperation by . . . Magistrate at . . . After that I found I should be having a Child which was born . . . 1905. So my Mother thought it would be better and I returned and lived with Him again and he behaved so bad to me after 5 weeks after baby was born I Had to leave Him and I applied for another separation at . . . and it was granted . . . 1905 by . . . and an allowance of 10*s*. per week. But He is gone and I do not know anything of Him over 3 years and all my married life is 17 weeks in 5 years 3 months. I am a machinist at dressmaking and support myself and my little boy and live with my widowed Mother.

Can you help me—and is there any hope for me to get a divorce.

I beg you will pardon this liberty.

I am, Sir,
Your humble Servant,

To Hon. Henry Gorrell Barnes,

SIR,

I AM pleased to hear of the Royal Commission on Divorce. In my case my wife left me and would not return to me although I begged her to do so, this was . . . 1907 nearly three years ago. We had a deed of Separation. Now I wish to get a decree as I wish to get married again, under any circumstances I should never return to her and I am living with a lady whom I want to marry. I do hope the law will soon be altered so that it will release me so that I can be properly married again.

Yours most respectfully,

To the Rt. Honourable
H. G. Barnes.

SIR,

MAY I be permitted to draw your attention to that of the deserted wife I have a friend whose husband deserted her four years ago. She has had to part from all her children the two eldest have been adopted the youngest she still supports and she herself has had to seek a situation, so her life is very hard and lonely. She could have married if the law would have permitted her to do so. Meanwhile the husband relieved of all responsibility is no doubt enjoying life at its fullest.

I should esteem it a favour if you would kindly use your influence on behalf of the deserted wives.

Your obedient servant,

DEAR SIR,

IM glad your taking a leading part in trying to get Divorce for the working classes as I for one have been 9 years deserted by my wife and cannot marry again as Im held up and how can we be a Loyal Christian until we get a remedy. according to our humble situation in life. So let us have some good news for the New Year. wishing you many of them.

Yours Respfully,

DEAR SIR,

I AM writing to you to ask if you would kindly inform me how much it would cost me to get free from my wife who deserted me 2 years & 4 months ago and left me two young children she has gone to America and she has been out there 26 months and a friend of mine says that she can marry out there after 2 years and I should not be able to touch her as regards bigamy. I have proof that she has committed adultery on more than one occasion and I have letters which she has sent me which is quite good enough for anybody to judg her by I want to get free because I have fear she might come over here and take one of the children away while I am at work. I am only a working man earning on an average 30*s*. per week so I could not afford a large sum. I was informed to write you for particulars of how much it would cost me. Should you require

further information I should be very pleased to give it you respecting the above. An early answer will oblige.

I remain,
Yours,

My Lord,

I am very glad indeed to see that the Royal Commission on Divorce is to meet under your esteemed Presidency to-day. May I venture to express the hope that it may be possible for the Commission to suggest *permanent desertion* as a sufficient ground ipso facto, for divorce. I am Curate-in-Charge of this large Parish, but cannot get a licence from my bishop on the ground that I am not living with my wife when it is she who has deserted and wrecked my home after misconduct with a man. I cannot get a divorce it being too expensive, and also the shame. The position is both anomalous and undefensible. I am of sufficient credit to have charge of a large parish, but cannot hope for preferment on account of my wife. In the colonies of Australasia I should have been emancipated years ago. It is now . . . years since I have been in this case. Therefore I do hope for relief from the Commission.

Pray pardon the liberty I am taking in making this suggestion.

I have the honour to be, my Lord,
Yours v. faithfully,

Dear Lady Balfour,

Seeing in to-day's paper that you are one of the Commission on Divorce laws I shall take the liberty of writing you and ask if anything could be done for me. My husband deserted me 4 years ago and resides in Mexico. He is I know living with a woman out there as man and wife. He never sends me a penny neither does he keep his children. *I am* letting apartments at the above address and by a little help from friends manage to live. I cannot get my divorce simply because it is far more than I can ever save out of my earnings. The solicitors require 25*l.* down and say my case the very least would cost 75*l.* I can therefore never hope to be free unless the laws are altered as it is far beyond my means and yet I do not come under the "pauper" law having a bisiness, although all my furniture is hire and I have not any money of my own except what I earn. Can you possibly help the really poor yet decent woman who could pay a little to get her case, but not the fearful and impossible sum that is required now. There must be many who would be most glad if divorce could be made possible to the middle class.

Thanking you in hopes,
Yours faithfully,

The Hon. H. Gorell Barnes,

Dear Sir,

It is with the utmost interest I have read the reports so far made public in connection with the Royal Com. on Divorce. Like many other women I'm placed in a very difficult position; wishing and feeling to have every right to claim a divorce yet not sufficient evidence as the law now stands. Four years this coming July I was married in . . . The following *four months* were a period of untold misery and mental anguish. At the end of that time my husband deliberately left me, and since . . . 1906, not a trace of his whereabouts has been found or a word has broken the silence. Every effort was made to this end by public and private means but all with the one result.

In any case my whole moral instinct *revolts* at the idea of a reunion; neither would he wish it I am assured, if he were found. But as there was no actual cruelty so far as blows, though he came very near it in his extremely passionate moods; I have always felt that the fact of desertion is not enough in the eyes of the law for me to attempt to gain a divorce upon.

My sympathies are entirely with you in this matter. Not that the ideal of honour or marriage should be lessened; but that divorce should be obtainable on wider grounds than at present, to, in many cases, save the moral character of the individual.

Yours very truly,

Lady Frances Balfour,

My Lady,

I have been very much interested lately in reading that a Royal Commission for Divorce has been formed and as I notice you are sitting on this Commission I take the liberty of bringing my case before your notice.

It is five years since my husband went away without a word of explanation and since then I have had to support myself to the best of my ability, as he has never helped me in any way, in fact I am in ignorance as to his movements.

Shortly after my marriage he recognised that I had a small income and played on my feelings to such an extent that in a very short time he had morgaged the whole of it. After this I humbled myself, I went into a business with him and did my utmost to encourage him to keep straight but my efforts were in vain, for he seemed to prefer the company of loose companions rather than a comfortable home and cheerful wife. He then became a working partner in a . . . business but soon committed himself and was obliged to leave . . . which as I have already stated is five years ago.

You will readily understand what a hard life I have had for 12 years, simply because I have not had the means to seek release in the ordinary divorce court. I do sincerely trust that the good work you are engaged in will prove a great success for the sake of poor suffering innocent women. Apologising for troubling you and thanking you in anticipation for any suggestion you may be kind enough to send me.

I am,
Yours faithfully,

To Lord Gorell,
Chairman of the Royal Commission.

I hope your Lordship will excuse this liberty I am taking in laying before your Lordship my grievance regarding this matter in which is now taking up your valuable time.

I have been married 9 years and had led a very happy life untill I came home one afternoon in . . . 1908 unexpected and found my wife in bed with the lodger, who I had always treated as a brother, having taken him in, when he was in want and starving, and for 6 years he had lodge with me and had been treated as a friend of the family, however I turned the man out of the house and reasoned with my wife, finding she was the worse for drink, and telling me it was the first time such a thing had occurred. I believed her and forgave her on the promise of her never speaking to him again. I forgave her so much that 3 days after I handed 75*l.* Seventy five pounds over to her, which I had just received in settlement for a claim for compensation to let her see I had still faith in her, and trusting her in every way I know Your Lordship will say what a silly thing to do.

A few weeks after I came home to find my home, wife and child gone, she had taken rooms and was with this scamp for he is no man, I must tell Your Lordship my wife is 22 years older than him.

I applied for a warrant for her arrest at . . . Police Court in the meantime my wife finding that I intended to charge her, applied for a summons against me for threats, but I had only threatened the man with a good hiding, however both cases was to be heard the same day before Mr. . . . taking my wife case against me first my wife and another woman swore that I threatened her with a razor and that I kicked her, which was false, as my razors were taken and also my clothes with the rest of my home, Mr. . . . did not so much as ask me a question but bound me over to keep the peace for 12 months, which I kept faithfully and went out of . . . but when I returned I met the woman who had appeared against me, she apologised to me and said it was all false what she had said against me, and also told me if ever she could put right the wrong she had done she would. when Mr. . . . saw what a different face my case made I think he saw where the wrong was and what my wife was trying for, so he told me he was sorry for me and that my wife could not get an allowance made against me.

I did not meet my wife and did not know where she was untill one Sunday night I met her and this man together, I politely ask her how my child was (a little girl now 4 years of age) but she struck me in the eye with a bag she was carrying (I have never struck a woman yet) but I turned on the man and gave him a good hiding which he well deserved such a hiding that he was laid up in bed for days and only used my fists on him after I had given him as much as I think he deserved I let him go and told him he would have the same each time I met him with my wife, I have only met him once since when he received the same, so he keeps out of my way. This last few days my wife's sister has shown me letters which was written by my wife to this man one is where she sent him 3*l.* to pay back money which he had used of his masters. So I hope your Lordship will see how necessary it is for a change in the English Divorce laws for the poor. I am only a butler so after losing all I had in the world I must be content to be tied to a woman like that all my life, it is more the thoughts of my poor little Girl to be brought up in such a life, and I who has done no wrong not to be allowed to see my child and not so much as to know even where she is.

Now once again I must apologise for encroaching on your valuable time trusting a day may come when we shall see an alteration in these Laws.

Thanking you for perusal of this letter.

I beg to remain Yours respectfully,

My Lord,

Kindly forgive me for writing to you but I am reading carefully the matter on Divorce law now before the Royal Commission. No question has yet been put relating to a case similar to my own.

Up to 2 years ago I lived quite comfortably with my husband, then he quite suddenly went away and cohabited with a woman as "man and wife" and shortly they had a child; they are still living as "man and wife" and I have never seen him since. On hearing of the misconduct I got a separation order to prevent him taking away my (our) child. The separation order granted 10*s.* weekly, none of which I have had, as I hear that his means are only enough for a bare living with this woman and their child. He vows he would never return to me even if I would have him. I now go out and work to keep myself and child. I am now told that the separation order I was *forced* to obtain prevents my possibility of ever obtaining a divorce. Have I no remedy or am I to continue to live this life of misery and doubt?

I shall be pleased to hear the opinions on such a case. My relations may find the means if a divorce were obtainable.

Again asking you to forgive my troubling you,

I remain,

Yours faithfully,

To Lord Gorrell.

Your Lordship,

Sir,

May I beg to draw your sympathetic attention to the following *Re* Poor Law Divorce as under present discussion. Would you kindly take my case for consideration. After five years of unhappy married life my husband left me nearly two years ago (at the age of 25) and took another "person" with him to Scotland by whom he has children and with whom he is still living. He left me with two little boys totally unprovided for. My two little boys felt ill and by the doctor's advice I parted with them to . . . . Infirmary (where they still are). The authorities issued a warrant on their behalf and he (my husband) was arrested and brought up to . . . As he was arrested on a Guardian's warrant only my name was not mentioned. I knew little or nothing about the law and he got off with only having to pay to my two boys. They are still in the Infirmary whilst I am earning my living as . . . at above address. Do you not think my position a cruel one in the extreme? I have neither father, mother, brother or sister.

For the sake of such as myself don't you think that there should be divorce for those unable to pay thro' force of circumstances such a large amount as now demanded. I cannot do wrong tho' I have many offers to settle down as Housekeeper etc. and can in some cases even have my two dear little lads. I am twenty seven years in the prime of my life as you may say yet I dare not do wrong for my boys sake. Do you understand my position? My husband and I never cared from the first and I have yet to meet the man with whom my soul can mate and until then I can wait it is true but if there was possibly such a thing as obtaining divorce for the sum of three guineas as mentioned during your present committees discussion, I should feel myself entirely free to follow the dictates of my own heart when that time arrives. I could not in honour listen to any proposal as I am now placed, and yet I am so longing for my two little lads to be with me again that were I free I would sacrifice my personal feeling should it be for their comfort and welfare.

Apologising for taking your valuable time and wishing to show only how perhaps many others beside myself are similarly placed, I beg to remain,

Yours truly,

My Lord,

Having read some reports of Commission, I beg to place before you the case of my Mother who is 64 years of age. In 1882 my Father . . . run away to Canada with a woman leaving myself aged 13, my brother 17, and my Mother. After being away nearly 20 years, during which time my mother has supported herself he returned to this country owing to a law dispute with . . . and after petitioning His Majesty the King he has been sent on to . . . Asylum where he is at the present day I believe. My mother who was granted a Separation Order at the time has never received a coin from him. And I have every reason to believe my mother could have married and being in a house of her own but for the expense of procuring a divorce.

Yours respectfully,

P.S.—My Lord I also beg to state my mother who has held the position of housekeeper, to a large business manager in . . . , for the last . . . years, has only mentioned divorce to me once and said the expense was too great, but it seems to me hardly fair that the law which does not compel a man to support his wife should expect her to be true to his memory.

Respectfully yours,

Right Hon. Lord Gorell,

My Lord,

I am writing to thank you for your sympathy with the poor in relation to divorce as one who has suffered I know the misery which it entails.

I was a small farmer occupying some heavily rented land, having no capital except the few things about the Farm.

Twenty-three years ago my wife left me, the reason being that life was too dull in the country after coming from the town. Her pretext was a charge of cruelty in order to obtain a maintenance. She applied to the Magistrates for a separation order which they refused to grant, and which had they done I should have been unable to pay and someone to take her place in the house besides, as it would have resulted in bankruptcy. I begged her to come back after she failed to obtain the order, she refused and left the neighbourhood, and I could not succeed in tracing her for many years. Eventually I found out that she had married again and had a child, a daughter somewhere near . . . in New Zealand. I have the certificate of her second marriage in . . . [New Zealand] from the registrar at that town, wherein she described herself as a widow and myself as having died some years since on a certain date in . . .

I have applied to solicitors in reference to the matter and they tell me it will cost several hundred pounds to get a divorse and which I think is a great hardship especially after all these years of suffering. I appeal to you and the gentlemen on the Commission for relief in connection with the law on the subject of divorce.

Surely *seven years* desertion without cause should be considered sufficient grounds for a decree of divorce.

I remain yours obediently,

P.S.—I may say that I have lived here in the same neighbourhood all my life, and am . . . , and am also prepared to verify the statements I have made before the Commission if you think it would be of any service to those similarly circumstanced. If your Lordship could give me any advice how to obtain my freedom from these bonds I should be eternally grateful.

My Lord,

I have been greatly interested in the doings of the divorce inquiry; I have been married 17 years last . . . , 7 years next . . . my wife went to live with another man, She told me she thought more of his little finger than she did of me, altogether, as he was better off, better dressed, and more suitable for her in every way. I consulted Mr. . . . solicitor and he Informed me, that I could not get a Divorce for less than 150*l*. Unfertunately I did not posess that many pence, and therefore had no redress at law, but have had to live within 400 yards of them; through her conduct I had to give up 2 situations, and have only earned since then about 16*s*. a week while the man she is with makes 10*l*. a week, are the Diverce laws fair to me, I don't think so, why should I not have the same privileges as the rich man, I think I should have as much right to be heard in a court of law but the law denies me, on a/c of having no money.

My Lord if you can tell me any way out of my difficulty, or could give me any Infermation you would make me your lifelong Debtor, as my life has been and is still Hell upon earth, I have given you my name and address in good faith but not for Publication the letter can be read out at the Inquiry and published in the papers if you wish to but please don't give the address to the papers.

My Lord I Remain a 7 years sufferer.

P.S.—I have enclosed stamped envelope in case you could give me any advice.

Lord Gorell,
London.

To Lady Francis Balfour,
Royal Commission, London.

Madam,

I hope you will pardon the liberty I take in writing to you, as you are sitting at the Royal Commission. I felt I should like to lay my case in front of you. In 1888 I was married to a man who turned out to be one of the Basest Scoundrels possible, after subjecting me to vile indignities and ill-treatment, he deserted me at the end of 8 years. I heard nothing of him for several years until I heard he was charged at . . . with Fraud, and by inquiry I found he had married another woman and subsequently was convicted for Bigamy since then he has had other terms of imprisonment, and was again sentenced to 3 years imprisonment . . . this year particulars of which I enclose. My whole life has been blighted and I am tied to this man, simply because the present system of divorce is not obtainable to poor people. I am employed in a shop and earn 17*s*. weekly and help support a widowed mother. It is the future that looks so black when I am no longer able to work. I have one son of . . . years of age, who is in the . . . and of course does not earn much. I am told if I were able to find the necessary money, I could get Free of him while he is in prison, but that is impossible, unless the Royal Commission will do something for such unfortunate people as I. I invite every inquiry into my affairs. I am now only 38 years of age.

I have the honour to be, Madam,
Your Ladyship's most obedient and
humble servant,

To the Royal Commission on Divorce Laws.

The Secretary,

Dear Sir,

I have followed with extreme interest, the proceedings of your learned Commission, the outcome of which, I earnestly hope will be to afford relief in such concrete and typical cases as my own.

Eight years ago my wife ran away with a lodger. Six weeks later she begged for forgiveness, which was granted, and I took her back. But the second state was worse than the first, for a few months later she decamped again, and has lived ever since, over seven years, with the same fellow. I was thus left in the lurch with two little girls aged about 5 and 6. The wife had had a boy which I thought was mine but now I know it was that fellow's. I have lived in lodgings practically ever since, leaving my poor girls to get on with strangers' kindnesses, but the last four years I have placed them in a boarding school, in which they will not be able to stop for ever, leaving when both are over school age. Thus, through the woman's sin, my daughters have been deprived of home and all it means to girls ever since they were little tots; the same applies to me, for I have had to put up with lodgings. On the other hand, the woman, living with another man these seven or eight years, has a home and children, enjoying the lot with impunity.

Now Sir, my daughters will soon be out of school, girls just over 14 and what have I for them? What "home coming" can I give them? They are too young to "keep house" for themselves and me; they cannot very well come with me in lodgings for "a single young man," were I to put them to work, they must come home sometimes surely? Thus because of the heavy expenses of divorce, I have never been able to free myself from this unfaithful woman, and by this time I might have had a home for my daughters. But no, the guilty party does not suffer in this instance, unless it be through her conscience, whilst I, who wishes to keep pure and live pure before God and man, have to bear *the* punishment, to deserve which I have done nothing. "Where there is no sin, there is no shame." Eight years ago and so ever since! I have never set eyes on her, neither do I know where she is. But her parents know or hear about her. Where would collusion be in my case, especially when I took her back once, and all the thanks I got was to run away a second time for good?

Thanking you for kind attention.

I remain, dear Sir,
Yours very respectfully,

My Lord Justice,

Kindly allow me to make a statement in reference to the Royal Commission now sitting on the divorce laws, the proceedings of which I have followed from the commencement and I think a great many good suggestions have been. What struck me most was the evidence relating to desertion. Why can't the Scotch system be brought in and make desertion a cause for divorce.

I may state that I have been deserted by my wife some 16 years ago. Now its very hard lines one has to suffer so much on account of one person. I may tell you she sued for maintenance but failed because she had no valid excuse whatever. There was a mother-in-law in the case and she was the instigator. I may say there are two children of the marriage.

In this part 2 or 3 weeks ago there was a similar case and the man committed suicide on the railway after trying to drown himself a few days before. This was a man with a large family. Now I followed the evidence in this case very closely and it was exactly the same as what I had gone through years ago except the very last act, and I can assure you I only narrowly escaped that for it preyed on my mind many days. Now in my opinion its useless to blame this man for taking his life. From my own experience I believe it was quite natural to him and that he thought he was doing his duty. It would be brought on by the constant mental strain. I am not writing this from an individual point of view because I don't expect a law to be past for one only but I know several that are in the same predicament as myself and I am sure there are many throughout the country.

Apologising for trespassing on your valuable time,
I have the honour to remain,
Sir, your humble and obedient servant,

The Rt. Hon. Lord Justice Gorell.

Secretary Royal Commission Divorce Court.

Dear Sir,

I hope and trust the efforts that are being made to enable poor people will, soon be at hand or some

remedy that will not entail much cost take my case for instance four years ago I was married to a man and after living with him nearly 3 months he disappeared, as he had been very cruel during this time the magistrates here granted a summons but he could not be found for some time and then we obtained his address from the . . . authorities the man being a . . . the summons found him in . . . Scotland. He appeared on the summons the case was adjourned for a month to see if the parties could come to terms. He never turned up at the adjournment and an order and separation was obtained the amount being 7*s.* 6*d.* that is four years next . . . . I have never seen him since the summons was heard, and not one penny have I received I am now and have been close on three years a Waitress in a Gentlemans house in . . . and they take a great interest in my case I am known and go by my maiden name with my employers permission they have also found a home for my infant I cannot describe my suffering before my child was born and afterwards through being deserted I was pointed out to everyone and through no fault of my own a warrant was obtained but the police could not get him I communicated with the . . . authorities and they say he has not applied for his pension since . . . 1907 but he has reported himself once, before he disappeared my parents and I found out he had married me under false pretences and had also tried to obtain various sums of money by false statements even the wedding ring was found to be brass all these facts were placed before the clergyman who married us and who said at the time the man wanted locking up I think it very hard at the age of 23 to be bound to a man I may never see and who so cruelly deserted and left me to face the world with my unborn babe and had it not been for my parents during the terrible months that followed God knows where I would have drifted, and as I stand I am neither maid wife or widow, enclosed you will see I have been seeking a divorce but on the present terms and the existing circumstances I will be obliged to remain as I am although I could remarry a honest man if I were a free woman.

To the Chairman of the Divorce Commission.

HON. SIR,

OF course I much prefer that my name is not made public, but I would like to put my case before you:

I am 49 years of age, and it is just four years and four months yesterday since my wife left me. She took with her the elder son, and has since enticed the younger one away. We shall never live together again: life for me was beyond all endurance, what with her cruel tongue and treacherous deceits.

I am in lodgings, and cannot think of refurnishing a home, as I do not know what her next move might be.

Is it a nice thing to contemplate that my life should be subject to her caprice?

Surely after four years' desertion I might be set free from her every claim, and seek some comfort for my declining years.

In your deliberations *please* be merciful to the unfortunate. I Remain,

Yours very Sincerely,

Lords and Gentlemen,

DEAR SIRS,

I HAVE been reading with interest the varies subjects on Divorce. I would like to say something regarding myself. I am a Married man with 2 Children. six years ago my Wife left me taking the 2 Children of the marriage with her since that time she has been living an immoral life; After 2 years I was able to put in a petition in the Divorce Court. But unfortunately however the cause was defended the day before the trial 7 weeks after the serving of the Citations.

To my great surprise I found that I was responsible for the costs of defending the case, which however I could not meet, What is one to do for the welfare of the children are they to be brought up in an immoral life as I am now unable to bring the case to court. I humbly pray that your Lordship will give me a little advice, I am only a poor working man.

I am Dear Sirs, Yours Truly,

To the Hon. Henry Gorell Barnes,
Secretary to the Royal Commission on the law of Divorce.

DEAR SIR,

MAY I bring before you my case in which I think no reasonable man would or could object to my having a Divorce it is a sad one.

22 years ago my wife drowned her child on becoming insane without warning and no proceedings were taken, I had to put her away in an asylum she being extremely violent, I have had her put in three different asylums, and she is now in the last one of unsound mind and will never be better this I have from the Commissioners of Lunacy in London. I took the responsibility instead of the government in, keeping a criminal lunatic, which I might have had her tried for drowning her child. I was a young man at the time, and I furnished a house and never slept in it and the cause of insanity is no doubt hereditary for I have traced it in the family. I have given up the sea faring life and I think after 22 years I ought to be allowed to be divorced or I may say no one situated with a wife as I am, should be debarred from marrying again. I should feel it a great kindness to me if you do all you and your committee can to have this law of divorce in England altered. I have one daughter only and she knows nothing about her mother being in the asylum, I have thought it best not to let her know it, and I will do all in my power to prevent her marrying for I would not if I possibly could allow another man to go through what I have. It has been a millstone round my neck all my life time.

Should you wish I will send you on the letter which I received from the Secretary of the Commission of Lunacy and if Mr. . . . does not know that there is a permanent lunatic he can read it and add to his store of knowledge, for he stated in Parliament that he was not aware of there being a permanent lunatic.

I remain, Sir,

Your obedient Servant,

P.S.—I may state that I am not doing or at least asking for the laws of divorce to be altered for the purpose of saving the expense of keeping or paying for my wife. But that it is a disgrace to humanity that a man shall be bound to a lunatic, and debarred having a wife, and by so doing drive him to immorality and no end of misery.

I think the Bible or St. Paul says if a man marries and the wife finds no favour in his sight write her a bill of divorce so I fail to see in my case at least how a lunatic can find favour in anyone's sight, and I fail to see how any minister of government or church could object to a divorce in cases like myself.

To the Hon. Henry Gorell Barnes,

DEAR SIR,

I READ with deep interest the article on the Law of Divorce in the Daily Chronicle of Friday last. Does this law introduce the Lunacy Act? I earnestly ask cannot something be done to bring that act forward I myself was married at the age of 22 years after 2 years of married life my wife lost her reason and was taken to an asylum leaving me with a baby 3 months old. This is 12 years ago, I am now 34. I have a doctor's letter certifying my wifes case is quite hopeless yet I am bound and compelled to live an unnatural existence. Mine I know is only one case in thousands or why are the asylums so crowded. These poor creatures are dead to the world. Why cannot something be done to free those who are left behind thereby helping to make England more pure and the cases of forced immorality less. How can one expect a moral country where such laws exist.

Apologising for troubling you,

I am dear Sir,

Yours truly,

HONOURED SIR,

HEREWITH I beg to submit a case (my own) for consideration by yourself and other members of His Majesty's Royal Commission appointed to consider the divorce laws at present in existence, as related to the conditions of the poor.

I remain, Sir,

Yours respectively,

The Honble Henry Gorell Barnes, Esq.

THE Honourable Gentlemen of His Majesty's Royal Commission appointed to consider the present Divorce Laws.

Case.

I . . . am a Subordinate . . . Official and have been in my present post . . . years at a salary equal to a trifle under 2*l.* per week.

After having been in my present post a little over a year I considered I was in a position to marry and did accordingly. In the course of the next 6 years my wife gave birth to two children, a boy and a girl, the boy being five years old when the other child was born.

Soon after the birth of the last child, my wife developed signs of insanity and although I tried to avoid this course, I became compelled to have her removed to an Asylum. I since find out that the insanity was hereditary, which fact was previously concealed from me. This occurred nearly seven years ago (and apparently she is a hopeless case) since when I have found it necessary to break up my home and part with my children to a person who has no other interest in them than the periodical payments I make. Did my circumstances permit I would much prefer, as my children are growing up to have them under my own personal care.

Observations.—I do think that some alteration in the divorce laws are necessary, to make it possible for such as are in the same unfortunate position as myself (and I have met others when visiting the asylum) to provide a home and proper parental training and care for the children of such a marriage. I advance this with all due respect to my present wife, who I will say that when sane was a model wife in all respects but who now does not appreciate any affection shown by her husband. If I was to consider a housekeeper in the first place a housekeeper would require a salary, which would reduce my finances below the possibility of housekeeping. Secondly, I should have to engage someone who was well advanced in years and who would therefore be incapable of doing the necessary household duties of a working man. I know of more than one person nearer my own age, who might also be a friendly companion to me, and would be willing to take charge of my household, and who have every regard for my honourability. They dare not, because the world at large would brand them as immoral, however proper and moral their life might be. Therefore I say an injustice is done to us in so far that it is forcing a man who would be a respectable citizen into an immoral course, and at the same time sacrificing the future of his children who are the men and women of the future.

I respectfully advance the theory that some alteration might be made to release one from a marital tie, which is of no advantage to anyone concerned, thereby in some way make conditions such, that the children should not be sacrificed for the sake of Mrs. Grundy. I advance this solely for the sake of my two children whom it pains me to be separated from.

Yours respectfully,

SIR,

I BEG to apologise for writing to you, but as I have cause to be interested in the Commissions of enquiry into the present state of the divorce laws and being very anxious as to its results, I am sure you will excuse it, and although you are familiar with such cases I have thought it may be right to give you the particulars of my own. I was married a few years before my wife became insane, she has been so continuously for the past 18 years and is certified to be hopelessly incurable by the Medical Superintendents and in a recent letter from the Asylum at . . . she was described as "Mentally lost." I was not aware at the time of marrying that insanity was in her family, her father having died of softening of the brain. Although I have no means, if money could be found, would such deception form any ground for applying for a divorce? In the meantime, Sir, I should be very grateful if your enquiries should result in the law being altered to remedy such a monstrous injustice. With my best thanks for the efforts that are being made to this end, and apologising again for troubling you.

I am, Sir,
Yours very respectfully,

To the Royal Commission Law and Divorce.

GENTLEMEN,

I HAVE the honour to lay the following case of Lunacy before your Royal Commission.

I have a wife . . . who has now been confined in the County Asylum, . . . for over thirteen (13) years with no prospect of her ever being well enough to come out. During all this time I have been paying 5*s.* per week for her. I am a general working . . . at 27*s.* per week. Before being sent to the Asylum she was at home with me for two years causing great expense for Doctors, etc. she also, I am sorry to say got me into serious money troubles, wasting my wages, so that, after she was sent away numerous bills, of which I knew nothing were sent into me; to meet all these extra expenses I had to let my house rent run up to 70*l.* odd, which has not yet been fully paid.

To make matters worse I am a great sufferer from Rheumatism, my last illness laying me up for eight months with rheumatic fever during which time I could not earn a penny, at the same time incurring heavy expenses. Having an unmarried son I must keep up a home and pay a woman to look after the house while I am at work and do for us.

Now considering the number of years my wife has been detained, together with my illness, also four of our family besides myself are paying poor rates, I made application to the . . . Board of Guardians asking them if they could not see their way to reduce the weekly payment, as it was entirely through ill health that I had got a few weeks behind—their answer was pay up, or legal proceedings will be taken.

I think this very hard having tried my best to keep out of debt. What is a man in my position to do as I cannot afford a lawyer to plead my case.

I am Gentlemen, Yours very respectfully,

Mr. Gorell Barnes.

DEAR SIR,

IN reading the papers I have been pleased to see how you have spoke out about the divorce for the poor and I hope such cases as mine will be taken up too.

My husband has been eight years in one of our largest asylums, he is an epileptic and for nine years before that when I lived with him it was drink drink no pleasure in fact he used to have it for breakfast, he was sent away once for the delirium tremens so you see I have had very little pleasure of my marriage. I think it is high time something was done for such cases as mine there are other cases in the town I have two friends who are placed same as myself and has asked me to mention it.

I should esteem it a favour if you would answer this and let me know if lunacy is included in the Royal Commission.

Yours sincerely,

To the President of the Royal Commission on Divorce.

DEAR SIR,

I AM not aware of the class of evidence which will be brought before you during the sitting of the Royal Commission but I would like to bring before you my case not that I have or ever have had any intention of seeking for a divorce but to show the injustice to which one may be put under existing laws. I have been married for the past 14 years to a woman who when I married her appear to be in perfect health but after 4 years had to be certified as a lunatic and it was then that I discovered that she had already been certified before I married her; having become slightly better she was allowed home, but after a year had to be certified again, and was again sent home where she now is, and may at any time have to go away again.

My contention is that any man or woman having contracted a marriage without the knowledge being disclosed of either the one or the other having been in an asylum before marriage that they should be able to get a divorce and that for the sole reason that it is

unwise that those who have been certified should be allowed to propogate their species and that for the good of the state.

I remain,
Yours respectfully and faithfully,

DEAR SIR,

IN the Weekly Dispatch of to-day's date, I find in the evidence of . . . that he states that divorce should not be granted for lunacy. Now the following is my experience of married life with the wife in the asylum 12 years ago my wife was taken to the asylum "after twice attempting to do me harm with a knife," and I am informed that she will never come out again although her health is good, why should I have to pass the remainder of my life alone, I am only 43 in the prime of life, so you see what a great hardship it is for one in my position. You may use this letter if you think fit but I would rather my name was not mentioned at the present stage.

I am, dear Sir,
Yours respectfully,

Gorell Barnes, Esq.,
Secretary, London.

MY LORD,

AS Chairman of the Divorce Law Reform Commission, I take this liberty of addressing you, and shall esteem it a favour if you will inform me as to whether the Commission will discuss the question of divorce, as regards an insane partner. I am only a young man 29 years of age, and my wife has now been confined in various asylums for nearly 3 years, which seems to me nearly 30 years, and the Doctors give me no hope of her ever recovering her senses, but tell me that she may live on to be an old woman.

I am quite willing to provide for her maintenance but it does not seem right that I should be debarred from marrying again, as there were no children to the marriage, and to live a life such as I live is almost unbearable and is enough to drive one to desperation, the best years of my live vanishing and nothing to look forward to but years of misery. If I was an old man with children around me I should feel more content, but I am a man and have the feelings and desires of a man and as I had been married some years, you can understand what it means to have a wife taken away from you, and as the law will not allow me to marry again there appears to be only one course to take, and such a course debars a person from decent society, as the law now stands. Cannot something be done to remedy such a condition as mine, as I lead a good life and have no desire to do wrong, if such can be called wrong, but surely I cannot be expected to live a life such as I am now doing until I am an old man.

If it is not asking you too much, should you consider that I was doing wrong to marry again, and is it probable that I should be criminally prosecuted, for doing so, under such circumstances as mine. I know that as the law now stands the marriage would not be legal, but I live in hopes that things will be altered, and to be placed in such a position as mine is enough to drive all hope and ambition from any man.

I hope you will excuse my writing to you at such length, but I know of no one better than yourself to whom I can open out my troubles, as I know you have spent your life in solving matrimonial troubles and trust you will be spared to see the present Law as regards marriage, so altered that adultery will not be a matter of compulsion.

Awaiting your kind reply,
I remain,
Yours faithfully,

The Right Hon. Lord Gorell, London.

YOUR HONOUR,

SEEING a paragraph re "Lunacy Inquiry" I was married to my wife 18 years before she became insane, she had to go to a Private Asylum, and the doctors say there is no hope of her recovery, and she has been there 15 years. The remark in reference to early insanity is quite correct, but what about the man after 18 years? surely that ought to be sufficient for the Lunacy Commissioner to go into the matter and grant a divorce, say in 6 or 7 years after the person has become insane especially as the case is hopeless cases like those ought not to be brought up to London when they happen in the country. Please ask your friends at the Bar if things cannot be altered. There are hundreds of cases like mine and I think they ought to have consideration. In reference to the remark in the paper of the Royal Commission that a man or woman having lived together for 15 years without showing any signs of insanity during that time, and then one or the other becomes hopelessly insane, should have all the pleasures of life taken away from them. There is many a man or woman suffer through no fault of their own and have to be separated for years without any redress.

Yours faithfully,

MY LORD,

BEING intensely interested in the controversy now taking place re Divorce will you pardon me for bringing my own case before your notice which I am convinced is not a solitary one by any means.

My husband for the first ten or twelve years of our married life was a clerk in a . . . office, and was everything that a wife could wish but he accepted a post as representative of a . . . which marred his whole career and he became so violent and debauched in his habits that I sought and had a Judicial Separation with maintenance for myself and 2 children, he never contributed anything and has been an inmate of a lunatic asylum for years, with no hope whatever of recovery, this has been going on for nearly 12 years and my children having married I am alone and cannot of course marry again under the existing laws and therefore I do trust that good may come out of all your learned discussions not only for myself, but for many others who are similarly situated.

Trusting this may come under your Lordship's notice and apologizing for my lengthy letter

I remain,
Your Lordship's obedient servant,

If you make this known, kindly withhold my name from the public press.

YOUR LORDSHIP,

SEEING your Lordship's speech as Chairman of the Divorce Commission in reference to insanity I beg that you will press your opinion on that particular matter. As one whose wife became insane 14 years ago I think I am able to realize to the full the benefit to be derived if such an important suggestion were made law. No one except those who go through the terrible ordeal can have the slightest idea of the mental anguish and torture through which one passes through at a time like that, it is a thousand times worse than death and goodness knows that is bad enough. I have seen my children neglected cruelly treated and verminous and me powerless to do anything to remedy it. I could tell a true tale that would make a strong man weep. May I ask this question if this is the case where a wife is afflicted how much more terrible it must be when the husband becomes insane. I have cause to feel glad it was not me instead of my wife, for I cannot imagine how my wife who was a shop assistant before marriage could possibly have brought up our three children. In conclusion let me say I am sure that the law as at present is a direct incentive to immorality in cases such as these. What can a woman do, for the sake of a home and food for her children and herself if the offer is from say an old school friend or an old lover she would indeed be a strong woman who would see her children want food and clothing when offered to her in all honour but that of the law of the country. I sincerely hope that if relief is not given to the man it most certainly should be given to the woman, believing your Lordship will do your best in this particular direction.

Humbly,
I am your obedient servant,

The Secretary,

DEAR SIR,

REGARDING the conditions of divorce, should like to cite particulars of my own case, as emphasizing the need of legislation to provide increased facilities

aud extend grounds on which a petition can be lodged. Was married at . . . in . . . 1897, my wife becoming an inmate of the . . . Asylum in . . 1899; she left that institution without being discharged in . . . 1902 and has since been cared for at home, but still suffers from some form of incurable lunacy.

Needless to say we have no children; though legally married I find myself clean cut off from all such intimacy which should exist as between husband and wife, and am virtually without a partner in the world. Of course in the circumstances I would gladly have my freedom, and can well believe any similarly placed, may not infrequently be driven to adopt a course of immorality which under different conditions they would doubtless have shunned and been easily able to avoid.

Concluding let me suggest Insanity should be a good ground for the dissolution of marriage when on either side the same has been clearly established.

Yours faithfully,

To the Lord Mayor.

SIR,

MY husband has been in an asylum at . . . 15 years and is incurably insane. I have been in service since that time now 55 years of age and getting too old for service can I get a cheap divorce in . . . as I have not much money an old gentleman offers me marriage and a comfortable home if I can get free he is 60 years of age my life has been very hard to be tied to a man who has never kept me; his father was in . . . Asylum 20 years I did not know his family when I married as I was young.

An answer at your earliest will oblige,

P.S.—I only get out Wednesday evening 7 o'clock to late to come to the court to see you personally.

Re Royal Commission on Divorce.

DEAR SIR,

I TRUST you will not consider it impertinence my writing you on this matter. I wish briefly to call your attention to this as relating to Lunacy and my own experience.

18 years ago my wife became insane and was confined in a lunatic asylum where she now is, I was left with 5 young children the eldest 12 the youngest a baby, at that time I was a traveller for a small firm. I however had to give this up and take an inferior position that I might be home with my children. I am quite sure if your Royal Commission knew the difficulty socially and personally of a man placed in this position they would arrange that some means should be adopted to remedy this not only for our sake but for the childrens sake.

I am now 53 years old and my children are now grown up that any alteration of the laws at my time of life would not affect me.

I am therefore addressing these few lines to you that others who are younger may reap some benefit from my experience.

Yours respectfully,

SIR,

I HOPE I am not taking too great a liberty in writing to you. My wife has been in . . . Lunatic Asylum 18 years next . . . "A hopeless Case," and as the law stands now, I am to remain neither married nor single, while everything is being done to assist evil doers getting divorces.

Sincerely yours,

Please accept an apology for writing.

DEAR SIR,

I HOPE you will forgive the liberty I am taking by writing to you, my husband has been in . . . Lunatic Asylum for six years now so I want you to tell me shall I be a free woman, as there is a good man wanting to marry me. I have got a certificate from the Medical Superintendent telling me that my husband is an uncurable case, I have three children, and I do hope you will tell me right. I am a servant at present, will you please let me know soon.

I remain dear Sir,

Yours very respectfully,

To My Lord Gorell.

DEAR SIR,

re *Divorce.*

I HOPE the existing law will be altered so as to give the poor or working classes a chance that they may avail themselves as well as those that can under existing expensive law and further if the working class whom it affects was allowed to give evidence on behalf of their own hardships and grievances instead of those that are not in a like position as themselves as if they were they would I think have more sympathy for the deserving and unable as in the mens cases I know off.

I would also to give mine own in point of this contention and no doubt there are hundreds of simelar. I married a person that had a deranged mind before marriage and from what I know of the law I am legally entitled to a divorce on those grounds but the expenses incurred prevents me therefore there is no alternative under existing law but to go on year after year now near 20 years which I consider a great hardship whereas if within reach of my pocket I should long ago have availed myself of its blessing therefore I really think it would be a great boon to such if the alterations was affective and no doubt it would be a wise step towards morality for why should not the deserving poor be debarred living in misery on a/c of no cash to go to London whereas if conferred on C Cts and cheapened they would then be able trusting this will have some consideration and be helpful.

I remain,

Yours truly,

MY LORD,

I HAVE read with interest the evidence given before the Divorce Commission and note that most of the witnesses favour granting a divorce to a man if his wife is a permanent imbecile. Now my Lord as a man who has a wife that has been sent out of . . . Infirmary as incurable and who is now laid in bed suffering from disease of the blood vessels to the brain, is wrong in her mind, blind and has lost the use of her arm and leg I strongly object to a man being allowed to shirk his responsibility by granting him a divorce. My wife has been for years like she is to-day and I have tried to obey the marriage law which says "in sickness or in health" out of my wage of 35*s*. per week and the state has not, or will not do anything to help me but if a man was allowed a divorce in cases like this he takes advantage of the law and promptly pushes his wife on to the state for them to keep. Now my Lord why should I have to cast a stigma upon my wife's relations and upon my children by getting a divorce? before the state would help me. Should they not sooner help a man who is trying to do his duty rather than make the way easier for a man to shirk his responsibility.

Yours respectfully,

SIR,

I AM writing to ask how I can get a divorce married in 1899 when I was 19 to a man 25 he led me a terrible life for 7 years. I have 1 little girl. He ill-used me and I have had such black eyes that I have not been able to see for 2 or 3 days have lost the hearing of one ear through a terrible blow and he use to keep me without money for 6 and 7 months at a time bringing in a bit of food when it pleased him. But great part of the time I went to work to keep myself and child I left him once but went back again as he promised to be better but he got worse and not content with ill-treating me he went away and came home with a disease. I stayed then as he begged of me and said again he would be a better man but all no good he took to drink then and after 2 years half hard drinking it has ended in him being a lunatic having been in a asylum for 3 years and the doctor says no hopes of him ever getting any better. Not only that when he was put in an asylum it came out that insanity ran in the family he having a sister that had been in an asylum for 14 years and I did not know it when I married him. The end of it now through ill-usage and hard work my health is breaking up. I am 31 and have not any means of getting a divorce as the money I have earned as had to keep the child and all so to clothe myself sometimes I feel like ending it all as there seems nothing to live for and if I was free

how different it might be I might marry again and be comfortable other wise all I can see is the workhouse as I cannot earn enough to save; my wages have been 18*l.* a year board and lodge, it is only like dragging out an existence hoping and trusting they will bring in cheaper divorce so as to free me from this life of misery I am working now in my maiden name because when I went after any work in the name of Mrs. . . . they wanted to know if I was a widow when I said no they would say O he might get better in a month or so and then come out and then you would leave us but I never intend going back to him even if he did I could not have the life again hoping I am not intruding on your precious time and also hoping you could tell me what to do thanking you in anticipation.

The Hon. H. Gorell Barnes

DEAR SIR,

HAVING heard that you are secretary to the Commission now sitting for the purpose of amending the divorce laws, I take the liberty of submitting my case to you, from which the present law seems unable to offer any freedom other than separation, and which may be a point worthy the consideration of the Commission, to the great relief of probably many in a similar position to myself.

I married ten years ago and within a fortnight after my marriage I was somewhat shocked to find that my wife was an epeleptic subject, neither she nor her parents having acquainted me of this fact, although she had suffered eight years prior to her marriage. Since then however she has been steadily getting worse mentally, in spite of the many treatments she has been through at a great expense to myself, her father having absolutely refused to help in this matter.

The fits nearly always occur at night and weekly, and certain very unpleasant conditions take place as a result of them, she losing all control over her natural functions, which I have been obliged to attend to myself. Added to these conditions her temper and jealousy are intolerable, she having on several occasions assaulted me, without the least provocation.

The object of a marriage like this is entirely defeated as I could not possibly, under the circumstances, risk the birth of a child on account of the possibility of its being similarly afflicted, and also it was more than probable that a miscarriage would have taken place each time, owing to her complete loss of control.

Sexual connection was nearly always followed by the fits and one of the medical advisers I had for her informed me that this (sexual connection) should never really take place, as it affected her nervous system. You will thus see that she was physical incapable from the first, of conforming to the conditions of marriage, and for the past ten years has been a burden to me.

Her father is in a comfortable position and has a good home, and I feel that it is his duty to take the responsibility of his daughter, whom he so unfairly foisted on to me, and that I should by law, be again given my freedom, by the marriage being made null.

Yours faithfully.

DEAR SIR,

I WAS married in 1892 and soon after my wife had Influenza and went mad, shortly after she was Locked up as a wonding Lunatic and sent to . . . Asylum where she has been ever since, the doctor tells me she will never be right again. I am only A Labourer. I have no family and no Reliations and have been knock about in Lodgings all my life. Age 45 Good character and steady. I think it is Hard Lines to have to go to the end of my Days without being able to put my Feet on my own Fender.

I am, Sir,

Yours,

HONOURED SIR,

SEEING you are on the Divorce Commission, might I kindly ask if you would bring my case before the Commission.

My Wife is a Hopeless Lunatic in this Asylum having been there now over 23 years and I am so tired and weary of it, as I have to pay 5*s.* a week and my means is but 17*s.* a week, and my rent is 5*s.* a week, I should be very thankful if I could be free. I suppose I could not get her into any asylum in or near London where she would be free of charge to me or I could manage 2*s.* 6*d.* a week. If you could help me in any way should indeed be very thankful.

I remain,

Honoured Sir,

Yours faithfully,

DEAR SIRS,

HAVING read about the Royal Commission and I am a sufferer through my wife being afflicted with Insanity and have been so for 24 years which has caused me to live an Imoral Life which I have no wish to do Could the law think fit to grant the marrage Trusting this will find favour with you Gentlemen,

I am,

Yours respectfully,

Lord Gorell.

MY LORD,

SEEING you are taking evidence of the Divorce Law of Lunatics I beg leave to state my case which is one of very great hardship in bringing up a family. I am in a small way of farming, my wife has been in . . . Asylum for near six years and no hope for her recovery. I am left with 5 children oldest 12 years. It has cost me 40*l.* a year and wages to pay for someone to look after the children. I am nearly ruined and there is no redress at present so surely something can be done. Could you kindly let me know if such an act will pass and if it will be long in coming into force.

Otherwise I will have to take her home and suffer the consequences as I cannot pay any more without the children suffering and leaving my farm.

Your obedient servant,

P.S.—Hope I am not doing what is not right but it will soon take me the same road, and leave the children without a home.

TO LORD GORELL,

As you are taking evidence on the Royal Divorce Commission I take the liberty in writing you. am a working man 37 years 2 children 8 and 12 respectively. My wife has been confined in a lunatic asylum for over 7 years a hopeless case. My children I have had to put away in a home, I am fond of children but never have been able to give them my own home comforts. I should welcome a new law, were I might be released from my burden and allowed to marry again.

I might add in my small sphere I know four men with wives in Asylums varying from 7 to 15 years confinement who earnestly hope through your endeavours on the Divorce Commission we might be able to start life afresh.

I am, dear Sir,

Your obedient servant,

DEAR SIR,

I HOPE you will excuse me I dont know if I am doing wrong or no by writing to you but I have been impressed so much to do so.

I am very much interested in reading the Daily News on the subject of the Divorce Commission and I like to hear the opinion of other on the subject what makes me interested in the subject I am placed under one of the conditions mentioned in the debate namely insanity my life since 8 years old as been a up hill one left on my own since that age both parents being dead. When I came to the age of 22 I married one what I loved but unknown to me she began to have epileptic fits a few months before I was married I only found it out fortnight after I married when she had the first one at home I took her to the best doctor in the town but he told me he could not cure her he said there was only one hope and that was by having a family as that might clear her of them and told me not to fear as the offspring would not take fits on account of her as hers had come through a fright we had a family of 6 daughters and two sons. When the youngest was about 1 year and 6 months old we had to take her away to the Lunatic Ward in the . . . Workhouse and when she had been there about 5 month she gave birth to a little girl making 9 children the child was

kept in the house and I must say was well cared for and loved by the nurses but happy for my sake it died when about three months old which gave me a great relief. 6 months after that she was sent to . . . County Asylum that was in 1902 and as been there ever since and they tell me there is no hope of her ever coming out again.

You see I was left to struggle with 8 children and bring them up, and I am only a working man and many a time when I have been pressed for money I have been tempted to do away with myself and would have done but for the children's sake. I have now three married and have five at home all dependent on me and it take and I find it hard worke to make ends meet. I have a little . . . business but its a hard work to keep up. My wife as been away for 11 years and with her being there I feel myself tie up and cannot make headway if I had been free I could have made life happier as I have had some very good offers and could have done well but I am married and the law says I cannot move while she lives so I shall have to struggle on and when all hope for betterment on my part comes it will be too late when you see opportunities keep passing you by it make your life so miserrable that tongue cannot tell. I am now 53 years old but feel young. I think a case like mine one ought to be freed and at a very small cost I should like a word as to what you think.

I am,
Yours truly,

P.S.—Excuse and forgive me if I have dont wrong in writing but when you hear from one who has suffered much you can rely on it better as no one who has not gone through can tell the feeling of one that is so tied. I could write a lot on this subject but it would perhaps weary you.

My Lord,

I hope your Secy. will pass this letter for you to read. The cause is that separations lead to guilty misconduct myself being the sufferer of what I have seen the company my wife keeps. I have tried for a perfect reconciliation but failed. I am a working man a mechanic but not working at my trade through depression of trade been married 22 years this is a most painful position to be in. It is against my advancement and against society. Separations should be abolished.

To Lord Gorell. Yours sincerely,

Memorandum from . . .

To the Hon. Henry Gorell Barnes,

Dear Sir,

Re Divorce law reform.

It is with very great relief that I notice this matter is having attention and I hope and trust that before long it may become law, my own case is as follows.

I was married at the age of about 23 years full of hope and life, with the hope of becoming an honorable man and citizen, unfortunately my wife took to drink with the usual result, eight homes I made her in 5 years, but none would satisfy her, the end of it was a legal separation, which has now been on for nearly 10 years. Oh the misery no one can tell but those unfortunate people that are tied for life to a woman that lives apart from her husband, it is even worse in a small country town like this, where everyone knows, you are shut out from any society, you dare not form the companionship of an honerable woman, you can have no society of the opposite sexes, I have to live my life lonely and sad simply because I made a mistake in early life, before I had experience of the world.

May I prey of you to consider those people that are living apart for long periods by legal separations and give them relief from this long and lasting agony. I am but a small . . . trying to do my best and live an honorable and upright life, but at times it is hard.

Thanking you in anticipation and wishing you every success.

I am, dear Sir,
Yours faithfully,

The Hon. Henry Gorell Barnes.

Sir,

As the Commission to consider the divorce laws will presumably, invite evidence bearing upon various phases of the question, I respectfully submit my own case in illustration of a very common hardship, and in the hope that such cases may come within the scope of the Commission's enquiry.

Twelve years ago I separated from my wife owing to acute domestic differences promoted by neglect of the home and children, one of whom died through lack of proper attention. A deed of separation was drawn up by our respective solicitors at a cost of twelve pounds to myself. I made an allowance of one pound a week, and agreed reluctantly to give my wife the custody of two of the children—girls.

Some time afterwards these children (and the mother) are found in such a condition—dirty and verminous—that the S.P.C.C. took the matter up and the mother was only saved from prosecution by a doctor's certificate to the effect that she was mentally incapable of the custody of the girls, since when I have had charge of them. I now allow my wife ten shillings a week — a big drain upon my resources, especially as I had to defend in court, at considerable expense, an application entirely vexatious and that failed ignominiously. I cannot charge adultery against my wife, but we are as irrevocably parted as any divorced couple, and I respectfully suggest that such a case should come under the same category as those adjudicated upon in the proposed provincial courts. That is to say, if the Commission recommends the substitution of divorce for judicial separation, mutual separations (arising from such experiences as mine) proved not to be of a temporary character, should, after a specifically defined period, be declared just cause for a decree nisi. If I could marry again I would willingly continue the alimony until such time as my wife also married, and such a condition of divorce should be made in all cases when there are no visible means of support.

My course of action twelve years ago was entirely approved by my committee (I am . . .) in whose service I have been since a boy.

I am Sir,
Your obedient and humble servant,

Dear Sir,

In reading the daily paper I saw a accounnt where his majesty the King has commissioned several ladies and gentlemen to see what can be done for poor women concerning divorce and I thought it would be a good thing for me as I had had 16 years of trouble and misery through a bad husband and I could tell you a very sad tale of all the troubles and trials I have had to go through he was ordered by the magistrates to pay me weekly money through a separation order I had through cruelty he is a joiner by trade and can earn good wages but he will leave one job after another so as to defie the law and not give me my money I have had no money from him for 10 years for when I find him he will leave his work and go into the workhouse and then appear before the magistrate in workhouse clothes I do wish I could see one of your ladies if they would be so kind as to make an appointment with me I am sure I could tell them something that might help them or give them some idea how to get at other cases for I have gone through such a lot and I am sure I am situated much worse than a widow for I am never entitled to any of the Benefits widows receive and I am 67 years and of course not able to do much so dear Sir if you will please kindly consider my case I shall be very grateful to you and you will find me very deserving.

Thanking you in anticipation.

I am,
Yours respectfully,

P.S.—I should have stated under a Magistrate's order I obtained the separation.

Dear Sir,

I am now taking the great liberty of placing my full case before you has I saw in the Star of your meeting on the 4th inst. I think myself there is room for a great alteration in marriage laws and separations

I write to say I had a separation from my second wife . . . the . . . 1897 and through no fault of my own my paper is clear to show. On her side it was through neglect of my four children of the first marriage and dirty habits and bad management I do not intend to ever make it up but at the same time has the law is now you cant marry again its like two lives blighted my family are grown up now but they cannot act as a good wife could do if he could marry again.

I am,
Yours obediently,

Lord Gorell.

DEAR SIR,

WILL you pardon the liberty I am taking in writing to you. For a long time I have anxiously awaited the result of your endeavour to get justice for poor people. This is my story twelve years ago I was granted a separation by the . . . Justices from my husband with 1*l.* a week, which he only paid under compulsion until three years ago when he disappeared.

His people could but will not tell me and I am too poor to trace him. He treated me cruelly and I still suffer as the result. For years he has lived with another woman and there are children by her, I believe, as the law stands, there is no remedy for me.

Had I known at the time what a painful position it is for a woman to be separated I would have got a divorce instead. I am honest enough to tell people the truth when seeking a situation they seem afraid of a woman so placed. May I beg of you not to cease your efforts to get justice for us, for I am sure there are hundreds of poor wives in the same position as myself. Can I compel his people to tell me his address? It seems such hard lines that he should spoil my life and go free. I am not strong and have a struggle to live, as things are I cannot marry again. I have read your speeches on the subject, you are absolutely right.

Yours obediently,

MY LORD,

HAVING read in the Daily Mail this morning . . . opinion on separation without the right to marry again may I be allowed to uphold his opinion from experience. My case is this. After an engagement of many years I married in 1899. A few months later I discovered my husband married me for what he thought I possessed, after a wretched life with him for 2 years my position became unbearable. In 1904 I obtained from . . . a judicial separation. Mr. . . . being my counsel. Sir. . . . recommended alimony. This part of my case came before Mr. Registrar . . . who decided I was not entitled to alimony. My husband brought a false charge of insobriety against me in defence, and did his best to degrade me in every way. The best part of my life has been wasted upon him, my only recompense being that I am not compelled to live with him. In 1904 while staying at a boarding house, a gentleman paid me some attention and after a time pointedly asked me—are you a widow? I was surprised at the question, and fearing the manner in which I might be regarded by the other guests in the house, were my real position known, answered on impulse—Yes. This was a wrong course to take but I regarded the acquaintance as a casual one and of no importance. The acquaintance lead to a proposal of marriage, when I had to disclose my true position. If I could have obtained a divorce at this time, (3 years after I had separated from my husband) I should now be a happily married woman, and probably a mother. I am childless. I believe my case to be a common one. A healthy, and moderately attractive woman, living apart from her husband, not infrequently meets a male acquaintance whose friendship develops beyond the platonic stage, they are the best of friends but marriage is impossible. What is frequently the result of such an acquaintance? Why should a woman living a perfectly moral life, never having spoken to, or had any communication whatever with her husband, say for 7 years, be debarred from an honourable marriage with another man? Is the temptation to live under the protection of the man that loves her a great one? How many women are there to-day for whom this temptation is too great? The present form of separation to the moral man and woman is a cruel one, but it offers every excuse, and every inducement to the immoral.

Since 1901, I, for one, have lived a life of loneliness, the law forbidding me to accept the great happiness that could be mine, were I in a position to obtain a divorce.

I have the honour to remain,
Your Lordship's most humble and obedient servant,

Your Lordship
Lord Gorell.

YOUR LORDSHIP,

As Chairman presiding over the Commission dealing with separations etc, I as a man thats has been by the law separated from my wife, I should like to give you something tangible to place before your colleagues on the commission. It is as follows about the . . . in the year 1900 my wife summoned me to appear before the magistrates at . . . in Lancashire as a deserter from her and family the result being I was ordered to pay 4*s.* per week. Well, Sir, for the first 3, 4, 5 years or so, I stayed in my own town and got quite careless. Afterwards I came here to . . . after travelling to London etc. full of remorse however I am at present in employment at . . . I might just inform you I am only an ordinary working man. My wife I admit was and is much better than I am or perhaps ever was. We have 8 children all in . . . and now and then I run over to see them as I cannot help it and I say good luck to them, only I have missed home I am in lodgings and there is no place like home.

Yours respectfully,

To Lady Frances Balfour.

MY LADY,

MAY I write and tell you what caused my sad life, the real cause was never allowed to become known. I was granted a judicial separation in 1893 and the children were given to me. My husband was not made to maintain me because I could teach and earn a salary, which he was allowed to call my independent income. When I broke down in 1907 he was only made to give me 5*s.* per week, because I had a breakdown allowance of 13*s.* 4*d.* per week.

Thus my husband was helped by the Separation, because it set him free to live as he pleased; and this freedom was all that he wanted; he had been trying by systematical cruelty for eight years to obtain it. He was not even made to give me the 5*s.* per week until the following . . . after my breakdown.

I am,
Yours very respectfully,

TO LORD GORELL,

MAY I venture to state to your lordship the bare facts of a case which seem to suggest a direction in which the divorce laws might be improved. A young lady, separated from her husband by mutual agreement, lost sight of him ten years ago, when he ceased payments to her. She went as housekeeper to a gentleman, in order to maintain herself, and an attachment arose between them. About a year ago the husband turned up, and having grounds for divorce, brought a suit. The lady did not defend—in fact, having been deserted so long, desired to be free. Decree nisi was granted but before it could be made absolute, the King's Proctor intervened on the ground of the husband's adultery. The husband did not defend and the decree was rescinded.

The position is therefore this, that these two people, separated for ten years, without the possibility of their ever being able to come together again, are bound together for life, whereas the lady, if she were set free, might be legally, respectably and honourably married. In other words it amounts to this as the law stands, that the less reputable the husband, the tighter the wife is bound to him, for had he been unblameable himself the decree would have been made absolute. In the circumstances it was not surprising that the lady comitted herself. The law insists that she shall now do what it has no right to ask of human nature, or to continue to live in adultery, which she is anxious not to do. Anything more conduce to immorality than the law as it exists is hardly conceivable.

I am,
Yours respfly,

Memorandum from . . .

To the President of the Royal Commission on Divorce.

SIR,

I HAVE a worker whose evidence would be worth listening to, she had to leave her husband on a/c of his misconduct, was too poor to get a divorce, got a separation order and maintenance order against him he left the country and she has to try and maintain her two children, she has had an offer of marriage but of course cannot accept it, but it has just come to my knowledge that she is thinking of going to live with the man who offered her marriage, I have however persuaded her not to do so for the present, but there can only be one end to it for the sake of her children; if you care to hear her evidence I will make arrangements for her to come before you as in Lancashire we dont care for opinions we like *facts*.

Yours truly,

MY LORD,

I HAVE now been seperated from my wife 10 years and although there are children I do not think it would be advantageous to live together for many reasons. I may say, she has means and is independent of me.

I do not wish to get married again but the hardship is very terrible, being practically neither married nor single and either debarred from society or compelled to be a Fraud and Liar.

Although no order was afterwards applied for before the magistrate to complete the proceedings, the persecutions I endured I cannot forget.

Would your Lordship's commission wish me to be punished in this cruel way a lifetime, or may it not be more merciful to divorce a Man and Wife who have ceased to live together such a period.

I am, my Lord,
Yours respectfully,

GENTLEMEN,

HAVING read of late so much about divorce I thought I would take the liberty to relate my case to you which is true. Having married about 9 years ago my wife and I lived together for about 5 years but she went into bad ways and we parted and I have never returned. But I was not happy without a partner so I made the aqquance of a young woman she is now twenty-three and I thirty-two she has now three children by me One two years and three months Second one year and two months third three months. My wife has a separation from me with charge of one boy the only one who is now six years old and seven shillings and sixpence per week. My wife is always in good work and the boy gets his dinners from the school he goes to now I am earning on an average of eighteen shillings per week. She has now agreed to take 5*s*. per week, out of 18*s*. per week.

Wife -	- 5*s*.	per week.
Rent -	- 4*s*. 6*d*.	do. do.
Insurance	- 4*d*.	do. do.
Gas -	- 6*d*.	do. do.
Coals -	- 1*s*.	In winter.
	11*s*. 4*d*.	

which leaves me 6*s*. 8*d*. to keep a woman and three children on. Now gentlemen if work is quiet with me and I have to stand off for a week or two and I can't send my wife any money she gets a warrant for my arrest and if I cant pay back arrears I have to go to prison for one month and perhaps more while the woman who is one of the best in the world to me has to starve with her three children and when I come out I have no work. Prison I would not mind only while I was there this poor girl should not be allowed to starve with her three children.

I remain,
Yours obediently.

To Lord Sir Gorrel Barnes.

MY LORD,

MAY I as a working man humbly lay my case before you, which to my mind is one of the worst that it is possible to imagin, I have read with interest the evidence given before your Lordship from day to day as I have good reason for so doing, as it means much to me, my Lord I will now give you the details of my own case, on the . . . 1906 my wife disappeared from her home and all trace of her whereabouts failed, leaving me with 4 children the youngest 6 weeks old, my children I have kept round me since, time went on, and after the lapse of nearly 4 years I accidentally discovered her, to find she was living with another man by whom she had given birth to a child which is now 2 years of age, and to my surprise I found that she had registered the child in my full name, which I have the certificate to prove, well I demanded that she should have it altered, and she made a declaration in the presence of Mr. . . . J.P. to the efect that I was not the father, some time after that, I was persuaded for the sake of my own children to forgive her, at last I did on the conditions that she kept away from the man that had wrecked my home, and she said she would, and do her duty as a wife and mother should, now as a matter of fact she had only been back a week before she visited the man who had broken my home up again, as I will explain I am employed on night work, and as soon as my back was turned she went after this man, then I lost my temper I assaulted her and made an application for a separation, which on the evidence I produced was granted me with the custody of my children and the wife is at present living with the man that has caused all the trouble and misery, this I think my Lord, is a case where divorce is out of my reach as the law stands have now but if it had been linked to a woman of her description for long.

Hoping, my Lord, you will pardon me writing to you,

I am,
Yours obediently,

Memo. from

re Enquiry Divorce Law, &c.

DEAR SIR,

WILL you try and get this story before the Commission?

Twenty-two years ago I married a woman, who without any apparent cause whatever started drinking and she developed into a disgraceful creature. After having three children, two of which died, I decided that it was wicked and against all ideas of decency to cohabit with her principally for the sake of the offspring, and next to preserve my own sense of decency.

The Hell on Earth soon began, and after submitting to lead the most unnatural life a human being can lead, I came away from her after 14 years' steady efforts to cure her. To-day I am leading a life which is very unsatisfactory, as I have a home where my son and I reside with a lady as housekeeper. Mrs. Grundy has been hard at it for years and there is more misery and annoyance caused through this person than many people imagine. In a provincial town Mrs. Grundy has the power to create quite a lot of misery especially to poor devils in my position.

I never go anywhere except that I am alone, and people don't want me because the false position I am placed in, having a wife alive although she has forfeited all claims to me by her conduct.

If I followed the promptings of nature too much, I should probably bring misery to others, I mean by having several illegitimate children, but I have to set my teeth and suffer. Why?

Because few of the Church dignitaries have tasted such a life, this seems the chief reason. My case can be easily enquired into if you think I am not serious.

Yours faithfully,

To the Hon. Henry Gorell Barnes.

MY LORD,

HAVING seen in the Daily Mail last October a Royal Commission had been appointed to enquire into the present state of the Divorce law I am writing to your Lordship to ask if anything has been done to improve that Law. At present I consider it is most unjust especially to the working man. I have a drunken wife from whom I have been separated five years ago. We had been married about three months when she began drinking, I did all that laid in my

power to induce her to give it up. There was one child of our marriage and I hoped after that was born she would be better, but as soon as she could get out with the child, she was continually in the public-house with it. She ran me into debt and through her drunken habits I was compelled to give up my business, which has utterly ruined me through having to pay debts incurred by my wife. I endured five years of misery and could no longer bear her drunkenness so I was obliged to get a Deed of Separation Order. Now I have to earn my living the best way I can to support a woman who has blighted my life and prospects, having lost all I had worked hard for to go into business. I know all, I pay to her goes for drink, she is constantly seen in public houses with the child which I think is most disgraceful. I trust there will soon be an alteration in the Divorce Law, as there are many others situated the same as myself, hoping something will be done for their benefit apologizing for the liberty I have taken in making this appeal to your Lordship.

I beg to remain,
Your obedient servant,

My Lord,

Please pardon me for this liberty of writing to you through my unfortunate circumstances. I read with interest the different views of the Commission on separation &c. on which you are now presiding. My position is as follows. Married 17 years at least 12 years of which my wife has been habitually drinking, pawning everything portable even to her own and my underwear to satisfy her craving for drink. Nearly 2 years ago, after an attack of Delirium Tremens she was taken to the Infirmary remaining there about a month, was transferred to an Asylum, she remained there for 12 months, on being discharged came home again, she soon began her drinking habits again and after a few months had the doctor to attend her, he treated her for some weeks and then advised me the Infirmary was the best place she was taken there and again sent from that place to the Asylum where she now remains.

The details of my own case would take too long to state. What can I do in this rotten position? with a very limited income.

Again apologizing for so troubling you,
Believe me my Lord,
Your obediently.

P.S.—Three members of my wife's family have died through the effects of alcohol.

Sir,

As I am very much interested in the divorce problem I am taking the liberty of writing to you on the subject. I do hope that you gentlemen will, see your way clear to get a divorce not for misconduct (only) but for drunkenness and cruelty especially for the working class to be able to sue in the county courts at a fee within the reach of the pockets of the deserving. I am a young married woman who has had to leave her husband after ten years of married life six years of happiness and the remaining four very miserable owning to drink and bad company I worked very hard for four years to try and reform him but he got worse and worse finally I was compelled to leave him as he would not work to maintain me and my only child so I got a sepration from him in . . . police court three years come . . . with a maintenance order against him for five shillings a week for the child only I did not ask for anything for myself as I told the magistrate I had worked to keep him now I would work to keep myself but I cannot get any money from him the . . . magistrates have sent him to prison several times but he does not mind it in the least. I am in a situation at the above address at a wage of 18*l.* a year but I find it a hard struggle to feed and clothe my boy who is 9 years old and to clothe myself and be respectable. I try to make my miserable life happy as far as I can but I find it very hard to live under such sad and trying circumstances.

I sincerely hope under the new act I shall be freed from such a burden my life is blighted not mine only but thousands under the same conditions you may make what use you like of this letter but please do not disclose my name to the public.

I beg to remain,
Gentlemen,
Yours respectfully,

The Secretary,
Royal Divorce Commission.

Sir,

I hope you will pardon my writing and taking up your valuable time, but the subject matter is to my mind very important. The facts are as follows.

In 1896 there was a marriage and more or less since then to 1903 the husband was a drunkard and at the latter date he was locked up and Bail refused on a charge of Rape. He got off and more or less since then to 1908 he was constantly committing adultery but his wife had no direct proof. However in 1908 she found him staying at an hotel with a woman who has given birth to a child and the language the man used to his wife was too awful and horrible. As a result there was a separation order drawn up on . . . 1909 between solicitor and solicitor and of course agreed upon by the concerned parties to the effect that the husband had not to molest his wife, that he had to allow her 2*l.* 10*s.* per week as maintenance and since last . . . he has made no effort towards paying the maintenance. He is living in adultery with the same woman and drinking together and the only way of proceeding to recover the maintenance is through a civil court. The wife wanted a divorce as he was most cruel to her, but the solicitors thought the separation would be better and there it is. I am trustee to the woman and children for an amount invested for their joint behalf and the wife is now told that no divorce would be granted because of the separation order. I do not know whether to expect a reply or not, but I merely draw your attention to the fact that here is a most dreadful hardship on the wife. I hope you will pardon me but the matter is so cruel that I could not help bringing it under your notice.

Yours faithfully,

Sirs,

I wish to let you know the position I am in as regards my marriage. I would have written earlier had I known you would accept letters, from the outside public. My position is this. I was married in 1897 and after a few years my wife commenced to drink heavily which caused greal trouble. In 1902 my wife left me in . . . taking our only child a boy of three years of age with her. Having some property in . . . she went there and sold it for *l.* After 12 months had gone by my mother chanced to hear that the boy was not looked after properly and was neglected on account of his mother's drinking bouts. My mother went to see her and she said she felt greatly relieved for me to have the boy, and since then we have heard nothing of her or where she went to. And it is almost certain women who drink to get drunk are not particular about their morals. I came to seek work in . . . where I have been engaged this last 7 years and have brought my boy up respectably. Now Sirs I have become acquainted with a good little woman who both care for each other and who will make me a good and true wife and home for me and my boy. If I could be released by law from an alliance which I believe would be allowed under the circumstances. In any other country than England I feel sure if divorce was cheaper and reasonable for men in my position then men would be able to marry women whom at the present time are willing to live with them as their unlawful wife. So Sirs I hope and trust to see you advise an alteration that will enable working men by cheaper divorce be able to live their lives happily and morally.

Yours respectfully,

To My Lord Gorrell,

My Lord,

Forgive my trespassing on your valuable time but learning through the press your kind interest in the Royal Commission on the Divorce Laws, I venture to state my case. I am a working man and have been in the one employ for thirty years I am now 47 years

of age I married when 20, shortly afterwards my wife developed a grate taste for drink and gradually got worse I need not go into the misery which I suffered, sufficient is she became an habitual drunkard and was taken away three years ago, she is still in the Asylum the Medical Superintendent tells me she is an hopeless case. Now my position is this, I have meet someon whom I care for very much and they me. We both come of decent family and we cannot be together because the law of England forbids, so what are we to do it is spoiling her life and mine and I have no domestic comfort whatever so you may imagine with what interest we are awaiting the issue of the Commission. Agin My Lord apolergising for presuming on your most valuable time and also wishing you and your colleagues every success in your good work.

I beg to remain my Lord,
Your obedient servant,

P.S.—Should be pleased to furnish you with all details in confidence.

To the President of
The Royal Commission on Divorce.

DEAR SIR,

I DO not know if I am breaking rules in addressing you, discourtesy is the last of my thoughts, but I feel I must write and speak of the misery that the poor are forced to bear through the cursed marriage laws of England. In my own case, I married a woman who proved a drunkard, and after a short time I was forced to leave her and my home for my life had become unbearable, since then my wife has had delirium tremens and been confined in the County Lunatic Asylum for nine months. She is now discharged and from all I hear is still drinking and worse I believe, and the law says that I am legally married. I could never make a home with her again. What a mockery of the word "wedded" marriage, I take it, should be founded on happiness and goodness, on affection and respect. Oh if your Commission only understood what a bitter thing it is to be forcibly tied and compelled to own one who has ceased to be a wife, and drained each week of a large portion of my earnings to cotribute to the support of a wife who has forfeited all love and regard. And I am not alone in my unfortunate position, I meet many women and men who from a variety of causes, are compelled to live a single life although married, and they would hail with delight and bless the day that means were provided to give them freedom.

May your Commission be the lever to pass some good law on this important question and apologising for writing to you.

I remain,
Yours faithfully,

MY LORD,

I BEG respectfully to be permitted to endorse what has been so plainly addressed to the Evening Standard as per cutting enclosed which I ask for your kind perusal, and, pray that you will do the writer the privilege of your consideration when analysing the pros and cons of the present enquiry over which you have the honour to preside.

I also beg to take the liberty of briefly stating my personal experience, was married at 21 against parents desire, wife commenced sly drinking, home and children neglected, wedding ring and other articles pawned to satisfy the hungry craving, two children died due to inattention and want of common sense, was anxious to avoid exposure or would have acted on doctor's suggestion, eventually was compelled to publicly stop all credit, and. to avoid injury to my children was absolutely compelled to supply her with gin, and things went from bad to worse, which resulted in her going away to subsequently return. Later she again left owing to my taking severe measures and my father took my 2 babes 2 years and 5 years respectively and had my goods warehoused. Some 8 years later I was implored to take her back believing she had gained commonsense and given up drink, and, to my deep regret I acceded, and myself and 2 children suffered, as no tongue can tell, with further exposure and unmitigated lies, whilst holding a public position in a country village. After 8 months she again left and I am still married and not married. I declined in both instances to allow her maintenance (and in consequence had to seek protection) until she took a summons, my object, to enable me to state my case to a magistrate, and, although I had a medical gentleman, solicitor and others the presiding magistrate declined to hear their evidence, but, simply enquired "are you prepared to take your wife back" resulting in my being compelled by law to support a worthless woman for the past 15 years. I venture to say Sir that reconciliations prove a life of torture, early marriages should be prohibited, bastardy cases subject to imprisonment on both sides, and last but not least, that separation orders after 5 years should be sufficient to have the effect of a decree being absolute for the dissolution of a marriage and that no maintenance be allowed provided the woman is able to work.

I fear Sir my case is only one of many thousands and pray for your kind indulgence.

Apologising for the liberty taken,
I remain, my Lord,
Your obedient servant,

Lord Gorell Barnes,
Chairman Divorce Laws.

To
the Chairman.

SIR,

In writing to you and stating may case it is to show how hard the present divorce laws are regarding the working classes.

I was married in 1896 and soon after my first child was born in 1897 my wife went on the drink, she gradually went from bad to worse, got locked up two or three times and after selling up my home, eloped with a man named . . . and went off to Canada leaving me with three little children.

Now I have been in my present situation 16 years but owing to the expense of providing for my children it is impossible for me to save sufficient money to get a divorce, and am compelled to lead a lonely life, through no fault of my own.

Trusting you will be able to recommend some means to give us working classes a chance, as well as the rich

I remain, Sir,
Your obedient servant,

Memorandum from . . .

To the Hon. Gorell Barnes,
Sec. of the Royal Commission on Divorce,

SIR,

IN stating the facts of my case again before that should you require me as a witness to give evidence I should be pleased to do so. The true facts of my case are, that, almost, seven years ago, I was compelled, to leave my wife, owing to her terrible drunken habits, neglect and cruelty to the children and myself, I might here state that through those habits I lost two dear children. However I was summoned for desertion, and a separation Order granted. I to have the custody of the children allowing her the smallest grant, I understood they could make viz. 2*s*. 6*d*. per week. I might also tell you Sir that Dr. . . . of this town handed a letter to the Justices, describing the shocking condition he used to find her when called to see the children when very ill. I have strove hard for my two dear boys in humble lodgings and I believe it is only those who are placed like myself, know the need of a reform in our laws. I do pray Sir that your Commission will recommend in cases like mine, that after three years or five there should be absolute Divorce which I am sure would bestow a Gods blessing on vast numbers. although Sir I have been informed by the Police of my wife doings with men it is almost impossible to prove adultery for fear of losing the maintenance money, and being so shrewd make it very difficult to obtain witnesses. My age Sir is forty two years and my sons 16 and 13 respectfully I do trust Sir that this statement will bear good fruit and so enable those who are placed like myself to have another beginning in life and to look forward to having

home comforts for the children for I am sorry to say it is a hard life is mine, and Boys.

I am Sir,
Yours obediently.

Re the Royal Commission on Divorce.
The Secretary.

DEAR SIR,

I HAVE followed the sittings and evidence of the above with great interest as I am one who will be affected by their decision. Mine is a typical case of several I know personally. A few years after being married, when I had 4 children I found my wife was giving way to drink to such an extent that I was compelled to obtain a separation. After about 9 months I allowed her to return on her promise both verbally and by letter that she had given it up and would never touch drink again. I am sorry to say that in less than two weeks she was drunk again. This went on so bad that she was locked up several times. Her language to the children was simply disgusting, she would pawn anything for drink and from first to last cost me hundreds of pounds. I at last went to the court and got a legal separation from her on the grounds of an habitual drunkard; allowing her 15*s*. per week. I have not seen her now for nine years, she being in another town.

My children are getting older and two of them will shortly be leaving. According to the present law I must either live a celibate life or live with a drunken wife, the latter I will never do. If the law cannot help me then I shall be compelled to make my own law. You may use this but omit the name for the children's sake.

Yours faithfully,

It is all very well for the persons and those people who says "try and persuade them to give up the drink" only those who wear the boots know where and how they pinch. I hope and trust the Commission will give relief to persons in my position as well as for unfaithfulness. I have only given you the fringe of what a man (and his children) has to go through with a drunken wife.

To the Royal Commission on the Divorce Laws.

GENTLEMEN,

I HAVE read with great interest the evidence given on the divorce laws. I hope I am not intruding but beg to state my case as follows.

I am a married man with 6 children, soon after marriage on returning from work each day, I found my wife more or less intoxicated. The excuse being each time bad bilious attacks. On several occasions I called in a medical man, and after a time he informed me it was only drunkenness, my suspicions were then confirmed. That was my first insight of 14 years of misery to follow. I have given my wife a comfortable allowance each week (including all holidays) for housekeeping, but found it all went in drink, even the children's clothes, her own, and mine, she pawned for drink, even the bed clothes, left nothing but the mattress for all to lie on in all conditions of weather. The children were kept dirty and neglected and have often had to stay at home because their boots were in pawn, the excuse to the school teacher—the children are not well. I also know people that could prove that my wife has committed misconduct, but are afraid of causing trouble in their own families. I did not want my wife to be a total abstainer and allowed her 4 quarts of ale or stout per week, but this was not sufficient. I have found as many as 30 40 and 50 pawn tickets at a time for various articles of mine pledged by my wife or associate.

She would when under the influence of drink openly insult me in the street. I have tried hundreds of times to get her to alter or improve her ways, the retort always being a lot of filthy language and—you have married me I shall do what I like and the law cannot prevent me. The life she led me so injured my health that I had to have medical attendance. It has taken all my savings 200*l*. in 8 years to pay debts and redeem pledges.

Since the children's act was passed, and with the assistance of Inspector . . . P.S.C.C. of . . . and solicitors, I obtained a separation and allow my wife 10*s*. per week, and from what I can learn she is still as bad as ever. Mr. . . . has a full list taken from a diary I have kept. I may mention that most Reverend Gentlemen only see the woman (of this kind) in her best, usually pleading poverty and charity to hide their shame. Pen cannot describe my sufferings, and my means will not allow me to divorce her. I earnestly trust something will be done to enable the working man to rid himself of a burden so intolerable and loathsome as a drunken wife.

I hope I am not encroaching too much on your valuable time, you are at liberty to publish this letter if you so desire.

I remain, dear Sirs,

YOUR LORDSHIP,

I AM taking the liberty of writing you to ask you if you could let me know if I am a free woman, as I am leaving for South Africa next Saturday . . . and should like to know before I go.

On . . . 1893 I had to get a separation from my husband on the grounds of persistent cruelty, since then I have not seen him, or has he sent me one penny to help to keep his two little girls. I have had nothing but what I have earned myself and for the last six months I have had a nervous breakdown, and been unable to work, and I think if I get to South Africa where I have friends I may be better.

If I meet someone who would act as a father to my children can I get married?

I am sorry to trouble you, but I cannot afford to go to a solicitor.

Thanking you in anticipation,
Yours obediently,

To the Right Hon. Lord Gorell.

MY LORD,

I PRAY your Lordship will bear with your humble servant in regard to cheaper divorce facilities for the poorer classes.

In the matter of my own case, my lawful wife is suffering (sad to say) from that dreadful and deadly disease known to medical men Syphlus, and that in an advanced stage, that her visage is depleted of one of its organs. Now when the doctor that attended my wife knew her condition, he sent for me and warned me not to have further sexual intercourse with my wife, so after some delay I managed to get the guardians to grant her an order for the infirmary for 3 months, during which time my wife was greatly relieved but not cured, so that I was still in danger of catching the disease if I lived with my wife, so I parted from her 2½ years ago, but I had not the funds to pay expence, and was also afraid that publicity would prejudice my career so I took to myself a natural wife because I could not live with my lawful wife, I may be to blame for doing this but to my mind it was better than ruining young girls or forging links in the chains of prostitutes.

I have the honour, My Lord, to remain,
Your humble servant,

To Lord Gorrel Barnes.

MOST RESPECTED SIR,

PLEASE allow me to thank you for the position you have taken up with regard to Poor Mans Divorce, and to shew you how hard the present Law is.

For Sixteen years I have been married and my wife had two children (Boys).

Towards the latter part of the time she became fascinated with a younger man, with the result adultery and the breaking up of my Childrens Home. They like me have suffered but the man has not though he knew her to be married. To-day and for the last 3 years since I have been striving to obtain money to take action under Forma Pauperis, but fate seems to treat me hard as I have to work hard and can only find enough to nearly pay my way without incurring this further expense.

The stamp duties are too much for me more less the luxury of a Solicitor and Council, and the consequence is I am as far away as ever.

The Laws of Nature I am denied and also am debarred from asking any respectable womans hand

in marriage. People know I am seeking Divorce and through this present day Law I must keep on suffering and through no fault of my own. My children are doing likewise and so the punishment still goes on.

An Englishmans Home is supposed to be his Castle, yet he cannot prevent his chief asset from being stolen.

Yet were a man to enter a shop and steal the most commonest article therein he could get 6 months. My opinion Sir is that a man who knows a woman to be married should, did they commit adultery, be treated the same as any common thief, and the injured one be freed by a stipendary or bench of magistrates. Hoping you will persevere with your good work

I am, Sir,

Yours affectionately,

Please do not consider this private.

HON. SIR,

I WAS married at the age of 18 and for a few years lived fairly happy with my husband (and two children). Never a teetotaler he took to drinking more than was good for him, got into the society of violent men and bad women, and thro his orgies my life and that of my children was perpetually endangered by the throwing of lighted lamps and knives and whatever came to hand, often myself and children had to seek a shelter in the middle of the night from his violence. Eventually I went to a solicitor who wrote him a letter of warning, which he answered, with a promise of better behaviour for the future. After a short time he broke out worse than ever, and I was forced to do what I always dreaded, take out a public summons, result a separation with maintenance which he payed for about five weeks.

My son and daughter are both married and I am still working and keeping myself altho my health is indifferent. Had I been free the chance of a happy home was assured, but through lack of means I have been unable to procure a divorce.

I remain,

Your Lordship to command,

The Hon. H. Gorell Barnes.

TO LADY FRANCES BALFOUR,

I HOPE they will alter the law as regards divorces so as a person of limited means will be able to get a divorce. My case is this I was married in 1879 and there are five children of the marriage and no man ever loved a wife and children more than I did mine business called me away from home for a few weeks in 1887 and when I come home my wife I found was living with another man sanctioned by her own father and mother and as had a family by him and still lives with him in open adultry (if you like I would come to London to see you when the Commission are sitting) she forbid my children to speak to me and she has not spoken to me since and my eldest daughter I do not know I have heard she is married and lives in . . . you are at liberty to publish this letter if you like.

Yours respectfully,

P.S.—I hope your Ladyship will not mind my writing to you as I think mine is a very hard case being tied to a woman like that.

SIR,

SEEING by the papers that a royal commission has been formed to enable the poorer classes of obtaining a divorce, I wish to state my case briefly.

I am a married woman, and at the present time am getting my living as a tailoress and wish to obtain a divorce from my husband whom I married in 1896 and left in 1907 through intimacy with other women there is one child of the marriage.

I shall esteem it a great favour if you would let me know how I could obtain the divorce as I have no means of doing so through the high courts.

DEAR SIR,

I BEG to lay before you my case.

My age is 23, I was married 16. In two months my husband treated me in a most brutal manner without any provocation. I lived with him five years and one little daughter was born.

Owing to the constant ill-treatment, I got a separation order and costs granted . . . a year ago, but which I had to pay, as my husband pleaded poverty, although his father has an income from 3,000*l.* to 4,000*l.* a year, and my husband is an only son and entirely dependent on his father.

I have proof of my husband's misconduct but the Divorce decrees being so expensive, I cannot obtain one, so my young life is blighted, and no future in store for me unless, Divorce proceedings become cheaper. There must be very many similar cases to mine in this world.

I remain,

Yrs. most humbly,

SIR,

SEEING an account of "Cheap Divorce" in the "Daily Mail" I beg to put my case before you. After being married 10 years, I took in a man lodger, who completely wreacked my home. He showed a great liking for my wife and when I spoke about it, she said she would rather I went than he. I then left the house, and she left with this man and all my furniture. I got a legal separation drawn up, and since then have not spoken. She has now taken my three children away from me and has got 4 illegitimate ones besides.

Will you kindly tell me the particulars and how to arrange the Divorce, and the cost, as I am only a working gardener earning 1*l.* a week.

I am, Sir,

Your's respectfully,

DEAR SIR,

MIGHT I be allowed as one of the members of the poorer class to say with what pleasure I hear that a Royal Commission of Enquiry has been appointed to consider the law of divorce and its relation and administration, in regards to the working class, who cannot proceed solely on account of finance, let me briefly illustrate to you the injustice of the present law as regards to myself, for this last eighteen years. The woman that I married, was a slave to the drink, more a creature of pity perhaps, than for condemnation, gradually and eventually, became hopeless, and whilst under its influence, did almost anything and went from bad to worse, and I was absolutely compelled to leave her and after allowing her upon a maintenance order the sum of 8*s.* a week, for some little time, I discovered that she was living a life of immorality with other men, my case was taken into the . . . Police Court and upon me producing more than ample evidence of her immorality, the Order was rescinded, and allthough she is no longer my wife *morally*, the law still says that she is my wife legally until I get a divorce from her, and this I have not been able to do on account of finance, being too poor therefore not being able to proceed, otherwise I like many others, might have been living a happy pure and contented life, this injustice I have felt most keenly at times, and should the outcome of this commission rectify this lamentable state of things I for one shall be most pleased and gratefull, and should any further information be required of me I should only be too willing to give same. should you deem my case sufficiently worthy of a reply, I have enclosed a stamped addressed envelope for same. Believe me to Remain your Obedient Servant

DEAR SIR,

I SEE by the press, that a Royal Commission has been appointed, re Divorce for the poor, and about time too! for as the law stands at present Divorce is simply a luxury for the rich, and it furnishes the justification of saying, there is one law for the rich and another for the poor.

For instance, I will give you my own case—my wife left my home and protection some months ago, now, she is leading the life of a prostitute, as a matter of fact, during the past summer months she followed that calling at . . . , she could be seen with different men daily, yet I am forced because I do not possess the means—to have a woman, bearing my name, I am forced to put up with this month in month out, to be pointed out as one whose wife is a Prostitute! had I been a rich man, I could get rid of such a creature, but as I

am poor, well, I've got to grin and put up with it. Let us hope the time is not far off when Divorce will be within the reach of all, and that £. s. d. will not bar the door—to-day the homes of the poor are wrecked by infidelity as much as compared with the homes of the well-to-do, but the rich have a remedy, the poor none, perhaps soon, justice from this point of view, as far as Divorce is concerned, will be denied to none.

I am, Sir,
Yours truly,

DEAR SIR,

AFTER reading the Correspondence Re "Cheap Divorce," I thought my case would perhaps interest you. In the first place I am a young man 25 years of age and up to 5 months ago I hadn't seen my wife for 4 years. Then I receive a letter from a man in . . . asking me to petition for a Divorce on the grounds of Adultery saying, I shall have no difficulty in doing so, as she (my wife) is expecting a child. After making enquiries I find that they have been living together as man and wife for about 3 months and since then I know, in fact I can prove, that she (my wife) has given birth to a still born child. You will now see the position I am placed in. I havn't means to apply for a Divorce, not being able to meet the expense and I don't think it possible to get my expenses from him (Co-respondent). There is no doubt left, that had I been a rich man I could have procured a Divorce at once, but seeing that I am not, then I must live a solitary life or, under false pretences (which I don't intend to). I hope you will excuse me taking this liberty and if you feel at all interested in my Case I could on demand send you further particulars, also letters bearing on my character. I think you will gather that in my case "Cheap Divorce" would mean a great deal to me. Again apologizing for any trouble I may have given you.

From Yours Truly,

YOUR LORDSHIP,

I HOPE you will excuse my liberty in writing to you but I felt I could not refrain from doing so after reading your motion to bring facilities for divorce within the reach of a poor and deserving person of which I think I am as regards jurisdiction about 7½ years ago I preyed for a Divorce from my wife in India . . . on the ground of desertion and adultery which cost me the whole of my savings which I withdrew from the Savings Bank only to learn afterwards that my case was dismissed. I then came home from India as I could not soldier there it preyed on my mind so much after being home from India 12 months and receiving letters from her of a condolling character I resolved to bring her home thinking she might reform and through . . . I got her a passage Home. she went on all right for a few years till I left the service some few years when she repeated her conduct and the result was a child which I disclaim then she became the same as ever pawning and selling my Home gradually till I was compelled to leave her and now my Lord I cannot possibly pay for a second Divorce and am leading a life of lonliness. I think it very hard that I could not have been judged fairer than this. I paid a detective all I could afford thinking I could get a paupers Divorce but he wanted more than I could afford so that fell through I have got ample proof at present for a second petition but I have not got the money to do it with I am a Labourer employed . . . earning 22s. per week and got a small pension. So hoping my Lord you will take my extenuating circumstances into consideration, and give me a little advice on the subject.

I am,
Your Lordship,
Your obedient Servant,

To the Royal Commission on the Divorce Laws.

GENTLEMEN

MIGHT I give you the the following facts as a reason why Cases should be heard in tows in which people reside in 1907 I "Personally" made application to the Court throught my Solicitor for Divorce the Case went on for about 2 years Costing me 200*l.* then it had to be entered under another Court result had to drop it for want of money. 10 years after (Now) having to live an unnatural life for the above reason.

DEAR SIR

Re cheaper Divorce.

6 years ago I broke my leg playing football, my wife left me saying it served me right, she went with another man, had a child, how could I forgive,

I am a Working man and do not average 1*l.* per week, so it is impossible to obtain a divorce, hoping this will receive attention.

Yours Truly,

DEAR SIR

I SEND these few lines to congradulate on your undertaking to get a cheaper divorce which I do think is much needed for the poorer class my wife has been living with another man for about 12 years and got children by him and I am not allowed to do anything because I have not money enought

Yours Fraternally,

To The President of the
Divorce Commission.

Re Poor Man's Divorce.

DEAR SIR,

I TAKE the liberties of writing your Commission giving a true statement of my situation in reference to Myself and Wife.

We have been married 15 years, but she left me 5 years ago, I had reasons to believe that she was unfaithful at that time and sought Legal advice and I wished him to get me Divorced. My Wife hearing later that I had sought Legal advice as taken upon herself to write to my Solicitor making a full confession of her Misconduct on several occasions, and wished him to tell me that it was not with the one whom I thought it to be. Both our afidifits have been signed and I have engaged Council opinion. I have paid altogether 10*l.* I have been anxiously waiting an hearing. But my Solicitors now tell me that there must be more evidence before they can proceed. Having furnished them with all the evidence that is possible for me to give I cannot say any more to help them. Therefore I am anxious that your Commission should hear my story. I am only a working man and cannot afford to pay for Divorce in the ordinary way.

Hoping still that something can be done on my behalf

I am, Gentlemen,
Yours obediently,

SIR,

FROM condensed reports in the newspapers of the proceedings of the Royal Commission on Divorce, I understand that communications have been received from "silent witnesses," and, as I consider myself a "victim" of our present marriage law, I trust this letter will be laid before the Commissioners.

I hold the opinion that divorce should be made cheaper. My wife became a chronic inebriate and I was reluctantly compelled to obtain a separation order under the 1902 Act, an Act which gave relief where previously I had none.

From experience, separation is unsatisfactory. With one-fourth of wages gone in allowance, a family to care for, and being a sort of "odd man" in social gatherings, for an *uncertain* time, a man's life is a blank, try how he will to occupy his time. This, of course, entirely apart from the experience of the other side.

Five years ago I took legal advice, and was informed I had good grounds for Divorce, owing to having proofs of wife's infidelity; but the cost, 26*l.*! That means, at least 30*l.*, which places Divorce entirely out of my reach. Why should not the law be made for the poorer classes as well as the richer class?

Hoping, Sir, the result of this Commission will be that Divorce will be made easy, not necessarily for trifles, but, at any rate, within the reach of such as

Your obedient servant,

DEAR SIR,

As your Commission has been started to enquire into the subject of Divorce and the conditions which lead to such a step. I think it is my duty, apart from

any personal considerations to write and state my own case for your information in the fervent hope that future legislation will perhaps afford me a means of escape from my awful predicament. I am married to a woman who is internally deformed and which I did not discover until after marriage. I was put into communication with a firm of London lawyers by a weekly newspaper and they informed me that they had never in their long experience ever heard of such a case as this and that the law had never been framed to meet such a condition of affairs. They said I could enter divorce proceedings and no doubt obtain a nullity of the marriage but such a course would cost 40*l.* to 60*l.* Of course this to me is hopeless because my average earnings do not exceed 25*s.* to 27*s.* per week. I do not care to entrust to a letter, addressed as this is, minute details, but if you care to communicate with me and give me your name and address I will go more fully into the matter and give you the name of the medical man who thoroughly examined my wife, and also a description of how and to what extent she is deformed. Externally she is practically the same as the usual type of woman, internally her sexual organs are sealed and withered. At present I am forced to live an unjust and strictly speaking dishonourable life. Can you assist me. I am eagerly awaiting your reply.

Faithfully yours,

My Lord,
Ladies & Gentlemen,

I SHOULD like to draw Attention to the Committee enquiering into whether Divorce should be Cheaper for the Working Class. I have just got a divorce myself and as a Working Man my evidence is sound Common Sence. not prejudice by Religious Instruction. I know a good few around about where I live that as not money enough for a divorce Result they are both going about with anyone they fancy. and always quarreling like Dog and Cat. the Children hearing them on almost every occasion. that is the no cheaper divorce result. some are living with other men and men with other women bringing children into the world Result children shamed for life throught no fault of their own because father or Mother could not get a divorce. I know one friend a good young Man. Total abstainer Wife drinks and bothers with another man. This young man cannot get money for a divorce Result he as being brought up in the police court for Assaulting this other man on several occasions his wife stabbed him a few weeks since and he was fined in the . . . Police Court still he as no chance of Divorce she as been out all night about 20 times this year at least. and the man is a good honest, steady young man still he is compelled to live with a Swine like that. Take my case I got damages, custody of my Boy but I cannot get a penny, my case started in 1909. Case come up in 1910 then I have 6 months before I am free altogether. 1 year and 4 months althought I win the case I must be 6 months before free I think this requires reducing. Remember there was no defence at that. if There had been I should have been compelled to pay her expences which is outrageous from a Working man. especially when all the wrong is on the woman's part I think the Committee might give the Points a Concideration as they are from one who as suffered throught the expences being so great. Of course there are two sides to the question of divorce.

I remain yours, Truely,

DEAR SIR,

I beg to address you with reference to my case which has occurred during the past month, as an illustration of the necessity of cheaping the cost in divorce.

A few months back my suspicions were aroused as to my wife's conduct in my absence, I may state here, I am a commercial traveller (always home for the week ends), and when I finally brought the matter to a head, she left me . . . with the man, whom she owned to have been carrying on with for over 12 months, and is now living with him in furnished apartments, it is the usual thing a friend of the family. Of course there are a lot of details that are not necessary to enter into here.

If it were a matter of a few pounds (say 10*l.*) I would bring a suit against them, but at present I am out of employment caused through this trouble, so cannot think of it. The suit would be entirely undefended on their part, as there is not a question of cruelty or adultery against me during the time I have been married to my wife, just within 7 years.

I should be obliged if you would bring this before the Commission, and should you wish to hear any further particulars, I should be pleased to give them.

Yours obediently,

SIR,

As one directly affected, I most earnestly trust that the Commission may cause divorce to be cheaper, my case is as follows, married 2 years, no children, wife deserted after disgraceful behaviour, heard nothing 6 months, wife eventually brought action for restitution of conjugal rights, I with ample evidence brought cross petition for divorce, co-respondent a wealthy man, . . . employed very expensive Counsel who spun out case 5 days, I compelled to withdraw having no means to continue, have never earned more than 3*l.* a week as a pianoforte tuner, now earn (30*s.*) my own costs were 630*l.*, fancy that for a man in my position, all my savings of a lifetime are gone.

I believe in this country over 100,000 couples are living apart, imagine the misery being tied to a person that they will never live with again, if the commission give relief, it will mean happiness to above number, fancy to about as many people who formed the queue in one day to see the late King Edward lying in state from 6 in the morning till 10 at night.

Yours respectfully,

APPENDIX XXVII.

"THE MODEL LAW"—AN ACT REGULATING ANNULMENT OF MARRIAGE AND DIVORCE—EXTRACTED FROM UNITED STATES CENSUS REPORT—MARRIAGE AND DIVORCE, 1867–1906 (p. 272).

Proposed uniform divorce law.—The form of Bill as recommended by the congress on uniform divorce laws is as follows:

AN ACT REGULATING ANNULMENT OF MARRIAGE AND DIVORCE.

CHAPTER I.—JURISDICTIONAL PROVISIONS.

Article I.—Annulment of marriage.

SECTION I. Causes for annulment.

A marriage may be annulled for any of the following causes existing at the time of the marriage:

(*a*) Incurable physical impotency, or incapacity for copulation, at the suit of either party: Provided, That the party making the application was ignorant of such impotency or incapacity at the time of the marriage.

(*b*) Consanguinity or affinity according to the table of degrees established by law, at the suit of either party; but when any such marriage shall not have been annulled during the lifetime of the parties the validity thereof shall not be inquired into after the death of either party.

(*c*) When such marriage was contracted while either of the parties thereto had a husband or wife living, at the suit of either party.

(*d*) Fraud, force, or coercion, at the suit of the innocent and injured party, unless the marriage has been confirmed by the acts of the injured party.

(*e*) Insanity of either party, at the suit of the other, or at the suit of the committee of the lunatic, or of the lunatic on regaining reason, unless such lunatic, after regaining reason, has confirmed the marriage: Provided, That where the party compos mentis is the applicant, such party shall have been ignorant of the other's insanity at the time of the marriage, and shall not have confirmed it subsequent to the lunatic's regaining reason.

(*f*) At the suit of the wife when she was under the age of 16 years at the time of the marriage, unless such marriage be confirmed by her after arriving at such age.

(*g*) At the suit of the husband when he was under the age of 18 at the time of the marriage, unless such marriage be confirmed by him after arriving at such age.

Article II.—Divorce.

SECTION 2. Kinds of.

Divorce shall be of two kinds:

(*a*) Divorce from the bonds of matrimony, or divorce *a vinculo matrimonii*.

(*b*) Divorce from bed and board, or divorce *a mensa et thoro*.

Article III.—Divorce a vinculo.

SECTION 3. Causes for.

The causes for divorce from the bonds of matrimony shall be:

(*a*) Adultery.

(*b*) Bigamy, at the suit of the innocent and injured party to the first marriage.

(*c*) Conviction and sentence for crime by a competent court having jurisdiction, followed by a continuous imprisonment for at least two years, or in the case of indeterminate sentence, for at least one year: Provided, That such conviction has been the result of trial in some one of the states of the United States, or in a Federal court, or in some one of the territories, possessions, or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

(*d*) Extreme cruelty, on the part of either husband or wife, such as to endanger the life or health of the other party or to render cohabitation unsafe.

(*e*) Wilful desertion for two years.

(*f*) Habitual drunkenness for two years.

Article IV.—Divorce a mensa.

SECTION 4. Causes for.

The causes for divorce from bed and board shall be:

(*a*) Adultery.

(*b*) Bigamy, at the suit of the innocent and injured party to the first marriage.

(*c*) Conviction and sentence for crime by a competent court having jurisdiction, followed by a continuous imprisonment for at least two years, or in the case of indeterminate sentence, for at least one year: Provided, That such conviction has been the result of trial in some one of the states of the United States, or in a Federal court, or in some one of the territories, possessions, or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

(*d*) Extreme cruelty, on the part of either husband or wife, such as to endanger the life or health of the other party or to render cohabitation unsafe; or such indignities, threats, or acts of abuse, as to render the condition of the other party intolerable and life burdensome, and to force such party to separate from the other and to live apart.

(*e*) Wilful desertion for two years.

(*f*) Habitual drunkenness for two years

(*g*) Hopeless insanity of the husband.

Article V.—Bars to relief.

SECTION 5. When decree shall be denied.

No decree for divorce shall be granted if it appears to the satisfaction of the court that the suit has been brought by collusion, or that the plaintiff has procured or connived at the offence charged, or has condoned it, or has been guilty of adultery not condoned.

Article VI.—Jurisdiction.

SECTION 6. In what courts.

The * * * court of this state shall have and entertain jurisdiction of all actions for annulment of marriage, or for divorce.

SECTION 7. By personal service in actions for annulment.

For purposes of annulment of marriage, jurisdiction may be acquired by personal service upon the defendant within this state when either party is a bona fide resident of this state at the time of the commencement of the action.

SECTION 8. By personal service in actions for divorce.

For purposes of divorce, either absolute or from bed and board, jurisdiction may be acquired by personal service upon the defendant within this state, under the following conditions:

(*a*) When, at the time the cause of action arose, either party was a bona fide resident of this state, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless one of the parties has been for the two years next preceding the commencement of the action a bona fide resident of the state.

(*b*) When, since the cause of action arose, either party has become, and for at least two years next preceding the commencement of the action has continued to be, a bona fide resident of this state: Provided, The cause of action alleged was recognized in the jurisdiction in which such party resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this state.

SECTION 9. By publication in actions for annulment.

When the defendant can not be served personally within this state and when at the time of the commencement of the action the plaintiff is a bona fide resident of this state, jurisdiction for the purpose of annulment of marriage may be acquired by publication, to be followed, where practicable, by service upon or notice to the defendant without this state, or by additional substituted service upon the defendant within this state, as prescribed by law.

SECTION 10. By publication in actions for divorce.

When the defendant can not be served personally within this state and when at the time of the commencement of the action the plaintiff is a bona fide resident of this state, jurisdiction for the purpose of divorce, whether absolute or from bed and board, may be acquired by publication, to be followed, where practicable, by service upon or notice to the defendant without this state, or by additional substituted service upon the defendant within this state as prescribed by law, under the following conditions:

(*a*) When, at the time the cause of action arose, the plaintiff was a bona fide resident of this state, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless the plaintiff has been for the two years next preceding the commencement of the action a bona fide resident of this state.

(*b*) When, since the cause of action arose, the plaintiff has become, and for at least two years next preceding the commencement of the action has continued to be, a bona fide resident of this state: Provided, The cause

of action alleged was recognized in the jurisdiction in which the plaintiff resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this state.

SECTION 11. *Particeps criminis* may be made a party.

Any one charged as a *particeps criminis* shall be made a party, upon his or her application to the court, subject to such terms and conditions as the court may prescribe.

SECTION 12. Hearings.

All hearings and trials shall be had before the court, and not before a master, referee, or any other delegated representative; and shall in all cases be public.

SECTION 13. Attorney, appointment of by court.

In all uncontested cases, and in any other case where the court may deem it necessary or proper, a disinterested attorney may be assigned by the court actively to defend the case.

Article VIII.—Evidence.

SECTION 14. Proof required.

No decree for annulment of marriage, or for divorce, shall be granted unless the cause is shown by affirmative proof aside from any admission on the part of the defendant.

SECTION 15. Impounding of record and evidence.

No record or evidence in any case shall be impounded, or access thereto refused.

Article IX.—Decrees.

SECTION 16. Rule for decree *nisi*.

If after hearing of any cause, or after a jury trial resulting in a verdict for the plaintiff, the court shall be of opinion that the plaintiff is entitled to a decree annulling the marriage, or to a decree for divorce from the bonds of matrimony, a decree *nisi* shall be entered.

SECTION 17. Final decrees, entry of.

A decree *nisi* shall become absolute after the expiration of one year from the entry thereof, unless appealed from or proceedings for review are pending, or the court before the expiration of said period for sufficient cause, upon its own motion, or upon the application of any party, whether interested or not, otherwise orders; and at the expiration of one year such final and absolute decree shall then be entered, upon application to the court by the plaintiff, unless prior to that time cause be shown to the contrary.

SECTION 18. Decree *a mensa*, terms of.

In all cases of divorce from bed and board for any of the causes specified in section 4 of this act, the court may decree a separation forever thereafter, or for a limited time, as shall seem just and reasonable, with a provision that in case of a reconciliation at any time thereafter, the parties may apply for a revocation or suspension of the decree; and upon such application the court shall make such order as may be just and reasonable.

SECTION 19. Former name of wife.

The court upon granting a divorce from the bonds of matrimony to a woman may allow her to resume her maiden name, or the name of a former deceased husband.

CHAPTER III.—GENERAL PROVISIONS.

Article XI.—Children.

SECTION 20. Legitimacy of.

(*a*) In an action brought by the wife, the legitimacy of any child born or begotten before the commencement of the action shall not be affected.

(*b*) In an action brought by the husband, the legitimacy of any child born or begotten before the commission of the offence charged shall not be affected; but the legitimacy of any other child of the wife may be determined as one of the issues of the action. All children begotten before the commencement of the action shall be presumed to be legitimate.

Article XII.—Foreign Decrees.

SECTION 21. Effect of.

Full faith and credit shall be given in all the courts of this state to a decree of annulment of marriage or divorce by a court of competent jurisdiction in another state, territory, or possession of the United States when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in sections 7, 8, 9, and 10 of this act. Nothing herein contained shall be construed to limit the power of any court to give such effect to a decree of annulment or divorce by a court of a foreign country as may be justified by the rules of international comity: Provided, That if any inhabitant of this state shall go into another state, territory, or country in order to obtain a decree of divorce for a cause which occurred while the parties reside in this state, or for a cause which is not ground for divorce under the laws of this state, a decree so obtained shall be of no force or effect in this state.

Article XIII.—Repeals.

SECTION 22. Repealing clause.

The following acts of assembly and parts of acts, viz.: * * * and all other acts and parts of acts of assembly of this state, general, special, or local, inconsistent with this act, be and the same are hereby repealed: Provided, That nothing in this act contained shall affect or apply to any actions of annulment of marriage, or for divorce, now pending.

SECTION 23. When act shall take effect.

This act shall take effect on the day of A.D. .

APPENDIX XXVIII.

NAMES OF WOMEN AFTER DIVORCE.

The question as to the name to be held by a woman whose marriage has been ended by divorce is one that is not covered by the terms of reference of this Royal Commission, but in view of the correspondence that has been addressed to the Commissioners on the subject, and the fact that the general law as to the use of names varies in different countries, it has been thought desirable to furnish some information on the subject.

A brief reference to the historical development of the use of names in marriage and generally may to some extent explain modern variations in practice in different countries. The taking of the husband's name by the wife on marriage appears to spring from the earliest Roman practice. Originally in Rome a woman bore the name of the head of the family to which she belonged. Consequently, if she passed out of the *manus* of the father into the *manus* of the husband she lost her father's name, and as a member of her husband's family acquired her husband's name. Thus we have Caecilia (filia) Metelli; Metella Crassi (uxor). Later it became the practice to indicate a daughter as distinguished from a wife by adding the letter (f) after the name of the daughter. Mr. H. E. P. Platt, Fellow of Lincoln College, Oxford, who has considered the question of the names of married women in Roman practice (in contrast to Roman law) for the present writer, doubts if there is any evidence that when a wife passed *in manum viri* she took her husband's gentile name. In the age of the kings, Lucretia is described as remaining Lucretia after marrying L. Tarquinius Collatinus and, not many years later, the wife of Cn. Marcius Coriolanus is not called Marcia, but Volumnia, and his mother is

Veturia (Livy ii, 40). It is possible, however, in these cases that *manus* never arose. Again, C. Julius Caesar was designated (*designatus*) *Flamen Dialis* when he married Cornelia. He must have married her by *confarreatio* and so acquired *manus*, and yet she remained Cornelia by name (see *Suetonius*, Jul. 1). Again, a Flamen Dialis must have been the son of a *confarreate* marriage, yet Cæsar's mother was called Aurelia. It should be noticed that expressions such as *Metella Crassi* occur only in a few instances (Madvig's *Grammar*). Gildersleeve and Lodge, in their *Grammar*, say, "The Family Genitive, as Hasdrubal Gisgonis " (Livy xxvi. 20 and elsewhere), Hectoris Andromache " (Aeneid iii. 319), is found twice only in Cicero: " otherwise it is poetical and post-Ciceronian. *Servus*, " however, is regularly omitted: Flaccus Claudii, " Flaccus, Claudius' slave." But even when the Family Genitive was used it was rather as a description of a person for purposes of identification than as a *name*: thus Hasdrubal Gisgonis distinguishes the son of Gisgo from Hasdrubal, the son of Hamilcar (*see also* Pliny, Ep. ii., 20). But we, in fact, find such descriptions of married women: as Jucundus Domitiae Bibuli, namely, Jucundus the slave of Domitia the wife of Domitius [? Calpurnius] Bibulus (*see* Cagnat, *Épigraphie latine*, p. 64; Orelli's *Latin Inscriptions*, 2874. During the later Republic the marriage *in manum*, however, became more and more rare, and, of course, in the common case of a formless marriage by consent and cohabitation, the wife did not pass into a husband's family, and so retained her own *nomen* or gentile name, though, as pointed out above, for purposes of description or reputation, she might sometimes use her husband's name. Under the Empire, when the marriage *in manum* had practically ceased to exist, the wife took a fuller name by adding to her *nomen*, or gentile name, the cognomen, or family name, of her father, using feminine endings: thus the daughter of Lucius Aemilius Lepidus Paulus would be called Aemilia Lepida. But sometimes the daughter took the name of both father and mother: thus the daughter of Attius Atticus and Valeria Sextina might be called Valeria Attia.* We have also to remember that from the time of Diocletian (*C.* 290 A.D.) a change of name was by Roman law freely allowed to freemen unless it opened the door to fraud (Cod. Just., Lib. IX., Tit. XXV., *De Mutatione Nominis*).†

Though the doctrine of *manus* (and, therefore, the use of the husband's name by the wife) gradually died out in Rome itself, yet an institution similar to *manus* was a custom also of the Germanic tribes, and when these tribes adopted Roman law they retained their own law of *manus*, and, perhaps, adopted the old Roman law on the subject of family names. Consequently the wife bore the husband's name once more. By this date, however, Christian divorce *a vinculo* was slowly dying out, and the problem before us did not arise in the modern form until the codes of the eighteenth century re-introduced the practice of divorce and re-marriage. But the question throughout the middle ages continually arose in the numerous nullity cases that represented the modification that those ages introduced into the doctrine of indissolubility. In one English nullity case—quoted in *Sir Moyle Finch's* case (Coke's Rep., Part VI., 66*a*)—it is stated that "if a man marries with a woman pre- " contracted, and has issue by her, this issue in law " and truth bears the sirname of his father. But if " after the husband and wife be divorced for the pre- " contract, now the issue have lost his sirname . . . " yet because he once had a lawful sirname, it is a " good ground of reputation subsequent." The same argument applied to the divorced wife. The English mediaeval law indeed adopted, as other Germanic codes adopted, the early Roman law of family life. An Englishwoman passed under the *manus* of her husband and became one with him. Therefore she took his family name. Before dealing with modern English law it will be convenient to consider the practice in some other countries.

In Scotland, the later Roman law seems to have been adopted with the formless marriage, and thus the wife, though she assumes her husband's name and drops her own, and is rightly designated by her Christian name alone, and is referred to as the wife of the individual whose surname is given (*see* Fraser on *Husband and Wife* (2nd ed.), p. 515, and Voet 23.2.40), nevertheless retained and retains for legal purposes her own family name as an alternative to the name of her husband. (See *Dunlop and Greenlees Trustees* [1863], 2 Macp. 1; *Johnstone* v. *Coldstream* [1843], 5 D. 1297, *see* p. 1312.) A will signed by a married woman with her maiden name and surname has been held valid (see *Johnson* v. *Coldstream*). It should be noted that " there is no need of the authority of the court " to enable a man in Scotland to change his name " (Lord President Hope: Young, 1835, 13 S. 262; *see also* Forlong, 1880, 7 R. 910, Lord Pres. Inglis).

It is interesting to see how a different practice arose in France. The Roman practice, at any rate, from the time of Diocletian, as to the use of names generally was the rule that still survives intact in England; as we have seen, a change of name was by Roman law freely allowed to freemen unless it opened the door to fraud (Cod., Lib. IX., Tit. XXV., *De Mutatione Nominis*). This law was adopted in France, but it was found to lead to abuse, and enabled plebeians to enter the order of the nobility. By an ordinance of March 26th, 1555, Henri II. forbad (art. 9) any person to change his name or arms without letters of dispensation under pain of heavy fines and punishment and loss of nobility. The ordinance was not enforced. The States-General, in 1614–15, promoted an ordinance (which was signed in 1629) which directed all gentlemen to sign all legal documents with the name of their families and not of their seigneuries, thus suggesting a reversion to the Roman practice. This was again unenforced, and the order of the nobility was invaded by rich landowning commoners. The decrees of 19th June 1790, and 27th September 1791, abolished titles and ordered every citizen to bear only his family name. State registration of names followed on 20th September 1792, and the changing of names was forbidden on 23rd August 1794. On April 10th, 1803, it was made legal to change a name subject to certain strict formalities, and in the present code this law is maintained. But it has to be noticed that a customary practice had grown up centuries earlier among the nobility by which the family name only was retained by the eldest son, while a younger son added to this name the name of his wife or his mother. Even to-day in some Departments a husband adds the name of his wife to his own name and retains the double name after his wife's death. Consequently, in France, the old Roman practice had been entirely transformed, and we often find a husband bearing the wife's name instead of the wife the husband's name. It was probably for this reason that throughout the nineteenth century no settled practice existed in France after the introduction of the practice of divorce as to the name to be taken by the late wife. It was not until the passing of the law of February 6th, 1893, that it was finally decided that a wife on divorce should resume her family name, and should not be allowed to use the name of her former husband.* The penal code forbids any person to use any name other than his or her

* It may be added that some members of the Italian nobility still derive their names from the name of a family and not, as is more usual in other countries, from the name of an ancient fief: see on the whole question of names the *Encyclopedia Britannica* article by Mr. J. H. Frese, and Larousse, *Grand Dictionnaire Universel de* 19 *Siecle*, art. "*Nom.*" Riemann and Goelzer in dealing with the inscription referred to above (*Jucundus Domitiae Bibuli*), say, in their *Grammaire Comparée du Grec et du Latin* (p. 112), "de même en Italie on " trouve certains noms de famille en-*i* qui sont des génitifs; " on a dit d'abord Niccolo Niccoli, puis Niccoli s'est " employé tout seul."

† Codex Justinianus, Lib. IX., Tit. XXV. *De Mutatione Nominis, Impp. Diocletianus et Maximianus, A.A. et C.C. Juliano.* Sicut initio nominis cognomiuis praenominis recognoscendi singulos impositio privatim libera est, ita horum mutatio innocentibus periculosa non est. Mutare itaque nomen sive praenomen sine aliqua fraude licito jure, si liber es, secundum ea quae saepe statuta sunt minime prohiberis, nulli ex hoc praejudicio futuro. *S. XV. K. Jan. A.A. Conss.* (*See* Cod ex Justinianus: P. Krueger, p. 848, and Corpus Juris Civilis, Kriegel, Vol. II., p. 603.)

* *See* on France generally *Dalloz, Jurisprudence Générale: Nom. Prenom.*, also Kelly's French Law of Marriage, 2nd ed., 1895, by O. E. Bodington, p. 130; French Civil Code, annotated by E. Blackwood Wright (ed. 1908), p. 53.

registered name. Thus French law has little in common with English law, which, strictly following the Roman Codex Justinianus, recognises no right in a name *simpliciter*.

When we turn to German law we find a somewhat different position. It will serve no useful purpose to deal at length with the German history of the use of names save to say that the German common law, which offered a permanent background to a great variety of local customs, was a modified form of the Justinian Code as received in 1495. Thus the common law of Germany presumably incorporated the Roman law, permitting non-fraudulent change of name. But this general rule was subject to local customs and local codes: The Bavarian Codex Maximilianus (1756), the Prussian Laurecht (1794), Code Napoleon (1804), Badische Landrecht (1810), the Austrian Civil Code (1811), and the Saxon Civil Code (1863). It will be sufficient here if reference is made to the provisions of the Civil Code which came into force on January 1st, 1900. This Code (Tit. 1. 12) provides that "where the "right to the use of a name is disputed by another "or against the rightful bearer, or where the interest "of the rightful bearer is injured by another, who "*illegally* uses the same name, the rightful bearer "may demand of the other the discontinuance of the "infringement. If further injuries are to be antici-"pated, he may sue to cause them to be discontinued." Section 1355 provides that "the wife receives the family name of the husband." Section 1577 provides that "the divorced wife retains the family name of the husband." The wife may resume her family name. If she was married previously to the dissolved marriage, she may also resume the name which she had at the time of the marriage, unless she is alone adjudged guilty. The resumption of the name is effected by declaration before the competent authority; the declaration is to be made in publicly authenticated form. If the wife is alone adjudged guilty, the husband may forbid her to bear his name. The prohibition is effected by declaration before the competent authority (magistrate); the declaration is to be made in publicly authenticated form. The magistrate is to communicate the declaration to the wife. With the loss of the name of the husband the wife again receives her family name.

It will also be convenient to recite the provisions of the Swiss Civil Code (10 December 1907) upon the subject. Section 29 declares that there is property in a name. Section 30 allows the Government of a canton to sanction a change of name on good grounds, but this change can be attacked by anyone who is injured by the change. Section 149 provides that a divorced woman takes again the name of the family which she bore before the celebration of the dissolved marriage. If she was a widow at the date of the marriage, she can be authorised by the divorce decree to take her family name again.

In England, apparently from the time of the introduction of surnames, a person could have "divers names at divers times" (Co., Litt. 3*a*), and *Sir Moyle Finch's case* (Coke's Reports, Part VI., 66*a*) shows us that there were from the first at least two types of surnames:—

(*a*) a name inherited from the father;
(*b*) a name acquired by reputation. (*See also Doe d. Luscombe* v. *Yates* (5 B. & A. 543).)

The case of nullity referred to in *Sir Moyle Finch's case* shows also that from mediaeval times, at any rate in England, and almost certainly elsewhere, a wife on marriage acquired her husband's name, possibly by reputation, as in the Roman cases referred to above, but possibly *de jure mariti*. (*See* Findall v. Goldsmith 2 P.D. 263). The issue, on the ground *cognomen majorum est ex sanguine tractum*, also acquired the same name. On the dissolution of the marriage the issue retained the same name by reputation. We are not told whether the wife did so or not. She would, of course, lose the name as "a lawful sirname" (if the name was not merely a name by reputation), as she was no longer in the *manus* of her husband; but the children also lost the name in so far as it was "a lawful sirname," but retained it on the ground of reputation. There seems no reason why this should not have been the case with the quondam wife. The Elizabethan practice shows how invulnerable a claim a wife had to her husband's name: the case of *Bon* v. *Smith* (Cro. Eliz. 532) and *Jobson's case* (Cro. Eliz. 576), which were cases dealing with gifts to persons bearing the testator's name, show that in the Elizabethan age a woman was regarded as having absolutely lost her family birth-name by the fact of marriage. It is true that in the case of *Pyot* v. *Pyot*, in 1749, Lord Chancellor Hardwicke regarded these decisions as "odd," and evaded them, but he did not overrule them. But *Pyot* v. *Pyot* does seem to show that a married woman for the purpose of taking under a deed or devise does not lose her former name. In the case *Wright* v. *Plumptre* (3 B. & A. 474), decided in 1820, it was strongly contended by counsel (Sergeant Pell, Mr. Gaselee, and Mr. Adam) that "the taking of the name "of the husband by the wife is a matter of mere "private arrangement. In many countries married "women retain their maiden names; and even in this "country, women of a certain rank, marrying their "inferiors retain their former names and titles; the "use then of the name of the husband, is a mere "voluntary assumption, and does not take away the "former." Abbott, C.J., however, held that the lady in question "had, as is usual in *England*, parted with "her surname on her marriage, and had been always "called by the name of her husband," and was not "a person of that name" that she bore before marriage. The case of *Leigh* v. *Leigh* (15 Vesey, 92) shows that a married woman stood in a very special position, for in that case Lord Eldon held (p. 100) that "an Act of "Parliament giving a new name does not take away "the former name," and that consequently the former name is available for purposes of succession. It is a voluntary assumption of a name, and this apparently is to be distinguished from the acquisition of a substitutional name on marriage. The cases of *Barlow* v. *Bateman* (3 P. Wms., 65) and *Doe dem. Luscombe* v. *Yates* (5 Barn. & Ald. 544) seem to show that "anyone "may take upon him what surname and as many "surnames as he pleases without an Act of Parlia-"ment." Mr. Jacob Waley, the eminent conveyancer, was of opinion "that a new surname may be assumed at pleasure." (Davidson's Precedents, Vol. III., Part I., 3rd ed., p. 360.) It would, therefore, appear to follow that whether a wife is or is not divested of her late husband's name on divorce, she can at pleasure resume her maiden name or adopt as her own the name that she formerly held either by reputation or *de jure mariti*.

A wife usually takes her husband's surname, but whether it is a name acquired by reputation or by special right, in view of the cases just discussed, is an open question. The question, as we have seen, goes back into classical times.

It is necessary to consider some modern cases on this subject.

Violet, the former wife of Earl Cowley, is an instance of a wife *not* taking her husband's name. The House of Lords held that having "acquired the "right to use a name which the usages of society" allowed her to retain, it was impossible for her first husband to restrain her from using his name (*Earl of Cowley* v. *Countess of Cowley*, A.C. (1901) 460).* Mr. Jacob Waley, as we have seen, held on the cases that "a new surname may be assumed at pleasure provided "of course that it is not for any fraudulent purpose" (*Davis* v. *Lowndes*, 1 Bing. N.C. 618). Lord Lindley (*Earl Cowley* v. *Countess Cowley* (1901), A.C., p. 460) says: "speaking generally, the law of this country "allows any person to assume and use any name, "provided its use is not calculated to deceive and to "inflict pecuniary loss." The test as to the wife's name is probably the question of reputation. In *Findall* v *Goldsmith* (2 P.D. 263), Sir Robert Phillimore said: "I am of opinion that marriage confers a "name upon a woman, which becomes her actual "name, and that she can only obtain another by "reputation. The circumstances must be very excep-"tional to render a marriage celebrated in the actual "names of the parties invalid. It could only be where

* It is desirable to notice that it is not the use of the name that raises the presumption that the wife can pledge the husband's credit. That arises from the fact of cohabitation (*Gomme* v. *Franklin* (1859), 1 F. and F. 465).

" the woman has so far obtained another name by " repute as to obliterate her original name."* Hence, where a woman who had divorced her husband was re-married to him by the name which she had gained at her first marriage, it was held in *Tindall* v. *Goldsmith* that there could be no nullity on the ground of undue publication of banns. A name obtained by repute, it must be remembered, may, however, obliterate an actual name. Thus in the case of *Tooth* v. *Barrow* (1 Spinks. 37. [1854] the illegitimate daughter of a woman, lost her mother's name and acquired by notoriety or repute the name of her mother's husband. This case decided that if under such circumstances banns of marriage were published in the *original name* of the woman with intent to defraud, the marriage would be null and void. Lord Lindley, in the *Cowley case* (p. 459), considered that *Findall* v. *Goldsmith* " goes far to show " that, so far as name is concerned, the Countess was " entitled to continue after the divorce to use the " name and style which she had previously acquired " the right to use," and it was held on her re-marriage to Mr. Biddulph that no damage was done by her continued use of the name Cowley, and that apart from damage she had a right to use a name of which she had acquired the use. The case of *Du Boulay* v. *Du Boulay* (1869, L.R. 2, P.C. 430) carries the right further. Lord Chelmsford said: "In this country we " do not recognise the absolute right of a person to a " particular name to the extent of entitling him to " prevent the assumption of that name by a stranger " . . . . The mere assumption of a name which is " the patronymic of a family by a stranger who has " never before been called by that name, whatever " cause of annoyance it may be to that family, is a " grievance for which our law affords no redress." The assumption of the patronymic name of another family would only be restrained " where it has been " exclusively used in connection with a particular " business (Kerr on Injunctions, 4th ed., p. 544), or " where the unauthorised use of a man's name though " neither libellous or defamatory may cause injury in " his property, business, or profession " (*Hawker* v. *Stourfield Park Hotel Company, W.N.* [1900] 51).

There are cases, no doubt, where a mere voluntary assumption of a name would not satisfy the " names and arms " clause in a will (*Croxon* v. *Ferrers* (1904), 1 Ch. 252). The terms of the clause must be observed. Moreover, it is usual, on changing a name, to notify the fact in a public way by royal licence advertised in the London Gazette and other papers, or by deed poll enrolled in the Central Office of the Supreme Court, and advertised in *The Times* and local papers (" Cyclopædia of Forms and Precedents," Vol. 9, p. 1, and Vol. 16, p. 441). But the point of practical importance is that a woman after divorce is free to determine the name by which she wishes to be known. It is possible that by divorce she loses the right to use her late husband's name *de jure mariti*, and, if so, she reverts to her former name. But in any event she can take, on other grounds, the name she bore during marriage, or any other name that appears to her to meet the equities of her position.

J. E. G. DE MONTMORENCY.

* From this it would seem that the name of a married woman is not merely a name acquired by reputation, but is acquired by the fact of marriage, and can be replaced by a name acquired by reputation.

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