

# VARIOUS

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# Various Blackwood's Edinburgh Magazine, Volume 66, No. 407, September, 1849

## THE SCOTTISH MARRIAGE AND REGISTRATION BILLS

About two years ago, we found it necessary to draw the attention of our readers to certain alterations which our Whig rulers, or at least a section of them, proposed to make in the existing law of marriage, as applicable to Scotland. We stated our views moderately, not denying that in some points it might be possible to effect a salutary change; but utterly deprecating the enforcement of a bill which was so constructed as to uproot and destroy the ancient consuetudinal law of the kingdom, to strike a heavy and malignant blow at morality and religion, and which, moreover, was regarded by the people of Scotland with feelings of unequivocal disgust. So widely spread was that feeling amongst our countrymen, of every shade of political opinion and form of religious faith, that we believed this ill-advised attempt, once arrested in its progress, would be finally withdrawn. Popularity, it was quite clear, could never be gained from persisting in a measure so unpalatable to the whole community; nor had England, save in the matter of Gretna-green marriages, any visible interest in the question. It is just possible – for self-conceit will sometimes betray men into strange extravagancies – that a few individual legislators had more confidence in the soundness of their own opinions than in that of the opinions of the nation; but, even if we should give them credit for such honest convictions, it still remains a doubtful point how far individual opinions should be allowed to override the national will. There may be parliamentary as well as regal despotism; and we are much mistaken if the people of Scotland are inclined to submit to the former yoke, even at the hands of those who claim honour for their party on the strength of traditionary denunciations of the latter. We think it is pretty clear that no private member of parliament would have attempted to carry through a bill, the provisions of which had been encountered by such general opposition in Scotland. No ministry would have lent its support to such a case of insolent coercion; and we confess we cannot see why the crotchets, or even the convictions, of an official are to be regarded with greater favour. In a matter purely Scottish, it would, indeed, be gross despotism if any British cabinet should employ its power and its interest to overwhelm the voice of Scotland, as fairly enunciated by her representatives. That has not been done, at least to the last unpardonable degree; yet, whilst grateful to Lord John Russell for having, at the last moment, stopped the progress of these bills, we may very fairly complain that earlier and more decided steps were not taken by the premier for suppressing the zeal of his subordinates. Surely he cannot have been kept in ignorance of the discontent which has been excited by the introduction of these bills, three several times, with the ministerial sanction, in both houses of parliament? Had a bill as obnoxious to the feelings of the people of England, as these avowedly are to the Scots, been once abandoned, it never would have appeared again. No minister would have been so blind to his duty, or at all events to his interest, as to have adopted the repudiated bantling; since, by doing so, he would have inevitably caused an opposition which could only terminate in his defeat, and which, probably, might prove fatal to the existence of his cabinet. And yet, in the case of these bills, we have seen three separate attempts deliberately made and renewed – first in the House of Commons, and afterwards in the House of Peers – to thrust upon Scotland measures of which she has emphatically pronounced her dislike. No wonder if, under such circumstances, when remonstrance is disregarded, and the expression of popular opinion either misrepresented or suppressed, men begin to question the prudence of an arrangement which confides the chief conduct of Scottish affairs to a lawyer and

judge-expectant, whose functions are so multifarious as to interfere with their regular discharge. No wonder if the desire of the Scottish nation to have a separate and independent secretary of state, altogether unconnected with the legal profession, is finding an audible voice at the council-boards of the larger cities and towns. Of late years it has been made a subject of general and just complaint, that the public business of Scotland is postponed to everything else, huddled over with indecent haste at untimeous hours, and often entirely frustrated for the want of a parliamentary quorum. This arises from no indisposition, on the part of the House of Commons, to do justice to the internal affairs of the northern kingdom, but it is the natural result of the system, which virtually leaves Scotland without an official representative in the cabinet. Every one knows that Sir George Grey is not only an able, but a most conscientious home-secretary; but, in point of fact, he is home-secretary for England alone. It is impossible to expect that, in addition to the enormous labour attendant upon the English home administration, any man can adequately master the details of Scottish business. The fundamental difference which exists in the laws of the two countries would of itself prove an insurmountable barrier to this; and consequently, like his predecessors, Sir George Grey has no personal knowledge either of our wishes or our requirements. He cannot, therefore, take that prominence in a Scottish debate which his position would seem to require; and the duty which ought to be performed by a member of the cabinet is usually intrusted to a subordinate. In this way Scottish public business receives less than its due share of attention, for the generality of members, observing that cabinet ministers take little share in such discussions, naturally enough attribute their silence to a certain degree of indifference, and are careless about their own attendance. All this, which involves not only scandal, but positive inconvenience, would be cured, if a return were made to the older system, and a secretary of state for Scotland numbered in the roll of the cabinet. The want of such an arrangement is positively detrimental to the interests of ministry; for, during the last session, they have assuredly gained but few laurels from their northern legislation. Four or five bills, purporting to be of great public importance, have been withdrawn, and one only, which establishes a new office connected with the Court of Session, has been graced by the royal assent. Among the lapsed bills are those which form the subject of the present paper; but they have not yet lost their vitality. On the contrary, we are led to infer that, in the course of next session, they will again be introduced, in some form or other, before parliament.

This mode of treatment is so unprecedented, that we cannot pass it over in silence. It may not be unconstitutional, according to the letter of the law; but if it be true, as we maintain it to be, that the people of Scotland have already protested against these measures, it does seem rather tyrannical that for the fourth time they should be compelled to organise a resistance, and to make themselves heard through petitions, lest the very absence of these should be held as an intimation of passive acquiescence. This kind of reasoning has actually been resorted to; and a very pregnant instance of it is to be found in the reported speech of the Lord Advocate upon the third reading of the Marriage Bill. "With respect to the dissenters in Scotland, there was not a single petition from them against the bill; *therefore they were to be taken as being in favour of it!*" This is a notable *sequitur*. In the first place, it is quite a new doctrine to maintain that because men do not organise meetings, or go out of their way to petition parliament against any measure, they must therefore be held as assenting. In the second place, it is rather a startling thing to find that men are expected to petition in a religious rather than in a social character. If this view be correct, no individual Anabaptist has any right to express his political opinions unless he petitions along with his congregation. No member of the Episcopal Church ought to have a voice in a secular matter unless he goes along with his diocesan. We are almost tempted to ask the question, whether congregations in Scotland are to be regarded as mere political clubs, or as associations for praise and worship? The town-councils of most of the large towns of Scotland have petitioned against the bills – are there no dissenters at any of those boards? One hundred and thirty parishes have separately recorded their detestation of the bills, not one parish has made the smallest demonstration in their favour, yet, according to the logic of the Lord Advocate,

those that are silent must be held as acquiescing! It is remarkable, however, that if these bills really tend to confer such inestimable boons upon the people of Scotland, that stubborn race have been singularly reluctant to acknowledge the extent of the benefit. Nay more, it is certainly a most striking fact, that notwithstanding the religious divisions, which are more numerous here than elsewhere, it has been impossible to procure one isolated testimony, by an ecclesiastical body, in direct support of these singularly unfortunate bills. Lord Campbell, in his evidence given before the Committee of the House of Commons – of which more anon – indicates an opinion that the clergy of the Established Church of Scotland have been actuated in their unanimous and decided Opposition to the Marriage Bill by the desire to preserve a monopoly of celebrating formal marriages. If so, how is it that none of the dissenting clergy, in whose favour this monopoly was to be broken up, came forward in support of the measure? But the truth is, as we shall presently show, that no such monopoly exists at all, save in the imagination of the noble lord. By the law of Scotland, there is no distinction in favour of any sect, and clergymen, of whatever denomination they may be, have the right, and are in the daily practice, of celebrating formal marriages.

"I admit," says the Lord Advocate, "that the clergymen of Scotland are generally against this measure; but surely the house will think that, by this time, the third year of the discussion of this bill, these reverend gentlemen ought to have come forward with some substantial grounds for their opposition." We must fairly confess our inability to fathom the meaning of this remark. Two hundred and twenty-five petitions against this bill have emanated from the Established Church – at almost every meeting of presbytery and synod, the matter has been fully and thoroughly discussed – the moral and political objections to its enactment have been over and over again brought forward – yet still, in the eyes of the learned lord, there is a want of "substantial grounds." It is not enough, therefore, to say that a measure is unnecessary, immoral, and impolitic – it is not enough to assign reasons why these opinions are entertained, and to repeat them year after year. Something more must be done, according to this remarkably liberal view, before it becomes the duty of the legislature to give any weight to the general remonstrance – something "substantial" is required, but no intelligible definition has been vouchsafed of that substantiality. Nor does the following sentence by any means tend to sharpen the edge of our apprehension. "If they (the clergy) meant to say that they came here to assert that they had the power or right to supersede the interference of the legislature, they would put forward a right in them much greater than the Church of Rome asserted, because they took their right to interfere in reference to the rules of marriage, on the ground that it was a sacrament, which carried with it a degree of plausibility; and they required no witness to their marriage, or proof of the marriage, beyond that of the parish priest who performed the ceremony." Now, if any kind of meaning whatever is to be extracted from this sentence, it must be taken as an inuendo that the Church of Scotland, in petitioning against the bill, is directly or occultly preferring some ecclesiastical claim to interfere in the celebration of regular public marriages. The Church of Scotland asserts no claim of the kind, nor has it ever been so much as hinted that such a right was inherent in that body. The church does not seek to interfere with the legislature. It neither has, nor claims ecclesiastical dominion or preference in the matter of marriage. As a Christian communion and a Christian church, it has entreated parliament not to pass a measure which, justly or not, it considers as hurtful to the moral character of the people, and in doing so, it has been actuated by no motive save a due regard to its high and holy functions. If such considerations as these are not sufficient to justify the right of petitioning, it is difficult to understand why that right should be exercised at all. Must a pounds-shillings-and-pence interest be established, before the Church of Scotland can be allowed to approach the legislature on such a question? In our mind, the absence of all pecuniary interest, and the utter abnegation of any kind of ecclesiastical monopoly, are the strongest reasons why the opinion of the Church of Scotland, in a matter such as this, should be listened to with reverence and respect.

Having thus disposed of the church, though in a manner, we should think, scarcely satisfactory to himself, and not at all to his auditory, the Lord Advocate summarily remarks of the petitions against

the bill, that "as proof to be relied on of a general feeling throughout Scotland, they were worthless and insignificant." It may be useful for intending petitioners to know what sort of demonstration they must be prepared to make, if they wish their remonstrances against any government measure to pass the limits of worthlessness. It is always advantageous to learn what is the last definition of the true *vox populi*, in order that there be no mistake or misinterpretation of its extent. We turn to the admirable speech of Mr M'Neill, the learned Dean of Faculty, and we find the following analysis of the extent of the lay opposition: —

"An opportunity had been afforded to the counties of Scotland to take the measure into consideration at their annual meetings on the 30th April. They had done so, and, with very few exceptions, had petitioned against this measure; and of those that had not actually petitioned this year, some had petitioned last year; and some had contented themselves this year with reiterating, in resolutions passed at public meetings, their continued dissatisfaction with the measure. The county which he had the honour to represent (Argyleshire) had not sent up a petition; but they had, at a public meeting, passed resolutions, temperately, yet firmly expressed, in reference both to the Marriage and the Registration Bills. No county, he believed, had passed resolutions in favour of this bill. So much for the counties. Next as to the burghs. The burghs comprehended about one-third of the population of Scotland. There was an institution recognised by law called the Convention of Royal Burghs, and which consisted of delegates from all the burghs in Scotland, who assembled once a-year or oftener in Edinburgh, and deliberated on matters affecting their interests. At the convention of 1849, the matter of these bills was taken into consideration. They were disapproved of, and a petition against them was voted unanimously. Thus you had all, or nearly all, the counties petitioning, and you had the assembled delegates from all the burghs petitioning. Then there were separate petitions from the popularly elected town-councils of most of the large towns in Scotland. The town-councils of Edinburgh, of Dundee, of Perth, of Greenock, of Leith, of Inverness, of Stirling, of Kilmarnock, of St Andrews, of Haddington, and many others, had petitioned against this bill. There was also another body of persons, popularly elected to a great extent, and who had a very material interest in the probable effects of this measure, especially with a knowledge of the fearful extent of bastardy in some parts of England — he meant the parochial boards of populous parishes. Petitions against this measure had been presented from the parochial boards of many of the most populous parishes in Scotland — the parochial board of the city parishes of Edinburgh — of the great suburban parish of St Cuthberts — of the city of Glasgow — of the great suburban parish of the Barony — of the parishes of Dundee, Paisley, Greenock, Leith, Port-Glasgow, Campbelton, and several others."

Such is the demonstration which the Lord Advocate of Scotland, without any counter display of opinion to back him, ventures to characterise as worthless and insignificant! Counties, burghs, town-councils, parochial boards, presbyteries, and General Assembly, which also represents the opinion of the universities, all combine to denounce the hated measure; still their remonstrance is to be cast aside as worthless and insignificant, and as in no way representing the feeling of the people of Scotland! A more extraordinary statement, we venture to say, was never made within the walls of the House of Commons; but the premier very properly refused to homologate its extravagance, and withdrew the bill on account, as he expressly said, of the opinion that had been expressed in the house regarding the sentiments of the Scottish people. Indeed, as Lord Aberdeen afterwards remarked, had the bill

not been withdrawn, "representative government would become a farce; for the whole kingdom of Scotland was universally against it."

Some of our readers may naturally wonder why so much perseverance should be shown in this reiterated attempt to force an obnoxious bill upon the acceptance of the nation. It is, to say the least of it, an unusual thing to find a professing physician so clamorously and importunately insisting upon his right to practise on the person of a patient, who vehemently denies the existence of any bodily ailment. It is true, that we are accustomed to hear crotchety people crying up the efficacy of their peculiar remedies, and we admit the right even of Paracelsus to dilate upon the value of his drugs. But the case becomes widely different when the empiric requires that, *nolens volens*, you shall swallow them. Such, however, for the last three sessions, has been the conduct of the promoters of this bill; and as it is now plain beyond all dispute that nobody wanted it, this sudden rage for legislation becomes proportionally wonderful. Hitherto we have rather complained of the apathy than of the over-zeal of our representatives. Sometimes we have grumbled at their want of spirit for not watching more closely over our immediate interests, and in not protesting more loudly against the injustice of that neglect to which Scottish charities, foundations, and institutions are consigned, whilst a very different mode of treatment is adopted by government upon the other side of the Irish Channel. But we have seldom had reason to deprecate an excess of legislative activity, and it therefore becomes matter of curiosity to discover the motives for the present fit.

We must premise that the Scottish Marriage and Registration Bills are indissolubly linked together. The object of the Registration Bill is to secure a perfect record of all births, marriages, and deaths; and no reasonable objection can be taken to this upon the score of principle. It is admitted on all hands that our registers are at present defective – that is, they are not sufficiently minute to satisfy the cravings of the scrupulous statist. To have a perfect record is unquestionably desirable: the main objection to the scheme lies in the expense with which it must be attended. It is not our present purpose to examine the details of this bill, which we have nevertheless perused with much attention. We shall therefore merely remark that it seems to us quite possible to realise the same results with a far less expensive machinery. The present bill would create not only a well-salaried staff of officials in Edinburgh, but registrars in every county and town, whose services would fall to be defrayed by local assessment; and we need hardly say that, under present circumstances, the imposition of any new burden, especially in the shape of direct taxation, would be felt as an especial grievance. There is no prospect of relief from the income and property tax, though Sir Robert Peel gave the country a direct assurance that the measure was merely proposed to supply a temporary deficiency. It is now quite clear that neither the right hon. baronet, nor his successors, will ever attempt to redeem that dishonoured pledge. The poor-rates are increasing in Scotland at a frightful ratio, and are already so high as, in the opinion of many, to constitute an intolerable burden. It is now evident that, in a very short while, the inexpediency of the new system will be submitted to a serious review, or at least that some such attempt will be made. Other burdens are by no means decreasing, whilst the general wealth and prosperity of the country has, within the last three years, received a violent check. It is, therefore, not in the least surprising, if men hesitate to accept the proffered boon of a perfect registry at the price of a new assessment. Isolated cases of inconvenience which have occurred, from the want of such a register, may no doubt be pointed out; but, upon the whole, there is no general grievance, since the means of effective registration are at present open to all who choose to avail themselves of it. The present bill proposes to do nothing more than to substitute imperative for voluntary registration: its provisions are not only costly, but in some respects they are highly penal, and therefore, for a double reason, it is regarded with general dislike. Men do not like to be taxed for the alteration of a privilege which is already sufficiently within their power; and they are jealous of exposing themselves to fines, for omitting to do that which is no duty at all, except it is made so by the force of statute. They do not see any weight or shadow of reason in the argument, that Scotland must necessarily have a registration act, because England has already submitted herself to such a measure. On the contrary,

they are not fond of uniformity, because, under that pretext, many inroads have of late years been made upon laws and institutions which hitherto have worked well, and against which, intrinsically, it was impossible to bring any tangible ground of complaint. Nor is it without some reason that they view with jealousy that endless multiplication of offices which the Whigs seem determined to effect. No doubt it is convenient for a political leader to extend the sphere of his patronage; but the public have, at the present time, too many stringent motives for economy, to acquiesce in the creation of a new staff as the indispensable consequence of every ministerial bill. They do not want to be visited by a fresh flight of locusts, whose period of occupation is to be everlasting, whenever it is thought expedient to make some change in the form and not the essence of our institutions. And therefore it is that the Registration, apart altogether from its connexion with the Marriage Bill, has been regarded as a measure not strictly objectionable in principle, but exceedingly ill-timed, inconvenient, and unlikely to produce any results commensurate with the cost which it must entail.

We believe that the above is a fair statement of the public feeling with regard to the Registration Bill; but, notwithstanding all these objections, it might very possibly have been carried had it stood alone. The ministerial phalanx in the House of Commons would probably have regarded the advantages of uniformity as a thorough answer to the arguments which might be adduced on the other side; and English members might naturally have been slow to discover any valid objections to the extension of a system already in full operation within their own domestic bounds. But the promoters of the bill had, at the very outset, to encounter a difficulty of no ordinary weight and magnitude. That difficulty arose from the peculiar position of the law of Scotland with regard to marriage. There could be no mistake about births and death, for these are distinct contingencies; but how to register marriages, which required no legal formality at all, save consent, to render them binding, was indeed a puzzle, which even the wisest of the innovators could not pretend to solve. There stood the law as it had done for ages; not demanding any ceremony to render the deliberate consent of contracting parties binding; shielding the weaker sex against the machinations of fraud, and interposing an effectual barrier to the designs of the unscrupulous seducer. There it stood, so merciful in its provisions that it left open a door to reparation and repentance, and did not render it imperative that the birthright of the child should be irretrievably sacrificed on account of the error of the parents. At the same time, that law drew, or rather established, a wide distinction in point of character between regular and irregular marriages. It had wrought so upon the people that instances of the latter were of comparatively rare occurrence, except, perhaps, upon the Border, which was crossed by English parties, less scrupulous in their feelings of decorum. Irregular marriages were discountenanced by the church, not by the establishment only, but by every religious body; and, to constitute a regular marriage, publication of the banns was required. No complaint had been heard from Scotland against the law; on the contrary, it was considered, both by jurists and by the people, as equitable in its principle, and less liable than that of other nations to abuse in the mode of its operation.

The existence of this law effectually interfered with the establishment of such a system of registration as was contemplated by the reforming Whigs. So long as it stood intact, their efforts in behalf of uniformity, additional taxation, and increased patronage, were hopeless; and no alternative remained save the desperate one of deliberately smiting down the law. It was not difficult for men so purposed and inspired to find out defects in the marriage law, for never yet was law framed by human wisdom in which some defect could not be detected. It was, first of all, urged, that the state of the Scottish law gave undue encouragement to the contract of Gretna-green marriages by fugitive English couples. The answer to that was obvious – Pass a law prohibiting such marriages until, by residence, English parties have obtained a Scottish domicile. That would at once have obviated any such ground of complaint, and such a measure actually was introduced to parliament by Lord Brougham in 1835, but never was carried through. Next, the whole fabric of the law was assailed. The facilities given to the contraction of irregular marriages were denounced as barbarous and disgraceful to any civilised country. Old cases were raked up to show the uncertainty of the law itself, and the

difficulty of ascertaining who were and who were not married persons. According to one noble and learned authority, the time of the House of Peers, while sitting in its judicial capacity, was grievously occupied in considering cases which arose out of the anomalous condition of the Scottish law with regard to marriage; and yet, upon referring to an official return, it appeared very plainly that, for the last seventeen or eighteen years, only six cases of declarator of marriage or legitimacy had been brought before that august tribunal, and that of these six, three had no connexion with the subject-matter of the proposed bill! Lord Brougham, who entertains strong opinions on the subject, felt himself compelled to admit, in evidence, that most of the hypothetical abuses which might take place under the existing system, did not, in practice, occur amongst natives and residents in Scotland. Lord Brougham is to this extent a Malthusian, that he thinks minors ought to be, in some way or other, protected against the danger of an over-hasty marriage. His lordship's sympathies are strongly enlisted in behalf of the youthful aristocracy, more especially of the male sex; and he seems to regard Scotland as an infinitely more dangerous place of residence for a young man of rank and fortune than Paris or Vienna. In the latter places, the morals may be sapped, but personal liberty is preserved; in the former, the heir-expectant is not safe, for at any moment he is liable to be trapped like vermin. The red-haired daughters of the Gael, thinks Lord Brougham, are ever on the watch for the capture of some plump and unsuspecting squire. Penniless lads and younger sons may be insured at a reasonable rate against the occurrence of the matrimonial calamity, but wary indeed must be the eldest son who can escape the *perfervidum ingenium Scotarum*. This is, no doubt, an amusing picture, and the leading idea might be worked out to great advantage in a novel or a farce; but, unfortunately, it is not drawn from the usual occurrences of life. Isolated cases of hasty marriages may, no doubt, have taken place, but our memory does not supply us with a single instance of a clandestine marriage having been contracted under such circumstances as the above. In Scotland, a stranger may, for the base purposes of seduction, pledge his solemn faith to a woman, and so obtain possession of her person. If he does so, the law most justly interferes to prevent him resiling from his contract, and declares that he is as completely bound by the simple interchange of consenting vows, as though he had solicited and received the more formal benediction of the priest. Will any man gravely maintain that in such a case the tenor of the law is hurtful to morals, or prejudicial to the interests of society? Even if the woman should happen to be of inferior rank in life to the intending seducer, is she on that account to be consigned to shame, and the man permitted to violate his engagement, and escape the consequences of his dastardly fraud? In England, it is notorious to every one, and the daily press teems with instances, that seduction under promise of marriage is a crime of ordinary occurrence. We call it a crime, for though it may not be so branded by statute, seduction under promise of marriage is as foul an act as can well be perpetrated by man. In Scotland, seduction under such circumstances is next to impossible. The Scottish people are not without their vices, but seduction is not one of these; and we firmly believe that the existing law of marriage has operated here as an effectual check to that license which is far too common in England. Would it be wise, then, to remove that check, when no flagrant abuse, no common deviation even from social distinctions, can be urged against it? If seduction does not prevail in Scotland, still less do hasty and unequal marriages. Lord Brougham is constrained to admit that it is most unusual for Scottish heirs, or persons possessed of large estates, or the heirs to high honours, to contract irregular marriages when in a state of minority. The law, in the opinion of Lord Brougham, may be theoretically bad, but its very badness raises a protection against its own mischiefs – it ceases, in fact, to do any harm, because the consequences which it entails are clearly and generally understood. We confess that, according to our apprehension, a law which is theoretically bad, but practically innocuous, is decidedly preferable to one which may satisfy theorists, but which, when we come to apply it, is productive of actual evil. It requires no great stretch of legal ingenuity to point out possible imperfections in the best law that ever was devised by the wit of man. That is precisely what the advocates of the present measure have attempted to do with the established marriage law of Scotland; but when they are asked to specify the practical evils resulting

from it, they are utterly driven to the wall, and forced to take refuge under the convenient cover of vague and random generalities.

It is said that, under the operation of the present law, persons in Scotland may be left in doubt whether they are married or not. This is next thing to an entire fallacy, for though there have been instances of women claiming the married status in consequence of a habit-and-repute connexion, without distinct acknowledgment of matrimony, such cases are remarkably rare, and never can occur save under most peculiar circumstances. The distinction between concubinage and matrimony is quite as well established in Scotland as elsewhere. Nothing short of absolute public recognition, so open and avowed that there can be no doubt whatever of the position of the parties, can supply the place of that formal expressed consent which is the proper foundation of matrimony. If the consent once has been given, if the parties have seriously accepted each other for spouses, or if a promise has been given, *subsequente copulâ*, there is an undoubted marriage, and the parties themselves cannot be ignorant of their mutual relationship. It is, however, quite true that proof may be wanting. It is possible to conceive cases in which the contract cannot be legally established, and in which the actual wife may be defrauded of her conjugal rights. But granting all this, why should the whole character of marriage be changed on account of possible cases of deficient evidence? For if this bill were to pass into law, consent must necessarily cease to be the principal element of marriage. No marriage could be contracted at all unless parties went either before the priest or the registrar; and the fact of the mutual contract would be ignored without the addition of the imposed formality. Upon this point the commentary of Mr M'Neill seems to us peculiarly lucid and quite irresistible in its conclusions.

"The law of Scotland being now as heretofore, that consent, given in the way he had described, makes marriage – that it is, in the language of Archbishop Cranmer, 'beyond all doubt *ipsam matrimonium*' – the present bill says that henceforth it shall not make marriage, whatever may have followed upon it, unless the consent is given in presence of a clergyman, or by signing the register. It does not say that all marriages must be celebrated in presence of a clergyman; but, professing to recognise the principle that consent, though not given in presence of a clergyman, may constitute marriage, it says that the consent shall be of non-avail whatever may have followed upon it, unless it was given in the particular form of signing the register, and can be there pointed out. No matter how deliberately the consent may have been interchanged, and how completely susceptible of proof. No matter although the parties may have lived all their lives as man and wife – may have so published themselves to the world every day, by acts a thousand times more public than any entry in a register can possibly be – by a course of life more clearly indicating deliberate and continued purpose than a single entry in a register can do. All that shall not avail them or their families; they are to be denied the rights and privileges of legitimacy unless they can point to their names in the journal kept by the registrar. To borrow the language of a high authority, relied upon in support of the bill, 'It may be according to the law of Scotland that it is a complete marriage, and so it may be by the law of God; but if the woman is put to prove that marriage after the birth of children, of that she is or may be without proof.' *That which, by the law of Scotland and by the law of God, is a marriage, the people of Scotland wish to be allowed to prove by all the evidence of which it is susceptible.* They do not wish that parties should be allowed to escape from such solemn obligations undertaken towards each other, to their offspring, and to society. They are unwilling that any man should be enabled, with the confidence of perfect impunity, to impose upon an unsuspecting community, by wearing a mask of pretended matrimony, behind which is concealed the reality of vice. I do not wonder that the people of Scotland have no liking to this measure. There may occasionally be cases in which

the proof of marriage is attended with difficulty; and so there may be with regard to any matter of fact whatever. So there may be in regard to the fact of marriage under the proposed bill, even where the marriage has been celebrated in the most solemn manner in presence of a clergyman. Occasional difficulty of proof is not a satisfactory or adequate reason for so great a change in the law. Certainty is desirable in all transactions, and is especially desirable in regard to marriage; and the means of preserving evidence of such contracts is also desirable; but although these objects are desirable, they should not be prized so highly, or pursued so exclusively, as to endanger other advantages not less valuable."

We think it is impossible for any one to peruse the foregoing extract from the speech of the Dean of Faculty, without being forcibly impressed by the soundness and strength of his argument. He is not contending against registration; he simply demands that through no pedantic desire for uniformity or precision, shall the general principle of the law of Scotland regarding marriage be virtually repealed. We are indeed surprised to find a lawyer of great professional reputation attributing to the established clergy of the Church of Scotland a desire to arrogate to themselves the functions of the Church of Rome, whilst, in the same breath, he asks the legislature to constitute itself into an ecclesiastical court, and to enact new preliminaries, without the observance of which there shall henceforward be no marriage at all. If the old principle of the law is to be abandoned, if consent is no longer to be held as sufficient for the contraction of a marriage, but if some further ceremony or means of publication are thought to be essential, we have no hesitation in saying that we would infinitely prefer the proscription and annulment of all marriages which are not performed *in facie ecclesiae*, with the previous proclamation of the banns, to a hybrid measure such as this, which neither declares marriage to be the proper subject of ecclesiastical function, nor permits it to remain a civil contract which may be established and proved by any mode of evidence within the reach of either of the parties. If marriage is not a sacrament, but a civil contract, why take it out of the operation of the common law? Why make it null without the observance of certain civil ceremonies, unless it is intended virtually to confer upon the legislature regulating powers which have been claimed by none of the reformed churches, and which, when arrogated by that of Rome, have been bitterly and universally opposed?

Another objection to our present law of marriage has been frequently urged, and great use has been made of it to prejudice the minds of English members in favour of the proposed alteration. We have already shown that there is in reality no doubt of what constitutes a Scottish marriage; that parties so contracting know very well what they are about, and are fully sensible of the true nature of their obligations. If any doubt should by possibility exist, it can be set at rest by a simple form of process – a form, however, which is never resorted to, unless there has been gross intention to deceive on the one part, or a most unusual degree of imprudence on the other. But it is said that the possible existence of a private marriage may entail the most cruel of all injuries upon innocent parties – that it is easy for a man who has already contracted a private marriage, to present himself in the character of an unfettered suitor, and to enter into a second matrimonial engagement, which may be, at any moment, shamefully terminated by the appearance of the first wife. No ordinary amount of rhetoric has been expended in depicting the terrible consequences of such a state of things; the misery of the deceived wife, and the wrongs of the defrauded children, have, in their turn, been employed as arguments against the existing marriage law of Scotland.

This is a most unfair mode of reasoning. Unless it can be shown, which we maintain it cannot, that the law of Scotland, with regard to matrimony, is so loose that a party may really be married without knowing it, the argument utterly fails. Without distinct matrimonial consent there is no marriage, and no one surely can be ignorant of his own intention and act upon an occasion of that kind. He may try to suppress proofs, but for all that he is married, and if, during the lifetime of the other party, he shall contract a second marriage, he has committed bigamy, and is guilty of a

criminal offence. Lord Campbell, in his evidence, admits that the marriage law of Scotland has been perfectly well ascertained upon most points – that there can be no doubt what is, and what is not, a marriage; but that the real difficulty consists in getting at the facts. Armed with this testimony, we may fairly conclude that unintentional bigamy is impossible; but that bigamy, when it takes place, is the deliberate act of a party.

Bigamy is beyond all dispute a crime of a heinous nature. Its consequences are so obviously calamitous, that no power of oratory can make them appear greater than they are; and we should rejoice to see any legislative measure introduced which could render its perpetration impossible. But, unfortunately, the eradication of bigamy, like that of every other crime, is beyond the power of statute. It may perhaps be lessened by decreasing facilities, or by augmenting its punishment, but we cannot see how it is to be prevented altogether by any effort of human ingenuity. But if the marriage law of Scotland is to be assailed upon this ground, it is incumbent upon its opponents to show that it really tends to promote bigamy. If the wrongs so pathetically deplored have a real existence, let us be made aware of that fact, and we shall all of us be ready to lend our assistance towards the remedy. No paltry scruples shall stand in the way of such a reformation, and we shall willingly pay even for registration, if it can be made the means of averting an actual social calamity.

But here again we find, on examination, that we are dealing with a pure hypothesis. We are told of horrible private injuries that may occur under the operation of a law which has been in force for centuries: we ask for instances of those injuries; and, as in the former case, it turns out that they have no existence save in the imagination of the promoters of the new bills. If the present law of Scotland has a tendency to promote bigamy, surely by this time it would have been extremely fruitful in its results. On the contrary, we are told by Lord Campbell that the Scots are a very virtuous people; and certainly, in so far as bigamy is concerned, no one will venture to contradict that opinion. One case, it appears, has occurred, in which a man of high rank, having previously contracted a private marriage under peculiar circumstances, married a second time, and that union was found to be illegal. The case is a notorious one in the books and in the records of society, and it occurred forty years ago. "About forty years ago," said the Dean of Faculty, "a gentleman of high position in society, so far forgot for the time what was worthy of, and due to that position in point of honour, and truth, and observance of the law, as to marry a lady in England, while he had a wife living in Scotland – and so he might have done if he had had a wife living in France or Holland. In short, he committed bigamy. And this one case of bigamy, forty years ago, without even an allegation of any similar case since that time, is brought forward at the present day, as a reason for now altering the law of Scotland in regard to the constitution of marriage." The individual in question lived and died in exile, and the case is never quoted without expressions of deep reprobation. It is the only one of the kind which can be brought forward; and surely it cannot be taken as any ground for altering the established law of the country. But does registration prevent bigamy? Unfortunately it is shown by numerous instances in England that it does not. In that country, registration is already established, but, notwithstanding registration, bigamy is infinitely more prevalent there than in Scotland. It is, indeed, impossible by any means of legislation to prevent imposition, fraud, and crime, if men are determined to commit them. Registration at Manchester will not hinder a heartless villain from committing deliberate bigamy in London. The thing is done every day, and will be done in spite of all the efforts of law-makers. Why, then, make the law of Scotland conformable to that of England, since, under the operation of the latter, the very grievance complained of flourishes fourfold? We pause for a reply, and are likely to pause long before we receive any answer which can be accepted as at all satisfactory.

Under the Scottish law, it is admitted that there is far less seduction, and far less bigamy, than under the English law, which is here propounded as the model. And having come to this conclusion – which is not ours only, but that of the witnesses examined in favour of the bill, all evidence against it having been refused – what need have we of saying anything further? Surely there is enough on the merits of the question to explain and justify the unanimous opposition which has been given to

the Marriage Bill by men of every shade of opinion throughout Scotland, without exposing them to the imputation either of obstinacy or caprice: indeed we are distinctly of opinion that the promoters of the bill have laid themselves palpably open to the very charges which they rashly bring against their opponents.

We cannot, however, take leave of the subject, without making a few remarks upon the evidence of a noble and learned lord, who was kind enough to take charge of this bill during its passage through the upper house. Lord Campbell is not a Scottish peer, nor, strictly speaking, a Scottish lawyer, though he is in the habit of attending pretty regularly at the hearing of Scottish appeals. But he is of Scottish extraction; he has sat in the House of Commons as member for Edinburgh, and he ought therefore to be tolerably well conversant with the state of the law. Now we presume it will be generally admitted, that any person who undertakes to show that an amendment of the law is necessary, ought, in the first place, to be perfectly cognisant of the state of the law as it exists. That amount of knowledge we hold to be indispensably necessary for a reformer, since he must needs establish the superiority of his novel scheme, by contrasting its advantages with the deficiencies of the prevalent system. But in reading over the evidence of Lord Campbell, as given before the Committee of the House of Commons, a very painful suspicion must arise in every mind, that the learned peer is anything but conversant with the Scottish marriage law: nay, that upon many important particulars he utterly misunderstands its nature. Take for example the following sentence: —

"With regard to this bill which has been introduced, I am very much surprised and mortified to find the grounds upon which it has been opposed; for it has been opposed on the ground that it introduces clandestine marriages into Scotland. I think, with deference to those who may have a contrary opinion, that its direct tendency, as well as its object, is to prevent clandestine marriages. I may likewise observe, that I am very sorry – being the son of a clergyman of the Church of Scotland – to find that it is opposed, and I believe very violently opposed, by the clergy of the Established Church of Scotland. I think that they proceed upon false grounds; *and I am afraid*, although I would say nothing at all disrespectful of a body for whom I feel nothing but respect and affection, *that they are a little influenced by the notion, that a marriage by a clergyman who is not of the Established Church, is hereafter to be put upon the same footing with a marriage celebrated by a clergyman of the Established Church*: but I should be glad if they would consider, that they are placed nearly in the same situation as the clergy of the Church of England, who, without the smallest scruple or repining, have submitted to it, because a marriage before a Baptist minister, or before a Unitarian minister, is just as valid now as if celebrated by the Archbishop of Canterbury; and I should trust that, upon consideration, they would be of opinion that their dignity is not at all compromised, and that their opposition to it may subside."

We can conceive the amazement with which a minister of the Established Church, could he have been present at the deliberations of the select committee, must have listened to the reasons so calmly assigned for his opposition, and that of his brethren, to the progress of the present bill! Never for a moment could it have crossed his mind, that a marriage celebrated by him was of more value in the eye of the law than that which had received the benediction of a dissenter; and yet here was a distinct assumption that he was in possession of some privilege, of which, up to that hour, he had been entirely ignorant. "At present," continued Lord Campbell, "a marriage by a dissenting clergyman, I rather think, is not strictly regular!" Here a hint was interposed from the chair to the following effect: – "He cannot marry without banns; he is subject to punishment if he marries without banns?" But the hint, though dexterously given, fell dead on the ear of the ex-chancellor of Ireland. He proceeded

deliberately to lay down the law, – "There are statutes forbidding marriages unless by clergymen of the Established Church."

This is, to say the least of it, a singular instance of delusion. No such statutes are in force; they have long been repealed; and every clergyman is free to perform the ceremony of marriage, whatever be his denomination, provided he receives a certificate of the regular proclamation of the banns. So that Lord Campbell, if he again girds himself to the task, must be prepared to account on some more intelligible grounds for the opposition which his father's brethren have uniformly given to this bill. But, to do him justice, Lord Campbell does not stand alone in error with regard to the present requirements for the celebration of a regular marriage. Unless there is a grievous error in the reported debate before us, the Lord Advocate of Scotland is not quite so conversant with statute law as might be expected from a gentleman of his undoubted eminence. Whilst advocating a system which is to entail the inevitable payment of a fee to the registrar, he at the same time considers the fee which is presently exigible for proclaiming the banns a grievance. "He was astonished to hear the honourable baronet opposite (Sir George Clerk) state that it was the first time he had heard it considered a grievance, that persons could not marry without proclamation of banns in the parish church, by the payment of a large fee to the precentor or other officer of the church. That had always been considered a very great grievance by the dissenting body throughout Scotland, so far as he understood. The members of the Episcopal communion were, however, saved from that grievance, because they were in possession of an act of parliament, which provided that the proclamation of banns made in their own chapel was sufficient to authorise a clergyman to solemnise the marriage." We should like very much indeed to know what act of parliament gives any such dispensation from parochial proclamation to the Episcopalians. Certain we are that the statute 10 Anne, cap. 7, confers no such privilege; for though it *allows* proclamation of banns to be made in an Episcopal chapel, it at the same time enjoins, under a penalty, that proclamation shall also be made "in the churches to which they belong as parishioners by virtue of their residence;" and accordingly, in practice, no Episcopalian marriage is ever celebrated without previous proclamation of the banns in the parish church. We do not attribute much importance to this error, though it is calculated to mislead those who are not conversant with the law and practice of Scotland. We were rather impressed, on reading the debate, with the circumstance, that the old system of proclaiming by banns in the parish church was denounced, and we therefore directed our attention the more closely to the provisions of the bill, in order to discover the exact nature of the new method by which it was to be superseded. The bill is singularly ill-drawn and worded; but we comprehend it sufficiently to see that, had it passed into law, regular marriages could have been contracted under its sanction without any difficulty, and with no publicity at all.

The bill declares that henceforward marriage shall be contracted in Scotland in one of the following modes, and not otherwise: – 1st, By solemnisation in presence of a clergyman; or, 2d, by registration, the parties proposing so to marry appearing "in presence of the registrar, and there and then signing, before witnesses, the entry of their marriage in the register."

It is evident, however, that without some precaution for publicity, the registrar's office would be as much a temple of Hymen as the blacksmith's forge at Gretna-green, and accordingly, previous to registration – that is, legal marriage – residence for fourteen days was required; and, besides that, a written notice to the registrar, with the names and designations of the parties, seven days previous to the fated entry. A copy of such notice was to be affixed upon the door of the parish church for one Sunday, and this was to be the whole of the publication. Notwithstanding this, if the registrar chose to take the risk of a penalty, and allow the parties to sign the register without their having proved their residence or given notice of their intention, the marriage was, nevertheless, to be valid and effectual.

Worse regulations, we are bound to say, never were invented. Why select the church door? Why post up the names amidst lists of candidates for registration, notices of rousps, and advertisements of the sale of cattle? Is not the present mode of announcing the names *within* the church more decent

than the other, and likely to attract greater notice? But the whole thing is a juggle. The bill gives ample facility for evasion, should that be contemplated; for it is easy to divine that, with the whole proof in his own hand, and no check whatever placed upon him, no registrar would be hard-hearted enough to refuse dispensing with the preliminaries in any case where the amorous couple were ready and willing to remunerate him for the risk of his complaisance.

So much for marriage by registration, which, instead of throwing any obstacle in the way of ill-advised or hasty unions, would, in effect, have a direct tendency to increase them. But the case is absolutely worse when we approach the other form of marriage, which was to supersede that solemnity which is at present in every case preceded by the formal proclamation of banns. The provisions of the bill were as follows: —

No clergymen could solemnise a marriage, unless,

1st. Both or one parties should have been resident for fourteen days within the parish in which the marriage was to take place; *or*,

2d. In some other parish in Scotland: the certificate in both cases to be granted by the Registrar; *or*,

3d. Unless both or one of the parties had been for a fortnight a member or members of the congregation resorting to the church or chapel in which the clergyman solemnising the marriage usually officiates; *or*,

4th. Unless they had similarly attended *some other place of worship*; the same to be certified by the minister of such congregation; *or*,

5th. Unless they could produce the registrar's certificate of a week's notice; *or*

6th. Unless they had been regularly proclaimed by banns.

Such is the species of hotch-potch, which it was seriously proposed to substitute, instead of the present clear, simple, cheap, and decent mode of celebrating regular marriages; and it is not at all surprising that hardly one native of Scotland could be found to raise his voice in favour of such an enormity. So far from publicity being obtained or increased, it would have afforded the most ample facilities for the celebration of marriage without the slightest warning given to the friends of either party. In reality, this pretended mode of marriage *in facie ecclesiae*, would have been far more objectionable than the simple method of registration; for, in the latter case, the registrar, if he did his duty, was bound to give some kind of notice; in the former, none whatever was required by the clergyman. What is a member of a congregation? Abounding as Scotland is in sects, we apprehend that any one who pays for a sitting in any place of worship is entitled to that denomination. For ten shillings, or five shillings, or half-a-crown, a seat may be readily purchased in some place of worship; and if any one held that seat for a fortnight, he was to be entitled, according to this bill, to ask the officiating minister to marry him, without any further process whatever. If it should, however, be held, that no one is a member of a congregation unless he is in full communion, all difficulty could have been got over, by resorting to the fourth method. The member of the Established Church had simply to ask from his minister a certificate of his membership, and, armed with that, he might be legally married anywhere, and by any kind of clergyman, without the slightest notice to the public! We confess that, when we arrived at this portion of the provisions of the bill, we could scarcely credit the testimony of our eyesight. We have heard it proclaimed, over and over again, by those who supported the measure, that its principal aim was to put an end to hasty and ill-advised marriages; and on perusing the evidence, we found Lord Brougham most clamorous against the facilities given by the present law of Scotland for tying the nuptial knot, without due warning afforded to parents, more especially when young noblemen were concerned. We look to the remedy, and we find that, without the assistance of the registrar, marriages might, under the provisions of this bill, have been contracted before a clergyman, at a minute's notice, without any banns at all, and no formality, beyond payment of seat-rent for a single fortnight in any chapel, or a certificate to the same effect! A proposal

more preposterous than this – more irreconcilable with decency – more injurious to the interests of society and of religion, it is really impossible to conceive; and if the language which has been used regarding it throughout Scotland has been generally temperate, we apprehend that the temperance has been entirely owing to a somewhat inaccurate estimate of the full extent of its provisions. It is, in our judgment, emphatically a bad bill; and we trust that after this, its third defeat, it will never again be permitted to appear in either house of parliament. Our representatives have done no more than their duty in giving it their most strenuous opposition; and, though a few individuals may mourn over the frustrated hopes, occasioned by the ruthless blight of a crop of expected offices, they can look for no sympathy from the people. We can assure Lord John Russell, that he never acted more wisely than in refusing to force through the final stages such unpalatable bills as these; and we hope that, in future, he will give the Scottish people credit for understanding their own affairs, and not suffer their deliberate and expressed opinion to be treated with undeserved contempt, simply because it may be possible, by "making a house," to swamp the suffrages of their representatives.

## THE CAXTONS. – PART XVI

### CHAPTER XCV

The stage-scene has dropped. Settle yourselves, my good audience; chat each with his neighbour. Dear madam in the boxes, take up your opera-glass and look about you. Treat Tom and pretty Sal to some of those fine oranges, O thou happy-looking mother in the two-shilling gallery! Yes, brave 'prentice boys, in the tier above, the cat-call by all means! And you, "most potent, grave, and reverend seigneurs," in the front row of the pit – practised critics and steady old play-goers – who shake your heads at new actors and play-wrights, and, true to the creed of your youth, (for the which all honour to you!) firmly believe that we are shorter by the head than those giants our grandfathers – laugh or scold as you will, while the drop-scene still shuts out the stage. It is just that you should all amuse yourselves in your own way, O spectators! for the interval is long. All the actors have to change their dresses; all the scene-shifters are at work, sliding the "sides" of a new world into their grooves; and, in high disdain of all unity of time as of place, you will see in the playbills that there is a great demand on your belief. You are called upon to suppose that we are older by five years than when you last saw us "fret our hour upon the stage." Five years! the author tells us especially to humour the belief by letting the drop-scene linger longer than usual between the lamps and the stage.

Play up, O ye fiddles and kettle-drums! the time is elapsed. Stop that cat-call, young gentleman! – heads down in the pit there! Now the flourish is over – the scene draws up: – look before.

A bright, clear, transparent atmosphere – bright as that of the East, but vigorous and bracing as the air of the North; a broad and fair river, rolling through wide grassy plains; yonder, far in the distance, stretch away vast forests of evergreen, and gentle slopes break the line of the cloudless horizon; see the pastures, Arcadian with sheep in hundreds and thousands – Thyrsis and Menalcas would have had hard labour to count them, and small time, I fear, for singing songs about Daphne. But, alas! Daphnes are rare; no nymphs with garlands and crooks trip over those pastures.

Turn your eyes to the right, nearer the river; just parted by a low fence from the thirty acres or so that are farmed for amusement or convenience, not for profit —*that* comes from the sheep, – you catch a glimpse of a garden. Look not so scornfully at the primitive horticulture; such gardens are rare in the Bush. I doubt if the stately King of the Peak ever more rejoiced in the famous conservatory, through which you may drive in your carriage, than do the sons of the Bush in the herbs and blossoms which taste and breathe of the old fatherland. Go on, and behold the palace of the patriarchs – it is of wood, I grant you, but the house we build with our own hands is always a palace. Did you ever build one when you were a boy? And the lords of that palace are lords of the land, almost as far as you can see, and of those numberless flocks; and, better still, of a health which an antediluvian might have envied, and of nerves so seasoned with horse-breaking, cattle-driving, fighting with wild blacks – chases from them and after them, for life and for death – that if any passion vex the breast of those kings of the Bushland, fear at least is erased from the list.

See, here and there through the landscape, rude huts like the masters' – wild spirits and fierce dwell within. But they are tamed into order by plenty and hope; by the hand open but firm, by the eye keen but just.

Now, out from those woods, over those green rolling plains, harum-scarum, helter-skelter, long hair flying wild, and all bearded as a Turk or a pard, comes a rider you recognise. The rider dismounts, and another old acquaintance turns from a shepherd, with whom he has been conversing on matters that never plagued Thyrsis and Menalcas, whose sheep seem to have been innocent of foot-rot and scab, and accosts the horseman.

Pisistratus. – My dear Guy, where on earth have you been?

Guy (*producing a book from his pocket with great triumph.*) – There! Dr Johnson's *Lives of the Poets*. I could not get the squatter to let me have *Kenilworth*, though I offered him three sheep for it. Dull old fellow, that Dr Johnson, I suspect; so much the better, the book will last all the longer. And here's a Sydney paper too, only two months old! (*Guy takes a short pipe or dodeen from his hat, in the band of which it had been stuck, fills and lights it.*)

Pisistratus. – You must have ridden thirty miles at the least. To think of *your* turning book-hunter, Guy!

Guy Bolding, (*philosophically.*) – Ay, one don't know the worth of a thing till one has lost it. No sneers at me, old fellow; you, too, declared that you were bothered out of your life by those books, till you found how long the evenings were without them. Then, the first new book we got – an old volume of the *Spectator!* – such fun!

Pisistratus. – Very true. The brown cow has calved in your absence. Do you know, Guy, I think we shall have no scab in the fold this year? If so, there will be a rare sum to lay by! Things look up with us now, Guy.

Guy Bolding. – Yes; very different from the first two years. You drew a long face then. How wise you were, to insist on our learning experience at another man's station before we hazarded our own capital! But, by Jove! those sheep, at first, were enough to plague a man out of his wits! What with the wild dogs, just as the sheep had been washed and ready to shear; then that cursed scabby sheep of Joe Timmes's, that we caught rubbing his sides so complacently against our unsuspecting poor ewes. I wonder we did not run away. But "*Patientia fit,*" – what is that line in Horace? Never mind now. "It is a long lane that has no turning" does just as well as anything in Horace, and Virgil to boot. I say, has not Vivian been here?

Pisistratus. – No; but he will be sure to come to-day.

Guy Bolding. – He has much the best berth of it. Horse-breeding and cattle-feeding; galloping after those wild devils; lost in a forest of horns; beasts lowing, scampering, goring, tearing off like mad buffaloes; horses galloping up hill, down hill, over rocks, stones, and timber; whips cracking, men shouting – your neck all but broken; a great bull making at you full rush. Such fun! Sheep are dull things to look at after a bull-hunt and a cattle-feast.

Pisistratus. – Every man to his taste in the Bush. One may make one's money more easily and safely, with more adventure and sport, in the bucolic department. But one makes larger profit and quicker fortune, with good luck and good care, in the pastoral – and our object, I take it, is to get back to England as soon as we can.

Guy Bolding. – Humph! I should be content to live and die in the Bush – nothing like it, if women were not so scarce. To think of the redundant spinster population at home, and not a spinster here to be seen within thirty miles, save Bet Goggins, indeed – and she has only one eye! But to return to Vivian – why should it be our object, more than his, to get back to England as soon as we can?

Pisistratus. – Not more, certainly. But you saw that an excitement more stirring than that we find in the sheep had become necessary to him. You know he was growing dull and dejected; the cattle station was to be sold a bargain. And then the Durham bulls, and the Yorkshire horses, which Mr Trevanion sent you and me out as presents, were so tempting, I thought we might fairly add one speculation to another; and since one of us must superintend the bucolics, and two of us were required for the pastorals, I think Vivian was the best of us three to intrust with the first; and, certainly, it has succeeded as yet.

Guy. – Why, yes, Vivian is quite in his element – always in action, and always in command. Let him be first in everything, and there is not a finer fellow, nor a better tempered – present company excepted. Hark! the dogs, the crack of the whip; there he is. And now, I suppose, we may go to dinner.

*Enter Vivian.*

His frame has grown more athletic; his eye, more steadfast and less restless, looks you full in the face. His smile is more open; but there is a melancholy in his expression, almost approaching to

gloom. His dress is the same as that of Pisistratus and Guy – white vest and trowsers; loose neckcloth, rather gay in colour; broad cabbage-leaf hat; his mustache and beard are trimmed with more care than ours. He has a large whip in his hand, and a gun slung across his shoulders. Greetings are exchanged; mutual inquiries as to cattle and sheep, and the last horses despatched to the Indian market. Guy shows the *Lives of the Poets*; Vivian asks if it is possible to get the *Life of Clive*, or *Napoleon*, or a copy of *Plutarch*. Guy shakes his head – says, if a *Robinson Crusoe* will do as well, he has seen one in a very tattered state, but in too great request to be had a bargain.

The party turn into the hut. Miserable animals are bachelors in all countries; but most miserable in Bushland. A man does not know what a helpmate of the soft sex is in the Old World, where women seem a matter of course. But in the Bush, a wife is literally bone of your bone, flesh of your flesh – your better half, your ministering angel, your Eve of the Eden – in short, all that poets have sung, or young orators say at public dinners, when called upon to give the toast of "The Ladies." Alas! we are three bachelors, but we are better off than bachelors often are in the Bush. For the wife of the shepherd I took from Cumberland does me and Bolding the honour to live in our hut, and make things tidy and comfortable. She has had a couple of children since we have been in the Bush; a wing has been added to the hut for that increase of family. The children, I daresay, one might have thought a sad nuisance in England; but I declare that, surrounded as one is by great bearded men, from sunrise to sunset, there is something humanising, musical, and Christian-like, in the very squall of the baby. There it goes – bless it! As for my other companions from Cumberland, Miles Square, the most aspiring of all, has long left me, and is superintendent to a great sheep-owner some two hundred miles off. The Will-o'-the-Wisp is consigned to the cattle station, where he is Vivian's head man, finding time now and then to indulge his old poaching propensities at the expense of parrots, black cockatoos, pigeons, and kangaroos. The shepherd remains with us, and does not seem, honest fellow, to care to better himself; he has a feeling of clanship, which keeps down the ambition common in Australia. And his wife – such a treasure! I assure you, the sight of her smooth, smiling woman's face, when we return home at nightfall, and the very flow of her gown, as she turns the "dampers"<sup>1</sup> in the ashes, and fills the teapot, have in them something holy and angelical. How lucky our Cumberland swain is not jealous! Not that there is any cause, enviable dog though he be; but where Desdemonas are so scarce, if you could but guess how green-eyed their Othellos generally are! Excellent husbands, it is true – none better; but you had better think twice before you attempt to play the Cassio in Bushland! There, however, she is, dear creature! – rattling among knives and forks, smoothing the tablecloth, setting on the salt-beef, and that rare luxury of pickles, (the last pot in our store), and the produce of our garden and poultry-yard, which few Bushmen can boast of – and the dampers, and a pot of tea to each banqueter; no wine, beer, nor spirits – those are only for shearing-time. We have just said grace, (a fashion retained from the holy mother country), when, bless my soul! what a clatter without, what a tramping of feet, what a barking of dogs! Some guests have arrived. They are always welcome in Bushland! Perhaps a cattle-buyer in search of Vivian; perhaps that cursed squatter, whose sheep are always migrating to ours. Never mind, a hearty welcome to all – friend or foe. The door opens; one, two, three, strangers. More plates and knives; draw your stools; just in time. First eat, then – what news?

Just as the strangers sit down, a voice is heard at the door —

"You will take particular care of this horse, young man: walk him about a little; wash his back with salt and water. Just unbuckle the saddle-bags; give them to me. Oh! safe enough, I daresay – but papers of consequence. The prosperity of the colony depends on these papers. What would become of you all if any accident happened to them, I shudder to think."

And here, attired in a twill shooting-jacket, budding with gilt buttons, impressed with a well-remembered device; a cabbage-leaf hat shading a face rarely seen in the Bush – a face smooth as

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<sup>1</sup> A damper is a cake of flour baked without yeast, in the ashes.

razor could make it: neat, trim, respectable-looking as ever – his arm full of saddle-bags, and his nostrils gently distended, inhaling the steam of the banquet, walks in – Uncle Jack.

Pisistratus, (*leaping up.*) – Is it possible! *You*, in Australia – you in the Bush!

Uncle Jack, not recognising Pisistratus in the tall, bearded man who is making a plunge at him, recedes in alarm, exclaiming – "Who are you? – never saw you before, sir! I suppose you'll say next that *I owe you something!*"

Pisistratus. – Uncle Jack!

Uncle Jack, (*dropping his saddle-bags.*) – Nephew! – Heaven be praised. Come to my arms!

They embrace; mutual introductions to the company – Mr Vivian, Mr Bolding, on the one side – Major MacBlarney, Mr Bullion, Mr Emanuel Speck on the other. Major MacBlarney is a fine portly man, with a slight Dublin brogue, who squeezes your hand as he would a sponge. Mr Bullion – reserved and haughty – wears green spectacles, and gives you a forefinger. Mr Emanuel Speck – unusually smart for the Bush, with a blue satin stock, and one of those blouses common in Germany, with elaborate hems, and pockets enough for Briareus to have put all his hands into at once – is thin, civil, and stoops – bows, smiles, and sits down to dinner again, with the air of a man accustomed to attend to the main chance.

Uncle Jack, (*his mouth full of beef.*) – Famous beef! – breed it yourself, eh? Slow work that cattle-feeding! (*Empties the rest of the pickle-jar into his plate.*) Must learn to go ahead in the new world – railway times these! We can put him up to a thing or two – eh, Bullion? (*Whispering me.*) – Great capitalist that Bullion! LOOK AT HIM!

Mr Bullion, (*gravely.*) – A thing or two! If he has capital – you have said it, Mr Tibbets. (*Looks round for the pickles – the green spectacles remain fixed upon Uncle Jack's plate.*)

Uncle Jack. – All that this colony wants is a few men like us, with capital and spirit. Instead of paying paupers to emigrate, they should pay rich men to come – eh, Speck?

While Uncle Jack turns to Mr Speck, Mr Bullion fixes his fork in a pickled onion in Jack's plate, and transfers it to his own – observing, not as incidentally to the onion, but to truth in general – "A man, gentlemen, in this country, has only to keep his eyes on the look-out, and seize on the first advantage! – resources are incalculable!"

Uncle Jack, returning to the plate and missing the onion, forestalls Mr Speck in seizing the last potato – observing also, and in the same philosophical and generalising spirit as Mr Bullion – "The great thing in this country is to be always beforehand: discovery and invention, promptitude and decision! – that's your go. 'Pon my life, one picks up sad vulgar sayings among the natives here! – 'that's your go!' shocking! What would your poor father say? How is he – good Austin? Well? – that's right: and my dear sister? Ah, that damnable Peck! – still harping on the *Anti-Capitalist*, eh? But I'll make it up to you all now. Gentlemen, charge your glasses – a bumper-toast" —

Mr Speck, (*in an affected tone.*) – I respond to the sentiment in a flowing cap. Glasses are not forthcoming.

Uncle Jack. – A bumper-toast to the health of the future millionaire, whom I present to you in my nephew and sole heir – Pisistratus Caxton, Esq. Yes, gentlemen, I here publicly announce to you that this gentleman will be the inheritor of all my wealth – freehold, leasehold, agricultural, and mineral; and when I am in the cold grave – (*takes out his pocket-handkerchief*) – and nothing remains of poor John Tibbets, look upon that gentleman, and say, "John Tibbets lives again!"

Mr Speck, (*chauntingly.*) —

"Let the bumper toast go round."

Guy Bolding. – Hip, hip, hurrah! – three times three! What fun!

Order is restored; dinner-things are cleared; each gentleman lights his pipe.

Vivian. – What news from England?

Mr Bullion. – As to the funds, sir?

Mr Speck. – I suppose you mean, rather, as to the railways: great fortunes will be made there, sir; but still I think that our speculations here will—

Vivian. – I beg pardon for interrupting you, sir; but I thought, in the last papers, that there seemed something hostile in the temper of the French. No chance of a war?

Major MacBlarney. – Is it the wars you'd be after, young gentleman? If me interest at the Horse Guards can avail you, bedad! you'd make a proud man of Major MacBlarney.

Mr Bullion, (*authoritatively.*) – No, sir, we won't have a war: the capitalists of Europe and Australia won't have it. The Rothschilds, and a few others that shall be nameless, have only got to do this, sir – (*Mr Bullion buttons up his pockets*) – and we'll do it too; and then what becomes of your war, sir? (*Mr Bullion snaps his pipe in the vehemence with which he brings his hand on the table, turns round the green spectacles, and takes up Mr Speck's pipe, which that gentlemen had laid aside in an unguarded moment.*)

Vivian. – But the campaign in India?

Major MacBlarney. – Oh! – and if its the Ingees you'd—

Bullion, (*refilling Speck's pipe from Guy Bolding's exclusive tobacco-pouch, and interrupting the Major.*) – India – that's another matter: I don't object to that! War there – rather good for the money market than otherwise!

Vivian. – What news there, then?

Bullion. – Don't know – haven't got India stock.

Mr Speck. – Nor I either. The day for India is over: this is our India now. (*Misses his tobacco-pipe; sees it in Bullion's mouth, and stares aghast! – NB. – The pipe is not a clay dodeen, but a small meerschaum – irreplaceable in Bushland.*)

Pisistratus. – Well, uncle, but I am at a loss to understand what new scheme you have in hand. Something benevolent, I am sure – something for your fellow-creatures – for philanthropy and mankind?

Mr Bullion, (*starting.*) – Why, young man, are you as green as all that?

Pisistratus. – I, sir – no – Heaven forbid! But my – (*Uncle Jack holds up his forefinger imploringly, and spills his tea over the pantaloons of his nephew!*)

Pisistratus, wroth at the effect of the tea, and therefore obdurate to the sign of the forefinger, continues rapidly, "But my uncle *is!* – some grand national-imperial-colonial-anti-monopoly" —

Uncle Jack. – Pooh! Pooh! What a droll boy it is!

Mr Bullion, (*solemnly.*) – With these notions, which not even in jest should be fathered on my respectable and intelligent friend here – (*Uncle Jack bows*) – I am afraid you will never get on in the world, Mr Caxton. I don't think our speculations will suit *you!* It is growing late, gentlemen: we must push on.

Uncle Jack, (*jumping up.*) – And I have so much to say to the dear boy. Excuse us: you know the feelings of an uncle! (*Takes my arm, and leads me out of the hut.*)

Uncle Jack, (*as soon as we are in the air.*) – You'll ruin us – you, me, and your father and mother. Yes! What do you think I work and slave myself for but for you and yours? – Ruin us all, I say, if you talk in that way before Bullion! His heart is as hard as the Bank of England's – and quite right he is, too. Fellow-creatures! – stuff! I have renounced that delusion – the generous follies of my youth! I begin at last to live for myself – that is, for self and relatives! I shall succeed this time, you'll see!

Pisistratus. – Indeed, uncle, I hope so sincerely; and to do you justice, there is always something very clever in your ideas – only they don't —

Uncle Jack, (*interrupting me with a groan.*) – The fortunes that other men have gained by my ideas! – shocking to think of! What! – and shall I be reproached if I live no longer for such a set of thieving, greedy, ungrateful knaves? No – no! Number one shall be my maxim; and I'll make you a Cræsus, my boy – I will.

Pisistratus, after grateful acknowledgments for all prospective benefits, inquires how long Jack has been in Australia; what brought him into the colony; and what are his present views. Learns, to his astonishment, that Uncle Jack has been four years in the colony; that he sailed the year after Pisistratus – induced, he says, by that illustrious example, and by some mysterious agency or commission, which he will not explain, emanating either from the Colonial Office, or an Emigration Company. Uncle Jack has been thriving wonderfully since he abandoned his fellow-creatures. His first speculation, on arriving at the colony, was in buying some houses in Sydney, which (by those fluctuations in prices common to the extremes of the colonial mind – which is one while skipping up the rainbow with Hope, and at another plunging into Acherontian abysses with Despair) he bought excessively cheap, and sold excessively dear. But his grand experiment has been in connexion with the infant settlement of Adelaide, of which he considers himself one of the first founders; and as, in the rush of emigration which poured to that favoured establishment in the earlier years of its existence, – rolling on its tide all manner of credulous and inexperienced adventurers, – vast sums were lost, so, of those sums, certain fragments and pickings were easily griped and gathered up by a man of Uncle Jack's readiness and dexterity. Uncle Jack had contrived to procure excellent letters of introduction to the colonial grandees: he got into close connexion with some of the principal parties seeking to establish a monopoly of land, (which has since been in great measure effected by raising the price, and excluding the small fry of petty capitalists;) and effectually imposed on them, as a man with a vast knowledge of public business – in the confidence of great men at home – considerable influence with the English press, &c., &c. And no discredit to their discernment, for Jack, when he pleased, had a way with him that was almost irresistible. In this manner he contrived to associate himself and his earnings with men really of large capital, and long practical experience in the best mode by which that capital might be employed. He was thus admitted into a partnership (so far as his means, went) with Mr Bullion, who was one of the largest sheep-owners and landholders in the colony, though, having many other nests to feather, that gentleman resided in state at Sydney, and left his runs and stations to the care of overseers and superintendents. But land-jobbing was Jack's special delight; and an ingenious German having lately declared that the neighbourhood of Adelaide betrayed the existence of those mineral treasures which have since been brought to day, Mr Tibbets had persuaded Bullion and the other gentlemen now accompanying him, to undertake the land journey from Sidney to Adelaide, privily and quietly, to ascertain the truth of the German's report, which was at present very little believed. If the ground failed of mines, Uncle Jack's account convinced his associates that mines quite as profitable might be found in the pockets of the raw adventurers, who were ready to buy one year at the dearest market, and driven to sell the next at the cheapest.

"But," concluded Uncle Jack, with a sly look, and giving me a poke in the ribs, "I've had to do with mines before now, and know what they are. I'll let nobody but you into my pet scheme: you shall go shares if you like. The scheme is as plain as a problem in Euclid, – if the German is right, and there are mines, why, the mines will be worked. Then miners must be employed; but miners must eat, drink, and spend their money. The thing is to get *that* money. Do you take?"

Pisistratus. – Not at all!

Uncle Jack, (*majestically.*) – A Great Grog and Store Dépôt! The miners want grog and stores, come to your dépôt; you take their money; Q.E.D! Shares – eh, you dog? Cribs, as we said at school. Put in a paltry thousand or two, and you shall go halves.

Pisistratus, (*vehemently.*) – Not for all the mines of Potosi.

Uncle Jack, (*good humouredly.*) – Well, it shan't be the worse for you. I shan't alter my will, in spite of your want of confidence. Your young friend, – that Mr Vivian, I think you call him – intelligent-looking fellow, sharper than the other, I guess, – would *he* like a share?

Pisistratus. – In the grog dépôt? You had better ask him!

Uncle Jack. – What! you pretend to be aristocratic in the Bush! Too good. Ha, ha! – they're calling to me – we must be off.

Pisistratus. – I will ride with you a few miles. What say you, Vivian? and you, Guy? —  
As the whole party now joined us.

Guy prefers basking in the sun, and reading the *Lives of the Poets*. Vivian assents; we accompany the party till sunset. Major MacBlarney prodigalises his offers of service in every conceivable department of life, and winds up with an assurance that, if we want anything in those departments connected with engineering – such as mining, mapping, surveying, &c. – he will serve us, bedad, for nothing, or next to it. We suspect Major MacBlarney to be a civil engineer, suffering under the innocent hallucination that he has been in the army.

Mr Specks lets out to me, in a confidential whisper, that Mr Bullion is monstrous rich, and has made his fortune from small beginnings, by never letting a good thing go. I think of Uncle Jack's pickled onion, and Mr Speck's meerschaum, and perceive, with respectful admiration, that Mr Bullion acts uniformly on one grand system. Ten minutes afterwards, Mr Bullion observes, in a tone equally confidential, that Mr Speck, though so smiling and civil, is as sharp as a needle; and that if I want any shares in the new speculation, or indeed in any other, I had better come at once to Bullion, who would not deceive me for my weight in gold. "Not," added Bullion, "that I have anything to say against Speck. He is well enough to do in the world – a warm man, sir; and when a man is really warm, I am the last person to think of his little faults, and turn on him the cold shoulder."

"Adieu!" said Uncle Jack, once more pulling out his pocket-handkerchief; "my love to all at home." And, sinking his voice into a whisper, "If ever you think better of the grog and store depôt, nephew, you'll find an uncle's heart in this bosom!"

## CHAPTER XCVI

It was night as Vivian and myself rode slowly home. Night in Australia! How impossible to describe its beauty! Heaven seems, in that new world, so much nearer to earth! Every star stands out so bright and particular, as if fresh from the time when the Maker willed it. And the moon like a large silvery sun; – the least object on which it shines so distinct and so still.<sup>2</sup> Now and then a sound breaks the silence, but a sound so much in harmony with the solitude that it only deepens its charms. Hark! the low cry of a night-bird, from yonder glen amidst the small gray gleaming rocks. Hark! as night deepens, the bark of the distant watch-dog, or the low strange howl of his more savage species, from which he defends the fold. Hark! the echo catches the sound, and flings it sportively from hill to hill – farther, and farther, and farther down, till all again is hushed, and the flowers hang noiseless over your head, as you ride through a grove of the giant gum-trees. Now the air is literally charged with the odours, and the sense of fragrance grows almost painful in its pleasure. You quicken your pace, and escape again into the open plains, and the full moonlight, and through the slender tea-trees catch the gleam of the river, and, in the exquisite fineness of the atmosphere, hear the soothing sound of its murmur.

Pisistratus. – And this land has become the heritage of our people! Methinks I see, as I gaze around, the scheme of the All-beneficent Father disentangling itself clear through the troubled history of mankind. How mysteriously, while Europe rears its populations, and fulfils its civilising mission, these realms have been concealed from its eyes – divulged to us just as civilisation needs the solution to its problems; a vent for feverish energies, baffled in the crowd; offering bread to the famished, hope to the desperate; in very truth enabling the "New World to redress the balance of the Old." Here, what a Latium for the wandering spirits,

"On various seas by various tempests toss'd."

Here, the actual *Æneid* passes before our eyes. From the huts of the exiles scattered over this hardier Italy, who cannot see in the future,

"A race from whence new Alban sires shall come,  
And the long glories of a future Rome"?

Vivian, (*mournfully*.) – Is it from the outcasts of the workhouse, the prison, and the transport-ship, that a second Rome is to arise?

Pisistratus. – There is something in this new soil – in the labour it calls forth, in the hope it inspires, in the sense of property, which I take to be the core of social morals – that expedites the work of redemption with marvellous rapidity. Take them altogether, whatever their origin, or whatever brought them hither, they are a fine, manly, frank-hearted race, these colonists now! – rude, not mean, especially in the Bush – and, I suspect, will ultimately become as gallant and honest a population as that now springing up in South Australia, from which convicts are excluded – and happily excluded – for the distinction will sharpen emulation. As to the rest, and in direct answer to your question, I fancy even the emancipist part of our population every whit as respectable as the mongrel robbers under Romulus.

VIVIAN. – But were *they* not soldiers? – I mean the first Romans?

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<sup>2</sup> "I have frequently," says Mr Wilkinson, in his invaluable work upon South Australia, at once so graphic and so practical, "been out on a journey in such a night, and, whilst allowing the horse his own time to walk along the road, have solaced myself by reading in the still moonlight."

Pisistratus. – My dear cousin, we are in advance of those grim outcasts, if we can get lands, houses, and wives, (though the last is difficult, and it is well that we have no white Sabines in the neighbourhood!) without that same soldiering which was the necessity of their existence.

Vivian, (*after a pause.*) – I have written to my father, and to yours more fully – stating in the one letter my wish, in the other trying to explain the feelings from which it springs.

Pisistratus. – Are the letters gone?

Vivian. – Yes.

Pisistratus. – And you would not show them to me!

Vivian. – Do not speak so reproachfully. I promised your father to pour out my whole heart to him, whenever it was troubled and at strife. I promise you now that I will go by his advice.

PISISTRATUS, (*disconsolately.*) – What is there in this military life for which you yearn that can yield you more food for healthful excitement and stirring adventure than your present pursuits afford?

Vivian. —*Distinction!* You do not see the difference between us. You have but a fortune to make, I have a name to redeem; you look calmly on the future, I have a dark blot to erase from the past.

Pisistratus, (*soothingly.*) – It is erased. Five years of no weak bewailings, but of manly reform, steadfast industry, conduct so blameless, that even Guy (whom I look upon as the incarnation of blunt English honesty) half doubts whether you are '*cute* enough for "a station" – a character already so high, that I long for the hour when you will again take your father's spotless name, and give me the pride to own our kinship to the world; all this surely redeems the errors arising from an uneducated childhood and a wandering youth.

Vivian, (*leaning over his horse, and putting his hand on my shoulder.*) – "My dear friend, what do I owe you?" Then recovering his emotion, and pushing on at a quicker pace, while he continues to speak, "But can you not see that, just in proportion as my comprehension of right would become clear and strong, so my conscience would become also more sensitive and reproachful; and the better I understand my gallant father, the more I must desire to be as he would have had his son. Do you think it would content him, could he see me branding cattle and bargaining with bullock-drivers? Was it not the strongest wish of his heart that I should adopt his own career? Have I not heard you say that he would have had you too a soldier, but for your mother? I have no mother! If I made thousands, and tens of thousands, by this ignoble calling, would they give my father half the pleasure that he would feel at seeing my name honourably mentioned in a despatch? No, no! you have banished the gipsy blood, and now the soldier's breaks out! Oh for one glorious day in which I may clear my way into fair repute, as our fathers before us! – when tears of proud joy may flow from those eyes that have wept such hot drops at my shame! When *she*, too, in her high station, beside that sleek lord, may say, 'His heart was not so vile, after all!' Don't argue with me – it is in vain! Pray, rather, that I may have leave to work out my own way; for I tell you that, if condemned to stay here, I may not murmur aloud – I may go through this round of low duties as the brute turns the wheel of a mill: but my heart will prey on itself, and you shall soon write on my gravestone the epitaph of the poor poet you told us of, whose true disease was the thirst of glory – 'Here lies one whose name was written in water.'"

I had no answer; that contagious ambition made my own veins run more warmly, and my own heart beat with a louder tumult. Amidst the pastoral scenes, and under the tranquil moonlight, of the New, the Old World, even in me, rude Bushman, claimed for a while its son. But as we rode on, the air, so inexpressibly buoyant, yet soothing as an anodyne, restored me to peaceful Nature. Now the flocks, in their snowy clusters, were seen sleeping under the stars; hark, the welcome of the watch-dogs; see the light gleaming far from the chink of the door! And, pausing, I said aloud, "No, there is more glory in laying these rough foundations of a mighty state, though no trumpets resound with your victory – though no laurels shall shadow your tomb – than in forcing the onward progress of your race over burning cities and hecatombs of men!" I looked round for Vivian's answer; but, ere

I spoke, he had spurred from my side, and I saw the wild dogs slinking back from the hoofs of his horse, as he rode at speed, on the sward, through the moonlight.

## CHAPTER XCVII

The weeks and the months rolled on, and the replies to Vivian's letters came at last: I foreboded too well their purport. I knew that my father could not set himself in opposition to the deliberate and cherished desire of a man who had now arrived at the full strength of his understanding, and must be left at liberty to make his own election of the paths of life. Long after that date, I saw Vivian's letter to my father; and even his conversation had scarcely prepared me for the pathos of that confession of a mind remarkable alike for its strength and its weakness. If born in the age, or submitted to the influences, of religious enthusiasm, here was a nature that, awaking from sin, could not have been contented with the sober duties of mediocre goodness – that would have plunged into the fiery depths of monkish fanaticism – wrestled with the fiend in the hermitage, or marched barefoot on the infidel, with the sackcloth for armour – the cross for a sword. Now, the impatient desire for redemption took a more mundane direction, but with something that seemed almost spiritual in its fervour. And this enthusiasm flowed through strata of such profound melancholy! Deny it a vent, and it might sicken into lethargy, or fret itself into madness – give it the vent, and it might vivify and fertilise as it swept along.

My father's reply to this letter was what might be expected. It gently reinforced the old lessons in the distinctions between aspirations towards the perfecting ourselves – aspirations that are never in vain – and the morbid passion for applause from others, which shifts conscience from our own bosoms to the confused Babel of the crowd, and calls it "fame." But my father, in his counsels, did not seek to oppose a mind so obstinately bent upon a single course – he sought rather to guide and strengthen it in the way it should go. The seas of human life are wide. Wisdom may suggest the voyage, but it must first look to the condition of the ship, and the nature of the merchandise to exchange. Not every vessel that sails from Tarshish can bring back the gold of Ophir; but shall it therefore rot in the harbour? No; give its sails to the wind!

But I had expected that Roland's letter to his son would have been full of joy and exultation – joy there was none in it, yet exultation there might be – though serious, grave, and subdued. In the proud assent that the old soldier gave to his son's wish, in his entire comprehension of motives so akin to his own nature – there was yet a visible sorrow; it seemed even as if he constrained himself to the assent he gave. Not till I had read it again and again, could I divine Roland's feelings while he wrote. At this distance of time, I comprehend them well. Had he sent from his side, into noble warfare, some boy fresh to life, new to sin, with an enthusiasm pure and single-hearted as his own young chivalrous ardour – then, with all a soldier's joy, he had yielded a cheerful tribute to the hosts of England; but here he recognised, though perhaps dimly, not the frank military fervour, but the stern desire of expiation – and in that thought he admitted forebodings that would have been otherwise rejected – so that, at the close of the letter, it seemed not the fiery war-seasoned Roland that wrote, but rather some timid, anxious mother. Warnings and entreaties, and cautions not to be rash, and assurances that the best soldiers were ever the most prudent – were these the counsels of the fierce veteran, who, at the head of the forlorn hope, had mounted the wall at – , his sword between his teeth!

But, whatever his presentiments, Roland had yielded at once to his son's prayer – hastened to London at the receipt of his letter – obtained a commission in a regiment now in active service in India; and that commission was made out in his son's name. The commission, with an order to join the regiment as soon as possible, accompanied the letter.

And Vivian, pointing to the name addressed to him, said, "Now, indeed, I may resume this name, and, next to Heaven, will I hold it sacred! It shall guide me to glory in life, or my father shall read it, without shame, on my tomb!" I see him before me, as he stood then – his form erect, his dark eyes solemn in their light, a serenity in his smile, a grandeur on his brow, that I had never marked till then! Was that the same man I had recoiled from as the sneering cynic, shuddered at as the audacious

traitor, or wept over as the cowering outcast? How little the nobleness of aspect depends on symmetry of feature, or the mere proportions of form! What dignity robes the man who is filled with a lofty thought!

## CHAPTER XCVIII

He is gone! he has left a void in my existence. I had grown to love him so well; I had been so proud when men praised him. My love was a sort of self-love – I had looked upon him in part as the work of my own hands. I am a long time ere I can settle back, with good heart, to my pastoral life. Before my cousin went, we cast up our gains, and settled our shares. When he resigned the allowance which Roland had made him, his father secretly gave to me, for his use, a sum equal to that which I and Guy Bolding brought into the common stock. Roland had raised the sum upon mortgage; and, while the interest was a trivial deduction from his income, compared to the former allowance, the capital was much more useful to his son than a mere yearly payment could have been. Thus, between us, we had a considerable sum for Australian settlers – £4500. For the first two years we made nothing; indeed, great part of the first year was spent in learning our art, at the station of an old settler. But, at the end of the third year, our flocks having then become very considerable, we cleared a return beyond my most sanguine expectations. And when my cousin left, just in the sixth year of exile, our shares amounted to £4000 each, exclusive of the value of the two stations. My cousin had, at first, wished that I should forward his share to his father, but he soon saw that Roland would never take it; and it was finally agreed that it should rest in my hands, for me to manage for him, send him out interest at five per cent, and devote the surplus profits to the increase of his capital. I had now, therefore, the control of £12,000, and we might consider ourselves very respectable capitalists. I kept on the cattle station, by the aid of the Will-o'-the-Wisp, for about two years after Vivian's departure, (we had then had it altogether for five.) At the end of that time, I sold it and the stock to great advantage. And the sheep – for the "brand" of which I had a high reputation – having wonderfully prospered in the meanwhile, I thought we might safely extend our speculations into new ventures. Glad, too, of a change of scene, I left Bolding in charge of the flocks, and bent my course to Adelaide, for the fame of that new settlement had already disturbed the peace of the Bush. I found Uncle Jack residing near Adelaide, in a very handsome villa, with all the signs and appurtenances of colonial opulence; and report, perhaps, did not exaggerate the gains he had made: – so many strings to his bow – and each arrow, this time, seemed to have gone straight to the white of the butts! I now thought I had acquired knowledge and caution sufficient to avail myself of Uncle Jack's ideas, without ruining myself by following them out in his company; and I saw a kind of retributive justice in making his brain minister to the fortunes which his ideality and constructiveness, according to Squills, had served so notably to impoverish. I must here gratefully acknowledge, that I owed much to this irregular genius. The investigation of the supposed mines had proved unsatisfactory to Mr Bullion; and they were not fairly discovered till a few years after. But Jack had convinced himself of their existence, and purchased, on his own account, "for an old song," some barren land, which he was persuaded would prove to him a Golconda, one day or other, under the euphonious title (which, indeed, it ultimately established) of the "Tibbet's Wheal." The suspension of the mines, however, fortunately suspended the existence of the Grog and Store Depôt, and Uncle Jack was now assisting in the foundation of Port Philip. Profiting by his advice, I adventured in that new settlement some timid and wary purchases, which I resold to considerable advantage. Meanwhile, I must not omit to state briefly what, since my departure from England, had been the ministerial career of Trevanion.

That refining fastidiousness, – that scrupulosity of political conscience, which had characterised him as an independent member, and often served, in the opinion, both of friend and of foe, to give the attribute of *general* impracticability to a mind that, in all *details*, was so essentially and laboriously practical – might perhaps have founded Trevanion's reputation as a minister, if he could have been a minister without colleagues – if, standing alone, and from the necessary height, he could have placed, clear and single, before the world, his exquisite honesty of purpose, and the width of a statesmanship marvellously accomplished and comprehensive. But Trevanion could not amalgamate with others,

nor subscribe to the discipline of a cabinet in which he was not the chief, especially in a policy which must have been thoroughly abhorrent to such a nature – a policy that, of late years, has distinguished not one faction alone, but has seemed so forced upon the more eminent political leaders, on either side, that they who take the more charitable view of things may, perhaps, hold it to arise from the necessity of the age, fostered by the temper of the public – I mean the policy of *Expediency*. Certainly not in this book will I introduce the angry elements of party politics; and how should I know much about them? All that I have to say is, that, right or wrong, such a policy must have been at war, every moment, with each principle of Trevanion's statesmanship, and fretted each fibre of his moral constitution. The aristocratic combinations which his alliance with the Castleton interest had brought to his aid, served perhaps to fortify his position in the cabinet; yet aristocratic combinations were of small avail against what seemed the atmospherical epidemic of the age. I could see how his situation had preyed on his mind, when I read a paragraph in the newspapers, "that it was reported, on good authority, that Mr Trevanion had tendered his resignation, but had been prevailed upon to withdraw it, as his retirement at that moment would break up the government." Some months afterwards came another paragraph, to the effect "that Mr Trevanion was taken suddenly ill, and that it was feared his illness was of a nature to preclude his resuming his official labours." Then parliament broke up. Before it met again, Mr Trevanion was gazetted as Earl of Ulverstone, a title that had been once in his family – and had left the administration, unable to encounter the fatigues of office. To an ordinary man, the elevation to an earldom, passing over the lesser honours in the peerage, would have seemed no mean close to a political career; but I felt what profound despair of striving against circumstance for utility – what entanglements with his colleagues, whom he could neither conscientiously support, nor, according to his high old-fashioned notions of party honour and etiquette, energetically oppose – had driven him to abandon that stormy scene in which his existence had been passed. The House of Lords, to that active intellect, was as the retirement of some warrior of old into the cloisters of a convent. The gazette that chronicled the Earldom of Ulverstone was the proclamation that Albert Trevanion lived no more for the world of public men. And, indeed, from that date his career vanished out of sight. Trevanion died – the Earl of Ulverstone made no sign.

I had hitherto written but twice to Lady Ellinor during my exile – once upon the marriage of Fanny with Lord Castleton, which took place about six months after I sailed from England, and again, when thanking her husband for some rare animals, equine, pastoral, and bovine, which he had sent as presents to Bolding and myself. I wrote again after Trevanion's elevation to the peerage, and received in due time a reply, confirming all my impressions – for it was full of bitterness and gall, accusations of the world, fears for the country: Richelieu himself could not have taken a gloomier view of things, when his levees were deserted, and his power seemed annihilated before the "Day of Dupes." Only one gleam of comfort appeared to visit Lady Ulverstone's breast, and thence to settle prospectively over the future of the world – a second son had been born to Lord Castleton; to that son the earldom of Ulverstone, and the estates held in right of its countess, would descend! Never was there a child of such promise! Not Virgil himself, when he called on the Sicilian Muses to celebrate the advent of a son to Pollio, ever sounded a loftier strain. Here was one, now perchance engaged on words of two syllables, called —

"By labouring nature to sustain  
The nodding frame of heaven, and earth, and main,  
See to their base restored, earth, sea, and air,  
And joyful ages from behind in crowding ranks appear!"

Happy dream which Heaven sends to grandparents! rebaptism of Hope in the font whose drops sprinkle the grandchild!

Time flies on; affairs continue to prosper. I am just leaving the bank at Adelaide with a satisfied air, when I am stopped in the street by bowing acquaintances, who never shook me by the hand before. They shake me by the hand now, and cry – "I wish you joy, sir. That brave fellow, your namesake, is of course your near relation."

"What do you mean?"

"Have not you seen the papers? Here they are."

"Gallant conduct of Ensign de Caxton – promoted to a lieutenancy on the field" – I wipe my eyes, and cry – "Thank Heaven – it is my cousin!" Then new hand-shakings, new groups gather round. I feel taller by the head than I was before! We grumbling English, always quarrelling with each other – the world not wide enough to hold us; and yet, when in the far land some bold deed is done by a countryman, how we feel that we are brothers! how our hearts warm to each other! What a letter I wrote home I and how joyously I went back to the Bush! The Will-o'-the Wisp has attained to a cattle station of his own. I go fifty miles out of my way to tell him the news and give him the newspaper; for he knows now that his old master, Vivian, is a Cumberland man – a Caxton. Poor Will-o'-the Wisp! The tea that night tasted uncommonly like whisky-punch! Father Mathew forgive us! – but if you had been a Cumberland man, and heard the Will-o'-the Wisp roaring out, "Blue bonnets over the Borders," I think your tea, too, would not have come out of the caddy!

## CHAPTER XCIX

A great change has occurred in our household. Guy's father is dead – his latter years cheered by the accounts of his son's steadiness and prosperity, and by the touching proofs thereof which Guy has exhibited. For he insisted on repaying to his father the old college debts, and the advance of the £1500, begging that the money might go towards his sister's portion. Now, after the old gentleman's death, the sister resolved to come out and live with her dear brother Guy. Another wing is built to the hut. Ambitious plans for a new stone house, to be commenced the following year, are entertained; and Guy has brought back from Adelaide not only a sister, but, to my utter astonishment, a wife, in the shape of a fair friend, by whom the sister was accompanied. The young lady did quite right to come to Australia if she wanted to be married. She was very pretty, and all the beaux in Adelaide were round her in a moment. Guy was in love the first day – in a rage with thirty rivals the next – in despair the third – put the question the fourth – and before the fifteenth was a married man, hastening back with a treasure, of which he fancied all the world was conspiring to rob him. His sister was quite as pretty as her friend, and she too had offers enough the moment she landed – only she was romantic and fastidious, and I fancy Guy told her that "I was just made for her."

However, charming though she be – with pretty blue eyes, and her brother's frank smile – I am not enchanted. I fancy she lost all chance of my heart by stepping across the yard in a pair of silk shoes. If I were to live in the Bush, give me a wife as a companion who can ride well, leap over a ditch, walk beside me when I go forth, gun in hand, for a shot at the kangaroos. But I dare not go on with the list of a Bush husband's requisites. This change, however, serves, for various reasons, to quicken my desire of return. Ten years have now elapsed, and I have already obtained a much larger fortune than I had calculated to make. Sorely to Guy's honest grief, I therefore wound up our affairs, and dissolved partnership; for he had decided to pass his life in the colony – and, with his pretty wife, who has grown very fond of him, I don't wonder at it. Guy takes my share of the station and stock off my hands; and, all accounts squared between us, I bid farewell to the Bush. Despite all the motives that drew my heart homeward, it was not without participation in the sorrow of my old companions, that I took leave of those I might never see again on this side the grave. The meanest man in my employ had grown a friend; and when those hard hands grasped mine, and from many a breast that once had waged fierce war with the world came the soft blessing to the Homeward-bound – with a tender thought for the Old England, that had been but a harsh step-mother to them – I felt a choking sensation, which I suspect is little known to the friendships of Mayfair and St James's. I was forced to get off, with a few broken words, when I had meant to part with a long speech: perhaps the broken words pleased the audience better. Spurring away, I gained a little eminence and looked back. There, were the poor faithful fellows gathered in a ring, watching me – their hats off – their hands shading their eyes from the sun. And Guy had thrown himself on the ground, and I heard his loud sobs distinctly. His wife was leaning over his shoulder, trying to soothe: forgive him, fair helpmate, you will be all in the world to him – to-morrow! And the blue-eyed sister, where was she? Had she no tears for the rough friend who laughed at the silk shoes, and taught her how to hold the reins, and never fear that the old pony would run away with her? What matter? – if the tears were shed, they were hidden tears. No shame in them, fair Ellen – since then, thou hast wept happy tears over thy first-born – those tears have long ago washed away all bitterness in the innocent memories of a girl's first fancy.

## CHAPTER C

(DATED FROM ADELAIDE.)

Imagine my wonder – Uncle Jack has just been with me, and – but hear the dialogue.

Uncle Jack. – So you are positively going back to that smoky, fusty, old England, just when you are on your high road to a plumb. A plumb, sir, at least! They all say there is not a more rising young man in the colony. I think Bullion would take you into partnership. What are you in such a hurry for?

Pisistratus. – To see my father, and mother, and Uncle Roland, and – (*was about to name some one else, but stops.*)

You see, my dear uncle, I came out solely with the idea of repairing my father's losses, in that unfortunate speculation of *The Capitalist*.

Uncle Jack (*coughs and ejaculates*) – That villain Peck!

Pisistratus. – And to have a few thousands to invest in poor Roland's acres. The object is achieved: why should I stay?

Uncle Jack. – A few paltry thousands, when in twenty years more, at the farthest, you would wallow in gold!

Pisistratus. – A man learns in the Bush how happy life can be with plenty of employment, and very little money. I shall practise that lesson in England.

Uncle Jack. – Your mind's made up?

Pisistratus. – And my place in the chip taken.

Uncle Jack. – Then there's no more to be said. (*Hums, haws, and examines his nails – filbert nails, not a speck on them.*) Then suddenly, and jerking up his head. "That '*Capitalist!*' it has been on my conscience, nephew, ever since; and, somehow or other, since I have abandoned the cause of my fellow-creatures, I think I have cared more for my relations."

Pisistratus, (*smiling, as he remembers his father's shrewd predictions thereon.*) – Naturally, my dear uncle: any child who has thrown a stone into a pond knows that a circle disappears as it widens.

Uncle Jack. – Very true – I shall make a note of that, applicable to my next speech, in defence of what they call the "land monopoly." Thank you – stone – circle! (*Jots down notes in his pocket-book.*) But, to return to the point: I am well off now – I have neither wife nor child; and I feel that I ought to bear my share in your father's loss: it was our joint speculation. And your father, good dear Austin, paid my debts into the bargain. And how cheering the punch was that night, when your mother wanted to scold poor Jack! And the £300 Austin lent me when I left him: nephew, that was the remaking of me – the acorn of the oak I have transplanted. So here they are, (added Uncle Jack with a heroic effort – and he extracted from the pocket-book, bills for a sum between three and four thousand pounds.) There, it is done – and I shall sleep better for it! (*With that Uncle Jack got up, and bolted out of the room.*)

Ought I to take the money? Why, I think yes! – it is but fair. Jack must be really rich, and can well spare the money; besides, if he wants it again, I know my father will let him have it. And, indeed, Jack caused the loss of the whole sum lost on *The Capitalist*, &c.; and this is not quite the half of what my father paid away. But is it not fine in Uncle Jack! Well, my father was quite right in his milder estimate of Jack's scalene conformation, and it is hard to judge of a man when he is needy and down in the world. When one grafts one's ideas on one's neighbour's money, they are certainly not so grand as when they spring from one's own.

Uncle Jack, (*popping his head into the room.*) – And you see, you can double that money if you will just leave it in my hands for a couple of years, – you have no notion what I shall make of the Tibbet's Wheal! Did I tell you? – the German was quite right, – I have been offered already seven

times the sum which I gave for the land. But I am now looking out for a Company: let me put you down for shares to the amount at least of those trumpery bills. Cent per cent, – I guarantee cent per cent! (*And Uncle Jack stretches out those famous smooth hands of his, with a tremulous motion of the ten eloquent fingers.*)

Pisistratus. – Ah, my dear uncle, if you repent —

Uncle Jack. – Repent! when I offer you cent per cent, on my personal guarantee!

Pisistratus, (*carefully putting the bills into his breast coat-pocket.*) Then, if you don't repent, my dear uncle, allow me to shake you by the hand, and say that I will not consent to lessen my esteem and admiration for the high principle which prompts this restitution, by confounding it with trading associations of loans, interests, and copper mines. And, you see, since this sum is paid to my father, I have no right to invest it without his permission.

Uncle Jack, (*with emotion.*) – "Esteem, admiration, high principle!" – these are pleasant words, from you, nephew. – (*Then shaking his head and smiling.*) You sly dog! you are quite right: get the bills cashed at once. And hark ye, sir, just keep out of my way, will you? – and don't let me coax you out of a farthing! (*Uncle Jack slams the door, and rushes out. Pisistratus draws the bills warily from his pocket, half-suspecting they must already have turned into withered leaves, like fairy money; slowly convinces himself that the bills are good bills, and by lively gestures testifies his delight and astonishment.*) Scene Changes.

## AUTOBIOGRAPHY – CHATEAUBRIAND'S MEMOIRS.<sup>3</sup>

Autobiography, when skilfully and judiciously done, is one of the most delightful species of composition of which literature can boast. There is a strong desire in every intelligent and well-informed mind to be made acquainted with the private thoughts, and secret motives of action, of those who have filled the world with their renown. We long to learn their early history, to be made acquainted with their first aspirations – to learn how they became so great as they afterwards turned out. Perhaps literature has sustained no greater loss than that of the memoirs which Hannibal wrote of his life and campaigns. From the few fragments of his sayings which Roman admiration or terror has preserved, his reach of thought and statesmanlike sagacity would appear to have been equal to his military talents. Cæsar's *Commentaries* have always been admired; but there is some doubts whether they really were written by the dictator; and, supposing they were, they relate almost entirely to military movements and public events, without giving much insight into private character. It is that which we desire in autobiography: we hope to find in it a window by which we may look into a great man's mind. Plutarch's *Lives* owe their vast and enduring popularity to the insight into private character which the innumerable anecdotes he has collected, of the heroes and statesmen of antiquity, afford.

Gibbon's autobiography is the most perfect account of an eminent man's life, from his own hand, which exists in any language. Independent of the interest which naturally belongs to it as the record of the studies, and the picture of the growth of the mind of the greatest historian of modern times, it possesses a peculiar charm from the simplicity with which it is written, and the judgment it displays, conspicuous alike in what is revealed and what is withheld in the narrative. It steers the middle channel so difficult to find, so invaluable when found, between ridiculous vanity on the one side, and affected modesty on the other. We see, from many passages in it, that the author was fully aware of the vast contribution he had made to literature, and the firm basis on which he had built his colossal fame. But he had good sense enough to see, that those great qualities were never so likely to impress the reader as when only cautiously alluded to by the author. He knew that vanity and ostentation never fall to make the character in which they predominate ridiculous – if excessive, contemptible; and that, although the world would thankfully receive all the details, how minute soever, connected with his immortal work, they would not take off his hands any symptom of his own entertaining the opinion of it which all others have formed. It is the consummate judgment with which Gibbon has given enough of the details connected with the preparation of his works to be interesting, and not enough to be ridiculous, which constitutes the great charm, and has occasioned the marked success, of his autobiography. There are few passages in the English language so popular as the well-known ones in which he has recounted the first conception, and final completion of his history, which, as models of the kind, as well as passages of exquisite beauty, we cannot refuse ourselves the pleasure of transcribing, the more especially as they will set off, by way of contrast, the faults in some parallel passages attempted by Chateaubriand and Lamartine.

"At the distance of twenty-five years, I can neither forget nor express the strong emotions which agitated my mind as I first approached and entered the Eternal City. After a sleepless night, I trod with a lofty step the ruins of the Forum. Each memorable spot – where Romulus stood, or Tully spoke, or Cæsar fell – was at once present to my eyes; and several days of intoxication were lost, or enjoyed, before I could descend to a cool and minute investigation. It was at Rome, on the 15th October 1764, as I sat musing amidst the ruins of the Capitol, while the barefooted

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<sup>3</sup> *Mémoires d'Outre Tombe*. Par M. le Vicomte de Chateaubriand. 4 vols. Paris, 1846-9.

friars were singing vespers in the Temple of Jupiter, that the idea of writing this Decline and Fall of the city first started to my mind. But my original plan was circumscribed to the decay of the city, rather than of the empire; and though my reading and reflections began to point towards that object, some years elapsed, and several avocations intervened, before I was seriously engaged in the execution of that laborious work." – (*Life*

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