

Defense of his Marriage with Lady Penelope Rich (1606?)

Charles Blount, 1st Earl of Devonshire

Transcript

British Library, Additional MS 11600, ff. 56v–64v

56v

A discourse written by the Earle of Devonshire in
defence of { }his marriage w[i]th the Ladie Riche

As God in him selfe and of him selfe is infinite in his beinge soe is hee in his attribut[es] his wisdome power and his goodnes. out of w[hi]ch goodnes (the nature whereof^{is} to communicate it selfe w[i]th others) as it pleased him by his wisdome and power to create the world for man & both for his glorie soe was itt answerable to the forme, to directe and make his owne works to the two ends for w[hi]ch it was created. wherefore havinge created man w[i]th a purpose in him & in his posteritie to be served as in his wisdome he sawe that it was not good for that end that man should bee alone, soe did he create him an assistant or helper like vnto him selfe w[hi]ch was the woman, And to them boeth hee prescribed a Rule howe in that vocation to the w[hi]ch hee had called them^{they} should best serve him, The lawe of God though in it selfe it be eternall & like vnto him selfe in puritie who is infinitely pure, yet whatsoeu[er] doeth want doth in some sort worke accordinge to the Capacity of that w[hi]ch herein it doth want and therefore where wee are to consider what is lawfull wee are n ot to search into the absolute will of God w[hi]ch is infinite and infinitely pure but to be directed by so much of his will as hee hath pleased to reveale vnto vs the w[hi]ch hee hath sufficiently in his Word: and in those impressions of nature w[hi]ch although by o[u]r fall they are blotted yett are they not vtterly defaced in vs w[hi]ch impression although they bee not sufficiently to lead vs to one true god, yet in them is there nothinge contrary to the word of god, w[hi]ch^{not} in the word of god is there no thinge contrary to them. Soe as to be resolved of the nature of the bond of marriage and of the mutuall duties incident thereunto because it is bothe a sacred and civill contract, wee must haue recourse especially to the word of God or the lawe of nature and to so much of the lawe of the land wherein wee liue as is not contrary to the word of God or the lawe of nature. For human lawes in thinges that are otherwaies indifferent, doe impose dutie in conscience to obey^{observe} the lawe, but yf they bee contrary to the Word of God

57r

or lawe of nature are bounde w[i]th patience to suffer the penaltye, but not in conscience to obey the lawe, But in case of marriage att the least concerninge the lawfullnes thereof it seemeth heere in England that Ius Poli and Ius fori are allone. For the by the statute in the [*Left margin:32: H. 8:*] 32 yeare of H 8. w[hi]ch remaineth still in force all marriages are pronounced lawfull that are contracted betweene lawfull p[er]sons and by the same act all p[er]sons are pronounced lawfull that be not p[ro]hibited by the word of God to marry notw[i]thstandinge any Statute or Acte to the contrary. In the question therefore whether it be lawfull for two betweene whome a marriage was lawfully contracted and consum[m]ated after a sentence of divorce to marry w[i]th another bothe p[ar]ties betweene whome the first marriage was beinge then aliuie, It is onely necessarie to see whether by the word of God

it bee prohibited to marry as this case standeth, for otherwaies the marriage is lawfull. In w[hi]ch considerac[i]on there is nothinge to bee alledged but the word of God, although the lawes of nature Nations and the iudgement of the learned men may bee considered towards the interpretac[i]on of soe much of the word of God as shalbe produced to the purpose; To determine this matter itt is first fitt to bee handled whether a marriage lawfully contracted & consumated may be by any meanes vtterly dissolued and the bond vtied duringe the lyves of boeth the p[ar]ties w[hi]ch were first married, Nowe since heerein wee are to be resolued by the word of God. Christ whoe is the lyvinge word and the word of lyfe doethe direct vs where wee must begin and that is at the begining And first instituc[i]on of marriage for in question of this matter hee doth call the Pharises from the present practice and opinion to the considerac[i]on of the first instituc[i]on of marriage where hee saith But from the begininge itt was ^{not} soe. / . The first instituc[i]on was by God in parradize and betweene the first man and the first woman in the state of p[er]fecc[i]on The finall end was because it was not good for man to bee alone that hee might haue a helpe fitt for him, The efficient cause was the consent of bothe p[ar]ties wherein it is sayd when God had made the woman and brought her to the man, hee sayd this now is bone of my bones and flesh of my flesh. The matter and essence of marriage is the fast adheringe w[hi]ch is expressed in these words, Therefore shall man leaue his father and his mother and shall cleaue vnto his wife and they shalbe one flesh / The rule of marriage out of this instituc[i]on is concluded by the wordes and wisdome of God to be this let noe man therefore put asunder whome God that coupled together / .

57v

[iure] There is noe dowbt but the contract De iure ought neu[er] to be broken and that there offence is haynous and not to bee excused that doe breake itt But the question is whether de facto it may bee broken because the rule is, let noe man putt a sunder whome god hath coupled together wee may as well conclude that noe man may kill because the rule is thou shalt not kill In {} w[hi]ch ^{case} the magistrate may both kill an offender and iustly kill him, yet is it not to be said that hee but Iustice killeth him so the offender is guiltie of his owne death and not the magistrate Soe if two that are married shall contrary to the ends and causes of marriage instead of Comfortable helpes become continuall torments vnto each other instead of mutuall consent doe lyue in continuall vnconscionable dissention and instead of beinge one flesh ^{by abandoning themselues unto others do become one Flesh} w[i]th another I see nothinge left like vnto a marriage nor of the substance of marriage nor any danger, by any thinge that I can see in that first instituc[i]on for the Magistrate to pronounce that to bee broken w[hi]ch by the faulte of the offendor is indeed broken / . And as God ruleth all sutable to his infinite purenes yett in those rules doth hee allowe some exceptions agreable to the weakenes of o[u]r nature for as the rule is Let no man put asunder whom god hath coupled together. Soe wee muste needs confess that in som[m]e cases this rule doeth beare exceptions. For God by Malachy doeth comaund Yf thou hate thy wife put her away And by Moyses where the Children of God are comaunded that yf when they goe to warr they take a bewtiful woman whome they desire that then hee shall take her and marrie her And yf after hee haue noe favor unto her then hee might lett her goe whether shee would only hee might not sell her. And in Deu: 34 when a man married a wife yf soe hee had found no favor in her eies because hee had espied some filthines in her hee was willed to write her a divorce and gyve itt unto her and soe send her owt of his howse w[hi]ch wordes in the hebrewe expressinge divorce the learned in that tonge doe interprett to imply a cuttinge a sunder and dissoluc[i]on And nothinge is more

plainly by this place and diuers others in the Scriptures then that the diuorse then allowed and practized

was

58r

was an vtter dissoluc[i]on of the bonds of marriage in such sorte that both p[ar]ties did and might marry w[i]th any other And that the Iewes did knowe and acknowledge noe other kinde of diuorse but this. And this lawe was especially made in favor of the p[ar]tie wronged in the contract of marriage That yf either of them owt of the hardnes of their harts did breake the obligac[i]on wherein they were bound (the w[hi]ch to doe was neu[er] lawfull) were tollerated that then it should bee tollerated lawfull for them to bee seperated that the p[ar]tie innocent being defrauded of the true end wherefore they were contracted, the marriage should haue againe the proper due of their owne bodies w[hi]ch they had conferred vpon another For these considerac[i]ons. and that it should bee free for them to contract w[i]th any other by a better choise to make reparac[i]on of their first misfortune / And somuch was done in favor of the innocent party that yf out of the hardnes of his hart his minde were soe alienated though w[i]thout iust cause from his former choise that hee was allowed to lyue w[i]thout her least hee should bee tempted to seeke ~~dangerous~~ and more dangerous and wicked meanes to bee ridd of her, And it was p[er]mitted vnto him to become sui Iuris by restoringe vnto her the interest that shee had gyven him in her selfe and by marrying any other more agreable to his harte to haue better meanes to serue god in peace w[hi]ch before in warr and dissention hee could neuer in that vocac[i]on doe / Nowe for the Lawe of nature the best expositors of that lawe amongst them whoe had only the light of nature to direct them doe thus deee^ryue the begininge of marriage. That man being a reasonable and sociable creature desiringe his owne mortall beinge and well being coveteth to preserue his beinge in his posterity w[hi]ch hee could not doe in him selfe; And the well beinge in the society of others w[hi]ch hee could not ^{dooe} alone so that as hee could not gyve beinge to his posterity w[i]thout a woman so could hee neither gyve well being unto them w[i]thout carefull and good education yf eu[er]y man went promiscuously to eu[er]y woman no man should knowe his owne children & consequently noe care of their education wherein consisteth there well beinge Wherefore marriage was contracted betweene one man and one woman that they two beinge one should preserue each others being & well beinge boeth in their owne mutuall society and in their posteritie /. Nowe yf there happen such a marriage where there is noe hope of posterity nor mutuall comfort or society , but the cleane contrary what is there in the Lawe of nature that p[ro]hibiteh to dissolue this marriage especially yf it bee done by

there

58v

there consents by whose consents it was contracted. For the Civill lawe w[hi]ch in the generality appereth neerest to the Lawe of nature saith that nihil est tam naturale quan co genere quod que dissoluere quo collegatu[m] est and all lawes saith that consensus facit matrimoniu[m]. And if it be said that the consent of two p[ar]ties should not preiudice the interest of a third and that god hath an interest in this bond beinge a witnes thereunto it may bee aunswered that all honest promises made by men haue eu[er] God for their witnes and yet are there many that by consent may be dissolued w[i]thout offence to god And although this bee a promise w[hi]ch more then most contracts doe binde vs carefully to obserue it

yett this is but a contract and magis et minus non diuersificant speciem I doe not conclude out of all this that out of naturall conveniency it was Comely that all p[er]sons contracted by this sacred and cyvill bond should vpon any cause or mutuall consent make sep[er]ac[i]on of themselues w[i]thout the cognizaunce of the magistrate because many things that in them selues are lawfull to be done are vnlawfull till they bee iudged fitt to bee done and yf it should be done only by the iudgem[en]t of the parties then should they bothe be iudges and parties in their owne cause w[hi]ch were vniuste and vnnaturall But as I haue herd some of the Fathers of o[u]r lawe saye that yf the kinge doe graunte vnder his greate Seale (w[hi]ch is an high contract) any office w[i]th fee and comodity absolutly in wordes duringe lyfe w[i]thout any appearinge exception yet hath the contract this silent condic[i]on included in it, that the p[ar]tie{s} shall p[er]forme all those duties that are incident to his office the breach whereof doth forfeit his graunt but yet is not the kinge himselfe to take benefit of the forfeiture and libertie to dispose of it to any other vntill it bee iudged soe that as by a solemne record the contract was made soe by a solemne deede it shalbe pronounced to be dissolved, And though a marriage be contracted during life yet may it haue in it a hidden condic[i]on to obserue those duties w[hi]ch are the motiues of each others first consent And though the marriage may be broken vpon the likeinge of them yet is it not fit for either partie to take advantage of it till it bee iudged soe and by the publike iudgem[en]t

of

59r

of it so the cheife naturall end of marriage w[hi]ch was to avoyde promiscuity in generac[i]on and uncertainty in yssue is nowe more sufficiently prouided for then yf they haad contynewed ioyned in that bond and disioynd in harts for such a bond betwene such so distracted in their harts is not only a inticement to adulterie but a cloud to conceale them and a warrant for a woman to intende an adulterous issue into the inheritance of her husband The doinge of w[hi]ch and of many other inconueniencies is clearely avoided by a publique and vtter sep[er]ac[i]on / And to inferr that I doe not rashly or imp[er]tinently make some comp[ar]ison betwixt this grant of an office and the contract of marriage w[hi]ch seemeth to bee absolute yett doeth not binde for euer and in all causes euen in this case of marriage I haue the warrant of the comon lawe w[hi]ch doeth allowe a man for fornicac[i]on to put away his wyfe, although when hee were married besides That maine [*Left margin: maine*] contracts hee had sworne not to put her away and the reason is gyven by the same lawe to be because in the same contract and such like this unexpressed condic[i]on must be understood si videlicet illam legem coniungij non peccerat . I haue as I thincke good reason ^{to beleeeve} that there is nothinge in the first instituc[i]on of marriage by the same lawe of God that doth make the bonde of marriage so fast, but that in some cause it may bee diseuered; And the practice of this Church untill the cominge of Christ wh^{was} dowbtles in many cases to dissolue it: And likewise that it is not contrary to the Lawe of nature for then it must needs haue been contrary to the worde of God. If I haue alleadged noe other reason yet I thinck this very sufficient that whatsoeu[er] ^{all nations did hold} was counted [the] lawe of Nature and all nations ^{nations till the} cominge of Christ did hold diuorse to be lawfull. Therefore diuorse was esteemed lawfull by the lawe of nature till the Cominge of Christ till the begininge of the com[m]on lawe but that will fall more fitt to bee affirmed in this parte where (h auinge proued diuorse a vincul are neither against the lawe of nature nor the nature it selfe) I must now make it appeare that it is not against the lawe of the gossell. to w[hi]ch purpose I will alleadge the words of Christ whoe

was the lawe-gyver of this caution w[hi]ch hee gyveth himsef that hee came not to take away the lawe but to fulfill it and as I take it in this case not vtterly to restraine the libertie gyven by the former lawe but to reforme the misvnderstandings and abuse of that libertie And though the wordes them selues doe seeme to interprett them selues yett I will declare how I doe vnderstand them & what warrant I haue to understand

them

59v

them, As God gaue the first lawe of marriage in Parradize to man then beinge in the state of p[er]fection }so Christ when hee woulde regenerate vs vnto that p[er]fection ascendinge himsef and seekinge to drawe vs w[i]th him did first speake of marriage in his sermon w[hi]ch is called by the Fathers in monte wherein all his rules are of right and soe full of puritie that they seeme ordinary to such a lyfe as should be the right marke wee should ayme to come vnto as neere as wee could and speakinge of marriage these be the wordes. It hath bene said alsoe whosoer shall put away his wyfe let him gyue hir a bill of diorse, but I say vnto you whosoer putte h away his wyfe except it be for fornicac[i]on causeth her to com[m]it adultrie whosoer shall marry that is diorced comitte the adultrie. These wordes I will not only interprett out of my owne spiritt but in the words of Erasmus Paraphrase vpon this place and not only because it is Erasmus interpretac[i]on concordinge w[i]th myne but because it agrees w[i]th the doctrine and practize of the Church for many hundred yeares after the cominge of Christ w[i]th the opinion of most of the antient fathers and w[i]th the opinion of most of the Church of Rome and lastly w[i]th all or almost all of the learned and godly writers whome god did vse as blessed instruments for the better reformac[i]on of the Church and these are Erasmus words the lawe of Moises did p[er]mitt that the husband offended w[i]th any fault w[i]th his wyfe should put her away at his pleasure soe that hee gaue vnto her whome hee did put away a bill of diorse by w[hi]ch shee might marry w[i]th another and by w[hi]ch the right in him to assume her againe might bee taken away, and soe ^{he} did satisfie the lawe whoe for any cause did repudiate his wyfe yf att her dep[ar]ture hee gaue her such a bill neither should shee bee iudged as an aduress neither should any note her as an aduress notw[i]thstandinge the lawe did w[i]th the freindshipp and concord betweene the married continewe to be p[er]petuall. But knowinge the hardnes of the Iewes and least any thinge More wicked should be comitted as poisninge and other murder, hath p[er]mitted diorse. but I wish that by the professors of the newe lawes marriage be more holy and inviolable and therefore whosoer shall putt away his wife vnlesse shee be an aduress (for then

shee

60r

shee leaueth to bee a wife when shee hath mingled her selfe w[i]th another doeth constraine her^{selfe} to comitt adultrie for yf she marry w[i]th another she doeth not marry a husband but an adulterer And hee that doeth marry ^{her} that is so repudiated doeth not marry a wife but an aduress for Erasmus enlarginge the words of Christ to explaine his meaninge and Cardinall Caieton in his Comentaries vpon this place concurringe w[i]th this interpretac[i]on upon the words Et quid dimissam duxerit adulteras doth ad vnto dimissam procul dubio absq[ue] fornicacione nota: w[hi]ch is one w[i]th Erasmus who vnto dimissam doth ad sic dimissam and doth agree that the puttinge away w[hi]ch by this text is allowed in the case of

fornication is such a putting away and the vtter dissallowinge of the bond aswell is allowed in the law of moises. I doe not soe farr over vallewe the authorities of these men although I knowe them to haue bine as learned as any that lyved in their age as I would Iurare in verba magistri but that they haue said the same w[hi]ch yf I had neuer read them I had so many of their reasons to say and that in these words they doe make it plaine that in this text a divorce of marriage a vinculo in som[m]e case is not prohibited w[hi]ch is the question I nowe handle I doe inferr by these words That whosoer shall putt away his wyfe (except it be for fornicac[i]on doeth cause her to comitt adultrie) And whosoer doeth marry a wyfe soe put away (that is for some sleight cause and not for adultreie) doth committ adultrie, But whosoer doth marry a woman lawfully put away and it is lawfull to put her away for that greate cause doth com[m]itt adultrie because shee is then noe mans wife and consequently no man wronged yf shee marry to any other. And yf Christ did not in this take away the ould lawe but reforme it hee leaueth the lawe to bee the same that it was in the cases w[hi]ch hee doth in this reformac[i]on except And therefore in the cause of fornicac[i]on the lawe of divorce remaineth still whole as it was in the tyme of Moises and the lawe of divorce was then an vtter seperac[i]on a vinculo. And surely yf these words of Christ touchinge divorce in this place haue expressed noe exception I see noe reason but in this wee might haue admitted an exception in causes cleane contrary to the nature of marriage as well as wee are forced in most of the absolute p[re]cept[es] in the chapter read the like in the next verse in lyke manner hee saieth againe you haue heard that it was said to them in ould tyme thou shalt not forswear thy selfe but shalt p[er]forme thy oath vnto the lord but I say vnto you Swear not att all And yett wee finde out an exception in som[m]e cases to make it lawfull to Swear And after yf any man will Sue thee at the lawe {so} take away thy coate let him haue they cloake

also

60v

alsoe And yett wee finde out an exception to make it lawfull for vs boeth to defend o[u]r coates and o[u]r cloakes also from the advantage of the lawe and finally he concludeth you shalbe p[er]fect therefore as yo[u]r father w[hi]ch is in heauen is p[er]fect the w[hi]ch yf wee doe not other waies expound then the letter doth importe wee muste needes confesse to bee impossible for how can a finite and corruptible Creature by infinite degres come neere vnto the p[er]fection of an infinite or infinitely pure creature Creator therefore yf the exception heere in the matter of diorce and the same in the 19 of Mathew were not, yet might those places in Mark and Luke moue that where there is noe exception of fornicac[i]on expressed but especially now it maketh it plaine for as noe one place of the doctrine of the holy ghost is contrary to another so is the gen[er]all rule of expoundinge the scriptures to expound that w[hi]ch is more skant or obscure by other places of the same subiect that are more large and plaine and not to restraine that w[hi]ch is written more large by any other places w[hi]ch doe not expresse so much so that vnto Luke and Marke wee must add the exception w[hi]ch is in the 19th of Mathew and not to take it from those places because it is not in the other But because in the 19 of Mathew this matter of deepe diorce doth seeme more largely to be handled it wilbe fitt to bringe these words to be considered the Pharises hauinge herd as it is {lyke by} of the doctrine of Christ against the p[re]sent opinion and practise of those times came to him w[i]th a minde to tempt him in the matter and said to him as it lawfull for a man to putt away his wife upon eu[er]y occasion? and hee answered and said vnto them, haue yee yet not read that hee that made them in the begininge made them male and female and said for

this cause shall a man leaue father and mother and cleaue vnto his wife and they twoe shalbe one flesh lett noe man therefore putt a sunder those whome God hath coupled together. They sayd unto him why then did Moises [*Left margin:* com[m]and us to giue a bill of diuorce & put her away the said unto them Moises for the] for the hardnes of yo[u]r harts suffered you to doe soe but from the begininge it was not so I say therefore vnto you whosoeu[er] shall putt away his wife except it be for fornicac[i]on and marry another comitteth adu[er]sarie and whosoeu[er] marrieth her that is diuorced comitteth adu[er]sarie The Pharises as both their cause and purpose in this

business

61r

business was euill, so doubtles was boeth their opinion and practise att that tyme both against the first instituc[i]on of marriage and the true meaninge of Moises in this cause of diuorce and therefore as they and their begininge so informed of the matter did putt the question to Christ so Christ vnto them and to this matter as it was then held and practized doth make the answer and seekinge to reduce them and all men vnto that state of p[er]fecc[i]on in which they were first conceaued doth call them back to the first instituc[i]on of marriage w[hi]ch was made when man was in paradize in the state of p[er]fecc[i]on and therefore doth answer their question whether itt were lawfull for a man to putt away his wyfe vpon eu[er]y occasion as they then held and as they verely beleued to this effect haue you not read in the word of god that god made man and woman at the first in the state of p[er]fection and therefore able to p[er]forme those duties incident to their creation and also to his p[ar]ticular vocation wherein they were ordained as to be comforters and assistants to each other as well by their posteritie to increase his church as by their mutuall loue and affection to supply to each other the defects of solitarines and that yf they should fall to be a meanes by their lawfull ioyninge together to avoyd the same w[hi]ch w[ith] their inordinate defects might leade them unto. And therefore shall this bond be so sleightly obserued by you that a man shall leaue Father and mother in respect of his wife and in continuall conu[er]sation and affecc[i]on be ioyned together so that they whoe before this mutuall consent were two by this contract be but one flesh [*Left margin:* let no man therefore breake his faith in not performing the Condic[i]on of this bond nor by seeking any others to become one] w[ith] another by the w[hi]ch the bond is broken and they are sep[er]ated whom god did couple together This beinge contrary to that w[hi]ch they conceaued to be lawfull by Moises lawe They asked him againe whi did Moises then comand to giue a bill of diuorce and put her away to the w[hi]ch hee answered that Moises because he knewe that you beinge degenerated from yo[u]r first p[er]fection though the hardnes of yo[u]r harts w[hi]ch could resist all grace did not only breake of the true end[es] and condic[i]ons of marriage but out of the same hardnes of heart were apt to seeke wicked and bloody meanes to be seperated, ordained a course w[hi]ch by his prouisionⁿ was lawfull by a bill of diuorce to make it knowne how that was seperated w[hi]ch you by the hardnes of yo[u]r harts had seperated but from the begininge it was not soe for the seed of discord and discention being then unsowen there was noe breakinge of the bond of marriage and therefore noe cause of diuorce neither should there be any now when you are borne againe ^{to} by the like

61v

p[er]fecc[i]on and shall haue my grace contyuallly to strengthen you except the hardnes of yo[u]r harts doe refuse it I say therefore vnto you that whoso[eu]r shall putt^{eth} away his wife and marrieth another except it be for whoredome (w[hi]ch eu[er]f from the begininge that it had bin comitted was so opposite to the nature of marriage, that it did vtterly breake and dissolue it) hee doth comitt adulterie because shee that hee doeth soe putt a way is still his wife because shee is not lawfully and fully putt away whoso[eu]r marrieth her that is so put away commiteth adultrey because hee doth marry one that beinge not lawfully put away remaineth still the wife of another. And surely but that I am fearefull to add any thinge to the text in the w[hi]ch I haue not apparant warrant I thincke I might expound theis words except it be for fornication ~~and some such other~~ to haue a more la^rge intent then the bare letter doth imply and that the word fornicac[i]on doth imply not only carnall but spirituall fornication and some such other greate causes as are contrary to the nature of marriage for som[m]e causes there must be allowed besides this carnall fa^ulte [*Left margin: faulte*] for howe will eleece the place of Pawle stand w[i]th this wherein he doth pronounce the beleeuinge woman to be free to marry another beinge abandoned by her vnbeleeuinge husband, And some of the Fathers the M[aste]rs of the sentences and others of the Church of Rome are forced to that large interpretac[i]on to make good theire titularie diuorce a thoro et mensa w[hi]ch they allowed in diuerse other causes besides adultry) And many learned writers of o[u]r church and the ciuill lawes made by most Christian Emperours must either haue that construcc[i]on for their warrant for wee must thincke that those Emperours lyeing neerest to the purest tymes of the church (when the church did florish w[i]th more extraordinary learninge and pietie And those Emperours not only obedient but also obnoxious to the authoritie of those good men would not promulgate and practize lawes that were contrary to the word of god I say they were obnoxious because Theodolphus the younger who by his lawes did allow many other vtter causes of diuorse when a Churchman did iniuriously

threaten

62r

threaten to excommunicate him from denyinge him a suite he did rather chuse to satisfie him then repell his wronge w[i]th iust power. The iudgement of the Fathers and stories of those tymes did wittnes much of his extraordinary pietie in dutie and obedience to the Church And Socrates doeth write of him that he spent much of his time in fastinge and prayer that hee did striue abundantly to keepe the straitte rules of the Christian life that his court was lyke a monastery for he spent the morninge w[i]th his Sisters in singinge psalmes: hee could repeate all the Scriptures so owt of his owne memory that of those hee would dispute w[i]th the Bishops as yf his function had bin to be one of them hee was a more gatherer of such boekes as contained the whole word of god and of such lyke then euer Ptolomeus Philidelphus was and that he did obserue w[i]th all honor the preists of god and those most whome he did knowe to be best and in the end of that chapter w[hi]ch is 22 of his 7 boeke of Ecclesiasticall histories he saith that the whole Cittie for practice and consent was as it were but one church. shall wee then thincke ^{that so} ~~those~~ godly and soe learned an Emperour would haue made or suffered a publike lawe w[hi]ch he had thought to haue bine contrary to the word of god or yf the learned men euen of those times had thought it to be contrary to the word of god can it be imagined that they would not haue admonished him of it? it is not likely that hee whoe bare so much respect vnto them would haue ruled his will to that w[hi]ch they should haue

tould him had not it bene the word of god. for in those times, that was the lawe Quod principi placuit. And there was no other difficultie but his will to haue altered it neither did hee make his lawe of diuorce ^{such as they {though}} beinge many other Christians and excellent Emperors in his lawe Concensus lib. 5. tit. 17 he doth restraints the causes of diuorce to suche as he thought of greatest importance and yet out of all this I only conclud that it is lawfull for a man to put away his wife for fornicac[i]on and to marry another. And that it as much as in this question I desyre to proue, w[hi]ch is, that in som[m]e case the bonde of marriage may be dissolued neither doth Pawle in the 7^{to the Ro[mans]} where he saith that the woman w[hi]ch is in subiection to the man is bound by the lawe to the man while he lyueth make any thinge against the doctrine of Christ and therefore theire exceptions (except it be for fornicac[i]on) must be added neither is it his purpose in his law to speake anythinge of diuorce but by the example of a gen[er]all rule wherin it was necessarie he should menc[i]on the excep[i]on , his purpose was to proue another matter for ells hee would neu[er] haue said knowe

you

62v

you not brethren for I speake to them that knowe the lawe for they that did knowe the lawe did knowe that gen[er]all rules haue an exception and to this effect saith Caitan vpon this place aduerte tamen c aute V ector quod hæc Pawli verba intelliguntur regularites, seci us veron i casu s ciebat Paulus sciebat et docti in lege Moises quos alloquitur quod secumdu[m] legem verum est regulariter quod mulier alligata est ~~quam totem~~ quanto tempore viuit vico suc: et cum hoc sciunt, quòd in casu libelli repudij secundu[m] legem mulier soluta erat a lege viri, etiam viuentis viro. And wherein the 7 of the first to the Corinth[ians] he saith And to the married I com[m]aund . yet not I . but the lord; let not the wyfe departe from the husband but yf shee departe let her remaine vnmarried or let her be reconciled to her husband and let not the husband put away his wyfe: Theis must be expounded of such sleight causes, for the w[hi]ch christ doeth prohibitt but to put away an adultres w[hi]ch is allowed to be lawfull by the opinion of all men And therefore there is no dowbt but this place also must be added (except it be for adultre) for in the next verse he saith if any haue a wife that beleueeth not yf shee be contented to dwell with him let him not forsake her, by w[hi]ch he sheweth that marriage betweene such to be found lawfull and yet hee addeth but if the vnbeleeuinge departe let him depart: A brother or a Sister is not in subiection to such thing[es], w[hi]ch I feare the Romish Church doth expound to be free to marry another And from thence doe many learned men of o[u]r church conclud that for the cause of discretion it was lawfull for any to marry againe but his leauinge of her, for in the verse going before it appeareth that it was not lawfull for her to leaue him except he did leaue also though hee were an infidell And surely since cohabitac[i]on ioyned w[i]th the other mutuall duties of marraiage is yet adheringe w[i]thin the first instituc[i]on was of the very essence of marriage. I see no reason but ^{he} that dothe wickedly and vtterly abandon his wife should by that maker her as free as shee was before shee was married vnto him especially [tha]t it be done by order and so pronounced by the magistrate vnto the w[hi]ch I beleue the magistrate is warranted by the word of God. I

could

63r

could neu[er] read nor heare of any other place in the scriptures that w[i]th any apparence is alledged against my conclusion, And therefore since the dissoluing of the bond of marriage in some cases doth appeare neither to be against the first instituc[i]on of marriage nor to be against the doctrine of Christ I may conclud that it is not prohibited by the word of god that marriage lawfully contracted and consumated may in some cases be dissolued from the bond during the lyfe of both p[ar]ties that were so married. And thought to inferr so much it is enough to haue alleaged the word of god yet I will as breiefely as I can[n] touch the Censure and practise of the Church touchinge the matter from the tyme of Christ vntill nowe not mindinge to alledge all that hath bine controu[er]sed by some excellent men but rather to give some light how the state of this question hath bene held and haue led untill the begininge of the Com on lawe. The Civill lawe w[hi]ch was the law of o[u]r Christian world did allowe in som[m]e causes divorce a vinculo and none of the Fathers. vntill the tyme of St Ierome and St Augustine did directly impinge but many directly allowe ~~allow~~ It is true that in some of them there may be some what gathered of their dislike of the abuse of divorce and of such as did rashly conuolare ad secundas nuptias. But was it heard that till the com on lawe any marriage made after divorce was by the iudgem[en]t of any of them dissolued St Ierome and St Augustine were the first that seeme dogmatically to dissalowe the dissoluc[i]on of marriage a vinculo. and from them is deryved the divorce (w[hi]ch is indeed noe divorce) A thore atque mensa w[hi]ch nowe the Church of Rome doth allowe. These holy Fathers out of their exceedinge loue of puritie (but especially Ierome) did a litle to hardly censure even the holy state of marriage it selfe and so carefull were they in this and in many other things that Ethnickes and Heretiques should see nothings foule that they somtimes rather admitt a hidden sore in the bodie then a moate in the face of the Church but how strongly soeuer St Ierome handled this matter whose strongest arguments may aswell be vrged against second marriage after diuorce yet hee doeth even extoll Fabriola for her pietie as a miracle and excuse her fact whoe duringe the life of her husband had married another and though after the death of her second husband shee did voluntarylie penance (It was often done for ordinary faults) yet was the marriage neu[er] dissolued and the pennance because that w[i]thout the authoritie of the Church shee did putt away her husband and not because shee did it And for that St Augustine after to proue his purpose hee hath made such interpretac[i]ons of the scriptures as will hardly satisfie any man that is not more moved by his authoritie then by his reasons yet in the end hee is forced

that

63v

that in his boeke de {fule} et operibus to conclude this matter. Quis quis vxorem in adulterio deprehensam dimiseret et aliam duxerit non videtur æquandus eis excepta causa adulterij dimittunt et ducunt. et in ipsis diuinis sententijs ita est obscuru[m] ut iste equidem siue dubio adulteram licet dimittere adulter tamen habentur si alteram duxerit ut quantu[m] existimo Veni aliter quisquis sallitur. And let that Reverend Father pardon me yf I bee not satisfied w[i]th his boeke of this matter since it seemeth hee was skant satisfied, w[i]th them himselfe for thus he write of them in his retractions scripsi duos libris de coniungijs adulterinis quantum secundu[m] scripturas cupiens soluere difficillimam questionem quod verum emendatissime fecerim nescio imo vero me non peruenisse ad huius rei perfectionem sentio. But howsoeu[er] by the boekes it appeareth that Polotimus a godly Father was of the contrary opinion, I conceaue it may be gathered by that treatise of Polotimus written to him to knowe

the reason of his opinion as beinge newe and diuerse from that w[hi]ch was held at that time I will not alledge all the authorities of the autient Fathers that to make for my conclusion but repeate^{even} out of Sixtus Serensis^{an} aduersarie to this cause that Ambrose Tertulian Hillari a uthor operis in perfecti, Crisostom Enthunius Theophil actus Chromatius Pope L achary the first and the Fathers of the Eube rtine Mogientine and Tibertine counsells doe seeme to be of that opinion besides suche of the Fathers as wee whome hee calleth heritiques doe alledge in this cause but it is noe wonder that the Com on Lawe should err in this matter w[hi]ch in many things but especially in this of marriage hath so many errors that haue noe appearance to warrant them that none but a iudgement captiuated and obnoxious to the Church of Rome can[n] allowe them and the comon lawe is the fountaine of that hath corrupted the torrent of the doctors since that tyme w[i]th the w[hi]ch even they were carried that in their owne iudgem[en]t did otherwise beleue since it was so dangerous for them to striue against the streame And yet I may say by the authority of Cardinall Caiton whome I had rather alleadge in this

matter

64r

matter then o[u]r owne writers who doeth protest boeth against the Contrary doeth p doctrine and parties that professed it that this matter was neu[er] dogmat tically defined by the church of Rome to be as a matter of faith contrary to the word of god but iudicially to be determined as fitt to be as a matter obserued. in fact as theis are his wordes upon the 19 of Mathew.

Intellig^{goi} egitur {ex hac D.} Jesuⁱⁿ Christi lege tutum^{licitu[m]} esse Christiano admittere vxorem ob fornicationem carnalem ipsius^{vis, & posse ducere alia[m] em: Salva sedm[er] Eccl[es]iæ { }nitioe, quæ} hac tenus non apparet: nam decretales Pontificiæ de hac re^{materia} non sunt definitiuæ

quæ Fidei^{sed} ad iudiciales Facti. And Catharinus Bisshop of {Compfar} when in the first edic[i]on of his booke of annotac[i]ons upon Cajetans Com[m]entaries hee had w[i]th much bitternes taxed him for many things doth overpresse this opinion with silence: But in his second edition in his 5 booke he dooth confesse that hee did it because (as he saith) nec potera[m] prudenter reprehendere, quod nesciebam etiam {idonte} confutare. And hee that in all things did quarrell w[i]th Cajetan doeth concurr w[i]th him in this opinion and confirme it w[i]th many (and I doe thincke soe stra^onge) reasons as can noe way be answered; and doeth much like to the other conclude in these words; Scio, quod aliter docent nunc uniuersaliter scholæ, et ego cu[m] illis sentio, ex fide cogor, et captiua[m] reddo intellectum meum: hoc tamen precor, neminis facile censura[m] adhibeant. satis est, quòd decretis Pontificu[m] hanc per soluo reuerentia[m], ut iuxta illa doceam atq[ue] cosulum^{Here is a much {illegible}}: Out of w[hi]ch^{out which is in a prayer exposition with my owne hand he {}

{gap: illegible}

} out of which I do inferr it Owt of w[hi]ch I do^{inferr ...} vniust then prohibite them to marry for marriage is the lawfull remedy that god hath apointed & prouided for such as cannot lyve in Chastitie and as Austine saieth of marriage Quod sanis fuit in offensa[m], ægrotis dictu[m] est in remedi[u]m, And if o[u]r Sauior Christ left his whole flocke for to seeke pne lost sheepe, shall wee put a poore lost sheepe out of the right way wherein it desireth to retorne againe to the Shephard? what were this, but to punish sinne w[i]th sinne and to deny vnto them, whome wee would reclaime to saluation the meanes to lead them vnto it? and therefore I will only say

w[i]th Caluin (whoe in this agrees w[i]th Luther, Malanchton, Bucer, {Hem[m]ingiu[m]s}, Beda, Vinitus^{Vicetus} and most of all the godly doctors;) quia hac tenus (non tamen temere, ue dicebat) animaduersu[m] fuit in adulterio, ut eoru[m] vitæ parcat, qui violant fidem coniu[g]ij: duru[m] esset, virum quo cum diuortium fecit vxor adulterij causa, aut mulierem a marito repudiata[m], si incontentia laborant, in tota[m] vitam à coniu[g]io arcere: Ha[que] necesse est, ut indulgentia vna alteram trahat. / Nowe since it doeth not appeare that it is prohibited by the word; and that all marriages by o[u]r lawes are pronounced lawfull that are not prohibited by the word of god: I may conclud that the marriage between twoe, of whome one of them was diuorced;

from

64v

from another, duringe the lyfe of that other is lawfull by the lawe of god and of man. And if it not it-being contrary to the lawe of god it were contrary to the positie lawe of this land the Prince might in some p[ar]ticuler case dispence w[i]th the gen[er]all rule and neither against the nature of all humane lawes in w[hi]ch the equitie of all p[ar]ticular causes cannot be sufficiently prouided for nor against the iustice of this Realme since (as I take it) that power is gyven by a Statute of the 25, of H.8. Chapt[er] 21. even in this Cause of marriage. And yf upon greate Considerac[i]on hatefull^{and} cryinge since of treason w[hi]ch is neu[er] w[i]thout blood and breach of faith wherein not only the prince but eu[er]y subiect hath an interest and not only gyven øf the offenders lyfe but restored them and their posteritie from infamie; what offence can the like indulgence giue in a fault of weaknes? especially if it fall out that it be not accompanied w[i]th any other injury; for yf both p[ar]ties doe desire suche a separac[i]on and content w[i]th a newe voleneti non sit iniuria. /

habeat itaq[ue] et Christum assertatorem Iusti
diuorcij. Tertulliam lib: aduersus Marcionem. . finis

Other manuscript witnesses

- British Library, Additional MS 73087, ff. 82r–105r
- Lambeth Palace Library, MS 943, ff. 47–53
- London Society of Antiquaries, MS 258, ff. 1r–21v
- Senate House, University of London, MS 20, ff. 84v–107r

© 2017–2024 University of Birmingham, University of Bristol. Provided under a Creative Commons Attribution 4.0 International (CC BY 4.0) licence.

<https://mpese.ac.uk/t/BlountMarriageLadyRich1606.html>