However, it would seem clear that as to colonies acquired after the passing of the Statute of William by occupancy, that Statute must be deemed in force, for it cannot be open to doubt whether a law declared by the English Parliament to be contrary to the law of God is applicable to the circumstances of colonists.

I do not think that the Lord Chancellor can have intended his words to apply to colonies acquired before the passing of the Statute of William, for I apprehend that if the Statute applies to any part of the British dominions beyond England and Wales, it applies to all. Certainly there is nothing in the Statute itself to justify any interpretation which would extend its provisions to one Colony and not to another; nor am I aware of any rule of law or interpretation whereby Acts of the Imperial Parliament not expressly applying can be said to extend to colonies acquired by occupancy, and not to colonies acquired by conquest, nor would the fact of the existence or non-existence in a Colony of a marriage law contrary to the Statute of William make any difference in the case.

If the Statute of William applied to colonies acquired before its passing, it would apply whether or not there were at the time of its passing a different law in force in the colony, and the colonial law would, of course, be thereby repealed, so far as inconsistent with the Imperial Statute, and that would be so in whatever manner the colony was acquired. Although I am of opinion that an Act such as that contemplated may be passed by the Legislature of New Zealand, and that the Courts of law in England would recognize a marriage celebrated in New Zealand between English subjects domiciled in New Zealand, though marriage between the parties is prohibited by the Statute of William, yet I think that if such a law be passed, questions of difficulty are likely to arise under it.

The validity or invalidity of a marriage under such an Act will depend upon the domicile of the man and woman at the time of the marriage.

It is, as stated by Story, sometimes a matter of no small difficulty to decide in what place a person has his domicile: "His residence is often of a very equivocal nature, and his intention as to that residence is often still more obscure;" and where a question is to depend not upon the domicile of one, but of two persons, the difficulty is likely to be greater.

Moreover, it is to be borne in mind that, though the majority of the law Lords who gave their opinion in the case of Brook *v.* Brook were against the interpretation that the Statute of William created a personal incapacity on all English subjects, whosoever they might be, still the adoption of that opinion was not necessary for the decision of the case.

I observe that in South Australia a Bill has been lately passed legalizing marriage between a man and the daughter of his deceased wife's sister. This question would, from a legal point of view, be open to similar considerations as that of a marriage between a man and the sister of his deceased wife.

The proposed Bill, so far as it affects to validate previously contracted marriages, would not be within the provisions of the 28th and 29th Vict. c. 64, inasmuch as by the proviso to the first section of that Act it enacted that nothing in the said Act shall give validity to any marriage unless at the time of such marriage both of the parties were, according to the law of England, competent to contract the same, so that the validating part of the proposed Act would not, by virtue of the 28th and 29th Vict., extend beyond New Zealand. And I am of opinion that, without the sanction of an Imperial Act, Colonial legislation cannot in such a case as this extend beyond New Zealand; this is a different question to that decided in the case of Governor Eyre as to the Indemnity Act.

The necessity for Imperial legislation in this matter was pointed out by the Secretary of State for the Colonies, in his Despatch to Governor Grey, printed in *Gazette* for 1865, page 321.

I am of opinion, therefore, that if a similar measure is again brought forward, its provisions should apply only to future marriages.

I observe that the South Australian measure contained a similar provision. Though I think that the Bill would not, by reason of containing such a provision, be void as repugnant to the law of England, yet its validating effect would be inoperative beyond the Colony.

24th November, 1871. JAMES PRENDERGAST.

DECEASED WIFE'S SISTER MARRIAGE.

Title.

A BILL intituled "An Act to legalize the Marriage of a Man with the Sister of his Deceased Wife."

Preamble.

WHEREAS it is desirable to authorize the marriage of a man with the sister of his deceased wife:

Be it therefore enacted by the General Assembly of New Zealand in Parliament assembled and by authority of the same as follows:—

Short Title.

1. The Short Title of this Act shall be "The Deceased Wife's Sister Marriage Act 1871."

Marriage with deceased wife's sister valid.

2. All marriages which have been heretofore or which shall be hereafter duly solemnized within the Colony of New Zealand between any person and his deceased wife's sister shall be deemed to have been and to be and are hereby declared valid any law or custom to the contrary notwithstanding.