Act of the Imperial Parliament extending to the Colony either by the express words or by necessary intendment of some Act of the Imperial Parliament.

The 5th and 6th William IV. c. 54 does not apply expressly to New Zealand, nor does the Act extend to New Zealand from necessary intendment of that or any other Act of the Imperial Parliament. I therefore think that such legislation would not be void or inoperative as repugnant to the law of England.

The 5th and 6th William IV. c. 54 is no doubt in force in New Zealand; but it is not so by virtue of anything contained therein, or by express enactment or necessary intendment of any Imperial legislation, but either by virtue of the Act of the Colonial Parliament called "The English Acts Act, 1858," adopting all such English laws in force in 1840 (the date of the settlement of the Colony) as were applicable to the circumstances of the Colony, or by reason of the Colony being one not acquired by conquest. Such being the case, the provisions of the Act of William, though in force in New Zealand, may, as far as it is force in New Zealand, be repealed or altered by an Act of the Colonial Legislature.

I should observe, that the Attorney-General for South Australia, in 1870, in his report on the South Australian Bill, gave his opinion that, as the Statute of William was in force in that Colony, the provisions of the Bill were repugnant to the law of England, and that therefore the Bill should be reserved for the signification of Her Majesty's pleasure.

This report was transmitted with the Bill to the Secretary of State for the Colonies, and he, in his Despatch to the Governor of South Australia in reference thereto, says, that "as the Imperial law remains unaltered, he is unable to advise that this Act should receive the Royal assent."

I have already stated my opinion that such a measure is not repugnant to the law of England in the sense attached to the expression by the 28th and 29th Vict. c. 63; and it would seem that if the true objection to the South Australian Bill was that it was repugnant to the law of England, the proper course to have taken with it was for the Governor to have refused assent to it, on the ground that it was void for such repugnancy; for a Colonial law repugnant to the law of England will not become valid or operative by receiving the Royal assent, though given by the Queen herself.

It is to be observed that the Secretary of State does not found the refusal of the Queen's assent to the South Australian Bill on the ground that the Bill is void for repugnancy to the law of England. I believe it was really on the ground of expediency; it was thought that on this subject there should be no difference between the law of England and the Colonies.

Where a doubt exists as to the validity of a Bill, it may be proper to reserve it for the Queen's assent, so that the opinion of the Law Advisers of the Crown in England, as well as those in the Colony, may be obtained; but where no doubt is entertained, there seems an impropriety in reserving the Bill. I have thought it right to observe upon this opinion of the Attorney-General of South Australia, inasmuch as the proposed measure is, in these Colonies at any rate, associated with that Colony, and because that opinion, differing as it does from mine, would, if correct, be as applicable here as in South Australia.

Still, though the legislation may not be void as repugnant to any Act of the Imperial Parliament extending expressly or by necessary intendment to the territory of New Zealand, it is evident that if, according to the law of England, any personal incapacity is attached to an English subject, wherever he is, no Colonial Act could remove that personal incapacity, even within its own territory.

Now, it has been urged that the 5th and 6th of William IV. c. 54 did create a personal incapacity, and that English subjects, wherever they went, were subject to, and could not be divested of, that incapacity.

In the opinions given by three of the law Lords in the case of Brook *v.* Brook, above cited, it was considered that the question depended upon the domicile of the parties to the marriage at the time of the marriage; but one of the four law Lords who gave their opinions on the case, agreed with the Vice-Chancellor Stuart and Sir Cresswell Cresswell, who, in the case below, expressed an opinion that the law of England in this respect created a personal incapacity, and affected English subjects, even though they should change their domicile, and be domiciled in a country where such marriages were allowed by the law of that country. The three Lords above referred to expressly dissented from this view, and considered that there was no personal incapacity.

It may therefore, perhaps, notwithstanding the difference of opinion above referred to, be safely assumed that the Statute of William would be held not to create any personal incapacity in English subjects domiciled in New Zealand or elsewhere; and therefore that any Act of the Parliament of New Zealand, permitting marriages not permitted by that Statute, would be operative everywhere with regard to all English subjects domiciled in New Zealand.

It is to be observed that the Lord Chancellor (Lord Campbell), in his opinion in the case of Brook *v.* Brook, says, with regard to the Statute, "I am bound to say that, in my opinion, the Act would not affect the law of marriage in any conquered colony in which a different law of marriage prevailed, whatever effect it might have in any other colony."

These words were used in 1861, before the Statute 28th and 29th Vict. c. 63 had been passed; and therefore it might perhaps at that time have been considered that any Act passed by a Colonial Legislature, authorizing marriages which, by an Imperial Act, had been declared contrary to the law of God, would be repugnant to the law of England and invalid.

However, I understand the Lord Chancellor here to have in his mind the rules of law that, as to conquered and ceded colonies, the laws in force in the conquered or ceded colony at the time of the conquest or cession, except so far as they are contrary to the fundamental principles of the British constitution, remain in force till altered; and that as to colonies acquired by occupation and founded by British subjects, and in which no previous laws existed, the colonists take with them so much of the English law as is applicable to their circumstances; and I think that the Chancellor must have meant that as to colonies acquired after the Statute of William by conquest or cession, the law of marriage there, though contrary to the Statute of William IV., would certainly remain and be in force; but that as to colonies acquired after the passing of the Statute of William IV. otherwise than by conquest or cession, he would not express an opinion.