

Carolina Scots, the *Westminster Confession*, and a Deceased Wife's Sister

By Barry Waugh

Scottish Highlanders settled in the counties of Robeson and Scotland in North Carolina having journeyed up the Cape Fear River from the coast. They established homes and farms along the upper tributaries and along the meandering river. To the west of the Highlander community were Scots Irish, and to the east along the lower Cape Fear were English, Huguenot, Welsh, and German settlers. Into the Highland core of this Carolina melting pot was born Archibald McQueen around 1796. His interests were diverse. He pursued practicing law for a short time after his graduation from the University of North Carolina, but then his attention turned to the study and practice of medicine, however, believing himself called to the ministry he prepared to that end. Candidacy was granted McQueen in 1826, and when Fayetteville Presbytery organized the Smyrna Church, its first pastor was the recently ordained Rev. McQueen. Within the first year of his call, the Laurel Hill Church was added to his charge. McQueen has been described as a gifted communicator who was able to preach eloquently in both Gaelic and English.

It was during his pastoral ministry at the Laurel Hill Church that Rev. McQueen suffered a great personal loss resulting in his taking an action that would be disciplined by the Presbyterian Church, Old School. Rev. McQueen was married three times, having been made a widower

twice. First, he was married to Margaret Stewart who bore him three children, including a son named James Stewart McQueen. He married his second wife, Juliana McLeod, Dec. 20, 1833. Juliana and Archibald expressed pride in their Presbyterian heritage by naming their only two children Archibald Alexander and John Knox. After less than seven years of marriage, Juliana died on March 25, 1840, due to, as a newspaper expressed it, the "certain and insidious progress of pulmonary disease." The third marriage took place October 24, 1841, when he united with Mary McLeod, the sister of his recently deceased wife. It was because of his marriage to his deceased wife's sister that Fayetteville Presbytery prosecuted him for violating both the Law of God and the *Westminster Confession's* affinity sentence, which reads, "The man may not marry any of his wife's kindred nearer in blood than he may of his own, nor the woman of her husband's kindred nearer in blood than of her own" (24:4).

The marriage of Archibald McQueen came before the meeting of the General Assembly of the Presbyterian Church in the United States of America, Old School, at Philadelphia in 1842, through his appeal of the decision by the Presbytery of Fayetteville suspending him from the ministry. The retiring moderator, Rev. R. J. Breckinridge, the father of B. B. Warfield's mother, passed the gavel to John T. Edgar of Nashville. McQueen was absent and he would not attend any of the assembly meetings in which his case was adjudicated. McQueen's defense was presented by the Rev. John M. Krebs. As part of his defense, Krebs contended that Lev. 18:16 applied to adultery and not marriage because it prohibits a man having sexual relations with his brother's wife, not widow. In his concluding remarks, Krebs made four points: first, McQueen was convicted and condemned by a dubious and uncertain law; second, the prosecution must prove that this law is just; third, it is difficult to prove that there is no law in the Bible to condemn McQueen; and fourth, the punishment was extreme.

THE AUTHOR: Barry Waugh received his Ph.D. from Westminster Theological Seminary, Philadelphia, and presently lives in Greenville, South Carolina, where he researches and writes concerning Presbyterian and Reformed history. SOURCES: This article is an adaptation, condensation, and modification of chapter 4 of my Ph.D. dissertation, *The History of a Confessional Sentence*, Westminster Theological Seminary, 2002. On pages 278–81 of the dissertation is a table of twenty-four cases of near-kin marriage prosecuted at all levels of the judicatories. Both of these publications are documented with extensive footnotes. The minutes of the P.C.U.S.A., Thornwell's *Works*, and Palmer's *Life and Letters*, are, the last time I checked, available on Internet Archive. Princeton Theological Seminary has a digital library online that includes the *Biblical Repertory and Princeton Review*.

The case for the prosecution was presented by Rev. Colin McIver. McIver was born on the Isle of Tervis, Scotland, had ministered in the Fayetteville area since 1813, and since 1815 he had been the Presbytery of Fayetteville's missionary to the local Highland Scots. McIver had served for several years as stated clerk of both Fayetteville Presbytery and the Synod of North Carolina. One comment by a contemporary described McIver as a tenacious proponent of his views. His presentation of the prosecution's case was simple. He pointed out that Lev. 18:16 deals with marriage and not adultery, so it is applicable to cases of consanguinity and affinity, including the marriage of a man to his deceased wife's sister. Rev. McIver commented that it is as wrong for a man to marry a wife's sister as it is to marry a brother's wife. The court voted on McQueen's appeal and soundly rejected it by the margin of sixty-eight to eleven. Further, the Assembly buttressed its rejection of the appeal by affirming the decision of the Presbytery of Fayetteville suspending him from the ministry. Rev. McIver published his views on near-kin marriages in his book, *An Essay Concerning the Unlawfulness of a Man's Marriage with His Sister by Affinity*, 1842.

The Princeton theologian Charles Hodge agreed with the Old School's interpretation of the *Confession* and its condemnation of McQueen's marriage in his review of the 1842 meeting in *Biblical Repertory and Princeton Review*. He saw three incorrect interpretive positions represented at the meeting: first, some contended there is no law against incest in the Bible; second, others said there are laws against incest but they are no longer in force; and third, some contended that the law is in force but it did not pertain to the McQueen marriage. After discussing and refuting all three, Hodge concluded that the laws of Lev. 18 and 20 were of "permanent obligation" and pertained to the case of McQueen. Hodge then considered whether the marriage of a man to the sister of his deceased wife is condemned by Lev. 18:18. Contrary to the prevailing view at the Assembly, the Princetonian interpreted the verse as a prohibition of polygamy that had no bearing on the issue of a man marrying his deceased wife's sister. Hodge concluded, "In reviewing the case...we think it plain that the word of God...does forbid marriage between a man and the near kindred of his wife." Though it might have been thought that the McQueen-McLeod marriage issue had been settled, the Assembly would hear again from the Presbytery of Fayetteville concerning the case.

The 1843 Assembly docket included a resolution requesting the Assembly to instruct the Presbytery of Fayetteville to restore McQueen to the ministry. The

resolution produced heated and lengthy debate. Rev. Dr. Maclean observed that there were three factions in the court: first, those who condemned McQueen, not for violating Scripture, but for violating the *Confession*; second, others who thought the censure should continue, but after due time he should be restored; and third, a few who thought he should separate from his wife as a prerequisite for removing the suspension. Debate continued as the Rev. David Xavier Junkin, a pastor in Greenwich, New Jersey, observed that McQueen had been properly disciplined by his presbytery, the action was affirmed by the last Assembly, and the present Assembly should not interfere. The question was called, and the resolution for the restoration of Rev. McQueen was lost.

The General Assembly of 1844 found its docket to be free of the Archibald McQueen case, but any hopes of the decision of 1843 being the last one concerned with the marriage were dashed when the McQueen case appeared at the 1845 meeting in Cincinnati. The question before the court was whether or not the discipline already received by McQueen was sufficient. The Assembly heard papers relevant to the case and weighed the statements of both McQueen and the prosecution, which was still spearheaded by the tenacious Colin McIver. Extensive debate occurred once again as presbyters on both sides of the issue passionately expressed their opinions. When the time for the vote arrived, the Assembly moved to recommend to the Presbytery of Fayetteville that they reconsider their discipline against McQueen and discern if the three years he had already been suspended from the ministry were sufficient. Charles Hodge's report on the Assembly of 1845 in *Biblical Repertory* expressed concern because the marriage issue was dividing the denomination and had been doing so for over a hundred years. Furthermore, "The Assembly...has almost always acted upon the principle of neither restoring a man condemned by his session or presbytery for such a marriage, nor coercing the lower courts to make it a matter of discipline." Hodge concluded that this was an appropriate way to handle such cases and if the issue were pressed to a matter of communion, he believed it would split the Presbyterian Church.

At each of the next two meetings of the Old School General Assembly there was additional business concerning McQueen. At the 1846 Assembly, Archibald McQueen's marriage appeared via a reference from the Presbytery of Fayetteville that was dismissed (no specifics of the reference are recorded in the published minutes). When the General Assembly convened at Richmond, Virginia, in 1847, the McQueen case was

before the court because of a complaint from Rev. Colin McIver against the decision of the Synod of North Carolina and the Presbytery of Fayetteville for restoring McQueen to the ministry. At this point a resolution was presented contending that McIver's complaint was out of order because the lower courts were merely doing what the 1845 Assembly had directed. After tabling the resolution declaring McIver's complaint out of order, the Assembly later took it up anew and discussed it from Thursday afternoon until Saturday morning, when it was adopted. This decision by the 1847 General Assembly ended more than five years of adjudication concerning the McQueen case.

James H. Thornwell was the moderator of the 1847 Assembly, and he discussed the McQueen case in correspondence with his wife and mentioned it in other writings. In one letter, the South Carolinian mentioned he had planned on making a speech pertinent to the issues raised by the case, but due to his position as moderator, he could not do so. In a later letter, he informed his wife that restoring McQueen to the ministry would be inappropriate, but he believed it would carry the house due to the decision made by the Assembly in 1845. Thornwell commented in his *Works* that restoring McQueen was in "gross defiance of the letter of our Standards," and he believed further that those who are prohibited from marriage by consanguinity or affinity "can never enter into the marriage contract." In Thornwell's opinion, it was a more severe transgression to marry a mother, sister, or an aunt, than to marry a deceased wife's sister; but in all the prohibited cases, the marriage was invalid. The only suitable sign of repentance on the part of McQueen and his wife would have been their separation.

Neither Colin McIver nor Archibald McQueen lived very long after these events. McIver enjoyed a stable ministry as the pastor of the Galatia and Barbeque Churches until his death on January 18, 1850. When Fayetteville Presbytery received a report of the death of Rev. McIver, the moderator, who ironically was Archibald McQueen, appointed a committee of two to compose a memorial for the man Thornwell called "Father McIver." Rev. McIver was buried in Fayetteville cemetery in a grave marked by a plain and simple stone purchased by his friends. When Archibald McQueen died in 1854, he too was honored with a memorial by the Presbytery of Fayetteville. The years following the conclusion of his near-kin marriage case appear to have been difficult with respect to his work as a minister, because he was listed in the General Assembly reports for those years as without call. Mary McLeod McQueen, Archibald's deceased wife's sister and third wife, was

alive and living with him according to the 1850 U. S. Census in Robeson County on their 467 acres of land known as Queensdale.

EPILOGUE

What are we to make of this historical record of adjudication associated with the near-kin marriage of affinity between Archibald McQueen and his deceased wife's sister, Mary McLeod? Could these events be composed into a script for *The Twilight Zone* with Rod Serling looking intently into the camera lens and introducing with his one-in-a-million voice "The Strange Case of Rev. McQueen's Third Marriage." It might be thought odd for people of the past to have been so engrossed in an issue that seems peripheral to the integrity of Christian theology. After all, the prohibition of marriages of affinity is not as weighty as the doctrines of justification, the atonement, or the inspiration of Scripture. However, some of the contemporary befuddlement may be due to the fact that currently in America the likelihood of such unions is limited. It should be understood that the opportunities for marriages of affinity were greater in the past, due to extended family relations sometimes living together on remote abutting pioneer homesteads or rural farm communities as the nation expanded westward. So, when a mother died in childbirth, the widower often asked a family relation such as a deceased wife's sister—whether she was living two homesteads away or in New Jersey—to help with the care of the children. The kin would help, one thing would lead to another, and the widower would marry his near-kin.

The judicatory records show several occurrences of a man marrying his deceased wife's sister. Not only were there marriages of a man to his sister-in-law, but between 1717 and 1882 there were adjudications of near-kin marriages that included a man marrying his deceased brother's wife (Henry VIII of England is the most famous historical example of this type of marriage), his half-brother's widow, his wife's brother's daughter, his wife's half-brother's daughter, his deceased wife's sister's daughter, his mother's brother's widow, and his sister's daughter. However, even though the opportunity for marriages of affinity is greatly reduced currently, in 2001, the A.R.P.C. removed the affinity sentence from the *Westminster Confession* due to a case involving a man's marriage to his deceased wife's sister. The sentence had already been removed by both the P.C.U.S.A. and P.C.U.S. in the 1880s, which means that the O.P.C. and P.C.A. versions of the *Westminster Confession* have the sentence removed as well. ■