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ART. III.—THE MARRIAGE LAW AMONG CONVERTS TO CHRISTIANITY.

THE question of the toleration of polygamy among converts from Mohammedanism or heathenism has been very ably discussed by Dr. R. N. Cust and Professor Stokes in the numbers of *THE CHURCHMAN* for September, 1886, and March, 1887. In the following pages I propose, not to reopen that question, but to call attention to some other features in the wide problem, of which it is, after all, only a part—the problem, namely, of the manner in which the general marriage law, as it is accepted in a settled Christian Church, is to be applied to the circumstances of a nascent Christian community, formed for the most part of converts from another religion, and surrounded by a non-Christian population, from whom its ranks are continually receiving accessions.

It is only necessary to state some of the leading points in this problem to appreciate the great difficulties by which they are surrounded, and at the same time the immense importance of a satisfactory and authoritative solution being found for them. For example: (i.) A man and woman who have lived together as man and wife are both converted to Christianity. Are they to be regarded as already completely married, or is any Christian ceremony of marriage, or of confirmation of marriage, to be performed over them? (ii.) If one only of the couple becomes a Christian, what is his or her relation to the other member of the couple if that member (1) desires to continue the conjugal union; or (2) deserts the converted partner, either (a) living single or (b) contracting a new conjugal or quasi-conjugal alliance? (iii.) In the foregoing cases are men and women to be considered on the same footing, or is a distinction to be drawn between them on the ground of the difference of sex? (iv.) Apart from the existence of a wife or husband who is willing to continue the conjugal connection, are any, and if so, what other circumstances antecedent to conversion to be regarded as debarring a convert from subsequently contracting Christian matrimony? (v.) If a Christian desires to marry a non-Christian, is such marriage permissible? and if so, may it be solemnized, supposing the parties so desire, with a Christian ceremony? (vi.) If two Christians intermarry according to the civil laws or customs of their country or tribe, without any religious ceremony, what is to be regarded as their *status* ecclesiastically? (vii.) If one member of a Christian married couple apostatizes and deserts the other member, and either (1) remains single or (2) contracts a new conjugal or quasi-conjugal alliance, is the member who remains Christian at liberty to contract a fresh

marriage? (viii.) What circumstances, if any, other than apostasy, are to be regarded as sufficient grounds for divorce? (ix.) Are these grounds different in the case of a man and a woman? (x.) Is either a man or a woman at liberty to contract a fresh marriage after a divorce on any or all of these grounds? (xi.) If the law of the country recognises as valid marriages between persons within the degrees of consanguinity or affinity prohibited by our Church, how are such marriages to be treated by the Church—(1) in the case of neither party being a Christian when the marriage was contracted, and (2) in the case of one or both of the parties being Christian at the time of the marriage?

It is evident that some of these points are of extreme intricacy, and admit of a wide divergence of opinion. They have already given rise to difficulties in the mission-field, and as missions extend and the number of converts increases, they will doubtless give rise to more. These difficulties have hitherto been solved for the most part by individual missionaries on the spot, in accordance with their own views of general principles, or of the particular circumstances of each case. It is, however, highly desirable that some universal agreement should be come to in reference to the whole subject, so as to secure an uniformity of dealing with it in our different missions. It has been announced that the subject will occupy a place in the discussions of the Lambeth Conference of Bishops this summer; and certainly no more important topic could engage the attention of the Conference. The following remarks are thrown out as a humble contribution towards the consideration of the matter, and in the hope that they may give some little help towards its elucidation. As a matter of interest, and as indicating the opinions held in Western Christendom on the subject many centuries ago, reference will be made to the *Decretum* of Gratian and the *Decretals* compiled by Pope Gregory IX., which form parts of the *Corpus Juris Canonici*.¹

(i.) The answer to our first question would seem to depend on the nature of the union which has subsisted between the two parties in their unconverted state. In some countries and among some tribes the idea of a lifelong conjugal union appears to be absolutely unknown. Elsewhere, though the idea exists, a large proportion of the unions between the sexes are contracted without any intention of their assuming a lifelong character, and, even where that character is assumed, the

¹ Gratian's *Decretum* contains the opinions and decisions of ecclesiastical authorities down to the year 1159. The *Decretals* of Gregory IX. contain papal decisions between that date and his own pontificate, which began in 1227.

union is nevertheless liable to be dissolved on most inadequate grounds. If the connection be avowedly only for a fixed period, or be terminable at the mere will of either party, it obviously cannot be regarded from a Christian point of view as a state of wedlock; and the parties to the connection, on becoming Christians, ought to be joined together by a solemn marriage. But if the connection has been formally entered into, according to the law or custom of the country or tribe, and is, in the contemplation of the parties, of lifelong duration, even though according to that law or custom it be liable to be dissolved on what we should consider very trivial and utterly insufficient grounds, then assuredly the parties ought to be taught by the Church to consider themselves as married in the sight of God, and, after becoming Christians, ought not to be permitted, much less advised, to go through the marriage ceremony as if they had previously been living together in an unmarried state. So far, in fact, from depreciating in their eyes the relation into which they had entered while unconverted, we ought to inculcate upon them that the relation is to be regarded as possessing a more binding character than their laws and customs had assigned to it. For we are bound to teach that marriage subsisted before Christianity, and was an ordinance of God for the whole human race from the days of creation. It is incumbent upon us to insist that conjugal fidelity, no less than abstinence from murder or theft, is the duty of the Mohammedan and the heathen equally with the man who has been brought to Christ.

The above remarks are directed to cases of monogamous unions. The question how the rule is to be applied in the case of polygamists will be answered differently according to the different views adopted respecting polygamy. No one, of course, would pretend that the union of a man with more than one wife ought, under any circumstances, to receive the sanction of a Christian ceremony. But where it has taken place before conversion to Christianity, there may be an intelligible divergence of opinion as to whether the parties, on accepting Christianity, are to be taught that the conjugal state thus entered into in ignorance of the revealed will of God on the matter is valid as respects all the wives, or invalid with regard to all, or valid in the case of one of the wives and invalid in the case of the others. The question is treated in a letter of Pope Innocent III. to the Bishop of Tiberias (Decret. Gregor. IX. Compil., lib. iv., tit. 19, cap. 8):

Quia vero pagani circa plures insimul feminas affectum dividunt conjugalem, utrum post conversionem omnes vel quam ex omnibus retinere valeant non immerito dubitatur. Quia vero tam patriarchæ quam alii justii viri ante legem pariter et post legem multas uxores insimul

habuisse leguntur, nec contrarium apparet in evangelio vel lege præceptum, neque pagani subjiuntur canonicis institutis post inventis, quemadmodum est præmissum : videtur quod nunc etiam juxta ritum suum licite contrahant cum diversis, quorum conjunctiones legitimas unda sacri baptismatis non dissolvit, et ita patriarcharum exemplo ad fidem Christi conversi pagani conjugiorum pluralitate gaudebunt. Verum absonum hoc videtur et inimicum fidei Christianæ, quum ab initio una costa in unam feminam sit conversa, et scriptura divina testetur, quod propter hoc relinquet homo patrem et matrem et adhærebit uxori suæ, et erunt duo in carne una; non dixit "tres vel plures" sed "duo"; nec dixit "adhærebit uxoribus" sed "uxori." Unde Lamech, qui plures simul uxores legitur habuisse, reprehenditur in scripturis eo quod ipse primus reprobendam bigamiæ speciem introduxit. Licet autem de his non quesieris, volentes tamen te quam alios super his etiam reddere certiores, et quod veritas prævaleat falsitati, sine dubitatione qualibet protestamur quod nec ulli unquam licuit insimul plures uxores habere, nisi cui fuit divina revelatione concessum, quæ mos quandoque interdum etiam fas censetur, per quam sicut Jacob a mendacio, Israelitæ a furto, et Samson ab homicidio, sic et patriarchæ et alii viri justii, qui plures leguntur simul habuisse uxores, ab adulterio excusantur. Sane veridica hæc sententia probatur etiam de testimonio veritatis testantis in evangelio "Quicumque dimiserit uxorem suam nisi ob fornicationem, et aliam duxerit, mœchatur." Si ergo, uxore dimissa, duci et alia de jure non potest, fortius et ipsa retenta; per quod evidenter apparet, pluralitatem in utroque sexu, quum non ad imparia judicentur, circa matrimonium reprobendam.

In *Harvey v. Farnie* (Law Rep., 6 Prob. Div. 35) Lord Justice Lush said (p. 53) :

There is no analogy whatever between the union of a man and a woman in a country where polygamy is allowed and the union of a man and a woman in a Christian country. Marriage, in the contemplation of every Christian community, is the union of one man and one woman to the exclusion of all others. No such provision is made, no such relation is created, in a country where polygamy is allowed; and if one of the numerous wives of a Mohammedan was to come to this country and marry in this country, she could not be indicted for bigamy, because our laws do not recognise a marriage solemnized in that country—a union falsely called marriage—as a marriage to be recognised in our Christian country.

If this *dictum* of a very eminent judge is to be considered ecclesiastically as well as civilly true, persons who before conversion have been living in polygamy ought, on becoming Christians, to be considered as unmarried.¹

(ii.) On the next point there can be no question that (1) if one only of a married couple embraces Christianity, and the other is willing to continue cohabitation, there ought to be no objection or opposition on the part of the Christian (1 Cor. vii. 12-14). But (2) (a) if the Christian partner is deserted by the

¹ Since these pages were written, Mr. Justice Stirling in the case of "*Bethell v. Hildyard*" has decided, in accordance with the above conclusion, that a man and woman cannot be regarded as married according to the English law, if by the terms of the marriage the man is at liberty to add a second wife. (*Times*, Feb. 16, 1888.)

other, is he or she at liberty to re-marry? The answer to this question will depend in part on the interpretation which we put on St. Paul's words in 1 Cor. vii. 15, that a brother or a sister is *not under bondage* in case the unbelieving partner departs. Do the words *not under bondage* mean a release from the matrimonial yoke, so as to imply liberty to marry again? or do they merely mean that the Christian husband or wife need not in such cases consider it a duty to follow up the deserter, and endeavour to effect a reconciliation? Opinions on this subject have always differed. Gratian (Decret., Pars ii., Caus. 28, Quæst. 2) quotes a decision of a Gallican Council of Meaux in favour of the stricter view :

Si quis habuerit uxorem virginem ante baptismum, vivente illa post baptismum alteram habere non potest. Crimina enim in baptismo solvuntur, non conjugia.

But he adds :

Gregorius autem contra testatur dicens : "Licet fidei uxorem aliam ducere quam [*semb. quem*] Christianæ fidei odio infidelis dimittit. Si infidelis discedit odio Christianæ fidei, discedat. Non est enim frater aut soror subjectus servituti in hujusmodi. Non est enim peccatum dimisso propter Deum, si alii se copulaverit. Contumelia quippe Creatoris solvit jus matrimonii circa eum qui relinquitur."

And he continues :

Hic distinguendum est aliud esse dimittere volentem cohabitare, atque aliud discedentem non sequi. Volentem enim cohabitare licet quidem dimittere, sed non ea vivente aliam superducere ; discedentem vero sequi non oportet, et ea vivente aliam ducere licet. Verum hoc non nisi de his intelligendum est, qui in infidelitate sibi copulati sunt.

And Pope Innocent III., in a letter to the Bishop of Ferrara, adopts the same view :

Si enim alter infidelium conjugum ad fidem catholicam convertatur, altero vel nullo modo vel saltem non sine blasphemia divini nominis, vel ut eum pertrahat ad mortale peccatum, ei cohabitare volente : qui relinquitur, ad secunda, si voluerit, vota transibit. Et in hoc casu intelligimus quod ait Apostolus : " Si infidelis discedit, discedat. Frater enim vel soror non est servituti subjectus in hujusmodi," et canonem etiam in quo dicitur quod contumelia Creatoris solvit jus matrimonii circa eum qui relinquitur."—Decret. Gregor. IX. Compil., lib. iv., tit. 19, cap. 7.

It may be observed that our Government in India has proceeded upon the lines of these decisions. By the Native Converts Marriage Dissolution Act, 1866 (Indian Act, No. xxi, of 1866), provision is made for dissolving, in a civil point of view, under certain circumstances, the marriage of an Indian convert to Christianity who may have been deserted or repudiated by his or her heathen wife or husband on account of the conversion. The Act does not apply where the wife or husband is a Mohammedan, since by Mohammedan law a marriage is *ipso facto* dissolved on the abjuration of Islam by either party.

(2) (b) Of course, if mere desertion renders re-marriage lawful, so *à fortiori* does desertion coupled with the contraction by the deserter of a new conjugal or quasi-conjugal union. But if desertion alone is not sufficient to justify the re-marriage of the deserted convert, is this aggravated desertion sufficient? The answer to this will be yea or nay, according as divorce and re-marriage are permitted in the new Christian community to the innocent individuals of a married couple, on the ground of the other having been guilty of conjugal unfaithfulness.

(iii.) But whatever views we adopt on the difficult matters discussed in the preceding paragraph, there can be no pretence for making any difference in the application of the principles to the two sexes. In the seventh chapter of his First Epistle to the Corinthians, to which the ultimate appeal lies on the subject, St. Paul clearly makes no distinction between husband and wife in the rules which he lays down. He does not merely leave this absence of distinction to be inferred, but is careful in each case to repeat the same precept with respect to both the one and the other.

(iv.) In discussing the next question, it is essential to bear in mind that it deals with circumstances which have not been considered sufficient to debar the convert from Christian baptism. The drift of it will best appear by putting a particular hypothetical case. Suppose a heathen to have married a wife, and afterwards to have divorced her for grounds wholly insufficient from a Christian point of view, after which he becomes a convert, but does not know what has become of his divorced wife, though she is believed to be alive. Ought he to be considered bound to her until it is ascertained that she has died, or has become the wife of another man? Gratian (Decret., Pars ii., Caus. 28, Quæst. 3) cites conflicting authorities on this point in reference to the qualification of Bishops and Elders laid down by St. Paul (1 Tim. iii., 2; Tit. i. 6), that they must be the husbands of one wife:

Utrum vero bigamus sit reputandus qui ante baptismum habuerit unam et post baptismum alteram auctoritate Jeronimi patet. Ait enim super epistolam Pauli ad Timotheum: Non est bigamus qui ante baptismum habuerit unam et post baptismum alteram.

Oportet episcopum esse unius uxoris virum. Verum hoc post baptismum. Ceterum si ante baptismum habuerit unam et post baptismum habuerit alteram, non est reputandus bigamus, cui prorsus innovato per baptismum omnia vetera sint dimissa.

Augustinus vero contra testatur et Innocentius. Ait enim Augustinus super epistolam Pauli ad Titum: Non debet fieri episcopus qui ante baptismum habuerit unam et post baptismum alteram.

Acutius vero intelligunt qui nec eum ordinandum censuerunt, qui ante baptismum habuerit unam et post baptismum alteram. In baptisate enim crimina abolentur, non federatio conjugii dissolvitur. . . . Item Innocentius Rufo et Eusebio episcopis Macedoniæ multis argumentis

probat talem bigamum reputari. Quia ergo iste cujus causa in præsentia agitur, ante baptismum habuit unam et post baptismum alteram, bigamus indicatur, et licet vitæ merito et industria scientiæ polleat, tamen in episcopum ordinari non potest.

Innocent III., in his letter to the Bishop of Tiberias, from which a quotation has already been made, decides our question in the affirmative generally, without reference to the case of a Bishop or Presbyter. He says :

Qui autem secundum ritum suum legitimam repudiavit uxorem, quum tale repudium veritas in evangelio reprobaverit, nunquam ea vivente licite poterit aliam etiam ad fidem Christi conversus habere, nisi post conversionem ipsius illa renuat cohabitare cum ipso, aut etiamsi consentiat, non tamen absque contumelia Creatoris, vel ut eum pertrahat ad mortale peccatum. In quo casu restitutionem petenti, quamvis de injusta spoliatione constaret, restitutio negaretur, quia secundum Apostolum frater aut soror non est in hujusmodi subjectus servituti. Quodsi conversum ad fidem et illa conversa sequatur antequam propter causas prædictas legitimam ille ducat uxorem, eam recipere compelletur. Quamvis quoque secundum evangelicam veritatem qui duxerit dimissam mœchatur, non tamen dimissor poterit obijcere fornicationem dimissæ pro eo quod nupsit alii post repudium, nisi alias fuerit fornicata.

But this decision appears to be open to grave question. Clearly, if, while in a state of heathenism, our convert had married a second wife, with whom he was living at his conversion, he ought not, on becoming a Christian, to repudiate her and go back to his divorced wife, even if he had the chance of doing so. And if in this event the heathen divorce must be considered to have been good, ought it not also to be considered good where it was not followed by his re-marriage? The Christian Church is not concerned with judging them that are without (1 Cor. vi. 12, 13). With the past life of an individual, before he came under Christian influence, we have nothing to do. He may have married a dozen wives in succession, and divorced them all for reasons which, according to the Christian standard, were utterly frivolous. But if, when he embraces Christianity, he is, according to local law, a single man, there would seem to be no valid ecclesiastical objection to his afterwards contracting a Christian marriage.

In applying this principle, however, certain cautions will, no doubt, be requisite. There may be many cases in which what is lawful is not expedient or proper. Moreover, the time when ecclesiastical cognizance can first be taken of a man's actions will be, not his baptism, but the date of his formally putting himself under Christian instruction. Further, it may be proper, under conceivable circumstances, to urge upon him, as a Christian duty, a return to conjugal union with a woman whom, as a heathen, he has wronged by a harsh divorce.

To pass on to the next two heads of our inquiry. (v.) The marriage of a Christian with an unbaptized person ought to be

strictly prohibited. So far from a Christian ceremony being performed on the occasion of its taking place, its perpetration ought invariably to be visited with ecclesiastical censures. But there is no warrant for actually excommunicating a Christian for such a marriage, and *quod fieri non debuit, factum valet*. If it actually takes place according to monogamous local law or custom, the Church is bound to regard it as valid. So, too (vi.), if two Christians intermarry according to monogamous local law or custom, without presenting themselves for the religious ceremony, their conduct should be sternly reprobated, but the marriage cannot be regarded as otherwise than binding.

(vii.) The question whether if one member of a Christian married couple apostatizes from the faith and deserts the other, that other is at liberty to contract a fresh marriage, has been carefully considered by the Canonists. Gratian follows up the passage already quoted, in which he admits the lawfulness of the re-marriage of a convert who is deserted by the unconverted wife or husband in consequence of conversion, by saying :

Ceterum si ad fidem uterque conversus est, vel si uterque fidelis matrimonio conjunctus est et procedente tempore alter eorum a fide discesserit et odio fidei conjugem dereliquerit, derelictam discedentem non comitabitur; non tamen illa vivente alteram ducere poterit, quia ratum conjugium fuerat inter eos quod nullo modo solvi potest.

And Innocent III., in his letter to the Bishop of Ferrara, already cited, decides to the same effect :

Distinguiamus, licet quidam prædecessor noster censisse aliter videatur, an ex duobus infidelibus alter ad fidem catholicam convertatur, vel ex duobus fidelibus alter labatur in hæresim vel decidat in gentilitatis errorem.

Then follows the passage quoted above; after which the letter proceeds :

Si vero alter fidelium conjugum vel labatur in hæresim vel transeat ad gentilitatis errorem, non credimus quod in hoc casu, is qui relinquitur, vivente altero possit ad secundas nuptias convolare, licet in hoc casu major appareat contumelia Creatoris. Nam etsi matrimonium verum quidem inter infideles existat, non tamen est ratum. Inter fideles autem verum quidem et ratum existit, quia sacramentum fidei, quod semel est admissum, nunquam amittitur, sed ratum efficit conjugii sacramentum ut ipsum in conjugibus illo durante perduret. Nec obstat quod a quibusdam forsitan objicitur quod fidelis relictus non debeat jure suo sine culpa privari, quum in multis casibus hoc contingat, ut si alter conjugum incidatur. Per hanc autem responsionem quorundam malitiæ obviatur qui in odium conjugum vel quando sibi invicem displicerent, si eas possint in tali casu dimittere, simularent hæresim ut ab ipsa nubentibus conjugibus resiliunt. Per hanc ipsam responsionem illa solvitur quæstio qua quæritur utrum ad eum qui vel ab hæresi vel ab infidelitate revertitur is qui permansit in fide, redire cogatur.

We shall, I think, be ready to admit the soundness of these opinions on question (vii.) (1). The mode of answering question

(vii.) (2), as to which other considerations, besides apostasy, enter, will depend on the answers given to questions (viii.), (ix.), and (x.).

Into these three questions I do not propose to enter in detail, inasmuch as they have a practical bearing on all Christian communities alike, whether surrounded by heathenism or not. Suffice it to say generally that the decision of them ought to be uniform throughout all the Churches belonging to the Anglican communion, whether those Churches are of long standing, or have been recently formed in the midst of non-Christian communities. It may, however, be mentioned with regard to (ix.), that there is much authority for the unpopular view that the grounds for divorce should be the same for husband and wife. This was the rule of the Roman civil law under a decree of the Emperors Theodosius and Valentinian (Cod. Justinian, lib. v., tit. 17, cap. 8). And that the practice prevailed in the second century appears from Justin Martyr's Apology, quoted by Eusebius (Eccles. Hist., lib. iv., cap. 17). Bishop Hooper held the same view, laying down that "the same authority hath the woman to put away the man that the man hath to put away the woman" (Declaration of the Ten Commandments, ch. x.).

When we come to question (xi.), we return to an inquiry with which Missionary Churches are chiefly concerned. Would that they could be said to be exclusively concerned with it! But this, unhappily, cannot be asserted, since in several Christian communities marriage with a deceased wife's sister has become civilly recognised as lawful. With regard to heading (1) of the question, Innocent III., in his already twice quoted letter to the Bishop of Tiberias, writes as follows :

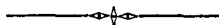
Utrum pagani uxores accipientes in secundo vel tertio vel ulteriori gradu sibi conjunctas, sic conjuncti debeant post conversionem suam insimul remanere vel ab invicem separari, edoceri per scriptum apostolicum postulasti. Super quo fraternitati tuæ taliter respondemus, quod, quum sacramentum conjugii apud fideles et infideles existat, quemadmodum ostendit Apostolus, dicens, "Si quis frater infidelem habet uxorem et hæc consentit habitare cum eo, non illam dimittat" et in præmissis gradibus a paganis quoad matrimonium licite sit contractum, qui constitutionibus canonicis non arctantur ("quid enim ad nos" secundum Apostolum eundem "de his quæ foris sunt, judicare") in favorem præsertim Christianæ religionis et fidei, a cujus perceptione per uxores, se deserit timentes, viri possunt facile revocari, fideles hujusmodi matrimonialiter copulati libere possunt et licite remanere conjuncti, quum per sacramentum baptismi non solvantur conjugia, sed crimina dimittantur.

This decision appears to be a sound one. When, however, we pass to heading (2), the case is very different. The Church would fail of her duty if she were to recognise as valid any such incestuous marriage contracted between persons, both or either of whom were Christians or were to abstain

from visiting with condign censure any of her members who committed the offence of entering into such a union.

An objection may be raised in some quarters that it is a harsh and unwarrantable proceeding to impose a strict marriage law on a new and imperfectly instructed Christian community formed out of and still dwelling in the midst of an atmosphere in which the laxest ideas on the conjugal relationship have prevailed for generations. Indulgence, it may be urged, should be shown towards the first generation of converts. Among those with whom Christianity has become hereditary, we shall have a right to expect more. I believe this to be altogether a mistake. Hardship in individual cases, no doubt, there will be. But it is a trite saying that "hard cases make bad law." We must legislate according to what is intrinsically right, and for the good of the community at large, without regard to the suffering which may be caused in isolated instances. If it were made to appear that the regulations worked real injustice in a given instance, the true remedy would be, not to alter the regulations, but to dispense with the application of them to that particular case. The binding and loosing power of the Church may be rightfully invoked for this purpose. In short, I believe that the true policy with reference to marriage among Christian converts is to lay down a high standard and strict general law, giving power at the same time to the Bishop, in consultation with leading clerical and lay members of the Church, to suspend the law in individual cases where its enforcement would clearly occasion extreme hardship, if not actually injustice, to both or one of the parties concerned, and where its suspension would not injure the Church at large by appearing to countenance laxity of practice or theory upon the subject of marriage.

PHILIP VERNON SMITH.



ART. IV.—THE EARLY LIFE OF OUR LORD.

IN our study of the life of Christ, as recorded by the Evangelists, we cannot but notice, as a peculiar feature, the absence of a detailed account of the time of His boyhood and of His manhood before He entered on His public ministry. We would naturally attach an interest to that period of His history; we would fain learn somewhat particularly of "the child Jesus," of the youth who "grew in favour with God and man," and of the maturity of the same Jesus while He dwelt in Nazareth; and yet, of the first thirty years of His