ART. XVII.—*An instance of Infant Marriage in the Diocese of Carlisle.* By MRS. HENRY WARE.

Communicated at Ambleside, Sept. 4th, 1889.

MY mind has been turned towards the subject of infant marriages by my acquaintance with Rukmabai, the Hindoo child-wife, and by the efforts which are now being made to bring about some modifications of the marriage laws and customs of India.

It is probably not generally known that infant marriages of a certain kind have been recognised in our own land within comparatively recent times. It seems certain that during the 16th and 17th centuries such marriages, or at all events betrothals, or contracts of a legal and permanent character, were not uncommon, and that there was a recognised way in which such contracts could be voided, if either party so wished, on arriving at the age of consent.

I am indebted to the Dean of Carlisle for the Canon law on the subject, which he has gathered from Lyndwood, as follows :—

> There can be no marriage without mutual consent. Therefore, infants, *i.e.*, children under 7 years of age may be espoused to each other, but such espousal is not binding, either for espousal, unless confirmed by the parties after 7 years of age; or for marriage, unless confirmed after the marriageable age, *i.e.*, 14 for a boy, 12 for a girl. At the age of 14 and 12 a contract of espousal may be cancelled; but this effect will remain that neither of the two can marry a blood relation of the other. Espoused children may be married when one or both are under the marriageable age, on occasion of necessity, *pro bono pacis*, *i.e.* it is explained for the union and reconciliation of persons or families, acquisition of wealth and friendship.

A paper read by J. P. Earwaker, Esq., during the meeting of the Archæological Institute at Chester, but not

not yet published, gave several interesting particulars on this subject; the writer called attention to the fact that information must be sought in the records of the Consistory Courts and not in the parish registers, inasmuch as there is generally no notice in the older church registers of the ages of parties recorded as having been married. I have not been able to obtain a sight of his paper, which was of great interest, and which I hope may be published in some form, but, so far as I can remember, he stated that young children were contracted in marriage and the form of service was gone through; they then returned to the care of their respective parents, and when the time came for fulfilling their engagement, if both consented, no further ceremony was necessary; but if one of the parties objected the matter was taken into the Consistory Court, and the Chancellor either ratified or annulled the contract. Mr. Earwaker quoted many extracts from the records of the Chester Consistory Court in proof of his statement, some of them very funny ones, such as that the bridegroom had never been a consenting party, that he had had to be enticed to the altar with promises of sweetmeats, and had never kissed his baby bride or given her any cakes or toys since. Many of these so-called marriages seem to have been annulled. I have searched the records of the Carlisle Consistory Court, beginning with the year 1606 down to 1684, but, unfortunately, the volumes between 1608 and 1663 are missing, (they were probably destroyed during the Commonwealth); this is specially disappointing as the only reference to a case of infant marriage occurs in the volume for 1608, in which the defendant was ordered to appear before the Court at its next sitting for the hearing of matrimonial causes, and it would have been interesting had it been possible, to follow the cause to its conclusion. The entry to which I refer is as follows:—

Kirkby

Kirkby Stephen.

Eisdem die et loco comparuit procter Mergera Dowthwait et allegavit quod fuit contracta in ejus impubertate cum quodam Thomas Ffawcett cum condicione sequenti Vizt. that if she should refuse to marrie with him when she came to lawfull yeares of consent it should be lawful for the said Ffawcett to take the forfeiture mensioned in the condicons or articles of the same, and if Ffawcett should refuse her then she to take ye like forfeite, et petiit indicat (?) ut solemnizetur cum dicto Ffawcett alledging that she was willing to have him to her husband according to ye said articles Et quia dictus vir non comparuit dominus (i.e. the Chancellor) decrevit diem citandi fore in proximo hoc in loco in causa matrimoniali.

As the parish registers at Kirkby Stephen do not commence so early I have not been able to find the entry of this marriage or contract.

In Bishop Nicolson's Miscellany Accounts of the Diocese of Carlisle (p. 108) referring to the Register at Threlkeld there is a passage which may possibly have a bearing on this subject. He says:—"Before we shut this Book, we must observe one extraordinary Custome of the place, to be proved by it. Formal Contracts of Marriage are herein Recorded; and Sureties enter'd for the payment of five Shillings to the poor, by the party that *draws back*." This custom may be connected with the contracts between children. It is improbable that so accurate a man as Bishop Nicolson should have made a complete mistake, but I am informed by the present Incumbent that there is nothing whatever to be found of this nature in the registers at Threlkeld, the entries of which date from 1572. (It has been suggested by Mr. Lees that the Bishop mistook some entries of the loan of the Poor's Stock, but it seems to me more probable that the Bishop made an error with regard to the parish in which he saw the Register to which he refers.)

There is a notice in the Chronicle of Lanercost which has an undoubted bearing on the subject of this paper. It runs as follows:—

A.D

A.D. 1313.

Eodem anno dominus Thomas de Multuna, dominus Gilleslandiæ, sexto kalendas Decembris [ ] obiit, unicam filiam heredem, nomine Margaretam, post se reliquit, quam Robertus de Clifford, filius Roberti de eadem, septimo suæ ætatis anno, apud Hoffe, *ipso lecto decubante*, desponsavit. Et vivente dicto Roberto, Ranulphus de Daker filius domini Willelmi de Daker, eundem Margaretam nupsit, quia jus habuit ad illam propter pactionem factam ante priores nuptias, inter Thomam de Multuna, patrem dictæ Margaretæ, et Willelmum de Daker.

The Dean of Carlisle thus renders the passage :—

"In the same year 1313 on Nov. 27 Lord Thomas of Multon, Lord of Gilsland died, leaving an only daughter, Margaret, his heiress, whom Robert of Clifford, son of Robert of Clifford betrothed at Hoffe, being in his 7th year, he himself lying in the bed, and though this Robert was alive, Ranulph of Dacre son of William of Dacre married this Margaret, for he had a right to her on account of a contract made before her first marriage (*i.e.*, betrothal) between Thomas of Multon father of the said Margaret and William of Dacre."

From this it would seem (see also Transactions of the Cumberland and Westmorland Society, vol. IV, p. 469), that the betrothal or marriage of Margaret to Robert de Clifford ("ipse lecto decubante" is an allusion to one of the ceremonies which accompanied the hand-fasting in these infant weddings) was void by reason of her "priores nuptias" with Ranulph de Dacre, and her elopement with him (at the age of seventeen) was justified.

A curious account of marriage and betrothal customs will be found in Brand's Popular Antiquities (vol. II, p. 54) but there is nothing bearing specially on infant marriage.

I cannot but feel that this essay on Infant Marriage is of a somewhat meagre kind; it is the result, however, of not a little searching and enquiry. It is not my fault that the harvest has been thin, and it may possibly

possibly suggest to persons in other dioceses to examine the records of the Consistory Courts for the purpose of obtaining more information and evidence. I can only wish them more abundant success than I have met with myself.

I began this paper by a reference to the Hindoo lady Rukmabai; in closing it I cannot refrain from suggesting that perhaps a partial cure for the miseries attendant upon infant marriage in India might be found in permitting persons contracted in infancy to obtain a release from their contract by sentence of a competent Court to which, as in England, application might be made by either party on reaching the age of consent.

APPENDIX.

The following letters from the Rev. T. Lees, F.S.A., and from Professor Clark, F.S.A., refer to the translation of the passage from the Lanercost Chronicle.—

Wreay, Decr. 9th, 1889.

Dear Ferguson—That passage from the Lanercost Chronicle is an old friend, and has long been a puzzle to me; but, at last, I think I see my way to its true meaning. This I take to be a true interpretation:—

In the same year (i.e. A.D. 1314) Lord Thomas de Multon, Lord of Gilsland, on the 6th day before the kalends of December [ ] died, he left behind him an only daughter as heir whose name was Margaret, whom Robert de Clifford, son of Robert of the same ilk, in the 7th year of her age, betrothed at Hoff, he himself lying on the outside of the bed. And during the life-time of the said Robert, Ranulph de Daker, son of Lord William de Daker, married the same Margaret, because he had a right to her on account of a compact made before her former nuptials, between Thomas de Multon, father of the said Margaret and William de Daker.

The man lying outside the bed of his betrothed, may have been one of the customs of the time. When Marie de Valois, Duchess Burgundy, in 1477, was married by proxy to the Archduke Maximilian, the Duke of Bavaria (Maximilian's substitute) slept with the princess after the custom of the times. Both were in complete dress, watched by four guards, and separated by a naked sword. Evidently Margaret's marriage with Robert de Clifford was never consummated; or she

she could not so easily have been wedded to William Dacre, without apparently any ecclesiastical proceedings in the way divorce or dispensation. THOMAS LEES.

" Remove the bridegroom," said Aladdin to the genie. . . . On Aladdin being left alone with the princess. . . . he then laid himself down beside her, putting a drawn scimitar between them.
ARABIAN NIGHTS.

Newnham House,
Cambridge, Dec. 13th, 1889.

My dear Ferguson—On the whole I think I agree with Lees, except that I render *suæ* of *his* age, which the other records require, and the Latin will bear; and I translate *ipso lecto decubante* " he himself lying *apart* from her in the bed."

Decubare is not a very common word, but the passage quoted in the Lexicons from Fabius Pictor (apud Aulum Gellium, x, 15), suits this passage. The Flamen Dialis never sleeps three continuous nights *away from* his proper bed " de eo lecto trinoctium continuum non decubat." I think, however, it must be here " away *from her*, *in* the bed." I do not think *decubare* ever means to lie *ill* in bed, tho' possibly *decumbere* may have once or twice borne that sense.

The most extraordinary piece of Latinity is the transitive *nupsit*, of which I can find no other instance, but for which I see no help.