

solemnisation of marriage is left exclusively to the Provincial Legislatures. When the Confederation Resolutions were under discussion, in the old Canadian Parliament, the language was not the same; there was no grant of power to the Local Legislatures in reference to the solemnisation of marriage. Some anxiety being felt in reference to this subject, enquiries were made of the Government, and the hon. the Minister of Public Works, then Solicitor-General, gave, on behalf of the Government, the following explanations:—

"The word 'Marriage' has been placed in the draft of the proposed Constitution, to invest the Federal Parliament with the right of declaring what marriages shall be held and deemed to be valid throughout the whole extent of the Confederacy, without, however, interfering in any particular with the doctrines or rights of the religious creeds to which the contracting parties may belong."

He proceeded to declare that the whole effect of the clause was to give power to decide that marriages contracted in any one Province, according to the laws of that Province, should be valid in the other Provinces, though their laws might be different, in case the parties came to reside there; and again he stated that when a marriage is contracted in any Province, contrary to its laws, though in conformity with the laws of another Province, it will not be considered valid. He subsequently assured the House that the resolutions contained only the principle of the Bill to be carried in the Imperial Parliament, which would be drawn up in accordance with the interpretation he had already put upon the clause. Mr. Dorion asked:

"Will a Local Legislature have the right of declaring a marriage between parties not professing the same religious belief invalid?"

Attorney-General Cartier replied:

"Has not the Legislature of Canada now the power of legislating in that matter, and yet has it ever thought of legislating in that way?"

Such was the explanation at that time given, from which it is obvious that a very limited power was intended to be conferred on this Parliament. The British North America Act passed, and subsequently, in the year 1869, with reference to a Bill of one of the Local Legislatures,

for conferring upon the Lieutenant-Governor of the Province the power to issue marriage licenses, in his report upon that Bill, the then Minister of Justice pointed out that two questions arose. The first question is not very material; as to the second he says:

"The second question as to where the power of legislation on the subject rests has excited much interest in Canada, and conflicting opinions exist with respect to it. The power given to the Local Legislatures to legislate on the solemnisation of marriage was, it is understood, inserted in the Act at the instance of the representatives of Lower Canada, who, as Roman Catholics, desired to guard against the passage of an Act legalising civil marriages without the intervention of a clergyman, and the performance of the religious rite. They therefore desired that the Legislature of each Province should deal with this portion of the law of marriage. The Act must, however, of course, be construed according to its terms, and not according to the assumed intention of its framers. The undersigned is of opinion that the right to legislate respecting the authority to marry, whether by publication of banns, by license, or by episcopal dispensation, is part of the general law of marriage, respecting which the Parliament of Canada has exclusive jurisdiction. The publication of banns, or the license, as the case may be, is no part of the solemnisation; it is merely the authority to solemnise. The solemnisation is not commenced by the issue of the license or the publication of the banns; all the English Marriage Acts treat the authority, and the solemnisation, under the authority, as quite different matters. Thus, it is provided, in Geo. IV. chap. 76, sections 9 and 19, that 'Whenever a marriage shall not be had within three months after publication of banns, or the granting of license, no minister shall proceed to the solemnisation of such marriage until a new license shall have been obtained, or a new publication of banns had,' and, by the 21st section, the solemnisation of marriages without due publication of banns, or license of marriage, is made a felony. In order to convict a person under this clause, it must be alleged and proved that the solemnisation was not only commenced, but completed, and, if the license or banns were a necessary portion of the solemnisation, the offence would never be completed without them. The subsequent Marriage Acts seem to draw the same distinction between the authority and the solemnisation. The undersigned is therefore of opinion that this reserved Act is beyond the jurisdiction of the Local Legislature, and should not receive the assent of Your Excellency. As the subject is one of the very greatest importance, affecting the validity of marriages, past and future, the undersigned would suggest that the colonial Minister be requested to submit the two questions above raised to the Law Officers of the Crown for their opinion."

That opinion was given, and it is reported, as follows:—