

statute on mining rights passed five or six years ago. But the very preamble of that act was to do away with tradition by the sale of mining rights. So it would be seen, on looking into the matter, that there was no conflict between those two portions of the work of the codifiers. If, however, there was anything dubious in the meaning of the clauses or principles proposed, the codifiers would have to go over the work again and correct every article that might be affected by any of these amendments, and everything of a conflicting nature could be amended. He would now come to another of the objections of the member for Hochelaga, that relating to the *peine comminatoire*. We had adopted the system, providing that the penal clauses of a contract should be considered a portion of the contract itself—a principle which we took from the existing French law. He had legal experience in this matter, and had found that people hardly ever looked on those penal clauses as merely nominal, and very frequently he had much difficulty in explaining that this was the case, and that the actual damage resulting from non-performance of contract would have to be established in order to receive damages. Consequently, the public could experience no surprise nor inconvenience in the adoption of this feature. In making the penal clauses a part of the contract we had only done what codifiers everywhere did on this subject. In regard to another of the objections urged by the hon. member for Hochelaga, it must be observed that it was an advantage of our law that a man had a right to give a lien upon his land in favor of his creditors. Well, if that mortgaged debtor wished to go beyond that, or to sell his property to his creditor, he might do it in the form of a *vente à réméré*. Well, the codifiers had applied to that part of the contract the same rule they had applied all through—that is to say, the consent of parties should be the rule everywhere. Then an objection was taken to the clause respecting wills and notarial deeds, and the relationship or otherwise of the witnesses in regard to both kinds.

Hon. Mr. DORION said his objection was that an alien could be a witness to a will as well as a notary.

Hon. Mr. CARTIER said that as respects other notarial deeds than wills, a notary could do the work with only one witness, instead of two. The codifiers had suggested this feature. As to the relationship of the notary, he (Mr. C.) would answer that exception.

Hon. Mr. DORION said he did not object that aliens should be witnesses to a deed or will, but merely pointed out that it was curious to see a rule applied in one case and not in another. If aliens could be witnesses to a will, they should be received as witness to an ordinary deed.

Hon. Mr. CARTIER said that as to the question of relationship raised in the Hon. gentleman's speech, the codifiers took the rule as it was.

Hon. Mr. DORION said the present law was taken from an ordinance of a very great age.

Hon. Mr. CARTIER observed that when parties making wills were in good health, they could easily procure plenty of wit-

nesses, or comply with the law on this subject, but if a man happened to be suddenly taken with sickness, in a hotel, and being desirous of making his will, had not time to select his witnesses, it mattered not whether the witness was an alien or not, he could answer the purpose. That was the principle upon which the codifiers suggested that an alien might be a witness to a will suddenly made; but this feature was not intended to apply to ordinary contracts in respect of which the circumstances were different. Before the committee he (Mr. C.) had gone the length of advocating that there should be no witnesses at all, being willing to rely on the good faith of the notary, but he did not expect to carry all his views and accepted the present proposition. The hon. member for Hochelaga in alluding to the anomalies of the Code, pointed out that of an *enrê* not being able to take a will. It was proposed at present, however, that this power should not be granted to any *enrê*s except those in the district of Gaspé, where there might be no notary.

Hon. Mr. DORION did not object to that.

Hon. Mr. CARTIER.—In this matter the codifiers were not to blame, having taken the Code Napoleon as it is. He would now notice the hon. gentleman's remarks on the law of entail. He did not agree with that gentleman in thinking it was wrong to make provision for the future family. If there was anything to encourage and induce a man to be sober and industrious and provident, it was the ability the law conferred upon him to provide for those of his offspring who might need assistance. The same degrees of entail adopted by the French Codification Commissioners on the accession of Louis XVIII. to the Throne had been adopted by our codifiers. He thought they had done wisely in the matter; because it was at their suggestion the Committee had adopted the French law and the Roman law in this particular, which was also the law of the land. The member for Hochelaga only found fault with the present law of dower in favor of the wife.

Hon. Mr. DORION.—The hon. gentleman does not understand me. I meant the legal dower.

Hon. Mr. CARTIER.—Well, it was the same thing. What would a dower be if it was not legal? Was the hon. member not aware that more than the half of the marrying community in Lower Canada make no arrangement of this kind at all, but merely trust in this matter to the law of the land. Well, if you ought to do away with the legal dower, you ought also to abolish the law that protected the woman and the minor, and those not in a position to make contracts for their own protection. [Hear, hear.] The codifiers had a good rule—namely, that when any property was subject to legal dower there ought to be a registration of such property; otherwise that right of dower in regard to a third party could not confer a title if not registered. If a man wanting a property, on going to the registrar found there was no claim of dower in connection with it, he could buy and obtain a good title. Abolishing the legal dower meant that every young person entering the married state