

Port Whitby Harbour Company.—(Mr. Kirkpatrick.)

Bill (No. 78) Respecting the President, Directors and Company of the Bank of New Brunswick.—(Mr. Burpee, St. John.)

MARRIAGE WITH A DECEASED WIFE'S SISTER LEGALISATION BILL.

[BILL 30]

(Mr. Girouard, Jacques Cartier.)

THIRD READING.

MR. GIROUARD (Jacques Cartier) :

It will not be out of interest at the present stage of the debate on this Bill, to review its history before this House and answer a few of the objections which have been made against it; and in doing so I intend to be as brief as the importance of the subject will permit. On the 16th February last I had the honour of introducing the following Bill :

"1. Marriage is permitted between a man and the sister of his deceased wife, or the widow of his deceased brother, provided there be no impediment by reason of affinity between them, according to the rules and customs of the church, congregation, priest, minister or officer celebrating such marriage.

"2. All such marriages thus contracted in the past are hereby declared valid, cases (if any) pending in Courts of Justice alone excepted."

It was objected that under this enactment, the members of the Church of England would be in a worse position than under the existing laws, which, at least in Ontario and the Maritime Provinces, declare marriage contracted between brothers and sisters-in-law only voidable during the lifetime of the parties. It was contended, and it must be confessed not without reason, that the marriage in question, being contrary to the Confession of Faith of that Church, would be absolutely prohibited under that Bill. At the request, therefore, of some Protestant members, and more particularly of those belonging to the Church of England, the Bill was withdrawn, with the intention of introducing in its stead another Bill where no reservation as to Church discipline or regulations would be made, except in favour of the Catholic Church, and the Bill which was introduced subsequently, to wit, on the 27th of February, read as follows :—

"1. Marriage between a man and the sister of his deceased wife, or the widow of his deceased brother, shall be legal and valid. Provided always, that if in any church or religious body, whose ministers are authorised to

celebrate marriages, any previous dispensation, by reason of such affinity between the parties, be required to give validity to such marriage, the said dispensation shall be first obtained according to the rules and customs of the said church or religious body. Provided also, that it shall not be compulsory for any officiating minister to celebrate such marriage.

"2. All such marriages heretofore contracted as aforesaid, are hereby declared valid, cases (if any) pending in Courts of Justice alone excepted."

During the debate, both the hon. members for West Durham (Mr. Blake), and for Argenteuil (Mr. Abbott), expressed it to be their clear opinion that this Federal Parliament had no power to pass the proviso as to any dispensation to be obtained according to the rules of the Catholic Church. These learned jurists stated that the subject matter belongs to the solemnization of marriage, and consequently comes within the exclusive jurisdiction of Local Legislatures. It must be borne in mind that the Federal Parliament and Provincial Legislatures have not a concurrent jurisdiction over the subject of marriage, or in fact any other subject; the jurisdiction of the one is exclusive of the other, and what can be done by the one cannot be done by the other. The British North America Act of 1867, declares at section 91, par. 26, "That the jurisdiction of the Parliament of Canada shall extend to the following classes of subjects," that is to say: "Marriage and Divorce," and at section 92, par. 12, that the Provincial Legislature "may exclusively make laws in relation to matters coming within the classes of subjects" following, and among others "the solemnization of marriage in the Province." Under these enactments of our Canadian Constitution, it is plain, it seems to me, that this Parliament has alone jurisdiction—of course I am speaking from a legal and not ecclesiastical point of view—over the whole subject of marriage, solemnization of marriage only being excepted, and that Local Legislatures have no jurisdiction whatever beyond anything not pertaining to the solemnization of marriage. This Parliament alone, therefore, can declare who shall or who shall not contract marriage in the eyes of the civil law, and for this reason there cannot be any doubt, and there is but one opinion in this House, that the Parliament of Canada and not the Provincial Legislatures can