

MARRIAGE WITH A DECEASED WIFE'S SISTER.

DEBATES AND PROCEEDINGS IN THE
HOUSE OF COMMONS

—ON—

MR. GIROUARD'S BILL.

(From the Official Report of the Debates.)

February 27th, 1880

Order for second reading of Bill (No. 30) To legalise marriage with a sister of a deceased wife read.

MR. GIROUARD (Jacques Cartier): Some nine or ten months ago, a lady came to me, and stated that she had married the husband of her deceased sister, according to the rites of the Catholic Church. There were children from both marriages. The father, although having no property of his own, was in possession of a considerable estate, which had been entailed by his father in favour of his legitimate children. The lady wished to know whether the children of the second marriage were excluded from this succession. Her marriage being absolutely null under our Civil Code, you may, Mr. Speaker, easily imagine the effect which the communication of this fact produced on this lady, who had committed no wrong before her God and her friends, but who was, however, guilty before the law of the land. I then conceived the idea of presenting to this House a Bill, to come to the relief of that class of people, situated as this lady was. The last Session having been a long and arduous one, and being far advanced, I thought it would be better to defer the consideration of such an important subject till the present Session, and hence the present Bill. This Bill, although brought for the first time before this Parliament, is not new to the Canadian public. A Bill to the same effect received its first reading in 1860, before the Legislative Council of the late Province of Canada. Eight times it received the sanction of the popular branch of the British Parliament, and eight

times was rejected by its Upper House. It has been passed by several of the Colonial Legislatures; it forms part of the laws of the greatest portion not only of America, but also of the Continent of Europe. Its subject matter is of the greatest social importance, marriage with the sister of a deceased wife being almost of daily occurrence among all classes of our community, irrespective of creed or nationality. Therefore, this grave question should be considered, not only apart from all party motives, but also from all prejudices and ill-feeling, religious or otherwise; it should be regarded almost as a national question affecting the mass of the people of this Dominion. Before the Reformation, as at present, in the Catholic Church, the validity of the marriage with a deceased wife's sister depended upon the dispensation of the ecclesiastical authorities. In 1533 it was forbidden by Henry VIII. However, until the year 1835, it was not void *de jure*, but merely voidable by a legal process taken before the Ecclesiastical Court. In 1835, Lord Lyndhurst's Act made past marriages of affinity valid, but a prohibitory clause, declaring all similar marriages in the future "void," was consented to by the Commons, with the understanding that this limitation should be removed in the ensuing Session, but it is still in force. In 1841, the first effort was made in the Lords by Lord Wharcliffe to repeal the prohibitory clause, but his Bill was lost without a division. In 1842, the question was taken up by the Commons, the Bill being, however, lost by 123 to 100. Five years later, in 1847, a Royal Commission was appointed to examine the