

PARLIAMENTARY DEBATES

UPON THE

CIVIL CODE OF LOWER CANADA.

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(18th August, 1865.)

CIVIL CODE OF LOWER CANADA.

Hon. Mr. CARTIER moved that the House go into Committee on the bill respecting the Civil Code of Lower Canada.

Hon. Mr. DORION asked the Hon. Attorney-General East how he intended to proceed in this matter.

Hon. Mr. CARTIER said he supposed it was as well that the bill should be allowed to go through committee. Then some day could be fixed for receiving the report of the committee, and upon that day we could have the discussion upon any points upon which hon. gentlemen opposite were desirous of joining issue.

Hon. Mr. DORION said he was willing to accept the proposition.

After some further discussion—

Hon. Mr. CARTIER said that Friday next could be fixed for receiving the report the Committee of the Whole. He would know a day or two before if the Hon. Finance Minister intended going on with his financial statement, and if he does, we can fix some other day for the Code. Should, however, any contingency arise to prevent that hon. gentleman [Mr. Galt] from proceeding as he intended, then we could go on with the Code.

Hon. Mr. DORION said he supposed it was to be understood that if the hon. finance minister made his statement on Friday, the Code would not be discussed on that day.

Hon. Mr. CARTIER was understood to reply in the negative.

The motion was then carried.

The house then went into Committee, Mr. TASCHIEREAU in the Chair.

The bill was reported from Committee without discussion.

(25th August, 1865.)

Hon. Mr. CARTIER moved that the Report of the Committee of the Whole on the Act respecting the Civil Code of Lower Canada, and the question of concurrence on the resolutions reported from the said Committee be taken into consideration.

Hon. Mr. DORION said this was one of the most important pieces of legislation that had come before the country since the Union. It was evident that, after the Commission having been in session six years, from the appointment of a Secretary to sit six years more. He objected to the hurry with which the code had been passed last session. The house had only gone through the amendments suggested by the Codification Commissioners themselves. The Committee of the House had never read the code, but only the suggested amendments to the present law. One of the principal objections he had to the code was that the codifiers were doing away

with the necessity of tradition altogether. This would cause endless difficulty and litigation, inasmuch as when a creditor seized property, he would find that a sale had taken place two or three years before, although the property was still in the possession of the vendor. Then we found a different provision for other real estate than mining lands. In one kind of real estate we found that registration within 60 days after purchase would have the effect of preserving the rights of the purchaser; in the case of sales of other kinds of real estate it was provided that registration within 30 days would preserve the purchaser's rights. Why should there be any difference in this matter? The hon. gentleman went on to complain that under the penal clause, or clause relating to stipulations for damages arising from the non-performance of a contract, the person failing to carry out the agreement might be absolutely ruined by being made to pay, not the actual damage, which he had caused, but some large sum which had been stipulated as the nominal damage. He would have much preferred the old rule of our law on that subject. He also found objection to the change respecting the faculty *de réméré*. It was, he thought, only right that there should be a small delay granted to the vendor in such cases. Under the change now proposed, the moment the delay stipulated for re-purchase had expired, there was no further delay whatever. It was wrong, he thought, to have the provision which had been made respecting the signature of authentic acts, inasmuch as it contained a singular contradiction. In the article 98, relative to wills, he found another singular and contradictory provision to the effect that notaries could not be related to the party, but the witnesses might. He found, however, that in an ordinary deed the notary could be related to the parties, and the witnesses could not, to the degree of second cousins even. The hon. gentleman proceeded to a minute condemnatory criticism of other provisions about witnesses to wills. He found also that the codifiers had come to the conclusion that there was no limitation to the right of entail. Another objection to the code was keeping in it the provisions as to legal and customary dower. There was no good ground why this clause should have been retained. In registry another unwise alteration had been made, rendering it necessary to register deeds for the transfer of real estate, at full length, except in the case of licitation and division between co-heirs and co-proprietors. This change would entail an expense of \$20, in payment of the Registrar, instead of only \$1 or \$2, which was all that should have been rendered necessary. The removal of the restrictions which formerly protected and ensured to the children by a first wife