

sible, be dealt with by one Bill, and that they should not be mixed up as they are in this Bill with heterogeneous matter. Though this Bill applies to the Criminal Law generally, still, as the hon. gentleman has pointed out, the eighth clause has nothing to do with procedure or evidence, but creates a new offence. I do not think, however, that it would be well to strike it out at present, from the fact I hope by next Session there will be a consolidation of the Criminal Law, which will include, of course, the proper sub-division of the various branches of the Criminal Law under appropriate heads; otherwise, I should object to this clause being put in the Bill, as it might better be made a separate Bill.

Mr. CAMERON (Huron). I may state that on this subject there was a difference of opinion in the Committee, and the ground on which the clause in question was inserted in the Bill was the understanding that there would shortly be a consolidation of the Criminal Law.

Mr. BOSSÉ. This Bill, although apparently inoffensive, is really an exceedingly comprehensive measure. It touches the very root and foundation of our laws. The first clause contains a distinction which I for one have not been able to make. I am at a loss to understand why a man would be a competent witness for himself upon his indictment for a misdemeanor, and not be competent for himself upon an indictment for felony. Where the line should be drawn I am at a loss to conceive. Is it thought that his slight interest at stake in an indictment for a misdemeanor would not induce him to perjure himself, whereas his larger interest at stake in an indictment for a felony might induce him to do so? If we admit that distinction, we must see that the clause is a bad one, because it acknowledges the principle that a man might or might not perjure himself, according to the nature of the offence with which he is charged, and according to the gravity of the condemnation to which he might be subjected. In other words, we might say that what might be believed coming from the accused on one occasion, might not be believed coming from him on another occasion, and therefore his evidence would very nearly go for naught. But that clause contains another provision which, I believe, would be subversive of all the rules of morality. It is here provided that the wife can be a witness for her husband, and the husband for the wife. Now, we all know that, as a rule, accusations of misdemeanors fall upon persons belonging to the laboring class. In most cases a conviction for such an offence means poverty for the accused. The wife, standing in the witness box to be heard as a witness for her husband, knows very well that, if a conviction follows, as a result of that conviction some weeks, perhaps some months, of imprisonment will be the lot of her husband, and she sees poverty and starvation staring her in the face. She will, therefore, be placed between her love for her husband, and added to that, poverty and starvation for both herself and her children, on the one hand, and her oath on the other. What will be the result? Does anybody believe that the wife will fairly state the facts with her knowledge with these three evils—to her husband, to herself and to her children—staring her in the face? I say that the evidence of a person placed in such depressing circumstances could not be relied upon, and, in order to obtain it we have the spectacle of that woman placed in that position, contrary to public morals and public decency. The evil is more than that, an acquittal might follow as the result of the perjury of the wife, or a conviction might follow as the result of her telling the truth. In the latter case, what would be the feelings of that man on regaining his liberty and returning to his home. The result of his wife's conduct would be for him ignominy and shame, and rest, peace and love would be destroyed in the household. But if we look at this clause, we shall find it contradictory in its views. On the other hand,

it says that the wife may give evidence for the husband, or the husband for the wife, but that they cannot give evidence against each other; then we read:

"But every such witness called and giving evidence on behalf of the accused shall be liable to be cross-examined like any other witness on any matter though not arising out of his examination-in-chief: Provided, that so far as the cross-examination relates to the credit of the accused, the Justice or Justices, or the court, may limit such cross-examinations to such extent as it thinks proper, although the proposed cross-examination might be permissible in the case of any other witness."

What would the evidence in cross-examination be but evidence against the accused? What would be the duty of the Judge under such circumstances? It is easy to see that this portion of the clause could not be put into effect, and this fact shows how impossible it is, with any propriety, to allow a husband or wife to give evidence for the other. Objectionable as this clause is, there are other clauses in the Bill which appears to me to be still more objectionable. I call attention to clauses four and five. I may as well state, at the outset, that I believe them to be, in some respects, unconstitutional. It has been ruled that, in all matters over which this Parliament has jurisdiction, it has power to legislate on questions of proof; but I do not think that we can treat questions of proof as principal matter, and make laws as we do here, and I take it that these clauses are *ultra vires*. You will also find that articles 255, 256 and 257 of the Quebec Code of Procedure contains special provisions which would be entirely done away with if this law were adopted. I take it also that this section five is useless, because all the ground covered by it is covered by the general Common Law as well as the Statutory Law of the Dominion. In the twentieth volume of the Upper Canada Queen's Bench Reports, I find reported on page 95, the case of the Queen vs. Wah Pah Mag, in which I was told that, without the necessity of any other law, the laws now in force admit of the oath of an Indian being taken in the form prescribed by whatever religion he professes, or by his own conscience, if he believes in God, without having recourse to any particular form of oath. These two sections, therefore, would interfere with our special law in the Province of Quebec, and would be, as far as section five is concerned, useless in the Province of Ontario. Even concurring in the merits of the two clauses, I consider them subversive of law, subversive of respect for the Constitution and respect for the deity. Everywhere, and up to very lately in England, it has been found that whenever men had to decide questions connected with money, honor, or life, it was impossible to leave the decision of those questions embarrassed or biased by predictions, or by the love, hatred, and all the passions of man. It was found that a greater and higher control was necessary, that man, as man, without referring to the Almighty, was too feeble a creature to be trusted in cases where his good or evil passions were brought into play, and something more than his mere affirmation was required in questions of honor, life, or death. At all times, all nations have had recourse to the same guarantee whenever any charge, or duty, or public office of any kind had to be entered upon by any man. Everywhere the oath was administered in order to secure, as much as possible, the honesty and purity of the office. We must bear in mind that the Bill, as it is brought in, may induce us into error. The clause of which I am speaking, clause four, does not refer to particular forms of oath, but goes to the negation of the oath. Except of late years, that negation, never entered into the mind of legislators. In some countries one form was adopted, in others, other forms, according to creed, manners, customs; and though some of those forms might appear ridiculous to us they were far from being so among those who used them. For instance, a Chinaman would take an oath by breaking a saucer, and saying he wishes his soul would be broken in the same way if he should speak