Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- [x] Coloured covers/ Couverture de couleur
- [ ] Covers damaged/ Couverture endommagée
- [ ] Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- [ ] Cover title missing/ Le titre de couverture manque
- [ ] Coloured maps/ Cartes géographiques en couleur
- [ ] Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- [ ] Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- [ ] Bound with other material/ Relié avec d'autres documents
- [ ] Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure
- [ ] Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.

- [ ] Coloured pages/ Pages de couleur
- [ ] Pages damaged/ Pages endommagées
- [x] Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- [x] Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- [ ] Pages detached/ Pages détachées
- [x] Showthrough/ Transparence
- [ ] Quality of print varies/ Qualité inégale de l'impression
- [ ] Includes supplementary material/ Comprend du matériel supplémentaire
- [ ] Only edition available/ Seule édition disponible
- [ ] Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

- [x] Additional comments:/ Commentaires supplémentaires:

Pagination as follows : [1] - 55, [1] - 40 p.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
						✓					

MARRIAGE WITH A DECEASED WIFE'S SISTER.

13

THE DEBATES

—IN THE—

Senate and House of Commons

OF CANADA,

(During the Session of 1880.)

ON THE BILL INTRODUCED BY

MR. GIROUARD, M.P., Q.C.,

To Legalize Marriage with a Deceased Wife's Sister.

(From the Official Report of the Debates.)

Ottawa:

MAY, 1880.

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 Wharncliffe 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

Marriage Laws, and the result was the bringing in of a Bill in the Commons by Mr. Stuart Wortley. The second reading was carried on the 20th June, 1849, by 177 to 143, but the Bill did not reach the third reading. In 1850, Mr. Stuart Wortley's Bill was again brought before the Commons and passed by 144 to 134. In 1851, the question was raised in the Lords by Lord St. Germans, but his Bill was lost by 50 to 16. In 1855, the same Bill was presented to the Commons, where it reached the second reading by 164 to 157; but in the following year it was again rejected by the Lords, 43 to 19. In 1858, Lord Bury introduced the Bill before the Commons, where it was passed by 100 to 70, but the Lords rejected it, 46 to 22. In 1859, the same result was obtained. During the years 1861, 1862, 1866 and 1869, the Commons sided with the Lords, and in every instance rejected the Bill. Public opinion, however, did not support the action of the Parliament. Petitions from the people, boroughs and corporations poured in, and finally, in 1870, Mr. Chambers's Bill, which had been withdrawn in 1869, was carried unopposed, and in Committee was adopted by 184 to 114. The Lords rejected it, 77 to 73. In 1872 and 1873, the same course was followed with the same result. But in 1875, Sir T. Chambers's Bill received a check in the Commons. The second reading was negatived by 171 to 142. Finally, in 1879, the Bill was again introduced in the Lords by His Royal Highness the Prince of Wales, and was rejected by 101 to 81. The laws in England, therefore, stand as they were laid down by William IV in 1835, the marriage with the sister of a deceased wife being not only voidable, but void, and such is the law in all the British Colonies settled since that time. I believe Manitoba and British Columbia are among these. The Statutes of Henry VIII which declares such marriages only voidable, applied to the Colonies settled before, as the Provinces of Ontario, New Brunswick, Nova Scotia, Prince Edward Island, etc.

"It cannot be doubted" said Vice-Chancellor Esten in the Ontario Case of Hodgins vs. McNeil, "that the marriage in question in this case was unlawful, and void at the time of its celebration, and could have been annulled by the sentence of the Ecclesiastical Court at any time during the lifetime of both parties."

We were told last Session during the debate on the Campbell Relief Bill that no Ecclesiastical Court exists in Ontario. However, this would only involve a difficulty of procedure, which can be solved by an Ontario attorney, and it remains certain that under the laws of Ontario the validity of the marriage with the sister of a deceased wife may be questioned and set aside during the lifetime of the parties; and it may be a doubtful point, not to say more, whether in British Columbia and Manitoba such validity may not be questioned even after death. In the Province of Quebec, until the promulgation of the Civil Code, in 1866, these marriages were tolerated, and among Catholics they were altogether left to the discretion of the Church, which, as in England before the Reformation, grants dispensation from the impediment of affinity. But article 125 of the Code says:

"In the collateral line, marriage is prohibited between brother and sister, legitimate or natural, and between those connected in the same degree by alliance, whether they are legitimate or natural."

It is not, therefore, surprising that the question under consideration should have attracted public attention, as well in the Colonies as in the Mother Country. South Australia, Victoria, Tasmania, New South Wales, Queensland, and Western Australia have passed Acts legalising these marriages. A Bill of the same nature has passed the Lower House of New Zealand, and twice that of Natal. At the Cape of Good Hope such marriages are valid if celebrated under dispensation from the Governor. When the Bill was moved in the House of Lords last year by His Royal Highness the Prince of Wales, the progress it had made was reviewed. One of its ablest advocates, Lord Houghton, said:

"At home the question has made great progress, especially in Scotland and Ireland. I remember the time when only three representatives from Scotland could be counted in support of the Bill, but now you have the important petitions from the Convention of Royal Burghs, representing sixty municipalities, which I present to-night, as well as many representative petitions from other municipalities not included in the Convention. The Magistrates and Town Council of Edinburgh recently agreed by a majority of 24 to 12 to petition in support of the

measure, and the United Presbyterian Church have, through their Kirk Sessions and Presbyteries, arrived at the conclusion that marriages of the nature with which this Bill deals, ought not to be a bar to Church membership. As to Ireland, I may state that the corporation of Dublin have five times sent petitions to this House, and that forty other corporations in Ireland have petitioned in the same sense. I may also mention that the late respected Cardinal Cullen authorised me to say that he had no difficulty in acceding privately to the opinion expressed by Cardinal Wiseman and other dignitaries of that Church, although he declined to sign any petition because of the difference of views existing among his clergy. In England, the most important corporations, that of the city of London being at the head of them, have repeated their adhesions, and this evening the petitions presented by His Royal Highness the Prince of Wales, and by the Prime Minister, as well as that by myself from three Bishops, and upwards of two hundred Roman Catholic clergy, including the superiors of the chief religious orders, confirm our opinion.

"It should not be forgotten that all the Nonconformist bodies, without the exception of a single sect, are in favour of the Bill, and what is the immense proportion they bear in the Christian community of this country.

"And now, my Lords," continued Lord Houghton, "I pray you to give a second reading to this Bill. If you do so, you will relieve thousands of your fellow-citizens, honest men and honest women, from a deep sense of partial legislation and cruel injustice; if you reject this Bill, you will force on them the conviction that they might, like yourselves, enjoy the great happiness of family life with those they love best, without discomfort to themselves or dishonour to their offspring, were it not for the intolerance of the Church of England, and the social prejudices of the House of Lords."

I do not intend to consider the religious aspect of the question. It cannot be denied, however, that the law as it stands at present hurts the conscience of the majority of the people of this Dominion, whose religion and faith do not forbid them to marry the sister of a deceased wife. Again, it is equally certain that a large number of spiritual peers of the Church of England have declared their conviction of the spiritual lawfulness of such marriages. More than 400 of the metropolitan clergy have petitioned the British Parliament for their legalisation. I hold a long list of most eminent Protestant divines, and among them such names as Dr. Whately, Dr. Cumming, Canon Dale, Dr. Dodd, Dr. Eadie, George Gilfillan, Dr. Norman McLeod, Dr. Chalmers, Dr. Hook, Dr. Musgrave, Dr. Fair, who are always high authorities on religious questions, from a Protestant point of view, and who strongly advocate the passing of the Bill so often rejected by the House of Lords. However, I cannot shut my eyes to the persistent, and almost systematic opposition of the majority of the prelates of the Episcopal Church. I cannot either ignore the restrictions imposed by the Church of Rome, and the Bill I have the honour to submit to the consideration of the House, is so framed as to meet the views of all, and respect the prejudices, scruples, and sentiments of everyone. In a mixed community like ours, it is important that the conscience of no one should be disturbed or hurt. In the preparation of the Bill, I have been guided to a great extent by the remarks made by Mr. Gladstone, in 1869, when Mr. Chambers's Bill was under consideration. This eminent statesman said:

"Some twelve or fourteen years ago, I formed the opinion that the fairest course would be to legalise the marriage contracts in question, and legitimise their issue, leaving to each religious community the question of attaching to such marriages a religious character."

This religious character will be kept by making such marriages dependent upon the regulations of the Church celebrating the marriage. My bill reads 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."

The Bill has no reference to the celebration of the marriage. We all know that under the Constitutional Act that subject is left to Provincial Legislatures exclusively. You will permit me to close these remarks, more lengthy than I anticipated, but not too long if we consider the importance of the subject, by making a few quotations. The Royal Commissioners, appointed June 28th, 1847, to enquire into the state of the law relating to marriages of affinity say:

"Some persons contend that these marriages are forbidden expressly, or inferentially, by Scripture. If this opinion be admitted *cadit quæstio*. But it does not appear from the evidence that this opin on s generally entertained. * * * We do not find that the persons who contract these marriages, and the relations and friends approve them, have a less strong sense than others of religious and moral obligation, or are marked by laxity of conduct. These marriages will take place when a concurrence of circumstances gives rise to mutual attachment; they are not dependent on legislation.'

The report is signed by the Bishop of Lichfield, Mr. Stewart Wortley, D. Lashington, Mr. Blake, Mr. Justice Williams and Lord Advocate Rutherford. Lord Palmerston says:

"It seems to me to be established and admitted, that the moral feeling of the community at large is not with this law; that the law, in fact, is not obeyed, and that a great number of persons, not considering themselves to commit any moral offence, do contract marriages which the law prohibits."

Earl Russell says:

"I must say that I have satisfied myself that there is not any religious prohibition of these marriages"

Mr. John Bright, during the debate on Mr. Chambers's Bill, in 1869, said:

"Apart from the consideration of the freedom of the man and woman who propose to marry, this matter is of the greatest importance to the motherless children who are left, and it is notorious beyond dispute, that there have numbers of cases—and there might have been multitudes more if this law had not existed—where a dying mother has hoped that her sister might become, in a nearer sense than as their aunt, the protector and friend of the children whom she was about to leave behind her. Is it not a common thing—I know it is cruel and brutal—to represent in stories and on the stage that step-mothers are not kind to the children they come to take care of. I believe that in the vast majority of cases no statement can be more slanderous than that; but if there be anything in it, surely the woman who comes as an aunt to take charge of the household, and take those children to her bosom, may be free from any charge of the kind, and the husband may look to her with the utmost confidence to discharge the offices of a parent to those who have been bereft of their mother.

"I know men, I know women, married in violation of the existing law, who are looking forward to the result of this debate with an interest which it is utterly impossible that all the debates of this Session can exceed, or even approach, on a question so grave to them, and by your own showing admitting of so much doubt. I think I may entreat this House to give, by an emphatic vote, their sanction to this principle—for it is all I ask—that the common liberty of men and women in this country, in the chief concern of their lives, shall not be interfered with by a law of Parliament which has no foundation in nature, and which, while pretending to sanction from revelation, is, in fact, contrary to its dictates."

I move that the Bill be read the second time.

MR. CAMERON (North Victoria): In seconding the motion, I desire to say a few words in support of the principle of the Bill. There may be matters of detail connected with its phraseology which can better be disposed of elsewhere. But I presume that what we shall have to determine at present is whether the principle of the Bill ought to be favoured by Parliament. I take it for granted that, where a restriction upon marriage or any other right is sought to be maintained the onus of proving a foundation for that restriction rests upon those who are in favour of it. Now, upon what ground is a restriction upon marriage justified? There are two classes of arguments advanced against the Bill—one the religious, and the other the social. The religious argument originally rested upon what is now well settled on indisputable authority to be an entire misconstruction and misreading of a passage in the Book of Leviticus. That, no doubt, originally formed the foundation upon which the restriction was inserted in the Table of Consanguinity in the Prayer-book of the Church of England. But it is well settled now that that passage, instead of being a prohibition, is no authority, no justification for the restriction. In support of this position, I do not know that it is necessary to do more than refer to the authority of two or three most eminent Hebrew scholars of modern times. The first I shall quote, is Dr. Alexander McCaul, formerly Pofessor of Hebrew in King's College, London, under whom I had the honour of being a student, and who was recognised in his time as the very highest authority on the Jewish language and the construction of the Bible in Hebrew, of any person except a Jew. He was a brother of Dr. McCaul, of Toronto. Dr. McCaul, of King's College, said:

"Having again carefully examined the question, and consulted some of the highest authorities in Hebrew literature, as to the meaning of the Scripture passages, I am confirmed in the opinion formerly expressed—1st. That marriage with

a deceased wife's sister is not only not prohibited, 'either expressly or by implication,' but that, according to Leviticus xviii. 18 (concerning the translation of which there is not the least uncertainty), such marriage is plainly allowed. 2ndly. That this has been the opinion of the Jewish people, from the days of the Septuagint translators, nearly three hundred years before the Christian era, to the present time, as is testified by their greatest authorities, as Onkelos, probably contemporary with our Lord, Rashi, Maimonides, &c.; and, in our own time, those distinguished scholars, Zunz Furst, Arnheim, Sachs, &c. This conclusion is much strengthened by the fact that in the New Testament there is nothing against it. Our Lord, who strongly condemned the Jews, where their tradition or practice was opposed to the law of God, as in the matter of divorce, has left no trace of disapproval of marriages of this kind. Neither has St. Paul, who, being brought up at the feet of Gamaliel, was intimately acquainted with the laws and practices of his brethren."

It must be admitted, that is very high authority in favour of the position that marriages of this kind are not prohibited by the language of the Old Testament, and that the passage in Leviticus has been misinterpreted. I would also refer, in support of that, to the opinion of Dr. Adler, Chief Rabbi of the Jews, a very eminent Hebrew scholar, who, speaking of marriages of this kind, says:

"It is not only not considered as prohibited, but it is distinctly understood to be permitted, and on this point neither the Divine law, nor the Rabbis, nor historical Judaism, leave room for the least doubt;" and "according to Rabbinical authorities, such marriage is considered proper and even laudable; and where young children are left by the deceased wife, such marriage is allowed to take place within a shorter period from the wife's death than would otherwise be permitted."

Another authority I would refer to, is Professor Max Muller, a distinguished Oriental scholar, who said it was a puzzle to him, how any critic could have supposed the passage in question to prohibit marriage with a deceased wife's sister. I think, therefore, Sir, that we may fairly assume that it is not prohibited by the Old Testament Scriptures, and that the whole prohibition to it is contained in in the Prayer-book of the Church of England, or founded upon a misconception that prevailed at the time the Prayer-book was written, in regard to the proper interpretation of that passage. But there is even the very highest authority amongst the Bishops of the Church of England in favour of that same position which I have advanced. No less than twenty-six Bishops of the Church of England, including two Archbishops, have expressly declared that in their opinion marriages of this kind are not prohibited by Scripture. I think, therefore, that it would be idle to further argue the question that there is not any Scriptural prohibition against such marriages. If, then, there is no Scriptural probibition, upon what other grounds can objection possibly be raised? The only other argument that I have heard of as being advanced against it is that there is some social reason why marriages of this kind are not to be favoured. When the opponents of this Bill are compelled to fall back upon social reasons of that kind, they must be of an overwhelming character in order to be entitled to any weight. They must not be reasons as to which there is a strong difference of opinion. When we remember the numerous authorities in favour of the abolition of this restriction in England; when we find on the roll of names men distinguished for their high sense of morality, and their high position in public opinion, we may fairly assume that there is not that strong social reason against it which ought to sustain us in retaining a prohibition or restriction of this kind. My hon. friend who has moved the second reading of this Bill has dissomewhat the question of its social expediency. It would be idle perhaps, at this period, after the discussion has proceeded in England for thirty or forty years, to review the arguments upon that point. I am content to rest the case in favour of this Bill on the common sense of the members of this House, who, I am quite sure, in their own experience of life, in their knowledge of human affairs, will not come to the conclusion that there are those overwhelming social reasons against marriages of this kind which ought to justify them in maintaining the restriction which is not founded upon Scripture authority. My hon. friend who has moved this Bill has referred to the state of the law in this country upon it. We have only had one case fore the Courts of Ontario, as far as I am aware, in which the subject has been considered. It was the case of Hodgins *vs.* McNeil, decided by Vice-Chancellor Esten, in the year 1863, and shows the position of the law as it stood, and still stands, in Ontario. In that case it was decided that

the Act of Lord Lyndhurst did not apply to the Colonies, and that, consequently, marriages of this kind were only voidable, and not void, and, unless rendered void during lifetime, the children were legitimate. Inasmuch as the only tribunal by which they could be voided was an Ecclesiastical Court, and as we have no Ecclesiastical Court in Ontario, after death such marriages were lawful and their issue legitimate. Still, that is not the proper position in which the matter, I submit, ought to be placed. If they are only voidable, if there is no Scriptural or moral law against them, I submit the prohibition which rests on no other authority than the Prayer-book of the Church of England ought to be removed, and marriages of this kind ought to be legalised. I understand that objections will be taken by some hon. members in this House to the terms of the Bill, inasmuch as it contains a clause referring to the necessity of obtaining a dispensation in any church in which a dispensation is necessary to the validity of such a marriage. If, by the rules of any particular Church, marriages of any particular kind require a dispensation in order to make them valid according to the laws of the Church, I confess I see no reason why we should interfere and prevent that state of facts continuing. I understand that some objection will be taken to the form of the Bill on the ground that there is, in fact, only one Church in which a dispensation for marriage is known and practised: namely, the Roman Catholic Church, and that it will be placing Roman Catholics in a different position to what the rest of the community are in, and making their marriages subject to the will of higher authorities. I do not know that there is any reason why we should interfere, in any way, with the particular religious or ecclesiastical regulations of the Roman Catholic Church in reference to the question of marriages. Protestant as I am, I confess I have no fear of any harm resulting from the passage of the Bill in its present form. But, inasmuch as I believe my hon. friend who has introduced the Bill intends to move that it be referred to a Select Committee, in order that its provisions may be deliberately considered and made acceptable to the various religious communities in the Dominion, and to the various Provinces and their different marriage laws, any matter of that kind is, I think, a matter of detail, which can more properly be determined upon in a Select Committee than it can be in the House. I take it that we have at present to decide whether the principle of the Bill is one that ought to be accepted or not. In voting in favour of the second reading, we determine nothing more than the principle of the Bill; unless there is something in the Bill which is manifestly wrong, and then it should be rejected *in toto*. I have, therefore, much pleasure in seconding the motion of my hon. friend from Jacques Cartier (Mr. Girouard), for the second reading of this Bill, and I trust that, if any objection of the kind I have referred to is raised, it will be disposed of elsewhere, and that this House will follow the example set by the House of Commons of England, in seven or eight different divisions, which has by large majorities, usually of about 100, voted in favour of the removal of the prohibition in England, which is contrary, I submit, to the enlightenment of the present age.

MR. THOMPSON (Haldimand): Every day, Mr. Speaker, when you open this House, you invoke the Divine blessing upon our deliberations, and I propose to-night to follow that course which to me seems most in accord with the Divine will. I oppose this Bill from a Scriptural point, on the Divine Law as laid down in Leviticus, chapter 20, verse 21. We are told in the Great Book that we are neither to take away from nor add to one word of it. Notwithstanding the able arguments of the hon. members for Jacques Cartier (Mr. Girouard) and North Victoria (Mr. Cameron), I beg to move that this Bill be not now read the second time, but that it be read the second time this day six months.

MR. MILLS: I desire to make a few observations on the merits of the Bill before the motion is put. I am rather inclined to support the Bill than the amendment. I confess I do not see the Scriptural objection that presents itself so formidably to the mind of my hon. friend from Haldimand (Mr. Thompson). I will just say a word or two on what appears to be the popular Scriptural objection. I have a very great deal of respect for those who entertain that view, and who profess to be guided by what they believe to be the law of Moses in this par-

ticular. I would just make an observation or two in regard to what the Mosaic Law upon this subject is, as a question of jurisprudence rather than a question of theology. I have examined the subject with some care, and it seems to me that very mistaken notions arise by undertaking to apply particular words and phrases to the conceptions of modern society. If we were to examine with care the construction of ancient society in Palestine, I think we would find that some of the arguments that have been founded on analogy have no applicability in this case. The popular idea seems to be this: because the law of Moses forbids, except in certain cases, marriage with a deceased brother's wife, the deceased brother's wife stands in exactly the same relation as a deceased wife's sister; and that therefore the prohibition which applies to the one case must also apply to the other. Those who have given attention to the early conditions of society know right well that, if you look at society as it exists to-day in some parts of India, or as it existed formerly in Palestine, or in ancient Rome, there were other customs existing and recognised by law than those we recognise at this moment. There was the house and the tribe interposed between what we now call the family and the State. The policy of the law was to save them from obliteration. There were *gens* or houses in Palestine just as there were in Rome. The woman was a member of the house to which her father belonged, until she married. When two members of particular families were married, the woman was transferred to the house of her husband, and, being so transferred, she was considered a sister to all his brothers. Therefore, upon his death she was not allowed to marry those who by law were her own brothers, members of the house of her deceased husband. This was not at all the case with the deceased wife's sister. If the man belonged to the house of A, and the woman to the house of B, the moment she married she became a member of the house of A and was excluded upon her husband's death from marrying anyone belonging to the house of A. But her sister remained in the house of B, she was no relation to the house of her deceased sister, and therefore the husband could marry her without legal impediment, there being no legal objection. Now, gentlemen who will pay any attention to the origin of the prohibition that existed under the English Common Law in regard to the exclusion of half-bloods by the rules of inheritance, will find the law was founded on this ancient distinction. Half-brothers by the same mother were no relation to each other under the laws of primitive society, while paternal half-brothers were counted as full brothers as in the case of Jacob's children, whether of wives or servants. For further illustration, let me take the case of a woman in the house of A, who married into the house of B her first husband; her children by this marriage would be of the house of B. For heritable purposes, their kinship is confined to this house. She subsequently marries into the house of C. The children born in the house of C were by law no relation to the house of A, or to the half-bloods of the house of B. These half-brothers were no relation to each other, and one could not inherit from the other. But, where they had a common father, they were recognised as standing in exactly the same relation as whole bloods. It was on this ground that the prohibition applied to the deceased brother's wife, but it had no application to the deceased wife's sister. As long as that condition of society existed, as long as these houses were kept up, as long as property could not pass from one house to another house, or from one tribe to another tribe, either in ancient Rome or in Palestine, the inhibitions continued in force, as in the case of the restrictions upon the marriage of Zelophahad's daughter. They were founded on grounds of public policy, and, when these tribal distinctions ceased to be a matter of public policy, the prohibition ceased along with them. It is therefore perfectly clear that the prohibition which applied to a deceased brother's wife never at any time applied to a deceased wife's sister. The prohibition as to the brother's wife was not based on moral grounds, but on the law of property. It is expressly stated that the man is not to marry the sister of his wife so long as his wife is living, but a brother was absolutely forbidden to marry a deceased brother's wife, unless there were no children born of the marriage. Then the marriage was a matter of obligation, whether the party had a wife of

his own or not; and the children born of the marriage were accounted in law the children of their uncle; they inherited the property of their imputed father, and not of their real father. The whole theory of the Mosaic Law, and, indeed, all ancient law of which we have any knowledge, is founded upon conceptions of society to which we, under our western civilisation, are total strangers; and therefore it is absurd, it seems to me, to undertake to make quotations from an ancient system of jurisprudence, relating to a condition of society that has, at this day, no existence, and make them a ground for objecting to a marriage which is perfectly right and proper. If there be any objection to the principle of the Bill, it is that it might throw doubts upon marriages practically valid at this moment. There is no Court in Ontario in which objection can be taken to such marriages as are now under consideration, and they are practically valid; but to remove the possibility of any doubt, I am prepared to support the Bill. There are some provisions in it, however, which do not wholly meet my views. One clause runs thus:

"Provided there be no impediment by affinity between them, according to the rules and customs of the Church, congregation, priest, minister, or officer, celebrating such marriage."

The form in which marriages are to be solemnised is beyond our authority, and therefore a question with which we ought not to deal; but, as to the principle of the measure, I think it is founded in reason and common sense, and so far as the religious objection is concerned, it is one founded on a total misapprehension of ancient law and the policy of the law, a misconception which has arisen from—a failure to study the structure of that society upon which the law operated.

MR. ABBOTT: It is not my intention to discuss marriages of this description from the point of view taken this evening. The Church of England has taken a decided stand against marriages of this kind. The Church of England has taken one side on this question, and the Nonconformists take the other, for the latter do not raise any objection to marriage with a deceased wife's sister. Similar differences of opinion exist here in regard to the religious view of the subject. But no such considerations should move us. As I see no physical objection, and in fact no objection but one derived from a religious source, I think it is better in a mixed community, such as ours, that people should be left to the free exercise of their opinions. The laws should deal with it only as it concerns public policy. It is impossible to assert that there is any question of public policy opposed to the marriage of a man with his deceased wife's sister. Physically, there can be no objection. Socially, objections have been made; but these have been rather of a character appealing to good taste than to any important principle. In that respect also, therefore, the question whether a man may marry the sister of his deceased wife should be left to himself, and the question should be decided according to his conscience and his good taste. And, there being no reason of public policy against it, I would be disposed to make such a marriage free, and vote for the Bill. At the same time, though I understand this Bill is to be left to a Committee, which will settle the details—it is not inappropriate to draw attention to some of its provisions which appear to be inconsistent with the general principle of the measure, and the arguments made use of in support of that principle by my hon. friend from Jacques Cartier (Mr. Girouard). If it be right and proper that marriage with a deceased wife's sister should be free, then why place it under the control of any Church to say whether or not, in any particular case, a member of that Church shall be allowed to have the benefit of the proposed Bill? In the Church of England it is absolutely prohibited, and in the Catholic Church, although I do not know what rule they have regarding it, I think it is illegal as well as in the English Church. The obvious effect of the clause will be that the right to marry a deceased wife's sister will not be free but left to the decision of a Church or clergyman, and from the way in which the Bill is framed it would not only be impossible for a member of a Church whose clergy were opposed to a marriage of that kind to marry without a dispensation, but it would be impossible for a man belonging to such a Church to go to some other minister or clergyman to be married. A man who belongs to a Church which regards it as an absolute impediment will, by the wording of the Bill, be debarred

altogether from contracting such a marriage. It is inconsistent with the arguments in favour of the principle of the Bill that the right should be restricted by any authority. The marriage should either be legal or illegal; and this House should pronounce whether these marriages should or should not be permitted in future. There is another detail to which it is important to call the attention of the House or the Committee: the second clause makes all such marriages, in the past valid. That is an objectionable provision; the principle involved — the retroactive operation of the clause— is objectionable. I do not think there should be retroactive legislation in matters of this kind or in fact in matters of any other description. The hon. gentleman has cited the English Act of 1835 as a kind of precedent, but that Act does not seem to me to establish any precedent for the retroactive clause introduced into the present Bill. Previously to 1835, as I understand, the marriage of a man with his deceased wife's sister was voidable only during the lives of both parties; but after the death of either party it could not be declared void; and the Act of 1835 simply rendered such marriages valid, or rather confirmed the validity of such marriages, they being actually valid at the time. The marriages affected by this particular clause of the Act of 1835 being merely voidable, my hon. friend will perceive that that provision could do no harm; it could take away no vested rights; but the clause now proposed by my hon. friend might take away vested rights. It might take away from the children of the first wife some of the rights which had become vested in them. and give them to the children of the second wife. Up to the time of the passage of this Bill, any rights that have vested in, or accrued to the children of a deceased wife, by reason of their legitimacy, should not be taken away by retroactive legislation; and any such retroaction should at least be restricted to the cases where both the parties are alive. I presume these subjects will receive the attention of the Committee. I shall vote for the second reading of the Bill, and, when the report of the Committee comes up, these details can be fully discussed.

MR. BLAKE: I coincide with the view that the Scriptural argument is based on a misconception of that passage in the Bible which has given rise to it, and to a mistaken application of the rule supposed to be laid down to the modern states and conditions of society, which are different from those of that ancient date. I do not think any weight is to be attached to that argument. The existence of such an argument, however, seems to have had some weight with the hon. member for Jacques Cartier (Mr. Girouard) who thinks that consideration renders it proper that we should create some restrictions upon the right to marry in these cases. To the social argument I attach more importance. I do not think it is reduced merely, as the member for Argenteuil says, to a question of taste. There is to my mind a much more serious question growing out of the relations between the husband and his wife's sister domiciled in his family during the lifetime of his wife. But, though I have hesitated on this, I have come to the conclusion that there is not enough to render it right for us to forbid such marriages. Therefore, had this Bill been simply a Bill to authorise marriage between a man and the sister of his deceased wife, I should feel disposed to give it my support. But I could not support it beyond this stage in its present shape; and I think it not inopportune that a discussion is raised at this time by some hon. gentlemen, not, perhaps, to the principle of the Bill, but to some of the provisions. We do not know whether or not there will be a Select Committee upon it. We do not know what may be the report of such a Committee, or whether there will be a fair opportunity of discussion here at the late date at which the measure may return to us; and. at any rate, there should be. in a matter of this kind, discussion on at least two separate stages. I may say that I concur in the objection of the hon. member from Argenteuil (Mr. Abbott) to the conditions proposed to be attached to this Bill, on the ground he stated, and for the additional reason that it is not within the scope of the authority of this Parliament to deal with the solemnisation of marriage as is in effect proposed. We have within the British North America Act two provisions upon the subject of marriage. "Marriage and Divorce" are left exclusively to the Canadian Parliament; the

solemnisation of marriage is left exclusively to the Provincial Legislatures. When the Confederation Resolutions were under discussion, in the old Canadian Parliament, the language was not the same; there was no grant of power to the Local Legislatures in reference to the solemnisation of marriage. Some anxiety being felt in reference to this subject, enquiries were made of the Government, and the hon. the Minister of Public Works, then Solicitor-General, gave, on behalf of the Government, the following explanations :—

"The word 'Marriage' has been placed in the draft of the proposed Constitution, to invest the Federal Parliament with the right of declaring what marriages shall be held and deemed to be valid throughout the whole extent of the Confederacy, without, however, interfering in any particular with the doctrines or rights of the religious creeds to which the contracting parties may belong."

He proceeded to declare that the whole effect of the clause was to give power to decide that marriages contracted in any one Province, according to the laws of that Province, should be valid in the other Provinces, though their laws might be different, in case the parties came to reside there; and again he stated that when a marriage is contracted in any Province, contrary to its laws, though in conformity with the laws of another Province, it will not be considered valid. He subsequently assured the House that the resolutions contained only the principle of the Bill to be carried in the Imperial Parliament, which would be drawn up in accordance with the interpretation he had already put upon the clause. Mr. Dorion asked :

"Will a Local Legislature have the right of declaring a marriage between parties not professing the same religious belief invalid ?"

Attorney-General Cartier replied :

"Has not the Legislature of Canada now the power of legislating in that matter, and yet has it ever thought of legislating in that way ?"

Such was the explanation at that time given, from which it is obvious that a very limited power was intended to be conferred on this Parliament. The British North America Act passed, and subsequently, in the year 1869, with reference to a Bill of one of the Local Legislatures, for conferring upon the Lieutenant-Governor of the Province the power to issue marriage licenses, in his report upon that Bill, the then Minister of Justice pointed out that two questions arose. The first question is not very material; as to the second he says :

"The second question as to where the power of legislation on the subject rests has excited much interest in Canada, and conflicting opinions exist with respect to it. The power given to the Local Legislatures to legislate on the solemnisation of marriage was, it is understood, inserted in the Act at the instance of the representatives of Lower Canada, who, as Roman Catholics, desired to guard against the passage of an Act legalising civil marriages without the intervention of a clergyman and the performance of the religious rite. They therefore desired that the Legislature of each Province should deal with this portion of the law of marriage. The Act must, however, of course, be construed according to its terms, and not according to the assumed intention of its framers. The undersigned is of opinion that the right to legislate respecting the authority to marry, whether by publication of banns, by license, or by episcopal dispensation, is part of the general law of marriage, respecting which the Parliament of Canada has exclusive jurisdiction. The publication of banns, or the license, as the case may be, is no part of the solemnisation, it is merely the authority to solemnise. The solemnisation is not commenced by the issue of the license or the publication of the banns; all the English Marriage Acts treat the authority, and the solemnisation, under the authority, as quite different matters. Thus, it is provided, in Geo., IV. chap. 76, sections 9 and 19, that 'Whenever a marriage shall not be had within three months after publication of banns, or the granting of license, no minister shall proceed to the solemnisation of such marriage until a new license shall have been obtained, or a new publication of banns had,' and, by the 21st section, the solemnisation of marriages without due publication of banns, or license of marriage, is made a felony. In order to convict a person under this clause, it must be alleged and proved that the solemnisation was not only commenced, but completed, and, if the license or banns were a necessary portion of the solemnisation, the offence would never be completed without them. The subsequent Marriage Acts seem to draw the same distinction between the authority and the solemnisation. The undersigned is therefore of opinion that this reserved Act is beyond the jurisdiction of the Local Legislature, and should not receive the assent of Your Excellency. As the subject is one of the very greatest importance, affecting the validity of marriages, past and future, the undersigned would suggest that the Colonial Minister be requested to submit the two questions above raised to the Law Officers of the Crown for their opinion."

That opinion was given, and it is reported, as follows:—

"The Law Officers are disposed to concur with the Minister in his views of the first question stated by him, but they are unable to concur in his opinion that the authority to grant marriage licenses is now vested in the Governor-General of Canada, and that the power of legislating on the subject of marriage licenses is solely in the Parliament of the Dominion. It appears to them that the power of legislating upon the subject is conferred on the Provincial Legislatures by 31 and 32 Vic., cap. 3, section 92 under the words 'the solemnisation of marriage in the Province.' The phrase 'the laws respecting the solemnisation of marriages in England' occurs in the preamble of the Marriage Act, 4 Geo. IV, cap. 76, an Act which is very largely concerned with matters relating to banns and licenses, and this is therefore a strong authority to show that the same words used in the British North America Act, 1867, were intended to have the same meaning. 'Marriage and Divorce' which by the 91st section of the same Act are reserved to the Parliament of the Dominion, signify, in their opinion, all matters relating to the status of marriage, between what persons, and under what circumstances it shall be created, and (if at all) destroyed. There are many reasons of convenience and sense, why one law as to the status of marriage shall exist throughout the Dominion, which have no application as regards the uniformity of the procedure whereby that status is created or evidenced. Convenience, indeed, and reason would seem alike in favour of a difference of procedure being allowable in Provinces differing so widely in external and internal circumstances, as those of which the Dominion is composed, and of permitting the Provinces to settle their own procedure for themselves; and they are of opinion that this permission has been granted to the Provinces by the Imperial Parliament, and that the New Brunswick Legislature was competent to pass the Bill in question."

That opinion was acted upon, the Act was not disallowed, and other similar Acts have since been permitted to go into operation. Now it appears to me that the view taken by the law officers was correct. I do not see any other intelligible line. I do not see that we are invested with anything more than the power to decide the status of marriage, and between what persons and under what circumstances the contract of marriage may be created. I presume that the hon. the Minister of Public Works will agree that this view of our powers, though broader than what he indicated at Quebec, is nearer to his view, and more reasonable than that of the former Minister of Justice. As I read the passages to which I have alluded, it was in contemplation at Quebec that the Local Legislatures should have authority to deal with the [illegible] matters here mentioned, and it was simply reserved to this Parliament to determine whether marriages good in one Province should be good in all the Provinces. More is given by the British North America Act, more, much more is given by the opinion of the law officers to this Parliament, than the hon. the Minister of Public Works expected, but not so much as his colleague claimed. I believe, however, that the true line has been found. Now, it is entirely inconsistent with the existence of any such line to insert in this Bill some of the provisions it contains. We cannot provide as to banns, dispensations, or licenses, preliminaries to the solemnisation of marriage. Contrary to the contention of the hon. the Minister of Justice, the right to legislate on these subjects was held in 1869 to reside in the Local Legislatures, and that view has been accepted for eleven or twelve years. We are now called upon to deal with the question, because the question of expediency is another and a subsequent point. If we have not the power to legislate as the hon. gentleman proposes, then the question of expediency will not arise. I believe we have not the power, and that it belongs to the Local Legislature to decide by what means marriage between those persons between whom marriage may, under the general law, be lawfully contracted, shall be contracted. Now, a serious question may arise, should a Local Legislature thwart the provisions of a general law, by declining to provide means for the solemnisation of marriages between particular classes of persons who are lawfully entitled to marry. It is obvious that, if we have not, as in fact we have not, any power to prescribe how marriages shall be solemnised, we have no power to give effect to our declaration that it shall be lawful to contract marriages between any two classes of persons. It is for the Local Legislature, in some shape, to render that possible which the Federal Parliament has declared to be lawful. And there may be a defect in our system which may lead to serious difficulties. But it is unnecessary, perhaps, to deal with such a possibility before the occasion arises. We are at present concerned only with the question as to where the power rests, and I maintain that it is an infringement on

the powers of the Local Legislatures to attempt to make any provision connected with the solemnisation of the marriage, whether it be preliminary to or whether it accompanies the act. Now there is one of these provisos that is clearly wrong, that which provides that it shall not be compulsory on any officiating minister to celebrate such a marriage. If the Local Legislature alone is to determine who is to celebrate marriage, it may determine that marriage may be celebrated civilly; it may not give power to any minister of any church to celebrate any marriage; it may determine that marriages should be celebrated by one class of ministers alone; it may declare that all marriages may be celebrated, no matter what the religion of the contracting parties be, by any lawful minister of any Christian denomination; it may decide that it shall not be compulsory on any minister of any faith to celebrate any marriage; it may make it obligatory on all authorised persons to celebrate all marriages. It may make all sorts of provisions. It is able to meet the difficulty raised by the hon. member for Jacques Cartier, as to the objections of a minister to celebrate marriage between these classes. I believe, as he has said, that such objections are largely shared by my spiritual pastors and masters. Now the Local Legislature may, if it deems fit, respect this scruple by such a clause as I am discussing. But we have no such right, and it would be eminently imprudent for us, in my opinion, to attempt to interfere with the solemnisation of marriage. If I have established that it belongs to the Local Legislature to say who shall solemnise marriage, I have established also that it belongs to the Local Legislature to say whether that shall be a duty or a power, imperative or obligatory, compulsory or optional. Therefore I think we have no power to pass this proviso, which declares that, if, in any Church or religious body, whose minister is authorised to celebrate marriages, any dispensation be required, for such a marriage, the dispensation shall be first obtained. I concur cordially in the view of the hon. member for Argenteuil (Mr. Abbott) For my part I believe nothing is of greater consequence with respect to this contract, which is the foundation of law, of society, and of the whole social fabric—nothing is of greater consequence, than certainty. I am wholly indisposed to any provision of law which may make of doubtful validity a marriage which the Parliament of Canada has declared may be lawfully contracted. But we are not called upon, in my opinion, to do so, and I think this subject is improperly intruded upon our notice; because, I say again, we should be trenching, in passing this provision on Local powers; though I agree that the simple right to declare whether the marriage shall be good may embrace a power in us to declare that it should be good between some and bad between others of the same class. But how inexpedient is this. What a degree of uncertainty we would be introducing into the law? To require in the case of every marriage a decision what is the religion of the parties; whether or not the law or custom of the Church requires a dispensation; and, if so, whether the dispensation has been properly obtained, and to require proof of all these things in order to make the marriages valid. I agree also with the view that this clause is obscure. I cannot clearly construe it. We know the questions that have arisen under the Quebec Code; we know the hon. gentleman's opinion of the meaning of the Code; we know that the view entertained by many in the Province of Quebec is that, where the parties are of one faith, it is lawful only for a minister of the Church to which those parties belong to celebrate their marriage. Nay, more, that this is lawful only for the *curé* of one or other of the parties where both are Roman Catholics. In the case of mixed marriages, from the necessity of the case, a more liberal interpretation has been given, and it is admitted that the marriage may be celebrated by a minister of the Church to which either of the parties belongs, but it is contended that the marriage, for example, of two Roman Catholics by a minister of the Presbyterian, or of the Anglican Church, is, according to the law of Lower Canada, invalid. Then with reference to this particular Bill, as affecting the Roman Catholics, we know that the Code has placed upon them in this particular a disability to which the hon, gentleman very much objects. There is no doubt, I think, at all, that, under the Code, those prohibitions, which are subject to dispensations, do not include this particular pro-

hibition, which is absolute. I think, therefore, according to the laws of Quebec, at this moment, notwithstanding a Papal dispensation, which is, under the rules of the Roman Catholic Church, essential to the validity of such a marriage, such a marriage is absolutely void. We know also that the law of Quebec, as it has been interpreted in some cases, and as it is contended for now, is of a character which I think it would be very difficult to persuade this House, or any other Legislature, to adopt. We know that it has been decided in one case, at any rate, in Quebec, that upon any question as to the validity of a marriage, there must be a reference to the episcopal authority; that, unless and until the episcopal authority shall pronounce the marriage to be void, the Civil Court cannot do so; but it can act only after the decision, and according to the decision, of the episcopal authority. So that, according to the law of that Province, as it has been interpreted in one case, and as it is contended for to-day, the question whether a marriage celebrated by a Presbyterian clergyman between two Roman Catholics is valid is to be referred to and decided by the Roman Catholic Bishop, whose decree is to be necessarily followed and effectuated by the Civil Court. It is contended that the decision of the Civil Court on the construction of the Statute with reference to the validity of the marriage is dependent upon the decision of the Bishop. Now, that is a state of things which it is not at all likely will be introduced by Parliament throughout Canada. It is not easy to maintain that all these questions should be raised, that all these difficulties should be created by the introduction of these provisos, when an easy mode of relieving the Legislature from their consideration is to be found in eliminating them from this Act, and leaving the Local Legislatures to deal, so far as they can, with the subject, by making laws as to the solemnisation of marriage. I do not well understand the meaning of this proviso. I do not know whether it means that the parties are to be married only by a minister of the Church to which they may belong; I do not know whether it means that a dispensation is to be required where the faith of the parties themselves requires it, or where the faith of the minister who celebrates the marriage requires it. I do not know what is to be done when the faith of one party requires, while that of the other does not require, a dispensation. Supposing it were determined by the Anglican Church, in any Province, that such marriages were not permissible at all, no dispensations being obtainable in that Church; consequently, would it be possible for members of that Church to marry? I think that these and other questions are best got rid of here by eliminating these clauses. Else these difficulties will, I venture to say, defeat the hon. gentleman's attempt to procure this legislation. Then the hon. gentleman proposes that all such marriages heretofore contracted are to be declared valid, although these marriages may be absolutely void in the Province in which they have been contracted. Now, under such circumstances, either or both of the parties may have contracted another marriage. What is to be done in that case? Supposing a legal marriage has been contracted by the so-called husband or the so-called wife, what is their position after the passage of the hon. gentleman's Bill? Why, by the law proposed by the hon. gentleman, the void marriage being validated, the subsequent nuptials are made void, of course, and the parties who had formed new ties find these broken and the old ones joined again. What is to be the course in a case which is not pending, but has already been disposed of, such as that to which I refer, one with which the hon. gentleman is familiar, that of Vallaincourt and Lafontaine, in which the marriage was adjudged to be void some years ago? Is that marriage to be revived again? It seems to me that these considerations are to be added to those which the hon. member for Argenteuil suggested with reference to the rights of property. I think it is a different thing to declare these marriages valid, in cases in which they are only voidable, from declaring them valid in cases in which, by the law as in Quebec, they are absolutely void. I am then of the opinion that these provisos are in large measure beyond our powers, and so far as they may be within our powers are highly inexpedient, and on both these grounds I contend that this Bill should pass with only the first part of the first clause, and that all the rest of it should be struck out,

MR. ANGLIN: It is difficult for a

body composed as this is, of Protestants and Catholics, to deal satisfactorily with question of marriage. The principles upon which Protestant opinions rest with regard to this question, differ in many respects very widely indeed from the principles by which Catholics are governed. That very dispensing power which some hon. gentlemen seem to regard with so much disfavour is the great protection which Catholics have in matters of this kind. The social feelings are offended by such marriages as those of a man with his deceased wife's sister, or a woman with the brother of a deceased husband. It cannot be denied that the feeling is strong that such marriages should be discountenanced as much as possible, that possibly great social evils would arise, were the impression to go abroad that such marriages were not merely tolerated, but were, under all circumstances, unobjectionable. The Catholic Church regards them as highly objectionable, and forbids them, but not absolutely, reserving to its highest authority, and to that alone—I believe, in most instances, to the Pope himself—the power to issue a dispensation in such cases, and such a dispensation is issued only where circumstances seem absolutely to require it. As a matter of fact, I suppose it is known to all hon. members in this House that, though such a dispensing power does exist, it has been but rarely exercised in this country, and it is not very frequently exercised in any other country. Now, Protestants of the various Churches having no such balancing power, so to speak, as this, are compelled to find in the Statute Law of the country that protection against social disorders which they apprehend from the frequency of such marriages. It therefore becomes an exceedingly difficult question, one of the most difficult it is possible to deal with. The hon. member for Argenteuil (Mr. Abbott) seemed to think that no such dispensing power does exist in the Catholic Church, and that Catholics do not regard the Church as having any such power, or think that it should not be exercised. In that he is mistaken. The power exists and has existed from the first, but it is exercised only under highly exceptional circumstances. My impressions are that the hon. member for West Durham (Mr. Blake) is mistaken in his views of the law relating to marriage, when he argues that it is for the Local Legislatures to say whether this proviso with regard to dispensation should or should not become the law of the land; he misunderstands, I think, what is meant by dispensation in the cases to which he referred. He quoted to us the opinion of a former Minister of Justice, and the opinion of the Law Officers of the Crown with regard to the rights of the Dominion Parliament and Local Legislatures in this matter. To summarise that opinion, as I understood him, it amounts to this: that we have here, and that we alone, according to the British North America Act, have the right to declare what persons may be married one to the other; but in all that relates to the mode and manner of the solemnisation of marriage, and the conditions under which it shall be solemnised, the Local Legislatures alone have the power to legislate. Well, Sir, taking that to be perfectly correct, as I believe it is, we find that, in speaking of dispensation, the hon. gentleman does not seem quite to understand it. There the license issued by a Bishop in the Catholic Church, by the proctors or agents of Bishops of the Church of England in the Old Country, and by the officers appointed under the power of the Local Legislatures in this country, is spoken of and regarded as a dispensation, but it is a dispensation which relieves the parties from one of the requirements of the law, with regard to the solemnisation of marriage, that of the publication of banns, and, therefore, such dispensation can only be granted and regulated by the Local Legislatures. It is a dispensation with regard to the mode and manner of solemnisation. On the other hand, the dispensation mentioned in this Bill is a dispensation which affects the position of the individuals one towards the other. We claim the right of saying what persons shall be married one to another, such a dispensation as that which permits the brother of a deceased husband to be married to the widow, etc. we only can authorise or grant according to law. There is a wide distinction between these two forms of dispensation, which, I think, the hon. member for West Durham has not perceived. I was rather surprised that, being always so clear and perspicuous, he

did not perceive this distinction. Perhaps he does not yet agree with me, and then I am mistaken. My impression is clear that the dispensation which affects merely the relation of one person to the other, which removes any objection as to the one person marrying the other, is a dispensation with which we have a legal right to deal; while any dispensation as to the mode of solemnisation, a dispensation, for instance, from the jurisdiction of Courts, is a dispensation with which the Local Legislatures have got to deal. I think it is well that we have had this discussion to-night, and it would be well to have further discussion on this important matter before it is finally disposed of. Some sugg stions have been made that this Bill should be referred to a Special Committee to deal with. But I think it would be better for the hon. mover of the Bill, with the consent of the House, to move the adjournment of the debate, and let us, when convenient, take it up for further consideration. Some hon. members on both sides of the House seem to think that there is no social objection whatever to the passage of such a measure. I am satisfied that a great many other hon. members differ widely from that view; that even those who do not think the religious objection to be valid are, notwithstanding, strongly of opinion on other grounds that it is not desirable to encourage the formation of alliances of this kind. The learned discussions respecting the meaning of that particular passage in the Scriptures I think the Catholics are willing to leave entirely to the hon. gentlemen belonging to the Church of England, and to others, to settle among themselves. For us, all that is simply a matter of literary curiosity. We hear now that, for centuries, there has been a great mistake as to the meaning of that particular passage: that later commentators, men who have acquired a more profound knowledge of the Hebrew, or the Syraic, to-day declare that the old translation, and consequently the interpretation of that particular passage of the Holy Scriptures, was founded on an erroneous idea of the meaning of the words used in the original. That may be quite correct, but that does not at all affect us in arriving at a decision upon this subject. I speak, of course, of the Catholic members of the House. The whole matter is an exceedingly difficult one to deal with. I am satisfied many hon. gentlemen in this House feel a strong objection to passing any Act of Parliament, the operation of which will be made dependent on the decision of ecclesiastics of any particular Church or denomination. We quite understand how strong an objection they may have to that, and I think that we ought to discuss the matter in every point of view in this House. The Bill is a very short one, but it is one of the most important in its character and consequences that has been submitted to this Parliament since its creation.

MR. HOUDE moved the adjournment of the debate.

SIR JOHN A. MACDONALD: I think the hon. gentleman is quite right in moving the adjournment of the debate. It is a matter of great importance, and our attention has been called to so many interesting considerations that it is well to take time to think them over and consider them on another occasion.

Motion *agreed to* and *Debate adjourned*.

March 4th, 1880.

SECOND READING.

House *resumed* the adjourned debate on the second reading of the Bill and the amendment (*Mr. Thompson, Haldimand*): "That the said Bill be not now read the second time, but that it be read the second time this day six weeks."

MR. HOUDE: Mr. Speaker, if this Parliament was the only legislative body in the country, the only one competent to discuss questions respecting marriage, my position in regard to the proposed law of the hon. member for Jacques Cartier would be slightly different from that which I think myself bound to take on the present occasion. It is not that I am opposed to this measure; on the contrary, I approve of its principle, and will vote for its second reading. My objections have only reference to the details. I recognise the motive which has induced my hon. friend to include in his Bill provisions whose expediency I intend to discuss; he has by their means no doubt desired to allay the fears of the members

of certain Churches ; but I am of opinion that there is a way of calming these apprehensions without its being necessary to include similar enactments in a law of this nature emanating from the Federal Parliament. This is the proposition which I shall at once endeavour to prove in as brief a manner as possible. In the case I have supposed, when commencing, I would not at all desire to concur in the adoption of a measure proposing to legalise marriage between the brother-in-law and the sister-in-law, or no matter what marriage, without providing at the same time the necessary conditions in order to give recognition to its character as a religious contract, a character essential to its remaining in conformity with the spirit of christianity and to ensure the happiness of families as well as the stability of society. But, since the perfection of Confederation, our new Constitution has placed us in as unique position in this matter, by enacting that the law of marriage shall be under the jurisdiction of the Dominion Parliament while its celebration shall be under the jurisdiction of the Provincial Legislatures. At first sight, the distinction would appear somewhat finely drawn, and the division line between these two authorities difficult to follow. Without doubt the letter of the Constitution on this point, as on others, is vague. To comprehend perfectly its spirit, it is necessary to discover what idea was uppermost in the minds of its authors when they established this division of jurisdiction between the Federal Parliament on the one side and the Provincial Legislatures on the other. This is what, on my part, I have humbly endeavoured to find out before forming a settled opinion upon certain details in the law as proposed by my hon. friend. It is a known fact that our present Constitution had its origin in the Quebec Conference, made up of representatives from the greater number of the Provinces which to-day form part of the Confederation. Now, let us see with what intent "marriage" was included among the number of subjects upon which the Federal Parliament might legislate :—

"The word 'marriage' has been placed in the draft of the proposed Constitution to confer upon the Federal Legislature the right of declaring what marriage shall be considered as valid throughout the whole extent of the Confederation, without affecting, however, in the least degree the dogmas or ceremonials of the religious bodies to which the contracting parties belong."

What guarantee would there have been that the Federal Parliament would never touch upon these religious dogmas and rites, if it had not been understood that they would never be called upon to decide upon them. Unless they had recognised and confirmed the principle that to the Provincial Legislatures must be left the exercise of the constitutional right to take cognisance of the dogmas and rites in conformity with which marriage ought to be contracted, the guarantee would be of none effect. While citing these opinions of the Quebec Conference, I may state that, during the debates of Parliament upon the scheme of Confederation, the hon. the Solicitor-General for the Lower Canadian section, whose opinion, I presume, ought still to agree, to some extent, with that of the present hon. Minister of Public Works, inasmuch as it was he himself who then gave utterance to them, commented upon them in the name of the Government of the day, after it had been formally communicated to the House :

"The hon. gentleman has asked the Government what meaning was to be attached to the word 'marriage,' where it occurred in the Constitution. He desired to know whether the Government proposed to leave to the Central Government the right of deciding at what age, for example, marriage might be contracted. I will now answer the hon. gentleman as categorically as possible, for I am anxious to be understood, not only in this House, but also by all those who may hereafter read the report of our proceedings. And, first of all, I will prove that civil rights form part of those which, by article 43 (paragraph 15) of the resolutions, are guaranteed to Lower Canada. This paragraph reads as follows :—

"'15. Property and civil rights, excepting those portions thereof assigned to the General Parliament.'

"'Well, among those rights are all the civil laws of Lower Canada, and included in these latter are those which relate to marriages. Now it was of the highest importance that it should be so under the proposed system, and therefore, the hon. members from Lower Canada at the Conference took great care to obtain the reservation to the Local Government of this important right ; and in consenting to allow the word 'marriage' after the word 'divorce,' the delegates have not proposed to take away with one hand from the Local Legislature what they had reserved to it by the other. So that the word 'marriage',

placed where it is among the powers of the Central Parliament, has not the extended signification which was sought to be given to it by the hon. member. * * * * The whole may be summed up as follows :—The Central Parliament may decide that any marriage contracted in Upper Canada, or in any other of the Confederated Provinces, in accordance with the laws of the country in which it was contracted, although that law might be different from ours, should be deemed valid in Lower Canada in case the parties should come to reside there, and *vice versâ*."

At another sitting the same hon. Minister added further :

"This (the words last above cited) was merely a development of what I said. I stated before that the interpretation I had given of the word 'marriage' was that of the Government and of the Conference of Quebec, and that we wished the Constitution to be drafted in that sense. * * * * I maintain then that it was absolutely necessary to insert the word 'marriage' as it has been inserted, in the resolutions, and that it has no other meaning than the meaning I attributed to it in the name of the Government and of the Conference. Thus the hon. member for Verchères (Mr. Geoffrion) had no grounds for asserting that the Federal Legislature might change that part of the Civil Code which determines the age at which marriage can be contracted without the consent of parents."

At another sitting again, and in reply to a request for explanations put to the Government, the hon. Minister said :

"I made the other day, Mr. Speaker, the declaration just mentioned by the hon. member for Montmorency (Hon. Mr. Cauchon), which relates to the question of marriage. The interpretation given by me on that occasion is precisely that given to it at the Quebec Conference. As a matter of course the resolutions submitted to this hon. House embody only the principles on which the Bill or measure of Confederation is to be based ; but I can assure the hon. member that the explanations I gave the other evening, as to the question of marriage, are perfectly exact, and that the section of the Imperial Act in relation thereto will be worded in accordance with the explanation I gave."

It was on the faith of those assurances, Mr. Speaker, that the country, through the medium of the press and of Parliament, accepted the new Constitution. That Constitution is a synallagmatic compact between the Confederated Provinces, and we are bound to adhere scrupulously to its spirit in all the laws we make. Here then we have the authority of the Interprovincial Conference, in which the present Constitution originated, the authority of the Government that proposed it, and the authority of the Parliament that ratified it by a very large majority, declaring that the spirit of that Constitution requires that the Dominion Parliament shall only take cognisance of questions relating to the nature of marriage, and that it shall leave to the Provincial Legislatures the duty of dealing with the conditions under which marriage is to be contracted. I know that, according to the view taken by my co-religionists, the majority of the representatives of the Province of Quebec, which is also my own view, dispensations by reason of relationship or affinity flow from the very nature of marriage. But we must remember, on the other hand, that the privilege of the Church as to exercising the right of granting dispensation in certain cases is secured by Article 127 of the Civil Code, which is as follows :

"The other impediments recognised according to the different religious persuasions, as resulting from the relationship or affinity, or from other causes, remain subject to the rules hitherto followed in the different Churches and religious communities. The right, likewise, of granting dispensations from such impediments appertains, as heretofore, to those who have hitherto enjoyed it."

In the other Provinces, Mr. Speaker, that precaution does not exist, for it is only in the Province of Quebec that the Canon Law forms part of the Civil Law. My hon. friend from Jacques Cartier says : "In the Province of Manitoba also." I rejoice at it. But this is a state of things which we cannot remedy without affecting the autonomy of the Provinces, an alternative which would help us but little towards the end in view in this matter ; for, so soon as public opinion in the other Provinces becomes favourable to our views, the chances of success would be as great with the Legislatures of the Provinces as with their representatives, and meantime we should avoid exposing our public law to the danger of being changed for the worse by a majority of legislators, still, for the most part, opposed to our principles in this matter. For those who, like myself, consider marriage to be a religious contract, there is, it seems to me, a tolerably sure means of knowing whether any proposed Act of legislation respects or violates the doctrine of the Church; it is to ask ourselves : will this measure have the effect of legalising marriages which are not permitted by the Canon Law, or of declaring invalid, marriages which that law permits? Apply-

ing that rule to the present case, it is clear, in the first place, that the proposed measure does not prohibit any marriage, and therefore does not come within the category of measures, and moreover, that it merely recognises as valid, marriages which are so in any case, naturally and morally speaking, without that legal sanction. Yes, valid, but on one condition, some hon. members of my own religious belief will perhaps say; on condition that the impediments maintained by the Church in order to prevent the too great frequency of such marriages, against which well-grounded objections certainly exist, shall first have been removed. Quite right. But if this Parliament, considering the restricted sphere of its jurisdiction in this matter, simply removes the legal prohibition wrongfully resting against such marriages, without entering into details as to the conditions under which they are to be contracted, leaving the care of such details to the Local Legislatures, it is evident that the religious rules which already apply, in accordance with the Civil Law, to other marriages not legally prohibited, must also apply to these particular marriages so soon as they cease to be legally prohibited. There cannot be any doubt as to this, for it is a strictly logical consequence flowing from undeniable premises. The authors of the Constitution, Mr. Speaker, have placed civil liberty and liberty of conscience under the special protection of the Provincial Legislatures, and I am of opinion that they acted wisely in so doing, so that I am opposed to anything that may tend, directly or indirectly, to diminish the efficacy of that protection, or cause it to change hands. Consequently, I should prefer to strike out the stipulation contained in the first proviso to the 1st section of the Bill, and, in my humble opinion, that clause should read as follows: "Marriage between a man and the sister of his deceased wife, or the widow of his deceased brother, shall be legal and valid." As to the other provision, declaring that those who are authorised to celebrate such marriages shall not be bound to celebrate marriages of the kind, if objections exist under their religious belief, I think it is useless here. Have we the power to compel anyone to celebrate any marriage whatever? It cannot be asserted that we have. It is, therefore, superfluous on our part to grant exemption from an obligation which it is out of our power to impose. Some hon. members have expressed the opinion that the second section should be wholly struck out. I think, on the contrary, that it is better to retain it, with some alteration. If it be desirable to legitimatise in the eyes of the law children the issue of marriages contracted hereafter, between brother-in-law and sister-in-law, is it not wise to legitimatise in the same way children already born of such marriages, provided such marriages have been contracted under the conditions requisite to validity? But I know we must be careful to legislate in such a manner as not to appear to desire to give a retroactive effect to this law, in matters involving rights of inheritance, which belong to the domain of civil rights reserved to the jurisdiction of the Provincial Legislatures. I would suggest that the section be amended to read as follows: "All existing marriages of such nature, celebrated with the required conditions, shall be legal, without prejudice to rights acquired prior to the sanction of this Act." As I stated at the outset, Mr. Speaker, I approve of the greater part of this measure, and I shall vote for its second reading; but, before its final passing, I hope it may be modified in detail in such a way as to remove the objections I have pointed out.

MR. GIROUARD (Jacques Cartier): I have listened with a great deal of attention to the discussion on this Bill, which took place the other evening and this evening, and I do not doubt much good will result therefrom. I may state at once that I am not pledged to the wording of the Bill as it stands to-day. I am open to any reasonable suggestion for its modification, and, when the Bill reaches Committee, I hope it will be so drafted as to meet the views of those hon. gentlemen who have not been able to agree with some of its details. I take it for granted, at least from the arguments used by the majority of the speakers, that the principle of the Bill will receive the approbation of this House. The objections seem to bear only upon that provision which renders a dispensation necessary from certain Churches to make such marriages valid, and also upon that proviso by which no officiating clergyman shall be bound to celebrate such

marriages. I have understood that some objection too was made to that portion of the Bill which renders it retroactive in its operation, or at least to a certain portion of it. I will endeavour to show that these objections are not altogether well-founded. First, as to the constitutionality of the "dispensation" clause, there is no doubt that, under the Constitution of 1867, this Parliament has alone the power to declare who can contract marriage. Generally speaking, we ought to follow the intention of the framers of the law, but that is not sufficient when the letter is evidently inconsistent with the expressed intention. There is no doubt, in my humble opinion, that everything appertaining to marriage and divorce belongs to this Parliament exclusively; we may permit marriage between, not only brother-in-law and sister-in-law, but minors, and we may not only deal with these matters, but also recognise Church dispensation from impediments imposed by the different Churches in these respects. The "dispensation" proviso was introduced to meet a serious objection of the members of the Church of England. Hon. members will recollect that, by the first Bill I had the honour of introducing, the validity of the marriage was to depend on the rules and regulations of the church celebrating the marriage. It was represented, and rightly so, that that law, while giving relief to the Catholic Church and Dissenters, would not relieve members of the Church of England. As the hon. member for Gloucester (Mr. Anglin) said the other evening, the Catholic Church, although not favourable to these marriages, for grave reasons grants dispensation from the impediment of affinity; qut in the Church of England there is no such a power. Therefore, under the Bill as first introduced, the members of that Church would have been in a worse position than under the existing laws, as far as some Provinces are concerned where, by the law of the land such marriages are only voidable. The clause was therefore changed so as to limit the condition to the Catholic Church. We all know that that condition or reservation concerns no one else but the Catholic Church. The proviso declares that, if in any Church a dispensation be required, that dispensation shall be first obtained. The clause providing that no minister should be obliged to celebrate such marriages was put in to meet another objection of some clergymen of the Church of England. It is no novel provision; it is no new legislation; the Legislature of Australia has passed a similar law. I come next to the question of jurisdiction. I cannot understand how it is that this House has every other jurisdiction except the power to recognise Church dispensations in regard to marriage, or relieving from the incapacity to contract marriages. As the hon. member for Gloucester rightly remarked, this dispensation has no reference to the celebration of marriage; it is a dispensation from incapacity by reason of affinity. It has no other reference than to the capacity of parties to contract marriage; and for that reason this clause is within the legislative jurisdiction of this Parliament, and not within the jurisdiction of the Local Legislature. The hon. member for West Durham (Mr. Blake) explained, the other evening, at great length, the law of the Province of Quebec, as far as the solemnisation of marriage is concerned. He referred to the opinions of the Crown law officers as to the power of the Local Legislature to empower the granting of licenses to celebrate marriage; but that was not a dispensation, at least in the sense referred to when the impediment from affinity has to be removed. These licenses had reference only to certain formalities preceeding the celebration of marriage, such as banns, etc.; they do not bear upon any of the essentials to the contract of marriage or the capacity of the parties. Another objection to this clause respecting dispensation was put forward on the ground of its uncertainty. I have read it over and over again, and I cannot understand how that objection can be made. It states that, if any dispensation is required to give validity to the marriage, such dispensation shall be obtained. If there is anything equivocal in that, I cannot see it. It is plain that it only affects the Catholic Church. It has been said also, by the hon. member for West Durham, that the Bill as it is will render the position of the parties very difficulty with regard to mixed marriages. It will be the same as to-day; if the marriage is celebrated in the Catholic Church the dispensation must be obtained; but if it is celebrated before a Protestant

minister then a dispensation will not be required. That is the rule to-day, and still will be the rule under this Bill. The hon. member for West Durham was astonished that the marriage in Quebec should be solemnised before the curé of the Catholic parties. There is no doubt of the law, but a different rule prevails with regard to Protestants; they may be married before any Protestant minister, provided there is no Church regulation to the contraay. As to the reservation of the right of requiring previous dispensation in favour of the Catholic Church, it seems to me that the whole question turns upon a question of policy, as to whether it would be politic for this House to make such a reservation. I may say that I inserted that clause with a view to meet the views of the Catholic members, who I thought would have some hesitation in voting for the Bill without that clause. I really cannot see why members of the Protestant faith should object to the clause. We claim it with the same spirit of liberty with which we were actuated when we put in the proviso that no minister of the Church of England shall be forced to celebrate such marriages. The clause, moreover, is a necessary consequence of the general law of the Dominion, which requires that marriage shall be celebrated by a priest or minister, and not by civil officers.

MR. HOUDE: But no priest or minister can be compelled to celebrate any marriage that is not legal. I know of no means of doing so.

MR. GIROUARD: I am of opinion that, outside of the Province of Quebec, where an exception is made by the Civil Code, that, if a priest or minister should refuse to celebrate a marriage, there are means of compelling him. A *mandamus*, and I presume in some Provinces an injunction, will meet such a case. If no reservation be made, a priest or minister could be forced to celebrate this kind of marriage against his conscience. If no regard is to be had to Church regulations, we shall introduce into our marriage laws a character purely civil which we have no power to give them under our Constitution, the celebration of marriage being left entirely to the Provincial Legislature, and from the character of the officiating minister will always depend the character of the marriage. Finally, the "dispensation" proviso will not be a novelty on our Statute-book. several Statutes in force in this country have recognised the regulations of the various Churches existing within its territory. The Quebec Act of 1774, which may be considered as our *Magna Charta*, declares that:

"For the more perfect security and ease of the minds of the inhabitants of the said Province of Quebec, His Majesty's subjects, professing the religion of the Church of Rome of and in the said Province of Quebec, may have, hold and enjoy the free exercise of the Church of Rome, subject to the King's supremacy," etc.

The clause objected to is nothing more than the application of this Imperial law; it is then the recognition in favour of Catholics only of an article of faith of the said Church, to wit: that no marriage between brothers and sisters-in-law can be valid except by dispensation from the constituted authorities. Numerous Statutes will be found in the Statutes of Lower Canada where various privileges and immunities of the Catholic Church were sanctioned by Parliament but, to be brief, we will confine ourselves to Article 127 of the Civil Code, which was voted by the Parliament of the late Province of Canada immediately before Confederation. That article says:

"The other impediments recognised according to the different religious persuasions, or resulting from relationship of affinity or from other causes, remain subject to the rules hitherto followed in the different Churches and religious communities. The right, likewise, of granting dispensations from such impediments appertains is heretofore, to those who have hitherto enjoyed it."

This law was passed by the Parliament of the late Province of Canada, a few months before Confederation, and I do not see why this Parliament should be less liberal than the late Parliament of Canada. I could quote several Statutes of the Province of Quebec where the different rules and regulations of various Churches have been recognised. But, to be brief, I come to the Province of Ontario where I find the same policy pursued. In 1793, a Statute was passed legalising all past marriages of persons "not being under any canonical disqualification to contract matrimony." A more express recognition of Church regulations cannot be found. The same provision is contained in another Statute of Upper Canada, passed in 1830, 11 Geo. IV, cap. 36.

Among the regulations laid down for the future celebration of marriages, the same Statute provides that the said marriage shall be solemnised "according to the form prescribed by the Church of England." The Catholics never complained of this legislation; it is only in accordance with the principle they invoke. In another Statute, concerning marriages of members of the Church of Scotland, Lutherans or Calvinists, it is stated that said marriages shall be "according to the rites of such Church or religious community." The Marriage Act of Upper Canada, passed in 1857, 20 Vic., cap. 66, declares that marriage shall be solemnised "according to the rites and usages of such Churches or denominations respectively." The some Statute declares valid all past marriages of Quakers solemnised "according to the rites and usages" of their society. With those numerous precedents before us, it seems to me that the proviso as to dispensation should no longer be open to objection. It simply declares that, as far as Catholics are concerned, marriage between brothers and sisters-in-law shall be celebrated according to the rules and usages of their Church; and, as these marriages may be objectionable to some ministers of the Church of England, it declares what will be found in some other Colonial Statutes, and among others Australia, namely, that it shall not be compulsory for any officiating minister to celebrate such marriages. This proviso, also referring only to the impediment of affinity, or the capacity of contracting, is, I believe, constitutional. But, however, if desired, it could be removed. Now, one word as the retrospective clause of the Bill. We find in England the first instance of such retroactive legislation in Lord Lyndhurst's Act of 1835, and every Bill introduced since that time into the Commons or the Lords contains the same clause. The Statutes passed by most of the British Colonies on the subject matter of this Bill have also a retroactive effect. I will also refer to the following Statutes, of both Upper and Lower Canada, which were found necessary to legalise irregular, voidable, and in fact void marriages:—Statutes of Lower Canada—44 Geo. III cap. 2, 1 Geo. IV cap. 19, 5 Geo. IV cap. 21, 7 Geo. IV cap. 2, 2 Wm. IV cap. 51; Statutes of Upper Canada—33 Geo. III cap. 5, 11 Geo. IV cap. 36; Statutes of Canada—18 Vic. cap. 245, 20 Vic. cap. 66. I have heard it mentioned that this Bill does not interest Ontario much. I believe that it not only effects Quebec, Manitoba, and British Columbia, but Nova Scotia, New Brunswick, Prince Edward Island, and even Upper Canada. We find that the ecclesiastical jurisdiction of England, which seems to be wanted in Ontario, exists in all those Provinces. In the Province of New Brunswick, a Court of Divorce and Matrimonial Causes has been constituted; in Nova Scotia the same jurisdiction has been vested in her Equity Courts. There is also a Statute in Prince Edward Island which gives similar powers to the Governor and the members of the Privy Council. We may also easily suppose the the case of two Upper Canadians moving to Great Britain or any of these Provinces, where they may acquire a new domicile and become amenable to the jurisdiction of their Courts, and therefore see their marriage attacked and set aside. It was intimated that it was my intention to refer this Bill to a Special Committee. I may state that I have changed my mind. I believe now that a measure of this public importance should be considered in a Committee of the Whole. As I have said, I am not pledged to any special wording of the Bill. The essential point is to legalise marriages with a deceased wife's sister or the widow of a deceased brother. It would be open to every member to introduce improvements or strike out provisions, and I would certainly submit to the decision of the Committee. In the meantime, I hope this House will authorise the second reading of the Bill, and reject the six months' "hoist."

MR. HOUDE: I believe my hon. friend did not understand me when I said we could not oblige ministers of any Church to celebrate a marriage. I meant that we could not do so as members of the Federal Parliament. My hon. friend admits that solemnisation of marriage is entirely within the jurisdiction of the Local Legislatures, and at the same time he contends that we can oblige ministers of Churches to celebrate marriage; that is to say, that the very solemnisation of marriage ought to be interfered with by the Federal Parliament. The two propositions seem to be contradictory.

MR. JONES: I do not rise for the purpose of prolonging this debate, but merely to say a few words on the vote I intend to cast. I may state that I intend to support the amendment for the six months' "hoist." At whose request is this Bill brought before the House? Has any petition been presented? I would ask, moreover, if any opportunity has been given to the country to protest against this measure? I can tell the hon. gentleman that, if an opportunity were given, the Church of England, to which I belong, will protest against this Bill, which has been brought forward so hurriedly. In my opinion it should be allowed to stand over. Some hon. gentlemen have stated that the Hebrew translation of the 18th chapter of Leviticus is an error. I should be sorry to make such an assertion on the floor of the House, and I should be sorry to think that the translation of the Scriptures was an error, because, if it were so, it knocks down a portion of the structure, and the whole question of affinity is destroyed. No later than 1877, at the Provincial Synod of the Church of England held in Montreal, the following resolution, brought down by the House of Bishops, was passed:—

"No clergyman of this Ecclesiastical Province shall, knowingly, solemnise a marriage forbidden by the 99th Canon of the year A.D. 1603, which is as follows:—No person shall marry within the degrees prohibited by the Laws of God, and expressed in a table set forth by authority, in the year of our Lord God 1563."

Now, that is the rule regulating the Church of England, and I do not agree with the hon. member for Jacques Cartier, that the jurisdiction for the regulation of marriage in every way resides with this House. I believe it should rest as it has for ages with the the Churches to which we belong. I am sure that, if proper time be given for petitions against the Bill, they will come in large numbers from members of the English, the Roman Catholic, Presbyterian and other Churches. The Bill is brought forward in the interest of individuals, the endeavour being made to push it hurriedly through the House; but I shall oppose it with all my powers, and support the six months' "hoist."

MR. WRIGHT: I confess I see few difficulties in the case presented so ably by the member for Jacques Cartier (Mr. Girouard). He has, I must admit, manifested profound research and a wonderful knowledge of all matters connected with the subject of marriage with a deceased wife's sister, almost from the beginning of the practice till the present. We can imagine this eloquent, graceful advocate seated in the solitude of his studies, probably digesting grave problems of social and moral science, waited upon by this charming lady—for we will assume she is charming, which would give the motive usually looked for in such cases—because, as we see no petition, one cannot otherwise understand why the hon. gentleman brings his forces to bear on this problem. It is the old story, the old irrepressible conflict between the law and the lady, and in the present as in past cases of this kind he will find the lady will be victorious. We can understand all the influence upon the hon. gentleman of this good-looking, graceful lady, coming into his office arrayed in all the habiliments of love, wearing looks of the deepest despair and darkest desolation; she has loved, not wisely, but too well; she has placed herself in a sad position, and now appeals to this good counsel for that relief which the Draconian Code does not afford. I cannot, any more than the hon. member for South Leeds (Mr. Jones), see why this question has been brought up here. We all know that the family is the archetype of society, and as it is secure, society will be secure, and we must be careful how we meddle with the family relations. But, from the research manifested by the member for Jacques Cartier, we must assume that some things are at fault, and that we in the 19th century must bear with a little more ease and humility on the errors of humanity than was done at the time of the framing of the Code of Leviticus. I have been seriously troubled by the theological question. The hon. member for Haldimand (Mr. Thompson) produced authorities to which we all bow, but upon which the hon. member for Gloucester (Mr. Anglin) does not look with such great respect; then came the legal address of the hon. member for Jacques Cartier, who presented other claims to attention by a manner of singular ability, and the hon. member for West Durham (Mr. Blake) and the hon. member for Argenteuil (Mr. Abbott), in able

speeches, also appeared to differ with him in regard to matters of detail. Considering all the arguments of the case, with a sense of all the difficulties of the situation, I do not feel disposed, as a member of the Church of England, to share in the prejudices of the hon. member for South Leeds. I will confess that I have been convinced by the power and learning of the hon. member for Jacques Cartier, and, consequently, that I will give his Bill my support.

MR. GAULT: I sent a copy of the Bill of my hon. friend the member for Jacques Cartier (Mr. Girouard), immediately after it was printed, to the Lord Bishop and clergymen of the Church of England, also to the Roman Catholic Bishop and several of the clergy, also to clergymen of the Presbyterian, Methodist, Congregationalist and Baptist Churches in Montreal to ascertain their opinion of the measure, and have had only two replies—one from a clergyman of high standing, who quite approves of the Bill and says it is not contrary to the Word of God, and the other from the Rev. Dr. Cordner, of the Unitarian Church, who says he believes the Bill will conduce to the interests of good morals and sound public policy. With these views in possession and none disapproving, it is my intention to vote in favour of the Bill. A great many of my friends in Montreal, who have married their deceased wives' sisters, are gentlemen of the very highest respectability and standing, and I do not see why they should be held as law-breakers for that cause.

MR. McCUAIG: I do not rise for the purpose of adding any remarks to those already expressed by hon. gentlemen, members of the learned profession, and of this House, both for and against this measure, having reference to the effect the passage of this measure may have on society in Canada. My desire is to call the attention of the House to the opinions entertained in England, for which Canadians have great respect, by eminent men, as reported in the English *Hansard*, 1877. In doing so, it is my duty to place before this House the views of the representative men of the various bodies, as well as the equally distinguished public men of the Empire, from both points of view. In favour of the Bill, 1877, then before the British Parliament, permitting a widower to marry the sister of his deceased wife, I will read the views of the Roman Catholic Archbishops and Bishops residing in England, as addressed by those Prelates to the members of a Royal Commission appointed to enquire into the state of the English law, as well as the replies of Cardinal Wiseman to certain questions he was called upon to answer. In the letter addressed to the Royal Commission on the law of marriage, by the Roman Catholic Archbishops and Bishops of England, is the following passage:—

"With respect to the much debated question of marrying a deceased wife's sister, with us the impediment is diriment of marriage; but urgent cases will arise when ecclesiastical authority finds it reasonable to remove the impediment by dispensation. And among the motives for such dispensations are the preventing of greater evils, the protection or reparation of character, the difficulty of forming another marriage, the consideration of children born, or that may be born, etc., and, although cases of this kind are comparatively rare, we could wish to see the civil obstacles removed which stand in the way of remedying what may prove to be grave matters of conscience.

(Signed)

"† HENRY EDWARD MANNING,
† THOMAS JOSEPH BROWN,
† WILLIAM BERNARD ULLATHORNE,
† THOMAS GRANT,
† WILLIAM TURNER,
† JAMES BROWN,
† ALEXANDER GOSS,
† WILLIAM VAUGHAN,
† WILLIAM CLIFFORD,
† FRANCIS KERRIL AMHERST,
† RICARDUS ROSKELL,
† ROBERT CORNTHWAITE."

The following questions were put to Cardinal Wiseman:—

"Do you construe that passage in Leviticus XVIII, 18, as prohibiting marriage with a deceased wife's sister, or merely as saying that a man should not take two wives together, at the same time being so related?

"*Reply*—Certainly, that verse appears to have the latter meaning, that two sisters shall not be living together in the same house, as wives of the same person.

"*Question*—Is such a marriage held by your Church as prohibited in Scripture.

"*Reply*—Certainly not. It is considered a matter of ecclesiastical legislation."

This influential advice in favour of the Bill will no doubt have a powerful influence on the minds of our Roman Catholic fellow-countrymen in Canada. Though from a Canadian or Colonial standpoint in favour of a similar Bill passing the Dominion Parliament, with the law of England in its present shape,

which declares in effect the children of such marriages are bastards in England on questions of inheritance of real property and the unhappy consequences contingent upon such a state of things to children yet unborn. I say it is just possible a different opinion might have been arrived at. I will now read Lord Brougham (see *Hansard*, English, 1877, pp. 1175 and 1176) in support of opinions entertained in England of the law of the Empire, as it is at the present day, when applied to the inheritance of children of marriage by a widower with his deceased wife's sister in any of the Colonial possessions of Great Britain; and in Canada, notwithstanding, by the North America Act, this Dominion is authorised through her Dominion Parliament to deal with the law of marriage and divorce. Lord Brougham said:

"One should say that nothing can be more pregnant with inconvenience, nay, that nothing can lead to consequences more strange in statement than a doctrine which sets out with assuming legitimacy to be not a personal status, but a relation to the several countries in which rights are claimed, and indeed to the nature of different rights. That a man may be bastard in one country and legitimate in another seems of itself a strong position to affirm, but more staggering when it is followed up by this other —that in one and the same country, he is to be regarded as bastard when he comes into Court to claim an estate in land, and legitimate when he resorts to another to obtain personal succession; nay, that the same Court of Equity (when the real estate happens to be impressed with a trust) must view him as both bastard and legitimate in respect to a succession to the same estate."

I now, Mr. Speaker, propose to read opinions of several eminent authorities of the Protestant Church, on the measure having for its object legalising the marriage of a man with the sister of his deceased wife. Dr. Benjamin Franklin says:

"I have never heard upon what principle of policy the law was made, prohibiting the marriage of a man with his wife's sister, nor have I ever been able to conjecture any political inconvenience that might have been found in such marriages, or to conceive of any moral turpitude in them."

To arrive intelligently at the opinion of the Rev. John Wesley, I will read an extract of the tract written on this subject by John Fry, a gentleman of distinguished learning:

"Suppose a man had married a virtuous woman, every way fit for him, with whom he lived happily until it pleased God to take her off by death, leaving him a widower with young children, and his circumstances such as made it fit for him to marry again, and his deceased wife had a maiden sister much like herself, and, therefore, on all accounts fit for him, who, on account of his kind and obliging behaviour to her sister, had conceived so good an opinion of him, and such fondness for his children, as engaged her consent to supply her sister's place. Can any reasonable person say it would not be fit for him to marry her."

The House will observe the Rev. John Wesley approves of the views of Mr. Fry, by the extract which I will now read from a letter addressed to his friend by Mr. Wesley:

"This is the best tract I have ever read on this subject. I suppose it is the best that is extant."

The opinions of the Baptist ministers in London are thus given:-

"In the judgment of the Board, the marriage of a widower with the sister of his deceased wife is scripturally lawful, and ought not to be prohibited by human legislation." Resolution of the Board of Baptist Ministers in London and Westminster.

Lord Macaulay writes to the Secretary of the Board of Baptist Ministers:

"I am truly glad to find that my opinion on the subject of the Marriage Bill agrees with that of the most respectable body in whose name you write."

Rev. Dr. Chalmers says:

"In verse 18 of Leviticus xviii, the prohibition is only against marrying the wife's sister during the lifetime of the first wife, which of itself implies liberty to marry the sister after her death."

Dr. Adler, the Chief Rabbi of the Jews in the British Dominions, gave the following evidence:-

"It is not only not considered as prohibited, but it is distinctly understood to be permitted; that on this point neither the Divine law, nor the Rabbis, nor historical Judaism, leaves room for the least doubt. I can only reiterate my former assertions, that all sophistry must split on the clear and unequivocal words, Leviticus xviii, 18, in her lifetime."

The following is from the speech of Lord Francis Egerton, in the House of Commons:-

"In 1835, a most important Statute had been passed by that House under somewhat peculiar circumstances, and he might also say of haste and want of due deliberation, materially affecting a portion of the marriage laws of this country (England). In this case the voice of Heaven was silent, and that of man had been given with hesitation and confusion of utterance that deprived it of its due authority."

Lord Houghton said:

"That our Established Church should select one point of the Canon Law, and establish an arbitrary limit without giving any power of dispensation was, he was sorry to say, a very great tyranny, and one he felt convinced that the true principles of the Church of England did not sanction."

Mr. George Anderson, M. P. for Glasgow, in his speech on the Marriage Bill, 20th July, 1869, said:

"He denied that there existed in Scotland the strong and general aversion for those marriages which was alleged to exist."

I have now given the House the opinions of several eminent men, all inclining to the belief that the law of England should be changed, to legalise marriages with the sister of a deceased wife, and which may no doubt influence public opinion in this Dominion. With a view of cautioning hon. members of this House, I may be permitted to draw their attention to the various views and arguments advanced by those whose opinion I have just read in favour of the change of the law, and to my mind the argument of expediency preponderates. I may, in support of this statement, read the arguments of Lord Chief Justice Denman and Sir George C. Lewis. Lord Chief Justice Denman says:

"If the Act of 1835 has notoriously failed in its operation, if these marriages, though discountenanced by the Legislature, have become more numerous, not only among the lower classes, a large proportion of whom must ever remain ignorant of the existence of this and similar interferences by law with freedom, but among the cultivated, the thoughtful, the conscientious, the exemplary; if the stigma set by the law is not stamped by the public opinion, if the offenders are as well received as before, and are respected for acting on a just view of scriptural text, perverted by erroneous interpretations; in such case it will surely be more politic to make the law consistent with reason, than in a fruitless endeavour to bend reason to arbitrary law, to vex and persecute where we cannot prevent, to curse whom the Lord hath not cursed, and defy whom he hath not defied."

Sir George Cornewall Lewis, M. P., said:

"Upon the whole, looking at the law, the practice of foreign countries, and the unwillingness which prevails in this country to submit to the present law, he should give his cordial assent to the second reading of the Bill."

The eloquent words of Mr. Beresford Hope, the Attorney-General of England, and Mr. O. Morgan, delivered in the Commons of England against the passage of a Bill introduced by Mr. Knatchbull-Hugessen, in 1877, but not carried, to relieve the disabilities of inheritance in England of the children of a man with the sister of his deceased wife, and which I now propose to read to this House, I accept as a true index of the public opinion of old England, and a safe guide for me in recording my vote against the measure, now before this House, introduced by the hon. member for Jacques Cartier. Mr. Hope said:

"As to the first, it is conceded that, whatever may be the state of the law for the purposes of those Colonies, gentlemen who have allied themselves with their wives' sisters in the Colonies, will enjoy the protection of such laws as those Colonies may have passed; that, in point of fact, clearing the question of all verbiage and ambiguity, the only grievance, if grievance there is at all, is that the offspring of those alliances will not inherit property under intestacy or settlement, nor succeed to titles in England. That is the grievance on the side of the Colony. The grievance on our (England's) side is much broader, a more real one; shall or shall not all or any of the Colonies have the right to force the hand of the Mother Country? Shall we or shall we not put the marriage laws with all those great and delicate questions which run into moral, into social, and into legal considerations; shall we put all those questions into the power of all or any of the Colonies which happen to enjoy a responsible Government to regulate for us? Is the law to be made for England by Canada or by England for England, and by Canada for Canada? Let me just take the case of a couple that have committed an alliance of this sort. The couple have taken a trip to Australia, and the return trip may stand for the honeymoon. They go into society, and say they are as good as anyone else, and perhaps rather better. They have been married according to law in the Colony and under the protection of my hon. friend's Bill. Well, they attempt to go into society, and what is their position there? No doubt in some quarters they would be received with all the honours of martyrs. Elsewhere they would be regarded as persons who, for the purpose of contracting a marriage which is not legal in this country, had evaded the law of the Mother Country by undertaking the expense of a voyage to one of the Colonies; whilst other persons, desirous of contracting the identical marriage, were unable to do so because their business or their want of means obliged them to remain in the United Kingdom. Is that a pleasant position for a high-minded man or a pure-minded woman to stand in? But that is what your measure would lead to. I will take another case, and suppose two brothers who are successively in remainder to some property or some title. Each of these brothers has become a childless widower, and each feels that the vacant chair at his desolate hearth might be best filled by his sister-in law.

The elder brother is poor and unable to afford the expense of a voyage to the Colonies. He goes through the marriage ceremony, say in England, or in Denmark, with his sister-in-law. The younger brother, more adventurous or more wealthy, makes his voyage to Australia, and after due interval of time brings back blushing sister-in-law decorated with his surname, from the southern hemisphere. Now the question of property comes in. A son is born to each. The son of the elder brother and of the elder brother's sister-in-law is illegitimate, because his parents clung to Europe. The son of the younger brother and the younger brother's sister-in-law inherits the estate or the title because his parents took that pleasant voyage to Australia. Is that a state of things which anybody would like to see existing in England? Yet that is another result to which this Bill of yours would lead you. By this Bill you enable a man, at the small expense of a journey to Australia and back, if he can afford it, and possibly of a residence of twelve months in one of the Colonies, to marry and bring back that person as his wife. What is this but to confound the ideas of right and wrong, to defeat the laws of succession and inheritance, and to commit an outrage on the social feelings of the country, just because the man has a longer purse and some more leisure than the small residuum of persons remaining in England, who might wish to do the same thing, but are wanting in the material means of giving effect to their desires. This, Sir, is the light in which I am compelled to regard this Bill."

Earl Percy said:

"The Colonies had passed Acts legalising these marriages, and those Acts had received the assent of Her Majesty, and because that had been done they were now asked to change their own law in order to put themselves right with the Colonies. He wanted to know how far that argument was to be carried? Were we prepared to accept the views of the colonist on all matters in which the Colonial Legislatures came into contact with the Imperial Legislature? If that were to be the rule, he could hardly understand how we could be said to be independent of the Colonies at all.

It would be for the Colonies to dictate the laws which they were to pass. These marriages were objected to on moral, social and religious grounds, and they were asked to change their conduct on a moral, social and religious question in order to suit the Colonies. If this Bill were passed, a rich man would be enabled to contract a marriage legally with his deceased wife's sister, whereas a poor man could not do so. Legislation of this kind would be introducing the thin end of the wedge. If marriage with a deceased wife's sister were right and lawful, let them pass a measure making it legal; but, if not, let them resist by every means in their power any modification of the law by any indirect method of dealing with the question."

The Attorney-General of England said:

"According to the English law, a man domiciled in this country could not contract a valid marriage with his deceased wife's sister either here or elsewhere. Such a marriage, whether contracted in England or elsewhere, was wholly null and void. The law of Scotland was more stringent still. Such marriage in that country was not only void, because illegal, but was a crime, and a man contracting the marriage might be subjected to severe penalties, formerly if not now, to death. If a man not domiciled in a Colony—and a domicile was a most important element in this question—married the sister of his deceased wife in that Colony, the marriage, although according to the law of the Colony it was perfectly good, and was recognised as valid whilst the man and his wife remained there, was not so recognised in England; but on the contrary was considered an invalid marriage altogether."

Mr. Osborne Morgan said:

"An Englishman domiciled in Australia, and having married his deceased wife's sister and having issue by her, might return to England and might there invest £1,000 in the funds and another £1,000 in the purchase of freehold land. At his death, intestate, his son by the second marriage would be legitimate as to the funded property but a bastard as to the land."

Before the introduction of the Bill in the English House of Commons, by Lord Lyndhurst, the law of the Empire declared the marriage of a man with his deceased wife's sister voidable, but void only when decision was pronounced by the Courts of England. Lord Lyndhurst's Bill changed the law, by legalising all past marriages contracted with a deceased wife's sister by a widower up to 1865, but so amended the law that all marriages of that nature after the passing of that Act, 1865, was declared absolutely void. I appeal to hon. members of this House and ask, is it not our duty, with the evidence before us of the apparently inflexible determination of British statesmen to hold all marriages by a man with his deceased wife's sister, in England, void, and the unhappy consequences which may result and overtake the families and the children of such marriages inheriting property or title, especially in England, to reject the measure now before this House, which, if passed, will encourage a state of things repugnant to the educated public opinion of the Empire, and declared by her laws to be void and of no effect? I admit the natural feelings of relationship may secure to the children of the deceased mother, in some instances, a more tender and affectionate consideration, at the hands of the sister of their deceased mother, than they would at the hands of a second wife of their father, in no way or

manner connected previously with the family by ties of relationship. But I deny, emphatically deny, that any true and good woman, worthy of being called by the sacred name of wife and mother, and accepting the responsibilities which at the time of her marriage with a widower she was fully informed would come within the compass of her legitimate duties, would withhold from those young, tender, helpless and motherless little ones that affection and gentleness which distinguish a true woman's nature. I shall vote that the Bill be read this day six months.

MR. ROSS (Dundas): I do not desire to give a silent vote on this question, because I consider it very important. I entirely differ with the hon. member for South Leeds (Mr. Jones) on the subject, and as to the views held by the Church of England. In my intercourse with clergymen of that Church, I have often heard them express regret that they were frequently obliged to refuse to solemnise marriages with deceased wives' sisters. Many valuable members of this Church have left it, and joined other Churches on account of this disability. I do not believe there is any good reason why we should interfere with persons desirous of uniting in marriage, to prevent them. It appears to me that no person is so suitable to take the place of a deceased sister as a surviving sister, or to take care of the children and exercise that kindly oversight which the departed would have wished. Parliament has no right to prevent such unions, for which there are so many strong, natural and other reasons. The great patriarch, Abraham, himself married his half-sister; and, if there was nothing wrong in that act, why should we consider it wrong at the present age to permit the present proposed Bill to become law. Therefore, I shall have great pleasure in voting for the Bill of the hon. member for Jacques Cartier, who shows himself up to the age, and a friend of that liberty we all should approve of when there is nothing wrong behind it.

MR. ANGLIN: I agree with the hon. member for South Leeds in one of his propositions, that neither the Government nor the Parliament, King, Lords or Commons, has anything to do with the law of marriage, which should be settled by the Church only. However, with regard to the temporal questions, including the settlement of property, the power of the Legislature in modern times must be invoked. I should support any Bill intended to settle property rights on the part of those contracting such marriages as are named in this Bill. I think the word "valid" objectionable, unless we regard it as only used in a Parliamentary sense, and having no meaning beyond the admitted powers of the Legislature; but the word "legal" is a different word, which I would prefer to see used alone in this connection; for, in using the word "legal," no Catholic supporting the Bill could be supposed to express any doubt as to the validity of any marriage contracted according to the laws of the Catholic Church.

MR. GIROUARD: I consent to the suggestion of the hon. member for Gloucester (Mr. Anglin), and will allow the word "legal" to stand for the purpose of the Bill instead of the word "valid." That will be sufficient.

MR. LANDRY: In a question assuming all the importance which is generally ascribed to the question now before the House, it appears to me that great advantages would result in the debate if the matter were placed on a proper footing. And what can that footing be if it be not the great principles which form the foundation of society, and the luminous brilliancy of which enlightens the intellect, by pointing out, as the lighthouse does to the pilot, the dangers of navigation, the reefs upon the shore. And if ever we stand in need of a skilful pilot, if ever prudence, even when least distrustful, for bade us to entrust the vessel in which we are embarked to the mercy of the wind, if ever we needed the steady hand of the steersman, it is under existing circumstances, when we have to encounter a species of legislation which may attack or protect the rights of the Church, restrict our own, and seriously compromise those which are claimed by the Provincial Legislatures. Those are the three reefs which stand forth before us; this is the three-fold danger which we have to avoid. Gathered together from all points in the Dominion, we are all here as representatives of the people, and our duty is, by wise and enlightened legislation, to attain the objects aimed at by the civil and political society of which we are

members; but we are also members of a religious society, and as such strictly held to the obligations which it imposes upon us, entirely subject to its ordinances and bound to respect its rights. Let me, Sir, going at once to the point, state from that point of view what are the rights and the duties of each individual. It is an elementary and universally recognised principle in every society that power must be proportionate to the object which that society proposes to attain. By power must be now understood the entirety of the rights possessed by society, whether such rights are derived from society itself, the intrinsic source of power, or whether they are the results of certain agreements, the extrinsic source of power. In virtue of its nature, that is to say, of an intrinsic derivation, all society has a right to exact all that is requisite for the complete attainment of its object. Now, to obtain that result, a three-fold power is necessary: 1st. That of proposing in an obligatory form the means tending towards its object—legislative power; 2nd. That of compelling the proper application of such means according to the sense and in the manner prescribed by the authority proposing them—judicial power; 3rd. That of forcibly constraining those who refuse to apply them, and of reproving those who attempt to obstruct them—coercive power. This necessity of power, as a means of attaining the end, does not limit its extent; it is the end itself which regulates and fixes it. In fact the end is the main element of all society; it is the source of its existence; this it is which determines the nature of the means, their proportion and their utility. It evidently follows from their nature that the means are subordinate to the end. It is now easy to draw a conclusion. Power in all society is a means which, of its nature, it has to attain its end; it is a means which must be subordinate to the end. Therefore, in all society, power, let its source be what it may, intrinsic or extrinsic, let its nature be what it may, legislative, judicial or coercive, must be proportionate to the end which society proposes to attain. Such is its extent. If we now glance at all societies at present existing on the face of the earth, the most cursory examination of the question will demonstrate the existence of two principal forms of society, which include all others: 1st, Religious society, the Church; 2nd. Civil society, the State. If men unite and form societies, it is with a view of labouring for the attainment of benefits which prosperity confers upon them. Now all benefits composing the happiness and prosperity of mankind are included of necessity either in spiritual welfare or in temporal welfare. Thus civil society and the Church divide between them the attainment of this double welfare, temporal welfare falling to civil society and spiritual welfare to the Church. Thus the Church and civil society comprise all other societies. The existence of these two branches of society being admitted, let us consider the relations which may exist between them. Those relations are not always alike, for the good reason that civil society or the State presents variation in its composition, which must of necessity influence its relations with the Church. It will be understood that a Catholic State cannot have the same relation with the Church as a heretical or an infidel State. But let us leave out of the question civil society, composed from a religious point of view, —first, of infidel individuals, society not under the dominion of the Church; second, of schismatical and heretical individuals, society separated from the Church, but subject to its power—to consider only civil society composed, still from a religious point of view, third, of Catholic individuals, society united to the Church and subject to its power. In this latter society, and this it is which distinguishes it from the other two, the individual belongs at once to both branches of society, to civil society as a citizen and to the Church as a Catholic. Now in every society the obligation obtains that the members of it should unite their power to attain a fixed end. In the case under consideration, he, therefore, who is at once a member both of civil society and religious society, is subjected to a double obligation, that of attaining the object of civil society, of which he is a member, and that of attaining the object of religious society, of which he is also a member. If these obligations be compared with each other, it will be found that they agree, that is that they exist without conflict ordiscord. Now societies, being under the same con-

ditions, since from their nature such obligations exist, are either in accord with each other or in conflict. What is then the duty of the Catholic citizen, that is to say, of him who is at once a member of civil and of religious society? If the two societies are in accord, if their obligations exist together without conflicting, the duty of the Catholic citizen is easy of performance; he has only to conform to the obligations of the two societies of which he is a member. But if these are in conflict, if one cannot strive for its object, at least in its own opinion, without interfering with the other; if the Catholic citizen, in a word, is brought face to face with contending obligations, what line of conduct should he adopt, the choice to be made being decided by the motive? This is what we have to define: Religious society, the Church; and civil society, the State; are, as compared with each other, two unequal societies, but composed, as in the present case, of the same members. They are two unequal societies, because their objects are unequal. There can indeed be no equality between eternal welfare, the object of the Church; and temporal welfare, the object of the State. If the objects are not equal, it follows, as a matter of course, that one must be superior to the other, otherwise they would not be unequal. Is it necessary for me to prove that eternal welfare is superior to temporal welfare? No, that is an admitted truth, evident to all the world. Therefore, the object of the Church is superior to that of the State. Again, it is admitted, and it is the principle which serves as the basis of our argument, and which was cited at its commencement, it is admitted without question that in society all power must be proportionate to the object. Therefore, the power of the Church, a society superior to civil society, because its object is superior to that of the State, is itself superior to that of the State. In view of contradictory obligations imposed, the one by religious power and the other by civil power, the Catholic citizen is therefore bound to obey the Church in preference to the State. But the duty of obeying is correlative with the right to command, that is to say that it is the duty of the citizen to obey, because it is the right of the State to exact that obedience. But, if, in view of contradictory obligations emanating, the one from the State, and the other from the Church, the Catholic citizen is only found to submit to the latter, he therefore does not and cannot owe obedience to the State. Therefore the State has not the right to exact such obedience—judicial power. If the State has not the power to exact such obedience, it follows that it does not possess that of compelling by force the citizen whose duty does not bind him to obey—coercive power. Further, if the State has not the right to exact or to compel, it cannot have that of proposing, in an obligatory form, what cannot be an obligation to a Catholic citizen—legislative power. The State has therefore no power to impose on Catholic citizens obligations which contravene the rights of the Church. The legislator—and we are here as legislators—has not therefore the power of legislating in a manner opposed to the rights of the Church. Such are the true principles which must guide us, and make us Catholics accept the teachings of the Church. Now, what are those teachings at least so far as relates to the question of marriage. Before replying, it is important to establish at once what are the rights of the Church in this important matter. The forbearance of the House will allow of my approaching this question. In the abstract, marriage is a natural, civil and ecclesiastical contract. It is a natural contract instituted by God himself amid the magnificence of the terrestrial paradise and the unity and indissolubility of which receive a sanction and authority which is no less than Divine in character from the words of Genesis:

"Erunt duo in carne unâ;
Quod Deus conjunxit homo non separet."

Marriage is also a civil contract, but in this sense only, that it is a contract subject to certain civil formalities, apart from which the marriage may be looked upon as void as respects the civil results which may follow it. Thirdly, marriage is an ecclesiastical contract, and as such subject to the canons of the Church. By this it is not to be supposed that marriage is a triple contract. Not so, it is a single contract which takes these several names according as it is looked at, as relating to the propagation of the human race or as a matter of interest either to civil society or

to religious society. I have stated that marriage is an ecclesiastical contract subject to the canons of the Church. That truth I shall now demonstrate. Since this discussion began, you must have observed, Sir, that most of those on either side have, as a rule, each in his turn, addressed in support of their assertions, the incontrovertible authority of Holy Scripture. Such an advantage should not be denied me, and I may be allowed to prove my proposition by biblical quotations, which I shall give, not as an expression of my own individual views, but as the doctrinal and divine interpretation of the Church to which I belong. First, I state that marriage is a sacrament. What St. Paul wrote to the Ephesians (v., 25, 28) : "Sacramentum hoc magnum est, ego autem dico in Christo et in ecclesiâ," is an incontrovertible proof of the truth of this proposition, and the more so for us Catholics, because it has also been the teaching of the Church from its foundation to the present day. The fathers of the Church have spoken : St. Ignatius of Antioch, Tertullian, Origen, St. Athanasius, St. Augustin, etc.; the voice of the Church was heard at Florence, at Cologne, at Trent ; and everywhere and at all times marriage was proclaimed a sacrament. Now, what the Universal Church believes, and has always believed, can only have been transmitted to us by Apostolic tradition, and what the Apostles have transmitted to us as a divine institution, proceeds as all admit from Jesus Christ himself. Marriage is therefore a sacrament and a sacrament of the new law. For us Catholics it is a dogma of faith. Pius IX, in his letter to the King of Sardinia, dated 19th September, 1852, says : "It is a dogma of faith that marriage was raised by Our Lord Jesus Christ to the dignity of a sacrament." Would you know the doctrine? The Council of Trent speaks : "Whosoever says that marriage is not really and truly one of the seven sacraments of the Evangelical Law, let him be anathema." If marriage is a sacrament, and such is our unalterable belief, the Church only, by divine right, has supreme power over christian marriage. In fact the Church alone is the dispenser of the sacraments. St. Paul teaches us this in his first epistle to the Corinthians, chapter 4, in which he says : "Let a man so account of us as of the ministers of Jesus Christ and stewards of the mysteries of God." The Pope Gelasius, writing to the Emperor Anastasius told him plainly : " Although your dignity raises you above the human race, you are nevertheless subject to the Bishops in matters relating to the faith, and to the delivering of the sacraments." And what is a sacrament, if it be not a means subordinate in its nature to the object of religious society? The Church has, therefore, supreme power over marriage. An examination of history proves that in all ages the Church claimed, by divine right, power over marriage. In the days of the primitive Church, the Apostle to the Gentiles, writing to the Corinthians, told them that it was not the Lord but he, Paul (Dico ego non Dominus), who prescribed a regulation in relation to marriage between infidels, one of whom had embraced the faith. He thereby recognised the right of the Church to make regulations respecting marriage. In 305, the Council of Elvira, that of Neocæsarea in 314, St. Basil, Pope Innocent I, Pope St. Leo, the Council of Agda in 506, St. Gregory the Great, the Church in a word, by the lips of her teachers and the decisions of her Councils, promulgates her laws as to marriage, and decides what are absolute impediments, and we Catholics have only to submit to that infallible authority. And when error lifts up its head, when the most false principles are circulating in society and threatens to poison all true doctrine, a Pontiff of sainted memory does not fear to raise his voice. And what are the words of that aged man? They condemn this proposition :—"The Church has not the power to establish absolute impediments to marriage, but that power appertains to the secular authority, by whom existing impediments may be removed," (Syllabus, 68.) We now arrive at the true question as it presents itself to us. We shall easily solve it. The hon. member for Jacques Cartier brings in a Bill which may meet with our approval, but he has just delivered a speech which I cannot accept as an expression of the ideas and principles of Catholics upon this question of marriage. What does the hon. member maintain? That this Parliament has the undoubted right to establish absolute impediments to marriage,

and the not less undoubted power of dispensing with them. I protest against such a declaration, and I emphatically deny that this Parliament has a right to legislate as to the validity of marriage. Marriage is a sacrament; the State has nothing to say as to the administration of the sacrament, and, by consequence, as to the validity of marriage. That is an ecclesiastical contract over which religious society alone has a power, which cannot be vested in the State. Further, the doctrine announced by the hon. member for Jacques Cartier, so far as we Catholics are concerned, has been solemnly condemned by Pius IX in the 68th Article of the Syllabus, which I read a few minutes ago. I think, however, that the hon. member has confounded absolute with prohibitive impediments. It is important that the difference should be understood, and that distinction should be made in a case where there should be no confsiuon. By an impediment to marriage must be understood every obstacle to marriage. When that obstacle cannot be overcome without rendering the marriage void, the impediment is said to be absolute. If an individual, regardless of the law, by a misdemeanour, contracts a valid marriage, the impediment is said to be a prohibitive one. As may clearly be seen, the absolute impediment is an insurmountable obstacle to marriage, as it renders the parties unable to contract. It is an obstacle to the administration of the sacrament, for marriage is a sacrament. The State, therefore, has nothing whatever to do with it, and to the Church alone belongs the power of establishing such impediments; the Church alone has the power of dispensing with them; and, whereas amongst us Catholics no one can question the testimony of our infallible Pontiff, I shall now cite an extract from the letter of Pius IX to the King of Sardinia, under date of 19th September, 1852:

"A civil law, which, supposing the sacrament to be divisible from the contract of marriage for Catholics, pretends to regulate the validity thereof, contradicts the doctrine of the Church, usurps her inalienable rights, and in practice puts in the same rank concubinage and the sacrament of marriage, or sanctions the one and the other as equally legitimate. Let Cæsar, keeping what is Cæsar's, leave to the Church what belongs to the Church. Let the civil power deal with the effects resulting from marriage, but let it leave the Church to regulate the validity of marriage itself between Christians. Let the civil law take for its starting point the validity or invalidity of marriage as determined by the Church; and starting from that fact which it cannot constitute, the same being without its sphere, let it regulate the civil effects."

The Church, therefore, claims for herself alone the right of regulating the validity of marriage, the power of legislating on absolute impediments. The proposition of the hon. member for Jacques Cartier is therefore untenable. No, Mr. Speaker, we have not the right to establish absolute impediments to marriage; what we can do, as a Parliament, as a civil authority is, "taking for our starting point the validity or invalidity of marriage, to regulate solely its civil effects." Parliaments have that power only. "The matrimonial contract," says Mazzarelli, "is governed by the laws of the Church, because it is a spiritual contract *in ordine sacramentum*." Let the civil power, therefore, preserve its authority; no person desires to usurp it. Let it declare null and void any contract made without the formalities it prescribes. Will that contract be void? Yes; who denies it? It will have no validity—but, be it well understood, it will have no validity before the civil power. And what is meant by saying it will have no validity before the civil power? It means that it will give the contracting parties, in civil society, no legitimate action, for this is the sole and only result of the annulling of a civil contract. But, if the Church determines that the same contract is valid *in foro conscientiæ, in ordine ad sacramentum*, it will be valid matter of the sacrament, and the marriage will be indissoluble in the eyes of the Church. And why? Because it is not the civil contract, but then atural, divine, spiritual, ecclesiastical contract, which is the matter of the sacrament of marriage; and it is the laws of the Church that govern spiritual contracts and offices. These principles being clearly established, let us proceed to enquire as to the nature of the measure now before us. What is the purport of the Bill of the hon. member for Jacques Cartier? It is 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 dispensa-

tion, 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."

The first paragraph declares to be legal and valid a marriage, against which the Church has set up an invalidating impediment, but it must be remarked that this clause is not absolute, and that it only stands together with the proviso accompanying it, which is nothing but the setting forth of the conditions to which the contracting parties should submit, if they desire their marriage to be considered by the State as legal and valid. And what are these conditions? The same which the Church desires to impose. By legislation such as this the State recognises the rights of the Church, accepts her ordinances, and only recognises as legal and valid, in the particular cases we are now discussing, the marriage when contracted after the preliminary dispensation has been obtained, in conformity with the rules and usages of the Church. Legislation of a similar nature to this—not complete, it is true, but such as it is—should be accepted by the Catholics in this House, and will be I hope. We will vote then against the proposition made to us by the hon. member for Haldimand (Mr. Thompson) to give this Bill a six months' "hoist.' Favourably as I regard the principle enunciated in the proposed law as now presented to us by the hon. member for Jacques Cartier, I must nevertheless make some important reservations. This legislation is incomplete and ambiguous, and in its phraseology leaves much to be desired. For example, as the hon. member for West Durham (Mr. Blake) remarked, there is nothing in this legislation which determines the line of conduct to follow, or at least which establishes the line of conduct to be followed when the contracting parties belong to different religious creeds. I do not intend to attempt a critical examination of the wording of the measure, but, when the House goes into Committee, I shall suggest one change which I consider desirable. This measure, Mr. Speaker, may be considered from another point of view. There are other considerations which must not be lost sight of. Indeed, in this important question of marriage, the Local Legislatures have a jurisdiction which must be jealously guarded, and we must not permit this Legislature to encroach in any way upon the rights and privileges of our Provincial Legislatures. I trust that, when this measure is again submitted to our consideration, in Committee of the Whole, it will receive all the modifications required to render it a measure worthy of this House, and in keeping with the true principles of religious and civil society, and in conformity with the rights and privileges which the fathers of Confederation gave to our Local Legislatures.

Motion *made* and question *proposed*:

That the said Bill be not now read the second time, but that it be read the second time this day six weeks.—(*Mr. Thompson, Haldimand.*)

The House *divided*:—Yeas, 19; Nays, 140.

YEAS:

Messieurs

Charlton	McLeod
Farrow	McQuade
Geoffrion	O'Connor
Jones	Patterson (Essex)
Keeler	Stephenson
Macdonald (Vict. N.S.)	Thompson (Haldimand)
MacDonnell (Inverness)	Trow
McCuaig	Weldon
McIsaac	Williams.—19.
McKay	

NAYS:

Messieurs

Abbott	Kaulbach
Allison	Kilvert
Anglin	King
Arkell	Kranz
Baby	Landry
Baker	Lane
Barnard	Langevin
Beauchesne	LaRue
Béchard	Longley
Benoit	Macdonald (Kings PEI)
Bergeron	McDonald (Pictou)
Bergin	Macdonell (N. Lanark)
Bill	Mackenzie
Blake	Macmillan
Bourassa	McCallum
Bourbeau	McInnes
Bowell	McLennan
Brecken	McRory
Brown	Malouin
Bunster	Masson
Burpee (St John)	Massue
Burpee (Sunbury)	Merner
Cameron (South Huron)	Méthot
Cameron (N. Victoria)	Mills
Carling	Montplaisir
Caron	Mousseau

Cartwright	Muttart
Casey	Ogden
Casgrain	Oliver
Chandler	Olivier
Cimon	Orton
Cockburn (Muskoka)	Ouimet
Colby	Paterson (S. Brant)
Connell	Pickard
Costigan	Pinsonneault
Coughlin	Platt
Coupal	Plumb
Currier	Pope (Queen's P.E.I.)
Cuthbert	Richey
Daoust	Rinfret
Desaulniers	Robertson (Hamilton)
Desjardins	Robertson (Shelburne)
Domville	Rogers
Doull	Ross (Dundas)
Dugas	Ross (West Middlesex)
Dumont	Rouleau
Elliott	Routhier
Fiset	Royal
Fitzsimmons	Ryan (Marquette)
Fleming	Rymal
Fulton	Scriver
Gault	Skinner
Gigault	Smith (Selkirk)
Gillies	Snowball
Gillmor	Sproule
Girouard (Jacques Cart.)	Strange
Girouard (Kent, N. B.)	Tassé
Grandbois	Tellier
Gunn	Thompson (Cariboo)
Hackett	Tupper
Haddow	Vallée
Hay	Vanasse
Hesson	Wallace (S. Norfolk)
Hilliard	Wallace (W. York)
Holton	White (Cardwell)
Hooper	White (E. Hastings)
Houde	White (N. Renfrew)
Huntington	Wiser
Hurteau	Wright
Ives	Yeo.—140

PAIRS :

For—	*Against*—
Daly	McCarthy
Bannerman	Smith (Westmoreland)

Question resolved in the *negative*.

Bill *read the second time*.

March 10th, 1880.

CONSIDERED IN COMMITTEE.

House *resolved* itself into Committee of the Whole to consider the said Bill.

(In the Committee.)

MR. MILLS : I think that the amendment of the first section by striking out the words "and valid" would meet some of the objections to the measure on ecclesiastical grounds. The measure would then encourage the marriage as a civil contract, and leave untouched the question of its ecclesiastical validity.

MR. KAULBACH : I am in receipt of a letter from a clergyman of the Church of England asking for delay in the passage of the Bill until the friends of the Church, in the various parts of the Province, may have an opportunity of learning more of its merits. I think it advisable that this measure should be delayed.

MR. MILLS : I move that all the words after the word "legal," at the end of the second line of the first clause, be struck out.

MR. WELDON : There is this difficulty in the matter. This measure declares such marriages to be legal, and the Statutes of the Local Parliament compel officiating ministers to officiate where there is no legal impediment.

Mr. MILLS : We cannot compel anyone to perform the ceremony, nor can we say they shall not perform any ceremony. That is a matter clearly within the province of the Local Legislature, as it relates to the solemnisation of marriage, and one with which we have nothing to do.

MR. ANGLIN : It would be more convenient if the hon. member would take another mode of ascertaining the opinion of the Committee on this point. Some of us may wish to strike out the words "and valid," and retain the rest.

SIR JOHN A. MACDONALD : This House cannot by legislation compel a minister to perform a marriage ceremony, r interfere in the matter in any way. A part of that clause trenches very closely upon the jurisdiction of the Local Legislatures, if it does not directly interfere with them, as I am not quite sure it does not. I was much struck by the line of argument taken by the member for Gloucester (Mr. Anglin) the other day, and I am not at all sure but that that section had not better be amended. I am strongly in favour of leaving the clause as it will stand as amended by the hon. member for Bothwell (Mr. Mills).

MR. JONES : If this Bill is to be passd, it had better be passed in the shape the hon. member for Bothwell proposes. That is the only way that Bill can pass this House at all.

MR. LANGEVIN : I would observe that, by this motion of the hon. member for Bothwell, only the two first lines of the clause will be left, that is to say, these words :—"Marriage between a man and the

sister of his deceased wife, or the widow of his deceased brother, shall be legal," and then the words "and valid," with the two provisos will be struck out, the first proviso reading as follows :—

"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."

And I must say that, if we were to adopt this clause, we would, in my opinion, exceed our jurisdiction and infringe upon the rights and privileges of the Local Legislatures according to the Confederation Act. The provision relative to the dispensation mentioned in the tenth line is strictly within the province of the Local Legislatures. Such is the meaning of the Confederation Act, not stated in so many words, but understood by the promoters of that measure at the time it was drawn up. I may remark that I had the honour at the time of giving the views of the Government on that subject, when my right hon. friend who now leads the Government was at the head of the then Government. The views then expressed met with the approbation of the House at the time. The proviso in question in the present Bill is, therefore, strictly within the province of the Local Legislatures, and this power ought not to be assumed by this Parliament. When I first looked at this Bill, and considered the reason given by the hon. member for Bothwell the other night for striking out all the words after the word "legal," I thought I could not really vote for the Bill; and for this reason, that, as a Roman Catholic, I cannot admit that the Parliament of Canada has the right to legislate on the subject of marriage, pure and simple, which would be an interference with the rights and privileges of my Church, which holds marriage to be a sacrament. On the other hand, the Confederation Act having reserved to the Local Legislatures the right to legislate on the celebration of marriage, and those Legislatures having asserted the right to determine those points, I think we would be only acting within our province by adopting the amendment of the hon. member for Bothwell. I would have preferred to put in this Bill a proviso that any marriage contracted according to the rules and prescriptions of the Church or the Churches to which the parties belong, between brothers-in-law and sisters-in-law, would be legal; but considering the difficulties that such legislation would lead us into, and the difficulty there would be in determining the functions of the Legislatures and the Parliament on this point, I am ready for my part to vote in favour of the amendment proposed by the hon. member for Bothwell. I cannot help thinking that the hon. gentleman who has just spoken is mistaken, if he says that the matter of dispensations is within the power of the Local Legislature. The Local Legislature has, by the Confederation Act, power to legislate about the solemnisation of marriage, and the mode of celebration necessary to render the marriage legal and binding; but nothing to do with regulating as to the parties who shall marry. That, it is admitted, belongs to this Parliament in the legal sense of the Confederation Act.

MR. ANGLIN: Catholics believe that only the Catholic Church can make any laws affecting the validity of marriage—the *vinculum matrimonii*. In considering the clauses of a Bill of this kind, the views of all parties must be taken into account. If we could pass a Bill merely declaring that marriages celebrated according to the rules and regulations of any Church should be legal, it would be a very simple matter. Under the proviso as framed the only question that arises is whether we should or should not distinctly and directly recognise the powers and authorities of any Churches or religious bodies to regulate the conditions on which marriages are to be contracted. That is the object of the framer of the Bill in providing that, where dispensations are required under the laws of any Church, such dispensations must be obtained to make the marriage legal. I see the word "valid" is used throughout; we ought to substitute "legal" for "valid" in every instance. It would be better if the question was taken on a motion to strike out the word "valid;" after that, we could, with less embarrassment, consider whether we should recognise the right of the Churches, or any of them, to take a share in determining the

legality of marriages; whether we should recognise the right claimed to require dispensations before celebrating the marriage. With regard to jurisdiction, the Act of Confederation must be taken as we find it, and we must interpret its meaning as it clearly appears on the face of it, without regard to the views of the hon. gentleman who discussed this question when the scheme for Confederation was brought forward, or when the Act passed through the Imperial Parliament. I would like to hear the hon. mover, who desires to retain one of the provisos. I would prefer that we should vote on each particular branch of the question, and not on all together.

MR. LANGEVIN: The hon. gentleman is right in saying that we must interpret the Confederation Act, taking it as it is; but, if some disposition is not clear, or requires some explanation, it is quite within our right and the manner of, and rules for, the interpretation of Statutes, to see how the framers of the Bill viewed the subject at the time the law was passed. I agree with the hon. gentleman that the solemnisation of marriage is left entirely to the Local Legislature to deal with; but, with reference to these dispensations, I say that the question is not left to the Local Legislature, but to the Church to which the hon. gentleman and myself belong. If a marriage is to be contracted between parties of the Catholic faith, and dispensation is required, according to the rules aud prescriptions of the Church, the law does not say that the dispensation will be such and such, but mentions the dispensation authorised by the Church, and the marriage then takes place. We have no right in this Parliament—with all the great powers that we own and claim and have—we have no more rights than the Confederation Act gives us; and those powers are limited on this subject; we have to declare what is the status of parties throughout the Dominion; but what the mode of celebration is to be, or what the dispensations shall be, is not within our province. After considering and weighing well that clause, I am disposed to vote for the amendment of the hon. member for Bothwell (Mr. Mills), as I have already stated.

MR. CASEY: While I agree with the hon. Minister in wishing to expunge this clause, I do not coincide in the reason given by him. I understand him to contend that—this being a question of whether a prior dispensation is requisite to make a marriage valid—the power over these dispensations rests with the Local Legislatures entirely; and it is there I must take issue with him. I think the Constitution says it rests with the Local Legislature to say how the parties shall marry; but the question here is who shall marry? It rests with the Local House to say by whom the marriage ceremony shall be conducted and how it shall be conducted; but it rests with us in this Parliament to declare what persons shall have power to marry one another. Although I do not admit that we have no jurisdiction, I think this clause had better not be in the Bill. I think it would be as well to take this question of expunging the clause piecemeal, and make it two or three votes, as my hon. friend from Gloucester (Mr. Anglin) suggests.

SIR JOHN A. MACDONALD: But, if those hon. gentlemen who think it goes too far will not vote, I do not see how the hon. member for Bothwell (Mr. Mills) can alter his motion.

MR. MILLS: It is open for any member to move an amendment.

SIR JOHN A. MACDONALD: He might move that all after the word "valid" might be struck out.

MR. MILLS: Or stand as part of the Bill. With regard to the question of jurisdiction, I think the rule was well recognised in the Constitution of the United States, that it was necessary to look whether the power given is general or special. Now the question of property or civil rights was given to the Local Legislature. Out of that power was carved another—the subject of marriage and divorce—which, being carved out of a larger power, should be construed strictly; and then out of that is carved the power over the solemnisation of marriage. I am inclined to agree with the views expressed by the hon. the Minister of Public Works, that, after all, the power does not rest here. There is, too, this consideration, that, by the canons of the Catholic Church, marriage is a sacrament, and it is by the authority of the Church and not by Acts of Parliament that marriages celebrated by that Church are

rendered valid; and it is on that account that I strike out the word "valid." Protestant clergymen are divided on the question. Many do not think marriage between a man and his deceased wife's sister is right. There are a great number of laymen of a different opinion; and these would not be willing to leave it to their clergy to decide for them the question of the propriety of such marriages, and I propose to protect their right of private judgment. I think, if we have the power to pass this proviso, we could not meet the views of various classes by doing so. We should find ourselves more free, and give less offence to the consciences of the people by leaving the proviso out.

MR. WILLIAMS: It seems to me that, if the amendment of the hon. member for Bothwell passes, clergymen who have religious scruples against performing such marriage ceremony might perhaps be under the impression that the law intended that it should be compulsory upon them to perform the marriages which this Act legalises. Under these circumstances, and knowing, as I do, that many of the clergy of the Church of England felt that they could not do so without breaking their ordination oath, I cannot see why the last proviso should be also struck out. I therefore move in amendment to the amendment that the second proviso be retained.

MR. WELDON: This difficulty it seems has arisen from the division of powers under the British North America Act. The proposed Bill declares the marriage with a deceased wife's sister to be legal. With regard to the members of the Roman Catholic Church, they stand in a different position. They rely on their dispensation to render the marriage valid, but, with regard to the Church of England and Presbyterian Church, many of their ministers have conscientious scruples as to its legality, and they are placed in an awkward position. On the one hand, it is declared by this law to be legal to solemnise these marriages, and on the other, a clergyman, believing it to be a violation of the ordination vow, cannot perform such a marriage; theretore, it seems to me that it would be wise to retain that provision, a negative provision, not to be compulsory on them A clause might be prepared and put in by which men holding conscientious views, feeling that they cannot perform the ceremony, may be relieved.

MR. CASEY: I do not think any such provision is necessary. This is only a permissive Bill. It does not say that a clergyman must marry the parties, but it says he may marry them, and I do not think there is any danger of a clergyman being compelled to solemnise such a marriage against his conscience.

SIR JOHN A. MACDONALD: I think the question is this: Does this House believe that, under the terms of the Confederation Act, we have the right to adopt this clause? If we have not, we should not adopt it, for it might destroy the Bill altogether. Supposing the Bill was carried, and anyone should bring it up before Her Majesty's Government, within two years, and show that the Bill was *ultra vires*, it would be disallowed. As the hon. gentleman who spoke last says, there is no law compelling any clergyman to marry those persons, and there is no use of running a chance of defeating the Bill, when I do not think we have that power.

MR. ANGERS: I am in favour of the principle of the Bill, because I find that its enactments will make the law of the land in accordance with the law of my Church, when proper dispensations are obtained. I am also in favour of it because I have heard from the best authorities in this House that, according to the Church of England, such a marriage is only voidable and not void. I would, however, prefer retaining the proviso. To remove the proviso is to offer perhaps an inducement to people to infringe the laws of their own Church. With the proviso, they must first remove the impediments which may exist according to the rites of the congregation to which they belong. Article 127 of the Civil Code of Quebec will still be in force in that Province. The impediments imposed by the Church of Rome, which have to be removed before such marriage, can be celebrated in to far as Roman Catholics are concerned. I do not, however, find the same protection in other Provinces. The impediment removed from Article 125 will fail as a general impediment without Article 127 I think it would not be infringing upon the powers and limits of Local Legislatures if we stated that marriage with a deceased

wife's sister or the widow of a deceased brother shall be legal, if we put in a proviso requiring the fulfilment of the formalities imposed for the celebration of marriage by the laws of the Provinces to which the contracting parties belong. I am very much in favour of such a proviso, but I am willing to vote for the Bill pure and simple as the hon. member for Bothwell (Mr. Mills) proposes to amend it. I have faith in the liberality of the Local Legislatures of the several Provinces, and believe that they will not enact laws contrary to the rules of any Church.

Amendment to the amendment (*Mr. Williams*) *negatived.*

Amendment (*Mr. Mills*) *agreed to.*

MR. JONES said the amendment to the second clause showed that the remarks he made the other night were correct, that this Bill was brought in for interested motives. He thought, therefore, it should not be pressed to a conclusion hastily. A number of petitions might be presented against the Bill if there was a delay of a week.

Bill, as amended, *ordered* to be reported.

House *resumed.*

(In the House.)

Bill, as amended, *reported.*

March 31, 1880.

RECONSIDERED IN COMMITTEE.

Order for the consideration of the said Bill, as amended by Committee of the Whole, *read.*

MR. JONES: I am very sorry to say that I am obliged from a conscientious point of view to oppose this Bill. I think from what has appeared in the press, and from the petitions laid before the House against the Bill—there is scarcely a petition in favour of it—I think that it should not be pressed to a conclusion. I am of opinion that this measure has been brought forward for the furtherance of some private interest, although I do not know what the interest may be. It has been forced upon this House, and I do not see why, without any call for it—without any petition for it—we should initiate a Bill of this kind. Such legislation has always been refused in the Mother Country, and when the measure comes up for a third reading I shall move an amendment to it.

MR. STRANGE: The Bill now before the House is one that ought to receive a most careful and thorough consideration. The social principle of the Bill has been recognised in Canada for years, and I believe that the voice of the people, when the Bill was introduced, was largely in favour of these marriages. I wish, as an humble member of the Church of England, to state the reasons why I differ from the Bishops of my Church in the position they have taken on the subject. One of the principle reasons, I believe, assigned in these petitions for opposing this Bill is a passage of Mosaic law. As I read it, however, so far from such marriages being prohibitory they are enjoined on the Israelites, and, so far as the Mosaic law applies to us, I think it is equally applicable at the present day. In some instances also the Mosaic law renders it imperative that a brother shall take the widow of his deceased brother to wive. I am of opinion that as far the Mosiac law is concerned there is no objection to the Bill. Another objection to the Bill is that an injustice would be done to the sisters who would take charge of the households of their deceased sisters. I believe that instead of an injustice being done in this regard, that it would place them in their proper position. When we find men in this country occupying high positions, both in the ecclesiastical and civil worlds, marrying their deceased wive's sisters and feeling no conscientious scruples thereat, I think it is a very strong argument in favour of this measure. I remember that only a few years ago the President of the Wesleyan Conference of this country married his deceased wife's sister. The act was regarded as a laudable one, and the lady was received into the best society. I am aware that there is a great objection in England to the principle of this Bill, but I believe that is more an objection of prejudice than of common sense. I cannot conceive that any woman would make a better step-mother than the sister of a deceased wife. It seems to me that no woman is better adapted to act as a mother to a man's children after his wife's death than his deceased wife's sister. I think the principle embodied in this Bill is a laudable one, although I am aware that there is a certain amount of objection to it in the Church to which I belong. Still, I can see nothing to prohibit such marriages, and I hope eventually to see in every country, as well as in Canada,

that the principle of this Bill will be allowed. I shall therefore have much pleasure in voting for the Bill.

MR. SPROULE: I cannot see any objection to this Bill. In looking over various passages of Scripture, said to apply to it, there does not appear to be anything in them binding or compulsory, and the only passage at all bearing on it is the 18th chapter of Leviticus, 18th verse, but even that does not bear against this Bill. It bears on the marriage of a wife's sister whilst the wife herself is living. Greek and Hebrew scholars, who have taken the trouble to investigate the subject, all seem to agree that the passage has reference only to marriage in the lifetime of the wife. The great opposition comes from the Episcopal Church, or Church of England; but I believe there is a diversity of opinion between the Church of England ministers on this question; and, further, in the House of Commons, they have passed such a Bill, but it has been rejected by the House of Lords. The reason why it was rejected in the House of Lords is easily understood; it is not because there are real objections. It is simply due to the fact that the House of Lords is composed partly of Bishops, and thus by their influence the Bill is successfully opposed there. We believe that there is as much intelligence and as strong a desire among the members of the House of Commons to do justice to this question as in the House of Lords. Well, one party says it is right, and the other invariably says it is wrong. If the members of Parliament, in the Commons, are almost universally in favour of the principle, as I am persuaded they are, and believe there is nothing wrong in it, then why should we not pass the Bill? I think the day has come when we should regard the marriage law as a civil contract, to be dealt with by the civil law, and not to be controlled by ecclesiastical law at all.

MR. HOUDE moved:

That the Bill be again recommitted to a Committee of the Whole, with instructions that they have power to strike out, in Clause 2, the following words:—"but nothing herein contained shall affect any rights actually acquired by the issue of the first marriage previous to the passing of this Act; nor shall this section render legal any such marriage when either of the parties has afterwards, during the life of the other, and before the passing of this Act, lawfully intermarried with any other person."

MR. GIROUARD: I do not see any objection to this motion for amendment. I really believe these words are not necessary:—

"But nothing herein contained shall affect any rights actually acquired by the issue of the first marriage previous to the passing of this Act."

I think the subject matter of this enactment properly belongs to the Local Legislature. As to the last part of the paragraph, it seems to me that it is sufficiently covered by the first part of the clause. I had some conversation with some hon. members, who are not now present, and it was considered best to strike out these words.

MR. JONES: I would ask if this is not retroactive.

MR. GIROUARD: The clause, as amended, only renders legal those marriages in which the parties are now living together as husband and wife.

Amendment (*Mr. Houde*) *agreed to* on a division.

House accordingly *resolved* itself into Committee of the Whole.

(In the Committee.)

Bill, as amended, *ordered* to be reported.

House *resumed*.

(In the House.)

Bill *reported*.

MR. LANGEVIN: I would ask the hon. gentleman who has charge of the Bill to allow this report to stand over a few days more, because we may concur in the report on the day when it comes up again, and let the Bill go to a third reading.

MR. GIROUARD agreed to the suggestion.

April 14, 1880.

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 enact that marriage shall or shall not be permitted between brothers and sisters-in-law; of course, I am always arguing from a legal point of view and in the eyes of the constitutional law of this country. I have already expressed the opinion that the "dispensation" clause of the Marriage Bill was constitutional, that it had reference, not to the celebration of marriage, but to a legal impediment which can be removed only by this Parliament. However, as I have already remarked, a contrary view was entertained and strongly expressed by the two learned jurists above named, and that view was shared by what we all consider the best authority on any constitutional question, the right hon. leader of the Government (Sir John A. Macdonald). Prominent members of this House, well-known for

their devotion to the rights and interests of the Province of Quebec, both religious and civil, and among others the hon. the Minister of Public Works, and member for Three Rivers (Mr. Langevin), likewise raised the constitutionality of the "dispensation" proviso; and at their special instance and request, it was struck out in Committee of the Whole, and the Bill, as reported by that Committee, and, as it now stands, reads as follows:—

"1. Marriage between a man and a sister of his deceased wife, or the widow of his deceased brother shall be legal.

"2. All such marriages heretofore contracted, the parties whereto are living as husband and wife at the time of the passing of this Act, shall be held to have been lawfully contracted."

Now, what are the objections against the Bill? First, as far as the Province of Quebec is concerned, a single newspaper has written editorially against it. I refer to the *Journal des Trois Rivières*, a paper generally well-informed on ecclesiastical matters, but not, perhaps, so accurate on constitutional questions. In its issue of the 5th instant, it denounced the Bill, deprived as it is of its "dispensation" proviso, as simply "immoral." The Hon. T. J. J. Loranger, the pensioned but not retired Judge of Sorel, has also lately assailed the Marriage Bill, with all the learning, energy and great talent at his command, in several communications published in *La Minerve*. Finally, the high position of His Lordship Mgr. Laflèche, Bishop of Three Rivers, as one of the most distinguished dignitaries of the Catholic Church in Canada, and one of its ablest theologians, forces me to mention the fact that in a letter addressed to me, His Lordship formally withdraws his former adhesion to the Bill and protests against its passing, unless the "dispensation" clause be restored. Both His Lordship and ex-Judge Loranger fear that, under the Bill, Catholics will be allowed to marry their sisters-in-law without first obtaining the previous dispensation from the Pope. I would understand this objection if the Bill intended to do away with Church discipline and regulations. But there was no such intention, I am sure, on the part of the hon. members who demanded the striking out of the "dispensation" clause, and such is not and cannot be the effect of the Bill. In the first place, it is well-known that in the Province of Quebec, at least, Catholics must be married before their priest or curate, *leur propre curé*; this point is not susceptible of controversy, and it has been recognised by law writers and courts of justice. Of course the *Curé* will not proceed to celebrate the marriage without the required dispensation, and it must be borne in mind that in the Province of Quebec, at least, no priest or minister can be forced to celebrate a marriage against his conscience. Article 129 of the Civil Code, says:

"All priests, rectors, ministers and other officers authorised by law to keep registers of acts of civil status are competent to solemnise marriage.

"But none of the officers thus authorised can be compelled to solemnise a marriage to which any impediment exists according to the doctrines and belief of his religion, and the discipline of the Church to which he belongs."

But there is more. I respectfully submit that Article 125 of the Code being amended, as it will be, by this Bill, the "dispensation" power will be sufficiently recognised by Article 127; but even if it is not, it will indeed be easy to define it more expressly by an Act of the Quebec Legislature. Article 125 says:

"In the collateral line marriage is prohibited between brother and sister, legitimate or natural; and between those connected in the same degree by alliance, whether they are legitimate or natural."

After the passing of the Bill, it will read as follows:—

"125. In the collateral lien, marriage is prohibited between brother and sister, legitimate or natural; but it is permitted between a man and the sister of his deceased wife, or the widow of his brother."

The following articles need only be quoted:—

'127. Marriage is also prohibited between uncle and niece, aunt and nephew.

"127. The other impediments recognised according to the different religious persuasions, as resulting from relationship or affinity, or from other causes, remain subject to the rules hitherto followed in the different Churches and religious communities. The right, likewise, of granting dispensations from such impediments appertains, as heretofore, to those who have hitherto enjoyed it."

Such was the opinion of His Lordship the Bishop of Three Rivers, himself, and of all the Catholic Bishops of the Province of Quebec, a fact which the following letters already published will show beyond doubt

(*Translation.*)

MONTREAL, 28th February, 1880.

MY LORD,—The discussion on the Bill to render legal marriages between brothers-in-law and sisters-in-law began last night, as your Lordship will have seen from to-day's newspapers. The point meeting with most opposition is the recognition by the State of the right to give dispensations in the case of the impediment resulting from affinity.

Would your Lordship be content to see Article 125 of the Code repealed in order to legalise such a marriage without further ado? Do you think that in that case the right of giving dispensations would be sufficiently protected by Article 127?

An answer addressed to me at Ottawa will oblige

Your obedient servant,

D. GIROUARD.

(*Translation.*)

BISHOPRIC OF THREE RIVERS,

5th March, 1880.

D. GIROUARD, Esq., M.P.

MY DEAR SIR,—I regret that your Bill for the legal recognition of marriages between brothers-in-law and sisters-in-law cannot pass as it was brought forward. Nevertheless, the repeal of that prohibition in Article 125 of the C. C. being favourable to the liberty of the Church, I have no objection to its simple repeal, leaving the dispensation of that impediment, as well of the other impediments, to the authorities designated in Article 127.

I remain, etc.,

†L. F., Bishop of Three Rivers.

(*Translation.*)

MONTREAL TELEGRAPH CO., March 2, 1880.

By telegraph from Rimouski to D. GIROUARD.

Letter received this morning. What you propose will suffice and satisfies me.

†BISHOP of RIMOUSKI.

(*Translation.*)

SHERBROOKE, 1st March, 1880.

D. GIROUARD, Esq., M.P., Ottawa.

SIR,—I think it is sufficient to repeal Article 125 of the Code in order to legalize the marriage now before Parliament. I am also of opinion that the right to grant dispensations is sufficiently safe-guarded by Article 127.

But would it not also be *apropos* to repeal at the same time Article 126, which prohibits marriage between uncle and niece, aunt and nephew?

I am, Sir,

Your obedient servant,

†ANTOINE, Bishop of Sherbrooke.

(*Translation.*)

MONTREAL, 29th February, 1880.

MY DEAR SIR,—I certainly think that Article 127 sufficiently establishes the right to grant dispensations, and that your plan to legalize the marriages in question by amending Article 125, will be for the best.

I wish you every success.

Yours faithfully,

†EDOUARD CHS., Bishop of Montreal.

(*Translation.*)

ST. HYACINTHE, February 29, 1880.

D. GIROUARD, Esq., M.P., Ottawa.

SIR,—I have the honour to inform you, in answer to your yesterday's letter, that I would be content to see disappear from our Code, not only Article 125, but also Article 126, which, in many cases, are very embarrassing for us Catholics. Bishops and priests oppose with all their might, as is imposed upon them by the Church, marriages contracted by such close relations, but there are circumstances when, for the welfare of the parties interested, and the honour of families as well as the safeguard of public morals, they are obliged to solemnise such marriages, after having obtained from the Pope all the dispensations required in a similar case. A real service would thus be done us, were those two Articles, which, in my opinion, should never have been introduced into it, eliminated therefrom.

Article 127 might be retained, but worded as follows:—"The impediments to the marriage being admitted according to, etc." The rules of the Catholic Church concerning our impediments to marriages and our right to grant dispensation thereof, are therein sufficiently recognised and safeguarded. I do not, therefore, see any reason for not maintaining that Article after making in it the slight change suggested by me.

Wishing you success,

I remain most sincerely,

Your obedient servant,

†L. Z. Bp. of St. Hyacinthe.

(*Translation.*)

ARCHBISHOPRIC OF QUEBEC,

QUEBEC, March 1, 1880.

D. GIROUARD, Esq., M.P., Ottawa.

SIR,—Replying to your letter of 28th February: 1. It is most desirable that the Bill concerning the marriage of brothers-in-law and sisters-in-law should pass, such as amended by you, for it would be of service not only to the Province of Quebec, but to the whole of Canada as well. 2. By contenting yourself with repealing the second part of Art. 125 of the Civil Code of Lower Canada, you will no doubt provide in a satisfactory manner for the legalisation of these marriages in our Province, but not in the other Provinces, and each one of them will in turn ask for the passing of a law more or less contrary to the rules of the Catholic ecclesiastical discipline. With us, Article 127 maintains the impediment until removed by a dispensation, but will the same be the case in the other Provinces?

I have the honour to be, Sir,

Your obedient servant,

† E. A., Archbp. of Quebec.

(*Translation.*)

QUEBEC, April 1st, 1880.

C. RINFRIT, Esq., M.P., Ottawa.

SIR,—In reply to your letter of yesterday, I

profoundly regret that Mr. Girouard's Bill has no chance of passing with the clauses which I suggested to that gentleman and to Mr. Vallée in various letters which I have written them on this subject. However, in default of a better, I think there would be still less inconvenience in adopting the Bill, as amended in Committee of the Whole than to leave this delicate question in the state of uncertainty in which Articles 125 and 127 of our Civil Code of Lower Canada place it.

I have the honour to be, S'r,
Your very obedient servant,
(Signed,) E. A.,
Archbishop of Quebec.

The Bill has also the support of the Roman Catholic clergy of the Province of Ontario, as the following correspondence, which has likewise appeared in the public press, will show:—

OTTAWA, 2nd March, 1880.

MY LORD,—Your Lordship has undoubtedly noticed by the reports of the debates on my Bill to legalise the marriage with a deceased wife's sister, that the opposition to the same is principally confined to that proviso which acknowledges the right of the Catholic Church to grant previous dispensation from the Pope. Without that proviso, the Bill has a fair chance of being carried. Several Catholic members of your Province desire to know whether they should vote or not for the legalisation of such marriages pure and simple, without insisting on any reservation as to Church discipline or regulations.

An answer will oblige,
My Lord,
Your obedient servant,
D. GIROUARD.

BRACEBRIDGE, Ont., 5th March, 1880.

D. GIROUARD, Esq., M. P.

DEAR SIR,—Although the marriage of a man with his deceased wife's sister is prohibited in the Catholic Church as a general rule, still we are sometimes under the necessity of applying to the Holy See for a dispensation for such marriages. So I consider that it will be a satisfaction to know that the State recognises the validity of such unions. I highly approve of the tenor of your Bill. I hope that it will pass such as it is. But if the first proviso cannot pass, try to have the second.

I have the honour to be,
Your obedient servant,
†JOHN FRANCIS JAMOT,
Bishop of Sarepta.
Vicar Apostolic of Northern Canada.

TORONTO, March 4, 1880.

D. GIROUARD, Esq., M. P., Ottawa:

DEAR SIR,—I think that a Catholic can vote for the Bill in question, inasmuch as the Catholic Church grants, for grave reasons, a dispensation to marry a deceased wife's sister, &c.

The inconvenience is very serious in the case when a dispensation is granted by the Church and not by the State. The State looks upon, as invalid, a marriage which the Church holds as valid, on account of the dispensation, and the State holds as illegitimate the children, and that they are disqualified to inherit the property of their parents.

Respecting the clause about the dispensation I think in a Parliament like yours, at Ottawa, the Catholic members might overlook that, as it is supposed that a Catholic will always obtain such a dispensation when necessary from his Bishop or from the Pope.

The proviso may be retained that no clergyman is to be compelled to officiate at a marriage against the rules of his Church. If a Catholic member has a scruple to vote for this Bill, he may abstain from voting

I have the honour to be,
Your devoted servant,
†JOHN JOSEPH LYNCH,
Archbishop of Toronto.

(*Translation.*)

OTTAWA, 16th March, 1880.

D. GIROUARD, Esq., M. P.

SIR,—As the Catholic Church permits, under special circumstances, for grave reasons, marriages between brothers-in-law and sisters-in-law, your Bill, as amended by Committee of the whole House, to legalise these marriages meets my views, in the absence of something better.

I have the honour to be, Sir,
Your humble servant,
†J. THOMAS, Bishop of Ottawa.

Now, let us see what is the state of public opinion among the Protestants of this country. Is it against the Bill or in favour of it? Where are the petitioners for the same, said some of the opponents of the Bill. The hon. member for Leeds (Mr. Jones), said the other evening, that the Bill "was brought forward in the interest of individuals, the endeavour being made to push it hurriedly through the House." Allow me, Mr. Speaker, to tell him that as far as I am personally concerned, I have no interest whatever in the Bill; I will even tell my hon. friend if this information will tend to remove his opposition or quiet his mind, that I have no sister-in-law to marry; I may confess that I cannot conceive how a man can have for his sister-in-law that love and affection which are necessary to make marriage happy. But, Sir, what we do not feel ourselves, others might, and as a matter of fact, do. Hundreds of these prohibited marriages have been contracted during the last fifteen or twenty years. If the necessary dispensation be obtained, the Catholic priest

does not hesitate to perform the ceremony, and if among Protestants, no minister can be found willing to do the same, the parties cross the line, where they are always certain of finding relief. This Bill is brought solely in the interest of the people of this country, more as a beneficial measure in the future than a relief for the past, inasmuch as the marriage where one of the parties have died, are not to be affected by its provisions. I exceedingly regret that the hard case of the unfortunate lady, which I referred when I introduced the Bill, and deserved so much attention and sympathy from the hon. member for Ottawa (Mr. Wright), is not covered by the Bill as amended and reported by the Committee. The hon. member for Leeds (Mr. Jones), promised us some four of five weeks ago that if an opportunity was given, the Church of England would protest. That opportunity has been given and what have we seen? An agitation against the Bill? No, Sir, on the contrary, an agitation in favour of it. Hardly one newspaper can be cited against it, and it was, indeed, pleasing to see all the leading journals of the Dominion, both French and English, Catholic and Protestant, pronounce in most unequivocal terms in favour of the measure. I challenge the hon. members opposing it to quote one single editorial from any of the independent papers in favour of the ungenerous course they are pursuing. However, this failure of sympathy was not for want of proper exertions and efforts. Lengthy and learned pamphlets and papers have been written by most eminent dignitaries of the Church, and, no doubt, the pamphlet of His Lordship Bishop Binney, of Nova Scotia, showing, in the strongest language possible, the "reasons for rejecting the proposed alterations in the marriage law of the Dominion," was calculated to produce a great effect. Sheets were also printed and circulated by the thousand, containing a very convincing report of the speeches delivered at a meeting, one would suppose, expressly called to influence the proceedings of this Parliament, and held in London, England, on the 26th of February last, to oppose "the Bill to legalise marriage (not with a deceased brother's wife, but only) with a deceased wife's sister." Petitions were also carefully prepared, printed, and distributed for signatures, by the various congregations spread all over the country. And what has been the result of this great canvassing? Petitions came, not from towns and cities, but from thirty-one small and obscure parishes of the Church of England, in Nova Scotia; one from St. Paul's Church, Chatham, New Brunswick; three from Prince Edward Island, that is from Milton, Summerside, and Crapaud. One came from some of the clergy and laymen of the Church of England, in Kingston, Ontario. We are still waiting for one from Gananoque, the important town where the hon. leader of the opposition to this Bill resides, and also from all the other towns and cities of Ontario and of the Dominion. None came from Quebec, or any other Province, except from the Church of England. It must be observed that these "parish" petitions are alike, in printed, or rather circular form; they do not emanate from the parishes or congregations as bodies, but only from a few individuals, in some cases five or six altogether in number, whose occupation, or position, is not given, who often cannot read nor write, and who, finally, are not always headed by their incumbent. To do, however, ample justice to these petitioners, it is, perhaps, better to lay the full text of their protest before the House:

To the Honourable the House of Commons of the Dominion of Canada:

The petition of the undersigned members of the Church of England, in the Parish (or Mission) of

HUMBLY SHEWETH,

That your petitioners have been much alarmed by the introduction into your Honourable House of a Bill to effect serious changes in the Marriage Laws legalising the marriage of a man with his deceased wife's sister, and of a woman with her deceased husband's brother. That your petitioners are persuaded that any such interference with the table of prohibited degrees will materially affect the welfare of the community and the comfort and happiness of many households in which persons connected together by affinity have been accustomed to regard each other in the same light as though they were connected by the ties of consanguinity, and enjoy the same happy intercourse as brothers and sisters without suspicion or thought of evil.

Your petitioners believe that one of the marriages to be legalised is expressly forbidden by Holy Scripture, and that the prohibition of the other is implied, and they cannot admit tha

any authority, ecclesiastical or civil, is empowered to dispense with such such a prohibition.

That your petitioners especially object to the proviso of the Bill making a distinction between marriages where the parties are members of one religious body, and other cases, as introducing an element of confusion and uncertainty, and they hold that all such marriages ought either to be legal or illegal in every case, without reference to the peculiarities of any Branch of the Church.

That on behalf of the children who may be deprived of their mother, your petitioners pray that the present position of the surviving sister with relation to the widower may not be altered, as such alteration must necessarily deprive the motherless children of the loving care of the aunt at the time when it would be most especially beneficial, and under the present law is commonly enjoyed.

Finally, your petitioners submit that before any alteration is made in the Marriage Laws, ample opportunity should be afforded for the full consideration of a subject in which all persons are more or less interested, and for the presentation of their objections by those who are opposed to any change; that no such opportunity has been afforded with respect to the Bill now before your Honourable House, and that for this as well as the other reasons herein set forth it should be rejected.

Now, Mr. Speaker, let us show to this House how the Protestant clergy stands. On the one side we find the Bishops of the Church of England, being almost unanimously against the Bill. Their joint petition is in these terms:

That your petitioners have heard with surprise and alarm that a Bill has been introduced into your Honourable House to legalise marriage with the sister of a deceased wife, and also to legalise the marriage of a woman with the brother of her deceased husband.

Your petitioners submit, that many serious evils would arise from thus tampering with the fundamental law of marriage, which has declared that the two become by marriage one flesh, and with the immemorial custom founded upon this law, that the prohibited degrees of affinity and consanguinity should be identical.

Your petitioners further submit that there is no more fruitful source of corruption o morals in a State than laxity on the subject marriage; and they have great reason to fear that if the proposed Bill should pass into an Act, other cases of unlawful union will speedily arise, which it will be difficult, if not impossible, to reject; and that general immorality will be promoted. For these and other grave reasons which your petitioners forbear to urge, your petitioners earnestly pray your Honourable House not to consent that the proposed Bill should become law, and your petitioners will ever pray, etc.

JOHN FREDERICTON, Metropolitan of Canada; H. Nova Scotia, J. T. Ontario, J. W. Quebec, T. B. Niagara, W. B. Montreal, A. Toronto.

These Bishops have further sent in their respective petitions, in which the same grounds are set forth more fully. The Bishop of Huron has also forwarded his individual protest. But against these representations, not from the whole clergy or laity of the Church of England, not from this important branch of Christianity as a body, but from the Episcopate of that Church only a large number of favourable testimonials came from all shades of the Protestant faith. It must not be forgotten that the Presbytery of London, Ontario, was sitting at the time of the introduction of the Bill, and had this religious body been against its provisions, it would, no doubt, have petitioned against it. True, the Presbytery of Montreal has just asked Parliament to delay its proceedings until the next annual meeting of the General Assembly of the Presbyterian Church of Canada, in June next, but from the wording of the petition one would suppose that the cause of their action seems to be that portion of the Bill which legalises marriage with the widow of a brother. On the other hand, we do not know who formed this Presbytery of Montreal; who were present at the meeting where this petition was decided upon; when the meeting was held; and finally, we are not even told that the petition was duly authorised. We also find that the Ministerial Protestant Association of Montreal, open to all Protestant ministers, at a meeting where several Presbyterian ministers were present, unanimously pronounced in favour of the Bill. The Methodist clergy of Toronto have made a similar declaration. One of its first advocates was the Rev. Gavin Lang, minister of St. Andrew's Church (Church of Scotland), Montreal. His letter to the hon. member for Montreal West (Mr. Gault), as well as other similar letters from other Protestant clergymen, will, no doubt, be read with interest. Only yesterday a petition was presented to this Parliament, signed by all or nearly all the Protestant ministers of Montreal belonging to the Church of England, thirty-two in number, praying that the Bill do pass and become law. These favourable testimonials should be preserved, and I hope I will be excused for inserting them here for future reference;

The Rev. Gavin Lang (Church of Scotland) writes:

MONTREAL, February 27th, 1880.

DEAR MR. GAULT,—I thank you very much for sending me a copy of Mr. Girouard's Bill for legalising marriages with a deceased wife's sister, etc. For one, I heartily approve of its principle, and hope it will pass and become law.

It occurred to me that I would mention to you that, to the astonishment of most people, the United Presbyterian Body of Dissenters in Scotland declared, last year, that they could no longer regard such marriages as Mr. Girouard's Bill contemplated as un-Christian. Their ministers are permitted to solemnize these, and to admit the parties to them to the privileges of their communion. The importance and significance of this action on the part of a severely Evangelical body cannot be exaggerated.

The attitude of your own Church and of mine, both national Churches and the only State Churches of the Empire, must necessarily be determined by the position taken up by the law makers. When Parliament sanctions marriages with deceased wives' sisters, so must we. I speak for the Church of Scotland, to which I belong, when I say that we are quite ripe for the ready performance of these marriages. In my first parish in Scotland, I had a couple who took that step in (ecclesiastically viewed) an irregular way "furth of the kingdom" and came back to live in the parish. I had no hesitation in regarding them as parishioners of mine in good standing.

The Church of Rome, of course, takes up a different position in this matter, but Mr. Girouard fully provides against any infringement of its rules and rights; and it is entitled to hold and assert its own opinions and views.

I would be very glad if you offered our mutual friend, Mr. Girouard, my warm and sincere wishes for the success of his measure. Its adoption and enactment by the Parliament of Canada will give wider and greater relief than any of us imagine, and would not in any wise conflict with the teachings of the Word of God as interpreted by either Roman Catholics or Protestants.

With repeated thanks for your courtesy in sending me a copy of this important Bill, and with kind regards, as also deep sympathy with you in your recent heavy affliction,

Believe me,

Yours very sincerely,

GAVIN LANG.

M. H. GAULT, Esq., M.P.

The Rev. J. Cordner, D.D., of the Unitarian Church, writes:—

MONTREAL, February 2nd, 1880

M. H. GAULT, Esq., M.P.

DEAR SIR,—I thank you for copy of Bill to "legalise marriage with, etc." In my judgment it would be in the interest of good morals and sound public policy to pass such a measure. I would omit the two provisos, however, as likely to lead to complications. But rather than have the measure fail I would accept them.

Very truly yours,

J. CORDNER.

The Montreal Ministerial Association endorse the Bill, in the following letter:—

MONTREAL, 922 Dorchester street,
March 22nd, 1880.

DEAR SIR,—There is a society in this city called the "Montreal Ministerial Association," open to all the Protestant Ministers of Montreal, to which, moreover, a large number of them testify good will by attending its meetings. The Association met this morning, and discussed the subject of the lawfulness of marriage with a sister of a deceased wife. After an interesting conversation, it was resolved that those present could see no Scriptural inhibition against such marriages, and further, that the approval of the Bill now before Parliament for rendering them legal. This view was taken quite unanimously, as to those present at our meeting this morning, and the subject had been duly announced beforehand. Had the meeting been larger than it was, I have no doubt a result substantially similar would have followed, although in that case there might have been one or two dissentients.

Among those present at the meeting and fully concurring in the view I have given, were the following clergymen:—Rev. Gavin Lang, St. Andrew's Church (Church of Scotland); Rev. J. S. Black, Erskine Church (Presbyterian); Rev. J. H. Wells, American Presbyterian Church; Rev. J. Roy, Wesley Church (Congregational); Rev. J. Nichols, St. Mark's (Presbyterian), and myself.

I am permitted and authorised to communicate this result to you.

One would think from the opposition raised to the proposal, that it was one to compel marriage with a former wife's sister. It is wonderful that people should be unwilling to leave a question on which the highest exegetical and ecclesiastical authorities are so divided, to the judgment and conscience of individuals who may be interested, and to the laws of the several Churches.

* * * * *

I am, dear Sir,

Very truly yours,

J. FREDERICK STEVENSON,

Emmanuel Church (Congregational).

M. H. GAULT, Esq., M.P.

The Rev. James Roy (Wesleyan), writes:

1464 ST. CATHERINE STREET,
MONTREAL, April 2nd, 1880.

M. H. GAULT, Esq., M.P.

MY DEAR SIR,—I have to thank you for a copy of the Ottawa *Citizen*, of Wednesday last, and for the printed letters enclosed.

The testimony of Dr. de Sola is very valuable.

I hope you will be successful in removing from Canada all such obstacles to marriage

with a deceased wife's sister, as those aimed at by Mr. Girouard's Bill.

I am, my dear Sir,
Yours truly,
JAMES ROY.

The following is the Petition of the Methodist Ministers of Toronto:

To the Honourable the House of Commons of the Dominion of Canada:

The petition of the undersigned clergymen of the Methodist Church of Canada, resident in the city of Toronto, humbly showeth:—That, whereas a Bill for the purpose of legalising marriage with a deceased wife's sister, has been presented for the consideration and legislative sanction of both Houses of the Dominion Parliament; your petitioners are satisfied of the wisdom and expediency of such a measure, and the invalidity of the objections which are urged against it, and therefore respectfully request your honourable House to enact the principle of the Bill in a Statute, so as to give the formal authority and protection of the law to the marriage of a widower with the sister of his deceased wife.

In presenting this request to your honourable House, your petitioners may be permitted briefly to state some of the reasons by which they have been compelled to take a position so different from that which has been taken by petitioners belonging to some other Christian denominations in respect to the said Bill.

There are no ties of blood or relationship, which would make such marriages immoral or improper. There are numerous cases where they are eminently expedient, and, beyond doubt, promote the best interests of all the parties concerned.

Hitherto, there has been no law upon our Canadian Statute-book against such marriages; although we are aware they are regarded as illegal in Britain. Under these circumstances, believing that they were acting in a legal and proper manner, some of our worthiest and most respected Canadian citizens have formed such marriages. It would be a cruel and ill-advised thing for our highest legislative courts to take any course that would appear to place these excellent persons in a position of inferiority and outlawry. There is no good reason why such marriages should not have the formal sanction of law. No interest of social order, property, or morality would be injuriously affected by the enactment of such a law; while, in many cases, the legal denial of this privilege would be a very great hardship to innocent and worthy persons, whose interests should not be disregarded by those to whom the making of our laws is committed.

Apart from ecclesiastical law, which creates an artifical morality that has no general Christian obligation, the only feasible ground of objection to the proposed measure is obtained by a strained and unwarrantable interpretation of a passage in the 18th chapter of the Book of Leviticus; which says nothing about marrying, or not marrying, a deceased wife's sister.

The passage in dispute seems simply to forbid the taking of a wife's sister, as an additional wife, during the lifetime of the first wife. The fact that the Mosaic law made it the duty of a man, in certain cases, to marry his deceased brother's wife, is wholly inconsistent with the interpretation which some have put upon this passage. So is the fact that such marriages were customary among the Jews; which is unaccountable, if they understood this passage to forbid what they practised. Mr. Hirschfelder, the learned Professor of Hebrew and Oriental Literature, in University College, Toronto, has shown in his pamphlet, "A Wife to her Sister, that both the Septuagint version and the Chaldee paraphrase render the passage in Leviticus in such a manner as to leave no doubt that such marriages were allowed; also, that there is no evidence that, while Hebrew was a living language, this text was understood to prohibit such marriages; and that the Mishna and the writings of the learned Philo show that no such meaning, as modern writers attach to this passage, was formerly given to it by Hebrew scholars.

It seems to your petitioners somewhat singular, therefore, to see the representatives of Christian Churches, on the strength of such a forced interpretation of what is admittedly not a plain prohibition, attempting to prevent the enactment of a law that commends itself to reason; which has repeatedly received the sanction of the House of Commons of England, and which would now be the law of the Mother Country, only for the opposition of the House of Lords, mainly caused by the powerful ecclesiastical influence in that body. The idea of building a prohibition for whole communities on so doubtful a foundation is a remarkable illustration of the tenacity with which people cling to the side of a question that has the prestige of ecclesiastical authority and prejudice in its favour.

In view of the considerations herein named, and other weighty reasons, your petitioners earnestly request your honourable House to accede to the prayer of this memorial, and enact a measure that shall duly legalise a marriage contracted between a widower and his deceased wife's sister.

E. HARTLEY DEWART, D.D., Editor *Christian Guardian*.

JOHN POTTS, Metropolitan Church.

GEORGE COCHRANE, Chairman of the Toronto District.

S. D. HUNTER, Pastor of Elm street Church.

WM. BRIGGS, Book Steward, Methodist Book Room.

J. POVELL, Pastor Richmond street Church.

S. ROSE, D.D.

W. S. BLACKSLOCK, pastor of Bestheley street Church.

THOS. W. CAMPBELL B.D.

A. SUTHERLAND, D.D., General Secretary Methodist Missionary Society.

W. J. HUNTER, D.D., Pastor Bloor street Methodist Church.

W. H. WITHROW, Sunday School Editor, M. C. of Canada.

JOHN B. BLACKSON, M.A., Pastor Sherb. St. Church.

J. E. SANDERSON, M.A., Pastor of Wood. Church.

The following is the petition of the Protestant Ministers of Montreal :—

Unto the House of Commons of the Dominion of Canada, in Parliament assembled :

The petition of the undersigned Protestant Ministers, of different denominations, in the city of Montreal, humbly sheweth,

1st. That a Bill has been introduced into your Honourable House, whose object is to legalise marriage with a deceased wife's sister, etc.

2nd. That it is expedient that the proposed Bill should become law, it being understood that all ministers of religion who have conscientious objections to such marriages, have full liberty to decline to perform them.

Therefore, your petitioners humbly pray your Honourable House to pass the said Bill.

And your petitioners will ever pray.

HENRY WILKES, D.D., LL.D., Principal Cong. College of B.N.A.

GEO. DOUGLASS, LL.D., Principal of W. M. College.

J. CORDNER, LL.D., Pastor Em. Metropolitan Church

A. DE SOLA, LL.D., Minister of Synagogue, Chennevil'e street.

J. S. BLACK, Erskine Church, Can. Presbyterian.

HUGH JOHNSTON.

A. H. MUNRO, Pastor of the First Baptist Church, Montreal.

D. V. LUCAS.

GEORGE CORNISH, LL.D., Cong. Minister.

WILLIAM HALL, M.A.

E. BOTTERELL.

J. W. SPARLING, M.A., B.D.

A. J. BRAY, Zion Cong. Church.

H. F. BLAND.

J. F. STEPHENSON, LL.B., Emmanuel Cong. Church.

JOHN NICHOLS.

J. L. FORSTER, Calvary Cong. Church.

B. F. USHER, D.D., Rector of St. Bartholomew Reformed Episcopal Church.

GEORGE H. WELLS, A.M., Presbyterian Church.

JAMES ROY, Wesley Church, Congregational.

WM. J. SHAW, Professor Wesleyan Theo. College

WM. S. BARNES, Church of the Messiah.

SAMUEL MASSEY, Salem Church.

EDWARD WILSON, D.D., St. Bartholomew Reformed Episcopal Church.

GAVIN LANG, St. Andrew's Church, Church of Scotland.

LOUIS N. BEAUDRY, Pastor of First French Methodist Church.

REV. H. ROSENVURG, Minister of St. Constant street Synagogue.

DR. H. NUMNER, Lutheran Minister of the Perm. Evangelical Protes ant Church in Montreal.

K. M. FENWICK, Professor Cong. College. Montreal.

H. L. MACFADYEN, B.A., Inspector s reet Church.

JAMES ALLEN, Pastor of Sherbrooke street Methodist Church.

EDWARD A. WARD, Pastor of Point St. Charles Methodist Church, Montreal.

Montreal, April 10th, 1880.

Mr T. M. Hirschfelder, Professor of Hebrew in the University of Toronto, writes the following letter to the *Globe* :—

To the Editor of the Globe :

SIR,—I perceived in yesterday's *Globe* a letter from the Rev. Provost Whitaker on the subject of "Marriage with a Deceased Wife's Sister," in which the rev. gentleman moralises on the consequences that may result from the abrogation of that law, it being presumably based on the Mosaic marriage-law recorded in Lev. xviii., 18.

Now, Mr. Editor, it appears to me that it would have been more in accordance with sound criticism to have first proved that such a law actually has a place among the Mosaic marriage laws. Of course, the Legislature of any country has a perfect right to establish any law that may be conducive to morality, but it is quite another matter to maintain that such a law is founded upon the Divine teaching of the Scriptures.

In my treatise on this subject, I carefully traced this question from the very first institution of marriage, Gen. ii., 24, and afterwards fully examined the passage in Lev. xviii., 18, on which the law in question is supposed to be founded, and have, I think, shown beyond a shadow of doubt that it is utterly impossible to construe that passage as prohibiting such a marriage. There are many who feel very deeply on this subject, and I think that they have a right to look to those who profess to be well informed on the subject to prove distinctly to them that they have transgressed, even if unknowingly, such an important law.

Would Mr. Provost Whitaker, therefore, kindly answer the following questions :—

1. How are the words, "to cause jealousy (or enmity) * * beside her," (the above is a literal translation) to be understood? What do these words mean if the first sister is in her grave?

2. What do the words "in her lifetime" mean, and why are they in the text at all if they do not intend to imply that such a marriage was only prohibited during the life of the first wife?

3. Why should the sacred writer have couched a command which was necessary to be understood by the ignorant as well as by the learned, in such ambiguous language if he intended positively to forbid "the marriage with a deceased wife's sister"? Experience has proved that 99 out of 100 critics interpreted the passage that such a marriage is only forbidden during the life of the first wife.

4. Why did the sacred writer not express it in the same simple manner as he expressed the law forbidding the marriage with a deceased brother's wife? There is no mistaking that language. See Lev. xviii., 16.

5. How is it that not the least trace of any such law can be discovered among the ancient Jews, but that, on the contrary, special provisions are made in respect to such laws in the Mishna, which contains the oral laws of the Jews, and which are by most Jews regarded of equal importance as the Mosaic laws? I will here subjoin, for the benefit of your readers,

two of the many provisions laid down in the Mishna. The following is a literal translation, made by myself from the work in the University library :—"If a man whose wife is gone to a country beyond the sea, is informed that his wife is dead, and he marries her sister, and after that his wife comes back, she may return to him. . . . After the death of the first wife he may, however, marry again the second wife." And again :—"If, on being told of the death of his wife, he had married her sister, but being afterwards informed that she had been alive at the time (he had married the sister), but is dead now, then any child born before the death of the first wife is illegitimate, but not those born after her death." (See Babylonian Talmud Treatise Zebamoth, Tam. v., p. 94, Amsterdam Ed.)

In this treatise, which chiefly treats on questions of marriage, there are found even passages where such marriages are encouraged, as for example, cap. iv., sec. 13, p. 49.

As this subject is now attracting a great deal of attention both here and in England, you will oblige me by inserting the above remarks in your widely circulated journal.

I am, Sir,

Yours truly,

J. M. HIRSCHFELDER.

Toronto, April 10, 1880.

But what must be astonishing to those Christians who advocated that the Bill in question is against the Old Testament will be found in the fact that the Jews believe in it and act in accordance with its principles. This is established in a most remarkable letter addressed by the learned Rabbi of the Jews of Montreal, Rev. Mr. de Sola, and also Professor of Hebrew in McGill University. He writes:

"MONTREAL, March 19, 1880.

DEAR MR. GIROUARD,

I reply to your favour of yesterday, I have much pleasure in stating that your Bill, intended to legalise marriage with the sister of a deceased wife, or the widow of a deceased brother, has my most decided approval. As regards Jewish authoritative opinion, this, unquestionably, has always been in favour of such marriages, because the Synagogue (the *ecclesia docens* of Judaism) from the time of Moses to our own day, has always regarded them as in accordance with the will of God, and as instituted in the law which he commanded Moses, his servant. The propriety of such marriages has, therefore, never been questioned by Jewish teachers, ancient or modern. The marriage with the widow of a deceased brother *who was childless*, has always been authoritatively declared obligatory, except when exemption acquired by the means indicated in the Levitica, Law, and more fully explained in the Talmud, Treatise "Yebamoth." I shall, therefore, add nothing in respect to this kind of marriage. As regards marriage with a deceased wife's sister, this has always been permitted by the Jewish Church and practised by the Jewish people. The passage in Leviticus xviii., 18 sometimes appealed to as prohibiting such marriages, according to received Jewish interpretation, and also in accordance with strict grammatical analysis, should read thus: "And a wife to her sister shalt thou not take to vex her, by uncovering her nakedness beside her, during her life time." Puting aside Jewish interpretation for the nounce, and bearing in mind that polygamy, although not originating in, or recommended by, the law of Moses, was yet tolerated by it, we may legitimately infer that the words "during her life time" are used simply to limit the period during which such a marriage might not take place, and at the same time, to indicate when it might; to wit, after the wife's death. In this sense has the passage been rendered in the Chaldaic Targumim (translations or paraphrases of the biblical text), in that of Onkelos, written before the commencement of the Christian era, and in that of Jonathan, for which even a greater antiquity is claimed. The Talmud, as old as the Gospel and which contains not merely the orally received laws and precepts regarded as obligatory by the Hebrew people, but also their system of jurisprudence and traditional, or historical, exposition of the Hebrew Scriptures, while prohibiting (Treatise Yebamoth iv. 13) the marriage with a wife's sister, even "though he may have divorced his wife," most explicitly states, at the same time, that there is no prohibition of such a marriage, no objection thereto, *after* the death of his wife, but that it may then be celebrated. Throughout all the writings of the later Casuists, the same doctrine is taught, and, as a consequence, marriage with a deceased wife's sister has ever been, and is yet, practiced by the Jewish people everywhere.

The Hebrew commentators all unite in giving glosses in accordance with the teachings of the Synagogue. They point out to us that the expression "during her life time" limits the prohibition of such a marriage to the wife's life time only, but does not extend beyond it. They also point out to us (*inter alia* Rashi) that the term "Litsror" (to vex her) is a word, the primary acceptation of which is to trouble, to annoy, and, in a secondary sense, means to create or produce trouble or vexation through jealousy—so in the kindred dialects also,—and they add that the limitation to these marriages was instituted because it is neither natural nor proper that sisters, who ought to love each other, should be placed in a position where jealousy or enmity would probably be excited. And, in this connection, I may note that the Mishna (the text of the Talmud), applies a word derived from the very same root, to the polygamist's additional wives, which it styles "tsaroth," or troubles. As a *résumé* of the Hebrew exposition of this text, I will quote from the eloquent and philosophical Don Isaac Abarbanel. He aptly remarks: "The reason assigned for the prohibition is the 'vexation' which the first wife would suffer, but there can be no such vexation in the case of her death, and, therefore, is the marriage with the sister then allowed. It is not allowed, however, if he divorce his wife, because, as she still lived, her

vexation would be the same. From the use of the expression, 'during her life time,' we see that all the other prohibited kinds of intercourse are of a permanent and unconditional character, but not the marriage with a wife's sister, respecting which, according to the analogy of the language employed in the other prohibited unions, the expression here should be : 'The nakedness of the sister of thy wife shalt thou not uncover," which is *not* used, but in exceptional form employed. But the truth is that the design of the text is merely to prohibit the 'vexing' or afflicting his wife by exhibiting a preference for her sister, and hence again is marriage allowed after the wife's decease."

With this quotation, I think enough has been now written to show what are the views and practice of the Jewish Church in respect to the marriages you desire to legalise in Canada. My best wishes are for the success of your Bill, which I regard as calculated to subserve the cause of civil and religious liberty, which underlies it, and of morality, which it is calculated to promote. When a similar measure of relief, for many worthy and pious persons under the ban of illegal union, was brought forward by Mr. Stuart Wortley, in the Imperial Parliament, during the year 1850, the measure was denounced by an opponent as "scandalous, immoral, and mischievous." But I believe that you will find but few inclined to go thus far in opposing your Bill, especially in view of the fact that many dignitaries of the Christian Church, Protestant as well as Roman Catholic, have pronounced in its favor.

You are fully at liberty to publish this, as you request.

Very truly yours,

ABRAHAM DE SOLA.

D. GIROUARD, Esq., M.P.

I believe that, under the circumstances, I can affirm with certainty that the prohibition to marry the sister of a deceased wife, or the widow of a brother, is not against the Scriptures, as the majority of Christians understand them. There is no doubt, moreover, that the Law of Moses is not always a safe guide for Christians. Polygamy, or plurality of wives, was admitted, or at least tolerated, among the Jews. We are assured that Solomon was allowed seven hundred legitimate wives.

MR. BOULTBEE : And he was called Solomon the Wise.

MR. GIROUARD : Mormonism can be defended upon the Leviticus, as well as the prohibition to marry a deceased wife's sister and even better. No one, not even the gallant member for Leeds (Mr. Jones), would dream of introducing Mormonism into our Christian community, because it is to be found in the Old Testament. Finally, it cannot be contended that the restriction in question, which the opponents of the Bill desire to perpetuate and make permanent, is not based upon reason, morality or natural law ; there is no blood relationship or consanguinity between the parties. And if the Bill were to make these marriages obligatory as it was sometimes the case under the laws of Moses, one would account for the opposition of the Church of England. But hereafter no more than in the past, do we intend to interfere with the liberty civil or religious of the subject, and the members of the Church of England, whose conscience and faith would forbid those unions, will not in the least be prevented from abstaining from the same. It has been observed that the Bill in its present from introduces into this country civil marriage. It has no such effect, I always understood that the character of the marriage law always depends from the character of the celebrating officer, and so long as this officer shall be the priest or minister of the parties, there cannot exist any reasonable fear that that the marriage shall be civil and not religious. This was the reason which induced the fathers of our Federal constitution to place the solemnization of marriage under the exclusive control of Provincial Legislatures. This great concession was made to quiet the mind of the Catholic population of the Province of Quebec, who, as a consequence have not much to fear from the marriage laws of the Dominion Parliament, the law of divorce excepted ; but it is to be hoped that this Parliament will never follow the example of the British Parliament which, to use the language of an eminent Protestant legal writer (Dr. Redfield) "has degraded the solemnisation of that sacred relation to the level of a mere civil contract, allowing its solemnisation before the civil magistrate, and practically abandoning the former claim of its indissolubility." Now, one word with regard to the social objections raised by the opponents of the Bill. It is said that it will upset happy social relations and would destroy the relations between brothers and sisters-in-law, the free, truthful and pure feelings with which a man regards the sister of his wife. This objection exists today under the prohibitory laws, for these marriages are almost daily contracted ; public feeling is decidedly in their favour and they are socially recog-

nised. Why then maintain a restriction which has only the effect of branding the issue of such marriages with the mark of illegitimacy before the law of the land. One of the leading journals of London, England, (the *Telegraph*, 7th May, 1879) answers the objection in this spirited manner:—"A man's feelings in such matters are wholly unaffected by Statutes, for as yet no human legislature has ever discovered how to modify or control the domestic affections by Acts of Parliament. The Bishop of London's reasoning seems to rest on the assumption, which is really as insulting as it is gratuitous, that but for the law which prohibits a man marrying his deceased wife's sister, everybody would try to taint with impurity this now spotless relationship. The way of dealing with such a question is to treat it in the spirit of those whose solvent for all social and political difficulties is liberty." Lastly, Mr. Speaker, and I conclude with this point, an effort was made to bring the great influence of the fair sex against the Bill. But what a failure! One or two women only from the isolated sea coast of Cape Breton, acting, no doubt, under the pressure and restraint of unmerciful husbands, appended their names to the petitions already alluded to. On the other side what have we seen? A lady under the *nom de guerre* "Gunhilda" in the columns of the leading journal of Ottawa (the *Citizen*), rushing into the *melée* and displaying such an amount of learning and ingenuity that she forced her antagonist, the valiant Bishop of Ontario, to withdraw from the contest. The brilliant success is not surprising; we all know that the ladies have a style of putting their arguments, which is simply irresistible. The following language of the Countess of Charlemont is a fair sample of it:—"There is one argument," and Lady Charlemont considers it a strong one, in favour of such marriages, which is, "that now the foolish opponents thereof say that a woman would never feel safe in admitting her sister to her house as a resident, if after the wife's death, a marriage between the widower and the sister were possible. This is sheer folly," continues this noble lady, "Why such a degrading idea would prevent a woman of having a cousin, often as dear as a sister, or a friend to stay with her. Now, if a kind girl goes to nurse and comfort her dead sister's children, for whom she must have a natural affection, old gossips shake their heads and malign her, though as the law stands (not, we hope, for long) she is in her brother's house. Who would cherish the motherless things like her? A stranger? Well, the kind aunt would be thrust aside for some giddy girl, who would have no love for them, perhaps, even a feeling of repulsion."

MR. JONES: I must congratulate the hon. member for Jacques Cartier (Mr. Girouard), on the very able legal manner in which he has brought this matter before the House. We all know the ability and the energy of that hon. gentleman when he takes anything in hand. I think ever since the 16th of February, when he first brought this matter before the House, he has been sleeping over it and thinking over it, and he has made up a brief, which might be placed before any Court in this Dominion. It is a regular legal brief. But I do not look at this matter from either a legal or civil point of view. I take a different ground. It is contrary to the law of God; it will cause disturbance, trouble, and jealousies in many a household, when otherwise all would be peace and quiet. The hon. gentleman has said that numerous petitions have been presented in favour of this Bill. Now, how have these petitions been got up? Have they not been written for? Have they not been sought for? Has not the hon. gentleman written to almost every clergyman in his Church; written to every Bishop, to get up these petitions in favour of his Bill? Were there any petitions presented to this House before the 16th of February, in its favour? The hon. gentleman has stated that he had no interest whatever in it. Who are his friends, then, in whose behalf he has brought up this Bill? He must have many friends, many sympathisers, in different parts of the country, for whom he has taken all this trouble, and yet he coolly tells the House that he has done it from purely sympathetic and philanthropic motives, and that it is for the general welfare of the world. The hon. gentleman says that only the Church of England opposes it. As regards the Church of England, were that the only body which oppose it, is a very

large and influential body in this country. And when we see all the Bishops of the Church of England in this Dominion, with the exception of those in Manitoba and British Columbia, who had not sufficient time to send petitions, have petitioned against the Bill, I think it is only reasonable that the delay that is asked for should be accorded. The hon. gentleman says the Presbyterian body are in favour of it. But on the 3rd of March last, a large meeting of Presbyterians was held in England, opposed to a Bill of this kind. We have also seen ministers of the Presbyterian Church in Montreal holding a meeting opposed to this Bill; and when we see other bodies in the country opposed to the Bill, I think it only right that some delay should be granted, and not rush the Bill; through the House in this manner. I think the Conservatives in this House, and on the Treasury Benches, should grant the delay asked for. I am very sorry to see that there is a disposition in this House to pass this Bill. We were taken by surprise in regard to it, and by some hon. members the Bill has been regarded with great levity. I protest against the measure as a member of the Church of England, because I think the Synods, which will meet during the summer, should have an opportunity of considering it. There is no difference of opinion amongst the Bishops of the Church of England on the subject. I beg to move:

"That the Bill be read a third time this day six months."

MR. GAULT: I have seen no reason to change my view in regard to this measure, and I see no reason whatever why this Bill should not become law.

MR. CAMERON (North Victoria): The hon. member for South Leeds (Mr. Jones) has ventured to speak on behalf of the Church of England, as being opposed to this Bill. As a member of the Church of England, I deny that that Church, as a body, is opposed to this Bill. It is true that those bishops who have thought fit to petition this House on the subject, are opposed to the Bill, but there are some English bishops who have voted in favour of this measure on one or two occasions. The basis of the objections to this measure is only to be found in the Prayer-book, and I do not coincide with the party who considers that the Prayer book is superior in point of sanctity and obligation to the Bible. I was surprised to hear the hon. member for Leeds speak of the measure as having been regarded as a huge joke. I do not think that we can consider a Bill of this importance as a joke, in view of the past history of the question in England. There is only an unsupported assertion that the law of God is against the Bill, and there is no social reason against it, and, therefore, I venture to think that the third reading of this Bill ought to be carried.

MR. CHARLTON: I think there is a good deal of force in the observation made by my hon. friend from Leeds, that there was no agitation in favour of this Bill. It is certainly a very radical change, and if we pass the Bill this Session, I am of opinion that we will be guilty of precipitancy. It is a matter of great importance, and one in regard to which we should ascertain more fully the feeling of the religious bodies in the country. Therefore, I hope the further consideration of the measure will be deferred until another Session.

MR. PLUMB: I was pained to hear the manner in which the hon. member for Victoria spoke of the Prayer-book, which is not at all under discussion here. I do not think this is the place to bring up questions of that kind, and it does not seem to me to be the proper way of advocating the passage of this Bill. I avow myself in favour of the amendment of the hon. member for Leeds.

MR. WELDON: As one of the few who are opposed to this Bill, I am not willing to give a silent vote. I understood my hon. friend from Jacques Cartier, on the second reading of the Bill, to state that this was a similar measure to the one introduced into the House of Commons, England, with the exception of the provisos which he added. I have, however, been unable to find in that Bill any provision legalizing marriage with a deceased husband's brother, and Sir Thomas Chambers, who was the introducer of the Bill in the House of Commons, never introduced such a proposition in his Bill. We look for light in legislation, to the Mother Country, where we find the question agitated in that country, that peti-

tions were presented, that an association was formed and cases of hardship brought forward. But in this instance here, not one instance of hardship, not a single petition, not even the slightest agitation, until the hon. member for Jacques Cartier (Mr. Girouard), brought his Bill forward. I regret that he has brought it forward. As to the religious phase of the matter, that is a question which men should settle by their own consciences. The unanimous voice of Christendom has been against such marriages. We know that, until 1550, no dispensation by the Popes was granted. I will read an extract from a speech of Lord O'Hagan on the subject, delivered by him in the House of Lords. He says:

"This principle has unquestionably been maintained at all times since the earliest days of Christianity. It was proclaimed in the Apostolic Constitution before the Nicene Council. It became a part of that great system of jurisprudence which was generated when the Christian civilisation rose on the ruins of the effete and corrupt Imperialism of Rome, basing the hope of the world on the strictness and continency of the family relations, and raising up woman from her low estate to soften and purify the rude society round her. The Theodosian code condemned the practice which we are asked to approve, and declared marriage with a deceased wife's sister to be unlawful, and thenceforth, for many a century, down even to our time, the doctrine of that code has been held intact by famous theologians and solemn councils. It was the doctrine of Basil and Ambrose and Augustine. It was the doctrine equally of the East and West. It was affirmed by ecclesiastical assemblages in the various countries of Christendom, as they were successively comprehended within the fold of the Church, and it commanded the assent of all them. The dispensing power claimed by the Popes was at first resisted and denied, on the ground that the prohibition was absolute and mandatory by the law of God. The Greek Church, whatever may have been its decadence and shortcomings, is a venerable witness to the discipline of Christian antiquity, and we find that the unlawfulness of such a marriage was asserted equally by the Lutherans and Calvinists in Scotland, Geneva and in France."

That is the opinion of an Irish Lord who stood very high in legal circles and who was a Roman Catholic.

Some HON. MEMBERS: Question question.

MR. CASEY: I rise to order. This is something, Sir, that I am sure you will not allow.

MR. SPEAKER: Order.

MR. WELDON: The cause which relies upon disturbance and uproar to put down opposition must be a poor cause indeed. I think it is well for us, in such a great social and religious question as this, that we should consider the opinion of the religious bodies, and particularly the expression of opinion expressed by the Church of England. That Church should be listened to, and other religious bodies have requested that the matter should stand over, and I do not not see why such an important matter, both in its religious and social aspect, should not stand over another Session to give time for fuller discussion and deliberation, and ascertain fully the public opinion. I shall feel it my duty to support the amendment of the hon. member for Leeds.

MR. THOMPSON (Haldimand): The petition that I had the honour to present was forwarded by the Bishop of Nova Scotia, and was, so far as I know, voluntary on his part. There have been other petitions besides this indicating that more time should be given; there have been no petitions from the people asking for this Bill, and I think it premature to pass it. Other denominations wish to obtain time in order to present their views fully to this House, because it will involve a great change. The Presbytery of Toronto passed a resolution, resolving:

"That the Moderator, Dr. Reid, Principal Caven, Dr. Gregg (convener), and Prof. McLaren, be appointed a Committee to prepare petitions to the Governor-General and both Houses of Parliament, deprecating their giving assent to the Bill now before Parliament, which proposes to give legal sanction to marriage between a man and his deceased wife's sister or his deceased brother's wife. The petition to be submitted for approval at next meeting of Presbytery."

And they ask for delay, and I think it right to give them time to fully present their views to this House. I would ask the hon. gentleman who has introduced this Bill, to be content with it, and withdraw further proceedings upon it, so that the House may be able to pass upon it another year.

MR. HOUDE: I understand that a certain portion of the public would prefer to see this Bill undergo a slight change in its wording, so as to make it read that laws prohibiting such marriage are repealed, instead of saying that these marriages will be legal. Some hon. members

will, perhaps, remark that there is not much difference between the two expressions; but persons whose opinion deserves deference, even eminent jurists, pretend that, so far the Province of Quebec is concerned, especially, there exists a difference worthy of notice. My object is to leave no doubt as to the possibility of applying the 127th clause of the Civil Code of the Province of Quebec to marriage between a man and the sister of his deceased wife or the widow of his deceased brother, as it applies, for instance, to marriage between a man and his cousin. By the amendment I am going to move, if it were adopted, the 125th clause would read as if marriage between a man and the sister of his deceased wife, or the widow of his deceased brother, had never existed any more than between a man and his cousin; whilst this Bill says that such marriage shall be legal. Therefore, I move in amendment to the amendment, seconded by Mr. Hurteau, that all the words "that" in the main motion be struck out and replaced by the following:

"The report of the Committee be not now concurred in, but that the Bill be referred again to the Committee of the Whole, with instruction to replace the first and the second clauses by the following:

1. All laws prohibiting marriage between a man and the sister of his deceased wife or the widow of his deceased brother, are hereby repealed.

2. This Act shall also apply, as if laws hereby repealed had never existed, to marriages hereafter contracted, the parties whereto are living as husband and wife at the time of the passing of this Act.

MR. MACKENZIE: What laws will be repealed? There are no such laws.

MR. HOUDE: In the Provinces other than that of Quebec, there is the Common Law of England.

MR. MACKENZIE: We have no power to deal with the Laws of England.

MR. HOUDE: I say the common law of England, which has become law in the Provinces of this Dominion, except that of Quebec. In the Province of Quebec there exists a statutory law positively prohibiting such marriages. In the other Provinces they are only voidable, but in ours they are absolutely void. It is these laws I propose to repeal. Where there is no such law, well, nothing will have to be repealed.

MR. CASEY: I do not intend to go into the question of the sentiments of His Lordship of Three Rivers, but I wish to call attention to the form of this resolution. I am in doubt whether the House can possibly entertain this motion. It is one in words to repeal the laws which make such marriages as these illegal. There are no laws in Canada which make them illegal, and I do not think we can undertake to repeal any laws except the laws of Canada. We cannot repeal any ecclesiastical law which makes these marriages illegal, neither can we repeal the Common Law of England in respect to such marriages.

SIR SAMUEL L. TILLEY: I wish to say a few words on this question before a vote is taken, so that if I am called to vote upon it next Session I may not be considered inconsistent. This is a very important question, but I do not think the country will suffer by its being delayed twelve months, in order that it may be more carefully considered than at present. If this Bill is not carried, and comes up next Session, I will feel bound to sustain the principles of the Bill.

Motion *made:*

That the Bill, as amended in Committee of the Whole, be now taken into consideration.—(*Mr. Girouard, Jacques Cartier.*)

Motion in amendment *made:*

That the said Bill, as amended in Committee of the Whole, be not now considered, but that it be considered this day six months.—(*Mr. Jones.*)

Motion in amendment to the proposed amendment *made* and question *proposed:*

That all the words after "that" in the said motion be expunged, and the following inserted instead thereof:—"The Report be not now concurred in, but that the said Bill be re-committed to a Committee of the Whole with an instruction that they have power to insert, instead of Clauses 1 and 2, the following:

"1. All laws prohibiting marriage between a man and the sister of his deceased wife, or the widow of his deceased brother, are hereby repealed. 2. This Act shall also apply, as if the laws hereby repealed had not existed, to such marriages heretofore contracted, the parties whereto are living as husband and wife at the time of the passing of this Act."

The House *divided.* Yeas, 10; nays, 130.

YEAS:

Messieurs

Anglin	Hurteau
Bourbeau	Langevin

Cimon	Méthot
Desaulniers	Montplaisir
Houde	Vanasse.—10

NAYS :

Messieurs

Abbott,	LaRue
Allison	Longley
Angers	McDonald (Pictou)
Arkell	Macdonell (N. Lanark)
Baby	Macdougall
Beauchesne	Mackenzie
Béchard	Macmillan
Benoit	McCallum
Bergeron	McCuaig
Bill	McGreevy
Blake	McInnes
Bolduc	McIsaac
Bourassa	McKay
Bowell	McLennan
Brooks	McLeod
Brown	McQuade
Bunster	McRory
Burnham	Malouin
Burpee (Sunbury)	Massue
Cameron (South Huron)	Merner
Cameron (N. Victoria)	Mousseau
Carling	Muttart
Caron	O'Connor
Cartwright	Ogden
Casey	Oliver
Charlton	Olivier
Cockburn (Muskoka)	Orton
Colby	Ouimet
Coughlin	Paterson (South Brant)
Coupal	Patterson (Essex)
Coursol	Perrault
Currier	Pinsonneault
Daoust	Plumb
DeCosmos	Pope (Compton)
Desjardins	Poupore
Doull	Rinfret
Dugas	Robertson (Shelburne)
Dumont	Rochester
Elliott	Rogers
Farrow	Ross (Dundas)
Ferguson	Ross (West Middlesex)
Fiset	Rouleau
Fitzsimmons	Routhier
Fleming	Royal
Fortin	Ryan (Montreal Centre)
Geoffrion	Rykert
Gillies	Schultz
Girouard (Jacq. Cartier)	Scriver
Grandbois	Shaw
Gunn	Smith (Selkirk)
Hackett	Stephenson
Haggart	Strange
Hay	Tellier
Hesson	Thompson (Cariboo)
Hilliard	Thompson (Haldimand)
Hooper	Tilley
Huntington	Vallée
Ives	Wallace (S. Norfolk)
Jackson	Weldon
Jones	White (Cardwell)
Killam	White (East Hastings)
King	White (North Renfrew)
Kirkpatrick	Williams
Kranz	Wright
Landry	Yeo.—130

Motion *resolved* in the negative.

Question *proposed* on the amendment—(Mr. Jones) :

The House *divided* :—Yeas, 34 ; nays, 108.

YEAS :

Messieurs

Bourbeau	McLeod
Bowell	McQuade
Brooks	Montplaisir
Charlton	O'Connor
Coughlin	Olivier
Desaulniers	Ptterson (Essex)
Doull	Plumb
Farrow	Pope (Compton)
Fleming	Roulcau
Geoffrion	Schultz
Houde	Stephenson
Jones	Thompson (Haldimand)
Kirkpatrick	Tilley
Langevin	Vanasse
McCuaig	Weldon
McIsaac	White (North Renfrew)
McKay	Williams.—34.

NAYS :

Messieurs

Abbott	Jackson
Allison	Killam
Angers	King
Anglin	Kranz
Arkell	Landry
Baby	LaRue
Beauchesne	Longley
Béchard	McDonald (Pictou)
Benoit	Macdonell (N. Lanark)
Bergeron	Macdougall
Bill	Mackenzie
Blake	Macmillan
Bolduc	McCallum
Bourassa	McGreevy
Brown	McInnes
Bunster	McLennan
Burnham	McRory
Burpee (Sunbury)	Malouin
Cameron (South Huron)	Massue
Cameron (N. Victoria),	Merner
Carling	Méthot
Caron	Mousseau
Cartwright	Muttart
Casey	Ogden
Cimon	Oliver
Cockburn (Muskoka)	Orton
Colby	Ouimet
Costigan	Paterson (South Brant)
Coupal	Perrault
Coursol	Pinsonneault
Currier	Poupore
Daoust	Rinfret
DeCosmos	Robertson (Shelburne)
Desjardins	Rochester
Dugas	Rogers
Dumont	Ross (Dundas)
Elliott	Ross (West Middlesex)
Fiset	Routhier
Fitzsimmons	Royal
Fortin	Ryan (Montreal Centre)
Gigault	Rykert
Gillies	Scriver
Girouard (Jacq. Cartier)	Shaw

Grandbois	Skinner
Gunn	Smith (Selkirk)
Hackett	Strange
Haggart	Tellier
Hay	Thompson (Cariboo)
Hesson	Vallée
Hilliard	Wallace (S. Norfolk)
Hooper	White (Cardwell)
Huntington	White (East Hastings)
Hurteau	Wright
Ives	Yeo.—108.

Motion *resolved* in the negative.

Bill, as amended, *concurred in*, on a division.

Motion *made:*

That the said Bill be now read the third time.—(*Mr. Girouard, Jacques Cartier.*)

Motion in amendment *made*, and question *proposed:*

That the said Bill be not now read a third time, but that it be re-committed to a Committee of the Whole with an instruction that they have power, to expunge Clause 1 permitting marriage with the deceased brother's widow.

The House *divided:*—Yeas, 40; nays, 102.

YEAS:

Messieurs

Blake	McLeod
Boultbee	McQuade
Bourbeau	Montplaisir
Brooks	O'Connor
Cartwright	Ogden
Charlton	Olivier
Cockburn (Muskoka)	Patterson (Essex)
Coughlin	Plumb
Desaulniers	Pope (Compton)
Farrow	Rouleau
Fleming	Schultz
Gillies	Smith (Selkirk)
Gunn	Stephenson
Houde	Thompson (Haldimand)
Huntington	Tilley
Jones	Vanasse
Kirkpatrick	Weldon
Langevin	White (North Renfrew)
McCuaig	Williams
McKay	Yeo.—40.

NAYS:

Messieurs

Abbott	Killam
Allison	King
Angers	Kranz
Anglin	Landry
Arkell	Lane
Baby	LaRue
Beauchesne	Longley
Béchard	McDonald (Pictou)
Benoit	Macdonell (N. Lanark)
Bergeron	Macdougall
Bill	Mackenzie
Bolduc	Macmillan
Bourassa	McCallum
Bowell	McGreevy
Brown	McInnes
Bunster	McLennan
Burnham	McRory
Burpee (Sunbury)	Malouin
Cameron (South Huron)	Massue
Cameron (N. Victoria)	Merner
Carling	Méthot
Caron	Mousseau
Casey	Muttart
Cimon	Oliver
Colby	Orton
Costigan	Ouimet
Coupal	Paterson (South Brant)
Coursol	Perrault
Currier	Pinsonneault
Daoust	Poupore
Desjardins	Rinfret
Doull	Robertson (Shelburne)
Dugas	Rochester
Dumont	Rogers
Elliott	Ross (Dundas)
Fiset	Ross (West Middlesex)
Fitzsimmons	Routhier
Fortin	Royal
Fulton	Ryan (Montreal Centre)
Gigault	Rykert
Girouard (Jacq. Cartier)	Scriver
Grandbois	Shaw
Hackett	Skinner
Haggart	Strange
Hay	Tellier
Hesson	Thompson (Cariboo)
Hilliard	Vallée
Hooper	Wallace (S. Norfolk)
Hurteau	White (Cardwell)
Ives	White (E. Hastings)
Jackson	Wright.—102.

Motion *resolved* in the negative.

Bill *read the third time* and *passed*, on a division.

DEBATE IN THE SENATE

ON THE BILL RELATING TO

MARRIAGE WITH DECEASED WIFE'S SISTER.

(Reported by A. & Geo. C. Holland, Senate Reporters, Ottawa.)

MARRIAGE WITH A DECEASED WIFE'S SISTER BILL.

SECOND READING.

Hon. Mr. FERRIER moved the second reading of Bill (30) "An Act to legalize marriage with the sister of a deceased wife." He said: I regret very much that this Bill is not in the hands of some other member better qualified than I am to shew the pressing necessity of now passing this very important measure. This Bill has been before the House of Commons during the greater part of this long session, and it has come up to the Senate passed by a large majority of votes; we, therefore, receive it as the voice of the people, through their representatives, and I am satisfied that there is a cry from every constituency in this Dominion for relief from the grievous disability now resting on the people of Canada, and which, I trust, will be removed by the passing of this Bill by this hon. House. It has been said to me, "let this Bill stand over until another session." I ask every member of this House who thinks that relief should be given, why should the Senate postpone the Bill until next session? Heads of households, fathers and mothers are dying and hundreds of families are now lying under great disabilities; surely this higher branch of the Legislature will not refuse to listen to the petitions now before this House, but will at once pass this Bill for their relief. I question if ever there was a measure before Parliament of this character on which the public sentiment in its favor was so united as it has been in the House of Commons, Roman Catholics and Protestants voting together for this Bill of relief. I am not surprised that one Roman Catholic Bishop should withhold his approval, and that the Metropolitan, with other bishops in the Church of England, should do the same. They must uphold the Table of Affinity which stands in the Prayer Book. But there is a large class in the Church of England, and a very large majority in all other Protestant churches, which have a right to be heard by us. Our best attention should be given to the petitions now before this House in favor of this Bill, praying that it may become law, and give relief from the disabilities to which they are now subjected by the unscrip-

tural ecclesiastical law which prevails, especially in the code of jurisprudence in the Province of Quebec. I believe that if this Bill is lost in the Senate it will raise a controversy between the bishops and the laity, which will be very damaging to the Christian character of Protestantism. The Roman Catholic Church grants a dispensation to any of its people who wishes to marry a sister of his deceased wife, but their children are still under the disabilities of the civil law. But we Protestants have the unyielding iron law of affinity, enforced by the bishops, a law which has no foundation in the Bible—neither in the Old nor in the New Testament. This fact is now fully established by the highest authorities among the Jews and Christians of this nineteenth century. Lord Houghton, in a speech delivered in the House of Lords, in May, 1879, on moving the second reading of the Bill for legalizing marriage with a deceased wife's sister, said :—

"During this period our colonies have not been silent, and to this fact I desire to draw your Lordship's serious attention. South Australia, Victoria, Tasmania, New South Wales, Queensland, and Western Australia, have passed acts legalizing these marriages. A bill of the same nature has passed the Lower House of New Zealand, and twice in the Legislature of Natal, which colony has now, unfortunately, something else to think of. Such marriages are practically legal in the whole Canadian dominion, the West Indies, and, it is believed, in the Channel Islands."

It is evident that Lord Houghton thinks we are further advanced in the Dominion on this question than we really are. Speaking of the feeling in England amongst the Non-conformists, he said :—

"It should not be forgotten that all the Non-conformist bodies, without the exception of a single sect, are in favor of the Bill, and what is the immense proportion they bear in the Christian community of this country ?"

Further on he quoted from a letter that appeared in the *Standard* newspaper, which ends as follows :—

"I sincerely hope that something will be done to remedy the painful position of thousands of deserving families during the coming session of Parliament, for, if not, I am convinced that the question will be made very prominent in the next General Election; and I would not support any member who would not pledge himself to vote for the removal of this oppressive law."

In concluding his remarks, on moving the second reading of the Bill, Lord Houghton said :—

"And now my Lords, I pray you to give a second reading to this Bill. If you do so, you will relieve thousands of your fellow-citizens, honest men and honest women, from a deep sense of partial legislation and cruel injustice; if you reject this Bill, you will force on them the conviction that they might, like yourselves, enjoy the great happiness of family life with those they love best, without discomfort to themselves or dishonor to their offspring, were it not for the intolerance of the Church of England and the social prejudices of the House of Lords."

There has been so much discussion on this subject, that I will conclude my remarks by citing a passage in a letter received by Lord Houghton from the eminent Oriental Scholar, Professor Max Muller, who says :—

"How any Hebrew scholar could so mis interpret Leviticus xviii., 18, as to make it a prohibition of marriage with a deceased wife's sister is a puzzle to me. I know of one analogous case only—the falsification of a verse in the 'Veda,' by which it was turned into a commandment for the burning of a widow on the death of her husband."

Hon. Mr. DICKEY: I am sure the House has listened with much interest to the observations that have accompanied the introduction of this Bill by my hon. friend; and I may say for myself, and the House will, I am quite sure, agree, that it is a question which affects the tenderest and holiest relations that can obtain between man and woman. I, therefore, desire to approach the discussion of the subject in the reverend spirit that ought to animate everyone in dealing with so serious and important a matter. My hon. friend has furnished us with very little argument of his own, and, as to the value of opinions expressed in another place, I am sorry that he had not been impartial, and given us a little of the argument on the other side. I think that would have been but a fair measure of justice; but, taking the matter as it stands, the hon. gentleman tells us that a large portion—hundreds of people, in fact—in England are waiting for the passing of this Bill.

Hon. Mr. FERRIER: I said from every constituency of this Dominion.

Hon. Mr. DICKEY: My hon. friend stated that also, but he read a speech

which alluded to the fact that the Bill was desired by a great many people in England.

Hon. Mr. FERRIER: I said, at the beginning, that I was going to read, from a speech of Lord Houghton's, delivered in the House of Lords, a few remaks in accordance with the views I endeavored to lay before the House. It is evident that I have not been understood, and I am exceedingly unfortunate in having assented to take charge of this Bill.

Hon. Mr. DICKEY—I do not complain of the interruption, but I am free to say that my hon. friend expressed himself in such terms as not to leave any doubt in the mind of any person as to his meaning. So that, I think, any apology for the Bill not having fallen into better hands is quite unnecessary, for I am sure no motion in regard to a bill could come with greater effect than from the hon. gentleman who has moved the second reading of the Bill before the House. But the hon. gentleman has stated, and it has been stated elsewhere, that hundreds of people are affected by this Bill. I dare say that is the case, and I have no doubt that has been at the bottom of the agitation on this question in England—that hundreds of people have violated the law in this respect, and they wish to have an act passed to set them right again, and the hon. gentleman, instead of appealing to the sympathy of the House, would better have subserved his cause by shewing the reasons for which they ask for the repeal of the law. The hon. gentleman says that a good many Jews and Christians of the nineteenth century are agreed that there is no scriptural argument against this Bill. Unfortunately, we live in an age when we have had to find out, to our sorrow, that even in the Christian world a great many questions have been taken up and treated in a very different light from what it has always been considered they should be dealt with. This Bill may involve a reference to one of the five books of Moses. My hon. friend knows perfectly well that one of the bishops of the Church of England has published a work in which he has struck at the very foundation of these five books. In the light of modern science and modern learning, not content with attempting to upset the account of the creation in Genesis, Bishop Colenso sneers at the inspired narrative of the number of Israelites that went out of Egypt. Certain divines and learned men of the present day have taken this view; but that should not have much weight with this House, because my hon. friend must be aware that for 4,000 years, so far as I know, both Jew and Christian, under the old and the new dispensations, have agreed that these Levitical injunctions as to marriages, like the moral law, were binding on Jew as well as on Christian. That is the position I take, and if such opinions are rife in this nineteenth century, my hon. friend should consider the position he is taking, and the effect it may have upon the beliefs of others—not upon our beliefs, because I assume they are settled; but if we are to have the beliefs of others unsettled upon these points, by bringing up prominently the opinions of some Jews and Christians of the present day, as compared with those who have had an unbroken opinion on this point for thousands of years, I think my hon. friend must see where all this will land us. The hon. gentleman speaks of the voice of the people as expressed through their representatives. We are all familiar with that argument. We know what its effect is, but I can only meet my hon. friend by pointing to the course taken last year on a matter in which the voice of the people had also been expressed in an unmistakable way. I allude to the Insolvency Repeal Bill. That view was expressed then in this House, but the Senate decided then, as I trust they will decide to-day, that, although that was apparently the opinion of the people, yet it was wise to postpone that measure for another year, however inconvenient it might be, in order, if possible, to obtain a true expression of the sentiments of the country, with the understanding that, if that expression were continued in the direction it was before, that it should have its effect. I opposed that contention, because I was in favor of the immediate repeal of the law, looking to the inconvenience that would result, and did result, from its continuance.

Hon. Mr. FERRIER—And you were quite right.

Hon. Mr. DICKEY—I must assume that the House was right in taking time to see the result, and I think the Senate, on that occasion, performed one of its peculiar functions,in checking hasty legislation, and giving time for the country, and for the other branch of the Legislature to decide upon the question. I do not propose to enter at length into the theological arguments of this subject. I have already said it has been held as a rule in the church, whether under the old or new dispensations, that this is the construction of Leviticus, otherwise we would have supposed we would not have had it in the different prayer books of the churches. That is a singular consensus of opinion, and it applies to all those Levitical injunctions and the moral law, including the Ten Commandments, not to any directions which apply peculiarly to Jewish observances that have passed away. Reference has been made to the 18th verse of the 18th chapter of Leviticus. I do not intend at present entering into, even if I felt competent to do so, a critical analysis of that verse; but I think I will shew sufficiently from the whole tenor of the directions given in that chapter, that the weight of opinion is most decidedly and distinctly in favor of the present construction of the law, which is to prevent marriage with a deceased wife's sister. I wish to draw the attention of the House to this argument, that the general injunction in that chapter, "Thou shalt not approach thy next of kin," is given first that we shall not marry the next of kin, and then there are particular cases specified in which it is not lawful to marry. The House will be surprised, or some members of it, at all events, may be surprised, when I state the curious fact that there is no particular injunction which prevents a man from marrying his own daughter, and yet it might be said, with an expression of horror, "you do not mean to say that that chapter admits of it?" I say no such thing. I say the chapter rejects it, and I will shew how: by the seventh verse, the son is prevented from marrying his mother, and, in the parallel case, the father is prohibited from marrying his daughter, although it is not mentioned. The rule is given as to one, and it obtains in all parallel cases, and this is one of them. There is another extraordinary parallel, in which a man is prohibited, by the 14th verse,from marrying the wife of his father's brother, that is to say his paternal aunt, but there is no injunction against marrying his maternal aunt. Why? Because the two cases are parallel, and the one governs the other, following the general rule that a man should not marry with near of kin. Then, in like manner, with regard to this very point, marriage with a deceased wife's sister, the 16th verse implies that a man may not marry his brother's widow. That is a case exactly parallel to a man marrying his deceased wife's sister. Some hon. members may give expression to the opinion that, in the one case, there is a distinct or absolute prohibition, as there is with regard to the widow of a deceased brother, and that if there is doubt about one point, it is quite clear as to the other. I wish to call the attention of the House to this fact: that, following out the same rule of interpretation against marrying with a maternal aunt, and a man's marriage with his own daughter, we come, by an inevitable process of reasoning, without any reference to this eighteenth verse, to the construction that, where a man is prohibited from marriage with the widow of a deceased brother, he is, in like manner prohibited from marrying with the sister of his deceased wife. That being the case, I need not pursue that argument further, except with this single remark: that the House will perceive that the question of marriage with the widow of his father's brother—that is with his aunt—is a much more remote connection, certainly, than that with the sister of the wife of his own bosom. I do not propose to dive further into the depths of the theological part of the question, I prefer, rather, to call the serious attention of the House to the domestic and social aspect of the subject. What is the situation at present? The sister of the wife is equally the sister of the husband, because, by marriage, they twain have become one flesh. We know that the result is the most free and unrestricted intercourse that can obtain between brother and sister, and the most perfect confidence. That is the case under the existing law, and I

need hardly say what would be the result were it changed as proposed. I have already said that the most tender relation in life between the sexes is that between man and wife. Next to that, perhaps, and apart from the question of children, is that which a man bears to his own mother; then comes his love for his sister, and next to that, surely, and in most cases equally with that, is the love he bears and the affection he lavishes upon his sister-in-law — the sister, not by nature, but the sister by the law of God and man. This, hon. gentlemen, is the situation of affairs during life, in sickness and in health; and what is the case after the wife's death, and who, I may ask, so fit to care for the children of her deceased sister as the surviving sister? That argument may be applied in another way, but let me call the attention of hon. gentlemen to it as it stands: if, after death, the sister-in-law is put on the footing of a stranger, eligible to marry the widower of her sister, what woman of modesty or delicacy of feeling would allow herself to be placed in the position of taking charge of the household and living under the same roof with the widower? That would at once deprive the children of the tender protection and care which they now have under the existing law, as is happily the case in thousands of homes where a sister-in-law takes the place of a mother to her deceased sister's children, who would otherwise be without a mother's care. I object, therefore, to that portion of the Bill as being most destructive to domestic happiness. All those social objections apply with tenfold force to the other clause of the Bill, which allows a man to marry the widow of a deceased brother. In either case, we cannot shut our eyes to the possible temptation to get rid of a wife who stands between the husband and the sister, who has been thrown for years into close contact with him, and who, if this Bill passes, will be eligible to take her sister's place. I shrink from the consequences of such legislation, and implore the House to pause, at all events for a time, ere they pass such a sweeping revolution in the social and marriage customs of the land, hallowed by long ages of usage, and intimately associated with the religious sentiment of the country. I humbly submit that we are bound to pay some deference to that sentiment, and it appears to me that the very smallest expression of deference that we can adopt would be, at all events, to give the people who have always considered it to have been the law of the land, for at least 1800 years of the Christian era, an opportunity of considering it, and being heard upon the question. A great many petitions have been before the House for and against this measure. It is, perhaps, difficult, and I do not know that any hon. member has taken the trouble to analyse these petitions day after day as they come in, to consider them properly. The effect of the amendment which I propose to submit, and which I hope the House will accept, would be to give Parliament an opportunity of considering those petitions carefully and fully, and of weighing their representations, and also to give an opportunity to the country to express an unmistakable opinion on this important question. Because, although my hon. friend may speak of people in various parts of the country who desire to have this law, I can tell him of thousands and tens of thousands of people who will be shocked if it be passed. In my opinion, it is not the bounden duty of this House to give force to the agitation which has already been commenced on one side of the question, without, at all events, paying some little deference to the opinion of the other. It is the active, aggressive people who always make the most noise, and these are the people who possibly have broken the law, and who, through their friends in Parliament, endeavor to excite the sympathies of the House to their ends. Under the circumstances, I trust hon. members will pause, and will, at all events, act in the same direction as we acted last year, and give the country an opportunity of making known their opinions upon this law. Certainly after the experience of so many hundred years, no harm can be done by giving an opportunity of seeing what the public feeling is on a matter that deeply affects the religious sentiment of the country. Therefore I hope the House will pardon me when I move, seconded by Hon. Mr. Bureau :—

"That the said Bill be not now read a second time, but that it be resolved that it is inexpedient to proceed with this measure during the present Session, in order to afford time to consider the various petitions to the Senate for and against the Bill, and to ascertain the sentiment of the people on the question at the next session of Parliament."

Hon. Mr. PENNY.—It is not without a feeling of diffidence that I second the Bill that has been introduced by my hon. friend opposite (Mr. Ferrier), and my diffidence is due to the fact that I appreciate, to some extent, the objections raised by my hon. friend from Amherst (Mr. Dickey), yet I have been requested by friends, to whose interests and desires I attach a great deal of importance, to urge upon the Senate the reasons why I think this Bill should pass. Yielding to that desire on their part, and believing that the Bill should become law, notwithstanding the objections which occur to some minds, I do what I can to promote what I believe to be a very valuable reform. I am more diffident about taking this course, however, because I know there is a large number of my friends, professing a different faith from my own, in the Province from which I come, who will vote for the amendment. At the same time, while I dislike to dissever myself from the great body of my fellow-provincialists, I am happy to know that, in this case, there is no *odium theologicum* to be drawn between us on account of our difference of opinion on this occasion, because, although I am not a Catholic theologian, and a very poor theologian of any kind, I know that the Church of Rome and the Pope do not pretend to set aside the laws of God. The dispensations granted to Catholics are not from the laws of God, nor from the laws of nature, as I understand it, but from laws of a disciplinary character, which have been provided on account of expediency, or some other causes, which do not go so wide or deep as the laws of God or nature. This enables me to reply to some remarks which fell from the hon. Senator from Amherst. He has stated that for eighteen hundred years or more, the prohibition of marriages of this kind has been the universal law of Christendom. I think he is wrong in that, because dispensations have always been allowed by the Church of Rome, and, until a very recent period, though such marriages were voidable in England, they were not absolutely void. Now, I take it for granted, that marriages which the Church of Rome permitted in any case, were not marriages that they considered against the law of God, and I take it also that, while the Church of England permitted such marriages to be made, and considered them to be practically good until voided by some court of justice, it could not regard them with that abhorrence which the hon. gentleman from Amherst speaks of. With regard to the passages from Leviticus which he has quoted, he must recollect that there is another passage which goes in the direct teeth of them —the passage which obliges a man, under certain circumstances, to marry the wife of his deceased brother. Therefore, while such marriages may have been considered inexpedient or undesirable from other causes, yet there is nothing absolutely against them in the laws of God or of nature. I am not addressing myself particularly to advocate the Catholic view of it—there are gentlemen in this Chamber who are far better qualified to do so—but I may remark that it seems to me this law would restore to the bishops of that church a power of which they have been deprived by the Code—the power to grant dispensations, which could be followed by valid marriages. As the law stands, their dispensations are, for practical purposes, null, because, while they can still grant them, very few persons would like to subject themselves to the disabilities which the civil law, notwithstanding the dispensation, would bring upon their children. That view of the question was pressed very strongly by Cardinal Wiseman, in addressing the Commissioners appointed by the House of Commons in England to inquire into this subject. However, I do not care to go into that part of the question, because I do not presume to instruct gentlemen of another faith on a matter that concerns themselves. Turning to the question as it affects all creeds, and particularly the people of my own Province, I think there are circumstances of very great hardship and inconvenience, which the Senate should consider before they reject or postpone

this Bill. Previous to 1835 the law in England was this: such marriages were not void, unless declared so by a Court of Justice during the lives of the married persons, and the children were legitimate That is the law as it was introduced into Ontario, and as it now exists in that Province, and as there is no ecclesiastical court to void these marriages, they are absolutely good to all intents and purposes. But persons marrying in that way, in perfectly good faith, intending to live in Ontario all their lives, may find it necessary to move into a Province where the marriage is null. They cannot plead that it is an absolutely good marriage; it is only good until voided, and when, they go to Quebec, it becomes a bad marriage. I am informed by gentlemen learned in the law that, in the Lower Provinces, they have a Court which can perform all that the Ecclesiastical Courts could formerly do in England, and these marriages could, therefore, be voided there, also, though it is not likely that it would be done. Now, that is a great hardship to persons married in that way, many of whom are as respectable, in every sense of the word, as ourselves, and it seems to me to be the duty of Parliament to relieve them from the position in which they are placed. I did not propose to quote Cardinal Wiseman at any length, and I should not have done so if it had not been for the demand of my hon. friend (Mr. Dickey) to know what reason there was for passing this law—what practical inconvenience was suffered by the people at present, that this measure was necessary to relieve them from. What I am going to read is not on a question of religious doctrine, but of fact. It is a question treated of by a prelate, who, I suppose, was as well informed on the matter he talked of before the Committee of Parliament as any man could be. This is the reply of Cardinal Wiseman to one of the questions put to him—of course, what he says applies immediately to England; but, no doubt, to a great extent, it will apply here also. He says:

"It has generally been in the middle classes, and among the poor. In the middle classes it generally results from the sister having lived, perhaps for some years, in the family with the wife, the health of the wife perhaps being delicate. The wife dies, and leaves a young family; the husband has his business to attend to, and has no one to take care of his children; and the sister-in-law has no other shelter—probably has lost her parents, or has been living for many years in her sister's house. I had an instance where she had been living seventeen years in the family, and had been a second mother to the children. The case is very trying for both parties. There is an attachment naturally between them, from having lived so long together. To bring a stranger into the house would probably be disturbing the peace and happiness of the little society. The children are attached to their aunt; and it appears altogether the most natural arrangement for their happiness, as well as to prevent the sin probably of cohabitation without marriage, that a dispensation should be granted. That, I should say, is the history of nine out of ten of the cases which I have had to deal with. In the lower ranks it is generally a case of absolute poverty. The sister, if sent away, is turned into the streets; the man himself could not pay for a servant; he, perhaps, is too poor to expect anyone else to marry him; he is getting old, and the parties are thrown together in such a way that it is advisable that they should be married, otherwise it would end in cohabitation without marriage. Those are the ordinary cases."

Now, it is not I, but a prelate whose worth is known all over the world, who has given evidence there that is quite conclusive on the problem presented by my hon. friend (Mr. Dickey) as to whether this law is required. It is a rather curious circumstance, referring to the law as it stands in England now, that the prohibition of such marriages arose out of an attempt to relieve the public from the partial prohibition then existing. I take the account of this episode in the history of the subject from Lord Houghton's admirable speech:—

"This state of things continued down to the reign of William IV, when, in 1835, special attention was called to the subject by a Bill brought in by Lord Lyndhurst, for the purpose of validating such marriages. Although this measure may have been set in motion to meet a special case, it was intended as a measure of general relief, and only in consequence of the urgency of that case, in which every day was deemed of importance by the parties immediately concerned, was the opposition weak in itself, but fortified by private considerations, met by the insertion of a clause declaring all such marriages prior to the passing of the Bill valid, and all similar marriages in the future void. This clause was rejected by the House of Commons, and the Bill so amended, came up again to this House, when the clause was re-inserted; and, as it was late in the session—everyone knows what happens at the end of a session—the

Bill was allowed to pass with this obnoxious clause, but with an undertaking between Lord Lyndhurst and other parties interested in the matter, that this limitation should be removed in the ensuing session. And natural enough would have been this expectation, even without any private agreement. For what my Lords, was the moral position to which the House and the country were committed by the passing of that Act? The Legislature declared that such marriages, after a certain date, were to be unlawful, and in the religious aspect sinful, and yet they were made obligatory on all who had contracted them up to that date. By one portion of that Act, Parliament placed a certain number of persons in a position in which, if they came to consider these marriages wrong and void, they could be enforced upon them by an action for the restitution of conjugal rights: by another clause in the same Act, Parliament declared them void *ab initio*, and by implication sinful. There neither was, nor is there in fact, in the statute book of any country in the world an Act so inconsistent in its provisions, so repugnant to common sense, and so shocking to the first dictates of morality."

The Bill, therefore, actually validated all the marriages in question before that time, and declared all future marriages of that description void. As to the amendment that has been proposed by my hon. friend from Amherst, it seems to me that this is one of those questions that almost all of us must know as much of now as we shall know next year. For my own part, I believe that if it is proper to pass the Bill at all, it should be passed now. I am acquainted with many respectable families in Lower Canada, some of whose names, if I were to mention them, would be known to all who hear me as those of persons high in the public service, whose children are, in point of law, degraded by bastardy. Although that is not often thrown into their teeth, and no person respects them any the less for their legal position, yet, in case of the disposition of property, very great evils might arise from it, as I believe really happened in the case which induced the hon. gentleman in the other House to introduce this measure. In that case, I am told, the man and wife, who had been married after being granted a dispensation from Rome, and who supposed their marriage was valid, found that their children could not inherit from their grandfather. Such cases must occur frequently, and I think this House should prevent such inconveniences from arising.

Hon. Mr. MILLER—I do not intend to enter at any length into the discussion of this important question, because I consider it has already been so fully debated, not only in Parliament, but in the press, that it is impossible to throw any new light upon it. I am sure that every gentleman who hears me has read and thought sufficiently on the subject to have made up his mind as to the course which he will adopt on the present occasion. I desire, however, to state my reasons briefly for the vote which I shall give upon this Bill. I may say that so far as the first portion of the first clause of this Bill is concerned—the part which is intended to legalize the marriage of a man with his deceased wife's sister—I am not opposed to it, and if there was any necessity for haste, I should have no hesitation in voting for the legalization of such marriages; but I do not conceive that there is any imperative necessity, in the interest of the general public, to take hasty action upon a question deeply affecting the fabric of society, and one which should be dealt with in this House with the greatest possible deliberation. I believe also, that there is no instance on record in any British legislature where a measure of this kind has passed upon its first introduction. Certainly, in England it has been brought several times before Parliament, and, although it has of late years generally passed in the House of Commons, it has never succeeded in obtaining the approval and consent of the House of Lords. In the several colonies of Australia in which a measure of this kind has become law, it has passed after more than one application for such legislation, and, in some cases, the Bill, when reserved for the consideration of the Queen, has been vetoed by Her Majesty, and had to be passed a second time by the Legislature before being sanctioned. I have seen nothing to convince me that there is any necessity for haste in this matter, and, when I reflect that a very large and respectable body of people in this country have memorialized the Senate merely to delay this measure, which has been sprung upon Parliament without any previous notice or any agitation for it in the press of the country, until this Bill was brought before the House of Com-

mons, I, for one, feel disposed to pay the greatest respect to their representations. I find also that, in another very large and important religious body, divided counsels prevail with regard to the details of such an enactment, and, therefore, I prefer to allow time to elapse before we take an irretrievable step on this question, and until we see whether these differences of opinion, which now prevail, can be reconciled; I repeat, if under ordinary circumstances, any pressing necessity could be shewn me for the passing of this Bill, I should be prepared to vote for it, if the measure went no further than legalizing the marriage of a man with the sister of his deceased wife. But this Bill goes a far greater length; it proposes to legalize the marriage of a man with the widow of his deceased brother. Some hon. gentlemen contend that the one case is the corollory of the other. To that opinion I desire to enter an emphatic protest. The two cases are not similar, especially when, in the latter case, there is offspring by the first marriage. There is a difference in the two cases, clearly marked by natural laws, which not only affect the human family, but also animals of a lower order of creation, and which are well understood by those who have made a study of such subjects. I say that, in relation to these two classes, where the deceased brother's widow has borne children by the first marriage, the circumstances are changed altogether, and physiological objections arise which, to my mind, it is impossible to overcome. It is true, as stated by my hon. friend from Alma (Mr. Penny) in his ingenious advocacy of the Bill, that, under the old law, a man was commanded to marry his brother's wife under certain circumstances. That was where the brother died without issue, but the natural inference to be drawn from that command is, that where children had been begotten by the first marriage, it was wrong that any such connection should exist. I am opposed, completely, to this leading feature of the Bill, and for this reason, and the other reasons I have already given, I shall vote for the amendment. I feel somewhat awkwardly situated, I admit, in the position which I occupy. I intend to vote for the amendment of my hon. friend from Amherst (Mr. Dickey), and, still, I do not think that the arguments he has used against the first portion of the Bill are at all sufficient to prevent, on some future occasion, the legalizing of marriage with a deceased wife's sister. I am unwilling, however, to take now, an irretrievable step, in the face of the opposition that has been excited in the country against this measure, and in view of the fact that no notice was given that this Bill was intended to be introduced in Parliament this session. With the desire, therefore, of allowing the fullest investigation, in order that the settled opinion of the country may be had upon this grave question, which will have an important bearing on our social system, and which is, therefore, one upon which this body is expected to act with deliberation, I feel it to be the special duty and function of this branch of Parliament to interpose its authority, in order to prevent unnecessary haste; and I shall, therefore vote for the amendment of my hon friend from Amherst.

Hon. Mr. ALLAN—In relation to the Bill now before the House, and which I earnestly hope the House will defer taking any final action upon, for this session at all events, I do not propose to argue the question on theological grounds, although I think it is right to preface what I have to say otherwise, with the simple declaration that I do conscientiously believe that in such a matter as the law of marriage human law must rest upon the sanction of Divine law. If this principle be not admitted, I know not what safeguards can, for any length of time, be interposed to the passions or the caprices of individuals who may seek to bring about still further changes from which all of us, I am sure, whether opposed to or in favour of the present Bill, would recoil with dismay. In regard to the changes in the marriage laws, sought to be introduced by the present Bill, I am entirely against them, and more especially am I opposed to the clause particularly referred to by my hon. friend from Richmond, which legalizes the marriage of a man with the widow of a deceased brother. I would not, of course, call in question for one moment the sincerity of those who hold opposite views, or presume to reflect in any way upon the motives which have led the hon. gentleman, who has charge of this Bill, to

bring it forward in this House. Indeed, I am sure that the highest compliment that he could receive was paid to him by the promoters of this Bill in asking him to take charge of it, because they know his position, both in public life and the religious world, to be such that anything coming from him would be listened to with the greatest respect. In moving the second reading of the Bill, my hon. friend enforced his arguments by reference to several authorities, whom he, no doubt, thought might have weight with the House, quoting specially from speeches delivered on this subject in England. I shall, therefore, claim the indulgence of the House to make one or two allusions to speeches in support of my own view of the matter, and, in doing so, I shall quote only the opinions of laymen, for the reason that I wish to counteract the strange idea held by some of the promoters of these proposed changes, that the objections to them are all of an ecclesiastical or theological character, in which laymen have little concern or interest. The first authority I shall quote is the Earl of Shaftesbury, a nobleman whose name, I know, is familiar to the promoter of the Bill, and which is a household word in England in connection with every good or benevolent work. This is what he says:—

"When the question of legalizing marriage with a deceased wife's sister was first propounded in the House of Commons, I resisted it to the utmost of my ability. I did so mainly on the ground, that such a change would disturb, and, indeed, annihilate, many of the existing conditions of social and domestic life. The husband and sister of the wife would then stand in different relations to each other, and necessarily—reserve, jealousy, intrigue, with all their many and serious consequences, would prevail in many families where the existing law now gives freedom and safety."

Lord Hatherly, better known as Vice-Chancellor Sir William Page Wood, spoke in even stronger language at a public meeting the other day. He said:—

"That although, while in the House of Commons, he had not shrunk from advocating changes of very considerable magnitude, both in the Church and in the State, he was not prepared to take part in what he believed would be the beginning of a social revolution—trenching upon and invading the sanctity of home life."

At the same public meeting, which was held not very long ago—I think in March last—in St. James' Hall, London, another gentleman, a Mr. Miller, a Queen's Counsel and Railway Commissioner, and Deputy Grand Master of the Orange Lodges, argued that the existing marriage law rested on the clear principle of equality of relationship by blood and relationship by marriage, and urged that even granting, for the sake of argument, that such unions as those with a deceased wife's sister were allowable by the Word of God, still, in the interests of society, and those of our families, a prudent legislature would refuse to legalize such marriages. My hon. friend from Alma, in seconding the motion for the second reading of the Bill, referred several times to the opinions expressed by Cardinal Wiseman, and quoted them at some length in support of this measure. I should like to refer, on the other hand, to a speech delivered in the British House of Commons in 1855, by a well-known Roman Catholic statesman, the Right Honorable Richard Lalor Shiel, when a similar measure to the present Bill was before the House of Commons. That hon. gentleman said:—

"If my right hon. friend shall succeed in this project, where is he to stop? Why may not a man marry his wife's daughter, as well as his wife's sister, for in neither case is the barrier of consanguinity interposed? I hold it to be an indisputable fact, that the religious feelings of the country are against this measure, and I would not wantonly, and gratuitously run counter to that feeling, for the sake of a more than hazardous innovation which breaks down the moral fences that protect our homes."

I have purposely abstained from following the example of either of my hon. friends, the mover or the seconder of the Bill, in quoting the opinions of theologians or ecclesiastics in support of their views on the subject before the House; but were I to take this course, I do not think I should have the slightest difficulty in producing as many authorities on the other side. Eminent divines of great learning and piety belonging to different denominations, and whose experience and knowledge of the existing condition of things among the classes referred to in the evidence of Cardinal Wiseman, quoted by the hon. gentleman from Alma, is as wide and as accurate as the experience and knowledge of that

eminent prelate. I do not desire, however, to take that course, but shall content myself with stating what is undoubtedly the case, that a large majority of the earnest thinking men of the Church of England, in England, have always been, and still are, most strongly opposed to any change in the marriage laws, that even among the Nonconformists there are many who do not approve of any change, that the Church of Scotland has, as a body, always most strongly protested against the measure, and hon. gentlemen have heard in what terms the eminent Roman Catholic statesman whom I have quoted, has spoken of "the hazardous innovation that would break down the moral fences that protect our homes." In this country, as my hon. friend from Richmond has very properly urged, public attention has not been, to any great extent at least, directed to the consideration of this matter, and sufficient time has not been given for a fair and satisfactory expression of public opinion in reference to so important a subject. As it is, I think that upwards of sixty petitions against the Bill have been presented in the Senate, but the attention of the community generally has not been called to the important changes which it contemplates, and I very earnestly hope that the promoters of the Bill will, on that ground—and it is delay only that I am now urging—consent to postpone any further consideration of the measure until the next Session of Parliament. As it is, however, there have been put forth, from time to time, in this country, very strong and unmistakable expressions of opinion against any change in the marriage law. I may refer to what took place at the meeting of the Church of England Provincial Synod in Montreal, in 1877, composed of clerical and lay delegates from almost every Diocese in the Dominion. A very strong resolution against the solemnizaof such marriages as would be allowed by the Bill, was adopted at that meeting, and, notwithstanding what my hon. friend (Mr. Ferrier) has said about the intolerance of the Church of England!! I think that the opinion of such a body is entitled to some respect. I have, myself, also, during the present session, presented several petitions from my own Diocese, including one of them from the Bishop of the Diocese, and others from very considerable numbers of the clergy and laity. I am aware, also, as a matter of fact, that the Presbyterians, as a body, in Ontario at all events, are generally opposed to this Bill, and I know that at the last meeting of the Presbytery of Toronto it was determined to petition against it, and a committee was appointed to draft these petitions to be laid before the Synod at its meeting next week. Of course, they did not anticipate that this measure would be so far advanced as it is now, or they would have been prepared in time. I am quite certain that if the attention of the community generally had been drawn to the subject before the meeting of Parliament, the House would have been inundated with petitions against this measure. I am perfectly free to admit that there are many excellent men in this country (as well as in England) who are in favor of the proposed change, but I am sure the House will agree with me that, in a matter so deeply affecting the religious scruples and domestic happiness of the whole community, we should be thoroughly well assured that any change sought to be made really commends itself to the judgment and consciences of at least a large majority of the community. In a matter which involves all that is dearest and most precious to us in our home life and affection, the views and opinions, and even the prejudices of all affected. are entitled to consideration and respect. What has been said by the hon. Senator from Richmond as to the course pursued in England, under similar circumstances, in avoiding hasty legislation, and also in reference to the course pursued in this House, in reference to a measure of another character, a year ago, ought to have some weight with the Senate. This matter has been well discussed in the House of Commons, and will now be thoroughly discussed here, and I think it is not an unreasonable thing to ask that the Bill be allowed to lie over until the next session of Parliament. It should also be borne in mind, as has already been remarked, that individuals, whose particular cases are met and legislated

for in this Bill, are much more likely to be very zealous in petitioning Parliament, and agitating in favor of the measure, than those who are simply opposed to it on general principles—and this will sufficiently account for any lack of agitation against the Bill; but I am perfectly correct in saying that had the community generally been fully aware of what was in contemplation to be done in the way of legislation, during the present session, we should have had a very strong expression of adverse opinion from all parts of the country. There is nothing unfair, or unreasonable, therefore, in asking that time and opportunity be given for the expression of that opinion, if it really exists, and while I am not likely to change my own views on the subject, still, if it should appear, at the next session of Parliament, that a majority of the community are in favor of this Bill, of course all that I, and those who agree with me, can then do, would be to relieve our own consciences by voting against it. I earnestly hope, therefore, that the House will accede to the request of those who are opposed to the Bill, and who think that they speak the sentiments of a very large number of their fellow-citizens throughout the Dominion, and will postpone the further consideration of the Bill until the next session of Parliament.

Hon. Mr. KAULBACH—This is a very short Bill, but one striking at the root of social and domestic life, and it is most important in its character and consequences. No such bill has ever been submitted to the British Parliament, and we have never had such a bill as this submitted to any Parliament in Canada. The hon. gentleman who introduced it here to-day has contended that this measure is desired in England, and that there is no scriptural argument against it. It seems to me, however, that this is not the case. I look very strongly to the "happy homes of England," which, I think, should be our examples in many matters—religious as well as moral—and we must feel that England, from its clear and oft-repeated actions in Parliament, has no desire for this bill. It is true, as the hon. gentleman from Alma (Mr. Penny) has said, that Lord Lyndhurst's Bill was intended simply as a measure of relief, and Parliament, in a charitable spirit, granted the transgressors relief, but declared that such marriages in the future would be void, and so stands the law to this day. If it had not the moral and beneficial influence which we believe it has, why has not the Parliament of England since that day abolished this law? Why has it not been repealed? We know, in fact, that it has been frequently brought before the English House of Commons, and as frequently been defeated. We have evidence of the House of Commons siding with the House of Lords in 1861, in 1862, in 1866 and in 1869, and in every instance rejected the Bill. Again, in 1875, Sir T. Chambers' Bill was defeated on second reading in the House of Commons by a vote of 174 to 142. Now, we must consider that that was the public sentiment of England in 1875, and we have seen no change of sentiment since that time. We know that even last year a bill not as repugnant as this one to the dignity of woman—not going as far as this one in the destruction of the happy union of families, but a measure only to legalize marriage with the sister of a deceased wife—was defeated in the House of Lords, notwithstanding the extraordinary and powerful influence of its mover and its promoters, and, therefore, I say again that, if we look to England as our examplar, which I am happy and pleased to do, we must admit, without any hesitation or doubt, that it is there considered as striking at the root of the social and domestic life and happiness of the country. If, therefore, we wish to look for precedents in this matter for this Bill, we cannot go to Mother England, for we find there, from its beginning, for centuries upon centuries, the law of the land following the Divine law has been opposed to these marriages. In no case, and at no time, in England has a bill attempted to go as far as this one goes—to legalize marriage with the widow of a deceased brother—and it seems to be revolting to natural feelings that a brother's wife, incorporated into and assuming and legally taking the name of the husband and his family, should be subject to such an inconsistent, depraved and demoralizing alliance. It seems to me that such an alliance, viewed from every standpoint,

is shocking, and only could be sanctioned or approved by a misguided or corrupt taste. I feel that there should be a strong opposition to this Bill as being repugnant to all feeling or sense of right, depriving sisters-in-law of the chaste guardianship of fraternal love. I do not wish to go far into the religious aspect of this question, but I believe that such marriages have not the Divine sanction. The 18th chapter of Leviticus clearly prohibits such alliances, and although, as my hon. friend from Amherst has stated, there are some marriages that are not by express words prohibited, they are merely the corollory of those that are prohibited. For instance, a father was not expressly prohibited from marrying his own daughter—but a mother was prohibited from marrying her own son. Nor was a man in terms forbidden to marry his niece—but a woman was expressly forbidden to marry her nephew. I contend that what was forbidden in the one sex was forbidden in the other, and, reasoning from these premises, I maintain that, when, as by the 16th verse of that chapter, a man was expressly forbidden to marry his brother's widow, a woman, by reasonable implication, was strictly forbidden to marry her deceased sister's husband—her brother-in-law. If we sanction such marriages, we will be lead to deny, in every detail, the sacred law, and, by degrees, familiarize ourselves with all the abominations which the law forbade. In the early history of our race, such marriages were, of course, necessary, but the fitting time came—when the Divine law interposed—when it would not impose a harsh restraint on the proper liberty of choice, but would guard and extend the purity and sanctity of loved and hallowed relations—protected from the misery, confusion and jealousy—with which, unhappily, this Bill now threatens them. My hon. friend from Alma stated this afternoon, marriages with the sister of a deceased wife, were not prohibited by divine law; and he took upon himself to quote some remarks on that point from the celebrated Cardinal Wiseman, to the effect that the ecclesiastical rules and regulations of the Church of Rome prohibited such marriages, and that the present law is an unnecessary interference with its discipline. But the Church of Rome certainly bases her religion upon the divine law, and that Church declares these marriages to be highly improper, and forbids them, reserving dispensations in extreme cases. But that celebrated prelate, Cardinal Wiseman, before the same commission to which my hon. friend from Alma referred, stated that these marriages, of course, were unlawful, and that such marriages, as are now contemplated by this Bill before us, would be null. My hon. friend says that marriages of this kind are not always void, and that there is a state of confusion in the present law. There can be no confusion in the law. Our law is plain and unmistakable. Every person must know when he marries contrary to the spirit and intent of that law, that he is violating it and indulging in (to use a mild term) a misguided taste, and this Bill is instigated and brought in simply at the instance, and for the express purpose of protecting a comparatively few people from the consequences of the law which they have deliberately violated. I have no sympathy with such people, whether they move in high society or in low life, who openly and knowingly disregard the moral and religious law of the land. To legalize marriage with a deceased wife's sister would at once destroy that fraternal affection which exists for the sister-in-law, and deny her the guardianship which she should naturally have in her sister's house and family. Unless, under any circumstances, the wife's sister can only be treated as a sister, the close relationship and fraternal love that are the charm of social life are destroyed; and once you destroy the present relation of the sister-in-law, which you will do if this Bill passes, you will deprive many persons, who add a charm to marriage, who now live together in a fiducial state, as brothers and sisters, of that free social and domestic and family love and intercourse that prevails under the present law. We have seen the benefit of this law in England for centuries, and I see no reason why, because some misguided or corrupt individuals have thought proper to violate what for ages has been considered to be a moral and necessary law,

holding society and marriage relationship, with the innumerable benefits in the varied vicisistudes of life—I see no reason why that law should be repealed, in order to legalize what is, in every sense of the word, wrong, through any feeling of sympathy.

Hon. Mr. DEVER—Hon. gentlemen, in explanation of the vote I am going to give on this subject, matrimony, I wish to make a few remarks, and, in doing so, I trust I will be governed by proper humility, if not timidity, because I am aware the great majority before whom I speak cannot, nor will not, be induced to look on matrimony, and its church regulations, in the same sacred and religious light which I do. To me, matrimony clearly presents itself as a purely Christian institution—over and above the Levitical law, an institution worthy of all honor and respect, and binding, by that law, the Christian, "till death do us part." To sustain this view, I find that, as far back as the second century of the Christian era, Tertullion, who is known in history as one of the fathers of the early Christian Church, wrote these words :—

"How can we," he says, "express the happiness of the marriage union contracted under the auspices of the Church, consecrated by the oblation of the holy sacrifice, and sealed by the benediction which the angels have witnessed, and which the Eternal Father has ratified."

Again, in the fourth century, St. Augustine, another father of the Church, writing on the same subject, made use of these clear and unequivocal expressions :—"Among all nations the advantage of the nuptial bond was to propagate the human race, and to unite the married pair by the fidelity they owe to each other. But with the people of God," he says, "a more precious good, and a stricter bond of union result from the sanctity of the sacrament." Here hon. gentlemen will see, without any doubt, that, in the early church, matrimony was clearly considered a sacrament. But St. Paul, too, calls it "a great sacrament," or "mystery," if you will—as some translators have it—for what are any of our sacraments but mysteries—things which cannot be comprehended, except by the eye of faith? "This is a great sacrament," he says, "but I speak in Christ, and in the Church"—Paul to the Ephes. 5 chap. 32 verse. And, as the Church condemns not only this marriage, with a deceased wife's sister, or a deceased husband's brother, but even with the third consin, or any nearer blood relation of one's former husband or wife; and, as I do not feel disposed to reject the teaching of Scripture and the Church, as I see it, till some better guide be given, I must personally be governed by the history of the past, and by the deductions from that plain passage in Matthew, the 28th chapter, 18th, 19th and 20th verses, which say :—

"All power is given to me in Heaven and in earth. Go ye, therefore, and teach all nations, baptising them in the name of the Father, and of the Son, and of the Holy Ghost, teaching them to observe all things whatsoever I have commanded you. And behold I am with you all days, even to the consummation of the world."

See for further delaration of this commission, John 20th chap., 21st, 22nd, and 23rd verses, and John 14th chap. and 16th verse. But, notwithstanding all this—and it is a good deal—I will vote for the Bill, because you will see by the foregoing views that I look on matrimony and its church regulations as a purely Christian institution, which should be wholly free from all civil restrictions to those who can see it in no other light. Besides, I know some highly honorable and good people who are affected by this inconsistent civil law—people who have no church restrictions of their own in their way, and I am glad to have it in my power to assist in relieving them from it. But, in voting for the Bill, I also see that the clergymen of the Church of England have strong conscientious scruples on the subject, and I would, therefore, propose as a concession to these gentleman to have the following words inserted in the Bill before we pass it: "But the passing of this Act shall not be construed to compel any clergyman who may have conscientious scruples in the matter to perform the ceremony against his will." And this, I believe, is but fair to those gentlemen who clearly have strong conscientious scruples, and who, when deprived of the present civil restrictions, cannot fall back, as other clergymen can, on ecclesiastical law to prevent what they conceive to be a great error, if not a sin.

With these views, hon. gentlemen, I will vote for the Bill.

Hon. Mr. ALEXANDER — The House has been so flooded with newspapers and memorials giving arguments for and against this question, that I am sure it will not be disposed to listen to any lengthened remarks on the subject. I merely rise to explain, as briefly as possible, why I consider it to be my duty to vote for this Bill. I ask myself the question: if this measure becomes law, how will it affect society and the different classes of society? If I look at my own neighborhood, or Toronto, Hamilton or other western cities or counties, I can find numberless cases where men desiring to evade the law as it now stands, have passed over to the United States, and, under the laws of that country, have married the sisters of their deceased wives. I have then asked myself: what have I found to be the position of those gentlemen who have done so, and, in all cases of which I have had cognizance, they have been leading members of leading churches, occupying a respectable and respected position in every way, and they have not been the less respected because they have done so. I have, therefore, come to the conclusion that this Bill will not affect the better class of society, because the head of any family who has the misfortune to lose the mother of his children, and desires to marry her sister, can go over to the United States and legally accomplish there what he cannot do in Canada, and I do not see that the passing of this Bill will have any immoral effect on the poorer classes. For, when a poor man has the misfortune to lose his wife, what can be more natural than that the sister of the deceased wife should be more interested in the welfare of the children than any other person? I cannot see that this Bill will have any immoral effect on society, and I conceive it to be my duty to vote in favor of the measure.

Hon. Mr. FLINT moved the adjournment of the debate.

The motion was agreed to.

MARRIAGE WITH DECEASED WIFE'S SISTER BILL.

DEFEATED ON SECOND READING.

The Order of the Day having been read for resuming the adjourned debate on the Hon. Mr. Ferrier's motion, for the second reading of Bill (30) "An Act to legalize marriage with the sister of a deceased wife,"

Hon. Mr. FLINT said The hon. member from Amherst, yesterday, moved a resolution to postpone this measure over the present session. I can see no good reason in the argument that he offered on that occasion why this Bill should not be proceeded with the present session. The hon. gentleman, if I understood him rightly, gave us to understand that, when a man married a woman, they became one flesh, and that the wife's sister also became part of that flesh. I must dissent from any belief of that kind. I do not believe in a man's wife's sister being incorporated into a wife and husband when the marriage tie is made, and I trust the hon. gentleman will pardon me for mentioning the matter, if I am right.

Hon. Mr. DICKEY — The hon. gentleman must have misunderstood me. I did not say the husband and his wife's sister were one flesh. I said of the husband and wife that they twain should be one flesh.

Hon. Mr. FLINT—I think that there were other hon. gentlemen in this House who understood, as I did, the hon. Senator from Amherst to say that the wife's sister stood in the same relation to the husband, and, so far as the reasoning of the hon. gentleman goes, from his standpoint, it is all right. He wants this Bill postponed because a large number of petitions have been laid before the House in opposition to the measure. I have paid considerable attention to those petitions as they were brought before the Senate, and I did not hear of one of them asking for the postponement of the Bill, but rather that it should not become law. There is but one presented to-day asking for its postponement. The question now is, whether any benefit or advantage is going to be derived from postponing this Bill until another session. If a certain amount of agitation has been raised already, what will that agitation be between now and next session, and is it actually necessary that this agitation should be set on foot throughout the length and breadth of the land, in order to induce hon. gentlemen to pass this

measure? The hon. gentleman from Amherst suggested that we should now adopt the same course as was taken by this House in reference to the Insolvency Law Repeal Bill, but I do not think that is an analogous case at all, as it stood in an entirely different position. The Insolvency Repeal Bill was for the purpose of abolishing an Act that we considered to be injurious to the country. This Bill is not for the purpose of dissolving the marriage tie, but to allow a man to marry his deceased wife's sister, or a woman to marry the brother of her deceased husband, provided that they should agree to do so, and I do not see that we should do anything to prevent it. We live in a free country, and we should be allowed to think, act and speak for ourselves as long as we keep within the limit of the law. I am considerably advanced in years, and I have, during my lifetime, known several cases in which a man has married his deceased wife's sister, and in every instance, so far as my knowledge extends, I have never known a disagreement as the result of such marriages. The sister-in-law is far preferable, in my opinion, to bring up the children of her deceased sister than any woman outside of the family. I have noticed also that, when widowers have married the second time, not with the sister-in-law, the first children have been abused and driven from home, and everything has been done to prevent them from enjoying any of the benefits which would accrue from the property of their father. I have known some very hard cases indeed of this kind, but none on the other side of the question. Under all circumstances, a man should have the privilege of marrying whom he pleases, so long as he does not marry an actual relative. I believe that there is no affinity between the deceased wife and her sister. When the wife dies she is gone, and that tie is, therefore, severed just as much as is the tie between the husband and wife severed when the wife dies, and *vice versa* with the husband. This being the case, I cannot see why we should object to this measure. The great majority of the petitions that have been sent in against the measure have come from the Episcopal Church. We have been told by the hon. gentleman from Montreal that the position of Roman Catholics in Quebec is this: That, while the church can grant a dispensation to allow a man to marry the sister of his deceased wife, the children of that issue cannot inherit the property under the civil law. Are they to be allowed to remain in that state? I think not. If the church has the power to give the dispensation, they ought at least to consent to a law which will make the children by the marriage with the deceased wife's sister heirs to their father's property equally with the children of the first wife. If they wish to bow to the will of their church in this respect it is all very well, but they should not insist that we Protestants should also bow to the will of the Church of Rome. The Church of England has no power to grant dispensations such as the Church of Rome has, and if the ministers of that church desire to have an Act passed giving them that power, they should say so, and then we can understand them, but they come forward, instead, and tell us they do not want this Bill passed, because it is contrary to Scripture. Where do they get the Scripture it is contrary to? It is contrary to their own rule, but not to Scripture. The hon. gentleman from Amherst quoted Scripture last evening to shew that he was right, and I want him to understand that there is nothing like appealing to the law and to the testimony. The eighteenth chapter of Leviticus and eighteenth verse is the authority which is quoted as forbidding marriage with a deceased wife's sister. It reads:—

"Neither shall he take a wife to her sister to vex her and uncover her nakedness beside the other in her lifetime."

Now, what is meant by these words: "in her lifetime?" It simply means that he should not marry his wife's sister during his wife's lifetime, as they might quarrel, but he could take the sister of any other woman, as a matter of course. He could have two wives under that dispensation. I have never known but one case where a man had two wives at the same time, and they did not quarrel. It is such a peculiar case that I will mention the circumstances. A farmer living back of Brockville, was said to have two wives. They had two houses, and he lived with one wife one week and with the other the

next week; turn about. He had two families by those wives, and supported them comfortably, and settled them all on good farms. These two wives did not quarrel, but, as a general rule, there would be a quarrel between the first wife and the second; if they were sisters they would quarrel worse, and there would be a great amount of trouble in such a household. If any hon. gentleman can interpret that passage of Scripture to mean anything else than what it says, I should like to hear him do so. I am no theologian; I have never studied divinity, but I have studied the Bible some, and I take it for what it says, and I believe it says just what it means. The hon. gentleman quoted several passages to prove that marriage with the sister of a deceased wife is prohibited, but I do not think that any of them apply. On the other hand, if you refer to Matthew, you will find that, when the Sadducees came to our Saviour and asked him about the woman who had seven husbands, which of them would be her husband in Heaven, he did not upbraid the woman, nor say that it was wrong for her to have had seven husbands, nor did the Sadducees ask him to do so; but they asked him whose wife she would be in the resurrection. Christ's reply was that she would be the wife of none of them, but would be as the angels in heaven. It is said also that there is no law by which a man can marry his deceased brother's wife. Well, if you just go back to Deuteronomy, you will find, in the 25th chapter and 5th verse, that there is not only authority but a command to a man to marry the wife of his deceased brother. It may be said that that is because he has to raise up children to his brother. It may not have been the man's fault that she had no children. Hon. gentlemen may laugh, but I am speaking seriously on this subject, though, if they continue it, I may be tempted to put in a joke occasionally. If the man refused to marry his brother's widow, she could unloose the shoe from her foot and spit in his face. He was bound to marry her or to submit to this degradation. I cannot see anything in this passage which prohibits a man from marrying his deceased wife's sister, or a woman from marrying her deceased husband's brother, and why should it be so? I am strongly in favor of this Bill, and I hope that hon. gentlemen will consider well before they throw it out for this session. The people are in favor of this measure, and, if they were asked to petition Parliament for it, the House would be flooded with petitions. But no one thought it was necessary, as they expected it was only reasonable and right that a bill should be framed so as not only to allow those marriages to take place, but to legalize all that had taken place before, and to place the children of such marriages in the same position as the children of the first wife. I trust that I have said nothing offensive to anyone's feelings in my remarks, as I have only spoken strictly in accordance with the dictates of my own conscience.

Hon. Mr. ODELL—I think this is too grave a subject to be treated with levity. It is a question of very great importance—more so, perhaps, than any other that has come before this House this session, or in any previous session of Parliament, affecting, as it does, the social relations of the community from one end of the Dominion to the other. I desire, therefore, to record my reasons for the vote which I shall give in support of the resolution which has been submitted, and, before I proceed to state what those reasons are, I will first refer to the petitions which have been alluded to by the hon. member who last addressed us. He stated that none of those petitions ask that this measure be deferred, but that the Bill be rejected. Now, I will read from the conclusion of those petitions, one of which I hold in my hand, what the prayer of the petitioners is:

"Finally, your petitioners submit that, before any alteration is made in the marriage laws, ample opportunity should be afforded for the full consideration of a subject in which all persons are more or less interested, and for the presentation of their objections by those who are opposed to any change; that no such opportunity has been afforded with respect to the Bill now before your hon. House, and that for this, as well as the other reasons herein set forth, it should be rejected.

"And your petitioners will ever pray, &c."

With regard to the Bill, as I have already said, I consider it one of very great importance, demanding the careful and calm consideration of your honors, which

it is the peculiar duty of this House to give to all measures, but especially to one upon which opinions appear to be so divided. I do not intend to bring into the discussion any arguments in regard to the scriptural objections that have often been raised against the measure, opinions upon which are so divided, even amongst those supposed to be best qualified to form a correct judgment. At the same time, I think great consideration ought to be accorded to the feelings of those entertaining such scruples, sanctioned and enjoined as the interpretation they contend for has been by church and state for so many centuries. The Bill, as it has reached us, is, in some respects less objectionable than as first introduced in another place, as an amendment has been made reserving the rights of the issue of the previous marriage. Still, whatever arguments may be adduced in favor of a marriage with a deceased wife's sister, that with the brother's widow is far more objectionable. This, your honors, is the first time this measure has ever been before the Dominion Parliament introduced without any previous public notice, and no fair opportunity afforded for obtaining an expression of public opinion upon the question. How, I would ask, has it come before Parliament? I see, by reference to the speeches reported in *Hansard*, that it was frankly admitted to have been instigated by, and introduced on behalf of a lady, who, as has been said, "Loving not wisely, but too well," knowingly and wilfully placed herself in the position she now occupies, and desired that her act should be now legalized in disregard and in violation of the feelings of the law-abiding portion of the community. Not only so, but, having issue herself, she wished to divert from her sister's children to her own, the inheritance lawfully belonging to them. (*Hansard*, page 291.) Is this, I ask, a fitting prelude for the introduction of such a bill? Does it not present the strongest argument against the measure? And how completely does it destroy the argument that, while converting the aunt into the step-mother, you retain the affections and kindly feelings of the aunt towards her sister's offspring, and provide the fittest person to have their care and to act the part of guardian and protect their rights. If you could provide that no issue should ensue, or if there were no previous children, there might be some force in such an argument, but if issue follows, then the aunt becomes merged in the step-mother, and her affections naturally become alienated from her sister's children to her own. But, aside from this particular case, what is the object sought to be attained by this Bill? Clearly the relief of the comparatively few who can ever be in a position to avail themselves of the privilege of contracting such marriages, and of those who have already openly violated the law and disregarded what many hold to be a Divine injunction, and in opposition to what I believe to be the wishes and feelings of a large majority of the law-abiding portion of the community. I am glad to find that, by the Bill, as it has reached us, the existing rights of the children of the first wife have been preserved, and the contemplated spoliation, openly avowed at its introduction in another place, been frustrated, even should the Bill pass. What, let me ask, is the course pursued in regard to bills of a local nature or affecting a few individuals, or a small portion of the community? Have we not established most stringent rules, requiring not only public notice for two months in the *Gazette* of the nature and provisions of any such bill proposed to be introduced, but a similar notice in both languages, French and English, in one or more newspapers in the locality interested? Do we not, by the 51st rule, require certain prescribed formalities, as regards petitions for the passing of such bills, to be complied with before even the petition will be entertained? And have we not appointed a large and influential committee, whose duty it is to ascertain that all these preliminaries are duly attended to? And all this machinery has to be put in motion and worked for a trivial alteration in some act of incorporation—the alteration of a road or the building of a bridge, or some such purpose. But in this case we are asked to pass a bill affecting all the social relations of life of every individual from ocean to ocean—Cape Breton, in the east, to Vancouver, in the west—without any previous notice whatever that such a measure was contemplated. Why, hon. gentlemen, if a publication of two

months is required in all such private and local matters, twelve months would barely suffice for proper notice in a matter in which the whole population, spread over this vast extent of country, is deeply interested. And I hold that this 51st rule is applicable to this case, as it refers specially to bills granting any peculiar rights or privileges, or affecting rights of property, or relating to any particular class of the community. I would, therefore, strongly urge the adoption by your honors, in this case, of the same course pursued last session in regard to the Bill to repeal the Insolvent laws. A bill like the present, coming from the Commons, backed by a large majority, and, though affecting only a portion of the community, it was decided that time should be afforded for more mature consideration and for information as to what its effect might be, and the Bill was, accordingly, postponed. How much stronger and more forcible are the demands for delay in the case of a measure like the present, affecting the social relations of the whole population of every class and of every creed, creating so important a change in the long-established law which has, so far, withstood all attempts to change it in the Mother Country, and ratified and confirmed, as it has been, by both Church and State for so many centuries. In disscussing a question of this nature, we ought, I think, to be in a great measure guided by the course pursued in England. Now, whatever may be said in regard to the Statutes passed during the reign of Henry VIII to suit the caprice of that licentious monarch, it is clear that since the passing of the Lyndhurst Act, in 1835, marriage with a deceased wife's sister is made illegal; the offence, up to that date, was condoned, but not to be repeated. Since the passing of that Act, the question has been repeatedly brought before the British Parliament, and though bills introduced in the Commons have, in several instances, been passed, they have, on a majority of occasions, been there rejected, and have been invariably rejected by the Lords—whether originating in that House or the Commons. The measure was rejected in the Commons on eight occasions: in 1842, 1849, 1855, 1861, 1862, 1866, 1869, 1875, and bills originating in the Lords on three occasions, 1841, 1851, and again as late as 1879. Had a bill to legalize such marriages become law in England, then, I think, we should pass a similar one here to assimilate our laws. But, passing one here, would be altogether local in effect; give no rights or privileges, or legalize the marriages there. In addition to this, I desire to call especial attention to what has lately taken place in England. A large and influential meeting was held at St. James' Hall, London, on the 26th of February last, under the auspices of a number of lay Peers, Members of Parliament, Queen's Counsel, delegates from the Established Church of Scotland, Workingmen's Society, Workingmen's Protestant League, Protestant Election Union, and Free Church College of Glasgow. At this meeting the question was not taken up as a party question, not as a church question, but as one of social order and morality. The first resolution was moved by Mr. A. C. Swinton, representing the General Assembly of the Kirk of Scotland, and, with permission, I will read an extract from his remarks in introducing the resolution:—

"He stood there as the representative of the church and people of Scotland. He rejoiced to add that the Free Church shared with the Establishment in the intensity of its convictions, and that the Church of England was with them to a man. What was proposed would be the beginning of a revolution in the social life of the community. You would deprive orphaned children of what the promoters of the Bill declared to be the best guardianship they could have. The interests of thousands of God-fearing men, law-abiding citizens, would be sacrificed to the desires of a few."

Altogether, four resolutions, all condemning any change in the existing law, were carried by overwhelming majorities, thus clearly shewing how strong and growing a feeling exists in England and Scotland against any change in the existing law. It may be argued that such a law prevails in Australia, but the example has not been followed by the adjacent colonies of New Zealand or Natal, in both of which the measure failed; and in Australia it never became law until twice passed—the first Act having been disallowed, and only receiving the Royal assent on being passed a second time. I

do not think we should go to so distant a colony for precedent, but rely rather upon the example of the Mother Country, where such a measure has always failed to meet with success. The Act will be especially unfair to the Episcopal clergy who have no power of dispensation, and feel precluded from solemnizing such marriages by their ordination oath, by the established tables of kindred and affinity and the canons of their Church, and, notwithstanding, may be compelled to perform the ceremony, or submit to penalties that may be imposed. Notwithstanding the short period which has been allowed for presenting petitions, I find that upwards of sixty have been presented against the Bill, asking that the measure may be postponed, to afford sufficient time to learn the wishes of the country at large upon so vital a question. These petitions, I find, by a printed sheet laid upon my table, have been assailed in a most unjustifiable manner by a Montreal paper, to which I desire to refer. This sheet, in referring to the Bill before the House, indulges in the following remarks :—

"There, perhaps, never was a measure before Parliament in connection with which public sentiment in its favor was so united as is the case in connection with this measure. We had in the press of the Dominion no indication of any hostile sentiment. With singular unanimity the press of all the provinces have either warmly approved the Bill, or have been silent. The petitions that have been presented, asking for its postponement, prove the same fact. They are for the most part printed, shewing a regularly organized effort to provoke a hostile expression of opinion; and yet, although they only ask for a postponement of the measure, which many persons who are favorable to it, or indifferent upon the subject, might sign, and, although most powerful influence has been used to secure signatures, the result has simply shewn how utterly infinitesimal is the opposition to the measure."

I am at a loss to perceive how the presentation of sixty-one petitions against the measure from sixty-one different localities, proves that "the public sentiment is in its favor, and that there is no indication of any hostile sentiment," as asserted by the writer. Again the writer goes on to state :—

"Had there been any such opposition as would justify the Senate in interposing its veto, after the overwhelming majority in its favor in the House of Commons, that opposition would have manifested itself in a much more emphatic way than has been shewn."

To this I would remark that, by petition is the only legitimate way, the only emphatic way, of expressing the wishes of the public, or of individuals, to Parliament; and this course has been adopted, so far as the limited time allowed has rendered practicable. And, again, that "the postponement would provoke discussions and breed heart-burnings which everyone would deplore." This argument, that postponement would cause discussion, is altogether worthless. Discussion is what is required, and the friends of the measure ought rather to court discussion than repudiate it. The measure, if a good one, and in unison with public sentiment, would lose nothing, but thereby gain support. After all this, what do we find emanating from the same city of Montreal? Instead of an imaginary, an unmistakable "regularly-organized effort" to induce your honors to sanction the Bill, by a number of printed sheets circulated there for signature, handsomely bound and illuminated, presented to this House as purporting to be (and entered on the proceedings) as so many separate petitions, whereas they, in truth, form but one and from one single locality. The whole number of petitions, therefore, in favor of the measure are only four—two, at least, from the same locality; whereas there are sixty-one against it, from sixty-one different localities. I desire also to call attention to the reasons assigned in this petition for passing the Bill, viz:— "Because it is said the question has been before the world for years," and "the suspension of the passage for twelve months would create confusion and difficulty, and affect the rights of many citizens." Now, if as is stated, "it has been before the world for years," no great calamity has ever, in consequence, ensued. Nor is it likely that any will occur if deferred for twelve months longer. Nor need we anticipate the confusion or difficulties suggested. And as to the delay affecting "the rights of citizens," there are no existing rights to be affected. I might well retaliate and apply the remarks already quoted, that "this result simply shews how infinitessimal is the support given to the measure, or it would have manifested itself in a much more emphatic way than has been shewn by four petitions." I feel sure

your honors will not allow yourselves to be beguiled by this attempt to ignore the petitions from sixty-one different localities, or look upon Montreal as representing the whole Dominion, whatever personal interest or influence may be there concentrated, but that you will readily grant the reasonable delay asked for by the resolution before the House. I may say, in conclusion, that should the Bill go to a committee, I give notice that I shall move that the latter part of the first clause be amended by striking out the words, "or the widow of his deceased brother." And also, should the Bill pass, that a clause be added suspending the operation of the Act until it shall have received Her Majesty's assent, as it would be highly prejudicial and injurious should such a measure become law for a short period, and be afterwards disallowed.

Hon. Mr. MACFARLANE--I shall not follow my hon. friend in the course that he has taken, because I imagine that here the richest field for controversy has been abandoned by the most astute scholars in the world, who have pledged their reputation as linguists that the interpretation of the Levitical law will bear the construction that we, who advocate this measure, put upon it. I regret that the hon. Senator from Amherst, who introduced this resolution, did not move the six months' hoist, but has sought to win support for his cunningly-prepared resolution, which he could not obtain by a direct motion against the Bill. I believe that his resolution was prepared in order that it might catch some hopeful support like that of the hon. Senator from Richmond, who frankly told us that he was prepared to sustain the Bill—with the exception of the second clause—and yet was prepared to vote for this amendment.

Hon. Mr. MILLER—I did not say anything of the kind. I distinctly stated that an important portion of the Bill I was decidedly opposed to.

Hon. Mr. MACFARLANE—I have already said that, while the hon. gentleman opposed a portion of the Bill, he was not opposed to the first part of it. He said that he agreed to the portion of the Bill which permitted marriage with the sister of a deceased wife. While I do not see the same objection to the latter part of the Bill that some gentlemen do, I cannot see the close or doubtful affinity that some do, in the case of the widow of a deceased brother. Still, I frankly admit that there are objectionable features in connection with such a marriage, which we do not feel in connection with the first class of cases, and I am not at all prepared to say that if this Bill goes into Committee, I would not be ready to sustain my hon. friend's views on the second part of the clause allowing marriage with the wife of a deceased brother. From what has been argued here, and from the pertinacity with which some hon. gentlemen oppose the Bill, you would really suppose that the object was not merely to give them liberty, but to compel them to marry the sisters of deceased wives. You would suppose, from what they say, that there was not a man in the country who, if he happened to lose his wife, would not be compelled to marry her sister, if she had one. Now, hon. gentlemen, what really are the causes that give rise to such a disturbance? Who are the parties that seek, here, to avail themselves of the privilege that this Bill will confer? Is it the cases of young and thoughtless persons in the hey-day of youth? How many sad scenes do we find, of young persons who are brought together without previous acquaintance, and who rush into wedlock and learn the truth of the old adage, "marry in haste, and repent at leisure?" We know many of those sad cases; they are before us every day; but who are the class of persons that seek relief through this Bill? The man who has arrived at mature age, beyond all doubt. He has been wedded, and must, in all probability, have spent years of wedded life. His wife's sister will, very probably, have been residing in the house with him. Who, I ask, could be found to whom the wife, in her last moments, would so carefully entrust her children as to her sister? But who is the sister? In all probability she, too, is a lady of mature and ripened years—very likely an aged spinster; probably one who, for years, has been on intimate terms of acquaintance with her sister's husband. Hav-

ing known and carefully studied each other's qualities, and having made up their minds that they were adapted to each other, if they conclude to marry, who can doubt that such a conclusion is the result of mature experience, and that such a marriage would be a happy one? We have all seen cases of men who did not marry their deceased wife's sister, and whose experience was unfortunate. But while I know a great many who have married their deceased wives' sisters, I am not aware of a solitary instance in which the parties were not happy. But what is the consequence of the law as it is at present? The hon. Senator from Woodstock told us yesterday that these marriages are continually being contracted all over Canada. What do parties do who desire to contract those marriages? They simply go across the border, where such marriages can be contracted and are legal, and they do so, feeling and believing that there is no moral stain upon them. They feel that they transgress no law of God or man, and that there is no blood relationship between them. If some hon. gentleman had had the boldness to introduce a law to restrict marriages between cousins, I am not sure but that it would benefit the country. Who can have failed to observe the effects of ill-assorted marriages of cousins and other blood relations? Who can have failed to have seen the sad results of such marriages, such as often happens—deformed children — and yet is there any law to prevent these unions? What is to prevent a widower marrying his cousin, a blood relation, who, perhaps, has taken charge of his children? Is there anything in such a marriage that is considered immoral; or does anyone think there is any immorality in a man, who has lost his wife, living in the same house with his cousin? While the sad effects of the marriages of blood-relations are seen and felt all over the country, the results of marriages such as are intended to be legalized by this Bill, are exactly in the opposite direction. My hon. friend says that we should be guided in our legislation by the experience of England, but what is the state of society there? Who does not know you have there a dominant church, which rules and controls the social life of the country? Who does not know that, in the House of Commons of Great Britain, where bills of this kind have been carried seven times——

Hon. Mr. POWER—Four times.

Hon. Mr. MACFARLANE—I shall give the very best authority, the authority of Lord Houghton, who says that such bills have passed the House of Commons seven times.

Hon. Mr. ODELL—It is a mistake.

Hon. Mr. MACFARLANE—It is a statement which, I imagine, the hon. gentleman will not be able to gainsay. Here is what Lord Houghton says, in a speech delivered on a second reading similar to this, on the 6th May, 1879:—

"Seven times has the will of the people been expressed by various majorities, sometimes approaching one hundred in support of these bills, and seven times have they been rejected by the House of Lords. That, assuredly, is not a satisfactory position in which to leave that question, and, in the meantime, these marriages are multiplying every day."

Now, what does this eminent authority that I have quoted state in his speech? That these Bills were introduced not so much to relieve the aristocracy of any disability, but rather to relieve the poor classes of the people who reside in the rural parts of the country, and not so much residents of large cities and towns, where they have a large field to form their connections in. In the rural districts, where a man has found a friend in his deceased wife's sister, he clings to her, and she is able to help him to provide for his children. That has proved to be the case in England, and it is equally so in this country. Now, has any gentleman been able to shew that bad results have arisen from these marriages across the border, where they are permitted by law? Yet there the law affects forty or fifty millions of people; and who has ever heard a complaint that any woman has been found to try to strip her deceased sister's children of their property? Such cases may occur. I do not say that there are not bad sisters-in-law, just as well as other people; but what I do mean to say is, that the widower who has had a good opportunity of becoming acquainted with the sister of his deceased

wife, and especially if she has resided in his house—there is no one whose character he ought to be more familiar with, being in a position to know whether she would make him happy or comfortable if she became his wife, in such a case. I say, he should not be prevented by law from contracting such a marriage. I shall not labor the Bill, but in every view that I can take of it, we are removing by it, as we are bound to remove, the shackles or restrictions that prevent men from selecting their partners in life when there is no blood affinity in consideration. The only valid objection to marriage is where the blood relationship is so close that it is likely to affect the offspring. With these views, I have great pleasure in supporting the Bill of my hon. friend, who we may well call the Nestor of the House. I am sure that, if the hon. Senator from Montreal (Mr. Ferrier) thought there was any immorality about it, he would be the last one to be found advocating this Bill. In his long life and extended experience, the hon. gentleman is the Nestor of the House. He has had more and longer opportunities than any other member to judge of the relief that it will give, and I am quite sure that any hon. gentleman in sustaining the Bill introduced by that hon. gentleman, will have no cause to regret it. Entertaining these views, I shall certainly record my vote against the amendment proposed by the hon. member for Amherst, and in favor of the Bill, and, if the measure should be carried, as I trust it will, when it is referred to committee, I shall be prepared to assist in expunging any objectionable features that it may contain.

Hon. Mr. MILLER—I am sure that the hon. gentleman who has resumed his seat has no desire to misrepresent what I said, and I can only conclude, as he expressed it himself, that he could not have understood the plain statement that I made to the House yesterday. What I did say on that occasion was that I was in favor of legalizing marriage between a man and his deceased wife's sister if there was any immediate haste for doing so; but that in the face of the very respectable memorials that have been presented from every portion of the country, and in the face, also, of the conflicting counsels that prevail in regard to the details of the Bill among the heads of another very large denomination, I thought that my proper course was to vote for the postponement of the measure for another session. I also said that I was decidedly opposed to that portion of the Bill which was intended to legalize the marriage of a man with the widow of his deceased brother. I could not, under any circumstances, vote for the second portion of the Bill. Neither can I understand how any member can support the second reading of the measure, who is not in favor of the whole Bill.

Hon. Mr. MACFARLANE—I did not at all misunderstand the hon. gentlemen. The statement which I made is, I think, entirely in harmony with the explanation.

Hon. Mr. POWER—The question before the House is whether we shall support the resolution of the hon. gentleman from Amherst, to defer this Bill until another session, or whether we shall pass it once; and, probably, strictly speaking, a discussion of the merits of the Bill is not altogether necessary. There is a good deal of force in what was said by the hon. Senator from Richmond, that it was not necessary to enter into any very elaborate discussion of the merits of the measure, but that we should simply decide whether we should not postpone it, on the ground that it was not absolutely necessary to pass it now. There is a great deal of authority on the subject. A somewhat similar Bill has been discussed several times, and with great ability, in the Imperial Parliament. This Bill has also been debated in the other branch of this Legislature, and has been discussed in some letters published by Judge Loranger, of Montreal, in the Montreal *Minerve*, probably with greater ability and accuracy than by any other gentleman in this country. I feel that, while that is true, and members in this House can get access to all the authorities on the subject, the public at large, who are to consider the question, if the resolution of the hon. Senator from Amherst passes, have not the means of getting at those authorities, and I think that, to a certain extent, it is the duty of gentlemen who are in favor of

postponement, to supply to the public some materials upon which they may base their judgment. I do not propose, however, to delay the House for any great length of time. We are asked to pass this Bill at once. Now, unless there are circumstances of peculiar urgency, aside from the nature of the Bill, I do not think that we should do so; and, when we come to look at the circumstances, I do not think that they will be found to be of that character. There is no very strong popular feeling in favor of the measure outside of Parliament; in fact there was none of any kind until this Bill was introduced in the House of Commons. The case is not the same as in England, where petitions, signed by hundreds of thousands of persons, were presented to Parliament on the subject. There were no petitions presented here before the Bill was introduced in the other House, and since then a great majority of the petitions have been against the measure. It has been said that this Bill is in favor of the fair sex. I do not think that there is any evidence in support of that assertion; and I think that the majority of that sex are altogether opposed to the Bill. We cannot be asked to pass this Bill in a hurry because of the existence of a similar law in England. The fact is the reverse; instead of assimilating our law to that of England, we should be making it different. Aside from the merits of the Bill, the only reason why we should pass it this session is, that the hon. gentleman who introduced it in the other branch of the Legislature is very popular, very much liked by his brother members, and very resolute and determined in carrying his point. While he deserves all credit for that, I do not think that it is any special reason why we should support this Bill. I think we should consider the measure on its own merits, and not otherwise. Looking at the somewhat revolutionary character of the Bill, I do not think we should pass it this session, unless some urgent necessity is shewn for it. No such necessity has been shewn, nor even alleged to exist. In the case of the Insolvent Act last year, which has been referred to by some two or three hon. gentlemen, it might have been stated that there was some necessity for haste, because it might be claimed that the business of the country was suffering; but there is no such urgency in this case. I wish to call the attention of hon. gentlemen who may be disposed to support the principle of the Bill, to the fact that, to my mind, at any rate, even if the principle should be admitted as correct, this is not the bill which ought to pass. The measure is illogical and inconsistent. It allows a man to marry the sister of his deceased wife, whilst it does not allow him to marry her niece, though the niece is a degree further removed than the sister. If the Bill is to be altered at all, it should be changed to include the niece. I do not think we are bound to undertake, at this stage of the session, to manufacture a new Bill. Then, the second section, if hon. gentlemen will look at it, is *ex post facto* legislation, which is always reprobated in England, and is forbidden by the constitutions of the different states of the neighboring republic. This second section interferes with the rights of persons acquired under the existing law, and interferes with those rights on behalf of persons who have broken that law. I think it is unjust and improper. But, even in this, the Bill is illogical, because, while it legalizes certain marriages contracted between men and the sisters of their deceased wives, it does not legalize all of them, as will be seen by reading the second section. I should like to call the attention of the Senator from Fredericton (Mr. Odell) to the fact that he was in error when he said that the Bill did not affect existing rights of children. The section says: "All such marriages heretofore contracted, the parties whereto are living as husband and wife at the time of the passing of this Act, shall be held to have been lawfully contracted." If lawfully contracted, the children of such marriages would share in the property, as well as the children of the former wives.

Hon. Mr. ODELL—Is there not a proviso?

Hon. Mr. POWER—No; it has been struck out. If a marriage of this sort was contracted five or six years ago, and children were born, and one of the parties died, those children would be ille-

gitimate, while, if both of the parties were alive, their children would be legitimate. Now, I do not think anything could be more illogical or unfair than that part of the Bill. Another circumstance connected with it, which has been adverted to by some hon. gentlemen who have spoken, is, that it differs from the Bills introduced in England, and I believe from those passed in Australia, inasmuch as it legalizes marriage with the widow of a deceased brother. That is repugnant to the sense of right and propriety of almost every man, and is something that I hope will not pass this House. With reference to such marriages, in addition to the arguments used against marriage with a deceased wife's sister, there are a number of others. There is an express prohibition in Scripture. The hon. gentleman from Belleville (Mr. Flint) was not able to find a prohibition, but, instead of looking at the eighteenth section of chap. 18 of Leviticus, he should have looked at the 16th, where he would have found an express prohibition of marriage with the widow of a deceased brother. In the 21st verse of the same chapter it is pronounced an unlawful thing, and the punishment is, that the couple should be without children. The hon. gentleman referred to the passage in Deuteronomy as exceptional. Now, to my mind, the exception in this instance proves the general rule. I am confirmed in that belief by the fact that, in the twenty-seventh chapter of Deuteronomy, twenty-third verse, there is a very serious condemnation against persons who are guilty of a similar offence. As I understand the Senator from Belleville, he argued that the Scriptures do not recognize affinity at all. The hon. gentleman from Cumberland (Mr. Macfarlane) seemed to take the same ground. Now, in the eighteenth chapter of Leviticus, fourteenth verse, I find that, with reference to the wife of an uncle, intercourse with whom is forbidden, she is described as one "who is joined to thee by affinity." The Scriptures very strongly recognize the relationship of affinity. In the seventeenth section of the same chapter of Leviticus, and in other places where the relationship is merely one of affinity, it is held that the flesh of the husband is the flesh of the wife, and that intercourse with certain relatives of the wife is incest. On this point, I will call attention to a letter which was published in the *Globe* the other day, by Mr. Hirschfelder, a Jewish gentleman living in Toronto, a man of considerable prominence in the Jewish body, who is in favor of marriage with the sister of a deceased wife. Speaking of marriage with the widow of a deceased brother, he says :—

"Taking all things into consideration, I cannot see upon what grounds the law prohibiting an alliance of a brother with a deceased brother's widow can be abolished, unless it is upon the supposition that the Mosaic marriage laws, like some other laws, were only intended for the ancient Israelites, and, therefore, have no force now.

"Now, Mr. Editor, in order to comprehend fully the force of many of the Mosaic laws, it is necessary to divide them into three principal classes :—(1) Precautionary laws; (2) Sanitary laws; (3) Moral laws."

* * * * *

"To the third class belong all such laws which are conducive to foster morality, and, as might be naturally expected, they are by far the most numerous. Now, I think it will hardly be denied that the observance of these laws are just as binding to Christians as to the Jews, and I think it will be admitted at once that the marriage laws must certainly belong to this class, and, if such is the case, I can hardly see how the law prohibiting 'a brother marrying his brother's wife' can consistently be abolished. There are, certainly, very strong grounds to be urged against such alliances; but, as I have above stated, it is impossible to notice them in a newspaper article."

I think, hon. gentlemen, enough has been said to shew that, as regards marriage with the widow of a deceased brother, there can be no reasonable doubt as to the law laid down in the Scripture. As to marriage with a deceased wife's sister, the scriptural argument has been dealt with already by the hon. gentleman from Amherst, and has been discussed in the other House and elsewhere, and hon. gentlemen are quite familiar with it; but there is one point to which attention has been called, to a certain extent, and to which I shall again refer; that is this fact: that, whatever the Jewish law on this subject may have been, there is no doubt as to what the Christian law has been. One of the greatest changes that was made by the change from the Jewish to the Christian dispensation, was in the elevation of the married state. The marriage tie was made more sacred,

and the union between husband and wife rendered more intimate and more difficult to dissolve. Divorce, which had been allowed in the old law, was not tolerated in the new. Polygamy, which had existed under the old law, was done away with, and husband and wife were declared by the Redeemer himself to be one flesh. Looking back on ecclesiastical history, we find that, at a very early date in the history of the church, the canon law, in dealing with the question of marriage, placed the relations of wives in exactly the same position as those of the husbands themselves. Not later, I think, than about 300 years after the Christian era, we find the law in that position, and for hundreds of years the canon law was as strict as this—that marriage was forbidden not only between those who were nearly related by blood or affinity, but between persons related by blood or affinity as far as the seventh degree, and it was only at the fourth council of Lateran, in the beginning of the thirteenth century, that the prohibition was limited to the fourth degree. Now, this canon law was the law of all Europe up to the sixteenth century. It was recognized by cap. 22, of the 25th year of Henry the Eighth, and by a subsequent statute of that monarch, as the law of England, and it has so been accepted down to the present day. It was said by the Senator from Alma (Mr. Penny) that, up to 1835, the time that Lord Lyndhurst's Act was passed, such marriages were not void, but were voidable. He is in error in that. They were void, but they had to be declared so by the Ecclesiastical Court, and this Act of Lord Lyndhurst's declared them void in the eyes of the common law, without any action of the Ecclesiastical Courts. In order to shew what the sentiment of the early Christian world was on this subject, we cannot go to any better authority than the Greek Church. In that church they preserve most of the old practices and discipline of the early church, and, in the Greek Church, those marriages are absolutely void. It was not until the middle ages, and after a struggle that endured for some time, that the right of the Popes to grant dispensations for such marriages was recognized; but the church has always been hostile to them. As an argument in favor of this Bill, we have been referred to the practice in the United States, and also, I think, to the practice in Germany. Now, I do not think, when we want a model for our social life, we should go to the United States. I do not think the morals of that country are such as to induce us to follow in their footsteps, but very much the reverse. Whatever good things there may be in the United States, I do not think that their domestic morality is more admirable than our own, or anything that we should be anxious to imitate; and Prussia, which, I think, is the only country where those marriages are allowed without any dispensation, is undoubtedly the most immoral country in Europe. A very singular argument was used by the Senator from Belleville (Mr. Flint), that if we allowed this Bill to stand over for another year, there would be a great deal of agitation against it. That seems a very extraordinary argument. I am surprised that a gentleman, who is generally so ready to recognize the right of the people to be heard, should take such a position in this instance.

Hon. Mr. FLINT—I did not say that there would be an agitation against the Bill. I stated that it would create great agitation throughout the country. The hon. gentleman is just about as wrong in that as his quotations of Scripture.

Hon. Mr. POWER—If the hon. gentleman will take the trouble to examine the passages in Leviticus, he will find that I have quoted them correctly.

Hon. Mr. FLINT—I examined them before the hon. gentleman was born.

Hon. Mr. POWER.—I do not know whether it was the hon. gentleman from Belleville who said that this Bill was opposed as if it obliged every man to marry the sister of his deceased wife. I think there is another way of looking at it. One would imagine, from the anxiety of hon. gentlemen to get this Bill passed at once, that there were no other women to be married but sisters-in-law. There are women enough in the world for men to marry without contracting such alliances. An argument that has been used by almost every hon. gentleman who has supported the Bill is, that orphan children would have the guardianship and care of their aunts, who are the best persons to take

charge of them. That is true as the law stands now. A deceased wife's sister can remain in the house with her brother-in-law and take care of them ; but, if you passed this Bill, she could not do that. She would have to leave the house, because she would be in the position of any other unmarried woman there. It has already been said that if she becomes a step-mother, she ceases to be an aunt ; so that the orphan children would lose by this Bill, in any case. The hon. gentleman referred to the woman who had seven husbands, and the problem as to who was to be her husband in the resurrection. We are not now dealing with the future life, but with this life, and we should confine ourselves to that. I should like to say a word with reference to the church to which I myself belong, since it has been referred to by the hon. gentlemen from Alma (Mr. Penny), and St. John (Mr. Dever.) The law of the Church of Rome, as everyone knows, almost from the commencement of the Christian era down to the present time, has forbidden those marriages. For a long time, dispensations were not granted under any circumstances ; now they are granted under urgent circumstances, and obtained with a great deal of difficulty. The cases in which dispensations are granted are exceptional. The question is whether, looking at the matter from the standpoint of the Church to which I belong, it is better to have the law of the land agree with the general law of the church, or with the exceptional cases. To my mind, it is better to have the law of the land agree with the general law of the church. The fact that the law of the land is hostile to such marriages, and makes the issue of them illegitimate, is a discouragement to persons entering into alliances which are contrary to the law of the church. If a dispensation is granted, the children are legitimate in the eye of the church, and there is no stigma affixed to them in the eyes of other members of the Church. With reference to the rights of property, any difficulty of that kind can be subsequently got over by a man making his wishes the proper way. That is all that I propose to say for myself ; but I would call the attention of the House to some language used in the House of Lords in 1873. I wish to quote from the speech, on the motion to reject the Bill to legalize marriage with a deceased wife's sister, made by Lord O'Hagan. He had been Lord Chancellor for Ireland, was one of the best lawyers in the three kingdoms, and his orthodoxy, as a Catholic, was unquestioned. He made this speech several years after the evidence, which has been quoted by the hon. gentleman from Alma, had been given by Cardinal Wiseman. At page 1,888 of the *Hansard* for that year, Lord O'Hagan is reported as having used the following language :—

"I have the sincerest sympathy with any innocent persons who suffer from the law as it exists. From some of them I have received communications which have touched me deeply. But I cannot pity those by whom that law has been deliberately violated, on the prompting of passion, or in concession to a supposed expediency, without consideration of the fatal results to trusting women and unborn children. If it were possible to relieve, in cases of real hardship, with due regard to the momentous issues involved in the controversy, I suppose we should all be glad to aid in doing so; but we have to consider what is right and wise, and for the highest interests of the society in which we live ; we cannot play with them according to the impulse of our feelings. We are bound to deal with them as judgment and conscience dictate when we come to touch that family life, which is the very corner stone of our social state, and, according to its moral condition, becomes the glory or the shame, the strength or the destruction of a people."

And again, at page 1,891, Lord O'Hagan says :—

"We are the 'heirs of all the ages,' and we should not lightly set aside the instruction which they give. If you would maintain a Christian civilization in the world, hold high the ideal of the Christian marriage. Do not abase its dignity ; do not dim its brightness. The time is not apt for meddling rudely with that great ideal, or, as you are asked to do to-night, with principles which are its bulwarks, and from which it derives its beauty and its strength. Old landmarks are vanishing away. Doctrines of international law and political justice, which long governed the public conscience of mankind, are losing their power. The elements of socialistic anarchy are working through the nations, and we should beware of precipitating the time when laxness as to the marriage bond may help to bring us to the condition of Rome, as described by Gibbon, 'when marriages were without affection, and love was without delicacy or respect,' and when corruption in that regard was one of the worst instruments in the overthrow of the mightiest of empires. But, my lords, if all I have said were to be disregarded; if there were no tradition

or authority, or religious influence to warrant the rejection of this Bill, I should not oppose it in the interest of society, and for the maintenance of the dignity and purity of the family life; I should oppose it because it is calculated to alter the relations of the sexes in a way most serious and most mischievous. The connection of the brother and sister is delicate and tender, and so ought to be that of the brother-in-law and the sister-in-law—a connection of love and trust, without the taint of passion or irregular desire, and thus it will continue, if you refuse to make legal marriage possible between them. Temptation is bred of opportunity, and dies when it is lost."

I shall say no more, except to end, as I began, with the hope that this House will not pass such a revolutionary measure as this; but will grant the very reasonable and modest request contained in the petitions that have been addressed to the House, and involved in the resolution moved by the Senator from Amherst, to wait one year, to give Parliament and the country time to consider the matter.

Hon. Mr. GIBBS—I have listened with a very great deal of attention, during the whole of this discussion, and have endeavored, if possible, to hear if anything could be advanced by any hon. gentleman, that would tend, in any way, to shake the opinion which I had formed in the past, and which should guide me in the vote which I shall give on the present occasion. I am bound to say that, ably as the discussion has been conducted on both sides, from the beginning until now, I am really more strongly impressed with the correctness of the views I have held in the past, than I was at the commencement of the debate. The only argument used by those who are opposed to the Bill, for the purpose of affecting the vote to be given on the question, is the one that there should be delay in order that more light may be obtained on this subject, which we are told has been discussed for the last 1,880 years, and hon. gentlemen ask that they may have 1,881 years in order to form a correct opinion upon it. It has also been said that this Bill is intended to give relief to a few individuals; that, in point of fact, if this law had not been violated by a few persons, there would have been no debate to-day, there would have been no movement in the country, and there would have been no petitions presented before the House, nor would this Bill have been introduced. Taking it for granted that this statement is substantially correct, and for the purposes of my argument, I am willing to assume that it is so, I ask if Parliament has not, on all occasions, been willing to afford relief to even one humble individual, not hundreds, as we are told in this case, who have violated the law of the land, and who are now asking for relief at the hands of Parliament? I say Parliament has always been ready to give relief to individuals, and, besides, we are informed that, in the Province of Quebec, the children of these marriages are incapable of inheriting property, and, in fact, that under the law, as it stands in that Province, they are illegitimates. The parties who have entered into the bonds of matrimony under these circumstances did not believe they were violating the law, for, had they so believed, they had only to cross the borders, and enter into those bonds without violating the laws of the neighboring Republic, and could return to Canada to live as man and wife. Now, we are informed that we are not to go to the United States to obtain lessons on public morality. I grant, it if you please. Another hon. gentleman has based his argument on the fact that England has refused this Bill for years and, therefore, Canada ought to refuse it also. I do not think, however, we should be asked to look to countries that have refused to pass this measure, but rather to the colonies and countries that have adopted it, to ascertain what the effect of such a law has been. I ask the hon. gentleman who has based his argument —a very able one it was, from his point of view (but very illogical)—what the effect of such a law is, or has been, in countries where it has been adopted? We are asked to believe that it will have a bad effect in the Dominion of Canada; that it will, in point of fact, shock the moral sense of the community. We know that it has not produced injury elsewhere when adopted, and its effect here, I believe, will be to set at rest a question that we desire to have settled. I desire that we should follow the example of the colonies of Great Britain, the United States and the coun-

tries of Europe—Germany and Switzerland—where this law prevails, and draw our inferences as to its effects in those countries, rather than from countries that have opposed it from time immemorial, and still continue to do so. I admit that there are many things we might copy from English legislation, but I ask my hon. friend from Fredericton if there is any force in his argument, that we should, in every instance, assimilate our laws to those of England? Would the Statute have been passed in Canada, which is now in force—I allude to the abolition of the law of primogeniture—if we were to follow the law of England? Does the hon. gentleman wish us to repeal that law, in order to assimilate our legislation to that of England? It was an Act which met with the approval of the people of Canada, and I have never heard one word said against it from that day to this, nor do I believe that there is a solitary individual who desires, to-day, to see that law repealed. Another suggestion is that this Bill should have a suspending clause, if it is passed, but I think that, as every law passed here is liable to be disallowed within two years by the home authorities, then, I say, if that is the case, instead of postponing the passage of this Bill, it is a more urgent reason why we should pass it at once, for, if there are two years within which it can be disallowed, we may, at the end of that term, have to begin *de novo*. It has been stated in this debate that the Act passed in Australia was not allowed for two years, and it did not receive the Royal assent until it had been passed the second time by the Australian Parliament. This being the case, the sooner we pass this Bill the better. We are bound to pass it, and to give relief to those who seek it. No persons are more likely to come for relief to Parliament than those who are affected by the law as it now stands. I have no friends of my own seeking relief, and, therefore, I do not speak from any interested point of view, as it is not a matter of the slightest consequence to me, personally, whether the Bill passes or not; but I do hope, in the interest of those who seek relief at our hands, that hon. gentlemen will vote against the amendment of the hon. Senator from Amherst. It may be, upon his part, very good tactics to introduce his motion in the shape he has framed it; it may be, as an old parliamentarian, that he expects, by this method, to defeat the Bill, but I think it would have been a more straightforward and a more manly way to have met the Bill squarely upon its merits, and let the vote be taken upon its merits. I agree with my hon. friend opposite (Mr. Macfarlane), when he said it was an endeavor to catch those who were undecided in their opinions. To such, the amendment of my hon. friend from Amherst comes as a relief, because, in voting for it, they feel that they are not voting against the principle of the Bill, but are simply asking for its postponement. Is there an hon. gentleman in this House who would rise in his place and say that he expects, by this time twelve months, he will have more light than he has at the present moment? I venture to say that there has not been a single argument adduced in this debate from the Scriptures that bears on the subject, and if the hon. gentleman who did quote from Leviticus had read the whole chapter, the sense of the House would have been against his interpretation of it. I am bound to say this: that hon. gentlemen cannot vote upon this question on any other principle than according to their own convictions, and I admit that it is very difficult to overcome one's prejudices. If, in early life, we have imbibed certain views—religious ones particularly—I know how difficult it is to get rid of them in after life; no matter how one may reason upon them, they cleave closely to him all through his natural life. I know, also, the respect that is paid by members of any church to the doctrines and teachings of that church, whatever they may be, and, although I am at all times disposed, myself, to give due respect to opinions coming from high authority of that kind, yet, when they come into conflict with my own convictions, I put them aside. and act according to my own views. I must confess my surprise at the paucity of the arguments that have been placed before this House in opposition to this Bill. I do not believe, and, if I stated my own convictions, I would add that I doubt very much if hon. gentlemen who advanced those arguments before this House think that the passage of this Bill will create

such a revolution in the country as they would fain make us believe. I am satisfied this measure would be accepted by the people as the settlement of a vexed question, and I, for one, would be very sorry, coming so recently into this hon. House, to find it arrayed against the other branch of the Legislature, after its having pronounced itself in such an unmistakable manner upon this question.

Hon. Mr. VIDAL.—At this late hour and protracted stage of the debate, I fully recognize the propriety of confining my remarks within a limited space. I rise to support the amendment proposed by the hon. member from Amherst, and I must say that, in my judgment, the severe comments which have been made upon it are not justified. It has been alleged that postponement of the Bill has not been asked for. I think the hon. gentleman shewed most distinctly and most clearly, as did other hon. gentlemen, during the course of this debate, that the petitions presented to this House against the Bill, have, all of them, asked that it should either be rejected or postponed for one year; and, consequently, the amendment which has been proposed is in strict accordance with the prayer of the petitioners. Those petitions are numerous. It has been stated that there have been over sixty of them. I have hurriedly counted them, but have not reached that number. I remark, however, that the petitions for the Bill up to the day before yesterday amounted to only two, and I think, with my hon. friend from Fredericton, that the thirty-six petitions which were bound together, presented at one time, and came from one city, might with all propriety be regarded as one petition. If so, we have the fact, worthy, surely, of some consideration, that there are sixty petitions against the Bill, and only three in its favor. It must be admitted that there is a great deal of feeling, both within and without this House, with regard to this question, which has been long before the public, and has developed a wide divergence of opinion; it must, therefore, be approached with great consideration in order to form a correct judgment upon it. I have listened very carefully to the entire debate, and I am constrained to say that, either I have seriously misapprehended the statements that have been made in the House justifying the introduction of this measure, or the House misapprehends the real character of the agitation in favor of the Bill. It has been alleged that great suffering prevails in the community on account of the present state of the law. I will ask hon. gentlemen has there been one petition presented to this House from any person who claims to have suffered in the least degree from the operation of the law as it now stands? Has there been one single case of hardship or injustice presented to the House to shew that this Bill—so subversive of long-established institutions—is really necessary to remedy it? or, has proof been adduced that any evils have, in this country, resulted from the present law? We have had strong statements and fancy pictures of domestic unhappiness presented as evils necessarily connected with the law, as it has been for centuries, and equally fanciful pictures have been painted in glowing colors of the beneficial results that will follow the passage of the Bill before us, but none of those illustrations will bear examination. My hon. friend from Belleville (Mr. Flint), gave a very pathetic illustration to shew how suitable it is for the sister of a deceased wife to take charge of the children she might leave behind, and how desirable that the husband should marry her, rather than bring in a stranger; but, in order to secure the carrying out of his views, he would have to make this law compulsory, obliging him to marry her, for he seems to forget that the man would have some freedom of choice in the matter, and, although he might have the sister-in-law there, he might fancy some other woman for a helpmate, and the dreaded results might follow. But, apart from these social considerations, I would rather urge the point to which I have alluded: that no person has come before this House to shew that any evil result whatever has flowed from this law, as it stands, and the petitions that have come have not asked us to remedy an evil, but simply to pass this Bill. They are not the outcry of a suffering people coming to the Legislature for relief; they are got up at the request of parties in the House who have desired to sustain the Bill by getting

this outside help. That is, practically, the character of the petitions that have been presented in its favor. Much has been said about the state of the law, on this subject, in England, I will admit that, in England, there is ample room for agitation on this question. I am not surprised that there are petitions, signed by thousands of people, presented to the British Parliament, asking relief from a real practical difficulty in the law, as it stands there. But we are not under that law; no law is in force in Canada, declaring those marriages void. In England, they are under an actually oppressive law—a law which, were I in England, I would do all in my power, if not to repeal, at least so to amend it as to remove the clauses which bar the issue of such marriages from inheritance of their fathers' property. My hon. friend from Woodstock has told us that great difficulty was experienced in the western parts of Ontario in consequence of our law, and that many people, on account of it, had to go to the United States to get married. I question if he could produce any cases of parties who went to the United States to be married because the law of Ontario makes such marriage illegal if it takes place here. The law of Ontario does not make such marriages illegal, and, if people go to Buffalo, Detroit, or other American cities to get married, it is simply because it is convenient for them to go there, or it suits their purpose in some other way. There is not, in the Province of Ontario, any law which throws any obstacle in the way of those unions, or disinherits the issue of such marriages. I challenge any hon. gentleman here to produce any single instance on record where a court in Ontario has decided that the issue of one of those marriages is illegitimate! It cannot be done. Whence, then, this cry for relief? Where this oppression that the people are groaning under? The community has never asked for this Bill, for the people have not suffered from the evils complained of. Now, let us look at the relation of this question to the Province of Quebec. I believe, from the remarks that have fallen from hon. members, that the issue of such marriages are not considered to be the lawful heirs to the property of their father, should he die intestate. Supposing it is so, are we, hon. gentlemen, legislating for the particular interests of a few individuals in that one Province? Is not that a question which is solely and entirely in the hands of the Provincial Legislature? I do not mean to say that marriage is, but as to this question of holding property, is it not a fact that to the provincial legislature is confided the duty of legislating with respect to property and civil rights? and can we constitutionally legislate to say that the issue of such marriages shall be heirs-at-law? They certainly ought to get that relief; but it is the local legislature alone that should grant it. I am very much surprised at the assent that has been given in the other Chamber to the Bill now before us. Gentlemen whose battle-cry has been: *Notre religion, notre langue, et nos lois*, have advocated and voted for the passing of a measure in direct contradiction to the law of the church to which they belong, and are asking this Legislature to interfere with those laws which they value so highly, and which one would suppose they would desire to keep in force. But I have other and more serious objections to the Bill than its being unnecessary and unasked for, and the chief is that it may possibly be a measure in direct opposition to Divine law. I presume that, if it could be distinctly shewn that it were so, this House would not commit itself to any such legislation. One part of this Bill is, in my judgment, clearly and distinctly a contravention of Divine law. I have not the least hesitation whatever in saying that I regard the part of the first clause legalizing the marriage of a man with the widow of his deceased brother as contrary to Divine law, and I could not consent to the passing of this Bill while it contains such a provision. Although my objection is not so strong against the first clause, I have very serious doubts even as to the propriety of legalizing marriage with the sister of a deceased wife. If it should be so, that this Bill is in contravention of the Divine law, what are we about to do? Do we suppose that we can improve on the government and laws of the Almighty? Is it not a fact that every law He has given to man has been designed for man's

good? He does not condescend to explain all the reasons for giving that law, or all the results to flow from it; if He has laid down a law barring such marriages, I maintain it is for the good of humanity. None of His laws are arbitrary enactments, but command or prohibit, because the doing of this, or the refraining from that, are conducive to man's health and happiness. I think, under the circumstances, we ought to be very careful indeed to confine ourselves to that kind of legislation which is clearly within our jurisdiction, as relating to things earthly rather than spiritual. I should have no hesitation whatever in supporting a bill which declared merely as to property that the children of these marriages should be considered as lawful inheritors of it, but I do object to see on the Statute book of our country an act, the terms of which may be said to be in direct contradiction to the Divine law. There is manifestly a great difference of opinion as to whether it is so or not. The Catholic Church of Rome, a very large and influential body of Christians, by its laws—not enacted as of its own will and authority, as we make laws here, but drawn from the law of God, declare this affinity a bar to marriage, although granting a dispensation in some particular cases. Then look at the Church of England, comprising such large numbers of highly educated and talented theologians of unquestioned wisdom and piety, who affirm clearly that this affinity is, by the word of God, a bar to marriage. Do these opinions count for nothing? I would not, for a moment, accept their authority as a mere church law, of human origin, but I do accept these church laws as evidence that, in the opinion of these great and learned men, such marriages are forbidden by the law of God. Then take the Presbyterian Church—strong in numbers and influence, in piety and talent—and we find in the "Confession of Faith," their authorized standard of church law, they have it laid down, among the rules drawn from the Scriptures, that "A man may not marry any of his wife's kindred nearer in blood than he may of his own." I would not adhere to that view merely because given as the rule of a church. I am too independent, and too free to be bound down by doctrines, the mere commandments of men, but I do consider that, when the opinion of those wise and good men, who have carefully and prayerfully studied the Scriptures, is, that the law of God prohibits this kind of marriage, it should have great weight with us. I say that these three great churches, by their standards, have, for centuries, upheld it.

Hon. Mr. PELLETIER—Not the Catholic one.

Hon. Mr. VIDAL—I take these three churches by their accredited standards, and I challenge any man to say that they do not disapprove of such marriages. I think, without going into arguments that are not fit for the floor of this House—for the discussion on the Scriptures is better fitted for a forum of a different nature—these churches all bear testimony to the fact that, in their opinion, the law of God requires that there should be a bar to this kind of marriage. Is all that testimony valueless? Are we to say that there can be no difference of opinion, or are we to be like the hon. gentleman from Belleville, who seemed to think that his *ipse dixit* was to sweep all these bars to the winds? This being the testimony of such a large number of persons who are so well-fitted to form a judgment, we should hesitate before venturing to say that they are entirely wrong, and I think it is a wise thing to give an opportunity, which I think will be taken advantage of, to have this subject thoroughly discussed by the churches and the people, and some decision arrived at, that may be a guide and assistance to Parliament at its next session.

Hon. Mr. BOYD—It is with some reluctance that I venture to offer a remark on this question, the more so because, while very grave differences of opinion exist between good men of both sides, whose judgment I respect, to me it seems so clear, and the interests involved in the early and just settlement of it so great, that I deem it my duty to join those who may press for an immediate decision, and that in favor of the Bill which is now before this hon. House. It has been said by my hon. friends the members from Amherst, Toronto and Fredericton, that the people

have not asked for it; that few petitions have been sent up for, and many against it; but this is a question which does not take hold of the public mind; because it is not one which touches the country's pride or its purse, it is passed over with the remark: "A mere question of family relations, and not likely to affect me or mine," say too many. But it has been discussed very widely in the Old Country, Australia and the United States. In the latter it has been decided favorably, and in Britain, the House of Commons, after years of discussion, passed it by a large majority. It is yearly growing in favor of the House of Lords, and it must succeed, for in all these discussions, so far as I have seen—and I have followed them with some degree of interest—I have not met one argument to convince me that it was wrong, for neither from pulpit, platform or press have I heard or seen any reason that can weigh against those which have been adduced in favor of the principle of this Bill. The main appeal has been to the Scriptures. Here, one party rests their case, and they have so far been singularly unfortunate. They involved the question in such a labyrinth of difficulties that in many cases they were forced to leave this ground and seek that on which we stand when discussing the ordinary affairs of life and duty, of which matrimony is one. Even Cardinal Wiseman, as has been quoted by the hon. member from York, is in favor of this Bill, for the poor, as necessary in their case, and will be productive only of good for them, therefore, it is right in his view, and may be obtained by the wealthy for a consideration. Standing upon this ground, I have put the case to my own judgment in every conceivable shape. I can see nothing in it but what is purely sentimental. Even this has its weight, and we are bound to respect it; but there is sentiment also on the other side, and more than sentiment, there are realities which have come home to many a household; and men and women, pure as ever lived, have been branded with disgrace, and made to feel the humiliating mark placed upon them until their death. And why? Because certain prejudices have been framed into a law. Great names have been quoted in defence of certain views. Men in authority desired to pursue a certain course, and this was made easy to them by those whose policy it was to please, but as in political matters, so in spiritual, or what is called spiritual, it is not always safe to be led by great names, as even the best of men have at times been, unwittingly, the victims of prejudice. They desire to believe a certain thing; they frame it into a dogma, and, instead of going to the law and the testimony for the Truth, they, out of their own desires, frame a policy—they go to, and frame arguments from it, in defence of this policy, and thus even good men have been led astray; and the old lines of Burns have been in order in their case:—

"Some books are lies frae end to end,
And some great lies were never penned.
E'en Ministers they hae been kenned
In holy rapture;
A rousin' whid at times to vend
And nail't wi scripture!"

Confounding the Moral with the Ceremonial—that which is for all time, with that which was merely for a dispensation which passed away some 1,800 years ago—men have framed a plea from the Old Testament to sustain their opposition to this Bill; but it goes too far. They say it meets their case; let us read it: "Neither shalt thou take a wife to her sister, to vex her besides the other in her (the wife's) lifetime." We may not marry our wife's sister while she lives—that is all; they forget that we may, by a parity of reasoning, when she dies; and not only so, but while prohibited from vexing our wife, by wedding her sister while she lives, we are at perfect liberty, according to this law, to wed her after the death of the wife, and, from the example of the good men of that day, to wed her and any other man's wife's sister also, and there is no restriction on the number that might be thus wed; so that if this law is of any force, we must take it with all that it commanded, and all that it permitted. Under it hon. gentlemen might establish Harems in this country—they might introduce the abominations of polygamy, now happily confined to Utah and a few other places not recognised in Christian circles. The same law to which appeal is had against this Bill, if we take it in all its fulness, would regulate our appetites in every direction; our domestic economies; what we should eat, drink and avoid; how we

should bear ourselves on the Sabbath, with other purely local and ceremonial enactments, adapted to a barbarous, untutored people in those early ages—a people who treated woman as inferior, placing upon her heavy burdens, and degrading her, in almost every position in life. Even this law, to which appeal is had, ordered that, on the birth of a female child, the purification attendant should be double that of a male. These laws are attempted to be set beside those which are for all time, and against laws which commend themselves to our better nature, and which will last when those of mere ceremonialism shall have for ever passed away. If marriage were aught else but a civil contract between man and woman, which I hold it is, we might be inclined to yield our judgment to spiritual courts, and to the decrees of spiritual teachers. It is a subject which belongs to the State; to be regulated only by the State, and Parliament, therefore, is the proper place to deal with it. We ought not to give up our powers to another court; we cannot guard these too carefully, or uphold them with too much jealousy. But even in spiritual circles, opinions widely differ. My hon. friend from Montreal will be met by my hon. friend from Toronto, each with a list of great names against the opinions of the other. One of the most distinguished clergymen in the Wesleyan Church had to leave England and come to this country, and remain here for a length of time, to marry his deceased wife's sister, and to avoid the annoyances consequent upon it. I know a case of one of the most pure and amiable ladies in the Dominion, a model wife, a good mother to her sister's children, and yet her family have discarded her, and, almost broken-hearted, she is no longer recognized by them. My hon. friend from Sarnia has challenged us to name one case where parties had to leave this country to effect such a marriage. I can name two such cases where I had myself to act as the guide from St. John to Eastport, on missions of this kind. I might multiply such cases, but this one, will, I doubt not, suggest many to hon. Senators, who have probably had like knowledge, and why should we lend our sanction to a continuance of this injustice? Why cause these heart burnings and recriminations, where there ought to be only love and harmony? Are we looking for more light? Is Parliament unable to form an opinion? What are we, to gain by postponement? And must we in this stage of the world's progress, wait upon spiritual courts, while they pass their judgment upon matters purely secular? Make laws, if you please, against the marriage of certain degrees of blood relationship, and see that they are carried out in the interests of future generations. Make a law, as in Sparta, compelling every man of the age of 25 to marry, or pay a tax to the State—and I trust that this law will include my hon. friend from Halifax, who says there are many women in the world, but yet has not taken one to himself, as I hope he will ere another session of this House—but, in framing these marriage enactments, omit all limits where the laws of nature or of scripture have set no limits. Let a man marry whomsoever he loves and is loved by, yea, even to his own mother-in-law, if he has the courage, and should so desire. At the present time those desiring marriage with their sister-in-law can step across the border line, and the twain be made one flesh. Let the same privilege be accorded here, and thus remove a barrier which is useless, indefensible, and, I believe, wholly evil. Some of the opponents of this measure assume to be the sole defenders of woman's purity, dignity, rights and privileges. I am quite willing to leave with woman the custody of her own dignity and purity, her rights and privileges; to leave her to be the judge of these herself, in this matter of marriage. I would say to those who are unfairly interfering with these: "hands off," and, if not, there will always be found those, who, like Mary Frances Cobb, Maria S. Rye and others, who can defend themselves against the stronger sex, even though led on by Right rev. bishops, and give a good account of themselves, even against a whole General Assemby of Divines. Let us then, leave these questions to the men and women interested or to be interested. If a man or woman desire to marry, let him or her do so, and let us not use our power to force either party. Differences of opinion and taste always have, and will exist; let these continue without obstruction from us. The old minis-

ter, discussing this point, said: "It was well there were such differences of opinion, for, if everyone had been of my opinion, they would all have wanted my wife," while his deacon replied, that "if everyone had been of his opinion, no one would have wanted her." These differences of opinion are wise and natural. Let us have Free Trade in these things, coupled with just Protection to the weaker. Let us not interfere where our interference will be evil, or we may find ourselves tripped up at every step. The transgression of Eve seems to be ever before the minds of certain high dignitaries in all ages, and for this alleged sin of our dear old inquisitive grandmother, they would put her daughters into leading-strings for evermore, and say what they should do, or not do, in matters in which they have no concern. A later dispensation has elevated woman to her proper position. It is only under the benign influence of Christianity that woman is accorded her true place. Here she is no longer in the same degree as formerly—the slave of man's wants and of his passions. She is now the equal in, and the helper of, his home; often his guide, always his best counsellor in times of difficulty; his stay in trouble, as I know. In that great trial which came upon so many of us in our burning city, when men's hearts failed them for fear, woman only was equal to the emergency, and bore us up with her strong faith and loving sympathy. Whenever a man is drawn toward such an one, and she reciprocates his love, let not mere sentiment frame a law to prevent their union, for "whoso findeth a wife findeth a good thing." There are plenty of *women* in the world, but a *wife* is not so easily to be had. This principle of love, we can talk about it, but who can estimate its strength, its influence for good, when rightly exercised; its influence for evil, when improperly obstructed? George Stephenson, once asked by a lady, What is the most powerful force in all nature? replied: "Madam, it is the eye of a woman for the man she loves. If he go to the uttermost ends of the earth, that eye will bring him back. There is no other force in all nature that will do that." No one may stand between a woman and the man she loves. "Neither life nor death; things present or to come." Nothing more inexplicable, wonderful, beautiful than this love exists, a grand example of which we have in the character of Evadne, as drawn by Shiel, portrayed by one of the most accomplished of her sex, and witnessed by hundreds in Ottawa last evening—an example which ought to melt the most obdurate woman-hater or woman-enslaver in Parliament. And where such devotion exists, and it only does exist when allied with purity and truth; and where no violation of God's law can be shewn in permitting it to declare itself, then, hon. gentlemen, I believe we would be unjust to our kith and kin, untrue to our own nature, and unfair to those who have entered into the bonds of matrimony, or who desire thus to do, under the relationship contemplated by the framers of this Bill, if we did not at once ordain a law which has only the opposition of mere sentiment, and against which there has not been advanced one argument that I have heard, that can stand the test of reason or the light of Scripture. For these reasons, then, I shall vote for this Bill. I do trust that this House will shew itself abreast of public sentiment by sustaining it heartily; and for myself, I am glad to vote for a Bill that has been introduced by one whom, for the last thirty years, I have known for his good works, and whom, with so many who know him throughout this Dominion, I am delighted to honor and respect.

Hon. Mr. HAYTHORNE—I desire to offer a very few remarks in explanation of the course that I intend to pursue on this occasion. I intend to support the amendment that has been moved by the hon. Senator from Amherst. One hon. gentleman says that the Christian world has had this question before them for 1880 years, and surely the Senate did not want another year after all that time to make up their minds. I shall answer that by saying that it is not to make up my own mind, but to permit those I represent to express their opinion at another meeting of Parliament upon a measure which they certainly did not contemplate would be submitted in the Legislature this session. It is not because I hesitate in my own opinion upon this Bill, but because this question was not before the people of the Province that I represent when I

last was face to face with them; and they have this further disadvantage, that their geographical position renders it more difficult to communicate with them than with other parts of the Dominion. It is possible that, sometimes, even British Columbia may be more easily communicated with in winter than Prince Edward Island. Looking at all these things, and being, as I am, aware of the fact that many men connected with my Province, for whose opinion I have the very highest respect, are opposed to the marriages legalized by the Bill now before the House, I think it my duty to support the amendment. I may say that the views which I entertain with regard to the Bill itself are very much in conformity with those expressed here yesterday and repeated to-day by the hon. Senator from Richmond. I am in favor of that portion of the Bill which permits marriage with a deceased wife's sister, but I am not in favor of that portion of it which permits marriage with the widow of a deceased brother. Under those circumstances, even if I were aware that the opinions of the people of my Province were in favor of the Bill, I could not vote for it in its present shape. It is, therefore, the more incumbent on me to vote for delay. I will, with the permission of the House, touch upon a few points that have been alluded to in this debate. In any remarks that have fallen from the speakers who have preceded me, with the exception of the hon. Senator who has just resumed his seat, no allusion was made to special cases of hardship, and I think that the House can readily understand the reason. No person can wish to have paraded before the public his own case or the cases of friends, and, therefore, the difficulties of those who advocate the passage of this Bill are increased. I look upon this measure as the removal of a disability. Now, in my three-score and some more years, I have seen several disabilities removed, and I remember that, previous to their removal, terrible consequences were contemplated. I remember the sad anticipations that were indulged in when the disabilities of Catholics were removed; but no such evils occurred. Then, again, there was another measure which occupied the attention of the Imperial Parliament session after session, which was rejected over and over again, but which, finally, was passed—I allude to the removal of the disabilities which prevented Jews from sitting in Parliament. That was a measure which was very unpopular, not only in Parliament, but throughout the country. The disabilities were removed, and how many Jews do you find returned to Parliament in the last election? It is not hard to trace who is, and who is not, a Jew, for, along with their religious and national peculiarities, they preserve their family names; and anyone who runs his eye over the list of returned members, can see that, probably, not over half-a-dozen Jews will take seats in the newly-elected Parliament. Now, as to the religious points of this question, which have been so ably discussed, I may say that I have given them careful consideration, and I have come to the conclusion that, with regard to the marriage of a man with his deceased wife's sister, there is no scriptural objection. I think we may very safely accept the opinions of a dignitary of the Roman Catholic Church on that question, so far as Roman Catholics are concerned. We have the opinions of Cardinal Wiseman, as alluded to by the hon. Senator from Alma (Mr. Penny), and they are very emphatic in favor of the removal of this disability. In the Episcopal Church we have the opinions of Archbishop Whately, also emphatically expressed in favor of the removal of such disabilities; and when I find two men, holding such an elevated position as those two ecclesiastics, I cannot hesitate to accept their opinion as conclusive upon this point. The hon. Senator from Fredericton (Mr. Odell) alluded to a numerous meeting of clergy and others in London, England. While I am willing to attach as much importance to a meeting of that sort as it is worth, it must be considered that it was not held in our own country or amongst our own immediate countrymen. What is far more to the purpose, and should weigh more with us, is the fact that a meeting of the Ministerial Association was lately held in a city much nearer to us than London—in Montreal—for whose opinions we ought to have greater respect. It was called for the purpose of discussing this question, and, though not

very numerously attended, I find that there were, among those present, six ministers of different persuasions, all of whom expressed the opinion that there was no scriptural inhibition against such marriages, and, further, that they approved of this Bill. That was the unanimous opinion of the meeting. So much for Protestant opinion on the subject. Now, I think, upon a question of this sort, Jewish opinion is worth something. I think we should inquire what has been the practice among the Jews with respect to marriage with a deceased wife's sister. And here, again, I have a competent authority. Whether he is a native of British North America or not, I cannot say, but I know that Dr. De Sola occupies a very important position in one of our leading educational establishments, as Professor of Hebrew, at McGill University :—

"As regards Jewish authoritative opinion, this unquestionably has always been in favor of such marriages, because the synagogue (the *ecclesia docens* of Judaism) has always regarded them as in accordance with the will of God, and as instituted in the law which he commanded his servant Moses. The propriety of such marriages has never been questioned by Jewish teachers, ancient or modern. * * * * * As regards marriage with a deceased wife's sister, this has always been permitted by the Jewish Church, and practised by the Jewish people. The passage in Leviticus XVIII, 18, sometimes appealed to as prohibiting such marriages, according to received Jewish interpretation, and also in accordance with strict grammatical analysis, should read thus :—"

I will not trouble this hon. House by again quoting this verse, which has been done once or twice already this evening. I will only say that Dr. De Sola's translation is substantially the same as the English version. Here is the opinion of a learned Hebrew professor of our day, telling us emphatically that the Jews have always regarded such marriages as in accordance with the law of God. With the opinion of these high authorities in favor of the legality of such marriages, I, for one, can have no difficulty in forming an opinion upon that point. Then, my hon. friend opposite (Mr. Macfarlane), whose speech I very much admired, and whose sentiments I generally concurred in, referred to the fact that bills similar to this had passed the British House of Commons seven times. In saying so he answered my hon. friend (Mr. Odell), who thought that the Bill had been more frequently rejected than passed by the British House of Commons. One fact has escaped the observation of both hon. gentlemen ; it is that, although a measure may have been rejected twenty times, it needs only to be carried once, and, when it has been carried so often in the House of Commons, and by such large majorities, indicating a very general consensus of opinion in its favor in Great Britain, it does seem a great stretch of authority on the part of the House of Lords to reject it so often as they have. I quite agree that this House is a sort of reflection of the House of Lords, and should occupy in the Canadian Parliament a position somewhat similar to that of the Upper House in England, but I, for one, should not like to take the responsibility on my own shoulders, of rejecting a bill which passed the other House seven times, by majorities sometimes approaching one hundred. Knowing that the Senate is weary of this debate, I shall content myself with simply observing that I intend to support the amendment of the hon. member from Amherst ; but, in doing so, I have found it necessary to explain my views very clearly, because I do not wish to subject myself to any misinterpretation on this point. I do not wish it to be said here, or anywhere else, that I supported the resolution with the view to seeing how the land lies in my own Province. I have expressed myself with sufficient clearness to render such an imputation perfectly groundless.

Hon. Mr. TRUDEL—I should not have taken part in this debate if allusion had not been made repeatedly to a supposed necessity for this Bill in the Province of Quebec, and if Catholic doctrine had not been invoked in its favor. I think that the vote to be taken to-night will shew that we, in that Province, do not seek for such legislation. I have strong objections, some of which I shall state, to this Bill. At this late hour, and at this advanced period of the session, and with the numerous memorials that have been presented in this Chamber on the subject, lengthened argument would be useless. I may refer, however, to the opinions of

some hon. gentlemen who do not belong to the same church that I do, and who have contended that the Roman Catholic Church permits such marriages. Those gentlemen are right in one sense, but wrong in another. The rule of the church is this: it does not recognize the power of civil governments to legislate upon the marriage tie, so that any legislation which deals with the validity of the marriage tie is, in my opinion, contrary to the rule of our church. That is one of the objections that I have to this Bill. Another objection is, that the law of the church prohibits such marriages, reserving the power, under certain circumstances, some of which have been referred to in this debate, to grant dispensations. The law is against such marriages, but, in exceptional cases, they are allowed, and it is in this sense only that it may be said that such marriages are allowed. But this Bill, without making any exception, legalizes these marriages. It affirms a principle which is entirely opposed to the law of the church. While the church enacts, as the general law, that "the marriage of a man with the sister of his deceased wife, etc., is prohibited," this Bill lays down a contradictory proposition as the general rule, viz.: "Marriage between a man and the sister of his deceased wife, or the widow of his deceased brother, shall be legal." Is it not clear that it is contradictory to the law of the church and of its doctrines? That is my second objection to the Bill. I question very much the propriety of admitting such a general rule—a rule which, I admit, will have the effect of affording relief to some parties, but is wrong in principle. We are all Christians, and I think it will be universally admitted that such marriages are not favorably regarded, though they may be allowed, by any religious denomination. They are not of such a character that they should be put on the same general footing as ordinary marriages. Therefore, to pass this Bill would be to lay down a principle which, as a general rule, is reprobated, I believe, by most of the Christian denominations of this country, and is opposed to the religious sentiment of the people. An hon. gentleman from Ontario remarked, to-day, that, while he has the greatest respect for the opinions of the different churches, still he prefers his own convictions. This hon. gentleman should consider, whatever his individual opinion may be, that marriage is, in this country, admitted by all creeds to be a religious act, and, consequently, a matter which properly belongs to the different churches; and I hope that the day is far distant when it will be considered a civil matter. The best proof of that is the fact that, in all the religious denominations, the ceremony of marriage is performed by a clergyman. There is no marriage performed by civil officers, and, fortunately, civil marriage is not permitted in this country. To us Catholics, marriage is a sacrament, is of Divine institution, and is exclusively under the control of the church. I do not see how the opinions of the different churches on this question can be set aside. The Bill is also objectionable from a social point of view, but, at this late hour, I shall not enter into an argument on that branch of the subject. One hon. gentleman remarked this evening that he had heard very few arguments against the Bill; the reason was explained, even at the beginning of the debate—the late period of the session. If we had time, I should be perfectly ready to meet the advocates of the measure, and shew that there are very strong arguments against it. Is not the fact that Christianity, during eighteen centuries, has been opposed to these marriages, and that they have been allowed only under exceptional circumstances, sufficient to shew that they are objectionable? It may be contended that we live in an age of great advancement, but it must be remembered that the rules of morality are always the same and do not admit of progress. Unfortunately, instead of improving, in our age the sense of morality is diminishing, so that the tendency of the age cannot be used as an argument in favor of this measure. We are asked "why do you not vote directly against the Bill if you are opposed to it? Why do you ask for a year's delay?" My reason is, that I consider some legislation necessary to meet particular cases, although I am opposed to establishing a general rule, and, therefore, I wish to have a year's delay in order that such legislation may be introduced. What we want

is legislation giving sanction to the rules of the church, that is, recognising the marriages which they have allowed, and which would enact for instance: "That such marriages between a man and his deceased wife's sister that have been contracted according to the regulations of their church, are recognized as valid." Special allusion has been made to the Province of Quebec, with reference to the civil status of children, issue from such marriages. The social position of parties in that Province, who have contracted such marriages, is not affected by any feeling in the community, if dispensations have been granted by the church. The only difficulty is that their children cannot inherit their property: but this fact is no reason for adopting a general principle which is wrong. There is a simple remedy for the difficulty; these parties can make their wills in favor of their children. I shall, therefore, vote for the amendment, first, because I consider that the Bill establishes a wrong principle, and better legislation may be framed; and, second, that there is no harm in postponing the matter for another year.

Hon. Mr. SMITH—I did not intend to say anything on the Bill before the House, but, as so many hon. gentlemen have expressed their views on this subject, I think I should say a few words to identify myself with the measure before the amendment is put. I find that, since the beginning of the Christian era, marriage with a deceased wife's sister has been allowed. It is against the law of the land, but it cannot be said that it is against the law of God. If it was, the church to which I belong would never have granted dispensations for such marriages. The law of God has, therefore, not been broken, but the law of the land has been violated, and it is our duty to place upon our statute books a law which will relieve their offspring from the unmerited taint of illegitimacy. In voting against the amendment and for the Bill, I consider that I shall be doing my duty to my church, my God and my fellow-men. No argument that has been advanced here by Roman Catholic members can shake, in the slightest degree, my convictions on this subject. I have the high authority of the great Cardinal Wiseman in support of the course that I shall take, and I shall vote to remove the disabilities under which so many of our people are suffering.

Hon. Mr. BOTSFORD—I did intend to express my views on this measure, because I have a very decided opinion upon it, but I shall not detain the House, at this late hour, longer than to refer to the statement made by the hon. Senator from Sarnia (Mr. Vidal), in respect to the opinions of the learned divines of the Church of England, the Church of Rome and the Presbyterian Church. I will read a few authorities upon that point to shew the hon. member that he has made a statement which, he will acknowledge, went too far.

Hon. Mr. VIDAL—I spoke of the standards of the churches, not of anybody's opinions.

Hon. Mr. BOTSFORD—The House will pardon me if I cite a few authorities. I find in *Hansard* for 1855, Mr. Ball is reported as saying:—

"Among those names (in support of such marriages) were those of Archbishop Whately, the Bishop of Norwich, the Bishop of St. David's, the Bishop of Lincoln, the late Bishop of Landaff, and he might go on naming a long list of illustrous divines and holy men who had concurred in those views. Then, again, among those who were revered by the great body of the Dissenters, and who were favorable to the adoption of a measure like the present, the name of Dr. Chalmers stood pre-eminently forward. * * * * Another name that he would cite in its favor was that of Dr. Adam Clarke, a man of profound learning, of immense ecclesiastical research, and whose admirable commentaries upon the Holy Scriptures had rendered his name celebrated throughout the empire. He, too, was favorable to the abolition of the present restrictions; and he (Mr. Ball) would complete the list of illustrous men, whose opinions were favorable to a change of the law in this respect, by adding that of a man who was held in veneration by hundreds of thousands, nay, perhaps millions of his fellow-countrymen—the great Wesley, a man than whom no one led a purer or more pious life; and also the name of Professor Lee."

In 1862, when a bill similar to this was before the British House of Commons, Mr. Buxton is reported as saying:

"Nor could he allow that it was a question of mere expediency. It was a question of right and justice. In forbidding a man, when God had not forbidden him to marry the woman he loved—in forbidding him to give his children a mother already devoted to them, instead of a strange step-mother—they were as cruelly

wronging him as if they snatched away his money or his land. He had a claim on their justice to be allowed to do that, and they were trespassing on his rights in debarring him. If Scripture said nothing, people would be left to form their own opinions. But when a line had been precisely drawn between allowed and disallowed marriages, surely those who demanded to use the freedom which God had given them were wronged if that freedom were taken away upon the pretence of some fancied awkwardness arising to imaginary people. The case for the Bill seemed overwhelming if they took the ground of expediency alone. But the true, the decisive reason for supporting it was that the existing law was a trespass on men's natural rights, and that it filched from them the freedom reserved to them by the law of God."

Mr. Monckton Miles, in the same debate, cited the following testimony of Dr. McCaul, one of the best Hebrew scholars of the day; at the same time, his orthodoxy cannot be disputed. Dr. McCaul says:

"I confess that, when I entered upon this inquiry, I had no idea that the case of those who wish a change in the present marriage law was so strong. I had thought that the opinions of grave and learned students of the Bible were more equally divided; and that, as authorities were pretty evenly balanced, they who had contracted such marriages must bear the inconveniences arising from doubtful interpretation. But I do not think so now. Confirmed by the testimony of antiquity and the judgment of the most considerable interpreters at the Reformation, and since the Reformation, I now believe there is no reasonable room for doubt—that there is no verse in the Bible of which the interpretation is more sure than that of Leviticus xviii, 18; and I think it a case of great hardship that they should, by the civil law, be punished as transgressors, whose marriage, according to the divine law, is permitted and valid; and harder still that the children of such marriages legitimate in the sight of the infallible Judge should be visited with civil disabilities."

I have quoted these authorities to shew the opinions of leading divines in England upon the subject.

The House then divided upon the amendment, which was adopted by the following vote:—

CONTENTS:

Hon. Messrs.

Allan,	Grant,
Archibald,	Guévremont,
Armand,	Haythorne,
Bellerose,	Kaulbach,
Boucherville, De,	McClelan (*Hopewell*),
Bourinot,	LcLelan (*Londonderry*)
Bureau,	Macdonald,
Campbell, Sir Alex.,	Miller,
Chaffers,	Odell,
Chapais,	Power,
Christie,	Pozer,
Cormier,	Ryan,
Cornwall,	Sutherland,
Dickey,	Trudel,
Dickson,	Vidal,
Dumouchel,	Wark—33.
Girard,	

NON-CONTENTS:

Hon. Messrs.

Aikins,	Lewin,
Baillargeon,	McMaster,
Benson,	Macfarlane,
Botsford,	Macpherson (*Speaker*),
Boyd,	Montgomery,
Cochrane,	Paquet,
Dever,	Pelletier,
Fabre,	Penny,
Ferguson,	Price,
Ferrier,	Read,
Flint,	Reesor,
Gibbs,	Simpson,
Hamilton (*Inkerman*),	Smith,
Hamilton (*Kingston*),	Stevens,
Hope,	Thibaudeau—31.
Leonard,	

The House adjourned at 11.30 p.m.