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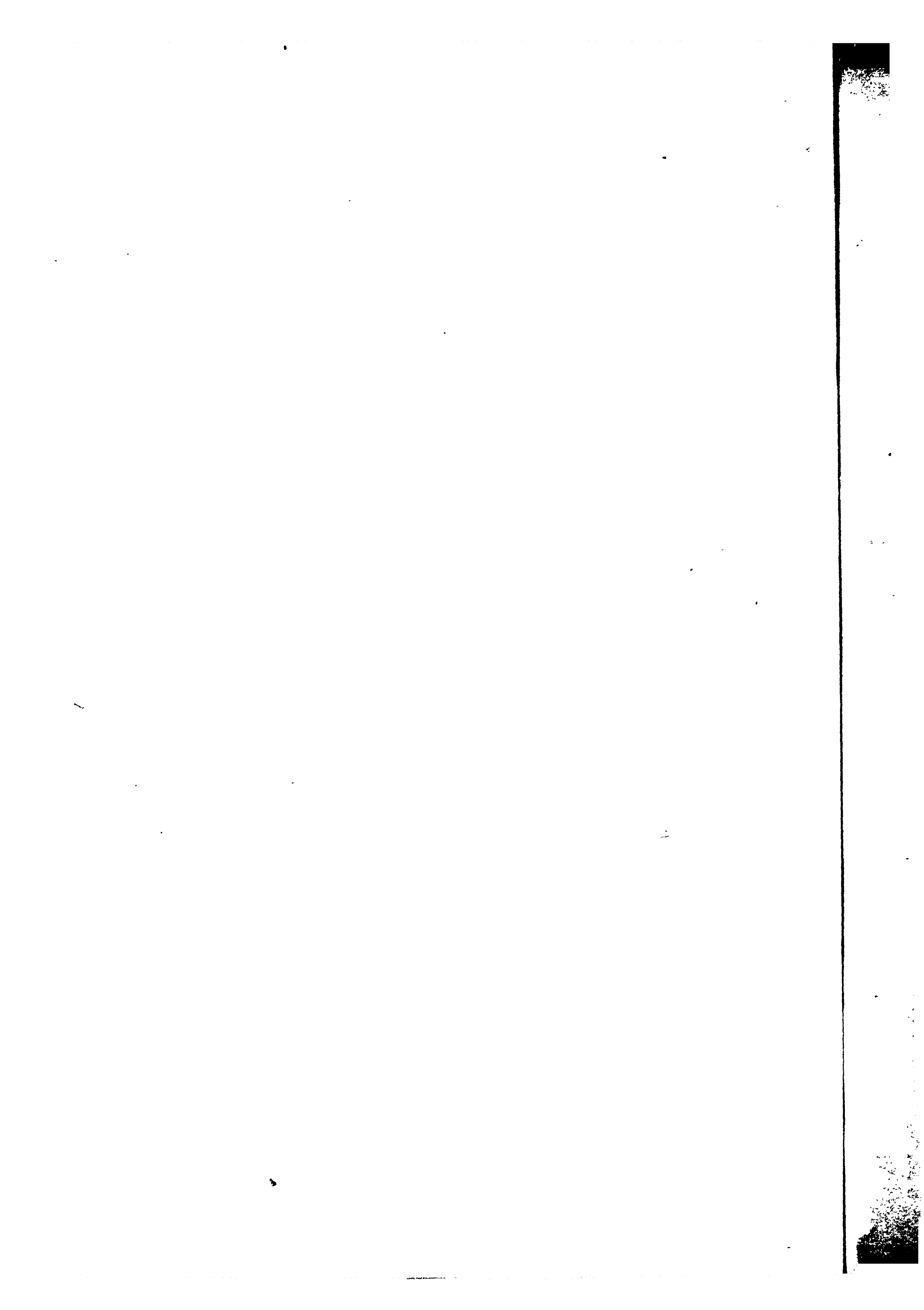

THE

CAMPBELL DIVORCE BILL.

:o:

WOMAN'S RIGHTS IN ONTARIO.

:o:

Parliament as a Court of Justice.

:o:

Speech of the Hon. Wm. MacDougall, Counsel for Mrs. Campbell, before the Committee of the Senate; taken in Short Hand.

:o:

The resistance of an intelligent, brave and virtuous woman—as all those best qualified to judge believe her to be—against the persecution and ill-treatment of a coarse, ill-natured, penurious and unprincipled husband, has made the CAMPBELL DIVORCE CASE not only a *cause celebre*, but has conclusively established the fact that in Ontario, as the law now stands, *a married woman has few rights which a husband is bound to respect*. If a husband wish to put away his wife, he need only provide himself with two witnesses to watch at her window when some neighbor is paying her a visit, to report a conversation implying criminal intercourse, supplemented by a statement that the visitor confessed the crime—which neither he nor the accused wife is permitted to contradict in the witness box—and he may then kick her into the street and leave her there to starve, unless some charitable stranger or relative shall come to her relief!

If he should desire to marry a rich widow, whom he had met in his travels, he must, indeed, come to Parliament for a divorce. And if the discarded wife, broken in spirit and without means, is unable to follow him, or willing to be free from a legal tie which has ceased to be of any use to her, decline to contest his application, he will secure his Bill as a matter of course.

Mr. Campbell having, by the evidence of his brother and brother-in-law, obtained a verdict against the alleged seducer,

applied to Parliament for a Bill of Divorce. Mrs. Campbell being a woman of spirit, and having the confidence and sympathy of all the reputable people of the town in which she lived, resolved that in defence of her own honor and the reputation of her children she would follow him to Parliament, even though he had obtained a temporary triumph on the question of alimony in the Court of Chancery. But what a prolonged, what a desperate struggle! She has been compelled to demand *justice* from the only tribunal having power to decree it, session after session, since 1876! At last, in 1879, she has obtained from the Senate, in spite of the persistent and unreasoning opposition of half-a-dozen members, (whose views of woman's rights may be inferred from their own marital relations) a *second* verdict of acquittal as respects the accusation of her husband, and a second award, in the form of a Bill passed to its third reading, securing a sufficient semi-annual payment from her husband for her support while she remains separated and unreconciled. This Bill, passed in the session of 1877 by the Senate; stayed in the Commons by the Standing Orders Committee on the ridiculous pretence that the husband, who was present defending his money-bags against the rightful claims of his wife, had not been properly notified of her claim; obstructed by the Private Bill Committee of the Senate in the session of 1878, on the ground that the rules of that body had not all been complied with, though the Senate had *passed* her Bill in the previous session, and her petition to be allowed to renew her application in *forma pauperis*, and for a suspension of any rules that might hinder her progress, was then before the Senate —is, at last, before the House of Commons for its concurrence. Unless justice in this country is reserved for *men* and denied to *women* in these marital disputes; unless it is to go abroad that our laws, like those of the Roman tyrant which were written in small characters on a high tower, are beyond the reach of any helpless wife who may be turned out of doors by a brutal husband, the judgment of the Senate will be endorsed by the Commons, and rendered effective as a *law*, without any further delay.

In the present House of Commons there are many new members. Those who attended the sittings of the Committee of the Senate in 1876, or who had an opportunity to observe the appearance and demeanor of the witnesses, and especially those who came in contact with Mrs. Campbell's husband, will, with very few exceptions, approve of the verdict of the Senate Committee, twice confirmed, as it has been, by the Senate itself. But, for the benefit of those who have not had these opportunities, Mrs. Campbell's friends have procured the publication of the very full and able speech of her counsel before the Senate Committee. The evidence will be found in the Senate Journal of 1876. Mr. McDougall's review of that evidence, and his exposition of the law, applicable to the case of Divorce *a mensa et thoro* arising in the Province of Ontario, will, perhaps, be read with interest by those who have now the duty of pronouncing a verdict in the Commons. The speech was taken in short hand by the Messrs. Holland, of the Senate reporting staff, and published in the Whitby *Chronicle* of June, 1876.

Honorable Gentlemen:

I need not remind you of the peculiar interest and importance of the question submitted for your consideration by the

reference of this Bill. Although a Private Bill, brought in at the instance of an individual to redress a private wrong; though only six persons are directly interested in its passage, you will all agree that as an example and a precedent—let us hope as a warning—it will be read, and the action of the Senate upon it regarded with interest in every Province of the Dominion. In its nature and consequences, the decision in this case will have an important bearing, not only on the rights of these individuals, and their future happiness and position in society, but a powerful moral influence upon other families and individuals, far and wide.

The decision of this Committee, confirmed as it probably will be by the Senate, is to the respondent morally speaking, life or death. Life in one event clouded and unhappy, it is true; but still tolerable, still susceptible of those parental emotions, those joys, and hopes, and sweet anxieties, which none but a mother's heart can feel, and, perhaps, under the subduing and chastening influence of her unexampled misfortunes, she may in her declining years look forward with a steadier eye, and a firmer faith, and a better assurance of sympathy and love from that other marriage which, we are told, awaits the Christian believer when all earthly bonds are severed. In the other event, she is condemned to a living death. She is branded with a mark of infamy which no power on earth can efface. The verdict of a common jury obtained by surprise, if not by perjured testimony, in a case in which she was neither witness, nor defendent, she could survive. Surrounded by relatives and friends who knew the motives of her accusers, and the falsehoods by which they had misled the court, she could still hold up her head and assert her innocence; she could point triumphantly to another verdict when the scales of justice were not weighted against her — where her witnesses were not excluded by a rule of law—the relic of a barbarous jurisprudence. She could claim that the latter verdict had reversed the former, and that by the oaths of twelve men she had shewn that her accusers and traducers were not to be believed. She might still command the sympathy of strangers, and of hundreds of undoubting believers in her honor and truth among her neighbors, the most competent to judge of her character and conduct, in all the scenes of this domestic drama, even though a Chancery judge had argued himself out of his doubts in her favour, by a laborious process, which required 17 months to reach an adverse conclusion! But who can expect her to withstand, or even to survive, the cruel blow aimed at her defenceless head by this Bill? She must go down before the power of the two Houses of Parliament. There is no re-hearing in this case; no ultimate appeal except to that dread tribunal, where the helpless victim of human injustice may look for exculpation if innocent, as certainly as her persecutors and judges may expect condemnation if they have falsely or carelessly wronged her. The question therefore is one of exceeding gravity in whatever way it may terminate, and no doubt of very serious importance to the petitioner also. I simply glance at this view of the case, for the purpose not only of preparing my own mind for the work before me, but of directing the attention of the Committee to the serious character of the issue they are about to try. I trust I will be pardoned for reminding them of the duty and the necessity that rest upon them, to consider carefully, and weigh justly, the evidence in their hands. It would almost be an impertinence to make this special appeal if the case had not been before other tribunals, with opposite results.

An action for damages was brought against the alleged seducer, Gordon;—it was tried by a jury. Under the law of Ontario—which in this respect is peculiar, because in other Provinces, as well as in England, a special tribunal exists for the trial of such cases, and rules of evidence obtain in them different from ordinary courts—the petitioner in this action has the case all to himself. He produces his own witnesses and they can not be contradicted. The real party charged—the lady who was here a few moments ago—could not be heard, and had neither witnesses nor defenders. It was a matter debated and decided behind her back. She had no right, power, or privilege to make any explanation or defence. The co-respondent in that par-

ticular case certainly did make a defense, but he could not be examined as a witness, and could not, therefore, give any explanation of the proceedings of that night. It was an action brought by the plaintiff under circumstances which gave him every advantage, and it is not surprising that he secured a verdict. We know how that verdict was secured. We know what kind of evidence was given there, and the particular statement—the alleged confession of guilt—upon which a good deal of the evidence brought before this Committee bears—and, as I trust I can shew confutes—that the co-respondent, on being charged with the crime confessed his guilt, was a complete surprise to every one. The learned Judge told the jury that if they believed *that* evidence it made an end to the case as far as Gordon was concerned, and no doubt he was right. Even the Vice-Chancellor, in the judgment now in your hands, tells us he disbelieves the story of a confession? But my contention before this Committee is, that the guilt or innocence of the respondent was not fairly submitted to that jury, and what followed proves it. Another action was brought, this time by Mrs. Campbell, against one of the witnesses at that trial who gave false evidence, as she alleged. On this occasion, she and Gordon were allowed to give evidence, and other witnesses were brought who proved a different state of facts. The jury, presided over by a Chief Justice, thought the evidence of the witnesses at the first trial was not to be believed; that Mrs. Campbell and Gordon were not guilty of the crime of which they were accused, and they gave her $1,000 damages against James Campbell for having defamed her character. These are facts proved before the Committee, and they have had an important influence on the public mind. Another trial subsequently took place which has had a more serious effect on the case, and one to which I ask you to give your patient and serious attention. A suit was brought by the respondent, for the purpose of obtaining from this petitioner means of support to which she was entitled as his innocent and legal wife. Under the law of most civilized countries—a wife, if she has not been proved guilty of adultery, is entitled to be supported according to the means and condition of her husband. It is not the law of this country that a husband can, without just cause turn his wife out of doors, penniless, leaving her to the chance protection of friends, and contributing nothing to her support, or the support of his own child subsequently born. But the Petitioner in this case seems to have had advice to the contrary, and a suit was brought by Mrs. Campbell to establish her claim to alimony. Under the law of Ontario this question of alimony stands in a very peculiar position. The Court of Chancery claims that it has exclusive jurisdiction in the matter. The Act which gives it jurisdiction will be found in the Consolidated Statutes. The language is very indefinite and became the subject of discussion in the first case I find reported, *Soules vs. Soules*, and afterwards in the case of *Severn vs. Severn.* The first you will find in 1. Grant, p. 300. The case occurred in 1851. "This Court," says the Chancellor, "has no jurisdiction to decree either divorce or restitution of conjugal rights, although it has power to deal with alimony." I shall have occasion to cite this and other cases at the conclusion of my address; I only refer to them now for the purpose of discussing the effect of this suit for alimony, The only remedy the Court could give her, was simply to order the payment annually, or periodically, of a sum of money for her support. The same evidence as that produced in the action for defamation of character, appears to have been brought before the Vice-Chancellor, but a very singular incident occurred. When the case of the husband was concluded, and all the evidence adduced which was expected to satisfy the judge that she ought not to receive alimony, (viz.: that she was guilty of adultery) the learned Vice-Chancellor, as we have shown in the evidence here, suggested to the defendant the propriety of accepting from his wife an explanation. He proposed that they should be reconciled, that they should meet together privately, and discuss matters; make mutual explanations, and agree to live together. I hope the Committee will permit me to call their attention again to the langage which he is reported to have used on

that occasion: "Although I find this against the plaintiff," that is to say that the wife had shown frivolity and indiscretion, "*I have not yet been able to come to the conclusion that she has been guilty of the very grave—the gravest charge which a man can bring against his wife. I have pondered over the evidence, every point of which has been brought out with the utmost skill by the able counsel engaged in the case, and I confess that it has failed to establish the charge against the plaintiff to the satisfaction of my mind. I am unable to force my mind to the conclusion that I can stamp Mrs. Campbell with the indelible stigma, which must attach to her should I find in favor of the defendant.* I do appeal to the husband; I most earnestly beg of Mr. Campbell to consider that, already under oath, has Mrs. Campbell denied these charges that have been made against her; I do beg of him to consider the most painful ordeal to which he is now about to submit his wife in her lengthened public examination in respect of all the accusations brought against her; and I may confidently say that, of all those present, none will feel more keenly the position of the wife than the husband who is exposing her to this trial. I appeal to Mr. Campbell's feelings as a husband, to allow his wife that opportunity of explanation, which she so beseechingly asked for in her appealing letter of the 28th of August, read by her counsel. I appeal to him looking back to the remembrance of those ten years of married life, passed in comparative happiness, to do this. Looking to the future of his young children, who cannot plead for themselves, and who, the parents being again united, will grow up to call them blessed; but separated may grow up to regard with aversion, one or both of their parents, may I not appeal to his tenderness as a father in this unhappy matter. Looking to the short period of life—a short span at the best for both—left, I beg of you to consider the grave question at issue. And looking also to the light of the great Hereafter, to which we are all so rapidly hastening, I appeal to Mr. Campbell to spare his wife and himself this ordeal. It is scarcely necessary to remind him of the misery which during the past eight months his wife must have suffered through the various painful stages of these untoward proceedings. May he not now rest assured that his wife, warned by the fearful ordeal she has undergone, will in the future seek more diligently to cultivate that spirit of obedience to his wishes, which it is her duty to exhibit; will learn more carefully to look after her children and her household duties, and perform her part of a good wife and mother. *It must be remembered that, at best, the opinion I must ultimately form in this case will be but fallible, and that should I come to the conclusion that the wife is guilty when she is innocent, the husband will thus be the means of inflicting upon the wife the greatest injury that can be done. It was with the utmost pain I heard read on the first day of this trial the letter in which the wife, having been informed of the accusation made against her, in supplicating tones begged an interview with her husband and her accusers, in order that she might have the opportunity of disproving their charges—which request was refused her.* I think the husband should have given the wife that opportunity. Looking at all, I beg of him still to give her the opportunity sought for. *I would not urge this upon him did I not feel strongly the improbability of the truth of the grave charge made against her,* and did I not sincerely hope and trust that a life of happiness might yet be opened to both of them. It is not yet too late to allow this matter to end in happiness to both, before a decision which may do an irreparable wrong and injury has been pronounced. And, in view of all the facts, I make a last appeal to the husband to give the wife that opportunity of explanation which she applied to him to give her at an earlier period."

Now this is the language of the Vice-Chancellor during the hearing of the suit for alimony. It appears strange to me, and I confess that I have looked very carefully into the case and endeavoured to ascertain the grounds and reasons for his judgment, that after long deliberation—seventeen months elapsed after this language was used before he announced his judgment—he came to the conclusion that the crime was sufficiently established, and therefore that she was not entitled to alimony. I cannot help thinking that the learned Vice-Chancellor has misinterpreted and misapplied the law as laid down by the authorities he quotes: that he has mis-

taken the evidence in material points, and that he has shown but little knowledge of the social habits of our villagers and country people. I may have to point out some of these mistakes and misapprehensions, but at present, I content myself with this reference to the antecedent facts of the case, which are a part of its history, that ought to be considered before you come to deal with the evidence.

The husband now applies to the only court in this country which has power to separate him legally from his wife. He comes to the Senate and says, "I demand your assistance in severing the marriage tie between myself and my wife, because I shall establish to your satisfaction that she has committed the crime of adultery." It has been the practice heretofore when clear evidence was produced that a wife had dishonored her husband, for this Senate to interfere and grant the appropriate remedy. But, following the rule observed on former occasions, I take it, that this committee will not recommend, nor the Senate vote, nor Parliament grant a divorce from the bond of matrimony in any case in which it is not clearly and indubitably proved that the crime was committed. No mere inferential conclusion will suffice. You must be satisfied beyond any question that the fact of adultery is established. I need not cite examples. The learned judge has cited some cases and authorities under the old practice in England, as to the proof which should be deemed satisfactory, and if it be necessary to review them, I undertake to say that among all the cases cited there is not one so weak in proof as this. In none of them are the circumstances of such a doubtful character; in none is there so little evidence.—where so much must rest on inference—as in the case submitted to you. For instance, one of the cases cited as parallel, is where a married woman was found in the lodgings of a single gentleman, alone with him for a sufficient time for the commission of this offence. That fact being proved, other surrounding facts showing a diminished fondness for the husband, etc., were proved, and the judge came to the conclusion that these things put together tended to produce such a violent presumption of guilt, that the court, opening its eyes, and treating the question as men of common sense would treat it outside of the court, must find the fact proved. But in most of those cases the character of the house the woman visited, and the time of night she was out of her own house, as well as the proof of domestic infelicity, led to a conclusion of guilt. In one of the cases a married woman left her own house accompanied by a young man to his private lodging, entered his bedroom, and was seen going from it after a considerable lapse of time. In one instance it was a house of assignation, or prostitution, to which the married woman was taken. If anything of that kind had been proved here I might be compelled to place it in the same category, and confess that the reasoning of the judges, as quoted, is applicable; but there is no such evidence. In this case, the married woman was in her own house; her husband being away from her under circumstances which I shall presently notice. The gentleman found with her was a neighbour she had known from childhood, who was on friendly terms with the family; who had been invited to the house on more than one occasion, and had been left alone in her company by her husband. Their families had been in the habit of interchanging visits for years. On the very night of the alleged criminality they were brought together at her father's house by a visit of the two families.

It is absurd to say that there is any ground for accusation or even suspicion in a country village, where the social relations are familiar and unrestrained as we know them to be, that a young man, for years a near neighbor, and one of her social circle, should be found at the house of a married lady alone with her in the evening. Certainly there is nothing in the mere fact of such a visit in the absence of the husband, or even its prolongation under the circumstances proved, that requires explanation or justifies suspicion. But the case of the petitioner appears to be this: that his wife had shown signs of dislike and repugnance towards him previously! That, if true, may account for her seeking in the society of others, the pleasure of intellectual and friendly intercourse, which he denied to her; but it does not prove crime. The committee will see, however, that we

have no testimony, except his own, to support this theory, and even that testimony is limited to a very few instances. He mentions one occasion on which she had expressed a desire to separate, and wished that her children were dead, or, if they were dead, (his recollection was not good as to the precise words.) she would be glad to separate from him. She denies this story *in toto.* We have no evidence to corroborate a statement made, I will not say for the first time, but certainly elaborated and extended before this committee, as if greater importance would be given to it here than elsewhere. Then, as to her conduct towards her husband, we have only two instances, and one of these is brought out by her own evidence. The petitioner's counsel did not venture in his cross-examination to question her as to her frivolity on the trip to the Old Country. What did it all amount to, taking the evidence on both sides? Simply to this:—On their return across the Atlantic she walked with a gentleman on the deck of the steamer, and played and sang for him in the cabin. No complaint, not even a remark was made about it at the time. It would appear the husband was inattentive to his young wife, whom he had taken abroad for her own pleasure as well as his own—at least a good husband would put it that way—and she accepted civilities from those she met on equal terms and whose acquaintance she made on the voyage. Every gentleman who has crossed the Atlantic will testify that some of the most agreeable and desirable acquaintances of life have been formed in that way. On this occasion, it seems Mrs. Campbell, according to her own statement, was escorted up and down the deck by a gentleman coming to this country, and a bowing, walking and talking acquaintance sprang up between them. The husband, observing all this said nothing, but seemed rather glad that somebody should take charge of his wife while he was amusing himself with his own reflections. But after their return to Whitby, in a chaffing way, as he admits, he made allusion to this gentleman as a person she admired more than himself. And this insignificant circumstance is gravely imported into this case as proving, or tending to prove, or in some way bearing on the crime of adultery with Gordon! The Vice-Chancellor quotes this story as told by the petitioner, and, sagely, and I suppose we must admit, learnedly concludes, that as she did not deny the walking, or the subsequent "chaffing", or the other insignificant incidents that had occurred months, and some of them years, before the alleged seduction by Gordon, they help to establish that fact. I submit, with all due deference, to the Committee, some of whose members are learned in the law, that there is no relevancy in such evidence, and that it ought not to be considered. The only instance of alleged improper conduct proved by the petitioner and admitted by the respondent is the visit of Gordon one evening while he (Campbell) was in the house, and at the time taking his tea. Gordon was shewn by the servant into the parlor; Mrs. Campbell went in to meet him and the husband was invited by her to see him. He went in, apologized for not being able to stay, went out leaving Gordon with Mrs. Campbell, and returned a couple of hours afterwards finding his visitor still there, and again entered into conversation with him. The petitioner says he "chaffed" her about it, but did not at first pretend that he spoke seriously, or charged her with any impropriety. But when examined upon the point at such length as to suggest the importance of giving some color to the case, he says she *burst into tears!* I think we all felt that this incident, heard for the first time, suggested innocence rather than guilt. But Mrs. Campbell spoils the poetic features of the case, for she denies the "tears," denies the chidings, and only admits the "chaff"! It was mere banter—was thought nothing of at the moment,—and soon passed away. This insignificant fact is also brought into court, is the subject of serious comment by the Vice-Chancellor, and is one of his reasons for reversing his first opinion, and finally refusing Mrs. Campbell's application for alimony. These are the two instances or proofs of waning affection, and which you are asked to accept by way of preparation for the infidelity, which is alleged to have taken place on the 26th of August. I must say I have never heard, or read of a case, standing upon such a flimsy foundation as regards

the preliminary facts—alienation of affection, and improper behaviour. But there is another incident—the Park correspondence—which belongs to this part of the case, and which I admit cannot be dismissed so summarily. The husband on his return from England in August 1873, found a letter addressed to his wife, but to the care of his firm, which he opened and read, and acted upon. It was supposed to be written by a person named Parks, though signed with the initials G. H. This letter never came into her possession, and yet a single passage in it—"Where do you think the suspicion is"—created a suspicion in his mind that his wife had committed adultery with Parks, and without asking or seeking an explanation from her, he resolves, then and there, to leave her forever. It is true he went to his wife's bureau, and discovered amongst numerous writings and memoranda, two or three scraps of paper. You have them before you; look at them! With one exception they are extracts from books. You can go to the library and find the very books from which they are copied. She appears to be a woman of reading and cultivation, who, left very much alone—her husband being absorbed in business—occupied herself with books, and music, and amusements of that kind. She made extracts from the books she read, and you are asked to believe that these disconnected passages, found on different scraps of paper, are copies of letters written to her paramour. There is nothing on the face of these writings, or in the sentiments they express, to justify that belief,—and she has sworn that there is no foundation for it. The correspondence with Parks ought to be ruled out altogether. It is *res inter alios acta.* The specific fact charged in this case is adultery with Gordon on the 26th of August, and a thousand letters and scraps showing affection for another man would not prove the specific fact. I cannot understand the principles on which this so-called correspondence with Parks was admitted in the previous actions. It is contended, I believe, that a married woman who writes a letter to a young man in answer to one from him, in which words of affection are used, gives evidence of a laxity of morals, of a loosening of the marital tie, of a corrupt imagination, and of a willingness to commit adultery with *any* one! The conclusion is very far fetched, and in my judgment, such evidence is inadmissable in a case of this kind, and the conclusion sought to be established by it is against reason, and the experience of mankind. But this correspondence has been used as evidence here, and I am obliged to make a few observations upon it. The intercepted letter, which is among the exhibits, and will be found in the judgment of Vice-Chancellor Blake, is as follows:

"Concord, August 14th, 1873.

Dear Marie—I wrote you from here three or four weeks since, but have never had an answer. I was thinking of coming about the first or second week of next month, should I be in time to escape the G—d—n. I asked in my last for some envelopes; will you write by return and send me a few? I have been very busy all day, and have hardly a minute to spare, and have to walk to the post office with this, as I cannot allow any one to see the address. Be sure and write by return.

In haste.—Believe me to remain,
My dear Marie,
Yours in sincerity, G. H.

I think if you have written to me your letter must have gone to the States, as there is a place of the same name there. Please address to me at Concord post office, County of Vaughan, Ontario. Tell me where you think the suspicion is."

That is the letter which aroused his jealousy, and with the pencil extract, and draft of a letter never sent, induced him to remove his children and accuse his wife of adultery. He comes here and asks you, upon the same evidence, to admit that he treated her in a proper manner when he deserted her without explanation, and took his children away from her on a false pretence. Now, it has been laid down by the highest authorities, that a husband must come into court with clean hands. He must be able to show that he has not contributed to his own dishonor; that he has not neglected or exposed his wife. [Mr. Macdougall here read from Shelford and other authorities.] If he wants equity, he must shew that he has done, and is ready to do, equity. On the evidence of

this letter, which contains nothing criminal, and the "scraps" not proved, he makes this accusation to others, but not to her, and deserts her forever! You will find by the authorities that a letter *to* a person, is not evidence to prove a crime committed by that person. Any scoundrel may write such a letter for the very purpose of injuring a lady's reputation. We are all familiar with the celebrated case of Sidney, who was charged with treason, and convicted in a dark age of our jurisprudence, because treasonable correspondence addressed to him was found in his desk. But after he was beheaded, the illegality of a conviction founded upon such evidence was admitted by judges, as well as political writers. I remember a case in this country (it is one of the early recollections of my life) similar, except the beheading, to that of Sidney. A previous Speaker of the Legislature, whose portrait will be found in one of the lobbies, was charged with being concerned in the rebellion of 1837. He remained in his place, and those who knew his amiable temper and Christian profession, believed him incapable of anything treasonable. The Government had intercepted a number of letters written to him which were detained unopened. He was asked whether he would allow them to be opened, and take the consequences, whatever they might be, or leave the country. Mr. Bidwell (for he was the man) replied :—"I have personally no objection to the letters being opened, there may be something treasonable in them. People may have written to me under the assumption that I would sympathize with their treasonable views; but I have invited no correspondence of that kind, and according to law, I cannot be held or punished for the crimes of others." But, in those exciting times, when suspicions were in the air, and a vindictive spirit abroad, the ex-Speaker decided that it would be better and safer to leave the country for a time, lest anything should be discovered to compromise himself or his friends. I think he acted prudently. Suppose treasonable language had been found in these letters, and suppose some scraps of political writing condemning the government of that day in severe and pungent terms, had been found among his papers, which an ingenious prosecutor could have patched together, and a partizan judge and jury could have construed into copies of lettters to the parties who wrote to Mr. Bidwell? He would have been hanged beyond question, if the rules of evidence and the resoning resorted to in this Chancery judgment had prevailed. I appeal to the legal members of this Committee to confirm the doctrine I contend for on this subject, viz: that statements contained in letters written *to* a person cannot be used as evidence of criminality, until you have established previous or subsequent correspondence *from* the person charged, which connects him with the crime. Now, we have no letters received by Parks from Mrs. Campbell, and while the lady herself told the whole story in court, there was nothing legally proved against her. She said, "it is true Parks wrote to me after he left Whitby, and I answered him, for a lark." He was a young gentleman who spent some months in Whitby, and moved in the social circle to which she belonged. As far as we know, he was a respectable person. A friendly acquaintance sprang up between them, and when leaving Whitby, it appears he asked permission to write to her. At all events he did write to her two or three notes, and she answered them, until finding his letters rather frequent and familiar. and as she tells us, likely to bring her into difficulty, she wrote him that there was suspicion, and requested him to dicontinue the correspondence. The letter produced here corroborates her statement of the case. He writes, "I think if you have written to me your letter must have gone to the States, as there is a place of the same name there," intimating that he had not received a letter from her for some time, that he was disappointed because he had not, and asking her "where" she thought "the suspicion" was. She denies that she enclosed him envelopes, and the letter confirms the denial. The last paragraph and also the first confirm her statement that after two or three notes had passed between them, the correspondence ceased. Parks writes in a complaining tone of the incivility of this lady who, according to the petitioner, was so eager to find a paramour! She explains the passage "tell me where the suspicion is" in the

only manner that is reasonable, in view of all the facts we know. She tells you that in a letter written "to frighten him," she said there were "suspicions" as to their correspondence. She did not say "where," evidently, by the question he asks. In the light of her explanations, and from the internal evidence of the intercepted letter, which she never received and never answered, the correspondence with Parks was at the most a "lark," very imprudent no doubt, but very far from justifying a charge of adultery or an application for divorce. It was a case demanding explanations, and justifying reproof, and to a fair-minded sensible man, the explanation she has given to this Committee would, at least, have removed all suspicion of criminality. But impelled by evil counsel, he at once jumped to the conclusion that his wife was guilty. Guilty of what? According to the petitioner, of adultery; according to the evidence, of corresponding with a young man without the knowledge of her husband. But that is not the charge before the Committee. You do not sit here to try or to admonish people for breaches of decorum. You have to deal with the crime of adultery, and that only. But let me return for a moment to the contents of the bureau. I ask your attention to the internal evidence which these writings contain in refutation of the theory of the petitioner.—"Here I am vacillating between two opinions, whether shall I stay here or stray afar off? Duty says stay." That is an extract word for word from a book, and though written on a separate piece of paper containing the address of her brother in California, it is printed in this judgment as if it formed part of a continuous letter or composition. Another extract, patched into the case, is the following—"I believe there are certain men who can be happy when they have learned where the ideal lies. We never can be perfectly happy, although a great deal of our happiness consists in being contented. We must be sorrowful sometimes, in order to compare the difference of happiness and misery. I have no wish to marry, and it is not likely that I shall ever sacrifice my independence to *any woman*; so much the worse for you! You will never know what love is, for we love only virtuous women, my dear, and we are never loved except by them" etc. Now, this is part of exhibit E. and is put in as a copy of a letter to Parks! I say that passage was written by a *man*, or intended by the author to express the sentiments of a man. I'll "never sacrifice my independence to any woman",—Is that the language of a woman writing to a paramour? It is clearly an extract from some book she was reading, and had no reference whatever to Parks. Yet it is put here, in this judgment, and used as part of the evidence to establish criminality against this woman. Her mind being already corrupted by such literature as we have read—so reasons the Vice-Chancellor—she was a fit subject for seduction; therefore, Gordon seduced her! Really, gentlemen, I am afraid there are hundreds of women in this country, good wives and good mothers, who would not be able to pass the Vice-Chancellor's ordeal. I have read and re-read these so-called letters, and I confess I am too dull to discover the "moral depravity" the learned judge assures us they contain.

Senator Kaulback,—I understand she did not deny exhibit C. was a letter sent to Parks.

Hon. Wm. MacDougall,—She denied that it was a letter, but admitted that it is, or may be the draft of a letter which she never sent. And suppose she had sent this very draft letter. I ask any one to read it, and say whether it contains a single word or suggestion, amounting to proof of criminal relations with Parks, or bearing in any way whatever on the charge in this case? I say if it had been found in Parks' possession, or proved to have been sent to him—which it was not—it would not establish the petitioner's case even as to Parks. "I am glad you enjoy attending the Holy Trinity." Is that the language of a corrupted wife to a paramour? Why talk about the Church of the Holy Trinity, and her preference for Low Church or evangelical views, &c., if she had committed or contemplated committing adultery? It does not seem to me to be more than a gossiping letter, such as any woman in her position in life might write, without the remotest intention of doing any wrong to her husband. I see

nothing in these exhibits to sustain a charge of anything more than thoughtless levity—indecorum if you will—which this poor woman now confesses she committed, though at the time she had no evil intention, and was unconscious of the danger to which she exposed herself.

I shall now pass to the case of Gordon, the only one, as I contend, that we can consider under this reference. He appears from all the evidence to have fallen into the difficulty suddenly. There was no previous suspicion, nothing to lead any one to believe that his relations with Mrs. Campbell were improper. It is evident that in instructing his house to be watched, the husband's idea was to entrap Parks. He expected, as it would seem, that Parks might appear in the neighborhood during his absence. No evidence whatever was produced here to shew that they watched the house for Gordon. James Campbell denies that he was previously aware of any suspicious conduct on the part of Gordon. They watched the house expecting to catch Parks, the gay Lothario, and they discovered Gordon, a neighbor and a friend, visiting her in an open, innocent, friendly manner, and so they bagged him! You have heard the evidence of the witnesses. On the cross-examination, I think I pretty well sifted all they know, and you have before you a full report of all they can say on the snbject. And what is the story? It is this,—a lady of education, and confessedly of more than ordinary accomplishments, living in her own house in a country town, under the eye of her neighbours, within four months of her confinement,—her husband having just returned after an absence of several weeks, and having taken her children away, as she supposed, for a short trip, kissing his wife at parting, submits herself *for the first time*, to the embraces of a young man whom she had known for years, and this too with the parlor door open, a light burning, the maid-servant listening for anything they knew, and the criminal act, or rather acts, preceded and followed by loud and lewd conversation, laughing, crying, and kissing, that could be heard out of doors, through the curtains, the windows, and the blinds! I submit to you, gentlemen, that on the mere statement of the case as proved by the petitioner, the story is utterly incredible. I would have said, but for this judgment, the evidence adduced by the petitioner alone, without any explanation whatever, makes it impossible for any court to convict that woman of adultery. The language sworn to by the witnesses is incredible on the theory that it was uttered in reference to acts of criminality. The whole story is improbable, contrary to the instincts of human nature, and to the experience of every married or single man competent to give an opinion on matters of this kind. We all, I presume, know something of the other sex; of their humors, habits, and dispositions, the young as well as the middle-aged; and I say that the acts alleged to have occurred at that house on the 26th of August, and the conversations alleged to have been heard by the two witnesses in relation to those acts, are contrary to the experience of every one of us. It is incredible that such language could have been used in the sense conveyed to us, by a woman brought up under religious influence, associating with the most respectable people of the neighbourhood, and thank God, associating with them still. Yes! after the repeated attempts of her husband and his good brother to damn her reputation, she has still their respect, their confidence, their good will, and even their ardent sympathy. Now, you are asked to believe that a person in that condition of life, in her own house, under the circumstances I have mentioned, was seduced by a neighbour, and had criminal connection with him not once, but twice; that the language reported to us by the two witnesses was used in the course of the seduction, and was uttered in a loud tone. I repeat, the story is not credible. I doubt if a common prostitute, in this or any other city, under any circumstances, except, perhaps, in a state of intoxication, would use such language in her intercourse with the other sex. But while that difficulty meets the petitioner at the beginning, and on the mere statement of his case, what are the difficulties that confront him when we come to consider the evidence in detail? Last night I took the evidence of James Campbell and Anderson, and carefully extracted all the words they swear they heard used in

that parlor. James Campbell reports sixteen distinct expressions in the whole of his evidence. He forgot four or five in his examination-in-chief, among them the California story. Anderson was listening at the west window, where he could hear equally well. James Campbell told us he could hear better at the front window, but on being pressed, said he could hear equally well. The windows were closed, and these two, listening there for a joint purpose, heard a number of expressions, Campbell 16 and Anderson 12, and yet only four of these expressions have any similarity or can be held to relate to the same matter. Is that a credible thing? They went there to listen to everything; they swear they heard conversations; they pretend to give the language used by each of the parties; the time, with reference to acts, when these several conversations were heard, and yet they do not agree in their report as to 24 out of 28 of these conversations or expressions. I do not contend that the language sworn to should be precisely identical, but it ought to agree in substance, and the expression, attributed to the interlocutors, should be heard at the same time. The witnesses separate the time, and tell us what was said before and what after certain events, and yet there is no identity or corroboration. The witness at one time puts language into Mrs. Campbell's mouth, which, at another, he swears was used by Gordon. But these contradictions and discrepancies, fatal as they are to the credibility of the witnesses, will not justify me in asking you to dismiss their testimony altogether. I have no doubt they heard some of the words sworn to, —words which were perfectly innocent, but which their evil imagination distorted into vileness. Let any man take the expressions one by one as they are recorded in that evidence, and ask himself this question,—does that necessarily imply sexual commerce between these parties? It is not possible that words of a similar sound, with a slightly different collocation,—not so different as the witnesses themselves have reported,—were used without any improper or criminal meaning? To the first question I say, no; to the second, yes. They are all intelligible—they can all be explained—upon the theory of innocence. No doubt these eavesdroppers went there to hear something wrong, and no doubt also they put the worst construction on the few fragments they heard; yet, after all, they report only one word which leads almost necessarily to the conclusion that there was criminal intercourse. "Robert might suspect," was the expression first heard by James Campbell. Anderson did not hear that at all, though at the time—a little after 12—he was standing near the window, and swears he could then hear distinctly. The reply was—"Has Robert had anything to do with you since his return," or, as the witness afterwards put it, "Has Robert had any connection with you since his return?" etc. Up to the time of his going for a stick to break the window, this is the only conversation James Campbell swears he heard between these parties. A great deal depends upon this word "connection." I admit, if it were true that Gordon asked Mrs. Campbell this question, and she answered it in the words sworn to, the conclusion would almost necessarily be that there was criminal familiarity between them. But in his examination-in-chief the witness said Gordon asked,—"Has he had anything to do with you." That might have referred to some other matter—it is not necessarily criminal or evil in its character—but finding it necessary to use a word that would leave no doubt on your minds, that an improper question was asked, Campbell next day revises his evidence and uses the word "connection," to which he adheres. Let us now look at the probability, at the reasonableness, of this dialogue. What possible object could he have in asking such a question? What could Robert suspect? I cannot imagine a woman five months gone with child, discussing with her paramour the danger of suspicion on the ground which the witness imagines he heard suggested. Can any member of this Committee, can any human being, solve the difficulty? I could suppose that a young woman, before marriage, if solicited by a seducer, would ask herself, if she did not ask him, whether her consent might not cause suspicions; but for a married woman, within four months of her confinement, to talk about suspicion in such a case, and for the other party to reassure her by suggesting that suspicion could not

attach because her husband had been with her since his return, is too puerile for serious argument. As Anderson, though listening, heard nothing of this absurd question, and still more absurd answer, I ask you not to hear them either. Campbell swears the next expression he heard, after he returned with the stick, was—"I have no pleasure in life, etc." Anderson heard nothing of this, but if he had, and concurred in reporting the language, I deny that there is anything criminal in such a confession of unhappiness. I contend that a presumption of innocence must go along with us in construeing the language of these parties until guilt is proved by evidence that cannot be doubted. I say, even if this language was used exactly as Campbell pretends to have heard it, no such conclusion as he draws from it would be justifiable. The next expression is—"will you come half way if I go the other." We are expected to believe that this was an invitation to criminal intercourse by a married woman, addressed to a young man sitting there, who was eager for the opportunity, who in fact had already enjoyed it, and yet refusing the invitation! Is that the way such matters are conducted? Is this the same man who—as we are afterwards told, wanted this woman three times and declared he was crazy for it! Anderson, though listening, hears nothing of that conversation either. Then another expression is—"The floor is as good as a bed." A volunteer, speaking of camp life, might make an observation of that kind without committing adultery, but as Anderson did not hear it, I am disposed to believe James Campbell is romancing again. Then we come to an expression which seems to have some kind of correspondence with one sworn to by Anderson. James Campbell swears he heard Gordon say—"What is the matter?" and she replied, "You are hurting me." He assumed that was evidence of criminal connection. I say, if any such words were used, they do not prove, or even imply a criminal act. They were sitting near each other playing draughts, and something about "hurting" or it may have been "beating me" may have been heard. It is true both swear to this word, but not in the same sense or connection.—The next expression—and it is the only one sworn to by both witnesses—is—"What is this?" She answers, "My navel." I do not know what conclusion they came to as to the position of the parties when Gordon displayed such curiosity, and at the same time such ignorance of the human organism. I asked if they were undressed, but the witnesses could not tell us, or even venture an opinion on the subject. No doubt the word "Naval" was heard, as she sang a marine song, and remembers a remark about the naval service, but Campbell prefers to spell it with an "e." We now come to a remarkable utterance, sworn to by James Campbell:—"Those are nice breasts, Eliza." Anderson heard nothing of that. If the expression was used in such a loud tone as to be heard outside the window, it seems strange that Anderson did not hear it. Another expression is:—"If there is anything wrong it is your fault." Anderson did not hear that, and there is nothing criminal in them, even if the words as reported were used. Campbell tells us Gordon spoke of having a hard day's work before him—rather inconsistent with the "crazy" story, at three o'clock in the morning. Anderson did not hear the observation about the hard day's work. Campbell swears he heard Gordon say, "Eliza, you are my dear love." Anderson does not hear that either. Campbell heard her say, "I want you to take me to California." Anderson tells us something about California, but neither the words nor the meaning are the same. Mrs. Campbell explains the allusion to California. Each had a brother there, and she remembers some conversation on the subject. It was natural they should speak of California, under such circumstances, but certainly not as a hiding place from guilt. (Mr. McDougall then commented on certain expressions sworn to by Campbell, but not heard by Anderson, which he denounced as utterly incredible in the sense pretended, but perfectly innocent as explained by a conversation respecting a stereoscope.) Apparently, the word "crazy" was heard by both just before Gordon left, but they do not quite agree in the relative words. "Crazy" is put in the mouth of Gordon by one, and in Mrs. Campbell's by the other. Campbell swears she asked, "Why are you so crazy?"—and he replies, "Why did

you ask me to come here on Sunday night, to-night?" What had that to do with his being crazy? Remember, this language was used after he had twice had criminal intercourse, according to Campbell, and after his hand had been seen on the door, and he had expressed his desire to go home. I have gone over all the expressions sworn to by Campbell. I shall now for a moment turn to the evidence of Anderson. The first remark he heard was, "You are getting stout." Nothing of that kind was heard by Campbell. It amounts to very little in any case. The second expression heard by Anderson relates to California. This conversation, if we are to believe Anderson, took place before Campbell started to get the stick, and, therefore, immediately after he heard the words about "suspecting." That fixes the point of time in the narrative. All this was heard by Anderson before Campbell went for the stick. Immediately after Campbell's return, Anderson hears Gordon use this expression: "Put your arms around me," etc. Campbell hears nothing of that. They seem to have heard different parts of the conversation all the way through. Now, if there was criminal conversation in the popular or in the legal sense, these witnesses who heard everything ought to give us substantially the same account of it. The next he heard was, "What are you crying for?" but there was no reply, according to Anderson. He swears he heard her say "Kiss me." It seems remarkable that Mrs. Campbell should find it necessary to ask a young man who was so lustful, according to their joint report, to come and kiss her. Did he require to be encouraged and formally invited to do it? Campbell does not hear that. He says he heard kissing, and that is the most remarkable thing of all—that he could hear through the curtains, windows, blinds, and all the other obstructions, the noise of lips meeting. You are asked to believe that two clandestine lovers, seated in a parlor, 12 feet at least from the eavesdroppers, listening at the windows of a well-built brick house, with all their impediments—and the parlor door open—indulged in labial *smacks* that could be heard outside! Gentlemen, is that possible or probable? The last expression he swears to is, "You may kiss me." After she had invited him to kiss her, after the sound thereof —like the kiss of Moore's lover that "startled the woods of Madeira," had reached the ears of one of the listeners, the other heard the coy wanton tell her paramour "You *may* kiss me!" Incredible condescension! This kissing business is enough of itself to destroy the whole story of these wretched spies. In truth they tell two stories, so unlike, so improbable, that you cannot believe either of them. If witnesses for the plaintiff, in an action for slander, varied in their statements of the slanderous words, as these witnesses have in 24 out of 28 expressions, he would find himself out of court. In this case where a criminal act is to be proved from the language used by the alleged criminals, I doubt whether any of the expressions sworn to here would legally support a verdict of guilty, even if the witnesses agreed in their evidence. But before a tribunal like this, it would be useless, I know, to discuss mere technical questions; you will very properly take this evidence for what it is worth; you will consider it in connection with the surrounding circumstances, and you will be asked to say whether the evidence satisfies you that there was criminal connection between these parties on that occasion. Reasoning upon it from a legal point of view, I contend there is no word in the double dialogue sworn to by the two witnesses—for I have shewn that neither heard the language reported by the other—except the word "connection," which leads to the conclusion that there was criminal conversation between Gordon and the respondent on that night. Admitting the witness Campbell heard that word as stated in his cross-examination, it is still your duty to consider whether the witness Anderson did not describe the situation truly in his first written statement when he represents Campbell accusing Gordon of "*attempting* to seduce" his brother's wife. "The law always presumes against crime," and therefore, until the evidence has raised a presumption of guilt, which preponderates over the presumption of innocence, the latter must prevail. The petitioner's case is that those parties engaged in criminal conversation while a servant was within

ear-shot of them, the door open, and lights burning, that the loud solicitations of the sedncer, and even the touching of lips were heard through the walls. I think you will require something more than the disjointed phrases, so variously reported, to make you believe that under the circumstances, even as proved by the petitioner, two human beings, with ordinary intelligence, such as these persons are admitted to possess, to say nothing of their social relations and previous habits of life, committed the crime of adultery. Nothing has been adduced here to shew there was a suspicion of wrong doing by Mrs. Campbell previous to the receipt of the anonymous letter, and this unfortunate visit of Gordon. Her character was irreproachable ; her husband, after efforts to find some slips, some instance of immoral behaviour in her ten years of married life, utterly failed—yet he asks you to believe that she brought a young man to her house, and carried on a conversation which, as construed by the petitioner, proves that *she* was the seducer, and Gordon the seduced, and all this in loud talking that could be heard out of doors, and therefore by the servant upstairs ! I find no parallel to this case in the English Divorce Court, and I have looked through the reports with some care. Did the petitioner's counsel venture to interrogate that servant as to whether she heard anything improper ? On cross-examination I compelled her to admit that she heard nothing. The sounds of the voice, as everyone knows, would go up stairs through the open door more readily than through walls or closed windows, and she has shewn a sufficient animus to justify me in saying that she would have reported anything to the discredit of her mistress if she could. I say on that ground alone, the case breaks down. Mr. McDougall argued strongly against the probability of the act, in view of the respondent's condition, combatting the theory of the Vice-Chancellor, that women in such cases are apt to give "free course to their passions," referring to medical theory and experience. At the conclusion of the argument on this point, the Committee adjourned till the following morning at 10 o'clock.

The Committee met, Wednesday at 10 a.m.

Hon. Wm. McDougall resumed his speech. He said :—When the Committee adjourned yesterday, I was speaking of the improbabilities of the case on the evidence presented by the petitioner. I ask your attention for a few moments to the evidence of the girl, Newsome. With respect to Martha, her evidence can have but a very remote bearing on the charge in this Bill. She, by her own statement, was not in the house, having left Mrs. Campbell's service on the 15th of August. She does make some reference to some incidents which, I suppose, in the prejudiced view of the other side, help the inference they wish to have drawn. For instance, she speaks on one occasion of finding the curtains of the parlor pinned together, and the footstool away from its usual place.. Admit the fact and it is nothing. She says she found the stump of a cigar in the parlour on another occasion. She does not specify when, nor can she swear it was not dropped from the corner of the table, where it may have been left by Gordon, or some other person. It adds nothing to the evidence required to sustain this charge. She speaks of having found her mistress's boots in the parlour on one or two occasions, as if finding a lady's boots in the parlour of a country house, after an evening party, is ground for grave suspicions against her ? But Mrs. Campbell tells us very frankly, that on one occasion, having been engaged dancing with some friends, she took off a tight pair of boots during the evening, and left them in the parlour. I find nothing further in her evidence, except her notions of matrimonial duties, and her illustration of the saying that a guilty conscience needs no accuser, on which last subject, I admit, she is a competent witness. The other servant Newsome, was in the house on one occasion of Gordon's visit. I call the attention of the Committee to an important feature of her evidence. She says she retired to bed about 11:15 p.m., but the petitioner's chief witness, Anderson, swears she went to bed at 12 o'clock. Both he and Campbell swear positively on that point. She must, therefore, have been awake and capable of hearing the conversation that preceded the first act of criminality, because it occurred, as they say, about 12 o'clock.

The conversation they overheard up to the time Campbell went for the stick, was before 12 o'clock, and the criminal act was completed before he returned. It follows that the servant, who was in the house, and within hearing, at the very time these witnesses outside heard criminal conversation, is unable to report a single word of it! I say a strong inference is to be drawn from that fact. This servant, who is a willing witness, and is now in the employ of the petitioner, will not swear that she heard any language, such as the outsiders report to us, although she was in a much better position than they to hear it. She swears she heard the noise of some person walking on the gravel. If she could hear the footsteps of Campbell, who was in his stocking feet, it must have been when he was going for the stick, and, therefore, she was awake at that juncture according to her own evidence. Why did she not hear the loud and disgusting language sworn to by Campbell? She is brought to contradict Mr. Gibson and his wife as to the fact of singing. What object Campbell and Anderson expected to gain by denying the statements of the ex-Mayor, is not apparent to me, but as they have undertaken to prove there was no singing or music that night, we have produced witnesses to contradict them. These witnesses have been cross-examined several times, yet adhere to the statement that late on the evening of the 26th of August in passing the house, they heard music and two voices singing. Jane Newsome is brought here to raise a doubt in your minds, and it is suggested the Gibsons are mistaken as to the night. My answer is, it does not follow because there was music on the 27th there was none on the 26th. I believe Miss Ham was there on the night of the 27th, and no doubt this witness heard music on that occasion. Gibson says he was passing on the night of the 26th, and saw two persons standing near the window, apparently listening. Now, if Gibson did not see Anderson and Campbell, it is evident he did not see Jane Newsome and her young man, who, she admits, was but little taller than herself. You have only to look at the photographic view to be satisfied that the fence would have concealed them from Gibson's observation.

Hon. Mr. Dickey:—Does not the witness Gibson say he could see over the fence because the sidewalk was elevated?

Hon. Mr. McDougall:—He could not if they were between the fence and the window, where Gibson swears he saw the heads and shoulders of two men. So far as the Newsomes are concerned, they state nothing, and corroborate nothing that is material in this case. In addition to the evidence of Gibson and his wife, we have the positive statement of Mrs. Campbell (and we know Gordon corroborates her), that there was singing and music in the house on the night of the 26th. Here we have four persons under oath, stating this fact, and we have Campbell and Anderson and this girl Newsome denying it. As to Jane Newsome's character, I need only recall what she has admitted,—that before these events she had lost her virtue; I doubt, after that confession, that you will give her credit for having retained much of her veracity. She says she was gathering pears on the night of the 27th of August. According to my experience in fruit-culture, we do not grow standard pears in this climate that are fit to eat so early in the season.

The next point to which I desire to direct your attention is the interview or altercation that took place between Gordon and James Campbell. And first, as to the question of time. Campbell and Anderson state they did not leave the verandah until three o'clock. I cross-examined them at considerable length as to how they ascertained and fixed the time. After much fencing, Campbell admitted that he saw his watch by the light of the window. If his evidence is shown to be untrue, to be really substantially and knowingly false, on the question of time, then I shall ask you to distrust his truthfulness on other and more vital points. They went down to their shop for the purpose, as Anderson says, of getting some whiskey, being tired and cold after their long watching. They heard footsteps, and suspecting the approach of Gordon, they waited until he came near and called to him. Campbell swears he charged Gordon with having been in the house from 9 until 3 o'clock, and having criminal connection with his brother's wife, and that Gordon said—"I could not help it, it is not my fault." If Gor-

don made that reply certainly most of us would agree with the witness that it amounted to a confession of guilt. Four witnesses give evidence as to the time this street colloquy occurred, and, what I regard as much more important, as to the tone and character of the interview. Dr. Adams swears that Gordon denied the charge at once, using very strong and very emphatic language. Mr. Gross, who was aroused from his sleep by the cry, as he supposed of "fire," (the words "fire" and "liar," sounding very much alike,) ran to the front window to look out, being a property holder and naturally anxious about fires. Seeing nothing but three or four men on the opposite side of the street, he went to the back window. On his return he hurt his foot, and finding that he had been awakened by a row only, he went to bathe his foot. He explains how his attention was directed to the hour of the night. He had been asked to subscribe for stock in a clock company, and a specimen clock had been placed in his house on trial. It stood beside an English clock, and as he sat down stairs bathing his foot, he noticed as he sat that it was just 1:30 by both clocks. We have, moreover, the evidence of Mrs. Allen, clear and unimpeachable, though not so precise as that of Mr. Gross, on the point of time. She lives immediately adjoining Campbell's place of business. She was sitting up a little later than usual, reading a book, (which, she tells me, was her Bible,) when she heard loud talking in the street, and although she did not look at the clock at that moment her impression is from knowing the time she completed her domestic duties, and having on her mind the necessity of retiring, that it could not have been more than a few minutes after one o'clock. We have the statement of Dr. Adams as to his impression of the time. He did not look at his watch, but the young student who slept with him, was regular at his hours, and according to their idea of the time, it could not have been later than 1.20 a. m. The student corroborates Dr. Adams in every important particular. I submit, therefore, that the *time* of the altercation in the street, has been proved by independent unimpeached testimony, by persons who have no interest in telling anything but the truth. On the other hand, we have the evidence of parties who, by their own admissions, were engaged in a conspiracy to watch, and if possible to catch, an unsuspecting woman in a position which would enable them to charge her with a crime. Their feelings were enlisted, their minds were prejudiced, and even though they may not have intended to commit perjury, everything that occurred, in their warped judgment corroborated the opinion they had previously formed. I ask this Committee to look at the question of time, and the question of confession or no confession, in the light of this evidence. Is it reasonable or probable that Gordon, when accused by Campbell, would show such indignation or speak in such loud and angry tones, pursuing these parties up to their door, and daring them to come out, if he had a few minutes before, meekly and humbly confessed his guilt? I say the story is incredible—the two statements cannot be reconciled. No jury in an ordinary case, if they balanced the evidence on that point, could come to any other conclusion, and such a jury, with less evidence than you have heard, have already given a verdict against the evidence of Campbell and Anderson on these very points. The verdict in the first case is relied upon as a material fact by the petitioner, and is made, according to custom, an important element in supporting the application for this Bill.

I have proved, I hope, to the satisfaction of the Committee, that the co-respondent, Gordon, made no confession of guilt. Even the Vice-Chancellor questions the veracity, or the recollection of these eavesdroppers on that point. As far as I can judge from the newspaper report of that trial, the verdict was obtained upou the testimony of these men as to Gordon's confession. The defendant was taken by surprise, and was not then aware that he could produce four witnesses whose evidence would disprove their statement. But even if he had admitted all that is alleged, I ask your attention for a few moments to the injustice and the danger of receiving or trusting to confessions of co-respondents in such cases. A remarkable case occurred not long ago in

England, which will illustrate and corroborate my argument on this point. Some members of the Committee may remember a Mr. Portman, who spent some years in Canada, and was for a short time a member of Parliament. He was co-respondent in a trial when a young man, which, but for a fortunate circumstance, would have ruined the character and extinguished the rights of an innocent wife. I will read a brief extract from the Westminster *Review* of 1856:—"Mr. Hunt, a gentleman of large fortune, charged his wife with adultery with a youth nineteen years of age, the son of Lord Portman. The usual action was brought. The case came on for trial in June, 1854. The counsel for the plaintiff opens his case, he is instructed to treat the defendant with gentleness, to represent him as a youth who had fallen a victim to the attractions of a woman much his senior, to describe him as the seduced, rather than the seducer. The object rather of compassion than of reprobation. The Attorney-General is instructed by Mr. Portman, or Mr. Portman's friends, to accept the representation, to admit that Mr. Portman had undoubtedly committed adultery with Mrs. Hunt, to unite with his learned friend in pitying their respective clients, and in laying all the blame on Mrs. Hunt, and to agree that a verdict should be recorded against his client for £50 damages. The judge (Chief Baron Pollock) highly commends this course. The conduct of the counsel and of the parties meets with full approbation. Public morals are spared the contamination they would suffer by the publication of disgusting details. The Chief Baron congratulates the jury, bows to the counsel, and all parties leave the court mutually commending each other. What Mrs. Hunt may think of this proceeding, never appears to enter into the mind of any one of the parties to this pleasant and amicable arrangement. A year and a half passes away, and Mr. Hunt appears in Doctor's Commons to pray for his divorce. On the 13th of February, 1856, nineteen months after Mrs. Hunt had been branded with infamy in a public court, and in a public proceeding, where her voice could not be heard to deny her guilt, she is at last permitted to hurl back the foul charge in her husband's face. "I am not guilty," (such is the substance of her plea), "you are my husband in name, but not in fact—you who charge me with having broken my marriage vow, have never performed yours! Whilst you have denied me the rights of a wife, and the hopes of a mother, you have rioted in debauchery which you have not the power to enjoy, and you dare not deny that you are yourself an adulterer. You, and the boy from whose fears you extorted a false admission of his guilt, know that as far as either of you are concerned, I am pure as on that which is called, in bitter mockery, 'my marriage morn.' I know, and I will prove that I am still a virgin!" And with true womanly courage, Mrs. Hunt does prove it; turns round upon her husband claims a divorce from him on the ground of *his* guilt, and obtains it. Sir John Dodson, delivering his judgment, says:—"This is the conclusion at which the Court arrives, that the husband, in this case has been guilty of adultery; that his wife has not, and consequently she is entitled to her prayer." Whilst we are engaged in pointing out what we consider grave defects in the system of our Ecclesiastical Courts, we have pleasure in recording this signal vindication of an innocent woman through their means; but a solitary instance of this kind by no means weakens the force of our argument. Mrs. Hunt's case, it is to be hoped, is exceptional. She owes her vindication from a false charge to the good luck of having been the victim of cruel deceit. But for this fortunate circumstance she would have had but little chance of ever clearing her character; and had her husband remained satisfied with the verdict at Common Law, and not proceeded to the Ecclesiastical Court her case would have been hopeless."

This extraordinary case probably excited the legal discussion which ultimately resulted in the change of the law of evidence in divorce cases, and in the establishment of a divorce court in England. The old custom which we continue to follow, was found to be unsafe and illogical, and a wife, charged with adultery, cannot now be convicted of the offence in an action against a third party, where she is not permitted to give evidence, or put in a defence. By a fortunate accident,

Mrs. Hunt was able to prove that she was *virgo intacta*, and therefore not guilty of the offence which the verdict against Portman, seemed to establish. But that may not happen again in a thousand years. Now, in my case it is argued that because a jury of 12 men, in an action against Gordon, found *him* guilty, we must assume that Mrs. Campbell is also guilty,—that we are concluded by that verdict. But it must be remembered, that verdict was based on the evidence of two witnesses, who swore that Gordon admitted his guilt.—a statement we have disproved, but which, even if true, would not be conclusive against her according to English law, and English experience.

Hon. Mr. Dickey—You over-rate the effect of this verdict upon the Committee.

Hon. Mr. Macdougall.—It is a fact in the case which has been referred to by members of the Committee, and is stated prominently in the preamble of the Bill, while the other verdict in Mrs. Campbell's favor is carefully excluded. It is necessary for me to point out the little weight that should be given to a verdict obtained in such a manner. On the question of time, I must ask your attention. Evidence in rebuttal—at least it was so called—has been produced, to strengthen the case on that point. A tavern-keeper is called, who says James Campbell was seen on the night of the 26th of August, coming home at 3.30 a.m. Now, is it credible that they could have walked down the street; waited there until after the discussion with Gordon, proceeded to their shop which, it it appears, they twice entered, remaining there taking their whiskey, and discussing this matter together; then proceeded to the house to put up a ladder to the window for the purpose of doing, God knows what; then stood grumbling there because they could not get up a discussion with Mrs. Campbell, and only have occupied half-an-hour in all their movements? The Committee will judge for themselves what bearing that evidence can have on the case, and on the credibility of the petitioner's chief witnesses. Instead of rebutting my evidence, I submit they have rebutted their own. The case of the petitioner rests upon the evidence of Campbell and Anderson, and if they are found to have made wilful misstatements upon three important, material points, such as singing or no singing, in the house; the admission or denial of Gordon when accused of the crime; and the hour of the morning when he left the house, then I ask you, what reliance can you place upon their recollection or report of the conversation that took place within the house? Are they witnesses who can be believed when they tell you that they heard the mother of three children,—then large with the fourth—ask a young man in her own parlor, in a loud voice, to "come half way" for a criminal purpose, and the "crazy" libertine reply—"No, you proposed it, you come"! I will not elaborate the point. It is only necessary that I should refresh your recollection as to the absurdities, improbabilities, and contradictions in the evidence, to discharge my whole duty in this part of the case. I, perhaps, will be justified in calling your attention to the manner in which the chief witness, James Campbell, gave his evidence. You heard him examined and cross-examined. You observed his hesitation to answer, his refusal to answer sometimes, and the way he fenced throughout the enquiry, endeavouring to evade every question which he fancied would tend to vindicate my client. All the witnesses produced by the respondent, I submit, gave their testimony in a straightforward, candid manner. There was no attempt to evade, or conceal the truth, or to make up a story. She, herself, as I heard a spectator remark, seemed willing to tell the *whole* truth, without reserve. On the other side, the witnesses could not hide their bias; they hesitated, backed, fenced, explained, and strayed from the question, as if they had come to corroborate a case previously agreed upon, and not to state to you all the facts within their knowledge. One word as to the extraordinary conduct of the principal witnesses, the extraordinary service they enlisted in, and the still more extraordinary manner in which they executed their commission. They went there to watch. When I asked for what purpose, I could not get an answer. There was no particular object in view. They repudiated the suggestion that they went there to watch for Gordon. They said they went to the house to watch for something!

James Campbell gave, what I consider, a very remarkable account of his visit to Anderson to obtain his assistance in watching. He did not tell him the object, had no conversation with him upon the subject, made no remark by the way of explanation on the road, and said nothing at the gate. He would have us believe that he simply asked him to go to the house; that Anderson accompanied him without asking any reason; that there was no communication or exchange of ideas between them until they arrived at the verandah. I must say, Campbell's story is an extraordinary one; so peculiar, so unreasonable, that I do not believe him. On the contrary, I believe they knew what they were going to watch for, and discussed it on the way. That it should have occurred otherwise, is utterly improbable. But the witnesses deemed it advisiable to avoid any allusion to their conversation, objects, and plans, because an inquiry might be pushed, and a deep laid plot, as well as discrepancies might be revealed. James Campbell admits that he went for a stick for the natural and proper purpose of breaking in the window on the discovery of his sister-in-law's infidelity. But then he tells us he allowed his brother's wife to be seduced, and though armed with a stick made no attempt to prevent it! He stood by, as his brother's agent, and allowed the act to be consummated! I submit first, the improbabilily of the thing, and next, the wrong and illegality of it. The authorities are clear on the point. The husband cannot claim a dissolution of the marriage tie, where he has been guilty of misconduct as the law calls it; where he has connived at, or assented to the act of adultery, on account of which he claims divorce. [Mr. Macdougall here read several passages from Shelford, and other authorities.] Now, I submit the petitioner has proved a state of facts that brings him expressly within the rule of law administered every day in the Divorce Court of England. The husband was present by his agent when the particular act on which he founds his case, was committed. He appointed his brother agent; both have sworn to that fact. He was there for the purpose of watching. I presume for the legal purpose of seeing that no adulterer came to that house, or if any attempt were made to seduce his brother's wife, to prevent it. If we admit the rule, *facit per alium facit per se*, then I say the petitioner was present when the act of adultery was committed, and did not prevent it. He allowed the seducer to ply his arts, and to consummate the act, without attempting to hinder him. He has no right, therefore, on his own showing, to ask the intervention of Parliament, having contributed to his own dishonor. But I do not rest my case on that view of the facts, because I deny that any act of adultery was committed. I ask the Committee to dismiss the Bill on the petitioner's evidence alone, but I ask them on the whole case, to find affirmatively and positively, that Mrs. Campbell is innocent. (Mr. Macdougall then noticed, at some length, the *presumptions* against the respondent, which the Vice-Chancellor discovered in her general conduct, previous to the alleged offence. He quoted authorities to show that where a husband is morose or severe towards his wife; where he treats her with neglect and coldness, he disentitles himself to, and must not complain if he loses, her wifely solicitude and affection.) He said: I do not charge acts of severity against the petitioner prior to his desertion of his wife, but I charge him with having paid greater attention to his outside duties than to his household. He neglected his wife, and compelled her to seek the companionship of young persons, and now takes advantage of his own ill-treatment, and its natural consequence to create presumptions of guilt against her! No fair argument can be based on the fact which we admit that Mrs. Campbell is a person of great social aptitudes, always disposed to entertain her friends when they presented themselves, that she was fond of music and the society of young persons, that these were more congenial than the cold, morose, negligent, absorbed husband, who seems to have thought all his wife should think of was how to manage his house, look after his children, and wear a pleasant face when he came home late at night. His conduct afterwards, which is partly admitted even by himself, in turning her out of his house, shows his temper and sense of duty. She was his lawful wife.

No legal proceedings had taken place, which justified him in turning her out of doors. He began by trying to starve her out. He and his brother gave notice to the merchants not to trust her, and yet she remained nearly a month in her own house, refusing to admit she was guilty of any offence that justified starvation, or expulsion from her house. All this time she was deprived of her husband's society and protection. At last came the crisis, and he proceeded to the house with two constables, who had no legal authority to act in the case. He either hired or bribed them to accompany him. He says he took them to see that no disturbance arose! He found her in bed, a doctor's certificate had been obtained, to show that she might safely be removed, but when subsequently produced, it showed the contrary. She was dragged out of her bed, pushed in a fainting condition down stairs, thrust rudely and by physical force out of the house, where she fell almost insensible into her brother's arms. She was taken away by him and has been maintained ever since by her relations and not by the petitioner. Conduct like that, admitting that he believed his wife had dishonored him, was not only cruel but entirely unwarranted in law. His treatment of his wife on that occasion was in the opinion of the whole countryside brutal, and with the concurrence of every generous minded observer, I venture to think, it proves him to have been a husband who had not performed and was by nature incapable of performing those duties which he undertook to perform when he vowed to love, cherish and protect his wife so long as they both should live. I submit that his conduct as proved before this Committee shows him to be a man selfish, morose, and cruel; as a husband incongenial and repulsive, and therefore not entitled to demand from his wife that devotion and disregard of social enjoyment which a loving and attentive husband might justly claim. But I only ask in this case that no presumption of crime shall be permitted to supersede legal evidence because Mrs. Campbell sought innocent enjoyment in the society of friends which was denied to her at home. I object to the law, the logic and philosophy of the learned judge, who reasoned from the domestic relations of these people, that circumstances being favourable by "the close proximity" of a male acquaintance, she must have given "free course to her passions" and committed this crime. I think I may rest the case here and assume that you cannot find the preamble of this Bill proven.

The plaintiff's bill must be dismissed, but what is to follow—what protection does the law extend to this discarded wife? In Ontario as I have pointed out the law is peculiar. There is no door of redress now open to that unhappy woman, except the old common law remedy by which she may obtain from her husband—even when you rehabilitate her by dismissing this bill—the means of subsistence. If she can find any one to undertake the experiment of an action for necessaries against Campbell on the old common law rights, she may indirectly recover a modicum of support, to which she is entitled as a wife. But even in a Division Court she may be met by this judgment, and told that her case is *res judicata*. In this court—the highest in the land, for you make the law as well as administer it in divorce cases—the Vice-Chancellor's opinion will go for what it is worth, and no more; but in the inferior court, it will be probably argued that it has the force of law. This is the only court that can apply the proper remedy. I come to you—a Committee of the Senate—and ask a divorce on behalf of this deserted wife. The petitioner asks for divorce *a vinculo*, to which he is not entitled. The respondent, now the petitioner, also asks for a divorce *a mensa et thora*, to which she is entitled. She asks to be protected in her earnings, and to be made free and independent of her husband, so that he cannot molest her, and that she may not be left without support. It will be for the Senate to consider what amount of alimony should be secured to the wife in each case on obtaining this separation from "bed and board." You will find in the case of Dundas *vs.* Dundas, where the adultery was actually proved, the House of Lords inserted in the bill a provision that the husband should pay his wife an annuity for life. The judicial separation which is now granted or decreed by the Court of Divorce in England, is substituted for the old Ecclesias-

tical divorce from bed and board, which was not a complete severance of the marriage bond.

Hon. Mr. Dickey—On what evidence in this case do you ask us to grant a separation *a mensa et thora*.

Hon. Mr. Macdougall—On the ground of desertion and cruelty, the latter as shewn by the treatment of his wife from the beginning to the end of this conspiracy. His unjust suspicions and refusal of all opportunity for explanation; his taking away the children on a false pretence; his determination to be separated from her, as shown by the evidence, before he had any proof except an anonymous letter; his cruelty in expelling her from his house, an act in its circumstances unprecedented in the annals of divorce courts, so far as I have been able to explore them; that attempt at starvation; that insulting notice to tradespeople; that blackening of his wife's character over the whole country,—all these acts and circumstances corroborate and establish the legal offence of cruelty. I say his conduct from beginning to end is evidence of cruelty, desertion and ill-treatment, and justifies my demand that this Parliament should use the high powers which the constitution has committed to it, and award to Mrs. Campbell a full one-third of her husband's income, and also a reasonable allowance for any children that may be allotted to her. In cases of this kind, where the mother is not proved to be unchaste, she is usually allowed to have the custody of the younger children. In this case I shall ask, in the event of the Committee finding that no adultery was committed, that she be allowed to retain the child now under her care, and her little girl. Let the husband keep the boys. To make out my case in accordance with precedents I call the attention of the Committee to the position of the wife before the Courts of Ontario. I admit as a principle that if an adequate remedy could be obtained by an appeal to the courts of law (although there are precedents the other way) the natural order of events would be, the dismissal of the Bill and an application to the courts for judicial separation and alimony. But as I have already pointed out, the courts in Ontario have no power to decree separation. [Mr. Macdougall referred again to the authorities on that point.] It is a favorite boast of legal writers that there is no wrong without a remedy. Unless you apply it in this case no other tribunal can. Parliament has exercised its high authority in England, in cases where the courts could have supplied the remedy. I will call your attention presently to a remarkable case on this point, because I have heard some doubts expressed on the subject. But let me remind you that the 91st section of the Constitution gives exclusive jurisdiction in matters relating to marriage and divorce to this Parliament. Clearly you have the power of legislating. In this case the petitioner comes to this court and acknowledges jurisdiction, and asks for a divorce *a vinculo*. If you think proper you can grant a divorce *a mensa et thora* for the greater includes the less. As a matter of expediency, if there were any means of applying to the Court of Chancery, and if that court could grant an adequate remedy, such as I ask at your hands, I would have advised my client to go there, notwithstanding the delay and expense. But let us see what was done in England in the case of Miss Turner, who ran away from school with a man named Wakefield, who like Portman, was afterwards seen in Canada. He induced her to believe her father had become bankrupt, and wished her to marry a rich person to save his credit. They ran across the border and were married hastily, but according to Scotch law. Fortunately the marriage was never consummated, and Miss Turner's father succeeded in convicting Wakefield in a criminal court for his fraud, and sending him for three years to the penitentiary. Mr. Turner applied to the House of Lords for a dissolution of the marriage which was valid in law until the contrary was determined. It was argued that as Miss Turner could have applied to the Scotch Court, and on the ground of deception and fraud demanded a judicial separation of the marriage, Parliament ought not to interfere. It was admitted the Courts had jurisdiction, and could dissolve the marriage; but as Mr. Turner had already spent £10,000 in law, the most distinguished members of that august body, amongst whom were Lords Eldon and Tenterden, held that the case might be, and in the circum-

stances ought to be dealt with by Parliament.

[Mr. Macdougall read the remarks of several law Lords upon the subject.]

Upon that view of the power of Parliament and the exigency of the case, Miss Turner's marriage was dissolved, although it was admitted by the lawyers in the House that the Scotch courts could, and would if properly approached, decree the marriage to be null. The House said:—"This case requires promptitude; it is legally before us; we can deal with it; we can cut the Gordian knot," and they did it. I have cited Miss Turner's case simply to show an exercise of the power of Parliament, where the Courts could have furnished a remedy. In the case of my client, desertion being admitted and cruelty proved, she would be entitled in England, or in Quebec, or in Nova Scotia, or New Brunswick, to demand judicial separation and alimony, and the custody of the children—but under the laws of Ontario she must come to this Parliament, the only power that can remedy her wrongs. [Mr. Macdougall at some length—supporting his view by reference to the authorities—argued that Mrs. Campbell was remediless, even to the extent of alimony, owing to the limited powers of the Court of Chancery, and the position of her case in consequence of Mr. Blake's judgment. He concluded his address, which had occupied two sittings of the Committee, as follows]:—

Gentlemen. I submit in conclusion, that to turn my client away from this court after the case she has proved, I believe to your satisfaction, would be a great wrong to her, a great failure of justice, a great scandal upon our laws and institutions. The husband petitioner has asked for one kind of divorce; the wife-petitioner for another. I ask this committee to report, that the preamble of this Bill has not been proved; that on the contrary, the evidence shows that a grevious wrong wil be sustained by one of Her Majesty's subjects in Ontario, unless the high powers of Parliament are exercised to grant her the limited divorce she asks, and to provide, by law, for the maintenance of herself and her child or children. I ask the Committee to report that, while Mrs. Campbell is not guilty of the crime of adultery, her husband has been guilty of great cruelty; that he first deserted and then drove his wife from his house; that he has refused to maintain or provide sustenance for her or her youngest child without lawful excuse, and that, under the circumstances, she is entitled to have the Bill amended in accordance with the prayer of her petition.

[The Committee adjourned until the next day, and reported the preamble of the Bill not proven. The Senate referred back to the Committee, Mrs. Campbell's petition, with instructions to enquire into its allegations, and, if true, amend the Bill accordingly. Mr. Macdougall addressed the Committee on the charges in Mrs. Campbell's petition, pointing out the evidence already taken which supported them. He also submitted draft amendments to the Bill. The Committee found all the allegations in Mrs. Campbell's petition proved, and reported the fact, with the proposed amendments of the Bill, to the Senate, where the question was, by resolution, ordered to remain until next session. It would have been impossible to carry the amended Bill through the Commons, as the session was within two or three days of its close.]