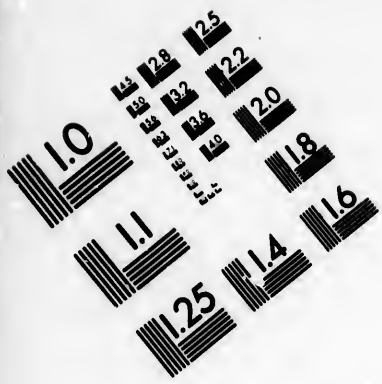

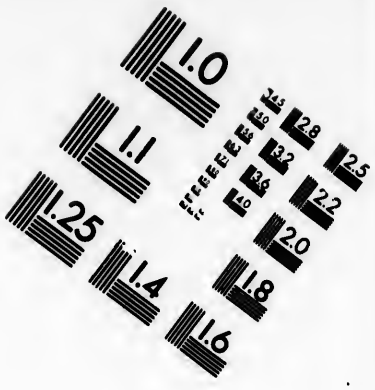

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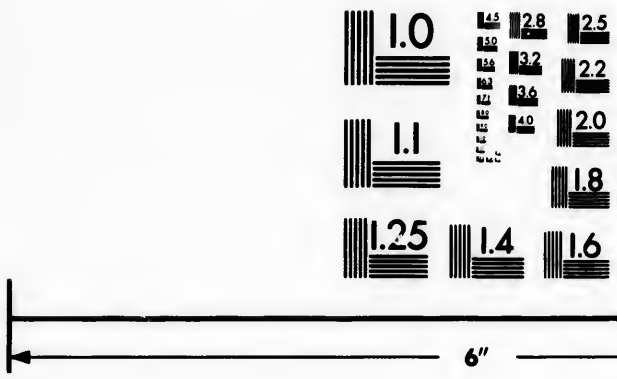

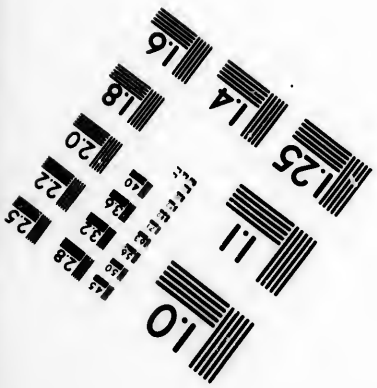

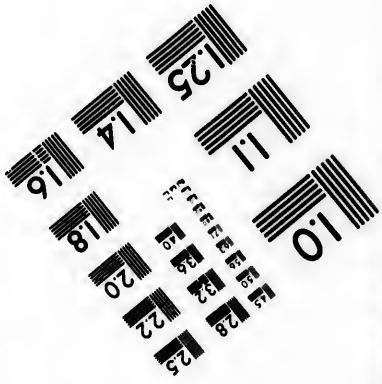

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DISCOURS ET DEBATS PARLEMENTAIRES.

PARLIAMENTARY SPEECHES AND DEBATES.

DISCOURS DE L'HONORABLE G. E. CARTIER

SUR LE

CODE CIVIL DU BAS CANADA,

(Prononcé le 31 Janvier 1865, et tel que publié dans "La Minerve" du 4 Février 1865.

M. L'ORATEUR,—Je ne pense pas que depuis l'Union des Canadas, les chambres aient eu devant elles une mesure plus importante à examiner, que celle de l'établissement du Code Civil, que j'ai l'honneur de soumettre présentement. Les explications que j'aurai à donner à ce sujet, sont d'une importance majeure, et je vous prie, ainsi que tous les honorables membres de cette chambre, de me prêter la plus grande attention. Je commencerai par retracer l'histoire des travaux des commissaires nommés pour codifier les lois du Bas Canada, et qui vous soumettent présentement le résultat de leurs veilles et de leurs études.

En 1857, le discours de Son Excellence renfermait le paragraphe suivant:

"Je ferai soumettre à votre considération une mesure susceptible de rendre, dans le Bas Canada, la justice plus accessible au peuple en général, et d'établir la codification des lois et la procédure en matières civiles dans cette partie de la province."

La promesse contenue dans ces quelques lignes, se trouve maintenant en grande partie réalisée. En 1857, je présentai une mesure autorisant la confection d'un code pour le Bas Canada. Ce projet souleva alors de fortes objections; beaucoup disaient que cette entreprise était impossible. J'avais prévu les objections que l'on pouvait faire à cette question, et j'avais compris qu'il fallait auparavant applanir beaucoup de difficultés, qui tenaient à la loi alors en force dans cette partie de la province. Parmi les défauts que l'on me reproche, et que je reconnais du reste, on met au premier rang l'obstination. Je suis content qu'elle m'ait servi en cette circonstance; je persévérai, et aujourd'hui je suis heureux du succès obtenu.

Les commissaires soumettent à cette chambre un code aussi complet et aussi sage que celui d'aucune autre nation; ils vous soumettent aujourd'hui un travail, qui ne peut être surpassé, même par le Code Français, ni par le Code Justinien, dont la renommée de sagesse est pourtant si grande.

La première objection que l'on fit à mon projet en 1857, consistait dans la difficulté même de le mettre à exécution. En effet, il ne s'agissait pas de faire un code pour le Bas Canada, mais bien de classer et d'ordonner les lois alors en force, en mentionnant pour chaque article les autorités sur lesquelles les commissaires s'appuyaient, pour affirmer que c'était là réellement la loi du Bas Canada; cette exigence devait rendre le travail considérablement plus long, et pour ainsi dire interminable. Je persistai néanmoins dans ma résolution, et le résultat, tel que présentement connu, démontre que je n'ai pas été trompé dans mes prévisions. A chaque article du Code est citée l'autorité sur laquelle il s'appuie; par ce moyen, on connaîtra toujours les sources de notre droit, et il sera toujours facile d'y recourir, quand viendra le temps d'interpréter notre loi. Ces citations, par leur exactitude et leur grand nombre, attestent un travail considérable de la part des commissaires. Il a fallu du temps, sans doute, mais cependant cette précaution était nécessaire; il était impossible pour nous de copier le Code de la Louisiane ou le Code Français. Les commissaires, sans doute, ont pris beaucoup d'articles du Code de la Louisiane et du Code Français, mais il leur a fallu inclure aussi le droit particulier du Bas Canada, notre droit indigène, renfermé dans les statuts, et nous pouvons dire que sur tous ces points, ils ont pleinement justifié l'attente du public.

Avant de passer aux observations et aux suggestions contenues dans le Code, je dois dire un mot des savants légistes à qui ce travail avait été confié.

Il existe dans l'esprit d'un grand nombre une impression fausse, se rapportant à la formation de la commission de la codification et ce qui s'est passé à cet égard entre feu l'Hon. juge-en-chef Sir Louis Hypolite LaFontaine et moi. On a répété et l'on croit que le regretté juge n'a pas eu l'offre de faire partie de la commission; ou que du moins, si l'offre lui en fut faite, ce fut de telle manière qu'il ne pouvait l'accepter. Je suis bien aise de pouvoir aujourd'hui démontrer que cette impression est fausse. Une lettre de Sir Louis Hypolite LaFontaine, lui-même, démontre que l'offre lui fut faite de soumettre son nom à Sir Edmund Head. Je dois à sa mémoire comme à moi-même de lire cette lettre. Voici la demande que je lui addressai à cette occasion.

Toronto, 28 Novembre, 1857.

Monsieur,—J'ai l'honneur de vous demander de vouloir bien me permettre de soumettre votre nom à Son Excellence, le gouverneur-général, dans le but de fournir à Son Excellence l'occasion de vous nommer comme l'un des commissaires qui devront, sous les dispositions de l'acte de la 20e année du règne de Sa Majesté, chapitre 43, codifier les lois du Bas Canada, en matière civile. Tout en vous témoignant l'espérance que vous voudrez bien acquiescer à ma demande, je puis vous intimer que si vous y accédez, Son Excellence l'apprendra avec plaisir.

J'ai l'honneur d'être, votre très-
humble et obéissant serviteur,

GEO. ET. CARTIER.

Sir L. H. LaFontaine, Baronnet,
Montréal.

Sir Louis Hypolite me répondit par la lettre suivante :

Montréal, 1er Décembre, 1857.

Monsieur,—J'ai l'honneur d'accuser réception de votre lettre, dans laquelle vous me demandez " de vouloir bien vous permettre de soumettre mon nom à Son Excellence, le gouverneur-général, dans le but de fournir à Son Excellence l'occasion de me nommer comme l'un des commissaires qui devront, sous les dispositions de l'acte de la 20e année du règne de Sa Majesté, chapitre 43, codifier les lois du Bas Canada, en matière civile."

Je suis bien sensible à l'assurance que vous me donnez, que si j'accède à votre demande, Son Excellence l'approuvera avec plaisir. Néanmoins, je me trouve dans la nécessité de vous répondre que je ne puis accepter l'offre que vous me faites ; de trop fortes raisons s'y opposent : la première, qui est la seule qu'il me suffit de donner, est l'état de ma santé, qui ne me permet pas d'entreprendre une tâche aussi laborieuse que celle de la codification.

J'ai l'honneur d'être, votre très-humble et obéissant serviteur,

L. H. Lafontaine.

L'Honorable G. E. Cartier,
Etc., Etc., Etc.

Dès cette époque, le regretté juge-en-chef ressentait les atteintes du mal qui nous l'a enlevé, et qui nous a fait perdre en lui un des personnages les plus distingués, comme politique et comme jurisconsulte.

Des difficultés étant survenues subséquemment, l'action du gouvernement sur la codification se trouva interrompue. Je laissai le Canada pour l'Angleterre, en Septembre, 1858, et je restai absent jusqu'en décembre de la même année. Je dois dire qu'à mon retour je réitérai mon offre, en espérant que la santé du savant juge pouvait s'être assez rétablie, et qu'il pouvait alors accepter ; mais il me répondit que les mêmes raisons existaient encore, et l'empêchaient de se rendre à ma demande, et qu'il devait me remercier de nouveau du témoignage de confiance que je lui donnais.

Voyant qu'il fallait cesser d'espérer son acceptation, je fus obligé de faire autrement, et en Février, 1859, la commission fut définitivement formée de MM. les Honorables Juges Caron, Day et Morin ; qui reçurent l'autorisation de commencer les travaux préliminaires du grand ouvrage qui leur était confié. Ils eurent pour secrétaires les deux hommes les plus aptes à ce genre de travail qu'il fut possible de trouver, MM. U. Beaudry et T. K. Ramsay. La loi exigeait que les deux secrétaires connussent bien les deux langues ; il devait y avoir un secrétaire anglais, mais bien versé dans la langue française, et un secrétaire français, qui eût également une grande connaissance de la langue anglaise. M. Beaudry, il n'est pas besoin de le dire, quoiqu'occupant le modeste poste de Greffier de la Cour d'Appel, était remarquable par une connaissance parfaite de la jurisprudence de nos décisions. M. Ramsay possède une éducation classique parfaite, et est bien connu comme écrivain anglais. La connaissance qu'il avait de la langue française lui permettait de comparer les deux textes et de voir à la perfection de la traduction. Je regrette que par suite de causes politiques, on l'ait forcé d'abandonner cette charge, qu'il remplissait avec tant de talent et de capacité. Cependant, je ne puis m'empêcher de dire que la nomination de son successeur fut faite avec beaucoup de soin, et que M. McCord s'acquitta de son devoir, à l'entière satisfaction de tous les membres de la commission.

L'Hon. Juge Caron, un des commissaires, était certainement un des hommes qui avaient le plus de droit à cette charge ; son amour du travail et ses talents le désignaient à une pareille position. Il fut successivement Membre du Parlement Provincial avant l'Union, et après l'Union, Membre du Conseil Législatif, Président de cette Chambre ; et durant tout ce temps, il prit à la législation une part qui donnait au pays une garantie que le travail qu'on lui confiait ne pouvait être placé en meilleures mains.

Tout le monde reconnait le génie philosophique de l'Hon. juge Day, sa puissance d'analyse considérable. Lorsque j'étais encore jeune avocat, j'ai eu occasion de juger de ses connaissances légales, lorsqu'il remplissait le poste de solliciteur-général. Il fut nommé juge à un âge encore peu avancé, mais il comprit de suite qu'il y avait, dans son éducation, une lacune à remplir, et il s'appliqua, avec une ardeur et une constance dignes de tous les éloges, à l'étude de la langue française. On a toujours admiré la persévérance avec laquelle il a sans cesse cherché à augmenter ses connaissances légales. Par son esprit philosophique, et par son aptitude à saisir parfaitement la raison des choses, il devait puissamment aider le travail de ses confrères. On disait que l'Hon. juge Morin n'avait que peu d'expérience comme avocat et comme jurisconsulte. Ceux qui faisaient cette objection ne connaissaient point l'intelligence qu'il pouvait déployer pour un semblable travail, et maintenant j'ai le témoignage de ses deux collègues, déclarant qu'il n'aurait pu que très-difficilement être remplacé. Voilà le personnel de la codification, tel que désigné en 1859.

Je passerai maintenant aux observations sur leur travail, présentement devant cette chambre. Les commissaires étaient autorisés à soumettre des amendements en regard du texte de la loi, mais d'une manière parfaitement distincte de la loi elle-même actuellement en force. Voici les principaux amendements qu'ils présentent dans leur rapport.

Au Traité des obligations, ils expriment l'opinion qu'il vaudrait mieux adopter la disposition du Code Napoléon, qui veut que dans une convention, lorsqu'il y a eu des dommages de stipulés, le juge soit tenu de s'en tenir aux termes mêmes de la convention ; de préférence à l'ancien droit français, qui permet au juge de réduire ces dommages. Ils proposent d'abolir la distinction que fait le droit romain de la faute lourde, grave et légère. Ils expriment l'opinion

que la preuve verbale, au lieu d'être permise seulement dans une cause n'excédant pas $25, devrait être reçue dans les causes jusqu'à $50.

Relativement à la vente, ils croient préférable de rendre la vente parfaite par la convention, sans rendre la tradition nécessaire. Au titre du louage, ils proposent d'abolir la loi actuelle qui établit la résolution du bail, dans tous les cas de vente des biens loués ; il résulte beaucoup d'abus de cette disposition ; le propriétaire fait souvent une vente simulée, dans le seul but de faire déguerpir le locataire. L'amendement n'est suggéré que dans le cas de vente volontaire, et pour toutes les ventes forcées, l'ancien droit reste en force. Il résulte aujourd'hui de grands embarras pour la transmission de la propriété foncière, par suite de nos lois sur les douaires. A l'avenir, une femme devra faire enregistrer son contrat de mariage et désigner sur cet acte les immeubles affectés au douaire. Une telle disposition ne nuit en rien aux droits de la femme et des enfants, en même temps qu'elle empêche un acheteur de bonne foi d'être forcé d'abandonner sa propriété ou de la payer deux fois. Il pourra s'assurer, par ce moyen, de toutes les charges imposées à la propriété qu'il achètera. Un amendement à la loi des successions propose l'abolition des biens propres, et l'assimilation de notre droit au Code Napoléon. Les commissaires proposent aussi d'abolir les dons entre époux, et le droit de résiliation de donation, pour cause de survenance d'enfants. A l'article des testaments, ils suggèrent d'adopter la saisine testamentaire ; cet amendement aurait certainement pour effet d'éviter bien des procès. L'abolition de la prescription de 100 ans est également proposée, comme parfaitement inutile ; il en est de même de celle de 20 ans, qui n'a plus sa raison d'être, par suite de la grande facilité de communications qui existe aujourd'hui. Il n'y a aucun amendement au titre de la communauté. Voilà tous les changements importants suggérés par les commissaires. Si le projet du Code est adopté, nous pourrons en être fiers, et dire que sous ce rapport, nous n'avons rien à envier à aucune autre nation. Une des plus grandes difficultés qui se présentaient pour la confection d'un code pour le Bas-Canada, provenait de la différence qu'il y avait dans la tenure de la terre ; mais par une loi dont je proposai l'adoption en 1857, la même loi fut étendue aux townships ; l'uniformité fut établie. Cette loi de 1857 fit disparaître non seulement une grande difficulté de la législation, mais encore un obstacle au progrès général de notre pays. On a souvent reproché aux Canadiens-Français de ne pas vouloir s'établir dans les townships ; leur conduite s'explique cependant d'une manière parfaite, de même que celle des émigrants. La loi régissant ce territoire n'était pas définie, et ils ne pouvaient jamais être certains qu'en achetant un terrain en cet endroit, ils n'achetaient pas un procès, et si eux ou leurs enfants n'en seraient pas dépossédés un jour.

Les commissaires avaient pour instructions de n'inclure dans le Code aucune disposition relative à la tenure seigneuriale. La loi de 1854 avait bien en grande partie, aboli la tenure seigneuriale, mais cependant elle était encore en force dans l'Isle de Montréal, qui appartient aux Sulpiciens, dans la seigneurie des Deux Montagnes et dans quelques seigneuries du comté de L'Assomption. Mais l'acte de 1859 a fait disparaître toutes ces différences et l'uniformité a été rendue complète, et toutes les terres sont maintenant en franc-alleu roturier.

En 1859, j'insistai auprès de mes collègues Canadiens-Français sur la nécessité de faire connaître la loi française aux anglais ; ce moyen était le plus sûr de la faire apprécier et conserver.

Le travail de la codification se présente sous des auspices importants, et tout fait espérer que les résultats que nous en augurons seront réalisés ; d'ailleurs, ce travail a été fait à l'imitation du Code Français, et en marchant sur ces traces, il n'y avait aucune crainte pour nous de ne pas réussir. Quand on discutait le Code Napoléon au corps législatif français, Benjamin Constant essaya de ridiculiser cette œuvre, en disant qu'elle ne contenait rien de romain, et que ce n'était que la rédaction en articles du droit déjà en force. Les commissaires revendiquèrent l'importance de leur travail, en disant que ce qui paraissait un défaut pouvait être une précieuse qualité. La loi d'un pays n'est pas seulement le résultat de l'arbitraire, et ne se forme pas par caprice, elle est le résultat de l'habitude du peuple, appliquée à tous les actes de la vie pour les régler. Notre droit a les mêmes origines que le droit actuel français, et il a été puisé aux mêmes sources. Il est tiré en grande partie du droit romain, qui est regardé par tous ceux qui l'étudient, comme supérieur à tout ce qui a pu être produit par les autres peuples. Les Romains étaient remarquables par leur esprit d'économie et positif ; les grecs avaient plus d'imagination et ont excellé surtout en politique ; leurs publicistes n'ont pu être surpassés ; mais les lois romaines ont gardé le premier rang. Lerminier, professeur de droit à Paris, disait que le plus beau livre, après l'Ecriture Sainte, était le droit romain. La coutume de Paris forme aussi une des sources de notre droit. On sait qu'entre toutes les coutumes de France, celle de Paris était remarquable par la sagesse de ses dispositions. Les divisions peuvent manquer d'ordre et le style en être obscur ; mais on ne peut n'en pas remarquer la concision et l'énergie. Du reste le parlement de Paris a toujours été composé des avocats et des hommes de loi les plus distingués de la France.

Je dois dire maintenant un mot de nos statuts. Chaque peuple a une loi indigène, un droit particulier, résultant de sa position et de ses besoins particuliers. Depuis que le Canada est devenu une colonie anglaise, nous avons fait entrer dans notre droit plusieurs dispositions nouvelles, qui devaient faire partie du Code. Le Code Civil sera suivi d'un Code de commerce. Les commissaires ont adopté à ce sujet la division du Code Napoléon. Les trois premiers livres se composent des mêmes matières et le quatrième livre traitera des contrats commerciaux en particulier, comme les lettres de change, etc.

A la Louisiane, après que le Code civil fut promulgué, on songea au Code de

commerce ; mais le premier était si complet, qu'on s'aperçut qu'un nouveau Code serait inutile, et que toutes les dispositions, dont pourrait se composer le Code de Commerce, se trouvaient déjà dans le Code Civil.

Il avait été résolu, dès le commencement du travail des commissaires, qu'aussitôt qu'un rapport important serait prêt, il serait adressé aux juges, afin qu'il fissent leurs commentaires et présentassent leurs objections. Cette résolution a été accomplie à la lettre de la part des commissaires ; mais il n'y a qu'un seul juge qui ait répondu à l'attente du gouvernement à cet égard, et qui ait est envoyé ses observations, l'Hon. juge Winter. Le Code a eu très peu de publicité jusqu'à présent, et cependant il a déjà rendu de grands services aux avocats et aux juges ; c'est la meilleure preuve de sa grande utilité dans l'avenir. Chacun connait les graves difficultés qu'eut à surmonter la France, avant d'en venir à la réalisation du projet du Code qui fait aujourd'hui l'admiration du monde entier. Il ne serait pas juste cependant de laisser toute la gloire de cette entreprise à notre siècle. Louis XIV, Louis XV, Colbert, Lamoignon, D'Agueseau ont l'honneur d'avoir conçu ce projet, que diverses circonstances les ont empêchés de mettre à exécution. Mais c'est à Napoléon I que revient la plus grande part de la gloire, et on peut dire avec lord Brougham qu'il pourra se présenter à la postérité avec son Code à la main. Louis XIV, aidé des conseils de Lamoignon, avait résolu de codifier les coutumes de France ; les grandes coutumes étaient alors au nombre de 60 et les petites étaient au nombre de plus de 200, ce qui faisait dire à Voltaire qu'en France, on changeait de loi chaque fois qu'on changeait de chevaux de poste. Louis XIV, après avoir établi l'unité de la monarchie sur les ruines de la féodalité, fit organiser par Lamoignon, une commission qui s'occupa pendant deux ans de la codification, mais sans produire d'autre résultat qu'un ouvrage de la plus grande utilité, les arrêtés de Lamoignon. Voyant que son projet ne pouvait être exécuté, Louis XIV publia ses ordonnances si connues de 1667, 1673, 1681, et autres, qui ont servi de base au Code Napoléon. Depuis cette époque, la codification ne cessa de progresser sous différentes formes, jusqu'à la constituante qui décréta l'uniformité des lois de la France. L'Assemblée Législative et la Convention se succédèrent, sans mettre à exécution le projet de la Constituante. Sous la Constituante cependant, Cambacérès présenta un projet de code qui fut rejeté, parce qu'on ne le trouvait pas assez révolutionnaire ; il s'était guidé dans son travail sur la coutume de Paris, sur le droit romain et sur les ordonnances. Le travail fut repris par le premier consul, et après quatre mois de travail, la commission qu'il avait nommée présenta son rapport, qui n'était en grande partie que la reproduction du travail de Cambacérès, ce qui explique pourquoi il fut fait en si peu de temps. Il fut promulgué en 1804.

On a dit que la commission du Bas Canada avait siégé longtemps. Voici ce qu'il y a de vrai à cet égard. La commission fut organisée en Février, 1859, mais de suite le juge Day partit pour l'Europe, d'où il ne revint que dans l'été. Puis le juge Morin fut malade pendant près de six mois, et ce ne fut que vers le mois de Juillet que les commissaires commencèrent leur travail, qui a ainsi duré quatre ans. Le Code de Procédure Civile est assez avancé, et il pourra prochainement être promulgué. Le code aujourd'hui devant les chambres est une œuvre importante. Si le Canada veut grandir, s'il veut conserver son individualité et sa nationalité, rien ne sera plus capable de réaliser ses espérances que l'adoption d'un code de lois. Le peuple romain fut grand, surtout par ses lois ; ses conquêtes sont séparées, son nom même est disparu, mais ses lois ont survécu à son anéantissement, et il a imposé ses lois à ses vainqueurs. Le nom de Napoléon sera plus célèbre par les lois qu'il a établies que par les conquêtes qu'il a faites. Il fut obligé d'abandonner son rôle de dominateur de l'Europe, mais son Code est resté, moins les dispositions sur le divorce et sur les substitutions au second degré.

Quand les lois du Bas Canada pourront être mieux connues, que l'étude et l'application en seront plus faciles, nos voisins du Haut Canada et des provinces du golfe nous l'emprunteront ; et il aura son influence dans la confédération, si elle a lieu.

Le droit criminel reste intact. Il tient de l'ordre public et l'on a pas cru avantageux d'y rien changer, et nous devons le conserver tel qu'il est promulgué en Angleterre. Possédant le droit criminel anglais et le droit civil romain, nous avons le meilleur système légal qu'aucun peuple puisse posséder. A propos du droit criminel, je ne puis ne pas faire mention d'un homme qui a contribué, pour une grande part, à faciliter son étude et son application dans notre pays. Je veux parler du juge Black, juge de l'amirauté, qui a proposé, en 1841, l'adoption des actes de sir Robert Peel, qui guident l'administration de la justice criminelle en ce pays, depuis cette époque. J'apprécie à une haute valeur les talents aussi grands que la modestie de l'hon. juge Black, et je les ai fait apprécier à mes amis. Je ne dois pas non plus oublier, en parlant de ceux qui ont contribué au progrès de la législation du pays, M. Wicksteed, qui a pris une si large part à la rédaction des statuts.

La mode de promulgation du Code sera le même à peu près que celui qu'on a suivi pour les statuts refondus. Le gouverneur signera un rôle du Code, qui sera aussi signé par les greffiers de l'assemblée législative et du conseil législatif. Les amendements rapportés par le comité, seront réunis en une cédule, laquelle sera soumise au parlement, et ses amendements seront incorporés dans le Code par les commissaires eux-mêmes. Puis Son Excellence fixera par proclamation le jour où le Code deviendra définitivement en force.

L'hon. proc-gén. Cartier reprend son siége au milieu des applaudissements de toute la chambre.

PARLIAMENTARY DEBATES

UPON THE

CIVIL CODE OF LOWER CANADA,

Reprinted *literatim* from the reports of the Quebec Morning Chronicle, of the 19th August, 26th August, and 1st September, 1865.

(18*th August*, 1865.)

CIVIL CODE OF LOWER CANADA.

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

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

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

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

After some further discussion—

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

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

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

The motion was then carried.

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

The bill was reported from Committee without discussion.

(25*th August*, 1865.)

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

Hon. Mr. DORION said this was one of the most important pieces of legislation that had come before the country since the Union. It was evident that, after the Commission having been in session six years, from the appointment of a Secretary to it the other day, that it was likely to sit six years more. He objected to the hurry with which the code had been passed last session. The house had only gone through the amendments suggested by the Codification Commissioners themselves. The Committee of the House had never read the code, but only the suggested amendments to the present law. One of the principal objections he had to the code was that the codifiers were doing away with the necessity of tradition altogether. This would cause endless difficulty and litigation, inasmuch as when a creditor seized property, he would find that a sale had taken place two or three years before, although the property was still in the possession of the vendor. Then we found a different provision for other real estate than mining lands. In one kind of real estate we found that registration within 60 days after purchase would have the effect of preserving the rights of the purchaser; in the case of sales of other kinds of real estate it was provided that registration within 30 days would preserve the purchaser's rights. Why should there be any difference in this matter? The hon. gentleman went on to complain that under the penal clause, or clause relating to stipulations for damages arising from the non-performance of a contract, the person failing to carry out the agreement might be absolutely ruined by being made to pay, not the actual damage, which he had caused, but some large sum which had been stipulated as the nominal damage. He would have much preferred the old rule of our law on that subject. He also found objection to the change respecting the faculty *de rémére*. It was, he thought, only right that there should be a small delay granted to the vendor in such cases. Under the change now proposed, the moment the delay stipulated for re-purchase had expired, there was no further delay whatever. It was wrong, he thought, to have the provision which had been made respecting the signature of authentic acts, inasmuch as it contained a singular contradiction. In the article 98, relative to wills, he found another singular and contradictory provision to the effect that notaries could not be related to the party, but the witnesses might. He found, however, that in an ordinary deed the notary could be related to the parties, and the witnesses could not, to the degree of second cousins even. The hon. gentleman proceeded to a minute condemnatory criticism of other provisions about witnesses to wills. He found also that the codifiers had come to the conclusion that there was no limitation to the right of entail. Another objection to the code was keeping in it the provisions as to legal and customary dower. There was no good ground why this clause should have been retained. In registry another unwise alteration had been made, rendering it necessary to register deeds for the transfer of real estate, at full length, except in the case of licitation and division between co-heirs and co-proprietors. This change would entail an expense of $20, in payment of the Registrar, instead of only $1 or $2, which was all that should have been rendered necessary. The removal of the restrictions which formerly protected and ensured to the children by a first wife

a share of the parental property, leaving it as now enacted, optional with a father to give all to the second family, was an immense change. Then, again, the wording of the article about the dictation of wills was very confused. The hon. gentleman expressed dissent from the wisdom of the clause respecting civil death, inasmuch as it was exceedingly contradictory in regard to the disability arising from religious profession. He did not think the changes to which he had taken exception were for the better, and he believed that important changes in the code might have been submitted with advantage.

Mr. GEOFFRION briefly addressed the House in reference to a remark which he had made during the speech of the hon. member for Hochelaga [Mr. Dorion], defending himself against an exception taken thereto, by the Hon. Attorney-General East; and concluding with some remarks upon details of the code.

Hon. Mr. CARTIER said he would be most happy to hear any remarks or suggestions which hon. members of this House had to make in respect to the Code and its amendments, so that he might be in a position, when replying to the hon. member for Hochelaga [Mr. Dorion,] to embrace the whole range of arguments of hon. gentlemen.

Mr. DUNKIN confirmed the statement that the committee last session had not been able to examine the entire body of the code, which had received but a slight examination at the hands of the members. It should be well remembered that no committee of this House had as yet really examined this great work. Not thinking that the code would be pressed through during this hurried session, he had not sufficiently examined the code during the recess. Before he would call attention to some of the clauses which he thought required amendment, he would wait to hear the explanations of the Hon. Attorney-General. He referred particularly to the clauses respecting civil death.

Hon. Mr. CARTIER said there had been an important amendment suggested in Committee which would serve as a guide to changes of a less important character.

Mr. DUNKIN felt that the discussion of this code had been of the most incomplete nature. If, however, the Government were determined to push it through, he would offer it no objection. He thought there should be a delay of a year between the promulgation of the code and its coming into force, to give professional men time to acquaint themselves with the new provisions.

Hon. J. A. MACDONALD said that as regards the code undergoing revision by the House, is was out of the question that a Legislative Assembly could undertake the codification of a national code of laws. The only thing that governments could do and had done in such matters was to select the most able and skilled lawyers for the work of codification in whom was reposed implicit confidence. It would be merely destroying the work of such well qualified workmen, if the legislature interfered with their labours. Legislatures must receive such works as they would any other kind of work from the hands of skilled artizans. Any action by the House should be merely a petition offering suggestions to the Codifiers on certain peculiar points, or in the case of doubts on the part of the codifiers as to what the law really was in some particulars. Parliament could declare what the law was. Unless the amendments to this code were very numerous, there was no object in its being passed in connexion with a committee or without a committee.

Mr. DUNKIN desired only to urge strongly on the Government the propriety, or rather the absolute necessity, of allowing some delay between the promulgation and the coming in force of the new code. It would require that length of time for the public to obtain an idea of the changes which were being made. There was in the public mind a fixed opinion about certain laws and customs, with respect to which changes had been made. There, for instance, was the *clause comminatoire*. Every person understood that according to the present system one was only liable for the amount of damages actually proven; and people therefore would not hesitate to sign a contract containing any penal clauses, however onerous. Under these circumstances, he thought, as already stated, that—if not a year at least sufficient time to permit of a session being held in the interval—should be allowed to elapse between the promulgation of the code and its coming into force.

Hon. Mr. DORION adverted to the fact that the French Code had been so carefully considered and discussed, that the discussion occupied some thirty-five or forty volumes.

Hon. Mr. CARTIER, replied, showing the great length of time which the formation of a code in France had occupied at various periods and the number of experiments made in many reigns, caused by the number of customs of the various provinces.

It being six o'clock, the Speaker left the chair.

After the recess

The SPEAKER took the chair at eight o'clock.

The debate on the code was resumed.

Hon. Mr. CARTIER said he would proceed to answer the observations and arguments of the hon. member for Hochelaga in the language he himself had used, with which, though English, most of his French Canadian friends were familiar. At the outset the hon. member had found fault with the alleged precipitate manner in which the Committee had gone through the code. He [Mr. C.] thought the remarks on the subject were not warranted. The Committee had done its work in the most fitting manner, and every amendment suggested by the codifiers had been taken into consideration. Not only was this the case, but the committee on many occasions, in order to be informed of the alterations in the common law, called the codifiers before them, where they explained why any amendments of the common law were suggested. No doubt the result of those interviews had been to convince the Committee of the propriety of the report now submitted. The hon. mem-

ber had no reason to complain or think that the Committee had not gone thoroughly into the examination of the statements of law made by the codifiers, as by the law regulating their own proceedings they were obliged to do. They were appointed to codify the laws of Lower Canada as correctly as possible, while being authorized to suggest any amendments to the existing law; and were told to distinguish any suggestion of their own from the actual laws they were appointed to codify. He had introduced the bill for this purpose in 1857, and he knew how responsible was the work thrown upon the codifiers. They were obliged to report the progress of their work from time to time to His Excellency the Governor General and send to him partial reports of what they had done in codification. Then, the Governor General had to send these reports to the Judges, in order that they should have the opportunity of giving their opinion upon the work of the commission. The object was to investigate the state of the law, ascertain what it was, and find out if any errors had been committed in regard to the work of codification. It was his duty to read the various reports of the work as forwarded to His Excellency, and had never found such an error in their statements of the law as to require a notification to him that the law was not being correctly set forth. [Hear, hear.] When the hon. member for Hochelaga and Hon. Judge Sicotte were in the Government they had the opportunity of examining some of the reports of the codifiers, and must have ascertained any errors made in reporting to His Excellency what was the common law of the land. He [Mr. Cartier] however, had never found that either of them had ever reported the occurrence of mistakes in the work of the codifiers during the period in question. Well, since he had regained office he had had to consider the whole code of Lower Canada, and must state, to the honor of the codifiers, that it was extraordinary that three men should have displayed in such a laborious and responsible work, such an amount of steady labor, diligence and accuracy in reporting the law of the country. No one could suppose that the 24 judges of Lower Canada, to whom the partial reports of the codifiers were submitted, could have ignored their contents. This code, morover, had been as commonly quoted during the last two or three years as any other portion of the law of the land. This code had been used and applied as fast as it came out of the hands of the codifiers. In regard to the charge of precipitancy and incorrect statement of the law, the Act of 1857, which authorized the codification, did not throw on the committee the task of sifting every portion of the reports of the commissioners. That would have been impossible. Would members not be more ready to accept the statements of the codifiers as to what was the actual law of this country—of men who had been studying the matter four or five years—than the statements of three or four Committees of the House, during three or four successive sessions. Hasty legislation was peculiar to all legislatures like ours. In England, however, they appointed trustworthy men commissioners for such work, whose report was acceptable. Now, by our statute, it was designed that the responsibility for the accuracy of the law should not depend on this House, or on a committee, but upon the codifiers. They were not commissioned to make law for the whole country; and the committee had to consider every suggested amendment from those gentlemen. Those amendments were very few. In answer to an objection of the hon. member for Hochelaga, he would say that we had two distinct modes of transferring property, one by a memorandum in writing. But what did the codifiers do in regard to the transference of property? They adopted the rule which now prevailed in France after an experience of 50 years of the Code Napoleon, and had merely extended the principle of the act which existed in Lower Canada, as to any sale when one had a memorandum in writing. With regard to commercial transactions, they had extended the law so as to apply to sales of a civil and commercial character.

Mr. DUNKIN thought it would be admitted the commissioners had gone a little beyond that.

Hon. Mr. CARTIER thought it would be admitted that in the committee some gentlemen pretended that the article of the Code in regard to sales speaking in regard to *entre les parties contractant* did not effect the *parti tiers*. He [Mr. C.] wished to prove that in adopting this principle, the codifiers, took what prevailed in Great Britain, France, and some parts of Canada, as to commercial transactions when there was a memorandum in writing. We ought to be grateful to them for having discovered and considered the conflicting rules which prevailed on this subject in Lower Canada, as well as in other countries with which we had most commercial intercourse. [The hon. gentleman went on to prove that the law of France, with regard to the sale of real estate, was just what the commissioners had recommended.]

Mr. DUNKIN said that what he contended was that the codifiers had gone a little too far in order to make the law consistent and clear.

Hon. Mr. CARTIER proceeded to quote from Imperial Statutes 19th and 20th Vic., and the law of Scotland in respect to the tradition of property sold, and argued that these laws were passed to render sales perfect by mere consent. By another Imperial statute the law in different parts of Great Britain was made uniform as to that rule. Therefore, the codifiers, in having adopted that rule, had done well, and it ought not to be disturbed. [Hear, hear.] He would proceed to notice the objection of the member for Hochelaga respecting the tradition in regard to real estate. He was under the impression that, by the amendment suggested by the commissioners there would be a conflicting rule in regard to the tradition of real estate and the tradition of mining rights or lands. There was no such thing in the amendment. The commissioners adopted a proper rule as to the sale of real estate, that the purchaser who obtained registration of the title was the one to be preferred. The member for Hochelaga had quoted the

statute on mining rights passed five or six years ago. But the very preamble of that act was to do away with tradition by the sale of mining rights. So it would be seen, on looking into the matter, that there was no conflict between those two portions of the work of the codifiers. If, however, there was anything dubious in the meaning of the clauses or principles proposed, the codifiers would have to go over the work again and correct every article that might be affected by any of these amendments, and everything of a conflicting nature could be amended. He would now come to another of the objections of the member for Hochelaga, that relating to the *peine comminatoire*. We had adopted the system, providing that the penal clauses of a contract should be considered a portion of the contract itself—a principle which we took from the existing French law. He had legal experience in this matter, and had found that people hardly ever looked on those penal clauses as merely nominal, and very frequently he had much difficulty in explaining that this was the case, and that the actual damage resulting from non-performance of contract would have to be established in order to receive damages. Consequently, the public could experience no surprise nor inconvenience in the adoption of this feature. In making the penal clauses a part of the contract we had only done what codifiers everywhere did on this subject. In regard to another of the objections urged by the hon. member for Hochelaga, it must be observed that it was an advantage of our law that a man had a right to give a lien upon his land in favor of his creditors. Well, if that mortgaged debtor wished to go beyond that, or to sell his property to his creditor, he might do it in the form of a *vente à réméré*. Well, the codifiers had applied to that part of the contract the same rule they had applied all through—that is to say, the consent of parties should be the rule everywhere. Then an objection was taken to the clause respecting wills and notarial deeds, and the relationship or otherwise of the witnesses in regard to both kinds.

Hon. Mr. DORION said his objection was that an alien could be a witness to a will as well as a notary.

Hon. Mr. CARTIER said that as respects other notarial deeds than wills, a notary could do the work with only one witness, instead of two. The codifiers had suggested this feature. As to the relationship of the notary, he (Mr. C.) would answer that exception.

Hon. Mr. DORION said he did not object that aliens should be witnesses to a deed or will, but merely pointed out that it was curious to see a rule applied in one case and not in another. If aliens could be witnesses to a will, they should be received as witness to an ordinary deed.

Hon. Mr. CARTIER said that as to the question of relationship raised in the Hon. gentleman's speech, the codifiers took the rule as it was.

Hon. Mr. DORION said the present law was taken from an ordinance of a very great age.

Hon. Mr. CARTIER observed that when parties making wills were in good health, they could easily procure plenty of witnesses, or comply with the law on this subject, but if a man happened to be suddenly taken with sickness, in a hotel, and being desirous of making his will, had not time to select his witnesses, it mattered not whether the witness was an alien or not, he could answer the purpose. That was the principle upon which the codifiers suggested that an alien might be a witness to a will suddenly made; but this feature was not intended to apply to ordinary contracts in respect of which the circumstances were different. Before the committee he (Mr. C.) had gone the length of advocating that there should be no witnesses at all, being willing to rely on the good faith of the notary, but he did not expect to carry all his views and accepted the present proposition. The hon. member for Hochelaga in alluding to the anomalies of the Code, pointed out that of a curé not being able to take a will. It was proposed at present, however, that this power should not be granted to any curés except those in the district of Gaspé, where there might be no notary.

Hon. Mr. DORION did not object to that.

Hon. Mr. CARTIER.—In this matter the codifiers were not to blame, having taken the Code Napoleon as it is. He would now notice the hon. gentleman's remarks on the law of entail. He did not agree with that gentleman in thinking it was wrong to make provision for the future family. If there was anything to encourage and induce a man to be sober and industrious and provident, it was the ability the law conferred upon him to provide for those of his offspring who might need assistance. The same degrees of entail adopted by the French Codification Commissioners on the accession of Louis XVIII. to the Throne had been adopted by our codifiers. He thought they had done wisely in the matter; because it was at their suggestion the Committee had adopted the French law and the Roman law in this particular, which was also the law of the land. The member for Hochelaga only found fault with the present law of dower in favor of the wife.

Hon. Mr. DORION.—The hon. gentleman does not understand me. I meant the legal dower.

Hon. Mr. CARTIER.—Well, it was the same thing. What would a dower be if it was not legal? Was the hon. member not aware that more than the half of the marrying community in Lower Canada make no arrangement of this kind at all, but merely trust in this matter to the law of the land. Well, if you ought to do away with the legal dower, you ought also to abolish the law that protected the woman and the minor, and those not in a position to make contracts for their own protection. [Hear, hear.] The codifiers had a good rule—namely, that when any property was subject to legal dower there ought to be a registration of such property; otherwise that right of dower in regard to a third party could not confer a title if not registered. If a man wanting a property, on going to the registrar found there was no claim of dower in connection with it, he could buy and obtain a good title. Abolishing the legal dower meant that every young person entering the married state

would have to make a civil contract in settlement of property, which would entail great inconvenience in Lower Canada, where not one-third of the young persons make any settlement of the kind. The hon. member for Hochelaga [Mr. Dorion] also found fault with another disposition—that which related to *gages* in so far as respected the right of any party who held a *gage* to sell it at the expiration of the allotted time. Now in regard to the matter the framers of the provision had only applied to it the same rule which had been applied to conventions throughout. He also found fault with the drafting of wills and the numerous forms of wills—finding it strange that the notary who receives a will should be surrounded by such great formalities while the holograph will was so extremely simple. There was nothing whatever in the objection, and a little consideration would shew that the codificators had taken the correct view of the matter and adopted the proper course. He [Mr. Cartier] thought he had gone through all the objections stated, but he would be most happy to reply to the best of his ability to any others that might be advanced. Before sitting down, however, he would advert to the suggestions of the hon. member from Brome [Mr. Dunkin.] That hon. gentleman had alluded to one or two matters which were worthy of some consideration—for instance with respect to the delay which he believed should be allowed to elapse between the promulgation of the Code and its coming into force. He thought, however, his hon. friend would find that by the formalities which were required in order to bring the Code into force, a sufficient amount of delay would be obtained. For instance, the codificators—it should be borne in mind—would have to incorporate any amendments which might be made, with their work, after which they should make a report to His Excellency the Governor-General, and then deposit the original. Under these circumstances he did not think there could be any well grounded fear of undue haste. On the contrary, he considered there would be sufficient delay. After all there would be less change in the law of the land than was sometime effected by means of a single Act of Parliament which came into effect the moment it was sanctioned without delay or formality. The honorable member for Brome, [Mr. Dunkin,] as an old member of the House, must know this and appreciate the strength of the argument. He [Mr. Cartier] remembered, by the way, that the hon. member for Vercheres [Mr. Geoffrion] raised the objection that, notwithstanding the laws relating to the loan of money, a lender might, by the introduction into a contract of a penal clause containing an usurious obligation exact any rate whatever for the loan, after the expiration of the delay—in virtue of the proposed enactment relative to the *clause comminatoire*. The hon. gentleman, however, was in error. This would not be the case, inasmuch as the distinction between the nature of *dommages civils* and that of interest on money which related to the supposed case he had urged. The hon. gentleman would, on making an application of the rule, at once see the difference.

Mr. GEOFFRION said that what he observed was, that if the Code, with the proposed amendment were adopted, a party could stipulate, by means of a penal clause, that if after the expiration of the term of the contract, the obligation were not fulfilled, the other contracting party might be compelled to pay so much per day, and that by this means an usurious rate would be exacted. Under the change proposed, such a claim would be well founded in law.

Hon. Mr. CARTIER explained that, in his opinion, and according to the spirit of the law, and the clause in question, as he interpreted it, the hon. member's objection was not founded, inasmuch as the provision he referred to could not have reference to loans of money. The hon. gentleman again remarked that he thought he had adverted to all points upon which incidental discussion had arisen, but he would be quite prepared to give any further explanations which might be needed.

Mr. DUNKIN reminded the hon. Attorney General of the provisons relating to civil death.

Hon. Mr. CARTIER would explain. The hon. member for Hochelaga had referred to the civil rights of members of certain religious corporations. Now the status of certain corporations were established or had their entity by law, or rather by treaty, and we could not touch them. A question had been raised before the Committee as to whether those Nuns who were regularly cloistered were civilly dead or not. Two Commissioners maintained that they were civilly dead, but the other held that it was but civil incapacity. There were but four of these institutions mentioned in the terms of cession of this country, after the conquest. The difference of opinion had, however, been reconciled, and would be found in the article suggested in the amendment respecting this subject, which embodied the thirty-second article of capitulation of Montreal. Under these circumstances, no new corporation of the same kind could be established except by authority of Act of Parliament. No fears need, therefore, be entertained on this head. At the same time, it should be borne in mind that if we were to do away with the civil disabilities in the four communities in question, we should give rise to many difficulties, and create a vast deal of litigation. If there were any other points upon which information was sought he [Mr. Cartier] was ready to reply, inasmuch as he was good for two hours more. [Hear, hear, and laughter.]

Mr. JOLY said he wished to make some practical objections to the provision relative to wills. He did not, however, wish to have the matter mixed up with the remainder of the code, and he should therefore take an opportunity of telling the Attorney General the nature of his opinions on the subject.

Mr. DUNKIN said he would study the clauses relative to the subject of civil death referred to by the Hon. Attorney General East, and he would not bring the matter up again unless, after careful consideration, he found it to be his duty, under which circumstances he would not shrink from it. He would take an opportunity of conferring

with the hon. Attorney General East, if the hon. gentleman would allow him.

Hon. Mr. CARTIER.—I shall be most happy.

Mr. DUNKIN repeated that he would not bring the matter up unless he considered it necessary to do so.

Mr. SCOBLE said that after the remarks made by his hon. friend, the member for Brome, [Mr. Dunkin] he would not trouble the House with any comments on this exceedingly important part of the subject, as he might otherwise have done. He considered it a matter of exceeding great importance, and he was glad to observe from the temper of the house that it was fully appreciated, and would be maturely considered.

Hon. Mr. CARTIER said the course he proposed to pursue was to ask that the concurrence be voted at present without any amendment; and that the third reading should come up on Thursday, when the amendments could be proposed. He would ask any hon. gentleman who intended proposing any amendment to let him have communication of it a day or two before—say on Tuesday or Wednesday. [Hear, hear.]

Hon. Mr. DORION thought that the course proposed would be a most convenient mode of proceeding. At the same time he thought it would be well that hon. gentlemen should now state the nature or purport of any amendments they proposed to make.

Hon. Mr. CARTIER said he concurred in the latter suggestion of the hon. member for Hochelaga.

Hon. Mr. DORION said he did not think he would propose any amendments himself; but he would take this opportunity of urging most earnestly upon the hon. gentlemen the propriety of uniformity between the French and English wills. The formalities, according to the former system, were, in his [Mr. Dorion's] opinion, far too great and cumbrous. The English system was exceedingly simple and devoid of formalities. He did not see why there should be such formalities as to cause difficulty and encumbrance.

Mr. DUNKIN said it was notorious that very many cautious professional men always advised their clients not to go to notaries for the execution of their wills, inasmuch as there was no knowing where the litigation might end in the case of a notarial will. [Hear, hear, and laughter.] He did not see, however, why the matter should not be so placed as to give the notarial system a fair trial.

Mr. JOLY said he would explain as briefly as possible the nature of his objection and the amendment he proposed to make. The point involved therein was not personal to himself but to other parties, friends and clients of his own; and he might add, that in his professional capacity he had become well possessed of the facts of the case. It was an exceedingly important matter in its bearings, and he therefore felt it was but right he should discharge his duty. The case in which the point to which he referred arose, was now pending. The will was contested, and among other grounds alleged by the contesting parties, it was urged that it had not been dictated according to law, in the presence of two notaries. It was, he might here remark,—as had been already stated incidently in the course of the present discussion—very true that notaries were invested with great powers. He did not know of any public officer in England or in Upper Canada who possessed such powers as the Lower Canadian notary. He at once stamped the deed passing through his hands with the cast of authenticity, and no further formality was needed in order to prove its genuine character. A will, according to the French law in Lower Canada, was drawn before two notaries, and did not require to be proved afterwards, as the English system required. Under the latter, all the formalities came after death. But the notarial will came into force at once, after death, without any proof—being of itself authentic. The notarial power being so great, he [Mr. Joly] held it was only right, and he believed the House would agree with him, that the forms required under that system should be accurately defined, clearly understood, and strictly followed—much more so than under the English system, inasmuch as there was formality required after death. Now, what happened in the case to which he adverted to was this,—one of the parties pleaded that the will had not been drawn according to law, and dictated in the presence of two notaries. On the other hand, the universal legatee contended that the legal requirement had been fulfilled. The facts in the case having been established, the issue turned altogether upon the correct legal interpretation of the term "dictate." If the law really meant that two notaries should be present at the dictation of the will, then it was important in the extreme that the fact should be defined and understood beyond the possibility of a doubt. The point, however, upon which the case turned, was the meaning of the word "dictate." Did it mean that the presence of the two persons to whom the will was dictated was absolutely required, or did it not? The Superior Court, by its judgment, answered the question in the affirmative, holding that both notaries must be actually present at the dictation. On the case coming up in appeal before the five judges on the Court of Queen's Bench, it was decided by two against three that the presence of two notaries was not required—thus shewing in the true sense of the expression "the glorious uncertainty of the law." This matter, he repeated, was most important, inasmuch as there was an immense number of people in Lower Canada concerned in it. The position of the question as regarded the decision of the courts of law was just this, that three judges—one in the Superior Court and two in the Court of Queen's Bench—have held that the presence of the two notaries to whom the will is dictated is absolutely necessary, while the other three judges of the Court of Queen's Bench have held that this formality was unnecessary. The case was now before Her Majesty's Privy Council. The Lords of the Privy Council would naturally turn, amid the mass of authorities, to the Civil Code of Lower Canada in order to find the true interpretation of the word "dictate," ac-

cording to the meaning of our law. This being the case, he had certainly not overrated the importance of a clear and indisputable definition of the word. The hon. gentleman then quoted what had been said by the Codifiers on the subject, which was to the effect that the presence of two notaries was requ[illegible] During last session a Committee of this House had been appointed to revise the Code. Looking at the proceeding of this Committee, he found that on the 6th March, the article of the Code in question was considered, and it was proposed that this article, upon which the rights of the parties he represented were based, should be swept away, and that another should be substituted. The hon. gentlemen read the proposed amendment on page forty-seven of the resolutions, which, he contended, rendered the true meaning exceedingly vague, inasmuch as it spoke of the presence of two notaries at the signing of the will but not at the dictation. He protested against the next paragraph affecting to explain the meaning of the word "dictate" being allowed to remain in the resolutions, and the purport of his amendment was to strike it out. If it were allowed to remain in, he believed his clients would be ruined. If they wished to change the law, then let it be done—although he believed we should stand by the old French law; but, he repeated, if they wished to change the existing law, let it not be done by citing the language of the law, while affecting to explain it. Such a course had a double effect, and could only be compared to the recoil of a gun. It should not be attempted to give to the word "dictate" a meaning it was never intended to have. The hon. gentleman concluded by reading his amendment.

Hon. Mr. CARTIER begged the hon. gentleman to communicate the amendment to him on Tuesday or Wednesday next.

In the course of some discussion of a conversational nature which followed, and in which hon. Messrs. Dorion and Cartier took part—

Hon. Mr. CARTIER said there was a clause at the end of the Code setting forth that amendments should not apply—not only to cases now pending, but to any rights existing at the time of its promulgation.

Hon. Mr. EVANTUREL said he was sure his hon. friend (Mr. J.) did not intend to misstate facts, and he would, therefore, take the liberty of correcting an error into which he had fallen. The hon. member for Lotbiniere (Mr. Joly) had stated that in the question which had arisen, there were three judges on one side and three on the other. Now, it was important the facts should be known, and he therefore begged to remind his hon. friend that the late Hon. Jonathan Sewell, one of our greatest judges, had, in 1829, given his opinion on the question. A matter of this kind certainly should not be forgotten.

Mr. JOLY said that what he had stated was that six judges, three on each side, had given their opinions in this case, and he only spoke the truth in so doing. As this case only commenced eighteen months ago, Chief Justice Sewell who died 20 or 25 years ago, could certainly not have had anything to do with it. (Laughter.)

Hon. Mr. EVANTUREL.—Oh, you know very well what I mean. (Hear, hear, and laughter.)

The report of the Committee of the Whole on the Code was then concurred in, and the third reading was ordered for Thursday next.

The house then, at eleven p. m., adjourned.

(31*st August*, 1865.)

On the order of the day being called for the third reading of the bill intituled: "An Act respecting the Civil Code of Lower Canada,"—

Hon. Mr. CARTIER said that, as he had already stated when the matter came up at its last stage, he had no objection that the House should again go into Committee of the Whole, so that any necessary and desirable amendments, which were required to be made could be freely discussed. Some important matters in connexion with the proposed Code had been discussed the other evening. For instance, we had the remarks of the hon. members for Lotbiniere (Mr. Joly) and Quebec County (Mr. Evanturel,) who criticised the clause relative to wills—or rather, he should say, the member for Lotbiniere, for his hon. friend from Quebec had not indulged in any adverse criticism. When the provision of the Code, relative to formal and solemn testaments and the redaction of the same was discussed in Committee, due enquiry had been made into all the difficulties which might possibly arise in connexion with that question. The codificators had proposed, as was seen, to make some change in the redaction; and his [Mr. Cartier's] opinion—after considering the report of the Committee, and noting all the objections made, and the discussions which had arisen thereupon, as well as the debate in Committee of the Whole—was that the very best thing that could be done was to rid the solemn will and testament of all useless and unnecessary formalities by which it was embarrassed, and to adopt rather the form in use in England and Upper Canada. [Hear, hear.] The project now before the House explained as well the form as the redaction. He was aware that there was an important action at law pending in one of our Courts which turned upon this point. Now, he need hardly say that there was no desire on his part to do anything tending to interfere with or prejudice in any way the important case in question, or any other case which might now be pending. He would, however, declare formally and explicitly that he did not wish the Code to interfere in any way with any actual will or contract. He would be exceedingly sorry that it should have such an effect. These questions which had arisen before the existence of the Code must, of course, be decided by the laws in force before the Code. [Hear, hear.] There need not, therefore, be any cause for apprehension or uneasiness. Neither the codificators nor himself desired to disturb the past. They only sought to legislate for the future. He proposed to cast aside all that there was in the project about the dictation or nomination of the will, and he thought the change would be most beneficial. He repeated, however, that it was not intended

to legislate for the past but for the future. Another article in the project of Code under consideration had for its object to exclude women from acting as witnesses of wills, as they were allowed to do, according to the law of England and Upper Canada. He did not see that Lower Canada should be an exception to those countries in this respect, inasmuch as it might have the effect of doing Lower Canada an injury, by being distasteful to persons coming here from places in which the other rule held good, and the English system was in practice. When the House went into Committee he would therefore move to amend the project so as to provide that women might act as witnesses to wills. On another point too—namely with respect to the degrees of relationship of witnesses to wills and notarial deeds—representations had been made to him by hon. gentlemen of all origins. He would therefore move that the bill be not now read a third time, but that it be sent back to Committee of the Whole. He might add, however, that he was resolved that no time should be lost in the matter, and he would consequently move, upon the Committee reporting, that the report be received to night, and that the bill be then read a third time. [Hear, hear.]

Hon. Mr. DORION said he approved of the idea suggested by the hon. gentleman of going into Committee of the Whole; but he certainly did not consider it right that this bill should be hurried through a third reading to-night.

Hon. Mr. CARTIER said that of course if the hon. gentleman wished to have the third reading postponed until to-morrow evening, he [Mr. Cartier] had no objection.

The motion was carried and the House went into Committee, Mr. Taschereau in the chair.

Mr. GEOFFRION said he wished to have the 20th resolution, and 227th clause of the Code so amended as to allow the notary to receive *actes* as formerly. One of the great inconveniences of the system proposed would be to compel notaries, in the rural districts particularly, to put themselves to great inconvenience to obtain witnesses to deeds. It might even be exceedingly difficult, if not altogether impossible, for them to do so. There was another point which should be considered which was this—that the proposed change would have the effect of depriving the public of the same guarantee of secrecy which they possessed under the old system.

Hon. Mr. CARTIER said that the present system was certainly as bad as it should be, and it required some amendment.

In the course of some discussion—

Hon. Mr. ROSE thought the House should accept the Code as it stood. No doubt there might be some defects in it, but it was as perfect as such a great work could be. The Government had accepted the responsibility of it, and he thought under these circumstances that the House should pass it in the shape in which it was at present.

Mr. ARCHAMBAULT moved to strike out the 20th resolution and the 227th clause, and to provide that an *acte* received by one notary only should be valid, subject to the following article.

This, on some discussion, was lost on a division.

Hon. Mr. CARTIER next referred to that part of the Civil Code respecting civil death, and said he thought such an amendment would be made as to meet all possible objections. As already stated when the matter was discussed, one of the coditiers objected to the use of the term "civil death," and argued, that it should instead be "civil disability and incapacity." As he [Mr. C.] had explained on a former occasion there were only four communities actually within the bearing of this article, and there could be no mistake whatever about its application. It was urged by some that the article might have a very undesirable effect, as if, for instance, a member of any of those four religious communities were to turn Protestant. Such a thing might happen, and it was feared that a very serious question might afterwards arise as to alleged civil disability. He had no objection whatever so to amend the article as to provide it should affect those professing the Catholic religion only. The hon. gentleman read a resolution to that effect.

Hon. Mr. DORION reminded the hon. gentleman that there were other communities in the country, the members of which made solemn and perpetual vows, just as well as the four to which he just alluded.

Hon. Mr. CARTIER.—They were not, however, recognized by the law of the treaty.

Mr. DUNKIN said the amendment, at any rate, would do no harm. It left the question entirely free and unembarrassed for the decision of the courts, in case any question should arise.

Hon. Mr. DORION said the Code, in fact, decided nothing. If, for instance, a lady belonging to one of those communities got married, was her marriage to be considered null or valid? Were the children, the issue of such marriage, to be considered legitimate or illegitimate? Supposing she were abandoned by her husband, would she have any recourse in law?

Hon. Mr. CARTIER said that was not at all the question to be decided now.

The amendment was then carried.

On the resolution 128, relative to the power of parties contracting a second marriage, it disposed of their property by contract, without reference to the issue of the first marriage—

Hon. Mr. CARTIER contended that the desire was to allow to the contracting parties full liberty in making their contract or convention. This was the course which had been pursued in reference to a variety of other matters, and it was thought only proper to extend it to this point also.

Mr. GEOFFRION opposed the principle, and moved, in amendment, that the law should remain as at present in reference to the disposal of property by contract on the occasion of a second marriage. After some discussion it was understood the amendment would be moved on the third reading of the bill.

The article respecting wills or testaments having been taken up.

Hon. Mr. CARTIER said he proposed

to change the clause so as to provide that, in the case of the notorial will received before two notaries, or before one notary and two witnesses, the formality required should be that the testator in their presence should sign or declare that he could not sign it, and that the will should be read in the presence of the other notary or in presence of the two witnesses.

Hon. Mr. DORION contended that there was a gross contradiction. Why should a notary and two witnesses be needed to the notarial or authentic form of will when two witnesses only were required for the English or holograph form?

Hon. Mr. CARTIER said there was no contradiction at all. If a will was not clothed with the character of validity, according to the authentic form, it would possess authenticity by the other form as soon as it was verified. At the same time he desired to remark that the notarial form had many very great advantages which should not be overlooked. The will drawn by the testator himself in the presence of two witnesses might be lost or mislaid, and might not be found after the death of the testator. It occurred not unfrequently that wills of this kind were discovered long after the division of the property; but, with regard to the notarial wills he did not recollect having heard of any case in which the will, according to that form, had been lost. There was certainly a very great advantage in having an *acte* of so much importance deposited in the hands of a third party.

Hon. Mr. DORION said that the hon. gentleman was mistaken if he fancied that he [Mr. Dorion] had any desire to deprecate the notarial form of will. On the contrary, he wished to facilitate that form, by ridding it of those formalities which did not attach to wills made according to the other form. He failed, however, entirely to see why a will should not be made before a notary and one witness. [Hear, hear.]

Mr. DUNKIN said that the will before two notaries or before a notary and two witnesses was an authentic *acte* of itself. The will made according to the other form would be valid on being verified. He did think, however, that the hon. gentleman would see, on consideration, that it was necessary that the will—which only came into question after the death of the party by whom it was made—should be hedged around with a little more formality than an ordinary deed.

The proposed amendment was carried.

Mr. GEOFFRION, referring to resolution 148, said he did not see that it was correct in principle that the relationship of the witnesses of the testament should, in itself, be an absolute case of nullity.

Hon. Mr. CARTIER said that the hon. gentleman could propose an amendment to-morrow on the third reading.

On the discusion of the next article to which objection was taken—

Hon. Mr. DORION suggested to strike out that section of the provision which tended to disqualify aliens from being witnesses to notarial deeds. He could not understand why a difference had been made, in this respect, between wills and notarial deeds.

Mr. DUNKIN said that this was a very important matter indeed. There was a very large number of people, indeed in the country who were aliens in the eye of the law, and who really did not know it. Some of these people had been many years in this country, and had not the slightest idea that they were in reality aliens. Indeed he could not state positively, but it was possible that there might be some notaries who were open to this objection.

Hon. Mr. CARTIER said that in permitting aliens to witness wills regard was had to any emergency which might arise in which it might, perhaps, be impossible to procure other than aliens as witnesses. For instance, suppose a person travelling in some remote part of the country, was taken suddenly and dangerously ill. He might find none around him except Americans, Frenchmen or Germans, or some other foreigners. In view of the possibility of such circumstances, it was necessary that aliens should be qualified as witnesses in respect to wills. He had no objection whatever to extend this privilege to aliens so far as ordinary notarial deeds were concerned. The hon. gentleman, [Mr. Dorion] however, would not attain his object by striking out the word "alien" in the clause he indicated, as he proposed to do. The proper view in order to accomplish his object would be to make an addition to a clause elsewhere.

Hon. Mr. DORION asked whether the hon. Attorney General East was willing that this should be done.

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

On the next resolution—

Hon. Mr. CARTIER said that with regard to wills drawn according to the English form, he desired as he had stated at the outset, to move an amendment to the effect, that females should be held as qualified to act as witnesses.

The amendment was carried.

On the next resolution—

Mr. GEOFFRION said, that with respect to the registration of hypothecs, he was of opinion that the hypothec, resulting from mutual assurance liabilities should be registered. The fact of a hypothec arising from such a cause being in existence could not be ascertained, inasmuch as its origin was not, so to speak, a public transaction. As a matter of information, charges of this nature should be registered. There was no other way of being able to discover their existence. It was the same with regard to the charge arising from the shares due toward the construction or repairs of churches or parsonage-houses. How was the purchaser to know of the existence of such a charge?

AN HON. MEMBER—From the curé who is the custodian of the *role de repartition*.

Mr. GEOFFRION—But the property might have passed out of the hands of the proprietor during whose possession the liability had originated, into the hands of a person of another faith, so that the purchaser might never for a moment imagine there was such a charge on it. Or the intending purchaser being of a different faith might not perhaps care to seek infor-

mation from the curé who, by the way, was not bound to give it.

Mr. J. DUFRESNE [Montcalm] argued that the suggestion of the member of Vercheres, [Mr. Geoffrion] if carried into effect would only entail expense. All necessary publicity and information could be obtained by the law as it stood without amendment.

Mr. GEOFFRION made a motion to amend the resolution in the sense of his suggestion.—Lost on a division.

Mr. POULIOT suggested an amendment in the article relative to registration of *tutelle* by adding the words "in the county."

After some discussion, however, this was dropped.

Mr. GEOFFRION moved to amend the provision relative to registration, by adding a few words that registration might be made by means of a summary of the deed, or one summary for several deeds.—Carried.

Hon. Mr. CARTIER made a change in the interpretation clause, or provision relative to retroactive effect, so as to render it thoroughly explicit and unmistakeable that so far as the amendments to the Code were concerned, all contracts and other matters which had originated previous to the Code, should be governed by the laws in force on such points previous to the promulgation of the Code.

Some minor amendments were discussed, but it was understood that the amendments would be printed in time for the third reading.

The Committee then rose and reported the bill.

On motion of Hon. Mr. CARTIER the report of the Committee was received, and the third reading was ordered for Friday.

Hon. Mr. HOLTON would like to know the order of business for to-morrow—whether the hon. Attorney-General East would move the third reading of this bill before proceeding with the other business.

Hon. Mr. CARTIER said he would move for the third reading in the course of the afternoon.

Hon. Mr. HOLTON.—Before going into Committee of Supply?

Hon. Mr. CARTIER.—I will move it in the course of the afternoon.