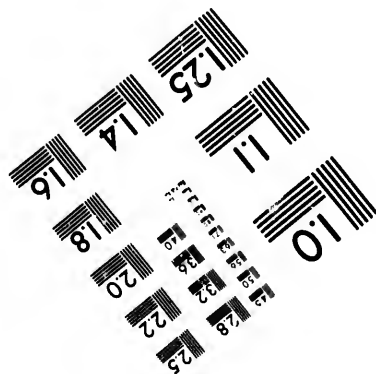
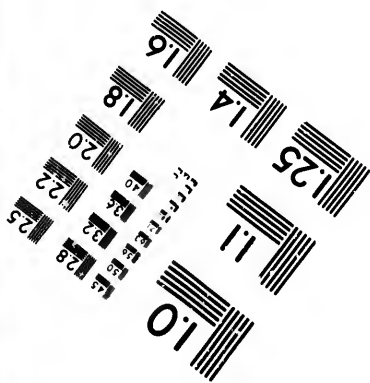
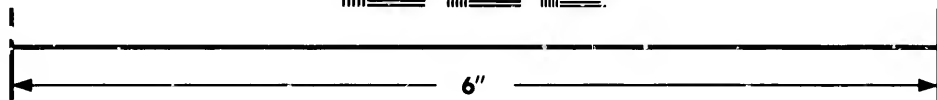
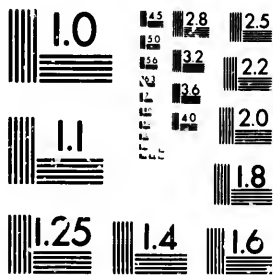


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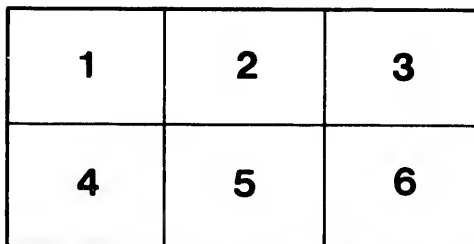
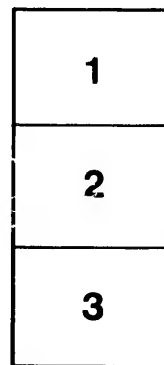
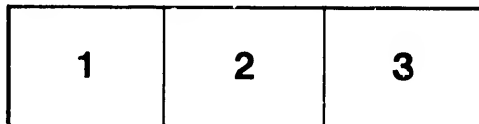
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MORAL LEGISLATION

W. a. Watt

Montreal: 1890



MORAL LEGISLATION.

A STATEMENT

PREPARED FOR THE INFORMATION

OF

THE SENATE.

MONTREAL:
PRINTED BY THE GAZETTE PRINTING COMPANY.

1890.



Printed, not published.]

MORAL LEGISLATION.

A STATEMENT FOR THE INFORMATION OF THE SENATE.

For many years I have been endeavouring in one way and another to promote legislation which would secure greater protection to women, and more especially to young girls, than was afforded by the Dominion statutes, but with very indifferent success hitherto.

Taking advantage of the Montreal meeting of the General Assembly of the Presbyterian Church of Canada in May 1885, I prepared a pamphlet similar to this for circulation among the members and petitioned the Assembly to take action. The Assembly referred the matter to a Committee, the Chairman of which, Mr. Justice MacLennan, reported a petition to Parliament which was adopted by the Assembly and transmitted to Ottawa. Similarly the Methodist Conference, the Congregational Union and the Ministerial Association of Montreal were approached and they also took action and petitioned Parliament. These petitions are quoted below.

Early last year the Society for the Protection of Women and Children took the matter up and appointed the committee of which I am Chairman, and hence the accompanying correspondence. The notes and information which follow were gathered together with a view to their being presented to the Senate on the second reading of the bills, or else presented to the committee of the Senate to whom it was expected the bills would have been referred; and neither opening being now probable I have concluded to print them in this form. It is proper I should add that, beyond the correspondence quoted below, I am alone responsible for the contents of this pamphlet.

D. A. WATT.

SOCIETY FOR THE PROTECTION OF
WOMEN AND CHILDREN,
MONTREAL, February, 1889.

HON. GEORGE A. DRUMMOND,
The Senate, Ottawa :

DEAR SIR,—

I have mailed under a separate cover to your address drafts of two bills for the amendment of chapter 162 of the Revised Statutes, the purpose of which is to give better protection to women, and especially to young girls, than the law presently affords.

The first of those bills is designed to extend the protection afforded under section 42, now restricted to women of property and heiresses, to all women and girls, the poor as well as the rich.

The principle that the measure of protection afforded by law to the persons of women should be contingent on their status as regards property, has been eliminated from the criminal codes of most civilized countries, and its elimination from our statute book ought to be deemed non-contentious legislation.

Moreover, the conditions of girl-life in Canada are such that the poor and friendless are in greater need of legal protection than the rich and guarded, and not in less need, as our law now takes for granted.

I am, therefore, in hopes that this bill may become law with but little controversy.

The second bill proposes :—(1) To raise the age of "consent" from *twelve* years, where it now stands, to a point somewhat nearer to civilized decency. The age inserted, *sixteen* years, is that of the mother country, of many of the separate states as well as of the United States, and of section 44 of the chapter under consideration when the girl has a parent or guardian; (2) to include "attempts" in several of the sections which now contemplate only the completed offence; and (3) to provide for the punishment of guilty parents, near relatives, fiduciaries, guardians, etc., etc., who may have betrayed the trust reposed in them.

The Minister of Justice once informed me that unfaithful fiduciaries could be punished under the Common Law. The English and American authorities do not, so far as I have read, bear this out, but even so, the mere enactment and publication of the provision could not fail to have a salutary effect.

Section 44, above quoted, gives certain very effective protection to a girl that has a faithful guardian; but a girl without a guardian, or with one who is unfaithful, receives no protection under it

This second bill will, I suppose, go to a committee of the Senate, before whom this Society desires to appear and to be heard.

Yours faithfully,

D. A. WATT,

Chairman of Committee.

On the twenty-eighth of March, I again took occasion to write substantially as follows, some informal communications having meanwhile passed between Mr. Drummond and myself.

DEAR SIR,—

I am to thank you for your favor of yesterday informing me that the two draft-bills for the better protection of women and girls had been handed to the law clerk of the Senate for his report, upon receipt of which you would take occasion to consult the leader of the Senate with respect to them.

We had ourselves considered the advisability of seeking the aid of that gentleman in his official capacity, but refrained from doing so, inasmuch as the questions at issue were not political but moral, and moral questions are not commonly passed upon by the Cabinet, but are left open for members and ministers to deal with according to their individual judgment.

May I venture to express the hope that the matter will not be unduly delayed, as the Society is most anxious to bring the subject under the notice of Parliament during the present session.

Yours faithfully,

D. A. WATT,

Chairman.

THE SENATE, May 14th, 1889.

MR. D. A. WATT,

Chairman, etc., etc.:—

DEAR SIR,—

As I have from time to time reported to you, I submitted your draft bills, amending the criminal law in various particulars, to the Honorable the Minister of Justice, the Hon. J. J. C. Abbott, and the Law Officer of the Senate.

The first mentioned, after due deliberation, could not give his approval, and, consequently, no hope whatever existed of being able to pass them as private bills.

It was intimated to me that the Government was disposed to assist in amending the law to punish more effectually procurers and procuresses. Perhaps you may think of making this available by a suitable bill which I should introduce in the Senate next session.

I am,

Yours, etc., etc.,

G. A. DRUMMOND.

SOCIETY FOR THE PROTECTION OF
WOMEN AND CHILDREN,

MONTREAL, February 9th, 1890.

THE HON. G. A. DRUMMOND,

The Senate, Ottawa:—

DEAR SIR,—

In May last you intimated to me that Government aid towards the passing of a suitable bill for the more effectual punishment of procurers and procuresses was not unlikely to be forthcoming, and you invited me to send you the draft of such a bill, the which, on approval, you would submit to the Senate.

Broadly speaking, the traffic in girlhood may be divided into:—

1. The import and export traffic of the Dominion, mainly with the United States;
2. The traffic within the Dominion from one city to another, and from the country parts to the cities; and
3. The traffic within cities.

In the draft bill which I enclose the two first infamies are reached very directly, and the third somewhat indirectly. The latter may, however, also be reached under the present law, while the first cannot be so reached, being, in fact, a legal occupation.

The bill will also reach and deter those fugitive criminals who are now accustomed to bring their victims into Canada, to live with them a few weeks, and then to desert them in a boarding-house, or more often in a brothel, frequently also leaving them a charge on the community.

The draft bill is based on the provisions of the Imperial Act of 1885, section 2nd, which I have endeavored to adapt to our requirements. Clause (a) is the present section 44; (b) is the new matter.

Yours faithfully,

D. A. WATT.

BILL.

An Act to amend chapter 162 of the Revised Statutes of Canada Her Majesty, etc., etc.

Section 44th of the said chapter shall hereafter read as follows:—

44. Everyone who—

(a) Unlawfully takes or causes to be taken any unmarried girl being under the age of sixteen years, out of the possession and against the will of her father and mother, or of any other person having the lawful charge of her; is guilty of a misdemeanor, and liable to be imprisoned for any term less than two years; or who—

(b) procures or attempts to procure any girl or woman to leave the Dominion, or to leave her domicile or place of abode whether such domicile or place be within the Dominion or elsewhere, with intent that she may, either within or without the Dominion, have unlawful carnal knowledge of any person or persons, or become an inmate of a disorderly house,

Is guilty of abduction and liable to five years' imprisonment as a felon if the woman or girl be a minor under twenty-one years

of age, or to two years' imprisonment as a misdemeanant if she be a major.

P.S.—If you are willing to also introduce a bill to protect minors from incitement to vice, I append a suggested draft as follows:—

BILL.

An Act to make further provision for the protection of minors from incitement to vice, and for other purposes.

Everyone who—

(a) Procures or attempts to procure the commission of any act of immorality or gross indecency by or with a minor of either sex, or who

(b) counsels, encourages, facilitates or favors the commission of any such act by or with a minor of either sex, or who

(c) incites a minor of either sex to immorality or gross indecency by any means whatsoever,

Is guilty of a felony, and liable to five years' imprisonment if the minor be under sixteen years of age, or of a misdemeanor and liable to two years' imprisonment if the minor be of or over that age:—Provided always that when the guilty person is also a minor, his or her age may be pleaded in mitigation of punishment.

THE PROPOSED LEGISLATION.

Instead of transcribing the formal bills sent to Mr. Drummond a year ago, I append a transcript of all the sections of chapter 162 of the Revised Statutes, relating to the abduction and defilement of women. The words placed within brackets are those which it was proposed to omit, and words in *italics* are those which it was proposed to add to the sections.

ABDUCTION AND DEFILEMENT OF WOMEN.

38. Every one who assaults any woman or girl with intent to commit rape is guilty of a misdemeanor, and liable to im-

prisonment for any term not exceeding seven years and not less than two years.

39. Every one who unlawfully and carnally knows and abuses or who attempts to have unlawful carnal knowledge of any girl under the age of ten years, is guilty of felony, and liable to imprisonment for life or for any term not less than five years.

40. Every one who unlawfully and carnally knows and abuses, or who attempts to have unlawful carnal knowledge of any girl of or above the age of ten years and under the age of twelve years is guilty of a misdemeanor, and liable to seven years' imprisonment.

41. Every one who commits any indecent assault upon any female, or has or attempts to have unlawful carnal knowledge of any girl [under twelve years of age] of or over the age of twelve years and under the age of sixteen years is guilty of a misdemeanor and liable to imprisonment for any term less than two years, and to be whipped.*

42. Every one who—

(a) From [motives of lucre] any motive whatsoever takes away or detains against her will, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, any woman of any age [who has any interest, whether legal or equitable, present or future, absolute, conditional or contingent in any real or personal estate, or who is a presumptive heiress or co-heiress or presumptive next of kin, or one of the presumptive next of kin to any one having such interest] or—

(b) [fraudulently] allures, takes away or detains [such] any woman, being under the age of twenty-one years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person,—

Is guilty of felony, and liable to fourteen years' imprisonment :

* The punishment of stripes is confined to this section, and omitted from the previous sections which relate to more heinous crimes.

2. Every one convicted of any offence under this section shall be incapable of taking any estate or interest, legal or equitable, in any real or personal property of such woman, or in which she has any interest, or which comes to her as such heiress, co-heiress or next of kin ; and if any such marriage takes place, such property shall, upon such conviction, be settled in such manner as any court of competent jurisdiction, upon any information, at the instance of the Attorney General for the Province in which the property is situate, appoints.

43. Every one who, by force, takes away or detains against her will any woman, of any age, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, is guilty of felony, and liable to fourteen years' imprisonment.

44. Every one who unlawfully takes or causes to be taken any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, is guilty of a misdemeanor, and liable to imprisonment for any term less than two years.

And the proposed new clause for the punishment of unfaithful trustees was as follows :—

50. Every person who—

- (a) Being the parent, guardian, tutor or near relative of any woman or girl ; or—
- (b) being a person in authority over or having the lawful care or charge of any woman or girl ; or—
- (c) being a licenciate, or an official, or the occupant of a position of trust or responsibility of any kind towards any woman or girl or towards the public ;
 - (1) Takes, receives, employs, harbors or uses, or causes or procures to be taken, received, employed, harbored or used, any woman or girl as aforesaid for any immoral, indecent or unlawful purpose ; or who—
 - (2) is convicted of an offence under chapter 157 of the Revised Statute under the provisions of this chapter,

Is guilty of a felony, and liable to ten years' imprisonment in the case of a minor under sixteen years of age, or of a misdemeanor and liable to five years imprisonment in the case of a minor or of over sixteen years and of a major ; or, in the discretion of the Court, to double the imprisonments and penalties, otherwise imposed by law.

In all criminal prosecutions, proof of age may be either oral or documentary, and in the absence of both, the Court or jury may determine the matter or view of the person implicated.

[The proper drafting of a provision of this nature requires much knowledge and consideration, neither of which I am able to bring to it.]

ATTEMPTS.

Sections 39 and 40 are changed only so far that "attempts" are in each case included. This inclusion, beyond emphasizing the heinousness of the crime, will not otherwise adversely affect the culprit, inasmuch as the minimum punishment in 39 is left, and the minimum in 40 remains at the discretion of the Judge. It should be noted, however, that the age of felony in the Imperial Act is three years higher than here, being thirteen years to our ten.

CONSENT.

Section 41 is very materially changed, the age of "consent" being extended from twelve years, where it now stands for the young girl who is without guardians and without money, up to sixteen years, which may be said to be the minimum age of modern legislation. It is the age of section 44 of the present chapter ; the age of the British law enacted some years ago ; and also the age of the United States and of numerous individual States, as quoted below. As proposed to be amended the clause will read:—

"Every one who commits any indecent assault upon any female, *or has or attempts to have unlawful carnal knowledge of any girl of or over the age of twelve years and under the age of sixteen years, is guilty of a misdemeanor.*"

The additions to the clause include both the attempt and the completed offence ; and also the insertion of the word "unlawful"

which seems to have been accidentally omitted, by the draughts man or printer, from the text as it now appears.

The necessity for legislation of this character is not now seriously controverted in any civilized community. Cases of the defilement and prostitution of girls of tender years, often by or with the concurrence and to the profit of parents or near relations, are of frequent occurrence, and for these crimes there is presently no adequate or deterrent punishment in Canada. Rather than give a list of cases in proof of this statement, which could easily be done, reference is requested to the English blue-book quoted below, wherein the matter is treated at great length, and to the Statutes also quoted below, shewing how the evil has been dealt with in other places.

GREAT BRITAIN.

On May 30th, 1881, Lord Ramsay, on behalf of the ministry of the day, in his place in the House of Lords, moved,—

“That a select committee be appointed to enquire into the state of the law relative to the protection of young girls from artifices to induce them to lead a corrupt life, and into the means of amending the same.”

The motion was carried, and the committee constituted under the chairmanship of Earl Cairns, the eminent law lord and some time Lord Chancellor.

This committee sat and took evidence during the two parliamentary sessions of 1881 and 1882, and reported their proceedings, with minutes of evidence in full, during July of the latter year.

The report and evidence are contained in the parliamentary blue-book No. 109, re-printed 18th June, 1883, by Messrs. Eyre & Spottiswood, the details of which are of great value and interest.

Three paragraphs of the report are as follows:—

“(8) In other countries, female chastity is more or less protected by law up to the age of twenty-one. No such protection is given in England to girls above the age of thirteen.

(9) The evidence before the committee proves beyond doubt that juvenile prostitution, from an almost incredibly early age, is

increasing to an appalling extent in England, and especially in London.

(11) The committee think it better to refer at length to the evidence which has been given before them on this painful subject without attempting to abbreviate it. They are unable adequately to express their sense of the magnitude, both in a moral and physical point of view, of the evil thus brought to light, and of the necessity for taking vigorous measures to cope with it."

The "recommendations" of the committee, being the results of a compromise of differing opinions, were much weaker than might have been looked for in view of the evidence and report. Three of them are here quoted :—

PROCURATION.

"1. That it be made a serious misdemeanor for any person to solicit or endeavor to procure any woman to leave the United Kingdom, or to leave her usual place of abode, for the purpose of entering a brothel, or of prostituting herself in parts beyond the seas, whether he shall or shall not inform the woman of such purpose."

It is to cover crimes of this character committed in Canada that the draft bills quoted on pages 9-10 have been prepared.

CONSENT.

"3. That the age up to which it shall be an offence to have or attempt to have carnal knowledge of, or to indecently assault a girl, be raised from thirteen to sixteen."

This clause was much debated both in the committee and in the House. The Chairman's recommendation was seventeen years. Mr. Gladstone and an influential section of the Commons favored eighteen, in which they were supported by most of the religious bodies, who petitioned through their church-courts, and also by a large number of philanthropic people of great knowledge and experience. It was also urged in other quarters that there should be but one age of majority for girls, for both person and property, and that the poor and friendless needed more protection from the law than the rich and guarded, and not less; which argu-

ments would have made the age twenty-one. The divisions in favor of sixteen years as against a lower age were, however, emphatic enough. In May, 1884, Lord Milltown divided the House, when 102 peers voted for retaining sixteen years in the bill, and only twenty-nine peers against that and in favor of a lower age. The law embodying this recommendation now forms part of the section 5 of the Criminal Law Amendment Act of 1885, and reads :

“ Any person who—

(1) Unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any girl being of or above the age of thirteen years, and under the age of *sixteen years*, shall be guilty of a misdemeanor.”

ABDUCTION.

“ 4. That the age of unlawful abduction (24-25 Vict., c. 100, s. 55) with intent to have carnal knowledge unlawfully, be raised from sixteen to twenty-one.”

This section 55 is the same as the Canadian section 44, quoted above. The intention of the committee apparently was to assimilate the age of protection for guarded girls who were not heiresses to that afforded, by another section, to guarded girls who were heiresses (our sec. 42) ; but Parliament did not adopt the recommendation. Section 55, which does not require “ intent ” on the part of an abductor to be proved, was left untouched, and a new section was enacted, with the compromise age of eighteen years inserted, reading as follows :—

“ 7. Any person who—

With intent that any unmarried girl under the age of eighteen (18) years should be unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally—

Takes or causes to be taken such girl out of the possession and against the will of her father and mother, or any other person having the lawful charge of her, shall be guilty of a misdemeanor.”

GENERAL.

The British law, broadly speaking, therefore stands thus :—

To have, or to attempt to have, carnal knowledge of a minor girl even if she consent

—is a felony if under thirteen ;—in Canada the age is ten years ;

—is a misdemeanor if under sixteen ;—in Canada the age is twelve years ;

—is a misdemeanor if under eighteen if she have a faithful guardian ;—in Canada the age is sixteen years ; and

—is a felony up to twenty-one years under similar circumstances if she be also an heiress or a ward of court ;—and in Canada the age is the same.

In both countries protection is in inverse ratio to helplessness. With us under section 42, for the rich and guarded girl there is protection up to the age of twenty-one on pain of felony ; under section 44, for the guarded girl who is not an heiress, protection ceases at sixteen and on pain only of misdemeanor ; while under section 41, for the poor and friendless girl who is without guardians and without expectations, protection ceases at twelve.

THE UNITED STATES.

The law enacted by Congress and applicable to the United States is as follows :—

“ An Act to punish as a Felony the carnal and unlawful knowing of any Female under the age of Sixteen years.

Every person who shall carnally and unlawfully know any female under the age of *sixteen years*, or who shall be accessory to such carnal and unlawful knowledge before the fact, in the District of Columbia or other place (except the Territories*) over which the United States has exclusive jurisdiction, or in any vessel within the admiralty or maritime jurisdiction of the United States and out of the jurisdiction of any State or Territory, shall

*The Territories provide their own legislation.

be guilty of a felony, and, when convicted thereof, shall be punished by imprisonment at hard labor, for the first offence, not more than fifteen years, and for each subsequent offence, not more than thirty years."

NEW YORK AND NEW JERSEY.

The law of the State of New York (*vide* the Penal Code; Banks Bros, Albany, 1887) is as follows:—

"§ 278. Rape defined.—Rape is an act of sexual intercourse with a female not the wife of the perpetrator, committed against her will or without her consent. A person perpetrating such an act, or an act of sexual intercourse with a woman not his wife—

(1) When the female is under the age of *sixteen years*; or

(2) when through idiocy, imbecility or any unsoundness of mind, either temporary or permanent, she is incapable of giving consent; or

(3) when her resistance is forcibly overcome; or

(4) when her resistance is prevented by fear of immediate and great bodily harm, which she has reasonable cause to believe will be inflicted upon her; or

(5) when her resistance is prevented by stupor or by weakness of mind, produced by an intoxicating, narcotic or anaesthetic agent, administered by, or with the privity of, the defendant; or

(6) when she is at the time unconscious of the nature of the act and this is known to the defendant;—

Is punishable by imprisonment for not less than five nor more than twenty years."

In this Code "attempts" are dealt with in the two following sections:—

"§ 34. Attempt to commit crime defined.—An act, done with the intent to commit a crime, and tending but failing to effect its commission, is an attempt to commit that crime.

§ 35. Prisoners indicted may be convicted of lesser crime, or attempt.—Upon the trial of an indictment, the prisoner may

be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the same crime."

The law of the State of New Jersey is somewhat similar to the foregoing, the age of "consent" being also *sixteen years*.

THE STATE OF PENNSYLVANIA.

The following quotation from the penal code of this state is given at second-hand.

"Section 91. If any person shall have unlawful carnal knowledge of a woman forcibly and against her will, or, who being at of the age of sixteen years and upwards, shall unlawfully and carnally know and abuse any woman-child of or under the age of *sixteen years* with or without her consent, such person shall be adjudged guilty of felonious rape and on conviction be sentenced to pay a fine not exceeding one thousand dollars and undergo an imprisonment by separate or solitary confinement at labor or 'y simple imprisonment not exceeding fifteen years."

THE STATE OF KANSAS.

The two sections of the General Statutes of this State respecting Crimes and Punishments which relate to the age of consent are as follows:—

"Section 31. Every person who shall be convicted of rape, either by carnally and unlawfully knowing any female under the age of *eighteen years*, or by forcibly ravishing any woman of the age of eighteen years or upwards, shall be punished by confinement and hard labor not less than five years nor more than twenty-one years.

Section 32. Every person who shall have carnal knowledge of any woman of eighteen years or upwards without her consent by administering to her any substance, liquid, or any potion, by inhalation or otherwise, which shall produce such stupor or imbecility of mind or weakness of body as to prevent effectual resistance, shall upon conviction be adjudged guilty of rape, and be punished as in the last section provided."

MASSACHUSETTS AND IOWA.

With a view to a comparison with our own the following extracts are given from the brothel laws of two neighboring States.

Chapter 329 of the Massachusetts statutes enacts :—

Sect. 1. Whoever fraudulently and deceitfully entices or takes away an unmarried woman, of chaste life and conversation, from her father or wherever else she may be found, for the purpose of prostitution, or for the purpose of unlawful sexual intercourse at a house of ill-fame or assignation or elsewhere, and whoever aids and assists in such abduction for such purpose, shall be punished by imprisonment in the State prison not exceeding three years, or in the common jail not exceeding one year, or by a fine not exceeding \$1,000, or by both fine and imprisonment.

Sect. 3. Whoever induces any person under the age of *eighteen* years, of chaste life and conversation, to have unlawful sexual intercourse, shall be punished by imprisonment * * * not exceeding three years, or by a fine not exceeding \$1,000, or by both * * * .

Sect. 5. Whoever, being the owner of any premises or having or assisting in the management or control thereof, induces or knowingly suffers any girl under the age of 21 years to be in or upon the premises for the purpose of being unlawfully and carnally known of any person or persons, shall be punished by imprisonment * * * not exceeding three years, or by a fine not exceeding \$1,000, or by both * * * .

Chapter 311 enacts :—

Sect. 1. Whoever, for himself or herself or as agent or employee of another person, knowingly sends, or aids or abets in sending, any woman or girl to enter as an inmate or a servant any house of ill-fame or other place resorted to for the purpose of prostitution, shall for each offence be punished, etc., etc., and Whoever, as proprietor or keeper of an intelligence or employment office, either personally or through an agent or employee, sends any woman or girl to enter, as aforesaid, any house of ill-fame or other place resorted to for the purpose of prostitution, the character of

which could have been ascertained by him on reasonable enquiry, shall be punished, etc., etc.

Sect. 2. Any person who, for any length of time whatsoever, unlawfully detains or attempts to detain, or aids or abets in administering any drug for the purpose of detaining any woman or girl in any house of ill-fame or other place resorted to for the purposes of prostitution, shall, for each offence, be punished by a fine of not less than \$100, nor more than \$500, and by imprisonment not less than one nor more than three years, or in the State prison not more than five years.

In the law of the State of Iowa there is a remarkable provision for the protection of women who may have given up their evil lives, as well as for others. Section 4016 of the State code enacts that whoever shall entice back into a life of shame any female who has heretofore been guilty of the crime of prostitution, or who ever shall inveigle or entice any female before reported virtuous to a house of ill-fame, or shall knowingly conceal, or assist or abet in concealing, a female so deluded or enticed, for the purpose of prostitution or lewdness, shall be punished by imprisonment in the penitentiary not less than three nor more than ten years.

ONTARIO.

In 1887 the Legislature of Ontario found it necessary to pass the following "Act for the Protection of Women in Certain Cases."

1. No person shall at any time or place within the precincts of any institution to which *The Prison and Asylum Inspection Act* applies, unlawfully and carnally know any female, who is capable in law of giving her consent to such carnal knowledge, while she is a patient or is confined in such institution.

2. Whosoever violates section one of this Act is guilty of an offence, and shall be liable to be imprisoned in any gaol or place of confinement, other than the penitentiary, for any term less than two years, with or without hard labor.

3. The person charged shall be a competent witness in his own behalf.

4. Nothing in this Act contained, nor any conviction obtained in pursuance thereof, shall deprive any person of the right to maintain an action for damages against the person so charged.

FRANCE.

The following are some of the articles of the French penal code protecting minors from defilement and incitement to vice.

330. Toute personne qui aura commis un outrage public à la pudeur sera punie d'emprisonnement de trois mois à deux ans, et d'une amende de seize francs à deux cents francs.

331. Tout attentat à la pudeur consommé au tanté sans violence sur la personne d'un enfant de l'un ou de l'autre sexe âgé de moins de treize ans, sera puni de la réclusion.

Sera puni de la même peine l'attentat à la pudeur commis par tout ascendant sup la personne d'un mineur même âgé de plus de treize ans, mais non émancipé par le mariage.

334. Quiconque aura attenté aux mœurs, en excitant, favorisant, ou facilitant habituellement la débauche ou la corruption de la jeunesse de l'un ou de l'autre sexe au-dessous de l'âge de vingt-un ans, sera puni d'emprisonnement de six mois à deux ans, et d'une amende de cinquante francs à cinq cents francs.

Si la prostitution ou la corruption a été excitée, favorisée, ou facilitée par leur pères, mères, tuteurs, ou autres personnes chargées de leur surveillance, la peine sera de deux ans à cinq ans d'emprisonnement, et de trois cents francs à mille francs d'amende.

354. Quiconque aura, par fraude ou violence, enlevé ou fait enlever des mineurs; ou les aura entraînés, détournés ou déplacés, ou les aura fait entraîner, détourner ou déplacer des lieux où ils étaient mis par eux à l'autorité ou à la direction desquels ils étaient soumis ou confiés, subira la peine de réclusion.

355. Si la personne ainsi enlevée ou détournée est une fille au-dessous de seize ans accomplis, la peine sera celle des travaux forcés à temps.

356. Quand la fille au-dessous de seize ans aurait consenti à son enlèvement ou suivi volontairement le ravisseur, si celui-ci

était majeur de vingt-un ans ou au-dessous, il sera condamné aux travaux forcés à temps.

Si le ravisseur n'avait pas encore vingt-un ans, il sera puni d'un emprisonnement de deux à cinq ans.

It will be noticed that the two latter refer to minor girls and the others to both sexes. The quotations are at second-hand.

Not only is the age of "consent" in all the before mentioned States much higher than it is in Canada, but it is also noteworthy that the heinousness of the crimes specified are greatly emphasized by the severer punishments affixed to them.

AS TO BROTHELS.

The brothel-laws presently in force in Canada are so inadequate as to be of scarcely any value. In addition to the clause in the Vagrant Act there is the following section as amended by Sir Alexander Campbell in 1887:—

7. Every one who by false pretences, false representations, or other fraudulent means,—

- (a) Procures any woman or girl, under the age of twenty-one years, to have illicit carnal connection with any man other than the procurer, or,—
- (b) inveigles or entices any such woman or girl to a house of ill-fame or assignation, for the purpose of illicit intercourse or prostitution, or who knowingly conceals in such house any such woman or girl so inveigled or enticed,—

Is guilty of a misdemeanor and liable to two year's imprisonment.

This clause, purporting to reach procurers and to punish the traffic in vice, has proved so ineffective that probably no conviction of the very common crime of procuration has ever been obtained under it. Moreover, the moral sense of the community rebels against a law which singles out the agent for punishment, and expressly exempts the greater criminal, the principal. The words "other than the procurer" have been interpolated here, they are not in the British act from which the clause (a) has

otherwise been copied. Trafficers in vice and inciters to debauchery are punished in almost every civilized country in the world. The law-makers of France, have put our legislators to shame by branding as a crime (see article 334 of the penal code) the inciting, abetting or facilitating immorality in youths of either sex up to the age of twenty-one, and that without the false pretense reservation or the omission of the conspirator-in-chief from the scope of the law. In any event there should be no limit of age where fraud is used; and as regards girls who are minors the clause should be imperative, should cover attempts, should include principal as well as agent, and also all persons who aid or abet in the act of infamy.

I sent in the following petition against the bill, in which the more patent objections are formulated:—

To His Excellency the Governor-General-in-Council.

The Memorial of the undersigned, a Citizen of Montreal,
SHEWETH,—

That

Whereas a bill has recently passed both Houses of Parliament and is now before your Excellency for assent, entitled “An Act further to amend an Act entitled ‘An Act respecting offences against the person,’ ”

and

Whereas the principal clause of the said bill, by implication,

- (a) Legalizes the crime of procuration, unless the victim be a minor and fraud be provable; and
- (b) Legalizes the defilement of minor girls, when over eleven years old, unless the crime be compassed by means of fraud, enticement, a brothel, and what-not, provable and cumulative;
—the said clause being in effect a notification to traffickers in vice and lechers generally, that if certain procedure be avoided by them, they will be within their legal rights; and

Whereas the principles of morality require that each of these crimes should be constituted a punishable legal offence, without reservation and under all circumstances—and have, in fact, been so constituted by the laws of many civilized communities, and

Whereas it is the duty of legislative bodies to enact decent, reputable, and moral legislation, while this proposed law, together with that which it purports to amend, are essentially indecent, disreputable and immoral:—

Wherefore, your Memorialist prays your Excellency to withhold assent from the said vicious and otherwise useless Bill:—

And your Memorialist will ever pray.

It is very disheartening to compare these halting, half-hearted and tentative provisions, enacted for the so-called "protection" of the inexperienced, helpless girl who has neither guardians nor expectations, with the very direct and stringent protection given to the heiress by the section 42 above quoted. Moreover, when parliament essays to deal with matters affecting even grown men of mature years, its enactments are direct enough, as witness the following:—

FROM CHAPTER 100.

No oleomargarine, butterine or other substitute for butter * * * shall be manufactured in Canada or sold therein, and every person who contravenes the provisions of this Act * * * shall be liable to imprisonment for a term not exceeding twelve months and not less than three months.

FROM CHAPTER 159.

Every one who—

(d) records or registers any bet or wager, or sells any pool * * * is guilty of a misdemeanor and liable to a fine not exceeding \$1,000 and to imprisonment for any term not exceeding one year.

FROM 51 VIC., CHAP. 42.

" Every one who—

with intent to make gain or profit by the rise or fall in price [of anything], makes or signs or authorizes * * * any contract or agreement oral or written purporting to be for the sale or purchase [of anything], in respect of which no delivery of the thing sold or purchased is made or received * * * and every one who acts, aids or abets " in so doing is guilty of a misdemeanor and liable to one year's imprisonment.

It will be noticed that in these sections it is not the procurer only that is punished nor the minor only that is protected, and that neither falsehood nor fraud nor inveiglement are necessary to a conviction. It is very different with Section 7, which, while pretending to give protection to young girls, really gives protection to the brothellers, and is what Mr. Waugh, the "Child's Guardian," would call "a vile and all too common kind of statutory hypocrisy."

Then there is this clause taken from Mr. Charlton's bill:—

5. Every one who—

Being the owner *and* occupier of any premises, or having or acting or assisting in the management or control thereof, induces or knowingly suffers any girl of such age as is in this section mentioned, to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any *man*, whether such carnal knowledge is intended to be with any particular *man* or generally—

- (a) If such girl is under the age of twelve years, is guilty of felony, and liable to ten years imprisonment—
- (b) If such girl is of or above the age of twelve and under the age of sixteen years is guilty of a misdemeanor, and liable to two years imprisonment.

Provided that it shall be a sufficient defence. . . . that the person so charged had reasonable cause to believe that the girl was of or above the age of sixteen years.

Here, too, it is only the brothel-keeper who is punishable; the culprit-in-chief who buys the child is not included in the clause. He may not marry the child, may not even buy of her her doll, she being a minor, but he may buy and defile her person, and be within his legal rights if she be of or over the age of twelve years.

The words in italic seem to limit the scope and usefulness of the section; and as regards the *proviso* there is surely something revolting in the spectacle of the legislature going out of its way to protect the brothel-keeper from well-merited punishment, and to afford him an immunity which is not given to members of the community engaged in lawful occupations.

A PROPOSED BILL.

The following is the draft of a measure, the enactment of which would bring our law somewhat more in accord with the laws of European countries and of the neighboring States and would promote the cause of public morals.

BILL.

An Act to make further provision for the protection of women and girls, the suppression of disorderly houses, the conservation of public morals, and for other purposes.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Every brothel, house of ill-fame, bawdy-house or house of assignation, and every house, room, place or premises resorted to or visited by persons for any lewd, obscene, indecent, immoral or unlawful purpose, is a disorderly house; and everyone who keeps or manages, or acts or assists in the management, or appears or behaves as the person having the care, government or management of a disorderly house, shall be deemed to be the keeper thereof.

Proof of age may be oral or documentary, and, in the absence of both such, the Court or jury may determine the matter on view of the person implicated.

2. Every one who—

- (a) Is the keeper of a disorderly house; or
- (b) being the tenant, lessee or occupier of any premises, knowingly permits such premises, or any part thereof, to be used as a disorderly house; or
- (c) being the landlord, mortgagee* or owner of any premises, or the agent of any such person, lets or is a party to the letting of the same or any part thereof, with the knowledge that such

* An old-time Montreal property owner was accustomed to sell his \$2,000 houses to brothel keepers for say \$5,000, taking a "mortgage" for the full amount, and drawing his *interest* monthly in advance. By this ruse he evaded prosecution as an owner.

premises or some part thereof are or is to be used as a disorderly house, or is wilfully or knowingly a party to the use of such premises, or any part thereof, as a disorderly house ;

Is guilty of a misdemeanor, and liable to six months' imprisonment; and on a second or subsequent conviction, to twelve months' imprisonment; and in the case of a third conviction, such person shall also enter into a recognizance, with such sureties as the Court deems sufficient, to be of good behavior for two years, or, in the alternative, shall be imprisoned for such further term as the Court may direct, but not exceeding two years.

3. Every one who—

Being the keeper of a disorderly house, induces, permits or knowingly suffers a minor of either sex to be in or upon, or to resort to, any such premises for an indecent, immoral or unlawful purpose,

Is guilty (1) of a felony, and liable to five years' imprisonment, in the case of a minor under sixteen years of age ; and (2) of a misdemeanor, and liable to two years' imprisonment, in the case of a minor of or over the age of sixteen years.

4. Every one who—

By force, menace, duress, intimidation, threats, false promises, false pretences, false representations, or other forcible, false or fraudulent means, sends, or takes to, or detains any woman or girl—

(a) unto or in or upon any premises, with intent that she may be unlawfully and carnally known of any person or persons, or for any other immoral, indecent or unlawful purpose ; or

(b) unto or in any disorderly house,

Is guilty (1) of a felony, and liable to five years' imprisonment, in the case of a girl under sixteen years of age ; and (2) of a misdemeanor, and liable to three years' imprisonment, in the case of a girl of or over the age of sixteen years, and of a woman ;

Provided that when a woman or girl is in or upon any premises for an indecent, immoral or unlawful purpose, or is in a disorderly house, a person shall be deemed to detain such woman or

girl in and upon such premises or in such disorderly house, if, with intent to compel or induce her to remain therein, such person withholds from such woman or girl the wearing apparel necessary to enable her to leave such premises or disorderly house, or any money or property belonging to her;

And no legal proceedings shall be taken against such woman or girl for taking away or being found in the possession of any such wearing apparel as may have been needful to enable her to leave such premises or disorderly house decently and becomingly clothed.

5. Every one who—

Procures or attempts to procure any woman or girl, not being a common prostitute or of known immoral character, to have unlawful carnal knowledge of any person or persons, or to enter into or upon any place or premises for an indecent or immoral purpose, or into a disorderly house,

Is guilty of (1) felony, and liable to five years' imprisonment, in the case of a minor; and (2) of a misdemeanor, and liable to two years' imprisonment, in the case of a major.

6. Every one who—

(a) Being an official, or a licentiate, or the occupant of a position of trust or responsibility of any kind towards the public; or

(b) being the parent, guardian, near relative, trustee or fiduciary of any woman or girl; or

(c) being a person having the lawful care or charge of any woman or girl, or being in authority over her;

(1) Sends or takes to, or detains any woman or girl, or consents to her being, or knowingly suffers her to be sent, taken or detained as in the last section provided; or

(2) promotes, causes, encourages, favors, or is privy to the seduction, defilement or prostitution of any woman or girl, circumstanced as aforesaid,

Is guilty of (1) a felony, and liable to five years' imprisonment in the case of a minor girl under twenty-one years of age, or of

(2) a misdemeanor, and liable to two years' imprisonment in the case of a major.

7. Every one who—

Being a male person,

(1) robs, assaults, maltreats, or defrauds any woman or girl, or

(2) commits any indictable offence whatsoever,

In or upon any premises as aforesaid, or in any disorderly house,

Is liable in double the penalties and imprisonments imposed by law.

8. Every one who—

Being a male person,

(1) is the keeper of a disorderly house; or

(2) neglects lawful work or business and habitually mispends his time by frequenting disorderly houses, or lives for the most part in a disorderly house, or subsists in whole or in part on the avails of prostitution; or

(3) does an indecent act in a public place or in public view, with intent to insult or offend any person,

Is guilty of a misdemeanor, and liable to three years' imprisonment.

THREE REQUIREMENTS.

I. REFORMATORY PRISONS.

The frequency with which children of tender years are charged before our petty courts, often by their parents or guardians, convicted by a single magistrate, and sentenced for a term of years to some reformatory prison, are matters deserving of grave consideration. The so-called "trial" may last for but a few minutes, and the offence charged and evidence adduced may be of the most trivial character, if, indeed, the child be not entered on the papers as having pleaded "guilty," when there would seem to be no evidence at all. The law, as at present administered, would appear to be a direct incentive to parents and guardians to evade their natural and legal responsibilities, with a view to foist these

responsibilities on the State. A knowledge of the ease with which a child can be thus put away and maintained, must be demoralizing to the family life and morals of parents and guardians, just as the prison life must also demoralize the character of the child. Moreover to herd children together in reformatories is, in many respects, the worst up-bringing that could be given to them.

As an instance of how grave injustice that may be perpetrated under the forms of law, I give the following, as an example of both merits and procedure. It is condensed from a newspaper report in the *Montreal Gazette* for December 30th, 1888.

In December, 1888, Chief Justice Sir A. A. Dorion and Mr. Justice Church gave judgment in *habeas corpus* proceedings in the case of a young girl, Adeline Trempe, who had been brought up by her uncle before the Recorder of Montreal in 1885, and sentenced, at the uncle's request, to five years' imprisonment in a reformatory prison. The trivial charge brought against the girl was that of having begged without the certificate required by law (*vide* chap. 157, sec. 8 (*d*) of the Vagrant Act) to which she "pleaded guilty."

The Chief Justice said that, upon two grounds, the writ must be issued and the girl be liberated. The information accused two persons of separate offences, and had been altered by scoring out the name Eugenie and writing above it the name Adeline, while the Eugenie remained in another part. When or by what authority this alteration had been made did not in any manner appear, although the Clerk of the Recorder's Court admitted that the alteration had been made after the information had been sworn to. He characterized this as utterly unwarrantable and a grave irregularity, said that the alteration of a sworn information could not be too strongly condemned, and that the faulty information was quite fatal to the conviction. The second ground was that neither information nor conviction disclosed an offence known to the law. When the offence was one created by statute, an informant could not take upon himself to swear what was or was not required by law. He then referred to the fact of the conviction having been drawn up three years after the trial, which was certainly a gross irregularity, and could not be permitted to pass unnoticed by

him. He also said that, while he was not called upon to express an opinion on the statute under which the girl had been committed, it nevertheless appeared to him that an act which gave to a single magistrate jurisdiction, without the intervention of a jury, summarily to imprison for five years for such an offence, was simply atrocious.

This particular wrong was thus righted after three years' imprisonment had passed, and at considerable expense for law costs. How many equally flagrant wrongs yet remain to be righted?

II. THE VAGRANT ACT.

In 1884, by 37 Vic., chap. 43, the punishment for offences named in the Vagrant Act was increased from two months to six months, in addition to the \$50 fine. Having watched the administration of this Act for a number of years, I can say that the full punishment is very seldom inflicted, save in the case of helpless, undefended girls, whom the petty courts are accustomed to sentence with a severity that savors of vindictiveness. Six months' imprisonment with a fine, or in the alternative three or six months more, is a usual penalty to them, and not infrequently the money is found by philanthropic people, and it is they who are out of pocket and fined and not the girl. The British law is much more humane. There the general law provides for but fourteen days' imprisonment; the towns' Police Acts for a forty shillings fine, or, failing payment, fourteen days; and the Vagrant Act, which also includes more serious offences, for a month, and even up to three months in cases of gross open indecency. In the city of London, where such offences as "solicitation," "loitering," and so forth are said to be rampant, the punishment is a forty shillings fine, or, failing payment, one month's imprisonment, and there is no reason why our Canadian law should be more severe.

Our Vagrant Act, with its ancient provisions, is badly in need of revision, and of having the punishments graduated to the numerous differing offences, somewhat as in the British act. Meanwhile I submit that a clause should be added providing that no minor girl convicted under it summarily should be liable to

imprisonment for a longer term than thirty days, or to be fined in a larger sum than five dollars.

III. "THE CHILD'S CHARTER."

The Imperial Parliament during its last session passed an Act that has been fittingly termed the Child's Charter. Under it cruel treatment will be more easily prevented than hitherto, and the unhappy lot of the "child of the English savage" greatly mitigated.

The Act is in two divisions, the first dealing with the ill-treatment of children, and the second with their employment and labor.

The age has been assimilated to the age of control, to wit: sixteen years for girls and fourteen years for boys. To ill-treat or neglect a child or youth is now a direct offence, and if the ill-treated child's life was insured, or if any money would come to its guardian at its death, the punishments are doubled. Any one who has the care or custody of a child is required to see that it is well treated, and is himself responsible for its ill-treatment by others. When a child is "found wandering" it is no longer the child who will be arrested and sent to gaoi, but the unfaithful guardian. Moreover, those who cause or procure a child to be ill-treated or neglected are equally culpable with those who do the evil deeds.

So far as the act deals with child labor it may be esteemed as an extension of the Factory Acts; and as regards such offences as begging, it is not the child-beggar who is arrested and gaoled, as in the Adeline Trempe case, but the person who sends it out. Street hawking is left to be dealt with by the local authorities, but here, too, it is not the child-hawker that can be punished, but the person who sends it out or profits by its work.

There is also a general provision (with some exceptions) that no child shall do any work for profit in any public place unless it be over ten years of age. This limit of age seems to be very low; in New York, where the conditions are somewhat similar to those which prevail in the large English cities, the limit is the more humane one of sixteen years.

Legislation of this character is quite as much needed in Canada as it was in England.

APPENDIX A.

The following *precis* has been condensed and somewhat altered from a paper by Mr. William Shaen, an eminent London jurist, and one of the highest legal authorities on these and cognate subjects. It was contributed by him to a London periodical, THE JOURNAL, as long ago as 1881.

The following principles justify legislation on the subject of Social Morality:—

- a.—The Protection of Youth.
- b.—The Protection of all Persons from Force and Fraud.
- c.—The Protection of all Persons from Public Scandal.

In accordance with these principles, the Law of every country OUGHT, *inter alia*, to contain the following provisions:—

FOR THE PROTECTION OF YOUTH.

1. The father and mother of every child are jointly and respectively liable to each other and to the State for the suitable maintenance and education of such child.

(2) If the parents are married, they are jointly and severally guardians of such child during the terms of their lives.

(3) If the parents are not married, the guardianship of the child remains with the mother alone during the term of her life, and the obligation of the father is determined by an affiliation order.

(4) Every person against whom an affiliation order is made shall enter into recognizances, with or without sureties in the discretion of the Court, to secure the due payment of the weekly or other sum ordered to be paid.

The amount of such weekly or other payment to be in the discretion of the Court, suitable to the position in life of the father and the mother of the child. Either the putative father or the

mother may at any subsequent time apply to the Court to rescind or vary the affiliation order.

(5) All children (minors) without a legal guardian are, *ipso facto*, Wards of Court.

On the application of any person as the "next friend" of a Ward of Court, the Court may appoint the applicant or any other person or persons, for such period or indefinitely, and upon such terms and conditions as, to the Court, shall seem desirable, to be acting guardian or guardians of the Ward of Court.

During the term of such appointment, and subject to any conditions specified in the Order of the Court, the acting guardian shall be clothed with the rights and liabilities of a parent of the Ward of Court.

Upon the application of any person as "next friend" of a Ward of Court, the Court may rescind or vary any such Order and may also at any time in its discretion direct such proceedings civil or criminal to be taken as the facts of the case shall require.

(6) Upon a sworn information disclosing reasonable grounds for suspicion that a child (minor) is concealed or retained upon any premises, any magistrate to be empowered to issue a search warrant for such child.

Such child, if found, to be brought before the Court and delivered either to its parent or other legal guardian, or to a certified home.

2. It is a crime (an indictable offence) to attempt by any means whatever, to facilitate, promote, or induce* unlawful intercourse by or with any minor.

This crime is to be punished with increased severity if the criminal occupied a position of trust (a fiduciary relation) towards the victim, *e.g.* parent, guardian, master, teacher, official, licenciate, etc., etc.

* The wording of one clause of the Imperial Act is—"that the seduction has been caused, encouraged or favored by * * * ."

(2) This crime may also be made the subject of an action for damages before a civil tribunal.

FOR THE PROTECTION OF ALL PERSONS FROM FORCE AND
FROM FRAUD.

3. It is a crime (an indictable offence) to attempt by force, or by fraudulent representation or inducement, or by false promises, or by any forcible, false or fraudulent means, to procure, promote or induce unlawful intercourse by or with any man or woman.

This crime is to be punished with increased severity if the criminal occupied a position of trust (a fiduciary relation) towards the victim, *e. g.* parent, master, etc.

(2) This crime may also be made the subject of an action for damages before a civil tribunal.

4. Any false accusation of unchastity or licentiousness may be the subject of an action for slander or libel, as the case may be.

FOR THE PROTECTION OF ALL PERSONS FROM PUBLIC SCANDAL.

As to Brothels.

5. It is a crime (an indictable offence) to keep a brothel, as it is a public nuisance.

Upon the prosecution of any brothel the Court may allow the costs of the prosecution.

6. Upon the conviction of any person as a brothel-keeper, every existing lease or agreement for the tenancy of the brothel, shall be *ipso facto* cancelled to all intents and purposes.

7. Every landlord, whether superior or intermediate, of any tenement used, with his knowledge, as a brothel, shall be liable to prosecution as a brothel-keeper.

8. If any premises, in respect of which any license for any purpose is held, shall be condemned as a brothel, every such license shall be absolutely forfeited.

As to the Streets.

9. All offences against public decency and propriety in the streets, such as night-walking, street-walking, loitering, soliciting or importuning passengers to immorality, are as much offences if committed by men as if committed by women, and are equally to be dealt with by the police.

APPENDIX B.

THE PRESBYTERIAN CHURCH.

The Memorial addressed to the Presbyterian Church was as follows:—

To the Moderator and Commissioners of the Presbyterian Church in Canada, Meeting in General Assembly:

The Memorial of the undersigned, a member of the said Church,
SHEWETH,—

Whereas the Dominion law (Act 32-33 Vic chap. 20, sec. 49-56) enacted for the punishment of offences against morality, and for the protection of women and girls, is inadequate, immoral and unjust,—*Inadequate* in that it does not protect minors from incitement to debauchery,—*Immoral* in that traffickers in vice and betrayers of trusts are not punishable, but are in fact protected under it,—*Unjust* in that while rich and guarded girls are given protection during the whole term of their minority, poor and friendless girls are given no protection beyond their eleventh year of childhood; and

Whereas solemn protest against bad laws, and earnest demand for their amendment, properly come within the purview of the General Assembly;

Wherefore your petitioner prays your Reverend Court to make such protest and demand upon the Dominion Parliament; and

Also to direct that all Synods, Presbyteries, Sessions and Congregations within the bounds shall take communication thereof and govern themselves accordingly.

D. A. WATT.

MONTREAL, June 4th, 1885.

The Petition of the General Assembly of the Presbyterian Church in Canada was as follows :—

HUMBLY SHEWETH,—

Your petitioners have had under consideration the state of the law for the prevention and punishment of crimes and offences against the chastity of women.

Your petitioners believe that such offences are on the increase throughout the land.

Instances of seduction under circumstances of great heartlessness and aggravation on the part of the offenders have not unfrequently come to light.

Cases have occurred of atrocious misconduct to young women by their employers and guardians whose duty it was to protect them.

There is also, as your petitioners think, good reason to believe that many wicked men and women make a trade and business of procuring young women for immoral purposes, and who use threats and intimidation and every species of fraud and artifice to accomplish their ends.

Your petitioners believe that a large number of women are annually ruined and go down to premature graves for want of legal protection.

Your petitioners believe that the existing law is inadequate to prevent such crimes and offences, and they think that the protection now given to women and girls should be greatly enlarged and extended, and that attempts should be made criminal as well as the completed offence.

Your petitioners desire respectfully to call attention to the anomaly presented by the 42nd section of the Revised Statutes of Canada, Chapter 165, which protects young women of property or expectations from abduction, by making the offence a felony punishable by fourteen years' imprisonment, but leaves their less fortunate sisters, who have no expectations or property, to their fate, except when actual force has been employed.

Your petitioners therefore humbly pray that suitable laws may be passed to prevent the evils complained of, and to that end that the law lately enacted by the Imperial Parliament, 48-49 Vic.

Chap. 69, with such modification and extension as the wisdom of Parliament may deem necessary, be adopted for the Dominion.

And your petitioners will ever pray, etc., etc.

THE MINISTERIAL ASSOCIATION.

At a meeting of the Protestant Ministerial Association of Montreal, Rev. George H. Wells reported from the committee appointed to petition for better laws for the protection of women and girls, as follows :—

That this association has heard with great interest and concern the statements of Mr. D. A. Watt regarding the need of improved legislation for the protection of women and girls in our country ;

That we express our hearty thanks to Mr. Watt for his able presentation of the case, and assure him of our sympathy with the efforts of himself and of other men like-minded with him in this work ;

That we record our profound conviction that further and more stringent laws are required, and our earnest hope that the Dominion Parliament may immediately supply this lack, and so amend our legislation that it may impartially protect all classes of women, the poor as fully as the rich, and place us on a par in this respect with the mother-country and with other civilized and Christian lands ; and

That a copy of this action be forwarded to His Excellency the Governor-General of Canada, and to the proper officials of both houses of the Dominion Parliament.

The report was adopted and the petition ordered to be forwarded.

THE CONGREGATIONAL CHURCH.

The Petition of the Congregational Union of Ontario and Quebec, assembled :—

SHewETH,—

That your petitioners have viewed with alarm the prevalence of offences against the chastity of women, especially against the youthful and unprotected ;

That, while your petitioners are thankful for the measure of

protection afforded by the Charlton Act, they feel that its provisions need extending.

Your petitioners would therefore pray that all convictions for procuration for immoral purposes, with or without intimidation thereto or fraud, be punished with heavy penalties.

Your petitioners would further pray that all attempts on chastity be punished, as well as the completed offence;

That silence on the part of the woman, which is often procured by the severest threats, shall not be taken as proof of assent or condonation;

That the punishment for abduction should be made uniform whether it be for young women with property or for those without any means whatever;

And that your honourable House shall pass such laws for the protection of all classes of women as shall in your wisdom be deemed necessary.

And your petitioners will ever pray, etc.

THE METHODIST CHURCH.

To the Honorable the Senate of Canada in Parliament Assembled :

The Petition of the General Conference of the Methodist Church,
RESPECTFULLY SHEWETH—

That serious offences against the chastity of young women are frequently committed for which the laws of the Dominion at present provide no punishment and furnish no adequate remedy;

That your petitioners are of opinion that there is urgent need for immediate legislation for the attainment of the following objects:—

- (1) That the protection now given to women and girls should be greatly enlarged and extended;
- (2) That young women should be protected to a greater age than at present;
- (3) That the persons of other young women should be as fully protected by law as the persons of heiresses now are, and that offences against the former should be as severely punished as those against the latter;

(4) That ample provision should be made for the due punishment of unfaithful parents and guardians who are parties to wrongs against minor girls under their charge;

(5) That the laws of Canada in this respect should be made at least as severe as the laws of England now are.

Wherefore your petitioners humbly pray that your Honorable Body will be pleased to pass an Act embodying the foregoing provisions;

And your petitioners as in duty bound will ever pray.

By order and on behalf of the General Conference of Methodist Church,

E. B. RYCKMAN, D.D.,
Secretary.

A. CARMAN, D.D.,
General Superintendent,

APPENDIX C.

A few weeks after the Statement made to the Presbyterian Church was distributed, that thunderbolt, "The Maiden Tribute," shot forth by Mr. William Thomas Stead, the editor of the *Pall Mall Gazette*, burst over England and electrified the civilized world. One immediate effect was the prompt passage through the Imperial Parliament of the bill referred to on pages 14-17, amended almost beyond recognition, and couched in terms more effective and workable than the most enthusiastic promoters of moral reform dared even to hope for.

The protective provisions of this bill (Imp. Act, 48-49 Vic. chap. 69) may be briefly summarized as follows:—

The age in the section (4) answering to our 39 (*vide* page 11), is now thirteen years against ten years here.

The age in section 5, answering to our 40, is now sixteen years against our twelve years.

The age in section 7, answering to our 44, save that evil intent must also be proved, is now eighteen years against our sixteen years.

The equivalent of our section 42 remains unchanged; there, as

well as here, the rich and guarded girl still maintains her supremacy of protection.

The punishments for the crimes of procreation, the vice-traffic, the harboring of minor girls for immoral purposes, the defilement of women when compassed by means of drugs or intimidation or fraud, and the defilement of idiot or imbecile women, are all sufficiently drastic. Moreover, the evidence of minors is now receivable for what it is worth, there is an effective right of search, and severe punishment for unlawful detention.

On the other hand, the crimes of incest, of adultery, of seduction by false promises or by intoxication not amounting to rape, and the defilement of lunatic women, are not yet legal offences. Inveiglement to a brothel is not made criminal unless it be "for the purposes of prostitution;" nor is even the grossest possible breach of trust punishable otherwise than by the deposition of the criminal from his trusteeship (*vide* sec. 12).

The full text of the Act, with much interesting historical matter, is given in a sixpenny pamphlet entitled "Six Years' Labor and Sorrow," compiled by Mr. Benjamin Scott's Committee for Suppressing the Foreign Traffic in English Girls, and published for them by Messrs. Dyer Brothers, Paternoster Square, London, some copies of which are in the Parliament library.

POSTSCRIPT.

Since the foregoing pages were printed, I have received a copy of the Bill No. 65 introduced to the House of Commons by the Minister of Justice, in which it is proposed to alter the provisions of three of the sections of chapter 162 quoted on page 11, so that they shall read as follows:—

CONSENT AND ATTEMPTS.

39. Every one who unlawfully and carnally knows and abuses any girl under the age of thirteen years, is guilty of felony, and liable to imprisonment for life, or for any term not less than five years, and to be whipped.

40. Every one who attempts to have unlawful carnal knowledge of any girl under the age of thirteen years, is guilty of a misdemeanor, and liable to two years' imprisonment, and to be whipped.

41. Every one who commits any indecent assault on any female, is guilty of a misdemeanor, and liable to two years' imprisonment and to be whipped.

CONSENT.—Substantially this amendment does no more than add a beggarly twelve months to the present age of protection for girls who are without expectations and without guardians. The twelve years of the present section 40 will become thirteen years under section 39 and that is all.

In 1884, his Eminence Cardinal Manning, in course of a paper on "Inhuman Crimes in England," thus expressed himself:—"By our present legal code a girl cannot give her consent to marriage before the age of 21, but she is regarded as capable of consenting to her own ruin at the age of thirteen years. The man who marries her before 21 is punishable by law; the man who ruins a child of 13 escapes with impunity. She may ruin herself at 13 but cannot marry for defect of consent until 21."

And now it is gravely proposed by a minister of the Crown that we, in Canada at this late date, should leave off where the people of England began more than a decade ago. It is surely incredible that Parliament will accept any such inadequate provision.

ATTEMPTS.—The proposed provision respecting attempts in no way changes the present law. The new sections 40 and 41 are the mere equivalent of the present section 41 quoted on page 11, the utter inadequacy of which has over and over again been shown in Court proceedings. In intent the culprit who attempts this crime and fails, is as guilty as he who succeeds. Moreover, in numerous cases, when the child-victim is of tender years, the completed crime is commonly a physical impossibility unless preceded by instrumental outrage, for which latter crime the punishment (see sections 14 and 35) is only three years' imprisonment. In March, 1886, in Montreal, an inhuman monster of mature age, who had assaulted and foully diseased his own child-neice of tender years, could only be convicted under the 41st section, notwithstanding the 65th section of the Act of 1869, and this proposed amendment provides no better remedy.

Children of tender years cannot be adequately protected unless the attempt be included with the completed offence and the punishment left to the Court.

UNFAITHFUL TRUSTEES.

In the part of the new bill which deals with what are euphemistically termed "offences against public morals and convenience," there are two sections which would come under this head :

2. Every one who, being a guardian, seduces or has illicit connection with his ward, or who seduces or has illicit connection with any woman or girl of previously chaste character who is in his employment, or who, being in a common employment with him, is, in respect of her employment or work, under, or in any way subject to, his control or direction, is guilty of a misdemeanor and liable to two years' imprisonment.

7. Every one who, being the parent or guardian of any girl or woman under the age of twenty-one years, (1) procures such girl or woman to have carnal connection with any man other than the procurer, or (2) who orders, is party to, permits, or knowingly receives the avails of, the prostitution of such girl or woman, if such girl or woman is under the age of thirteen years, is guilty of felony and liable to fourteen years' imprisonment, and if of or above the age of thirteen years, is guilty of a misdemeanor and liable to five years' imprisonment.

Respecting these clauses, the omission of "attempts" from both is lamentable; also that under section 2, the crime, when committed against a minor, is not emphasized.

On the other hand, the measure of protection given by this section to the large and dependent class of working-women is every way satisfactory and just.

There is not, however, in the Minister's bill, any provision for the punishment of other unfaithful trustees. The large numbers of girls and women who are in asylums, prisons, police-courts, schools, and so forth, are entitled to receive special protection under the law; and such public trustees as teachers, innkeepers, prison and asylum employees, conductors, policemen, hackmen, and other persons, to whom girls or women are entrusted, should be awarded exemplary punishment when they betray the trust reposed in them.

Section 7 is by no means satisfactory. From my stand-point, the minimum of amendment to it would be as follows, the words within brackets to be omitted, those in italics to be added:—

"7. Every one who, being the parent, *near relative*, or guardian of any girl or woman [under the age of twenty-one years]. (1) procures, or *attempts to procure*, such girl or woman to have *unlawful* carnal connection with any [man other than the procurer] *person or persons*; or (2) who orders, is party to, permits or knowingly receives the avails of the *seduction, defilement or* prostitution of such girl or woman, etc., etc,"—with three degrees of punishment—one for 16 years, a lesser for 21 years, and the least in the case of a major; and "near relatives" to mean the persons included in the preceding section.

The reasonableness of these changes is apparent on their face.

PUNISHING INDECENCY.

Section 4 does not seem to go very much beyond clause (c) of the Vagrant Act, either in the definition of the offence or in the punishment awarded to it, and that clause has been found to be ineffective. It is doubtful whether the words "public place" will cover private grounds, or the culprit's private house, although the offence be in public view. Moreover, the judge should have power to award two years' imprisonment in aggravated cases, which are far from being rare.

A noteworthy section is the following :—

“ 3. Every male person who, in public or in private, commits, or is a party to a commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, is guilty of a misdemeanor and liable to two years' imprisonment.”

How very definite and wide a law draftsman can be when he is pleased to be so. “ In public or in private ” ; “ commits, or is party to a commission ’ ; procures or attempts to procure.” Some such crisp decisiveness in the clauses affecting the protection of young girls would be much valued by those who are called upon to afterwards enforce them.

SOCIETY FOR THE PROTECTION OF
WOMEN AND CHILDREN,

MONTREAL, February 22, 1890.

Hon. JOHN CARLING,
Minister of Immigration and Agriculture,
Ottawa.

SIR,—I have the honour to enclose, for your careful consideration, copies of a statement, prepared by me for the information of the Senate, with reference to the inadequate legal protection presently afforded to women and children in this Dominion, more especially to helpless girls who are without expectations and without resident guardians; and

I am to urge upon you the obligation which lies on your Department, to promote such amending legislation as will secure to immigrant girls arriving in Canada (many of whom are now debauched and ruined for want of legal protection) the benefits of at least as effectively protective laws, as prevail in Great Britain and the other countries from whence they have emigrated; and also as much legal security in Canada as obtains in those neighboring States with which Canada is in such keen competition.

Apart from any considerations of humanity and morality, this aid would seem to be required of you in the mere interests of material prosperity, and in view of the fostering care of immigration which your Department has in its charge.

I am, your obedient servant,

D. A. WATT,
Chairman, etc., etc.

