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MARRIAGE WITH A DECEASED WIFE'S SISTER.

DEBATES AND PROCEEDINGS IN THE HOUSE OF COMMONS

—ON—

MR. GIROUARD'S BILL.

(*From the Official Report of the Debates.*)

February 27th, 1880

Order for second reading of Bill (No. 30) To legalise marriage with a sister of a deceased wife *read.*

MR. GIROUARD (Jacques Cartier): Some nine or ten months ago, a lady came to me, and stated that she had married the husband of her deceased sister, according to the rites of the Catholic Church. There were children from both marriages. The father, although having no property of his own, was in possession of a considerable estate, which had been entailed by his father in favour of his legitimate children. The lady wished to know whether the children of the second marriage were excluded from this succession. Her marriage being absolutely null under our Civil Code, you may, Mr. Speaker, easily imagine the effect which the communication of this fact produced on this lady, who had committed no wrong before her God and her friends, but who was, however, guilty before the law of the land. I then conceived the idea of presenting to this House a Bill, to come to the relief of that class of people, situated as this lady was. The last Session having been a long and arduous one, and being far advanced, I thought it would be better to defer the consideration of such an important subject till the present Session, and hence the present Bill. This Bill, although brought for the first time before this Parliament, is not new to the Canadian public. A Bill to the same effect received its first reading in 1860, before the Legislative Council of the late Province of Canada. Eight times it received the sanction of the popular branch of the British Parliament, and eight times was rejected by its Upper House. It has been passed by several of the Colonial Legislatures; it forms part of the laws of the greatest portion not only of America, but also of the Continent of Europe. Its subject matter is of the greatest social importance, marriage with the sister of a deceased wife being almost of daily occurrence among all classes of our community, irrespective of creed or nationality. Therefore, this grave question should be considered, not only apart from all party motives, but also from all prejudices and ill-feeling, religious or otherwise; it should be regarded almost as a national question affecting the mass of the people of this Dominion. Before the Reformation, as at present, in the Catholic Church, the validity of the marriage with a deceased wife's sister depended upon the dispensation of the ecclesiastical authorities. In 1533 it was forbidden by Henry VIII. However, until the year 1835, it was not void *de jure*, but merely voidable by a legal process taken before the Ecclesiastical Court. In 1835, Lord Lyndhurst's Act made past marriages of affinity valid, but a prohibitory clause, declaring all similar marriages in the future "void," was consented to by the Commons, with the understanding that this limitation should be removed in the ensuing Session, but it is still in force. In 1841, the first effort was made in the Lords by Lord Wharncliffe to repeal the prohibitory clause, but his Bill was lost without a division. In 1842, the question was taken up by the Commons, the Bill being, however, lost by 123 to 100. Five years later, in 1847, a Royal Commission was appointed to examine the

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

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

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

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

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

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

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

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

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

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

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

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

"1. Marriage between a man and the sister of his deceased wife, or the widow of his deceased brother, shall be legal and valid; provided always, that if in any church or religious body whose ministers are authorised to celebrate marriages any previous dispensation, by reason of such affinity between the parties, be required to give validity to such marriage, the said dispensation shall be first obtained according to the rules and customs of the said church or religious body: Provided also, that it shall not be compulsory for any officiating minister to celebrate such marriage.

"2. All such marriages heretofore contracted as aforesaid are hereby declared valid. cases (if any) pending in courts of justice alone excepted."

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

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

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

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

Earl Russell says:

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

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

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

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

I move that the Bill be read the second time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Attorney-General Cartier replied :

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

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

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

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

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

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

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

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

MR. ANGLIN: It is difficult for a

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

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

MR. HOUDE moved the adjournment of the debate.

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

Motion *agreed to* and *Debate adjourned.*

March 4th, 1880.

SECOND READING.

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

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

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

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

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

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

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

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

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

At another sitting the same hon. Minister added further :

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Signed)

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

The following questions were put to Cardinal Wiseman:—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rev. Dr. Chalmers says:

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

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

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

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

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

Lord Houghton said:

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

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

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

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

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

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

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

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

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

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

Earl Percy said:

"The Colonies had passed Acts legalising these marriages, and those Acts had received the assent of Her Majesty, and because that had been done they were now asked to change their own law in order to put themselves right with the Colonies. He wanted to know how far that argument was to be carried? Were we prepared to accept the views of the colonist on all matters in which the Colonial Legislatures came into contact with the Imperial Legislature? If that were to be the rule, he could hardly understand how we could be said to be independent of the Colonies at all—it would be for the Colonies to dictate the laws which they were to pass. These marriages were objected to on moral, social and religious grounds, and they were asked to change their conduct on a moral, social and religious question in order to suit the Colonies. If this Bill were passed, a rich man would be enabled to contract a marriage legally with his deceased wife's sister, whereas a poor man could not do so. Legislation of this kind would be introducing the thin end of the wedge. If marriage with a deceased wife's sister were right and lawful, let them pass a measure making it legal; but, if not, let them resist by every means in their power any modification of the law by any indirect method of dealing with the question.'

The Attorney-General of England said:

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

Mr. Osborne Morgan said:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"1. Marriage between a man and the sister of his deceased wife, or the widow of his deceased brother, shall be legal and valid; Provided always, that, if, in any Church or religious body whose ministers are authorised to celebrate marriages, any previous dispensa-

tion, by reason of such affinity between the parties, be required to give validity to such marriage, the said dispensation shall be first obtained according to the rules and customs of the said Church or religious body; Provided also, that it shall not be compulsory for any officiating minister to celebrate such marriage.

"2. All such marriages heretofore contracted as aforesaid are hereby declared valid, cases (if any) pending in Courts of Justice alone excepted."

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

Motion *made* and question *proposed*:

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

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

YEAS:

Messieurs

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

NAYS:

Messieurs

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

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

PAIRS :

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

Question resolved in the *negative*.

Bill *read the second time*.

March 10th, 1880.

CONSIDERED IN COMMITTEE.

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

(In the Committee.)

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

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

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

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

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

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

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

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

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

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

"Provided always, that if in any Church or religious body whose ministers are authorised to celebrate marriages, any previous dispensation, by reason of such affinity between the parties, be required to give validity to such marriage, the said dispensation shall be first obtained according to the rules and customs of the said Church or religious body."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

House *resumed*.

(In the House.)

Bill, as amended, *reported*.

March 31, 1880.

RECONSIDERED IN COMMITTEE.

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

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

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

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

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

MR. HOUDE moved:

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

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

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

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

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

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

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

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

(In the Committee.)

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

House *resumed*.

(In the House.)

Bill *reported*.

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

MR. GIROUARD agreed to the suggestion.

April 14, 1880.

THIRD READING.

MR. GIROUARD (Jacques Cartier): It will not be out of interest at the present stage of the debate on this Bill, to review its history before this House and answer a few of the objections which have been made against it; and in doing so I intend to be as brief as the importance of the subject will permit. On the 16th February last I had the honour of introducing the following Bill:

"1. Marriage is permitted between a man and the sister of his deceased wife, or the widow of his deceased brother, provided there be no impediment by reason of affinity between them, according to the rules and customs of the church, congregation, priest, minister or officer celebrating such marriage.

"2. All such marriages thus contracted in the past are hereby declared valid, cases (if any) pending in Courts of Justice alone excepted."

It was objected that under this enactment, the members of the Church of England would be in a worse position than under the existing laws, which, at least in Ontario and the Maritime Provinces, declare marriage contracted between brothers and sisters-in-law only voidable during the lifetime of the parties. It was contended, and it must be confessed not without reason, that the marriage in question, being contrary to the confession of Faith of that Church, would be absolutely prohibited under that Bill. At the request, therefore, of some Protestant members, and more particularly of those belonging to the Church of England, the Bill was withdrawn, with the intention of introducing in its stead another Bill where no reservation as to Church discipline or regulations would be made, except in favour of the Catholic Church, and the Bill which was introduced subsequently, to wit, on the 27th of February, read as follows:—

"1. Marriage between a man and the sister of his deceased wife, or the widow of his deceased brother, shall be legal and valid. Provided always, that if in any church or religious body, whose ministers are authorised to celebrate marriages, any previous dispensation, by reason of such affinity between the parties, be required to give validity to such marriage, the said dispensation shall be first obtained according to the rules and customs of the said church or religious body. Provided also, that it shall not be compulsory for any officiating minister to celebrate such marriage.

"2. All such marriages heretofore contracted as aforesaid, are hereby declared valid, cases (if any), pending in Courts of Justice alone excepted."

During the debate, both the Hon. members for West Durham (Mr. Blake), and for Argenteuil (Mr. Abbott), expressed it to be their clear opinion that this Federal Parliament had no power to pass the proviso as to any dispensation to be obtained according to the rules of the Catholic Church. These learned jurists stated that the subject matter belongs to the solemnization of marriage, and consequently comes within the exclusive jurisdiction of Local Legislatures. It must be borne in mind that the Federal Parliament and Provincial Legislatures have not a concurrent jurisdiction over the subject of marriage, or in fact any other subject; the jurisdiction of the one is exclusive of the other, and what can be done by the one cannot be done by the other. The British North America Act of 1867, declares at section 91, par. 26, "That the jurisdiction of the Parliament of Canada shall extend to the following classes of subjects," that is to say: "Marriage and Divorce," and at section 92, par. 12, that the Provincial Legislature "may exclusively make laws in relation to matters coming within the classes of subjects" following, and among others "the solemnization of marriage in the Province." Under these enactments of our Canadian Constitution, it is plain, it seems to me, that this Parliament has alone jurisdiction—of course I am speaking from a legal and not ecclesiastical point of view—over the whole subject of marriage, solemnization of marriage only being excepted, and that Local Legislatures have no jurisdiction whatever beyond anything not pertaining to the solemnization of marriage. This Parliament alone, therefore, can declare who shall or who shall not contract marriage in the eyes of the civil law, and for this reason there cannot be any doubt, and there is but one opinion in this House, that the Parliament of Canada and not the Provincial Legislatures can enact that marriage shall or shall not be permitted between brothers and sisters-in-law; of course, I am always arguing from a legal point of view and in the eyes of the constitutional law of this country. I have already expressed the opinion that the "dispensation" clause of the Marriage Bill was constitutional, that it had reference, not to the celebration of marriage, but to a legal impediment which can be removed only by this Parliament. However, as I have already remarked, a contrary view was entertained and strongly expressed by the two learned jurists above named, and that view was shared by what we all consider the best authority on any constitutional question, the right hon. leader of the Government (Sir John A. Macdonald). Prominent members of this House, well-known for

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

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

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

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

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

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

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

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

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

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

The following articles need only be quoted:—

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

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

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

(*Translation.*)

MONTREAL, 28th February, 1880.

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

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

An answer addressed to me at Ottawa will oblige

Your obedient servant,

D. GIROUARD.

(*Translation.*)

BISHOPRIC OF THREE RIVERS,

5th March, 1880.

D. GIROUARD, Esq., M.P.

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

I remain, etc.,

†L. F., Bishop of Three Rivers.

(*Translation.*)

MONTREAL TELEGRAPH CO., March 2, 1880.

By telegraph from Rimouski to D. GIROUARD.

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

†BISHOP of RIMOUSKI.

(*Translation.*)

SHERBROOKE, 1st March, 1880.

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

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

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

I am, Sir,

Your obedient servant,

†ANTOINE, Bishop of Sherbrooke.

(*Translation.*)

MONTREAL, 29th February, 1880.

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

I wish you every success.

Yours faithfully,

†EDOUARD CHS., Bishop of Montreal.

(*Translation.*)

ST. HYACINTHE, February 29, 1880.

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

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

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

Wishing you success,

I remain most sincerely,

Your obedient servant,

†L. Z. Bp. of St. Hyacinthe.

(*Translation.*)

ARCHBISHOPRIC OF QUEBEC,

QUEBEC, March 1, 1880.

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

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

I have the honour to be, Sir,

Your obedient servant,

†E. A., Archbp. of Quebec.

(*Translation.*)

QUEBEC, April 1st, 1880.

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

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

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

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

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

OTTAWA, 2nd March, 1880.

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

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

BRACEBRIDGE, Ont., 5th March, 1880.

D. GIROUARD, Esq., M.P.

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

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

TORONTO, March 4, 1880.

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

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

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

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

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

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

(*Translation.*)

OTTAWA, 16th March, 1880.

D. GIROUARD, Esq., M.P.

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

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

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

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

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

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

HUMBLY SHEWETH,

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

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

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

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

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

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

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

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

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

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

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

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

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

MONTREAL, February 27th, 1880.

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

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

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

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

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

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

Believe me,
Yours very sincerely,
GAVIN LANG.

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

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

MONTREAL, February 2nd, 1880

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

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

Very truly yours,
J. CORDNER.

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

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

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

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

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

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

* * * * *

I am, dear Sir,
Very truly yours,
J. FREDERICK STEVENSON,
Emmanuel Church (Congregational).

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

The Rev. James Roy (Wesleyan), writes:

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

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

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

The testimony of Dr. de Sala is very valuable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JOHN POTTS, Metropolitan Church.

GEORGE COCHRANE, Chairman of the Toronto District.

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

WM. BRIGGS, Book Steward, Methodist Book Room.

J. POVELL, Pastor Richmond street Church.

S. ROSE, D.D.

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

THOS. W. CAMPBELL B.D.

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

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

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

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

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

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

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

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

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

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

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

And your petitioners will ever pray.

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

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

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

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

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

HUGH JOHNSTON.

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

D. V. LUCAS.

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

WILLIAM HALL, M.A.

E. BOTTERELL.

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

A. J. BRAY, Zion Cong. Church.

H. F. BLAND.

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

JOHN NICHOLS.

J. L. FORSTER, Calvary Cong. Church.

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

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

JAMES ROY, Wesley Church, Congregational.

WM. J. SHAW, Professor Wesleyan Theo. College

WM. S. BARNES, Church of the Messiah.

SAMUEL MASSEY, Salem Church.

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

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

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

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

DR. H. SUMNER, Lutheran Minister of the Perm. Evangelical Protestant Church in Montreal.

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

H. L. MACFADYEN, B.A., Inspector Street Church.

JAMES ALLEN, Pastor of Sherbrooke street Methodist Church.

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

Montreal, April 10th, 1880.

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

To the Editor of the Globe :

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

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

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

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

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

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

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

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

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

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

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

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

I am, Sir,

Yours truly,

J. M. HIRSCHFELDER.

Toronto, April 10, 1880.

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

"MONTREAL, March 19, 1880.

DEAR MR. GIROUARD,

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

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

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

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

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

Very truly yours,

ABRAHAM DE SOLA.

D. GIROUARD, Esq., M.P.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Some HON. MEMBERS: Question question.

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

MR. SPEAKER: Order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Motion *made*:

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

Motion in amendment *made*:

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

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

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

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

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

YEAS:

Messieurs

Anglin	Hurteau
Bourbeau	Langevin

Cimon	Méthot
Desaulniers	Montplaisir
Houde	Vanasse.—10

NAYS :

Messieurs

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

Motion *resolved* in the negative.

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

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

YEAS :

Messieurs

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

NAYS :

Messieurs

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

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

Motion *resolved* in the negative.

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

Motion *made:*

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

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

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

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

YEAS:

Messieurs

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

NAYS:

Messieurs

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

Motion *resolved* in the negative.

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