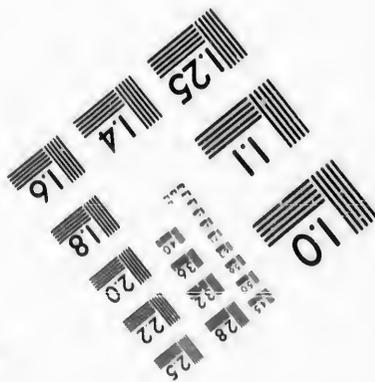
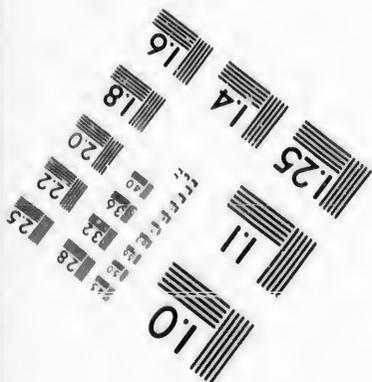
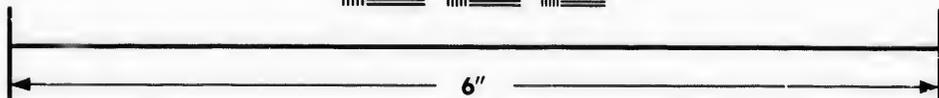
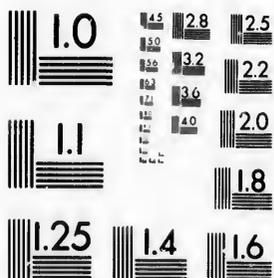


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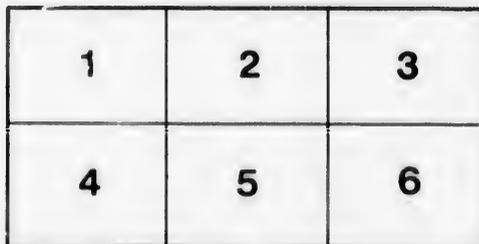
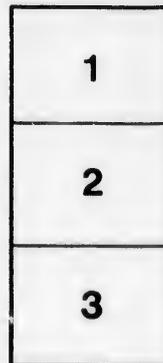
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IMMORAL LEGISLATION.

A STATEMENT

PRINTED (BUT NOT PUBLISHED) FOR THE INFORMATION OF

THE COMMISSIONERS

OF THE

Presbyterian Church in Canada,

MEETING IN

GENERAL ASSEMBLY,

MONTREAL, JUNE 10, 1885,

BY A CHURCH MEMBER.

This Statement was accompanied with the following Memorial :—

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

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

SHEWETH--

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

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

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

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

D. A. WATT.

MONTREAL, June 13th, 1885.

The General Assembly referred the Memorial to a Committee, for report next year. The desired reference to Presbyteries, Congregations, etc., was in the hope and expectation that a wide-spread and healthy public opinion might thereby be evoked.

IMMORAL LEGISLATION.

THE Dominion laws relating to social morality, and for the protection of women and girls, are chiefly contained in the Act of Parliament quoted below, passed in the year 1869, at the instance of Sir John A. Macdonald the then minister of justice, through the House of Commons, and of Sir Alexander Campbell the present minister of justice, through the Senate. No serious attempt to enlarge the scope of these enactments or to amend them has since been made, either by the department of justice or by either of the ministers, and certain well-meant endeavours in that direction on the part of private members have been opposed, balked, and made abortive by the opposition of the first minister in the lower house, and of the minister of justice in the upper. The law as it now stands (with the additional clause quoted) may therefore be accepted as the most finished work of the department of justice, and the following criticisms are based on that assumption.

Of this law as a whole it may be said that, under it, *punishment is in inverse ratio to crime, and protection in inverse ratio to helplessness.* Lechers may hire procurers, guardians may betray their trusts, parents may sell their children, and still be within their legal rights. And as regards protection:—to take away a girl with expectations is a felony if she be under twenty-one (54); to take away a guarded girl without expectations is a misdemeanour up to the age of sixteen (56); but for girls who are without expectations and without guardians all protection ceases after their eleventh year of childhood (53). There is thus one law for the rich and guarded, and another and a much weaker law for the poor and friendless. Our law-makers, having first carefully protected their own daughters and the daughters of the rich, have deliberately left the orphaned daughters of the poor an open prey.

The Act in question is the 32-33 Vic. chap. 20 (anno 1869) and the sections under discussion are the following :—

49. Punishes the crime of violence, (see also 36 Vic. chap. 50, anno 1873).

50. Whosoever by false pretences, false representations, or other fraudulent means, procures any woman or girl under the age of twenty-one years, to have illicit carnal connection with any man other than the procurer, is guilty of a misdemeanour, and shall be liable to be imprisoned in any gaol or place of confinement, other than a penitentiary, for any term less than two years, with or without hard labour.

This clause, purporting to reach procurers and to punish the traffic in vice, has proved so ineffective that probably no conviction of this very common crime has ever been obtained under it. Moreover, the moral sense of the community rebels against a law which singles out the agent for punishment, and expressly exempts the greater criminal, the principal. The words "other than the procurer" have been interpolated here: they are not in the British act from which the clause has otherwise been copied. Traffickers in vice and inciters to debauchery are punished in almost every civilized country in the world. The law-makers even of France, perhaps the most brothel-ridden country in Europe have put our legislators to shame by branding as a crime (see article 334 of the penal code) the inciting, abetting, or facilitating immorality in youths of either sex up to the age of twenty-one, and that without the false-pretense reservation or the omission of the conspirator-in-chief from the scope of the law. Prostitution commonly involves conspiracy, and hence the common-law provision that "a conspiracy to cause immorality or indecency is an offence" might be re-enacted here with good results. In any event there should be no limit of age where fraud is used; and as regards girls who are minors the clause should be imperative, should cover attempts to procure, should include principal as well as agent, and also all persons who aid or abet in the act of infamy.

The minister of justice has during the present session passed through the Senate a bill re-enacting this clause verbatim!

51. Punishes a crime against a child "under the age of ten years" as a felony, (see 40 Vic. chap. 28, anno 1877).

The limit of age here is scandalously low ; in Britain it is twelve years.

52. Punishes the defilement of a girl over ten and "under the age of twelve years" as a misdemeanour.

This provision of the Canadian law, which in effect withholds all protection from children beyond their eleventh year, provided always that they are also orphaned and penniless, is both odious and revolting.

It is true that the age in Britain is thirteen years, but as long ago as 1881 a committee of the House of Lords was appointed to enquire into the question ; they reported in July, 1882, and recommended (*inter alia*),—

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

A bill embodying this halting recommendation was before the House of Lords in July, 1883, when Lord Mount Temple took a division on the question of making the age seventeen and was defeated. Another motion to make the age eighteen, which was strongly urged by many persons of great knowledge and experience, was also lost. Motions to lower the term to fourteen or fifteen were not entertained, and the age remained at sixteen. The bill, however, did not reach a second reading in the Commons, and so failed for that year. It was re-introduced and passed by the Lords in May, 1884, only to again fail in the Commons owing to the great press of business, but on motion of Lord Milltown a division was then taken on the question of lowering the age, when 102 members voted for retaining sixteen years, and only 29 members against it. The bill is once more before parliament, and the Government has undertaken to make some efforts to pass it. It is, however, meeting with all the obstruction which the promoters of immorality in and out of parliament can offer.

Three other clauses from the Lords' report are of vital interest to us :—

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

9. The evidence before the Committee proves beyond doubt that juvenile prostitution, from an almost incredibly early age, is increasing to an appalling extent in England, and especially in London.

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

53. Punishes indecent assaults on women and girls.

54. (a.) Where any woman of any age has any interest whether legal or equitable, present or future, absolute, conditional or contingent in any real or personal estate, or is a presumptive heiress or co-heiress or presumptive next of kin, or one of the presumptive next of kin to any one having such interest, whosoever from motives of lucre, takes away or detains such woman against her will with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person ; (b.) and whosoever fraudulently allures, takes away or detains such woman, being under the age of twenty-one years, out of the possession and against the will of her father and mother or of any other person having the lawful care or charge of her, with intent to marry or carnally know her or to cause her to be married or carnally known by any other person, is guilty of felony, and shall be liable to be imprisoned in the penitentiary for any term not exceeding fourteen years and not less than two years,— or to be imprisoned in any other gaol or place of confinement for any term less than two years with or without hard labour ; and whosoever is convicted of any offence against this section shall be incapable of taking any estate or interest, legal or equitable, in any real or personal property of such woman, or in which she has any such interest, or which shall come to her as such heiress, co-heiress or next of kin as aforesaid and if any such marriage as aforesaid shall have taken place, such property shall, upon such conviction, be settled in such manner as the Court of Chancery in Ontario, the Supreme Court in Nova Scotia or New Brunswick, or the Superior Court in Quebec, shall appoint, upon any information at the suit of the Attorney General for the Province in which the property is situate.

This clause with every possible ingenuity of phraseology protects *rich women* (a) of any age from force ; and (b), if they be under twenty-one, it affords them legal protection in their persons against the consequences of their own ignorance or folly,

somewhat similar to that extended to the property of all minors. This is a just and right principle, but the peculiar baseness of the provision lies in the circumstance that protection is here afforded to the rich and guarded and to them only. It is however noteworthy that the clause does not protect the girl from an offence coming to her from, or with the connivance and consent of, her guardian;—in debauching his ward he would be within his legal rights as here expressed, whereas a less heinous breach of trust in respect of her property would consign him to penal servitude. The French code is careful to emphasise crimes of this character by assigning hard-labor when the guilty persons are those having authority, or are officials, or are in conspiracy (see article 333), than which nothing can be more just and right, or more tersely and comprehensively expressed. The clause should be amended so as to include within its scope all women, rich or poor, friendless or guarded, and under (a) it should cover fraud as well as force and motives of lust as well as of lucre.

55. Punishes the forcible abduction of any woman or girl, with intent, as a felony.

56. Whosoever unlawfully takes or causes to be taken any unmarried girl being under the age of sixteen years, out of the possession and against the will of her father and mother, or of any other person having the lawful care or charge of her, is guilty of a misdemeanour, and shall be liable to be imprisoned in any gaol or place of confinement, other than a penitentiary, for any term less than two years, with or without hard labour.

Under clause 54, guarded girls with expectations are protected up to twenty-one on pain of felony; while here guarded girls without expectations are less well protected, up to the lower age of sixteen, and on pain of only misdemeanour! * Many of the remarks under clauses 52 and 54 are equally applicable to this clause, and need not be repeated.

The new sub-clause which the minister of justice proposes to enact reads thus :—

50. Every one who by false pretences, false representations, or other fraudulent means * * * * (b) inveigles or entices any such woman or girl [*i.e.* under the age of twenty-one years] to a house of ill-fame or assignation for the purpose of etc., etc.

* In this Province a man may not take a girl thus circumstanced in honorable marriage without incurring the penalties of the Quebec code if she be under twenty-one, but he may abduct and debauch her and be within his legal rights if she be not under sixteen.

In order to a conviction there must, therefore, be proved (1) the age of the girl, (2) the use of fraud, (3) the fact of an inveiglement (4) to a house (5) of ill-fame, and (6) for an evil purpose. Contrast all this with section 54 above, which enacts that any one who merely allures away from her guardians a minor heiress, with intent, shall be guilty of felony. [A simple provision making it a legal offence *to do any act anywhere to promote or induce immoral acts with minors* would be useful in restraining and deterring criminals, whereas provisions like this amended fiftieth clause are not merely valueless, but also mischievous.] The title of the whole bill might very well have been changed into "An act to protect procurers and to authorize the defilement of girls, in certain cases!" *

It is submitted, in conclusion, that the limits of legislation in respect of social morality are co-incident with its limits respecting property. Hence:—(1) all persons should be protected against force, intimidation, and fraud; (2) minors and imbeciles should be protected against their own ignorance and inexperience; and (3) betrayers of trusts should be specially punishable.

It is further submitted that all like-minded persons of influence and in authority should urge and promote by every means in their power, the enactment of new and effective legislation. The lines upon which such legislation should be drawn are somewhat as follows:—

1. That the law and its administration ought to be absolutely equal and impartial towards all, male and female, rich and poor alike; and if any difference in its protective limits be admissible, that difference should be in favor of the poor and helpless and not, as now, in favor of the rich and guarded.

2. That the law ought to afford protection to *all persons* against incitement to immoral acts by means of force, intimidation, or fraud.

3. That the law ought to afford protection to *all minors* against incitement to immoral acts by any means whatever.

* When the legislature undertakes to deal by criminal enactments with such matters as Customs and Excise, Inspection, Game preservation, Gambling, Alteration, Larceny, etc. etc., it commonly proceeds with great directness and force, but when offences against helpless girls call for repression its procedure is as commonly halting, half-hearted and indirect. (See, e.g. the Dominion Acts 40 Vic. chaps. 41 and 42, respecting gambling.)

4. That the persons of women and girls should have the same measure of protection under the law as is now given to their property.

5. That (a) procurors and other traders in vice, with those who hire, aid, or abet them, (b) conspirators to promote vice, and (c) betrayers of trusts, should be singled out for special punishment.

MONTREAL, June, 1885.

D. A. WATT.

The bill referred to on page 6 having been forced through the House of Commons, at a single sitting, near the close of the session, I sent the following petition to His Excellency (in Council):—

The Memorial of the undersigned, a Citizen of Montreal,

SHEWETH—

That

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

and

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

(a) Legalizes the crime of procuration, unless the victim be a minor and fraud be provable, and

(b) Legalizes the defilement of minor girls when over eleven years old, unless the crime be compassed by means of fraud, enticement, a brothel and what-not, provable and cumulative;

—the said clause being in effect a notification to traffickers in vice and lechers generally, that if certain procedure be avoided by them, they will be within their legal rights;

and

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

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

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

And your Memorialist will ever pray.

The bill was assented to and is now law.

Appendix A.

A few weeks after the foregoing Statement was distributed, that thunderbolt, "The Maiden Tribute," shot forth by Mr. William Thomas Stead, the accomplished editor of the *Pall Mall Gazette*, burst over England and electrified the civilized world. One immediate effect was the prompt passage through the Imperial parliament of the bill referred to on page 4, amended almost beyond recognition, and couched in terms more effective and workable than the most enthusiastic promoters of moral reform dared even to hope for.

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

The age in the section (4) answering to our 51 (vide page 4), is now 13 years against 10 years here.

The age in section 5, answering to our 52, is now 16 years against our 12 years.

The age in section 7, answering to our 56 save that evil intent must also be proved, is now 18 years against our 16 years.

The equivalent of our section 54 remains unchanged: there as well as here the rich and guarded girl still maintains her supremacy of protection.

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

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

The full text of the Act, with much interesting historical matter, is given in a sixpenny pamphlet entitled "Six years' labor and sorrow," compiled by Mr. Benjamin Scott's committee for suppressing the Foreign Traffic in English Girls, and published for them by Messrs. Dyer Brothers, Paternoster Square, London.

Appendix B.

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

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

- A.—The Protection of Youth.
- B.—The Protection of all Persons from Force and Fraud.
- C.—The Protection of all Persons from Public Scandal.

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

A.—FOR THE PROTECTION OF YOUTH.

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

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

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

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

The amount of such weekly or other payment to be, in the discretion of the Court, suitable to the position in life of the father and the mother of the child. Either the putative father or the mother may at any subsequent time apply to the Court to rescind or vary the affiliation order.

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

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

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

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

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

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

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

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

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

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

**B.—FOR THE PROTECTION OF ALL PERSONS FROM FORCE
AND FROM FRAUD.**

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

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

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

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

**C.—FOR THE PROTECTION OF ALL PERSONS FROM PUBLIC
SCANDAL.**

As to Brothels.

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

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

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

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

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

As to the Streets.

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

Appendix C.

MONTREAL, July, 1886.

During the last session of the Dominion parliament a bill purporting "to make further provision for the Protection of Women and Girls" was introduced and passed through the Commons by Mr. Charlton, M.P. It was afterwards amended and somewhat strengthened by the Senate, and finally passed into law. It is now the Act 49 Vic. Chap. 52, and its chief provisions are as follows:—

1. Any person who

- (1) Seduces and has illicit connection with any girl of previously good character, or who Attempts to have illicit connection with any girl of previously chaste character, —being in either case of or above the age of twelve years and under the age of sixteen years,
- (2) Unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of any female idiot or imbecile woman or girl shall be guilty of a misdemeanour

2. Any person above the age of twenty-one years who, under a promise of marriage, seduces and has illicit connection with any unmarried female of previously chaste character, and under eighteen years of age, shall be guilty of a misdemeanour

3. Any person who procures a feigned or pretended marriage between himself and any woman, or any person who knowingly aids and assists in procuring such feigned and pretended marriage, shall be guilty of a misdemeanour

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

(1) shall, if such girl is under the age of twelve years, be guilty of felony and

(2) if such girl is of or above the age of twelve and under the age of sixteen years shall be guilty of a misdemeanour

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

5. No person shall be convicted of any offence under this act upon the evidence of one witness, unless said witness be corroborated in some material particular by evidence implicating the accused.

6. In every case arising under this act the defendant shall be a competent witness in his own behalf upon any charge or complaint against him.

7. No prosecution under this act shall be commenced after the expiration of one year from the time of committing the offence.

8. Any person convicted of any offence under this act shall be liable to imprisonment for two years in a penitentiary, or for a less term in any other place of confinement, in the discretion of the court having jurisdiction.

* The words in italics unduly limit the scope of the clause.

