

THE SENATE

Thursday, April 30, 1868

The Speaker took the chair at three o'clock.

After routine,

Hon. Mr. McCully moved,

To resolve that in the opinion of this House it is desirable that the law on the subject of interest should be made uniform throughout the Dominion during the present Session.

Hon. Mr. Campbell said it was the intention of the Government to bring in a bill on that subject during the present Session, therefore, there was no necessity for passing this resolution.

Hon. Mr. McCully said he wished the law of interest to be made uniform throughout the Dominion. In Nova Scotia they had the old English law concerning the rate of interest and as the natural sequence of things, money was being sent away from that Province and invested in other Provinces where it commanded a higher rate of interest. As the Postmaster-General had promised to bring in a bill in reference to this matter, he would accede to his request and now drop the subject.

Hon. Mr. Campbell said that possibly the bill might not meet the views of his hon. friend, therefore, he would only ask him to postpone it until he saw the bill.

Hon. Mr. McCully said he would allow it to stand over until Tuesday next.

The Bill entitled "An Act respecting the Treaty between Her Majesty and the United States of America for the apprehension and surrender of certain offenders," was read a third time and passed.

Also, "An Act to define the privileges, immunities and powers of the Senate and House of Commons, and to give summary protection to persons employed in the publication of parliamentary papers."

A message was brought from the House of Commons, with a Bill intituled "An Act constituting the department of Inland Revenue."—Read a first time.

Also, "An Act to regulate and restrict the contingent charges of the departments of Public Service, and to establish a Stationery Office."—Read a first time.

Also, "An Act to enable Banks in any part of Canada to use notes of the Dominion instead of issuing notes of their own."—Read a first time and second reading ordered for Tuesday next.

Also, "An Act respecting the Currency." Received a first reading, and ordered to be read a second time to-morrow.

WHITEAVES RELIEF BILL
SECOND READING

Hon. Mr. Ferrier said as the Union Act defined the powers of this Senate to be the same as were enjoyed at that date by the House of Commons, therefore, he intended moving that this bill be referred to a committee to comply with the rules of the House of Commons, where those bills are referred to Special Committees of the members, and the evidence comes to them from the House of Lords, who are the court qualified to receive it. The Senate not being able to exercise that power under the Constitutional Act, he asked them to appoint a committee for the purpose of laying the evidence before them which was taken before the Superior Court; that evidence being of the same character as that taken before the House of Lords. Persons will be summoned before that committee, and the committee will have an opportunity of examining witnesses to see whether their testimony corresponds with the evidence taken before the court. This was a case of great hardship, and if this case was postponed until another year, the witnesses who still remain in the country, may leave, and the evidence not be available, therefore, he desired this committee to include gentlemen of high standing in the legal profession, and they can report to the House whether the evidence is sufficient or insufficient to proceed further with the case. He would do all he could to enable the petitioner to obtain what he asks for, therefore, he hoped, though some of the hon. members might feel it their duty always to oppose this class of bills, that they would reserve their opposition until they saw what action that committee would take. He would now move that the bill be read a second time.

Hon. Mr. McCully in seconding the motion said that he was not quite satisfied that this Senate had any power in the matter. He had seconded this bill *pro forma*, because he was anxious if the Senate has this power to give him every assistance he could. If the Senate had not this power, there ought to be a power vested in some organisation to give the relief sought by this bill. He was afraid his hon.

friend had fallen into the error of thinking that this Senate possessed the power the late Legislative Council of Canada had before the Union. He considered that this Senate as constituted under an Act of the Imperial Parliament did not possess powers as a court to discharge these functions. If this was nothing more than an Act of Parliament, then they are right in proceeding.

Hon. Mr. Campbell—Nothing more.

Hon. Mr. McCully—The next point is this: the Senate has no power to examine witnesses under oath.

Hon. Mr. Ferrier said he had stated that, and therefore he wished it referred to a committee of the legal profession.

Hon. Mr. Ross said this bill was to be referred to a Special Committee, with power to examine under oath the same as in the Parliament of England. It is based upon the precedent of the House of Lords. In the Legislative Council of the two Canadas witnesses were sworn and examined under oath the same as in the House of Lords, and under the Constitutional Act of 1867, we have the same powers as the Legislative Council of the two Canadas had. They assumed this authority, but the bills were reserved for the assent of the Crown.

Hon. Mr. Bureau did not object so much to the mere separation of a man and wife, as to allowing the parties afterwards to marry, and he cited the United States to prove the ruinous evils such acts have on the morals, well-being, and the entire social interests of communities. He had collected some statistics which proved, to him at least, conclusively, that in that country where the laws of divorce obtain there were about ten cases daily, or 3,000 yearly, thereby depriving about 9,000 children of the fostering care of one of their natural protectors at least. Hence see the results.

Hon. Mr. Ferrier said he had named the Committee from gentlemen of the legal profession.

Hon. Mr. Letellier de St. Just opposed the divorce, particularly when power is granted the parties to remarry, as in many cases, holding out inducements to infidelity to matrimonial vows.

Hon. Mr. Miller opposed the divorce as ruinous to the best interests of society, and holding out facilities in many cases to gratify

criminal desires, by the Legislature legalizing future marriages, and consequently he would oppose the second reading of the bill.

Hon. Mr. Ferrier did not think the opponents of the bill would be in any worse position on account of this Committee being appointed, which will be composed of gentlemen of the highest qualifications, and he was perfectly satisfied justice would be done.

Hon. Mr. Chapais (in French) did not call in question the right of the Senate to deal with the question of divorce, but denied the wisdom, propriety or moral right of exercising that power. He opposed the second reading from a sense of duty, not as Minister, but as a member of the great Christian family. Men of various religious opinions had looked on divorce as a wrong, and he would always do all he could to prevent the spread of what he must say, he considered as dangerous principles, and ruinous to the whole social fabric.

Hon. Mr. McCully said the difficulty in this Dominion was that they had no other court for these cases. He would like to see this subject entirely withdrawn from Parliament, because, in this large Dominion, these questions would be constantly coming up, and this Parliament would be frequently called upon to deal with individual cases. In England they have laws which enables them to deal with this question without its coming before Parliament at all. The British Parliament have conferred the power to act in these cases, and if this bill is thrown out without a second reading, the case is prejudged before we get the evidence, and no other person can succeed in future.

Hon. Mr. Miller admitted this was the correct mode to adopt, but regretted that any question should be brought before Parliament which necessarily brought up distinctions between creeds and religious beliefs of hon. members of this House. He was sure the majority of this House would support this measure, but thought it preferable that a special court be appointed to try such cases, although decidedly opposed to the law of divorce.

Hon. Mr. Letellier de St. Just did not oppose the bill for the mere sake of opposition, but wished the minority to put their opinions on records, and that they should have an opportunity of doing their duty.

Hon. Mr. Kenny did not object to separating a bad wife or a bad husband from their lawful

partner, but according to the doctrines of his church he objected to the parties being allowed to marry again.

Hon. Mr. Tessier would have preferred that the motion in opposition had been put out at once, so as to make it unnecessary to argue again the objections at the subsequent stages. Of course he was opposed decidedly to divorce, and must, in duty, oppose the measure.

Hon. Mr. Chapais wished to repeat in English what he had said in French, and would prefer that the actions for divorce, if such there must be, should be tried by this House rather than committed to a Court of Justice.

Hon. Mr. Bureau moved in amendment, seconded by the **Hon. Mr. Dumouchel**, to insert "not" after the word "be," and after "time" to insert the following. "but that it be resolved, that in the opinion of this House the divorce *a vinculo matrimonii* destroys in marriage those two characters of unity and indissolubility which Christian communities have always deemed to be essential safeguards of moral and family ties."

Hon. Mr. Letellier de St. Just took exception to the wording of the motion.

Hon. Mr. Bureau in answer to the hon. member (Mr. Letellier de St. Just) said that his motion was properly worded, owing to the distinction between a divorce *a mensa et thoro*, and a divorce *a vinculo matrimonii*. The former is not to dissolve the marriage bond, but simply to authorize the separation of the parties and of their property (*separation de corps et de biens*) while the latter declares null and void, rescinds the marriage contract and allows one or both of the parties to marry again.

The amendment was then put and lost on a division.

The question being put on the main motion, the House divided, and the names being called for they were taken down as follows:

Contents—The Honorable Messieurs Aikins, Allan, Benson, Bill, Blake, Botsford, Burnham, Campbell, Dickey, Dickson, Ferguson, Ferrier, Glazier, Hamilton (Inkerman), Hamilton (Kingston) Hazen, Leonard, Leslie, McCrea, McCully, McMaster, Macpherson, Mitchell, Odell, Reesor, Ross, Sanborn, Seymour, Shaw, Simpson, Skead, Stevens, Wark, Wilmot—34.

Non-Contents—The Honorable Messieurs Armand, Bourinot, Bureau, Cauchon, Chapais,

Cormier, Dever, Dumouchel, Flint, Guévermont, Kenny, Lacoste, Letellier de St. Just, Malhiot, Miller, Olivier, Tessier—17.

The bill was then read a second time; when,

Hon. Mr. Ferrier moved, seconded by the **Hon. Mr. McCully**,

That the seventy-ninth Rule of this House be dispensed with in so far as it relates to the said bill intituled: "An Act for the relief of Joseph Frederick Whiteaves," and that the said Bill be referred to a Select Committee composed of the Hon. Messrs, Allan, Campbell, Dickey, Hazen, McCrea, McCully, Ross, Sanborn, and the mover, to report thereon with all convenient speed, with power to send for persons, papers and records, and that the exemplification of the proceedings to final judgment of the Superior Court, Montreal, presented to the Senate on the reading of the petition of the said Joseph Frederick Whiteaves, be referred to the said Committee.

The motion was carried on the same division.

The Bill intituled "An Act respecting accessories and abettors of indictable offences," was read a second time, and ordered to be committed to a Committee of the whole House to-morrow.

REPORT ON PRINTING

Pursuant to the order of the day, the House went into the consideration of the thirteenth report of the Joint Committee on Printing.

Hon. Mr. Simpson observed that there had been so much said about this report, that he would not detain the House with any lengthy remarks upon the subject. He had had some conversation with the Postmaster General and other members of the Government upon this matter, and they were perfectly well satisfied that the report was right in the main, and therefore, he did not understand why so much fuss had been made over it. In regard to the salary of the Clerk, he would repeat once more that they were only giving him one hundred dollars beyond what he had formerly. The late Province of Canada at one time gave him \$350, and it was afterwards reduced to \$200; but now they had become a large Dominion, keeping more books, and spending more money, the Committee thought they would not be very far wrong in asking this House to grant an additional \$50, the other \$50 to be granted by the other House. Mr. Hartney was an assistant clerk in the other House, and received \$2,000 a year, and we have induced him to