

THE SENATE

Monday, May 4, 1868.

The Speaker took the chair at three o'clock.

After routine,

The Speaker reported that the period for receiving petitions for Private Bills had expired to-day.

On motion of **Hon. Mr. Campbell**, seconded by **Hon. Mr. Hamilton**, the period for receiving petitions for Private Bills was extended to the 11th inst.

Hon. Mr. Reesor enquired,

Whether it is the intention of the Government to adopt any particular route for the Intercolonial Railway, without first submitting the same for the approval of Parliament?

Whether it is the intention of the Government to let the contract for building the said railway without first submitting such contract to Parliament for its approval, or whether it is the intention of the Government to grant a subsidy to aid a responsible company in building said road, and, if so, upon what conditions the subsidy will be granted?

Hon. Mr. Reesor said that he might state in connection with this enquiry, that a bill was passed during the first part of the Session giving the Government power to adopt any particular line of railway which they might find upon due enquiry to be the most suitable. He had noticed in the newspapers that a canvass had been going on as to the proper line to be adopted, and he had also learned that some time was likely to elapse before the surveys now being made were likely to be completed, therefore he made the inquiry in order to obtain information as to what course would be adopted by the Government.

Hon. Mr. Campbell said nothing had occurred since the passing of the Act in the first part of the Session to induce any change in the intentions of the Government. It was the intention of the Government to adopt a route having first submitted the same for the approval of the Imperial Government. He would state in reference to the latter part of the inquiry that it was the intention to let the work by contract in pursuance of the Act of Parliament, and therefore it was not the intention of Government to grant any subsidy to aid a company in building this railroad.

In answer to an enquiry by **Hon. Mr. Steeves**, it was stated by **Hon. Mr. Campbell**,

that he had received a design of a medal that was now being cast at a cost of £500, to commemorate Confederation.

WHITEAVES' RELIEF BILL—THIRD READING

Hon. Mr. Bureau said the bill came before this House in an irregular way. No witnesses were produced before this House, nor the parties themselves to convince them that all was right, or that no collusion or deception was attempted to be practised on this Branch of the Legislature. It was their duty to be jealous of the rights and prerogatives of this House, and also to guard carefully against the possibility of doing any wrong. A reconciliation may have been effected between the parties. The courts could grant him (the husband) a judgment of *séparation de corps et de biens*, but divorces were dangerous modes of redress. The more facilities are given for procuring them, the more frequent will be the demand on this House. This case will be invoked as a precedent, and a dangerous one it will be. He would ask the hon. mover to delay a few days until further information might be offered, and so justify, in some measure, the undue haste with which the majority of this House hurried on this measure. This was the province of a Superior Court of Justice, which this House was arrogating to itself, and he yet hoped they would delay the final passage of the bill for a few days for these reasons, and so avoid the great danger of hasty legislation in a case of this complicated and delicate character. The following are the authorities cited by **Hon. Mr. Bureau**, in support of his proposition:

"The law of divorce and marriage in the Divorce Court, and in the House of Lords—By Macqueen."

1st. Page 46-47, "With reference to these eleven bars, a heavy responsibility is created by sections 29, 30 and 31 of the Divorce Act, 1857, for the full court is "to satisfy itself," so far as it reasonably can, not only as to the facts alleged by the complainant, but also whether or no he or she is subject to any of the bars. Suppose a suit is undefended—it is certain, generally, that in such case, both parties are willing—nay, anxious, that the remedy should be granted. The Legislature intended that *ex parte* suits be inspected with a jealous eye. The court, therefore, is not to decide simply on the evidence adduced. The Act requires the Judges to sift the proofs, and call for more, until they are satisfied, not only

that the respondent's delinquency is established, but also that the petitioner is shown to be meritorious. This the House of Lords always did".

"Why? Because marriage was an holy estate, emblematical of the mystical union of Christ with his church; because, to use the language of a Judge distinguished in this branch of learning, 'the genius and tendency of the law is in favour of the permanence of marriage; it encourages the duration of marriage union, and discourages the dissolution of it. In certain circumstances the dissolution of the marriage contracts is, indeed, permitted, but the law of divorce is barely permissive, not imperative. It tolerates what it neither commands nor approves. The remedy of divorce, is, in truth, but a mournful remedy, and it is one which the law dispenses with an unwilling hand. This is manifest from the principle which runs through the whole proceedings. Hence, every obstacle that presents itself, is eagerly laid hold of, to support the marriage and prevent its dissolution, as condonation, collusion, connivance, and all other personal bars."

Hon. Mr. Allan said he would be one of the last to agree to increasing the facilities for annulling the matrimonial bond, in order to enable married persons more easily to obtain a divorce, but in this present case the principal objection of his hon. friend (Mr. Bureau) would have been done away with if the matter had come before the House, in the same manner as those cases had formerly been taken before the Legislature of Canada. This evidence has been taken before the courts of Lower Canada, and he had no hesitation in saying that they needed no stronger proof than they had elicited from the witnesses; to induce them to recommend the House to grant the petition. If they deferred this matter until power was given to the House to examine witnesses under oath, it was more than probable that some of these witnesses who were now here would not then be in the country. In regard to any arrangement taking place between the parties, there was not the slightest grounds to suppose any such reconciliation would take place. Under these circumstances, he could not see that anything would be gained by postponing this matter for three days, as had been suggested. If his hon. friend would show any advantage to be gained by postponing it he (Mr. Allan) would consent to it.

Hon. Mr. McCully said he had listened with much interest to the hon. gentleman (Mr.

Bureau), who had taken such an active part against this measure, and he (Mr. McCully) agreed with him that there was nothing more undesirable than to have these matters brought before this Senate. He hoped the action of this Senate in taking the functions of a court of law in relation to divorce would never be repeated in this Legislature, as there could be no tribunal so unfitted to enquire into those delicate subjects relating to husband and wife, especially where the appeal for divorce is on the ground of adultery. He hoped the Government would take the matter into consideration, and bring in a bill to establish a court to deal with those cases. He would feel that the House was degraded if they were obliged to listen to such testimony as was sometimes brought forward in these cases. As a general rule the evidence that is required in order to justify the court to deal with cases of this character is of such a nature that no tribunal like this ought to hear it. He was not speaking of this case, because it was not of that revolting character that many cases are, but he hoped this would be the last application of this kind, and that the Government would provide as in other countries, a tribunal to hear these indelicate matters, which must of necessity be investigated before a tribunal of justice. The testimony in this case was not taken under oath, as we had not the power to administer an oath, but as the Union Act had conferred upon this Legislature the power to deal with these subjects, and it having been referred to a committee we dealt with it as best we could, and we came unanimously to the conclusion that the evidence was ample to justify the proceedings that have been taken. If there had been seen any sign of collusion or condonation between the parties to justify us in withholding our approval of this bill, he (Mr. McCully) would have been one of the first to have resisted it.

Hon. Mr. Letellier de St. Just expressed himself decidedly opposed to this hurried mode of dealing with the question. If it must be passed into law, why do so with so much haste before hon. members have time to read over the evidence taken before another tribunal. He thought the parties and their witnesses ought to have been properly produced before this House, so that we would feel in conscience we were doing our duty, and not hold out such unheard of facilities to all others to come before this Dominion Parliament and accomplish their purposes with little or no trouble. This House was bound in honour

and duty to protect the interests of society, and he felt satisfied that this was only the commencement of many other similar applications and this case would be cited as precedent.

Hon. Mr. Campbell said the evidence in the case went to show that the husband and wife had had no personal intercourse whatever since the wife had left her husband's house, and it had been shown that from the time the evidence was taken up to the time the Committee were sitting she was absent from him, and the letter she had written to to him had been unanswered. There had been no intercourse between them, either personal or by correspondence, in any way, from the time the wife had left her husband's house. The evidence of guilt had been produced before the Committee in the most clear and distinct way in which it could be taken until this Senate has the power to examine witnesses under oath. The House indicated its wish not to have this matter brought before them, and they deputed their power to a committee, who having heard the evidence which had been taken under oath, and having heard the witnesses, they have intimated there was no collusion between the parties, and report in favour of the bill. He did not quite agree with his hon. friend, (Mr. McCully) that they should create a court to deal with cases of marriage and divorce, because he thought the establishment of such a court would create too great a facility for the dissolution of the matrimonial bond, and would tend to increase the number of applications for divorce, while the present course tended to check these applications. These were the opinions he had formed for the moment on the subject. The bill now before the Legislature, so far as he had formed an opinion, had been established by such evidence as he thought justified the House in adopting the report of the Committee and passing the bill.

Hon. Mr. Locke gave notice of enquiry for Wednesday next, relating to filling up the vacancy caused by the death of the late Senator Wier.

The first report of the Joint Committee on the Library was read and accepted.

The House then resolved itself into Committee of the Whole on the Bill from the House of Commons, intituled: "Stationery office establishment Bill,"

Hon. Mr. Dickson in the Chair,

The said bill was reported without an amendment.

CURRENCY BILL

The House went into Committee of the Whole on the Bill intituled "An Act respecting the Currency,"

Hon. Mr. McCrea in the chair.

Hon. Mr. Steeves said the provisions of the bill did not carry out its object, as stated in the preamble, that there should be a uniform currency throughout the Dominion.

Hon. Mr. Campbell said that to prevent making changes in the currency too often it was thought desirable to submit to present evils, and wait until they ascertained whether the monetary arrangement agreed to by the Conference at Paris would be adopted by the United States.

Hon. Mr. Wilmot said if the recommendation of the Conference at Paris was not adopted, we should adopt the Nova Scotia system, and one advantage to be derived from it would be, it would relieve the silver nuisance by reducing its value compared with the sovereign.

Hon. Mr. Tessier said legal tender notes were legal tender in Nova Scotia, as well as in other parts of the Dominion, therefore a person in Montreal with £1,000 in gold could get one thousand pounds in legal tender notes for it at the rate of 2½, but if he went to Halifax he could buy up legal tender notes with his gold and reap a profit. It this was carried on to any extent the Province of Nova Scotia would certainly lose by it.

Hon. Mr. McCully said there would be no advantage gained in that way as the notes would not be of the same value in Montreal as in Halifax.

Hon. Mr. Campbell said this bill would provide a remedy for this difference of currency, in case Congress agrees with the recommendation of the Conference held at Paris, because then the bill would introduce a uniform currency with the United States and some of the principal powers of Europe, but in case Congress does not accede to that recommendation, then some other bill will have to be presented for the consideration of Parliament, having for its object the assimilation of the currency of the Dominion alone. In the prospect of Congress adopting that bill it was thought best not to make any change in the meantime. Correspondence has been going on between the chairman of the Committee having that subject under consideration in Con-