

1920.
NEW ZEALAND.

MARRIAGE AMENDMENT BILL

(REPORT OF COMMITTEE ON), TOGETHER WITH THE MINUTES OF PROCEEDINGS AND EVIDENCE.

(W. DOWNIE STEWART, CHAIRMAN.)

Report brought up 28th October, 1920, and, together with Minutes of Proceedings and Evidence, ordered to be printed.

ORDERS OF REFERENCE.

Extracts from the Journals of the House of Representatives.

TUESDAY, THE 28TH DAY OF SEPTEMBER, 1920.

Ordered, "That Standing Order No. 219 be suspended, and that a Select Committee be appointed to consider the amendments made by the Legislative Council in the Marriage Amendment Bill; with power to call for persons, papers, and records; three to be a quorum: the Committee to consist of the Hon. Mr. Anderson, Mr. Forbes, Mr. Harris, Mr. Hudson, the Right Hon. Mr. Massey, Mr. Poland, Mr. Savage, Mr. Sidey, Mr. Stewart, Mr. Wright, and the mover."—(Hon. Mr. LEE.)

WEDNESDAY, THE 29TH DAY OF SEPTEMBER, 1920.

Ordered, "That the amendments made by the Legislative Council in the Marriage Amendment Bill be referred to the Select Committee on the Bill."—(Hon. Mr. LEE.)

REPORT.

I AM directed to report: The Committee recommends that the House agree with the amendments made in the Bill by the Legislative Council by inserting new clauses 3A and 6, with the exception of the words "imprisonment for one year or," in clause 6, line 31.

28th October, 1920.

W. DOWNIE STEWART, Chairman.

MINUTES OF PROCEEDINGS.

TUESDAY, 5TH OCTOBER, 1920.

The Committee met at noon in the Joint Committee-room.

Present: Hon. Mr. Anderson, Mr. Harris, Mr. Savage, Mr. Sidey, Mr. Wright, Hon. Mr. Lee.

The order of reference setting up the Committee was read by the Clerk.

Election of Chairman.—Resolved, on motion of Hon. Mr. Lee, seconded by Mr. Sidey, That Mr. Stewart be Chairman of the Committee.

In the absence of Mr. Stewart, Mr. Wright took the Chair.

Day of Meeting.—Resolved, on motion of Hon. Mr. Lee, That the Committee adjourn until Thursday, the 7th instant, at 10.30 a.m.

FRIDAY, 8TH OCTOBER, 1920.

Present: Hon. Mr. Anderson, Mr. Harris, Mr. Hudson, Mr. Poland, Mr. Savage, Mr. Sidey, Mr. Stewart, Hon. Mr. Lee.

Minutes of previous meeting were read and confirmed.

Resolved, on motion of Mr. Sidey, That evidence be taken before the Committee.

It was also resolved that the Press be not admitted to the meetings of the Committee, but that the Chairman issue a notice to be published in the Press.

The meeting then adjourned until Tuesday, the 12th October, 1920, at 10.30 a.m.

Notice issued to the Press by the Chairman, 8th October, 1920.

MARRIAGE AMENDMENT BILL.—PROCEEDINGS NOT TO BE PUBLIC.

The Committee on the Marriage Amendment Bill has decided that in view of the evidence already taken, and the full public discussion that has taken place by means of pamphlets and otherwise, it does not consider it necessary to open up the whole question again. But if any persons specially interested have not yet been heard, or if any points bearing on the Bill have not yet been sufficiently elucidated, the Committee is prepared to hear evidence briefly stated on Tuesday next in the Joint Committee-room, Parliament Buildings, at 10.30 a.m. The proceedings will not be open to the Press.

TUESDAY, 12TH OCTOBER, 1920.

Present: Hon. Mr. Anderson, Mr. Forbes, Mr. Harris, Mr. Hudson, Mr. Poland, Mr. Savage, Mr. Sidey, Mr. Stewart, Mr. Wright, Hon. Mr. Lee.

Minutes of previous meeting were read and confirmed.

Letters from Rev. Robert Wood, Karori (dated 9th October, 1920), and one from Rev. Archbishop O'Shea and Bishop Cleary (dated 11th October, 1920) were read by the Chairman.

Resolved, on motion of Mr. Savage, That after consideration the Committee approve of the notice issued to the Press by the Chairman as being sufficient.

The following witnesses attended and gave evidence and were questioned by members, their evidence being taken down in shorthand: Rev. Howard Elliott; Mr. W. W. Cook, Registrar-General of Marriages.

It was also resolved that the Chairman communicate with Archbishop O'Shea, inviting him to send a representative to the next meeting of the Committee should he so desire.

The Committee then adjourned until Friday, the 15th instant, at 10.30 a.m.

FRIDAY, 15TH OCTOBER, 1920.

Present: Hon. Mr. Anderson, Mr. Forbes, Mr. Harris, Mr. Hudson, Right Hon. Mr. Massey, Mr. Poland, Mr. Savage, Mr. Sidey, Mr. Stewart, Mr. Wright, Hon. Mr. Lee.

Minutes of the previous meeting were read and confirmed.

Letters to Archbishop O'Shea and Rev. Robert Wood, a letter from Archbishop O'Shea (dated 14th October, 1920), and an opinion from the Solicitor-General, were read by the Chairman.

Rev. Howard Elliott attended and made a statement.

Resolved, on motion of Mr. Harris, That the amendments in the Marriage Amendment Bill made by the Legislative Council as printed in the Bill be agreed to, subject to the striking-out in clause 6, line 31, the words "imprisonment for one year or."

Mr. Sidey moved, as an amendment, That the following subclause be added: "In any prosecution under this section it shall be a good defence if the Court is of opinion that the allegation related exclusively to the doctrines, practice, or discipline of the Church of which the accused person is a member, and was accompanied by an express statement that the accused did not question the validity of the marriage in law."

On the question being put, That the above amendment stand part of the Bill, it passed in the negative.

On the original motion being put, the Committee divided, and names were taken down as follow:—Ayes, 6: Hon. Mr. Anderson, Mr. Harris, Mr. Hudson, Mr. Stewart, Mr. Wright, Hon. Mr. Lee. Noes, 4: Mr. Forbes, Mr. Poland, Mr. Savage, Mr. Sidey.

So it was resolved in the affirmative.

It was resolved that the minutes of the proceedings and evidence be printed.

Resolved, on motion of Hon. Mr. Lee, That the Chairman do report the Bill to the House with amendments.

It was unanimously resolved, on motion of Mr. Sidey, That a hearty vote of thanks be passed to the Chairman.

The meeting then adjourned.

FRIDAY, 22ND OCTOBER, 1920.

Present: Hon. Mr. Anderson, Mr. Harris, Mr. Hudson, Mr. Poland, Mr. Savage, Mr. Sidey, Mr. Stewart, Mr. Wright, Hon. Mr. Lee.

Minutes of previous meeting were read and confirmed.

The following witnesses attended and gave evidence: Rev. Robert Wood, representing the Presbyterian Assembly; Rev. Howard Elliott; and Mr. W. W. Cook, Registrar-General.

A letter, dated 16th October, 1920, from Bishop Cleary, was read by the Chairman. It was resolved, That copies of this letter be sent to the Rev. Robert Wood and the Rev. Howard Elliott, in order that they may reply to same in writing.
The meeting then adjourned.

MARRIAGE AMENDMENT BILL.

Solicitor-General's Office, Wellington, 14th September, 1920.

The Right Hon. the Prime Minister.

I HAVE been asked to advise as to the legal effect of (a) the new clause added to this Bill in the Legislative Assembly, and (b) the joint opinion thereon by Sir John Findlay and Mr. Myers, which was recently forwarded to you by Archbishop O'Shea.

After consideration I have to advise as follows :—

(a.) If the new clause becomes law in its present form the Roman Catholic Church will still be at liberty to promulgate its doctrine that the marriage of a Catholic celebrated otherwise than before a priest of the Catholic Church is not a sacrament. But that Church will be debarred from promulgating declarations that a sacramental celebration is essential to the validity of a marriage, or that marriages entered into without such a sacramental celebration are in any respect invalid as marriages; and will be also debarred from alleging that persons so married are living together in adultery, or that their issue is illegitimate. In my opinion that is the effect of the new clause, and I see no reason to believe that a Court of law would interpret it otherwise.

(b.) The effect of the amendments suggested by the two counsel who have advised the Archbishop would in my judgment be to frustrate the object of the proposed legislation, as embodied in the new clause above referred to. Their joint opinion is returned herewith.

W. C. MACGREGOR, Solicitor-General.

MINUTES OF EVIDENCE.

TUESDAY, 12TH OCTOBER, 1920.

Rev. HOWARD ELLIOTT examined.

The Chairman : The Committee have received some letters, one from the Rev. Robert Wood, asking to be allowed to reply to certain statements made by Dr. Findlay to the Committee of the Upper House. We have also a letter from the Catholic Archbishop, and Bishop Cleary, discussing the terms in which we invited them to give further evidence. The conclusion they have arrived at is that while they have prepared a great mass of evidence, they think there would be no object gained in trying to put it before us, because we have intimated that we will only hear evidence briefly, and for various other reasons they do not propose to give evidence. Nobody appears to be offering evidence, and we understand that you are in attendance to watch proceedings in the event of evidence being offered before this Committee. We want to know if you have anything to say, and, if so, what points it deals with. If possible, we are anxious to avoid opening the whole question again, as the subject has already been opened up in the Legislative Council. If, however, there is any point that you wish specially to make the Committee will hear it, and, of course, if necessary, they would have to invite the other side if they considered it opened up fresh matter.

Rev. Howard Elliott : Mr. Chairman, in making any statement just now, one would have to make this reservation, that I would be free, should other evidence be offered, to make a cross-examination in respect of such evidence. There are one or two matters that I wish to refer to now. I want to put in two copies of certificates issued in respect to one marriage in this country.

The Chairman : Were they put into the Legislative Council?

Rev. Howard Elliott : No. They purport to be a certificate issued on the 20th June, 1908, of a marriage between Neil McLean and Ada Casey, and celebrated before James S. Bond, Registrar; whilst on the 13th July, 1908, the same parties were married in St. Martha's Church, Hamilton, by Dean Darby, and described in this certificate a month later as bachelor and spinster, which is a practical confirmation of the statement made by me before the Committee of the Legislative Council, but a particular instance of which we could not secure evidence of at the time.

Hon. Mr. Lee : These are documents about which there is no question, and if they are put in without comment there is nothing to answer. If Mr. Elliott wants to draw conclusions about these statements, that will open the door. Does the Committee want any explanation about documents such as those?

The Chairman : My recollection as to what took place in the Upper House was that this class of certificate was put in evidence by Mr. Howard Elliott, but they were only copies of an Australian certificate. The contention made by the Roman Catholic authorities was that no such case had occurred in New Zealand. If Mr. Elliott has discovered such a case in New Zealand I should think it is of so much moment to the Catholic authorities that this should be put in, and we should ask if there is any explanation of them.

Hon. Mr. Lee : We do not want to have any explanation of these from Mr. Elliott.

Rev. Howard Elliott : If you now do not want any explanation, and the authorities of the Roman Catholic Church come forward to offer an explanation, I presume I shall be able to hear their deductions in reference to these certificates. These are the only ones I put in. I have here the photographic copies of the originals : would they be sufficient, or do you desire to hold the originals for a time ?

Hon. Mr. Anderson : We keep the original.

The Chairman : Is there any difficulty about leaving the original ?

Rev. Howard Elliott : I would rather take the originals just now if you are satisfied with the photographs.

Hon. Mr. Anderson : If you produce the photographs only you cannot meet them so effectively as with the originals.

Hon. Mr. Lee : They admitted photographs in the Upper House, as may be seen from the report, as follows : " Mr. Elliott also produced photographs of two marriage certificates issued at Brisbane, Queensland, the one of a marriage by a Baptist minister in 1913 of a man and woman described as ' bachelor ' and ' spinster,' and the other of a marriage by a Roman Catholic priest in 1918, of the same man and woman, also described as ' bachelor ' and ' spinster.' " That was accepted by the Upper House.

Rev. Howard Elliott : I will not question the point, Mr. Chairman. There are also the points that have been raised by the Church Courts, &c., and by resolution, regarding the religious liberty of all Churches, such as may be affected by the proposed amendments in the law, if they come into force. I desire to be heard in reference to those points in support of the proposed amendments.

The Chairman : Mr. Elliott wants to support this clause in answer to the resolutions passed by various bodies objecting to it.

Rev. Howard Elliott : They are raising the point in objection that this amendment if passed into law would infringe religious liberty, and the liberty of the various denominations to teach their doctrines of marriage.

Hon. Mr. Lee : But they have not raised it before this Committee.

Rev. Howard Elliott : I desire to have an opportunity of meeting it—

Hon. Mr. Lee : But they have not made that before this Committee.

Rev. Howard Elliott : They have raised the point, nevertheless. The statements have been made, and I desire to have the opportunity of meeting them. I prefer to meet these objections before the people concerned, and before the authorities of the Roman Catholic Church. It would be much more satisfactory for me to do so. They have avoided anything like coming to grips on this subject. They stand off and fire pamphlets all over the country, and allow nothing to be recorded where responsible Committees can draw their own conclusions and deductions in the course of cross-examination. The attitude, so far as I can judge, is most unfair which they have taken up, and is calculated, I think intentionally, to burk the work of this Committee, with the view that the subject may be hung up indefinitely, and probably over the end of the session. I do trust that the Committee will not allow anything of the kind to be done. If the attitude of the Roman Catholic Church—or, rather, if the authorities of the Roman Catholic Church do not care to accept the invitation—which, so far as I can judge, is in good taste or courtesy—then that ought to be their responsibility. If they will come, I shall be very glad to have an opportunity of meeting the whole opposition before this Committee, face to face with the Roman Catholic Church authorities.

The Chairman : How long would it take to make your statement ?

Rev. Howard Elliott : My statement could be made very briefly, if it is only a statement. If I make a statement now and other statements are subsequently made, my right of reply would disappear, or I would only have the right of examination of a witness who might attend.

The Chairman : Do you think it material to make a statement ?

Rev. Howard Elliott : I do not think it material at this juncture. Not having appeared, the Roman Catholic Church is allowing the case to go by default. That is how it appears to me.

The Chairman : If we ask them concerning this fresh evidence, and they intimate to us that they wish to attend, would it meet your view if you reserve your right to meet any statement they make then ?

Rev. Howard Elliott : That would be satisfactory.

The Chairman : The Committee is bound to accept documentary evidence. If there is to be a discussion on proposed legislation it would be much more satisfactory to us if they took the opportunity of being present.

Rev. Howard Elliott : May I suggest that they must have known that some discussion would take place, and that some evidence would probably be tendered.

The Chairman : My own view would be, if Mr. Elliott wished to make a statement there is nothing to prevent him from doing so. The question is whether he should make his statement now, or wait until we see whether they want to comment on that evidence.

Rev. Howard Elliott : In view of the attitude of the Roman Catholic authorities—the attitude they have taken up—and in view of what I judge to be the general mind of this Committee, I conclude that it is your intention to afford them another opportunity of appearing.

The Chairman : On that particular point.

Rev. Howard Elliott : Would you restrict them to that ?

The Chairman : I would not be inclined to have the whole question opened up again.

Hon. Mr. Lee : I suggest that the document be put in.

The Chairman : You admit of the right of reply to it ?

Hon. Mr. Lee : I do not know about that.

Mr. Harris : They could be heard if they wanted to, but they have not come here. We need not even tell them what has taken place.

Hon. Mr. Anderson : Would it not be well to hear what the Registrar has to say about these documents ?

The Chairman : Is there anything further you would like to say, Mr. Elliott ?

Rev. Howard Elliott : Well, sir, I would like to say that this letter from Bishop Cleary and Archbishop O'Shea should not go into the records of the proceedings of this Committee. I think that would be very objectionable. I object very strongly to that being done, because there is no right of reply, and that letter may prejudice this Committee in its decision. If that is done there will be put on record a number of contentions or statements which are not correct, and which are not sustainable, and it is placing me at a disadvantage. That letter may be used subsequently in controversy in a most unfair manner. I think that in view of the absence of these gentlemen from this Committee that letter ought not to be put upon the permanent records. It contains a great deal of matter which is not justifiable and which is very reprehensible. I would also point out that I am prepared to call evidence in regard to the operations of this decree from people who have been affected by it, and people who have been separated by it, and who have had experience of it. I will call that evidence if the Committee desires me to do so. The Statutes Revision Committee of the Legislative Council desired that I should not call any personal witnesses relating to this matter, and that I should not put on record any names, because of the publicity attached to having the names recorded in a public document. And at the request of Sir Francis Bell and of the Hon. Chairman of that Committee I did not then call evidence. But I am quite prepared to call the evidence of people who can testify to the facts that I have stated. They can testify to what has occurred under the operations of this *Ne temere* decree, and to what is occurring. That evidence is available if the Committee desires proof that our allegations are as we have made them. Some of the evidence may take a little time to get, some of it we may have to get from Dunedin and other parts of the country. But there is also evidence available here in Wellington. I have mentioned that, sir, because I would not like it to be assumed by this Committee that my evidence is purely documentary evidence. As I stated before the Statutes Revision Committee of the Legislative Council, I am prepared to supply the evidence of the "overt act," as Sir Francis Bell termed it. I am quite prepared to call that evidence, and if the Committee desires it, all names could be left out in the official records.

MR. W. W. COOK, Registrar-General of Births, Deaths, and Marriages for New Zealand, examined.

Mr. Cook : I am Registrar-General of Births, Deaths, and Marriages for New Zealand.

Hon. Mr. Lee : Are all marriages taking place in New Zealand recorded in Wellington, Mr. Cook ?—Yes.

In the registers ?—Yes. The loose documents are sent to us after solemnization.

It is the duty of every Registrar, or officiating minister, to send you particulars of all marriages for record in your register ?—That is so, as soon as practicable after solemnization.

Then you record these particulars in your Marriage Register ?—We record the documents sent to us.

The registers are open to public inspection ?—Yes, anybody can see them on paying a fee.

Before the marriage can be solemnized, a marriage certificate has to be issued ?—Notice must be given to the Registrar of the district where the marriage is to be solemnized, whether by a minister or by a Registrar.

What does that notice set out ?—It sets out the names of the parties to the marriage, their respective ages, sex, and occupation ; whether they are married or single ; the place where the marriage is to be solemnized, and by whom.

Is that notice given in the form of a statutory declaration ?—After the notice is given it is signed, and then there is a statutory declaration made to the effect that the particulars in the notice are true ; that there is no legal impediment ; that consent has been obtained in the case of a minor ; and, further, that the three-days residence has been complied with.

On that a certificate is issued authorizing marriage ?—Yes.

If the notice is given, say, in Hamilton, and the certificate issued in Hamilton, do they get recorded in Wellington ?—Yes ; the Registrar sends his return of the notice to us, and the minister will send his return of the marriage to us, and we check the marriage by the notice.

I may put it this way : If there be a marriage in Hamilton, you are able to say in Wellington whether a certificate was issued authorizing that marriage ?—Yes, the Registrar sends in his returns every quarter.

According to the Act, no minister has a right to perform the marriage ceremony without a certificate—that is, it must be produced to him before the marriage is solemnized ?—Yes, exactly.

Is this a certificate [produced] of marriage of two parties, and who are they ?—Neil McLean and Ada Annie Casey.

On what day is that ?—The 20th June, 1908.

Where ?—At the office of the Registrar of Marriages at Hamilton.

Can you tell us whether a certificate was issued in that case ?—Yes, it was to the Registrar himself, authorizing him to marry.

Here is another marriage certificate [produced] : what is the date ?—The 13th July, 1908.

Of marriage, where ?—At St. Mary's Roman Catholic Church, Hamilton, between Neil McLean, school-teacher, and Ada Annie Casey, a nurse.

There is a number on that in the margin ?—This is number 38.

What does that number indicate ?—That is the number of the entry of the marriage in the Marriage Register. A minister starts his Marriage Register with No. 1.

If that is a marriage by a clergyman, then that is the thirty-eighth marriage in that book?—That is so.

Is it his duty to keep a book?—Not necessarily. He can solemnize a marriage and use another man's book, but a book must be kept.

That was the thirty-eighth marriage solemnized by that clergyman?—It is the thirty-eighth one at Hamilton registered in that book.

Before that marriage was solemnized, the officiating minister should have had in his possession a certificate from the Registrar at Hamilton?—Yes, to authorize that marriage.

Which he retains?—Yes, he should retain it; it does not come to me.

The marriage having been solemnized, a document of that nature should have been sent down to Wellington for record in the Marriage Register at Wellington?—Yes.

Can you say if that has been done?—I have searched the Registrar's returns of marriage notices and I cannot find that a certificate was issued to authorize the marriage. I have looked in the index without result, also, in this case.

That marriage is not recorded in your books?—No. If a copy of that had been sent to us we would have refused to accept it because there was no certificate issued to authorize it.

Assuming a document like that had been sent to you and you had refused it, what action would you have taken?—We should ask the clergyman by whom the certificate was issued to authorize this marriage.

Would it rest at that—would it be cleared up?—If he said he did not receive the Registrar's certificate authorizing the marriage, we would advise him of the seriousness of the position, and ask him to advise the parties to the marriage of the position. We would recommend them to be married again after having taken out a Registrar's certificate. I have looked up the records for correspondence about this thing, but I cannot find anything. It would appear as if a return of this was never sent to us.

Your Marriage Registers are all open to the public?—Yes.

Are the Church registers open to the outside public?—I do not think so. I may add that a further search was made for marriages solemnized by the Rev. Joseph Croke Darby, of Hamilton, respecting the sequence of his numbers. I find returns for marriages Nos. 34 to 37, and then I find marriage No. 39.

Evidently, marriage No. 38 is not in your book?—That is so. I searched the Registrar's returns for Hamilton, Cambridge, and Te Awamutu for the year 1908.

Mr. Forbes: Who fills in that return there?—The minister in charge of the register would fill in that return. In this case it is written out by the Rev. Joseph Croke Darby, who solemnized the marriage.

The statement made, "bachelor" and "spinster," that has to be supplied to him by the parties concerned?—That is so. Accompanying the certificate authorizing the marriage is a blue form, and he enters the particulars from that form. The Registrar makes out the blue form.

Hon. Mr. Anderson: If you had any correspondence in connection with that, would it have been on your records?—I am certain it would. We always record them specially when marriages have been solemnized without Registrars' certificates.

Do you have many marriages solemnized without a Registrar's certificate?—A few. In looking through my record index for the year 1908 I ran across a marriage solemnized without a Registrar's certificate.

By whom?—A Mr. Raine.

Where is it?—I did not look it up.

How did you find out?—I was trying to find this one in the index under "Marriages."

What did he say in Raine's case?—I did not look it up to see.

There might be an explanation?—Yes. I did not look it up. If you like I can get the papers.

It would be just as well?—I can let you have them.

Have you other marriages?—Yes, three or four.

You have?—Yes, where we made them get married with a Registrar's certificate.

Can you furnish this Committee with particulars of those cases?—Yes, I think so.

Mr. Savage: In connection with the issue of these certificates, are they kept in duplicate? In the case of an oversight occurring on the part of the Department, what protection would the officiating clergyman have? Is there any duplicate or any means of tracing the certificates?—We do not keep a duplicate, but we keep a record of each certificate issued.

But supposing that record has not been made?—The certificate could not be issued without the notice being taken and the declaration made.

Supposing there is no record kept by the clerk who drew up the certificate?—You mean to say that there would be no notice taken and no declaration made?

Then the declaration is made first, before the certificate is issued?—Yes. The notice is signed, and the declaration is made as to the truth of the contents of it. It is entered in the notice-book, and the minister's name is inserted in the same book.

Hon. Mr. Lee: What becomes of the marriage notices: are they filed?—The book itself is.

They sign in the volume itself?—Yes.

Mr. Savage: But does the clergyman do so?—No, the clergyman does not. One of the parties to the marriage must do that.

So long as the clergyman gets the authority of the Registrar he is satisfied?—Yes.

That is the point: I want to know if there is any possibility of the clergyman being misled?—By a foolish Registrar issuing a certificate without taking the notice? We have some bad ones, but that would be pretty bad.

Apparently there has been a marriage solemnized without the authority of the Department. I want to know whose fault it is. I want to know whether it is due to a mistake made by the Department, or whether it has been deliberately done by the officiating clergyman?—It may have been a mistake. I know of a case now where what we call “pink form” was produced to an officiating minister, and he married the parties on the strength of that without a Registrar’s certificate.

Hon. Mr. Lee : He did not send the return in?—No. (This refers to the second marriage by Rev. Father Darby.)

You have got to assume that the certificate was bungled, and that then he did not send in the return. At any rate, you never got it?—No.

Hon. Mr. Anderson : Could any officer of yours have issued a certificate authorizing that sort of a marriage?—I do not think so. He would have to be pretty bad. Mr. Bond was a good Registrar.

Mr. Sidey : When did this first come under your notice?—This morning.

Is this the first case of the kind brought under your notice?—No. There was a similar case where the parties were subsequently married by a Rabbi without a Registrar’s certificate. The Rabbi signed the document.

How long ago was that?—I cannot say exactly.

Hon. Mr. Anderson : What happened in that case?—I got into touch with the gentleman and I informed him that the marriage was not properly solemnized as there had been no Registrar’s certificate issued. He had entered it in his book, and I said we could not accept that as a record.

The same thing was done there?—Apparently, exactly similar.

Except that he sent the certificate in?—Yes.

Does the local Registrar keep a register, too?—He has a record of all certificates issued by him, either to himself or to a minister.

Mr. Sidey : You are quite satisfied in this case that the Registrar did not issue the certificate?—Well, I went through his returns.

What about his books at Hamilton : would there be any record at Hamilton?—I could not say without a personal inspection.

Can you get that information?—Yes.

Mr. Poland : You never got No. 38?—No.

You looked up the numbers, and you found them up to 37, and then the next number was 39 : how do you account for that?—No. 38 was never sent in. I looked through the Registrar’s returns to find out the marriages solemnized by this man at Hamilton. I took the numbers of them and looked them up, but No. 38 was not there.

Is it a case of neglect of duty or an oversight, or what?—I do not know. Perhaps the minister knew of this marriage, and that it was not necessary to send in a return of that one.

If the minister had known of the marriage would he have been justified in using the words “bachelor” and “spinster”?—No.

Mr. Harris : Does it ever happen that a certificate does not come in?—If it does not come in from the clergyman we can pick it up from the Registrar’s returns and write to the clergyman.

But that may be some time after?—Yes. We get our Registrars’ returns every three months.

Mr. Hudson : If the second return had reached you it would have described the parties as “bachelor” and “spinster”?—Yes. We should have noticed that a certificate had not been issued to authorize the marriage.

How?—We could see from the Registrar’s returns what marriages were outstanding, and if we did not find a certificate for this marriage we would write straight away to the minister.

Mr. Sidey : Is there anything which should prevent a case like this occurring? Would the minister be liable to a penalty?—There is a penalty.

The Chairman : As Mr. Elliott desires to ask the witness some questions, the same procedure will be adopted as was adopted by the Legislative Council Committee. Mr. Elliott will be presumed to be asking his questions through me as Chairman.

Rev. Howard Elliott : It is quite apparent, then, from your failure to discover any record of the issue of a certificate to celebrate the marriage, and from the fact that that certificate did not subsequently reach you from the Rev. Joseph Croke Darby, that a marriage was illegally performed in that case?—Apparently.

And if you look at those certificates and compare them, and find that the parties are described as “bachelor” and “spinster” in the one certificate, and that they are also similarly described as “bachelor” and “spinster” in the other certificate, you would say that in the second certificate the parties are wrongly described?—Yes, it would be incorrect.

They were previously married?—Yes.

Would it be possible for you to secure the Church record?—I have no power to do that. The Church records are not Government records.

Then you quoted a case of a remarriage by a Rabbi, but in that case the certificate was sent in to you and rejected by you?—Yes.

In that case were the parties described as “bachelor” and “spinster”?—I could not say from memory.

The certificate would show that?—Yes. It would be very hard to find it now.

And have you ever found any other minister in the case of a second marriage describe previously married people as “bachelor” and “spinster”?—In the case of a second marriage?

In the case of a remarriage?—No ; I do not know of any case.

So that this case is distinct in that respect?—Yes.

FRIDAY, 15TH OCTOBER, 1920.

Rev. HOWARD ELLIOTT examined.

The Chairman : For your information, Mr. Elliott, I may mention that I wrote to Archbishop O'Shea informing him of the evidence you had put in at the last meeting of the Committee, and stating that the Committee would sit this morning to hear any further evidence. A reply has been received from the Archbishop, and I will hand it to you for your perusal.

Rev. Howard Elliott : Sir, I have read this statement, and I notice that there is an attempt to throw a doubt upon the genuineness of the second certificate which I put in. I do not think, however, that for this Committee there can be any question as to the genuineness of the certificate, and that disposes of that suggestion in the statement. Then the statement goes on to say that such a thing is absolutely against their regulations. Well, no copy of those regulations is supplied, and you are asked to proceed upon the—

Hon. Mr. Lee : There is a form of the memorandum issued in such cases at the end of the evidence taken before the Upper House?—Quite so; but we have evidence that that is not the practice of the Church universally. For instance, the Australian certificate of 1918 shows that that was not the practice adopted there; and, further than that, there may be a practice current in the Church which is very difficult to discover, because the people concerned are interested in concealing the practice so far as their friends are concerned. There may be a practice of issuing these certificates, purporting them to be genuine certificates, and which are never registered by the Registrar, in connection with marriages celebrated a second time. If the priests of the Church do this kind of thing in one instance they may do it in others. It is a fact that we have one case before us, and there is no proof that it is not done in other cases. Dean Darby was a priest of very good standing in the Roman Catholic Church until there was some disagreement over certain property, and I understand that, as a result, he is not now exercising his functions as a priest. But up to that time Dean Darby was one of the best-known priests in the Auckland diocese, and probably would have as good a knowledge of the rules and regulations of the Church as any one of their ministers. And if a dean of the Church would do this kind of thing it shows that such certificates may be being issued. A dean is of some rank in the Church, and it may be inferred that others are doing the same thing. Now, these forms which are referred to here in the evidence taken before the Legislative Council Committee are merely forms indicating that certain dispensations have been granted—

The form states that they have received the sacrament of matrimony?—They receive the sacrament of matrimony after having obtained a dispensation. But they are all forms of dispensation.

Take this one: "Diocese of Auckland: —, already civilly married, have renewed their consent and have rightfully received the sacrament of matrimony, having obtained a dispensation in regard to the impediment of —, all things having been performed according to the requirements of the law"—That is a Church memorandum.

There is no objection to that?—No; though, of course, we do not believe that any Church should have the right to issue a certificate of that kind.

They do not issue it. The evidence goes on to state: "The rule in this [Dunedin] diocese, as far as I know it, has been, in the case of marriages revalidated sacramentally, to enter them in a private record for ecclesiastical purposes alone. In no case were any copies of such revalidated marriages given to the persons themselves or sent to the Registrar, or used for any public purpose. If this rule has been broken in the past by any of our priests, he acted through mistake and not in accordance with the instructions of his ecclesiastical superior." That seems to be the practice?—Yes, in regard to that certificate of dispensation.

The Chairman : Can you give the Committee your views in regard to what is stated in that letter?—The principal point is that the certificates which I put in at the last meeting of the Committee are absolute proof that in the case of one priest at least in the Roman Catholic Church the practice of describing persons already married as "bachelor" and "spinster" has been used. And that is not singular. That has been done in that case, whatever may be the regulations of the Church as stated by the Archbishop here. Now, I would like to bring before you the facts in connection with the "pink" catechism, No. 2, which states distinctly that any persons who presume to go through a form of marriage before a non-Catholic minister, or before the Civil Registrar, do not contract a valid marriage—that is to say, they are not married at all. Now, that is in line with the action of Dean Darby, and, whatever Archbishop O'Shea may say, here is the official catechism, under the imprimatur of the Archbishop of Wellington, I understand—Archbishop Redwood. It states distinctly that those persons "are not married at all," and consequently are presumed to be living in sin. That is the catechism Dean Darby adhered to, whatever the regulations may say. According to the catechism he was right in describing those persons as "bachelor" and "spinster," because according to the catechism they were not married at all. Now, sir, our contention is that that must be made an offence, and that no person and no Church has the right to so describe persons, and set at defiance our civil law and the institution of marriage in this country—

Hon. Mr. Lee : They say it is distinctly against their rules to do so?—Quite so. That is a very forcible point. But although they say they do prohibit that kind of thing, the practice of some of their priests is quite to the contrary. And the mere fact that Dean Darby is not now exercising the functions of a priest in the Roman Catholic Church does not affect the case, because there is no evidence to show that it was on account of this act, or "fault," as it has been termed, that he was relieved of his charge. From the reports I have heard it was for quite other reasons. It cannot be alleged that he was not under good discipline in regard to the rules of the Church on that point.

The Chairman : I think that covers all the ground, Mr. Elliott?—Well, sir, I would like to be allowed to make a few remarks as to the suggested infringement of religious liberty by the proposed

amendments of the law. It is rather an important point among all Churches, and I believe many resolutions have been sent to the Right Hon. the Prime Minister and others. There are various resolutions on the subject to which I need not draw your attention, but I want to point this out: that these proposed amendments do not affect the right of a Church to teach their own doctrine in their own Church. The proposed amendments make it an offence to allege, either expressly or by implication, by persons outside the Church, that persons legally married are not truly and sufficiently married. Now, a Church may teach its own doctrine in regard to marriage either in connection with a deceased wife's sister or in connection with any one of the prohibited degrees. They may say that the Church does not approve of such a marriage, and that is consistent with religious liberty and religious freedom. But it is quite different to go outside of the Church. No priest or any other person should have the right to go outside of their Church to a home or to a person and say, "You are living in sin, and your children are illegitimate and are bastards." That is an infringement of both the civil and religious liberty of the parties concerned. If a man has been raised in the Roman Catholic Church, and chooses for his own conscientious purposes to be married either by a Registrar or a non-Catholic minister, that should not give the Roman Catholic Church the right to go to that man and make his life miserable and his home wretched because they happen to regard him as not married according to their doctrine. A case of that kind has occurred just recently in Wellington. That is what is going on. Why should priests of the Roman Catholic Church have a right to persecute and make people miserable and unhappy because of the supposed right of the Church to impose its doctrines over the laws of the country? Now, I contend that the liberty of any Church is not infringed by these proposed amendments. They can teach in their own churches their own doctrines, and that is all the liberty they ought to claim. I want to emphasize that point: that there is every right preserved to the different Churches to teach in their own churches their own doctrines. But it is made an offence for them to go outside of their Church and to say that persons who do not obey their law are not truly married, and that their children are illegitimate or bastards. If that point is kept in mind by this Committee and by the House I do not believe there will be any difficulty in passing these amendments into law.

You consider that there has been some misapprehension?—I am quite sure that there has, according to some of the statements which have appeared in the Press. Take the case of the Nelson Synod: A statement was made that the Bishop of Nelson opposed the proposed amendments to the Marriage Act; and yet that Synod, of which the Bishop is president, subsequently passed a resolution wholly supporting these present amendments. Then, the Rev. Mr. Jolly, in Auckland, questioned very strongly these amendments and called them "preposterous folly"; but his presbytery—that is, the Presbytery of Auckland—published a very strong statement supporting them. The Presbytery of Wellington has passed a resolution supporting the amendments, but suggesting that if there is any doubt as to the liberty of the Churches in the proposed amendments that there should be some safeguard made. But in that respect I want to say that if, on that ground or any other, any attention is given to the suggestion made by Archbishop O'Shea that the word "legal" should be introduced into these amendments, you might just as well cut the whole thing out. You would destroy the value and the effect of the amendments, because Dr. Cleary in his book says, "We do not question its legality, but we call it legalized concubinage."

You say that the Nelson Synod is in favour of the proposed amendments in this Bill?—Yes.

But they add this to their resolution:—

"(a.) That while this Synod recognizes the right of any branch of the Christian Church to teach its religion, and apply its discipline to its own people, it is nevertheless of the opinion that the evidence produced before the Committee of the Legislature which sat recently at Wellington indicates that the Roman Catholic Church declares that the Roman Catholic party to a mixed marriage is guilty of the sin of adultery if such marriage has been celebrated in a registry office or by a non-Roman minister of religion. The Synod holds that such a declaration inflicts a cruel and unmerited injustice on the non-Roman party to such a union, and on the children born of such a marriage. It therefore calls on the Legislature to give such parties, who have committed no offence against the law of Christ or of morality, all the protection and remedy that law can afford.

"(b.) That while it is competent for the State to make its own code for legally valid marriages, the proposed amendments of the Marriage Act appear, as they are worded, to prevent the possibility of a revision of the Book of Common Prayer, and to make it penal for any religious society to set before its own members the ideal of marriage contained in the Gospel. We respectfully beg that Parliament will not impose these restrictions of religious liberty."

Did that appear in the Press?—No. It did not appear in the Press. That is from the Rev. Mr. Coursey. He would probably be the secretary. He would send more in his letter than appeared in the Press. But, anyhow, that point is, I contend, amply guarded against, because it is only an offence to "allege against any person or persons" that they are not lawfully married. That is where the damage is done. Instead of religious teaching there is an overt act, which singles out particular individuals. The rights of the individual should be safeguarded, and these amendments will safeguard the rights of the individual.

Mr. Harris: You were not quoting from the second catechism?—No. The second catechism is something very much in the nature of a blind. It is the old catechism, the "pink" catechism, in every particular, except that page 57 has been torn out, and a fresh page substituted with certain alterations, and then it has been placed in a new cover under the imprimatur of the Bishop of Auckland. I may say that the catechism under the imprimatur of the Bishop of Auckland only applies to the Auckland Diocese, whereas the imprimatur of the Archbishop of Wellington applies to the whole of New Zealand, because the Archbishop of Wellington is the Metropolitan for the whole of New Zealand. The fact is that after there had been a definite promise given by Sir John Findlay to the Statutes

Revision Committee of the Legislative Council that that catechism would be withdrawn, it is still on sale both here and in Auckland.

The Chairman : They say they decided on this alteration twelve months ago?—They say so; but the fact is that here is the catechism (which could have been reprinted any time within a week as a whole) mutilated, torn asunder, four pages reprinted, and then restapled and issued under another cover. Obviously it must be to blind the members of the Legislature. Obviously it is not a serious and genuine attempt to deal with the position, but it is simply something to get past the difficulty which has been raised.

Mr. Harris : Your idea is that the alteration was not contemplated?—I submit that the whole of the facts in connection with the second catechism show that there was nothing of the kind contemplated; and the fact of the original catechism not being withdrawn, and being still on sale after the promise made and after the second one was circulated, proves that the whole thing was not substantially honest. And not only so, but if they do withdraw this catechism now, there are still the teachings of their authoritative writers or standard works, and not only here in New Zealand but throughout the whole of the British Empire. It is obviously an attempt to escape from anything in the way of a penalty, and from the dread of legislative action, which is now before their eyes.

What is a "sacrament" according to the Roman Catholic Church?—

Hon. Mr. Lee : The catechism here states, "A sacrament is an outward sign of inward grace, ordained by Jesus Christ, by which grace is given to our souls."

FRIDAY, 22ND OCTOBER, 1920.

The Rev. ROBERT WOOD examined.

The Chairman : Mr. Wood, I have explained to the Committee a misunderstanding that arose about your attendance. From your first letter I assumed that the only point upon which you wished to give evidence was in connection with your statements in the Upper House, and, as the Committee had decided that they did not want to open up that question again, it was a day or two before I notified you. It did not occur to me that there was anything else on which you wanted to give evidence. However, as there was an opportunity of calling a meeting to-day I sent you notice in order to let you make a statement if there is any point you wish to discuss with the Committee. The Committee had really finished its proceedings, but other letters came in, and as the Committee had to consider these a further notice was sent to you, and I hope you will understand there was a misunderstanding on the former occasion, and that no discourtesy was intended.

Rev. Mr. Wood : I may say the only notification I got of any of these meetings was last Friday, when it reached me by post about the time you commenced your meeting. I appeared before the Committee of the Legislative Council in my individual capacity. There was an invitation given by Sir Francis Bell, and I responded to that invitation. I was at a very considerable disadvantage, because I had no official standing, and I was asked by a member of the Committee if I represented the Presbyterian Church. I could only say I did not. I was there to report the decision and the attitude of the Church, and I had not had time to ask for a commission to represent the Church. To-day my position is different. The General Assembly's committee that has charge of subjects such as you are discussing has formally commissioned me to represent the committee, and through representing the committee to represent the Presbyterian Church. When they heard your Committee had been set up I was commissioned to represent the Church, and I sent on a formal commission to the Hon. Mr. Lee, Minister of Justice. I received a letter from Mr. Hunter, of Oamaru, the convener of the committee, asking me to appear in the interests of the Church, and to support the demand of the Church made in 1911, which is the request of the Presbyterian Church to-day. That is my position. If I have an opportunity—it is for you to rule whether the opportunity may be given to me—I should like to do three things. In the first place, I should like to report to you the request of the Presbyterian Church made in 1911 through its General Assembly to the Ward Government. That request stands to-day. It is the attitude of our Church to-day.

Hon. Mr. Anderson : What is the attitude?—I am outlining what I would like to say. I have documents in my bag to show the attitude of the Church.

Hon. Mr. Lee : What was the request: can you put it concisely?—That the Ward Government should protect the social interests of non-Roman-Catholics affected by the *Ne temere* decree. That, in short, was the request.

The Chairman : You put that in evidence in the Upper House?—I reported that. In the second place, I have listened to statements made on the public platform with regard to the discipline and practice of the Presbyterian Church respecting marriage. This matter, I understand, is coming before the House of Representatives. The other Sunday night, at a crowded meeting, a member of the House of Representatives quoted as unimpeachable evidence that could not be challenged statements to the effect that the Presbyterian Church had its *Ne temere* decree of almost as, or of a more, malignant character than the decrees of other Churches. He quoted that as unimpeachable evidence, and I can only say the whole thing is a tissue of misrepresentation. The Presbyterian Church is suffering through these erroneous statements being made with regard to its practice respecting marriage. In the third place, some years ago I found a strange practice obtaining in the Registry Office. Certificates were being issued by Registrars to parties already married to be married again. The Presbyterian Church in 1911 expressed its disapproval of that condition of things.

Hon. Mr. Lee : That is absolutely illegal?—I can lay on the table here letters from the Registrar-General in support of that practice, and saying—

Hon. Mr. Anderson : But is it done now?—I cannot say, but it was done at that time. I have no reason to believe there is any change.

Can you show us these letters?—Yes, they are in my bag. I have indicated the three points I should like shortly to handle and submit evidence upon, and it is for you to say whether I can traverse that ground.

The Chairman : It is a question of how much you dealt with before the Statutes Revision Committee of the Legislative Council. I understood from what I read of the evidence there that you dealt with the first point, as to the request of the Presbyterian Church in 1911, and that you also dealt with the third point, as to the issue of certificates?—No. I submitted the question of the certificates to one of the members, thinking he would bring up the correspondence. The fact is that in the Legislative Council I was in this position : I sat for four hours listening to the Protestant Political Association stating its case, and I came in at the end of the day when the Committee was rather wearied and I felt myself pretty much of a nuisance. Most of the members would have been glad, I suppose, if they could have ended the business then. I was at a disadvantage, and had to cut out of my statements some of the things I had wished to bring before the Committee, and that was one of them—the certificates.

Hon. Mr. Lee : I do not see that we are concerned with the second question at all.

The Chairman : It relates to the doctrines of the Presbyterian Church.

Hon. Mr. Lee : That is so. The witness says that some people have charged that Church with having a *Ne temere* decree of a kind, which they have not got. What has that to do with us? If they say they have not a *Ne temere* decree, and they have not, it is not for us to worry the thing.

Witness : The speaker I refer to quoted from a parliamentary paper. The evidence he submitted to the meeting was the report of the Legislative Council, and the point is that the Presbyterian Church has no *Ne temere* decree.

Hon. Mr. Anderson : The important thing the witness said this morning is that Registrars have issued permits to marry a second time. Can the witness produce those permits?

Witness : I can produce the letters of the Registrar-General.

Hon. Mr. Anderson : I take it that is the only point that interests us.

Mr. Sidey : Mr. Wood also wishes to suggest an amendment to a clause.

The Chairman : Yes.

Witness : In 1911 I reported to the Assembly, as convener of a Special Committee, "Our New Zealand Marriage Act, we are informed on good authority, can be used in the interests of the *Ne temere* decree. A second certificate may be issued to parties who are already registered as persons to go through a second marriage ceremony; and through this seemingly legal sanction a Roman priest may declare the marriage ceremony of a Presbyterian minister to be null and void. If a second certificate may be issued, why may not a third, or a fourth, or a fifth, and a reign of freckdom be set up under our New Zealand Marriage Act? The administration of our Marriage Act, in such a way as to weaken the sense of the bindingness of the first marriage covenant, opens the door to the entrance of the most dire evils."

Hon. Mr. Anderson : But where is the letter?

Hon. Mr. Lee : Show us what has been done. That is only what you say has been done.

Witness : I have this letter :—

„DEAR SIR,—

“Wellington, 16th September, 1912.

“I have to acknowledge the receipt of your letter of 12th instant, and to inform you that it is not uncommon for parties to be remarried by an officiating minister after a previous marriage by the Registrar. This procedure is in my opinion strictly legal provided the provisions of the Marriage Act are complied with.

“For your own information I will quote two legal opinions on the subject :—

“1. On the question of the Registrar issuing a certificate for the second marriage: ‘No doubt the point is a novel one in some respects. Nevertheless it must have occurred before that a second marriage has been solemnized though a previous valid one has—for example, Gretna Green marriages, and in the case of Catholic and Protestant. On the whole I think there is no lawful impediment to the marriage, and that the certificate should issue on the usual declaration.’

“2. The second opinion deals with the solemnization of a marriage by a minister when the parties were previously married before a Registrar or by another minister: ‘I think it clear that if parties, having been duly married before a Registrar, at a later period are married according to the form and ceremony of a religious body, such second marriage can only be upon the issue of a second certificate; and in such a case all the provisions of the Act as to registration will take effect accordingly. The first marriage is presumably good; the second is contracted possibly to quiet religious scruples; but, although a voluntary and in a legal sense an unnecessary act, yet if parties choose to take this course they must do so in accordance with law.’

“Yours faithfully,

“F. W. MANSFIELD, Registrar-General.

“The Rev. R. Wood, The Manse, Waikari, Christchurch.”

Hon. Mr. Lee : That was in 1912?—Yes, in 1912. I have not a copy of the letter I wrote to Mr. Mansfield. I was puzzled as to how I could fill in my marriage-book. There is no provision made in the Marriage Act as far as I know for describing the parties as “already married.” They are described as “bachelor” or “spinster,” “widow” or “widower,” or “divorced.” I wrote to him asking him how I should fill in my book, and he replied as follows :—

“DEAR SIR,—

“Wellington, 21st September, 1920.

“I have to acknowledge the receipt of your letter of 17th instant on the subject of the remarriage of parties already married.

“In all such cases the party should be described in the Marriage Register, in the column Condition,’ as ‘Previously married at on ’ [Quote date of first marriage]. You will, however,

be guided by the description of the parties given in the Registrar's certificate to authorize the marriage, and the form R.G. 45, 'Particulars of Bride and Bridegroom.'

"I have no objection to your showing my letter of 16th instant to the Committee of the Presbyterian Assembly being convened by you.

"Yours faithfully,

"F. W. MANSFIELD, Registrar-General.

"The Rev. Robert Wood, The Manse, Waikari, Christchurch."

Hon. Mr. Lee : Following on that, I wish to ask, Where parties have been married by the Registrar has it been a practice in your denomination to remarry them on a second certificate from the Registrar? I am not aware of it. I have never done it, and would refuse to do it. I would absolutely refuse to do it. The deadliness of the situation presents itself to me in this way: Here is a couple married by the Registrar—

We do not want to know your reasons: we only want to know what has been done?—I would like to say—

You represent a community?—I represent the Presbyterian community.

And as their representative can you say, is it the practice of the Presbyterian community, after there has been a marriage before the Registrar, to remarry on a second certificate?—No; and here is—

That is all I want to know?—I may be permitted to point out here is our report—

It is sufficient if you say No: you cannot add to it?—I cannot speak for every minister.

I asked for the opinion of the Church?—The Assembly frowns on it. There is another letter, if you would like to hear it.

Is it from the Registrar?—No; it is from a member of the House. In 1912 I wrote to Mr. J. G. W. Aitken. I wanted to know if it was the practice of the Registrars, apart from the Registrar-General, and I wrote to Mr. Aitken suggesting that he should move in Parliament against it, and this is his letter:—

"DEAR MR. WOOD,--

"Wellington, 25th September, 1912.

"I have your favour of the 17th instant. Absence from town is the reason of the delay in replying. I have seen the Wellington Registrar on the question that you have raised. He assures me that the practice that you have drawn attention to is a very common one, and is not confined as between the marriage of a Roman Catholic and Protestant. Not infrequently two people of different Protestant denominations go through the ceremony twice; but the most frequent thing that does happen is that a marriage which takes place before the Registrar legally and properly, then they go before a clergyman and get married over again. I asked him where the clause was in the Act permitting of this double ceremony, and he said that it is because of the absence of any clause forbidding it that it is permitted. When they go before the clergyman to be married, or the Registrar, if they declare themselves to be already married and the conditions under which the marriage took place, and if it pleases them to desire a second ceremony, there is nothing illegal in it, and hence it is allowed. I discussed the question of legislation against it. He assured me that the thing was so common an occurrence that he was quite sure the House would not legislate against it.

"Trusting that you are well, and with best wishes, "I am, yours sincerely,

"JOHN G. W. AITKEN."

Mr. Harris : What is the date of the letter?—25th September, 1912. Our Assembly frowned on the thing. They were astonished when I reported it, and they authorized me to get a legal opinion and to prosecute the thing further. I was struck with illness at the time, and resigned the work I had in hand.

Hon. Mr. Anderson : If it is the wish of the Committee, I will telephone to the Registrar and get information on the matter at once.

Members : Aye, aye.

The Chairman : That is all the correspondence bearing on that point, Mr. Wood?—Yes, bearing on that point. I would like you to notice that the Assembly was astonished at this report, and authorized me to prosecute the thing further. I was knocked down with illness, and had to resign the convenership of the Committee. When Mr. Aitken wrote as he did—that the practice was so common that legislation would be almost impossible—it knocked the wind out of my sails.

Mr. Harris : Was Mr. Aitken Moderator at the time?—No. He represented the City of Wellington in Parliament.

Was he Moderator of the Presbyterian Church?—Not at that time. He was Moderator two years ago.

The Chairman : He is a prominent member of the Church?—Yes. Then I should like to have an opportunity of speaking on the question of the allegation that is reported in the Legislative Council's minutes of evidence—allegations repeated on the platform, and that will be made in the House of Representatives when this thing comes up again, about the *Ne temere* decree of the Presbyterian Church.

Hon. Mr. Anderson : You deny there is such a thing?—I deny it absolutely.

The Chairman : What we are chiefly anxious about is to avoid becoming involved in a long controversy on these issues, which might delay the Bill and might mean that no legislation would get through this session. If these statements have been made on the public platform, I think the public platform would be the best place to reply to them?—They were made by members of Parliament.

Hon. Mr. Lee : Members of Parliament say all sorts of things?—As one who has studied the subject pretty closely, might I say it seems to me the thing is in a nutshell. You have overwhelming evidence that from one Church come declarations that marriages of a certain kind are no marriages at all. There is no other Church in the land that makes a declaration that any State marriage is no marriage at all. That is the point.

Hon. Mr. Lee : Is that so?—Yes.

Are you prepared to say that the teaching of the Church of England is that according to their theological view the marriage of a deceased wife's sister is a legal marriage?—I am not aware of any theologian of the Church of England who will declare a marriage of that sort to be no marriage at all.

You say the Church of England does not teach that?—To the best of my knowledge it does not.

Is it to the best of your knowledge, or do you assert it positively, that the Church of England, as a matter of theological opinion, does not teach that marriage with a deceased wife's sister is according to the laws of the Church no marriage at all?—I have solemnized the marriage, and these people have not been disciplined.

I am not speaking of your discipline, but of the discipline of the Church of England?—I have solemnized the marriage of Church of England people, and it has not affected their Church standing, as far as I am aware.

That is not an answer to my question. There is a degree of relationship—deceased wife's sister—if they are married according to the Marriage Act; but do the Church of England theologians recognize it as a marriage according to the laws of their Church?—I cannot say, but I might look into it.

Hon. Mr. Anderson : Is Mr. Wood going to make a suggestion to get over the difficulty?

The Chairman : You said, Mr. Wood, that you had a slight amendment in the Bill to call attention to?—This correspondence deals with it. It seems to me ridiculous to say that because an Act does not forbid a thing it permits it.

The Chairman : Mr. Wood wants a clause that will prohibit the practice regarding the Registrar issuing a second certificate.

Hon. Mr. Anderson : Whose opinions are those the witness dealt with?

Witness : The Registrar-General quotes two opinions, but he does not give the names of the gentlemen who gave the opinions.

The Chairman : Unless the Committee wish to hear Mr. Wood on these further points of doctrine and discipline and practice of the Presbyterian Church it might save time, while we are waiting on the witness from the Registrar-General's office, if I read the Bishop's letter from Auckland, and if the witness wishes to comment on it we can hear his comments. Does that meet with the view of the Committee?

Members : Aye, aye.

The Chairman : There are two letters, one making verbal amendments in the other. I will have the first letter altered in accordance with the second letter. This is the letter :—

“DEAR SIR,—

“Bishop's House, Ponsonby, Auckland, 16th October, 1920.

“I have read in the daily papers statements submitted to your Committee, to the following effect :—

“1. That a couple (one or both of them Catholic) contracted a legal marriage at some unstated place.

“2. That this same couple subsequently went through a Catholic religious marriage ceremony at a stated place in my diocese. (This is said to have occurred in 1908, the year in which the *Ne temere* decree came into force, and long before my arrival here as bishop.)

“3. That the priest who conducted this religious ceremony described the parties in question as ‘bachelor’ and ‘spinster.’

“4. That no record of this religious ceremony was sent to the Registrar-General.

“A telegram and letter from Archbishop O'Shea inform me that your Committee desires (or is prepared to receive) information bearing upon this matter. I therefore request the good leave of your Committee to submit to it the following statements relating directly or indirectly thereto. These statements include some fresh matter which I was unable to lay before the Statutes Revision Committee owing to my having to prepare my matter for them, in haste, on short notice, and during a trying illness.

“1. In the ceremony referred to above, the priest did not in the least act as a gazetted State official. He acted solely in his capacity as the Church's official witness charged with seeing to the proper administration of the sacrament of matrimony, to each other, by two persons already legally (but not sacramentally) married. He acted quite correctly, and in accordance with our established usage, in not sending to the Registrar-General any return of this purely religious (and in no sense civil) ceremony. And neither he nor the married couple in question were so foolish as to question or deny the fact of the legal validity and the civil standing and effects of the previous and not sacramental union. That legal validity could not be further validated, nor could the parties be either more married or less married, in the eyes of the law, by going through the subsequent religious ceremony for their ease of conscience. (Compare the minutes of evidence of the Statutes Revision Committee, pages 11, 12).

“2. Judging by the statement supplied to your Committee, a certificate of the religious ceremony appears to have been given to the parties in question. If a certificate was given in accordance with a Church form or Church usage it was quite in order. If, on the other hand, it was given on an official form as supplied by the Government, this was not done by virtue of any direction or sanction of ecclesiastical authority, or in consequence of any approved ecclesiastical custom. It may therefore be reasonably taken to have occurred through inadvertence or error of judgment. And this seems to be confirmed by the omission to send any record of the religious ceremony to the Registrar-General. At any rate, a certificate in the form here considered is quite exceptional and contrary to established rule and practice in this Dominion. That practice is described in greater detail hereunder. It neither provides for, nor even contemplates, the use of such designations as ‘bachelor’ or ‘spinster.’ In the case under consideration these terms were obviously intended to express the doctrine that the parties in question were not wedded in accordance with the teaching and law of the Catholic Church. For no sane person questions or denies the obvious fact that our statute law affirms the civil validity of the purely civil marriages of such couples—or even of those several classes of remarried divorcees

whose unions (although perfectly legal in this Dominion) are held by both Protestants and Catholics to be forbidden by the sacred Scriptures and contrary to the law of God. (Compare the minutes of evidence of the Statutes Revision Committee, pages 5, 6, and 8). These legalized marriages and certain legalized marriages of affinity are respectively described as 'adulterous' and 'incestuous' in the official doctrinal standards of several important non-Catholic religious denominations in this Dominion. Such terms are nowhere to be found in the official laws and doctrines of the Catholic Church. But all alike necessarily (however regretfully) recognize the facts of the position created by the civil law in respect of such marriages."

Rev. Howard Elliott : May I interrupt you, sir, in order to make a protest. I think the procedure followed by Bishop Cleary and Archbishop O'Shea towards this Committee is one of the utmost disrespect; it is also calculated to prejudice the answering of objections or answers made by them. Every opportunity is taken to side-track the Committee from the real issue. This letter is a case in point. It has already admitted a fact that in itself is absolutely damaging to Dr. Cleary's contention. All the way through the inquiry, both before the Statutes Revision Committee of the Legislative Council and before this Committee, I have been at the disadvantage of having to answer correspondence of which I had no previous knowledge, raising subtle points likely to mislead those not intimately acquainted with the subject. I have had to do that on the spur of the moment, while those gentlemen have sat away in Auckland or Wellington and considered what was before them and prepared these pamphlets. I consider that Dr. Cleary ought to be present to allow me to cross-examine him. That would put the whole matter on a different basis; and I must say that a very different construction would be put upon some of his statements under the process of cross-examination. The present position is most unfair to us, and I am sure it does not help to elucidate the points in dispute, but rather to cloud the issue. These gentlemen are quite well able to come before the Committee and give evidence. Instead of that they send in pamphlets or letters to which no immediate rejoinder can be made. If they were present we should be able to ascertain by direct questioning what the actual position is. As matters stand we are put at a grave disadvantage, and the circumstances are all to their advantage. This method of conducting the argument, or controversy, or discussion, is unsatisfactory to the last degree. I am sorry to interrupt, but I do feel that we are being placed in a most unfair position, and have been throughout the proceedings. I am afraid that if you are going to receive such letters as this the Committee will have to go on *ad infinitum*, receiving communications that will make it impossible to have any legislation enacted during the present session of Parliament.

The Chairman : I am inclined to think that it will have the opposite effect. The question as to what weight is attached to these statements depends upon the fact that they are sent in without your having the opportunity of cross-examining. The Committee must attach such weight to them as it thinks fit. If, on the other hand, attempts were made to compel Bishop Cleary to attend here for cross-examination we might go on interminably. If you are taken by surprise the only course is for you to make a written reply to the statements he makes, and that would conclude the matter. It would be a serious matter for the Committee to take the responsibility of ruling out these statements, in view of the fact that there have been a great many statements of the kind made, both here and before the Statutes Revision Committee of the Legislative Council, without any sort of cross-examination taking place.

Rev. Howard Elliott : I do not see that I could object to the statements going before either Committee, but the method is unfair. It is not a method by which we arrive at the real facts. While I have no desire to shut out anything the Roman Catholic Church may desire to submit on the questions at issue, I do think that as a matter of courtesy and fairness its representatives ought to come here personally and allow us the same opportunity of cross-examining them as they had to cross-examine myself and any other witness.

Hon. Mr. Lee : Do you mean on their doctrines or on their practices?

Rev. Howard Elliott : On their practices; that is all we are concerned with.

Hon. Mr. Lee : They have given evidence before the Committee of the Legislative Council as to their method of confirming a marriage which has been conducted according to law. I understand that the clergy are now going on to tell us in that letter their practice as to recording their religious ceremonies, and say that it does not in any way conflict with our marriage law.

Rev. Howard Elliott : But they do not give evidence in the sense that we have been present to give evidence. They simply put in a certain statement, and there is no opportunity of cross-examining them, or testing the value of the forms put in, by personal questions. We have been at that disadvantage. We have had no opportunity of discovering anything other than what they have chosen to tell us in their pamphlets.

The Chairman : Of course, that is a matter for comment by you, and it may detract from the value of their evidence. Their statements have to stand for what they are worth in the eyes of the Committee if they do not submit to cross-examination.

Mr. Harris : It must be remembered that at the first meeting of the Committee it was decided that we did not want a lot of evidence. It was felt that the matter might go on interminably.

The Chairman : The letter deals mainly with technical points. If there is an offence to be legislated against, the issue is a very simple one—whether, as Sir Francis Bell said, certain overt acts have been committed against which the community ought to be protected. The evidence as to the details may be very interesting, but I do not think it concerns this Committee.

Hon. Mr. Lee : Looking at the forms put before the Committee of the Legislative Council, I say that if these are adopted as the practice of the Roman Catholic Church it seems that they do not register in the same way as if the first marriage were in their Church. For example, the procedure according to their forms is different. When they remarry according to their Church people who have been previously married according to law, or when they marry in the first instance people who have

not been married, they adopt different entries, and use different forms in their books, according to the evidence given to the Committee of the Upper House. I think the letter of the bishop is going on to tell us what has been done where there is a marriage concluded before the Registrar, and that the practice is not to follow out what we saw in the certificate put before us.

The Chairman : The further portion of the letter continues :—

"4. Arising out of this subject, and having an important bearing thereon, some further particulars may perhaps be permitted here in regard to our practice of recording such sacramentally 'regularized' marriages as the one which has been brought under the notice of your Committee. The particulars supplied hereunder are additional (but in no point contradictory) to those hurriedly supplied by me, on short notice, to the Statutes Revision Committee. As stated in evidence in reply to a question, we have in New Zealand no parish register of marriages as distinct from the official one which the Government supplies and requires us to keep. That is quite correct. But in the diocesan archives we have filed records or registers embracing the following purely religious matters : Dispensations of various kinds in connection with marriage, and special and confidential records or registers of all purely civil and non-sacramental marriages of Catholic (or 'mixed' Catholic and non-Catholic) couples that have been religiously 'regularized' in any way—for instance, by an appropriate religious ceremony, or by a special dispensation 'radically remedying' the defects of the previous union. These things are no concern of any Government. They are the Church's purely domestic and private concern. The records of them are kept in Latin; and it is contrary to established practice to enter them in English or upon Government forms, for the reasons stated hereunder. Printed forms of record for such 'regularized' legal marriages are comparatively recent among us. There are no set canonical forms for this purpose. These are matters for local arrangement. Even the printed forms (where used) vary in different dioceses, and in the same diocese at different times. They are changed optionally on exhaustion or otherwise; they are slightly changed necessarily (except for those already on issue) to suit the expiration or alteration of the special 'faculties' or powers given to the bishops by the heads of the Church in connection with marriage dispensations. But all methods of record, whether written or printed, resemble each other in setting forth the following details : The mere names of the parties (without any indication of age, parentage, or such designations as 'bachelor' or 'spinster'), the statement that they were previously united otherwise than as the Church requires, the date of the religious ceremony, and the name of the priest assisting at it.

"5. Among us these 'regularized' marriages are held to be confidential, or even (as the case may be) canonically sacredly confidential. So are the records thereof. These central records are our official and only canonical 'registri,' or 'registers,' or 'marriage registers' for such marriages. They are so described; and they are so intended in any and every reference to 'register' or 'marriage register' that may occur in any dispensation or other canonical form relating to such 'regularized' marriages. For the reasons mentioned hereunder, the Government register could not even be thought of as a means of recording the confidential matters here referred to. The recording of them is governed by the following chief precautionary rules and customs, which are laid down in our canon law, or in synodal directions, or during visitations, or in other ways : (a.) They are made out in Latin. (b.) They are allowed to be preserved only for a time in the parish archives or books. As a further precaution, they are not to be entered in any book or register that is left lying about or open to casual or unauthorized inspection. For this reason it is strictly contrary to Catholic rule, and feeling, and custom to enter such confidential and purely religious matter in the Government marriage register, which is the property of the State and is open to public inspection, even, on occasion, in the civil and criminal Courts. (c.) The records of these religiously 'regularized' marriages of Catholic (or of 'mixed' Catholic and non-Catholic) couples have to be sent to and filed in the episcopal register kept for such marriages. This register or record is kept in a secret compartment of the episcopal safe or strong-room. Of this the bishop alone holds the key, and he is bound by canon law to designate one (and only one) diocesan official who shall have the custody of that key in the event of the bishop's absence or death. The parties concerned in these really confidential matters cannot be prevented from making them known, but the bishops and clergy will not do so. (d.) In accordance with usual custom, the Vicars-General of the Diocese of Auckland are charged with the ordinary and general (though not exclusive) administration of these matters; and they declare that not alone have they never entered such 'regularized' legal marriages on the Government register or forms, but that they cannot understand how they could so enter matters of so confidential a nature. (e.) The above-mentioned confidential record of 'regularized' marriages may be produced by the bishop or his deputy *in foro externo*—that is, to an ecclesiastical Court or inquiry, in the following circumstances : To determine, in case of doubt, the regular or irregular standing, before the Church, of candidates for the priesthood. A man born of a non-sacramental union (never 'regularized') has all the privileges of Church membership except the following : He requires a dispensation in order to become a priest, and he is not eligible for the office of bishop or cardinal. An examination of these confidential records or registers is necessary only when a doubt arises as to the standing of a candidate for holy orders in this connection. He is admitted to the priesthood without the need of dispensation if his parents' non-sacramental marriage was 'regularized' at any time previous to his elevation to holy orders; but even in this case he is not eligible for the office of bishop or cardinal. It thus happens that these private and confidential ecclesiastical records or registers may not be inspected for generations. And the Catholic Church, as a voluntary association in this Dominion, has the same right as a football club has to determine under what conditions persons shall be admitted to membership and the privileges of membership.

"6. Arising out of the matters mentioned in the last preceding paragraph, I request leave to submit the following further and fresh matter to the consideration of your Committee. The 'regularizing' of a non-sacramental marriage carries with it essentially, and without further mention,

the 'regularizing' of the offspring (if any). This 'regularizing' or canonical legitimation is (briefly stated) retrospective without limit. In some European forms (as also in one used for a time in this diocese) canonical legitimation is expressed in about half a dozen words; but this is unnecessary, and, among us, quite unusual. In this connection, your Committee is requested to note: Just as Catholics acknowledge (though with regret) the legal validity of even the remarriage of divorcees, so they freely and fully acknowledge (without such regret) the fact, and standing, and civil effects of all legal legitimacy whatsoever. Again: The word 'legitimate' in civil law is quite a different thing from 'legitimate' in Catholic canon or Church law. These two words 'legitimate' in each case differ somewhat after the manner of the words (of identical form) 'chair' and 'chaise' in English, and *chair* and *chaise* in French. 'Marriage contract' and 'legitimate,' in civil law and in Catholic canon law and theology are, in a like way, words of two different languages, with different meanings. (For the term 'marriage contract' see 'Catholics and the Marriage Laws, a P.P.A. Pamphlet,' by Bishop Cleary, page 6.) In both the civil law and Catholic canon law the word 'legitimate' means, primarily, 'according to law.' To arrive at its exact meaning in each case we must first clearly understand what the law in each case is. In the civil law 'legitimate' is applied to children only in connection with the laws governing succession to property. Catholic canon law and Catholic theology know no such meaning. For them the word 'legitimate' related to the laws regulating the validity of a sacrament and admission to the priesthood, the episcopate, and the cardinalate. Thus the civil meaning and the Church meaning of the word 'legitimate' (and, of course, 'illegitimate') are poles apart. In regard to the legal validity of unions condemned by our and other Churches, we may say, with so eminent a Presbyterian leader as the Rev. W. Gray Dixon, M.A., 'No one questions the legal validity of whatever the State may enact, be it ever so contrary to morality and the revealed will of God' (*The Outlook*, 4th October, 1920.)

"Your Committee is, I take it, aware that non-Catholics marrying among themselves are, in our code of canon law, expressly excluded from the operation of the laws of our Church relating to marriage.

"I have, &c.,

"† HENRY CLEARY,

"Bishop of Auckland."

"The Chairman. Special Committee appointed for the consideration of the Marriage Law Amendment Bill, Wellington."

Hon. Mr. Lee: What I would like to find out from Mr. Elliott is this: Assuming that there is a marriage under our law before a Registrar, and that he issues no new certificate for any other marriage, and that the same parties are married sacramentally in a Roman Catholic Church, and that the only entries which are made in the church are the entries which are described in this letter—not on the official register which they would use in the case of an ordinary marriage, but on the forms which are described here—would there be any objection to that?

Rev. Howard Elliott: There could be no objection to that, but there needs to be a proviso made: So long as the parties go to the church to have a religious ceremony after the civil ceremony, just as they do in France or Italy. They are permitted by law to do that. If they go to their minister and then go through the Church form of marriage, there can be no objection to that, so long as they do not go beyond that to those who do not choose to accept that procedure.

Hon. Mr. Lee: I am only speaking of the ceremonies described in that letter: there is no objection to that?

Rev. Howard Elliott: No; there is no objection to their private ceremony.

Hon. Mr. Lee: And so long as their private memoranda do not describe the parties as "bachelor" and "spinster"? It is obvious from the forms that the memorandum is a memorandum of the sacramental union.

Rev. Howard Elliott: So long as those are kept secret, and so long as there is no attempt on the part of the Roman Catholic Church, or any other Church, to say that it is giving its sanction to what the State has done. There is no objection so long as it is a private thing, concerning their own Church courts and their own Church affairs, and there is no attempt to go beyond that. It is a question always of the conflict between Church and State.

Hon. Mr. Lee: That letter points out—

Rev. Howard Elliott: Let me say here that I do not hesitate about answering any questions put to me, but I do not think it is quite fair to put questions in relation to that letter, seeing that I have only just heard it read.

The Chairman: The substance of it was given before the Statutes Revision Committee of the Legislative Council, was it not?

Rev. Howard Elliott: No. There are points raised in the letter that were raised before the Statutes Revision Committee in a superficial way, and now Dr. Cleary is pursuing them very much further.

Hon. Mr. Lee: I wanted to clear up the point whether there was any objection to the terms used.

Rev. Howard Elliott: If I have an opportunity of going over the letter carefully I shall be prepared to answer any questions you may care to put to me. There is a statement in the commencement of the letter in reference to the certificates, that "in the ceremony referred to above the priest did not in the least act as a gazetted State official. He acted solely in his capacity as the Church's official witness charged with seeing to the proper administration of the sacrament of matrimony." He did act as a State official, in that he issued a State document, and in issuing that State document—

Hon. Mr. Lee: That is where they admit that the priest made an error in doing it. If that was done they say it was a wrong thing, and that it is not the practice.

Rev. Howard Elliott: It is not the practice, perhaps, in regard to the issue of the certificate; but I want to point out that it is emphatically the practice of their Church, and that they are out

to lead people to believe that they are not married—that they are bachelor and spinster. There is just a danger, in all the material that is coming out now that has no real bearing upon the points to be legislated upon—these matters are altogether apart from the letter, and there is a danger that the real point may be obscured by the side issues and by the cloud of theological distinctions.

Hon. Mr. Lee : I do not think they will. I think we appreciate the difference between the ceremony they adopt and the outside allegations.

Rev. Howard Elliott : And the policy pursued by these people. Dr. Cleary admits that the issue of the certificates he mentions not only validates the marriage, but also legitimizes the issue.

Hon. Mr. Lee : According to their faith.

Rev. Howard Elliott : Yes, but the inference is that otherwise the issue would be illegitimate.

Hon. Mr. Lee : According to their faith, which you object to being stated outside.

Rev. Howard Elliott : Yes—statements invading the rights of the individual outside. That is the point to be legislated for, not the right of the Church to issue what they like in the way of certificates, or teach any doctrine of marriage they choose, so long as it does not override the State.

Rev. Mr. Wood : May I ask if Dr. Cleary's letters are to go into evidence? Is this evidence to be printed and circulated as a parliamentary paper?

The Chairman : Yes.

Rev. Mr. Wood : Well, I feel that I am placed at a very serious disadvantage. For instance, an article by the Rev. Gray Dixon is referred to, one that appeared in *The Outlook*.—I have *The Outlook* here, the last number, and it protests against Mr. Gray Dixon's opinions. Then, Dr. Cleary refers to the evidence furnished in the minutes of evidence of the Legislative Council's Committee.

Hon. Mr. Lee : Perhaps it would shorten the proceedings if Mr. Wood were allowed to write a reply to Dr. Cleary's letter, if he wishes it to go into the record of the Committee's inquiry, and if Mr. Elliott were allowed to do the same.

Rev. Mr. Wood : I will if you will allow me. Dr. Cleary refers to the evidence in the Council's minutes of evidence, but the only evidence are the statements that he furnished to Sir John Findlay to make, and we had no opportunity of replying to Sir John Findlay. The evidence Dr. Cleary refers to as proving his statements is simply his own statements.

Rev. Howard Elliott : The whole thing is thoroughly unsatisfactory.

Rev. Mr. Wood : I really feel, as representing the Presbyterian Church, that I am placed, and the Church is placed, in an unfair position. When this question was first brought up it was the matter of the *Ne temere* decree. Now the whole subject is clouded by insinuations and statements that all the Churches have their *Ne temere* decrees, and the Presbyterian Church has had no opportunity of showing that that is untrue. The Church of England also has had no opportunity.

The Chairman : We invited them. They have had an opportunity of giving evidence. They could come to this Committee if they saw fit.

Rev. Mr. Wood : The Rev. Mr. Hunter, of Oamaru, replies in this week's *Outlook* to the Rev. Gray Dixon's extraordinary article, and points out that the statements in it are inconsistent with the declaration made by the Presbyterian General Assembly in 1911.

The Chairman : You could cover those points, as Mr. Lee has suggested, in your communication.

Rev. Mr. Wood : The Hon. Mr. Lee seems to be impressed with the idea——

Hon. Mr. Lee : You must not gather my impressions from questions. I put questions, but you should not come to any conclusions as to what I may arrive at, or you may be very much astray.

Rev. Mr. Wood : The point is this : The authorities of the Church of Rome in New Zealand are understood to say that a civil marriage is a civil marriage, and that the children born as the fruit of a civil marriage are legitimate from the standpoint of the law, but that it is not complete religiously, and therefore a religious service is necessary for its completion.

Hon. Mr. Lee : It is not complete according to some denominations. It is not complete religiously according to the faith of some denominations : that cannot be gainsaid.

Rev. Mr. Wood : There is a civil contract ; then there is a religious ceremony giving sacramental significance, to complete the thing. That is to say, there is a distinction between the contract, so to speak, and the ceremony of religious sanction. That is the attitude that Dr. Cleary and the other representatives of the Church of Rome are understood to take up. I submitted this point to one of the most eminent scholars in our Church, and he thought it was a point that I should press home if I had an opportunity. The authorities of the Church of Rome here recognize the validity and bindingness of the contract, but they say it requires a religious ceremony to complete the thing. I have before me the Syllabus of Pius IX, in which he singles out the errors of the age to be condemned. This syllabus is a canonical authority. The "Codex Juris Canonici" quotes it as authoritative. The point is this : The distinction between the contract and the Church benediction is an error condemned by Pope Pius IX as a heresy, and if Bishop Cleary were here now I would ask him to explain how it is that he is propagating heresy, according to his own Church. Paragraph 66 in Section VIII says, "The sacrament of marriage is only an adjunct of the contract and separable from it, and the sacrament itself only consists in the nuptial benediction." That is an error that is condemned. To make that statement is stated to be a heresy. In paragraph 73 another series of errors is condemned. It says, "A merely civil contract may among Christians constitute a true marriage, and it is false either that the marriage contract between Christians must always be a sacrament, or that the contract is null if the sacrament be excluded." That view is condemned as a heresy. Gladstone, in his "Vaticanism," questioned this phase of the Roman views as regards marriage. He referred to Schrader, a great authority, and Schrader has taken these negative propositions and turned them into positive propositions. This is an error condemned.

The Chairman : The greatest service you could render would be the drawing of a clause which would satisfy Dr. Cleary, yourself, and Mr. Elliott.

Rev. Mr. Wood : The Presbyterian Church has not spoken on the matter as a Church, but I have no objection to the clause of the Bill as it is. It is a matter for the Assembly.

The Chairman : Can you persuade Bishop Cleary to take no objection to the clause ?

Rev. Mr. Wood : I think this is a most important point : Schrader's positive statement is, " No true marriage can exist between Christians by force of a civil contract, and it is true that either the contract of marriage between Christians is always a sacrament, or that the contract is null if the sacrament has been excluded." And Schrader, the expositor of canon law, adds, " And thus, therefore, every connection entered upon between man and woman among Christians, by virtue of a civil law, and without the sacrament, is nothing else than a shameful and corrupt concubinage, condemned by the Church. Therefore the marriage tie can never be separated from the sacrament." When Bishop Cleary amends the catechism by stating that marriage between a Protestant and a Catholic before a Protestant minister or a civil Registrar is not a sacramental marriage, what he says is that, according to the teaching of the Roman Catholic Church just as was said in the previous issue of the catechism—it is not a marriage at all.

W. W. COOK, further examined.

The Chairman : You have read the letters received by the Rev. Robert Wood from the Registrar-General in 1912. I understood from your statement the other day that it was quite irregular to issue a second certificate of marriage ? I do not say that. It is not an uncommon thing to issue a second certificate, where persons previously married before a Registrar are subsequently married in a Church.

Then his statements are correct ? Yes.

Hon. Mr. Lee : When a marriage is to be solemnized a declaration is made and a certificate authorizing the marriage is issued ?—Yes.

Then, when the marriage takes place before a Registrar the marriage is finished with ?—Yes.

The two people are married : then how can you issue a certificate for a second marriage ? It is not a marriage, because the people are already married under the law ? Well, it has been done.

What is the authority for it ?—The opinion of one of the Crown Law Officers.

What is your view of the practice of issuing a certificate authorizing a marriage which is not a marriage at all according to law ?—Where they have been previously married in a Registrar's office and are going again to be married in their Church, I see no objection.

Is it a second marriage ?—It is sometimes referred to as a marriage.

But supposing that people are married before a Registrar, and ten years afterwards you issue a certificate for their marriage in a Church ? I have never heard of that happening.

It makes no difference if it is ten minutes afterwards or ten years ; there would be no objection on account of the lapse of time ?—No.

Well, say ten years afterwards they get a certificate and are married in a Protestant Church, and the clergyman sends in the usual form. How would they be described ? They would be described as having been previously married on a certain date.

Do you enter the second marriage in your books ? Certainly, if it is gone through in the ordinary course.

You enter up that marriage just as a marriage under the Act ?—Why not ? They are married under the law.

Because there is no authority for the marriage of married people ?—It has been done from time immemorial.

Do you appreciate the difficulties that might result ?—I have never known of any.

Would you issue a certificate of the marriage ten years afterwards ?—If they asked for it.

Hon. Mr. Anderson : Supposing a question arises as to who is entitled to property ?—That question does not concern us.

Do you count the second marriage as another marriage in your statistics ?—I do not know what the Government Statistician does. I do not make out the statistics. I simply record the marriage.

Hon. Mr. Lee : Could you tell us how many of these second marriages occur in twelve months : would it be hundreds ? Nothing like that. Not more than a dozen. Probably about half a dozen.

For what Churches are these certificates usually issued ? The Roman Catholic will be one ?—Yes.

And the Church of England ?—Yes.

Any other denomination ?—The Methodist.

The Jews ?—I do not think so. In the case I mentioned where there was a second marriage in a synagogue they did not get a certificate.

Rev. Mr. Wood : Have you ever known a Presbyterian apply for a second authorization ? I cannot say. I know of a number of cases in the Church of England. Two friends of mine were married in a Registrar's office first.

What was the interval between the two marriages ?—In one case some months, at any rate.

Suppose that a child was the fruit of such a marriage ?—I have nothing to do with that.

Rev. Howard Elliott : I think the practice has grown up in some casual way, and then a deliberate legal opinion, such as Mr. Mansfield obtained, has given it a kind of sanction ; but it is a very disastrous practice.

Rev. Mr. Wood : Could you say how far back this practice of issuing a second certificate to parties already married began ?—I could produce our legal-opinion book. The legal opinion on the point is very old.

Rev. Howard Elliott : I am only concerned with one point, and that is that no person in this country, whether ecclesiastic or layman, shall have the right to call in question the validity—the legal validity or the full and sufficient character—of a legal marriage ; that if he does that kind of thing

he shall come under the penalties of the law. We want to protect the rights of the individual—the civil liberty and the religious liberty of persons to be married as they see fit. Apart from that, the Church of England, or any other Church, may have its own religious doctrines, and teach its doctrines and perform its ceremonies as it pleases.

Hon. Mr. Anderson : Suppose I married a Catholic, and we had children, and in a Church the priest says my offspring are illegitimate ?

Rev. Howard Elliott : There is no objection to his stating his doctrine so long as he does not single you out as living in sin, or say that your children are illegitimate.

Hon. Mr. Anderson : The present clause puts upon the State the duty of prosecuting the man for saying that, and I have my own civil right to prosecute him for slander.

Rev. Howard Elliott : Yes, under certain conditions. As to further proceedings, I promise to read Bishop Cleary's letter through carefully and if necessary to forward to the Committee any letter that I may consider necessary in reference to it. May I suggest that in view of the evidence given this morning as to the process of double marriage, the Committee might add a rider to their report, or in some other way direct the attention of the Department concerned to the practice, and if necessary have the practice stopped ?

Hon. Mr. Anderson : I intend to have the whole matter looked into by the Crown Law Officers immediately after the session closes, and have it attended to next session of Parliament.

CORRESPONDENCE.

Letter from Archbishop O'SHEA and Bishop CLEARY to the CHAIRMAN OF THE COMMITTEE.

DEAR SIR,—

Wellington, 11th October, 1920.

We, the undersigned, have read in the daily Press the following resolution passed by your Committee : " The Committee on the Marriage Amendment Bill intimate that in view of the evidence already taken, and the full public discussion that has taken place by means of pamphlet and otherwise, they do not consider it necessary to open up the whole question again. If, however, any persons specially interested have not yet been heard, or if any points bearing on the Bill have not yet been sufficiently elucidated, they are prepared to hear evidence briefly stated on Tuesday, 12th October, 1920, in the Joint Committee-room, Parliament Buildings, at 10.30 a.m."

The above-quoted resolution determines the conditions under which further evidence (if any) will be taken by your Committee in connection with the Marriage Law Amendment Bill now before your honourable House. The situation thus created has been carefully considered by us, both by ourselves and in consultation with the Hon. Sir John Findlay, and all three of us are agreed that we should not (even if we could) tender any further evidence under the conditions set forth in your Committee's resolution.

It is due to ourselves, to the high respect which we entertain for your Committee and for your honourable House, and to our deep sense of the responsibilities of Parliament in this connection, that we should state the grounds of our decision not to offer further evidence on the Bill now before you. Summarily stated, our reasons are the following :—

1. A very considerable mass of our new evidence has already appeared in print under the titles " The Marriage Law Amendment Bill " and " Catholics and the Marriage Laws : A P.P.A. Pamphlet " (second edition, revised). These pamphlets were written by Bishop Cleary. They have an important bearing upon the Marriage Law Amendment Bill. It was our intention to place this printed matter before your Committee, for record as evidence of much pertinence to the issues now before your honourable House. But by the terms of your Committee's resolution these pamphlets appear to us to be probably excluded because of their previous (though very recent) publication as pamphlets ; while they are obviously and certainly excluded by reason of their overstepping the limits of brevity required by your Committee's resolution.

2. We had in hand, with a view to its submission to your Committee, a further extended mass of fresh evidence, having an important bearing (direct and indirect) upon this Bill. This evidence has not yet been published in any form. It consists mainly of detailed refutations of numerous statements, quotations, and contentions already placed before the Legislature with a view to promoting the proposed measure, and to influencing the opinions of honourable members thereon. In our opinion, this fresh matter has a close and important relation to the issues raised. Yet it must be excluded from the purview of your Committee on the ground of its unavoidable lack of the required brevity.

3. A selection of refutations of various misrepresentations has lately been placed by us before the public. We take it that they are probably excluded from consideration by your Committee by reason of their recent appearance in pamphlet form, and certainly on account of their lack of the brevity required in your Committee's resolution. But, in addition to the misrepresentations mentioned above, a considerable body of other travesties and caricatures of Catholic doctrine and Church law has been submitted to the Legislature. In our opinion, these have had some (perhaps considerable) influence in promoting the present project of legislation. A good part of the matter in question consists of misrepresentations of an extremely grave and reprehensible kind, having a grievously misleading effect, even in regard to the contents of specified official documents of our Church. We have on hand full and detailed refutations of this misleading matter that has been submitted to Parliament, but it is beyond the bounds of possibility for us to reduce it within the measure of brevity required by your Committee's resolution. In the circumstances, we hold that

(even if our evidence were admissible by your resolution) it would neither be very helpful to your Committee, nor fair to the cause which we represent, to impair seriously the strength and extent of our refutations, or of our other testimonies, by compressing them into the brief tabloid form required by your Committee.

Bishop Cleary attended in Parliament on the 20th August, 1920, armed with a mass of authorities, to set before the Statutes Revision Committee the facts of Catholic doctrine and Church or canon law relating to the present Bill, and to refute the numerous misrepresentations thereof which had taken place. On the advice of the Hon. Sir John Findlay, Dr. Cleary's evidence was not submitted—and this precisely because of the assurances given by the Statutes Revision Committee that the facts of Catholic doctrine and canon law, and the accuracy or otherwise of Archbishop O'Shea's and Bishop Cleary's statements thereon, would not be investigated and determined by the said Committee. We were left in no doubt by the Statutes Revision Committee that it had not entered on, and would not enter on, any investigation of what was or what was not Catholic marriage doctrine or law.

But an entirely new situation has now been created by the amendment made by the Legislative Council in the Marriage Law Amendment Bill at present before your honourable House. Eminent counsel have advised that the Bill in question, if it becomes law, may be invoked to penalize heavily the direct or indirect teaching of certain doctrines and laws not alone of the Catholic Church, but of the Protestant and Jewish denominations as well—and even to suppress the circulation and teaching of important parts of the Holy Scriptures which forbid (as being neither "true" nor "sufficient") certain classes of marriage that are legalized in New Zealand.

Assertions were made before the Statutes Revision Committee to the following effect: That whatever were the real marriage doctrines of the Catholic Church, a main complaint of some of our opponents was this—that statements were made by some persons, represented as speaking the views of the Church, reflecting upon the character and legal validity of certain purely civil marriages in this Dominion. We were (and are) unable to admit that the statements so made (which referred exclusively to the sacrament of matrimony) rightly bear the interpretations put upon them. Nevertheless, to meet this complaint in a spirit of charity, assurances were given by us to that Committee that—long previously to, and quite independently of, the proceedings now before Parliament—steps had been taken by us to make certain verbal alterations in catechetical publications, which would preclude any reasonable inferences of the kind alluded to above.

The amendment passed by the Legislative Council, however, does not deal with irresponsible statements as to what are the doctrines of the Catholic Church in regard to marriage. It goes much further: it makes a direct and vehement attack on the real doctrines of that Church itself, and (as already stated) upon those of every religious denomination that stands by the teachings of God's revealed Word on Christian marriage. The amendment in question is therefore an unequivocal attempt to repress and crush what are admittedly religious doctrines pure and simple.

This proposed drag-net legislation renders it doubly necessary for the Parliament of this Dominion to examine minutely at the present juncture the objective truth or otherwise of the various statements advanced in support of this Bill. Your Committee's resolution precludes the possibility of our doing—in any really effective way—our share in this necessary work of investigation and illumination.

In the circumstances, we must regretfully accept the option implicitly contained in your Committee's resolution—that of not appearing before it to offer further evidence.

In conclusion, we renew the expressions of respect for your Committee and for your honourable House, and sign ourselves with much consideration and esteem,

Very faithfully yours,

†THOMAS O'SHEA, S.M.

Coadjutor-Archbishop of Wellington.

†HENRY W. CLEARY,

Bishop of Auckland.

The Chairman,

Special Committee appointed for the consideration of the Marriage Law
Amendment Bill, Wellington.

Letter from the Rev. ROBERT WOOD to the Hon. the ATTORNEY-GENERAL.

DEAR SIR,

"Glendarnal," Mary Road, Karori, 9th October, 1920.

I see from to-day's papers that the Marriage Amendment Committee do not desire to hear those who have already given evidence, and I shall be grateful if you let me know if this applies to me.

I appeared before the Legislative Council on my own and did not possess any authority to represent the Presbyterian Church. I had no time to get the commission that I have put into your hands which makes me represent the Committee of the Church whose business it was to protest against the *Ne temere* decree.

In the Legislative Council Committee I had to listen to very gross misrepresentations from Sir John Findlay of the faith and practice of the Presbyterian Church *et* *re* deceased wife's sister marriage, and I had no opportunity to lodge a protest or even to ask a question through the Chairman of the Committee, and Bishop Cleary is circulating Sir John Findlay's misrepresentations all over the land. The Presbyterian Church has no *Ne temere* decree in New Zealand, Scotland, or America, or anywhere else, in relation to this deceased wife's sister marriage, and a very serious wrong will be done to the Presbyterian Church if evidence correcting Sir John Findlay on this and on other points are shut out.

May I trouble you to let me know if the newspaper notice nullifies my commission which was placed in the hands of Chairman of Committee.

The Hon. Mr. Lee, Attorney-General.

Yours truly,

ROBERT WOOD.

Letter from the CHAIRMAN OF THE COMMITTEE to Archbishop O'SHEA.

MY LORD ARCHBISHOP,—

Wellington, 12th October, 1920.

I have to acknowledge receipt of yours of 11th instant, signed by yourself and Bishop Cleary, and addressed to myself as Chairman of the Special Committee appointed for the consideration of the Marriage Law Amendment Bill.

I note your reasons for deciding not to tender further evidence before this Committee, and I submitted your letter to the Committee. Without making further comment on your letter, I think it my duty to acquaint you with certain evidence tendered to the Committee to-day, which may appear to you to be of sufficient importance to warrant further consideration of your decision so far as concerns this new evidence.

There was put in evidence to-day two copies of marriage certificates from the district of Hamilton relating to the marriage of Neil McLean, school-teacher, and Ada Annie Casey, nurse. The first certificate is dated 20th June, 1908, and shows that the above parties were married before the local Registrar. The second certificate is dated 13th July, 1908, and is issued by the Rev. Joseph Croke Darby, officiating minister at St. Mary's Church, Hamilton; and in both certificates the parties are described respectively as "bachelor" and "spinster."

The Registrar-General of Marriages was called as a witness, and stated that he had no record of the second marriage, and no record of any certificate having been issued authorizing it.

The Committee were of opinion that your attention should be drawn to this evidence, because of the fact that it understands no similar case arising in New Zealand was presented to the Committee of the Legislative Council.

The Committee meets again on Friday next, the 15th instant, at 10.30 a.m., in the Joint Committee-room, and if in your opinion this further evidence calls for comment, I shall be glad if you can advise me whether you will be represented at that sitting of the Committee, notwithstanding the fact that you have decided not to tender evidence on the general questions arising out of the proposed legislation.

I have, &c.,

W. DOWNIE STEWART, Chairman.

His Grace Coadjutor-Archbishop O'Shea, Wellington.

Letter from the CHAIRMAN OF THE COMMITTEE to the Rev. ROBERT WOOD.

DEAR SIR,—

Wellington, 14th October, 1920.

Your letter of 9th instant addressed to the Hon. Mr. Lee was placed before the Marriage Amendment Bill Committee at its last meeting.

I note that you are commissioned to represent the Protestant Principles Committee of the General Assembly of New Zealand. I also note that you assume from the notification in the Press that the Committee does not desire to hear those who have already given evidence, and you ask to know if this applies to you.

Your interpretation of the Press notification is hardly correct, as the Committee expressly intimated that, "if any points bearing on the Bill have not yet been sufficiently elucidated," they would hear further evidence.

However, with reference to your complaint that you had to listen to gross misrepresentations in the Legislative Council Committee from Sir John Findlay of the faith and practice of your Church *in re* deceased wife's sister's marriage and had no opportunity of lodging a protest, or even to ask questions through the Chairman, the Committee is of opinion that it can hardly review the decision of the Legislative Council Committee on such a question. That Committee having heard the statements was the best judge as to whether they should be replied to or not.

In any case, my Committee does not consider it necessary to consider either the allegations or possible replies thereto, as it appears to be quite feasible to arrive at a conclusion without entering on a prolonged controversy on theological doctrines.

The Committee meets again to-morrow, Friday, the 15th, at 10.30 a.m., and is still prepared to hear evidence on relevant points, but not on questions already adequately discussed or dealt with by the Legislative Council Committee.

I have, &c.,

W. DOWNIE STEWART, Chairman.

The Rev. Robert Wood, "Glendarnal," Mary Road, Karori.

Letter from Archbishop O'SHEA to the CHAIRMAN OF THE COMMITTEE.

DEAR SIR,—

Wellington, 14th October, 1920.

I have to thank you and your Committee for your letter of 12th October, informing me that two marriage certificates were submitted to you at your meeting on that day—one from the Marriage Registrar at Hamilton, and the other, concerning the same parties—McLean and Casey—dated 13th July, 1908, and signed by the Rev. Joseph Croke Darby, in both of which the parties are described as "bachelor" and "spinster."

If this second certificate is a genuine one, the use of the aforesaid words in it was, and is, absolutely against the regulations of the Catholic Church in New Zealand. The archbishops and bishops have never approved of any such designations being put in the records of the sacramental validations of legal marriages. As stated in my letter to the Statutes Revision Committee of the Legislative Council (page 6 of the "Proceedings"), the Church "requires merely the names of the parties, the names of the witnesses, the place and date, and the name of the priest who assists at the ceremony" (Canon 1103, "Code of Canon Law," Vatican Press, Rome, 1917).

Moreover, if the certificate of 13th July is a genuine one on a civil official form, then the whole thing was irregular according to our regulations, which forbid the use of the civil official forms in these cases, and order the use of private ones similar to the specimens submitted to the Statutes Revision Committee. It may be that the priest copied the Registrar's certificate exactly as it stood, and out of inadvertence set down the words "bachelor" and "spinster," which would be in the former. But in any case, such a proceeding was, and is, against our rules.

I may state that the priest in question belonged at the time to the Auckland Diocese, but has not been exercising for some considerable time the work of the ministry in our Church.

Thanking you and the members of the Committee for your courtesy in writing me on this matter, I beg to remain, with due respect,

Yours faithfully,

† T. O'SHEA,

Coadjutor-Archbishop of Wellington.

The Chairman, Special Committee on the Marriage Bill, Parliament House, Wellington.

Letter from the Rev. HOWARD ELLIOTT to the CHAIRMAN OF THE COMMITTEE.

SIR,—

Wellington, 26th October, 1920.

I have the honour to acknowledge the receipt of a copy of a letter addressed to you by Dr. Cleary under date the 16th instant, in order that I may furnish the Committee with my written comments on the same.

I thank you for the courtesy extended, and beg to say that the bearing of the contents of the letter upon the question at issue—namely, the amendment of the Marriage Act to protect the civil and religious liberty of people legally married against the operations of the *Ne temere* decree and the issue of legal marriages from insult—is so remote that comment would be useless. I have stated before your Committee what I had to say on the subject-matter of the letter in so far as it related to the action of Dean Darby in issuing a second certificate in the McLean-Casey marriage.

I am, &c.,

HOWARD ELLIOTT.

The Chairman, Marriage Amendment Bill Committee, Parliament House, Wellington.

Letter from Rev. ROBERT WOOD to the CHAIRMAN OF THE COMMITTEE.

DEAR SIR,—

Glendarnel, Karori, Wellington, 26th October, 1920.

I beg to submit the following comments on Bishop Cleary's letter of 16th October, 1920.

1. Bishop Cleary does not challenge the statement that a Roman Catholic priest in Auckland Diocese "remarried" a couple married already according to our Dominion law, and designated them in a certificate he gave them as "bachelor" and "spinster." He says such a form of certificate was "exceptional," but he makes this somewhat startling admission: "In the case under consideration these terms ('bachelor' and 'spinster') were obviously intended to express the doctrine that the parties were not married in accordance with the teaching and law of the Catholic Church." Bishop Cleary does not say that the priest erred in thus expressing "Catholic doctrine." The Auckland priest in the early days of *Ne temere* (in 1908) raised no smoke-screen over his expression of what he thought of a marriage according to New Zealand law. The couple before him were "bachelor" and "spinster," and their former marriage was to him, to use the language of the catechism of the Roman Archbishop and Bishops of New Zealand, "no marriage at all." In 1911 I, as convenor of a special committee by the Presbyterian Assembly, sent a circular to every Presbyterian minister in the Dominion, in which they were asked to say if in their districts the *Ne temere* decree was so applied as to affect the social interests of the non-Catholic parties in a mixed marriage, and I received in reply signed statements that it was. (See my evidence on page 31 of the Legislative Council's report.) Bishop Cleary says it is not now the custom in the Dominion to express Catholic doctrine as the Auckland priest expressed it in the certificate he issued. But outside New Zealand the Auckland priests mode of expressing himself has obtained. I append to this letter a certificate of baptism used in America in which a priest described the parents of the child he baptized as "living in concubinage" because they had been married by a Protestant minister. Bishop Cleary's justification of this Auckland priest and his endorsement for years of the catechism issued from the *Tablet* office when he was editor furnish a very powerful reason for the State by its strong arm laying an arresting hand on the promulgation of "doctrine" that defames the character of moral and law-abiding citizens outside his own communion.

2. Bishop Cleary has convinced himself, and he seeks to convince your Committee, that nearly all the New Zealand Churches have their *Ne temere* decrees, and that in various tones and dialects they denounce marriages according to our Dominion law as "incestuous" and "adulterous," and he says that a favourable feature in his Church is the mild language of denunciation it indulges in compared to that of other churches. I have carefully read the printed evidence submitted to the Upper House Committee, and I cannot find any proof for Bishop Cleary's assumption with regard to the non-Roman-Catholic Churches in New Zealand. Has the condemnation by any of the Courts of the non-Roman-Catholic Churches in New Zealand of any of our legalized marriages found a place in the minutes of evidence? No, not one. This favourite assumption of Bishop Cleary finds a prominent place in his letter before me. He writes: "Several classes of remarried divorcees whose unions (although perfectly legal in this Dominion) are held both by Protestants and Catholics to be forbidden by sacred Scriptures and contrary to the law of God (compare the minutes of evidence of the Statutes Revision Committee, pages 5, 6, and 8). These legalized marriages and certain legalized marriages of affinity are described as 'adulterous' and 'incestuous'."

in the official doctrinal standards of several important non-Catholic religious denominations in this Dominion. Such terms are nowhere to be found in the official laws and doctrines of the Catholic Church. But all alike necessarily (however regretfully) recognize the facts of the position created by the civil law in respect of such marriages." The pages Bishop Cleary cites contain no proof for his statements, and the extraordinary misrepresentation of the "doctrinal standards" of the Presbyterian Church of New Zealand by the counsel for Bishop Cleary makes more vivid the foundation of sand on which the Bishop builds. Bishop Cleary and Sir John Findlay find in the statement of the Westminster Confession of Faith—published in London in 1648, nearly three hundred years ago—that "incestuous marriages" can never "be made lawful by any law of man," a declaration or war against the marriage laws of this Dominion! Bishop Cleary never made a more unhappy use of a document whose meaning he did not understand. The statement gleefully quoted by his counsel is a declaration of war against the Pope who, in the eyes of the Westminster divines, defied Heaven by making marriages "incestuous" in nature lawful. Popes in the sixteenth century had made themselves the scandal of Christendom by their nullification of marriages and by their permissions to marry again, and the "Confession of Faith" in its chapter on marriage fires all through at the Pope, and not at the Parliament who had summoned the divines to draw up the Confession. There are few blacker pages in history than those that deal with the Popish meddling with marriage condemned by the Westminster divines, and the blackness can be seen in "Historical Essays and Studies," pages 76 and 77, by Lord Acton, a Roman Catholic with a passion for truth and freedom. His shocking story is before me, but I cannot burden this letter with quotation. There is indirectly in the Confession of Faith of 1648 a condemnation of the deceased wife's sister marriage, but the Churches of the whole Presbyterian world have found this indirect condemnation to be inconsistent with the teaching of Scripture, and so to-day this condemnation is obsolete, and liberty of opinion and perfect freedom of action obtains in relation to this marriage in the Presbyterian churches of Christendom. The position with regard to the marriage laws of this Dominion taken up by the New Zealand Presbyterian Church is that of silent approval and not condemnation. The Clerk of the General Assembly writes me that the supreme court of the Church has not on its minutes a single protest against any of the marriages permitted by the State. As an officiating minister under the Marriage Act I have solemnized the deceased wife's sister marriage, and I have also solemnized the marriage of a woman whose former marriage was morally subverted by desertion. Such is the practice of the New Zealand Presbyterian Church, and in doing these things I realized I was faithful to the law of God and true to the law of a State whose Constitution rested on our common Christianity. Bishop Cleary's allegations about the *Ne temeres* of the Presbyterian and other Churches are simply a smoke-screen to make obscure the whole question. When this smoke-screen is blown away there is only one *Ne temere* to be seen that smites men and women and helpless children outside the Roman communion.

3. Bishop Cleary again asks you to believe that the Roman Catholic Church in New Zealand is a voluntary association, as football clubs and non-Roman churches are voluntary associations. The Roman Church in our midst is poles apart from these institutions. Football clubs and non-Roman churches have independence and self-government, and their rules are not imposed on them from Rome, or Geneva, or Canterbury. As regards Dr. Cleary's Church in New Zealand, laws are imposed upon it and upon him, and he is not consulted about the matter. Take this *Ne temere* decree as proof and illustration. Before Easter, 1908, Bishop Cleary believed and taught that a Roman Catholic and a Protestant married by a Protestant Minister contracted a true marriage—a sacramental marriage—and the couple were really husband and wife. But *Ne temere* was imposed upon him by the Vatican at Rome and he had to change his faith and practice. He was compelled after Easter, 1908, to believe and to teach that the foregoing marriage was, as his catechism says, "No marriage at all," and as the Auckland priest said, they were "bachelor" and "spinster" still. Such is the freedom Roman prelates possess in New Zealand.

4. Bishop Cleary closes his letter by quoting a Presbyterian "leader" who says that "No one questions the legal validity of whatever the State may enact, be it ever so contrary to morality and the revealed will of God." The Presbyterian Church has always questioned iniquity set up by law, but it has seen no iniquity in our Dominion marriage laws. The Presbyterian Church looks to the State to do the will of God in its own sphere as she seeks to do the will of God in her sphere.

I append baptismal certificate referred to above, and the explanatory statement of the United States *Protestant Magazine* of 1911.

I am, &c.,

W. Downie Stewart, Esq.,

ROBERT WOOD.

(Chairman, Marriage Amendment Bill Committee.

[Extract from U.S. *Protestant Magazine*.]

HOW LEGALLY MARRIED COUPLES ARE DEFAMED.

A case of much significance which involves the enforcement of the *Ne temere* decree in the United States has recently come to our attention. Having been able to secure convincing testimony to show that a Roman Catholic priest acting under the authority of this decree, has, in defiance of the law of the State of New Jersey, declared a valid marriage to be no marriage, and the child of a lawfully married couple to be an illegitimate child, we present the facts herewith, in order that our readers may know that Rome is already setting church law before civil law in this country, and, by declaring a marriage lawfully contracted to be no marriage, has put the stamp of shame upon persons whose relations were wholly honourable. The facts briefly stated are these: A Roman Catholic Hungarian, of Perth Amboy, N.J., named Stephen Dagonya, was married on the 4th August, 1909, to Mary Csoma, a member of the Hungarian Reformed Church of the same city, by the pastor of her church, Rev. Louis Nanassy. In November, 1910, they took their little girl, Anna Susanna, to the Roman

Catholic priest, Rev. Francis Gross, for baptism. When the father asked for the certificate of baptism the priest declared their marriage was not a marriage, and that they were living in concubinage, but that it would become a marriage if the parents would pay him a fee of 15 dollars and be remarried by him. The father replied that his marriage was valid and lawful according to the law of the State and his conscience, and he refused to remarry. The priest then wrote out a certificate of baptism in which he stated that the child was illegitimate, and that the parents were living in concubinage. A reproduction of the original certificate and the translation of the same appear as a double frontispiece in this issue of the *Protestant Magazine*. The translation of the vital part of the certificate follows :—

On the 6th day of the month of November, in the Year of Our Lord 1910, in the Church of the Holy Cross of Perth Amboy, Middlesex County, New Jersey, Diocese of Trenton, according to the rite of the Roman Catholic Church, I baptized Anna Susanna (illegitimate), born on the 5th day of the month of November, A.D. 1910, in Perth Amboy, New Jersey, of the father, Stephen Dagonya, Roman Catholic, whose place of birth was Kis-Varda (*comitat Szaboles*), and whose place of living is ----; and of the mother, Mary Csoma, Reformed, whose place of birth was Patroha, (*comitat Szaboles*) and whose place of living is ----. The sponsors were Emericus Szlatenji, Anna Keeskes. Remarks : The parents are living in concubinage.

From the reproduction of this certificate it will be seen that it is not a private paper, but that it is given under the seal of the Church. If these parents should ever return to Hungary, where this *Ne temere* decree is not in force, the only evidence they would have concerning the birth and baptism of this child would declare that they had been living a life of shame, and that their offspring was illegitimate.

Approximate Cost of Paper.—Preparation, not given; printing (600 copies), £30.

By Authority : MARCUS F. MARKS, Government Printer, Wellington.—1920.

Price 9d.]