

passed. You might just as well say that the legislature shall perform every other duty incumbent upon them to perform, as that they shall perform this duty. The only change this makes at all is in allowing marriages to be celebrated by the mayor of a city, or any justice of the peace, and in providing for the registration of marriages. I believe that in Maryland marriage has always been considered a religious contract, as well as a civil contract. The policy of the legislature of Maryland has been that marriages should be celebrated by some minister of the gospel under a license or the publication of the bans between the parties. The provision of the law as it now stands is :

"The rites of marriage between any white persons, citizens or inhabitants of this State, shall not be celebrated by any person within this State, unless by some minister of the gospel, ordained according to the rites and ceremonies of his or her church, or in such manner as is used and practiced by the society of people called Quakers."

This allows the Quakers to marry according to the rites of their church, as well as every other denomination. That we should undertake to make a constitutional provision, to provide especially for the case of a good Quaker lady who wants to marry some person who does not belong to her church, or of some Quaker man who wishes to marry some lady outside of the Quaker church, seems to me to be going a little too much into an absurdity. The legislature is competent to provide for this by law whenever they please. I do not see the necessity of putting such a provision into the constitution.

Mr. STROCKBRIDGE. It is true, as has been remarked by the gentleman from Anne Arundel (Mr. Miller) that the legislature have power to pass laws such as this amendment of the gentleman from Harford (Mr. Russell) makes it obligatory upon them to pass. The only difference will be that instead of having the power if this is adopted by us, it will lay them under the obligation of passing it.

The difference however is greater than was stated by the gentleman from Anne Arundel. While the proposed amendment provides that the rites of marriage may be celebrated by a minister of any religious denomination, the law as it stands is that they shall not be celebrated unless by some minister of the gospel. There are in this State not less than 50,000, and probably more, of the people called Hebrews, or Jews. How are they married? Is a Jewish rabbi a minister of the gospel according to this law? If not, by what mode and in what manner is marriage to be celebrated by them? The law makes no provision.

This is also the law for white persons alone. There are 100,000 in this State to whom that has no application, not being white persons. It is time there was some general law. The

attention of the legislature has often been called to this subject. It has been pressed upon them in the most urgent manner; as has also, what is at this time of the utmost importance, the registration of marriages, for the want of which in this State there are thousands upon thousands of widows and orphans at this time likely to lose, I may say sure to lose, bounties and pensions to which they are entitled, because there is no mode of authenticating their marriage which is recognized by the laws of the land.

It is a thing of the utmost importance, and yet the most strenuous efforts upon the part of a large number of men in the last legislature failed to get any law upon the subject. I think it is highly important, in both of these respects, as a matter of religious freedom to the Jews as well as the Quakers, and as a matter of duty to those whose marriage cannot easily be proved, that we should adopt the new section offered by the gentleman from Harford. It is made obligatory upon the legislature that they shall pass such a law; and I shall vote for it with a great deal of pleasure.

Mr. JONES, of Somerset. I am surprised to hear so good a lawyer as the gentleman from Baltimore city say that there is no law in Maryland evidencing the fact of marriage, whereby widows and orphans are likely to lose the bounties to which they are entitled. My friend must remember that although there is no express statute prescribing the evidence of that fact, Maryland decisions have left no doubt upon the subject as to the nature of the evidence which is held sufficient in this State to establish the fact of marriage. In the absence of any one who was present at the ceremony, to prove the fact, the courts have held that cohabitation, and acknowledgment, and reputation, sufficiently establish the fact, unless it is expressly rebutted. And I apprehend that such evidence, before the authorities anywhere in the State, with reference to the bounties, evidence recognized by the highest judicial tribunals in the State, is sufficient to establish the fact, and would unquestionably be sufficient before those tribunals.

With reference to the phraseology of the code, that the marriage may be performed by some minister of the gospel, I apprehend that that phrase has been held, although perhaps not strictly legitimately and technically, to embrace Jewish rabbis; that it has been held to mean the ministers of any religious denomination in the State. If there is any doubt about that construction, it seems to me that no legislature could hesitate to make it broad enough to meet that designation.

Although marriage is recognized as a religious ceremony, in law it is true that marriage is but a civil contract, and it has been held that no such ceremony is necessary. Full acknowledgment of the fact of marriage,