

The True Witness

AND
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MONTREAL, FRIDAY, MAY 23, 1873.

ECCLESIASTICAL CALENDAR.

MAY—1873.

Friday, 23—Of the Octave.
Saturday, 24—Our Lady of Good Succour.
Sunday, 25—Sunday within the Octave of the Ascension.
Monday, 26—St. Philip Neri, C.
Tuesday, 27—St. Mary Magdalen of Pazzi, V.
Wednesday, 28—Of the Octave.
Thursday, 29—Octave of the Ascension.

NEWS OF THE WEEK.

Not only is the Pope not dead yet, but the stern logic of facts compels the telegraph agents to report that he is recovering; that he is convalescent; that his health is quite restored. We thank God for it, and trust that Pius IX. may yet for several years to come be spared to us, to guide the church through the stormy seas with which she is encompassed.—The other news from Rome is to the effect that the invaders of the States of the Church are busy enacting spoliation decrees for robbing the Religious Orders of their property. There have been riots in Florence, in connection with this plan of confiscation, but of their precise nature and object we are not informed. One thing is however certain, that is, that the confiscating process will not cease with the robbery of the Church. There are millions in Europe who entertain very strong views as to the rights of property, and who will know how to profit by the lesson taught by the Piedmontese Government. The Church first; but the turn of the bourgeoisie will undoubtedly come next; and the great principle that all belong to the State will be applied to what the last named impudently call their property as well as to that of the Religious Orders. It is a poor rule that won't work both ways.

The Carlist cause is looking well. Don Carlos is said—but there may be some exaggeration in numbers—to be at the head of 150,000 men, and in the latest engagements reported, his troops have certainly had the upper hand over those of the revolutionists.

M. Thiers has been remodelling his Ministry; M. Jules Simon, and M. Goulard have resigned, and the following new appointments have been made—M. C. Perrier, Minister of Interior; M. Tourton, of Public Worship; M. Beranger, of Public Works; M. Waddington, of Public Instruction.

Nothing of much public importance is occurring in England: The trial for perjury of the claimant of the Tichborne estates is proceeding, and threatens to last all Spring and part of the Summer. The witnesses examined, ecclesiastics who knew the real Roger Tichborne well, who were his tutors, and who prepared him for his first communion, have sworn positively that the claimant is an impostor. They remember perfectly that the real Roger had tattoo marks on his arms, and the claimant has not.

The persecution of the Church goes merrily on in Germany, and is daily assuming larger proportions. It is now resolved, we are told, to expel the Redemptorists, Lazarists, all Congregations of the Holy Ghost, of the Sacred Heart, and all occupants of cloistered convents, within the next six months. The Religious Orders having thus been dealt with, the next step, if the Government intends to be logical, will be to enact the expulsion of all Catholics within a year, with the penalty of death attached to the crime of returning to the country. To stop short of this would be a confession of weakness, and would justly expose the Liberals to the charge of timidity. Well! it is a serious piece of business that the Germanic Imperial authorities have on hand; and ere long they will, we suspect, bitterly regret the hour when they were foolish enough to entangle themselves in it.

Investigations into the conduct of the Commissioners from the United States to the Exhibition have brought to light gigantic frauds. A report has been transmitted to Secretary Fish.

What action will be taken by the Ministry on the vote of the House on Mr. Costigan's motion is uncertain. In another column will

be found a report of the very interesting debate and division that followed.

The Provincial Synod of Quebec was opened on Sunday last. Before leaving Montreal to assist thereat, Mgr. the Bishop of Gratianopolis administered the Sacrament of Confirmation to 212 young persons in St. Patrick's Church, and to 230 in St. Joseph's Church.

THE "WITNESS" AND BISHOP STROSSMAYER.

In our last we acknowledged the receipt of certain documents from Rome, clearly establishing that the speech attributed to Mgr. Strossmayer before the Council of the Vatican, was an infamous fabrication; and that the people of the Montreal Witness office who gave it in pamphlet form to the public, were guilty of—well not to put too fine a point on it—of lying and slandering. To-day we publish the documents in question, a copy of which have also been forwarded to the Montreal Witness:—

To the Editor of the True Witness.

MR. EDITOR.—Your readers may not have forgotten the pamphlet published in French four months ago by the Witness, and entitled: "Discours de Mgr. Strossmayer sur l'Infaillibilité Pontificale," &c., and soon broadcast in this city, and in the Province of Quebec. Catholics pronounced it immediately a tissue of lies and impossibilities in the mouth of a primate of their Church. I there and then wrote in that sense to the Witness, and challenged the author or the publisher to have the Bishop's signature to that document; offering, in the space of four months, to have a peremptory *desaveu* of this pamphlet, either from Bishop Strossmayer himself, or from the Secretaries of the Council. A hundred pounds, to go to some charitable institution, were the stakes of the challenge. My letter was published in the Witness, but I cannot say the challenge was accepted.

However, to-day I have the proof of what I advanced four months ago, and I will leave it to the uprightness and fairness of your readers to say whether the pamphlet is not what I affirmed it was, "a tissue of lies," and the writer or publisher "a liar and a slanderer." Monsignore Desautels, then in Rome, forwarded a copy of the pamphlet to the Secretaries of the Council, and here is the answer he received to a letter containing my demands—(In English "enquiries."—E. W. T.)—

(Translation.)

"Very Rev. Sir.—By letter of the 14th February, your Lordship has had the kindness to inform me of the publication by a Montreal paper of a pretended discourse on the Primacy and Infallibility of the Roman Pontiff, calumniously attributed to Mgr. J. G. Strossmayer, Bishop of Bosni and Sirmio, as if he had pronounced it in the Vatican Council.

"Last year the enemies of the Clergy published the same lies in Europe, and Mgr. Strossmayer, who never pronounced in the Council such a discourse, either as to the matter or the form, hastened to deny it openly. He addressed to that effect, on the 18th of March, 1872, to Mgr. Joseph Fessler, Bishop of St. Hypolythus, and Secretary to the Council, a very explicit letter. This letter was then published by Bishop Fessler. It ran thus:—

"You know as well as those who took part in the Vatican Council, that I never spoke the discourse now attributed to me. My principles are altogether different from those sustained in this discourse. My conscience bears witness to me that I never said anything to enfeeble the authority of the Holy See, or wound in any manner whatever the unity of the Church.

"I give leave to your Very Reverend Lordship to make whatever use of this declaration you may think proper to do.

"(Signed) "STROSSMAYER, Bishop."

"Mgr. Fessler accompanied the publication of this letter with the following declaration:—

"In order to bear witness to the truth against falsehood, I believe it my duty to publish the declaration extracted from a letter sent to me by Bishop Strossmayer, whose name the enemies of the Church have shamelessly abused.—Bishop Strossmayer's autograph letter is in my possession, and all those who may wish to see it are welcome.

"St. Hypolythus, March 25th, 1872.

"JOSEPH FESSLER, Bishop."

"These documents were published in different European papers.

"I thought it useful in answer to your Lordship's gracious letter, to give him the preceding documents in order to enable him to refute the calumnious publication, and to confound the enemies of the Church.

"I take the occasion to send to your Lordship the expression of the profound esteem and veneration with which I have the honor to be of your Very Illustrious and Reverend Lordship the very obedient and humble servant,

"LODovico JACOBI,

"Under Sec. to the Vatican Council."

L. J.

"N.B.—The seal apposed to this document is that of the Holy Father."

Trusting to your love of the good cause, and thanking you for the insertion of these lines,

Believe me, Dear Sir,

Your most humble and ob'd't serv't,

ALFRED LA ROCQUE, JR.,

ex-Papal Zouave.

Montreal, May, 1873.

STATE RIGHTS.

A most important debate—the most important for the future of the Confederation in general, and of the Province of Quebec in particular, that has occurred this Session, or that can ever occur again—took place in the Dominion House of Commons on the night of the 14th inst. Ostensibly the subject matter was the New Brunswick School Laws; in fact, the question raised, was as to the autonomy of the Province under our actual political system; and the limits—if any limits at all exist—to the power of the Central or Federal Legislature to interfere with, and control Provincial Legislation on matters over which by the 92nd section of the B. N. A. Act the "exclusive" right, or power of legislation, is expressly assigned to the Provincial Legislatures.

This important question was raised by a motion from Mr. Costigan—a gentleman whose zeal in the Catholic cause no one can doubt or too highly praise—to the effect that the House

advise His Excellency the Governor General to withhold the Royal Assent to certain Acts lately passed in the Legislature of New Brunswick for giving effect to the School Law of 1871, pending the final decision of the Privy Council on the constitutionality of the last named measure, which decision has been invoked. On the merits of the N. B. School legislation there was singular unanimity; men of all shades of political opinion agreed in condemning it, either as unjust or impolitic; but the debate turned upon the right of the Parliament of the Dominion to control the action of a Provincial Legislature, so long as the latter was acting strictly within the limits "exclusive" possession of which has been assigned to it by the Act of the Imperial Government; to which Act both Federal and Provincial Legislatures owe their being; and from which alone both derive all legitimate authority that they possess.

This most important debate was inaugurated by Mr. Costigan in a speech of which we find given by our contemporaries the following analysis:—

Mr. Tilley moved the House into Committee of Supply on the estimates and supplementary estimates.

Mr. Costigan brought up the New Brunswick school question, tracing up the history of the movement to the present time, and recapitulating the proceedings taken up to and subsequent to the last meeting of Parliament. He urged that as an appeal was pending before the Privy Council upon the constitutionality of the law of 1871, no other or more oppressive legislation should be allowed by the Government; and as a new act amending the law of 1871 and legalizing assessments under it, had been quashed by the Courts, the Governor-General should be advised to disallow the acts passed at the last session of the Legislature of the Province to legalize the assessments made under the School Act of 1871. He, therefore, moved in amendment to the motion to go into supply, that doubts having arisen as to the sufficiency of section 93 of the British North America Act of 1867 to protect the rights, privileges and advantages which the Roman Catholic minority of New Brunswick enjoyed as to their schools and their school system, in operation when the said Act came into force, the House of Commons of Canada on the 30th May, 1872, did resolve:—

"That this House regrets that the School Act recently passed in the New Brunswick Legislature is unsatisfactory to a portion of the inhabitants of that Province, and hopes that it may be so modified during the next session of the Legislature of New Brunswick as to remove any just grounds of discontent that may exist; and that this House deems it expedient that the opinion of the law officers of the Crown in England, and, if possible, the opinion of the Judicial Committee of the Privy Council should be obtained, as to the right of the New Brunswick Legislature to make such changes in the school law as deprive the Roman Catholics of the privileges they enjoyed at the time of the Union, in respect of religious education, in common schools, with the view of ascertaining whether the case comes within the terms of the fourth sub-section of the 93rd clause of the British North America Act of 1867, which authorizes the Parliament of Canada to enact laws for the due execution of the provision respecting education in the said act." That the law officers of the Crown in England, having acted in conformity with the said resolution, and given their opinions, and the Judicial Committee of the Privy Council having declined to interfere unless the matter was judicially brought before them, it was the opinion of the House that the parties aggrieved have an opportunity of bringing the matter judicially before the Privy Council; and that in the meantime it is the duty of the Government to advise His Excellency the Governor-General to disallow several acts passed during the last session of the New Brunswick Legislature to amend the Act known as the Common School Act of New Brunswick, and amendment to the Common School Act.

Sir J. A. Macdonald replied. He avowed himself as having been in favor of an incorporating or legislative union of the Provinces, giving to the latter a Municipal system with extensive powers; and had this idea been carried out, Mr. Costigan's motion might have been adopted, as by it the entire power of legislation over the whole Dominion would have transferred to the Dominion Legislature. But this idea had not been carried out. A Federal, not a legislative union had been adopted; and if, after all, an ultimate power of legislation were to be vested in the Dominion House of Commons, if it were decided that that House might order the Governor General to disallow Bills passed by the Local Legislatures—where, asked the speaker, would be the use of all the paraphernalia of Local Governors and Local Legislatures, with all their heavy concomitant expenses? We copy at length the argument of Sir J. A. Macdonald, as reported in the Gazette:—

If we decided here that we may order the Governor General to disallow such bills as we may think should not pass, we shall have wiped out all the jurisdiction, and authority of the Local Legislatures, and centred them here. Was the House prepared to assume to alter the constitution; it might be so, but if the members of one Province undertook to disagree in this House with the policy pursued by another Local Legislature where would it end? Take the Province of Quebec, for instance; we might have had a legislative union, except for the Province of Quebec. In the other Provinces, we were mainly of one race, the Anglo-Saxon, and the majority Protestants; our laws were based on the common law of England; but in Quebec, it was different. Lower Canada stood alone; their majority were of a religion different to that common in the other Provinces. They claimed, and justly, the protection of their religion and their institutions for which they desired their own legislation. There were also many questions relating to property and land which required special legislation on these questions. The Lower Canadian drew up and said that if all the rest of the Dominion believed local legislatures to be wrong they would retain within themselves the power to protect their institutions, and preserve the law. If these rights had not been given them, our union would never have been secured. The same rule applied with equal force in the other Provinces. The question now under consideration was not whether the New Brunswick Legislature was right or wrong, but the question was whether this House had a right to interfere so long as the Legislature kept within the bounds of their authorization? Here was safe anchorage ground—the fixed principle that we should not in-

terfere. If this were not the case, we should be continually going through the form of discussing, modifying and amending the Acts of the Legislatures, which might go through the necessary forms, and pass by-laws to be sent up here, and be upset at the caprice of the Federal Legislature; and in this way our whole system would have gone for ever. It would have given him great pleasure if we could have acted in this matter, but he had come to the conclusion that such a course was beyond the competence of this House. He thought a mistake had been made in bringing this matter up here, as well as in not working so that each class of people should educate its children in its own wishing and in its own way. The law of the British North America Act provided that the Governor-General, the representative of the Sovereign, might disallow bills coming from the Local Legislature, but that was his prerogative as a representative of the Sovereign.

Mr. Anglin, a brave and honest champion upon whom we congratulate the Catholics of New Brunswick, an eloquent speaker as well as a powerful journalist, next took part in the debate. He argued that the Dominion Parliament was supreme in all things over the Provincial Legislatures, and had the constitutional right to set aside or annul their Acts at its discretion. He spoke eloquently also on the injustice inflicted by the Legislature of N. Brunswick on the Catholic minority of that Province, on which point, of course, every one agreed with him; and he concluded an able speech by stating that the said minority appealed to the Dominion legislature for protection—which, of course, raised the legal question of the constitutional right of the said Dominion Parliament to interfere.

M. Masson came next. He argued in favor of the legal right of the Federal Parliament to interfere; and maintained the principle that the legislation of any Provincial Legislature even when strictly within the limits exclusive possession of which is expressly assigned to it by the Constituent Act, was subject to the interference of the Dominion Legislature, and could by the latter be set aside. "If," he concluded "acts were never to be disallowed unless they were unconstitutional the people had a right to know it."

The Hon. M. Langevin rose next in debate. He took his stand on "State Rights;" and whilst expressing strongly his dissent from the action of the New Brunswick Legislature as unjust to Catholics, he argued "that under the constitution it never was intended that the acts of local legislatures should be reversed and vetoed. Adverting to the independence given to the Provinces under the Confederation Act, he submitted that the adoption of Mr. Costigan's motion would be to risk all the rights secured to them; and he could not consent to jeopardize all the privileges and guarantees received by the people of Lower Canada. If this proposition were acted upon to-day, Parliament might have to-morrow application of a similar kind from the Protestant minority in Quebec."

Mr. Mercier followed. He urged the House to remember that it was not proposed to set aside the decision of the House last session, but only to disallow subsequent legislation. He quoted the opinion of Lord Caernarvon, and insisted upon the liberal manner in which minorities were treated both in Quebec and Ontario; whilst the Catholics of New Brunswick, though forming one-third of the population, were deprived of their rights over the education of their own children. The speaker had confidence that the people of Canada would not tolerate such an injustice; and he further raised the question of the "British Constitution," which gave equal rights to all religions."

M. Cauchon read the Resolution passed last year. He argued that thereby the House had asserted its competence to deal with the matter, and insisted that there was a power of veto somewhere; he also contended that it was within the power, and was the duty of the Dominion House of Commons to disallow the law passed by the Provincial Legislature of New Brunswick. He insisted that now was the time for action, as the chance of so doing might never occur again.

Mr. H. Cameron truly remarked that the question actually before the House was not a religious but a constitutional question; whether in short the House was legally competent to recommend the Governor General to veto a Bill passed by a Provincial Legislature.

M. Dorion reviewed the steps that had been taken in this very intricate piece of business. He said that the House was not asked to disallow the School Law, but an Act passed subsequently to it. At the last session of the House a resolution had been offered asking for the opinion of the law officers of the crown. Bishop Sweeney had sent a letter to the Government, asking whether the opinion was to be asked for, in order that instead of having an *ex parte* opinion he might have a case to enquire into, and yet he had never been informed that the law officers had declined to interfere. He contended that an opinion should be obtained on the old law, and that pending its obtaining the law should be imperative, if the act was constitutional, despite the delay there was to stop its coming into operation. No more reasonable demand had ever been made than that now before the House, and he should therefore vote for the law.

Mr. Smith protested against the attempt at interference with the rights of the people of New Brunswick. It was admitted that the Local Legislature had a right to act on this matter, and it was therefore a mockery for this House to attempt to interfere. That the Local Legislature had power to act in this matter had been affirmed by the Supreme Court of the Province and by the law officers of Crown in England.

Mr. Bryson supported the amendment.

Sir Francis Hinks pointed out that it was found in the United States, impossible to have the same school law prevailing throughout. He protested against the Dominion Government interfering with matters clearly within the province of the Local Legislature.

The debate was continued by Mr. Palmer.

Mr. Jette maintained that the question was not what it had been stated to be. The motion of the member for Victoria, was to re-open the whole question and ask this House to nullify the Act of the New Brunswick Legislature, but simply to carry out the resolution passed at the last session of this House and to obtain the opinion of the Privy Council upon it. It was desired to have the operation of the Act of the last session of the Local Legislature suspended; and when that was obtained, if their ruling was adverse to the Roman Catholics of New Brunswick, the matter would be in exactly the same position as at present. He spoke at some length of the injustice to which the minority of New Brunswick were subjected, and asked that they might not be deprived of what all the members boasted of according, viz.—fair play.

Mr. Mackenzie said this was a subject which not only came under the constitution of this House, but from its wording, made it the duty of the House, to deal with it. It would be unfair to pass this resolution and let the matter remain in abeyance. To the Privy Council, they had given their opinion on the subject. He said that Protestant and Catholic were alike interested in this. In fact, the provinces of the Dominion had an interest in it. He thought it would have been advisable if the local Legislature of New Brunswick had not passed the law they had, of which the question was a tissue. He was personally in favour of secular education, but under the circumstances, he could not do otherwise than vote for the resolution.

Mr. Colby said that his own views had by no means changed since last session. He had the warmest sympathy with the member for Victoria. He believed that this was a hardship on the people of New Brunswick, and would go the very verge of the constitution to relieve them. Last session the matter had been sent to the Privy Council, and there he was disposed to let it be till they gave in their verdict. He was surprised at the illogical arguments of the members for Lambton, Quebec and Napierville. The House had not the power to suspend the law, as had been urged, and what the gentlemen proposed would not tend to the middle course which they desired. If the vote that the hon. gentleman asked to give last session were right the proposition of to-night could be nothing else than wrong.

Mr. Carter contended that this House had not the right to dictate to the Crown as to what course they should adopt. The House had already affirmed the principle that the local legislature was the only authority which had the right to deal with this question. He referred to the case of ex-Governor Eyre and the Privy Council, in which the Chief Justice of England had declared the local legislature had exclusive jurisdiction in local matters.

Mr. Burpee (St. John) spoke of the difficulties which the passage of this resolution would put in the way of education if the present law were allowed to continue its operations. It would, in the end, operate as well as in Nova Scotia.

Mr. McAdams said if this House interfered in the matter it would be doing a great injustice to the people of New Brunswick.

Hon. Mr. Tilley, as a member of the Legislature of New Brunswick, he could affirm that the policy had been to grant special grants for denominational schools, and had continued in that House he should have endeavoured to secure its continuance; but the Local Legislature had determined in its constitutional right to decide otherwise. If the resolution before the House were adopted it would be a stroke at the very root and foundation of our constitution. He was surprised at the course this evening pursued by the member for Lambton, who had expressed himself willing to violate the constitution. There were many Protestants in New Brunswick who opposed the act of the Local Legislature, and when they had an opportunity of expressing their opinion would do so; but he held that if the member for Victoria pressed his resolution it would postpone the desired end for ten or fifteen years.

Hon. Mr. Mitchell endorsed the opinion expressed by the Premier. He believed that if the resolution passed it would be a violation of the constitution and would retard the legislation, which the Roman Catholics much desired. He regretted that this premature action had been pressed upon the Legislature. This question ought to have been put at the polls, and he was certain that if the matter had been brought up fairly before them they would have done justice to their co-religionists and the member for Victoria. He regretted the law had not worked in New Brunswick as well as in Nova Scotia, but he attributed it to bad administration.

Mr. Donville said he should cast his vote against the motion, as it was calculated to interfere with the constitution.

At ten minutes to two, a division was taken, with the following result:—Ayes, 98; nays, 62.

With this division, in which the Ministry were outvoted, was brought to a close a debate the most exciting that has as yet occurred in the Dominion Parliament; exciting because of the great constitutional question therein raised, and in fact on which it turned. The proposition that the Governor Council should, pending the expected utterance of the Judicial Committee of the Privy Council on the constitutionality of the New Brunswick School Law of 1871, exercise his undoubted prerogative as representing the Queen in her legislative capacity, and as therefore himself a co-ordinate or concurrent branch of the New Brunswick Legislature, by refusing the Royal Assent to certain Bills supplementary to the School Law, and approved of by the other branches of the New Brunswick Legislature is one to which we think most men will yield a hearty assent. But the proposition that the Federal Legislature, of which it can hardly be predicated that it is a co-ordinate or concurrent branch of the New Brunswick Legislature, has a constitutional right to control or set aside the Acts of the latter is a proposition to which many heartily condemning those Acts may not readily yield assent. In fact this proposition or thesis brings us face to face with the great constitutional difficulty of our actual political system considered as a Confederation. It raises a question of constitutional law; a question therefore on which none but a legal tribunal is competent to adjudicate—for neither Federal Legislature nor Provincial Legislature is competent to determine the limits within which it may constitutionally exercise its functions. They are interested parties to the suit, and therefore incompetent as judges. The grave, transcendently important question as to whe-