

THE CONSTITUTIONALITY OF THE QUEBEC JESUIT ACT.

WE propose to continue the discussion on this Quebec Act within the same passionless lines of legal argument and judicial reason as in our former article. The law has no passion or sentiment, and is of no church or political party, but is supreme over all. Only by the light of its words and reason can we be guided to the constitutional rules which control this Act, or learn what is the final judgment and will of the law as to its legislative validity.

In addition to the levy of taxes (Hawkins Pleas of the Crown, p. 55), the Pope in early days asserted a civil jurisdiction as an appellate sovereign over the English government. To prevent this, various statutes were passed. The 16 Richard II, c. 5 (still in force), after reciting that "cognisance of cases belongeth only to the King's Court, in the old right of his Crown," but that divers processes hath been made by the Bishop of Rome, whereby the regality of the Crown was submitted to the Pope, thereupon prohibited all persons from pursuing in the Court of Rome, or elsewhere, any processes, or instruments, or other things whatever, which touch the King, or his realm, or which do sue in any other than the King's Courts "in derogation of the regality of our lord the King."

Another statute (still in force) recites the vigorous protest of Parliament that "the Crown of England which hath been so free at all times, that it hath been in no earthly subjection, but immediately subject to God and none other, in all things touching the regality of the same Crown, should be submitted to the Pope, and the laws and statutes of the realm defeated by him, and avoided at his will, in perpetual destruction of the sovereignty of our lord the King, his Crown, his regality and all his realm."

The statute, 25 Henry VIII, c. 21, has also an important bearing on this Quebec Act, for it expressly prohibits the Sovereign from procuring licenses, delegations, etc., or *any instrument in writing*, from the Bishop of Rome, "called the Pope"; and being binding on the Sovereign, is also binding on her representatives and ministers.

These statutes, says Lord Coke, are declaratory of the ancient or common law of the realm (4 Coke's Inst. 340), and they declare that every encouragement or acknowledgment of the Papal, or a foreign, power, within the realm, is a diminution of the regal authority of the Crown, and is an offence (4 Bl. Com. 110). By the several statutes, 24 Henry VIII, c. 12, and 25 Henry VIII, c. 19 and 21, to appeal to Rome from any of the King's Courts, which (though illegal before), had been connived at; to sue to Rome for any license or dispensation, or to obey any process from thence, were made liable to *præmunire* (*Ibid.* 115). Though the penalties of *præmunire* are now obsolete, a wilful contravention of any Act which is not otherwise an offence, may be a misdemeanor.

In dealing with this question of *ultra vires*, it must be borne in mind that "the Government of the Province," mentioned in the Act, is constitutionally Her Majesty the Queen, as representing the corporate and supreme sovereignty of the Empire, for by the B.N.A. Act, the executive government and authority of