

settled by British subjects, Clarke,* says: "They carry only so much of these laws as is applicable to the condition of an infant colony... For the mode of maintenance for the established clergy, the jurisdiction of spiritual courts, and a multitude of other provisions, are neither necessary, nor convenient for *them*, and therefore not in force." How can it be pretended that the Statutes of England were suitable to the inhabitants of Canada, either to the thousands, subjects of His Christian Majesty, professing the faith of the Catholic Church, or to the few British settlers, (who in 1770 numbered no more than 160 inhabitants besides women and children) belonging to various protestant religions, and consequently incapable of receiving and maintaining the English national Church?

We have alluded to the treaty by which Canada was made an English Colony, and we may here seize the occasion to lay before the reader the text of this document. But it may not be amiss first to ascertain the effects of such international agreements.

Bowyer says: † "The articles of capitulation upon which a country is surrendered, and the treaty of peace or of cession by which it is ceded, are sacred and inviolable according to their true intent and meaning."

Forsyth says: ‡ "The same rule of English law as to the power of the Crown to impose law, applies equally to a country obtained by cession, except that, of course, the right of legislation may be regulated by the terms of the treaty with the ceding power; and those terms ought to be invariably observed. Thus, in *Re Adam* P. C. 470, the Court said: "The Mauritius, before its surrender to Great Britain, in 1810, was a French Colony, and having been surrendered on the condition that the inhabitants should preserve their religious laws and customs, we must look to the law of France as established in the colony before that event."

"It is well settled," said Mr. Justice Smith, in *Stuart v. Bowman*, "that the King cannot violate any articles of capitulation, which have been assented to in favor of the conquered, and that these articles are sacred."§

Mr. Justice Aylwin said in the same case:—"Nor can the King *legally* disregard or violate the articles on which the country

* Colonial law, p. 8.

† Const. Law, p. 45.

‡ Const. Law, p. 16.

§ 2 L. C. Jurist, 11.