

## THE MARBLAGE LAWS—No. IV.

In the interesting debates which preceded the passing of the Quebec Act, it was the opinion of the law officers of the Crown that the position of the Roman Catholic Church, as determined by that act, was a position of toleration only and not of establishment. Thursday, the Attorney General, thought that thereby "the Roman Catholic religion was only tolerated, with provision for the continuance of that maintenance which the clergy had before from the whole population, but which by this act is restricted to such people only as choose to become or to remain Roman Catholics." And he remarked that nobody is thereunder compelled to be a Catholic. *Cavendish's Debates*, pp. 33, 34. Speaking with regard to the 5th section the Solicitor General Wedderburne says, "I can see by the article of this bill no more than a toleration. The toleration, such as it is, is subject to the King's supremacy, as declared and established by the act of the first of Queen Elizabeth." *Id.* p. 54. This also appears to be the view subsequently taken by the highest Imperial authorities, and communicated to the Canadian Governors in the Royal Instructions. For instance, sect. 41 of the instructions sent to the Governor in 1818 is to this effect: "Whereas the establishment of proper regulations on matters of ecclesiastical concern is an object of very great importance, it will be your indispensable duty to take care that no arrangements in regard thereto be made, but such as may give full satisfaction to our new subjects in every point in which they have a right to any indulgence on that head, always remembering that it is a toleration of the free exercise of the religion of the Church of Rome only to which they are entitled, but not to the powers and privileges of it as an established church, that being a preference which belongs only to the Protestant Church of England." With regard to the Bishop of that Church it is noticeable that for a long time he was called "the superintendent of the Romish Churches." (See Ord. L. C. 31 Geo. iii. c. 6). The title of "Bishop" first began to be commonly used about the year 1810, as appears from one of Sir James H. Craig's dispatches to the Colonial Minister, but not till 1818 was such title recognized by any official person in the government. In the debates we have already referred to, Lord North (the leader of the government) said, "With regard to the

Bishop it is my opinion—an opinion founded in law—that if a Roman Catholic Bishop is professedly subject to the King's supremacy under the act of Queen Elizabeth, none of those powers can be exercised from which dangers are to be apprehended." (*Cavendish's Debates*, p. 222). It will be observed that by the articles of capitulation, the British commanders carefully abstain from giving any guarantee that the Episcopal office should be continued under English rule. And we do not find in all subsequent Imperial or Colonial legislation that there has been any institution or restitution of the Roman Catholic episcopal office in Canada. True, in some of the later statutes reference is made to the Roman Catholic Bishop, but this is out of mere courtesy, and the employment of the name "Bishop" can never be taken to import into our system a sanction to all or any of the episcopal functions pertaining to that office as legally constituted.

Practically the right of the British Sovereign to nominate Bishops for the Roman Catholic Churches in Canada is ignored; these ecclesiastics receive the investiture of office from the hands of the Pope; it is his act which makes, not the royal approval, which follows as a matter of course. Then, having regard to the Quebec Act and the Statute of First Elizabeth, can a bishop, deriving jurisdiction from such a source, dispense with any part of the statute law of England introduced into Canada by our own constitutional act (C. S. U. C. c. 9)?

Bishops in England have the right to dispense with some parts of the statute law (*e.g.* the proclamation of marriage banns), because their dispensing power is conferred upon and confirmed to them by statute likewise: see 25 Hen. VIII. c. 21, by which all bishops are allowed to dispense as they were wont to do. But what, according to the opinion of constitutional lawyers who have examined this matter, is the legal status of the Roman Catholic Bishop in Canada? Jonathan Sewell, Attorney General, and afterwards Chief Justice, of Lower Canada, about the year 1810; in a state paper uses the following language: "Since the titular Roman Catholic Bishop of Quebec, according to the original creation of the See of Quebec, holds of and is dependent upon the See of Rome, and at this moment, as heretofore, derives his entire authority from the Pope, without any commission or power