

administrative and ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia and New Brunswick respectively, as if the Union had not been made; subject nevertheless (EXCEPT WITH RESPECT TO SUCH AS ARE ENACTED BY OR EXIST UNDER ACTS OF THE PARLIAMENT OF GREAT BRITAIN OR OF THE PARLIAMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND) to be repealed, abolished or altered by the Parliament of Canada, or by the Legislature of the respective Provinces according to the authority of the Parliament or of the Legislature under this Act."

Even if there had been legislation in any way detracting from the Statute 1st Elizabeth, which was undoubtedly in force at the time of Confederation, no legislation, either in this House or in the Province of Quebec, could in any way legally detract from or diminish the extent of the application of that statute. I think I have shown conclusively what is now the statute law of the land, namely, that resulting from the legislative enactments of 1st Elizabeth. But I maintain that the common law, altogether apart from the Statute, is such as to prevent the introduction of His Holiness the Pope into this legislation. Some of us can recollect the fact, I only from my reading, that, prior to 1850, the Pope attempted to divide England into different dioceses or divisions, but a Statute was passed in 1850 to prevent him doing so. This Statute was the Ecclesiastical's Act of that year. Now I want to refer to Mr. Todd again, who says, on page 313, that that Statute passed in 1850 declaring that the Pope had no power as a foreign potentate, either in his individual capacity as head of the church or as a foreign potentate, to divide England into dioceses, had always been the common law of England. Mr. Todd says:

"The Ecclesiastical Titles Act was in substance a declaration of the common law, which was affirmed before the Reformation, and ratified by Parliament some five hundred years ago."

If it was always the common law of the land, Sir, that the Pope could not divide England into dioceses, surely it must have been the common law of the land that he had not the right to distribute money, and that money the money of the state. I

would like to know which is the most important—dividing a country into different parcels or dioceses with a view of placing church authorities over each, or distributing certain moneys. If it was the common law of the land that His Holiness the Pope could not divide England into dioceses, it must have been also the common law that he could not distribute moneys in the way provided by the Statute aimed at by the amendment now before the chair. That common law of England became the common law of Canada. On this point Sir Richard West gives his opinion, on the 20th June, 1720, (see Chalmers's Colonial Opinions, page 510):

"The common law of England is the common law of the plantations, and all Statutes in affirmance of the common law passed in England, antecedent to the settlement of any colony, are in force in that colony unless there is some private act to the contrary, though no statutes, made since these settlements, are there in force, unless the colonies are particularly mentioned."

MR. MILLS (Bothwell). That is a settlement, not a conquest.

MR. BARRON. No, but it matters not. I maintain on that authority that the common law of England was such at that time that no distribution of moneys could be made by the Pope in England, and that common law became part and parcel of the common law of this country. Some reference has been made to correspondence from officers of the Crown in England, or others in high authority, regarding the right of His Holiness the Pope to exercise any jurisdiction in this country. I refer, in support of my view, to the royal instructions to the Duke of Richmond, on his appointment in 1818 as Governor in Chief of Upper and Lower Canada, with reference to the inhabitants of Lower Canada:

"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. It is our will and pleasure that all appeals to a correspondence with any foreign ecclesiastical jurisdiction of what nature or kind soever be absolutely forbidden under very severe penalties."