

no Act can be found in the Parliamentary annals of England delegating to a foreign potentate authority to determine how grants of money to subjects of the Crown should be disposed of.

In the 25th, 27th and 38th years of Edward III., and the 13th and 16th years of Richard II., this prohibitory legislation against the Pope's jurisdiction in England commenced. The statute, 24 Henry VIII., c. 12, prohibits any foreign prohibitions, appeals, sentences, judgments or any other process, etc., from the See of Rome or any other foreign courts or potentates, and prescribes penalties against persons within the realm, *or within any of the King's dominions*, attempting to procure any such from the See of Rome or from any foreign court or potentate.

Another statute of the same year (c. 21) prohibits the King, his heirs, and successors, Kings of the realm, and all subjects of the realm, *or of the dominions of the Crown*, from suing for licenses, dispensations, compositions, faculties, grants, rescripts, *delegations*, or any other instruments in writing from the Bishop of Rome, "called the Pope," or from any person or persons having or pretending to have any authority by the same. "The King, his heirs and successors," being expressly named in the Act, the reigning Sovereign is bound by the prohibition (*Coke's Inst.* 169); and it is not within the constitutional power of a colonial legislature or governor to absolve the Crown from its provisions, or to enact or assent to any Bill violating this or any other Imperial Statute in force in the colony. The Crown can only be relieved from the prohibitions of the Act by the power that imposed them, namely, the Imperial Parliament.

But the statutes of Elizabeth are more precise and emphatic, and in express words abolish "the usurped power and jurisdiction of the Bishop of Rome, heretofore unlawfully claimed and usurped within this realm, *and other the dominions to the Queen's Majesty belonging*;" 13 Elizabeth, c. 2; 1 Elizabeth, c. 1. Neither the treaty surrendering Canada to England, nor the Quebec Act of 1774, altered these statutory prohibitions against the foreign jurisdiction of the Pope. Both granted to the French-Canadian subjects of the Crown liberty to profess the Roman Catholic religion "so far as the laws of Great Britain permit," and in "subjection to the Crown and parliament of Great Britain."

"The conditions mentioned in the documents" cited in the preamble of the Act, import into the Act the assertion that "*the Holy Father reserved to himself the right of settling the question of the Jesuits' estates in Canada*," and provide that the proceeds of sale are to be disposed of under agreements "*with the sanction of the Pope*," and that "the amount of the compensation fixed [\$400,000] shall remain in the hands of the government of the province, as a special deposit, *until the Pope has ratified the said settlement and made known his wishes respecting the distribution of such amount in this country*."

These extracts clearly show an intent to confer upon the Pope—a foreign potentate—a jurisdiction to determine how the Crown's grant of money is to be distributed in Canada. In view of the constitutional questions and statutory provisions referred to above, we are inclined to think that the question of the validity or disallowance of the Jesuit Estates Act of Quebec, has not yet been settled.