

The Church in Canada.

Under this heading will be collected and preserved all obtainable data bearing upon the history and growth of the Church in Canada. Contributions are invited from those having in their possession any material that might properly come for publication in this department.

EARLY LEGISLATION AFFECTING THE CHURCH IN UPPER CANADA.

(From notes on a forthcoming History of the Law and Constitution of Canada.)

The province of Upper Canada, being part of the old province of Quebec until 1791, was subject to the laws and ordinances of that province. The great majority of the population of Quebec were Roman Catholics, the majority of those in Upper Canada, when the division was made, were Protestants, belonging to the Church of England. The Quebec Act of 1774 was not repealed by the Act making the division (the Constitutional Act of 1791), nor was it repealed by any provincial act of the legislature of Upper or Lower Canada. The Quebec Act made provision for the Church of Rome, and the Constitutional Act made provision for the Church of England. It was not until many years afterwards that any other religious denomination was recognized.

The Quebec Act in its fourth section repealed every ordinance made by the Governor of Quebec after the cession, and in the fifth section, "for the more perfect security and ease of the minds of the inhabitants of the said province," declared that "His Majesty's subjects, professing of the religion of the Church of Rome of and in the said Province of Quebec, may have, hold and enjoy the free exercise of the religion of the Church of Rome subject to the King's supremacy, declared and established by an act made in the first year of the reign of Queen Elizabeth over all the dominions and countries which then did or thereafter should belong to the imperial crown of this realm; and that the clergy of the said church may hold, receive, and enjoy their accustomed dues and rights with respect to such persons only as shall profess the said religion."

The next section went on to legalize "the rest of said accustomed dues and rights for the encouragement of the Protestant religion and for the maintenance and support of a Protestant clergy." Section seven relieves all Roman Catholics from taking the oath of Elizabeth, and substitutes one, substantially the present oath of allegiance. In the event of any one refusing to take this oath, he incurred the same penalties as attached to the oath in Elizabeth. These were loss of benefice, etc.

The statute law stood in this way until 1791, the Governor and Council of Quebec having no power to make an ordinance touching religion unless such ordinance had received the King's approbation. As a matter of fact, no ordinance was passed during these 16 years touching religion, unless we except that of the year 1791.

On the 30th of April, 1791, an ordinance, one of the last, was passed in Quebec concerning the construction and repair of churches, presbyteries, and cemeteries. It was ordained by this that whenever it was necessary to form parishes, or to construct or repair churches, presbyteries, or cemeteries, the practice of the old French Canadian law was to be followed. The Bishop could exercise the ancient rights of bishops under the French *regime*—the governor those of the Intendant. Protestants were exempt from contributing to the support of the Catholic Church, though this was always the law since 1774, that the accustomed dues and rights of the Roman Catholic clergy were to be paid only by Roman Catholics. The residue of these dues was, by the Quebec Act of that year, appointed for the support of the Protestant clergy, as has already been pointed out.

The Constitutional Act, 1791, section 31, continued all laws in force as they then existed, until repealed or varied under its authority. By the 35th section the provisions respecting Roman Catholic clergy were combined in each of the two provinces of Upper and Lower Canada, subject to be varied or repealed in an Act approved of by the Parliament of Great Britain. The next seven sections are taken up with the reservation for the support and maintenance of a Protestant clergy. This reservation, known as the "Clergy Reserves," was one-seventh part of the lands granted by the Crown. This grant

was to be applied solely for the purpose mentioned, and for no other; provision was made for the erection and endowment of parsonages, and the presentation of incumbents as in England under the jurisdiction of the Bishop of Nova Scotia.

The Act of 1791 left the Church of England with this provision for its support, and left the Church of Rome to continue in both provinces under the existing law, as set out in the Act of 1774.

There is not much legislation in the early part of the century affecting churches or the clergy. In the Militia Act of 1808 the clergy were exempt from service in the militia, though they might have held commissions as officers therein; and in the same Act Quakers, Menonists and Tunkers were not compelled to serve. These persons were obliged to produce a certificate proving that they belonged to one of these bodies, and in times of peace they were obliged to pay twenty shillings and in times of actual invasion or insurrection the sum of five pounds per annum. In case of non-payment after distress they might be imprisoned, but not longer than one month. Persons over fifty were exempt altogether in times of peace, but in times of war or other contingency they were not exempt until after sixty. In 1810 the certificate of the sons of Menonists and Junkers had to set out that the father was of their persuasion and that they were brought up in this way, and in the following year some elaborate provisions were made in the case of Tunkers, whose goods may have been distrained under regulation referred to.

The Marriage Act of 1793 has certain references in it which come under this head. It recites "that many marriages had been contracted in this province at a time when it was impossible to observe the forms prescribed by law for the solemnization thereof, by reason that there was no Protestant parson or minister, duly ordained, residing in any part of the said Province, nor any consecrated Protestant church or chapel within the same," and the Act goes on to validate marriages publicly contracted before any magistrate or commanding officer of a post, or adjutant or surgeon of a regiment acting as chaplain, or any other person in any public office or employment. Provision was made to preserve the testimony of these marriages and for the future until there should be "five parsons or ministers of the Church of England." A Justice of the Peace within his district could marry persons if neither of the parties were living within 18 miles of any such parson or minister and were otherwise enabled and desirous of being married. A public notice was given of these circumstances and after three Sundays, if no valid objection was made, the magistrate could legally proceed to solemnize the marriage according to the form prescribed by the Church of England. He then issued a certificate of the marriage, and he was entitled to one shilling for the notices and one shilling for the certificate and no more. This certificate could be registered with the clerk of the Peace whose fee equalled all the magistrate was entitled to collect. Whenever there would be five ministers or parsons of the Church of England within any district the power of the justices ceased and any pretended marriage was null and void to all intents and purposes whatever. It was no objection to such a marriage or to any marriage that it was not solemnized in any church or chapel duly consecrated. In 1798 an Act was passed by which the "minister or clergyman of any congregation or religious community of persons, professing to be members of the church of Scotland, or Lutherans, or Calvinists," was authorized to "celebrate the ceremony of matrimony, according to the rights of such church or religious community." The minister or clergyman must have been rightly ordained according to the rules and forms of his own church and must appear before at least six justices at the Quarter Sessions and take the oath of allegiance.

Upon this the clerk of the peace issued a certificate that the minister was the "settled minister or clergyman of such congregation or religious community," and thereupon he might undertake the celebration of the ceremony of matrimony. It was further necessary for him to announce this for three several Sundays beforehand, "openly and with a loud voice," and declare his intention to do so, or else procure a license from the governor. This disagreeable act was reserved for the signification of the King's pleasure, but His Majesty assented to it.

The first piece of legislation by the old Parliament of Upper Canada, affecting or indeed referring to Roman Catholics was an act passed in 1821 in respect of a piece of land in the city of