

the *Law Times* shows conclusively that it is quite constitutional for the Province to vote money in the way it has. The hon. member for Muskoka (Mr. O'Brien) is entirely at issue with the *Law Times* on that point. If he had read the article in the *Law Times*, he would have found that it holds that the voting of money to ecclesiastical institutions or powers is regarded by that newspaper in an entirely different way from that in which he regards it. I cannot understand, therefore, on what ground the *Globe* made its sudden summersault. The *Law Times* says it is constitutional to vote money for this purpose. Of course, the *Law Times* is in conflict with Mr. Wm. McDougall on that point, but I will refer to him later. The *Law Times* says :

"The constitutional question that arises is not the voting away of public money, be the pretext never so shallow, but the subordination of the sovereign to a foreign authority, and the placing of Her Majesty's public funds at the disposal of the same foreign authority. It is of course an unquestionable and fundamental proposition of law that the Legislature cannot deny the sovereignty of Her Majesty or acknowledge the sovereignty of any other person, especially as under the Constitution it derives its sole authority from an Act passed by the Imperial Parliament. But there is authority for saying that such a proceeding would be unconstitutional."

Then it goes on to refer to the case of the International Bridge Company and the Canada Southern Railway Company, reported in 28 Grant, page 14, showing that the action of Parliament would be unconstitutional in declaring that an Act of that kind could go into operation without the consent of a foreign power. It quotes the decision of Vice-Chancellor Proudfoot as follows:—

"If Canada has chosen to pass an Act in terms similar to the New York Act, it derives its validity from the Canadian Legislature, not from the Legislature that originally created it. No express clause was required to exclude the laws of one from operating in the territory of the other; the exclusion arose from the countries forming part of different nationalities with different sovereign powers. Each country has assented to the corporation created by it uniting with the corporation created by the other, and bringing into the union the rights and liabilities conferred or imposed upon it, and certainly Canada has not introduced the provisions of any Act of Congress passed subsequent to the union applying to the united company. Were the Canadian Parliament to endeavor to do so—to say that Canadian subjects and Canadian corporations are to be subject to legislation that might be passed by Congress—it would, I apprehend, be unconstitutional."

And upon that ground the *Law Times* argues that it is unconstitutional in having, as it says, delegated the power to the Pope to say whether the law shall go into operation or not. We have seen that the Act does not depend upon the action of the Pope at all, but the money voted by this Act for a particular purpose is left for the Pope to say how much shall go to one church or another, or to one university or another. Now, we have in our Canadian Parliament enactments which are somewhat at variance with the law as laid down by Mr. Justice Proudfoot. In the Niagara Frontier Bridge Company Act we have a clause to this effect:

"The said company shall not commence the actual erection of the said bridge until an Act of the Congress of the United States of America has been passed consenting to or approving the bridging of the said river, or until the executive of the United States of America has consented to and approved thereof."

We have enacted the same thing in the Niagara Frontier Bridge Company Act. I think I can safely say that the constitutional authorities of this country, who have expressed their opinion upon it, are as reliable and as deserving of our confidence as the expression of the opinion in the *Law Times* or other papers of the same kind. It seems to me that the *Law Times* could not have carefully considered the question, otherwise it would not have arrived at the conclusion I intend to point out. The hon. member for Muskoka states in his resolution that the Act is not legal, firstly:

"Because it endows from the public funds a religious organisation, thereby violating the unwritten but understood constitutional principle of a complete separation of church and state, and the absolutely equality of all denominations before the law."

We have an answer to that in the *Law Times*, which says:
Mr. BYRKE.

"The policy of disallowing a Provincial Act must be determined by responsible Ministers of the Dominion. They are constitutionally answerable to Parliament and the people, and as has frequently been shown, the right to disallow Acts was not granted in order that unconstitutional or invalid legislation might be got rid of, but in order that the more important policy of the Dominion should not be interfered with by the Provinces. The whole course of English history shows a struggle with the ecclesiastical houses to prevent property from falling into their hands. The policy both in England and her colonies has been the same—to prevent the property of the nation from falling into mortmain. But it is a question, not of legality, but of policy, and with the policy of the Governments of the day we have nothing to do."

Whereas, on the other hand, the *Mail* says it is entirely a question of policy with which we have to do, yet the *Law Times* is of a contrary opinion:

"If a particular Province choose to depart from this policy and permit the absorption of property by ecclesiastical orders, it is undoubtedly acting within its constitutional rights. The Governor in Council would also be acting within his constitutional rights in opposing such a policy by disallowing all Acts tending thereto; but it is a question of policy as we have said, and not of law. The Act then must be looked at with regard only to its contents."

So that while the hon. member for Muskoka takes strong ground that no Legislature has a right to vote money for ecclesiastical purposes to seminaries or churches, or anything of the kind in the Province of Quebec, yet the *Law Times* says that they have got absolute power. Now, which authority are we to take? Are we to take that of the *Law Times*, or that of the hon. member for Muskoka, or are we to say that the Government acted strictly within its constitutional rights and privileges by saying: We will not interfere, because they had a perfect right to vote their money; at any rate it is a matter of purely local concern. Now, it is stated that the Pope is an alien, and as such has no right whatever to express an opinion upon this question. If we look at the Treaty of Paris we find that, to a large extent, his authority is recognised so far as is necessary for church purposes. The clause says:

"For her part, Her British Majesty agrees to grant to the inhabitants of Canada the liberty of the Catholic religion. Consequently she will give most precise and effective orders, so that her new Roman Catholic subjects may profess and practise their religion, according to the rites of the Roman Church, in so far as the laws of Great Britain permit."

Now, the law of Great Britain permits the Catholics to carry on the affairs of their church just as they please, so long as they do nothing in conflict with the laws of England. It seems to me, looking at the *Law Times* and *Law Journal*, that they agree with the proposition I laid down, that if an Act be *ultra vires* or unconstitutional, it should not be a subject of discussion, but one which the Government should leave entirely to the jurisdiction of the courts. Now, we have another authority in this House—Mr. Wicksteed, who has been for years the law officer for this House. He has expressed his opinion upon it, and I find in a communicated article this language:

"And as respects the article questioning the constitutionality of the said Act,—it does not seem to me that the English Acts cited in it can apply to Canada, which, when they were passed, was no part of the realm of England, and the inhabitants of which are by subsequent Acts of the Imperial Parliament, guaranteed the free exercise of the Roman Catholic religion, of which the Pope is the head, and his supremacy as such is part of its very essence. The later law derogates from and virtually repeals any former provision contrary to it. The English laws disqualifying Roman Catholics from holding certain offices were never in force in Canada. The money appropriated belonged to the Province, and is granted by its Legislature for the purposes for which the property from which it arises was given by the French King, and the Act of Appropriation is sanctioned by the assent of the Queen, who may, without impropriety, avail herself, in dealing with it, of the advice and assistance of the head of the church and of an ecclesiastical and educational corporation, which, if not legally the same, is morally the representative and successor of that to which the original grant was made, and which, with the Pope, will be bound to use the money in accordance with and solely by virtue of the powers given them by the Act."

So we find that nearly every authority learned in the law who has expressed an opinion, points clearly to the fact that the Government acted entirely within the constitution. But, Sir, these gentlemen who are so terribly annoyed because the Pope has been called in, and has chosen to say