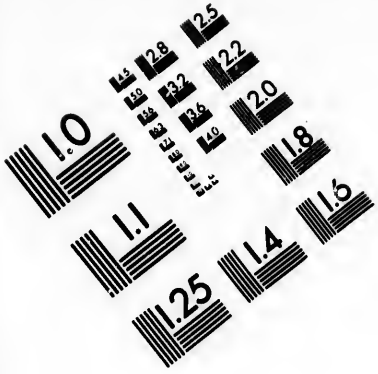

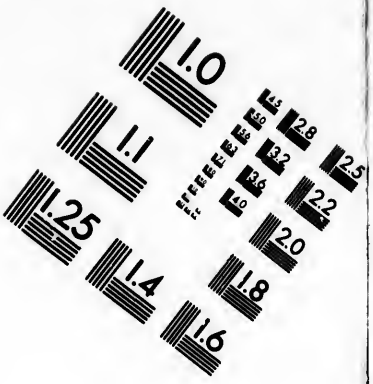

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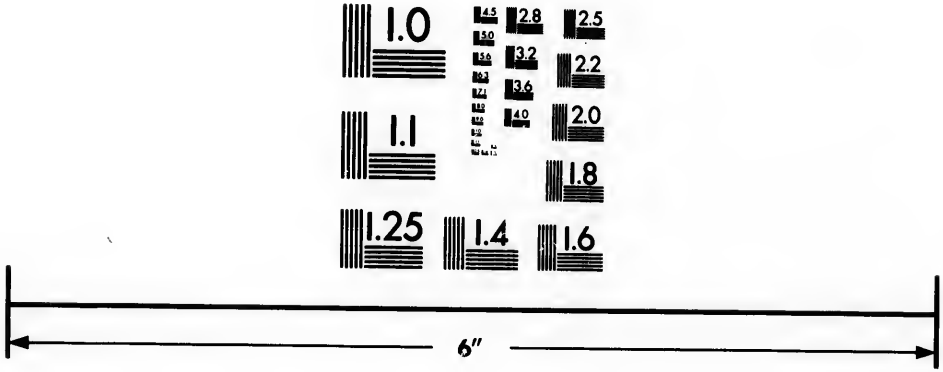

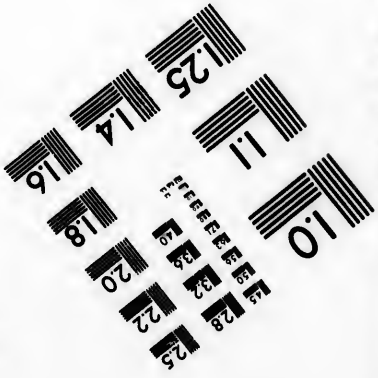

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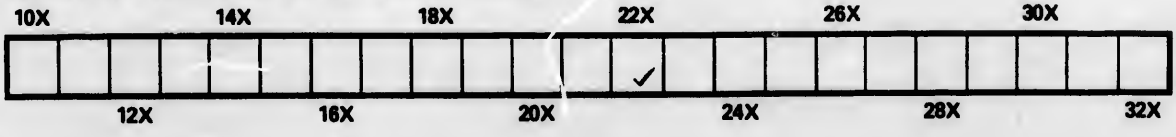

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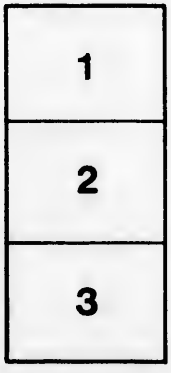

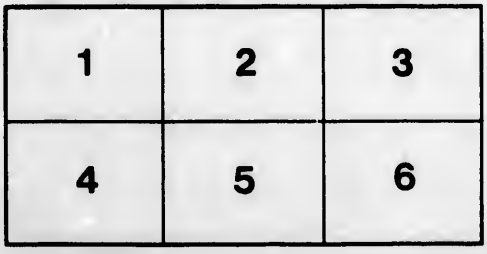

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House of Commons Debates

FOURTH SESSION—SIXTH PARLIAMENT.

SPEECH OF HON. EDWARD BLAKE, M.P.,

ON THE

JESUITS' ESTATES ACT.

WEDNESDAY, 30TH APRIL, 1890.

Mr. BLAKE. I cannot say, Mr. Speaker, that it was any source of gratification to me to learn that such a motion was to be made as that which is now attracting the attention of the House, nor am I certain, that any good results will flow from a renewal of the discussion upon the Jesuit question. In the observations I am about to make, although as hon. members will perceive, I am obliged to differ from some of the views which have just been expressed by the hon. Minister of Justice; and I dare say also, to differ from some of the views of gentlemen with whom I usually act; I do not desire to say a single word, in a sense which might aggravate any feeling of bitterness which may exist throughout this country with reference to this subject. I have felt from the beginning, that the question should be treated by those on either side who take opposing views, in a spirit, which I am sorry to say has not animated a great many of those who have acted on the lines of the hon. member for North Norfolk (Mr. Charlton). I have felt that it was a question which was pregnant with grave and important issues, and I do not deny in the slightest degree, the right, and even the duty, of those who feel as this gentleman did, to raise and to agitate it; I believe, however, that it should have been raised and agitated in a different tone and in a different spirit from that which many of them have evinced, if any good results were to ensue; nay, rather, if great calamities were to be averted. The questions which are immediately before us do not, I think, justify any severe motion of censure on the Government, nor do I think the motion of the hon. member for North Norfolk (Mr. Charlton) is to be considered as such a motion of censure, but rather as an expression of opinion adverse to the view which the Government adopted in this matter. Although I do not think the circumstances would justify a severe motion of censure, yet there are questions of high consequence involved, upon which there well may be differences of opinion, both upon an important constitutional point which the hon. Minister of Justice has advanced to-night—as he advanced it before in some of the State papers which he has produced upon this subject—and also upon a point which is certainly disputable, but I think, also, of greater practical importance. That is the question of political expediency, in the high and proper sense of that term, the question of policy, which is at issue between the hon. member for North Norfolk (Mr. Charlton) on the one hand, and the Administration on the other. Now with reference to the constitutional point. I am unable for my part to accede to the full extent, to the argument made by the hon. Minister of Justice, as to the effect of the action of the Executive during the currency of the twelve months within which the power of disallowance may be exercised, or to his view that this power cannot, after a declaration of a contrary opinion, be exercised during the twelve months with reference to a Provincial statute. The hon. Minister of Justice does not indeed deny that what he calls the bare power of disallowance continues. It would, I think, be absolutely impossible to affirm that that power had been blotted out. The law gives the power to the Executive to disallow at any time within twelve months from the receipt of the authentic announcement of the statute, and the power is therefore exercisible, at any period short of the expiry of the twelve months. There is no power whatever to allow a statute. The Provincial statute derives its force and vitality from the assent of the Lieutenant Governor of the Province. It is, if in the power of the Province, valid, operative and living from the hour of that assent, and it requires no other allowance in order to give it operation. There is no right in the Executive of Canada to assume to allow it at all. The right of the Executive of Canada is purely of a destructive order: it can destroy, but it cannot give validity; it can obliterate by exercising the power of disallowance, but it cannot vitalise by its approval. If that be so, and if the Constitutional Act awards to the Executive an authority to exercise their power up to the expiration of the twelve months, no prior expression of opinion on the part of the Executive, however positive, as to the validity of the Act, as to its expediency, as to its being such as ought not be disallowed, can absolutely take away all right and authority to disallow within the

twelve months which the law and the constitution give. Sir, suppose during a meeting of Parliament, while the people's representatives are here assembled, the twelve months not having yet expired, that a motion is placed in your hands, Mr. Speaker, or on the Notice paper, for an Address to His Excellency paying him to disallow a particular local statute; and suppose that during the debate, or before the notice is reached, the Executive, anticipating the period of or the termination of the debate, should exercise their right to pass an Order in Council declaring that in their opinion the Act ought to be left to its operation; could such a course as that thwart, annul or affect the power of Parliament to express its opinion by Address, requesting His Excellency to exercise his power to disallow? Why, the very circumstance that there are twelve months within which this power can be exercised, and that there must be, according to the law, a session of Parliament within twelve months, secures always to this Parliament its right, if it chooses, to intervene effectively in these matters. The Parliament of the country has a power not merely to approve and to condemn, but it has also a more important power with reference to every political and executive act—it has a power to advise. An approval may be gratifying to some, a condemnation may be gratifying to others, but neither the approval nor the condemnation of an accomplished act serves any purpose save that of criticism. The power of advice is the great power of Parliament, a power to be exercised with reserve, but to be maintained in efficiency; and to preserve effectively that power, it is necessary that we should deem that it has not passed beyond the domain of Parliament to advise within the twelve months, no matter what the Executive may do, whatever action in the opinion of Parliament, the interest of the country requires. It is of very little use for Parliament to say to Ministers, who have decided that they think an Act ought to be allowed: "Gentlemen, we think you are wrong; we condemn you; we censure you." Are we to be told that if the twelve months still remain unexpired, we may condemn the Administration, forsooth, but the Act must remain operative; that we cannot make our advice effective; that we cannot take a step which will cause that to be done which the great council of the country decides in the interest of the country ought to be done? The power of Parliament itself would be thwarted by the proposition of the hon. Minister of Justice. I admit that there may be cases in which a great local convenience may be demonstrated to exist in favor of an earlier expression of opinion on the part of the executive as to the character of a local act; there may be such cases of public convenience as distinguished from party convenience. I have known a good many curious things to happen in connection with this question of disallowance. I have known a case in which, from motives of party convenience, a Lieutenant Governor held back a Provincial Act for months—aye, I believe for years—just in order that its fate might be left in doubt, it being inconvenient for the Federal Executive at the moment to deal with it as it intended ultimately to deal with it. I have known, on the other hand, a case—I was myself an actor, I may say a victim, in it—in which while a motion was on the Order paper for an address to His Excellency, for strong reasons assigned, praying that he would not exercise the power of disallowance with reference to a Provincial statute, that motion being, for some little time, delayed by the exigency of other business, a day or two before it was reached, the Executive acted and disallowed the statute; and when I rose, instead of making my motion, I had to say: "This motion has been anticipated by the Executive doing in the interval, between the time the notice was placed on the paper and the time when it could come on, the act which I proposed we should pray His Excellency should not be done; and, therefore, I have no motion to make." So I say we have seen strange tricks played with reference to the exercise and non-exercise of this power of disallowance, for the purpose of party convenience. But I admit that public, as distinct from party convenience, may indicate that early action is important; and where it does; and when the Executive takes the responsibility of coming to a conclusion in advance of the expiration of the time, I admit that the utility of coming to such a conclusion would be greatly weakened if it were understood that after all the conclusion meant just nothing at all—if it were understood that the exercise of the power of the Executive after that time, within the twelve months, should be absolutely free, should be deemed proper, otherwise than under very exceptional circumstances. But I hold that the hand of the Executive is not so absolutely bound, but that the occurrence of some exceptional circumstances, the development of some new state of facts, the creation of some new description of policy, a change of the administration, perchance, with all its effect upon the politics of the country, should entitle the Executive, under special circumstances, to execute the duty and power of disallowance for which the constitution gives twelve months, at any time within that period. The power remains. In this particular case, Sir, the decision was reached at a very early time, absolutely and relatively. The hon. gentleman has said, that in looking over the records of the past twenty-three years, he finds some twenty cases in which the power was exercised earlier. As compared with the total number of cases in which the decision of the Executive has been reached, twenty cases are almost an infinitesimal proportion. In this case, I think it would have been wiser to have deferred the decision. I agree that that is a question on which opinions may differ. But my own opinion was, as it is now, that it would have been wiser to have deferred, at any rate not to have anticipated it. The first mutterings of the storm were even then audible; the Lodges were even then moving; some petitions had been sent in; other petitions were circulating; the public ferment had commenced and was increasing; and Parliament was about assembling; when the action was taken. It was possibly taken in the hope that such decisive action, as it is now stated to be, would quell the incipient agitation; that the Government supporters, at any rate, throughout the country, would no longer, seeing the matter was decided, press their objections; and that many people would say, to quote a homely proverb, "it is no use crying over spilt milk." If that were the idea, it turned out to be a very mistaken idea, because it was not the conception of the people at large that within the period of twelve months

this decision was final or fatal. It was their conception that circumstances might still be brought forward which would render it proper for the Executive to take, and at any rate for Parliament to advise, that action which the Executive had, so far, thought fit not to take. I thought, then, and I think now, that it would have been the wiser course to have waited, and to have allowed the subject to be ventilated more fully and freely before taking action. The ventilation has taken place, notwithstanding the action; and it has taken placeall the more violently for the attempted repression; and in a way and at a time which have greatly complicated the difficulties of the country. So much with reference to that point, and to the various positions which appear to be taken by the hon. Minister of Justice upon it. Without attempting a criticism in detail of those papers of his, to which I have referred, I may point out one blemish in the hon. gentleman's statement, which, I think, he himself will concede exists, in that part in which he is adverting to this point, and is accumulating objections which he conceives to exist to the proposition that the right of disallowance may be exercis ı after the announcement that the Act is thought unobjectionable. He says, that on that assumption even the Supply Bill of a Province could not be safely acted on until the expiration of the year, by which time the supplies would have lapsed. The hon. Minister of Justice forgot for the moment that the effect of disallowance is only to annul the Act from the time of the disallowance, and not from an hour earlier, and that whatever may have been done under the Act up to that time is well done. He forgot that moneys can be paid under a Supply Bill with perfect safety up to the hour of disallowanee, and that there is not the slightest difficulty in acting upon a Supply Bill, even although in every case the Administration of the Dominion were to determine that they would never pronounce upon a local Act until the expiration of the twelve months, and were then to disallow the Supply Bill; and I will prove the case to you. In an early year in the Province of Ontario, a Supply Bill was passed which contained one objectionable provision, involving the payment of a permanent extra allowanee to the judges of the Superior Court of Ontario, of some thousands in all. The hon. the Minister of Justice of that day, the present First Minister, decided that that provision was so objectionable that it must go. The then Attorney General of Ontario, a tolerably firm, not to say an obstinate man, as the First Minister knows, decided that it should not go by his consent. What did the Minister of Justice of that day do? He stayed his hand; he allowed all the supplies to be paid; he waited until after the lapse of the twelve months, of which the Minister of Justice of this day speaks; and when all the supplies had been paid, the Act remaining valid all that time, then he disallowed it. And that clause which contained the provision for the payment of judges in future years, went with the rest of the Act. But the payments were all made, and well made; and the trifling inconvenience which the Minister of Justice of this day suggests would arise, is found by practical experience to have no existence whatever. The hon. gentleman suggested that we are to suppose the case of an Act authorising the borowing of money. I say if there is an Act authorising the borrowing of money, and if money is borrowed under that Act, and if, after that borrowing has taken place, the Act is disallowed, what had been done under it remains valid. The First Minister shakes his head, but it is perfectly plain I am right. Suppose a Provincial Act, authorising a loan, suppose the bonds of the Province given for it and the money received, will anybody seriously contend that the act of the Minister of Justice and the Privy Council of the Dominion, occurring later, annulling this Act, would render the loan void?

Sir JOHN THOMPSON. It would destroy the security.

Mr. BLAKE. No; the security is in existence; it is made; it has passed; it is issued; and I deny that the disallowance of the Act would destroy the security. I admit, however, that if there be an Act authorising the construction of public works, of which, as in almost all cases, only a part can be accomplished within the time, the disallowance of the Act would theoretically cause inconvenience, as people might be averse to undertake such contracts, not being quite sure whether they would be allowed to finish the work. But such inconveniences are more theoretical than practical; for, in the vast bulk of cases in which there is provincial legislation, there never is any question, or risk, or doubt, about disallowance at all. It is only in view of exceptional cases that the doubt and difficulty—the shadow of doubt—as to disallowance at all exists. In the great and increasing bulk of cases, and I hope and trust the number and proportion will swell more and more as the years go by, an Act, when passed by a Provincial Legislature is and will be felt to be at once as sound and free from attack by the act of the Executive of the Dominion as if the twelve months had elapsed. Therefore, I maintain that the power of disallowance remains; and may, if the good of this country requires that it should be exercised, be exercised at any time within the period of twelve months, and that no premature determination of the Executive, as to what they think is right or politic, can absolutely divest them or their successors, or the Parliament of the country from the obligation and the power to do right, until the period given by the statute for action has expired. These conditions, I conceive, existed on the present occasion, and it was quite competent to this Parliament to review the decision of the Executive, and to come to a conclusion, one way or the other, as to whether this Act should or should not be disallowed, notwithstanding the Order in Council. I aver that this Parliament retains within the twelve months that power, even after the Executive has acted; but I agree that it is a power to be exercised only under exceptional circumstances. As to the principles upon which the power of disallowance should be exercised, with reference to statutes which are *ultra vires*, on the ground that they are *ultra vires*, I stated my views only the other day, and I pointed out that, although the cases might be rare, cases there were in which it was agreed that *ultra vires* Acts might properly be disallowed on that ground, and I have thought always that this statute came within that category. and that, if *ultra vires*, it should have been disallowed. I do not enter on the constitutional objections which have been taken to the statute in times past, and which have, to some extent, been repeated to-day by my hon. friend from North Nor-

folk (Mr. Charlton). Indeed, after his frank statement, perhaps not highly complimentary to this Chamber, that there were not to be found in it twenty men who could decide reasonably well whether the statute was constitutional or not, I came to the conclusion that it would be of very little use to argue this question, and I came to this other conclusion, I must admit, that whatever else my hon. friend might have established, or failed in establishing, he had satisfactorily proved this at any rate, that he was not one of the twenty. I say that I do not enter into these constitutional objections, of which one was the question whether the Act offended against the 93rd section of the British North America Act—an objection which I thought not well founded, and which, if any weight attached to it at any time, has been, as the hon. Minister of Justice has said, solved. I thought, and still think, that the other objections were equally unfounded. If I had thought differently, I certainly would have voted differently from the way in which I voted last Session; but, thinking as I did, and as I do, that the Act was *intra vires* of the Legislature, I would, under like circumstances, repeat the vote I gave last Session. I gave that vote in the belief that it was a sound vote in defence of the Canadian constitution, and in defence of Provincial rights and liberties, a vote which in my opinion was eminently safe and beneficial for all the Provinces, and especially safe and beneficial for, however unpopular it might be amongst, my own fellow-countrymen of the Province of Ontario. But, while this was and is my opinion, I also thought, before that Session closed, that there ought to have been, under the circumstances, an effort made to refer to judicial authorities the decision of these legal points. I did not believe it was well that we should, in the conditions of this question as they existed during that Session, and as they became more obviously apparent as the Session went on, assume to conclude this question finally by our own judgments. I referred the other day—and, I admit, with reference, with obvious reference, to those very conditions—to that state of public opinion and to those agitations which, in my judgment, would render it highly proper and expedient to refer legal questions of this kind to a judicial tribunal. Those conditions, I believed then, and I believe now, existed in this case. As I stated the other day, it is not necessarily decisive against such a reference that the Executive or the Parliament, or both, should be of the opinion that the law is *intra vires*, and that they should even have decided, that pending the reference, they will treat it as *intra vires*. That state of things does not at all necessarily preclude you from adopting the view that it might be wise, and politic, and expedient, and in the public interest to obtain a judicial solution of the legal question. I think that is very obvious; and I conceive that it is not necessary now to do more than to refer to certain precedents which have occurred. In the New Brunswick school question, what was the course pursued? The Executive decided that the New Brunswick school law was *intra vires* of the New Brunswick Legislature. This Parliament decided, by a very large majority, that it was *intra vires* of that Legislature. In that case, then, you found the Executive and the Parliament both declaring that it was *intra vires*, and both declining to exercise the power of disallowance; but at the same time, you found the Legislature deciding, and the Executive concurring, in the decision to obtain the view of high judicial authorities as to whether that Act was *intra vires* or *ultra vires*. I read, the other day, the views expressed by hon. gentlemen opposite, then in office, though the decision was arrived at under a motion of my hon. friend from East York (Mr. Mackenzie), as to the propriety of referring that question to the Judicial Committee of the Privy Council or the law officers. At that time, I need hardly say there was no Supreme Court. Then, again, in the case of the Liquor License Act, there was an Act passed by this Parliament under the auspices of gentlemen opposite. The Executive believed it to be a legal Act; the House believed it to be a legal Act; and expressed that view by large majorities. The House supported the Executive in the view that it was a wise and beneficial as well as valid Act. Yet the Executive promoted at the instance of the House a measure to refer that Act, which was believed both by the Executive and the House to be legal, to the judicial authority to ascertain whether it was legal or no. So I prove by these two cases, by the practice and the views of hon. gentlemen opposite, that it does not follow that, because the Executive believes the law to be *intra vires*, and the House, following the lead of the Executive, believes it to be *intra vires*, and because both act meanwhile on that view, you are precluded, if the public interest in any view requires it, from seeking further light, either to settle the question or to quiet public apprehensions. No doubt the machinery at that time provided was inadequate and the results were less satisfactory than they might have been, but even then, as in the case of last Session, the machinery might have been improved, and, even though the machinery was unimproved, it was better than nothing, and good results for the immediate questions were obtained in the public interests—excellent practical results in the New Brunswick school case and also in the liquor license case. If such a decision had been obtained in this matter, I believe it would have been generally accepted, and an agitating question in some of its most agitating elements would have been so far settled. Therefore I deem it by no means inconsistent with my expression, if not by voice yet by vote last Session, contemporaneously with the expression of other hon. gentlemen which was concurred in by me, that this Act was *intra vires* of the Legislature which passed it, to say that I thought, as I did think, that we held ourselves free, if the circumstances of the case required it, to seek and obtain that further light to which I have referred. And so holding, it was, further, my view, last Session, that it was our public duty, as far as possible, to eliminate from this controversy the legal questions, and to provide for their disposition in some way by legal authorities; and it was my opinion that, as in the New Brunswick school case, and I may add the Liquor License case, the Government might well, at the instance of the Legislature, assent to and promote legislation or parliamentary provision which would have secured that result. Under these circumstances, having been unable, owing to circumstances, to take part in the debate, and having been obliged to leave my place here, it became more and more clear to my mind that a great public good would flow from the adoption of that course by this Parliament; and in the hope

that it might be done at the instance of the Executive of the day, and having regard to the special circumstances of the case, I thought that I was not unduly taking a liberty when, during last Session, I made a communication to a leading gentleman on the other side of the House, and to a leading gentleman on this side of the House. On the 26th April, 1889, I took the liberty of telegraphing to a leading gentleman opposite in these terms :

"Allow me to suggest that the public interest would be promoted by parliamentary provision for early reference to highest available authorities, of validity of Jesuits' Estates Act. Easily accomplished by arrangement. I have not communicated to any one. Please let———see this immediately."

I telegraphed to a leading gentleman on this side of the House, and wrote to him later on the same day as follows :—

"It has for some time been pressing itself more and more upon my mind that some of those who are engaged in the fomentation of the present agitation are taking an undue advantage by their plan of presenting, as a main element of the discussion, their views of the legal questions on the validity of this legislation. They inflame the public mind in various ways ; and they invite that tribunal so highly inflamed, and at the same time so imperfectly informed on the legal issues, to adopt their opinions on the latter, and to reach conclusions on the whole subject largely based on these opinions. In the case of the New Brunswick School Act we recognised the strong feeling and the deep interest of a substantial minority of the population as a reason for governmental and parliamentary action towards obtaining an authoritative settlement of the legal question. In the case of the Temperance Act we did the same thing, and there are other precedents. I think we might now act with great public advantage on the same lines. Had the complainants invited such action by a motion, I, for one, would have supported it. They have now had every opportunity to invite it ; it has become plain that they do not intend to do so. But their inaction does not disentitle us to act so as to afford relief to the public anxiety they are creating ; nor does it relieve us of our responsibility. There is a special reason for early and unusual action in the shortness of the time now remaining before the term for possible disallowance ; though this is not a governing consideration. The aim should be to get the decision, upon argument, of the Judicial Committee. I know there are difficulties ; but I think, that the representations of the Government, based upon parliamentary action, may over-rule them. At any rate the effort will be useful. Should it fail, there remain the Supreme Court and the Imperial Law Officers. I cannot see any harm that can result from an honest attempt to procure a speedy solution of the legal questions ; I see great harm to result from the continuance of the situation with these questions unsolved. There is no impropriety in our calling for an authoritative solution, even though we have opinions of our own. The Government acted on this view in the New Brunswick School case. Assuming the sincerity of all the agitators (and I believe many of them to be sincere) they will all be glad that this question should be put in a train for easy and rapid solution ; though some of them may be sorry that they did not propose the plan, and may accordingly decry it. My only object is to contribute, if in the least degree I can, towards the settlement of questions, whose agitation, in the temper and spirit now shown in many quarters, seem to me most lamentable. There are difficulties, great enough in our future, difficulties which we must meet, not shirk. But they demand treatment in a very different spirit from that now frequently evinced, if a fortunate solution is to be reached. For the moment, it seems to me, the best we can do for our country is to grapple with that part of the present problem, capable of solution by the machinery we can set in motion. I do not apprehend that the great body of the Roman Catholics, remembering how we acted in the case of the New Brunswick school law, would be so unjust as to decline acquiescence in the present proposal. But even in the face of opposition from that quarter, I would earnestly urge its adoption, in the confident expectation that second thoughts would reconcile them to it ; and in the belief, that whether they think so or not, it is for the general advantage."

That was the view which I took leave to state in the only way which was open to me at that time, a view, I may add, which I have ever since entertained, and which I believe subsequent events have rendered more clearly evident to be the true one. Now, the Minister of Justice has adverted to a specialty attending the application which was made by a private individual, I think Graham by name, for a reference to the Supreme Court, a specialty in respect of which I conceive that the Minister of Justice was entitled to speak—that it was a proposition to refer the question to the Supreme Court after the period for disallowance had expired. I consider that the point of time may make a very serious difference between an earlier and a later proposition. There are also some other observations made by the Minister of Justice with reference to that particular proposition from which I do not propose to dissent. I do not understand this motion to be, it certainly does not read as being, based upon the question of Mr. Graham's application ; it is a general statement as to what, in the opinion of this House, the Government should have done. In my opinion, as you will have just learned by what I have read, they should have done even more than what this motion calls for. I think, as a question of political expediency in the true sense of that term, as a question of policy, it would have been well to invite the House to take action in the way of seconding, and facilitating, and effectuating the reference, in the way, as I put it last Session, of making parliamentary provision for such reference. Having failed to do that, the next best thing, in my opinion, was to have referred it to the Supreme Court, and in referring it to the Supreme Court, in the circumstances in which the country was placed, and for the purpose of obtaining further light within the period remaining for disallowance, I believe they would have done well, though I think they would have done still better to have adopted the parliamentary course to which I have referred. The hon. gentleman has adverted to a report of mine upon an application from New Brunswick with reference to a local Act, in which the proposition was from the authorities of New Brunswick, that we should use this particular power to obtain an opinion from the Supreme Court as to the validity of that Act, not at all with reference to the question of disallowance, nor for any purpose of the Federal Executive at all, but in order to obtain a short and easy cut to a decision, by the appellate court, of a question perfectly easy of solution in the ordinary way. So far from the cases being parallel in any respect, they differ in almost every respect. I have stated the character and object of that New Brunswick application. But as to this case now in hand, I have pointed out to you that during last Session, and after last Session, the reference of which I speak might have been made by the Executive, of its own motion, or at the instance of Parliament, for the purpose to which I have referred, for the purpose of enlightening them as to the course they should take. And as to the possibilities of there being an easy and rapid mode of obtaining a judicial decision on the case in hand, the Minister of Justice confined his observations, as far as I could gather his argument, to the question of the validity of the Jesuits' Incorporation Act and did not touch the other questions which are suggested. He said that as to that Act there was a method ; that the Attorney General of the Province of Quebec might have been called on to deal with that question,

and that the Society of Jesus itself in a libel suit, while it did not raise the question as to its incorporation, was yet resisted by the defendant who did raise it. By this time I believe, within a day or two, we have had the first decision of a single judge in the court of first instance on some preliminary stage of the trial of that case; and the decision is in favor of the incorporation; but the end is not yet; and after all that has been done, and all the time which has elapsed, the other questions which have been raised, be their weight what you please, remain untouched by that decision and incapable, so far as I can see, by any easy process certainly, and not by any process at all that I am aware of, of being ever touched. There are several classes of cases in which provincial legislation may be *ultra vires*, and in which it is difficult or impossible to prescribe a mode by which the question can be tried in the courts, and I believe some of these questions are of that description. Then the hon. Minister of Justice says, that the application to the law officers of the Crown has been improperly criticised. I think the phrase which the hon. member for North Norfolk (Mr. Charlton) used was not justified by anything I have heard; I do not understand very well the relevancy of the phrase clandestine on which the hon. Minister animadverted. I suppose all that was really meant was, that there should have been a public announcement of the fact that this reference was being made, which, I agree, would probably have been better. I think it would have been better not to have made any mystery about it; but if the word clandestine is applied in any invidious sense, I am not disposed to concur in that application. But, I want to call your attention, Mr. Speaker, to the ground upon which the Minister of Justice himself says, that it was well and wisely done to get that legal advice of the law officers, to which he attaches such high importance, on this question. What was that ground? It was the state of public feeling, and it was on that account that it was thought important to fortify the Executive by an opinion. I agree. But, I argue, also, that this very condition existed during the Session, and it existed after the Session, and that its existence is the justification for the proposition that the public interests required the Executive itself to act, to act early, and to act by a reference which I think would have been more proper and more valuable than the reference which was made to the law officers. I do not well understand the attitude which the hon. gentleman assumed upon two points in this connection: first, with respect to this same application to the law officers; second, with respect to the reply of His Excellency to the deputation which he met. I am quite aware that the Governor General of Canada occupies a sort of double position, and that there are certain conceivable cases in which it may be alleged, perhaps, that he is acting as an Imperial officer, and that his advisers, the Queen's Privy Council for Canada, have no responsibility for such acts. It may be so. I decline to enter into a definition of those occasions. I hold it to be the duty of any representative of the Canadian people to narrow to the utmost possible extent the classes of cases to which the principles of responsible government shall not be held to apply, and I will only add that I perceive no circumstances whatever existing in this instance which should induce us to abandon for one moment the fullest application of the principles of responsible government to the action to which I refer. I am not condemning the action. I only say that it is an action in respect of which the Ministers cannot constitutionally shelter themselves under any suggestion that they are otherwise than absolutely and fully responsible for it, and we speak of it as their action, because we insist it must be advised by them. So with respect to the address of His Excellency in reply to the deputation. I maintain that no formal words, such as those used by the hon. Minister, "of course I assume all the responsibility that constitutionally devolves upon me," answer the exigencies of the occasion. There is a real responsibility, there is more than the formal and technical responsibility implied by the hon. gentleman, and hon. gentlemen opposite would have been deserting their duty, if they had done otherwise than advise His Excellency as to the answer which he should give to that deputation, and they are deserting their duty to-day if they ask us to treat that answer in every word and letter of it as anything else than an answer given under their advice. It is not necessary to trace at this day, the development of the principle of British Constitutional Government. Take the accounts of what happened in the course of the reign of the last William; take the interviews that took place even with peers; take the answers to addresses on much more innocent and less important questions on which the monarch expressed with some freedom his opinion, and you see that even at that stage of the development of the principles of responsible and constitutional government, the First Minister of the day felt bound to remonstrate with the sovereign, and point out to him that he must have power to advise, and that without his advice such observations must not be made. The First Minister felt that he was responsible. So I say that this answer, which I am not for the moment criticising, is, in no formal or technical sense, but must be taken to have been really and substantially given under the advice of the Ministers of the Crown. This action then has been taken under that advice, and so taken, this action, which recognises on the part of Ministers the existence of that condition of public opinion to which I have adverted, it recognises the importance and propriety of taking notice of that condition of public opinion, and of fortifying the Executive by the assistance of dispassionate aid and advice as to the legal question. The hon. gentleman says the law officers have been treated by the hon. member for North Norfolk with some degree of disparagement. The law officers are law officers, and it will not be pretended that they are always of the same calibre. I am afraid that I would fall under the condemnation of the Minister of Justice, and that he would treat me as a very old offender, as one whom he would subject to the severer penalties to which habitual offenders are regularly exposed, in this regard. Not that I deny for an instant the uprightness, the honor and the transcendent ability of many, of almost all those who have filled the high positions of Attorney General and Solicitor General of England. As a rule they win that position by force of merit and they hold it by force of merit, and those who hold first places at the English bar, and who fight their battles in the face of day with the most eminent advocates in that country and in the halls of Parliament as well,

must be, as a rule, men of great weight and mark. But what I say is this, that these are busy men as well; and that it is not their regular business to act judicially at all; that they are political personages; that their opinions expressed on these occasions are not entitled to the same weight as the opinions of judges; and I add that such has been the experience of the hon. gentleman opposite when it suited him to seek the advice of the law officers, and that has not been very seldom. I could go over a long bead roll of cases, if it were not pretty late in the Session and in the evening, in which the right hon. gentleman found it convenient to shunt off a difficult question by sending over to the law officers and getting their opinion, and some of those opinions have been placarded as great authorities when it suited him to do so, while other opinions were obtained from time to time to which he paid less regard and gave less prominence. I say that of the three possible sources to which we might apply, the law officers are unquestionably the third. I hold that the Judicial Committee of the Privy Council and the Supreme Court both stand in rank of suitability for that purpose higher than the law officers. That is enough for me. I do not condemn the application to the law officers, but I maintain it would have been more expedient and more in the interests of the country to have applied to the Supreme Court. Now, the Minister of Justice has declared that these views are in fact old High Tory views, and I suppose that was rather based once again upon the idea that we are being called upon to vote something in the nature of condemnation of the Executive, for not complying with Mr. Graham's application. The hon. gentleman brought into the arena the court of high commission and the old ecclesiastical courts, and he told us of these extraordinary tribunals, with inquisitorial powers created by the supposed prerogative of the Crown in earlier and more evil days, denounced for years, found to be productive of great abuses, in the end wiped away from the institutions of the land by an indignant Parliament, which prohibited their re-erection by prerogative—though, of course, that Parliament which had annulled them, could of itself have re-erected them. The hon. gentleman told us that those who supported this motion were advocating the doing something of the same sort, as the erection of these courts. What was the mischief of these courts? It was their coercive jurisdiction. They were unusual tribunals, out of the ordinary course of the law, by which the subject was to be vexed and aggravated, by which he was to be harassed in person and in estate, and that was the main objection to them. But the proposal which is made to-day is of another character. The hon. gentleman objected to this proposal at one time just because it was not coercive. He said the decision does not bind and you cannot make it binding, and, therefore, you should not get it at all; so that first of all he objects because it does not bind, and then he says it is like the court of high commission which was bad, because it did bind. No, Sir, the object in this case was not to vex and aggravate the subject. The object was, I think, a worthy object; it was to relieve the apprehension of the subject, by the opinion of an authoritative tribunal upon a legal question; upon which I quite agree a great majority of this House took a different view from that of the hon. member for North Norfolk (Mr. Charlton). We, of the majority, thought, as I believe we think still, that the objections which were taken to this Act were objections which would not be found to weigh in the balance. We thought they were objections which would not be maintained in the courts. But some of us at any rate—of whom I have shown you that I was one—thought, even during last Session, that the circumstances of the case were such, that we ought not to set up our judgments as absolutely conclusive upon this question; but that we might well resort to higher, to purer, to calmer, and to clearer light for a decision, which if given in the way we expected it would be given, would settle the question, so far as the agitators and those whom they were seeking to agitate were concerned; and which, if given in the other way, would furnish a just foundation for the exercise of that power of disallowance for which those agitators called.

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