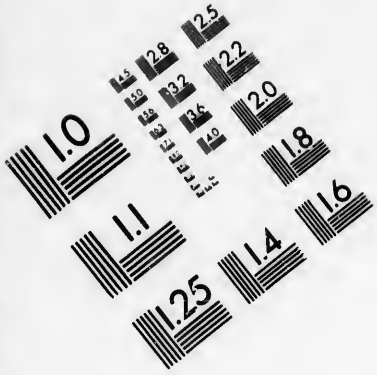

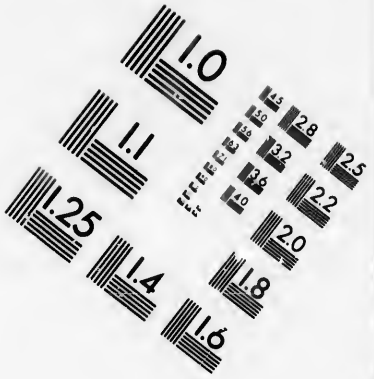

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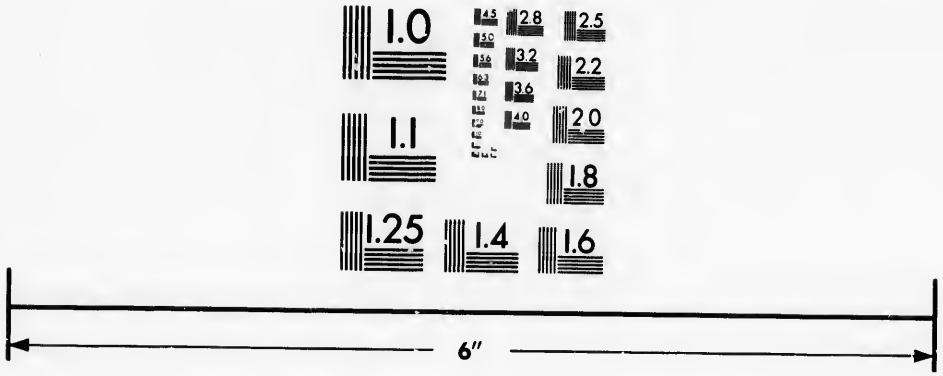

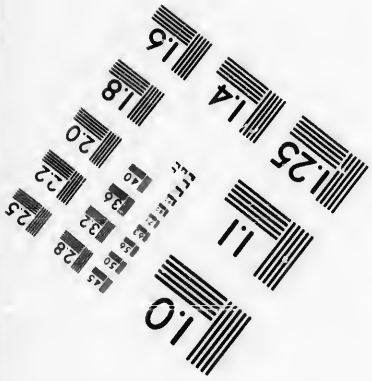

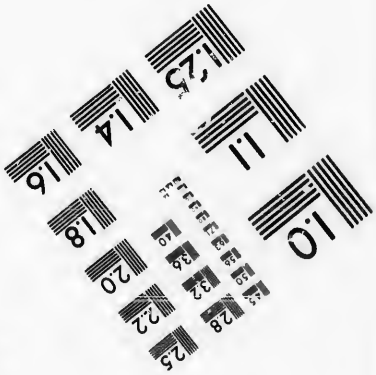

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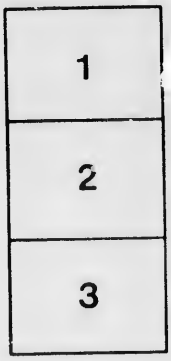

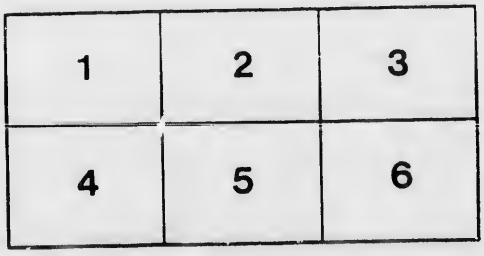

78 Droit Canon No 1

Mr. Barron's Speech on the Jesuit Estates Act.

MR. BARRON. Mr. Speaker, I wish I could content myself with simply giving an affirmative vote to the amendment of my honorable friend from Muskoka (Mr. O'Brien); but, Sir, that has become impossible. Fortunately or unfortunately, I do not know which, my name has been more or less intimately associated with the sudject-matter of the hon. gentleman's amendment ever since the beginning of this session, and I feel compelled to supplement the vote that I shall give with some explanation. I do that, Sir, even though my duty is a most unpleasant one and a most painful one indeed, especially so when I remember and am conscious of the fact that in voting and in speaking as I do I am weaning myself for the time being—and only for the time being I hope—from few or many, I don't say which, of the hon. gentlemen around me with whom I have been in such happy accord ever since I have had the honor of a seat in this House. Still more especially is it painful to me, Mr. Speaker, to speak as I do and to vote as I do, when I am conscious of the fact that I am separating myself from the hon. gentleman on this side of the House who leads me and who leads us, and for whom I, in common with hon. gentlemen on this side of the House as well as with many hon. gentlemen on that side of the House, have feelings not only of respect but of the deepest possible affection. But, Sir, even under those circumstances I enjoy the comfort which is that I know that hon. gentlemen on both sides of this House will at least give me credit for acting from sincere and honest convictions. Believing that I am in the right, I hope hon. gentlemen will give me their sympathetic attention while I speak to the amendment of the hon. member for Muskoka. I may be permitted in passing to make a few references to the remarks of the hon. member for Muskoka, after which I will come to the speech of the hon. member for Lincoln (Mr. Rykert), I do not refer so much to the remarks that the hon. gentleman from Muskoka made this afternoon as I do to his remarks of a day or two ago upon the occasion when he gave notice to this House of his intention to introduce the amendment which he has placed, Mr. Speaker, in your hands to-day. I do not wish to be understood even inside or outside of the House as complaining at all of the course of the hon. member for Muskoka. It has been suggested to me that that hon. gentleman's course was in fact forestalling me and taking from me that course which I intended to pursue; but, Sir, I can tell this House that I was gratified beyond measure when the hon. gentleman rose in his seat a day or two ago and announced his intention of doing what he has done to-day. I recognize, and no one in this House can recognize more than I, how grave and serious this question is, not only in the present, but grave and serious in its consequences in future, and I would be foolish indeed if I presumed to think that I could give the question the weight and the importance of other hon. gentlemen in this House, I, who am comparatively young and especially so in comparison with the hon. member for Muskoka. I recognize, Sir, that someone older in years, older in experience and older in position than I am should have taken this matter up, and I, therefore, say again, and I hope hon. gentlemen will believe me, that I was pleased and gratified when the hon.

gentleman from Muskoka notified the House a day or two ago of his intention to move his amendment. I do not complain even of his words when he spoke, but I may be permitted to make some reference so as to explain away the inference that his words bore. He gave as his reasons for taking the course which he did, that inasmuch as my resolution appeared so far down on the order paper that likely it would not be reached this session, and under these circumstances he thought it was his duty to move in the matter. The very best answer to the statement of the hon. gentleman is that my motion was reached, my motion was made and the papers have since been brought down so that it will be understood, I think, that the course I took was not as has been suggested by people outside of this House, upon the words of the mover of the amendment, to evade the matter altogether, and to cheat the House of its introduction. In speaking on this question I must be understood as having no feelings whatever against the Roman Catholics of my country or even against the Jesuit body, amongst whom I am happy to say, at least among my Catholic fellow citizens, I number many, many friends. I have no sympathy with the clamor which is being made outside of this House, clamor, I may say, without reason. The Jesuits have been assailed in some quarters without argument, and I have no sympathy whatever with the course pursued in certain quarters against the Jesuits and against the Roman Catholic body. All that has been said may be true or false; I care not As far as my investigation and my reading has gone, I confess to believing that much that has been said is false. Even, Sir, taking the maxim *Finis determinat probitatem actas*, I believe that it bears no construction such as has been put upon it in certain quarters that "the end justifies the means." But, on the contrary, my reading and education has been such as to inspire me with admiration for the early Jesuit fathers. We need only recall Parkman's account (and he is by no means a very favorable historian of Roman Catholicism) of the early Jesuit fathers and we must be inspired and imbued with enthusiasm in our recollection of the work they accomplished in this country. We can recall, all of us, from history, the arrival, in this country, of the unfortunate Father Jogues, his capture by the Iroquois, his cruel and unheard of tortures, his determination to regenerate by baptism, notwithstanding his intense sufferings, his subsequent escape to France, his performing the sacred rites of the mass in his mutilated condition, his return to this country, his recapture and his fearful death at the hands of the father whose child he was trying to save by baptism. The only effect of our recollection is, the only result can be to inspire us with enthusiasm that such missionaries have lived in years gone by. I approach this grave and serious question entirely relieved from any bias whatever against the Jesuit fathers or against the Roman Catholic Church. Our admiration for them is one thing, our judgment regarding the constitutionality of this Act, now under discussion, is another thing. Now, my first serious objection to the Act is that which has been mentioned by the hon. member for Muskoka. I claim, Sir, that the introduction into the Act of the Pope is such a serious encroachment upon the prerogative of the Crown as to call for its disallowance at the hands of the government. The sovereign is the *caput principium et finis* of all legislation; but in this particular case the Legislature of Quebec makes the Pope the end of its legislation. The Pope is given the right, notwithstanding what hon. gentlemen say, to negative this legislation entirely. Suppose the Pope did nothing, the Act would be a dead letter, It cannot be denied that the effect is to give a foreign potentate — and I shall show that the Pope is a foreign potentate—the right to disallow or negative this legislation; and if that is true, the converse must be true: if he has power to negative legislation, power to make an Act of Parliament a dead letter, it must follow logically that he has also the right to affirm legislation. And here we have

introduced into a British Act of Parliament the power given to a foreign potentate, to negative or affirm legislation. Now, we are taught again and again that the right of assenting to or dissenting from an Act of Parliament is a right so peculiar to the prerogative of the Crown that the sovereign herself cannot delegate. It is quite true that the Governor General is given the right to assent to or dissent from Acts of Parliament; so are the Lieutenant Governors of the different Provinces; through them the Sovereign acts, not in *propria persona*, but by them, they by supposition in the person of the Sovereign, for whom they speak; but they have not the right to delegate that power to anybody else. "Delagata est non potest delegare" is a maxim especially aplicable to the Lieutenant Governors of the Provinces in cases of this kind. Now, to show that my contention is well founded, I want to refer to the Statutes, and thereby prove my contention by legislation. First, I will refer to the Statute of 1 Elizabeth, chapter 1, which has already been referred to, and clause 16 of which reads as follows:—

"That no foreign prince, person, prelate, state or potentate, spiritual or temporal, shall at any time after the last day of this Session of Parliament, use, enjoy or exercise any manner of power, JURISDICTION, superiority, authority, pre-eminence, or privilege spiritual or ecclesiastical within this realm or within any other of your Majesty's dominions or countries that now be, or hereafter shall be, but from thenceforth the same shall be clearly abolished out of this realm, and all other Your Highness' dominions forever. Any statute, ordinance, custom, constitution or any other matter or cause whatsoever to the contrary in any wise notwithstanding."

The hon. member for Lincoln (Mr. Rykert), although he referred to that statute, did not for one moment contend that it was not in force in this country; but it has been said that because it is an old statute, therefore it is not applicable. Well, I want to read from the Treaty of Paris, and I will read only those portions which bear on my argument, His Britannic Majesty engaged:—

"To grant the liberty of the Catholic religion to the inhabitants of Canada; and to give precise and effectual orders that his new Roman Catholic subjects might profess the worship of their religion according to the rites of the Romish Church, AS FAR AS THE LAWS OF GREAT BRITAIN PERMITTED."

I want to emphasize these last words, "AS FAR AS THE LAWS OF GREAT BRITAIN PERMITTED," because at the time of the making of that Treaty of Paris this Statute of Elizabeth was in force, so that the treaty did not negative the existence of that statute in this country, but on the contrary perpetuated it. Now, the hon. member for Lincoln said that there was a distinction between His Holiness the Pope as a foreign potentate, and as the head of the church. I grant you that; but does anyone mean to say that the Statute of Elizabeth is not directed, as all the statutes of Elizabeth were, to His Holiness the Pope? No one can argue to the contrary, if he is possessed of the least atom of historical knowledge. Every one of the penal Statutes of Elizabeth were pointedly directed to his Holiness the Pope, and, therefore, the Treaty of Paris did not discontinue the Statute of Elizabeth or prevent its application to this country. If we want any further legislative authority, let us look at the Quebec Act of 1774, the 5th section of which reads as follows:—

"And for the more perfect security and ease of the minds of the inhabitants of the said Province, it is hereby declared that His Majesty's subjects professing the religion of the Church of Rome at 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 hereafter should belong to the Imperial Crown of the 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"

There we have, first of all, the Statute of 1 Elizabeth positively, in a legislative way, disapproving of the Pope in any way exercising a jurisdiction; then we have the Treaty of Paris coming after that, not preventing the operation of that Statute;

and then we have the Quebec Act of 1774, specially perpetuating that Statute in the Province of Quebec. But let me go still further, Sir, let me refer to the opinion of a great judge to show that what I say is correct. Mr. Justice Smith, in the case of Corse v. Corse, reported in the Lower Canada reports, page 314, said:

"As soon as Canada ceased to belong to France, the public law of France ceased to exist, and the public law of England came in."

Now, it may be said that my construction of the statute is a forced one, is not a fair one, is not consistent with the time in which we are living, in 1889, when it was passed in 1554; but I will read from an authority whose name is a household word, well known to every gentleman in this House; I refer to Mr. Todd, who was cited by the hon. member for Lincoln in his attempts to demonstrate the truth of some of his statements. He says in his most recent work:

"The Statute of 1 Elizabeth, chapter 1, known as the Act of Supremacy, declares that no foreign prince, person, prelate, or potentate, spiritual or temporal, shall henceforth use, enjoy or exercise any power, jurisdiction———"

Now, I stop at this word "jurisdiction." Sir, I want to ask hon. members of this House, how it is possible, if that construction be a correct construction of the Statute of Elizabeth, and I challenge assertion to the contrary, to contend that that construction is not infringed upon by the Act passed in the Province of Quebec last session? At the very least in it the Pope is exercising the jurisdiction of distributing moneys, if nothing else, which I say is a violation of the Statute according to the universal construction thereof. Mr. Todd goes on to say:

"—or authority within the realm, or within any part of the Queen's dominions; and that all such power or authority heretofore exercised shall be forever united and annexed to the Imperial Crown of this realm. This declaration remains in force to the present day, and it is the statutory warrant for the supremacy of the Crown, in all matters and causes civil or ecclesiastical, throughout the British Empire, as well as for the renunciation of the papal claims therein."

Now, it has been said in this House, and has been written to the press by the hon. member for Bellechasse (Mr. Amyot) that there is a distinction between the Pope in his spiritual capacity as the head of the church and the way he has been brought into this Statute; but here we have the opinion of Mr. Todd that his right to exercise papal claims in this country ought not to and does not exist. But, Sir, I shall cite earlier authorities. I understand that some of the gentlemen who are opposed to this resolution rely upon the authority of Lord Thurlow. Now, I ask the attention of this House for a few minutes until I read his opinion regarding the statute:

"By the 1st of Elizabeth, I take it that there is no reason whatever, why the Roman Catholic religion should not have been exercised in this country as well as in that: confining it entirely to that Act, I know no reason to the contrary * * * for the language of the Act is only this, that no foreigner whatever SHOULD HAVE ANY JURISDICTION, POWER OR AUTHORITY WITHIN THE REALM."

Then I will refer to the language of the celebrated Wedderburn:

"I can see, by the article of this bill, no more than a toleration. The toleration, such as it is, is subject to the King's supremacy, as declared and established by the Act of the 1st of Queen Elizabeth. Whatever necessity there be for the establishment of eccleciastical persons, it is certain they can derive no authority from the See of Rome, without directly offending against this Act."

Then it may be argued that this Statute is not in force now, by reason of some provincial or federal legislation which prevents its application in this country. No one who makes that contention could have read the British North America Act, because Imperial legislation which was in force at the time of Confederation could not since be repealed or destroyed by any Dominion or Provincial legislation. The 129th section of the British North America Act reads as follows:—

"Except as otherwise provided by this Act, all laws in force in Canada, Nova Scotia or New Brunswick at the Union, and all courts of civil and criminal jurisdiction, and all legal commissions, powers and authorities, and all officers, judicial,

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 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 Chalmer'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."

Then as to the royal supremacy, which cannot exist if this statute is to become law, I will refer also to Mr. Todd, who says at page 313:—

"The source of the authority of the Crown in ecclesiastical matters and of its jurisdiction in the last resort all over ecclesiastical causes is to be found in the doctrine of the royal supremacy. This doctrine is a fundamental principle of the British constitution. It was authoritatively asserted by Parliament at the era of the Reformation, and it is interwoven with the very essence of the monarchy itself."

Further on he says :

"While by previous enactment ecclesiastical supremacy had been conferred upon the Crown, as a perpetual protest against the assumptions, by any foreign priest or potentate, of a right to exercise coercive power or pre-eminent jurisdiction of British subjects."

Now I think I have fairly shown that, at all events, the Statute law is against the introduction of the Pope into any matters in this country in the way this Statute provides. I will refer now to what I believe to be the objectionable clauses, and I will ask how it is possible for anyone not to admit, in the face of the Statute, that these clauses to which I refer certainly make this law an infringement of the law as it is defined by the Statute of Elizabeth. In reply to a letter of Mr. Mercier, Cardinal Simeoni says:

"I hasten to notify you that, having laid your request before the Holy Father at the audience yesterday, His Holiness was pleased to grant permission to sell the property which belonged to the Jesuit Fathers before they were suppressed, upon the express condition, however, that the sum to be received be deposited and left at the free disposal of the Holy See."

Then, in another place, Cardinal Simeoni replies to Mr. Mercier:—

"The Pope allows the Government to retain the proceeds of the sale of the Jesuits' estates as a special deposit to be disposed of hereafter with the sanction of the Holy See."

Is it to be said in this British country that we are to be told by a foreign potentate that he *allows* the Government of this country—a British Government—to "retain the proceeds of the sale of the Jesuit estates as a special deposit to be disposed of hereafter with the sanction of the Holy See."? Yet, allowing this Act is tantamount to saying that we allow the Pope to assume this important position. In another place, Cardinal Simeoni, replying to the question:

"Should authority be given to any one to claim from the Government of the Province of Quebec the property which belonged to the Jesuit Fathers before the suppression of the society, and to whom and how should it be given."?

Says as follows:—

"Affirmatively in favor of the Fathers of the Society of Jesus and in accordance with the method prescribed in other places, that is to say, that the Fathers of the Society of Jesus treat in their own name with the civil government, in such a manner, however, as to leave full liberty to the Holy See to dispose of the property as it deems advisable, and, consequently, that they should be very careful that no condition or clause should be inserted in the official deed of the concession of such property which could in any manner affect the liberty of the Holy See."

Then in another place Mr. Mercier appears to acknowledge all that the Pope through his Secretary demands. He says:

"That the amount of the compensation fixed shall remain in the possession 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."

Now, the letters containing these sentences are a preamble to this Statute. They are referred to by a section of this Statute and are made part and parcel of the law of Quebec—a British Province—and that law is that nothing is to be done until the Pope has ratified the settlement and made known his wishes as to the distribution of the property. There is an admission on the part of the Premier of a British Province that a foreign potentate —for such I claim he is—has the power to ratify British legislation. If he has the power to ratify it, he has the power to nullify it, and that is a power which no one, whether he be the head of a church or not, should possess. Then the Statute goes on, in order to give it a sort of meritorious effect, to talk about restitution. In the very front of the Statute, it speaks

of restitution being necessary to be made to the Jesuit Society. What is restitution? You cannot restore anything to a person who was not at one time or other entitled to it, or to some one who is entitled to claim it on his behalf. I contend that the Jesuit Society which was incorporated in 1887 has nothing whatever to do with the original Jesuit Society. Suppose a society is incorporated by charter in this Parliament, and for some reason or other it becomes extinct, and fifty years afterwards another society is formed under the same name; can anyone say, will any one argue that the society so formed can have any claim to the estates of the former society which has become extinct? Certainly not; and the same state of things exists here, and there can be no principle whatever of restitution involved. Sir, to contend for the affirmative is to contend, not for the principle, but for the very irony of restitution. I find that the Jesuit Society was incorporated in the year 1678 in France. I shall not trouble the House by reading at length the diploma or letters patent incorporating that society, but, with your consent and the consent of the House, I shall ask permission to hand it in.

Sir. JOHN A. MACDONALD. No.

Some hon. MEMBERS. Read.

Mr. BARRON. On the 2nd August, 1761, that Society was dissolved in France, and, if the house is determined to have lengthy words read, I shall read the decrees of dissolution, contenting myself with the bald statement that the Society was incorporated as I have said. The Society was dissolved by the self-same Parliament which originally incorporated it, and the declaration of the King of France at Versailles was:

"Moreover, we ordain, that during one year from the date of the enrolment hereof, nothing shall be ordered, either definitely or provisionally, upon what may relate to the said institutes, constitutions and establishments of the houses of the said Society, unless we shall otherwise so ordain."

Then on the 6th August 1761, by another sentence, the Parliament of France, with reference to the report to them made of the doctrine of the Jesuits, made the following provisions:—

"In like manner it is provisionally inhibited and forbidden unto the said priests, and others of the said society, to continue any lessons, either public or private, of theology, philosophy or of the humanities in the schools, colleges and seminaries within the jurisdiction of the court, under penalty of seizure of their temporalities, and under such other penalty as to right and justice shall appertain; and this, from and after the first day of October next, as well with respect to the houses of the said society which are situated at Paris as to those which are situated in the other towns, within the jurisdiction of the court, having within their limits schools or colleges other than those of the said society; and from the first day of April next, only with respect to those which are situated in towns within the jurisdiction of the court, where there are no other schools or colleges than those of the said society, or in which those of said society shall be found to occupy any of the faculties of the arts or of theology in the university there established, and, nevertheless, in case the said priests, scholars, or others of the said society, shall claim to have obtained any letters patent duly verified in the court, to the effect of per[illegible]ag[illegible]e said scholastic functions, th[illegible]mits the said priests, scholars, a[illegible] the said society, to produce t[illegible] court, all the chambers as-se[illegible] the delays above prescribed [illegible]pon view of the same, and upo[illegible]on of the King's Attorney Gene[illegible]made by the court as to right sha[illegible]tain.

"The court most expressly inhibits and forbids all subjects of the King from frequenting, after the expiration of the said delays, the schools, boarding schools, seminaries, novieiates and missions of the said persons styling themselves Jesuits, and enjoins all students, boarders, seminarists and novices to quit the colleges, boarding houses, seminaries and novieiates of the said society, within the delays above fixed; and all fathers, mothers, tutors, curators or others having charge of the education of the said scholars, to withdraw them or to cause them to be withdrawn therefrom, and to concur, each in respect to himself, in carrying into effect this present decree, as good and faithful subjects of the King, zealous for his preservation. The court in like manner prohibits them from sending the said children to any colleges or schools of the said society, held without the limits of the jurisdiction of the court, or out of the kingdom. And as for the said scholars, the court declares all those who shall con-

time after the expiration of the said delays to frequent the said schools, boarding houses, colleges, seminaries, novicIates and instructions of the said persons styling themselves Jesuits, in whatever place they may be, incapable of taking or receiving any degrees in universities, or any civil or municipal offices, or of discharging any such public functions. The said court reserving to itself to deliberate on Friday, the 8th day of January next, upon the precautions which it shall judge necessary to take upon the subject of the offenders, if any there be."

Then the society, having been dissolved by the same Parliament that brought it into existence, appears to have got a respite for a short time. But the letters patent were enregistered, and provided:

"Subject, nevertheless to this: That the respite contained in the said letters patent shall take place only to the first of April next, upon which day the provisional decree of the court of the sixth August last shall be executed 'ipso jure,' and also without that the necessary proceedings to enable the court to render judgment on the 'appel comme d'abus,' instituted by His Majesty's Attorney General, prove the bulls, briefs, constitutions, forms of vows, and other regulations relating to the said society, can be suspended, and like manner without prejudice to the provisional execution of the said 'appel comme d'abus.'

"And also subject to this: That the public or private lectures on theology, philosophy or the humanities, held and given by the priests or scholars in all the towns or places within the jurisdiction of the court, without distinction, cannot be provisionally continued after the expiration of the said respite, the whole under the pains contained in the provisional decree of the sixth August last."

Thus I maintain that the same Parliament which brought the Jesuit Society, as a corporate society, into existence, by its decree, dissolved the society. Then we find that His Holiness the Pope, on the 20th July, 1773, dissolved the society by his celebrated brief *Dominus ac Redemptor*. I shall not ask the House to listen to the reading of that brief, which is not necessary for any purpose, and in any event it is familiar to the ears of most honorable gentlemen in this House. A year later, this society was suppressed by royal instructions to the Governor-General as follows:—

"That the Society of Jesuits should be suppressed and dissolved, and no longer continue a body corporate and politic, and that all their rights, privileges and property should be vested in the Crown, for such purposes as the Crown might hereafter think fit to direct and appoint, and the royal intention was further declared to be that the present members of the said society as established at Quebec, should be allowed sufficient stipends and provisions during their natural lives."

In 1791 there are Royal Instructions to the same effect. The last Jesuit died in 1800, the present society came into corporate existence in 1887, so I maintain that the present society is not in any way connected with the former society; and the principle of restitution does not and cannot apply; this Government, at least, should have returned the Bill, suggesting that it should be altered in some respects, and amongst others, the one to which I referred a few moments ago, on the point of restitution. Even the bishops of Quebec, or some of them, admitted that the Jesuits were no longer in existence, and they, at the request of the Jesuits, made a claim to the property. I find the following in a petition over the signatures of Joseph. Bishop of Quebec, P. T. Turgeon, Coadjutor of Quebec, and J. S. Lartigue, Bishop of Montreal:

"Your petitioners humbly represent that the Order of Jesuits being extinct in this country, their natural successors are the Roman Catholic bishops of the diocese."

Then the very Act itself incorporating the Society of Jesuits in 1887 makes no claim whatsoever by right of succession as owners of this particular property, so I think it cannot be maintained on the merits that they are entitled on any principle of restitution to this property. But it has been said that this property was taken from the Jesuits at the time of the conquest. I deny that, because, at the time of the conquest it did not belong to the Jesuits. It had become Crown property, like any other Crown lands; therefore when the statute now attacked says that the property was confiscated, it

states that which is not the case, and the Federal government should not have sanctioned that misstatement of fact, but out of respect for history and especially for the reputation of the sovereign, they should at least have returned the Act to the Government of Quebec to have it amended in this particular. Now, in some pamphlets issued by gentlemen who support the Jesuit Society, I find Twiss referred to as an authority on the law of nations. A gentleman who writes a very able argument in support of the Jesuit cause, has quoted from this authority as follows:—

"A victorious nation in acquiring the sovereignty *de facto* over a country, from which it has expelled its adversary, does not acquire any other rights than those which belonged to the expelled sovereign; and to those such as they are, with all their limitations and modifications, he succeeds by right of war."

They also refer to De Vattell of the law of nations:

"The conqueror who takes a town or province from his enemy cannot justly acquire over it any other rights than such as belonged to the sovereign against whom he has taken up arms. War authorizes him to possess himself of what belongs to his enemy; if he deprives him of the sovereignty of that town or province, he acquires it such as it is, with all its limitations and modifications.

"One sovereign makes war upon another sovereign, and not against unarmed citizens. The conqueror seizes on the possessions of the state, the public property, while private individuals are allowed to retain theirs. They suffer but indirectly by the war; and the conquest only subjects them to a new master."

Now, I agree with every word of that. Suppose the United States and Great Britain were to go to war—and I think hon. gentlemen in this House on the both sides would have but very little doubt as to the result—it would not be said for one moment that Great Britain obtained any rights whatsoever over private property, but she would obtain just the same rights and no more and no less than the Executive of the United States possessed over private property. Now, at the time of the conquest this property did not vest in the Jesuits at all; it had become extinguished, it had become vacant property; therefore, when it is said outside the House, as it has been said inside, that for meritorious reasons, because the property was taken by a method of confiscation, it should be returned to the Jesuit order. I say it was not taken by confiscation, because at the time that Canada was conquered by England this property was not the property of the Jesuits, but was the property of France, having become extinct. We find the opinions of Her Majesty's Attorney General and Solicitor General for the Crown, dated 18th May 1779, stating in regard to this property:

"As a derelict or vacant estate, His Majesty became vested in it by the clearest of titles, if the right of conquest alone was not sufficient, but even upon the footing of the proceedings in France and the judicial Acts of the sovereign tribunals of that country, the estates in this Province would fall naturally to His Majesty, and be subject to his unlimited disposal, for by those decisions it was established upon good, legal and constitutional grounds, that from the nature of the first establishment or admission of the Society into France, being conditional, temporary and probational, they were at all times liable to expulsion, and having never complied with, but rejected the terms of their admission, they were not even entitled to the name of a society, therefore, they were stript of their property and possessions, which they were ordered to quit upon ten days' notice, after having been compelled to give in a full statement of all they had, with several title deeds, and documents or proofs in support of it. Sequestrators or guardians were appointed to the management of their estates, and in course of time and with a regularity proportioned to their importance, provision was made for the application of them in the various ways that law, reason, justice and policy dictated; and all this was done at the suit of the Crown."

Now, to show further that at the time of the conquest this was vacant property, I refer to Marriott's opinion, 12th May, 1765. He says:

"From all these premises, it seems conclusive that the titles of the society passed together with the dominion ceded to Great Britain (in which dominions those possessions were situated) attended with no better qualifications than those titles, had by the laws and constitution of the realm of France, previous to the conquest and cession of those countries."

I mention that this Quebec Act is objectionable in many important particulars and is also objectionable in declaring that those estates were confiscated by the British Crown, I say such was not the fact, and is not borne out by the history of the estates. This property has always been treated as having escheated to the crown, not as having been confiscated by reason of the conquest, and those who argue differently, argue outside the facts, with the object, no doubt, to excite the sympathy humanity always entertains towards those whose private rights have been prejudiced or affected. I find Lord Goderich on 7th July, 1831, spoke to this effect:

"His Majesty's Government do not deny that the Jesuit's estates were, on the dissolution of that order, appropriated to the education of the people, and readily admit that the revenue which may result from that property, should be regarded as inviolably and exclusively applicable to that object."

And the statute of William IV, chapter 41, states to the same effect as follows:—

"And it is hereby enacted by the authority of the same, that from and after the passing of this Act, all moneys arising out of the estates of the late order of Jesuits which now are in or may hereafter come into the hands of the Receiver General of this Province shall be placed in a separate chest in the vaults wherein the public moneys of the Province are kept, and shall be applied to the purposes of education exclusively, in a manner provided by this Act, or by any Act or Acts which may hereafter be passed by the Provincial Legislature in that behalf and not otherwise."

Then we have the petition of the bishops, to which I have already referred. Does anyone mean to say that if the Province became owners of this property by reason of confiscation, the bishops would say the Jesuits were no longer entitled to it, as they did say in their petition? It is quite clear, therefore, that the statute is incorrect in that particular when it states that the property was acquired by confiscation. Then there is another point to which I desire to refer, and it is one which has not yet been touched upon, and it is this: It is the case that two or more of the properties were acquired by the Jesuits, not from the King of France and not by grants of the Parliament of France, but from private individuals. I do not think anyone will deny that within strict law, and I may say I am speaking from a legal standpoint altogether, and I do not desire to go into the merits or demerits of the Jesuit claim, but to speak of the question from a legal standpoint only—no one, I think, will deny that it is good and proper law that when property is given to a corporation or society or body of men or to one or more men upon a certain specific trust, the very moment that the trust is no longer capable of performance from that moment the property reverts to the heirs of the party from which the property originally came. That this trust was destroyed no one will question. It was destroyed by the Parliament of France. Then, if such be the case, the heirs of the donors are now entitled to the property, whoever they may be. But it may be said that I am building up a fictitious case, and, therefore, I will quote the language of the Rev. Father Flannery of St. Michal's Cathedral, of Toronto, on 17th February, 1889. He said:

"These lands were never given to them by the French Government or by any Government, but were the donations of private members of the church who left the lands in posession of the order for religious and educational purposes."

That trust having been destroyed, it will not be denied by any legal gentlemen, that the property reverts to the original donors. Why, we see only lately that

the Seignory of Sillery was given to a certain body of Indians and that the property has been taken away from them by this objectionable Statute. We remember in 1882 in this House the First Minister, waxing eloquent over the contention that the Rivers and Streams Bill took away one person's property and gave it to another, contended that the public interests were greatly affected, and that it was his duty to disallow that Bill. The premises he built did not exist; but if he was right in that action, he should have inquired more closely into the facts regarding this question to ascertain whether the rules he laid down for his own Government and for succeeding Governments did not apply to this particular case. If he was right in disallowing the Ontario Rivers and Streams Bill because, as he said, it took away the property of one man and gave it to another, *a fortiori*, he should have disapproved of this legislation because the trusts created by private donors have been destroyed and lands have been taken away by the Parliament of Quebec and handed over to other parties that have nothing more to do with them than the man in the moon. In order to show that I am not wrong in my view of this question, I quote a letter dated 20th June, 1879, over the signature of James McGill:

"It seems to us that it would have been proper by an advertisment to call upon the public for any dormant claims there may be on the Jesuits' estates."

I maintain, moreover, that under the British North America Act this Act is entirely unconstitutional. If I remember rightly (I will not read the particular section) it states that each Province of the Dominion shall have the right to deal with educational matters, reserving the rights of the minority in Quebec, and the minority in the Province of Ontario. No one has ever maintained that that Act gave to the difierent Provinces of the Dominion the right to make denominational grants, as has been done. There can be no doubt that the Jesuits are a religious institution; and are we to understand that the different Provinces have the right to make religious grants to the different religious bodies? I think not. I assert that if the leader of the Government had the very least respect for his own past record and his own past utterances he would have disallowed this legislation just as quickly as he allowed it. Why, we have only to recall the case of the Rivers and Streams Bill of Ontario. In that case he built up the premises which did not exist. He claimed that it gave the right to take away the property of one man and give it to another; and that the general effect upon the whole country would be such that he had a right to disallow the bill. I say that, applying that principle, to the present bill he should have disallowed this Bill, and for the reasons given. If it is true that a portion of the property was given originally to the Indians of the Seignory of Sillery, then I say there are as good reasons for disallowing this Bill as, on the Premier's contention there was for disallowing the Rivers and Streams Bill of Ontario, there was good reason to disallow this legislation, if for no other reason than that it took away from the Indians land given to them, as it is said, by France originally. I desire to refer to the remarks of the right hon. leader of the Government on the Rivers and Streams Bill disallowance; and I may mention that his remarks were coincided in by several hon. gentlemen, and especially by the present Postmaster General and the hon. member for North or South Simcoe. On that occasion the First Minister spoke as follows :—

"I declare that, in my opinion, all Bills should be disallowed IF THEY AFFECTED GENERAL INTEREST. Sir, we are not half a dozen Provinces. We are one great Dominion. If we commit an offence against the laws of property or any other atrocity in legislation, it will be widely known."

Can any subject be thought of that affects the people more generally and acutely than that of religion? Can any subject be thought of that will affect the people more generally than one respecting the Jesuit's Society. Without reflecting for one moment upon the society let me point out that this Society of Jesus has been legislated against by the countries of Saragossa, La Palantine, Venice, Avignon, Portugal and Segovia, England, Japan, Hungary and Transyl-

vania, Bordeaux, France, Holland, Tournon and Berne, Denmark, Bohemia, Russia, Naples, and in all Christendom by the bull of Pope Clement the XIV. I maintain that it cannot be said that a society legislated against in all these countries is not of general interest, but it might be said that "this was many years ago and that we are not now in the dark ages" I am quite willing to admit that, but I find that even since that society was restored by Pope Pius VII, in 1814 it has been legislated against by and expelled from Belgium, Russia, France, Portugal, Spain, Switzerland, Bavaria and the Italian towns. I refer to that not because I have the least unkind feeling against the Jesuit Society, but I maintain that it cannot be said that that society is not of general interest when we find it has been legislated against in all these different countries. Can it be said that the question is of the deepest possible interest right up to the imaginary line which divides the Province of Quebec from the Province of Ontario and that the moment you step across to the Province of Ontario it has no interest at all. I certainly say no. Can it be said that anything which will be injurious to the Methodist body in Ontario, that the same body is not more or less effected by the injury in the Province of Prince Edward Island? No. The Baptist community, The Presbyterian, the Congregational community and all. other denominations have a touch of sympathy between themselves respectively throughout the whole Dominion. Therefore I say that the words of the right hon. gentleman spoken in 1882 in this House in reference to the River and Streams Bill, apply to this case. By the authority of the words that he used then, I hold it is a strong argument for this Bill being disallowed to-day. I do not like to charge the hon. Premier with making fish of one and fowl of the other in this matter, but his treatment of the Orange Incorporation Bill in this House cannot be forgotten. He takes only three days to intimate to the Lieutenant Governor of Quebec that he assents to and approves of this Bill, but he is struck dumb with silence, when the Lieutenant Governor of Ontario, asks his assent to and approval of the Orange Incorporation Bill, when one word from him, similar to that he gave to Quebec would have incorporated the Orange Society. If he assents and approves of this legislation it follows as a most positive sequitur that when he disallowed legislation in the Province of Ontario and he disallowed legislation in the Province of Manitoba because he disapproved thereof, it must follow that by allowing this Statute to become law he does so because he approves of the same. I would like to give the hon. the Premier an opportunity, but I see he is not in the House just now, of denying what he is credited with having said at a certain meeting on the 20th June, 1886. On that occassion he is credited by his organ La Minerve.

"To the calumnious hypocrites who represent him as the personification of religious fanaticism."

Sir John replied by saying :

"That he had never in his life set foot in an Orange lodge. * * * I am accused, said Sir John, of being a Protestant, and even of being a bad Protestant. In like manner I have been accused of being an Orangeman, although I have never set a foot in a lodge.

I do not know whether to believe that or to believe the statement of one of his proteges regarding our Roman Catholic fellow citizen that he, or a member of his Government "had no confidence whatever in the breed." I have satisfied myself at all events that my conclusions are correct that this Bill should have been disallowed and if possible, that it should be still disallowed for the reason that it is strictly unconstitutional. Now that I see the Minister of Customs in his seat, I hope that he, occupying the prominent position he does in a certain order which has been mentioned by the hon. member for Lincoln (Mr. Rykert), will not allow this opportunity to pass without giving to some hon. members on this side of the House who think as I do, the benefit of his views. I hope, Sir, they will be in accord with many of those who belong to the society of which I believe he is such——

Mr. BOWELL. An ornament.

Mr. BARRON. Yes! Such a great ornament.