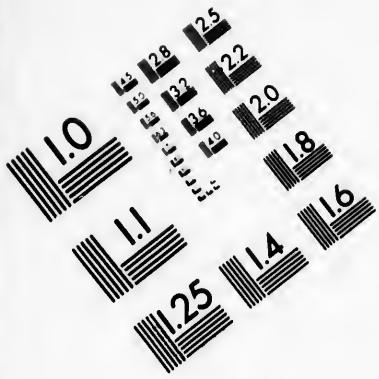

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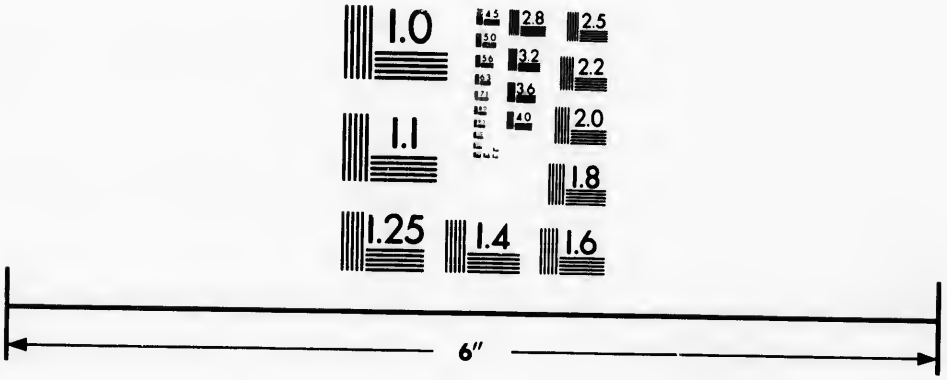

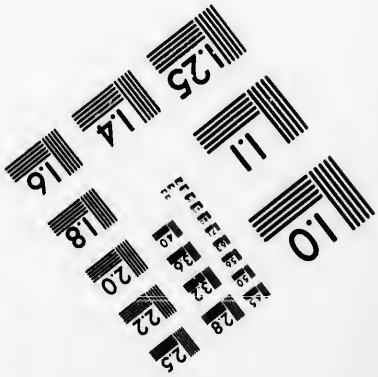

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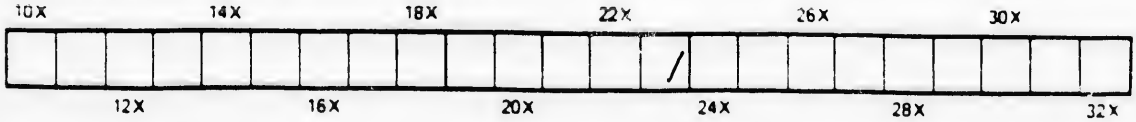

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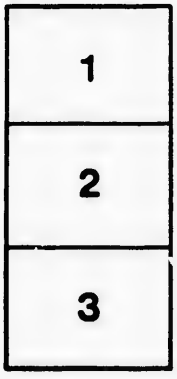

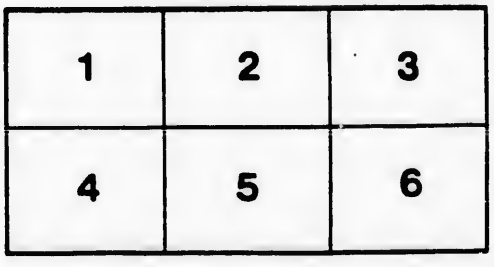

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MEMORANDUM

ON THE

STATUTE OF QUEBEC,

(CAP. 13, OF 1888,)

ENTITLED

An Act respecting the Settlement of the Jesuits' Estates.

The contention has been put forward that the statute above mentioned is *ultra vires* of a Provincial Legislature, and should have been disallowed by His Excellency the Governor General.

The year within which disallowance might have been exercised (see sections 56 and 90 of the British North America Act), would not have expired until the 8th of August, 1889, but on the 19th of January, 1889, the Lieutenant Governor of Quebec was notified that this, and a large number of other Acts of Quebec, of the same Session, would be left to their operation.

The contention referred to was put before the House of Commons of Canada, in the Session of 1889, in a resolution expressing the opinion that the Act should be disallowed. This resolution was negatived by a vote of 188 to 13.

The Government has also been asked to take steps whereby the question, as to the validity of the Act, may be raised before the Judicial Committee of the Privy Council.

His Excellency has not been advised to adopt such a course, because his Government regard the Act as clearly within the powers of the Legislature which passed it.

These powers are defined by the 92nd section of the British North America Act (1867), in which the following subjects are enumerated, among others, as being within the legislative competence of each of the Provinces:—

"1. The amendment from time to time, notwithstanding anything in this Act, of the constitution of the Province, except as regards the office of Lieutenant Governor."

"2 Direct taxation within the Province, in order to the raising of a revenue for provincial purposes"

"3. The borrowing of money on the sole credit of the Province."

"5. The management and sale of public lands belonging to the Province and of the timber and wood thereon."

"11. The incorporation of companies with provincial objects."

"13. Property and civil rights in the Province."

"16. Generally, all matters of a merely local or private nature in the Province."

The 93rd section of the B. N. A. Act, also gives exclusive powers to the Legislatures of the Provinces to make laws in relation to education.

The grounds on which the Statute in question is claimed, by persons who have asked for its disallowance, or who have urged that its validity should be passed on by the Judicial Committee of the Privy Council, to be *ultra vires* of the Quebec Legislature are the following:

1st Because it endows from the public funds of the Province a religious organization. This is said to be inconsistent with the separation of Church and State, and to result in inequality as between religious denominations.

2nd. Because it is said to recognize a right in the Pope to claim that his consent was necessary to empower the Provincial Legislature to dispose of a part of the public domain. This is said to be even subversive of Her Majesty's Supremacy.

3rd. The Act diverts, it is said, the "estates" to which it refers from the educational purposes to which by law they had been devoted.

4th. The assent of Ontario is said to have been necessary to the disposition made by this Statute of the "estates" in question.

A brief narrative of the facts relating to the Jesuits' Estates in Quebec may serve to elucidate the subject.

While the country was under the dominion of France the members of the Society of Jesus were the most active missionaries among the savages and were the principal teachers and ministers of religion, both among the settlers and aborigines.

The sacrifices which they underwent, in every part of the country, in their contact with the Indians, involving not only extreme privations and great hardships, but in many

cases multilation and loss of life, excited the devotion and ardor of many persons of their faith in France. As a result of this the society in Canada was endowed with donations of property, goods and money from persons in France, from property holders in New France, and from the King of France. The purchases by the Jesuits themselves formed the only other class of titles to these estates. In some cases the properties were expressly charged with trusts in favor of religion and education, and, in other cases no trusts were expressed.

The Jesuit community in Canada had been erected into a corporation by the King of France and the Jesuits were in full enjoyment of their estates at the time of the conquest of Canada in 1759.

In reference to the values of these estates, Father Turgeon, S.J., in a letter to the Premier of Quebec, dated 20th May, 1888, contained in the preamble to the Statute under review, says: "According to the official report which you were kind enough to communicate to me, I find that the Jesuits Estates are valued at the sum of $1,200,000. This is only approximate, and I think it is greatly less than the real value. Competent men whom I have consulted, at Quebec, Montreal and Three Rivers, do not hesitate to say that the Jesuits Estates are worth at least $2,000,000."

The following articles from the Capitulations may be supposed to have some bearing on the matter :—

CAPITULATION OF QUEBEC, 18TH SEPTEMBER, 1759.

"ART. II. That the inhabitants shall be preserved in the possession of their houses, goods, effects and privileges." *Answer*—"Granted, upon their laying down their arms."

"ART. VI. That the exercise of the Catholic Apostolic and Roman religion shall be maintained; and that safeguards shall be granted to the houses of the clergy, and to the monasteries, particularly to His Lordship the Bishop of Quebec, who, animated with zeal for religion and charity for the people of his diocese, desires to reside in it constantly, to exercise freely and with that decency which his character and the sacred offices of the Roman religion require, his episcopal authority in the town of Quebec, whenever he shall think proper, until the possession of Canada shall be decided by a treaty between their Most Christian and Britannic Majesties." *Answer*—"The free exercise of the Roman religion is granted, likewise safe-

guards to all religious persons, as well as to the Bishop, who shall be at liberty to come and exercise, freely and with decency, the functions of his office, whenever he shall think proper, until the possession of Canada shall have been decided between their Britannic and Most Christian Majesties."

CAPITULATION OF MONTREAL AND OF THE WHOLE PROVINCE, 8TH SEPTEMBER, 1766.

"ART. XXVII. The free exercise of the Catholic Apostolic and Roman religion shall subsist entire, &c., &c." *Answer*—"Granted as to the free exercise of their religion. The obligation of paying tithes to the priests will depend on the King's pleasure."

"ART. XXXII. The communities of nuns shall be preserved in their constitution and privileges. They shall be exempted from lodging any military, and it shall be forbid to trouble them in their religious exercises or to enter their monasteries; safe-guards shall even be given them if they desire them." *Answer*—Granted.

"ART. XXXIII. The preceding article shall likewise be executed with regard to the communities of Jesuits and Recollets, and to the house of the priests of St. Sulpice at Montreal. This last, and the Jesuits, shall preserve their right to nominate to certain curacies and missions, as heretofore.', *Answer*—Refused till the King's pleasure be known.

"ART. XXXIV. All the communities and all the priests shall preserve their movables, the property and revenues of the seigniories and other estates which they possess in the colony of what nature soever they be, and the same estates shall be preserved in their privileges, rights, honors and exemptions." *Answer*—Granted.

"ART. XXXV. If the canons, priests, missionaries, the priests of the Seminary of the Foreign Missions, and of St. Sulpice, as well as the Jesuits and the Recollets, choose to go to France passage shall be granted them in His Britannic Majesty's ships, and they shall have leave to sell, in whole or in part, the estates and movables which they possess in the colonies, either to the French or to the English, without the least hindrance or obstacle from the British Government. They may take with them, or send to France, the

produce of what nature soever it be, of the said goods, sold, paying the freight as mentioned in the XXVIth Article; and such of the said priests who choose to go this year, shall be victualled during the passage at the expense of His Britannic Majesty; and they shall take with them their baggage." *Answer*—"They shall be masters to dispose of their estates and to send the produce thereof, as well as their persons, and all that belongs to them to France."

It is contended that Article XXXIV, of the Capitulation of Montreal, applied to the Jesuits (who were then a community, see Article XXXIII), and that the refusal given to Article XXXIII, is therefore to be considered as confined in effect to the latter part of the request which asked rights of nomination to curacies and missions and, perhaps, to those parts of the article which asked for exemptions and other privileges.

Significance has been attached to the fact that Article XXXIV, and not Article XXXIII, deals with the *property* of the communities and priests.

In 1763, the Treaty of Paris ceded Canada to Great Britain, and His Britannic Majesty made the following stipulation as to the exercise of religion :—

"His Britannic Majesty on his side agrees to grant the liberty of the Catholic religion to the inhabitants of Canada. He will, consequently, give the most precise and most effectual orders that his new Roman Catholic subjects may profess the worship of their religion, according to the rites of the Romish Church, as far as the laws of Great Britain permit. His Britannic Majesty further agrees that the French inhabitants or others who had been subjects to the Most Christian King in Canada, may retire with all safety and freedom wherever they shall think proper, and may sell their estates, provided it be to the subjects of His Britannic Majesty."

The restriction "as far as the laws of Great Britain permit" has been universally conceded to mean as far as such laws would permit in the colonies.

In 1773, the suppression of the Order of the Society of Jesus, by Pope Clement XIV occurred. It has been claimed by some authorities in the Province of Quebec, that if the Brief of suppression was published in Canada (which it required to be in order to give it any effect there in ecclesiastical law), and of this publication there is doubt, its effect, if any, would be to vest the property of the Jesuits in the Ordinary of each of the Dioceses in which it was

situated. Probably, however, the Brief had no effect, in law, in Canada.

In 1774, the Imperial Statute, 14 George III, chap. 83, known as the "Quebec Act" was passed. It gave security, on certain conditions, to the liberty of religion in the colony. Subsequently, by Royal Instructions, the Society of Jesus was declared to be suppressed and dissolved, and its property was declared to be vested in the Crown, for such purposes as might thereafter be appointed. The then members of the Society were allowed to continue in the enjoyment of these estates, until the decease of the last survivor, which occurred in 1800. Soon after that the properties were taken possession of under a Brief which declared that, by right of conquest, they had become vested in the Crown. Subsequently they were transferred by the Crown to the Province for educational purposes, and statutes were passed declaring that the proceeds should be applied to such purposes exclusively. The Provincial Government had ample power to make sale of these estates, as of all other public lands, and the revenue derivable from the estates, and the proceeds of such sales of them as have been made from time to time, have been applied to education and to various other purposes than those of education, but it may be stated generally that the Legislature has, every year, appropriated for education a far larger sum than the annual proceeds of the estates.

There has existed in the minds of a large portion of the Roman Catholic people of the Province of Quebec, for many years past, the belief that the application of properties which had been given for purposes of religion and of religious education, to purposes of the State, was a matter which called for some redress and compensation.

The Society of Jesus, was re-established in the Province many years ago. It received its incorporation in the city of Quebec in 1871, and in the whole Province in 1887, by Chapter 28 of the Statutes of that year. Besides, in 1852, by Chapter 57, its college in Montreal had been incorporated, and in 1868, its educational establishment at Sault au Recollect had been incorporated by Chapter 68 of that year.

When the question of compensation came to be agitated in the Province the Jesuits claimed that any compensation which should be given, or any allowance which might be made, should be given to them, while the Roman Catholic Bishops of the Province maintained that any such compensation or allowance should be made to the colleges and

other educational establishments which they and their flocks had established, because, on the dissolution of the Society of Jesus by Pope Clement XIV, the properties of the Jesuits were directed to be administered by them for the purpose of carrying on the work in which the Jesuits had been engaged, and because they had, as a matter of fact, taken up and carried on the work of religion and education which the Jesuits were no longer able to continue. At various times, when the Provincial Government endeavored to make sale of portions of these estates, this claim was put forward, in the shape of protests and remonstrances against the property being disposed of, and the Provincial Government was, in some instances, thereby deterred from the projected sale. Under these circumstances the Act of 1888, which is now being objected to, was passed, as the result of negotiations which the First Minister of the Province had entered into and concluded with the authorities of the Roman Catholic Church, and with the representative of the Jesuits, and for the purpose of giving effect to the agreement which these negotiations had reached.

First—As to the first objection—that the Quebec Statute under review endows from the public funds of the Province a religious organization, and creates inequality between religious denominations, the opposite contention is that the Act is not *ultra vires* even if that were a correct statement of its effect. There is no provision in the British North America Act compelling the separation of Church and State, and it hardly seems open to doubt that under more than one of the enumerated powers of a Provincial Legislature it would be within the competence of such a Legislature to make enactments inconsistent with the separation of Church and State. A glance at the enumeration will probably be sufficient to make that view clear. There is no restriction against the endowment of religion, or against the unequal endowment of religious bodies, in the constitution of any of the Provinces, and, if there were, it must be observed that each Province has power to amend its constitution within the limits of the British North America Act, which has no such restriction. Again, it is evident that the endowment of a religious denomination does not necessarily establish inequality between religious denominations. The endowment may be necessary to redress an existing inequality, or, if it causes inequality, that inequality may be redressed; it is subject to review from time to time and, even though it might be said to be impolitic and unjust to other denomina-

tions than that endowed, and even though the endowment for the time being might be said to result in an inequality, it would be impossible to test the validity of the Act by ascertaining whether it has caused an equal, or unequal, distribution of the public funds to be made as between religious bodies. This would be to a large extent a matter of opinion. It would depend partly on population, partly on extent of other endowments, partly on the question of necessity, partly on the expenditure which the denomination endowed might be called on to make in carrying on its work, partly on the extent of territory covered by the operations of the endowed denomination, and on various other conditions which it would be impossible to measure in considering the validity of the Act. It seems obvious that this would be no standard of validity and that the discretion and sense of justice of the Legislature, elected by the people of the Province, must be trusted to guard against an unfair use of the legislative powers in this regard.

The power to change the constitution of the Province, the power to raise a revenue and to borrow, (implying, as it necessarily does, the power to expend the money so raised), the power to deal with civil rights, and to control all matters of a merely local nature within the Province, seem to include the power to endow a church or religious body, leaving out of consideration the propriety of such a measure, with which the present memorandum does not profess to deal;—and with regard to this particular measure, the power to dispose of the public lands, (of which the Jesuits' Estates were a part), seems necessarily to include the power to appropriate the proceeds as the Legislature might see fit.

But it seems impossible to regard this Act as affecting, in the slightest degree, the separation of Church and State, or as the endowment of a religious denomination. It professes to restore to a certain society a portion of the property, not in kind, but in money, of which that Society was, in years gone by, deprived, without compensation, and it professes to give a compensation therefor in the money of that Province which had become possessed of the forfeited property, and was profiting by it. It seems not to enter into a consideration of the validity of the Act that that Society was formed of persons of the same religious belief, or that the object of the Society was to spread the tenets of its members. To admit such a proposition would be to establish the very principle which those who raise this objection contend against, because it would affirm the idea that one re-

ligious belief—the belief of the members of the Society in question—is under the ban of the law, and that it could not on account of that belief, receive compensation for a claim which the Legislature of a Province, by a unanimous vote, declared to be worthy of compensation. This would certainly result in inequality as between religious denominations, unless the principle were adopted that no society could be paid public money if its members possessed any definite belief on religious subjects. That principle would, perhaps, establish equality as between religious denominations, by declaring that none of them could recover for any claim, but it would do far worse. It would establish inequality as between societies whose members professed religious belief and those whose members had no religion—to the great advantage of the latter. Even if the grant of money—really made as the discharge of an obligation—had been made for the purposes of endowment it would have had no relation to the question of Church and State It might have been as well urged that the endowment of Maynooth College was the endowment of the Roman Catholic Church in Ireland.

Second—It has been objected that the Act recognizes a right in the Pope to claim that his consent was necessary to empower the Provincial Legislature to dispose of part of the public domain. This has been said to be derogatory to Her Majesty's Supremacy.

This objection involves a mis-statement of what has taken place and as to the effect of the references in the preamble to the authorities at Rome. As has been stated in the narrative of facts which the present review contains, there were two sets of claimants to the Jesuits' Estates, or rather two sets of claimants for what the Legislature was pleased to recognize as a moral right to compensation in regard to those estates : the Jesuits on the one hand, and the Hierarchy of the Roman Catholic Church in the Province of Quebec on the other. While the legal title to the property, without any doubt or question, was vested in the Province, and while the Provincial Government had a clear and undoubted right to make sale of the estates, this claim for compensation had been put forward from time to time in the shape of protest, remonstrance and petition by both the claimants. When the Legislature of the Province arrived at the conclusion that compensation should be paid, in settlement or extinguishment of that claim, it was an ordinary business precaution that all the persons who participated in the

claim, or who had set it up, should withdraw their claim and accept the settlement, before the compensation should be paid over, or when it should be paid over, and it was plainly necessary, even before negotiations for such a settlement could be carried on, that some one with authority, competent to represent both sets of claimants, should be treated with; otherwise two sets of negotiations would be necessary and a conclusion would be almost impossible.

The authority who, naturally, by His position, and by the choice and consent of the two sets of claimants, could negotiate for them, and mediate between them, was the Pope, as being the Head of the Church to which both sets of claimants belonged. He had authority, by consent of both, to conduct the negotiations for both, and to cause both to be satisfied with any settlement which might be arrived at.

In 1884, in pursuance of this theory, the Archbishop of Quebec obtained permission to represent the Holy See in treating with the Government of the Province on this subject.

On the 2nd January, 1885, as appears by one of the preambles of the Act, the Archbishop wrote a letter to the Premier of the Province, informing him of his authority, and on the 25th April of the same year, the Premier informed His Grace, that, if the Provincial Government consented to reopen and reconsider this question, he would consult His Grace and the Jesuit Fathers, so that he might, if expedient, "be able to submit to the Legislature a measure which" would "settle this question in a definite and satisfactory manner." The Government of Quebec did not seem satisfied that the authority which the Archbishop possessed included the authority to conduct the claims set up by the Jesuits themselves, because the reply of the Premier intimated that it would be necessary to consult and treat with the Jesuits as well as with His Grace.

On the 7th May, 1887, Cardinal Simeoni, Prefect of the Sacred College of the Propaganda, informed the Archbishop of Quebec (then Cardinal Taschereau), that the authority conferred on him had been withdrawn. This was done by intimating to the latter that the "Holy Father reserved to himself the right of settling the question of the Jesuits' Estates in Canada." The most critical view which can be taken of the language quoted can hardly construe it as evidence of an intention, on the part of the authorities at Rome, to interfere with the rights or property of the Province. The rights of the Province in these lands, as before

stated, were so plainly established by Statutes of the Province, as well as by the concessions of the Imperial Government, that the legal title was not in question, and could not be.

"The right" which Cardinal Simeoni declared that the Holy Father "reserved to himself" was not the right to control, in any way whatever, the property, but to conduct and conclude the demands of the claimants who had put forward requests for compensation from the Province, and the right to decide, even as against them, that their objections to the sale of the property by the Province ought to be withdrawn, for compensation or without compensation, and at whatever rate of compensation he should decide on.

It was only in respect to these points that the Holy See had conferred authority on the Archbishop of Quebec, in 1884, and it could only be that authority which was withdrawn and reserved, by the despatch in which the Pope reserved to himself the right to settle this question.

The letter of the First Minister of Quebec, dated the 17th February, 1888, to Cardinal Simeoni, set forth in the preamble of the Act, recites this despatch of the 7th May, 1887, withdrawing the authority of the Archbishop of Quebec. It states that, in 1876, a part of the estates in the city of Quebec had been divided into building lots with a view to their sale, but that the sale had not taken place, "owing to certain representation from exalted personages at the time." It states, also, that the matter had been allowed to lie, and that the property had become so neglected as to be "a grazing ground and a receptacle for filth," so much so, that the matter had "become a public scandal."

The First Minister proceeded then to ask Cardinal Simeoni if he saw "any objection to the Government's selling the property, pending a final settlement of the question of the Jesuits' Estates." This part of his letter has excited much criticism, as inviting the interference of a foreign power. There can be no doubt that the First Minister had in view the petitions, protests and remonstrances which had been put forward against the sale of the property, and was soliciting Cardinal Simeoni to interfere to prevent the obstructions which had frustrated the sale, and was asking him to agree, on behalf of the Pope, that these objections might not be repeated, but that a sale might be made, whatever the final result might be of the claims which had been put forward, for compensation. In the next paragraph of his letter, the First Minister states that the Government was willing to "look on the proceeds of the sale

as a special deposit to be disposed of" thereafter "in accordance with the agreements to be entered into between the parties interested, with the sanction of the Holy See."

If we are to read this proposal in the light of the history of these estates, and of the claims made upon the Quebec Government in regard to them, it would seem that this passage admits of no other construction, than that it was a proposal on the part of the First Minister that all the protests against the sale should be withdrawn and that, in order to assure the protesting parties that the Province would not, in making a sale, extinguish their claims, whatever they were, he was willing that the proceeds should be set aside to await a final settlement of the matter. In the concluding portion of the letter, the First Minister intimates that "it will perhaps be necessary to consult the Legislature of the Province." This expression can only have reference to the possible settlement of the claims. It would have been quite unnecessary to consult the Legislature as to the sale of the property, because the Government already possessed ample authority for that purpose.

The reply of Cardinal Simeoni, dated 1st March, 1888, was that the Pope had so far acceded to the proposals made as to consent to the sale, on condition that the proceeds should be deposited at his disposal. The language used clearly means nothing more than a consent to the withdrawal of the objections to the sale of the land which was the subject of the negotiations, although it uses the words: "to grant permission to sell the property." The Quebec Government declined to deposit the proceeds for the disposal of His Holiness, and, on the 24th March, 1888, Cardinal Simeoni announced the final answer of the Pope, which was that the Government should "retain the proceeds of the sale as a special deposit," which had been Mr. Mercier's original proposition.

Immediately afterwards the Rev. A. B. Turgeon, S. J., received authority from the Sacred College at Rome to treat with the Government in this matter. This authority seems to have superseded that which had been previously conferred upon the Archbishop of Quebec. The authority was conveyed by Cardinal Simeoni to Father Turgeon in a letter dated 27th March, 1888, in which the Cardinal intimated that the authority to treat with the Provincial Government would be given to the Jesuit Fathers, but they were to treat in such a manner "as to leave full liberty to the Holy See to dispose of the property as it" should deem advisable, and they were directed that "the official deed

of the concession of such property" should contain "no clause or condition which could in any manner affect the liberty of the Holy See." These provisions, as to the disposal of the property finally by the Holy See were doubtless in view of the contingency, then deemed possible, that the estates themselves, or a portion of them, would be restored to the Jesuits. The Cardinal made the further stipulation that if a sum of money should be paid by the Government, the Jesuit Fathers should deposit it in a place to be determined by the Sacred College.

In a letter dated 1st of May, 1888, the First Minister of Quebec put forward the bases on which he proposed that a settlement of the claims should be made He required that the documents, conferring authority on the Jesuit Fathers to negotiate, should be duly authenticated and deposited, that it should be understood that the Government did not recognize "any civil obligation, but merely a moral obligation," and that there could be no restitution of the property itself but only compensation in money. He stipulated further, that "the amount fixed as compensation" should "be expended exclusively in the Province," and, in order, evidently, to preclude all claims which could possibly be set up, either by the two sets of claimants who had previously been agitating the matter, or by any other authority, he stipulated that the Province should receive "a full, complete and perpetual concession of all the property which may have belonged, in Canada, under whatever title, to the Fathers of the old Society," and that there should be a renunciation as "to all rights whatsoever upon such property, and the revenues therefrom. in favor of the Province" in the "name of the old Order of Jesuits, as well as of the present corporation," and "in the name of the Pope, and of the Sacred College of the Propaganda, and of the Roman Catholic Church in general." It was necessary that any agreement made should receive the ratification of the Legislature of the Province, and, as he was asking the priest with whom he was negotiating to go much beyond the express letter of his authority, in binding the Pope, the Sacred College and "the Roman Catholic Church in general," as to all of whom Father Turgeon's authority was silent, he stipulated, in language which has been misunderstood and has, therefore, excited much unfavorable comment, that any agreement made should "be binding only in so far as it" should "be ratified by the Pope and the Legislature of the Province." The Quebec Government had arrived at the conclusion that, in order to settle all possible claims, as they were dealing

with an agent whose authority was limited, they should have the ratification of the principal, and it would seem that this precaution, which appears neither unreasonable nor unnecessary, was taken, not in *favour* of a foreign potentate, as some have supposed, and not in recognition of any civil rights in the Pope as to the property, but to guard against any possible renewal of the claims, under any other form, or under any names different from those under which they had been previously advanced It was, for the same reason, proposed that the amount of compensation should remain in the hands of the Provincial Government as a special deposit, until the ratification of Father Turgeon's principal, the Pope, had been obtained, and until the Pope had made known His decision regarding the distribution, between the claimants, of the compensation money which might be agreed on. Mr. Mercier agreed that the Jesuit Corporation should receive interest at four per cent. from the date of the signification to the Provincial Secretary of the confirmation of the arrangement by the Pope, down to the time of paying the capital. He stipulated further that the Statute ratifying such agreement should contain a clause "enacting that when such settlement" should be "arrived at, the Protestant minority" in the Province should "receive a grant in proportion to its population in favor of its educational work"

On the 8th May, 1888, Father Turgeon replied to the First Minister's letter accepting the bases of settlement.

Some further correspondence ensued, in which Father Turgeon suggested the amount of compensation which the Provincial Government should allow, and, on the 4th June, 1888, the First Minister, replying to this, declared that he could not exceed $400,000, and a grant of the Common of Laprairie, which was a part of the estates in question.

On the 8th of the same month Father Turgeon accepted these offers.

The First Minister of Quebec, in defending the Bill in the Legislature, made the following explanation of the recognition of the Pope, which the correspondence seemed to contain :—

"Any serious objection to it, however slight, may disappear, for it is we, the Ministers, who insisted on it, in order not to give effect to the transaction unless it was sanctioned by the religious authority in the person of the Pope. And it is easy to understand why. In all important treaties made by mandatories, ratification must be made by the mandator. Thus, for example, take what concerns me per-

sonally, what concerns Ministers, what is it usual to state in resolutions, in letters? That the transaction shall not avail unless sanctioned by the Legislature. Well the Rev. Father Turgeon, who was charged by the Holy See to settle this question with us, is only an agent, a mandatory, an attorney. And so that there may be no misunderstanding, so that the transaction may be final, so that the settlement may no longer be open to discussion by the religious authorities, we insist that the Pope shall ratify the arrangement. There is no question of having the law sanctioned by the Pope. Let us not play upon words. The law will be sanctioned by the Lieutenant Governor, and it will take effect in the terms of the agreement. That is to say, Sir, that if the Pope does not ratify the arrangement, there will be neither interest nor principal paid, but we shall then say to the religious authorities: 'You appointed an agent to settle this question, we came to an understanding, and if you do not ratify the act of your mandatory, it is your own fault, for we, the inhabitants of the Province of Quebec, through the constituted authorities, have done our part—have kept our promise,—I am pleased to believe that the importance of the precaution taken by us will be understood. But once more, if there is any serious objection to that part, it is very easy to come to an understanding. But in that case we must substitute something equivalent. What shall we put? We must, after all, put something to express that the transaction shall not avail till the Pope ratifies it. Well, Sir, we said 'the Pope' intentionally. We did not say the Congregation of the Propaganda. We did not say the Secretary of State. We said the Pope. We desired the ratification to be given by the head of the Church in order that all those interested may be bound."

The correspondence and negotiations above commented on are the cause of the objection; that the Statute recognises "a right in the Pope to claim that his consent was necessary to enable the Legislature to dispose of a part of the public domain." Having stated what is believed to be the true interpretation of the correspondence, and its phrases, in view of the surrounding circumstances, and having stated what is believed to be their legal and actual effect and meaning, the question remains to be considered how this correspondence, and its phrases and expressions, which have excited hostile criticism outside of the Province of Quebec, can be considered as affecting the validity of the Statute under review. It may be properly said that the

expressions which are said to recognise a right in the Pope in regard to the public domain, do not form any necessary part of the Statute and do not in any way affect its validity or justify its disallowance. Turning to the enacting parts of the Statute we find that this preliminary correspondence is only referred to in the first section, which reads thus :—

" 1. The aforesaid arrangements entered into between the Premier and the very Rev. Father Turgeon, are hereby ratified, and the Lieutenant Governor in Council is authorised to carry them out according to their form and tenor."

It will be seen, therefore, that the only portions of the many matters which are set out in the preamble to this Statute, which are ratified, and which, therefore, form any material part of the Statute, are the arrangements entered into between the Premier and the very Rev. Father Turgeon. These arrangements are contained in the letter of the First Minister of Quebec dated 1st May, 1888, the letter of Father Turgeon dated the 8th of the same month, the letter of the First Minister dated 4th June, 1888, the letter of Father Turgeon dated 8th of the same month, and the letter of the First Minister dated the same day, and the legal documents which followed in order to give effect to the settlement. All other matters which are referred to in the preamble to this Statute are extraneous and irrelevant.

They are in no way confirmed by the Act in question, and all that can be said of the Act in relation to them is that it recites that such correspondence took place. Among the documents which may be enumerated, as containing nothing affecting the validity of or affected by the Act, are the documents which contain the expressions which have excited the greatest criticism and opposition. As, for instance, the letter of the First Minister to Cardinal Simeoni, dated 17th February, 1888, in which the Minister mentioned that Cardinal Simeoni in a despatch to Cardinal Taschereau, had informed the latter " that the Holy Father reserved to himself the right of settling the question of the Jesuits' Estates." The same document is that in which the First Minister asked Cardinal Simeoni whether he saw " any serious objection to the Government selling the property pending a final settlement of the question of the Jesuits' Estates." It was in that document that the First Minister intimated that " the Government would look on the proceeds of the sale as a special deposit to be disposed of in accordance with the agreeements to be entered into between the parties interested, with the sanction of the Holy See." Another such instance is, likewise, Cardinal Simeoni's despatch to

the First Minister of Quebec, stating that the Holy Father "was pleased to grant permission to sell the property which belonged to the Jesuit Fathers before they were suppressed," provided "that the sum to be received should be deposited and left at the free disposal of the Holy See." Another such instance, is the message of Cardinal Simeoni, dated 24th March, 1888, in which the Cardinal used the expression "the Pope allows the Government to retain the proceeds of the sale of the Jesuits' Estates as a special deposit," &c.

It may, therefore, with propriety, be stated that even if these expressions, to which grave exception has been taken, bear the meaning which is attributed to them, as being a recognition by Mr. Mercier of the right of the Pope to claim that the consent of His Holiness was necessary "to empower the Provincial Legislature to dispose of a part of the public domain," it would have been impossible to have disallowed the Statute on the ground that such correspondence had taken place and that such expressions had been used, when the Act merely recited the facts which had occurred, and contained no express ratification of what is so objected to.

To have disallowed it, on any such ground, would have been to have disallowed a Statute, within the powers of a Province, on the ground that the Act was *ultra vires* by reason of its having merely recited the existence of certain facts which did undoubtedly occur.

In amplification of the objection which is here being answered, it is stated that the recognition of a right in the Pope to claim that his consent was necessary, involved a recognition of the Pope's Supremacy, and involved a denial of the Supremacy of Her Majesty, and also involved an admission that the Legislature of one of Her Majesty's Provinces could only proceed by having its legislation sanctioned by the Pope; but, at the risk of repeating the argument which has already been advanced, as to the fair construction of the correspondence set out in the preamble, it may be replied that no such consequences are involved.

The First Minister of Quebec was dealing with objections and protestations which had hindered the sale of portions of the public domain. He was negotiating for the consent and approval of One Who, by the choice of all the rival claimants, had power to arbitrate and decide between them, and to induce them to withdraw their claims or to moderate them; the Minister was negotiating with a view to the extinguishment, not of rights, but of

claims, for restoration or compensation, and this extinguishment his Government and Legislature thought it desirable should be made, in order that an advantageous sale of these estates might take place. There is certainly no subversion of Her Majesty's Supremacy, as Head of Her Church. There is, surely, no subversion whatever of Her Majesty's rights and Supremacy as Sovereign over the Province. It is not a contravention of that Supremacy that compensation should be given to extinguish, what the Legislature regarded as a moral claim, in relation to estates which had become forfeited to Her Majesty's Predecessors and with which Her Majesty's Predecessors had endowed the Province.

The assertion might as well be made that it is a disloyal proceeding, and one subversive of the Sovereign's Supremacy, to entertain a doubt as to the validity of the title of a part of the public domain which a colony acquires from the Imperial Government. The Quebec negotiations, however, do not go so far as that. They distinctly state that the *title* is not in question, and that none but moral obligations were being considered.

It seems needless to say that Governments of British countries, and indeed Her Majesty's own Government, do not treat moral obligations, in relation to the public domain, or in relation to escheated property, as in any way conflicting with Her Majesty's Sovereign rights and Supremacy In so far as it is supposed to be objectionable that the Pope should have been considered entitled to make any distribution of the compensation awarded, it would seem to be impossible to regard that feature as in any way derogatory to Her Majesty's authority, dignity or Supremacy. It was a matter of absolute indifference to the Government and Legislature of the Province and surely entirely irrelevant to any consideration of Her Majesty's rights and Supremacy, what should be done with the amount of compensation to be paid over. The one thing which it was necessary for the Government, in the interest of the Province, to guard, was, that when it should be paid over, the claims which it was intended to extinguish should exist no longer, and those who were acting in the interest of the Province, doubtless thought that this could be best accomplished by dealing with One Who, by the consent of the parties interested, had their authority for the extinguishment of the claims and for settling any question as to the division of the compensation.

It will be observed that the objection being here discussed applies rather to the policy of the Statute than to its

validity. Indeed it is difficult to understand the objection now under consideration as being an objection in any way affecting the validity of the Act.

When the very extensive powers which the British North America Act confers, (some of which have already been enumerated), are considered, it will be seen that whatever objections some may have to the Act, even on the second ground on which its invalidity is claimed, that ground would hardly be available for an attack on the Act as being *ultra vires.*

It may not be unimportant, in considering how extensive the rights and powers of Provincial Legislatures are, to refer to some of the authorities, which have pronounced on the powers conferred on the Colonies by the British North America Act and other similar enactments. For example, in the case of Harris *vs* Davies (10 App. Cases 279) it was held by the Judicial Committee of the Privy Council, under a statute not very dissimilar from the British North America Act that :

"The Legislature of New South Wales, has power to repeal the Statute of James I, and had impliedly done so by 11 Vic., No. 13, which, according to its true construction, placed an action for slander for words spoken upon the same footing, as regards costs and other matters, as an action for written slander." The Statute of James I, had made provision as to the amount of costs which the litigant could recover when he only obtained a verdict for a certain amount for slander ; the Act applied to the colony, the Legislature passed an Act changing that provision. The judgment of their Lordships was delivered by Sir Barnes Peacock, who said: "Their Lordships are of opinion that there are no sufficient grounds for reversing the judgment of the court below. Their Lordships are of opinion that the Colonial Legislature had the power to repeal the Statute of James I, if they saw fit, and they are also of opinion that, looking at the first section of 11 Vic., No. 13, it was the intention of the Legislature to place an action for words spoken upon the same footing, as regards costs and other matters, as an action for written slander."

Another important decision was Hodge *vs.* the Queen (9 App. Cases 117) which is thus referred to in the case of Powell *vs.* Apollo Candle Company (Limited) (10 App. Cases 282,), also an important decision as to the powers of a Colonial Legislature.

"Two cases have come before this Board in which the powers of Colonial Legislatures have been a good deal con-

sidered, but these cases are of too late a date to have been known to the Supreme Court when their judgment was delivered. The first was the case of Regina *vs.* Burah (3 App. Cas., 889) in which the question was whether a section of an Indian Act, conferring upon the Lieutenant Governor of Bengal the power to determine whether the Act, or any part of it, should be applied to a certain district, was or was not *ultra vires*. In the judgment of this Board, given by the Lord Chancellor, the legislation is declared to be *intra vires*, and the Lord Chancellor lays down the general law in these terms: 'The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can of course do nothing beyond the limits which circumscribe these powers. But when acting within those limits it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation as large, and of the same nature, as those of Parliament itself.' The same doctrine has been laid down in a later case of Hodge *vs.* The Queen (9 App. Cases, 117) where the question arose whether the Legislature of Ontario had or had not the power of entrusting to a local authority—a board of commissioners—the power of enacting regulations with respect to their Liquor License Act of 1877, of creating offences for the breach of those regulations, and annexing penalties thereto. Their lordships held that they had that power. It was argued then, as it has been argued to-day, that the Local Legislature is in the nature of an agent or delegate, and, on the principle *delegatus non potest delegare*, the Local Legislature must exercise all its functions itself, and can delegate or entrust none of them to other persons or parties. But the judgment, after reciting that such had been the contention, goes on to say: 'It appears to their Lordships, however, that the objection thus raised by the appellants is founded on an entire misconception of the true character and position of the Provincial Legislatures. They are in no sense delegates of, or acting under any mandate from, the Imperial Parliament. When the British North America Act enacted that there should be a Legislature for Ontario, and that its Legislative Assembly should have exclusive authority to make laws for the Province and for provincial purposes in relation to the matters enumerated in section 92, it conferred powers, not in any sense to be exercised by delegation from, or as agents of, the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by section 92 as the Imperial

Parliament, in the plenitude of its powers, possessed or could bestow. Within these limits of subjects and areas the Local Legislature is supreme and has the same authority as the Imperial Parliament."

Reference may also be made to the case of Riel *vs.* the Queen (10 App. Cases, 675), in which the power of the Dominion Parliament to alter the provisions of Imperial Statutes regarding trials for offences in the North-West Territories was established.

Third. It has been contended that the Statute diverts the estates to which it refers from the educational purposes to which by law they had been devoted.

In the first place it is to be remembered that the Act does not, in express terms, or by necessary implication, make such a diversion.

It ratifies an agreement for the payment of $400,000 and for the transfer of Laprairie Common. It provides for the payment of $60,000 to the educational authority representing the Protestant minority in the Province—and this latter sum was declared by the First Minister of Quebec, during the negotiations, to be the proportion to which the minority was entitled out of these estates—and it provides that the remainder of the proceeds of the estates are to be applied for any purposes which may be approved by the Legislature. The payment of $400,000 in satisfaction of the Jesuits' claims and the $60,000 to the Protestant Committee of the Council of Public Instruction, do not necessarily come out of the proceeds of the Jesuits' Estates. They are to be paid out of any public money at the disposal of the Lieutenant Governor in Council. It is not to be assumed that, if these estates are to be considered as charged with a trust in favor of education, the Legislature will approve of any diversion of the proceeds of that trust, and the proceeds can only be applied in such a way as the Legislature shall hereafter approve.

As already stated, if the proportion of the public money which the Protestant minority is to receive under this Act is an inadequate proportion, that is a matter which is capable of redress by the Legislature chosen by the people of the whole Province, and it may not be unimportant to observe, in this connection, that the Act received the unanimous approval of both Houses of the Legislature of Quebec, in which the Protestant minority is ably represented by distinguished men in both political parties.

Even if the charge of diversion from the original trusts had more foundation than it has, it is obviously impossible

for the Federal Government, in the exercise of the power of disallowance, to undertake to guard against misappropriations of the public funds or of the public property, without assuming the power and responsibilities of regulating the public revenues and public domain of the Provinces. To undertake the task of watching over the public appropriations of the Provinces would be to incur the risk of almost inevitable injustice, for want of the means of correctly understanding the conditions which ought to guide the Legislatures in such appropriations. The British North America Act must be held to have placed these matters within the power of the Legislatures which represent the people directly, in regard to these questions, which the Federal Executive cannot be said to do. Even if the Act directly sanctioned a breach of trust, it would not be beyond the powers of the Provincial Legislature, however much its passage might be deplored.

It cannot be supposed, however, for reasons which have already been suggested, that the Legislature of Quebec, intends to commit, by this Statute, for all future time, a breach of trust in regard to these estates. First, because it has every year made far more ample provisions for education, both for the majority and for the minority, than these estates, or any other part of the public domain charged with trusts in favor of education could afford. Second, because the approval of the Legislature to any final distribution of the proceeds of the estates is stipulated for on the face of the Act itself.

Fourth.—A further objection has been that the sanction of Ontario is necessary to the disposition made by this Statute, of part of the estates in question. This objection can hardly be sustained from any legal point of view, even if it be regarded as one which could affect the validity of the Statute. It is only put forward under the view that some power, regarding the subject, may remain in the Province of Ontario, because these estates were devoted to educational purposes by a Statute, (prior to the union of the Provinces), of a Province of which, what is now the Province of Ontario, was once a part. The estates, however, are solely within the Province of Quebec. They are public lands of that Province, and any trusts with which they may be charged are trusts in favor of the people of that Province. Neither the Government nor the Legislature of Ontario, have ever asserted the slightest claim upon them, or the slightest right to interfere in regard to them, nor has either the Gov-

ernment or the Legislature of Ontario, in any way, given countenance to this objection.

It seems then quite clear, not only that the Province of Ontario has no claim to these estates, but that its Legislature would have no power to pass a Statute with regard to them, as such a Statute would relate to a matter outside of that Province.

The Quebec Statute, therefore, seeming clearly to be within the powers of the Legislature which passed it, it appeared to be the duty of the Government of Canada not to exercise the power of disallowance with regard to it. To have revised the policy of the Statute, irrespective of its validity, would have been to have assumed responsibilities for the exercise of authority in a domestic matter, within the control of the Legislature, and in respect of which the Legislature had been unanimous after considering the subject for years, and would have excited deep resentment among the people of the Province.

After a delay of nearly six months, during which time the remonstrances against the allowance of the Act were of a merely formal character, and no agitation existed, His Excellency was advised to signify to the Lieutenant Governor of Quebec, that this Act, along with many others of the same Session, would be left to its operation. Thereafter the agitation for disallowance commenced. A resolution, in favor of that course, was moved in the House of Commons and received the votes of 13 members out of a House of two hundred and fifteen members. Petitions have been presented to His Excellency also, asking that the power of disallowance should still be exercised.

It may be open to much question whether even the bare *power* of disallowance remains, after His Excellency's Government has made its choice, and has decided that the Act shall be left to its operation, and has so informed the Provincial Government, but it is surely clear that, although the bare power may remain, it would be contrary to all constitutional usages that an Act, in respect of which that signification had been solemnly and formally made, should afterwards be disallowed. The inconvenience of such a course would be extreme. No Provincial Statute—even for the incorporation of a Company—for the building of a railway—for effecting a loan—for a transfer of property, or indeed for any purpose, could be safely acted on until the

expiration of a year from its transmission to the Secretary of State for Canada, even though declared by His Excellency in Council to be unobjectionable—lest within the year—on some new objection being stated, it should be disallowed. Even the Supply Bill of a Province could not be safely acted on until the expiration of the year, and by that time the supplies would have lapsed.

His Excellency's Government, having come deliberately to the conclusion that the Act was within the powers of the Legislature which adopted it, and having signified that the Act would be left to its operation, has been moved to undertake the contestation of the validity of the Act in the Courts, and especially before the Judicial Committee of the Privy Council.

It seemed to His Excellency's advisers that to pursue that course, against a Province, in regard to a Statute which they considered within the powers of that Province, would be a proceeding most hostile and also most unwise, in view of the relations which should exist between the Provincial and the Federal authorities, and would be a vexatious interference with the affairs of the Province.

They have, therefore, declined to recommend an appropriation of any portion of the public revenues for litigation on this subject, against the Government of Quebec, and they entertain the opinion that they are not called upon to enter into such litigation, and that the authority to pass the Statute in question is so clear, that any such proceedings must be carried on without any hope of success.

Furthermore—after the emphatic vote of the House of Commons on the resolution for disallowance, the Government would be defying the opinion of the House, so decidedly expressed, in undertaking thus to contest the soundness of the decision which was pronounced by that vote.

The contention has also been made that His Excellency should disallow the Statute under review, because it infringes the provisions of the 93rd Section of the British North America Act. That section gives Provincial Legislatures power to make laws in relation to education, but provides that such laws shall not prejudicially affect any right or privilege, with regard to denominational schools, which any class of persons had at the time of the Union, or should afterwards acquire under authority of the Legislature of the Province.

This Statute, however, is not necessarily a Statute in relation to education. It cannot be said to prejudicially affect

any right to denominational schools, or the rights or privileges of any "class of persons in the Province," with respect to denominational schools. The Jesuits' Estates were certainly never charged with any trusts in respect to any schools of that description, although portions of their proceeds have, from year to year, been distributed among schools of all denominations.

It is unnecessary to repeat, in this connection, what has already been said as to the objection that the Statute sanctions a breach of faith, but the argument there advanced applies to this objection as well.

Since the discussion in the House of Commons, a point has been raised against the effectiveness, rather than the validity of the Quebec Statute, viz., that the intention of the Legislature must fail, because the grant is made to the incorporated Society of the Jesuits in the Province of Quebec. The Act of Incorporation, passed in 1887, is hereto annexed.

The Act of Incorporation having been long ago left to its operation, without objection, the Dominion Government has considered that this is a question with which they have nothing to do, and they have, therefore, declined to ask Her Majesty's Government to submit any question in relation to it for the consideration of the Judicial Committee of the Privy Council. The point on which doubts as to the effectiveness of the grant of the Legislature seems to turn is that the Legislature of Quebec could not, as it assumed to do in 1887, incorporate the Jesuits. It is contended, by those who sustain this view, that, in consequence of the early English Statutes against the Jesuits, it is impossible for a Colonial Legislature to give members of that society corporate rights, or even to recognize their presence in the country. This view is not held by His Excellency's advisers. Considering the large powers of self-government which have been conferred, from time to time, on the various colonies, Canada included, and especially considering the powers given by the British North America Act in 1867, it is believed by His Excellency's Government that it is clearly within the power of any one of the Legislatures to pass statutes on such a subject, even though they may conflict with the early statutes relating to religion or in any way connected with religion. On this point the cases already cited in this memorandum, as to the power to alter or to repeal Imperial enactments affecting a colony, seem to have force.

The point which is here being answered implies that the early British Legislation in relation to the Jesuits forms part of the Constitution of the Provinces. If that were so it might be answered that, by the terms of the British North America Act, the Legislature has the power, in each Province, to alter the Constitution of the Province, but the theory involved in this objection depends on a very loose notion of the Constitution.

The contention which has been raised in this connection has been carried so far as to assert that it is not in the power of a Provincial Legislature to make provisions inconsistent with the early statutes regarding the exercise of religion, which have never been repealed although long fallen into disuetude in the United Kingdom. This is not, however, the view which His Excellency's Government entertain, nor is it the view held by the large majority of those who recorded their votes on the resolution in the House of Commons, on this subject, at last session.

The free exercise of the power to regulate the civil rights of the people, and the full exercise of the ample powers of self government conferred by the British North America Act would be almost worthless if they were restricted within the lines marked out by obsolete enactments of the Parliament of Great Britain, which for many years have been found too restrictive of liberty to be put in practice in that country, and which certainly could not, at any time within the last century, have been applied to the colonies.

An Act to incorporate the "Society of Jesus," Chapter 38, of the Province of Quebec.

(*Assented to* 18*th May*, 1887.)

Whereas the Reverend Fathers of the Society of Jesus have prayed to be constituted into a corporation; and whereas it is expedient to constitute such religious community into a body politic and corporate like the other religious communities of this Province;

Therefore Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:—

1. The "Society of Jesus" shall be a corporation composed of the Reverend Fathers Henri Hudon, Adrien Turgeon, Leonard Lowire, George Kenny, Arthur Jones, and of all persons who now or may hereafter form part of the said society, in accordance with its rules, by-laws and regulations.

Under the above name it shall have perpetual succession.

It shall have a right to have a common seal, which it may alter at will, and to appear before the courts of justice in the same manner as any person may do.

It may possess, accept and acquire under any legal title movable and immovable property, which it may sell, alienate, hypothecate, give, lease, transfer, exchange or otherwise dispose of, by any title whatsoever; provided always that the annual revenue from the immovable property owned by the society for the purposes of revenue in any diocese, shall not exceed thirty thousand dollars.

2. The corporation shall not have the right under this Act to possess educational establishments elsewhere than in the archdioceses of Montreal and Ottawa and in the diocese of Three Rivers.

3. The corporation shall be governed in accordance with its community rules, and shall have powers to pass by-laws, rules and regulations with respect to the administration of its property, its management and internal government, the election, number and power of its officers and directors, the admission and dismissal of its members and, generally, all rules connected with the purposes of the corporation.

4. The corporate seat of the corporation shall be in the city of Montreal.

Another place in this Province, within the present limits of the archdioceses of Montreal and Ottawa and of the diocese of Three Rivers, may be selected later on by a by-law of the corporation.

5. The corporation may appoint officers, procurators or administrators and define their powers.

The signatures of the superior of the society in this Province or of the procurator of its chief establishment shall be sufficient for all legal purposes.

6. This Act shall come into force on the day of its sanction.

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