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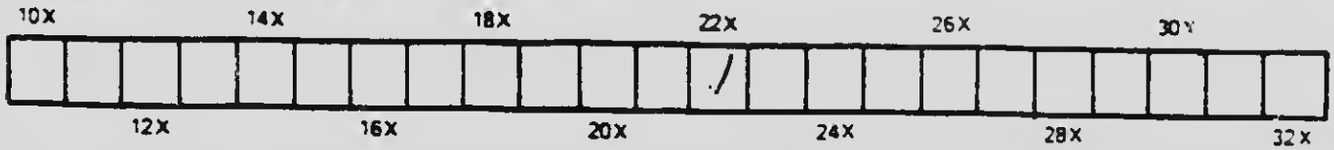

8.

Church History from the Archives

A STUDY. *By* HENRY KITTSON

Rector and Canon of Christ Church Cathedral, Ottawa

The Jackson Press, Kingston.

Price 10¢.

CHURCH HISTORY FROM THE ARCHIVES

A Study, by Henry Kittson.

I.

HISTORY AND ROMAN CLAIMS.

The marriage question, which is being so generally discussed throughout the Dominion, can be intelligently considered only by reviewing the conditions upon which the Province of Canada was transferred from the French to the British at the conquest and after. If it is admitted, as some seem willing to admit, "that when Quebec was ceded to the British an agreement was made, that the French language should be retained, and that the Civil Code of France should continue," then the claims of French Nationalists concerning their language and customs, as well as the oft-repeated demands for Roman jurisdiction over the laws of marriage must be conceded. On the other hand, if Kingsford, in his History of Canada (Vol. IV., p. 503), is right in stating that "the handful of people who surrendered at the conquest was granted no special privileges," then the claims of the Roman ecclesiastics, in the Province of Quebec, to control the State and to intervene in the courts of justice are not based upon the facts of history nor upon properly understood enactments of British legislature. It is the purpose of this pamphlet to show from history, that at no time after the conquest were any special or exclusive privileges granted to the Church of Rome, or to the French Canadians individually, or to the Province of Quebec, known then as Lower Canada, either by the terms of the Capitulation of Quebec or the Treaty of Paris, or the various acts passed by the British Parliament.

1. At the capture of Quebec the French officials attempted to dictate the terms of the capitulation, and demanded that the Church should have free exercise of its religion and that the jurisdiction of the Roman Catholic Bishop with all its rights, titles and privileges, as understood under the French King, should be recognized and conceded by the British. The answer to this far from modest demand was, that the Roman Catholics would have granted to them the privilege of the free exercise of their religion but that the question concerning the jurisdiction of the Church and the titles of the Bishop would be deferred to some other time when the wishes and intentions of

the King of England would be made known. The English assured them of the protection of the convents and of all ecclesiastical property. The free exercise of their religion meant freedom of worship in the administration of the Sacrament and other necessary offices of the Church.

The policy of toleration begun here was always in the mind of the British Government and was reiterated through the instructions given to the various governors by the King of England.

2. When the terms of the Treaty of Paris were discussed, the French made another attempt to have the former status of the Roman ecclesiastics recognized and established under British rule, by inserting in the sections, concerning the future position of the Church of Rome in Canada, the words "comme ci-devant," or "as heretofore." The English objected to this word and instead stated "the Roman Catholic subjects may profess the worship of their religion according to the rites of the Roman Church as far as the laws of Great Britain permit."

This phrase was finally accepted by the French.

History tells us that at this period the laws of Great Britain only tolerated the Church of Rome and allowed it freedom of worship, but no jurisdiction was officially recognized within the Kingdom. Moreover, the same Treaty of Paris contained these terms: "The King of France cedes and guarantees to his Britannic Majesty, in full right, Canada and its dependencies—and makes over the whole—in the most ample manner and form *without restrictions* and without any liberty to depart from the said cession and guarantee." The claim now made by high ecclesiastics and by political agents that Quebec demands what is really hers by guaranteed treaty rights is not based upon facts of history nor upon the records as given by the Canadian Archives in Ottawa and Quebec.

3. In 1774 the Quebec Act for the better government of the Province of Quebec was passed by the British Parliament. To understand the object of this Act we should study the report of the discussions that took place in the House of Lords, from which it originated, and in the House of Commons, where it was hurriedly passed in the presence of a very small number of the members. We should also study the voluminous instructions given by the King to the Governors of the Province. These instructions may be read in the Canadian Archives.

The Act is a short one. The most important sections are the fifth, sixth, eighth and ninth, which have reference to present discussions. The fifth sections exacts an acknowledgment of the King's supremacy, permits the priests of the Roman Church to demand tithes and gives them power to levy taxes for the building of churches. *No other privileges are mentioned.*

In section six the Church of England is recognized as the Established Church, and to be maintained from the resources of State funds. This is sufficient evidence to prove that at this date whatever the privileges of the Church of Rome may have been they were not those of an Established Church. Section eight of the Act is peculiarly worded. It enacts that "Canadian subjects in the Province of Quebec or Lower Canada (the religious orders and communities only excepted) may hold and enjoy property and possessions and all other civil rights —as may consist with their allegiance to his Majesty—and in matters of controversy relative to property and civil rights resort shall be had to the laws of Canada as the rule for the decision of the same." This section is limited as to territory by the ninth section confining this rule to a small portion of Lower Canada known as the seignories. The instructions given to Sir Guy Carleton, the Governor, clearly state that the British Government does not intend by this act to establish the Church of Rome but to regulate questions of property ownership and the civil rights of the citizens of the Province when in dispute.

4. In 1791 the Canada Act was passed by the British Parliament by which Canada was divided into two Provinces, each having a Governor, and a separate form of local government. It also made further provisions for the maintenance of the Church of England as the Established Church of Upper and *Lower* Canada. The state policy involved in this act was far from successful. Its final result was in the French Canadian rebellion of 1837 and 1838. This is beside our question, but it is further evidence that at that date the jurisdiction of the Church of Rome was not officially admitted, and that the jurisdiction of the Church of England alone was so recognized.

5. If we are to believe history and the records of the Canadian Archives, then we must conclude that "the guaranteed treaty rights of Quebec" are mythical; the use of the French language was a privilege and not a right, accorded to those who knew no other; the reference to French laws was limited to a small section of the present Province of Quebec and then as mere evidence of land tenure, and the limitations of the rights and duties of French Canadian citizens; that the toleration only of the Church of Rome was conceded by the terms of the Capitulation of Quebec, the Treaty of Paris, the Quebec Act of 1774, and the Canada Act of 1791; the jurisdiction of the Church and Pope of Rome as superior to the supremacy of the English King was never admitted; that the Roman Catholic Bishop in Quebec was designated as the "Superintendent of the Romish Church"; that the Anglican Bishop alone was designated as the Bishop of Quebec.

6. Finally, the Church of Rome is claiming to-day the rights and status accorded to it under the French rule. The records of the Archives reveal the true relationship between

the State and Church during that period. No Canadian Bishop or ecclesiastical dignitary was allowed to visit Rome or consult with the Pope without the license of the King of France and a statement from the Bishop or dignitary of the object of that visit to Rome. The King's supremacy was recognized in all churches and parishes by appointing the Bishops and priests and heads of colleges, by regulating the affairs of communities and convents, and by controlling the erection and establishment of orders. When the King hears that the ecclesiastics are interfering with the civil rights of individuals and even intruding into the courts of justice, he sends a peremptory order that those ecclesiastics who thus usurp the authority of the King shall suffer severe penalties. It is evident that the Church of Rome has greater liberty under the English King than when subject to the harsh rule and caprices of a French autocrat.

7. The present position of the question is this:

(1) The Roman Church claims the right of annulling marriages under the plea that the Canon Law, the French law, their treaty rights, give them power so to do in the Province of Quebec.

(2) That the French Canadians, no matter where they may be in Ontario and Manitoba, Saskatchewan and Alberta, can demand their "guaranteed treaty rights" as to their language, their religion and their customs or laws.

These two claims are the menace held over the heads of this English-speaking and British governed people of the Dominion of Canada. Even if mistakes have been made by a paternal and indulgent parliament in times past, that is no reason why we should suffer as we are suffering under an ecclesiastical and political tyranny that must eventually bring disaster upon our new nation. Our present policy is to study the history of the past in Canada and to prove the hollowness of the claims of Roman ecclesiastics and the demands of Nationalist agitators.

II.

BISHOP MOUNTAIN'S PROTEST.

In 1803, the first Bishop of Quebec, the Rt. Rev. Jacob Mountain, completed the tenth year of his episcopate. From the experiences of those years he was able to judge of the condition of the Church of England in Canada. He had succeeded in doing much, and the failures were not due to his lack of ability or of spiritual zeal, for his name still stands forth as one of the great episcopal missionaries of the Church of England. We must not forget that the Church in Canada was at that time established, and therefore subject to the temporal, and to

some extent to the spiritual or ecclesiastical rule of the home Government.

When letters patent were given for the appointment of Jacob Mountain to the see of Quebec, liberal support was promised for himself and the clergy of the Church; churches would be built and educational institutions would be organized and adequately supported. It was understood that the episcopate would be extended as the English population increased. In fact, the Church of England would be the only recognized religious body with the power and privileges of an Established Church. The Bishop tells the results in a long letter of protest and appeal addressed to Lieutenant-Governor Milnes. It is fully printed in the Archives Report of 1892, on page 16. Only salient points are given here for lack of space.

"Sansbruit, 6th June, 1803.

"Sir:—It is not without reluctance that I come forward at the present moment to request your Excellency's attention to the situation of Ecclesiastical affairs in this Province, not because I entertain any doubt respecting the importance or the urgency of the several matters which I wish to lay before you, but because the time in which His Majesty's Bounty is largely employed in completing a Metropolitan Church at Quebec may appear to be ill-chosen for soliciting higher distinction and more extensive protection.

"But after maturely considering the subject in its different relations and weighing with the best deliberation in my power, its political as well as its religious and moral influence upon the general interests of His Majesty's subjects in these provinces, I feel myself impelled by a sense of superior duty to surmount my scruples and submit to your Excellency's consideration the several points which appear to me of more immediate moment.

"The instructions which have been successfully issued to His Majesty's representatives (as far at least as they have been to my knowledge) the provision made by Parliament for the future maintenance of a Protestant clergy, the erecting of those provinces into a Bishop's see, and the assurance given to the Bishop on his appointment to it, have spoken with uniform decision the intentions of His Majesty's Government with respect to the actual Establishment of the Church of England here.

"I need not observe to your Excellency that what has been thus obviously intended has hitherto been very imperfectly effected . . . I must first beg permission to observe to your Excellency that it is not the interests of the Protestant inhabitants of Quebec, Montreal, Three Rivers, William Henry, and the settlers of the new townships (the last already amounting to many thousands and rapidly increasing) which are involved

in this question—important as these interests are—but those, also, of the whole Province of Upper Canada, which is at least equally concerned in the event of such an establishment. . . . I am sorry to be under the necessity of occupying so much of your Excellency's time. I suppress much that appears to me to be not unworthy of your attention, but there remains one point which, although I introduce it with pain, because I may again be personally interested, yet seems to have growing consequences of so much importance and extent I conceive it to be my duty humbly, but most earnestly, to recommend it to your Excellency's consideration.

"His Majesty was graciously pleased in the year 1793 to erect these provinces and their dependencies into a Bishop's see, 'to be called thenceforth (letters patent) the Bishopric of Quebec.' By successive Acts of his Government he had been pleased to provide for 'the Establishment of the Church of England both in principle and practice' and for the future maintenance of its clergy.

"It appeared to be His Majesty's gracious intention to leave to his subjects of the Romish Church 'a toleration of the free exercise of their religion, but not the powers and the privileges of it as an Established Church, for that is a preference which His Majesty deemed to belong to the Church of England alone.'

"Reserving to himself his just supremacy, His Majesty was pleased to 'forbid under very severe penalties all appeals to a correspondence with any foreign ecclesiastical jurisdiction of that nature or kind soever.' To prohibit 'the exercise of any Episcopal or vicarial power within the Province, by any person professing the religion of the Church of Rome, such only excepted as are essentially and indispensably necessary to the free exercise of the Romish religion, and that not without the license or permission from the Governor,' and 'during His Majesty's will and pleasure,' to direct, 'that no person should have Holy Orders conferred upon him or the care of souls without a license from the Governor,' and 'that all the right or claim in any person whatever, other than His Majesty, to present or appoint to any vacant benefice (patronage of civil right excepted) should be entirely abolished.'

"But what has your Excellency found, in truth and in fact, to be the state of things?

" 'The Superintendent of the Church of Rome (for such I understand to be his proper and legitimate appellation) is in the actual enjoyment of all the power and privileges of the most plenary episcopal authority, under which he visits not this Province only, or that of Upper Canada, but the Provinces also of Nova Scotia and New Brunswick.

"It is under the immediate sanction of the Pope's Bull that he and his Coadjutor enter upon the exercise of their Episcopal

functions. He selects, as I understand, without any license from His Majesty's representative or any reference to him, whomsoever he thinks proper for Holy Orders and the care of souls. He disposes absolutely, if I am not misinformed, of the whole patronage of his extensive diocese, and since the settlement of the French emigrant priests in this province he has come forward with decision, not only to assume, himself, in the public prints the title of the 'Bishop of Quebec,' but to add the splendid title of 'Monseigneur, Sa Grandeur, le venerendissime et illustrissime.' His Coadjutor wears the habit and assumes the rank of a Bishop, and likewise receives the title of Monseigneur. . . . I am far from wishing that the Roman Catholic clergy should be deprived of any of those privileges so liberally conceded to them for the free exercise of their worship or of any reasenable indulgence that they enjoy. I would rather (if it were permitted) express a wish that the Superintendent's allowance from Government were better suited to His Majesty's distinguished bounty. But if in addition to his extraordinary power and influence he be permitted to continue this high style of dignity, it is natural to ask what becomes of the establishment of the Church of England? If the Roman Bishop be recognized as the 'Bishop of Quebec' what becomes of that diocese which His Majesty has solemnly created and of the Bishop whom he has graciously pleased to appoint thereto? To authorize the establishment of two Bishops of the same diocese, of different religious persuasions, would be a solecism in ecclesiastical polity which I believe never took place in the Christian world; to attempt the union of two different Churches with the State I hardly conceive an experiment in the science of Government not less dangerous than novel.

"If all that has thus been unwarrantably assumed were permitted to be continued and by such permission were virtually to receive the sanction of His Majesty's Government, it would be an indulgence which (I speak with all humility and deference) would appear to contravene the laws and constitution of our country; it would be to place the 'Pope's Bishop' (for such he is) above the King's; it would be in my poor opinion to do all that can be done to perpetuate the reign of error and to establish the empire of superstition; and consequently it would be to grant an indulgence to the Canadians more injurious to themselves than even to the English inhabitants; for whatever would have a tendency gradually to introduce reformation of the Romish Church would be the greatest benefit Canadians would receive.

"I intreat your Excellency not to consider me as under the influence of an intolerant and uncharitable spirit in what I have here advanced; I am indeed attached to the Church of England by principle and not less by experience. Not to insist in this place upon the superior purity of her faith and practice,

I believe her to be the best friend to the security and happiness, both of the governing and the governed, of any that exists in the world. It is my bounden duty to watch over her interests. I now make what I intend should be, on my part, a last appeal on her behalf; I have the honor to make that appeal where it can be perfectly judged and will be candidly accepted. Again disclaiming, therefore, every wish to see the Romish Church deprived of any privilege which can be thought necessary to the complete and liberal toleration of its worship, I do not hesitate to conclude that unless some immediate and effectual remedy be applied to the abuses which have been gradually introduced; unless both the positive and relative situation of the Church of England in this country be speedily and radically changed, all reasonable hope of maintaining the Establishment of that Church will, in my judgment, be irrevocably lost. The Roman Catholic religion will be to all intents and purposes the established religion of the country; rapidly declining, as it should seem, in other parts of the world, it will not only find a safe asylum here, but be raised to pre-eminence and laid upon the broadest and most substantial basis.

"Such, sir, after long and, I think, unprejudiced reflection upon this subject, is my decided opinion. I have thought it my duty explicitly to state it. But these observations as well as the measures that I have ventured to suggest are submitted with the utmost deference to your Excellency's wisdom. And with the strongest persuasion that whatever shall appear to involve the real interests, present and future, of the people committed to your care will be thought not unworthy of your favorable consideration.

"I have the honor to be, with the highest regard, Sir, Your Excellency's most obedient and humble servant,--J. QUEBEC."

The result of this strong protest and appeal was an interview ordered by the Lieut.-Governor between Sewell, the Attorney-General, and Plessis, the Coadjutor Bishop. In this conference the Roman prelate was warned that the Church of Rome had no right or privilege but such as were permitted to a tolerated religion and that no privileges could be accorded to the Roman Bishops that were refused to the Bishop of the Church of England. There are two reports of this conference. Portions of these will be found in the next section.

III.

A NOTED CONFERENCE.

The letter of the Bishop of Quebec, written from his residence, "Sansbruit," in Quebec, on the 6th of June, 1803, which was an appeal as well as a protest against the failure of the Government to carry out the instructions of the King, and the

various enactments of the Home Governments, was received by His Excellency as worthy of immediate and serious consideration. The letter was sent to Lord Hobart, who had charge of Colonial affairs, who replied as follows:

"It will be highly proper that you should signify to the Catholic Bishop the impropriety of his assuming new titles or the exercise of any additional powers; and it would be right that you should intimate to him that no express orders have been issued upon the subject, it is expected that if any such (titles or powers) had recently been taken up that they should not be persevered in.

"The French emigrant priests should also be reminded that their residence in Canada is only upon sufferance and it is therefore all the more incumbent upon them to observe the utmost circumspection in their proceedings as they must be aware that the indulgence with which they have been treated by the British Government is liable to be withdrawn if they should render themselves undeserving of it by anything questionable in their conduct."

On receiving this instruction the Lieutenant-Governor of Lower Canada commanded the Attorney-General, Sewell, to confer with the Roman Catholic authorities, and two reports of the conferences that took place between Sewell and Plessis, the Coadjutor Bishop, are published in the Archives. In the first report the conversational form is used.

Plessis—"I have lately spoken to the Governor respecting the present situation of our Church and he has referred me to you on the subject."

Attorney-General—"It is highly necessary for you to have the means of protecting your Church, and to the Government, a good understanding with the ministers of a Church it has acknowledged by the Quebec Act, and at the same time to have them under its control. Let me also remark that the Government, having permitted the free exercise of the Roman Catholic religion, ought, I think, to avow its officers, but not, however, at the expense of the King's right or of the established Church. You cannot expect or ever obtain anything that is inconsistent with the rights of the Crown, nor can the Government ever allow to you what it denies to the Church of England."

Plessis—"Your position may be correct. The Governor thinks that the Bishops should act under the King's commission and I see no objection to it."

Attorney-General—"My principle is this: I would not interfere with you in concerns purely spiritual, but in all that is temporal or 'mixed' I would subject you to the King's authority. There are difficulties, I know, on both sides; on one hand the Crown will never consent to your emancipation from its power nor will it ever give you more than the rights of the

Church of England which has grown with the Constitution and whose power, restrained as it is, is highly serviceable to the general interests of the State; on the other hand, your Bishop will be loth to abandon what he conceives to be his right, I mean particularly the nomination to cures; yet that he must do for no such power is vested in the Church of England, and, if permitted, would be highly dangerous."

Plessis—"You said 'Conceives to be his right'; why so?"

Attorney-General—"The statute of the 1st of Eliz., Cap. 1, made for dominions which the Crown then had or might hereafter acquire, explains what I mean: It is that the Bishop has no power."

Plessis—"I know the 1st of Eliz., but, I confess, I did not know that it was extended to the Dominions which the Crown might hereafter acquire."

Attorney-General—"It certainly is. It was made at a time when England had most reason to be dissatisfied with the Roman Catholic religion, immediately after the death of Mary. It provided for the emancipation of all English subjects from the Papal power in all times and places."

Plessis—"Had Mary followed the advice of Cardinal Pole the statute would never have been passed; she would not then have disgraced herself and her religion by her cruelties."

* * * * * *

Plessis—"Our general Church Government is aristocratic but the Government of a Bishop is monarchial. He has the power of enacting 'reglemens' which must be obeyed. You will not probably admit this position."

Attorney-General—"The power of a Bishop extends to a forcing by his 'reglemens' the general principles of Government adopted by the Church. He cannot legislate, he can only enforce obedience to what is already enacted, to the canons and to the municipal laws of the country."

Plessis—"That is true, but our Canons are different, materially, from yours."

Attorney-General—"I cannot admit that. It was enacted in the reign of our Henry the 8th that the Canons then in force and not repugnant to the principles of the Reformation should continue in force until a review of them should be made, which never has been accomplished, so the Church of England is governed now by the Canons in force prior to the Reformation, which form the greater and most essential part of the Canons which govern the Church of Rome."

Plessis—"You state incorrectly; your Church, for instance, does not acknowledge the Canons enacted by the Council of Trent."

Attorney General—"The Gallican Church certainly does not."

Plessis—"Yet the Canons of the Council certainly were in force in France."

Attorney-General—"Yes, the greater part, but that was because the Kings of France enacted them in their Ordinances. On this head you cannot suffer, for these Ordinances are at this moment component parts of the municipal law of Canada."

* * * * * *

Attorney-General—"Pray, keep in mind what I have said that you never can obtain anything inconsistent with the prerogatives of the Crown nor, at all events, any rights that the Church of England does not possess."

These are the closing words of this conference, the report of which has been necessarily very much condensed. Sufficient has been given to reveal the position of the contending parties. The second report of the Attorney-General refers to a later conference with Bishop Plessis. It deals with more definite terms and more positive statements.

The Attorney-General reports:

"May it please Your Excellency:—I have the honor, in obedience to your commands, to report to Your Excellency the substance of the conversation which passed between Mr. Plessis, the titular Roman Catholic Bishop, and myself on the 21st inst. (May, 1805). He entered first into a general view of the state of the Roman Catholic Church in this Province, its toleration by law, under the capitulation and the Quebec Act, and the assistance afforded to its support by this, inferring from thence it was an established religion and, consequently, that the Crown ought not only to recognize its officers but to invest them with all the powers to which they had formerly been entitled under the Government of France.

"In answer to this I briefly observed that things were so much changed since that period by the introduction of a Protestant Government that no idea of the kind could be entertained for a moment. I recalled to his recollection what I had said in our first conversation, respecting the Church of England, and asked if he conceived possible for the Roman Catholic Church to obtain what was denied to the National Establishment, intimating, at the same time, that he ought to be contented with much less.

"In the further progress of our conversation he entered into a specific numeration of what the members of the Church thought themselves entitled to, and I shall endeavor to detail his demands with my answers as generally but as accurately, and at the same time as distinctly, as I can. Our dialogue was too long to admit an attempt on my part to relate it more particularly.

"1. 'That the Bishop should be created a Corporation by some title which would distinguish him from the Protestant Lord Bishops of Quebec.

"To this I answered that there was no Catholic Bishop of Quebec, nor could the Government, in my opinion, recognize such a character without an Act of the Imperial Parliament. That a Superintendent of the Roman Catholic Church might be appointed and an Assistant Superintendent with such salary, rank and precedence as the Crown might think fit to grant, and that such titles would sufficiently distinguish them from the said Bishop of Quebec. That they would be civil officers of the Crown and might take, in silence, from the Pope such ecclesiastical qualifications as in conscience they might require to enable them to execute the duties of their ministry. That I could say nothing about their corporate capacity, but conceived that their officers, like all other Colonial appointments, would be held during pleasure.

"Secondly. 'That the Bishop would appoint his own Grand Vicaires and Subordinate Officers.'

"To this I answered I saw no material objection, provided it was done with the approbation of the Governor, and that the appointment would be for spiritual purposes only.

"Thirdly. 'That the Bishop should have an ecclesiastical court for the government of his clergy.'

"To this I replied that the Government ought to give the Bishop a jurisdiction over his clergy subject to the controlling power of the King's Bench.

"Fourthly. 'That the Bishop should have control over the revenues of religious communities.'

"To this I answered that the revenues of the religious communities were their own, but that the King was legally the Visitor of every community.

"Fifthly. 'That the Bishop should have power to regulate the fees for marriages, baptisms, funerals, etc.'

"To this I said that, by the Ordinance of Blois, which is the law of the present time in Canada, the parishes had power to fix the fees. The law in this respect could not be changed.

"Sixthly. 'That the Bishops should finally audit and control the accounts for all buildings and repair of churches, etc.'

"I answered that the King's courts were the proper final auditors of accounts for money so expended.

"Seventhly. 'That the Bishop should retain the nomination to livings, but not present without the concurrence of the Governor.'

"I answered that the nomination and presentation must remain in the Crown exclusively.

"Eightly. 'That livings should not be permanent, but held during pleasure.'

"I answered that a living should be held during pleasure and during good behavior.

"Ninthly. 'That the Bishop should have two or more Coadjutors.'

"I answered that one was sufficient, and he could not expect more.

"Tenthly. 'That the Bishop should receive a salary or pension of £1,500 and the Coadjutor £750 per annum.

"I answered that on this point I could say nothing.

"Eleventhly. 'That the Superintendent of the Catholic schools should be vested in the Catholic Bishop of Quebec.'

"I answered very briefly that this was impossible.

"Twelfthly. 'That Bishops should be empowered to erect parishes.'

"To this I answered that the right of erecting parishes was clearly vested in the Crown exclusively, which was an authority common to the Church of England and the Church of Rome. That the power of dividing up the Provinces into parishes, even of the Established Church, not being vested in the Lord Bishop of Quebec, could not be granted to the titular Catholic Bishop.

"All which is most respectfully submitted, etc., etc.

"J. SEWELL, Attorney-General,

Quebec, May, 1805."

It is evident from these reports that while the Church of Rome was in a measure recognized and tolerated, nevertheless, it had not the position or rights of an Established Church nor even that of a body incorporated by law, but only as a religion whose adherents had the freedom of practising it, and its ministers the right of ministering its spiritual functions, all being under the direct control of the Crown. The emigrant priests must be clearly distinguished from the native-born priests of Canada. From the minds of the latter the sentimental regard for the old land, France, had almost faded away, but the emigrant priests were suspected of disloyalty and of intrigue against the British occupation.

The entire subordination of the Church of Rome to British rule will be more evident from the letter of Bishop Denaut to the King and the comments of the Lieutenant-Governor on the situation.

IV.

BISHOP DENAUT, A HUMBLE SUPPLIANT.

The first letter is from Lieut.-Governor Milnes of Lower Canada to Lord Camden, who had charge of colonial affairs. It is to be noted that the date of this letter is two years later than Bishop Mountain's protest in May, 1803, so slowly moved the sands of time in those colonial days:

"Quebec, 27th of July, 1805.

"My Lord:—It is with the highest satisfaction that previous to my departure from Quebec I am enabled to transmit

to your Lordship the petition of Mr. Denaut to His Majesty, which I have the honor to enclose, and which I flatter myself will give an opening to the final arrangement of those objects with regard to the Roman Catholic clergy which I have had in view for several years past and had the honor to submit to your Lordship's consideration in my despatch No. 28.

"I feel myself called upon in justice to Mr. Denaut to state to your Lordship that I have found him uniformly candid and open in the course of several conversations we have had on this subject, and I believe there is no man more truly attached to the Government than he is.

"Your Lordship will observe that in signing the enclosed petition to His Majesty, Mr. Denaut styles himself, 'Bishop of the Roman Catholic Church,' and prays that he may be formally acknowledged as 'Bishop of the Roman Catholic Church of Quebec,' a title by which he is not acknowledged in the King's instructions to the Governor when he is only called the 'Superintendent of the Romish Church.'

"But though the title was not allowed by the instructions, it has always been used in courtesy, except in official letters from the Governor, and Mons. Denaut as well as his predecessors, has usually been addressed by the title of Monseigneur, not only by the society in general, but also by the persons administering the Government. I have endeavored to make Mr. Denaut understand the due distinction, but as he always has been in the habit of signing as Bishop of Quebec I did not insist upon a different signature for the present, being unwilling on this occasion to hurt the feelings of a man of his advanced age, who has in this instance conducted himself with so much propriety.

"As my departure from Quebec is fixed for the beginning of next month, multiplicity of business which arises at this moment will not allow me sufficient time to enter at length into every particular relating to this most interesting subject, which includes so many various points of consideration, I shall therefore defer troubling your Lordship any farther at present in the hope of being allowed to lay them personally before you, or, if your Lordship should permit me to furnish you on my arrival in England with such statements as your Lordship may desire to have.

"I have the honor to be, my Lord, etc., etc.,

"ROBERT S. MILNES."

Bishop Denaut's petition was addressed to the King and was written in the French language. In the Archives it can be read in the original and in the English translation. But the translation has an omission that obscures the meaning of the sentence; the words "to have Bishops" being omitted.

PETITION OF MGR. DENAUT TO THE KING.

"To His Most Excellent Majesty the King, the humble petition of Pierre Denaut, Bishop of the Roman Catholic Church, who takes the liberty to approach Your Majesty's throne to represent most respectfully:—

"That the Roman Catholic religion having been introduced into Canada with its first settlers, under the former Government of France, the Bishopric of Quebec was erected in sixteen hundred and sixty-four, and has been successively filled by Bishops of whom the sixth died in seventeen hundred and sixty, the date of the conquest of this country by Your Majesty's arms;

"That since that date, the Catholics, who form upwards of nineteen-twentieths of the population of your Province of Lower Canada, have continued, by Your Majesty's goodness, to have Bishops, who after taking the oath of allegiance before Your Majesty's representatives in this Province in Council, have always exercised their functions with Your Majesty's permission and under the protection of different Governors whom it has pleased Your Majesty to appoint for the administration of this Province, and that your petitioner is the fourth Bishop who directs this Church since Canada happily passed to the Crown of Great Britain;

"That the prodigious extension of this Province and the rapid increase of the population require more than ever that the Catholic Bishop would be invested with such rights and dignity as Your Majesty may think suitable, to direct and rule the clergy and the people, and to impress more strongly on their minds those principles of attachment and loyalty towards their Sovereign and of obedience to the laws which the Bishops of this country have constantly and strongly professed;

"That, nevertheless, neither your petitioner, who for eight years has guided this Church, nor his predecessors from the Conquest, nor the rectors (curés) of parishes have had from Your Majesty that special authorization of which they have frequently felt the need to prevent the doubts which might arise in the courts of justice in respect to the exercise of their civil functions;

"Wherefore may it please Your Majesty to permit your petitioner to approach Your Majesty and to pray him humbly to give such orders and instructions as in his royal wisdom he may deem necessary, that your petitioner and his successors be civilly recognized as Bishops of the Roman Catholic Church of Quebec and enjoy such prerogatives, rights and temporal emoluments as Your Majesty shall graciously attach to that dignity.

"For further details, your petitioner prays Your Majesty to refer to the information which His Excellency Sir Robert

Shore Milnes, Baronet, Your Majesty's Lieutenant-Governor, may undertake to give Your Majesty.

"And your petitioner shall continue to address to Heaven the most ardent prayers for the prosperity of Your Gracious Majesty, of his august family and of his Empire.

"PIERRE DENAUT, Bishop of the Roman Catholic Church."

The petition of Bishop Denaut, with all its humility and frank admissions of the disabilities of the "Romish Church," was nevertheless a bold step towards a position which the ambition of Roman prelates were aiming at, that is the supremacy of papal power in the Province of Quebec. The power behind the episcopal throne of Mgr. Denaut was the Coadjutor Bishop, Plessis. This young prelate was a native-born Canadian of humble parentage, but with abilities that placed him easily at the head of the Church. Educated and trained for rapid promotion in his own province, he soon showed his diplomatic skill and his astuteness in successfully dealing with the difficult questions of his day.

After the death of Bishop Denaut, Plessis became Bishop of the Roman Catholic diocese of Quebec. As Denaut's petition received no favorable reply, Bishop Plessis made a formal application for recognition as Roman Catholic Bishop of Quebec on the 12th of May, 1812.

At this time England was in considerable trouble and Canada was repelling an invasion from the hostile Americans. Whether these conditions were taken advantage of oy the Roman Catholic prelate as a favorable time to secure further privileges from the Government cannot well be discussed in these papers; nevertheless, a few years after Bishop Plessis was summoned to the Legislative Council under the title of the "Roman Catholic Bishop of Quebec" on the 5th of February, 1818; "with a clear understanding of the limitations that apply to it." (Can. Arch. Q. 148, p. 117).

The reason for this final movement is recorded in Sherbrooke's frank avowal to Bathurst, Jan. 6. 1817. that the object of the Government in admitting Mgr. Plessis to the Council was "to serve as a counterpoise to the House of Assembly," or, in other words, the appointment of Plessis was a political move (Can. Arch. Q. 143, p. 49).

It must be remembered that while Bishop Plessis was recognized as Roman Catholic Bishop of Quebec no letters patent were issued by the King as in the appointment of Bishop Mountain, and the limitations of that recognition were official rather than personal. Thus for more than half a century the Roman Church in Canada was only tolerated and had, as a body, no legal standing. It must be noticed that the humble requests of Bishop Denaut had not been complied with, although the Government was more and more inclined to overlook the

encroachments of the Church of Rome and the usurpation of power in matters that were clearly temporal.

An interesting part of our subject is the relative position of the Church and State during the French Regime in Canada. This subject is extensively recorded in the Archives and a condensed review will be given of the French King's instructions to the Governors of New France.

V.

KINGS OF FRANCE AND THE GALLICAN CHURCH.

We often hear or read, from French-Canadian sources, that what is asked as a privilege or right of their Church and people is the position once held by them during the French régime.

In making this statement they are careful to place in a strong light the privileges enjoyed by the Church and people, but force into the background the cost of these privileges through the submission exacted by the representatives of the King and the loss of freedom to manage their own affairs.

The Gallican Church and state had grown together as the English constituent had grown with England's Church. At times the Church dominated through the genius of some great cleric, and again the state made its supreme authority felt, especially when secular questions were involved with ecclesiastical domination.

The Canadian Archives reveal such a condition when the Gallican Church and state were of one language and nationality and Canada was but a weak colony governed by the autocratic Government of France. The state, although generously disposed towards the Church, and showing this generosity by liberal contributions towards the maintenance of the parishes and support of the various religious institutions of Canada, nevertheless strongly resented any attempt by the ecclesiastics to encroach upon the domains of the state or courts of justice. Sometimes this resentment declared itself through the direct rebuke or commands of the King, but chiefly by private instructions given to the Governor and by careful and discreet diplomacy, especially when dealing with the assumptions or unauthorized actions of the Jesuits.

The Church was by no means what it is to-day in the Province of Quebec. It was then obliged to accept, from the King's authority, power to carry on even its spiritual work. It could not freely elect its Bishops or nominate its parish priests. Religious communities were organized or suppressed by the power of the King. The parishes were opened or closed by order of the state. Even papal bulls required the decrees of the parliament and sovereign council, as well as registration, before they became parts of the law of the land. The Royal

instructions and correspondence are voluminous. A careful examination of them in connection with the position of the Church and State in the 17th and 18th centuries of Canadian history will well repay the earnest searcher after truth.

The following quotations are chiefly from the Archivist Report of 1899, being the result of Mr. Edouard Richard's labors in the Archives of France. They are the edicts, despatches and letters of the King to the Governors, Intendants and Bishops of Quebec, either directly or through his authorized minister. The pages at the end of each section refer to the report.

"May 5, 1700.—To the Bishop of Quebec: His Majesty is very glad that churches are being built; grants again the 8,000 livres for the livings but hopes that this will no longer be necessary. His Majesty sees with regret the multiplication of establishments for religious of both sexes. The Convent of Ursulines, at Three Rivers, was perhaps not necessary, and for want of means it may have to be dissolved. His Majesty is willing to allow it to exist, but will not give letters patent. He regrets, also, that he (the Bishop of Quebec) should on his own authority have withdrawn nuns from the Hotel Dieu to send them to the General Hospital. Cannot approve of the latter being made into a convent. It must be under the direction of administrators like all the general hospitals in the Kingdom. He is to take care of the older establishments which are already too numerous." p. 100.

May 31, 1701.—"Royal ordinance authorizing establishment of Ursuline nuns at Three Rivers: Number of nuns limited to eight. Will grant letters patent on being furnished with proof that the fixed income is sufficient for the support of the establishment." p. 102.

May, 1671.—Answers to consultations had by the King respecting the vows taken by the Congregation de Ville Marie and by Hospitaliers. It does not appear that the King's intention in granting letters patent to these sisters was to make real nuns of them. According to all authorities and the practice in the first times of the Church and to the royal statutes, the liberty of the King's subjects belonged to the King and not to the Church. The King can grant or refuse the founding of a religious community, the privilege of assuming vows, etc., etc. This permission once granted, the religious authority alone has the right to judge whether the person asking to take such vows possesses the necessary disposition to find holiness therein. The daughters of the congregation having been established to live a secular life only should not without permission from the King change their status and their rule of life by imposing upon themselves the obligations of taking vows, whether simple or solemn. p. 194.

June 6, 1708.—The King's letter to M. Randot shows that it is not His Majesty's intention that the daughters of the Congregation of the Hospitaliers should take vows. M. Randot notified them to that effect. p. 194.

November 25, 1743.—A royal ordinance was issued concerning Canada, the most important provisions were: That no religious community could exist or be formed without royal permission and letters patent; that the properties which such communities might hold was solely and exclusively that designated in the letters patent, and it could not be added to either by gift, purchase or otherwise without royal letters of permission. Notaries were forbidden to make or receive for the communities and holders in mortmain any deed of sale or exchange donations, cession of money or lands, conveyance or deed, attesting the possession of property, etc., etc., under pain of nullity, etc., etc. p. 143.

July 12, 1707.—"His Majesty is quite willing to continue the grant to the Hospitaliers of Montreal, the gratuity he has heretofore allowed them, but they are not to take any vows, to wear uniform or assume the name of Brothers, etc., etc. There are already too many communities and convents in Canada. If they do not observe and adhere strictly to these conditions they are to be dismissed." p. 204.

"Considers that communities owning large estates should contribute for fortifications." p. 204.

March 27, 1663.—Royal Memorial to serve as instruction to Sr. Talon going to Canada as Intendant of Justice, Police and Finance: "Those who have made the most faithful and disinterested reports have always said that the Jesuits have assumed an authority to which they are not entitled. In order to maintain it they secured the appointment of M. Laval as Bishop, as one entirely dependent upon them; in fact, they have also nominated the Governors and used every means to obtain the cancelling of the appointment of those who were not wholly devoted to their interests. Must study the situation and so act that the spiritual authority shall be subordinate to the temporal." p. 245.

April 5, 1668.—Royal instructions to the Sr. Bouteroue going to Canada as Intendant. Must take a census every year, encourage marriage and the peopling of the colony. Has reason to think that the Bishop and the Jesuits are establishing too solidly their authority by means of the fear of excommunications and the too great severity of life they wish to maintain. . . . Must prevent as much as possible the excessive number of priests, monks and nuns. p. 235.

1669.—Instructions to Gaudain: "He will inquire into the conduct of the Bishop and Jesuits, but with much discretion and prudence.

"He is to patronize or favor the Recollets and Sulpicians in order to moderate the authority assumed by the Jesuits." p. 248.

August 15, 1669.—Instructions to De Courcelles about Talon: "Must act prudently with regard to the Bishop or rather the Jesuits. As the country becomes more densely peopled it will be easier to render royal authority paramount over that of the Church. Meantime, he may, by acting cleverly about it, prevent, without causing rupture, any ambitious enterprise they may undertake." p. 248.

1672.—The King to Frontenac: "Must treat the Jesuits who deserve it for their zeal with a great deal of consideration; but if they should attempt to carry ecclesiastical authority too far he must reprehend them with gentleness. He is to protect in like manner the Sulpicians and Recollets, so as to counterbalance the authority of the Jesuits." p. 253.

1676.—"Must settle the little trouble with the Bishop";

"Must maintain his authority firmly in all military matters and support the privileges of the Crown and the Gallican Church." p. 259.

To Duchesneau, Intendant of Justice: "Although the Bishop is a good man he does not hesitate to assume an amount of authority far exceeding that which Bishops exercise throughout the Christian world. As the Bishop assumes too great an authority it may be well, by the use of skilful expedients, to deprive him of the desire of being present at the Council." p. 260.

1677.—Letter to Frontenac: Has told the Bishop's Vicar that the letters erecting the Bishop of Quebec must be registered at the Parliament of Paris, upon the letters patent (which will be issued in pursuance of the bulls) before being registered at the sovereign council, for the council must conrfo mto the decrees which will emanate from the parliament. p. 261.

1678.—The Sovereign Council must endeavor to keep the clergy within their sphere; must promote the establishment of fixed cures or parishes whenever the settlers demand them. The ordinance he has issued concerning tithes relates to matters devolving upon him (Frontenac) only and he ought to know that cures held only during pleasure are contrary to the canons, councils and the laws of the Kingdom. p. 262.

1681.—To Bishop of Quebec: "Has given instructions to Duchesneau to inform him of the King's intention concerning Church matters." p. 265.

1682.—Must enquire into condition of tithes and the building of churches, for the King does not intend to continue to give assistance any longer. p. 266.

1684.—The King is surprised that the Bishop has refused to allow the Recollets to go on missions and thereby deprive

the settlers the consolations of religion. His Majesty's will is that he so employ them. The King reduces the grants to parishes and will stop them entirely in three years. p. 268.

1685.—The King to De Meules: "M. de la Barre having failed to settle question of fixed parishes he (the King) has accepted the Bishop's resignation and has had Abbe de Chevrieres appointed in his place." p. 270.

The Bishop-elect is allowed passage for himself and suite of twenty persons upon the vessel, "Le Fourgon." p. 271.

1689.—The King to Frontenac: Will befriend the clergy but prevent the Jesuits from encroaching upon the civil authority.

1702.—The King has informed the Bishop that for the collection of tithes he must employ other means than the refusal of absolution and of the Sacrament at Easter. p. 362. Note: The Bishop had issued an order to his priests to refuse absolution and the Sacrament to those who had not paid their tithe.

1707.—Letter from the minister to the Vicar General of Canada: "In the account I gave the King in relation to the levying of tithes in Canada I could not avoid informing His Majesty that one of the parish priests of that country was so impudent as to add to the commandments of the Church a seventh commandment for the payment of tithes; and that he had made it the subject of a sermon. His Majesty has commanded me to say to you that he desires you to administer a sharp rebuke to the said parish priest for having so abused of his ministry in this matter ;and you are to warn him that if the like should happen again His Majesty will have him punished. p. 111.

July 5, 1702.—The King permits the Bishop of Quebec to go to Rome to attend to the union of the abbeys with his bishopric, which union he (the King) has granted to him. p. 363. Note: There was a standing order that no ecclesiastic could visit Rome without a license from the King or Governor and a statement of the business to be transacted there.

1715.—The King to the Bishop of Quebec: The King has not thought proper to cancel the decree of the council in case of M. St. Pierre against Father Joseph in as much as there has been no encroachment on the ecclesiastical jurisdiction. Father Joseph was wrong in refusing, in writing, to give absolution to Mademoiselle de St. Pierre and above all in stating the cause of his refusal. p. 497.

July 31, 1736.—Ordinance of M. Hocquart permitting Marie Gay, minor, of the age of twenty-three and a half years, to contract marriage with Joseph Marie Lemieux, after three respectful notificatoons to her father, Michel Gay, notwithstanding the opposition of the said Michel Gay. p. 145.

Sufficient evidence has been given through these quotations from the ordinances and letters of the Kings of France

to prove that the Gallican Church, unfettered as yet by ultramontane influences, was the Established Church in Canada with all the privileges and advantages of such an institution, but subject, nevertheless, to the restraining power of the state and obliged to recognize the supreme authority of the King of France in matters concerning at least the temporalities of the Church.

Those who are familiar with the present status of the Church of Rome in the Province of Quebec mark the vast changes that are even now taking place through the attitude of the clergy and the claims for a position in this country that the Church never enjoyed even in the most favorable days of the French régime. No one could wish a harsher fate for that Church than to be again subject to the stern rule of a Frontenac or the sharp reproofs of a Louis XIV.

VI.

INSTRUCTIONS TO GOVERNORS OF CANADA.

The apparent inconsistencies of the French and English Governments concerning the Church of Rome, in Canada, is a puzzling question to those who have little or no knowledge of early Canadian history. It is often said that both Governments were favorable to the Church, and acts, statutes and treaties are quoted which speak in a kindly tone concerning the claims of the hierarchy or members of that Church. Then again there are incidents in history that imply, at times, almost a violent animosity and a strong desire to curb the growing power of this foreign ecclesiasticism. The fact is that the Church of Rome as representing the religion of a very large majority of the original inhabitants of Canada had inherent claims and vested rights which she presented to and were acknowledged by the ruling powers of the day. On the other hand, the Church was more and more inclined to assume a position which had not been legally given to her and to encroach upon the jurisdiction of the civil powers, and for this met the strong opposition of Kings and Governments. Hence the acts of Parliament and terms of treaties find their true interpretations in the instructions given to the Governors of this colony.

The following are some of the instructions sent by the English Government to the Governors and officials of Canada:

August 13, 1763.—From the Secretary of State Egremont to Murray: "That he (Murray) has been appointed to the Government of Canada, over which he has so long presided with applause; His Majesty has reason to suspect that the French may be disposed to avail themselves of the liberty of the Catholic religion granted to the inhabitants, to keep up their connections with France and to induce them to join for

the recovery of the country. The priests must therefore be narrowly watched and any who meddle in civil affairs be removed. Whilst there is no thought of restraining the new subjects in the exercise of their religion according to the rites of the Romish Church, the condition is as far as the laws of Great Britain permit, which can only admit of toleration, the matter being clearly understood in the negotiations for the definite treaty of peace, the French ministers proposing to insert the words "Comme ci devant," and did not give up the point until they were plainly told that it would be deceiving them to insert these words. He is, however, to avoid everything that can give the least unnecessary alarm or disgust to the new subjects. The greatest care must be used against the priest Le Loutre, should he return to Canada, where he is not to be allowed to remain, and every priest coming to Canada must appear before Governor for examination and to take the oath of allegiance. He is to be on his guard with respect to the conduct of Abbe Lacorne, Dean of the Chapter of Quebec, who, according to papers transmitted, has been trying, whilst in Britain, to set on foot negotiations to establish rules for exercising the Catholic religion in Canada, in which he was supported by the French Ambassador, who urged that he (Egremont) should confer with Lacorne, a request that was constantly refused; he would neither see nor enter into any discussion with him, stating that the French King had no right to interfere between His Britannic Majesty and the new subjects. Should there be reason to suspect him (Lacorne) of interfering in civil or political matters he is to be warned in clear terms to confine himself to the duties of his station in the Church. If he confines himself to the duties of his office he is to be treated with that civility and respect due to persons of his order and character."

When Murray entered upon the duties of his office as Governor of the Province of Quebec he received further orders and instructions as follows:

"And whereas we have stipulated by the late definite treaty of peace, concluded at Paris, the 10th February, 1763, to grant the liberty of the Catholic religion to the inhabitants of Canada and we will consequently give the most precise and most effectual order that our new Roman Catholic subjects in that Province may profess the worship of their religion according to the rites of the Roman Church, as far as the laws of Great Britain permit, it is therefore our will and pleasure that you do, in all things, regarding the said inhabitants, conform with great exactness to the stipulations of the said treaty in this respect. You are not to permit of any ecclesiastical jurisdiction of the See of Rome or any other foreign ecclesiastical jurisdiction whatsoever, in the Province under our Government. And to the end that the Church of England may be established both in principle and practices and that the said in-

habitants may by degrees be induced to embrace the Protestant religion, and their children be brought up in the principles of it; we do hereby declare it to be our intention when the said Province shall have been accurately surveyed and divided into townships, districts, precincts or parishes in such manner as shall be hereinafter directed, all possible encouragement shall be given to the erecting of Protestant schools in the said districts, precincts and townships by setting, appointing and alloting proper quantities of land for the purpose, and also for a glebe, and maintenance for a Protestant minister and Protestant schoolmasters; and you are to consider and report to us, by our Commissioners for trade and plantations, by what other means the Protestant religion may be promoted, established and encouraged in our Province under your government."

Such were the intentions of the English Government concerning the ecclesiastical affairs of the Province of Quebec. There is no evidence of the special favors through treaties or agreements in settling the tolerated status of the Church of Rome. The Church of Rome was free in the exercise of its religion within well defined limits.

January 3, 1775.—Royal instructions to Governor Carleton: "The establishment of proper regulations in matters of ecclesiastical concern is an object of very great importance and it will be your indispensable duty to lose no time in making such arrangements in regard thereto as may give full satisfaction to our new subjects in every point in which they have a right to any indulgence on that head; always remembering that it is a toleration of the free exercise of their religion of the Church of Rome to which they are entitled but not to the powers and privileges of it as an established Church, for that is a preference which belongs only to the Protestant Church of England."

Upon these principles therefore and to the end that our just supremacy in all matters ecclesiastical, as well as civil, may have its due scope and influence, it is our will and pleasure:

First—That all appeals to, or correspondence with, any foreign ecclesiastical jurisdiction, of what nature or kind so ever, be absolutely forbidden under severe penalties.

Secondly—That no Episcopal or vicarial powers be exercised within our said Province by any person professing the religion of the Church of Rome, but such only as are essentially and indispensably necessary to the free exercise of the Romish religion; and in those cases not without a license and permission from you under the seal of our said Province for and during our will and pleasure, and under such other limitations and restrictions as may correspond with the spirit and provision of the act of Parliament "for making more effectual provision for the government of the Province of Quebec." And no per-

son whatever is to have holy orders conferred upon him or to have the cure of souls without a license for that purpose first had and obtained from you.

Thirdly—That no person professing the religion of Church of Rome be allowed to fill any ecclesiastical benefice or to have and to enjoy any of the rights or profits belonging thereto, that is not a Canadian by birth (such only excepted as are now in possession of any such benefice) and that is not appointed thereto by us or by or under our authority and that all right or claim of right in any other person whatever to nominate, present or appoint to any vacant benefice, other than such as may lay claim to the patronage of benefices as a civil right to be absolutely abolished. No person to hold more than one benefice and at least not more than can reasonably be served by one and the same incumbent.

Fourthly—That no person whatever professing the religion of the Church of Rome he appointed incumbent of any parish in which the majority shall solicit the appointment of a Protestant and entitled to all tithes payable with such parish; but nevertheless the Roman Catholics may have the use of the church for the free exercise of their religion at such time as may not interfere with the religious worship of the Protestants. And, in like manner, the Protestant inhabitants in every parish where the majority of the parishioners are Roman Catholics shall, notwithstanding, have the use of the church for the exercise of their religion at such times as may not interfere with the religious worship of the Roman Catholics.

Fifthly—That no incumbent professing the religion of the Church of Rome, appointed to any parish, shall be entitled to receive any tithes for lands or possessions occupied by a Protestant; but such tithes shall be received by such persons as you shall appoint and shall be reserved in the hands of our receiver-general as aforesaid for the support of a Protestant clergy in our said Province to be actually resident within the same, and not otherwise according to such directions as you shall receive from us in that behalf. And in like manner all growing rents and profits of a vacant benefice shall, during such vacancy, be reserved for and applied to the like uses.

Sixthly—That all persons professing the religion of the Church of Rome which are already possessed of, or may hereafter be appointed to, any ecclesiastical benefice, or who may be licensed to exercise any power or authority in respect thereto, do take and subscribe before you in Council or before such person as you shall appoint to administer the same, the oath required to be taken and subscribed by the act of 1774.

Seventhly—That all incumbents of parishes shall hold their respective benefices during good behavior, subject, however, in cases of any conviction for criminal offences, or upon due proof of seditious attempts to disturb the peace and tran-

quility of our government, to he deprived or suspended by you with the advice and consent of a majority of our said Council.

Eighthly—That such ecclesiastics as may think fit to enter into the holy state of matrimony shall be released from all penalties to which they may have been subject in such cases by any authority of the See of Rome.

Ninthly—That freedom of burial of dead in churchyards be allowed indiscriminately to every Christian persuasion.

Tenthly—That the royal family be prayed for in all churches and places of holy worship, in such manner and form as are used in this Kingdom; and that our arms and insignia be put not only in all such c..urches and places of holy worship, but also in all courts of justice; and that the arms of France be taken down in every such church and court of justice where they they may at present remain.

That all missionaries among the Indians, whether established under the authority of, or appointed by, the Jesuits, or by any other ecclesiastical authority of the Romish Church, be withdrawn by degrees and at such times and in such manner as shall be satisfactory to the said Indians, and consistent with the public safety; and Protestant missionaries appointed in their places; that all ecclesiastical persons whatsoever of the Church of Rome be inhibited upon pain of deprivation, from influencing any person in the making of a will, from inveigling Protestants to become Papists, or with tampering with them in matters of religion, and that the Romish priests he forbidden to inveigh in their sermons against the religion of the Church of England or to marry, baptize, or visit the sick, or bury any of our Protestant subjects if a Protestant minister he upon the spot. You are at all times and upon all occasions to give every countenance and protection in your power to such Protestant ministers and schoolmasters as are already established within our said province or may hereafter be sent thither."

Remembering that the instructions to Murray were given at the period of the Treaty of Paris in 1763 and those to Carleton immediately after the passing of the Quebec Act in 1774, it is an easy matter to conclude that the liberty of French Canadians in the exercise of their religion, the use of their language and the jurisdiction of French law was very limited. Their religion was only tolerated, the use of their language was a privilege not legalized until 1849, and the French law was restricted to land transfers and municipal questions. The act of 1774 gave the Church power to exact tithes from its members and levy taxes for the erection of churches; but the French habitants to this day refuse to raise grain from which tithes can be collected and the taxes for erecting churches cannot be levied except by the majority vote of the parishioners. The instructions to Governors must now be taken as an expla-

nation of the various acts of the government and as denials of the claim that the State is bound by its acts to admit the rights of the Roman Church in demanding the utmost freedom in its administration of the temporal and spiritual affairs of th Province of Quebec.

VII.

CANON LAW AND MARRIAGE.

In discussing the marriage law of the Province of Quebec, much is said of the authority and the recognition of Canon Law. The usual opinion about Canon law is, that it is the law by which the members of the Church have been guided in faith and morals from the earliest ages of Christianity and is, in some measure, binding not only upon Roman Catholics but upon all those who call themselves Christians wherever they may be. It is also asserted concerning Canon law that the authority exercised by it is inherent and is in force "proprio vigore" and that it is above all other laws, being an expression of the will of God in His Holy Church.

If this be so, then we can understand that an appeal to Canon law with reference to marriage, when held as a sacrament, must have an authority which cannot be gainsaid. But is this a true or fair representation of Canon law? History tells us that Canon law is a collection or collections of ancient canons, beginning perhaps with the so-called apostolic constitutions, to which have been added in various ages, decisions of councils, decrees of popes, opinions of doctors learned in the law, letters of Bishops, to explain or enforce local ordinances, and finally the results of discussions of minor interest arising from the views of the mediæval faculties of law. This process, originating from the necessity of law and order both in the temporal and spiritual affairs of the Church, produced the code commonly known as the "Corpus Juris Canonici." Such a digest was put forth as the sole authority in the Western Church until A.D. 1151. In apostolic and subapostolic days such regulations may have been oral or at least kept hidden from the knowledge of the heathen public, for with the exception of such rules as are read in the Gospels and Epistles, no records of discipline have come to us which are older than the third century. The Apostolic Canons originated in Syria in eight books, six of which date from the third century and two from the fourth century; to these were added eighty-five Canons of a disciplinary character. The Eastern Church authorized the whole of the constitutions, but only fifty of the Canons found their way into the Canon Law of the Western Church. After the accession of Constantine and the decisions of General Councils, collections were made of the various ordinances from which the Greeks made four and the Latins three. The most eminent of all these was the Decretum of Gratian, which made up the

larger part of the Corpus. This was a codification of all the existing Canon laws. To this was added by order of Gregory, A.D. 1230, the Decretal. This latter part, derived from various sources, refers to the status and functions of ecclesiastics and the procedure of Church courts; the temporal rights of the clergy; marriage and its impediments; ecclesiastical crimes, and punishments or censures. Rescripts of popes and other constitutions were added and so was completed the Canon law as published and authorized up to the end of the 16th century.

The middle ages, with the great universities and faculties for the study of civil and canon law, producing a constant supply of well-educated lawyers, gradually developed the system of ecclesiastical courts, where civil actions as well as ecclesiastical questions were pleaded and decided. The civil courts and laws of that age were so rude and primitive that the fairer and better equipped Church courts were preferred to decide disputes and interpret the civil rights of the people. Canon law entered into almost every particular of social life because the state recognized the claim of the Church over all persons from their baptism until laid in consecrated ground as children of Holy Church. This order arose from the decision of the early Church that questions as between Christians should be decided by and within the Church (1 Cor. vi; 1-6).

Thus Constantine recognized the rights of Bishops to have jurisdiction over the moral conduct of all Christians and this recognition carried with it the force and confirmation of the State. The Church had a voice in matters relating to criminal acts such as blasphemy, sacrilege, and social morality, so it gradually absorbed the jurisdiction of the civil courts. International law had its origin from the Church, which looked upon all nations not as enemies, but brothers of one blood. Popes and Bishops were often called upon to arbitrate between princes, and Christian law ruled to a great extent in time of war. By these influences the State in time selected parts of the Canon Law to supply a code of Common Law. Canon Law had no force "proprio vigore," but derived its binding authority solely from the will of the king or the decision of the nation. England has been in a peculiar position with reference to Canon Law, a position partly due to its distance from the great centres of legal influence, but mostly from its jealousy and fear of papal power and jurisdiction. While the clergy were naturally willing to study and use the Canon law, the laity always demanded the ancient laws of the people known as Common law.

When Bishop Merton (A.D. 1236) attempted to change the law of legitimacy according to Canon law, by a decree promulgated from Rome, the earls and barons assembled would have none of it and protested by exclaiming "Nolumus Leges Angliæ Mutari!" so fearful were they, even then, of the en-

croachment of papal claims. There is a distinction between Canon law and Ecclesiastical law which must be clearly recognized. Canon law is from the Church, but Ecclesiastical law is for the Church. Canon law has in itself no special or inherent power, at least in England, but Ecclesiastical law is recognized as a part of the law of the land just as spiritual courts in England are known as the King's Ecclesiastical Courts. Ecclesiastical law of England is a body of jurisprudence which shows clearly the sources of its origin. From the ultimate relationship between the Church and State the civil law is recognized from the authority it turns over to the Church in many cases. The Canon law is also traced, but more from its domestic or local origin than from the influences of the foreign collections of Canons and Ordinances. Nevertheless, the Canon law never had complete authority in England, as in other countries, until incorporated into the Canon law of the Church and accepted as the Ecclesiastical law of the English. These distinctions are recognized in courts of law even to this day.

The domestic or English Canon law consists of constitutions framed by the councils of the English Church held at different periods and in various places, usually under the presidency of the Archbishops. No authoritative digest of them has ever been issued. They were recognized by Henry VIII, but never received legislative authority. As Church order and State law grew side by side there was always an interweaving of the two systems which resulted in a common or concerted action for the good of the people, and thus Ecclesiastical law became a recognized part of the law of the land. At last in the reign of Henry VIII statute law was used to give a proper basis to all Church laws and gave express sanction to all canons and constitutions that were not contrary to the Common law.

What then are the component parts of English Church Law? (1) The Civil law so far as it has been incorporated into the English Church law; (2) the Common law whereby the temporalities of the Church are regulated; (3) the Statute law which legalizes all Canon law previous to the Reformation. This also legalizes such Canons as those of 1603, although the courts have thrown doubt upon the English Canons of 1640. At this point we may be in a better position to consider the appeal to Canon law with reference to the question of marriage.

1. Judge Archibald's decision makes it clear that the marriage law of the Province of Quebec is not subject to the Act of 1774, but is ruled by the English Ecclesiastical or Common law reinforced by the Statute law of Henry VIII, which has never been repealed. So it is not the Canon law as incorporated into the ordinances of the French Kings which must guide Canada in this question, but the English Canon law which is the law of the Dominions of Great Britain overseas.

2. The Roman Church is as usual incoasistent ia her decisions, and for reasons best known to herself sets aside even the decrees of the Council of Trent, or at least by her actioas has declared to the world that the decrees of that Council need not he recognized in every particular. The ancient Canon law recognized that the essential sacramental element in marriage was the consent of the parties provided no legal or spiritual impediments existed. The presence of a priest was not necessary to assure the validity of such a marriage solemnized in the presence of two or more witnesses.

The Archives reveal circumstances in the history of the Acadians (Canadiaa Archives report, 1905, p. 209) under which the decrees of Trent were set aside and the terms of the old Canon law were accepted as sufficient in the esseatials of a valid marriage. Here is an extract from the register of the parish of St. Joseph, in Deschambeau, Province of Quebec. It tells the whole story:

"The 27th day of the month of October, 1766, in the Church of Cap Lauzon, Seignory of Deschambeau, parish of St. Joseph, there presented themselves Michel Robichau, Acadian, and Marguerite Landry, Acadian, who have shown us in a writing in which it is said that they, having heen made prisoners hy the English and driven from their country for refusing the teaching and doctrine of the Eaglish ministers, married themselves in the presence of their parents assembled and also of Acadian elders ia New England, in the hope of renewing their marriage if ever they should fall, after the term of their imprisonment, into the hands of French priests; we have therefore given them the nuptial benediction according to the forms and ceremonies prescribed by our mother Holy Church, making them understand that it is but a renewal of their mutual consent, the parties of necessity having united themselves in New England in the presence of their seniors in the ahsence of priests.

Made and declared at Deschamheau on the day and year above mentioned. Signed, MENAGE, Curé of St. Joseph."

There are several other records of the same kind taken from registers in the Diocese of Quebec. This is an acknowledgment that the sacrament of marriage does not depend on the presence of the priest hut on the mutual consent of the parties. This is ia accordance with ancient Canon Law and contrary to the decrees of the Council of Trent. May it not be claimed then that a marriage by a minister or official recognized by iaw is valid if the consent is free and mutual and the witnesses are competent to assure the publicity of the act? That the Canon law, as recognized by the Church of England, was in the mind of the Government when the Governor of Canada was instructed to put up in some public place the table of

prohibited degrees, is undoubted, as the canon ordering such was part of the law of England.

In the face of the Archives and all that has been stated in this pamphlet, further claims are being made by the Roman hierarchy; and the illegal act of annulling marriages will continue to be the practice of these officials. Nevertheless, it is clear that if attempts are made to carry out such claims, they can be successfully accomplished only by a collusion of Church and State officials with those who are chiefly interested in such annulments. The law is clear and sufficient to prevent this indirect and illegal method of securing divorces and it is our duty as law-abiding citizens to denounce and expose such breaches of Civil and Canon law.

VIII.

MARRIAGE LAW OF QUEBEC.

The records of the Canadian Archives should help us in the consideration of the claims made by the Church of Rome on the important question of marriage in the Province of Quebec. We are able thereby to trace the limits and to recognize the character of the ecclesiastic jurisdiction of that Church. The provision made in the Act of Confederation and in the legislation of the province do not seem to countenance the position of the Church because no power or jurisdiction was ever given to Roman prelates to override the law, to establish ecclesiastical courts and to decide the validity of marriages without reference to the civil authorities. It is well to study the ground of the civil code of Quebec and come to some fair conclusion on the whole matter. Since Confederation several marriages have been declared void by Roman decrees for alleged impediments. These decrees were taken to civil courts only to settle the civil effects of such annulment. Most of these were decided in favour of the Roman plea, but there was one noted exception, however, in the case of Delpit versus Coté which was brought before Judge Archibald of the Superior Court in Montreal, and decided in the year 1901. It was a comparatively simple question, involving only the competency of the officiating minister, the Rev. W.S. Barnes, of the Unitarian Church, Montreal, to marry two Roman Catholics by the authority of license secured in the usual way according to the civil code of Quebec. The provisions of the law had been complied with and Mr. Barnes was recognized, by the possession of the usual register, as an authorized officer to solemnize marriage in he Province of Quebec. It was admitted that no other impediment existed.

It may be stated here that the decision of the judge, which declared the act of the Archbishop of Quebec ultra vires and

the decree of Rome null and void, as the ecclesiastical authorities had no jurisdiction recognized by law and the ecclesiastical courts were unrecognized by Canadian legislature, was not appealed and remains to this date the clearest and strongest representation of the law of the Province of Quebec concerning the solemnization of marriage.

The articles of the civil code of Quebec which are concerned directly and especially with the solemnization of marriage are the 128th and 129th in Chapter ii. They are simple in language and in themselves present no great difficulty if a literal rendering be accepted. But it is claimed that there is some ambiguity in the terms used and a clear interpretation must be made by a study of past legislation on the subject as well as by the reason and motive of the statute itself. These articles read as follows:

The Civil Code of Quebec, Chapter ii. Title. Of the Formalities relating to the Solemnization of Marringe.

Art. 128. "Marriage must be solemnized openly by a competent officer, recognized by the law.

Art. 129. All priests, rectors, ministers and other officers authorized by law to keep registers of acts of civil status are competent to solemnize marriage.

"But none of these officers, thus authorized, can be compelled to solemnize a marriage to which any impediment exists to the doctrine and belief of his religion, and the discipline to which he belongs."

To this may be added Article 156, which determines the absolute control of the court in case of a possible annulment:

Art. 156. "Every marriage which has not been contracted openly nor solemnized before a competent person may be contested by the parties themselves and by all those who have an existing and actual interest, saving the right of the Court to decide according to circumstances."

In this article the informalities in connection with the incompetence of the officiating minister cannot annul the marriage, but it is the right of the civil court to enquire and judge of their gravity. The Roman position is clearly stated by Archbishop Bruchesi, in a pastoral addressed to the faithful, and by Judge Jetté in his judgment on the case of Lnramee versus Evans.

The Archbishop takes the extreme Ultramontane view " that marriage being a sacrament must be controlled wholly by the laws of the Church; and that while marriage between a Roman Catholic and a Protestant, in the presence of a Protestant official, may not be invalid, yet it must be declared by the Church as irregular and open to censure; that the Council of Trent, by a Canon which is a part of the law of the Province of Quebec, orders the members to be married by their proper priest or by one authorized by him on pain of nullity."

Judge Jetté in his decision is more moderate. He recognizes marriage to be a civil contract, subject to the laws of the country, but being also a sacrament of the Church of Rome it is subject to the ecclesiastical jurisdiction of the Archbishop after an appeal to the Pope, and that the Canon law which is the law of this province regards the competent official to be the parish priests of the parties. He also states that the words "publicly" and "competent officer" must be restrained to mean according to the usage of the different congregations or communions which in the case of Roman Catholics is before the "proper parish priest." He also added "that the free exercise of their religion and the continuance of the French law, including regulations of marriage by Canon law, had been guaranteed to Canada by the Treaty of Paris and by acts of the English Parliament."

Although the Delpit case only involved the competency of the officiating minister, nevertheless Judge Archibald entered very fully into the history and laws both of Church and State on the whole subject of marriage, and from the evidence at his command showed clearly that there is no ecclesiastical court recognized by the State to review the civil acts of the people, nor has there been any legislation conveying to the Archbishop of Quebec jurisdiction to pronounce a solemn decree of annulment against a marriage sanctioned by sovereign authority, through a license, where no legal impediment existed, and the officer competent by the authority of the Crown to officiate on the occasion.

The plaintiff, Delpit, had applied to the Archbishop of Quebec, Begin, to consider the validity of his marriage to Madame Coté. The question was entered into by Rev. Cyrille Marois, Apostolic Prothonotary, Vicar-General of the Diocese of Quebec, official judge and delegate for matrimonial causes, who pronounced and declared the marriage contracted by the parties to be null and invalid on the ground of clandestinity, upon which judgment and its confirmation, by an appeal to Rome, the Archbishop of Quebec granted the parties the following certificate: "In consequence, that in virtue of the judgment rendered by our official the 12th of July, 1900, Mr. Edourd Delpit and consequently his consort, Madame Marie Coté, are free from every matrimonial bond and that they may, if they think fit, enter into new marriages." It is therefore evident that in the opinion of Roman authorities the civil courts have no jurisdiction in such cases except to decide upon the civil effects.

The points decided by the judgment of Judge Archibald are:

1. The legality of a marriage between two Roman Catholics by a Protestant minister on the authority of a properly

issued license, before witnesses, solemnized in the Province of Quebec.

It is undeniable according to Canon law that a marriage (per verba de præsenti) by consent of parties without the intervention of a priest was valid. Many Acadians were so married during their exile in Boston and were recognized by the ecclesiastical authorities of Quebec as validly married (see Canadian Archives). The Canon law modified by statutes was the matrimonial law of England. There are indications, however, that by the law of England the interventions of a priest was considered necessary and this was enforced from time to time by spiritual penalties, though never, before the Council of Trent, by nullifying the marriage at which no priest was present. It is to be remembered that the ecclesiastical courts of England, where the Church is established, were a part of the Sovereign power. No ecclesiastical courts have been created by legislature in the Province of Quebec, and there are none existing with coercive power. That marriage comes under the jurisdiction of the Common law of England is evident. Two Protestants were married in Madras by a Roman Catholic priest without publication of banns or license. This marriage was declared valid by the courts as being controlled by the Common law of England *which affected matrimonial acts beyond the seas.* It is presumed also, by this decision, that those who have authority to keep registers have authority to marry parties who present themselves for the solemnization of marriage having the usual license issued by the government of the province.

2. Did the Common law of France become the law of Canada as to matrimony after the cession?

Old laws in a conquered country may continue, but only as a matter of convenience, as they have not force from the will of the conquered, because the law-making force of the conquered is extinguished by the conquest. The sovereign will alone rules and all initiative and jurisdiction lie in the Crown.

At the time of the cession the laws of France and England being the same and based upon the Canon law as regarding publicity and competence of the officiating minister, so authority was given to the Church of England and the Church of Rome in Canada to solemnize marriage according to the Common law of England, requiring the publication of banns or the issue of license or dispensation, by an authorized priest or minister.

It could not for a moment be supposed that a Protestant nation intended to have its subjects under laws which would compel them to conform to the Roman Catholic religion, especially at a time when the exercise of that religion was strictly prohibited in England. Lord Stowell says: "I am yet to seek for any principle derived from that law (the law of nations)

which bows the conqueror to the legal institutions of the conquered."

3. Did the terms of the capitulation of Quebec, or the Treaty of Paris, or the "Quebec Act" of 1774, give the Church of Rome special power or jurisdiction over marriage in Canada?

The privileges allowed to French subjects at the capitulation of Quebec and the cession of Canada in the free exercise of their religion implied no compulsory jurisdiction over their own members in a matter which concerned the civil authority. For instance, in 1688 the Dissenters in England were granted the free exercise of their religion, and in 1791, long after the Treaty of Paris, the Roman Catholics were allowed the same privilege, but in neither case was it pretended that this freedom carried with it the right to govern their own marriages. Dissenters, as well as Roman Catholics, were obliged by the Hardwick Act to be married in Anglican Churches. The idea of special rights being conveyed by the Treaty of Paris, as concerning Roman Catholic marriages, may be dismissed as purely imaginary as the free exercise of their religion was granted only so far as the laws of Great Britain permitted.

The "Quebec Act" of 1774 purposely excludes marriage. Marriage produces civil rights but the contract itself is distinct from them. The British North American or Confederation Act recognizes this distinction. Thus although property and civil rights by Sec. 91 of the Act is placed under the jurisdiction of the legislature of the provinces, marriage, including all the hindrances thereto, belongs to that of the Parliament of Canada, and although the solemnization of marriage is given by the same statute to the local legislature, it is made a special category and not included in that of property and civil rights and it is difficult to see how laws relating to the solemnization of marriage should be considered as having any relation to property or civil rights. The Quebec Act provided that the country should have the right to decide questions or disputes concerning property and civil rights. It provided also for the free exercise of the Roman Catholic religion subject to the supremacy of the King of England and so far as the laws of Great Britain permit, but the law relating to marriage does not fall within the description of laws relating to property and civil rights. Thus, then, the Common law of England constituted the law of this country as to marriage previous to the statutes which have been passed here.

4. Does Canon law, concerning marriage, as represented by the decrees of the Council of Trent, form a part of the law of Quebec?

Archbishop Bruchesi, in his pastoral, claims authority from the Council of Trent concerning marriage, at least as modified subsequently by pontifical decrees. He may feel him-

self bound by them but it is almost needless to say that civil law does not flow from the Canons of the Council of Trent as its source.

If marriage is a sacrament it is one that does not depend upon the offices of the priest but results wholly from the nature of the contract between the parties. It was equally a sacrament before the Canons of the Council of Trent were enacted; it is equally a sacrament now in France or Belgium, where the marriage is solemnized before a civil magistrate.

To sustain the position of the Archbishop you must set aside the unanimous jurisprudence of France; you must ignore the laws of England; you must forget the British North American Act (Confederation) which assigns marriage and divorce to the Federal Parliament; you must abolish the Civil Code of the Province of Quebec, which makes provision concerning the whole ground and assigns the administration of them to the civil courts.

The secular power had always been acknowledged and even taught in France by the doctors of the Church. It was the doctrine of England at the time of the cession. The same principle prevailed here at the time of the French Régime, and we find the Superior Council prohibiting the Church from proceeding to perform a marriage between minors without the consent of the parents upon an ecclesiastical dispensation (2 Edits and Ordon., p. 311). Surely it is enough to say that the Civil Code of Quebec leaves no doubt as to what authority governs laws relating to marriage.

5. Is the statute in the Civil Code of Quebec, Articles 128 and 129, obscure in its words and ambiguous in its intentions?

The words "nuhlicly" and "competent officer" have been the subject of a difference of opinion among the legal authorities of the province. Judge Jetté expresses the opinion that "publicly" means in the parish Church and "the competent officer," as for Roman Catholics, the proper priest of the parish.

Judge Archibald quotes French jurisprudence to show that "publicly" means an act done before or by any public or authorized officer and before witnesses. As to the meaning of the words "competent officer" the plea in the Delpit case was that the Rev. W. S. Barnes was incompetent because he had no authority to marry two Roman Catholics. This limitation cannot be derived from the civil code of Quebec nor from the old law, for the old law as such disappeared with the old sovereignty. Taking the preexistent law, so far as Roman Catholics are concerned, to be such as Judge Jetté has stated, namely, "That Catholics can only be married after publication of banns, in their own Church, by their own proper priest, on pain of absolute nullity, the whole to be decided by ecclesiastical authority." undouhtedly the civil code of Quebec has radically changed all this by Article 63.

6. Is there any legal authority from the province or federal legislation for the act of a Roman Catholic Archbishop to declare the annulment of marriage such as in the Delpit case?

The Roman Catholic Church has received no power since the cession to summon parties and solemnly decide as to the validity of the marriage tie between them. The civil court will not interfere in matters entirely spiritual, but it does interfere and gives a remedy when the ecclesiastical authority imposes even an ecclesiastical penalty such as the refusal of burial without warrant under the rules and laws of the Church as in the Guibord case, which was decided in the Privy Council against the Roman officials.

We may repeat that no ecclesiastical court in the Roman Catholic communion has ever been constituted in this country under the supremacy of the Crown. Therefore the Archbishop's decree is not only invalid for want of jurisdiction, but is in violation of said Article 156 of the civil code of Quebec and is of no legal force or effect.

The formal judgment of the Court is given in full and reads as follows:

Delpit v. Coté.

The court having heard the parties by their counsel upon the merits of the inscription in law filed by the defendant against the plaintiff's action, etc.

Seeing the plaintiff alleges that both he and the defendant were on the 2nd May, 1893, persons professing the Roman Catholic religion, that on said date they proceeded before the Reverend W. S. Barnes, minister of the Unitarian Church in Montreal, who received their consent and gave them a certificate of marriage; that the said marriage was null, in as much as the said W. S. Barnes was not a competent officer to celebrate the same; that the marriage of Roman Catholics can only be validly celebrated in the presence of their proper curé and in their Church which curé is alone the officer competent to celebrate marriage in such case; that the plaintiff applied to the ecclesiastical authority of his Church for the purpose of having his marriage tie, resulting from such marriage, declared null and void; and said tie was declared null and void by a judgment rendered on the 12th July, 1900, by the Rev. C. A. Marois, Apostolic Prothotatary, Vicar-General of the Diocese of Quebec, Official Judge Delegate for Matrimonial Causes; and the plaintiff prayed that the said pretended marriage having been declared illegal and null by the ecclesiastical authority should be confirmed and recognized for all legal purposes.

Seeing defendant (Coté) inscribed in law against the plaintiff's (Delpit) action on the ground that supposing said parties to be Catholics, yet they could be validly married by a Protestant minister; that the sentence of the ecclesiastical tri-

bunal, set up in the declaration, was null and of no effect; that there exists no ecclesiastical tribunal in this country having jurisdiction to dissolve a marriage tie;

1. Considering that there exists in this province no established church and that all denominations of Christians are free and equal;

2. Considering that marriage is a contract of natural law and belongs to the whole body of the population without distinction of religious belief;

3. Considering that our law relating to marriage was enacted without any reference to the religious belief of any section of the population, but as a general law to secure the publicity of the marriage and the authenticity of its proof;

4. Considering that neither the code nor the authority of England, since the cession of this country, nor of this country during the French Régime, required any religious ceremony as an essential of the validity of the marriage;

5. Considering that marriage is a civil contract, the obligation of which, however, has with most nations been reinforced by considerations relating to religion;

6. Considering that the interpretation of any law, relating to marriage, every presumption must tend to the validity of marriage;

7. Considering that Articles 128 and 129 of the civil code require that marriage be solemnized publicly and before a competent officer and that all persons authorized to keep registers of civil status are competent officers and that the literal interpretations of these articles would exclude any limitations such as that set up by the plaintiff;

8. Considering that there is no ground to limit the general application of the Articles in question except such as would be based upon the supposition that the law intended to confer upon the particular religious bodies an obligatory jurisdiction over their members which is absolutely contrary to the complete freedom of religious profession prevailing in this country;

9. Considering that the Rev. W. S. Barnes was not an incompetent officer to receive the consent of the parties to the marriage in question;

10. Considering that at the cession of this country the functions of all courts in previous existence absolutely ceased, and determined and could not be revived or re-established without the expression of the will of the new sovereignty.

11. Considering that since the said cession, the new sovereign authority has never constituted any ecclesiastical court in this country and that no such court has existed or does exist therein;

12. Considering that all the different religious organizations of this country are purely voluntary associations free and

independent of the State with regard to all matters of faith and doctrine, but having no coercive jurisdiction over their members;

13. Considering that actions for annulment of marriage are civil actions, and are specially contided to the courts of civil jurisdiction;

14. Considering therefore the decree of the ecclesiastical authority, pleaded by the plaintiff, as being null and void and of no legal effect;

15. Considering plaintiff's action wholly unfounded and defendant's demurrer well founded, doth maintain said demurrer and dismiss plaintiff's action with costs.

Inscription in law maintained.

Note.—The plaintiff (Delpit) took no action for an appeal.

This case, too soon forgotten by those who have the greatest interest at stake, as citizens of the Province of Quebec, or members of the Dominion, should have the greatest publicity. It reveals the unceasing efforts of the Roman policy to subjugate the inhabitants of the Dominion as it has done so very successfully those of the Province of Quebec. It also reveals the futility of the Roman leaders to deceive the public by worthless appeals to history and by claims which the public records show to be purely imaginary. It is our duty, then, to make the records known, and by truth confute the errors of the Ultramontane party in the Church of Rome.