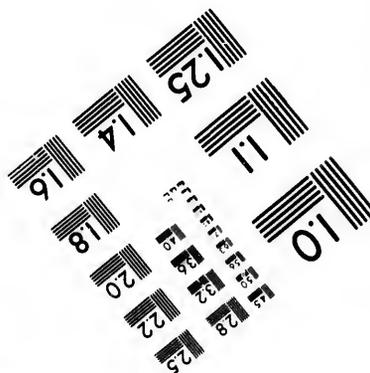
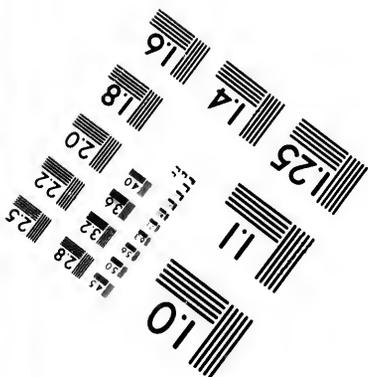
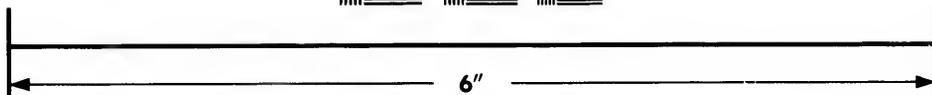
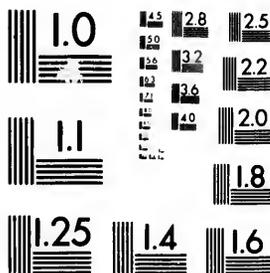


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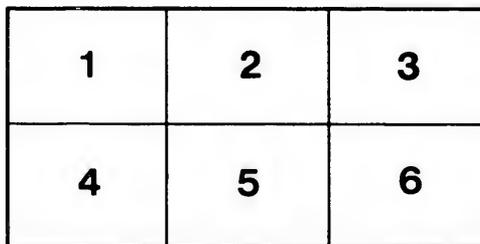
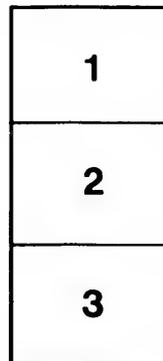
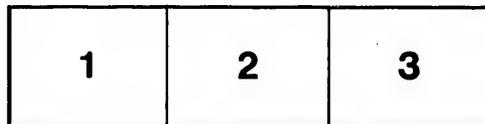
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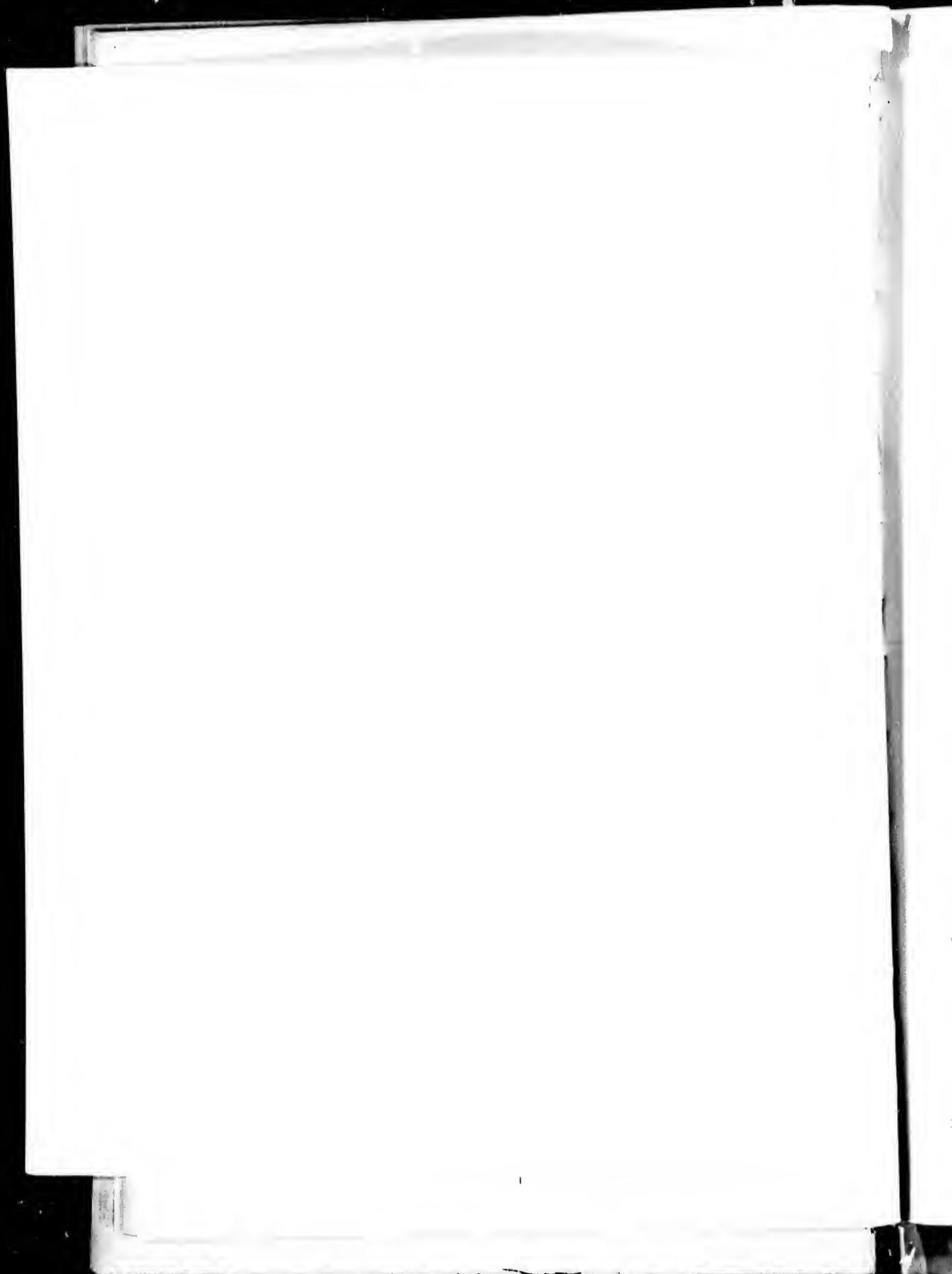
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HISTORY AND MISCHIEF OF THE QUEBEC JESUIT ACT.

IT is not often that we have occasion to comment on any legislation in the Province of Quebec. The subject of this article, although not of much technical interest, except in so far as it touches on the interesting question of escheat, is of so much importance in connection with constitutional questions affecting the whole Dominion, and necessarily, therefore, all its provinces, that it is desirable to discuss it at some length from a constitutional and historical point of view. We have nothing to do with party politics, and for this reason we refrain from discussing the much debated question as to the expediency of disallowance by the Dominion Government of provincial Acts like the Jesuit Act; our readers can form their own opinion on the subject after a careful consideration of this most important subject. As to the competency of that government to disallow such legislation, we think there can be no doubt.

Five and twenty years ago, when the Clergy Reserves of Upper Canada, held by as indefeasible a title as it was possible for any crown-granted lands to be held, were diverted from their original purpose and applied to secular objects, it was thought that the question of the state-endowment of ecclesiastical bodies was settled for ever; and among those who voted for the secularization of the reserves were the representatives of French-Canadian Roman Catholic constituencies, who, in support of the principle then established, ranged themselves side

1800, I have seen many things about
Jesuits, but I quote the following only, | heathen usages in the East, and the dis-
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by side with the voluntaries of the upper province. It now appears, either that the long and fierce agitation which set aside the grants of George the Third was all in vain, or else that the rule which is valid as against the endowment of a Protestant clergy by a British Monarch does not apply to the pious designs of a King who, in his zeal for the Roman Catholic faith, ordained that upon the shores of New France no Protestant should set his foot.

In the proposed endowment of the Jesuits by the recent legislation of the Province of Quebec, we find ourselves face to face with the old dispute, and under conditions which preclude the contention that the question, as it now arises, is one altogether of provincial interest, or to be settled by purely provincial considerations; and the conditions which present themselves make every objection which may be urged against religious endowments in general apply with tenfold force to this one in particular.

Into the general question we need not enter. As we stated at the outset, that question has been settled, and to justify this particular exception from the principle established, it clearly devolves upon its advocates to show upon what grounds that justification is based. This, we are bound to say, M. Mercier has done his best to accomplish. In the preamble to his bill he gives us all the evidence, and all the facts, or assumptions of fact, upon which his action rests, and it must be admitted that the address and plausibility with which he sets about his task, are worthy of the object in view.

Having by a previous Act given incorporation to the Society of Jesus, M. Mercier, in the preamble to his Act, dwells upon the "uneasiness" felt with regard to the Jesuits' estates, and this view he supports by reference to various demands which certain ecclesiastics have, from time to time, made for a settlement of the question of the ownership of the property—a property to which, as he subsequently admits, the claimants have only a *moral* right, but for which *they are entitled to compensation*. He then proceeds to clear the way by stating that "on the occasion of the settlement of this delicate question certain Protestant educational institutions will receive a fair allowance proportionate to the numerical importance of the minority in this province." Having thus provided for the possible opposition of the "Protestant minority," the astute premier goes on to overcome the hostility which, as is well known, a large part of the majority, clerical as well as lay, entertained to his proposal; and for the purpose he, the responsible minister of a British province, not only appeals to the Pope of Rome for leave to deal with a property which, according to the law of the land, had duly escheated to the Crown for want of any legal owners, but publishes *in extenso*, in the preamble of his bill, the whole correspondence between himself as Premier of Quebec, the Procurator of the Jesuits, and the "Prefect of the Sacred College of the Propaganda," who writes as directly representing the Pope. And a very remarkable correspondence it is, in spirit as well as in letter, bringing home to us more fully than anything published in the English language has hitherto done, the sort of religious and political Frankenstein which our forefathers unwittingly created at the capitulation of Quebec, and which now, in so many ways, blocks the path of progress for this Dominion.

In his first communication, M. Mercier, after asking whether His Eminence sees "any serious objection to the Government selling the property," says that the Government would "look upon the proceeds of the sale as a special deposit to be disposed of hereafter in accordance with the agreements to be entered into between the parties interested *with the sanction of the Holy See*," and then he goes on to say that "as it will *perhaps* be necessary upon this matter to consult the Legislature of the province, etc.," he wishes an immediate reply. It is quite evident that the sanction of the Holy See was much more important for the carrying out of M. Mercier's designs than that of the Legislature of the province. In reply, his Holiness the Pope graciously grants permission for the sale of the property, "upon the express condition, however, that the sum to be received be deposited and left at the *free disposal of the Holy See*." This condition was too much, even for the Quebec Premier, who insists on his previous terms. These are conceded in the next letter in the following words: "The Pope *allows the Government* to retain the proceeds of the sale as a special deposit to be disposed of hereafter with the sanction of the Holy See." In the next document quoted authority is given by His Holiness to the "fathers of the Society of Jesus" to deal in the matter directly with the Government of Quebec, leaving, however, *full liberty to the Holy See to dispose of the property as it sees fit*. These preliminaries settled, M. Mercier then addresses the procurator of the Jesuits for the purpose of fixing the basis of settlement. He is, in the first place, very particular to specify that properly authenticated evidence of the foregoing particulars is placed in his hands, and then goes on to say that, in consenting to treat, "the Government does not recognize any *civil* obligation, but merely a moral obligation"; that the compensation given shall be expended exclusively in the province; that the Society shall grant a complete concession of all property, and a renunciation of all rights, which may have belonged to the old Society; that any agreement made shall be binding only so far as *ratified by the Pope and Legislature*; that the compensation fixed shall remain as a special deposit in the hands of the Government till the pleasure of the Pope with regard to it is made known, and that upon it the Society shall, in the meantime, receive four per cent. interest; and "finally, that the statute ratifying such agreement shall contain a clause enacting that when such settlement is arrived at, the Protestant minority will receive a grant in proportion to its population in favour of its educational work."

To all of this, clause by clause, the Procurator graciously assents, till he comes to the last, when he very properly remarks that as this clause (that relating to the Protestant minority) does not touch the question at issue, he asks to be dispensed from replying thereto. Even the Procurator of the Jesuits will not accept M. Mercier's invitation to legislate for the "Protestant minority," a degree of moderation for which the said Protestant minority should be duly grateful. Upon this correspondence, in which the leader of the Government in the Province of Quebec so openly lays himself and the Legislature of Quebec at the disposal of the Holy See, comment is needless. The unconstitutionality

of the Act resulting therefrom is, however, pointed out in another place to which we refer the reader.

Then comes the settlement of the amount of compensation, which is interesting only as showing the playful fence with which the Procurator, first estimating the value of the property at two millions of dollars, and modestly saying that he will be satisfied with half that amount, finally accepts the four hundred thousand which is offered as compensation for a property which belonged, not to the Jesuits, but to the Province of Quebec. It is hard not to believe that all this was arranged beforehand so as to display the care taken by M. Mercier to protect the interests of the Province, and the extreme moderation of the Jesuits in accepting a fifth of what, according to their contention, was really their right. The remaining documents given in the preamble are purely formal, and inserted in the bill merely to show that His Holiness and the Society of Jesus had really given their assent to the agreement.

The historical facts relating to this matter are briefly as follows: For more than a century prior to the conquest of New France the Society of the Jesuits had been established there, and had undertaken two great works—the conversion of the Indians, and the education of the people. To enable them to carry on these undertakings they had become endowed with certain lands derived from three sources: Grants from the Crown; gifts from private individuals; and purchases made from various funds at their disposal. All these grants and gifts were expressly made in trust for the objects already mentioned; besides which it must be remembered that, according to their vow of poverty, the Jesuits, neither individually nor collectively, could hold property for personal profit or emolument. We shall not stay to enquire how these trusts were executed. That is a matter of history, and is not pertinent to the present issue.

At the capitulation of Quebec article thirty-four provided that "all the communities and all the priests shall preserve their movables, the property and revenue of the Seigniories, and other estates which they possess in the colony, of what nature soever they be. And the same estates shall be preserved in their privileges, rights, honors and exemptions." With that regard for its plighted faith which the British Government has always maintained, this article was kept inviolate; and for fourteen years the Jesuits remained undisturbed in the possession of their properties.

But whilst under the British flag against which they had so often intrigued, and under the protection of the British Government which they had so often assailed, the Jesuits enjoyed peace, it was not so with them in the countries of Roman Catholic Europe. Two years after the conquest of Quebec they were suppressed in France, where the exposure of their constitution and method of acting, consequent upon the failure of Lavalette's commercial enterprises, made their presence intolerable. Five years later they were altogether expelled from the dominions of His Most Catholic Majesty, their properties sequestrated, their colleges closed and their teachings forbidden. In 1767 they were suppressed in Spain, the most Roman Catholic country in Europe and the land of their birth, but where their poli-

tical intrigues and social interference had set all parties against them. A year later saw them meet the same fate in Naples. Finally, in 1773, while still enjoying in New France, under a Protestant Government, that which was denied them in Old France under a Roman Catholic sovereign, Pope Clement XIV., acting at the desire of all those European Powers who had been suffering from the machinations of the Society, absolutely suppressed and abolished it. His reasons for doing so, as stated in the Bull which decreed its suppression were—the acts of its members in defiance of their own constitution, which forbade them to meddle in politics; the injury caused by their quarrels with local religious authorities, and other religious orders; their conformity to heathen usages in China and other Eastern lands; and the disturbances they had made in Roman Catholic countries, which caused the sovereigns thereof, of the same religion, to expel them from their dominions. And so the Bull goes on to say that seeing the Society had ceased to fulfil the intention of its institution, the Pope declares it necessary, for the peace of the Church, that it should be suppressed, extinguished, abolished, and abrogated forever, with all its rites, houses, colleges, schools and hospitals. Provision was further made for taking over and administering the property of the Society and for the conduct of its members.

Such, then, was the position of affairs in 1774, when the British Government, recognizing the fact that by the highest authority known to the Roman Church, and admitted by it as having absolute control, the Society had ceased to exist as a corporate or ecclesiastical body, gave instructions to the Governor-General of Canada to assume possession of its property as escheated to the Crown. In this the British Government violated no pledge—broke no contract. It simply took official notice of an event which had happened—of the demise of a society which left no heirs nor successors, as they might of the demise of an individual similarly situated. The property passed to the Crown as a matter of law, and of right. It could pass only to the Crown, whatever its ultimate destination might be, for there was no one else to receive it.

The manner in which the British Government exercised its rights was in perfect keeping with the good faith with which it had observed its treaty obligations throughout. Having assumed the property which had devolved upon it by the dissolution of the Society, it permitted those of the Jesuits who chose to remain to continue in possession till 1800, when the death of the survivor took place; and then it recognized the trusts attaching to the property, and, as far as circumstances permitted, it executed them. It received with favor the petitions of the Quebec House of Assembly, who, first in 1793, and on subsequent occasions, asked that the Jesuit estates should form a fund for the purpose of education, and finally, in 1831, Lord Goderich fully admitted the principle, and directed that the estates should be applied inviolably and exclusively for promoting education, as, in fact, they had been applied for many years previously. For that purpose the Government handed them over to the Province, in whose possession they have remained, and for whose benefit they have been used

ever since, and mainly, too, for the promotion of the Roman Catholic faith.*

Now, in view of these facts, what, we may ask, becomes of the fictions and assumptions stated in the preamble of the Act? Whence is derived the *moral* right of the present Society of Jesus to the estates forfeited by a former one, (which was dissolved, not by the judgment of any Protestant tribunal, but by that of the Pope of Rome, its superior and infallible head.) Where is the ground for compensation? M. Mercier admits that it rests on no legal right; and as the trusts attaching to the property have been carried out, where is the equitable or moral right? And how has he met the objections to his proceedings based on the principle which his predecessors helped to establish when they voted for the secularization of the Clergy Reserves? What is there in the case of the Jesuits to exempt them from the operation of that principle? Is it that their ethics are superior to those of the Church of England, whose endowments were taken from them? Is it the superior morality of their members? Is it the fact that they own no allegiance to the sovereign of these realms—that they are, in the extremest sense of the terms, foreigners and aliens, not to say enemies, to the commonwealth? Is it that on the testimony of professors of their own creed they have been everywhere political intriguers, disturbers of the public peace, destroyers of domestic happiness and domestic ties? Is it that with all their talent for organization, the self sacrifice and self devotion of individual members, their great missionary efforts (those bright pages in their history) have been failures—failures as vast as were the efforts they made? For we know that, despite the heroism and talents of a Francois Xavier, the martyrdom of a Brebeuf or a Lallemand, and of hundreds of kindred spirits whose bones lie scattered over North and South America, India, China and Japan, the sum of their work, so far as the elevation or advancement of the human race is concerned, is everywhere and always failure—failure, absolute and complete. What justification has the Premier of Quebec shown for his illegal and possibly treasonable invitation to the Pope of Rome to exercise jurisdiction over property in this Dominion? And, finally, what right has he shown to take from the Province of Quebec, either from the Roman Catholic majority or the Protestant minority, any sum of money, great or small, to endow any religious corporation at the expense of either one or the other? The property in question is the property of the whole Province, given to it, and held by it for nearly a century, for the purpose of education. To apply it, or any portion of it, to endow any religious body, is a direct robbing of the people, and especially of the Protestant minority, even though the latter are offered a bribe for their acquiescence, to be raised by a tax laid upon themselves.

* How differently might the British Government have acted had they taken into account the past history and the previous conduct of those with whom they were dealing—had they remembered the Jesuit plots against Queen Elizabeth, the Gunpowder Plot, and the incessant intrigues of later years—had they paid heed to the dark rumors which associated the Jesuits with the assassination of Henry the Fourth, the massacre of St. Bartholomew, the murder of William the Silent, and even the death of Pope Clement, by whom they had been suppressed; or even if, discarding all these as idle tales, they had judged the Society by its own maxim, the admitted rule of all its policy—“*Cum finis est licitus etiam media sunt licita*”—the frightful and horribly demoralizing principle that “the end justifies the means!”

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But it is contended that this is a Provincial matter entirely within the jurisdiction of the Provincial Legislature, which has a right to incorporate, and if it pleases, to endow from its own resources, any society that it chooses, and that being so no *one* outside that Province has a right to interfere. Whether it would be right for the Dominion Government to interfere, or whether or not such interference, as a matter of policy, is desirable (matters into which we do not propose to enter), the subject is one which the public of the Dominion have clearly the right to discuss. They have the right to protest against the endowment, in any portion of the Dominion, of a purely religious body, contrary to the general policy of the Dominion. They have the right to protest against this official recognition of the secret religio-political society of the Jesuits as a body corporate, civil or ecclesiastical. They have the right to say that in no part of the Dominion should special privileges and powers be given to a society which, under the guise of religion, has pursued its own ends in defiance alike of morality and Christianity, has violated its own rules, and disregarded the laws of every country in which it has existed; which has been the instigator, if not the perpetrator, of private assassination and public massacre: which has stirred up war and rebellion among nations, and destroyed the domestic peace of families; which subverts every idea of mental and moral independence, and makes a blind and unreasoning obedience to human authority take the place of the dictates of conscience and the teaching of Scripture. They have the right to protest, also, against the Pope of Rome or any other foreign ecclesiastic, of any denomination, or any alien power whatever, civil or ecclesiastical, interfering in any way, directly or indirectly, in the affairs of this Dominion, or of any Province within it, to the subversion and undermining of the just rights and pre-eminence of our Sovereign in her own dominions, and more especially when such interference is exercised on behalf of a society which professes no allegiance to any temporal sovereign, and whose avowed aim, at the present moment, is to use every means to subvert religions which conflict with its own, and to secure that absolute supremacy in temporal and spiritual affairs for the head of the Church of Rome which the British nation has for centuries been resisting. They have the right to protest against a disloyal society, the existence of which is a menace to the integrity of the British Empire, and whose members are said to be bound by an oath to aid in extirpating the "damnable doctrines" of the Church of England, and other Protestants, solemnly renouncing all allegiance to all heretical kings and governments, and binding themselves when called on to "depose" them, and if necessary, "destroy" them. And it need not be stated here that the kingdom of Great Britain and Ireland is by its constitution a Protestant power. The Dominion of Canada is a part of that great empire, and owes allegiance to a sovereign who by the law of the land must be a Protestant.

Happily there is in this matter no issue between Protestant and Roman Catholic. By none has the mischievous and meddling policy of the Jesuits been so resented as by other Roman Catholic bodies whose rights it has interfered with, whose operations it has hindered, and whose independence it has subverted.

By none have its character and its principles been more fiercely assailed, and more vehemently denounced, than by men of the Roman Catholic faith. By no governments has it been so harshly dealt with, and so absolutely suppressed, as by the governments of such supremely Roman Catholic countries as Spain, France and Italy. And it is only by its success in the cause of Ultramontanism, and the destruction of the Gallican and other national churches, that it owes the favor it now enjoys. In conclusion, we venture to say, by none will the action of M. Mercier be more bitterly regretted in time to come than by the Roman Catholics of the Province of Quebec.

THE CONSTITUTIONALITY OF THE QUEBEC JESUIT ACT.

THIS Act appears to give authority to the Pope to sanction or ratify the distribution of the legislative grant of \$400,000. The enacting clause provides that the money is to be payable "under the conditions mentioned in the documents" cited in the preamble. This delegation of authority to the Pope, a foreign potentate or sovereign, brings up the question whether the Act is constitutional, and also whether it infringes the express provisions of Imperial statutes prohibiting foreign potentates exercising jurisdiction in the dominions of the Crown, which are in force in Canada.

It will, we think, be conceded, apart from any provisions in Imperial statutes, that it is *ultra vires* the constitutional power of a colonial legislature to confer or delegate to any foreign sovereign, potentate, or tribunal, lawful jurisdiction or authority to determine or ratify the distribution of the moneys or properties of the Crown, or how money grants to the subjects of the Crown, within its colonial jurisdiction, are to be distributed.

The Imperial Crown may in any proper case agree with another crown or nation to refer to a sovereign, or to arbitrators mutually agreed upon, questions affecting its belligerent or territorial rights or claims; but this regality of the Imperial Crown is not possessed, nor can it be exercised, by a colonial government or legislature. If it would be *ultra vires* of the Legislature of Ontario to delegate authority to a foreign power—say to the President of the United States—to distribute, or to ratify the distribution of public moneys legally voted (the Clergy Reserve moneys, for instance) it follows that this delegation of authority to the Pope by the Legislature of Quebec must also be *ultra vires*. What would be unconstitutional in Ontario must be equally unconstitutional in Quebec. No State of the American Union, though "sovereign" in a limited sense, can treat with foreign potentates, or give them jurisdiction to dispose of the moneys or territorial properties of the State. Nor can any provision similar to that in this Quebec Act be found in the legislation of any civilized nation.

The Imperial Parliament has from the earliest days made it a criminal offence for subjects of the Crown to procure judgments or determinations from the See of Rome or from any other foreign powers or potentates out of the realm; and

no Act can be found in the Parliamentary annals of England delegating to a foreign potentate authority to determine how grants of money to subjects of the Crown should be disposed of.

In the 25th., 27th and 38th years of Edward III., and the 13th and 16th years of Richard II., this prohibitory legislation against the Pope's jurisdiction in England commenced. The statute, 24 Henry VIII., c. 12, prohibits any foreign prohibitions, appeals, sentences, judgments or any other process, etc., from the See of Rome or any other foreign courts or potentates, and prescribes penalties against persons within the realm, *or within any of the King's dominions*, attempting to procure any such from the See of Rome or from any foreign court or potentate.

Another statute of the same year c. 21 prohibits the King, his heirs, and successors, Kings of the realm, and all subjects of the realm, *or of the dominions of the Crown*, from suing for licenses, dispensations, compositions, faculties, grants, rescripts, *delegations*, or any other instruments in writing from the Bishop of Rome, "called the Pope," or from any person or persons having or pretending to have any authority by the same. "The King, his heirs and successors," being expressly named in the Act, the reigning Sovereign is bound by the prohibition *Coke's, Inst.* 169; and it is not within the constitutional power of a colonial legislature or governor to absolve the Crown from its provisions, or to enact or assent to any Bill violating this or any other Imperial Statute in force in the colony. The Crown can only be relieved from the prohibitions of the Act by the power that imposed them, namely, the Imperial Parliament.

But the statutes of Elizabeth are more precise and emphatic, and in express words abolish "the usurped power and jurisdiction of the Bishop of Rome, heretofore unlawfully claimed and usurped within this realm, *and other the dominions to the Queen's Majesty belonging*;" 13 Elizabeth, c. 2; 1 Elizabeth, c. 1. Neither the treaty surrendering Canada to England, nor the Quebec Act of 1774, altered these statutory prohibitions against the foreign jurisdiction of the Pope. Both granted to the French-Canadian subjects of the Crown liberty to profess the Roman Catholic religion "so far as the laws of Great Britain permit," and in "subjection to the Crown and parliament of Great Britain."

"The conditions mentioned in the documents" cited in the preamble of the Act, import into the Act the assertion that "*the Holy Father reserved to himself the right of settling the question of the Jesuits' estates in Canada*," and provide that the proceeds of sale are to be disposed of under agreements "*with the sanction of the Pope*," and that "the amount of the compensation fixed [\$400,000] shall remain in the hands of the government of the province, as a special deposit, *until the Pope has ratified the said settlement and made known his wishes respecting the distribution of such amount in this country*."

These extracts clearly show an intent to confer upon the Pope—a foreign potentate—a jurisdiction to determine how the Crown's grant of money is to be distributed in Canada. In view of the constitutional questions and statutory provisions referred to above, we are inclined to think that the question of the validity or disallowance of the Jesuit Estates Act of Quebec, has not yet been settled.

