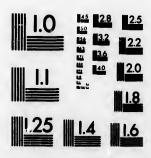
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TO THE

BISHOPS, CLERGY, AND LAITY

OF THE

UNITED CHURCH OF ENGLAND AND IRELAND IN THE PROVINCE OF CANADA,

FROM

FRANCIS FULFORD, D.D.,

LORD BISHOP OF MONTREAL, AND METROPOLITAN.

Montreal :

PRINTED BY JOHN LOVELL, ST. NICHOLAS STREET.







A LETTER

TO THE

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FROM

FRANCIS FULFORD, D.D.,

LORD BISHOP OF MONTREAL, AND METROPOLITAN.

Montreal:

PRINTED BY JOHN LOVELL, ST. MICHOLAS STREET. 1864.

LETTER.

To the Bishops, Clergy, and Laity of the United Church of England and Ireland in the Province of Canada.

RIGHT REV. AND REV. BRETHREN, AND BRETHREN OF THE LAITY:

You are, I have no doubt, all of you well aware of the discussions which have arisen respecting the Patents issued by the Queen for the appointment of a Metropolitan for this Province; which question has recently attracted increased interest in consequence of certain proceedings which have taken place in connection with the Diocese of Cape Town and the Province of South Africa. In the early part of this year I received from His Excellency Viscount Monck a copy of a despatch from His Grace the Duke of Newcastle to the following effect:

Downing Street, 10th Feb., 1864.

My Lord,—A correspondence, which arose out of the recent cases of Long v. the Bishop of Cape Town, has led me to submit for the opinion of the Law officers of the Crown the question whether any, and if so what metropolitan pre-eminence or jurisdiction was conveyed by the Letters-Patent bearing date the 12th February, 1862, which constituted the Bishop of Montreal Metropolitan Bishop in the Province of Canada.

The following is the answer which I have received:

"We think that it was competent to the Crown to constitute his "Lordship a Metropolitan, and thereby to give him pre-eminence and precedence over his Suffragans: but that as to the coercive juris-diction which the Metropolitan may exercise, and the manner in which it is to be exercised, these are matters which must be settled by the Bishops, Clergy, and Laity of the Church, in a General Assembly of the Province, according to the provision of the local act of the Canadian Legislature, 19th and 20th Victoria, cap. 121."

You will be good enough to communicate a copy of this opinion to the Bishop of Montreal, adding that it will be for his Lordship, in concert with the other authorities of the Canadian Church, to determine for themselves whether they would prefer to apply for fresh and amended Letters-Patent, or to allow the existing instrument to remain in force, with the knowledge that so far as it assumes to invest the Metroplitan with coercive jurisdiction, it is of no effect.

I have, &c.,
(Signed) NEWCASTLE.

I forwarded copies of this despatch to the other Bishops of the Province, thinking it probable that they would consider it right to lay it before their Diocesan Synods, at their next meeting; at the same time informing their Lordships that I had stated, in my reply to His Grace, that I should not be able to let him know whether it would be the wish of the Canadian Church "to apply for fresh and amended Letters-Patent," until there had been an opportunity to bring the matter before a meeting of the Provincial Synod, which would not ordinarily take place until September, 1865. But in the mean time, I believed, it was well understood that, by an amendment introduced into the Letters-Patent, as issued on the 12th February, 1862, the authority and jurisdiction of the Metropolitan were expressly "made subject to the Rules, Regulations, and Canons that the General Assembly may from time to time make in respect thereof."

There was also about the same time, forwarded by His Grace's desire to all the Bishops of the Province, an extract from a despatch of the Duke of Newcastle to the Governor of the Cape of Good Hope, "containing the opinions of the Law Advisers of the Crown, on certain questions of much importance to the members of the Anglican Communion in the Colonies."

A few weeks since I received a letter from the Bishop of Huron, dated London, C. W., June 17, 1864, in which his Lordship wrote as follows:

"On the receipt of the extract of a despatch from the Duke of Newcastle to the Governor of the Cape of Good Hope, forwarded to me by His Excellency the Governor General, and of the despatch forwarded by your Lordship, I felt embarrassed and unable to come to a conclusion concerning the position of the Church in this Colony, and also concerning the proceedings which have taken place in the Provincial Synods, and whether these proceedings were legal and valid, and binding on those who took part in them. In order to satisfy my own mind for the guidance of the Synod of my diocese, I submitted all the documents together with the Synod law, the Royal Patent, &c., to A. Crooks, Esq., Q.C., and Edward Blake, Esq., of Toronto, and requested them to furnish an opinion as to the validity or invalidity of our proceedings heretofore, and to advise as to how it would be necessary for us to proceed in time to come, if we desired to have a General Assembly under the Synod law.

"These gentlemen furnished me with the opinion, a printed copy of which I enclose. From this it is evident that all the labour and expense incurred by the Provincial Synods which have taken place, have been in vain, and that it is now necessary to begin de novo.

"My Synod meets on Tuesday, when all these matters will come before it."

The legal opinion referred to by the Bishop, was to the following effect:

Legal Opinion with Reference to the General Assembly, or Provincial Synod.

We have considered the papers and statements laid before us by the Bishop of Huron, from which it appears, amongst other things, that the Bishop of Montreal, as Metropolitan, and by virtue of Hor Majesty's Patent in that behalf, convoked and presided over the meetings of the Provincial Synods, or General Assemblies, which have taken place in Canada, and that the action of the Assembly, and of the several Dioceses which participated therein, proceeded upon the assumption that this Patent was legal and valid, and that this assumption materially influenced the action of the Diocese of Huron in the matter.

It appears, also, that under judicial decisions arrived at, and legal opinions taken subsequently to the last meeting of the Assembly, the Patent is invalid and illegal in all its material parts, including that which assumes to give the Bishop of Montreal, as Metropolitan, power to convoke and preside over the Assembly.

We are of opinion as follows:

1.—The Meetings and organization of the Assembly were not, nor are they, under the circumstances, legal or binding on any Diocese.

2.—In order to the proper and legal organization of the General Assembly, it is necessary that all the Dioceses in Canada should concur in a new organization thereof.

3.—The refusal of any one Diocese to concur in the organization of the General Assembly, would render it impossible to effect such an organization under the Provincial Act, though, of course, a voluntary Association, independently of the Act, may be formed, by the members of any one or more of the Dioceses.

ADAM CROOKS, EDWARD BLAKE.

Toronto, April 19, 1864.

In reply to the Bishop, I stated that "I should not attempt to give any judgment of my own as to the value of the opinion he had sent me. There evidently had been much confusion and misapprehension, in relation to matters connected with the Colonial Church, which the Imperial authorities were now anxious to have set right. That, before the time arrived for the next meeting of the Provincial Synod, I trusted we should have ome clear understanding of the course we ought to pursue; and I was sure that no one could be more anxious than I was to have these questions settled, whatever might be the decision arrived at."

Whatever might have been the authority attached to the above legal opinion for its own sake, in the judgment of the members of the Church throughout the Province at large, yet as I heard a few days after, that a vote had been taken at the Synod of the Diocese of Huron, based upon it, and that a memorial had been forwarded by the Synod to the Queen, asking for the withdrawal of the Letters-Patent altogether, I thought it my duty to place the whole case, with all the documents relating thereto, and the opinion of Messrs. Crooks & Blake, before Strachan Bethune, Esq., Q.C., my Chancellor; and I give below the answer I received from him:

MONTREAL, 28th June, 1864.

My Lord,—After full consideration of the "legal opinion" of Adam Crooks, Esq., Q.C., and Edward Blake, Esq., "with reference to the Gene"ral Assembly or Provincial Synod," submitted by your Lordship, and the letter of His Lordship the Bishop of Huron accompanying the same, I have to report, that whatever objection may legally exist to the exercise by the Metropolitan of coercive jurisdiction, under the Letters-Patent of the 12th of February, 1862, the Crown had an undoubted

right, in my opinion, to constitute your Lordship a Metropolitan, and thereby give you pre-eminence and precedence over your suffragans. In the "legal opinion" above referred to it is stated "that under "judicial decisions arrived at and legal opinions taken subsequently "to the last meeting of the Assembly, the Patent is invalid and illegal "in all its material parts, including that which assumes to give the "Bishop of Montreal, as Metropolitan, power to convoke and preside "over the Assembly." From the Bishop of Huron's letter I must infer that these decisions and opinions are those alluded to in the despatches of His Grace the Duke of Newcastle of the 4th and 10th of February, 1864.

In the first of these despatches it is stated that the Letters-Patent, in the case of the Colony of the Cape of Good Hope were invalid in so far only as they purported to convey to the Bishop any power of coercive jurisdiction, irrespectively of the sanction of the local legislature; and in the second of these despatches it is distinctly stated, that it was competent to the Crown to constitute your Lordship a Metropolitan, with power of pre-eminence and precedence. It being once conceded that the Letters-Patent legally conferred upon your Lordship the title and rank of Metropolitan, I apprehend there can be no difficulty in concluding that you had a perfectly legal right to convoke and preside over the Assembly.

It is to be borne in mind, also, that the first Letters-Patent (to which those in question here are an amendment) were granted, at the express request (by Petition) of the Dioceses of Quebec, Toronto, and Montreal, "so that the necessary powers might be vested in the Metropolitan "for holding and presiding over the said General Assembly of the Church;" and although the Diocese of Huron abstained from joining in the application, yet that Diocese, in the most unequivocal manner, subsequently acquiesced therein, by electing delegates who, with their Bishop, attended and took part in the proceedings of the Synods held under the two Patents. In the course of the proceedings at the first of these Synods, the Lord Bishop of Huron joined in a solemn declaration with his brother Bishops, in which it is affirmed that the Synod was assembled "under Royal and constitutional authority," and in which also expression of most humble and hearty thanks is given to Almighty God "that it has pleased him in His Providence to "set over us a Metropolitan." And in the "Constitution of the Pro-"vincial Synod," as adopted by both houses at such first Synod, under the authority of the Provincial Act, it is expressly enacted, that the Metropolitan shall have power in his discretion to convene the Synod whenever he thinks fit, and that he "shall be the President of the "Upper House."

It is conceded by Messrs. Crooks & Blake, that the General Assembly could be legally organized by the mere concurrence of all the Dioceses in Canada. Now whatever doubt may be entertained as to the strict right of the Metropolitan to convoke and preside over the first Assembly, it is certain that the organization, such as it was, was effected with the concurrence of all the Dioceses, and was subsequently confirmed by a second Synod, at which all the Dioceses were represented, and in which they all concurred. It surely cannot be seriously contended, that the mere participation of the Metropolitan in the organization thus effected and concurred in, has so vitiated the whole proceedings that they are to be considered as illegal, and in no way binding on any of the Dioceses. The Dioceses, whether legally summoned or not in the first instance, chose to meet, as they had an undoubted right to do, under the Act, and at such meeting they not only assented to the Metropolitan assuming to convoke and preside over the Assembly, but they enacted, as a part of the Constitution, which the Legislature gave them express power to make, that in future the Metropolitan should have power to summon them in his discretion, and should be the President of the Upper House. It was in the exercise of this discretion, and under the authority of the Constitution thus made, that the Metropolitan convoked and presided over the second Synod, at which the Constitution was unanimously confirmed.

Viewing the whole matter therefore under either aspect (that of strict legal right to convoke and preside in the first instance, or the contrary,) I am clearly of opinion that the organization of the Provincial Synod, as a legally constituted body under our Provincial Act, is unassailable.

I have the honour to be,

My Lord,

Very faithfully,

Your most obedt. servant,

STRACHAN BETHUNE, Q.C.

Convinced as I might be myself by the able document drawn up by my Chancellor, yet I felt sure that it would be a great satisfaction to the members of the Church in general, and assist most materially in at once putting an end to any doubts on this subject, if I could also obtain the opinion of the learned Chancellor of the Bishop of Toronto. I therefore immediately forwarded all the documents to the Hon. J. H. Cameron, Q. C., M.P.P., and I have now received from him the following full and complete reply:

My Lord,—I am in receipt of your letter requesting my opinion on certain points which have been mooted on the validity of the Letters-Patent appointing you Metropolitan, particularly in reference to the power of calling and presiding over the Provincial Synods, and the effect of the proceedings had by that body, at the sessions which have already been held: as those proceedings have been called in question at the last meeting of the Diocesan Synod of Huron, and the bishop of that diocese has pronounced them to have been "in vain."

In order to place the whole matter fully before your lordship, and to state clearly the grounds for the conclusions at which I have arrived, I consider it necessary to make a short resume of the history of the proceedings of the Diocesan and Provincial Synods, and the steps that have been taken from time to time, both before and since your appointment as Metropolitan.

A very short time elapsed, after the passing of the Synod Act by our Provincial Legislature, before the various Diocesan Synods were organized; and all of those Synods, with the exception of the Synod of Huron, petitioned Her Majesty to appoint a Metropolitan Bishop in Canada, "who might hold and preside over the General Assemblies of the Church in the Province." In accordance with the prayer of these petitions, the first Letters-Patent were issued to your lordship; but they went far beyond the prayer of the petitioners, and professed to confer powers and authorities upon you as Metropolitan, which were of a character which could not be enforced by law in Canada, and were liable to conflict with the powers of the Provincial Synod, which could alone confer coercive jurisdiction within the limits which the Synod Act prescribes. At the first Provincial Synod, which was attended by delegates from all the Diocesan Synods, these Letters-Patent were submitted by you, with a draft of new letters, which had been sent out from England, where doubts had arisen as to the validity of the first letters, in order that the views of the Canadian Church authorities might be expressed upon their various clauses; and after receiving the most careful consideration of the Synod, an amended draft was agreed to by both houses, which was accepted by the law officers of the Crown in England, and on which the Letters-Patent, which you at present hold, were based. These new letters, which are in fact the only letters we can look at now, by an express provision, make all the "powers and authorities" conferred by them on the Metropolitan, subject to the "rules, regulations, and canons" of the Provincial Synod under the Act of the Canadian Legislature, and do not profess to confer any authority or jurisdiction, except in subordination to the Provincial Synod.

When you convened the first Provincial Synod, all the Diocesan

Synods elected, and sent representatives to it. You presided at the opening of the proceedings, and until so much of the Constitution was submitted as created separate houses. The Synod passed an address to Her Majesty, thanking her for the appointment of a Metropolitan, and unanimously adopted a form of declaration, which commenced as follows: "We, the Bishops of the United Church of England and Ireland, within the Province of Canada, together with the delegates from the clergy and laity of the Diocesan Synods, now assembled in the first Provincial Synod under Royal and constitutional authority, and intending under God's blessing and guidance to consider and determine upon such matters as shall appear necessary for the welfare of the Church in this Province, desire to express our most humble and hearty thanks to Almighty God, that it has pleased him in his Providence, to set over us a Metropolitan, and thus to enable us, as in the ancient days, to assemble in one body, under the direction of His holy Spirit, whose aid we now invoke, in the name of His only begotten Son, for the consolidation and advancement of his kingdom in this Province." At this first Synod a Constitution was adopted, which provides for the convening of the Synod by the Metropolitan, makes him the President of the House of Bishops, and in various other ways recognizes his office and appointment. After the new Letters Patent reached you, you called the second Provincial Synod, which was attended by delegates from all the Diocesan Synods, and at which an address was unanimously adopted, thanking Her Majesty " for her gracious compliance with the memorial forwarded from the Provincial Synod at its first meeting," in relation to the amended Letters-Patent, appointing a Metropolitan. A canon was passed constituting a court of appeal from any Diocesan court to be presided over by the Metropolitan. A committee was struck to consider the question of the succession to the Metropolitan see, of which the Bishop of Huron was a member, and which he and one of his cierical delegates attended; and various other acts were done and resolutions adopted, all recognizing your appointment and office, the validity of which was never questioned by any motion or proceeding at either the first or second Provincial Synod.

After this brief synopsis of our Synodical and other proceedings, I now have to consider and advise your lordship on the following points:

1st. Had the Crown power to appoint a Metropolitan?

2nd. If the Crown had that power, were the Letters-Patent vitiated or made null by the provisions granting power to the Metropolitan, which could not be enforced?

3rd. Had the Metropolitan, either by virtue of the Letters-Patent or otherwise, power to convene the first meeting of the Provincial Synod?

4th. If the Metropolitan could not convene the Synod, was the first Synod, and the acts $n \in \mathbb{R}$ thereat, legal under the Synod law?

5th. Were the progedings at the second Provincial Synod legal under the Synod law?

Upon the first point, I continue of the opinion, which I expressed at the first Provincial Synod, that the Crown, as the fountain of honour and dignity, had the right to appoint a Metropolitan, give him pre-eminence over the other Canadian Bishops, and confer corporate powers upon him, notwithstanding our Synod Act: at any rate until the members of the Church themselves exercised the powers vested in them by the Synod Act.

Upon the second point, I am of opinion that the provisions in the Letters-Patent, which are *ultra vires*, do not affect those privileges in the Letters which the Crown had the right to confer.

The third and fourth points may be considered together. I think that the Letters-Patent did not confer any right on the Metropolitan to convene the first Provincial Synod, although they professed so to do; but having reviewed the appointment, I am of opinion that the Metropolitan might properly call together the delegates from the different dioceses, and that when they did assemble in pursuance of that call, they formed a properly constituted Synod, whether they were legally convened or not, as by common consent they proceeded to business, and no objection was made either to the manner, time or place, of their assembly, and their acts are binding on the members of the Church in the several dioceses under the Synod law.

On the fifth point, I have no doubt that the proceedings of the second Provincial Synod are legal.

Your Lordship will bear in mind, that the validity of your appointment as Metropolitan, and the legality of the proceedings of the Provincial Synod have been questioned only by the Synod and Bishop of one diocese; and I shall briefly examine how far they are in a position to make any objection either to the appointment or the proceedings.

It is true that the Synod of Huron did not petition for the appointment of a Metropolitan; but it is equally true that they elected and sent delegates to the first Provincial Synod, that the Bishop of Huron took his seat in the house of Bishops, that they all took part in the whole of the proceedings, that they assented to the address to the Queen for the amended Letters-Patent, that they concurred in the Declaration and Constitution. It is also true that they attended the second Provincial Synod, agreed in the address of thanks to the Queen for the amended Letters-Patent, that they joined in passing a canon for the Court of Appeal, that they assisted in the motion for the committee on the succession to the Metropolitan see, and that their Bishop, and one of their

clerical delegates attended that committee. Surely no stronger evidence could be adduced of their participation in and assent to all these proceedings, which their Bishop now pronounces all "in vain;" and the Bishop and other members of the Church within that diocese do certainly, in reference to these proceedings, come within that part of the judgment of the judicial committee in Long and the Bishop of Cape Town, which has decided that, "The Church of England, in places where there is no church established by law, is in the same situation with any other religious body, in no better, but in no worse position; and the members may adopt, as the members of any other communion may adopt, rules for enforcing discipline within their body, which will be binding on those who expressly or by implication have assented to them." This judgment refers to a case, where the meetings and all the proceedings were purely voluntary; but in this Province our Synodical action has been taken under the authority of the law, and I have no doubt not only that the proceedings of the Provincial Synod have been legal, but that they are binding on the members of the Church in Huron, who have by their delegates assented to them; and that having thus brought themselves within the constitution, which they helped to frame, they cannot now evade either its obligations or responsibilities, under the plea that the Letters-Patent are void, or that the meeting at which the Constitution was adopted was improperly convened.

I remain,

Your Lordship's faithful servant,

J. HILLYARD CAMERON.

I have received letters from Clergy in the diocese of Huron, who have entered their protests against the vote taken by their Synod, expressing "a fear that the tendency of the course which the Synod has seen proper to pursue, will be to cut off its connection with the Church in Canada." I earnestly trust, however, that this is not likely to happen; but that we shall find we can all meet together and work together, as we believe we have done on the two former occasions, under the influences of the good spirit of grace, advancing the glory of God and the increase of His Kingdom. And that, instead of imagining, that "all the labour and expense incurred by the Provincial Synods which have taken place, have been in vain, and that it is now necessary to begin de novo," we shall rather see reason to thank God, that amidst so many difficul-

ties and so much uncertainty in these our early struggles for the establishment of our Ecclesiastical polity, we have been "enabled, as in ancient days, to assemble in one body," and have been permitted to lay a good foundation according to catholic usage.

I remain,

Very sincerely,

Your faithful brother in Christ,

F. MONTREAL,

Metropolitan.

