

THE CHURCH IN CANADA UNDER THE FRENCH RÉGIME.

IT may seem unexpected that the subject of Establishments should have any special connection with a consideration of the Church in Canada. Such, however, will be found to be the fact,—indeed, to a thorough understanding of our subject, reference must be had to what was in reality a State Establishment in England, as well as to what was believed to be a State or National Church of France. At the risk of being tedious, it may, perhaps, be desirable to examine briefly how far the term “establishment” is applicable and appropriate to churches generally. A misconception in regard to this and some cognate matters has not only engendered a considerable amount of bad feeling in this country, but has given rise to prejudices and opinions which are positively unjust and unfounded, so far as Catholics are concerned. Mere individual opinion might go, as it has largely gone, for nothing. But it is otherwise with judicial determination. The judges of the judicial committee of the Privy Council in England, having before them every day questions bearing on their own State Church, may very naturally import corresponding impressions into the consideration of a case wherein the Catholic Church may be represented to be a State Church. They have assumed, for example, that during the French rule in Canada the Catholic Church was established by law; and that since 1763, when that country passed into the hands of the English, though it may not have been an establishment “in the full sense of the term, it nevertheless continued to be a Church recognized by the State.” It was one, therefore, over which the State could exercise some control. An establishment for non-Catholics generally is an institution over which the State presides, over which there might be a minister of public worship; and it presupposes a condition of things wherein the law could put an end to the establishment or to the parliamentary religion, just as the law created it. “The Anglican theologians,” says De Mais-tre, “often call their Church the Establishment, without perceiv-ing that this single word annuls their religion.” The word in its usual acceptation is not used by Catholic writers regarding the Catholic Church.

The popular view of a State establishment becomes the more important to correct, inasmuch as one hears a good deal of a French National Church,—the “liberties” of the Gallican Church,—the

right to appeal from an ecclesiastical to a lay tribunal, commonly called the *appel comme d'abus*, and other matters now of some antiquity. Several industrious local writers, setting out with conclusions and adducing only such evidence as went in support of them, have discovered a National Catholic Church in Canada—an Established Church—a Church with the Gallican liberties (so they are called) of the Church of France, a royal as opposed to a Papal supremacy; and with much bewailing these writers have adverted to the Ultramontane Church of the Vatican Council, under which for the first time Canada was brought under Rome, and the beloved national element put an end to. It is not likely that these gentlemen will change their opinions, even when these misconceptions are corrected; but it is due to those desiring to know the real state of affairs to have the truth put before them. The Catholic Church is not, and was not, and cannot be a national church in Canada or elsewhere; it cannot be "established" as is the church familiar to their lordships of the Privy Council; the supremacy of the Church is and has always been that of the Pope of Rome; and, finally, the Canadian Church was as ultramontane in the time of Louis XIV., and of the Popes who opposed him, as it was after the Vatican Council. It must needs be repeated very often in certain quarters that every Catholic is, so to speak, an ultramontane Catholic, and that whoever is not ultramontane is no Catholic.

The teaching of the Catholic Church on what lies at the foundation of this question of establishments may be found set out with great clearness in the famous Encyclical Letter, *Immortale Dei*, of His Holiness Pope Leo XIII., on "The Christian Constitution of States," dated the 1st November, 1885. After referring to the office of the Church in "watching and legislating for all that concerns religion, of teaching all nations, of extending as far as may be the borders of Christianity, and, in a word, of administering its affairs without let or hindrance, according to its own judgment," the Holy Father proceeds to show that the Church always claimed this authority from the time the Apostles maintained that God rather than man was to be obeyed. The Catholic belief on the relations of the Church and the State is thus expressed: "God, then, has divided the charge of the human race between two powers, viz., the ecclesiastical and the civil, the one being set over divine and the other over human things. Each is the greatest in its own kind; each has certain limits within which it is restricted, and there is, we may say, a world marked off as a field for the proper action of each. . . . So, then, there must needs be a certain orderly connection between these two powers, which may not unfairly be compared to the union with which soul and body are

united in man. What the nature of that union is, and what its extent, cannot otherwise be determined than, as we have said, by having regard to the nature of each power, and by taking account of the relative excellence and nobility of their ends; for one of them has for its proximate and chief aim the care of the goods of this world, the other the attainment of the goods of heaven that are eternal. Whatsoever, therefore, in human affairs is in a manner sacred; whatsoever pertains to the salvation of souls, or the worship of God, whether it be so in its own nature, or, on the other hand, is held to be so for the sake of the end to which it is referred, all this is in the power, and subject to the free disposition, of the Church; but all other things which are embraced in the civil and political order are rightly subject to the civil authority, since Jesus Christ has commanded that what is Cæsar's is to be paid to Cæsar, and what is God's to God."

If this ecclesiastical power is entrusted to the Catholic Church, and if she has charge of divine things as fully as the civil power has charge of human things, it follows that the Church has as good a claim—indeed the same claim—to the possession of her power as the State can show for its own. Whatever the extent of that power may be, it cannot, on the one hand, be lawfully abridged by a hostile civil power, or, on the other hand, be confirmed or more fully "established" by the action of a friendly civil power. The Church is entitled to this power, not by virtue of a mere human law, but independently of any human law, and if needs be, in spite of it. The Catholic Church, therefore, in a higher sense than that in which the word is generally used, is "established," but not established by any civil or human authority.

The Catholic Church never was and never can be "established by law," in the accepted meaning of the phrase, because a Church so established comes to mean one that depends on the laws of some particular State or country for its existence and support. It, therefore, at the best, can be no more than a State or National Church. It cannot be catholic,—it cannot be universal. As it may be established in a dozen different countries, it will necessarily be required to conform to the civil or municipal law of the land in each of these; and, therefore, it is in vain to expect that there should be unity, because there never was, and never will be, two countries in the world governed by the same local laws. If the civil or temporal affairs of the whole world were entrusted to some new Cæsar Augustus, and if the subjects of his authority undertook, in union with him, to "establish" the Catholic Church by means of an imperial edict, or act of parliament, that would mean, and mean only, the recognition of the Church to have charge

over spiritual affairs in its own legitimate sphere. This would still fall short of an establishment as popularly understood.

"The theory of established churches," says Cardinal Manning, "demands an ecclesiastical supremacy in the civil power. The two come and go together; and when the ecclesiastical supremacy is declining, the days of establishments are numbered. . . . A church that consents to be established at the cost of violating its divine constitution and its own conscience, is not a church, but an apostasy. No establishment by State laws and State support has ever been or can ever be accepted by the Catholic Church at the cost of its own divine constitution. The Catholic Church can stand, and has stood, for centuries in relations of amity with the civil powers of the world; but in the sense of establishments here understood, the Catholic Church has never been established in any kingdom upon earth."

Since the breaking up of Christendom in the sixteenth century, it is manifest that the phrase, "established by law," as applied to churches, must be restricted to national churches, or to such as are fostered or controlled by the will of any one sovereign people. But there is no longer a Christendom. When there was such, the Roman Pontiff was its head and the Catholic Church was its recognized Church. The temporal authority in each country naturally wanted, and sometimes imperatively required, particular regulations; and in this regard the Chief of Christendom, for the sake of peace or for other good and sufficient reasons, made special arrangements with that country—made concordats. In the Encyclical on Civil Government already referred to, it is said that "sometimes, however, circumstances arise when another method of concord is available for peace and liberty; we mean when princes and the Roman Pontiff come to an understanding concerning any particular matter. In such circumstances the Church gives singular proof of her maternal good-will, and is accustomed to exhibit the highest possible degree of generosity and indulgence."

Protestant writers, to whom the idea of a universal authority in spirituals, or a Catholic Church, is objectionable as affording a twofold argument against themselves and in favor of Catholicity (so to call the Church), have readily taken up the idea of national churches, either as the mere creation of the State, as Hobbes in his "*Leviathan*" has it, or as an organization for spiritual affairs coexistent with the civil government of the people, as is the more recent and less humiliating view. This theory, however, puts a church on a very temporal and precarious foothold and entirely at the mercy of the populace, who, as once before, might cry out for Barabbas, because the people, the king and Parliament in England, for example, could repeal the Act of Supremacy, could

declare the religion of the State to be anything or nothing, and wipe out the Church it had established; and do all that in a regular and constitutional way. Indeed, the days of the Church of England as a legal establishment are likely to be numbered, and may from constitutional, revolutionary, or external causes be completely annihilated. From a regular and compact Christendom we find there have been experiments with national churches; and now there is but one remaining step, from a few straggling and debilitated establishments to no church at all.

In the sixteenth century the English people achieved a separation from Christendom and established a national church. It was the ingenious theory of some of her historians that this national church is the original and genuine *Ecclesia Anglicana*, the Church whose rights were maintained inviolate in Magna Charta, and concerning which the repeated statutes of the Plantagenets form no inconsiderable portion of the legislation of the kingdom.¹ But it is undisputed that the Roman Pontiff had great control over the Church, that up to the time of Henry VIII. an appeal lay to him; that he had the right of nominations to vacant sees and to the heads of monastic institutions; that he confirmed all appointments of archbishops and bishops; and that a rupture between him and the king was the cause of the establishment of a national church of England and a separation from the Universal Church of Rome.

What took place in England is not pertinent to our subject, except in so far as reference is made to English church establishments. The abolition of appeals which Henry VIII. wanted, and the separation which finally resulted from his quarrel with the Pope, turned out to be two very different and, perhaps, unexpected things. But it is quite certain that other monarchs in Europe before and after his time were equally desirous, if not to nationalize the Church, at least to control it as much as possible. The history of Western Europe at the period we refer to is largely taken up

¹ This theory sits uneasily on the "Declaration of the Homily against Peril of Idolatry," put forth by authority of Queen Elizabeth in 1562, and approved of by the 35th Article of the Church of England. This describes the Church as fallen into the "pit of damnable idolatry, in which all the world, as it were drowned, continued until our age by the space of above eight hundred years, unspoken against in a manner." That was declared to be the case, "not only with the unlearned and simple, but the learned and wise; not the people only, but the bishops; not the sheep, but also the shepherds," etc. Rowland, a grave constitutional writer, says: "Our ancestors were certainly Roman Catholics," and then he goes on to resist the imputation that they were "Papists." If they were not "Papists," it is difficult to understand the statute respecting appeals to Rome, or Henry VIII.'s quarrel with the Pope.

In an article in the *British Quarterly Review* for January last, a writer on this subject says: "Whatever else the Reformation did, it gave to the sovereign that supremacy over the Church which was formerly held by the Bishop of Rome. . . . The bare fact from which we must start is, that the Bishop of Rome before the Reformation was supreme head of the Church in England."

with kingly encroachments on the power, spiritual and temporal, of the Papacy. Germany, Spain, France, might be considered as well as England. In the case of France, for example, we find concordats and pragmatic sanctions between the Roman Pontiffs and the kings, in order to come to an understanding on the particular matters of their nation. To say that because of these arrangements France or Spain had set up a national church, as happened in England, and had become independent of the Holy See, is what cannot be justified. Yet that lies at the foundation of an error within the consideration of so modern a subject as the status of the Church in Canada. The learned reader will withhold his decision as to the relevancy of some things here set out, which are well known, in order that the subject may be fully grasped. We hear of the Gallican Church, the liberties of the Gallican Church, and sometimes of the Gallican school of theology, until it is paralleled with the Anglican Church; and, finally, a grave bench of judges think that there is something in it, and what is more important, a grave question came near being decided in reference to all this. Writers in Canada have espoused this national church, and have given day and document for the transition from the Gallican Church of the past to the Ultramontane Church of our own day.

It is difficult to conceive nowadays the position the Catholic Church occupied in England in very early times, or even in times immediately prior to Henry VIII. The bishop's see at first was commensurate with a kingdom, the parish with a township. The bishop had then his own courts, and everything relating to the care of souls was to be adjudged therein. The law of these courts was the canon and episcopal law; and when the bishop excommunicated, the royal authority gave its full support towards carrying out the sentence.¹ The ecclesiastical courts decided all questions of wills, of legitimacy, and of marriage, and came very near absorbing all the litigation concerning contracts. Any man who could read might claim to have his case handed over to the ordinary,—the Bishop,—and so claim his "benefit of clergy." The wonder was that the king's court had anything to do. The king's council, or ultimate court, had no jurisdiction by a final appeal over these ecclesiastical courts; but an appeal, however, lay to Rome. Not only were the clergy possessed of their separate judicatures, in which they administered their own law, but they formed a separate order in the State. The Lords Spiritual were

¹ As long as the Convocation of the Established Church in the time of Henry VIII. had any power, things were not done so decently. The bishops could imprison on the mere charge of heresy, and when the cause came to trial the proceedings were in accordance with neither law nor justice.

selected from the ecclesiastical chiefs; they had their convocations in York and Canterbury, sitting regularly at the same time as the Commons, and being summoned with them. They, it is said, disputed the supreme legislative authority with the civil power in the State. They were in a majority among the peers, they had immense wealth, they were exempt from taxation. So far, then, from being a church "established by law," the Catholic Church in England was a separate, independent power in the State; and this position was accorded it by the oaths of kings and by repeated acts of Parliament. In upwards of twenty statutes during the Norman and English periods the "liberties" of the Church always appear. It claimed the sole right to define doctrines of faith and morals and to fix the limits of its own jurisdiction in that sphere. It taught that the civil power was to be obeyed in its own sphere; it was in union with, and subject to, the Popes of Rome. This was the Church of England in Catholic times, is the Church of the Vatican Council, and is the teaching of the Encyclical of Leo XIII. on the relation of the State to the Church at this very hour. This is ultramontanism, and it is, and has been always, opposed to national churches or mere State establishments. "The Church in England, in Catholic times, was not established," says Cardinal Manning, "and when an establishment appeared it ceased being Catholic."

But Henry VIII. and his successors changed all this. The ecclesiastical courts are no more; their particular law is good only so far as it is not repugnant to the law of the land. Wills and matters testamentary are now looked after in the Probate Division of the High Court of Justice. Convocation is only a meeting for an adjournment. Some spiritual peers there are, but they sit as barons, the lowest of the five orders of nobility in the United Kingdom. The national church is not relatively to the State what the Church was in former times. Questions for the care of souls are now disposed of by lay, and not by ecclesiastical tribunals. The Church of itself has no authority.

The judicial committee of the Privy Council now decides what is, or what is not, heresy as opposed to the Thirty-nine Articles; and they are the judges of the legal tests of doctrine in the Church of England. These articles are rendered law and good religion by the statute 13 Elizabeth. And so the same judicial committee has decided on the canonicity of the books of the Old and the New Testament, the "real, active, objective presence" in the communion, as also the state of depravity sufficient to disentitle a communicant from receiving the communion. The manner of baptism has been defined by law, as well as all that is legal and salutary to believe so far as regards the same sacrament. The

communion table, the altar, the crosses, the candlesticks, the lighted candles, the vestments, the bread for the service, and many other kindred matters, are judicially laid down in English law as minutely as is the law of landlord and tenant. The legal posture of the clergyman has been carefully regulated. For instance, it has been held illegal for him in the celebration of the communion to elevate the elements above his head, or to mix water with the wine, or to use incense, or to kneel or prostrate himself before the elements. To bow one knee has been held a breach of the discipline of the Church; as also a practice of the minister to stand with his back to the people.¹ Decisions of this kind are not confined to the ones so well known as the *Maconochie* case, but numbers like it can be turned up in the law reports. This will give a fair idea of what is meant by a Protestant church as established by law in England.

How does all this compare with the Church of France—the Gallican Church? Louis XIV., it is true, had his differences with the Popes, but there was no such fatal quarrel with Rome as appears in English history. Relations, such as they were, often unsatisfactory to both parties, were maintained between the head of the Church and the head of the nation; but at no time did the parliaments or other civil tribunals profess to decide on the doctrine, the liturgy, or the discipline of the Church. The Catholic Church was no more an established church in France in the time of Louis XIV. than was the Catholic Church in England in the time of Edward III. Let us see how far it can be called a national church. From the time that Valentinian commanded the Gallican Church to submit to the Pope, down to the famous Articles of 1682, there is, on the face of French history, abundant evidence of the ultramontane or Papal, as opposed to the national or Gallican, character of the French Church. After she received the pallium from Rome, we have repeated pragmatic sanctions and concordats between the French kings and the Popes; for instance, the pragmatic sanction (now by many regarded as spurious) of Saint Louis in 1268, that agreed on at Bourges in 1438 with Charles VII., the concordat of 1515 between Francis I. and Leo X., abolishing this objectionable treaty with Charles VII.

The Gallican Church was, therefore, controlled to some extent by a power outside the French nation, and so was not national; it was ultramontane. These negotiations between France and the Holy See necessarily presume two things: 1st,—to use language not quite exact, but popular enough to be understood,—the dependency of the French Church on the Roman; 2d, privileges or

¹ See Moore's *Privy Council Cases*, New Series, vol. vii., page 167; vol. ii., page 375; vol. xv., page 1; *Weekly Reporter*, vol. xx., page 804; and *Jurist*, page 443.

concessions, liberties or slaveries, of the French Church, either towards the Roman Pontiff or towards the king. For the king, especially Louis XIV., used the influence of the Pope against the clergy, and availed himself of the clergy to make terms with the Pope. The French clergy were, in the fifteenth and sixteenth centuries, in a peculiar position as regards the king and the royal treasury. They were possessed of considerable means, and aided the king very materially in liquidating the burthens of his kingdom. They were in a position to ask favors, and the king, having conceded some, was similarly in a position to command their subjection. "It has always been a maxim of the French court," says Ranke, "that the papal power is to be restricted by means of the French clergy, and that the clergy, on the other hand, are to be kept in due limits by means of the papal power. But never did a prince hold his clergy in more absolute command than did Louis XIV. A spirit of submission without parallel is evinced in the addresses presented to him by that body on solemn occasions. . . . And certainly the clergy of France did support their king without scruple against the Pope. The declarations they published were from year to year increasingly decisive in favor of the royal authority. At length there assembled the Convocation of 1682. 'It was summoned and dissolved,' remarks the Venetian ambassador, 'at the convenience of the king's ministers, and was guided by their suggestions.' The four articles drawn up by this assembly have from that time been regarded as the manifesto of the Gallican immunities. It was the opinion of contemporaries that, although France might remain within the pale of the Catholic Church, it yet stood on the threshold, in readiness for stepping beyond it. The king exalted the propositions above named into a kind of 'Articles of Faith,' a symbolical book. All schools were to be regulated in conformity with these precepts; and no man could attain to a degree, either in the juridical or theological faculties, who did not swear to maintain them.

"But the Pope also was still possessed of a weapon. The authors of this declaration—the members of this assembly—were promoted and preferred by the king before all other candidates for episcopal offices; but Innocent refused to grant them spiritual institution.

"They might enjoy the revenues of those sees, but ordination they did not receive; nor could they venture to exercise one spiritual act of the episcopate."

The measures which Louis XIV. employed to coerce the Pope are matters of general history, and are detailed by Ranke, Gerin, Rohrbacher, and other historians. The king found it impolitic to have the Pope as his enemy, and place the Church to which he

himself and the French people were attached on the eve of what threatened to be a schism. Pope Innocent XI. remained firm, and so the king made a virtue out of his necessities, and went to the other extreme by his hostility towards the Huguenots. He withdrew from the position he had taken towards the Pope.

Ranke, after describing the change in the king, and the political complications of Western Europe that seemed to have driven him to it, proceeds thus :

“It is true that when this result ensued, Innocent XI. was no longer in existence ; but the first French ambassador who appeared in Rome after his death, 10th of August, 1689, renounced the right of asylum ; the department of the king was altered ; he restored Avignon, and entered into negotiations.

“And that was all the more needful, since the new Pope, Alexander VIII., however widely he may have departed from the austere example of his predecessor in other respects, adhered firmly to his principles as regarded the spiritual claims of the Church. Alexander proclaimed anew that the decrees of 1682 were vain and invalid, null and void, having no power to bind even when enforced by an oath. ‘Day and night’ he declares that he thought of them ‘with bitterness of heart, lifting his eyes to Heaven with tears and sighs.’

“After the early death of Alexander VIII., the French made all possible efforts to secure the choice of a Pontiff disposed to measures of peace and conciliation ; a purpose that was indeed effected on the elevation of Antonio Pignatelli, who assumed the tiara with the name of Innocent XII., on the 12th of July, 1691.

“But the Pope was not by any means more inclined to compromise the dignity of the Papal See than his predecessors had been, neither did there exist any pressing motive for his so doing, since Louis XIV. was supplied with the most serious and perilous occupation by the arms of the allies.

“The negotiations continued for two years. Innocent more than once rejected the formulas proposed to him by the clergy of France, and they were, in fact, compelled at length to declare that all measures discussed and resolved on, in the assembly of 1682, should be considered as not having been discussed or resolved on : ‘Casting ourselves at the feet of your Holiness, we profess our unspeakable grief for what has been done.’ It was not until they had made this unreserved recantation that Innocent accorded them canonical institution.

“Under these conditions only was peace restored. Louis XIV. wrote to the Pope that he retracted his edict relating to the four articles. Thus we perceive that the Roman See once more main-

tained her prerogatives, even though opposed by the most powerful of monarchs."

Ranke does not in any way question the authenticity or effect of the retraction. He then proceeds:

"The words of the king, in his letter to Innocent XII., dated Versailles, September 14th, 1693, are as follows:

"I have given the orders needful to the effect that those things should not have force which were contained in my edict of the 22d of March, 1682, relating to the declaration of the clergy of France, and to which I was compelled by past events, but that it should cease to be observed.' In a letter of the 7th of July, 1713, that we find in Artaud's "Histoire du Pape Pie VII.," 1836, tom. ii., p. 16, are the following words: 'It was falsely pretended to him [Clement XI.] that I have dissented from the engagement taken by the letter which I wrote to his predecessor; for I have not compelled any man to maintain the propositions of the clergy of France against his wish; but I could not justly prevent any of my subjects from uttering and maintaining their opinions on a subject regarding which they are at liberty to adopt either one side or the other.'"

This was the condition of Gallicanism in France when Canada was a French colony. The reader need not be detained with any account of the "liberties" (or "slaveries," as Catholic writers call them) of the French Church. They seem, at this distance of time, to resolve themselves chiefly into an annihilation of the Papal authority and an exaltation of the claims of the national clergy. The articles of 1682, some think, were the mildest expression of these liberties;¹ others consider them as the extreme limit of the kingly encroachments. The first, second, and fourth relate to the Pope and the Councils, and do not concern the subject here in hand. The third article assumes that the Papacy is inferior to the Episcopacy, and in France is subject to the rules, manners, customs, and institutions of the country. This subjection would, therefore, entail such courtly rights and exactions as the right of presentation, the right of the *régale*, the *appel comme d'abus*, and such other infringements of ecclesiastical power as the Court or the parliaments delighted to exercise. In the wilderness along the St. Lawrence, as Garneau in his History intimates, it would scarcely be expected that the courtly customs of the Gallican Church could have much application. The reader will appreciate, however, that in any discussion concerning the status of the Church in Canada, a reference to the Church of France may be most material. At the same time it is to be remembered that so far as "establishments" are concerned, the law of England is, that in any of her colonies the English Church is in the same situation as any other religious

¹ This seems to have been the opinion of Doctor Brownson.

body. After a colony has received legislative institutions, the crown has no prerogative to effect the least control over the colonial church; the mother church forms no part of the colonial constitution; and the establishment is not in any way transplanted. The position of the Anglican church, in a British colony, is that of a voluntary association.¹ If this analogy were insisted upon in a case where the French Church was transferred into a colony of France, one would hear less of "establishments" and "liberties" of the Catholic Church in Canada.

There are, therefore, establishments and establishments. A purely civil law that controls the doctrine and the discipline of a church, and manages its affairs just as it does the postal affairs or the customs of the kingdom, no doubt may establish a church or religion in a way that must be conceded to be legal and, probably, constitutional; but it is manifestly a different establishment from that of a church which has its own laws, its own courts, its own undisputed position as an integral part of the constitution; and whose authority and jurisdiction, if not superior to the civil law, are coördinate with it, and admittedly supreme within its own sphere. There is also that milder and uncomplimentary form of establishment of which the civil authority says in effect: We will recognize such or such a church as the established church of this country; just as it might say, we will do business in financial matters with the First National Bank. One cannot help remarking that those who aided in breaking up Christendom have taken low ground for their religions; avoiding a universal head, recourse was at first had to a national or royal supremacy, and after that has been found a failure, every man is and has the right to be the head of his own church. If the right of private judgment is good against the Pope, it ought to be good against the Privy Council. The historical fact is, that the world within a very short period has seen a Christendom with one international head; then national churches with a royal supremacy; and now disestablishment—no church. "The royal supremacy," says Cardinal Manning in one of his most happy remarks on this subject, "has perished by the law of mortality, which consumes all earthly things." It failed in Ireland—penal laws could not enforce it; in Scotland the whole people rose against it. In Canada,² after being shorn of many of its objectionable provisions, it was introduced by the Quebec Act of 1774. After several ineffectual attempts to enforce it, the provision passed through all possible stages of degradation; it was

¹ See *Long v. Gray* [Cape Town Bishop], 1 Moore's Cases, N. S., 411; *Colenso v. Gladstone*, 3 L. R. Eq., 1; *In re Bishop Natal*, 2 Moore's Cases, N. S., 115, deciding these points.

² See article on "The Quebec Act and the Church in Canada" in the October (1885) number of this REVIEW.

overlooked and waived and ignored, and then finally relegated to the limbo of obsolete law. During British rule in Canada, one thing is certain, that the Church of England never was, and is not now, an establishment by law; the Church of Rome, with its Papal supremacy, could not be expected to confine itself under a royal supremacy; it could not have acknowledged two inconsistent and irreconcilable authorities, and, therefore, it has not been an established church in Canada. It may well be the case that it is better known to the law of the land than any other church; that its freedom is guaranteed by treaty and by statute; and that the law of nations must be set at defiance before any abridgment of this freedom can be effected,—a strong and indestructible bulwark against bigotry emanating from any quarter;—but all this falls short of establishment even of the mild character alluded to. It is vastly better than the Establishment.

The Church under French rule must first of all be considered both with regard to the sequence of events and as throwing light on the state of affairs when this country passed into the hands of the English. It will be contended that it was no national or state church that formerly obtained in this country; that there was no transplanting of "liberties" of the French Church; and that from the historical evidences and legal state papers and other documents pertinent to the solution of these questions, it is impossible to arrive at any other conclusions.

From the discovery of Canada, or rather from the foundation of Quebec, the spiritual care of the French settlers and of the aborigines was entrusted to the Archbishop of Rouen. Quebec dates back to 1608, and is associated with the name of Champlain. Many other discoverers had touched at several points in the Gulf of St. Lawrence from the time of Jacques Cartier over seventy years before. To Poutrincourt is ascribed the honor of bringing the first missionary, in 1610, to this shore. As appears by the ecclesiastical records in Quebec, on the 12th of June, 1611, two Jesuit Fathers arrived from France to begin the work of implanting the faith in the New World. One of these remained about two years, and then returned to France. His *confrère*, after thirty-five years of missionary life, ended his days peacefully with the people he had come to serve. Not alone, however, during all this time; for in 1615, four Recollects reached Quebec, and every second or third year afterwards new missionaries of these orders reinforced their brethren, as death or other causes thinned their ranks.

The tenth name on the list is Jean de Brébeuf, a martyr in 1649. While not a few are set down as "drowned" or "frozen," there are over twenty on the same glorious roll with this illustrious Jesuit. Later, many are reported as lost—unheard of. In 1620

the Recollect convent was founded on the St. Croix River; the name was afterwards changed to St. Charles, and five years later the Jesuit establishment of Notre Dame des Anges. The year previous St. Joseph had been chosen patron saint of the country. In 1639 the Ursulines and Hospitallers commenced their labors at Sillery. Within this period is to be found the names of Lalemant and Brébeuf, Maise, Jogues, and other missionaries.

Shortly after Ville Marie (Montreal) was founded, and churches were built there as in Quebec. The Sulpicians arrived, and with them M. de Queylus in his quality as Grand Vicar of the Archbishop of Rouen. In 1658, however, Mgr. de Laval was named Bishop of *Petræa in part. infid.*, and Vicar Apostolic of New France, and the Grand Vicar retired from the country. It was not until 1674 that he was named Bishop of Quebec and immediate suffragan of the Holy See. This was by bull of Clement X., dated 1st of October of that year.

During these fifty years it may be fairly argued that whatever principles of the French national church or of Gallicanism could be imported into New France might have been so imported; that Quebec was ecclesiastically an outlying portion of the Archdiocese of Rouen, and that whatever that was, Quebec was. But now a bishop was to be appointed, and that was regarded then, as it may be now, the test question, or deciding whether Gallican or Ultramontane principles (so to call them) were to be transplanted into the French colony.

On this important matter few writers will be more readily accepted, at all events by Protestants, than the historian Parkman. In his "French Régime," he thus narrates this crisis of ecclesiastical affairs:

"Two great parties divided the Catholics of France—the Gallican, or national party, and the Ultramontane, or papal party. . . . Hence they claimed for him [the Pope] the right of nominating bishops in France. This had anciently been exercised by assemblies of the French clergy, but in the reign of Francis I. the king and the Pope had combined to wrest it from them by the Concordat of Bologna. Under this compact, which was still in force, the Pope appointed French bishops on the nomination of the king, a plan which displeased the Gallicans and did not satisfy the Ultramontanes.

"The Jesuits then, as now, were the most forcible exponents of ultramontane principles. . . . In the question of papal supremacy, as in most things else, Laval was of one mind with them.

"Those versed in such histories will not be surprised to learn that when he received the royal nomination, humility would not permit him to accept it; nor that, being urged, he at length

bowed in resignation, still protesting his unworthiness. Nevertheless, the royal nomination did not take effect. The Ultramontanes outflanked both the king and the Gallicans, and by adroit strategy made the new prelate completely a creature of the Papacy.

"Instead of appointing him Bishop of Quebec in accordance with the royal initiative, the Pope made him his Vicar Apostolic for Canada, a country of infidel savages, which was excluded from the concordat and under his [the Pope's] jurisdiction pure and simple. The Gallicans were enraged.

"The Archbishop of Rouen vainly opposed, and the parliaments of Rouen and of Paris vainly protested. The Papal party prevailed. The king, or, rather, Mazarin, gave his consent, subject to certain conditions, the chief of which was an oath of allegiance; and Laval, Grand Vicar Apostolic, decorated with the title of Bishop of Petraea, sailed for his wilderness diocese in the spring of 1659."¹

Slight reference need here be made to other facts which go to the support of this view. The unfortunate episode of Abbé Queylus made it only the more apparent that the "Papal party," as Parkman would call it, and not the "Gallican party," was at the head of the Church in Canada.

The Abbé had obtained bulls from Rome in regard to the curacy at Montreal. These disturbed the mind of the Vicar Apostolic, and he wrote to the Pope regarding the jurisdiction of the Archbishop of Rouen. The result was not ambiguous.

"The Holy See annulled the obnoxious bulls; the Archbishop of Rouen renounced his claims, and Queylus found his position untenable. Seven years later, when Laval was on a visit to France, a reconciliation was brought about between them. The former Vicar of the Archbishop of Rouen made his submission to the Vicar of the Pope, and returned to Canada as a missionary. Laval's triumph was complete, to the joy of the Jesuits, silent, if not idle, spectators of the tedious quarrel."²

To Mgr. Laval must be ascribed the position of father of the Canadian Church. In 1663 he founded the seminary of Quebec, which was confirmed by letters patent from Louis XIV., and three years later he consecrated the parish church of Quebec. On the occasion of his visit to France in 1674, he was named Bishop of Quebec and immediate suffragan of the Holy See, and the reve-

¹ Abbé Faillon gives the documents in full.

² De Talon says: "L'Ecclésiastique est composé d'un Eveque, ayant le titre de Pétrée, *in partibus infidelium*, et se servant du caractère et de l'autorité de Vicaire-Apostolique. . . . En lieu de soupçonner que la pratique, dans laquelle ils sont qui n'ont pas bien conformé à celle des Ecclésiastiques de l'Ancienne France, a pour but de partager l'autorité temporelle qui jusqu'au temps de l'arrivée des troupes du Roi en Canada, residait principalement en leur personnes." The extract made by Parkman is all that is material in these papers.

nues of the Abbey of Meaubec were united to the diocese of Quebec. In 1684 he established a chapter in his episcopal city, and four years later retired, leaving the Abbé de St. Valier as his successor. On the day after Mgr. Laval had retired, his successor was consecrated, though the bulls for his appointment and the letters patent confirming it had been issued some months prior to that time. These letters, issued in 1687, confirm the creation of the diocese of Quebec.

St. Valier had been Almoner to the king when Laval went to France for a successor in 1684, and it is ascribed to him that he tried to undo much of the good his predecessor had effected in opposing the kingly pretensions.¹ The mere fact of his being almoner suggests a favorite of the king; on him devolved the right of advising the crown as to the nomination to bishoprics. In 1685, two ordinances were passed which deserve to be noticed. In the commission to Denonville the religion of the governor is for the first time specially mentioned, it being required that he profess "la religion catholique, apostolique et romaine." It is significant that Colbert died the preceding year. In March, 1685, an ordinance issued in which "le roi veut y maintenir la discipline de l'Eglise catholique apostolique et romaine."

In 1695, during the episcopacy of St. Valier, the jurisdiction concerning ecclesiastical matters was thus defined: "La connaissance des causes concernant les sacrements, les vœux de religion, l'office divin, la discipline ecclésiastique, et autres purement spirituelles, appartiendra aux juges d'église. Enjoignons à nos officiers et même à nos cours de parlements, de leur en laisser, et même de leur en renvoyer la connaissance, sans prendre aucune juridiction, ni connaissance des affaires de cette nature, si ce n'est qu'il y eut appel comme d'abus interjeté en nos dites cours, de quelques jugements, ordonnances ou procédures faites sur ce sujet, par les juges d'église, ou qu'il s'agit de succession, ou autres effets civils à l'occasion desquels on traiterait de l'état des personnes décédées ou de celui de leurs enfants."

On the death of St. Valier, in 1727, a question arose as to whom should be entrusted the conduct of his obsequies. Mgr. de Mor-nay, some dozen years before that date, had been appointed coadjutor to Bishop St. Valier, under the title of Bishop of Eumenea in Phrygia. He had taken up his residence at Cambrai, and, as a matter of fact, never came to Canada. One of his first acts, however, after his succession to the See of Quebec, in May, 1728, was the nomination of Mgr. Dosquet as his coadjutor. On the death

¹ It is said that the aim of this bishop was to place the Church in Canada on the footing of the Church in France; but, as Parkman says on this, nature as well as Bishop Laval threw difficulties in the way. He effected nothing.

of St. Valier the Quebec chapter assembled and appointed M. Bollard as Vicar-General, in spite of the fact that Mgr. Mornay exercised that charge. A claim was put forward by M. de Lotbinière, as archdeacon, and a lengthy ordinance appeared under the direction of the intendant, Dupuy. He was a lawyer of the Gallican school, whose great ambition was to make the superior council at Quebec a reduced copy of the parliament at Paris.¹ With great prolixity, an ordinance of the 4th of January, 1728, prescribed the proceedings of the bishop's funeral. Two days later, a canon of the Cathedral caused a *mandement* to be read in all the churches protesting against this intervention of the civil power, whereupon the incensed intendant on the following day issued another ordinance which bears exactly on the question in hand. It is in the true Gallican spirit:

“ L'Église étant dans l'État, et non l'État dans l'Église, faisant partie de l'État, sans lequel elle ne peut subister, les Écclésiastiques, d'ailleurs, étant si peu les maîtres de se soustraire un seul moment à la justice du Prince que Sa Majesté enjoint à ses Juges, par les Ordonnances du Royaume, de les y contraindre par la saisie de leurs revenus temporels, n'étant nécessaire, pour en convaincre tout

¹ As to the nature of the Parliament of Paris, hear what Count de Maistre says of it: “ Protestant dans le seizième siècle, frondeur et Janséniste dans le dix-septième, philosophe enfin et républicain dans les dernières années de sa vie, trop souvent le Parlement s'est montré en contradiction avec les véritables maximes fondamentales de l'État. Le germe Calviniste nourri dans ce grand corps devint bien plus dangereux lorsque son essence changea de mom et s'appela Jansénisme. Alors les consciences étaient mises à l'aise par une hérésie qui disait: je n'existe pas; le venin atteignit même ces grands noms de la magistrature que les nations étrangères pouvaient envier à la France. Alors, toutes les erreurs, même les erreurs ennemies entre elles, étaient toujours d'accord contre la vérité, la nouvelle philosophie dans les parlements s'allia au Jansénisme contre Rome. Alors le Parlement devint en totalité un corps véritablement anti-catholique, et tel que sans l'instinct royal de la maison de Bourbon et sans l'influence aristocratique du clergé (il n'en avait plus d'autre) la France eût été conduite infailliblement à un schisme absolu.

“ Encouragés par la faiblesse d'une souveraineté agonisante, les magistrats ne gardèrent plus de mesure: ils régentèrent les évêques, ils saisirent leur temporel; ils appelèrent comme d'abus d'un institut religieux devenu français depuis deux siècles, et le déclarèrent, de leur chef, anti-français, anti-social, et même impie, sans s'arrêter un instant devant un concile œcuménique qui l'avait déclaré pieux devant le souverain Pontife qui répétait la même décision devant l'Église Gallicane, enfin debout devant eux, et conjurant l'autorité royale d'empêcher cette funeste violation de tous les principes.

“ Pour détruire un ordre célèbre ils s'appuyèrent d'un livre accusant qu'ils avaient fait fabriquer eux-mêmes et dont les auteurs eussent été condamnés aux galères sans difficulté dans tout pays où les juges n'auraient pas été complices. Ils firent brûler des mandements d'évêques, et même, si l'on ne m' a pas trompé, des bulles du Pape, par la main du bourreau. Changeant une lettre provinciale en dogme de l'Église et en loi de l'État, on les vit décider qu'il n'y avait point hérésie dans l'Église qui anathématisait cette hérésie: ils finirent par violer les tabernacles et en arracher l'Eucharistie pour l'envoyer au milieu de quatre baïonnettes, chez le malade obstiné qui, ne pouvant la recevoir, avait la coupable audace de se la faire adjuger.”

le peuple de cette colonie, inviolablement attachée au culte dû à Dieu et à l'obéissance due au Roi par l'express commandement de Dieu, que de lui donner connaissance ainsi que nous allons le faire de la déclaration publique, que les *Evêques de France, assemblés à la tête du clergé, ont donné, le dix-neuf Mars de l'année mil six cent quatre-vingt deux*; laquelle déclaration porte en propres termes, que Saint Pierre et ses successeurs, Vicaires de Jesus Christ, et que toute l'Église même, n'ont reçu de puissance de Dieu que sur les choses spirituelles et qui concernent le salut, et non point sur les choses temporelles et civiles: Jésus Christ nous apprenant lui-même que son royaume n'est pas de ce monde, et, en un autre endroit, qu'il faut rendre à César ce qui est à César, et qu'il s'en faut tenir à ce précepte de l'Apotre Saint Paul, que toutes personnes soient soumises aux puissances des Rois, car il n'y a point de puissance qui ne vienne de Dieu, c'est pourquoi celui qui s'oppose à la puissance des souverains, résiste à l'ordre de Dieu dans les choses qui concernent le temporel.

“ Ce sont ces vérités reconnues et annoncées par un clergé aussi auguste que l'est le clergé de France, dont les prélats et ecclésiastiques qui le composent, ont toute la science et la capacité convenable pour ne se point tromper eux-mêmes et ne point induire les peuples en erreur, aussi bien dans les affaires du gouvernement et de l'État que dans les plus grandes vérités de la religion, ce sont, disons-nous, ces principes qu'il convenait d'apprendre ici au peuple, plutôt que d'abuser de cette chaire de vérité où l'on ne doit prêcher que l'obéissance due à Dieu et au Roi, pour faire de la part des dits chanoines et chapitre un acte d'obéissance formelle à la puissance du roi et à l'autorité légitime; c'est donc pour aller au devant de ce désordre et mettre le conseil supérieur en état de punir les coupables que nous ordonnons qu'il sera informé contre le Sieur de Tounancourt, Chanoine de la Cathédrale, et autres, de la publication du prétendu mandement et manifeste, par devant le Sieur André de Leigne, Lieutenant-General, civil et criminel, en qualité de nôtre subdélégué à la requête du Sieur Hiche, que nous avons nommé en cela Procureur-Général de notre commission.

“ Faisons de très-expresses inhibitions et défenses aux prétendus Vicaires-Generaux du Chapitre de Québec, d'envoyer le dit mandement et manifeste pour être publié en aucune Église de la colonie, sous peine de la saisie de leurs revenus temporels et autres peines de droit.

“ Faisons pareillement défense aux curés et missionnaires des Églises paroissiales du Canada de faire la publication du mandement et manifeste d'aucun autre qui émane des dits prétendus vicaires-généraux à qui le Conseil Supérieur a fait défense de prendre cette qualité et d'en faire les fonctions sous peine contre

les dits curés et missionnaires d'être déclarés désobéissants aux ordres du Roi et à justice et sous peine de la saisie du revenu temporel de leurs curés, etc."

If these ordinances of the council had taken effect, or had not been questioned, they would be strong evidence of the existence and toleration, the actual establishment indeed, of the "liberties" of the Gallican Church in Canada. But the governor, M. de Beauharnois, took the most decided stand against the action of the intendant, Dupuy; he annulled the obnoxious ordinance and had his own decrees for their reversal executed with the aid of the military. Cardinal Fleury, at home, had procured the dismissal of Dupuy; and although the governor may have acted in a high-handed way, as Mr. Garneau says, the ordinance of the 17th of September, annulling the proceedings of Dupuy, was confirmed by Maurepas, the French Secretary of State. Mr. Garneau thinks that the governor took sides more strongly in favor of the clergy than ever his predecessor took against them. But unquestionably it was a critical time in the history of the Church. Garneau's account is, to say the least, meagre, and not at all marked by the calmness that should pervade the treatment of such delicate subjects amongst his countrymen. Mr. Doutre is forced to say: "Le conseil se trouva ainsi en opposition au gouverneur et à la majorité du clergé. L'immoral Louis XV., de son côté, pour donner la change, se faisait servir par des cardinaux et donnait au clergé dans le royaume une immense influence. L'Intendant Dupuy, voyant défaillir le conseil, donna sa démission pour ne pas se voir retirer les faveurs du prince." This great and indisputable fact remains. In 1728, in La Nouvelle France, the declaration of 1682 was expressly referred to and relied upon in an official State document; and subsequently, within the same year, and as part of the same public affair, this document was officially, publicly, and with unusual notoriety, annulled and rendered void. The French authorities approved of this course.

The history of the declaration is in perfect accord with this view. It was never registered or put in force in Canada. This cannot be disputed. In the two large volumes compiled under the direction of the Parliament of Canada, in 1801, no such registration can be found; nay more, no official or other state paper from France has the most remote reference to it. It can be pretty confidently asserted that no official or other state paper in Canada, except the one already referred to as having been cancelled, is to be found. If not registered, then, according to the French law, it would be void. "It did not require registering," says Mr. Doutre, "because it did not emanate from the king." It is true that the declaration did not emanate from the king as a state paper,—it has been traced

pretty clearly to Colbert,—but the edict directing that the doctrines of the four propositions should be taught and maintained in the schools of the kingdom, was an edict emanating from the king. Mr. Doutre feels the weakness of a want of registration, however, and adds: “The most incontestable proof that it is possible to give that the bishops of New France are conformed to the declaration of 1682, is in the edict of installation of Mgr. Pontbriand.”

That admission, in view of what we have seen, will bring us safely down to 1714 without any Gallican liberties in Canada. Mr. Doutre is the great champion of the Gallican Church, and if there is anything in favor of his theory until Bishop Pontbriand's time, it is likely he made the most of it.

The See of Quebec was declared from its foundation to be immediately dependent on the Holy See. The claim of nomination was no special feature of the Gallican liberties, it was exercised in Europe in ancient times, and exists to-day.¹ Bishop Laval was no Gallican, and was opposed to Gallican principles; Bishop Saint Valier was necessarily something of a royalist, but was unable to nationalize the Church; he could not even establish an irremovable curé. We have seen the defeat of Gallicanism after his death—a defeat where success, if possible, was the most likely. During the episcopates of Mornay, Dosquet, and L'Aube-Rivière, there is no sign of any royal, or national, or Gallican tendency; but we are told that the installation of the last bishop under the French régime established the most “incontestable proof of the recognition of the four articles of 1682.” The first bishop was confessedly not within these articles, as his installation was many years before they were drawn up—the last one, it seems, is the only one possible to be accounted as Gallican.

Bishops in French times, and later under English sway, were royal counsellors as well as spiritual heads. They therefore took an oath such as privy counsellors at this day take. If Bishop

¹ Archbishop Spalding, in his *Miscellanea*, says: “Princes never had the right of nomination to bishoprics without the consent and concurrence of the Church. The thirtieth canon of those called Apostolic—believed by the learned to exhibit pretty accurately the discipline of the first three centuries of the Church—pronounced sentences of deposition against bishops who received their Sees from princes. The fourth canon of the great Council of Nice, held in 325, regulates the manner of appointing bishops by the prelates of the province, or by at least three of them, without even alluding to any right of the people or of princes in the matter. The twenty-second canon of the Eighth General Council, held in Constantinople in 870, goes still further and pronounces an anathema against any lay prince who would interfere in the “election or promotion of any patriarch, metropolitan, or bishop so as to prevent its canonical freedom.” Many other authorities could be produced to prove that the claim set up by the princes of the 11th century not only had no sanction from the Church, but was in the very face of all its rights and laws. By being liberal to the Church, temporal princes acquired no right to enslave it, and to introduce into its bosom the feudal on the ruins of the canon law.

Pontbriand, or any other bishop before or since his time, took an oath with any reference to Gallican liberties, or adverted even to the existence of such things, there would be an argument worth considering. Now, what are the facts about Bishop Pontbriand? After the king had seen the "bulls and apostolic provisions for the bishopric of Quebec," as the installation document says, "and not being able to discover anything in them, either derogating from our laws, indult, concession, and concordat between the Holy See and our kingdom, or from the privileges, franchises, and liberties of the French Church, we have admitted the said bishop to take an oath of fidelity that he owes us by reason of the said bishopric, as it appears by a certificate," etc.

Now all this is manifestly in favor of the view we are presenting. As to the bishopric of Quebec, the bulls and apostolic provision for its erection were issued on the 1st of October, 1674, and the negotiations for obtaining a bishopric for Canada began in 1657. The king wrote to the Pope frequently about it, and he was waiting, as the official documents show, until "il aura plû à notre Saint Père le Pape d'y en établir un."

Mgr. Laval was consecrated Bishop of Petræa in 1659, and the delay was really due to the fact, as Parkman tells, whether Laval should be attached to the Gallican archbishop of Rouen, or should be directly under the authority of the Pope. Between 1659 and 1674 Mgr. Laval was named Vicar Apostolic, which, as every one knows, is an office immediately depending on the Holy See. When the bulls were published in 1674, this fact was recited in them.

Now, in 1741, when Bishop Pontbriand received the mitre, he received it both with reference to the king and the Pope, exactly as did Bishop Laval in 1674; and this is not only the meaning, but the precise wording of the installation. Further, if the articles of 1682 were in force, either in France or in Canada, if no reference were made to them, it would be strange, but it might pass. When, however, the king says that "the bulls and apostolic provisions of the diocese of Quebec are in accord with the laws, indult, concession, and concordat" between France and the Holy See, it is inconsistent with these words to suppose the existence of the articles of 1682, which had been, as long as they were in force, directly opposed to the concordat of 1515, and to all the relations with the Holy See.¹

¹ The oath of Bishop Pontbriand is as follows: "Sire, Je, Henri-Marie Du Breil de Pontbriand, Evêque de Québec, jure le très-saint et sacré nom de Dieu et promets à Votre Majesté que je lui serai, tant que je vivrai, fidèle sujet et serviteur, que je procurerai de tout mon pouvoir le bien et le service de son Etat, que je ne me trouverai en aucun conseil, dessein, ni entreprise au préjudice d'iceux, et que, s'il en vient

This document is, therefore, evidence against those who contend for the Gallican character of the Church in Canada; but even if it were the contrary, it has been referred to here for this reason: it is the only document in force referred to in the edicts, ordinances, *arrêts*, etc., in France or in Canada, in ecclesiastical or "Gallican" state papers, in which the phrase, "Libertés de l'Eglise Gallicane," appears. The state paper drawn up by Dupuy in 1728, and already referred to, relies on the articles of 1682, but was annulled. In no one of the commissions to governors or intendants is there any reference to the Gallican Church. In the ordinances or patents respecting the bishops, the seminary, the Jesuits, or other religious bodies, there is not a word pointing to any Gallican Church or any special customs, liberties, or privileges.¹

The state papers drawn up in reference to the cession are further evidence of the position for which we are contending. The VIth article of the capitulation of Quebec provided that "la religion catholique, apostolique et romaine sera conservée;" the XXVIIth article of the Capitulation at Montreal makes provision that "la religion catholique, apostolique et romaine subistera en son entier," and then the Treaty of Paris in its IVth clause secures "la religion catholique . . . selon les rites de l'Eglise de Rome." Attorney-general Marriot, who went very minutely into the whole question, gave it as his strong opinion that the Church in Canada was the Church of Rome without any restrictions of the Gallican Church. He wrote at the time, and at the express request of the government of England. He was employed to draft a constitution for the "new" subjects of His Majesty George III., and he was regarded as one of the most learned doctors of the law in the kingdom.

The Church, then, in Canada began under the protection of the Archbishop of Rouen, and for nearly fifty years was under his charge. A vicar apostolic was then put over the country; the archbishop lost all control of the ecclesiastical affairs, and Quebec became immediately dependent on the Holy See. Prior to this time Cardinal Richelieu, an adherent of the Roman as opposed to the Gallican tenets, took charge of the colony.²

quelque chose à ma connaissance, je le ferai savoir à Votre Majesté; ainsi, Dieu me soit en aide, et ses Saints Evangiles par moi touchés."

[Signé] H. M. DU BREIL DE PONTBRIAND,
Evêque de Québec.

¹ In a series of questions put for the decision of the king in 1692, on some disciplinary matters as to precedence in the Church, an answer is given to one to the effect that the case be governed "par les usages de l'Eglise de France." It is needless to say that it would be unfair to draw a general deduction from phrases like "l'Eglise de France," or "l'Eglise Gallicane," when used in a sense of certain customs obtaining in France and necessarily introduced here.

² Ranke says: "Richelieu found it advisable, on the whole, to attach himself as closely as possible to the Papacy; in the disputes between the Roman and Gallican doctrines, he now adhered to the Roman and abandoned the Gallican tenets."

In the third quarter of the century the diocese was erected and placed under Roman as opposed to Gallican control. From 1682, the date of the Gallican articles, until 1693, when they were annulled, no edict is to be found transplanting them into Canada, and no French or Canadian edict ever referred to them as being in force in this country. The Pope, it is said, claimed that it did not apply to a country like Canada. The Superior Council at Quebec has no reference to it. In 1728 an attorney-general attempted to make it appear that it was French law, and founded an edict upon it, but the edict was annulled, and he was dismissed from his position. Finally, in 1741, the last bishop who owed allegiance to France was installed with special reference to the fact that the diocese of Quebec was created by the bulls and apostolic provisions of Clement X. in 1674. In 1763 Canada passed out of French control, and in the capitulation at Montreal, some years before, the French representatives asked that the nomination of French bishops, etc., be reserved to the French king, and the absurd request was very naturally refused.

The rights of the *régale* never could have any application to Canada except as to the presentation, which has been a law at all times in France—so long as the Church has existed there. How was this in Canada? Every bishop after Laval had his coadjutor, who was appointed *in partibus infidelium*, just as Laval himself originally had been. The consent of the king was superadded. There was never a vacancy in point of fact, and there were no revenues for the king to seize upon.¹ These are the three features of the *régale*, and it cannot be intelligently argued that the right applied to Canada. It did not arise in France until after 1670.

Then the *appel comme d'abus* does not apply to Canada. Sir Robert Phillimore, in giving judgment in the Guibord case, on the contention that the Court of Queen's Bench, created in 1794, possessed the power of enforcing the privileges of the Gallican Church by proceeding in the nature of an *appel comme d'abus*, says: "Considering the altered circumstances of the Roman Catholic Church in Canada, the non-existence of any recognized ecclesiastical courts in that province, such as those in France, which it was the office of an *appel comme d'abus* to control and keep within their jurisdiction, and the absence of any mention in the recent code of procedure for Lower Canada of such a proceeding, their lordships would feel considerable difficulty in affirming the latter of these

¹ The colony was so poor, and the church revenues so insufficient, that the king had to defray the expenses connected with procuring the bulls from Rome in Bishop Laval's time. When Canada fell into the hands of the English, the government granted an annuity to the bishop to maintain him in suitable dignity. A vacant benefice in Canada would not afford any *régale*. The bishops had the patronage by a royal arrêt, dated 27th March, 1699.

propositions." The ordinance of 1695, set out above, would seem to be decisive of this question.

In ordinary language, this means that there was no such appeal; that there cannot be an appeal where there is no court to be appealed from. His lordship then proceeded to show that a number of cases decided in Lower Canada, supposed to be appeals of this nature, were not so in reality. And one hundred years before this judgment of the Privy Council, Chief Justice Hey reported to the home government that so far as appeals from the ecclesiastical to the civil tribunals were concerned, "no such thing as ecclesiastical courts existed in the province." The governor-general, Carlton, acquiesced in this view. However it may be as to the existence of appealable courts, the position was taken that the tribunal capable of entertaining such appeals was not the Superior Council at Quebec, and this position was upheld on a reference to the French court. The ordinance of 1695, already cited, expressly enjoins that, except in the case of appeal to the courts of parliament, the civil authorities were not to interfere with the judges of the Church in matters of a spiritual nature. That the courts of the parliament of Paris might have been able to entertain an appeal, in virtue of this *ordonnance*, from the judges of the Church, may be fairly argued; but by every canon or legal construction of a written law, there could be no appeal to any other tribunal, and so no appeal to the Superior Council at Quebec.

In former articles of this REVIEW, the writer has discussed the "Treaty of Paris," and the "Quebec Act," making reference to such incidental matters as seemed to throw light upon these important documents. The order in which these studies have been presented to the reader may be open to some objection; but it is to be hoped that a little assistance has been given to whosoever takes up the task of writing the history of the Church in Canada. Such a work remains yet to be done; some general histories of Canada, of course, there are; but in these, even when written by Catholics, and where the Church necessarily forms an important part, much must be taken with caution, and not a little rejected altogether. It is to be regretted that, with one or two notable exceptions, non-Catholic writers have done themselves no credit by the suppression of what is unquestionably the truth, and by the suggestion of what is undeniably falsehood. It is no part of the present writer's task to correct, or to try to correct, every erroneous impression or unfair statement of those who have preceded him in the consideration of the questions here suggested; it was deemed sufficient to put forward the one view of the case and allow it to rest on such evidence as properly decides the questions in dispute. That evidence speaks for itself; and if the reader thinks it points to other conclusions, he is welcome to his own opinion.

CATHOLICITY IN ITALY.¹

A SINGLE fact, taken up by chance from among those which are of frequent and almost daily occurrence in Italy, and even in Rome, may serve to introduce to American readers the very important topic with which this paper deals. Yesterday—Septuagésima Sunday—at half-past one o'clock of the afternoon, a large and select audience assembled in the great hall of the Roman College, the once glorious school of the Society of Jesus, to hear a distinguished member of the Italian Parliament deliver a lecture on what must have seemed to his admirers a most interesting subject. Around the lecturer's chair was a circle of illustrious *Italianissime* gentlemen and ladies. There were Mancini, the ex-Minister of Foreign Affairs, who won himself such unenviable notoriety at the time of the obsequies of Pius IX., in the summer of 1881, and two years ago in the confiscation of the Propaganda property; Zanardelli, ex-Minister of Justice, Cairoli, Spaventa, Pianciani, Sbarbaro, Miceli, and others whose names the *Gazzetta d'Italia* omits to mention. The rest of the audience was made up of the anti-clerical clubs of Rome, of the youth who are mis-taught in the institutions which formerly composed the Papal University of the Sapienza and the Roman College itself, in papal times the Gregorian University.

The lecturer was the honorable Domenico Berti, and the subject was—The Life and Work of Giordano Bruno—the great apostle of atheism in Italy. The subject-matter and its treatment were quite in harmony with the ideas and sentiments of the audience, for the illustrious statesmen present, and the *moltissime signore*, the crowd of ladies, applauded frequently and vehemently.

So, in the great hall of the world-wide renowned Catholic school in which Leo XIII. was educated, he had the grief to learn that on

¹ [It may be noticed that here we present a second article, in this number of the REVIEW, on the relation of the State to the Church in Italy. The fact that these two contributions came to us almost simultaneously is a striking illustration of the renewed interest that is being taken in this question. Both papers were written in entire independence of each other, one by an American priest resident in the Eternal City; the other, by an American bishop, making close observation during his visit *ad limina apostolorum*, and, some considerable time after his return home, putting his recollections and impressions in the shape in which they appear in our opening article. Necessarily, both, to a great extent, cover the same ground; but each adds greatly to the interest the other awakens in the reader, who cannot fail to remark the different ways by which they arrive at practically the same conclusion. The Roman question will remain an open one until it is settled in favor of the Pope, of the Church, and of justice.—ED. REVIEW.]