

THE QUEBEC ACT AND THE CHURCH IN CANADA.

AT the distinguished company assembled at Toronto last autumn in honor of Archbishop Lynch, many of the readers of this REVIEW who were present and heard the speeches will have remembered with what pardonable pride the venerable prelate from Quebec, Archbishop Taschereau, referred to the ancient boundaries of his diocese; to the time when his predecessors had jurisdiction not only over the province of his host, but westward to the valleys of the Ohio and the Mississippi. No one better than the illustrious speaker could have depicted the time when, in Canada, a long line of bishops traced the outlines of a great cross on this Continent, at once the symbol and limits of their jurisdiction, connecting the Atlantic with the Rocky Mountains, intersected by a belt of territory extending from Hudson's Bay to the waters of the Gulf of Mexico. This was the diocese of Quebec not only under the old French régime, but for many years after the cession of Canada to England in 1763—up, in fact, to the formation of the United States some years later. The early American Church, not owing allegiance to the French or Canadian bishops, comprised what was comparatively a small strip of Atlantic seaboard, with France to the north and west and Spain to the south. Probably the moderation of the speaker had been somewhat suggested by the cosmopolitan character of the assembly, fearing lest some representative of the Mexican Church might have arisen and asserted his claim, if not to the larger portion of the Continent, at least forestalling Quebec in priority by a good century and a quarter. Conceding this, there yet remained a respectable antiquity to Bishop Laval and his successors, and a jurisdiction of territory that now covers nearly a dozen ecclesiastical provinces.

But beyond this there are some unique things about the Church in Canada. We had a complete Church establishment prior to the cession, and we have had since the cession an attempted establishment, so to speak, under British law. Our bishops in French times were the choice of the king, and the diocese, convents and colleges were established by royal patent. In early English rule, since the cession, the King of England has been consulted in the choice of bishops, and the Downing Street authorities have time and again signified their disapproval or acceptance of nominees to the episcopal see of Quebec before they were preconized at Rome. In truth, we have had the representative

of the Crown trying, by every means, to force the Church under the law, so that not only the bishop but every curé should seem to be appointed by the king's most excellent majesty. In former days, in England, a Catholic was thought to be good enough to be head of the Protestant Church; and as it was a poor rule that worked only one way, the flexibility of the constitution was thought to be sufficient to enable a Protestant king in return to become the head of the Catholic Church, at least good enough for the Church in a colony. We have had Protestants, legal luminaries amongst us at one time, arguing that Roman Catholics in Quebec or Lower Canada had no rights whatever, as compared with the Church of England, and at another arguing that the Catholic Church is the only Church there established by law. We have seen the one see of Quebec occupied by two titular Bishops—a Catholic and an Anglican—and the latter forced to give way. Learned judges and attorney-generals have wasted their time drafting *commissions* for Catholic bishops to be licensed as Chief Ecclesiastical Superintendents of the Church of Rome, with irremovable curés and state-erected parishes; and afterwards we have seen these officials sit, "cheek by jowl," with the self-same superintendents in the legislative councils of the province, not as superintendents but as recognized bishops of this favored Church. And to this day, in this same province, the parish, so erected by the Bishop, is equally as well known as is the township or county or ward under its municipal law, and the curé and church wardens are recognized in the public law of the land. The law apportions the tithes and its officers collect them. On the other hand, there is also on record within this country the refusal by Protestant rulers to grant Wesleyan Methodists any sort of legal recognition for their ministers, unless under a security of two hundred pounds sterling and the appearance of seven respectable members testifying before justices of the quarter sessions as to the genuineness of the minister in question, and the additional indignity of a violent protest against even this concession by a Protestant chief justice.¹

We have had the Church of England established by law in one province and generally the attempted disregard everywhere of all who did not belong to that church. We have examples of a Catholic being in the position of O'Connell as to taking his seat in

¹ In order to show what a beautiful example this judicial dignitary bequeathed to his posterity, it is related that when the accounts of the Jesuits' estates were examined by the House of Assembly in Lower Canada it was found that one of the Church of England parsons, residing in Quebec, was in the habit of annually drawing a large income from the school funds on pretense of being "Chaplain to the Jesuits." "The Jesuits," says Wm. Lyon Mackenzie, who is authority for this story, "had been all dead many years before, and, besides, they were Roman Catholics. The parson's name was Sewell, a son of Jonathan, the Chief Justice."

the Commons. We have the sad story of the Acadians and the persecutions of religious, and by one of those curious retributions by which Providence makes a fool of people, we have a small province, into which no Catholic was allowed to emigrate, now numbering more Catholics than Protestants.

In our chief Protestant province we have had a committee of the legislature report that the Church of England is not the church by law established in Canada, and that no prayers from its chaplain would be tolerated. We have had governments make a choice of religions, and find them approving of four—the Catholic, the Anglican, the Presbyterian, and the Methodist—and following the example in Ireland of giving the most where it was least needed. We have had, however, within the last sixty years, a Catholic bishop and his clergy supported largely out of the public chest. In this same province we can turn up the estimates in blue books and find pounds upon pounds paid out of the public taxes for the building and repairing of Catholic churches. We have separate schools, and we have had large sums paid annually in this same Protestant province for the support of Catholic colleges. We have had tithes, as they still have them in Quebec. Here, too, may be found the name of a legislative councillor who was an Honorable and Right Reverend gentleman—the first Roman Catholic Bishop of Upper Canada—in receipt of a considerable pension from the state and of complimentary notices for his loyalty from his Prince Regent. We have had riots and mobs attacking processions, and we have in return a Protestant city turn out to honor its Archbishop, and the vice-regal, provincial, and civic dignitaries vying with one another to honor this same rather outspoken churchman. There is, in fine, in Canada, an immense territory, with every assistance of nature, for a great nation, with the only serious drawback of a lack of anything like a proportionate population. There is need of fifty millions of people, but, in the meantime, things go on very well with a tenth of that number, one-half of whom are Catholics, holding their own fairly well. The Catholics believe that the form of government is one of the best in the world, and that the Church is as free and prosperous as the Church militant can expect to be.

When we speak of Canada some explanations must be made. Nowadays, every one must keep up his knowledge of geography, as the political changes are so numerous that what was true of boundaries and divisions yesterday may not be so to-day. Until the Dominion of Canada was created in 1867, the provinces of Upper and Lower Canada comprised what, for one hundred years, was included in the old Canadas, or in the older Province of Quebec. To-day Canada means, leaving out Newfoundland, all

British territory lying north of the United States. This includes everything on the map, except Alaska and Greenland, and is, indeed, as large as or larger than the States of the American Union. There are now seven provinces and several territories bound together by a central government in much the same way, politically, as are the American States. Two out of these seven provinces form the old Canadas, and these are the provinces of Ontario and Quebec, the latter returning to its old name in the Act of 1774. There are three provinces around the Gulf of St. Lawrence, and these retain their former names: Nova Scotia, New Brunswick, and Prince Edward Island. The first two of these were anciently known as Acadia, but they formed no part of Canada as ceded by France, belonging to the English for many years before Quebec fell. On the other hand, Prince Edward Island, called by the French St. John, and Cape Breton, were part of New France, and came to England under the Treaty of 1763. Newfoundland has never been fraternized, politically or ecclesiastically, with British Canada, and is no part of the Dominion. The other two provinces of Canada are British Columbia, on the Pacific coast, formerly owned by the Hudson Bay Company, and Manitoba, a new creation of the Dominion Government, carved out of the great Northwest, lying between Ontario and the Saskatchewan Valley, which runs westward to the Rocky Mountains. This latter valley and the great Lone Land to the north of it and Manitoba, extending east to Hudson Bay, is the Northwest Territory, and was formerly the seat of the posts and forts of the Hudson Bay Company and other great fur companies. The remainder of the map eastward to the Atlantic forms the Northeast Territory.

These provinces and territories have, of course, their own separate histories. They have their own local laws and, in general, the care of their own domestic concerns. Formerly they were separate colonies of Great Britain, now there is only one colony—rather one dependency—as no one now, except some newly-arrived Englishman, would talk of Canadians being colonists.

The new Dominion of Canada dates back only a few years, beginning in 1867 with four provinces and adding others since that date until the present dimensions have been attained. It is plain, therefore, that considerable limitation must be made in speaking of historical matters in Canada, as there are fully half a dozen or more places to be considered, each with a separate history of its own. However, the two Canadas, once the old Province of Quebec, and forming the bulk of what was New France, are very prominently before the mind of the reader of political and ecclesiastical history. They were divorced by the Act of 1791, to be united again in 1840, and seem to be marked out as political partners, strange enough

though the partnership be. The present constitution is the fifth or sixth change under British rule within its first century.

During all these mutations in constitutions the Church has a history that, though naturally branching out in more recent times with the increase of its children and by force of political changes, nevertheless preserved for a long time one headquarters in one ecclesiastical province, having to deal entirely with the Crown of England as represented by the governors of Canada. As has been said, all of the other fragmentary possessions of Great Britain in America were separate colonies. But the Governor-General of Canada was, in an undefined way, their superior, was Captain-General of all the forces, and took precedence of other British governors. Living in Quebec with the Bishop, he seemed to represent the Crown, as did the latter the Church, for all the British provinces. The battle of the Church was fought between these two under British rule as it was fought there under the French rule. It was not until the last years of the reign of George the Third that the Bishop of Quebec got his immense diocese subdivided, but the rights of his Church were contested and decided long before this, though by the same heroic bishop. In 1819 Bishop Plessis, having obtained sanction in England and in Rome, established vicar-generals in Upper Canada, in New Brunswick, and in the Northwest. From that time a particular history in these places is necessary. It is to this period, within which Bishop Plessis (he was Archbishop, but prudently declined to style himself such) and his predecessors, as bishops of Quebec, held the Church in their own hands, that attention must be mainly directed at first. He and Bishop Laval stand at the end and beginning of the history of that Diocese.

Upper Canada was the resort of United Empire loyalists, and many others, to whom the rule in Lower Canada or Quebec was displeasing, and it will therefore come in for considerable notice, and is entitled to it, as now and always a part of old Canada.

In 1796 Newfoundland had been erected by the Holy Father into a Vicariate Apostolic, and the same condition of things obtained in Nova Scotia since the year 1817. The other portions of Canada were under the supervision of the Bishop of Quebec. Louisiana had passed out of French control to Spain soon after the middle of the last century, and, in 1793, had its bishop, who was suffragan of San Domingo; so that nothing remained to England south or west of the Great Lakes, though the mission in Detroit was still practically under the care of Bishop McDonell, auxiliary of the Bishop of Quebec and later the first Bishop of Kingston. As will be seen later, there is a certain analogy between the political and ecclesiastical divisions in Canada. What we call

the Maritime Provinces, Nova Scotia, New Brunswick, and Prince Edward Island, now form one ecclesiastical province, and besides the popular name, the Constitution of Canada considers these as one division for purposes of representation in the Senate. Quebec and Ontario are also ecclesiastical provinces, and are separate political provinces, and the remainder of Canada goes to make up the fourth ecclesiastical province. It has a Senate representation with reference to its population, so that four divisions obtain in each, though as to the Northwest the analogy is not so complete as in the other three. There are still vicariates apostolic in Canada. Newfoundland stands aloof from the political combination of 1867, and is yet a colony of the empire. She also forms no part of any ecclesiastical province of Canada, being directly subject to the Holy See. The western portion of the island was made an Apostolic Prefecture in 1871, and is called St. George. The French islands in the Gulf of St. Lawrence form another Apostolic Prefecture.

Bearing this in mind, the reader will be better able to appreciate our past history and avoid some confusion in these matters that many Canadians have difficulty in avoiding. Many shufflings of constitutions have taken place since Canada passed under British rule. The Church alone, for two centuries and three-quarters, has pursued its unchanging way. "One great fact," says Parkman, "stands out conspicuous in Canadian history—the Church of Rome. More even than the royal power she shaped the character and the destinies of the colony. She was its nurse and almost its mother; and, wayward and headstrong as it was, it never broke the ties of faith that held it to her. It was these ties which, in the absence of political franchises, formed under the old régime the only vital coherence in the population. The royal government was transient; the Church was permanent. The English conquest shattered the whole apparatus of civil administration at a blow, but it left her untouched. Governors, intendants, councils, and commandants, all were gone, the principal seignors fled the colony, and a people who had never learned to control themselves or help themselves were suddenly left to their own devices. Confusion, if not anarchy, would have followed but for the parish priests, who, in a character of double paternity, half spiritual and half temporal, became more than ever the guardians of order throughout Canada."

Attention has been drawn to the extent of the Diocese of Quebec. That portion of it which now lies within the United States need not detain us. For twenty years after the cession the English owned north and south of the Great Lakes, and Quebec claimed jurisdiction, in the valley of the Mississippi, as far south as New Orleans. After the Treaty of Versailles, in 1783, only six years

elapsed until the Catholics of the United States had a bishop of their own, and since that time the history of the Church in the United States would include that of the portion of Canada extending along the Mississippi. None of the territory south of Lake Erie or Ontario, or west of Lake Huron, though included in the boundaries of Quebec under the Quebec Act of 1774, need be taken into consideration, though for many years after it passed into the hands of the United States authorities the ecclesiastical limits were not the same as the political boundaries.¹

So far as the Church in Canada is concerned, the extent of the Diocese of Quebec at the time of the Treaty of Paris, or in 1774, would not be a safe guide in estimating how far the guarantees of the treaty extend. It will be borne in mind that, while the French ceded Canada to the British, they stipulated for the free exercise of religion, but only as regards their own subjects. There was no compact entered into that all other Catholics under British rule in America should be secured in the same rights. The "new" Roman Catholic subjects were the subjects to be protected. Now, it is true that Acadia and Newfoundland and some of the Gulf islands changed masters very frequently, and that, in general, they were under the ecclesiastical jurisdiction of the Bishop of Quebec; but they were, excepting perhaps the Island of St. John (now Prince Edward Island), and Cape Breton, under the Crown of England before the date of the Treaty of Paris. These inhabitants were, therefore, not new subjects, nor has it been urged by any writer that any claim for the guarantees of the free exercise of religion was ever made outside of the territory actually known as Canada or New France in 1763. The terms of capitulation at Montreal, indeed, refer to the "Diocese" and to the "priests and people" in the "towns" and "country places" and "distant posts" and to the "missionaries," but under the usual construction put upon like documents the terms of capitulation would be binding only and until the definitive treaty was executed. They were binding, certainly, for three years, but then came the treaty in which "His Britannic Majesty on his side agrees to grant to the inhabitants of Canada the liberty of the Catholic religion. He will, in consequence, give the most exact and effectual orders that his new Roman Catholic subjects may profess the worship of their religion according to the rites of the Roman Church as far as the laws of Great Britain permit."

The writer, while stating his opinion that the treaty is now to be looked at rather than the terms of capitulation at Quebec and Montreal, is not unaware of the fact that almost every writer who

¹ The boundaries of Quebec were purposely set out in full in the Article on the Treaty of Paris in the April number of the REVIEW.

has dealt with this matter has read treaty and capitulations as forming one international bargain. It is difficult to reconcile this with the history of the treaty, and with the general principles applicable to the construction of agreements culminating in one considered and definite document. Of course, the capitulations are good enough evidence of the desire of the parties, and where they do not offend against the meaning of the treaty, but help to explain it, they ought to be admitted. But it is manifest that entirely new stipulations may have been finally settled by the treaty which were never entertained by the generals who drew up the capitulations. Indeed, these capitulations anticipate other terms.

Nearly every treaty between France and England in the seventeenth and eighteenth centuries adjusting European matters affected colonists in America, the Anglo-Americans and the Canadians, as the French inhabitants were called. In 1697 the Treaty of Ryswick was signed, and by it the French asserted the Kennebec to be the boundary between them and Massachusetts.¹ The entire eastern coast, Nova Scotia, Cape Breton, St. John (now Prince Edward Island), Newfoundland, Labrador, and Hudson's Bay remained to the French.

By the Treaty of Utrecht, 1713, Nova Scotia, then called Acadia, according to its ancient limits, with the whole of Newfoundland, was given up to England. The French retained some reservation as to the fisheries in Newfoundland, and the English secured the fur trade of Hudson Bay.

By the Treaty of Aix la Chapelle, in 1749, Cape Breton, with the islands of St. Pierre and Miquelon, was restored to France. Three years prior to this, Cape Breton had been taken by the English colonists. By a consideration of these treaties it will be seen at once who were and were not already British subjects in what is yet British territory before the Seven Years' War ending with the Treaty of Paris. The inhabitants of Acadia, afterwards two provinces of Canada, were, in 1763, not inhabitants of Canada, and consequently were not "new" subjects, as Acadia passed over to England in 1713 by the Treaty of Utrecht. In a court of law it would not be arguable on the documents and facts to say that the guarantees of the stipulation were coterminous with the boundaries of the diocese, or that New Brunswick or Nova Scotia come within the scope of its benefits. On the other hand, the people of St.

¹ Mr. Garneau says that soon after 1763 a slice of territory was detached from Canada and took the name of New Brunswick with an administration apart. Now Nova Scotia had a legislature of its own since 1758, and it then, and since 1731, included New Brunswick, but its western boundary was not easily defined. Acadia or New Brunswick, when it passed into the hands of the English in 1713, had for its western boundary the Kennebec River. Great Britain, since that time, lost the territory between the Kennebec and the present boundary, the St. Croix River.

John and Cape Breton may fairly be regarded as citizens of a part of New France, as "new" subjects of the Crown of Great Britain after the cession, though St. John was under British rule before the treaty and in 1758. However, it was part of the Seven Years' War; Quebec was in the same position, was under British rule since 1759, and Montreal since 1760.

There is no doubt at all but that the other provinces and territories in Canada, except probably British Columbia and some of the Hudson Bay territory, come within the treaty or the act. A reference to the words of the treaty will explain this. The territory ceded to England after the fall of Quebec and the capitulation is referred to in the treaty as follows :

"Sa Majesté Très-Chrétienne renonce à toutes prétentions qu'elle a jusqu' ici formées ou pourrait former sur la Nouvelle Ecosse ou Acadie, dans toutes ses parties, et en garantit le tout et toutes ses dépendances au Roi de la Grande Bretagne.

"De plus, Sa Majesté Très-Chrétienne cède et garantit à la dite Majesté Britannique, en plein droit, le Canada avec toutes ses dépendances, ainsi que l' Ile Cap Breton, et toutes les autres îles et côtes dans le golfe et le fleuve St. Laurent, et en général tout ce qui dépend des dits païs, terres, îles et côtes, avec la souveraineté, propriété, possession et tous droits acquis par traité ou autrement, que le Roi très-chrétien et la couronne de France ont eus jusqu' à présent sur les dits païs, îles, terres, places, côtes, et leurs habitants, de sorte que le Roi Très-Chrétien cède et transporte le tout au dit Roi et Couronne de la Grande Bretagne, et cela de la manière et forme les plus agréables, sans restriction et sans pouvoir d'écarter de la dite garantie, sous aucun prétexte, ou de pouvoir troubler la Grande-Bretagne dans les possessions sus-mentionnées."

The clauses to be construed with this are as follows, in the language in which they were written :

"Sa Majesté Britannique, de son côté, consent d'accorder la liberté de la religion Catholique aux habitants du Canada. Elle donnera en conséquence les ordres les plus efficaces pour que ses nouveaux sujets Catholiques Romains puissent professer le culte de leur religion selon les rites de l' Eglise de Rome, autant que les lois d' Angleterre le permettent.

"Sa Majesté Britannique consent de plus que les habitants Français ou autres, qui avaient été sujets du Roi Très-Chrétien en Canada, puissent se retirer en toute sûreté et liberté, ou ils jugeront à propos ; qu' ils vendent leurs biens, pourvu que ce soit à des sujets de Sa Majesté Britannique ; et qu' ils emportent leurs effets avec eux, sans être restreints dans leur émigration, sous aucun prétexte quelconque, à l'exception de celui des dettes ou de poursuite criminelles ; le terme limité pour cette émigration sera fixé à

l'espace de dix-huit mois, à compter du jour de l'échange de la ratification du présent traité."

Under this treaty there is, therefore, included the province of Ontario and a part of the Northeast territory, along with the present Province of Quebec. These come within the operation of the Quebec Act as well.

What the western boundaries of New France may have been in 1763 is not now easy to determine. It was lately the subject of an appeal to the Privy Council between the Province of Ontario and the Dominion of Canada as to the western limits of this province. These were found to be more extensive than many supposed. But their extreme western limit does not reach into the province of Manitoba, and it would require a consideration of the Red River settlement and the wars of the traders to be able to offer any speculation as to whether treaty or act reached westward on the Saskatchewan. The country was explored by Verendrye, under French rule, in the early part of the eighteenth century, and large settlements made. The Hudson Bay charter goes back to the time of Charles II., but the French and English were alternately masters of the fur trade, and the settlements were largely made up of the traders and the half-breeds.

As regards the Hudson Bay settlement, there were very few Catholics, the inhabitants being nearly all from the Orkneys of Scotland or from Switzerland. In the Red River settlement and at Sault St. Marie there were flourishing French posts with missionaries and a prosperous body of settlers, all Catholics.

In a former article in this REVIEW it was pointed out how the Crown of England interpreted the treaty, and how, by means of the Quebec Act, the boundaries of Canada were defined and the benefit of a liberal interpretation of the religious guarantees extended to all Catholics within the large area of the new province of Quebec. Beyond this area the act does not go, but the treaty does, and to a considerable extent of territory. Under the Quebec Act there was Labrador, from St. John River to Hudson Bay, Anticosti, and the Magdalen Islands; under the treaty, the isles of St. John (now Prince Edward Island) and Cape Breton. The Canadas and parts of the territories are both in the treaty and in the act.

It will thus be seen that for a portion of British America the Treaty of Paris applied; for another portion the Quebec Act applied, and for the remainder there was no guarantee as far as the Church is concerned. Indeed, in Nova Scotia one of the early Acts of the Legislative Council was to establish there by law the Church of England.

Before discussing the question of the extent of the treaty as compared with the Quebec Act, or the benefits accorded by either,

assuming that the former extends to the French territory now owned by Great Britain, by virtue of the law of nations, and that the latter (the act) is binding within whatever territory the Crown of England chose to extend it, it may be asked what difference would it make to claim under the treaty or under the act? There can be no great difference; the act is fuller, more liberal than the bare words in the treaty, and is not limited to the old French territory, may be within larger or smaller bounds, and may, like any other imperial statute, extend its provisions anywhere within the empire.

The treaty is limited to the old French territory, and cannot be extended beyond the ancient French possessions, nor does it include them all; on the other hand, it cannot be abridged as to that territory. There is no doubt also but that as long as the British Empire continues to exist and keep up its standing as a nation, it will be bound to keep faith with France as to the terms of the Treaty. The guarantees for these terms would extend to all Roman Catholics who, at any time subsequently, were British subjects in the ceded territory.¹ A treaty does not become effete, though it is otherwise with an Act of Parliament; but until the Quebec Act is repealed a mere non-user would not render it lifeless. As has been shown in a former article, this act has been expressly recognized for over a hundred years in Canada, and in every great political change has been referred to as the basis of all our constitutions. The effect of subsequent imperial and provincial legislation will be considered further on.

The treaty, it will be remembered, has one apparently inconsistent feature in it—the free exercise of the Roman Catholic religion is guaranteed to the new subjects, “so far as the laws of Great Britain permit.” The Act of 1774 puts an interpretation upon these words, but the Act itself is not easy to construe. The ablest jurists in England and Canada gave it as their opinion at the time that these words, “so far as the laws of Great Britain permit,” mean so far as the laws of Great Britain permit the exercise of the Roman Catholic religion in the colonies and outlying divisions of the Crown. Parliament adopted this construction. The statute books were then ransacked to discover what, if any, laws in force against the Catholics extended to the colonies. After a search,

¹ L' Abbé Ferland narrates that, when Monseigneur Plessis, Bishop of Quebec, was on a visit to Rome in 1819, an interview with Louis XVIII. was arranged for him at Paris. “The audience was private; the King spoke to Monseigneur Plessis with kindness, and put many questions relating to the state of religion in Canada, requested to be remembered in his prayers, and charged him to say to his diocesans that their former sovereign had not forgotten them, and that, if the conditions stipulated for in their favor by the Treaty of Peace were not observed by England, France would not neglect to claim them.”

the most careful, as may be imagined, only one statute could be found. This was the Act of Supremacy of Queen Elizabeth, the first act in the first year of her reign. In the Quebec Act, as has been seen, they, accordingly, introduced the supremacy of the king, but greatly modified the oath, so that there was nothing very objectionable about it. Where the statute applies territorially, then this construction must obtain; and without going into argument on the question, it may be assumed that, where the treaty extends beyond the boundaries of the old Quebec province, the same construction would be put upon it as upon the statute. To invoke the treaty would be to invoke the construction put upon it in the highest court of the realm. It was quite competent to the British Parliament to have made the Quebec limits coterminous with the ceded territory, and if they fell short of part of it this would not affect the *ratio decidendi*, the purview and scope of the treaty generally.

If this be so, then the one construction suffices for treaty and statute, and reduces the question to this simply: How does the supremacy of the king of a Protestant country affect the free exercise of religion to his Roman Catholic subjects? The Act of Supremacy was but a re-enactment by Elizabeth of a statute passed in the twenty-fifth year of Henry VIII., entitled: "*An Act for the submission of the clergie to the King's Majestie.*" The preamble of this act is painfully significant of the times: "Whereas, the King's humble and obedient servants, the clergy of this realm of England, etc.," and then it goes on to recite the desire of the King in matters ecclesiastical. The submission of the clergy is accounted for at this particular juncture by a Protestant writer, Short, in his "History of the Church of England." The clergy were then under a *præmunire* in regard to Wolsey. "In order to buy this off, the Convocation consented to a considerable subsidy, and in the bill which granted it the king's supremacy was asserted. It was, however, with much difficulty that this clause was passed, and so little with the goodwill of the lower house that, after the acknowledgment, a proviso was inserted *quantum per Christum licet.*" This act made the King Primate of the Church of England, and by it the sovereign is regarded as being over all persons and over all causes, ecclesiastical as well as civil, supreme in the Church.

The author referred to very candidly admits the reason of the assumption of this supreme ecclesiastical power; it was to procure a divorce for the King from Queen Catharine. "The existence of the Church of England," he adds, "as a distinct body and her final separation from Rome may be dated from the period of the divorce." To obtain this and yet remain a Catholic—a Defender of the Faith—it is by various authors contended, was the sole aim of the King,

and it is certainly clear that whatever his motives may have been, the doctrine of the royal supremacy was not pushed to as great a degree as in the reign of Elizabeth. In the interval between the reigns of these two sovereigns the first statute of Philip and Mary repealed this act and established the Church in its former relations to Rome. Elizabeth, on her accession, passed an act reviving the supremacy of the Crown, and re-enacting nearly everything that her sister had repealed. Two short sections of the first act in the year 1558 will give all that is necessary. Section XVI. is as follows: "And to the intent that all usurped and foreign power and authority, spiritual and temporal, may, forever, be clearly extinguished, and never to be used or obeyed within these realms or any other of Your Majestie's dominions or countries. May it please Your Highness that it may be further enacted by the authority aforesaid, That no foreign prince, person, prelate, state, or potentate, spiritual or temporal, shall use, enjoy, or exercise any manner of power, jurisdiction, superiority, authority, pre-eminence, or privilege, spiritual or ecclesiastical, within this realm or any other of Her Majestie's dominions or countries, but the same shall be abolished thereout forever, any statute, ordinance, custom, constitution, or any other matter or cause whatever, to the contrary notwithstanding."

Section XVII.: "And that it may also please Your Highness that it may be established and enacted by the authority aforesaid, That such jurisdiction, privileges, superiority, and pre-eminence, spiritual and ecclesiastical, or by any spiritual or ecclesiastical power or authority, hath heretofore been, or may lawfully be, exercised or used for the visitation of the ecclesiastical state and persons, and for reformation, order, and correction of the same; and of all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities shall, forever, by authority of this present Parliament, be united and annexed to the Imperial Crown of this realm."

Coke and Hale put constructions on this statute which, at all events, suited the royal pretensions. Coke says that, "By the ancient laws of this realm the kingdom of England is an absolute empire and monarchy, consisting of one head, which is the King, and of a body consisting of several members, which the law divideth into two parts. The clergy and the laity, both of them next and immediately under God, subject and obedient to the head, . . . such an authority as the Pope heretofore exercised, is now annexed to the Crown by the above-mentioned statute." And elsewhere it is laid down judicially that "all that power which the Pope ever exercised within this realm on spirituals is now vested in the King."

These opinions were certainly opposed to Magna Charta, the first chapter of which stipulates that the Church shall be free and have her whole rights and liberties inviolable. As to the statute being declaratory of the common law, that went for nothing, as the whole doctrine was novel, and without custom or precedent justifying it. The title of "Supreme Head of the Church and Clergy of England" appears for the first time in the Petition of Convocation to Henry VIII. to relieve them from the penalties to which they were exposed.

If it were necessary to pursue this subject, there would be little difficulty in estimating how the members of the Church of England regarded the change from the Papal to the royal supremacy. It was well enough to inveigh against the supremacy of the Pope, but when the royal supremacy was found to be more intolerable, then it was time for a noted public man and writer to say that "pretensions of this sort, from whatever side they have come, have never found any permanent favor with the English people." This is very briefly the history of the passing of the Act of Supremacy—an act by which, in England, the King is supreme ordinary and who might, without any Act of Parliament, make ordinances for the government of the clergy, and if there be a controversy between spiritual persons concerning jurisdiction, he is arbitrator, and it is a right of his Crown to declare their bounds. The King in England, therefore, became head of the church, no matter what the church was and no matter what religion the King professed. He was King and Pope; the church became a department of the state, quite subordinate to the Crown and to its judicial and executive officers. It exists with the Crown, and ceases when the Crown ceases. The Crown was the head of Episcopacy in England, and might have been head of Presbyterianism in Scotland that tolerates no Episcopacy. A Catholic Stuart was the head of this Protestant Church. With such precedents, what obstacle was there to the omnipotence of the Parliament of Great Britain to assume headship over the Church of Rome in Canada? Under such a multiplication of recognized churches the Crown was likely to become an ecclesiastical hydra. If there was no great reason why that should be propagated in Canada which was regarded as damnable and idolatrous at home, then it was but a step further to have the viceroy in India proclaimed the head of the native church, as Lord Dalhousie thought he could be in Canada. Had the Act of Supremacy been held to be in full force in Canada, there is little doubt but that no Catholic could have assumed any office, or any clergyman become recognized before the law; but the statute itself was virtually repealed, especially as to the oath, and a new and simple one introduced. The words of the Quebec Act are, "may

have, hold, and enjoy the free exercise of the religion of the Church of Rome, subject to the King's supremacy declared in the act, etc."

Now, as to the meaning put upon the statute by Lord Coke and referred to above, it is to this effect, that to the King of England there is now annexed such an authority as the Pope heretofore exercised. Suppose such power were annexed, it could vest only by some supposed transfer of it from the Pope himself; or that the King inherently was possessed of it. The latter was the only view possible. The statute affirming this inherent authority could not make it a fact or make it believed by Catholics, and the only course open to the Crown was by active coercive measures in the more modern form of persecution. The Crown then, in Canada, said in effect, we will assume control over the Church and be its head whether it wants another head or not. The Church in Scotland would have been satisfied with the Crown, and why should Rome be more particular?

It was evident that this was the only way out of the difficulty—to force the head on the body; but after sixty years of endeavor the Crown was utterly defeated in Canada, the Church rejecting the royal headship. The difficulty was settled by time, the Act of 1 Eliz., chap. i., was ignored, and the Catholic Church rendered independent of the Crown—neither its creature nor its slave. The details of this struggle form the most exciting part of the history of the Church in Canada, and will aid in discussing the present legal *status* of the Church.

The reader has had his attention directed sufficiently to those matters which lie at the foundation of the Church in Canada under British rule—the Articles of Capitulation, the Treaty of Paris, etc., and the Quebec Act. The Diocese of Quebec and its subdivisions have been adverted to and the extent within which the safeguards of the treaty extended. The acknowledged interpretation to be put upon the treaty as to the free exercise of the Roman Catholic religion has also been noticed, and the inconsistencies on the face of the guarantees endeavored to be explained. Wherever it was possible, reference was had only to authorized copies of state papers and Acts of Parliament and other official documents, so that the reader can draw his own conclusions. There still remains the question of the exact legal status of the Catholic Church in Canada, whether it occupies a position different from that of the other religious denominations. This was the question raised by the Privy Council in the Guibord case, but not decided there. It is not an easy question to approach, much less to attempt arriving at a definite opinion, but the writer will submit his evidences and authorities as to his own views, and the reader can form another opinion if he chooses to do so. This will be considered in the next article.