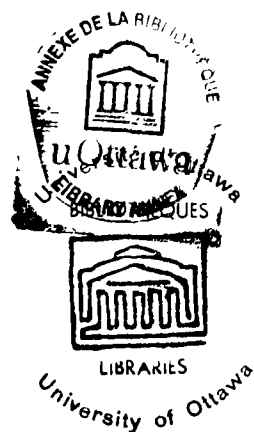


THE JURIDICAL STATUS OF THE CATHOLIC CHURCH IN CANADA
(1534-1840)

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INTRODUCTION

In many countries throughout the world, the question of Church-State relationships is one that has profoundly influenced the course of history. One needs only consider for a moment the situation of Italy, France, England, Spain, or of almost any of the other great powers of the Western world, to see the utmost importance of the official place of religion in the country, either in the Constitution, or in other legal texts relating to the administration of the land.

Wars of religion are not only things of the past. We have witnessed them at many times in the course of this century. It is true that religion is often mixed with politics and that the two fields usually overlap to such an extent that one is scarcely distinguishable from the other.

This was none the less true for Canada. The history of this country has been clearly marked by the religious factor. From the time of de Mont's first settlement in Acadia in 1604 until the conquest by the British in 1759-1760, Canada was a land where Catholicism was the state religion and where the union of Church and State was an accomplished fact as in France. After the conquest, however, the Catholic Church was no longer the established Church and Catholicism ceased to be the official religion of the land. In fact, in the years immediately following the change of

government, the Catholic Church was barely tolerated. It had to struggle for its right to exist; it had to maintain strict surveillance over its activities in order to avoid overstepping the boundaries that had been laid out for it by the new leaders of the country.

The Church could have surrendered its rights at the conquest and become simply a private organization. But this would have been contrary to its nature and to its purpose. Being a society of divine origin, it had as an innate duty to respect the principles and the laws that it had inherited from its Founder. The Church considered its official existence in Canada as something essential to the good of the country and of its people.

These principles of the Church's Public Law today spell out what the Church considers to be its essential rights. It traditionally has seen itself as a perfect society, that is, one which has as its end a good that is complete in its own order, a society that possesses by right all the means necessary to attain this end, and which, in its own order, is self-sufficient and independent, that is, fully autonomous.¹ Since the Church maintains that it has

¹ "Societas juridice perfecta ea est quae bonum in suo ordine completum tamquam finem habens, ac media omnia ad illud consequendum iure possidens, est in suo ordine sibi sufficiens et independens, id est plene autonoma", Alfredo Ottaviani, Institutiones iuris publici ecclesiastici, Ed. 3a, [Vatican City], Typis Polyglottis Vaticanis, 1947-48, Vol. I, p. 53.

the right to possess all the means necessary to attain its end, it must make use of these means if it is to honour its mission on earth.

A contemporary, though as yet unofficial, statement of the Catholic Church's position on this question is found in the revised draft of the "Lex Ecclesiae fundamentalis". Canon 85, basing itself on paragraph 36 of the dogmatic Constitution "Lumen Gentium", states that

The Church, constituted so that it might establish the Kingdom of Christ and of God, [...] has its own mission which is of a religious order, rather than a political, economic or social order. [...] By reason of its mission, the Church is distinguished and set apart from temporal societies.

The Church acknowledges the autonomy of temporal realities and of the temporal order of societies.²

In Canon 86 of the same text, it is stated that

The Church and the political society are in their own arena autonomous and independent from each other. Although each has certain limits by which it is bound, defined by its nature and mission, each is a supreme authority of its kind for the men subject to it.³

2 Schema Legis Ecclesiae fundamentalis, Textus emendatus cum relatione de ipso schemate deque emendationibus re-ceptis, [Vatican City], Typis Polyglottis Vaticanis, 1971, p. 52-53. "Ecclesia, quippe quae constituta sit ut in omnibus promoveat Regnum Christi et Dei, [...] missionem propriam habet, non autem ordinis politicis, oeconomici vel socialis, sed ordinis religiosi [...]. Huius missionis ratione, a societatibus temporalibus distinguitur ac secernitur." See English translation in National Catholic Reporter, April 10, 1970, p. 15.

3 Ibid., p. 53. "Ecclesia et societas politica in proprio campo sunt ab invicem independentes et autonomae. Utraque, licet certos habeat quibus contineatur terminos, sua cuiusque natura et missione definitos, in suo genere est erga homines sibi subditos suprema." English translation in National Catholic Reporter, loc. cit., p. 15.

The fulfillment of each society's mission, however, can lead to difficulties. Conflicting laws are sometimes promulgated by different authorities, such as the Church and the State, for once two societies come into contact, there is a possibility of divergent interests. In Canada, the conflict was not easily settled at first because for some time the State did not even wish to recognize officially the existence of the Church. After the conquest, by the Treaty of Paris, the practice of the Catholic religion was authorized, but only to the extent that the laws of Great Britain did so allow.

The practice of the religion, as authorized by the Treaty, necessarily implied in the mind of the Church authorities, those ecclesiastical functions and offices which the Church considered essential for its existence, even though not absolutely required at all times for the practice of the faith by the members of the Church. Some of these offices which were the object of conflict after Great Britain took over the territory from France, and upon which the Church insisted continually, were those of Bishop and Pastor. Likewise, the Church vindicated its right to purchase property, to direct schools, to appoint incumbents freely, without being subject to numerous constraining devices.

As the Catholic Church passed from the position of an established Church to one of a voluntary association, whose

existence, however, was guaranteed by law, it found itself in the position of having to make concessions on certain non-essential points. Today, this situation is accepted as something quite ordinary, and we are even inclined now to consider the Catholic Church to be in a highly favourable position in this country. As the years pass, so do matters that were at one time, and for one particular reason, considered essential to the Church's mission. For instance, at one point, the Church wanted its priests and bishops to receive a salary from the State; today we are quite pleased to be independent. At one time, the Church insisted on the observance of holydays and other visible forms of celebration; today, these are almost things of the past.

We must never forget to place those who were involved in the difficulties of a given period in their historical and political context. It would be unfair to the Church and to its leaders to consider them as we would like to find them today, just as it would be most unfair to judge today's ecclesiastical and civil leaders by criteria that were valid one hundred years ago.

It is in this context that we wish to study the juridical situation of the Catholic Church in Canada before 1840. The Public Law of the Catholic Church, or its equivalent at the time, was something that the Church leaders felt had to be respected and protected. They had what they

considered to be an obligation inherent upon their office to defend the Church and to see that it was able to develop and spread.

The Government of the time allowed the Church to spread, but not necessarily for reasons of piety. In fact, in many instances, political expediency was an almost exclusive reason for allowing the Church to continue its mission in Canada. This became quite visible as the Catholic Church began to extend into Upper Canada. The need of keeping the new immigrants faithful to the Crown of Great Britain rather than having them transfer their allegiance to the newly-founded United States of America, prompted the Secretary of State for the Colonies in England to be much more generous to the Church than he probably would have been had the political situation been otherwise.

In this work, we wish to study the evolution of the juridical status of the Catholic Church in Canada. We will study this evolution in a chronological sequence, examining the situation of the Church at the different periods of its existence in those parts of the New World now known as Canada. As far as we can gather, no general work of this nature exists although studies have been carried out on particular aspects of the question, and we will make use of the results of this research in the appropriate sections. Many of the texts quoted are taken from manuscript sources found in the

Public Archives of Canada. Oftentimes, these texts are still unpublished; certain ones have been referred to in other works, without textual quotations, and some passages have appeared in translations. We believe, though, that there are many original facets to this work.

The study ends with the Union of the Canadas in 1840, since at that time the essential laws which guarantee the institutions that are now recognized by the Government as pertaining to the Church were in effect. The laws have evolved since 1840, since both Church and State are living bodies. But once the principle of legal existence is admitted, it becomes a simple matter to expand or modify it; the basis remains the same.

This study is being carried out in a perspective of ecclesiastical Public Law. Within this scope, it is not, as such, primarily a historical work, although based immediately on the historical context. The Church's Canon Law is a body of rules that has evolved, and is continuing to do so as a rapid pace. In the centuries we are studying, the law was not formulated in the same way as it is today. Nevertheless, before the nineteenth century, we find its living expression in the attitude of the Bishops, who, even though they exercised their ministry at great distances from the See of Rome, were most closely united to the Holy See in outlook and in action.

CHAPTER I

CATHOLICISM IN NEW FRANCE UNDER THE FRENCH REGIME (1534-1763)

As we begin this study of the juridical situation of the Catholic Church in New France after its discovery and settlement by the French, we must first examine briefly the situation of the Church in France at the time of the settlement of the new North American colonies. For the laws of France in civil and religious matters were applied in the beginning to the new lands, and the juridical situation of the Catholic Church in France necessarily determined and profoundly influenced its situation in the New World.

Having ascertained the status of the Church in France, we will be able to study its role in Canada, to see how the Church was able to develop under the legal protection of the French government. Then, we will consider the status of the Church in Quebec immediately after the conquest by the British in 1759-1760.

This chapter will be divided into four sections:

- A. A Summary of Church-State Relationships in France at the Beginning of the Sixteenth Century.
- B. The Status of the Catholic Church in Canada from 1534 to 1663.
- C. Church and State in Canada from 1663 to 1759.
- D. The Church in Quebec during the Military Regime.

A. A Summary of Church-State Relationships in France
at the Beginning of the Sixteenth Century.

The beginning of the sixteenth century is marked, as far as Church-State relations in France are concerned, by the Concordat of Bologna in 1516 between Pope Leo X and King Francis I of France. We note in this important document the emergence of new principles which were to exert a profound influence on the question of relationships between Church and State in France: limitation of papal prerogatives and the exaltation of royal power.

Close union existed between the Church and the State at this time. The Catholic Church enjoyed the position of being an established Church in France at the time of the Concordat.¹ Diplomatic relations existed between the Holy See and the Court of France; the State recognized the Pope as head of the Church, and the mutual relationships of Pope and King were determined by treaty and concordat. The monarch, as head of State, considered himself to be the secular arm of the Church and saw to the observance of religious laws. Indeed, the Church laws of the time were considered part of the

¹ Cf. Georges-Michel Giroux, "La situation juridique de l'église catholique dans la province de Québec", in La Revue du Notariat, 48 (1945), p. 102.

laws of the Kingdom.² However, at times the State seemed to meddle in the internal affairs of the Church by legislating in matters of ecclesiastical discipline.

As protector of the Church, the King convoked local councils and synods,³ and their decisions became effective only upon registration by Parliament.

The clergy was one of the three estates, part of the States General where legislation was passed on matters of ecclesiastical discipline applying to France.⁴

Although the Pope was accepted as the leader of Christianity, his freedom of operation had been restricted to a certain extent: he could now only act through his legates accredited to the country by letters of appointment registered with Parliament. In fact, the sectors of jurisdiction were carefully laid out in the Concordat.⁵

2 The Privy Council of Great Britain upheld this opinion in 1874 in its decision in the Guibord case. Cf. G.-M. Giroux, loc. cit., p. 99.

3 Edict of Louis XIII, September 1610, art. VI, in G. de Champeaux, Recueil général du droit civil ecclésiastique français, Paris, A. Courcier, [s.d.], Vol. I, p. 166-167.

4 Cf. for example, the Edict of Melun, 1580, in Champeaux, op. cit., Vol. I, p. 107-116.

5 Cf. Roger Aubenas, L'Eglise et la Renaissance (1449-1517), Paris, Bloud & Bay, 1951, (Coll. Fliche-Martin, Histoire de l'Eglise depuis les origines jusqu'à nos jours, No. 15), p. 179.

Another point agreed upon in the Concordat of 1516 which was to be of great importance, not only to France but also to the infant colony in New France, was the right given the King to appoint to benefices, subject to the approval of the Pope who would grant canonical institution.⁶ We will find, in the course of Canadian history, that this will be a recurrent theme with important overtones for the status of the Catholic Church, especially concerning the appointment of bishops. The right of appointment of pastors does not seem to have been used by the King, although the State established a series of regulations for the appointment of clerics to major benefices.⁷

A further matter to be of great importance in Canadian particular ecclesiastical law, was the payment of tithes. In France, during the sixteenth century, tithes were part of a pastor's benefice, and a citizen could be taken before the courts for default of payment.⁸

We can rightly say, then, that at the beginning of the sixteenth century in France, there existed a very close

6 Cf. Vincentio Nussi, Conventiones de rebus ecclesiasticis inter S. Sedem et civilem potestatem, p. 22-23, art. 7 (Moguntiae, Franciscus Kirchheim, 1870). Cf. also Champeaux, op. cit., Vol. I, p. 59.

7 Cf. C.-M. Giroux, loc. cit., p. 100-101.

8 Cf. "Edit concernant la Jurisdiction Ecclésiastique, avril 1695", Art. XIX, in Champeaux, op. cit., Vol. I, p. 229.

union between Church and State. The Church with its organization and legislation was an integral part of the Kingdom; the State protected the Church and gave public and obligatory effect to its decisions and laws once they had been registered by Parliament. There also existed, however, what could be considered as disadvantages: the State could easily intervene in religious matters, and, in fact, did so. Royal assent was a necessary prerequisite for any decision to be binding in France before the courts.

As time went on, the Gallican doctrines became even stronger. In the seventeenth century, we witness the publication of the Four Articles of March 19, 1682, which were one of the final formulations of the principles of Gallicanism.⁹ The four propositions could be summarized as follows:

1. God has not given to St. Peter and his successors any power, either direct or indirect, over temporal matters; therefore in these matters the pope has no jurisdiction over the king or his subjects.
2. The Gallican church approves the decrees of the Council of Constance declaring oecumenical councils superior to the pope in spiritual matters, and holds them as still in full force.
3. The usages and rules of the Gallican church in the kingdom, shall remain unchanged, and it is to the glory of the Holy See that they should so remain.

⁹ Cf. ibid., p. 218-238. Also Gustave Lanctot, "Situation politique de l'Eglise Canadienne sous le régime français", in Rapport de la Société Canadienne d'Histoire de l'Eglise Catholique, 1940-1941, p. 38-39.

4. The decisions of the pope in questions of faith are not final until ratified by the church.¹⁰

Four days later, March 23, 1682, Louis XIV published an edict making it unlawful to teach or write anything contrary to these four articles.¹¹

At this time, we may ask what Gallicanism was. It could be defined as

an agreement between the King and the clergy to govern the Church of France through control and limitation of the role of the Holy See, claiming this as a consequence of rights acquired in ancient times.¹²

Gallicanism has also been defined as a movement whose purpose is to defend "the freedom of the Church of France, basing itself on the King, against any discretionary exercise, or even any complete exercise, of the papal power".¹³

The principal questions debated at this time concerned the role of the Pope as supreme interpreter of Revelation and its development; his role as chief magistrate of the Church; and, the existence of the Gallican rights as

¹⁰ Walter Alexander Riddell, The Rise of Ecclesiastical Control in Quebec, Columbia University Press, New York, 1916, p. 108.

¹¹ Edict of March 23, 1682, in Champeaux, op. cit., Vol. I, p. 206-207.

¹² Léopold Willaert, S.J., Après le Concile de Trente: la Restauration catholique, 1563-1648, Paris, Bloud & Gay, 1960, (Fliche-Martin, No. 18), p. 373.

¹³ Ibid., p. 373.

ancient and inalienable privileges.¹⁴ The application of these questions covered such categories as the relations of the clergy with the Pope, and with the State.

While these Gallican principles were quite common in France, and in spite of the fact that they necessarily exerted a profound influence on the thinking of the Government concerning the status of the Catholic Church in New France, they were not exclusive. As the Canadian Church began to develop during the seventeenth century, it remained very close to the Holy See in thinking, in spite of certain pressures occasionally placed upon it by civil authorities.

With this as a background, we are now in a position to try and determine the juridical status of the Catholic Church as it became established in New France.

B. The Status of the Catholic Church in Canada
from 1534 to 1663

Before the establishment of the Sovereign Council in 1663, the colony was governed by companies functioning under Royal Charter. In their terms of reference, we find numerous allusions to the establishment of Christianity in the new territories. We will not, however, find juridical texts but rather illustrations of the application of French

¹⁴ Ibid., p. 369-370.

religious customs to the new lands.

We will divide this section into two paragraphs:

1. Jacques Cartier and the first missionaries
2. The trading companies and the arrival of the first permanent missionaries.

1. Jacques Cartier and the first missionaries.- When Cartier planted the cross on the shores of the Bay of Chaleurs, in Gaspé, on July 24, 1534, he began the juridical or legal occupation of Canada by France. For, at that time, it was considered that territories inhabited only by "natives" were res nullius. The official discovery constituted the act of occupation, ordinarily signified by planting a cross bearing the sovereign's coat of arms. It was a simple legal occupation, without necessarily implying a physical one.

By becoming a part of the Kingdom of France, the country became subject to all its laws and ordinances. When it was founded in Canada, the Church thus enjoyed the legal situation which it had in France.

The subsequent commission of Francis I to Jacques Cartier for the development of Canada, October 17, 1540, while containing no legal prescription, clearly demonstrates the monarch's feeling for the establishment of religion in the colony.

From those countries we have brought back several men and have kept them in our kingdom so as to instruct them in the love and fear of God, his holy and Christian doctrine so as to be better able, when they return with a large number of our subjects, to induce their brethren to accept our holy faith. [...] We have decided to again send Cartier to Canada [...] so that we may better fulfil our intention and to do actions agreeable to God our creator and redeemer.¹⁵

Cartier was authorized to bring six priests with him, but they served only as chaplains.¹⁶ It was not until Champlain was able to found the first settlement at Quebec did the Church itself become part of the juridical reality in Canada.

Again, on January 15, 1540, Francis I commissioned François de la Roque, Sieur de Roberval to build "temples and churches for the communication of our holy Catholic faith and of Christian doctrine".¹⁷

¹⁵ Canadian Historical Documents Series, Vol. I: The French Regime, edited and translated by Cameron Nish, p. 8. (Scarborough, Prentice-Hall Limited, 1965). See original text in Edits, ordonnances royaux, déclarations et arrêts du Conseil d'état du Roi concernant le Canada, Québec, E. R. Fréchette, 1854-1856, (hereinafter referred to as Edits), III, p. 5-6.

¹⁶ Text of proclamation given in C. Nish, op. cit., p. 7.

¹⁷ Paul Bernier, "La situation présente du catholicisme au Canada", in Revue de l'Université d'Ottawa, 15 (1945), p. 390.

2. The trading companies and the arrival of the first permanent missionaries.- a) Samuel de Champlain.- Besides being a competent and untiring discoverer and colonizer, Champlain was also a loyal and convinced Christian. In the course of his expeditions he met numerous natives "without faith or law, living without God, and without religion, as brute animals".¹⁸ Champlain considered that it would be wrong for him not to bring these people to the knowledge of God.¹⁹ In order to remedy the situation, he says,

I exerted myself to find some good friars with zeal and affection for the glory of God that I might persuade them to send some one or to go themselves with me to these countries, and to try to plant there the faith, or at least to do what was possible according to their calling, and thus to observe and ascertain whether any good fruit could be gathered there.²⁰

Champlain wished to establish the Christian religion in Canada, but the Church as such had no official status in the new colony. There was no question of Church-State relationships as yet, because officially no government had been established in Canada. The religious communities which came

¹⁸ C.-H. Laverdiere, Oeuvres de Champlain, Quebec, Geo.-E. Desbarats, 1870, Vol. IV, p. 2.

¹⁹ "Lors ie iugay à part moy que ce feroit faire vne grande faute si ie ne n'employois à leur préparer quelque moyen pour les faire venir à la cognoissance de Dieu", Ibid., p. 2.

²⁰ Ibid., p. 2. English translation in W. A. Riddell, op. cit., p. 101.

to New France to undertake missionary work, did so at that time without the establishment of a hierarchy or the creation of a diocese. The missionaries prepared the way, set up the first contacts, created the first works of evangelization, education and hospitalization. The period we are now studying could be characterized by the idea of utmost cooperation between missionaries and administrators.²¹

Yet, in order to understand subsequent situations, we must briefly mention at this time how the Church came to be canonically established in Canada.

b) The arrival of the first permanent missionaries.- Priests who exercised their ministry in Canada prior to 1615 could be considered as chaplains. Missionaries were sent to l'Acadie in 1604, but they could only make attempts at evangelization; the Church did not succeed in becoming established for long. The Jesuits' promising mission at Saint-Sauveur was totally destroyed by the Virginians shortly before Poutrincourt's mission at Port Royal (1613).²²

21 Cf. Georges-Emile Giguère, "L'Eglise catholique a-t-elle subi des modifications en venant en Nouvelle-France?", in Revue d'Histoire de l'Amérique française, 15 (1961), p. 194.

22 Cf. Conrad-M. Morin, o.f.m., "La naissance de l'Eglise au Canada", in Revue d'Histoire de l'Amérique française, 1 (1947), p. 243. Also, Marcel Trudel, Histoire de la Nouvelle-France, Montreal, Fides, 1963- , Vol. II, p. 111-149; Lucien Campeau, s.j., La première mission d'Acadie (1602-1616), Quebec, Les Presses de l'Université Laval, 1967, 719 p.

The Recollects arrived at Tadoussac on May 25, 1615; on June 25 of the same year, the first Mass was offered in the new wooden chapel at Quebec. We may ask whether these missionaries were explicitly mandated by the Holy See to establish a new mission, or whether they came only at the request of the new settlers.

On May 26, 1615, Pope Paul V received a request from Father de Trejo, Vicar General of the Franciscans, for permission to found a mission in the New World. Louis XIII also wrote to the Holy Father requesting missionaries.²³ A note in the Vatican archives states that this permission was granted orally.²⁴

On July 10, 1615, a Brief was issued, valid for ten years. However, it appears that this document remained without effect.²⁵ On March 20, 1618, a definitive brief was issued, giving the Recollects all permissions necessary and useful for the progress of the faith in Canada.

²³ Cf. Conrad Morin, "Le Saint-Siège et la juridiction des fondateurs de la Mission du Canada", in Antonianum, 1945, p. 173. "Per poter predicar l'Evangelio, amministrare li Santissimi Sacramenti et fare altre cosi necessarie per stabilimento della sancta fede et religione catholica in quelle parti."

²⁴ Ibid., p. 173.

²⁵ Cf., Conrad-M. Morin, "La naissance de l'Eglise au Canada", loc. cit., p. 249.

At this time there was no residential bishop in North America. The territory was not part of any civil French province: it belonged to the King who leased it to merchants with the obligation of colonizing and supporting the missionaries working there. The situation was similar from an ecclesiastical point of view. The mission country did not depend on the jurisdiction of any French bishop, in spite of certain claims to the contrary, but rather on the authority of the Sovereign Pontiff in Rome. The Cardinal Archbishop of Rouen assisted with financial support, but his intervention at the time seems limited to this aspect.

The same is not true of the French court. The King had recourse to Rome to obtain faculties for the founders of the Canadian mission,²⁶ and Louis XIII gave the missionaries permission to inhabit Canada and to build convents and monasteries, but restricted the missionaries to the Recollect province of Saint-Denys.²⁷

The canonical status of the Canadian mission could be summarized as follows. The mission was not dependant on any French bishop or diocese, but was directly subject to the Holy See. The spiritual jurisdiction granted by Rome

26 Ibid., p. 336.

27 Cf. Conrad Morin, "Le Saint-Siège et la juridiction des fondateurs de la Mission du Canada", loc. cit., p. 167-168, non-dated letter.

made the mission of Canada an apostolic one; not a territorial mission, but a Recollect enterprise. When the Jesuits arrived a few years later, they too had faculties from the Holy See.

In this enterprise both Church and State were involved. The mission received canonical recognition on March 20, 1618. Louis XIII then gave it legal or political recognition, assuring the viability of the pontifical decree.²⁸

c) The Company of the Hundred Associates.— Champlain continued his efforts to build up the colony and to promote the fur trade which was its principal source of revenue at the time. The number of inhabitants was still quite small, and if the colony were to survive it needed regulations for the fur trade as well as more colonists.

On April 29, 1627, Richelieu organized the Company of New France, or of the Hundred Associates, giving it the exclusive monopoly of commerce in New France.²⁹

In order to reduce the difficulties which the colony would have to face necessarily, it was decided that all colonists were to be of the Catholic faith, thus eliminating one possible source of conflict. Articles II and III of the

²⁸ Ibid., p. 170.

²⁹ Marcel Trudel, op. cit., II, p. 432.

Act for the establishment of the Company of the Hundred Associates, contain the following stipulations:

II. It will not be permitted, however, to transport aliens, [...] but rather the colony must be settled by French Catholic citizens.

III. In each settlement established by the Associates there are to be at least three clerics in order to [...] convert the Indians and bring spiritual comfort to the French citizens. [...] The Associates will furnish [...] all the requirements necessary to the fulfilment of the spiritual functions for fifteen years; however, should the Associates so choose, they may distribute to the clerics cleared lands sufficient for their maintenance.³⁰

Thus, Huguenots and others were forbidden access to New France. This is not surprising when we replace the document in its historical context. In France, the wars of religion had just ended. The Edict of Nantes (April 1598)³¹ was still in effect. When Richelieu assumed his functions in 1624, he realized that the Huguenots divided France. He saw that they had not succeeded in their colonial efforts in Florida and Brazil; he knew that they sought a commercial and religious monopoly. It was hoped that the Company of the Hundred Associates would remedy this situation. When Richelieu signed the charter in 1627, he was directing the siege of LaRochelle, capital of the Huguenots and principal centre

³⁰ Edits, I, p. 7. English translation in C. Nish, op. cit., p. 18-19.

³¹ Cf. Champeaux, op. cit., I, p. 131-156.

of resistance to the absolute sovereignty of the King. It is not surprising, then, that he wished to exclude them from New France.³²

The Huguenot was considered at that time as a trader, and therefore as an enemy to colonization. If New France were to be settled in any permanent way, the presence of Catholic missionaries was considered necessary.

In 1629, Champlain was forced to surrender Quebec to the Kirke brothers, and was taken to England. In surrendering he requested protection for the religious establishments found in Quebec.³³ Until 1632, the colony remained under British domination, but was restored to France by the Treaty of St. Germain-en-Laye.

The Jesuit missionaries then returned, but the Recollects remained in France for the time being. Champlain also returned as governor until his death in December 1635. Religion progressed during the following years: in 1635 the Jesuits were able to open a seminary at Quebec; in 1639 the Ursuline sisters arrived to begin their convent, and the Hôtel-Dieu was also started that year. A Christian Indian village was set up at Sillery in 1639.³⁴

32 Cf. Georges-Emile Giguère, loc. cit., p. 195-196.

33 C.-H. Laverdière, op. cit., VI, p. 240-243.

34 Cf. W. L. Morton, The Kingdom of Canada, Toronto, McClelland and Stewart Limited, 1963, p. 39.

Between 1636 and 1639, the Hundred Associates made land grants in an effort to stimulate colonization; the Jesuits were among those receiving these grants. Yet, for want of sufficient capital, the Associates failed in their efforts to establish a thriving colony. In 1645, they were prepared to turn their fur trade over to a new subsidiary company, the "Compagnie des Habitants".

In 1642, the Sulpicians became established in Montreal. There were now many priests in New France and it soon became evident that plans would have to be made to have a bishop appointed to take charge of ecclesiastical affairs.

It was not until 1659 that François de Montmorency Laval was appointed titular Bishop of Petrea and Vicar Apostolic of New France. His arrival in Canada marked the beginning of a new era in Church-State relations, for shortly after his arrival, the Company of the Hundred Associates surrendered its charter definitively (1663), and the old government by governor and council was remodelled to conform more to that of a French provincial government.

C. Church and State in Canada from 1663 to 1759.

An edict of Louis XIV (April 1663)³⁵ established the Sovereign Council of Quebec,³⁶ marking the beginning of a new form of government for the land. The bishop, or first ecclesiastic in the country, was automatically a senior member of the council. The Sovereign Council had only judiciary power, all legislative authority remaining in the hands of the King of France. However, at times this was interpreted broadly.

The country thus became part of the Kingdom of France in the fullest sense of the word, and subject to all its laws and ordinances. The Church thus acquired in Canada the status it enjoyed in France. The King, by decree, was in the coming years, to determine many points of ecclesiastical law and discipline in New France.

In the same month as Louis XIV established the new Sovereign Council, he also approved Bishop de Laval's establishment of a seminary in Quebec to provide for clerics to minister to the inhabitants.³⁷ In his decree of approbation, he also provided for the support of the seminary.

³⁵ Edits, I, p. 37-39.

³⁶ The name was changed in 1702 to "Superior Council", as the King became suspicious of its pretensions.

³⁷ Edits, I, p. 33-35.

We confirm [...] that all tithes, of whatever form they may be, that which is produced by the work of man as well as that which the earth provides on its own, shall be paid at one-thirteenth, and will be allotted and given irrevocably to the foundation for the support of the Seminary and the clergy.³⁸

The King incorporated the seminary, giving it the right to acquire property and goods. He also stipulated that the clergy belonging to the seminary but appointed to parishes would be removable.³⁹

The various items mentioned in this approbation are good examples of topics upon which Church-State relationships were to hinge in the coming century: the support of the clergy (tithes), the appointment of pastors, and the legal situation of religious communities and institutions.

In 1665, two years later, new authorities were appointed by the King to govern the colony: Tracy (Lieutenant-General for the King), Courcelles (Governor) and Talon (Intendant). At that time, Louis XIV gave instructions to Talon concerning the balance that was to exist between the spiritual and the temporal powers.

³⁸ Edits, I, p. 36.

³⁹ Ibid., I, p. 34.

It is absolutely necessary to maintain a just balance between the temporal authority which belongs to the person of the King, and the spiritual, which belongs to the person of the said Bishop and the Jesuits, in a manner, however, that the latter be inferior to the former.⁴⁰

When writing to Frontenac a few years later, in 1676, Louis XIV was even more explicit:

Concerning the Church, my intention is that the rights and privileges of my crown and the rights of the Gallican Church be observed in all spiritual affairs; but since it is a difficult matter, it will be sufficient that you advise me of what you observe in this matter and of what you believe to be contrary to my rights and to the good of my people.⁴¹

The next year, he seems to be a little more lenient. In further instructions to Frontenac, the King stated:

All matters concerning pastors and parishes belong to the Lord Bishop, and you should not place any obstacle in the way of his power and his functions.⁴²

With these instructions as a background, we are now in a position to study the development of certain particular difficulties which exerted their influence on the cordiality

⁴⁰ Instructions of March 27, 1665, in Nouvelle-France. Documents Historiques. Correspondance échangée entre les autorités françaises et les gouverneurs et intendants, Québec, L. J. Demers & Frère, 1893, Vol. I, p. 5. English translation in C. Nish, op. cit., p. 52.

⁴¹ Louis XIV to Frontenac, April 15, 1676. Cf. Rapport de l'Archiviste de la Province de Québec, 1926-1927, p. 89.

⁴² Quoted by Paul Bernier, "La situation juridique de la paroisse au Canada français", in Actes du Congrès de Droit canonique, 1947, p. 166.

of Church-State relations during the remaining years of the French regime: the payment of tithes, the appointment of pastors and the erection of parishes, the legal situation of religious communities. We must keep in mind, however, that these difficulties were only part of an overall picture where the Church was indeed respected and considered. They are mentioned to illustrate some of the types of friction that can arise when two different forms of leadership find themselves side by side.

1. The payment of tithes.-- As mentioned above, in April 1663, Louis XIV decreed that the rate of tithes would be one-thirteenth; this was the amount suggested by Bishop de Laval.⁴³ However, the rate did not remain stable for long. The citizens objected vigorously to the fact that they were assessed so highly for the support of their clergy, and the Bishop was forced to reduce the rate to one-twentieth.

On September 4, 1667, Tracy, Courcelles and Talon adopted an ordinance which, leaving aside the Bishop's decree, limited the tithes to fruits of the earth and reduced the rate to one twenty-sixth for a period of twenty years.⁴⁴

⁴³ Cf. G. Lanctot, loc. cit., p. 50.

⁴⁴ Cf. Edits, I, p. 305. This text is also referred to as the Rule of August 23, 1667: Edits, I, p. 309.

The ordinance further stated that no change could be made in the rate without royal assent and the consent of the people. The Bishop had no say in the matter, and it was entirely reserved to the people and their King.⁴⁵

Twelve years later, the King issued a new ordinance decreeing that tithes would continue to be paid according to the regulations of 1667, that is, one twenty-sixth. The prologue of this new ordinance is most interesting from the aspect of Church-State relationships.

The special graces which God has given us
[...] oblige us, as protector of the Holy Canons,
to see that the discipline of the Church be ob-
served even in the furthestmost countries of our
realm.⁴⁶

In 1706, two pastors appealed to the Superior Council to claim right to tithes not only on grains, but also on all other fruits of the earth. The Council replied that only grains were taxable and that pastors could not exact more.⁴⁷

That same year, the pastors and missionaries of the colony requested a return to the edict of 1663 (one-thirteenth of all goods provided either by labour or by the earth).⁴⁸

⁴⁵ Cf. Edits, II, p. 133-134. Cf. also C. Nish, op. cit., p. 73.

⁴⁶ Edict of May 1679, in Edits, I, p. 231-233.

⁴⁷ Decision of February 1, 1706, in Edits, II, p. 139.

⁴⁸ Edits, I, p. 36.

Again, on July 12, 1707, the Council of State refused to grant this permission.⁴⁹ In 1732, after a long interval, Bishop Dosquet tried to have the amount increased, but in vain.⁵⁰

In itself, this matter is not of primary importance. Taxation has always been considered as belonging to the State, and the State fulfilled its role according to what it thought right. This does not exclude the possibility of personal enmities entering into consideration, as is often the case. Nevertheless, the State consistently refused to accede to the Church's requests in this respect and maintained a firm policy. It is interesting to note that the Court considered the clergy to be sufficiently well provided for, as we can see in this letter of Maurepas to Beauharnois on April 1, 1732:

⁴⁹ Edits, I, p. 305-311.

⁵⁰ Cf. G. Lanctot, loc. cit., p. 51.

The King has not judged proper to augment to the thirteenth minot, the tithes of the curés. Out of sixty-two curés, twenty-seven have a revenue of from eight hundred to two thousand four hundred pounds, and thirty-five of from one hundred and ninety to seven hundred and thirty, outside of their perquisites, which is amply sufficient for them to live on. [...]

His Majesty has not thought fit to make any changes in the Canadian usage regarding tithes, and it is useless to insist on it any further. He knows that, in spite of any diminutions that may have taken place, the livings are good, and far from thinking of increasing the supplements already given, he may eventually decrease them, if he learns that the curés, for interested motives, have sought to turn the inhabitants from commerce or cultivation beneficial to the colony.⁵¹

More striking examples of the interference of the State in religious matters are found in the appointments of pastors and in the regulations concerning religious communities.

2. Appointment of pastors and the erection of parishes.- At the beginning of the French regime, pastors remained in one place only as long as circumstances required. However, this situation came to change as the population increased. The Canon Law of the time, as well as the desire of the French government, was that pastors were to be irremovable. Pressure was put to bear at times on the bishops to appoint pastors in this way. But considering their Church

⁵¹ Letter of M. de Maurepas to Beauharnois and Hocquart, April 1, 1732, quoted in W. A. Riddell, op. cit., p. 118.

to be more a missionary one than a firmly-established Church, they preferred to have their pastors considered as stable, but not as irremovable or fixed.

In fact, at the beginning of the eighteenth century, we find only thirteen fixed pastorates established by Bishop de Laval, as well as five more erected by his successor, Bishop de Saint-Vallier. Two additional parishes with fixed pastors were erected towards the end of the French regime.⁵²

In Canada there were three manners of appointing pastors: the free collation, union of pastorates to institutions, and appointment by presentation or patronage. There seems to have been no juridical problems connected with the first manner of proceeding; difficulties arose, though, concerning the union of pastorates and the presentation of candidates.

Concerning the union of pastorates, when Bishop de Laval established the seminary of Quebec in 1663, it was his intention to have all the secular clergy form part of the seminary, which, in turn, would be their community, would appoint them to parishes and missions, and would see to their needs. However, for various reasons, the project did

⁵² Cf. Guy Arbour, Le Droit canonique particulier au Canada, Ottawa, Les Editions de l'Université d'Ottawa, 1957, p. 66-67.

not succeed.⁵³ Numerous discussions followed, especially after the arrival of Bishop de Saint-Vallier. The matter was finally left to arbitration in France, and the King gave his decision on February 11, 1692, in favour of the Bishop who had asked that no country pastorates be united to the seminary.⁵⁴ The King approved the request: "No country pastorates may be united to the Seminary without the approval of the Bishop and letters patent from the King."⁵⁵

In principle, the right of patronage was introduced to Canada by royal edict of May 1679, registered at Quebec on October 23 of the same year.

The person who donates the land on which the parish church is to be built, and who pays for all building expenses will be the patron-founder of the said church; he will present candidates for the pastorate when it is vacant; the Ordinary will be free to make the first appointment. The patron's heirs and successors will enjoy [...] the right of presentation as well as the other honorary rights belonging to patrons.⁵⁶

In spite of this decree, there were very few people who were in a position to become patrons of churches.

⁵³ Cf. Honorius Provost, "Le système des cures du Canada français", in Rapport de la Société Canadienne d'Histoire de l'Eglise Catholique, 1947-1948, p. 23.

⁵⁴ Cf. Edits, I, p. 265-270.

⁵⁵ Edits, I, p. 266.

⁵⁶ Ibid., I, p. 232, Art. VI.

Certain misunderstandings developed concerning the extent of this right and the ensuing responsibilities for the upkeep of the building. To settle the matter, Pishop de Saint-Vallier appealed to the Court of Versailles for a clarification, and in a royal decision of May 27, 1699, it was declared that:

In the petition presented to the King in Council by the Bishop of Quebec, reciting that His Majesty has hitherto granted to private individuals, to whom he has made grants of Fief in New France, the patronage of the churches of these fiefs, on the condition that these churches should be built of stone, but that, up to the present, most of these private individuals have shown no great desire to take advantage of the favor which His Majesty has been good enough to confer upon them, and that even the said bishop, who by right should be preferred to all others in having churches erected, has been prevented by these people from doing so, in some cases on the pretext that they are about to have them erected immediately themselves, and in other cases from a hesitation as to the location of their parishes--[all] which is contrary to the pious intentions of His Majesty, and prevents Divine Service being conducted with the proper decorum, and the inhabitants from receiving the spiritual assistance of which they have need:

To the end that such evils be avoided, His Majesty in Council has ordained and doth ordain that the said bishop shall have power to build churches of stone in all the parishes and fiefs of New France not as yet provided with them, in situations which shall be judged the most suitable for the convenience of the inhabitants; in virtue of which action the bishop shall have the right of patronage of them [the churches], without, however, having the power to prevent the seigniors of the said parishes and fiefs from completing any churches under construction, or to prevent those who have collected the materials to build churches, from building them; and the patronage of these churches shall continue to be enjoyed by such persons as before the present decree.⁵⁷

⁵⁷ Edits, I, p. 279. English translation in W. A. Riddell, op. cit., p. 127.

According to this decision, the Bishop was not responsible for paying building expenses; he simply had to see that the churches were built.

These preliminary remarks on the various forms of appointment of pastors serve to introduce a more touchy problem over which the leaders of Church and State disagreed: the permanence of pastors. Versailles insisted that pastors be irremovable so that they would have to depend on their flock for support, thus saving money for the royal treasury. The court sent £8000 a year to Canada to help pay for the priests' expenses.⁵⁸

The bishops wanted to be free to appoint whomever they wished and for the duration of their choice. A great deal depended on the number of priests available.

The decree for the establishment of the seminary of Quebec stated that pastors were to be fully removable.⁵⁹ But this caused some of the people to complain that the priests were not always available to conduct services and to be of assistance; rather, they were going to various missions on different Sundays.⁶⁰ The king had approved this

⁵⁸ Auguste Gosselin, L'Eglise du Canada depuis Monseigneur de Laval jusqu'à la conquête, Quebec, Laflamme & Proulx, 1911, Vol. I, p. 189.

⁵⁹ Edits, I, p. 34.

⁶⁰ Cf. A. Gosselin, op. cit., p. 197.

arrangement at the time the seminary was incorporated. The intent seems to have been to imitate the early Church in its missionary characteristics.

It was under Frontenac that events were precipitated. As mentioned above, the King wrote to him on April 15, 1676:

Concerning the Church, my intention is that the rights and privileges of my crown and the rights of the Gallican Church be observed in all spiritual affairs; but since it is a difficult matter, it will be sufficient that you advise me of what you observe in this matter and of what you believe to be contrary to my rights and to the good of my people.⁶¹

Again, in the fall of 1655, Colbert wrote to the Intendant Duchesneau "to undertake all necessary steps with the Bishop of Quebec to establish permanent pastors in the country".⁶²

The edict of May, 1679,⁶³ already referred to in another context, mentions the desire of having fixed pastors and mentions that only they will be able to receive tithes. It seems that, again, financial considerations were behind this policy, for on December 23, 1680, the Sovereign Council promulgated a decision obliging the parishoners to support their pastors.⁶⁴

61 Letter of April 15, 1676. See note 41 supra.

62 Quoted by H. Provost, loc. cit., p. 89.

63 Edits, I, p. 237.

64 Ibid., II, p. 86-87.

In 1694, Versailles ordered an inquiry into the situation, and on May 12 of that year, Frontenac wrote to each pastor:

His Majesty having ordered me, Sir, in his last letters to render an exact account of the diligence which is being brought to establish fixed pastors in this country, something that he has desired for a long time, I could not better satisfy his orders than by asking you to inform me of the manner in which you are serving the parish; either as a missionary or as a fixed pastor.⁶⁵

The situation did not change much through the years. On September 11, 1731, Bishop Dosquet wrote to Maurepas, stating:

Letters have come from the Court granting permission to make all pastors fixed. But this had no consequence. M. de Saint-Vallier had contrary orders sent out; he arranged for a few fixed pastors, and the few places that he so erected, he returned to their former state at the death of the first incumbent.⁶⁶

In 1740, after the death of Bishop de Lauberivière, the Chapter proceeded to appoint a few irremovable pastors. Louis XIV was no longer King, nor was Colbert his minister. Surprisingly, the court did not approve of this procedure because there did not seem to be any immediate need to appoint these pastors, and when Bishop de Pontbriand arrived in Quebec he promptly had the appointments annulled.

⁶⁵ Letter of May 12, 1694, quoted by H. Provost, loc. cit., p. 93.

⁶⁶ Letter of September 11, 1731, ibid., p. 95.

The question of the appointment of permanent pastors was one where the Church and the State did not agree. Had the bishop appointed all pastors in a permanent manner, he would not have been free to move them as easily as before. He simply did not have a sufficient number of priests to assign one to every place.

One last point to be mentioned in this period of Church-State relationships is the situation of religious communities.

3. The legal situation of religious communities.-

The role of the Court extended even further into another sector of ecclesiastical life: the organization of religious communities. The King had authorized the first missionaries to come to New France. The French Government even determined which communities could come and exercise their ministry in Canada. In 1670, for instance, it was decided that the Recollects should return to America, against the desire and will of Bishop de Laval.⁶⁷

Royal policy was affirmed explicitly in a Declaration concerning religious orders. After having insisted that "the progress of religion has always been the principal object of the attention of the Kings, our predecessors", the

⁶⁷ Cf. Auguste Gosselin, Vie de Mgr de Laval, Quebec, L.-J. Demers, 1890, Vol. II, p. 81.

King Continues,

Art. 1. It is our pleasure, in accordance with the commands given and regulations made for the interior of our kingdom, that no foundation or new establishment of houses and religious communities, hospitals, refuges, congregations confraternities, colleges, or other religious or lay bodies or communities, be made in our colony of America: save by virtue of our express permission given by our letters patent, registered in our Superior Court of the said colonies in the form that will be prescribed hereinafter.

Art. 2. We forbid the making of any disposition by last will or testament for the foundation of any new establishment of the nature of those mentioned in the preceding article, or in favor of persons who may be intrusted with the foundation of such establishments: the whole under pain of nullity; which requirement shall be observed, even if the will or testament has been made under condition of obtaining our letters-patent.⁶⁸

Examples of this "express permission" are quite numerous. In 1673, the King allowed the Sulpicians to open a seminary in Montreal. In 1692, upon request of the Bishop, a royal edict granted permission to the Recollects to continue their establishments in Quebec and Montreal, but "with the consent of the Governor and our Lieutenant-General in the country, and of the inhabitants of the place where they will become established".⁶⁹ Consent was again given in 1694 for the founding of the Montreal General Hospital.⁷⁰ In 1728,

⁶⁸ Edits, I, p. 576-577. English translation in W. A. Riddell, op. cit., p. 120.

⁶⁹ Edits, I, p. 275.

⁷⁰ Edits, I, p. 277-278.

permission was refused to open a college in Montreal.⁷¹

In 1748, Bishop de Pontbriand was advised that the King did not favour the establishment of a new house of the Congregation of Notre Dame in Detroit.⁷²

In another domain, royal intervention went even further: in the running of communities that had already been established. For instance, in 1701 Louis XIV limited to twelve the number of sisters at the Quebec General Hospital. In 1716 and 1717, Louis XV allowed eight additional sisters, and in 1720, ten more.⁷³

By a decision of the Council of State, May 31, 1723,⁷⁴ the amount of dowry of each sister was determined, and before a nun was admitted to profession, proof of the existence of this dowry was required. In 1732, the dowry was reduced to £ 3000.⁷⁵ The bishop was chastized in 1742 for having admitted a young girl to profession without determining whether the dowry was paid.

In another field, we have a different example. On December 14, 1708, an ordinance stated that the "Charon

71 Cf. G. Lanctot, loc. cit., p. 47.

72 Ibid., p. 47.

73 Edits, I, p. 403.

74 Edits, I, p. 464-465.

75 Edits, I, p. 529-530.

Brothers", who, in fact, were not religious in the canonical sense of the term, would not be allowed to pronounce vows. Nor were they allowed to wear a distinctive religious habit:

Consequently, we prohibit the said hospital brothers from making vows, declare nul and void those to be made in the future, as against the intentions of His Majesty and of the said letters patent; we prohibit them from wearing uniform habits, and order them to abandon immediately the black robe, the silk belt and the rabat; we allow them simply, according to the said letters patent, to live in community.⁷⁶

The financial situation of the communities was subject to government inspection and verification. This, of course, is quite natural, since it was the government which covered the expenses! In 1664, the Sovereign Council ordered the Hôtel Dieu of Quebec to furnish "titles, foundations and other papers concerning the holdings and revenue of the said hospital".⁷⁷ Later, in 1701, the Jesuits were ordered by the King to present an account of their finances in Canada.⁷⁸ Again in 1728, the court ordered statements prepared concerning the revenues and holdings of all communities.⁷⁹

76 Ibid., II, p. 269.

77 Ibid., II, p. 23.

78 Cf. G. Lanctot, loc. cit., p. 48.

79 Ibid., p. 48.

The State's intervention in the various matters concerning religious communities was certainly justified at the time because of the financial implications of their existence. However, these examples serve to illustrate the closeness of both Church and State in matters which were often affairs of internal administration.

While this period was marked by certain difficulties, we must not think that the relations between the Church and the State during the French regime were intolerable or even extremely difficult. On the contrary, we must place these events in the historical context of their time, never forgetting the status of Church-State relations in other Christian countries during the same period.

The Church derived numerous advantages and favours during the French regime. The missionaries were part of the expeditions that moved further westward; the bishop was a respected member of the governing community; the priests exerted great influence for good over the settlers.

The difficulties that the Church had to face during the French regime, especially at the hands of a few individuals, were small compared to some that it would meet in the years to come. For many troubled years, the Church found herself in a most precarious situation, and her very existence at times seemed to depend on the bounty and sympathy of the new civil authorities.

D. The Church in Quebec during the Military Regime.

The juridical status of the Church during the Military Regime, that is, in the years immediately following the British conquest of the country, was determined principally by two official documents: the Capitulations of Quebec in 1759 and of Montreal in 1760. We will now study these two documents to determine their influence on the juridical status of the Church. Then we will try and see how the freedom of worship granted in the capitulations was applied to Canada.

1. Freedom of worship guaranteed in Canada.- a) The Capitulation of Quebec, September 18, 1759.- When de Ramesay capitulated the city of Quebec and the area under the government of Quebec to the British commanders, Saunders and Townshend, in 1759, he inserted two articles concerning the status of the Catholic Church.⁸⁰

Article Nine, the least important of the two, stipulated that British soldiers would be posted to protect the churches, convents and principal buildings. The request was agreed upon without condition.

Article Six is of much greater importance in the context of our study. It reads:

⁸⁰ Cf. Adam Shortt and Arthur G. Doughty, Documents Relating to the Constitutional History of Canada, 1759-1791, Vol. I, second edition, 1918, Ottawa, Public Archives (hereinafter referred to as Documents), p. 6: Art. VI, IX.

That the exercise of the Catholic, Apostolic and Roman religion shall be maintained; and that safeguards shall be granted to the houses of the clergy, and to the monasteries, particularly to his Lordship the Bishop of Quebec, who, animated with zeal for religion, and charity for the people of his diocese, desires to reside in it constantly, to exercise, freely and with that decency which his character and the sacred offices of the Roman religion require, his episcopal authority in the town of Quebec, whenever he shall think proper, until the possession of Canada shall be decided by a treaty between their most Christian and Britannic Majesties.⁸¹

The fact that this article was inserted in the capitulation agreement shows the importance of the Catholic Church in the life of the people. While de Ramesay was possibly hoping to be able to maintain the Catholic Church as the established church of Canada, the British commanders could not possibly grant his desire as it was formulated. Their reply was carefully and unambiguously worded:

The free exercise of the Roman religion is granted, likewise safeguards to all religious persons, as well as to the Bishop, who shall be at liberty to come and exercise, freely and with decency, the functions of his office, whenever he shall think proper, until the possession of Canada shall have been decided between their Britannic and most Christian Majesties.⁸²

This "treaty" as it is called in the original document, settled three points: free exercise of religion,

⁸¹ Ibid., p. 6. Cf. also, William Renwick Riddell, "Status of Roman Catholicism in Canada", in The Catholic Historical Review, 8 (1928), p. 305-306.

⁸² Documents, I, p. 6.

protection of religious persons, and freedom of the bishop to exercise his functions.

The agreement concerned only that part of North America under the jurisdiction of de Ramezay. It was not until the following year that all the remaining French possessions were surrendered to the British by the Capitulation of Montreal.

b) The Capitulation of Montreal, September 8, 1760.-

The act of the capitulation of Montreal, even though it too was of interim character, is much more important for the subject of Church-State relationships. It is much more detailed than the preceeding one, showing that the Governors realized the tremendous difficulties they would now have to face to maintain the Catholic religion.

The principal articles of the act concerning religion can be summed up under the following headings: freedom to practice the "Catholic, Apostolic and Roman Religion"; the right of meeting in Churches; the right to receive the sacraments publicly; the right of the secular clergy to retain and exercise their functions; that religious communities of women may retain all their privileges and remain as they were; that religious communities of men retain their possessions but not their rights; that the Indians will keep their missionaries; that the bishop will no longer be chosen by

the King of France.⁸³

It must indeed have been most difficult and painful for the French leaders to see their Church reduced to a position of mere toleration after so many years of freedom and protection.

We will now analyse articles of the capitulation agreement in order to determine their import for the status of the Church. The document itself contain some fifty-five articles. Nos. XXVII to XXXV concern the freedom of religion.

Article XXVII reads as follows:

The free exercise of the Catholic, Apostolic, and Roman Religion, shall subsist entire, in such manner that all the states and the people of the Towns and countries, places and distant posts, shall continue to assemble in the churches, and to frequent the sacraments as heretofore, without being molested in any manner, directly or indirectly. These people shall be obliged, by the English Government, to pay their Priests the tithes, and all the taxes they were used to pay under the Government of his most Christian Majesty.⁸⁴

Amherst's reply was: "Granted, as to the free exercise of their religion, the obligation of paying the tithes to the Priests will depend on the King's pleasure".⁸⁵ Amherst did not want to grant the right of obliging the people by law

⁸³ Cf. Arthur Maheux, "Difficultés religieuses après la cession", in Rapport de la Société Canadienne d'Histoire de l'Eglise Catholique, 1946-1947, p. 11.

⁸⁴ Documents, I, p. 30.

⁸⁵ Ibid., I, p. 30.

to continue to pay tithes. Under British rule, there was no question for the time being of making the State responsible for the well-being of religion. His reply did not change the ecclesiastical law of contributing to the support of the pastor, but the protection of the priests' right was no longer guaranteed by civil authority, and delinquents could not be prosecuted for default of payment.⁸⁶

Article XXVIII was granted without commentary.

The Chapter, Priests, Curates and Missionaries shall continue, with an entire liberty, their exercise and function of cures, in the parishes of the towns and countries.⁸⁷

Article XXIX concerns the role of the Grand Vicars.

The Grand Vicars, named by the Chapter to administer to the diocese during the vacancy of the Episcopal see, shall have liberty to dwell in the towns or country parishes, as they shall think proper. They shall at all times be free to visit the different parishes of the Diocese with the ordinary ceremonies, and exercise all the jurisdiction they exercised under the French Dominion. They shall enjoy the same rights in case of the death of the future Bishop, of which mention will be made in the following article.⁸⁸

This request was also granted by Amherst, while referring to the following article. Mention is made of the

⁸⁶ Cf. Georges-Etienne Proulx, "Les Canadiens ont-ils payé la dîme entre 1760-1775?", in Revue d'Histoire de l'Amérique française, 11 (1958), p. 536.

⁸⁷ Documents, I, p. 31.

⁸⁸ Ibid., I, p. 31.

"future" bishop, because Bishop de Pontbriand died in Montreal on June 8, 1760.⁸⁹ This death came at a most unfortunate period in Canadian history, and was the occasion of long and tedious negotiations to have a successor appointed.

Article XXX concerns the appointment of bishops:

If by the treaty of peace, Canada should remain in the power of his Britannic Majesty, his most Christian Majesty shall continue to name the Bishop of the colony, who shall always be of the Roman communion, and under whose authority the people shall exercise the Roman Religion.⁹⁰

This request was simply "Refused", and not surprisingly so. Amherst's duty was to conquer the country, not to legislate on details concerning its bishops.

Article XXXI was refused as being "comprised under the foregoing".

The Bishop shall, in case of need, establish new parishes, and provide for the rebuilding of his Cathedral and his Episcopal palace; and, in the meantime, he shall have the liberty to dwell in the towns or parishes, as he shall judge proper. He shall be at liberty to visit his Diocese with the ordinary ceremonies, and exercise all the jurisdiction which his predecessor exercised under the French Dominion, save that an oath of fidelity, or a promise to do nothing contrary to his Britannic Majesty's service, may be required of him.⁹¹

89 Cf. Marcel Trudel, *L'Eglise canadienne sous le Régime militaire, 1759, 1764*, Vol. I, p. 244. (Les Etudes de l'Institut d'Histoire de l'Amérique française, 1956).

90 Documents, I, p. 31.

91 Documents, I, p. 31.

Article XXXII was granted by Amherst:

The communities of Nuns shall be preserved in their constitutions and privileges; they shall continue to observe their rules, they shall be exempted from lodging any military; and it shall be forbid to molest them in their religious exercises, or to enter their monasteries: safe-guards shall even be given them, if they desire them.⁹²

The following article, XXXIII, concerning communities of male religious, was "refused till the King's pleasure be known".

The preceeding article shall likewise be executed, with regard to the communities of Jesuits and Recollects and of the house of the priests of St. Sulpice at Montreal; these last, and the Jesuits, shall preserve their right to nominate to certain curacies and mission, as heretofore.⁹³

Article XXXIV was granted without reservation:

All the communities, and all the priests, shall preserve their moveables, the property and revenues of the Seignories and other estates, which they possess in the colony, of what nature soever they be; and the same estates shall be preserved in their privileges, rights, honours, and exemptions.⁹⁴

The final article concerning religion, No. XXXV, concerned the departure of the priests and their return to France if they so desired.

⁹² Ibid., I, p. 31.

⁹³ Ibid., I, p. 31-32.

⁹⁴ Ibid., I, p. 32.

If the Canons, Priests, Missionaries, the Priests of the seminary of the foreign Missions, and of St. Sulpice, as well as the Jesuits, and the Recollects, chuse to go to France, a passage shall be granted then in his Britannic Majesty's ships, and they shall have leave to sell, in whole, or in part, the estates and moveables which they possess in the colonies, either to the French or to the English, without the least hindrance or obstacle from the British Government. -- They may take with them, or send to France, the produce of what nature soever it be, of the said goods sold, paying the freight, as mentioned in the XXVith article; and such of the said Priests, who chuse to go this year, shall be victualled during the passage, at the expence of his Eritannic Majesty; and they shall take with them their baggage.⁹⁵

The reply was more succinct: "They shall be masters to dispose of their estates and to send the produce thereof, as well as their persons, and all that belongs to them to France".⁹⁶

Vaudreuil seems to have wanted to guarantee the "establishment" of the Catholic faith. This was unacceptable to Amherst whose intencion was "to allow the conquered people to worship God in their own way without molestation, but nothing more. The right for the Bishop to form new parishes was refused--the existing parishes were not interfered with but matters in that regard were to remain in statu quo".⁹⁷

⁹⁵ Ibid., I, p. 32. Cf. W. R. Riddell, loc. cit., p. 308.

⁹⁶ Ibid., I, p. 32.

⁹⁷ W. R. Riddell, loc. cit., p. 309.

Having studied the two Acts which determined the juridical status of the Catholic Church during the Military regime, we can now briefly examine some of the difficulties experienced in applying the freedom of religion granted to the French people of Quebec.

2. Application of the freedom of worship.- In order to see how the freedom of worship was observed in Canada, we can examine General Murray's "Report of the State of the Government of Quebec in Canada June 5th 1762". This contemporary document will show us how the British leader considered the life of the Church in Quebec.

Section five of the report described the situation of the Church and its government. After having mentioned the roles of the Bishop, the Chapter, and so on, Murray makes nine remarks concerning the status of the Catholic religion.

The first remark concerns the fidelity of the people to the British crown:

The Canadians are very ignorant and extremely tenacious of their Religion, nothing can contribute so much to make them staunch subjects to his Majesty as the new Government giving them every reason to imagine no alteration is to be attempted in that point.

The second remark concerns the necessity of having a bishop appointed:

Care was taken under the former Government to keep up a great part of the Clergy French, especially the dignified part: To prevent the further importation of these, it would be necessary to encourage the natives to engage in the profession, which cannot be so well done, except the See is filled up, as without a Bishop there can be no ordination: some difficulty will attend this, as it is unendow'd tho' hereafter means may be found of making up this deficiency.

The third remark concerns the Chapter:

A like difficulty occurs in relation to the Chapter, their number indeed might be reduced by letting the vacancies lye dormant, if some provision cannot be made for them as will hereafter be proposed.

The fourth remarks concerns the rebuilding of the Church:

An expedient to assist the people in rebuilding their great Church, would much ingratiate their new Masters with them.

The fifth deals with the Jesuits and their role in the country:

The Jesuites [*sic*] are neither loved nor esteemed in general, and this order may be easily removed whenever the Government shall think proper without giving offence, out of part of their Estate provision might be made for the Bishoprick, and Chapter which would ease the Crown of further expenses on that head.

Paragraph six concerns the Recollects:

The Recollects is an order of Mendicants, as they depend upon charity for subsistence, they are careful not to give offence; probably should they find the Inhabitants upon the present change, cool towards their Order, they will of themselves seek a better living somewhere else.

The three remaining remarks concern the Seminary, religious communities of women, and the situation of

Protestants who wish to remain in Canada. Murray sums up his report by comparing the situation of the French Canadians to that of the Acadians who were expelled from their lands:

Convinced that this is not to be their case and that the free exercise of their religion will be continued to them once Canada is irrecoverably ceded by a Peace the people will soon become faithful and good subjects to His Majesty, and the Country they inhabit within a short time prove a rich and most useful Colony to Great Britain.⁹⁸

There were many difficulties facing the Church immediately after the cession. The first one was the absence of a residential bishop. Another difficulty was that both seminaries were now closed, leaving little opportunity for the preparation of a Canadian clergy. The parishes also seem to have experienced some financial difficulties. The faith of the people was considered endangered by the practice of mixed marriages and other abuses.⁹⁹

During the Military regime, the Catholic Church ceased to be the established Church. The people were granted freedom of worship, but the existence of the Church was simply tolerated.

The era of protection under the French regime was now over, and the people had to depend solely on good-will and understanding if their Church was to continue its existence in Canada.

⁹⁸ Documents, I, p. 71-72.

⁹⁹ Cf. M. Trudel, L'Eglise canadienne sous le Régime militaire, 1759-1764, Vol. I, p. 151-174: "Les Canadiennes imposent à l'Eglise le problème des mariages mixtes".

CHAPTER II

CATHOLICISM IN QUEBEC AT THE BEGINNING OF THE BRITISH REGIME (1763-1791)

An entirely new situation was to arise in Canada after the signing of the Treaty of Paris in 1763 between Great Britain and France. Catholicism, which was the official and exclusive religion of the land, was now reduced to a vague status of tolerance; the official religion then became that of the Church of England.¹

In the light of these changes, we will now study the Treaty of Paris and the subsequent Quebec Act of 1774 to determine how these official texts qualified the juridical status of the Catholic Church and the practice of its religion in Canada. The present chapter will comprise two sections:

- A. The Treaty of Paris and its Consequences
- B. The Quebec Act and Religious Freedom in Quebec.

- A. The Treaty of Paris and its Consequences.

Before studying the text of the Treaty of Paris, we must first mention some of the discussions which preceeded its signing; then study the Treaty itself to see how it was

¹ Cf. Marcel Trudel, L'Eglise canadienne sous le Régime militaire, 1759-1764, Vol. I, p. 193.

interpreted by jurists; and, finally, examine some of the practical difficulties encountered by the Church in this period. This section, therefore, will have four paragraphs:

1. Preparations for the Treaty of Paris
2. The Treaty of Paris
3. The Interpretation of Article IV of the Treaty of Paris
4. Practical Difficulties encountered concerning the appointment of a Bishop at Quebec.

1. Preparations for the Treaty of Paris. - In studying the preparations for the Treaty of Paris, we will only be concerned with the articles of the Treaty relating to the practice of religion.²

In view of his title, "Most Christian King", the King of France wished to ensure that the Catholic religion would be protected in the Colony that was to be ceded. His intention was that the religion be maintained "comme ci-devant", as heretofore. Vaudreuil had previously asked for this in the Capitulation of Montreal, but his request had been refused at the time.³

A brief prepared by the French government on July 15, 1761, proposed that freedom of the Catholic religion be preserved, and that the King of England would give "the most

2 Cf. ibid., p. 248-249.

3 Cf. Adam Shortt and Arthur G. Doughty, Documents Relating to the Constitutional History of Canada, 1759-1791, Vol. I, second edition, 1918 (referred to hereinafter as Documents), p. 30, Art. 27.

precise and most effectual orders, that his new Roman Catholic subjects, as heretofore, may profess publicly the worship of their religion, according to the rites of the Romish Church".⁴

England's reply was that "Concerning the public profession and exercise of the Roman Catholic Religion in Canada, His Majesty's new subjects will enjoy this freedom without interruption or molestation".⁵

This was not exactly what France had in mind, and again in July 1762, in a preliminary draft of articles of peace, the King reiterated his request, which was once more rejected by England.

The French Ministers proposed to insert the Words, comme ci-devant, in order that the Romish Religion should continue to be exercised in the same manner as under their Government; and they did not give up the Point, 'till they were plainly told that it would be deceiving them to admit those Words, for the King had not the Power to tolerate that Religion in any other Manner, than as far as the Laws of Great Britain permit.⁶

The clause, "comme ci-devant", was thus dropped.

There were, however, precedents for this request. When France ceded certain territories to Britain in 1713 by

⁴ M. Trudel, op. cit., I, p. 248.

⁵ Ibid.

⁶ Egremont to Murray, August 13, 1763, in Documents, I, p. 169.

the Treaty of Utrecht, she had stipulated that the Catholic religion be maintained without any changes in its state. Yet, England too, had precedents to follow. When it obtained possession of Gibraltar it promised to "tolerate the free exercise" of the Catholic religion; when it was given the Island of Minorca, it agreed to maintain the Catholic religion to the extent that it was consistent "with the civil government and the laws of Great Britain". When it acquired the colony of Acadia, it stipulated simply that the inhabitants "would enjoy the exercise of the Roman Catholic Religion as far as the laws of Great Britain permit". It seems that England was about the only European nation which refused systematically to its new subjects the exercise of their religion "as heretofore".⁷

There was no alternative remaining, and so France had to agree to the text as found in the Treaty.

2. The Treaty of Paris.— The Treaty was concluded at Paris on February 10, 1763, by the Kings of England, France and Spain. The King of Portugal acceded to its articles on the same day.

Article IV concerns the freedom of religion. After having stated that

⁷ Cf. M. Trudel, ibid., p. 249.

His Most Christian Majesty cedes and guarantees to his said Britannick Majesty, in full right, Canada with all its dependencies

it is further accepted that

His Britannick Majesty, on his side, agrees to grant the liberty of the Catholick religion to the inhabitants of Canada: he will, in consequence, give the most precise and most effectual orders, that his new Roman Catholic subjects may profess the worship of their religion according to the rites of the Romish church, as far as the laws of Great Britain permit.⁸

The interpretation of this last clause was to lead to many controversies. Pagnuelo summarized by stating that it granted "freedom, but not privilege in favour of the Church of Rome".⁹ We shall study the import of this clause further on.

The article then stipulated that a period of eighteen months would be fixed in which the inhabitants of Canada could sell their estates and return to France if they so desired.

Thus, it wasn't until August 10, 1764, that the civil government of Canada came into effect, ending the military regime.¹⁰

⁸ Treaty of Paris, Art. IV, in Documents, I, p. 115.

⁹ Siméon Pagnuelo, Etudes historiques et légales sur la liberté religieuse en Canada, p. 21.

¹⁰ Cf. W. L. Morton, The Kingdom of Canada, Toronto, McClennan and Stewart, 1963, p. 152.

Article IV stated that the King was to "give the most precise and most effectual orders" for the profession of the Catholic faith. These orders are found in the instructions to General Murray, dated December 7, 1763.

28. And whereas We have stipulated, by the late Definitive Treaty of Peace concluded at Paris the 10th Day of February 1763, to grant the Liberty of the Catholick Religion to the Inhabitants of Canada, and that We will consequently give the most precise and most effectual Orders, that Our new Roman Catholick Subjects in that Province may profess the Worship of their Religion, according to the Rites of the Romish Church, as far as the laws of Great Britain permit; It is therefore Our Will and Pleasure, that you do, in all things regarding the said Inhabitants, conform with great Exactness to the Stipulations of the said Treaty in this respect.¹¹

Then follow some twelve articles giving precise instructions concerning the practice of the Catholic and Protestant religions. These texts are quite important for they show how the British government intended to settle the question, and are repeated substantially in subsequent instructions to Carleton and Haldimand.¹² We will see, though, that many of these articles remained dead letters in practice.

¹¹ Documents, I, p. 191.

¹² Cf. ibid., I, p. 310-312, 696-697.

29. You are, as soon as possible, to summon the Inhabitants to meet together, at such Time or Times, Place or Places, as you shall find most convenient, in order to take the Oath of Allegiance, and make and subscribe the Declaration of Abjuration mentioned in the aforesaid Act passed in the first year of the Reign of King George the First, for the further Security of His Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for extinguishing the Hopes of the pretended Prince of Wales, and his open and secret Abettors; which Oath shall be administered to them by such Person or Persons as you shall commissionate for such Purpose; and in case any of the said French Inhabitants shall refuse to take the said Oath, and make and subscribe the Declaration of Abjuration, as aforesaid, You are to cause them forthwith to depart out of Our said Government.¹³

By this article, all the subjects were to take the Oath of Allegiance and make and subscribe the Declaration of Abjuration, commonly called the "Test".¹⁴ The order seems never to have been executed. Nor was the following article which called for all "professing the Religion of the Romish Church" to "deliver in upon Oath an exact Account of all Arms and Ammunition, of every sort in their actual possession".¹⁵

Murray was also instructed to transmit an exact account of the nature and constitution of the religious

¹³ Ibid., I, p. 191.

¹⁴ Cf. James Kenney, Relations Between Church and State in Canada since the Cession of 1763, in The Catholic Historical Review, 18 (1933), p. 450. Also S. Pagnuelo, op. cit., p. 25.

¹⁵ Article 30, Documents, I, p. 191.

communities as well as of their revenues and holdings.¹⁶

He was ordered "not to admit of any Ecclesiastical Jurisdiction of the See of Rome, or any other foreign Ecclesiastical Jurisdiction whatsoever in the Province".¹⁷

The subsequent articles were concerned with the establishment of the Church of England both in principle and in practice. Article 33 directed that all possible encouragement be given to the erecting of Protestant schools in the Province and that proper quantities of land be allotted for a glebe and maintenance of a Protestant minister.¹⁸

Murray was also directed to see that the Book of Common Prayer be used in services.¹⁹ A minister could not be appointed to an ecclesiastical benefice without the recommendation of the Lord Bishop of London. Ministers were to be called to every Vestry meeting.²⁰

The Governor was given authority for the collating of benefices, granting licences for marriage, and probates of wills. His licence and that of the Bishop of London were to be obtained before a person could teach school. A table

16 Article 31, ibid., I, p. 191.

17 Article 32, ibid.

18 Article 33, ibid., I, p. 191-192.

19 Article 34, ibid., I, p. 192.

20 Articles 35 and 36, ibid.

of marriages was to be prepared and hung up in all places of public worship. And, finally, certain moral evils were to be suppressed and laws executed against "Blasphemy, Profaneness, Adultery, Fornication, Polygamy, Incest, Profanation of the Lord's Day, Swearing and Drunkenness".²¹

It was stated in these Royal Instructions that the Canadians should be induced by degrees to accept the Protestant religion and bring up their children in its principles. There seems to be no doubt that the authorities in England hoped and believed that Quebec would before long be English-speaking and Protestant.²²

Yet, as a historian remarks:

the hope and expectation that by a considerable English-speaking Protestant immigration and intermingling of the races, the French population would be diluted, and by intermarriage and otherwise gradually become anglicized and Protestant, were wholly disappointed: the French-Canadian people were tenacious of language and religion and any intermingling there was had rather the contrary effect.²³

The thinking behind the treaty or the factors which influenced its composition could be summed up under the following headings.

21 Articles 37 to 40, ibid. . . , p. 192-193.

22 Cf. W. R. Bidwell, Status of Roman Catholicism in Canada, in The Catholic Historical Review, 3 (1928), p. 313.

23 Ibid., p. 314.

"First, there was a desire to assimilate the new subjects to the life of the fold into which they had been introduced"; then, a sincere feeling of revulsion against the Catholic faith; thirdly, a long-inherited suspicion against the papal court; also, the fear that France might use the Church to facilitate the future recovery of Quebec; "a curious worship of the legal dogma of the King's supremacy, and an extraordinary sensitiveness towards any formal detraction therefrom"; and, finally, a wish to show a friendly indulgence to the people of Canada.²⁴

We shall now examine the application of Article IV of the Treaty, concerning religion, and the interpretation given by jurists.

3. The Interpretation of Article IV of the Treaty of Paris.— Article IV of the Treaty of Paris gave rise to discussion on two points. The first was the interpretation of the clause "as far as the laws of Great Britain permit"; the second was whether the new subjects of George III were bound by laws passed previously and still in effect at that time in Great Britain. We will first examine the anti-Catholic legislation, commonly called the Penal Laws, of Great Britain, and then study its possible application to Canada.

²⁴ Cf. J. Kenney, op. cit., p. 446-448.

a) The Penal Laws of Great Britain.- In order to understand the import of the clause "as far as the laws of Great Britain permit", we must examine those religious laws which were still in effect at that time, and see how they influenced the local position of the Catholic Church.

The "Penal Laws" of England were enacted in 1559 and lasted until the Catholic Emancipation Act of 1829. There were five types of such laws: statutes that subjected Catholics to penalties and punishments for practicing their religion; statutes that punished them for not conforming to the established Church; statutes that regulated the penalties or disabilities attending the refusal to take the Oaths of Supremacy and Allegiance and the declarations against transubstantiation; acts concerning reception of the Lord's supper, and statutes that affected landed property.²⁵

While most of these laws were never applied as such in Canada, a study of their content is in order to show the historical and psychological context into which the Catholics of Quebec were plunged. The severity of these Statutes naturally gave rise to great apprehension on the part of the "new subjects".

²⁵ Cf. P. R. Glazebrook, Penal Laws, in New Catholic Encyclopedia, Vol. XI, p. 62-63.

The Statutes of Supremacy and Uniformity were passed under Elizabeth I in 1559.²⁶ These reintroduced the statutes of Henry VIII which had been repealed by Philip and Mary.²⁷

In the Statute of Supremacy, it was enacted that no foreign Prince, Person, Prelate, State or Potentate Spiritual or Temporal shall at any time after the last Day of this Session of Parliament use, enjoy or exercise any Manner of Power, Jurisdiction, Superiority, Authority, Preheminence or Privilege Spiritual or Ecclesiastical, within this Realm, or within any other [sic] your Majesty's Dominions or Countries that now be, or hereafter shall be.²⁸

26 1 Elizabeth I, Ch. 1 and 2: An Act to restore to the Crown the ancient Jurisdiction over the Estate Ecclesiastical and Spiritual, and abolishing all foreign Powers repugnant to the same; An Act for the Uniformity of Common Prayer and Service in the Church, and Administration of the Sacraments, in Owen Ruffhead, The Statutes at Large from Magna Charta to the End of the Last Parliament, 1761, in Eight Volumes, (hereinafter referred to as Statutes), II, p. 517-514 [sic - 524]; 514-516.

27 25 Henry VIII, c. 21, An Act concerning Peter pence and Dispensations, in Statutes, II, p. 193-200; 26 Henry VIII, c. 1, The King's Grace to be authorized Supreme Head, ibid., II, p. 203; 1 and 2 Philip and Mary, c. 8, An Act repealing all Articles and Provisions made against the See Apostolick of ROME, since the twentieth Year of King HENRY the Eighth, and for the Establishment of all Spiritual and Ecclesiastical Possessions and Hereditaments conveyed to the Laity, ibid., II, p. 473-482.

28 Statutes, II, p. 518.

It was also stated

that such Jurisdictions, Privileges, Superiorities and Preheminences Spiritual and Ecclesiastical, as 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 for ever by Authority of this present Parliament be united and annexed to the Imperial Crown of this Realm.²⁹

The Act of Uniformity provided that the clergy should conduct services according to the 1552 Book of Common Prayer. Penalties were determined for the non-observance of this statute.³⁰

Further penal laws were enacted in 1571 after Elizabeth's excommunication.³¹ Penalties for saying Mass were determined in the "Act to retain the Queen's Majesty's Subjects in their due Obedience".³² An act was passed against

29 Ibid.

30 1 Elizabeth I, c. 2, Statutes, II, p. 514-516.

31 13 Elizabeth I, c. 1 [No title], Statutes, II, p. 583; c. 2, An Act against the bringing in, and putting in Execution of Pulls, Writings or Instruments and other Superstitious Things from the See of ROME, ibid., II, p. 583-585; c. 3 [No title], ibid., II, p. 585. See also, 14 Elizabeth I, c. 6, p. 606.

32 23 Elizabeth I, c. 1, ibid., II, p. 624-25; 29 Elizabeth I, c. 6, An Act for the more speedy and due Execution of certain Branches of the Statute made in the twenty-third Year of the Queen's Majesty's Reign, intituled An Act to retain the Queen's Majesty's Subjects in the due Obedience, ibid., II, p. 656-57.

the Jesuits and Seminary priests in 1585.³³ Further Acts in 1593³⁴ penalized heads of families for harbouring recusants, and prohibited those convicted of being a recusant from venturing more than five miles from their homes without a licence.

On June 26, 1606, the Oath of Allegiance (or Obedience) was prescribed. This was imposed after the discovery of the Gunpowder Plot of 1605. The Oath was drafted to exploit the differences of opinion on the Pope's deposing power, and to cast doubt on the loyalty of Catholics. It reads as follows:

I A.B. do truly and sincerely acknowledge, profess, testify and declare in my Conscience before God and the World, That our Sovereign Lord King JAMES is lawful and rightful King of this Realm, and of all other his Majesty's Dominions and Countries; and that the Pope neither of himself nor by any Authority of the Church or See of Rome, or by any other Means with any other hath any Power or Authority to depose the King, or to dispose any of his Majesty's Kingdoms or Dominions, or to authorize any Foreign Prince to invade or annoy him or his Countries, or to discharge any of his Subjects of their Allegiance and Obedience to his Majesty, or to give Licence or Leave to any of them to bear Arms, raise Tumults, or to offer any Violence or Hurt to his Majesty's Royal Person, State or Government, or to any of his Majesty's Subjects, within his Majesty's Dominions.

³³ 27 Elizabeth I, c. 2, An Act against Jesuits, Seminary Priests, and other such like disobedient Persons, ibid., II, p. 633-635.

³⁴ 35 Elizabeth I, c. 1, An Act to retain the Queen's Majesty's Subjects in their due Obedience, ibid., II, p. 671-673; c. 2, An Act for Restraining Popish Recusants to some certain Places of Abode, ibid., II, p. 673-675.

(2) Also I do swear from my Heart, That notwithstanding any Declaration or Sentence of Excommunication, or Deprivation made or granted, or to be made or granted, by the Pope or his Successors, or by any Authority derived or pretended to be derived from him or his See against the said King, his Heirs or Successors, or any Absolution of the said Subjects from their Obedience; I will bear Faith and true Allegiance to his Majesty, his Heirs and Successors [...]

(3) And I do further swear, That I do from my Heart abhor, detest and abjure, as impious and heretical, this damnable Doctrine and Position, That Princes which be excommunicated or deprived by the Pope may be deposed or murdered by their Subjects, or any other whatsoever.

(4) And I do believe, and in my Conscience am resolved, That neither the Pope nor any other Person whatsoever, hath Power to absolve me of this Oath or any Part thereof [...]

After 1610³⁶ this oath could be demanded of anyone over eighteen, and further penalties were imposed.

On August 19, 1643, an act provided that a person who refused the Oath of Adjuration renouncing papal supremacy, transsubstantiation, purgatory and other doctrines included in the act should be "adjudged a papist" and should forfeit two-thirds of his real and personal estate.

³⁵ 3 James I, c. 4, An Act for the better discovering and repressing of Popish Recusants, *ibid.*, III, p. 39-46. See also 3 James I, c. 5, An Act to prevent and avoid Dangers which grow by Popish Recusants, *ibid.*, III, p. 46-51.

³⁶ 7 James I, c. 6., An Act for administring the Oath of Allegiance, and Reformation of married Women Recusants, *ibid.*, III, p. 78-80.

As of August 1, 1673, the Test Act³⁷ became law. This required all military and civil office holders to take the two oaths of Supremacy and Allegiance,³⁸ receive the sacrament, and make a short declaration against transsubstantiation.

I A.P. do declare, That I do believe that there is not any Transsubstantiation in the Sacraments of the Lord's Supper, or in the Elements of Bread and Wine, at or after the Consecration thereof by any Person whatsoever.³⁹

After the Oates Plot (1678) a much longer test was devised with a further clause that

the Invocation or Adoration of the Virgin Mary or any other Saint, and the Sacrifice of the Mass, as they are now used in the Church of Rome, are superstitious and idolatrous.

(3) And I do solemnly in the Presence of God profess, testify and declare, That I do make this Declaration, and every Part thereof, in the plain and ordinary Sense of the Words read unto me, as they are commonly understood by English Protestants, without any Evasion, Equivocation or mental Reservation whatsoever, and without any Dispensation already granted me for this Purpose by the Pope.⁴⁰

³⁷ 25 Charles II, c. 2, An Act for preventing Dangers which may happen from Popish Recusants, ibid., III, p. 377-379.

³⁸ Cf. 3 James I, c. 4, supra.

³⁹ 25 Charles II, c. 2, sect. IX, ibid., III, p. 378.

⁴⁰ 30 Charles II, st. 2, An Act for the more effectual Preserving of the King's Person and Government, by disabling Papists from sitting in either House of Parliament, ibid., III, p. 395.

This new Test excluded all Catholics from sitting or voting in Parliament by requiring every member of either house (except the Duke of York, later James II) to take the two oaths and make the Declaration against Popery.

Under William and Mary,⁴¹ in 1688, persons refusing the Test oath were deemed popish recusants and were thereupon liable to all the penalties of the statutes punishing absence from church and were disabled from practicing as lawyers and voting at elections.⁴²

Later, in 1700, the "Act for the further preventing the Growth of Popery"⁴³ provided that any Catholic over eighteen not taking the oath should be incapable of acquiring lands and that any land devised to such a person should pass to the Protestant next of kin. In 1715, under George I⁴⁴ "papists" were obliged to register their names and real estates. Another oath against papal jurisdiction was also

⁴¹ 1 William and Mary, c. 8 (session 1), An Act for the abrogating of the Oaths of Supremacy and Allegiance, and appointing other oaths, *ibid.*, III, p. 417-420.

⁴² See also 1 George I, st. 2, c. 13, An Act for the further Security of his Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess SOPHIA, being Protestants; and for extinguishing the Hopes of the pretended Prince of Wales, and his open and secret Abettors, *ibid.*, V, p. 30-37.

⁴³ 11-12 William III, c. 4, *ibid.*, IV, p. 41-42.

⁴⁴ 1 George I, St. 2, c. 55, An Act to oblige Papists to register their Names and real Estates, *ibid.*, V, p. 93-96.

prescribed:

I A.B. do swear, That I do from my Heart abhor, detest and abjure, as impious and heretical, that damnable Doctrine and Position, That Princes excommunicated or deprived by the Pope, or any Authority of the See of Rome, may be deposed or murdered by their Subjects, or any other whatsoever. And I do declare, That no Foreign Prince, Person, Prelate, State, or Potentate hath or ought to have any Jurisdiction, Power, Superiority, Pre-eminence or Authority, Ecclesiastical or Spiritual, within this Realm.⁴⁵

These were the principal laws in effect in Great Britain at the time of the signing of the Treaty of Paris. Not all laws were applied in England with the same vigour, some even remained dead letters.⁴⁶

The biggest question that remained to be settled was the extent to which these laws applied in Canada. We will now try to study this question.

b) The Application of British Penal Laws to Canada.-

There was considerable doubt in the minds of the people as to whether the penal laws and the accompanying disabilities were to be observed to the letter once the treaty went into effect. There was no doubt that the Church had changed from its position as an established Church to that of a voluntary association; yet, in spite of the guarantees of the Treaty, would it be crushed by the annulling factors found in the final

⁴⁵ 1 George I, session 2, c. 13, ibid., V, p. 32.

⁴⁶ Cf. P. R. Glazebrook, loc. cit., p. 65.

clause, "as far as the laws of Great Britain permit"?

Already on August 13, 1763, Egremont, Secretary of State in charge of the American colonies, wrote to Murray, stating that the laws of Great Britain

prohibit absolutely all Popish Hierarchy in any of the Dominions belonging to the Crown of Great Britain, and can only admit of a Toleration of the Exercise of that Religion.⁴⁷

On October 7, 1763, the first steps towards the civil organization of the colony were taken by Royal proclamation. While nothing in the text related expressly to religion, the assurance given "that all Persons Inhabiting in or resorting to our said Colonies may confide in our Royal Protection for the Enjoyment of the Benefit of the Laws of Our Realm of England" was at least disquieting since it introduced the laws of England as a whole into the new Provinces.⁴⁸

On September 17, 1764, an ordinance was passed at Quebec by the Governor in Council, erecting Civil courts and ending the Military Regime.⁴⁹ It was this ordinance which brought about the legal definition of the status of the Catholic Church in Quebec after the conquest. Two courts of judicature were erected: the Superior Court or Court of

⁴⁷ Egremont to Murray, August 13, 1763, Documents, I, p. 169.

⁴⁸ Cf. Documents, I, p. 163-168.

⁴⁹ Ibid., I, p. 205-210.

the King's Bench, in which causes were to be decided according to the laws of England, and trial to be held by jury; and, the Inferior Court or Court of Common Pleas in which causes were to be decided "agreeable to Equity, having Regard nevertheless to the Laws of England, as far as the circumstances and present situation of things will admit".

Canadians were allowed to practice in the lower court because not one English Barrister or Attorney could be found who understood French.⁵⁰ Canadians were also allowed by Murray to serve on juries. This was probably done for political reasons. After stating in a letter to the Lords of Trade that "Little, very little, will content the New Subjects", on the other hand, after speaking of the British merchants, Murray added that "nothing will satisfy the Licentious Fanaticks Trading here, but the expulsion of the Canadians who are perhaps the bravest and best race upon the Globe". He then gives his opinion on the loyalty of the Catholics.

Could they be indulged with a few priveledges wch the Laws of England deny to Roman Catholics at home, they wou'd soon get the better of every National Antipathy to their Conquerors and become the most faithful and most useful set of Men in this American Empire.⁵¹

⁵⁰ Cf. Murray's report to the Home Government, in Public Archives of Canada, Ottawa, (hereinafter referred to as PAC), Q 62 A, p. 504; see also W. R. Riddell, loc. cit., p. 315.

⁵¹ Murray to Lords of Trade, Oct. 29, 1764, in Documents, I, p. 231.

Murray then added that unless the Canadians were admitted to serve on juries and "allowed Judges and Lawyers who understand their Language his Majesty will lose the greatest part of this Valuable people".

Murray did not appoint Catholic lawyers to practice except in the Inferior Court, nor did he appoint a Catholic Judge. The old statute of James I (1605)⁵² provided that no "papist" could practice

the Common Law as a Councillor, Clerk, Attorney, or Solicitor nor shall practise the Civil Law, as advocate or proctor, not practise physick, nor be an apothecary, nor shall be a judge.⁵³

In 1764, the Grand Jurors of Quebec expressed the opinion that

admitting persons of the Roman Religion, who own the authority, supremacy and jurisdiction of the Church of Rome as Jurors, is an open Violation of our most sacred Laws and Libertys, and tending to the utter subversion of the protestant Religion and his Majesty's power, authority, right, and possession of the province to which we belong.⁵⁴

This was also described in the same report as "an unwarrantable incroachment on the establish'd maxims of a British Government". The same objection could also be raised against a Roman Catholic "holding any office or filling any public

⁵² 3 James I, c. 5, s. 8, in Statutes, III, p. 46-51.

⁵³ Ibid. See W. R. Riddell, loc. cit., p. 318.

⁵⁴ Presentments of the Grand Jury of Quebec, October 16, 1764, in Documents, I, p. 215.

employment".⁵⁵

Faced with this situation, the French citizens shortly afterwards presented an address to the King regarding the legal system, stating that the people have enjoyed "tranquillity in their Religion and in the possession of their property" but that it was not secured for them. They held that this tranquillity had been removed because they were being judged in a language they did not understand, and were subject to laws they could not comprehend, and were being proscribed by "about thirty English merchants, of whom fifteen at the most" were settled there.⁵⁶ And this was caused by the fact that because of their religion, they were unable to enjoy full civil rights. The brief continues as follows:

And in fact what would become of the general prosperity of the Colony, if those who from the principal section thereof, become incapable members of it through difference of Religion? How would Justice be administered if those who understand neither our Language nor our Customs should become our Judges, through the Medium of Interpreters. What confusion, what Expenditure of Money would not result therefrom? Instead of the favoured Subjects of Your Majesty, we should become veritable Slaves.⁵⁷

⁵⁵ Ibid., p. 215-216.

⁵⁶ Address of French Citizens to the King Regarding the Legal System, Documents, I, p. 228.

⁵⁷ Ibid.

The matter was referred to the Privy Council with its standing Committee, the Lords of Trade, or "Lords of the Committee for Plantation Affairs", and not to Parliament because the King had not given over the colony to the control of Parliament. The standing Committee referred the matter to the Law Officers of the Crown. For, while the King had full power of administration of the Colony, including law making, he couldn't legally do anything contrary to an Act of Parliament. The Treaty of Paris itself was not an Act of Parliament, but an act of the Executive. Thus, the King when signing the Treaty, promised to do everything in his power to grant freedom of religion, but since he could not change the law, he had to take the current laws into consideration.⁵⁸ And so, if the Statute of 1605 (3 James I, c. 5) applied to the Colony, the Ordinance of September 17, 1764 giving Catholics the right to practice law in the inferior court or to sit on juries was ultra vires and without effect.

A reply was received on June 10, 1765, from the Attorney General and the Solicitor General.

⁵⁸ Cf. Louis-Philippe Pigeon, Législation civile des paroisses, in La Revue du Barreau, 9 (1949), p. 54.

In Obedience to your Lordships Commands Signified to me by Mr Pownall's Letter of the 7 Instant, directing us to consider, and Report to your Lordships our Opinion, whether His Majesty's Subjects, being Roman Catholicks, and residing in the Countries, ceded to His Majesty, in America, by the Definitive Treaty of Paris, are, or are not subject, in those Colonies, to the incapacities, disabilities, and Penalties, to which Roman Catholicks in this Kingdom, are subject by the Laws thereof;

We have taken M^r Pownall's letter into our Consideration, and are humbly of Opinion, that His Majesty's Roman Catholick Subjects residing in the Countries, ceded to His Majesty in America, by the Definitive Treaty of Paris, are not subject, in those Colonies, to the Incapacities, disabilities, and Penalties, to which Roman Catholicks in this Kingdom are subject by the Laws thereof.⁵⁹

This was a beginning. On September 2, 1765, a report submitted to the Lords "of the Committee for Plantation Affairs", stated

Neither do we conceive what foundation there is for the Doctrine, that a Roman Catholick, provided he be not a Recusant convict is incapable of being admitted to practice in those courts as a Proctor, Advocate or Attorney.⁶⁰

On July 1, 1766, an Ordinance of the Acting-Governor, Irving, stated that all subjects in the Province of Quebec

without distinction, are intituled to be impannelled, and to sit and act as Jurors, in all causes civil and criminal cognizable by any of the Courts or Judicatures within the said province.

⁵⁹ F. Norton and W. De Grey to Lords of Trade, June 10, 1765, in Documents, I, p. 236.

⁶⁰ Report to the Lords of the Committee for Plantation Affairs, on several papers relative to Ordinances & Constitutions Made by the Governor of Quebec, Sept. 2, 1765, in Documents, I, p. 241-242.

And it was further declared and ordered that

His Majesty's Canadian Subjects shall and are hereby permitted and allowed to practice as Barristers, Advocates, Attornies, and Proctors, in all or any of the Courts within the said Province.⁶¹

The question took only three years to settle as such. This was the first formal breach in the anti-Catholic penal code of the British Empire. However, other practical difficulties arose, setting the way for the Quebec Act of 1774. One such problem was the recommendation of the Board of Trade (September 2, 1765) that a General Assembly be called, with Catholics qualifying as voters but not as members.

The Bulk of the Inhabitants of which being Roman Catholicks cannot, under the Regulations of your Majesty's Commission, be admitted as Representatives in such an Assembly.⁶²

However, the Board also stated that they knew "of no Law by which Roman Catholicks, as such, are disqualified from being Electors".⁶³ Four years later, on July 10, 1769, the Lords of Trade recommended that a number of His Majesty's new Subjects be admitted not only into the Council and House of

⁶¹ An ORDINANCE, To alter and amend an Ordinance of His Excellency the Governor and His Majesty's Council of this Province, passed the Seventeenth Day of September 1764, Documents, I, p. 249-250.

⁶² Representation of the Board of Trade, to the King's Most Excellent Majesty, Documents, I, p. 247. No person could sit in the Assembly who had not subscribed the Test of 25 Charles II.

⁶³ Ibid., p. 248.

Representatives,

but also into the Courts of Judicature, and other Offices of Government, by exempting them from the obligation of subscribing the Declaration against Transsubstantiation declared in the Statute of twenty-fifth of Charles the second, conformable to what has been done in the like case in the ceded Islands, and has been found, both upon Antient precedent and late opinions of Law, to be a Matter entirely in His Majesty's Discretion.⁶⁴

This opinion seems first to have come into legal significance in 1766, when the Catholics of the island of Grenada, likewise ceded by the Treaty of Paris, were seeking admission to the local Assembly.⁶⁵

The Lords suggested that the Catholics chosen to represent the various districts should "not be obliged to take any other Oaths than those of Allegiance, Supremacy and Abjuration".⁶⁶ They then went on to recommend measures that were deemed useful in other matters of religion, but which were considered not "in general necessary to a free exercise of the Religion of the Church of Rome, as meant to be tolerated by the Treaty of Paris".⁶⁷ The recommendations included the suppression of the Jesuits and confiscation of their

⁶⁴ Report of Lords Commissioners for Trade and Plantations Relative to the State of the Province of Quebec, July 10, 1769, Documents, I, p. 383.

⁶⁵ Cf. J. F. Kenney, loc. cit., p. 453.

⁶⁶ Report of Lords..., Documents, I, p. 384.

⁶⁷ Ibid., p. 387.

property by the Crown; abolishing the Chapter of Quebec; abolishing the office of Provincial Commissary of the Recollects; consolidation of the Seminaries of Quebec and Montreal at Quebec; limitation of the number of seminarians; and, prohibition of new religious profession in communities of sisters.⁶⁸ The appointment of a "Superintendant" of the Catholic Church was recommended, but without "any outward Pomp or Parade incident to the dignity of Episcopacy in Roman Catholic Countries".⁶⁹ We will discuss this last matter in the following section.

The interpretation of Article IV of the Treaty of Paris as applied by Britain to Quebec can be summed up in the words of Solicitor General Alexander Wedderburn, in a report dated December 6, 1772.⁷⁰ The qualification, "as far as the laws of Great Britain permit",

renders the article of so little effect, from the severity with which (though seldom exerted) the laws of England are armed against the exercise of the Romish religion, that the Canadian must depend more upon the benignity and the wisdom of Your Majesty's government for the protection of his religious rights than upon the provisions of the treaty, and it may be considered as an open question, what degree of indulgence true policy will permit to the catholic subject.⁷¹

⁶⁸ Ibid., p. 387-388.

⁶⁹ Ibid., p. 389.

⁷⁰ Report of Solicitor General Alex. Wedderburn, December 6, 1772, Documents, I, p. 424-434.

⁷¹ Ibid., p. 427.

And Wedderburn continues:

True policy dictates then that the inhabitants of Canada should be permitted freely to profess the worship of their religion; and it follows of course, that the ministers of that worship should be protected and a maintenance secured for them.

Beyond this the people of Canada have no claim in regard to their religion, either upon the justice or the humanity of the crown; and every part of the temporal establishment of the Church in Canada, inconsistent with the sovereignty of the King, or the political government established in the province may justly be abolished.

The exercise of any ecclesiastical jurisdiction under powers derived from the see of Rome, is not only contrary to the positive laws of England, but is contrary to the principles of government; for it is an invasion of the sovereignty of the King, whose supremacy must extend over all his dominions, nor can his Majesty by any act divest himself of it.⁷²

A final point could be mentioned in this report:

There should be a declaration that all the subjects in Canada may freely profess their religion without being disturbed in the exercise of the same, or subject to any penalties on account thereof, and also that there should be a proper establishment of parochial clergymen to perform the offices of religion.⁷³

The interpretation of Article IV led to special practical difficulties when it came to the question of the appointment of a bishop as successor to Bishop de Pontbriand.

⁷² Ibid.

⁷³ Ibid., p. 428. See also the Considerations on the Expediency of Procuring an Act of Parliament for the Settlement of the Province of Quebec (by Baron Masères), London, Printed in the Year MDCCLXVI, in Documents, I, p. 257-261. That the Catholic religion "should be tolerated is surely very reasonable, and to be wished by all lovers of peace and justice and liberty of conscience", p. 261.

4. Practical difficulties encountered concerning the appointment of a Bishop at Quebec.- The historical question concerning the appointment of a Catholic bishop at Quebec to succeed Bishop de Pontbriand has been studied at great length by historians.⁷⁴ We will, thus, limit our consideration of this question to an examination of the juridical principles involved in this difficult matter.

Bishop de Pontbriand died in Montreal on June 8, 1760. The designation of a successor raised a crucial juridical problem. In former times, the Kings of France had appointed the Bishops of Quebec. In the act of capitulation of Montreal, Vaudreuil had attempted to insert an article guaranteeing the appointment of bishops by Versailles.⁷⁵ Naturally, Amherst refused, and it was left to the Treaty of Paris to determine the matter in more detail. Yet, the Treaty eventually remained silent on this score.

In view of the ambiguous situation, the dean of the Chapter of Quebec, Joseph Marie de Lacorne, who was in Europe at the time, attempted to persuade the Lords of Trade of the necessity in justice of having a bishop appointed.⁷⁶ He also

74 M. Trudel, op. cit., I, p. 243-334.

75 Documents, I, p. 3, Art. 30.

76 See Henri Tetu, Le Chapitre de la cathédrale et ses délégués en France, 1723-1773, in Bulletin de Recherches Historiques, 15 (1909), p. 296-301.

tried to convince the Secretary of State, Egremont, of the urgency of such an appointment.⁷⁷ He suggested the election of a bishop by the Chapter to avoid the appointment of a Vicar Apostolic who would be subject to a "foreign power". The idea of an election would eliminate the difficulty of having a Catholic bishop appointed by a Protestant King, or by the King of France. On June 13, 1763, it was announced that permission had been granted orally for the Chapter to hold an election.⁷⁸

Unaware of this development, five groups prepared briefs during the summer of 1763 in favour of the appointment of a successor. The Chapter met on September 12, 1763, for the first time and prepared an address to the King,⁷⁹ praying for the continuation of bishopric and chapter.⁸⁰ Murray forwarded this to the Earl of Shelbourne, President of the Board of Trade, on September 14, 1763. It was then transmitted to the Privy Council.⁸¹ In the meantime, on September 15, 1763, the canons elected as their candidate

77 M. Trudel, op. cit., I, p. 258.

78 Eon to Choiseul, June 13, 1763, in M. Trudel, op. cit., I, p. 260-261.

79 Mandements, lettres pastorales et circulaires des évêques de Québec, II, p. 174-176; M. Trudel, ibid., p. 270-272.

80 PAC, Q1, p. 234-238.

81 PAC, Q1, p. 93-100. See J. F. Kenney, loc. cit., p. 450.

Etienne Montgolfier, a Sulpician from Montreal.⁸²

In a letter from Egremont to Murray⁸³ which arrived on October 22, 1763, it was stated that no papal hierarchy was to be established in Canada. It was not mentioned, though, that no priest could be appointed to ensure the ordination of priests and the other functions of episcopal ministry.

In the detailed instructions given to Murray on December 7, 1763, and referred to previously, no specific mention was made of a bishop. However, early in 1764, the Privy Council stated that it would be against the oath taken by the King at the time of his coronation to allow a residential bishop to be established in Canada; but that one or even two could be appointed as Superiors of seminaries after having taken the oath of allegiance to the King.⁸⁴

On March 25, 1764, Lacorne was able to write to the Chapter at Quebec to the effect that London would close its eyes on the episcopate and that the Catholics would not be troubled in their religion, as long as they acted with prudence. Again, all these "permissions" were given orally to

⁸² M. Trudel, op. cit., I, p. 275.

⁸³ Egremont to Murray, August 13, 1763, PAC, Q1, p. 130 sqq.

⁸⁴ M. Trudel, op. cit., I, p. 303.

avoid establishing precedents. The new bishop would be called Superior of the Clergy in Canada.⁸⁵

However, Rome did not wish to recognize the right of the Chapter of Quebec to elect a Bishop.⁸⁶ There did not seem to be any objection against the person of Montgolfier, only against the procedure followed. In his letter of March 28, 1764, the Cardinal Prefect of the Propaganda said to the Nuncio in Paris:

His Holiness will have no difficulty in naming as Vicar Apostolic the same ecclesiastic elected as bishop by the Chapter, once the regular proofs of his capability have been received; he will also give him a coadjutor when the Vicar and clergy so desire.⁸⁷

Murray, on the other hand, was extremely opposed to Montgolfier's nomination.⁸⁸ He preferred Jean-Olivier Briand, Vicar at Quebec. The Governor's views won out. On September 9, 1764, Montgolfier resigned his "see".⁸⁹ Thus, on September 11, 1764, the Chapter met again to elect Briand as their

⁸⁵ Ibid., p. 305.

⁸⁶ Letter of Cardinal Castelli, Prefect of the Congregation of the Propagation of the Faith, to the Nuncio in Paris, March 28, 1764, in A. Gosselin, L'Eglise du Canada après la conquête, I, p. 98-106.

⁸⁷ A. Gosselin, ibid., p. 105. Cf. M. Trudel, op. cit., I, p. 308.

⁸⁸ Murray to Shelbourne, September 14, 1763, PAC, C.O. 42, I, 1: 73 s.

⁸⁹ The reasons for Murray's dislike of Montgolfier are found in M. Trudel, op. cit., I, p. 309-313.

candidate. In case Rome would prefer another method of procedure, the canons also prepared a letter of recommendation in favour of the same person.

On June 13, 1765, the reports and documents were referred to the law officers of the Crown, who, although admonished that "as this matter is of great national moment and requires despatch, they are hereby ordered to make their report thereon as soon as possible", did not do so until nearly three years later, on January 18, 1768.⁹⁰

In the meanwhile, Briand left for London on September 20, 1764. By January 1765 he still had received no word from the Board of Trade. Finally, in December 1765, he was allowed to go to France. Rome accepted the idea of appointing a bishop since a Vicar Apostolic was less acceptable to England; the idea of a "foreign power" was always lurking in the background. On March 16, 1766, Briand was consecrated at Suresne in France.⁹¹

London had agreed to tolerate Briand as Bishop, and the new Governor, Carleton, was instructed to do likewise.⁹²

The question was settled for the time being as far as the immediate situation was concerned. But the principle

⁹⁰ J. F. Kenney, loc. cit., p. 450-451.

⁹¹ M. Trudel, loc. cit., I, p. 332.

⁹² Ibid., I, p. 332.

was far from being recognized by all.

After the law officers reported on January 18, 1768, the Plantation Committee once again sent the entire report, including the opinion of the Law officers, to the Board of Trade. On July 10, 1769, the Board presented an elaborate report,⁹³ relative to the state of the Province of Quebec. The six recommendations referring to the establishment of a bishop are as follows.

1) The appointment of a Superintendant:

As being necessary to the due execution of the Treaty of Paris, a proper person be licensed by His Majesty, during Pleasure, to Superintend the affairs of the Romish Church; but it will be essential to the legality of such appointment, that the powers should be so limited and circumscribed, as that it may not violate or impeach His Majesty's Supremacy in all causes, as well Ecclesiastical as Civil, which, as we have before observed, is inseparably inherent in the Crown; or have the effect in any manner whatever to obstruct His Majesty's Service, or the due course of Law.

2) Limitations of his activity:

To this end the conduct of the Superintendant in the execution of this Office should be governed by the following limitations and restrictions, to be prescribed by Instruction to the Governor.

3) Jurisdiction:

Such Superintendant shall not take upon him any outward Pomp or Parade incident to the dignity of Episcopacy in Roman Catholic Countries; nor take upon himself, nor appoint others to take

⁹³ Report of Lords..., Documents, I, p. 377-393.

cognizance of any matters of a civil, criminal, or ecclesiastical nature, except in such cases, as respect the conduct of the inferior Clergy in religious Matters; and in those cases, not to exercise any authority or Jurisdiction without the consent and approbation of the Governor; nor is the said Superintendant to use any other powers than such as the Governor and Council shall think absolutely necessary to the exercise of the Roman Catholic Religion by His Majesty's new Subjects.

4) Power to make regulations:

The said Superintendant shall not make any new Regulations in respect to Ecclesiastical Affairs, other than such as shall be necessary for the purposes aforesaid; nor shall any regulations whatever be made or established with respect to the Romish Church, or any persons appointed to Ecclesiastical Benefices in the Romish Church within the said Province of Quebec, without the consent and license of the Governor or commander in Chief; nor shall he allow of any public processions, or other ceremonies of Pomp or Parade; but shall take care, that the Rites of the Church of Rome be in all cases observed with such moderation and simplicity, as to avoid all occasions of offence or dispute between His Majesty's Protestant and Roman Catholic Subjects.

5) Oaths to be taken:

The said person, so licenced, as aforesaid, to superintend the affairs of the Romish Church, shall, before he enters upon the exercise of any of the functions incident to his Superintendancy, take an Oath of Allegiance and Fidelity to His Majesty; which Oath shall be taken before the Governor sitting in Council, and entered upon Record in the Council Books.

6) Removal from office:

If the said person, so licenced to superintend the affairs of the Romish Church, shall in any respect act contrary to the foregoing regulations and restrictions, or shall otherwise misbehave himself, to the danger, Scandal or reproach of

His Majesty's Government, the Governor or Commander in Chief shall have power to suspend him from the exercise of his said Superintendancy, transmitting his reasons for so doing to His Majesty by one of His Majesty's principal Secretaries of State.

As to the provision necessary to be made for the support and maintenance of the person, so licenced, as aforesaid, to superintend the affairs of the Romish Church, it is proposed, that he be admitted Superiour of the Seminary of Quebec, to be tolerated in manner hereinbefore mentioned, and have such Stipend or appointment, as His Majesty shall think proper out of the Revenues of that Seminary.⁹⁴

Another report submitted by the Attorney General, Alexander Wedderburn, in 1772, also contains recommendations concerning the role of the bishop.

It is necessary, in order to keep up a succession of priests, that there should be some person appointed whose religious character enables him to confer orders, and also give dispensations for marriages; but this function should not extend to the exercise of a jurisdiction over the people or the clergy; and it might be no difficult matter to make up to him for the loss of his authority, by emoluments held at the pleasure of the government.⁹⁵

The question of the appointment of a bishop was never officially settled because it would have been contrary to tradition of Parliament to sanction such a practice. Yet, in the Quebec Act, when the personal and political freedom of Catholic citizens was granted, even though there is no

⁹⁴ Ibid., p. 389-390.

⁹⁵ Report of Solicitor General Alex. Wedderburn, December 6, 1772, Documents, I, p. 428.

explicit mention of the establishment of a hierarchy, its existence was an accepted fact.⁹⁶

The eleven years of uncertainty and hesitation were ended by what has been called the "Magna Charta" of Catholic liberties in Canada, the Quebec Act.⁹⁷

B. The Quebec Act of 1774 and Religious Freedom
in Canada

To understand the importance of the Quebec Act in determining the juridical status of the Catholic Church in Canada, we must first examine some of the immediate antecedents of the Act, then analyse the text of the Bill, and, finally, see how it was implemented. Three paragraphs, then, will make up the following section:

1. The Antecedents of the Quebec Act
2. The Quebec Act
3. Subsequent Instructions to Governors.

1. The Antecedents of the Quebec Act.- On December 1, 1773,⁹⁸ the Secretary of State for the Colonies wrote to H. T. Cramahé, who was then serving as Lieutenant-Governor of

⁹⁶ The manner in which this question was settled legally in the XIXth Century is described in detail in J. F. Kenney, loc. cit., p. 458-471.

⁹⁷ S. Marion, L'Acte de Québec, concession magnanime ou intéressée?, in Les Cahiers des Dix, No. 28, 1963, p. 147.

⁹⁸ T. Chapais, Cours d'Histoire du Canada, t. 1, p. 135, gives the date as December 13th.

Canada, and administrator during Carleton's absence, stating

I have the Satisfaction to Acquaint you that the Affairs of Canada & the arrangements necessary for the adjustment of whatever regards the Civil Government of the Colony are now actually under the immediate Consideration of His Majesty's Servants, and will probably be settled in a very short time.

You may be assured that I will not fail in this Consideration to urge the Justice and Expediency of giving all possible Satisfaction to the new Subjects on the Head of Religion; and to endeavour that the Arrangements with regard to that Important part of their Interests be established on such a Foundation that all Foreign Jurisdiction be excluded, and that those professing the Religion of the Church of Rome, may find within the Colony a resource for everything essential to the free Exercise of it, in the true Spirit of the Treaty.⁹⁹

The matter to be settled "in a very short time" was essential for the legal determination of the juridical status of the Church in Quebec. Seeing the indefinite state of affairs in which the Catholic Church found itself, it was necessary to determine more precisely what were the religious rights of the new Subjects and how they were to be ministered to.

A plan for a Code of Laws for the Province of Quebec was prepared by James Marriott, Advocate General in London, but published only in 1774.¹⁰⁰ It contained certain passages

⁹⁹ Dartmouth to Cramahé, Dec. 1, 1773, in Documents, I, p. 485.

¹⁰⁰ Plan of a Code of Laws for the Province of Quebec; Reported by the Advocate-General, James Marriott, London, MDCCCLXXIV, Documents, I, p. 415-418.

on matters of religion which were not incorporated into the Quebec Act, but which illustrate the mentality of some of the jurists at that time.

Marriott proposed a bill giving leave to Catholics to profess the worship of their religion, according to the rites of the Romish Church, as far as the laws of Great Britain permit, which are already in force and antecedent to the definitive treaty of peace, concluded at Paris, 10th February 1763, and for the better maintenance of the clergy of the church of England already established in the said colony.¹⁰¹

Marriott stated next that the

treaty gives the superiority to the laws of England: it understands them all to be introduced into the colony ipso facto. The treaty stipulated clearly the laws shall not be changed in this article with your Majesty's assent, and by the national legislation, but shall stand as they did stand, as the law of the realm in being at the instant of the contracting.¹⁰²

Speaking of Article IV of the Treaty of Paris, he wrote:

Now I conceive that the laws and constitution of this kingdom permit perfect freedom of the exercise of any religious worship in the colonies, but not all sorts of doctrines, nor the maintenance of any foreign authority, civil or ecclesiastical, which doctrines and authority may affect the supremacy of the crown, or safety of your Majesty and the realm: for a very great and necessary distinction, as it appears to me, must be taken between the profession of the worship of the Romish religion, according to the rites of it, and its principles of church government. To use the French word, the culte, or forms of worship or rituals, are totally distinct from some of its doctrines; the first can, may, and ought, in my humble

101 Ibid., p. 481.

102 Ibid.

opinion, in good policy and justice to be tolerated; the second cannot be tolerated.¹⁰³

Further on, he also mentioned that

in a question of this kind, before it can be said that the whole system of the church of Rome, not only of its ceremonies, but of its doctrines, can be tolerated by the laws of England, antecedent to the conquest and treaty, which refers back to them, it must be considered what the system of the Romish church actually is; not only as controuled in France by the sovereign and civil power, but as the great political system of the court of Rome with all its pretensions. [...]]

The exercise of the Romish worship being therefore politically fit to be tolerated in Canada, the question is, is it equally fit to tolerate all the doctrines of the Romish church, or the ecclesiastical establishments, and powers for the support of the doctrines?

To this I answer no: and for this plain reason, because the Romish religion itself (of which the conduct of France in many instances in history, with respect to conquered places, affords sufficient example) will neither tolerate nor be tolerated. In some of the articles of its system, on the presumption of its being the dominant system among the several states of Europe professing Christianity, it will give no quarter, and therefore it cannot take it without the destruction of the giver.

In order to judge politically the expediency of suffering the Romish religion to remain an established religion of the state in any part of your Majesty's dominions, the Romish religion (I mean its doctrines, not its ceremonies) ought to be perfectly understood.¹⁰⁴

Besides the matter of religion, other questions that required settlement in the new Act were the restoration of French laws to Quebec, and the constitution of a Legislative

¹⁰³ Ibid., p. 482.

¹⁰⁴ Ibid., p. 483.

Assembly. The French settlers wanted to be judged according to French laws; a number of merchants were also pressing for the formation of an Assembly.¹⁰⁵

2. The Text of the Law: The Quebec Act.- In order to understand the evolution of the wording of the Quebec Act, we should first study the various drafts of the text; then we will be able to show the import of the law and the reasons for its passing. We will thus study the Quebec Act under three headings:

- a) The drafts of the Law
- b) The Quebec Act
- c) Interpretation and nature of the Quebec Act.

a) The Drafts of the Quebec Act.- The first draft of the Quebec Act makes no mention of religion. The second text refers briefly to the prescribed oaths of Charles II and to the "benefit of clergy" in Canada. Both of these drafts were disregarded in the third text where we find the following detailed proposal concerning religion:

¹⁰⁵ Cf. Petition of divers of the French Inhabitants of the Province of Quebeck to the King's Majesty, which was signed about the Month of December, 1773, and presented to the King about February, 1774, Documents, I, p. 507-508; Case of the British Merchants Trading to Quebec, ibid., p. 512, sqq.

And be it further enacted by the authority aforesaid that His Majesty's subjects professing the Religion of the Church of Rome of & in the same Province of Quebec as the same is described in & by the said Proclamation and Commissions, and also of all the Territories part of the Province of Canada at the time of the Conquest thereof, which are hereby annexed during His Majesty's Pleasure to the said Government of Quebec may have, hold & enjoy the free Exercise of the Religion of the Church of Rome, so far as the same is not inconsistent with the Kings [sic] Supremacy as established by act of Parliament and that the Clergy & other Religious of the said Church may hold receive & enjoy their accustomed Dues & Rights with respect to such Persons only as shall possess the said Religion. Provided nevertheless that nothing herein contained shall extend or be construed to extend to the Disabling His Majesty's His Heirs or Successors from the making such Provision for the Maintenance & Support of a Protestant Clergy within the said Province as He or they shall from time to time think necessary & expedient.¹⁰⁶

In the margin of the text, the following paragraph is indicated:

Subject to the Kings Supremacy, as declared & established by an Act made in the first year of the Reign of Queen Elizabeth, over all the Dominions & Countrys which then did or thereafter should belong to the Imperial Crown of this Realm.¹⁰⁷

This text, which is quite similar in idea to the one finally adopted, was the subject of certain remarks, seemingly made by Lord Mansfield. The first remark concerning the clause of religion was whether the proviso in favour of the Protestant Subjects of Quebec was only a "saving to the clause which gives to the Canadians the free exercise of their

¹⁰⁶ Documents, I, p. 545.

¹⁰⁷ Ibid.

religion" or whether it was intended "to operate as a saving to the clause immediately preceding which gives the Canadians the Enjoyment of their ancient civil Rights customs and Usages". In either case, objection was raised to the clause because in the first place it was unnecessary, and in the second it was leave for as many exceptions as for the rule itself.

He also raised the point of payment of tithes by those who deny professing "the Popish Religion", and wished to ensure the decent support of the clergy.¹⁰⁸ This was inserted into the final draft by providing for the "Maintenance and Support of a Protestant Clergy".¹⁰⁹

The fourth draft was changed to a declaratory form. A clause was added by the Commons concerning the obligation of taking the oath:

¹⁰⁸ Cf. The Clause Concerning Religion in the Third Draught, ibid., p. 551.

¹⁰⁹ The Quebec Act, ibid., p. 572.

Provided always, and be it enacted, That no Person professing the Religion of the Church of Rome, and residing in the said Province, shall be obliged to take the Oath required by the said Statute, passed in the First Year of the Reign of Queen Elizabeth, or any other Oaths substituted by any other Act in the Place thereof, but that every such Person, who by the said Statute is required to take the Oath therein mentioned, shall be obliged, and is hereby required to take and subscribe the following Oath before the Governor or such other Person, or in such Court of Record as His Majesty shall appoint, who are hereby authorised to administer the same; videlicet, "I A.B. do sincerely promise and swear, That I will be faithful, and bear true Allegiance to His Majesty King George, and Him will defend to the utmost of my Power, against all Traiterous Conspiracies and Attempts whatsoever, which shall be made against His Person, Crown, and Dignity; and I will do my utmost Endeavour to disclose and make known to His Majesty, His Heirs, and Successors, all Treasons, and Traiterous Conspiracies and Attempts, which I shall know to be against Him, or any of Them; and all this I do swear, without Equivocation, mental Evasion, or secret Reservation; and renouncing all Pardons and Dispensations from any Power or Persons whomsoever to the Contrary. So help me God."110

A number of questions or queries were then posed, possibly by Carleton himself, before the bill assumed its final form. Eight of these concern the status of the Church.

What Provision is to be made for the Protestant Church in Canada?

What number of Ministers are to be appointed, and with what Stipend?

Where are they to reside, and are any of the Churches already established to be appropriated to the Use of

110 The Quebec Bill as Returned from the Commons, June 13, 1774, Documents, I, p. 557.

the Protestants, or others to be erected?

If the latter what Fund will there be to defray such Expences?

Are all the Religious Orders and Communities of the Church of Rome, at present existing in Quebec, to be abolished? or which, if any of them, are to be continued, & under what Restrictions or Regulations.

If any are to be abolished is the Suppression to take effect immediately, or are they to cease when the present members of such Communities are deceased, and what is to become of the Estates and Revenues of such of the religious orders and Communities as are to be discontinued.

Are the secular Clergy to have any Episcopal or Vicarial Superintendence over them? If so, by what Authority, & under what Limitations and Restrictions is such Episcopal or vicarial Power to be established?

Is the Patronage of vacant Benefices to be delegated to the Governor, or in what other manner exercised, or by whom enjoyed, and how are the Clergy to be appointed?¹¹¹

Replies to these questions are not found as such in the final draft of the Bill but the subsequent instructions to the Governors of Quebec contained answers to most of them. The bill was not to enter into too many details. Yet, these questions give additional insights into the thinking that went into the Act as it was being prepared.

We are now in a position to examine the clauses of the Quebec Act itself, studying those articles pertaining to

¹¹¹ Queries Re Government of Quebec, Documents, I,
p. 569.

the status of the Catholic Church in Quebec.

b) The Quebec Act.— The official title of the Quebec Act is "An Act for making more effectual Provision for the Government of the Province of Quebec in North America" (14 George III, c. 83).¹¹² It was sanctioned on June 22, 1774, and became effective on May 1, 1775.¹¹³

The clauses concerning religion may be summarized under the following headings:

- the free exercise of the "Religion of the Church of Rome" is granted;
- the clergy may receive the "accustomed Dues and Rights" from Catholics;
- provision shall be made for the support of the Protestant clergy;
- no Catholic shall be obliged to take the Oaths of Supremacy and abjuration; in their stead, another oath is substituted;
- religious orders do not have the right to hold possessions.

The section of the Act we are concerned with reads as follows:

112 Documents, I, p. 570-576.

113 Cf. Guy Fregault, Marcel Trudel, Histoire du Canada par les textes, 2nd edition, Vol. I (1534-1854), p. 141.

And, for the more perfect Security and Ease of the Minds of the Inhabitants of the said Province, it is hereby declared, That His Majesty's Subjects, professing the Religion of the Church of Rome of and in the said Province of Quebec, may have, hold, and enjoy, the free Exercise of the Religion of the Church of Rome, subject to the King's Supremacy, declared and established by an Act, made in the First Year of the Reign of Queen Elizabeth, over all the Dominions and Countries which then did, or thereafter should belong, to the Imperial Crown of this Realm; and that the Clergy of the said Church may hold, receive, and enjoy, their accustomed Dues and Rights, with respect to such Persons only as shall profess the said Religion.

Provided nevertheless, That it shall be lawful for His Majesty, His Heirs or Successors, to make such Provision out of the rest of the said accustomed Dues and Rights, for the Encouragement of the Protestant Religion, and for the Maintenance and Support of a Protestant Clergy within the said Province, as he or they shall, from Time to Time, think necessary and expedient.

Provided always, and be it enacted, That no Person, professing the Religion of the Church of Rome, and residing in the said Province, shall be obliged to take the Oath required by the said Statute passed in the First Year of the Reign of Queen Elizabeth, or any other Oaths substituted by any other Act in the Place thereof: but that every such Person who, by the said Statute is required to take the Oath therein mentioned, shall be obliged, and is hereby required, to take and subscribe the following Oath before the Governor, or such other Person in such Court of Record as His Majesty shall appoint, who are hereby authorized to administer the same [...]

The text of the Oath which follows is the same as that approved previously by the Commons, and transcribed above.

The Act then continues.

And every such Person, who shall neglect or refuse to take the said Oath before mentioned, shall incur and be liable to the same Penalties, Forfeitures, Disabilities, and Incapacities, as he would have incurred and been liable to for neglecting or refusing to take the Oath required by the

said Statute passed in the First Year of the Reign of Queen Elizabeth.

And be it further enacted by the Authority afore-said, That all His Majesty's Canadian Subjects, within the Province of Quebec, the religious Orders and Communities only excepted, may also hold and enjoy their Property and Possessions, together with all Customs and Usages relative thereto, and all other their Civil Rights.¹¹⁴

This new law gave almost complete civil liberty to those who professed the Catholic faith. It granted more than the Treaty of Paris since it also allowed for the right of the clergy to collect tithes to be protected by law. The only restriction still imposed was that concerning religious communities. Concerning this last matter, subsequent instructions were issued to Carleton in 1775.¹¹⁵

At this point, the question could be asked whether the new freedom of worship granted to Catholics was the result of magnanimity only, or whether other motives were considered in preparing this Act.

c) Interpretation and Nature of the Quebec Act.- The history of the Quebec Act has given rise to almost unending controversies. Proponents of two theses still dispute whether the text was an outward act of generosity or the result of political interest. Indeed, the Act has been praised,

¹¹⁴ Documents, I, p. 572-573.

¹¹⁵ Instructions to Governor Carleton, January 3, 1775, Documents, I, p. 605.

and rightly so, as a measure of unprecedented generosity; it has been labelled a measure of benevolence and humanity, a sign of lenity and indulgence.¹¹⁶

Yet, it does not seem to be only the result of generosity. For, immediately after the conquest, as Mason Wade put it, "Assimilation was to be the order of the day".¹¹⁷ However, the enduring vitality and distinctive personality of Quebec made it clear that such was not to be the case.

The first Governor, Murray, had considered that were the French settlers granted a few privileges, they would soon "become the most faithful and most useful set of Men in this American Empire".¹¹⁸ And Wade comments, "It is clear from Murray's correspondence that toleration was extended to Catholicism solely as a matter of policy and expediency".¹¹⁹

When Carleton succeeded Murray in 1766, he was soon to face a second problem: fear of revolution on the part of the other American colonies. True, it would not erupt before 1775, but even then, the storm clouds were gathering.

Then there was always the possibility of another war between England and France.

¹¹⁶ S. Marion, loc. cit., p. 149.

¹¹⁷ M. Wade, The French Canadians, p. 54.

¹¹⁸ Murray to Lords of Trade, October 29, 1764, in Documents, I, p. 326.

¹¹⁹ M. Wade, op. cit., p. 52.

Should France begin a War in hopes the British-colonies will push matters to extremities and she adopts the project of supporting them in their independent notions, Canada, probably, will then become the Principal scene, where the fate of America may be determined.¹²⁰

These and other causes, such as the menace of an Indian attack, certainly played a great role in determining the clauses of the Act. It seems that the idea of gaining the sympathy of the population of Quebec was one of the vital factors to be considered. At any rate, whatever the causes, the results remain. While the Church still remained a non-established organization, it enjoyed the freedom it needed to operate successfully.

The clauses of the Act were to be implemented in the light of subsequent instructions to the Governors which we shall now examine.

3. Subsequent instructions to Governors.- From 1774 to 1791, the Province of Quebec was governed by Guy Carleton (later Lord Dorchester) and by Frederick Haldimand. Carleton was in office until September 18, 1777, when Haldimand was appointed. On April 22, 1786, Carleton once again was appointed Governor.¹²¹

¹²⁰ Carleton to Hillsborough, November 20, 1768, in Documents, I, p. 326.

¹²¹ See Francis J. Audet, Canadian Historical Dates and Events, 1492-1915, p. 40.

Since the instructions these men received upon their appointment as Governor of Quebec contain many articles relative to the question of religion, we should now study them to see how it was intended to have the Quebec Act applied in practice. As in previous cases, though, not all of these instructions were followed to the letter, as can be ascertained from a letter written by Bishop Briand on March 10, 1775.¹²² For, if Carleton had followed all the instructions to the letter, the freedom of the Church would have been considerably limited in spite of the constitutional guarantees.

Carleton's instruction could be summarized as follows:

122 "Je pense que votre zele pour l'église de notre Seigneur vous rendra sensible au detail succinct de l'etat de ce Diocese: la religion y est parfaitement libre: j'y exerce mon ministere sans contrainte. Le gouverneur m'aime et m'estime; les anglois m'honorent. J'ai rejeté un serment que l'on avoit proposé et le parlement de la grande Bretagne l'a changé et établi tel que tout catholique peut le prendre: dans le bill qui autorise la religion, on a pourtant mis le mot de suprémacie; mais nous ne jurons pas sur le bill: j'en ai parlé à son Excellence notre gouverneur qui m'a répondu: 'qu'avez-vous à faire au bill? le roi n'usera point de ce pouvoir et il consent bien et il pretend même que le pape soit votre supérieur dans la foi mais le bill n'auroit pas passé sans ce mot. on n'a point dessein de gêner votre religion. Et notre roi ne s'en meslera pas autant que fait celui de France: on ne demande pas comme vous le voyés par le serment, que vous reconnoissiez cette suprémacie: Laissés le dire et croyés ce que vous voudrés'." Letter of March 10, 1775, Bishop Briand to the Apostolic Nuncio (?) in Paris, in G. Fregault, M. Trudel, Histoire du Canada par les textes, 2nd edition, Vol. I, p. 149-150.

Article 4: Catholics will be dispensed from taking the oath of Supremacy or any similar anti-Catholic oaths; but they must use the form prescribed in the Quebec Act.

Article 20: the Governor is asked to give full satisfaction on the matter of establishing proper ecclesiastical regulations,

always remembering, that it is a toleration of the free exercise of the religion of the Church of Rome only, to which they are entitled, but not to the powers and privileges of it, as an established Church, for that is a preference, which belongs only to the Protestant Church of England.¹²³

Article 21: this section contains twelve paragraphs covering various items:

- a) No "correspondance with any foreign ecclesiastical jurisdiction";
- b) No Episcopal powers to be exercised, except those "essentially and indispensably necessary to the free exercise of the Romish Religion". A licence was required for ordination;
- c) Only Canadians to hold ecclesiastical benefices;
- d) Where the majority of the people are Protestant, no Catholic pastor is to be named;
- e) Protestant tithes are to go for the support of a Protestant clergy;

¹²³ Documents, I, p. 602.

- f) The Oath prescribed in the Quebec Act is to be taken before receiving a benefice;
- g) Holding of benefices subject to good behaviour of incumbent;
- h) Ecclesiastics are free to marry without penalty;
- i) Christian burial to be allowed "indiscriminately";
- j) Prayers to be offered in Churches for the Royal family;
- k) Seminaries of Quebec and Montreal to continue in existence;
- l) Religious societies (except the Jesuits) are to be allowed to exist; but new members may be admitted only to communities of women. The Jesuits are to "be suppressed and dissolved", their property to revert to the Crown. Protestant ministers to be appointed for the Indians to replace gradually the Catholic missionaries.¹²⁴

Articles 22 to 29 called for support and supervision of the Protestant churches of Quebec.

Carleton was instructed to suppress and dissolve the Jesuits. During the same period, Clement XIV issued a Bull suppressing the Society. Bishop Briand was not too eager to have the papal Bull apply in Quebec because of a shortage of priests. He did not want the Governor to act either, since he wished to protect the goods of the Jesuits from reverting

¹²⁴ Ibid., p. 602-605.

to the Crown.¹²⁵

Haldimand's instructions (April 15, 1778) are identical on matters of religion. The same remark applies to Carleton's instructions of August 23, 1786, when he began his second term of office.¹²⁶

An additional instruction was sent to Carleton (now Lord Dorchester) on August 25, 1787. When announcing the appointment of Anglican Bishop Charles Inglis, the King also added a paragraph concerning freedom of worship.

125 "La bulle du pape qui abolit les Jésuites m'a embarrassé parce que je manque de prêtres. Je la leur ai signifiée ou plutôt leur ai dit en même temps de rester dans leur maison, de porter leur habit et de servir l'Eglise comme à l'ordinaire et de garder le secret. tout ceci est de concert avec le gouverneur. personne dans le Canada ne sait le secret. Je l'ai écrit au souverain pontife; sa mort me sera peut être favorable son successeur ne me blâmera peut-être pas. au reste je n'ai pas cru que le temps fut propre à exécuter cette bulle: Les conquérants demandent le bien de ces religieux je veux le conserver à l'Eglise et notre aimable gouverneur me soutient en cela. Les conjonctures ne seroient pas favorables pour cette opération. au reste encore je me suis déclaré Leur Supérieur et je les ai continué par moi même dans leurs différentes charges voilà tout ce que j'ai cru devoir et pouvoir seulement faire pour obéir à cette bulle", Letter of March 10, 1775, Bishop Briand to the Apostolic Nuncio (?) in Paris, in G. Fregault, M. Trudel, op. cit., Vol. I, p. 150.

126 Documents, I, p. 816 sqq.

You are to permit Liberty of Conscience and the free Exercise of all such Modes of Religious Worship, as are not prohibited by Law, to all Persons who inhabit and frequent the Provinces under your Government, provided they be contented with a quiet and peaceable enjoyment of the same, without giving offence or scandal to Government.¹²⁷

The period we have been studying could perhaps be characterized as a period of mitigated attempt to control the Catholic Church. Freedom of worship was granted, and gratefully received; the existence of a bishop was tolerated and even unofficially recognized; Catholics enjoyed the civil rights of other citizens and could practice in the courts.

The best summary of the situation was given by the Privy Council in the decision *Despatie v. Tremblay*:

The religious position in the Province of Quebec in 1774, was therefore that every individual had the right to profess and practise the Catholic religion without let or hindrance. But it must be borne in mind that this is a privilege granted to the individual. There is no legislative compulsion of any kind whatever. He may change his religion at will. If he remains in the Roman Catholic community he may, so far as the law is concerned, choose to be orthodox or not, subject to the inherent power of any voluntary community, such as the Roman Catholic Church, to decide the conditions on which he may remain a member of that community unless that power has been limited in some way by the past acts of the community itself. In other words, each member of the Roman Catholic community in Quebec possessed the same privileges as any other citizen so far as religious freedom is concerned, save that he was not subject to any of the disabilities which then and, for a long time after, attached to Protestant dissenters. The

¹²⁷ Instructions to Lord Dorchester, August 25, 1787, Documents, I, p. 839.

Legislature did not put over him as a citizen any ecclesiastical jurisdiction. The decisions of the ecclesiastical Courts that existed in the Roman Church bound him solely as a matter of conscience. The Legislature gave to their decrees no civil effect nor bound any of its subjects to obey them. Indeed, the Act in Article 17 expressly reserves to His Majesty the power to set up Courts of ecclesiastical jurisdiction in the Province and to appoint judges thereof, although that power seems never to have been acted upon. But what has just been said must not be misunderstood. The law did not interfere in any way with the jurisdiction of any ecclesiastical courts of the Roman Catholic religion over the members of that communion so far as questions of conscience were concerned. But it gave to them no civil operation. Whether the persons affected chose to recognize those decrees or not was a matter of individual choice which might, or might not, affect their continuance as members of that religious communion. But that was a matter which concerned themselves alone.¹²⁸

Any control exerted was not as stringent as it might have been. In fact, compared to the other Provinces of what is now Canada, the Catholic Church in Quebec enjoyed freedom much sooner than elsewhere.

We will now examine the juridical situation of the Catholic Church in the other territories of British North America which are now part of Canada, but which were independent in the eighteenth and nineteenth centuries. This is the object of our third chapter.

¹²⁸ Privy Council, *Despatie v. Tremblay*, February 11, 1921, (58 D.L.R. 29, 47 B.R. 305, and 27 R.L. n.s. 209), quoted by Marc Lalonde, *Les relations juridiques Eglise-Etat au Québec*, in Vincent Harvey, et al., *L'Eglise et le Québec*, Montreal, Les Editions du Jour, 1961, p. 82-83.

CHAPTER III

THE JURIDICAL SITUATION OF THE CATHOLIC CHURCH IN BRITISH NORTH AMERICA OUTSIDE OF LOWER AND UPPER CANADA (1713-1840)

Having studied the status of the Catholic Church in Quebec after the conquest, let us now examine the situation of Catholics in those other parts of British North America which now comprise the whole of Canada.

The present-day provinces of New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland were administered separately from Quebec. Likewise the western territories. Newfoundland regained its independent administration in 1729. Prince Edward Island became a separate colony in 1769, and until 1784, New Brunswick was part of Nova Scotia or "Acadie" as it was then called.

Since the government of Nova Scotia exerted more importance in view of the fact that it administered at one time what are now the four Canadian Maritime Provinces, we will deal with it more at length; then, the laws of the other Provinces concerning the status of the Catholic Church will be briefly examined.

The history of the western regions is not nearly as developed at this time. However, we will be able to find before 1840, certain elements of recognition of the Church as the settlers continued to move westward.

This chapter, then, will have three sections:

- A. The Status of the Catholic Church in Nova Scotia
- B. Emancipation of Catholics in the other Maritime Provinces
- C. The Status of the Catholic Church in Western Canada.

A. The Status of the Catholic Church in Nova Scotia.

From 1604 to 1710, l'Acadie was under French rule, and, as in Quebec, the Catholic religion was the official religion of the colony. Port Royal capitulated to the English in 1710, and with the signing of the Treaty of Utrecht in 1713, the territory was transferred to British jurisdiction.

Article XII of the Treaty of Utrecht gave the colony (less Cape Breton and its fortress Louisbourg) to the British. Article XIV provided that the former subjects of the King of France

may have liberty to remove themselves within a year to any other place, as they shall think fit, together with all their moveable effects. But those who are willing to remain there, and to be subject to the King of Great Britain, are to enjoy the free exercise of their Religion, according to the usage of the Church of Rome, as far as the laws of Great Britain so allow the same.¹

¹ Treaty of Peace and Friendship between the most Serene and most Potent Princess ANNE, by the Grace of God, Queen of Great Britain, France, and Ireland, and the most Serene and most Potent Prince LEWIS the XIVth, the most Christian King, Concluded at Utrecht the 31 Day of March 1713, p. 72-74. 11 April

Shortly after the signing of the Treaty, and in return for an act of kindness by the King of France, Queen Anne wrote to Governor Francis Nicholson, instructing him that the residents who chose to remain in Nova Scotia could keep their possessions.

Whereas our Good Brother, the most Christian King, hath at our desire released from imprisonment on board his galleys such of his subjects as were detained there on account of their professing the Protestant religion, We being willing to show by some mark of our favor towards his subjects how kind we take his compliance therein, have therefore thought fit hereby to signify Our will and pleasure to you; that you permit such of them as have any lands or tenements, in places under your Government in Acadia and Newfound Land, that have been or are to be yielded to Us by Virtue of the late Treaty of Peace; and are willing to continue our subjects; to retain and enjoy their said lands and tenements, without molestation as fully and freely as other of our subjects do: or may possess their lands or estates or to sell the same, if they shall rather choose to remove elsewhere. And for so doing this shall be your warrant.²

Still, in spite of these instructions, the people did not remain "without molestation as fully and freely as other of our subjects do".³ Within a short while a campaign began against the Catholics to have them take an unqualified oath of allegiance to the British Crown. They refused to

² Queen Anne to Gov. Nicholson, June 23rd 1713, in M. F. Howley, Ecclesiastical History of Newfoundland, Boston, Doyle and Whittle, 1888, p. 164; see Public Archives of Canada, M.G. 11, N.S., A4, p. 97.

³ Ibid.

take the oath because of the anti-Catholic nature of its clauses.

In 1715, the people refused the Oath of Allegiance to George I who had ascended to the throne the year previously. Again, in 1717, following the appointment of John Doucette as Lieutenant to Governor Richard Phillips, they refused to swear. In 1720, Phillips himself tried in vain to have them take the oath.⁴

A few years later, in 1725, Lawrence Armstrong became Lieutenant-Governor; he too wished to have the Catholic subjects enter into line with the others. The death of George I and the beginning of the reign of George II provided an excellent opportunity. He delegated an Ensign, Robert Wroth, to visit the villages and try to convince the people. Wroth was able to have the inhabitants of Chignecto sign, but only on three conditions:

⁴ Cf. Robert Rumilly, Histoire des Acadiens, Montreal, Fides, 1955, Vol. I, p. 214.

1. That they will be exempt from taking up arms against any one while they are under the dominion of the King of England.
2. That they will be free to remove themselves to any other place of their choice, and that they will be relieved of their oath as soon as they are no longer under the dominion of the King of Great Britain.
3. That they will have full and entire freedom of their Religion, and the right to have Catholic, Apostolic and Roman priests.⁵

The inhabitants of Minas also agreed to subscribe to the Oath, but on four conditions, the first of which concerned freedom of religion:

That they will enjoy the free exercise of their Religion, and may have missionaries necessary to instruct them as Catholics, Apostolics, and Romans.⁶

Yet, these conditions agreed to were disallowed by **Armstrong** Lawrence, even though, in his instructions to Wroth, he had written:

⁵ Cf. Articles granted by Robert Wroth to the inhabitants of Minas, Pissiquit and dependences, and the same for Chignectou, October 11th 1727, P.A.C., Colonial Office Records, Nova Scotia (1726-1728), M.G. 11, A-17, p. 168-169.

⁶ Ibid., October 31st, 1727, p. 186-191. "Qu'ils aurent Le Libre exercice de leur Religion, et pouront, avoir des Missionnaires dans Les Lieux nécessaires pour Les instruire Catholiques, apostoliques & Romains."

In case the inhabitants of this Province agree to your requests, you will assure them that they will have the free exercise of their religion and that their goods and lands will be preserved for them and their successors. I promise to ratify all upon your return, as well as any other thing that you will do, and in the most authentic manner possible, and hoped for according to the confidence and rest given to you.⁷

A study of the official correspondence of the period reveals that on numerous occasions, the matter of religion was raised. It is not always an easy task to evaluate the political and religious elements involved. It is certain, though, that the religious reasons given for not taking the oath of Allegiance, are mentioned quite often in government documents of the period.

In 1732, Armstrong wrote to Newcastle, then Secretary of State, complaining about the poor condition of the province, and blaming it on the religion of the inhabitants:

⁷ Ibid., p. 173. Original in French: "En tous Cas que Les Habitants de cette Province Se Conforment a Vos Demandes, Vous Leurs Assurerez qu'ils auront La Libre Exercise de Leur Religion et que Leurs Biens, et terraines Leurs Seront Continués a eux et a Leurs hoirs, Le tout Je promets de Ratifier à Votre Retour, aussi bien que toutes Autres Choses que Vous ferez de La manniere La plus authentique qu'il puisse estre, et souhaiter Selon La Confiance et Repos en Vous fait et Laissé".

the Inhabitants here being all ffrench [sic] and Roman Catholicks, are more Subject to our Neighbours of Quebeck and those of Cape Breton than to His Majesty whose Government by all their Proceedings (Notwithstanding of the oath of fidelity) they seek to Despise, being intirely [sic] governed by their most insolent Priests, who for the most part come and go at pleasure, pretending for their sanction the Treaty of Utrecht, without taking the least notice of this Government.⁸

A few years later, the President of the Legislative Council of Nova Scotia, Paul Mascarene, wrote to Newcastle stating that

3. The french Inhabitants were indulged from the Establishment of this Government in having Missionary Priests residing amongst them which then were butt three in number butt increas'd since to six. the Inhabitants have increas'd indeed in a double or trible proportion since that time, it is certain however that those Missionaries will always be an hindrance to these Inhabitants becoming good Subjects[.] they are apt to encroach & aim att gaining power which they of late endeavour'd to do by pronouncing the higher excommunication which occasion'd a Proclamation to be issued in Council wherein the 14th Article of the Treaty of Utrecht was inserted whereby it appears that these Inhabitants are no further entitled to the exercise of their Religion than's allowed by the Laws of Great Brittain and of consequence no Ecclesiastical Jurisdiction of the Church of Rome is to be allow'd. This Proclamation has hitherto had a good effect.⁹

One of the most ardent supporters of the Government in its struggle against the Catholics, and advisor of Mascarene

⁸ Armstrong to Newcastle, November 15, 1732, P.A.C., M.G. 11, Nova Scotia, A-21, p. 95.

⁹ Mascarene to Newcastle, November 15, 1740, P.A.C., M.G., 11, Nova Scotia, A-25, p. 75.

was Governor William Shirley of Massachusetts. His influence was felt shortly after Mascarene was appointed Governor of Nova Scotia and was to last for a number of years.¹⁰ It seems that Mascarene even had all his correspondence with London approved beforehand by Shirley, who was thus able to exert a profound influence upon the future of the colony.¹¹ And since Massachusetts at that time was not a haven for Catholics, it is not surprising, then, that the Government of Nova Scotia received strong support from this neighbouring Colony.¹²

In 1747, Shirley was instructed by the Crown to prepare a declaration addressed to the French inhabitants of the Province.¹³ In his reply to Newcastle, he informed him that he had not mentioned in the declaration that the inhabitants would continue to enjoy the free exercise of their religion if they took the oath. After describing the role of priests in the War then raging, and mentioning the Bishop's

¹⁰ Cf. Antoine Parnard, Le Drame Acadien depuis 1604, Montreal, Les Clercs de Saint-Viateur, 1936, p. 277.

¹¹ Ibid.

¹² A summary of the anti-Catholic laws of the period is found in W. L. Lucey, Massachusetts, in New Catholic Encyclopedia, Vol. IX, p. 429-433.

¹³ See Letter of Shirley to Newcastle, October 20th, 1747, P.A.C., M.G. 11, N.S., A-31, p. 55-61, in which he refers to these instructions.

menace of excommunication for Catholics contracting mixed marriages, Shirley continued his remarks:

The Treaty of Utrecht, my Lord, by which the cession of Accadie (or Nova Scotia) with its Inhabitants was made to the Crown of Great Britain, does not seem to lay His Majesty under an obligation to allow the French Inhabitants the exercise of the Roman Catholick Religion; and as His Majesty is as yet under no promise to do it, I should hope that methods might be found for weakening the Ties of Consanguinity and Religion between even the present generation of the French Inhabitants of Nova Scotia and those of Canada, by beginning new ones between His Majesty's English and French Subjects there, and at the same time controlling the pernicious power of the Romish Priests over the French Inhabitants and the Indians of that Province, which may possibly be cutt off or at least obstructed by His Majesty's making a promise to continue the French Inhabitants in the free Exercise of their Religion.¹⁴

The Secretary of State, Bedford, replied to Shirley saying that the King approved of his decision. But, he immediately added:

Although His Majesty has not any Intention of depriving that People of the free Exercise of their Religion, yet He was pleased to approve intirely of your having omitted declaring that they shall continue to enjoy it; especially as M. Mascarene & you seem both to be of opinion that the not mentioning any thing concerning it will neither alarm, nor give them Uneasiness.¹⁵

The founding of Halifax in 1749 brought an influx of some 2,500 English settlers, thus changing the ratio of

¹⁴ Ibid., p. 59-60.

¹⁵ Bedford to Shirley, March 10th 1748, P.A.C., M.G. 11, N.S., A-32, p. 97.

Catholics to Protestants in the Province. Yet, this did not settle the question, for the Acadians adamantly refused to comply with the wishes of the Government.

When the new Council of Nova Scotia was sworn in on July 14, 1749, the King's Instructions to Cornwallis were read.¹⁶ These included the order to prepare lists of the number of Catholic priests and churches; they also stated that no Priest could function without the authorization of the Governor; no church was to be built without special permission; the Bishop of Quebec was not to have any jurisdiction over the territory: the education of Catholic children in Protestant schools was to be encouraged; special land grants were to be given to Protestants. These instructions closely resemble those given to the Governors of Quebec after the conquest.

Cornwallis seems to have respected these instructions, at least on certain points. For instance, the Bishop of Quebec wrote to him on October 28, 1749¹⁷ requesting permission to exercise his ecclesiastical functions in Acadia. The Governor replied immediately, stating that he could not allow him to do so, adding, though, that he did not refuse priests

¹⁶ Details of these Instructions will be found in Bernard, op. cit., p. 289.

¹⁷ P.A.C., M.G. 11, N.S., A-35, p. 128-129.

to the Acadians, and "would be happy to procure good priests, which till now has not been the case". He continued,

If any priest should presume to exercise his functions without permission from the Governor, he would at once be arrested and tried.¹⁸

In 1755, the Government finally decided on the deportation of the Acadians living in Nova Scotia. Their steadfast refusal to take the unqualified oath of allegiance to the British Crown because of its anti-Catholic clauses, and to bear arms against their own countrymen were among the reasons invoked to justify this unprecedented move. Lawrence advised the Lords of Trade of his decision on October 18, 1755.

The French deputies refuse to take the oath of allegiance or to acquiesce in any measures consistent with His Majesty's honour, or the security of the Province, although sufficient time was given them to deliberate. The Council therefore resolved that they should quit the country.¹⁹

He continued by stating that the only safe way to achieve this end was to distribute them from Georgia to New England. And he hoped that by November, not one would remain in the country.

Lawrence's new commission as Governor of Nova Scotia (January 7, 1756) was not as specific on matters of religion. The traditional State Oaths (Allegiance, Supremacy and

¹⁸ Ibid., p. 134. Letter of November 1st 1749.

¹⁹ Lawrence to Lords of Trade, October 18th 1755, ibid., A-58, p. 84.

Abjuration) were still required.²⁰ His commission also stipulated that the Council and Assembly were to pass laws for the public peace, welfare and good government of the province, which laws were "not to be repugnant but as near as may be agreeable to the laws and statutes of Our Kingdom of Great Britain".²¹ These laws, as we have already seen, in practice excluded all Catholics from holding public office and enjoying civil rights.

On January 3, 1757, a resolution of the Council forbid "popish recusants" from voting in elections.²² Consequently, when the first election was held in 1758, the Catholics were not allowed to vote. In the 1758 session, two acts were passed against Catholics.

The first, An Act for confirming Titles to Lands and quieting Possessions, contained the following stipulation:

20 See P.A.C., M.G. 11, Supp. 2, No. 12, p. 87-107.

21 Ibid.

22 Cf. John Garner, The Enfranchisement of Roman Catholics in the Maritimes, in The Canadian Historical Review, XXXIV (1953), p. 204.

Provided, That no papist, hereafter, shall have any right or title to hold, possess, or enjoy, any lands or tenements, other than by virtue of any grant or grants from the Crown, but that all deeds or wills, hereafter made, conveying lands or tenements to any Papist, or in trust for any Papist, shall be utterly null and void: And such lands or tenements shall not revert to the persons granting the same to any Papist, or in trust for any Papist, but such lands or tenements shall, upon conviction of such Papist, be vested in His Majesty, his heirs and successors for ever.²³

This was followed by another statute, An Act for the establishment of religious public Worship in the Province, and for suppressing Popery. This enacted that

every popish person, exercising any ecclesiastical jurisdiction, and every popish priest or person exercising the function of a popish priest, shall depart out of this province on or before the twenty-fifth day of March, 1759.²⁴

The penalty was perpetual imprisonment. These statutes re-enacted several of the penal restraints then common in England.²⁵ By the same act, the rites and worship of the Church of England were "deemed the fixed form of worship" in the Province.²⁶

²³ 32 George II, c. 2, Nova Scotia Statutes, p. 2. (Uniacke edition, 1805).

²⁴ 32 George II, c. 5, ibid., p. 8.

²⁵ For instance see 11 & 12 William III, c. 4, sect. 3, An Act for the further preventing the Growth of Popery, The Statutes at Large, Vol. IV, p. 41-42.

²⁶ 32 George II, c. 5, Nova Scotia Statutes, p. 7.

Another statute enacted in 1776 prevented Catholics from teaching school.

If any popish recusant, papist or person professing the popish religion, shall be so presumptuous as to set up any school within this province, and be detected therein, such offender shall, for every such offence, suffer three months imprisonment.²⁷

After the British Relief Act of 1778, Nova Scotia passed its own Relief Act of 1782. But this latter was disallowed because it was more liberal than the British one.²⁸

The following year, another act passed and assented to by the King²⁹ enabled Catholics to own land in Nova Scotia, and removed the penal clause against Catholic clerics. Catholics were still not given the right to vote, and had to subscribe to an oath similar in form to that imposed in 1774 by the Quebec Act.³⁰

²⁷ 6 George III, c. 7, An ACT concerning Schools and Schoolmasters, 1766, ibid., p. 120.

²⁸ Cf. Garner, loc. cit., p. 206. See Imperial Statute, 18 George III, c. 60.

²⁹ 23 George III, c. 9, An ACT for the relieving His Majesty's Subjects, professing the Popish Religion from Certain Penalties and Disabilities imposed upon them by two Acts of the General Assembly of this Province, made in the Thirty Second Year of his late Majesty's Reign, entitled, an Act, confirming Titles to Lands and quieting Possessions; and an Act for the Establishment of Religious public Worship in this Province, and for Suppressing of Popery, in Nova Scotia Statutes, p. 235. (1783)

³⁰ Cf. Adam Shortt and Arthur G. Doughty, Documents Relating to the Constitutional History of Canada, 1759-1791, Vol. I, Ottawa, Canadian Archives, 1918, p. 557.

Three years later, in 1786, the Act concerning Schools and Schoolmasters was repealed by a new law which allowed Catholics to establish schools, provided they subscribe to the oath prescribed in 1683.³¹ One restriction in the act prohibited Protestants under fourteen years of age from attending Catholic schools.

In 1789, the Act for the better regulations of Elections was passed in spite of instructions received by the Governor not to allow any bill to pass regarding the franchise unless it had received prior approval in draft form from the Secretary of State, or incorporated a suspending clause.³² This new Act granted full franchise to all Catholics.

No other oath, save as herein before directed, shall be required from any voter at any election hereafter to be held in this Province, nor shall any religious test be required from such voter, liberty of conscience being one amongst many other blessings conferred on this Province, by our Most Gracious Sovereign.³³

There do not seem to be other significant pieces of legislation on the subject of religious liberty until later

31 26 George III, c. 1, An ACT for relieving His Majesty's Subjects, professing the Popish Religion from certain Penalties and Disabilities imposed on them by the Act of the General Assembly of this Province, made in the Sixth Year of His present Majesty's Reign, entitled, an ACT concerning Schools and Schoolmasters, in Nova Scotia Statutes, p. 245-246. See section III.

32 29 George III, c. 1, ibid., p. 265-268.

33 Ibid., Sect. 6, p. 267.

in the nineteenth century. The question was brought up again after the annexation of Cape Breton to Nova Scotia in 1820. Two members were to be elected to represent the Island in the Assembly. A resolution of the Executive Council decided that, "because of the conflict between the Royal Instructions, the acts of Nova Scotia, and the condition of Cape Breton",³⁴ no restrictions would be placed on the elector's choice of candidates, nor on the extent of the franchise itself. It then happened that a Catholic, Lawrence Kavanagh, was elected.³⁵

However, Kavanagh was not eligible to take his seat without subscribing to the State Oaths and the Declaration against Transsubstantiation. And since he refused the latter declaration, a bill to remove the obligation of doing so was introduced and passed in the Assembly.³⁶ However, the Council turned it down. While the members of the Council were not too hostile to the cause of Catholics, they considered

³⁴ Resolution of October 9th 1820, quoted by Garner, loc. cit., p. 215.

³⁵ For full details concerning this question, see Sister Mary Liguori, Haliburton and the Uniackes: Protestant Champions of Catholic Liberty (A Study in Catholic Emancipation in Nova Scotia), in The Canadian Catholic Historical Association, Report, 1953, p. 37-48; also D. J. Rankin, Laurence Kavanagh, ibid., Report 1940-41, p. 51-76.

³⁶ An ACT to remove certain disabilities which His Majesty's subjects professing the Roman Catholic Religion now labor under in this Province, in J. Garner, loc. cit., p. 215-216.

it imprudent to pass a bill in direct violation of the King's instructions without first securing the consent of the Crown.

On March 20, 1822, the Lieutenant-Governor, James Kempt, wrote to Earl Bathurst, Secretary of State for the Colonies, exposing the situation.³⁷ Bathurst replied on May 8, 1822, stating that Kavanagh should be allowed to take his seat.³⁸ An amended motion was thus passed in the Assembly on April 3, 1823:

Resolved, That this House, grateful to His Majesty for relieving His Majesty's Roman Catholic subjects from the disability they were heretofore under from sitting in this House, do admit the said Lawrence Kavanagh to take his seat; and will, in future, permit Roman Catholics, who may be duly elected, and shall be qualified to hold a seat in this House to take such seat, without making a Declaration against Popery and Transsubstantiation.³⁹

This was indicative of the growing feeling of toleration, championed by such men as Richard John Uniacke, an Anglican, and Thomas Chandler Haliburton, a Presbyterian.⁴⁰

In 1826, two acts were passed, granting more extrinsic freedom to Catholics.

The first granted full liberty of conscience to Catholics and repealed the proviso of the act of 1786

³⁷ The text of this letter is reprinted in Rankin, loc. cit., p. 67.

³⁸ Cf. ibid., p. 71.

³⁹ Cf. ibid., p. 72.

⁴⁰ Cf. Sister Mary Liguori, loc. cit.

excluding Protestant children from Catholic schools.⁴¹

The second act repealed those sections of the act of 1783 which had required Catholics to swear a specific oath of allegiance and abjuration before they could purchase, inherit, or otherwise hold land. The act, however, did not grant any new privileges to Catholics; it only removed the prescribed oath.⁴²

On April 17, 1827, the Lieutenant-Governor approved a bill abolishing all disabilities against Catholics. This bill, however, was not accepted by the Crown since it was too contrary to British policy of the time.⁴³ This policy, however, was soon changed. For, two years later (April 13, 1829), the British Parliament passed An Act for the relief of His Majesty's Roman Catholic Subjects.⁴⁴ The British act repealed the Oaths of Allegiance, Supremacy and Abjuration, and allowed Catholics to sit and vote in Parliament. A new oath of fidelity was prescribed in the act; it still contained

⁴¹ Cf. Sister Francis Xavier, Educational Legislation in Nova Scotia and the Catholics, in The Canadian Catholic Historical Association, Report, 1957, p. 64. See Nova Scotia Statute, 7 George IV, c. 5.

⁴² Cf. Garner, loc. cit., p. 217. See Nova Scotia Statute, 7 George IV, c. 18.

⁴³ Cf. Sister Mary Liguori, loc. cit., p. 47.

⁴⁴ The text of this Act (10 George IV, c. 7) is reprinted in The Acts of the General Assembly of Her Majesty's Province of New Brunswick from the twenty sixth year of the Reign of King George the Third to the sixth year of the Reign of King William the Fourth, (1786-1836), p. 488-494.

certain limitations, but was considered acceptable by Catholics:

And I do further declare, that it is not an article of my Faith, and that I do renounce, reject and abjure the opinion, that Princes excommunicated or deprived by the Pope, or any other authority of the See of Rome, may be deposed or murdered by their subjects or by any person whatsoever; and I do declare, that I do not believe that the Pope of Rome or any other Foreign Prince, Prelate, Person, State or Potentate, hath or ought to have any temporal or civil jurisdiction, power, superiority or preeminence, directly or indirectly, within this Nation.⁴⁵

All Catholics were allowed to vote.⁴⁶ However, no Catholic priest was allowed to sit in the House of Commons,⁴⁷ and certain offices were withheld from Catholics.⁴⁸ Numerous restrictions were imposed on the Jesuits and other religious orders of men.⁴⁹ However, in spite of these limitations, the British Act was a great step forward.⁵⁰

⁴⁵ Ibid., p. 489.

⁴⁶ Ibid., p. 489, Art. 5.

⁴⁷ Ibid., p. 490, Art. 9.

⁴⁸ Ibid., p. 490, Art. 12.

⁴⁹ Ibid., p. 492-494, Art. 28-37.

⁵⁰ It was not until 1910 that the last remaining anti-Catholic declaration was removed from the British Statutes: 10 Edward VII, 1 George V, c. 29; Cf. P. R. Glazebrook, Oaths, English Post-Reformation, in New Catholic Encyclopedia, Vol. X, p. 599.

The same year, the General Assembly of Nova Scotia passed An Act for the relief of His Majesty's Roman Catholic Subjects in this Province.⁵¹ This Act abolished the declaration against Transsubstantiation,⁵² allowed Catholics to sit in the Council or House of Assembly;⁵³ allowed them to hold military and civil offices.⁵⁴ It contained none of the restrictions of its British counterpart--Catholics were on the same footing as other citizens; the only difference was that they had to subscribe to the new oath substituted for the State Oaths.

This law did not consider the status of the Catholic Church as such, but by giving full rights to those who professed its beliefs, the Catholic Church was unofficially recognized.

At the same time as Catholics were being emancipated in Nova Scotia, the other Provinces were passing similar legislation, but not always without difficulty. We will now study the legal situation of Catholics in Prince Edward Island, New Brunswick and Newfoundland.

⁵¹ Nova Scotia Statutes, Vol. 4, p. 73-74. 11 George IV, c. 1.

⁵² Ibid., section I, p. 73.

⁵³ Ibid., section II, p. 73.

⁵⁴ Ibid., section III, p. 73.

B. Emancipation of Catholics in the other
Maritime Provinces.

1. Prince Edward Island.— Prince Edward Island was a French possession, known as the Island of St. John, until the capitulation of Louisbourg in 1745. By the terms of the capitulation, the Island of St. John was given to the British.

After the signing of the Treaty of Paris, the Royal Proclamation of October 7, 1763, which established civil government for Quebec, also annexed The Island of St. John and Cape Breton to the Government of Nova Scotia.⁵⁵

In 1769, separate government was established for the Island of St. John, and Walter Patterson appointed Governor.⁵⁶ His Instruction of August 4, 1769, contain numerous prescriptions concerning religion. Yet, Article 26 is the only one that makes mention of the status of the Catholic Church, and then, indirectly.

You are to permit a liberty of conscience to all persons (except Papists) so they be contented with a quiet and peaceable enjoyment of the same not giving offence or scandal to the Government.⁵⁷

⁵⁵ No. 4. See Alexander Bennerman Warburton, A History of Prince Edward Island from its discovery in 1534 until the Departure of Lieutenant-Governor Ready in A.D. 1831, St. John, N.B., Barnes & Co., 1923, p. 23.

⁵⁶ Cf. Order in Council for establishing a separate government for the Island of St. John, P.A.C., N.C. 11, Supp. II, No. 2, p. 69-85.

⁵⁷ See Warburton, loc. cit., p. 460.

In 1773, the Executive Council of the Province required that all electors be Protestant, even though the Catholic population was proportionately quite numerous.⁵⁸

On February 1, 1779, the Island's name was changed to its present one, Prince Edward Island.⁵⁹

In 1801, An Act for the better regulation of elections was passed (P.E.I., 41 George III, c. 4)⁶⁰ but electors still had to be Protestant. Anti-Catholic feeling was still high in the Province. The House of Assembly unanimously agreed to the following address on July 23, 1801:

58 In 1814, the situation was the same. See letter of Lt.-Gov. C. D. Smith to Pathurst, Oct. 1, 1814: "In pursuance of my intention of furnishing Your Lordship with requisite information relative to this Colony I proceed to mention the state of Religion & Education which must be said to be truly deplorable. The Island may be considered at present as a Roman Catholic country[;] even the descendants of the remaining French whose ancestors were Protestants are become members of the Church of Rome of which Religion there are Two Priests & I believe two Chapels neither of them though in this Town.", P.A.C., M.G. 11, C.D. 226, Vol. 29, p. 103.

59 Cf. Warburton, loc. cit., p. 268.

60 41 George III, c. 4, in The Acts of the General Assembly of Prince Edward Island from the Establishment of the Legislature in the Thirteenth Year of the Reign of His Majesty King George the Third, A.D. 1773 to the fifteenth year of the Reign of Her present Majesty Queen Victoria, A.D. 1852, Inclusive, p. 120.

We, His Majesty's most dutiful and loyal subjects, the representatives of the Island, Prince Edward, in General Assembly convened, beg leave to express to your Excellency that, although we conceive that liberty of conscience ought to be fully allowed to all His Majesty's subjects of this Island, whatever their faith or religious tenets may be, yet that of late the encroachments made by the priests and their adherents, professing the religion of the Church of Rome, within this Island have become alarming, the attempts and endeavours to convert Protestants and their children to their faith, their public harangues, without regard to license or authority, their priests, in the habit of their Order, going in processions to funerals and festivals and other public occasions, the erecting crosses in different parts of the Island, particularly one near the side of a public road within the Royalty of Charlottetown, exhibited to the view of all passengers, and their zealous and unremitting labours to inculcate and propagate the Romish persuasion, in prejudice of the Protestant religion as established by law, we consider to be matter dangerous and offensive to His Majesty's loyal subjects, the Protestant inhabitants of this Island, and therefore beg leave to request that Your Excellency will be pleased to take the same into your consideration and adopt such measures on the occasion as in your wisdom you shall think fit.⁶¹

In 1802, the rites of the Church of England were reaffirmed as "the fixed form of worship amongst us".⁶²

Another election Act passed in 1806 (P.E.I., 47 George III, c. 3) maintained the same prohibition against Catholics. This law as well as that of 1801 were not repealed as such

⁶¹ Cf. Warburton, loc. cit., p. 288-289.

⁶² 43 George III, c. 6, Prince Edward Island Statutes, p. 128-129.

until much later.⁶³ And this, even though Nova Scotia had granted the franchise to Catholics in 1789.

In 1825, the Catholics of the Province petitioned the Assembly to "do its part towards removing all indivious and impolitic distinction, on account of their religious beliefs, and place them on a similar footing with their Protestant fellow subjects and thereby unite the inhabitants of this Island in mutual confidence".⁶⁴

However, the Assembly did not meet again until 1827, due to the absence of the Lieutenant-Governor. In that session a resolution was presented, stating,

Resolved, that it is the opinion of this House that the right of voting at elections of members to serve in the General Assembly ought to be extended to His Majesty's subjects of the Roman Catholic religion within the Island, and that the election laws should be altered conformably to this resolution.⁶⁵

Yet, it turned out that the House was evenly divided and the

63 10 Victoria, c. 21 (1847): An Act for doing away with the oath of abjuration, heretofore imposed on Roman Catholics, Prince Edward Island Statutes, p. 521-522. "And be it enacted, That the oaths to be taken by any of Her Majesty's subjects, of the Roman Catholic persuasion, on their being sworn in as members of any branch of the Legislature, or as officers of the Government, shall in all particulars be the same as that taken, or to be taken, by Her Majesty's Protestant subjects in the like cases, any law, usage or custom to the contrary notwithstanding" (Section II).

64 Cf. Garner, loc. cit., p. 211: Prince Edward Island Statutes, p. 128-129.

65 Cf. Warburton, loc. cit., p. 370.

Speaker voted against the motion on the grounds that the matter of the right of voting at elections had not yet been settled in England.⁶⁶

Another bill that would have removed the restraints against the Catholic religion was decisively defeated in the following session.⁶⁷ The resolution had coupled Catholic emancipation with a higher qualification for the franchise.⁶⁸

A further statute of 1829 again refused Catholics the right to vote and was disallowed by the Crown for this reason.⁶⁹ The same year, after the approval of the Catholic Emancipation Act in England, the Lieutenant-Governor of the

66 Cf. ibid., p. 370; Garner, loc. cit., p. 212.

67 Prince Edward Island Journal of Assembly, April 27th 1828.

68 Cf. Garner, loc. cit., p. 213. "This is exactly the line adopted by Wellington's Government in 1829. Wellington was forced by the O'Connell campaign and the rising temperature in Ireland to abandon his party's settled opposition to emancipation. He granted Catholics the vote but he coupled it with an act which, while it applied solely to Ireland, disfranchised the forty shilling freeholders and increased the freehold qualification to £10 a year. The Island amendment may have sought to disfranchise the same class as the Imperial legislation for since 1825 the British colonies in America were being deluged with pauper and near pauper immigrants from Ireland." (Ibid.)

69 10 George IV, c. 12, An Act to alter, amend and repeal certain parts of an Act made and passed in the forty-seventh year of His late Majesty's reign, intituled "An Act to repeal an Act made and passed in the forty-first year of His present Majesty's reign, intituled, 'An Act for the better regulation of elections,' and to regulate elections for members to serve in General Assembly in future", Prince Island Statutes, p. 199.

Province was instructed by London to pass an emancipation act for the Province.

I have the honor herewith to enclose the copy of an Act, which has recently passed in Parliament, for relieving His Majesty's Roman Catholic Subjects from all Civil & Military disabilities, with certain specified exceptions.

I apprehend, that this Act must be understood as extending to the Colonies, though, certain, there is no positive declaration to that effect. But to remove all possibility of doubt, on so important a subject, it will be proper, that you should recommend to the Legislature of Prince Edward Island to pass an Act declaring, that this Statute does extend to, & is in force in that Colony.⁷⁰

The Prince Edward Island Statute, 11 George IV, c. 7, was passed in 1830. It enacted that

all such part or parts of any statute or statutes of this Colony as has or have a tendency or power to render ineligible or incapacitate for various offices, and to impose civil, or political disabilities upon any of His Majesty's subjects professing the Roman Catholic religion be, and the same is and are hereby repealed.⁷¹

The same oath as was prescribed in Nova Scotia was to be taken. Priests were also forbidden to sit in the House of Commons.⁷²

Thus, we see that Prince Edward Island followed approximately the same course as Nova Scotia in granting full

⁷⁰ G. Murray to Gov. Ready, May 4th 1829, P.A.C., R.G. 7, P.E.I., G.S.D., Vol. 6, p. 267-268.

⁷¹ Prince Edward Island Statutes, p. 206.

⁷² Ibid., p. 207-208. The prescription concerning the oath was repealed in 1847 (P.E.I., 10 Victoria, c. 21).

civil rights to Catholics. The story will repeat itself, with slight variants, in the Province of New Brunswick.

2. New Brunswick.— New Brunswick was a part of Nova Scotia until 1784, when it was created as a separate province. Since Nova Scotia had already allowed Catholics the right to own, purchase or inherit land within the colony,⁷³ New Brunswick has always allowed Catholics equal privilege of holding property. In the first elections held, all males who were of age and had three months' residence in the colony were admitted to vote. However, one of the candidates was defeated by the Acadian vote, and he challenged the right of Catholics to use their franchise; the election was subsequently ruled null, since the French (Catholic) vote was illegal, being contrary to the Laws of England.⁷⁴

A bill passed in 1786 did not specifically exclude Catholics, but empowered the Sheriff to reject the vote of

73 Nova Scotia Statutes, 23 George III, c. 9, p. 235-236.

74 The minutes of the House of Assembly of New Brunswick for Jan. 13, Jan. 20th and Feb. 7th 1786, give the results of this vote: "Mr. Foster reported the opinion of the Committee, that the French votes as stated by the Sheriff, were not legal, and therefore that Charles Dixon, Esq. was duly elected", in Journal of the Votes and Proceedings of the House of Assembly of the Province of New Brunswick, from Tuesday the 3rd of January, to Wednesday the 15th of March, 1786, p. 14, 18, 39.

any elector who would refuse to take the State Oaths.⁷⁵ This bill was disallowed in 1790 because of a technical error. A new act⁷⁶ was passed the following year and dispensed Catholics from making the declaration against Transsubstantiation.

In the same year, 1791, another bill allowing Catholics to vote at elections was defeated. A later one,

⁷⁵ Carleton to Sydney, June 12 1786, P.A.C., M.G. 11, N.B., A-3, p. 77-79: "Previous to re-enacting any particular Law it seemed necessary to adopt some general principles respecting the extension of the British Statutes. The doctrine universally received by the Colonists was that all the Laws of England, passed before the existence of a Colony and applicable to its situation, were binding on its Inhabitants. The Era of the restoration was generally fixed on by the Courts of Law in the Explanation of this principle and countenanced by the several Legislatures, because the Colonies were not of sufficient importance before this period to become an object of attention to the Parliament of Great Britain, and after it so many Acts are found expressly noticing and binding the plantations, that a presumption arose they were not intended unless named, or words of universal import made use of. These with many other legal reasons influenced the Council and Assembly here to abide by a limit so long established and practised on, and as it appeared most safe and convenient in our present situation to reduce the number of Laws that would otherwise require consideration; and by admitting all the Statutes of a general tendency which were passed before the restoration, as of force amongst us, the stability of the Province will be guarded from a spirit of innovation. I have also given into the distinction and hope it will be found in every respect deserving of approbation." This letter gives general observations on the laws passed in the first Session of the Assembly of New Brunswick, and gives the spirit of the laws. Cf. New Brunswick Statutes, 25 George III, c. 62.

⁷⁶ 31 George III, c. 17 (1791), "An Act for Regulating Elections, of Representatives in General Assembly, and, for limiting the duration of Assemblies, in this Province, New Brunswick Statutes, p. 86-93.

presented in 1795, declaring that all laws against recusants and non-conformists emanating from the Parliament of Westminster were inapplicable to New Brunswick, was also rejected since it denied the supremacy of the Imperial Government.⁷⁷

In 1810, a relief measure was passed by the Assembly and Council by which a simple Oath of Allegiance was substituted for the State Oaths.⁷⁸ The reason given for the bill was

It is just and expedient that all His Majesty's faithful subjects, should participate in the enjoyment of a right equally interesting to all, as far as may be consistent with the safety and security of His Majesty's Person and Government.⁷⁹

The oath substituted was much simpler:

I, A.B., do sincerely promise and swear that I will be faithful and bear true allegiance to His Majesty King George the Third, and him will defend to the utmost of my power, against all traitorous conspiracies and attempts whatsoever, which shall be made against His Person, Crown or Dignity. And I will do my utmost endeavour to disclose and make known to His Majesty and His Successors, all treasons and traitorous conspiracies which I shall know to be against him or any of them.⁸⁰

77 Cf. Garner, loc. cit., p. 209.

78 50 George III, c. 36 (1810), An Act in addition to an Act, intituled, "An Act for regulating Elections of Representatives in General Assembly, and for limiting the duration of Assemblies, in this Province, New Brunswick Statutes, p. 190-191.

79 Ibid., p. 190.

80 Ibid., p. 190.

However, the franchise granted to Catholics did not make them eligible for election to the House, although Catholics in both Upper and Lower Canada enjoyed this right since the creation of their representative institutions.⁸¹ Yet, it seems that the New Brunswick Catholics never petitioned the Assembly for the right of election to their Assembly. No steps were taken to complete the emancipation of Catholics in the Province until March 8, 1830 when the Act for the relief of His Majesty's Roman Catholic Subjects in this Province was passed.⁸²

This Act simply reproduced the British Act of 1829, stating that it was applicable to the Province.

Thus we see that the three Provinces of Nova Scotia, Prince Edward Island and New Brunswick granted full civil rights to Catholics in 1830. Once again, the status of the Church in these Provinces was not affected, only the situation of its members who were no longer disqualified from civic office because of their membership in the Church.

There remains one Maritime Province to study. The ecclesiastical history of Newfoundland bears witness to many similar pieces of anti-Catholic legislation, as we shall now

⁸¹ Cf. Documents, I, The Constitutional Act of 1791, p. 1031 sqq., Art. 21.

⁸² New Brunswick Statutes, p. 438-494, 10-11 George IV, c. 33.

see.

3. Newfoundland.— Before 1713, Newfoundland belonged to the French. After the British took over the administration of the Island, the laws of England were applied to varying degrees by the Admirals who acted as governors of the Island. A representative Assembly was established only in 1832.

Article XIII of the Treaty of Utrecht in 1713 gave Britain undisputed possession of the Island; and Article XIV, as mentioned earlier for Nova Scotia, granted Catholics "the free exercise of their Religion, according to the usage of the Church of Rome, as far as the Laws of Great Britain do allow the same".⁸³ Newfoundland was placed under the Government of Nova Scotia until 1729 when the first independent Governor was appointed.

The famous letter of Queen Anne to Governor Nicholson of Nova Scotia, dated June 23, 1713,⁸⁴ allowed any Catholics who owned "lands or tenements" in Newfoundland "to retain and enjoy their said lands and tenements, without molestation as fully and freely as other of our subjects".⁸⁵

⁸³ Treaty of Peace and Friendship [...] Concluded at Utrecht, Art. XIV, p. 74.

⁸⁴ Cf. M. F. Howley, Ecclesiastical History of Newfoundland, Boston, Doyle and Whittle, 1888, p. 144; P.A.C., M.G. 11, N.S., A4, p. 97.

⁸⁵ Ibid.

The number of Catholics on the Island increased with the greater flow of immigrants from Ireland. They had started to come in the mid seventeenth century after Cromwell's persecution. In 1746, Captain James Douglas reported that St. John's held "236 English Protestants fit to bear arms, and 311 Irish Catholics [...] neither fit for this function nor for liberty of conscience".⁸⁶ In 1763, Catholics numbered 4,795 (about half of the fixed population).⁸⁷

The British laws against Catholics were applied with varying degrees of strictness by the Governors in office. The height of the strictness seems to have been reached in 1755 and 1756 under the governorship of Richard Dorrill. One of the most famous episodes of his career was the order sent to the magistrates of Harbour Grace:

Whereas I am informed that a Roman Priest is at this time at Harbour Grace, and that he Publicly reads Mass which is contrary to law, & against the peace of our Sovereign Lord the King.

You are therefore hereby required and directed on the receipt of this to cause the said Priest to be taken into custody and sent round to this Place, in this you are not to fail as will answer the contrary at your perrill.⁸⁸

⁸⁶ E. T. Kelly, The Coming of the Newfoundland Irish: The State of the Question, in The Newfoundland Quarterly, 66 (1967), p. 15.

⁸⁷ Cf. M. F. Howley, op. cit., p. 169.

⁸⁸ Cf. Letter from R. Dorrill to George Garland, August 15, 1755, in Letter Books of the Colonial Secretary's Office, Sl, 2, p. 202. Cf. also D. W. Prowse, A History of Newfoundland, second ed., London, Eyre and Spottiswoode, 1896, p. 293.

The man who harboured the priest was sentenced to a £50 fine, and ordered to have the room where Mass was offered demolished. He was to sell his possessions and leave the Island along with four other Catholics.⁸⁹

Among other ordinances issued by Dorrill, we find a proclamation against bringing Roman Catholic servants

89 "At a Court held before me at Harbour Main the 20th Sept at which you Chas. Garland was present att which time Michael Katen did appear before us, and by his own confession did admit a Roman Priest to Celebrate Publick Mass according to the Church of Rome, in one of his Fish Rooms or Storehouses, and he being present himself which is Contrary to Law, and against our Sovereign Lord the King, we therefore think proper to fine him the sum of fifty Pounds and to Demolish the said Fish Room or Storehouse, where Mass was said, And I do likewise order the said Michael Katen, to sell all the possession he has or holds in this Harbour, and to quit the Harbour on or before the 25th. of November ensuing. At the same Day appeared before us, Michl. Landrican, who was guilty of the said crimes for which we think proper to fine him the sum of twenty Pounds, to burn his house and stage down to the Ground, and he to quitt the said Harbour, by 25th. November ensuing att the same time appeared before us Darby Costley, Robt. Finn Michl. Mooring and Renold Macdonald, all which by their own confession and Roman Catholick and Inhabitant of this Place, which is contrary to Law, that they should hold any Property in this Island, we therefore think proper to fine the said Darby Costley ten Pounds Robt. Finn ten pounds Michl. Mooring the sum of eight Pounds and Renold Macdonald the sum of two Pounds and ten shillings, all the said fines in Sterling Money of Great Britain and all the above Persons to Quitt the said Island, by 25th. November ensuing." (Cf. Letter Books, Sl, 2, p. 256-257) Cf. also Prowse, op. cit., p. 294.

permanently into the country,⁹⁰ and against Catholics selling liquor.⁹¹ In other cases, buildings where Mass was offered were burned to the ground.⁹²

90 Cf. M. F. Howley, op. cit., p. 172. "Whereas a great Number of Irish Roman Catholics are Annually brought over here, a great part of which have but small wages, so that after paying their Passages, to this Place and the charges of Clothing &c during the fishing season, their whole wages are spent, & they have not wherewith, either to Pay their Passages home, or to Purchase Provisions for the Winter, by which means they not only become chargable, to this Place and many Robberyes and Felonys &c are committed, by them to the great loss and Terror, of his Majestys Leige Subjects in this Island.

"This is therefore to give Notice to all masters of Ships or vessels that bring such Passengers to this Island that after the Fishing season is over they carry from hence, the whole Number and same Passengers they bring except such as may have my Order to remain in the Land hereof, they are not to fail, as they will prevent being Proceeded against with the greatest severity the Law in such Cases will admits" (Richard Dorrill, September 22, 1755, in Letter Books, Sl, 2, p. 236).

91 Cf. M. F. Howley, op. cit., p. 174. The text of this order is not found in the Letter Books.

92 Cf. D. W. Prowse, op. cit., p. 294. "At a Court at Harbour Main [...] did Appear before us [...] all which are Romans and servants to Michl. Katin and did all Join in Celebrating Publick Mass in his fish Room, for which we therefore think Proper to fine the said persons Viz. [...] Which fines the above Persons are to pay to Michl. Katin as Order, towards making good the Damage that he received by Demolishing his fish Room" (September 20, 1755), in Letter Books, Sl, 2, p. 258. This could be considered Alice in Wonderland justice!

"Whereas at a Court held at Cracker Cove, Sept. 25th 1755, at which you Rd. Mullens and Chas. Garland Esqr. was Present, at which time it did Appear before us, that Publick Mass was Read in Terence Kennedys House, and the said Kennedy and his Wife was Married by the Priest, which appears by the confession of Mary Kennedy his Wife. We therefore think proper to Fine the said Kennedy the Sum of ten Pounds Sterling money for Payment of the Court Fees, and to Burn his house down to the Ground and that he quits this Place, and likewise the Island of Newfoundland on or before the tenth of October ensueing" (September 25, 1755), in Letter Books, Sl, 2, p. 260.

In 1759, Governor Richard Edwards made all the important residents of St. John's work on the building of the Anglican Church, or pay a carpenter to do so for them; penalty for failure to comply was a jail term.⁹³

Governor Hugh Palliser was appointed in 1762, and he issued an order to the following effect: 1) papish servants are not to be permitted to remain in any place but where they served the previous summer; 2) no more than two papists are allowed to live in one house, unless in the house of a Protestant; 3) no papist to be allowed to keep

⁹³ Cf. D. W. Prowse, op. cit., p. 295-296. "Whereas the Church at this Place has been carried on by the Subscription of Well Dispos'd Parsons; and it being highly necessary that the same should be covered as soon as possible. You are therefore hereby required & directed to cause the men mentioned in the margin, to repair to work the sd. Church from the date hereof, to the fourth Day of November next. As it appears that they are livers in this place, & have not subscribed towards the Building of the same. Or to cause each of them That shall neglect complying herewith to pay the usual price given to carpenters daily in this place (till that time). For which this shall be your Order" (Letter Books, Sl, 3, p. 48). While the ruling was, of course, illegal, there is no evidence that jail terms were implied or applied. It is possible that this order and others against settlement, fell to the ground by their own ridiculousness and unenforcibility. We could remark that twenty-four names are mentioned in the margin of the letter, and not thirty-four as Prowse states.

a public house, or sell liquors by retail.⁹⁴

Other orders issued by Palliser included pulling down "all huts inhabited by Catholics who induced people to stay in the Island, when the intention is that they shall go home in the fall"; "neither man nor woman, being Papist, who did not serve in St. John's in the summer be allowed to remain in the winter"; "all children born in the country be baptized according to law" in the Anglican faith.⁹⁵

94 Cf. M. F. Howley, op. cit., p. 78. "For better preserving the Peace preventing robberies Tumultuous assemblys and other disorders of wicked & Idle people remaining in the Country during the Winter[.] Order'd That no Papist Servant man or woman shall remain at any place where they did not Fish or serve during the Summer Proceeding. That not more than two Papist Men shall dwell in one House during the Winter, except such as have Protestant masters. That no Papist shall keep a Publick House or vend liquor by Retail. That no Person keep 'dyeters' during the Winter" (October 31, 1764), in Letter Books, Sl, 3, p. 272.

95 Cf. M. F. Howley, op. cit., p. 178. "Whereas a great number of Hutts are erected, possess'd and inhabited by Irish Roman Catholicks in this Harbour, who entertains & keep in the Country a great number of Rogues and Vagabonds to the great disturbance of the Peace and danger of His Majesty's Subjects lives, and to the exceeding great prejudice of the Fishing Trade. You are hereby authorized and directed immediately to pull down all such huts or Houses, and suffer no more such to be erected hereafter" (October 23, 1767), in Letter Books, Sl, 4, p. 79. The last two ordinances concerning Catholics remaining in Newfoundland over the winter, and baptizing children in the Anglican faith are not found in the Letter Books for Pallisser's period. Cf. also Letter Books, Sl, 4, p. 83: "I desire you will immediately give Orders for pulling down the most notorious Huts Possess'd by, or that have entertain'd, Irish Roman Catholicks during the last Winter, contrary to Orders Published the last year; that ye Vagrants who mean to take shelter in them this Winter, may have time to leave the Country, whilst there is Shipping to carry them."

The Instructions given to Governor John Campbell upon his assuming office in 1782, include:

12. To allow the exercise of such modes of Religious Worship as are not prohibited by law.⁹⁶

Accordingly, Campbell issued a proclamation on October 24, 1894:

Pursuant to the King's instructions to me you are to allow all persons inhabiting this Island to have full liberty of conscience and the free exercise of all such modes of religious worship as are not prohibited by law, provided they be contented with a quiet and peaceable enjoyment of the same, not giving offence or scandal to Government.⁹⁷

This proclamation "apparently coincided with Dr. James L. O'Donel's arrival in the colony as Prefect Apostolic".⁹⁸

Bishop O'Donel's Diocesan Statutes of 1801 show how much he insisted on the Catholics' contribution to law and order. After ordering prayers for the welfare of the Royal family, he also stipulated

⁹⁶ P.A.C., C.O. 194, Vol. 35, p. 631, Reel B-676; these instructions are undated but are addressed to Campbell. Letter Book S1, 9, contains, on pages 342-348, a copy of the Royal Commission appointing Campbell to be Governor, and a footnote to the copy reads thus: "Ent'd at the Treasury Chambers Whitehall 15th May 1782. (sgd.) J. N. Leake."

⁹⁷ D. W. Prowse, op. cit., p. 363.

⁹⁸ The Cambridge History of the British Empire, Vol. VI, p. 424.

that the priests should use every means to turn aside their flocks from the vortex of modern anarchy; that they should inculcate a willing obedience to the salutary laws of England, and to the commands of the governor and magistrates of this Island.⁹⁹

The British Emancipation Act of 1829 brought official recognition to Catholic rights.

In the Instructions received by Sir John Cochrane upon his appointment as Governor in 1832, Article 50 states that he is to see that the

Book of Common Prayer, as by law established, [be] read each Sunday and holiday, and the Blessed Sacrament administered according to the rites of the Church of England.¹⁰⁰

Article 56 reads as follows:

It is our further will and pleasure that you recommend to the Legislature to enter upon proper methods for the erecting and maintaining schools in order to the training up of youth to reading, and to a necessary knowledge of the principles of religion. You are not, however, to give your consent to any Act respecting religion without a clause suspending its operation until Our pleasure shall have been signified thereupon, unless a draft thereof shall have been previously transmitted by you for Our consideration and approval.¹⁰¹

99 "Missionarii omnes [...] tandem publice orent omni die Dominica & Festiva (paucas quarum in hac missione observare possunt) [sic] & illas privata instructione ipsis designabit superior) pro Serenissimi Rege nostro Georgio Tertio ejusque Regia familia; nitantur pretem ipsorum avertere a vertigine moderna anarchia, & populo inculcare promptam obedientiam tam salutaribus Anglia legibus, quam mandatis gubernatoris & magistratus hujus insulae", Diocesan Statutes by R.R.D. O'DONEL, 1801, 2 August 1801, par. 14, Manuscript, Chancery Office, St. John's, Nfld., Doc. 6/.

100 Imperial Blue Books on Affairs Relating to Canada, PAC, Vol. 37, Paper 704, p. 12.

101 Ibid., p. 13.

In 1839, several petitions were sent to the Queen on a matter concerning the Church's influence in political matters, especially the constitution of the recent House of Assembly. One such petition, forwarded by the Merchants and Traders of St. John's has an interesting comment on the subject we are considering:

In this island, the population of which may be estimated at 75,000, of whom about one-half are Protestants, and the other half Roman-catholics, it may be proper to remind Your Majesty that there are no legal distinctions affecting any class of Your Majesty's subjects; and were the Roman-catholics permitted to follow the impulse of their own minds, and to act individually as their own wishes might prompt them, there would be no cause for apprehending that they would differ from their neighbours in matters of a civil nature.¹⁰²

The merchants recognize that Catholics are not subject to any civil restraints at that time, but protest against what they consider undue influence on the part of the clergy. A counter petition forwarded by the House of Assembly itself, vehemently contradicts the allegations of the first one.¹⁰³

It is quite evident, though, that the Catholics living in Newfoundland enjoyed the same rights as they did in the other Maritime Provinces in the middle of the nineteenth century.

¹⁰² Ibid., Paper 525, p. 11.

¹⁰³ Ibid., Paper 525, No. 4, p. 9-10.

Catholics now enjoyed the franchise, and were eligible for election to the Houses of Assembly. The laws against their ownership of land were repealed; penalties imposed at various times were abolished.

The Church itself in the Maritimes, as in other parts of British North America, enjoyed no specific recognition at this period of time.

Let us now examine the juridical situation of the Church in Western Canada to see what status can be determined for it in this other section of the country.

C. The Juridical Situation of the Catholic Church
in Western Canada before 1840.

The juridical situation of the Catholic Church in the Canadian West and North West was substantially different from that in the East. The movement of settlers towards the western regions did not begin in earnest until the nineteenth century. Before that time, it is quite difficult as such to speak of the existence of a specific juridical situation for the Church in this wide expanse of territory.

1. Formation of the Hudson's Bay Company (1670).- The Hudson Bay area was discovered in 1610 by Henry Hudson and named after him. Fur trading seems to have begun in the

region around 1646.¹⁰⁴ Chouart des Groseilliers and Pierre Esprit Radisson began making excursions by land into the country as early as 1658 and appear to have reached Hudson Bay overland from Lake Superior. They were soon instrumental in persuading influential Englishmen to form the Hudson's Bay Company for purposes of commerce, since they were unable to obtain satisfaction at the French court.

A vast percentage of the lands to the west were allotted to the Hudson's Bay Company on May 2, 1670, by Charles II. The territory thus originally ceded was then named Rupert's Land in honour of Prince Rupert, the first Governor of the Company, and comprised the Ungava district, the area around Hudson and James Bay, the Red River Valley, and the valleys of the north and south branches of the Saskatchewan River.¹⁰⁵ The original grant did not include, then, the district of Athabaska, nor the land beyond the Rockies.

The charter granted to the Hudson's Bay Company constituted the Governor and Company "the true and absolute lords and proprietors of the same territory, limits and

¹⁰⁴ Cf. G. Dugas, The Canadian West. Its Discovery By the Sieur De La Vérendrye. Its Development By the Fur-Trading Companies, down to the year 1822, Montreal, Librairie Beauchemin, 1905, p. 15.

¹⁰⁵ Norah Story, The Oxford Companion to Canadian History and Literature, Toronto, Oxford University Press, 1967, p. 368.

places"¹⁰⁶ and enabled them to "make, ordain and constitute such or so many reasonable laws, constitutions, orders and ordinances" as they deemed fit.¹⁰⁷ Besides the power to make laws, the Company was authorized to impose penalties and punishments, and to judge in all causes civil and criminal according to the laws of England.¹⁰⁸

Mention is only made of Christianity three times in the charter. The first two instances concern the rights to territories "which are not actually possessed by any of our subjects, or by the subjects of any other Christian Prince or State".¹⁰⁹ This phrase is repeated on two occasions.¹¹⁰

The third instance is when the Company is given authority "to make peace or war with any prince or people whatsoever, that are not Christians".¹¹¹

106 Beckles Willson, The Great Company being a History of the Honourable Company of Merchants-Adventurers trading into Hudson's Bay, Toronto, The Copp, Clark Company, Ltd., 1899, p. 520-521.

107 Ibid., p. 521.

108 Sir William Schooling, K.B.E., The Governor and Company of Adventurers of England Trading into Hudson's Bay during Two Hundred and Fifty Years, 1670-1920, London, The Hudson's Bay Company, 1920, p. 6. See also B. Willson, op. cit., p. 521-522.

109 B. Willson, op. cit., p. 515.

110 Ibid., p. 520.

111 Ibid., p. 525.

Otherwise, there is no mention in the document of anything referring to religion, or to the freedom of worship that was to be granted to those living in the territory under the jurisdiction of the Company.

2. Early Explorers and Traders in the West (1672-1763). - In spite of the charter granted to the Hudson's Bay Company, France was not willing to let England lay claim to the land and its resources without opposition. On June 28, 1672, a Jesuit missionary, Father Charles Albanel, acting under instructions from the French Government, claimed the northern country for France.¹¹² Hostilities followed during the next twenty years, and in 1694 the last remaining English fort, Fort Bourbon on the Nelson River, was taken by the French. It was, however, recaptured by the British in 1696. France reconquered the territory the following year and remained in possession of the land until the Treaty of Utrecht in 1713 when the Hudson Bay territory was restored to England, although no attempt was made at that time to define the extent of the land. For a century and a half the bay was almost a private preserve of the Hudson's Bay Company.

After the treaty, explorations by land were continued by the French, especially under Sieur Pierre Gaultier de la Vérendrye. In 1731, he was accompanied by a Jesuit priest,

¹¹² G. Dugas, op. cit., p. 25.

Father Charles-Michel Messaiger, who returned east in 1733. Another Jesuit, Father Jean-Pierre Aulneau spent the winter of 1735-1736 near Lake of the Woods, at Fort St. Charles. Father Aulneau was later massacred by the Sioux Indians. Another Jesuit, Father Claude-Godefroi Coquart left Montreal in 1741. He went as far west as what is now known as Portage la Prairie¹¹³ but returned east in 1745. There seems to have been no priest in the West from 1745 to 1750.

The French forts were abandoned in 1756. During the period prior to the abandonment of the forts, there was no question of any particular juridical situation of the Catholic Church in the territory. Besides the occasional visits of missionaries, there was no other visible presence of ecclesiastical institutions in the area.

3. The North West Company (1784-1821).- After the cession of Canada to England by the Treaty of Paris in 1763, the system of trading privileges under exclusive licence from the Governor was abandoned, "and each one was free to do business with the Indians on his own account".¹¹⁴ In 1784, the North West Company was established to further trading in the area. Although known as the "French Company", it comprised mostly English or Scotch members. This company was

113 Cf. ibid., p. 66.

114 Ibid., p. 112.

to rival the Hudson's Bay Company for more than thirty years, until the two finally merged on March 26, 1821. The North West Company did not enjoy any legal status from the British Parliament for trading, but had to preserve its monopoly "by force and audacity".¹¹⁵ One of its best-known figures, Sir Alexander Mackenzie, was in command of the Athabaska district, and on July 22, 1793, was to reach the Pacific coast by land.¹¹⁶

In spite of the North West Company's efforts to mark out roads, build forts and organize systems of safe travel over the prairies, we do not find mention of any efforts to establish the Church in the West. The Company was interested in trading and other forms of commerce. As a result of internal divisions, it split in two in 1795, but was reunited on November 5, 1804.¹¹⁷

As the North West Company's activities increased, it came more and more into contact with the members of the Hudson's Bay Company. Hostilities eventually broke out between the two groups, and the North West Company disappeared on March 26, 1821.

¹¹⁵ Ibid., p. 122.

¹¹⁶ Ibid., p. 135.

¹¹⁷ Ibid., p. 169.

4. The Red River Colony and the Catholic Church (1811-1832).- a) Under Lord Selkirk.- In May 1811, Thomas Douglas, Lord Selkirk, was granted 116,000 square miles of land by the Hudson's Bay Company in the area around the Red River, portions of which are now within the limits of the United States of America.¹¹⁸ The remainder is now part of the Province of Manitoba. The Governor of the new colony, appointed by Selkirk, wrote to Bishop Flossis on April 4, 1816, asking for priests.

You know, Monseigneur, that there can be no stability in the government of States or Kingdoms unless religion is made the corner stone. The leading motive of my first undertaking the management of that arduous tho laudable enterprise was to have made the catholic religion the prevailing faith of the establishment, should Divine Providence think me a worthy instrument to forward this design.¹¹⁹

Lord Selkirk himself confirmed this request on the same day.

It would be with the greatest satisfaction that I would co-operate with all my strength for the success of such a work, and if Your Lordship will select a suitable subject to undertake it, I do not hesitate to assure him my consideration and to offer him all the help that Your Lordship may deem necessary.¹²⁰

118 Sir William Schooling, op. cit., p. 78.

119 Grace Lee Nute, Documents Relating to Northwest Missions 1815-1827, Saint Paul, Minnesota Historical Society, 1942, p. 4-5.

120 Text in G. Dugas, op. cit., p. 283.

Bishop Plessis sent Father P. A. Taureau on an exploratory voyage to the Red River in 1816, giving him numerous faculties for the territory. An officer of the Hudson's Bay Company, Georges Fleury Dechambault, petitioned for a priest to reside permanently among the settlers.¹²¹ The residents of the Red River Colony petitioned in the same sense in the summer of 1817.¹²² Bishop Plessis then decided to send two missionaries as soon as the troubles between the Hudson's Bay Company and the North West Company would subside.¹²³

To assist the missionaries, Lord Selkirk donated two important tracts of land to the Church to be used for religious purposes.¹²⁴

On April 20, 1818, Bishop Plessis issued a pastoral letter announcing the official establishment of the mission and mentioning the encouragement given by the Governor of Upper and Lower Canada:

[...] encouraged in this important work by the wish and zeal of His Excellency, Sir John Sherbrooke, governor in chief of these provinces in the name of His Britannic [sic] Majesty, we have named [...] ¹²⁵

121 Grace Lee Nute, op. cit., p. 18.

122 Ibid., p. 14-17.

123 Ibid., p. 19.

124 Cf. G. Dugas, op. cit., p. 287.

125 Grace Lee Nute, op. cit., p. 57.

The territory entrusted to the missionaries included the parts of "North America situated to the North and West of the said two provinces of Upper and Lower Canada".¹²⁶ Among the instructions given to the missionaries, we read:

9. They will cause to be known the advantages that the inhabitants have in living under the government of His Britannic Majesty, teaching them by word and deed the respect and allegiance owed to the sovereign, and accustoming them to address to God fervent prayers for the well-being of His Most Gracious Majesty, of his august family, and of his empire.¹²⁷

The two priests, Fathers J. N. Provencher and Sévère Dumoulin, were then instructed to maintain "absolute impartiality" toward the claims of the North West Company and the Hudson's Bay Company.

When it became necessary to proceed with the division of the eastern Church into dioceses, Lord Selkirk wished to have the western territory remain under the jurisdiction of the Bishop of Quebec. On October 17, 1818, he wrote as follows to Bishop Plessis:

126 Ibid., p. 58.

127 Ibid., p. 60-61.

I heard it said of late that probably Upper Canada will be erected into a separate diocese. If that division takes place, I hope that the Red River will remain in the diocese of Quebec. I would be very sorry if that infant establishment were not to remain under Your Lordship's jurisdiction, under which it has been so happily commenced.

I remember that last spring, in Quebec, Your Lordship suggested that in the end those distant regions should have an independent establishment; but, while awaiting the time when the population will have sufficiently increased to be able to support, without assistance, a separate establishment, it seems to me that all those Indian countries should come under Quebec rather than any other diocese; especially so, since the Catholics, scattered over them, only speak the French language, and because Upper Canada could not supply subjects suitable for the duties of the ministry there.¹²⁸

On January 6, 1819, a few months after the missionaries' departure for the West, Bishop Plessis wrote to Father Provencher:

I do not see any sign that the government will be disposed to undertake any of the mission's expenses. It would be better, perhaps, if it should not be a contributor. We shall have thus more liberty and independence.¹²⁹

Speaking of the anxiety he felt over the disputes between the Hudson's Bay Company and the North West Company, Bishop Plessis wrote in 1820 to Father Provencher:

¹²⁸ Text in G. Dugas, op. cit., p. 297-298. Another translation in G. L. Nute, op. cit., p. 163.

¹²⁹ Grace Lee Nute, op. cit., p. 185.

There is talk of a treaty of peace between the two Associations, that of the Hudson Bay and that of the North-West. I do not know if religion will be taken into consideration, nor if the colony will survive, should the lot fall to the side of the North-West. The result will show what may be thought of the matter. If, as I have no doubt, God has His merciful designs on that part of the New World, He will easily find a way of therein sustaining and extending His Kingdom.¹³⁰

Lord Selkirk died in 1820, and the Hudson's Bay Company took over the administration of the Red River Colony.

b) Under the administration of the Hudson's Bay Company.- When the Hudson's Bay Company took over the administration of the land, it aided the Catholic and Protestant schools "by grants of land, free passage of teachers on their boats and subsidies in money".¹³¹

On July 2, 1825, the Council of the Hudson's Bay Company passed a resolution concerning the Catholic missions in the Red River district.

¹³⁰ G. Dugas, op. cit., p. 299.

¹³¹ A. G. Morice, History of the Catholic Church in Western Canada, Vol. I, Toronto, The Mission Book Company, 1910, p. 221.

Great Benefit being experienced from the benevolent and indefatigable exertion of the Catholic mission at the Red River in the welfare and the moral and religious instruction of its numerous followers; and it being observed, with much satisfaction, that the influence of the mission under the direction of the Right Reverend Bishop of Juliopolis,¹³² has been uniformly directed to the best interest of the settlement and of the country at large, it is Resolved: That in order to mark our approbation of such laudable and disinterested conduct on the part of said mission, under the direction of the Right Rev'd Bishop that a sum of £50 per annum be given towards the support, etc., etc.¹³³

This sum was doubled after 1830.¹³⁴

5. Assiniboia (1832-1840).-- In 1832, since the population had increased somewhat, it was decided to inaugurate a certain form of participatory rule. The settlement became known as Assiniboia and an appointed council was set up to govern the territory.

Religious denominations were not recognized as such when the governing body was established, although the Anglican minister was an ex officio member of the Council. Bishop Provencher was invited to the Council on February 12, 1835,

¹³² On February 1, 1820, Father J. N. Provencher was appointed titular Bishop of Juliopolis and named Vicar General of the Bishop of Quebec for the North West District. His territory extended from the 91° longitude to the Rocky Mountains, and from the United States border to the Arctic Ocean. See Joseph-Etienne Champagne, Les Missions catholiques dans l'Ouest canadien, (1818-1875), Ottawa, Editions des Etudes Oblates, 1949, p. 58.

¹³³ Text in G. Dugas, op. cit., p. 302-303.

¹³⁴ Cf. A. G. Morice, op. cit., p. 153.

along with four other persons. Two years later, on June 16, 1837, he was sworn in as an official councillor.¹³⁵

On March 7, 1838, the directors of the Hudson's Bay Company decided that

neither the Protestant nor the Catholic missionaries would be encouraged or assisted in extending their labours beyond the limits of the colony without its special consent.¹³⁶

The extension began, nevertheless, at the end of the first half of the nineteenth century, and continued westward. The Company tried to maintain an official position of due respect to all clergymen. Its role seemed limited to aiding the missionaries by providing transportation from the East and by allowing them to stay at the Company's forts along the way.

Since the Hudson's Bay Company's charter did not refer to freedom of worship or to the establishment of religion, we must examine the writings of the Governors of the Company in Canada to see what policy was followed.

Concerning freedom of worship, a letter from the Governor and Committee, dated November 15, 1837, illustrates the Company's policy.

¹³⁵ Cf. ibid., p. 151-153.

¹³⁶ Cf. ibid., p. 157-158.

At the establishment we wish that moral and religious instruction and education should be combined, as regards the children of Protestants and native Indians, but that the attention of the Children of Roman Catholics should be confined to Morality and education. The fathers of these children must naturally wish to have their offsprings brought up in the same faith, and as they would not in all probability allow them to attend the school, if any attempt were made to influence their minds in regard to the forms of worship or religious observances, we are desirous that no such attempt be made, but that free liberty of conscience be allowed to the Catholics, and that no constraint be used in regard to attendance of Divine Worship, prayer meetings or Sunday Schools, as from what we know of the character of those people, we are quite satisfied that more good may be done, towards religious instruction by judicious toleration than by constraint and that an excess of zeal in the cause of proselytism more frequently defeats than promotes the object in view.¹³⁷

Referring to the Wesleyan missions, the Governor and Committee wrote from London to Duncan Finlayson, the Governor of Assiniboia, on March 4, 1840:

Being exceedingly desirous to afford to the native population within our territories the benefits of religious instruction and civilization, we have the satisfaction to say that an arrangement has been effected with the Wesleyan Missionary Society, having for its object the establishment of three missions in the Northern Department [...], it being intended to extend the Missions from time to time to other parts of the country as may be found expedient.¹³⁸

¹³⁷ Cf. Gaston Carrière, L'Honorable Compagnie de la Baie d'Hudson et les missions dans l'Ouest canadien, in Revue de l'Université d'Ottawa, 36 (1966), p. 28-29. Letter to Rev. Herbert Beaver. Emphasis added.

¹³⁸ Ibid., p. 27.

All this shows the Company's desire to grant freedom of worship in the West.¹³⁹

We will now study the status of the missions of the Catholic Church on the Pacific Coast.

6. The Church on the Pacific Coast.— The situation was somewhat different on the Pacific coast than on the western plains. The Spaniards first arrived by sea in 1774 at what is known today as Vancouver Island.¹⁴⁰ An establishment was begun on the island in May 1789 and a Governor appointed.¹⁴¹ However, the English soon dispossessed the Spaniards in virtue of the Treaty of Nootka Sound in 1790.¹⁴² In 1805, Simon Fraser, a Catholic, began the establishment of forts for the North West Company on the mainland of New Caledonia, now a part of British Columbia. However, no Catholic missionaries established permanent residence on the coast at that time.

During the same period, exploration of the mainland was conducted by Sir Alexander Mackenzie who first crossed

¹³⁹ Texts are available in Gaston Carrière, loc. cit., p. 28-34.

¹⁴⁰ Cf. A. G. Morice, op. cit., p. 275-276. Also Emilien Lamirande, L'Implantation de l'Eglise catholique en Colombie Britannique, 1838-1848, in Revue de l'Université d'Ottawa, 28 (1958), p. 213-216.

¹⁴¹ Cf. A. G. Morice, op. cit., p. 276. Emilien Lamirande, loc. cit., p. 216.

¹⁴² Cf. Emilien Lamirande, loc. cit., p. 218.

the Rockies in 1793 on behalf of the North West Company. On March 26, 1821, after many difficulties, the Company merged with the Hudson's Bay Company.¹⁴³ This increased extensively the amount of territory under the latter's jurisdiction.

The vast extent of territory now under the undisputed control of the Hudson's Bay Company was divided, for the same of trading purposes, into three principal departments, the Northern, the Southern, and the Western, which, in their turn, were subdivided into districts with a leading port or capital, where the chief officers resided.¹⁴⁴

The first employees of the Hudson's Bay Company who settled in New Caledonia were French-Canadian Catholics. However, they did not have a priest to administer to them. In 1821, the settlers of the Willamette Valley sent a letter to the authorities of the Diocese of St. Louis in the United States asking for a priest to minister to them. This valley was the object of disputes between Great Britain and the United States at that moment, although it is now recognized as

¹⁴³ A. G. Morice, History of the Northern Interior of British Columbia, 2nd edition, Toronto, William Briggs, 1904, p. 98.

¹⁴⁴ Ibid., p. 100. Describing the Northern department, Archbishop Taché was to write some years later that "the political existence of this portion of England's domain in America is most particular; the metropolitan government does not pay any attention to the territory; no colony has or could have any action; no one has any rights or privileges and the country is there without any laws, without a government, without an administration, without civil or juridical jurisdiction", in Esquisse sur le Nord-Ouest de l'Amérique, Montreal, C. O. Beauchemin et Fils, 1901, p. 49.

being situated on the Canadian side of the border.¹⁴⁵

In 1834, the settlers of the Willamette appealed again, this time to Bishop F. N. Provencher, Vicar General of the Bishop of Quebec for the North West District. Their petition was received in 1835.¹⁴⁶

It was decided to undertake a mission to the coast, and the first missionaries hoped to leave in the spring of 1836. However, the Hudson's Bay Company was hesitant in approving the project.

The Governor and Committee have declined affording any faculty for the establishing of that mission, at present, in consequence of being strongly advised thereto, by the Council of the Northern Department, at which I presided, who fully considered it, in all its bearings, last summer, and, in giving that advice, we were, alone, influenced by an apprehension that if such missions were established, it would lead to religious controversies that might, seriously, endanger the peace of that country, which is occupied by a population more barbarous, ignorant and treacherous than any with whom we have dealings. Should such apprehensions be, hereafter, removed, through the reports of the Company's officers, on the West side of the Mountains, I feel myself at liberty to assure your Lordship of our best support and assistance towards the accomplishment of your benevolent views.¹⁴⁷

¹⁴⁵ Emilien Lamirande, loc. cit., p. 224, also p. 335-336.

¹⁴⁶ Cf. ibid., p. 323.

¹⁴⁷ Sir George Simpson to Bishop Provencher, Lachine, April 18, 1837, in E. Lamirande, loc. cit., p. 334.

Nevertheless, the Hudson's Bay Company agreed soon after to the establishment of a mission of the Cowlitz River, rather than on the Willamette, since it was not disputed territory.

The first permanent missionaries, Fathers François-Norbert Planchet and Modeste Demers, finally arrived at Fort Vancouver on November 24, 1838.¹⁴⁸ From this time on, the missions developed and prospered. The Hudson's Bay Company had a most significant role to play in the extension of the Catholic Church on the Pacific Coast, and whatever may be said against its other practices, it certainly was of untold assistance in allowing the Church to spread westward.

In brief, before 1840, the Catholic Church on the Pacific Coast does not seem to have been the object of any particular statutes or special prescriptions. Rather, it was simply dependent on the good offices of the Hudson's Bay Company and its employees for its existence in the territories under the direction of the Company. Nevertheless, the Church was able to carry out its missionary work, conduct schools and build churches without being subject to restraining laws or limitations.

¹⁴⁸ A. G. Morice, History of the Catholic Church in Western Canada, Vol. II, p. 218. Emilien Lamirande, loc. cit., p. 342.

CHAPTER IV

THE JURIDICAL SITUATION OF THE CATHOLIC CHURCH IN LOWER AND UPPER CANADA FROM 1791 TO 1840

Our study so far has been limited to the analysis of the juridical situation of the Catholic Church in Quebec, the Maritime Provinces and the western territories. A new region also developed, known as Canada West or Upper Canada. It was established in 1791 and was known as such for approximately fifty years. The Constitutional Act of 1791 officially divided Canada, as it was called then, into two distinct regions: Lower Canada and Upper Canada.

In this chapter, we intend to examine the situation of the Church as determined by the Constitutional Act of 1791, and the relationships that existed between the Governments of both Canadas and the Catholic Church subsequent to the passing of the Act.

Thus, we will have three sections in this chapter:

- A. The Constitutional Act of 1791
- B. Relationships between the Government of Lower Canada and the Catholic Church
- C. Relationships between the Government of Upper Canada and the Catholic Church.

A. The Constitutional Act of 1791

The Constitutional Act of 1791 marks another milestone in Canadian history. Its clauses were to pave the way

for some of the fiercest political battles to be fought in the country, and which lasted for approximately sixty years. We shall divide our consideration of the Act into three parts: 1) the preparations, 2) the clauses, 3) the results.

1. The preparations for the Constitutional Act of 1791.- While the Quebec Act of 1774 was a great step forward in determining the juridical status of the Catholic Church in Canada, it left many matters to be desired. The increase in population, due partly to the arrival of the Loyalists in the Eastern Townships of Quebec and what is now known as Southern Ontario, necessitated further changes in the juridical and political organization of the territory. One of the privileges most sought after by many of the inhabitants was the right to an elected government, or the establishment of a democratic regime.

The inhabitants of Quebec who, at that time, were governed by an appointed Council, petitioned for a House of Assembly in 1784;¹ the Catholic citizens prepared a special petition concerning the possibility of recruiting priests from overseas and bringing them to Canada, and of increasing the number of Catholic representatives in the Legislative

¹ Cf. text in Adam Shortt and Arthur G. Doughty, Documents Relating to the Constitutional History of Canada, Ottawa, Public Archives, second edition, 1918, Vol. I, p. 742-752. (Henceforth referred to as "Documents").

Council.²

In 1787, a group of Loyalists petitioned the Governor General to grant some form of assistance for the establishment of the Church of England and the Church of Scotland, and requested that some four hundred acres of land be set aside in each township for the support of a minister.

Your Petitioners pray for some assistance in establishing the Church of England, and Scotland, in this Infant Settlement, and that a Glebe of Four Hundred Acres of Land in each Township, may be set apart for a Clergyman.³

Drafts of a revised Constitution were prepared by Lord Grenville, then Secretary of State for the Interior, and forwarded to Dorchester, Governor General, for his commentaries. In an accompanying letter of October 20, 1789, Grenville advised Dorchester that

a considerable degree of attention is due to the prejudices and habits of the French inhabitants who compose so large a proportion of the community, and every degree of caution should be used to continue to them the enjoyment of those civil and religious Rights which were secured to them by the Capitulation of the Province, or have since been granted by the liberal and enlightened spirit of the British Government.⁴

² Ibid., I, p. 765-766.

³ Ibid., I, p. 950.

⁴ Ibid., I, p. 988.

However, the drafts of the new bill contained no mention of religion.⁵ The new Constitution was voted by the British Parliament on March 14, 1791; it provided for the institution of an electoral regime, maintained all the guarantees given in the Quebec Act, and divided the Province in two. The Act itself contains fifty articles of which some nine concern the question of Religion.

An order in Council by the Governor, dated August 24, 1791, proclaimed the division into two territories: Upper and Lower Canada.⁶ By a proclamation of the Lieutenant-Governor (November 18, 1791) the new constitution was to become effective as of December 26, 1791.⁷ The Act itself contains fifty articles of which some nine concern the question of Religion. We shall now examine the articles which are of immediate interest to us, trying to determine their import on the question of Church-State relationships in Canada.

2. The Clauses of the Constitutional Act of 1791.⁸ - Three main categories of rules concerning religion are found

⁵ Cf. texts in ibid., I, p. 992-1002, 1006-1016.

⁶ Ibid., II, p. 3-5.

⁷ Ibid., II, p. 55-57.

⁸ Ibid., I, p. 1031-1051, Imperial Statute, 31 George III, c. 31.

in the Constitution: the ineligibility of priests and ministers to vote in elections and be elected to office, the reservation of land for the support and maintenance of a Protestant clergy, the appointment of incumbents to rectories of the Church of England.

The Constitution repealed only certain parts of the Quebec Act relating "to the Appointment of a Council for the Affairs of the said Province of Quebec, or to the Power given by the said Act to the said Council, or to the major Part of them, to make Ordinances for the Peace, Welfare and good Government of the said Province".⁹ Thus, the statutes of 1774 concerning freedom of worship remained in effect.

a. Section XXI of the Constitution reads as follows:

Provided always, and be it further enacted by the Authority aforesaid, That no Person shall be capable of being elected a Member to serve in either of the said Assemblies, or of sitting or voting therein, who shall be a Member of either of the said Legislative Councils to be established as aforesaid in the said Two Provinces, or who shall be a Minister of the Church of England, or a Minister, Priest, Ecclesiastic, or Teacher, either according to the Rites of the Church of Rome, or under any other Form or Profession of Religious Faith or Worship.¹⁰

This prohibition did not exist for the Legislative Council which was not elected, and the Bishop of Quebec, Bishop Plessis, was a member of this Council from 1818 to

⁹ Ibid., I, p. 1031, No. 1.

¹⁰ Ibid., I, p. 1038.

1825. Likewise, the Anglican Bishop, Jacob Mountain, who sat on the Council from 1794 to 1825.¹¹

b. Sections XXXV to XXXVIII deal with the support of the Anglican clergy.

Section XXXV recalls how the Quebec Act provided that the Catholic clergy could "hold, receive, and enjoy their accustomed Dues and Rights",¹² that the King could make provision for the "Maintenance and Support of a Protestant Clergy",¹³ and that no Catholic priest "should be entitled to receive any Tythes for Lands or Possessions occupied by a Protestant",¹⁴ and then proceeds to state that such shall continue to remain in effect until expressly repealed.

Section XXXVI declares the intention of making a "permanent Appropriation of Lands [...] for the Support and Maintenance of a Protestant Clergy"¹⁵ consisting of "the

11 The various election laws passed by the Legislature of Lower and Upper Canada, and by the Legislature of Quebec did not change this situation for a long time. It was only in 1895 that a new electoral law (59 Victoria, c. 9) stipulated that Priests could then be candidates, but not returning officers, deputy returning officer, election clerks or scrutineers. This last restriction was removed in 1936.

12 Documents, I, p. 1043, No. 35.

13 Ibid.

14 Ibid.

15 Ibid., I, p. 1044, No. 36.

Seventh Part of the Lands" granted by the Crown to others.¹⁶

Section XXXVII prescribed that any "Rents, Profits or Emoluments, which may at any Time arise from such Lands so allotted and appropriated as aforesaid, shall be applicable solely to the Maintenance and Support of a Protestant Clergy within the Province in which the same shall be situated, and to no other Use or Purpose whatever".¹⁷

Section XXXVIII states that the Governor may be authorized to erect parsonages and endow them with part of the lands already appropriated.¹⁸

c. The remaining sections concerning religion deal with the appointment of incumbents¹⁹ and the subjection of ministers to the Anglican Bishop of Nova Scotia,²⁰ who at that time had ecclesiastical jurisdiction throughout British North America.²¹ Any Act altering these statutes must have prior Royal approval.²²

16 Ibid., I, p. 1045.

17 Ibid., I, p. 1045, No. 37.

18 Ibid., I, p. 1045, No. 38.

19 Ibid., I, p. 1046, No. 39.

20 Ibid., I, p. 1046, No. 40.

21 Ibid., I, p. 838.

22 Ibid., I, p. 1047-1049.

The clauses as such, while quite restrained in scope, gave rise to numerous difficulties which marked this period of Canadian history. We shall now briefly allude to the immediate results of this Act; the far-reaching consequences being considered in the second section of this chapter.

3. The immediate results of the Constitutional Act of 1791.- The first result, which became more evident in Dorchester's instructions as Governor of Upper and Lower Canada, was the establishment of a "State-Churchism" in favour of the Anglican Church which, according to one author, was "in itself an infringement on the rights of citizenship, a violation of liberty of conscience, and a gross perversion of the spirit of Christianity".²³ While it might not be necessary to go so far, it is certainly evident that numerous abuses were to creep in.

The determination of the expression "the Seventh Part of the Lands" led in itself to controversy, whether the lands "should be equal to one-seventh of the whole in which they were divided" or to "one-seventh of the whole, thus making the Clergy Reserves actually equal to one-sixth part of all the lands granted for other purposes".²⁴

²³ E. R. Stimson, History of the Separation of Church and State in Canada, second edition, Toronto, 1887, p. 29.

²⁴ Ibid., p. 29.

While freedom of worship was still allowed to Catholics, the Church of England became all the more established, leaving other Protestant denominations in an uncomfortable situation.

The Act provided for the repeal or revision of Acts concerning Church matters by the Legislative Council and Assembly of each Province.²⁵ In the early years of the XIXth Century, many such laws were passed by the Governments, and these shall be examined in due time.

Opposition to the Act remained strong, and attempts were made to have it repealed, especially in 1822. However, it remained substantially in effect until 1840.

Having seen that the Constitutional Act of 1791 did not change the juridical situation of the Catholic Church, but retained the provisions of the Quebec Act of 1774, we can now proceed further and examine the relationships that existed between the Governments and the Catholic Church as a result of this Constitution.

B. Relationships between the Government of Lower Canada and the Catholic Church

In considering the questions of relationships between the Government of the Province of Lower Canada and the

²⁵ Documents, I, p. 1043-1044, No. 35.

Catholic Church from 1791 to 1840, we could study three points: the appointment of Catholic bishops, laws concerning Church property, and the status of the Church as considered by the Government.

1. Episcopal appointments in Lower Canada from 1791 to 1840.- It is not our intention to review the history of this question which has already been treated in detail.²⁶ However, many points are of particular interest for the study of the juridical situation of the Catholic Church.

One of the greatest obstacles the Church had to overcome after the Conquest and until the middle of the XIXth Century was the protection of its right to appoint bishops to its sees. The Treaty of Paris and the Quebec Act had granted freedom of worship to Catholics, but the question of the appointment of a bishop or bishops lead to innumerable difficulties.

We have previously mentioned how the British Government decided to close its eyes on Bishop Briand's nomination.²⁷ A coadjutor was then chosen and approved by London. The first such coadjutor was approved by the Secretary of

²⁶ Lucien Lemieux, L'établissement de la première province ecclésiastique au Canada, Montreal, Fides, 1968, xxv-559 p.

²⁷ Cf. also L. Lemieux, op. cit., p. 9.

State in 1772.²⁸

Correspondence with Rome was still officially forbidden, the episcopal succession was still dependant on the good will of the Government, and the shortage of priests was still acute.

The Anglican Bishop of Quebec, Dr. Jacob Mountain, was appointed in June, 1793, and was given civil recognition in 1794 and appointed to the Legislative Council of both Provinces.²⁹ One of the greatest objections to the civil recognition of the Catholic Bishop of Quebec was the fact that two bishops would be appointed to the same See.

In a letter to Governor Robert S. Milnes, Bishop Mountain wrote:

If the Romish Bishop be recognized as the "Bishop of Quebec", if his Diocese be publicly acknowledged as "the Diocese of Quebec", what becomes of that Diocese which His Majesty has solemnly erected, and of the Bishop whom he has been graciously pleased to appoint thereto? To authorize the establishment of two Bishops of the same Diocese, of different religious persuasions, would be a solecism in Ecclesiastical Polity, which, I believe, never yet took place in the Christian world. To attempt the union of two different Churches with the State, would be, I humbly conceive, an experiment in the Licence of Government not less dangerous than novel.³⁰

²⁸ Ibid., p. 10.

²⁹ Ibid., p. 36.

³⁰ Bishop J. Mountain to Gov. R. S. Milnes, June 6, 1803, Public Archives of Canada (henceforth referred to as "PAC"), B 72, C.O. 42, vol. 122, p. 194-195. Cf. L. Lemieux, op. cit., p. 52.

Bishop Plessis succeeded Bishop Denaut upon the latter's death in 1806. He took the oath of office before Thomas Dunn, Administrator of Lower Canada.³¹ The political troubles of 1808-1810 led Bishop Plessis to a privileged position: the Governor asked him to have his priests read an official proclamation concerning the newspaper Le Canadien. Plessis obliged, thus paving the way for the elections of 1810. In 1812, the war against the United States broke out. The Bishop did his utmost to work for the protection of the country, urging the people to enrol in the militia.³²

In July 1813, in return for his services, Plessis was given an annual allotment of £1000 sterling, and was called Catholic Bishop of Quebec,³³ but just in passing. The Prince Regent would have done more, but he felt bound by the Statute of 1 Elizabeth (1559) which prohibited Catholicism. On June 5, 1817, Bathurst wrote to Sir John C. Sherbrooke concerning the situation.

31 L. Lemieux, op. cit., p. 56.

32 Ibid., p. 77.

33 Ibid., p. 78.

I had written the dispatch N^o 99 but two days before I had the Honor of receiving your dispatch N^o 105 enclosing the duplicate of a Memorial from the Roman Catholic Bishop of Quebec and have delayed the Mail in order to answer it forthwith.

When this Memorial was first under my consideration I contented myself with advising The Prince Regent to consent to an augmentation of his Salary to such an Amount as would make his emoluments equal to what upon a fair calculation they would have been, had every thing continued so far as belongs to the emoluments of the Roman Catholic Bishop precisely in the same state in which it was when Canada became a part of His Majesty's Dominions. [...]

As the Laws of Great Britain prohibit Popish Hierarchy in any of His Majesty's Dominions, it must be clear that all measures which tend to establish such a power must be adopted with great circumspection, and it can only be upon a very favorable construction of the spirit of the Laws now in force, which can authorize His Majesty to acknowledge Dr du Plessis as the Roman Catholic Bishop of Quebec. Nor should I have now advised His Royal Highness to consent to this acknowledgement unless Dr du Plessis had conducted himself as to have shewn by his zeal and loyalty to His Majesty that he is entitled to a distinction which none of his Predecessors have enjoyed, that of a Seat in the Legislative Council. But you will have observed that neither this distinction, nor the acknowledgement are to be considered hereafter as matters of course, but must depend upon the circumstances of the case and the experience of the benefits which I flatter myself the Province will derive from this conciliatory measure.³⁴

Again, the next day, Bathurst wrote to Sherbrooke giving the official announcement of the Bishop's appointment to the Legislative Council.

³⁴ Bathurst to Sherbrooke, June 5, 1817, PAC, G. 1, Vol. 9, p. 151-154. Cf. L. Lemieux, op. cit., p. 83.

I have not failed to take into consideration your separate and confidential dispatch of the 1st Jan^y last in which you suggest the expediency of calling Dr Duplessis to a seat in the Legislative Council of the Province, and also the suggestion which has been conveyed to me that it would be very acceptable to him to be recognized Bishop of the Roman Catholic Church of Quebec, in a more formal manner than has hitherto been practiced since the time that the Canadas have become part of His Majesty's Dominions.

I do entirely concur with you in opinion as to the merits and public services of that Prelate that I most gladly avail myself of any opportunity of evincing the sense which His Majesty's Government entertain of the uniform propriety of his conduct during the whole time that he has filled the situation of Superintendent of the Romish Church. I have therefore not hesitated in submitting your recommendation of Dr. du Plessis to the favorable consideration of His Royal Highness the Prince Regent and I shall have much pleasure in conveying to you His Royal Highness' Mandamus Appointing Dr. du Plessis to the Legislative Council by the style and title of the "Bishop of the Roman Catholic Church of Quebec."

't the same time you will take care that the acknowledgement of the persons who may from time to time receive the Ecclesiastical situation now filled by Dr. du Plessis, as Roman Catholic Bishop of Quebec, must not be considered as a matter of course, but that they cannot expect to be authorized to assume that Title until His Majesty shall either by the Act of calling them to the Legislative Council, or some formal instrument have recognized them under that denomination.³⁵

While, as mentioned in Bathurst's correspondence, this civil recognition was not to apply necessarily to future bishops of Quebec, in fact the precedent was established and was to be maintained. It also became necessary to create other bishops, the territory of the diocese being too vast

³⁵ Documents, II, p. 556.

for one bishop to administer alone. As of 1817, Bishop Plessis had his Vicar General, Alexander Macdonell, begin negotiations with the Secretary of State, Lord Bathurst.³⁶ London seemingly had no objection at this time to the nomination of Vicars Apostolic in Canada, and informed the Holy See of this on April 30, 1817.³⁷ However, the British Government was not favourable to the idea of erecting other diocesan sees as such; there was no question for the time being of establishing an ecclesiastical hierarchy in Canada.

The whole matter of civil recognition arose again in 1825 at Bishop Plessis' death. New officials were now in function in London, and previous agreements had been forgotten. The question was whether the nomination of a Catholic bishop in Canada could legally be made by the King either under the great seal of England or under that of the Province. It was judged that to do so in either way would be to derogate and almost alienate the King's supremacy. It was finally decided simply to accept the fact without approving or disapproving, thus protecting the King's supremacy and not offending Rome.³⁸

36 Cf. L. Lemieux, op. cit., p. 93.

37 Ibid., p. 94.

38 Ibid., p. 228.

While dioceses were erected in the 1820's elsewhere in Canada, the British Government was continually opposed to the erection of a see at Montreal. It was only in 1836 (May 26th) that Glenelg, Secretary of State for the Colonies, gave "permission" for the appointment of a bishop in this city.³⁹

The British Government's policy was one of expediency. In the Instructions issued to Governors of Canada from 1775, it was stated that in order to protect the King's Supremacy in all matters ecclesiastical, as well as civil,

First, that all Appeals to, or correspondence with any foreign ecclesiastical jurisdiction, of what nature or kind so ever, be absolutely forbidden under very severe Penalties.

Secondly, That no Episcopal or Vicarial Powers be exercised within Our said Province by any Person professing the Religion of the Church of Rome, but such only, as are essentially and indispensably necessary to the free exercise of the Romish Religion; and in those cases not without a License and Permission from you under the Seal of Our said Province, for, and during Our Will and Pleasure, and under such other limitations & restrictions, as may correspond with the spirit and provision of the Act of Parliament, "for making more effectual provision for the Government of the Province of Quebec;" And no person whatever is to have holy Orders conferred upon him, or to have the Cure of Souls without a Licence for that purpose first had or obtained from you.⁴⁰

³⁹ Glenelg to Gosford (Archibald Atcheson), Governor of Canada, 1835-1838, May 26, 1836, PAC RG 7, G.L., Vol. 31, part. II, p. 398-405.

⁴⁰ Documents, I, p. 603.

These claims by the Crown seem to be based on the conviction that by the Conquest, the King of England had succeeded to the King of France, and that all the rights and privileges of the latter over the Bishop of Quebec had been transferred to him. That is why in the mind of the Government there was no Catholic bishop in Canada until such time as Bishop Plessis had been named so by the King more than fifty years after the conquest. It was indeed fortunate that most of the King's representatives in Lower Canada were satisfied with intervening indirectly in the nomination of bishops. Some had shown considerable zeal in trying to place the Catholic Church under the royal supremacy. But even if for more than twenty years, the Bishops of Quebec were recognized as such, the same pretensions subsisted. Faced with the Government's efforts to break the bonds which existed between the Catholic Church in Canada and the Holy See, especially during the first sixty years of British rule, the bishops had felt the necessity of obtaining the good graces of the political leaders by having them participate to a certain extent in the nomination of their coadjutors. On the other hand, the Governors, moved by reasons of political expediency and forced to adapt themselves to changing situations, had most often agreed to the wishes of the bishops. Seeing the satisfactory results thus attained, the Holy See had approved the procedures followed up to 1826. The King had not been considered

to have renounced his supremacy, and the rights of the Holy See were unassailed.⁴¹

Since the principle of the existence of bishops was admitted in practice if not in theory, the next logical step was to have an archbishop appointed in charge of an ecclesiastical Province to be erected in Canada. However, the Anglican Church did not have such an organization in the country, and would not have one until 1860.⁴²

According to Marcel Trudel, the main reason why the Government refused to consent to the establishment of an ecclesiastical Province was the fact that it felt obliged to dominate the Catholic Church. Bishop Bourget of Montreal stated that Governor Thompson had declared that it was not convenient for the Government to have to deal with many bishops and that he preferred Sir James Kempt's opinion that it would be preferable to have only one to whom all affairs concerning Church-State interests would be referred. In a system of union of Church and State, there must be but one spokesman; when more than one residential bishop exists, the State loses its control and its efforts come to naught.⁴³

⁴¹ Cf. L. Lemieux, op. cit., p. 360-361.

⁴² Ibid., p. 518.

⁴³ Cf. Marcel Trudel, La servitude de l'Eglise catholique du Canada français sous le régime anglais, in La Société canadienne d'Histoire de l'Eglise catholique, Rapport 1963, p. 30.

It was only in 1846, after the Act of Union, that the Government finally accepted the principle of an ecclesiastical Province.⁴⁴

During this same period, many laws were passed by the Legislature of Lower Canada dealing with matters of Church property holdings. We shall now mention some of these statutes, describing their principal effects.

2. Laws affecting Church property holdings.— The principal statutes of Lower Canada affecting Church property holdings in the period we are now concerned with, were passed in 1791, 1824, 1830, 1831 and 1839. We shall examine these acts to see what were the conditions imposed for ownership of Church property, and to recognize the rights granted by law to the Catholic Church during this period.

a) Statute concerning the building of churches (1791).— The Statute of April 30, 1791, is one of the first acts passed by the new Legislative Assembly of Lower Canada, and has been called the first "charter of the Catholic parish in the British Empire since the Reformation";⁴⁵ it is the Act or

⁴⁴ W. F. Gladstone (Secretary of State for the Colonies) to Earl Cathcart (Charles Murray, Count of Cathcart, Governor General), April 10, 1846, PAC B-864, C.C. 43, vol. 146, p. 336-338.

⁴⁵ Cf. Paul Bernier, La situation juridique de la paroisse au Canada français, in Actes du Congrès de Droit canonique, Paris, Letouzey et Ané, 1947, p. 167.

ordinance concerning the building and repairing of Churches, parsonage houses and Church yards. This ordinance states

that whensoever it shall become expedient to form parishes or build or repair Churches or Parsonage Houses or Cemeteries, the same course shall be pursued as was requisite before the conquest, according to the Laws and Customs at that time in force and practice, and that the Bishop or Superintendant of the Romish Churches for the time being, shall have and exercise the rights of the then Bishop of Canada for the purposes aforementioned, and that such rights as were then in the Crown of France and exercised by the Intendant and Provincial Government of that day, shall be considered as vested in the Governor or Commander in Chief for the time being.⁴⁶

This ordinance was quite important: the laws in effect before the conquest were maintained, and the rights of the "Bishop" affirmed. The law did not specify whether the formation of new parishes included the division of existing ones, or was limited to territories previously undivided.

The Judicature Act of 1794 provided that the prescriptions of the statute of 1791 would not be revoked or repealed, in spite of certain objections raised in the meantime.⁴⁷

⁴⁶ Text in S. Pagnuelo, Etudes historiques et légales sur la Liberté religieuse en Canada, Montreal, C. O. Beauchemin, 1872, p. 65-66. (Lower Canada Statutes, 31 George III, c. 6).

⁴⁷ Cf. S. Pagnuelo, op. cit., p. 93; Documents, II, p. 415, also p. 128.

In 1805, the validity of the Act of 1791 was tested before the courts.⁴⁸ Its legality was maintained by the Court of the King's Bench and the judgment appealed.

Objections against the legality of the Act were drafted by Attorney General J. Sewell and presented to the Government on November 11, 1806. They consisted in stating that the Act had not received Royal assent, that it infringed upon the rights of the Crown, and was ultra vires.

In view of the complicated situation, Chief Justice Monk was asked by Governor Craig to present an opinion on the power of erecting Catholic parishes in Lower Canada. His report is dated August 10, 1810.⁴⁹ Without declaring openly whether he is for or against the law, Monk recalls certain other facts which must be considered.

⁴⁸ Cf. ibid., p. 88: 'Lavergne vs. Bertrand; cf. also Documents, II, p. 415.

⁴⁹ Documents, II, p. 413-316.

Whatever may be my opinion upon the legality or the nullity of the ordinance above stated, I cannot forbear to represent to Your Excellency that many endeavors have been made to draw the question into legal discussions and judicial determination; and that on all such occasions, I have perceived those attempts to have created very considerable agitation and reasonings, tending to excite the public mind in a manner highly prejudicial to the Royal prerogative, and the Constitutional Government of this Colony. Nor can I entertain a doubt that any thing less than His Majesty's direct and express interposition upon the subject, would prevent the prejudicial agitation which may in my mind, be expected through the medium of various sources, that from the late disturbed state of the Colony, Your Excellency must but too clearly comprehend.

And I beg leave to add, that Your Excellency must fully perceive the serious import of a legal controversy, so novel in His Majesty's Colonial Courts of Law; and upon a question that may involve so extensive and so animated an interest, in support of an Act of the Provincial Legislature, that by Roman Catholic subjects may be represented as indispensably requisite to the powers of "their Bishop", and the free exercise of their religion, and that has subsisted and been acted upon, under circumstances so peculiar, and for so long a period of time; and the very great import of a colonial judicial determination - if such should be made - that this Act of the Governor and Legislative Council, so circumstances, was a nullity in law.⁵⁰

It was judged advisable in final analysis to leave things stand as they were. This Act was never repealed.⁵¹

b) The Elementary School Act (1824). - The Statute of March 9, 1824, was one in a series of Provincial proclamations

⁵⁰ Ibid., II. p. 415.

⁵¹ Cf. Paul Bernier, La situation juridique de la paroisse au Canada français, p. 167. The Provincial Statute 51-52 Victoria, c. 74 (1888), granting to canonically erected parishes the status of civilly erected ones, rendered the Act of 1791 obsolete.

concerning the right granted to the Church to have and direct its own schools.

In 1801, the Royal Institution for the Advancement of Knowledge was established by law. The purpose of this Act was to establish schools where English would be taught free of charge. However, a school would be built only upon a petition to the Governor signed by the majority of the population of a town.⁵² The clergy persuaded the faithful not to petition for such schools, and the law remained almost a dead letter.

The law of 1824 established the "écoles de fabrique" throughout the Province. The parish was allowed to purchase property for such schools, and one school could be established for every two hundred families.⁵³

This law was subsequently modified in 1827⁵⁴ (7 George IV, c. 20), increasing the value of the land the fabrique was allowed to set aside for educational purposes.

⁵² "An Act for the Establishment of Free Schools and the Advancement of Learning in this Province", Lower Canada Statutes, 1801, 41 George III, c. 17, section VIII.

⁵³ Cf. S. Pagnuelo, op. cit., p. 198-199. "An Act to facilitate the establishment and the endowment of Elementary Schools in the Parishes of this Province", Lower Canada Statutes, 1824, 41 George IV, c. 31.

⁵⁴ Lower Canada Statutes, 1827, 7 George IV, c. 20.

In 1836, another statute established Normal Schools, with the cooperation of the clergy.⁵⁵

c) The Religious Congregations Relief Act (1830)⁵⁶. - Besides the Catholic Church and the Church of England,⁵⁷ there were also other religious groups in the Province: members of the Jewish faith and of the Wesleyan community, to mention only two. These did not enjoy any legal existence in the territory of Lower Canada.

Numerous doubts had arisen concerning the marriages performed by ministers of these and other communities. In 1804,⁵⁸ it was declared that marriages performed since the conquest would be considered valid, but this statute did not apply to marriages contracted after 1804. As of 1825, the Legislative Assembly had passed a bill in favour of the Methodists, but this did not meet the approval of the Legislative Council. Royal assent was refused until another

⁵⁵ Cf. S. Pagnuelo, op. cit., p. 200. "An Act to provide for the establishment of Normal Schools", Lower Canada Statutes, 1836, 6 William IV, c. 12.

⁵⁶ Cf. Georges-Michel Giroux, La situation juridique de l'église catholique dans la province de Québec, in La Revue du Notariat, 48 (1945), p. 115. (Lower Canada Statutes, 1830, 10-11 George IV, c. 58).

⁵⁷ This also included the Church of Ireland and the Church of Scotland; see Imperial Statute, 7 George IV, c. 2.

⁵⁸ Cf. S. Pagnuelo, op. cit., p. 163-164. (Lower Canada Statutes, 44 George III, c. 2).

revised bill was passed. It was only in 1829 that representatives of other Churches were authorized to maintain registers of births, marriages and burials. A similar statute in favour of the members of the Jewish faith was also approved in the same session.⁵⁹

The statute of March 26, 1830, is entitled An Act for the relief of certain Religious Congregations therein-mentioned, and was completed by a later ordinance of the Special Council.⁶⁰ The act is one of the most important texts of the period we are studying in favour of freedom of worship in Lower Canada. The act was presented for Royal approval on March 26, 1830, and proclaimed law on April 29, 1831.

The main purpose of the law was to guarantee title to land necessary for Church purposes and for holding schools, besides confirming all titles held previous to the passing of the act.⁶¹

The Presbyterians obtained the right to keep public records in 1831.

In 1839, the Special Council established after the troubles of 1837 in Lower Canada issued four ordinances, the

⁵⁹ Ibid., p. 164. (Lower Canada Statutes, 9 George IV, c. 75 & 76).

⁶⁰ Cf. Lower Canada Statutes, 2 Victoria, c. 15.

⁶¹ Cf. S. Pagnuelo, op. cit., p. 172, section 5.

third of which concerned the Statute of 1830. It prescribed that any parish, mission, or society of Christians which did not form a parish recognized by the civil law of the Province, could acquire goods for their religious purposes. In other words, it created corporations of these bodies, allowing them to own two hundred acres of land outside the limits of Montreal and Quebec.⁶² The Church of England was not included in these regulations.

Thus, by this law and its subsequent modifications, all Christian religions, with the exception of the Church of England, were free of government control in the acquiring of lands for worship and education.

This law gave civil recognition not only to canonically erected parishes, but also to new missions. It would have a good effect in fostering colonization of new areas since the Church would be able to accompany the settlers. Every mission and parish obtained legal existence for religious purposes.

d) Civil erection of parishes act (1831).- The Statute of 1831 came about as the result of the creation of new parishes by ecclesiastical authorities alone, without the intervention of civil government.

62 Cf. Revised Statutes of Lower Canada, c. 19.

A commission was to be set up in each district where a new parish had been established, to determine its exact limits and boundaries.

The importance of this Statute lies in the fact that all government claims to the right of erecting Catholic parishes were withdrawn. The Act did not give the House or the Governor the right to erect parishes; rather, it recognized the Bishop's decree as sufficient for civil erection. It was only the question of parochial limits and boundaries that was to be examined by the commission.

The State could refuse to recognize a new canonical parish for its civil effects, but it could not erect a Catholic parish of its own accord. Nor was it necessary to have civil and canonical boundaries coincide.⁶³

e) Civil and Canonical Erection of Parishes (1839).-

The last Statute we will mention in this section is dated March 3, 1839. It provided not only for the civil erection of parishes by five prefects named for each district, but also for the formalities of canonical erection by the bishop. It also regulated the procedure for paying building expenses

⁶³ Cf. S. Pagnuelo, *op. cit.*, p. 179-181. Louis-Philippe Pigeon, Législation civile des paroisses (Régime anglais), in La Revue du Barreau, 9 (1949), p. 51. (Lower Canada Statutes, 1831, 1 William IV, c. 51).

for churches, and so on.⁶⁴

These five statutes of 1791, 1824, 1830, 1831 and 1839 provide much of the current legislation on matters of ecclesiastical property. The period we are studying was certainly marked, as far as property holdings are concerned, by a spirit of liberality. All communities were empowered to own property of their choice (exception being made for the established Church), and the decrees of the Bishop were given civil effect automatically in most cases.

3. Laws concerning education in Lower Canada.- As early as 1770, before the Quebec Act, a petition had been forwarded to London for authorization to establish a French-speaking University at Quebec, the "Royalles Georges College". This petition was not accepted.⁶⁵

In 1789, a committee chaired by Chief Justice William Smith, was established to examine the state of education in Quebec and to propose means to eliminate ignorance. This committee, in turn, also proposed a state-sponsored University at Quebec. Bishop Hubert expressed his interest for the

⁶⁴ L. P. Pigeon, loc. cit., p. 58. (Lower Canada Statutes, 1839, 2 Victoria, c. 27). One omission in this law was corrected subsequently in 1841 by the Statute 4 Victoria, c. 23: provision had not been made for parishes that had been erected canonically previous to the Statute, but not civilly. The new Statute empowered the prefects to proceed with this civil erection.

⁶⁵ L. Lemieux, op. cit., p. 26.

proposal, but he found it slightly premature. He also wanted to know to what extent the Catholic religion would be respected, and what the Bishop's role would be.⁶⁶ His coadjutor, Bishop Bailly, did not agree with the Bishop and stated that a University was indispensable. Bishop Hubert clarified his position and stated his preference for aid to existing institutions. He was concerned about the State's taking over the field of education.⁶⁷

The report was sent to London recommending parochial primary schools and regional secondary ones. Education would be free of charge. A portion of the revenues from the Jesuit estates would be used for the new proposed University in Quebec. London preferred waiting until the new Constitution was in effect. In fact, it took ten years before any change was made.

In 1795, a bill was introduced by which English-speaking and Protestant teachers would be placed in each parish. English would be taught free of charge, and a slight fee requested for other courses. Dorchester refused his consent for this bill. In 1799, after Milnes' arrival, Bishop Mountain proposed to have a system of free primary

66 Ibid., p. 26.

67 Ibid., p. 27.

schools approved with teachers on the government payroll.⁶⁸

On April 8, 1801, a statute was passed and officially proclaimed on August 12, 1802. This "Act for the Establishment of Free Schools and the Advancement of Learning in this Province" authorized the establishment of schools and institutions "for the purposes of Education". Bishop Plessis is said to have stated that the clergy and people must have been napping when the bill passed.⁶⁹

The Act provided that the Trustees could make necessary rules for "the direction, conduct and government" of the schools (Section IV). The Governor could establish free schools in any parish or township of the Province (Section V).

However, the bill, as mentioned earlier, was doomed to failure because of one restriction it contained:

[...] no School-house or School-houses shall be erected in manner aforesaid in any Parish or Township, unless a majority of the Inhabitants of such Parish or Township, shall present a Petition to His Excellency the Governor [...] praying to have a School or Schools established therein.⁷⁰

It seems as though the clergy persuaded the people not to petition for such schools, and the act remained almost

⁶⁸ Ibid., p. 44.

⁶⁹ S. Pagnuelo, op. cit., p. 101. (Lower Canada Statutes, 41 George III, c. 17).

⁷⁰ Section VIII, Lower Canada Statutes, 1801, 41 George III, c. 17.

without effect.

In 1803, Royal approval was given for land grants for the establishment of two colleges in Quebec and Montreal.⁷¹

In 1824, "An Act to facilitate the establishment and the endowment of Elementary Schools in the Parishes of this Province" was passed, authorizing every "Fabrique" to found and support "one or more Elementary School or Schools within the Parish to which such Fabrique shall belong" (Section I).⁷²

An additional school was authorized for each hundred families after an original minimum of two hundred (Section IV). One quarter of the "Fabrique's" reserves could be spent on the school (Section VI).

This act was clarified on March 7, 1827 by "An Act declaratory to explain the provisions of an Act passed in the fourth year of His Majesty's Reign, chapter thirty-one, relating to Elementary Schools in this Province",⁷³ but no changes were made in the educational provisions of the first bill. Some years later, in 1845,⁷⁴ the "Fabrique" was

71 S. Pagnuelo, op. cit., p. 197.

72 Lower Canada Statutes, 4 George IV, c. 31.

73 Lower Canada Statutes, 7 George IV, c. 20.

74 United Canada Statutes, 9 Victoria, c. 27.

authorized to unite its school to the parochial one where such existed.

On March 21, 1836, "An Act to provide for the establishment of Normal Schools"⁷⁵ was passed by the Legislature. It provided for certain sums of money for the education of young girls in convents in Quebec, Trois-Rivières and Montreal. It also called for the active cooperation of the "Bishops, Vicars-General, Archdeacons, Rectors, Curates, Pastors and other Priests and Ministers of Religion" in the organization of these schools.

These are the principal pieces of legislation of the period relative to education.

Another area of difficulty that could be mentioned briefly in passing is the question of the Jesuit estates and the property holdings of the Sulpicians. In 1831, the Imperial Government surrendered to the Province of Lower Canada the confiscated estates of the Jesuits for educational purposes in the province.⁷⁶ Another statute of 1840 incorporated the Sulpicians and finally confirmed title to the Seignories in Quebec. The revenues were to be used for

⁷⁵ Lower Canada Statutes, 6 William IV, c. 12.

⁷⁶ "It was not until 1888, long after Confederation, that all claims on this property were finally disposed of by provincial appropriations, including a grant to the Jesuit Order", J. F. Kenney, loc. cit., p. 469. Cf. Lower Canada Statutes, 2 William IV, c. 41.

[...] the instruction and spiritual care of the Algonquin and Iroquois Indians; the support of the Petit Séminaire or College at Montreal; the support of Schools for children within the Parish of Montreal; the support of the poor Invalids and Orphans; the sufficient support and maintenance of the Members of the Corporation, its officers and servants; and the support of such other religious, charitable and educational institutions as may from time to time be approved and sanctioned by the Governor, [...] and to or for no other objects, purposes, or intents whatsoever.⁷⁷

Having examined the situation of education in Lower Canada from 1791 to 1840, we can now proceed to study the juridical status of the Catholic Church in Lower Canada from 1791 to 1840.

4. The juridical status of the Catholic Church in Lower Canada from 1791 to 1840.- Many difficult situations arose in this period, and some are quite difficult to evaluate. A mixture of politics, nationalism and religion makes an objective analysis of these happenings even more difficult.

We will divide our considerations into two parts:
a) the Instructions to the Governors during the period; b) the efforts of Craig, Ryland and Mountain to reunite the two Provinces and place the Catholic Church under Government patronage.

⁷⁷ United Canada Statutes, 3 Victoria, c. 30, section II.

a) Instructions to Governors.— Sir Guy Carleton, now Lord Dorchester, was reappointed Governor of Lower and Upper Canada in 1791. The instructions he received at that time are still similar in content to those given to his predecessors after the conquest.

Section 44⁷⁸ enumerates his responsibilities concerning religious matters: no appeals to any foreign ecclesiastical jurisdiction; necessity of a licence to exercise ecclesiastical power; prayers for the Royal family in Church and the erection of the Royal Coat of Arms. In subsequent years, considerable attention was to be given to the non-observance of these instructions, and we will return to this matter further on.

One new section added to the Instructions to Dorchester, contains the following clause:

You are to permit Liberty of Conscience, and the free Exercise of all such modes of Religious Worship as are not prohibited by Law, to all Persons who inhabit and frequent the Province of Lower [Upper] [sic] Canada, provided they be contented with a quiet and peaceable enjoyment of the same, without giving offence or scandal to Government.⁷⁹

This clause was maintained and enunciated in the Instructions given to the various Governors in Upper and

78 September 16, 1791, in Documents, II, p. 24-26.

79 Ibid., II, p. 26, section 46. Cf. also James F. Kenney, Relations Between Church and State in Canada since the Cession of 1763, in The Catholic Historical Review, 18 (1933), p. 457, 458.

Lower Canada, and is still found in those addressed on September 7, 1839, to Charles Poulett Thomson, last Governor before the Union.⁸⁰

It is of interest to note that in the instructions issued to the Earl of Dalhousie, April 13, 1820, the 11th and 12th clauses of the previous instructions to Dorchester are omitted. These concerned the holdings of the Sulpicians and the Jesuits. In the special instructions to the Earl of Durham, April 2, 1838, it is declared of the previous instructions in general that they are in many respects obsolete, inapplicable, or superseded by later statutes.⁸¹

In the instructions issued to Thomson, now Lord Sydenham, as governor of the United Province of Canada, August 30, 1840, the directives of 1775 regarding the Catholic Church finally disappear.⁸²

b) Efforts to restrict the Church's civil freedom.-

In this section we will try and limit our considerations to a study of the official correspondence of the period, as found in the National Archives of Canada and in some printed sources.

80 Cf. J. F. Kenney, loc. cit., p. 458.

81 Ibid., p. 458.

82 Ibid., p. 471.

A modus vivendi had been established between the British Government and the Catholic Church in Canada during the generation which followed the conquest. However, as time went on, especially at the beginning of the nineteenth century, a determined effort was made to reverse the policy adopted by the first Governors, and to force the Catholic Church back into its previous legal position, which could be described as one of simple toleration, such as had been defined in the official Instructions of 1775.⁸³

Sir Robert Shore Milnes, Lieutenant-Governor of Lower Canada, wrote on November 1, 1800, to the Duke of Portland, Secretary of State, explaining what he considered to be the causes of the wavering state of the Government of the Province, and asking that measures be taken to strengthen the Executive Power in Lower Canada and the influence of the Aristocracy. The first cause he mentions is "the manner in which the Province was originally settled". The third cause was the disembodiment of the Militia.

⁸³ Cf. D. J. McDougall, Some Problems of Church and State in Canada and Ireland, 1790 to 1815, in Report 1940-1941, The Canadian Catholic Historical Association, p. 21-23.

The second cause is

the prevalence of the Roman Catholic Religion and the Independence of the Priesthood: this Independence I find goes considerably further than what was intended by the Royal Instructions wherein it is particularly declared to be His Majesty's Pleasure "that no person whatsoever is to have Holy Orders conferred upon him, or to have the Cure of Souls without a License for that purpose first had and obtained from the Governor" &c.&c. But this Instruction has hitherto never been enforced, by which means the whole Patronage of the Church has been thrown into the hands of the Roman Catholic Bishop, and all connexion between the Government and the People through that Channel is cut off, as the Priests do not consider themselves as at all amenable to any other Power than the Catholic Bishop.⁸⁴

Milnes then went on to say that Bishop Pierre Denaut was "extremely well disposed to Government", and recommends an increase in his salary in return for "a strict attention to that part of His Majesty's Instructions to the Governor which I have before mentioned".⁸⁵

Portland replied to Milnes on January 6, 1801. He stated that he was "not aware of the causes that have led to a disregard" of the King's Instructions, and held that the resumption of all powers "not only to be of the first importance, but so indispensably necessary, that I must call upon you to endeavour to effect it by every possible means

⁸⁴ Documents, II, p. 249-250.

⁸⁵ Ibid., p. 252.

which prudence can suggest".⁸⁶ He is even favourable to increasing the Bishop's salary. However, nothing was done immediately to change the situation.

On December 23, 1804, Herman W. Ryland, Clerk of the Executive Council, prepared a letter, but without indicating its destination, stating that the Government must use "every possible means which prudence can suggest, gradually to undermine the authority and influence of the Roman Catholic Priest".⁸⁷ He wanted the Crown to appoint a corporation for the purposes of public education, using the Seminary estates, and to give "a handsome stipend" to the Bishop and his coadjutor. He restates Milnes' position of 1800. Draft letters patent were prepared for the appointment by the King of a "Superintendent Ecclesiastical for the affairs of our Church of Rome in the Province of Lower Canada", but these were never consented to.⁸⁸

At the beginning of 1810, Chief Justice Sewell presented to Governor James H. Craig his opinion on the advisability of reuniting the two Provinces of Upper and Lower Canada. He considered that by the Quebec Act, the Roman

⁸⁶ Ibid., p. 256.

⁸⁷ Robert Christie, A History of the Late Province of Lower Canada Parliamentary and Political, Montreal, Richard Worthington, 1866, Vol. VI, p. 73.

⁸⁸ Ibid., p. 308-311.

Catholic Religion was "established" in the Province.⁸⁹ To overcome obstacles, it will be necessary to "sink the Canadian population by the introduction of a greater population of English Protestants".⁹⁰

A reunion of the two Provinces would increase the English representation in the Legislature, and "annihilate" the influence of the "Roman Catholic Priesthood in the Legislature".⁹¹ He continues:

Among the means to be adopted for increasing the power and influence of the Crown, I know of none which, after those which I have mentioned, would be so immediately efficacious as to increase the patronage of the Governor by resuming and exercising the King's right to appoint incumbents to all the Roman Catholic livings in Canada under the sanction of a declaratory act of the Imperial Parliament; but as his Majesty's right to make such appointments may be doubted, because antecedent to the conquest, that right was vested in the then Roman Catholic Bishop of Quebec, I shall beg leave to lay before your Excellency the grounds upon which, in my opinion, it is now vested in his Majesty.⁹²

Sewell proceeds to recall the historical facts of the conquest, demonstrating what he considers to be the King's right to appoint to all offices.

This letter marks the beginning of another period in a long and tedious effort in 1810-1811 to force the Catholic

⁸⁹ R. Christie, op. cit., V, p. 399.

⁹⁰ Ibid., V, p. 400.

⁹¹ Ibid., V, p. 403.

⁹² Ibid., V, p. 404.

Church back into its legal position of bare toleration.

On May 1, 1810, Governor Craig sent a long report to Lord Liverpool, and outlined many possible solutions. This report is one of the key documents of the period as far as the question of Church-State relationships is concerned.

Craig repeats a number of points raised by Milnes in his despatch of November 1, 1800, referred to above. In reference to the religious situation, he calls attention to the lack of governmental control over the Bishop.

This Bishop tho' unknown to our Constitution and confirmed, if not appointed by a Foreign Power, has been suffered to exercise every Jurisdiction incident to the episcopal functions, he nominates to all the benefices of the Province, and removes at his pleasure from one living, to another, and it is not an unfrequent circumstance, for an offence, or a supposed offence, to be punished by a degradation from a good Cure, to one of lesser emolument. His Patronage is at least equal to that of the Government, & it is so perfectly at his pleasure, that Government has no other notice of it, than that he usually once a year delivers to the Governor a list of such changes as have taken place during the preceding twelve months.
[...]

With the Curés themselves, no direct communication from the Government exists in any shape, a numerous and powerful body, dispersed in every corner of the Country, and certainly possessing a very considerable weight, and influence with the people.⁹³

Before coming to his recommendations, Craig summarized by repeating that "The Clergy under the general influence of attachment to France are further from religious motives

⁹³ Documents, II, p. 389.

decidedly our Enemies".⁹⁴ The Government is considered to be "destitute of all influence over the Clergy with whom it has scarcely a connection, and that this influence is entirely in the hands of an individual who holds his power under the confirmation at least of a foreign authority, which authority is now under the compleat direction of our inveterate Enemy".⁹⁵

Craig's recommendations are to suspend the Constitution,⁹⁶ reunite the two Provinces "so as to balance the Canadian Party in the House",⁹⁷ redivide the counties,⁹⁸ resume the King's right of nomination to ecclesiastical benefices,⁹⁹ increase the Bishop's salary, and resume the lands held by the Seminary at Montreal to make the Government less dependent on the people.¹⁰⁰

The Governor's recommendations were accompanied by the already-mentioned report of Chief Justice Sewell, and a petition from Bishop Denaut (since deceased) dated July 18,

⁹⁴ Ibid., II, p. 394.

⁹⁵ Ibid., II, p. 394.

⁹⁶ Ibid., II, p. 394.

⁹⁷ Ibid., II, p. 395.

⁹⁸ Ibid., II, p. 395.

⁹⁹ Ibid., II, p. 399.

¹⁰⁰ Ibid., II, p. 400.

1805, requesting civil recognition.

Mr. Ryland was sent to England to try and hasten the approval of these measures. In his private letter of instructions to his secretary, June 10, 1810, Craig states:

The resumption of the right of nomination to the Cures of the Roman Catholic Parishes, is an object of particular importance on which you will not fail to insist. [...] The resumption of the Estate, now in the hands of the Seminary at Montreal, is likewise an object of some importance.¹⁰¹

Additional instructions were issued on June 14, 1810:

Should His Majesty's Ministers be disposed to accede to what I have recommended with respect to the resumption of the patronage of the Romish Church, and wish to know in what way I think it most advisable the measure should be brought forward, you will inform the Secretary of State that, in my opinion, the most eligible means of accomplishing this object would be, by His Lordship's instructing me to inform Mr. Plessis, the present Roman Catholic Bishop, that the petition of his predecessor, the Revd. Mr. Denaut, of the 18th July, 1805, to the King, has been taken into serious consideration, that His Majesty is graciously disposed to accede to the prayer of the said petition by granting to the Roman Catholic Bishop the powers and authorities requisite to enable him to be recognized in the King's Courts, and for this purpose to grant him Letters Patent, appointing him to be Superintendent of the Romish Church in the Province of Lower Canada; that a salary suited to the dignity and importance of this office will be granted by His Majesty to the person holding the same.¹⁰²

The Instruction continued to the effect that the Government would confirm all parishes erected since the cession.

101 R. Christie, op. cit., V, p. 436-437.

102 Ibid., V, p. 441-442.

Ryland's visit to England was not very successful. The British Government was unwilling to return to Parliament asking to alter or suspend the Constitution. Ryland was also unable to do anything concerning the Sulpician properties. The Government also refrained from acting upon the suggestion of appointing to Ecclesiastical benefices, perhaps because it was deeply engaged in war at the time.

The law officers of the Crown reported on the right of presentation to benefices on July 3, 1811. They were of the opinion that "so much of the Patronage of the Roman Catholic Benefices, as was exercised by the Bishop of Quebec, under the French Government has of right devolved to His Majesty".¹⁰³ Concerning the Sulpician land titles, the law officers considered them to be illegal, but that since a possessory title had been tolerated for so long, it might be difficult to ignore it.¹⁰⁴

A new Governor, Sir George Prevost, was appointed to succeed Craig who retired in 1811, and a new policy of friendliness towards the Catholic Church was inaugurated.

As mentioned earlier, Bishop Plessis was finally given civil recognition and made a member of the Legislative Council

¹⁰³ Documents, II, p. 424.

¹⁰⁴ Ibid., II, p. 424. J. F. Kenney, loc. cit., p. 466-467.

of Lower Canada in 1817.¹⁰⁵

In 1822, efforts were made once again to reunite the two legislatures.¹⁰⁶ In the proposed text it was stated that nothing in the Act would affect the free exercise of the Catholic religion; concerning benefices, however, a new clause was inserted:

The clergy of the said Church and the several curates of each respective parish of the said Province of Lower Canada, now performing the clerical duties thereof, or who shall hereafter, with the approbation and consent of His Majesty, expressed in writing by the Governor or Lieutenant Governor, or persons administering the government of the said Province of Lower Canada for the time being, be hereto duly collated appointed or inducted, may continue to hold receive and enjoy their accustomed dues and rights in as full and ample manner, to all intents and purposes, as heretofore.¹⁰⁷

Draft forms of letters for the collation of Catholic benefices were prepared, emphasizing the Governor's approval of the Bishop's presentation.¹⁰⁸ These were never put into use.

The "Act" was withdrawn in the face of French-Canadian opposition and Upper-Canadian lukewarmness.¹⁰⁹ Lord

105 Documents, II, p. 556.

106 Ibid., III, p. 123.

107 Ibid., III, p. 130.

108 Ibid., III, p. 150.

109 Cf. W. P. M. Kennedy, Statutes, Treaties and Documents of the Canadian Constitution, 1713-1929, Toronto, Oxford University Press, 1930, p. 243.

Dalhousie had first signified his approval of the proposed bill,¹¹⁰ but then changed his mind. On December 22, 1822, he wrote to the Hon. John Hale:

In regard to Religion--the provision of this Bill was unnecessary, because it is the King's Prerogative and only requires an instruction to the Governor, as His Majesty's Representative to exercise it, but no further than as the Government does so in regard to the Bishop and Protestant Church.¹¹¹

On January 19, 1823, Sewell wrote to Dalhousie on the question:

I have attentively considered the enclosed Papers and shall frankly express my earnest hope that nothing respecting the Roman Catholic Religion will be inserted in the Bill which it is proposed to submit to Parliament.

The Instructions I think are warranted by the Statute 14 Geo. III, c. 83 which declares the King's Supremacy. But the present state of the public mind appears to me to require that they should be postponed, and it certainly would be prudent to do so.

The proper occasion for putting them in force would be upon the appointment of a new Roman Catholic Bishop. With a candidate for the Mitre, they might, then, be settled by a "Concordat", previous to any final approbation of his nomination,--and to all aspirants to the Episcopal Throne it might be intimated beforehand, that this course would be adopted upon the first vacancy.¹¹²

In 1824, consideration was being given to a plan for the general union of British North America, partly as a protection against possible American invasion. Chief Justice

110 Documents, III, p. 151.

111 Ibid., III, p. 151.

112 Ibid., III, p. 151.

Sewell presented his views on the topic and at the same time gave some insights into the consideration that was given to the situation of the Catholic Church in Lower Canada.

To these causes must be added the influence of the Roman Catholic Clergy. The United States, it is well known, have no established religion; all sects there are equally protected by law in the enjoyment of their tenets, and the exercise of their ceremonies; and all being left alike to their own support. Tithes are not tolerated, nor does the government contribute by salary, or allowance, to the maintenance of any church. The situation of the Roman Catholic Church, in America, is similar to the others; and the situation of the Roman Catholic Church, in Canada, in case of conquest to the States, would be the same. It would be but one, among many, not entitled to any pre-eminence or advantage, and left to the voluntary support of its own members.

In Canada, on the contrary, the Roman Catholic Church considers itself to be (while Canada shall remain under the dominion of England) an established Church: and as far as unequivocal toleration assured, by act of parliament, admission of its members to every office of the government (except the highest); tithes secured for the support of their clergy, by act of parliament; a salary to their bishop; and the filling up of every vacancy in the benefices of their church, without interference or participation of any kind,--can constitute an established church, it is so.

It is however, by no means material to inquire, whether this does or does not constitute an established church; the contrast, without this distinction, between what the Roman Catholic Church is in Canada, under his Majesty's government, and what it would be under the government of the United States, is so great, that its consequences and effects upon the conduct of the priesthood of that church, and of every Roman Catholic layman within the reach of their influence, cannot be doubted.¹¹³

¹¹³ Ibid., III, p. 241-242.

Bishop Plessis died in 1825, and the question of his successor's civil status was brought to the Government's attention. A coadjutor, Bishop Panet, had previously been named by Rome and it was asked whether he could now be appointed civilly as Bishop of Quebec by Letters Patent under the Provincial Seal or under the Great Seal of Great Britain. Bathurst referred the matter to the Law Officers of the Crown on February 25, 1826, asking them to examine the question. Their reply is dated September 23 of the same year:

We have the honour to report, that We are of opinion, that the appointment of a Roman Catholic Bishop in Canada, cannot legally be made, either under the Great Seal of the Kingdom, or under the Provincial Seal of Canada.

The constituting a Bishop of the Catholic Church by Letters Patent, or Royal Warrant directed by the Governor of Canada, independently of the difficulties which arise from the general considerations, connected with this point, would be, as it appears to us, by necessary implication, in derogation, and virtually in alienation, of the King's Supremacy in Canada, which is expressly reserved, and scrupulously guarded by the Provisions of the Statute 14th Geo. 3rd. Ch 83. [...]

The 5th Section of that Statute does no more than guarantee to certain Subjects of His Majesty in Canada, the free exercise of the Religion of the Church of Rome, and to the Clergy of that Religion, the enjoyment of their accustomed dues and rights: But the express reservation of the King's Supremacy, coupled with the reference made to the Statute of Elizabeth, shews the intention of the Legislature that the Supremacy of the Crown, in Canada, should be preserved undiminished, as it exists in England, by the Law and Constitution of this Realm; And we think the appointment of a Catholic Bishop by the King would operate as a devolution from the Crown, of that Supremacy.¹¹⁴

¹¹⁴ Ibid., III, p. 286-287.

No official action was taken on this matter except that Bathurst had written in the meantime (August 31, 1826) to Dalhousie, stating that the new "Roman Catholic Bishop of Quebec" was to receive £1000 per annum.¹¹⁵ Wilmot Horton, the Under-Secretary of State for the Colonies, wrote on February 27, 1827, to Bishop Poynter, the Vicar Apostolic of London, who had been acting as intermediary in the matter, to the effect that Bathurst's letter of August 31, 1826, was the equivalent of civil recognition. The matter stayed there.

Having examined the situation of the Catholic Church in Lower Canada from 1791 to 1840, we can now turn to the other Province that was created by the Constitutional Act of 1791, the Province of Upper Canada.

C. Relationships between the Government of Upper Canada
and the Catholic Church.

As in the case of Lower Canada, there were a number of important decisions taken in this period which concerned the juridical situation of the Catholic Church in Upper Canada. The most important one for our topic, even though it is dwarfed by the question of the Clergy reserves, is the matter of the appointment of a Catholic Bishop in the Province, and the subsequent division of the territory from the

¹¹⁵ L. Lemieux, op. cit., p. 227.

diocese of Quebec.

1. Appointment of a Catholic Bishop.— In 1796, the Holy See had proposed appointing three auxiliary bishops for the diocese of Quebec. One of these would have resided in Upper Canada.¹¹⁶ However, time was not yet ripe for such an appointment.

The man who was to become the first Catholic Bishop in Upper Canada, Alexander Macdonell, arrived in the Glangarry district of the Province in 1804. Today, this is known as the region near the town of Alexandria.

In 1807, Bishop Plessis asked Macdonell, who was his Vicar General for Upper Canada, to inform the governor about the advantages that would result from the nomination of a Catholic Bishop for the Province. The Lieutenant-Governor, Francis Gore, agreed to the suggestion, but all depended on London's attitude.

The matter remained there until 1816 when Bishop Plessis visited Upper Canada during the month of May. At that time he asked Macdonell to go to London to obtain the required permission. Macdonell was successful in his efforts to be appointed auxiliary bishop. On January 16, 1817, in a private memorandum to Bathurst, Macdonell insisted on the necessity of having any new bishops come from

¹¹⁶ Cf. L. Lemieux, op. cit., p. 47.

Europe, and mentioned that there was ample time to act before Rome would proceed with the appointment of new titulars.

There is no doubt that Doctor Plessis, who is a good man, an excellent Prelate, & as sincerely attached to the British Gov't. as any man in the Canadas, would recommend for those situations proper characters & loyal Subjects, but it is natural to think, that he would prefer Canadians, if he found them sufficiently qualified. As by far the greater part of the Catholics in Upper Canada, & in the Islands are Scotch Highlanders & the Catholics of Nova Scotia & New Brunswick principally Irish it is most certain that clergymen of their respective countries ought to have the spiritual direction of them.¹¹⁷

At the same time, Macdonell applied for permission to have six clergymen and eight to ten schoolmasters appointed and asked that the Government pay the salaries that the Prince Regent had offered in 1816: £100 and 200 acres of land for clergymen accompanying immigrants, and £50 and 100 acres of land to schoolmasters. Macdonell mentioned in the petition that the money could come from the revenues of the Jesuit or Recollect lands in Lower Canada, or from the Crown lands in Upper Canada.¹¹⁸

Henry Goulbourn, the Under-Secretary of State for the Colonies, replied almost immediately that Bathurst had approved hiring three teachers with an annual salary of

¹¹⁷ PAC, B-299, C.O. 42, vol. 360, p. 173, Alexander Macdonell to Lord Bathurst, January 16, 1817.

¹¹⁸ Ibid., p. 171-174.

£50.¹¹⁹ On May 19, 1817, their salary was fixed at £100 each.¹²⁰

In June 1817, Goulbourn notified Macdonell that he was authorized to "engage" three Catholic priests who would receive an annual salary of £100.¹²¹

The Colonial Office seemed interested in the proposal that non-Canadians be appointed Vicars Apostolic for the territories in question, and Lord Castlereagh, the Secretary for Foreign Affairs, even notified the Holy See on April 30, 1817, that the Government would be willing to have Vicariates erected in Nova Scotia, Upper Canada and Prince Edward Island.¹²² On November 23, 1818, Macdonell was appointed by Rome Bishop in partibus, Vicar General, suffragant and auxiliary of the Bishop of Quebec, not a Vicar Apostolic as London had suggested.

In his efforts to have priests and school teachers appointed, Macdonell made use of political arguments: this was the most expedient way of keeping the new settlers loyal

119 PAC, B-306, C.O. 42, vol. 374, p. 293, 25 January, 1817.

120 PAC, B-306, C.O. 42, vol. 374, p. 297, May 19, 1817.

121 PAC, B-306, C.O. 42, vol. 374, p. 295, June 6, 1817.

122 L. Lemieux, op. cit., p. 94.

to the Crown. The Governor was of the same opinion, and on January 18, 1821, Dalhousie wrote to Bathurst requesting additional salaries for the Bishop and the teachers. This was "urgently pressing, not to the individuals alone, but to check a spirit of discontent in the Settlements of Highlanders which has already spread very seriously". Concerning the Bishop's salary, Dalhousie continued:

I think it a matter of very great importance in the Civil Government of this part of His Majesty's Dominions that the Head of the Catholic Church in each Province should be maintained with respectability and that Policy can never be more useful than in the case of Mr. McDonnell whose character is universally known and esteemed--whose zeal is indefatigable, whose influence is founded, as much on his personal resolution and conduct during the late War (active & at periods very critical on that point of the frontier) as it is in his clerical relations to them.¹²³

In 1824, Macdonell returned to England to obtain additional salary grants and to request that Upper Canada be erected into a separate diocese. His petition to the Government is undated, but would appear to be written on June 20, 1824.¹²⁴

Macdonell was promised a salary increase to £400 per annum.¹²⁵ On September 2, 1824, he wrote again to Robert

¹²³ PAC, B-146, C.O. 42, vol. 187, p. 26, January 18, 1821, Dalhousie to Lord Bathurst.

¹²⁴ Cf. L. Lemieux, op. cit., p. 230; PAC, B-306, C.O. 42, vol. 374, p. 320.

¹²⁵ PAC, B-306, C.O. 42, vol. 374, p. 321, July 4, 1824, Alexander Macdonell to Robert Wilmot Horton.

Wilmot Horton, Under-Secretary of State for the Colonies, on the question of his own salary. He thanked him for approving salaries for the teachers and again mentioned the usefulness of such action:

Having been ascertained by experience & acknowledged on all hands that the influence of Religion when judiciously exercised over the Irish Roman Catholics is the most effectual means of rendering them good Christians, and loyal subjects, it surely becomes an object deserving the most serious attention of His Majesty's Gov't.¹²⁶

Macdonell then promised that if all were granted, he would be responsible "with his life" for the loyalty of the Irish Catholics emigrating to Canada. It seems that securing the loyalty of the new citizens was one of the best means of influencing the British Government to grant assistance.

Finally, on September 26, 1824, Horton advised Macdonell that his salary had been effectively increased to £400 per annum, effective July 1, 1824, as Bathurst promised earlier.¹²⁷

In December of the same year, Bathurst personally subscribed £50 for "building Church & School Houses in Upper Canada".¹²⁸

¹²⁶ PAC, B-306, C.O. 42, vol. 374, p. 326, September 2, 1824, Macdonell to Horton.

¹²⁷ PAC, B-3047, C.O. 43, vol. 64, p. 161-162, September 26, 1824, Horton to Macdonell.

¹²⁸ PAC, B-3047, C.O. 43, vol. 65, p. 47-48, December 20, 1824, Bathurst to Macdonell.

Macdonell applied again on August 8, 1825, for £5180 to cover expenses of priests and teachers in Upper Canada and in the Maritime Colonies.

I do not hesitate to assert that the best security that the Parent State can have for the allegiance of those provinces is the provision of means to ensure a continued attention to the diffusion of that moral and religious instruction which has produced hitherto such satisfactory practical results.¹²⁹

In the same letter he mentions that "not a single Scots Catholic is to be found at this day in any part of the United States". What is of interest also is the signature of his letter: "Catholic Bishop of Upper Canada".¹³⁰

On December 20, 1825, the Holy See agreed to the erection of the new diocese of Regiopolis. The Pope approved the change on January 8, 1826, and apostolic letters were forwarded to Macdonell on February 14, 1826.¹³¹

In 1827, April 4, Bathurst wrote to Macdonell's auxiliary, Thomas Weld, informing him that no more government aid would be forthcoming for Catholic Schools in Upper Canada.

¹²⁹ PAC, B-308, C.O. 42, vol. 376, p. 284, August 8, 1825.

¹³⁰ Ibid., p. 285.

¹³¹ Cf. L. Lemieux, op. cit., p. 239.

In referring to the recommendation which Dr MacDonnell addressed to me in the year 1824 on the subject of the Roman Catholic Clergy & School Masters in Upper Canada it appears that he has incurred very considerable expense in maintaining several persons who had proceeded to the Province on the faith of receiving Salaries from Government & in consequence recommended his case to the favourable consideration of the Lords Commissioners of the Treasury who directed the sum of £3400 to be paid to Dr. MacDonnell in addition to £900 which had been granted by Parliament. These sums were in payment of arrears of salaries and as regarded the future Dr. MacDonnell represented the inadequacy of his own salary and of the provision for the religious Instruction of the Roman Catholic Population of the Province. The former was increased by £400 & Instructions have been given to Sir P. Maitland to pay £750 per annum for the support of the Roman Catholic Priests from the money to be paid to Government by the Canada Company but as education is now very well provided for by the Province and the same means of instruction are afforded to Catholics as to persons of an other religion it was not deemed advisable to continue the allowance for School Masters and it was understood by Dr. MacDonnell that it would cease when the £3400 was received by him for the payment of salaries then due.¹³²

That same year, Macdonell wrote privately to Bathurst requesting his civil recognition as Bishop of Regiopolis.

¹³² PAC, B-3049, C.O. 43, vol. 69, p. 124-125, April 4, 1827, Bathurst to Bishop Thomas Weld.

[...] until such a notification be received by the proper authorities here, I shall not be considered but as a Vicar General of the Catholic Bishop of Quebec, subject to the mandates & control of that Prelate.

I therefore trust that your Lordship will see the expediency of rendering effectual this distinguished instance of the Liberality of His Majesty's Govern^t towards the Roman Catholic inhabitants of Upper Canada for which they consider themselves entirely indebted to your Lordship.¹³³

Macdonell did not take possession of his See until April 26, 1829. He had been waiting for the civil recognition which was not forthcoming. However, five months later, on September 23, 1829, the new Governor, Sir John Colborne, wrote to Sir George Murray, Secretary of State for the Colonies:

Bishop Macdonnell, lately nominated by the Pope, Bishop of Regiopolis, I am inclined to think should be admitted to the Legislative Council. He has great influence in the Eastern part of this Province, and both he and his flock would be pleased with the compliment paid to him.¹³⁴

London agreed to this appointment, and a draft warrant was prepared. However, the manner of appointment is important for our subject. The Under-Secretary of State for the Colonies, R. W. Hay, wrote to the Attorney General of Great Britain on March 6, 1830, requesting assistance.

¹³³ PAC, B-311, C.O. 42, vol. 382, p. 348-349, July 19, 1827, Macdonell to Bathurst.

¹³⁴ PAC, B-315, C.O. 42, vol. 289, p. 152-153, Sir John Colborne to Sir George Murray, September 23, 1829.

I have the honor to enclose the draft of a Warrant it is proposed to address to the Governor of Upper Canada, authorizing him to summon to the Legislative Council Dr. McDonell. It is to be observed that Dr. McDonell is a Roman Catholic Bishop, bearing the title of Bishop of Regiopolis, which he is supposed to derive from some Papal Grant. It does not appear from the records of this office, that any precedent can be found for the proper manner of describing, in a solemn Instrument of this nature, a person who has received Episcopal ordinance with a diocese in partibus from the Church of Rome. Many local circumstances give an importance to this subject to which it could not otherwise be entitled. The Warrant has been prepared on the supposition that Dr. McDonell's Episcopal character must be recognized, but that it would be, contrary to the spirit if not the letter of the law to recognize the character which he claims as Diocesan of the City of Regiopolis. You will, however, have the goodness in concurrence with the Solicitor General, to peruse and settle this Warrant, and to introduce into it such a description as may be most legal and appropriate of the Rev^d person in whose favor it is to be issued.¹³⁵

Macdonell was finally appointed to the Legislative Council in January 1831 as "Bishop Alexander Macdonell", without reference to his diocesan see.¹³⁶

On October 20, 1833, Bishop Macdonell received a coadjutor in the person of Bishop Rémi Gaulin.¹³⁷ Bishop Weld had been named Cardinal in the meanwhile and Macdonell was without a successor. In the same year, 1833, Macdonell's salary was increased to £900. The Lieutenant-Governor had

¹³⁵ PAC, B-3050, C.O. 43, vol. 73, folio 157, p. 317-318, March 6, 1830, R. W. Hay to Attorney General of Great Britain.

¹³⁶ Cf. L. Lemieux, op. cit., p. 247.

¹³⁷ Ibid., p. 407.

not appreciated the recommendation from the British Government to give money to the Anglicans and Presbyterians, but not to the Catholics. He had taken upon himself to authorize this sum for the building of Churches and chapels.¹³⁸

In 1836, the Secretary of State for the Colonies, Glenelg, wrote to Governor Gosford concerning the erection of a new diocese in Montreal. He referred once again to the question of civil recognition of the diocese of Kingston.

I need not assure your Lordship of the anxiety which is felt by H.M. Government to take all necessary measures for satisfying the wants and for meeting the wishes of H.M.'s Roman Catholic Subjects in Lower Canada in regard to their Religious Instruction. But at the same time the legal objections to the recognition by any formal Instrument of a Roman Catholic Bishop within the British Dominions are inseparable; and your Lordship will readily understand that the course pursued in the case of M. du Plessis, in the year 1817, for avoiding those objections, is no longer admissible. I am happy, however, to feel that such a recognition is not essential. Neither M. Panet, who immediately succeeded M. du Plessis, nor the present Roman Catholic Bishop of Quebec, have ever been recognized under that title by any more formal Document than a Despatch bearing the Signature of the Secretary of State; and altho' Dr. McDonnell, the R. Catholic Bishop of Upper Canada, has a Seat in the Legislative Council of that Province, he did not receive that distinction until some years after his investment with independent Episcopal Authority; nor was he described in the Mandamus under the Sign Manual by his Local Title. In regard to Nova Scotia and Prince Edward Island, a similar course appears to have been pursued; the Roman Catholic Bishop of these Colonies having been merely sanctioned by Letters from this Department.¹³⁹

¹³⁸ Ibid., p. 407.

¹³⁹ PAC, R.G. 7, G.L., Vol. 31, part II, p. 398-405; see pages 400-403 especially.

As such, the civil recognition of a Catholic Bishop in Upper Canada was not granted by the Government. However, it had given its consent to the erection of the See.¹⁴⁰

There was no further difficulty in obtaining the appointment of other Catholic bishops in the Province, and the Church was given complete freedom in this regard. Again, it should be mentioned that the question of political expediency seems to be at the base of all changes in the Government's policy toward the Church in Upper Canada. This was certainly due to a great extent to the character and personality of Bishop Alexander Macdonell.

Another matter to be considered now, and which was of great importance to the religious situation of Upper Canada in the first half of the XIXth Century, is that of the Clergy Reserves. The Catholic Church did not play an immediate role in this affair, but the ultimate consequences were of the utmost importance to the Church and to the determination of her juridical status in Canada.

¹⁴⁰ With time, it became imperative to divide the diocese of Kingston and the question of permission from the Government arose once again. Correspondence covering this division is found in the National Archives. For instance, the letter of May 22, 1841, from Lord Sydenham to Lord J. Russell (PAC, R.G. 7, G. 12, p. 31-38); the report of the Law Officers of the Crown, April 11, 1842 (PAC, B-379, C.O. 42, vol. 499, p. 444-446); the letter of Lord Stanley to Sir Charles Bagot, August 3, 1842 (PAC, B-864, C. O. 43, vol. 144, p. 310-311).

2. The Clergy Reserves Question.- The history of the Clergy Reserves dates from the Constitutional Act of 1791. As mentioned above, this Act provided that one-seventh of the lands in Upper Canada were to be set aside as a source of revenue for the Protestant Clergy.

The Act of 1791 did not determine who constituted the "Protestant" clergy, and from the very beginning, the Church of Scotland insisted that it too had a right in all grants since it was established by law in Great Britain. In 1793, the Upper Canada Government made grants to the Church of Scotland for the support of its activities.¹⁴¹

In 1815, Anglican corporations were set up by the Governor and Executive Council for the administration of the Reserves since it became evident that the means used so far would never provide a satisfactory form of support for the clergy.¹⁴²

In 1818, the British Government consented to the legal creation of endowed rectories in both Upper and Lower Canada as provided for in Section 38 of the Constitutional Act of 1791. In due course, twelve rectories were created by letters patent in Lower Canada, but in no case were they

¹⁴¹ Cf. H. H. Welsh, The Christian Church in Canada, Toronto, The Ryerson Press, c. 1956, p. 173.

¹⁴² Ibid.

endowed from the Clergy Reserves.¹⁴³

The Law Officers of the Crown reported on November 15, 1819, that the provisions of the Act of 1791

may be extended also to Clergy of the Church of Scotland [...] yet that they do not extend to dissenting Ministers since we think the terms protestant Clergy can apply only to Protestant Clergy recognized and established by Law.¹⁴⁴

In 1822, there was question of reuniting Upper and Lower Canada and the members of the Church of Scotland wanted to have the status of establishment for their Church fully recognized by law. However, the draft text of the proposed law did not contain any mention to this effect.¹⁴⁵

In 1825, the "Canada Company" was set up by the British Government to administer the Crown Lands in the Province and to purchase the lands held for the Clergy Reserves.¹⁴⁶ This was done without consulting the Anglican corporations that had been set up in 1815.¹⁴⁷ The Catholic Church received

¹⁴³ Ibid.

¹⁴⁴ Documents, III, p. 28.

¹⁴⁵ Cf. H. H. Walsh, op. cit., p. 174; W. P. M. Kennedy, op. cit., p. 243-248.

¹⁴⁶ Cf. H. H. Walsh, op. cit., p. 174. (Imperial Statute, 6 George IV, c. 75).

¹⁴⁷ Documents, III, p. 253-263.

£750 in 1826 from the Canada Company.¹⁴⁸

In 1827, an Imperial Statute provided for the partial sale of the Reserve Lands, since they had "remained waste and unproductive". A sale of one-fourth of the territory thus held was authorized, provided it not exceed 100,000 acres a year.¹⁴⁹

The dispute still raged as to who should receive the benefits from these lands.

In 1831 there was presented to the British Parliament a petition on behalf of an interdenominational committee of Upper Canada styled "The Friends of Religious Liberty." Among other things it petitioned that the clergy reserves be sold and the proceeds be used for educational purposes.¹⁵⁰

This was the beginning of a long and bitter campaign for the secularization of the Reserves, a campaign that was to last until 1854, and even slightly beyond.

In 1836, before leaving his office, Sir John Colborne established forty-four new Anglican rectories, giving four hundred acres of reserved lands to each. This caused a spontaneous outburst of anger against the Anglican Church and the Government, and may well have been the chief factor in

¹⁴⁸ Cf. H. H. Walsh, op. cit., p. 175; also John S. Moir, Church and State in Canada West, University of Toronto Press, 1966, p. 29.

¹⁴⁹ Documents, III, p. 386-387. (Imperial Statute, 7 & 8 George IV, c. 62).

¹⁵⁰ H. H. Walsh, op. cit., p. 176.

precipitating the rebellion of 1837 in Upper Canada.¹⁵¹

An Act was passed by the Assembly of Upper Canada to distribute the reserves among the various religious denominations. However, the British Government disallowed the Act, and passed an Imperial Statute in 1840 which was supposed to settle the question definitively. This Act was "to provide for the Sale of the Clergy Reserves in the Province of Canada, and for the Distribution of the Proceeds thereof".¹⁵² It forbade any future reservations of land (section XI), and authorized the Governor to sell and distribute the reserves (section I) under certain conditions.

The Church of England was to receive two-thirds of the revenue of all previous sales, and the Church of Scotland, one-third (section IV). Future proceeds were to be "divided into Six equal Parts, of which Two shall be appropriated to the Church of England and One to the Church of Scotland in Canada". The residue was to be "applied by the Governor of Canada, with the Advice of the Executive Council, for purposes of Public Worship and Religious Instruction in Canada" (section VI) without specifying any particular beneficiary. The Catholic Church was to benefit from this last clause as well as from section III of the Act guaranteeing allowances

¹⁵¹ Ibid., p. 182.

¹⁵² Imperial Statute, 3 & 4 Victoria, c. 78.

made to "any other Religious Bodies or Denominations of Christians in Canada".

But even this Act of 1840 did not settle the question, for the majority of the people still objected to the use of public lands for religious purposes, and the Act seemed to confirm the idea of semi-establishment.¹⁵³

The Catholic Church stood little to gain or lose from this hotly-debated issue, although on many occasions the Anglican Bishop of Toronto, Strachan, warned the Catholics that if the Anglican Church lost its lands, the Catholic Church stood in danger of losing its endowments in Lower Canada. The essential difference between the two was that the Catholic endowments were from private sources, while the Anglican ones were from public lands.¹⁵⁴

During the period we have been studying, we have seen that in Lower and Upper Canada the Catholic Church was maintained in the rights granted by the Quebec Act of 1774; its bishops received forms of civil recognition by the British Government; it had acquired corporation rights for

¹⁵³ Cf. John S. Moir, op. cit., p. 39. In 1851 a statute was passed (14 & 15 Victoria, c. 175, United Canada) settling the question of the Anglican rectories, and in 1854 the Clergy Reserves Act (18 Victoria, c. 2) settled the question definitively by providing for the commutation of the Reserves, the Catholic Church receiving £20,933 (cf. ibid., p. 79).

¹⁵⁴ Cf. ibid., p. 71, 73.

parishes and schools. It was even considered by some British Government sources as a "semi-established" Church.

CONCLUSION

On July 23, 1840, the British Parliament passed the "Act to re-unite the Provinces of Upper and Lower Canada, and for the government of Canada".¹ The new law was proclaimed in Canada on February 5, 1841, and in the following June the first parliament of the United Province met at Kingston.²

This bill did not considerably affect the status of the Catholic Church. It was passed after the difficulties of the 1830's to "secure the rights and liberties and promote the interests of all classes of her Majesty's subjects".³ Section XLII contains a special safeguard:

And be it enacted that whenever any bill or bills shall be passed by the Legislative Council and Assembly of the Province of Canada containing any provisions to vary or repeal any of the provisions now in force contained in an Act of the Parliament of Great Britain passed in the fourteenth year of the reign of his late Majesty King George the Third, intituled "An Act for making more effectual provision for the Government of the Province of Quebec in North America," or in the aforesaid Act of Parliament passed in the thirty-first year of the same reign, respecting [1] the accustomed dues and rights of the clergy of the Church of Rome; or to vary or repeal any of the

¹ Text in W. P. M. Kennedy, Statutes, Treaties and Documents of the Canadian Constitution, 1713-1929, Toronto, Oxford University Press, 1930, p. 433-445.

² Ibid., p. 433.

³ Ibid., Section I, p. 433.

several provisions contained in the said last mentioned Act respecting [2] the allotment and appropriation of land for the support of the Protestant clergy within the Province of Canada, or respecting [3] the constituting, erecting or endowing of parsonages or rectories within the Province of Canada, or respecting [4] the presentation of incumbents or ministers of the same, or respecting [5] the tenure on which such incumbents or ministers shall hold or enjoy the same; and also that whenever any bill or bills shall be passed containing any provisions which shall in any manner relate to or affect [6] the enjoyment or exercise of any form or mode of religious worship, or shall impose or create any penalties, burdens, disabilities, or disqualifications in respect to the same, or shall in any manner relate to or affect [7] the payment, recovery, or enjoyment of any of the accustomed dues or rights hereinbefore mentioned, or shall in any manner relate to [8] the granting, imposing or recovering of any other dues, or stipends, or emoluments to be paid to or for the use of any minister, priest, ecclesiastic, or teacher according to any form or mode of religious worship, in respect of his said office or function or shall in any manner [9] relate to or affect her Majesty's prerogative touching the granting of waste lands of the Crown within the said Province; every such bill or bills shall, previously to any declaration or signification of her Majesty's assent thereto, be laid before both Houses of Parliament, of the United Kingdom of Great Britain and Ireland [...]⁴

The section continues by mentioning a series of conditions to be observed before any change in laws affecting ecclesiastical rights in Canada could come into effect.

Section XLVI maintains all previous laws passed before the Union and in force at the time the new Act went into effect. Thus, all previous legislation concerning the

⁴ Ibid., Section XLII, c. 440.

Catholic Church remained in force.

Near the end of the text, the Union Act of 1840 takes up once again the question of the Clergy Reserves fund, mentioning that "ministers of other Christian denominations" besides the Church of England and the Church of Scotland, may receive money from the consolidated revenue fund.

This Act, consequently, did not in any way change or modify the juridical situation of the Catholic Church in Canada. It simply maintained all previous legislation still in effect.

It is interesting to note, however, that shortly after the Act went into effect, James R. Hope of the Chancery Bar, a specialist in this field, prepared a lengthy report concerning the status of the Catholic Church in Canada and in other places where the Catholic religion was considered in some way as being established. This report was prepared on the occasion of the division of the diocese of Kingston.⁵ Hope stated at that time (probably April 1842)⁶ that

⁵ Cf. Lucien Lemieux, L'établissement de la première province ecclésiastique au Canada, Montréal, Fides, 1968, p. 499.

⁶ The document is undated; cf. L. Lemieux, op. cit., p. 499.

with regard to the R.C. Church in Canada it is hard to maintain that it is not in some sense an established Church. Tithes are allowed to it, and effect is given to its Ecclesiastical jurisdictions, as such, by the Civil Powers.⁷

The report continues, referring to new lands developed by colonization.

Except in these, in which the R.C. Church is in a certain sense established under treaty, the Crown can evidently not be called on to interfere, and whatever is done must be upon the same principle of voluntary and private combination by which dissenters in this country are regulated in their religious arrangements.⁸

Subsequently, three additional bills were passed affecting in some way the status of the Church in Canada, and completing those which we have previously studied.

The first law was passed in 1845, allowing all denominations to enjoy corporation rights, and enabling the bishops of Upper Canada to form corporations sole. The bishop thus became the legal owner of all ecclesiastical property in the diocese.⁹

The second Act was passed by the Canadian assembly and reserved for Royal Assent on August 30, 1851. Assent

⁷ PAC, B-379, C.O. 42, Vol. 499, p. 455; the complete text of this report is found on pages 451-460.

⁸ Ibid., p. 455.

⁹ Cf. S. Pagnuelo, Etudes historiques et légales sur la Liberté religieuse en Canada, Montreal, C. O. Beauchemin, 1872, p. 243-244. (United Canada Statutes, 8 Victoria, c. 82).

was given on May 15, 1852, and the Act proclaimed on June 8, 1852. It is entitled: "An Act to repeal so much of the Act of the Parliament of Great Britain passed in the Thirty-first year of the Reign of King George the Third, and chaptered Thirty-one, as relates to Rectories, and the presentation of Incumbents to the same, and for other purposes connected with such Rectories". The importance of this Act lies in the fact that it removes the established character of the Anglican Church in Canada.

Section I states:

Whereas the recognition of legal equality among all Religious Denominations is an admitted principle of Colonial Legislation; And whereas in the state and condition of this Province, to which such a principle is peculiarly applicable, it is desirable that the same should receive the sanction of direct Legislative Authority, recognizing and declaring the same as a fundamental principle of our civil polity: Be it therefore declared and enacted [...]
That the free exercise and enjoyment of Religious Profession and Worship, without discrimination or preference, so as the same be not made an excuse for acts of licentiousness, or a justification of practices inconsistent with the peace and safety of the Province, is by the constitution and laws of this Province allowed to all Her Majesty's subjects within the same.¹⁰

The Act continues by repealing Sections 38, 39 and 40 of the Constitutional Act of 1791 whereby Parsonages or Rectories were to be erected in the province.

¹⁰ United Canada Statutes, 1841, p. 2313-2314. Cf. S. Pagnuelo, op. cit., p. 228-229. 14-15 Victoria, c. 175.

This statute certainly removes any restriction concerning the freedom of worship, and proclaims the equality of all religious denominations before the Law.

The principle of freedom of worship, or of separation of the Church from the State, was reasserted in 1854. This Act is entitled "An Act to make better provision for the appropriation of Moneys arising from the Lands heretofore known as the Clergy Reserves, by rendering them available for Municipal purposes."¹¹ The bill was assented to on December 18, 1854.

After referring to allowances to be paid to certain denominations, including the "Roman Catholic Church in Upper Canada", the Act continues:

And whereas it is desirable to remove all semblance of connection between Church and State, and to effect an entire and final disposition of all matters, claims and interests arising out of the Clergy Reserves by as speedy a distribution of their proceeds as may be: Be it therefore enacted
[...]¹²

Since most of the matter in question concerned the Anglican Church, it is not of immediate import here. What is important, however, is the official recognition of the principle of the separation of Church and State in Canada.

¹¹ Cf. W. P. M. Kennedy, op. cit., p. 516-519.
(United Canada Statutes, 18 Victoria, c. 2)

¹² Ibid., Section III, p. 518.

It could be mentioned, though, in passing, that the Anglican Church received its complete independence from the State in 1856.¹³

This is the principal legislation concerning the legal existence of the Church and its rights in the period we have been studying. One additional matter that could be mentioned is the way in which the British Government accepted the principle of an ecclesiastical Province in Canada.

The bill concerning the erection of parishes and the repairing of Churches¹⁴ had expired, and a new law was necessary. It was asked whether, in the new bill, the Archbishop of Quebec would be referred to by his title of Archbishop, or whether he would be called a Bishop. Since the government could not refuse the bill on those grounds alone, Gladstone decided it more expedient to recognize the title of Archbishop as such.

¹³ Cf. S. Pagnuelo, op. cit., p. 230. (19-20 Victoria, c. 141).

¹⁴ United Canada Statutes, 2 Victoria, c. 3.

I have received your Lordship's Despatch of the 23rd Feb. last N^o 17. I collect from that Desp. and its enclosure that it is the object of the Roman Catholic Bishop of Quebec to obtain from H.M.'s Govt. the recognition of his title as "Metropolitan" over the Dioceses of the R. Catholic Church in Canada alone and not over the Dioceses of that Church throughout R. North America.

In general I do not think it either necessary or desirable that H.M.'s Govt. should depart from the principle of entire inaction on all questions regarding the internal Govt and economy of the R. Catholic Church in Canada. But should such a Bill as you anticipate be presented for your Lordship's acceptance on H.M.'s behalf, and should the acceptance of it really involve the recognition of the Office of a R. Catholic Archbishop in Canada, you will not consider that circumstance as affording any sufficient reason for withholding your assent, or for reserving the Bill for the signification of H.M.'s pleasure, or for using your official influence to prevent the enactment of it. Important as may be the principle of non-intervention in these matters so long and so far as it can be maintained, yet in the case supposed, and if you shall be compelled to choose between assenting to such a law, and rejecting it on such grounds, your Lordship's choice will be made in the manner I have already pointed out.¹⁵

The last bishop to take a civil oath of office before assuming his See in Canada was Bishop Bruno Guigues, the first Bishop of Bytown, appointed in 1847. He probably took the oath because he was not a Canadian citizen.¹⁶

¹⁵ W. E. Gladstone (Secretary of State for the Colonies) to Earl Cathcart (Charles Murray, Count of Cathcart, Governor-General), April 10, 1846, PAC, P-864, C.O. 43, vol. 146, p. 336-338.

¹⁶ Cf. Paul Bernier, *La situation présente du catholicisme au Canada*, in *Revue de l'Université d'Ottawa*, 15 (1945), p. 393.

There remains to be drawn certain conclusions from what we have seen, in order to define more precisely the juridical status of the Catholic Church in Canada before 1840.

During the French regime, the Catholic religion was the established one, with complete union between Church and State. The Church did not consider this to be necessarily an ideal situation: the Gallican tendencies were something it had combatted on many occasions.

At the conquest of 1759-1760, the Church lost this status of being the official religion of the country. During the Military Regime preceding the Treaty of Paris, the Catholics were guaranteed the free exercise of their religion as beforehand,¹⁷ but the Church could not impose tithes. The question of the appointment of a bishop was left unsettled.

After the Treaty of Paris, the exercise of the Catholic religion was permitted "as far as the laws of Great Britain permit".¹⁸ A Catholic bishop was finally appointed in 1766.¹⁹

¹⁷ Cf. Documents, I, p. 30: The Capitulation of Montreal, Art. XXVII.

¹⁸ Ibid., p. 115: The Treaty of Paris, Art. IV.

¹⁹ Cf. L. Lemieux, op. cit., p. 9.

By the Quebec Act of 1774, the clergy were authorized to "hold, receive, and enjoy, their accustomed Dues and Rights".²⁰ The principle of the "free Exercise of the Religion of the Church of Rome, subject to the King's Supremacy" was also restated.²¹

The Constitutional Act of 1791 maintained previous legislation and Royal Instructions concerning the Catholic Church.²² The Catholic Bishop of Quebec received civil recognition in 1817. New Vicariates and Dioceses were erected, with permission of the Government, in the Maritime Provinces as of 1817, and in Upper Canada as of 1826.

Parishes and dioceses were incorporated and given civil recognition. The Church had the right to acquire property for its purposes. Bishops no longer had to take oaths of office before the State.

Most restrictions against Catholics were removed in the Maritime Provinces by the various Emancipation Acts of 1829 and 1830.²³

20 Documents, I, p. 572: The Quebec Act.

21 Ibid., p. 572.

22 Ibid., p. 1043: The Constitutional Act of 1791, Section XXXV.

23 Cf., for instance, Nova Scotia Statutes, 11 George IV, c. 1; Prince Edward Island Statutes, 11 George IV, c. 7; New Brunswick Statutes, 10-11 George IV, c. 33.

The juridical status of the Catholic Church in 1840, then, could be said to be that of a "semi-established" Church: its existence was guaranteed by law; it was allowed to collect tithes; the civil powers gave effect to its ecclesiastical jurisdictions. The Church's position was to evolve into the status of a voluntary organization, on the same legal footing as any other religious denomination "without discrimination or preference",²⁴ but recognized by the law of the country.

While the Catholic Church in Canada wished to receive a better recognition from the British authorities after the conquest, it must be remembered that it enjoyed more freedom in Canada than it did in Great Britain itself at the same period. The motives that influenced this liberality were certainly based on political expediency, but nevertheless, in 1840, the Catholic Church did enjoy much greater official recognition and freedom in the Canadian Provinces than it did in many other countries.

²⁴ United Canada Statutes, 14-15 Victoria, c. 175.

PIBLIOGRAPHY

1. Manuscript Sources.

Public Archives of Canada, Ottawa:

- Manuscript Group 11, Colonial Office Papers.
- Record Group 7, Governor General's Office.
- Manuscript sections Q1, Q62, Pre-Confederation Papers.
- Microfilm^{ms} of Public Record Office, London:
 - Colonial Office 42: Canada, original correspondence. Correspondence and enclosures from the governors, lieutenant-governors and administrators of Quebec, Lower Canada, Upper Canada and the United Province of Canada and from the governors general of the Dominion of Canada. Registers and indexes.
 - Colonial Office 43: Canada, Entry Books.
 - Colonial Office 194: Newfoundland, Original Correspondence.

Archdiocesan Chancery Archives, Saint John's, Newfoundland: Rt. Rev. James L. O'Donel, Diocesan Statutes ("Observanda ab omnibus sacerdotibus ad sacras missiones In nostro Districto admissis"), 1801, 10 p. Document No. 6.

Provincial Archives, Saint John's, Newfoundland.
Letter Books of the Colonial Secretary's Office, Series S1.

2. Documentary Sources.

The Acts of the General Assembly of Her Majesty's Province of New Brunswick from the twenty sixth year of the Reign of King George the Third to the Sixth year of the Reign of King William the Fourth (1786-1836), Fredericton, John Simpson, 1838, xlvii-9/11-34-cvi p.

The Acts of the General Assembly of Prince Edward Island from the Establishment of the Legislature in the Thirteenth Year of the Reign of His Majesty King George the Third, AD 1773, to the fifteenth year of the Reign of Her present Majesty Queen Victoria, AD 1852, Inclusive, [s.l.], Royal Gazette Office, 1862, xix-854 p.

Canadian Historical Documents Series. Vol. I: The French Regime, edited and translated by Cameron Nish, xvi-176 p. Vol. II: Pre-Confederation, edited by P. B. Waite, xii-242 p. Vol. III: Confederation to 1949, edited by R. C. Brown and M. E. Prang, xvi-334 p., Scarborough, Prentice-Hall, 1965- .

Champeaux, G. de, Recueil général du droit civil ecclésiastique français, Paris, A. Courcier, [s.d.], 2 vol. Vol. I: xxxii-572 p., Vol. II: 701 p.

Doughty, Arthur G., "Sources for the History of the Catholic Church in the Public Archives of Canada", in The Catholic Historical Review, 19 (1933), p. 148-166.

Edits, ordonnances royaux, déclarations et arrêts du Conseil d'état du Roi concernant le Canada, Québec, E. R. Fréchette, 1854-1856, 3 vol.

Fregault, Guy, and Marcel Trudel, Histoire du Canada par les textes, Vol. I (1534-1854), Montreal, Fides, 1963, second edition, 262 p.

Imperial Blue Books on Affairs Relating to Canada, London, P. S. King & Son, varying pagination, Vol. 37.

"Inventaire des documents concernant l'Eglise du Canada sous le régime français", in Rapport de l'Archiviste de la Province de Québec pour 1939-1940, p. 155-353 (1610-1699). Ibid., 1940-1941, p. 333-473 (1700-1717). Ibid., 1941-1942, p. 178-298, (1718-1927).

Journal of the Votes and Proceedings of the House of Assembly of the Province of New Brunswick, from Tuesday the 3rd of January, to Wednesday the 15th of March, 1786, St. John, Christopher Sower, 1786, 73 p.

Kennedy, William Paul McClure, ed., Statutes, Treaties and Documents of the Canadian Constitution, 1713-1929, second ed., Toronto, Oxford University Press, 1930, 752 p.

Nouvelle-France. Documents historiques. Correspondance échangée entre les autorités françaises et les gouverneurs et intendants, Québec, L. J. Demers & Frère, 1893, Vol. I, 244 p.

Nute, Grace Lee, Documents Relating to Northwest Missions, 1815-1827, Saint Paul, Minnesota Historical Society, 1942, xix-469 p.

Oliver, E. H., ed., Le Nord-Ouest canadien, son évolution primitive et ses archives législatives. Procès-verbaux des conseils de la colonie de la rivière Rouge et du Département du Nord de la Terre de Rupert, Ottawa, Archives publiques du Canada, 1916-1919, 2 vol.

Pontificia Commissio Codici Iuris Canonici Recognoscendo, Schema Legis Ecclesiae fundamentalis. Textus emendatus cum relatione de ipso schemate deque emendationibus receptis, [Vatican City], Typis polyglottis Vaticanis, 1971, 159 p.

Québec (Province), Nouvelle-France. Documents historiques. Correspondance échangée entre les autorités françaises et les gouverneurs et intendants. Publiés par ordre de la Législature de la Province de Québec, Quebec, L.-J. Demers, 1893, 244 p.

Ruffhead, Owen, ed., The Statutes at Large from Magna Charta to the End of the Last Parliament, 1761, in Eight Volumes, London, Mark Baskett, 1769, 8 vol.

Shortt, Adam, and Arthur G. Doughty, Documents Relating to the Constitutional History of Canada, Ottawa, Canadian Archives, The Historical Documents Publication Board. Vol. I, 1918 (1759-1791), second ed., xvi-1084 p. Vol. II, 1914 (1791-1810), xiv-576 p. Vol. III, 1935 (1819-1828), xii-538 p., with the collaboration of Norah Story.

A Statute of the Imperial Parliament, anno tertio & quarto Victoriae Reginae, cap. LXXVIII, Kingston, Stewart Derbyshire and George Desbarats, 1841, 7 p.

The Statutes at Large passed in the several General Assemblies held in His Majesty's Province of Nova-Scotia, by Richard John Uniacke, Halifax, John Howe, 1805, xiv-483-95-[18] p.

Statutes of the Provinces of Lower Canada, New Brunswick, Nova Scotia, Prince Edward Island, United Province of Canada, Upper Canada.

Treaty of Peace and Friendship between the most Serene and most Potent Princess Anne, by the Grace of God, Queen of Great Britain, France, and Ireland, and the most Serene and most Potent Prince Lewis the XIVth, the most Christian King, Concluded at Utrecht the 31/11 Day of March/April 1713, London, John Baskett, 1713, 84 p.

Veilleux, Bertrand, Bibliographie sur les relations entre l'Eglise et l'Etat au Canada-français, 1791-1914, Montreal, McGill University, 1969, 92 p. (Mimeographed).

3. Historical and Juridical Studies.

a. Volumes

Audet, Francis J., Canadian Historical Dates and Events, 1492-1915, Ottawa, Beauregard, 1917, 239 p.

Beaulieu, André, et al., Guide d'histoire du Canada, Quebec, Presses de l'Université Laval, 1969, xvi-540 p. (Cahiers de l'Institut d'histoire, 13).

Bell, Winthrop, The "Foreign Protestants" and the Settlement of Nova Scotia, Toronto, University of Toronto Press, 1961, 673 p.

Bernard, Antoine, c.s.v., Le Drame acadien depuis 1604, Montreal, Les Clercs de Saint-Viateur, 1936, 459 p.

Buffett, Frederick M., The Story of the Church in Newfoundland, Toronto, General Board of Religious Education, 1939, 96 p.

Campeau, Lucien, s.j., La première mission d'Acadie (1602-1616), Quebec, Les Presses de l'Université Laval, 1967, 719 p. (Monumenta Novae Franciae, I).

Canniff, M., The Settlement of Upper Canada, Belleville, Mika Silk Screening Limited, 1971, xxxii-671-27 p. (Canadiana Reprint Series, No. 1).

Careless, J. M. S., The Union of the Canadas. The Growth of Canadian Institutions, 1841-1857, London, Oxford University Press, 1968, xvi-256 p. (The Canadian Centenary Series).

Carrière, Gaston, o.m.i., Les Missions catholiques dans l'Est du Canada et l'Honorable Compagnie de la Baie d'Hudson (1641-1900), Ottawa, Editions de l'Université d'Ottawa, 1957, 194 p.

Champagne, Joseph-Etienne, o.m.i., Les Missions Catholiques dans l'Ouest canadien (1818-1875), Ottawa, Editions des Etudes Oblates, 1949, 208 p.

Champlain, Samuel de, The Works of Samuel de Champlain in six volumes. Reprinted, translated and annotated by six Canadian Scholars under the general editorship of H. P. Figgis, Toronto, The Champlain Society, 1922-1936, 6 vol.

Chapais, Thomas, Cours d'Histoire du Canada, Quebec, J.-P. Garneau, 1919-1934, 8 vol.

Christie, Robert, A History of the Late Province of Lower Canada, Parliamentary and Political from the commencement to the close of its existence as a separate province, Montreal, Richard Worthington, 1866, 6 vol.

Dalton, R. C., The Jesuits' Estates Question, 1760-1888. A Study of the Background for the Agitation of 1889, Toronto, University of Toronto Press, [c1968], 201 p. (Canadian Studies in History and Government, No. 11).

Dugas, G., The Canadian West. Its Discovery By the Sieur De La Vérendrye. Its Development By the Fur-Trading Companies, down to the year 1822, Montreal, Beauchemin, 1905, 320 p.

Eastman, Mack, Church and State in Early Canada, Edinburgh, University Press, 1917, ix-301 p.

Fregault, Guy, Le XVIII^e siècle canadien. Etudes, Montreal, HMH Editions, 1968, 387 p. (Collection Constantes, No. 16).

French, Goldwin, Parsons and politics; the Role of the Wesleyan Methodists in Upper Canada and the Maritimes, 1780-1855, Toronto, Ryerson Press, 1962, xi-303 p.

Garneau, François-Xavier, Histoire du Canada, fifth edition, Paris, Librairie Félix Alcan, 1913-1920, 2 vol.

Gosselin, Auguste-Honoré, L'Eglise du Canada après la conquête, Quebec, Laflamme, 1916-1917, 2 vol.

Harvey, Vincent, et al., L'Eglise et le Québec, Montreal, Les éditions du jour, 1961, 157 p. (Collection: Idées du jour, No. 1).

Howley, M. F., Ecclesiastical History of Newfoundland, Boston, Doyle and Whittle, 1888, 426 p.

Johnston, Angus Anthony, A History of the Catholic Church in Eastern Nova Scotia, I (1611-1827), Antigonish, St. Francis Xavier University Press, 1960, viii-568 p.

Lanctot, Gustave, La situation politique de l'Eglise canadienne, Montreal, G. Ducharme, 1942, 26 p. (Société canadienne d'Histoire de l'Eglise catholique).

Langtry, J., History of the Church in Eastern Canada and Newfoundland, New York, SPCK, 1892, vi p., 1 leaf, 297-256 p. (Colonial Church Histories).

Laverdière, C.-H., Oeuvres de Champlain, Quebec, Geo.-E. Desbarats, 1870, 6 vol.

Lemieux, Lucien, L'établissement de la première province ecclésiastique au Canada, 1783-1844, Montreal, Fides, 1968, xxvii-559 p.

Lindsey, Charles, Rome in Canada. The Ultramontane Struggle for Supremacy over the Civil Authority, Toronto, Lovell Brothers, 1877, 398 p.

Lower, Arthur R. M., Canadians in the Making. A Social History of Canada, Toronto, Longmans, Green and Company, 1958, xxiv-475 p.

Millman, Thomas R., Jacob Mountain, First Lord Bishop of Quebec. A Study in Church and State, 1793-1825, Toronto, University of Toronto Press, 1947, 320 p. (University of Toronto Studies, History and Economics Series, vol. X).

Moir, John A., Church and State in Canada West. Three Studies in the Relation of Denominationalism and Nationalism, 1841-1867, Toronto, University of Toronto Press, 1959, xviii-223 p. (Canadian Studies in History and Government, No. 1).

Morice, A. G., O.M.I., History of the Catholic Church in Western Canada from Lake Superior to the Pacific, Toronto, The Mission Book, 1910, 2 vol.

-----, History of the Northern Interior of British Columbia, second edition, Toronto, William Briggs, 1904, xii-349 p.

Morin, Conrad-M., o.f.m., Le Saint-Siège et l'établissement de l'Eglise au Canada sous le régime français d'après les archives romaines. La mission apostolique (1615-1658), Rome, Antonianum, 1945, 27 p.

Morton, W. L., The Kingdom of Canada, Toronto, McClelland and Stewart, 1963, 556 p.

Murdoch, Beamish, A History of Nova-Scotia, or Acadie, Halifax, James Barnes, 1865-1867, 3 vol.

Noel, S. J. R., Politics in Newfoundland, Toronto, University of Toronto Press, 1971, x-328 p. (Canadian Government Series, No. 17).

Nussi, Vincentio, Conventiones de rebus ecclesiasticis inter S. Sedem et civilem potestatem, Moguntiae, Franciscus Kirchheim, 1870, x-442 p.

Ollivier, Maurice, Problems of Canadian Sovereignty (from the British North America Act, 1867, to the Statute of Westminster, 1931), Toronto, Canada Law Book Company, 1945, xii-491 p.

O'Sullivan, D. A., Essay on The Church in Canada, Toronto, The Catholic Truth Society, 1890, viii-136 p.

Ottaviani, Alfredo, Institutiones iuris publici ecclesiastici, ed. 3a, [Vatican City], Typis Polyglottis Vaticanis, 1947-1948, 2 vol.

Pagnuelo, S., Etudes Historiques et Légales sur la Liberté Religieuse en Canada, Montreal, C.-O. Beauchemin et Valois, 1872, [137-x-409 p.

Pouliot, Jean-François, Traité de droit fabricien et paroissial, Montreal, Wilson & Lafleur, 1936, xviii-1010 p.

Prowse, D. W. A History of Newfoundland from the English, Colonial, and Foreign Records, second edition, London, Eyre and Spottiswode, 1896, vii-634 p.

Reeves, John, History of the Government of the Island of Newfoundland, London, S. R. Publishers, 1793, 167-cxvi p. (Johnson Reprint Corporation, 1967).

Reid, W. S., The Church of Scotland in Lower Canada, Toronto, Presbyterian Publ., 1936, 192 p.

Riddell, Walter Alexander, The Rise of Ecclesiastical Control in Quebec, New York, Columbia University Press, 1916. Reprinted New York, AMS Press, 1968, 197 p. (Columbia University Studies in the Social Sciences, No. 174).

Rumilly, Robert, Histoire des Acadiens, Montreal, Fides, 1955, 2 vol., 1038 p.

Saint-Denis, Dominique de, o.f.m. cap., L'Eglise Catholique au Canada. Précis historique et statistique, sixth edition, Montreal, Editions Thau, 1956, xiv-269 p.

Schooling, Sir William, K. B. E., The Governor and Company of Adventurers of England Trading into Hudson's Bay during Two Hundred and Fifty Years, 1670-1920, London, The Hudson's Bay Company, 1920, 129 p.

Sissons, Charles Bruce, Church & State in Canadian Education, Toronto, Ryerson Press, 1959, x-414 p.

Somers, Hugh Joseph, The Life and Times of the Hon. and Rt. Rev. Alexander Macdonell, D.D., first Bishop of Upper Canada, 1762-1840, Washington, The Catholic University of America, 1931, iv-232 p.

Stimson, Elam Rush, History of the Separation of Church and State in Canada, second edition, Toronto, [s.e.], 1887, viii-201 p.

Story, Norah, The Oxford Companion to Canadian History and Literature, Toronto, Oxford University Press, 1967, xx-935 p.

Stuart, H. C., The Church of England in Canada, 1759-1793, Montreal, J. Lovell, 1893, 117 p.

Tache, Alexandre, o.m.i., Esquisse sur le Nord-Ouest de l'Amérique, Montreal, C. O. Beauchemin et Fils, second edition, 1901, 184 p. (English translation: Sketch of the North-West of America, translated by D. R. Cameron, Montreal, John Lovell, 1870, 216 p.

-----, Vingt Années de Missions dans le Nord-Ouest de l'Amérique, Montreal, Eusèbe Sénéchal, 1866, xii-245 p.

Trudel, Marcel, Histoire de la Nouvelle-France, I, Les vaines tentatives, 1524-1603, Montreal, Fides, 1963, xxii-307 p. II, Le comptoir, 1604-1627, Montreal, Fides, 1966, xlix-554 p.

-----, L'Eglise canadienne sous le Régime militaire, 1759-1764, Vol. I, 1956: Les Etudes de l'Institut d'Histoire de l'Amérique française, xxxvi-362 p. Vol. II, Quebec, Les Presses Universitaires Laval, 1957, viii-490 p.

Wade, Mason, The French Canadians, 1760-1945, Toronto MacMillan, 1955, xvi-1136 p.

Walker, Franklin A., Catholic Education and Politics in Ontario. A Documentary Study, Toronto, Thomas Nelson & Sons (Canada), 1964, xii-507 p.

-----, Catholic Education and Politics in Upper Canada. A Study of the Documentation Relative to the Origin of Catholic Elementary Schools in the Ontario School System, Toronto-Vancouver, J. M. Dent & Sons (Canada), 1955, xii-331 p.

Wallace, W. Stewart, ed., The Encyclopedia of Canada, Toronto, University Associates of Canada, 1935-1936, 6 vol.

Walsh, Henry Horace, The Christian Church in Canada, Toronto, Ryerson Press, 1956, x-355 p.

Warburton, Alexander Bannerman, A History of Prince Edward Island from its Discovery in 1534 until the Departure of Lieutenant-Governor Ready in 1831, St. John, N. B., Barnes & Co., 1923, xv-194 p.

Whitelaw, William Menzies, The Maritimes and Canada before Confederation, Toronto, Oxford University Press, second edition, 1966, 347 p.

Willson, Beckles, The Great Company being a History of the Honourable Company of Merchants-Adventurers trading into Hudson's Bay, Toronto, Copp, Clark Company, 1899, xxii-541 p.

Wilson, A., The Clergy Reserves of Upper Canada. A Canadian Mortmain, Toronto, University Press, 1968, 280 p. (Canadian Studies in History and Government, No. 8).

b. Articles

Ares, Richard, s.j., "L'Eglise et l'Etat, I", in Relations, 22 (1962), p. 264-266.

-----, "L'Eglise et l'Etat au Québec. II Situation juridique de l'Eglise au Québec", in Relations, 23 (1963), p. 221-223.

-----, "L'Eglise et l'Etat au Québec. III Le statut religieux de l'Etat québécois", in Relations, 23 (1963), p. 284-287.

Bernier, Paul, "La situation juridique de la paroisse au Canada français", in Actes du Congrès de Droit canonique, Paris, Letouzey et Ané, 1947, p. 165-170.

-----, "La situation présente du catholicisme au Canada", in Revue de l'Université d'Ottawa, 15 (1945), p. 389-407.

-----, "Le droit paroissial avant et depuis Mignault", in Revue du Notariat, 46 (1943), p. 175-199.

Brown, George W., "The Formative Period of the Canadian Protestant Churches", in Essays in Canadian History, R. Fleming, Ed., Toronto, MacMillan, 1939, p. 346-372.

Buxton, George, "Some Aspects of the Religious Policy of Great Britain in the Province of Quebec, 1760-1774", in The Canadian Catholic Historical Association, Report 1937-1938, p. 17-23.

Cameron, Rt. Rev. John, "The Catholic Church in the Maritime Provinces", in Canada: an Encyclopedia of the Country, Toronto, Linscott Publishing Co., 1898, Vol. II, p. 467-473.

Caron, Arthur, O.M.I., "De Relationibus inter Ecclesiam et Statum in ditioe Canadensi", in Ius Pontificium, 13 (1933), p. 150-162.

Carrière, Gaston, O.M.I., "L'Honorable Compagnie de la Baie d'Hudson et les missions dans l'Ouest canadien", in Revue de l'Université d'Ottawa, 36 (1966), p. 15-39, 232-257.

De Lery, Louis-C., S.J., "Loi anglaise et Droit canonique", in Relations, 2 (1942), p. 263-265.

Francis Xavier, Sister, S.C., "Educational Legislation in Nova Scotia and the Catholics", in The Canadian Catholic Historical Association, Report 1957, p. 63-74.

Fregault, Guy "L'Eglise et la société canadienne au début du XVIII^e siècle", in Revue de l'Université d'Ottawa, 31 (1961), p. 351-379, 517-542.

Garner, John, "The Enfranchisement of Roman Catholics in the Maritimes", in The Canadian Historical Review, 34 (1953), p. 203-218.

Girvère, Georges-Emile, S.J., "L'Eglise catholique a-t-elle subi des modifications en venant en Nouvelle-France", in Revue d'Histoire de l'Amérique française, 15 (1961-1962), n. 18^e-203.

Gillis, D. Hugh, "Sir John Thompson and Bishop Cameron", in The Canadian Catholic Historical Association, Report 1955, p. 87-97.

Giroux, Georges-Michel, "La loi Prévost", in La Revue du Notariat, 51 (1949), p. 421-448.

-----, "La situation juridique de l'Eglise catholique dans la province de Québec", in La Revue du Notariat, 48 (1945), p. 97-117, 137-152.

-----, "Le pouvoir des fabriques d'acquérir des immeubles", in La Revue du Notariat, 47 (1945), p. 441-455, 473-489.

-----, "Les corporations épiscopales catholiques romains du Québec", in La Revue du Notariat, 56 (1954), p. 334-350, 404-410.

-----, "Quelques principes fondamentaux de droit corporatif civil et de droit canonique", in La Revue du Notariat, 55 (1952), p. 85-104.

Clazebrook, P. R., "Oaths, English Post-Reformation", in New Catholic Encyclopedia, New York, McGraw Hill, [c.1967], Vol. X, p. 596-599.

-----, "Penal Laws, 1. In England", in New Catholic Encyclopedia, New York, McGraw Hill, [c. 1967], Vol. XI, p. 62-65.

Gosselin, Auguste, "La Constitution de 1791 et le clergé canadien", in Le Canada Français, 2 (1919), p. 286-293.

Groulx, Lionel, "La situation religieuse au Canada français vers 1840", in La Société canadienne d'Histoire de l'Eglise Catholique, Rapport 1941-1942, p. 51-75.

-----, "Le conflit religieux au lendemain de 1760", in La Société canadienne d'Histoire de l'Eglise Catholique, Rapport 1939-1940, p. 11-26.

Kelly, Eugene T., "The Coming of the Newfoundland Irish: The State of the Question", in The Newfoundland Quarterly, 65 (1965), p. 18-20; 66 (1967), p. 14-16.

Kenney, James F., "Relations between Church and State in Canada since the Cession of 1763", in The Catholic Historical Review, 18 (1932-1933), p. 439-471.

Lalonde, Marc, "Les Relations juridiques Eglise-Etat au Québec", in Cours à l'Institut canadien des Affaires publiques, 1961. p. 77-100.

Lamirande, Emilien, "L'implantation de l'Eglise catholique en Colombie-Britannique, 1838-1848", in Revue de l'Université d'Ottawa, 28 (1958), p. 213-225, 323-363, 453-489.

Lanctot, Gustave, "Situation politique de l'Eglise Canadienne sous le régime français", in La Société canadienne d'Histoire de l'Eglise Catholique, Rapport 1940-1941, p. 35-36.

Landreville, Léo, "L'influence de l'Eglise sur les lois canadiennes", in La Société canadienne d'Histoire de l'Eglise Catholique, Rapport 1962, p. 63-71.

Lemelin, Roméo, "L'érection des paroisses en Canada, sous le régime français", in La Société canadienne d'Histoire de l'Eglise Catholique, Rapport 1947-1948, p. 65-71.

Lenhart, John M., O.F.M. Cap., "The Church of Canada after the British Conquest (1760-1775)", in Records of the American Catholic Historical Society of Philadelphia, June, 1920, p. 162-173.

Lucey, W. L., "Massachusetts", in New Catholic Encyclopedia, New York, McGraw Hill, [c.1967], Vol. IX, p. 429-433.

Maheux, Arthur, "Difficultés religieuses après la cession", in La Société canadienne d'Histoire de l'Eglise catholique, Rapport 1946-1947, p. 11-24.

-----, "Le Problème protestant", in La Société canadienne d'Histoire de l'Eglise Catholique, Rapport 1939-1940, p. 43-50.

Marion, Seraphin, "L'Acte de Québec: concession magnanime ou intéressée", in Cahiers des dix, 28 (1963), p. 147-177.

Mary Licuori, Sister, S.C., "Haliburton and the Uniackes: Protestant Champions of Catholic Liberty (A Study of Catholic Emancipation in Nova Scotia)", in The Canadian Catholic Historical Association, Report 1953, p. 37-48.

Massicotte, E. Z., "Dénominations religieuses et institutions autorisées à tenir registre de l'état civil dans la province de Québec", in Bulletin des Recherches Historiques, 1927, p. 77-83.

McDonald, Donald R., "The Honourable and Right Reverend Alexander MacDonell, D.D., First Bishop of Upper Canada", in The Canadian Catholic Historical Association, Report 1938-1939, p. 9-19.

McDougal, D. J., "Some Problems of Church and State in Canada and Ireland, 1790 to 1815", in The Canadian Catholic Historical Association, Report 1940-1941, p. 21-33.

Mignault, P.-B., "Une dernière leçon de droit paroissial", in La Revue du Barreau, 6 (1946), p. 1-5.

Moir, John, "The Settlement of the Clergy Reserves, 1840-1855", in The Canadian Historical Review, 37 (1956), p. 46-62.

Morin, Conrad-M., C.F.M., "La naissance de l'Eglise au Canada", in Revue d'Histoire de l'Amérique française, 1 (1947), p. 243-256, 331-341.

-----, "Le Saint-Siège et la juridiction des fondateurs de la Mission du Canada", in Antonianum, 29 (1945), p. 149-176.

-----, "Le Saint-Siège et l'établissement de l'Eglise au Canada sous le régime français d'après les archives romaines. La mission apostolique (1615-1658), Antonianum, 1945, 27 p. (Reprint of former article).

Murray, John Courtney, S.J., "Contemporary Orientations of Catholic Thought on Church and State in the Light of History", in Theological Studies, 10 (1949), p. 177-234.

Ottaviani, Alfredo, "Devoirs de l'Etat catholique envers la religion", in Le Séminaire, 19 (1954), p. 5-22.

Pigeon, Louis-Philippe, "Législation civile des paroisses; régime anglais", in La Société canadienne d'Histoire de l'Eglise Catholique, Rapport 1947-1948, p. 93-99.

-----, "Législation civile des paroisses (Régime anglais)", in La Revue du Parreau, 9 (1949), p. 53-61.

Pouliot, Jean-François, "La liberté des cultes au Canada", in La Société canadienne d'Histoire de l'Eglise Catholique, Rapport 1933-1934, p. 68-78.

-----, "La Liberté des cultes au Canada", in Acta Congressus Iuridici Internationalis, 5 (1937), p. 365-378.

Pouliot, Léon, S.J., "Note sur l'église du Bas-Canada de 1831-1833. L'érection civile des paroisses", in Bulletin des Recherches Historiques, 1940, p. 289-292.

Proulx, Georges-Etienne, "Les canadiens ont-ils payé la dîme entre 1760 et 1775", in Revue d'Histoire de l'Amérique française, 11 (1957-1958), p. 533-562.

Provost, Honorius, "Le régime des curés au Canada français", in La Société canadienne d'Histoire de l'Eglise Catholique, Rapport 1954-1955, p. 85-103.

-----, "Le système des cures au Canada français", in La Société canadienne d'Histoire de l'Eglise Catholique, Rapport 1947-1948, p. 19-35.

Racicot, Armand, "La Situation juridique de l'Eglise au Canada et dans la Province de Québec", in "Nos Cours" à l'Institut Pie XI, Montreal, Institut d'Action catholique et de Sciences religieuses, 2 (1940-1941), Nos. 1, 2, 3, 5, 18.

Rankin, D. J., "Laurence Kavanagh", in The Canadian Catholic Historical Association, Report 1940-1941, p. 51-76.

Riddell, Hon. William Renwick, "Status of Roman Catholicism in Canada", in Catholic Historical Review, October, 1928, p. 305-327.

Schaaf, Valentinus T., O.F.M., "De libertate cultus in Statibus Foederatis Americae", in Acta Congressus Iuridici Internationalis, V (1934), Romae, 1937, p. 321-361.

Smith, W. Lyndon, "Church and State. A Review of Recent Literature", in Canadian Historical Review, 1941, p. 307-316.

Tetu, Henri, "Le Chapitre de la cathédrale et ses délégués en France, 1723-1773", in Bulletin de Recherches Historiques, XIII (1907), XIV (1908), XV (1909), XVI (1910), passim.

Trudel, Marcel, "La servitude de l'Eglise catholique du Canada français sous le régime anglais", in La Société Canadienne d'Histoire de l'Eglise Catholique, Rapport 1963, p. 11-33.

Walker, Franklin A., "The Political Opinion of Upper Canadian Catholics", in The Canadian Catholic Historical Association, Report 1955, p. 75-86.

Vallot, Jean-Pierre, "Sewell et son projet d'asservir le clergé canadien (1801)", in Revue d'Histoire de l'Amérique française, 16 (1963), p. 549-566.

Wilson, Alan, "The Clergy Reserves: 'Economic Mischief' or Sectarian Issue?", in The Canadian Historical Review, 64 (1962), p. 16-19.