THE
CLERGY RESERVE QUESTION
IN
CANADA.

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CLERGY RESERVES IN CANADA.

When the Province of Canada was conquered by the British forces about a century ago, its population was exclusively French, and its religion fully established under the Roman Catholic form. They possessed ample endowments for the maintenance both of religion and education; and, in accordance with the rules of an Establishment, tithes were enforced, and they are to this day paid by members of that communion in Lower Canada.

After the conquest, there was gradually an introduction of settlers of British origin; and at the conclusion of the revolutionary war which terminated in the independence of the United States of America, the loyalists who abandoned that country were encouraged to settle in the more westerly portions of the conquered province. In the year 1791, it was considered expedient to divide the province into Lower and Upper Canada, as their respective populations had become so diverse in language, customs, and creed. In framing the new Constitution consequent upon this division of the province, it was not forgotten that, as an ample provision existed for the

maintenance of the Roman Catholic faith in Lower Canada, some corresponding support should be secured for the Protestant religion in Upper Canada. As the adoption of tithes for this purpose was not considered advisable, one-seventh of all the lands of the province, in lieu of that ancient mode of religious endowment, was required to be set apart, in the progress of the surveys, for the maintenance of a "Protestant Clergy." Why the term *Protestant* was here employed, is explained by the fact that the tithes and endowments in the sister province existed entirely for the support of a *Romish* clergy. The adoption of the term *Protestant* in this case would render more clear the object and necessity of such an appropriation of lands for religious purposes. And if the term "Protestant" was liable to misconstruction, as seeming to comprehend other religious bodies than the National Church, doubt would be removed by the annexation of the word *Clergy;* which, according to all existing legal usage, could only be felt to apply to the ministers of the Established Church of England.

A question, however, did arise, founded upon the vague signification of the term "Protestant," as to the exclusive right of the Church of England to this religious provision; and the dispute which grew out of it was only terminated in 1840, when an Act was passed, (3 and 4 Victoria, chap. 78,) finally disposing of all doubtful interpretations, and deciding that the terms "Protestant Clergy" might be construed to

include other ministers than those of the Church of England; and assigning to the latter about one-half of the provision for religious instruction which heretofore had been regarded as exclusively her own.

In the progress of discussion upon this point in the Colonial Legislature, the proposal was occasionally advanced and adopted in the House of Assembly, that it was expedient to apply these reserved lands to the advancement of general education; but this was a proposition uniformly rejected by the Legislative Council; and, after many ineffectual attempts at a compromise, it was, in 1839, decided by the whole Provincial Legislature, that the Clergy Reserve lands should be re-invested in the Crown. This measure was founded upon the belief that a division of the property could be made by Parliament here with more prudence and justice than could be ensured amidst the heat and strife of local legislation. The Act of 1840 was the result of this reference of the question to the Imperial Parliament, and it was expressly stated to be for "the *final settlement* of the question of the Clergy Reserves, the maintenance of religion, and the diffusion of Christian knowledge within that province." That it was so judged, not only by friends of the Church of England, but by many of her political opponents, is evident from the language of one who afterwards became most unaccountably the advocate of the violation of that Act of settlement. Mr. Price, in 1846, during a discussion which arose upon that subject in the Legislative

Assembly on a mere question of executive management, "deprecated any further legislation, as likely to endanger that settlement which had been considered final; that peace had succeeded the long and fierce conflict; that the country was settling down in the hope that agitation on that subject was at an end; and that thus one great source of heart-burnings and mutual recriminations among the religious bodies would be at once and for ever lost in the oblivion of the past." The same Mr. Price, in 1850, introduced into the Legislative Assembly a series of resolutions, on which was founded an Address to Her Majesty, praying for the confiscation of the Clergy Reserves to secular uses!

If it be asked to what this extraordinary change of sentiment is to be attributed, the answer is ready,—that in new countries, if not in all countries, the Parliamentary aspirant cannot afford to be without some grave or interesting topic, by which to keep up the political excitement that may serve his turn where his abstract merits would not be discerned. The question of the Clergy Reserves,—with which there could be associated threats of a religious despotism on the one hand, and the charm of religious equality on the other,—was just the one for the political adventurer to seize upon with avidity. And it is important here to state that, during the period of our temporary quiet from the stir and strife of the Reserve question, that disruption took place in the Church of Scotland, which ended in the formation of

a separate communion, styled the Free Church; and that, however unnecessarily or unaccountably, this controversy in the Established Church of the neighbouring country extended to the colonies. When the same disruption took place in Canada, and when the larger body of seceders came to regard the smaller body of adherents to the Scottish National Church as invested with a share of a public endowment, from which, by their separation, they voluntarily excluded themselves, jealousy, combined with the heat of religious animosity, led the members of the Free Church to seek the overthrow of the settlement of 1840. Where no modification could be entertained by a party who professedly abjured at the outset all State endowments and aid, it was not unnatural that they should attempt the entire destruction of that provision for religion by which their rivals were so much benefited.

This was a happy opportunity for the political trader, who must have a capital to work upon; and while the members of the Free Church of Scotland were engaged in hearty advocacy of the abolition of the Reserves as a religious endowment, it was easy to enlist other allies from among those who were lately apathetic. The ranks of that party were easily swelled, too, by proposing the catching lure, that the appropriation of these Clergy lands to ordinary education would serve to relieve the people from a considerable burden of taxation for the support of their common schools. At the same time it was becoming

usual to elect the preachers of various denominations, as township superintendents of schools, with a respectable salary, likely to be much augmented if the Clergy Reserves could be thrown into the common fund; and so it was not unnatural that the alliance and hearty support of those should be secured in this agitation, who could thus transfer the revenues of the religious endowment into stipends, under another name, for themselves.

These combined circumstances, however unjustifiably and wickedly, accumulated strength and importance to the agitation. Political capital was made to abound on the one hand, and the lure of interest acted on the other; and this, connected with the alarm which can be thrown into simple minds by re-awakening the ancient cry of danger to religious liberty, easily produced that amount of fierce discussion and turmoil which would warrant the Parliamentary aspirant in bringing it more formally before the public.

In correspondence with this feeling—created by means so unprincipled and on grounds so little to be respected—the Address to Her Majesty to allow of renewed and local legislation upon the Clergy Reserves was moved by Mr. Price in the Parliament of Canada, in the summer of 1850; professing an intention to respect the interests of present incumbents, but abstaining from any declared opinion as to what should be the ultimate disposition of that property. As the question now was merely whether it was ex-

pedient or not to legislate anew upon these Reserves in the Colony; and as many, a large body of the French Roman Catholic members especially, felt themselves under no pledge, by supporting this view, to vote ultimately for their alienation to secular purposes, the Address was carried.

What followed is a matter of history so recent, that I need not dwell upon it further than to say, that Earl Grey, when Colonial Secretary, having been prevented, by the change of Ministry in February 1852, from bringing in a Bill to comply with the prayer of the Legislative Assembly in Canada, the succeeding Government adopted—what appears to a large majority of sound-hearted men in the Colony the constitutional and truly British course—the resolution of declining to recommend to Parliament here any action which would allow of unrestricted or unconditional legislation upon the property of the Church in Canada.

No body of men, in proposing the subversion of ancient institutions, or the alienation of property or privileges long in the possession of others, are so unreasonable as not to offer some plea or show of right for the violent changes they are seeking to bring about. The Canadian Legislature, accordingly, goaded by the clamours of a party, claim the *right* to this local action from the terms of the Constitutional Act itself. It is contended, that as they are there invested with power to "vary or repeal" the provisions of that Act, they are only exercising a constitutional right

in dealing absolutely with this property. That there is an evident misapprehension as to the meaning and extent of the powers thus conveyed, is proved from the opinion of Her Majesty's Judges themselves, who, on the 13th April, 1840, expressed themselves upon the words " vary or repeal " as follows :—

" My Lords,—In answer to the question secondly put to us, we are all of opinion that the effect of the 41st section of the statute is *prospective* only, and that the powers given to the Legislative Council and Assembly of either of the provinces, cannot be extended to affect lands *which have been already allotted and appropriated* under former grants; for the manifest import of the 41st section appears to us to be limited to this, viz. 'the varying or repealing the provisions *respecting the allotment and appropriation of lands*,' and not to comprehend the 'varying or repealing allotments, or appropriations, which have been already made under provisions of the Act, while such provisions continued unrepealed and in full force.' The provisions of the Statute of Wills might be varied or repealed without affecting the devises of land already made under it." In other words, the Provincial Parliament, by the force of that clause, had power to " vary " the amount of appropriation, from a seventh to a tenth, or a twentieth, for example; and to " repeal " the power of making further reservations of lands beyond what were already set apart for that purpose.

Equally unfounded is the claim that the local

Legislature have a right to the disposal of the Clergy Reserves, as being a Colonial property. But that surely cannot be a Colonial property which was acquired originally by conquest, at the expense of the blood and treasure of the British Empire, and which was so acquired before there was a single Protestant inhabitant in that portion of the Colony in which the disputed property lies. Moreover, after the conquest of that Colony from the French, the native North American Indians were regarded to a certain extent as proprietors of the soil in Upper Canada; and the lands considered to be rightfully possessed by those natives, were actually purchased from them by the British Government, and they are to this day, in part at least, being paid for by annual presents from the Imperial Treasury. It is most unreasonable, then, to affirm that the Canadian Legislature have any just control over a property acquired by the British Government both by conquest and purchase. If the right of the Colonial Legislature be conceded in this case, it could hardly be resisted if they should demand those other numerous and valuable portions of land throughout the province, which are reserved by the Crown for fortifications and other public purposes. These are of no inconsiderable value; in many cases they are unemployed, and held reserved for any special object which the course of events may render desirable or necessary; and not unfrequently the inconvenience of such reservations to local interests is complained of.

The alleged discontent that will prevail in Upper Canada, should the required provincial legislation upon the Clergy Reserves be resisted by the Imperial Legislature, is often adduced as the strongest argument for their total surrender to the local authorities. This would be dangerous ground on which to make such a concession, as establishing a precedent which would unsettle the title to all property that had originally been the grant of the Crown. In Lord Durham's Report, page 84, we find the following on the subject of grants of lands:—

"In Upper Canada 3,200,000 acres have been granted to U. E. Loyalists, being refugees from the United States, who settled in the Province before 1787, and their children; 730,000 acres to militiamen; 450,000 to discharged soldiers and sailors; 255,000 to magistrates and barristers; 136,000 to executive councillors and their families; 36,000 to clergymen, as private property; 264,000 to persons contracting to make surveys; 92,526 to officers of the army and navy; 50,000 for the endowment of schools; 48,000 to Colonel Talbot; 12,000 to the heirs of General Brock, and 12,000 to Dr. Mountain, a former Bishop of Quebec: making altogether, with the Reserves, nearly half of the surveyed lands of the Province." "Now," says a Colonial newspaper, "is it not strange that, while the time of the Legislature, to the value of tens of thousands of pounds, has been expended in fruitless legislation upon the Clergy Reserves, no man ventures to impeach the

titles to the extensive grants above described?" I shall ask whether legislation upon the one would not be as legal and equitable as upon the other!

But the discontent, so studiously set forth as arising from the present position of this property, exists only on the surface. It is limited to a few leading political characters, or a small number of agitators in the ranks of various religious denominations; it has not penetrated to the heart of the people, and has no influence upon the general quiet of the land. That I am correct in this affirmation, recent events in the history of that province serve to prove. Through the influence and exertions of the leading agitators already referred to, the last elections in Upper Canada were made to turn almost exclusively upon the Clergy Reserve question. Prior to their having taken place, much strong feeling was expressed upon this subject; many public meetings were held by the opponents and the advocates of the retention of the Reserves to religious uses. The most unscrupulous efforts were employed to create impressions hostile to the Church; all, in short, that could be done by agitation and misrepresentation, was resorted to, to secure the election of members who would vote away this property to secular uses. But what has been the result? Out of forty-two members (the quota of Upper Canada) elected, eighteen have declared themselves in favour of the retention of the Reserves for religious instruction by a recent vote; two, Sir Allan Macnab and Mr.

Illurney, decided advocates of the same view, were absent from that division; and one, Mr. Prince, can hardly be expected to persevere in voting against his long-avowed principles and his uniform action in the previous Parliament. It must have been a question of detail rather than of principle which led a gentleman of such strong and independent mind into this apparent, but let us hope temporary, contradiction. So that, claiming him as our ancient and always sturdy ally, we have the representation of Upper Canada equally divided on this great question.

This is an important fact in our favour; but it grows in importance when we compare the present with the last Parliament, upon this question. Now we have twenty-one (twenty certainly) in favour of holding the Clergy Reserves for religious uses; then we had but seventeen entertaining that view out of the representatives of Upper Canada; in other words, the Conservative religious party gained nine seats in Upper Canada at the last general election, and lost but five. Of these five, the constituencies of two—Cornwall and Niagara—are believed to be decidedly in favour of the maintenance of the Clergy Reserves; the seats were lost on personal grounds, or those of local interest only. And this was the result, it should be remembered, after the exercise of the most steady, strenuous, and unprincipled exertions on the part of our opponents.

In contemplating this result, there is a special feature, bearing upon the whole question, of which

we ought not to lose sight. Mr. Price, the leading advocate in the last Parliament for the secularization of the Clergy Reserves, lost his seat in the Second Riding of York, and is succeeded by Mr. Gamble, a Conservative Churchman. Mr. Notman, among the foremost and most talented in opposition to the claims of the Church, is displaced from Middlesex by Mr. Willson, another Conservative Churchman. Mr. Morrison, one of the leading debaters against the Reserves as a religious endowment, gives place to Mr. Wright, a Churchman, in the First Riding of York. Mr. Macfarlane, conspicuous for his animosity to the Reserves as a religious endowment, is rejected in the county of Welland, and Mr. Street, a zealous Churchman, is elected in his room. So that four gentlemen, in the most populous constituencies of the province, who had taken the most prominent part in seeking to despoil the Church, were beaten by their opponents; and what is, perhaps, more significant, Mr. Price, in taking leave of his constituents, distinctly declared that, in rejecting him and electing Mr. Gamble, they had given their verdict against the secularization of the Clergy Reserves.

But I am enabled to adduce another test of this improved feeling on the question of the Clergy Reserves. The Toronto *Patriot*, one of the oldest and most respectable journals in Upper Canada, has furnished us with a tabular statement, from which it appears that the population of those places in which the Conservative religious party have gained seats

amounts to 196,277; while the population of those which our opponents have gained amounts only to 55,482. Again, the same journal shows that the whole number of votes given to the Conservative religious party at the last elections in Upper Canada was 24,048, while those given to their opponents was only 23,550. Furthermore, on the showing of that paper, the whole population (adopting the census as then published) represented by the Conservative party amounts to 409,037, while that represented by their opponents is only 384,059.

By the last census, the members of the Church of England in Upper Canada number 223,928, and those of the Church of Scotland, 57,713; both having a defined and vested right in the property of the Clergy Reserves. Moreover, grants have been annually made from the proceeds of these Reserves to Ministers of the United Synod of the Presbyterian Church in Upper Canada, and to Wesleyan Methodists: a presumption that these bodies are not at least universally in favour of the alienation of the Reserves from religious purposes. So that, if to the combined numbers of the Churches of England and Scotland, amounting to 281,641, we add the adherents of those other religious bodies who are benefiting by this endowment, we shall hardly allow ourselves to say that a majority of the Protestant population of Upper Canada—amounting in all to 784,573—are opposed to the maintenance of the Clergy Reserves for religious objects. Some of them

may be discontented with the existing distribution of the revenue accruing from the lands; but the facts I have adduced prove that they are not opposed to the *principle* of holding them as a religious endowment.

But, leaving out of the question the rights and claims of other religious bodies, I trust I have advanced enough to substantiate the justice and equity of preserving to the Church of England her share in this property, formally allotted to her by the Act of Parliament of 1840.

She has in her favour the Constitutional Act of 1791, first making the reservation for the support of her Clergy; and which, it has been demonstrated, the Colonial Legislature has no power whatever to alter as respects the reservations already made. She has the Act of 1840 (3 and 4 Victoria, chap. 78), adjudicating a disputed point as to the extent of her claims under the Constitutional Act, and making that settlement "final."

She has virtual possession of the revenue derived from her share of the Reserves secured by this settlement, and she is actually employing it for the support of her Clergy.

In the name of common justice, then, how can she be deprived of this property?

And opposed to this law and justice, let us hear the wretched appeals on the other side. It has been argued that the lands thus reserved obstruct the course of public improvement. That cannot be the

case now, because they are all being sold, and they are rapidly falling into the hands of individuals for actual settlement.

State endowments of religion, it is contended, by securing a too great independence of the Clergy, endanger the purity of religion. But not so with the Clergy Reserves; since it has been shown by the Inspector-General, Mr. Hincks himself, that the share of the Church of England in Upper Canada can never exceed 20,000*l.* sterling per annum; and by existing regulations, no stipend exceeding 100*l.* currency per annum can be allotted to any individual Clergyman from that source.

They will, some argue, lighten the taxes of the people, if they should be appropriated to ordinary education. But not so, unless the affirmation be hypocritical and a mockery, that they who contend for the abolition of all endowments of religion are ready to give freely, by voluntary contributions, for the service of religion. What would be saved in this last case, by the application in its stead of a public endowment, let them appropriate to secular education. It would be a prudent shifting of the voluntary burden,—the fixed income to religion, and the voluntary one to education; the fixed income for that which men have no natural taste for supporting, the voluntary one for that which worldly and personal considerations would impel them to uphold. There would manifestly be kindness, as well as wisdom, in securing this transition for them.

Again, we are told, the maintenance of religion is secure without the aid or application of a special endowment; but the case or history of no nation can be adduced in which that rash assertion is proved. The experiment, wherever it has been tried, has emphatically failed. Such a land has either been overrun with infidelity, or the pure image of Christianity, amidst conflicting and extravagant forms of error, has been well-nigh lost. All history attests the necessity of supplying, from compulsory or independent sources, what the natural depravity of man is averse to.

And how would the spoliation contemplated in the application of the Clergy Reserves to secular education, contrast with precedents furnished by the dealing of the Government of the United States with a similar property? The endowments of Trinity Church, in New York, their origin and value, are well known. They were the gift of a British Sovereign to the Church of England in that country, and their estimated value is now 3,000,000 of dollars. The annual revenue from this endowment, at the legal rate of interest in that country, is nearly double of what can ever be derived from the share of the Clergy Reserves held by the Church of England in Upper Canada. Attempts, from time to time, have been made to divest Trinity Church of that endowment; but all have failed, and she is now secure in its possession. Again, in the State of Vermont, there were Glebe Lands held, for a long term of years, by

the Church ; which, in 1805, the Legislature of that State passed an Act to appropriate to the support of Schools. In 1819 a suit was brought, in the Circuit Court of the United States, for the recovery of these lands: it was decided in favour of the plaintiffs; and, in March 1823, the judgment was affirmed in the Supreme Court at Washington, by the opinion of six judges, against one dissenting.

If, in defiance of law and justice, and in contravention of all precedents, the Church of England in Canada is to be deprived of her unquestionable rights, what ecclesiastical property in the empire is anywhere safe? Should her revenues be sacrificed in Canada, because a real or presumed majority demand it, can they, with the same weight of argument and high moral influence, be preserved in Ireland? And if, in one dependency of the empire after another, they be given up to a causeless and unjustifiable clamour, how long shall the same concession be withheld in England? Cut away the power and vitality of the extremities, and will the heart be safe?

But, speaking of agitation, it would not be quelled in Canada by the mere sacrifice of the Clergy Reserves as a religious endowment. If a public property for the support of religion in Upper Canada be swept away, the rich endowments of the Romish Church in Lower Canada cannot long be preserved. It is needless to speak vaguely and abstractedly, as some choose to do, of the difference of the tenure by which

they are respectively held. The gift of a British king is as binding in the eye of law and conscience as the bequest of a French monarch; the endowment solemnly guaranteed by Act of Parliament is as strongly guarded by right and equity as the bequest of individuals, or the gift of corporations. And if the argument gain respect, that Protestant endowments endanger the purity of religion, as securing too much independence on the part of the Clergy, it must be even stronger to prove that Romish endowments—especially if there be no counterpoise from Protestant ecclesiastical property—involve a greater peril, not only to spiritual purity, but to religious liberty.

The very principle upon which the advocates of the secularization of the Clergy Reserves proceed, will, sooner or later, drive them into this view of the case. They will be compelled, by the strong clamour to which themselves have given impulse, to be consistent in their plunder. They will be constrained to this, because the despoiled Protestants, already in the United Provinces exceeding the whole amount of Roman Catholics, cannot be expected to look with complacency upon the large and untouched possessions of the Romish hierarchy.

Nor will this feeling be slightly aggravated by the action of Roman Catholic members in bringing about such an issue of the controversy. In October last, the resolutions of Mr. Hincks, demanding unrestricted legislation upon the Clergy Reserves by the

Canadian Parliament, were—at the proposal of the first amendment—supported by seventeen members from Upper Canada, and twenty from Lower Canada; including in the latter eighteen of the Roman Catholic persuasion. They were opposed by eighteen members from Upper Canada, and four from Lower Canada; including, in the latter, two Roman Catholic members. If, then, on this division, the Roman Catholic members on both sides had abstained from voting,—as they should have done in a question of Protestant Church property,—the vote would have been nineteen to twenty, or a majority of one against Mr. Hincks's resolutions.

Again, it should be recollected that a special indulgence—steadily denied to the Church of England—has been conceded to the Romish Church in Canada, in allowing them, under the Education Law, separate schools for the instruction of the children of their own creed. Should the Clergy Reserves, then, be forfeited for purposes of ordinary education, they would, as respects the Roman Catholics in Canada, go almost directly to the propagation of their *religion.* A share of the revenue of that property would be received for their separate schools; and these separate schools are under the control of their Church, and directed by their priests.

Either, then, leave the Protestant endowments to their original application, or sweep away every vestige of ecclesiastical property from every quarter of the United Provinces; for if this equal justice be denied,

the province will take the exacting of it—with all the sad results of a war of religious parties—into their own hands, much sooner than the threat of collision will be realized should the Imperial Government not concede to the mixed Canadian Legislature the right of sequestrating the Protestant Clergy Reserves.

I trust I have said enough to show, that the declaration should be maintained by Her Majesty's Government, put forth some months ago by the Right Hon. Secretary of State for the Colonies, that they are "unwilling to give their consent and support to an arrangement, the result of which would too probably be the diversion to other purposes of the only public fund, except that devoted to the endowment of the Roman Catholic Church, which now exists for the support of divine worship and religious instruction in the Colony."

While this declaration has given great joy to many thousands of loyal subjects in Upper Canada,—comprised in the ranks of other religious denominations, as well as of the Churches of England and Scotland, —it cannot be a ground of real complaint with any. The people of that province are comparatively young in their freedom, and they have the exuberance of youth in the manifestations of their constitutional liberty. But, while loyal to this Crown and Empire, they are loyal also to the obligations of religion, order, and justice. No public sentiment will ever sanction an interference with Royal privilege, or the

clearly defined claims of the Parliament of this kingdom; no public opinion there will uphold the spoliation of rightful proprietors, whether they be corporate bodies or individuals. The vast majority of the people, too, are desirous of the permanent ministrations of religion; and while a few may be chimerical in their enthusiasm upon that point, the great bulk of the population are practically aware of the ineffectual workings of the voluntary system, and are desirous that there should be blended with the partial dependence of their ministers upon the offerings of their flocks, their independence of that popular control which would mar the honesty of their religious teaching, and render them the tools of men rather than the servants of God.

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