

before God to take action beyond what you have
already taken "The highway of the upright is to
depart from evil; he that keepeth his way preserveth
his soul."

J.F.

Prayer
Lang

To Sir Wm Dawson
member of Port. Committee

Hon Sir

I would respectfully
request an earnest and serious
perusal of the accompanying
Memorandum and Consider-
ations

I am

Yours obt. Servt.

James Fraser

St. James's House

Cushing P. O.

20th Jan'y 1890

MEMORANDUM.

The "moral obligation" which forms the *raison d'être* and the basis of the Act for the settlement of the Jesuits' estates, is founded on a canon law of the Roman Catholic Church. That law is of the following tenor:—"If, through any cause whatever, a religious order in connection with the Church of Rome ceases to exist, the properties formerly held by that order pass by succession into the hands of the Roman Catholic Church at large, as represented by the Pope."

Now, canon law is not *per se* binding on the State. Few, however, would dispute the ground, that if there are moral laws underlying the canon law, and the application of these laws is truly made in any case at issue, these moral laws, as moral laws, ought to be respected. Canon law must, therefore, be examined by the ultimate standard, God's moral law; and the particular application of the general canon law to each special case must also be tried by the ultimate standard of moral principles.

In this particular case let the issues be subjected to the moral test. The question then is, "Does succession to proprietary rights in the so-called Jesuits' estates reside, according to God's moral law, in the Roman Catholic Church?" Clearly, from what has been said, the existence of canon law does not settle the question. A gift implies a donor and his will. The donor has a right to determine the destination of his gift. On moral grounds, therefore, the donor and his will must of necessity be taken into account. If, now, the donor has not in his deed of gift specified or not sufficiently specified his will, it is legitimate in the case of sovereigns and their kingdoms to resort to historical research, and from civil enactments of the realm and public state acts to learn the will of the donor.

The only proof that these so-called Jesuits' estates were given subject to canon law is, that such canon law forms part of the ecclesiastical polity of the Church. That the Church had such a law, however, is no proof, unless it can also be shewn that the kings and realm of France acknowledged that law civilly. It is perfectly clear that if history furnishes us with distinct testimony that the state did not receive that canon law, then there can be no other conclusion than that the succession in proprietary right is to follow the law and custom of the state and not the law of the Church.

It is historical fact regarding the attitude of the kingdom of France toward the Church, both before and during the period of French occupation of Canada, that these two principles underlay all legislation in that respect:—"one, that the Pope does not possess any direct or indirect temporal authority; the other, that his spiritual jurisdiction can only be exercised in conformity with such parts of the canon law as are received by the kingdom of France" (Hallam's *Europe during the Middle Ages*, page 79, edition, Ward, Lock & Tyler, London). This is of the greatest importance, as showing that canon law was not regarded as binding *per se* on the kingdom of France.

It is historical fact that before and during French occupation of Canada the general ecclesiastical law regarding the revenues of vacant cures and bishoprics was limited in France by the "Droit Regalien," whereby the king claimed and actually collected as state revenues for state purposes the revenues of the vacant cures and bishoprics. (Mosheim's *Church History*, Cent. XVII.)

[Evidently the moral principle underlying this practice was that the ecclesiastical work was undertaken for the state, and the recompense therefor provided by the state; when the work ceased the recompense to the church ceased and went into the state coffers. On the same principle these so-called Jesuits' estates were certainly given as compensation for certain ecclesiastical work to be performed by the Jesuit order for the state in Canada. When the Jesuit order ceased to exist by Papal extinction of the order, the payment ceased and the revenues and possessions returned to the state.]—*Note.*

It is equally historical fact, that the very canon law in question in the present case was not recognized by the Kingdom of France during the period of French occupation of Canada. Instances of the death of religious orders are not of frequent occurrence. During French occupation of Canada two at least took place. In neither case was the canon law regarding the disposition of the property recognized, though in one case the death of the order was by Papal excommunication, in the other by civil suppression. In the one case, that of Port Royal des Champs, the community of Port Royal de Paris, who were in favor with the king, petitioned the king for the transfer to

their community of all the property of the excommunicated Port Royal des Champs. The king granted the movables, but retained the immovable property. The buildings he razed to the ground. Years after, the successors of the excommunicated society returned to France from their exile in the Netherlands, and bought back from the king the property, which, on the excommunication of their predecessors, had passed by civil succession into the hands of the Crown, (Ency. XIX siècle). In the other case, that of civil suppression by the arrêt of the Parliament of Paris, the properties of the suppressed Jesuit order were taken possession of by the king.

Whatever may have been said, or may still be said, regarding the morality or immorality of these acts—though they can be defended on moral grounds—that is not the issue here. The question is this: If the kings and realm of France, by these public state acts shewed that the canon law regarding church succession was not received or recognized in France, and if the kings of France were the actual and virtual donors of all the so called Jesuits' estates in this country, did they give and donate subject to a church law which the state did not recognize; or did they give and donate subject to the civil procedure in such cases? There can be only one answer: These estates were not given subject to the ecclesiastical law of succession; but these estates were given according to the recognized principles of the civil law or custom of the succession of the state.

Having been thus given and thus held under French domination of Canada, it would be preposterous to declare that the titles, as to succession, were enlarged or changed by the transfer of Canada to Great Britain. It was the intention of the donor that the state should be the actual and full successor to those properties in the event of the death of the Jesuit order. That intention still holds good on moral grounds, and on legal grounds also. The Roman Catholic Church has no claim whatever to these estates. Its pretended claim is an immorality, a breach of God's command "Thou shalt not steal."

The civil recognition and ratification of that claim, in the Jesuits' Estates Act, is equally a violation of God's moral law; the granting of compensation therefor to the Church of Rome by the Provincial Legislature a flagrant act of dishonesty.

JAMES FRASER.

RESOLUTIONS.

Whereas, a special grant of \$60,000 is made by the Legislature of this Province to the Protestant minority for educational purposes;

Whereas, the Jesuits' Estates Act, by 1st clause, "ratifies the agreement entered into between the Premier of this Province and the Very Rev Father Turgeon," and by that ratification civilly enacts a violation of the principles of the Eighth Commandment, the Roman Catholic Church not having, according to a true ethics, any claim whatever to the so-called Jesuits' estates, as appears from the Memorandum hereto appended;

Whereas, the Jesuits' Estates Act, in the details of the said agreement, founded on the admission of the said immoral claim, applies ecclesiastical laws of the Roman Catholic Church, detrimental to the supremacy of the state and sovereign, and hurtful otherwise to the peace and well-being of the state, and injurious to the consciences of the Protestant minority of this Province;

Whereas, the special grant of \$60,000 aforesaid is embodied in and forms an integral part of the said Jesuits' Estates Act, thus making administration and reception by the Protestant minority involve acquiescence in all the objectionable features of the Act;

It is hereby declared that under these circumstances, in which for educational purposes there is made to the Protestant minority a special grant encumbered with special conditions, it is not only fitting, but absolutely necessary, that the action of the Protestant Committee should be in accordance with, and voice the views and sentiments of, the Protestant minority; or else be for, and in the name of, the Protestant minority;

And it is hereby resolved to respectfully request the Protestant Committee to call the attention of the Government to the obnoxious conditions which encumber the grant, and especially to the condition of acquiescence in a violation of the principles of God's moral laws, which lie at the base of all moral education, refusing administration till the evils complained of be remedied; or else, on the ground taken by the Committee, that it cannot technically act for the Protestant minority, to decline the task of administration.

— Considerations —

1st If assent be given to the historical facts quoted above from standard authorities, assent must also be given to the conclusion, that the basis of the Decree's Estates Act is immoral, and that the grant given to Protestant Education on that basis is equally immoral.

2nd If assent be given to the historical facts recorded above, and to the fact, that the confiding to the Protestant Committee of the exclusive right of selecting text-books for the use of the schools of the Dominion is not a limitation of their functions in the moral sphere of education; then assent must also be given to the conclusion that no special grant based on a violation of the principles of God's moral law — the only foundation of moral education — shall be administered by your Committee.

3rd If assent be given to the historical facts recorded above, and to the fact that public office does not destroy moral agency before God; then assent must also be given to the conclusion, that the moral quality of administration of that grant as a public functionary is of exactly the same moral quality as redistribution in a private capacity of money known to be stolen. Human legislative legalizing theft does not change the moral character of the act in God's sight. "There is a way that seemeth right to a man in his own eyes, but the end of that way is death."

4th If assent be given to the historical facts recorded above, and to the fact that God does not accept a part of moral duty as equivalent to the whole moral duty in any case; then assent must also be given to the conclusion, that you are in duty bound
before