

(January 12, 1914.)

The Quebec Act.

BY HON. RODOLPHE LEMIEUX, K.C., M.P.*

AT a regular luncheon of the Club held on the 12th January, Hon. Mr. Lemieux said:

Mr. Chairman, and fellow Canadians of the Canadian Club,—With the expression of my best wishes for a Happy New Year, let me thank you from the bottom of my heart for your most cordial welcome to-day. My good friend, the President, has been kind enough to wish that I might be spared for thirty years so as to come back to office. (Laughter.) There is an old saying, I think it is in Shakespeare, a line of which runs as follows:

"If France you must win,
By Scotland you must begin."

Well, as a Liberal—don't mention it, please (Laughter)—if Ottawa we must win—and we will—by Toronto we will begin. (Laughter and applause.) And there is hope: since the stern and unbending citizens of Toronto have just elected a Socialist! We don't stand for Socialism; we are against extremes: if you join my friend, Mr. Rowell, we will be satisfied. (Laughter.)

Will you allow me, speaking in the name of my fellow countrymen of Quebec, to express the hope that your esteemed and revered Premier, Sir James Whitney, may yet recover. (Hear, hear, and applause.)

Three years ago, upon my return from South Africa, I was privileged in giving you a few glimpses of the newly-born Union—I then spoke of the new King's subjects, the Boers, and of their hopes and aspirations under British self-government. I then stated that there was *some similarity* in the conditions existing in South Africa with those existing in Canada, after the Conquest. 1910 in South Africa, 1774 in Canada, witnessed epoch-making events. *In both cases British statesmanship won a signal victory.*

Under the benign influence of the Crown, our traditions have been preserved—our customs—our laws have been main-

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tained. Religious liberty we fully enjoy. The French language is officially recognized. It is freely used in the courts of the land and in Parliament.

Indeed, if we did not cling to the memories of the past, we should be unworthy of the great nation which gave us life. If we did not proclaim our loyalty, we should be ungrateful to the great nation which gave us liberty. French by descent and affection, we are British by allegiance and conviction.

May I now crave your indulgence for thirty minutes so as to give you as concise and as faithful an account as possible of the circumstances which brought about the Quebec Act, of its immediate causes and effects.

It is a page of history, certainly the most remarkable since the treaty of Paris (1763). The Quebec Act is considered as the Magna Charta of especially the French Catholic subjects of Great Britain in North America. And by all Canadians, in my humble judgment, it should be looked upon as one of the foundation stones of that greatest of human fabrics—the modern British Empire.

History is not only the record of events as events themselves. Experience is also history, and it is by sketching briefly some of the events which took place after the cession that I intend to draw a lesson.

Before proceeding any further, let me ask the following question: Could France have maintained her supremacy in North America?

The French policy was an Imperial policy—it was clear, consistent, far-reaching. The object aimed at was a French dominion in North America; the lines of communication being the two great rivers, the St. Lawrence and the Mississippi. Canada and Louisiana were to be joined; the English were to be kept between the Alleghanys and the Atlantic; the French king was to be lord of all; the Catholic religion was to be supreme; the Indians were to be converted and made French in sympathies and interests. The scheme was brilliant but impossible.

The American colonists, thirteen times as numerous as the French, held the base of a gigantic triangle—the base being the seaboard.

The French made, in the great conflict, a heroic resistance. On the Plains of Abraham both victors and vanquished gave the world a lesson of valour and of true heroism.

With the capitulation of Montreal, war in North American came to an end. The surrender of Montreal included all Canada.

Vaudreuil and his subordinates went back to France to be brought severely to account for their shortcomings. Amherst himself left Canada almost immediately but remained in America as Commander-in-Chief, with headquarters at New York. There were three governors subordinate to him: Governor Murray at Quebec, Colonel Burton at Three Rivers, and General Gage at Montreal.

Matters at first went on smoothly. Canadians worn with war desired only rest and fair dealing. Fair dealing they received at the hands of British commanders, among whom Murray was a conspicuously human example.

The status was one of military occupation, but on the whole, there was a nearer approach to freedom and more even-handed justice than in the days when Bigot and his confederates robbed the peasantry in the name of the French King.

With the treaty of Paris (1763) we pass from military to civil government. By that treaty, signed February the 10th, France besides renouncing all her pretensions to Nova Scotia ceded and guaranteed to Great Britain Canada and all its dependencies, including Cape Breton.

The liberty of the Catholic religion was guaranteed to the people of Canada; the understanding being that the most effectual orders would be given to secure to the new Roman Catholic subjects the exercise of their religion "*as far as the laws of Great Britain allowed.*" Mark these words. No mention was made of the civil or criminal laws in the treaty.

The first act of the British Government following peace was to issue a Proclamation, October 7th, 1763, dividing the new American acquisitions in four separate provinces: Quebec, East Florida, West Florida and Grenada.

Three outstanding facts must be remembered in connection with this proclamation:

First, the boundaries of Quebec, which I need not recite; but it will be noticed that no mention is made of the Indian reserves West of the American provinces. Later on, this will be one of the grievances of the American colonists.

Second, the introduction of the English law in the province.

Third, the power to "summon and call general assemblies of the freeholders and planters" of the new province as soon as its situation and circumstances would admit of so doing.

The boundary question, as regards the western territory, irritated the American colonists. They considered that

immense territory as their own; they were anxious to trade with the Indians.

The proposed assembly never was summoned, and the reason is very obvious.

The promise of an Assembly had been made with the idea of inducing British settlers to come; but immigration had made but slow progress, and the French still were in a very large majority. How could a minority of some 400 lord it over a population of some 70,000—because no Catholic was eligible. Yet the minority claimed its right to an Assembly, and even petitioned for the recall of Murray because, forsooth, he did not view the project with favor.

Murray seems to have been very hostile to the early British settlers. "Nothing," he asserted, "would content the licentious fanatics trading in Canada but the expulsion of the Canadians." Murray was recalled in 1766, and was succeeded by Guy Carleton.

The latter (afterwards Lord Dorchester) deserves the everlasting gratitude of every true Canadian. He was endowed with a heroic temperament, military genius and ability for statesmanship which enabled him to render exceptionally important service to the Empire. But we must not anticipate.

The introduction of English laws and forms of procedure created quite a commotion. With regard to one point, however, there was general agreement. The English criminal law was recognized to have the advantage both in certainty and lenity; and there was practically no opposition to its enforcement. But with regard to *Civil Law* it was quite different. The French Canadians felt that they were entitled to their usages and customs. True, an effort was made to blend the English and the French laws, but without success.

Right here, perhaps, it would not be amiss to recall succinctly the propositions laid down by that great English jurist Lord Mansfield on the effect of the conquest:

1—"A country conquered by the British arms becomes a Dominion of the King in the right of his Crown and, therefore, necessarily comes under the legislative power of the Parliament of Great Britain.

2—"The conquered inhabitants once received into the conquerors' protection become subjects, and are universally to be considered in that light, not as *enemies or aliens*.

3—"Articles of capitulation upon which the country is surrendered, and treaties of peace by which it is ceded, are sacred and inviolate, according to their true intent and meaning.

4—"The laws and legislation of every dominion equally affects all persons and property within the limits thereof, and is the true rule for the decision of all questions which arise there

5—"The laws of a conquered country continue in force until they are altered by the conqueror," and Lord Mansfield here explains that if the King has power to alter the old and make new laws for a conquered country, he can make none contrary to fundamental principles.

Though Murray seems to have acted with discretion and to have devised a *modus vivendi* as regards the administration of Justice, yet the proclamation of 1763 created, as I have already stated, a great commotion and also a great confusion. Notwithstanding the proclamation, lands continued to be divided as formerly and the estate of intestates to be distributed according to French law. At the same time, when it worked in their favour, Canadians were acute enough to take advantage of the English law.

Apart from the question of the establishment of a popular assembly and the system of laws to be finally adopted, there also remained the question of the future status of the Catholic Church. True, the liberty of practising their religion had been given to the Canadians both by the Capitulation and the Treaty of Peace. Nothing, however, had been said with regard to what provision would be made for the Roman Catholics in the future.

On the whole, therefore, a note of uncertainty still prevailed with regard to the future of Canada. Indeed, the proclamation issued in 1763 was a mere temporary expedient to give time for considering the whole situation in the colony. If maintained, it was calculated to do infinite harm, as it attempted to establish English civil law, and at the same time required oaths which effectively prevented the French Canadians from serving in the very assembly which it professed a desire on the part of the King to establish.

As already stated, the English-speaking people in the colony did not number more than 400. Yet, all power was to be placed in their hands and the 70,000 French-Canadians had to be ignored.

I have already explained how Murray contrived by his high sense of duty to do justice to the new subjects of the King committed to his care. His difficulties were lessened by the fact that the French, having at that time no conception of representative institutions, were quite content with any system of government which left them their language, religion and civil laws without interference.

It is only fair to state that in 1766 Mgr. Briand was chosen, with the approval of the Governor, to be Roman Catholic bishop at Quebec. He was consecrated at Paris after his election by the Chapter of Quebec, and it does not appear that his recognition ever became the subject of parliamentary discussion.

But, surveying the whole situation, the condition of things became practically chaotic, and it might have been much worse had not General Murray at first, and Sir Guy Carleton at a later time, endeavored so far as lay in their power to mitigate the hardships to which the people were subjected by being forced to observe laws of which they were utterly ignorant.

The Governor-General was advised by an Executive Council composed of officers and some other persons chosen from the small Protestant minority of the Province.

During the years which elapsed between 1763 and 1774 the British Government was anxious to show every justice conducive to its best interests. From time to time the points at issue were referred to the Law Officers of the Crown for their opinion, so anxious was the Home Government to come to a just conclusion. Attorney-General Yorke and Solicitor-General de Grey, in 1766, severely condemned any system that would impose new, unnecessary and arbitrary rules, especially as to the titles of land and the mode of descent, alienation and settlement; which would tend to confound and subvert rights instead of supporting them.

In 1772 and 1773 Attorney General Thurlow and Solicitor General Wedderburne dwelt on the necessity of dealing on principles of justice in the Province of Quebec. The Advocate General Marriott, in 1773, also made a number of valuable suggestions, though not exactly in the same spirit, and at the same time expressed the opinion that under existing conditions it was not possible or expedient to call an assembly.

Murray had been recalled in 1776 and succeeded by Guy Carleton, who later on became Lord Dorchester. He was indeed a great colonial governor. The Imperial Government had the advantage of his wise experience during the long and protracted investigation which took place before the passing of the Quebec Act.

The Act was brought before the House of Lords by the Earl of Dartmouth on May 2nd, 1774, and passed without any opposition on May 17th. From May 26th until June

13th it was discussed in the House of Commons. The principle of the Act fixed no territory limits for the province. It comprised not only the country affected by the proclamation of 1763, but also all the eastern territory which had previously been annexed to Newfoundland. In the west and southwest the province was extended to the Ohio and the Mississippi, and, in fact, enclosed all the lands beyond the Alleghanys coveted and claimed by the old English colonies now hemmed in between the Atlantic and the Appalachian Range.

It was now expressly enacted that the Roman Catholic inhabitants of Canada should thenceforth "enjoy the free exercise" of their religion "subject to the King's supremacy declared and established" by law, and on condition of taking an oath of allegiance set forth in the Act. The Roman Catholic clergy were allowed "to hold, receive and enjoy their accustomed dues and rights, with respect to such persons only as shall confess the said religion"—that is, one-twenty-sixth part of the produce of the land, Protestants being specially exempted. The French Canadians were allowed to enjoy all their property, together with all customs and usages incident thereto, "in as large, ample and beneficial manner" as if the proclamation or other acts of the Crown "had not been made;" but the religious orders and communities were accepted in accordance with the terms of the capitulation of Montreal. In "all matters of controversy relative to property and civil rights" resort was to be had to the old civil law of French Canada "as the rule for the decision of the same;" but the criminal law of England was extended to the province on the indisputable ground that its "certainty and lenity" were already "sensibly felt by the inhabitants from an experience of more than nine years." The government of the province was entrusted to a Governor and a Legislative Council appointed by the Crown "inasmuch as it was inexpedient to call the assembly." The council was to be composed of not more than twenty-three residents of the province. At the same time the British Parliament made special enactments for the imposition of certain customs duties "towards defraying the charges of the administration of justice and the support of the civil government of the province." All deficiencies in the revenues derived from these and other sources had to be supplied by the Imperial treasury.

Let us now, for a few moments, consider the political situation in England and in the thirteen colonies at that time.

In 1763 England was the most powerful nation in the world. London was the administrative centre of a vast Colonial Empire. Besides the thirteen colonies and Canada, England had a foothold in Africa and had laid the foundation of the present Indian Empire. Outposts scattered over many seas provided naval stations and points of defence. England was not unlike Athens at the close of the Persian wars: a trading nation, a naval power, a governing race, a successful military people. The English completed the parallel by tightening the reins upon their colonies until they revolted. Great Britain had not only gained territory and prestige from the war. She had risen rich and prosperous, and a national debt of 140 million pounds was borne without serious difficulty.

It was also a period of political development; great names are those of Burke, Chatham and Fox.

The long Jacobite period had come to an end. George the Third was accepted by all classes as the legitimate sovereign. The great Tory families which for many generations had been excluded from office now came forward. George the Third had his personal adherents—the King's friends. The King's prerogative was also strongly advocated. This could not but affect the English colonial policy. The Whigs generally made the cause of the colonies their own.

Briefly stated, the grievances of the colonies were these:

In their Declaration of Rights they declared that they were entitled to life, liberty, property and immunities of free and natural born subjects within the realm of England. They denied the right of the British Parliament to legislate in cases of taxation and internal polity, but cheerfully consented to the operation of such Acts of the British Parliament as were bona fide restrained to the regulations of their external commerce. They protested against "the keeping up in these colonies of a standing army in times of peace." They enumerated a long list of illegal acts, including the coercive statutes and the Quebec Act.

The patriots were well organized—the Loyalists were not. Another influence which hastened the revolution was a desire to supplant the men highest in official life.

The grievance, however, most strenuously put forward was that of *taxation without representation*.

On this point the Colonists were supported by the powerful authority of Pitt, of Burke, of Fox and of many other English statesmen. This cry had great popular effect. It was simple, it was universal, it sounded like tyranny. Yet,

one must remember that the taxes had not taken 400 thousand pounds out of their pockets in ten years. The armies had cost them nothing, and except in Boston had not interfered with the government. The acts of trade were still systematically evaded, and the battle of Lexington came just in time to relieve John Hancock from the necessity of appearing before the Court to answer to a charge of smuggling.

Without going any deeper into the causes of the American revolution, one can state, however, that the passing of the Quebec Act by the Imperial government was very keenly felt by the leaders of public opinion in the thirteen colonies.

In the Imperial Parliament, strangely, my friends, the Whigs opposed it most strenuously. If I had time I would quote Fox, who said the Bill did not go far enough—which happens sometimes with an Opposition: it blames the Government because it does not go far enough. (Laughter.) Fox blamed the Government: he said this was no Bill; where was the sparkle of liberty in the Bill? Burke was against the Bill, which gave no government to the new colony; he said, "In establishing any government, you had better say to the House and the country, 'We will govern by the government of necessity.'" And Lord Chatham, with his imperative and choleric character, was much more outspoken. Addressing the bench of Bishops, he said the Bill was a child of inordinate strength, and asked if any of that bench would hold it out for baptism. He said, "I have ten thousand reasons to be opposed to that Bill, and I will heartily vote in the negative."

Lord North, if you read his speech, was most generous and most liberal. He gave the Bill his blessing. And the French Canadians of to-day, nay more, the Protestants of to-day, owe him a debt of gratitude for having introduced that Bill in the House of Commons and having got it passed by Parliament. He was considerably helped by Guy Carleton, whose evidence given in committee was supported by Chief Justice Hay, by Baron Masères, and Mr. de Lotbinière, ancestor of Sir Henri Joly Lotbinière.

In French Canada the Act was received without any popular demonstration, but the men to whom the great body of people always looked for advice and guidance, the priests, curés and seigneurs naturally regarded these concessions to their nationality as giving most unquestionable evidence of the consideration and liberal spirit in which the British Government was determined to rule the Province. They had had ever since the conquest satisfactory proof that their

religion was secure from all interference, and now the British Parliament itself came forward with legal guarantees not only for the free exercise of that religion, with all its incidents and tithes, but also for the permanent establishment of the civil law, to which they attached so much importance.

The fact that no provision was made for a popular assembly could not possibly offend the people to whom local self-government in any form was entirely unknown. It was not a measure primarily intended to check the growth of popular institutions, but solely framed to meet the actual conditions of a people unaccustomed to the working of representative institutions. It was a preliminary step in the development of self-government. Such as it was, the Quebec Act was the first real bond of friendship between Canada and Great Britain.

The new Council had hardly been convened by Guy Carleton when the Americans invaded Canadian territory.

With no British troops available, unable to count upon any organized militia, Carleton's position was indeed desperate. Nevertheless, he wrote home cheerfully that the importance of the Province would make him obstinate in its defence.

And this is where my little lesson comes. I hope that closure will not yet be applied. The Americans tried hard to secure the help of French Canada, and sought to win the Quebec citadel for the second time. But at Quebec, Guy Carleton with the French habitants, with their Bishop, Mgr. Briand, at their head, when surrounded in the citadel, defended it successfully against General Montgomery. This was the first result of the passing of the Quebec Act. It showed the loyalty of the French Canadian towards the British Crown, and you will remember that later on, in 1812 the French Canadians, headed by their clergy, led by the leaders of public opinion in their districts, fought and died nobly for the British flag against the invaders at Chateauguay. (Applause.)

Just two minutes more and I am done. A few considerations: The strength of British statesmanship throughout the history of Canada, and the history of the Empire—the strength of British diplomacy lay in its wisdom. I may say: its wisdom is its strength; its strength is its wisdom. (Applause.) Reviewing the constitutional growth of Canada, there are three outstanding stages of development, each marking a large, a very large, measure of liberty.

First, England gave us a representative government—it educated the French Canadians to the notion of popular government; second, it gave us responsible government; third, it gave us federal government. And at each stage, I am proud to say, Great Britain made secure for the French Canadians, the minority, its religion, its laws and customs, and its language. The traditional policy of Great Britain, for the student of history, is that England trusts her own people. (Applause.) She made the French Canadians loyal in 1774, because she trusted the French Canadians. (Applause.)

May I say, might I suggest to this audience in Toronto, that in these days of monopoly and trusts and mergers, there must not be any such monopoly as a monopoly of loyalty? (Hear, hear and applause.) Loyalty is not in the trade; it is not even patented; it is in the heart of every man. (Hear, hear.) We may differ as to the methods of how best to serve the British Empire, but our aims are all the same. We may disagree on details, but we are all agreed on essentials. And I don't see the object of advertising, say, one half of this country as disloyal. We are all loyal. The great bond of union of all is; not the Grit party nor the Tory party—the great bond of union for every Canadian, after all, is His Majesty the King and the Crown. (Applause.) And the great instrument of freedom, which belongs to me as well as it belongs to you, is the British Constitution, an unwritten instrument, which is as dear to me as it is to you. We may speak different languages, profess different creeds, but the French Canadian in Quebec, the Scotch in the Highlands, the Manxman, the Irishman, the Welshman, is as loyal, as patriotic, as the Englishman from Lancashire—or even from Toronto. (Laughter and applause.)

Then, if you ask me why I am a British subject, and why I wish to remain one? (applause) I reply, that I honor the flag that honors its obligations; that I prize most those institutions that secure me most strongly in my rights and liberties; and am proud to be a sharer in that great work of advancing peace and progress throughout the world, for which the British Empire stands; gratitude for what has been done for them in the past, contentment in the liberties which they to-day enjoy; pride in the greatness of England and her dominions scattered throughout the whole of the globe; this, and much more, warms the hearts of the French Canadians to the Motherland, and makes of them loyal subjects second to none under the British Crown. By the vastness of the

Empire their imagination is stirred; by the self-government it insures, their confidence is secured.

Talk not of annexation of French Canada!—(applause)—outside of election time, of course. (Laughter.) Because all that there is of charm in monarchy is retained in our constitution, and all that there is of democracy in a republic is retained.

Therefore, gentlemen, it being two o'clock, I resume my seat. God save the King, and God bless Canada and the Empire. (Long applause.)