THE TEMPORALITIES FUND OF THE PRESBYTERIAN CHURCH OF CANADA IN CONNECTION WITH THE CHURCH OF SCOTLAND.

I.

Recent events have led to warm discussions as to the powers of Local Legislatures in this country, and as to the constitutional position they occupy. It was scarcely to be expected that the great change effected by the confederation of the Provinces could be accomplished without doubts arising as to the limits of the powers and duties of the Federal Parliament and the Local Legislatures. Hence, whatever the political result of the present discussions, there seems to be little doubt that light will be thrown on such points, and that the boundaries and limits of the powers of these legislative bodies will, in course of time, be marked out and established.

The political bearings of the question I have no intention to examine. But in connection with important Trusts and Trust properties, with which Local Legislatures believe themselves empowered to deal, under the clause of the British North America Act, assigning to them a jurisdiction over property and civil rights, there have arisen many difficulties. The Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland is one of the Trusts dealt with by the Local Legislatures, on what I conceive to be a mistaken idea of their powers.

For the sake of clearness it may be well, before shewing the origin of the Fund, to give a brief statement of the relation to it of the various ecclesiastical bodies to which the residue of the Fund (if there be any) has been assigned, on the sole ground, apparently, that they are all Presbyterians and that a majority has so willed it, although that majority never had any claim on the Fund, and one portion of these bodies distinctly laid it down as a principle that it would not accept aid from the State directly or indirectly. These bodies, in common with the Church of Scotland, having one general mode of Church government, through various Church Courts, but with no recognised permanent ecclesiastical head, such as a bishop, are known as Presbyterian Churches. It is a popular, but erroneous, belief that the title Presbyterian indicates a given set of doctrines or a distinct creed. It, on the contrary, refers simply and solely to the form of Church government, as Episcopal describes one differently constituted. In the one case the Church is ruled by presbyters, pastors of parishes or congregations, as the case may be, all of equal rank, presided over at their meetings by a chairman or Moderator, chosen from among themselves and invested with no higher rank on that score beyond the time during which he presides, that being, in the case of the Moderator or General Assembly or other supreme ecclesiastical court, usually for a year. With them are associated ruling elders (ordained from the laymen), in the sittings of Presbytery, Synod and General Assembly. In the other case the Church is ruled by bishops and archbishops, with, in the case of the Roman and Greek Churches, a supreme bishop, styled in the one, Pope, in the other, Patriarch.

It will, no doubt, be maintained that all Presbyterian Churches hold one creed, formulated under the name of the Confession of Faith, and it is constantly affirmed that because they do so they are one. To some extent it is true that they have one Confession of Faith, but they "wear their rue with a difference." There are clear and distinct lines of separation between the various orders of Presbyterians, well known to those who are acquainted with ecclesiastical history. The Westminster Confession of Faith is accepted in one sense by the Church of Scotland, and in another sense by the Free Church; the United Presbyterians, again, hold it in a different sense from either, they having expunged from it a whole chapter, that relating to the duty of the civil magistrate. The Church of Scotland acknowledges that in all *civil* matters, even such as in certain ecclesiastical proceedings arise from Church cases, the court of final appeal is the civil power. And this is the only constitutional ground to adopt. The Free Church contends that it possesses a certain attribute called spiritual independence, having co-ordinate jurisdiction with the civil power in questions arising in the course of ecclesiastical procedure. It is simply another name for ecclesiastical supremacy, for in the government of any kingdom or state there must be some one power supreme within the civil domain. There cannot be two, for if there is a difference of opinion between two courts on a subject in the decision of which each is supreme, it is plain that one must yield, or each is powerless. The United Presbyterian body, on the other hand, maintains that Christ's kingdom not being of this world, the civil magistrate has no right to interfere in ecclesiastical questions in one form or another, and that it is sinful to receive State aid for the promotion of religion.

Such a cloud of mystery has, however, gathered about this word Presbyterian, and what it means, that, at the risk of being tedious, I fall back upon the word Episcopal to illustrate the danger of being misled by a mere name.

The Eastern and Western Episcopal Churches, equally with the Presbyterian Churches, hold one Confession of Faith. In their case it is the Nicene Creed. There is no need to enter into the discussion of the change in that Creed made in Western Christendom, nor of the addition of other creeds. The Nicene Creed is one common to all the Churches referred to. The change in it is not greater than that made in the Westminster Confession of Faith by those Churches which have dissented or withdrawn from communion with the Church of Scotland, yet no intelligent man would venture to assert that because the Roman Catholic Church, the Greek Church and the Anglican Church are all Episcopal Churches, and all hold the Nicene Creed, they are not three but one, as has been said with respect to the Church of Scotland, the Free Church and the United Presbyterian Church.

Then as to the allegation that people can tell no difference in the doctrines, forms of service, &c., as presented in any one of the Presbyterian Churches compared with those to be found in another, there is no doubt in this a certain amount of truth. But it cannot be denied, either, that thousands of men can tell no difference between the teachings in any of them and those to be heard from a Methodist pulpit, although in many very important respects the doctrines are diametrically opposed and the interpretations of Scripture teaching at complete variance with each other. Popular impressions are not very safe guides in such cases.

Leaving aside the consideration of the modifications that have been made by some of the Presbyterian bodies in the United States, the relative grounds taken by the leading Presbyterian Churches in Scotland in respect to their position to the State may be thus roughly tabulated. By their interpretation of the Confession of Faith:

The Church of Scotland declares itself to be a Free Church in a Free State.

The Free Church declares itself to be a Free Church above the State.

The United Presbyterian Church declares itself to be a Free Church ignoring the State.

These distinctions are not purely theoretical, as they lead to very grave practical results.

The position held by the Church of Scotland in no respect depends upon its legal recognition by the State as the National Church, nor on the ground of the compact mutually entered into between the Church and State. It flows necessarily and inevitably from the whole theory and practice of civil society. The Church is free and untrammelled in the exercise of its ecclesiastical and spiritual functions, whether it be a Church established by law as a National Church, or be a voluntary religious organization. But if it transgress the bounds of the law, or seek to coerce the individuals forming its component parts, by attempting to compel them to abandon their civil rights by forced obligations to abstain from an appeal to the civil power when these rights are invaded, or refuse to abide by the rules by which it has agreed to be guided, it must then come under the power of the civil law when that is appealed to by those who consider themselves to be wronged. The status of the ecclesiastic does not set aside the status of the citizen. This is well set out in the very important controversy which took place between Rome and Sardinia in reference to the reforms in the administration of the Kingdom which had been taking place for some time and which extended to ecclesiastical corporations. In the course of the discussion the Court of Rome declared that

"Whatever may be the reforms which it has been thought proper to adopt in the civil legislation of the realm of Sardinia, the venerable laws of the Church must always be paramount to them, and should surely be respected in a Catholic kingdom."

In the Allocution issued by the Papal Court dated the 22nd January, 1855, after enumerating all the wrong-doings of Sardinia, the Pope declares authoritatively that all laws whatever of the Sardinian State which were detrimental to religion, the Church, or the Papal See, were absolutely null and void. The claims set up by the See of Rome in this document had been answered by anticipation by the Piedmontese envoy, sent to negotiate a new Concordat. After acknowledging fully the incontestable right of the Church to deal with questions of dogma, discipline and purely ecclesiastical questions generally, but as firmly maintaining that in all civil and criminal causes the persons and property of ecclesiastics should be subject to the temporal judge, as well as questions relating to patronage, benefices and the property of the Church, the proposal sets out:

"Moreover, as ecclesiastical persons, by living in civil society, belong to it, constitute one of its integrating parts, and enjoy all its advantages, why should they be exempt from the jurisdiction? Why should they decline the subjection common to all? An arrangement, which, if it was originally incongruous, must undoubtedly appear much more so in the present day, when the fundamental and universal law of the realm invites all to the same rights, declares all to be equal in its own eye, without any sort of distinction, and permits none to be withdrawn, in virtue of any privilege, from the sphere of the ordinary tribunals of the land. As nothing can be more strictly secular than property moveable or immoveable together with its proceeds, so its nature is not a whit changed by its being connected with an ecclesiastical office through the medium of canonical erection into a benefice."

It was upon this principle that the case of McMillan, the Free Church minister of Cadross, against the General Assembly of the Free Church was decided. It is not necessary to state more of the case than this, that McMillan appealed to the civil courts against the decision of the ecclesiastical courts of his Church. For this offence he was summarily deposed, without form of trial or process, on the ground that he had contracted not to appeal to the civil power against the decisions of the Church courts, even should these affect his civil rights. The decision of the civil courts declared such a bargain illegal and void in its nature, and was a clear though undesigned evidence of the fallacy of the argument against the Church of Scotland that it was subject to the civil power and compelled to give up its independence in ecclesiastical matters because it was a State Church. It reaffirmed the obligation of all to obey the laws and to observe the internal regulations by which the affairs of the Church, of every Church, are guided, when these do not conflict with the well-being of the State and are not contrary to good order. Over and over again the judgments of the court have decided that when the Church of Scotland, acting in her judicial capacity, observed the proper procedure prescribed and arrived regularly at a decision—even if that decision were glaringly wrong, the civil courts could not interfere. How this acted on the affairs of the Church of Scotland will be shown in another article.

DOUGLAS BRYMNER.

THE ENGLISH COUNTY COURTS.

At the present moment when the usefulness of our District Magistrates is under discussion, the following paragraph from the London *Daily Telegraph* will be found interesting; but it has to be borne in mind that our magistrates are charged with an important summary jurisdiction in criminal cases and in those embodying frauds on the Revenue, so that the parallel, though useful for guidance, does not fully apply to the Canadian case.

"Before the Session concludes, the question as to the extent and nature of the jurisdiction of our County Court Judges, and of their *status* and remuneration, will once again be brought before Parliament, and an opportunity will be afforded of doing justice to a most able and industrious body of public servants. Our County Courts are an institution of which it is difficult to speak too highly. It may be said of them, in truth, that they have brought cheap justice home to every man's door. Before their creation, the sole resource of a creditor was to sue in the superior courts. We know what sort of a bill of costs a lawsuit at Westminster or upon circuit of necessity involves, and we consequently need not wonder that in only too many instances creditors chose to forego their remedy rather than have recourse to the expensive, tedious, and sometimes un-