

body, by heavy legal expenses. This is only one out of many cases, the General Assembly of the Presbyterian Church in Canada having at its meeting in Hamilton, in June last, resolved to raise a fund for the purpose of crushing out every vestige of the Church of Scotland in Canada, by vexatious law suits against congregations which refuse to join the Union.

"Toronto, 7th November, 1878.

"SIR,—We are informed that you hold the church and land (twelve acres) belonging to the Presbyterian Church in North Williamsburgh, for the use of an Anti-Union congregation, and that you refuse to acknowledge the right of the Union people to the property. We are also instructed, in case it should be necessary, to take proceedings in Chancery against you to recover the property. We desire to avoid this, however, if possible, and would be glad to hear whether you really dispute the rights of the Union people, and if so upon what ground. Yours truly,

"MOWAT, MACLENNAN AND DOWNEY."

What a pity Jezebel had not had a Court of Chancery to appeal to in that little matter of Naboth's vineyard. What an admirable Chancery lawyer her late majesty would have made!

Passing from this digression, which was, however, necessary, we may enquire whether it was competent for the Legislatures to grant a new Act of Incorporation, whilst the other existed without forfeiture. Not only was the Act not founded on a forfeiture, but it is not even pretended that the Church to which the Fund belongs had been guilty of misuser or nonuser, or even that by unanimous consent the members had agreed to the abrogation of the old and the acceptance of a new Act of Incorporation. On the contrary the Act itself admits that the Fund was being properly applied, and that there were congregations and members of the Synod opposed to the diversion of the Fund, since it provides for the cases of ministers and congregations refusing to enter into the Union. It was simply an Act of Confiscation. It would have been so, even if every member of Synod had voted for the measure. The clergy are not the Church. This is an axiom among all Protestants. They are an important part of the Church, having certain special duties to perform, but the Fund was not for their benefit, except incidentally, but for the relief of congregations by assisting them, so far as it would go, in the payment of the stipends to clergy. Had the whole of the Synod voted for the Union, it might have been more difficult to have found a remedy for the wrong done by the clergy appropriating to themselves the endowment, to the benefits of which they had only an official claim, but which was really the property of the Church, and to which any single member of the Church could have vindicated his claim. Fortunately, however, we are not obliged to discuss this case. The Act itself proves that the appropriation of the Fund was confiscation. To quote the words of a high authority:

"Attainder and confiscation are acts of sovereign power, not acts of legislation. The British Parliament, among other unlimited powers, claims that of altering and vacating charters, *not as an act of ordinary legislation*, but of uncontrolled authority. Even in the worst times, the power of Parliament to repeal and rescind charters has not often been exercised. The illegal proceedings in the reign of Charles II. were under colour of law. Judgments of forfeiture were obtained in the courts. Such was the case of the *quo warranto* against the City of London, and the proceedings by which the charter of Massachusetts was vacated."

On the ground of there having been no forfeiture, then, the new Act of Incorporation is void, as according to the dictum of Lord Mansfield, "Corporate franchises can only be forfeited by trial and judgment." In this case, as I have shown, there was not even the pretence of trial or judgment.

Because the Temporalities' Fund Act (abrogating the provisions of the old Act) has been passed by a legislature, is it, therefore, a law of the land? There are various grounds on which this assumption may be resisted. I shall confine myself to one.