

objects. I therefore think that the Act purporting to create the body to be benefited by the transfer of the temporalities fund is *ultra vires* in whole.

There is another view of this case which depends on considerations entirely different from those which have influenced my opinion in one sense, or that of two of my colleagues in another sense. As that opinion has the effect of turning the scales, so far as this Court goes, in favour of respondents, it may not be out of place to notice it. One of the learned Judges thinks, I understand, that these Acts are *ultra vires*, and particularly the Act affecting the incorporation of the Temporalities Board; but that these Presbyterian bodies being voluntary associations they had a right, without any legislation, to form themselves into one body, that by the appellant's refusal to join the new body, he voluntarily excluded himself from the old, and that he has therefore no interest in the temporalities fund, and consequently no interest to question the illegal character of the Board. I confess to have experienced some slight feeling of consternation on first hearing this mode of dealing with the case relied on. For an instant I wondered if all my previous examination of the case had been misdirected. A little reflection will, however, I think, dispose of this opinion. The pertinacious use of the words "voluntary association" in this case, and in the case of *Johnston & The St. Andrews Church*,* induces me to think that some inexplicable meaning is commonly attached to the expression. If it be supposed that a Presbyterian Church is more of a voluntary association than an Episcopalian one, I am at a loss to understand the distinction. It seems to me to be a particularly unfortunate expression for a church association, for if there be any association, a man is not compelled by law to enter, which is more involuntary than another, it is the association with those of the same religious belief. But I must take it that the expression "voluntary association" means an unincorporated company, and taking it as such I shall deal with the argument. I admit there is no need of legislation to enable any number of persons to associate themselves together for religious or other purposes, and

even to adopt a name as a designation. So the four Presbyterian churches or any of their number, whether a majority or a minority, had a perfect right to form an association and call themselves "The Presbyterian Church in Canada," without the intervention or permission of any Legislature; but such members had no right to take the trust funds, and make them over to another body; nor could their adherence to a new body annihilate the old one, and so deprive its remaining members of their interest in such funds. It is evident from the ruling in Bourgoin's case, already cited, that incorporated companies could not do so, and I fancy unincorporated associations would not have greater powers. But if there be any distinction there, then the temporalities is held under the authority of an Act of the Legislature, which by the reasoning under consideration cannot be touched by local legislation. If such a pretension as that I now combat were tenable, then a majority of the members of the Presbyterian Church of Canada in connection with the Church of Scotland could have voted a distribution of the funds amongst themselves, and in this way have defeated the whole objects of the donors.

There is an argument which I have omitted to mention, probably because the answer readily suggests itself. It is said that the Legislature of Quebec had, previous to the Act in question, dealt with the temporalities fund, and that the appellant had acquiesced in the action of the Legislature. I do not think that one unconstitutional Act can justify its repetition, or that the acquiescence of the Rev. Mr. Dobie can appreciably extend the provisions of an Act of the Imperial Parliament. In a case of *Vautrin & Niagara Mutual Insurance Co.*, the question was raised as to whether an Act of Ontario could set aside an old Province of Canada Act affecting both Upper and Lower Canada. We decided the case on another question altogether, and so no decision was given on the point. I may, however, say that I don't think the question raised in the present suit was really involved in that case. The object of the original incorporation was purely local and always remained so. Nor am I prepared to admit the doctrine that doubt gives rise to a presumption in favour of the action of the Legislature, which has been advanced by the learned Judge in the

* 1 Supreme Ct. Rep. 235; 1 Legal News, 13.