

occasionally resorted to. On this subject the *Solicitors' Journal* says: "The ways in which judges in the interests of the law sometimes wriggle out of previous decisions are marvelous and manifold. Sometimes they say that the principle was wrong, and that the facts being different in some particular (albeit immaterial to the principle), they will not follow the case. They will only treat it as binding with regard to the very same facts." This suggests the old story of the judge who being hard pressed by a citation of *Jones v. Smith*, said he should not feel himself bound by that case unless a suit were before him in which the facts were precisely similar; indeed, unless the plaintiff's name were Jones, and the defendant's Smith!

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, JUNE 19, 1880.

Sir A. A. DORION, C. J., MONK, J., RAMSAY, J.,
TESSIER, J., McCORD, J., *ad hoc*.

DOBIE, (petitioner below), Appellant, and BOARD
FOR THE MANAGEMENT OF THE TEMPORALITIES
FUND OF THE PRESBYTERIAN CHURCH OF CANADA
IN CONNECTION WITH THE CHURCH OF SCOT-
LAND, et al. (respdts. below), Respondents.

The Presbyterian Church Union—Constitutionality of Act (Quebec) 38 Vic. cap. 64.—Power of the Church Synod to admit new members into the body of the Church.

[Continued from p. 248.]

On the other hand, we have a decision of Vice-Chancellor Blake, in the case of *Cowan & Wright*, 23 Grant, Ch. Rep., p. 616, upholding the constitutionality of the Ontario Act (38 Vic. cap. 75) except in so far as it attempted to deal with property in the Province of Quebec. This is, of course, a decision of the precise point before us, and therefore it becomes important to examine the grounds upon which it was rendered. It appears to me that it is undeniable that the local Legislature, acting within the scope of its powers, has a right to legislate as absolute as the Dominion Parliament legislating within the scope of its powers. Indeed, this doctrine as to the respective powers of the Dominion and local Legislatures seems to me

to be almost the only one on which there has been entire unanimity of opinion. But when from this it is sought to glide to the conclusion that the words of section 92 are alone to be considered as defining the exclusive rights of the local Legislatures, I think we arrive at a doctrine opposed to positive law, and to the authority not only of the Courts, but to the authority of practice.

There is a sort of floating notion that by the conjoint action of different Legislatures, the incapacity of a local Legislature to pass an Act may be in some sort extended. Section 15 of the 38 Vic., cap. 62 (Quebec), seems to have been added under the influence of such an idea. By it the Dominion and local Legislatures are permitted to recognize and approve. I cannot understand anything more clear than this, that the local Legislatures, by corresponding legislation cannot in any degree enlarge the scope of their powers. When the question is between the authority of Parliament and that of a local Legislature, the forbearing to legislate in a particular direction by Parliament may leave the field of local legislation more unlimited. This is the only bearing I can conceive the case of the *Union St. Jacques & Belisle** can have on this case. What the Privy Council held in that case was that a special Act for the relief of a corporate body did not fall within the meaning of "Bankruptcy and Insolvency" (B. N. A. Act, sect. 91, s. s. 21) and this more particularly as there was no Dominion Act with which it interfered. It is, therefore, dead against the pretension of respondents in this case, for the legislation objected to upsets a Dominion Act, that is to say, if corporations which have not alone provincial objects (provincial according to the meaning of the B. N. A. Act, *i. e.*, relating to one Province under the Act) created before Confederation, are under Dominion Laws. On this point there has never been a doubt. For instance, the Acts of incorporation of the G. T. Railway, an old Province of Canada incorporation, have been amended by Dominion Acts, never by local ones.

Another authority in support of the constitutionality of the Ontario Act has been mentioned by Mr. Todd in his very valuable volume on "Parliamentary Government in the British Colonies,"

* 20 L. C. J. 29; 6 P. C. 31.