JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

January 21, 1882.

Present :

LORD BLACKBURN, LORD WATSON, SIR BARNES PEACOCK, SIR MONTAGUE SMITH, SIR ROBERT P. COLLIER, SIR RICHARD COUCH, SIR ARTHUR HOBHOUSE.

REV. ROBERT DOBIE v. THE BOARD FOR THE MANAGEMENT OF THE TEMPORALITIES FUND OF THE PRESBYTERIAN CHURCH OF CANADA IN CONNECTION WITH THE CHURCH OF SCOTLAND et al.

Powers of Local Legislatures—38 *Vict., cap.* 64—*Effect of joint action of two provincial legislatures—Majority resolutions.*

The first step to be taken, with a view to test the validity of an Act of the Provincial Legislature; is to consider whether the subject matter of the Act falls within any of the classes of subjects enumerated in Sect. 92 *of the B.N.A. Act. If it does not, the Act is of no validity. If it does, the further questions may arise, whether the subject of the Act does not also fall within one of the enumerated classes of subjects in Sect.* 92, *and whether the power of the Provincial Legislature is not thereby overborne.*

The Quebec Act, 38 *Vict., cap.* 64, *is ultra vires and invalid, inasmuch as it does not deal directly with property and civil rights in Quebec, but with the civil rights of a corporation administering a fund held for the benefit of the ministers and members of a church having its local situation in both Provinces,—the proportion of the fund and its revenues falling to either Province being uncertain and fluctuating. The fact that the domicile and principal office of the Board administering the fund was within the Province of Quebec, and that the fund itself was also held or invested within the Province of Quebec, does not affect the question of legislative power.*

The power of a provincial legislature to annul a law of the old Province of Canada is measured by its capacity to reconstruct what it has destroyed; and as the joint action of Ontario and Quebec could not reconstruct a corporation in and for both Provinces, the joint action of the two legislatures could not repeal the Act of Canada, 22 *Vict., cap.* 66, *incorporating the Board for the management of the Temporalities Fund.*

The resolutions passed by a majority of the Synod, resolving that the fund should in future be administered according to a scheme inconsistent with the provisions of the Act incorporating the Board for the management of the fund, were not binding upon the minority, inasmuch as they dealt with a matter which the Synod was not competent to determine.

The appeal is from the judgment of the Court of Queen's Bench, Montreal, noted at pp. 244, 250 of 3 Legal News. See also 4 Legal News, p. 258, for argument of counsel before the Judicial Committee.

LORD WATSON.—The first question raised in this appeal is, whether the Legislature of the Province of Quebec had power, in the year 1875, to modify or repeal the enactments of a statute passed by the Parliament of the Province of Canada in the year 1858 (22 Vict., cap. 66), intituled "An Act to incorporate the Board for "the management of the Temporalities Fund "of the Presbyterian Church of Canada in con- "nection with the Church of Scotland."

The fund subject to the administration of the Board constituted by the Act of 1858 consisted of a capital sum of £127,448 5s. sterling, which was paid by the Government of Canada under the following circumstances. The ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, were entitled, by virtue of certain Imperial statutes, to an endowment or annual subsidy out of the revenues derived from colonial lands, termed clergy reserves, and from moneys obtained by the sale of portions of these lands, supplemented, when necessary, from the exchequer of Great Britain. But this connection between the Presbyterian Church and the State was at length dissolved. In 1853, an Act was passed by the British Parliament (16 Vict., cap. 21), authorizing the Legislature of the Province of Canada to dispose of the clergy reserves, and investments arising from sales thereof, but reserving to the clergy the annual stipends then enjoyed by them, and that during the period of their natural lives or incumbencies. In 1855 the Legislature of Canada, in exercise of the power thus conferred, enacted that all union between Church and State should cease, and that those ministers who were admitted to office after the 9th May, 1853, being the date of the Act, 16 Vict., cap. 21, should receive no allowance from the Government. It was, however, provided that the rights of ministers entitled, at that date, to participate in the State subsidy, should be reserved entire, power being given to the Governor-General in Council to commute the annual stipend payable to each individual so entitled for the capital value of such stipend, calculated at six per cent. on the probable life of the annuitant.

All the ministers interested consented to accept the statutory terms of commutation, and agreed to bring the amounts severally payable to them into one common fund, to be settled for behoof of the Presbyterian Church of Canada in connection with the Church of Scotland. In accordance with resolutions unanimously adopted by the Church in Synod assembled on the 11th January, 1855, they further agreed that the interest of the fund should be devoted, in the first instance, to the payment of an annual stipend of £112 10s. to each commutor, and that the claim next in order of preference should be that of ministers then on the roll, who had been admitted since the 9th May, 1853. The arrangement thus effected was carried out by eight Commissioners duly appointed for that