

estimated, but which are not of our competence. I do not conceive I have the mission to pronounce as to whether the "theological standards" of the four Churches are identical or not, and perhaps I may be permitted to add that I do not regret not having to perform that duty. I take it we must recognize the *status* of each of these Churches, and also that they were separate and distinct bodies, however thin the partition may be which divided them, and we must also recognize the new body as one distinct from all the others.

As a fact, it is admitted that all the property and money of the temporalities fund is situated or invested in the Province of Quebec. The respondents, relying on sub-section 13 of section 92 B. N. A. Act, which gives legislative power to the Provincial Legislatures over "property and civil rights in the Province," contend that having full control over all property, the Legislature of Quebec has full power to deal with all property which may exist in the Province of Quebec, and consequently that it has the power to confiscate the funds of the Presbyterian body situate in the Province of Quebec, and present them to some one else, and that this has been done. On the other hand, appellant contends that the local Legislature has no right to incorporate any companies but those having provincial objects (1b. sub-section 11); that this is tantamount to saying that the right to incorporate companies with other than local objects is exclusively reserved to the Dominion Parliament (Sect. 91, B. N. A. Act); that the board of management was an incorporation for other than provincial objects, and therefore that it could not have been created a corporate body by a local Act, and consequently that its act of incorporation cannot be altered or amended by any local Legislature.

I must confess that the sections upon which the contending parties rely appear to me to be irreconcilable by themselves. If the local power to legislate over property and civil rights in the Province is to be interpreted to mean over "all" property, &c., then the power of Parliament to incorporate is illusory. In practice it never has been contended that property means all property. Railway companies incorporated by Parliament, for instance, hold and manage their property under Dominion laws, and such companies evict people from

their private property in each Province under Dominion laws. No one will venture to affirm that a local Act could confiscate the property of a railway company incorporated by Parliament, or transfer it to another company or person. And so it has been decided in the case of *Bourgoin & The Q., M., O. & O. Railway Co.* by the Privy Council, (3rd Legal News, p. 185,) that a railway with all its appurtenances, and all the property, liabilities, rights and powers of the existing company, could not be conveyed to the Quebec Government, and, through it, to a company with a new title and a different organization, without legislative authority, and that if the railway was a Federal railway, the Act authorizing the transfer must be an Act of the Parliament of Canada. Nor, by parity of reasoning, could the local legislature confiscate the surplus funds of a bank on the pretext that it was property in the Province. It is impossible to conceive more obvious limitations to the right to legislate as to property than these. Again, we have had two decisions limiting the sub-section in question. In the case of *Evans v. Hudon*, and *Browne, T.S.*, Mr. Justice Rainville held that a local Act was unconstitutional which authorized the seizure by process of law of the salaries of federal officers, 22 L. C. J., p. 268; and the Court of Appeal in Ontario, in the case of *Leprohon & The Corporation of Ottawa*,² Tupper, p. 522, held, reversing the judgment of the Queen's Bench, 40 U. C. R. 478, that under the B. N. A. Act, 1867, a Provincial Legislature has no power to impose a tax upon the official income of an officer of the Dominion Government, or to confer such a power on the municipalities. These decisions can only be sustained on the ground that property in the sub-section in question does not include such property and civil rights as are necessary to the existence of a Dominion object, to copy the phraseology of the B. N. A. Act. It may, perhaps, be said that sec. 91, s. s. 8, B. N. A. Act, specially gives to the Federal Parliament the power of fixing the salaries; but this does not seem to me to affect the question. After the salary has been fixed and is possessed by the individual, it becomes property in the province. We are, therefore, obliged to sustain the judgment on some other general principle which limits the effect of s. s. 13, sec. 92 B. N. A. Act.

[To be concluded in next issue.]