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THE TEMPORALITIES FUND CASE.

We have now before us the full text of the opinion of the Judicial Committee of the Privy Council in the case of *Dobie & The Temporalities*. It is very elaborate, and it declares that the appellant must have his costs against the respondent, as he has had "substantial success." Such "costs are directed to be paid by the members of the respondent's corporation as individuals."

The substantial success consists in this:—That the Act of the Quebec Legislature is declared to be beyond the powers of that Legislature; that the Board formed under that Act is illegally constituted; that Mr. Dobie had an interest to seek the injunction; and that the injunction is maintained.

The judgment declines to declare that the funds are held by the respondents "in trust, for the benefit of the Presbyterian Church of Canada in connection with the Church of Scotland, and for the benefit of the ministers and missionaries who retain their connection therewith, and who have not ceased to be ministers thereof, and for no other purpose whatever." The reasons for not making this declaration are succinctly given. Their Lordships say:—"It is obviously inexpedient to make any declaration of that kind. It would be a mere repetition of the language of the Act of 1858, by which the trust is regulated, and would decide nothing as between the parties to the present suit."

The judgment also declines to declare that the clergymen who had joined the new association, but who, previous to 1875, were members of the Presbyterian Church in connection with the Church of Scotland, had lost all interest in the fund, as they were not, save one, in the record. And they add:—"It cannot be determined now, because the appellant has not asked any order from the Court in regard to the formation of the new Board, and has not made the individuals and religious bodies interested parties to this cause."

Incidentally, the opinion deals with matters

which have occupied the attention of our Courts, more or less, and generally in the sense that has prevailed here. They seem to hold: that a corporation of a local nature, created by the Legislature of the old Province of Canada, might be destroyed by a local Act of either Ontario or Quebec, so as to make it no longer a corporation in the Province where such Act is passed, but that the measure of the power of destruction was the power of creation. They say:—"The powers conferred by this section upon the Provincial Legislatures of Ontario and Quebec, to repeal and alter the statutes of the old Parliament of the Province of Canada, are made precisely co-extensive with the powers of direct legislation with which these bodies are invested by the other clauses of the Act of 1867." They held that even where the subject is to be dealt with by the Dominion Legislature, it may still be affected by local legislation.

They held that the property of a Dominion created corporation could be taxed by the local Legislature where its property was situated. They say:—"When the funds belonging to a corporation in Ontario are so situated or invested in the Province of Quebec, the Legislature of Quebec may impose direct taxes upon them for provincial purposes, as authorized by section 92 (2), or may impose conditions upon the transfer or realization of such funds," &c. And so the Court of Queen's Bench held in the case of *The Grand Trunk Railway Co. & The Corporation of the Town of Levis*, (at Quebec, 7th March, 1879.) This opinion, taken along with the decisions in the Ontario insurance cases, reduces the case of *Angers & The Queen Ins. Co.* to its narrowest limits; namely, that the Act did not establish a license. Or, as it was said, it was a Stamp Act and not a License Act; and the decision that the local Act of Quebec, 39 Vic., cap. 7, was *ultra vires*, seems to be over-ruled.

It is to be observed that their Lordships distinguish between taxation and confiscation. They add this proviso:—"But that the Quebec Legislature shall have power also to confiscate these funds, or any part of them, for provincial purposes, is a proposition for which no warrant is to be found in the Act of 1867." In other words, the taxation must be either by way of license or be direct.

R.