

land, have ceased to possess that character, and that they have no right to the benefits of the Temporalities Fund; and he concludes for an injunction against the respondent corporation making any payment to them. Their Lordships are of opinion that these are matters which cannot be competently decided in the present action. Their decision depends upon the answer to be given to the question, which Church or aggregate of Churches is now to be considered as being or representing the Presbyterian Church of Canada in connection with the Church of Scotland, *within the meaning of the Act 22 Vict. cap. 66?* But the two churches which appear from the record to have rival claims to that position are not represented in this action; and of the six ministers whose pecuniary interests are assailed by the appellant, he has only called one, the Reverend Dr. Cook, as a Respondent. That question between the Churches must be *determined somehow before a constitutional Board can be elected*; and, unless the Dominion Parliament intervenes, there will be ample opportunity for new and protracted litigation. 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.

*Substantial success* being with the appellant, he must have his costs as against the Respondents. But their Lordships are of opinion that neither the Respondents' own costs, nor those in which they are found liable to the appellant, ought to come out of the trust fund, which they are holding and administering *without legal title*. The Appellant's costs must therefore be paid by the members of the Respondent Corporation as individuals.

Their Lordships will, accordingly, humbly advise Her Majesty that the judgements under appeal ought to be reversed, and that the cause should be remitted to the Court of Queen's Bench, Lower Canada, with directions to that Court to give effect to the declarations recommended by this Board, and also to issue in the Appellant's favor an injunction and decree for costs as directed by this Board.

Mr. Horace Davey, Q.C., and Mr. Donald Macmaster, Q.C., were the counsel for the Appellant; Mr. J. P. Benjamin, Q.C., and Mr. J. L. Morris, for the Respondents.