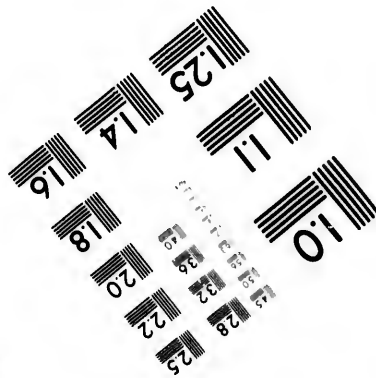
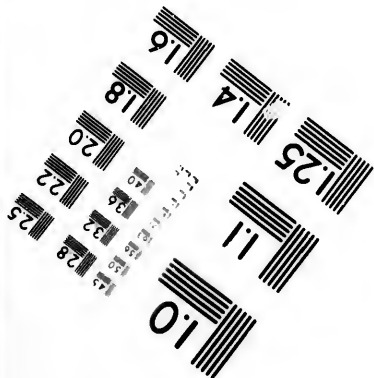
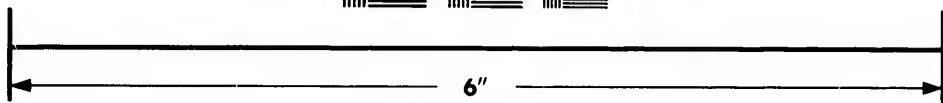
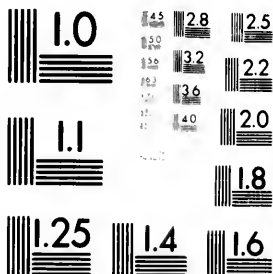


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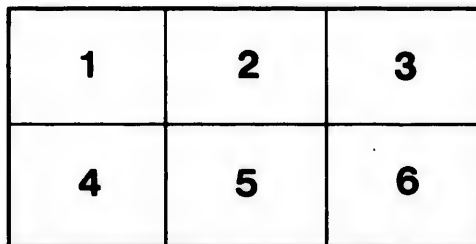
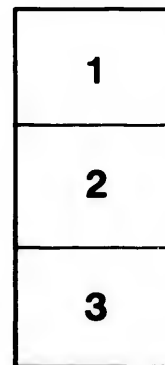
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PROPERTY AND CIVIL RIGHTS.

Reprinted from the "Canadian Spectator" of January 4th, 1880.

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Property, says the Socialist, is robbery. Arguing from this axiom, he maintains that no man is entitled to hold property as his own, however acquired; that it belongs entirely to the State, which can dispose of it as it may determine. Hence, by his theory, no title deeds are of any value; no trusts for any purpose are sacred; everything is at the caprice of the particular body which may for the time being represent the State, and which can deprive any man of the fruits of his labours and render abortive the most skilfully devised precautions to secure them to his heirs or to any object for which he believes it to be desirable he should provide.

If men would only think for themselves and not be led by the nose by others, they would see that these Socialistic demands have been given effect to, without the smallest intention and with no idea of doing so, by a judgment lately rendered in the Superior Court of Montreal, by Mr. Justice Jetté, in the case of *Dobie vs. The 'Temporalities' Board*. The same principle, I may remark, has led to similar decisions in the cases of individual congregations, by which the clearest title deeds were set aside. That principle was, however, less distinctly brought out in them than in the case now before us. Having, in a pamphlet, already published a history of the claims of the adherents of the Church of Scotland, I have no intention of going over ground already traversed. There are aspects of the case of general interest, and it is to these that I desire to call attention.

Acting upon the theory, that the provisions of the Act of Confederation give them power to dispose of private property, the Local Legislatures passed Acts to effect a junction of certain ecclesiastical bodies, and transferred a Fund held for the benefit of a particular Church, under a carefully guarded Trust, from those for whose benefit the Trust had been constituted, to individuals who do not come within the scope of the Trust, but who, on the contrary, have been specially excluded from it. Mr. Justice Jetté by his decision maintains the right of Local Legislatures so to dispose of private property, and declares that the Courts cannot interfere even if the rights of parties to the Fund in question be conclusively established. The learned Justice says:

"If the petitioner seeks to complain of the arbitrariness and injustice of these legislative enactments, which deprive him of rights of property which he considered inviolable, I must answer him that it is not my mission to accord him a protection which the law refuses" (meaning thereby these local acts), "and that nothing would be more dangerous than for the Courts to assume the power to reject a positive law under the pretext that it was unjust."

In another part of the judgment, the learned judge declines to consider the question of the proprietorship of the Fund, on the ground that all the Court has to do is to see if an Act complained of deals with matters on which the Local Legislature is empowered to legislate, and supports this view by the provision of the Confederation Act on the subject, to be found in the 92nd section.

"In each Province the Legislature may exclusively make laws *in relation to* . . . —13, Property and Civil Rights in the Province."

That, according to the present judgment, deprives every property holder, incorporated company, benevolent institution, &c. of all claim to the property they hold, and transfers it to the State, thus subjecting every man's property and civil rights to the caprice of a body of men who *may* act justly, but have not always done so. Russia, it is said, is a despotism tempered by assassination. If this judgment be good law Canada is under a despotism without mitigation.

Taking it for granted that this authoritative exposition of the law is correct, let us see how it works, as an illustration may reach where argument fails. There is a highly respectable club in Montreal called the St. James' Club. Mr. Harrison Stephens has a valuable property adjoining, the possession of which, and of the beautiful mansion erected on it, would add greatly to the

amenity of the Club and the enjoyment of its members. Under Mr. Justice Jetté's ruling, it would only be necessary for the influential gentlemen composing the Club to lobby a bill through the Local Legislature, to secure this highly desirable residence. Mr. Stephens on applying to the learned judge would be told (I quote his own words):

"The Courts are not the guardians of the rights of the people, except as those rights are secured by some constitutional provision which comes within the judicial cognizance."

And the ground for this refusal of redress to Mr. Stephens is the provision, that "the Local Legislatures may exclusively make laws *in relation to* property and Civil Rights" which Mr. Justice Jetté interprets as giving all private property to the Local Legislatures, instead of its being simply the definition of their powers to enact regulations relating to the mode of transfer, registration and the laws by which members of the community are to be guided in their dealings with each other. As the powers of the Local Legislature are unrestricted the members of the St. James' Club need not flatter themselves that they are secure in possession of their "ill gotten gear." The Political Economy Club, at present without a local habitat, has only to get another bill passed by the same Legislature to secure the property of the St. James' Club *plus* that of Mr. Stephens, to be in turn dispossessed by some more influential concern, and so on *ad infinitum*.

The Trust, which is the subject of the present litigation, was hedged round and fenced about with the most stringent precautions, so that there could be no doubt or misapprehension as to those who were to derive the benefit from its revenues. Mr. Justice Jetté declines to look at the question of who were or were not entitled to enjoy the benefits of this Trust, according to the terms specially laid down, on the ground, that "there is not in reality at the bottom, of this part of the dispute more than a question of religious doctrines, altogether beyond the jurisdiction of a civil tribunal, and consequently not for me to decide." But the very essence of the Constitution of the Trust is the precise thing that Mr. Justice Jetté refuses to look at. The Trust was constituted to secure the teaching of certain doctrines, in a certain way, by the adherents of a particular Church, holding, by compact with the State, an unalterable creed. The Law Reports are full of cases in which the whole question of Civil Rights turns upon the tenets held, simply because in no other way can the question of Civil Rights in these cases be decided. The appreciation of religious doctrines is as much the duty of a Court of Law, when upon these doctrines turn the interpretation of the terms of a Trust, as is the appreciation of the conditions of any other trust or contract. I might give proof from a mass of decisions and authorities now before me on this point, but really it is so elementary that the error into which the learned Judge has fallen (having apparently forgotten even the well known Guilford case) need not be seriously discussed. I give a Canadian case or two, not because they bring out so clearly as many the point before us, but because they are allied to the present suit.

The Chancellor of Ontario lately, in giving judgment in favour of one of the congregations of the Church of Scotland, which the United Presbyterian body sought to deprive of its property, by virtue of the Ontario Union Act, referred to certain judgments in the Court of King's Bench in Upper Canada, on Church cases, in which it was held unanimously that in a question of title to property, the question of identity was the material question. "In these cases," the Chancellor said, "the Court of King's Bench had evidence, oral, documentary and historic to prove the identity." Clearly that Court did not refuse to look into questions of doctrine. The Chancellor in the case before him maintained the same view, and quoted two cases, in one of which Vice-Chancellor Esten said: "It is an acknowledged fact, that the gift (by which the Church to erect a church) was to a branch of the Church of Scotland, and that Church became divided into two parts, one of which has become a new and different Church, of which the congregation at Cobourg is a part, and the use of the building is part and parcel. It appears to me to be a more

entitled to the benefit of the gift than a congregation of the Church of England, or of Methodists, or of Baptists would be." Chancellor Vankoughnet delivered another judgment in relation to a congregation of adherents of the Free Church. "Afterward," says the Chancellor, "the great body of the congregation abandoned the connection with the Free Church, but as long as *any one remains* to claim the site and church on behalf of the Free Church, the right of the latter body continues, notwithstanding the change of opinion in the body of the members."

Granting for the moment, that the local legislatures are vested with the extraordinary powers attributed to them by Mr. Justice Jetté, it would seem that these powers are only to be exercised when the objects of a Trust or Corporation are purely local and provincial. The very terms of the Act of Confederation show that the jurisdiction in cases in which property and civil rights are concerned belong exclusively to the Federal Parliament, when the objects of the Trust or Corporation extend over more than one province. The Statute Books of the Dominion are full of instances of this. To go no further back than last session. The local government of Quebec obtained in Ottawa an Act to authorise the erection of a bridge from Hull to Ottawa, to connect the railway system of Quebec with that of Ontario, and in that Act the Parliament of Canada dealt with property and civil rights in Ontario, as it would do with those in any other Province, when the object of an Act was more than provincial. But, according to the ruling, the local legislature of Ontario having exclusive jurisdiction in relation to property and civil rights may pass an Act to defeat the object of the charter granted by the Dominion. Let us see what the Trust dealt with in the judgment. The Act of Incorporation was granted by the old Province of Canada, for the purpose of holding in trust certain funds belonging to a Church co-extensive with the limits of United Canada. The fund to be held in trust was undivided and not susceptible of division except by the destruction of the Trust so constituted. It was not a local corporation, ~~having shareholders in other parts of Canada and outside of its~~ limits, subject to the local laws of the Province, as being shareholders of a Company with provincial objects. Yet the latter is the view the learned judge takes,—a view, I respectfully say, which is entirely contrary to the fact. It is a corporation which must be dealt with, and can be dealt with, in no other way than other corporations with more than provincial objects. The very Acts of Ontario cited by the learned judge show this. Quebec deals with the Trust in question and the Fund held by it *as a whole*. It does not deal with it as partly belonging to Quebec and legislate for that part. Ontario deals with the very same Trust *as a whole*, and does not assume that part belongs to Ontario and legislate for that. If the Fund is local to Quebec, then Ontario cannot legislate in relation to it. If local to Ontario, Quebec cannot legislate in relation to it. If it be necessary in both Provinces to deal with the Fund *as a whole*, as has been done, neither can legislate, that, within constitutional limits, being the duty of the Federal Parliament. It is incontestable that the objects of the Trust are in no sense local, but are general. The Act provides that each Manager shall be resident in the Province (United Canada), and a glance at the names will show that this was always complied with. The sixth section provides that "the said Corporation shall hold their meetings at such place or places within this Province (United Canada) as they shall from time to time direct and appoint," and the records of the Board show that the meetings were so held, although the principal office, for the sake of convenience, is in Montreal. The Act of Incorporation proves its general nature, and the very Union Acts quoted by the learned judge present the most incontestable evidence on the subject. Mr. Justice Jetté himself does not venture to contest it, but holds that property and civil rights being within the exclusive jurisdiction of the local legislatures, they alone can deal with them. Let me quote the words of the judgment, the italics being my own:—

"Now, what was the object of the Corporation created by the Statute 22 Victoria, cap. 66? Nothing else than the ownership and the possession of certain property; that is to say, that the Legislature of United Canada has

accorded. by this Act, those rights which are included specially in the category of subjects exclusively entrusted at the present time to the Provincial Legislatures. It is true that under the former *régime* the two Provinces being subject to a legislative union, these same rights were under the control of the Legislature of the Union, and consequently the privileges accorded in this respect to Corporations created by this Parliament extended (*except when specially restricted*) to all the territory subject to its jurisdiction. But the extent of this territory, whether more or less, does not change anything in the nature itself of these rights; and since these rights are now entrusted to the Provincial Parliament, can it be pretended that it has neither the right nor the power to legislate in a manner to affect them? Certainly not."

Very clear. Sambo is a man; Sambo is black; ergo, all men are black. Now let us see how it works, for the principle laid down is so broad as to cover every case in which an Act of Incorporation was granted by the old Province of Canada. The Grand Trunk Railway Company obtained an Act of Incorporation from that Legislature. Part of the line is within the Province of Quebec (of course the same reasoning applies to any other Province), in which the Local Legislature has exclusive jurisdiction over property and civil rights. Besides the line, the Grand Trunk has the Victoria Bridge, the use of which is much coveted by other railways. Suppose by certain "human devices" an Act is obtained from the Local Legislature to transfer the ownership of this bridge to another company, and the Grand Trunk applies for redress; the Court simply shrugs its shoulders and says, as Mr. Justice Jetté tells us: "The protection against unwise or oppressive legislation within constitutional bounds is by appeal to the justice and patriotism of the representatives of the people. If this fail, the people in their sovereign capacity can correct the evil; but courts cannot assume their rights." The Grand Trunk says: "The property in question is ours—paid for by us and assured to us by charter; the Legislature has overstepped its constitutional bounds." The answer is simple. "The Legislature has exclusive jurisdiction over property and civil rights, and the statement of your claim is altogether beyond my jurisdiction and consequently not for me to decide." But the Grand Trunk contends that not being a mere provincial incorporation, the Legislature has no jurisdiction. "All a mistake," says the Court; "you obtained the Act from the old Province of Canada over the whole territory under its jurisdiction, but the extent of this territory, whether more or less, does not change anything in the nature itself of your rights; and since these rights are now entrusted to the Provincial Parliament, can it be pretended that it has neither the right nor the power to legislate in a manner to affect them? Certainly not. The Victoria Bridge and anything taken from you by the Act are no longer yours; you have no redress." A conclusion which must be highly satisfactory to every man with money-invested in Canada.

As will be seen, I have scrupulously abstained in this paper from touching on doctrinal questions important to us, if of little general interest. And I have done so for the purpose of getting rid of all considerations which might distract attention from the grave constitutional question in which the whole community is vitally interested. The decision of Mr. Justice Jetté may help to startle and to arouse enquiry into the nature of the struggle in which we are involved. That struggle has a two-fold aspect. One ecclesiastical, affecting a limited number; the other constitutional, and of vital moment to the whole community. We have till now carried on the contest at enormous expense and with but scant sympathy, but I venture to urge upon every thinking man the duty of seeing that the decision of this question before the highest tribunal in the Empire does not fail for want of funds, for the question is one—if ever there was one—that cannot with safety be left unsettled.

Douglas Brynmor.

Ottawa, Jan. 12th, 1880.

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