The Legal News.

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LEGISLATION AT OTTAWA.

Mr. Girouard, Q.C., has again introduced his Bill concerning marriage with a deceased wife's sister. The measure is the same as that which passed the Commons last Session, except the omission of the portion which referred to the widow of the brother. The Bill now introduced proposes to repeal all laws prohibiting marriage between a man and the sister of his deceased wife, but vested rights are not to be interfered with. The promoters of the measure anticipate that it will pass both Houses this Session. The second reading was carried on division in the Commons, Feb. 23, 137 for, and 34 against.

The Hon. Mr. Blake has moved for a copy of the judgment of Mr. Justice Jetté in *Laramée* v. *Evans* (5 L. N. 51). As leave to appeal from the interlocutory judgment in question has been granted, and the case is now actually pending before the Court of Appeal, it was not easy to divine the motive for adopting this mode of obtaining information which might be had in the ordinary way. But we see by the *Hansard* report that Mr. Blake simply wishes to have an authenticated copy for use in the discussion on Mr. Girouard's bill.

Mr. Blake, by another resolution, directs attention to the expediency, in appeals to the Supreme Court of Canada, of accepting the printed records in the courts below for the purpose of the appeal, without requiring the reprint of the same matter. Something should certainly be done to prevent the useless duplication of printed matter. The burdens imposed on unsuccessful suitors are heavy enough without needless additions. A uniform page might be prescribed in all the Courts for printed factums, &c., and it would then be a simple matter to bind up what has already been printed for the courts below with the factums before the Supreme Court or Privy Council. It may also be mentioned that the parties sometimes go to considerable expense in printing opinions of judges in the courts below, the text of which has already appeared in reports of the cases.

Mr. Landry, with a manifestation of antiquarian spirit not often observed in Canada, seems to have wished the Government to accept seriously the suggestion thrown out by the Governor-General in a holiday speech at Quebec, in June, 1880, in which the noble Marquis is reported to have said:—"The very usages in "the Parliament of Britain survive from the "days when they were planted there by our "Norman ancestors. I do not know that it has "been observed before in Canada, but it has "often occurred to me that in the British Par- "liament we still use the old words used by "your fathers for the sanction of the Sovereign "given to bills, of *La reyne le veult*, or *la reyne* "*remercie ses bon sujets, accepte leur bénévolence*, "*et ainsi le veult*, forms which I should like to "see used at Ottawa, as marking our common "origin, instead of the practice that prevails of "translating into modern French and English." The Premier, in reply, pointed out that the form suggested would be an innovation, the form now adopted having been used in Canada ever since it has possessed representative institutions, and is sanctioned by the Constitutional Act.

A bill has been promised in the Speech from the Throne, amending the Acts relating to the Supreme Court of Canada. Mr. Justice Taschereau, at a dinner given to him by the Montreal Bar on the 11th instant, stated that the Judges of the Court had received no intimation of the proposed amendments.

THE TEMPORALITIES CASE.

Constitutional cases have come rather thickly of late, and have occupied more space than we like to take from the ordinary work of the courts. The difficulties which arise under our new constitution are so numerous and formidable, however, that we think our readers will be glad to have the views of the Imperial Court in a convenient form at the earliest moment, and we have therefore given up our space this week to the decision of the Privy Council in the long controverted case of *Dobie* v. *The Board*, &c. It will not be forgotten that all the decisions of our Provincial Courts on constitutional questions since Confederation have to be read by the light of these judgments.

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

purpose, of whom three were ministers and five were laymen. They received payment of the commutation moneys, to the amount already stated; and in order to provide for the management of the fund thus obtained, the Legislature of the Province of Canada, upon the application of the Commissioners, passed the Act 22 Vict., cap. 66.

By the first clause of the Act in question, the Commissioners were, along with four additional members and their successors, declared to be a body politic and corporate, by the name of the "Board for the management of the Tempo- "ralities Fund of the Presbyterian Church of "Canada in connection with the Church of "Scotland;" and the funds held by them as Commissioners were vested in the Board "in "trust for the said Church," subject to the condition that the annual interest thereof should remain chargeable with the stipends and allowances payable to the parties entitled thereto, in terms of the arrangement under which the fund was contributed by the commutors. It was enacted that, at the first meeting of Synod held after the passing of the Act, three Commissioners, one minister and two laymen, should retire from the Board, and that seven new members, consisting of four ministers and three laymen, should be elected by the Synod. The Board thus reconstituted was composed of six ministers and six laymen, and it was provided that at each annual meeting of the Synod held thereafter two ministers and two laymen were to retire by rotation, and that four new members, two clerical and two lay, should be elected in their stead. It was expressly enacted that all members of the Board should also be members of the Presbyterian Church of Canada in connection with the Church of Scotland; and provision was made for filling up vacancies occasioned by the death or resignation of a member, by his removal from the Province of Canada, or by his leaving the communion of the said Church.

In the year 1874 serious proposals had been made for an incorporative union between the Presbyterian Church of Canada in connection with the Church of Scotland, the Canada Presbyterian Church, the Church of the Maritime Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces. The old Parliament of the Province of Canada had by this time been abolished, and its legislative power had been distributed between the two provincial Legislatures of Ontario and Quebec, and the new Parliament of the Dominion of Canada, under the provisions of the "British North America Act, 1867." With the view of facilitating the contemplated union of the Churches, an Act of the Legislature of Quebec was passed in February, 1875 (38 Vict., cap. 62), in order to remove any obstruction which might arise from the form and designation of the several trusts or acts of incorporation by which the property of the Churches was held and administered. By the 11th section of that Act it was provided that, in the event of union taking place, the members then constituting the Board for management of the Temporalities Fund, under the Act of 1858, should remain in office, and pay over the revenue to the persons previously entitled to it; that any revenue not required for that purpose should pass to and be subject to the disposal of the united Church; and that any part of the fund remaining after satisfying the claim of the last survivor of those entitled should belong to the Supreme Court of the united Church, and be applied to the aid of weak congregations. It was by the same clause enacted that vacancies occurring in the Temporalities Fund Board should not be filled up in the manner theretofore observed, but should be filled up in the manner provided by another Act of the Quebec Legislature.

This last-mentioned statute (38 Vict., cap. 64), which received the assent of the Governor-General in Council upon the same day as the preceding, was passed with the professed object of amending the Act of the Parliament of the Province of Canada, 22 Vict., cap. 66. It was thereby enacted that, from the time when the union was effected, the annual allowances to which they were previously entitled were to be continued by the Temporalities Board to ministers and probationers then on the roll of the Presbyterian Church of Canada in connection with the Church of Scotland, and these were to be paid, so far as necessary, out of the capital of the fund, and that any surplus of revenue or capital, after satisfying these charges, should be at the disposal of the united Church. Ministers and probationers of the Church, interested in the temporalities fund, who might decline to become parties to the union, were, however, to retain all rights previously competent to them until the same lapsed or were extinguished. The constitution of the Board of Management was altered by the third and eighth clauses of the Act. The third clause is in these terms:—"As often as any "vacancy in the Board for the management of "the said temporalities fund occurs, by death, "resignation or otherwise, the beneficiaries en- "titled to the benefit of the said fund may each "nominate a person, being a minister or mem- "ber of the said united Church, or, in the event "of there being more than one vacancy, then "one person for each vacancy, and the remanent "members of the said Board shall thereupon, "from among the persons so nominated as afore- "said, elect the person or number of persons "necessary to fill such vacancy or vacancies, "selecting the person or persons who may be "nominated by the largest number of benefi- "ciaries, but, in the event of failure on the part "of the beneficiaries to nominate as aforesaid, "the remanent members of the Board shall fill "up the vacancy or vacancies from among the "ministers or members of the said united "Church." The eighth clause enacts that the

3rd section shall continue in force until the number of beneficiaries is reduced below fifteen, upon which occurrence the Board is to be continued by the remanent members filling up vacancies from among the ministers or members of the united Church. By the 10th section it was declared that the Act should come into force as soon as a notice was published in the Quebec *Official Gazette* to the effect that the union had been consummated, and that the articles of union had been signed by the Moderators of the respective Churches.

On the 14th day of June, 1875, the Synods of the four Churches met at Montreal, and in each a resolution was carried in favour of union. In the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland it was resolved, by a very large majority of its members, that the four Churches should be united, and form one Assembly, to be known as "The General Assembly of the Presbyterian Church in Canada," and that the united Church should possess the same authorities, rights, privileges and benefits to which the Presbyterian Church in Canada in connection with the Church of Scotland was then entitled, excepting such as had been reserved by Acts of Parliament. The minority, which consisted of the Appellant, the Rev. Robert Dobie, and nine other members, dissented from the action of the Synod, and protested that they, and those who might choose to adhere to them, remained and still constituted the Presbyterian Church of Canada in connection with the Church of Scotland.

On the 15th June, 1875, the majority of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, and the Synods of the other uniting Churches, met in General Assembly, when the Articles of Union were signed by the Moderators of each of the four Churches; and thereupon one of the Moderators, with the consent and concurrence of the rest, declared the four Churches to be united in one Church, represented by that its first General Assembly, to be designated and known as "The "General Assembly of the Presbyterian Church "in Canada." Notice of the union having been thus consummated was duly published in the Quebec Official *Gazette*.

After publication of the notice, the constitution of the Board for managing the temporalities fund was altered, and the fund administered, in conformity with the provisions of the Quebec Act, 38 Vict., cap. 64. In December, 1878, the Rev. Robert Dobie, who, with the other members of the protesting minority of 1875, and their adherents, maintains that they alone represent and constitute the Presbyterian Church of Canada in connection with the Church of Scotland, instituted, by petition to the Superior Court for Lower Canada, the proceedings in which the present appeal has been taken. The leading conclusions of the petition are to have it adjudged and declared (1) that the Legislature of Quebec had no power to alter the constitution of the Board or the purposes of the trust created by the Canadian Act, 22 Vict., cap. 66, and consequently that the administration of the trust as carried on in terms of the Provincial Act of 1875 is illegal; (2) that the protesting minority of the Synod of 1875, and its adherents, are now the Presbyterian Church of Canada in connection with the Church of Scotland, and that certain ministers of the united Church, who were members of the majority, had, by reason of the union, forfeited all right to participate in the benefits of the temporalities fund; and, (3) to have an injunction against the Board, as then constituted, acting in prejudice of the rights of the Appellant, and others beneficially interested in the statutory trust of 1858. Upon the 31st December, 1878, the Appellant's application was heard before Mr. Justice Jetté, who made an order for summoning the Respondents, and also issued an *interim* injunction, which the learned Judge dissolved, after fully hearing both parties, on the 31st December, 1879, and at the same time dismissed the Appellant's petition, with costs. This decision was, on appeal to the Court of Queen's Bench for Lower Canada, affirmed, in accordance with the opinions of the majority of the Judges.

The judgments of Mr. Justice Jetté in the Court of First Instance, and of Chief-Justice Dorion and Mr. Justice Monk in the Court of Queen's Bench, are based exclusively upon the competency of the Quebec Legislature to pass the Act 38 Vict., cap. 64, and the consequent validity of that statute. On the other hand, Mr. Justice Ramsay and Mr. Justice Tessier were of opinion that the Appellant was entitled to an injunction, on the ground that the Act 38 Vict., cap. 64, was invalid, and that the majority of the Presbyterian Church of Canada in connection with the Church of Scotland had no power to communicate any interest in the temporalities fund of that Church to the religious bodies with whom they had chosen to unite themselves in 1875. Mr. Justice M'Cord was of opinion, with his brethren Ramsay and Tessier, JJ., that the Act of the Legislature of Quebec was *ultra vires*, but he held that the majority of the Presbyterian Church of Canada in connection with the Church of Scotland had undoubted power to admit into that Church, as members of it, the three religious bodies with whom they had entered into Union. Consequently the learned Justice, though differing in opinion from his brethren Dorion, C. J., and Monk, J., agreed with them in result.

Whether the Legislature of Quebec had power to pass the Act 38 Vict., cap. 64, is the question first requiring consideration, because, if it be answered in the affirmative, the case of the Appellant entirely fails. The determination of that question appears to their Lordships to depend upon the construction of certain clauses in the British North America Act, 1867. There is no room, in the present case, for the application of those general principles of constitutional

law, which were discussed by some of the Judges in the Courts below, and which were founded on in argument at the bar. There is really no practical limit to the authority of a supreme legislature except the lack of executive power to enforce its enactments. But the Legislature of Quebec is not supreme; at all events, it can only assert its supremacy within those limits which have been assigned to it by the Act of 1867.

The Act of the Parliament of the Province of Canada, 22 Vict., cap. 66, was, after the passing of the British North America Act, 1867, continued in force within the provinces of Ontario and Quebec, by virtue of Section 129 of the latter statute, which, *inter alia*, enacts that, except as therein otherwise provided, all laws in force in Canada at the time of the union thereby effected, shall continue in Ontario and Quebec as if the union had not been made But that enactment is qualified by the provision that all such laws, with the exception of those enacted by the Parliaments of Great Britain, or of the United Kingdom of Great Britain and Ireland, shall be subject "to be repealed, "abolished, or altered by the Parliament of "Canada, or by the Legislature of the respec-"tive province, according to the authority of "the Parliament or of that Legislature under "this Act." 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. In order, therefore, to ascertain how far the Provincial Legislature of Quebec had power to alter and amend the Act of 1858, incorporating the Board for the management of the Temporalities Fund, it becomes necessary to revert to Sections 91 and 92 of the British North America Act, which enumerate and define the various matters which are within the exclusive legislative authority of the Parliament of Canada, as well as those in relation to which the legislatures of the respective provinces have the exclusive right of making laws. If it could be established that, in the absence of all previous legislation on the subject, the Legislature of Quebec would have been authorized by Section 92 to pass an Act in terms identical with the 22 Vic., cap. 66, then it would follow that the Act of the 22nd Vict. has been validly amended by the 38 Vic., cap. 64. On the other hand, if the Legislature of Quebec has not derived such power of enactment from Section 92, the necessary inference is that the legislative authority required, in terms of Section 129, to sustain its right to repeal or alter an old law of the Parliament of the Province of Canada, is in this case awanting, and that the Act 38 Vict., cap. 64, was not *intra vires* of the Legislature by which it was passed.

The general scheme of the British North America Act, 1867, and, in particular, the general scope and effect of sections 91 and 92, have been so fully commented upon by this Board in the recent cases of "The Citizens Insurance "Company *v.* Parsons," and "The Queen Insu-"rance Company *v.* Parsons," (1) that it is unnecessary to say anything further upon that subject. Their Lordships see no reason to modify in any respect the principles of law upon which they proceeded in deciding these cases; but in determining how far these principles apply to the present case, it is necessary to consider to what extent the circumstances of each case are identical or similar.

The case of "The Citizens Insurance Company of Canada *v.* Parsons" comes nearest, in its circumstances to the present, as in that case the appellant company was incorporated by, and derived all its statutory rights and privileges from, an Act of the Province of Canada, whereas "The Queen Insurance Company" was incorporated under the provisions of the British Joint Stock Companies Act, 7 and 8 Vict., cap. 110. In both cases the validity of an Act of the Legislature of Ontario was impeached on the ground that its provisions were *ultra vires* of a provincial legislature, and were not binding unless enacted by the Parliament of Canada. It was contended on behalf of the Citizens Insurance Company that the statute complained of was invalid in respect that it virtually repealed certain rights and privileges which they enjoyed by virtue of their Act of incorporation. That contention was rejected, and the decision in that case would be a precedent fatal to the contention of the appellant, if the provisions of the Ontario Act, 39 Vic., cap. 31, and the Quebec Act, 38 Vict., cap. 64, were of the same or substantially the same character. But upon an examination of these two statutes, it becomes at once apparent that there is a marked difference in the character of their respective enactments. The Ontario Act merely prescribed that certain conditions should attach to every policy, entered into or in force, for insuring property situate within the province against the risk of fire. It dealt with all corporations, companies, and individuals alike who might choose to insure property in Ontario; it did not interfere with their constitution or *status*, but required that certain reasonable conditions should be held as inserted in every contract made by them. The Quebec Act, 38 Vict., cap. 64, on the contrary, deals with a single statutory trust, and interferes directly with the constitution and privileges of a corporation created by an Act of the Province of Canada, and having its corporate existence and corporate rights in the Province of Ontario, as well as in the Province of Quebec. The professed object of the Act, and the effect of its provisions is, not to impose conditions on the dealings of

(1) 5 Legal News, pp. 25, 33.

the corporation with its funds within the Province of Quebec, but to destroy, in the first place, the old corporation, and create a new one, and, in the second place, to alter materially the class of persons interested in the funds of the corporation.

According to the principles established by the judgment of this Board in the cases already referred to, 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 section 92. If it does not, then the Act is of no validity. If it does, then these further questions may arise, viz., "whether, notwithstanding that it is so, the subject of the Act does not also fall within one of the enumerated classes of subjects in Sec. 91, and whether the power of the Provincial Legislature is or is not thereby overborne."

Does then the Act 38 Vict., c. 64, fall within any of the classes enumerated in Sec. 92, and thereby assigned to the Provincial Legislatures? Their Lordships are of opinion that it does not; and consequently that its enactments are invalid, and that the constitution and duties of the Board for managing the Temporalities Fund must still be regulated by the Act of 1858.

It was contended for the Respondents that the Quebec Act of 1875 is within one or more of these three classes of subjects enumerated in Sec. 92,—

"(7). The establishment, maintenance, and management of hospitals, asylums, charities, and eleemosynary institutions in and for the province other than marine hospitals."

"(11). The incorporation of companies with provincial objects."

"(13). Property and civil rights in the Province."

The most plausible argument for the Respondent was founded upon the terms of Class (13), but it has failed to satisfy their Lordships that the statute impeached by the Appellant is a law in relation to property and civil rights within the Province of Quebec.

The Quebec Act of 1875 does not, as has already been pointed out, deal directly with property or contracts affecting property, but with the civil rights of a corporation, and of individuals, present or future, for whose benefit the corporation was created and exists. If these rights and interests were capable of division according to their local position in Ontario and Quebec respectively, the Legislature of each province would have power to deal with them so far as situate within the limits of its authority. If, by a single Act of the Dominion Parliament, there had been constituted two separate corporations for the purpose of working, the one a mine within the Province of Upper Canada, and the other a mine in the Province of Lower Canada, the Legislature of Quebec would clearly have had authority to repeal the Act so far as it related to the latter mine and the corporation by which it was worked.

The Quebec Act 38 Vict., cap. 64, does not profess to repeal and amend the Act of 1858, only in so far as its provisions may apply to or be operative within the Province of Quebec, and its enactments are apparently not framed with a view to any such limitation. The reason is obvious, and it is a reason which appears to their Lordships to be fatal to the validity of the Act. The corporation and the corporate trust, the matters to which its provisions relate, are in reality not divisible according to the limits of provincial authority. In every case where an Act applicable to the two Provinces of Quebec and Ontario, can now be validly repealed by one of them, the result must be to leave the Act in full vigour within the other province. But, in the present case, the legislation of Quebec must necessarily affect the rights and status of the corporation as previously existing in the Province of Ontario, as well as the rights and interests of individual corporators in that province. In addition to that, the fund administered by the Corporate Board, under the Act of 1858, is held in perpetuity for the benefit of the ministers and members of a Church having its local situation in both provinces, and the proportion of the fund and its revenues falling to either province is uncertain and fluctuating, so that it would be impossible for the Legislature of Quebec to appropriate a definite share of the corporate funds to their own province without trenching on the rights of the corporation in Ontario.

These observations regarding Class (13) apply with equal force to the argument of the respondents founded on Classes (7) and (11). Even assuming that the Temporalities Fund might be correctly described as a "charity" or as an "eleemosynary institution," it is not in any sense established, maintained, or managed "in or for" the Province of Quebec; and if the Board, incorporated by the Act of 1858, could be held to be a "company" within the meaning of Class (11), its objects are certainly not provincial.

The respondents further maintained that the Legislature of Quebec had power to pass the Act of 1875, in respect of these special circumstances, (1) that the domicile and principal office of the Temporalities Board is in the city of Montreal; and (2) that its funds also are held or invested within the Province of Quebec. These facts are admitted on record by the appellant, but they do not affect the question of legislative power. The domicile of the corporation is merely forensic, and cannot alter its statutory constitution as a Board in and for the Provinces of Upper Canada and Lower Canada. Neither can the accident of its funds being invested in Quebec give the Legislature of that

province authority to change the constitution of a corporation with which it would otherwise have no right to interfere. When 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; 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.

Last of all it was argued for the respondents that, assuming the incompetency of either provincial Legislature, acting singly, to interfere with the Act of 1858, that statute might be altered or repealed by their joint and harmonious action. The argument is based upon fact, because, in the year 1874, the Legislature of Ontario passed an Act (38 Vict., cap. 75), authorizing the union of the four Churches, and containing provisions in regard to the Temporalities Fund and its Board of Management, substantially the same with those of the Quebec Act, 38 Vic., cap. 62, already referred to. It is difficult to understand how the maxim *juncta juvant* is applicable here, seeing that the power of the provincial Legislature to destroy a law of the old Province of Canada is measured by its capacity to reconstruct what it has destroyed. If the Legislatures of Ontario and Quebec were allowed jointly to abolish the Board of 1858, which is one corporation in and for both provinces, they could only create in its room two corporations, one of which would exist in and for Ontario and be a foreigner in Quebec, and the other of which would be foreign to Ontario but a domestic institution in Quebec. Then the funds of the Ontario corporation could not be legitimately settled upon objects in the Province of Quebec, and as little could the funds of the Quebec corporation be devoted to Ontario, whereas the Temporalities fund falls to be applied either in the Province of Quebec or in that of Ontario, and that in such amounts or proportions as the needs of the Presbyterian Church of Canada in connection with the Church of Scotland, and of its ministers and congregations, may from time to time require. The Parliament of Canada is, therefore, the only Legislature having power to modify or repeal the provisions of the Act of 1858.

On the assumption that the Legislature of Quebec had not power to alter the provisions of the Act 22 Vict., cap. 66, the Respondents still maintain that the Appellant cannot prevail in the present action, in respect that he has not sufficient interest to entitle him to sue, and that, even if he has such interest, he is barred from challenging the Act of 1875, by the resolutions of the majority of the Synod, which are said to be binding upon him.

As regards the first of these objections, it is true that the Appellant's right to an annuity from the Temporalities Fund is reserved in its integrity by the Act which he impugns, and his own pecuniary interests are, therefore, not affected by its provisions. But the Appellant is not a mere annuitant, and his right to an annual allowance does not constitute his only connection with the fund. He is likewise one of the commutors,—one of the persons by whom the fund was contributed for the purposes of the Act 22 Vict., cap. 66,—and in that capacity he has a plain interest, and consequent right, to insist that the fund shall be administered in strict accordance with law.

The second objection is derived from the resolutions in favour of union carried by the majority of the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, upon the 14th June, 1875. The Quebec Act 38 Vict., cap. 64, deals with the Temporalities Fund in conformity with these resolutions; and it is the contention of the Respondents that the Appellant is bound by the resolutions, and cannot, therefore, impeach the Statute which gives effect to them. That is a startling proposition. If the Legislature of Quebec was incompetent to enact the Statute of 1875, it is not easy to understand how the Synod could have power, either directly or indirectly, to validate that Act, or to set aside the enactments of 22 Vict., cap. 66. The Respondents do not, indeed, allege that the Synod was possessed of legislative powers, but they assert that the majority, by resolving that the fund, settled under the Act 22 Vic., cap. 66, should in future be administered according to a scheme inconsistent with the provisions of that Act, bound all its members to acquiesce in that new course of administration, and to abstain from enforcing the Statute law of the land. It may be doubted whether a Court of law would sustain such an obligation, even if it were expressly undertaken; but it is unnecessary to discuss that point, because their Lordships are of opinion that the Respondents have failed to establish that the Appellant, as a member of the Presbyterian Church in connection with the Church of Scotland, undertook any obligation to that effect.

Whether the Appellant is bound, as alleged by the Respondents, is, in this case, a question relating exclusively to civil rights, and must, therefore, be dealt with as matter of contract between him and the Synod or Church of which he was admittedly a member at the time when the resolutions in favour of union were carried. In the case of a non-established Presbyterian Church, its constitution, or in other words the terms of the contract under which its members are associated, are rarely embodied in a single document, and must, in part at least, be gathered from the proceedings and practice of its judicatories. Every person who becomes a member of a Church so constituted must be held to have satisfied himself in regard to the proceedings

and practice of its Courts, and to have agreed to submit to the precedents which these establish. The respondents were, therefore, justified in referring to the minutes of the Synod from 1831 to 1875, for the purpose of showing the extent of the power vested in majorities by the constitution of the Church. The minutes, which were founded upon by counsel for the respondents, afford abundant evidence to the effect that, in all matters which the Synod was competent to deal with and determine, the will of the majority as expressed by their vote was binding upon every member of the Synod, a proposition which the appellant did not dispute. But they contain nothing whatever to show that, in cases where the administration of Church property was regulated by statute, the Synod ever asserted its right to set aside that legal course of administration, and to restrain dissentient members from challenging any departure from it.

Their Lordships are, therefore, of opinion that the appellant is entitled to have it declared that, notwithstanding the provisions of the Quebec Act of 1875, the constitution of the Board and the administration of the Temporalities Fund are still governed by the Canadian Act of 1858, and that the respondent Board is not duly constituted in terms of that Act; and also to have an injunction restraining the respondents from paying away or otherwise disposing of either the principal or income of the fund.

The appellant, in his application to the Court below, asks a declaration to the effect that the fund in question is 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." 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 appellant also seeks to have it declared that six reverend gentlemen who, at and prior to the union of 1875 were members of the Presbyterian Church of Canada in connection with the Church of Scotland, 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 completely 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 Rev. 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 judgments 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 favour an injunction and decree for costs as directed by this Board.

H. Davey, Q.C., and *D. Macmaster, Q.C.*, for the Appellant.

J. C. Benjamin, Q.C., and *J. L. Morris*, for the Respondents.

RECENT DECISIONS AT QUEBEC.

Review—Deposit.—Where several defendants have pleaded separately, and the plaintiff inscribes in review on all the contestations, he is bound to make as many deposits as there are separate contestations.—*Pednaud* v. *Perron et al.* (Court of Review, Meredith, C.J., Casault and Caron, JJ.), 7 Q. L. R. 319. [See *McNamee* v. *Jones*, 4 Legal News, p. 102, where the same point was similarly decided by the Court of Review, Montreal.]

Execution—Opposition—Partial payment.—The defendant who has made partial payments on account of the judgment can file an opposition claiming to have the judgment reduced, but has no right to demand the total nullity of the seizure.—*Thibault* v. *Fontaine*, (S.C. Opinion by Meredith, C.J.), 7 Q. L. R. 320.