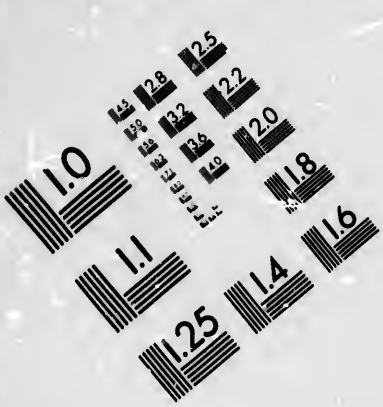


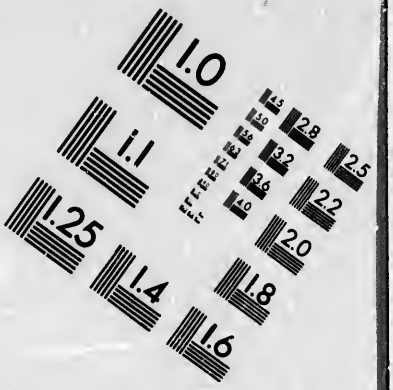
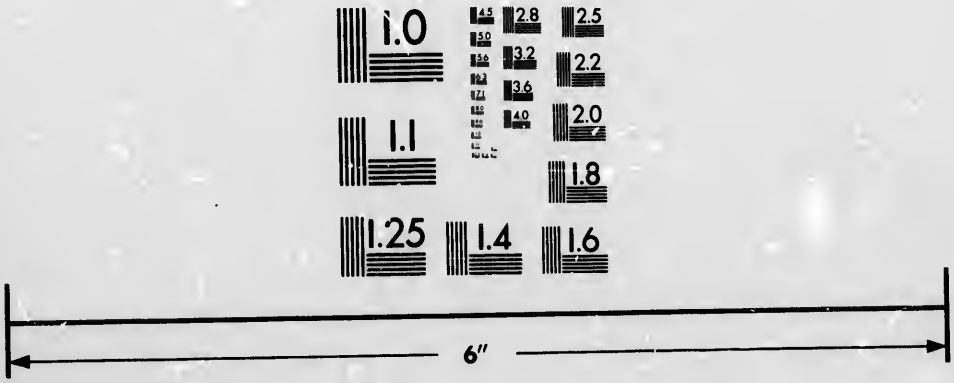
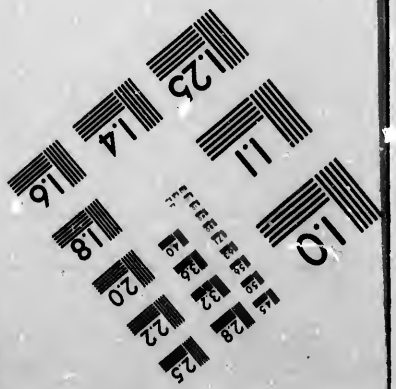


IMAGE EVALUATION
TEST TARGET (MT-3)





Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Technical and Bibliographic Notes/Notes techniques et bibliographiques

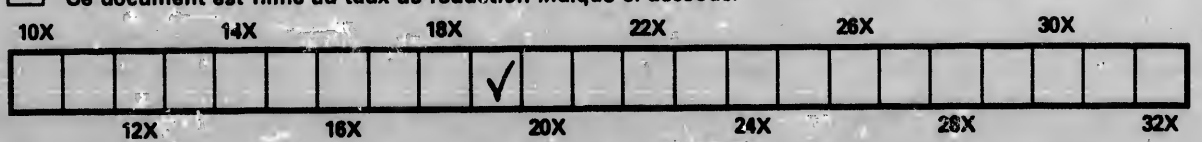
The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- [x] Coloured covers/ Couverture de couleur
- [ ] Covers damaged/ Couverture endommagée
- [ ] Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- [ ] Cover title missing/ Le titre de couverture manque
- [ ] Coloured maps/ Cartes géographiques en couleur
- [ ] Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- [ ] Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- [ ] Bound with other material/ Relié avec d'autres documents
- [ ] Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distortion le long de la marge intérieure
- [ ] Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- [ ] Additional comments:/ Commentaires supplémentaires:

- [ ] Coloured pages/ Pages de couleur
- [ ] Pages damaged/ Pages endommagées
- [ ] Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- [ ] Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- [x] Pages detached/ Pages détachées
- [ ] Showthrough/ Transparence
- [x] Quality of print varies/ Qualité inégale de l'impression
- [ ] Includes supplementary material/ Comprend du matériel supplémentaire
- [ ] Only edition available/ Seule édition disponible
- [ ] Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

- [ ] This item is filmed at the reduction ratio checked below/ Ce document est filmé au taux de réduction indiqué ci-dessous.



The copy filmed here has been reproduced thanks to the generosity of:

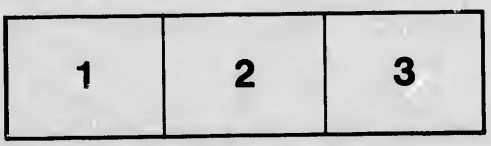
United Church of
Canada Archives

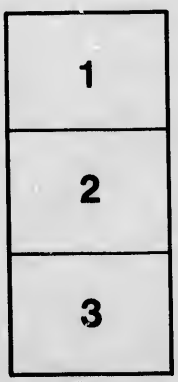
The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

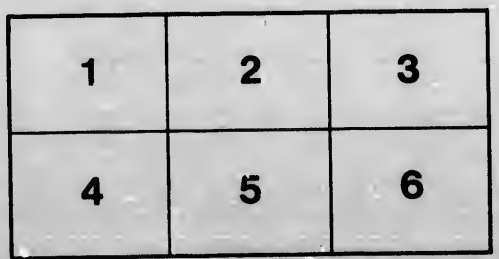
Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol → (meaning "CONTINUED"), or the symbol ▽ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:







L'exemplaire filmé fut reproduit grâce à la générosité de:

United Church of
Canada Archives

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole → signifie "A SUIVRE", le symbole ▽ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

32X

—THE—

Temporalities Fund

OF THE

PRESBYTERIAN CHURCH OF CANADA

IN CONNECTION WITH THE

Church of Scotland

With the full text of the Judgment rendered by the Judicial Committee of Her Majesty's Privy Council at Whitehall, January 21st, 1882.

"Do Right and Fear not"

PRI

—THE—

Temporalities Fund

OF THE

PRESBYTERIAN CHURCH OF CANADA

IN CONNECTION WITH THE

Church of Scotland

With the full text of the Judgment rendered by the Judicial Committee of Her Majesty's Privy Council at Whitehall, January 21st, 1882.

"Do Right and Fear not"

TORONTO, 1882.

The Temporalities Fund:

ITS ORIGIN AND HISTORY.

The Temporalities Fund; £127,448 5*s.*, was founded by 73 self-sacrificing ministers of the Presbyterlan Church of Canada in connection with the Church of Scotland, of whom 40 are now dead. The survivors differ with each other as to the disposition of this fund, which originated thus :—The ministers of the Church of Scotland in Canada were recognized by Imperial and Canadian Acts of Parliament as being entitled to State subsidy, in the form of an annual allowance of £150 each, payable out of the sales of the Clergy Reserve Lands, supplemented when these were insufficient by payments out of the Exchequer of Great Britain.

In 1853, Imperial and Canadian Acts authorized the Government of Canada to settle or commute these allowances, and to pay to the several ministers of the church a block sum, representing the capital value of the allowance, calculated at six per cent. interest upon the probable life of each minister.

By this plan each of the 73 ministers was entitled to receive and apply to his own personal uses capital sums averaging from $8,000 to $10,000 each. Well knowing that they became entitled to these sums on account of their being ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, they determined in 1855 to unite the several sums they were entitled to receive into one sum for a SPECIFIC PURPOSE, and upon certain *fundamental principles.*

The SPECIFIC PURPOSE was, that the United Sum should constitute, "under Providence a permanent endowment" for the Presbyterian Church of Canada in connection with the Church of Scotland.

The fundamental principles upon which it was founded, were :—

1. That each minister should receive an annual allowance from the fund of £112 10s.

2. That if any minister ceased his connection with the Presbyterian Church of Canada in connection with the Church of Scotland, he should thereby forfeit his interest in the principal and interest of the fund.

The SPECIFIC PURPOSE—PERMANENT ENDOWMENT,—and the "Fundamental Principles" were expressed in writing and deciared to be unalterable by the Synod without the consent of all the ministers agreeing to them. This agreement constituted a contract between the parties, and neither a majority of the contractors or a majority of the Synod has any power to change it. The Synod approved the contract and conditions by resolution, and an Act of Parliament (22 Vic., Cap. 66,) called The Temporalities Act, 1858, was applied for and obtained, creating a Corporation to hold the fund in trust for the Presbyterian Church of Canada in connection with the Church of Scotland, in accordance with the above conditions.

This is the Act the judgment of the Privy Council declares to be in force. The Corporation created by it is called "The Temporalities Board;" the Fund entrusted to it, £127,448 5s., "The Temporalities Fund."

In 1875 a majority of the members present at a Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, determined to unite with three other distinct religious organizations, and to form a new church under the name of the "Presbyterian Church in Canada." The minority dissented formally against the acts of the majority of the Synod, and notified them they would continue the Old Church and claim its properties.

The majority took possession of the funds and church property, and obtained legislation from the Provinces of Ontario and Quebec, which had the following objects :

1st. To extinguish the Old Church.

2nd. To deprive the Old Church of the "permanent endowment" referred to, and to vest it in the new organization, "The United Church."

3rd. To deprive the founders who adhered to the Old Church

of *the right to administer their own property*, only members of the United Church being eligible to fill vacancies on the Board.

With specious generosity the majority allowed to those whose faith in the old connection remained unshaken, the annual allowance of £112 10*s*. !

Of 33 commuters and founders who were alive at the time (1875,) 25 preferred to join the new organization, and 8 opposed it. If later events could have been foreseen, it is doubtful whether a single founder would have left the Old Church. The Synod was composed of a large number of ministers, but the Synod could not over-ride the Act of Parliament regulating the Temporalities Fund, and its members had no power to affect the contract between the founders. Neither had the majority of the surviving Founders any power to vary the contract.

By the contract, the 25 founders who joined the New Church forfeited their interest in the capital and income, under the stipulations agreed to by themselves. As to the shares of the 40 men who died before 1875, leaving the contract creating the endowment as a last will and testament, interference with their wishes was wanton violation of a SACRED TRUST.

The minority, in the name of the Reverend Robert Dobie, instituted an action to restrain the Temporalities Board as composed by the Provincial Acts, and to have the Fund put back under the Temporalities Act, 1858, which says it must be held by the corporation "in trust for the Presbyterian Church of Canada in connection with the Church of Scotland." After losing their case in the Canadian Courts, the minority succeeded before the Judicial Committee of Her Majesty's Privy Council, in England, and it is to destroy the effect of their Lordships' decision, and to prevent the Fund passing into the hands of a Board rightfully composed for behoof of the Old Church that the New Church is now seeking legislation.

By their Lordships' decision (which is given at length in the Appendix III.), the appellant, Mr. Dobie, obtained "substantial success."

1st. The unconstitutional legislation was set aside.

2nd. The Act of 1858 was declared in force.

3rd. It was unnecessary to say that the fund should be administered for the benefit of the Old Church, as the Act of 1858 says so; and it would certainly have been "inexpedient" to enjoin a Board illegally constituted to administed the fund in any way.

4th. The members of the new Board were declared to be "administering without holding legal title," and an injunction was made against them.

Now it must be clear from this that the only undecided question is, WHICH IS THE PRESBYTERIAN CHURCH IN CANADA IN CONNECTION WITH THE CHURCH OF SCOTLAND? This question could not be decided by their Lordships, because neither the New nor the Old Church is incorporated, and consequently neither could be parties to the Privy Council suit. But how can it be doubted that the ministers and members who adhere to the Old Church, which has continued its existence, though despoiled of its patrimony by unconstitutional legislation, are the Old Church. It has its clergymen, its congregations, its Synods—in a word, its membership and organization complete. That it is reduced in numerical strength is not its fault; that it existed, is surprising. Legislated out of existence, its faithful adherents in adversity were subjected to contumely and insult. That it does exist, and has a large numerical following, is undoubted. It could scarcely be expected that many new clergymen would join a Church during its years of trial, while legislated out of existence, deprived of its endowments, church edifices, and of its University. But it has survived adversity and contumely, and its cause has triumphed in the highest Court of the Empire.

Then how can it be said that the New Union Church is the "Presbyterian Church of Canada in connection with the Church of Scotland." Did the latter Church *absorb* the other three Churches with which it united? The "Free Churchmen" might easily answer this question. To claim the benefits of the Temporalities Fund it must show that the New Church is the Old Church, for whose benefit alone that Fund was formed. The new body took a new name, was composed of new constituents, adopted government by General Assembly as a Supreme Ecclesiastical Court, instead of by Synod as the Old Church was governed. The Churches that united with the majority of the Presbyterian Church of Canada in connection with the Church of Scotland to form one new Church—the "Presbyterian Church in Canada"—were:

(1) The Canada Presbyterian Church.

(2) The Church of the Maritime Provinces in connection with the Church of Scotland.

(3) The Presbyterian Church of the Lower Provinces.

These three Churches were distinct and separate religious organizations, existing in different parts of the Dominion of Canada. The Old Church only existed in Ontario and Quebec. These three bodies were not identical in their standard or doctrines with the established Church of Scotland, or with its branch in Canada—the Presbyterian Church of Canada in connection with the Church of Scotland. The principal difference between them consisted in the views as to the power and duty of the Civil Magistrate in relation to the Church, and to matters ecclesiastical and spiritual, as set forth in the Westminster Confession of Faith, and as to the question of state establishments and endowments of religion. By far the largest of these three Churches, viz., the Canada Presbyterian Church, was itself a fusion of two distinct Churches, "The Presbyterian Church of Canada" and "The United Presbyterian Church." Of these "The United Presbyterian Church" never was in connection or communion with the Established Church of Scotland; but on the contrary differed widely from it in its standard of doctrine, especially in regard to the points above mentioned, being composed in fact of dissenters and voluntaries in principle. "The Presbyterian Church of Canada," on the other hand, was composed of seceders from the "Presbyterian Church of Canada in connection with the Church of Scotland," who, in consequence of the secession from the Established Church of Scotland in 1843, and the formation in Scotland of the so-called "Free Kirk of Scotland," and out of sympathy with the opinions of the said "Free Kirk" quitted in 1844 the communion of the "Presbyterian Church of Canada in connection with the Church of Scotland," because of that connection, and formed a new and independent organization, bearing the same name, except the words "in connection with the Church of Scotland," were omitted. This new organization, "Free Church," in 1846 applied to the Government of Canada for a continuance of their state allowances from the Clergy Reserves, but the law officers of the Crown advised the Government of Canada in 1848 that the Free Church ministers, having seceded from the "Presbyterian Church of Canada in connection with the Church of Scotland," had forfeited all claim to share in the state subsidy.

It was precisely to prevent a recurrence of such a claim by any subsequent seceders, that in 1855 the founders of the Temporalities Fund stipulated and agreed with each other with the approval of the Synod, "That it shall be considered a fundamental principle that all

persons who have claims to such benefits (upon the Temporalities Fund) shall be ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and that they shall cease to have any claim on, or be entitled to any share of said Commutation Fund whenever they shall cease to be ministers in connection with the said Church."

The New Church is—what it is—a distinctly new Body—composed of a portion of the Old Presbyterian Church of Canada in connection with the Church of Scotland, and of three other distinct organizations; but it has no claim or right to be regarded as identical with the Old Church. With far greater reason might the Province of Quebec pretend to be the Dominion of Canada. Apart too from this reasoning, there remains the unanswerable fact that the rightful heir and claimant, the Presbyterian Church of Canada in connection with the Church of Scotland is in existance.

Now, how should the question, which is the Presbyterian Church of Canada in connection with the Church of Scotland, be determined and declared? Clearly by the Courts. Law suits are now pending in which this question can and must be decided.

Two of these suits were taken in October last (1881) to oust certain members of the Board, which the Privy Council has since declared to be "holding and administering without legal title." These suits must prove successful to the Old Church. There is a third—a suit calling upon the illegal members of the Board to render an account of their illegal administration. This suit must succeed. A fourth suit is an action to oust all the present members of the Board "holding and administering without legal title," and to put in their places members lawfully elected in June, 1881, by the Old Church Synod.

The Temporalities Act, 1858, declared to be in force by the Privy Council, requires, that the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland shall appoint the members of the Temporalities Board, and as that judgment declares: "*It was expressly enacted* (in that Act, 1858) *that all members of the Board should be members of the Presbyterian Church of Canada in connection with the Church of Scotland.*" In this action the Courts will have to decide whether the new men which it is sought by the minority to place upon the Board are properly *qualified and elected by the proper body*.—the Synod of the Presbyterian Church of Canada in con-

nection with the Church of Scotland. A legally elected Board does exist. This Board was elected after the Privy Council suit was instituted—in anticipation of a favourable decision. But the fact of its election and existence was not founded upon by the Old Church in the suit —as its election took place later than the institution of the suit, and its existance could not affect their Lordships' decision on the issues presented. The minority have no doubt about the successful issue of this suit. Once its nominees are placed upon the Board, it would take possession of the fund and administer it, as the Privy Council says it should be administered, for the benefit of the Presbyterian Church of Canada in connection with the Church of Scotland.

The Old Church contends :

1st. That it is the Presbyterian Church of Canada in connection with the Church of Scotland, and it asks for an Act of Incorporation.

2nd. That all funds now or heretofore held in trust for the benefit of the Presbyterian Church of Canada in connection with the Church of Scotland should be held for the benefit of said Church.

3rd. That the Courts alone should decide the question as to Church property, and that Parliament should not interfere with the rights of parties in process of determination before the Courts.

4th. That the New Church—the Presbyterian Church in Canada—is not and cannot be regarded as identical with the Presbyterian Church of Canada in connection with the Church of Scotland.

5th. That the Temporalities Fund is a sacred trust left in 1855 as a permanent endowment for the benefit of the Presbyterian Church of Canada, in connection with the Church of Scotland, by seventy-three founders who entered into a contract with each other upon certain fundamental and express written conditions, which neither the Synod nor the contracting parties could change, unless all the contracting parties consented ; that more than a majority of said contracting members have since died, and it would be an insult to their memories and a gross violation of the sacred trust left by them for a specific purpose—if a majority of the survivors, against the express stipulations of the contract, could divert the Endowment Fund to a new body ; that the shares of the deceased Founders, and of the eight living Founders who wish to adhere to the bond must be regarded as a sacred and inalienable bequest bestowed upon the Presbyterian Church of Canada, in connection with the Church of Scot-

land, and that by the strict terms of the fundamental conditions upon which the Fund was formed, the majority of the survivors having left the Old Church, have forfeited all claim to benefits, according to the terms of the contract they themselves agreed to.

The minority does not insist upon the forfeiture clause, provided the seceding commuters and others return to the Old Communion, but they claim the administration of the Fund in its entirity.

There can be but two rights in this Fund:

(1) The rights of the founders and annuitants.

(2) The rights of the Church.

One paragraph of the Privy Council judgment declares the rights of the founders and annuitants:

"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 commuters, 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 founders did not surrender the capital values of their state subsidies—they did not renounce £150 a year for life, and accept instead from the Temporalities Fund £112.10s, as a matter of personal investment. Their noble self-sacrifice was induced by the earnest promptings of religion to permanently endow their mother Church, and to so endow it that while provision was made for the new ministers joining it, the Fund itself should be kept intact against reductions of any kind, and sacred against the claims of disloyal and seceding members. The founders and annuitants have the "plain interest, and consequent right, to insist that this Fund shall be administered in strict accordance with law," and the plain duty of this Board is to so administer it.

(2) What are the rights of the Church?

The rights of the Church cannot exceed the provisions of the Act and of the fundamental conditions made by the founders, and every line of the Act and of the contract, contemplates the application of the Trust Fund for one purpose only—the permanent endowment of the "Presbyterian Church of Canada in connection with the Church of Scotland."

The applications to Parliament involve other questions that need not be here discussed, but which will require the best consideration of

the Legislature—the destination of the Colleges of the Church; the rights of the Church in congregational property; the administration of the Ministers' Widows and Orphans Fund, and other matters.

The object of the members of the Presbyterian Church in Canada in connection with the Church of Scotland, is, to maintain and perpetuate their Church. Its endowments are only held in trust to be transmitted to future generations as means of promoting Charity, Peace and Truth. It disclaims antipathy to any other creed or Church. It only asks for its own existence—for the patrimony transmitted to it by self-denying founders, for the aid of the Courts of Justice in preserving that patrimony, and if need be, the protection of a just Parliament over sacred and vested rights of an historic and loyal Church.

APPENDIX I.

THE CONTRACT OF THE FOUNDERS OF THE TEMPORALITIES FUND.

The following is a true extract from the Minutes of the proceedings of the Synod of the said Church, dated eleventh January, eighteen hundred and fifty-five, containing the resolutions and instructions of the Synod, and the conditions upon which the Temporalities Fund was formed :—

"The Synod, having heard the Report of the Committee appointed by the Synod to watch over the interests of the Church, in as far as these might be affected by the action of the Legislature on the Clergy Reserves, and, also, the verbal reports of such members of the Committee as had been in communication with members of the Government on the subject,—and, having seriously and maturely considered that clause of the Clergy Reserves Act, lately passed by the Provincial Parliament at its present Session, by which his Excellency the Governor in Council is authorized, with the consent of the parties interested, to commute the salaries or allowances of ministers chargeable for life or during their incumbencies on the Clergy Reserves Fund, for their value in money,—Resolved,

"First. That it is desirable that such commutation, if upon fair and liberal terms, should be effected; and that the Rev. Alex. Mathieson, D.D., of Montreal, the Rev. John Cook, D.D., of Quebec, Hugh Allan, Esq., of Montreal, John Thompson, Esq., of Quebec, and the Hon. Thomas McKay, of Ottawa City, be the Synod's Commissioners, with full power to give the formal sanction of the Synod to such commutation as they shall approve, the said Commissioners being hereby instructed to use their best exertions to obtain as liberal terms as possible; the Rev. Dr. Cook to be Convener; three to be a quorum; the decision of the Majority to be final, and their formal acts valid; but that such formal sanction of the Synod shall not be given except in the case of ministers who have also individually given them, the said Commissioners, power and authority to act for them in the matter to grant acquittance to the Government for their claims to salary *to which the*

faith of the Crown is pledged; and to join all sums so obtained into one fund, which shall be held by them till the next meeting of Synod, by which all further regulations shall be made, the following, however, to be a *fundamental principle, which it shall not be competent for the Synod at any time to alter, unless with the consent of the ministers granting such power and authority; that the interest of the fund shall be devoted, in the first instance, to the payment of* £112 10s. *each*, and that the next claim to be settled, if the fund shall admit, and as soon as it shall admit of it, to the £112 10s., be that of the ministers now on the Synod's Roll, and who have been put on the Synod's Roll since the 9th May, 1853; and, also, that it shall be considered a fundamental principle, that all persons who have a claim to such benefits, shall be ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and that they shall cease to have any claim on, or be entitled to any share of said Commutation Fund whenever they shall cease to be ministers in connection with the said Church.

"Second. That so soon as said commutation shall have been decided upon, and agreed to by the said Commissioners, the Rev. John Cook, D.D., of Quebec, shall be fully empowered and authorized, and this Synod hereby delegate to the said Rev. Dr. John Cook full power and authority to endorse and assent to the several Powers of Attorney from the individual parties on behalf of the said Synod, and in their name, and as their Act or Deed, as evidencing their assent thereto.

"Third. That all ministers be, and they are hereby enjoined and entreated (as to a measure by which, under Providence, not only their own present interests will be secured, but a PERMANENT ENDOWMENT for the maintenance and extension of religious ordinances in the Church) to grant such authority in the fullest manner, thankful to Almighty God that a way so easy lies open to them for conferring so important a benefit on the Church.

"Fourth. That the aforesaid Commissioners be a Committee to take the necessary steps to get *an Act of Incorporation for the management of the General Fund so to be obtained;* the aforesaid Commissioners to constitute the said Corporation till the next meeting of Synod, when four more members shall be added by the Synod.

APPENDIX II.

PROTEST AGAINST UNION.

The following is a copy of the Protest of the minority of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, from the Synod Minutes of June 15th, 1875 :—

" We, ministers and elders, members of the Synod, heartily attached to the Church, hereby dsssent from the resolution of this Court to repair to the Victoria Hall for the purpose of consummating the proposed Union with the other Presbyterian bodies and thereby to form the General Assembly of the Presbyterian Church in Canada. We further protest agninst the declaration that the United Church shall be considered identical with the Presbytertan Church of Canada in connection with the Church of Scotland, inasmuch as this Synod has no power *per saltum*, to declare other Bodies in addition to itself to be possessed of the rights, privileges and benefits to which this Church is now entitled. We declare, therefore, our continued attachment to the Presbyterian Church of Canada in connection with the Church of Scotland, and do hereby enter our protest against the empowering of the present Moderator to sign in its name the preamble and basis of Union and the resolutions connected therewith. And further, we, ministers and elders of this Synod, holding views opposed to Union, and declare that, if consummated, we will claim and continue to be the Presbyterian Church of Canada in connection with the Church of Scotland.

" (Signed) " Robert Dobie,
" Wm. Simpson,
" Robert Burnet,
" Dav. Watson,
" J. S. Mullen,
" Wm. McMillan,
" Thomas McPherson,
" Roderick McCrimmon,
" John Davidson,
" John Macdonald,

APPENDIX III.

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of the 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. from the Court of Queen's Bench, delivered 21st January, 1882.

Present:

LORD BLACKBURN.
LORD WATSON.
SIR BARNES PEACOCK.
SIR MONTAGUE SMITH.
SIR ROBERT P. COLLIER.
SIR RICHARD COUGH.
SIR ARTHUR HOBHOUSE.

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), entituled "an Act to "incorporate the Board for the management of the Temporalities Fund "of The Presbyterian Church of Canada in connection 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 sales of portions of these lands, supple-

mented, 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 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 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 the 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 iwere 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 Provinee of Canada, upon the application of the Commissioners passed the Act, 22 Vic., 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 Temporalities 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 the 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 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 Vic., 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 theParliament of the Province of Canada, 22 Vic., 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 entitled to the benefit of the "said fund may each nominate a person, being a minister or member "of the said United Church, or, in the event of there being more than one vacancy, then one person for each vacancy, and the rem "anent members of the said Board shall thereupon, from among the "persons so nominated as aforesaid, elect the person or number of per-"sons necessary to fill such vacancy or vacancies, selecting the person or "persons who may be nominated by the largest number of beneficiaries "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 third 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 favor 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 of 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, 28 Vic.,

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 Vic., cap. 66, and, consequently, that the administration of the trnst, 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 an 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 Vic., 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 Vic., 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 have chosen to unite themselves in 1875. Mr. Justice M'Cord was of opinion, with his brethern Ramsay and Tessier,

J. J., 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 brethern 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 Vic., cap. 66, was, after the passing of the British North America Act, 1877, 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 affected, 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 respective province, according to the authority of the Parliament or of that Legislature under this Act." The powers, conferred by this section upon the Provincial Legislature 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 Vic. 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 Victoria., cap. 64, was not *intra vires* of the Legislature by which it was passed.

The generai 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 Citizen Insurance Company of Canada v. Parsons," and "The Queen Insurance Company v. Parsons," that it is unnecessary to say anything further upon that subject. Their Lordships see no reason to modifiy 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 cir cumstances of each case are identical or similar.

The case of "The Citizen 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 Citizen In-

surance 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 Vict., 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 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 principle 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 Sec. 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 Legis

latures? 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 hositals."

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

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

The most plausable 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 has 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 is 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 enanctments 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 vigor 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 corporations 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 Classes (13) apply with equal force to the arguments of the respondent 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 con-

fiscate these fnnds, 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 Vic., 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 in 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 Vic., 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 1775, 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 administred in strict accordance with law.

The second objection is derived from the resolutions in favor of union carried by the majority of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland on the 14th June, 1875. The Quebec Act 38 Vic., 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 Vic., 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 the resolutions in favor 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 by 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 rights 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 Scot-

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 conection 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.