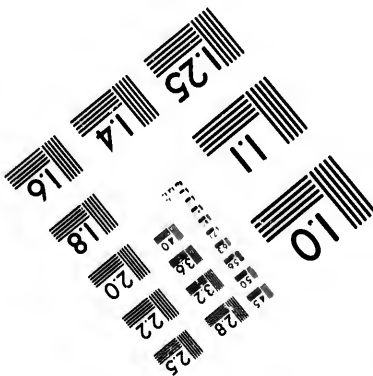
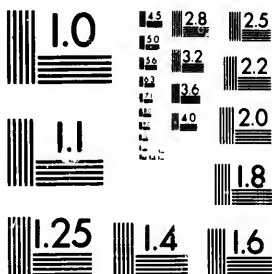


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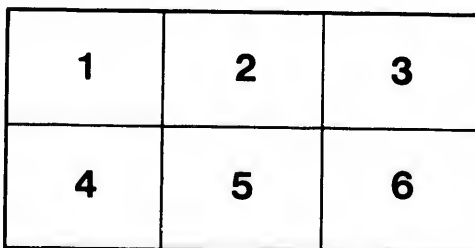
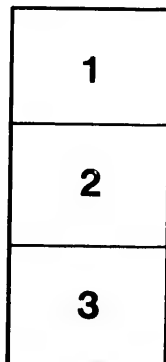
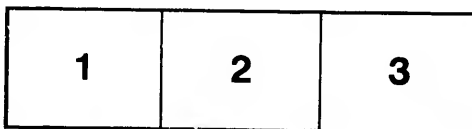
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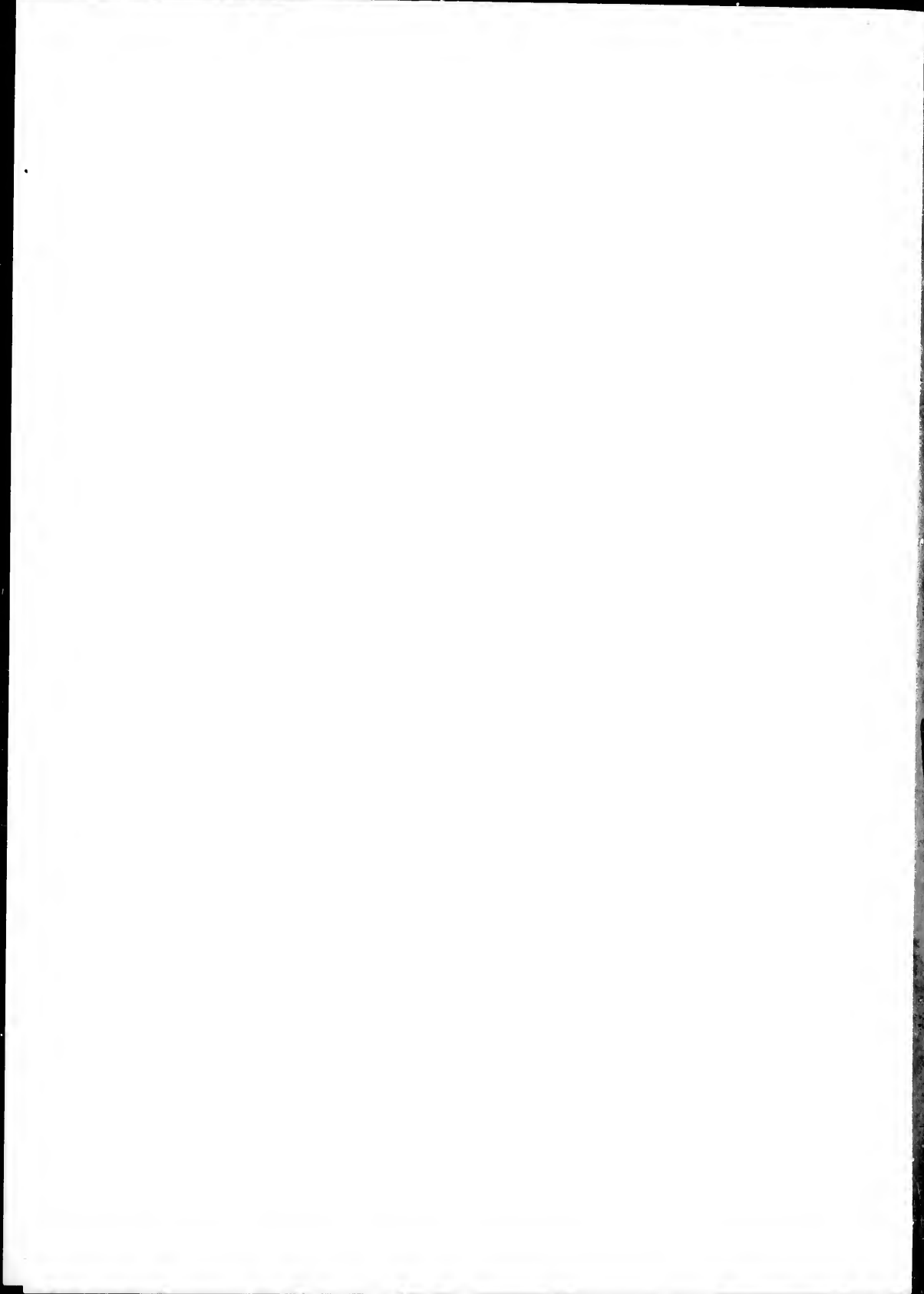
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IN THE QUEEN'S BENCH.

IN APPEAL FROM SUPERIOR COURT, MONTREAL.

REVEREND ROBERT COBIE,

Petitioner—Appellant;

No. 2100—144.

vs.

**Board for the Management of the Tem-
poralities Fund of the Presbyterian
Church of Canada in connection with
the Church of Scotland, et al.,**

Respondents—Respondents.

APPELLANT'S FACTUM AND APPENDIX.

MACMASTER, HALL & GREENSHIELDS,

Attorneys for Appellant.

MONTREAL, March 11th, 1880.

T. LARKIN, PRINTER.

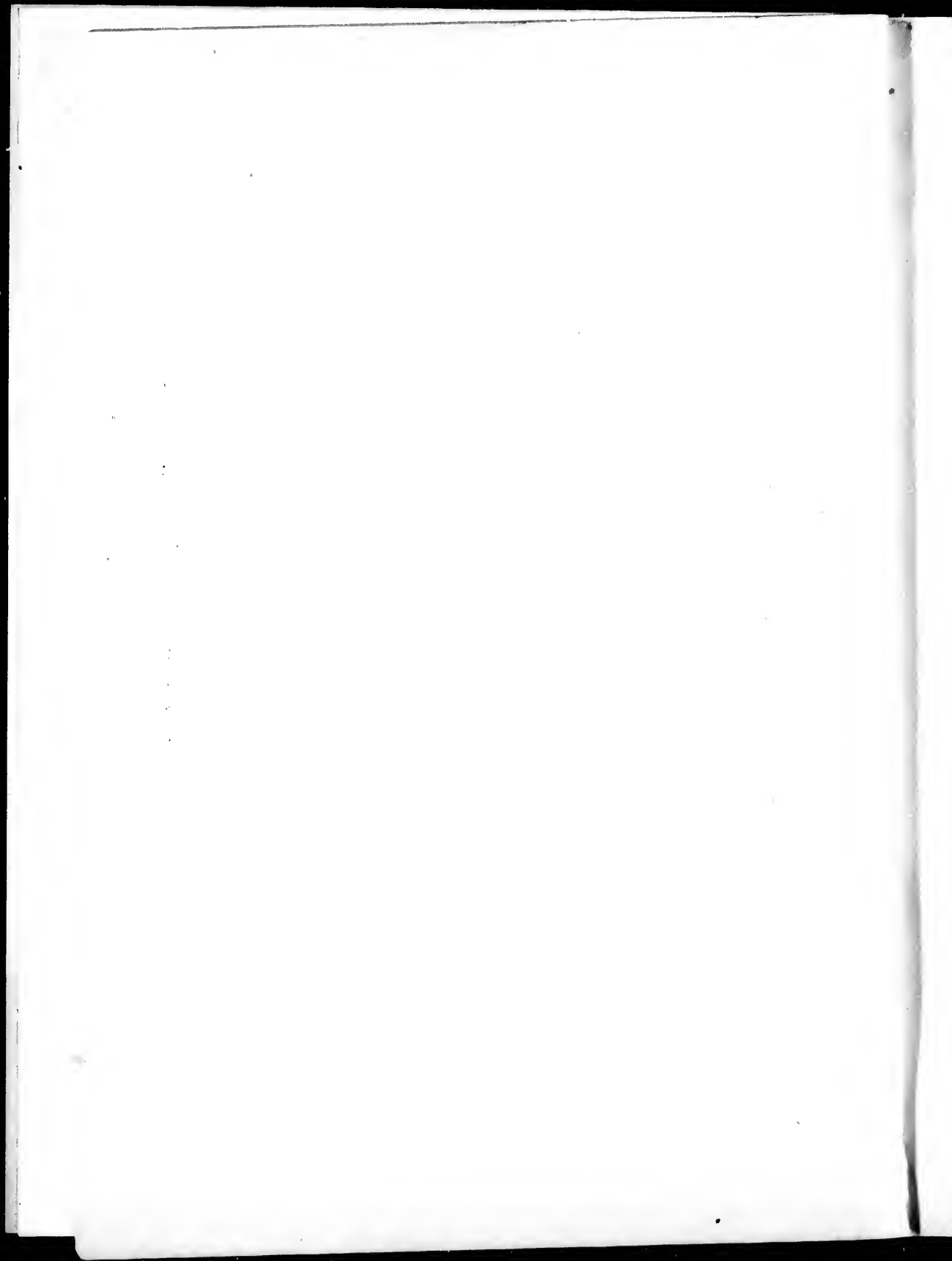
Sir S. Hemming Collector
1915

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My name is 125 100000



IN THE COURT OF QUEEN'S BENCH,

(APPEAL SIDE.)

REVEREND ROBERT DOBIE,

APPELLANT;

VS.

**Board for the Management of the Temporalities
Fund of the Presbyterian Church of Canada
in connection with the Church of Scotland,
et al.,**

RESPONDENTS.

A P P E L L A N T ' S F A C T U M .

COPY OF JUDGMENT APPEALED FROM.

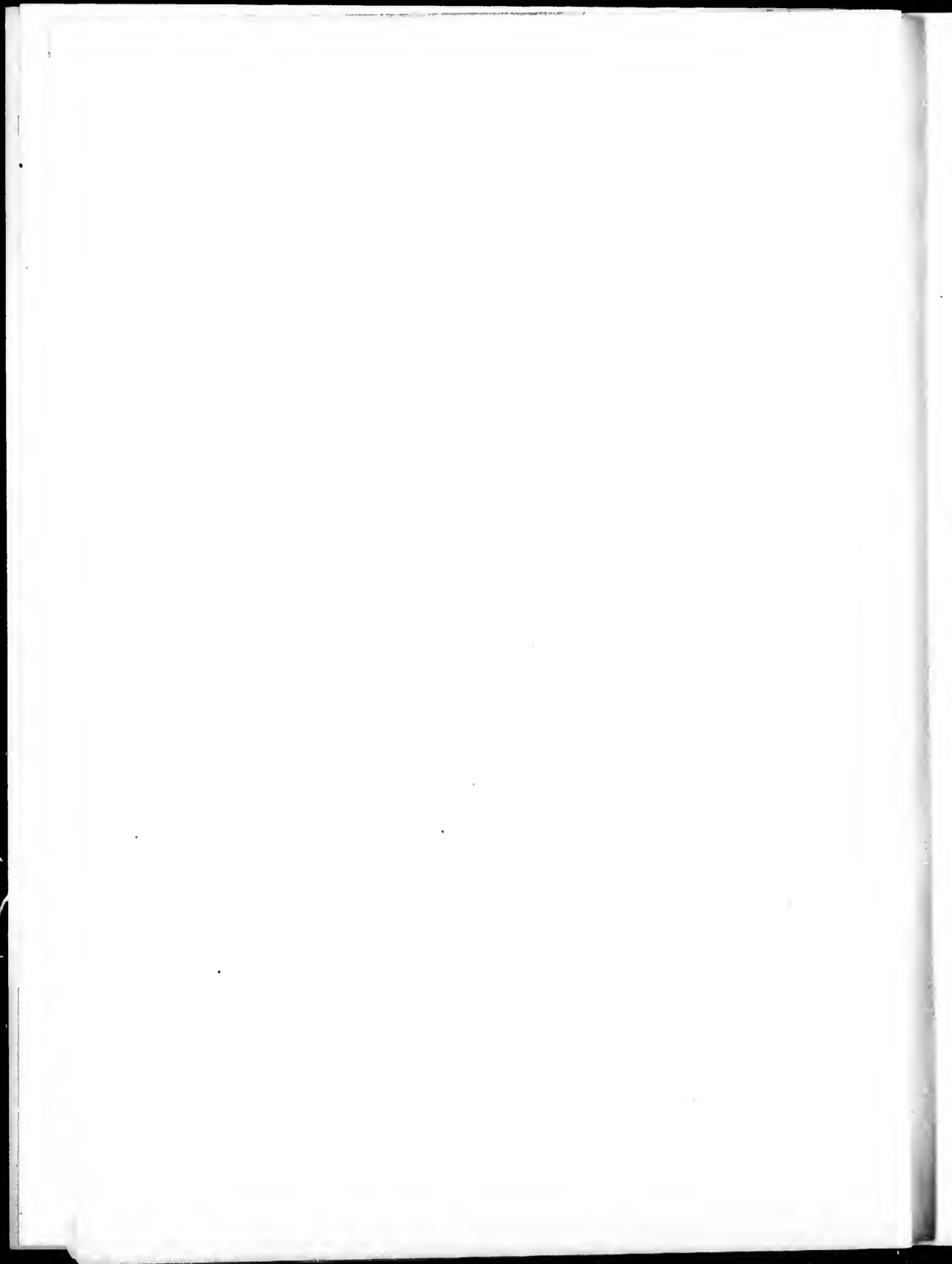
SUPERIOR COURT, MONTREAL.

Le 29 Décembre, 1879.

PRESENT EN CHAMBRE:—L'HONORABLE JUGE JETTE.

Ayant entendu les parties par leurs avocats respectivement sur le mérite de cette cause, examiné la procédure, les pièces produites et la preuve vu les admissions produites par les parties et délibéré;

Considérant que le Requérent allègue par sa demande que la Corporation Défenderesse a été créée sous le nom de "Le Bureau d'Administration des Biens Temporels de l'Eglise Presbytérienne du Canada en rapport avec 10
" l'Eglise d'Ecosse," pour la possession et l'administration d'un certain fonds appartenant à la dite Eglise, et préalablement créé par résolution du Synode de la dite Eglise, en date du mois de janvier mil huit cent cinquante-cinq, et que par le statut créant et incorporant le dit bureau, il a été entre autres choses pourvu et garanti que la propriété du dit fonds appartiendrait exclusivement à la dite Eglise, que le revenu du dit fonds serait affecté aux diverses charges



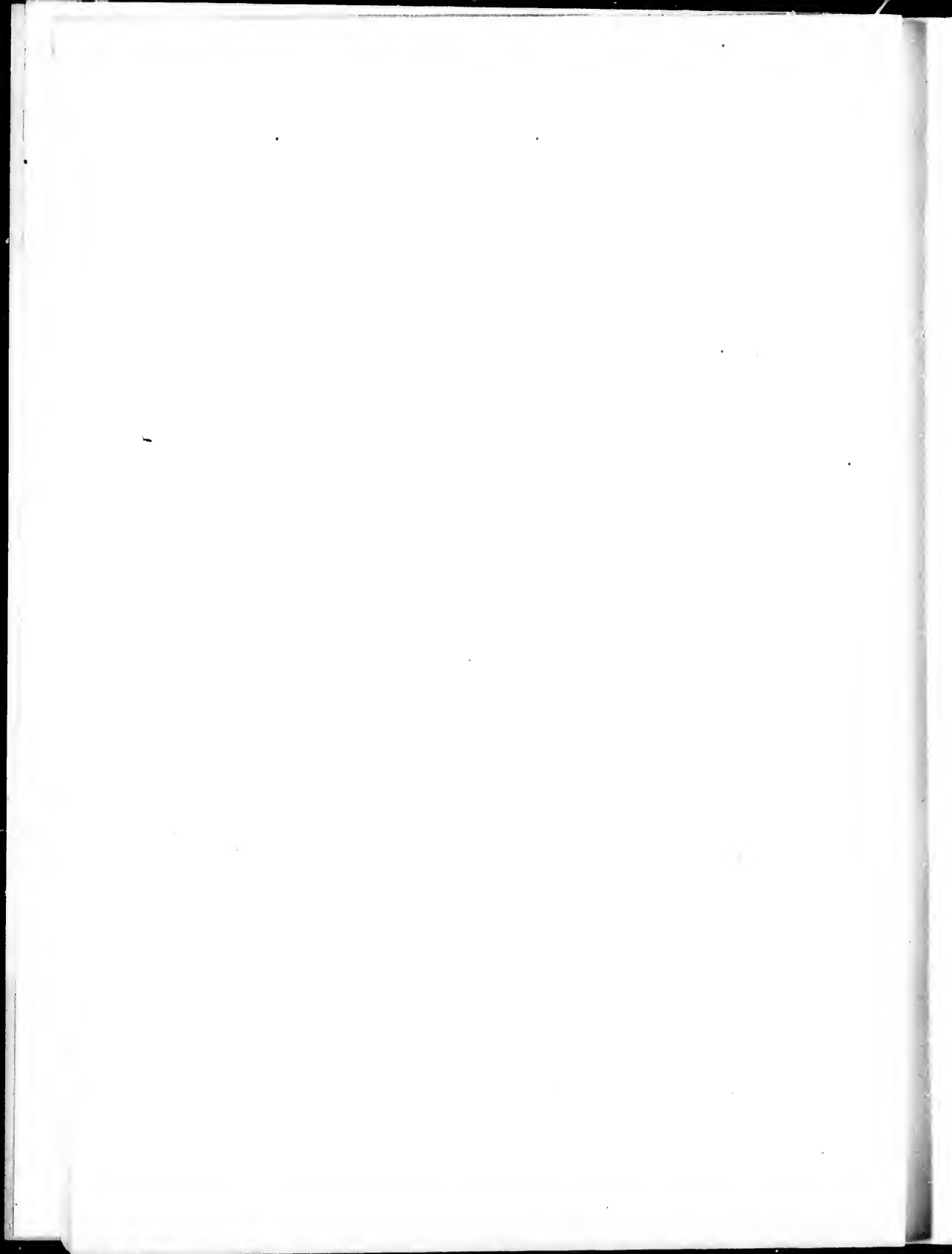
annuelles établies sur icelui, lors de sa création, en faveur des ministres de la dite Eglise, et qu'enfin les membres du dit bureau devraient toujours être des ministres ou des membres de la dite Eglise en pleine communion avec elle, et que quatre d'entre eux sortiraient de charge et seraient remplacés chaque année ;

Considérant que le Requérant allègue en outre que lors de la création du dit fonds, il était un des titulaires ayant droit à une charge ou allocation annuelle de quatre cent cinquante piastres à prendre sur le revenu du dit fonds ; qu'il a été alors convenu, stipulé et admis comme principe fondamental de la création du dit fonds que pour avoir droit à aucun revenu provenant d'icelui il 10 faudrait être ministre de la dite Eglise ; et que le Requérant est encore aujourd'hui en pleine possession de ses droits et privilèges sous ce rapport, étant resté ministre de la dite Eglise et en pleine communion avec elle ;

Considérant que le Requérant allègue de plus que par un Acte de la Législature de la Province de Québec passé en mil huit cent soixante-et-quinze, et étant le 38 Victoria, chapitre 64, les conditions d'administration du dit fonds ont été changées de manière à continuer en charge les membres du dit bureau pour le temps d'alors, et à ne pourvoir à leur remplacement qu'au cas de vacance par décès, résignation ou absence, et par des personnes autres que des 20 membres de la dite Eglise Presbytérienne du Canada en rapport avec l'Eglise d'Ecosse, et que le dit Acte permet de plus au dit bureau de prendre sur le capital du dit fonds, mais que ce dit Statut Provincial est inconstitutionnel et excède la compétence de la dite Législature de la Province de Québec ;

Considérant que le Requérant allègue en outre que les membres actuels du dit bureau sont illégalement restés en charge comme tels, en vertu de cet Acte inconstitutionnel sus-mentionné qu'ils n'ont aucun droit d'occuper la dite charge, et qu'ils ont de plus agi illégalement en payant diverses sommes à des 30 ministres ne formant plus partie de la dite Eglise, et qu'il demande en conséquence que le dit Statut Provincial, 38 Victoria, chapitre 64, soit déclaré inconstitutionnel, nul, et de nul effet ; que les Défendeurs soient déclarés non-légalement élus membres du dit bureau, et qu'il leur soit enjoint de cesser d'occuper la dite charge et d'administrer les dits biens, et qu'enfin il soit déclaré que le dit fonds des biens temporels est la propriété exclusive de la dite Eglise, et ne peut être employé qu'aux fins en premier lieu pourvues, et de plus que les Révérends John Cook, James C. Muir, George Bell, John Fairlie, David W. Morrison et Charles A. Tanner soient déclarés n'être plus ministres de la dite Eglise et n'avoir aucun droit au revenu du dit fonds ;

Considérant que les Défendeurs, sauf le Révérend Gavin Lang et Sir Hugh Allan, ont contesté cette demande, affirmant entre autres choses la 40 constitutionnalité du statut attaqué par le Requérant et la légalité de leurs actes ;



Considérant que par la section 92 de l'Acte de l'Amérique Britannique du Nord, 1867, il est déclaré que la propriété et les droits civils sont exclusivement du ressort et de la compétence des Législatures Provinciales et que les droits affectés par le dit Acte 38 Victoria, chapitre 64, dont le Requérent demande l'annulation, tombent formellement sous l'empire de la dite section 92 de l'Acte constitutionnel, et sont par suite sous la juridiction et compétence de la Législature Provinciale, et qu'en conséquence le dit Statut Provincial est valable et légal et a pleine force et vigueur ;

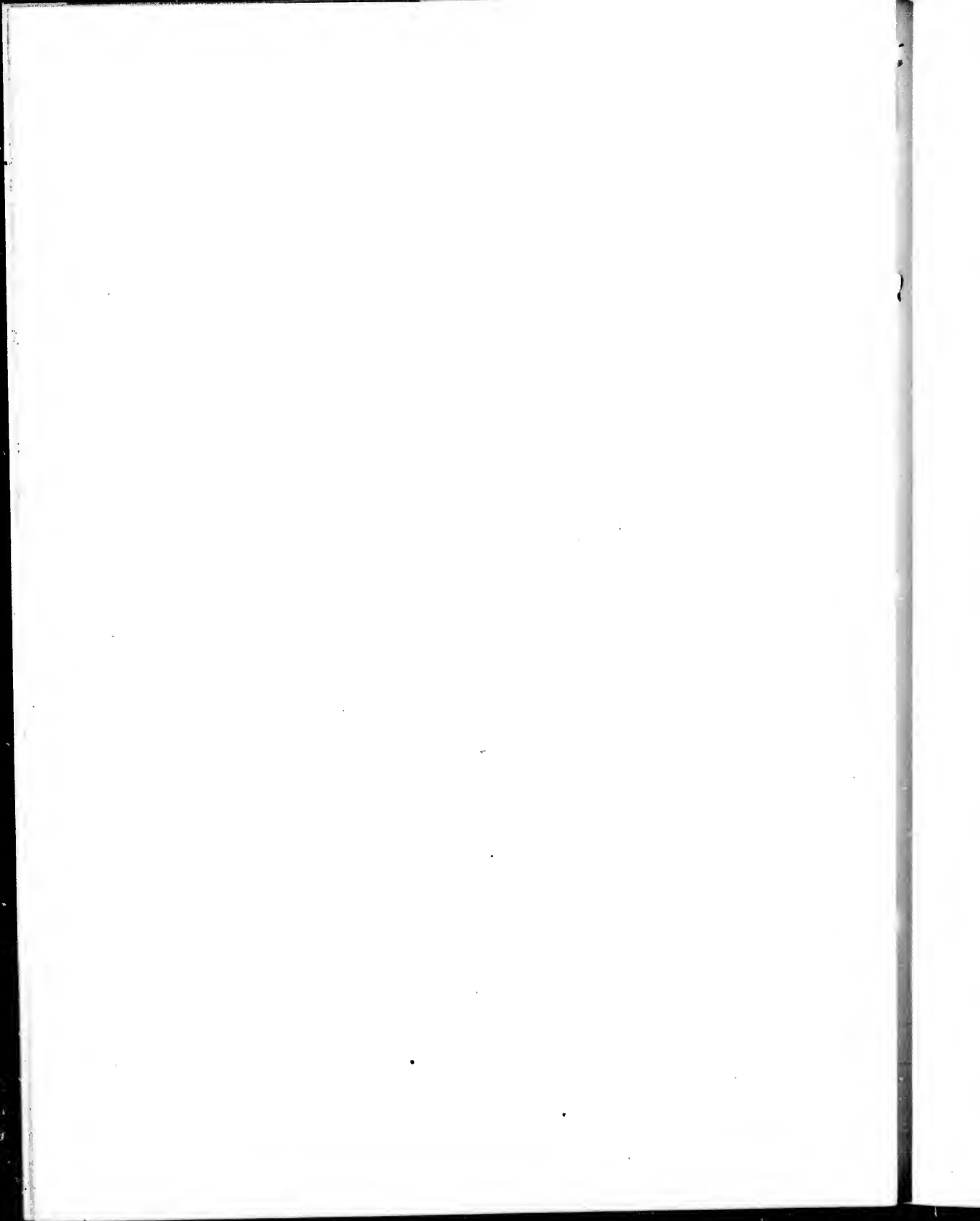
Considérant que bien que le Requérent ne soit pas résidant dans la Province de Québec, la Législation du Parlement de cette Province affecte nécessairement les droits qu'il peut posséder ou réclamer dans la dite Province, et que par suite les droits qu'il invoque dans l'espèce sont nécessairement soumis aux dispositions du dit Acte Provincial, 38 Victoria, chapitre 64 ;

Considérant qu'aux termes du dit Acte les Défendeurs sont légalement en charge comme membres de la Corporation Défenderesse et qu'ils ont droit de continuer l'administration des biens qui leur sont confiés comme tels ;

Considérant que tant en vertu du dit Acte, 38 Victoria, chapitre 64, qu'en vertu d'un autre Acte du dit Parlement de la Province de Québec, savoir, le Statut 38 Victoria, chapitre 62, dont la légalité et la constitutionnalité n'ont pas été mises en question, le dit fonds sus-mentionné est resté soumis en faveur de tous les titulaires y ayant droit, lors de la création d'icelui, à toutes les charges constituées sur icelui, et que par suite le droit du Requérent à son revenu annuel de quatre cent cinquante piastres a été complètement sauvegardé et garanti ;

Considérant néanmoins que par les deux statuts en dernier lieu mentionnés la propriété du dit Fonds n'est plus attribuée exclusivement à la dite Eglise Presbytérienne du Canada en rapport avec l'Eglise d'Ecosse, mais qu'après l'extinction de tous droits antérieurs garantis par le dit fonds, elle est transférée à l'Eglise Presbytérienne en Canada, formée de la dite Eglise Presbytérienne du Canada en rapport avec l'Eglise d'Ecosse et de trois autres Eglises, dont l'union a été autorisée par le dit Statut 38 Victoria, chapitre 62, et qu'en vertu des dispositions des dits statuts les dits Révérends John Cook, James C. Muir, George Bell, John Fairlie, David W. Morrison et Charles A. Tanner étaient en droit de recevoir et les Défendeurs étaient en droit de leur payer les sommes qui leur sont dues, sur et à même le revenu du dit fonds administré par les Défendeurs ;

Considérant en conséquence que la demande du Requérent est mal fondée et ne peut être maintenue, et que les Défendeurs (excepté le Révérend Gavin Lang et Sir Hugh Allan) sont bien fondés en leurs défenses ;



Maintenons les défenses des dits Défendeurs (sauf l'exception susdite) et renvoyons en conséquence la demande du dit Requérant, et cassons et annulons à toutes fins que de droit le Bref d'Injonction émis en cette cause et en donnons main levée aux dits Défendeurs, avec dépens distracts à J. L. Morris, écuyer, leur avocat.

Transcript.

MONTREAL, le 19 Janvier, 1880.

(Signed),

GEO. H. KERNICK,
Deputy P. S. C.

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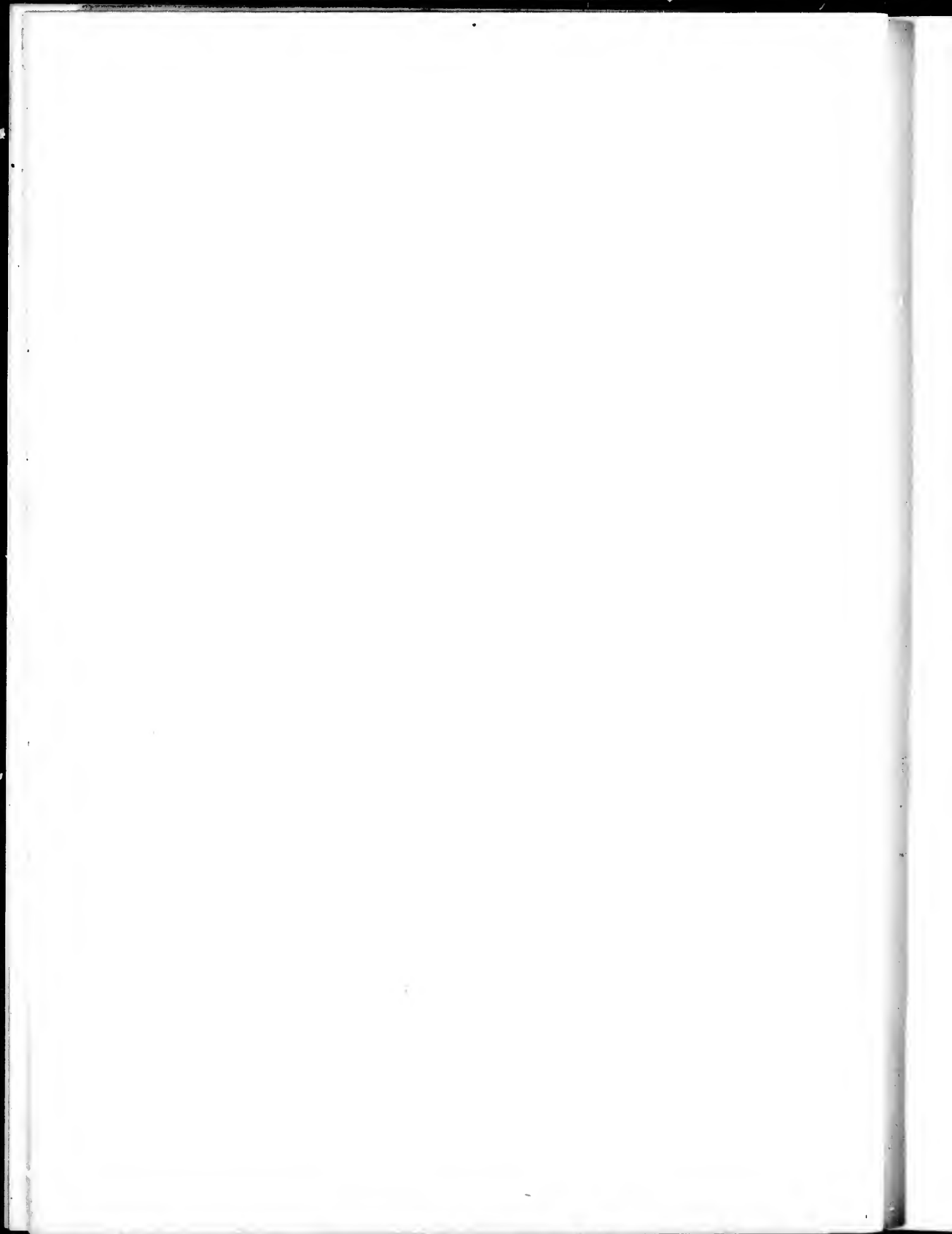
REMARKS OF THE HONORABLE MR. JUSTICE JETTE ON RENDERING JUDGMENT,

As reported in the "Montreal Gazette" of 5th January, 1880.

The Reverend Robert Dobie, a minister of the Presbyterian Church of 20 Canada in connection with the Church of Scotland, a member of the Synod of the said Church, and a minister of the Saint Andrew's Church and congregation of Milton, in the Province of Ontario, obtained an injunction the 31st December, 1878, against the Corporation, Respondents, and against the Reverend M. M. Gordon, Cook, Jenkins, Lang and Mackerras; M. M. Morris, Walker, Darling, Dennistoun, Mitchell and Sir Hugh Allan, members of the said Corporation, ordering them to abstain specially from disposing of the fund of the said Corporation, by making any payments therefrom, and generally from all acts of administration of the property under their control, until further order of Court. In spite of the proceedings of the Respondents, to 30 have this order set aside, the injunction thus far stands, and the question now before me is on the merits of the Petitioner's claim

Although I have already given, in connection with an incidental proceeding in this case, an analysis of the legislation on which the present litigation is based, the importance of the suit and the large number of persons, not parties thereto, but interested therein, almost equally with the litigants themselves, leads me to recur to this legislation, so as to make the claims of the parties clear and easily understood.

The Quebec Act (1774) had guaranteed to the Roman Catholic clergy the right they possessed before the cession of this country to England, to 40

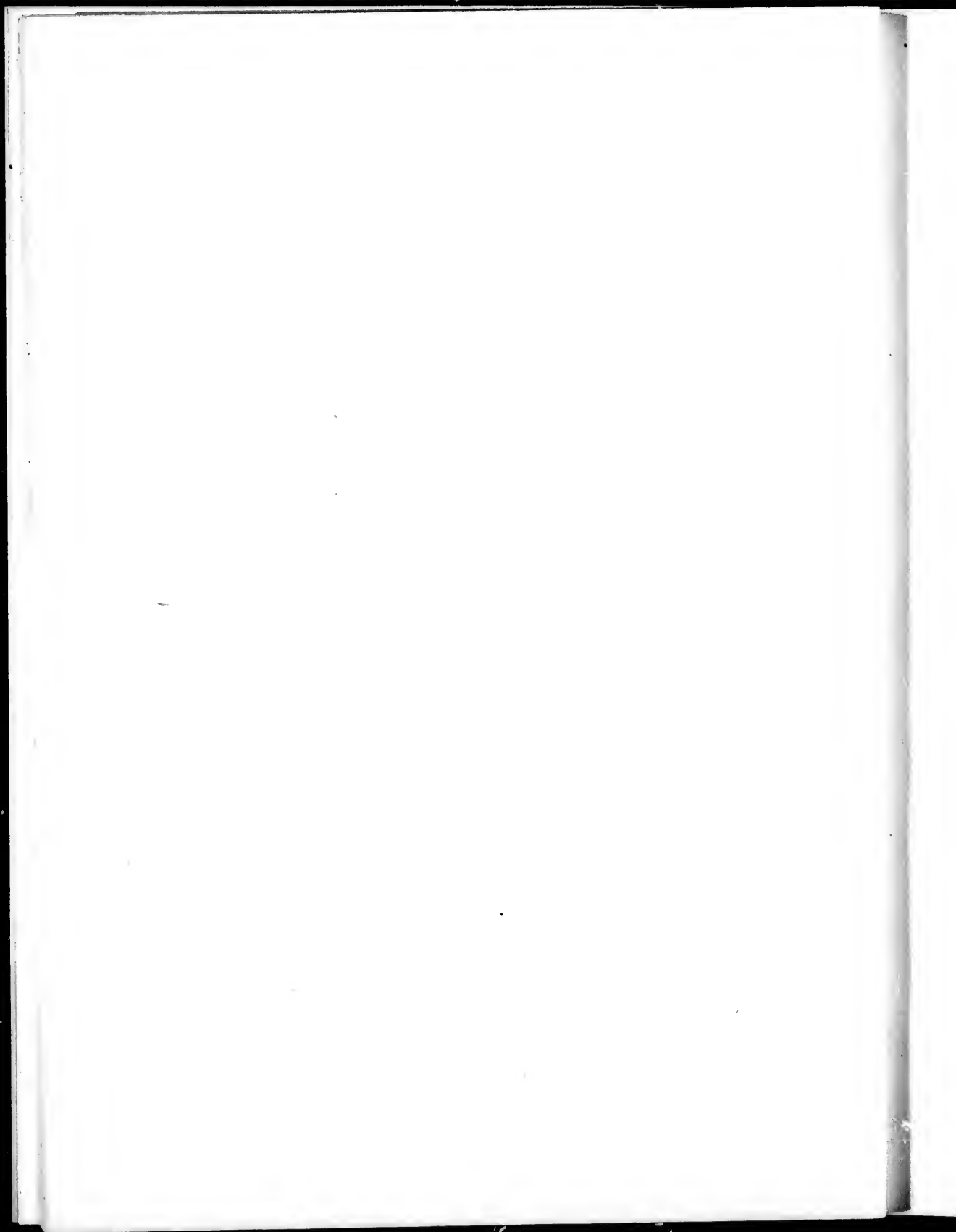


demand and receive their customary *dimes* or tithes. The Protestant clergy saw in this guarantee a privilege accorded to the Roman Catholic Church which justified them in claiming a corresponding favor. In 1791, by the Statute 31 George III., cap. 31 (amending the Quebec Act), the Imperial Parliament, wishing to acknowledge this claim, made provision for the support of a Protestant clergy in the two Provinces of Upper and Lower Canada in sanctioning an appropriation by the Governments of these two Provinces of a reserve for this purpose of certain lands from the public domain. These lands thus appropriated were styled Clergy Reserves.

In 1827, by the Act 7 and 8 George IV., the Imperial Parliament 10 authorized the sale of a part of these lands, on condition that the proceeds were invested in the public funds and the revenues exclusively applied to the maintenance of a Protestant clergy. In 1840 the Statute 3 and 4 Victoria, ch. 78, sanctioned the sale of all these lands, under certain restrictions as to the quantity to be sold annually. In 1853 the Imperial Parliament authorized the Legislature of the United Province of Canada to legislate for the management of the Clergy Reserves, with this restriction, that the moneys theretofore given to the clergy of the Churches of England and Scotland, or to any other denomination of Christians, should not be withheld, reduced, or in any manner affected by the legislation of the said Province during the lives of the persons 20 having a right in the said annual grant (16 Victoria, ch. 21).

By virtue of the powers conferred on it, the Legislature of Canada enacted in 1854 (18 Victoria, ch. 2) that the proceeds of the lands constituting the "Clergy Reserves" situated in Upper Canada and those in Lower Canada should form two separate and distinct funds, which should be styled, respectively, "The Municipalities Fund of Upper Canada" and the "Municipalities Fund of Lower Canada," and that, conformably to the Imperial Acts, these funds should be charged firstly, and in preference over any other charge, with the payment of the above-mentioned annual allowances to the Protestant clergy, during the lives of the incumbents, who had this right at the time of 30 the sanction of the Statute 16 Victoria, ch. 78, namely, the 9th May, 1853. To secure this payment, it was enacted that the capital required to guarantee these annual allowances should be invested in the public funds, and the surplus, if any, apportioned to the municipalities of the said two Provinces, according to population.

The rights which the Imperial Parliament desired to protect and secure under the Statute 16 Victoria, ch. 78, were thus preserved, but the system thus organized made the State the debtor for these annual appropriations, and the administrator of the fund representing the same, during the full term of the 40 lives of the then incumbents. The third section of this law clearly indicates

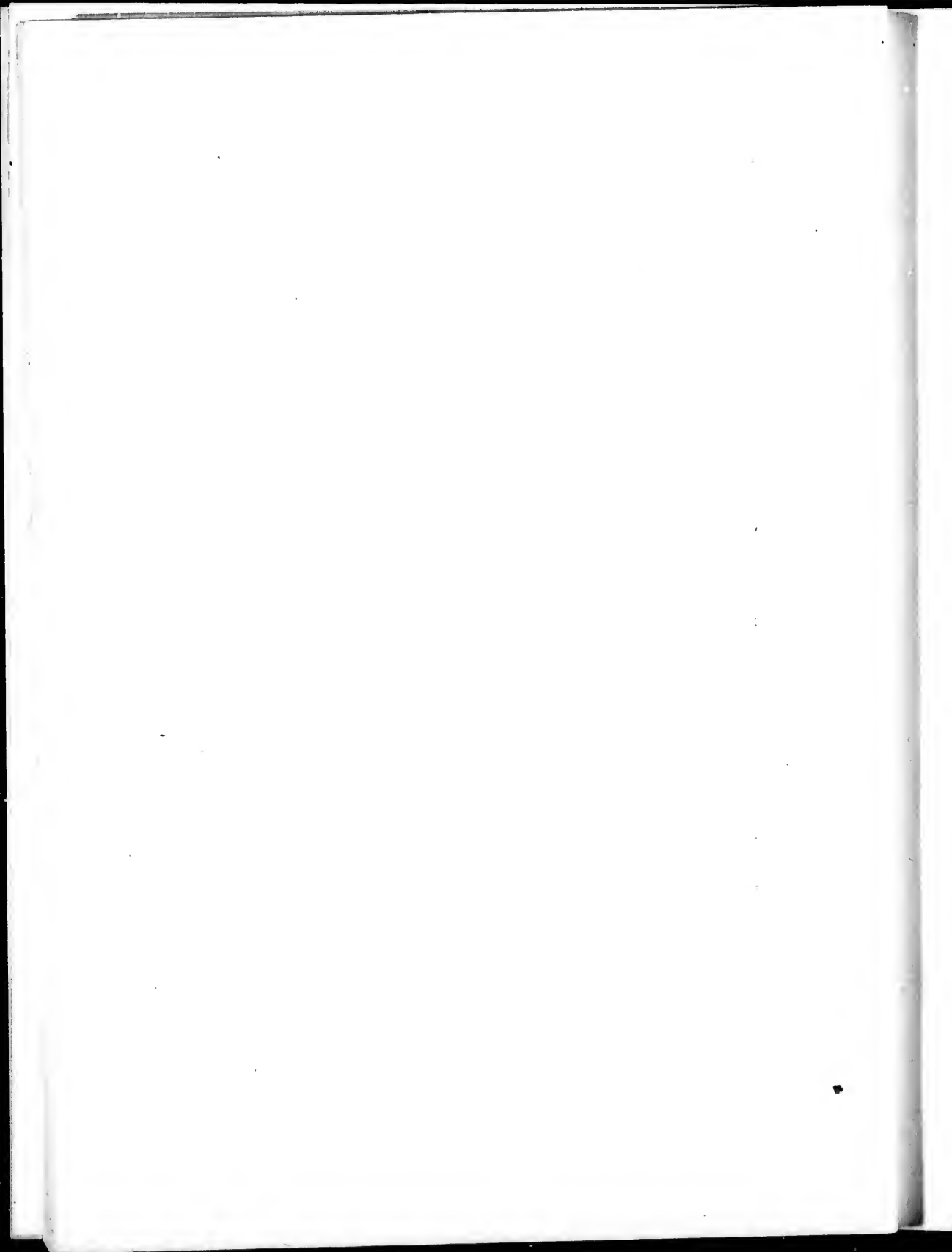


that this style of enactment, adopted to satisfy the rule of the Imperial Act, was not what our Parliament preferred. Anxious to put aside all appearance of union between Church and State, as it declared, and to settle promptly and finally all reclamations that might exist against these funds of the "Clergy Reserves," the Legislature, by this 3rd section, authorized the Executive to commute and extinguish the same, with the consent of the parties interested, by the immediate payment of the capital (at the rate of 6 per cent) calculated on the basis of the probable life of each incumbent.

At the beginning of this legislation the clergy of the Church of England had been alone benefitted, and had raised the pretension of being solely 10 entitled to the benefit of these reserved lands. But about the year 1829, the members of the Church of Scotland presented a claim, as well for their clergy as for those of the other Protestant denominations, for a share and interest in these Reserves, proportioned to the number of the members of each Church. This reclamation, for a long time contested and opposed, was finally admitted, and when the Statute of 1854, to which I am about to refer, was passed, the right of the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, to the benefits of this Statute had been for a long time acknowledged.

The provisions of the law of 1854, relative to the commutation of the 20 annual allotments, payable to each minister, appearing satisfactory, a meeting of Synod of said Church was convoked to decide on united action in relation to this commutation. The meeting was held in January, 1855, and the following resolution unanimously adopted:

"Resolved, 1st. That it is desirable that such commutation, if upon fair and liberal terms, should be effected; and that the Rev. Alexander 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 30 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 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 by further regulations shall be made; the following, however, to be a fundamental principle which it shall not be 40



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 10 whenever they shall cease to be ministers in connection with the said Church.

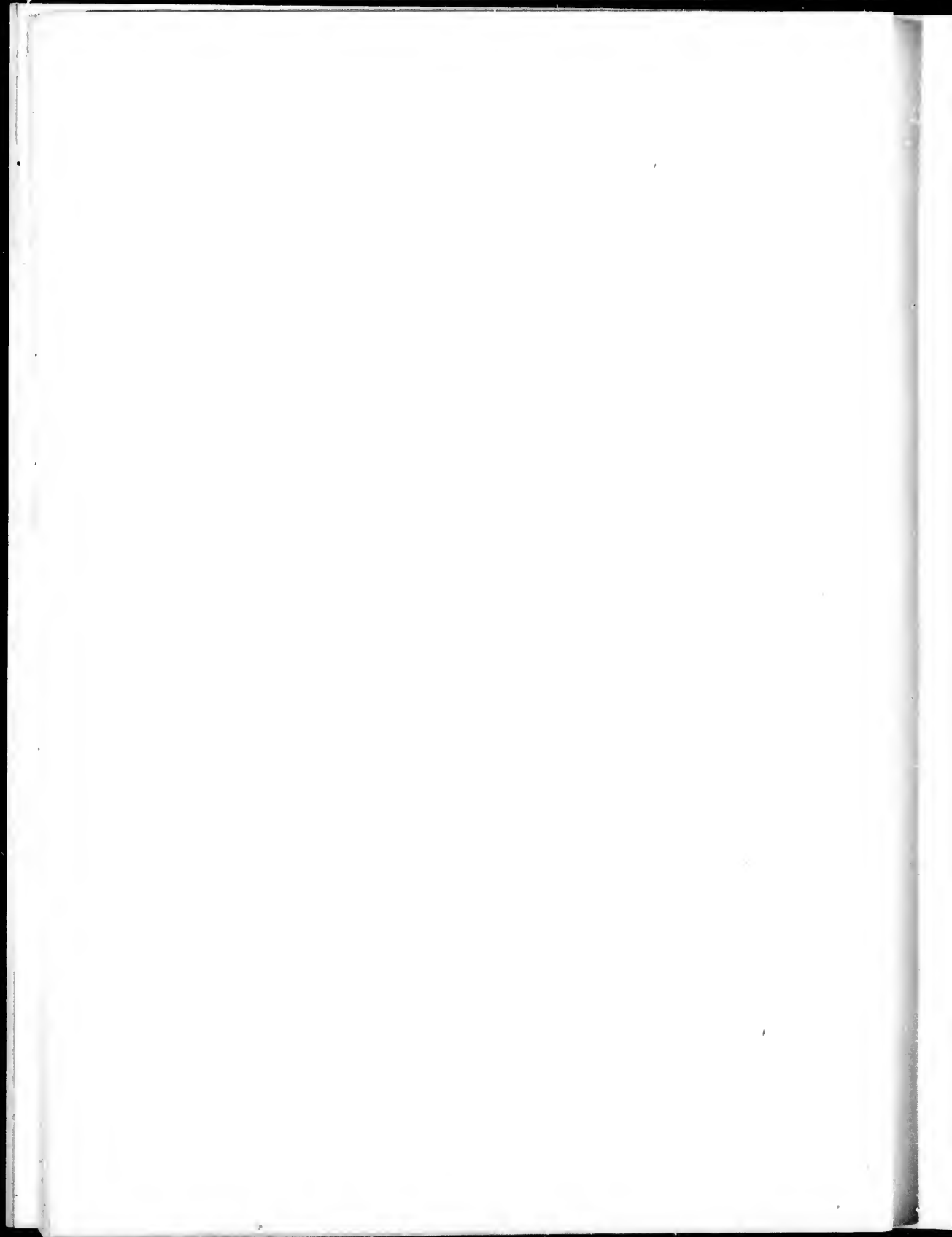
2nd. That so soon as said commutation shall have been decided upon, and agreed to by the said Commissioners, the Rev. John Cook, D.D., of Quebec, shall be fully empowered and authorized, and this Synod hereby delegates to the said Rev. John Cook full power and authority to endorse and assent to the several Powers of Attorney from the individual parties on behalf of the said Synod and in their name, and as their act and deed, as evidencing their assent thereto.

3rd. That all ministers be, and they are hereby enjoined and entreated (as to a measure by which, under Providence, not only their own present 20 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

4th. That the aforesaid Commissioners be a committee to take the necessary steps to get an Act of Incorporation for the management of the general funds 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."

Agreeable to this resolution all the ministers of the said Church gave 30 full power to the Commissioners, named for this purpose by the Synod, to arrange with the Government, and to unite all the sums thus realized in a common fund, according to the terms of the said resolution. The commutation of the several individual reclamations produced a sum total of £127,448 5s 0d, which the Government handed to the Commissioners named by the Synod.

In 1858 these Commissioners acting according to the instructions contained in the aforementioned resolution (§4), demanded and obtained from the Parliament of United Canada an Act creating a special corporation for the administration and the possession of this fund of £127,448 5s 0d, and of all other sums by which it might thereafter be increased. This corporation re- 40

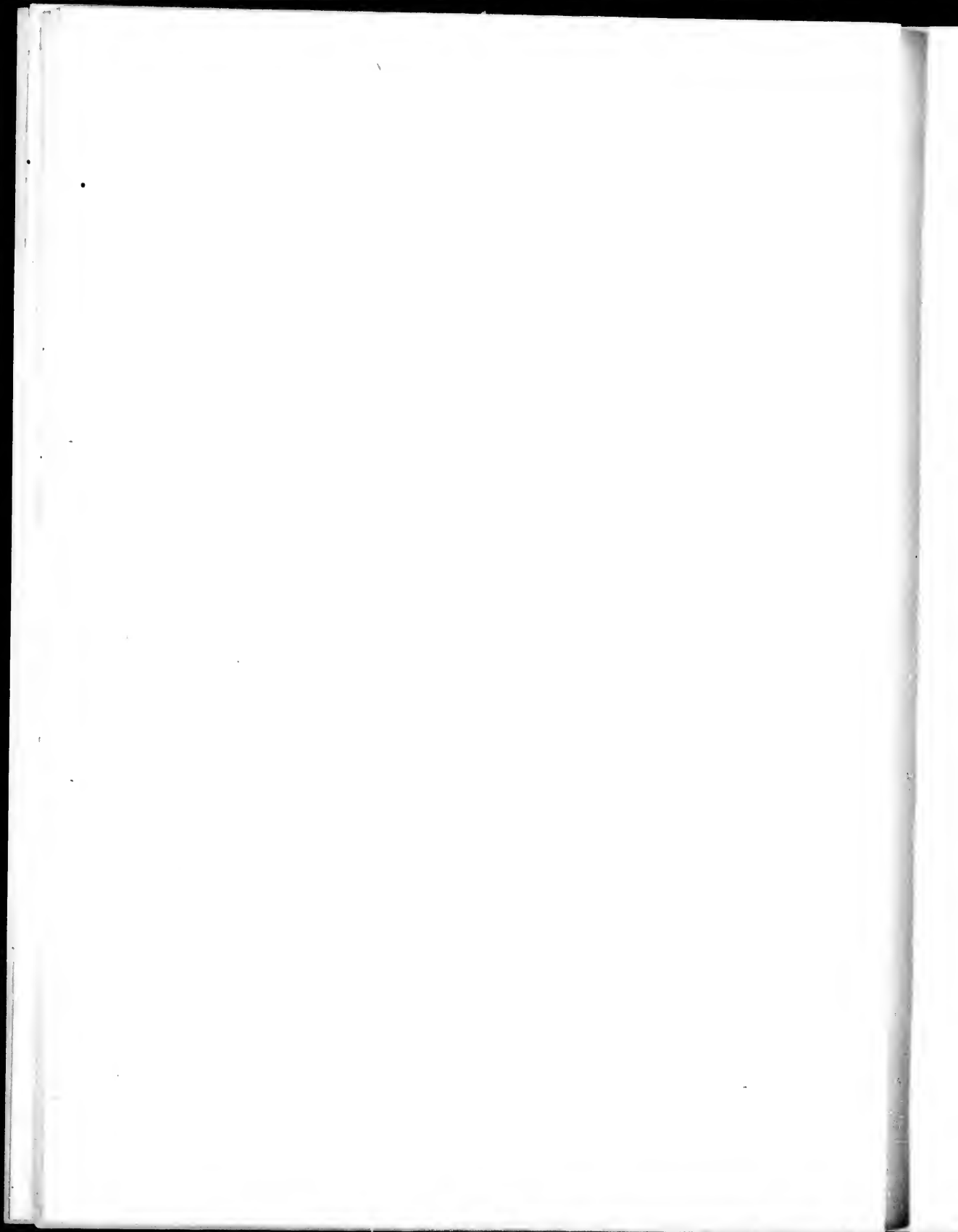


ceived the name of "The Board for the management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," and is one of the Respondents in this case. (22 Victoria, ch. 66). It is declared by this Statute that this corporation is created "for the management and holding of certain funds of the Presbyterian Church of Canada in connection with the Church of Scotland, now held in trust by certain Commissioners, hereinafter named, on behalf of the said Church and for the benefit thereof;" but by the first section it is enacted that "such holding is subject always to the special condition that the annual interest and revenues of the said moneys and fund now in their hands shall be and remain charged and subject, as well as regards the character as the extent and duration thereof, to the several annual charges in favor of the several ministers and parties severally entitled thereto, of the several amounts and respective characters and durations as the same were constituted and declared at the formation of the said funds and the joining of the same into one fund." * * * * *

The second section of this statute then provides for the mode of election and replacing of members of this board created a corporation as aforesaid. According to the dispositions of this section, the board shall be composed of twelve members, five being ministers and seven laymen; four of these members in order of seniority, viz., two ministers and two laymen retiring each year, on the third day of the annual assembly of Synod of said Church, and being replaced by two ministers and two laymen elected by said Synod. In case of death, resignation or absence from the Province, or withdrawal from communion in said Church, the vacancies shall be filled by the other members of the board, subject to the ratification of the appointments thus made by the Synod at its next ensuing meeting, so that, as stated in the second section, "this board shall always consist of twelve members, five of whom shall be ministers and seven laymen, and all being ministers or members in full communion in said Church."

The members of this board, thus organized, thenceforth administered the property of said Church conformably to the powers conferred on them, without their right having ever been questioned until the occurrences which gave rise to the present litigation. It results from the facts proved, that from 1870 and 1874 a proposed fusion of the Presbyterian Church of Canada in connection with the Church of Scotland, with three other Churches, viz.: 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, had been more or less discussed at different times.

In 1874, the conditions of this fusion appearing to be acceptable to the parties interested, an Act was sought and obtained from the Legislature of

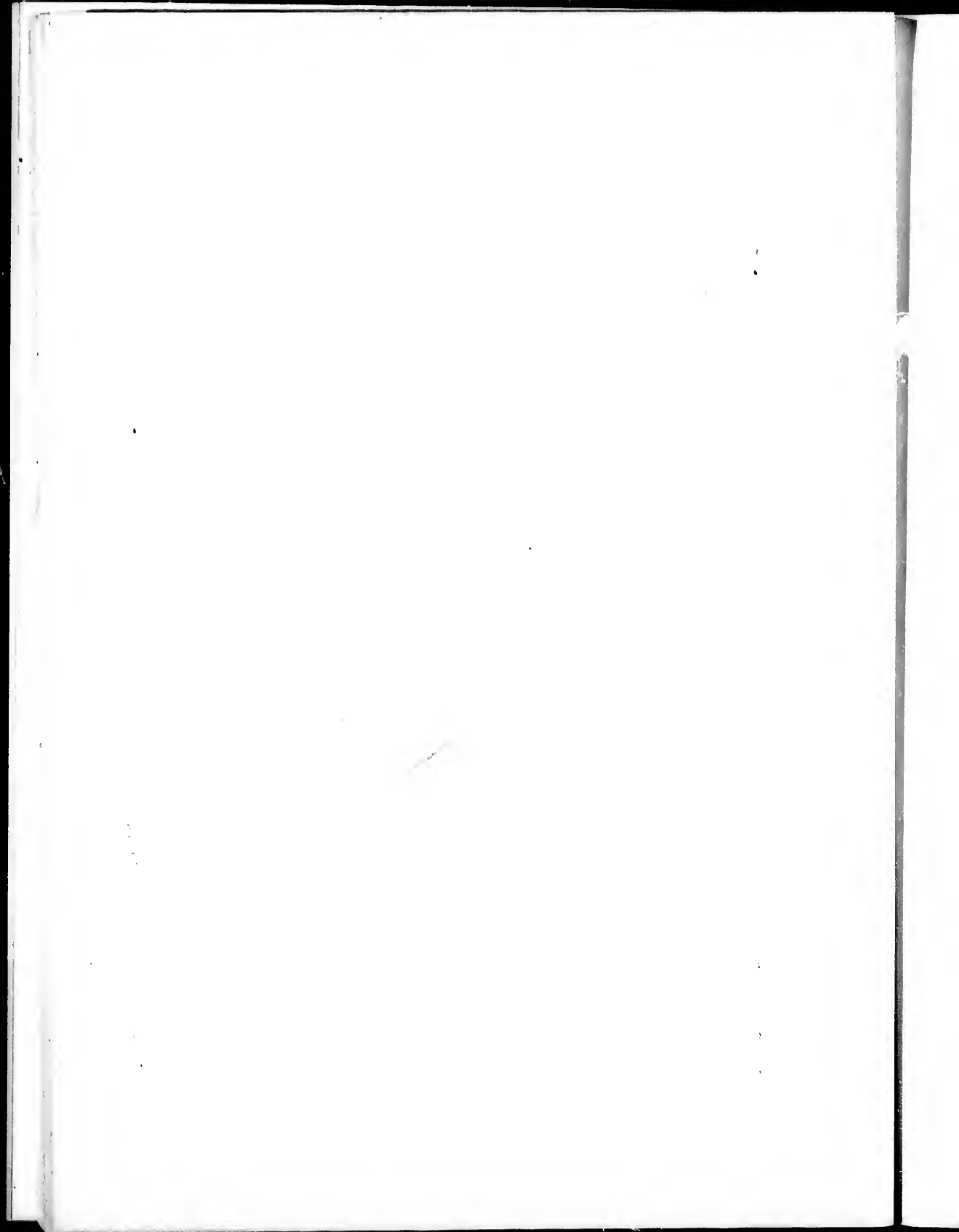


Ontario, authorizing the union and fusion of the said Churches, so as to form but one body or denomination of Christians, under the name of the "Presbyterian Church in Canada." This Act is the 38th Victoria, ch. 75, of the Statutes of Ontario, and was sanctioned the 24th December, 1874. The provisions of this Statute, of which the existence and authenticity are admitted, are of great importance, and have considerable bearing on the rights of the parties in this cause. It is therein firstly declared:—

That all the property situated in the Province of Ontario, and held at the time of the union of the said Churches by every congregation in connection or communion with any of them, shall thenceforth belong to the said 10 United Church, with this restriction, nevertheless, that those congregations of the said Churches which are unwilling to enter into this union might within six months declare their dissent by a vote of the majority of their members, and in such case the property of such congregation dissenting should not be affected by the said Statute. Then section 8 of this Statute declares that as the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland are entitled to receive an annual revenue, proceeding from the funds styled the "Temporalities Fund," administered by a board incorporated by the heretofore Province of Canada, and as it is proposed to maintain intact for these ministers during life this annual revenue, it is enacted that 20 the present members of this board shall continue in office and administer the said fund on behalf of the ministers now deriving a revenue therefrom; this revenue being preserved intact for the said ministers so long as they shall remain Presbyterian ministers in good standing in the Dominion of Canada, whether in active service or retired, and whether they are or are not in connection with the said United Church.

Lastly, that so soon as any part of the revenue provided from this fund is not required to meet the payment of the annual allowances coming to the said ministers, or of any other charge or expense on said fund, such part of said revenue shall be placed at the disposal of 30 the said United Church; and after the death of the last survivors of said ministers, any balance of said fund shall belong to the said United Church. By a final enactment of the said Statute, it is declared: "that the union of the said Churches shall be accomplished so soon as the terms of the said union are signed by the Moderators of each of them." Such are, in substance, the provisions of this Statute which bear on the present litigation.

At the same time that this legislation was obtained from the Legislature of Ontario, a similar law was sought from the Legislature of Quebec, which passed the Statute 38 Victoria, ch. 62 (sanctioned the 23rd February, 1875). This Statute corresponds exactly with that of Ontario, and enacts: 40

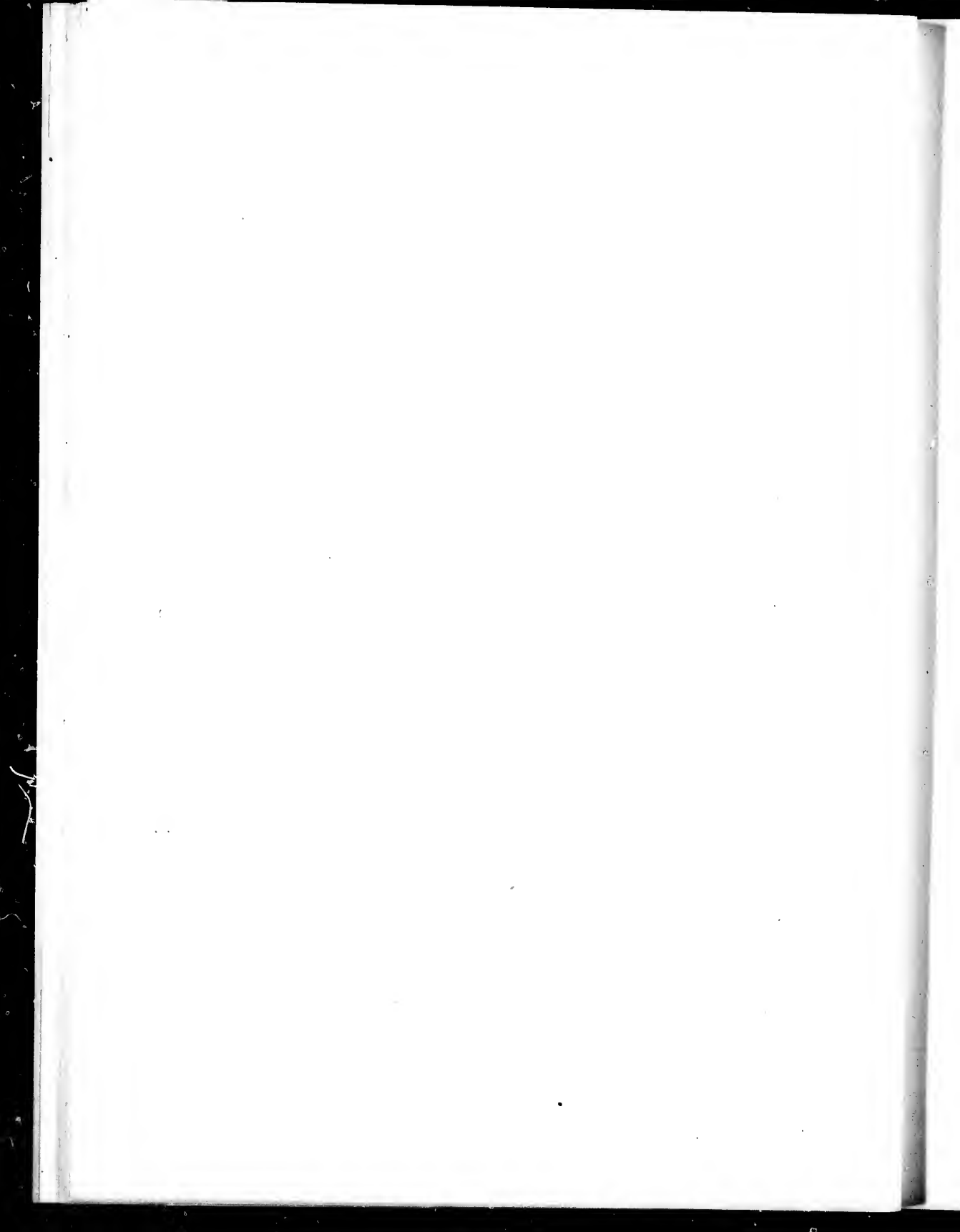


‘ Firstly. That the ownership of the property situated in the Province
 “ of Quebec and belonging to every congregation in connection with any
 “ one of the said United Churches shall pass immediately, on the consumma-
 “ tion of the union, to the said United Church, unless a vote of the majority
 “ of such congregation rejects such union, in which case the said property shall
 “ not be affected by this law. The 11th section of this Statute then repeats,
 “ with certain modifications, the provisions of section 8 of the Statute of On-
 “ tario, relative to the Temporalities Board of the Presbyterian Church of
 “ Canada in connection with the Church of Scotland; and after having stated
 “ that this fund is administered by a board incorporated by the heretofore 10
 “ Province of Canada, and that it is proposed to maintain the revenue of the
 “ said fund for the ministers having a right therein, and to their successors,
 “ even if the congregation over which they preside does not enter the union of
 “ the said Churches.” The section enacts :

“ That the present members of the said Board shall continue in office
 “ and manage the said fund on behalf of the said ministers now deriving
 “ revenue therefrom, and the income to said ministers shall be continued to
 “ them and to their successors, as aforesaid, so long as such Presbyterian min-
 “ isters are in good standing in the Dominion of Canada, whether exercising
 “ their ministry or retired, or whether they are or are not in connection with 20
 “ the united Church; provided that the successors of ministers of congrega-
 “ tions, in the Province of Quebec, in existence at the period of the union, and
 “ not entering into the same, shall preserve the same rights to the benefits of
 “ the Temporalities Fund, as they would have had if such union had not
 “ occurred.”

It is further declared by the same section of this Act, that so soon as a
 part of the accumulated revenue of the said fund shall not be required for the
 payment of the annual allowances to the ministers entitled thereto, it shall
 pass to the said United Church, which shall have the property therein, and
 may dispose of it, and that it shall be the same with that which shall remain 30
 of the said fund, after the death of the last of the incumbents having a right
 in the said revenue. This 11th section also enacts, that each vacancy occurring
 in the said Temporalities' Board (namely, the Corporation Respondents), shall
 not be filled in the manner heretofore adopted, but in the manner provided by
 an Act passed during the same session and entitled, “ An Act to amend the
 “ Act intituled ‘ 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.’ ”

Lastly, section 14 enacts: that the union of the said Churches shall be
 complete, so soon as a notice shall be published in the *Quebec Official Gazette* 40



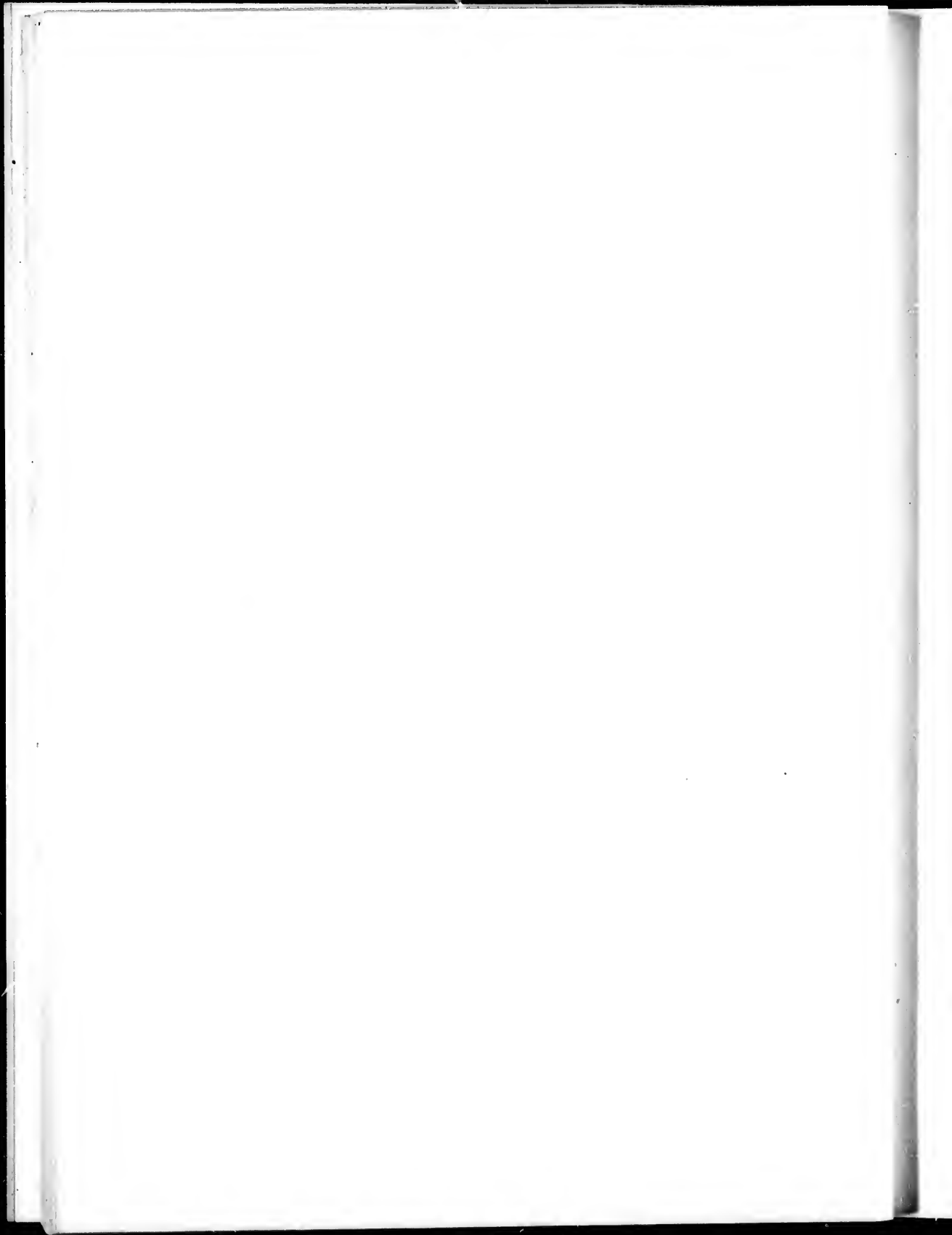
declaring that the articles of this union have been signed by the moderators of the said respective Churches.

As appears by this analysis, the enactments of these two Statutes of Quebec and Ontario are substantially identical. The only differences to be observed are, 1st. That the Statute of Quebec secures the right in the revenue of the Temporalities' Fund of the said Presbyterian Church of Canada in connection with the Church of Scotland, not only to the actual ministers as the Ontario Statute does, but also to their successors; and 2nd. That the Statute of Quebec subjects the filling of vacancies on the Temporalities Board, to the special provisions of the Act to which I am about to refer, while the Statute of Ontario maintains purely and simply the administration of this fund to the actual members of the Board.

At the same time that the Quebec Legislature passed the Act for the union of the said Churches it passed another Act, 38 Victoria, ch. 64, to amend the Act of incorporation of the Temporalities' Board of the said Presbyterian Church of Canada in connection with the Church of Scotland. This second Act which is a natural sequence of the former one may be said to be its complement. The Legislature commences by declaring that the union of the said Churches and the resolutions of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, adopted in consequence and referring to their temporalities, render it necessary to charge certain regulations in the charter incorporating the said board, wherefore it enacts:—

1. That until the rights of the ministers and probationers of the said Church in the said Temporalities Fund shall have ceased to exist, this property shall continue, as heretofore, entrusted to a board, whose functions shall be continued, after the completion of the said union, in the manner provided in the said Act, which board shall administer the property according to the same principles and for the same objects as at present, and it is declared that these rights shall be established as follows:

(1.) The annual payment to ministers now receiving four hundred and fifty dollars (\$450), four hundred dollars (\$400), or two hundred dollars (\$200) will be the same amount during their lifetime and good standing in the Church. (2.) The annual payment of two thousand dollars (\$2,000) granted to Queen's College will be continued in perpetuity. (3.) The annual payment of two hundred dollars (\$200) to all the ministers who shall be on the Synod's roll, and by all recognized probationers and licentiates engaged in active service at the time of the union, will remain the same during the lifetime and good standing in the Church of such ministers, probationers or licentiates; all salaries of two hundred dollars to be increased to four hundred dollars each when the recipients of them shall have retired from the active duties of the



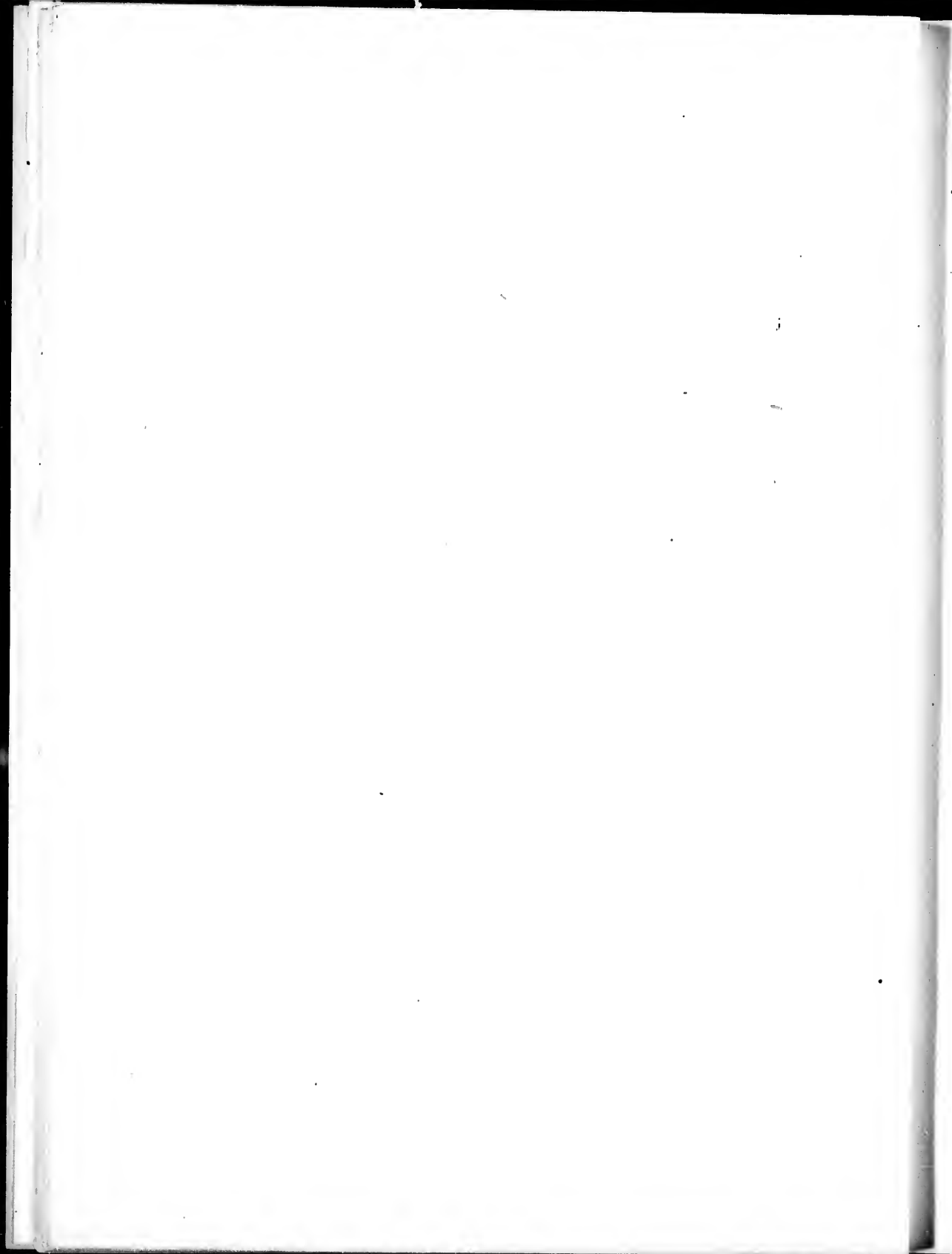
ministry. The Temporalities Board shall, if necessary, draw upon the capital of the fund to meet the aforesaid requirements. Then it is provided that so soon as any part of the revenue accruing from the said fund, or any part of the fund itself which is not required to meet the payments of said charges, shall be subject to the disposal of said United Church.

2. That all ministers and probationers possessing rights in the said Temporalities Fund, who decline to become parties to such union of the said Churches, shall be entitled nevertheless to all their rights as if they had entered into such union, so long as they shall continue to be Presbyterian ministers in good standing within the Dominion of Canada; and that the 10 successors of these ministers shall retain the same rights in the said fund as if the union of the said Churches had not taken place.

3. That as often as any vacancy in the Board of Management of said Temporalities Fund occurs, these beneficiaries may each nominate a person being a minister or member of the said United Church, or in the event of their 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 aforesaid, 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 beneficiaries, but in the event of failure 20 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.

Section 8 provides that the third section of this Act shall continue in force until the number of beneficiaries is reduced below fifteen; and so soon as the number of beneficiaries is reduced below fifteen the said Board shall be continued by the remanent members filling up any vacancy or vacancies from among the ministers or members of the said United Church. The remaining enactments of this Act apply only to the rules of procedure to be followed in the election of new members of the Board, in case of vacancies, 30 and for the auditing of the accounts of the administrators. The last provision is that this Act shall come into force so soon as a notice shall be published in the *Quebec Official Gazette* that the union of said four Churches has been consummated.

These several Statutes having been sanctioned and in force, the Synods of the four Churches, the union of which was authorized by the corresponding Statutes of Quebec and Ontario, assembled in Montreal in June, 1875, to consummate the proposed union. Agreeably to a previous understanding with the other Churches, the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, assembled in St. Paul's Church, in 40

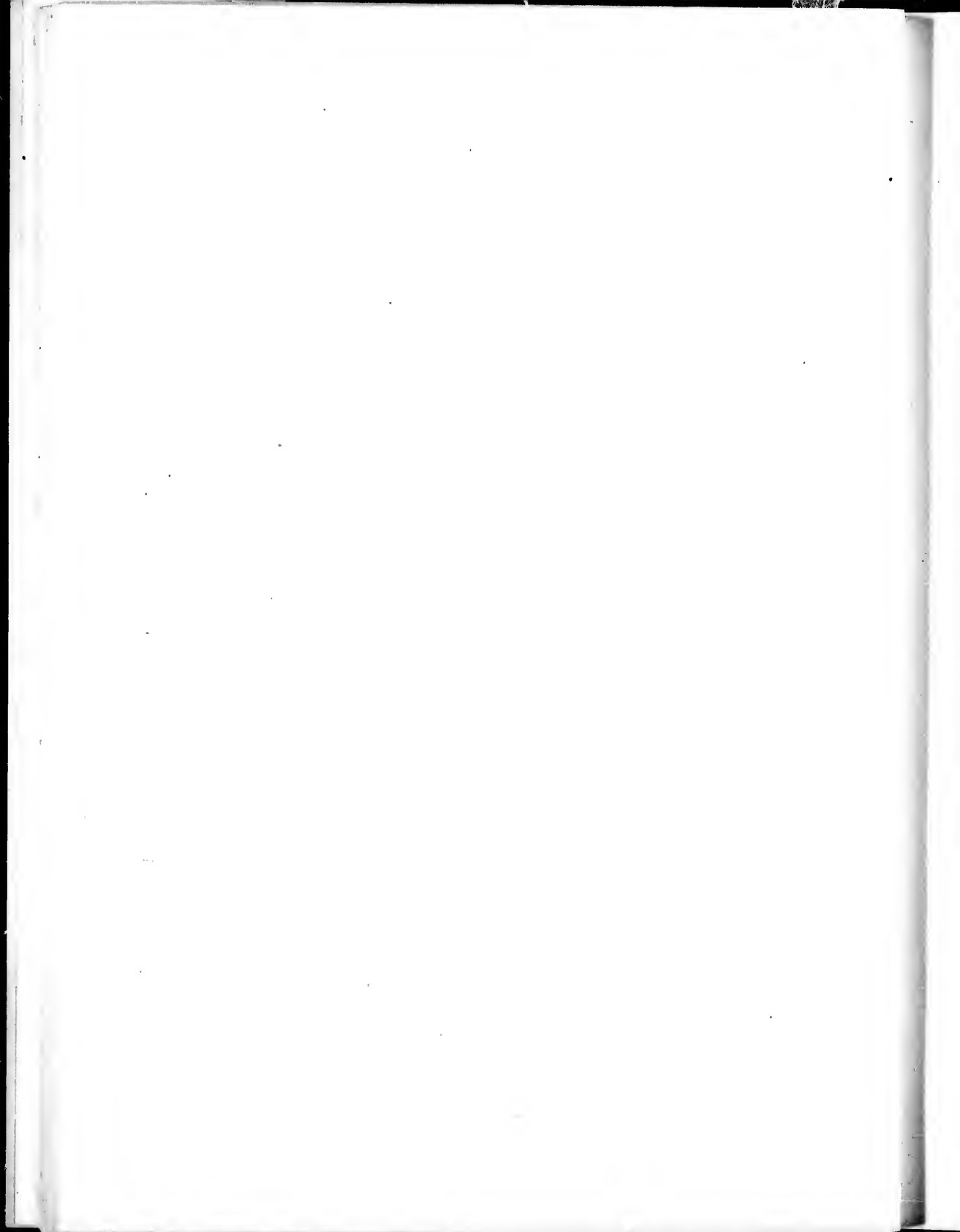


Montreal, and on the 14th June, 1875, decided by a very large majority, that on adjourning next morning it would proceed to the Victoria Hall, the appointed place for the consummation of the said union and the holding of its General Assembly of the said Churches, under the name of the General Assembly of the "Presbyterian Church in Canada, and at the same time gave full power to its moderator to sign in the name of the Synod, the preamble and the Basis of Union, and also the resolutions adopted relating to those documents. The Petitioner and nine other members of Synod protested in writing against this resolution. The following day, the 15th June, 1875, the Synod being assembled in the same place, a notarial protest was served on the Moderator against the projected union of the said Churches, in the name of several members of the said Presbyterian Church of Canada, and among others of the Petitioner. Notwithstanding this protest, the Synod adjourned to the Victoria Hall, as resolved the previous evening. Agreeably to this resolution, the great majority of the members of the aforesaid Synod proceeded to the Victoria Hall, where the members of the Synods of the other Churches had also assembled the documents relative to the union of the said Churches were signed, and the members of the said Synods then organized themselves into a General Assembly of the United Church, under the name of the "Presbyterian Church in Canada."

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Nevertheless, after the departure of this majority of the members of Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland for the Victoria Hall, the minority who had protested against the union, and who had remained in the building where the Synod met, chose the Petitioner as Moderator, in place of the one who had left with the majority, and continued the proceedings of Synod of the said Church. Persisting thenceforth in their refusal to enter the said United Church, this minority continued to hold, each year, its annual Synodical meetings, declaring that it formed and constituted the Presbyterian Church of Canada in connection with the Church of Scotland, and that those persons who had adopted the Union, had abandoned the said Church, and had voluntarily separated themselves therefrom, and no longer formed a part thereof. Starting from this point, the Petitioner, after having stated in his petition his quality of minister of the Presbyterian Church of Canada in connection with the Church of Scotland, and his right to an annual revenue of \$450 for life from the Temporalities Fund of the said Church, as being one of those who in 1855 profited by the commutation offered by the Government of Canada, and alleged that this fund had been created, subject to the conditions formally stated in the resolution of Synod, conditions recognized and guaranteed subsequently by the Act of in-

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corporation of the board to whom was entrusted the administration of the fund, adds :—

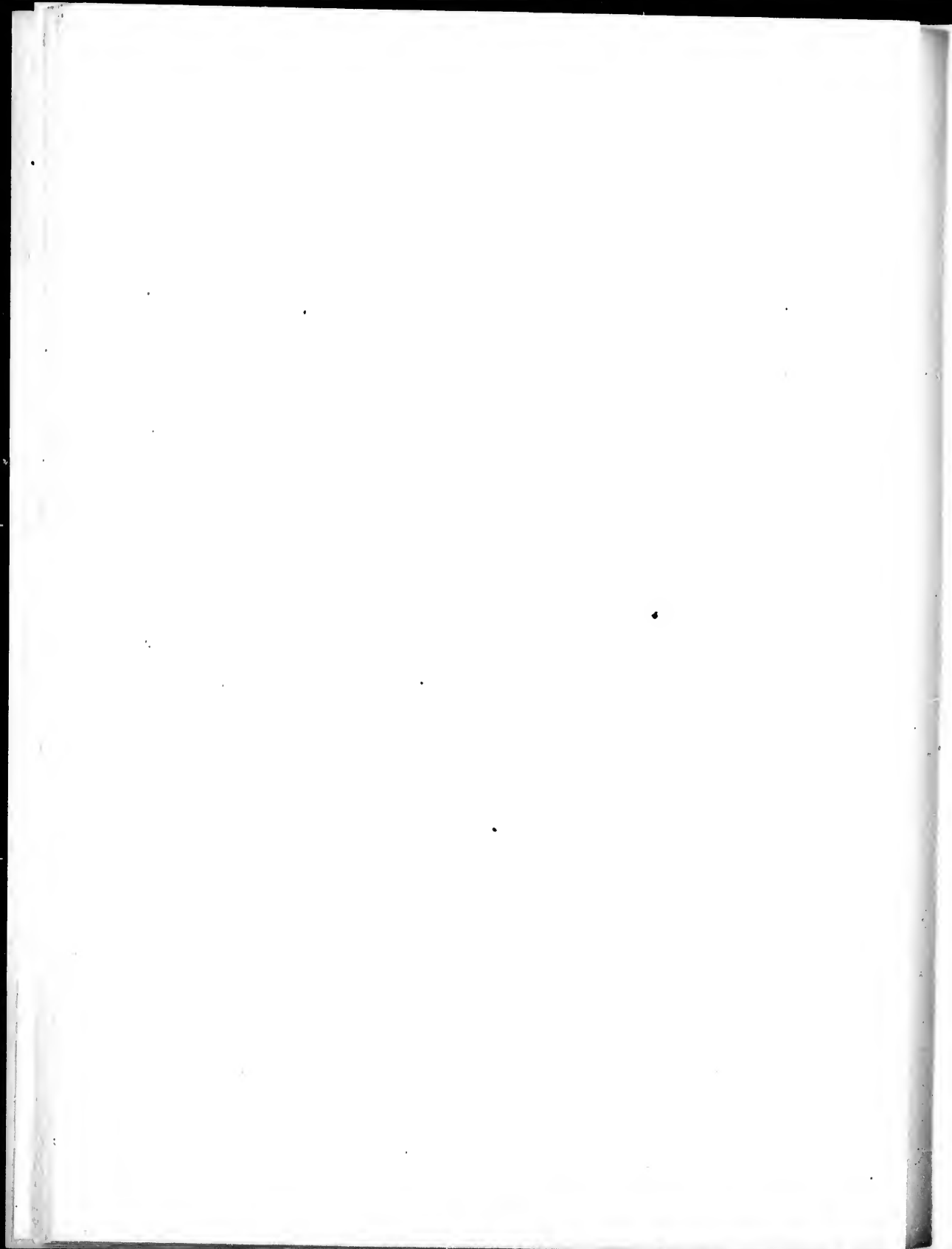
That the Statute of the Province of Quebec, 38 Victoria, ch. 64, amending the Act of incorporation of the Temporalities Board, is unconstitutional ; that it exceeds the jurisdiction and authority of the Legislature of the said Province, and consequently is null and of no effect. The reasons stated by the Petitioner in support of this allegation are :—

1st. That the powers granted to the corporation under the Act of the Parliament of Canada, 22 Victoria, ch. 66, are not limited, and applicable to one Province only, but are of a general nature, and affect the rights of persons 10 resident in the two Provinces of Quebec and Ontario. That consequently the Act of the Legislature of Quebec amending this Statute is not of a local and private nature, but affects the rights of persons not resident in this Province, and not subject to the jurisdiction of its Parliament, and therefore is in excess of its authority.

2nd. That the rights and interests of the Petitioner in the Temporalities Fund of the said Presbyterian Church are not of a private nature, but are a matter of general interest.

3rd. Lastly, that the said Provincial Act is unconstitutional : 1st. In that it authorizes the payment of the annual allowances to the ministers who 20 have ceased to be members of the Presbyterian Church of Canada in connection with the Church of Scotland. 2nd. In that it allows the Corporation Respondent to draw on the capital of this fund to pay the annual allowances. 3rd. In that it provides for the filling of vacancies in the Temporalities Board with members of the United Church ; thus depriving the beneficiaries of all right of administration of the said Fund, contrary to the dispositions of the Act creating the said corporation. Consequently, the Petitioner alleges that the Provincial Act has no legal existence, that the Statute of 1858 alone is in force, and that the rights of the parties are governed by its provisions.

The Petitioner then alleges that since the 15th June, 1875, the Revs. 30 John Cook, James C. Muir and George Bell became members of the said United Church, styled the Presbyterian Church in Canada, which is an entirely distinct organization from the Presbyterian Church of Canada in connection with the Church of Scotland ; that they abandoned this latter Church and ceased to be members thereof, and therefore have no right in the benefits resulting from said Temporalities Fund. That the Revs. John Fairlie, David W. Morrison and Charles A. Tanner, who receive annual allowances from the said fund, have no right therein ; firstly, because they are not among the number of those ministers who, in 1855, commuted their claims with the Government, and 40 secondly, because they have also abandoned the said Presbyterian Church of

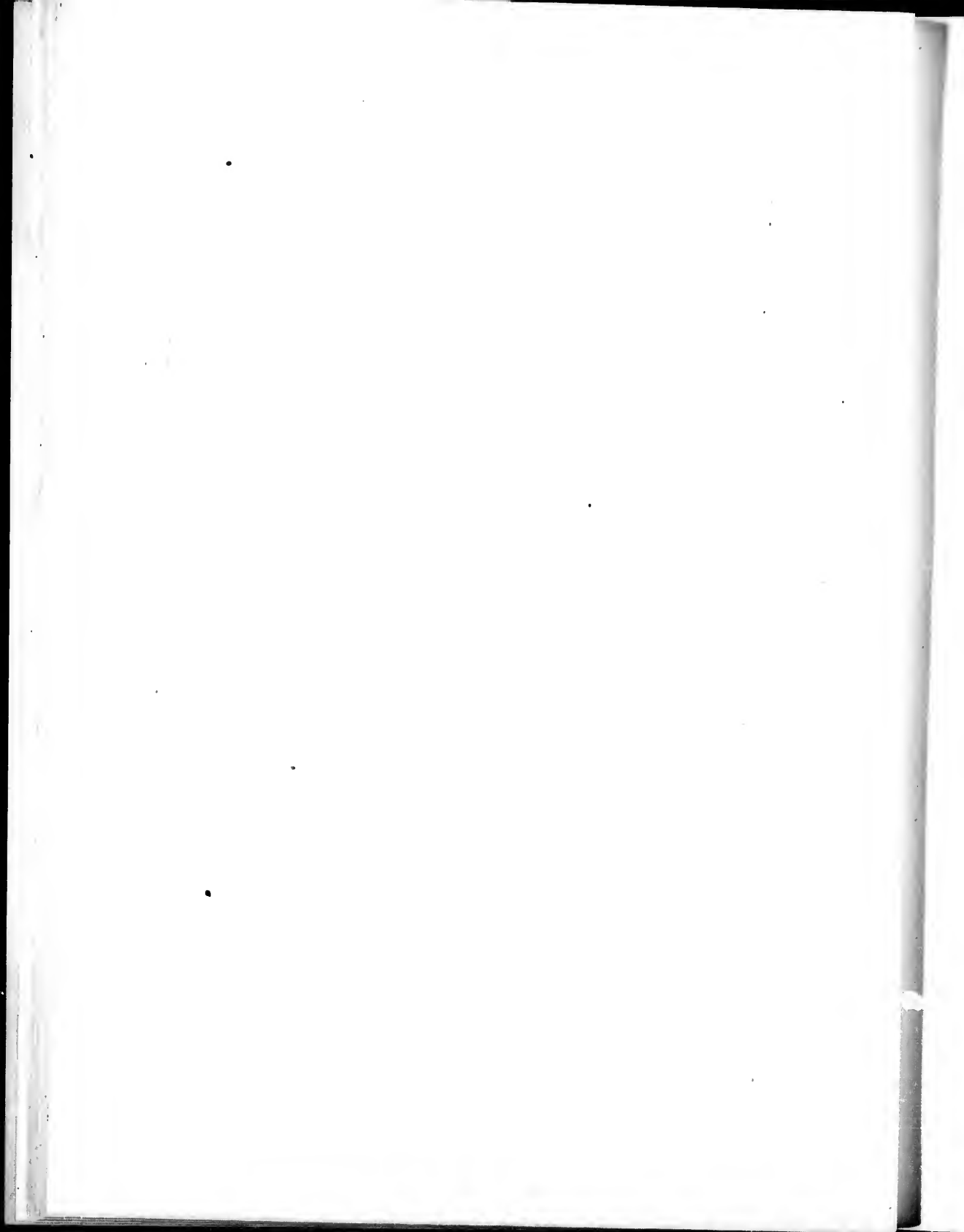


Canada in connection with the Church of Scotland to become members of the new Presbyterian Church in Canada.

Let us say, before proceeding further, that of the six ministers just named only one is a party to this cause, the Rev. John Cook, and consequently the rights of the others, who have not been impleaded, cannot in any manner be affected by the judgment of this Court.

Lastly, the Petitioner alleges that, by the terms of the Statute of 1858, four of the members of the Temporalities Board were bound to retire, and to be replaced each year, and that in order of seniority the Rev. Messrs. Jenkins and Lang and Messrs. Walker and Dennistoun ceased to be members of the board in June, 1876; the Rev. Messrs. Cook and Gordon and Messrs. Morris and Sir Hugh Allan also ceased to be members of the board in June, 1877; that the Rev. Mr. Mackerras and Messrs. Darling and Mitchell ceased to be members of the board in June, 1878; and that none of them have been regularly replaced agreeably to the Statute of 1858; lastly, that the only remaining member of the said board, namely, Mr. James Michie, withdrew from the said Church and joined the Presbyterian Church in Canada, and consequently has *ipso facto* lost his quality as a member of the said board. That consequently all the said Respondents administer illegally the property of the said Presbyterian Church of Canada in connection with the Church of Scotland, and have no right to act as members of the Temporalities Board of the said Church. 10

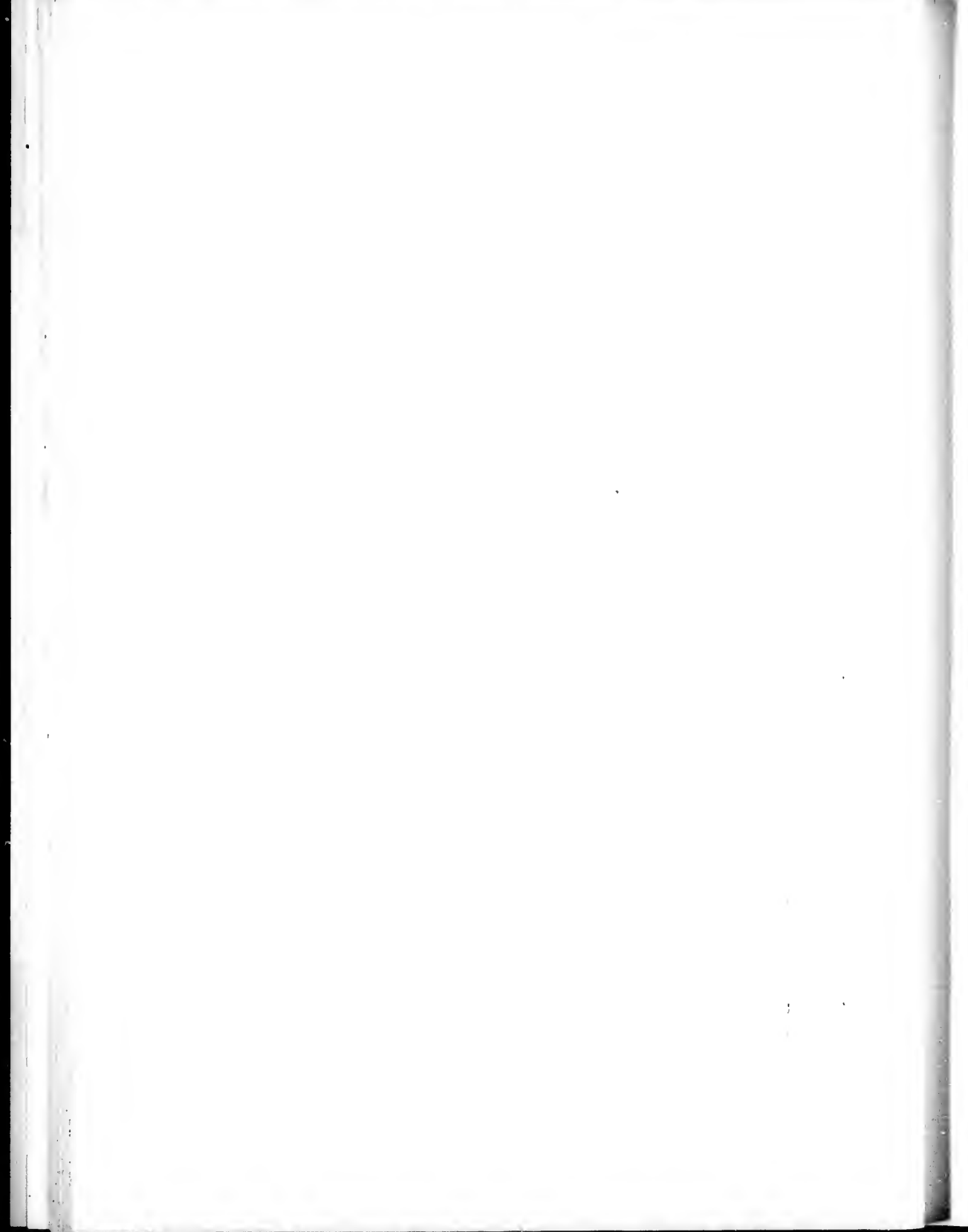
The Petitioner concludes: 1st. That the Provincial Act, 38 Vic., ch. 64, amending the Act of Incorporation of the Temporalities Board of the said Presbyterian Church of Canada in connection with the Church of Scotland, be declared unconstitutional, as beyond the competency of the Legislature of Quebec. 2nd. That it be declared that the corporation Respondents have acted illegally and have exceeded their powers in allowing the Respondents to act as members of the said board without their being elected in accordance with the law. 3rd. That it be declared that the Respondents have no right to act as members of the said board, and that they be restrained from so doing. 4th. Lastly, that it be declared that the fund administered by the said corporation Respondents is in itself only a trust for the benefit of the Presbyterian Church of Canada in connection with the Church of Scotland, and of the members and missionaries who have remained members of the said Church, and for no other purpose. That the Revds. John Cook, James C. Muir and George Bell have ceased to be members of the said Church, and consequently have no right to the benefits of the Temporalities Fund, and that the said John Fairlie, David W. Morrison and Charles A. Tanner are also without any rights therein. 40



Two of the Respondents, the Rev. Gavin Lang and Sir Hugh Allan, declared that they did not contest this application and put themselves in the hands of the Court; the other Respondents have pleaded.

The Respondents who pleaded have declared, in substance, that the Church heretofore styled the Presbyterian Church of Canada in connection with the Church of Scotland has always been, from the time of its organization in this country, in 1831, a voluntary and independent association, and that the terms "in connection with the Church of Scotland," embraced in its name, have never been understood as expressing the idea of a right of jurisdiction or of control in any manner possessed by the Church of Scotland over the said Church. That, on the contrary, the independence of the said Presbyterian Church of Canada in connection with the Church of Scotland, and the absolute power of jurisdiction and of discipline of its Synod over the said Church and the congregations composing it, its ministers and members, have always been recognized by the Church of Scotland, and affirmed in this country on different occasions, and notably by a solemn declaration made in 1844, and which thenceforth formed one of the fundamental principles of the constitution of the said Church, a principle to which each minister receiving ordination in the said Church was bound to give a formal adhesion, as the said Petitioner did on becoming a member of the said Church. That this supreme and independent power, possessed by the Synod of the said Church in all that concerned it, has always been acknowledged and accepted, and that in 1855, at the time of the commutation of the rights resulting from the "Clergy Reserves," the Government of Canada refused to consent to a settlement with the ministers thereof, individually, and only consented to make this arrangement through the Synod, acting by their representative commissioners for the general interests of the said Church; and that the fund derived from this commutation was subjected only to two conditions, as stated in the resolution of the Synod. 1. The primary claim of all the then ministers to an annual allowance of \$450 for life. 2. The next claim in favor of all ministers placed on the Synod's roll subsequent to the 9th of May, 1853, date of the sanction of the Imperial Act authorizing the Provincial Legislature to manage the "Clergy Reserves." That the corporation thenceforth charged with the administration of this fund held it subject to the control of the Synod, and for the benefit of said Church governed by such authority.

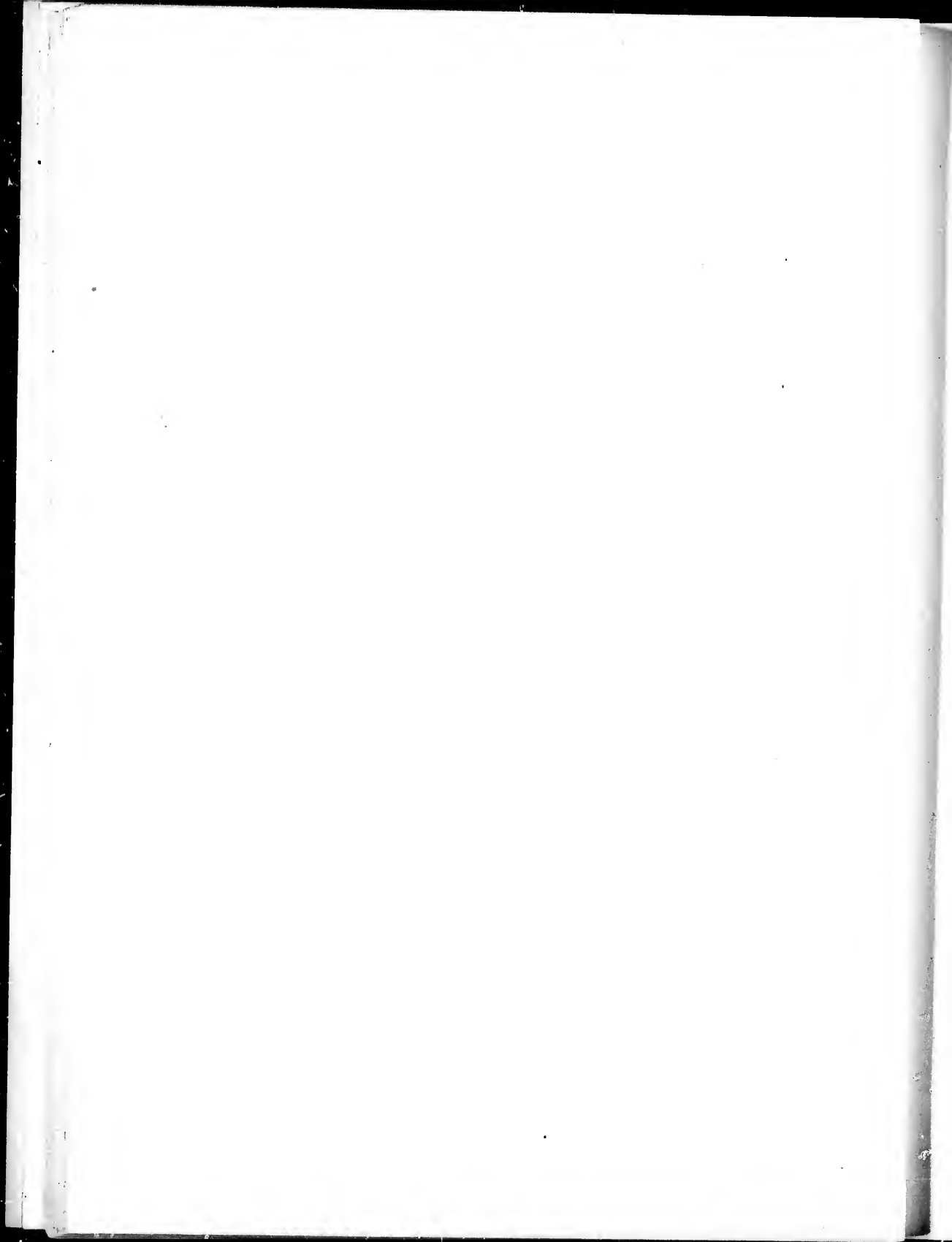
That in 1875 the Synod of the said Church, after five years' deliberation, acting at all times in virtue of its supreme authority in whatever related to the said Church, resolved, almost unanimously, to unite the said Presbyterian Church of Canada in connection with the Church of Scotland with the three other Churches afore mentioned, these four Churches having the same



faith, the same beliefs and the same doctrine, and that in so doing the said Synod had not renounced any of the principles, beliefs or doctrines of the said Church, but, on the contrary, it had preserved and maintained them intact, and that the said Church is at present in existence with the same doctrine, and for the same objects, the same organization, and also with the same rights, properties and estates under the name of the "Presbyterian Church in Canada," and that it maintains the same connection as heretofore with the Church of Scotland. That the Petitioner and the nine ministers, who continue with him outside the said union, have no right to pretend to continue the said Presbyterian Church of Canada in connection with the Church of Scotland, and that in fact they are dissentients, voluntarily separated from the said Church. That consequently they could not even have possessed the right to an allowance from the Temporalities Fund had it not been through the good-will of the Synod, which, by the legislation, sought and obtained from the Parliaments of Quebec and Ontario, preserved to them the maintenance of such privileges, notwithstanding their separation. Lastly, that the Acts passed to establish the union of the said Churches and for the modification of the Statute incorporating the Temporalities Board of the said Church are valid, and, therefore, that the Petitioner is not justified in his complaint.

As appears by the examination of these proceedings, the opposing parties seem to agree on opening the door wider for the interference of the civil power in church matters. The answer to this plea is not of a nature to restrict the litigation to a strictly legal basis; as after having stated that the share of the clergy of the said Church in the proceeds of the "Clergy Reserves," was only so awarded because this clergy formed part of and belonged to the Established Church of Scotland, and that this "Temporalities Fund" had been constituted on the express condition that it should only be used for the purposes of the Presbyterian Church of Canada in connection with the Church of Scotland; the Petitioner adds that this Church is not identical with, but on the other hand, altogether distinct and different from the new Presbyterian Church in Canada, which is composed of bodies or associations which have detached themselves in turn, either from the Church of Scotland or from the Presbyterian Church of Canada in connection with the Church of Scotland. Consequently the allegation of Respondents: that the said Presbyterian Church in Canada is the same as the Presbyterian Church of Canada in connection with the Church of Scotland, is unfounded. Lastly, the proof establishes and details, moreover, the reasons for this division between the Petitioner and his partisans on the one side, and the majority of the Synod on the other.

What is charged against the Respondents is: 1st. Their having, by this union of the said Churches, agreed to renounce the connection which the Pres-⁴⁰

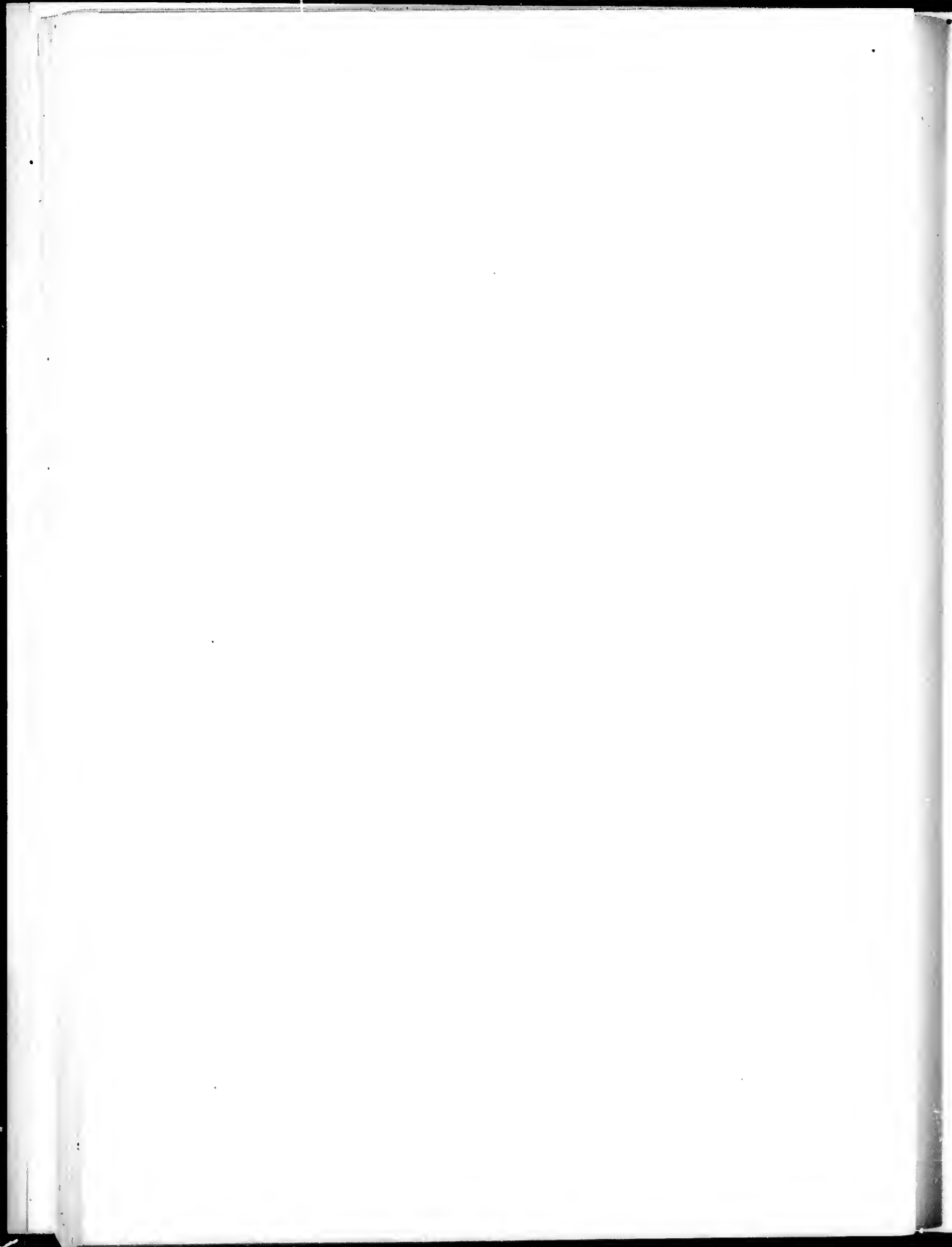


byterian Church of Canada had always carefully maintained with the Church of Scotland. 2nd Their having agreed to declare by the articles of union signed by the said united Churches, that the belief in a portion of "The Westminster Confession of Faith" is not obligatory. It is unnecessary to say that those who have accepted the union repudiate these accusations. They maintain on the first point, that the connection of the said Church with that of Scotland has never implied any subordination whatever, but simply an interchange of good will which exists to an equal extent to-day between the Church of Scotland and the new organization. On the second point, they affirm that the declaration which they have signed does not imply any change of faith; that they have simply acknowledged that the 23 cap. of the Confession of Faith cannot be interpreted as sanctioning principles opposed to liberty of conscience in matters of religion, and that such has always been the belief of the said Church prior to the union.

We have just reached the crowning point of the religious aspect of this case, and I have only sought thus to expose it by a gradual analysis of the pretensions of the parties, the better to demonstrate that there is not in reality at the bottom of this part of the dispute more than a question of appreciation of religious doctrines, altogether beyond the jurisdiction of a civil tribunal, and consequently not for me to decide. I am, moreover, convinced that the pretensions of the parties, as they stand to-day before me, may be decided by resting scrupulously within the domain of law. I, therefore, make it my duty carefully to eliminate from this cause all that is not a strictly judicial nature, and thus reducing this litigation to its true proportions I arrive at the examination of the only question on which my decision should be based.

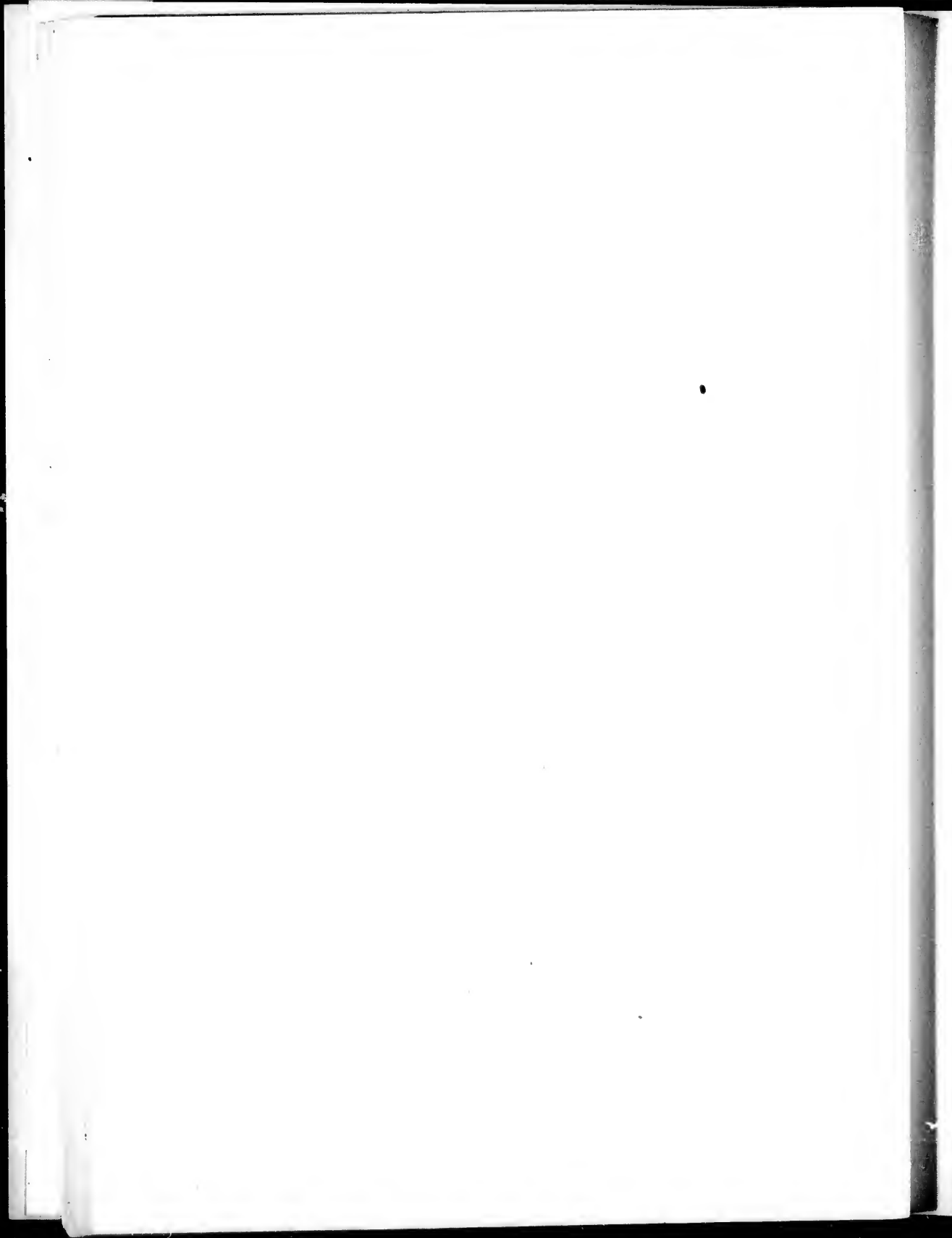
By his conclusions, the Petitioner confines himself in reality to asking but two things: 1. That the Provincial Statute, 38 Victoria, chap. 64, be declared unconstitutional; from which would naturally flow the illegality of the present constitution of the "Temporalities Board," and the nullity of the acts done by the Respondents as members of that corporation. 2. That it be declared that the "Temporalities Fund" is the exclusive property of the Presbyterian Church of Canada in connection with the Church of Scotland, and subsidiarily that the Reverends John Cook, James C. Muir, George Bell, John Fairlie, David W. Morrison and Charles A. Tanner are no longer members of the said Church, and consequently have no rights to the benefits arising from this fund.

The Petitioner thus attacks directly, by his first pretension, the constitutionality of the Provincial Statute of Quebec, 38 Victoria, chap. 64, and by the second, indirectly, the constitutionality of the Statutes of Quebec and Ontario, as respects the union of the four Churches aforementioned (38 Vic-40



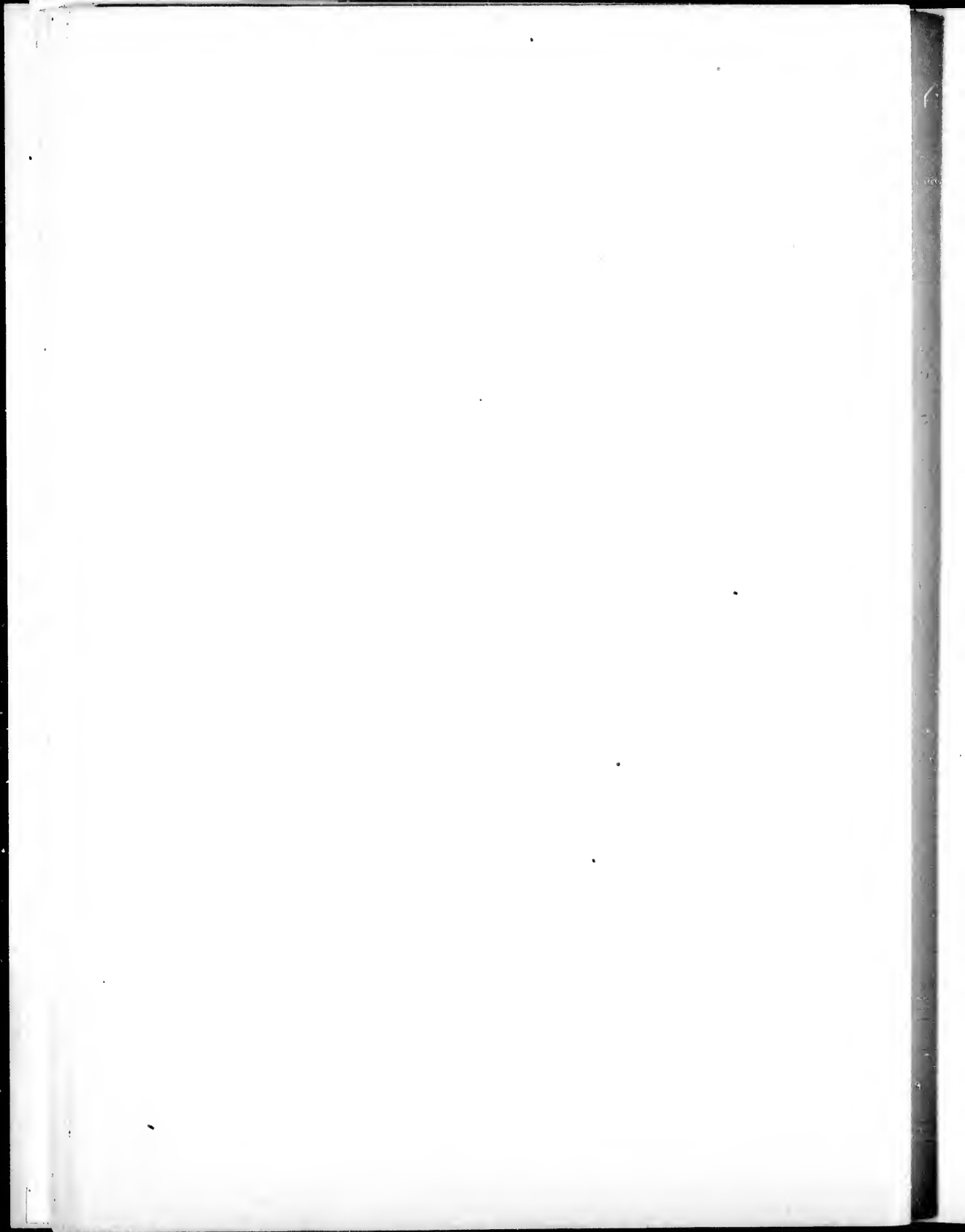
torio, cap. 62, Quebec, and 75 Ontario). For if these two Legislatures have not exceeded their powers in passing these laws, the Petitioner has not in the present law any remedy for redressing the grievances of which he complains.

It is much to be regretted that these important questions as to the constitutionality of the laws have not been intrusted by our new political constitution to a special tribunal, whose jurisdiction and authority in like matters would be unquestioned. The ordinary tribunals thus find themselves charged therewith unaided by any very precise rules to guide them, and it is necessary to seek elsewhere what our too short experience of a federal system does not enable us to find here. Although there exists a fundamental difference between the American Federal Constitution and that of the Canadian Provinces since in the United States the Federal powers have been delegated by the States to the central government, whilst here it is rather the powers of the Provincial Legislatures which have been specially delegated, and consequently limited; nevertheless the principles accepted by the American juriconsults and by the tribunals of the neighbouring republic on questions of the constitutionality of the laws appear to me to afford rules of indisputable wisdom for the decision of like difficulties. "It has been said by an eminent jurist, says Cooley (on "Constitutional Limitations, p. 182.) that when Courts are called upon to pronounce the invalidity of an Act of legislation, passed with all the forms and ceremonies requisite to give it the force of law, they will approach the question with great caution, examine it in every possible aspect, and ponder upon it as long as deliberation and patient attention can throw any new light upon the subject, and never declare a Statute void unless the nullity and invalidity of the Act are placed, in their judgment, beyond reasonable doubt. "A reasonable doubt must be solved in favor of the legislative action, and the Act be sustained." And further he adds, citing the words of Chief-Justice Marshall: "It is not on slight implication and vague conjecture that the Legislature is to be pronounced to have transcended its powers, and its Acts to be considered as void. The opposition between the Constitution and the law should be such that the Judge feels a clear and strong conviction of their incompatibility with each other." Judge Washington gives as a reason in favor of this rule, after having said that the question submitted to him afforded room for doubt. "But if I could rest my opinion in favor of the constitutionality of the law on which the question arises on no other ground than this doubt so felt and acknowledged, that alone would, in my estimation, be a satisfactory vindication of it. It is but a decent respect due to the wisdom, the integrity and the patriotism of the legislative body by which any law is passed to presume in favor of its validity until its violation of the constitution is proved beyond all reasonable doubt."



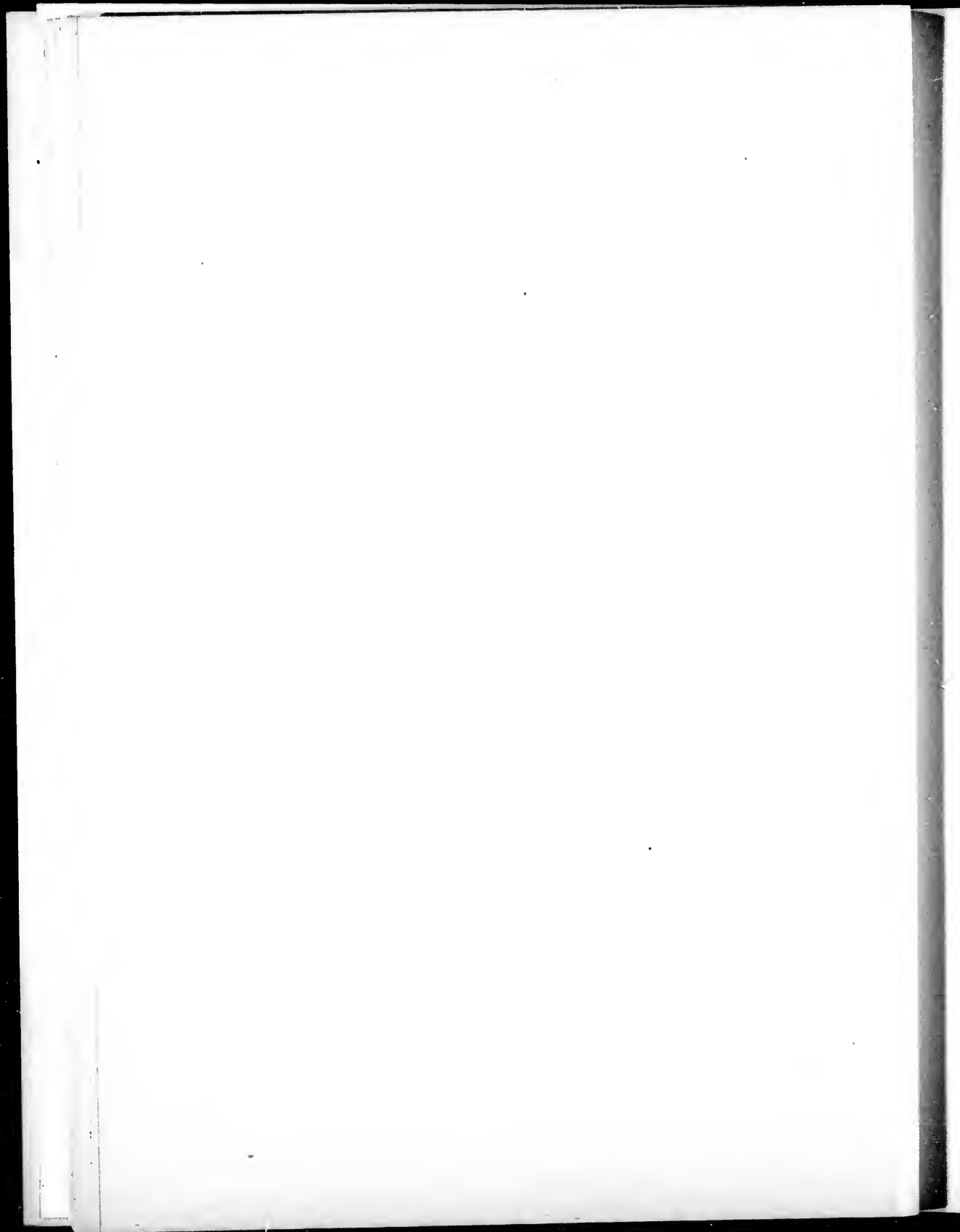
Such, in effect, is the fundamental rule which should guide a Judge in like cases. The presumption is always in favor of the constitutionality of the law. Let us examine at present, by the sight of these principles, the dispositions of our constitution relative to the powers of the Provincial Legislatures and the special Statutes now under consideration, and see if there be even room for doubt as to the right or power of the Provincial Legislature to pass the laws in question. The 91st section of the British North America Act, 1867, declaring the powers of the Federal Parliament, says: "It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces." * * * * * This section then enumerates a general list of subjects, exclusively entrusted to the Federal Parliament, but declaring that this enumeration is not limitative, except as to the subjects exclusively intrusted to the local Legislatures. The 92nd section regulates and determines the exclusive powers of the Provincial Legislatures, and declares: "Section 92. In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say: 11th. The incorporation of companies with Provincial objects. 13th. Property and civil rights in the Province."

Property and civil rights are thus, in virtue of this disposition of our present constitution, submitted to the exclusive control of the Provincial Legislatures. Now, what was the object of the corporation created by the Statute 22 Victoria, cap. 66? Nothing else than the ownership and the possession of certain property; that is to say, that the Legislature of United Canada has accorded, by this Act, those rights which are included specially in the category of subjects exclusively entrusted at the present time to the Provincial Legislatures. It is true that under the former *regime* the two Provinces being subject to a Legislative union, these same rights were under the control of the Legislature of the Union, and consequently the privileges accorded in this respect to corporations created by this Parliament extended (except when specially restricted) to all the territory subject to its jurisdiction. But the extent of this territory, whether more or less, does not change anything in the nature itself of these rights; and since these rights are now entrusted to the Provincial Parliament, can it be pretended that it has neither the right nor the power to legislate in a manner to affect them? Certainly not. The change in our political system cannot have had the effect of rendering perpetual what has been done in the past! It is to be assumed rather that property and civil rights then already in existence, and having been established in the past, as



well as property and civil rights to be established for the future, are made subject to the jurisdiction of the Provincial Legislatures. It must be admitted, therefore, that the changes which the Parliament of United Canada could have made, and no one will deny that it had the absolute right to make, in the Act of Incorporation of the "Temporalities Fund," the Legislature of the Province of Quebec can make with the same authority and the same effect within the limit of the territory attributed to its jurisdiction. But says the Petitioner, it is exactly this restriction as to territory which saves my rights; not having a domicile in this Province, I am not subject to the control of this Legislature, and therefore my rights cannot be affected by this legislation. 10 This objection is not serious. The constitution, in subjecting property and civil rights to the control of the Provincial Legislatures, did not make and could not make a distinction between the possessors of these rights; it has not limited the legislative authority to the case where the property belonged to a resident only! No, all rights of property, whether possessed by a resident or a non-resident, are under the authority of the legislative power of the Province. Any other interpretation of our constitution would be contrary to the best established principles of the civil law and of the public law. Therefore, either the rights which the Petitioner claims exist in this Province or they do not. If they do not, what can he seek from this Court? If they do, 20 they only exist as recognized by the laws passed or maintained by our Legislature. Now, I find that this Legislature has changed the disposition of the property, from whence flow the rights of the Petitioner, in two important respects: 1st, as to the administration; 2nd, as to the final disposition of the fund constituting this property. Firstly, as to the administration, the Statute 38 Victoria, cap. 64, of which the annulling is sought, completely justifies the action of the corporation Respondents and of the members composing it. Secondly, as to the final disposition of the Temporalities Fund, the Statute 38 Victoria, cap. 62, which is not attacked, while securing to the present ministers their annual incomes intact, transfers finally the property of this fund to 30 the United Church under the name of the Presbyterian Church in Canada.

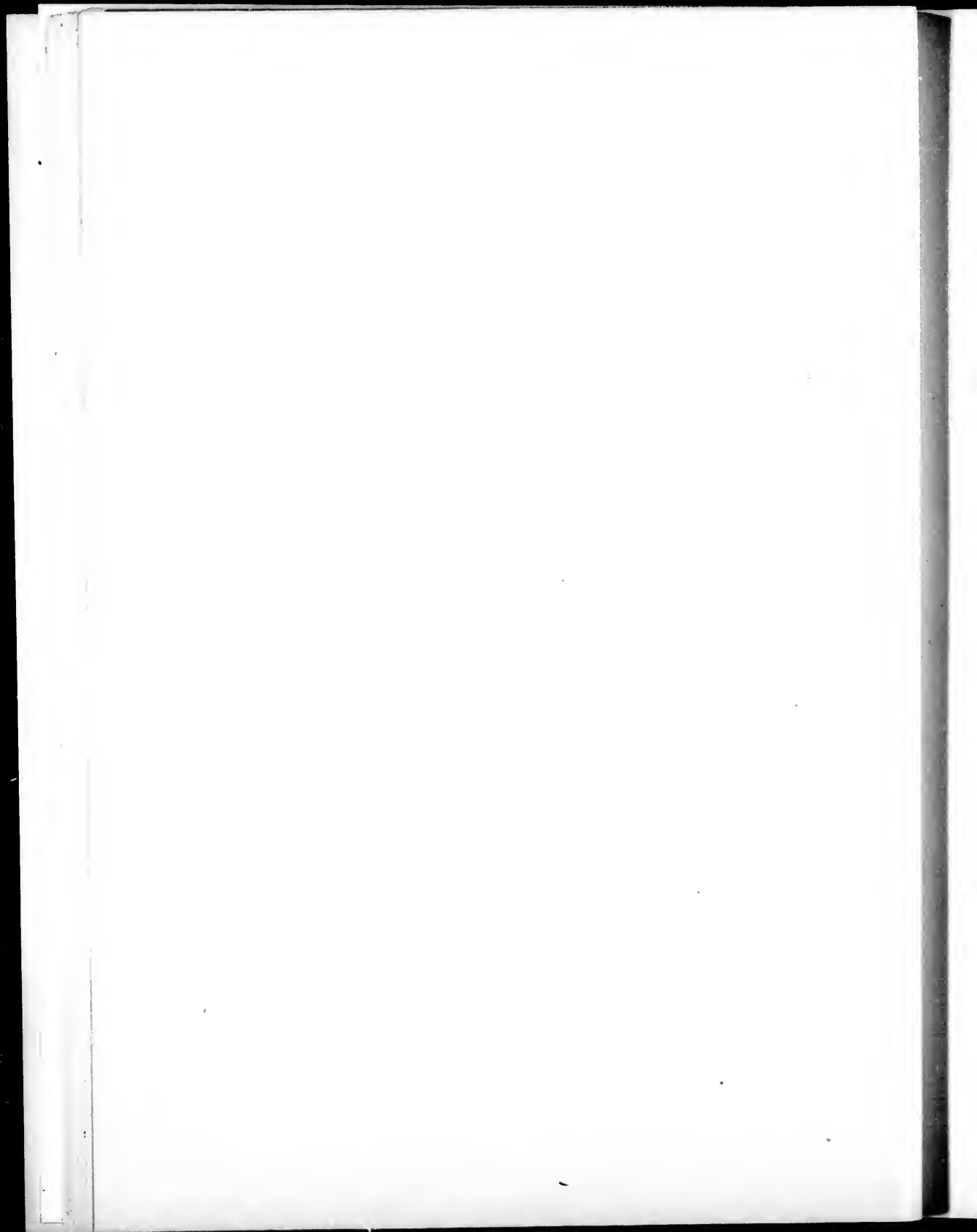
Now, it appears to me incontestable, according to the provisions of our Constitutional Act, that these two Acts, in so far as they affect civil rights and rights of property (and there are none other in question before this Court), were within the authority and jurisdiction of our Provincial Legislature, and therefore that they irrevocably settle the rights of the parties. In the face of this legislation, it is impossible for me to declare that the Respondents have acted illegally and without right in the administration of the fund entrusted to them; that these same Respondents are not legally members of the said 40 corporation Respondents, and that the "Temporalities Fund" does not belong



to the Church, to which the law attributes it, and that it cannot be applied in the manner provided by that law.

And if the Petitioner seeks to complain of the arbitrariness and injustice of these legislative enactments which deprive him of rights of property which considered inviolable, I must answer that it is not my mission to accord to him a protection which the law refuses, and that nothing would be more dangerous than for the Courts to assume the power of rejecting a positive law under the pretext that it was unjust. "There would be (says Cooley, page 167.) very
 " great probability of unpleasant and dangerous conflict of authorities if the
 " Courts were to deny validity to legislative action on subjects within their 10
 " control, on the assumption that the Legislature had disregarded justice or
 " sound policy. The moment a Court ventures to substitute its own judgment
 " for that of the Legislature in any case where the Constitution has vested the
 " Legislature with power over the subject, that moment it enters upon a field
 " where it is impossible to set limits to its authority, and where its discretion
 " alone will measure the extent of its interference. The rule of law upon this
 " subject appears to be that, except where the Constitution has imposed limits
 " upon the legislative power, it must be considered as practically absolute,
 " whether it operate according to natural justice or not in any particular case.
 " The Courts are not the guardians of the rights of the people, except as those 20
 " rights are secured by some constitutional provision which comes within
 " the judicial cognizance. The protection against unwise or oppressive legisla-
 " tion within constitutional bounds, is by an appeal to the justice and patri-
 " otism of the representatives of the people. If this fail, the people in their
 " sovereign capacity can correct the evil, but Courts cannot assume their rights.
 " The judiciary can only arrest the execution of a Statute when it conflicts
 " with the constitution. It cannot run a race of opinions upon points of right,
 " reason and expediency with the law-making power. Any Legislative Act
 " which does not encroach upon the power apportioned to the other depart-
 " ments of the Government being *prima facie* valid, must be enforced, unless 30
 " restrictions upon the legislative authority can be pointed out in the constitu-
 " tion and the case shown to come within them."

The writ of injunction issued in this cause must, therefore, be set aside, and the Petitioner's demand rejected with costs.



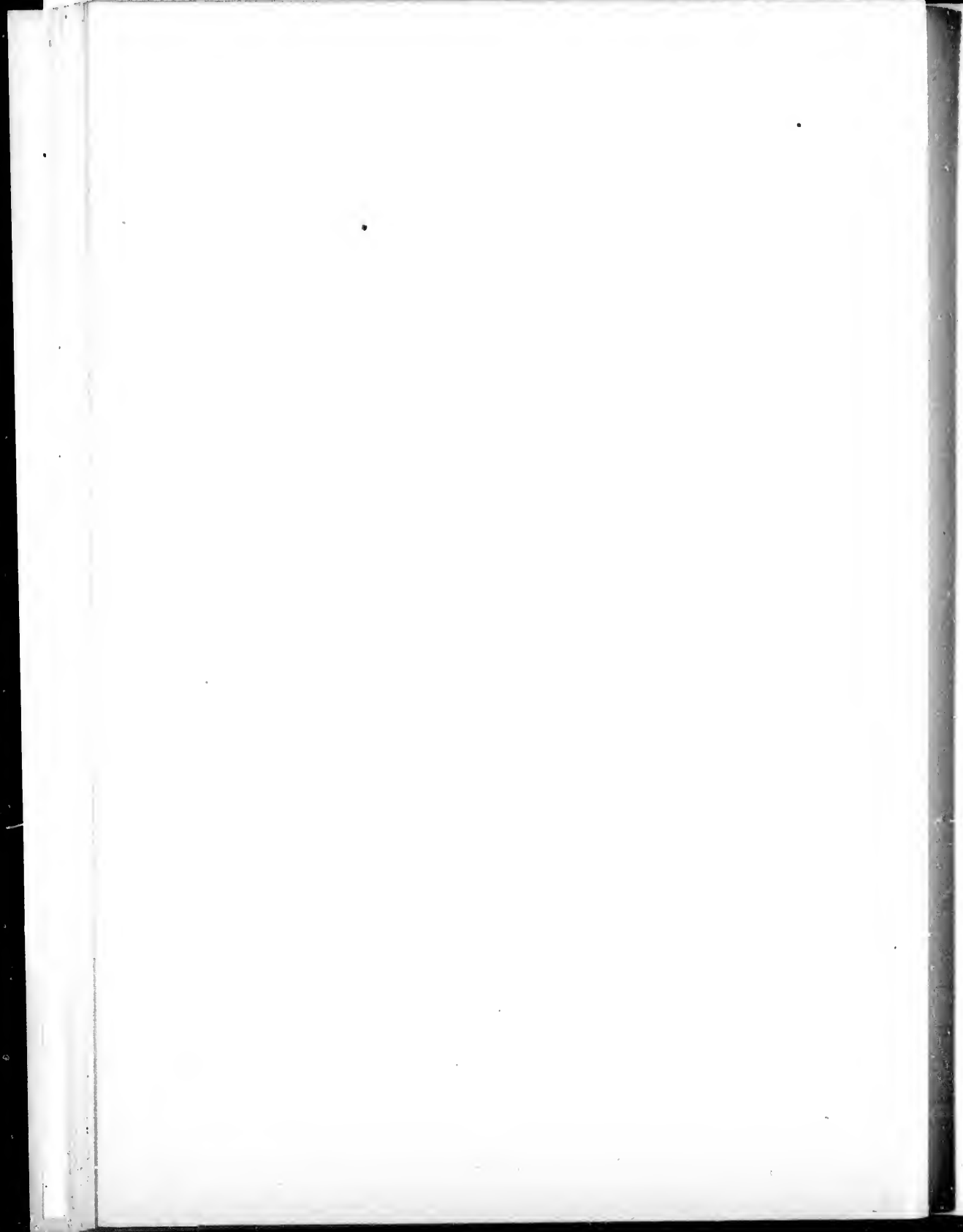
The Appellant is a minister of the Presbyterian Church of Canada in connection with the Church of Scotland. He refused to join the Presbyterian union in 1875, and with ten other ministers, and a large congregational following, continued the Church of Scotland, which is still in full organization in Canada, having now in the Province of Ontario and Quebec thirty-four congregations. Some of the leading and most influential people in Canada maintain their connection with it. The present suit is virtually in behalf of all the members and adherents of the Church of Scotland in Canada. The Appellant, though deeply interested in the result, is not contending for personal gain.

It is not the intention of the Appellant to submit a lengthy argument 10 for the consideration of the Court. He is, impelled to this course, because the remarks of the Honorable Mr. Justice Jette, who rendered the judgment appealed from, contain a reasonably fair statement of the contentions of the parties, and a concise and, for the purposes of this argument, a sufficiently correct *resumé* of the events and legislation out of which the present litigation arose, and to which this suit is pendent.

The narrative, however, is not at places strictly correct, and at others is too cramped. For example, it does not appear with sufficient clearness from his Honours remarks, as is the fact, that the Appellant and the other commuting ministers agreed, on certain fundamental conditions to renounce their 20 *personal* claims upon the Commuted Fund,—and consented to accept a reduced life annuity on *specified* conditions, in order that they might form a *permanent* endowment for the benefit of the Presbyterian Church of Canada, in connection with the Church of Scotland.

The appendix to the Journals by the Legislative Assembly of Canada, for the year 1856, (See Respondent's *Faetum* p. 115, line 20,) establishes that the Government actuary estimated that the present (Petitioner) Appellant, was entitled personally to receive an annuity of £150 per annum, on the amount of Capital apportioned to him, namely, £2,200.

The voluntary renunciation of individual ministers then made for the 30 purpose of permanently endowing "The Church of our Fathers" is a singular and worthy act of the devotion of the commuters to the Church of Scotland in Canada, (See the Pastoral letter of the Reverend John Jenkins, D.D., Moderator of the Synod,) that must challenge the respect and admiration of every man capable of appreciating sincerity of purpose and unadulterated self-denial. The Government transacted the business matter of paying over the aggregated individual claims to commissioners who produced the moral voucher of the Synod, in a resolution accrediting them to the government and the legal authority to transact and grant a discharge, in the *individual* 40 *power of attorney from each minister.*

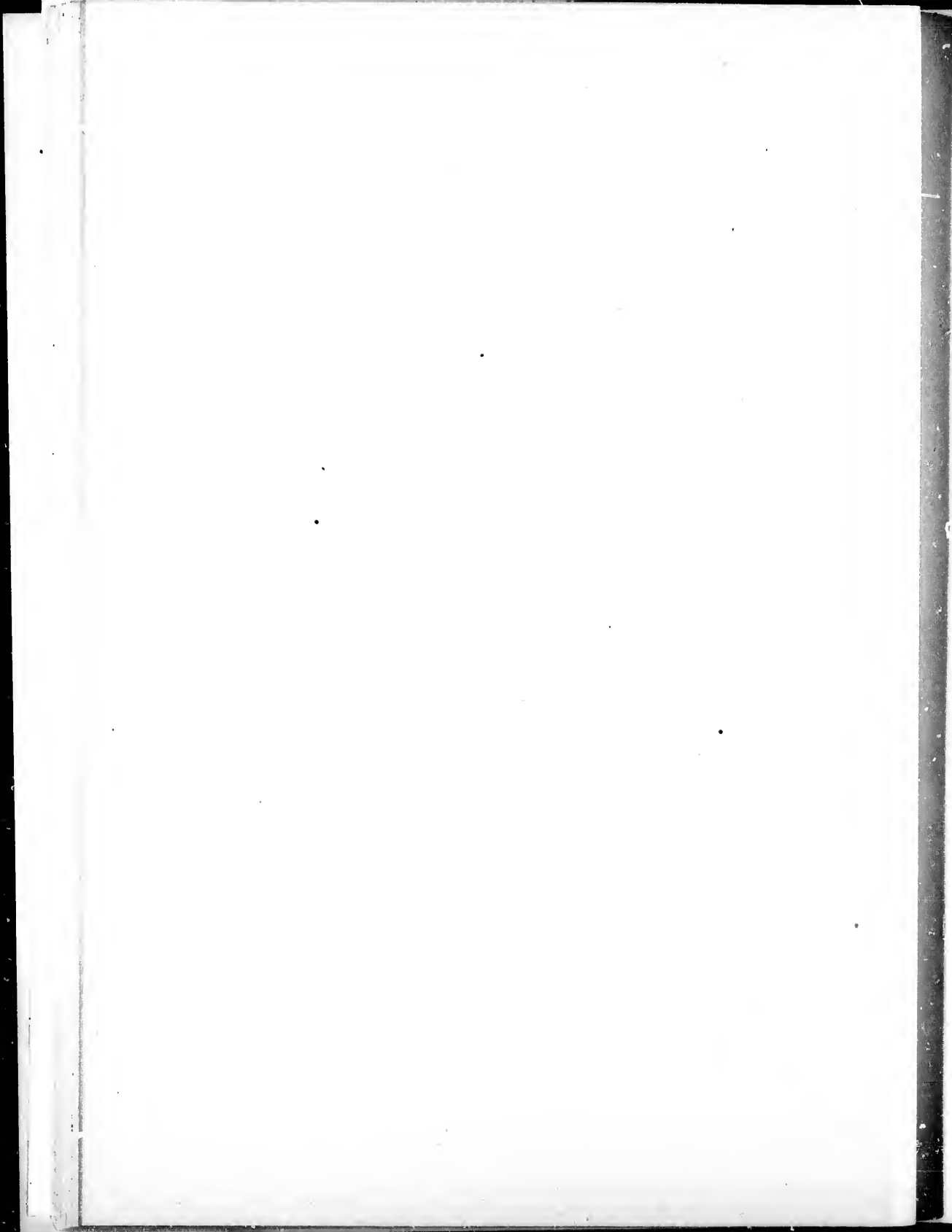


The Commissioners acted not only on behalf of the Church but as the attorneys of the ministers separately. The Reverend Dr. Cook writing to individual ministers for their powers of Attorney to authorize him to grant a receipt to the Government for the individual claims of ministers, reiterates in his letter (Appendix page 12 line 30) the fundamental conditions upon which the commuting ministers agreed to form the Temporalities Fund, and expressed his thankfulness "to Almighty God that away so easy is open to them " for conferring so important a benefit on the Church."

The conditions upon which the Appellant and the other ministers agreed to commute their claims is expressed in the first resolution of the 10 Synod at pages 9 and 10 of the Appendix.

" 1st. 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 Mon- " treal, 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 20 " 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 the Synod, by which " all further regulations shall be made ; the following, however, to be a funda- " mental 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 30 " 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 con- " sidered a fundamental principle, that all persons who have a claim to such " benefits, shall be Ministers of the Presbyterian Church of Canada, in connec- " tion 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."

From the terms of this resolution and of Dr. Cook's letter, it is not sur- 40



prising that the Appellant should have been lulled into a feeling of security and confidence that a "permanent endowment" (3rd resolution, page 10, Appendix line 30) had been provided for the Church of Scotland in Canada. He renounced his rights, relying upon the good faith of the Synod, and upon the stringency of "the fundamental principle (regulating the disposition of "the capital and interest) which (it was declared) 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."

A clear understanding of the rights and claims of the Petitioner is essential in order to appreciate the grievances of which he complains. 10

Again, the Honorable Judge who rendered the judgment, has unwittingly assumed that the Synod had supreme power in all matters regarding the fund in dispute. The Synod's powers were simply supreme in *ecclesiastical* discipline, but it had *no power to alter the disposition of the fund in dispute*. To a limited extent it assumed power (not without remonstrance) to deal with a portion of the revenues arising from the fund. But as to the capital, and by far the major portion of the revenues, the Synod was powerless, such matters being regulated in accordance with the fundamental conditions (see Appendix, p. 9 and 10) upon which the creation of the fund was based, and the Statutory enactment (22 Vic., cap. 66, Canada) regulating the terms of the Respondents' 20 holding and administration.

The Petitioner instituted this action not against the Synod or the Church, but against the corporation, Respondents, and the members of the corporation. Against these alone he founds his complaint, and they must justify their acts and administration, not by references to such moral countenance as they pretend to have received from the Synod—a voluntary association, not a party to this issue—but by virtue of the powers derived from the original Act of Incorporation and the amendment thereto (38 Vic., cap. 64) passed by the Quebec Legislature.

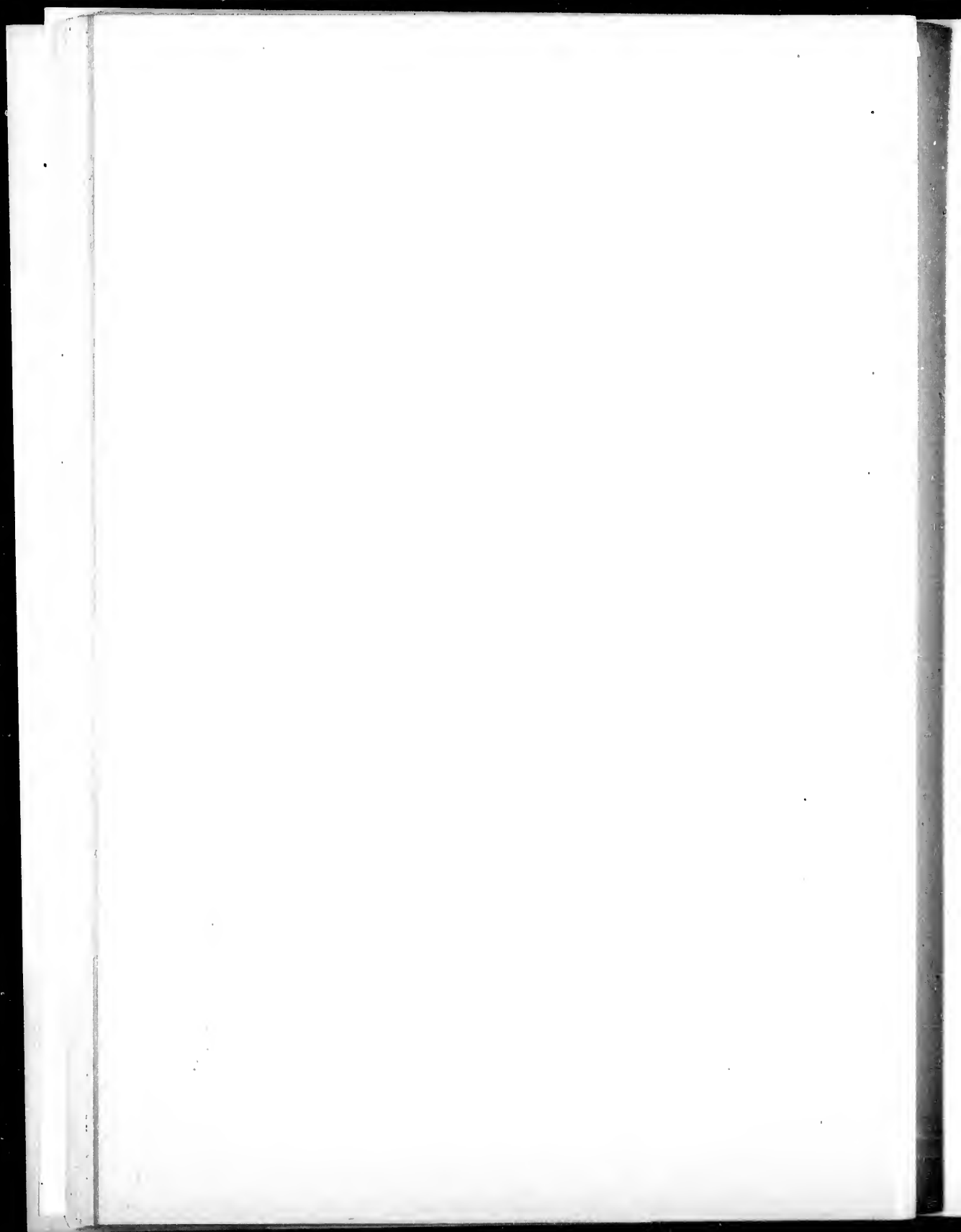
The Respondents must rely upon Legislative and not Synodical 30 authority.

The Respondents invoke the Act of the Quebec Legislature, which is impugned by Petitioner as being unconstitutional, and beyond the competency of Provincial Legislation.

It is clear at the outset that if the Provincial Act is within the competency of the local Legislature, the Petitioner is without legal ground of complaint.

It is true the intention of the founders of the fund has been invaded.

1. The proof establishes that the original capital (amounting to £127,000) which could not be diminished under the Act 22 Vic. Cap. 66, 40



Canada, has been trenced upon and reduced (under the authority of Amending Act, 38 Vic., Cap. 64, Sec. 1) in four years of the Respondents' Administration under the new authority, to the extent of \$75,000.

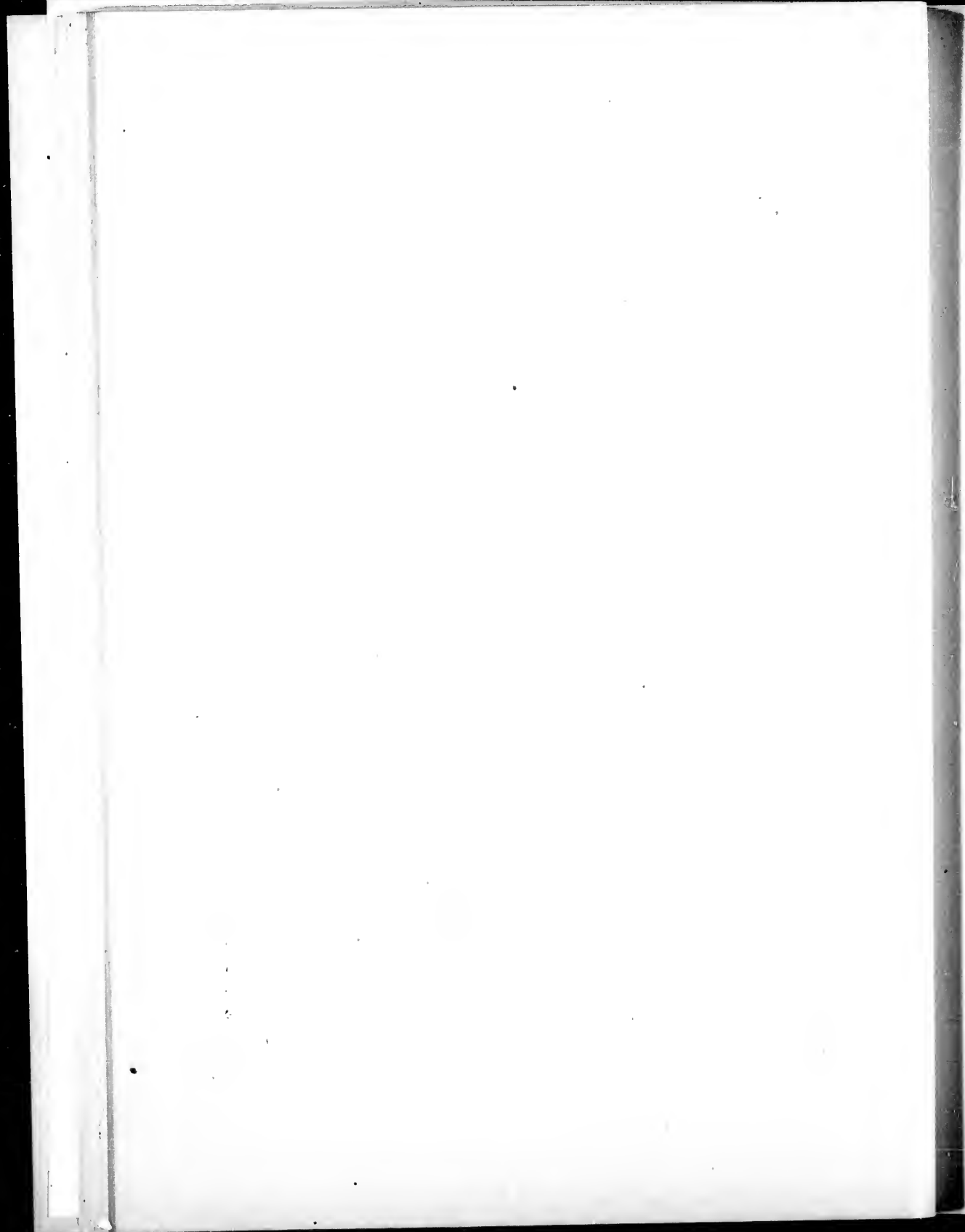
2. The Provincial Acts establish that the extinction of the Endowed Church is not only sought, but openly contemplated. (38 Vic., Cap. 61, Sec. 1 Quebec,) and that the balance of the Fund must ultimately go "to aiding weak charges in the United Church" (38 Vic., Cap. 64, Sec. 1).

3. The Provincial Acts further establish that the Appellant, though a founder of the fund, is now disfranchised, and deprived of the right of administration, that privilege being reserved only for "ministers, or members of the United Church" (38 Vic., Cap. 64, sections 3 and 8, Quebec). 10

But if all these things may be constitutionally done by the Provincial Legislature, the Appellant recognizes that he is without relief from the Courts.

The Appellant therefore seeks in *limine* to impugn the local acts. It is not necessary to repeat at length his contentions in this respect. This has been succinctly done by the Honourable Judge who rendered the judgment. Our jurisprudence furnishes but few, if in fact any, precedent exactly in point. Our Federal Constitution is new and sufficient time has not elapsed to permit important constitutional questions akin to the present to be submitted to the Courts. He can do little more than shortly and clearly state his pre- 20 tentions, and leave the matter to the decision of the Court. In this respect he regrets that he is unable to aid the Court with precedent; but he relies with confidence on the interpretation the Honourable Judges may be pleased to give the Statutes.

If the controversy were simply as to a specific piece of land, or a particular building, having a precise and well defined Provincial *locus*, whose tenure was purely of a local character and unfettered with the consideration of questions of a general character, Appellant would contend without hope. Indeed in this respect Appellant recognizes that the jurisprudence of the Courts, and especially of the Courts of the Province of Ontario, would afford 30 decisions against such pretension. But in this instance, the controversy is over a large sum of money, amounting to about \$500,000, proceeding originally from the bounty of the Crown—the proceeds of the sale of Crown lands belonging to the extended domain of the old Province of Canada. The fund has no Provincial *situs*. It is not Provincial in origin, in application, or in destination. Its only determinable *locus* is the place of meeting for the time of the Board Respondents. This board is not restricted to a Provincial place of meeting. Its meetings are ancillary to those of the Synod, and those of the Synod are nomadic—now in Ontario, and now in Quebec; but not permanently or statedly in either. The creators and beneficiaries of the fund reside in both 40



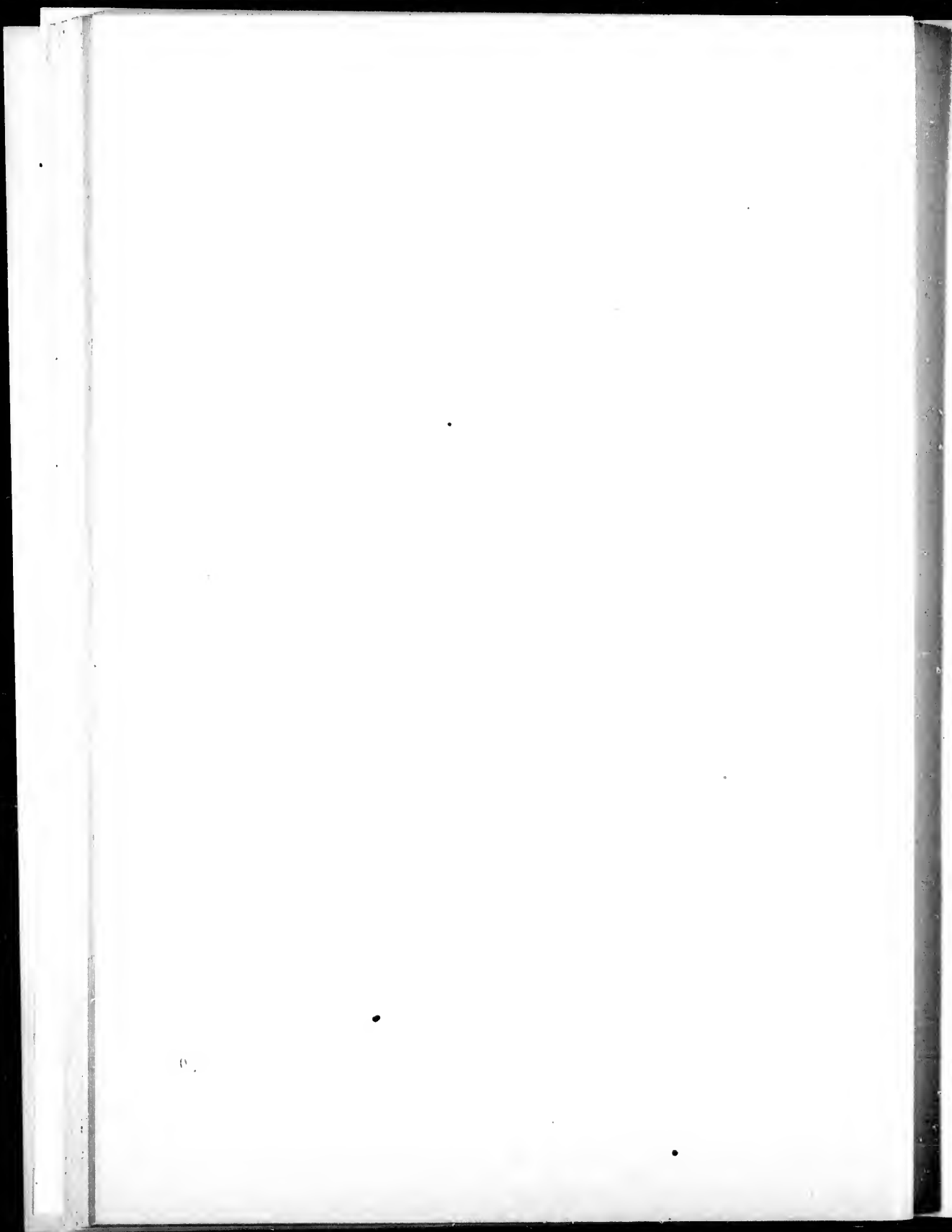
the Provinces of Ontario and Quebec. The Appellant resides in Ontario. His eligibility to election as a member of the Board is not questioned by the Ontario Statutes; but he is disfranchised by the Quebec Act. At a meeting of Synod or Assembly held in Ontario, he is debarred by a Quebec Statute from eligibility for nomination and election as a member of the Board, then meeting in Ontario. Why should his rights in Ontario be invaded by a Quebec Statute?

He is, thus, obviously deprived of one of his most valued rights as a British subject—the right of administering a property to which his claims are conceded, even by the terms of the act impugned.

The British North America Act, sec. 92, declares that “in each Province 10
“the Legislature may exclusively make laws in relation to matters coming
“within the class of subjects next hereinafter enumerated, that is to
say” :— * * * * *

“13. Property and civil rights in the Province.” Appellant contends that the property here in question is not legally and constitutionally property “in the Province” within the meaning of this clause, and that the “civil right” of administration and control of which he has been deprived is not in this instance a “civil right,” provincial in character, but one that he possesses in his quality as a British subject, and of which he can only be deprived by civil death, or the deprivation of his rights as a “British subject” under 20
the laws of the British Empire, (Civil Code of Lower Canada, article 30). Blackstone’s pithy protest against the infringement “of the sacred and inviolable right of private property” and his defence of the “absolute rights which appertain to every Englishman” are in glaring contrast with the legislative vandalism of Quebec. The whole tenor of the section 92 of the British North America Act contemplates application to matters purely Provincial, and not general in character. Sub-section 10 expressly restricts the Provincial legislation to “local works and undertakings,” and prohibits legislation as to “other works and undertakings connecting the Pro-
vince with any other or others of the Provinces, or extending beyond the 30
“limits of the Provinces.” Section 11 restricts the power of incorporation to “Companies with Provincial objects” Whereas Section 16, completing the category of Provincial powers, sums up the bill-of-fare under the significant heading: “and generally all matters of merely local or private nature in the
“Province.” Is there anything of a merely local or private nature in the fund in question, or in the Appellants rights of administration? Further, it is very observable how carefully the Imperial Statute in every instance restricts even these limited powers with the words “in the Province.”

When the Statute (B. N. A. sec., 92, sub-sec. 13) declares that “property 40
“and civil rights in the Province,” should come within the exclusive jurisdiction



of the local Legislature, can it be assumed that all property and civil rights, come within Provincial cognizance? If so, why were the words "in the Province," scrupulously appended? We are aided further in coming to the conclusion that there are "property and civil rights" which do not come under the exclusive control of the Provincial Legislature, by the 91 Section of the same act declaring the powers of the Dominion Parliament.

"It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say:—

* * * * *

"(29.) Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act, assigned exclusively to the Legislatures of the Provinces.

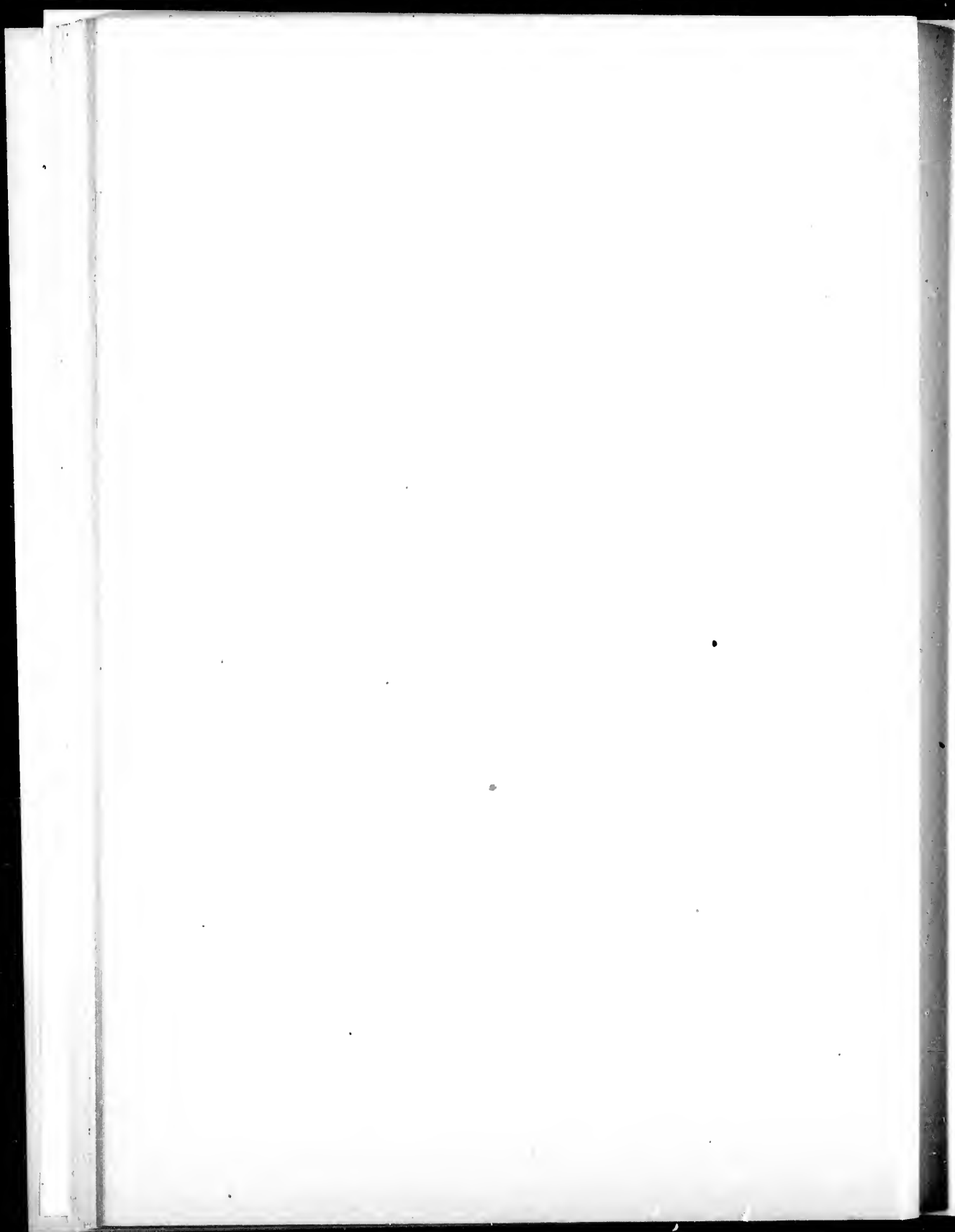
"And any matter coming within any of the classes of subjects enumerated in this Section, shall not be deemed to come within the class of matter of a local or private nature, comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces."

The Dominion Parliament exercises exclusive legislative control in all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces." Is the question of "property and civil rights" *exclusively* assigned to the Provinces? Not by the terms of section 92; whereas sub-section 29 of section 91 expressly gives to the Dominion Parliament power to legislate in "Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act 30 assigned exclusively to the Legislatures of the Provinces."

The powers of the Local Legislatures are restricted—parsimoniously—to certain specific matters; all beyond comes within the domain of Dominion enactment.

The public and ultra-Provincial character, of the origin, administration and application of this fund, it is submitted, takes it out of the category of a "local and private" matter "in the Province," and appropriately assigns it to the legislation of the general Parliament.

The Act impugned is simply an amending Act. It is contended that Act 22 Vic., cap. 66 is still in force. The latter Act is passed in pursuance of a 4)



long series of negotiation and legislation, Imperial and Provincial. It is broad in its character, and is the coping stone of the successful struggle of the Church of Scotland in Canada to secure a portion of the national estate reserved for the benefit of a "Protestant clergy" in Pitt's Constitutional Act, 1791.

The rights for which the Appellant is now contending, were carefully guarded by Imperial and Provincial legislation; and it is respectfully submitted that it is not within reasonable contemplation that they should be divorced from the Federal Parliament, and consigned to the Municipal Legislatures of the Provinces.

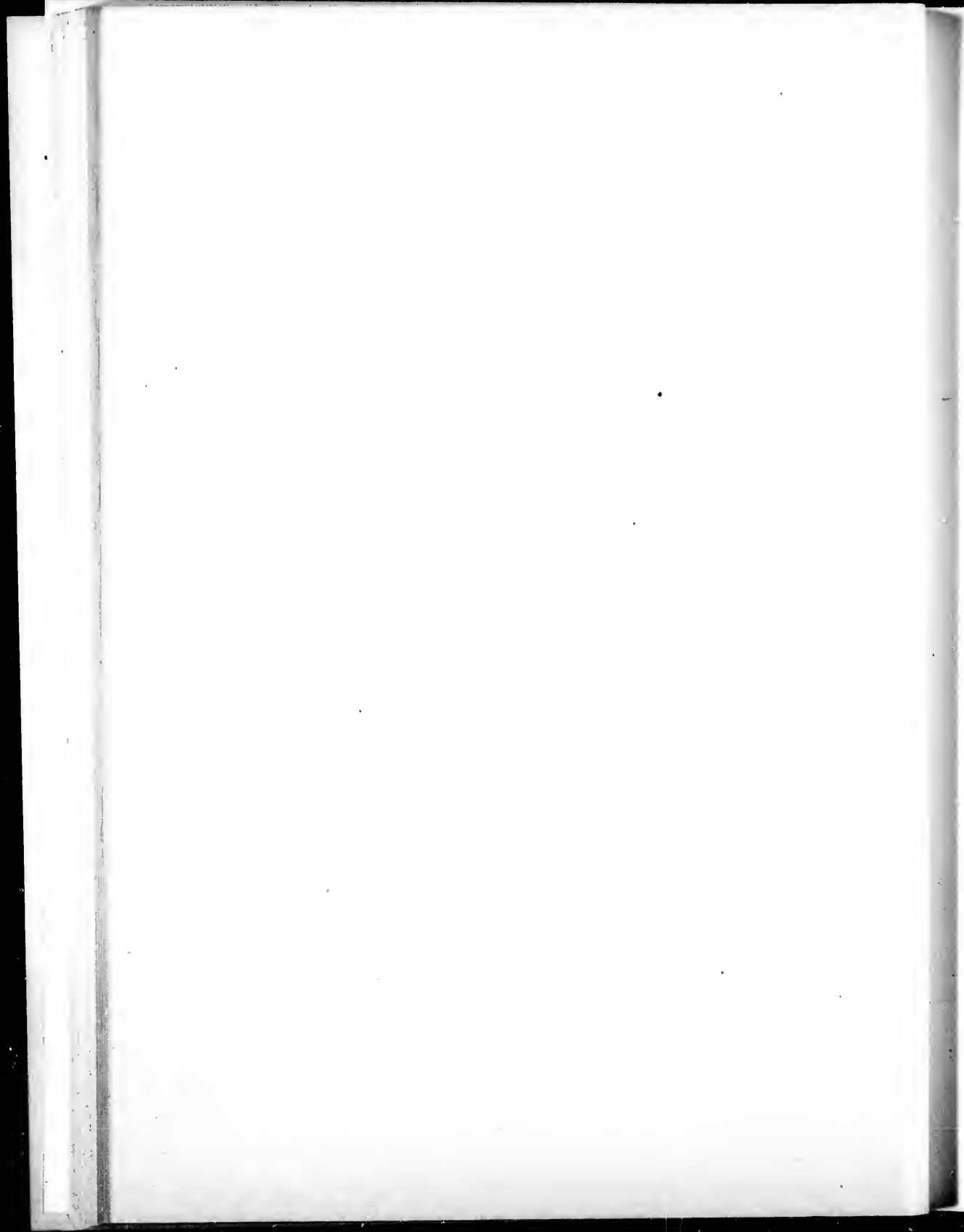
Looking to the origin of the fund—the royal bounty—there would seem to be not only a constitutional necessity, but legislative propriety, in applying for the authority of the Queen and her Parliament, rather than of her deputy's deputy and his Legislature, in all matters affecting its disposition and administration.

The Appellant respectfully submits that the "faith of the Crown," which was by the Statutes, Imperial and Provincial (Canada), pledged to the maintenance of the rights of the Church of Scotland in Canada, has been disregarded and invaded by the Quebec Act, and that his own civil rights have been violently interfered with by a Legislature incompetent to deal with matters coincident in character and extent with the domain of the Crown, in the old Province of Canada.

MONTREAL, 11th March 1880,

MACMASTER, HALL & GREENSHIELDS,

Attorneys for Appellant



IN THE COURT OF QUEEN'S BENCH,

(APPEAL SIDE.)

REVEREND ROBERT DOBIE,

APPELLANT:

VS.

**Board for the Management of the Temporalities
Fund of the Presbyterian Church of Canada
in connection with the Church of Scotland,
et al.,**

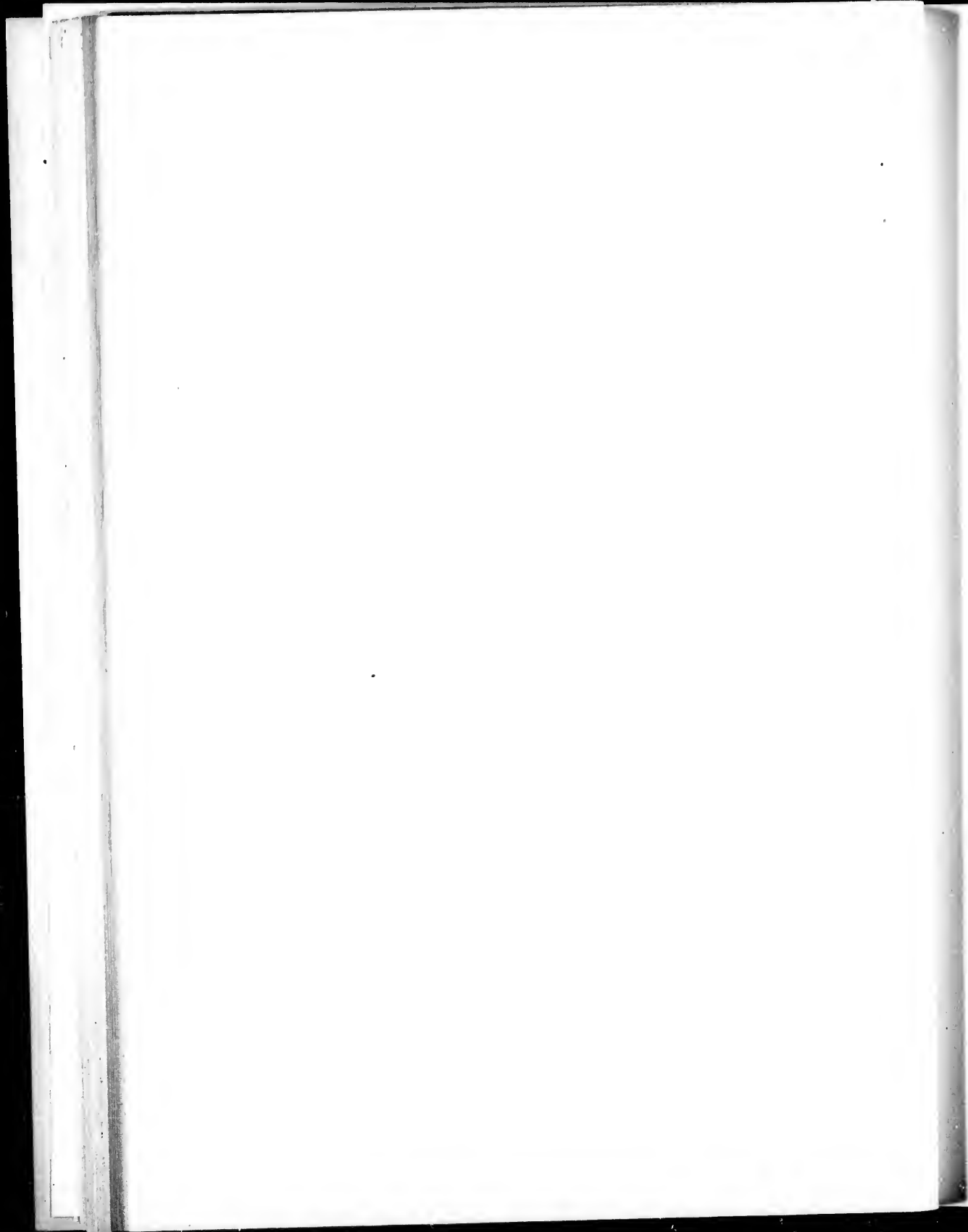
RESPONDENTS.

A P P E N D I X .

PETITION.

To the Honourable the Superior Court for Lower Canada, District of Montreal, or to any one of the Honourable Justices of the said Court sitting in and for the District of Montreal.

The humble Petition of the Reverend Robert Dobie, of Milton, in the County of Halton, in the Province of Ontario, and Dominion of Canada, Minister: personally, and in his qualities hereinafter mentioned, Petitioner, complains of the "Board for the Management of the Temporalities' Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," a body politic and corporate, duly incorporated, and having an office and its principal place of business in the City of Montreal, and of the Reverend Daniel M. Gordon, Bachelor of Divinity, Minister of St. Andrew's Church of Ottawa, Province of Ontario; Reverend John Cook, Doctor of Divinity, Minister of St. Andrew's Church, of Quebec, Province of Quebec; Reverend John Jenkins, Doctor of Divinity, Minister of St. Paul's Church, of Montreal, Province of Quebec; Reverend Gavin Lang, Minister of St. Andrew's Church, of Montreal, Province of Quebec; Sir Hugh Allan, of Ravensraig, Montreal, Province of Quebec; John L. Morris, Esquire, Advocate, of Montreal, Province of Quebec; Robert Dennistoun, Esquire, County Judge of Peterborough, Province of Ontario; William Walker, Esquire, Merchant, of Quebec, Province of Quebec: 20



Reverend John H. Mackerras of Kingston, Province of Ontario; William Darling, Esquire, and Alexander Mitchell, both Merchants of the City of Montreal, aforesaid, Respondents; and avers:

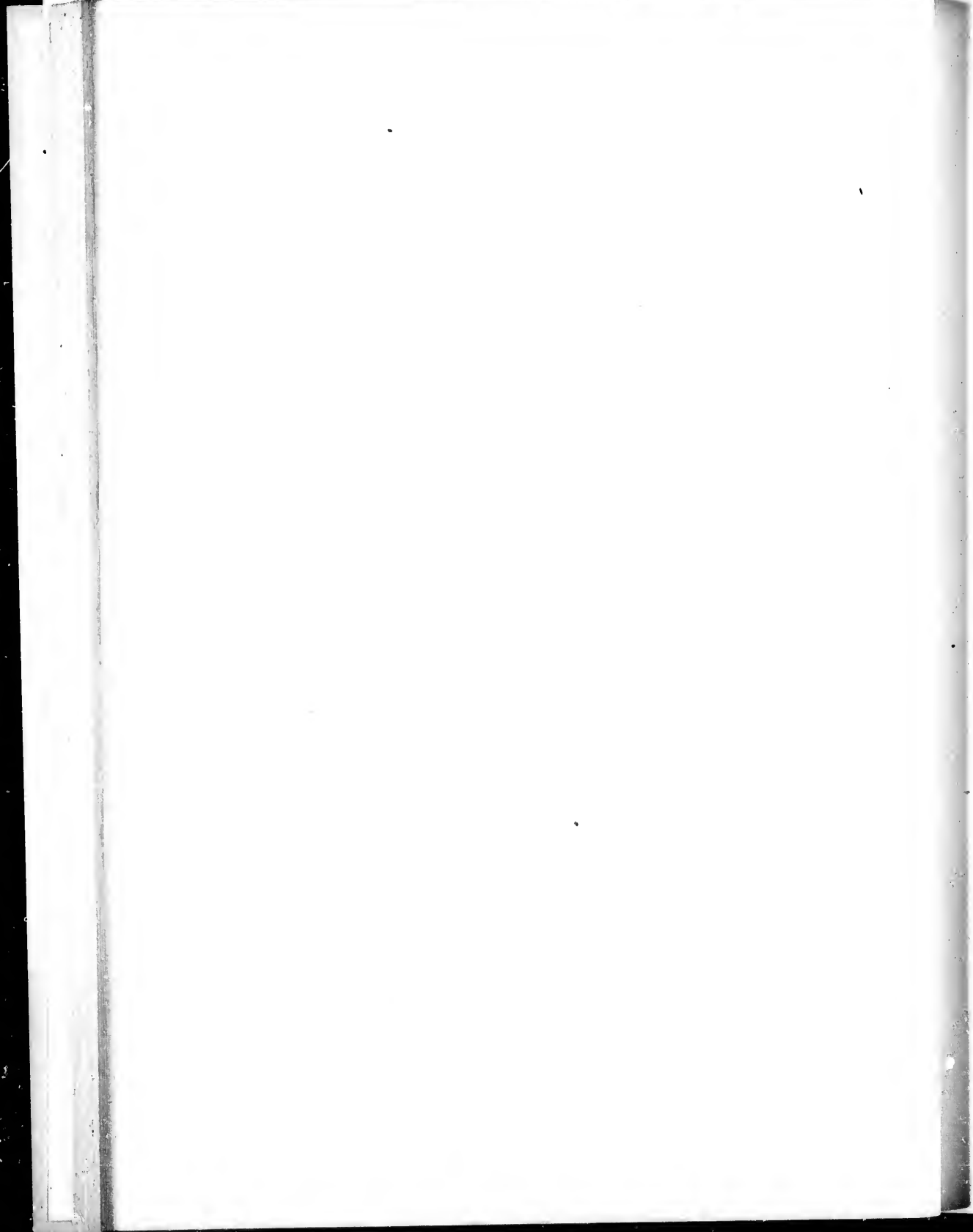
That petitioner is a Minister of the Presbyterian Church of Canada in connection with the Church of Scotland, and a member of the Synod thereof and Minister of the church and congregation designated "St Andrew's Church" in Milton, aforesaid, in connection with and under the ecclesiastical jurisdiction of the Presbyterian Church of Canada, in connection with the Church of Scotland.

That said Petitioner is a Member and Minister of the Church of Scotland, and a protestant Clergyman.

That the said Respondents, the Board for the Management of the Temporalities' Fund of the Presbyterian Church of Canada, in connection with the Church of Scotland, is a body politic and corporate, duly incorporated under a Statute of the heretofore Province of Canada, 22: Vic. Cap. 66; having an office and its principal place of business in the city of Montreal, in the District of Montreal, in the Province of Quebec.

That, in the year eighteen hundred and fifty, Petitioner was duly licensed as a probationer and minister of the Church of Scotland by Law Established in that part of the United Kingdom of Great Britain and Ireland, 20 called Scotland, and Petitioner came to the heretofore Province of Lower Canada, now the Province of Quebec, as an ordained missionary of the said Church of Scotland, in the year eighteen and fifty-two, and thereupon commenced and continued to labour and preach and teach as a missionary and minister of said last mentioned Church continuously in the said city of Montreal, until the year eighteen hundred and fifty-three.

That subsequently, on or about the seventh day of October, eighteen hundred and fifty-three, Petitioner, as a minister and missionary of the said Church of Scotland, removed from the said city of Montreal, and was admitted to and became a member of the Presbytery of Glengarry, in the now Province 30 of Ontario, which said Presbytery was then and still is under the ecclesiastical jurisdiction of the Presbyterian Church of Canada, in connection with the Church of Scotland, and of the Synod of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and the said Petitioner thereupon became a member and a minister of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and as such was duly appointed as minister and incumbent to the charge and pastorate of the Church and congregation in connection therewith, designated the Church and congregation of Osnabruck, situated in the Township of Osnabruck, in the County of Stormont, in the now Province of Ontario, then the section of the Province of 40



Canada, known and designated as Upper Canada, and also as Canada West.

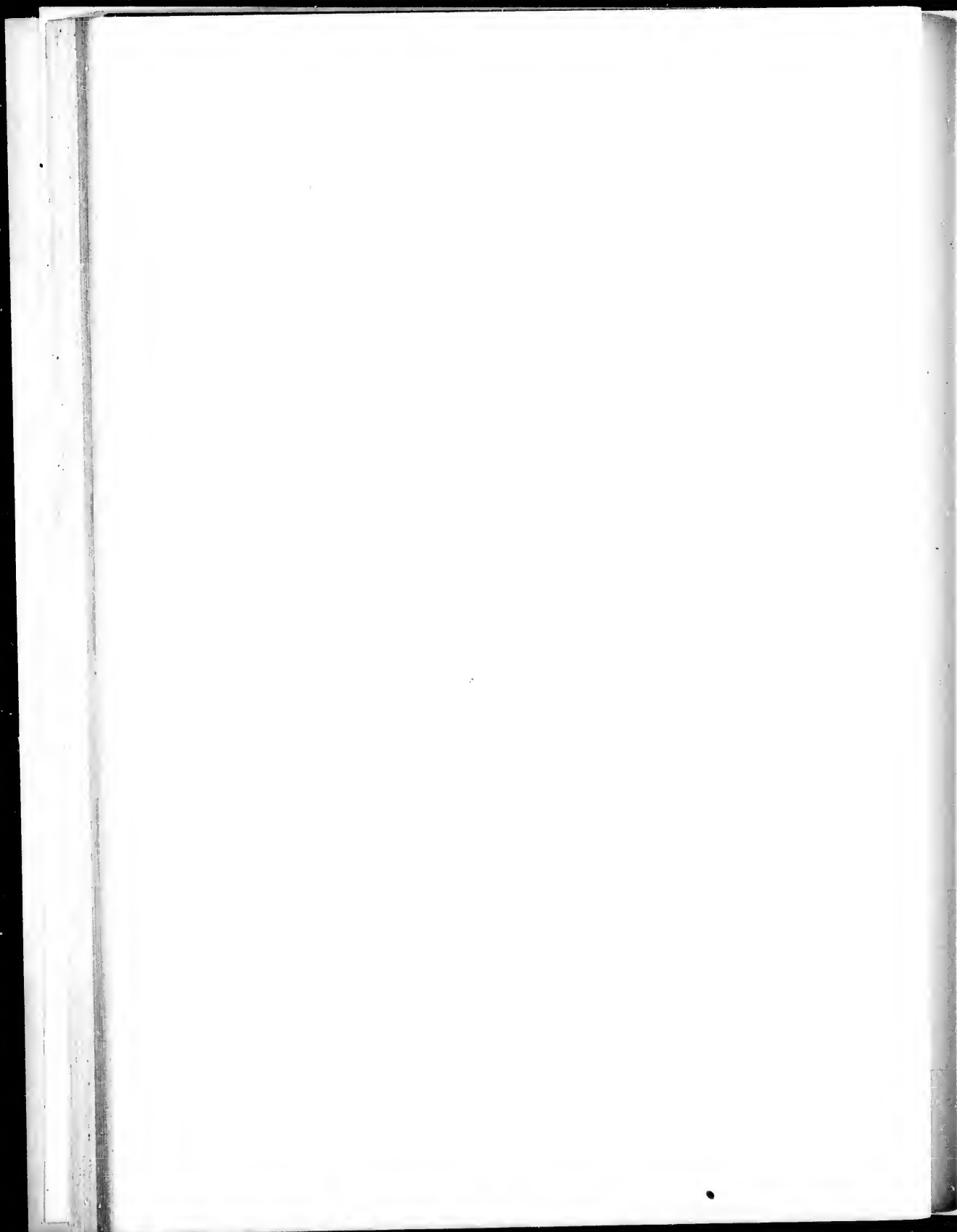
That since said last mentioned date, Petitioner has continued to be and to act as a minister of the said Presbyterian Church of Canada, in connection with the Church of Scotland, within the heretofore Province of Canada and within the Dominion of Canada, and has been at all times, and is now, as such in good standing in the said Church and in the Synod thereof.

That the Petitioner, as a member and minister of the Church of Scotland, and as a member and minister of the Presbyterian Church of Canada, in connection with the Church of Scotland, and as a member of the Synod of the said last mentioned Church, and as a Protestant clergyman, since the date of 10 the Petitioner's induction into the ministry as aforesaid, continuously unto the present time, became and was entitled to a share of and to a right of ownership in and to participate in the proceeds of certain lands of the Crown within the Provinces of Upper and Lower Canada, respectively, and in the rents, profits and emoluments derivable therefrom, as in the Acts and Enactments relating thereto declared

That by Acts of the Imperial Parliament of Great Britain and of the Imperial Parliament, of the United Kingdom of Great Britain and Ireland, the Sovereigns of Great Britain and of the United Kingdom of Great Britain and Ireland, were empowered to authorise the Governor, or Lieutenant Governor, of 20 each of the then Provinces of Upper and Lower Canada, respectively, to make from out of the Lands of the Crown within said Provinces respectively, such allotment and appropriation of Lands as therein mentioned, for the support and maintenance of the Protestant clergy within the said Provinces, and to apply the rents, profits and emoluments which might at any time arise from such Lands, so allotted and appropriated, solely for the maintenance and support of a Protestant clergy within the Province in which the same might be situated and to no other purpose whatever.

That subsequently thereto, in pursuance of said Acts, certain Lands of the Crown were from time to time reserved for the purposes mentioned therein, 30 which said lands were known, and were and are commonly designated by the name of the "Clergy Reserves."

That the Governor, Lieutenant-Governor, and Administrator of the heretofore Provinces of Upper and Lower Canada, respectively, were empowered with the consent of the Executive Council of such Provinces, respectively, and in pursuance of His Majesty's instructions, to sell and convey a part of the said "Clergy Reserves" in each of the said Provinces, and to invest the proceeds of such sales in the Public Funds of the said United Kingdom, and to appropriate the dividends and interests of the moneys so invested for the



support and maintenance of a Protestant clergy within the said Provinces, solely and to no other purpose whatever.

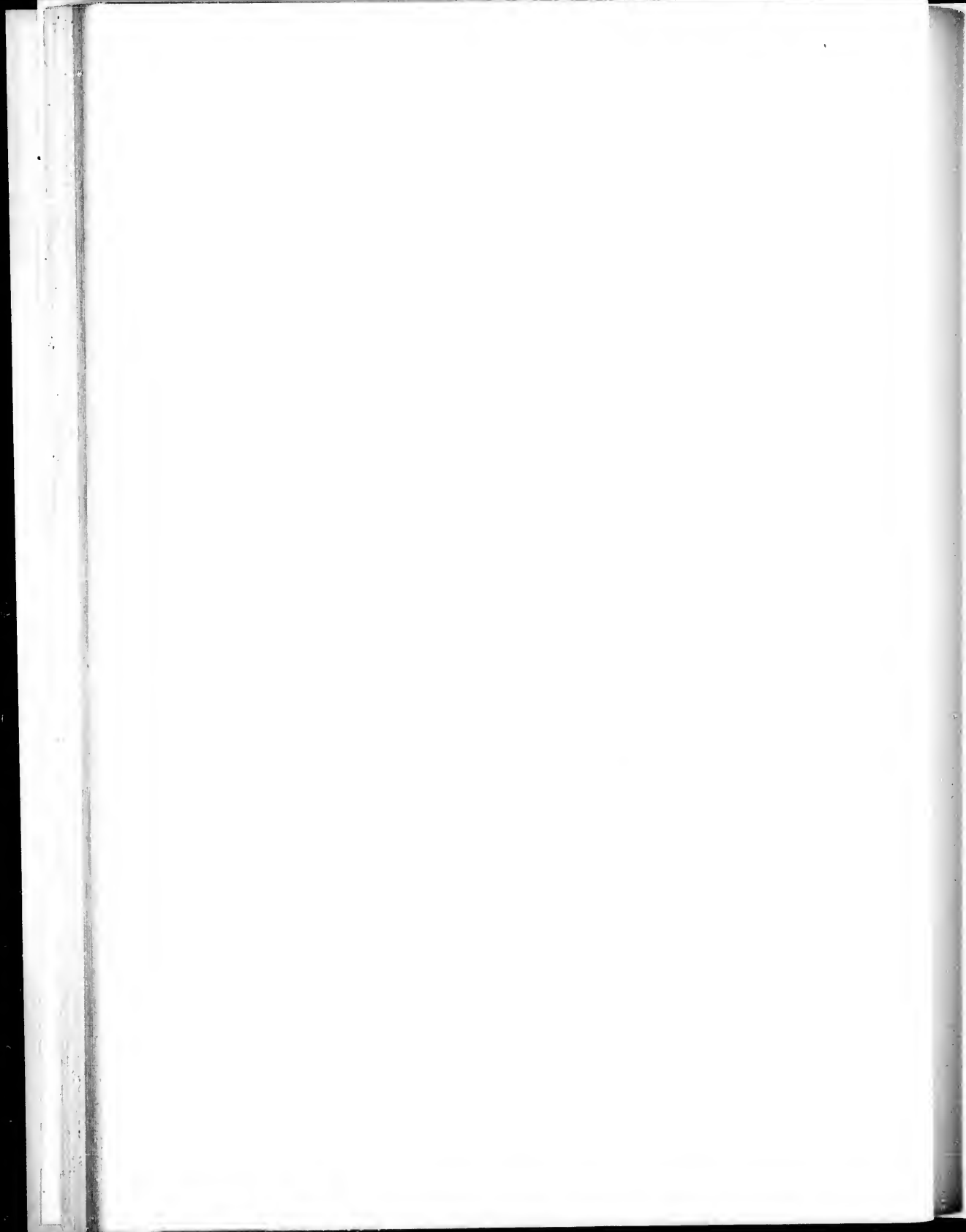
That by another Imperial Act, the sale of the entire Clergy Reserves in the Province of Canada and the investment of the proceeds of such sale, and the distribution of the interests and dividends of such investment, subject to certain conditions, were authorized for the purposes hereinbefore mentioned.

That by another Imperial Act, the Legislature of the heretofore Province of Canada was authorised to dispose of the said Clergy Reserves and to make such investments of the proceeds thereof as to the said Legislature might seem meet, subject to the proviso, that it should not be lawful for the said Legis- 10
lature of the Province of Canada, by any Act or Acts thereof as aforesaid, to annul, suspend or reduce any of the annual Stipends which had, previously thereto, been already assigned and given to the clergy of the Churches of England and Scotland, or to any other religious bodies or denominations of Christians in Canada (to which the faith of the Crown was pledged) during the lives or incumbencies of the parties then receiving the same, or to appropriate or apply to any other purpose, any part of the said proceeds, investments, interests, dividends, rents and profits that might be required for the payment of the stipends and allowances due or accruing to the Ministers and Missionaries of the said churches of England and Scotland during their lives or incum- 20
bencies.

That the Imperial Acts, to wit, the Acts of the Parliament of Great Britain and of the United Kingdom of Great Britain and Ireland hereinbefore referred to, the whole of which are herein invoked, are specifically referred to in the Act passed by the heretofore Province of Canada, in the eighteenth year of the reign of Her Majesty Queen Victoria, entitled, 18 Victoria, Chapter 2.

That under and by virtue of the said last mentioned Act, it was enacted and declared that the moneys arising from the sale and disposal of the said Clergy Reserves, in the said Province of Upper Canada, should continue to form a separate fund, which should be called the "Upper Canada Municipalities' 30
Fund," and that the moneys arising from the sale and disposal of the Clergy Reserves in the said Province of Lower Canada should continue to form a separate fund, which should be called the "Lower Canada Municipalities' Fund," and that after deducting the necessary expenses attending the sales of the said Clergy Reserves, and managing the same and the said Funds, the money forming the said Funds, or that had previously arisen therefrom, should be paid into the hands of the Receiver General of the heretofore Province of Canada, to be by him applied according to the purposes of the said last mentioned Act.

That by virtue of the said last mentioned Act, the annual stipend and 40



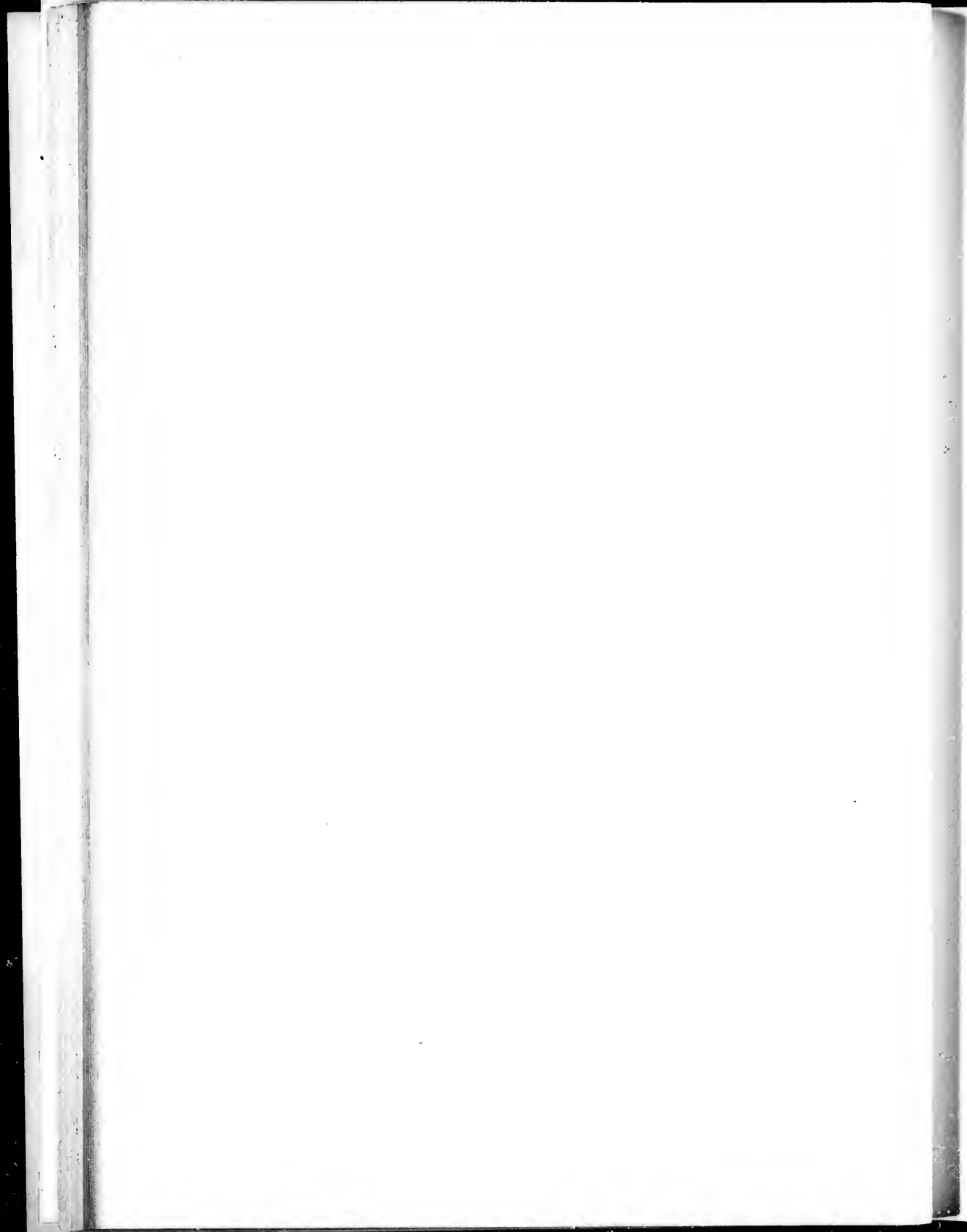
allowance which had been, before the passing of the Act of Parliament of the United Kingdom, in the sixteenth year of Her Majesty's reign, assigned or given to the clergy of the Churches of England and of Scotland, or to any other religious bodies or denominations in either section of the Province, and chargeable under the said Act of Parliament on the Clergy Reserves in such section (and to which the faith of the crown was pledged) should, during the natural lives or incumbencies of the parties, (to wit, the Ministers and Missionaries of the said churches and religious denominations receiving the same at the time of the passing of the said Act, to wit, the Imperial Act 16 Viet.) be a first charge on the Municipalities' Fund for that section of the Province, and should be paid out of the same in preference to all other charges or expenses whatever. 10

That by the Act of the late Province of Canada (18 Vic: Cap. 2) it was enacted that the Governor of the said Province of Canada might, whenever he might deem it expedient, with the consent of the parties and bodies severally interested, commute with the said parties such annual stipends or allowances for the value thereof, to be calculated at the rate of six per centum per annum upon the probable life of each individual, and that such commutation amount should be paid accordingly out of that Municipalities' Fund, upon which such stipend or allowance was made chargeable by the said last mentioned Act. 20

That under and by virtue of the said last mentioned Act, each of the Ministers and Missionaries of the Presbyterian Church of Canada in connection with the Church of Scotland, then receiving benefits within the said Province of Canada from the said Clergy Reserves, or from the proceeds thereof, or from the Municipalities' Funds within the respective sections of the said Province of Canada, was entitled to receive a sum of money as commutation for the value of the annual stipend or allowance payable to him therefrom, and for the interest which he had individually, and as a member of the Presbyterian Church of Canada, in connection with the Church of Scotland, in the said Clergy Reserves and in the said Municipalities' Fund, arising therefrom. 30

That the Synod of Presbyterian Church of Canada, in connection with the Church of Scotland, was duly summoned for the purpose of taking such steps as might be necessary to enable the said Synod and the members thereof to take advantage of the commutation clauses in the said Act of the Legislature of Canada, 18 Viet. Cap. 2, and the said Synod duly met and determined and decreed as set out in the minutes hereinafter cited, in the City of Montreal, on the tenth and eleventh days of January, eighteen hundred and fifty-five.

The following is a copy of the Proceedings of said Synod, extracted 40



from its official records at pages three to eight of the Proceedings of Synod for eighteen hundred and fifty-five.

ACTS AND PROCEEDINGS

OF THE

Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, begun at Montreal the tenth day of January, and concluded the eleventh day of January, eighteen hundred and fifty-five years.

SESSION XXVI.

10

Diet 1.

At Montreal, and within St. Andrew's Church there; Wednesday, the tenth day of January, one thousand eight hundred and fifty-five years.

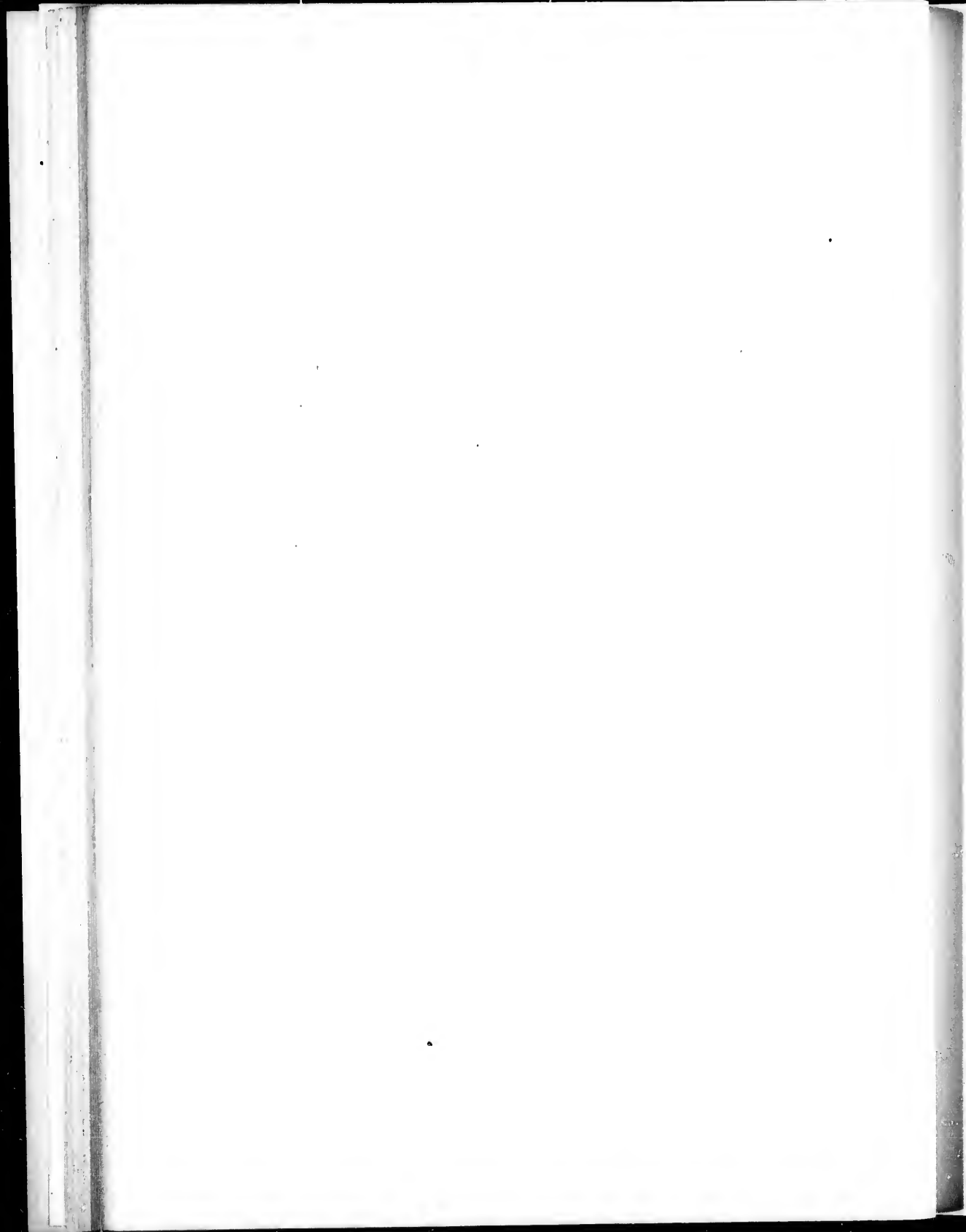
The which day, after sermon by the Reverend Dr. Mathieson, from Psalm XLVIII. 12, 13: "Walk about Zion and go round about her, tell the towers thereof; mark ye well her bulwarks, consider her palaces, that ye may tell it to the generation following," the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, met, *pro re nata*, and was constituted with prayer by the Moderator, the Reverend James Williamson A. M. Sclerunt: Mr. James Williamson, *Moderator*; Mr. John McMurchy, Mr. John Barclay, Dr. Alexander Mathieson, Mr. James Anderson, Mr. James C. Muir, Dr. John Cook, Mr. William Simpson, Mr. Alexander Wallace, Dr. Robert McGill, Mr. James T. Paul, Mr. Thomas Haig, Mr. Archibald H. Milligan, Mr. John McDonald, Mr. John McKenzie, Mr. Hugh Urquhart, Mr. John McLaurin, Mr. Thomas McPherson, Mr. Eneas McLean, Mr. Donald Munro, Mr. Thomas Scott, Mr. Andrew Bell, Mr. Robert Dobie and Mr. John White, *Ministers*; together with Mr. Alexander Morris, Mr. John Thompson, Mr. Thomas A. Gibson, and the Hon. Thomas McKay, *Elders*.

The Moderator laid before the Synod a Requisition, which had been addressed to him, calling on him to summon a meeting of the Synod; also a copy of his circular calling the present meeting. The same were read, as follows:

QUEBEC, 11th Dec., 1854.

Reverend and Dear Sir,

I beg to intimate to you that it is the opinion of the Committee of Synod, appointed to watch the progress of Legislation in respect of the Clergy Reserves, that the Bill introduced by Government, having now passed both Houses of 40



the Legislature, it is desirable that a meeting of Synod should be called as early as possible for the purpose of taking such steps as may be necessary to take advantage of the commutation clause in said Bill, and in name of the Committee I beg very respectfully to request that you will call such meeting at the time and place you think most convenient.

I am, Reverend and Dear Sir,

Your faithful servant,

JOHN COOK.

We, the undersigned, hereby concur in the necessity of calling a special meeting of Synod at the earliest period the forms of the Church will admit. 10

ALEX. MATHIESON.

ROBERT MCGILL.

The Reverend,

The Moderator of the Synod of the

Presbyterian Church of Canada,

in connection with the Church of Scotland

KINGSTON, 20th December, 1854.

Reverend and Dear Sir,—

In compliance with a request addressed to me by the Convener and other members of the Committee appointed to watch over the progress of 20 legislation in respect to the Clergy Reserves, to call a special meeting of Synod as early as possible for the purpose of taking such steps as may be necessary to take advantage of the Commutation clause in the Act which has lately been passed by the Provincial Parliament, I have now to intimate to you that a Special Meeting of Synod will be held in St. Andrew's Church, Montreal, on 10th January, 1855, being the second Wednesday of the month at half-past six p.m.

I am, Reverend and Dear Sir,

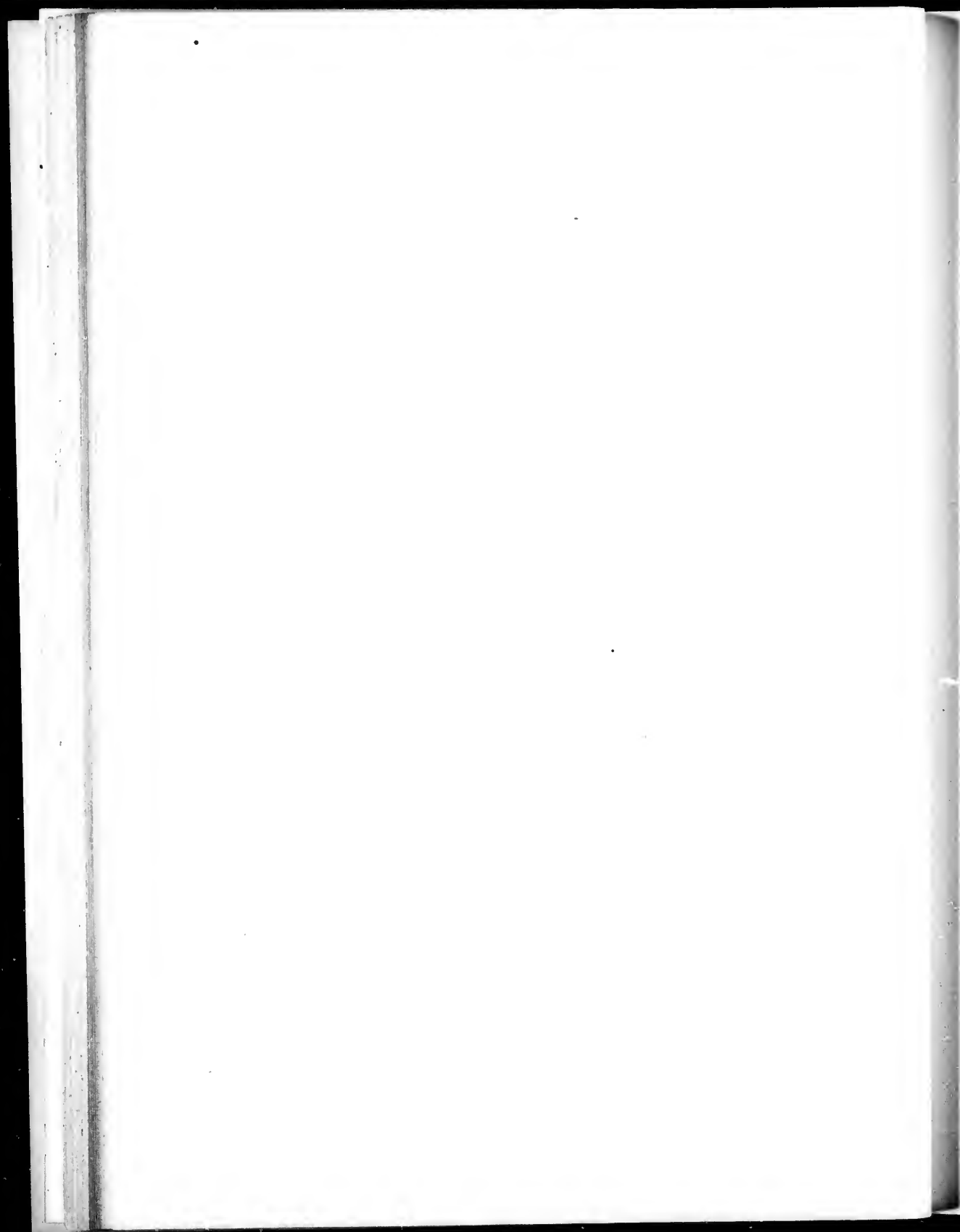
Yours faithfully,

JAMES WILLIAMSON, *Moderator.* 30

P.S.—It has been thought by several of my brethren, with whom I have conferred on the subject, and I concur in the opinion, that in the circumstances of the case, Montreal is, on the whole, the most suitable place for the meeting of Synod on this occasion.

The Synod unanimously agreed to approve the Moderator's conduct in calling this meeting.

The Synod then called for the report of the Committee appointed to watch over the interests of the Church in regard to the Clergy Reserves, which was given in and read by Dr. Cook, the Convener, stating that the Bill for the Secularization of the Clergy Reserves, which had been introduced into Parlia- 40



ment by the Government, had been carried in both Houses, and assented to by the Governor-General:—that it contained a clause securing to all ministers settled previous to the 9th May, 1853, the date of the passage of the Imperial Act, payment of their salaries from the Clergy Reserve Fund during their lives or incumbencies, and at the same time authorizing the Government to commute the claims of incumbents, with the consent of the parties and bodies severally interested, and that the Committee, for reasons which they stated, had not considered it expedient to interfere in any way with the passing of the said Bill, but, feeling assured from many considerations that it would be for the benefit of the Church to take advantage of the Commutation clause of the Act, the Committee had requested the Moderator to call a *pro re nata* meeting of Synod to take the matter into consideration, and make the necessary arrangements; and the Committee further, and at great length, recommended that the Synod should agree to commutation. 10

The Synod approved of the conduct of the Committee, and after some discussion, agreed to defer the further consideration of the report until tomorrow, and instructed the aforesaid Committee to draft resolutions to be then laid before the Synod for their consideration as to their action in the matter.

The Synod agreed to spend a portion of time in the morning in devotional exercises. 20

The Synod then adjourned, to meet again at half-past eleven o'clock tomorrow forenoon, and was closed with prayer.

Diet II.

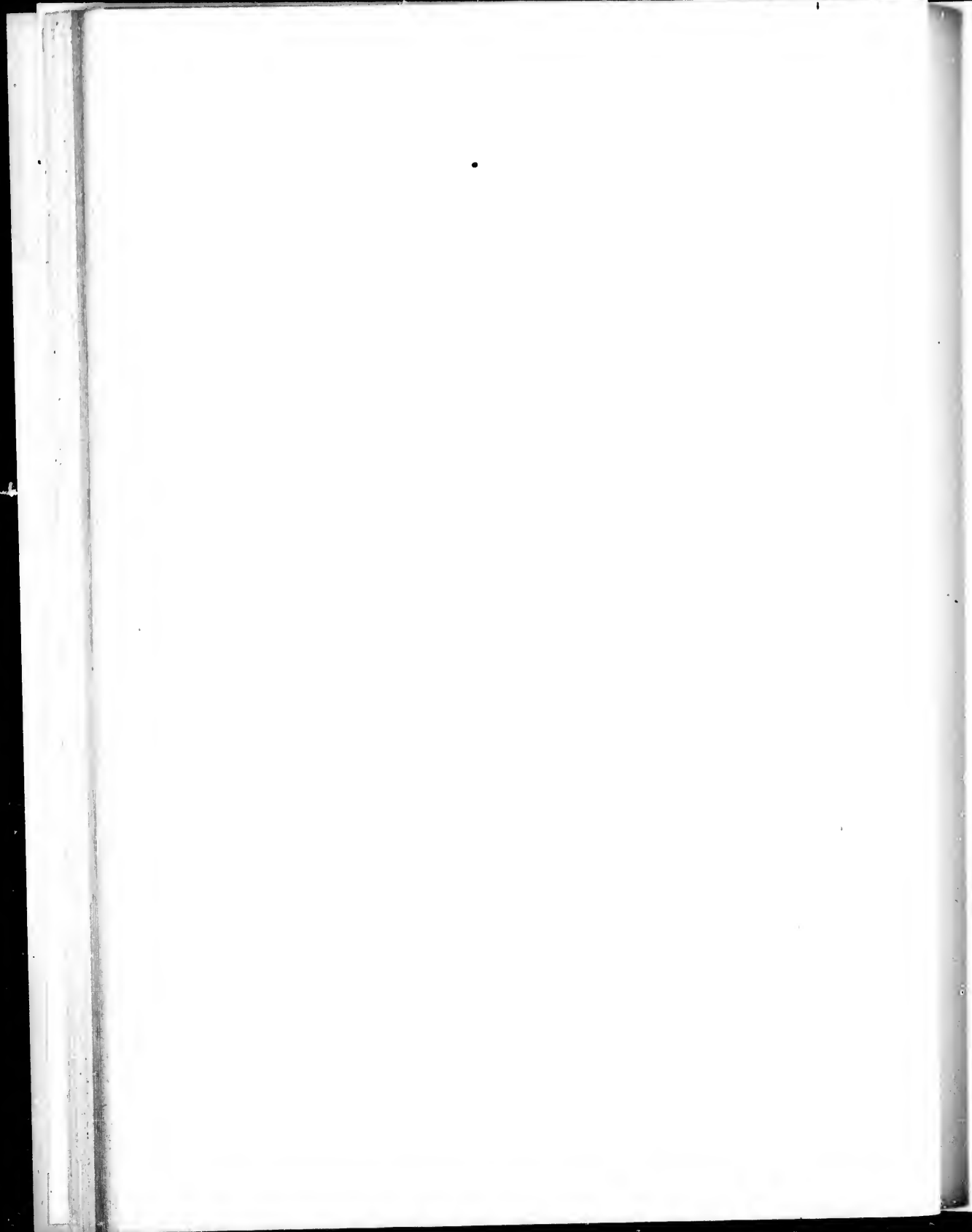
At Montreal, and within St. Andrew's Church there; Thursday, the eleventh day of January, one thousand eight hundred and fifty-five years:—

The which day, the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, met, according to adjournment, and was constituted with prayer. 30

On the call of the Moderator, the Rev. Dr. Cook conducted the devotional exercises of the Synod in praise, reading the scriptures, and prayer.

The minutes of yesterday were read and approved.

The clerk stated to the Synod, that he had received, a considerable time ago, a letter from the Inspector General's Department, of the Government, requesting him to make a return, to be laid before Parliament, of all persons connected with this Church, "who at the date of the passing of the Act of the Imperial Parliament, to make provision concerning the Clergy Reserves of this Province, viz: 9th May, 1853, were receiving any income or allowance from 40

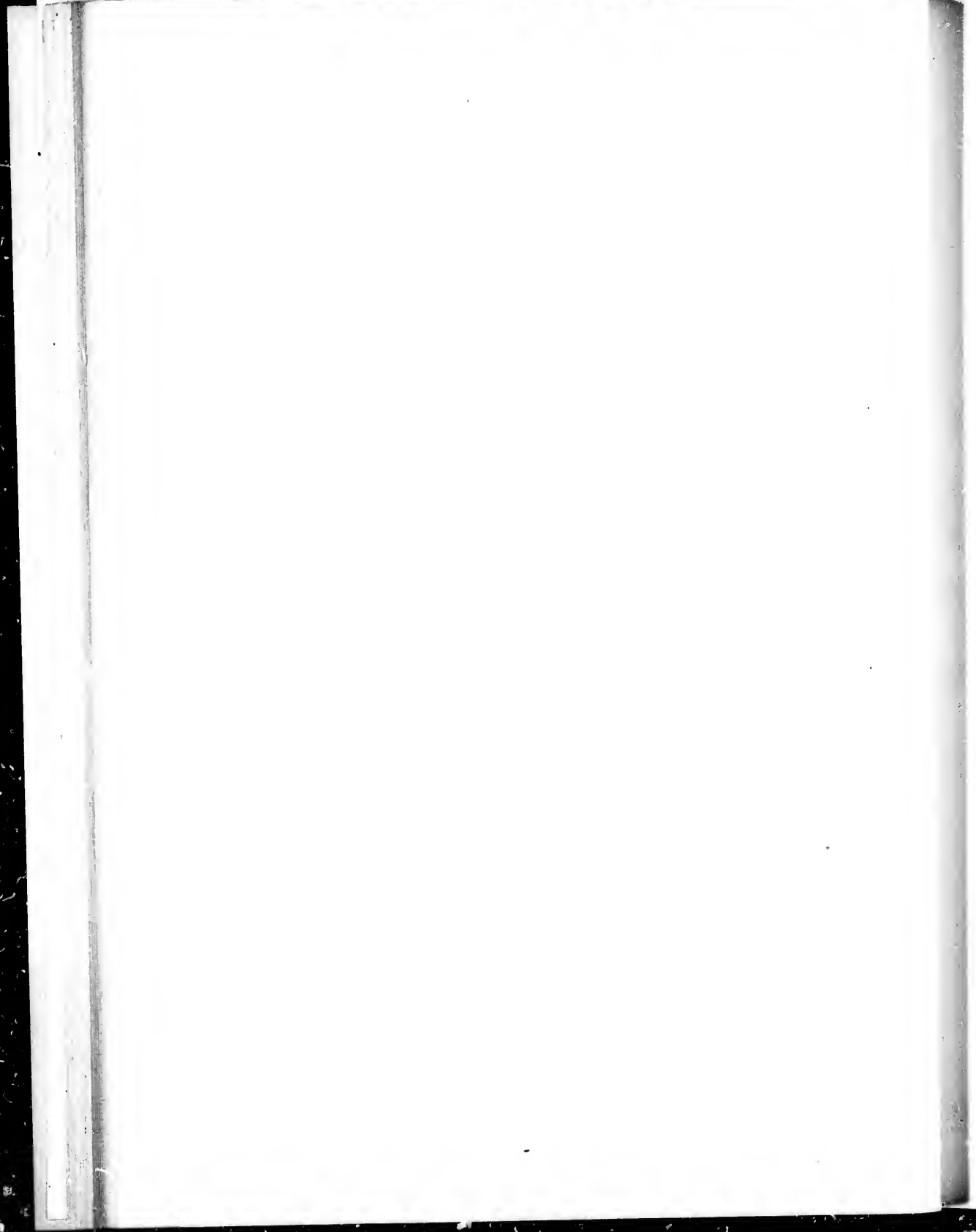


such portion of the proceeds of the Clergy Reserves as had been granted to the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, specifying the names and ages of such persons, the annual amounts of their allowance, and through whom it is paid; " and that he had immediately issued a circular to the several parties, requesting a statement of their ages, to be returned to him,—Mr. Allan, of Montreal, having kindly offered to furnish him with some of the items;—but that he had been as yet unable to make the required return, in consequence of a considerable number of the ministers having neglected to make returns to him, although written to a second time on the subject; and that he had also, at the suggestion of some of the Clergy 10 Reserve Commissioners, written to all of the parties whose names were on the Roll for salaries. The Synod, while approving of the conduct of the clerk, directed him to use all diligence in procuring as soon as possible, the whole of the required information, and in transmitting to the Government the list of incumbents up to 9th May, 1853, to furnish, at the same time, the names of those since put upon the roll as having, in the estimation of the Synod, claims upon the Fund.

The Committee, appointed yesterday to arrange measures for the consideration of the Synod, reported certain resolutions which the Synod proceeded to discuss at length. 20

The Synod, having heard the report of the committee appointed by the Synod to watch over the interests of the Church, in so 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 authorised, 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,— 30 Resolved,

" 1st. 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 Mon-
 " treal, 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 40



" 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 10
 " 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.

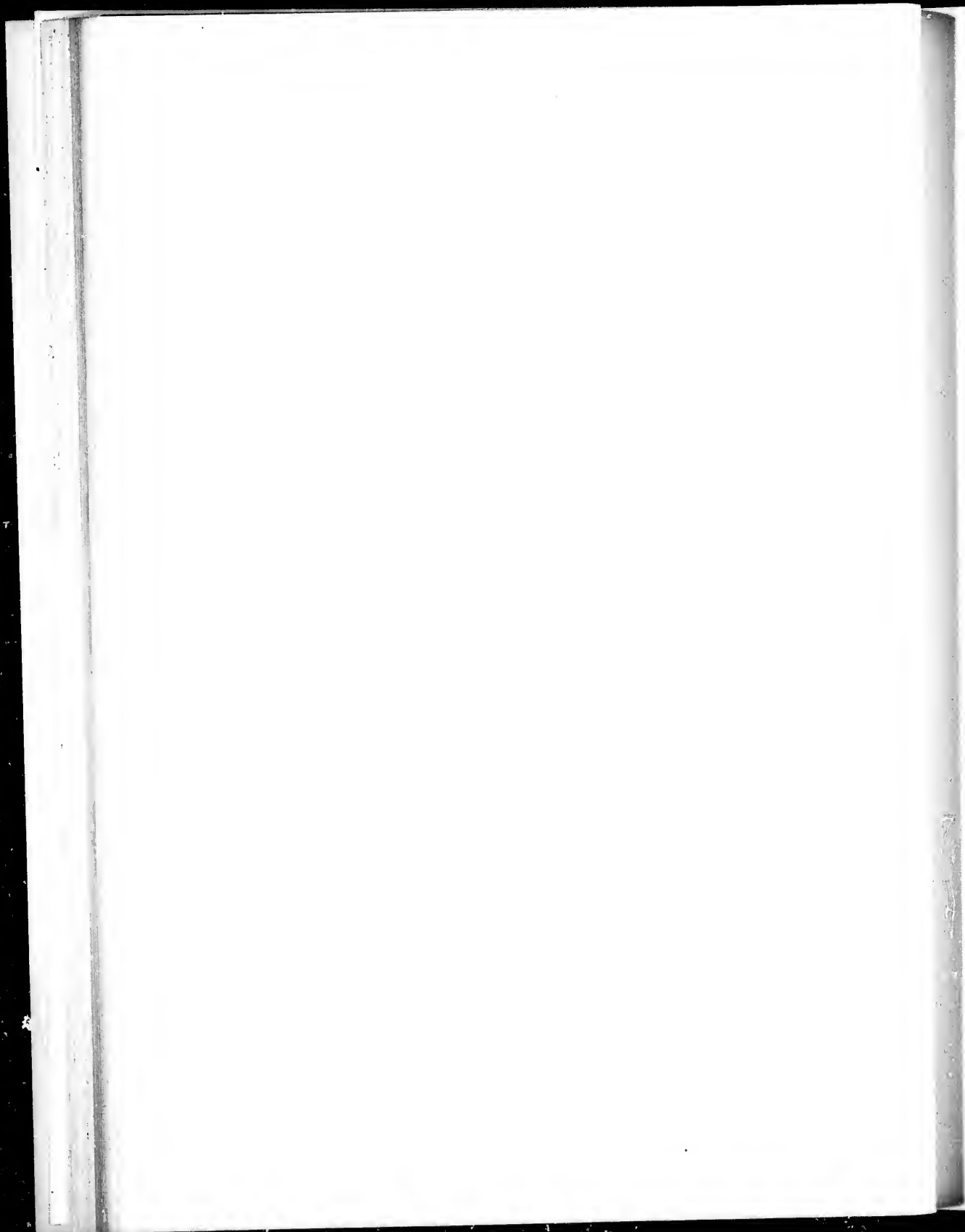
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" 2nd. That so soon as said commutation shall have been decided upon,
 " and agreed to by the said Commissioners, the Rev. John Cook, D.D., of
 " Quebec, shall be fully empowered and authorised, and this Synod hereby
 " delegate to the said Rev. Dr. 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 and Deed, as
 " evidencing their assent thereto.

" 3rd. That all Ministers be, and they are hereby enjoined and entreated,
 " (as to a measure by which, under Providence, not only their own present 30
 " 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.

" 4th. 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 "

The Synod ordered the minutes of this meeting to be printed, and a copy
 sent to each Minister as soon as possible, and they further instructed their 40

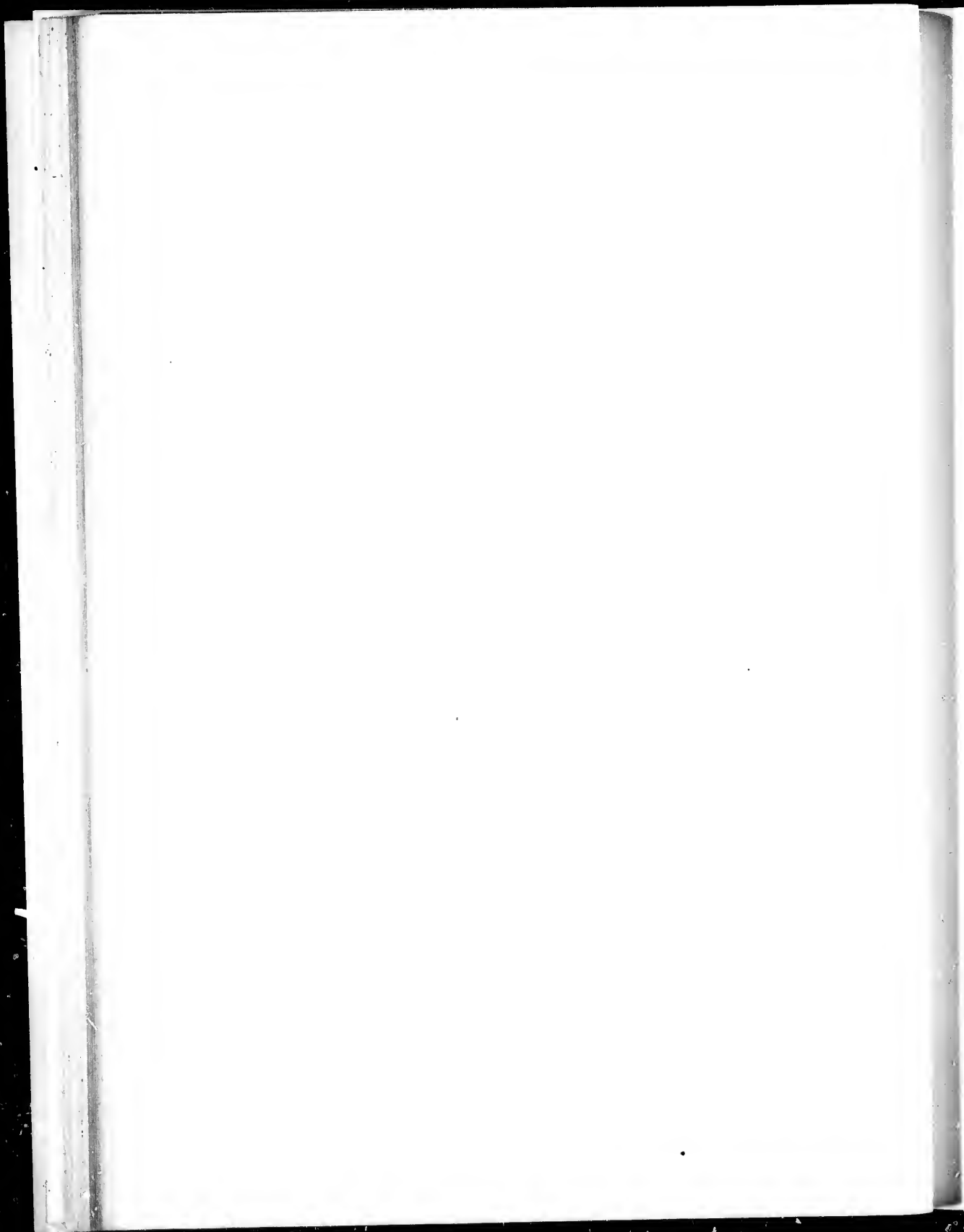


Commissioners, named above, to address a circular to the several ministers, showing them the importance of commuting upon the plan agreed to at this meeting, and giving them full information on the subject.

The Synod requested their Moderator to convey to the Hon. John Hamilton, of Kingston, and the Hon. Thomas McKay, of Ottawa, the thanks of this Synod for the assistance afforded by them to the Clergy Reserve Committee of this Synod, when lately met at Quebec, and for their exertions on behalf of the interests of this Church, especially during the present session of Parliament.

The business for which the special meeting of Synod had been called, 10 having been finished, the Reverend Dr. Mathieson stated "that he availed himself of the opportunity which this special meeting of Synod afforded, to direct the attention of the congregations within the bounds to the call made by the General Assembly of the Church of Scotland, and generously responded to by every parish in the land to contribute to the National Patriotic Fund for the relief of the wives and children of the brave men who have been disabled or found a soldier's grave in fighting for the honor of their country, and the liberty and (it is to be hoped), the ultimate peace of the world, and the advancement of the Redeemer's Kingdom; and, also, to the circumstances, that several of the congregations in connection with this Synod have already contributed or were 20 anxious to contribute their subscriptions through the channel thus afforded them, to the Patriotic Fund." Whereupon Dr. Mathieson moved to resolve, and it was resolved accordingly:

"That this Synod deeply sympathise with Her Majesty and her people in the great struggle, in which she has been constrained to engage, for the liberty and independance of nations. Sympathising also with the numerous families, whose hearts, in the inscrutable Providence of God, have been filled with sorrow for the loss of their natural protectors, or their friends who have fallen in the contest, and being deeply sensible of, and grateful for, the inestimable blessings, both civil and religious, which this colony enjoys, under Her 30 Majesty's gracious sway, and its connection with the parent State, this Synod strongly recommend to all the congregations within their bounds, not only as an expression of their gratitude and sympathy, but as a solemn duty, at the earliest convenient season, and in the way that to the Ministers and Elders seems best, to make contributions to the National Patriotic Fund:—and that Hew Ramsey, Esq., Montreal, be appointed to receive from the respective congregations their several contributions, and transmit them to William Young, Esquire, W. S., Edinburgh, who has been appointed to receive the contributions of the Church."



The Synod was then closed with prayer.

That the said proceedings of the said Synod are valid and binding; that the terms and conditions thereby established and declared, form the basis for the distribution and application of the said Fund, hereinbefore and hereinafter referred to.

That the sole business submitted at the meeting of the said Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, at the diets thereof, held on the tenth and eleventh days of January, eighteen hundred and fifty-five, was the consideration of giving force and effect to the clause permitting the Governor of the then Province of Canada in Council to 10 commute the claims of Ministers, Incumbents and Missionaries upon the Clergy Reserves Funds, with the consent of the bodies and parties severally interested as set out in the minutes hereinbefore recited.

That the said Synod, on its own behalf and on behalf of its members, determined at its said meeting to take advantage of the said commutation clause, and appointed a committee, styled Commissioners, to give effect to the said determination, and the said Synod ordered said minutes to be printed, and instructed said Committee to send a copy thereof to each minister entitled to commute.

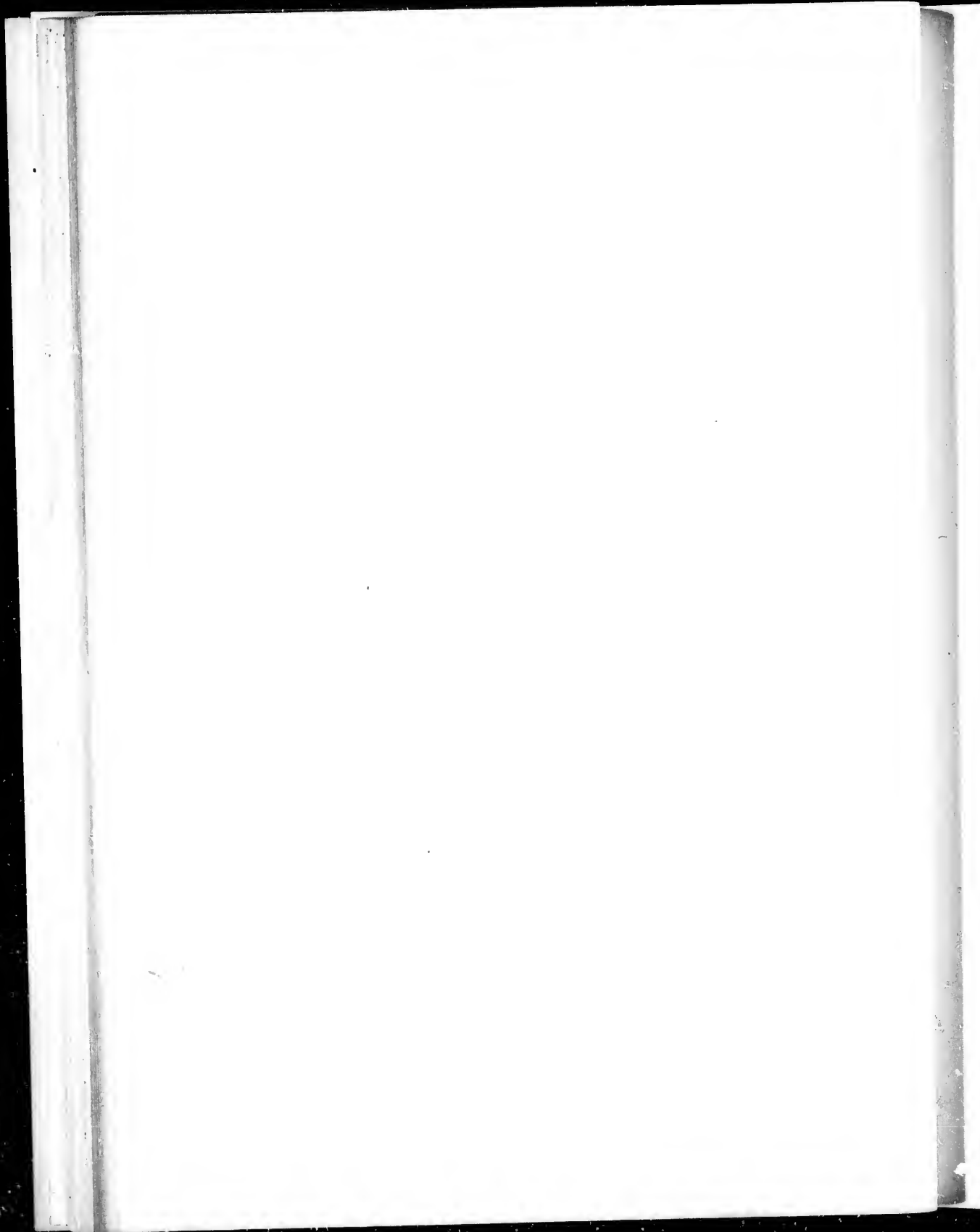
That the said Reverend John Cook, Doctor of Divinity, was appointed 20 convener and Chairman of said Committee, and as such, was authorized to, and did, address a circular to all the then Ministers and Incumbents of the said Church entitled to benefits from the said Funds, among others to the Petitioner, which circular was in the following words:—

“Quebec, 24th February, 1855.

“Rev. Sir.

“I am instructed by the Commutation Committee appointed at the last
“meeting of Synod, to enclose to you two Powers of Attorney, approved by
“the Government and by the Synod, which it is necessary you should sign and
“forward to Hugh Allan, Esq., Montreal, without delay,—in order to our 30
“obtaining a commutation of Clergy Reserve money, which will be advan-
“tagious to the Church. All the Ministers present at the meeting of Synod
“in January, agreed to commute, and the Ministers of the Church of England
“have unanimously signed similar powers to those now forwarded to you.

“The fundamental conditions contained in the minutes of the Synod,
“held at Montreal, on the 11th January, 1855, which are alluded to in one of
“these powers, and which by the terms of the said minutes, 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,” are first, “That the interest of 40



“ the Fund shall be devoted in the first instance, to the payment of salaries of
 “ £112 10s. each,” to such Ministers, “and that the next claim on the Fund
 “ shall be that of Ministers on the Roll of the Synod, and who have been put
 “ on the Synod’s Roll since the 9th May 1853:” and, second, “ 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 shall
 “ cease to have any claim, when they cease to be Ministers in connection with
 “ the said Church.”

“ Of these conditions it is presumed you will approve, and I have the
 “ satisfaction to inform you, that on the terms proposed by the Government, 10
 “ and to which the Commutation Committee are prepared to agree, as soon as
 “ these powers are received from the Ministers of the Church, it will be certainly
 “ possible to comply with the first condition, in so far as respects Ministers
 “ settled before the 9th May, 1853, and, preserving the capital, to secure to
 “ them, from the interest, salaries of £112 10s. for life, or incumbency. And
 “ it is, therefore, earnestly entreated that there may be no hesitation or delay
 “ in signing and forwarding these powers.

“ I am further instructed to call your attention to the following Resolu-
 “ tion, passed unanimously, at the last meeting of Synod:—

“ That all ministers be, and they are hereby enjoined and entreated, (as 20
 “ to a measure, by which, under Providence, not only their own private
 “ interests will be secured, but permanent endowment for the maintenance
 “ and extension of Religious ordinances in the Church,) to grant such authority
 “ as is necessary to effect a commutation, in the fullest manner, thankful to
 “ Almighty God, that a way so easy, is open to them for conferring so impor-
 “ tant a benefit on the Church. Not doubting that you will concur in the
 “ views of the Synod.

“ I am,

“ Rev’d. Sir,

“ Your obedient Servant,

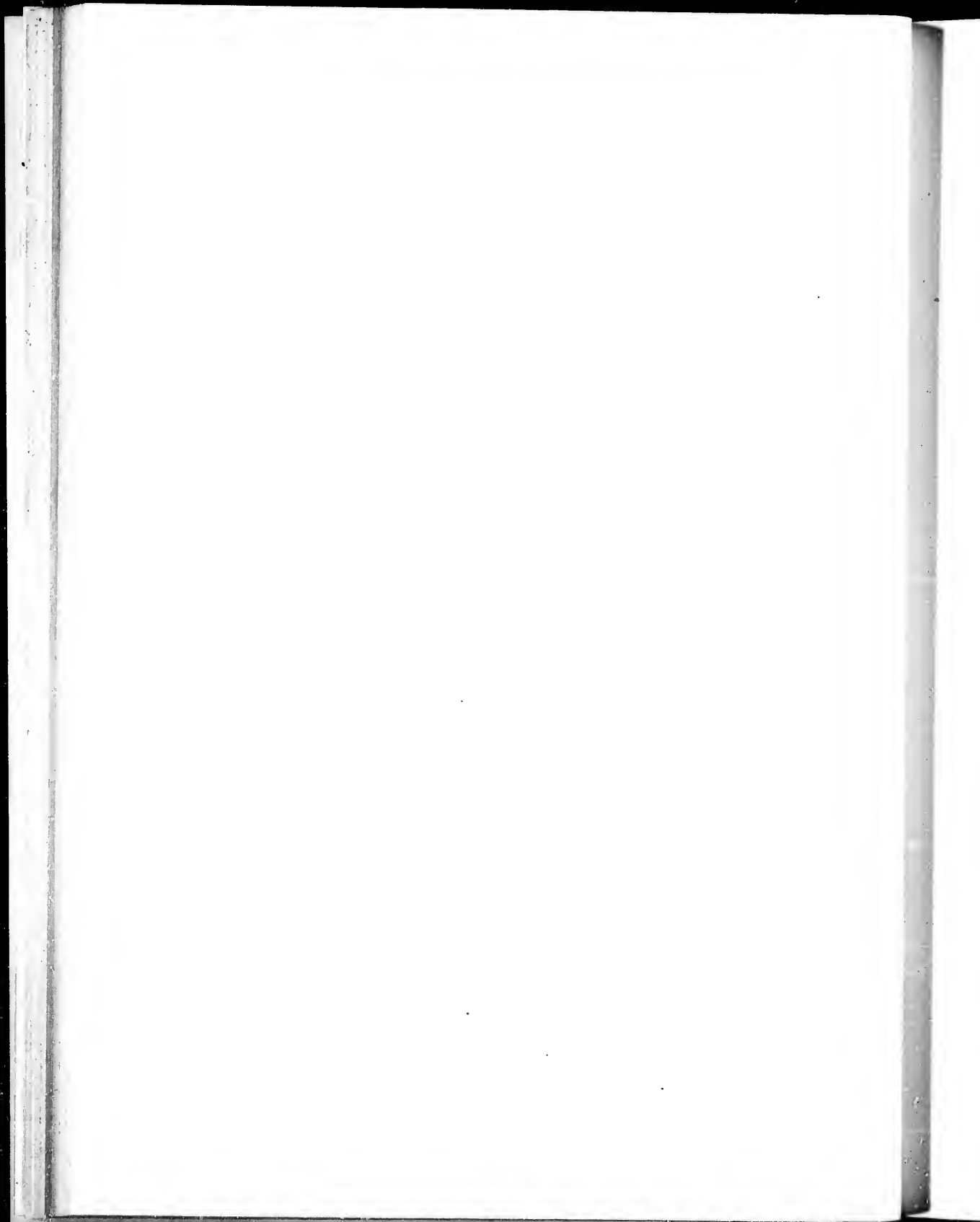
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“ (Signed)”

JOHN COOK, *Convener.*”

“ To the Reverend.”—

That Petitioner and other Ministers and Incumbents of the said Presby-
 terian Church of Canada, in connection with the Church of Scotland, and the
 Missionaries of the said Church of Scotland, renounced their individual rights
 in the said Fund, and authorised the said John Cook to act for each of them
 and in their behalf, for and by reason of the terms and conditions of the
 resolutions passed at the said meeting of Synod on the tenth and eleventh
 January, eighteen hundred fifty-five, and more especially upon the considera-
 tion that the Fund to be created thereby would be a permanent endowment 40

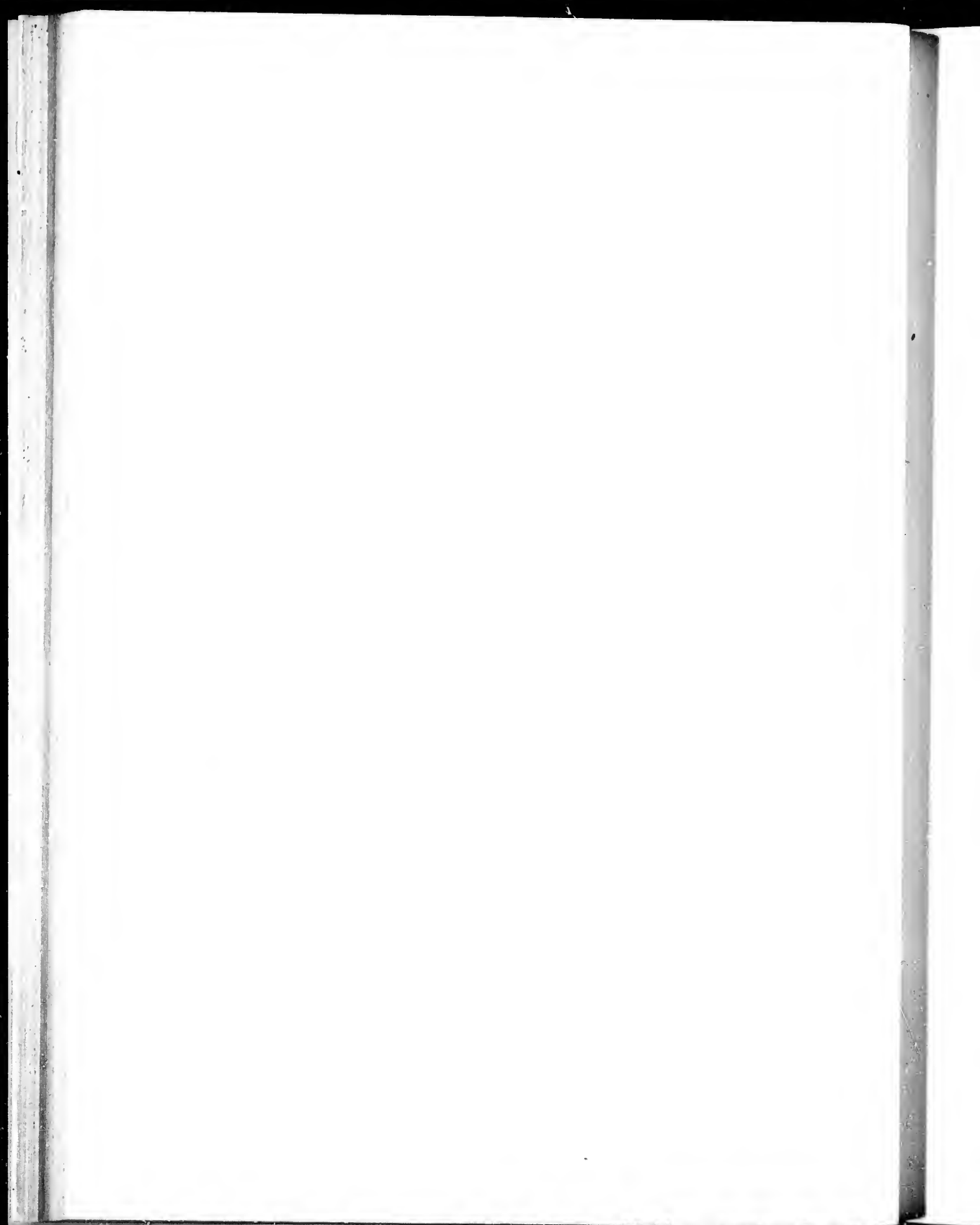


for the Presbyterian Church of Canada, in connection with the Church of Scotland.

That no change could be made in the distribution and application of the interest and revenues accruing on the said Fund received under the said Commutation Act, and the Acts therein referred to, without the full consent and approval of each and all of the commuting Ministers who renounced their individual interests therein, in consideration of the matters set out in the resolutions passed at the said meeting of Synod on the tenth and eleventh January, eighteen hundred and fifty-five.

That on and since the ninth of May, eighteen hundred and fifty-three, 10 the Petitioner was entitled to the benefits derivable from the proceeds of the said Clergy Reserves under the said Imperial and Provincial acts relating thereto, and on the ninth day of May, eighteen hundred and fifty-three, Petitioner was in the receipt of a stipend and allowance therefrom amounting to upwards of one hundred pounds annually, and further at the date of the passing of the resolutions of the said Synod in favour of the said commutation, to wit, on the eleventh day of January, eighteen hundred and fifth-five, the annual value of Petitioner's stipend and allowance, forming a life claim payable to him by and out of said sums, amounted to the sum of one hundred and fifty pounds currency per annum, and the said Petitioner has never done 20 anything to forfeit his right to participate in the said Fund, or in the proceeds, profits or revenues thereof.

That during the year eighteen hundred and fifty-five, and after passing of the said resolutions by the said Synod, the said Petitioner did commute the claims due to him by the said Fund, with the Government, by and through the said Commissioners, upon the conditions set out in said resolutions, and the said Petitioner did thereby consent to renounce his personal rights in the said Clergy Reserves, and in the proceeds thereof in favour of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and did consent 30 that the amount of the capital sum due and to accrue to him, should be joined with the amount due and to accrue to other Ministers of the said Church, and that all sums thus obtained should be joined into one fund, which should be held in Trust by the said Commissioners, in the said resolution named, till the meeting of the Synod next ensuing, by which all further regulations should be made, but the said renunciation of the Petitioner's rights was made subject to the fundamental principle (which it was declared not to be competent for the said Synod at any time to alter, unless with the consent of the Ministers granting such power and authority) namely, that the interest of the said Fund, to be so created, should be devoted, in the first instance, to the payment of one hundred and twelve pounds, ten shillings, to each member then on the Synod Roll 40



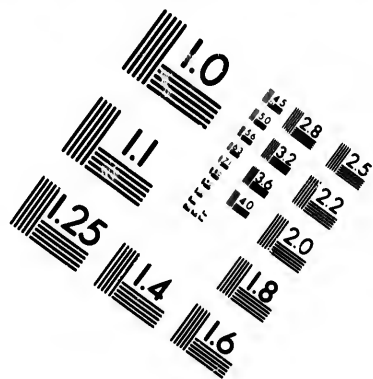
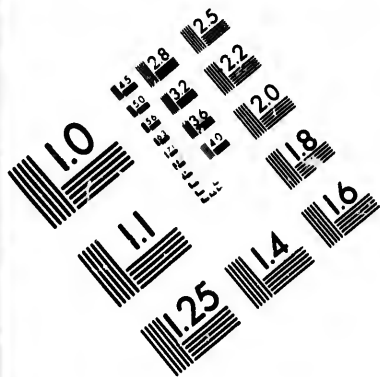
and who was on the Synod Roll on ninth May, eighteen hundred and fifty-three, and that the next claim to be settled, if the said fund should admit, and as soon as it should admit of it, to the one hundred and twelve pounds, ten shillings, be that of the Ministers whose names at the time of the passing of the said resolutions were on the said Synod Roll and which had been put on the said Synod's Roll since the ninth of May, eighteen hundred and fifty-three, up to the date of the passing of the said resolution; and, also, upon the condition that it should be considered a fundamental principle that all persons who have a claim to such benefits should be ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, and that they should cease to have any claim on or to be entitled to any share of the said Commutation Fund whenever they should cease to be Ministers in connection with the said Church.

That the said Petitioner has always maintained his connection with the said Presbyterian Church of Canada, in connection with the Church of Scotland, and has done nothing to forfeit his rights and privileges therein.

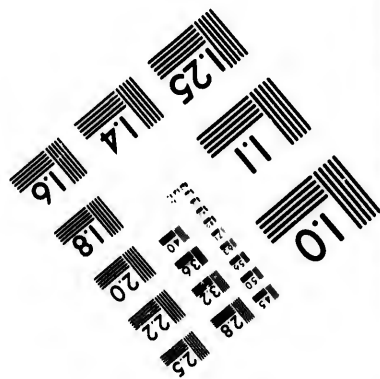
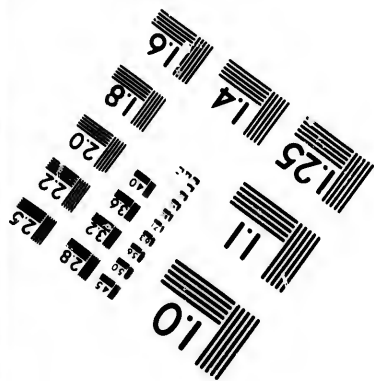
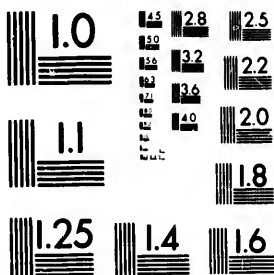
That the funds placed in the hands of the said Commissioners, subject to the terms, conditions and fundamental principles of the said resolutions, to be held for the purpose, and subject to the restrictions herein mentioned, to wit, the funds resulting from the original Commutation claims of the Ministers upon the Clergy Reserves, exclusive of all other Contributions to it, amounted in eighteen hundred and fifty-five, to the sum of One Hundred and Twenty-Seven Thousand Pounds, (£127,000) which said sum constituted, and was, and is, a Trust Fund, which could not be diverted from the purposes for which it was originally created, and the said Commissioners and their legal successors held the same in trust for the Presbyterian Church of Canada, in connection with the Church of Scotland.

That afterwards, an Act of the heretofore Parliament of Canada was passed (22 Vic., Cap. 66) to incorporate a Board for the management of the said Fund, and for such other funds as should be contributed, subscribed or paid in, from time to time, and that it was therein declared, at the time of the passing of the said Act, that said funds were held in trust by certain Commissioners on behalf of the said Church, and for the benefit of the said Presbyterian Church of Canada, in connection with the Church of Scotland.

That at the time of such Commutation the funds arising therefrom, and which were constituted into one fund, amounted to the sum of one hundred and twenty-seven thousand pounds, which it was declared, by a by-law passed under the provisions of the last mentioned Act, should be kept separate and distinct from any other funds which might come into the possession of the

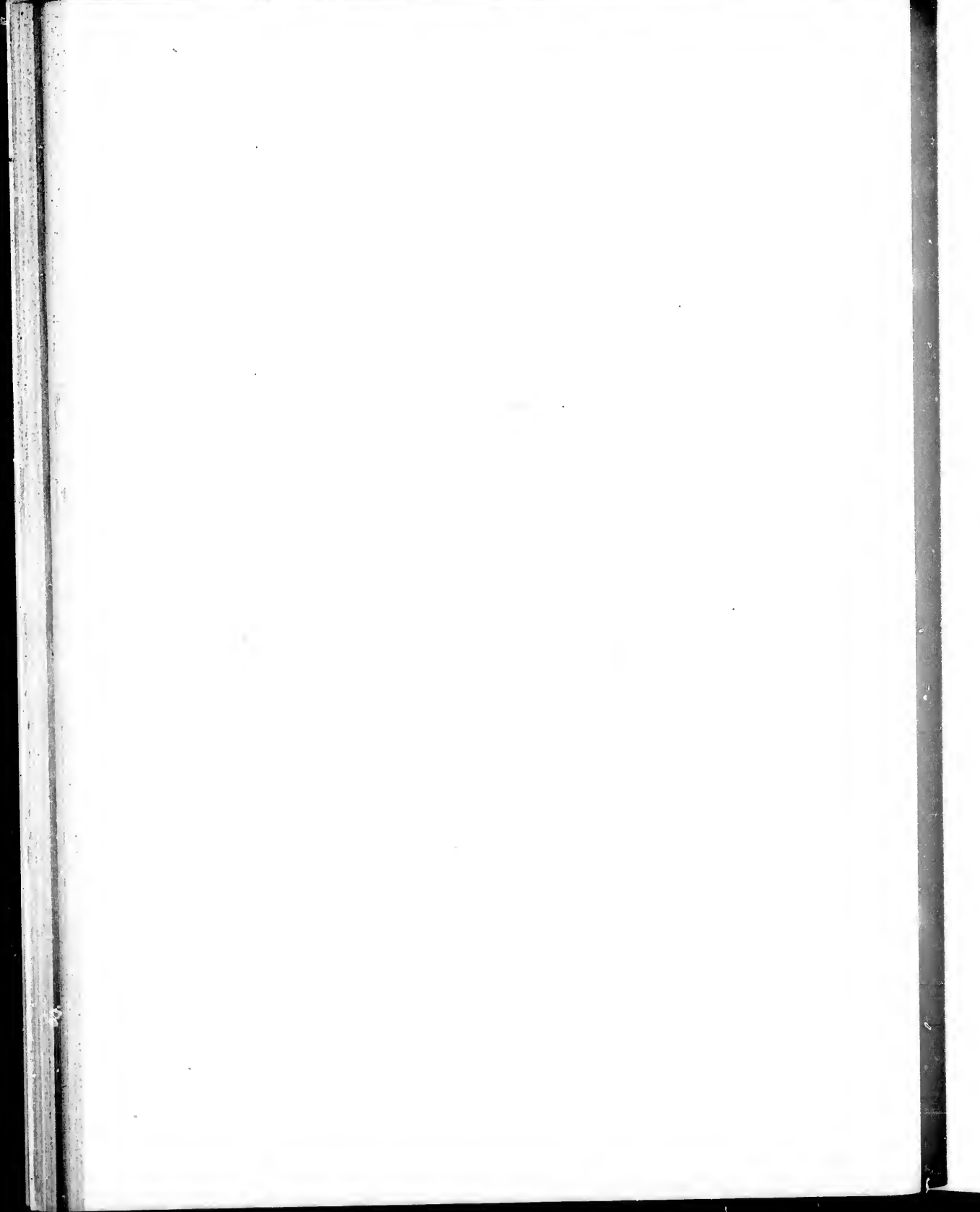


**IMAGE EVALUATION
TEST TARGET (MT-3)**



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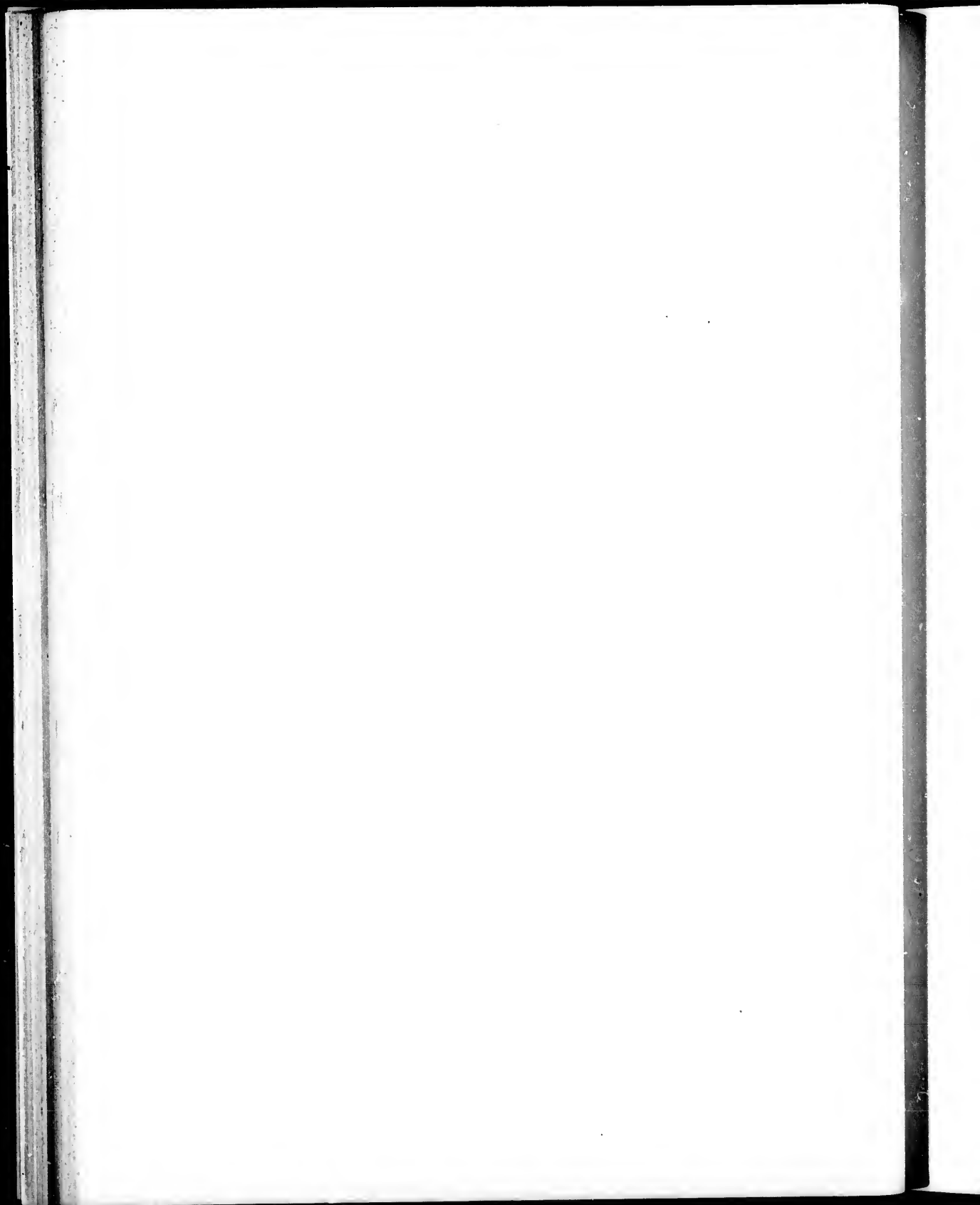
Board of Management of the Temporalities' Fund of the Presbyterian Church of Canada, in connection with the Church of Scotland.

That under the provisions of the said last mentioned Act, a body corporate and politic was created under 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," to wit, the Corporation, Respondents, which said Board it was declared, among other things, should consist of twelve members, of whom five should be ministers and seven should be laymen, all being ministers or members in full communion with the said Church, and of whom seven should be a quorum; and that the said Board should thenceforth have, 10 hold, possess and enjoy, in trust for the said Church (meaning the said Presbyterian Church of Canada in connection with the Church of Scotland) and for the purposes in the said Act and in the preamble thereof mentioned, all moneys, debentures, bonds, bank or other stocks and securities which were then held by the Commissioners of the said Church, in Trust for the said Church, under the terms of the resolutions of the tenth and eleventh of January, eighteen hundred and fifty-five, hereinbefore cited, and subject to the conditions in the said Act mentioned.

That the said last mentioned Corporation continued to manage and administer the Trust Fund arising from the original commutation, and divers 20 other funds contributed for the purposes mentioned in the said last mentioned Act, until the fifteenth day of June, eighteen hundred and seventy-five, when the aggregate amount of the funds, assets, and money under the control of the said last mentioned Corporation, Respondent, and by them held in trust for the Petitioner and for all others entitled to participate in the revenues and interests accruing thereon, and for the benefit of said Church, amounting to the sum of four hundred and sixty-three thousand, three hundred and seventy-one dollars and fifty-two cents. (\$463,371.52) at par value, according to statement dated first May, eighteen hundred and seventy-five, as set out in the Acts and Proceedings of the Synod of the said Church for eighteen hundred and seventy- 30 five, at page forty-five of the Records thereof.

That an Act was passed by the Legislature of the Province of Quebec (38 Vic: Cap: 64) assented to on the twenty-third February, eighteen hundred and seventy-five, entitled an act to amend the act intituled "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" and providing for the administration and distribution of the funds held and administered under the Act of the late Province of Canada (22 Vic: Cap: 66).

That the said Act of the Province of Quebec (38 Vic., Cap. 64) relates to subject matters beyond the competency of the Local Legislature under the 40



British North American Act, 1867, to wit, the Act of the Parliament of the United Kingdom of Great Britain and Ireland, (30th and 31st Vic., Cap. 3), and the Legislature of the Province of Quebec was incompetent to pass said Act; and the said Act of the Province of Quebec, in so far as it derogates from, or purports to modify or vary the Act 22 Vic., Cap. 66, of the heretofore Province of Canada, is null and of no effect.

That the subject matters of said Act of the Legislature of Quebec are not of a mere local or private nature within the Province of Quebec, but affect the rights of persons residing beyond the Province of Quebec, and not subject to its jurisdiction. 10

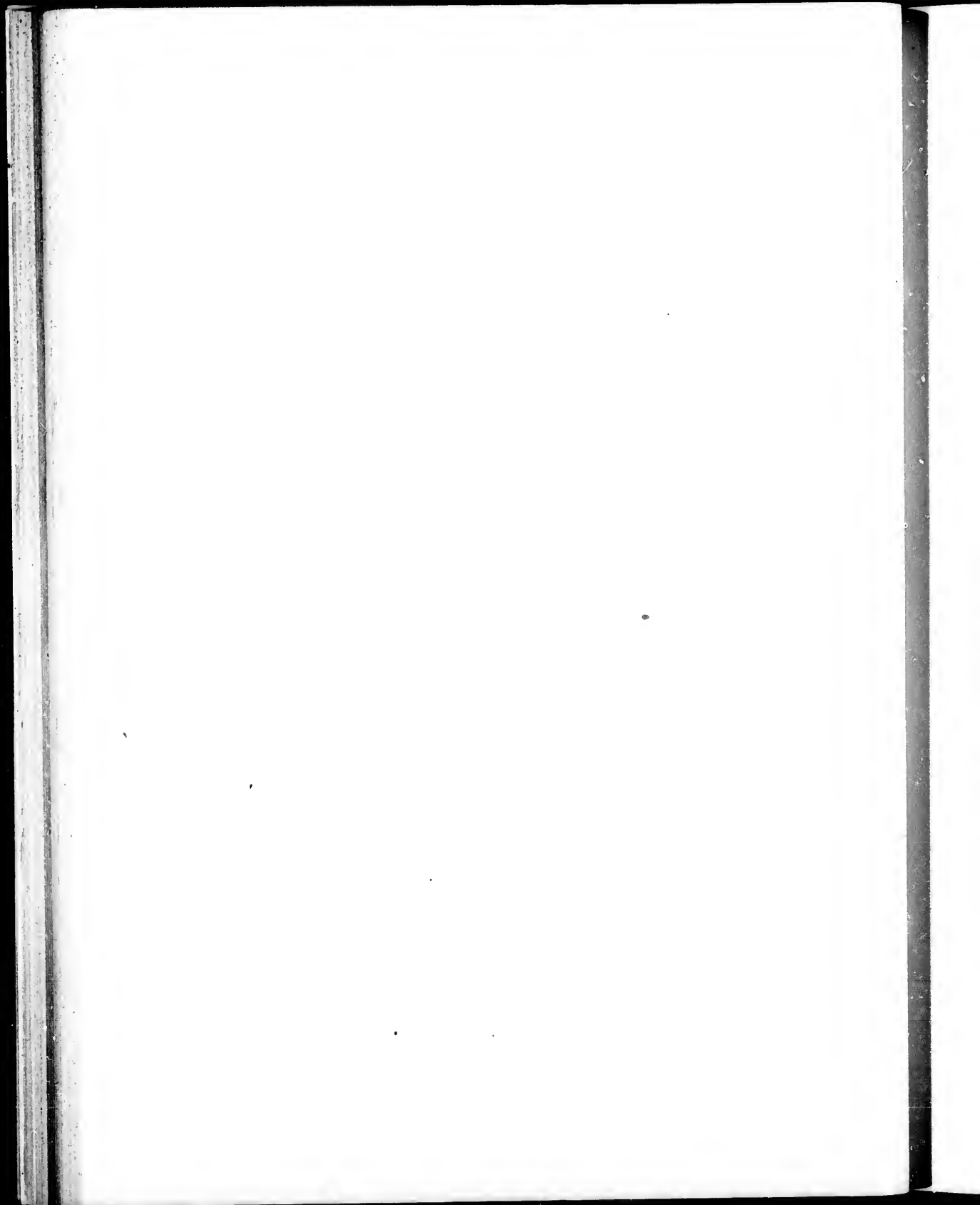
That the Petitioner is not subject to the legislation of the said Province of Quebec affecting his interests in the said funds, and the said Legislature of said Province of Quebec has exceeded its competency and jurisdiction in passing said Act.

That the interests of the Petitioner in the moneys arising from the said commutations and in the Temporalities' Fund, as constituted by the Act (22 Vic., Chap. 66) of the late Province of Canada, are not of a mere local or private nature in the Province of Quebec, but are a matter of general interest.

That the objects of the Corporation, Respondents, under the Act 22 Vic., Cap. 66, of the heretofore Province of Canada, were not, and are not, of a provincial nature, but extend to persons residing in the Provinces of Ontario and Quebec. 20

That the said Act of the Legislature of the Province of Quebec is illegal and unconstitutional, and beyond the competency of the said Legislature.

That the said Act of the Legislature of the Province of Quebec (38 Vic., Cap. 64) is further illegal and unconstitutional, in permitting and providing for the payment of an annual stipend to ministers who have ceased to be members of, or to have any connection with the Presbyterian Church of Canada, in connection with the Church of Scotland, and in providing that the Temporalities' Board, to wit, the Corporation, Respondents, should, if necessary, draw upon the capital fund, to wit, the Temporalities' Fund, in order to provide for the payment of the stipends and salaries to ministers, as mentioned in the said last mentioned Act, and in providing that: "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 remanent members of the said Board, shall thereupon from among the persons so nominated as aforesaid, elect the person or number of persons necessary to fill such vacancy or vacancies, selecting 30 40



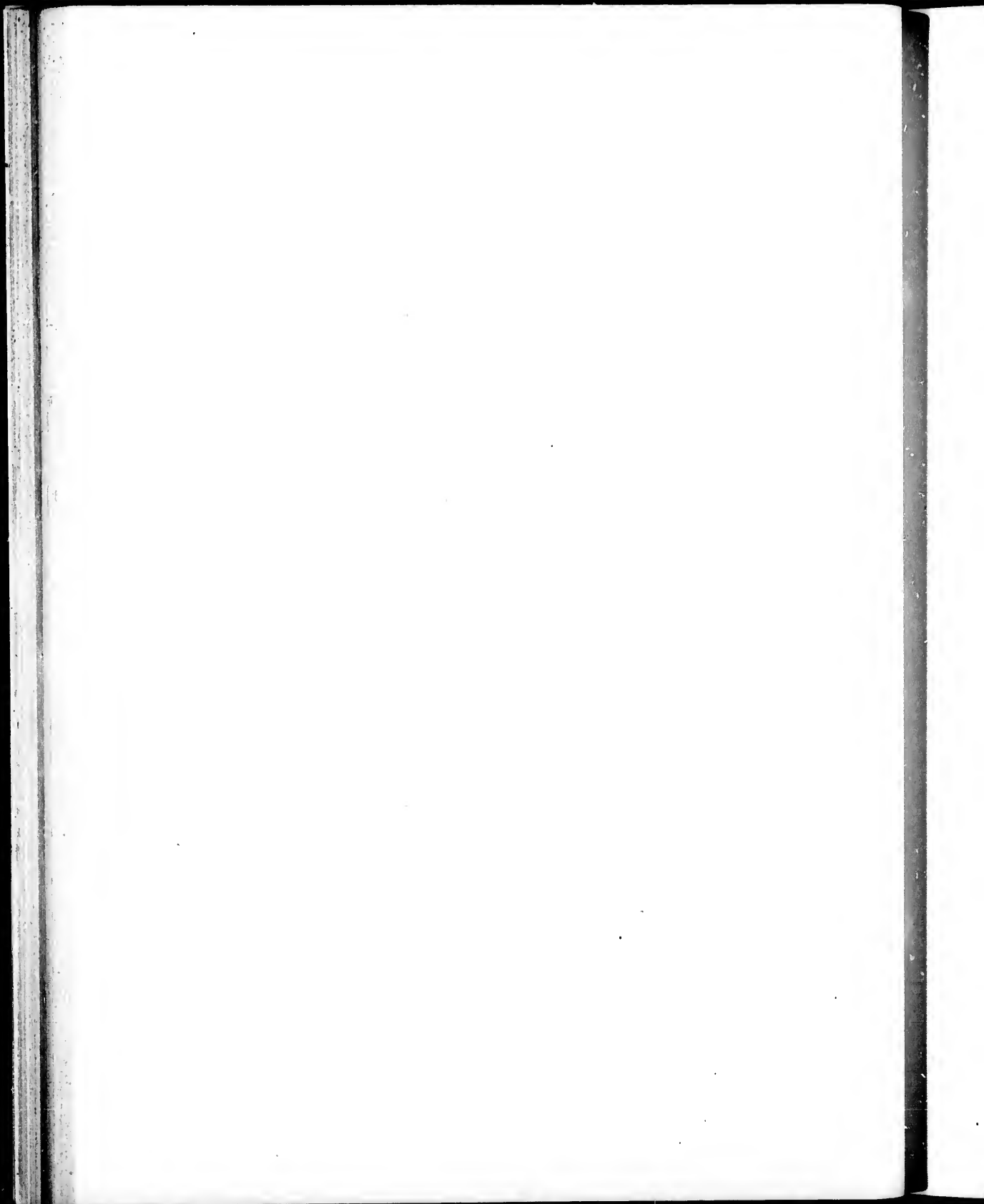
" the person or persons who may be nominated by the largest number of beneficiaries to nominate as aforesaid, the remanent members of the Board shall fill up the vacancy, or vacancies, from among the Ministers, or members of the said United Church," thus depriving a Minister who may have retained his connection with the Presbyterian Church of Canada, in connection with the Church of Scotland, of the right to administer the funds under the control of the said Corporation, Respondents, and disfranchising and disqualifying all members of the said last mentioned Church from administering the said Fund which, of right, alone belongs to them; and further in setting aside the legal method for filling vacancies in the Board, Respondents, as prescribed by the said Act 22, Victoria, Chapter 66, and the By-Laws made thereunder. That the said Statute of the late Province of Canada, (22 Vic.: Cap. 66) is legally and constitutionally in full force and effect, and the Respondents are subject to its provisions, and the By-Laws made thereunder by the said Presbyterian Church of Canada, in connection with the Church of Scotland, previous to the fourteenth day of June, eighteen hundred and seventy-five, and by those members, Ministers, and Elders of the said last mentioned Church, who remained in connection therewith, and who have not seceded therefrom on and since the fifteenth day of June, eighteen hundred and seventy-five, are now in full force.

That the said Respondents have no power to apply the capital sum of one hundred and twenty-seven thousand pounds, or the sum administered by them, to the payment of stipends or to any other purpose whatever, but the said sum and such other sums as should be contributed to it were intended to remain intact as a permanent endowment for the said Presbyterian Church of Canada, in connection with the Church of Scotland: as fully appears from the Minutes and the Synod letter of the Reverend John Cook, hereinbefore cited, under the express provisions of both which the Petitioner surrendered his interests in the Clergy Reserves and their proceeds to the said Church.

That the said Respondents had power only to use and apply the revenues, interests and accruals of the said Endowment Fund, for the purposes mentioned in the said Act incorporating the Board, Respondents.

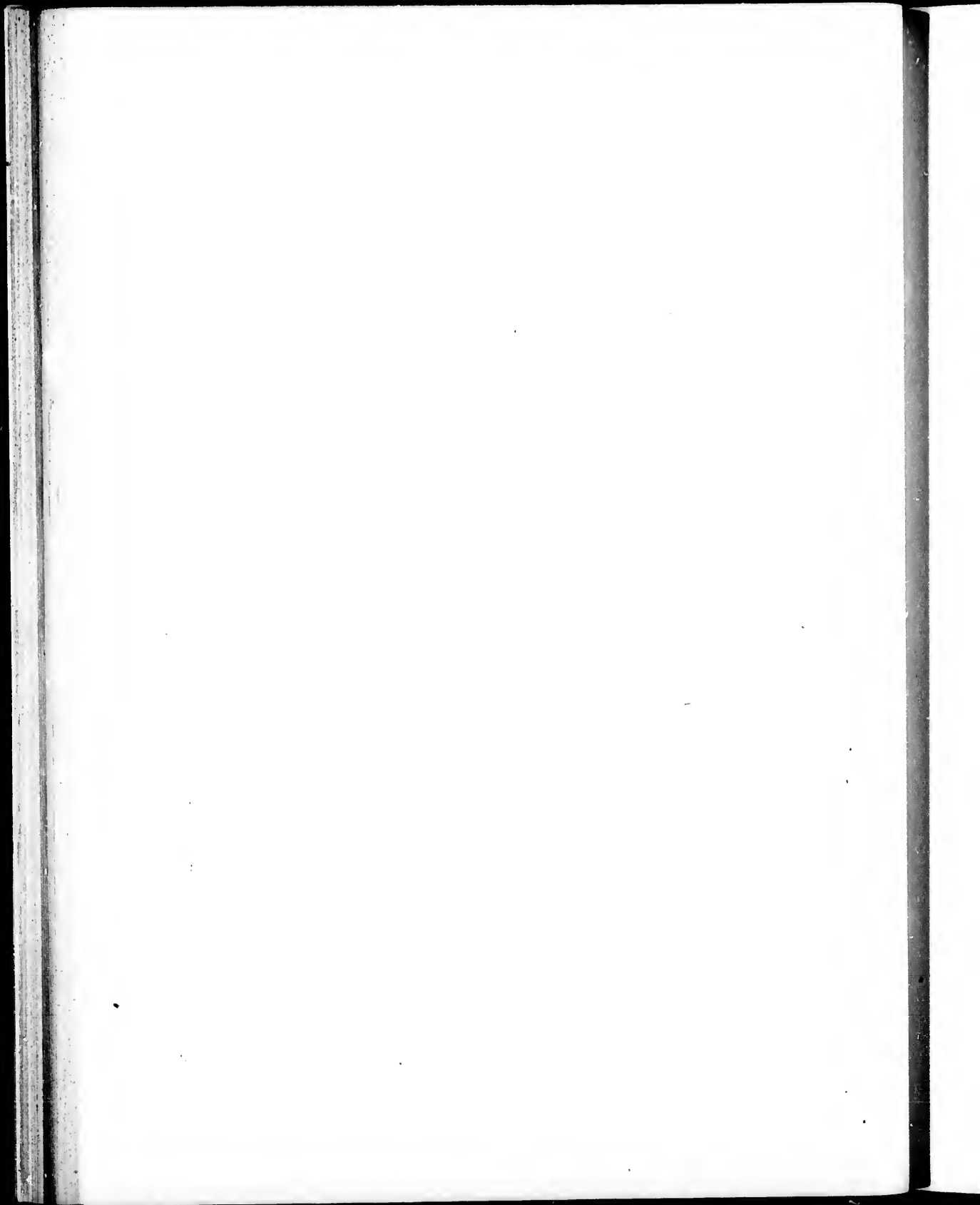
That the Corporation, Respondents, since the fifteenth day of June, eighteen hundred and seventy-five, up to the month of December, eighteen hundred and seventy-seven, have drawn upon the capital of the said Fund to the extent of the sum of forty thousand five hundred dollars and twenty-five cents. (\$40,500.25,) illegally and in contravention of the said Act (22 Victoria, Chapter 66) of the heretofore Province of Canada.

That the Reverend John Cook, Doctor of Divinity, of Quebec, the Reverend James C. Muir, Doctor of Divinity, of North Georgetown, in the



Province of Quebec, and the Rev. George Bell, Doctor of Laws, (L.L.D.,) of Walkerton, in the Province of Ontario, were commutators, and did commute their claims, upon the said Clergy Reserves, and upon the funds arising therefrom, concurrently with the Petitioner, and under and subject to the terms of the fundamental principles hereinbefore cited, passed by the said Synod on the eleventh day of January, eighteen hundred and fifty-five, but on and since the said fifteenth day of June, eighteen hundred and seventy-five, the said Reverends John Cook, James C. Muir, and George Bell, did join with another religious association called the Presbyterian Church in Canada, composed of persons who previous to the said fifteenth day of June, belonged to four separate and distinct religious organizations, and extending over various provinces of the Dominion, under four separate and distinct ecclesiastical governments, entirely unconnected with each other, to wit, the Canada Presbyterian Church, the Presbyterian Church of Canada, in connection with the Church of Scotland, the Church of the Maritime Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces, several members from each of which said last mentioned religious organizations united themselves together in a new and distinct religious organization and association called the Presbyterian Church in Canada: that the said Reverends John Cook, James C. Muir and George Bell, on said fifteenth day of June, eighteen hundred and seventy-five, ceased to be Ministers thenceforward of the Presbyterian Church of Canada, in connection with the Church of Scotland; and Petitioner avers that said Reverends John Cook, James C. Muir and George Bell, have not been entitled to receive any benefits from the said Fund, or to be paid any sums of money by the Corporation Respondents, by reason of their having seceded from, and ceased to be Ministers of the said Presbyterian Church of Canada, in connection with the Church of Scotland.

That since the said fifteenth day of June, eighteen hundred and seventy-five, the said Corporation Respondents, have paid to the said Reverend John Cook, the sum of eleven hundred and twenty-five dollars; to the said Reverend James C. Muir, the sum of nine hundred dollars; to the said Reverend George Bell, the sum of eleven hundred and twenty-five dollars; out of the said Fund, and the interest and revenues thereof, for Commutation Allowances by the said Corporation Respondents, alleged to have accrued on said Fund since the said fifteenth day of June, eighteen hundred and seventy-five, in favour of the said Reverends John Cook, James C. Muir and George Bell, in their quality as members of the Presbyterian Church of Canada, in connection with the Church of Scotland; though since the said fifteenth day of June, eighteen hundred and seventy-five, the said Reverends John Cook,



James C. Muir and George Bell, have been and are ministers of the said new organization, styled the Presbyterian Church in Canada.

That Petitioner has reason to believe and verily believes, that the Corporation, Respondents, will pay to the said Reverends John Cook, James C. Muir and George Bell, the sum of two hundred and twenty-five dollars each, on or before the first day of January next, as Commutation Allowances from the said Fund, to each of the said last mentioned Ministers, in their quality as Ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, for the half year ending 31st December, eighteen hundred and seventy-eight.

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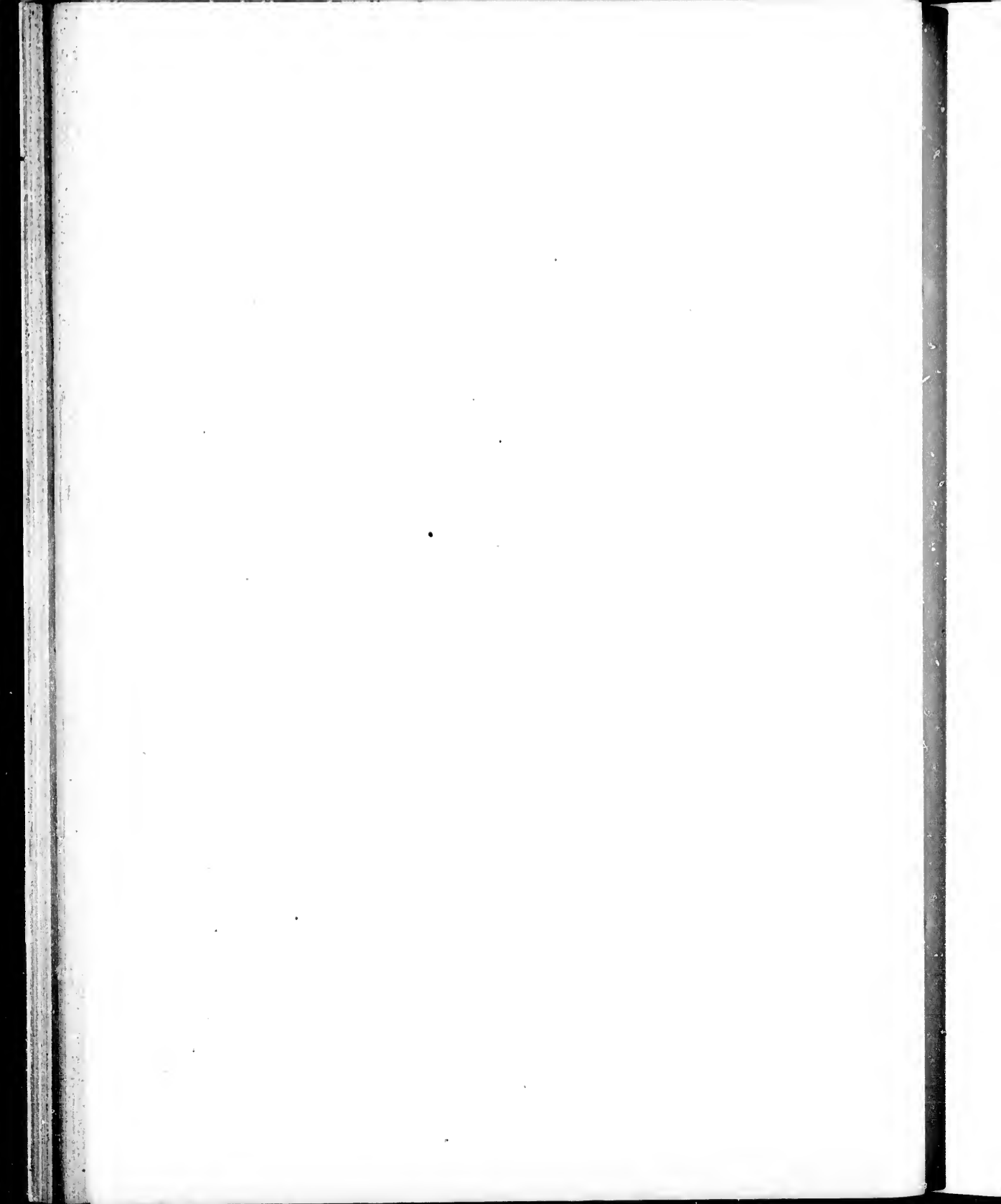
That preceding the fifteenth day of June, eighteen hundred and seventy-five, the Reverend John Fairlie, minister of L'Orignal, Province of Ontario, the Reverend David W. Morison, Bachelor of Arts, Minister of Ormstown, Province of Quebec, the Reverend Charles A. Tanner, of Richmond, Province of Quebec, amongst others, not being of the number of original commutors, were not entitled to receive any allowance or stipend or revenue or emolument of any nature or kind from said Fund administered by said Respondents, under the terms of said statute 22 Vic, Cap. 66, unless the interest, revenues and accruals on said Fund, and contributions from other sources thereto, were sufficient to allow the payment of certain allowances or emoluments therefrom after the deduction of the sums payable to the original commutors.

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That the said Reverend John Fairlie, Reverend David W. Morison, and Reverend Charles A. Tanner, of Richmond, Province of Quebec, have received from said Corporation, Respondents, since the fifteenth day of June, eighteen hundred and seventy-five, for, and by reason of their connection with and having been Ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, since the said fifteenth day of June, eighteen hundred and seventy-five, the sum of Five Hundred Dollars each, to which said last mentioned Ministers were not entitled, both by reason of having ceased to be entitled to the benefits from the Fund administered by said Corporation, Respondents, under the terms of the resolution of the eleventh of January, eighteen hundred and fifty-five, the said Reverends John Fairlie, David W. Morison and Charles A. Tanner having ceased to be members of the Presbyterian Church of Canada, in connection with the Church of Scotland, and having joined the said Presbyterion Church of Canada as aforesaid, and because the revenues and interests accruing on said Fund administered by said Corporation, Respondents, were not sufficient to pay the said Reverends John Fairlie, David W. Morison, and Charles A. Tanner, any allowance or emolument whatever, after the payment and settlement of all legal clames upon the revenues of said fund, and said Reverends John Fairlie, David W. Morrison, and Charles A.

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Tanner, were not entitled, respectively, to said sums of Five Hundred Dollars each, either from the revenues and interest or from the capital of said Fund so administered, as aforesaid, by the Corporation, Respondents.

That by the terms of the said Statute (22 Vic., Cap. 66), incorporating the Corporation, Respondents, it is provided that at the first meeting of the Synod of the said Church there should be elected, by the said Synod, seven members of the said Board, Respondents, of whom four should be laymen and three ministers, all members of the Presbyterian Church of Canada, in connection with the Church of Scotland, in place of two laymen and one minister, members of the said Board, who should then retire, and that thereafter two 10 ministers and two laymen should retire from the said Board annually, in rotation, on the third day of the annual meeting of the said Synod, and that the place of the retiring members of the said Board, Respondents, should be supplied by two ministers and two laymen, being ministers or members in full communion of the said Church, then to be elected by the said Synod.

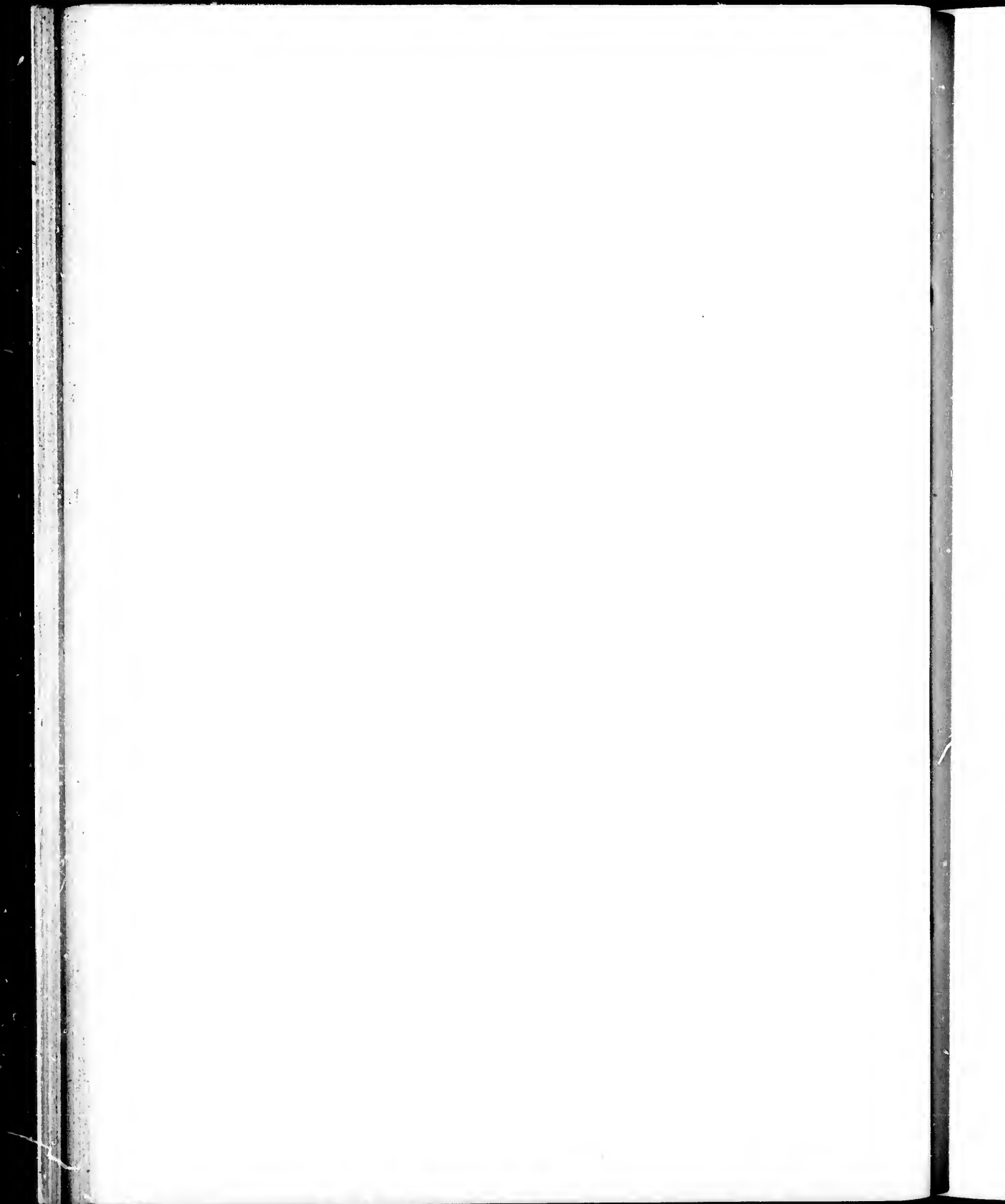
That on the fourteenth day of June, eighteen hundred seventy-five, the following persons composed the duly elected, eligible members of the said Board, Respondents, entitled to administer the funds and property entrusted to them under the provisions of the said Act, as appears by the Acts and proceed- 20 ings of the said Synod for the year eighteen hundred and seventy-five :

Reverend John H. Mackerras, Master of Arts, Professor in Queen's College, Kingston, Province of Ontario, the said Reverend Daniel M. Gordon, Reverend John Cook, D. D., Reverend John Jenkins, D. D., Reverend Gavin Lang, James Michie, Esquire, Merchant, Toronto, Province of Ontario; Alexander Mitchell, Esquire, Merchant, Montreal, Province of Quebec; William Darling, Esquire, Merchant, Montreal, Province of Quebec; the said Sir Hugh Allan, John L. Morris, Esquire, Robert Dennistoun, Esquire, and William Walker, Esquire.

That since the date of the said enactment, incorporating the Corporation, Respondents, (22 Vic., Cap. 66), four members of the said Board, Respondents, 30 should have retired therefrom at each annual meeting of the said Synod.

That in the month of June, eighteen hundred and seventy-six, the following members of the said Board, Respondents, by law ceased to be members of said Board, and should have retired therefrom, to wit, the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, and Robert Dennistoun, Esquire.

That in the month of June, eighteen hundred and seventy-seven, the following members of the said Board by-law ceased to be members of said Board, Respondents, and should have retired therefrom, to wit: The said Reverend 40



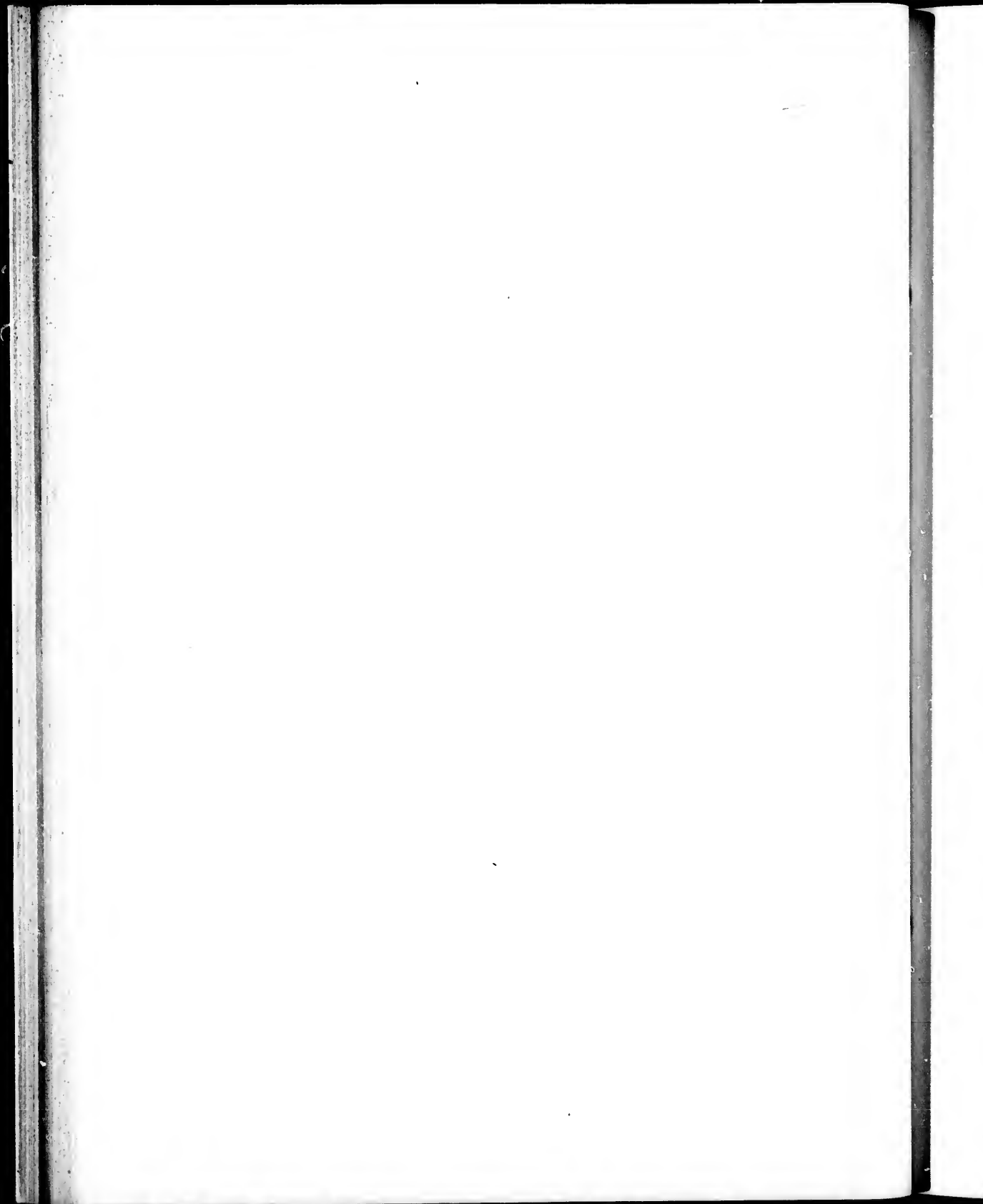
John Cook, Reverend Daniel M. Gordon, John L. Morris, Esquire, and Sir Hugh Allan.

That in the month of June last past, 1878, the following members of the said Board, Respondents, by Law, ceased to be members of the said Board and should have retired therefrom to wit, the said Reverend J. H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire.

That the remaining member of the Board, to wit: the said James Michie, Esquire, has seceded from the said Presbyterian Church of Canada, in connection with the Church of Scotland, and has joined the said Presbyterian Church in Canada, and has ceased to be a member of the Presbyterian Church of Canada, in connection with the Church of Scotland, and has *ipso facto* vacated his seat as a member of the Board, Respondents, and the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, John L. Morris, Esquire, and Sir Hugh Allan, heretofore members of the said Board, Reverend John H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire, were not legally re-elected and appointed members of the said Board, Respondents, and they and the remaining members of the said Board illegally pretend to exercise, and do in fact exercise and perform all the functions appertaining to legally elected and appointed members of the said Board.

That the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, John L. Morris, Esquire, and Sir Hugh Allan, Reverend John H. Mackerras, James Michie, Esquire, Alexander Mitchell, Esquire, and William Darling, Esquire are not entitled to administer the said Fund, or to be or remain as members of the Corporation, Respondents, and should be removed from the said Board, and the said Respondents are not entitled further to administer the funds under the control of the Corporation, Respondents, or to make any infringement on the capital thereof, or to disburse the revenues thereof in any manner whatever, the said Board being illegally constituted.

That the said Corporation, Respondents, have infringed upon the capital of the said Fund under their management and control in the manner hereinbefore indicated, and have illegally paid money, proceeds of the capital and revenues of the said Fund, in the manner hereinbefore indicated, without any legal power or authority so to do, and have illegally continued and permitted the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, John L. Morris, Esquire, Reverend John H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire, to act



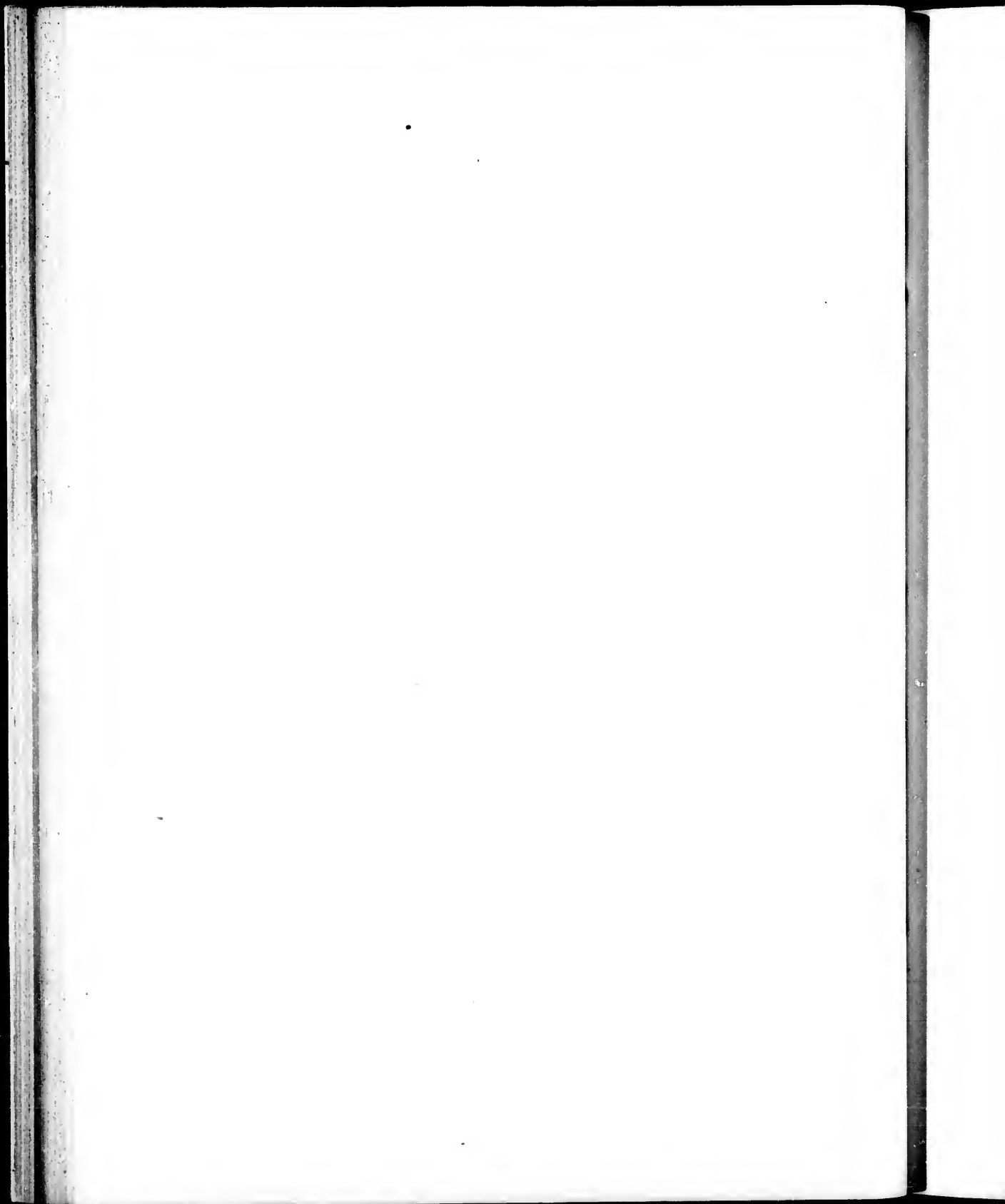
as members of the said Board, Respondents, without having fulfilled the formalities prescribed by law and the Act of Incorporation of the Corporation. Respondents, for their election as members of the said Board, and all the members now comprising the Board of the Corporation, Respondents, are illegally exercising the power of legally elected members, and the said Corporation, Respondents, composed as aforesaid, are now acting beyond their power in continuing the exercise of the powers conferred on the said Board without having a *quorum* of the said Board duly elected as members of the said Board, and by permitting the said parties, not being members thereof, to take part in the deliberations and proceedings thereof, and by administering the funds under their control illegally and contrary to the terms of the Act of the heretofore Province of Canada, incorporating the Board, to wit: 22 Vic., cap. 66. 10

That the Corporation, Respondents, have hitherto made the half-yearly payments of Ministers' allowances from said Fund some time before the day on which such payments to Ministers would become due, to those entitled to receive same, and the Corporation, Respondents, as Petitioner has been credibly informed and believes, are immediately about illegally to issue cheques in payment of, and to pay the pretended allowances which become due on the first day of January next, amounting to about ten thousand 20 dollars.

That unless the Respondents restrained from making payments of the said allowances last hereinbefore mentioned, the said Fund will be deteriorated to the extent of ten thousand dollars on or about the first day of January, eighteen hundred and seventy-nine.

That the said Petitioner has a personal interest in the Funds administered by the Respondents and more especially in that portion of the Funds so administered by them arising from the Commutation of claims of Ministers upon the Clergy Reserves and the proceeds thereof, and the said Petitioner has a right to allowances therefrom for life, provided he maintains his connection with the Presbyterian Church of Canada, in connection with the Church of Scotland, and does not cease to be a Minister in connection therewith, which said allowances and which said interest in the said Funds are endangered by the infringement upon the capital of the said Fund, made by the Board Respondents and by the illegal payments hereinbefore indicated or made or that may hereafter be made by the Board Respondent, out of the capital of the said Fund or the interest or revenues accruing thereon. 30

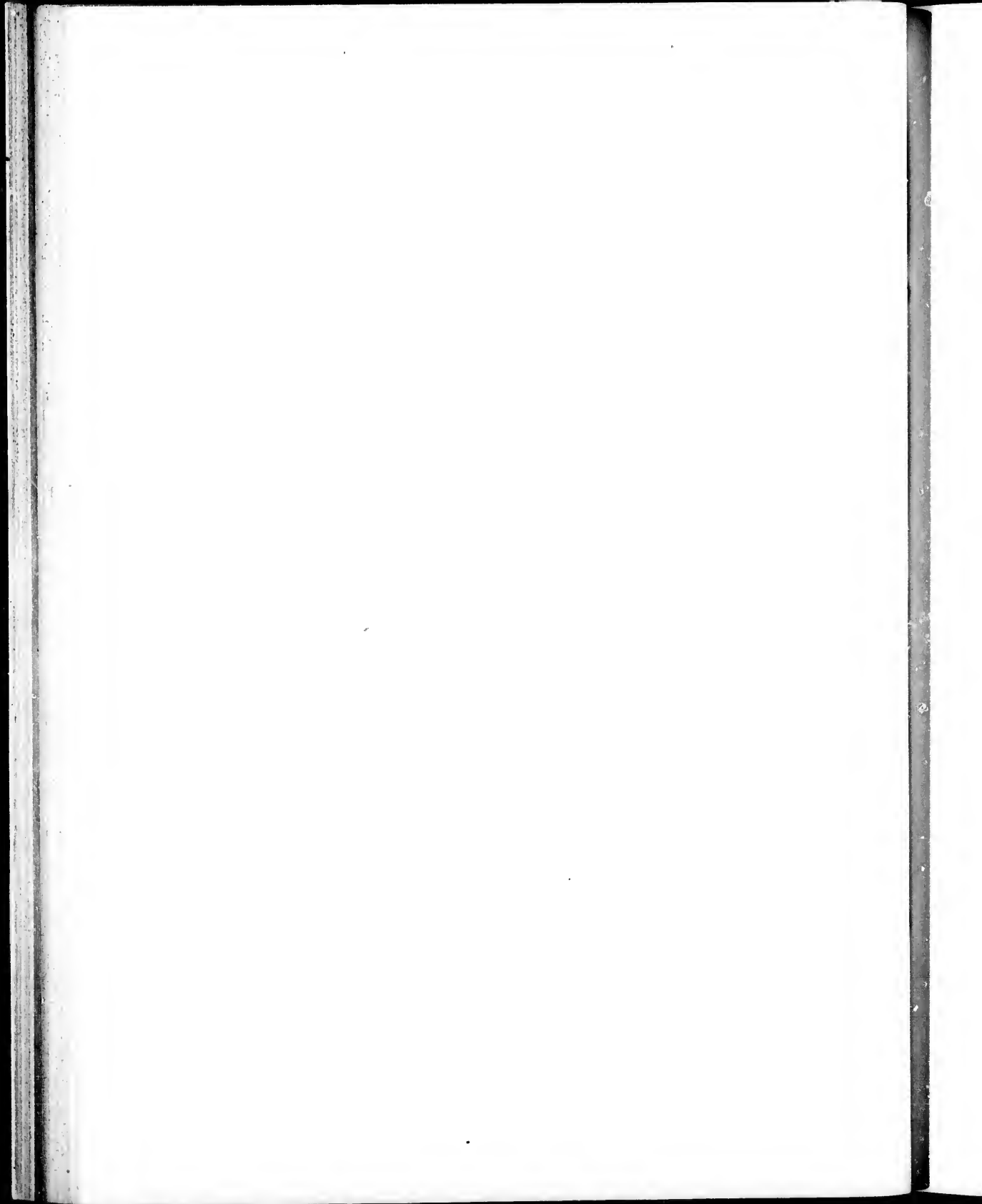
That all the payments heretofore made by Respondents to the persons hereinbefore mentioned, since the fifteenth day of June, eighteen hundred and seventy-five, or contemplated to be made out of the said Fund, as hereinbefore 40



stated, are contrary to the provisions of the Statute of the heretofore Province of Canada, 22 Vic., Chap. 66, and in so far as they may be ostensibly authorised by the Acts of the Parliament of Quebec, or of any of them, are illegal and unconstitutional, and *ultra vires* of the Corporation, Respondents, as Petitioner is advised and verily believes.

Wherefore the said Petitioner, personally and in his said qualities, prays that a writ of injunction may issue against the said Corporation, and against the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, John L. Morris, Esquire, Reverend J. H. Mackerras, 10 William Darling, Esquire, and Alexander Mitchell, Esquire, enjoining them and each of them to appear before this Honorable Court, or a Judge thereof, to answer the present petition.

That the act of the Legislature of the Province of Quebec intituled "An Act to Amend the Act intituled an Act to Incorporate the Board for the management of Temporalities Fund of the Presbyterian Church of Canada, in connection with the Church of Scotland," passed in the thirty-eighth year of Her Majesty's reign, (38 Vic., Chap. 64) may be adjudged and declared to be unconstitutional and illegal and be rescinded and revoked and that the subject matter thereof as therein presented may be declared to be *ultra vires* 20 of the Legislature of the said Province of Quebec, and that it be declared and adjudged, by the judgment to be rendered upon this petition, that the said Corporation, Respondents, are acting and taking proceedings beyond their power, and without having fulfilled the formalities prescribed by law, and by the Act of Incorporation thereof, by permitting the said last-named persons to act as members of the said Board and of the said Corporation without having been elected as members of such Board, in the manner provided by law and by the said Act of Incorporation, and, further, by administering, intermeddling with and disbursing the funds and property of the said Corporation in a manner and for purposes not authorized by the said Act of Incorporation 30 of the 22nd Vic., Chap. 66; and by holding, administering, dispensing, and disposing of the funds and property of the said Corporation, without having a sufficient number of members of the said Corporation elected in the manner provided by law, and in the Act of Incorporation thereof, to constitute a quorum of the said Corporation or of the said Board. And that it be further adjudged and declared that the said Rev. John Jenkins, Rev. Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Rev. John Cook, Rev. Daniel M. Gordon, Sir Hugh Allan, and John L. Morris, Esquire, Rev. J. H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire, have 40 no right or authority to sit, deliberate, or act as members of the said Corpora-



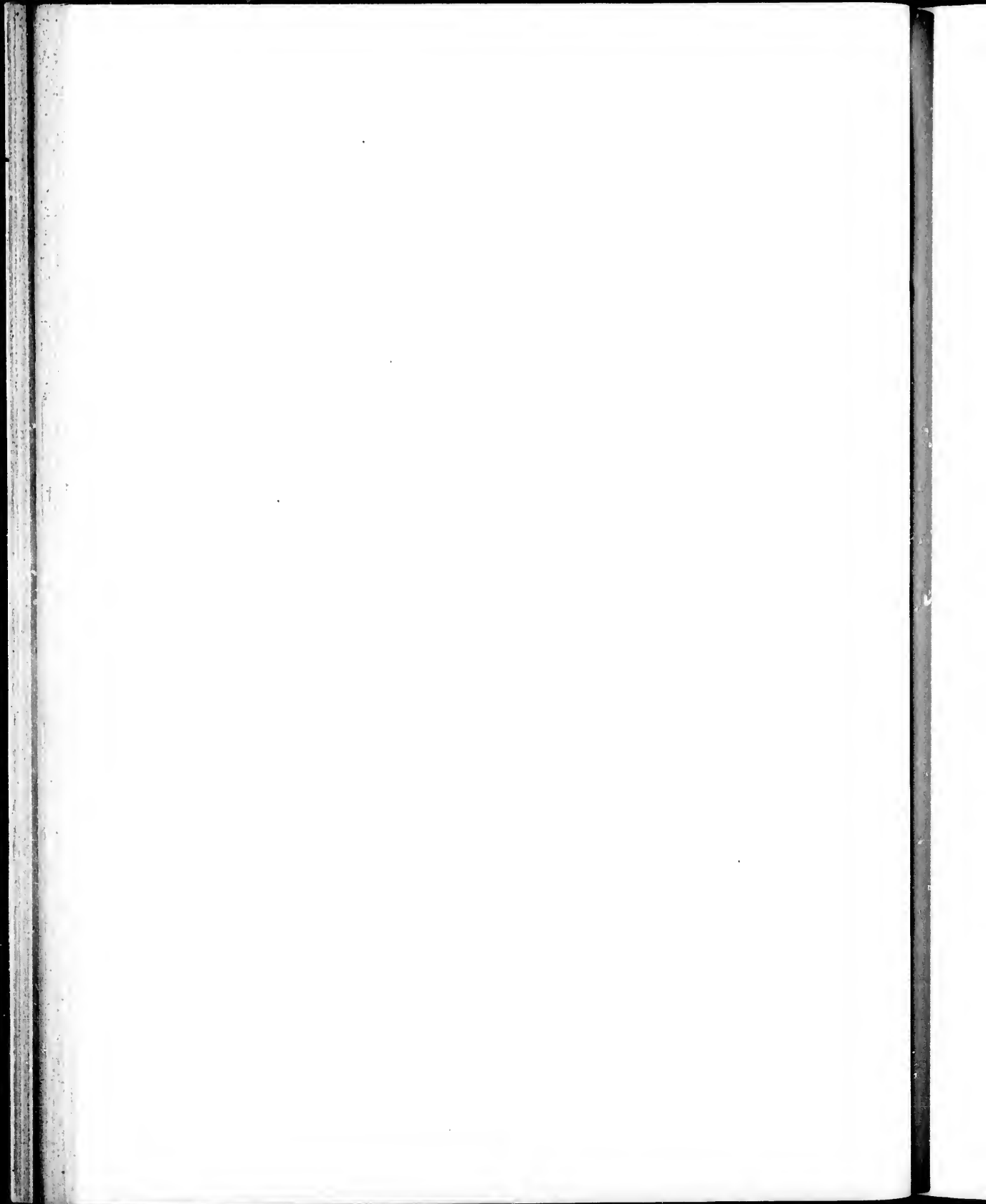
ation or Board, and thereupon further prays that the said Corporation be by such judgment restrained from acting and proceeding in respect of the duties imposed upon them by the said Act of Incorporation of the 22 Vic. chap. 66, and from administering, using, dispensing, or disposing of the funds and property of the said Corporation; and be ordered and enjoined not to act in respect of the said duties and powers, and in respect of the said funds and property, until an adequate and sufficient number of members thereof, shall have been duly elected in the manner and with the formalities provided by law and by the said last mentioned Act of Incorporation.

And further, that the Respondents, Rev. John Jenkins, Rev. Gavin 10
Lang, William Walker, Esquire, Robert Demistoun, Esquire, Rev. John Cook,
Rev. Daniel M. Gordon, Sir Hugh Allan, Rev. John Mackerras, William
Darling, Esquire, Alexander Mitchell, Esquire, and John L. Morris, Esquire, be
restrained from acting as members of the said Board, and be enjoined not to
sit or act as, or perform any of the functions of members of the said Board,
unless and until they shall be duly elected members thereof, in the manner,
and with the formalities provided by the said Act of Incorporation of the said
Board, 22 Vic. chap. 66.

And the Petitioner further prays, that it be ordered, that the said
Respondents, and each and all of them do forthwith suspend any and all acts 20
and proceedings in their several capacities respectively; in respect of the
administration of the said funds and property, and in respect of all matters in
dispute in this cause.

That it be adjudged and declared that the Fund administered by the
Corporation, Respondents, amounting to the sum of four hundred and sixty-
three thousand, three hundred and seventy-one dollars and fifty-two cents,
(463,371.52) is a Fund held in Trust by them for the benefit of the Presby-
terian 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 30
purpose whatever.

That the said Reverend John Cook, Reverend James C. Muir and
Reverend George Bell, be declared to have ceased to be Members of the
Presbyterian Church of Canada, in connection with the Church of Scotland,
and not to be entitled to any sum of money or benefit from the funds
administered by Respondents. That the said Reverend John Fairlie, Reverend
David W. Morison and Reverend Charles A. Tanner, be declared not entitled
to receive any sum of money whatever from the funds administered by
Respondents, and that Respondents be enjoined and ordered not to pay said
Rev. John Cook, Rev. James C. Muir, Rev. George Bell, Rev. John Fairlie, 40



Rev. David W. Morison and Rev. Charles A. Tanner, or any of them, any sum of money whatever from the capital or revenues of the funds administered by them, and further, that the said Corporation, Respondents, be adjudged and ordered not to pay to them the said Reverend JOHN COOK, Reverend James C. Muir, Reverend George Bell, Reverend John Fairlie, Reverend David W. Morison, Reverend Charles A. Tanner, or to any other person whomsoever, any sum of money whatever out of the capital or revenues or interest accrued and to accrue on said Fund, under pain of all legal penalties, until such further order shall be made upon the said petition, as to this Honorable Court, or any Judge thereof shall seem meet and 10 expedient, and the said Petitioner hereby declares his readiness to give good and sufficient security in the manner prescribed by and to the satisfaction of the said Court, or of a Judge thereof, in the sum of six hundred dollars, or any higher sum fixed by the said Court or Judge, for the costs and damages which the Respondents may suffer by reason of the issue of said writ of Injunction, and the said Petitioner hereby offers as such security, James S. Hunter, Notary Public, and Joseph Hickson, Railway Manager, both of the City and District of Montreal, who will justify as to their sufficiency if required, the said Petitioner reserving the right to take such other and further conclusions in the matter as he may be advised and permitted, the whole with 20 costs of suit and Exhibits against such of said Respondents as may contest the present action, but without costs against such of the Respondents as may declare that they abide the order of the Court, of which costs the undersigned Attorneys pray distraction.

MONTREAL, 31st December, 1878.

(Signed.) MACMASTER, HALL & GREENSHIELDS.

Attorneys for Petitioner.

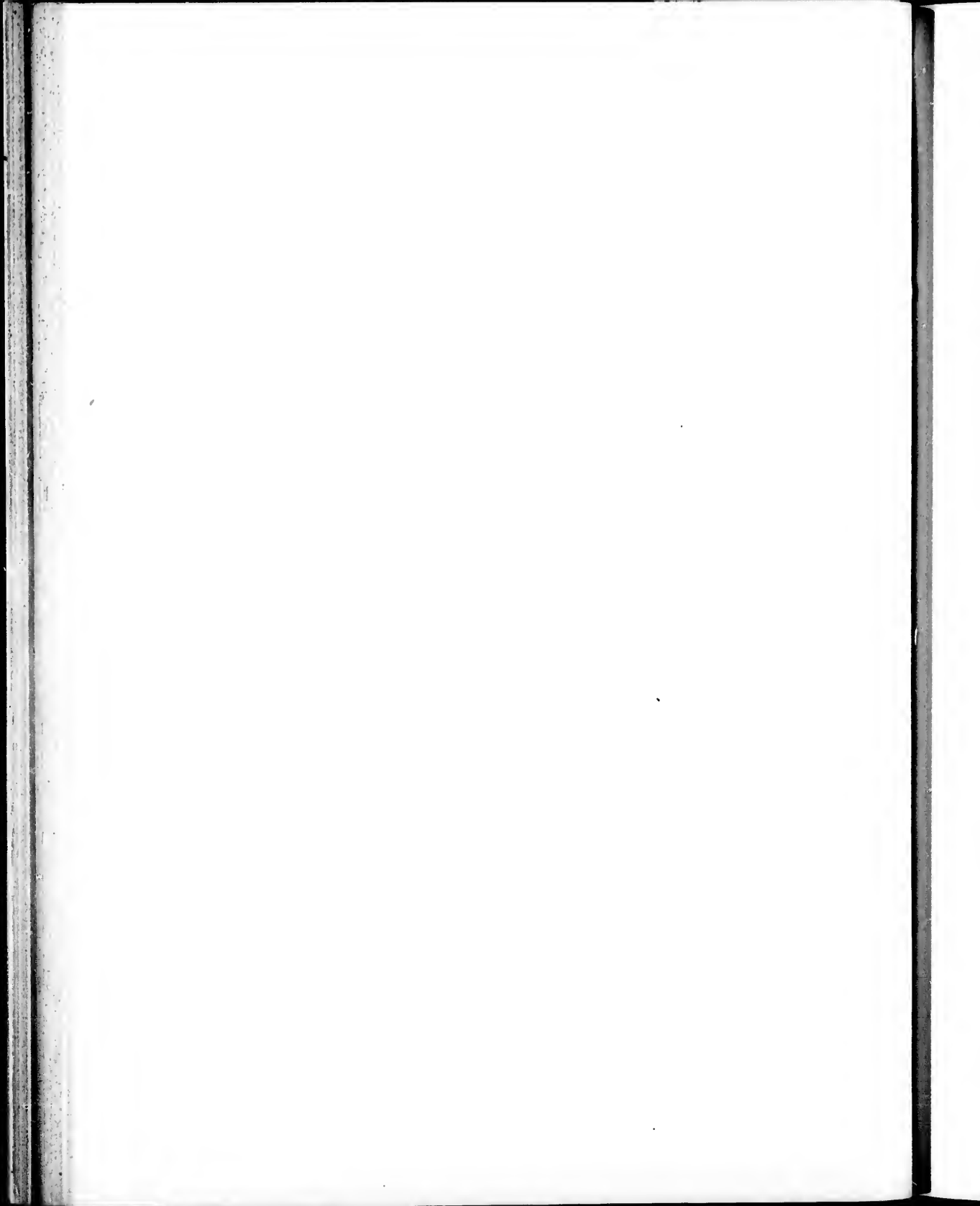
(Signed.) J. J. C. ABBOTT, Q. C.

" M. M. TAIT,

Of Counsel.

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I, the undersigned, one of the Justices of the Superior Court for Lower Canada, sitting in and for the District of Montreal, having read the foregoing Petition, and the affidavits and documentary evidence produced in support of the same, and seeing further the offer of the said Petitioner to give good and sufficient security in the manner prescribed by me and to my satisfaction, I do approve of the security offered by Petitioner, and do order and prescribe that the said sureties offered, to wit :—James S. Hunter, Notary Public, and Joseph 40



Hickson, Railway Manager, both of the city and district of Montreal; do enter into a bond before me to the extent of twelve hundred dollars, for costs and damages which the Respondents may suffer by reason of the writ of injunction herein ordered to issue; they then and there justifying to their sufficiency upon oath; and that thereupon a writ of injunction do issue according to the prayer of the said Petitioner, to summon the Respondents to be and appear before any one of the Honourable Justices of the said Superior Court of Montreal, aforesaid, on the thirty-first day of January next, (eighteen hundred and seventy-nine), to answer the premises, and pending such further order and judgment as may be rendered in this cause. I do hereby order and enjoin the said Corporation, Respondents, and the said Respondents, the Reverend John Jenkins, Reverend Gavin Laug, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, John L. Morris, Esquire, Reverend John H. Mackerras, William Darling, Esquire, Alexander Mitchell, Esquire, and each of them forthwith, to suspend any and all acts and proceedings in their several capacities, respectively, in respect of the payment of all sums of money, and of the administration of the funds under the control of the said Corporation, Respondents, and in respect of all other matters in dispute in this cause under pain of all penalties provided by law.

MONTREAL, 31st December, 1878.

(Signed) L. A. JETTÉ.

Judge.

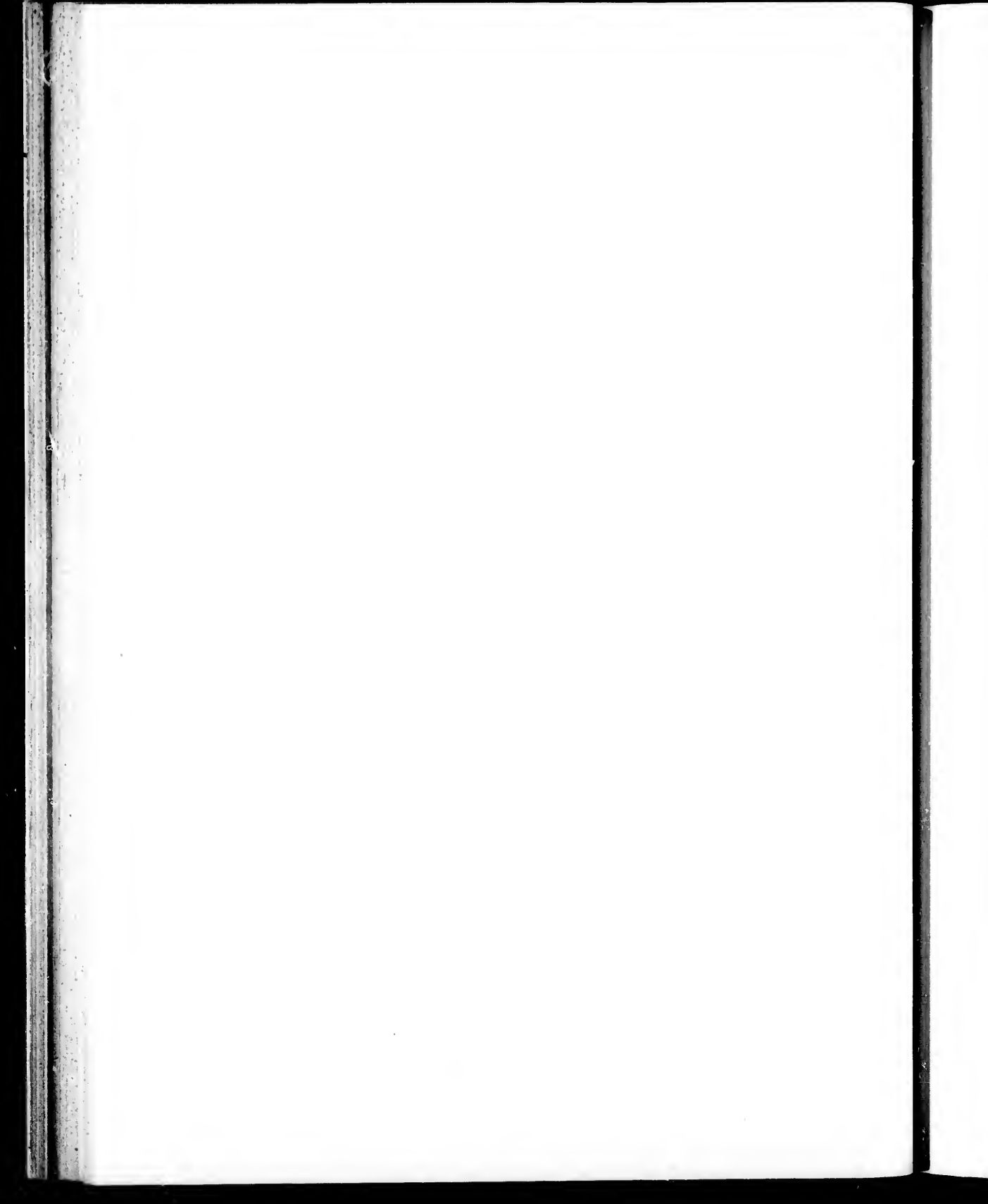
AFFIDAVITS IN SUPPORT OF PETITION.

DOUGLAS BRYMNER, of the City of Ottawa, in the Province of Ontario, employed there in the Civil Service, in connection with the Department of Agriculture, being duly sworn doth depose and say:—

I know the Petitioner and Respondents since eighteen hundred and fifty-seven, until the present time.

I have been an elder and member of the Presbyterian Church of Canada, in connection with the Church of Scotland, and am intimately acquainted with its affairs and with the affairs of the Board, Respondents More particularly for the period preceding the fifteenth day of June, eighteen hundred and seventy-five, since said last mentioned date, I have carefully examined the printed reports of the Board, Respondents.

From the year eighteen hundred and sixty-four, to the year eighteen hundred and seventy-one, I resided in the City of Montreal, and during the



whole of said period I was the Editor of a Monthly publication styled "The Presbyterian," the recognized organ of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and as such I had special opportunities of becoming acquainted with the affairs of the said Presbyterian Church of Canada in connection with the Church of Scotland, and with the proceedings of the Board, Respondents, and the Synod of the said church, of which latter body I was frequently appointed a member in the capacity of Representative Elder.

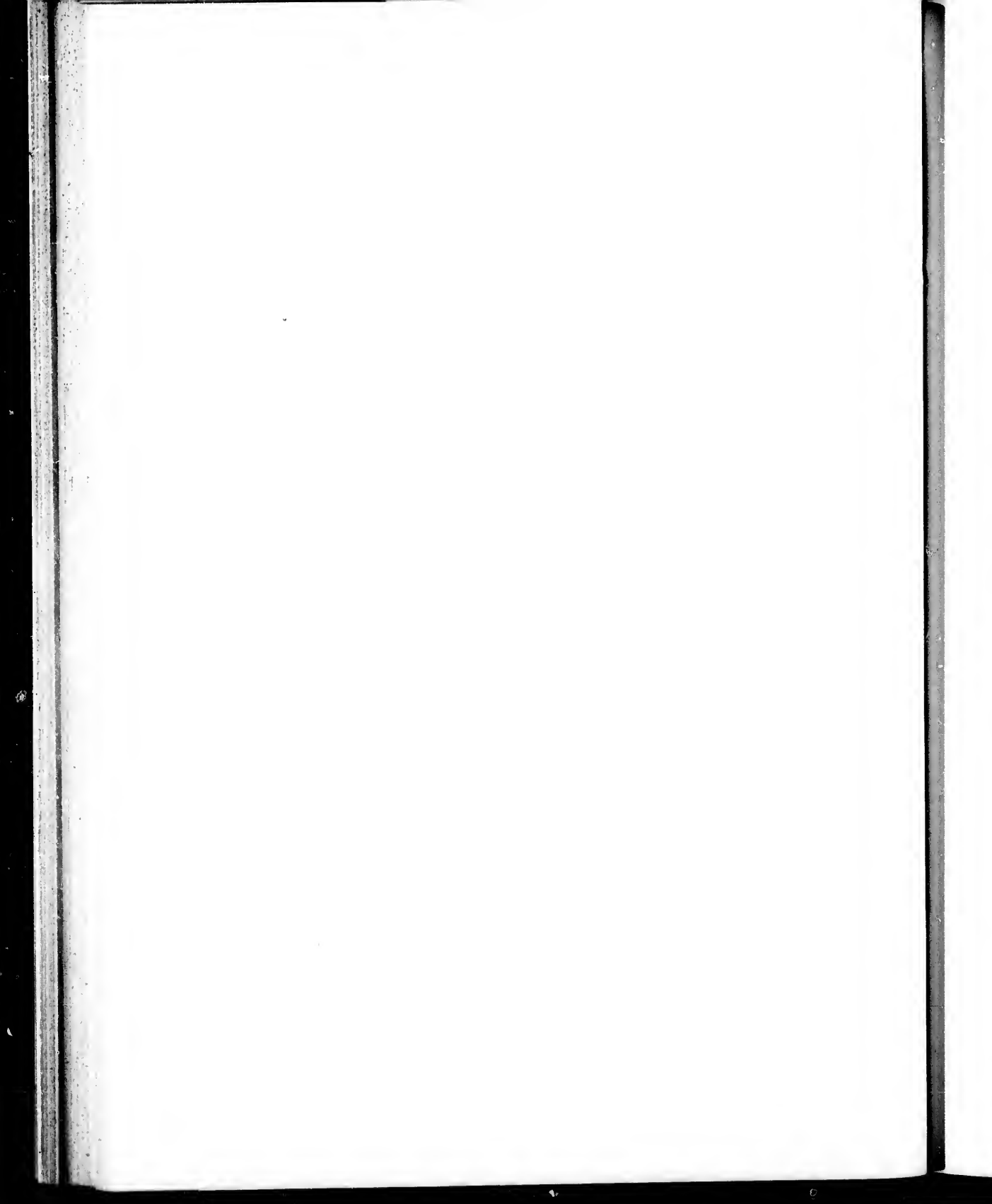
I have an intimate acquaintance with the records of the proceedings of the Synod of the said church, as contained in the official records thereof since 10
eighteen hundred and thirty-one, and am familiar with the circumstances connected with the secularization of the Clergy Reserves and the commutation of the claims of the Ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, upon the said Clergy Reserves or on the proceeds thereof, which knowledge I obtained both from the said records and from personal communication for years with many of the Ministers who committed their claims upon the said Clergy Reserves Funds.

I have taken communication of the Petition in this cause, of Petitioner, and to the best of my knowledge and belief the matters alleged as facts in the said Petition are true.

From all the sources of knowledge and information at my command it is my firm conviction that the funds administered by the Board, Respondents, arising from the the commutation of claims of Ministers upon the proceeds 20
of the Clergy Reserves, were intended to be a permanent endowment for the said Presbyterian Church of Canada, in connection with the Church of Scotland, namely, for the benefit of all those persons for all time to come, who should desire to maintain the forms of worship and religious ordinances of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and this connection therewith as a branch of the Church of Scotland in Canada, and for the benefit of those Ministers and Missionaries in connection therewith, who should maintain their connection with said church and who 30
should not cease to be ministers thereof.

That on the fifteenth day of June, eighteen hundred and seventy-five, a number of the members of the Presbyterian Church of Canada, in connection with the Church of Scotland, seceded and withdrew from its communion, and joined themselves with a number of persons connected with other distinct and separate religious organizations existing in different parts of the Dominion of Canada, and adopted the name and designation "The Presbyterian Church in Canada."

That notwithstanding such secessions, the said Presbyterian Church of 40



Canada, in connection with the Church of Scotland, continued its existence and has regularly held meetings of Presbyteries and Synod and is now in existence as a regular church organization, of which Petitioner and deponent are members.

That according to the best of the knowledge and belief of this deponent the said Corporation, Respondents, are illegally administering the funds in their hands which are trust funds, for the benefit of the Presbyterian Church of Canada, in connection with the Church of Scotland.

That the rights and interests of the Petitioner in the said funds are endangered by the administration of the Respondents, and without the benefit 10 of a writ of injunction to restrain the said Respondents, the rights and interests of the Petitioner and of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and of the members and adherents of the said last mentioned church, will sustain injury.

That the said Respondents are immediately about to make payments out of the said funds to divers ministers connected with the said Presbyterian Church in Canada, amounting to the sum of at least ten thousand dollars. That said payments will be made on the first of January next, and there is an urgent necessity that the same should be prevented and said payments stayed.

That such payments if made will seriously deteriorate the funds now 20 in controversy between Petitioner and Respondents.

And I have Signed,

DOUGLAS BRYMNER.

Sworn to and acknowledged before me at the city of Ottawa, this thirtieth day of December, 1878.

R. J. WICKSTEED,

Commissioner for taking affidavits in Ontario for use in Quebec.

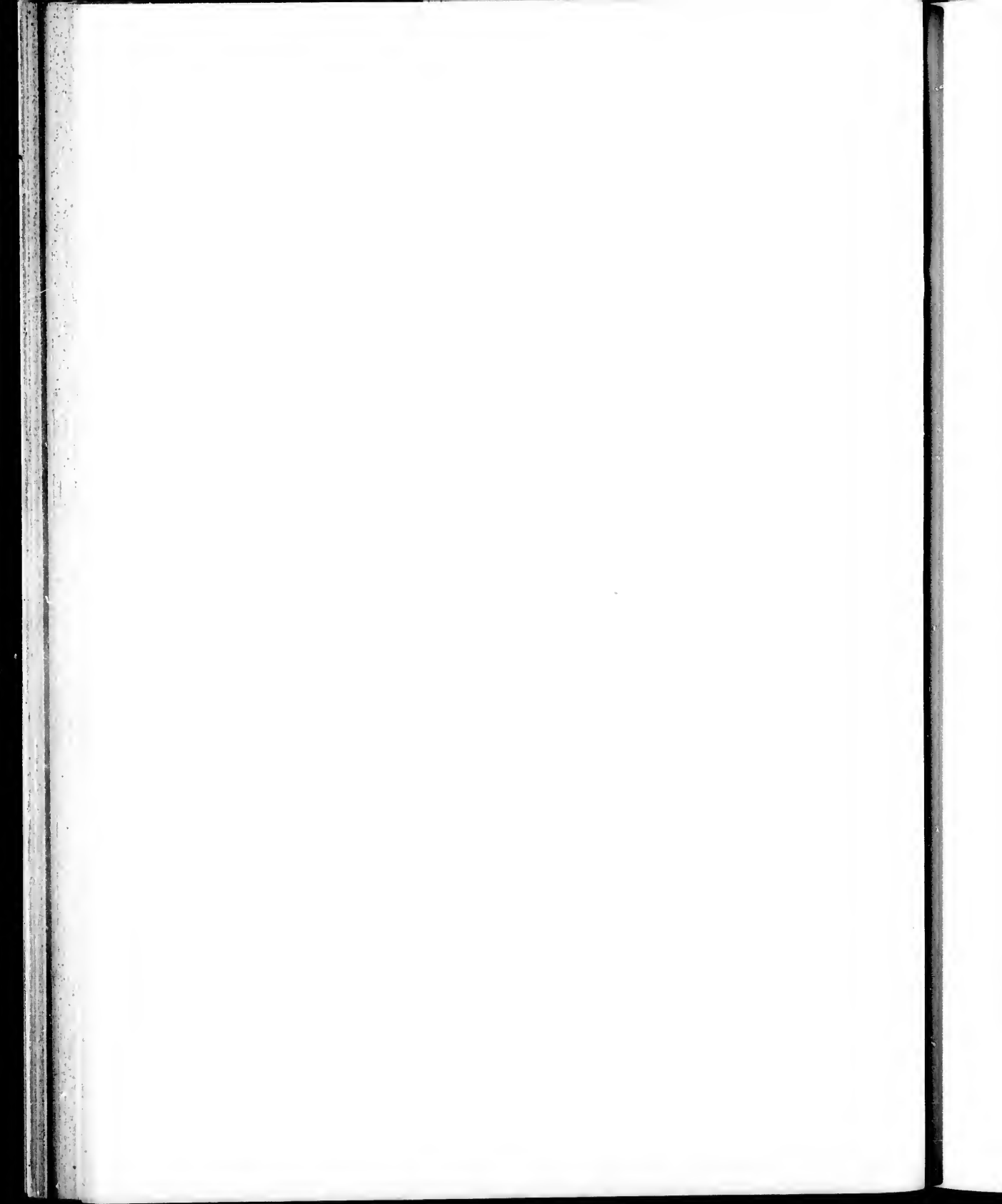
GAVIN LANG, of the City and District of Montreal, being duly sworn 30 doth depose and say:—

I am a minister of the Presbyterian Church of Canada, in connection with the Church of Scotland, and am Pastor of St. Andrew's Church in Montreal, aforesaid.

My name is entered as a member of the Board Respondents.

I have taken communication of the petition in this cause of Petitioner, and to the best of my knowledge and belief the allegations of fact as therein contained and set forth are true and correct.

That according to the best of my knowledge and belief the said 40



Corporation, Respondents, are illegally administering the funds in their hands which are trust funds for the benefit of the Presbyterian Church of Canada, in connection with the Church of Scotland, and that the rights and interests of the Petitioner in the said funds are endangered by the administration of the Respondents.

That the said Respondents are immediately about to make another half-yearly payment out of the said Fund, and said payment will be so made on or about the first day of January next, and there is urgent necessity that the same should be stopped, and without the benefit of a writ of injunction to restrain the said Respondents the rights and interests of the Petitioner, and 10 of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and of the members and adherents of the said last mentioned church will sustain injury.

And I have signed,

GAVIN LANG,

Sworn to and acknowledged before us at the City of Montreal, this twenty-eighth day of December, eighteen hundred and seventy-eight.

J. S. HUNTER,

Commissioner Superior Court, District of Montreal.

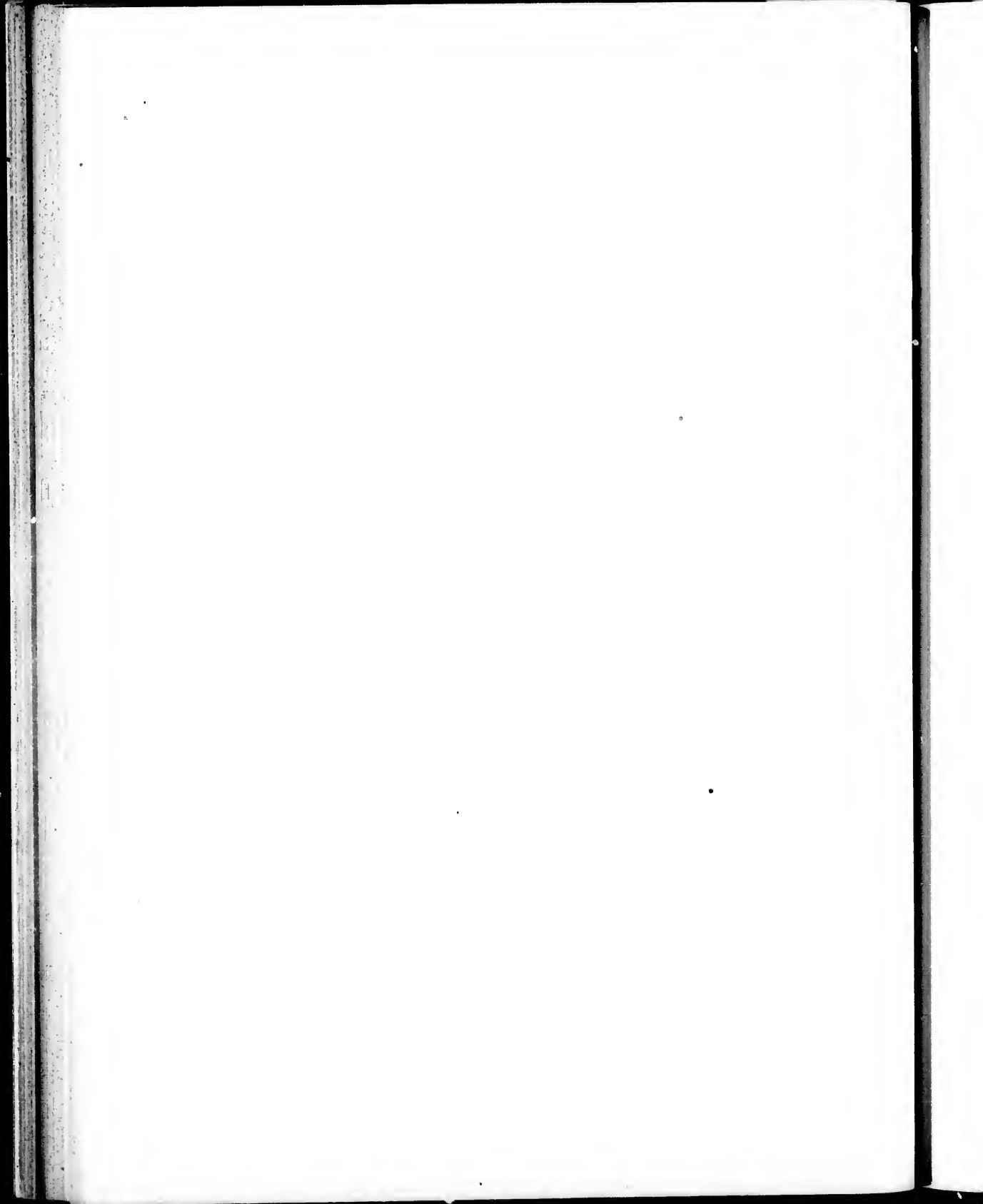
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The Reverend WILLIAM SIMPSON, of Como, in the district of Vaudreuil, heretofore a minister and pastor of the congregation and church at Lachine, in the district of Montreal, under the ecclesiastical jurisdiction of the Presbyterian Church of Canada, in connection with the Church of Scotland, being duly sworn doth depose and say:—

1st. That he has taken communication of the Petition in this cause, of Petitioner, and to the best of his knowledge and belief the matters alleged as fact in the said Petition are true and correct.

2nd. That the deponent is one of the original ministers of the Presby- 30 terian Church of Canada, in connection with the Church of Scotland, who commuted his claim upon the funds arising from the Clergy Reserve in the said Petition mentioned, and he has a personal knowledge of the proceedings connected with the renunciation of rights of ministers of the Clergy Reserve Fund to and in favour of the Presbyterian Church of Canada, in connection with the Church of Scotland.

That at the time the deponent so renounced his rights to the said Clergy Reserve Funds, and to the Municipalities Fund arising therefrom, it was his intention, and it was the intention of the Petitioner and all the 40



original commutators who surrendered their rights, to form and constitute a perpetual endowment for the benefit of the Presbyterian Church of Canada, in connection with the Church of Scotland, and for the benefit of the Ministers and Missioners who maintained their connection therewith, and who did not cease to be ministers thereof, and it was a distinct and fundamental condition upon which he surrendered his claim, and upon which the other commutators surrendered their individual claims to participate in the benefits arising from the said Fund, that the said Fund should remain perpetual endowment for the benefit of the said church and should be incapable of alienation for any other purpose whatever, and that no one who left the said church or who joined any other religious organization should be entitled to receive any benefit therefrom whatever. 10

3rd. That the Funds administered by the Respondents, arising from the commutation of claims of Ministers of the said Clergy Reserve Fund, constitute a trust which the Respondents were bound to administer for the purposes hereinbefore indicated, and for no other purpose whatever, and to the best of his knowledge and belief the conditions of the said trust have been violated, and the allegations of the Petitioners complaint are well founded in fact.

And he hath signed,

WILLIAM SIMPSON.

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Sworn taken and acknowledge before us at Montreal, this twenty-seventh day of December, eighteen hundred and seventy-eight.

J. S. HUNTER,

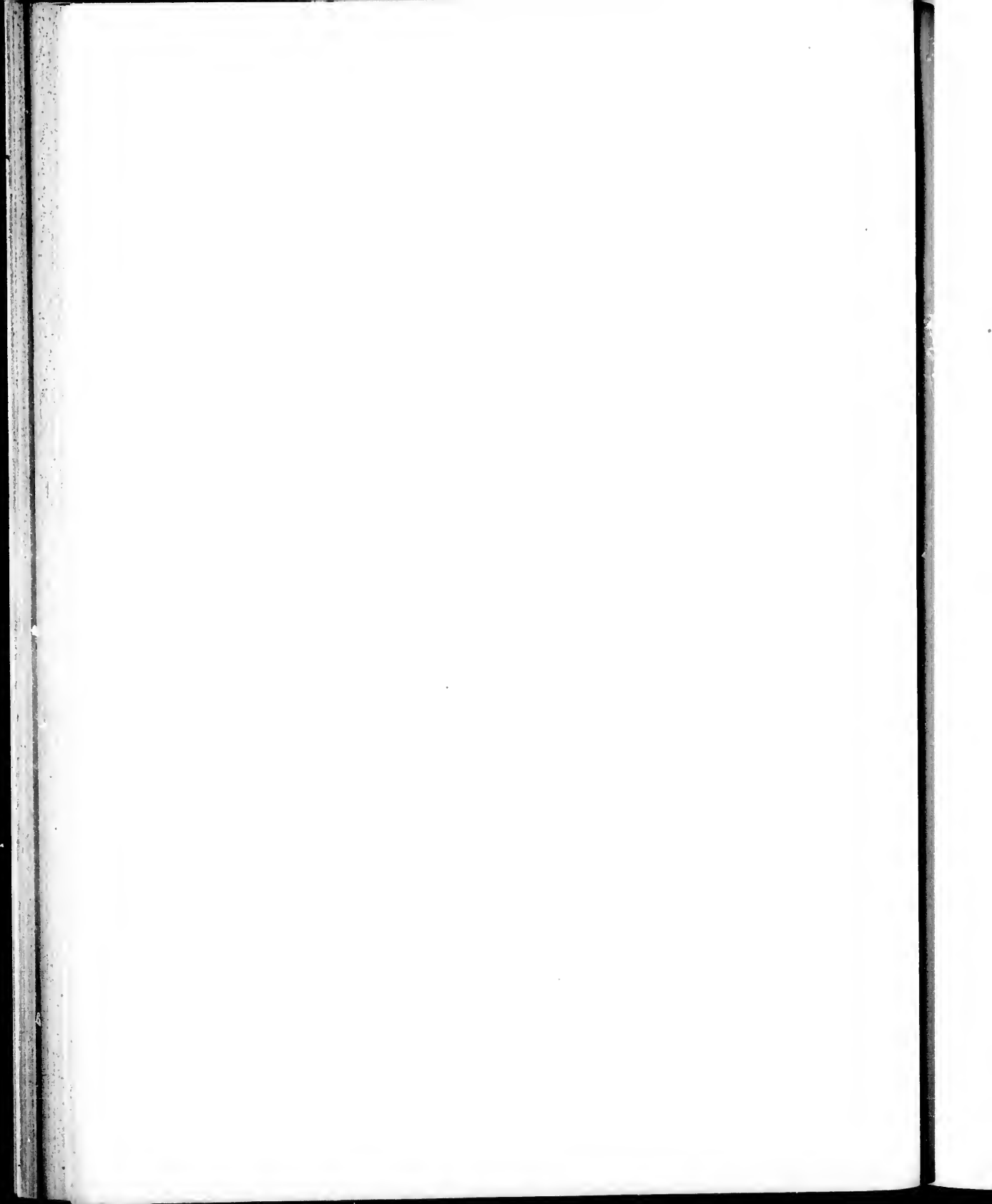
Commissioner Superior Court, District of Montreal.

ANSWERS TO PLEAS.

The said petitioner for answer to the plea firstly pleaded by all the respondents herein, except the Reverend Gavin Lang and Sir Hugh Allan (who, as appears by their declaration herein made, acquiesce in the pretensions of the petitioner, and abide the order of the Court) says:— 30

That each all and every the allegations of the said plea, save and except in so far as they agree with the averments of petitioners petition, and of this his answer, are false, untrue, and unfounded in fact: and the petitioner denies each and all of them, and the said petitioner avers.

That in eighteen hundred and fifty-two, he was a member of the Church of Scotland, in Scotland, and then and there was selected and appointed by the 40

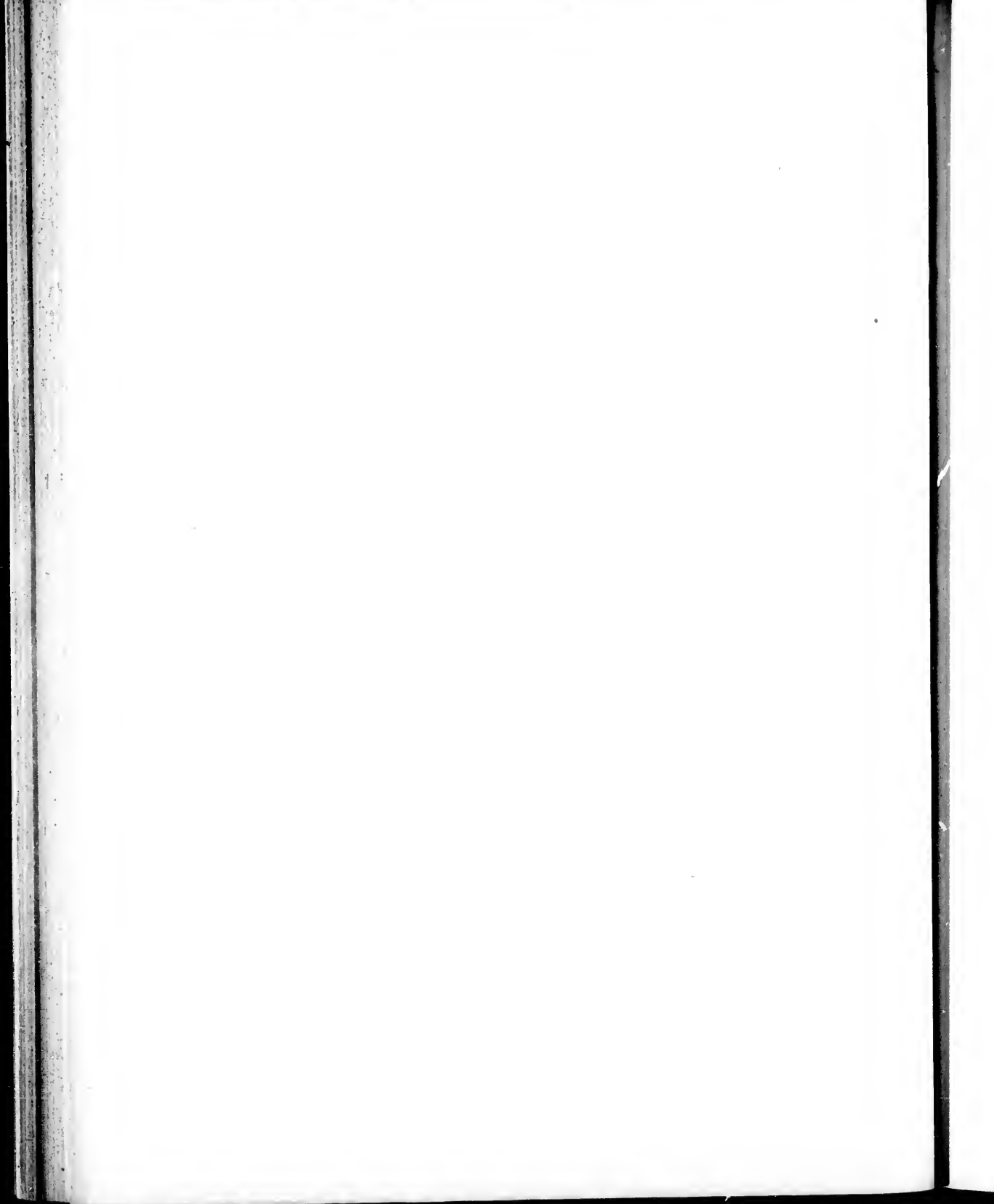


Church of Scotland, and by the Reverend John Cook, and the Reverend Alexander Mathewson, both delegates of the Synod of Presbyterian Church of Canada, in connection with the Church of Scotland, and of the "Clergy Reserves" commissioners as a minister and missionary from the Church of Scotland to its connection church in Canada.

That the Presbyterian Church of Canada, in connection with the Church of Scotland, and the ministry thereof, frequently and at divers times from eighteen hundred and thirty-one until eighteen hundred and seventy-five claimed to be, and were, not merely a branch of the Church of Scotland in Canada, but the Church of Scotland in Canada, and as such was aided and supported by the Church of Scotland in Scotland, by contributions in money, and were during said period recognized at divers times and acknowledged to be the Church of Scotland in Canada by the General Assembly of the Church of Scotland, and its Colonial Committee by the Imperial and Provincial Parliaments (vide Imperial Statutes three and four Victoria Chap. seventy-eight) and by the Synod and representatives of the Synod of the said Presbyterian Church of Canada, in connection with the Church of Scotland.

That it was only by reason of the identity of the said last mentioned church with the Church of Scotland in Scotland, to wit:—one of the established churches of the United Kingdom of Great Britain and Ireland, that the said Presbyterian Church of Canada, in connection with the Church of Scotland became, and was entitled with the Church of England and its ministers, to share in the proceeds of the "Clergy Reserves" in Canada, to the exclusion of all other Presbyterian bodies laying claim thereto, through professing identity with the said Presbyterian Church of Canada, in connection with the Church of Scotland.

That in and previous to the year eighteen hundred and fifty-five the petitioner was personally entitled to receive his proportionate share in money of the proceeds of the "Clergy Reserves" in Canada, which said sum at the date of commutation of the claims of ministers upon said "Clergy Reserves" in eighteen hundred and fifty-five, amounted to the capital sum of ten thousand dollars, which at legal interest would yield to the petitioner an annual allowance of six hundred dollars per annum; that petitioner in eighteen hundred and fifty-five, was entitled to draw and receive from the Crown the said capital sum of ten thousand dollars, and to invest, dispose or devise the same as he might think proper, but petitioner in consideration of the creation of a permanent endowment and trust, which was in said year eighteen hundred and fifty-five, created and formed by the said petitioner and the other commuting ministers for the benefit of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and of the ministers thereof upon certain

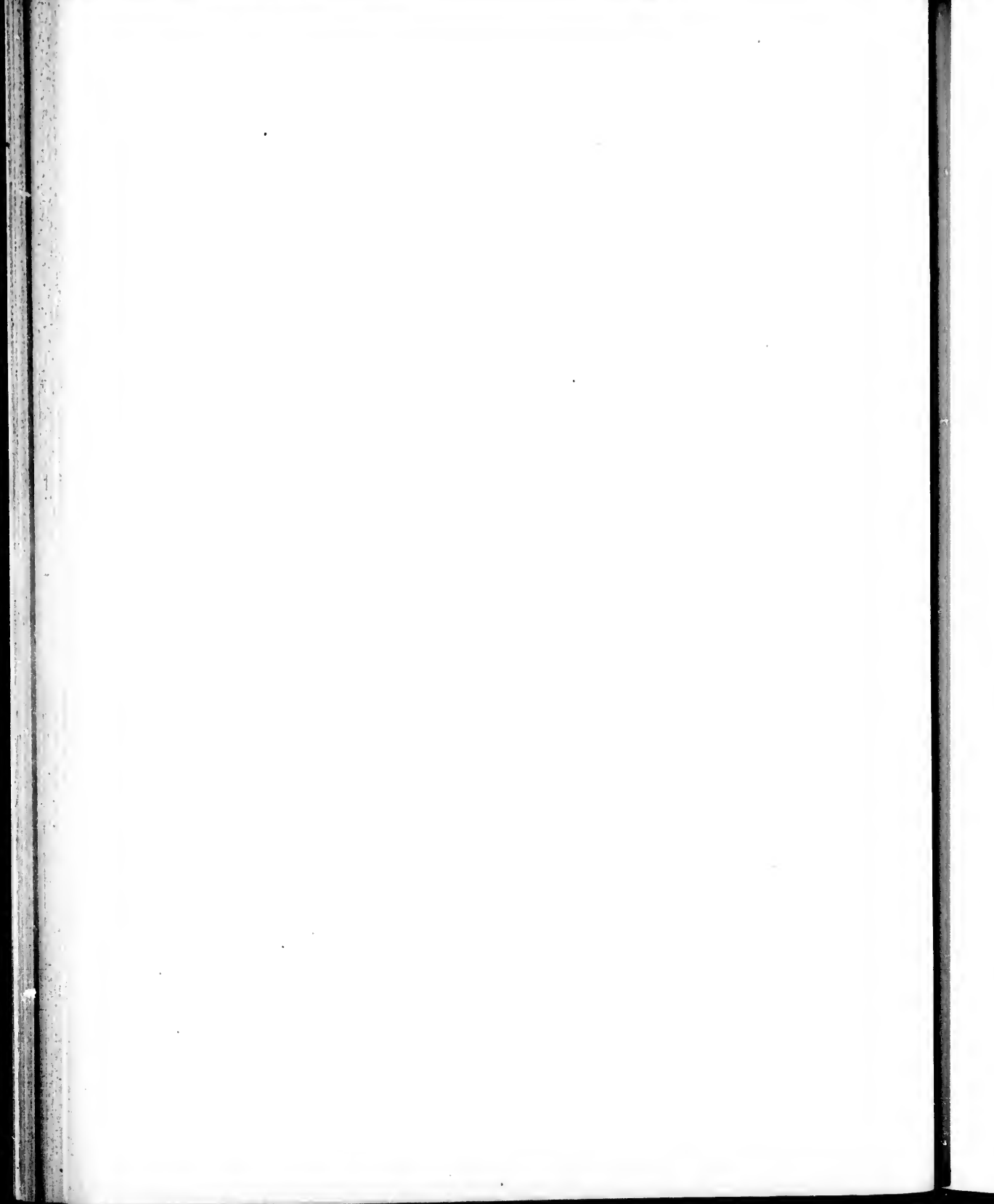


fundamental conditions then and there prescribed and entered into between himself and said other commuting ministers, and amongst others, upon the fundamental principle, which it should not be competent for the Synod of said church at any time to alter, unless with the consent of the ministers granting such power and authority, that all persons who should have a claim to such trust and the fund thereby created, should be ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, and that they should cease to have any claim on or be entitled to any share of the said commutation fund whenever they should cease to be ministers in connection with said church, did consent and agree to renounce, and did for said considerations renounce, the said capital sum of ten thousand dollars, which he was then entitled to, and consented and agreed to accept for the future a reduced annuity, or annual allowance therefrom during his natural life, to wit, the sum of four hundred and fifty dollars per annum, all which renunciations he would not have agreed and consented to, had it not been expressly provided as a fundamental condition of such renunciations that the money so renounced should, as in fact it was, be constituted into such a permanent endowment for said church and its ministers, and subject to said further condition that all ministers seceding from or ceasing to be members thereof should forfeit the right to all claim thereto in principal or in interest.

That the said petitioner as one of the original commutators of the said "Clergy Reserves," was a party to and was instrumental in forming and constituting a trust for the benefit of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and of the ministry of said church, and became, and was, and is interested in having, and entitled to have the purposes and objects of the said original trust strictly and faithfully carried out, and would be violating his duty as one of the original commutators, and as a member of the said church in suffering or permitting said fund to be deviated from its original purposes.

That no power or authority either Legislative or otherwise could legally divert the said trust from its original purposes without the unanimous consent of all those who constituted the same by the abandonment of their personal rights and privileges, which they then had in respect to the same for the purposes aforesaid.

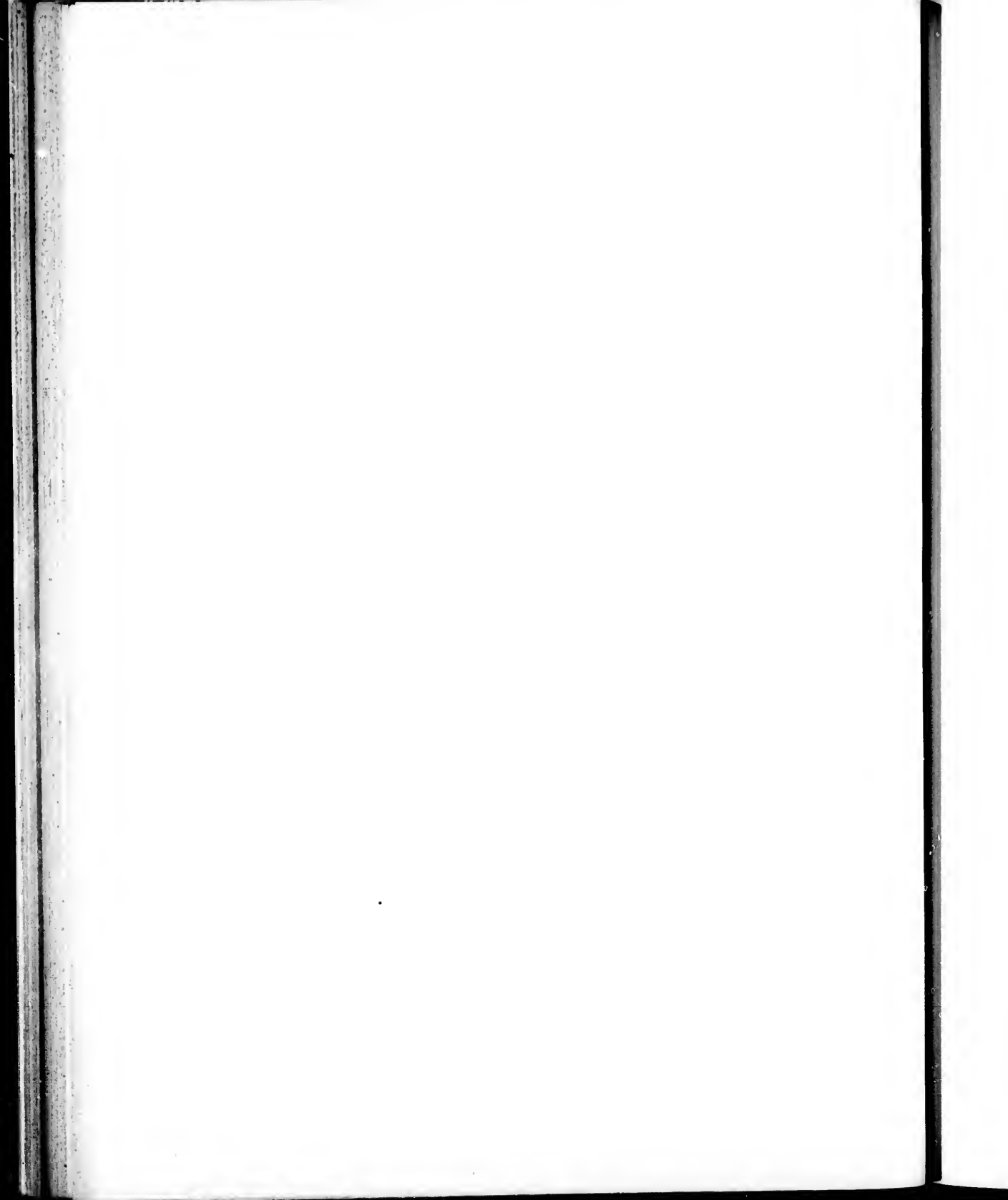
That petitioner is in good faith in instituting the present action, is not acting from malicious motives, but personally, and as the representative of many others in different parts of Canada, and with the concurrence and by the advice of the ministers and members and adherents of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and the Synod thereof.



That a meeting of the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, was duly called, and did meet in Saint Paul's Church in Montreal, on the fourteenth and fifteenth of June, eighteen hundred and seventy-five, at which meeting certain resolutions were carried to give effect to a secession from the said Presbyterian Church of Canada, in connection with the Church of Scotland, to certain other religious denominations, to wit, 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.

That at said meeting of Synod the petitioner protested in the forms 10 prescribed by the Synod of the said church in such cases, as will appear from the minutes thereof, and did protest notarially, by the ministration of Charles Cushing, Esquire, Notary Public, against said secession, and the consummation of a union between the Presbyterian Church of Canada, in connection with the Church of Scotland, and said other religious bodies, copy of which protest is herein filed; yet notwithstanding the said protest of petitioner, the personal respondents and divers others, ministers and elders mentioned in the petition herein, on the fifteenth day of June, departed from Saint Paul's Church and went to another building in the said City of Montreal, to wit, to the Victoria Skating Rink, and there united with the said Canada Presbyterian Church and 20 said other bodies; but petitioner and divers others, ministers and elders, on said last mentioned day, remained in said Saint Paul's Church, and there continued legally and regularly the proceedings of said Synod of said Presbyterian Church of Canada, in connection with the Church of Scotland, and duly adjourned, and have since regularly met and carried on the business of the said Synod of the said church until the present time, and since the said fifteenth of June continuously to the present time, the said Presbyterian Church of Canada in connection with the Church of Scotland, has continued its existence and organization in connection with the Church of Scotland as previously, and is now identical in standard and belief, in church government, and in every other 30 respect with the said Presbyterian Church of Canada, in connection with the Church of Scotland, before the fifteenth day of June, eighteen hundred and seventy-five, and is in fact the same Church.

That the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, has no power, and never had power, either by resolution or otherwise to affect the civil rights of petitioner, and the said Synod never had any other independence or control other than in matters spiritual and ecclesiastical as defined in the Declaratory Act of the Synod, in eighteen hundred and forty-four, to wit, matters coming strictly within its own confines, but the petitioner expressly denies that the said Synod ever had any 40



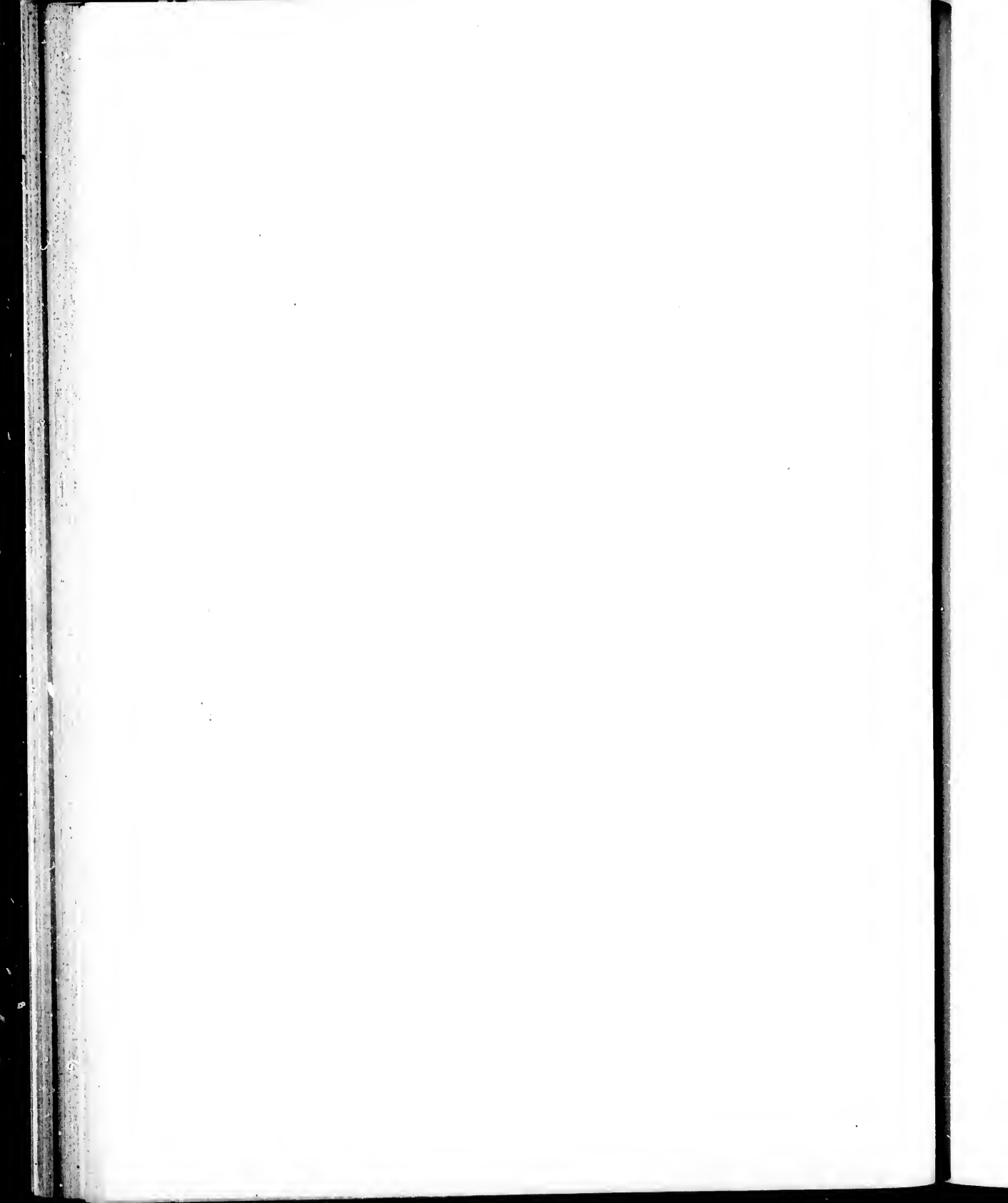
power by majority to effect his civil rights, or to arrogate to itself rights of control which it did not and could not possess, or to change or vary the terms of a trust regulated by express stipulations made by the persons constituting it.

That the Corporation, Respondents, were and are bound to administer the funds under their control, in accordance with the fundamental conditions prescribed by the petitioner, and the other constituents of the trust, and in accordance with the provisions of the Act of Parliament of Canada, (twenty-second Vic. Chap. sixty-six).

That the said petitioner by reason of his maintaining his connection 10 with the said Presbyterian Church of Canada in connection with the Church of Scotland, and by reason of his not being a member of another body, to wit, the Presbyterian Church in Canada, under and by virtue of the unconstitutional legislation obtained by the respondents, and referred to in their plea, has been deprived of the right to assist in the administration, and to have a voice in the control of the said fund.

That the ministers and members of the said Presbyterian Church of Canada, in connection with the Church of Scotland, to wit, the personal respondents and others mentioned in the petitioners petition, who seceded 20 from the said Presbyterian Church of Canada in connection with the Church of Scotland, on the fifteenth day of June, eighteen hundred and seventy-five, and became with others absorbed into the Canada Presbyterian Church, are in precisely the same position as regards the right to participate in the benefits and revenues arising from the said fund, as were the seceders from the said Presbyterian Church of Canada, in connection with the Church of Scotland, who in eighteen hundred and forty-three, and eighteen hundred and forty-four, left the said church and formed themselves into a religious association called the Presbyterian Church of Canada, adhering to the same standards as the 30 the ministers of which latter body, to wit, the Presbyterian Church of Canada were declared by the law officers of the crown to have forfeited their rights, and to be ineligible to participate in the benefits to be derived from the said "Clergy Reserves" and their proceeds.

That the terms of the agreement entered into by the petitioner and the other commuting ministers in eighteen and fifty-five, with regard to the constitution of the said permanent endowment fund were expressly framed to prevent seceding ministers from being eligible after secession to participate in the benefits arising from the said fund, and to preserve the said fund solely and only for the benefit of those who maintained their connection with the Presbyterian Church of Canada, in connection with the Church of Scotland. 40

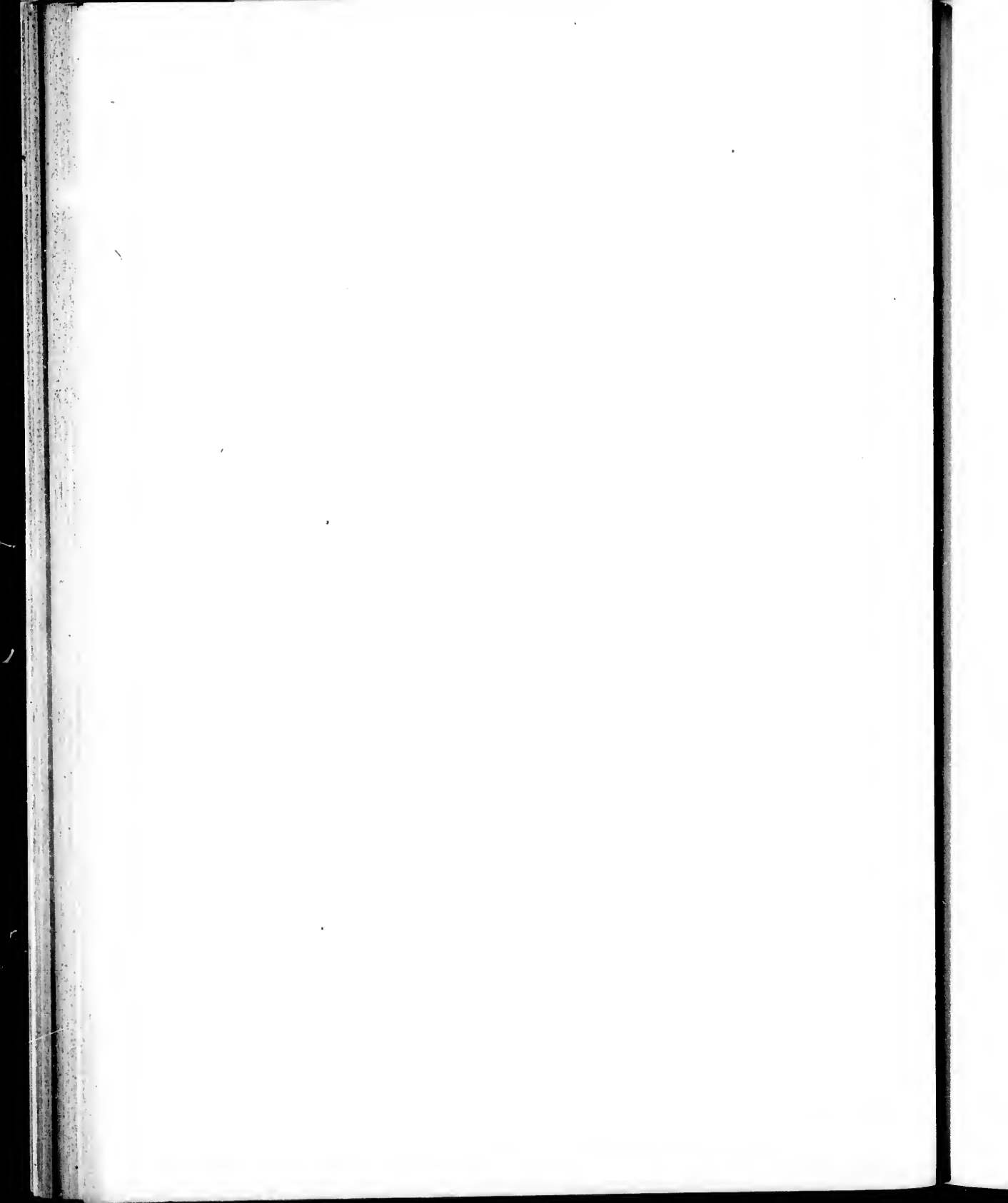


That the right to participate in the "Clergy Reserves" was granted and conceded to the Presbyterian Church of Canada, in connection with the Church of Scotland, on the ground that the said church was identical with, and the only representative in Canada of the Church of Scotland as an Established Church of the United Kingdom.

That petitioner does not lease his claim to receive his allowance of four hundred and fifty dollars per annum, upon any pretended concessions made to him in the illegal and unconstitutional acts of the Local Legislatures of Ontario and Quebec referred to in said plea, irrespective of which acts he is entitled to his allowance, and he expressly denies that he has ever recognized the authority of the respondents to hold and administer the said funds under the said Acts. 10

That the Presbyterian Church in Canada is not the same, or identical with the Presbyterian Church of Canada, in connection with the Church of Scotland, but is a different and distinct body, and is composed of a number of church bodies or associations, which each in turn seceded from either the Church of Scotland, or the Presbyterian Church of Canada, in connection with the Church of Scotland.

That the said seceders from the Presbyterian Church of Canada, in connection with the Church of Scotland, the Presbyterian Church in Canada, the Presbyterian Church of the Maritime Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces, did each before the consummation of the union on the fifteenth of June, eighteen hundred and seventy-five, declare that the said united church, to wit, the Presbyterian Church in Canada should be identical with each of the three uniting bodies, and the said Presbyterian Church of Canada, in connection with the Church of Scotland, but the said Presbyterian Church of Canada in connection with the Church of Scotland, and the said three uniting bodies differ with each other in standards and matters of belief, and it was, and is, impossible that the said united church could be identical with all and each of them, and the said Presbyterian Church in Canada is not identical with the said Presbyterian Church of Canada in connection with the Church of Scotland, which latter church has now, and has since eighteen hundred and thirty-one, a separate and distinct ecclesiastical and civil existence, and petitioner expressly denies that the Presbyterian Church of Canada in connection with the Church of Scotland, now exists under the name of the Presbyterian Church in Canada, as falsely alleged in respondents' plea. 20 30



Wherefore the said petitioner persists in the allegations and conclusions of his petition filed in this matter, and prays that the said plea be hence dismissed with costs *distrains* to the undersigned Attorneys.

MONTREAL, April 12th, 1879.

MACMASTER, HALL & GREENSHIELDS,

Attorneys for Petitioner.

ADMISSIONS OF THE PARTIES.

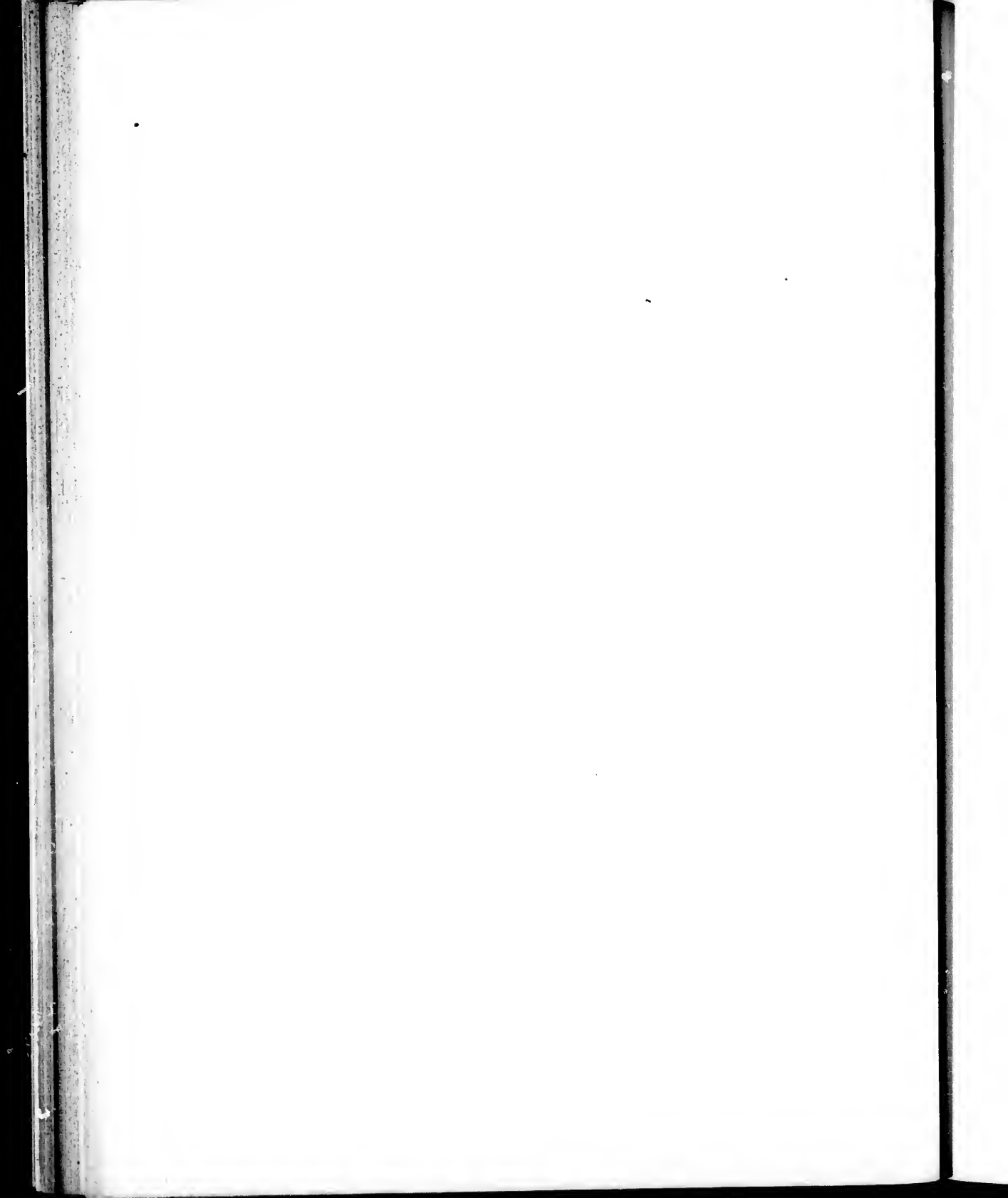
To save costs the Petitioner and Respondents pleading hereby admit:—

That the printed official minutes of the Acts and proceedings of the 10
Synod of the Presbyterian Church of Canada, in connection with the Church
of Scotland, from the year 1831 to the year 1875, both inclusive are to be
found in the three volumes of books filed by the Petitioner in this cause on
the twenty-first day of March last, each of said books been marked "B.B.B."

1. The said Respondents pleading contending that the said Acts and
Proceedings end at page marked "A" in the volume endorsed from 1870 to
1875, whereas the Petitioner contends that said Acts and proceedings in so far
as contained in said book "B.B.B." from 1870 to 1875, end at page 125 of the
Acts and Proceedings of Synod for June, 1875, and the said parties consent that
the said printed Acts and Proceedings do avail as legal proof in this cause, in 20
the same manner and to the same extent as if the said acts and proceedings of
said Synod had been regularly proved by the production and proof therein of
the original minutes, the whole in so far as the said minutes are relevant to the
issues in this cause.

2. That Petitioner's exhibit "E.E." filed on the said 21st day of March,
1879, is an official printed copy of the acts and proceedings of the first General
Assembly of the Presbyterian Church in Canada, and the said parties consent
that the said printed Acts and Proceedings do avail as legal proof in this cause
in the same manner and to the same extent as if the said acts and proceedings
of the said assembly had been regularly proved by the production and proof 30
of the original minutes, the whole in so far as said Acts and Proceedings are
relevant to the issues in this cause.

3. That the book filed in this cause as Petitioner's exhibit "K.K." on the
said 21st day of March, 1879, commencing on page 147 with the words
"Colonial Churches," and ending with the words "for the use of immigrants,"
on page 149 of said book is the report to the General Assembly of the Church
Scotland, in Scotland, by its Colonial Committee in Scotland, presented in May.



1853, and that the Reverend Robert Dobie referred to in the said report is the Petitioner in this cause, and the said parties consent that the said printed report have the same effect, and avail to the same extent for the purposes of this suit as the original would do if produced and duly proved herein, and that the said Petitioner came to Canada in the year 1852, after being selected as above mentioned in said report, and that after acting as a missionary and preacher for some time in the city of Montreal, of the Presbyterian Church of Canada, in connection with the Church of Scotland, he was subsequently, to wit: on the 7th day of October, 1853, ordained and inducted as a minister into the charge of the church at Osnabruck, in the presbytery of Glengarry, in the Province of Ontario, under the ecclesiastical jurisdiction of the Presbyterian Church of Canada, in connection with the Church of Scotland, and that the Respondents Exhibit No. 3, is a correct extract from the records of the Presbytery of Glengarry, referring to the said ordination and induction.

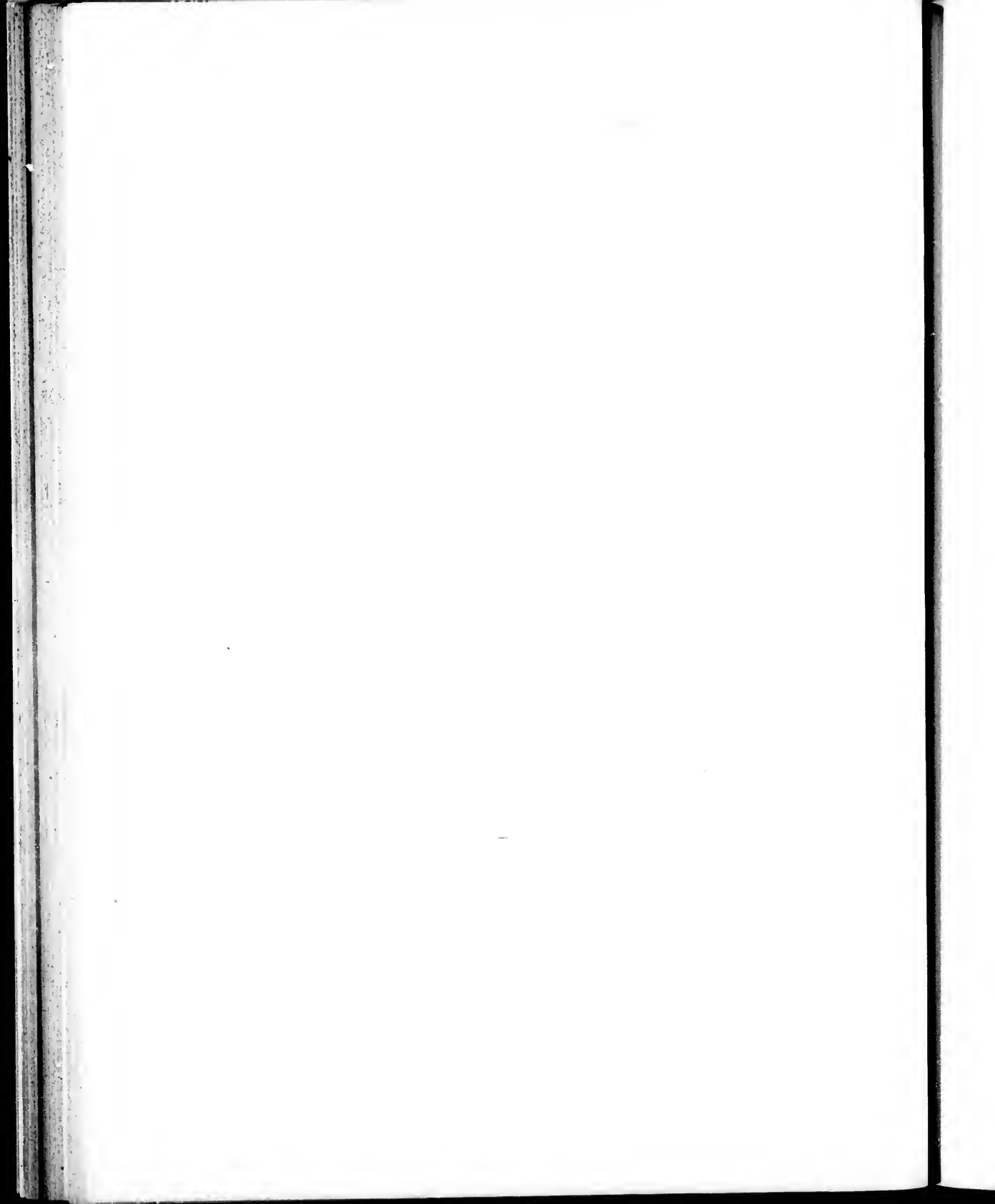
4. That the book filed as Petitioner's exhibit "L.L." on the said 21st day of March, 1879, is the official printed digest of the minutes of the Synod of the Presbyterian Church of Canada, from the first meeting held at Kingston in July, 1844, down to the year 1861 both inclusive; and said parties consent that the said printed digest have the same effect, and avail to the same extent for the purpose of this suit as the original of the minutes contained in said book would do if produced and duly proved in this cause, the Respondents reserving their right to object to the relevancy of the said book "L.L." to the issues herein.

5. That the copy of the Statutes of the Legislature of the Province of Ontario, printed on pages 104, 105, 106 and 107 of the acts and proceedings of said Synod, of the Presbyterian Church of Canada, in connection with the Church of Scotland for 1875, contained in said Petitioner's exhibit "B.B.B." is a true copy of the statute of which it purports to be a copy, passed by the Legislature of the Province of Ontario.

6. That the said Petitioner was one of the ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, who commuted his claim to an annual allowance (that he had a right to claim by virtue of the secularization of the Clergy Reserves, and under the authority of the Act: 18 Vic., Cap. 2, and the other acts relating thereto) said commutation being upon the terms of the resolutions passed by the Synod of said Church, on the 11th day of January, 1855, hereinafter set out in the next following admission.

7. That the allegations contained in the following portions of the Petitioner's petition are true, to wit:—

(a) From line 43 on page 2 down to and inclusive of line 8 on page 9 of said petition, being as follows: 40



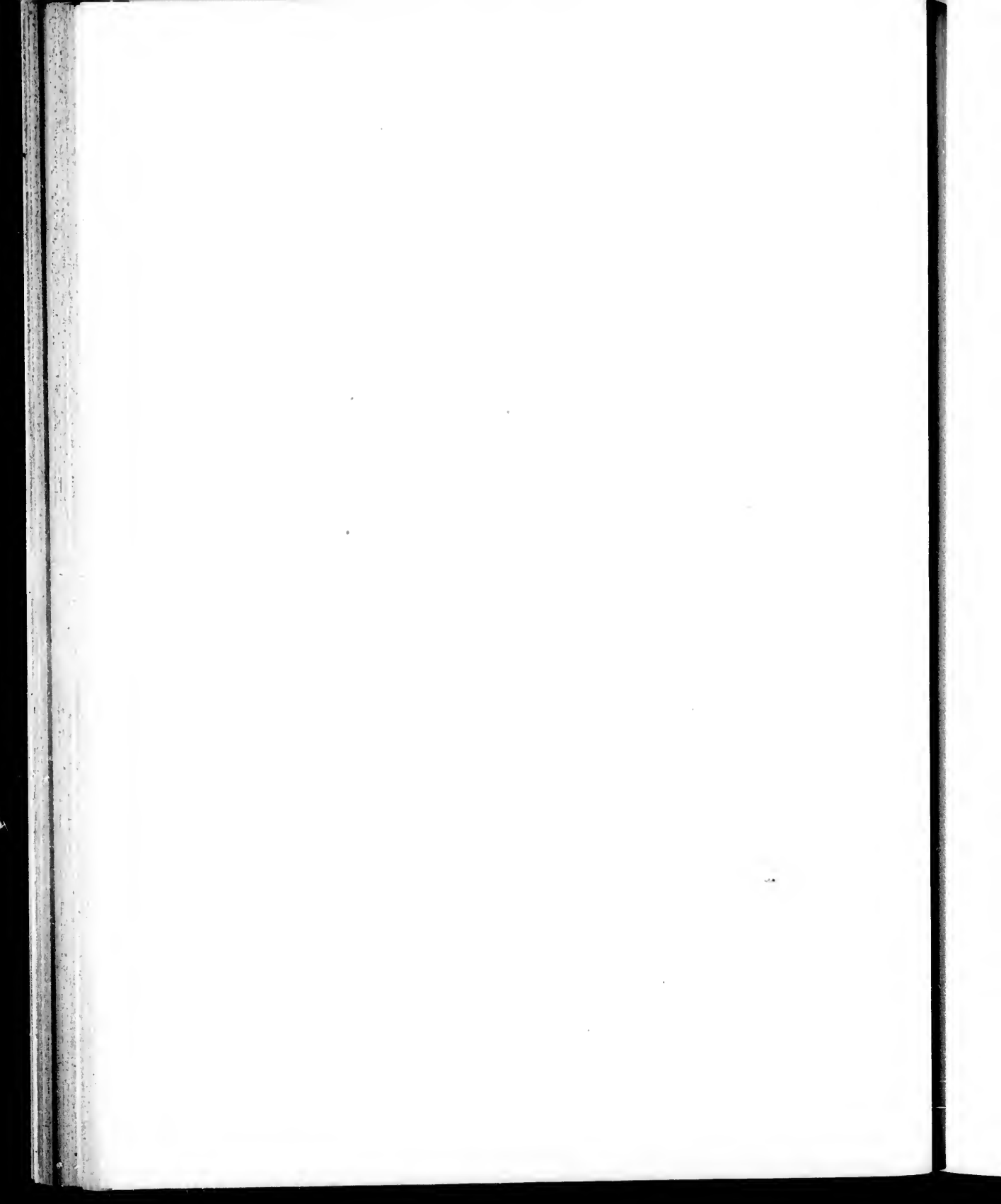
" That by Acts of the Imperial Parliament of Great Britain, and of the
 " Imperial Parliament of the United Kingdom of Great Britain and Ireland,
 " the Sovereigns of Great Britain and of the United Kingdom of Great Britain
 " and Ireland, were empowered to authorize the Governor, or Lieutenant-Gov-
 " ernor, of each of the then Provinces of Upper and Lower Canada, respectively,
 " to make from out of the lands of the Crown within the said Provinces
 " respectively such allotment and appropriation of Lands, as therein mentioned,
 " for the support and maintenance of the Protestant Clergy within the said
 " Provinces, and to apply the rents, profits and emoluments which might at
 " any time arise from such lands, so allotted and appropriated, solely for the
 " maintenance and support of a Protestant Clergy within the Province in
 " which the same might be situated, and to no other purpose whatever. 10

" That subsequently thereto, in pursuance of the said Acts, certain lands
 " of the Crown were from time to time reserved for the purposes mentioned
 " therein, which said lands were known, and were and are commonly desig-
 " nated, by the name of the 'Clergy Reserves.'

" That the Governor, Lieutenant-Governor, and Administrator of the
 " heretofore Provinces of Upper and Lower Canada, respectively, were empow-
 " ered with the consent of the Executive Council of such Provinces, respec-
 " tively, and in pursuance of Her Majesty's instructions, to sell and convey a 20
 " part of the said "Clergy Reserves" in each of the said Provinces, and to
 " invest the proceeds of such sales in the Public Funds of the said United
 " Kingdom, and to appropriate the dividends and interests of the moneys so
 " invested for the support and maintenance of a Protestant Clergy within the
 " said Provinces, solely and to no other purpose whatever.

" That by another Imperial Act the sale of the entire Clergy Reserves
 " in the Province of Canada, and the investment of the proceeds of such sale,
 " and the distribution of the interests and dividends of such investment,
 " subject to certain conditions, were authorized for the purposes hereinbefore
 " mentioned. 30

" That by another Imperial Act the Legislature of the heretofore Prov-
 " ince of Canada was authorized to dispose of said Clergy Reserves and to
 " make such investment of the proceeds thereof as to the said Legislature
 " might seem meet, subject to the proviso, that it should not be lawful for the
 " said Legislature of the Province of Canada, by any Act or Acts thereof as
 " aforesaid, to annul, suspend, or reduce any of the annual stipends which had,
 " previously thereto, been already assigned and given to the Clergy of the
 " Churches of England and Scotland, or to any other religious bodies or denom-
 " inations of Christians in Canada (to which the faith of the Crown was
 " pledged) during the lives and incumbencies of the parties then receiving the 40



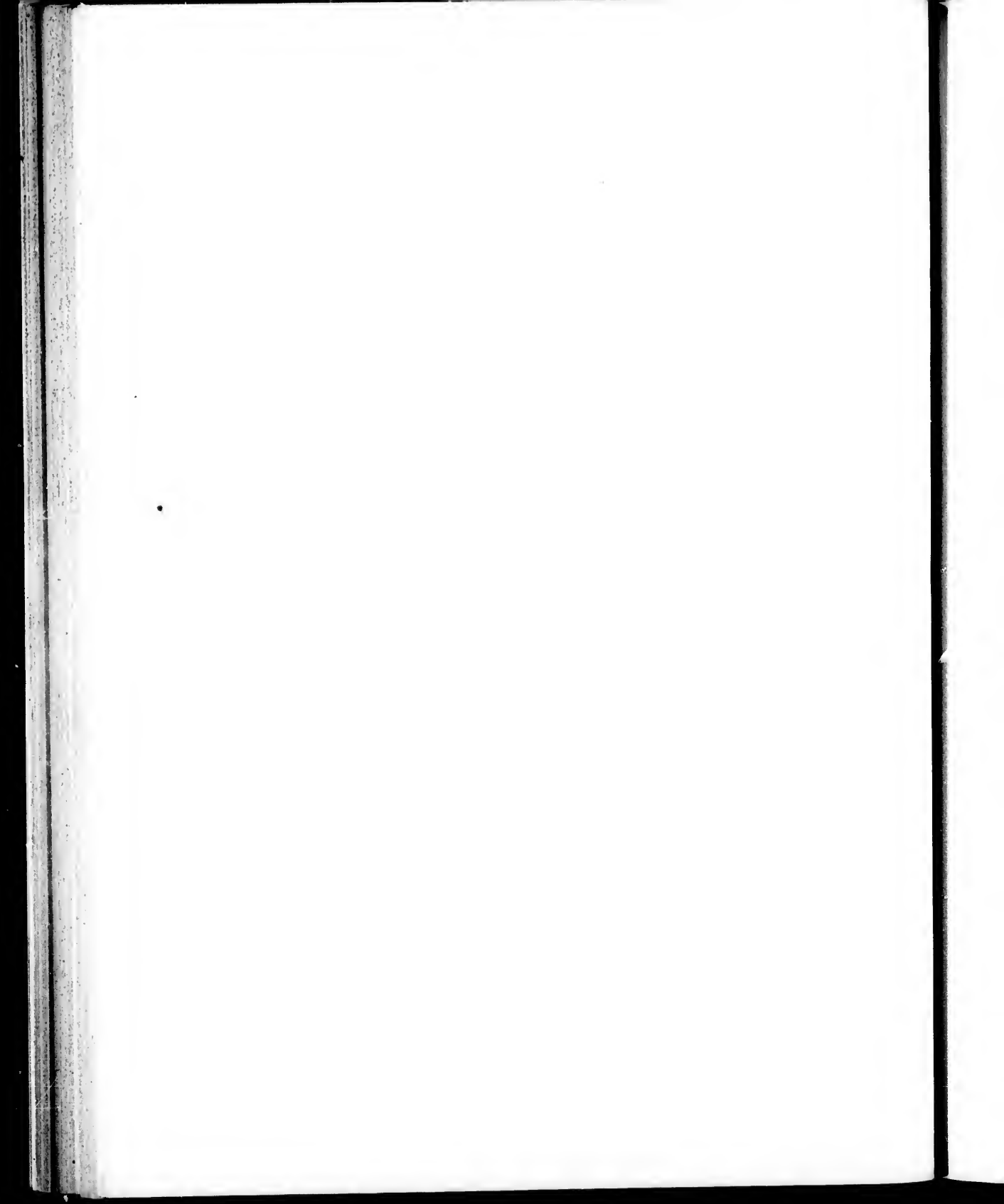
" same, or to appropriate or apply to any other purpose any part of the said
 " proceeds, investments, interests, dividends, rents and profits that might be
 " required for the payment of the stipends and allowances due or accruing to
 " the Clergy of the said Churches of England and Scotland during their lives
 " and incumbencies.

" That by the Imperial Acts, to wit, the Acts of the Parliament of Great
 " Britain and the United Kingdom of Great Britain and Ireland hereinbefore
 " referred to, the whole of which are herein invoked, are specifically referred to
 " in the Act passed by the heretofore Province of Canada, in the eighteenth
 " year of the reign of Her Majesty Queen Victoria, entitled 18 Victoria, 10
 " Chapter 2

" That under and by virtue of the said last mentioned Act, it was enacted
 " and declared that the moneys arising from the sale and disposal of the said
 " Clergy Reserves, in the said Province of Upper Canada, should continue to
 " form a separate fund, which should be called the 'Upper Canada Municipi-
 " palities' Fund,' and that the moneys arising from the sale and disposal of the
 " Clergy Reserves in the said Province of Lower Canada should continue to
 " form a separate fund, which should be called the 'Lower Canada Municipi-
 " palities' Fund,' and that after deducting the necessary expenses attending
 " the sale of the said Clergy Reserves, and managing the same and the said 20
 " Funds, the money forming the said Funds, or that had previously arisen
 " therefrom, should be paid into the hands of the Receiver General of the
 " heretofore Province of Canada, to be by him applied according to the pur-
 " poses of the said last mentioned Act.

" That by virtue of the said last mentioned Act, the annual stipend and
 " allowance which had been, before the passing of the Act of Parliament of
 " the United Kingdom, in the sixteenth year of Her Majesty's reign, assigned
 " or given to the clergy of the Churches of England and of Scotland, or to
 " any other religious bodies or denominations in either sections of the Province,
 " and chargeable under the said Act of Parliament on the Clergy Reserves in 30
 " such section (and to which the faith of the crown was pledged) should during
 " the natural lives or incumbencies of the parties, (to wit, the Ministers and
 " Missionaries of the said churches and religious denominations receiving the
 " same at the time of the passing of the said Act, to wit, the Imperial Act 16
 " Vict.) be a first charge on the Municipalities' Fund for that section of the
 " Province, and should be paid out of the same in preference to all other
 " charges or expenses whatever.

" That by the Act of the late Province of Canada (18 Vic: Cap. 2) it
 " was enacted that the Governor of the said Province of Canada might, when-
 " ever he might deem it expedient, with the consent of the parties and bodies 40



" severally interested, commute with the said parties such annual stipends or
 " allowances for the value thereof, to be calculated at the rate of six per centum
 " per annum upon the probable life of each individual, and that such com-
 " mutation amount should be paid accordingly out of that Municipalities'
 " Fund, upon which such stipend or allowance was made chargeable by the
 " said last mentioned Act.

" That under and by virtue of the said last mentioned Act, each of the
 " Ministers and Missionaries of the Presbyterian Church of Canada in connec-
 " tion with the Church of Scotland, then receiving benefits within the said
 " Province of Canada from the said Clergy Reserves, or under the Act of 10
 " Secularization thereof, or from the proceeds thereof, or from the Muni-
 " cipalities' Funds within the respective sections of the said Province of Canada,
 " was entitled to receive a sum of money as commutation for the value of
 " the annual stipend or allowance payable to him therefrom, and for the
 " interest which he had individually, and as a member of the Presbyterian
 " Church of Canada, in connection with the Church of Scotland, in the said
 " Clergy Reserves and in the said Municipalities' Fund, arising therefrom.
 " (the whole as more particularly set forth in said Acts to which reference is
 " made).

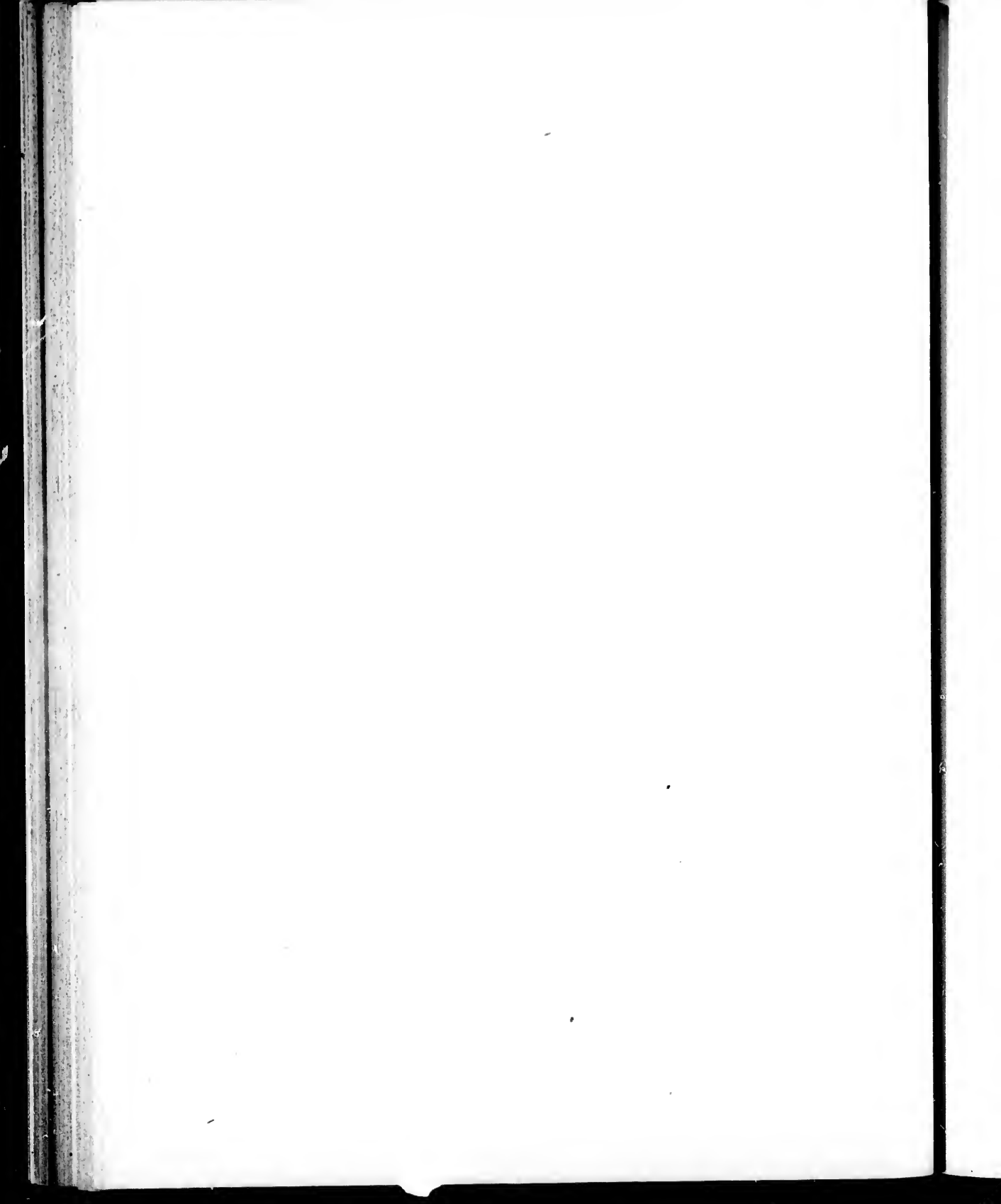
" That the Synod of Presbyterian Church of Canada, in connection with 20
 " the Church of Scotland, was duly summoned for the purpose of taking such
 " steps as might be necessary to enable the said Synod and the members thereof
 " to take advantage of the commutation clauses in the said Act of the Legisla-
 " ture of Canada, 18 Vict. Cap. 2, and the said Synod duly met and determined
 " and decreed as set out in the minutes hereinafter cited, in the City of
 " Montreal, on the tenth and eleventh days of January, eighteen hundred and
 " fifty-five.

" The following is a copy of the Proceedings of the Synod, extracted
 " from its official records at pages three to eight of the Proceedings of Synod
 " for eighteen hundred and fifty-five. 30

ACTS AND PROCEEDINGS

OF THE

" Synod of the Presbyterian Church of Canada, in connection with the Church
 " of Scotland, begun at Montreal the tenth day of January, and con-
 " cluded the eleventh day of January, eighteen hundred and fifty-five
 " years. 40



SESSION XXVI.

Diet I.

" At Montreal, and within St. Andrew's
 " Church there; Wednesday, the tenth
 " day of January, one thousand eight
 " hundred and fifty-five years.

" The which day after sermon by the Rev. Dr. Mathieson, from Psalm
 " xlviii., 12 13., ' Walk about Zion and go round about her, tell the towers
 " thereof; mark ye well her bulwarks, consider her palaces that ye may tell it 10
 " to the generation following;' the Synod of the Presbyterian Church of
 " Canada in connection with the Church of Scotland met *pro re nata*, and was
 " constituted with prayer by the Moderator, the Reverend James Williamson,
 " A.M., sederunt: Mr. James Williamson, Moderator; Mr. John McMurchy,
 " Mr. John Barclay, Dr. Alexander Mathieson, Mr. James Anderson, Mr. James
 " C. Muir, Dr. John Cook, Mr. William Simpson, Mr. Alexander Wallace, Dr.
 " Robert McGill, Mr. James T. Paul, Mr. Thomas Haig, Mr. Archibald H. Mil-
 " ligan, Mr. John McDonald, Mr. John McKenzie, Mr. Hugh Urquhart, Mr.
 " John McLaurin, Mr. Thomas McPherson, Mr. Eneas McLean, Mr. Donald
 " Munro, Mr. Thomas Scott, Mr. Andrew Bell, Mr. Robert Dobie, and Mr. John 20
 " White, Ministers; together with Mr. Alexander Morris, Mr. John Thompson,
 " Mr. Thomas A. Gibson and the Hon. Thomas McKay, Elders.

" The Moderator laid before the Synod a requisition which had been
 " addressed to him, calling on him to summon a meeting of the Synod; also a
 " copy of his circular calling the present meeting. The same were read as
 " follows:—

" QUEBEC, 11th December, 1854.

" REVEREND AND DEAR SIR:

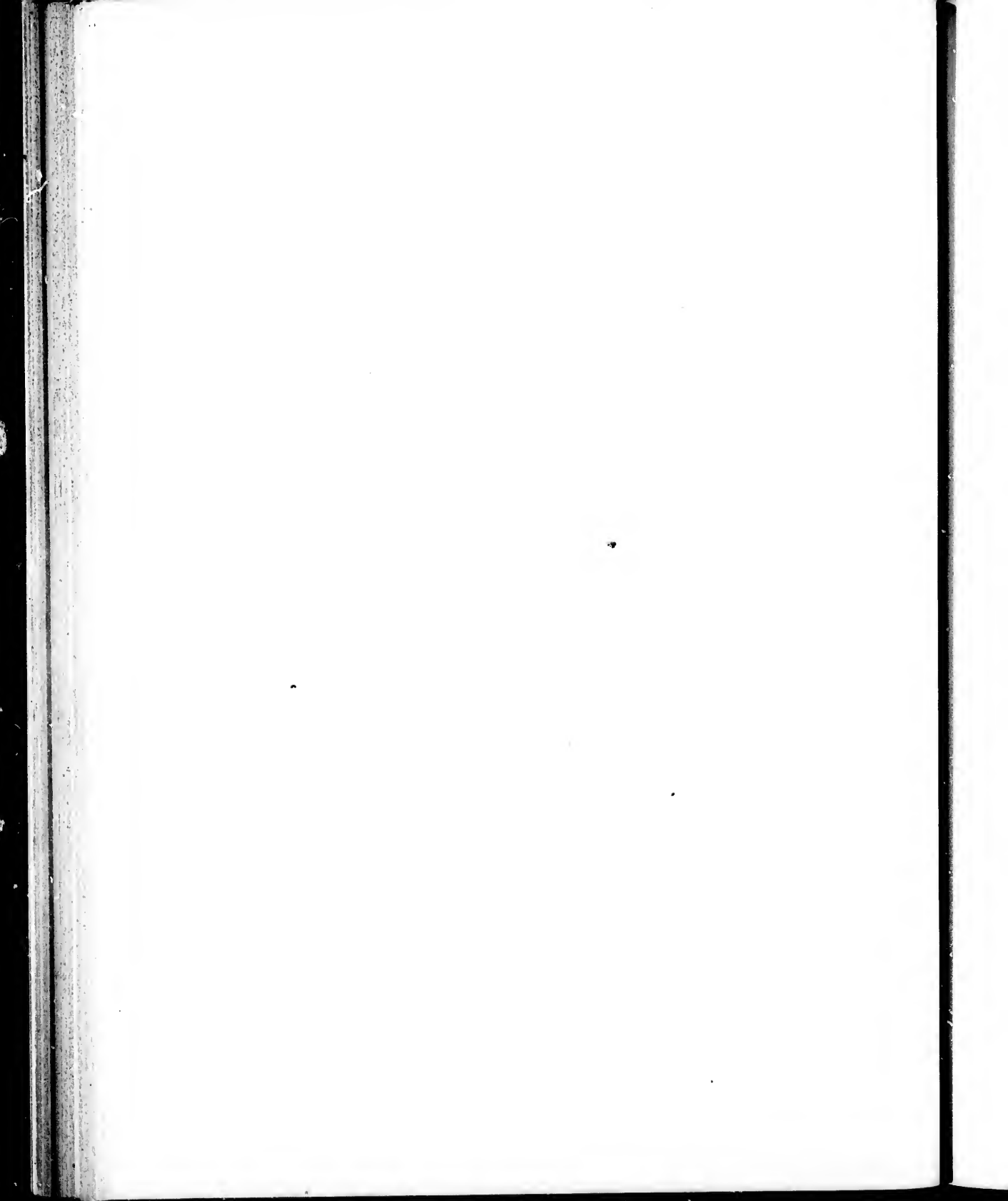
" I beg to intimate to you that it is the opinion of the Committee of
 " Synod, appointed to watch the progress of Legislation in respect to the 30
 " Clergy Reserves, that the Bill introduced by Government, having now passed
 " both Houses of the Legislature, it is desirable that a meeting of Synod should
 " be called as early as possible for the purpose of taking such steps as may be
 " necessary to take advantage of the commutation clause in said Bill, and in the
 " name of the Committee I beg very respectfully to request that you will call
 " such meeting at the time and place you think most convenient.

I am, Reverend and Dear Sir,

" Your faithful servant,

" (Signed),

JOHN COOK.



" We, the undersigned, hereby concur in the necessity of calling a special meeting of Synod at the earliest period the forms of the Church will admit.

" (Signed), ALEX. MATHIESON.

" (Signed), ROBERT MCGILL.

" The Reverend,

" The Moderator of the Synod of the

" Presbyterian Church of Canada,

" in connection with the Church of Scotland.

" KINGSTON, 20th December, 1854.

" REVEREND AND DEAR SIR:

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" In compliance with a request addressed to me by the Convener and other members of the Committee appointed to watch over the progress of legislation in respect to the Clergy Reserves, to call a special meeting of Synod as early as possible for the purpose of taking such steps as may be necessary to take advantage of the commutation clause in the Act which has lately been passed by the Provincial Parliament. I have now to intimate to you that a special meeting of Synod will be held in St. Andrew's Church, Montreal, on the 10th January, 1855, being the second Wednesday of the month, at half past six in the p.m.

" I am, Reverend and Dear Sir,

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" Yours faithfully,

" (Signed), JAMES WILLIAMSON,

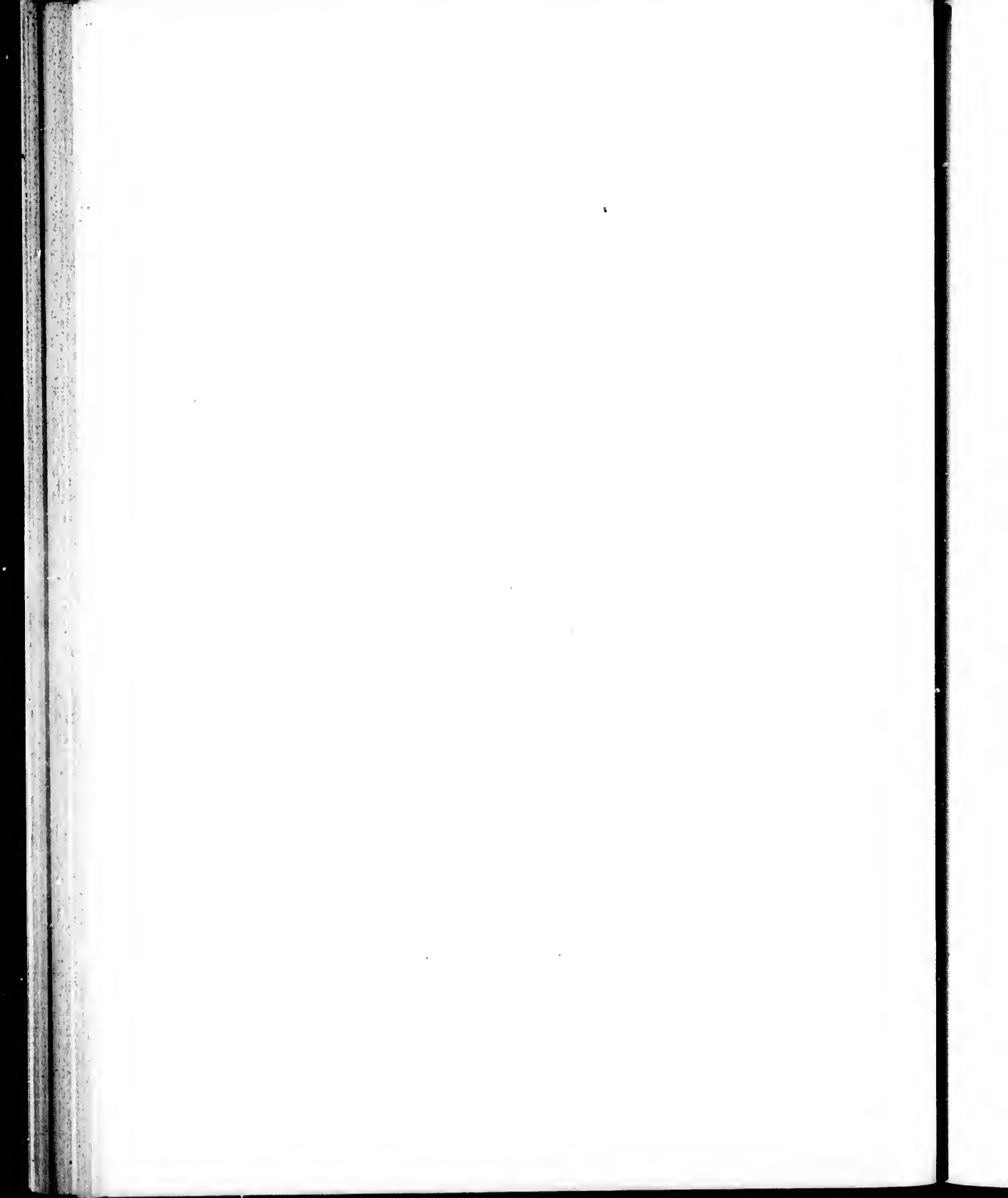
" Moderator.

" P. S.—It has been thought by several of my brethren with whom I have conferred on the subject, and I concur in the opinion that, in the circumstances of the case, Montreal is, on the whole, the most suitable place for the said meeting of Synod on this occasion.

" The Synod unanimously agreed to approve the Moderator's conduct in calling this meeting.

" The Synod then called for the report of the Committee appointed to watch over the interests of the Church in regard to the Clergy Reserves, which was given in and read by Dr. Cook, the Convener, stating that the Bill for the Secularization of the Clergy Reserves, which had been introduced into Parliament by the Government had been carried in both Houses, and assented to by the Governor-General:—That it contained a clause securing to all Ministers settled previous to the 9th May, 1853, the date of the passage of the Imperial Act, payment of their salaries from the Clergy Reserve Fund during their lives or incumbencies, and at the same time authorizing the Government to commute the claims of incumbents, with the consent of the parties and bodies severally interested, and that the Committee,

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“ for reasons which they stated, had not considered it expedient to interfere in
 “ any way with the passing of the said Bill, but feeling assured from many
 “ considerations that it would be for the benefit of the Church to take advan-
 “ tage of the commutation clause of the Act, the Committee had requested the
 “ Moderator to call a *pro re nata* meeting of the Synod to take the matter into
 “ consideration, and make the necessary arrangements; and the Committee
 “ further and at great length recommended that the Synod should agree to
 “ commutation.

“ The Synod approved of the conduct of the Committee, and after some
 “ discussion agreed to defer the further consideration of the report until to- 10
 “ morrow, and instructed the aforesaid Committee to draft resolutions to be
 “ then laid before the Synod for their consideration as to their action in the
 “ matter.

“ The Synod agreed to spend a portion of time in the morning in devo-
 “ tional exercises.

“ The Synod then adjourned to meet again at half-past eleven o'clock
 “ to-morrow forenoon, and was closed with prayer.”

Diet II.

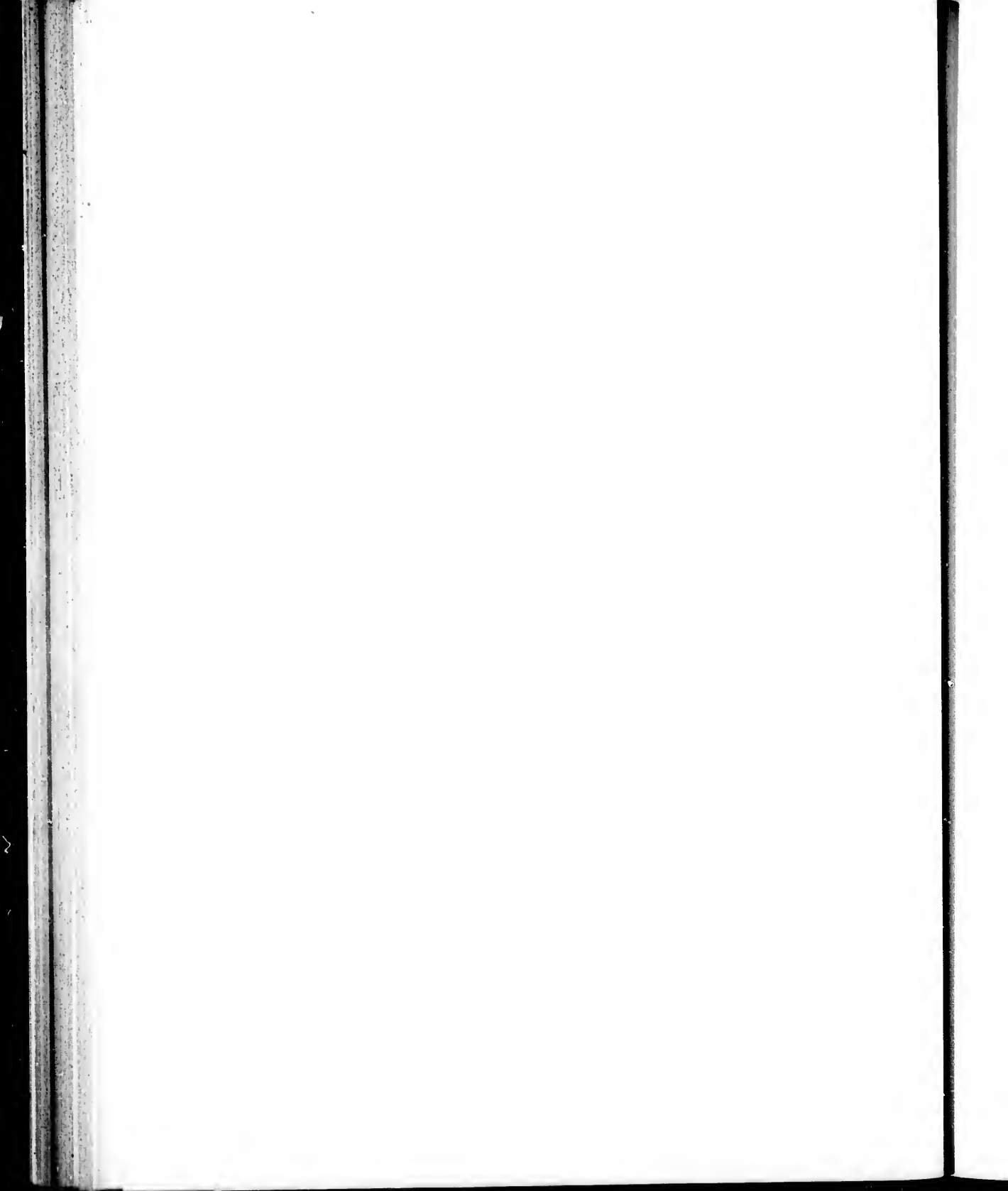
“ At Montreal, and within St. Andrew's ²⁰
 “ Church there; Thursday, the eleventh
 “ day of January, eighteen hundred and
 “ fifty-five years.

“ The which day the Synod of the Presbyterian Church of Canada, in
 “ connection with the Church of Scotland, met, according to adjournment, and
 “ was constituted with prayer.

“ On the call of the Moderator, the Rev. Dr. Cook conducted the devo-
 “ tional exercises of the Synod in praise, reading the Scriptures and prayer.

“ The minutes of yesterday were read and approved. 30

“ The Clerk stated to the Synod that he had received, a considerable
 “ time ago, a letter from the Inspector General's Department of the Govern-
 “ ment, requesting him to make a return, to be laid before Parliament, of all
 “ persons connected with this Church, 'who at the date of the passing of the
 “ Act of the Imperial Parliament to make provision concerning the Clergy
 “ Reserves of this Province, viz., 9th May, 1853, were receiving any income or
 “ allowance from such portion of the proceeds of the Clergy Reserves as had
 “ been granted to the Synod of the Presbyterian Church of Canada, in connec-
 “ tion with the Church of Scotland, specifying the names and ages of such
 “ persons, the annual amounts of their allowance, and through whom it is 40

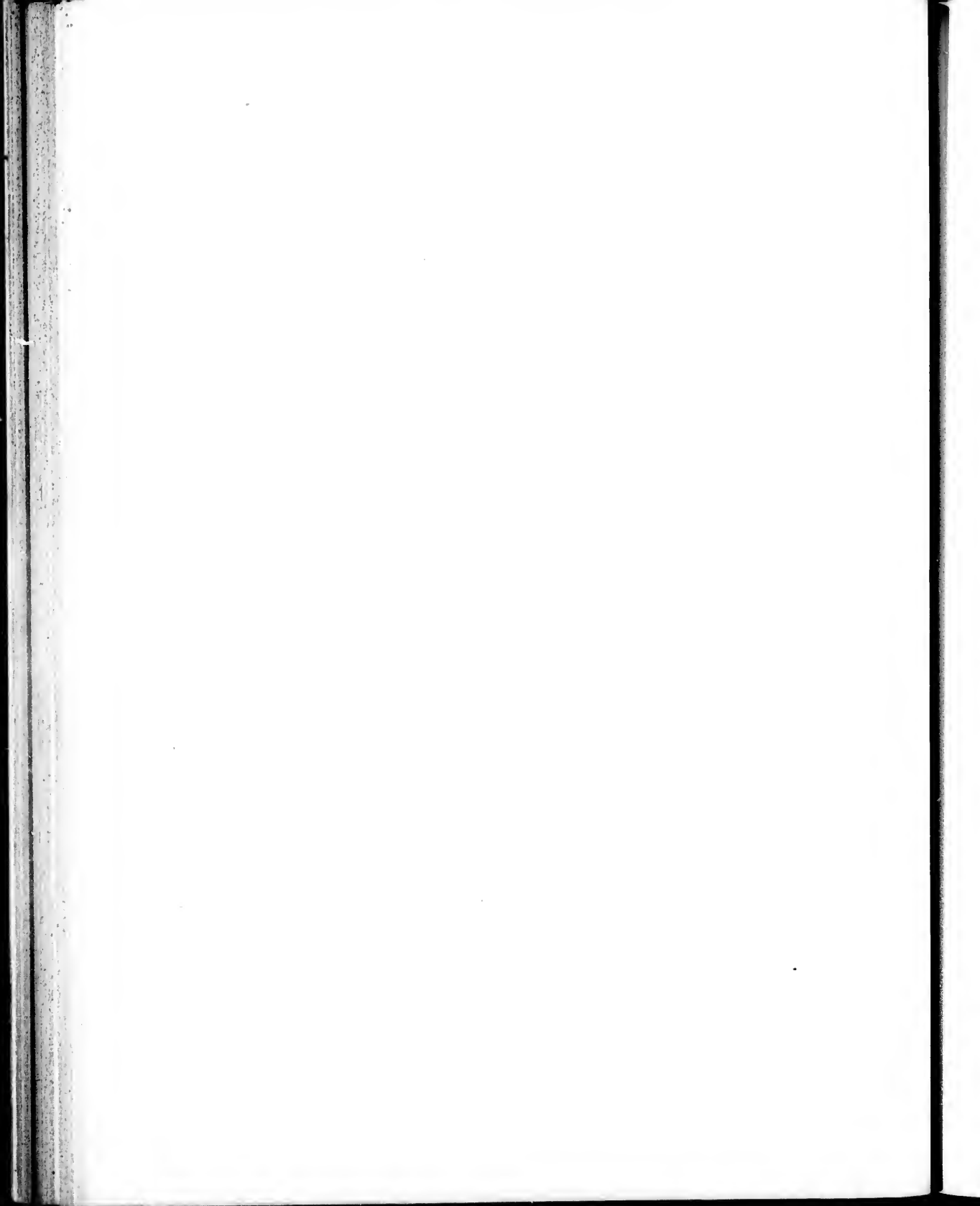


" paid; and that he had immediately issued a circular to the several parties,
 " requesting a statement of their ages to be returned to him,—Mr. Allan, of
 " Montreal, having kindly offered to furnish him with some other items,—but
 " that he had been as yet unable to make the required return, in consequence
 " of a considerable number of the Ministers having neglected to make returns
 " to him, although written to a second time on the subject; and that he had
 " also, at the suggestion of some of the Clergy Reserve Commissioners, written
 " to all of the parties whose names were on the roll for salaries. The Synod,
 " while approving of the conduct of the Clerk, directed him to use all dili-
 " gence in procuring as soon as possible the whole of the required informa- 10
 " tion, and in transmitting to the Government the list of incumbents up to
 " the 9th of May, 1853, to furnish at the same time the names of those since
 " put upon the roll as having in the estimation of the Synod, claims upon the
 " Fund.

" The Committee appointed yesterday to arrange measures for the con-
 " sideration of the Synod reported certain resolutions, which the Synod pro-
 " ceeded to discuss at length.

" The Synod having heard the report of the Committee appointed by
 " the Synod to watch over the interests of the Church, in so far as these might
 " be affected by the action of the Legislature on the Clergy Reserves, and also 20
 " the verbal reports of such members of the Committee as had been in com-
 " munication 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.

" 1st. 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 30
 " Montreal, the Rev. John Cook, D.D., of Quebec, Hugh Allan, Esq., of Mon-
 " treal, 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 40
 " said Commissioners, power and authority to act for them in the matter to



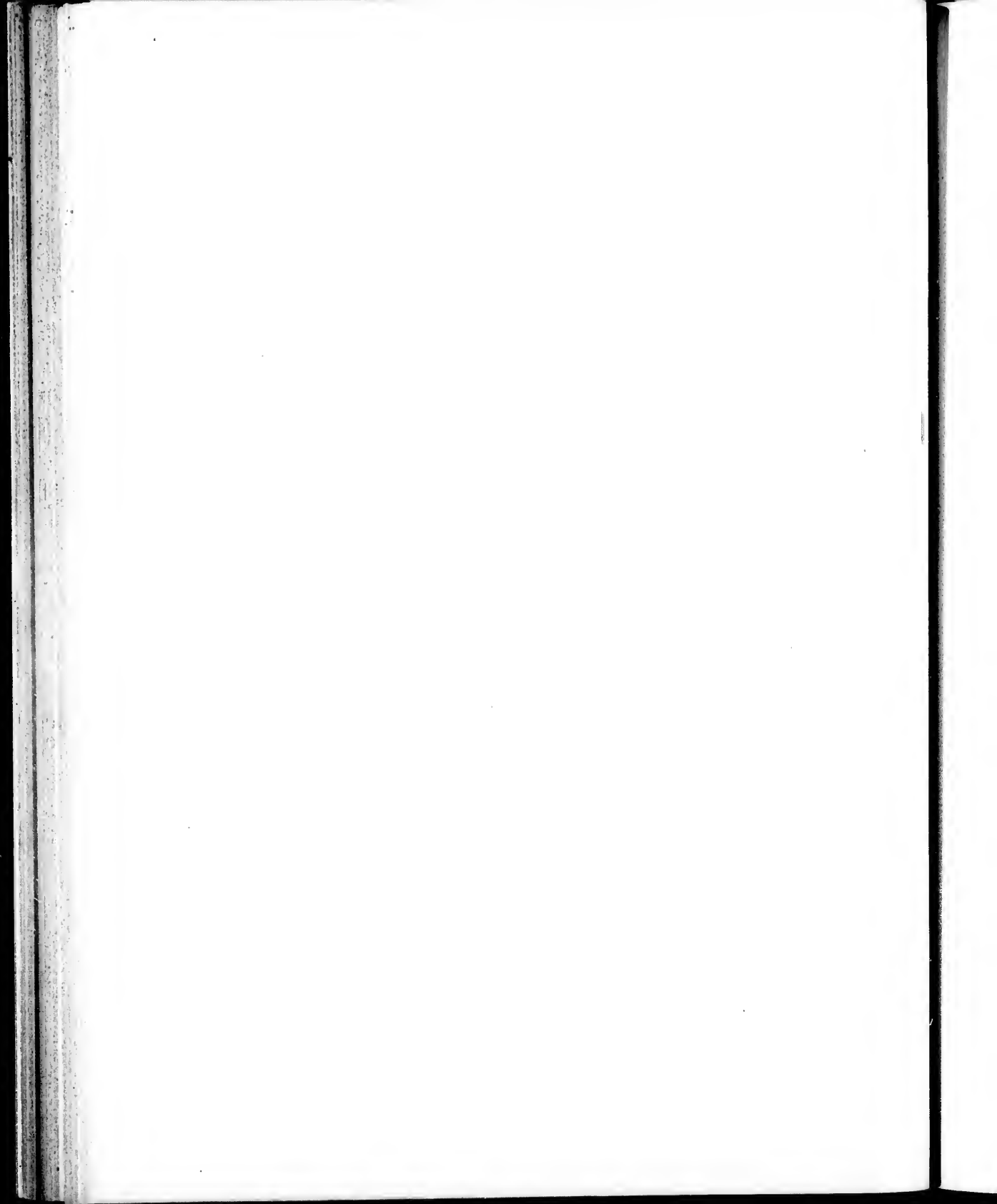
" grant acquittance to the Government for their claims to salary [to which the
 " faith of the Crown is pledged]; and to join all sums so obtained into one
 " Fund, which shall be held by them till the next meeting of Synod, by which
 " all further regulations shall be made; the following, however, to 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 10
 " 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.

" 2nd. 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 authorised, and this Synod hereby 20
 " 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 and Deed, as
 " evidencing their assent thereto.

" 3rd. 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. 30

" 4th. 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 "

" The Synod ordered the minutes of this meeting to be printed, and a copy
 " sent to each Minister as soon as possible, and they further instructed their
 " Commissioners, named above, to address a circular to the several ministers,
 " showing them the importance of commuting upon the plan agreed to at this
 " meeting, and giving them full information on the subject. 40



(b) From the last line of page 9, down to the words "fifty-five," line 23, page 11, inclusive being as follows:—

" That the sole business submitted at the meeting of the said Synod of
 " the Presbyterian Church of Canada, in connection with the Church of
 " Scotland, at the diets thereof, held on the tenth and eleventh days of
 " January, eighteen hundred and fifty-five, was in consideration of giving
 " force and effect to the clause permitting the Governor of the then Province
 " of Canada in Council to commute the claims of Ministers, Incumbents and
 " Missionaries upon the Clergy Reserves Funds, with the consent of the
 " bodies and parties severally interested, as set out in the minutes hereinbefore 10
 " recited.

" That the said Synod, on its own behalf and on behalf of its members,
 " determined at its said meeting to take advantage of the said commutation
 " clause, and appointed a committee, styled Commissioners, to give effect to
 " the said determination, and the said Synod ordered said minutes to be
 " printed, and instructed said Committee to send a copy thereof to each
 " minister entitled to commute.

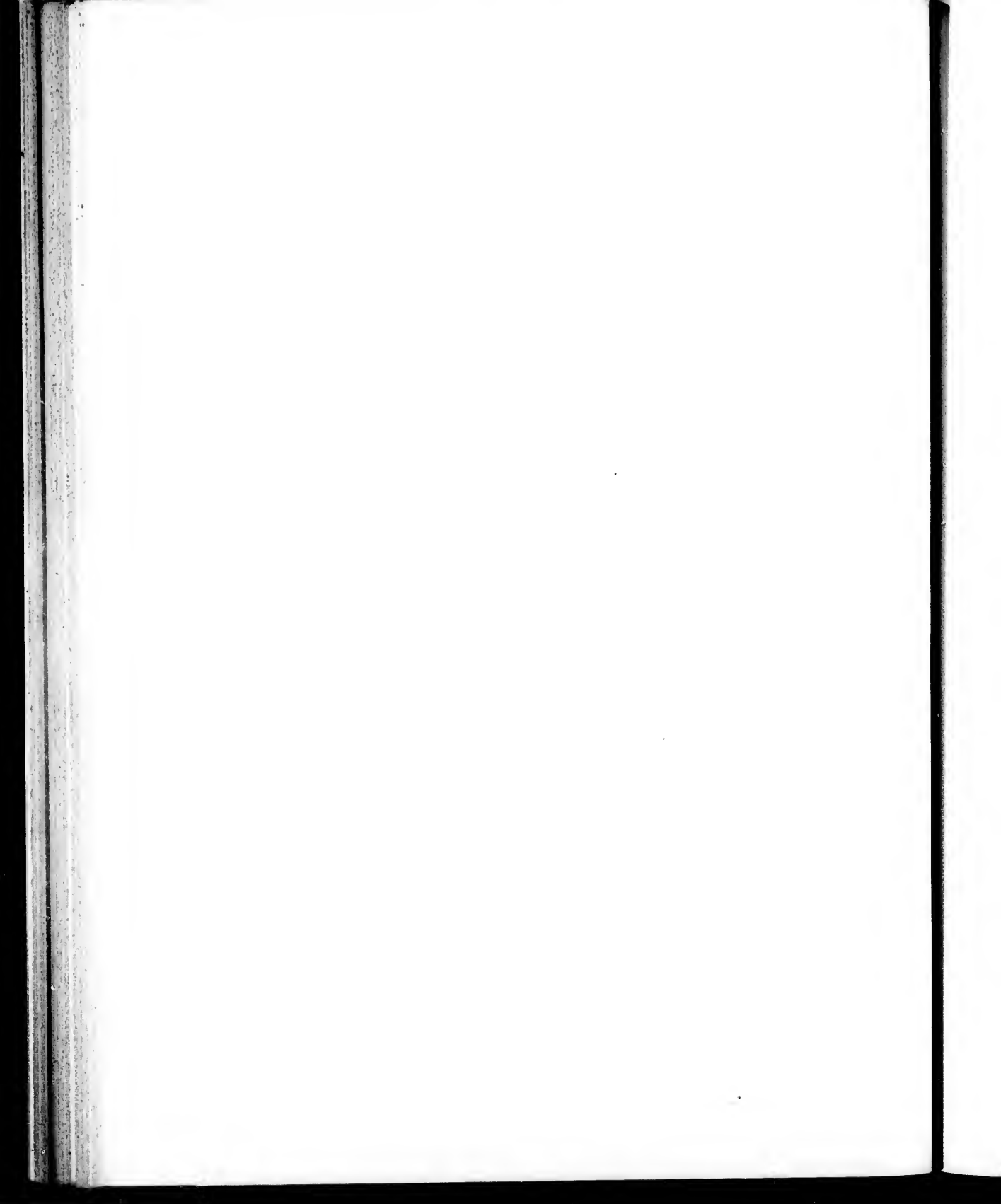
" That the said Reverend John Cook, Doctor of Divinity, was appointed
 " convener and Chairman of said Committee, and as such, was authorized to,
 " and did, address a circular to all the then Ministers and Incumbents of the 20
 " said Church entitled to benefits from the said Funds, among others to the
 " Petitioner, which circular was in the following words:—

" Quebec, 24th February, 1855.

" Revd. Sir,

" I am instructed by the Commutation Committee appointed at the last
 " meeting of Synod, to enclose to you two Powers of Attorney, approved by
 " the Government and by the Synod, which it is necessary you should sign
 " and forward to Hugh Allan, Esq., Montreal, without delay,—in order to our
 " obtaining a commutation of Clergy Reserve money, which will be advan-
 " tageous to the Church. All the Ministers present at the meeting of Synod 30
 " in January, agreed to commute, and the Ministers of the Church of England
 " have unanimously signed similar powers to those now forwarded to you.

" The fundamental conditions contained in the minutes of the Synod,
 " held at Montreal, on the 11th January, 1855, which are alluded to in one of
 " these powers, and which by the terms of the said minutes, 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," are first, " That the interest
 " of the Fund shall be devoted in the first instance, to the payment of salaries
 " of £112 10s each, to such Ministers, and that the next claim on the Fund
 " shall be that of Ministers on the Roll of the Synod, and who have been put 40



" on the Synod's Roll since the 9th May, 1853;" and, second, " 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 shall
 " cease to have any claim, when they cease to be Ministers in connection with
 " the said Church."

" Of these conditions it is presumed you will approve, and I have the
 " satisfaction to inform you, that on the terms proposed by the Government,
 " and to which the Commutation Committee are prepared to agree, as soon as
 " these powers are received from the Ministers of the Church, it will be
 " certainly possible to comply with the first condition, in so far as respects
 " Ministers settled before the 9th May, 1853, and preserving the capital, to
 " secure to them, from the interest, salaries of £112 10s. for life, or incum-
 " bency. And it is, therefore, earnestly entreated that there may be no
 " hesitation or delay in signing and forwarding these powers.

" I am further instructed to call your attention to the following
 " Resolution, passed unanimously, at the last meeting of Synod:—

" That all ministers be, and they are hereby enjoined and entreated, (as
 " to a measure by which, under Providence, not only their own private
 " interests will be secured, but permanent endowment for the maintenance
 " and extension of Religious ordinances in the Church.) to grant such
 " authority as is necessary to effect a commutation, in the fullest manner,
 " thankful to Almighty God, that a way so easy is open to them for conferring
 " so important a benefit on the Church." Not doubting that you will concur
 " in the views of the Synod.

" I am,

" Rev'd. Sir,

" Your obedient Servant,

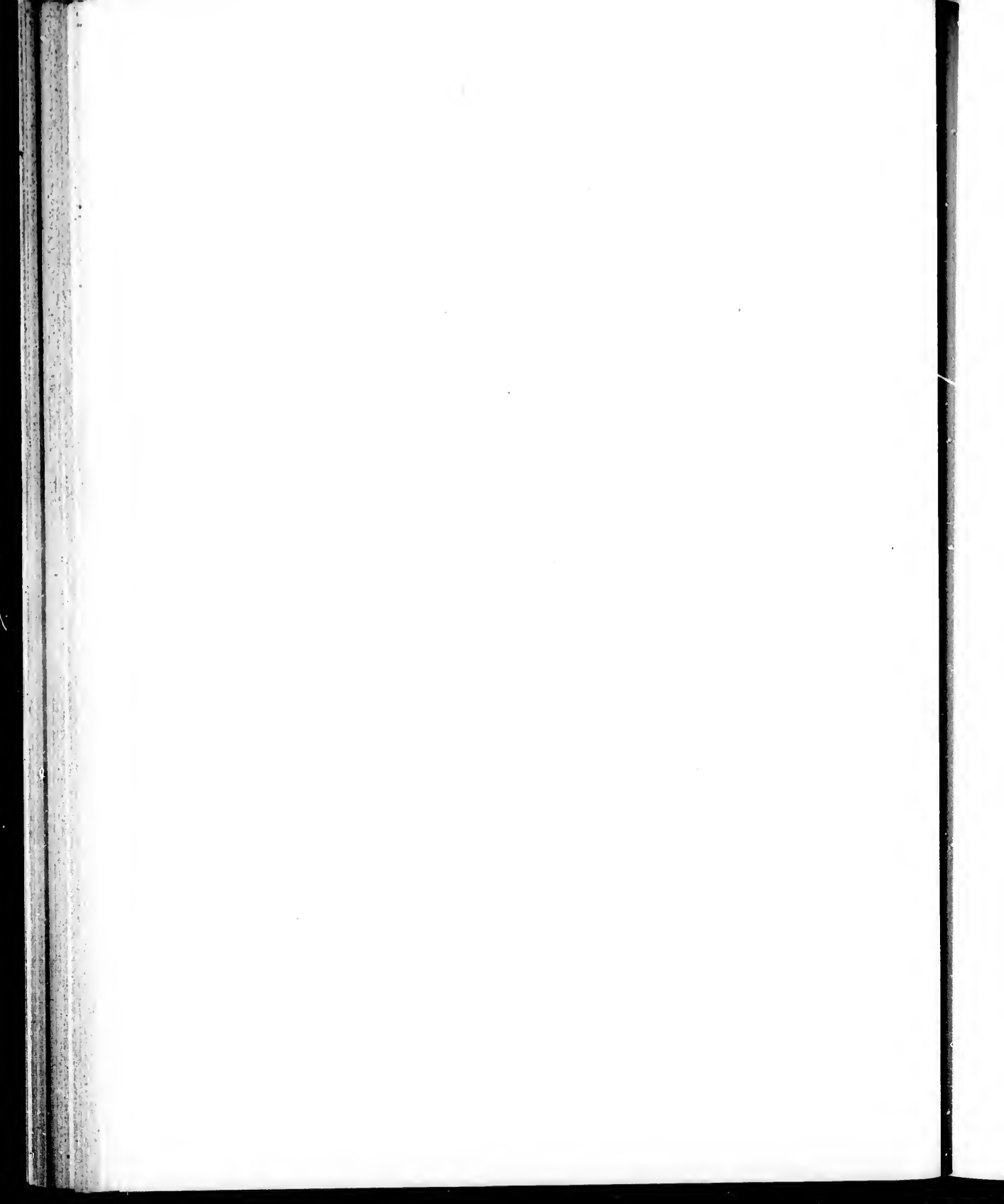
" (Signed.)

JOHN COOK, *Convener.*"

" To the Reverend."—

" That Petitioner and other Ministers and Incumbents of the said
 " Presbyterian Church of Canada, in connection with the Church of Scotland,
 " renounced their individual rights in the said Fund, or in the proceeds there-
 " of, and authorised the said John Cook to act for each of them and in their
 " behalf, for and by reason of the terms and conditions of the resolutions
 " passed at the said meeting of Synod on the tenth and eleventh January,
 " eighteen hundred and fifty-five."

(c) From line 33 on said page 11 down to the words " should be made "
 on line 10 of page 12, with the exception that the said Respondents do not
 admit the words " and the said Petitioner has never done anything to forfeit



“ his right to participate in the said Fund, or in the proceeds, profits or revenues thereof,” being as follows :—

“ That on and since the ninth of May, eighteen hundred and fifty-three, the Petitioner was entitled to the benefits derivable from the proceeds of the said Clergy Reserves, (the whole as provided) under the said Imperial and Provincial Acts relating thereto, [Respondents, however, alleging that since 1875 said Petitioner was not entitled to said benefits under the said amending Acts of Ontario and Quebec], and on the ninth day of May, eighteen hundred and fifty-three, Petitioner was in the receipt of a stipend and allowance therefrom amounting to upwards of one hundred pounds 10
“ annually, and further at the date of the passing of the resolutions of the said Synod in favour of the said commutation, to wit, on the eleventh day of January, eighteen hundred and fifty-five, the annual value of Petitioner’s stipend and allowance, forming a life claim payable to him by and out of said sums, amounted to the sum of one hundred and fifty pounds currency per annum, and the said Petitioner has never done anything to forfeit his right to participate in the said Fund, or in the proceeds, profits or revenues thereof.

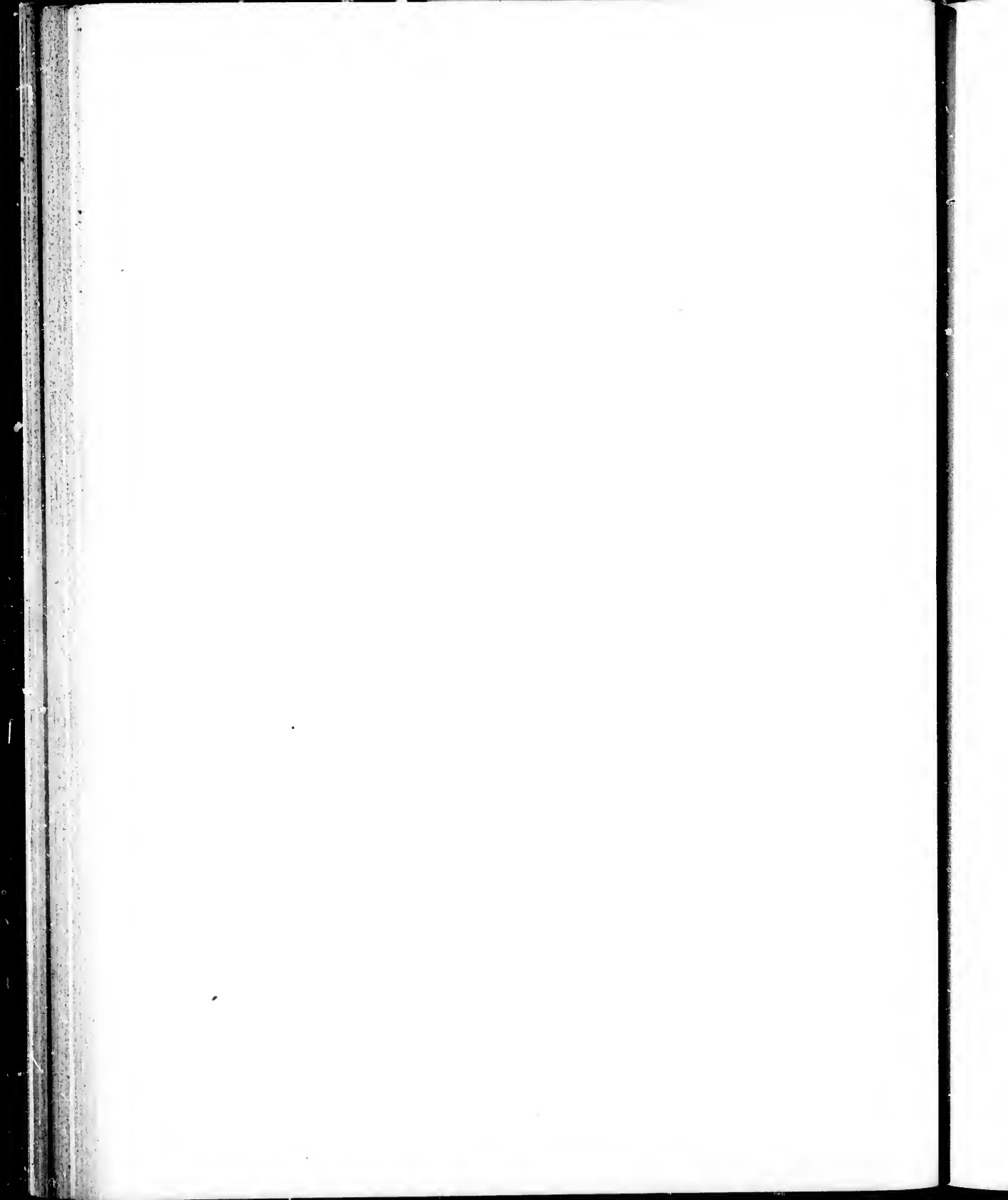
“ That during the year eighteen hundred and fifty-five, and after passing of the said resolutions by the said Synod, the said Petitioner did 20
“ commute the claims due to him as aforesaid, with the Government, by and through the said Commissioners, upon the conditions set out in said resolutions, and the said Petitioner did thereby consent to renounce his personal rights in the said Clergy Reserves, and in the proceeds thereof [as hereinbefore set forth] in favour of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and did consent that the amount of the capital sum due and to accrue to him, should be joined with the amount due and to accrue to other Ministers of the said Church, and that all sums thus obtained should be joined into one fund, which should be held in Trust 30
“ by the said Commissioners, in the said resolution named, till the meeting of the Synod next ensuing, by which all further regulations should be made.

(d) The following allegation commencing on line 33 of page 12 of said petition, and ending on line 36 of the same, to wit :—

“ The funds resulting from the original Commutation claims of the Ministers upon the Clergy Reserves, (as hereinbefore set forth) exclusive of all other Contributions to it, amounted in eighteen hundred and fifty-five to the sum of £127,448 5 0.”

(e) The last paragraph of said page 12 commencing with line 41 and ending with line 47, both inclusive, being as follows :—

“ That afterwards, an Act of the heretofore Parliament of Canada was 40



" passed (22 Vic., Cap. 66) to incorporate a Board for the management of the
 " said Fund, and for such other funds as should be contributed, subscribed or
 " paid in, from time to time, and that it was therein declared, at the time of
 " the passing of the said Act, that said funds were held in trust by certain
 " Commissioners on behalf of the said Church, and for the benefit of the said
 " Presbyterian Church of Canada, in connection with the Church of Scotland."

8. That the said last mentioned corporation continued to manage and
 administer the said Fund arising from the original commutation, and divers
 other funds contributed for the purposes mentioned in the said last mentioned
 Act, until the 15th June, 1875, when the aggregate amount of the funds, assets 10
 and money under the control of the said last mentioned corporation amounted
 to the sum of \$453,371.52, at par value according to statement dated 1st May,
 1875, as set out in the Acts and Proceedings of the Synod of the said Church
 for 1875, in appendix "A."

9. That an Act was passed by the Legislature of the Province of Quebec
 (38 Vic. Cap. 64) assented to on the twenty third of February, eighteen
 hundred and seventy-five, entitled an act to amend the act intituled: " 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 Scot-
 " land," and providing for the administration and distribution of the Funds 20
 held and administered under the act of the late Province of Canada (22 Vic.
 Cap. 66).

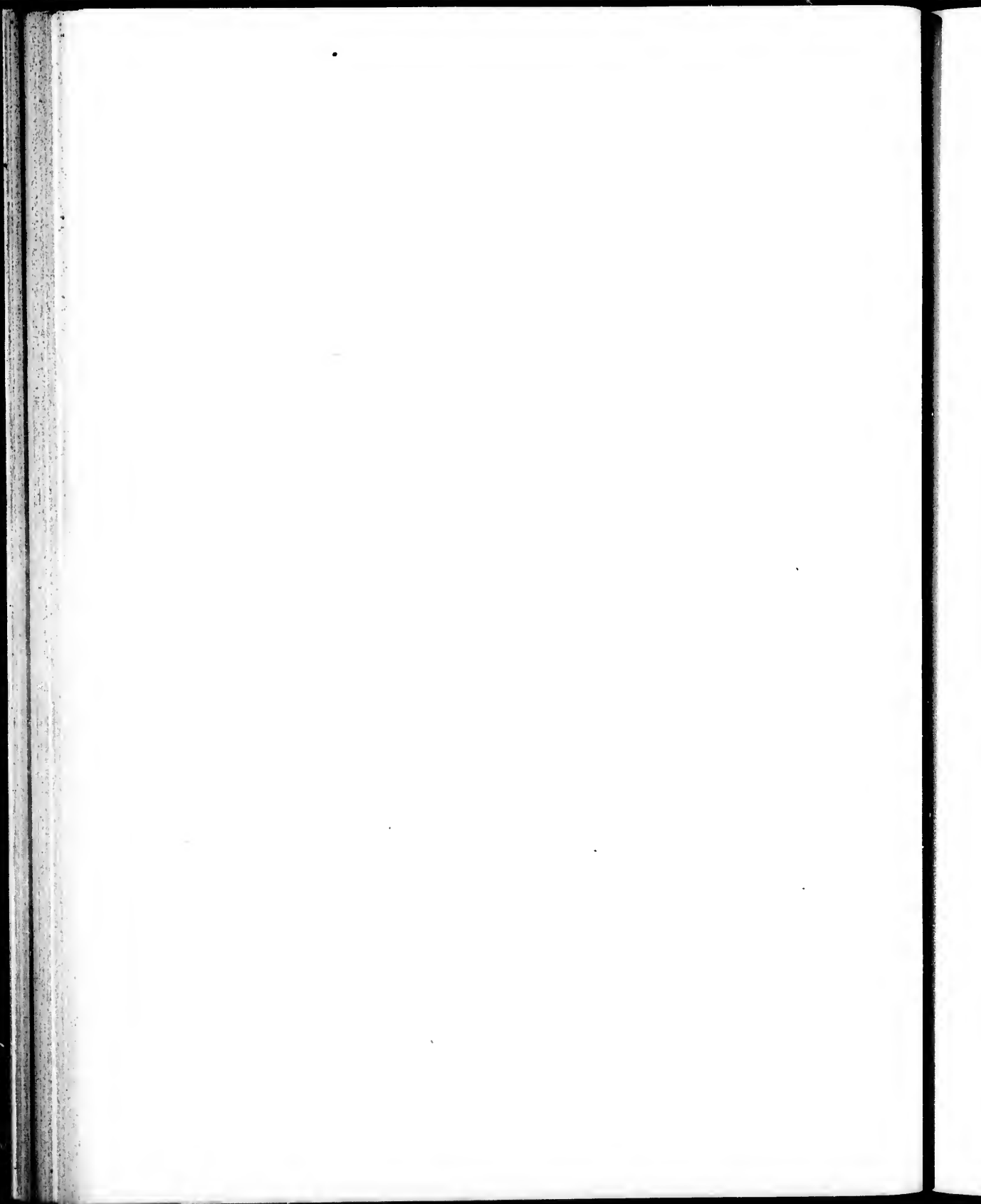
10. That the said Petitioner Dobie has since the year 1853, resided in
 the Province of Ontario, heretofore previous to the confederation of the Provinces
 known as that part of the Province of Canada designated Upper Canada.

11. That the number of ministers who had claims upon the said fund
 at the date of commutation was seventy-three.

12. That the domicile of the said Board Respondents and their principal
 place of business is and always has been the City of Montreal.

13. That the notice in conformity with Section 10 of the Act of the 30
 Quebec Legislature being 38 Vic., Cap. 64, intituled, " An Act to amend the
 Act intituled 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," was published in the *Quebec Official Gazette* on the
 19th June, 1875, as appears by the copy of the said *Official Gazette*, filed by the
 Respondents as their Exhibit No. 32.

14. That the preamble, basis and articles of the union of the 15th day
 of June, 1875, mentioned in Respondents pleadings are to be found in the
 Acts and Proceedings of the Synod of the Presbyterian Church of Canada in
 connection with the Church of Scotland for the month of November, in the 40



year 1874. at pages ————— and on pages 4, 5 and 6 of said Petitioners Exhibit "E E." and the parties consent that the said printed copy of said preamble, basis and articles of the union have the same effect and avail to the same extent as if the originals had been produced and duly proved in this cause, the Petitioner declaring that the whole is made without prejudice to the pretensions of the said Petitioner with respect to the effect of the said union upon the Presbyterian Church of Canada in connection with the Church of Scotland, and upon Petitioner and the other Ministers of said Church who did not join said union, and without prejudice to Petitioners pretensions that the Presbyterian Church of Canada in connection with the Church of Scotland has continued since 1875 and now exists as a distinct religious organization, the whole in so far as set forth in the pleadings in this cause.

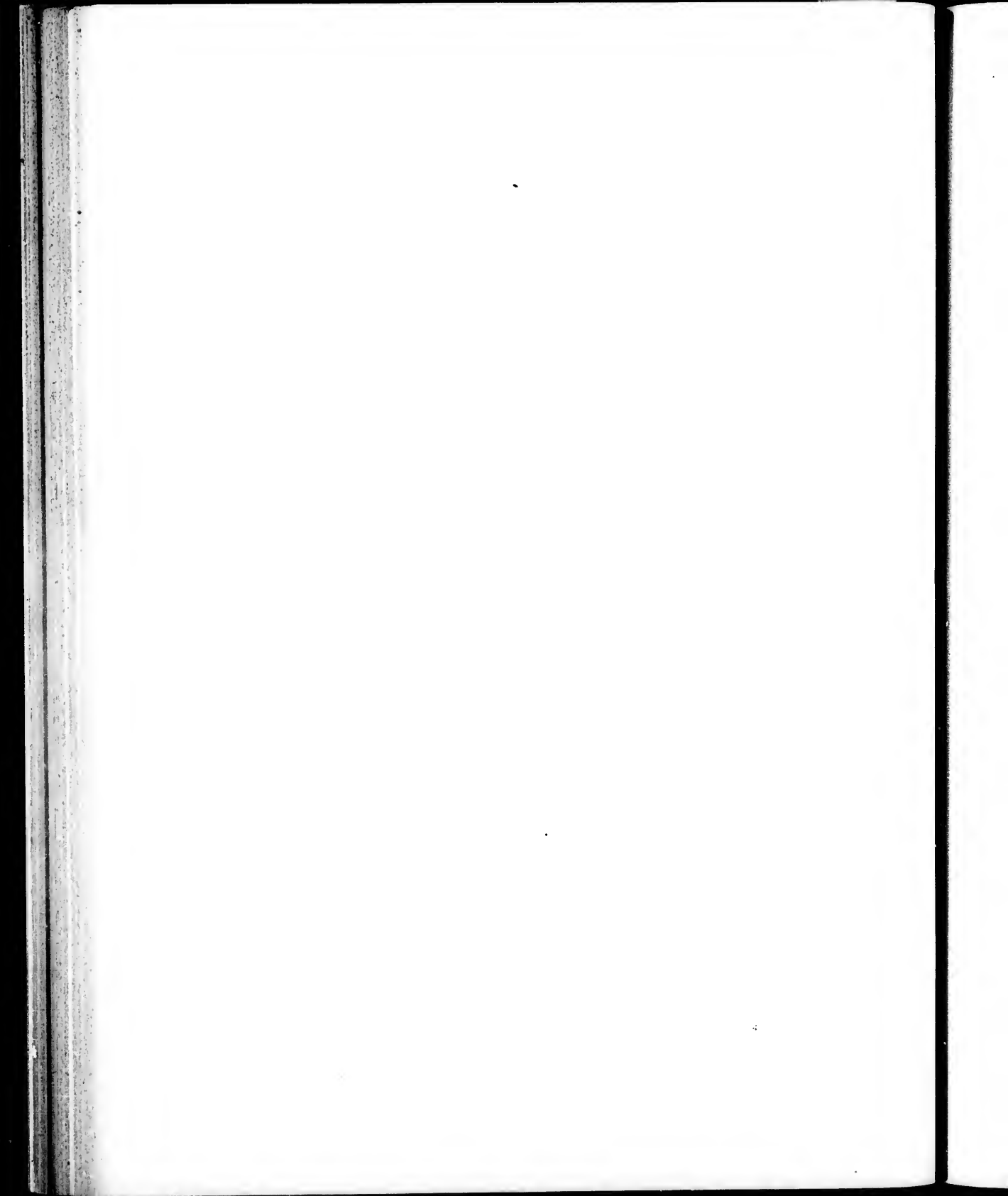
15. That the printed pamphlet fyled in this cause by the said Board Respondents as their Exhibit ——— contains a true copy of the Act of Incorporation of the said Board and of its By-Laws, and of some of its resolutions adopted by the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland, and the parties consent that the said printed copies of By-Laws and resolutions do have the same effect and avail to the same extent as if the originals had been produced and duly proved in this cause.

16. That the Reverend Robert Dobie mentioned in the Acts and Proceedings of Synod fyled herein is the Petitioner.

MONTREAL, 26th June, 1879.

(Signed.) MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioner.

(Signed.) JOHN L. MORRIS,
Attorney for Respondents pleading.



EVIDENCE.

REV. GAVIN LANG, of the City and District of Montreal. Minister, aged forty-three years, a witness produced on the part of the Petitioner, this twenty-fifth day of June, eighteen hundred and seventy-nine, who being duly sworn deposed and saith:—

Question.—You are one of the Respondents in this cause?

Answer.—Yes.

Question.—I believe you have filed a declaration accepting the judgment of the Court, whatever it may be?

10

Answer.—Yes.

Question.—You have not contested the petition?

Answer.—No.

Question.—You are the minister of St. Andrew's Church, Montreal?

Answer.—I am.

Question.—How long have you been a minister of religion?

Answer.—About fifteen years.

Question.—In connection with what Church did you become a minister?

20

Answer.—With the Church of Scotland, in Scotland.

Question.—Were you ever ordained a minister of the Church of Scotland in Scotland?

Answer.—I was.

Question.—How long did you act as a minister of the Church of Scotland in Scotland?

Answer.—About six years.

Question.—What was the occasion or cause of your ceasing to act as a minister of the Church of Scotland in Scotland?

Answer.—On receiving a presentation to St. Andrew's Church, Montreal, in the year 1870.

30

Question.—Have you been since continuously a minister of the Church of Scotland?

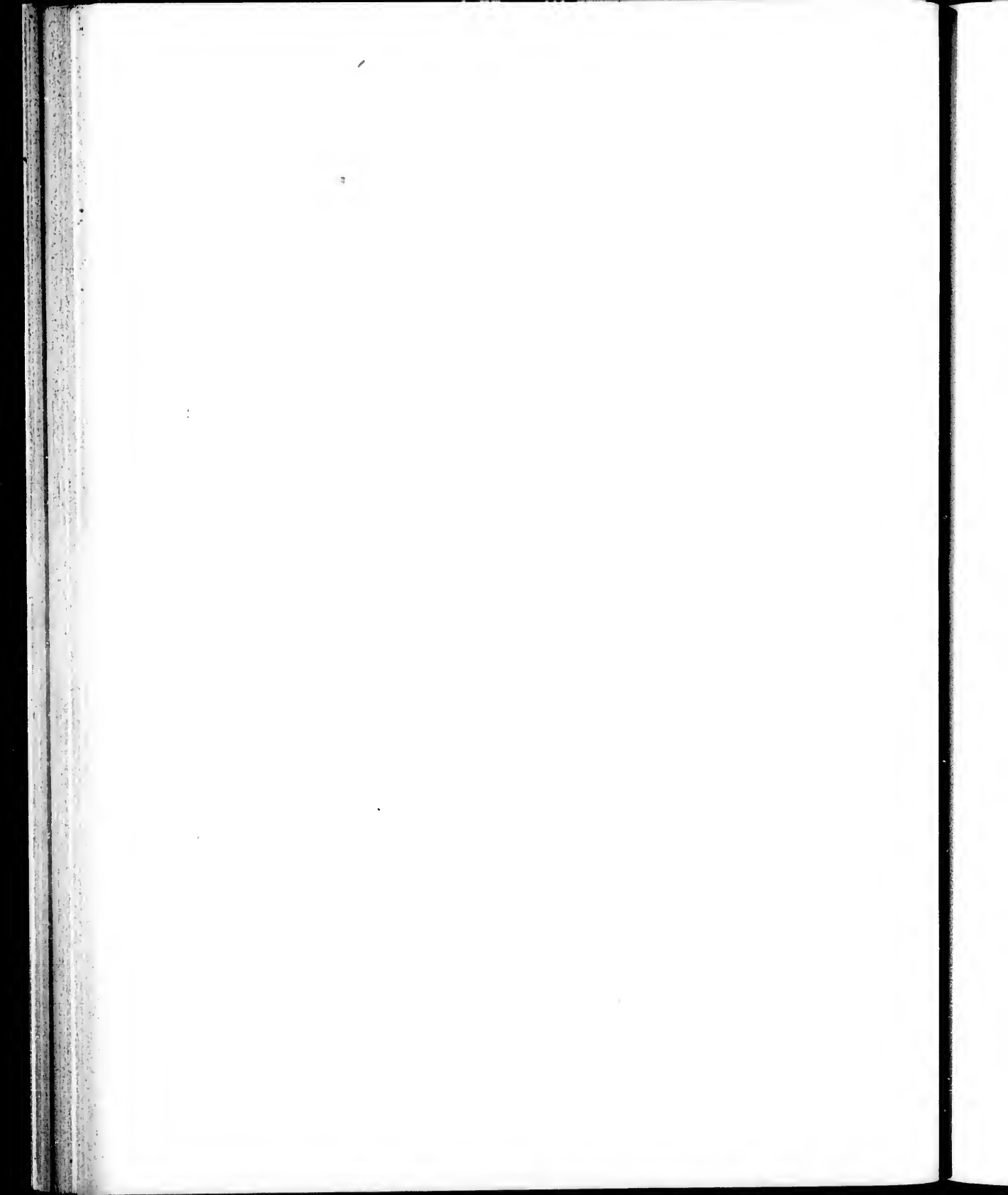
Answer.—I have.

Question.—When you were presented to St. Andrew's Church, Montreal, what ecclesiastical organization was it connected with?

Answer.—The Presbyterian Church of Canada, in connection with the Church of Scotland.

Question.—And has St. Andrew's Church remained in connection with the same ecclesiastical organization continuously since?

40



Answer.—I believe so.

Question.—Have you remained a minister of the Presbyterian Church of Canada, in connection with the Church of Scotland, continuously since your presentation to St. Andrew's Church in 1870?

Answer.—I have.

Question.—You are still a minister of the Presbyterian Church of Canada, in connection with the Church of Scotland?

Answer.—Yes.

Question.—You are aware that in June, 1875, a union was effected between certain of the members of the Presbyterian Church of Canada, in connection with the Church of Scotland, and three ecclesiastical bodies, namely, 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?

Answer.—So I was informed.

Question.—What was the name that this amalgamated body took?

Answer.—I believe it was called the Presbyterian Church in Canada.

Question.—At the time this union was actually brought about, you were absent from the country I believe?

Answer.—Yes; I was in Scotland

Question.—How long was it after June, 1875, before you returned to Canada? 20

Answer.—About three or four months afterwards.

Question.—Notwithstanding this union, when you returned to Canada, did you find that the Presbyterian Church of Canada, in connection with the Church of Scotland, had any existence in this country?

Answer.—It had.

Question.—Did many of the ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, unite with the new body, the Presbyterian Church in Canada? 30

Answer.—Yes; I believe so. I have been told so.

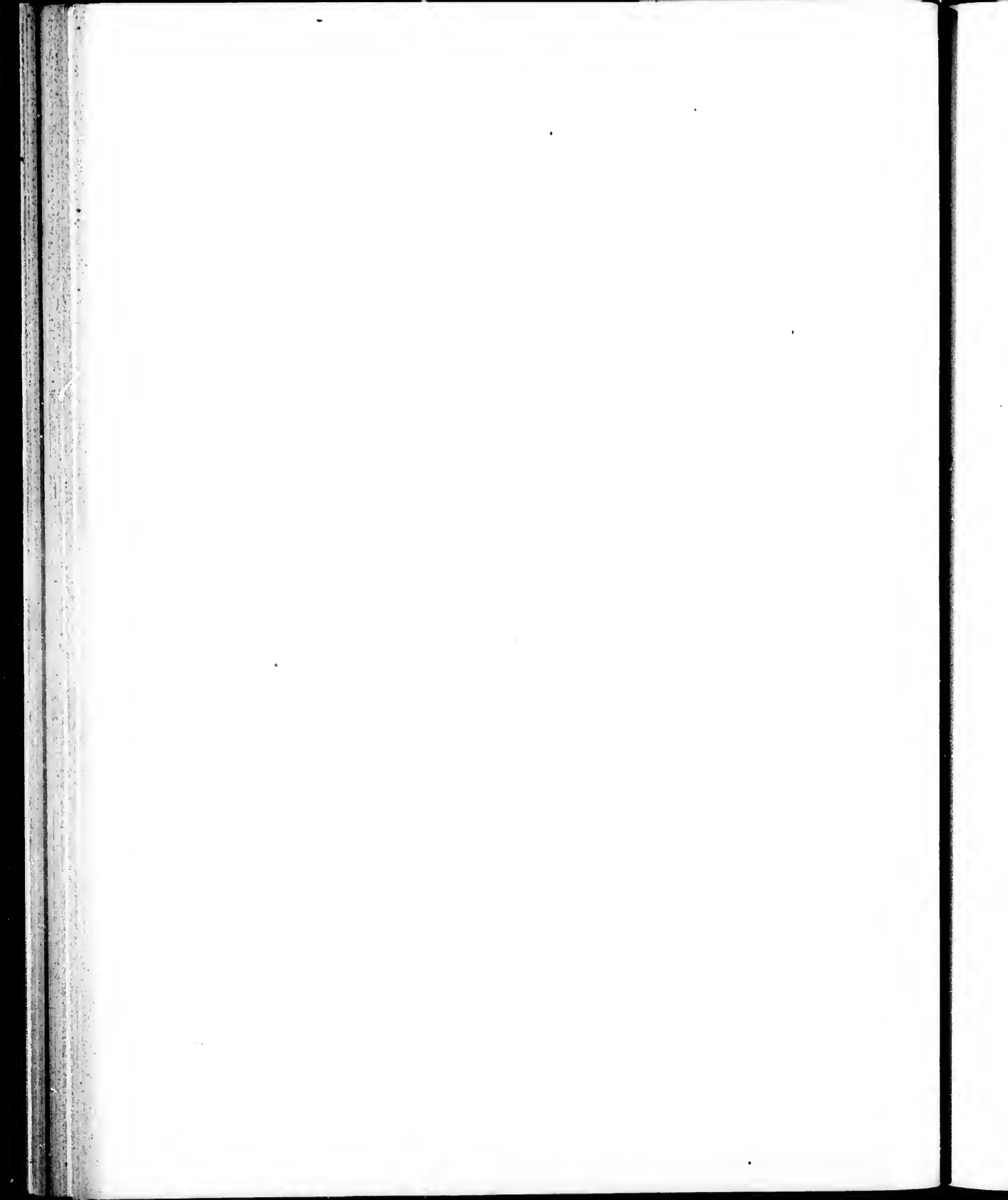
Question.—You are not, of course, a member of the Presbyterian Church in Canada Yourself?

Answer.—No.

Question.—But you have no doubt that quite a considerable number of the old ministers actually associated themselves with the new body?

Answer.—Yes; I believe so.

Question.—Since the 15th of June, 1875, has the Presbyterian Church of Canada, in connection with the Church of Scotland, continued its existence in this country? 40



Answer.—Yes.

Question.—Under what name ?

Answer.—Under the old name.

Question.—Has it kept up its Presbyteries, Synods and general Church organization as previously ?

Answer.—It has.

Question.—Have you any doubt now about its having, and having had since the 15th of June, 1875, a distinct organization ?

Answer.—I have no doubt.

Question.—Has it clergymen ministering within its domain ?

10

Answer.—It has.

Question.—Do you know the Petitioner, the Rev. Mr. Dobie ?

Answer.—Yes ; I have known him since 1871.

Question.—When you came here, of what Church organization was he a member and a minister ?

Answer.—Of the Presbyterian Church of Canada, in connection with the Church of Scotland.

Question.—Has he continued to be such up to the present time ?

Answer.—Yes.

Question.—He is another of those ministers who did not join the Pres- 20
byterian Church in Canada ?

Answer.—Yes.

Question.—Is he now, and has he been since you came to this country, a minister of the Presbyterian Church of Canada, in connection with the Church of Scotland, in good standing ?

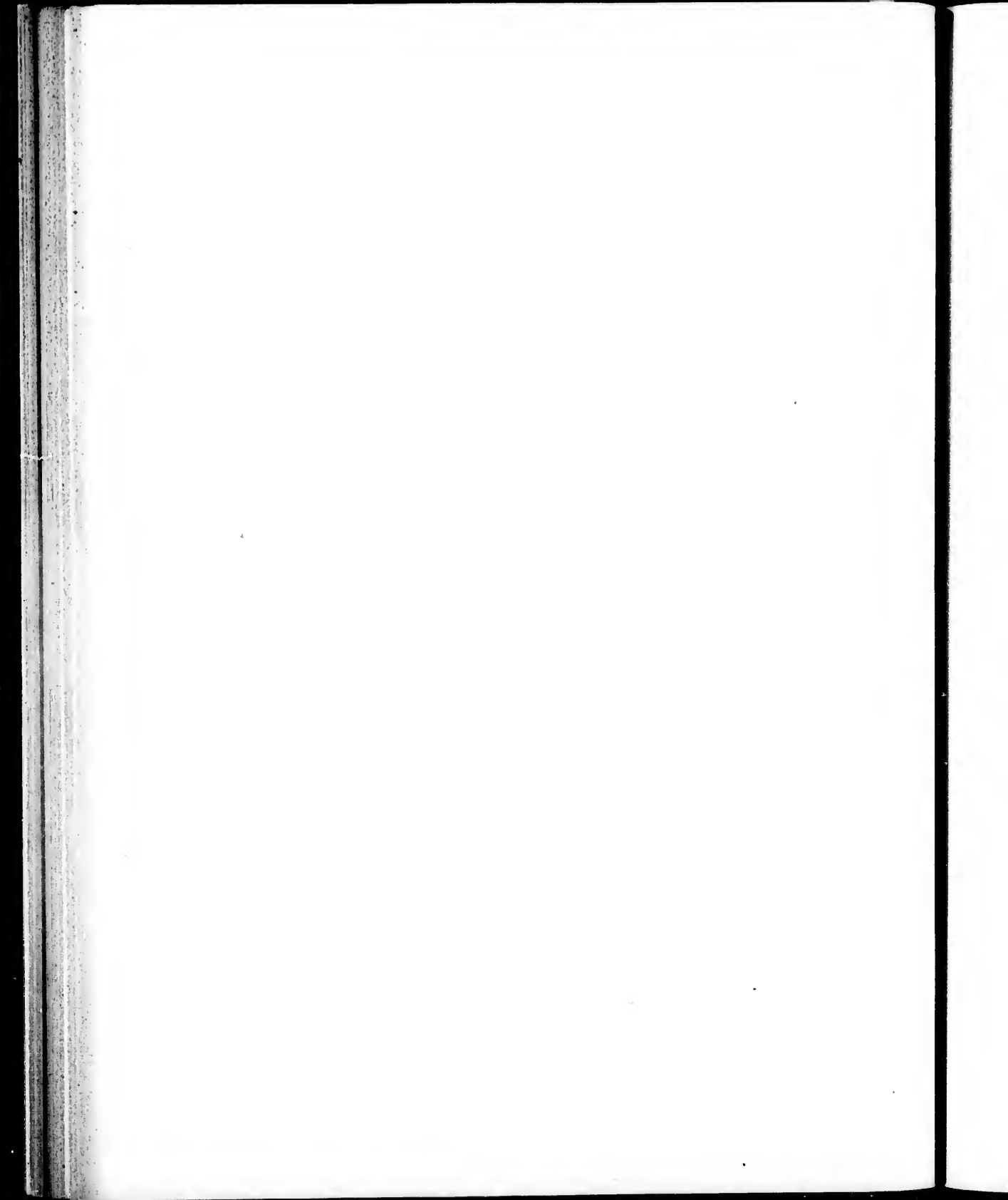
Answer.—Yes.

Question.—What is the name of his particular Church or congregation ?

Answer.—St. Andrew's Church, of Milton, in the Province of Ontario.

Question.—Are you at present acting in any official capacity in connection with the Synod of the Presbyterian Church of Canada, in connection 30
with the Church of Scotland ?

Answer.—I am Synod Clerk, *pro tempore*. I have in my possession, as such Synod Clerk *pro tempore*, the acts and proceedings of the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, on and since the 15th day of June, 1875, ending with the Acts and Proceedings of the latest meeting of the Synod of the said Church, held at Toronto, in the Province of Ontario, on the 12th day of June instant, which latter minutes are signed by myself as Clerk *pro tempore*, and also by John Macdonald, as Moderator of the said Synod. Upon, and since the 15th day of June, 1875, the Rev. Robert Burnett has been acting as Clerk 40



of the Synod of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and the signature "Robert Burnett" to all the minutes of the said meetings of Synod, prior to the last meeting, is the signature of the said Robert Burnett. The minutes of the meeting of the 15th June, 1875, are also signed by Robert Dobie, as Moderator; also the minutes of the meeting of the 30th of November, 1875, are signed by the said Robert Dobie. The minutes of the meeting held on the 13th day of June, 1876, are signed by David Watson, as Moderator, in addition to the said Burnett; and also the minutes of the meeting held on the 14th day of June, 1876, are signed by the said David Watson, as Moderator. The minutes of the meeting held on the 10
5th day of June, 1877, are signed by myself, as Moderator; also the minutes of the meeting held on the 6th day of the said month of June are signed by myself, as Moderator; also the minutes of the meeting held on the 7th day of said month of June of the same year. The minutes of the meeting held on the 11th day of June, 1878, are signed by John Davidson, Moderator; and also the minutes of the meeting held on the 12th day of June of the same year; and also the minutes of the meeting held on the 13th day of June of the same year are signed by the said John Davidson, as Moderator. The minutes of the meeting held at Toronto on the 10th day of June instant are signed by John Macdonald, as Moderator; and also those on the 11th day of said 20
June, and also those on the 12th day of said June. I produce all the said original minutes between the dates mentioned, and file a copy thereof, certified by me, which I mark "Petitioners' Exhibit at Enquete Z1." The said copy so filed by me is a true copy of said original minutes.

Question.—Are you aware that since the 5th of June, 1875, the Board, Respondents, have been acting under and in virtue of certain legislation obtained from the Legislature of the Province of Quebec?

Answer.—I believe so.

Question.—On about the 15th June, you were a member of this Board, Respondents, in virtue of the legislation obtained from the old Province of 30
Canada?

Answer.—Yes.

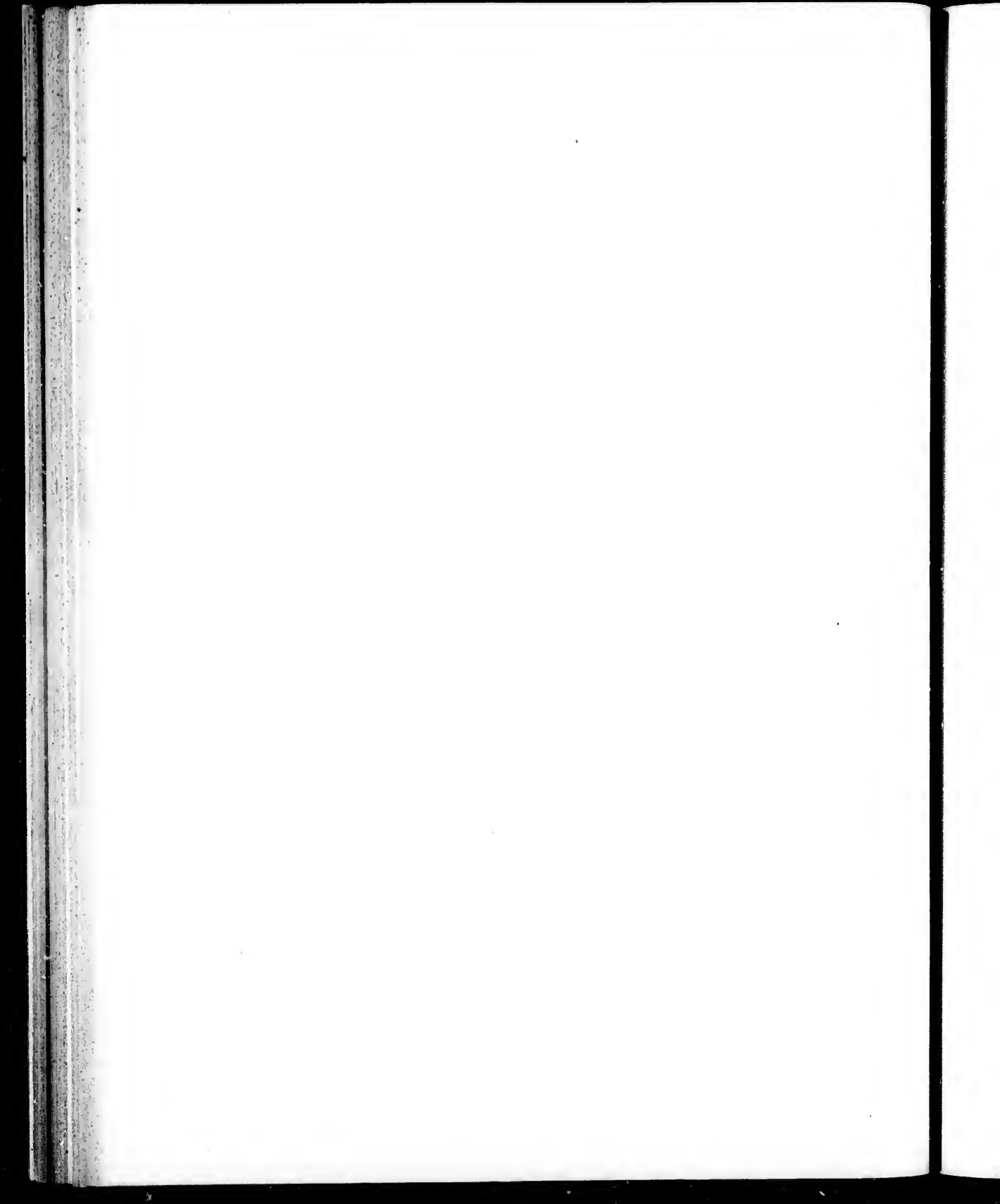
Question.—Under that legislation obtained from the old Province of Canada you would have had, in the ordinary course of things, to retire from the Board after a certain term of years?

Answer.—Yes.

Question.—And all other members also in a certain rotation?

Answer.—Yes.

Question.—Under the new legislation of the Province of Quebec, your name has been continued on the list as a member of the Board still? 40



Answer.—I believe so.

Question.—Have you been summoned to attend any meetings of this Board lately?

Answer.—Not lately; not since May, 1878.

Question.—Do you know if they have held any meetings lately?

Answer.—I do not; I have not been summoned to any.

CROSS-EXAMINED.

Question.—You stated that you received a presentation in 1870, to St Andrew's Church, Montreal? What do you mean when you state that you received a presentation?

Answer.—I received a presentation—a document inviting me to assume the pastorate of that Church.

Question.—You mean simply that you were invited to come to Montreal and assume the pastorate of that Church?

Answer.—I took it in the form of a presentation.

Question.—What do you understand by the term presentation?

Answer.—It was laid as such before my Presbytery in Scotland.

Question.—This presentation as you call it, was it not simply in the form of a letter or invitation from the St. Andrew's Church in Montreal, to come here and become the pastor of the said Church?

Answer.—It was a document signed by three gentlemen in Scotland, acting for the congregation of St. Andrew's Church, Montreal. They were Dr. Norman, McLeod, Dr. Macdull and Mr. James A. Campbell.

Question.—Do you know the circumstances under which those gentlemen undertook that duty?

Answer.—They said they were authorized by the congregation in Montreal to make this presentation.

Question.—After receiving that document, what was the next step?

Answer.—The document was laid before the Presbytery of Hamilton, in Scotland, and the process of translation begun?

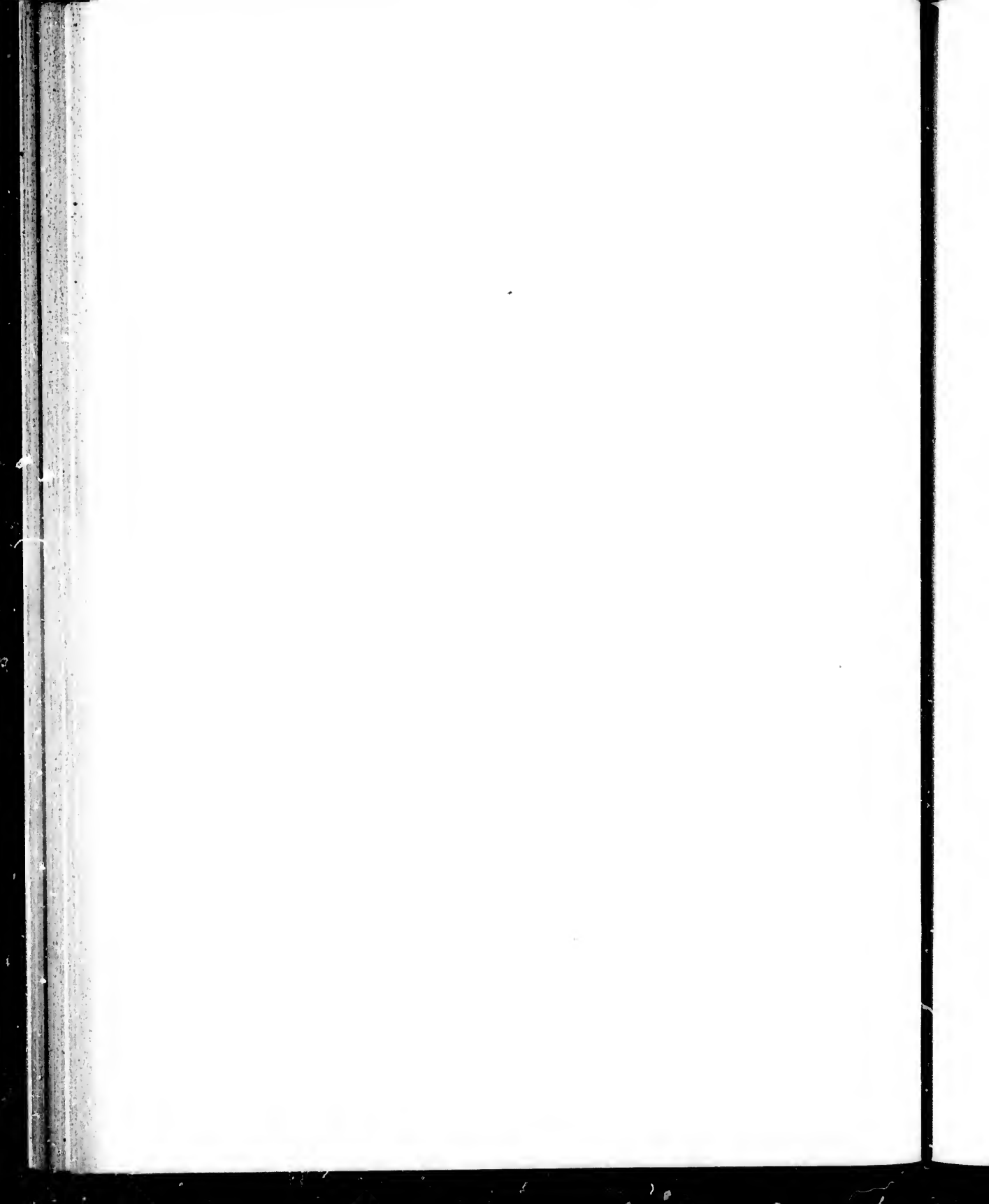
Question.—What was the process of translation?

Answer.—The same as from one parish to another in Scotland.

Question.—In what way?

Answer.—The documents of translation were sent out to the Presbytery of Montreal, in connection with the Presbyterian Church of Canada, in connection with the Church of Scotland, and received by them.

Question.—And you came to Montreal and were inducted here?



Answer.—I was inducted on the 28th November, 1870, by the Presbytery of Montreal of the Presbyterian Church of Canada in connection with the Church of Scotland.

Question.—You were inducted by the Presbytery in the usual way to the pastoral charge of St. Andrew's Church of Montreal?

Answer.—Yes, as I understand the usual way.

Question.—What document was laid before the Presbytery of Hamilton in Scotland at the time you say you were translated? Was there a call from St. Andrew's Church, Montreal, to you, calling you to be their minister?

Answer.—Not before the Presbytery, as far as I know. 10

Question.—Did you receive such a call before you came?

Answer.—No.

Question.—Was no such call sent?

Answer.—There was a letter from yourself (Mr. Morris, counsel for Respondents) forwarded to me.

Question.—When you were translated in Scotland from one congregation to another, as I believe you were, was there not always a call before the Presbytery?

Answer.—Not before the Presbytery. I was not translated from a congregation. I was translated from one parish to another parish. 20

Question.—In such cases did you not always receive a call before translation?

Answer.—The call was always presented after the presentation was sustained.

Question.—But I ask you if you received a call before translation?

Answer.—Of course yes, after presentation.

Question.—Is it not always the case in Scotland that the call is received and laid before the Presbytery before the translation takes place?

Answer.—Yes.

Question.—Have you any doubt that in this case before you were translated to Montreal a call from St. Andrew's Church, Montreal, was sent to Scotland and laid before the Presbytery? 30

Answer.—I do not know.

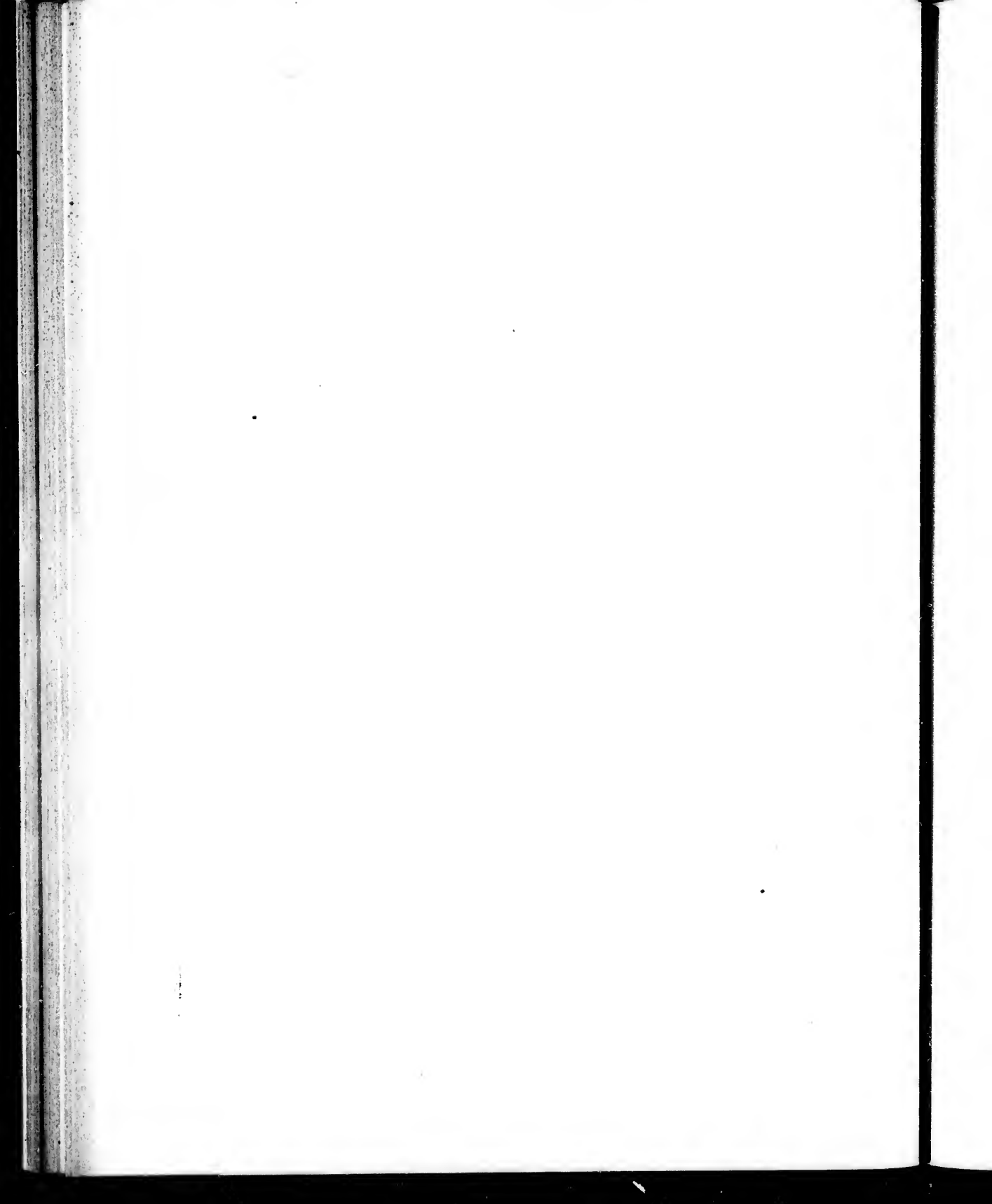
Question.—You never saw such a call or heard of it?

Answer.—Not in Scotland.

Question.—When did you first see it or hear of it?

Answer.—I think the call was moderated after I came here, if I remember right; but we attach very little importance to calls in Scotland?

Question.—Then, as a matter of fact, the translation you have spoken of from Scotland to Montreal could not have been a translation in the same sense 40



as a translation is in Scotland, seeing that no call was laid before the Presbytery in Scotland previous to your translation ?

Answer.—My parish was not declared vacant in Scotland till I was inducted here and notification of the induction was sent from here. I said I did not know whether a call had been laid before the Presbytery in Scotland.

Question.—Could a translation take place in Scotland without a call ?

Answer.—I do not know.

Question.—You stated that on the 15th of June and during the whole of that month you were absent from this country in Scotland ?

Answer.—Yes, in Scotland or England. 10

Question.—Then, personally, you know nothing about the proceedings which took place in the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, at its meeting held in Montreal in June, 1875 ?

Answer.—I do not know the force of the word " personally." What I had was from newspaper reports or correspondence

Question.—And that, then, is all you know on the subject ?

Answer.—Except from the subsequent proceedings.

Question.—How many of the ministers, who were ministers of the Presbyterian Church of Canada in connection with the Church of Scotland in June, 1875, entered into the union of Churches of which you have spoken in your examination in chief? 20

Answer.—I do not know the exact number.

Question.—How many of the said ministers did not enter into the said union ?

Answer.—I do not remember.

Question.—Can you not tell by referring to the minute book you produced to-day ?

Answer.—I do not think I could.

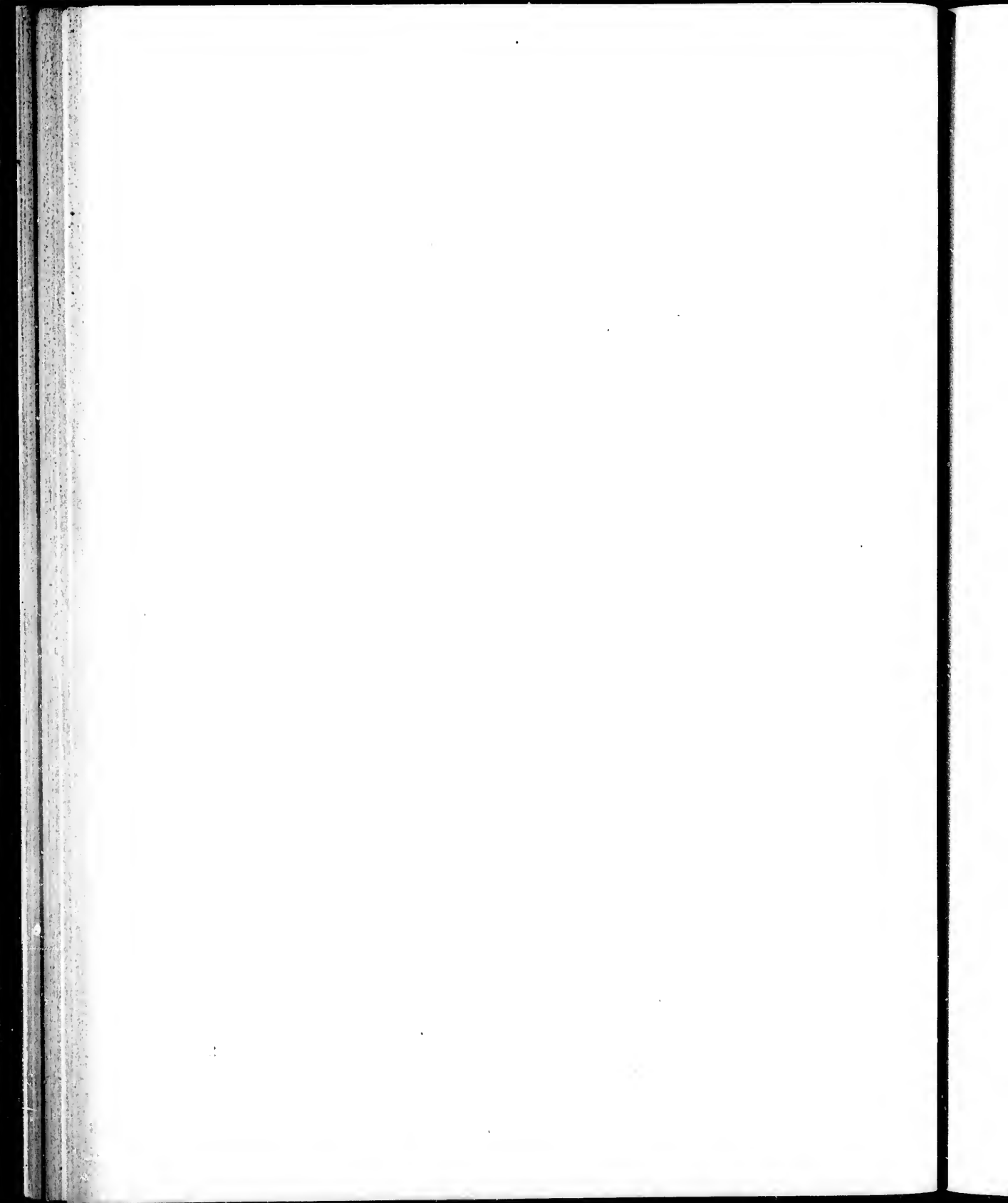
Question.—Are you positive that you cannot ? 30

Answer.—I refer to my former answer.

Question.—Will you look at the minute book and see if it does not show how many ministers did not go into the union ?

Answer.—I am not sufficiently acquainted with the minute book. The only minutes which I kept were those of the last session.

Question.—You say in your examination in chief " since June, 1875, the Presbyterian Church of Canada in connection with the Church of Scotland continued under its old name ;" then can you not tell me how many ministers continued under such name and how many congregations and how many presbyteries ? 40



Answer.—I cannot tell off hand.

Question.—Can you tell me by referring to your minute book ?

Answer.—I am not sufficiently acquainted with the minutes.

Question.—Does this book, which is produced marked "Z," contain the original minutes you have referred to when you produced this book ?

Answer.—I believe so.

Question.—Do you know when this book was written up and where ?

Answer.—I do not know ; I got the book from the Clerk of the Synod.

Question.—Do you know who keeps the minutes of the Commission of the Synod which is mentioned in this book ?

10

Answer.—I fancy it is the Reverend Robert Burnett.

Question.—Is he the Clerk ?

Answer.—I believe so

RE-EXAMINATION.

Question.—How does it happen that you have been for some time acting as Clerk *pro tempore* ?

Answer.—In consequence of the illness of the Clerk, the Reverend Robert Burnett.

20

Question.—Do you know in what condition of health he is at the present time ?

Answer.—I only know he has been very ill, and he is very ill still with typhoid fever.

Question.—It was on account of his illness you were called upon to keep the minutes ?

Answer.—Yes.

Question.—Mr. Morris requested you to take the minute book produced and mention the names of the clergymen and Presbyteries acting in connection with the Presbyterian Church of Canada in connection with the Church of Scotland, to which you answer that you were not sufficiently acquainted with the minute book. Will you explain if the contents of the minute book itself would supply the information asked for as to those ministers maintaining their connection with the Presbyterian Church of Canada in connection with the Church of Scotland ?

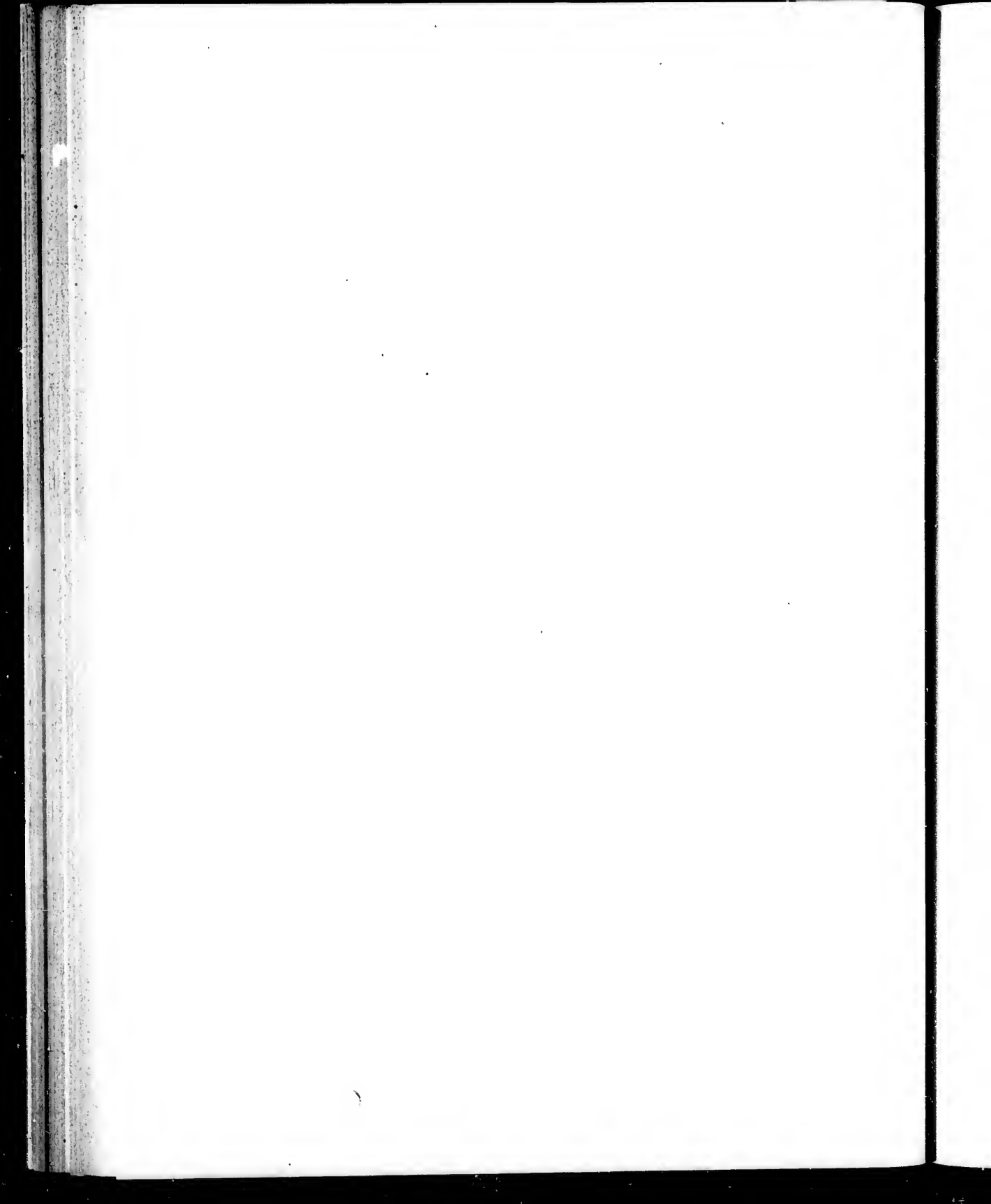
Answer.—It must contain the names of a large number of them.

Question.—It would at all events contain the names of those who attend the respective meetings of Synod ?

Answer.—Yes.

Question.—It would not show those outside who did not attend ?

40



Answer.—No.

Question.—Have you any ministers or missionaries acting in connection with the church at the present time and for some time past, who are not members of the Synod ?

Answer.—Yes.

Question.—You have been asked to mention the names of ministers maintaining their connection with the said church ; can you mention about what number of congregations are at present maintaining connection with the Presbyterian Church of Scotland, to whom the ministrations of religion are given ?

10

Answer.—I believe there are upwards of thirty ; but I do not know the exact number.

RE-CROSS-EXAMINED.

Question.—Will you be kind enough to give the details as to the congregations you have referred to in your last preceding answer ?

Answer.—I have already stated that I do not know the exact number.

Question.—How is it that you could recollect there are about thirty ?

Answer.—Simply from a statement which I saw at the Synod, which stated the fact in the aggregate. 20

Question.—Then you have no personal knowledge as to the fact that there are about thirty ?

Answer.—I believe it.

Question.—Do you personally know it except from the statement you say you have seen ?

Answer.—I do not doubt it.

Question.—I want to know whether you know it of your own knowledge, except from that statement ?

Answer.—I know it generally sufficiently not to doubt it. 30

Question.—From what is that knowledge derived ?

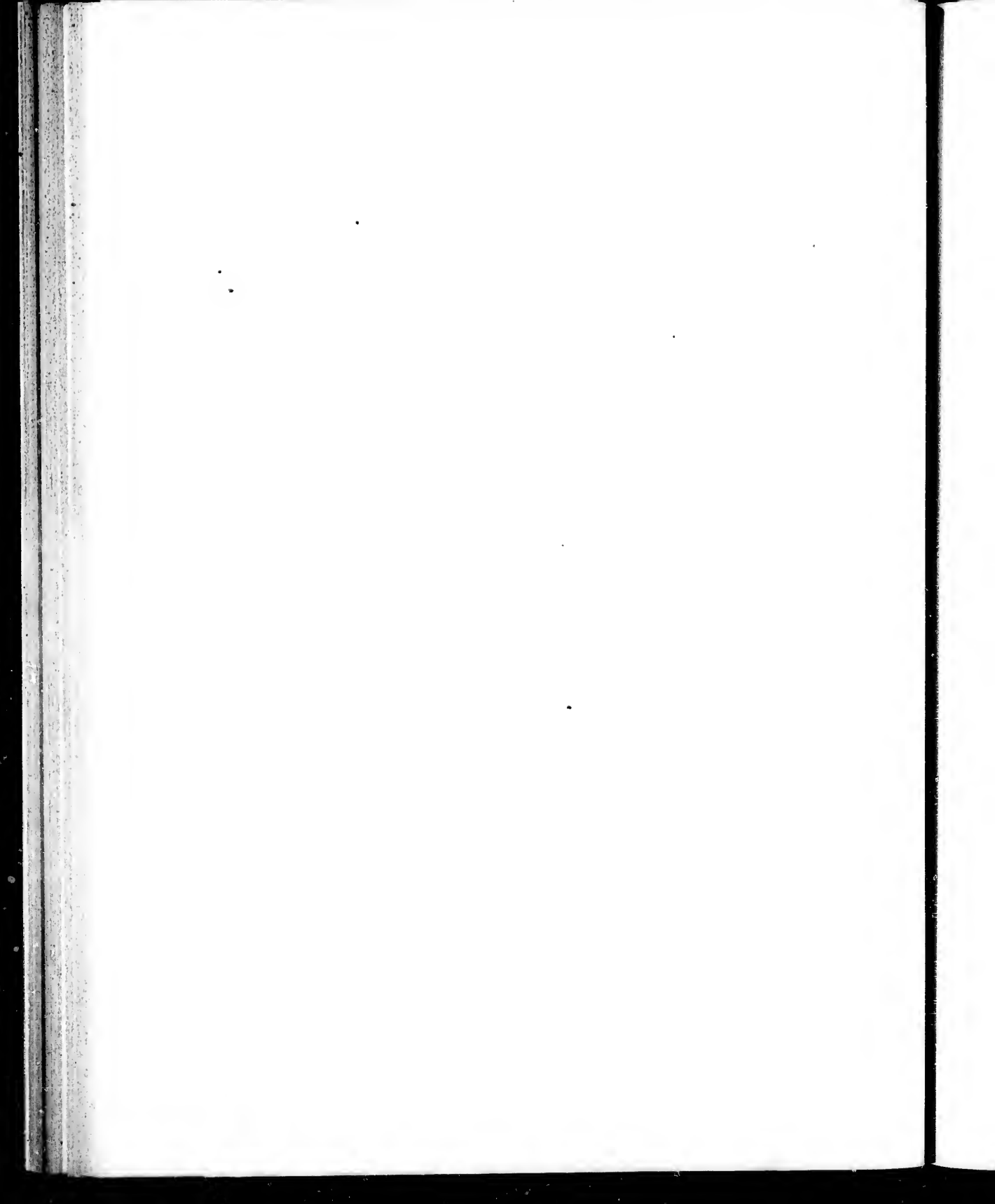
Answer.—I stated, in my former answer, from the document before the Synod.

Question.—Does the roll of the said minute book, at the commencement of each session, show the number of congregations that you have referred to ?

Answer.—I am not the Clerk of Synod ; I am not sufficiently acquainted with the procedure.

Question.—Is it not a fact that the roll should show it according to usage ?

40



Answer.—I am not sufficiently acquainted with the Clerk's duties.
And further deponent saith not, and this deposition having been read to him he declares it to contain the truth.

(Signed). S. A. ABBOTT,
Stenographer.

REV. JOHN McDONALD, of Beechridge, in the Province of Quebec, aged sixty years, a witness produced on the part of the Petitioner, on this twenty-
eighth day of June, eighteen hundred and seventy-nine, who, being duly
sworn, deposeth and saith :—I am not related, allied or of kin to, or in the
employ of any of the parties in this cause ; I am not interested in the event of
this suit.

I was ordained in 1854 in the Presbytery of Glasgow, in Scotland.

Question.—Were you ordained for the purpose of taking up any particular charge, and if so, what charge ?

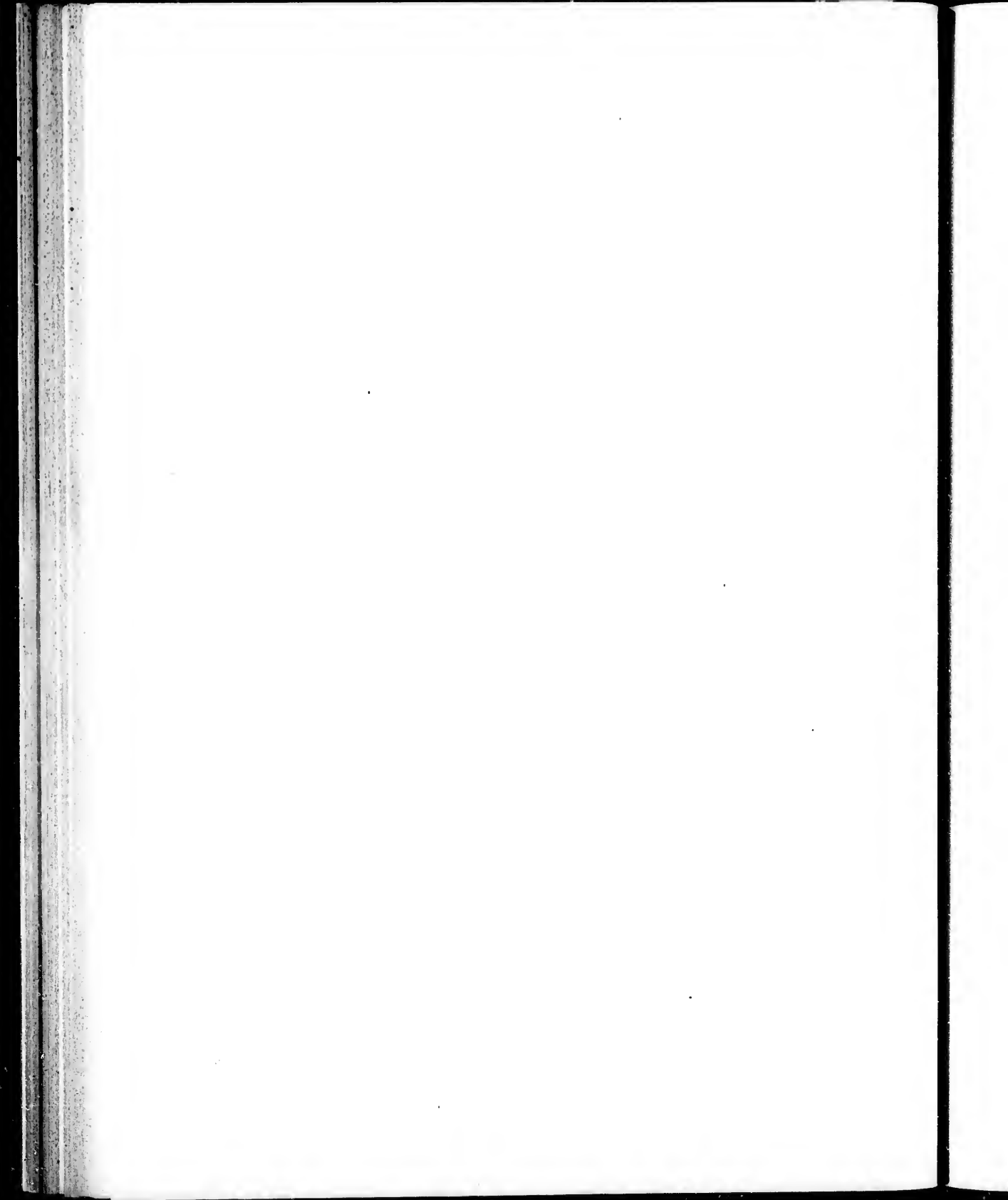
Answer.—I got a commission from the General Assembly of the Church of Scotland through its Colonial Committee, for the purpose of coming to Lochiel, in Glengarry, in the Province of Ontario. Having that in view, the
Assembly, by this Committee, enjoined the Presbytery of Glasgow to take me
on trial for ordination, according to the rules of the Church.

Question.—And you were ordained by the Presbytery of Glasgow ?

Answer.—Yes ; I did not take charge of anything there, but sailed for Canada on the 13th of May following. I have now in my possession my commission from the General Assembly, through its Colonial Committee, and which reads as follows :

“ At Edinburgh, the ninth day of February,
“ eighteen hundred and fifty-four. At a
“ meeting of the Acting Committee of the
“ General Assembly Committee on Colonial
“ Churches :

“ *Inter alia* : Read letters from the Rev. Dr. Mathieson, Montreal, in regard to the vacancy at Lochiel, in the Presbytery of Glengarry ; also minutes of that Presbytery dated 18th of January last, regarding the appointment of the Rev. John McDonald, Liverpool, to said charge. The Committee having considered this application, and being well satisfied of Mr. McDonald's gifts and qualities for the work of the ministry, did, and hereby do appoint him as minister of said Church of Lochiel, and direct an extract of this minute to be sent to Mr. McDonald.



" The Committee further, considering that it will add much to the influence and usefulness of Mr. McDonald in the situation to which he has been appointed, should he go out as an ordained minister of this Church, agree to request the Reverend the Presbytery of Glasgow to take him on trial for ordination, according to the rules of the Church.

" The Committee also agreed to grant Mr. McDonald the sum of £45. for outfit and passage money. * * * * *

" Extracts from the minutes of of the Colonial Committee.

" J. AYTON,

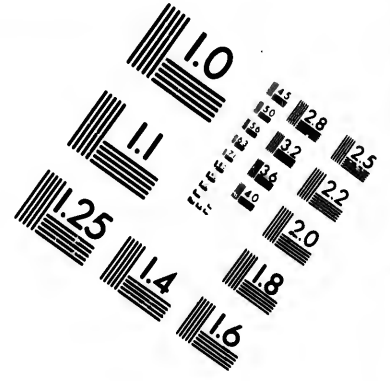
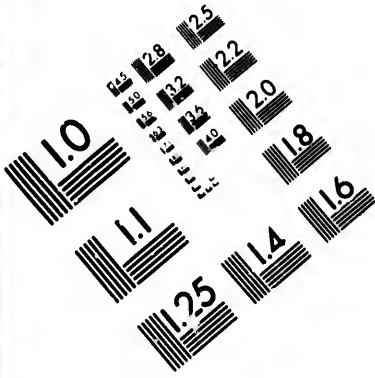
" Secretary *pro tempore*." 10

Question.—After you were ordained you received a certificate or papers evidencing your ordination ?

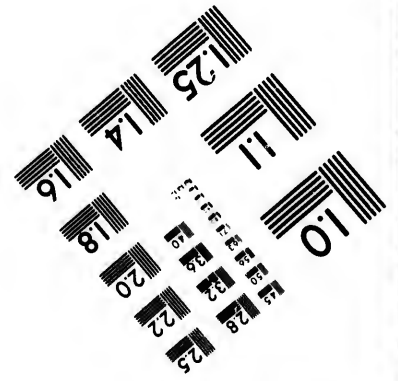
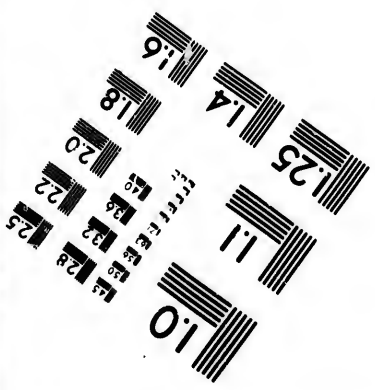
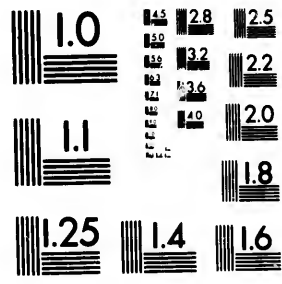
Answer.—Yes, from the Presbytery Clerk, and I now exhibit the papers which I received, and which are certified by the Presbytery Clerk of the Presbytery of Glasgow, which documents are duly stamped, the same being in the words following :—

" At and within the Parish Church of Carmunnock, the thirty-first day of April, eighteen hundred and fifty-four years, which day the Presbytery of Glasgow being met and constituted *inter alia*.

" Compeared Mr. John McDonald and delivered all the discourses prescribed to him at last meeting with a view to his ordination, which severally and upon conjunct review were sustained. The Presbytery then proceeded to examine him in church history and the Greek and Hebrew languages, and were satisfied with his proficiency. Sermon suitable to the occasion was preached by the Moderator from Matthew, 27th chapter, 45th verse: ' Now from the sixth hour there was darkness over all the land until the ninth hour.' After sermon the Moderator intimated to the congregation that Mr. McDonald having accepted an appointment by the Colonial Committee of the General Assembly of the Church of Scotland to the pastoral charge of Lochiel, in the Presbytery of Glengarry, Canada, had been taken upon trial for ordination by the Presbytery at the request of that committee, and had acquitted himself to their satisfaction. He then put to Mr. McDonald the questions appointed by the 10th Act of Assembly, 1711, to be put to ministers before they are ordained, to all of which satisfactory answers were returned. Thereupon the Moderator did, by solemn prayer to Almighty God and the imposition of the hands of Presbytery, publicly ordained and set apart the said Mr. John McDonald to the office of the holy ministry. Thereafter Mr. McDonald was suitably addressed by the Moderator on the duties of his office, with special reference to his appointment by the Colonial Committee. The brethren present gave him the right hand of fellowship. The Act 40

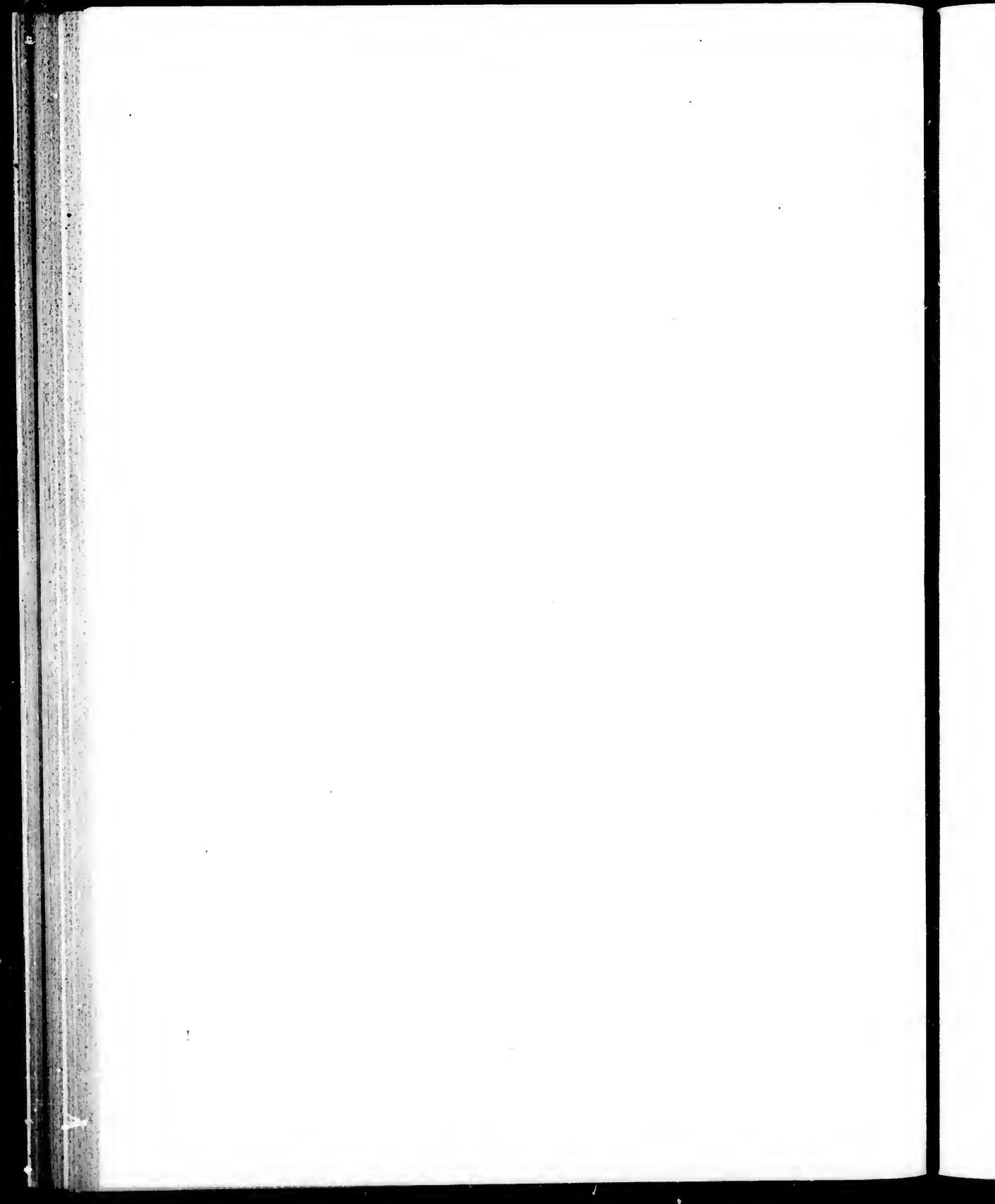


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" against Simony, 1759, was read to him, and he judicially signed the Confession of Faith and the Formula on all which instruments were taken, etc., etc.

" Extracted from the records of the Presbytery of Glasgow.

" By JAMES SMITH,

" Presbytery Clerk.

" Certificate.

" At Carmunnock, the thirty-first day of March, 1854, the Presbytery of Glasgow being met and constituted, did and hereby do certify that Mr. John McDonald, one of their licentiates and this day ordained by them as minister of Lochiel, in the Presbytery of Glengarry, in Canada, is well and most favorably known to the members, for many of whom he has officiated with much fidelity and acceptance; that his conduct has been uniformly consistent with his professional character and prospects, and that he carries with him to the sphere of ministerial duty on which he is about to enter the high opinion and best wishes of all the brethren.

Attested by James Smith, Pr. Cl."

On my arrival in this country, I proceeded to Lochiel and there presented the originals of the above documents to the Presbytery Clerk of Glengarry, and I was thereupon, namely, on the 24th of June, 1854, inducted by the Presbytery of Glengarry into the charge of the said Lochiel, and I exhibit the certificate of my induction which is in the following terms:

" I hereby certify that a memorial of the annexed certificate of induction was duly recorded in the Registry Office for the County of Glengarry, at the hour of eleven of the clock of Wednesday, the nineteenth day of July, in the year of our Lord, one thousand eight hundred and fifty-four, in Liber 1st Lochiel, in folio 353, number of memorial 382; and the said memorial fyled with the oath of allegiance of the Reverend John McDonald attached thereto.

" DONALD MACGILLIS, Dy.. Reg., 30

" County of Glengarry.

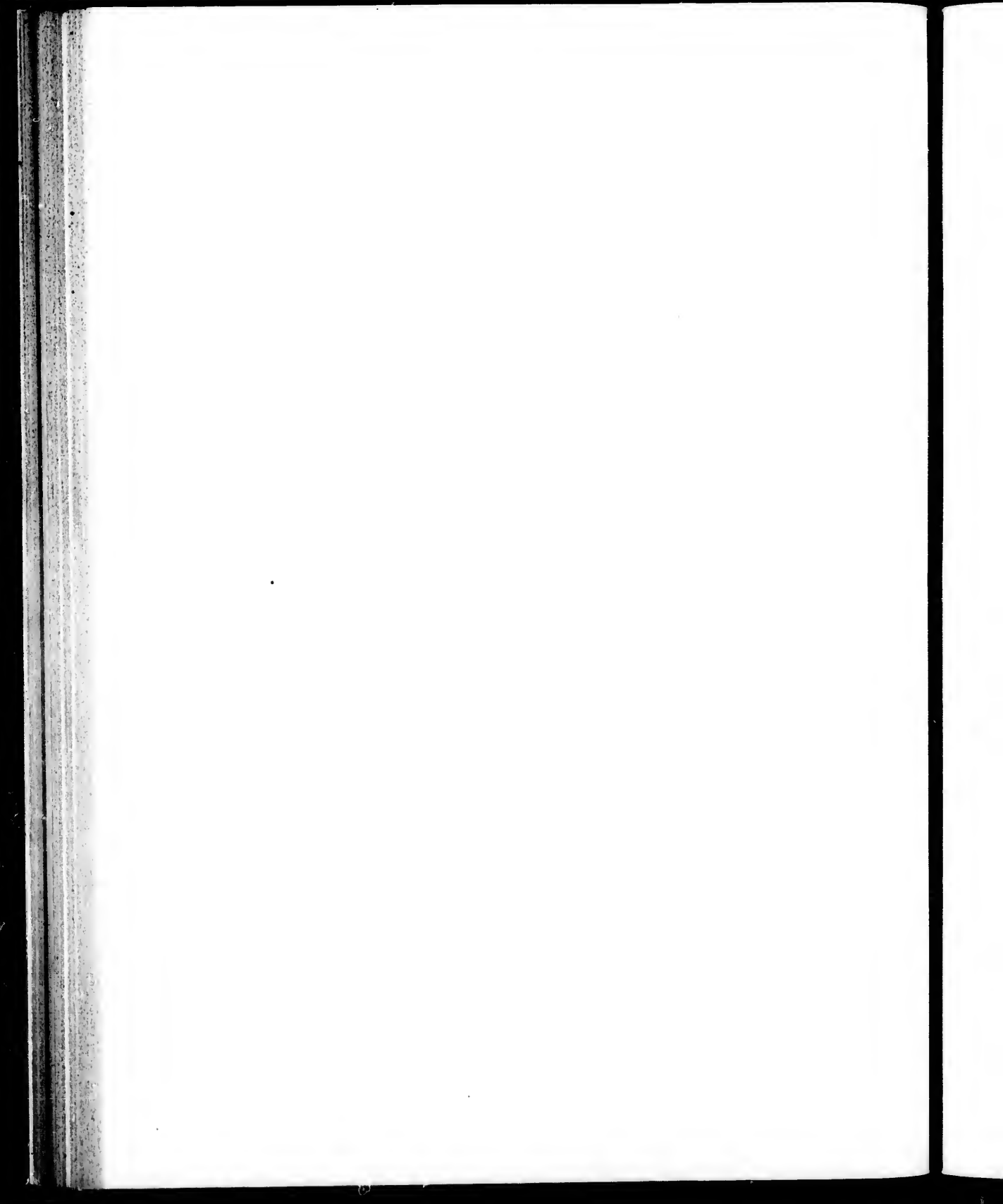
" At Lochiel, and within the Presbyterian Church there the 28th day of June, 1854.

" It is hereby certified, that the Rev. John McDonald was this day inducted as minister of the Scotch Church and congregation in this place, by the Presbytery of Glengarry, in connection with the Church of Scotland.

" ROBERT DOBIE, Moderator.

" ANDREW BELL, Pry. Clerk *pro tempore*."

Question.—Was there any more formality about your coming to this



country from Scotland and taking up the charge of Lochiel, than there would have been if you had taken charge of a parish in Scotland ?

Answer.—No, all proceedings were according to the laws of the church.

Question.—Have you been ever since a minister of the Presbyterian Church of Canada, in connection with the Church of Scotland ?

Answer.—Ever since.

Question.—Has that church been in existence in Canada ever since you came there ?

Answer.—Yes, and before I came here.

Question.—Has there been any trouble in the church since you came to 10 Canada, and especially in 1875, and what was it ?

Answer.—Yes ; some trouble arose in the Synod among the clergymen about the year 1870. A party of our Synod wanted to become united with the other Presbyterian bodies in the Lower Provinces and in this Province, whom we always regarded as dissenters, not recognizing the Established Church at all ; but we have been all along ministers of the Established Church of Scotland. Both here in this country and in the old country we have adopted the same laws of procedure, and were ordained by the same rules, and acted according to the rules of the Church of Scotland.

Question.—How did this trouble culminate in 1875 ?

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Answer.—The result was that the Synod was divided,—one side was a large majority against the other, but they were not unanimous.

Question.—What happened in 1875 ?

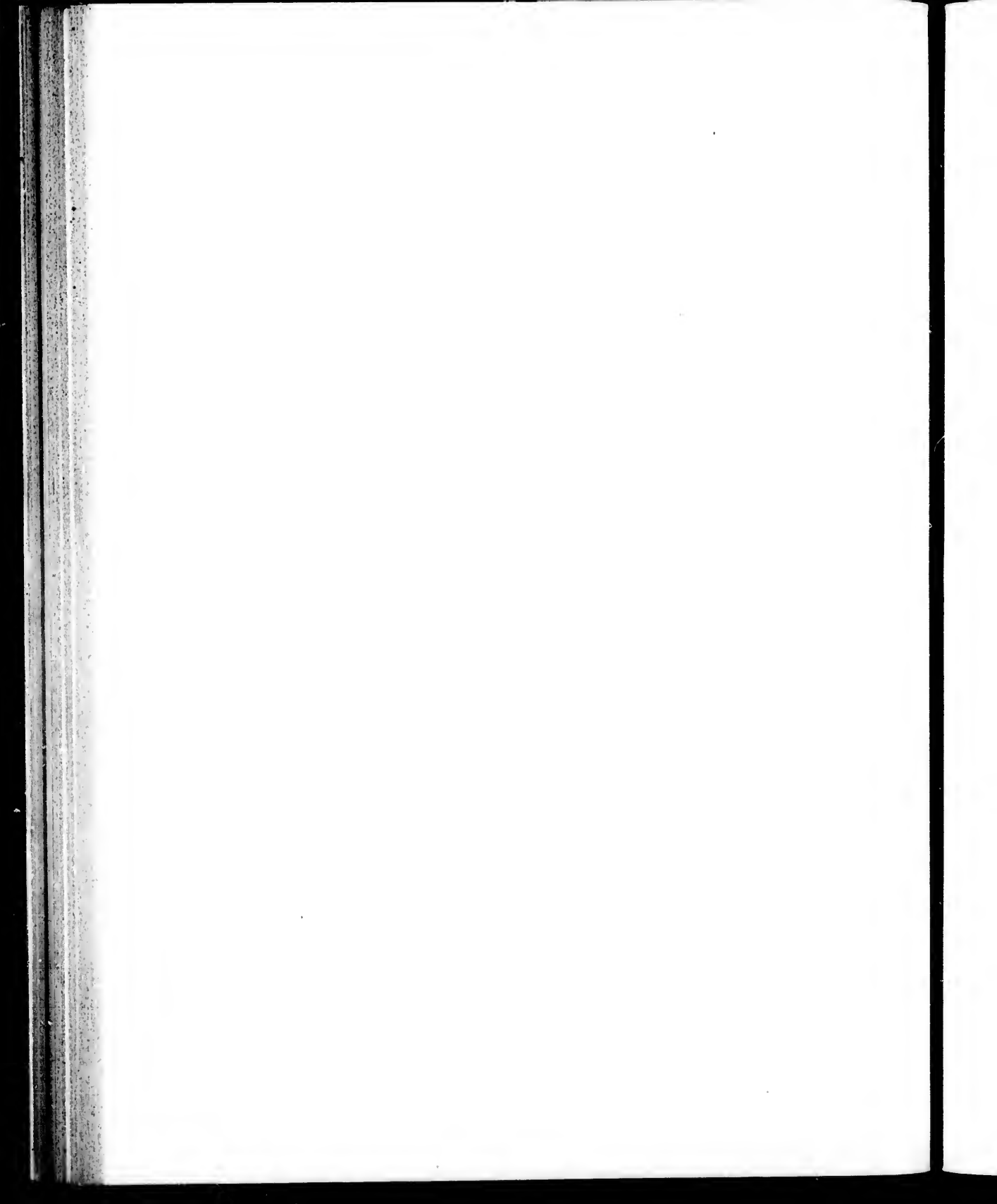
Answer.—It came to a crisis. They fixed a day for uniting, meeting with these other bodies—these dissenters, and they fixed upon the Skating Rink, the 15th June, on which day they wanted to walk from St. Paul's Church to meet the three bodies in the Skating Rink. I was not there, but I was one of the minority that remained behind. We remained behind and continued our sederunt as a court, that is the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland. What grieved us exceedingly was 30 the unhandsome and abrupt manner in which they treated us. They took away the records, the writing materials and the very ink and paper we were using. But we considered them acting in violation of their ordination vows, namely, not to follow divisive courses in the Church of Scotland, and that was the conviction on which we acted and do still act.

Question.—You were then present on the 15th of June, 1875, when the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, was held in St. Paul's Church, Montreal ?

Answer.—Yes.

Question.—Had there been any protest against this union ?

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Answer.—A succession of protests to the proceedings of the Synod, not only in that year, but in preceding years, which the records of the Synod will show.

Question.—By whom were those protests made?

Answer.—By the minority in our church, that is the Presbyterian Church of Canada in connection with the Church of Scotland.

Question.—Do you remember particularly a notarial protest on that day?

Answer.—There were two protests. One on the preceding night and one on that day. The one on the preceding night was tabled by ourselves, as a minority, and the one on the succeeding day was the notarial protest, the moderator was served with that before he left the chair. By the succeeding day, I mean the 15th of June, 1875.

Question.—You say that the members of the Synod who went away from the Skating Rink took with them the records and minutes of the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland. Have they since retained those records and minutes, so far as you know?

Answer.—Yes; they have retained them and refused to give them up, so far as I know.

Question.—Upon this body of members going over to the Skating Rink, what did the members do that were left behind?

Answer.—We continued the Diet of Synod.

Question.—Did you name a chairman?

Answer.—Yes; we named a chairman, the last ex-moderator present, or the one that was moderator before, and happened to be there then. Mr. Dobie, the Petitioner, was named chairman. We named as clerk the Rev. Robert Burnett, minister of the St. Andrew's Church, Hamilton. I was a member of the said Synod at that time.

Question.—From the 15th of June, 1875, down to the present time, have there been regular meetings of Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland?

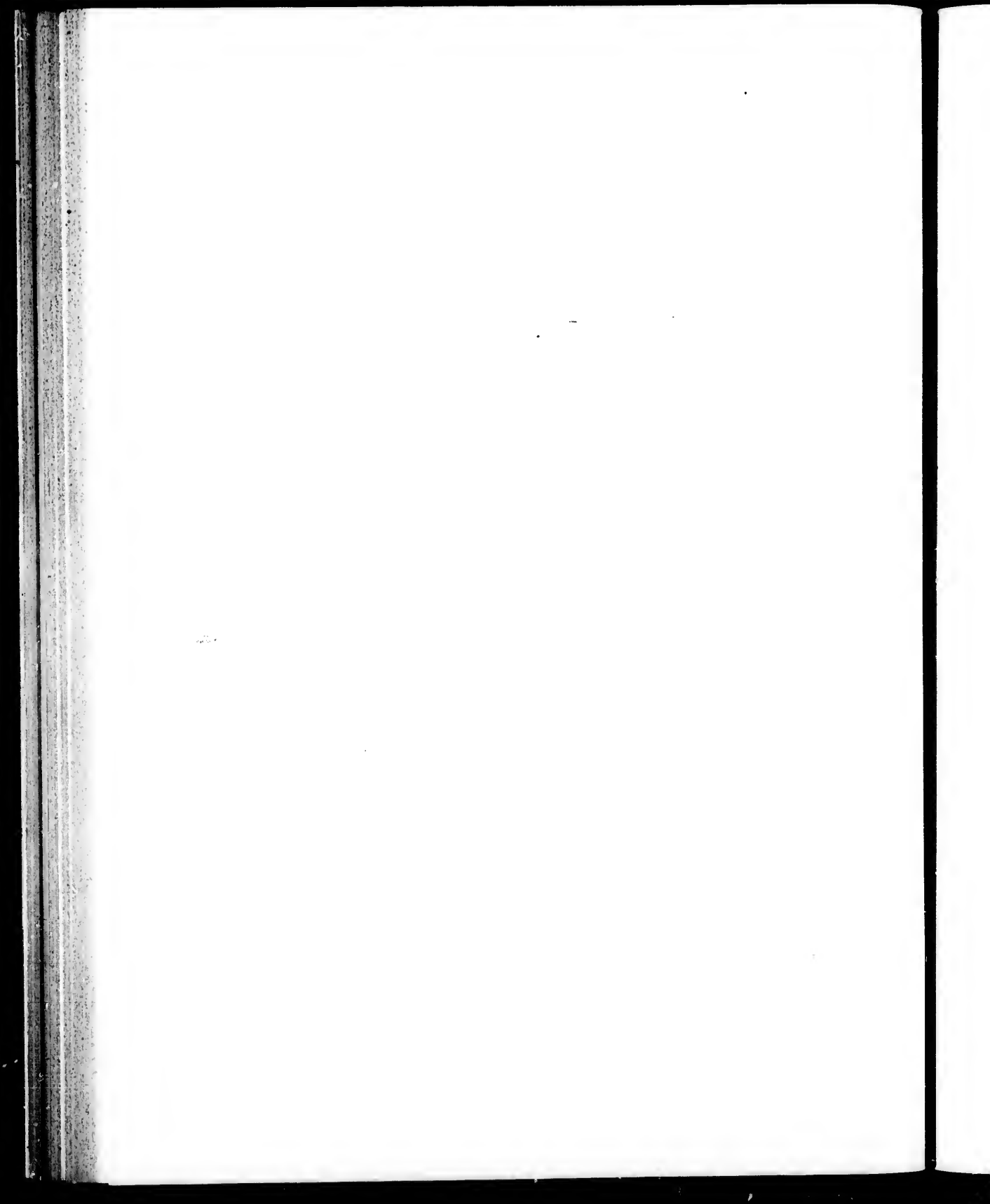
Answer.—Yes, sir.

Question.—How often?

Answer.—We had annual meetings; besides, we had other meetings called at the request of the Moderator, when found necessary.

Question.—Have you continued the same form of Church government and organization that you had prior to this large number of your Synod going over to the other bodies?

Answer.—We did, and intend to do it.



Question.—Have you since that time continued your connection with the Church of Scotland in the same way as before?

Answer.—Yes; that did not affect our connection at all. It did not affect the connection of the minority, the majority going away as they did. We are the constitutional party.

Question.—But has the Church of Scotland continued to transact business with you as the Presbyterian Church of Canada, in connection with the Church of Scotland, in the same way as it did prior to the 15th of June, 1875?

Answer.—Yes, sir. Previous to 1875 there was a Correspondence Committee corresponding with the Church of Scotland, and it has been continued 16 by us since then—in actual correspondence with the Colonial Committee of the Assembly at home, regularly, and we are recognized the same as before. And we do not anticipate that we will be ignored by the Church of Scotland, whatever people will say outside regarding us.

Question.—Prior to the 15th of June, 1875, were the three bodies, to which this large number of your Synod joined themselves, and the Presbyterian Church of Canada, in connection with the Church of Scotland, separate and distinct bodies?

Answer.—They were.

Question.—Were there differences between the Presbyterian Church of 20 Canada, in connection with the Church of Scotland, and the Presbyterian Church of Canada, in Canada, at the time of this union?

(Objected to as being illegal, and not being in issue on the Petitioner's petition).

(Objection reserved).

Answer.—Yes; there were differences.

Question.—Can you mention any difference with regard to the recognition of the Church of Scotland, or any other matter?

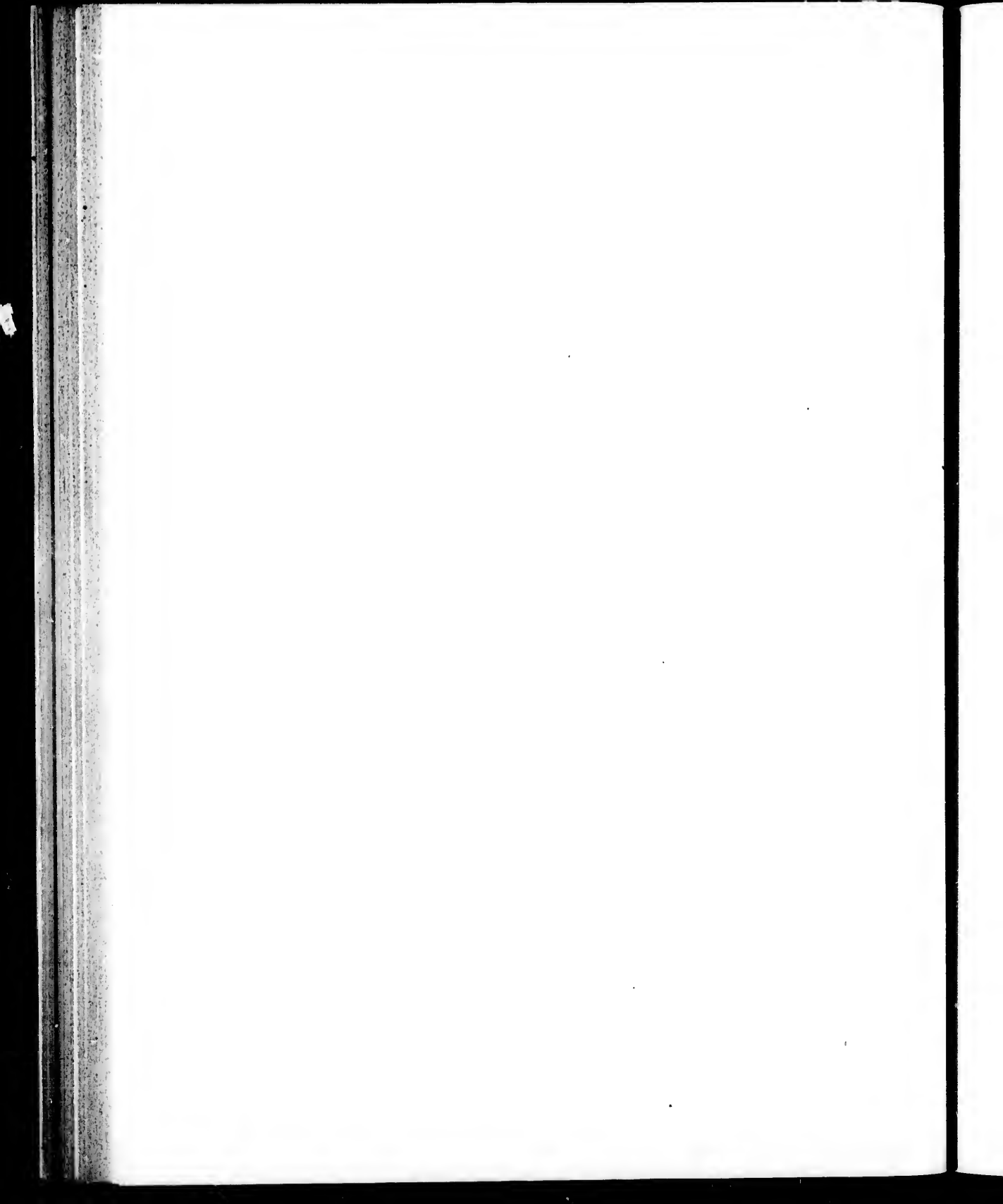
Answer.—They disapproved of our connection with the Church of 30 Scotland as established by law. That is one thing

Question.—Was there anything in the basis of union which, in your mind, conflicted with your views as a clergyman of the Presbyterian Church of Canada in connection with the Church of Scotland?

(Objected to as being illegal and not being in issue on Petitioner's petition).

(Objection reserved).

Answer.—The basis of union was introduced with a view of reconciling differences of opinion in the different parties. Unfortunately, in my humble opinion, it collided or clashed with our Confession of Faith. There was no necessity for a basis of union among Presbyterians who professed to believe in the Confession of Faith. We adopted and we act upon the Confession of Faith 40



in its entirety. But there is a section of the Confession of Faith which is the best section of all, because it is intended for the preservation of peace. That section was left an open question. The regulation of the Church of Scotland obliges us—obliges me or any person that follows it—to sign the Confession of Faith, and to declare it to be my belief, and sign it in its entirety. That is the section which refers to the power of the Civil Magistrate, and is No. 23.

Question.—I understand from your last answer that all clergymen joining the Church of Scotland in Scotland or the Presbyterian Church of Canada in connection with the Church of Scotland in Canada are obliged to give their entire adhesion to the Confession of Faith in its entirety? 10

Answer.—Yes.

Question.—Then I understand you further to say that, according to the basis of union, it is left optional with the ministers now joining the United Church whether they shall give their full adhesion to this Confession of Faith or not?

(Objected to as illegal and not being in issue on the Petitioner's petition).
(Objection reserved).

Answer.—Yes; it is left an open question. A man may hold any opinions he likes now in that United Church with regard to that twenty-third chapter, so far as I know. 20

CROSS-EXAMINED WITHOUT WAIVER OF OBJECTIONS.

Question.—You say you were inducted by the Presbytery of Glasgow in 1854?

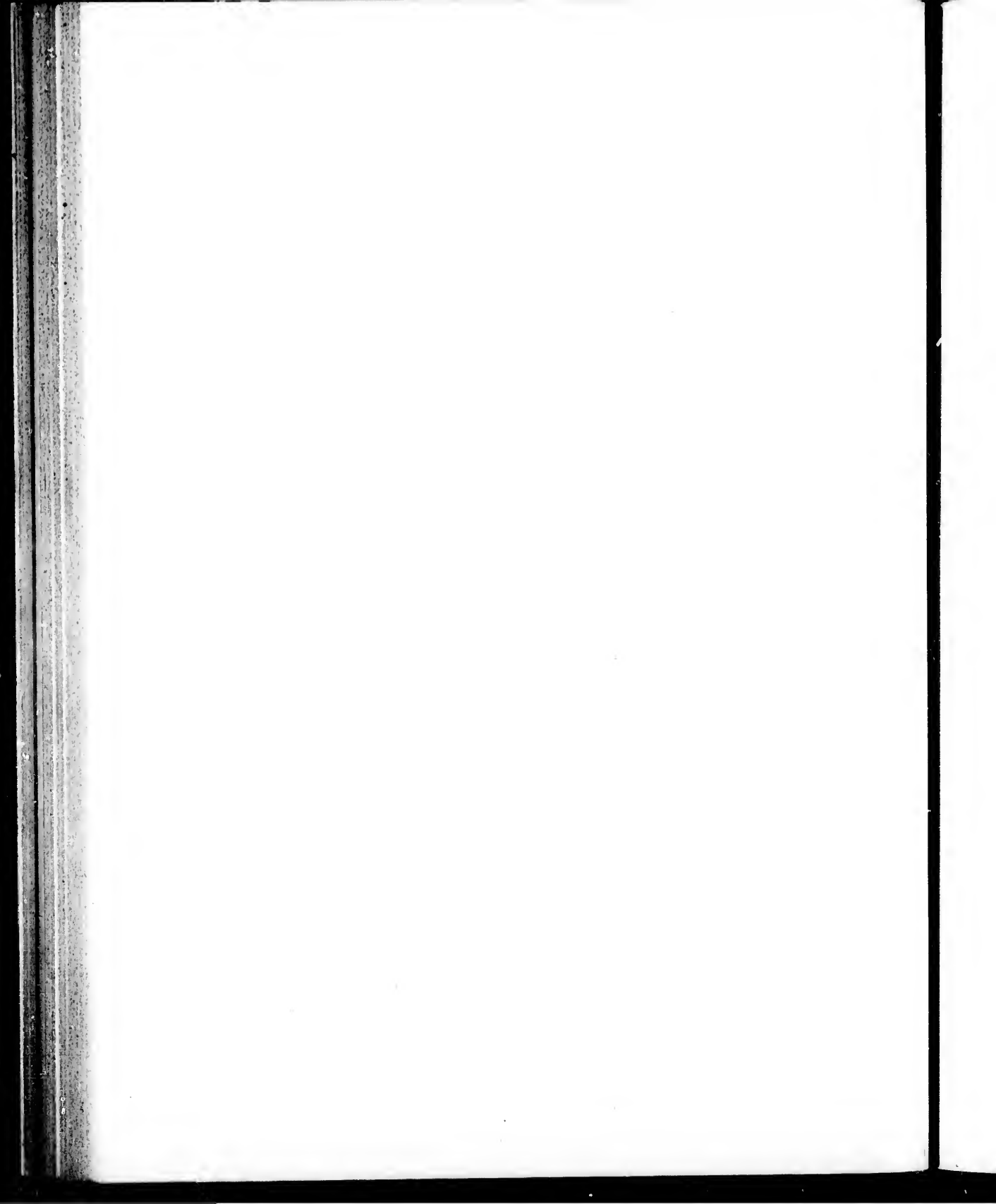
Answer.—Yes.

Question.—Previous to being inducted did you receive a call from the congregation to which you were inducted?

Answer.—No; I will tell you why. There was no formal call, because the congregation of Lochiel empowered the Colonial Committee to select for 30 them a minister that could preach in Gaelic and English; that they sent home a call to be filled by themselves in favor of a person they thought competent to discharge the duties.

Question.—And it was because they sent home that call to this committee in Scotland to select a competent person that you were selected and came out to Canada?

Answer.—My commission shows the origin of my coming to Canada. The request was sent home to the General Assembly's Committee by the late Rev. Dr. Mathieson, of Montreal, and the oldest minister in Glengarry at the time, the Rev. John McKenzie, minister, of Williamstown. These two were 40



particularly concerned in getting a minister for Lochiel, and were very urgent for me to come.

Question.—Is it not a fact that your coming to this country originated in the action of the congregation or representatives of the congregation at Lochiel in requesting either Dr. Mathieson or the Colonial Committee to select a suitable minister for them ?

Answer.—I believe that is implied. It was the good of the congregation that was kept in view in all the steps that were taken.

Question.—They made the first motion, did they not, towards obtaining you—it did not originate with the colonial committee at all ?

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Answer.—I cannot tell.

Question.—Did you not say a few minutes ago that the congregation of Lochiel sent home a call ?

Answer.—I was told so, but it was subsequent to my coming here; it was in Lochiel that I was told so.

Question.—Have you any doubt it was so ?

Answer.—I have no doubts in the matter. I have no reason to doubt honest men who wished to benefit their countrymen in Lochiel.

Question.—At the time you were inducted over the congregation at Lochiel, is it not a fact there was read over to you, and that you gave your assent to a document which is of record among the records of the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, passed by the Synod in 1844, and which is generally known as the Declaratory Act of Independence of the said church ?

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Answer.—Well, I will answer that question, if you will explain to me what is your meaning of the Act of Independence.

Question.—I will not explain to you my meaning of the Act of Independence, but want you to answer that question ?

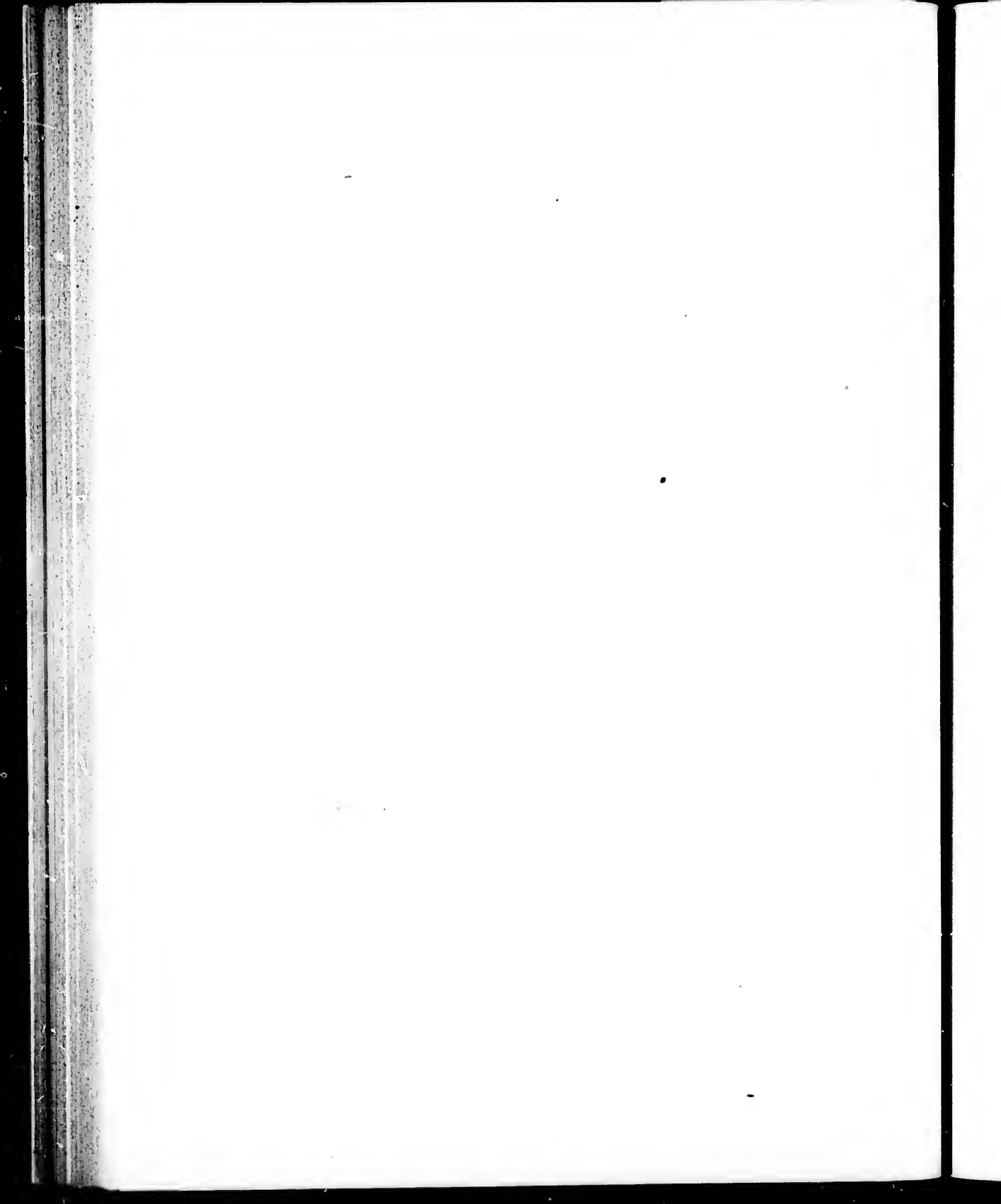
Answer.—I know I did sign such an act, but it was as regarded my ministerial duties that I would be subject to the direction of the Presbytery of Glengarry and the Synod of Canada, that was all—subject to the direction of the Synod in connection with the Church of Scotland.

Question.—That Act is to be found amongst the records of the votes and proceedings of the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, is it not ?

Answer.—Yes, since I knew you (Mr. Morris, counsel for Respondents) you acted upon that Act as well as I did.

Question.—Is it not a fact that all ministers at their induction had to give their assent to the said Act, according to the rules of the said Presbyterian Church of Canada, in connection with the Church of Scotland ?

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Answer.—Of course, as in accordance with the laws and regulations of the Church of Scotland.

Question.—Now, sir, is it not a fact that at the time of your induction you gave your assent, and as appears by the record, unqualifiedly, to that act of Independence, and that there was no such statement made by you that you did it in so far as was in accordance with the laws of the Church of Scotland?

Answer.—Unqualifiedly, no.

Question.—Where is your qualification to be found expressed?

Answer.—Whether expressed or not, it was understood by all the body of clergymen that we were a subordinate branch of the Church of Scotland, guided by her laws both in religious duties and in its government. 10

Question.—Then this qualification you stated you made was simply a mental reservation?

Answer.—There was no mental reservation about it.

Question.—Then was it written down and expressed in writing?

Answer.—I did not say reservation; I said it was the implied understanding of the Synod, as a body, that we were a subordinate branch of the Church of Scotland, entirely dependent on her pecuniary resources.

Question.—It was simply an implied understanding, then?

Answer.—I think that is too much about one point. 20

Question.—I ask you again; Is it not a fact that that Act of Independence was read over to you at the time of your induction, and you stated then that you assented to it, without stating anything else in the way of qualification of such assent?

Answer.—I assented to it with this belief, with this conviction, that I was under the control of a Presbytery as much in connection with the Church of Scotland, as if I had been in Scotland.

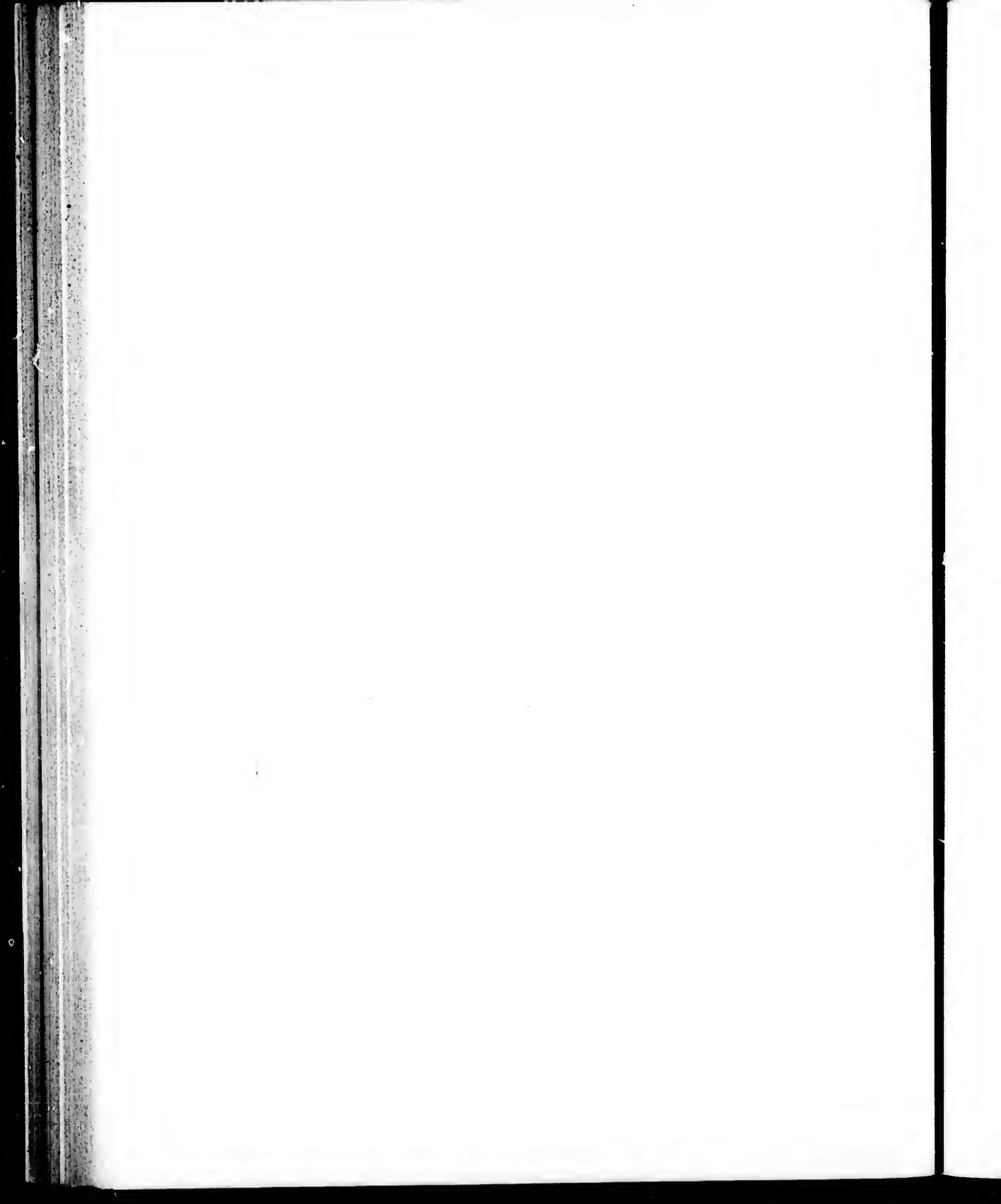
Question.—Now, is it not a fact that that Declaratory Act of Independence defines the meaning of the words "in connection with the Church of Scotland," which are to be found at the end of the name of said Church, to wit, the Presbyterian Church of Canada, in connection with the Church of Scotland? 30

Answer.—In reference to that I can say that, that Act of Independence in connection with the Church of Scotland never gave satisfaction to the Synod for the last twenty years. They could never agree upon it, but it was allowed to stand on the record. I know one grave Doctor of Divinity wanted it repealed.

Question.—Did you ever move to have it repealed?

Answer.—No; it did not come to that point.

Question.—Did anybody move to have it repealed? 40



Answer.—Not synodically. Still they were complaining of the Act.

Question.—You say that the question of union amongst the Presbyterian Churches came up in the Synod about the year 1870 ?

Answer.—I am not exactly positive as to the year, but a few years previous to 1875.

Question.—When it first came up in the Synod, did you oppose this union ? or did you take part in its discussion ?

Answer.—No ; I did not, because it did not come up regularly for discussion.

Question.—The first time it came up regularly for discussion in the 10 Synod, did you oppose it ?

Answer.—No ; because I considered it more of a clerical agitation than a regular desire in the country for union.

Question.—Is it not a fact that the question of union was discussed in the Synod about two years before you made opposition to it ?

Answer.—It was discussed ; but, according to my humble opinion, irregularly discussed. They were not in a position to discuss it according to the laws of the Church.

Question.—Is it not a fact that it was discussed two years before you took objection to it ?

Answer.—I cannot answer that ; I cannot charge my memory as to that, 20 but since it was mooted it was my humble opinion all along that the Synod, as a body, were acting irregularly in the matter, and, therefore, I never could believe that they would bring on a crisis notwithstanding.

Question.—Do you not approve of the principle of union amongst Christian bodies ?

Answer.—If it is attended with peace, and if it does not injure one to the advantage of another.

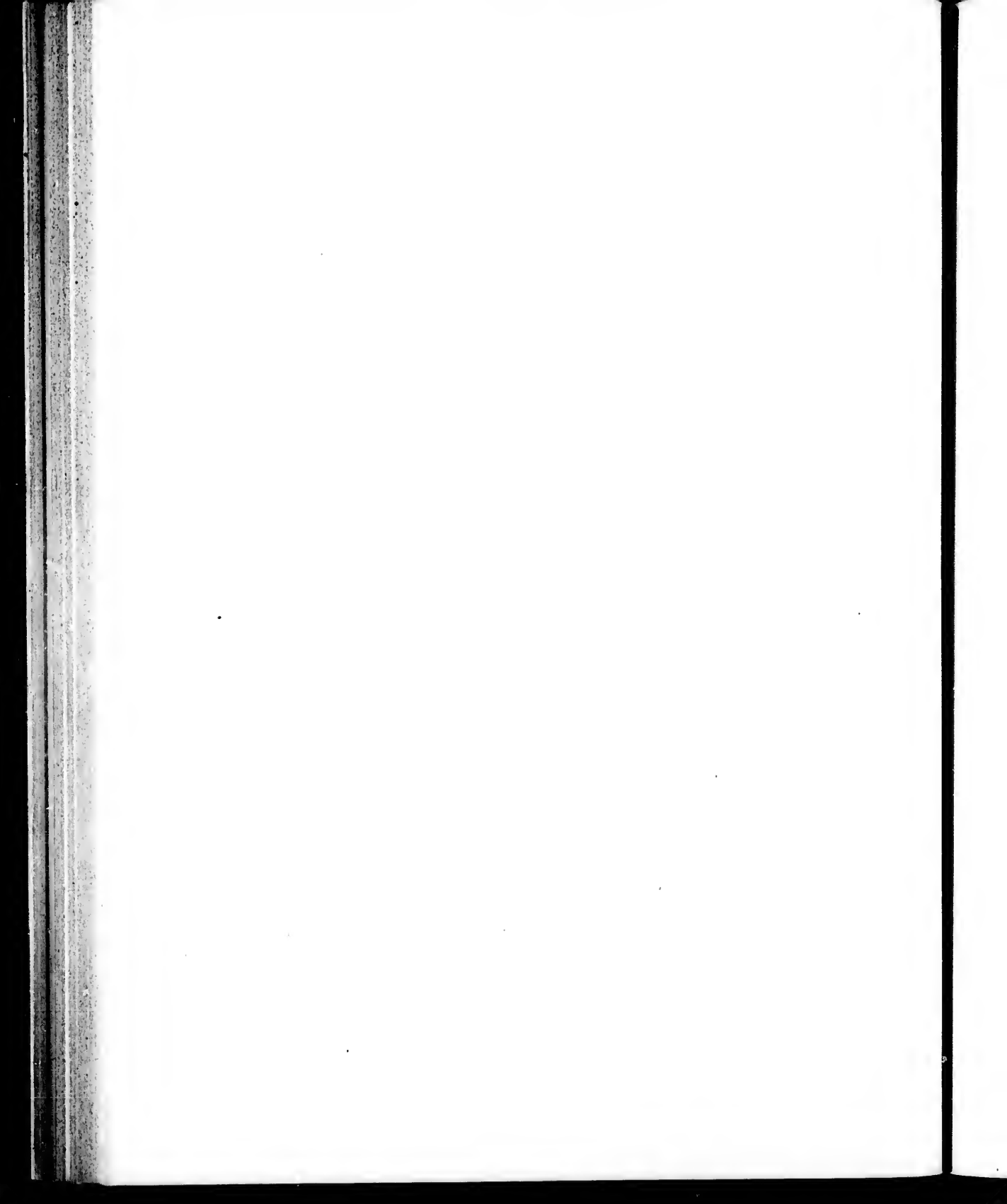
Question.—Now, you say that in 1875 the result was that the Synod was divided. Is it not the case that it was divided on a resolution regularly 30 brought up before the Synod at a meeting of the Synod duly called ?

Answer.—No, sir. According to my understanding of Church law—I am not going to force my opinion upon you—but, according to my opinion, it was at variance with the Barrier Act.

Question.—Did you take part in the discussion on the 14th and 15th of June, 1875, in Synod ?

Answer.—Not in the discussion, but when it came to the vote, I gave my vote against it.

Question.—Now you say that you and other members of the Synod remained behind in St. Paul's Church and did not take part in the union 40



which was effected on the 15th June: will you be kind enough to state how many ministers who were present at the said meeting of Synod remained behind with you in St. Paul's Church, and did not take part in said union?

Answer.—I cannot tell you how many remained behind, but they were part and portion of the *sederunt*.

Question.—Will you be kind enough to tell me the names of the ministers who so remained? and if you cannot I will refresh your memory.

Answer.—I cannot tell all the names for this reason, that some went away and came back.

Question.—Tell all you know?

Answer.—There were about twenty persons present. I do not know the names of all of them. 10

Question.—Is it not a fact that the Rev. Robert Dobie, Rev. William Simpson, Rev. Robert Burnett, Rev. David Watson, Rev. J. S. Mullin, Rev. Thomas McPherson, and yourself, the Rev. John McDonald, were the only ministers members of the said Synod who remained behind in St. Paul's Church after the other members repaired to the Victoria Skating Rink to consummate the said union under the resolution which was then and there carried?

Answer.—These were there, and they were the oldest members of the Synod.

Question.—The question is, whether any others were there? 20

Answer.—There were others.

Question.—I mean members of the Synod?

Answer.—I know some went away and came back and I do not know their names. They went away and came back, and went away to the rink a second time: They were hesitating what was their line of duty.

Question.—How many went away and came back?

Answer.—I cannot tell you.

Question.—You do not know the names of any who went away and came back? 30

Answer.—I can tell the names of some of them.

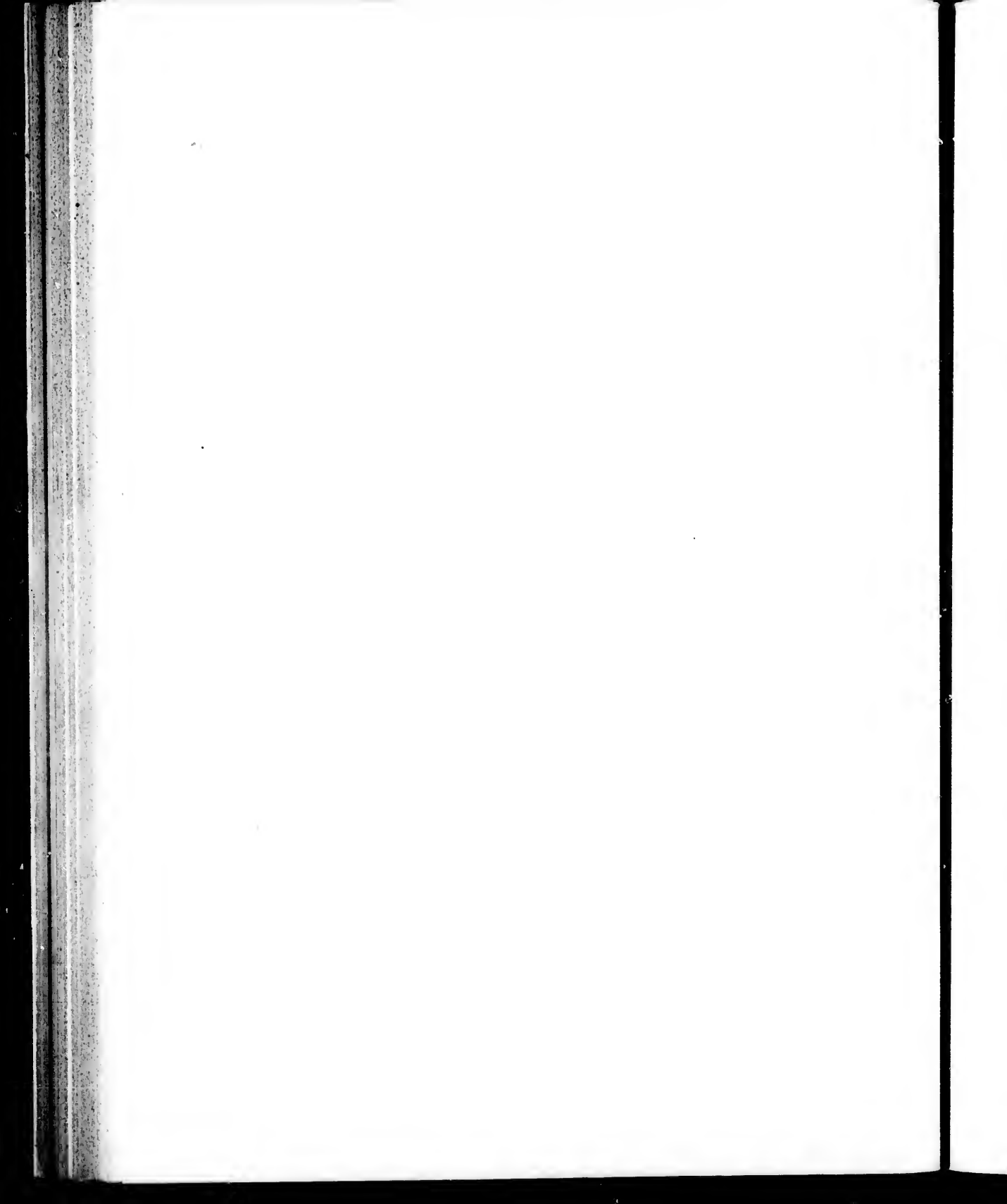
Question.—Tell the names of some?

Answer.—I am not going to implicate other people. They have left us and I am not going to injure them.

Question.—Then you decline to tell the names of any other who you say were present and who remained behind?

Answer.—I am not obliged to tell, besides there was such a crowd on that day.

Question.—But you say you know of some, and you decline to give the names of these? 40



Answer.—I said that some went and came back, and went again.

Question.—You said you knew the names of some; will you give their names?

Answer.—Mr. Mullin was one.

Question.—I am asking if there were any others besides those I have just mentioned?

Answer.—Some others.

Question.—Which others?

Answer.—Rev. Mr. Gray, minister of Thurlow, I think, in Ontario.

Question.—Was he a member of the Synod?

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Answer.—Yes; that is all I recollect just now.

Question.—What took place then, when the majority, as you say, had gone to the Victoria Skating Rink? What was the next step?

Answer.—I have only to repeat what I have said before.

Question.—What was the next step?

Answer.—They separated.

Question.—After they went away, what did you do that remained behind?

Answer.—We continued our sederunt.

Question.—What did you do first?

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Answer.—What any society would do. We appointed a President or Moderator when the first one gets sick.

Question.—Now is it not a fact that you first of all proposed as Moderator Rev. David Watson, of Thorah, immediately after the majority left for the Skating Rink? Is it not a fact that his name was proposed before Mr. Dobie's?

Answer.—No; it is not a fact, so far as I know.

Question.—Do you swear the name of the Rev. Mr. Watson, of Thorah, was not proposed at all as Moderator?

Answer.—Not that I recollect.

Question.—How did you constitute? Did you constitute with prayer? 30

Answer.—We did not need to constitute. We were constituted already.

Question.—Did you open with prayer?

Answer.—No, we did not; we engaged in devotion for Divine guidance in our deliberations, but not for constituting the Synod.

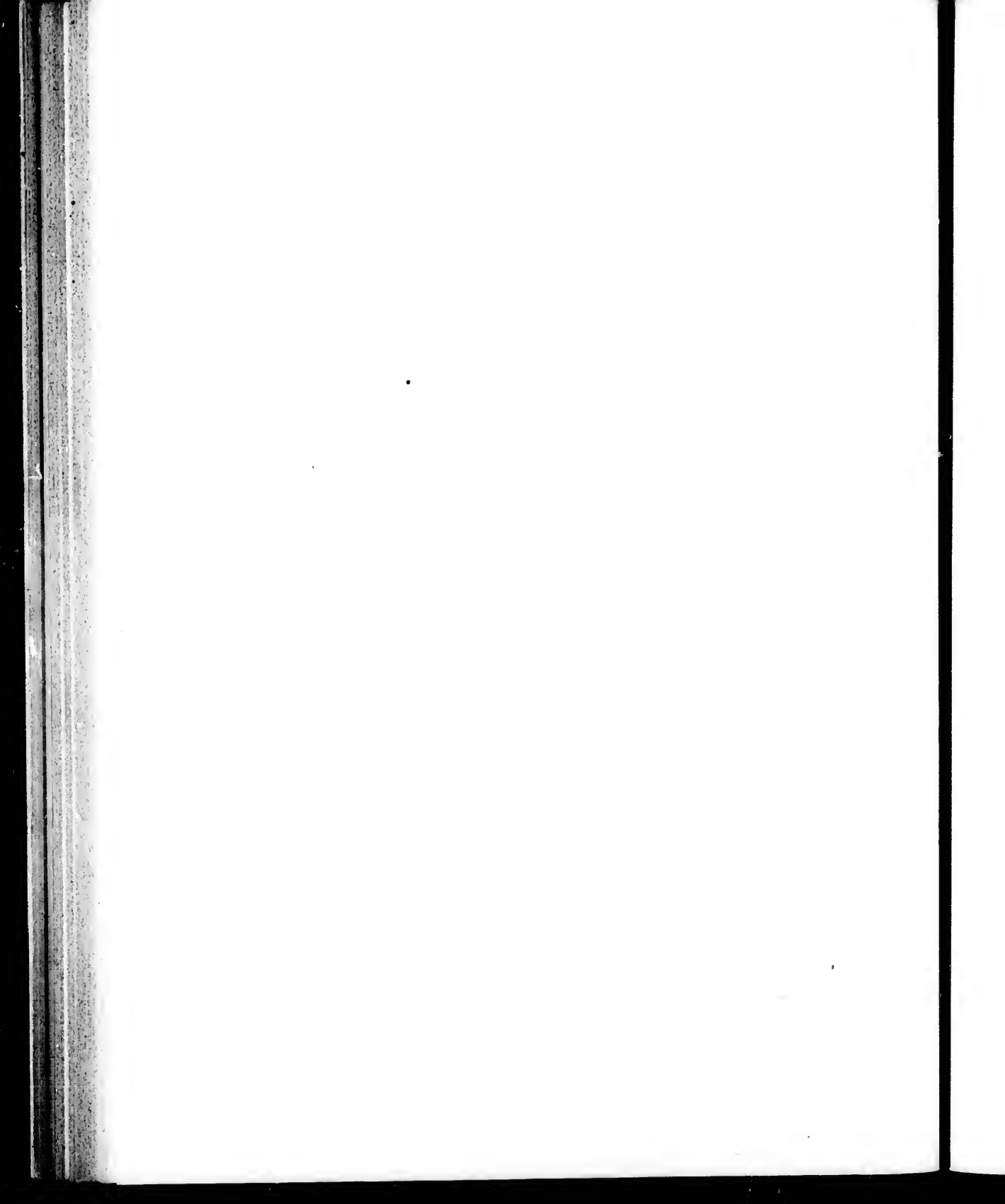
Question.—Who held your devotions?

Answer.—I cannot tell you who held devotions; but if I recollect it was one of the oldest members present.

Question.—Is it not the case that it was the Rev. Robert Dobie, the man whom you assumed to elect as your Moderator?

Answer.—I cannot tell. The excitement was great.

40



Question.—You cannot tell either that the Scripture was read, I suppose?

Answer.—That would be constituting the Synod.

Question.—I am asking whether it was or not?

Answer.—There was no constitution of the Synod there. There was no reading of Scripture, because the Scripture was read by you before you left. The Synod was constituted already; we did not begin a new Synod at all.

Question.—Is it not a fact that the Synod had been previously adjourned on that day?

Answer.—There was no adjournment. They left to join a new body and to assume a new designation in the Skating Rink. There was no adjournment 10 of us as a Synod. We continued the sederunt.

Question.—Nevertheless, was it not declared by that Synod, which you acknowledge yourself, that they adjourned to meet again in the Skating Rink?

Answer.—That was a violation of the law, sir; that was what separated us.

Question.—But I want an answer to the question?

Answer.—We did not recognize that; that was not going to break us up.

Question.—I repeat the question: Was it not declared by that Synod, which you acknowledge yourself, that they adjourned to meet again in the 20 Skating Rink?

Answer.—In so far as that applies to the majority who left, but could not disturb the minority in their duty.

Question.—At the time when, as you say, you elected a moderator from among these who remained behind, was there a quorum present of fifteen members of the Synod?

Answer.—A quorum? Why, if you speak of a quorum, after the first day in the Synod, it is a rare thing. I do not know what was the original number of the quorum, but that did not affect us, because we were a continuation of the Synod. 30

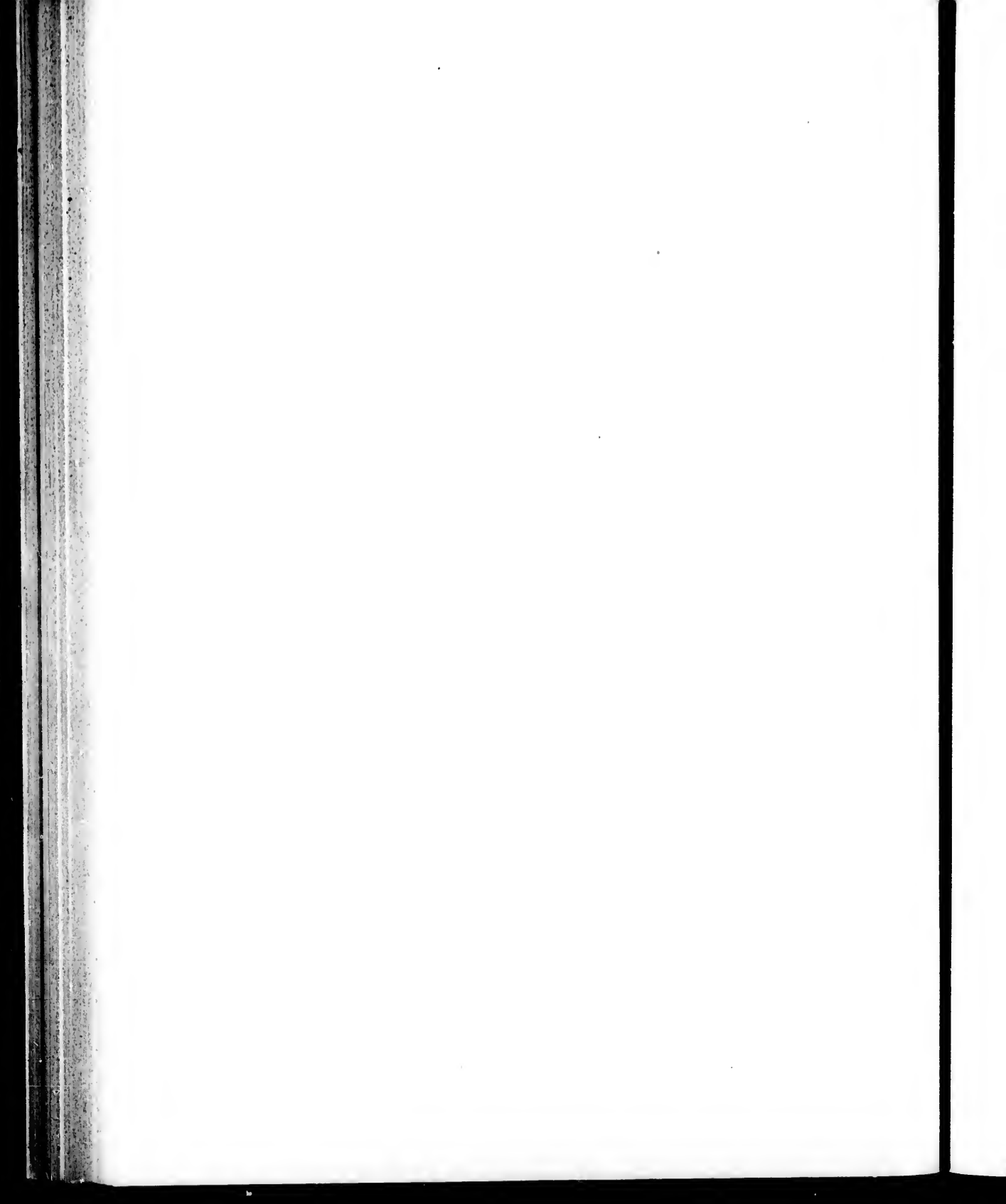
Question.—Now, I want to know whether there were fifteen members of Synod present at the time or not?

Answer.—I spoke of that already; I thought there were twenty, but I am not positively sure.

Question.—Do you swear that there were fifteen members of Synod present then?

Answer.—I have told already as far as I know; I said that I thought there would be about twenty; but I may be wrong. I am not positive.

Question.—Are you not aware that, according to the rules and regulations of the said Synod of the Presbyterian Church of Canada, in connection 40



with the Church of Scotland, it is there declared that a quorum of Synod consists of fifteen members, of whom eight must be clergymen?

Answer.—I said that, as I recollect, there were about twenty.

Question.—I repeat the question?

Answer.—No; I was not aware of that before. I do not think it was ever declared in the Synod that I attended what was the original quorum.

Question.—Will you look at the minutes of the said Synod of date June 9th, 1868, contained in the Petitioner's Exhibit "BBB," page 49 of the book entitled on the back "Minutes of the Church of Scotland, in Canada, 1855 to 1869," under the head of "General Provisions," section 1, sub-section 6, and state whether it is not there provided as follows: "To constitute a quorum
of the Synod there must be present not fewer than fifteen members, of whom
at least eight must be ministers." 10

Answer.—At the first meeting of Synod at the opening of Synod, I believe that is the rule that had been carried forth, but it has never been put in force at any subsequent meeting or in the sederunt; but we did not open the first meeting of Synod, we only continued the sederunt, therefore we did not need the fifteen members. As a minority in such a crisis that rule does not apply according to my opinion, no according to equity.

Question.—Was that rule number six ever repealed? 20

Answer.—I am sorry you gave me so little time to study the laws and rules of Synod. I cannot answer that, and I am sorry I cannot answer it. I do not doubt what you say, but I cannot answer it. It is too far back—ten years.

Question.—You say you have had regular meetings since the 15th of June, 1875; can you tell me how many ministers were present at those different meetings of Synod?

Answer.—I could not tell. We have a record. I did not commit the record to memory, and I cannot tell you without consulting the record.

Question.—Do you mean the minutes that have been kept? 30

Answer.—I mean the record.

Question.—Where is the record?

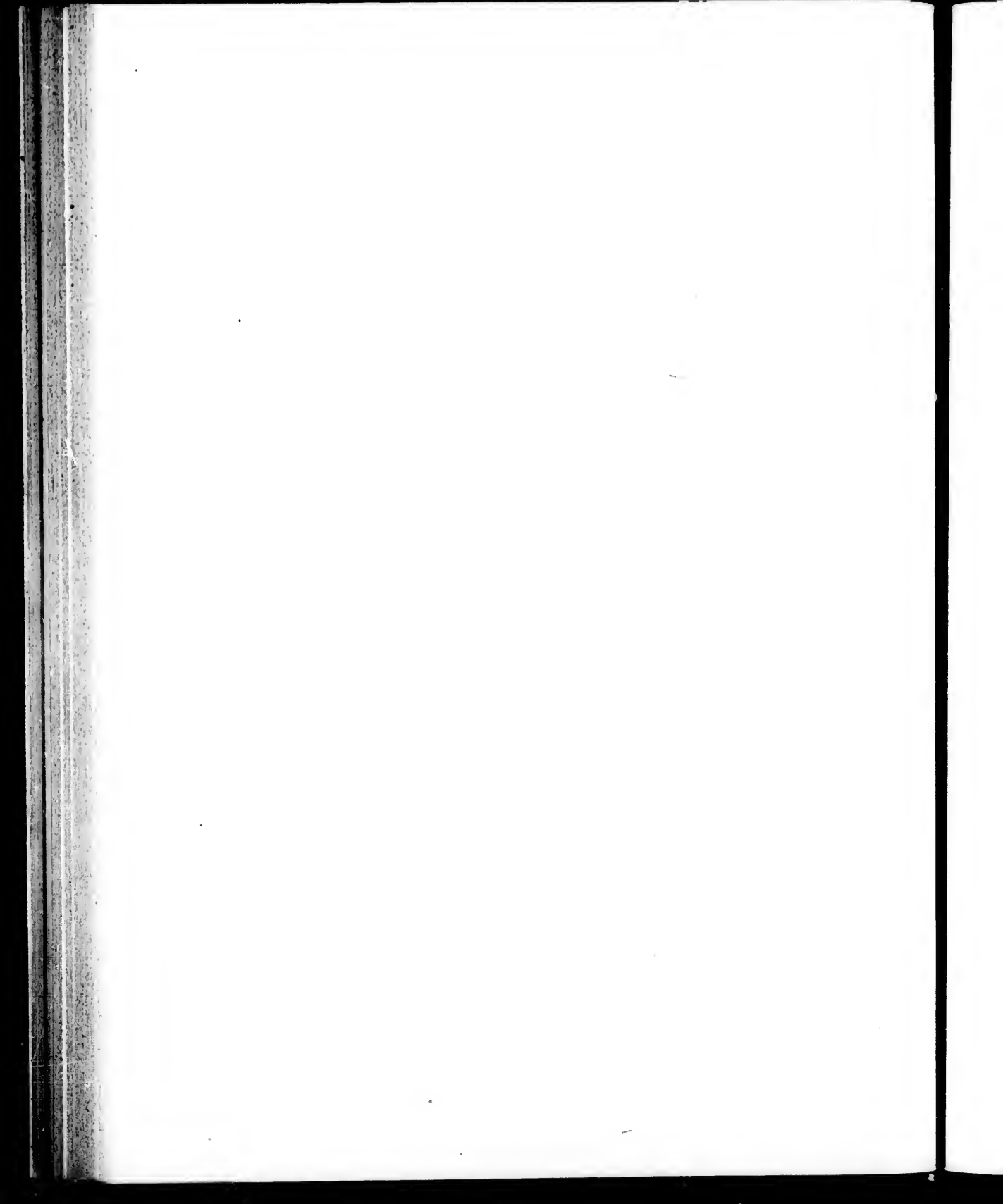
Answer.—I do not know.

Question.—Do you mean the record that has been kept by the Rev. Mr. Burnett, Clerk?

Answer.—Yes.

Question.—Can you remember the names of the other Presbyterian bodies who did join together to make this union in 1875?

Answer.—I cannot give the names exactly. There was our own body in the Province, there was the Free Church party, and there was the United 40



Presbyterian Church, or a secession of the church party in the Lower Provinces and a secession of our own. These were the three in the Lower Provinces who met in the Rink; and also in Ontario and Quebec there was a section that left ourselves and the Canada Presbyterian Church. The records will show which they were.

Question.—You have stated that you disapproved of the basis of union upon which said four bodies united. Is it not a fact that the Church of Scotland in Scotland has officially signified its intimation to the effect that it saw nothing whatever to object to in the said basis of union?

Answer.—I cannot tell. 10

Question.—Did you never see a resolution to that effect passed by the General Assembly of the Church of Scotland in Scotland?

Answer.—I do not recollect seeing it, but if it is passed there must have been a protest by a minority. I did not see it. I may be wrong.

Question.—How can you say there must have been a protest if you were not there?

Answer.—According to the usual procedure of the Assembly. They are always ready to co-operate with other bodies for religious work, but that is different from organic union. It is not a reason for changing our designation.

Question.—You say that you and those who adhered to you in refusing to join the union, have since said union had correspondence with the Colonial Committee, in Scotland, of the Church of Scotland; what do you consider that proves? 20

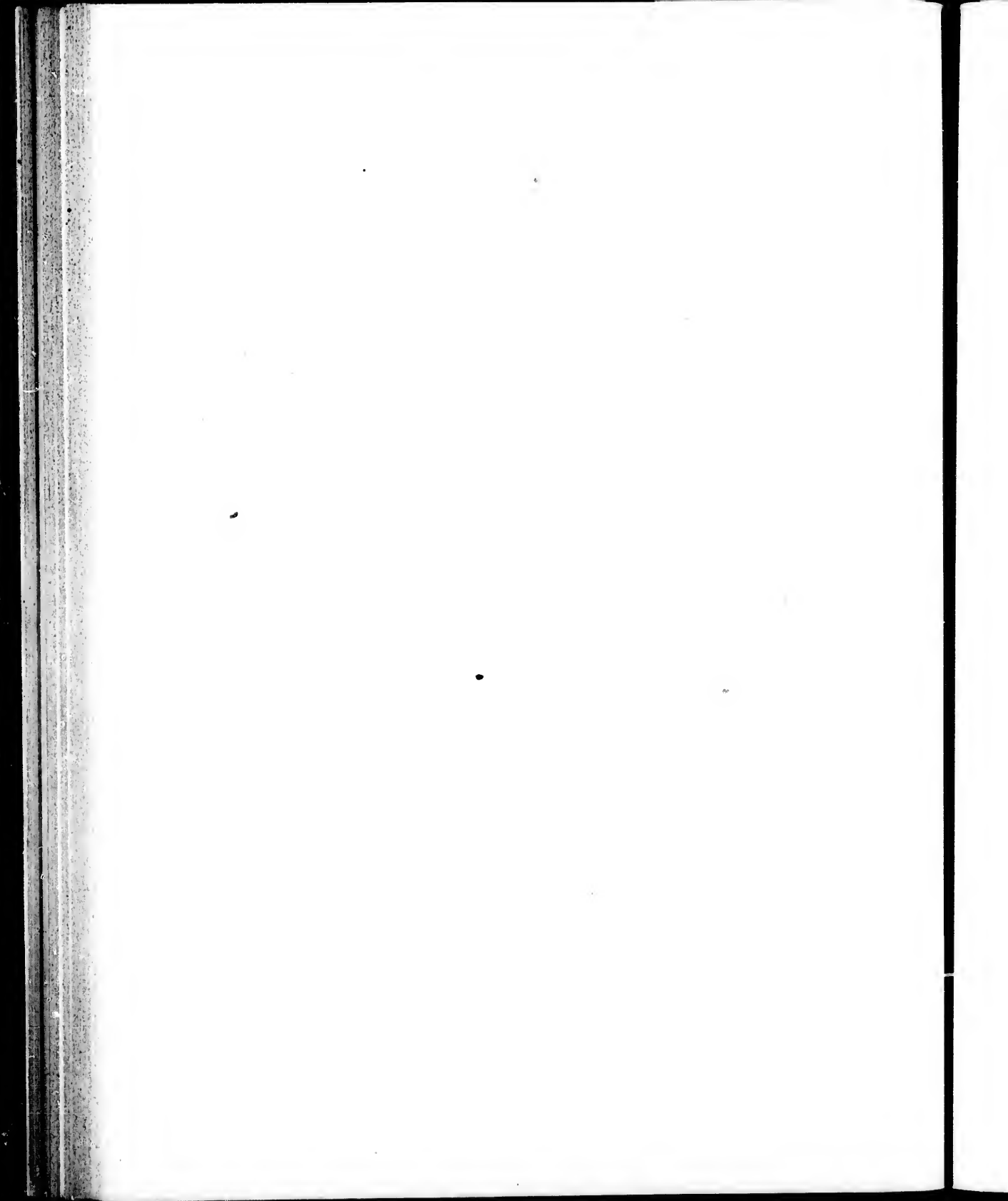
Answer.—It proves that the connection is unchanged; that we are a branch of the Church of Scotland in Canada, not dissenters, not a spurious name. We hold by the Confession of Faith as adopted by the Church of Scotland.

Question.—Will you point out in what respects the said basis of union clashes with the Confession of Faith in your opinion?

Answer.—I gave my personal impression at the time. I consider in my 30 humble opinion it was an insult to the religious knowledge of Presbyterians in Canada and a substitute for the Confession of Faith, and that it was opening a door for heterodoxy in the Church; and also by abiding by the Confession of Faith we are restricted to certain doctrines and certain rules of procedure.

Question.—Do you consider that the said Confession of Faith interferes in any way with your full liberty of conscience in matters of religion?

Answer.—I never felt it to interfere with my conscience in matters of religion, but I felt it my duty to conform to its injunctions in matters of religion, especially in church government.



Question.—Will you be kind enough now to look at Petitioner's Exhibit "E E," at pages 4 and 5 thereof, where the said basis of union is to be found, and point out the particular paragraph or clause in the said basis, which you say clashes with the Confession of Faith?

Answer.—I consider leaving it an open question in the 23rd chapter of the Confession of Faith.

Question.—Look again at the said Basis of Union, and show me, if you can, any reference therein to the said 23rd chapter of the Confession of Faith, or to leaving it an open question?

Answer.—There was something about the 23rd chapter of the Confession 10 of Faith. I do not think that is the exact copy that was sent to me, but I mind reading it in one of the remits that was sent to me.

Question.—Then you cannot find it in the said Basis of Union now shown to you on pages 4 and 5?

Answer.—It is my firm impression that it was in one of the remits that was sent to me accompanying the Basis of Union.

Question.—Then supposing it is not to be found in the said Basis of Union, you must admit that you have been mistaken in your ideas of the Basis in question?

Answer.—No; I am not mistaken. It is in the Confession of Faith. 20 The Basis of Union was substituted for the Confession of Faith to induce these different sects to unite, and I consider that a gross violation of our constitution hitherto.

Question.—Are you aware that it is expressly stated in said Basis of Union that, "The Westminster Confession of Faith shall form the subordinate "standard of this Church"?

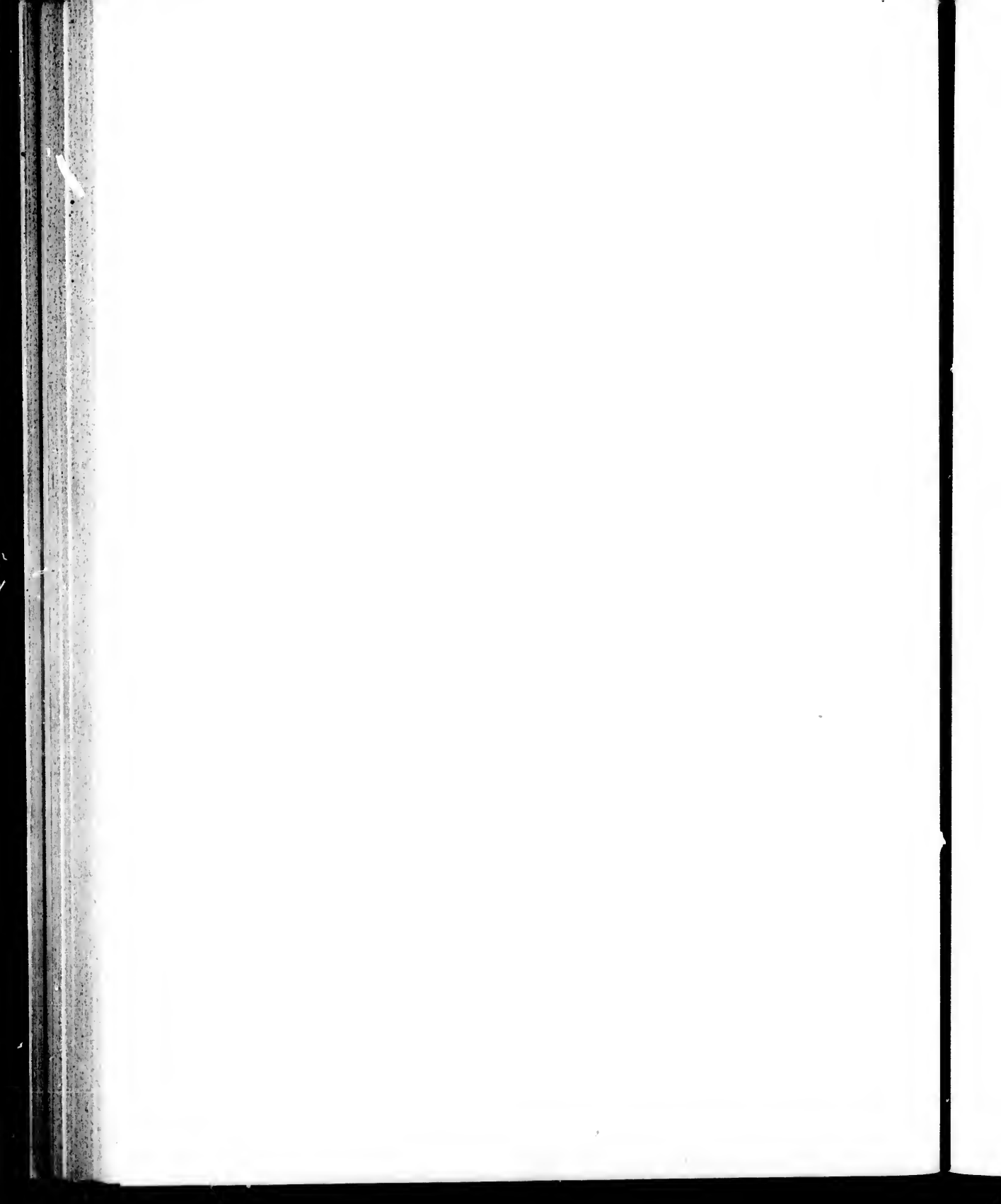
Answer.—According to my humble opinion then and now, a Basis of Union amongst Presbyterians separated from the Confession of Faith, was unnecessary and has been, and is productive of evil.

Question.—Look at said Exhibit "E E" again and answer my question, 30 yes or no?

Answer.—I believe it can be embodied in it. But why adopt the Basis of Union and repudiate the Confession of Faith.

Question.—Does the said Basis of Union repudiate the Confession of Faith?

Answer.—I do not say it does; but why substitute it? It is so far ignoring the Confession of Faith as the Confession of our Church of Scotland, that is, as they substitute it. It is a departure, it is a deviation from the ordinary doctrine and government of the Presbyterian Church of Canada, in connection with the Church of Scotland.



Question.—Then do I understand your objection to the said basis or to union on the said basis, to be only that the said basis is substituted for the Confession of Faith, and ignores the Confession of Faith?

Answer.—It is an ignoring of the Confession of Faith so far that its very existence effects the Confession of Faith.

Question.—That is your objection to the basis?

Answer.—That is my humble opinion, I did not say objection. You may put it in your own words if you like.

Question.—You also stated in your examination-in-chief, as one of your reasons for objecting to the Basis of Union, that it was introduced with a view 10 of reconciling differences between these four Presbyterian bodies, or to that effect; do you see any harm in endeavoring to reconcile differences between Christian bodies?

Answer.—I see great harm in compelling Christian bodies in matters of religion before they agree amongst themselves, inasmuch as they have never been found to coalesce if so compelled.

Question.—You have stated in your examination-in-chief that you considered the majority of said Synod, who passed the resolution on the 15th of June, 1875, to adjourn to the Victoria Skating Rink, were acting contrary to their ordination vows in following divisive courses from the Church of Scot- 20 land; what do you mean by that?

Answer.—I meant to say from the Presbyterian Church of Canada, in connection with the Church of Scotland, inasmuch as it is a violation of the Act of Assembly, 1711, which is read to every licentiate in the Church of Scotland, as I to every minister when he is ordained or inducted to the Church here or in Scotland. It is the 10th Act of Assembly in the year 1711. That Act is read to every licentiate—every man that is ordained or is inducted in Scotland and also here.

Question.—Is it read to every one who is inducted here?

Answer.—As far as I know. 30

Question.—What do you mean by "as far as I know?" How far do you know?

Answer.—I understood it to be so.

Question.—Did you ever hear it so read?

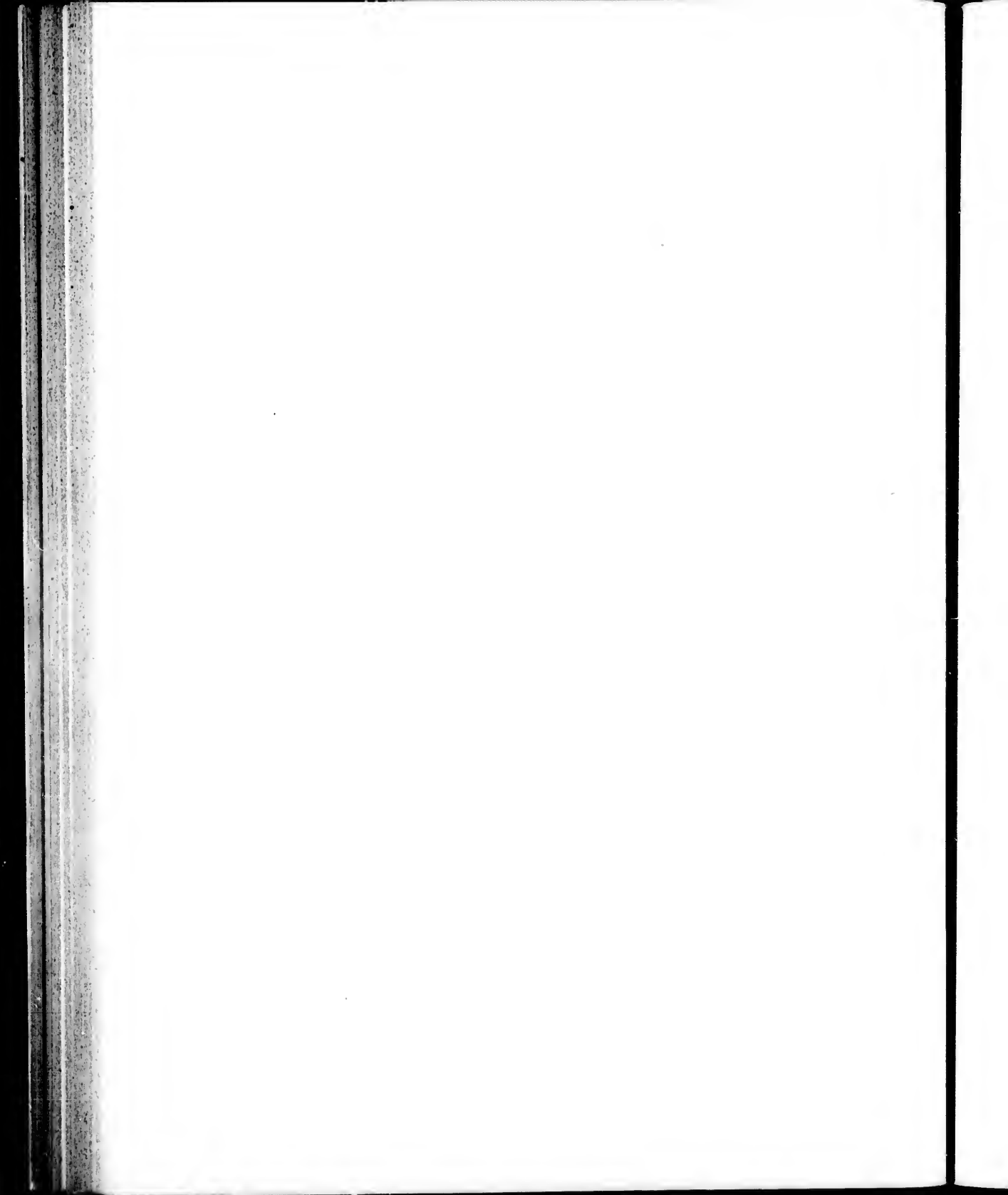
Answer.—I think I did.

Question.—Are you positive?

Answer.—I have seen it neglected to be read

Question.—Do you swear positively that you ever heard it read?

Answer.—I know it is an Act that has been read to every licentiate in Scotland, and I was licensed and ordained in Scotland. It was read to me and 40



in coming to this country I felt that I was then, as well as now, a minister of the Church of Scotland, although in Canada.

Question.—Was it read to you when you were inducted here in Canada?

Answer.—It was.

Question.—Do you swear positively it was?

Answer.—It was, as far as I recollect.

Question.—Can you recollect positively?

Answer.—My recollection is for twenty-five years; as far as I recollect, it was.

Question.—But are you positive it was, on the oath you have taken? 10

Answer.—I could refer to the record of Synod. A man's memory may be fallacious, but you can tell by referring to the record. As far as I recollect, it was read to me.

Question.—Have you a distinct recollection it was read to you?

Answer.—I said as far as I recollect.

Question.—But I want to know how far you can recollect?

Answer.—I said it was twenty-five years ago, and, as far as I recollect, it was read to me.

Question.—Can you recollect of any other instance where it was read at the induction of a minister in Canada? 20

Answer.—No; I cannot name any, because I was not so situated as to attend the inductions; I had too far to go. It was left to the local Presbytery, or the ministers of the locality, to do these matters and to the Clerk of Presbytery particularly, but they were subjected to the review of Synod, and if anything was found irregular, it was corrected.

Question.—You stated in your examination-in-chief that the other Presbyterian bodies that took part in the said union, and particularly that one in the Lower Provinces in connection with our Church, protested against the Church of Scotland; is that correct or not?

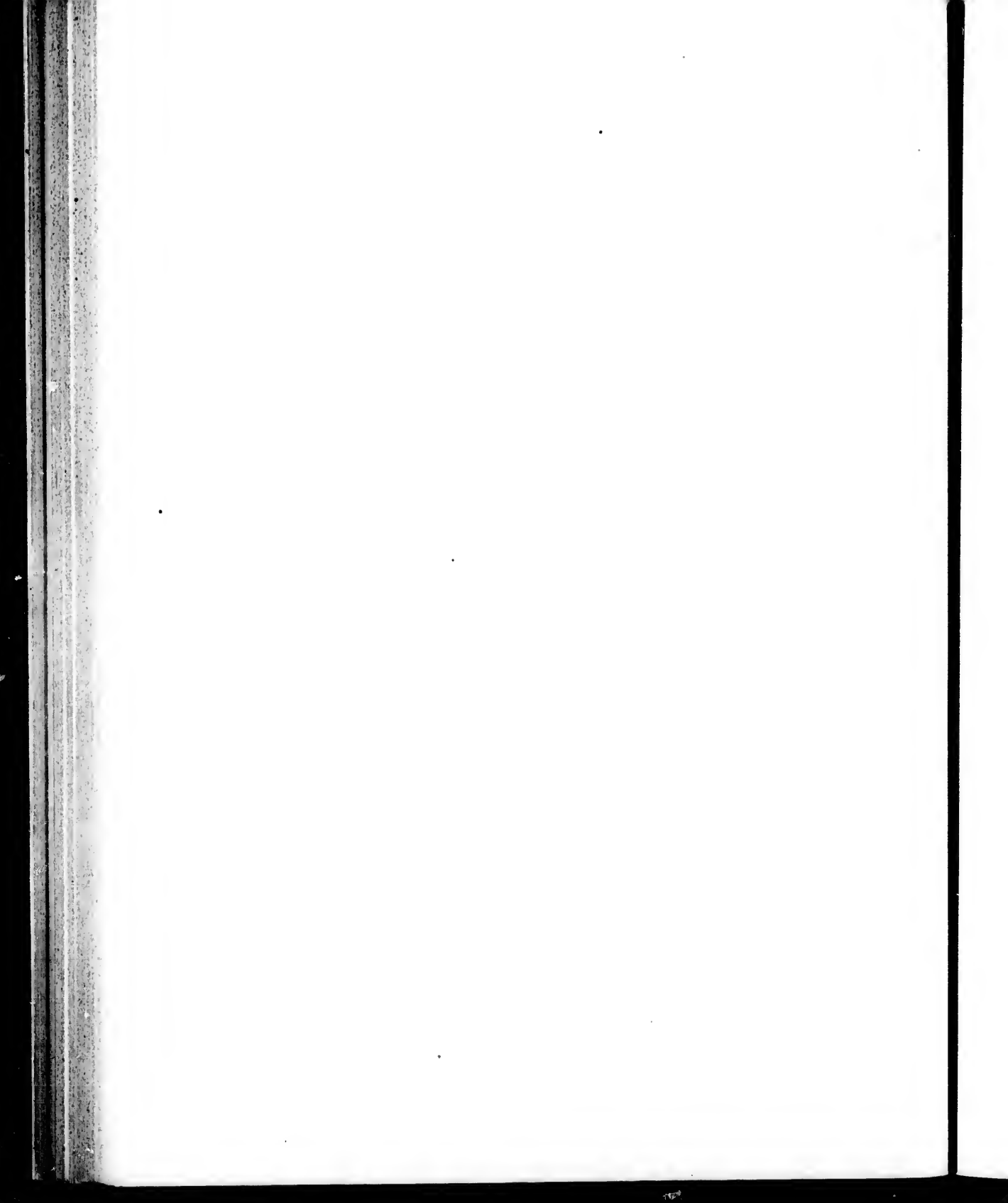
Answer.—No; I did not say protested; I said disapproved. 30

Question.—Is it true that the Church of the Maritime Provinces, in connection with the Church of Scotland, which took part in the said union, ever disapproved of the said union or protested against it?

Answer.—That question put to me, so far away from the Maritime Provinces, I think is irrelevant. I cannot answer that question.

RE-EXAMINED.

Question.—Will you please look at the basis of union in the said Exhibit "EE," and state whether the latter part of the second clause, being as fol- 40



lows; " It being definitely understood that nothing contained in the aforesaid " confession or catechism regarding the power and duty of the civil magis- " trate, shall be held to sanction any principles or views inconsistent with full " liberty of conscience in matters of religion," is not said portion that part of the said basis which you have above referred to as, in your mind, conflicting with the entire adherence to the Confession of Faith, particularly Chapter 23rd ?

Objected to as illegal, leading and putting the answer into the witness' mouth, who has already told us that he cannot see any such objection as he referred to in the said basis. 10

Objection reserved by consent of parties.

Answer.—Yes; I think that is the part that refers to the 23rd chapter, and I always understood that the 23rd chapter was left an open question in the new or united Church, whether they signed it or not, or whether obligatory or not.

CORRECTION.

On page _____ of this deposition, where witness stated that " it was " the implied understanding of the Synod as a body that we were a subordinate " branch of the Church of Scotland, entirely dependent on her pecuniary " resources," he desires to add that he did not mean to say " entirely," but " partly, at times aided by grants from the Church of Scotland for missionary " and religious work in this Province "

And further deponent saith not, and on this deposition having been read to him he declares it to contain the truth.

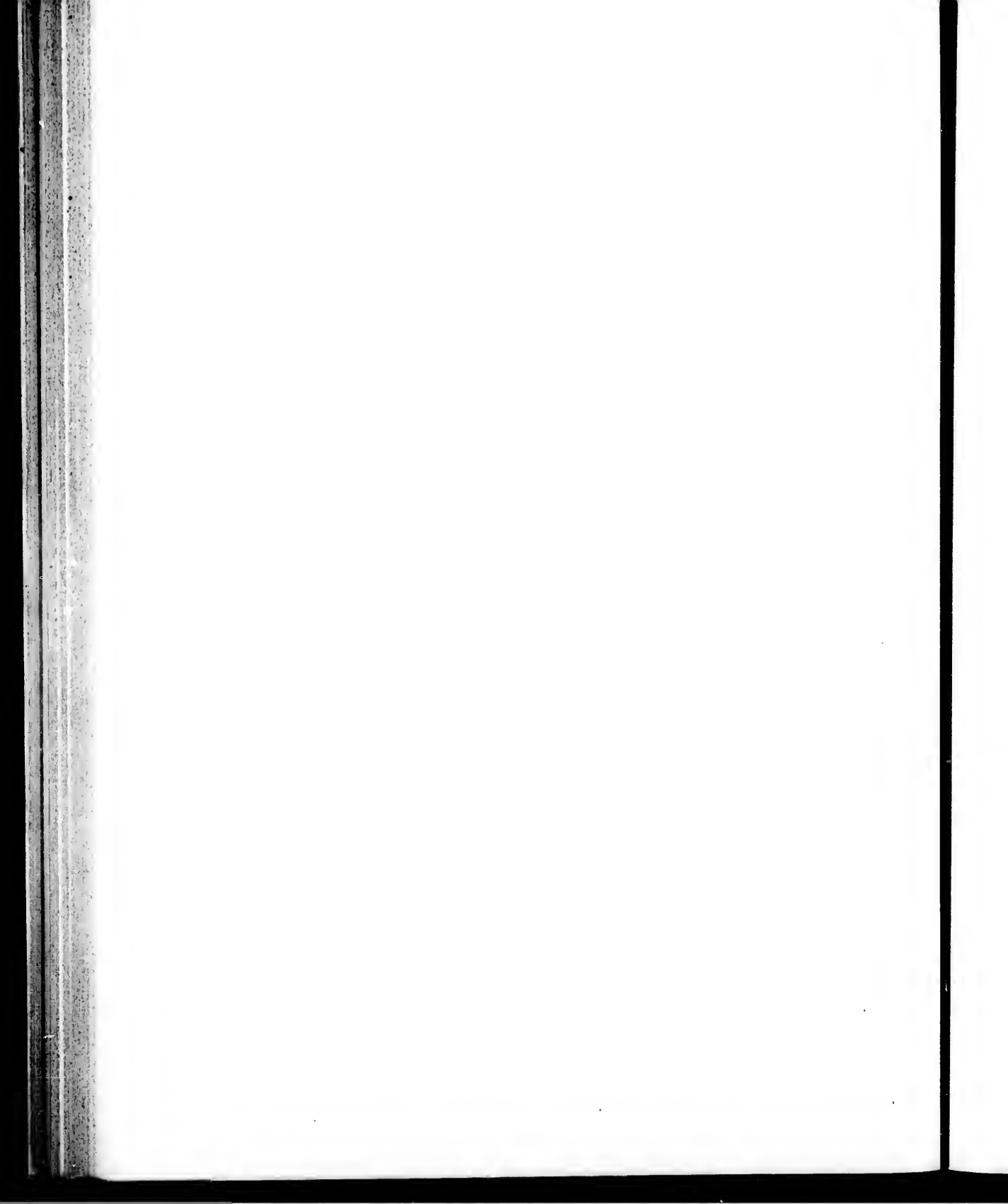
S. A. ABBOTT,
Stenographer.

30

DOUGLAS BRYMNER, of the city of Ottawa, in the Province of Ontario, gentleman, aged fifty-five years, a witness produced on the part of the Petitioner this second day of July, eighteen hundred and seventy-nine, who, being duly sworn, deposeseth and saith :

I am not related, allied or of kin to, or in the employ of any of the parties in this cause. I am at present in the Civil Service in the Department of Agriculture, and have been there for upwards of seven years.

Question.—Before that you were connected with journalism for some time in the city of Montreal? 40



Answer.--Yes.

Question.--What connection did you have with journalism ?

Answer.—I was a reporter and one of the editors of the *Montreal Herald*, and I was the editor of the *Presbyterian*, which was the recognized organ of the Presbyterian Church of Canada in connection with the Church of Scotland.

Question.—How long were you the editor of the *Presbyterian* ?

Answer.—From 1864 down to the end of 1871.

Question.--Did you hold the editorship with the approval of the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland ?

10

Answer.—Yes, and in eighteen hundred and seventy-one I received a vote of thanks from the Synod, which was recorded in the minutes.

Question.--What did you receive the vote of thanks for ?

Answer.—For the manner in which I conducted the *Presbyterian* in the interests of the Church.

Question.—What Church are you a member of now ?

Answer.—Of the Presbyterian Church of Canada, in connection with the Church of Scotland.

Question.—How long have you been a member of that Church ?

Answer.—Since eighteen hundred and fifty-seven.

20

Question.—When did you come to this country ?

Answer.—In eighteen hundred and fifty-seven.

Question.—Before coming to this country where did you reside, and of what Church were you a member ?

Answer.—I resided in Scotland, and I was a member of the Church of Scotland and an elder of a parish.

Question.--And when you came to Canada, how did it happen that you joined the Presbyterian Church of Canada, in connection with the Church of Scotland ?

Answer.--Because I understood, and still believe, it was a branch of the 30 Church of Scotland, identical with the Church of Scotland in this country.

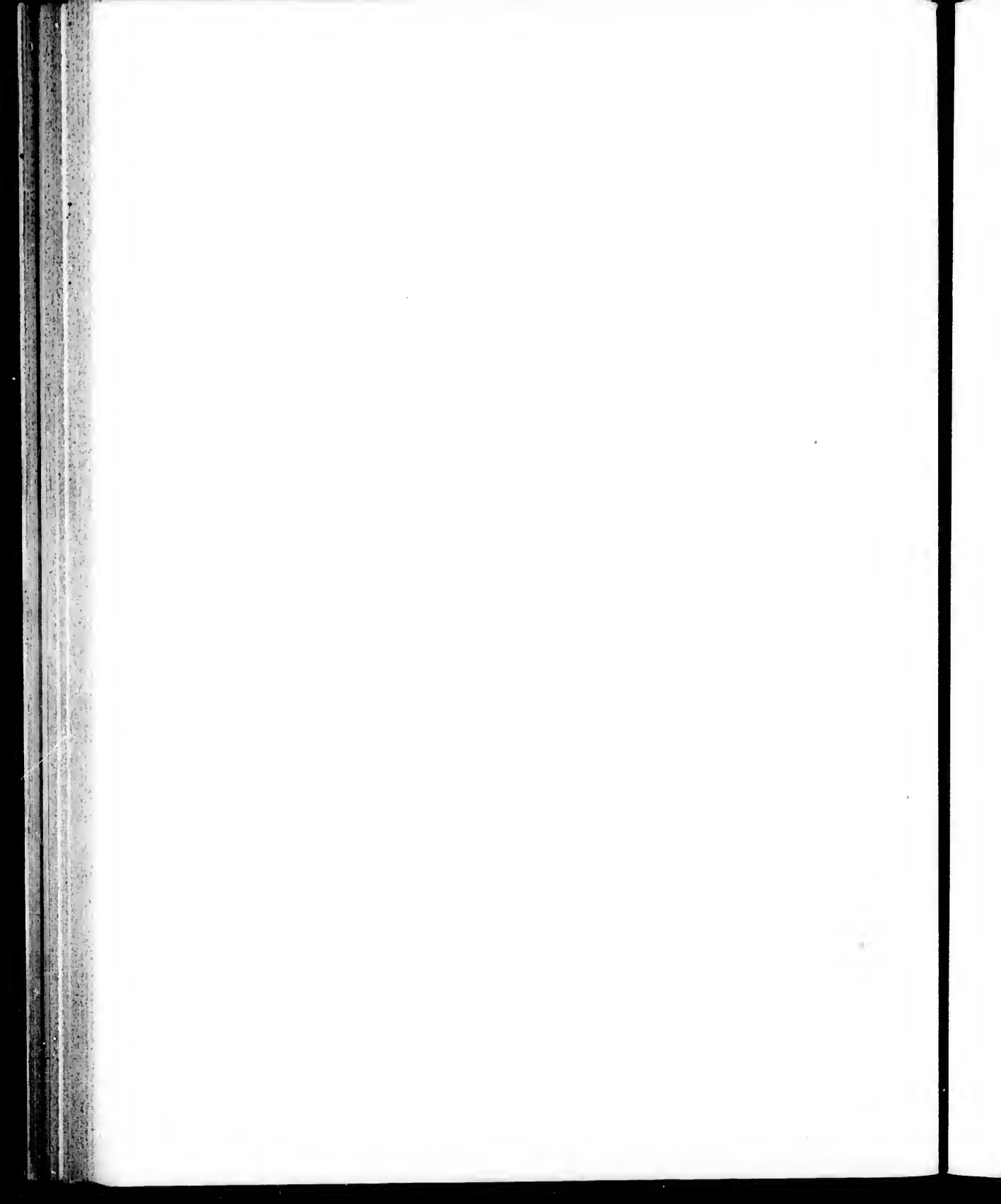
Question.—After coming to Canada, did you take an interest in the affairs of the Presbyterian Church of Canada, in connection with the Church of Scotland ?

Answer.—I did. I was appointed an elder in the congregation of Melbourne, in Lower Canada, a congregation of the Presbyterian Church of Canada, in connection with the Church of Scotland.

Question.--Have you frequently attended meetings of Presbyteries and Synods ?

Answer.—Yes.

40



Question.—Are you familiar with the proceedings of the Courts or Tribunals of the Church?

Answer.—I am.

Question.—Have you made any study of the laws relating to the Presbyterian Church of Canada, in connection with the Church of Scotland in ecclesiastical matters?

Answer.—I have studied both carefully.

Question.—In your capacity for a great number of years of editor of the official organ of the Church, have you had opportunities of being acquainted with such laws? 10

Answer.—I had opportunities, and in fact was obliged to make myself acquainted with them.

Question.—I suppose you know that there was a large sum of money administered by the corporation Respondents?

Answer.—Yes.

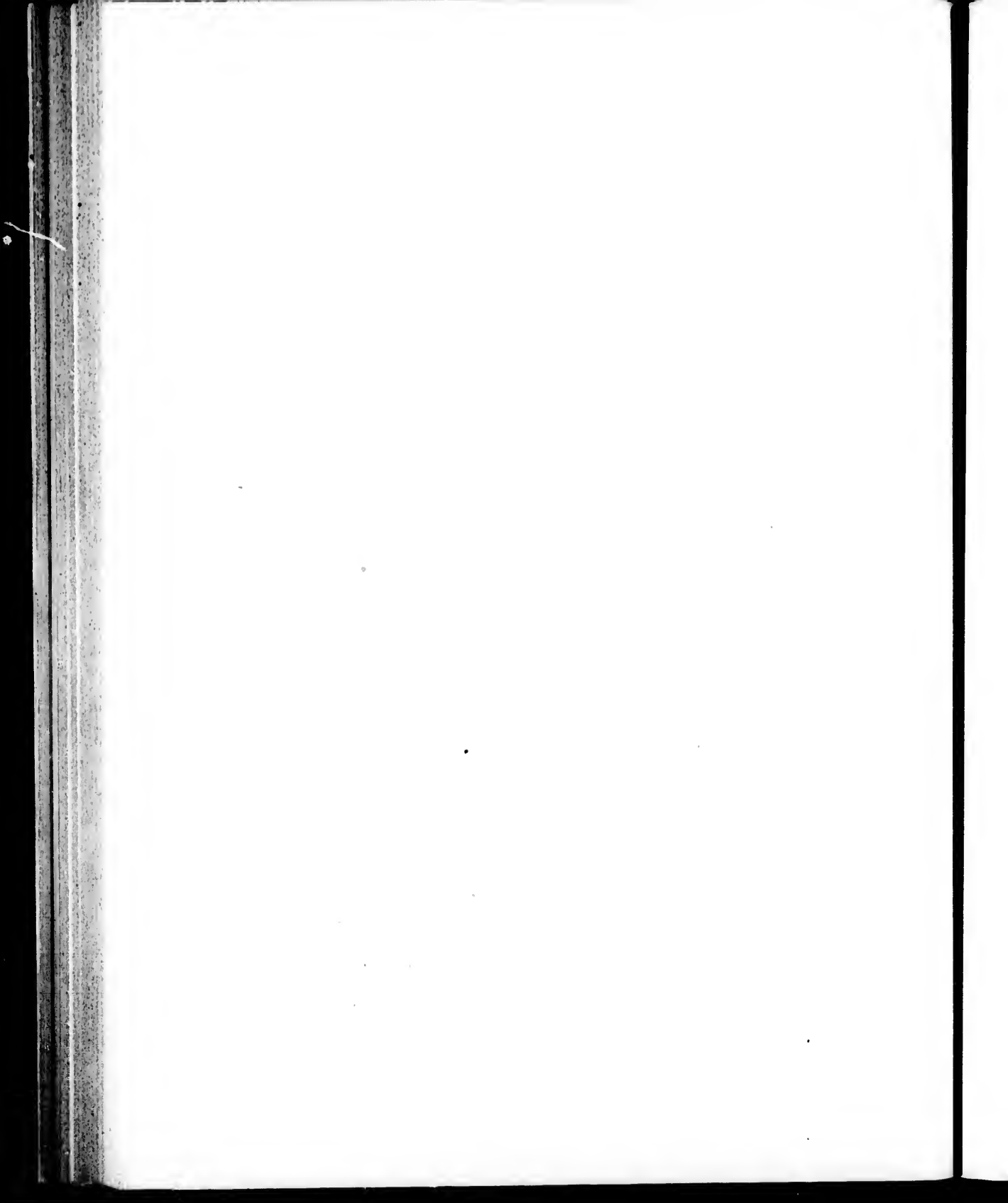
Question.—Can you explain what was the origin of that sum of money, and how it was it came under the control of the Presbyterian Church of Canada, in connection with the Church of Scotland?

Answer.—A certain proportion of the lands granted in Canada were to be devoted to religious purposes, for the maintenance of a Protestant Clergy. 20

Respondents object to witness stating what he can have no personal knowledge of, as, according to his own admission already given, he was not in this country at the time when it is alleged, in the Petitioner's petition, the said moneys came under the control of the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland, and this is a matter alleged by the Petitioner in his petition to be provided for and determined by Acts of Parliament and by acts and proceedings of the Synod of said Church, which speak for themselves and are not provable by parole evidence, and moreover have been already admitted by admissions signed by the parties to this case. 30

Objection reserved by the Judge.

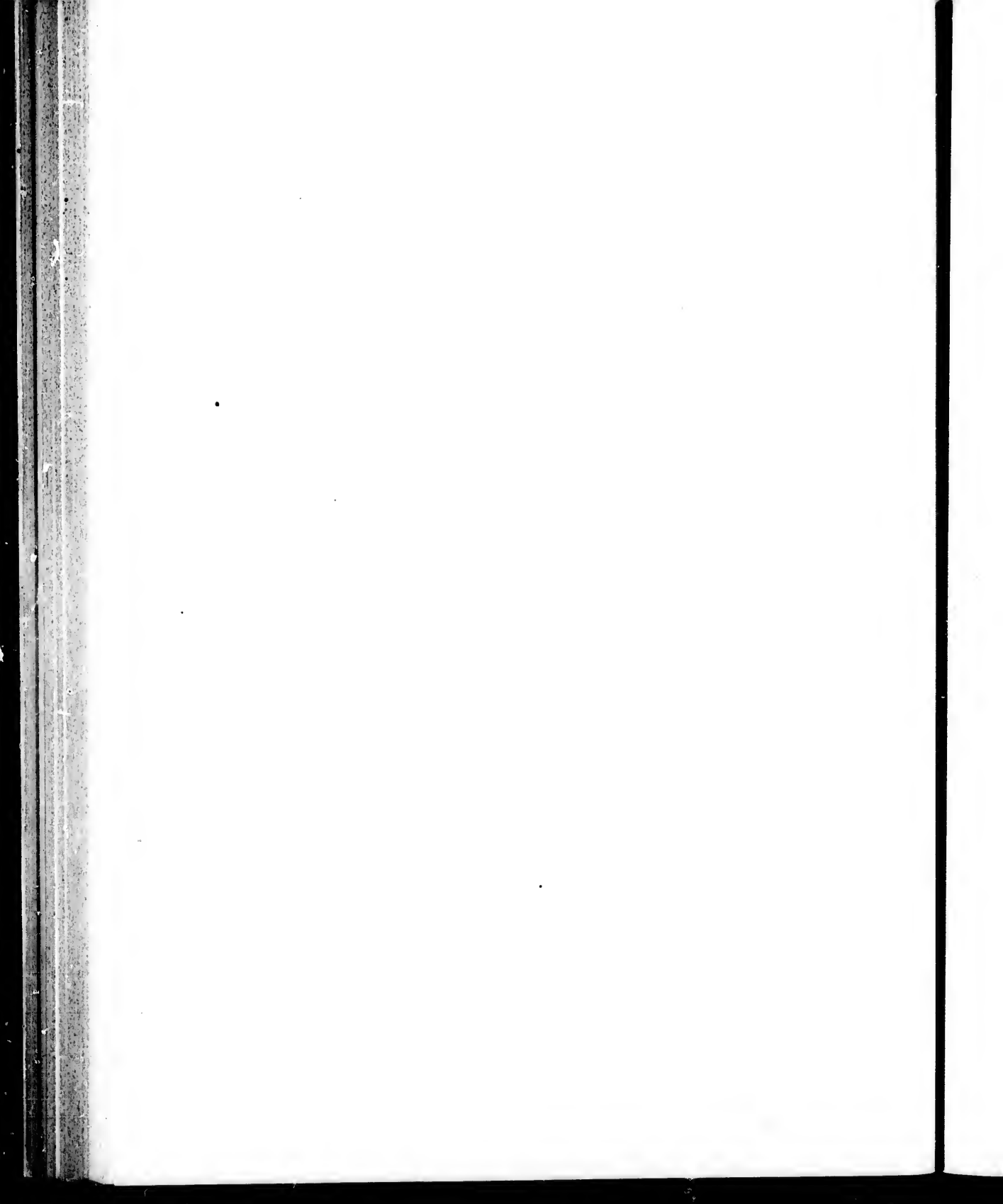
The members and adherents of the Church of Scotland in Canada made representations that they were entitled as natives of Scotland to receive with the sister Church of England the benefits of the proceeds of what was known as the Clergy Reserves. In eighteen hundred and thirty-one the adherents in Canada of the Church of Scotland formed themselves into a Synod under the name of The Presbyterian Church of Canada in connection with the Church of Scotland. Such Synod petitioned the King for a portion of the Clergy Reserves, on the ground that they belonged to the Established Church of a portion of the British Empire, and the words of the petition to be found at 40



page 20 Synod minutes, marked 33, eighteen hundred and thirty one, are:
 " The claims of the Church of Scotland and of all natives of that portion of
 " Your Majesty's Dominions is founded upon the Act of Union between the
 " two Kingdoms, which guarantees an equal communication of all rights and
 " privileges to the inhabitants of both."

The provision was made for emigrants coming to Canada from Scotland,
 members of the Church of Scotland in Scotland. The same petition, page 20,
 says: " Provision having been made in that Act, as your Petitioners believe,
 " fully sufficient for the support of all the Protestant clergy of the Province,
 " recognized by the laws of the United Kingdom, it is not unreasonable that 10
 " the members of the Church of Scotland should desire to be placed on the
 " same footing with their fellow-subjects of the Church of England." In the
 same year a representation was made to the General Assembly of the Church
 of Scotland, calling attention to the necessity for supporting their claims to the
 Clergy Reserves, beginning at page 15 of the same proceedings of the year
 eighteen hundred and thirty-one. In the year eighteen hundred and thirty-
 three the Synod memorialized the General Assembly of the Church of Scotland,
 and at page 54 will be found these words of a resolution which was adopted:
 " And further to crave the General Assembly to use its influence to secure to
 " this Synod all its legal rights as connected with "The Church of Scotland." 20

In eighteen hundred and thirty-six a petition was sent to the King by
 the Synod of the Presbyterian Church of Canada in connection with the
 Church of Scotland, complaining of the establishment of rectories by the
 Church of England in this Province, on the ground as stated in the petition
 that " they conceive that said Act is a violation of the Treaty of Union, which
 " entitles them in a British colony to a communication of all rights, privileges
 " and advantages equally with the subjects of England." This petition will
 be found at pages 115 and 116 of the Synod minutes of the year eighteen hun-
 dred and thirty-six, Exhibit 33. In the same year and on the same page (116)
 is a letter to the General Assembly of the Church of Scotland, in the course of 30
 which regret is expressed that the Imperial and Colonial Legislatures had come
 to no decision on the question of the Clergy Reserves. The letter says, page
 118, second paragraph: " For, Fathers and Brethren, our hope of surmounting
 " some of the difficulties which are in our way, and of pursuing the high
 " Christian enterprises to which we are called, is, under the great Head of the
 " Church, in your resources." In the same year, eighteen hundred and thirty-
 six, appears a report of a special committee of Synod of the Presbyterian
 Church of Canada in connection with the Church of Scotland, which was
 adopted by the said Synod; and in reference to the payment by the Govern-
 ment of allowances from the Clergy Reserves, the report states at page 120: 40



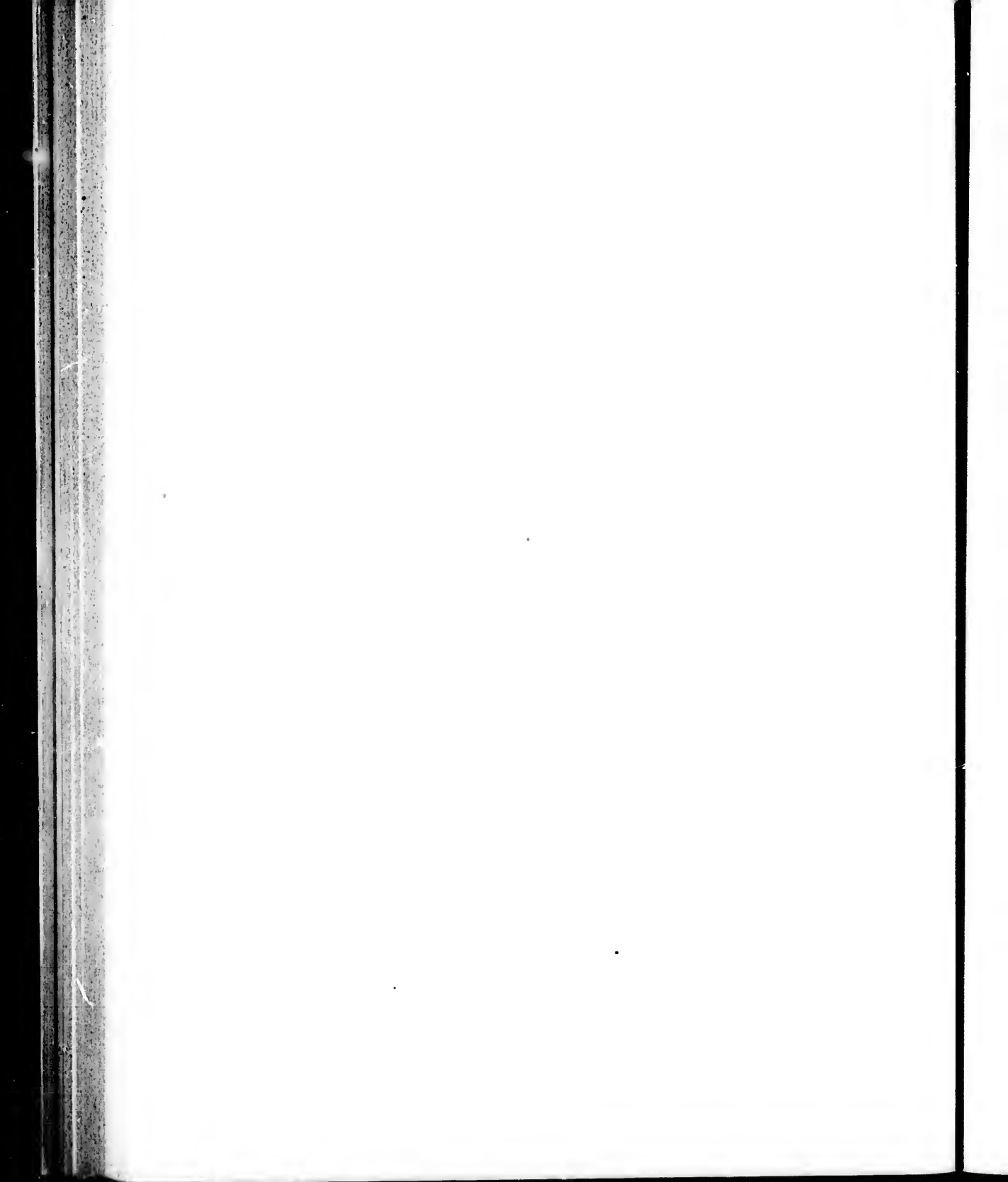
" It is further submitted whether the Synod, as being a spiritual court, ought
 " not to decline the distribution among its members of any bounty the Gov-
 " ernment may be pleased to confer, which ought to be managed by the Gov-
 " ernment as heretofore, or by lay commissioners appointed by it for that pur-
 " pose." In the same year (1836) an address to the Lieutenant-Governor of
 Upper Canada was approved by the Synod of the Presbyterian Church of
 Canada in connection with the Church of Scotland, and ordered to be engrossed,
 showing at page 122 these words: " We beg leave to express our desire and
 " hope that your Excellency will be pleased to extend to the Church of Scot-
 " land in Canada your protection, support and countenance, and encourage us 10
 " in our endeavors to diffuse throughout the Province the knowledge and
 " practise of religion and morality."

At page 123 of the same minute appears a resolution of the Synod con-
 taining these words; " That as the principles of this Synod, as a branch of the
 " Established Church of Scotland, respecting the duty of Christian rulers to
 " support the true religion are sufficiently declared in her standard, it is
 " unnecessary to emit any further declarations on this subject."

In eighteen hundred and thirty-seven, and in reference to a remonstrance
 of the Synod of the Presbyterian Church of Canada, in connection with the
 Church of Scotland, on the distribution of the Clergy Reserves, appears on 20
 page 136 of Exhibit 33 a report of a Committee of Synod, which was received
 by said Synod, and which says:

" The deputation waited on His Excellency, and endeavored to represent
 " to him the great necessity, as well as reasonableness, of special Government
 " allowances to all the ministers of the Church of Scotland in the Province,
 " and urged upon him the claim of those congregations which had been prom-
 " ised an allowance for their ministers so soon as they severally obtained them.
 " The deputation regret that their application has been entirely fruitless, His
 " Excellency persisting in his determination to surrender the management of
 " the annual grant to the Synod." At page 144 of the same year, eighteen 30
 hundred and thirty-seven, committees were appointed by the said Synod in
 Canada to prepare certain memorials. With reference to the first memorial
 the report states: " That a memorial be prepared for the Colonial Office setting
 " forth the claims of this Church to a portion of the interest accruing from
 " the proceeds of the sales of the Clergy Reserves," and the Synod appointed
 a Committee to prepare said memorial.

In eighteen hundred and thirty-eight, as will be seen on page 170 Ex-
 hibit 33 of Synod minutes, the Synod adopted a preamble and resolutions on
 the relations of the Presbyterian Church of Canada, in connection with the
 Church of Scotland, to the Civil Government, the preamble of which begins: 40



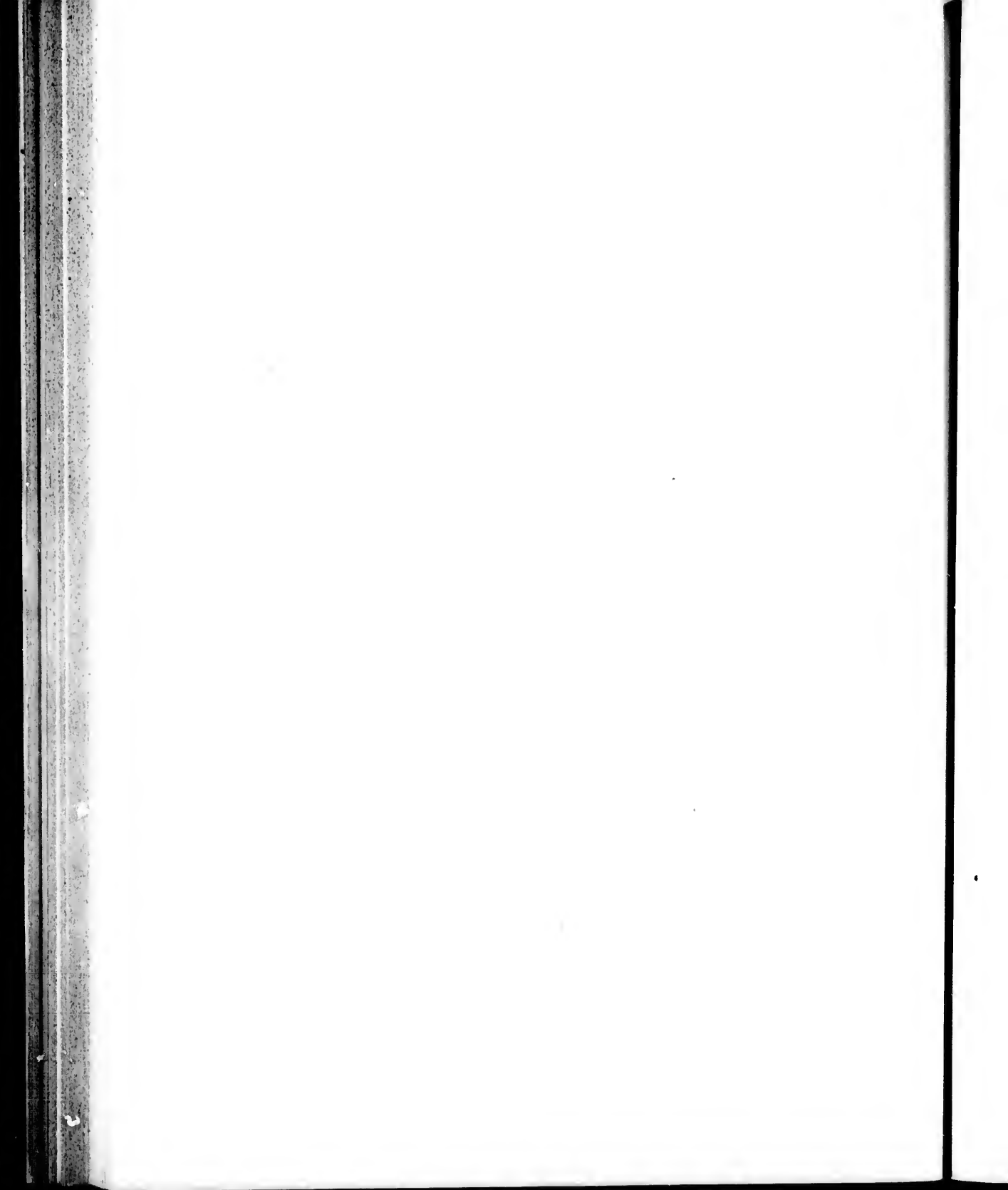
" That this Synod being deeply aggrieved by the unjust treatment which, as a
 " branch of the Established Church of Scotland, they have received and are
 " continuing to receive in this British Colony." On page 170 one of the reso-
 " lutions says: " To continue more energetically their correspondence with the
 " General Assembly and other friends in Great Britain, and with Presbyteries
 " and Synods in other British Colonies, inviting them to co-operate for the
 " vindication of a just national right based on a treaty, the fundamental prin-
 " ciples of which cannot be infringed without subverting the constitution of
 " the British Monarchy, viz., the right of our countrymen throughout its colo-
 " nies to an equal participation with the people of England in all civil and 10
 " ecclesiastical privileges and advantages."

In eighteen hundred and thirty-nine, at page 194 of Exhibit 33, the
 said Synod agreed by resolution " to solicit the Parent Church to send out a
 " deputation to enquire into the state of religion in general in this colony."

In the year eighteen hundred and forty, at page 36 of the Appendix, is
 a letter of the Committee on Colonial Churches of the General Assembly of
 the Church of Scotland, from the said Synod in Canada, which states: " With
 " respect to the legal and constitutional claims of this Synod as the representa-
 " tive of the Church of Scotland in Canada for encouragement and support
 " from the Civil Government, we have not thought it expedient during the 20
 " present session to institute any proceedings."

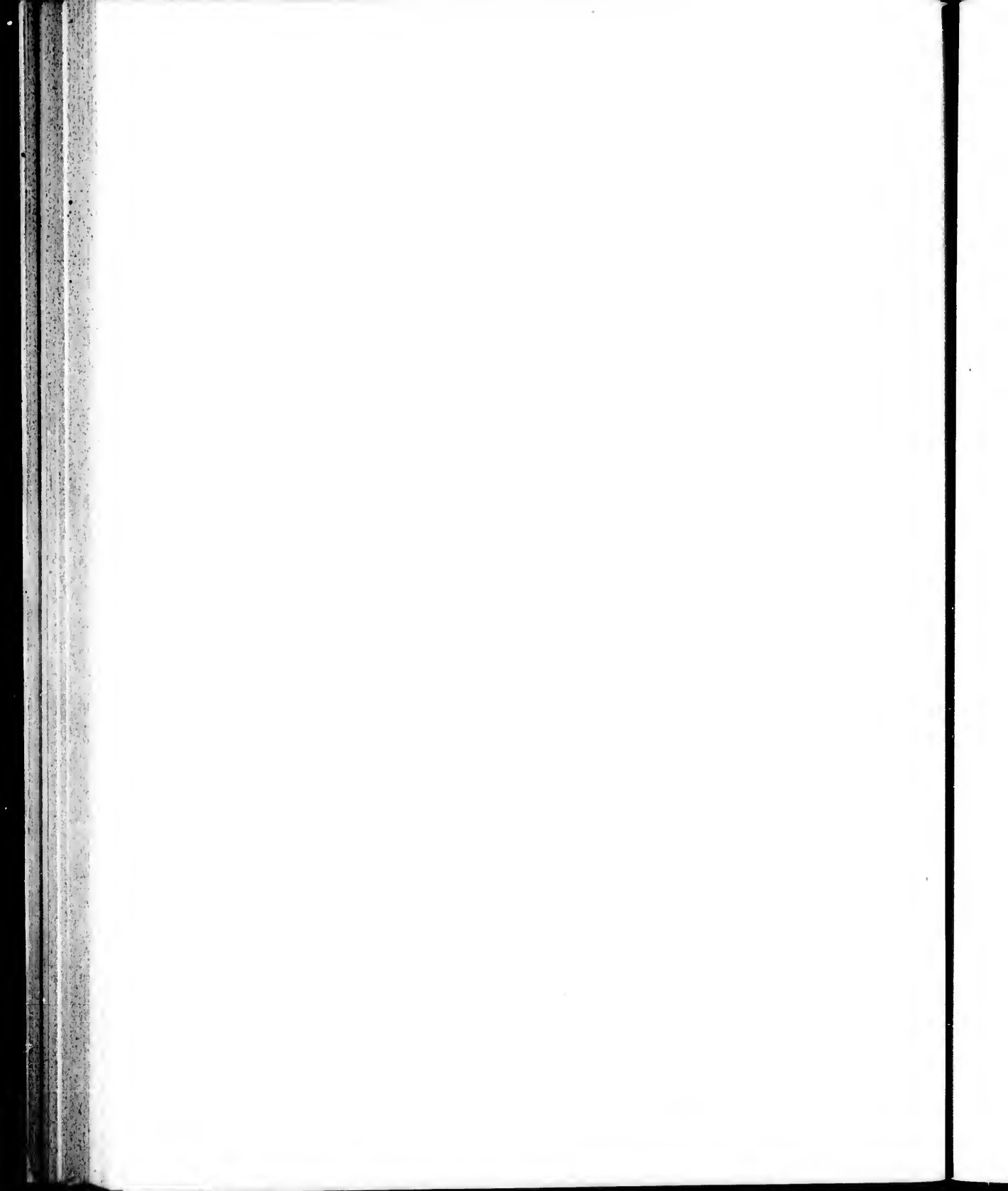
At page 42 of the same Appendix, in eighteen hundred and forty, in a
 letter to the General Assembly of the Presbyterian Church in the United
 States, from the said Synod, are these words: " We are also happy in being
 " able to inform you that we have now been relieved from the embarrassment
 " of a long and painfully agitated question—the question of the Clergy
 " Reserves—with the details of which it is unnecessary to trouble you, but
 " which produced and kept alive an evil spirit of jealousy and rivalry between
 " our Church and the sister Church of England; and that by the unanimous
 " decision of the Judges of England a right of our Church to important pri- 30
 " vileges and advantages in this and other dependencies of the British Crown
 " has been determined."

In eighteen hundred and forty-one, at pages 38 to 43 of the Appendix,
 is a memorial and protest of the Commission of the said Synod addressed to
 the Colonial Secretary in relation to the Clergy Reserves, and at page 39 are
 the following words: " A sum nearly five times as large as that in the mean-
 " time secured to the Church of Scotland has been secured to the Church of
 " England, and finally, of the portion of the Reserves allotted to the
 " Established Churches of the Empire, the Church of England has received
 " two-thirds, the Church of Scotland but one." 40



In the year eighteen hundred and fifty-one of Synod minutes, page 24, the said Synod passed resolutions with regard to the Clergy Reserves Fund. In the first resolution it is stated "that the Church of Scotland, of which this Synod is a branch." In resolution four, on the same page, are these words:

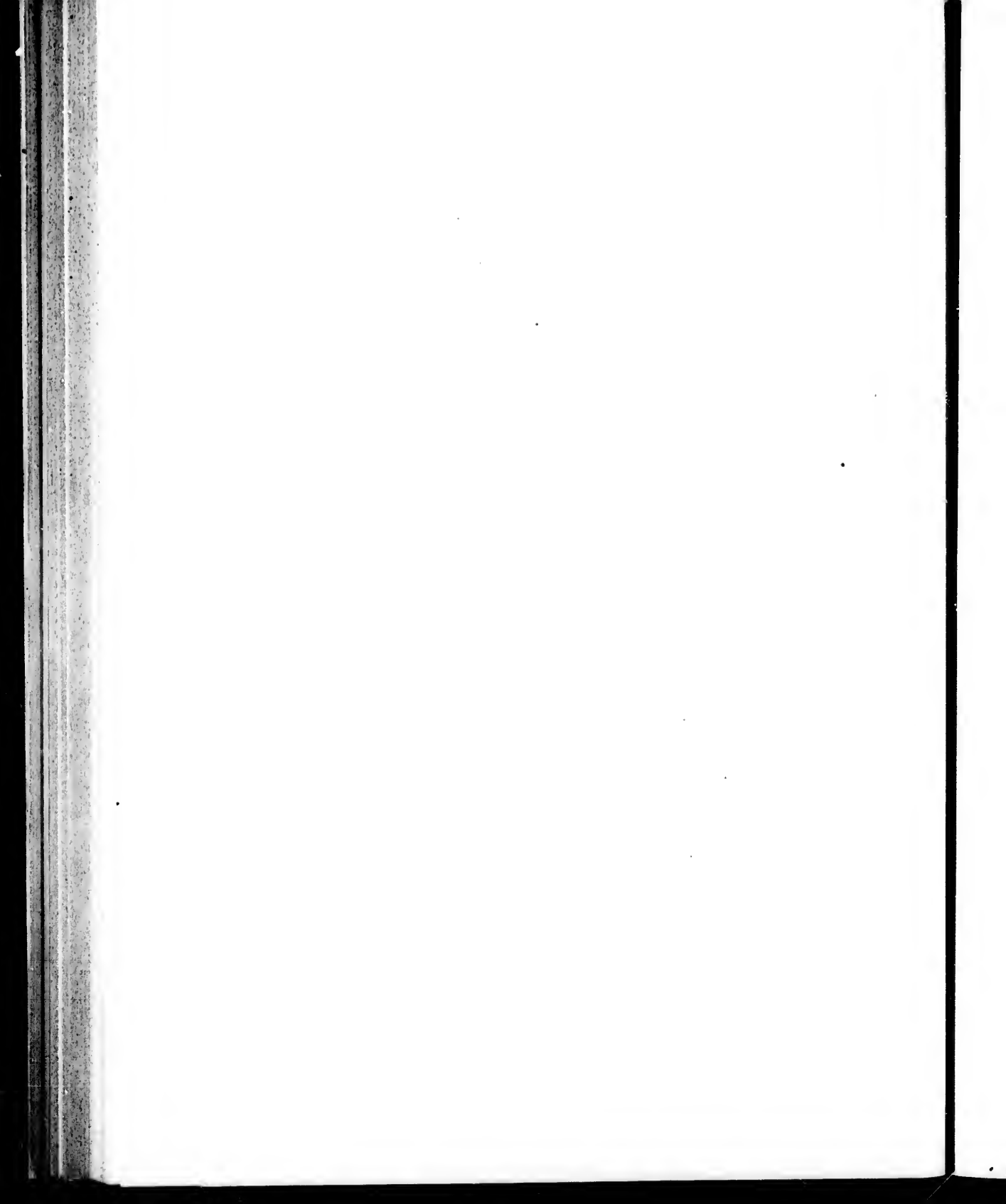
"That ever since the formation of this Synod our ecclesiastical relationship has been acknowledged by the Parent Church in every way conformable to the constitution and our own ecclesiastical independence, and on this ground our ministers and people have for the last thirty years asserted the right all the benefits of a connection with her as one of the Established Churches of the British Empire. Especially we long pleaded our legal claim to a portion of the lands in Canada set apart for the maintenance of a Protestant Clergy, on the ground of the proper legal import of that designation and of the Treaty of Union between England and Scotland. The claim made on this special ground, and long resisted by certain parties, was at length adjudicated in our favor by the unanimous decision of Her Majesty's Judges in England." In the same resolution reference was made to the agitation for the repeal of the Clergy Reserves Act, and these words are used at page 25: "And in view of these unworthy designs the Synod declares and protests against any interference with the permanent rights determined by the Statute as a violation of those sound and stable principles on which the grandeur and security of the British Dominion have hitherto rested, and which interference, should it unhappily prevail, will deprive coming generations of the benefits of a fund consecrated to the education of the moral and social being in his higher and nobler faculties. This Synod is not insensible to the importance of secular education in all its degrees, and in imitation of the Church of Scotland we will never cease, by all the means in our power, to advocate and promote it, though not by the sacrifice of means set apart for the support and maintenance of public worship and the propagation of religious knowledge. We cannot forget that our higher function as a Church of Christ has reference to the religious and spiritual well-being of our people, and that it is our duty to employ righteous means to frustrate any attempt that may be made to take from us the guaranteed provision which enables us to accomplish more effectually the ends of our vocation. We shall therefore continue to protest against any attempt to subvert the existing law, not only on account of the detriment which would ensue to the interests of religion, but also because it is incumbent on us to resist the encroachments of a flagitious principle which would leave nothing sacred in the social fabric, and which, were it to prevail, would inflict a serious injury on the general well-being, not so much perhaps of the present generation as on that which will follow." At page 26, in the 6th of the said resolutions and 40



concluding sentence of it, are these words: "The present ministers of this
 " Synod have only a very transient personal interest in the question, but it
 " belongs to them to teach and to witness that the Church of Christ, though a
 " spiritual body, has legal rights and temporal possessions, which she ought to
 " defend, as she best may, to transmit not only undiminished, but enlarged,
 " to her perpetual posterity."

In eighteen hundred and fifty-two of the said Synod minutes, page 27,
 appears an address of the said Synod to Her Majesty the Queen against the
 alienation of the Clergy Reserves, in which are these words: "We humbly
 " beg leave to submit to Your Majesty that a portion of the people of Canada 10
 " cannot legitimately claim, even if they were disposed to do so, that lands
 " appropriated by the British Nation, because within the Province of Canada
 " necessarily belong to the people of Canada, and are liable to be wholly
 " diverted from the great and pious objects for which they were intended."

In an address to Her Majesty the Queen by said Synod in June, eighteen
 hundred and fifty-five, at page 26, are these words: "In view of the emigra-
 " tion to this country of multitudes who have been accustomed to a public
 " provision for the maintenance of the ordinances of religion, it is much to be
 " deplored that the only provision of a public kind for the support of religion
 " existing in this Province, has lately been swept away by legislative enact- 20
 " ment; and this is all the more to be deplored considering the scanty and scat-
 " tered state of the population in the newly settled parts of the country, and the
 " difficulties with which emigrants have always to struggle for many years
 " after a settlement." On page 27, the address continues: "It is true that the
 " individual rights of the majority of our ministers have been respected, though
 " those of others have been disregarded, and availing ourselves of the author-
 " ity to commute our interests given by the enactment in question, we shall
 " endeavor in a spirit of self-denial to place the matter in such a position as
 " that the people may feel more loyal than they would otherwise have done."
 In January, eighteen hundred and fifty-five, it was resolved to constitute a 30
 fund as a permanent inducement for the maintenance and extension of religious
 ordinances in the said Church, as shown in the minutes of said Synod of Janu-
 ary, eighteen hundred and fifty-five, embodied in the petition in this cause.
 In June, of the same year, an address to His Excellency the Governor-General
 was adopted by the Synod, as shown at page 28, and which, after expressing
 regret that the Clergy Reserves should have been alienated, continues: "In
 " order that this blow may follow as lightly as possible upon the general in-
 " terests of religion, and more especially on the Church of which we are
 " office-bearers, we desire to avail ourselves of the permission to commute the
 " Reserve claims as provided for in the recent statute to which the Royal 40



" assent has been lately given, it being the desire of those of our number,
 " whose pecuniary interests are involved therein, to constitute a fund towards
 " the maintenance and extension of religious ordinances, in connection with
 " the Church of Scotland in this Province.

In eighteen hundred and sixty, at page 61 Appendix, is an address from
 the members of the Board Respondents of the Presbyterian Church of Canada
 in connection with the Church of Scotland containing these words: " It is
 " well known to you that the public provision for the support of the Church
 " was withdrawn some years ago by an Act of the Provincial Legislature, and
 " that the amount received by ministers in commutation of the annual stipend 10
 " secured to them for life was by them, under certain conditions, made over to
 " the Church to form a fund for the permanent support of the ministry."

The Presbyterian Church of Canada in connection with the Church of
 Scotland was formed on the suggestion of Sir George Murray to be the inter-
 mediary between the ministers of the Church of Scotland and the Government,
 but the Synod declined, as being a spiritual court, to act directly, and would
 only consent to act through means of the Commissioners who were elected by
 them, as appears by the Imperial Act of eighteen hundred and forty.

Question.—How do you explain that the Presbyterian Church of Canada
 in connection with the Church of Scotland or its members had any claim to 20
 the property out of which the Temporalities Fund was constituted ?

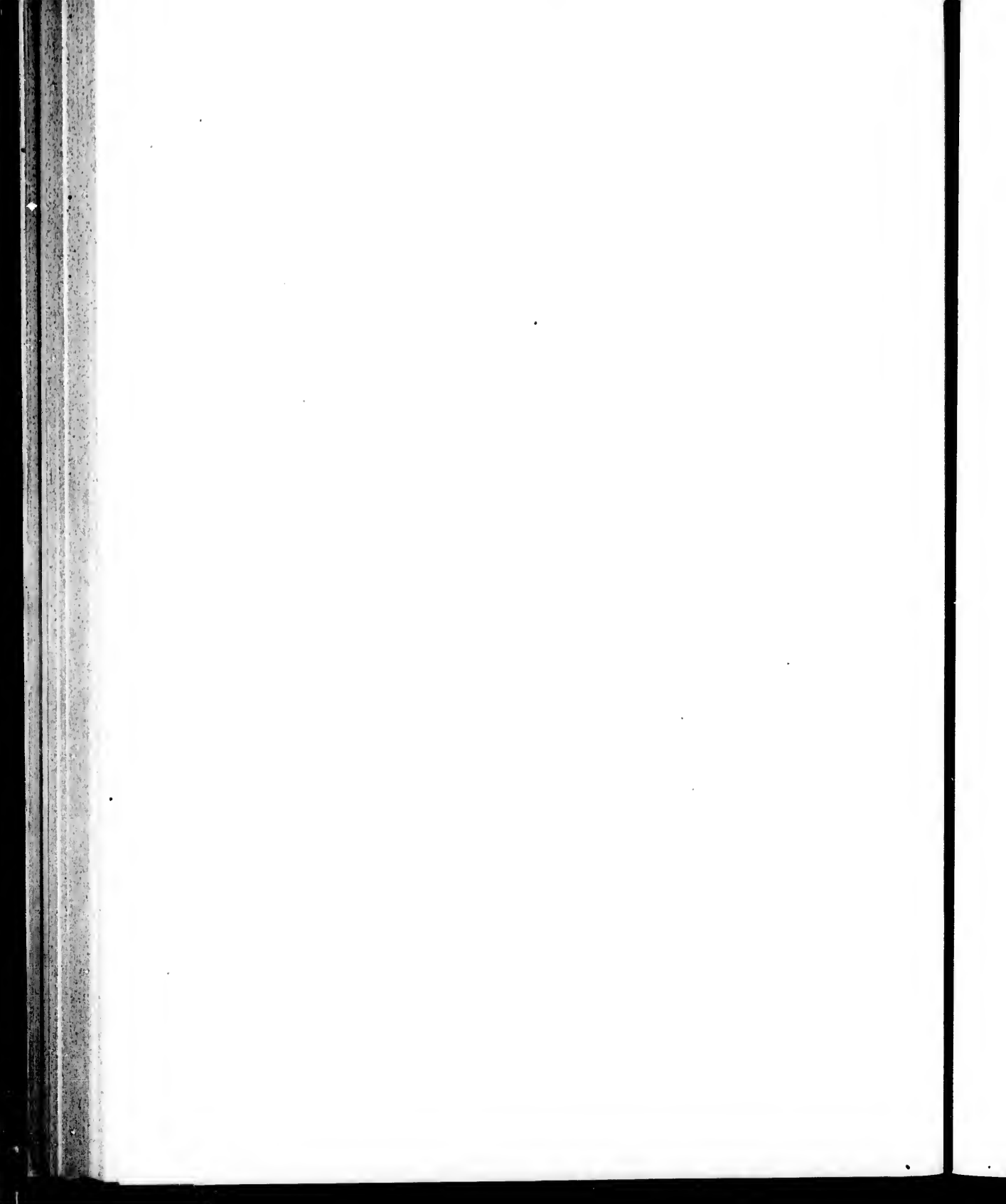
(Respondents object to witness stating what he can have no personal
 knowledge of, as, according to his own admission already given, he was not in
 this country at the time when it is alleged in the Petitioner's petition the said
 moneys came under the control of the Synod of the said Presbyterian Church
 of Canada in connection with the Church of Scotland, and this is a matter
 alleged by the Petitioner in his petition to be provided for and determined by
 Acts of Parliament, and by acts and proceedings of the Synod of said Church,
 which speak for themselves and are not provable by parole evidence, and
 moreover have been already admitted by admissions signed by the parties to 30
 this cause.)

(Objection reserved by consent.)

Answer.—A claim was made by the adherents of the Presbyterian
 Church of Canada in connection with the Church of Scotland to be the
 Church of Scotland in Canada and the sole representative of the Church of
 Scotland in this Province, which claim was admitted by the Government and
 by the Church of Scotland in Scotland.

Question.—What was the result of this claim so made ?

(Respondents object to witness stating what he can have no personal
 knowledge of, as, according to his own admission already given, he was not in 40



this country at the time when it is alleged in the Petitioner's petition the said moneys came under the control of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, and this is a matter alleged by the Petitioner in his petition to be provided for and determined by Acts of Parliament and by acts and proceedings of the Synod of said Church, which speak for themselves and are not provable by parole evidence, and moreover have been already admitted by admissions signed by the parties to the cause).

(Objection reserved by consent).

Answer.—The Claim was admitted by the Imperial Government as embodied in Acts of Parliament, and in consequence thereof the Presbyterian Church of Canada, in connection with the Church of Scotland, was declared to be identical with the Church of Scotland, and to be entitled to and did receive its proportion of the proceeds of the Clergy Reserves.

Question.—The Church of Scotland is an Established Church in Scotland, is it not?

Answer.—Yes.

Question.—And it has been since the Treaty of Union?

Answer.—Since and before the Treaty of Union between England and Scotland.

Question.—When was the first secession in Canada from the Presbyterian Church of Canada, in connection with the Church of Scotland?

Answer.—In eighteen hundred and forty-four.

Question.—What name did those who seceded then take?

Answer.—They took the name of the Presbyterian Church of Canada, dropping from its designation the words "in connection with the Church of Scotland."

Question.—Did these ministers who seceded in eighteen hundred and forty-four organize a Synod of their own?

Answer.—Yes.

Question.—Did the ministers of the Presbyterian Church of Canada just referred to make a claim to share in the benefits of the Clergy Reserves?

Answer.—They did.

Question.—What was the result of their claim?

(Objected to, as not being susceptible of proof by parole evidence).

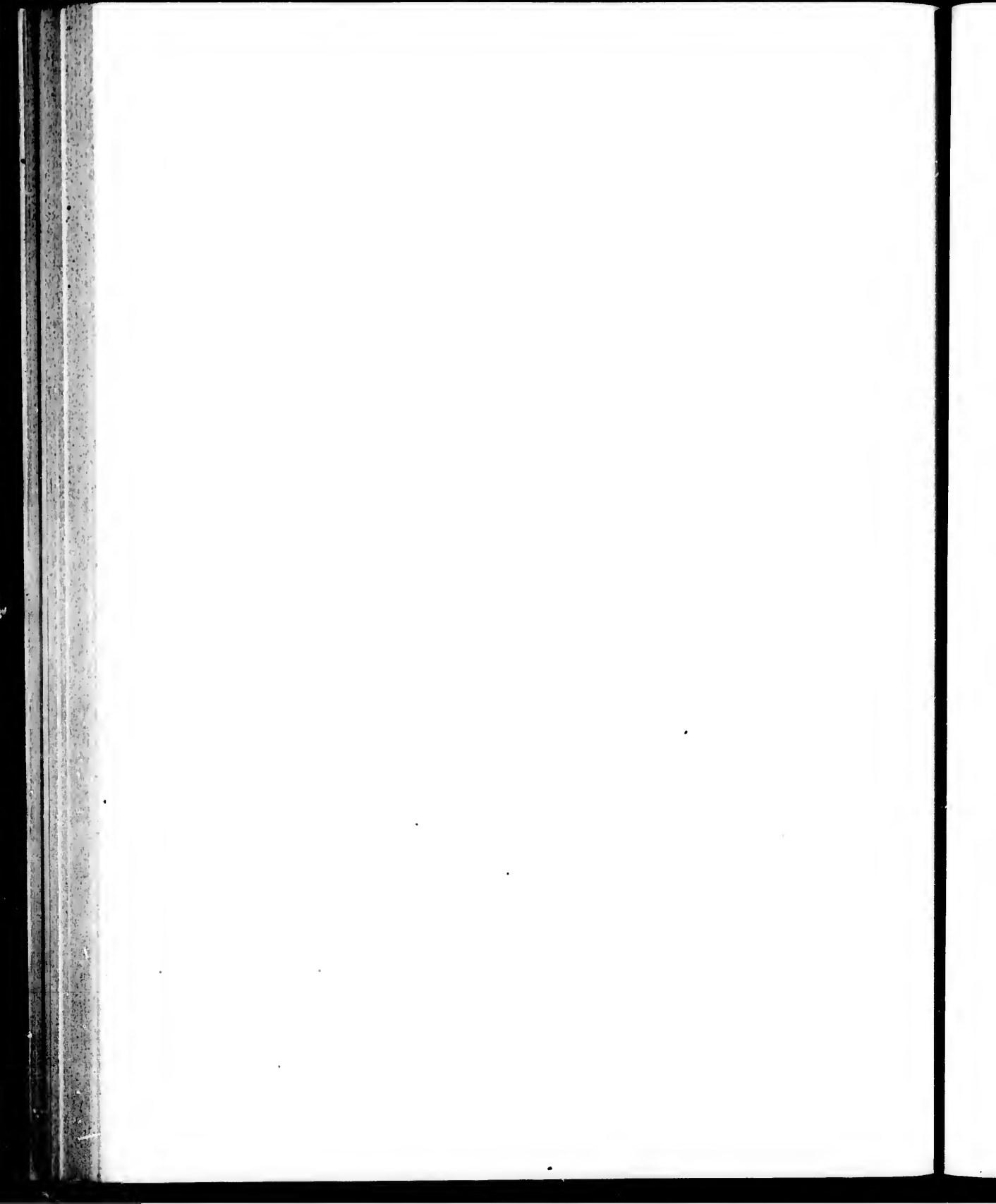
(Objection reserved by parties).

Answer.—The result was that it was refused, on account of their changed position.

Question.—What do you mean by their changed position?

(Objected to, as not being susceptible of proof by parole evidence).

Answer.—Their changed position in relation to the Church of Scotland.



They severed connection with the Church of Scotland by seceding from the Presbyterian Church of Canada, in connection with the Church of Scotland, and forming a distinct Synod, after lodging a protest.

Question.—Was there a claim to participate in the Clergy Reserves submitted by them to investigation ?

(Objected to, as not being susceptible of proof by parole evidence).

(Objection reserved by parties).

Answer.—It was, to the Governor-General.

Question.—What did the Governor-General do with it ?

(Objected to, as not being susceptible of proof by parole evidence).

(Objection reserved by parties).

Answer.—The Governor-General submitted it to the Law Officers of the Crown, and it was by the decision of the Law-Officers of the Crown that the claim was refused.

Question.—What was the decision of the Law-Officers of the Crown ?

(Objected to, as not being susceptible of proof by parole evidence).

(Objection reserved by parties).

Answer.—That they were not entitled to participate, on the ground of their changed position towards the Church of Scotland.

Question.—Are there any official minutes of this testimony, which you have just been giving, filed in this case ?

(Objected to as not susceptible of proof by parole evidence.)

(Objection reserved by parties.)

Answer.—Yes. It is to be found in the "Digest of the Minutes of the Presbyterian Church of Canada."

Question.—Have you any personal knowledge of the secession from the Presbyterian Church of Canada in connection with the Church of Scotland in eighteen hundred and seventy-five ?

Answer.—I have.

Question.—Were you previous to then in the habit of attending meetings of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland ?

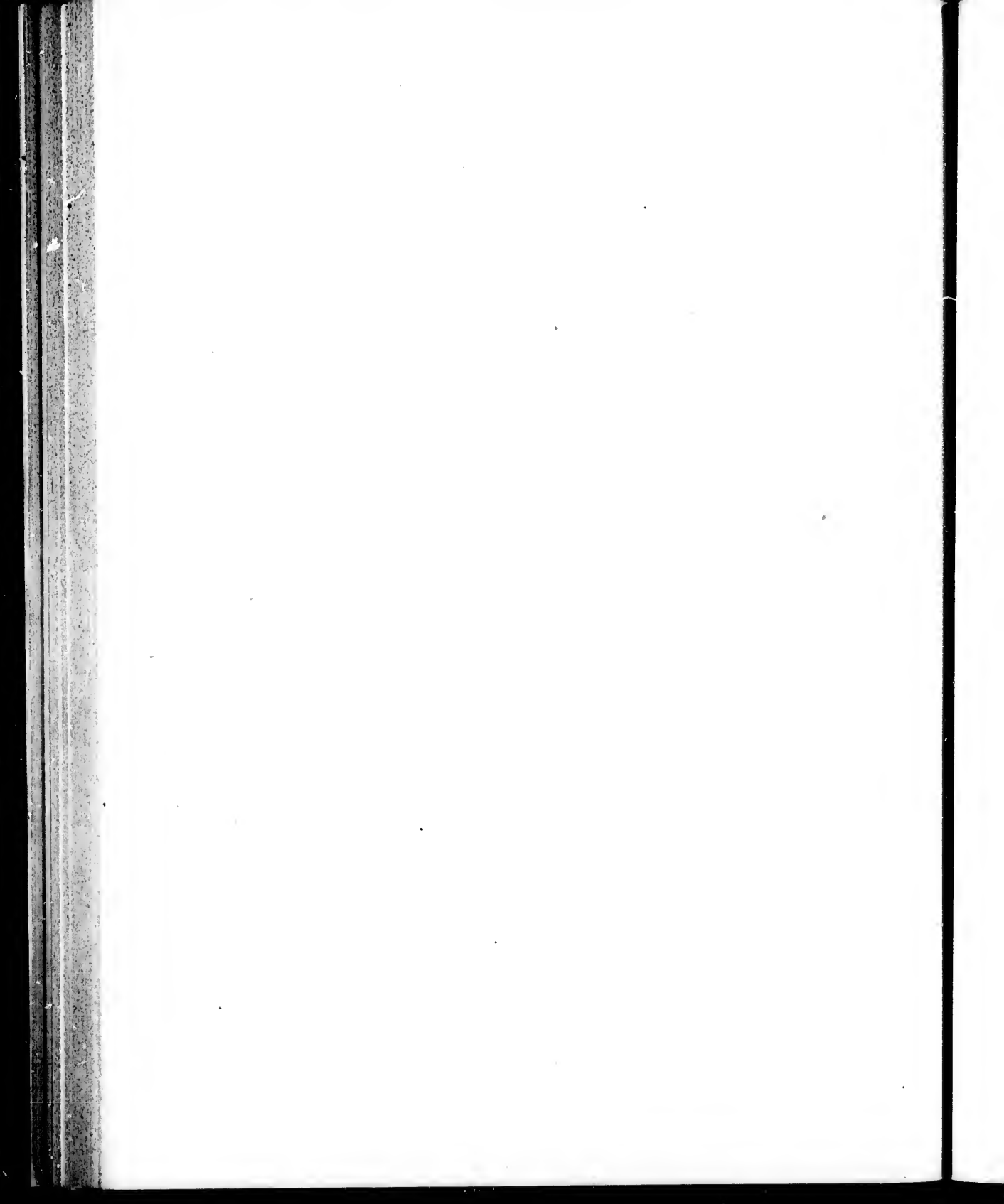
Answer.—Yes, pretty frequently. I was several times a member of the Synod.

Question.—Have you, and if so, how often, attended meetings of Synod of the said Church since June, eighteen hundred and seventy-five ?

Answer.—I have attended all except one since

Question.—Were you present at meetings of Synod held on the fourteenth and fifteenth of June, eighteen hundred and seventy-five ?

Answer.—I was.



Question.—Will you state about what time the Synod met on the fifteenth of June and what proceedings took place up to the time of this secession ?

(Respondents object to witness proving this by parole evidence, being a matter susceptible only of being proved by the official records of acts and proceedings of the said Synod.)

(Objection reserved by parties.)

Answer.—The Synod met in the forenoon, somewhere about ten o'clock, on the fifteenth day of June. The Synod was constituted in the usual way, certain business gone through, and then in the course of business Mr. Cushing, 10 notary, appeared. There was a dead pause in the business while he went up to the Moderator, namely, the presiding officer, Rev. Wm. Snodgrass, and presented the notarial protest to the Moderator. Shortly after, the presiding officer and a number of others left the St. Paul's Church where the meeting was then being held.

Question.—Did they leave any behind them ?

Answer.—Yes; they left behind them some members of Synod and some strangers.

Question.—Were the proceedings of that meeting of Synod continued or discontinued ?

Answer.—Continued. 20

Question.—The presiding officer, the Moderator, having left, who was put in the chair ?

Answer.—One of the ex-Moderators, Rev. Robert Dobie, Petitioner in this case.

Question.—After he was put in the chair can you state generally what was done ?

Answer.—After he was put in the chair it was agreed that he should offer prayer for Divine guidance, seeing the critical state of the Church, and that being done business was proceeded with and brought to a conclusion, and 30 the Synod adjourned.

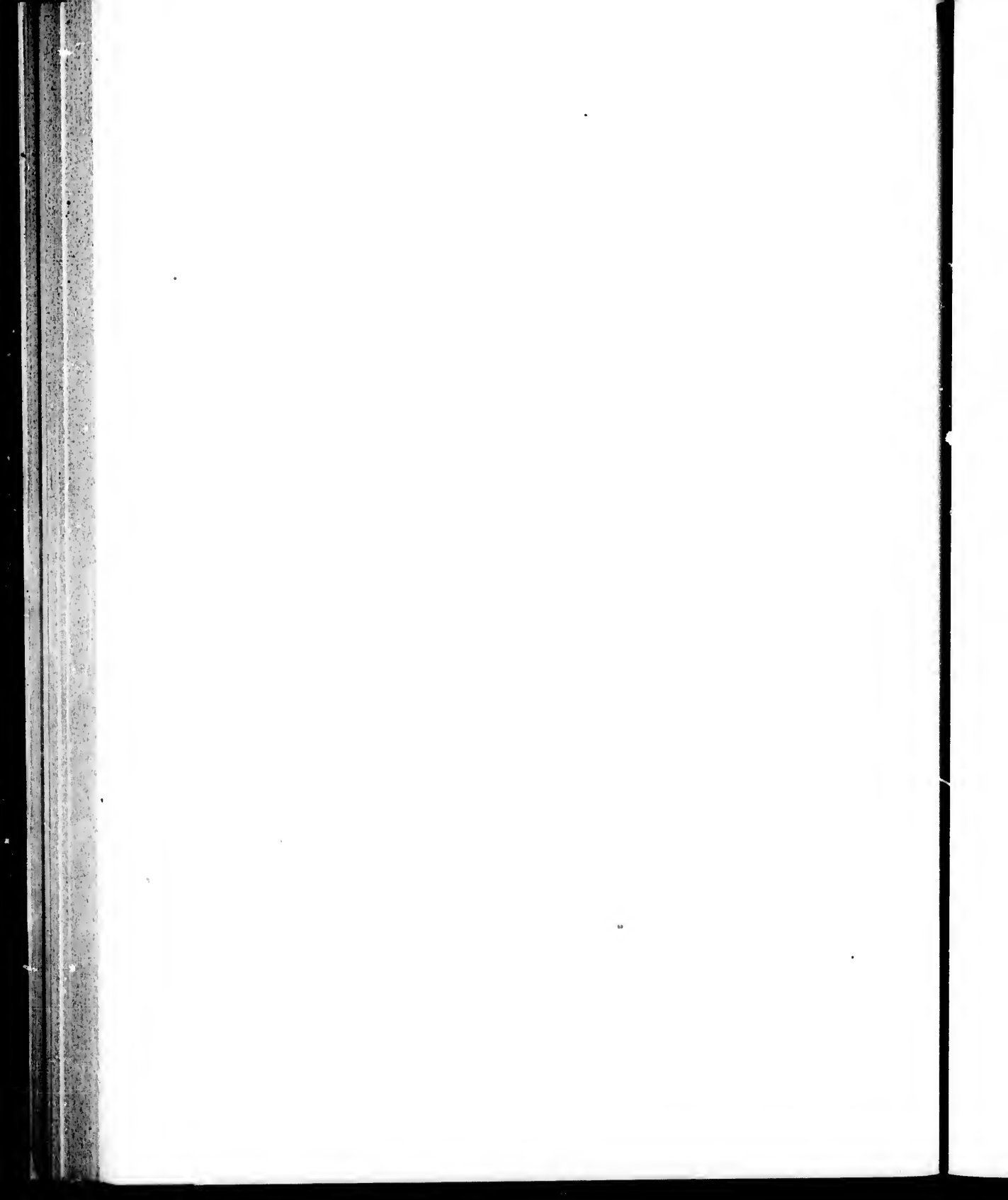
Question.—Did the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland meet afterwards ?

Answer.—Yes, every year since, sometimes twice a year.

Question.—When was the last meeting of Synod ?

Answer.—At Toronto, in the month of June last.

Question.—I understood you to say something about your attending meetings of Synod; how many of those meetings of Synod have you attended of the Presbyterian Church of Canada, in connection with the Church of Scotland, since the fifteenth of June, eighteen hundred and seventy-five ? or, to 40



put it in a different way, how many have you not attended since then ?

Answer.—I have missed one since then.

Question.—Are you in a position to swear that the organization of the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, has been regularly kept up since the fifteenth of June, eighteen hundred and seventy-five, notwithstanding the secession that then took place ?

Answer.—I can positively swear it.

Question.—Has the Presbyterian Church of Canada, in connection with the Church of Scotland, kept up its general Church organizations in presbyteries and congregations since that day ?

Answer.—Yes. 10

Question.—At the present time about how many ministers are there in connection with the Presbyterian Church of Canada, in connection with the Church of Scotland, and laboring with it ?

Answer.—We have ten ministers, three missionaries and three retired ministers.

Question.—How many congregations are there in connection with the said Church to which the ministrations of religion are supplied ?

Answer.—That is a little more difficult to answer on account of the difficulty of obtaining statistics, but, to the best of my knowledge and belief, there are somewhere between thirty-six and forty. 20

Question.—Would you state whether the adherents members of the Presbyterian Church of Canada, in connection with the Church of Scotland, are confined to any one place like the City of Montreal, or as to whether they are generally scattered throughout the Provinces ?

Answer.—They are scattered throughout the two Provinces of Ontario and Québec—throughout the whole of the old Province of Canada. I may add that I have a perfect knowledge of that.

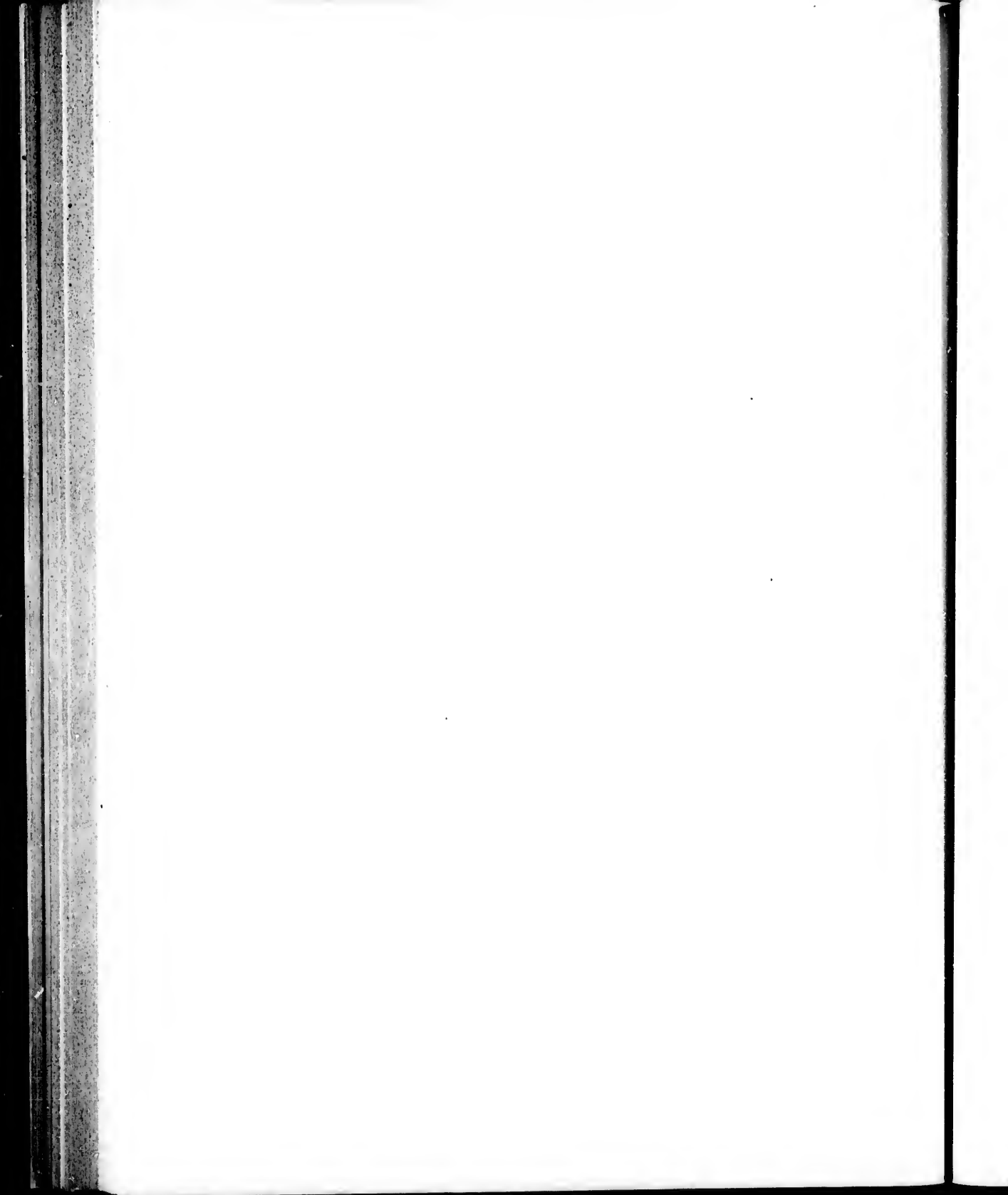
Question.—I believe that you have taken a very active interest in the affairs of the Presbyterian Church of Canada, in connection with the Church of Scotland, since you came to this country ? 30

Answer.—I have.

Question.—Has your interest to any extent flagged since that secession in eighteen hundred and seventy-five ?

Answer.—It has certainly not in the Presbyterian Church of Canada, in connection with the Church of Scotland, but on the contrary it has increased. There was not such a particular need of my interest before ; things seemed to be going on well.

Question.—You, of course, are a member of the Presbyterian Church of Canada, in connection with the Church of Scotland ? 40



Answer.—Yes.

Question.—You have never seceded from it?

Answer.—Never.

Question.—Did those who seceded, or those who remained, have a majority of members on the Board Respondents?

Answer.—Those who seceded have a majority of members.

Question.—You spoke of those who seceded in eighteen hundred and forty-four as having taken the name of the Presbyterian Church of Canada; have they any relationship? and if so, what, with the Canada Presbyterian Church, that appears as one of the co-partners in the amalgamation, out of which the Presbyterian Church in Canada is the result?

Answer.—There were two Presbyterian bodies besides the Presbyterian Church of Canada in connection with the Church of Scotland, the one you have just spoken of and another called the United Presbyterian Church in eighteen hundred and sixty-one; these two united under the name of the Canada Presbyterian Church.

Question.—Are the interests of the Petitioner in this suit simply personal?

(Respondents object to the question as illegal and irrelevant to the issues, inasmuch as the interest of the Petitioner is disclosed in the Petitioner's petition.)

(Objection reserved by parties.)

Answer.—No; he is acting in the interests of the whole Presbyterian Church of Canada in connection with the Church of Scotland.

Question.—This Presbyterian Church in Canada is composed of those who seceded from the Presbyterian Church of Canada in connection with the Church of Scotland and three other Churches mentioned in the petition?

Answer.—Yes.

The examination of this witness is adjourned.

30

And, on the third day of July, of the year aforesaid, the witness, Douglas Brymner, reappeared and continued his evidence as follows:

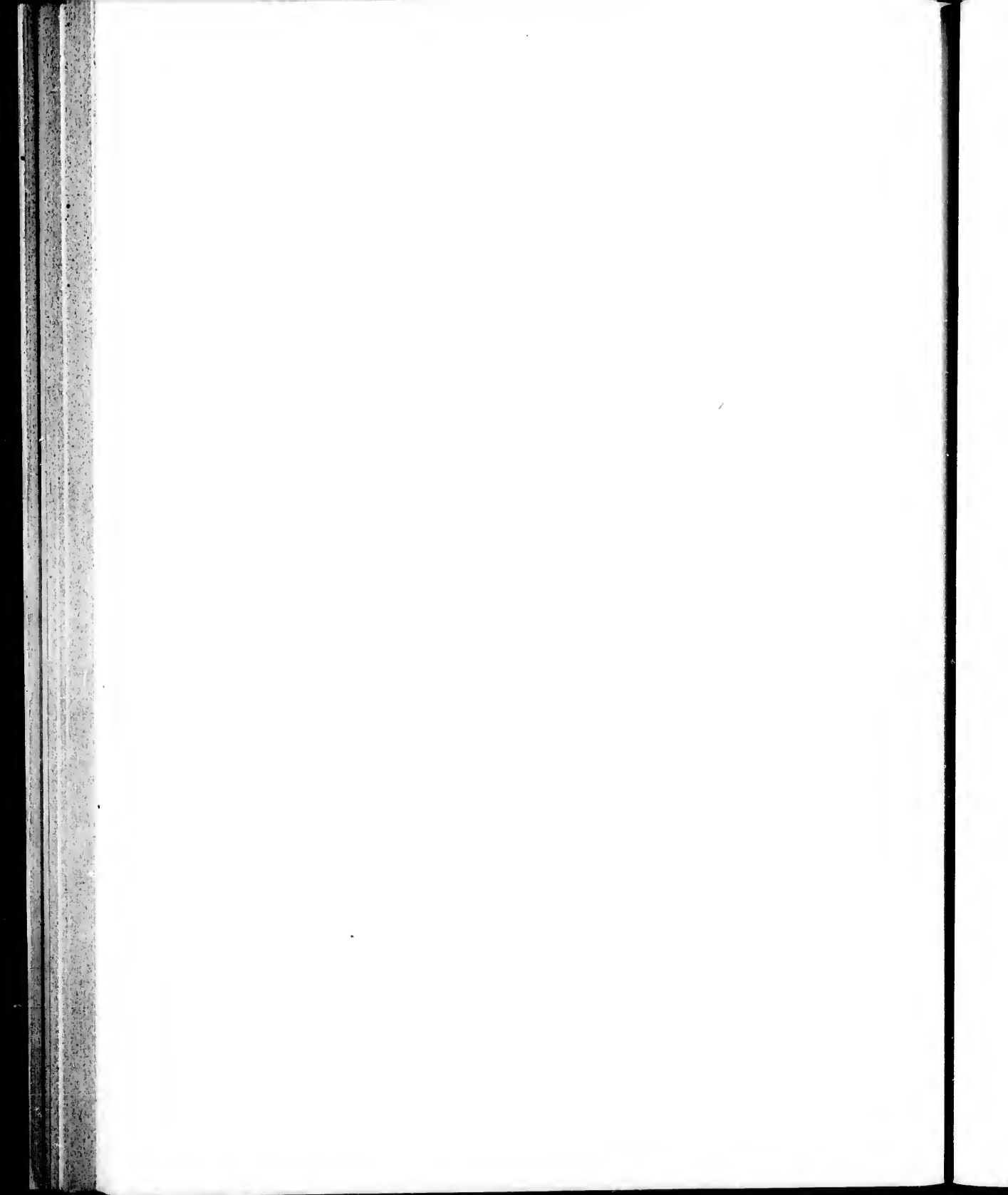
Question.—Is the Presbyterian Church in Canada identical with the Presbyterian Church of Canada in connection with the Church of Scotland?

(Objected to as being a question of law which it is not competent for the witness to decide.)

(Objection reserved by the Court.)

Answer.—No; they are distinctly different.

40



Question.—Will you please point out why they are not identical ?

Answer.—There are distinct differences in the obligations taken as to the Confession of Faith. There are differences in respect to the constitution of the Churches. The Presbyterian Church of Canada in connection with the Church of Scotland is a branch of the National Church. The Presbyterian Church in Canada is largely composed of dissenters and voluntaries who take obligations differing widely from the ministers and office-bearers of the Presbyterian Church of Canada in connection with the Church of Scotland and of the Church of Scotland.

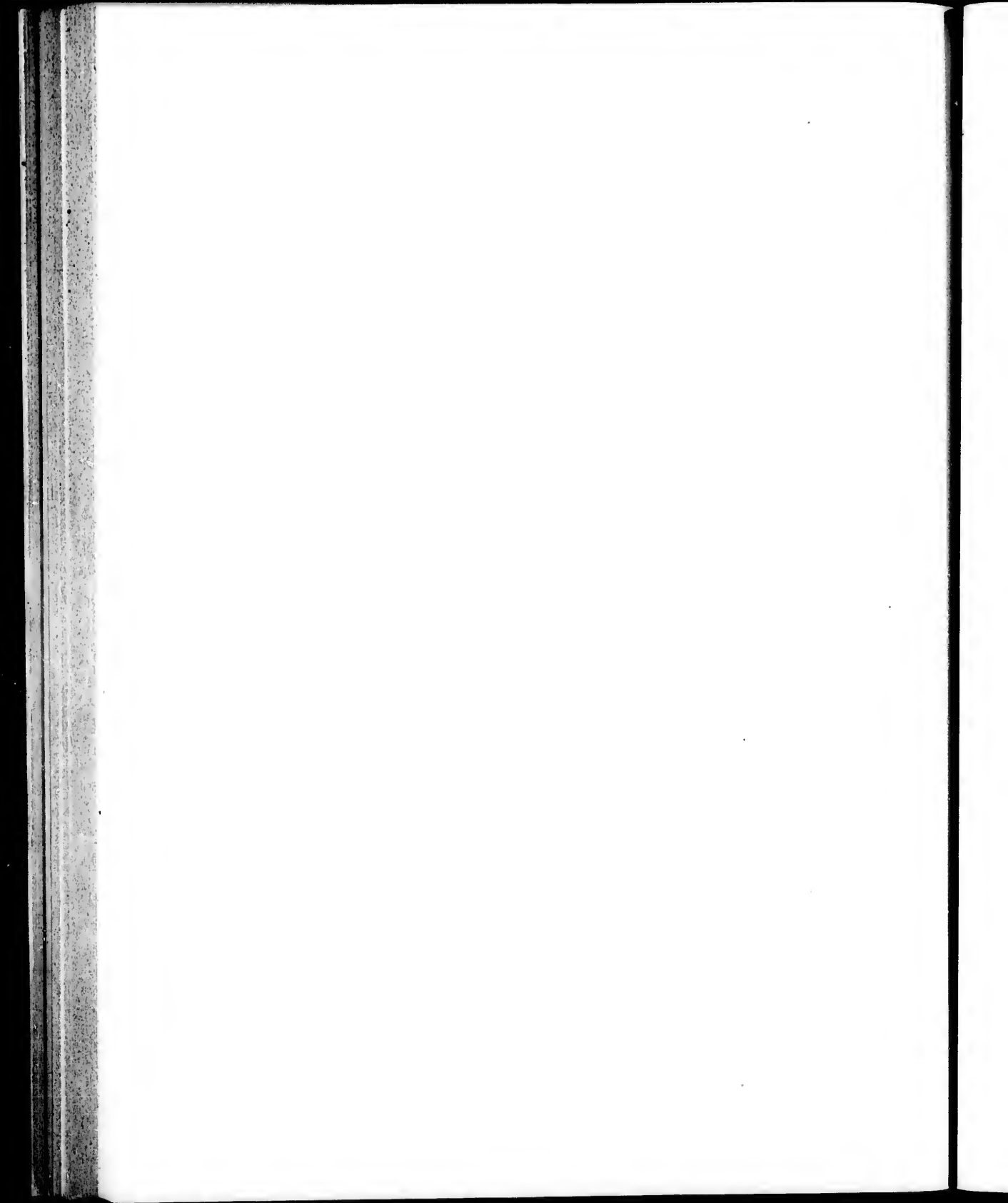
Question.—What are the distinct differences in the obligations taken as to the Confession of Faith ? 10

(Objected to as illegal and irrelevant.)

(Objection reserved by the parties.)

Answer.—In the formula or obligation to be subscribed or ordination or induction of ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, to be found among other places in minutes of Synod for eighteen hundred and sixty-seven, page 35, are the following words :
 " I do hereby declare that I do sincerely own and believe the whole doctrine
 " contained in the Confession of Faith, approved by the General Assemblies
 " of the Church of Scotland and ratified by law in the year 1690 and 20
 " frequently confirmed by divers Acts of Parliament since that time to be the
 " truths of God. And I promise that I shall follow no divisive course from the
 " Presbyterian Establishment in this Church." In the Basis of Union, to be found in the acts and proceedings of the first General Assembly of the Presbyterian Church in Canada, filed in this cause as Petitioner's exhibit E.E., page 5, are to be found the words : "The Westminster Confession of Faith shall
 " form the subordinate standard of this Church;" and in the same sentence at the end are the words : " It being distinctly understood that nothing contained
 " in the aforesaid confession or catechisms regarding the power and duty of the
 " Civil Magistrate shall be held to sanction any principles or views inconsis- 30
 " tent with full liberty of conscience in matters of religion." At page 6 of the same exhibit, under the head of " Government Grants to Denominational Colleges," are found these words : " In the United Church the fullest forbear-
 " ance shall be allowed as to any differences of opinion which may exist
 " respecting the question of State grants to educational establishments of a
 " denominational character," this forbearance having reference to the peculiar doctrines held by the Church of Scotland and by her branch in Canada.

Question.—I understand, then, that ministers joining the Presbyterian Church in Canada are not obliged to give their adhesion to the Confession of Faith in its entirety in the same manner as ministers joining the Church of 40



Scotland in Scotland, or the Presbyterian Church of Canada, in connection with the Church of Scotland?

(Objected to as illegal and not in issue).

(Objection reserved by parties).

Answer.—No, by the Basis of Union that is a matter that is optional.

Question.—Do you know when the ministers are paid their annual stipends out of the Fund of the Board Respondents?

Answer.—The cheques, as I have always understood, are issued on the first of July and on the first of January, being every six months.

Question.—Are you aware that various protests were made on behalf of certain members of the Presbyterian Church of Canada, in connection with the Church of Scotland, against the union which was in question.

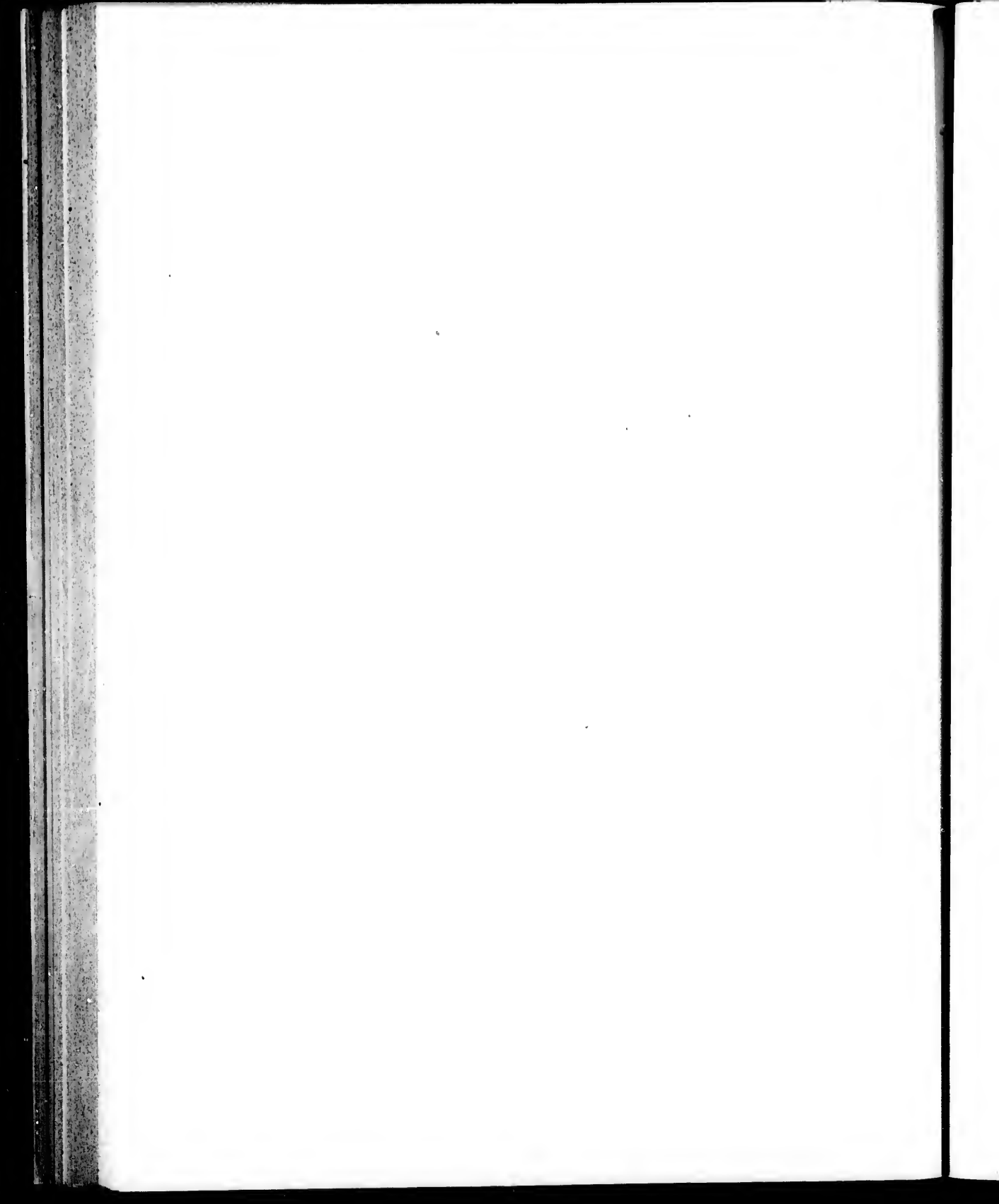
Answer.—I am.

Question.—Could you point out from the minutes of various meetings of Synod any places where the said protests are recorded?

Answer.—In eighteen hundred and seventy-three, according to Synod minutes for that year, at page 35, is a dissent with reasons given in by Mr. Mitchell, a member of that Synod, and adhered to by Messrs. David Watson, Lang, McPherson, Davidson, McGillivray, Wright and Lanskil. In eighteen hundred and seventy four, at Ottawa, Synod minutes pages 33 and 34, is a long protest on the same subject. At page 9 Synod minutes for November, eighteen hundred and seventy-four, I find a protest against the Synod discussing the question of union at a meeting held in violation of the Constitution. At page 14 of Synod minutes of November in the same year, appears a protest signed by the Petitioner and others, declaring that no majority could take from them the rights which they possessed as members and adherents of the Presbyterian Church of Canada, in connection with the Church of Scotland, said protest being in connection with the then proposed union. At page 16 of the same Synod minutes is a protest by the Rev. James Wilson against the proposed union. In the Synod minutes for eighteen hundred and seventy-five, page 29, is a dissent against certain resolutions respecting said Union. At page 30 is another dissent against the proposed union. At page 35 of the same Synod minutes, is a protest signed by Petitioner and others against the said resolutions on union. There was also a notarial protest served on the fifteenth of June, eighteen hundred and seventy-five, previous to the seceders leaving St. Paul's Church, in which proceedings were being conducted.

Question.—You are a native of that part of Great Britain and Ireland called Scotland?

Answer.—Yes.



Question.—You were admitted a member of the Church of Scotland in Scotland?

Answer.—I became a member by baptism.

Question.—Were you an elder of a Church in Scotland?

Answer.—I was.

Question.—What year did you come to the Province of Quebec?

Answer.—In eighteen hundred and fifty-seven.

Question.—Did you become an elder in Quebec?

Answer.—Yes, of the congregation in Melbourne, Presbytery of Quebec.

Question.—On what ground were you admitted to an eldership in the Church?

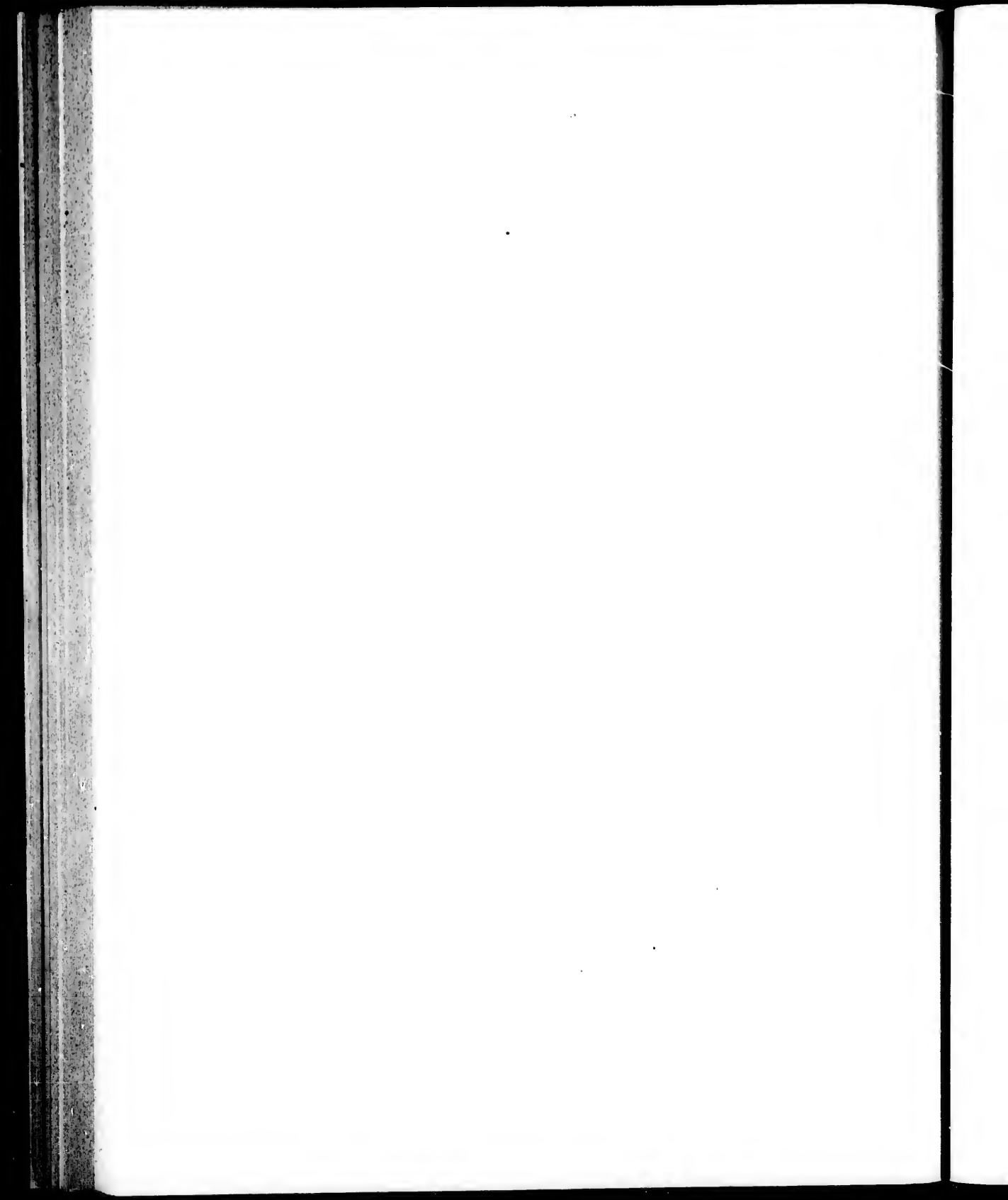
Answer.—I was received on my certificate of eldership and inducted without any further proceeding. The two Churches were in ministerial and Church communion, that is to say, the Presbyterian Church of Canada, in connection with the Church of Scotland, and the Church of Scotland. I think I should explain that the Church of Scotland was what is known as a close communion Church at that time, that is, that no minister was admitted into the pulpit except a minister of the Church of Scotland, or a recognized minister in connection with a branch of that Church; and no communicant was admitted to the Lord's table unless he, or she, was a member of the Church of Scotland, or recognized as a member of a branch of the Church of Scotland.

Question.—Has this communion between these two Churches always existed?

Answer.—Always existed. That communion was set out in the Synod minutes of eighteen hundred and thirty-three, page 43, in which the Church of Scotland declared that members of congregations in Canada under the charge of ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, should be received as members in Scotland of the Church of Scotland on producing certificates from the session under whose jurisdiction they were.

Question.—Were any overtures made by the Presbyterian Church of Canada in connection with the Church of Scotland towards the Presbyterian Church of Canada, or by the Presbyterian Church of Canada towards the Presbyterian Church of Scotland in connection with the Church of Scotland subsequent to the secession of eighteen hundred and forty-four, with a view to repairing the breach that had occurred, and if so, what was the result of such overtures, and what were the reasons respectively alleged for their non-success?

(Objected to as illegal and entirely irrelevant to the issues raised in this case.)



(Objection reserved by parties.)

In the Synod minutes of September, eighteen hundred and forty-four, marked B.B.B., page 30, is a minute of a resolution of the said Synod to appoint a committee to confer with those who had seceded from the said Synod in July, eighteen hundred and forty-four, with a view to the restoration of union between them. In eighteen hundred and forty-five, as appears by Synod minutes of that date, page 14, is the report of the committee named as just mentioned, in which it is stated that the sentiments unequivocally expressed by the seceders in regard to the Church of Scotland were such that the committee concluded to hold them as a bar to all negotiations. In the year 10 eighteen hundred and forty-four the Synod of the Presbyterian Church of Canada appointed a committee to meet with a committee of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland with a view of negotiating about reunion with the latter body as appears from the "Digest of Synod minutes of the Presbyterian Church of Canada," page 275. In eighteen hundred and forty-five the committee of the Presbyterian Church of Canada reported that the negotiations had been unsuccessful, the committee from the Presbyterian Church of Canada in connection with the Church of Scotland having been disposed to lay great stress on the act passed by their Synod, declaring the spiritual independence of their Church, 20 but entirely indisposed to entertain any proposal for dissolving the connection between their Synod and the Scottish Establishment, or altering the designation of the Synod, as will be seen by reference to page 277 of said Digest, filed as Petitioner's exhibit L.L.

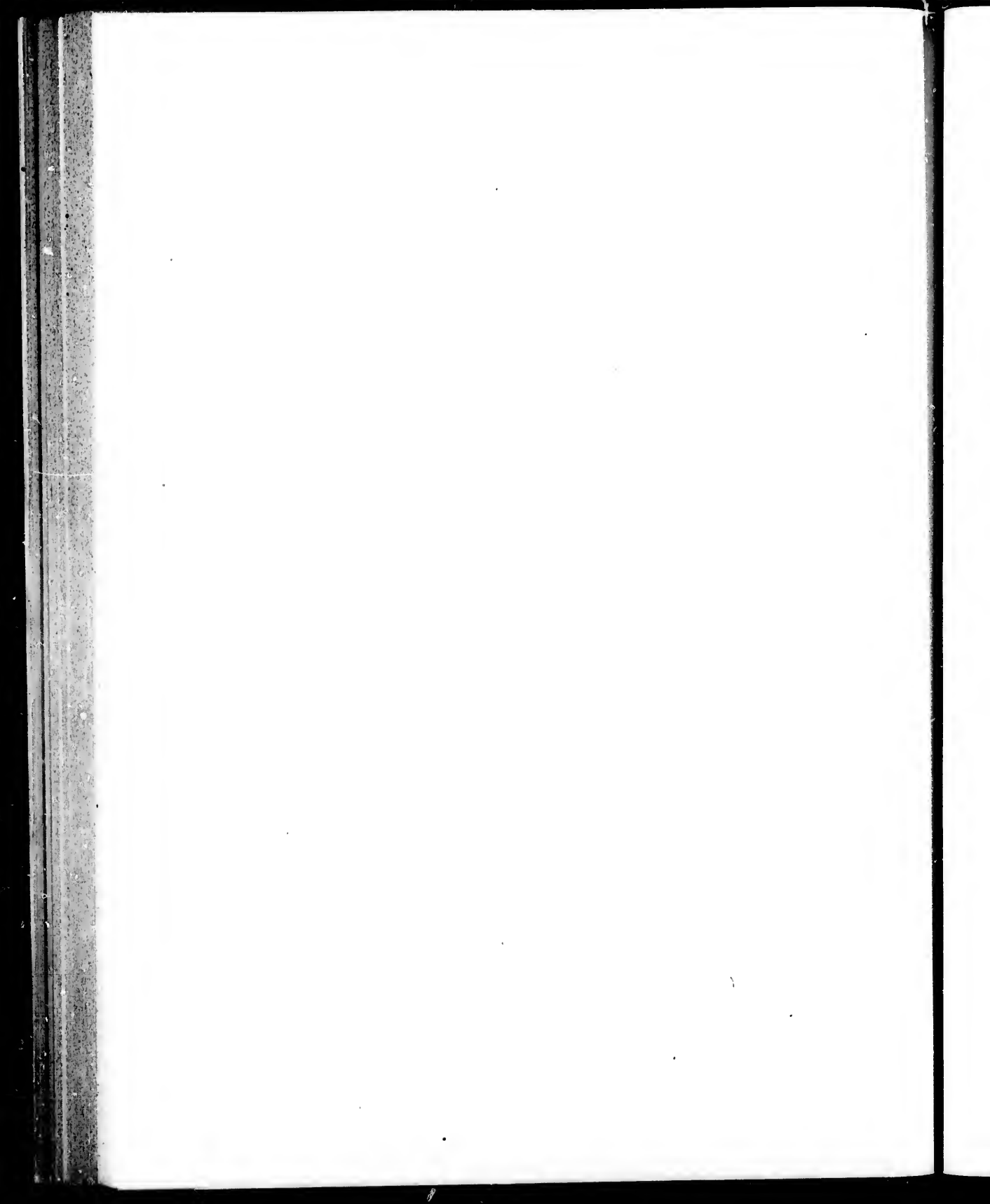
Question.—After the secession in eighteen hundred and forty-four was anything done in the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland by way of calling over the names of those who had seceded?

(Objected to as illegal and entirely irrelevant to the issues.)

(Objection reserved by the parties.)

Answer.—In Synod minutes for September, eighteen hundred and forty-four, at pages 20 and 21, will be found a statement of the steps taken to declare those who had seceded in the previous July no longer ministers of the Presbyterian Church of Canada in connection with the Church of Scotland or of the Church of Scotland in Canada.

Question.—Will you point out the page and the minutes of Synod where you find the report to which you have already referred, of the Law-Officers of the Crown, in which they stated, as you have said, that the allowances to those persons who had seceded could not be continued on account of the new position in which they stood?



(Objected to as illegal and entirely irrelevant to the issues).

(Objection reserved by the parties).

Answer.—At page 411 of the Digest, Exhibit LL, is a memorial addressed to the Governor-General praying for the continuance of the allowances from the Clergy Reserves. The memorial was from those who had seceded from the Presbyterian Church of Canada, in connection with the Church of Scotland, in July, eighteen hundred and forty-four, and who had been declared no longer ministers of that Church, or of the Church of Scotland in Canada, but who had formed themselves into a Synod under the name of the Presbyterian Church of Canada, asking that they might be continued in their allowances from the Government on the ground therein stated. At page 412 of the same book is a report made to the Synod by the Moderator, that in answer to the aforesaid memorial the memorialists could not be continued in the enjoyment of the Government allowances on account of the new position in which they stood. 10

Question.—You are Mr. Brymner, are you not, who made the affidavit filed in this case on the fourteenth day of March, eighteen hundred and seventy-nine?

(Objected to as illegal and having nothing to do with the issue as raised in the merits of this case). 20

(Objection reserved by parties).

Answer.—I am the same individual.

Question.—In speaking of your knowledge of the law relating to the Church of Scotland and to the Presbyterian Church of Canada in connection with the Church of Scotland and the records thereof, have you studied the standard works of these bodies relating to those subjects?

Answer.—Yes.

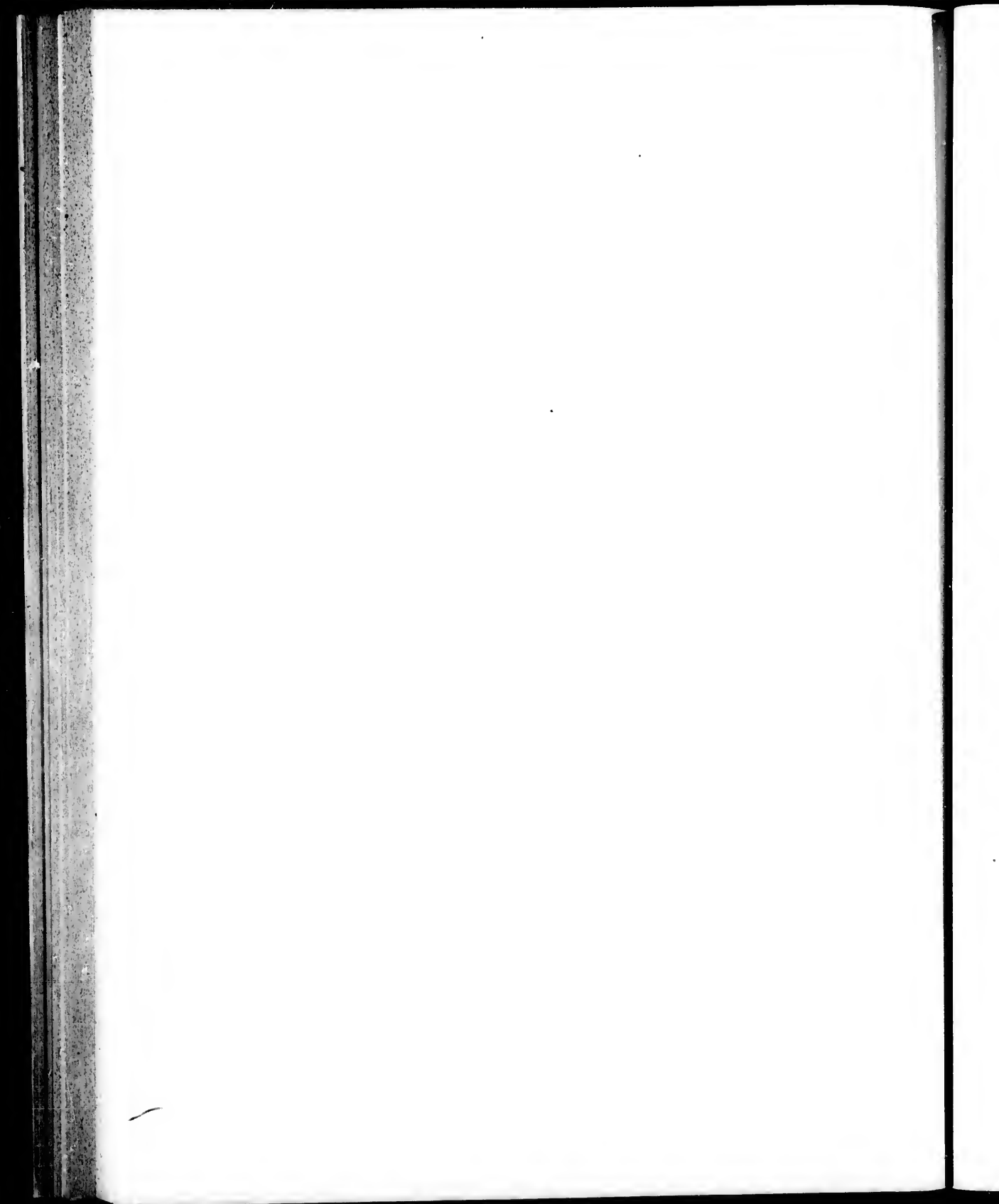
CROSS-EXAMINED WITHOUT WAIVER OF OBJECTIONS.

Question.—You have stated in your examination-in-chief that in the year eighteen hundred and forty-four certain seceders left the Presbyterian Church of Canada, in connection with the Church of Scotland, and formed the Presbyterian Church of Canada; where did these seceders meet at the time of the secession referred to? 30

Answer.—They met in Kingston, Ontario.

Question.—Were not said seceders in a minority of the said Church, and did they not leave the said Church without pretending in any way thereafter to represent the said Church?

Answer.—Before any vote was taken a protest was entered on the ninth 40



of July, eighteen hundred and forty-four, that no matter whether a majority should decide or not to change the designation, title or constitution of the Synod, or Church, or of the relations thereof to the Church of Scotland, that any majority attempting to do so would be acting unconstitutionally and *ultra vires*, and that those who remained in connection with the Church of Scotland, be they few or many, would remain and continue to be the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, and enjoy all the rights and privileges belonging to the same, as will be found in Synod minutes for July, eighteen hundred and forty-four, page 22. As a matter of fact, those who seceded were a minority. They did claim, however, to be 10 entitled to hold the property of the Church from which they had just seceded.

Question.—You have not answered my question fully; did the said seceders not declare that they had seceded from or left the said Church, and did they pretend to claim, after so leaving, that they were the Presbyterian Church of Canada in connection with the Church of Scotland?

Answer.—Their whole claims are found set out in their organization, and a protest lodged previous to leaving, which will be found at pages 2, 3, 4, 5 and 6 of exhibit L. L., filed in this case.

Question.—Will you kindly answer my question yes or no?

Answer.—I can answer no further than I have done. 20

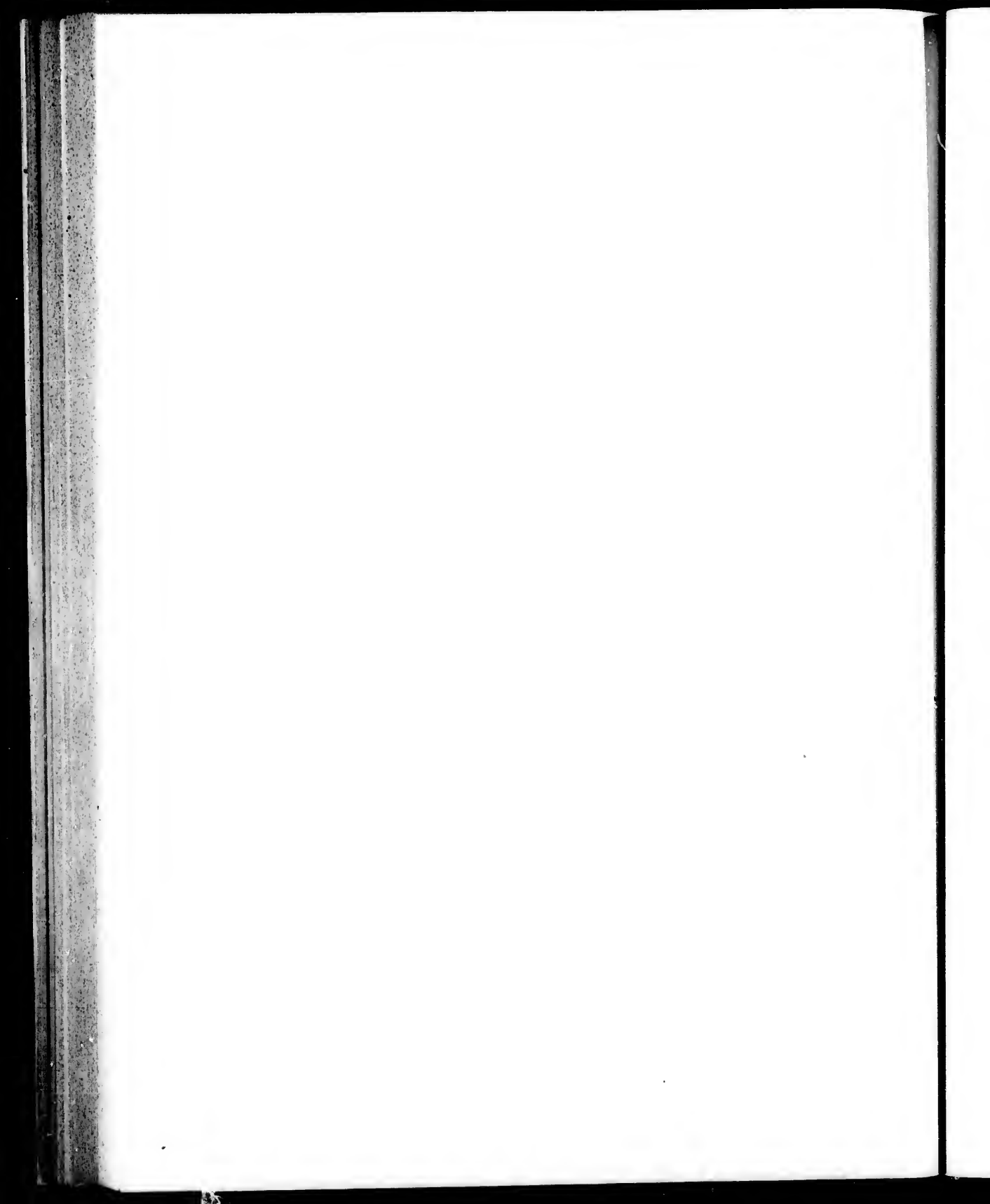
Question.—Before the said seceders, of whom you have spoken, left in eighteen hundred and forty-four the said Presbyterian Church of Canada in connection with the Church of Scotland, were they in a minority or in a majority of the said Synod?

Answer.—Being defeated on a motion to sever connection with the Church of Scotland they were in a minority.

Question.—Consequently it appears that there is no analogy between the case of the seceders who went out in eighteen hundred and forty-four from the Presbyterian Church of Canada in connection with the Church of Scotland and the seceders from the said Church represented by the Reverend 30 Robert Dobie, the Rev. Gavin Lang and others who went out from the said Church in the year eighteen hundred and seventy-five?

Answer.—In the first place I do not acknowledge that the Rev. Robert Dobie and the others were seceders; they remained in connection with the Church of Scotland. The other part of the statement is a constitutional question which must be solved by the Judges.

Question.—The Rev. Robert Dobie and the others who dissented from the resolution of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, passed in the year eighteen hundred and seventy-five relative to the union in question in this cause, were in a minority 40



of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, were they not ?

Answer.—They were a minority in the Synod.

Question.—Were they in a minority in the Church ?

Answer.—The Church is composed of the whole body of the people, the Synod being a mere committee for the management of the ecclesiastical and spiritual affairs of that body.

Question.—Were they not in a minority in the whole Church, on the oath you have taken ?

Answer.—From the very best information it is possible to get, the 10 question is not yet determined.

Question.—Those seceders in eighteen hundred and forty-four, after leaving the Presbyterian Church of Canada in connection with the Church of Scotland, organized a Synod of their own, did they not ?

Answer.—They did.

Question.—And they called themselves the Presbyterian Church of Canada ?

Answer.—Yes.

Question.—Then as a matter of fact, seeing that after leaving the Presbyterian Church of Canada, in connection with the Church of Scotland, they 20 set up a Synod of their own and called themselves the Presbyterian Church of Canada, is it not true that they did not pretend to be the Presbyterian Church of Canada, in connection with the Church of Scotland ?

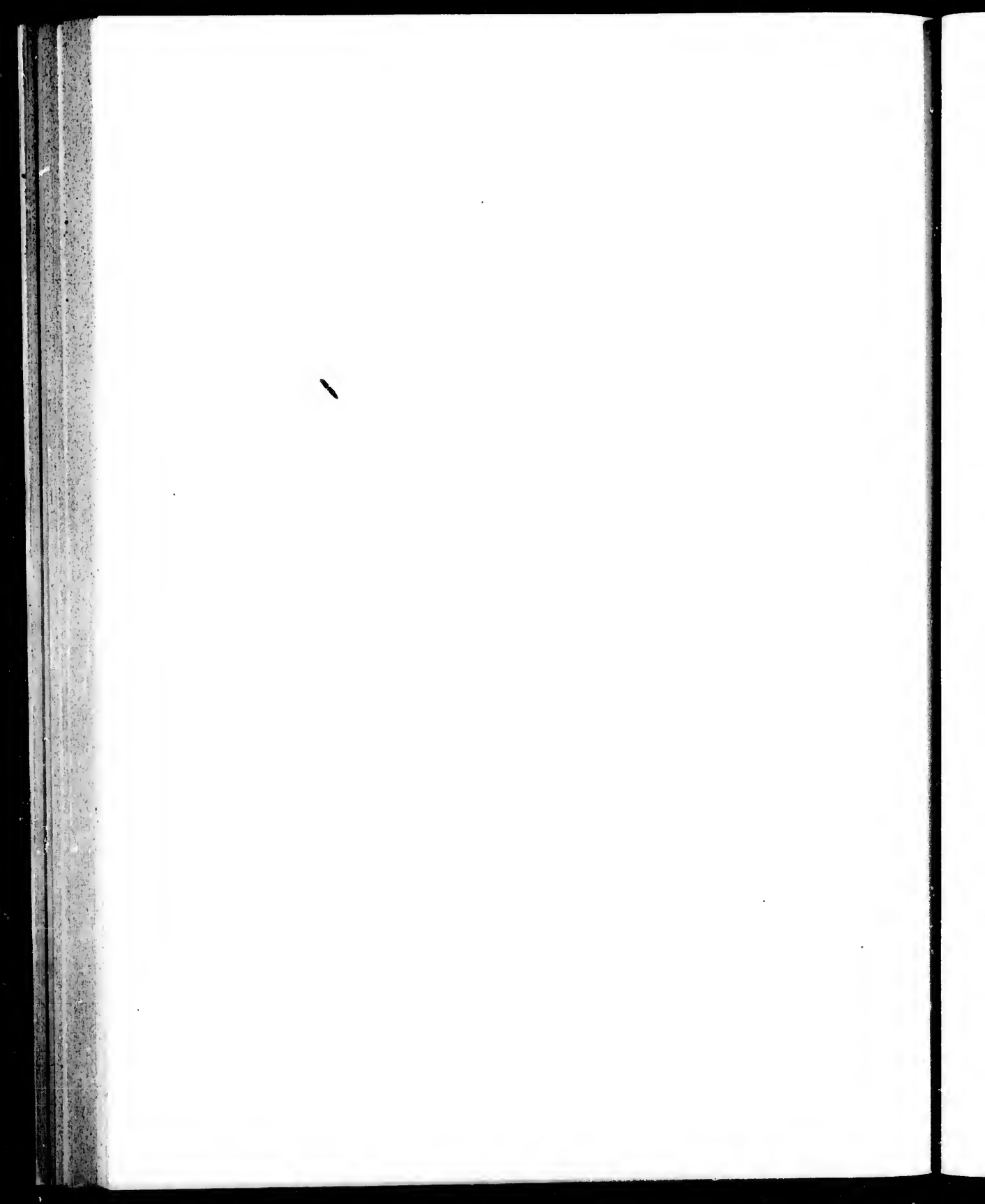
Answer.—Perfectly true. They set up a hostile, separate and independent organization, and further, they changed the obligation to be taken by ministers of the Church of Scotland and of the Presbyterian Church of Canada in connection with the Church of Scotland at their ordination and induction.

Question.—What do you mean by the term secession which you have used in your examination-in-chief on several occasions, with reference to anybody seceding from a Church ? 30

Answer.—Those who seceded from a Church are those who sever their connection with it and change its terms of communion—change its doctrines.

Question.—You say in your examination-in-chief that you have been in the habit of attending meetings of Synods of the Presbyterian Church of Canada, in connection with the Church of Scotland, for a number of years: how long since you attended meetings of the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, in a representative capacity.

Answer.—I could not be quite sure as to that point. I was an elder in St. Gabriel Church, Montreal, down to the year eighteen hundred and seventy- 40



two. The first meeting of Synod I attended was in eighteen hundred and fifty-eight, and I was an elder in St. Gabriel Church down to eighteen hundred and seventy-two, from the time I came into Montreal until I left. I then left St. Gabriel Church and went to Ottawa, with the very strongest possible recommendation to the session in St. Andrew's Church, Ottawa.

Question.—Have you ever attended a Church Court of the said Church since you left the congregation of St. Gabriel Church, Montreal, in a representative capacity under the laws of the Church?

Answer.—I have not.

Question.—Do you represent any congregation now?

Answer.—I do not.

Question.—How does it happen that in the minutes which have been filed in this cause by the Rev. Gavin Lang, who was examined in your presence, marked Z1, you appear to be taking part in moving resolutions as a member of the pretended Synod referred to in said minutes, if you had no authority to represent kirk sessions in church courts?

Answer.—According to the laws and practise of the Presbyterian Church of Canada in connection with the Church of Scotland, any member of the Church occupying a position either as minister or elder can be called upon to sit and deliberate with the Synod. It is the invariable practise. I had a perfect right to move or second a resolution. That is the practise: there is no law on the subject. Under such practise I, being present as an elder of the Presbyterian Church of Canada in connection with the Church of Scotland, was asked to sit and deliberate, and I thus became entitled to take part in all the proceedings of Synod. 20

Question.—Were you a member of the said Synod in which you say you were asked to take part and deliberate?

Answer.—I was a visiting member.

Question.—Will you show me the law which entitles you as such, not being a regular member of Synod, to take part in the proceedings of Synod and to move resolutions? 30

Answer.—I will show you the practise. In eighteen hundred and fifty-six Rev. Wm. Snodgrass, then a minister in Prince Edward Island being present at the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, was asked to sit and deliberate with the court, and I find him seconding a resolution in regard to the commutation funds.

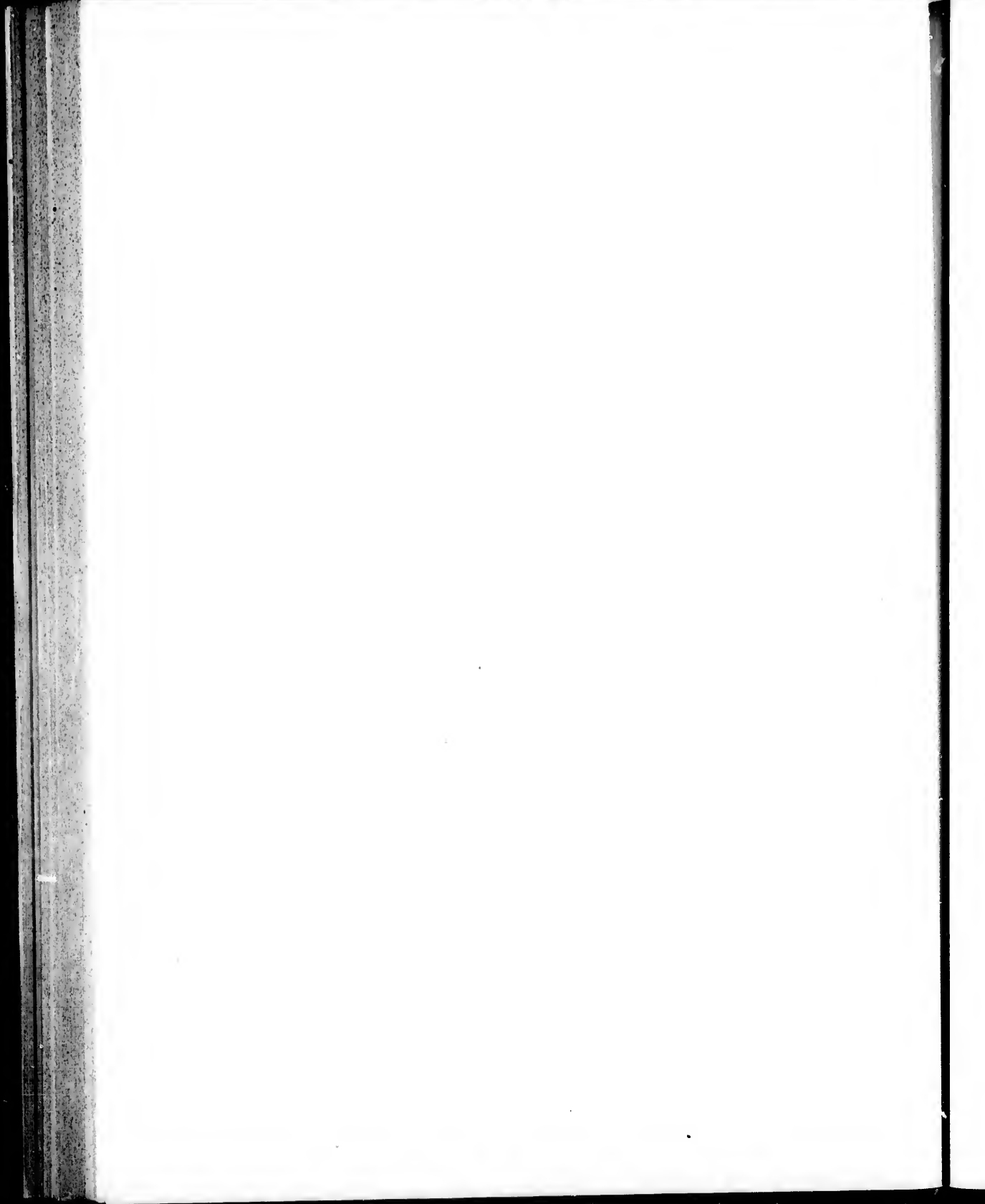
Question.—Is that all you have got to show on that point?

Answer.—I can give you twenty instances.

Question.—Well, give them to me?

Answer.—At this moment, not having looked into the question, it 40

*Represents
No Congregation*
10



would take me longer than would be convenient, but I will give them to-morrow morning.

Question.—Then your statement made just now that you could give me twenty instances of such practise was rather rash and without having verified your statement, was it not?

Answer.—When I said so I spoke from a knowledge of the practise of the Church and as having been present at the Synods.

Question.—And yet you cannot verify your statement, although you made it in such a positive way?

Answer.—To-morrow morning I will supply all the information. 10

Question.—Is it not true that no one who is not a regular member of Synod according to the laws and practises of the Presbyterian Church of Canada in connection with the Church of Scotland, that is to say, an elder representing a Kirk session, duly appointed, has any right to take part in the proceedings of Synod, move resolutions and be appointed on committees unless it be that he is a corresponding member of Synod, such as Dr. Snodgrass, whom you have referred to, was?

Answer.—The practise, so far as I know it, is that those who are present, whether they belong to the Church or not, ministers and elders not only of the Presbyterian Church of Canada in connection with the Church of Scotland, 20 but of other Churches, have been repeatedly asked to sit and deliberate with the courts.

Question.—Please answer my question. Beyond sitting and deliberating, have the persons referred to in the last preceding question, that is to say, those who are not regularly appointed members of Kirk sessions or who are not corresponding members, any right to move resolutions or be appointed on committees of Synod?

Answer.—That question has already been covered by what I have said, that to-morrow morning I will give all the information on that subject.

Question.—Then just now you cannot answer that question? 30

Answer.—I cannot from the books answer it at this moment.

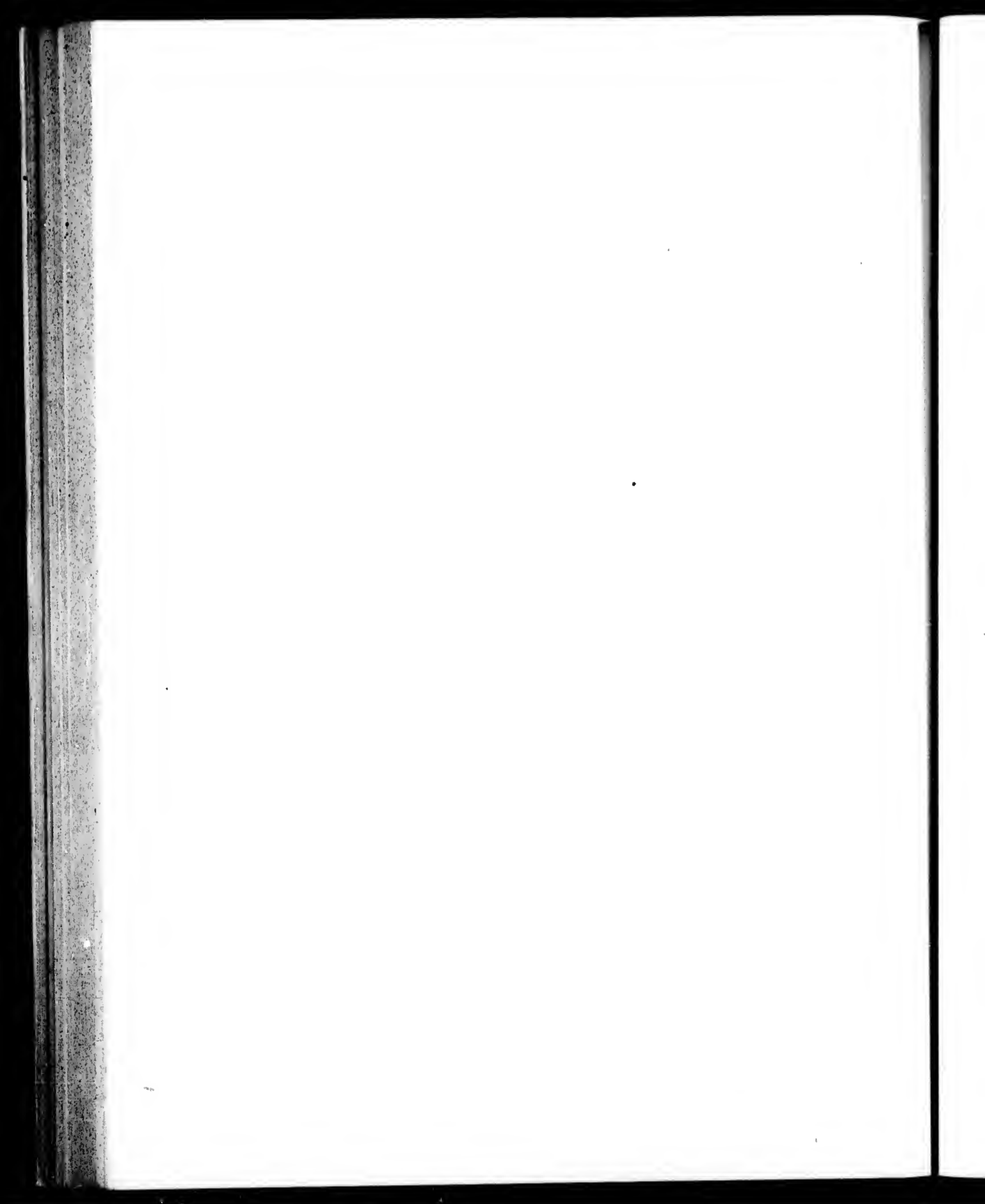
Question.—Are such members, who are merely asked to sit and deliberate, entered upon the rolls of Synod as forming part of the Synod?

Answer.—No: but their names are entered as having been asked to sit and deliberate simply.

Question.—Since June, eighteen hundred and seventy-five, the date of the union, what Church have you attended?

Answer.—I hold a pew in St. Andrew's Church, Ottawa. I have attended that Church and other Churches.

Question.—What other Churches? 40



Answer.—I have been in the habit of attending at times the sister Church of England, having been driven out of my own Church by the Church being taken possession of by the Presbyterian Church in Canada.

Question.—What Church do you attend as a regular thing from Sunday to Sunday ?

Answer.—I am oftener in the sister Church of England than any other.

Question.—Do you hold a pew in any other Church but St. Andrew's Church, Ottawa ?

Answer.—No.

Question.—Who is the minister of that Church ?

10

Answer.—Rev. Daniel Gordon.

Question.—In connection with what Church is St. Andrew's Church, Ottawa ?

Answer.—St. Andrew's Church, Ottawa, is in connection with the Presbyterian Church in Canada at this moment. I hold my pew, claiming that that Church belongs to the Presbyterian Church of Canada in connection with the Church of Scotland. But I took out my certificate as soon as the union took place, so that I could not be enrolled in the union roll as a member of the new Church.

Question.—Do you worship there ?

20

Answer.—At times.

Question.—Do your family attend there ?

Answer.—Occasionally.

Question.—Generally ?

Answer.—No.

Question.—Do you contribute to the funds of that Church ?

Answer.—Nothing but my pew rent.

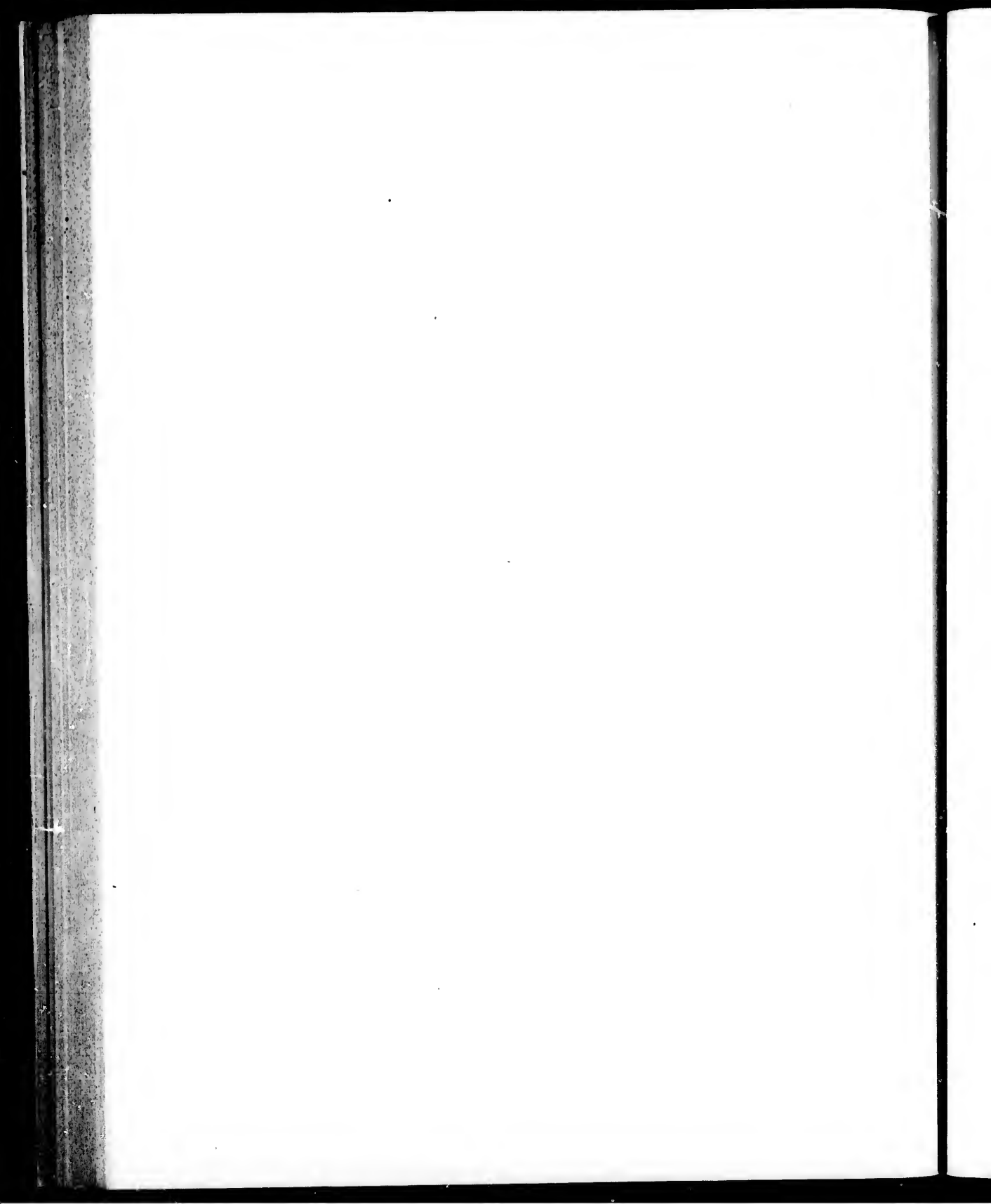
Question.—Then you do not represent any congregation or Kirk session in connection with what you call the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, that is to say, the Church that the Petitioner in this cause claims to represent ?

Answer.—I have already, I think, stated so that I do not.

Question.—You have already stated that you belong to the Presbyterian Church of Canada in connection with the Church of Scotland ; if you belong to no congregation under that name or no Kirk session under that name, how do you come to belong to such a Church ?

Answer.—That is one of the grievances we complain of, that our Church has been taken away from us and that we have no congregation in Ottawa to which we can go. We would have to be compelled to go to a Church to which we did not belong.

40



Question.—Is it not true that you appear in the Synod minutes, which are filed by the Rev. Gavin Lang, marked Z-1, as being appointed on certain committees of said Synod?

Answer.—Yes.

Question.—Do you pretend that, not being a member of said Synod and being only asked to sit and deliberate, you had any right according to the laws of the Presbyterian Church of Canada in connection with the Church of Scotland to be appointed on committees, such as a member of the committee on bills and overtures?

Answer.—I pretend that the Synod, being a committee of the Church, 10 having the management of the business of the Church at a crisis when so many had left her communion, that irregularities are not only permitted, but provided for according to the Confession of Faith. X

Question.—Then you admit that your appointment as a member of such committee was an irregularity?

Answer.—I do not admit it was an irregularity. What I contend is, even if irregularities were committed, those irregularities would not affect the rights of the members and adherents of the Presbyterian Church of Canada in connection with the Church of Scotland and thereby cause them to forfeit their civil rights.

Question.—Then can you show any law of the Church to authorize your appointment as a member of a committee on bills and overtures when you were merely asked to sit and deliberate? 20

Answer.—I am not aware that there is any law on the subject. In extraordinary circumstances it has been provided that Church courts may depart from the ordinary rules when exigencies demand it.

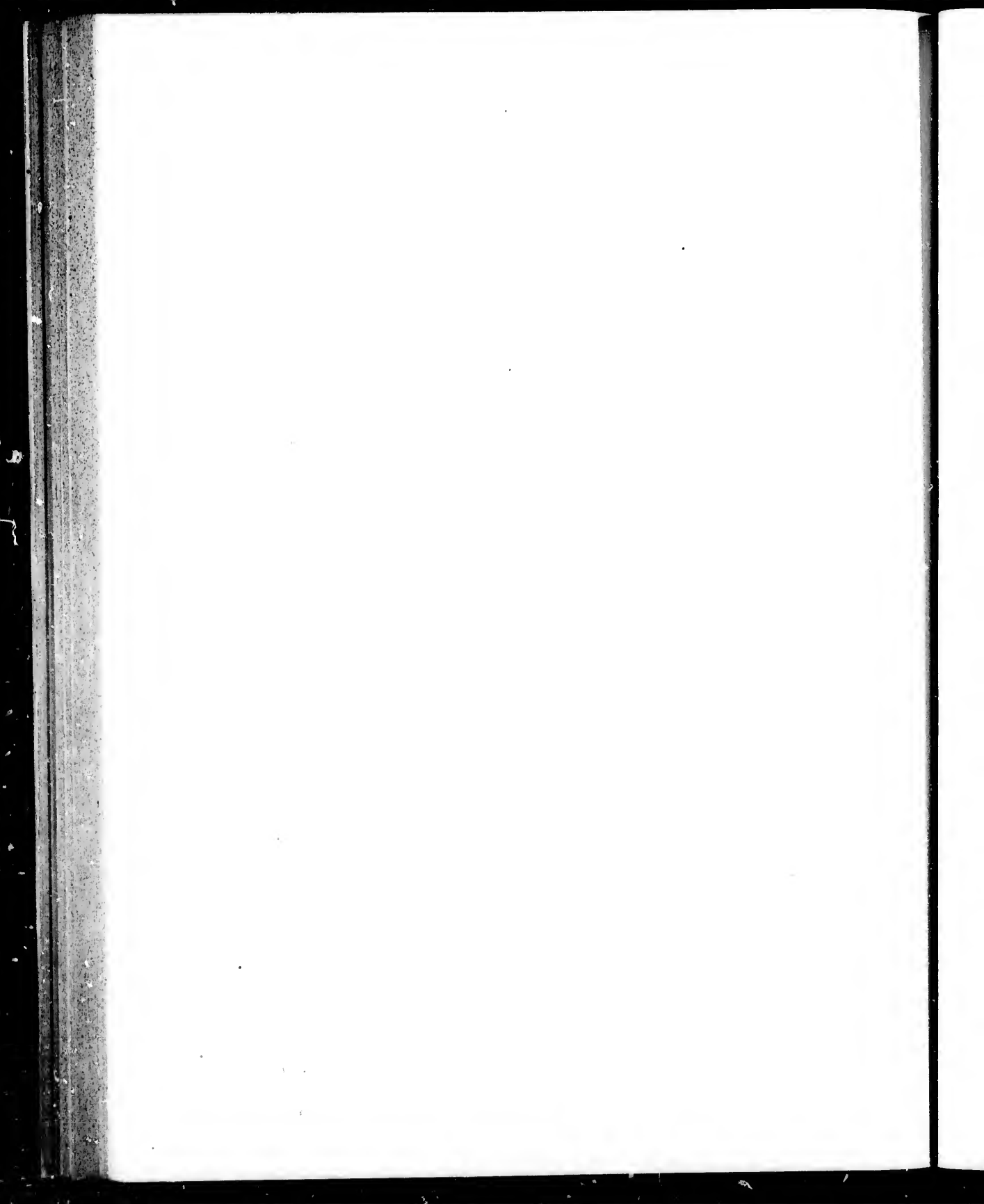
Question.—In what way may they depart from ordinary rules, according to their own free will?

Answer.—No, according to the general laws of the Church.

Question.—Show me those laws? 26

Answer.—The form of Church government, forming part of the Confession of Faith, provides at page 105 of the form of Church government an Act of the General Assembly of the Church of Scotland passed in sixteen hundred and forty-five, and which still remains in force, that even in so serious a matter as the ordaining of ministers ordinary rules may be departed from in extraordinary circumstances, as appears from the form of Church government bound up with the Confession of Faith, and which I now produce and file marked Z-4.

Question.—This form of Church government you have spoken of is the



form of Church government adopted by the Assembly of the Church of Scotland, is it not ?

Answer.—Yes.

Question.—Is that all you have to show as law on the subject ?

Answer.—That is all I have to produce.

Question.—You have stated in your examination-in-chief that on the fifteenth of June, eighteen hundred and seventy-five, after Mr. Cushing had delivered a notarial protest to the Moderator of the Synod then meeting in St. Paul's Church, Montreal, a number of members of Synod left the Church and left behind them some members and some strangers ; will you be kind enough to state how many ministers of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland then assembled remained behind in St. Paul's Church and did not go with the majority to consummate the union which is in question in this cause ?

Answer.—I could only state from memory, and I would not like to charge my memory with it at this date ; and there is no record of those who remained.

Question.—State it from memory ?

Answer.—I cannot tell exactly. I think there must have been seven ministers and either two or three elders ; I would not be sure which.

Question.—Will you give the names of the said ministers ?

Answer.—I cannot, really ; but I could give some of them—those who signed this document contained at pages 35 and 36 of Synod minutes of eighteen hundred and seventy-five—namely, Robert Dobie, Wm. Simpson, Robert Burnet, David Watson, Wm. McMillan, Thomas McPherson, Roderick McCrimmon, John Davidson and John McDonald. These at least were present.

Question.—How many of these were ministers ?

Answer.—Seven.

Question.—Which of these were elders ?

Answer.—Wm. McMillan and Roderick McCrimmon.

Question.—Do you know of any others, members of Synod, who remained behind ?

Answer.—I do not, really.

Question.—Now, to the best of your knowledge, is it not true that no other members of Synod remained behind on the fifteenth of June in St. Paul's Church except those who you have just mentioned ?

Answer.—Well, to the best of my belief, it is, but I would not be positive.



Question.—Do you not know, as a matter of fact, that the Rev. J. S. Mullin also remained behind and afterwards left ?

Answer.—The Rev. J. S. Mullin went away with the other seceders out of the Church. After the Moderator had taken the chair the Rev. J. S. Mullin returned and made some objection as to the legality of a protest lodged the night before, on the ground that a certain number of quarter-dollars had not been left when the protest was entered. Having made this objection, which was one objection he did make, he then went off again.

Question.—Do you know where he went to ?

Answer.—From his own statement he went to the Skating Rink; I personally have no knowledge of it.

Question.—Then, to the best of your knowledge and belief, is it not true that there did not remain behind in the said St. Paul's Church, after the majority of the Synod had repaired to the Victoria Skating Rink, fifteen members of Synod ?

Answer.—To the best of my knowledge that number did not remain.

Question.—What then did those who remained behind proceed to do ?

Answer.—Having been left by a large number of the members of Synod, those who remained behind proceeded in accordance with the laws of the Church to appoint a Moderator to continue the business. In the critical state of the Church the Moderator engaged in prayer for the Divine guidance. The Moderator was the Rev. Robert Dobie, Petitioner in this cause, who had previously been a Moderator of the Presbyterian Church of Canada in connection with the Church of Scotland. He having done so, the members of Synod then proceeded to continue the business which had been begun in the morning. They continued until they closed the business and adjourned.

Question.—You say that the first proceeding was to appoint the Rev. Robert Dobie Moderator, is it not true that the first proposal was to appoint the Rev. David Watson, of Thorah, Moderator ?

Answer.—There was no proposal. When the others had left there was 30 a minute or two of confusion, and there was some talk of appointing the Rev. David Watson, but there was no motion of any kind except that to appoint the Rev. Robert Dobie Moderator.

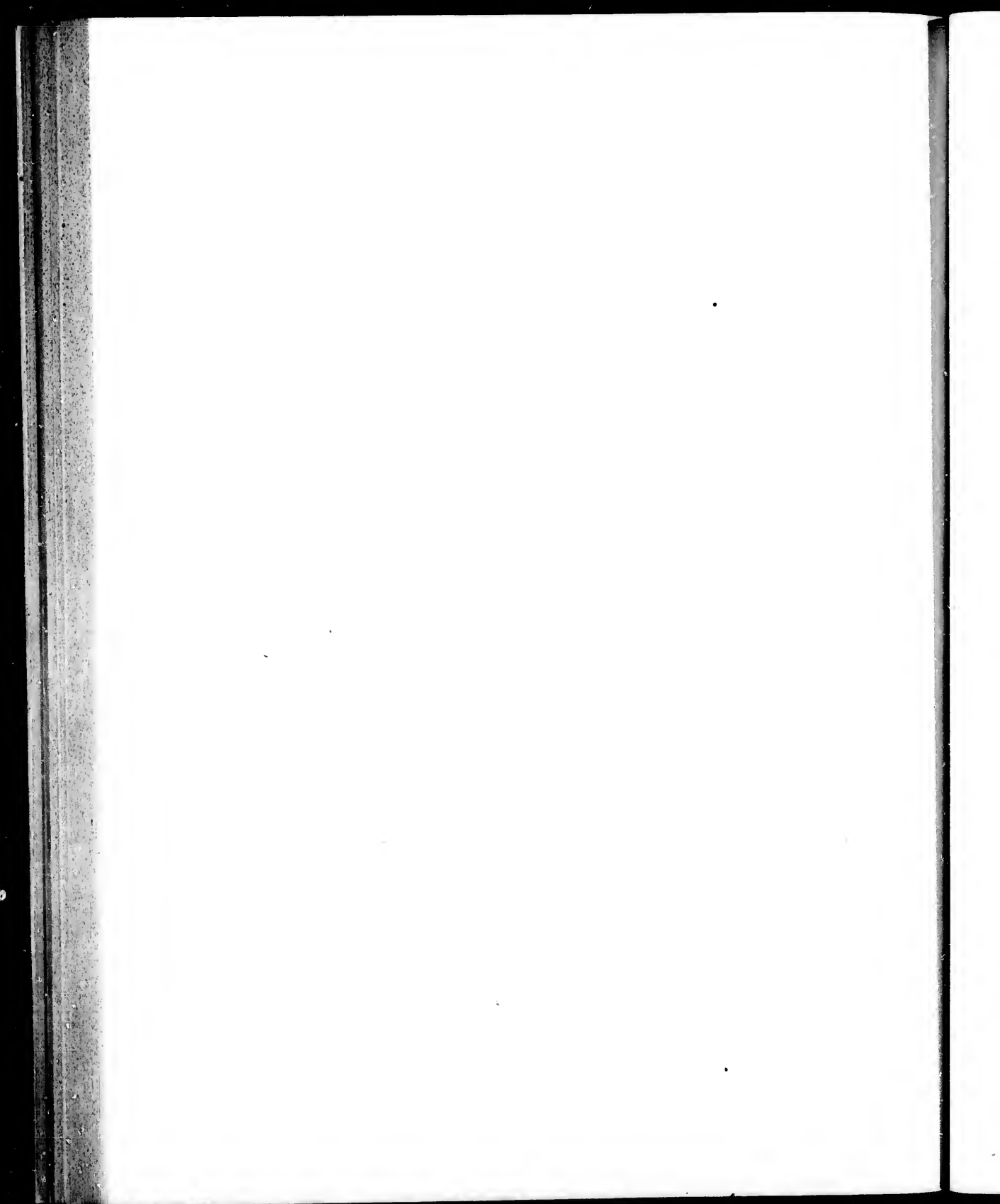
Question.—You are positive of that ?

Answer.—Positive of that.

Question.—You are positive that Rev. Mr. Watson did not refuse the appointment of Moderator ?

Answer.—I am positive the Rev. David Watson, when he was spoken about, pointed out that the proper man was not himself. But there was no motion to appoint the Rev. David Watson.

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did
No Remain



Question.—Did they appoint a clerk ?

Answer.—They appointed a clerk *pro tempore*, the Rev. Robert Burnet.

Question.—Previous, is it not true that the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland had passed a resolution resolving to adjourn the said meeting of Synod to the Victoria Skating Rink, Montreal ?

Answer.—They had, and under two protests, one from individual members of Synod and one from the notary.

Question.—Nevertheless, is it not true that the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland did immediately, previous to the appointment of the Rev. Robert Dobie, as you have heretofore stated, under authority of said resolution, adjourn the said Synod to the said Victoria Hall or Skating Rink ?

Answer.—A number of members of the Presbyterian Church of Canada in connection with the Church of Scotland left St. Paul's Church. Personally I do not know where they went. They went, I understand, with the intention of going to the Skating Rink.

Question.—Were you not present during the whole day at the meeting of said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland on the fifteenth of June, eighteen hundred and seventy-five, in St. Paul's Church ?

Answer.—I believe so.

Question.—Did you not then and there hear a resolution moved, seconded and carried, to the effect that the said Synod should adjourn to the Victoria Hall or Skating Rink, Montreal ?

(Objected to as being a matter of record, which will be shown by the records filed, if a fact.)

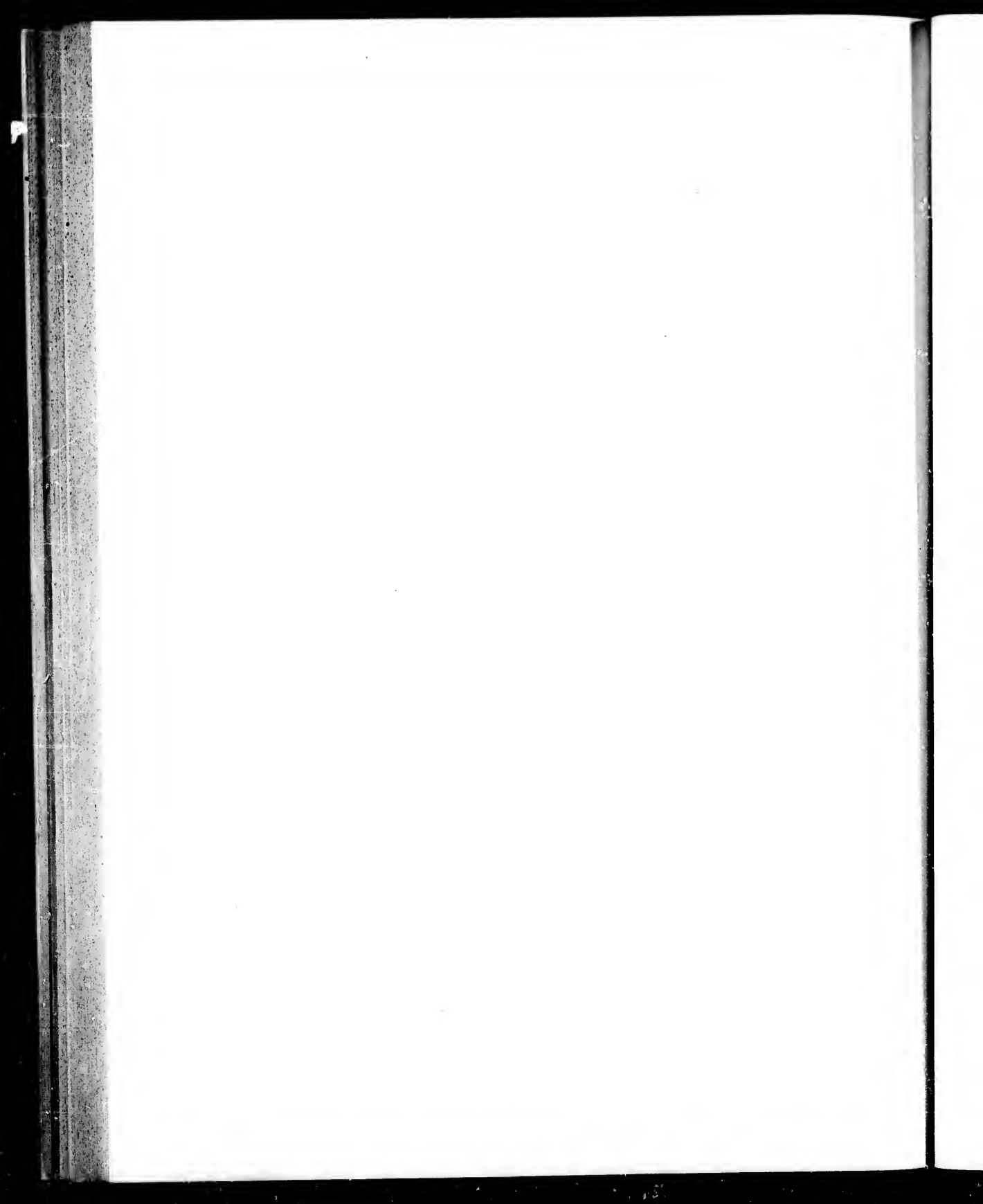
(Objection reserved by the parties.)

Answer.—I have no remembrance of it, and it is not on the record.

Question.—Is it not true that the resolution of the Synod was moved, seconded and carried on the fourteenth of June, to wit, the previous day, to the effect, as found on page 25 of the said minutes of Synod filed in this cause as Petitioner's exhibit B.B.B., that the said Synod did resolve to repair on the adjournment of the court, to wit, the said Synod, on the next morning, namely, the fifteenth of June, to the said Victoria Hall, commonly known as the Victoria Skating Rink, for the purposes mentioned in said resolution ?

Answer.—I believe so, and thereupon a dissent was entered.

Question.—Is it not true that it appears in the minutes of said Synod, to be found in the said exhibit B.B.B., on page 40 of the minutes of eighteen hundred and seventy-five, that the Synod adjourn, to meet in the Victoria



" Hall within this city, at ten minutes before eleven o'clock, for the purpose of uniting with the other Churches named in the minute adopted at yesterday's diet, to form the Presbyterian Church in Canada."

Answer.—It is true that a narrative is given here by the Clerk of what took place, according to their view, but the Synod did not adjourn; a number of members of the Synod adjourned.

Question.—Nevertheless, can you deny that the said resolution of Synod to adjourn was passed and carried by a large majority?

Answer.—I can only state what I have said before—it was carried under protest, and also in the face of a second or notorial protest which is not recorded in the minutes of Synod. That is the notorial protest I have already spoken of served by Mr. Cushing.

Question.—Can you deny that it was with a view of following up the said resolution to adjourn to the Skating Rink that the majority of members of said Synod went to the Victoria Skating Rink on the fifteenth of June, eighteen hundred and seventy-five?

(Objected to, this being a question upon which the witness under examination cannot supply the best testimony, the object of those so leaving the St. Paul's Church being capable of being best proved by themselves).

(Objection reserved by parties).

Answer.—Personally, I do not know. I decline to say anything about it.

Question.—You simply attended the meeting of Synod at that time as a spectator?

Answer.—As a member of the Presbyterian Church of Canada, in connection with the Church of Scotland, and one deeply interested in its preservation.

Question.—You were not a member of Synod, I suppose?

Answer.—I was not.

Question.—What congregation did you belong to then, on the fifteenth of June, eighteen hundred and seventy-five?

Answer.—Of St. Andrew's Church, Ottawa, the congregation I have already spoken of.

Question.—After Mr. Dobie was appointed by those who remained behind in St. Paul's Church, to the chair, did those present transact any business at all, except to adjourn?

Answer.—The minutes contain what was done. I know there was business done, but I must look at the minutes to see what it was. The minutes, Petitioner's Exhibit Z1, show what was subsequently done.

*Not a
Member of
Synod*

Question.—You mean the minutes marked Z1, filed by the Rev. Gavin Lang in this cause ?

Answer.—Yes.

Question.—Is it not a fact that those minutes purport to give the minutes of the Acts and Proceedings of the Presbyterian Church of Canada in connection with the Church of Scotland during the whole of the fifteenth day of June, eighteen hundred and seventy-five, even before the time when the majority of the members of Synod adjourned to the said Victoria Hall, and during the time when the Rev. J. H. Mackerras was Clerk of the said Synod ?

Answer.—All the papers, records and everything that was in the possession of the Clerk and of the majority who seceded, were carried away, so that the first part of the proceedings had simply to be a narrative of what took place. The minutes themselves only purport as a matter of record to give the general scope of the business done previous to the secession and what was done afterwards.

Question.—Who was the clerk of the Synod which met on the fifteenth of June, eighteen hundred and seventy-five, in the morning ?

Answer.—The Reverend John Mackerras.

Question.—Then had the Reverend Robert Burnet any authority to record the minutes of the said Synod, and sign his name as clerk of the proceedings of said Synod of June fifteenth, eighteen hundred and seventy five ?

Answer.—He was authorized by the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, which continued the session, to enter on the record the events which preceded that secession.

Question.—You mean that he was authorized by the ten men who remained behind to give a narrative of the proceedings of the said Synod ?

Answer.—I mean that he was authorized by the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, to do so.

Question.—You mean after the majorith had left to go to the Victoria Hall ?

Answer.—Yes.

Question.—Then as a matter of fact there were only nine men who authorized him so to do ?

Answer.—I refer to my previous answer.

Question.—Is it not within the power of a Church Court, to wit, a Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, to adjourn from one place where it holds its session to another ?

Answer.—I am not aware that it is.

Question.—Are you aware that it is not ?

Answer.—I am not. I may mention, however, as a matter of fact, that

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the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, did adjourn in June, eighteen hundred and seventy-four, to meet in Toronto in November of the same year.

Question.—You have stated in your examination in chief that there are at present ten ministers, three missionaries, and three retired ministers connected with the church which you say you belong to, and which Mr. Dobie, the Petitioner, claims he belongs to, and which you call the Presbyterian Church of Canada, in connection with the Church of Scotland, will you be kind enough to give me the names of the said ministers and missionaries ?

Answer.—Rev. John Davidson, Rev. John McDonald, Rev. David Watson, Rev. Robert Dobie, Rev. John Mollatt, Rev. Gavin Lang, Rev. A. J. Campbell, Rev. Robert Burnet, Rev. William Simpson, Rev. Thomas McPherson, and Rev. Hugh Nevin. The three last ones are retired ministers.

The missionaries are Rev. Mr. Hutchinson, Rev. H. D. Steele, Rev. A. Shand and Rev. Mr. Fuller.

Question.—The Rev. Mr. Mollatt whom you have mentioned, was he one of the ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, in June, eighteen hundred and seventy-five, at the time of said union ?

Answer.—I really could not tell you.

Question.—Was the Rev. A. J. Campbell a minister of the Presbyterian Church of Canada, in connection with the Church of Scotland, on the fifteenth of June, eighteen hundred and seventy-five ?

Answer.—No, I think not.

Question.—He has been brought in since, then ?

Answer.—He was admitted by ordination since.

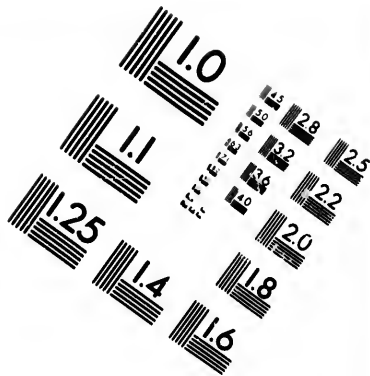
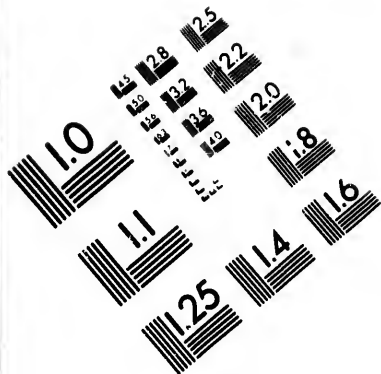
Question.—The Mr. Shand whom you have mentioned as a missionary, was a missionary of the Presbyterian Church of Canada, in connection with the Church of Scotland, on the fifteenth of June, eighteen hundred and seventy-five ?

Answer.—I believe not.

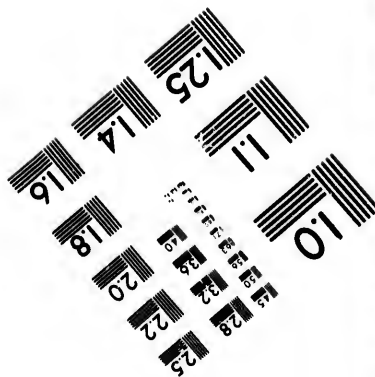
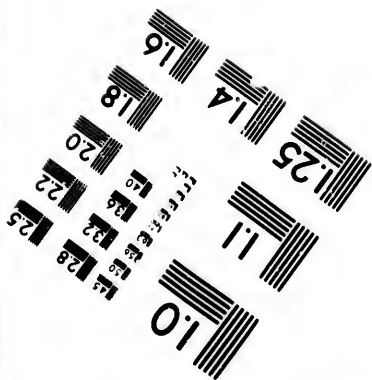
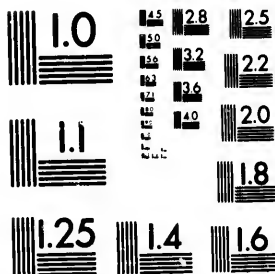
Question.—Mr. Hutchinson and Mr. Fuller, were they missionaries of the Presbyterian Church of Canada in connection with the Church of Scotland, on the fifteenth of June, eighteen hundred and seventy-five ?

Answer.—I think Mr. Hutchinson was, but I am not sure. Mr. Fuller was not.

Question.—So that as a matter of fact there are only at present adhering to the said Rev. Robert Dobie, and those whom he represents, seven ministers and three retired ministers who were ministers of the Presbyterian Church of

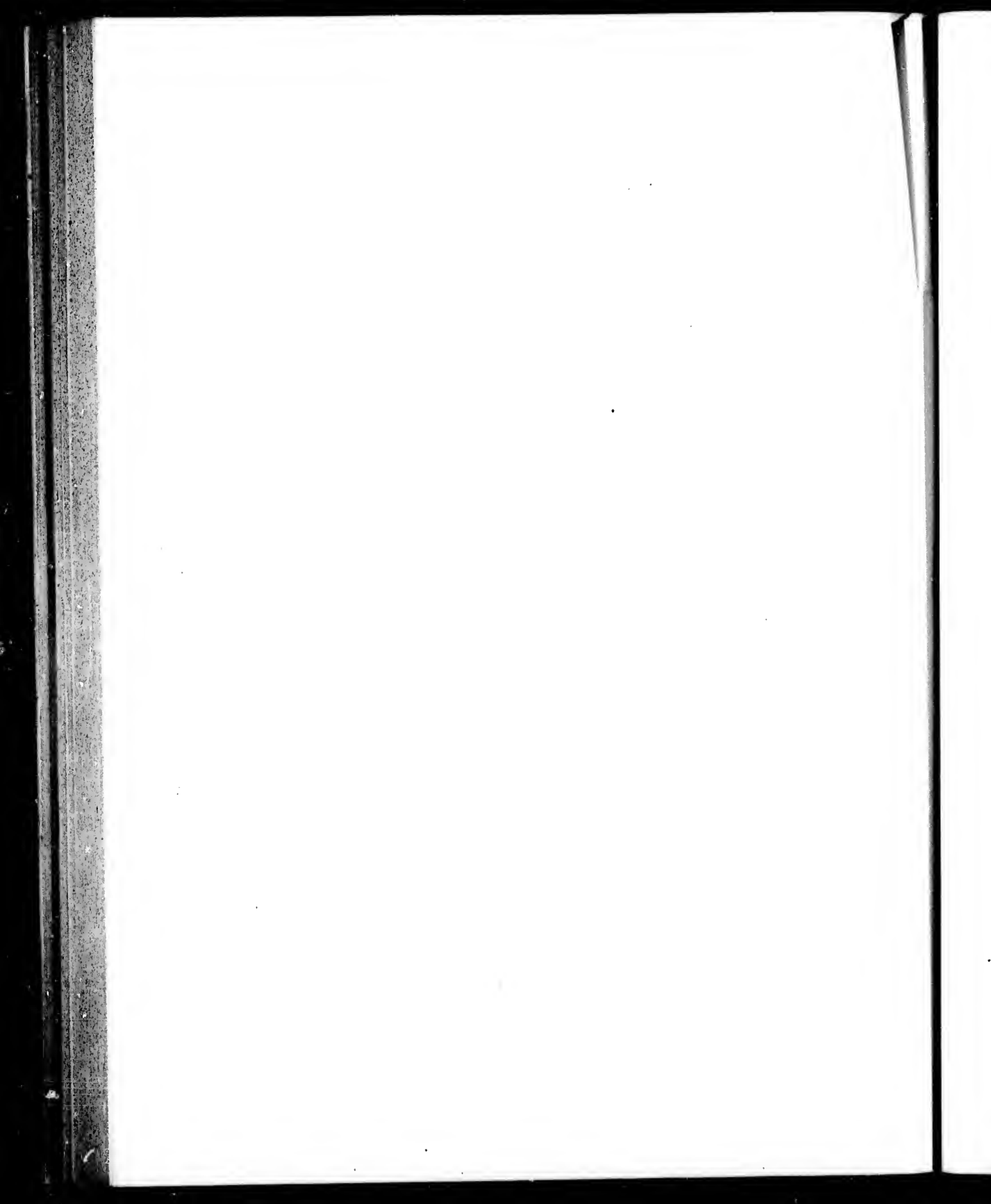


**IMAGE EVALUATION
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01



Canada, in connection with the Church of Scotland, on the fifteenth day of June, eighteen hundred and seventy-five, the date of said union?

Answer.—Apparently so.

Question.—And one missionary that you are sure of, who belonged to the Presbyterian Church of Canada, in connection with the Church of Scotland, at that date?

Answer.—Yes.

Question.—You have stated in your examination in chief that to the best of your belief there are at present between thirty-six and forty congregations in connection with the Petitioner, Rev. Robert Dobie, and what he claims to be the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland; will you be kind enough to mention where these congregations are to be found?

Answer.—I cannot mention them all; I will give you some of them. At Collingwood a new Church has been put up for our adherents there that costs six thousand dollars. At Thorah they have put up a Church within the last year that cost thirteen thousand dollars. At Perth we have a missionary with three charges. One of the congregations worships in the Town Hall, the Church having been taken away; the others worship in Churches. There are three stations there served by the missionary at Perth. I should have mentioned that at Collingwood there are six stations served by the minister there. In Lancaster we have a Church and a missionary. There is St. Andrew's Church, Montreal, here, the congregation of Bayfield, then there is North Williamsburg, Williamstown, London, the congregation at Galt, and there are others which I do not remember at this moment.

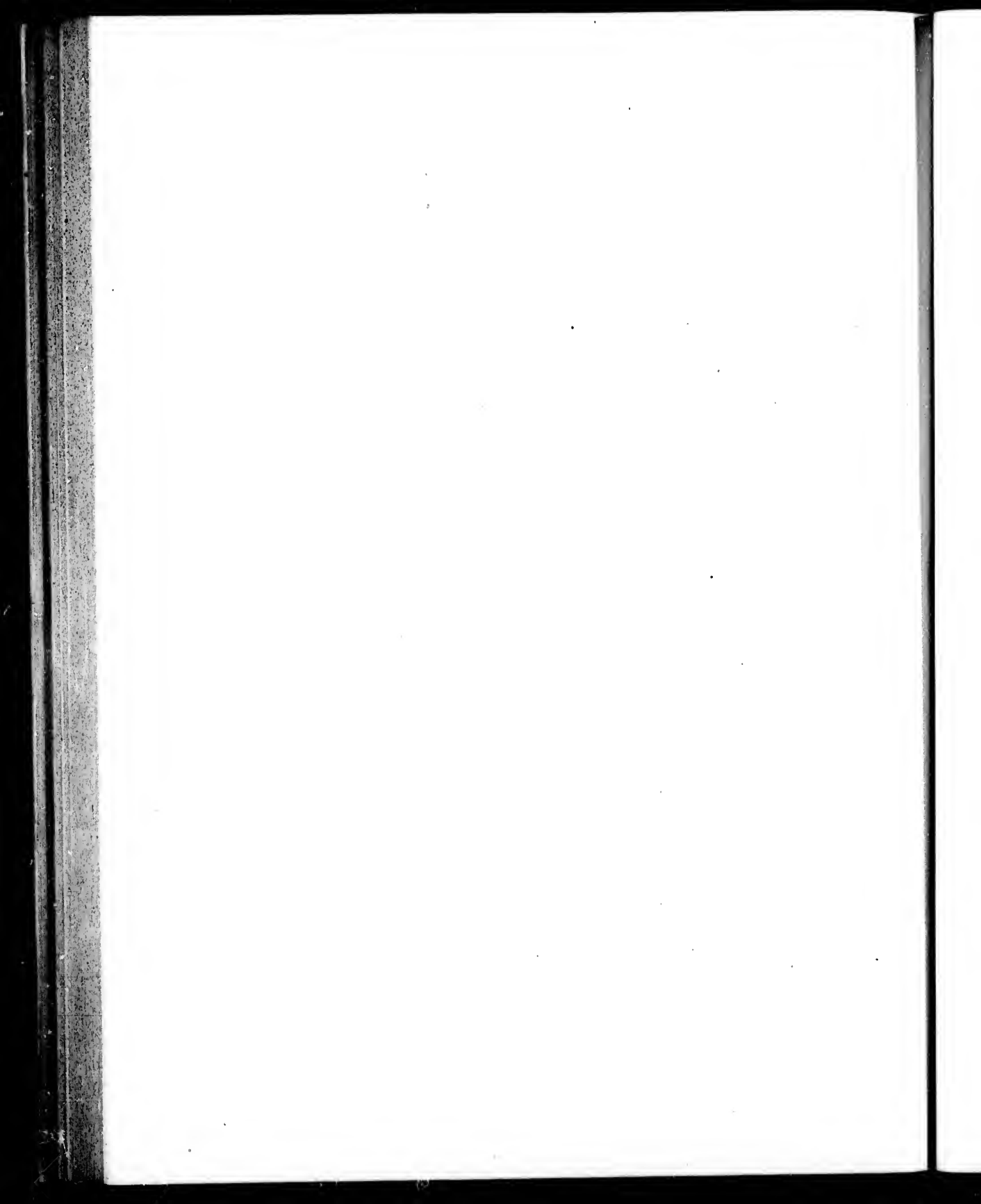
Question.—You have mentioned nine congregations. How do you account for the fact that you have stated there were about thirty-six or forty, and you being able to give only the names of nine?

Answer.—I cannot remember the names; I am not the agent of the Church. There is Cote St. George, for instance, that has just occurred to me.

Question.—Is it not a fact that according to Presbyterian procedure and polity, congregations with their representatives or their presbytery rolls are always reported to the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland?

Answer.—The presbytery roll is made up, but there is a large number of congregations which have no ministers, and there has been a great deal of difficulty in making them up, because there is hardly a Church connected with our Church that has not been attacked by a law-suit for the very purpose of depriving the said Synod of what these gentlemen are pleased to call a quorum.

10
Ministers



Question.—Then, if you have thirty-six or forty congregations, should they not appear in the minutes which the said Rev. Gavin Lang has filed in this cause ?

Answer.—No.

Question.—Why not ?

Answer.—Because the roll that is given is a mere matter of convenience in the work. You might just as well ask us to put in lists of Committees ?

Question.—Did not the congregations of the Presbyterian Church of Canada, in connection with the Church of Scotland, always appear in the minutes of the Synod previous to the fifteenth of June, eighteen hundred and seventy-five, and from eighteen hundred and thirty-four ?

Answer.—No. In eighteen hundred and thirty-five there was a roll appeared which was made up from other papers, as is stated explicitly in the minute. From and during eighteen hundred and thirty-one to eighteen hundred and thirty-four there were no rolls, although the rolls were filled in, and the reasons were given as a mere matter of convenience. In eighteen hundred and thirty-three the statement appears: "No roll of Synod appears to have been preserved hitherto, either in record or in print." There were no rolls in the written records. I never heard the rolls of presbyteries submitted to the Synod. I heard the names called over in order that those present might answer that they were present. I have never seen the written records kept by the Clerk up to eighteen hundred and seventy-five, so that upon that point I cannot speak.

Question.—What were the said names called over from ?

Answer.—From what was said to be the Synod roll made up from Presbytery rolls.

Question.—Then presbytery rolls were supplied to the Synod ?

Answer.—I do not know that. I said exactly what I do know ; I cannot say any more.

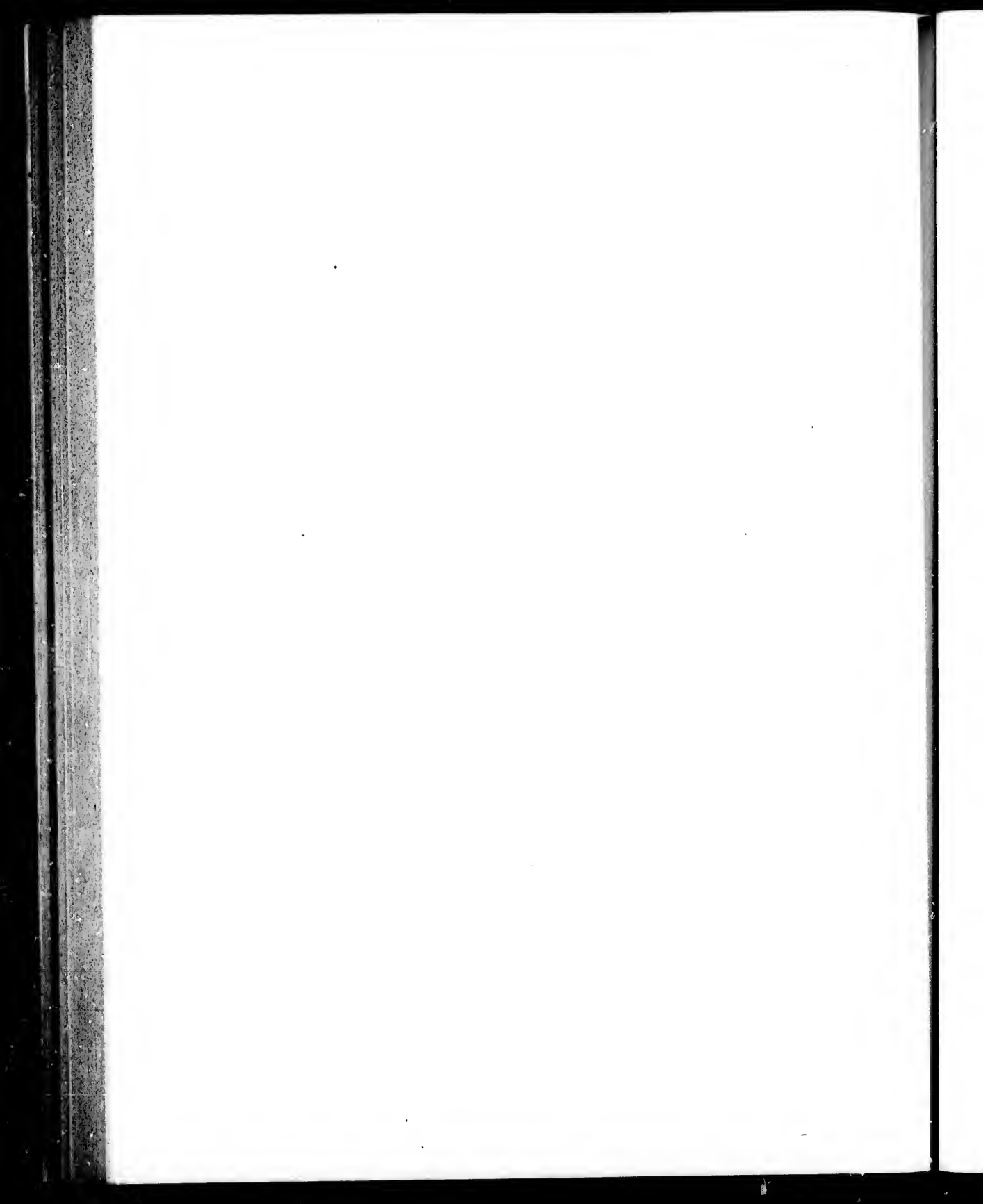
Question.—Did you never hear the Clerk of the Synod read out in regular order the roll of the Presbytery of Montreal, and then that of the next presbytery, *et cetera* ?

Answer.—I said distinctly the roll was called over for the members present to answer to their names.

Question.—And those names were the representatives of congregations, were they not ?

Answer.—I presume so ; they must have been.

Question.—Is it not a fact then that the said minutes filed by the Rev. Gavin Lang ought to show the said rolls of presbyteries, and, secondly, the different congregations you have spoken of ?



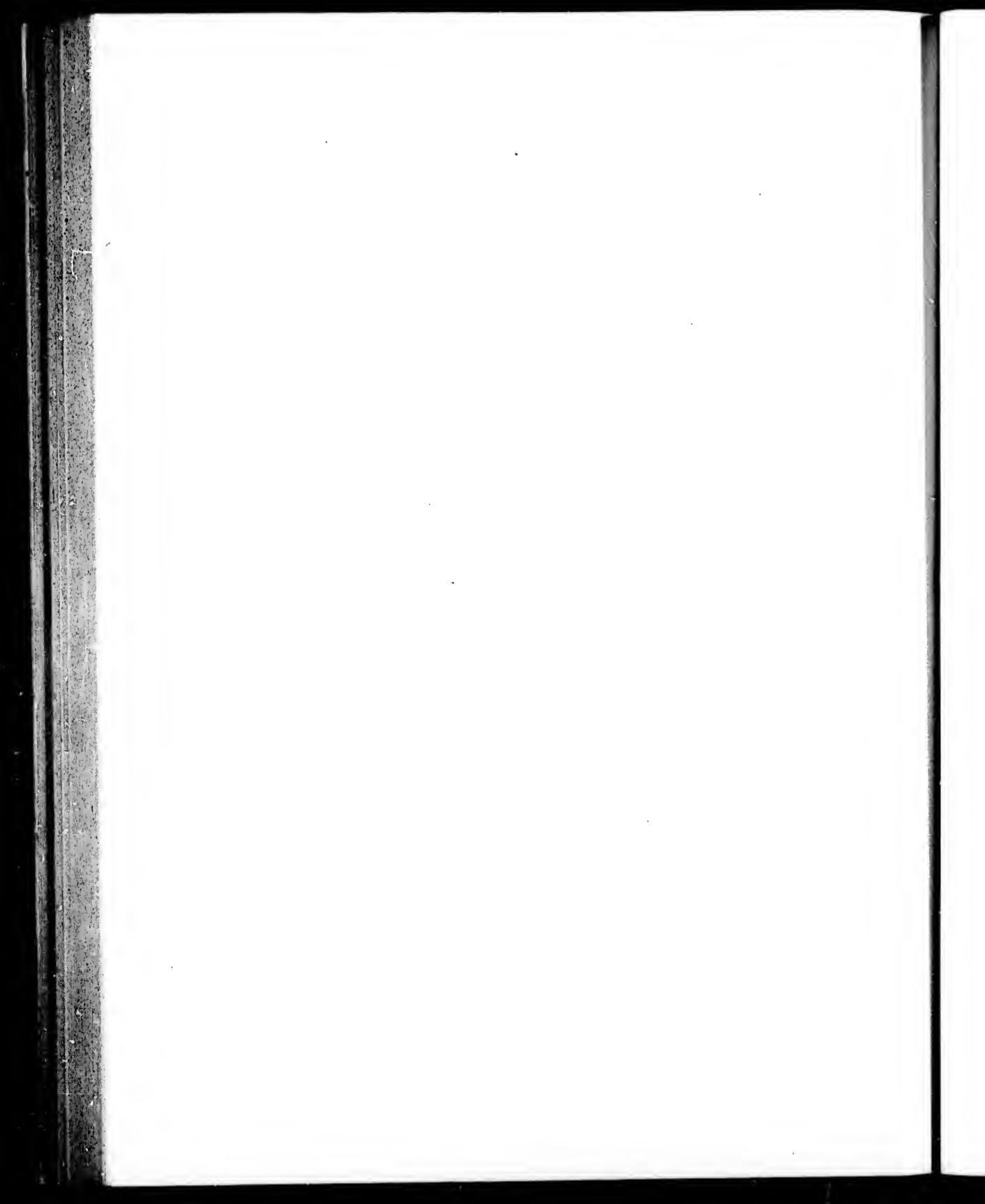
Answer—I do not think it. Not having acted as either Synod or Presbytery Clerk, or in any other capacity of that kind, I cannot say any more than I have said.

The examination of this witness is adjourned.

And on this fourth day of July, of the year aforesaid, reappeared the said witness, DOUGLAS BRYMNER, who continued his evidence as follows:

Question.—Can you give me now the twenty instances which you referred to in the previous part of your examination; and which you stated you would look up and give this morning?

Answer.—The expression twenty meant simply that I could give instances, that is, an indefinite number. I find on examining the minutes BBB, filed in this cause, from the year eighteen hundred and fifty-five down to eighteen hundred and seventy-five, that one hundred and fifty-eight ministers and elders from the said Church and from other Churches were asked to sit and deliberate with the Synod. I find that in eighteen hundred and fifty-six the Rev. Wm. Snodgrass, then a minister in Prince Edward Island, being present, was appointed on the twenty-ninth of May to preach by the Synod, as will be seen at page 18 of the Synod minutes for that year. On the following day, the thirtieth of May, as will be seen on the same page, Mr. Snodgrass attended the said Synod as a delegate from the Synod of Nova Scotia, was introduced to the Synod and received a cordial welcome. At page 24 of the said Exhibit BBB, of the same year, eighteen hundred and fifty-six, I find that the Rev. Wm. Snodgrass seconded a motion regarding the commutation funds. I find at page 29 of the said minutes of the same year, that Mr. Snodgrass moved a resolution regarding Queen's College. I find in eighteen hundred and fifty-seven of said Synod minutes BBB, page 11, of that year, that Rev. Wm. Donald, a minister of the Synod of New Brunswick, seconded a motion, as appears at page 20 of the same minutes; seconded another motion as appears at page 25 of the said minutes; and seconded a third motion as appears at page 27 of the said minutes. I find in Synod minutes BBB for eighteen hundred and seventy-three, and at page 26 thereof, that Rev. G. M. Grant, of St. Mathew's Church, Halifax, was invited to sit and deliberate. At page 48 of said Synod minutes I find that the Synod expressed their indebtedness to the Rev. George M. Grant, Halifax, "for the valuable services which, by his wise counsels and stirring eloquence, he has rendered at the important deliberations of the present meeting." I find at page 49 of the said minutes that Rev. G. M. Grant moved, seconded by Mr.



MacDonell, a vote of thanks to certain parties. I have now before me a memorandum containing dates and pages taken from the Synod minutes BBB, from the year eighteen hundred and fifty-six down to the year eighteen hundred and seventy-five, showing that ministers and elders of various Churches were asked to sit and deliberate, which dates and pages I am ready to give if required.

Question.—Is it not true that Rev. Dr. Snodgrass, whom you have referred to, was a corresponding member of the said Synod, and that as such his name appeared on its roll as a member thereof?

(Objected to as irrelevant and as filling up the record with matters not 10 pertinent to the issue).

(Objection reserved by parties).

Answer.—The Rev. Wm. Snodgrass was appointed a delegate from the Synod of Nova Scotia, but his name did not appear on the roll of Synod.

Question.—What I asked you was, whether he was or not a corresponding member of the Synod, and you have not answered that question?

Answer.—The exact words of the minute on page 18 of Synod minutes BBB, are these: "There was produced and read an extract minute of the " Synod of Nova Scotia of date July seventh, eighteen hundred and fifty-five, " appointing the Rev. Wm. Snodgrass, minister of Charlottetown, Prince Ed- 20
" ward Island, delegate from that Synod to attend this meeting of Synod."

Question.—Was the Rev. Wm Donald, of whom you have spoken, a corresponding member of the said Synod?

Answer.—I believe so. The minutes says his name was added to the roll as a corresponding member.

Question.—What about the Rev. George M. Grant?

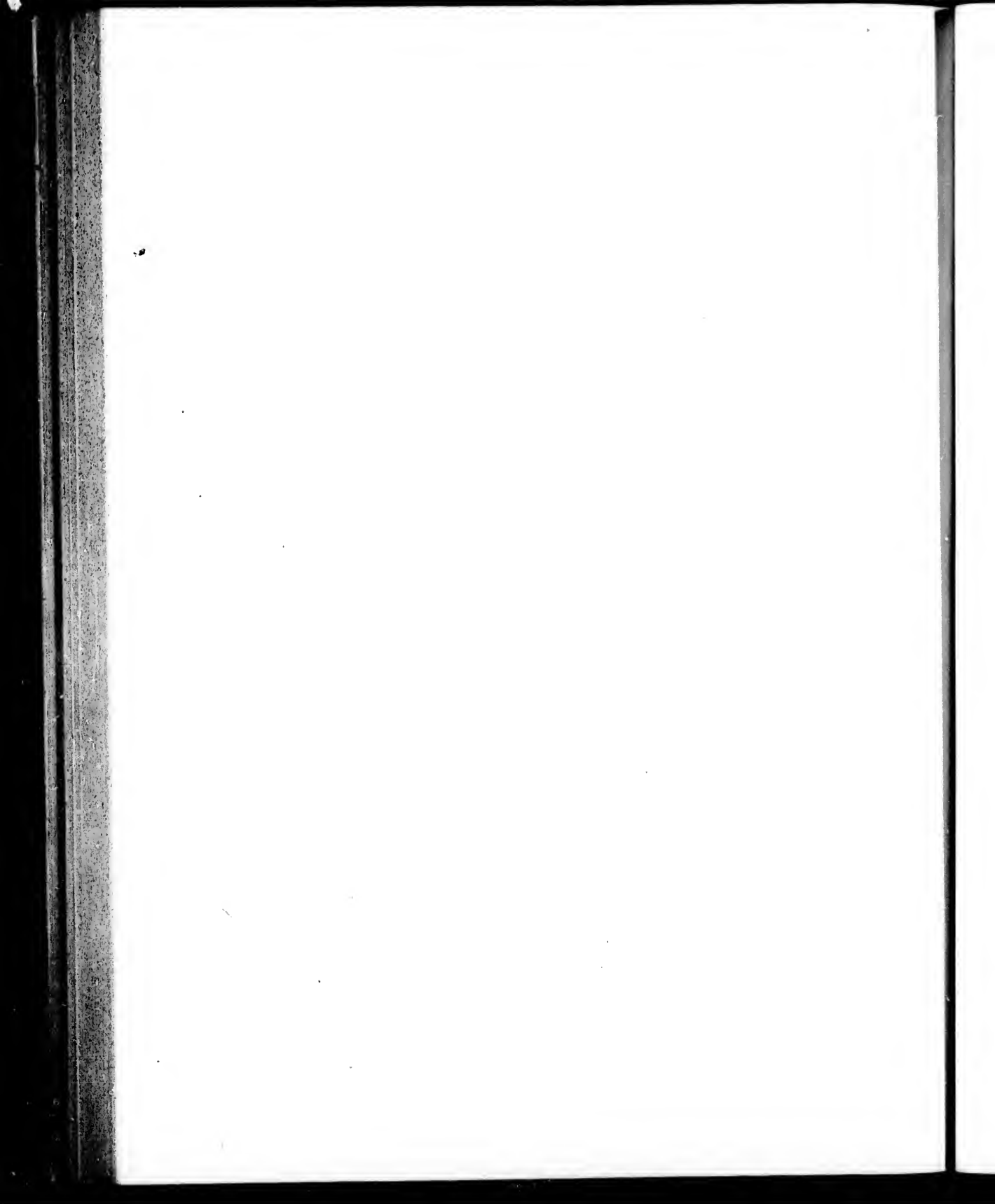
Answer.—The Rev. George M. Grant being present, was asked to sit and deliberate.

Question.—Can you show any law with reference to the rights of persons who are asked to sit and deliberate in the Synod of the Presbyterian 30 Church of Canada in connection with the Church of Scotland?

Answer.—I have examined the Synod minutes B.B.B., filed in this cause, carefully. I can find no law on the subject, either one way or another.

Question.—Is it not a fact that the form of asking strangers who are present to sit and deliberate has always been understood to be merely a matter of courtesy, and to give such person no right to become a member of the Synod or to vote in the said Synod?

Answer.—I can state, as a matter of fact, that many of those who were asked to sit and deliberate took part in the proceedings by speaking on the



questions under discussion. As to being members of Synod, it certainly did not involve that.

Question.—Do the minutes filed by the Rev. Gavin Lang show the number of congregations you have referred to?

Answer.—No, I believe not. The Synod of the Presbyterian Church of Canada in connection with the Church of Scotland claims ecclesiastical jurisdiction over all the congregations which were in existence and in connection with the said Synod on the fifteenth of June, eighteen hundred and seventy-five, whether they went into the union or not.

Question.—You cannot give the names then of any other congregations except those you have just mentioned? 10

Answer.—These are some of them. I do not remember all the names; as I said yesterday, I am not the Church agent. But there are a number of others. Each missionary and each minister has on an average charge of about three congregations.

Question.—The congregations you have mentioned, I suppose, did not go into the union in eighteen hundred and seventy-five, since you claim them as belonging to Mr. Dobie and his friends?

Answer.—There are congregations which have been deprived of their Churches on the grounds of the Acts of Ontario and Quebec, called the Union Acts. Some of them are worshipping in school houses and in other buildings, having been obliged to yield to *force majeure*. 20

Question.—The congregations you have mentioned, I suppose, did not go into the union in eighteen hundred and seventy-five, since you claim them as belonging to Mr. Dobie and his friends?

Answer.—The particular congregations I have mentioned are composed of members and adherents of the Presbyterian Church of Canada in connection with the Church of Scotland, whether the particular Church building in which they worshipped at that time was taken possession of by those who seceded or not. 30

Question.—I did not ask you about the Church buildings; I asked you in effect whether the congregations you have mentioned did or did not go into the union in question in this cause?

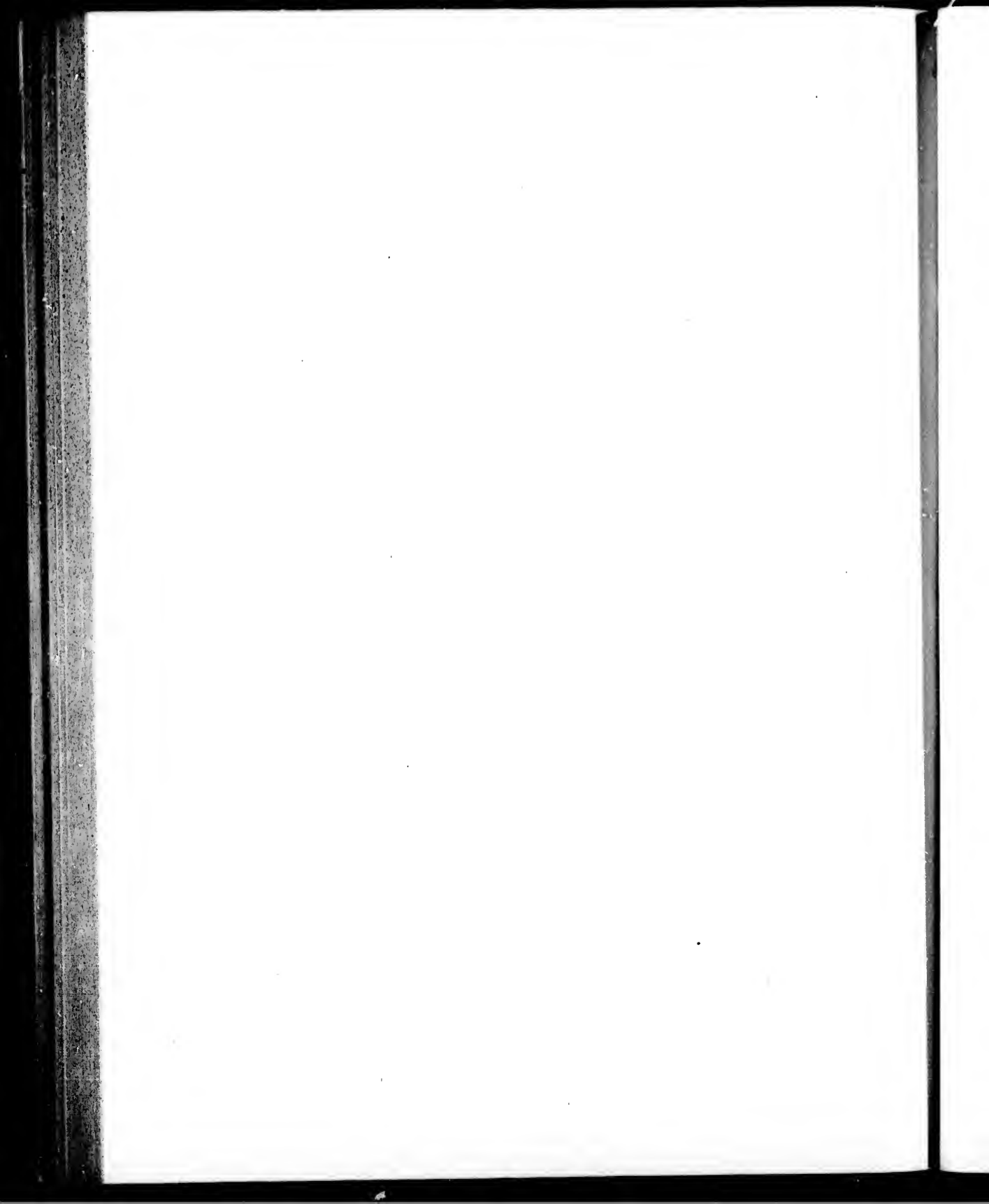
Answer.—I can give no further answer than the one I have already given. I can state distinctly that those people did not go into the union.

Question.—I have asked you about congregations, not about individual people?

Answer.—Those congregations did not go into the union?

Question.—Do you mean by that, that the said congregations by vote decided to remain out of the union? 40

Not
Members
of Synod



Answer.—They did remain out of the union.

Question.—Do you mean to say that the whole of said congregations remained out of the union having decided by a vote of the congregation ?

Answer.—I have no personal knowledge.

Question.—Seeing then that you have no personal knowledge, how can you undertake to swear that the said congregations did not remain out of the union ?

Answer.—I have letters from, I suppose, nearly all the congregations, if not all, and very many individuals who have never been able to form themselves into congregations for want of ministers. 10

Question.—Then your only knowledge is derived from certain letters you have in your possession ?

Answer.—Letters and other information which has come into my possession.

Question.—You have mentioned Perth, London, Williamstown and Galt as congregations that now belong to the Synod which you call the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland : are these the same congregations that appeared on the roll of Synod of the Presbyterian Church of Canada in connection with the Church of Scotland on the fifteenth of June, eighteen hundred and seventy-five ? 20

Answer.—They are the same under a different minister.

Question.—Are you not aware that it is only a mere section of some of these congregations that you have just referred to who have not gone into the said union of Churches ?

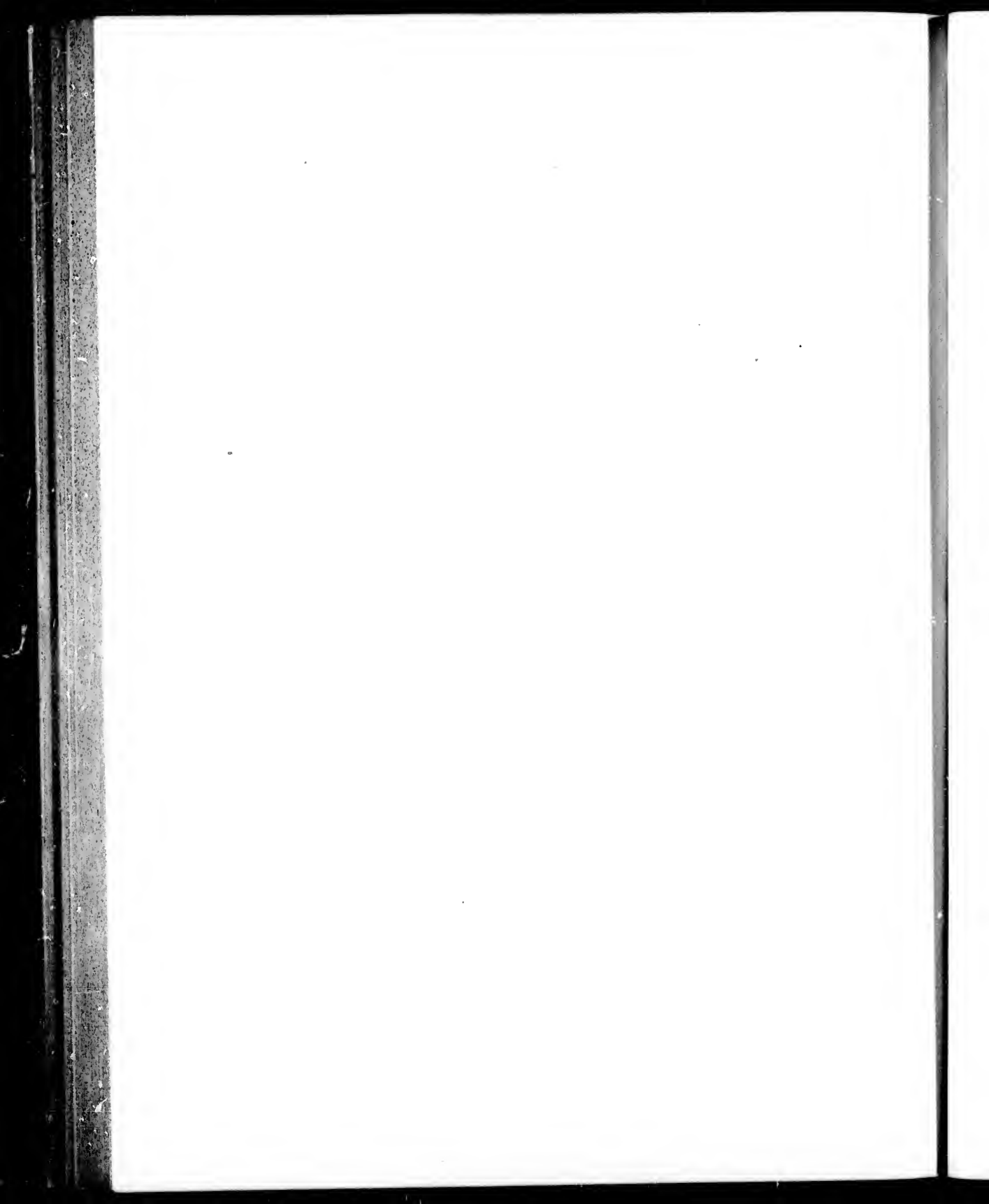
Answer.—In the case of London there was a majority of the congregation refused to enter the union at a vote which was taken, and who determined to remain in connection with the Presbyterian Church of Canada in connection with the Church of Scotland, and have continued since. In the congregation of Perth there was a majority claimed by both sides, those who resolved to secede from the Presbyterian Church of Canada in connection with 30 the Church of Scotland, and those who determined to maintain their connection with the Presbyterian Church of Canada in connection with the Church of Scotland.

Question.—Have you any personal knowledge on which side the majority was ?

Answer.—I have not.

Question.—Now, with regard to Williamstown ?

Answer.—I am not perfectly acquainted with the facts connected with Williamstown. In Galt, we have a mission ; missionary services have been conducted there. I do not believe there was a vote taken at all. 40



Question.—So you do not know whether the congregation at Galt went into the union or not?

Answer.—I mean to say that we have a mission there composed of members of the Galt congregation, still holding connection with the Presbyterian Church of Canada in connection with the Church of Scotland.

Question.—Nevertheless, you stated a minute ago that the congregation at Galt, which you claimed was the same congregation as was on the roll of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland on the fifteenth of June, eighteen hundred and seventy-five; now you state you do not know whether that congregation went into the union or not by vote; how do you reconcile your two statements? 10

Answer.—The two statements are perfectly consistent with each other.

Question.—Before the fifteenth of June, eighteen hundred and seventy-five, was there any congregation at Collingwood on the roll of the Presbyterian Church of Canada in connection with the Church of Scotland?

Answer.—The congregation at Collingwood was known as the congregation of Eldon. As a matter of convenience, when the new Church was to be built, they built it in the Town of Collingwood, still retaining the Church in Eldon.

Question.—How far away is Eldon from Collingwood? 20

Answer.—I could not tell you.

Question.—Is it over a hundred miles?

Answer.—No, I think not. From what I am told by the elders there, it is quite close.

Question.—So that there was no Church at Collingwood on the fifteenth of June, eighteen hundred and seventy-five, in connection with the said Church?

Answer.—There was no Church building.

Question.—And no congregation on the roll of Synod?

Answer.—Not under that name. 30

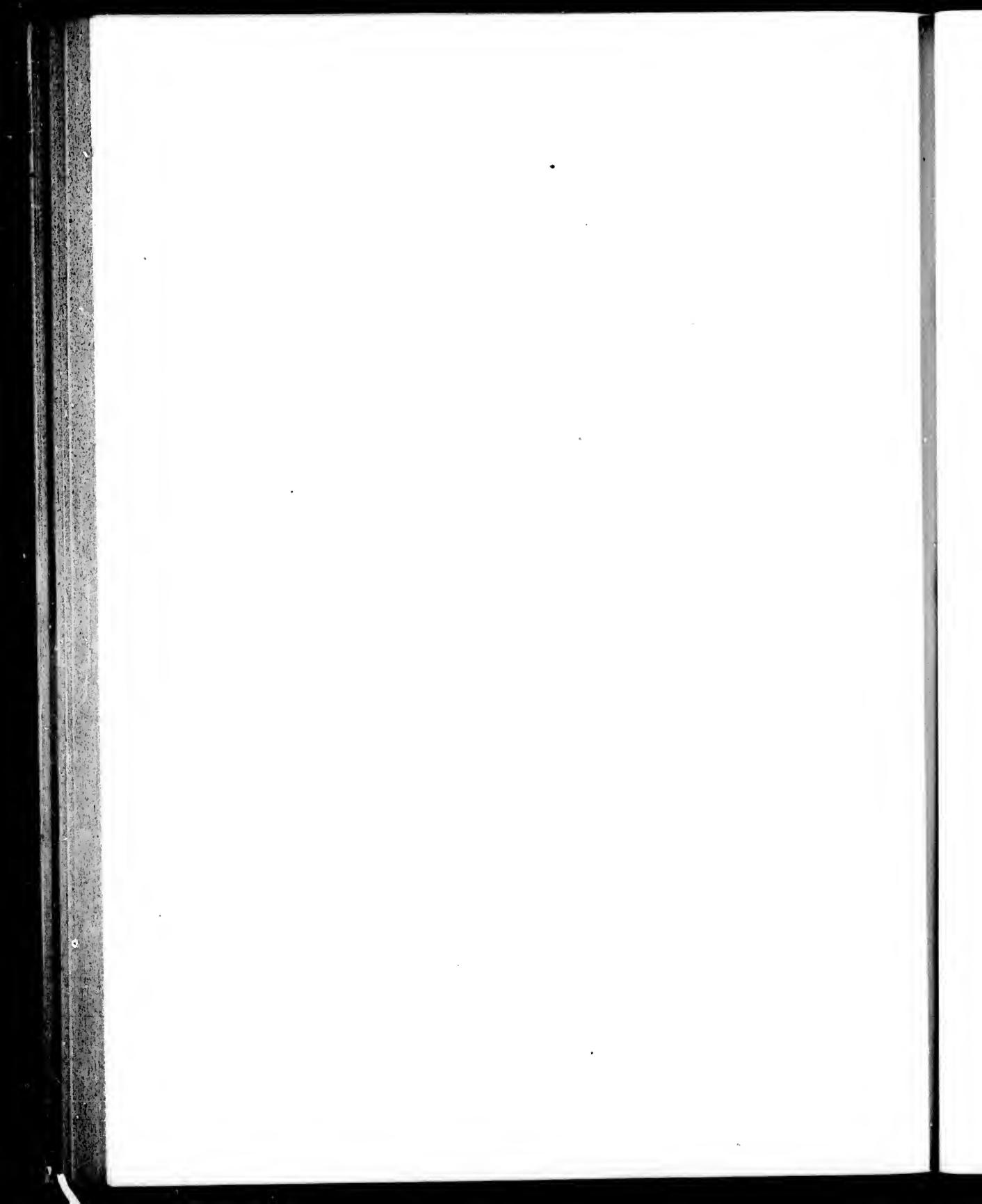
Question.—Do you mean to say that the congregation at Eldon is the same congregation as the congregation at Collingwood?

Answer.—I am very sure that the place is Eldon. At all events, the congregation is in the same township that Collingwood is in, whether that is Eldon or not.

Question.—Then you do not know whether the congregation you have spoken of at Eldon is the same congregation as the congregation you have spoken of at Collingwood?

Answer.—I have told you to the best of my recollection.

Question.—You do not know, I suppose? 40



Answer.—I believe so. I may be mistaken as to the name, but at all events the congregation of the same township in which Collingwood is situated was the congregation which built the Church at Collingwood.

Question.—Do you claim to have a congregation at Toronto?

Answer.—No; if we could get a minister we would have one.

Question.—I suppose you have no personal knowledge as to the congregations you have spoken of, as to whether they have Kirk sessions, for instance, in every case?

Answer.—Well, there seem to be regular returns made to the Synod of representative elders from many of many. 10

Question.—If, then, regular returns are made to Synod from many of them, can you not show me from the minutes of Synod how many returns from such congregations are entered on the roll of said minutes?

Answer.—I cannot.

Question.—Why not, if they are entered?

Answer.—Because the minutes will show.

Question.—Did you not say a little while ago that the said minutes would not show the congregations which you claim as belonging to what you call the Synod of the Presbyterian Church of Scotland?

Answer.—My last answer was: the Synod minutes will show all I can 20 say on the subject.

Question.—I see on the said minutes produced by the Rev. Gavin Lang as Petitioner's exhibit Z 1, at page 39, that the name of Mr. T. A. McLean is entered on the sederunt as being a member of Synod; do you know the said Mr. McLean?

Answer.—I do.

Question.—Can you tell me what Kirk session or congregation he represented?

Answer.—I cannot.

Question.—You know he lives in Toronto? 30

Answer.—Yes.

Question.—Previous to and on the fifteenth of June, eighteen hundred and seventy-five, in what Provinces were the congregations of the Presbyterian Church of Canada in connection with the Church of Scotland?

Answer.—In the Provinces of Quebec and Ontario.

Question.—Now you have stated in your examination-in-chief, with the view of showing what a large body you and the said Mr. Dobie represent, I suppose, that you have adherents throughout the whole Dominion?

Answer.—If I used Dominion, it is the Provinces I meant. I meant the Provinces of Quebec and Ontario. 40

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Question.—You have stated in your examination-in-chief that the formation of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland took place at the instance of Sir George Murray; did Sir George Murray advise that the Synod should be composed of only ministers and adherents of the Church of Scotland in Scotland, or did he wish that all Presbyterians should be embraced in it?

Answer.—He wished that all Presbyterians should be embraced in it. In the Synod minutes for eighteen hundred and thirty-one, 33, at page 13, we'll be found the letter referred to, quoted on page 14 of the resolution of the Synod of the Presbyterian Church of Canada in connection with the Church of 10 Scotland.

Question.—When were payments first made ministers of the Presbyterian Church of Canada in connection with the Church of Scotland from the proceeds of the Clergy Reserves?

Answer.—Up to eighteen hundred and thirty-one there was no Synod of the Presbyterian Church of Canada in connection with the Church of Scotland. Ministers of the Church, I think, received in first in eighteen hundred and twenty-five, and they became entitled to it, upon their congregations building a suitable place of worship and declaring that they acknowledged the jurisdiction of the Church of Scotland, and upon that ground the minister 20 received the allowance.

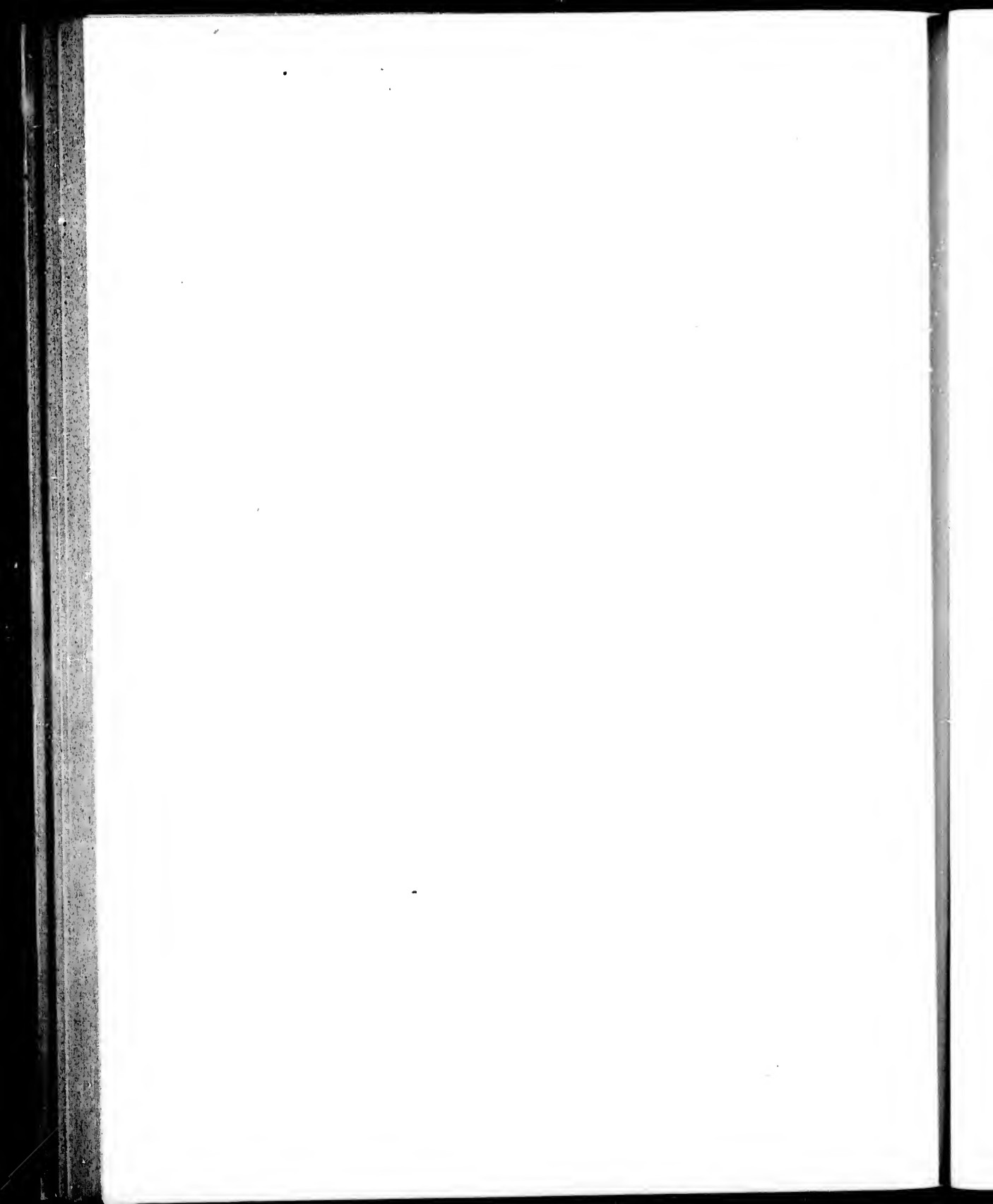
Question.—When did ministers of the Presbyterian Church of Canada in connection with the Church of Scotland first receive from the proceeds of the Clergy Reserves?

Answer.—From eighteen hundred and thirty-five ministers did. The Synod itself was constituted in eighteen hundred and thirty-one.

Question.—You have said in your examination-in-chief that it was because ministers of the Presbyterian Church of Canada in connection with the Church of Scotland were in connection with the Church of Scotland that in eighteen hundred and fifty-five they had claims upon the proceeds of the 30 Clergy Reserves, and that it was the commutation of those claims that originated the Temporalities' Fund in question in this cause; did all the ministers on the Synod roll at the date of the passing of the Act, the eighteenth of December, eighteen hundred and fifty-four, obtain recognition by the Government as having a right to share in these funds? if not, why?

Answer.—The Imperial Act of eighteen hundred and fifty-three defined those who had a claim to be continued in the enjoyment of the allowances from the Government from what was known as the Clergy Reserves. That was passed on the ninth of May, eighteen hundred and fifty-three. Any minister of the Church of Scotland in Canada, according to the Statute of eighteen 40

Sir Geo Murray
all
Presby
terians



hundred and forty who was receiving an allowance under that Statute, became entitled to its continuance for life. By the Imperial Act of eighteen hundred and fifty-three and the Provincial Act of eighteen hundred and fifty-five, provision was made for commutation. All those on the ninth of May, eighteen hundred and fifty-three, who were receiving this allowance, were entitled to commute. Between the ninth of May, eighteen hundred and fifty-three, and the meeting of Synod in January, eighteen hundred and fifty-five, eleven ministers had been placed on the Synod roll who, by virtue of the Imperial Act of eighteen hundred and fifty-three, were declared not entitled to commute, and consequently did not commute.

Question.—Then these eleven were not recognized by the Government as having right to a share of this Fund? 10

Answer.—I presume not. The date was specific—the ninth of May, eighteen hundred and fifty-three. They must have been on the list of those receiving allowances.

Question.—What is the nature of the connection between the Presbyterian Church of Canada in connection with the Church of Scotland and the Church of Scotland in Scotland, and what was it up to the fifteenth of June, eighteen hundred and seventy-five?

Answer.—The nature of the connection is set out repeatedly in the Synod minutes, of which I will furnish a list now if you choose. I specially refer to the Synod's resolutions of eighteen hundred and fifty-one, to be found at pages 24 and 26 of Synod minutes for that year, and which are filed in this cause. 20

Question.—Is not the nature of the said union and the meaning of the words in her name, namely, "in connection with the Church of Scotland," defined by act of her Synod passed in the year eighteen hundred and forty-four, to be found in said Synod minutes for that year at page 15; has the said Act ever been repealed?

Answer.—The Act was in force on the fifteenth of June, eighteen hundred and seventy-five. 30

Question.—Has it ever been repealed?

Answer.—It has been repealed since that date.

Question.—By whom?

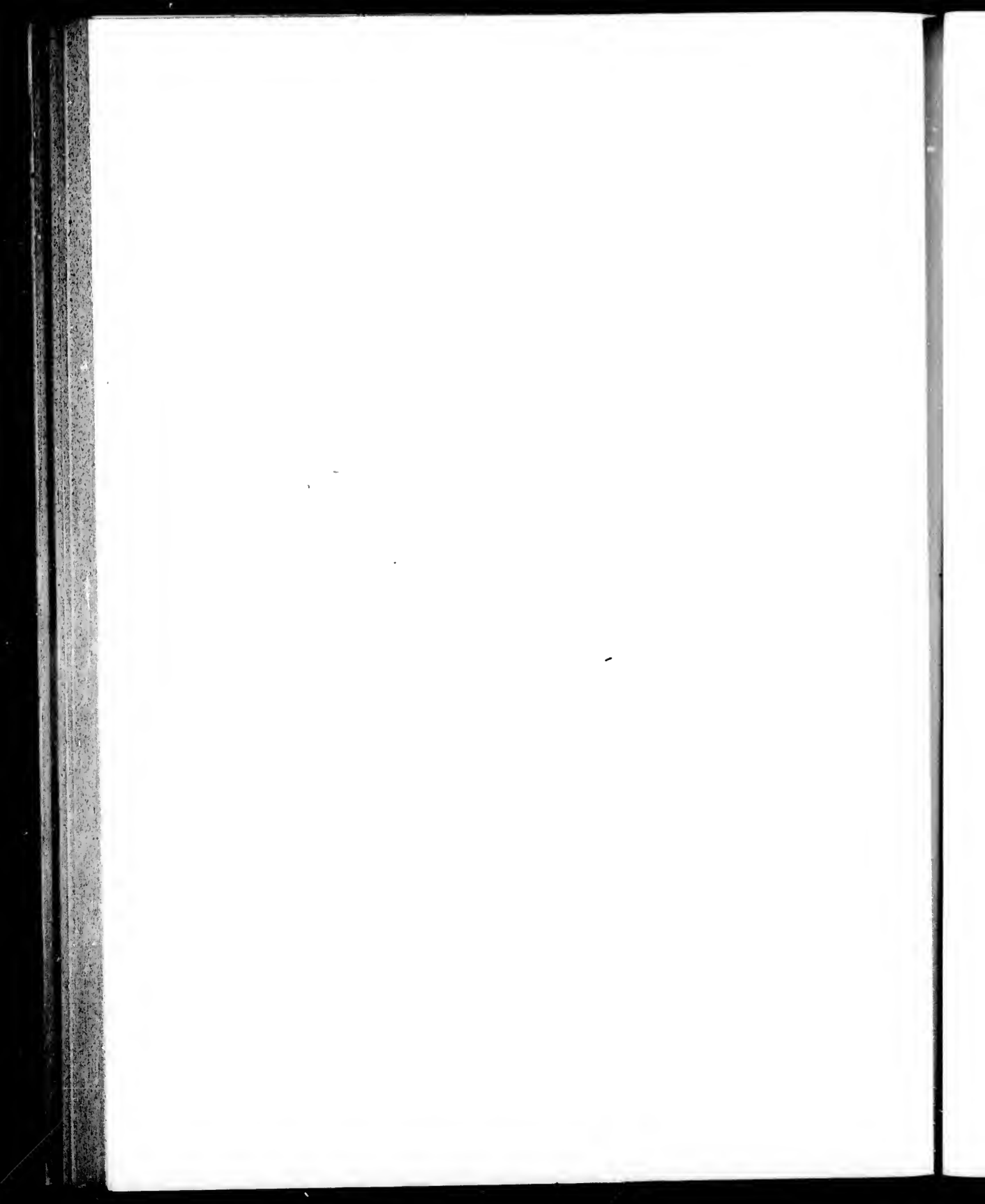
Answer.—By the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland.

Question.—Where is the repealing Act to be found?

Answer.—In the minutes filed by the said Rev. Gavin Laug, marked

Z 1.

Question.—Were you present when it was repealed?



Answer.—I do not think I was.

Question.—I suppose you are aware why they went through the formality of repealing it?

Answer.—It was repealed because it was a misleading document, and had been made use of to damage the Church.

Question.—Then, is it not true that the Church of Scotland in Scotland claims no jurisdiction over the said Presbyterian Church of Canada in connection with the Church of Scotland, and that the said last mentioned Church is a free and independent Church?

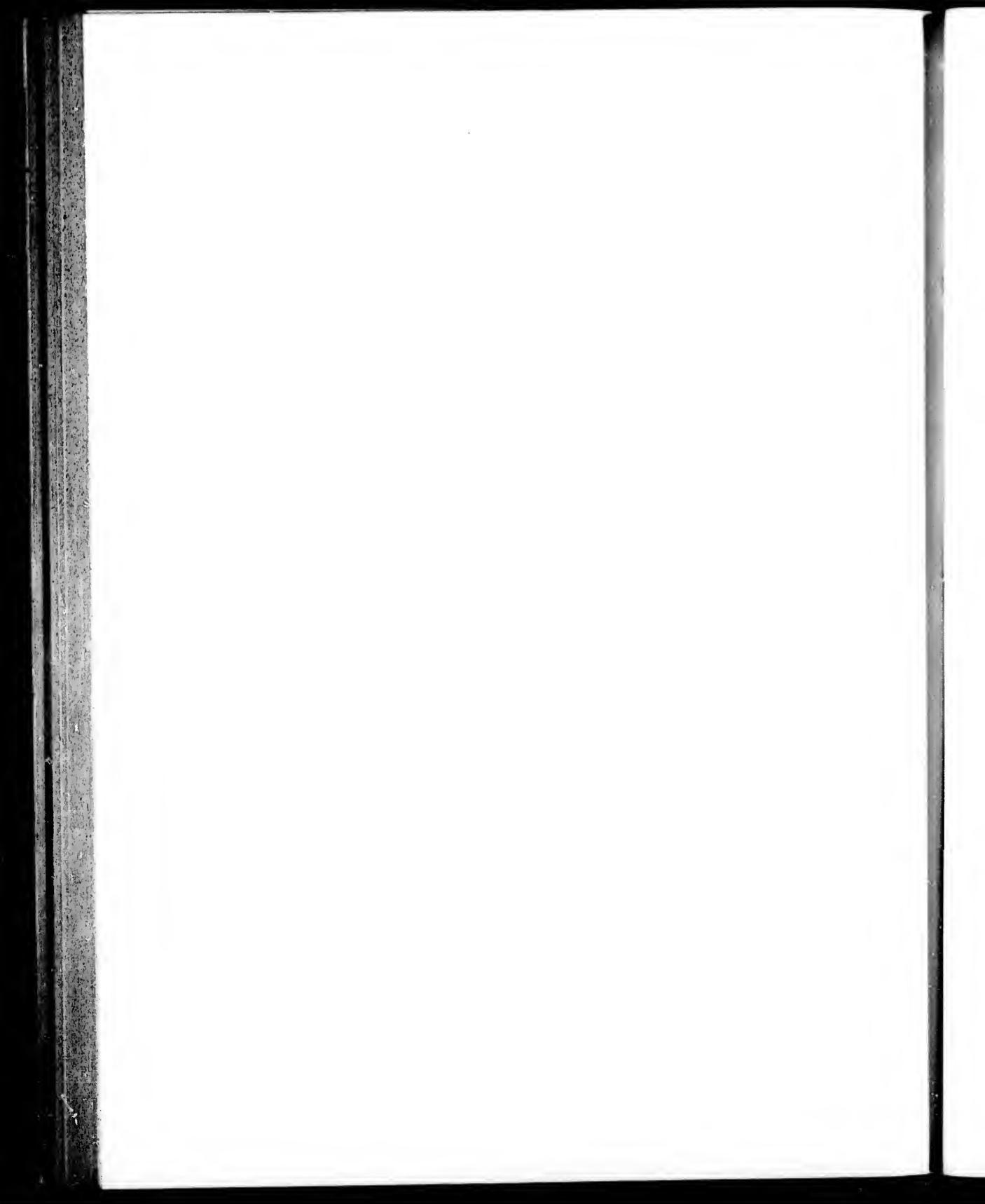
Answer.—The Church of Scotland claims no authoritative jurisdiction. 10
The constitutional position is to be found at page 33 of Synod minutes, Exhibit 33 for the year eighteen hundred and forty-two, by which the Church of Scotland declares that she has transferred the direct superintendence of the natives of Scotland, members of her Church, to the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, declaring at the same time that she will exercise no authoritative jurisdiction, it being a close and intimate, though voluntary, connection. That is the last constitutional declaration we have. It was upon the ground of this that the Rev. Dr. Cook and a deputation went to Scotland, in eighteen hundred and seventy-five, to obtain the approval of the General Assembly for uniting with other ecclesiastical bodies. The report of the deputation to the General Assembly of the Church of Scotland is to be found at page 99 of the Appendix for the year eighteen hundred and seventy-five of the said Synod minutes BBB. 20

Question.—If the said Church of Scotland has never claimed any authoritative jurisdiction over the said Synod, has she claimed any jurisdiction at all, and if so state what?

Answer.—Yes, repeatedly, and exercised it. In eighteen hundred and thirty-four, as appears at page 66 of Synod minutes BBB of that date, is a refusal on the part of the Colonial Committee of the General Assembly of the Church of Scotland to allow its branch here to receive a preacher from the 30
Congregational Church, which refusal was acknowledged as binding by the Synod of the said branch.

Question.—That was previous to the passing of the Declaratory Act of Independence of eighteen hundred and forty-four?

Answer.—In eighteen hundred and thirty-five, as appears from an affidavit by the Rev. John Cook, of Quebec, filed in this cause, he deposes that he was ordained and inducted by the presbytery of Dumbarton, one of the Courts of the Church of Scotland, to a Church in Quebec, and that upon such ordination and induction he entered upon the ministry of that congregation, and was received as a member of the Presbytery of Quebec, as one of the Courts of the 15



Presbyterian Church of Canada in connection with the Church of Scotland, and by the Synod thereof. After this declaration of eighteen hundred and forty-four, the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland presented its claims, as being in connection with the Church of Scotland in Scotland, to the benefits of the Clergy Reserves, and received such benefit on that ground. I can give many more instances, but it is not necessary to multiply them.

Question.—Then you claim that the Presbyterian Church of Canada in connection with the Church of Scotland is a branch of the Church of Scotland for the reasons you have just stated? 10

Answer.—In January, eighteen hundred and fifty-five, when the commutation was authorized of the claims of the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland to a share in the Clergy Reserves, and in eighteen hundred and fifty-eight when the Act incorporating the Temporalities' Board was passed, the allowances from the Clergy Reserves were claimed and received by ministers of said Church upon the ground of their representing the Church of Scotland in Canada.

Question.—Now, will you tell me what you claim?

Answer.—I maintain that that connection, be it close or not, exists down to the present day with those who have remained members and adherents of the Presbyterian Church of Canada in connection with the Church of Scotland? 20

Question.—What I have asked you is whether you claim the Presbyterian Church of Canada in connection with the Church of Scotland was a branch of the Church of Scotland? Answer yes or no.

Answer.—I claim the connection to be what it is set out by the authoritative decisions of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland from the year eighteen hundred and thirty-one downwards.

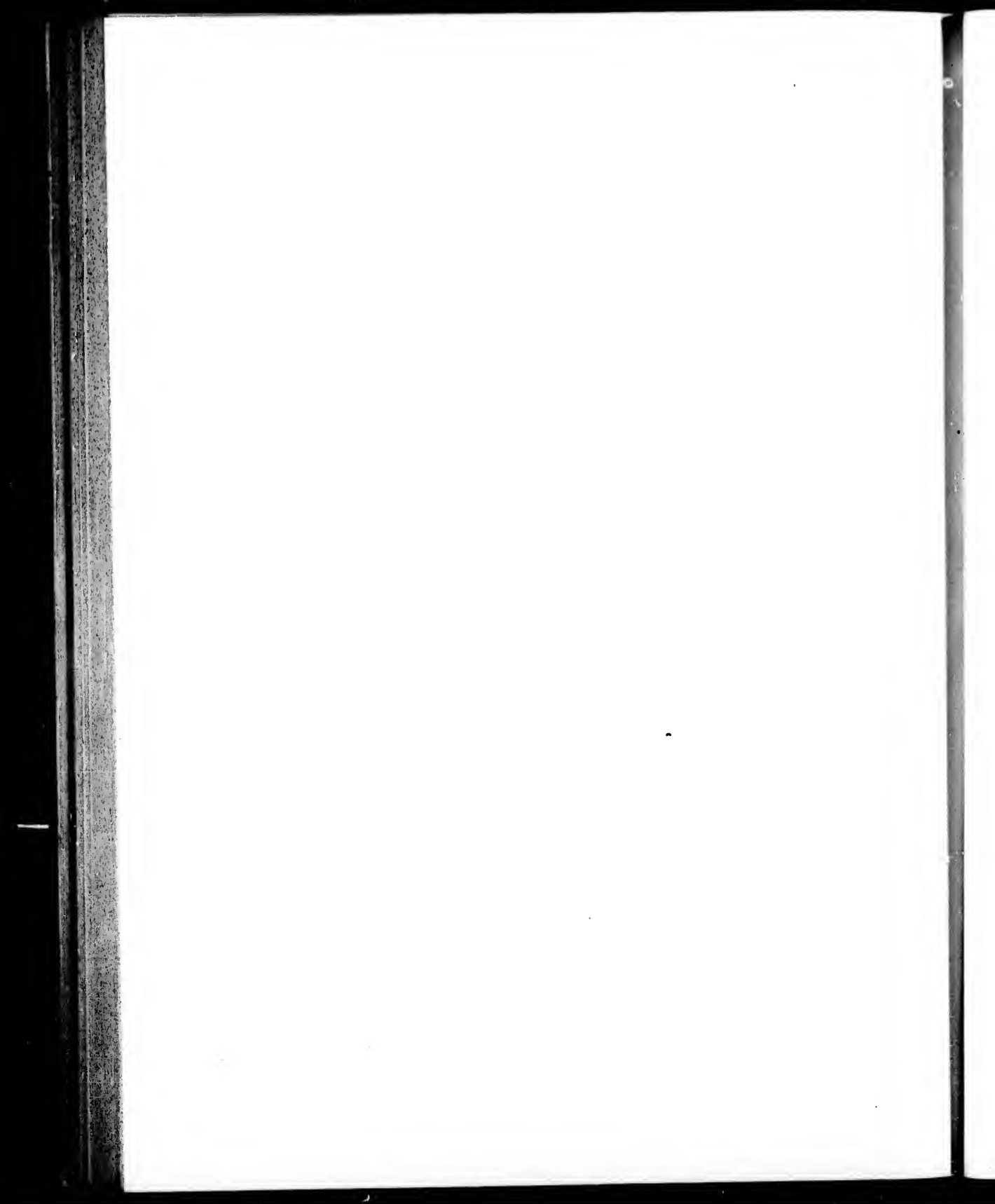
Question.—Then do you refuse to give me a direct answer to my question? Whether you claim the said Church to be a branch of the Church of Scotland, yes or no? 30

Answer.—I do make such claim.

Question.—But you do not pretend, do you, as Sir Hugh Allan did, that the said Church is the Church of Scotland in Canada, instead of being merely a branch.

Answer.—I simply refer for that question to the legal status defined by the Imperial Act of eighteen hundred and forty with respect to the Clergy Reserves.

Question.—Is it not the case that a great many ministers of the Presby- 40



terian Church of Canada in connection with the Church of Scotland previous to and on the fifteenth of June, eighteen hundred and seventy-five, were ministers who were not ministers of the Church of Scotland, but who were educated, ordained and inducted in Canada?

Answer.—Yes.

Question.—Is it not true that such ministers, on going home to Scotland, were not recognized by the Church of Scotland as having the status of a minister of the Church of Scotland?

Answer.—It is true as a matter of theory; as a matter of fact, any minister licensed by the Presbyteries or Synod of the Presbyterian Church of Canada in connection with the Church of Scotland was received as a minister of the Church of Scotland, and declared to be so on application without further examination.

Question.—Is it not true that some of such ministers, who were ordained by the Church here, on going home to Scotland and applying for induction to parishes there, were referred to the committee for the reception of dissenting ministers?

Answer.—I do not know personally about such cases. If there were any it must have been in the interval between one General Assembly and another.

Question.—Then what I understand you to say is, that a minister belonging to the Presbyterian Church of Canada in connection with the Church of Scotland, who was educated, licensed, ordained and inducted here, on going home to Scotland, occupied exactly the same position in the Church of Scotland as a minister of the said last-mentioned Church?

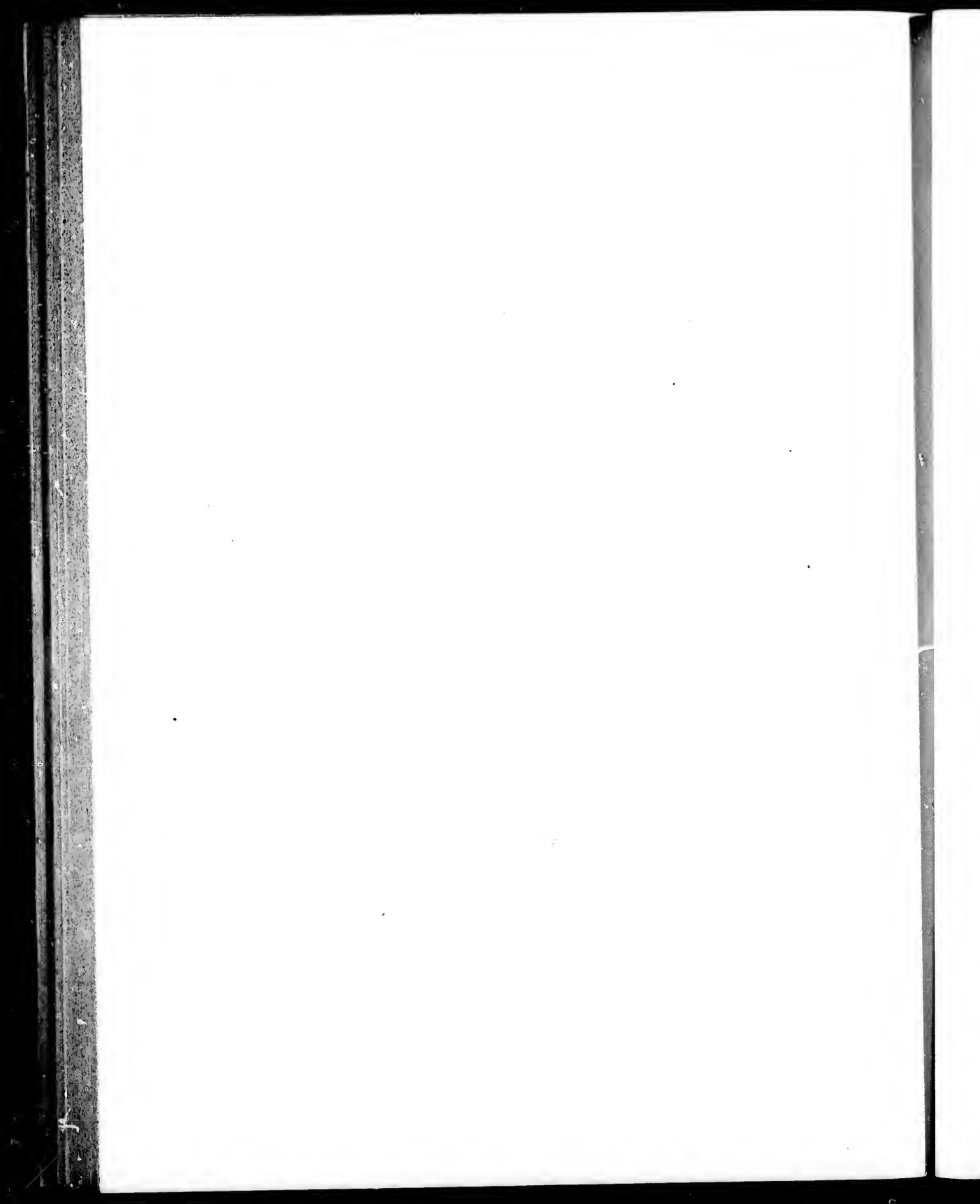
Answer.—He did so, on applying and being received. The law of patronage prevented the full extent of the connection being carried out. But that was a local law which prevented that.

Question.—Were not such ministers, on going home to Scotland under the above circumstances, treated in the same way, and did they not occupy the same position as a minister coming from any other body of Christians?

Answer.—No, decidedly not.

Question.—Were they eligible for a call?

Answer.—They were eligible for a call. They made application, and were received on that application, because they were ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and the connection is set out at section 4 of page 24 of the Synod minutes B.B.B., eighteen hundred and fifty-one, that ever since the formation of this Synod our ecclesiastical relationship has been acknowledged by the Parent Church in every way conformable to her constitution.



Question.—Then they were not eligible for a call, as I understand you, until they were admitted by the Church of Scotland ?

Answer.—According to the constitution of the Church of Scotland, which provided for lay patronage, no ministers licensed by any branch in the Colonies could become fully recognized by the Church of Scotland ; but I repeat, as a matter of fact, all the step that was necessary was an application by such ministers, and they were received without examination by the General Assembly of the Church of Scotland as ministers of that Church.

Question.—Were they received on any terms different from the terms on which dissenting ministers were received ? 10

Answer.—They were received by the same committee which has been in existence for many long years, and they were received on different terms from dissenting ministers.

Question.—What different formalities had they to go through ?

Answer.—In the case of dissenting ministers there were various forms of examinations *et cetera* ; in the case of ministers of this Church, the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, there were no examinations.

Question.—Are you positive ?

Answer.—I am positive that is the general rule, there may have been 20 exceptional cases.

Question.—I suppose you were there and know all about it ?

Answer.—I was not there, but I know from the Acts and Proceedings of the Church of Scotland what their practice is

Question.—Where are those reports of the Church proceedings ?

Answer.—I have some at home in Ottawa. I have none here with me. I did not bring the whole library.

Question.—Look at the minutes produced by the said R. v. Gavin Lang marked Z1, and state why, in the minutes of the meeting stated to be held in St. Andrew's Church, Montreal, on the thirtieth of November, eighteen hun- 30 dred and seventy-five, it is not mentioned that any rolls were given in, as it is all of the succeeding sessions ?

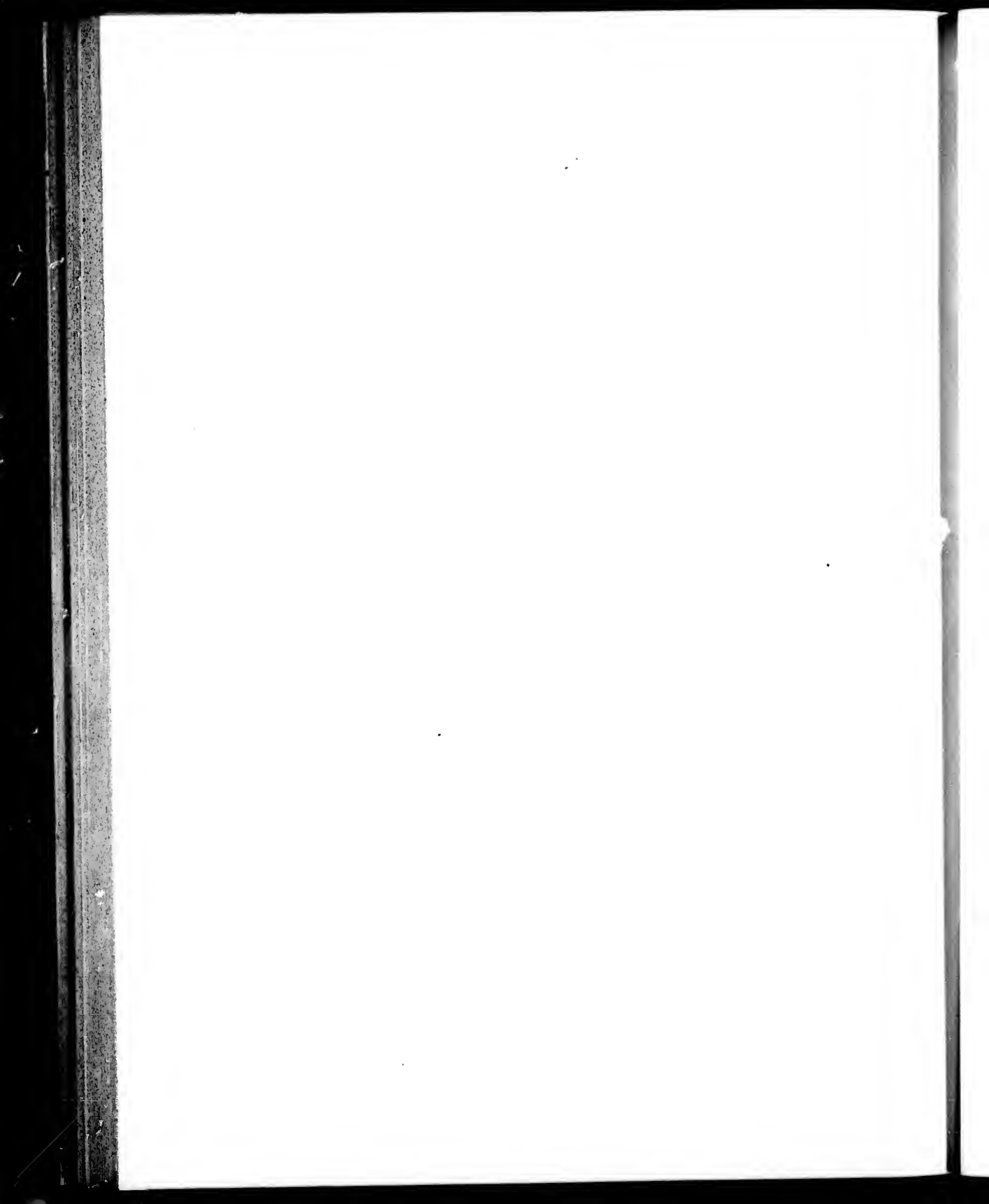
Answer.—I do not know that I was present at the said meeting.

Question.—Who composed the sederunt? Were they the same men who were present at the first meeting stated to be held on the fifteenth of June, eighteen hundred and seventy-five ?

Answer.—I presume so.

Question.—Do you know what Kirk session Mr. George Brockie represented ?

Answer.—Paisley, I believe. 40



Question.—And Mr. Roderick McLeod?

Answer.—I do not know.

Question.—Were the said two last mentioned persons on the roll of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, on the fifteenth of June, eighteen hundred and seventy?

Answer.—I could tell only by referring to the minutes. I have looked, and do not see their names on the said roll.

Question.—Will you look at the Basis of Union, to which you have already referred in your examination-in-chief? You have stated that according to the said Basis of Union it is optional as to what extent persons shall adhere to the Confession of Faith in the Presbyterian Church in Canada; will you kindly point out the particular part of the said basis which justifies you in making such a statement? 10

Answer.—The statement I made was as to whether it was optional to sign for the whole Confession of Faith or not, and I abide by that statement. It was optional on the part of ministers joining the Presbyterian Church in Canada to receive the whole Confession of Faith, or a portion of it, as set out in the Basis of Union.

Question.—Will you point out the particular part of the Basis of Union which justifies you in making the statement that it is optional with persons belonging to the Presbyterian Church in Canada, as to whether they shall adhere to the Confession of Faith in its entirety or not? 20

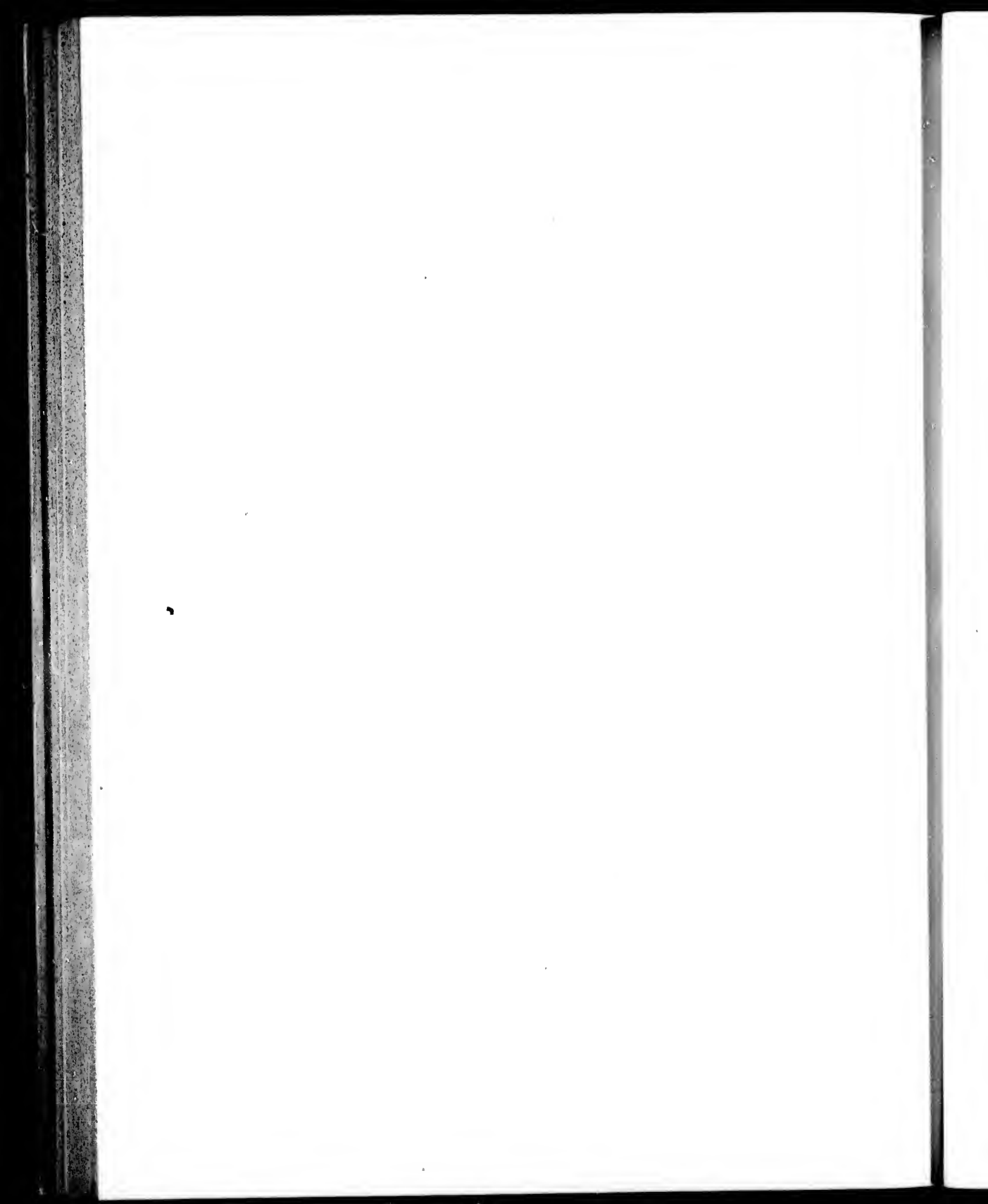
Answer.—The words will be found at page 5 of Exhibit EE, and are these: "It being distinctly understood that nothing contained in the aforesaid Confession of Faith or Catechisms regarding the power and duty of the Civil Magistrate shall be held to sanction any principles or views inconsistent in the full liberty of conscience in matters of religion;" meaning thereby to indicate the different views which existed between the Church of Scotland and the Presbyterian Church of Canada in connection with the Church of Scotland on the one side, and the Canada Presbyterian Church and other 30 bodies, which the said Synod was asked to join, on the other.

Question.—That is your interpretation of the meaning of the words which you quoted?

Answer.—Yes.

Question.—What are the particular views that you refer to about the power and duty of the Civil Magistrate and the differences between the said two Churches on that point?

Answer.—The Canada Presbyterian Church held the same views with what is called the Free Church in Scotland, maintaining that Churches have a supreme power not only over a spiritual, but over ecclesiastical matters even, 40



when these latter involve civil interests, which claim is known as that of spiritual independence. The Church of Scotland and the Presbyterian Church of Canada in connection with the Church of Scotland hold that in civil matters, even where ecclesiastical questions are concerned, the State is supreme. This is known by the name of Erastianism. The Presbyterian Church of Canada, to wit, the predecessor of the Canada Presbyterian Church, when it was formed into a Synod in eighteen hundred and forty-four, adopted as part of its questions put to a minister on his ordination the question: "Do you disown all Popish, Arian, Socinian, Armenian, Erastian and other doctrines, *et cetera*," the word Erastian referring to the doctrines regarding Church government held by the Church of Scotland and by the Presbyterian Church of Canada in connection with the Church of Scotland. 10

Question.—Is the Church of Scotland Erastian?

Answer.—The Church of Scotland has been charged with being Erastian, and is so designated in the protest lodged by the seceders from her communion, who seceded in eighteen hundred and forty-three, and their adherents in Canada who seceded from the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland in eighteen hundred and forty-four.

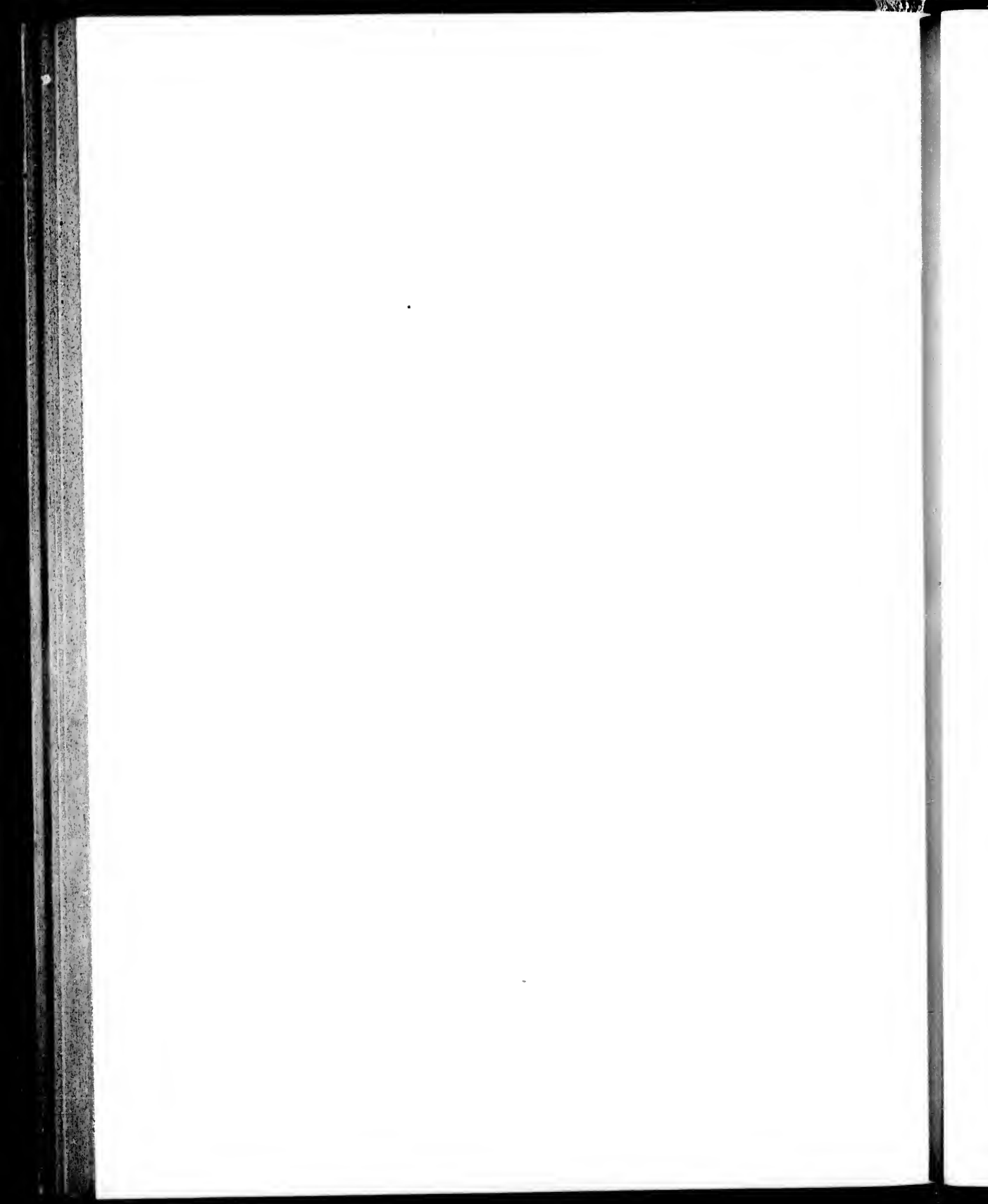
Question.—Does the Confession of Faith or Catechisms, which you have referred to regarding the power and duty of the Civil Magistrate, contain or sanction any principles or views inconsistent with full liberty of conscience in matters of religion? 20

Answer.—It does not.

Question.—Then why do you object to the words in the second article of the said Basis of Union as follows: "It being distinctly understood that nothing contained in the aforesaid Confession or Catechisms regarding the power and duty of the Civil Magistrate shall be held to sanction any principles or views inconsistent with full liberty of conscience in matters of religion?"

Answer.—Because the Canada Presbyterian Church maintained that the twenty-third chapter of the Confession of Faith contained doctrines inconsistent with liberty of conscience, and had expunged or largely modified the twenty-third chapter of the said Confession of Faith. And besides, such liberty of obligation constitutes a departure from the obligation to receive the whole Confession of Faith, which is taken by the ministers and elders of the Presbyterian Church of Canada in connection with the Church of Scotland and of the Church of Scotland. 30

Question.—But if, as a matter of fact, there is nothing in said Confession or Catechisms regarding the power or duty of the Civil Magistrate which can be held to sanction any principles or views inconsistent with full liberty of 40



conscience in matters of religion, as you have already stated, what possible objection can you have to its being so stated in the Basis of Union? and how can you make out that words, with which you are in the fullest accord, according to your own statement, can be twisted or construed into not receiving the Confession of Faith in its entirety, especially as it is expressly stated in the same article that the said Confession of Faith "shall form the subordinate standard of this Church?"

Answer.—Because the expression is a mere pretext for getting rid of the whole obligation taken by ministers and office-bearers of the Presbyterian Church of Canada in connection with the Church of Scotland.

Question.—That is to say, that is your opinion?

Answer.—I am giving a statement of my own views all through; I am not a Pope.

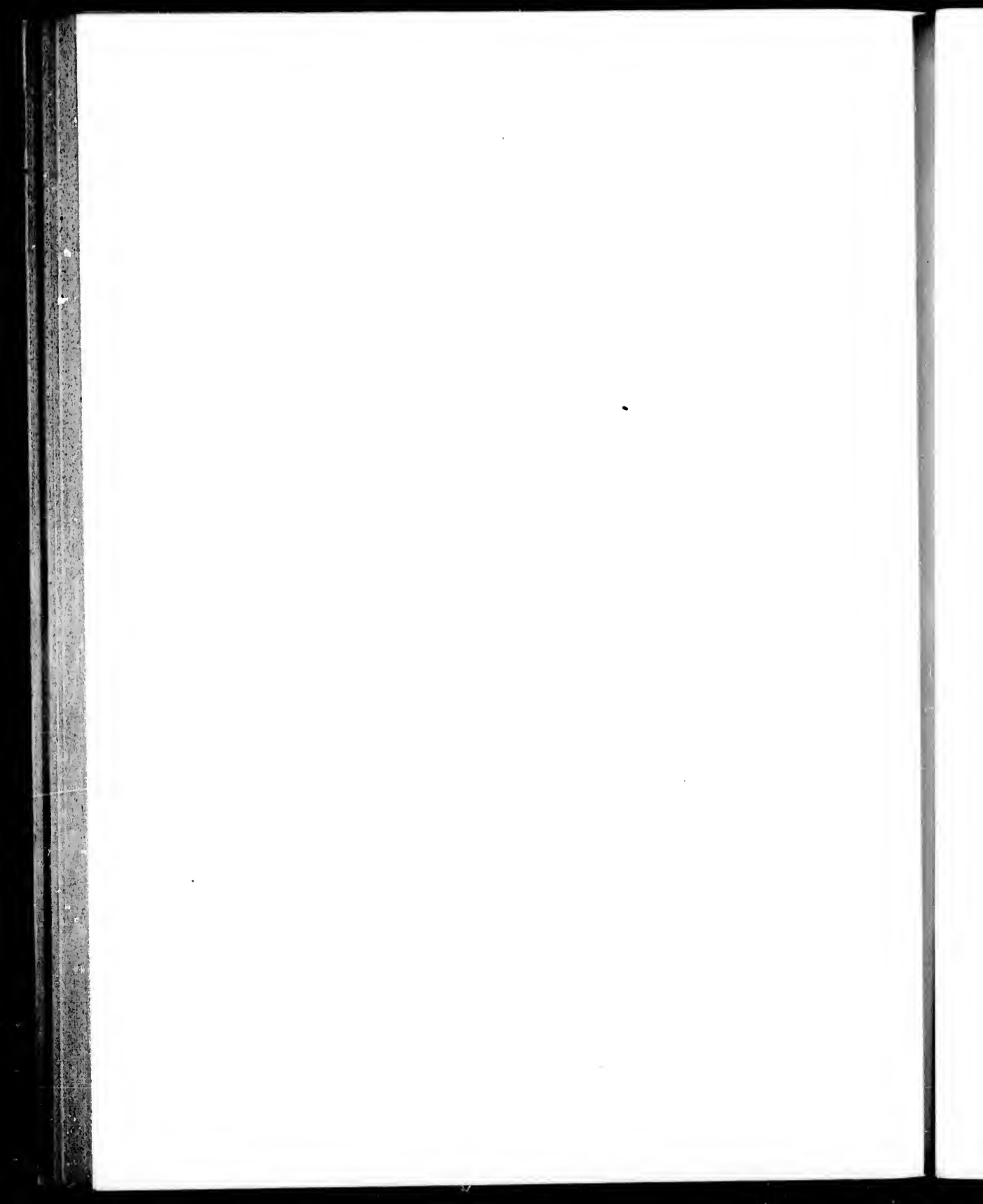
Question.—Do you pretend that the Church of Scotland in Scotland had any right to interfere with the Presbyterian Church of Canada in connection with the Church of Scotland with reference to the union which took place in 1875?

Answer.—I pretend that the Church of Scotland claimed no authoritative jurisdiction, and declined to express any approval of the conduct of those who sought an incorporating union with the other Presbyterian bodies.

Question.—Is it not to your knowledge that the said Church of Scotland in Scotland, acting through her General Assembly, has expressly stated that after consideration of the terms of the proposed union as laid before them, to wit, the said Basis of Union, that there was nothing in the said terms of union to prevent the said Assembly from cordially wishing God-speed in their future labors for the Lord, to brethren who proposed to accept union on that basis, or co-operating with them in any way that might be found possible in the new state of things in promoting the religious interests of Scottish Presbyterians in the Canadian Dominion?

Answer.—I do: the Church of Scotland has always wished God-speed to all organizations for the work of the Lord, but that God-speed does not in any way approval to the union.

Question.—Is it not true that the said General Assembly of the Church of Scotland also stated that while receiving with profound concern and regret the intimation that on the subject of an incorporating union of Presbyterian Churches, meaning the union in question in this cause, threatened division in the Canadian Synods is endangering the cordiality of that co-operation which is so essential to the success of the work of the Church in all lands, the General Assembly claim no title to review the proceedings which have issued in that result?



The examination of the witness was here adjourned.

And on this fifth day of July, of the year aforesaid, reappeared the said witness. DOUGLAS BRYMNER, and continued his evidence as follows:—

(Petitioner objects to the last question put to witness yesterday, as irrelevant, as not arising out of the examination-in-chief, as not being the best evidence to prove the extract pretended to be cited, and as being an attempt unnecessarily to fill up the record by substituting in questions, long quotations from matters already admitted, and at the great expense of the Petitioner).

(Objection reserved by the Judge).

Answer.—I do not find such a quotation as set out in that question. I do not find that sentence as set forth in the question.

Question.—What do you find in it?

Answer.—I find a sentence on page 101 of Synod minutes of the year 1875, which begins differently from that given in the question, the rest of which appears to be substantially set out in the question.

Question.—Is the resolution you refer to a resolution of the General Assembly of the Church of Scotland?

Answer.—It is contained in what is set out as a resolution of the General Assembly of the Church of Scotland on page 101 of said Synod minutes for 1875, being an extract from the same.

^{re}
~~Cross~~-EXAMINED WITHOUT WAIVER OF OBJECTIONS.

Question.—Are the words of which you have just spoken as being part of an extract correctly cited in the question asked you in cross-examination respecting it?

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Answer.—No.

Question.—Are they a resolution, or simply a sentence in a resolution?

Answer.—They are a sentence in a resolution.

Question.—Was the minority that went out from the Presbyterian Church of Canada in connection with the Church of Scotland in 1844 a large one, or a small one? In other words, will you explain or compare its strength with the majority that remained?

(Objected to as illegal and not arising out of the cross-examination, and moreover, as irrelevant to the issues).

(Objection reserved by the parties).

46

25

Answer.—The minority that went out in 1844 numbered forty and the majority numbered fifty-six.

Question.—In June, 1875, when a number of members of Synod left St. Paul's Church to go to the Victoria Skating Rink, will you explain whether the Clerk and Moderator of Synod left?

(Objected to as illegal and not arising out of the cross-examination, and, moreover, as irrelevant to the issues.)

(Objection reserved by the parties.)

Answer.—Yes.

Question.—Did they take the records with them? 10

(Objected to as illegal and not arising out of the cross-examination, and moreover as irrelevant to the issues.)

(Objection reserved by the parties.)

Answer.—Yes.

Question.—You mentioned Mr. Brodie's name as one of the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland?

Answer.—Yes, I believe so.

Question.—Will you specify in detail which are the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland in the regular service of the Church, which are the retired ministers, and which are the missionaries in the service of the Church, giving the total number? 20

Answer.—The regular ministers are Rev. John Davidson, Rev. John McDonald, Rev. David Watson, Rev. Robert Dobie, Rev. Peter Watson, Rev. Neil Brodie, Rev. John Mollatt, Rev. Gavin Lang, Rev. A. J. Campbell and Rev. R. Burnett, making ten. The retired ministers are Rev. Wm. Simpson, Rev. Thomas McPherson and Rev. Hugh Niven, making three. The missionaries are Rev. Mr. Hutchison, Rev. H. D. Steele, Rev. A. Shaw and Rev. Mr. Fuller, making four.

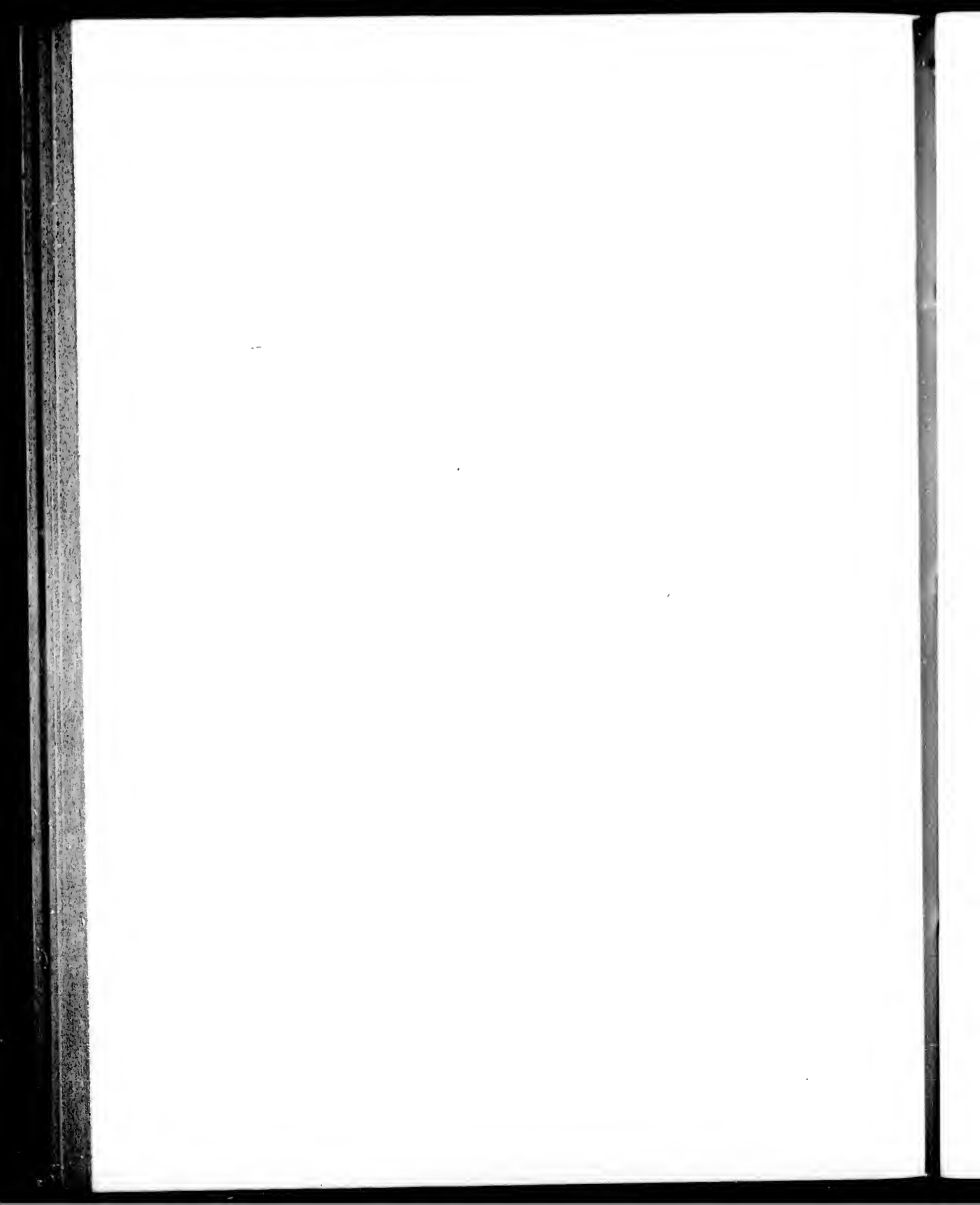
Question.—In all, how many ecclesiastics are connected with the regular service of the Church? 30

Answer.—Fourteen of ministers and missionaries, but besides that, two of the retired ministers at all events, Rev. Mr. Simpson and Rev. Mr. McPherson, are engaged in missionary work.

Question.—Will you state what rights are implied in the invitation of the Synod to visiting people "to sit and deliberate?"

Answer.—The rights are what the invitation implies—to sit and deliberate, that is, to take part in the debates and generally to act as members of court without voting.

Question.—Will you explain what are the differences between the Church of Scotland and the Presbyterian Church of Canada in connection 40



with the Church of Scotland on the one side, and the Presbyterian Church in Canada on the other, with regard to the power of the Civil Magistrate that you have referred to in your cross-examination, and explain also what you mean by the power of the Civil Magistrate?

(Objected to as not arising out of the cross-examination, and as illegal.)
(Objection reserved by the parties.)

Answer.—With regard to the first part of the question, the ministers and office-bearers of the Church of Scotland and of the Presbyterian Church of Canada in connection with the Church of Scotland take an obligation to adhere to the whole Confession of Faith in its entirety, including the twenty-third chapter of the Confession of Faith, "*of the Civil Magistrate.*" The Presbyterian Church in Canada does not oblige its ministers to take an obligation to the whole Confession of Faith, especially in regard to that chapter which it leaves optional, thereby departing from the obligation to adhere to the whole Confession of Faith in its entirety. With regard to the second part of the question, the relation of the Church to the Civil Magistrate, that will be found set out in the twenty-third chapter of the said Confession of Faith.

Question.—Do I understand you say that in the Church of Scotland and in the Presbyterian Church of Canada in connection with the Church of Scotland it is compulsory on the office-bearers and ministers to give a full adhesion at their ordination or induction to the whole Confession of Faith, including this twenty-third chapter relating to the power of the Civil Magistrate?

(Objected to as not arising out of the cross-examination, and as illegal.)
(Objection reserved by parties.)

Answer.—It is, and I have already stated so.

Question.—Will you explain if the Canada Presbyterian Church allowed any relaxation of the obligation just referred to in the last question with regard to the twenty-third chapter of the Confession of Faith, or what was it?

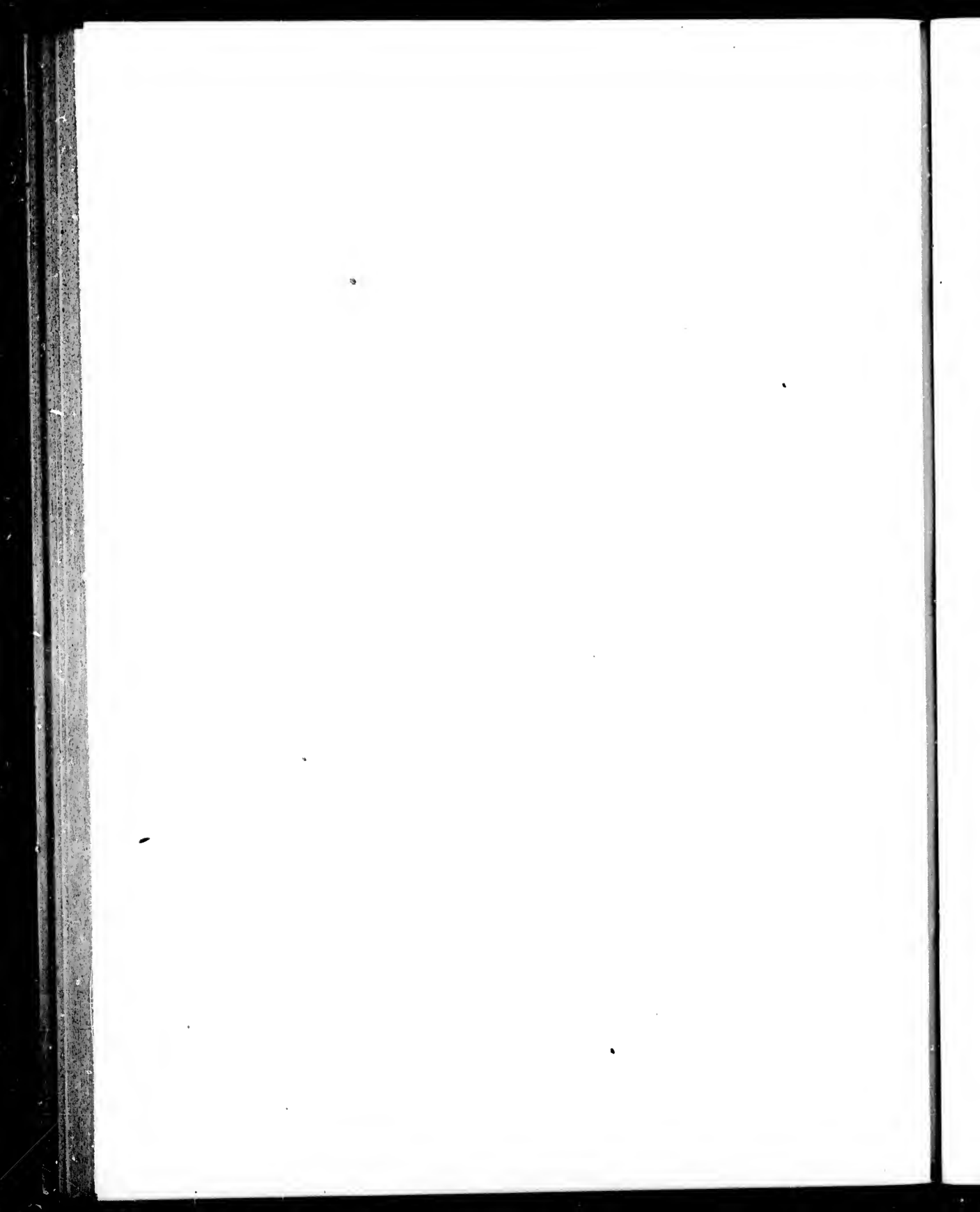
(Objected to as entirely irrelevant to the issues, and as not arising out of the cross-examination).

(Objection reserved by the parties.)

Answer.—The Canada Presbyterian Church not only allowed relaxation but had expunged, as I understand at all events, or completely modified the twenty-third chapter referred to.

Question.—Now, this Canada Presbyterian Church is one of the Churches that united with the seceders from the Presbyterian Church of Canada in connection with the Church of Scotland?

(Objected to as entirely irrelevant to the issues, and as not arising out of the cross-examination).



(Objection reserved by parties).

Answer.—It is.

Question.—Now, were the views entertained by the Canada Presbyterian Church and of the Presbyterian Church of Canada in connection with the Church of Scotland with respect to the said twenty-third chapter of the Confession of Faith, so incompatible with each other as to render a union of those Churches impossible without some modification of the views of the Presbyterian Church of Canada in connection with the Church of Scotland?

(Objected to as entirely illegal, irrelevant to the issues, and not arising out of the cross-examination). 10

(Objection reserved by the parties).

Answer.—The difference between the views of the Canada Presbyterian Church and of the Presbyterian Church of Canada in connection with the Church of Scotland were considered as so fundamental that at the time of the first secession in Canada, in eighteen hundred and forty-four, the Presbyterian Church of Canada, the predecessor of the Canada Presbyterian Church, added to the obligation imposed upon its ministers the word "Erastian," describing one of the errors to be disowned, the said word "Erastian" referring to the views stated to be held by the Church of Scotland and by the Presbyterian Church of Canada in connection with the Church of Scotland, with regard to 20 the duty of the Civil Magistrate.

Question.—Were these views of so incompatible a character with each other as to render union impossible without a modification of the views held by the Presbyterian Church of Canada in connection with the Church of Scotland?

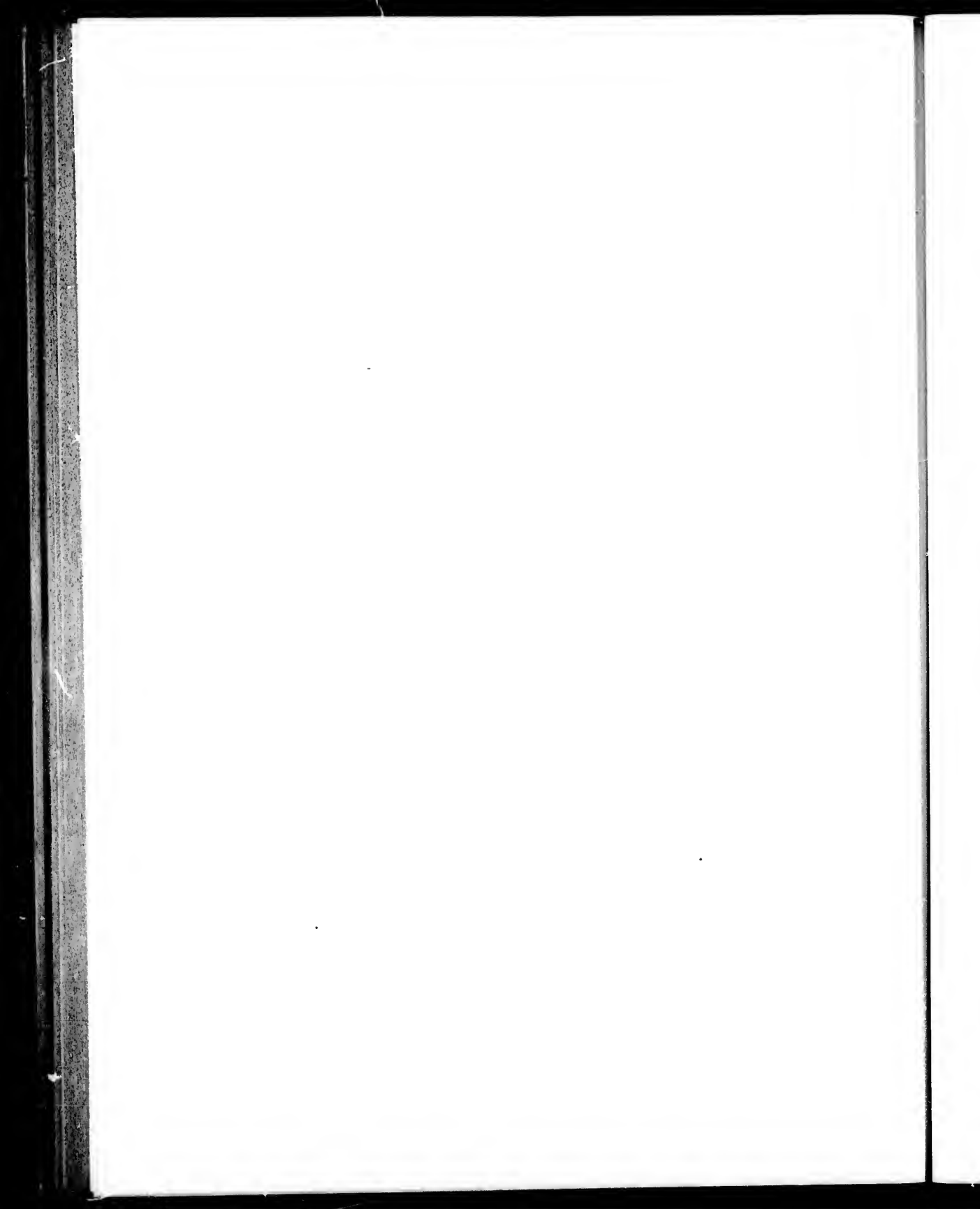
(Objected to as entirely illegal, irrelevant to the issues, and not arising out of the cross-examination, such a union, moreover, not being dependent in the witness' opinion or the opinion of any other individual man).

(Objection reserved by the parties.)

Answer.—No union could take place without a compromise of principles 30 on one side or on both.

Question.—Under the preamble and Basis of Union at present existing when a minister would be ordained or inducted in the Presbyterian Church in Canada, would it be necessary that he should believe and subscribe to the entire Confession of Faith as he would have been bound to do before the said union and now in the Presbyterian Church of Canada in connection with the Church of Scotland?

(Objected to as illegal, not arising out of the cross-examination, and moreover, because the said Basis of Union is a document which must speak for itself, and cannot be interpreted by the witness, its terms being perfectly 40



clear.

(Objection reserved by the parties.)

Answer.—No.

CORRECTIONS.

To my answer on page — of the foregoing deposition, namely, "Of St. Andrew's Church, Ottawa, the congregation I have already spoken of." I desire to add: "Which was then a congregation of the Presbyterian Church of Canada in connection with the Church of Scotland." 10

To my answer on page —, namely, "It does not," I wish to add: "Ministers of the Church of Scotland and of the Presbyterian Church of Canada in connection with the Church of Scotland take an obligation to adhere to the whole Confession of Faith, and are not allowed to hold, teach or preach any doctrine contrary to, and inconsistent with those contained in it."

And further, deponent saith not, and this deposition having been read to him, he declares it to contain the truth.

(Signed.)

S. A. ABBOTT,

Stenographer. 20

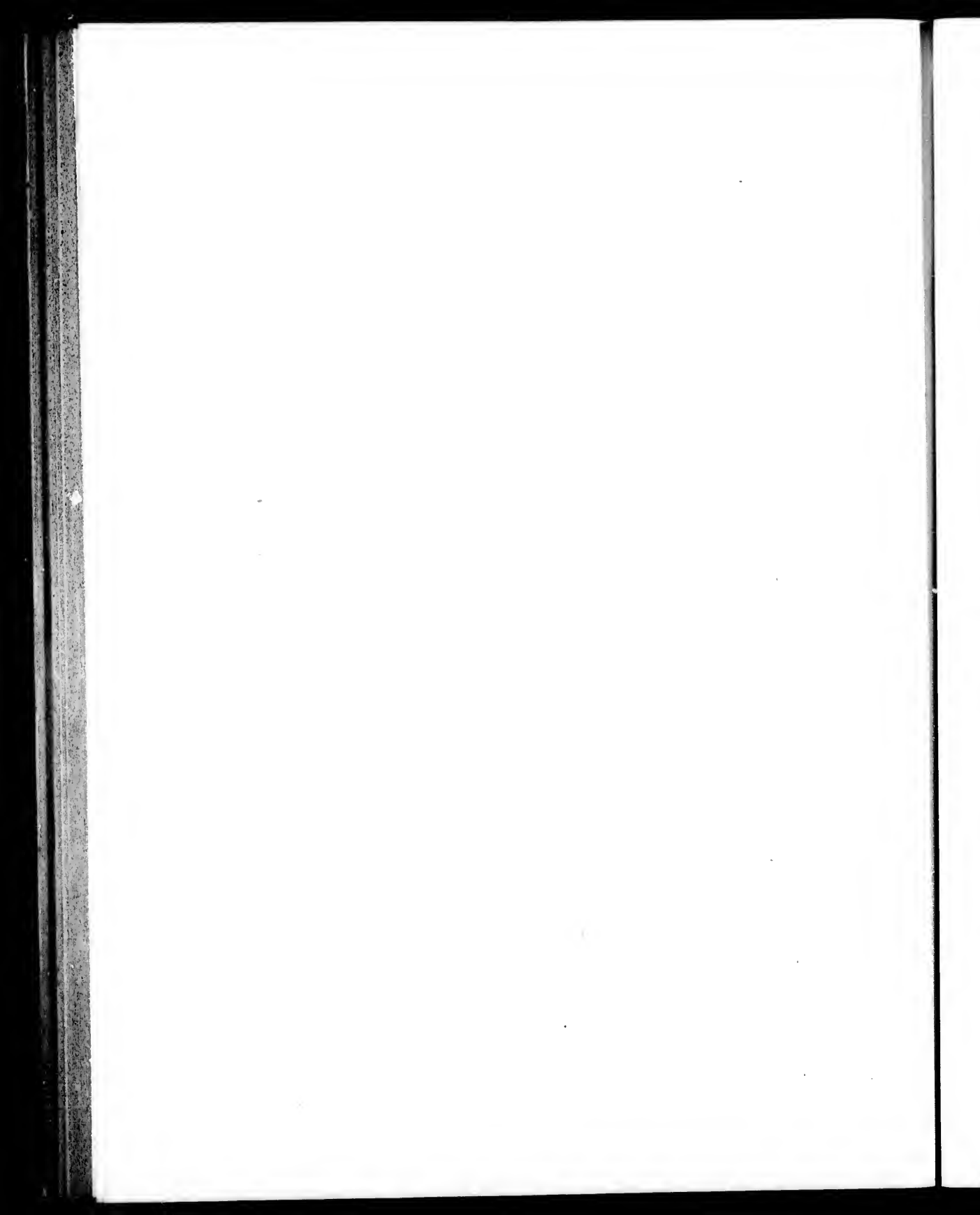
Reverend GAVIN LANG, of the city of Montreal, minister, aged forty-three years, a witness recalled and examined, by consent of parties on the part of the Petitioner, this second day of July, eighteen hundred and seventy-nine, who, being duly sworn, deposes and saith: I have already been examined as a witness in this case.

Question.—Will you state if the Presbyterian Church of Canada in connection with the Church of Scotland still keeps up an official connection with the Church of Scotland in Scotland? 30

Answer.—It does.

Question.—Have you in your own possession any letter or document showing the continued existence of that connection?

Answer.—As convener of the correspondence committee of the Presbyterian Church of Canada in connection with the Church of Scotland, which committee I will explain was appointed by the said Church to correspond with the Colonial Committee of the Church of Scotland and the General Assembly of the Church of Scotland, I received, about the sixteenth of June



last, a letter, the original of which I now produce and file as Petitioner's exhibit Z 2.

(Respondents object to the filing of the said document on the ground that the same has not been regularly proved in this case, and also as irrelevant.)

(Objection reserved by parties.)

Said letter is signed by the Rev. Robert H. Muir, convener of the Colonial Committee of the Church of Scotland, and is addressed to me in my above-mentioned capacity. Said letter is in the following terms :

" G. A. Colonial Mission,
22 Queen Street, Edinburgh, 10
3rd June, 1879.

To the

Rev. Gavin Lang, Convener of the Correspondence Committee of the Presbyterian Church of Canada in connection with the Church of Scotland.

Reverend and Dear Sir,

I have the pleasure of addressing you on behalf of the Colonial Committee, under instructions of the General Assembly of the Church of Scotland, to inform you that the Reverend George W. Spratt has been deputed by the Assembly to the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland; and hoping that you may be able to arrange with Mr. Spratt for his having the opportunity, most convenient for the Synod, of discharging the duty which the General Assembly has entrusted to him.

I am, Reverend and Dear Sir,

Yours truly,

ROBERT H. MUIR,

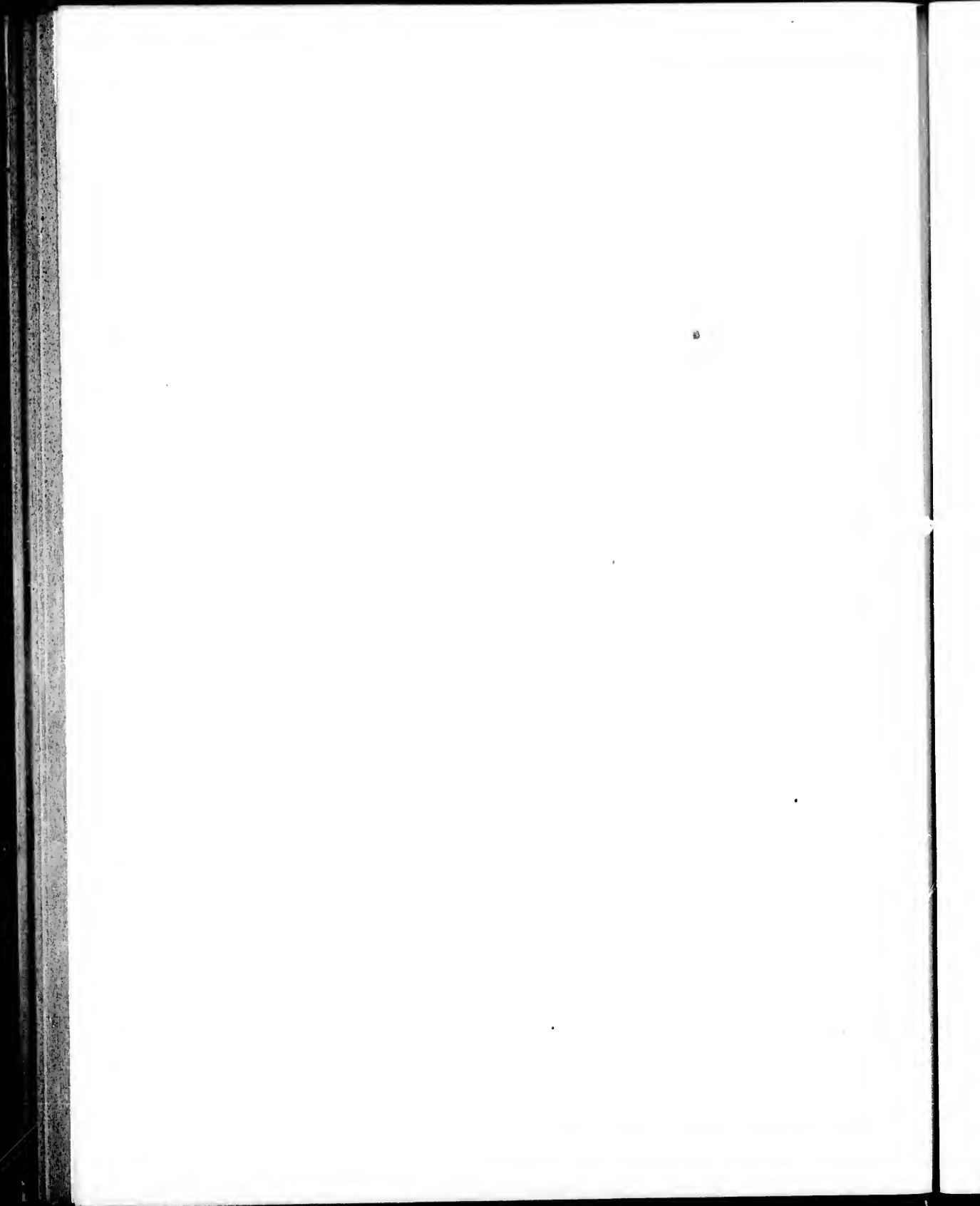
Convener of Col. Com.

Question.—Who is this Mr. Spratt referred to in the said letter?

Answer.—Mr. Spratt was appointed by the General Assembly of the Church of Scotland to visit Canada, and this letter is intimating his appointment as deputy to the Presbyterian Church of Canada in connection with the Church of Scotland.

Question.—Did he come to this country?

Answer.—He has come to this country, and I have here a letter from Mr. Spratt, part of which refers to the letter that accompanied that petition. Mr. Spratt came out on the mission referred to in that letter, and in forwarding said letter, herein filed as Z2, to me, sent in addition a private note from himself, dated June sixteenth, in which he says with reference to the purpose of his visit: "I am very sorry to have missed you here, as my instructions are to



"communicate with you as to the best time and place for a conference with the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland. This is the first article in my programme." I might be allowed to add that I was not in Montreal at the time of Mr. Sprott's arrival, which necessitated his forwarding instead of handing to me said letter "Z2," from Rev. Robert H. Muir. I now produce and file as Petitioner's Exhibit "Z3," at *enquete*, said letter from the Rev. George W. Sprott, dated at Montreal June sixteenth. The said Rev. George W. Sprott is the same person referred to in the letter "Z2" as "Mr. Sprott," also produced and filed by me to-day.

10

(Respondents object to the filing of said letter "Z3.")

(Objection reserved by the parties.)

I have no doubt about the signature at the bottom of letter "Z3" being Mr. Sprott's signature.

CROSS-EXAMINED WITHOUT WAIVER OF OBJECTIONS.

Question.—Do you know the signature of Rev. Robert H. Muir?

Answer.—Perfectly.

Question.—Have you seen him write his name?

20

Answer.—I think I have.

Question.—Was the only mission to Canada of the Rev. George W. Sprott the one which you have spoken of?

Answer.—It is the only mission I have anything to do with.

Question.—Are you not aware that he was appointed specially by the Assembly of the Church of Scotland to visit the Presbyterian Church in Canada?

Answer.—I have no personal knowledge.

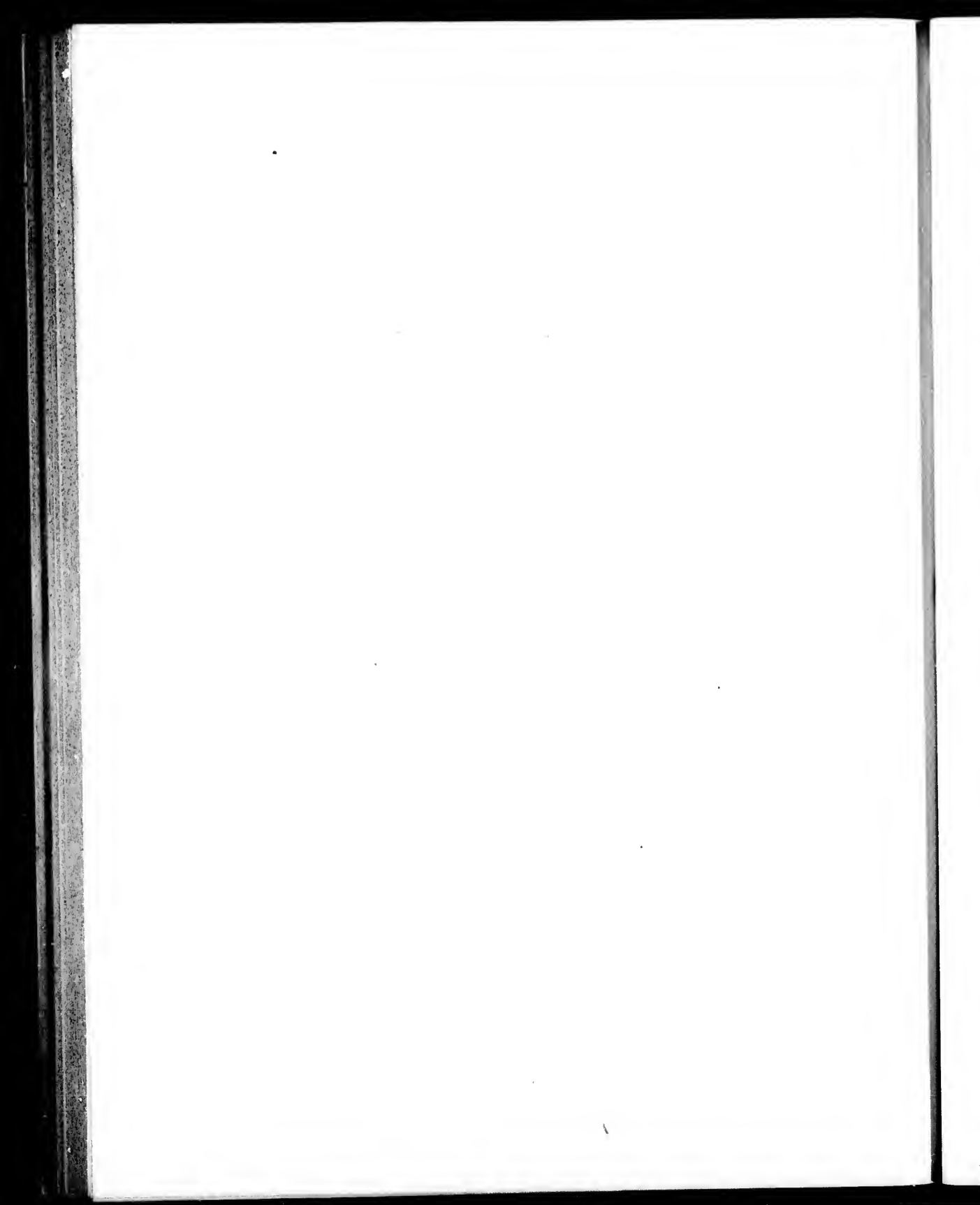
And further Deponent saith not, and this deposition having been read to him he declares it to contain the truth.

36

(Signed), S. A. ABBOTT,
Stenographer.

SIR HUGH ALLAN, of the City of Montreal, of Ravenscraig, Knight, aged sixty-eight years, a witness produced on the part of the Petitioner, this second day of July, eighteen hundred and seventy-nine, who being duly sworn deposeth and saith:—

Question.—You have been made one of the Respondents in this case? 40



Answer.—Without my consent.

Question.—I believe you are one of those who believe in the claims of Mr. Dobie being fairly ventilated before the Courts?

Answer.—Yes.

Question.—Of what Church organization are you a member?

Answer.—Of the Presbyterian Church of Canada in connection with the Church of Scotland.

Question.—How long have you been a member of said Church?

Answer.—About forty-six years.

Question.—I suppose you have been a member of it since you came to 10 to reside in this country?

Answer.—Not entirely; I became a member of it within a year or two after I came here, that is to say, I belonged to the Church, but I was not a communicant.

Question.—Have you been continuously for this last forty-six years a member of it?

Answer.—Continuously

Question.—Before you came to this country you resided in Scotland?

Answer.—I did.

Question.—What Church did you belong to there?

Answer.—I was a boy at school then. My father belonged, I think, to 20 what was called the Secession Church.

Question.—What particular congregation of the Presbyterian Church of Canada in connection with the Church of Scotland do you belong to?

Answer.—I belonged to Dr. Mathieson's congregation until he died, and after that with various clergymen who have come since his death, and now with Mr. Lang.

Question.—These congregations were all in connection with St. Andrew's Church, Montreal?

Answer.—Yes, all together, following one another.

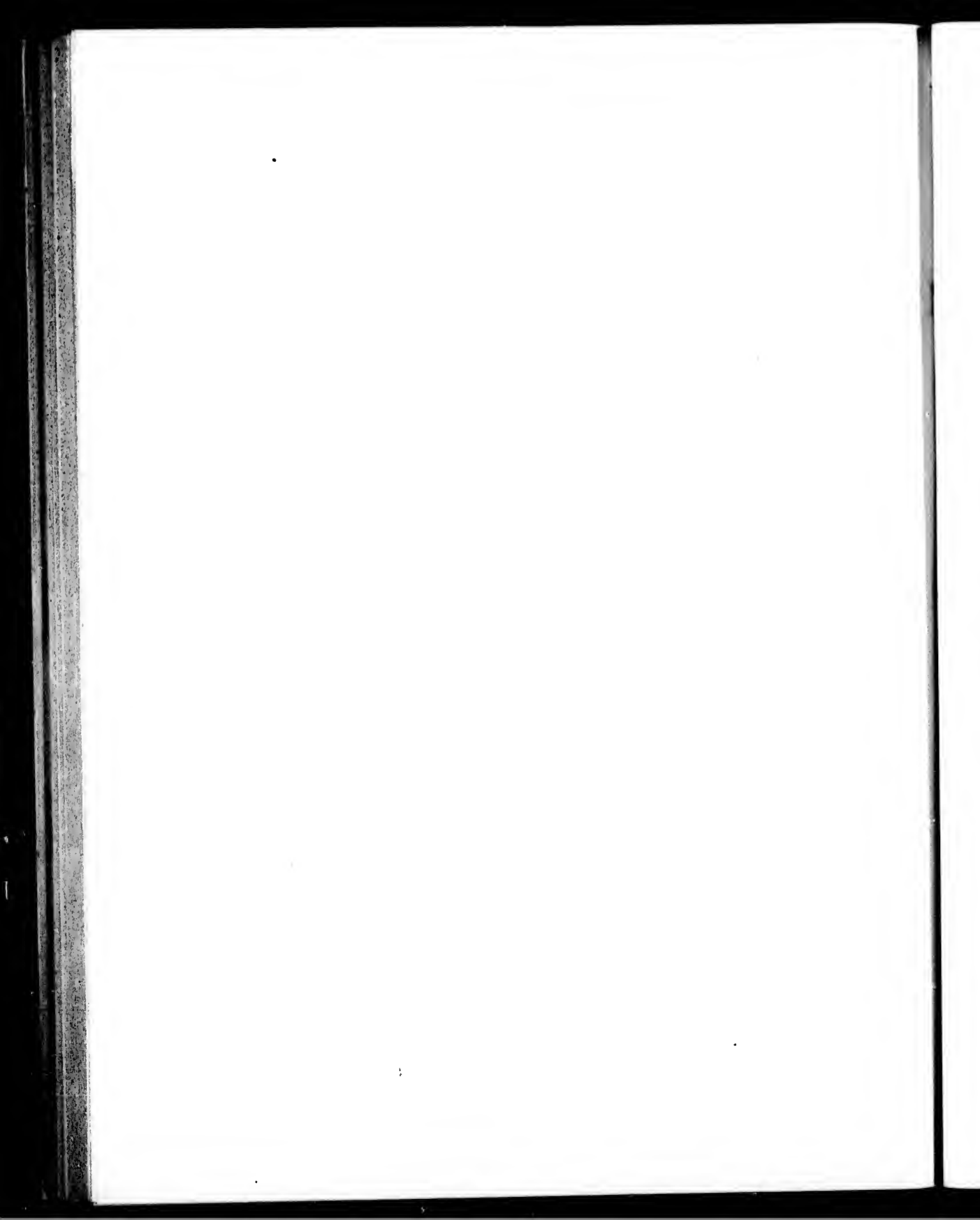
Question.—I believe you had a good deal to do with the Clergy Reserves and the Temporalities Fund for a number of years?

Answer.—I was Secretary to the Fund and to the Temporalities' Board altogether for several years.

Question.—And you were afterwards chairman for many years, were you not?

Answer.—Yes, I think I was, but I am not quite positive; I know I was officially connected with it.

Question.—For how many years were you officially connected with the Temporalities' Fund?



Answer.—From the time of its formation? It was formed, if I remember right, a year or two before the division of the Clergy Reserves.

Question.—Can you state shortly how it was that the Presbyterian Church of Canada in connection with the Church of Scotland received this State aid as it were, and that the other Presbyterian bodies did not?

(Objected to as illegal, and the origin of said Fund and the manner in which it was received by the Synod of the said Church being alleged in the Petitioner's petition to be by Acts of Parliament and by virtue of resolutions of the Synod of said Church, which cannot be proved by parole evidence, and which have already been admitted in the admissions signed by the parties in this case.) 10

(Objection reserved by the parties.)

Answer.—The original grant of the Clergy Reserve Lands, made under George III, was for a Protestant clergy. For a long time the Church of England considered itself the only Protestant clergy in Canada, but at the instance chiefly of the Hon. Wm. Morris and others a claim was made to a share of the Fund by the Church of Scotland, on the ground that it was also an Established Church, being established in Scotland, and therefore established in Canada. A controversy raged for a number of years regarding this, but the end of it was that an arrangement was come to, by which, under certain circumstances, the 20 land was to be divided between the two Churches, and between one or two other Churches which also got shares in it; I think the Roman Catholic Church and the Methodist Church, if I remember right, also got small shares. At any rate it was decided that the rights of the Church of Scotland should be considered as established; and it remained in that state until the Parliament and the Government of this country committed the whole into a money allowance.

Question.—In this controversy you have referred to, did the Presbyterian Church of Canada in connection with the Church of Scotland in this country take up the ground that it was a branch of the Church of Scotland? 30

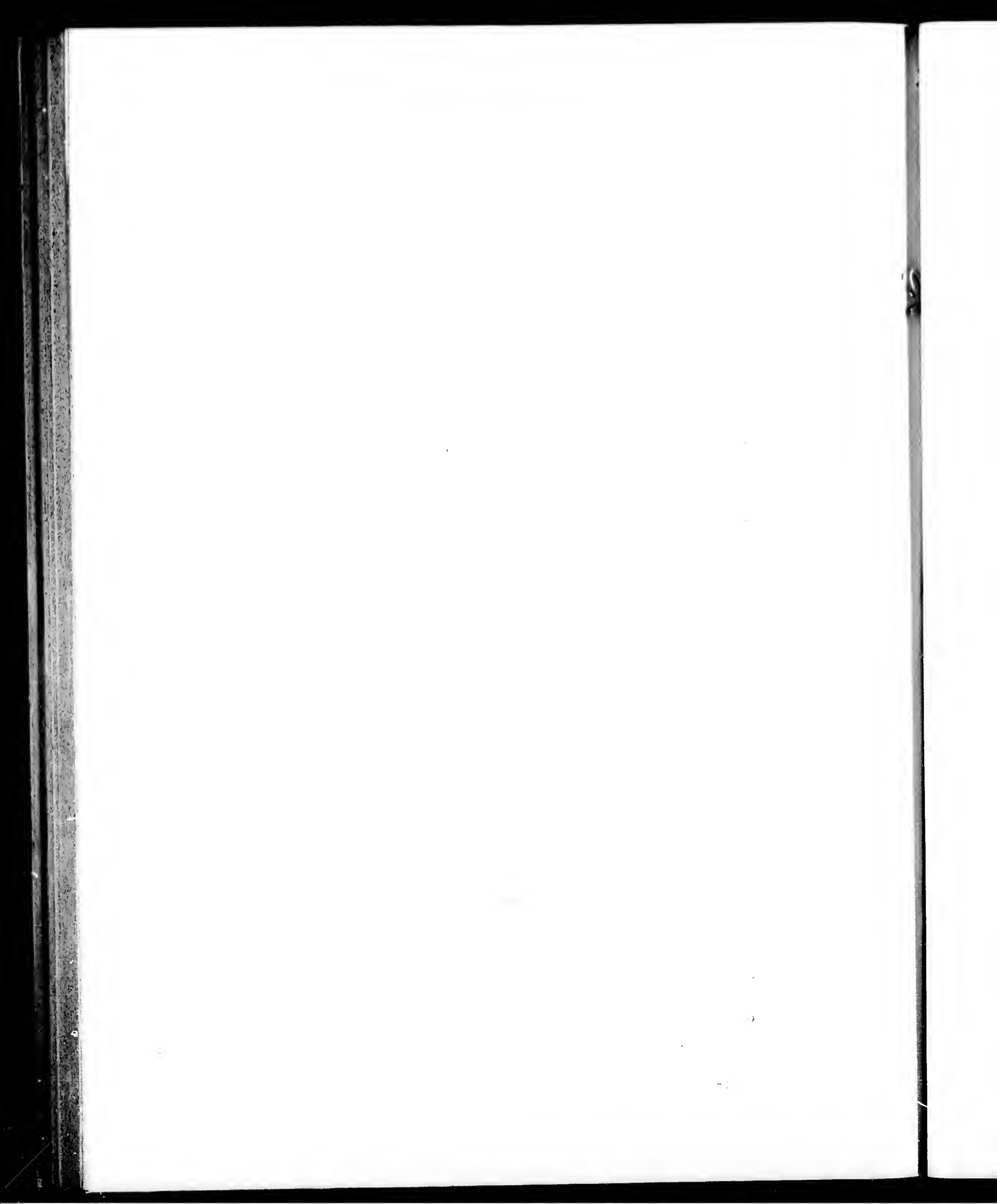
(Objected to as illegal and not in issue.)

(Objection reserved by the parties.)

Answer.—Certainly; as the only legal branch of the Church of Scotland, because not under the powers of the Church itself, but as recognized by the Churches in connection with it.

Question.—I suppose you are aware that in eighteen hundred and seventy-five a large number of ministers of the Presbyterian Church of Canada in connection with the Church of Scotland left it and formed with certain other people another Church called the Presbyterian Church in Canada?

(Objected to as illegal and irrelevant) 40



(Objection reserved by parties).

Answer.—I am aware of it.

Question.—Notwithstanding this secession that took place at the time (1875) did any considerable number of the people, ministers and elders connected with the Presbyterian Church of Canada in connection with the Church of Scotland remain in the last mentioned Church, and keep up their connection with it and its organization?

Answer.—The congregation with which I was connected did so, and I believe there were a considerable number of other ministers, and a considerable number of other people also, but I could not say how many. 10

Question.—Are you aware that quite a number of influential people have maintained their connection with it?

Answer.—A very considerable number in Montreal. I do not know throughout the country much about it; but I fancy the same proportion elsewhere.

CROSS EXAMINED WITHOUT WAIVER OF OBJECTIONS.

Question.—You are one of those that dissented from the union of Churches which took place in eighteen hundred and seventy-five? 20

Answer.—I was one of those who remained in connection with the Church of Scotland.

Question.—You objected to this union?

Answer.—I could not object to a thing I was not a party to. I objected to go over to it; and I did not take part in the said union.

Question.—You have remained in connection with St. Andrew's Church ever since?

Answer.—I have.

Question.—What are your reasons for saying that the Presbyterian Church of Canada in connection with the Church of Scotland has existed continuously ever since eighteen hundred and seventy-five? 30

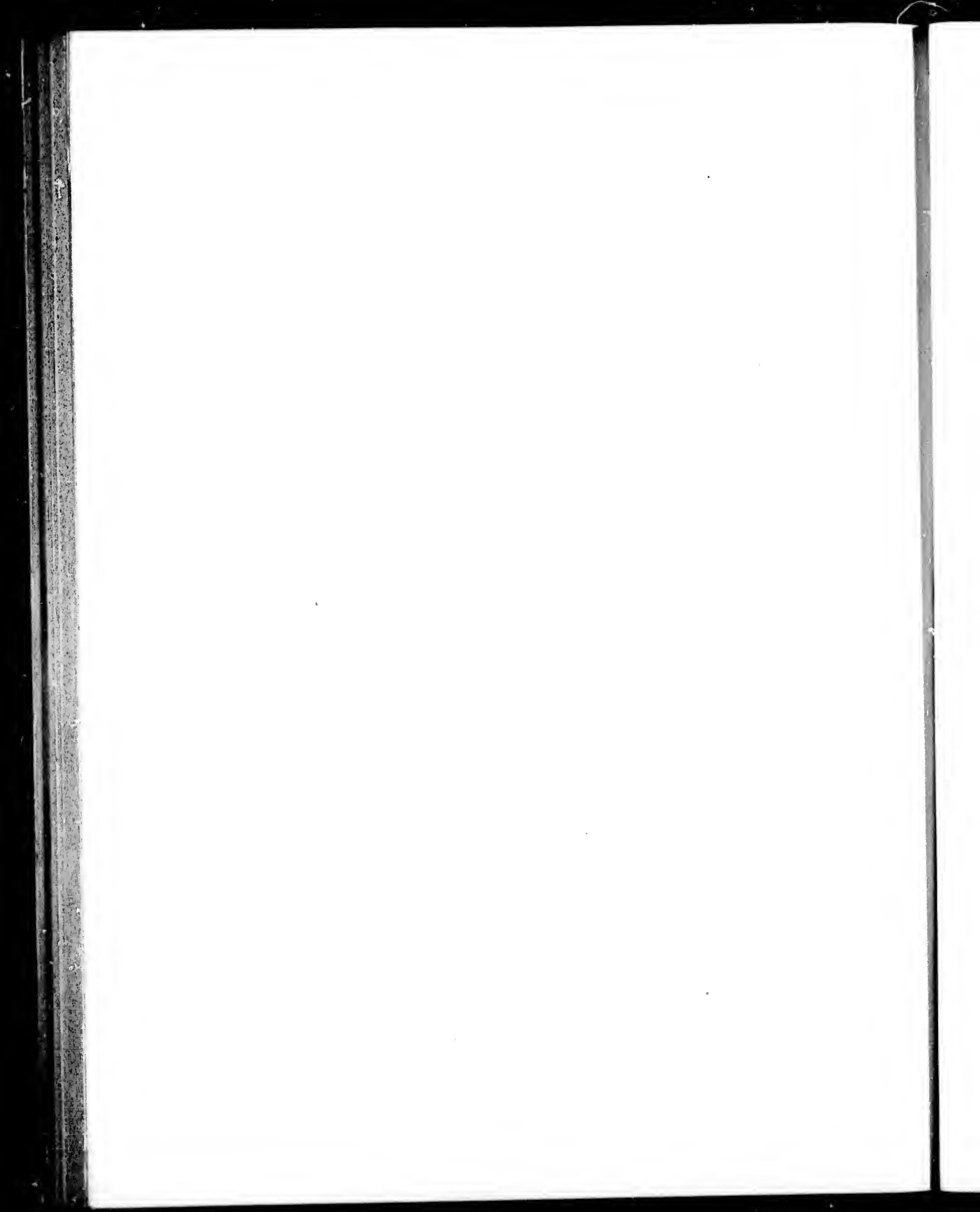
Answer.—Because I have been one of the body myself

Question.—What are your reasons for saying you have been one of the body?

Answer.—Because I have belonged to it all the time continuously.

Question.—Have you any other reason for saying that you belonged to it continuously, except that you have continuously remained in connection with St. Andrew's Church, Montreal?

Answer.—I am aware that the organization has continued by reports 40



from all the different congregations which form part of it. and which, I suppose, to this day continue to form part of it.

Question.—Have you any personal knowledge as to those reports that you refer to ?

Answer.—I do not know what the meaning of the question is. What personal knowledge can I have ?

Question.—Have you attended any Church Courts in any representative capacity since the fifteenth of June, eighteen hundred and seventy-five ?

Answer.—I have not.

Question.—Are you perfectly sure that no Presbyterian bodies besides 10 the one you have spoken of, the Presbyterian Church of Canada in connection with the Church of Scotland, received any share of the proceeds of the Clergy Reserves money ?

Answer.—I am not sure.

And further deponent saith not, and this deposition having been read to him he declares it to contain the truth.

S. A. ABBOTT.

Stenographer.

20

JAMES CROIL, of the City of Montreal, in the District of Montreal, aged fifty-eight years, a witness produced on the part of the Petitioner, on this second day of July, in the year of Our Lord, one thousand eight hundred and seventy-nine, who being duly sworn deposeth and saith :—

Question.—In what way are you in the employ of the Board of Respondents in this cause ?

Answer.—Secretary-Treasurer.

Question.—How long have you been such ?

Answer.—From ten to twelve years.

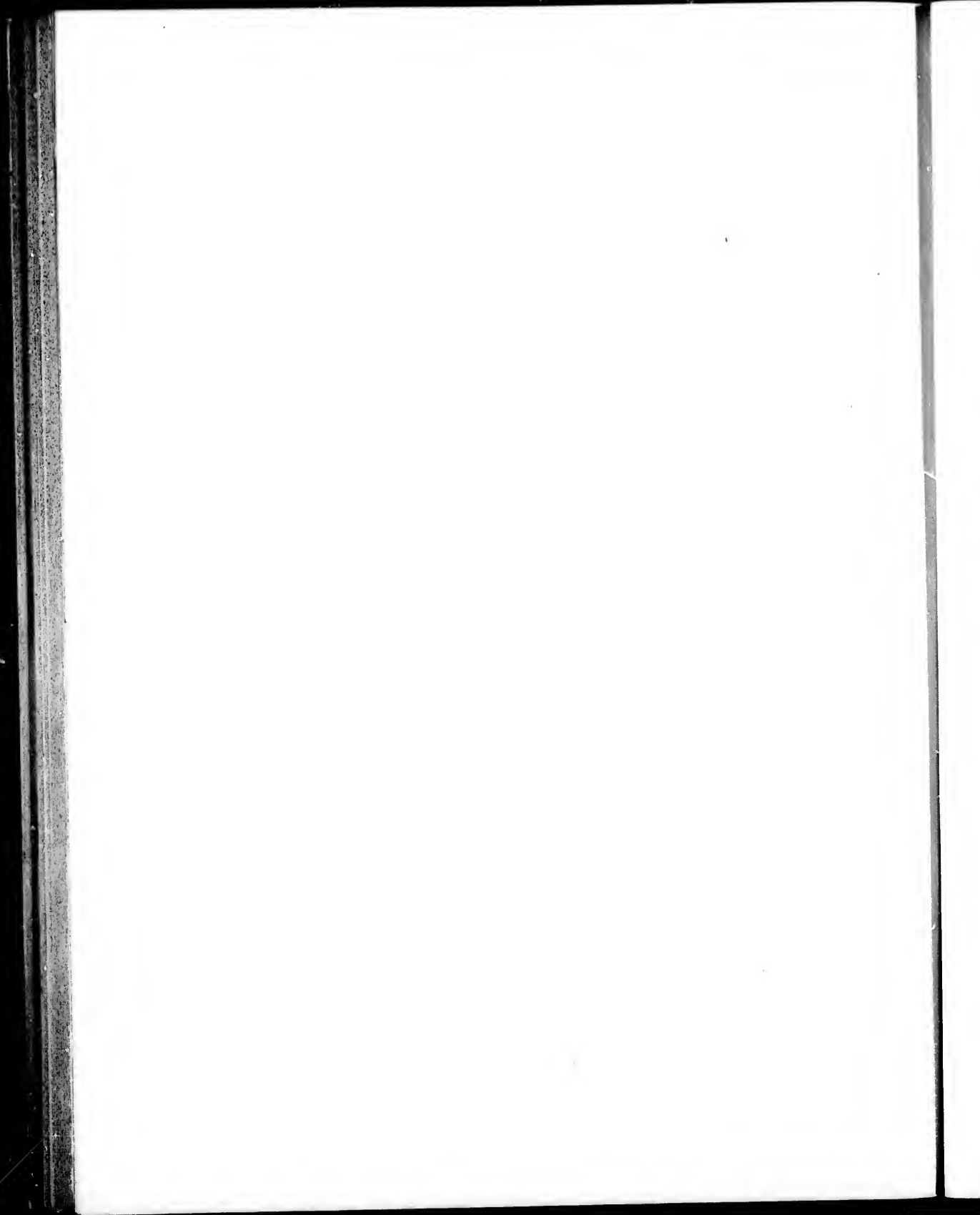
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Question.—What are your duties as such ?

Answer.—My duties as such are to pay the ministers half-yearly, to take charge of all the funds, collect the interests from investments, make reports and generally conduct the business.

Question.—Have the Board any investments out of the Province of Quebec ?

Answer.—Not at present, and have never had since I have been Secretary of the Board. I am aware that before my time the Board had money invested in the Commercial Bank of Upper Canada, and in bonds and debentures of the town of Peterborough, in the Province of Ontario. I now remember that this 40



investments in Peterborough bonds was held since I have been Secretary of the Board.

Question.—Where is the business of the Board generally transacted ?

Answer.—In my office in Montreal.

Question.—Is not certain business transacted in other places, at the meetings of Synod ?

Answer.—There are no meetings of the Board held now, other than at my office ?

Question.—Were there not meetings of the Board held in Ontario and Quebec at the places where the Synod happened to meet, that is prior to the 15th June, 1875 ?

Answer.—Yes; meetings had been held previous to that date, but none have been held since.

Question.—Prior to the said 15th June where were the elections held to fill vacancies occurring in the Board ?

Answer.—Members of the Board were appointed by the Synod.

Question.—In what places was the Synod held ?

Answer.—In different places throughout Upper and Lower Canada.

Question.—Did the meetings alternate between Upper and Lower Canada ?

Answer.—They did not alternate, the majority of meetings were held in Upper Canada.

Question.—The vacancies on the Board as they occurred were filled at these different meetings of Synod held at these different places, were they not ?

Answer.—These elections to fill vacancies on the Board were in virtue of the terms of the Act of Incorporation of the Board, 22nd Victoria, 1858.

Question.—Can you state what was the number of original contributors on the Clergy Reserves Fund, that portion of the Fund coming to the Presbyterian Church of Canada, in connection with the Church of Scotland ?

Answer.—Seventy-three.

Question.—How many of these were surviving on the 18th of June, 1875 ?

Answer.—Thirty-three.

Question.—How many of these joined the union, and how many did not ?

Answer.—Twenty-six joined the union, and seven did not. In saying that twenty-six joined the union, I mean that their names continued on the roll.

Question.—What roll do you mean ?

Answer.—The roll of the Assembly.

Question.—What were the names of the seven who did not join the union ?

Answer.—The names of the seven who did not join the union, so far as are known to me, are : Rev. Thomas McPherson, Rev. William Simpson, Rev. John Davidson, Rev. Fred. P. Sym, Rev. Dr. Watson, Rev. Robert Dobie and Rev. Robert Burnett. The Rev. Robert Dobie is the Petitioner in this cause.

Question.—Can you give us the places of residence of these different gentlemen on the 15th June, 1875 ?

Answer.—The Rev. Thomas McPherson, Lancaster, Province of Ontario ; Rev. William Simpson, Lachine, Province of Quebec ; Rev. John Davidson, 10 North Williamsburg, Province of Ontario ; Rev. Frederick P. Sym, New Edinburgh, Province of Ontario ; Rev. David Watson, Thorah, Province of Ontario ; Rev. Robert Dobie, Milton, Province of Ontario ; Rev. Robert Burnett, Hamilton, Province of Ontario. I wish to state that Mr Sym, one of the seven, has since joined the Presbyterian Church in Canada, and I am not certain that by any act of his own that he ever officially connected himself with the Petitioner.

Question.—Will you state the state of the Fund belonging to the Board Respondents on the 15th of June, 1875 ?

Answer.—You mean the amount of money held by them ? 20

Question.—Yes ?

Answer.—The amount of the investments on the 1st of May, 1875, which remained about the same on the 15th June, was of the par value of \$463,371.52.

Question.—That was the property of the Presbyterian Church of Canada in connection with the Church of Scotland, was it not ?

Answer.—The property of the Temporalities Board.

Question.—The sum of money you have just mentioned was a sum controlled by the Board Respondents for the benefit and in the interest of the Presbyterian Church of Canada in connection with the Church of Scotland up 30 to that date ?

Answer.—Yes.

Question.—After that date it remained under the administration of the Board in virtue of the amendments obtained from the Provincial Legislature, did it not ?

Answer.—Yes.

Question.—What was the amount of said Fund in the hands of the said Board on the 1st of May, 1878 ?

Answer.—The par value of the Fund was \$403,976.52.

Question.—Since then, and up to December, 1878, some payments were made out of the Fund, were there not ?

Answer.—Yes.

Question.—Can you approximately state about what the amount of the Fund was after the deduction of these payments on the 31st of December, 1878 ?

Answer.—\$389,120.00.

Question.—To what extent have the Respondents drawn upon the capital of the said Temporalities Fund since the 15th June, 1875, up to the 31st December, 1878 ?

10

Answer.—About \$74,251.52.

Question.—Who were the members of the Board Respondents on the 14th June, 1875 ?

Answer.—Rev. John H. Mackerras, Rev. D. M. Gordon, Rev. John Cook, Rev. John Jenkins, Rev. Gavin Lang, Messrs. James Michie, Alexander Mitchell, William Darling, Sir Hugh Allan, John L. Morris, Robert Dennistoun and William Walker.

Question.—Under the legislation of the Province of Quebec relating to the Board Respondents, the last-named members are still members of the said Board, are they not ?

20

Answer.—Still members.

Question.—Provided the legislation of the Province of Quebec had not made provisions for the permanency of the members of the said Board, which of them would have retired under the Statute 22 Vic., ch. 66, in the month of June, 1876 ?

Answer.—Rev. John Jenkins, Rev. Gavin Lang, ministers; Messrs. Robert Dennistoun and William Walker, laymen.

Question.—Which members of the Board would have retired under the same circumstances in the month of June, 1877 ?

Answer.—Rev. D. M. Gordon, Rev. John Cook, ministers, and Sir Hugh Allan and John L. Morris, laymen.

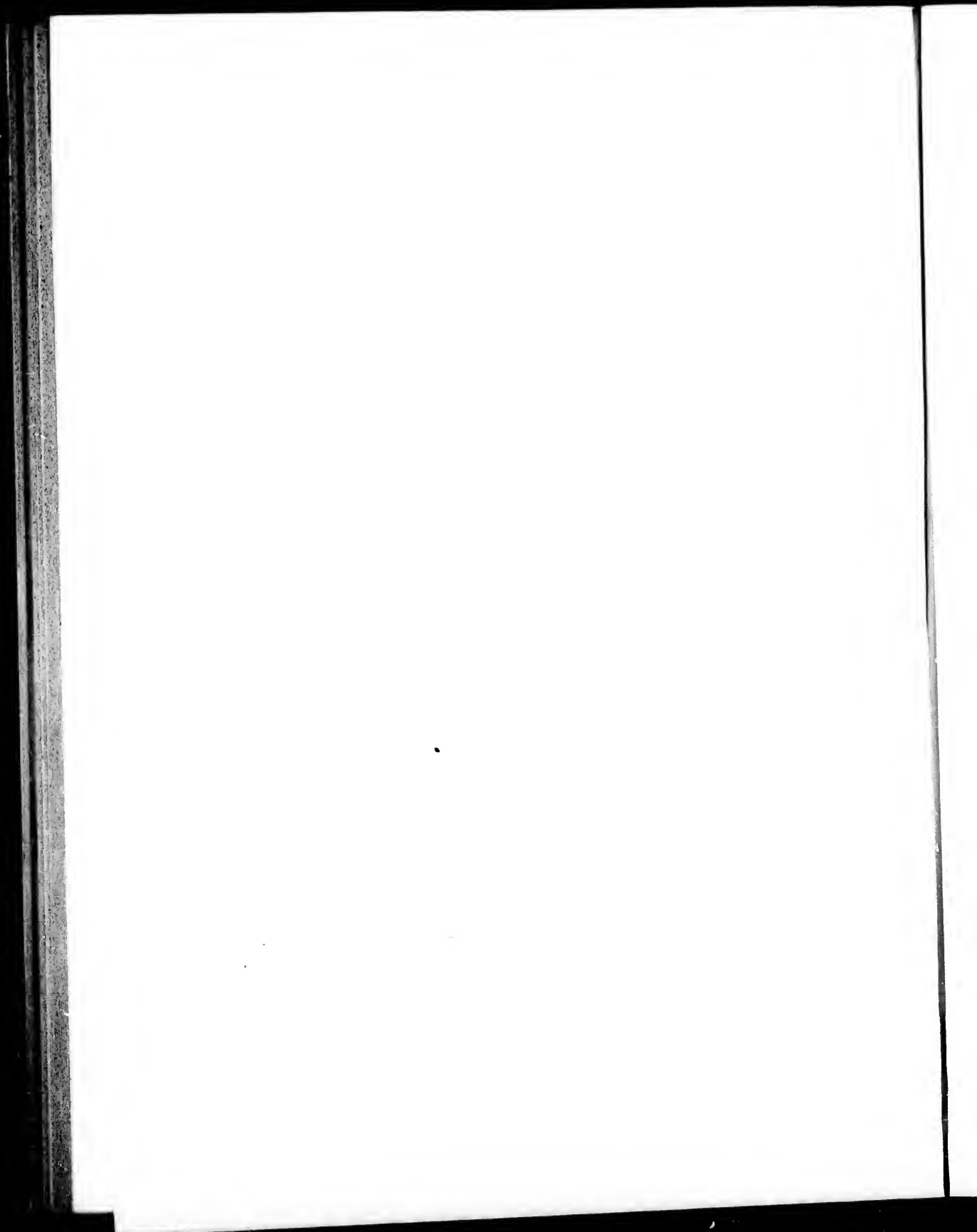
Question.—Which members of the Board Respondents would have retired under the same circumstances in the month of June, 1878 ?

Answer.—Rev. John H. Mackerras, minister, and William Darling and Alexander Mitchell, laymen.

Question.—Each of the said members of the Board named by you have identified themselves with the Presbyterian Church in Canada ?

Answer.—All the said members except Sir Hugh Allan and the Rev. Gavin Lang.

Question.—Did the Rev. John Cook, of Quebec, the Rev. James C. Muir, 40



of Georgetown, and the Rev. George Bell, of Walkertown, commute their claims upon the proceeds of the Clergy Reserves ?

Answer.—Yes.

Question.—They were as the Petitioner was, what are ordinarily called commuting ministers ?

Answer.—Yes.

Question.—The three last named clergymen are now ministers in connection with the Presbyterian Church in Canada ?

Answer.—Yes.

Question.—How much of the money of the Fund administered by the 10 Respondents have the said Rev. John Cook, the said Rev. James Muir and the said Rev. George Bell, respectively received from the 15th June, 1875, to the 31st December, 1878 ?

Answer.—At the rate of \$450 per annum each.

Question.—Now, were the Rev. John Fairlie of L'Original, the Rev. David W. Morrison of Ormistown, the Rev. Charles A. Tanner of Richmond, of the number of the original commutators of claims upon the proceeds of the Clergy Reserves ?

Answer.—No ; they were not.

Question.—How much of the Funds administered by the Respondents 20 have the said three last mentioned clergymen received from the 15th June, 1875, to the 31st December respectively ?

Answer.—At the rate of \$200 per annum each.

Question.—I suppose since the 15th June, 1875, there have been no elections for the purpose of filling up vacancies of the Board Respondents ?

Answer.—No ; none.

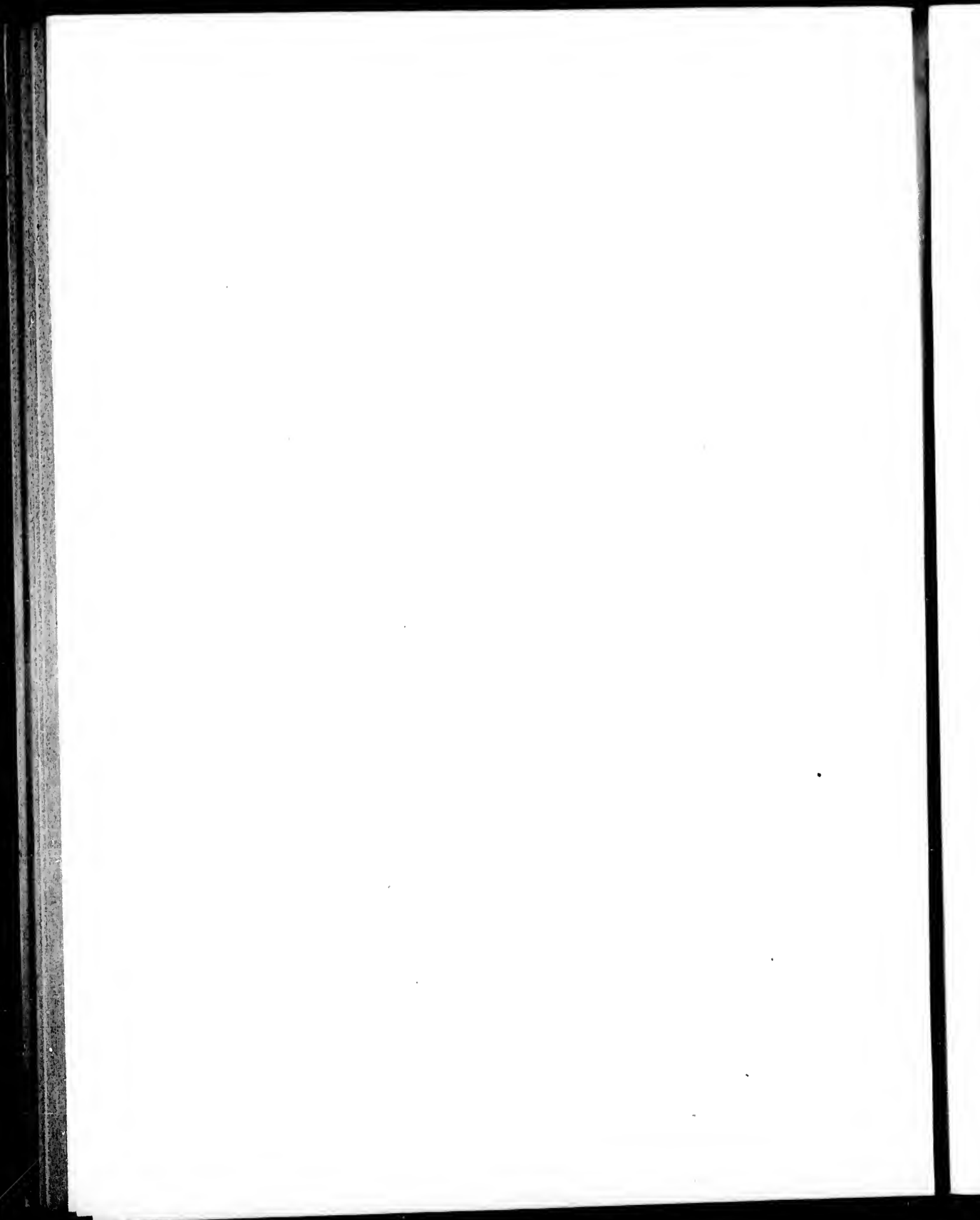
Question.—What were the names of the four ecclesiastical associations that on the 15th of June, 1875, amalgamated for the purpose of forming the Presbyterian Church in Canada ?

Answer.—The Presbyterian Church of Canada in connection with the 30 Church of Scotland, the Church of the Maritime Provinces in connection with the Church of Scotland, the Presbyterian Church of the Lower Provinces, and the Canada Presbyterian Church.

Question.—The three last named Churches had no claim whatever to the sum of \$463,371.52, previously referred to, previous to the 15th of June, 1875 ?

Answer.—No.

Question.—Previous to the 15th June, 1875, those four religious organizations were separate and distinct organizations, each having its own independent government ?



Answer.—Yes.

Question.—Practically for the purposes of government they were previous to the 15th June, 1875, as separate as the Church of England is from the Presbyterian Church of Canada in connection with the Church of Scotland?

Answer.—Each was independent of the others in its jurisdiction and government.

Question.—These four separate organizations were unconnected with each other before the amalgamation, were they not?

Answer.—They were.

Question.—Now, the members and adherents of the Canada Presbyterian Church, and of the Church of the Maritime Provinces in connection with the Church of Scotland, and of the Presbyterian Church of the Lower Provinces appear to have gone into this amalgamation unanimously, did they not?

(Objected to by Respondents pleading, as illegal and irrelevant).

(Objection reserved).

Answer.—I do not know.

Question.—Did you ever hear of any dissent against the amalgamation referred to on the part of the members and adherents of the three last mentioned Churches?

(Objected to by Respondents pleading, as illegal and irrelevant). 20

(Objection reserved).

Answer.—No.

Question.—You are aware, Mr. Croil, that there was a dissent against the amalgamation of the said four Churches, not merely of a formal character, but on the part of several members and adherents of the Presbyterian Church of Canada in connection with the Church of Scotland?

(Objected to by Respondents pleading, as illegal and irrelevant).

(Objection reserved).

Answer.—I believe there was.

Question.—What was the name of the united Church formed by the 30 amalgamating bodies?

Answer.—The Presbyterian Church in Canada.

Question.—I think you know the Petitioner personally, Mr. Croil?

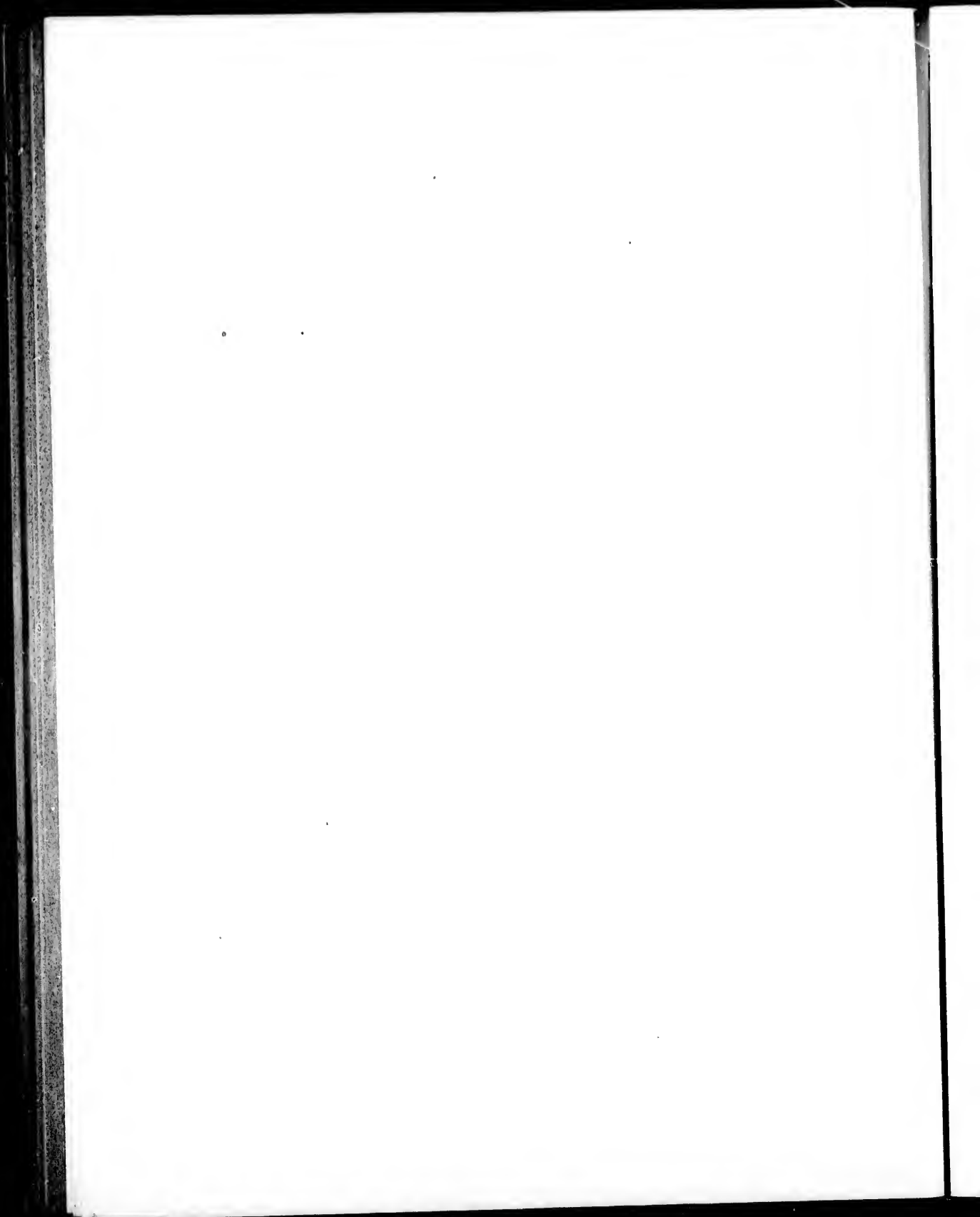
Answer.—Yes.

Question.—You were a member of his congregation in Osnabruck, and one of his elders there?

Answer.—I was.

Question.—Do you know of what charge he is minister now?

Answer.—Milton, Ontario.



Question.—How long have you known the Petitioner to have been a minister in good standing officiating?

Answer.—Since 1853.

Question.—Were you in Osnabruck, Mr. Croil, when Mr. Dobie came there?

Answer.—I was.

Question.—Where did he come from?

Answer.—St. Andrew's Church, Montreal, where he had been assisting Dr. Mathieson.

Question.—About how long had he been assistant for Dr. Mathieson, as 10
nearly as you can remember?

Answer.—About ten months.

Question.—He had not, in fact, been long out from Scotland?

Answer.—No; not more than a year, I think.

Question.—Have you any doubt that he was Dr. Mathieson's assistant, and acted in the capacity of a minister assisting Dr. Mathieson in St. Andrew's Church, Montreal?

Answer.—In a subsidiary sense he could neither assist Dr. Mathieson in the celebration of Baptism nor the Communion, inasmuch as he was not ordained.

Question.—But could he not preach and instruct people from the pulpit? 20

Answer.—Certainly; just as well as any layman could.

Question.—Do you pretend to say that he was merely a layman while assisting Dr. Mathieson in Montreal?

Answer.—I have no opinion upon it.

Question.—Are you not aware that when the Petitioner came to this country he came as a trained clergyman, fully licensed to preach the Gospel?

Answer.—I believe he did.

Question.—The ordination refers to the formal and special appointment to preach and teach in connection with a particular congregation? 30

Answer.—Generally, but not always.

Question.—From the time of his ordination to the charge in Osnabruck he became a member of the Presbytery in Glengarry, did he not?

Answer.—He did.

Question.—That was a Presbytery under the ecclesiastical jurisdiction of the Presbyterian Church of Canada in connection with the Church of Scotland?

Answer.—Yes.

Question.—The "Mr. Robert Dobie" referred to as one of the ministers present at the first diet held in St. Andrew's Church, in Montreal, on the 10th 40

of January, 1875, more especially set out at line 23, page 5, of Petitioner's factum, is the Petitioner, is he not ?

Answer.—Yes.

Question.—On the 9th day of May, 1853, the Petitioner, the Rev. Robert Dobie, was one of those ministers who was entitled to the benefits derivable from the proceeds of the Clergy Reserves ?

Answer.—I do not admit that he was entitled.

Question.—Can you deny it ?

Answer.—I will give you grounds for it if you choose, inasmuch as he was not ordained until October following.

Question.—Is it not a fact that the Petitioner was placed as early as 1852 or 1853 upon the list of those who were entitled to benefits derivable from the proceeds of the Clergy Reserves ?

Answer.—I have no certain information upon that point.

Question.—I suppose you are aware and you have no doubt heard that the Petitioner is one of those who had a claim to commute by the Government, and did commute it ?

Answer.—I have no doubt that he did commute it.

Question.—Did you ever hear any suspicion raised against his claim by the Church or by any one else ?

Answer.—I always had a doubt in my own mind about it.

Question.—Did you ever hear any doubt about his right to be placed upon the list of the beneficiaries of the Clergy Reserves ? and if so, did such doubt ever have the effect of having his claim investigated, or of having him deprived of the benefits derivable from the Clergy Reserves ?

(Objected to by Respondents pleading as illegal and irrelevant.)

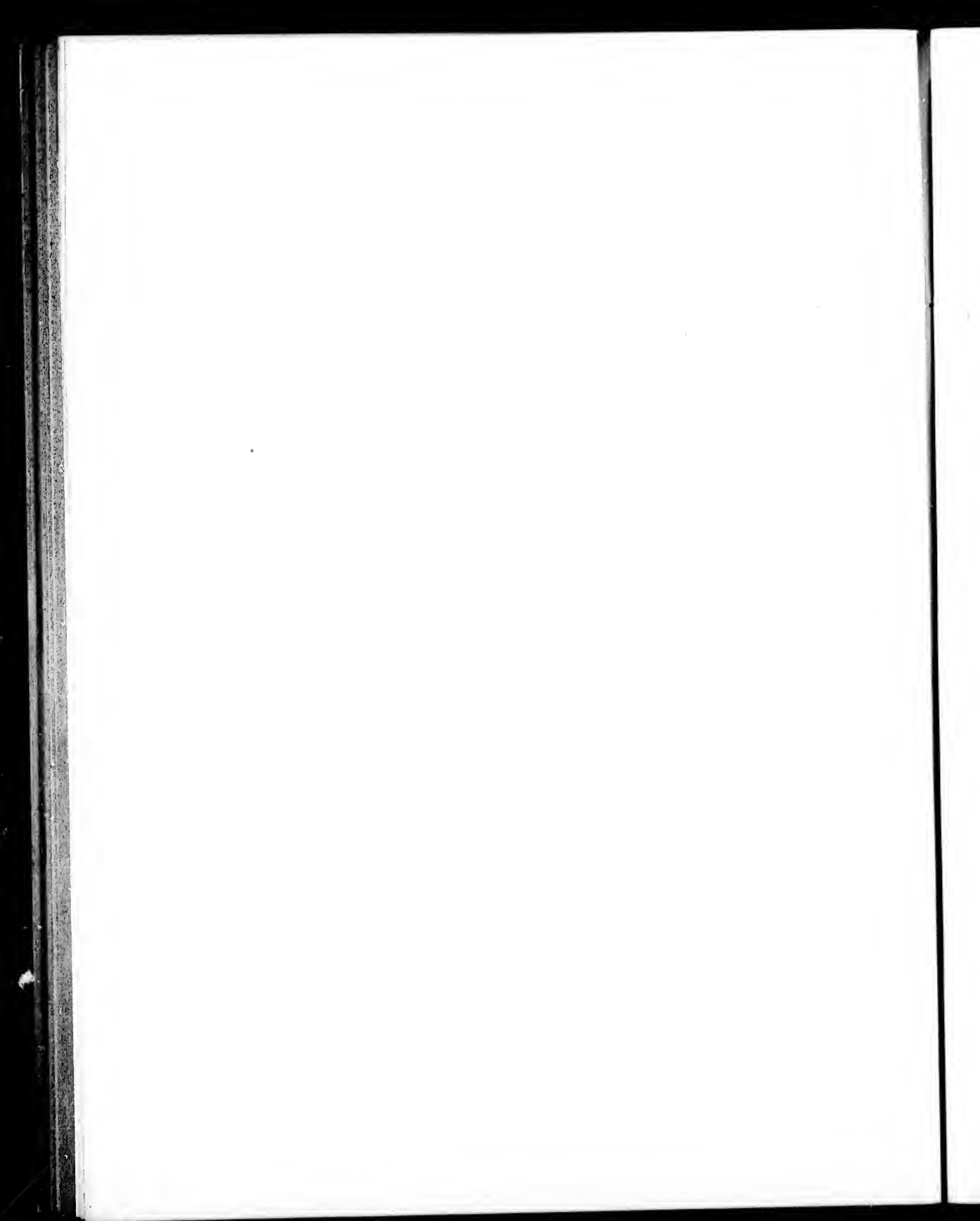
(Objection reserved.)

Answer.—I never heard any objection previous to the commutation to his right to be put on the list, but I have heard doubt subsequently to his right to commute.

Question.—Such doubts had not had the effect of having his claim investigated or having him deprived of the benefits derivable from the Clergy Reserves ? The fact is, he has been drawing the regular allowance of \$450 a year since 1855 without dispute of any one ?

Answer.—He has. At page 38 of the Acts and Proceedings of Synod of the Presbyterian Church of Canada in connection with the Church of Scotland for 1875 (in said exhibit "B.B.B."), the Petitioner is recognized as one of the commuting ministers by the Synod of the said Church.

Question.—Did the Board Respondents draw upon the capital of the



Fund under its control before the local legislation above referred to was obtained ?

(Objected to as not in issue.)

(Objection reserved.)

Answer.—I think not.

CROSS-EXAMINED WITHOUT WAIVER OF OBJECTIONS.

Question.—In speaking of the good standing of the said Petitioner since 1853, between what periods of time do you refer to ? 10

Answer.—From 1853 to 1875.

Question.—That was the time you were connected with him in connection with the Presbyterian Church of Canada ?

Answer.—That was the time.

Question.—Since that time have you had any Church connection with him ?

Answer.—None whatever.

Question.—I understand that when Mr. Dobie came out to this country from Scotland, he was what is called a licentiate or probationer of the Church of Scotland in Scotland ? 20

Answer.—Yes.

Question.—You have spoken of the par value of the funds in 1878 and at other dates. Was that the real actual marketable value at these times ?

Answer.—No ; in some cases investments were worth more than the par value and others were worth less.

Question.—Generally speaking were not the funds which were invested in stocks worth a great deal less than par value ?

Answer.—They may have been. I do not know.

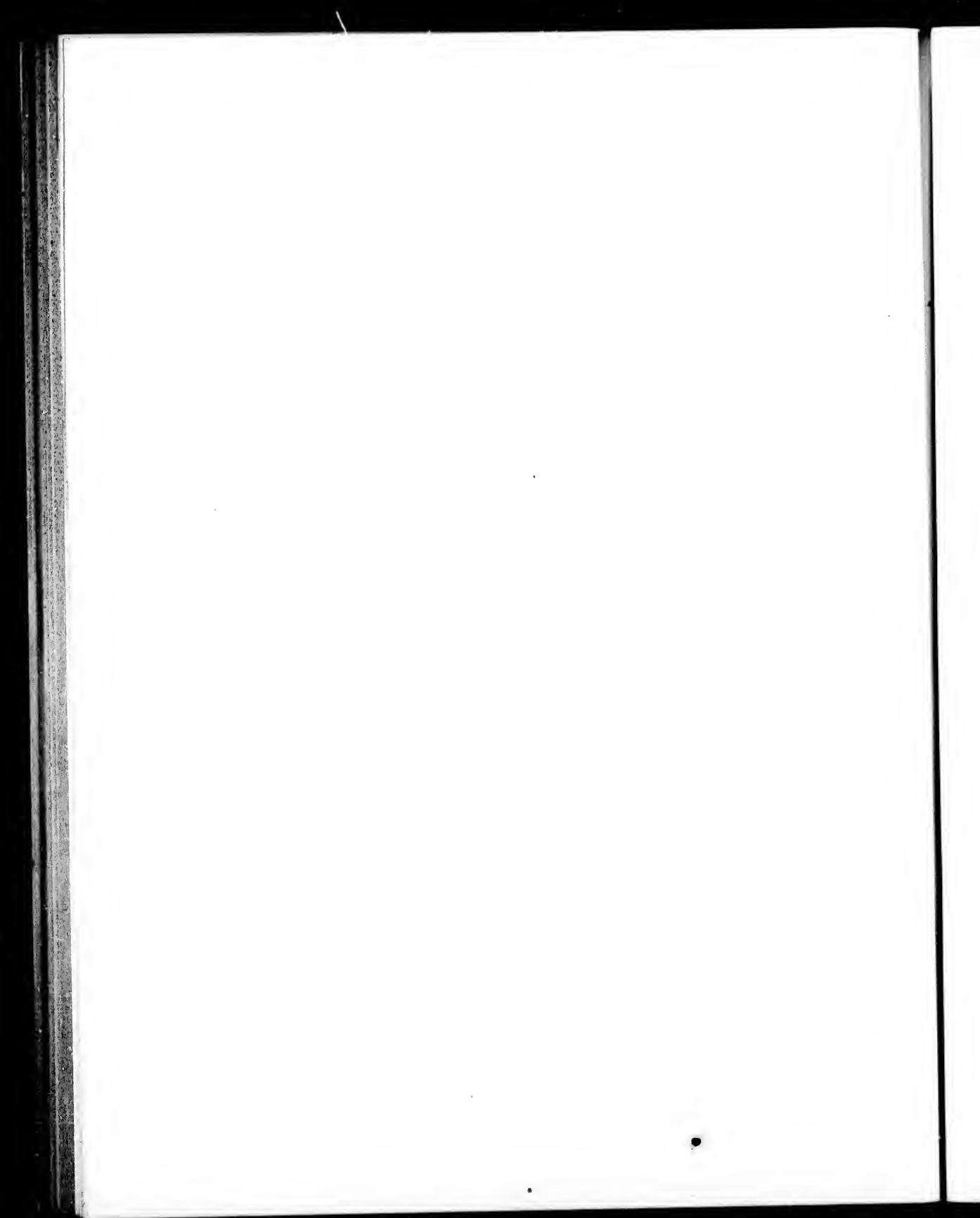
Question.—How long ago is it since the Board ceased to hold any investments in Ontario ? 30

Answer.—It must have been about ten years.

Question.—How many of the thirty-three commuting ministers whom you state were surviving on the 15th day of June, 1875, were still surviving at the date of the institution of this suit in December, 1878 ?

Answer.—Three have since died: Rev. Alexander Lewis, Rev. Alexander Spence and the Rev. John Towse.

Question.—Since June, 1875, up to the present time, is it not the case that the said Petitioner has received without protest from the Board Respondents his semi-annual payments in the same way as he had been receiving 40



them before the said June, 1875, with the exception of the last two semi-annual payments?

Answer.—He did receive them in the same way as formerly, with the exception just stated.

RE-EXAMINED.

I produce a blank form of the cheque by which the half-yearly stipends of the ministers are paid, marked X.

We have made no alteration in the cheque since the union in 1875, the 10 cheque has remained just the same as it was previously, the name of the Board having remained the same.

I am the Secretary. I countersign the cheques as Treasurer, along with the Chairman, who signs them as Chairman.

Question.—You did not consider you were doing to Petitioner any extraordinary favour in paying him the amount of these cheques?

Answer.—I did not pretend to do so.

Question.—You did not consider that the Petitioner had placed himself outside the pale of the Church, or otherwise disqualified himself from being entitled to receive his annual stipend, notwithstanding the fact that he did not 20 unite with the Presbyterian Church in Canada?

(Objected to as illegal and not arising out of re-examination, and, moreover, as involving a question of law which the witnesses' opinion cannot affect)

(Reserved).

Answer.—I certainly did not think that the Petitioner had disqualified himself (by refusing to join the union) from participating in the benefits of the 25 Temporalities' Fund, inasmuch as special provision had been made for such cases by the Synod, and also by the Legislature.

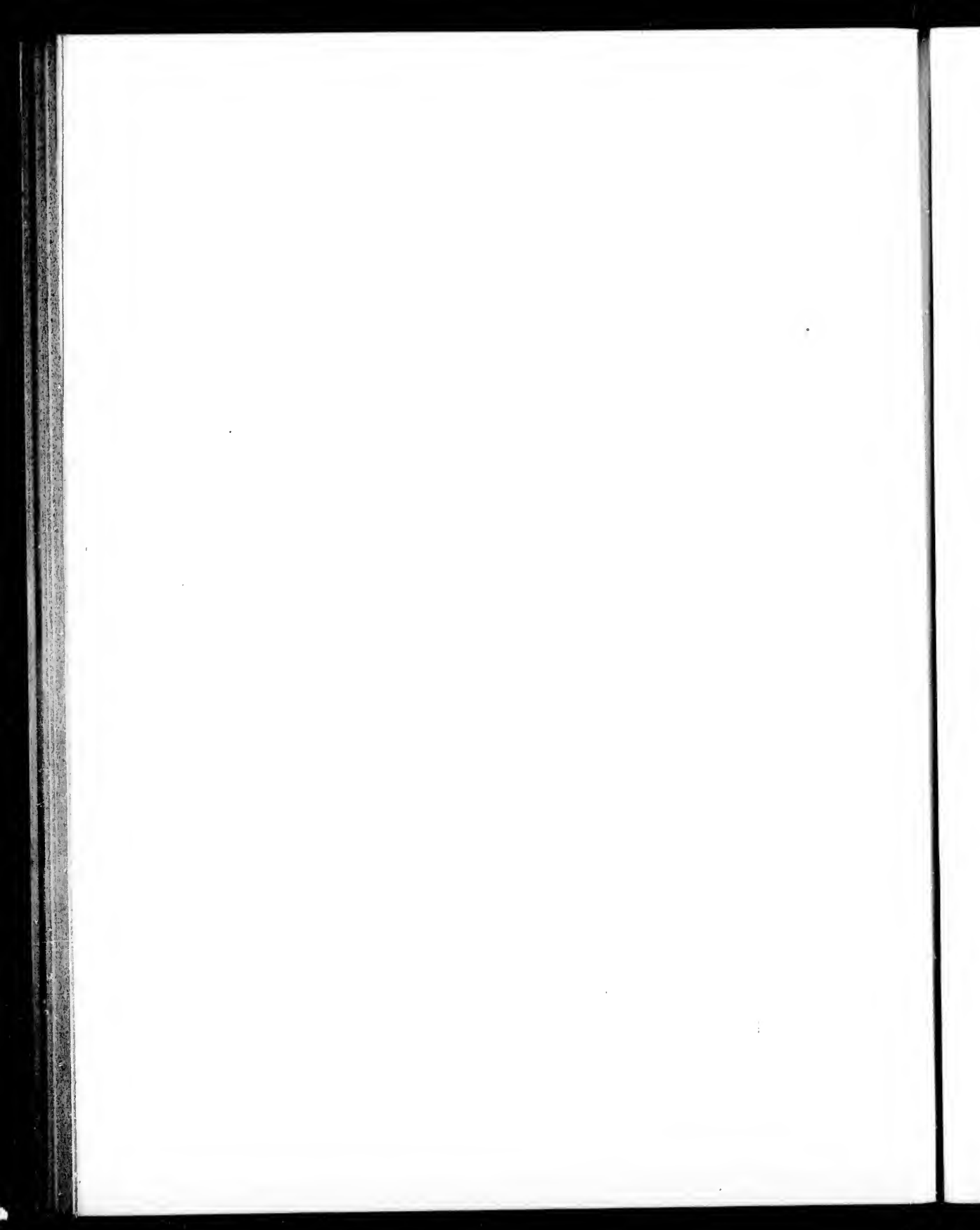
Question.—Do you pretend to say that he required any aid or favor 30 from the Synod to enable him to draw his half-yearly stipends after the union?

(Objected to as illegal and not arising out of re-examination, and, moreover, as involving a question of law which the witnesses' opinion cannot affect).

(Reserved).

Answer.—No; I do not.

Question.—The provisions you have just referred to as having been made by the Legislature is contained in the Acts of the Local Legislature, which is 35 sought to be impugned by the Petitioner's petition?



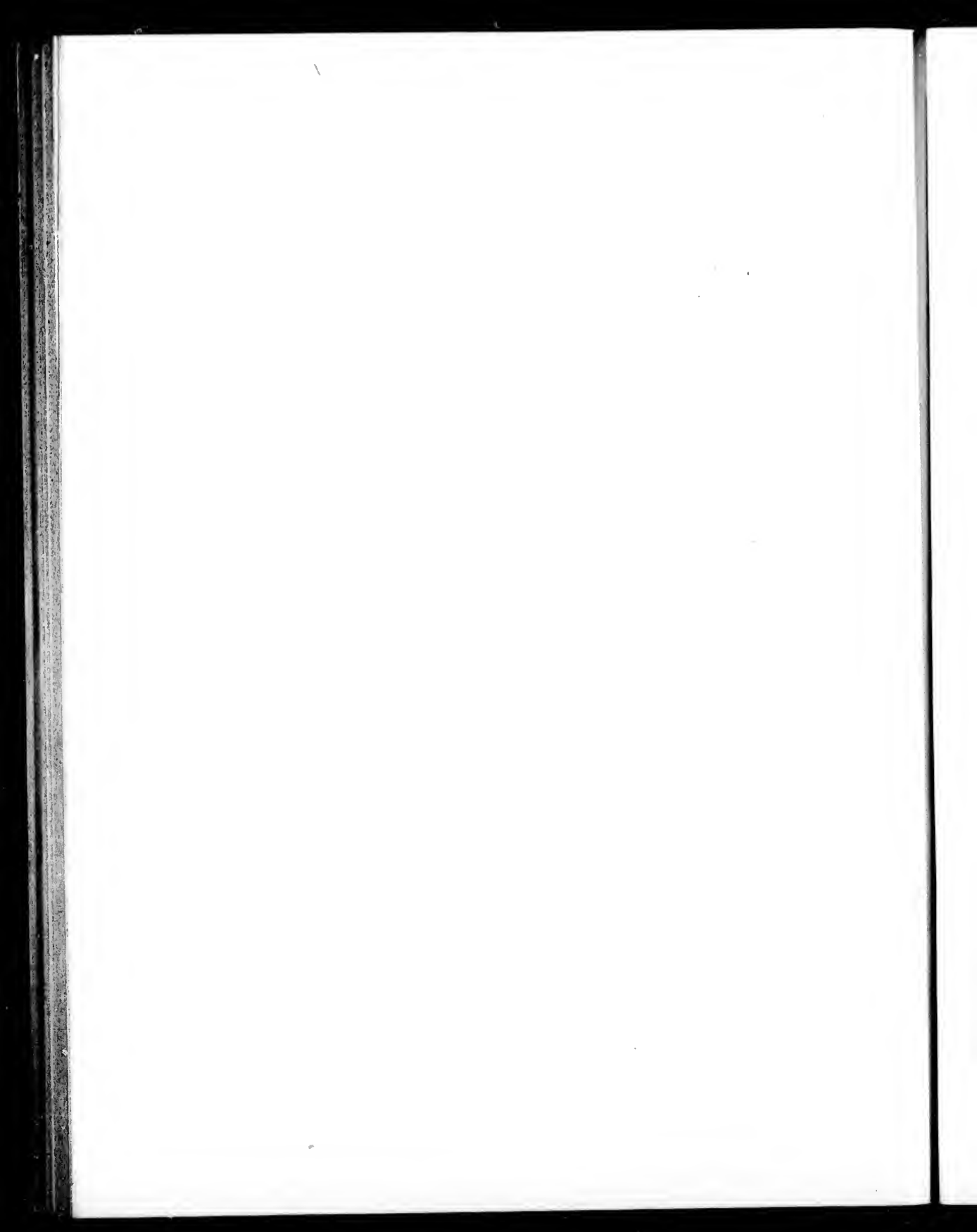
Answer.—Yes: the Acts of the Legislatures of Ontario and Quebec.

And further deponent saith not; and this, his deposition, having been read over to him, he declares it to contain the truth.

(Signed.)

H. CUTT.

Stenographer.



COPY OF JUDGMENT APPEALED FROM.

SUPERIOR COURT. MONTREAL.

Le 29 Décembre, 1879.

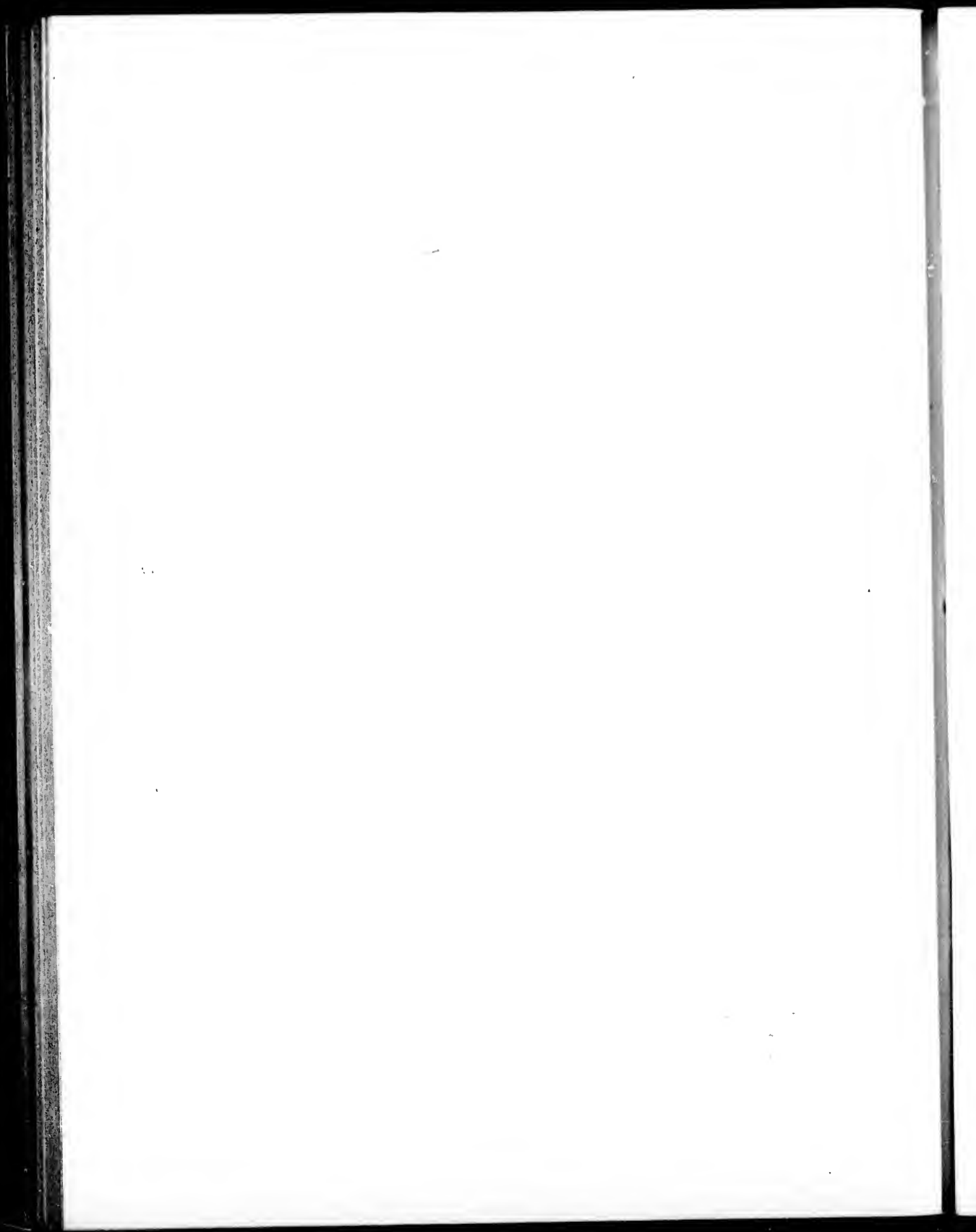
PRESENT EN CHAMBRE:—L'HONORABLE JUGE JETTE.

Ayant entendu les parties par leurs avocats respectivement sur le mérite de cette cause, examiné la procédure, les pièces produites et la preuve vu les admissions produites par les parties et délibéré ;

Considérant que le Requéant allègue par sa demande que la Corporation Defenderesse a été créée sous le nom de " Le Bureau d'Administration des Biens Temporels de l'Eglise Presbytérienne du Canada en rapport avec 10 " l'Eglise d'Ecosse," pour la possession et l'administration d'un certain fonds appartenant à la dite Eglise, et préalablement créé par résolution du Synode de la dite Eglise, en date du mois de janvier mil huit cent cinquante-cinq, et que par le statut créant et incorporant le dit bureau, il a été entre autres choses pourvu et garanti que la propriété du dit fonds appartiendrait exclusivement à la dite Eglise, que le revenu du dit fonds serait affecté aux diverses charges annuelles établies sur icelui, lors de sa création, en faveur des ministres de la dite Eglise, et qu'enfin les membres du dit bureau devraient toujours être des ministres ou des membres de la dite Eglise en pleine communion avec elle, et que quatre d'entre eux sortiraient de charge et seraient remplacés chaque 20 année ;

Considérant que le Requéant allègue en outre que lors de la création du dit fonds, il était un des titulaires ayant droit à une charge ou allocation annuelle de quatre cent cinquante piastres à prendre sur le revenu du dit fonds ; qu'il a été alors convenu, stipulé et admis comme principe fondamental de la création du dit fonds que pour avoir droit à aucun revenu provenant d'icelui il faudrait être ministre de la dite Eglise ; et que le Requéant est encore aujourd'hui en pleine possession de ses droits et privilèges sous ce rapport, étant resté ministre de la dite Eglise et en pleine communion avec elle ;

Considérant que le Requéant allègue de plus que par un Acte de la 30 Législature de la Province de Québec passé en mil huit cent soixante-et-quinze, et étant le 38 Victoria, chapitre 64, les conditions d'administration du dit fonds ont été changées de manière à continuer en charge les membres du dit bureau pour le temps d'alors, et à ne pourvoir à leur remplacement qu'au cas de



vacance par décès, résignation ou absence, et par des personnes autres que des membres de la dite Église Presbytérienne du Canada en rapport avec l'Église d'Écosse, et que le dit Acte permet de plus au dit bureau de prendre sur le capital du dit fonds, mais que ce dit Statut Provincial est inconstitutionnel et excède la compétence de la dite Législature de la Province de Québec ;

Considérant que le Requérent allègue en outre que les membres actuels du dit bureau sont illégalement restés en charge comme tels, en vertu de cet Acte inconstitutionnel sus-mentionné qu'ils n'ont aucun droit d'occuper la dite charge, et qu'ils ont de plus agi illégalement en payant diverses sommes à des ministres ne formant plus partie de la dite Église, et qu'il demande en conséquence que le dit Statut Provincial, 38 Victoria, chapitre 64, soit déclaré inconstitutionnel, nul, et de nul effet ; que les Défendeurs soient déclarés non-légalement élus membres du dit bureau, et qu'il leur soit enjoint de cesser d'occuper la dite charge et d'administrer les dits biens, et qu'enfin il soit déclaré que le dit fonds des biens temporels est la propriété exclusive de la dite Église, et ne peut être employé qu'aux fins en premier lieu pourvues, et de plus que les Révérends John Cook, James C. Muir, George Bell, John Fairlie, David W. Morrison et Charles A. Tanner soient déclarés n'être plus ministres de la dite Église et n'avoir aucun droit au revenu du dit fonds ;

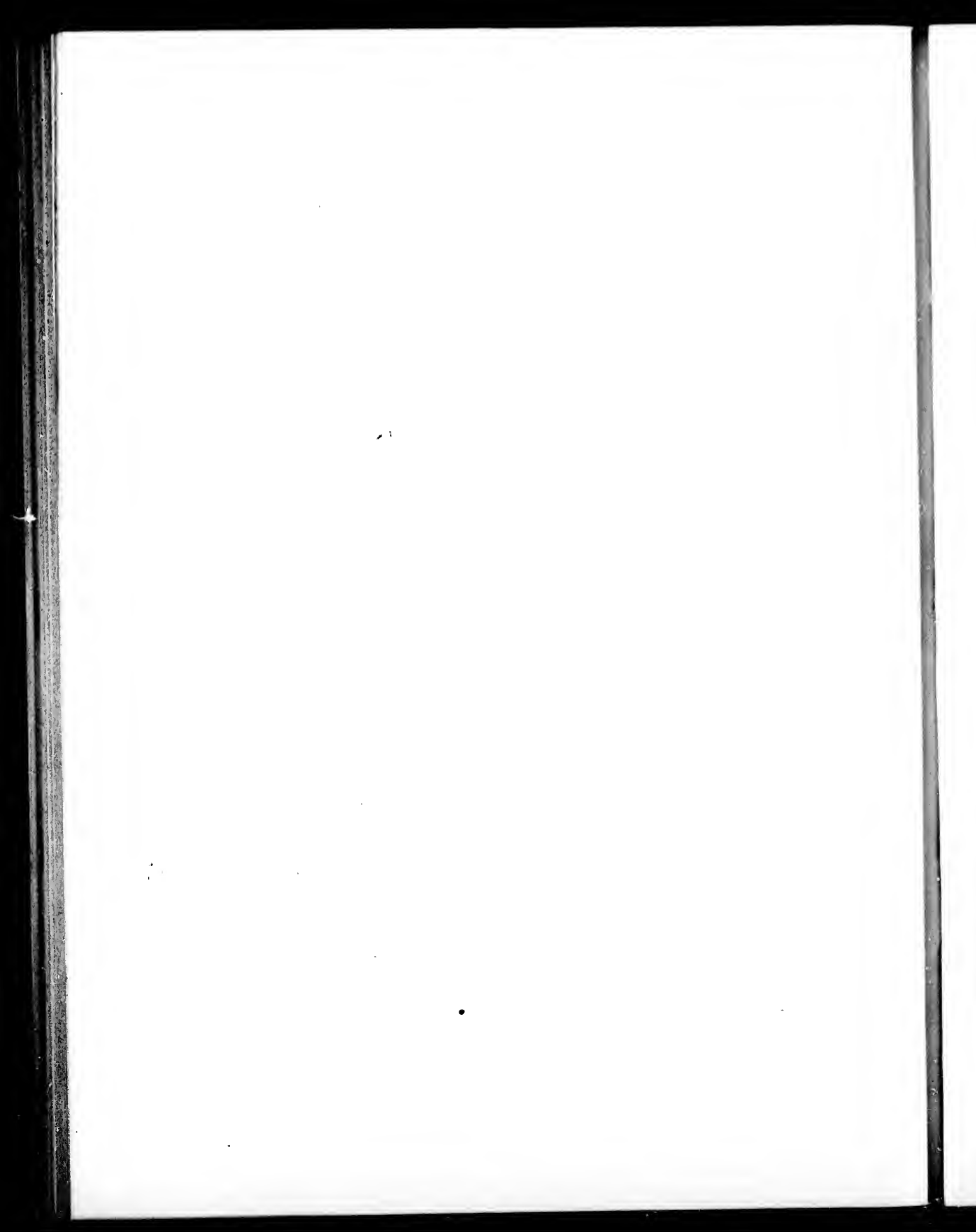
Considérant que les Défendeurs, sauf le Révérend Gavin Lang et Sir Hugh Allan, ont contesté cette demande, affirmant entre autres choses la constitutionnalité du statut attaqué par le Requérent et la légalité de leurs actes ;

Considérant que par la section 92 de l'Acte de l'Amérique Britannique du Nord, 1867, il est déclaré que la propriété et les droits civils sont exclusivement du ressort et de la compétence des Législatures Provinciales et que les droits affectés par le dit Acte 38 Victoria, chapitre 64, dont le Requérent demande l'annulation, tombent formellement sous l'empire de la dite section 92 de l'Acte constitutionnel, et sont par suite sous la juridiction et compétence de la Législature Provinciale, et qu'en conséquence le dit Statut Provincial est valable et légal et a pleine force et vigueur ;

Considérant que bien que le Requérent ne soit pas résidant dans la Province de Québec, la Législation du Parlement de cette Province affecte nécessairement les droits qu'il peut posséder ou réclamer dans la dite Province, et que par suite les droits qu'il invoque dans l'espèce sont nécessairement soumis aux dispositions du dit Acte Provincial, 38 Victoria, chapitre 64 ;

Considérant qu'aux termes du dit Acte les Défendeurs sont légalement en charge comme membres de la Corporation Défenderesse et qu'ils ont droit de continuer l'administration des biens qui leur sont confiés comme tels ;

Considérant que tant en vertu du dit Acte, 38 Victoria, chapitre 64, qu'en vertu d'un autre Acte du dit Parlement de la Province de Québec, savoir,



le Statut 38 Victoria, chapitre 62, dont la légalité et la constitutionnalité n'ont pas été mises en question, le dit fonds sus-mentionné est resté soumis en faveur de tous les titulaires y ayant droit, lors de la création d'icelui, à toutes les charges constituées sur icelui, et que par suite le droit du Requéran à son revenu annuel de quatre cent cinquante piastres a été complètement sauvegardé et garanti ;

Considérant néanmoins que par les deux statuts en dernier lieu mentionnés la propriété du dit Fonds n'est plus attribuée exclusivement à la dite Eglise Presbytérienne du Canada en rapport avec l'Eglise d'Ecosse, mais qu'après l'extinction de tous droits antérieurs garantis par le dit fonds, elle est transférée à l'Eglise Presbytérienne en Canada, formée de la dite Eglise Presbytérienne du Canada en rapport avec l'Eglise d'Ecosse et de trois autres Eglises, dont l'union a été autorisée par le dit Statut 38 Victoria, chapitre 62, et qu'en vertu des dispositions des dits statuts les dits Révérends John Cook, James C. Muir, George Bell, John Fairlie, David W. Morrison et Charles A. Tanner étaient en droit de recevoir et les Défendeurs étaient en droit de leur payer les sommes par eux reçues, sur et à même le revenu du dit fonds administré par les Défendeurs ;

Considérant en conséquence que la demande du Requéran est mal fondée et ne peut être maintenue, et que les Défendeurs (excepté le Révérend Gavin Lang et Sir Hugh Allan) sont bien fondés en leurs défenses ;

Maintenons les défenses des dits Défendeurs (sauf l'exception susdite) et renvoyons en conséquence la demande du dit Requéran, et cassons et annulons à toutes fins que de droit le Bref d'Injonction émis en cette cause et en donnons main levée aux dits Défendeurs, avec dépens distraits à J. L. Morris, écuyer, leur avocat.

Transcript.

MONTREAL, le 19 Janvier, 1880.

(Signed),

GEO. H. KERNICK,
Deputy P. S. C.

