The Legal News.

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THE PROPOSED CHANGES IN THE COURT OF QUEEN'S BENCH.

We have repeatedly pointed out in this journal the disastrous consequences flowing from the fluctuating composition of the Court of Review, as that tribunal exists in the District of Montreal. We refer specially to the contradictory decisions thus obtained from the same court. It is extraordinary that in the face of these facts, the same pernicious system should be forced upon the Court of Queen's Bench. There is no reason to suppose that the result will not be the same. It is well known that a great many of the most important decisions of the Appeal Court are really one judge decisions, that is, the Court is divided three to two. Now, if the appeal be heard by five out of six judges, there is the chance, in all such cases, that if one of the judges who sat in the case had been replaced by the judge who did not sit, the result might have been different. Thus, there is a temptation to try the same point over again, in the hope of a different decision, and on every point on which two contradictory decisions are obtained, the law will be utterly doubtful and unknown until the slow remedy of an appeal to the Privy Council or to the Supreme Court, in some case of sufficient consequence to be taken there, shall settle the jurisprudence.

That we are indicating no imaginary evil is apparent from a cursory examination of some of the more recent decisions of the Court of Queen's Bench. We may add that we are inclined to believe that the further back you go, the lack of unanimity will be the more apparent. In the following cases (decided at Montreal alone) the names of the judges who pronounced the judgment are placed on the left, and the names of the dissenting judges on the right:—

BORROWMAN & ANGUS.

Dorion	Monk
Tessier	Ramsay
Cross	

STANTON & THE HOME INSURANCE CO.

Dorion	Monk
Ramsay	Tessier
Cross	

BLACK & THE NATIONAL INSURANCE CO.

Dorion	Monk
Tessier	Ramsay
Sicotte	

JOLY & MACDONALD.

Dorion	Monk
Tessier	Ramsay
Cross	

DOBIE & TEMPORALITIES BOARD.

Dorion	Ramsay
Monk	Tessier
McCord	

TRUSTEES OF MONTREAL TURNPIKE ROADS & DAOUST.

Dorion	Ramsay
Monk	Cross
Tessier	

LAROCQUE & WILLETT.

Dorion	Ramsay
Taschereau	Sanborn
Loranger	

ARCHIBALD & BROWN.

Ramsay	Dorion
Tessier	Monk
Cross	

REEVES & GERIKEN.

Monk	Dorion
Tessier	Ramsay
Cross	

RENNY & MOAT.

Dorion	Tessier
Monk	Cross
Ramsay	

DORION & BROWN.

Dorion	Monk
Ramsay	Tessier
Cross	

CURÉ &C. DE BEAUHARNOIS & ROBILLARD.

Dorion	Monk
Ramsay	Tessier
Cross	

JURISDICTION.

The decision in *Mutual Fire Ins. Co. of Stanstead* v. *Galiput et al.*, noted in our last issue (p. 239), appears to be in contradiction with another decision recently delivered—*Eastern Townships Mutual Fire Ins. Co.* v. *Bienvenu*, 2 Legal News, p. 363. In the latter case the company sued for assessments on premium note, in the District of Bedford, where their head office was, and where the assessments were made payable, but the defendant was served at his domicile in the District of Montreal. Judge Dunkin maintained the declinatory exception filed by the defendant. In the case of *Mutual Fire Ins. Co.* v. *Galiput et al.*, a declinatory exception was pleaded on similar grounds. The action was taken out in the District of St. Francis, where the head office of the company is situate, and the defendant Lavoie was served in the District of Iberville. He pleaded a declinatory exception, on the ground that the contract of insurance originally made between the company and the defendant

Galiput was effected at Sutton, in the District of Bedford, through the company's local agent in that place, and the application was taken there, though the policy was issued at the head office of the company. Judge Doherty dismissed the declinatory exception, and this judgment was maintained in Review, Judge Jetté dissenting.

PROCEEDINGS BY AN INSOLVENT.

An interesting point was presented in the case of *Gareau* v. *Cinq Mars*, noted elsewh re. The plaintiff, Gareau, was an insolvent who had not obtained his discharge. The question was whether the provision of the repealed Insolvent Act, requiring that an insolvent bringing an action should give security, applies now that the Act has ceased to be in force. Mr. Justice Torrance holds that this provision of the Act applies to all insolvents under the Act who have not obtained their discharge.

NOTES OF CASES.

SUPERIOR COURT.

[In Chambers.]

MONTREAL, July 27, 1880.

GAREAU v. CINQ MARS.

Security for costs in action brought by insolvent —Effect of the repeal of the Insolvent Act.

An application was made July 26, by the defendant for security for costs against plaintiff under the Insolvent Act 1875, Section 39.

J. E. Robidoux, for the plaintiff, resisted the application, alleging that if it were granted his client might be impeded for 50 years to come, and that the repeal of the Insolvent Act prevented this demand.

T. C. Delorimier è contra.

TORRANCE, J. The repealing Act says that the provisions of the Acts repealed shall continue to apply to every insolvent affected thereby, and to his estate and effects It is also admitted that the plaintiff is an insolvent under the Insolvent Act before its repeal, and he is still under its operation, not being yet discharged. I have, therefore, no difficulty in holding that the application for security should be granted, and the proceedings stayed in consequence. I do not consider that the *Queen v. Jobin*, 3 Leg. News, 123, applies.

Robidoux for plaintiff.

DeLorimier & Co. for defendant.

COURT OF REVIEW.

MONTREAL, Oct. 31, 1879.

MACKAY, RAINVILLE, PAPINEAU, JJ.

THAYER v. ANSELL, and MOSS et al., opposants.

[From S. C., Montreal.

Privilege—Registration—Alienation of immoveable by holder while hypothecary action is pending by a creditor whose claim has not been re-registered under the cadastral system—Rights of the latter as against purchaser with duly registered title.

The judgment inscribed in review was rendered by the Superior Court, Montreal, Johnson, J., Feb. 28, 1879. See 2 Legal News, p. 75, for the judgment below.

MACKAY, J. (*diss.*) was of opinion that Moss was not in good faith. His opposition was founded on a purchase of property on which the plaintiff had a hypothecary claim. The registration of plaintiff's claim had not been renewed, as the law requires. It appeared that Ansell was about to institute an appeal in a certain case, and Moss was to be surety for the costs. It was in consideration of this that the deed was passed to Moss. But the appeal was afterwards abandoned, and Moss, therefore, had not given any consideration for the deed to him.

PAPINEAU, J., did not consider that there was sufficient evidence of bad faith on the part of Moss to preclude his claim. On the question of law, his honor made the following observations:—

La question de droit est pure et simple. L'action du demandeur pouvait-elle avoir l'effet que donne l'article 2074 C.C. à l'action hypothécaire, de rendre sans effet à l'égard du poursuivant, l'aliénation faite par le défendeur poursuivi, à moins que le nouvel acquéreur ne consigne le montant de la dette, intérêt et dépens dus au créancier poursuivant? La sect. 1ère du chap. 47, S.R.B.C., d'où est tiré l'art. 2074 du Code, était bien plus claire, sur ce point, que cet article, et ne laissait aucun doute qu'il fallait que l'action fut basée sur une hypothèque dument enregistrée pour avoir cet effet.

L'art. 2074, pris isolément, ne paraît pas exiger cette condition; mais s'il est rapproché de l'art. 2056, on voit que la loi est conservée, quant à cela, telle qu'elle était dans le Statut Refondu. "Les créanciers ayant privilége, ou *hypothèque enregistrée* sur un immeuble, le suivent en quelques mains qu'il passe," dit cet article, "et ont droit de le faire vendre en justice, et de se faire

payer, *suivant le rang de leur créance*, sur les deniers provenant de cette vente."

Cet article prévoit deux cas : celui du privilége qui n'a pas besoin d'être enregistré, comme par exemple les priviléges pour droits seigneuriaux, celui assurant le paiement des cotisations pour construction d'églises, le paiement des taxes municipales et scolaires, etc. Et il prévoit aussi le cas de l'hypothèque enregistrée.

Le privilége du vendeur, qui est celui sur lequel s'appuie le demandeur, dans la présente instance, n'est pas au nombre de ceux exemptés de la formalité de l'enregistrement, en vertu de l'art. 2984 du Code. Le demandeur devait donc faire enregistrer son droit hypothécaire pour le suivre en mains tierces. L'art. 2172 l'obligeait à faire renouveler son enregistrement dans le délai fixé, et qui expirait pour lui le 15 de juillet, cinq jours avant la date de la signification de son action qui n'a été faite au défendeur que le 20 de juillet. Le droit du demandeur est donc sujet aux termes suivants de l'art. 2173 : "A défaut de tel renouvellement, les *droits réels* conservés par le premier enregistrement n'ont aucun effet à l'égard..... des acquéreurs subséquents dont les droits sont régulièrement enregistrés.

Les opposants sont des acquéreurs subséquents à la date fixée pour le renouvellement de l'enregistrement des droits réels du demandeur, et leurs droits sont régulièrement enregistrés.

L'action hypothécaire du demandeur pouvait être intentée contre le défendeur, mais l'effet en était périssable comme le droit sur lequel elle était fondée, par le défaut de renouvellement de l'enregistrement de ce droit. Le demandeur doit s'imputer son malheur à son manque de diligence.

Le jugement est conforme à la loi et doit être confirmé.

Lunn & Cramp for opposants.

Geoffrion & Co. for plaintiff contesting.

COURT OF REVIEW.

MONTREAL, June 23, 1880.

MACKAY, TORRANCE, RAINVILLE, JJ.

BELANGER et al., Insolvents, ARCHAMBAULT, assignee, and LAROCQUE, petitioner.

[From S. C., St. Francis.

Insolvent Act of 1875, *Sect.* 68—*Inscription in Review from order under this section.*

The firm of Belanger Bros. became insolvent, and subsequently effected a composition with their creditors. Part of the consideration given for the discharge was a debt due to the insolvents by the Companie Typographique, of which about $1200 was payable on the 1st May, 1879. The assignee sued the Company ; the action was contested, and judgment was obtained for $640. The petitioner Larocque, a creditor of the insolvents, desired that the assignee should appeal from this judgment, to the Court of Queen's Bench, and on his refusal to do so, applied for an order of the judge, under Sect. 68, Insolvent Act of 1875, authorizing him to take such proceeding in the name of the assignee.

The judge at Sherbrooke, Doherty, J , made the following order :—"Having seen the foregoing petition, and considering the refusal of the said assignee to institute the appeal mentioned therein, I hereby authorize the said creditor Alfred Larocque and petitioner to take such proceeding, and to institute the said appeal in the name of the assignee, but at his own expense and risk, and for his own exclusive benefit, upon the said petitioner indemnifying the said assignee for all costs and damages which might result to the said assignee in consequence of the said appeal."

The assignee inscribed in Review from the above order.

The creditor, respondent in Review, moved that the inscription be discharged, on the ground that the order in question was not susceptible of revision, and that the assignee had no right to inscribe for the revision of an order which did not concern him nor the estate. The case of *In re Lambe*, 13 Chancery, 391, was referred to. It was further submitted that the writ of appeal had issued, and the case was now before the Court of Queen's Bench.

The COURT granted the motion and discharged the inscription.

Ives, Brown & Merry for the assignee.

L. C. Belanger for the petitioner.

CIRCUIT COURT.

District of Terrebonne, Jan. 14, 1880.

LA COMPAGNIE DU CHEMIN DE FER DU LAURENTIDE v. GAUTHIER.

*Bailiff—Return of Service—*78 *C.C.P.*

On an exception *à la forme*, attacking the return of service, on the ground that the bailiff who made the service in the district of Terre-

bonne, was appointed for the district of Montreal.

JOHNSON, J., held that the bailiff, who was originally appointed for the District of Terrebonne, had not ceased to have the right to act as such in Terrebonne by the fact that he no longer resided there, and had since been appointed bailiff for the district of Montreal, where he now resides.

Exception *à la forme* dismissed.

De Bellefeuille & Turgeon for plaintiffs.
Prevost & Prefontaine for defendant.

COURT OF QUEEN'S BENCH.

Sir A. A. DORION, C. J., MONK, J., RAMSAY, J., TESSIER, J., MCCORD, J., *ad hoc.*

MONTREAL, June 19, 1880.

DOBIE, (petitioner below), Appellant, and BOARD FOR THE MANAGEMENT OF THE TEMPORALITIES FUND OF THE PRESBYTERIAN CHURCH OF CANADA IN CONNECTION WITH THE CHURCH OF SCOTLAND, et al. (respdts. below), Respondents.

The Presbyterian Church Union—Constitutionality of Act (Quebec) 38 *Vic. cap.* 64.

The appeal was from a judgment of the Superior Court, Montreal, Jetté, J., Dec. 29, 1879, quashing a writ of injunction. The judgment below was as follows :—

" 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 Requérant 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 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, 1855, 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 Église 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 $450 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 Requérant est encore aujourd'hui en pleine possession de ses droits et priviléges 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 1875, et étant le 38 Vict. chap. 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 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 Quebec ;

" Considérant que le Requérant allègue en outre que les membres actuels du dit bureau illégalement sont 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 Eglise, et qu'il demande en conséquence que le dit Statut Provincial, 38 Vict. chap. 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 Réverend Gavin Lang et Sir Hugh Allan, ont contesté cette demande, affirmant entre autres choses la constitutionalité du statut attaqué par le Requérant et la légalité de leur actes ;

" Considérant que par la sect. 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 affectées par le dit Acte 38 Vict. chap. 64, dont le Requérant demande l'annulation, tombent formellent sous l'empire de la dite section 92 de l'Acte constitutionnel, et sont par suite sous la jurisdiction 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 Requérant 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 au dispositions du dit Acte Provincial, 38 Vict. chap. 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 Vict. chap. 64, qu'en vertu d'un autre Acte du dit Parlement de la Province de Québec, savoir, le Statut 38 Vict. chap. 62, dont la légalité et la constitutionalité n'ont pas éte 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 Requérant à son revenu annuel de $450 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 P ytérienne 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 Vict. chap. 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 Defendeurs 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 Requérant 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 distraits," &c.

RAMSAY, J., (*diss.*) The whole point of this case has been most ably put by the learned Judge in the Court below, and the issue is really brought down to this: whether certain Acts of the Quebec Legislature are within the legislative powers of that body.

The examination of the questions as to the extent of the legislative powers of the general and local Legislatures frequently gives rise to great difficulty, and the decisions are not, as yet, sufficiently numerous to enable the Courts to derive from them any well settled general principles as a guide. It is, therefore, with some hesitation that I approach the consideration of these intricate questions, to some of which it is impossible to give a totally satisfactory answer. The double enumeration by which it was intended to obviate all doubt as to which Legislature was to possess exclusively this or that power, even the use of the word "exclusively," has complicated the difficulty, and given rise to interpretations of very various merit. The questions presented in the case before us appear to me to be more difficult of solution than any that have as yet come before us, as they involve the consideration of a direct conflict between sections 91 and 92 of the B. N. A. Act.

Briefly stated, the facts are these: Prior to 1875, there existed a religious body, known as

the Presbyterian Church of Canada in connection with the Church of Scotland. It did not owe its existence to any charter or statute, but it grew out of the settlement in this country of Presbyterians in communion with the Church of Scotland. But if no statute defined precisely the limits, rights and privileges of this body, numerous statutes acknowledged its existence, and the right of its clergy to share in the lands known as the "Clergy Reserves," was admitted. When, by process of legislation, the share of the clergy of the Church of Scotland in Canada became fixed, an Act of the Legislature of United Canada was obtained (22 Vic., cap. 66) to make provision for the management and holding of certain funds of the Presbyterian Church in connection with the Church of Scotland, "now held in trust by certain commissioners, hereinafter named, and for the benefit thereof, and also of such other funds as may from time to time be granted, given, bequeathed, or contributed thereto." The body so incorporated is the Board of Management, the present respondent.

This Act being still in force, in 1874 numerous clergymen and others, members of different Presbyterian churches in Canada, deemed it desirable to unite their ecclesiastical fortunes and henceforward to form one body, to be called "The Presbyterian Church in Canada." Nothing could be more lawful or more praiseworthy than the attempt to sink minor differences of opinion in order to attain greater efficiency, but we have not to decide as to motives and intentions. Our duty is deliberately and coldly to decide a question of law. Application was made almost simultaneously to the Legislatures of Ontario and Quebec for authority to give effect to this determination, and to enable the new body to deal with the property of the Churches so united. An Act of the Ontario Legislature (38 Vic., cap. 75) was passed, the preamble of which sets up that:—

"Whereas 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, have severally agreed to unite together and form one body or denomination of Christians, under the name of "The Presbyterian Church in Canada;" and the Moderators of the General Assembly of the Canada Presbyterian Church, and of the Synods of the Presbyterian Church of Canada in connection with the Church of Scotland, and the Church of the Maritime Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces, respectively, by and with the consent of the said General Assembly and Synods, have by their petitions, stating such agreement to unite as aforesaid, prayed that for the furtherance of this their purpose, and to remove any obstructions to such union which may arise out of the present form and designation of the several Trusts or Acts of incorporation by which the property of the said Churches, and of the colleges and congregations connected with the said Churches, or any of them respectively, are held and administered or otherwise, certain legislative provisions may be made in reference to the property of the said Churches, colleges and congregations, situate within the Province of Ontario and other matters affecting the same in view of the said Union."

The first section then vests all the property of the different Churches so united in the united body under the name of "The Presbyterian Church in Canada." Then come reservations and modifications of certain rights, and then by section 4 certain legislation in Ontario respecting the property of religious institutions is made applicable to the various congregations in Ontario in communion with the Presbyterian Church in Canada. Section 5 declares that all the property, real and personal, belonging to or held in trust for the use of any college or educational or other institution, or for any trust in connection with any of the said churches or religious bodies, either generally or for any special purpose or object, shall, from the time the said contemplated union takes place, and thenceforth, belong to and be held in trust for and to the use in like manner of "The Presbyterian Church in Canada." Section 7 then deals specially with Knox College and Queen's College, situate in Ontario, and with "The Presbyterian College" and with "Morrin College," situate in the Province of Quebec. Section 8 deals with the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland, "adminis-

tered by a board incorporated by statute of the heretofore Province of Canada." Section 9 deals with the Widows and Orphans fund of "The Canada Presbyterian Church" and "The Presbyterian Church of Canada in connection with the Church of Scotland." Section 10 authorizes the new body to take gifts, devises and bequests; and lastly, section 11 declares that "the union of the said Churches shall be held to take place so soon as the articles of the said union shall have been signed by the Moderators of the said respective Churches."

The legislation in the Province of Quebec took the form of two Acts, 38 Vic., cap. 62 and 64, the former respecting the union of certain Presbyterian Churches; the latter is styled "An Act to amend the Act intituled 'An Act to incorporate the Board of Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland.'"

Cap. 62 of the 38 Vic., Quebec, with the exception of the section relating to the Temporalities Fund, is substantially the same as the Ontario Act 38 Vic., cap. 74. One or two differences it may, however, be well at once to note. The Ontario Act bestows all the above mentioned privileges on "The Presbyterian Church in Canada;" while the Act of Quebec bestows them on the body so named, "or any other name the said Church may adopt." The Quebec Act declares that the union of the four churches is to take place from the publication of a notice in the Quebec *Gazette* to the effect that the articles of union have been signed by the Moderators of the said respective Churches. The Quebec Act has also a section which, harmless in itself, is suggestive of the utmost confusion of ideas. It is as follows:—"In so far as it has authority to do so, the Legislature of the Province of Quebec hereby authorizes the Dominion Legislature, and the several Legislatures of the other Provinces to pass such laws as will recognize and approve of such union throughout and within their respective jurisdictions."

The other of the Acts of Quebec can hardly be called an amendment of the former Act of the old Province of Canada, for it transfers almost the whole of the temporalities fund over to the new Church, and confides its management to a Board constituted in a manner entirely different from the Board under the old Act.

The condition of union in Ontario was accomplished, and the notice has appeared in the Quebec *Official Gazette*.

The appellant, a minister of the Presbyterian Church in Canada in connection with the Church of Scotland, refused to concur in this fusion, and he petitioned for an injunction to prohibit the Board as now constituted to deal with the temporalities fund. The Court below has dissolved the injunction: hence this appeal.

The statement in respondent's factum, "that the petitioner and the seven ministers who continue with him outside the said union, have no right 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 charge," is calculated to mislead. Whatever the legal effect of the proceedings may be, whole congregations have voluntarily separated themselves from the said Church, if the eight ministers have. But whether the non-conformists be 8 or 8,000 is of no importance, except for the purpose of sensation. The rights of the few are as sacred in the eye of the law as the rights of the many.

A theological argument originally complicated the issues in the case; but the learned Judge in the Court below very properly, I think, dismissed it from his consideration. If we were to admit such a line of discussion we might be called upon to decide whether "The Presbyterian Church in Canada in connection with the Church of Scotland" was or is an orthodox body. This mode of circumscribing the argument evidently wounds the sensibilities of the respondents, who perhaps would be as much shocked at the idea of a majority vote absorbing their new union into the Church of Rome, as the Rev. Mr. Dobie is at the metamorphosis which respondents contend has now taken place. And therefore during the argument at the bar we were informed that the Church of Scotland had sanctioned or approved of the fusion in question. I only refer to this to show in what inextricable difficulties we should be involved if we were to allow ourselves to be decoyed from the legal question, to the consideration of questions, the interest of which cannot be over-

estimated, but which are not of our competence. I do not conceive I have the mission to pronounce as to whether the "theological standards" of the four Churches are identical or not, and perhaps I may be permitted to add that I do not regret not having to perform that duty. I take it we must recognize the *status* of each of these Churches, and also that they were separate and distinct bodies, however thin the partition may be which divided them, and we must also recognize the new body as one distinct from all the others.

As a fact, it is admitted that all the property and money of the temporalities fund is situated or invested in the Province of Quebec. The respondents, relying on sub-section 13 of section 92 B. N. A. Act, which gives legislative power to the Provincial Legislatures over "property and civil rights in the Province," contend that having full control over all property, the Legislature of Quebec has full power to deal with all property which may exist in the Province of Quebec, and consequently that it has the power to confiscate the funds of the Presbyterian body situate in the Province of Quebec, and present them to some one else, and that this has been done. On the other hand, appellant contends that the local Legislature has no right to incorporate any companies but those having provincial objects (Ib. sub.-section 11); that this is tantamount to saying that the right to incorporate companies with other than local objects is exclusively reserved to the Dominion Parliament (Sect. 91, B. N. A. Act); that the board of management was an incorporation for other than provincial objects, and therefore that it could not have been created a corporate body by a local Act, and consequently that its act of incorporation cannot be altered or amended by any local Legislature.

I must confess that the sections upon which the contending parties rely appear to me to be irreconcileable by themselves. If the local power to legislate over property and civil rights in the Province is to be interpreted to mean over "all" property, &c., then the power of Parliament to incorporate is illusory. In practice it never has been contended that property means all property. Railway companies incorporated by Parliament, for instance, hold and manage their property under Dominion laws, and such companies evict people from their private property in each Province under Dominion laws. No one will venture to affirm that a local Act could confiscate the property of a railway company incorporated by Parliament, or transfer it to another company or person. And so it has been decided in the case of *Bourgoin & The Q., M., O. & O. Railway Co.* by the Privy Council, (3rd Legal News, p. 185,) that a railway with all its appurtenances, and all the property, liabilities, rights and powers of the existing company, could not be conveyed to the Quebec Government, and, through it, to a company with a new title and a different organization, without legislative authority, and that if the railway was a Federal railway, the Act authorizing the transfer must be an Act of the Parliament of Canada. Nor, by parity of reasoning, could the local legislature confiscate the surplus funds of a bank on the pretext that it was property in the Province. It is impossible to conceive more obvious limitations to the right to legislate as to property than these. Again, we have had two decisions limiting the sub-section in question. In the case of *Evans* v. *Hudon*, and *Browne*, T.S., Mr. Justice Rainville held that a local Act was unconstitutional which authorized the seizure by process of law of the salaries of federal officers, 22 L. C. J., p. 268; and the Court of Appeal in Ontario, in the case of *Leprohon & The Corporation of Ottawa*, 2 Tupper, p. 522, held, reversing the judgment of the Queen's Bench, 40 U. C. R. 478, that under the B. N. A. Act, 1867, a Provincial Legislature has no power to impose a tax upon the official income of an officer of the Dominion Government, or to confer such a power on the municipalities. These decisions can only be sustained on the ground that property in the sub-section in question does not include such property and civil rights as are necessary to the existence of a Dominion object, to copy the phraseology of the B. N. A. Act. It may, perhaps, be said that sec. 91, s. s. 8, B. N. A. Act, specially gives to the Federal Parliament the power of fixing the salaries; but this does not seem to me to affect the question. After the salary has been fixed and is possessed by the individual, it becomes property in the province. We are, therefore, obliged to sustain the judgment on some other general principle which limits the effect of s. s. 13, sec. 92 B. N. A. Act.

[To be concluded in next issue.]