FAULTS AND FAILURES

OF THE LATE

PRESBYTERIAN UNION

IN CANADA,

BY

DOUGLAS BRYMNER.

P375D-72

FOR SALE BY

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TO THE READER.

The facts contained in the following pamphlet, although of comparatively limited interest in themselves, throw a light on the pretensions of the subordinate legislatures in Canada to deal with trusts and property of all kinds, over which they assume to exercise complete control. The clause of the British North America Act, empowering local legislatures to deal with questions affecting property and civil rights, is held to justify the confiscation of private property and its transference to any one selected by the irresponsible decision of these legislative bodies, which are already numerous, and which may be added to indefinitely as the Great North-West is settled and new provinces carved out of its territories. Apparently, if the claims set up on their behalf are to be held as correct, the only security any man, or set of men, can have for retaining his or their property is its insignificant value not making it worth coveting. The history of the Trust given in the following pages will serve to show the truth of this statement, as it is believed that the proof of the origin and ownership of the Fund in question is complete.

I shall offer no apology for the manner in which the history of the Trust is traced. I have tried to give the facts as clearly as possible, together with the evidence. If they offend the delicate susceptibilities of any, the facts must be blamed, not the narrator of them. In dealing with these, it has not been possible to avoid mentioning the names of actors in the events spoken of; but no statement has been made that has not, I believe. been fully substantiated.

In the last chapter, treating of the constitutional aspect of the case, I am aware that my views differ from those accepted as correct by many legal gentlemen. I can only say that, not being a lawyer, I may not be as competent as a professional man to discuss such topics, but I have endeavored, at least, honestly to investigate for myself, and to give my views with the diffidence of a layman in the presence of legal luminaries. I need scarcely add, on this point, that no one but myself is responsible for these constitutional truths or errors. If I am wrong, and if the powers of local legislatures are so unrestricted as their advocates affirm, it seems to me that the old formula, once applied to the power of the Crown, may be justly repeated in respect to them, that "their power has increased, is increasing, and must be diminished."

I have touched lightly on the course taken by the Canada Presbyterian Church, which was a scarcely disguised war of subjugation. It was with them *sic vobis non vos*, instead of the older expression, *sic vos non vobis*. If proof of this were needed, it may be found in the attacks upon our congregations, and in the fact that of the Ministers of our Church who joined the new body, numbers of them are now without pulpits, having been turned out under pretext of consolidating charges. Ill-educated lads, and still worse educated men, who should be following the plough or handling a "graip," are employed in summer as catechists and turned loose into pulpits, their prelections being the amusement of the unthinking and a source of regret to the serious and sober-minded.

About one-half of the present pamphlet was, through the kindness of Rev. Alfred J. Bray, which I beg to acknowledge, published in the *Canadian Spectator*, the articles being written as required for the weekly issue of the paper, and in the evenings after the discharge of official duties. These articles, with a very few trifling corrections are reprinted as originally published, which may help to explain a slight repetition in details, of which a brief summary had previously been given.

DOUGLAS BRYMNER.

OTTAWA, February, 1879.

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I.

Recent events have led to warm discussions as to the powers of Local Legislatures in this country, and as to the constitutional position they occupy. It was scarcely to be expected that the great change effected by the confederation of the Provinces could be accomplished without doubts arising as to the limits of the powers and duties of the Federal Parliament and the Local Legislatures. Hence, whatever the political result of the present discussions, there seems to be little doubt that light will be thrown on such points, and that the boundaries and limits of the powers of these legislative bodies will, in course of time, be marked out and established.

The political bearings of the question I have no intention to examine. But in connection with important Trusts and Trust properties, with which Local Legislatures believe themselves empowered to deal, under the clause of the British North America Act assigning to them a jurisdiction over property and civil rights, there have arisen many difficulties. The Temporalities' Fund of the Presbyterian Church of Canada, in connection with the Church of Scotland, is one of the Trusts dealt with by the Local Legislatures, on what I conceive to be a mistaken idea of their powers.

For the sake of clearness it may be well, before showing the origin of the Fund, to give a brief statement of the relation to it of the various ecclesiastical bodies to which the residue of the Fund (if there be any) has been assigned, on the sole ground, apparently, that they are all Presbyterians and that a majority has so willed it, although that majority never had any claim on the Fund, and one portion of these bodies distinctly laid it down as a principle that it would not accept aid from the State directly or indirectly. These bodies, in common with the Church of Scotland, having one general mode of Church government, through various Church Courts, but with no recognized permanent, personal, ecclesiastical head, such as a bishop, are known as Presbyterian Churches. It is a popular, but erroneous, belief that the title Presbyterian indicates a given set of doctrines or a distinct creed. It, on the contrary, refers simply and solely to the form of Church government, as Episcopal describes one differently constituted. In the one case the Church is ruled by presbyters, pastors of parishes or congregations, as the case may be, all of equal rank, presided over at their meetings by a chairman, or Moderator, chosen from among themselves and invested with no higher rank, on that score, beyond the time during which he presides, that being, in the case of the Moderator of General Assembly or other supreme ecclesiastical court, usually for a year. With them are associated ruling elders (ordained from the laymen), in the sittings of Presbytery, Synod and General Assembly. In the other case the Church is ruled by bishops and archbishops, with, in the case of the Roman and Greek Churches, a supreme bishop, styled in the one, Pope, in the other, Patriarch.

It will, no doubt, be maintained that all Presbyterian Churches hold one creed, formulated under the name of the Confession of Faith, and it is constantly affirmed that because they do so they are one. To some extent it is true that they have one Confession of Faith, but they "wear their rue with a difference." There are clear and distinct lines of separation between the various orders of Presbyterians, well known to those who are acquainted with ecclesiastical history. The Westminster Confession of Faith is accepted in one sense by the Church of Scotland, and in another sense by the Free Church; the United Presbyterians, again, hold it in a different sense from either, they having expunged from it a whole chapter, that relating to the duty of the civil magistrate. The Church of Scotland acknowledges that in all *civil* matters, even such as in certain ecclesiastical proceedings arise from Church cases, the court of final appeal is the civil power. And this is the only constitutional ground to adopt. The Free Church contends that it possesses a certain attribute called spiritual independence, having co-ordinate jurisdiction with the civil power in questions arising in the course of ecclesiastical procedure. It is simply another name for ecclesiastical supremacy, for in the government of any kingdom or state there must be some one power supreme within the civil domain. There cannot be two, for if there is a difference of opinion between two courts on a subject in the decision of which each is supreme, it is plain that one must yield, or each is powerless. The United Presbyterian body, on the other hand, maintains that Christ's kingdom not being of this world, the civil magistrate has no right to interfere in ecclesiastical questions in one form or another, and that it is sinful to receive State aid for the promotion of religion.

Such a cloud of mystery has, however, gathered about this word Presbyterian, and what it means, that, at the risk of being tedious, I fall back upon the word Episcopal to illustrate the danger of being misled by a mere name.

The Eastern and Western Episcopal Churches, equally with the Presbyterian Churches, hold one Confession of Faith. In their case it is the Nicene Creed. There is no need to enter into the discussion of the change in that Creed made in Western Christendom, nor of the addition of other creeds. The Nicene Creed is one common to all the Churches referred to. The change in it is not greater than that made in the Westminster Confession of Faith by those Churches which have dissented or withdrawn from communion with the Church of Scotland, yet no intelligent man would venture to assert that because the Roman Catholic Church, the Greek Church and the Anglican Church are all Episcopal Churches, and all hold the Nicene Creed, they are not three but one, as has been said with respect to the Church of Scotland, the Free Church and the United Presbyterian Church.

Then as to the allegation that people can tell no difference in the doctrines, forms of service, &c., as presented in any one of the Presbyterian Churches compared with those to be found in another, there is no doubt in this a certain amount of truth. But it cannot be denied, either, that thousands of men can tell no difference between the teachings in any of them and those to be heard from a Methodist pulpit, although in many very important respects the doctrines are diametrically opposed and the interpretations of Scripture teaching at complete variance with each other. Popular impressions are not very safe guides in such cases.

Leaving aside the consideration of the modifications that have been made by some of the Presbyterian bodies in the United States, the relative grounds taken by the leading Presbyterian Churches in Scotland in respect to their position to the State may be thus roughly tabulated. By their interpretation of the Confession of Faith:

The Church of Scotland declares itself to be a Free Church in a Free State.

The Free Church declares itself to be a Free Church above the State.

The United Presbyterian Church declares itself to be a Free Church ignoring the State.

These distinctions are not purely theoretical, as they lead to very grave practical results.

The position held by the Church of Scotland in no respect depends upon its legal recognition by the State as the National Church, nor on the ground of the compact

mutually entered into between the Church and State. It flows necessarily and inevitably from the whole theory and practice of civil society. The Church is free and untrammelled in the exercise of its ecclesiastical and spiritual functions, whether it be a Church established by law as a National Church, or be a voluntary religious organization. But if it transgress the bounds of the law, or seek to coerce the individuals forming its component parts, by attempting to compel them to abandon their civil rights by forced obligations to abstain from an appeal to the civil power when these rights are invaded, or refuse to abide by the rules by which it has agreed to be guided, it must then come under the power of the civil law when that is appealed to by those who consider themselves to be wronged. The status of the ecclesiastic does not set aside the status of the citizen. This is well set out in the very important controversy which took place between Rome and Sardinia in reference to the reforms in the administration of the kingdom which had been taking place for some time and which extended to ecclesiastical corporations. In the course of the discussion the Court of Rome declared that

"Whatever may be the reforms which it has been thought proper to adopt in the civil legislation of the realm of Sardinia, the venerable laws of the Church must always be paramount to them; and should surely be respected in a Catholic kingdom."

In the Allocution issued by the Papal Court dated the 22nd January, 1855, after enumerating all the wrong-doings of Sardinia, the Pope declares authoritatively that all laws whatever of the Sardinian State which were detrimental to religion, the Church, or the Papal See, were absolutely null and void. The claims set up by the See of Rome in this document had been answered by anticipation by the Piedmontese envoy, sent to negotiate a new Concordat. After acknowledging fully the incontestable right of the Church to deal with questions of dogma, discipline and purely ecclesiastical questions generally, but as firmly maintaining that in all civil and criminal causes the persons and property of ecclesiastics should be subject to the temporal judge, as well as questions relating to patronage, benefices and the property of the Church, the proposal sets out :

"Moreover, as ecclesiastical persons, by living in civil society, belong to it, constitute one of its integrating parts, and enjoy all its advantages, why should they be exempt from the jurisdiction? Why should they decline the subjection common to all? An arrangement, which, if it was originally incongruous, must undoubtedly appear much more so in the present day, when the fundamental and universal law of the realm invites all to the same rights, declares all to be equal in its own eye, without any sort of distinction, and permits none to be withdrawn, in virtue of any privilege, from the sphere of the ordinary tribunals of the land. As nothing can be more strictly secular than property movable or immovable together with its proceeds, so its nature is not a whit changed by its being connected with an ecclesiastical office through the medium of canonical erection into a benefice."

It was upon this principle that the case of McMillan, the Free Church minister of Cardross, against the General Assembly of the Free Church, was decided. It is not necessary to state more of the case than this, that McMillan appealed to the civil courts against the decision of the ecclesiastical courts of his Church. For this offence he was summarily deposed, without form of trial or process, on the ground that he had contracted not to appeal to the civil power against the decisions of the Church courts, even should these affect his civil rights. The decision of the civil courts declared such a bargain illegal and void in its nature, and was a clear though undesigned evidence of the fallacy of the argument against the Church of Scotland that it was subject to the civil power and compelled to give up its independence in ecclesiastical matters because it was a State Church. It reaffirmed the obligation of all to obey the laws and to observe the internal regulations by which the affairs of the Church, of every Church, are guided, when these do not conflict with the well-being of the State and are not contrary to good order. Over and over again the judgments of the court have decided that when the Church of Scotland, acting in her judicial capacity, observed the proper procedure prescribed and arrived regularly at a decision—even if that decision were glaringly wrong, the civil courts could not interfere.

The series of unhappy events which led to the formation of the Free Church in Scotland, arose from the setting up of the claim to Spiritual Independence, which dif-

fered in no respect from the claims of the Church of Rome, to decide that everything ecclesiastical was necessarily spiritual and that it was for the Church to decide in all cases. I can understand, though I cannot sympathise with, the claims of the Church of Rome. I can neither understand nor sympathise with the claims of the Free Church, which attempts to set up an ecclesiastical supremacy for itself, whilst denouncing in the most bitter and unmeasured terms the same assumptions on the part of another. This was the view taken by Sir James Graham in reference to the "Claim of Rights," which, he said, demanded that all the proceedings of the Church, whether legislative or judicial, should be beyond the cognizance of the courts of law, which should have no power to determine whether matters brought before them were within the scope of their authority, if, in the opinion of the Church, these matters involved any spiritual consideration, and that neither sentences of courts nor decrees of the House of Lords should be effectual if they interfered with the rights and privileges of the Church, of which interference, and of which spiritual considerations the Church itself was to be the exclusive judge. Earl, then Lord John, Russell, concurred in this view, as did other statesmen on both sides of politics. Sir Robert Peel said emphatically :

"This House and the country never could lay it down, that if a dispute should arise in respect of the statute law of the land, such dispute should be referred to a tribunal not subject to an appeal to the House of Lords. If peace could be secured, if the rights of the subject could be maintained consistently with the demands of the Church, then, indeed. such is my opinion of the pressing evils of this protracted disputation, that I should almost be induced to make any concession to obtain tranquillity. But my belief is that such claims, were you to concede them, would be unlimited in their extent. . . . . If the House of Commons is prepared to depart from those principles on which the Reformation was founded, and which principles are essential to the maintenance of the civil and religious liberties of the country, nothing but evil would result, the greatest evil of which would be the establishment of religious domination, which would alike endanger the religion of the country and the civil rights of man."

That patronage was the mere stalking horse used by the leaders of the party which ultimately became the Free Church, and that ecclesiastical supremacy under the name of Spiritual Independence, was the real object aimed at, is abundantly evident from the course followed since the abolition of patronage in Scotland, where an attempt has been made to draw together two ecclesiastical bodies holding the most opposite views, with the object of disendowing and disestablishing the Church of Scotland. That the members of the branch of the Church of Scotland in this country refuse to join with those whose sympathies, and, before long, whose active efforts, will be added to those of their friends in the Mother Country, is simply a duty they owe to themselves and to the Church by which they have been fostered. As represented everywhere, their objections are childish, arising from stupid obstinacy. But they are more than that. They are founded on reason and on justice, on the love of constitutional liberty, respect for the laws and determination to preserve the rights of conscience.

Lest I should be suspected of using the words of those who were opposed to the claims of the Free Church, I quote the following from one of the leading authorities of that body, the Rev. Dr. Kennedy, of Dingwall, in a lecture delivered last January. His claim to speak on behalf of that Church and his ability to do so must be fully recognised by all who have followed her history. The word *Erastianism* placed in antithesis to Papacy, did good service in its day, but sensible men now laugh at the long pole, white sheet, scooped-out turnip and candle-end which frightened the ignorant. In the present case it means simply Constitutionalism. Dr. Kennedy says :

"As to spiritual independence I will only say that there can be no difficulty in proving the Free Church doctrine regarding it to be Scriptural. Christ is King of Zion. As such it is His to appoint the province, the organization and the work of the Church. It is His, too, to issue laws for her guidance in the performance of her work, and, as He has done so, it is not allowable that the Church should conform her action to any other rule, or subject her will to any other authority. Her King is alive and He hath the seven spirits of God. He can, therefore, effectually regulate the action of the Church. The Church should not submit to any authority but Christ's in doing her proper work,

and she requires no other guidance than that of His word and spirit in order that her work should be rightly done. She has to please Christ, and Christ alone; and she is to be guided by Christ, and Christ alone.

"Within the Establishment (the Church of Scotland) in Disruption times, and to a great extent still, the idea on this subject was that either of the powers—Church and State--must be superior if not supreme; that they cannot be co-ordinate, and that in order to a settling of arising differences, either must be entitled to decide, as being superior in authority to the other. So says popery, and it claims the superiority for the Church. So says Erastianism, and *it* claims the superiority for the State. The Free Church doctrine is that Church and State have co-ordinate jurisdictions, each with its distinct province, and its own peculiar work; that Christ is supreme over both; that it is His to decide all questions between them by the verdict of His word, and that in the event of a controversy arising as to the limits of their respective provinces, the State can only legitimately deal with the civil interests supposed to be affected by the action of the Church, and may not attempt to reverse any ecclesiastical decision or to arrest any ecclesiastical process. In the United Presbyterian Church 'the Church's liberty' is the phrase substituted for the spiritual independence of the Church, and the right to liberty is made to rest on the unlawfulness of any alliance between the Church and State, it being held that the civil ruler, as such, has nothing to do with the Church or with religion, beyond allowing all Churches to do as they please, and all religions alike to be developed according to their several tendencies. There can be no demand for liberty on the ground of Christ having given a distinct power of governing in His Church, presented by a voluntary Church to the State, for she asks to share her liberty in common with Churches which can have no such ground to found their claim."

The connection between the Churches here and those in Scotland has been all along of a close and intimate nature. In 1844, the only organized body in Canada holding the Presbyterian form of Church government was the Presbyterian Church of Canada, in connection with the Church of Scotland, the Synod of Upper Canada having a few years previously been merged into that Church. The ministers of the Synod of Upper Canada were almost exclusively ministers of the Presbyterian Church in Ireland, a body in entire conformity with the Church of Scotland. In 1843, the Secession in Scotland, known as the Disruption, took place, those who separated styling themselves modestly the *Free* Church of Scotland. Those who adhered to them in this country separated in like manner, and following the example of their brethren in Scotland, called themselves the Presbyterian Church of Canada. In 1847, various minor bodies of Presbyterians in Scotland joined into the United Presbyterian Church, and the scattered congregations here which held the same views took the same name. There were then: 1. The Presbyterian Church of Canada, in connection with the Church of Scotland, whose name sufficiently indicates the ecclesiastical views it held. 2. The Presbyterian Church of Canada, adhering to and holding the same views as the Free Church. 3. The United Presbyterians, adhering to and holding the same views as their brethren in Scotland. In 1864, the two latter bodies joined, under the name of the Canada Presbyterian Church. In 1875, a number of members of the Presbyterian Church of Canada, in connection with the Church of Scotland, joined the other body, under circumstances to be hereafter detailed, but the Synod itself continued in existence, although greatly weakened by the secession. Power was granted by the Local Legislatures to transfer to the new body the funds and properties of that Synod, which now seeks to be continued in its rights, and has resolved to test the constitutionality of the Acts of these Legislatures, in the suit now instituted by the Rev. Robert Dobie.

II.

To whom does the Temporalities Fund belong? To those who adhere to the Church in whose name it is held in trust, or to those who have seceded from her communion? Were it under the control of a worldly corporation, there would be no difficulty in the matter, but as there are ecclesiastical bodies involved, it would seem that

these questions can only be answered by tracing the history of the claims of the adherents in Canada of the Church of Scotland on the Clergy Reserves, and then showing the terms and conditions on which the Fund was constituted. The subject will thus, very naturally, fall under two simple divisions. 1. The grounds on which the Presbyterian Church of Canada, in connection with the Church of Scotland, claimed the right to participate equally with the Church of England in the Clergy Reserves ; and 2. The terms and conditions on which the commuting ministers agreed to unite the amounts to which they were severally entitled by the Commutation Act, so as to form a permanent Fund for that Church.

Shortly after the conquest of Canada, it was provided in the first Constitutional Act (1776), that His Majesty and successors might make provision out of the accustomed dues and rights for the encouragement of the Protestant religion and for the maintenance and support of the Protestant clergy. By the Constitutional Act of 1791, His Majesty was authorized to reserve out of all lands granted, or to be granted, in the Province, a quantity equal to one-seventh of the lands so granted for the support and maintenance of a *Protestant clergy*. The description clearly showed that it was intended for the national churches, and the Church of England demanded that the whole of the proceeds of the reserves should be appropriated to the use of that Church, as the National Church of the Empire, a claim which was conceded for many years. Much dissatisfaction was felt at the concession to this demand, and other causes contributed to create a still further feeling of hostility to the system of Reserves, the chief of which, in the first instance, was the hindrance which the Reserves presented to settlement. In 1819 the first significant step was taken by the members of the Church of Scotland to test the claim of the Church of England to the sole proprietorship in the reserved lands and their proceeds. That step was taken by the Church of Scotland congregation at Niagara, by petition, which was referred to the Law Officers of the Crown, who, on the 15th November of the same year, gave the following opinion :—

"We are of opinion that though the provisions made by 31, George III., Cap. 31, ss. 36 and 42, for the support and maintenance of a Protestant Clergy, are not confined solely to the clergy of the Church of England, but may be extended also to the clergy of the Church of Scotland, if there be any such settled in Canada (as appears to have been admitted in the debate upon the passing of the Act), yet they do not extend to the dissenting ministers, since we think the term 'Protestant Clergy' can apply only to Protestant Clergy recognized and established by law."

Lord Bathurst instructed Sir Peregrine Maitland, then Lieut.-Governor, to carry into effect this opinion, and to allot a proper amount for the ministers of the Church of Scotland. The Lieutenant-Governor, however, threw every obstacle in the way, but the Church of Scotland continued to press its recognized claims, and so far successfully that the Legislative Assembly of Upper Canada, on the motion of Mr. William Morris, passed an Address to the King on the subject, basing the claim of the Church of Scotland to an equality of rights with the Church of England on the Act of the Union between the Kingdoms of England and Scotland. The General Assembly of the Church of Scotland supported the claim of its adherents in Canada on the same ground. In 1826 a first instalment was given as an acknowledgement of the justice of the claim, and a certain amount continued to be paid for some years to the ministers presenting their individual claims, the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland not having been formed till 1831. From the date of its formation all communications between Government and the Church were carried on through the instrumentality of the Synod, which was distinctly recognized as the representative in Canada of the Church of Scotland, one of the national Churches of the Empire. From this period, therefore, it must be borne in mind that in all the official communications, civil or ecclesiastical, the title Church of Scotland, when used to describe her adherents in Canada, means the Presbyterian Church of Canada, in connection with the Church of Scotland, to which a proportionate share of the Clergy Reserves was granted, and for the benefit of whose adherents the Temporalities' Fund was created. As, however, those who have lately seceded attempt to deny that there ever was any real connection between the Church of Scotland and the Church, here

having as part of her title the designation "In connection with the Church of Scotland," it is proper to adduce ample proof on that point, although the name itself should be sufficient evidence.

The testimony on this subject of the Rev. John Cook, D. D., of Quebec, should certainly be received without cavil by our seceding brethren. On the 1st June, 1837, Mr. (now Dr.) Cook read to the Presbytery of Quebec, which then included Montreal, the draft of a letter of instruction to Dr. Mathieson, who was proceeding to Scotland as a representative to the Mother Church. The draft was approved and ordered to be transmitted. It is signed by "John Cook, Moderator of the Presbytery of Quebec." The letter throughout takes for granted the real connection that exists between the Church in Canada and the Church of Scotland, but these words seem to place the matter beyond doubt :—

"CLERGY RESERVES. — You will endeavor to keep alive, in the Church of Scotland, the interest already expressed in our just claims to a portion of these reserves, *as belonging to an Established Church of the British Empire, co-ordinate with the Church of England.*"

To plain, simple, honest men but one meaning can attach to these words. Yet, in the face of these, and, as I shall shortly show other expressions equally strong, Dr. Cook, the writer of these words, and who signed them in his official capacity, had the boldness, as a member of the Board which sought to appropriate the Fund belonging to the Church he and other members of the Board had left, to instruct his attorneys to set up the plea to set aside the Writ of Injunction obtained in 1875, that there never had been any real connection with the Church of Scotland on the part of the Church in Canada, which, to use his own words, had demanded recognition, *as belonging to an Established Church of the British Empire, co-ordinate with the Church of England!* The question may very pertinently be asked :—Was there an attempt made to obtain a share of the benefits of the Clergy Reserves by setting up the false pretence that the Presbyterian Church of Canada, in connection with the Church of Scotland, represented in Canada one of the National Churches so completely that she was entitled to all the advantages bestowed by the Act of Union, equally with the Church of England, or was the statement in 1875, in the legal plea, a direct violation of the truth? These, to say the least, singular variations may be allowable to an advocate anxious to gain his case; they can scarcely add to the reputation of a Minister of the Gospel.*

The evidence of Hon. William Morris as to the connection with the Church of Scotland can as little be doubted as that of Dr. Cook. In the same year, 1837, that gentleman was sent to Great Britain in reference to the claims of members of the Church of Scotland living in Canada, that is, members and adherents of the Presbyterian Church of Canada, in connection with the Church of Scotland. It is necessary to be very particular on this head. At a meeting held in Cobourg, at which Mr. Morris was appointed, the following, among other resolutions, were passed :—

"That under and by virtue of the Act of Union, the adherents of the Church of Scotland, in any British Colony, are entitled to a communication of all civil and religious rights, &c., equally with the adherents of the Church of England.

"That in terms of the Act of Union, the status of the Church of Scotland, is co-ordinate with that of the Church of England, &c.

"That with the view of effectually removing the disabilities under which we labour, we address His Majesty and the Imperial Parliament of Great Britain, praying that a declatory Act of the Imperial Parliament may be passed, to remove all our disabilities, and to restore us to that position to which by the Act of Union we are entitled.

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* It may be remarked that the connection was not maintained by Dr. Cook solely in public church documents, signed by him officially. That reverend gentleman set up the connection as a plea for obtaining allowances from the British Government for his own personal benefit. I shall give only one instance. In a letter to the Secretary of War, of 11th August, 1844, (the date may be noted, as it was after the first secession in Canada) Dr. Cook, after setting forth his claim, says :

"I have to state that I was engaged by the Commanding Officer, Lt.-Col. Crabbe, to give separate services to the 74th, he stating it to be the privilege of that regiment, as being a Scotch regiment, to have the services of a Chaplain of the Church of Scotland, when these could be obtained."

"That all members of our Church throughout Canada should resist by every constitutional means all attempts to encroach on our rights, and should rest only when no disability shall remain to be removed, *and when the provisions of the Act of Union, in reference to the Church of Scotland, shall be fully complied with.*"

There were sixteen resolutions in all, but the extracts sufficiently show their nature. It is unnecessary to speak in detail of the steps taken by Mr. Morris to vindicate the claims of the Church which he was sent to represent. He emphatically claimed for it the privileges asked for by the petition which he carried with him, and on his return received the thanks of the Synod and a testimonial to be preserved as an heir-loom in his family. Yet Mr. John L. Morris, his son, a member of the Board which is administering, for the benefit of those who have joined another communion, the fund belonging solely to the Presbyterian Church of Canada, in connection with the Church of Scotland, had the hardihood, in 1875, to set up the plea that there never was any real connection with the Church of Scotland. As one of the attorneys for the Board it may be laudable in him to use any plea, but that can scarcely be a virtue in an advocate which is a sin in an elder. However, he may plead the example of ecclesiastical gentlemen in mitigation of the offence, for we know that

> "Ev'n ministers they hae been kenned
> In holy rapture,
> A rousing whid at times to vend
> And nail't wi' Scripture."

It may be objected that the claims set up by the adherents in Canada of the Church of Scotland were never acknowledged as valid, and that, therefore, those who had seceded in 1875 must not be condemned as inconsistent in first making the demands and then, finding them untenable, accepting the defeat and conforming their actions to the reality as brought home to them by an adverse decision. I will in answer to this supposed objection show:—1. That the Church of Scotland admitted and supported the claim of the Presbyterian Church of Canada, in connection with the Church of Scotland, to be her representative in Canada, and as such entitled to demand and receive all the benefits arising from the fact of her being a National Church; and 2. That the Imperial Parliament recognized and provided for the claims of that Church.

At the meeting of the General Assembly of the Church of Scotland in May, 1837, the report of a committee appointed to consider the position of the Church relative to the appropriation of the Clergy Reserves recommended that the most energetic measures should be adopted by the Assembly to procure a portion of that source of revenue for the Church of Scotland in the colonies. That report was approved of.

In May, 1839, at the meeting of Assembly, the report of the Colonial Committee, adopted by the Assembly, states that "the Committee embrace every opportunity for asserting and maintaining the rights of members of the Church of Scotland resident in the British Colonies to all the privileges and emoluments secured by the Treaty of Union to the Established Churches of the United Kingdom." The Assembly itself records its heartfelt acknowledgment for the "satisfactory assurance given to the representatives with reference to the claims of the Church of Scotland on the Clergy Reserves in Canada." In the appendix to the Committee's report is a letter, dated 4th January, 1839, from Sir George Grey, Colonial Secretary, addressed to the chairman of Committee, containing, when viewed in the light of the counter statement of Dr. Cook in 1875, the following remarkable words: "Your letter of the 20th November, on the subject of the memorial of the *Rev. Dr. John Cook* relative to the grant to *the Church of Scotland in Lower Canada* out of the Clergy Reserve Fund, was received," &c. On the 5th of March, 1839, the Colonial Committee of the General Assembly, speaking of the Clergy Reserves, "conceive that a memorial should be prepared to be laid before Her Majesty's Government respecting the legal claims of the Church of Scotland; a recognition should be sought from Government as to the rights of the Church of Scotland to be considered as an essential part of the Protestant established religion in Canada, ... and further agreed to the recommendation of the acting Committee, that a deputation should be sent to London to present the memorial

and urge the claims of the Church of Scotland in Canada on the consideration of Her Majesty's Government," (that is, the claims of the Presbyterian Church of Canada, in connection with the Church of Scotland.)

So much for the action of the Mother Church. What course did the Government follow? On the 7th August, 1840, an Act was passed (3 and 4 Vic., cap. lxxviii.) recognizing the claims thus put forward, and providing, amongst other arrangements respecting the Reserves, that "the net interest, &c., accruing upon the investments of the proceeds of all sales of such Reserves . . . . shall be divided into three equal parts, of which two shall be appropriated to the Church of England and one to the Church of Scotland in Canada."

III.

The first secession, which took place in 1844, naturally divides the history of the Church into two periods; the first bringing us to the secularization of the Reserves in 1855, and the second from that date to 1875, when the second secession took place.

Following the opinion of the Law Officers of the Crown, the Imperial Act of 1840 clearly acknowledged that the Church of Scotland was entitled to the same privileges in a British Colony as the Church of England. That the interpretation of the Law Officers as to the exclusion of dissenters was correct, is not doubtful, when examined by the known facts of the history of the period. Even the courts of law did not admit that dissenting bodies were entitled to claim legal protection, a fact which may be lamented, but which cannot be denied. It was, therefore, solely on the ground of [illegible]ing a National Church, and her ministers therefore Protestant Clergy, in the strictly l[illegible]l sense of the term, that the Synod in this country in connection with the Church of Scotland was officially recognized by Her Majesty's representatives and the Executive Government. That the Roman Catholics and Methodists received grants out of certain accrued revenues of the Reserves does not change that fact. Both grants were confessedly wrong.

The manner of admission of the United Synod of Upper Canada as part of the Synod in connection with the Church of Scotland may simply be referred to, as still further showing the close and intimate connection between the Mother Church and the Church in the Colony. It was not till the Synod of Ulster (Presbyterian Church in Ireland) was admitted to ministerial communion with the Church of Scotland, that her licentiates here, organized into the United Synod of Upper Canada, could be admitted to the Synod representing the Church of Scotland in Canada. When admitted they made an unqualified subscription to the formula of the Church of Scotland without reserve or open questions, merging their existence completely in that of the Church they were joining.

Not long after, the Synod became divided into two sharply defined parties, the one adhering to the Constitutional, the other to the Non-Intrusionist party in the Church of Scotland. The result was the secession in 1844 of those who were in sympathy with the latter. It is not my intention to enter into the merits or details of this first secession, the sole object now being to consider the bearing of what has been called the "Act of Independence," on which much stress has been laid by those who seceded from the connection with the Church of Scotland in 1875. It will be well, therefore, to look at this Act somewhat closely and to view it in the light of what followed, as well as of what preceded its adoption.

The seceders of 1875 plead that whatever connection existed between the Church of Scotland and the Church here previous to 1844, was ended by the "Act of Independence" passed by the Synod that year. How far do the facts immediately attending the passing of the Act support this plea? There had been a fierce struggle between those who wished to retain and those who wished to sever the connection with the Church of Scotland; there had been a motion that the peculiar connection which had hitherto subsisted between them and the Church of Scotland should from that time forth

cease and determine; according to Dr. Cook's letter of instruction to Dr. Mathieson, already quoted, and the other evidence given that connection was so close as to entitle the Synod in Canada to claim a portion of the Clergy Reserves as belonging to an Established Church of the British Empire co-ordinate with the Church of England. It is quite clear, then, how that peculiar connection was regarded. It was asked that the words "in connection with the Church of Scotland" should be expunged from the title of the Synod; that all peculiar privileges should be withdrawn from ministers and elders of that Church; that, in short, the Synod was no longer to be either in name or reality a branch of the Church with which it had down to that period, *teste* Cook, been identified. The struggle ended in a separation, those seceding leaving a protest charging those who remained with "corruptions and defections," with having committed "sin in matters fundamental," and declaring that the Protesters could no longer with a clear conscience hold office in the Church which persisted in retaining its connection with the Church of Scotland.

Desirous of reuniting to the Church those who had seceded, the Synod was called together two months after the meeting at which the secession had taken place. Every disposition was shown to conciliate, and the Act of Independence was passed, a purely declaratory Act, the preamble to which sets out :

"Whereas this Synod has always, from its first establishment, possessed a perfectly free and supreme jurisdiction over all the congregations and ministers thereof," &c.

In other words, it possessed a complete system of Responsible Government, whilst holding the closest relations to the Mother Church, as Canada to the Mother Country. The seceders, however, refused all compromise; nothing but complete severance from the Church of Scotland would satisfy them, and at the meeting of Synod in 1845, the Committee to negotiate with them so reported, stating that the Conference had abruptly terminated because of the hostile sentiments expressed regarding the Church of Scotland, after, it must be remembered, the Act of Independence had been passed, which it is now alleged severed the connection. The inference, then, must surely be unmistakable, that there was, in 1844, no severance of the connection with the Church of Scotland, except on the part of those who had positively withdrawn from the communion and had accepted the invitation tendered by the newly-formed Free Church, supported as it was by clerical representatives from that body, who came from Scotland to Canada to enlist support in the British American Colonies.

But the matter is not left to mere inference. There is positive proof of the light in which the connection was viewed, subsequent to 1844, both by the Synod and by the Civil Government.

In 1851, after long and careful discussion, a series of resolutions was adopted, not as the work of one man, but as that of the Synod itself, the original draft having been freely amended. It begins with these remarkable words, if the theory of those who have lately seceded be true, "Be it resolved and declared

1. That the Church of Scotland, *of which this Synod is a branch*, has always believed and assented," &c.

The resolutions are long, and I will only quote a few sentences from them. The fourth begins :

"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 and our own ecclesiastical independence; *and on this ground* our ministers and people have for the last thirty years asserted their right to 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 concluding paragraph of the last resolution is of great significance, affording the clearest proof of the settled determination of the Synod to establish a permanent endowment for the benefit of posterity and for the promotion of their spiritual interests,

as opposed to the attempt to squander the Fund now under discussion, on the part of those who had bound themselves to maintain it intact and to add to it as opportunity offered.

"The present ministers of this Synod have only a very 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, and, as she best may, to transmit, not only undiminished but enlarged to her perpetual posterity."

And Dr. Cook was appointed, along with the Moderator and Clerk, to draw up a pastoral address to the people in these terms. It is singular how closely associated Dr. Cook's name is with the struggle for the funds, and, being gifted with a facile pen, how clear is the evidence of the view he took of the claims of the Church on the Reserves. I must confess to having searched in vain to discover his name connected with the promotion of missionary enterprises, either home or foreign.

Then, again, subsequent to the secularization of the Clergy Reserves, the claim of the Synod here to represent the Church of Scotland was admitted by the Duke of Newcastle, the adviser of the Prince of Wales during the visit of His Royal Highness to this country in 1860. The Rev. Dr. Mathieson, of St. Andrew's Church, Montreal, had been chosen Moderator of the Synod that year, and it had been resolved by the Synod that an address should be presented to the Prince of Wales at the levee to be held at Montreal on the 27th August. Finding, almost at the last moment, that the branch of the Church of England was to be received by the Prince as the representative of the National Church, whilst the branch of the Church of Scotland was to be placed on a footing of inferiority, the Synod's Committee sent a letter to the Duke of Newcastle, which bears so closely on the question that I give it in full, with the exception of a short sentence having no relation to the point at issue.

"MONTREAL, 27th August, 1860.

"MY LORD DUKE,—I have dutifully to acknowledge the receipt, through the Governor-General's Secretary, of the notification that it is His Royal Highness' pleasure to receive the address of the Church of Scotland from myself as the bearer of it, but not to be read or replied to at the time. Having been informed that a different course is to be followed in the reception of the address from the sister Church of England, I beg very respectfully to represent to Your Grace, that, as a branch of the Established Churches of the Empire, the Church of Scotland in Canada is, in the eye of the law, constitutionally on a footing of equality with the Church of England in this Province, and that whatever privileges are possessed by the one Church belong of right to the other.

"Of course, as individuals, the members of the deputation are proud of the opportunity of expressing in any way that may be pointed out to them their loyalty to the Crown and their respect for His Royal Highness, but, as representing the Church of Scotland in Canada, their consenting to occupy a position of inferiority to that accorded to the sister Church of England on so interesting an occasion as the present, would be received with extreme suspicion by the large and respectable body on whose behalf they have been appointed to act.

* * * * * * *

"I have the honour, &c.,

"ALEXANDER MATHIESON, D.D.,

"Moderator."

When the letter was delivered it was too late to remedy the error at the Montreal levee, but the Duke of Newcastle officially recognized the justice of the claim, and a special audience was granted at which the address was formally read and presented, the reply of the Prince being couched in terms of respect for the National Church there represented.

In tracing the Fund to its source, it was my intention to show that it was derived from grants made on the definite ground that the Presbyterian Church of Canada, in connection with the Church of Scotland, was, by virtue of that connection, the repre-

sentative in Canada of one of the National Churches of the Empire; that not only down to 1844, when the first secession took place, but subsequently to that period, and after the passing of the declaratory Act of independence, that connection so clearly existed as to entitle the Synod to demand and receive all the privileges thence arising. Few will venture to deny that ample proof has been given on these points. I have, however, entered more minutely into the history of the Church than might have been necessary, were it not that the principle involved is one which affects all Trusts, all properties, every incorporation, and it was therefore desirable in the present instance to throw the fullest light on the subject. Once admit the principle that Trusts, no matter how plain are their terms, are at the mercy of clamour from men who choose to attack the rights of others on the ground of a similarity of name and the plea of numbers, and to what would it lead? The Bank of Montreal is a wealthy corporation, whose shares are held in comparatively few hands. It is not probable, but it is conceivable, that a demand might arise for the transfer of its property to some other institution by men calling themselves bankers on the strength of exchanging uncurrent money for bank bills, and maintaining, very probably correctly, that they were a majority, even although they had never held a share in the Bank of Montreal. The supposition is a violent one, no doubt, but it simply illustrates the line of argument adopted by those who have sought to set aside a Trust on the ground that they have a similar name to those for whose benefit it was constituted, and that they are a majority in point of numbers.

IV.

The secession from the Synod in connection with the Church of Scotland, in 1844, intensified the hostility to the Clergy Reserves, by adding a new element of bitterness. The adherents in Canada of the Free and the United Presbyterian Churches attacked them with passionate vehemence. Anti-Clergy Reserve Associations were formed among the one, the most active agitation was kept up by the other. They denounced the recipients of them as Achans, who had taken from the spoil a goodly Babylonish garment, shekels of silver and wedges of gold. Alas! how had the fine gold become dim, when these violent denouncers of Achan's sin went to the Local Legislatures to obtain their sanction to stone the unhappy Achan and his household with stones, but the Babylonish garment, the shekels of silver and the wedges of gold were too valuable to be lost, and so, like Saul, when ordered to destroy the Amalekites and all their herds and flocks, they preserved the best of the spoil, and put King Agag in the post of honour as Moderator, throwing the blame on the people, who took of the plunder to sacrifice to the LORD. This very Fund, derived from a polluted source, according to their oft repeated declarations, they have taken power to appropriate. The words of the Act are these:—

"Any part of the said Fund (the Temporalities' Fund) that may remain to the good, after the death of the last survivor of the said ministers, shall thereupon pass to and be subject to the disposal of the Supreme Court of the said United Church, for the purpose of a Home Mission Fund for aiding weak charges in the United Church."

"What meaneth then this bleating of the sheep in mine ears, and the lowing of the oxen which I hear?" Is there no Mause Headrigg to testify against the corruptions and defections of this backsliding generation?

The proceedings in regard to the Clergy Reserves in the Legislature of the old Province of Canada are very interesting, but, not being necessary to the present purpose, a detailed notice of them may be omitted. In 1853 an Imperial Act was passed, authorizing the Provincial Legislature to settle the vexed question, which contained the following clause:—

"Provided, that it shall not be lawful for the said Legislature, by any Act or Acts thereof, as aforesaid, to annul, suspend or reduce any of the annual stipends or allowances which have been already assigned and given to the clergy of the Church of Eng-

land and Scotland, or to any other Religious Bodies or Denominations of Christians, in Canada, (and to which the faith of the Crown is pledged), during the natural lives or incumbencies of the parties, now receiving the same, or to appropriate or apply to any other purposes such part of the said proceeds . . . . . . as may be required to provide for the payment of such stipends and allowances during such lives and incumbencies."

It will be observed that in this clause mention is made of other religious bodies, which might have been entitled to claim, by the conditional term, "to which the faith of the Crown is pledged." In reality there were none to whom that term could apply, except the clergy of the Churches of England and Scotland. The Roman Catholic Church in Lower Canada had received a small amount from the casual revenues of the Reserves by an annual grant of the Imperial Parliament; in Upper Canada the same Church received assistance, partly from the same source, partly from an annual vote of the Provincial Legislature; the British Wesleyan Methodists in Upper Canada had been paid entirely out of the Grants in aid of the Civil Expenditure. The latter might be, no doubt was, drawn from the casual revenues of the Reserves, but the form in which the charge appears in the Provincial Accounts showed that it was felt to be an expenditure of at least doubtful legality. This was evidently the view taken of the position of these two Churches, from the very terms used in defining their claims in the Provincial Act, assented to on the 18th December, 1854. In the case of the clergy of the Churches of England and Scotland, their annual stipends were provided for during their lives and incumbencies, by being made a first charge on the funds out of which they were to be paid, "in preference to all other charges and expenses whatever," whilst the Roman Catholic Church and the British Wesleyan Church for Indian Missions, were only provided for during twenty years after the passing of the Act, and no longer. So much stress was laid on the words in the Act as to "the faith of the Crown," during the discussions that preceded the Union, and since then, that I have thought it desirable to make this explanation, which, otherwise, would have been needless.

That the payments from the Clergy Reserves were made to ministers of the Presbyterian Church in Canada, in connection with the Church of Scotland, on the sole ground of that connection, and that they were claimed by the ministers of that Church on that special and only ground, has been proved beyond a doubt. From the first Opinion of the Law Officers of the Crown in 1819, down to the passing of the Act of the Provincial Legislature in 1854, there is not a link wanting. In the last mentioned Act power was taken to commute with the parties interested, so that the annual stipends might be liquidated in one sum, the amount to be calculated upon the probable duration of the life of each minister. This was done, because it was considered, in the words of the Act, "desirable to remove all semblance of connection between the Church and State." The money distributed by this commutation was to be the personal property of each commuter, and henceforth, therefore, it changes its character, being no longer a public grant, but private property, the Trust created by its means being, in short, a private endowment, such as Mr. Gladstone declared in dealing with the Irish Church, no Government was entitled to lay hands on, even when, as he conceived it, a great national crisis justified exceptional, if not violent, measures.

The Synod was called together in January, 1855, to consider what steps might be necessary to take advantage of the Commutation Act. The Imperial Act provided that only those should be entitled to life annuities whose names were on the roll of the Church Court to which they belonged on the 9th of May, 1853. Eleven ministers had been placed on the roll between that date and the meeting of Synod, for whom no provision had been made, and it was therefore considered right that in some way or other their cases should not be disregarded. The sum to which each minister on the roll on 9th May, 1853, was entitled, was six hundred dollars annually for life, or that sum capitalized, according to the probability of his life. The terms of the commutation were to be settled with Government by the Synod acting for each minister, but only on his granting a power of attorney in favour of the persons named by the Synod to act on its behalf and on behalf of all granting such power.

Steadfastly keeping in view the policy that had all along been adhered to by the Church, of having a permanent endowment, it was thought that the time had arrived when such a beginning might be made as would secure in process of time a fund of some magnitude. Proposals to this effect were made to the members present. After long and anxious consultation—after modifying and frequently remodelling the proposed resolutions having that end in view, so as to secure that the fund, if constituted, could never be diverted from those who continued to adhere to the connection with the Church of Scotland—a series of resolutions was agreed upon as the basis of the contract on which the individual ministers agreed to invest their commutation money, which, had they so determined, they could have used for themselves and invested for their families. A circular was ordered to be sent to each minister, with a copy of the minutes containing the resolutions, so that, before signing the power of attorney, all might be able deliberately to read and reflect on the terms.

The third resolution is the key-note to the contract, and therefore the closest attention should be given to its terms, which I give in full :—

3. "That all ministers be, and are hereby 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."

The terms of the contract itself, in consideration of which the ministers were asked to sign, were very precise. There were two fundamental principles laid down; one relating to the disposition of the interest of the fund; the other to the constitution of the fund itself, and the conditions on which alone any one was entitled to share in its benefits. The following are its clauses : By the powers of attorney the Commissioners were authorized "to grant acquittance to Government . . . . . . 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 ministers now on the Synod's Roll and who have been put on the Synod's Roll since the 9th May, 1853."

The plain, unmistakable, only meaning which these words can bear is so clear that it would be almost an insult to point it out, were it not that an attempt is made to give the words a totally different signification. The commuting ministers agreed by that clause to accept $450 instead of $600 annually, so as to help the eleven ministers settled from 9th May, 1853, till the meeting ot Synod in January, 1855, and took a solemn agreement from the Synod that that sum would never be lessened except with their own consent. If the interest yielded more than would meet their annuities, which constituted a mortgage or privileged claim, then it was for the Synod, with their consent, to deal with the surplus as from time to time it might determine. With the annuities of the commuters the Synod could not deal, so long as they complied with the second fundamental principle. I give it also in full :—

"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, 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."

Let honourable business men characterize the conduct of those who could violate every obligation and yet seek to appropriate a fund so carefully hedged about. I wish to give the facts only, which form a strong enough condemnation, a condemnation which no words, however strong, could intensify.

Upon the terms I have cited the commuting ministers gave the desired authority, and an Act, carefully prepared under the direction of the Synod, was passed by the Province of Canada, and assented to on the 24th July, 1858. The Act was a general Act for the whole Province, affecting the rights, privileges and property of residents of each section of the Province; the money by which the fund had been constituted had been derived by the donors from that section of the Province in which the charges of the individual ministers were situated. The interests, therefore, were clearly not local, but general to the whole Province.

The preamble of the Act states that certain funds belonging to the Presbyterian Church of Canada, in connection with the Church of Scotland, are held in trust by commissioners; that the funds so held in trust are for the encouragement and support of the ministers and missionaries of said Church, for the augmentation of their stipends and as a provision for those incapacitated. A corporation is created to hold these funds in trust, subject to the conditions already quoted. The Board of Managers must be ministers and members in full communion with the said Church, and it is provided that in "the event of the death, removal from the Province, or *leaving the communion of the said Church*, of any member of the Board, the remaining members are authorized to choose a successor, with the required qualification, until the next meeting of Synod." The Board is also authorized to dispose of or vary the investments, but only for the purpose of re-investment, they having no power to alienate any of the funds. Finally, the corporation could "hold their meetings at such place or places within this Province as they shall from time to time direct and appoint," and as a matter of fact the elections always take place in Ontario and Quebec, wherever the Synod is meeting, and meetings of the Board have not unfrequently been held in Upper Canada before, and in the same Province (now Ontario) after, Confederation.

If this is not a general Act, which cannot be repealed by a Local Legislature, what is a general Act of the old Province of Canada?

V.

The long struggle of sixty-three years was over; the Clergy Reserves were secularized; the claims on them commuted; the Fund constituted; there was no longer anything to be gained by professing warm attachment to the Church of Scotland. As in the case of the suitor of Hood's heroine, Miss Kilmansegg with the Golden Leg,

> "Who came to court that heiress rich,
> And knelt at her foot—I needn't say which—
> Besieging her Castle of *Sterling*,"

the Clergy Reserves being gone, all other reserves might be dispensed with. The ink was scarcely dry on the Act of Incorporation of the Temporalities' Fund Board, when the work of breaking up the Church was begun. In 1860, the first open attempt was made, but unsuccessfully. The design was not, however, abandoned, only postponed. I well remember a local politician in my salad days, whose nose, like Thackeray's, would have been improved by being "partially Romanized," who used to lay his finger over the inverted arch of that ruined bridge and whisper mysteriously: "If you want to manufacture public opinion, get hold of a lot of enthusiastic boys." This was the process adopted in the present case, by the two or three who were pulling the secret strings, and who made these young men believe they were leaders, whilst they were only tools. In 1870, it was believed that the pear was ripe, and a letter was sprung upon the Synod, signed by the Rev. Dr. Ormiston, Moderator, in 1869, of the Canada Presbyterian Church, addressed to Rev. Dr. Jenkins, who, that same year, was Moderator of the Presbyterian Church of Canada, in connection with the Church of Scotland. It was represented that the appointment of a Committee to confer on union, the ostensible object of the letter, was simply an act of courtesy, and a resumption of

the old negotiations for the re-admission of those who had seceded in 1844. Taken by surprise, the Synod allowed a Committee to be appointed, the only audible objection being the solitary protest from the Rev. Hugh Niven, *not recorded*. The Committee sat for two years, its proceedings attracting little, if any, attention. In 1873, when a substantive proposal was made, opposition was at once aroused. But in the meantime the official gentlemen interested had not been idle. They had secured control of the Church paper in 1872, and made of it a Union organ; many of the younger ministers of the Church, knowing nothing of the questions at issue, were easily influenced, and it was coolly assumed that the principle of Union had been conceded, and that all that remained was to settle the terms.

Two theories have been held as to the legislative powers of the Supreme Court of the Church (General Assembly or Synod, as the case may be). The one is, that all laws spring from the Supreme Court, the other that they originate in the inferior judicatories before being considered by the whole Church. The distinction is one of very grave significance, and the latter had always been held as the true theory, as well as observed in practice, by the branch in Canada of the Church of Scotland. By either theory, however, no legislation could be initiated in the Supreme Court, except on an Overture, that is, a proposition or representation, setting out the reasons for legislation. It is not a petition, although it may occasionally be in that form. Dr. Hill, in his "Church Practice," in explaining the Barrier Act, thus describes the Overture :—

"The proposal of making a new general law, or of repealing an old one, which, in our ecclesiastical language, is termed an Overture, originates with some individual, who generally lays it before his presbytery or synod, that it may be sent to the General Assembly as their Overture. The General Assembly may dismiss the Overture, if they judge it unnecessary or improper, or adopt it as it was sent, or introduce any alteration which the matter or form seems to require. If it is not dismissed, it is transmitted in its original or its amended form to the several presbyteries of the Church for their consideration, with an injunction to send up their opinion to the next General Assembly, who may pass it into a standing law, if the more general opinion of the Church agree thereunto; that is, if not less than forty presbyteries approve."

Substitute for "General Assembly" the name of "Synod," the latter being the Supreme Court of the Church in Canada, and the above is a plain statement of how the question should have been submitted, if such a revolutionary proposal as the extinction of the Church could have been submitted, to the Synod. There is, however, one essential point of difference between the Barrier Act in Scotland and here. In Scotland, as will be seen from the above extract, it requires the express consent of a majority of Presbyteries before an Act of the Church can become valid; in the branch in Canada, to meet a temporary difficulty with respect to its legislation, a radical change was introduced, by which the adoption of a proposed law became dependent, not on the formal consent of Presbyteries, but on the absence of dissent on the part of the majority, so that by a little careful manipulation, a proposal might be carried in Synod which had never been discussed at all in the inferior Church Courts, even although all formal steps had been taken.

The introduction of the proposal to put an end to the separate existence of the Church without an Overture has been represented as a trifling breach of technical practice, which was not of the slightest possible consequence. In reality it was a Revolution. The introduction of an Overture shows that the proposal has been carefully discussed beforehand, and has to some extent engaged the attention of the members of the Church. In this case a letter was addressed by one gentleman, Rev. Dr. Ormiston, not a member of the Church, to another, Rev. Dr. Jenkins, who had but a few years before been admitted to share its privileges. Each, it is true, was Moderator for the time being, but it was not even pretended that the letter was written officially. This private, unofficial document was read to the Synod by Dr. Jenkins, who having slid, with that easy grace which is his peculiar charm, from Arminianism to Calvinism, now made himself useful in the interests of officialism, in setting himself to create that wandering desire on the part of the Church he had so recently joined, with which he had himself been seized in his theologically nomadic life.

Whether a majority or minority agreed to break up the Church, and to ask the Local Legislature to set aside the conditions on which the Trust Funds and congregational properties were held, is not the point at issue. But as a matter of fact, apart from purely legal considerations, the question was settled by a small minority, instead of by a majority. By the returns made to the Synod, it appeared that there were 138 congregations entitled to be represented in the Synod. According to ecclesiastical law, the minister and an elder from each congregation are members of the Synod, making 276 congregational representatives. The Professors of Queen's College, being ministers of the Church, are also members, and of these there were five, being 281 in all. In June, 1874, at Ottawa, 88 voted for Union, a little more than 33 per cent. In November, 1874, at Toronto, 68 voted for Union, about 26 per cent., or little more than one-fourth of the whole Synod, and on the representation that the Synod had decided by "an overwhelming majority" in favour of Union, legislation was granted, by which those who adhered to their Church were declared to have forfeited the rights carefully secured to them by their title deeds.

Those who took in hand the work of breaking up the Church boasted that they and their allies in the other bodies had been promised legislation, and that that once granted, no Court of law would entertain the question as to what violation to the contracts between the parties interested had been committed. It may be so, yet even then it may not be useless to look for a little at the violations of law that took place.

It is exceedingly doubtful if the Synod had any right to discuss the proposal to break up the Church and to merge its existence into that of another body. By decisions of the highest Court of Scotland, confirmed in the Privy Council, it has been declared, that a resolution to form a union with a separate body is not an act of management properly falling to be regulated by the voice of the majority, but one affecting the use, possession and destination of the property of the body. Waiving, however, the question of competency, it cannot be doubted that, in so serious a step as was contemplated, the contract regulating the internal proceedings should have been strictly fulfilled. For the first time, on the contrary, the regulation as to the introduction of a serious change was broken and the Synod was made the originator of a most important measure, without any preliminary safeguard. Much stress has been laid by writers on Papalism and Vaticanism upon the evil influence of the *Curia* over the Church of Rome. Without discussing that particular point, there can be no question that under another name a *Curia* has been steadily gaining power and influence within the different Presbyterian bodies in Canada. Already there is a cry from the new United Presbyterians, that they are no longer a Presbyterian body, but a Church governed by committees. Let me very briefly point out one or two of the illegal steps that were taken to carry out the will of this Protestant *Curia*, in the case before us.

I have shown already, that by a complete violation of all ecclesiastical procedure, the proposal to break up the Church, under the name of Union, was sprung upon the Synod. Had that proposal been competent, and had it been legally brought forward, the measure proposed would have been sent down to Presbyteries for consideration. Beyond Presbyteries, according to the gradations fixed by the Presbyterian form of Church government, the Synod had no right to go. If the Presbyteries thought it desirable, or had been instructed by the Synod, to consult Kirk Sessions, they had the power to do so, and the Kirk Sessions, in turn, had the duty of bringing the matter before Congregations. There would thus have been preserved the right of reference from the Synod downwards, and of appeal from Congregations through the regular Church Courts upwards, as provided for in the polity of all Presbyterian bodies. But the ruling power, the *Curia* in the Synod, boldly violated the laws carefully devised for the deliberate consideration of every proposed change, even when that change is of a very unimportant character, and sent down the Basis of Union direct to Congregations, without any provision being made for rectifying irregularities or settling disputes. Many of the returns were manifestly incorrect; congregations complained that their votes had been grossly misrepresented; the returns, in short, were so little to be trusted, that Dr. Snodgrass moved, at the Synod held in Ottawa in June, 1874, that a poll, carefully supervised, should be taken of all the congregations, showing the numbers present and voting, before

proceeding further, but this revolt against the *Curia* would not be tolerated, and the resolution was withdrawn. Appeals from Congregations were refused to be heard, on the ground that these must be made to Presbyteries, who had previously refused to hear them on the ground that the Synod had sent the Basis of Union direct to congregations, who were thus bound to send their findings direct to Synod. In this ingenious way the rights of the people were completely trampled on.

The illegalities did not end here. It was found that the Basis of Union was so unsatisfactory that a new one had become necessary. This new basis it was resolved to send down in the same way as the first, ar [illegible] was moved that it be sent down in terms of the Barrier Act. By that Act, no propo[illegible]n be discussed at a special meeting, but must be taken up at a regular meeting of Presoytery, so as to prevent measures being carried by surprise; nor can it be considered until the next regular meeting of Synod, which would have been in the present case in June, 1875. But the official gentlemen were a phalanx; the general body of the members was unorganized, and it was resolved that the returns should be made to an *adjourned* meeting, to be held in Toronto in November. That adjourned meeting was constituted in violation of the laws of every Presbyterian body; the Barrier Act, one of the greatest constitutional safeguards we possess, and which had never been infringed upon before, was disregarded, in the face of protests and of the clearest proof of the illegality of the whole proceedings. There voted then for union, as I have already stated, only 68 out of 261, the merest fraction over one-fourth of the Synod, and this small minority was taken as representing the Synod, and on their demand, and on the demand of members of other Presbyterian bodies, numbering, we are told, 650 ministers and congregations, *whose demands, it was boasted, no Legislature would dare to resist*, the Synod in connection with the Church of Scotland, with 138 congregations, was declared by local acts to be no longer entitled to the benefit of the Act of Toleration, its funds were transferred to another organization, and its adherents deprived of their congregational properties, which were handed over to other Presbyterian bodies, on the strength of these being a majority. Yet smug respectability, with uplifted hands, stands aghast at the spread of Communism!

Interesting as the case may be to one part of the community, it is not less so to every inhabitant of Canada. If any man choose to constitute a Trust, for religious, benevolent or educational purposes, he does so at the risk, if this legislation be sustained, of seeing it set aside in his lifetime, or of feeling that after his death his most cherished desires, however praiseworthy, may be defeated on the most flimsy pretext. The constitutionality of the Acts by which such gross injustice has been perpetrated will be fully discussed in the Courts of Law, and, if necessary, the whole question will be carried to the highest Court of Appeal in the British Empire. Much as the "wretched minority" have been sneered at, they have shown, and will continue to show, that they are prepared to defend their civil and religious liberty and their constitutional rights as God-fearing and peaceable members of society.

VI.

The rapid summary in the last chapter may give an idea of the more glaring irregularities and illegalities committed, in the attempt to force on an unwilling people an outward uniformity for which there was no inward desire. But the more the matter is examined, and the more detailed is the information furnished regarding the mode of carrying on the work for the extinction of the branch of the Church of Scotland in Canada, the more discreditable appear the acts of the leaders in this crusade. Unbelievers may well doubt the truth of a religion in whose name such acts are committed. Yet looking more closely they might be constrained to follow the example of the wise Jew, who, before fully embracing Christianity, desired to observe its effects at the centre of the Faith, and returned convinced that the religion must be true, which could exist in spite of the conduct of its professors.

The Basis of Union, adopted by the Synod in 1873, was, as stated, sent down to Presbyteries, Kirk Sessions and Congregations for consideration, the returns from the latter, as well as from the former, to be sent up direct to the Synod. But the idea was carefully inculcated, that the question of Union had already been settled by the Synod, and that all the Congregations had to do was to vote on the Basis. The articles contained in that document were purposely vague and colourless, a series of platitudes which no one could well deny, and which, therefore, afforded no room for discussion. The Congregations were not asked if they approved of joining the Canada Presbyterian Church. The question thus plainly put would have been emphatically answered in the negative, since the people who really belonged to our Church well knew that the other body held theories totally at variance with their views, and principles destructive of the liberty of conscience. That Union was settled was quietly assumed. The consequence of this was, that the great bulk of those who determined to adhere to their own Church abstained from attending the meetings, which they held to be illegal, and by whose decisions they declared they would not be bound. The scanty attendance at congregational meetings had evidently been calculated on, for the leaders announced that all not voting *nay* would be held as voting *yea*. In so serious a change as was proposed, if it had been desired to ascertain the true state of feeling, a positive expression of opinion should have been obtained, and not a mere inference drawn from the absence of a negative vote, which might have arisen from many causes. That the true reason for the abstinence from voting was known to many, certainly to those who took the most active part in the attempt to break up the Church, is undoubted. But these had made up their minds that, at all costs, their scheme should succeed, and they were assisted by many, who were led to support them in that unaccountable way by which men are induced to do in the name of religion, what others, eager in the pursuit of worldly gain, would never dare to attempt. The returns to the first Remit, made to the Synod which met at Ottawa in June, 1874, showed that 114 Congregations had voted yea; 11 nay, and 20 had made no return. The result was known to be a farce, so well known, indeed, that like the Augurs of old, the leaders could scarcely look at each other with gravity. Let me show how the reports were made up. In one congregation, before the Basis was submitted, it was agreed by an unanimous vote that they should not enter into the Union. Nothing could be more emphatic or unmistakable. But the Minister was a Unionist, and he insisted that the Articles of the Basis should also be put. This was done, and as nobody could say that there was anything not strictly true to be found in the vague generalities laid before the meeting as a Basis, the Minister, acting as Chairman, returned the Congregation as unanimously in favour of Union! In another, none of the Congregation would attend to consider the question, which they rightly held to be unconstitutional, so the Minister, a Union man, got two friends to go with him, constituted a meeting, and returned that Congregation also as unanimously in favour of Union. In another, the Chairman stated that no discussion would be allowed, a protest was lodged against the legality of the whole proceedings, one or two men and a few girls and women voted yea to the Basis, the question of Union itself never having been submitted, and that Congregation, also, was returned as unanimously for Union. In still another, a very small meeting, there was one of a majority against the proposed Union. The Minister, a Union man, who acted as Chairman, on ascertaining the result, declared two undoubted members of the Church to be ineligible to vote, thus making one of a majority on the other side. But this also was returned as *unanimously* in favour of Union! Case after case of a similar kind might be quoted. No numbers were given in the report, and many of these facts were brought out in the course of the discussion in the Synod, yet in the face of such returns, of protests against the constitutionality of the attempt to set aside the Charters and Title Deeds by which the Church and Congregational properties were held, of the fact that only about thirty-one per cent. of the Synod voted for the revolutionary proposal to put an end to the existence of the Church, it was recorded that it had been carried by "an overwhelming majority."

Every man who has studied Parliamentary or Ecclesiastical proceedings is well aware that the rules guiding the deliberations of such bodies are framed so as to protect the rights of all, and to prevent tyrannical majorities, obtained often from some hasty impulse of passion or excitement, from trampling on the rights, not merely of minorities,

but rather usually on those of the whole body of the people. Yet it has been constantly asserted in the present case, that the setting aside of the most ordinary, yet most valuable, safeguards for the due deliberation of so solemn a question as the extinction of a Church with so noble a lineage and history, was but the brushing aside of trifling technicalities, that could not have affected the result one way or other. Take the case of the direct Remit of the Basis of Union from the Synod to Congregations as an instance. A learned Judge, in entire ignorance of the laws of our Church, and disregarding the general principle involved, treated the point as frivolous and unworthy of notice, the Remit to Congregations being in his view an act of grace, the Synod being bound to send it down only to Presbyteries. Of the true state of affairs his Lordship did not appear to have had the faintest glimmering. The mode I have already pointed out of sending down through Presbyteries to Kirk Sessions, thence to Congregations, if a special vote of the latter is desired, has its natural return movement from Congregations to Kirk Sessions, thence through Presbyteries to the Synod, and finally, if their be a higher Supreme Court, to the General Assembly.

An illustration will, better than the abstract statement, show the evil arising from the violation of so elementary a rule of procedure. Having protested not only against the constitutionality of the proposal to transfer the properties of the Church to another body, but also protested and appealed against the very irregular and illegal proceedings at the meeting held in St. Andrew's, Ottawa, to adopt the Basis, as we were told by the Chairman, I applied to the Kirk Session to transmit the appeal in regular course. The Session declined, on the ground of the Remit having been sent down direct from the Synod. Having obtained a certified extract of the minutes, I petitioned the Presbytery to the same effect, my object being, in both cases, to protect the rights of the members of the Church against what there was just reason to apprehend—the refusal of the ruling powers in the Synod to admit the appeal, on the ground of its not being transmitted through the regular channels. The result of the application to the Presbytery was what I expected. That Court, in a somewhat singular minute, declared "that it is not competent to discuss the question, and, therefore, dismiss petitioner's desire." Agreeing, as in duty bound, with this estimate of their own incompetency, I ventured to point out, that they might refuse to grant my request, but could not dismiss my desire, which I still retained. I transmitted my protest and appeal to the Synod Clerk, and the Synod, on his report, declined to receive it, on the ground that it should have been transmitted through the subordinate Church Courts, they having previously declined to receive it, because of the Synod's own action. I have preserved the certified extracts of minutes, as proof of the—to say the least—unusual means that were taken to prevent the voice of the members of the Church it was proposed to break up, from being heard.

In that Synod (Ottawa, June, 1874,) not a word of argument was advanced in support of the proposal to carry out the separation from the Church of Scotland, which had been begun in Canada in 1844. There were highly imaginative descriptions of the harmony that was to exist; there were appeals *ad captandum vulgus;* denunciations of those who refused to give up their convictions and bow the knee to the majority; and a two hours' harangue from one of the leaders, who in tones of exaggerated solemnity declared that the voice of God had spoken so clearly with regard to this Basis (brandishing it in his hand) that whoever opposed its adoption, with every jot and tittle of its conditions, was fighting against God, and called down on these wicked men the wrath of the people, who are so readily swayed by such fustian and claptrap. The fate of Korah, Dathan and Abiram was as nothing, compared to what their's should be who did not agree with the majority.

But the Canada Presbyterian Church was not so well satisfied on the subject, and insisted that in several very important points the Basis should be changed. For one thing, they demanded that a clause should be inserted as to the Headship of Christ, as a crucial test of the faith of those who were seeking to be united to them. They had made it a charge, the truth of which they constantly affirmed, that our Church had torn the Crown from the Saviour's brow, and was wallowing in Erastianism; and that clause, therefore, must be inserted as a guarantee that thenceforth, at least, she would maintain

sound doctrine on that point. It is true that in the Preamble, as thus proposed to be amended, the Scriptural definition of Christ's Headship over the Church and the Nations was mutilated, to satisfy the United Presbyterian part of the Canada Presbyterian Church, so that it neither expressed the views of the Church of Scotland, nor of the Free Church, yet nevertheless it was agreed to, and, strange to say, the same orator who the night before had been declaiming so vehemently of the clear revelations regarding the first Basis, was equally emphatic, next forenoon, about the clearness of the new revelation! One is tempted to believe that the descendants of Zedekiah, the son of Chenaanah, who armed himself with horns of iron, to encourage Ahab to go up to Ramoth-Gilead and prosper, are not yet extinct.

Then the managers of the scheme called frequent conferences between the two negotiating Churches about matters which would have been settled much more expeditiously and satisfactorily by a simple letter from the one Clerk to the other; and at every one of these, which every member attended, there were sung the lines :—

> "Behold how good a thing it is,
> And how becoming well,
> Together such as brethren are
> In unity to dwell."

veritable *corps de theatre*, to create a spurious excitement, and so to envelop the meetings of Synod with an atmosphere of unionism, that all sober and calm consideration should become impossible. The exegesis, too, of John xvii., 21, laid before congregations for nearly two years, was of the most fantastic kind, partaking largely of what is vulgarly but expressively called *twaddle*. This was continued in the Synod. One member of the Court, however, even in the full flare of his own eloquence, when, with extended arms, he declared his eager desire to embrace all Christians in one grand ecclesiastical organization, suddenly dropped from his flight, like Icarus, and explained that there, nevertheless, were limitations, for, he said, "I never could abide the Methodists." "'Ve draws the line at bakers," said the genteel young barber, who refused to shave the coalheaver. The precise line drawn by the reverend speaker was not clear, but whatever it was, the Methodists were not within its enclosing boundary.

The means used to obtain an affirmative vote were somewhat remarkable. Promises were made of increased allowances to retiring ministers from the Temporalities' Fund, of a share in the same Fund to the younger ministers of the Church, and hopes were held out of other advantages, vaguely hinted at, rather than openly stated. Good, well-meaning, simple men were led to believe that they would be guilty of a great sin, if they did not vote for what they were told was a measure for healing division, instead of the scheme being, what it was in reality, one from which would result nothing but increased bitterness and heartburning. The new Basis was agreed to with the greatest reluctance by even the majority of those who voted for it, and that threats had been held out to some is evident from the remarkable statement made privately and timidly by some: "We did not dare to vote against the Union; we were coerced into it, *but we shall gladly give a contribution towards the legal expenses to be incurred in defending the existence of the Church.*" That this showed a sad amount of moral cowardice may be, undoubtedly is, true, but it is strong proof of the influence that had been used. The new Basis having been forced or manœuvered through the Synod, a resolution was passed that it should be sent down *in terms of the Barrier Act*, and there having been certain business left unfinished, the meeting adjourned to reassemble in Toronto in November of the same year (1874).

VII.

The leaders of the scheme for breaking up the Church were not idle in the meantime. Having, in 1872, succeeded in obtaining control of the only recognised publication connected with the Church—*the Presbyterian*—they, on the ground that its

columns would not be open for discusion on controverted subjects, refuse to admit contributions that might serve to show there was the slightest difference of opinion on the question of Union. But in every number there were editorial utterances in favor of joining the Canada Presbyterian Church, anything serving as a peg on which to hang a Union homily. Systematic efforts were made to weaken the Church; Mission Stations were handed over to the other body; every attempt to extend the operations of the Church met with a steady resistance, on the plea that until the Union question was settled no additional work should be undertaken. The Union leaders, in short, acted as if the Church were a mere subordinate to the other body, and could do nothing without its approval. On the other hand, the Canada Presbyterian Church, very wisely from its own point of view, took every advantage of this extraordinary state of affairs, and whereas the professed Ministers of our Church were telling their people that there was no difference between the two bodies, the Ministers and office-bearers of the Canada Presbyterian Church were warning their adherents against attending the Moderate and Erastian services.

It must be confessed that the adherents of our Church were far from acting with the firmness that the occasion demanded. Yet, after all, this is not so wonderful as it seems. For some years the gentlemen who had made up their minds to join their fortunes to those of the body whose existence was due to hostility to our Church and to constant vilification, had been gradually and insidiously filling up the offices in the various committees and in the Managing Boards of the Colleges, Funds, &c., with those on whom they could rely. Not behind in this work were some of the professors in Queen's College, and those of them who objected were speedily lashed into the traces, and compelled to side with the *Curia*, being apparently made to feel that the Church existed for the good of the College, and not the College for the service of the Church. The students, also, were trained to believe that their duty was to preach a spurious unionism, and the abandonment of the connection with the Church of Scotland; because it was hoped, by thus pandering to the desires of their adversaries, to add to the funds of an institution built and endowed by members of that Church, which still contributed large sums annually for the support of Queen's College. Not even a pretext appears to have been made of teaching them the history of their own Church. And yet, in spite of this concealment, many of the more thoughtful of the students felt that there was, between the two Churches, a difference, appreciable, even if it were to them indescribable. Some of them said to myself that they knew there was a difference in spirit, in freedom, in liberality of view, in breadth of thought, between our Church, and that they were asked to join. "But," they added, "we cannot tell wherein the difference consists, so as to explain it to our people. We are placed in a cruel position. We know we should not join, but we cannot give any definite reason for not doing so." With an organized party, having a definite aim, with so many of the younger ministers drifting helplessly on a current which their hearts, if not their intellects, told them was floating them in a wrong direction; with Ministers in charges who had been admitted from other religious bodies; with public opinion misled by the Church paper, and articles contributed to the press, supposed to be the expression of the impartial views of the editors of daily and weekly papers, it is no marvel that a feeling of dull apathy sprung up, discouraging every effort on the part of the faithful members of the Church, and that, with few exceptions, they seemed to submit sullenly to the apparently inevitable. The whole weight of officialism, thoroughly organized, was, on one side, attracting every waiter on Providence; on the other, the members, widely scattered, had no common means of communication, and were unable to meet for concerted action. They were thus led individually, into the discussion of details, whilst opposed to the whole scheme, and so were held up to public obloquy as having first consented to the principle of Union and then refused to carry out the treaty, to which, it was represented, they had been parties. Disgusted with the state of affairs, many refused to attend the meetings of Synod, too many being actuated by a weak fear of offending leaders, of whose policy they strongly disapproved, without having the courage to say so openly.

A similar course of action was followed in taking the vote for the new Basis of Union as had been pursued with the other. According to the Barrier Act,

the returns to the Remit should not have come up until the next meeting of Synod, to be held in June, 1875. At the adjourned meeting held in November, 1874, only the unfinished business could properly have been discussed, but in spite of law, it was resolved that the plain meaning and intent of the words of the motion, "in terms of the Barrier Act," should be disregarded, and that the report should be considered and decided upon, less than five months after the Remit had been made, at an adjourned meeting of the same Synod at which the Basis had been agreed on. The attendance at this adjourned meeting is a clear proof of the value of the assertion as to the refusal of members to attend. Out of 281 members who constituted the Synod, only 110 answered to their names from the first to the last diet, the peculiar mode of recording the Sederunt affording no evidence of the number present on any particular day.

It was evident when the Synod met, that the leaders were in a dilemma. The meeting at Ottawa had only been adjourned, not closed, and the Barrier Act precluded the Synod from taking up the Remit at the continuation of the same meeting. Dr. Snodgrass acted as Clerk in the absence of that official, and apparently took the whole direction of the proceedings, the Rev. John Rannie, Moderator, being confessedly ignorant of Church law. In order to make it appear that it was a new meeting, the Moderator, by direction of the Acting Clerk, conducted services exactly as he would have done at the regular opening of a newly convened Synod. These being ended, the first question that arose was as to the constitution of the Court. It was maintained by those who advocated the adoption of the constitutional course, that this being merely an adjourned meeting, the roll made up in June was the one still in force. On the advice of Dr. Snodgrass, the Moderator gravely and decorously ruled, that this being a Synod, and as Provincial Synods in Scotland met twice a year, making up a new roll at each meeting, there should be a new roll. Against this decision a dissent was entered. What the opinion of the Presbyteries of the Church was on this point was evident, as, with two exceptions, none of them had sent up certified rolls of their membership, the law being that these must be in the hands of the Synod Clerk at least four days before each new meeting of Synod. The action of the Canada Presbyterian Church was also proof to the same effect, as that body, which had agreed to meet at the same time, held its meeting as adjourned, and, therefore, a continuation of the one begun in Ottawa five months previously. Considerable confusion took place before the Court was constituted, there being evidently great doubt as to the course to be followed. It was, however, finally constituted, and then the Presbyteries were ordered to meet and make up their rolls for transmission, against which proceeding, also, dissent was entered.

Logically, according to this ruling, supported by the precedent of Provincial Synods in Scotland, the next step was the election of a new Moderator. A motion to that effect was made by the Constitutional party, but the Moderator, again prompted by the Acting Clerk, as gravely and decorously as before, ruled, that this being a Supreme Court, came under the laws regulating the proceedings of General Assemblies, and that, therefore, the present Moderator should retain his seat, being elected for a year. It is not necessary to give in detail instances of the glaring violation of the laws of the Church in the conduct of that meeting. Every constitutional safeguard was ruthlessly trampled under foot, if it stood in the way, the idea evidently being that the minority, overawed by the bold front of those who had so far successfully managed their scheme, and terrified at the storm of public indignation which it was confidently believed had been excited against them, should they persist in their resolution to preserve their Church in existence, would abandon all resistance and let the case go by default. There is no other plausible theory to account for the illegalities committed at and subsequent to the adjourned meeting of Synod.

Previous to the report being discussed, a solemn protest was served upon the Moderator, to protect those who refused to be bound by the decision of any majority, however large, and yet who considered it right to declare openly in the discussion their views on so important a question. The returns being called for, it was found that out of 150 charges and stations reported, only 95 had voted yea as compared with 114 in June, many of them under similar circumstances to those reported as "unanimously in favour of Union" in June. After long discussion, during which every constitutional objection

was set aside, and the laws of the Church completely ignored, the vote was taken, showing that only 68 members could be induced to vote for the abolition of their Church, against which decision dissents were entered.

Immediately on this vote being taken, a resolution was moved, setting out that it was clear from the leadings of Providence that the Union was in accordance with the Divine will, but adding the cautious condition, notwithstanding this clear indication, that the Union should only be entered into provided legislation could be obtained to transfer to those who were seceding the Funds and properties of the Church they were about to leave! It was a fitting commentary on the course of some of the leaders, who, at the time of the secession of 1844, had remained in the Church only because they knew there was otherwise no hope of securing her property, or of sharing in the Clergy Reserves, but who now believed that times had changed, although they had not changed with them in their inward desires, and that they could safely secede without being out of pocket. This is no rhetorical flourish, nor a malicious attempt to blacken the character of men "whose praise is in all the Churches." It is the plain statement of an ugly fact, susceptible of the clearest proof.

When the last resolutions were put, some declined to vote. It is said that as many as twenty did so. It is not easy to decide with accuracy what was the exact number. But the leaders of the seceding majority maintain that the statement is incorrect. If it be, what is the position of those who resolved to break up the Church, to transfer all its congregational and other properties to another body, and to strip from her members the means placed in their hands for the spread of the Gospel in this country? How can they justify themselves for depriving a faithful people of their Churches, which they had reared, literally in many cases, with their own hands? We are told that there was the greatest enthusiasm for Union with the other body, and that this is full justification. Where is the proof of it? Of all the members of the Synod, only a poor twenty-four per cent. ventured, or could be induced, the latter by the means I have pointed out, to vote for the absorption of the Church into a body with which there was nothing in common, apart from their common Christianity, but the name Presbyterian, and with which there was no real sympathy. The Minutes of Synod themselves contain proof of the entire want of enthusiasm and spontaneity in the movement, which in reality was forced on by little more than half a dozen men, working in the dark to accomplish their own ends, and using others as their instruments, some actuated by vanity, some by self seeking, some by their total indifference to the welfare of the Church into which they had been admitted, others by a sincere belief in the desirableness of the end set before them.

No time was lost in having bills to secure the property of the Church laid before the Local Legislatures. In Toronto application was made to Chancery, to restrain the promoters of the bills from attempting to have them passed, but the Vice-Chancellor, on the plea that the Legislative Assembly was already "seized" of them and was bound to protect all interested, refused to interfere. As a proof of the manner in which the constitutional objections were met, I may cite that raised as to there being no Overture, but simply a letter suggesting the appointment of a Committee on Union from Dr. Ormiston, not a member of the Church. The real point was that there was no Overture, as required by our Church law, but this was evaded, and Dr. Snodgrass made affidavit that Overtures could be presented in various ways, giving instances in which they had been received and acted on, although not proceeding from an inferior Church Court, carefully concealing the fact that the letter referred to did not even profess to be an Overture, and was not written by a member of the Church, but by an official of another body writing unofficially, whereas the others were Overtures in the fullest meaning of the term. At a subsequent period, Mr. Mackerras, a professor in Queen's College, went still further. In giving his evidence at Cornwall, under oath, he stated: 1. That an Overture was simply a petition; that the Synod received petitions from any one; that they had, among others, received petitions from Temperance Societies. 2. That the laws of the Church of Scotland did not apply to the branch of that Church here; although, as a matter of fact, these are the only laws we have, modified, however, in a few cases by special Acts of Synod, as, for instance, the change in the Barrier Act, already alluded to.

In Ontario, the bills were forced through the Private Bills Committee with scant ceremony, and passed in the Assembly without discussion. In Quebec, much more time was given to their examination, they being only carried in the Private Bills Committee of the Assembly by two of a majority. In the Committee of the Legislative Council they were thrown out, the preamble being declared not proved, but pressure was brought by some of his supporters upon the Premier, who brought the whole influence of the Government to bear to have the bills recommitted, and they were then passed through Committee by a majority of two, several members, who had not been present when the evidence was heard being brought in to carry the bills. The general effect of the bills was to declare that all Congregations were in the Union, whether they had been consulted or not; that to extricate themselves from the Union, there must be the vote of a majority of *all* the members *entitled* to vote in Congregations, not the majority at a meeting, however large, if it fell short of an absolute majority of all the members, present or absent; that in spite of Trust deeds, Congregational title deeds, Charters or Acts of Incorporation, all Church and Congregational properties were to be transferred to the new body, no provision being made for the religious necessities of those who declined to abandon their own Church, even in cases in which, and these were far from uncommon, those who refused had contributed the whole, or very nearly the whole, cost of their Churches. A pretence was made that the rights of minorities were protected, but this simply meant that the Ministers who had been entitled to the Clergy Reserves, and who were donors to the Temporalities' Fund, on condition of receiving a life annuity, were not to be deprived of that annuity if they did not enter the new organization, but they were deprived of all share in its management by a special clause preventing them from being members of the Board. For minorities in Congregations there was not even a pretence of protection, and the Acts were subsequently so interpreted, that whole Congregations refusing to enter the new body were deprived of their properties under cover of their provisions. There was also a clause providing for constant agitation in Congregations which refused to leave their Church, no vote being final which stopped short of carrying the property into the Union Church, but any chance vote, or no vote, as was held, being sufficient to set aside the title deeds of Congregations, and to bind their churches, manses, glebes, &c., irrevocably to the new law-created ecclesiastical organization, to resist which, we are gravely told, is to be guilty of rebellion against legally constituted authority.

VIII.

Acts were thus passed by the Local Legislatures, disposing of the Funds and properties of the Church and Congregations. They were, in reality, Acts of Uniformity, visiting with the penalty of confiscation those who did not choose to abandon their own Church. There was the singular anomaly witnessed, in a British Colony which had professedly got rid of the slightest semblance of the connection between Church and State, of a specially-privileged, law-created ecclesiastical body, professing a detestation of the principles of the Church of Scotland, to which the members of that Church must adhere, if they desired, even in name, to retain the instrumentalities for the maintenance of their distinctive beliefs, which at a great sacrifice they had secured, as they fondly hoped, for themselves and their descendants. It was the exercise of despotism under colour of law, unexampled since August, 1692 (Black Bartholomew's day), and on the plea that the will of a majority is omnipotent. The numbers were not so great as then, but the principle was the same. From one end of the Dominion to the other the statement was circulated in every form, that the whole body of Presbyterians had agreed to unite, and that this praiseworthy desire was sought to be frustrated by a few pestilent fellows, who had set themselves to oppose the carrying out of this great object. The fact was most carefully concealed, that for years the seceders from the Church of Scotland had been fighting for her overthrow in this country; that their bitterness had been intensified rather than allayed by the lapse of time, that the demand for union on the

part of the seceders was only used to carry out their determination to remove every vestige of her existence and to secure in this way her funds and properties. The peculiar conditions as to the recognition of her colleges, as compared with the terms used in relation to the colleges of the other body, were very significant of the intention of the latter to get rid of Queen's and Morrin Colleges, and to appropriate their endowments to the colleges of the Canada Presbyterian Church. Nor was there much concealment on this point. With a charming candour the design was openly spoken of, not discussed, for it seemed to be beyond the realm of discussion, and to have arrived at the dignity of a settled decision. The continued existence of the Synod of our Church, sadly weakened in numbers, as it has been, by the secession of so many of its members, has hitherto prevented the final steps towards this end from being taken, but that the plan has been postponed only, not abandoned, is very plain from, amongst other indications, the Overture presented to the General Assembly of the new body, and the statement, with all the weight which the editorial form could give it, in the official organ of the Presbyterian Church in Canada, of the endowments of the different colleges, showing the great efficiency which might be gained by shutting up Queen's College and transferring the endowments and the money arising from the sale of the property, to Knox College, Toronto, and the Theological Hall at Montreal, belonging to the Canada Presbyterian Church. The only plea, the official organ added, which Queen's College could urge for being allowed to exist was her age and prestige.

All along, the press had been used with the greatest possible effect, to make it appear that the proposal for outward uniformity arose from the spontaneous desire of the people to unite, and in one great outflow of brotherly love, to get rid of all past differences. Yet the articles had a suspiciously close resemblance in style, tone of thought and line of appeal. They certainly bore the mark, the greater part of them at least, of being contributed from one central point. The members of our Church had no opportunity of answering, their replies being refused admission, or if admitted, a sting was usually added editorially to the communication, and when the few who had openly and boldly taken their stand in defence of their Church were spoken of, it was with a sneer or a contemptuous remark. Yet, outwardly weak as they were, they were cheered and supported by numerous letters from every part of the country, asking for advice, counsel and guidance, these letters affording the strongest possible proof that there were many left with an ardent and undiminished love for their Church. Much as that small band who stood forward to oppose the popular will may have been sneered at and despised, they showed a heroism and an unselfish devotion that may some day be recognized in its true light.

To give greater lustre to the ceremony, it had been arranged that the Supreme Courts of the different negotiating Churches should meet in Montreal, and there effect the Union, in the Victoria Skating Rink. The efforts to attract attention and to excite the popular enthusiasm were not relaxed, but were, on the contrary, increased. The newspapers were filled with the most glowing anticipations of the crowds that were to flock to the Skating Rink, of the processions of Sunday School children, of the picturesque proceedings, of the cheap excursions, of the great numerical strength that was to be gained by the junction of the different bodies. But it was remarkable that greater stress seemed to be laid upon the political influence, rather than on the spiritual power to be hoped for from the increased numbers. There were frequent comparative statements of the members of the new Presbyterian body, and those of the Roman Catholic, the English and Methodist Churches, and the boast was not seldom made, that the voice of so strong a body could not be disregarded by legislators.* In truth it was evident to the thinking onlooker, that the worm was already at the root of the seemingly flourishing tree, and the thought involuntarily occurred to

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* The following may be taken as an instance of this spirit of boasting : "We belong to a Church now happily united, having eight hundred Ministers and Missionaries, embracing a constituency of six hundred thousand, and covering an area stretching from Newfoundland to the Rocky Mountains."—*Extract from the Address of the Presbyterian Church in Canada to the Marquis of Lorne on his landing at Halifax.* Is it worth pointing out that the figures do not err on the side of moderation? They are, in fact, more like those given in the prospectus of a projected railway, with its glowing anticipations of profits.

many, that the boasted strength of the new organization, and the unthinking applause of the multitude, presaged a similar fate to that of Herod, when the people shouted, "It is the voice of a god, and not of a man." And immediately, the Holy Record says, the Angel of the LORD smote him, because he gave not GOD the Glory. For there was a levity in the conduct of those who were intent on breaking up the Church to which they had belonged, and whose destruction they believed they had secured, which was not becoming, even had the members unanimously agreed that duty to the cause of Christ required the sacrifice of personal inclination, and the closing of the history of a Church which had done so much for the spread of the Gospel in this land.

In June, 1875, the Supreme Courts of the negotiating Churches, from Ontario, Quebec, New Brunswick and Nova Scotia met in Montreal, a large proportion of the members of the Synod of the Maritime Provinces, in connection with the Church of Scotland, besides those of the Presbyterian Church of Canada, in connection with the Church of Scotland, refusing to attend. On the faces of the Free Church party might be seen a grim sense of the humour of the situation. They had for years been trying in vain, by open hostility, to conquer the branch of the Church of Scotland. Suddenly reversing their tactics, they had gained by strategy, with the help of friends within the citadel, what they could not otherwise have succeded in winning—the apparently complete subjugation of the Church from which they had seceded. What mattered to them the slight change of name to which they had agreed? In their short history of thirty years they had been known under various aliases, whereas the expunging from our title the words, "In connection with the Church of Scotland," was a revolutionary change, resisted uncompromisingly in 1844, which indicated on the part of those who left us the complete severance of the tie that had bound them to the Mother Church. That was, and is, the true meaning of the change of name, in spite of all the quibbling pleas that may be used to conceal the fact.

The Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, met in St. Paul's Church, instead of St. Andrew's, as had hitherto been the custom, a change not without meaning. In spite of circulars, appeals both personal and written, the persistent advertising of the greatness of the occasion, and the real importance of the event, only a fraction of the members answered to their names, including those who appeared at the opening of the Synod and then returned home, and those who came towards the last. Very properly, Dr. Snodgrass, convener of the Union Committee, who had been prominent in framing the Acts of the Legislatures, by which it was hoped to render helpless the members of the Church to which he belonged, was appointed Moderator. As showing the confusion that had been introduced by the attempt to override the laws of the Church at the adjourned meeting of Synod in November, it is worthy of notice, that there had been no election of representative elders since then, and that, therefore, according to the laws of the Church, not one of the elders was legally entitled to a seat in the Court. The law on the subject is very explicit. Within two months after the closing of a Synod, the representative elders for the Presbytery and next Synod must be elected by Kirk Sessions. The representative elder at the Synod may retain his seat in Presbytery for two months after the closing of Synod, if a successor be not previously elected; but, on the expiry of two months, his representative character absolutely ceases, whether a successor has been elected or not, and he cannot therefore legally vote in Presbytery or Synod without re-election. The Synod of 1874, begun at Ottawa in June, and adjourned, was formally closed in November at Toronto. At the adjourned meeting, held in Toronto, the new Roll was illegal, because the elections had taken place before the Synod closed. In Montreal, in June, 1875, the Roll was again illegal, because no election had taken place after the Synod closed. All the proceedings were, therefore, null.

But although the brute force of a majority of those present could get rid of this or of any other obstacle that stood in the way of the leaders, there was yet an uneasy feeling among their followers, that there were breakers ahead which it required some caution to avoid. Common sense might have shown that to legalize the formation of a body whose powers were to extend over the Dominion, one general Act was absolutely

necessary, not unconnected Acts, widely differing in their provisions. It was by the latter process, however, that a homogeneous body was attempted to be formed by provisions of the most heterogeneous character.

By the Union Act in Ontario, the claims of those who had been declared entitled to annuities from the Temporalities' Fund, were to lapse at their death, when the capital was to become the property of the new body. The Union Act of Quebec contained the following provision :

"Whereas the Ministers of the said Presbyterian Church of Canada, in connection with the Church of Scotland, are entitled to receive incomes from a fund called the Temporalities' Fund, administered by a Board incorporated by statute of the heretofore Province of Canada, and it is proposed to preserve to them, *and to their successors,* EVEN IF *the Congregations over which they preside do not enter into the Union,* the income which they derive from the said fund; it is therefore enacted," &c.

Nothing could be clearer. It was determined by the Private Bills Committee that the rights to the Fund of the Congregations of the Church of Scotland in the Province of Quebec should be preserved, and that such Congregations, *existing at the time of the Union,* to use the words of a subsequent part of the section, should be entitled, in accordance with the terms above cited, to enjoy in perpetuity the advantages of the partial endowment secured by means of the Temporalities' Fund, whether they joined the new Church or not. Much dissatisfaction was felt at the distinction thus made between the two Provinces, and to satisfy the discontented, it was resolved to obtain Opinion of Counsel. For this purpose a case was prepared, signed by the Church Agent, which, amongst other things, stated that "the word EVEN coming after the word 'successors,' near the beginning of the above section (that just quoted) was not in the draft of the bill as originally drawn, *but got in through some error.*" The statement I have italicized is entirely incorrect. The clause was deliberately inserted by the Private Bills Committee, after hearing the evidence and arguments on both sides, and in spite of the most urgent demands on the part of the promoters of the bill, the Committee positively refused to change the wording of the clause.

Apparently it was not difficult to obtain an opinion that the words did not mean what they so clearly expressed. In that obtained from Mr. Strachan Bethune, Q. C., it was gravely laid down that the words must be read in a non-natural sense, and thus treated, it seems that they could be made to mean anything the Church Agent wanted. Intelligent men, not honoured with the silk gown, might not unnaturally characterize the opinion as nonsense, but this would only have shown their ignorance of the fine subtleties of the higher branches of law, as simple lovers of ballad music might show their want of training in trying to criticise the music of Bach or Wagner. The Opinion is worth quoting, but the exact words of the Act must be borne in mind ; Mr. Bethune says :

"It is obvious that if we attach to the expression, 'even if,' in said 11th clause, its literal meaning, we shall entirely defeat the main object and intent the Legislature had in view in passing the other Act; and if, on the contrary, *we so vary the natural and common import of these words,* as to make them read as the word 'if' alone (regarding the expression 'even' *as introduced to emphasize or strengthen the expression 'if'*), we harmonize the provisions generally of both Acts, instead of defeating the entire object of one of them."

"And the serpent said unto the woman, Ye shall not surely die." The leaders must have been driven to desperate straits, when they exhibited such an Opinion as one that ought to satisfy reasonable men. Some of their followers were not satisfied. The Rev. Mr. McLean, of Belleville, and Rev. Mr. Campbell, of Renfrew, moved a resolution for delay, to have this and other discrepancies rectified, and supported their proposal in speeches of great ability. There seemed little doubt that the resolution would have carried, but between the adjournment for dinner and the reassembling in the evening, new light appeared to have dawned on the two gentlemen, who suddenly withdrew the resolution. The emphatic declaration of Mr. John L. Morris, during the discussion,

that he was not afraid of going to law, created some amusement. It would have been wonderful if he had, as few lawyers are greatly averse to the fees arising from a "gude gangin' plea."*

To enter into the details of the proceedings is unnecessary. A few salient points may be taken. The reports by the members of the deputation that had appeared before the General Assembly of the Church of Scotland were varied in their character, but there could be detected running through all a tone of dissatisfaction at their reception, which the "prave 'orts" of the delegates could not conceal; there were elaborate attempts to twist the words of the finding of the General Assembly into an approval of the conduct of those who were contemplating a severance of the connection with the Mother Church, but it was a palpable failure. There was evidently no heart in the movement, all the efforts of the managers of the scheme being necessary to obtain a vote in its favour. The Rev. W. M. Black (now of Anwoth, Scotland), one of the most retiring and diffident of men, expressed the mind of the great majority of the members of Synod, when, impelled by sincere conviction, he earnestly pleaded for delay in the interests of religion itself. There was a moment in which the scale seemed trembling in the balance, but the time for supporting his proposition was allowed to pass by those who had hitherto suffered themselves to be drifted on the current, and the words of those who had taken a pronounced part in opposition would not be heeded. The motion to proceed with the steps for the consummation of the Union was carried by the votes of 90 members, much less than one-third of the whole Synod, against which resolution dissents were entered.

On the 14th of June the final vote, to repair to the Skating Rink to consummate the Union, was proposed, which contained a clause, that the Synod

"Does at the same time declare that the United Church shall be considered identical with the Presbyterian Church of Canada, in connection with the Church of Scotland, and shall possess the same authority, rights, privileges and benefits to which this Church is now entitled, *excepting such as have been reserved by Acts of Parliament.*"

Which italicised phrase means, that the new brethren were only to enjoy pecuniary benefits after the death of the gentlemen who were so liberally, in appearance, throwing everything open. The meaning of the whole clause was to cover up the fact of the secession from the connection with the Church of Scotland, and that that, *ipso facto*, deprived all those who seceded of any of the benefits which they were declaring, *under reserves*, they were conveying to sundry other Churches! The minutes record that the motion was carried by an overwhelming majority, against an amendment moved and seconded by two members who had steadily voted with the leaders. Had the figures been given, they would have shown that a mere fraction voted in support of the final resolution. The following dissent was, therefore, laid on the table:

"We, Ministers and Elders, members of this Synod, heartily attached to the Church, hereby dissent from the resolution of this Court to repair to the Victoria Hall for the

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* The difficulty of drawing a distinction of persons in dual offices is not new. Peter de Dreux, Prince Bishop of Beauvais, was taken prisoner, when fighting at the head of his troops, by Richard Cœur de Lion. When Pope Celestin demanded that he should, as a son of the Church, be delivered up to His Holiness, the Lion Hearted sent for answer the prisoner's coat of mail with the pertinent enquiry: "Know now whether this be thy son's coat or no?" It is not more easy, in the modern instance, to recognise, in the childlike and simple representative elder at the Synod, who did not fear law, having no idea of its "ways that are dark and tricks that are vain," with the sharp legal gentleman who wrote the following letter a few days after the Court of Appeal had given effect to a technical quibble, interposed merely for the sake of delay, and having no bearing, in even the most remote degree, on the ultimate decision of the claims of the Church to retain its patrimony:

353 Notre Dame Street
Montreal, 29 December, 1878.

Dear Sir,

Dobie vs Temporalities Board et al

The costs due under the judgment lately rendered dismissing Plaintiff's action not having been paid I beg to inform you that unless paid to-day I will take legal proceedings against you as one of the sureties.

Yours obediently

JOHN L. MORRIS Attorney for Defts.

purpose of consummating the proposed Union with the other Presbyterian bodies, and thereby to form the General Assembly of the Presbyterian Church in Canada. We further protest against the declaration that the United Church shall be considered identical with the Presbyterian Church of Canada, in connection with the Church of Scotland, inasmuch as this Synod has no power *per saltum* to declare other bodies in addition to itself to be possessed of the rights, privileges and benefits to which this Church is now entitled. We declare, therefore, our continued attachment to the Presbyterian Church of Canada, in connection with the Church of Scotland, and do hereby enter our protest against the empowering of the present Moderator to sign in its name the Preamble and Basis of Union and the Resolutions connected therewith. And, further, we, Ministers and Elders of the Synod, holding views opposed to Union on the present basis, do protest against the carrying out of the contemplated arrangements for the consummation of the proposed Union, and declare that, if consummated, we will claim and continue to be the Presbyterian Church of Canada, in Connection with the Church of Scotland.

"ROBERT DOBIE,
"WM. SIMPSON,
"ROBERT BURNET,
"DAV. WATSON,
"J. S. MULLAN,
"WM. McMILLAN,
"THOMAS MCPHERSON,
"RODERICK MCCRIMMON,
"JOHN DAVIDSON,
"JOHN MACDONALD."

The way being thus, as it appeared, clear for deserting the ship, the work of plundering the wreck began. First, Dr. Cook, of Quebec, had a By-law of the Temporalities' Board produced and read, granting Morrin College, Quebec, $850 a year out of the Temporalities' Fund, which, after being discussed, was carried by 56 votes against 28, showing only 84 members present, a very small proportion of the Synod. As usual, the minutes contain no numbers. Next, one hundred and twelve Ministers, Missionaries and Probationers were put on the list, in addition to the legal recipients, as entitled to receive incomes from the Temporalities' Fund of the Church they were leaving. Very few of those foisted on the list, even had they remained by the Church, were entitled to one dollar from the Fund, their only claim being on the Sustentation Fund, which had been raised annually as a supplementary endowment, and was discontinued at the secession then taking place. The resolution was simply a bribe to obtain support, or to weaken opposition. It may be well to notice that no one can receive payment of his cheque, except by declaring himself a minister of the Church from which he has seceded. Can such a declaration, by any casuistry, be regarded as true?

The Professors of Queen's College had resolved that their exertions to break up the Church, for whose service the College was supposed to be maintained, should not go unrewarded. Their course is worthy of very special notice, as it is a key to the bitter hatred some of them have shown to the members of our Church since the secession. The Synod had agreed that an annual allowance of two thousand dollars should be made to Queen's College out of the Temporalities' Fund, the allowance to commuting Ministers, being professors, to form part of this. After Dr. Snodgrass assumed the office of Principal, an attempt was made to obtain the two thousand dollars, *plus* the allowance to the commuting ministers, and the following is the Minute of the Board on the subject :—

"1st.—That the commutation of stipend, whether made by Ministers having charges, or being Professors, having been personal, the stipend derived from it should continue to be enjoyed by those who commuted while they continue in the service of the Church, whether in charges or in the College.

"2nd.—In the event of there being Commuting Ministers in Queen's College, whose stipends together amount to £500 per annum ($2,000) no additional payment shall be made by the Board.

"3rd.—In the event of there not being Commuting Ministers in the College receiving salary from the Board to the amount of £500 per annum, the Board shall make up the deficiency."

The report of the Temporalities' Board for 1874-5 was presented in manuscript on the 8th of June, and transmitted to a small committee. Nothing more was heard of it till the 14th, the day before the secession took place, when, on the recommendation of the committee that it be adopted, it was agreed to without discussion. No member, beyond the privileged few, had the slightest idea that it contained a By-law, to which the sanction of the Synod had unwittingly been given, which gave to each Ministerial Professor the sum to which he would have been entitled as a commutor, or which he might claim on any other plea, *besides* the two thousand dollars to the College itself, as had been provided by the Synod. The effect of the By-law was, that an additional sum of $1,950 annually was taken from the Temporalities' Fund, namely, to Professor Mowat, $450; to Professor Williamson, $450; to Professor Mackerras, $450; to Professor Ferguson, $400, and to Principal Snodgrass, $200. Further, Dr. Snodgrass, acting for the others, had managed to have a clause inserted in the Quebec Act, providing for "the annual receipt of two thousand dollars, *in perpetuity*, by the Treasurer of Queen's College, for the use and benefit of said College." In providing for the transfer of the capital to the new Church, the two thousand dollars to Queen's College were specially exempted, and, according to the Act, "the Board shall have power, at any time after the passing of the said Act, to capitalize the same and pay it over to the Treasurer of Queen's College, for the use and benefit of the said College." To make assurance doubly sure, that the Professors were to put the additional annual allowance in their own pockets, without regard to their agreement with the Trustees, a clause had been inserted in the Quebec Act, several months before the formal sanction of the Synod could have been obtained, which was necessary to make the By-law valid. This I give in full :

"Provided also, that nothing contained in this Act shall be so construed as to deprive any Professor in Queen's College of any right to participate in the said Temporalities' Fund, to which, as a Minister of the Presbyterian Church of Canada, in connection with the Church of Scotland, he would have been entitled had he continued in the active duties of the Ministry of the said Church."

These facts throw a flood of light upon the sordid motives that, under the name of religion, actuated those who were entrusted with the training of young men for the Ministry of our Church. They need no comment.

The rest of the story may be briefly summed up. On the 15th of June, 1875, when every preparation had been made to repair to the Skating Rink, a notarial protest, with all the solemn forms of such a process in the Province of Quebec, was served on the Moderator. The Notary, attended by the necessary witnesses, stood up in sight of all and read the Protest in an audible voice. Business was suspended ; every eye was fixed on the officer of the Law, with one very remarkable exception. The Clerk of the Synod, sitting in his place in front of the Moderator, had no idea that such a document had been read, and no notice is taken of it in the minutes, although as usual in such cases, the Protest was served in writing, after having been audibly read. It is another wonderful proof of how much stranger is truth than fiction !

Shortly after this the Moderator, Rev. Dr. Snodgrass, rose and headed the seceders, who flocked down the aisles, leaving behind those who, true to their convictions, had remained faithful to their Church. To the one it seemed a small thing to desert a Church to which they owed everything. To judge from their faces, they were going off in mere *gaiete de cœur;* walking on the sunny side of the street with Religion in her silver slippers, and the people applauding. To the other it was a solemn and trying occasion. Even at the last moment attempts were made to cajole, to terrify, to induce by any or every motive those who remained to disobey the voice of conscience. They saw many going off who, too timid to strive against wind and tide, had yielded to the temptation to be on the winning side; they saw themselves regarded with bitterness; heard them-

selves spoken of with contempt; were separated from many with whom they had in bygone years taken sweet counsel. They knew not what were their prospects of support for themselves, their wives and families. Nor were they buoyed up by momentary excitement. Supported by a sense of duty, they did not shrink from the task before them. Months before, every step to follow the threatened secession had been arranged. The last of the seceders had not left the pews, when calmly the remanent members of Synod elected as Moderator the Rev. Robert Dobie, who had on a previous occasion filled the Moderator's chair, and appointed as Clerk the Rev. Robert Burnet. Closing up the ranks, they proceeded to finish the business, and not until that was done did the Synod close. There has been no break in the continuity of its existence. Since the secession in June, 1875, the Synod, Presbyteries and Kirk Sessions have continued their work, and are gradually but steadily growi ;, adding to their numbers, extorting respect even from those who differ from them. "Faint yet pursuing," they look forward undismayed to the trials they may yet have to endure, for even now the dark clouds are breaking by which they have so long been surrounded.

IX.

Had the object of this work been merely to define the legal position of the members of the Presbyterian Church of Canada, in connection with the Church of Scotland, and to discuss solely and exclusively the legal objections to the Acts of Union, &c., it might easily have been confined within much narrower bounds. For the question really turns not upon numbers, nor upon the manner in which the votes in Synod were taken, but upon the interpretation of Trust and Title Deeds, and upon the powers of Legislatures to revoke them. As, however, great stress has been laid all along upon the will of majorities, it has been thought well to show that these pretended majorities were really minorities, so far as the Church Courts were concerned, and that in respect to the votes of Congregations, no real returns were ever made, the reports transmitted to Synod being fallacious and misleading. It was also thought desirable to lay bare some of the secret springs of the movement, and to expose the manner in which the leaders contrived to carry out a scheme, which can only be described correctly as a clerical intrigue.

It cannot be too emphatically repeated, that in a case of this kind majorities do not decide. The Trust and Title Deeds must be interpreted, where ecclesiastical interests are concerned, no more and no less strictly than any other ordinary Trust and Title Deeds. In the first chapter, I quoted the words of the Piedmontese Envoy addressed to the Court of Rome, but a sentence will bear repetition :

"As nothing can be more strictly secular than property movable or immovable, together with its proceeds, so its nature is not a whit changed by its being connected with an ecclesiastical office."

Which is good, sound law. When an attempt was made to unite the Free and United Presbyterian Churches in Scotland, so as more effectually to attack the Church of Scotland, Dr. Begg and his friends obtained Opinion of Counsel from the most eminent men at the Scotch Bar, who unanimously declared, that "no majority, however large," could transfer the property of the Free Church to the new body proposed to be constituted by the Union.

But there is much more than Opinion of Counsel to rely upon. There has been since 1813, a series of decisions in Scotland, confirmed by the Privy Council, on cases very similar to the one now under consideration ; the judgments since that date have been invariable—no majority, however large, desirous to change the terms of ecclesiastical trusts, has been able to do so in the face of a hostile minority. In the Kirkintilloch case, in which the majority of a congregation refused to enter on a Union decided by

the Synod, the judgment was unanimously that no such resolution could compel the congregation to enter the Union, or forfeit its property. The same rule applies where those objecting in a congregation are a minority. In the Thurso case, the Court unanimously held that

"The principle recognized by the Court in Craigie v. Marshall is founded on the contract of parties in relation to which the trust of the property belonging to the congregational body was constituted, and its legal consequences, which secure those strictly adhering to it from being affected in their rights by the acts of those who would innovate upon its terms and purposes. . . . . . . The principle takes the case out of the class to be ruled by the voice of a majority. According to its obvious spirit, the like circumstances and reasons which are of sufficient potency to entitle an adhering and resisting majority to refuse to join a minority in a Union with another religious body, without its being necessary to establish that the minority by the Union would be departing from original principles, must also be available to an adhering and resisting minority."

It is constantly affirmed, that we are bound to unite with the Canada Presbyterian Church, unless we can show differences in doctrine, &c.; otherwise we are debarred from objecting to the Union. This is not the view taken by the highest Courts in Scotland and England. Lord Justice-Clerk Hope says on this point in the Kirkintilloch case:

"The desire to keep separate—to keep up one sect apart from all others—as in itself a good way strictly to maintain certain peculiar opinions—to stand by a name as recalling for ever the struggle in which the sect had its origin, and fixing down, as it were, in stern, exclusive, and deeply graven characters, the aspect and tone of language even, as well as of devotional sentiment, which that name forces on every one,—the desire to prevent the risk of defection in faith or in zeal for that rigorous exposition of doctrine, which the very name of such a sect as the Secession may be thought to guard against, by a sort of standing reproach to all who do not utter the very language of Erskine, Wilson, Fisher and Moncrieff, and the resolution to make no union with anybody, but steadily to require all to join distinctly to the name of the Secession, in order to proclaim that, as it was formed in 1733, so it remains, and, on that footing, that all must enter it as members thereof, without separate pretensions, notions, or origin;—such desire may be unreasonable—it may be to many unintelligible—it may appear idle caprice; but it is the first privilege of every congregation of such a body—it is their right—it is a desire springing from attachment to the causes which led to the formation of the Church, and the constant commemoration of which, as the true (and, they may think, the most important) distinctions from all other Churches, they may deem the best safeguard for the maintenance of the principles involved in these causes of secession. It seems to me utterly repugnant to every notion of such a sect to suppose that their congregations can be compelled to unite with any other Church or sect whatever. Be the general objection in the opinion of others valid or fanciful, it is a change to which no congregation is bound to submit. For separation, then, when such union is to be entered into, no reason, in my opinion, need be assigned, The right to refuse is absolute."

The Judge then points out that the notion that the property is to be forfeited if they refuse to enter the Union is "perfectly extravagant, and without the slightest support from any evidence that such is a condition of the trust."

In the course of the discussions in the Church Courts here, as in the arguments before the Legislatures, it was constantly maintained that there was no change in the Churches by the Union, and that the Basis or Contract was a mere declaration. On this point, in the case already referred to, Lord Moncrieff, in delivering his judgment, said:

"The measure proposed to the congregation unquestionably imputing a change in their status as a congregation, were they legally bound to accede to it under pain of forfeiture of their property? . . . It will not do, in my humble judgment, to say that the Secession Synod were merely making an extension of the Secession Church, by adding certain congregations to it. The reality of the case must be faced. This is not the state of it. The summons itself bears that what is now called the United Presbyterian Church, consists of two distinct Churches—the United Secession Church and the Relief Church

—each consisting of many Presbyteries and separate Synods. The pursuers will not say that this is merely an extension of the Relief Church, and that they are become members of the Relief. If they did say it, it would not be true. On the one side there is no particular congregation of the Relief Church to become simply members of the United Secession Church; and on the other, there is no proposal by the members of particular congregations of the United Secession Church to become members of the Relief Church. This is not the thing proposed or done. What is proposed and done is, that the whole Relief Church and the whole Secession Church shall be united *per aversionem*, upon a treaty as to the terms of this union. The very necessity of a treaty between the two Synods demonstrates that it is not a case of extension by the one or the other, to be accomplished in its own will. . . . Therefore I am of opinion, without inquiry as to the extent of the difference in principle between the United Secession Church and the Relief Church, that as the act of union, or the serious entertaining of a treaty for it, imported a change in the constitution of this congregation, there was no competency in the Synod of the Secession Church to force this congregation into such a union, or to infer a forfeiture of the property by their refusal to go into it."

Then there was the legally absurd resolution carried by the seceding members of the Synod of our Church, previous to their leaving: "That the United Church shall be considered identical with the Presbyterian Church of Canada, in connection with the Church of Scotland, and shall possess the same authority, rights, privileges and benefits to which this Church is now entitled." Lord Curriehill says on this point, in his judgment delivered a few months ago, on the Reformed Presbyterian Case, in which not only had a similar declaration been made when the majority joined the Free Church, but where they had colourably retained the distinctive name of the Synod for civil purposes, so as to prevent the adherents of the Church from making good their claim to the property:

"It is impossible for me in the present case to hold that the Reformed Presbyterian Church, by uniting with the Free Church, did not virtually abandon their distinctive fundamental principles. I am not moved by the fact that, in order to retain their patrimonial rights in the Churches, the majority when they united with the Free Church, retained their corporate name of the Reformed Presbyterian Synod, *quoad civilia*, because I think that a minority of any one of these congregations could have *debito tempore* vindicated the property of such congregation from the majority uniting with the Free Church."

It will, of course, be contended that in these cases there had been no legislation confirming the action of the Church Courts and rendering valid what, otherwise, was liable to be set aside. It has been maintained, besides, that the Courts will not go beyond the Acts of the Legislature, or ask whether the Statutes to be adjudicated upon were obtained properly or improperly, or the resolutions of the Church Courts arrived at in consistency with, or in violation of the laws of the Church. Without discussing the truth of these latter pretensions, it may be well to look at the true state of the case, as respects the claim of members of the Church to dissolve the connection and yet retain its benefits. It has been shown:

1. With respect to the Temporalities' Fund, that it was originally derived from the claims of the members of the Church of Scotland on the Clergy Reserves, being admitted as of equal weight with those of the members of the Church of England; that the share of the Clergy Reserves was not given to *Presbyterians* but to members of the Church of Scotland, who were admitted to the benefits of the Clergy Reserves, on the ground of the Synod here being a branch of one of the National Churches, and as such bound to provide religious ordinances for the members of that Church coming from Scotland, as well as for those already in Canada.

2. That, therefore, the Endowment for the Church was not at the disposal of any chance majority, subject to be swayed by passing excitement, or by the acts of clerical or lay demagogues, but was intended to be held by that Church for the benefit of all who might choose to seek its benefits in the Church, but not to be diverted by those who might think fit to leave its communion after having been admitted as members.

3. That by the commutation of the Clergy Reserves, the amounts thence arising became by Imperial and Provincial legislation the private property of the beneficiaries.

4. That the individual beneficiaries constituted the Temporalities' Fund a permanent Endowment for the Presbyterian Church of Canada, in connection with the Church of Scotland, the donors entirely divesting themselves of all right to resume the capital of the Fund or to revoke the Trust thus created.

5. That whilst the donors, by an express contract, became entitled to a life annuity from the *revenues* of the Temporalities' Fund, to be paid before any other claim could be admitted, they bound themselves down to give up their right to this annuity in case of, from any cause, severing their connection with the Church for whose benefit the Trust was constituted.

6. That, by the Act of Incorporation, the Trust was constituted for the benefit of the Presbyterian Church of Canada, in connection with the Church of Scotland, and not for the Ministers of that Church, but for the whole organization, those seceding from it, be they few or many, ceasing to have any claim to the benefit of the *revenues*, according to the terms of the contract, as recognized in the Act of Incorporation, and, therefore, *a fortiori*, incapable of taking possession of the *capital*.

7. That the Act of Incorporation provided that no inroad should be made on the Capital Fund, and that to meet additional claims arising from the extension of the Church, a supplementary fund should be raised, and, if necessary, annual subscriptions obtained.

8. That only the surplus of the revenues was to be applied to other purposes than the payment of the privileged beneficiaries, the whole income, if necessary, being secured for their annuities.

9. That the claim for any benefit from the revenues of the Fund was based entirely on the official connection of the recipients with the Church for whose benefit the Trust was created, the severance of that connection *ipso facto* involving the forfeiture of the benefit even in the case of the donors by whose money the Fund was constituted.

It follows, therefore, incontestably, that if the donors cannot revoke the Trust, still less can those who subsequently became entitled to a share of the benefits of the surplus revenues, on complying with the conditions of the Trust, and far less those who, belonging to other religious organizations, in no sense could pretend to claim any share in the Fund, or its revenues, and who had no *locus standi* before the Legislatures, to demand that the Capital of the Fund should be transferred to them and to those who by joining them had, in accordance with the terms of the Trust, ceased to have any right to enjoy the benefits thence derived, the words of the contract with the donors being, "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."

In discussing the constitutionality of the Acts by which the properties of the Presbyterian Church of Canada, in connection with the Church of Scotland, and those of her congregations, were transferred to another religious organization, I shall confine myself to the Temporalities' Fund as a matter of convenience, although the same reasoning will apply to congregational properties, and in even a stronger sense to the Charter of Queen's College. Nor shall I touch upon the special disabilities of the Local Legislatures to deal with such subjects, leaving that more technical ground to be discussed in the Courts of Law.

It has been laid down by Mr. Justice Story, of the Supreme Court of the United States, "That unless a power be reserved for this purpose, the Crown cannot, in virtue of its prerogative, alter or amend the charter, or divest the corporation of any of its franchises, or add to them, or add to, or diminish, the number of the Trustees, or remove any of the members, or control the administration, or compel the incorporation to receive a new charter." He adds, that the corporation may forfeit its corporate franchises, by misuse or nonuse of them. Lord Mansfield says: "After forfeiture duly found, the

King may re-grant the franchises; but a grant of franchises already granted, and of which no forfeiture has been found, is void. Corporate franchises can only be forfeited by trial and judgment."

Has any forfeiture been found in this case? If so, it would surely have been recited in the preamble to the Act to transfer the corporate franchises of the Temporalities' Board to another body. What, however, do we find? The preamble to the Act says:

"Whereas by Petition it hath been represented, that the Synods of the Presbyterian Church of Canada, in connection with the Church of Scotland, of the Church of the Maritime Provinces, in connection with the Church of Scotland, of the Presbyterian Church of the Lower Provinces, and the General Assembly of the Canada Presbyterian Church, have agreed to unite together and to form one body or denomination of Christians, under the name of the 'Presbyterian Church in Canada,' and that the '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 amendments thereto, required to be amended with a view to such union," &c.

And thereupon it is enacted that the Act of Incorporation shall be totally changed, so as to give the new body the control and reversion of funds, which the original Act declared should remain in perpetuity as an endowment for the Presbyterian Church of Canada, in connection with the Church of Scotland, and for it alone.

There seems to be as dense an ignorance in Canada as to the differences between Presbyterians generally and the adherents of the Church of Scotland, as there is in the British Isles between Americans generally and Canadians. The country now known as the United States consisted originally of thirteen colonies, which for reasons sufficient to themselves severed their connection with the Mother Country, and thereby ceased to have the benefit of the Fisheries of the Provinces now forming the Dominion of Canada. At various times secessions took place from the Church of Scotland, by which those seceding lost certain privileges attaching to the connection with that Church, among others to the enjoyment of the Clergy Reserves, which the law declared to be intended solely for the benefit of the National Churches of the Empire. These seceding Churches are as distinct ecclesiastically from the Church of Scotland, and her adherents in this country, as the United States are distinct politically from the British Empire, and have as little right to enjoy the revenues of the branch of the Church of Scotland here, on the ground of being Presbyterians, as the United States have to demand the enjoyment of our Fisheries, on the ground that we are all Americans, because we all inhabit the American Continent. The one pretension is no more and no less absurd than the other. In the Church case the Acts simply carry into practical effect the disendowment of the Church of Scotland here, under pretence of a Union, which is demanded with such virulence in Scotland by the seceding Churches there, without that pretence. In Canada, the seceding Presbyterians appear to have been unanimous in demanding that the funds and properties of the branch of the Church of Scotland should be transferred to the new organization, whereas in the Synod of the Church in connection with the Church of Scotland only 68 members out of 281 could be found to vote for that measure. If the United States Congress should vote unanimously that they would take possession of our Fisheries, and obtain the votes of 49 members of the Canadian Legislature to agree to this, we would have an exactly parallel case. Further, if it were enacted by the same authority, that every man refusing to sever the connection with Great Britain should forfeit all claim to the Fisheries, should be compelled to give up his properties and be subject to deprivation at the hands of his neighbours joining the new confederation, of all his lands, houses and everything he had by hard labour secured for his family, the two cases would be exactly similar. It is with the adherents of the Church of Scotland to-day in Canada as it was with the Roman Catholics in the worst days of Protestant ascendancy in Ireland, when all a man had to do who coveted his Roman Catholic neighbour's property was to declare himself a Protestant. That I may not be accused of misrepresentation or exaggeration, I give in full a copy of a letter of very recent date, sent to the Minister of one of our congregations which has remained faithful to its own Church, but which it has been determined, if possible, to coerce into joining the new

body, by heavy legal expenses. This is only one out of many cases, the General Assembly of the Presbyterian Church in Canada having at its meeting in Hamilton, in June last, resolved to raise a fund for the purpose of crushing out every vestige of the Church of Scotland in Canada, by vexatious law suits against congregations which refuse to join the Union.

"Toronto, 7th November, 1878.

"SIR,—We are informed that you hold the church and land (twelve acres) belonging to the Presbyterian Church in North Williamsburgh, for the use of an Anti-Union congregation, and that you refuse to acknowledge the right of the Union people to the property. We are also instructed, in case it should be necessary, to take proceedings in Chancery against you to recover the property. We desire to avoid this, however, if possible, and would be glad to hear whether you really dispute the rights of the Union people, and if so upon what ground. Yours truly,

"MOWAT, MACLENNAN AND DOWNEY."

What a pity Jezebel had not had a Court of Chancery to appeal to in that little matter of Naboth's vineyard. What an admirable Chancery lawyer her late majesty would have made!

Passing from this digression, which was, however, necessary, we may enquire whether it was competent for the Legislatures to grant a new Act of Incorporation, whilst the other existed without forfeiture. Not only was the Act not founded on a forfeiture, but it is not even pretended that the Church to which the Fund belongs had been guilty of misuser or nonuser, or even that by unanimous consent the members had agreed to the abrogation of the old and the acceptance of a new Act of Incorporation. On the contrary the Act itself admits that the Fund was being properly applied, and that there were congregations and members of the Synod opposed to the diversion of the Fund, since it provides for the cases of ministers and congregations refusing to enter into the Union. It was simply an Act of Confiscation. It would have been so, even if every member of Synod had voted for the measure. The clergy are not the Church. This is an axiom among all Protestants. They are an important part of the Church, having certain special duties to perform, but the Fund was not for their benefit, except incidentally, but for the relief of congregations by assisting them, so far as it would go, in the payment of the stipends to clergy. Had the whole of the Synod voted for the Union, it might have been more difficult to have found a remedy for the wrong done by the clergy appropriating to themselves the endowment, to the benefits of which they had only an official claim, but which was really the property of the Church, and to which any single member of the Church could have vindicated his claim. Fortunately, however, we are not obliged to discuss this case. The Act itself proves that the appropriation of the Fund was confiscation. To quote the words of a high authority:

"Attainder and confiscation are acts of sovereign power, not acts of legislation. The British Parliament, among other unlimited powers, claims that of altering and vacating charters, *not as an act of ordinary legislation*, but of uncontrolled authority. Even in the worst times, the power of Parliament to repeal and rescind charters has not often been exercised. The illegal proceedings in the reign of Charles II. were under colour of law. Judgments of forfeiture were obtained in the courts. Such was the case of the *quo warranto* against the City of London, and the proceedings by which the charter of Massachusetts was vacated."

On the ground of there having been no forfeiture, then, the new Act of Incorporation is void, as according to the dictum of Lord Mansfield, "Corporate franchises can only be forfeited by trial and judgment." In this case, as I have shown, there was not even the pretence of trial or judgment.

Because the Temporalities' Fund Act (abrogating the provisions of the old Act) has been passed by a legislature, is it, therefore, a law of the land? There are various grounds on which this assumption may be resisted. I shall confine myself to one.

It is not a general Act, but one affecting particular persons and their particular privileges, and dissolving a contract. The dissolution of the marriage contract by divorce, which is granted by the Federal Parliament, does not contravene this general rule, the Constitution having provided that Parliament should sit, in effect, as a Court of Justice to hear and decide in such cases. It will not be pretended that the particular religious denomination for whose benefit the Act of Incorporation we are now considering was passed, included the whole Province, or that the Act was such a general Act as affected the whole community, nor, it may be added, even if it did, was it within the competency of the Legislature, the Act of Toleration, of which this is an infringement, preventing the passage of Acts which, in their very essence, are penal Acts of Uniformity, the one in question providing for the forfeiture of rights by those who do not see it their duty to comply with the provisions which compel them to leave their own Church and join another. In his definition of what constitutes the law of the land, Blackstone says:

"And first, it is a rule; not a transient sudden order from a superior to, or concerning a particular person; but something permanent, uniform and universal. Therefore a particular Act of the Legislature to confiscate the goods of Titius, or to attaint him of high treason, does not enter into the idea of a Municipal Law; for the operation of this Act is spent upon Titius only, and has no relation to the community in general; *it is rather a sentence than a law.*"

Coke says on the same subject:

"No man shall be disseized unless it be by lawful judgment, that is, verdict of equals, or by the law of the land, that is (to speak it once for all), by the due course and process of law."

Thus in passing a railway bill for the benefit of the general community, the Legislature does not enact what certain properties shall be taken for the passage of the line, but provides legal machinery to decide after due examination between the parties. The adherents in Canada of the Church of Scotland proceeded under the protection of the law of the land to build churches and manses, to purchase glebes, to raise endowments for the support of their Church, when at the mere caprice of the Legislature they are told they have no rights which they can maintain. If this is the law of the land, trial before a judge would be a mere idle, empty form. The Court would simply have to register the sentences of the Legislature, usurping every judicial function but the name. The old *lits de justice* would be infinitely better, for at least there was a certain amount of responsibility, whilst here there is none. We pity the Eastern peasants groaning under the irresponsible despotism of their rulers, but wherein do their wrongs differ from those of a minority, against whom the senseless storm of public fury has been aroused? If the law of the land means any ill-conceived, rash, crude act, affecting single individuals or classes, passed during one session only to be repealed the next, affecting individuals as such, not as component parts of the community, granting an Act of Incorporation to-day only to withdraw it to-morrow, what security or what permanency would there be for any interest? To use the words of Burke:

"Is that the law of the land, upon which, if a man go to Westminster Hall and asks Counsel by what tenure or title he holds his privilege or estate, *according to the law of the land*, he should be told that the law of the land is not yet known; that no decision or decree has been made in his case, that when a decree shall be passed, he will then know what the law of the land is? Will this be said to be the law of the land by any lawyer who has a rag of a gown left upon his back, or a wig with one tie upon his head?"

There is only one point more to which I shall briefly refer. It has been laid down by the highest legal authority, that it is a principle of English law, as ancient as the law itself, that a statute, even of omnipotent Parliament, is not to have a retrospective effect. And it has been decided that "every statute which takes away, or impairs, vested rights, acquired under existing laws, must be deemed retrospective." It is impossible to deny that the new Temporalities' Act comes clearly within the scope of that definition, and that, therefore, the passing of that Act was beyond the power of the Legislature. Other

reasons might be adduced and additional authorities cited, but I do not profess to go exhaustively into the constitutional question, but merely desire to indicate some of the vices that inhere in the Union Acts, which would not, as I conceive, be remedied by being confirmed by a higher legislative power, the Legislature having forsaken its own domain and usurped that of the Judiciary.

There is only one way by which such legislation could be legal and operative, and that is, by the unanimous acceptance of the new Act of Incorporation by the members and adherents of the Presbyterian Church of Canada, in connection with the Church of Scotland. Has this been obtained? Apart from the provision of the Act itself, recognizing that even in Synod there was not a unanimous decision, let any one knowing the antecedents of the 68 members of Synod who voted to join the other ecclesiastical bodies, go carefully over the names and he will find, that a considerable number had not originally been members of the Church, but had been admitted from other bodies on their own petition and on taking a solemn vow not to follow divisive courses. He would find that some of those who thrust themselves most prominently forward in this matter were in that position. One of them had been scarcely twelve months admitted, till he had begun to sound the members of the Church on the subject, and, being repulsed, began his work of moling underground. Another declared to myself that he was always a Free Church man and had made up his mind from the first to vote that the Church he had joined should be swallowed up by the Church to which he really belonged—a curious instance of the security obtained by Tests. Another wished the Church to be more after the Genevese model, which he thought not sufficiently marked in the Church as it was. Another publicly asked "What had we to do with a Church three thousand miles away, which many of us had never seen and which most of us would never see?" forgetting that he was one of those who took part in framing the remonstrance on the subject of the Clergy Reserves, which contained these remarkable words, very remarkable when taken in connection with those I have just cited:

"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, and our own ecclesiastical independence; *and on this ground* our Ministers and people have for the last thirty years *asserted their right to all the benefits of a connection with her as one of the Established Churches of the British Empire.*"

Ah! but, no doubt the reverend gentleman may say, that was when we were trying to get the Clergy Reserves; there is no pecuniary benefit now to be derived from that connection. So do not the adherents of the Church of Scotland understand their attachment for their Church. Thank God! theirs is a nobler, a higher and truer devotion than the mercenary attachment which would live upon the bounty of parents and then leave them to poverty and a Union workhouse in old age. Yet have we not heard from such men the oft repeated and unctuous protestations of undiminished attachment to the Church of Scotland, which may be true, as it is not easy, except by a fiction, to diminish the value of a cypher. Then there were others, following like sheep the bell wether, and some who, urged by the vanity of appearing to be leaders, were in reality used as decoy ducks. Nor must the part played by Queen's College be forgotten, to which I have already referred, by which the students in that institution were easily led to believe that it was their duty to follow where their seniors led. And to complete the list of the 68, there were the timid who disapproved strongly of the proposed severance, yet had not the courage to express their opinions, or even to refrain from voting in direct opposition to their own convictions. The fact of those who seceded still, in order to obtain the half yearly payments from the Temporalities' Fund, continuing to describe themselves as Ministers of the Church they have left, would in ordinary business transactions appear very much like obtaining money on false pretences. How men with a profession of religion can reconcile it to their consciences to make a statement utterly inconsistent with truth, is one of those mysteries of our fallen nature that cannot be understood. It is evident that they read the injunctions: "Abstain from all appearance of evil," and "Be ye clean who bear the vessels of the LORD," in a different sense from ordinary Christian men. Possibly they think themselves entitled to "benefit of clergy."

I have already shown how the returns to Synod of the votes in congregations were made up. But, besides that, it must be borne in mind that the churches were built and the other properties acquired by adherents of the Church of Scotland, and that the title-deeds are clear and positive as to the real proprietorship, which is vested solely in members and adherents of the Presbyterian Church of Canada, in connection with the Church of Scotland, as strongly as the Temporalities' Fund is bound to that Church. But as the object of that Church, as of all others worthy of the name, is to spread the Gospel everywhere, her doors were open to receive all who chose to seek admission, and on their profession the Lord's Table was open to them as communicants. Becoming members in this way, they were entitled to vote on matters affecting the internal affairs of the congregation, and on such other questions of management as are usually decided by majorities. But this gave them no right to attempt to wrest the properties from the rightful owners, to set aside the title-deeds, to interpret the terms of the trusts, or to determine that the Church into which they had been received should be merged into another—one, as they might suppose, better suited to their wants. It was for them to decide, according to their consciences, what Church would best provide for their spiritual needs. It was *not* for them to decide that, because they thought another Church than the one into which they had been admitted to the privilege of membership, was better, they would transfer the property of their fellow-worshippers, to whom it belonged, to the Church which they themselves wished to join. The question must be decided by the judgment delivered in the Thurso case: "A resolution to form a union with a separate body is not an act of management properly falling to be regulated by the voice of the majority of the congregation. It is one affecting and altering the use, possession and destination of the property of the body." It might as reasonably be set up, that the inmates of a model lodging-house, in which rules were established giving to a majority the power of framing regulations for their good government, should, on the ground that majorities rule, vote to themselves the fee simple, and set aside the titles of the real proprietors.

On the 15th of June, 1875, the Rev. John Cook, D. D., was elected Moderator of the new body, in recognition of his services in breaking up the Church to which he had professed to belong, and in obtaining Acts of Confiscation against the members of that Church who refused to follow his lead. On the 8th of July, 1851, the same Rev. John Cook, D. D, was appointed by the Synod of our Church, along with the Moderator and Clerk, to prepare a pastoral, in terms of resolutions which he took a prominent part in framing. The words of one of these resolutions are so apposite, that they may be quoted with advantage, as applying to the present position of affairs:

"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 every righteous means to frustrate any attempt that may be made to take away from us a 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 secure in the social fabric, and which, were it to prevail, would inflict serious injury on the general well-being, not so much, perhaps, of the present generation, as on that which shall follow."

The resolutions, of which this forms a part, were drawn up when the interests of our Church were attacked by open enemies. They are no less true now, when the "encroachments of a flagitious principle" have been attempted by professed friends. So clearly and eloquently do the words I have cited show the danger to the security of the social fabric arising from the disregard of the most solemn contracts, that anything I could add would only weaken their force. The attempt to alienate the property of the Church, designed for carrying on her special work, is certainly not less flagitious than the agitation against the Clergy Reserves, for the latter was open and straightforward, differing widely from the pretences set up by those who under high-sounding professions have been guilty of conduct that does not increase the respect of the world for religion.

These encroachments we shall resist, and shall resist successfully. Confident in the justice of our cause, we can face undismayed the influences that are ranged against us; we can afford to wait patiently, and to bear without murmuring the trials to which we have been so long exposed. Can those who seek to destroy our Church bear with equal self-respect the stigma of delaying the hearing of the cases by the most contemptible technical quibbles? "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 every righteous means to frustrate any attempt that may be made to "take away from us a guaranteed provision which enables us to accomplish more effec-"tually the ends of our vocation." God helping us, that duty we shall faithfully discharge.