

54,1930

In the Privy Council.

No. 98 of 1929.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

TRUSTEES OF ST. LUKE'S PRESBYTERIAN
CONGREGATION OF SALTSPRINGS a body
Corporate, ALEX. C. MACDONALD, WILLIAM
FRASER, WILLIAM H. MACKAY, D. HEDLEY
ROSS, MUNRO GUNN, ROBERT A. ROBERTSON,
GEORGE GRAY, RODERICK MACKAY and
JOHN R. YOUNG - (*Defendants*) *Appellants*

AND

ALEXANDER CAMERON, GORDON PROUDFOOT,
C. A. MAXWELL, K. A. MURRAY, JOHN
BISHOP, W. C. PROUDFOOT, ROBERT JOHN-
STON, JOHN McN. CAMPBELL and ALEXANDER
HALLIDAY (*Plaintiffs*) *Respondents*

RECORD OF PROCEEDINGS.

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54, 1930

In the Privy Council.

No. 98 of 1929.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

TRUSTEES OF ST. LUKE'S PRESBYTERIAN CONGREGATION OF SALTSPRINGS a body Corporate, ALEX. C. MACDONALD, WILLIAM FRASER, WILLIAM H. MACKAY, D. HEDLEY ROSS, MUNRO GUNN, ROBERT A. ROBERTSON, GEORGE GRAY, RODERICK MACKAY and JOHN R. YOUNG (Defendants) Appellants

AND

ALEXANDER CAMERON, GORDON PROUDFOOT, C. A. MAXWELL, K. A. MURRAY, JOHN BISHOP, W. C. PROUDFOOT, ROBERT JOHNSTON, JOHN McN. CAMPBELL and ALEXANDER HALLIDAY (Plaintiffs) Respondents.

RECORD OF PROCEEDINGS.

No. 1.

Statement of Claim.

In the Supreme Court of Nova Scotia.

Writ issued the First day of September, 1925.

No. 1.
Statement of Claim,
3rd September 1925.

1. The Plaintiffs, Alexander Cameron, Gordon Proudfoot, C. A. Maxwell, K. A. Murray, John Hislop, W. C. Proudfoot are, and have been for many years previous thereto, members in full communion of St. Luke's Presbyterian Congregation of Saltsprings, in the County of Pictou, and are and have been for many years previous thereto, regular contributors to the support of the ordinances of divine service in the said congregation according to the rights, usages and practices of the Presbyterian Church. The Plaintiff, Robert Johnston, is moderator *pro tempore*, or *interim* Moderator of the said Congregation. The Plaintiffs, John McN. Campbell and Alexander Halliday, are Assessors appointed by the Presbytery of Pictou, and along with the Plaintiff, Robert Johnston, constitute the Session of the said Congregation.

a

A 2

RECORD OF PROCEEDINGS.

*In the
Supreme
Court of
Nova Scotia.*

No. 1.
Statement
of Claim,
3rd Sept-
ember 1925
—continued.

2. The Defendant Trustees of St. Luke's Presbyterian Congregation of Saltspings are a body corporate, having been incorporated by a Statute of the Province of Nova Scotia, namely, Chapter 217 of the Acts of the Province of Nova Scotia, 1906. The Defendants, Alex. C. MacDonald, William Fraser, William H. MacKay, D. Hedley Ross, Munro Gunn, Robert A. Robertson, George Gray, Roderick MacKay and John R. Young wrongfully act, and wrongfully claim the right to continue to act as Elders and Members of Session of the said congregation. The Defendants, D. A. Frame and D. M. Matheson, are ministers of and in connection with the United Church of Canada, who wrongfully have conducted, and 10 who wrongfully claim the right to continue to conduct divine services and the ordinances of religion in the Church edifice of the said congregation, on the footing that the said congregation is a congregation of and in connection with The United Church of Canada.

3. For a long period of time prior to the 10th day of June 1925, the said St. Luke's Presbyterian Congregation of Saltspings was a congregation in connection or communion with the Presbyterian Church in Canada, and as such congregation was the owner of, and entitled to the use and benefit of certain real and personal property and estate which was and is vested by the Statute referred to in Paragraph 2 of this State- 20 ment of Claim in the Defendants trustees of St. Luke's Presbyterian Congregation of Saltspings for the use and benefit of the said congregation, as by reference to the said Statute will more fully appear.

4. The said Presbyterian Church in Canada was a Church of Christ, which took its origin under that name, and its constitution, on the 15th day of June, 1875, by the voluntary Covenant of Union of four Presbyterian Churches then existing in Canada.

5. On the 10th day of June, 1925, there came into force certain provisions of a Statute of Canada, viz. : 14-15 George V, Chapter 100, "The United Church of Canada Act," which effected or purported to 30 effect a union of three churches named therein, viz. : The Presbyterian Church in Canada, The Methodist Church and the Congregational Churches of Canada, referred to therein as the "negotiating churches," and constituting or purporting to constitute the said Churches a body corporate and politic under the name of "The United Church of Canada."

6. On the 10th day of December, 1924, there came into force certain provisions of the said "The United Church of Canada Act," viz. : the provisions of Section 10 thereof which provided that if any congregation of the "negotiating churches" should at a meeting of the congregation regularly called, and held at any time within six months before the coming 40 into force of the said Act, viz., before the 10th day of June, 1925, decide by a majority of votes of the persons present at such meeting and entitled to vote thereat, not to enter the said union of said churches, then, and in such case, the property real and personal belonging to or held in trust for the use of such non-concurring congregation should remain unaffected by the said Act.

7. Said St. Luke's Presbyterian Congregation of Saltspings, at a meeting of the said congregation regularly called, and held within the time and in the manner specified in the said Act, and in full compliance

with all the provisions of the said Act, decided by a majority of votes of the persons present at such meeting, and entitled to vote thereat, not to enter the said union of churches, whereupon the said congregation became, and now is, a non-concurring congregation within the meaning of the said Act, and the said congregation, and all the real and personal property, belonging to, or held in trust for the use of the said congregation, became and now remains wholly unaffected by the provisions of the said Act.

8. On the 10th day of June, 1925, there came into force an Act of the Legislature of the Province of Nova Scotia. "The United Church of Canada Act" being Chapter 122 of the Acts of 1924, which enacted, or purported to enact, that all property, real or personal, within the Province, belonging to or held in trust for, or to the use of any congregation of the said negotiating churches, shall from and after the coming into force of Section 4 of the said Act, be held, used and administered for the benefit of the same congregation as a part of the said The United Church of Canada.

9. It was further provided in and by the said last mentioned Act as follows:—

20 "Section 8 (a) Provided always, that if any congregation in
 " connection or communion with any of the negotiating churches
 " shall, at a meeting of the congregation regularly called and held
 " within six months after the coming into force of this section decide
 " by a majority of votes of the persons present at such meeting and
 " entitled to vote thereat, not to concur in the said union of the
 " said Churches, then, in such case, the property, real and personal
 " belonging to or held in trust for the use of such non-concurring
 " congregation shall be held by the existing trustees, or other trustees
 " elected by the congregation, for the sole benefit of said congregation.
 30 " Should such congregation decide in the manner aforesaid at any
 " later time to enter the union and become part of the United Church,
 " then this Act shall apply to the congregation and all the property
 " thereof, from the date of such decision."

10. By the Acts of the Province of Nova Scotia, 1925, Chapter 167, it was provided as follows:—

" Chapter 122 of the Acts of 1924 is amended by the addition
 " of the following sub-section to Section 8.
 " (D) 1. Any vote on the question of entering the said
 " union taken in a congregation prior to the coming into force
 " in pursuance of and in accordance with the provisions of the
 40 " Act of Incorporation, shall be deemed to be the vote of such
 " Congregation for the purposes of this Act.

" 2. Notwithstanding any informality in the taking of any
 " vote or defect in the proceedings relating thereto, and not-
 " withstanding that persons not entitled to vote have voted, or
 " that persons entitled to vote have been deprived of the vote,
 " all votes taken or purporting to have been taken in pursuance
 " of the Act of Incorporation shall be valid and binding upon
 " the congregations respectively in which such votes have been

*In the
 Supreme
 Court of
 Nova Scotia.*

Statement
 of Claim,
 3rd Sept-
 ember 1925
 —continued.

*In the
Supreme
Court of
Nova Scotia.*

Statement
of Claim,
3rd Sept-
ember 1925
—continued.

“ taken unless on or before the 10th day of June, 1925, a pro-
“ ceeding is taken in the Supreme Court of Nova Scotia, for
“ the purpose of having such vote set aside or declared of no
“ effect.”

11. Whereupon said St. Luke's Presbyterian Congregation of Salt-
springs became and now is a non-concurring congregation, and became
and now is a Presbyterian congregation, within the meaning of the said
Acts, and is not a congregation of, or in any wise under the authority,
jurisdiction or control of the United Church of Canada, and all the real
and personal property belonging to or held in trust for the use of the said 10
congregation became and now remains wholly unaffected by the said
Acts.

12. On the 5th day of May, 1925, the Plaintiff, Robert Johnston,
was duly appointed by the Presbytery of Pictou, having jurisdiction in
that behalf, Moderator *pro tempore*, or *interim* Moderator, of said St.
Luke's Presbyterian Congregation of Saltsprings, and the Plaintiff, Robert
Johnston, thereupon became, and still continues to be Moderator *pro*
tempore or *interim* Moderator, of the rights and privileges and to exercise
and discharge all the duties, powers and functions of such office according
to the rules, procedure, customs and usages of the Presbyterian Church. 20

13. The Defendants, Alex. C. MacDonald, William Fraser, William
H. MacKay, D. Hedley Ross, Munro Gunn, Robert A. Robertson, George
Gray, Roderick MacKay, and John R. Young, were previous to the 10th
day of July, 1925, Elders of the said congregation, and with the Plaintiff,
Robert Johnston, were and constituted the Session of the said congrega-
tion. On the 10th day of July, 1925, the said Alex. C. MacDonald,
William Fraser, William H. MacKay, D. Hedley Ross, Munro Gunn,
Robert A. Robertson, George Gray, Roderick MacKay and John R. Young
each and all demitted and resigned their said offices as Elders and Members
of Session of the said congregation, whereupon, they each and all ceased 30
to be Elders and members of Session of the said congregation.

14. By and with the consent of the Session of the said Congregation,
and by and with the authority of the Plaintiff, Robert Johnston, as such
Moderator, *pro tempore* or *interim* Moderator, one E. F. Harrison was
duly and regularly appointed to supply the ordinances of divine service
to the said Congregation, and the said E. F. Harrison did, for a long period
of time, so regularly supply the said ordinances by and with the consent
aforesaid. On or about the 28th day of July, 1925, the said E. F. Harrison
received a notice in the words following.

“ St. Luke's Church, 40
Saltsprings,
July 27, 1925.

* *sic*.

“ Mr. E.*Henderson,
“ Saltsprings.

“ Dear Sir :

“ You will recall that some time ago a resolution was passed and
“ communicated to you that we held ourselves responsible for your
“ services for two Sundays only, your services to terminate on June
“ 10th. You have since continued to give services to the congregation

“ of St. Luke’s, while it remained an independent congregation and
 “ neither at the request of nor with the acquiescence of the Elders of
 “ the congregation, in whose hands all arrangements for pulpit supply
 “ for the time being lay.

“ To avoid difficulty, we have till now, taken no action. To-day,
 “ the congregation of St. Luke’s has decided to enter the United
 “ Church of Canada.

10 “ This is to inform you that from to-day, any further attempt
 “ on your part to supply St. Luke’s will be in opposition to the wishes
 “ of the Elders and the Congregation and contravenes the authority
 “ of the Presbytery of Pictou of the United Church of Canada, under
 “ whose jurisdiction of the congregation now lies.

“ We write thus because we are persuaded that you are not fully
 “ aware of the gravity of the situation and the very serious matter
 “ of contravening constituted authority.

“ We would also inform you that the Presbytery of Pictou of
 “ the United Church of Canada is asked to send supply to the pulpit
 “ of St. Luke’s on Sunday next.

“ Yours very truly,

20

“(Sgd.) ALEX. C. McDONALD,
 “Session Clerk.”

15. The said Alex. C. McDonald, is the Defendant Alex. C. McDonald, and acted or purported to act therein by and with the authority of the said Session.

16. On Sunday, the 2nd day of August, 1925, the said E. F. Harrison duly presented himself for the purpose of supplying and conducting the ordinances of divine service in the said church edifice, but he was wrongfully prevented from supplying and conducting the said ordinances by
 30 D. Hedley Ross, Munro Gunn, Robert A. Robertson, George Gray, Roderick MacKay, John R. Young and the Defendant, D. A. Frame.

17. On the 2nd day of August, 1925, the Defendant, D. A. Frame, a minister of and in connection with The United Church of Canada, claiming and alleging that he was acting under the instructions and with the authority of the Presbytery of Pictou in connection with the United Church of Canada, supplied and conducted the ordinances of divine service in the said church edifice to the said congregation.

18. On the 16th day of August, 1925, the Defendant, D. M. Matheson, a minister of and in connection with the United Church of Canada, claiming
 40 and alleging that he was acting under the instructions and with the authority of the Presbytery of Pictou in connection with the United Church of Canada, supplied and conducted the ordinances of divine service in the said church edifice to the said congregation.

19. The Defendants, Alex. C. MacDonald, William Fraser, William H. MacKay, D. Hedley Ross, Munro Gunn, Robert A. Robertson, George Gray, Roderick MacKay and John R. Young and the Defendants, D. A. Frame and D. M. Matheson, wrongfully act on the footing that the said congregation is a congregation of and in connection with The United

*In the
 Supreme
 Court of
 Nova Scotia.*

No. 1.
 Statement
 of Claim,
 3rd Sept-
 ember 1925
 —continued.

*In the
Supreme
Court of
Nova Scotia.*

No. 1.
Statement
of Claim,
3rd Sept-
ember 1925
—continued.

Church of Canada, and wrongfully supplied and wrongfully threaten to continue to supply, and intend to continue to supply the ordinance of divine service to the said congregation by themselves or by Ministers in connection or communion with The United Church of Canada.

20. On Sunday, the 19th day of July, 1925, a notice or what purported to be a notice was read by the Defendant, William H. MacKay, calling or purporting to call a meeting of the said congregation for the purpose of determining whether the said congregation should enter The United Church of Canada. The said notice was not read from the pulpit nor before the congregation. On the following Sunday, July 26th, 1925, 10 the said or a similar notice was read, but after the conclusion of divine service, and not from the pulpit, nor before the congregation. The said notice, or notices, and the meeting of the congregation held pursuant thereto, on or about the 27th day of July, 1925, and the vote taken at such meeting, and all proceedings had, and taken thereat, were and are irregular, null and void, and of no effect, for the reasons following, among others :—

(A) The said notices were not read from the pulpit of the church nor before the congregation.

(B) Said notices were not read during divine service. 20

(C) The said meeting was not regularly called in that it was not called by or with the authority of the Session of the said congregation.

(D) No meeting of the Session of the said congregation was at any time held, convened or constituted for the purpose of considering or deciding upon the calling of the said meeting.

(E) Neither the said Session, nor the said congregation, has any right, power, or authority, by vote or otherwise, to cause the said congregation to become a congregation of The United Church of Canada before the 10th day of December, 1925. 30

(F) At the said meeting many persons voted not entitled to vote at a meeting of the said congregation.

The Plaintiff's claim a declaration that the alleged meeting of St. Luke's Presbyterian Congregation of Saltsprings, held on or about the 27th day of July, 1925, and all proceedings taken thereat were and are null and void and of no effect ; a declaration that the Plaintiff, Robert Johnston is Moderator *pro tempore* or *interim* Moderator, of the said congregation ; a declaration that the Defendants, Alex. C. McDonald, William Fraser, William H. MacKay, D. Hedley Ross, Munro Gunn, Robert A. Robertson, George Gray, Roderick MacKay, John R. Young are not 40 Elders of the said congregation, but ceased to be Elders on or about the 10th day of July, 1925 ; a declaration that the said congregation is a Presbyterian congregation ; a declaration that the said congregation is not a congregation of or in connection with the United Church of Canada : an injunction restraining the Defendants from using the real or personal property of the said congregation, or suffering or permitting the same to be used, on the footing that the said congregation is a congregation of or in connection with the United Church of Canada, or in any manner

inconsistent with the status of the said congregation as a Presbyterian congregation; an injunction restraining the Defendants from interfering with the exercise by the Plaintiff Robert Johnston, of the rights, powers and privileges of the office of Moderator *pro tempore* or *interim* Moderator, of the said congregation; the costs of this action; such further and other relief as to the Court may seem just.

Place of trial, Pictou, N.S.

ROD G. MACKEY,
Solicitor for the Plaintiffs.

¹⁰ To the Defendants or their Solicitor,
Delivered the 3rd day of September, 1925.

*In the
Supreme
Court of
Nova Scotia.*

No. 1.
Statement
of Claim,
3rd Sept-
ember 1925
—continued.

No. 2.

Defence.

No. 2.
Defence,
12th October
1925.

1. These Defendants have no knowledge as to whether the Plaintiffs, Alexander Cameron, Gordon Proudfoot, C. A. Maxwell, K. A. Murray, John Hislop, W. C. Proudfoot, or any of them, are or have been members in full communion of St. Luke's congregation or that they or any of them are contributors to the support of the services of said congregation.

²⁰ 2. These Defendants deny that the Plaintiff, Robert Johnston, is Moderator *pro tempore* or *interim* Moderator or is in any capacity connected with said congregation, and they also deny that the Plaintiffs, John McN. Campbell or Alexander Halliday are assessors appointed by the Presbytery of Pictou, or that they along with the Plaintiff, Robert Johnston, constitute the Session of said congregation.

3. These Defendants say that the Presbytery of Pictou (so called) has no jurisdiction over said St. Luke's congregation and that said Presbytery has not and never had any jurisdiction or power to appoint any Moderator or assessors or any officers over said congregation.

³⁰ 4. The Defendants, Alex C. McDonald, William Fraser, William H. McKay, D. Hedley Ross, Munro Gunn, Robert A. Robertson, George Gray, Roderick MacKay and John R. Young were at all times referred to in the Statement of Claim and now are Elders and members of the Session of said congregation.

⁴⁰ 5. The Defendants, Reverend D. A. Frame and Reverend D. M. Matheson, are now Ministers of The United Church of Canada, and any divine services conducted by them in said church were at the request of the Session of said Church, who under the Polity of The United Church of Canada have control over the conduct of Divine Services. Alternately, the said Defendants conducted said services under the authority of the Presbytery of Pictou who had authority to authorise services as there was no settled minister in said congregation.

6. These Defendants deny each and every allegation of fact in Paragraph 7 of the Statement of Claim.

7. These Defendants deny each and every allegation of fact set out in Paragraph 12 of the Statement of Claim.

*In the
Supreme
Court of
Nova Scotia.*

No. 2.
Defence,
12th October
1925
—continued.

8. These Defendants deny each and every allegation of fact set out in Paragraph 13 of the Statement of Claim, and these Defendants further say that the said Defendants, Alexander C. MacDonald, William Fraser, William H. McKay, D. Hedley Ross, Munro Gunn, Robert A. Robertson, George Gray, Roderick MacKay, or John R. Young, or any or either of them, at no time demitted or resigned their said offices as Elders and Members of the Session of the said congregation; and these Defendants say that there was no competent person or body of persons to whom said Elders could tender their resignation; and these Defendants say that the said persons for a long time acted as Elders and are still Elders and Members 10 of the Session of said congregation.

9. The Defendants deny that it was with the authority of said Robert Johnston in any capacity that E. F. Harrison was appointed to supply the ordinances of Divine Service to the said congregation. Alternately, the said E. F. Harrison was appointed as supply when said congregation was part of the Presbyterian Church of Canada.

10. These Defendants say that any services conducted by the Defendants, Reverend D. A. Frame and Reverend D. M. Matheson, were conducted by them with the authority of the Defendant Trustees and of the Session of said congregation who had authority in that behalf. 20

11. These Defendants say that at a meeting of the congregation held on the 27th day of July, 1925, duly and regularly called in accordance with the Rules of Procedure of the said Presbyterian Church, the congregation by a majority of the persons present at such meeting and entitled to vote thereat, decided to enter the Union and become part of The United Church, and that under the provisions of Chapter 122 of the Statutes of Nova Scotia, Section 8, the said congregation since said 27th day of July, 1925, is part of the said The United Church of Canada.

12. These Defendants say that by virtue of Chapter 100 of the Statutes of Canada, 1924, and of Chapter 122 of the Statutes of Nova 30 Scotia, 1924, the Presbyterian Church of Canada became part of and was merged in The United Church of Canada, and that upon the coming into force of the said Chapters 100 and 122 respectively, on the 10th day of June, 1925, the said congregation ceased to be a congregation of the Presbyterian Church of Canada and became an independent congregation under the jurisdiction of no Presbytery and that said congregation never became part of or was associated with the Presbytery of Pictou as established by non-concurring congregations of the Presbyterian Church of Canada, and that said Presbytery had no jurisdiction or authority over its members, its Session or property, or the conduct of its Church ordinances 40 or services, nor has such Presbytery any authority to appoint any Moderator of said Session or any assessors of said congregation.

L. A. LOVETT,
35 Bedford Row, Halifax, N.S.,
Defendant's Solicitor.

Delivered the 12th day of October, 1925.

No. 3.

Evidence of Reverend Robert Johnston.

*In the
Supreme
Court of
Nova Scotia.*

November 11th, 1925.

J. McG. Stewart, for the Plaintiffs.
R. G. MacKay, for the Plaintiffs.
D. C. Sinclair, for the Plaintiffs.
Hector McInnes, K.C., for the Defendants.

Plaintiffs'
Evidence.

No. 3.
Reverend
Robert
Johnston.
Examination.

REV. ROBERT JOHNSTON.—Called.

Sworn and Examined by Mr. Stewart.

- 10 Q. You are a minister of the Presbyterian Church?—A. Yes.
Q. And you were such prior to the 10th of June, 1925?—A. Yes.
Q. Did you attend the meeting of the Presbytery at Pictou in connection with the Presbyterian Church in Canada on or about the 5th of May, 1925?—A. Yes.
Q. Tell me anything that took place on that day affecting yourself.
—A. Amongst other things I was appointed what is known as the Interim Moderator of the Saltsprings congregation.
Q. The Saltsprings congregation was at that time a congregation within the bounds of what Presbytery?—A. The Presbytery of Pictou.
20 Q. That is the Presbytery of the Presbyterian Church in Canada?
—A. Yes.
HIS LORDSHIP: Q. Was there any clergyman at Saltsprings then?
—A. No the congregation was vacant; whenever a congregation is vacant another minister is appointed as Interim Moderator.
MR. STEWART: Q. Was your authority as Interim Moderator ever revoked by the Presbytery?—A. No.
Q. What was your first act as Interim Moderator? I think you went away shortly afterwards?—A. I went away around the 8th of May, really before my term began; my term was to take effect on the 10th of May,
30 the minutes say so and I went away.
Q. And you returned about when?—A. About the 17th of June.
Q. Had you made arrangements for pulpit supply?—A. Yes, through Rev. Donald McOdrum.
Q. After you returned what was your first act as Moderator?—A. To constitute the Session, to have a meeting of Session.
Q. What happened; when did you meet the Session?—A. About the 10th of July.
Q. Whom did you meet on that occasion?—A. I met five members of the Session, which of course was a quorum.
40 Q. Where did you meet?—A. We met in the hall of the Saltsprings Church.
Q. Tell me what took place.—A. I had a conversation with the members of Session; I told them that this congregation, as they were aware, had voted non-concurrence and there was no need for them to

*In the
Supreme
Court of
Nova Scotia.*

Plaintiffs'
Evidence.

No. 3.
Reverend
Robert
Johnston.
Examination
—continued.

leave the Session on that account, only that they would have to come under the rules of discipline of the Presbyterian Church, which was continued; and there was a conversation amongst us at that time and they seemed to think right then that they had to get out, that they had to resign; and I asked each of them if they would continue and two of the five answered that they would continue if they were re-elected, the understanding being that there would be a new election of Elders.

Q. Were any arrangements made with that in view?—A. Yes, we arranged to give two days' notice from the pulpit for an election of new Elders. 10

Q. What do you mean by two days' notice?—A. I mean two Sundays notice.

Q. How many were to be elected?—A. Seven.

MR. McINNES: I suggest that we have the notice.

MR. STEWART: I ask what transpired at the Session meeting; that is not the subject of a written notice.

HIS LORDSHIP: Q. You said two said they would act?—A. Yes, Alex C. McDonald and Mr. Robertson, I think his initials are R. A. Robertson, I am not quite sure.

Q. What did the others say?—A. There were five there altogether; 20 one said he would not act, one man said definitely that he would not act; another man said he would not like to give an answer because he knew he would not be re-elected; the fifth man was so deaf that I could not make him understand what we were doing; he is an old gentleman.

MR. STEWART: Q. What arrangements were made for the ballot or for the election?—A. You mean of new Elders?

Q. Yes.—A. The arrangement was that every member of the Church who had a right to vote would put down on a paper seven names, the names of their choice; these were to be put in an envelope and sealed and put in the collection plate. 30

HIS LORDSHIP: When was this arranged?

MR. STEWART: This was still at the Session meeting.

Q. This was still a part of the arrangement of the Session?—A. Yes.

Q. When were the envelopes with the ballots to be handed in?—A. The meeting was on or about the 10th July, I mean the meeting of Session, two Sundays notice had to be given, that would be the 12th and the 19th, the first day they balloted would be the 26th.

Q. Was any meeting of Session held between the 10th of July and the 26th of July?—A. No meeting of Session.

Q. You are familiar with the rules and forms of procedure of the 40 Presbyterian Church in Canada?—A. Yes.

Q. That is what is known as the Blue Book?—A. Yes.

Book marked Exhibit 1.

Q. Exhibit 1 is the form or manual of procedure?—A. Yes.

Q. I understand you preached at Saltsprings on the 26th of last July?—A. Yes.

Q. Tell me what took place on that day with reference to matters

involved in this action?—A. I was there and, just before the service, one of the former Elders, R. A. Robertson, came to me and asked me to read a notice about a congregational meeting. I told him I would not, that the meeting was not regular, that it had not been called by the Session and was not regular. He said it would be read. I asked him who was going to read it. He said he would. I said I would not read it. That was all.

Q. Was that all that passed between you and Robertson?—A. No, that was not all. I said to him I could not understand his actions at all; that I simply could not understand his actions, because that he had resigned at the meeting on the 10th of July and that he had gone out and told, as far as I was aware, that he had resigned. This is what I said to him. And he said “Oh there was nothing to show in writing for that,” and I said “Well, I cannot understand you then.”

Q. Now the service took place?—A. Yes.

Q. Was any notice read during the service?—A. No.

Q. Was anything done after the benediction was pronounced?—

A. Yes, Robertson got up and read something then when the congregation was going out.

20 Q. He did not commence to read until the congregation was dismissed?—A. No.

Q. After the meeting with the Elders, after the meeting of Session of July the 10th, was any action taken by anybody with reference to constituting a new Session a temporary Session?—A. Yes, after July the 10th.

Q. What was done, by what body?—A. It was done by the Presbytery of Pictou of the continuing Presbyterian Church.

Q. What was done?—A. What is known as Assessors were appointed of an Interim Session.

30 Q. Can you refer me to the procedure of the temporary constitution; the procedure on that point is covered by the rules and forms of procedure?—A. Yes.

HIS LORDSHIP: What were the duties of the Assessors?

MR. STEWART: The Assessors with the Elders who had not resigned and with the Moderator constituted the Session until the new Session is elected by the Church.

Q. What is a quorum of the Session?—A. Three, the Moderator with two others.

HIS LORDSHIP: Which rule is it about the Session?

40 MR. STEWART: It is 59.

Q. By whom was the report made to the Presbytery of Pictou that called forth the appointment of Assessors; who made the report to the Presbytery of Pictou?—A. I did.

Cross-examined by MR. McINNES.

Q. Do you know whether notice was given to all the members of Session at that meeting of the 10th July?—A. I presume it was.

*In the
Supreme
Court of
Nova Scotia.*

Plaintiffs'
Evidence.

No. 3.
Reverend
Robert
Johnston.
Examination
—continued.

Cross-
examination.

*In the
Supreme
Court of
Nova Scotia.*

Plaintiffs'
Evidence.

No. 3.

Reverend
Robert
Johnston.
Cross-
examination
—continued.

Q. Do you know?—A. I think it was given from the pulpit. I am not absolutely sure; I instructed the student to do so.

HIS LORDSHIP: Q. You do not know that it was personally?—A. No, I was not there.

MR. McINNES: Q. You do not know?—A. I know the notice was given; I do not know that notice was given to every member of the Session.

Q. It was not on this Sunday?—A. As far as I am aware, the notice was given from the pulpit of the Session meeting, but I may be wrong there, but that was the instruction I gave. 10

HIS LORDSHIP: What is the date of that meeting?

MR. McINNES: The 10th of July, that is the meeting at which they resigned.

Q. On the 10th of June there was formed The United Church of Canada by Statute?—A. Yes.

Q. You personally did not become a member of the United Church of Canada?—A. Well nobody knows that yet and nobody knew it until recently, a month ago.

Q. You were not in favour of the Presbyterian Churches uniting with the other churches and forming a United Church of Canada?—A. No. 20

Q. Yourself and a number of Clergymen and Elders formed another Presbytery in Pictou; you formed what is called The Presbytery of Pictou?—A. Yes.

Q. That Presbytery is made up of the ministers and elders of non-concurring congregations?—A. I don't exactly admit that we formed a new Presbytery.

Q. In any event you were present at the formation of what you call the Presbytery of Pictou?—A. I was present at the Presbytery of Pictou on the 30th of June, which was ordered to meet by the Assembly of the Continuing Presbyterian Church. 30

Q. I am not going into that; I ask you what I think is common knowledge: you and a number of non-concurring ministers and elders have formed a new Presbytery?—A. I don't admit that.

Q. In any event there is a Presbytery formed of which you are the Moderator in Pictou?—A. There is the Presbytery of Pictou, but I am not Moderator.

Q. What is this Presbytery of Pictou composed of?—A. It is composed of the ministers and representative elders of certain congregations in the County of Pictou and a few congregations outside of the County of Pictou. 40

Q. These are ministers and elders who represented congregations that voted non-concurrence in the vote held as to whether they should join the United Church of Canada?—A. Yes.

Q. The only time that you met with the Session at Saltsprings was this alleged meeting of the 10th of July?—A. Yes.

Q. When Robertson asked you to read this notice you say you refused?—A. Yes, I refused.

Q. And you left the Church when Robertson got up to read the notice?—A. The service was over.

Q. You left the congregation, you walked away?—A. Certainly, the service was over, my duty was over.

Re-examined by MR. STEWART.

Q. With reference to the Presbytery that my learned friend asked you about, that consists of other membership than merely the ministers and representative elders of congregations which had voted not to concur in union does it not? for instance, the Halifax Church, is that a member
10 of the Pictou Presbytery?—A. Yes.

Q. That is a new congregation as I understand it?—A. Yes, of course that is correct.

HIS LORDSHIP: That is it does include one new congregation?

MR. STEWART: I think it includes more.

Q. Does it include any other new congregations?—A. Yes, it includes several new congregations.

Q. I understood you to say, in reply to a question by my learned friend, that the meeting of the Presbytery of Pictou held on June 30th was held under the direction of the General Assembly?—A. Yes.

20 Q. Which was constituted and reconstituted or constituted when?—A. On the 10th of June, I presume 1925, at Toronto.

Re-cross-examined by MR. McINNES.

Q. That Presbytery that met under the direction of the Assembly, that was an Assembly ordered to be called by the non-concurrents that met in Toronto, was it not?—A. Yes.

Q. It was not an Assembly that had any connection with The United Church of Canada or the members that formed part of The United Church of Canada?—A. Well—

30 MR. STEWART: That is a question of law, the status of those Presbyterians who did not concur. It was composed of those Presbyterians who did not concur in the union. It is quite a nice legal point whether they remained as the Presbyterian Church as an organization or whether the act merged them like a civil corporation.

MR. McINNES: So far as I want to get at the fact.

HIS LORDSHIP: There is no doubt what the facts are.

MR. McINNES: So long as it is understood it was an assembly called by non-concurring ministers and elders it is all right.—A. May I make a statement; every minister was put into the United Church and had to the 10th of December to get out.

40 HIS LORDSHIP: You say there was a meeting in Toronto of the non-concurring clergymen and representative elders; what authority had they?

MR. STEWART: They were the Presbyterian Church in so far as it had not gone into the union.

HIS LORDSHIP: What were they, the Assembly?

*In the
Supreme
Court of
Nova Scotia.*

Plaintiffs'
Evidence.

—
No. 3.
Reverend
Robert
Johnston.
Re-
examination.

Re-cross-
examination.

*In the
Supreme
Court of
Nova Scotia.*

Plaintiffs'
Evidence.

No. 3.
Reverend
Robert
Johnston.
Re-cross-
examination
—continued.

MR. STEWART: The General Assembly.

HIS LORDSHIP: As I understand, you cannot have an Assembly of the Presbyterian Church unless every congregation that belong to it send a representative.

MR. STEWART: They had the right to be represented.

HIS LORDSHIP: If they had the right to be represented they must have opportunity of sending a representative there.

MR. STEWART: The Presbyterian General Assembly met in Toronto prior to the union and they resolved to consummate union and they did consummate union so far as the legislation covered it, and a body of 10 non-concurrees remained who carried on the business of the General Assembly after midnight on the 9th of June. Justice was done in the case of the Scottish Churches in 1894: they carried on the continuity of the General Assembly and they subsequently adjourned.

HIS LORDSHIP: Does that come up here?

MR. STEWART: Possibly, in a secondary way, I think possibly in a legal way too.

HIS LORDSHIP: What I want to know is whether this meeting in Toronto had any real authority.

MR. STEWART: I submit it did; it was the continuance of the General 20 Assembly because the Assembly adjourned for a fictitious purpose, they adjourned to a later date after they had ceased to be an independent Presbyterian Church, they adjourned to a date after the consummation of the union.

HIS LORDSHIP: If they ceased to be a Presbyterian Church there was no church.

MR. STEWART: I submit there was. The Act expressly states in regard to any congregations non-concurring that they shall remain unaffected by the Act.

HIS LORDSHIP: Perhaps we do not need to consider it now. What 30 you say is that this meeting held in Toronto after midnight on the 9th of June was—

MR. STEWART: They were the Presbyterians who resolved not to enter the union: they were regular delegates to the General Assembly.

HIS LORDSHIP: What did they do?

MR. STEWART: They met as soon as the main body had adjourned and adjourned to a date which was not fictitious.

HIS LORDSHIP: When did they adjourn to?

MR. STEWART: A date a week or ten days later, and when they re-met they constituted the synods not constituting them but delimiting 40 the bounds of these lower courts.

HIS LORDSHIP: What did they do which was important in this case?

MR. STEWART: It is important from this point of view whether the Presbytery of The United Church of Canada had any authority from Salt-springs.

HIS LORDSHIP : What did this Assembly do which affects this case ?

MR. STEWART : The whole question is affected by it in this way ; I am going to argue that the Presbytery of Pictou of the Continuing Presbyterian Church was the immediate court above Saltsprings congregation, that it was the Church Court having immediate authority over the Saltsprings congregation ; the Saltsprings congregation having resolved not to enter the union in order to get that we have to trace the authority right back to the General Assembly.

HIS LORDSHIP : I want to see how you do trace it.

10 MR. STEWART : I will have to prove that by witnesses ; the meeting constituted the bounds of the Presbyteries and the authority of the Presbyteries and they delimited the territorial bounds of the Presbyteries. Mr. Johnston was not at this meeting ; I cannot prove it by this witness. I simply ask Mr. Johnston whether the Presbytery of Pictou covers the province of Nova Scotia ?—A. Yes.

Q. You say it includes ?—A. At present it includes Nova Scotia outside of Cape Breton, the whole mainland of Nova Scotia is the Presbytery of Pictou.

20 HIS LORDSHIP : Q. How was that fixed ?—A. It was fixed by the General Assembly at its meeting in Toronto.

MR. McINNES : Of course I don't agree with what my learned friend says about the effect of the General Assembly being continuing ; a number of gentlemen stayed on and constituted an Assembly.

HIS LORDSHIP : You say they had no authority to do anything ?

MR. McINNES : Yes.

30 HIS LORDSHIP : The whole question may come down to the question of the authority of this meeting ; if this meeting was not the General Assembly of the Presbyterian Church then there was no Presbytery in Pictou after the Union Act went into force, no Presbytery in Pictou constituted.

MR. STEWART : A Presbytery can constitute itself ; the congregations within a definite area can constitute themselves if there is no General Assembly or Synod about them. I don't think there is any mystery about the formation of them, the congregations are the base. It is purely a voluntary organisation.

No. 4.

Evidence of Gordon Proudfoot.

GORDON PROUDFOOT, Sworn, Examined by Mr. Stewart.

40 Q. You are a member of the Saltsprings congregation ?—A. Yes.
 Q. St. Luke's I think is the name of your congregation ?—A. Yes.
 Q. Were you a member in full communion during the year 1924 ?
 —A. Yes.

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*In the
 Supreme
 Court of
 Nova Scotia.*
 —
 Plaintiffs'
 Evidence.
 —
 No. 3.
 Reverend
 Robert
 Johnston.
 Re-cross-
 examination
 —continued.

No. 4.
 Gordon
 Proudfoot.
 Examination.

*In the
Supreme
Court of
Nova Scotia.*

Plaintiffs'
Evidence.

No. 4.
Gordon
Proudfoot.
Examination
—continued.

Q. A vote was taken on the subject of union in the latter part of January last year?—A. Yes.

Q. Did you have anything to do with the taking of that vote?—A. Yes, I was presiding officer.

Q. Who counted the ballots?—A. I counted them, that is I named the ballots to the scrutineers and the secretary took the tally.

Q. Who were the scrutineers and secretary?—A. The Secretary acting that day was Mr. John Fraser.

Q. Who were the scrutineers?—A. Charlie Maxwell and Gil Fraser.

Q. I understand that the adherents and members in full communion 10 voted separately on that occasion?—A. Yes.

Q. What arrangements were made for keeping their vote separately?—A. They used the same ballot except that on the head of the ballot was written "Adherent."

Q. Can you tell me the result of that vote?—A. I can tell you, but I cannot tell you the exact figures under oath, I can tell you the majority of the members.

Q. What were they?—A. The majority was 14 against entering the union.

Q. And the votes of the adherents?—A. I am not so clear on that, 20 but I think the majority was ten.

Q. Which way was the majority, in the case of the adherents?—A. Against entering the union.

HIS LORDSHIP: That is 24 altogether?—A. Yes.

MR. STEWART: Was a congregational meeting held before the commencement of the polling?—A. At the commencement.

Q. The voting commenced?—A. At the end of the public meeting.

Q. Was there a congregational meeting at the close?—A. It was and same meeting adjourned to such a day and the ballots were to be counted* the poll closed. 30

Q. Who was the minister of the congregation at that time?—A. Rev. Mr. C. C. Walls.

Q. Did he continue to be the minister after this vote?—A. Not for any time.

HIS LORDSHIP: Q. What happened, did he resign?—A. He resigned; I think he announced his resignation on the following Sabbath.

HIS LORDSHIP: Q. He was in favour of union?—A. Yes.

MR. STEWART: After his departure who supplied the pulpit, who preached to the congregation?—A. Affairs were somewhat irregular; Mr. Forbes, of Scotsburn, preached on one occasion. 40

Q. Who was the first regular pulpit supply you had?—A. Mr. Harrison.

Q. And he supplied from about when?—A. I think probably from about the first of June until the time the second vote was taken.

Q. Were you present in the church on July 26th when Mr. Johnston was preaching?—A. Yes.

Q. Were you in church on the preceding Sabbath?—A. Yes.

Q. Who preached that day?—A. Mr. Harrison.

* sic.

HIS LORDSHIP: That would be on the 19th?—A. Yes.

MR. STEWART: Q. Was any notice read by anyone on that date?

—A. Yes, Mr. W. H. McKay.

Q. What is he in the congregation?—A. He is an Elder.

Q. When was that notice read, at what stage of the service?—

A. At the time that is usually occupied in taking up the collection.

Q. Where was he standing when he read the notice?—A. He stood up in the choir at the platform.

Q. Not in the pulpit?—A. No.

10 Q. You were there when Johnston preached on the following Sunday?

—A. Yes.

Q. Was any notice read during the service that day?—A. No.

Q. Did anything take place after the service was over?—A. I was sitting near the rear of the church and I can scarcely remember of anything taking place only what I knew.

Q. You did not know anything about any notice being read?—
A. No.

Q. That is by directly hearing or seeing?—A. That is what I mean, yes.

20 Q. Do you remember the occasion of the meeting of Session in July of this year?—A. Yes, I remember the incident.

Q. How did you know there was a Session meeting?—A. I cannot answer that.

Q. About what time in July was that?—A. It was the early part of July, I do not know the date from memory.

Q. Do you remember having any conversation with any of the members of the Session shortly after that?—A. Yes.

30 Q. What took place?—A. I had a conversation a day, I think the second day following the meeting, with Mr. R. A. Robertson. I asked him what took place at this meeting and he told me that the Elders had resigned.

Q. Was there anything more?—A. Yes, I said that I regretted that. I do not know if I put it in those words. I said I thought some had remained; he said no, he thought it was better for them to resign; I asked also would they stand for re-election and he said that he and Mr. McDonald would; I also asked if Mr. McKay and Mr. Ross would stand for re-election and he said he did not think so.

Q. Who was the other member of the Session, Mr. Gunn?—A. Yes.

Q. Did you ask him about Mr. Gunn?—A. No, I did not.

*In the
Supreme
Court of
Nova Scotia.*

Plaintiffs'
Evidence.

No. 4.

Gordon
Proudfoot.
Examination
—continued.

*In the
Supreme
Court of
Nova Scotia.*

No. 5.

Evidence of Mrs. Margaret Brown.

Plaintiffs'
Evidence.

MRS. MARGARET BROWN, Sworn, Examined by Mr. Stewart.

No. 5.
Mrs.
Margaret
Brown.
Examination.

Q. Were you present at the meeting at the church service on July 26th when Mr. Johnston preached?—A. Yes.

Q. During the service was any notice read?—A. No.

Q. Do you remember the occasion of the meeting of Session in July?
—A. Yes.

Q. How did you know about the meeting of Session?—A. One of the members of Session was at our house and left for the meeting and 10 returned immediately afterwards, that was Mr. A. C. McDonald.

Q. Did you have any conversation with Mr. McDonald?—A. Yes, I asked him what they did at the Session, how they got along, and he said they all resigned.

No cross-examination.

No. 6.
Kenneth
Murray.
Examination.

No. 6.

Evidence of Kenneth Murray.

KENNETH MURRAY, Sworn, Examined by Mr. Stewart.

Q. You are a member of the Saltsprings congregation?—A. Yes.

Q. A member in full communion?—A. Yes.

Q. Were you present at the meeting at the church service on July 26th, when Mr. Johnston preached?—A. No, I was not. 20

Q. Were you there on the previous Sunday when Mr. Harrison preached?—A. Yes.

Q. Do you remember a notice being read by some one that day?
—A. Yes by W. H. McKay.

Q. At what period of the service was the notice read?—A. About the time the collection was taken up.

Q. Where did he stand as he read it?—A. On the platform occupied by the choir.

Q. Do you remember a meeting of Session in July, the meeting of the Session of the congregation?—A. I remember the occasion of the meeting. 30

Q. How did you hear about the Session meeting?—A. I think it was just from people talking about it, saying there was a meeting of Session at a certain time.

Q. How long before the meeting did you know that?—A. A day or two I think, I am not positive of that.

Q. Did you have a conversation with any member of Session afterwards?—A. Yes, with E. C. McDonald. 40

Q. What was the conversation?—A. He called to see me on some other business; after we talked over this other matter, I asked him the result of this meeting, and he said that the Elders had all resigned. I said it was rather a pity, that I thought they would carry on as before, and he said that some of them decidedly would not, but he thought some of them would, mentioning R. A. Robertson and himself.

*In the
Supreme
Court of
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Plaintiffs'
Evidence.

Cross-examined by MR. McINNES.

Q. You knew it was a second vote that had been asked for by Mr. Murray?—A. Mr. McKay read this paper on the platform.

10 Q. That was well known and discussed in the community that there was notice for a second vote?—A. I did not hear it discussed in the community, possibly it was, I did not hear of it at all until Mr. McKay read it.

Q. Don't you think it was discussed in every house in the congregation?—A. It was not discussed in our house.

Q. But you were present, you knew about it?—A. I was present when Mr. McKay read that paper, yes.

HIS LORDSHIP: What was the vote on the second occasion?

MR. STEWART: It was unanimous.

No. 6.
Kenneth
Murray.
Cross-
examination.

Evidence of A. H. McKenzie.

A. H. McKENZIE, Sworn, Examined by Mr. Stewart.

Q. You are a member of the Saltspings Presbyterian Church in full communion?—A. Yes.

Q. Were you present on the Sabbath when Mr. Johnston preached in July this year?—A. Yes.

Q. During Mr. Johnston's service was any notice read?—A. No.

30 Q. Do you remember anything that took place immediately after the benediction had been pronounced?—A. As soon as the benediction had been pronounced, I got up and went out, and I saw Mr. Robertson get up on his feet. I looked around when I was at the door and I saw Mr. Robertson on his feet.

HIS LORDSHIP: You did not want to hear it and went out, is that it?—A. Yes.

MR. STEWART: Where was Robertson when you saw him?—A. He was moving towards the door of his pew when I saw him.

Q. Do you remember the occasion of a meeting of Session of the Saltspings congregation in July?—A. I know they had a meeting of Session.

40 Q. How did you know that the meeting of Session was to be called?—A. There was notice read from the pulpit.

No. 7.
A. H.
McKenzie.
Examination.

*In the
Supreme
Court of
Nova Scotia.*

Plaintiffs'
Evidence.

No. 7.
A. H.
McKenzie.
Examination
—continued.

Q. Do you remember speaking to any members of Session after that meeting?—A. I remember speaking to R. A. Robertson shortly afterwards.

Q. What was said in that conversation?—A. I asked him what was done at the meeting of Session and he said they all resigned; that is all the conversation.

Q. Are you one of the trustees of the church?—A. No.

Q. Can you tell me who the trustees are?—A. Mr. Harry Brown is one, Henry Bailey, John Cotton; I am not sure who the other two are.

Q. Was it Alec Bailey you said?—A. Henry Bailey, Baillie.

MR. STEWART: That is R. H. Baillie.

Q. Now since the 1st August of this year do you know who has been conducting services in the church?—A. Just what I have been told. I have not been present. 10

Cross-
examination.

Cross-examined by MR. McINNES.

Q. Who read the notice calling the meeting of Session?—A. Mr. Harrison as near as I can remember.

Q. Can you give me the terms of the notice?—A. No.

Q. What time did he read the notice?—A. The time he was giving out the other announcements.

Q. You have a distinct recollection of him reading that notice?— 20
A. As far as I can remember.

Q. So far as I can find out you are the only man who ever heard it read?—A. I may be mistaken.

No. 8.
Harry Brown.
Examination.

No. 8.

Evidence of Harry Brown.

HARRY BROWN, Sworn, Examined by Mr. Stewart.

Q. You are a member of the Saltsprings congregation?—A. Yes.

Q. And you have been for some time?—A. Yes.

Q. Do you remember an occasion when you accompanied Mr. Harrison to the church early in August this year?—A. Yes. 30

Q. Mr. Harrison was the student who had been supplying during the summer months?—A. Yes.

Q. Tell me what took place on that occasion?—A. Well he wanted to meet the Session and the Session was in the church instead of in the hall, all but one; so he asked to meet the Session; so this Elder Munroe Gunn went in and came back and said they refused to meet him.

HIS LORDSHIP: You accompanied this student to the church on a week day or Sunday?—A. Sunday; he wanted to meet the Session before service and they refused to meet him.

MR. STEWART: Was the pulpit occupied when Mr. Harrison got there?—A. It was not occupied; Rev. Mr. Frame was standing at the foot of the stairs leading up to the pulpit.

Q. By whom was the service conducted that day?—A. Rev. Mr. Frame.

Q. What day of August was this?—A. I do not know.

Q. Was it early or late in the month?—A. I don't remember the date.

Q. Do you remember meetings of the Session being held at Salt-
10 springs in July?—A. Yes.

Q. How did you know that meeting was being held?—A. A. C. McDonald was boarding at our house at the time; he was a member of Session; he told us a few days previous to it.

Q. You say you learned from him?—A. Yes, he said he was going; said the Session was meeting at Saltsprings.

Q. Did he tell you what was going to take place?—A. No, he did not say; he did after he came back; I and the wife were both in the house; we asked him how things went; he said things went on fairly smooth; my wife asked him if the Elders resigned; he said they all resigned and
20 there was only R. A. Robertson and himself would act if they re-elected them.

Cross-Examined by MR. McINNES.

Q. Can you give Mr. McDonald's exact words?—A. I did as near as I can remember.

Q. Did he speak at all whether they were considering about resigning?—A. No, he said R. A. Robertson and him resigned, but the other three present they resigned, but the other three would not act if re-elected, R. A. Robertson and himself said they would act.

Q. Was the resignation coupled with the name of Robertson and
30 himself?—A. It was coupled with the other three, himself and Robertson.

Q. The view you took of it was that the whole five of them had resigned?—A. Yes.

*In the
Supreme
Court of
Nova Scotia.*

Plaintiffs'
Evidence.

No. 8.
Harry Brown.
Examination
—continued.

Cross-
examination

No. 9.

Evidence of Reverend D. A. Frame.

REVEREND D. A. FRAME, Sworn, Examined by MR. Stewart.

Q. Can you produce the minutes of the Presbytery?—A. Yes.

Q. You are Clerk of the Presbytery of Pictou in the United Church?
—A. Secretary, yes.

Q. With regard to the meeting of the Presbytery of Pictou in con-
40 nection with the Presbyterian Church of Canada on 5th May, 1925, with reference to the appointment of Mr. Johnston as Moderator of the Salt-springs congregation, have you the minute of that there?—A. Not Salt-springs congregation, Saltsprings Session to be exact.

No. 9.
Reverend
D. A. Frame.
Examination.

*In the
Supreme
Court of
Nova Scotia.*

Plaintiffs'
Evidence.

No. 9.
Reverend
D. A. Frame.
Examination
—continued.

Q. Will you read the resolution?—A. "Rev. R. Johnston appointed Interim Moderator of Saltsprings to take effect on 10th May."

Q. I think the results of the votes in the various congregations were sent you?—A. Yes.

Q. Can you produce the report that was sent in connection with Salt Springs?—A. I have not got it here, but it was as reported this morning with the exception of the adherents; I don't think the adherents' vote was sent me.

MR. McINNES: I have copies of the minutes of the adjourned sessions if it will assist. 10

HIS LORDSHIP: The clergyman in charge of the parish is always Moderator?—A. Yes.

Q. If somebody else is called in he is called Interim Moderator?—A. Yes.

MR. STEWART: Do you remember if it was a document like this that you received as to the report?—A. I cannot remember; I get so many of these from all the congregations in the Presbytery that I cannot recall; if I had known I could have brought the official report. I have it home; I suppose 75 or 80 came in to me.

Q. You remember at any rate that the majority was against the 20 congregation entering the United Church of Canada?—A. Yes.

Cross-
examination

Cross-examined by MR. McINNES.

Q. How long have you been clerk of the Presbytery of the Presbyterian Church in Canada?—A. Six or seven years.

Q. You are familiar with the church practice, the church procedure?—A. I know a little something about it.

Q. What is the practice when an Elder of the Session resigns, must his resignation be accepted?

MR. STEWART: I think these are all covered by the rules and forms of procedure. 30

HIS LORDSHIP: It might be important.

MR. STEWART: I must object to it.

HIS LORDSHIP: I will take it subject to objection.

Q. What is the practice when an Elder resigns, must his resignation be accepted by the Session to be effective?—A. Certainly, to be effective it must be accepted by the Session; it is not effective until it is accepted.

Re-
examination

Re-examined by MR. STEWART.

Q. Is there anything in the rules and forms of procedure to that effect, is there anything that you know of?—A. No, but the Elder is appointed by the Session, he resigns to the Session. 40

Q. The Elder is appointed by the Session?—A. He is inducted by the Session.

Q. What if all the Elders resign at the same time?—A. It is quite possible.

Q. Then the resignations would have to be formally accepted by

themselves?—A. No, they might be accepted to take effect 24 hours hence.

Q. Did you ever have a case where all the Elders resigned at once?—
A. Yes.

Q. When?—A. I had it in the town of Pictou.

Q. But not before the vote on church union?—A. No.

Q. You had no experience with such prior to the resignations that followed on the vote for union?—A. No.

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Plaintiffs'
Evidence.

No. 9.
Reverend
D. A. Frame.
Re-
Examination
—continued.

No. 10.

10

Evidence of A. C. McDonald.

A. C. McDONALD, Sworn, Examined by Mr. Stewart.

No. 10.
A. C.
McDonald.
Examination.

Document put in Marked Exhibit 2.

Q. Look at Exhibit 2, is that signed by you?—A. Yes.

Envelope Marked Exhibit 3.

MR. STEWART: Exhibit 2 is a notice signed by Mr. McDonald signing himself as Session Clerk on July 27th to Mr. Harrison the student supplying.

Q. You forwarded this letter to Mr. Harrison in a registered envelope did you?—A. Yes.

20 Q. Do you recognize this Exhibit 3 as the envelope in which it was forwarded?—A. I expect it is.

Q. The letter was not written by you, of course, it was prepared and sent to you to sign?—A. Yes.

Q. By whom was it sent to you?—A. It was indirectly through the Session; it was drafted and prepared by I think Mr. Farquhar; it was given to me by the Session.

Q. By whom?—A. Just by the Session; it was prepared by Mr. Farquhar.

30 me, Q. Who handed it to you?—A. I cannot remember who handed it to me, it was possibly from Mr. Farquhar himself.

Q. Was it at a meeting of the Session?—A. Yes.

Q. And Farquhar was present at that meeting?—A. Yes.

Q. When was that meeting?—A. That would be on the 27th I think.

Q. The same day this was written?—A. I am not quite sure but it is possible it was the day before that was written, it may possibly be.

Q. Who else was at the meeting of Session?—A. I am not sure but I almost think all the Session was present.

40 Q. Give me the names of those there?—A. Mr. Robertson, Mr. Mack, Mr. Gunn, W. K. McKay, Mr. Ross and myself, Mr. Fraser; it seems to me they were all present.

Q. And Mr. Farquhar was there?—A. Yes.

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Plaintiffs'
Evidence.

No. 10.
A. C.
McDonald.
Examination
—continued.

Q. What was Mr. Farquhar, in connection with Saltsprings congregation?—A. It appears he was invited over there for that day.

HIS LORDSHIP: Who is Mr. Farquhar?

MR. STEWART: He was the minister in New Glasgow.

Q. Did you do the inviting?—A. No.

Q. Did you hear anyone invite him?—A. No.

Q. Did he advise you to send this letter?—A. He and the others did.

Q. Do you know whether his name is on your communion roll of Saltsprings?—A. I don't think it is.

Q. Did he preside at the meeting of Session?—A. Yes. 10

HIS LORDSHIP: Is this the meeting at which the vote was taken?

MR. STEWART: No this is a meeting of Session?—A. Immediately after.

Q. Mr. Farquhar was well known to you and the Session as a unionist minister, was he?—A. I understood he was.

Q. Was this the first meeting of Session Mr. Farquhar attended?—A. As far as I remember, yes.

Q. This was the first meeting of Session after the meeting you had with Mr. Johnston on July 10th?—A. It was the first meeting I was present at. 20

Q. And you were the Clerk of Session?—A. Yes. There might have been others.

Q. And the meeting you had with Mr. Johnston on July 10th was the first meeting you had had since June 10th was it?—A. Yes.

Q. So up to July 27th at any rate there were just the two possible meetings, the one you have just spoken of where Mr. Farquhar presided and the one on July 10th?—A. This is all I was present at.

Q. And that is all you know of?—A. Yes.

Cross-
examination.

Cross-examined by MR. McINNES.

Q. In speaking about Mr. Farquhar, who invited him to sit with the Session on that day you speak about, the 7th of July?—A. I cannot tell you who invited him exactly. 30

Q. But he had been preaching?—A. He had been preaching the Sunday previous.

Q. Who gave you notice yourself that there would be a meeting of the session?—A. Mr. Farquhar told me on this Sunday that he would be present at the meeting the next day, that was the day the second vote was taken.

Q. You remember the meeting of Session that was discussed when Mr. Johnston was present on the 10th July?—A. Yes. 40

Q. How did you get notice that there was to be a meeting of the Session?—A. Mr. Harrison telephoned to my wife; I was not home at the time; she told me.

Q. Was there any notice read from the pulpit?—A. None that I heard.

Q. How many members of Session were present?—A. Five.

Q. Can you give me their names?—A. Myself, R. A. Robertson, W. H. McKay, Munroe Gunn, William Fraser.

HIS LORDSHIP : This was the meeting on July 10th ?

MR. McINNES : Yes, this was the meeting at which it is said the Elders all resigned.

MR. McINNES : Was there any discussion as to whether all the members of Session had notice?—A. One of the members asked Mr. Harrison if they were all notified ; he mentioned two names, he told him Rod McKay and John Young. He told him he did not know they were Elders.

HIS LORDSHIP : They were members of the Session?—A. Yes they
10 were.

MR. McINNES : I want you to take your time and give what happened at the meeting of the Session as fully as you recall?—A. As near as I recollect Mr. Johnston opened the meeting with prayer ; then there was some talk back and forth somewhat immaterial ; then he asked each one if they were willing to continue as he called it in the Continuing Presbyterian Church ; two of them admitted that they would continue.

Q. What did they say?—A. Well, Mr. Robertson and myself were the two that said they would continue. I cannot give you his exact words or anything near it.

20 Q. Did you qualify it in any way, did you qualify your consent in any way or just that you were willing to continue?—A. That is all, in fact no person present as far as I recollect mentioned any reason except Robertson.

Q. What was Robertson's attitude?—A. He seemed to be willing to continue for the sake of peace in the congregation for the time being ; we both declared we were in favour of the union.

Q. Did you say you were willing to continue for the time being for the sake of peace in the congregation or Robertson?—A. I think we both used words to that effect. I cannot give you the exact words.

30 Q. Give me what the others said?—A. Two of the others refused point blank to act in this Continuing Presbyterian Church and the third man said he was too old.

Q. Was the word " Resigned " used at all during the course of the conversation?—A. So far as I remember it was not, only just by Robertson.

40 Q. In what connection did Robertson use it?—A. He offered to resign or asked Mr. Johnston if he wished to resign or something to that effect. Mr. Johnston said he would not go that far. Mr. Robertson offered to resign—that is in writing—Mr. Johnston said he would not go that far, that it was not necessary, in fact I understood by what he said that he did not wish him to resign.

Q. Mr. and Mrs. Brown say you told them at some later time that the Session had all resigned ; give me your recollection about that.—A. Well I cannot remember stating that they all resigned. It might have been that I conveyed that impression to them, but I have no recollection of it.

Q. At that time did you consider that you had resigned yourself?—
A. No, I did not.

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Plaintiffs'
Evidence.

No. 10.
A. C.
McDonald.
Cross-
examination
—continued.

Q. Did you consider that any members of the Session had resigned?
—A. Not at that time.

Q. You are a Session Clerk?—A. Yes.

Q. Did you take any notes of that meeting at all?—A. No, I did not because I did not consider that there was any business done there, there seemed to be nothing done only just a lot of informal talk.

HIS LORDSHIP: You were the clerk of the Session?—A. Yes.

MR. McINNES: Look at these papers I show you marked Exhibit A; these papers were handed to the Session were they; about what date did you receive them?—A. I cannot be very sure as to the exact date. 10

Q. The signers of these papers are communicants of St. Luke's Presbyterian Church?—A. To the best of my knowledge.

MR. STEWART: I think the Communion Roll is the only evidence.

Q. You have been present at communions?—A. Yes.

Q. Have you seen these people whose names are there taking communion?—A. I think I can recollect the most of them, possibly all of them at one time or another.

HIS LORDSHIP: I will receive the evidence subject to objection.

Q. You have the communion roll?—A. Yes, it is in my possession.

HIS LORDSHIP: You can put it in afterwards. 20

MR. McINNES: I think it sufficient that Mr. McDonald says the signatories to the petition are communicants and he recognizes them as being communicants and that they have taken communion service.

Q. As a result of that requisition being handed to you what was done then by the Session?—A. The Session took steps to hold a meeting as requested by the petitioners.

HIS LORDSHIP: What is this Exhibit A?

MR. McINNES: It is a requisition to the Session asking for a meeting of the congregation. These papers are really a part of my own case and I don't want to split my case and it may be more convenient to put 30 them in, in my own case. I thought I would identify these first.

Q. You say as a result the Session took steps to call a meeting of the congregation?—A. Yes.

Q. Is the document marked Exhibit B the steps that they took?
—A. Yes.

Q. That paper is signed by all the Elders in Salt Springs?—A. Yes.

Q. Do you remember at the conclusion or during the meeting of the Session on July 10th the question of having an election of Elders in the congregation was discussed?—A. There was something about an addition 40 of Elders.

Q. An election of seven Elders?—A. There was no mention.

Q. Was it resolved that notice be given on two consecutive Sundays?—A. Not at that meeting, at least I have no recollection of hearing anything of that kind discussed.

Q. You are prepared to swear that?—A. Yes.

Q. Are you satisfied that the word "Resigned" was not used by anyone at this meeting except Mr. Robertson?—A. To the best of my recollection.

Q. Was it not agreed at this meeting of Session that a ballot for Elders should take place on the 26th of July and the 2nd August?—A. I have no recollection of it.

Q. You kept no notes of what took place?—A. None whatever.

Q. When was this petition Exhibit A received by you?—A. I cannot give you the exact date. It would be in the month of July I think, some time after the 10th.

Q. From whom did you get it?—A. It was not formally handed to me.

Q. It was handed to you; by whom was it handed to you, whether formal or not?—A. I cannot say.

Q. You have no idea?—A. I don't remember who handed it to me; it was presented at that meeting of Session that we had on the 27th, I think on a Monday, it was given to me then.

Q. Is that the first time you saw it?—A. No.

Q. Was that the first time you saw it completed?—A. It was the first time I saw it completed.

Q. Had it never been handed to you to keep before that?—A. No.

Q. In whose possession was it when you saw it previous to that?

A. I am not very sure.

20 Q. Have you any idea?—A. I would not like to say.

Q. Was it in Farquhar's possession?—A. I don't hardly think so.

Q. It might have been?—A. I don't think Farquhar had it.

Q. Did Robertson have it?—A. Not as far as I can remember.

Q. Did Gunn have it?—A. I cannot be sure.

Q. Did Mr. Fraser have it?—A. I don't think so; Mr. Gunn might possibly have had it.

Q. You are quite sure you did not have it before the 27th of July?—A. Yes, I have seen part of it, it was in three pieces,

Q. You never saw it together before the 27th of July?—A. No.

30 Q. Coming to the document Exhibit B, when did you see that the first time?—A. That was this petition of the Elders?

Q. Yes?—A. I cannot give you the date.

Q. Was that on the 27th of July too?—A. It was before that.

Q. Before you saw the petition was it?—A. Yes before I saw petition or about the same time.

Q. That would be about the 27th of July?—A. It would be before that; I saw part of the petition before the 27th; I did not see it completed until the 27th.

40 Q. When did you see part of the petition first?—A. It would be some time before this notice of meeting was read.

Q. In whose possession did you see one of the three parts of the petition first?—A. It would be in possession of either R. H. Baillie or Dr. Davis.

Q. And you saw it on the occasion of your signing it?—A. I did not sign this petition.

Q. The occasion on which you saw the part was when asked to sign, was that it?—A. I was never asked to sign that petition.

Q. Can you say what names were on the part you saw?—A. No, I cannot.

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Plaintiffs'
Evidence.

No. 10.

A. C.
McDonald.

Cross-
examination
—continued.

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Plaintiffs'
Evidence.

No. 10.
A. C.
McDonald.
Cross-
examination
—continued.

Q. Or the number?—A. I cannot tell you the number either; I was told nearly the number.

MR. STEWART: I move that that be struck out.

HIS LORDSHIP: What he was told will not affect it at all; surely he can say that he was told and that he acted accordingly.

MR. STEWART: I would like to have the objection noted.

Q. This was one step the Session took in connection with the petition, this document exhibit B?—A. I cannot be sure; I was not at home at the time.

Q. There is no signature of the minister to Exhibit B?—A. I don't think so.

Q. John Young lives at Abercrombie?—A. Yes for a short time.

Q. What do you mean?—A. Probably nearly a year or thereabouts.

Q. A good deal over a year is it not?—A. He has been back and forth.

Q. How long since he has attended a meeting of Session? A. I cannot remember; my records will show that.

Q. Can you tell from your records?—A. I think I can.

Q. It is a good many years is it not?—A. No.

Q. How about Mr. R. McKay?—A. He has not been attending very regularly.

Q. Has he attended at all in recent years?—A. My records will show.

Q. Can you get your records and look it up?—A. Yes.

Q. Will you get them?—A. Witness produces records and refers to same.

HIS LORDSHIP: What does your record show?—A. I cannot find Mr. McKay's name in it as far back as November 1918.

Q. What about Mr. Young's name? When did he attend last?—A. I find J. R. Young was present November 26th, 1924. 30

MR. STEWART: As to McKay you had gone back to 1918 and still have not found Mr. McKay's name?—A. That is right.

Q. After you sent this letter to Harrison on July 27th on the following Sunday, I think Frame was the minister?—A. Yes.

Q. Since that any preaching done in the church has been done by union ministers?—A. Yes.

Q. Do you remember Mr. Harrison turning up on August 2nd?—A. Yes.

Q. Do you remember Mr. Gunn asking you to meet Mr. Harrison?—A. Mr. Gunn was in the body of the church, I did not see him. 40

Q. Do you remember him coming out from the vestry room and asking you to meet Mr. Harrison?—A. No, Mr. Harrison met me there and said he would like to meet with the members of the Session: I went to see if I could find them, but I could only find Rod McKay; the others were in the church.

Q. Did they refuse to come?—A. I was not speaking to them.

Q. Anyway, the pulpit was occupied that time by Mr. Frame?—A. Yes, I think it was.

MR. STEWART: I wish to tender the Exhibits and in addition to tender Chapter 217 of the acts of 1906 that is the legislation incorporating the trustees of this congregation.

HIS LORDSHIP: Is it like the other acts submitted to me last week?

MR. STEWART: The call of the meeting of congregations is dealt with in the act.

HIS LORDSHIP: They have power to meet for certain purposes?

MR. STEWART: It is not exactly the same, there are some differences. That is our case.

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Plaintiffs'
Evidence.

No. 10.
A. C.
McDonald.
Cross-
examination
—continued.

10

No. 11.

Evidence of W. H. McKay.

W. H. MCKAY, sworn, Examined by Mr. McInnes.

Defendants'
Evidence.

No. 11.
W.H.McKay.
Examination.

Q. You live at Salt Springs?—A. At Lima, three miles from that.

Q. You are a member in full communion of St. Luke's Church?—

A. Yes.

Q. You are a member of the Session?—A. Yes.

Q. And you have been a member of the Session for a good many years?—A. 18 or 20 years.

Q. Coming to the meeting of the 10th of July at which Mr. Johnston was present, you were at that meeting?—A. Yes.

Q. It has been said in evidence that the other four members present were McDonald, Ross, yourself and the 4th one was Mr. Gunn?—A. Mr. Ross was not there.

Q. Mr. Robertson?—A. Yes.

Q. There was Mr. McDonald, Mr. Gunn, Mr. Robertson and yourself? And the 5th was Mr. Fraser?—A. Yes.

Q. Before you assembled was there any question whether you all had notice or not?—A. When Johnston came into the hall, Harrison came in with him and introduced himself to us.

Q. Harrison was your student?—A. Yes, he introduced Mr Johnston to all of us present and I asked him if he sent word to Rod McKay and John Robert Johnston; he said he did not know they were Elders.

Q. I understand Mr. Harrison left the hall?—A. Yes.

HIS LORDSHIP: You asked him if he had notified Rod McKay?—A. Yes.

MR. MCINNES: How did you get notice of this meeting?—A. Mr. Harrison came personally to the house and told me.

Q. There has been some suggestion there was notice read from the pulpit that there would be a meeting of the Session at this time; you were at the church service the day before that?—A. Yes.

Q. Or on a previous Sunday?—A. Yes.

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Defendants'
Evidence.

No. 11.
W.H. McKay.
Examination
—continued.

Q. Was any such notice read?—A. None that I heard.

HIS LORDSHIP: You were at church that Sunday?—A. Yes.

Q. If there had been a notice read you would have known about it?—A. I would think so.

MR. MCINNES: Tell us what happened at this meeting of the Session with Mr. Johnston?—A. As far as I am concerned, Mr. Johnston asked, he took us individually, first he asked Robertson then he asked McDonald, then he came to me, I was the third person sitting there, he asked me if I was willing to go over with the non-concurring church as an Elder; I refused, I said no; then he suggested perhaps they would elect new 10 Elders, if I would accept an Eldership if elected by a new vote; I said I would not; I would not consider the matter at all.

Q. Give in detail about this question of electing Elders, was there any resolution passed or any conclusion arrived at that new Elders would be elected?—A. There was no resolution passed whatever that day, there was talk about the probability, a suggestion as it were, that they must make new Elders, but there was no resolution passed that day referring to Elders at all.

Q. Was there any conclusion even if no resolution was passed?—A. None whatever. 20

Q. There has been some discussion about whether the Elders resigned; so far as you are concerned, did you resign?—A. No, sir.

Q. You said nothing to lead any person to believe that you did resign?—A. No, sir.

Q. What discussion was had with the other members of the Session?—A. Well, Mr. Robertson was the first man that Mr. Johnston approached. Robertson gave us to understand.

MR. STEWART: Let us have what he said.

Q. Give us what was said to the best of your recollection?—A. Robertson said he was a unionist and he would like to remain in the 30 unionist church and if they were going to form a non-concurring church he would go as an Elder in that church, he would agree to that, but if there was another vote taken he would vote union and he would go union.

Q. What did the others say?—A. McDonald said pretty much the same; Gunn refused entirely; Fraser is an old man and he was very hard to make hear; he said he was an old man and he thought he was just satisfied where he was; those were the words he used.

Q. So you adjourned after that discussion did you?—A. Yes.

Q. These papers Exhibits A and B were handed to you; tell us what you know about this requisition for a meeting?—A. These are petitions 40 that were circulated around the congregation signed by those who wanted to have a meeting, to have a second vote on the question of union. The Session were all a unit in reference to holding a second vote if they ever got an opportunity they were agreed to hold a second vote. And this petition came to the members.

HIS LORDSHIP: You mean they were united in favour of holding a vote?—A. Yes, this petition came to them and they signed the notice for calling a meeting.

Q. They signed this notice Exhibit B?—A. Yes.

Q. Do you know what was done with that notice with reference to Harrison, that would be the notice which was read on Sunday, the first Sunday that was read, was it presented to Harrison first, was he requested to read it?—A. I presented it to Mr. Harrison and asked him if he would read the notice, this notice I have in my hand, and he would not give me any answer; he argued that we could not call a meeting, that it was no good and so and so; I told him I did not come to discuss questions of that kind, I came to ask him to read the notice; after asking
10 him seven or eight times he said he would not. I told him the notice was going to be read and I would read it myself.

Q. What resulted then?—A. The service opened and he went on with the service until he made his announcements; whenever he finished making his announcements I read the notice; after that he went on with the service and gave out his subject about the middle of the service.

Q. You read it standing up did you?—A. Yes in the choir box.

Q. The choir stand is, there are sections alongside the pulpits on an elevated platform?—A. Exactly.

Q. And you read the notice as it appears, that notice you have
20 in your hand?—A. This is the very notice I read that I have; it was signed by all the Elders, nine in number. I did not read the names, I said it was signed by all the Elders, nine in number. This is dated the 18th of July.

Q. It was read on Sunday the 19th of July by you?—A. Yes.

Q. The next Sunday?—A. The next Sunday Dr. Johnston himself came to preach and it was read that day by Mr. Robertson.

Q. Do you know whether Mr. Johnston was asked to read the notice?
—A. I think so; I know he was.

Q. When was it read?—A. Mr. Johnston preached the sermon, he
30 prayed and pronounced the benediction of course that was understood that the service was then dismissed, he did not give Robertson any chance to read it whatever until the service was dismissed, until the benediction was pronounced. He preached a sermon, made a short prayer, pronounced the benediction, and he said the service is dismissed. So Mr. Robertson got up and read the notice after that.

Q. That was immediately after?—A. Yes, immediately after.

Q. This notice calls for a meeting to be held on the 27th of July 1925 at 2 o'clock? Were you present at that meeting?—A. Yes.

Q. You were appointed secretary of that meeting?—A. I was
40 chairman.

Q. The minutes were kept by C. H. McKay, he was appointed secretary?—A. Yes.

Q. Will you say if that minute I show you represents what was done?
—A. Yes.

Q. There was a motion too? You stated the object of the meeting?—A. Yes.

Q. You said the meeting was to take a vote according to the notice given on the two previous Sundays; the resolution passed purports to be this, "Resolved that St. Luke's Presbyterian Church of Salt Springs

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No. 11.
W.H. McKay.
Examination
—continued.

concur in the union church as provided for by, etc.”; that was the resolution that was moved?—A. Yes.

Q. The next resolution, was that how the vote was taken?—A. Yes.

Q. It was resolved to take a vote by a standing vote; that motion carried?—A. Yes.

Q. Scrutineers, Mr. McLeod and Mr. Fraser, to take the vote were appointed?—A. Yes.

Q. You asked those in favour of the resolution to stand until they were counted?—A. Yes.

Q. And the names of those who voted were taken down in writing? 10
—A. Yes.

HIS LORDSHIP: Did everybody at the meeting vote?—A. All that were entitled to, all the church members.

MR. MCINNES: It was communicants only that voted?—A. That is all.

Document marked Exhibit C.

Q. Exhibit C is the minutes of the meeting referred to?—A. Yes.

Document marked Exhibit D.

Q. Exhibit D is a list of those who voted that was taken down?—
A. Yes. 20

Q. Since that vote supply has been furnished you by the United Church of Canada?—A. Yes.

Q. And the ministers of the United Church of Canada have been carrying on the devotional exercises on Sundays?—A. Yes.

Q. You had service in the evening of the last day, that is on the 26th of July in the afternoon by Rev. Mr. Farquhar?—A. Mr. Farquhar did preach there on the same Sunday that Mr. Johnston preached in the evening; at 3 o'clock Mr. Farquhar read the notice also at the afternoon service.

HIS LORDSHIP: He is a fully ordained clergyman was he?—A. As 30 far as I know, I think he is.

MR. MCINNES: He had been minister of St. Andrew's Church, New Glasgow, and had been minister there some three or four years.

HIS LORDSHIP: When did he read it, during the service, from the pulpit?—A. He did in the evening yes, at 3 o'clock.

MR. MCINNES: Was there a full congregation in attendance?—A. Quite a number.

Cross-
examination.

Cross-examined by MR. SINCLAIR.

Q. There was no notice given by Mr. Johnston that there would be service in the afternoon?—A. No. 40

Q. You were not in the habit of having service at Salt Springs in the afternoon?—A. No.

Q. This was practically the first one you had had for some time?—
A. Yes.

Q. It was just a unionist meeting, there were none of the antis?—
A. Yes, some; all good people out there.

Q. This list marked Exhibit D of the people who voted on this so called second vote; did you make that list?—A. No, the scrutineers did; they took it down.

Q. Who were they?—A. The names are there, J. W. Fraser and Neil McLeod, they were appointed.

Q. You saw them taking the list down?—A. Yes.

Q. Who did you get the list from?—A. From the scrutineers at the very time.

Q. It has been in your possession ever since?—A. I gave it to the
10 Clerk of the Session, that is Mr. McDonald.

Q. After the meeting?—A. Shortly after the meeting, yes.

Q. Since then you have not seen that until Mr. McInnes gave it to you just now?—A. No.

Q. The call of the meeting was signed Exhibit B, I understood you to say there were nine Elders signed this; were there nine in the Session of Salt Springs?—A. Yes.

Q. Will you give us their names?—A. A. C. McDonald, he is the clerk; R. A. Robertson, D. H. Ross, Munro Gunn, William Fraser, John R. Young, Rod McKay and myself and Mr. George Gray; I think that makes
20 nine if I did not omit any.

Q. When was Gray elected an Elder?—A. Mr. Gray, there is a little history connected with that part of it.

Q. Can you tell me when he was elected?—A. He was elected in what we call the Free Church, he was formerly a Free Church Elder, he joined the Kirk and the two congregations were united and he came in.

Q. You say that when the Kirk and the Free Church were united in Salt Springs Mr. Gray became one of your Elders?—A. That is right, yes.

Q. Now in answer to my learned friend, Mr. McInnes, you said the
30 notice was read at the conclusion of the service by Mr. Robertson?—
A. Yes.

Q. You said that Mr. Johnston closed the service with prayer and then he pronounced the benediction?—A. Yes.

Q. That is the usual customary method of closing in the Presbyterian Church?—A. Yes.

Q. There was nothing unusual about that?—A. No, I suppose not.

Q. And that then the congregation very naturally began to disperse?
—A. They did, some of them.

Q. There was nothing unusual in that?—A. I suppose not.

Q. You know very well there was nothing unusual?—A. Certainly
40 not.

Q. I suppose as long as you have been a member of the Salt Springs congregation the method of dismissing the congregation is to have prayer and the benediction?—A. Sure, yes.

Q. This petition Exhibit A when was the first time you saw it?—
A. Well, I saw it; there were four or five petitions on different sheets when I saw it.

Q. Did you ever see it complete?—A. After it went around all the congregation I saw it.

*In the
Supreme
Court of
Nova Scotia.*

Defendants'
Evidence.

No. 11.
W.H. McKay.
Cross-
examination
—continued.

Q. When would that be?—A. That would be probably two or three days before the notice was read.

Q. Who showed it to you?—A. I saw it, I think, at Salt Springs, there were, may be, half a dozen who had those petitions; I saw it there.

Q. The petitions after they had been circulated among the congregation were gathered in one petition?—A. Yes.

Q. Who had the custody of that petition?—A. It was supposed to be the Clerk of the Session.

Q. Did the Clerk of the Session have it?—A. I don't think I can answer; I had it awhile. 10

Q. Did you have the completed list?—A. Yes.

Q. Who did you give it to?—A. I filed it in the Clerk's book and gave it to the Clerk of the Session.

HIS LORDSHIP: Was that two or three days before the meeting was called?—A. It would be about a day or two after the vote was taken; the vote was taken the same day.

MR. SINCLAIR: How long did you have it in your possession before you gave it to the clerk?—A. Probably a week.

Q. Now coming back to this meeting of the Session that Mr. Johnston had; how do you constitute a meeting of Session?—A. By prayer. 20

Q. Was this meeting of Session constituted by prayer in the ordinary manner?—A. Yes.

Q. Did you take any objection to the presence of the Rev. Robert Johnston at the meeting?—A. No, I don't think I did.

Q. You know whether you did or not?—A. I did not, no.

Q. Was there any discussion about re-electing Elders?—A. No discussion whatever more than Mr. Johnston said they would have to appoint new Elders.

Q. Why should they have to appoint new Elders?—A. Because the old fellows would not act. 30

Q. You did not want to have anything to do with the Presbyterian Church, you wanted to have to do with the United Church?—A. I made up mind and I was going there.

Q. And you would not act with the Continuing Presbyterian Church?—A. No, I would not, no.

Q. And that is the position that two other members of the Session, Mr. Gunn and Mr. Fraser, took; they took the same position you did?—A. Yes.

Q. And they would not act?—A. Yes.

Q. Therefore it would be necessary to appoint some new Elders?—A. To carry on, I suppose they had to. 40

Q. You said there was no provision made for doing this?—A. Not that I heard.

Q. You have not a very clear recollection, it may have been done?—A. Pretty good.

Q. Are you prepared to say it was not done?—A. There was talk of getting new Elders, that is all.

Q. Was there talk of having an election?—A. No, there was no talk of having an election.

Q. There was no talk of having any Elders elected?—A. There was talk of making new Elders, when they were to be made was not decided.

Q. There was some talk of making; that means electing; what is the means in the Presbyterian Church of making Elders?—A. Well you better turn up the Blue Book.

Q. Do you want to say that you do not know the method of making new Elders?—A. I suppose it had been spoken about in the Session meetings first.

Q. As a matter of fact are they not elected?—A. They are elected, 10 yes, by the congregation.

Q. If they were going to make new Elders they had to elect them?—A. Yes.

Q. You say, there was no time set for the election to be held?—A. No.

Q. Are you positive of that?—A. I am positive.

Q. You are positive there was no talk of an election?

HIS LORDSHIP: I understand this witness says it was talked of that they had to make new Elders and no one called it an election and no day was fixed.

MR. SINCLAIR: You would understand that the making of Elders 20 would be the electing of them?—A. There was no decision come to.

HIS LORDSHIP: Which means that no decision was come to that there should be an election; they said they would have to have them of course, and before they could get them they would have to have an election.

MR. SINCLAIR: This witness says there was no date fixed.

Q. The making of Elders is the electing of them?—A. Yes.

Q. And there is the inducting of them afterwards?—A. The ordaining, yes.

Examined by MR. McINNES.

Q. So far as the Session is concerned they passed no resolution or 30 took no step to join with the new Presbytery of the non-concurring churches?—A. No.

Q. Now, arising out of Mr. Sinclair's examination, I want to call your attention to the service Mr. Johnston held on the 26th of July; was there a collection taken that time?—A. Not that day.

Q. Were any announcements read?—A. None.

Q. Was there any opportunity for Mr. Robertson to read the notice during the service while it was being conducted by Mr. Johnston?—A. It was impossible for him to read it unless he interfered.

Q. As far as you know, did he or the members of the congregation 40 know that Robertson was to read the notice?

MR. STEWART: Surely this witness cannot speak as to that.

HIS LORDSHIP: It was read the previous Sunday, and they no doubt everybody expected it was going to be read again, it is a question of inference.

*In the
Supreme
Court of
Nova Scotia.*

Defendants'
Evidence.

No. 11.
W.H.McKay.
Cross-
examination
—continued.

Re-
examination.

*In the
Supreme
Court of
Nova Scotia.*

No. 12.

Evidence of Robert A. Robertson.

Defendants'
Evidence.

ROBERT A. ROBERTSON, sworn, Examined by Mr. McInnes.

No. 12.
Robert A.
Robertson.
Examination.

Q. You are a member of the Session of St. Luke's Presbyterian Church, Salt Springs?—A. Yes.

Q. Were you present at the meeting at which Mr. Johnston was present on the 10th of July?—A. Yes.

Q. Did you resign at that meeting?—A. No.

Q. Just tell us what happened at the meeting so far as the resignation of the others is concerned and dealing with your individual case?—A. Mr. Johnston was present, I think perhaps the first there, he was there when I arrived, I think perhaps I was nearly the last, McDonald I think was later than I was. Mr. Johnston opened the Session with prayer and then we went on to an informal discussion and a good deal of it did not amount to much until finally we came to the question of taking service in the United Union Church or the Continuing Presbyterian Church. I think Mr. Johnston asked me first if I was willing to take service in the Continuing Presbyterian Church as an Elder.

Q. You mean take service as an Elder?—A. Yes, I said I would under certain conditions; I said I felt myself entirely on the side of the 20 unionists, but I wished to continue going to the Salt Springs Church and that I would use my influence in the Church as a member and otherwise to bring about union at any time it might be in the future. Mr. Johnston asked me what I meant by using my influence, if I was to use propaganda throughout the congregation; I said no, but as I went in among the people I would use my influence to promote union. Well, he said, "that is quite satisfactory"; then it went on, he asked.*

* sic.

Q. At this stage, is that the conclusion of the conversation, was there any talk about resignations?—A. Not just at that time. Mr. Johnston asked McDonald the same question and he answered practically the same 30 words as I did, perhaps not quite in as many words but practically the same words. He asked Gunn and McKay the same question and they said, no, we will not have anything to do with the Continuing Presbyterian Church, we cannot conscientiously do so, and when McDonald and myself consented McKay and Gunn said there is no use in us staying any longer and they commenced to button their coats. I said, no, it is not so. Then Mr. Johnston said "we will have to have new Elders, I said, before we go Mr. Johnston we must have an understanding, I said I am willing to give you my resignation in writing," that was with the intention of leading the way to a better understanding among our people. And 40 he said "Well, I don't think it is necessary," or words to that effect. I inferred from his words that he thought it was not necessary in my case, being willing to continue. There was some words. It was a pretty high pitched meeting. There was some words. It was reported in the press, if I am not mistaken, that if the Elders did not consent to co-operate—

Q. You say there was tense feeling at the meeting, but you must not go outside of just what happened at the meeting; tell me anything that was said: was there anything said about what appeared in the press, if that was said at the meeting?—A. Mr. McKay asked Mr. Johnston what he meant by saying that they would take drastic measures to remove the Elders.

Q. Was there any statement by Mr. McKay that that statement had been made in the press before he asked Mr. Johnston that question?—A. He asked him what was the meaning; he said it was to take us by the

10 neck and choke us out.

Q. That was Mr. McKay?—A. Yes.

Q. How did this question of McKay's come up; was there any reference made by Mr. McKay at that meeting to a statement that appeared in the press that the Elders did not concur in the drastic measures taken with them?—A. No, I don't think so.

Q. McKay just asked the question?—A. Yes.

HIS LORDSHIP: He asked the question of Mr. Johnston?—A. Yes.

MR. MCINNES: What was McKay's question?—A. He asked Mr. Johnston what they meant or what he meant by saying there were drastic

20 measures to be taken to remove the Elders.
Q. And you said that McKay continued this question by saying what?—A. He said, does it mean that they are to take us by the neck and choke us out.

Q. What did Mr. Johnston reply?—A. He just shook his head and passed it off, he did not reply as I remember.

Q. The meeting then broke up?—A. Yes.

Q. I want to call your attention to a statement that Proudfoot another witness made on the stand to-day that you stated to him that the Session had resigned; did you make such a statement, and if so

30 under what circumstances did you make it?—A. As I remember, I called on Mr. Proudfoot on some other business and when we completed our business we discussed the question. I told him that Mr. Gunn and Mr. McKay refused to take service, to act as Elders in the Continuing Presbyterian Church. I also told him that I offered my resignation to Mr. Johnston in writing, and there was no satisfactory outcome and I said so far as I could recollect I am not positive about using the word "resign," I am not in a position to be positive I did not use it.

Q. But you gave him to understand?—A. That was my intention. I wished to convey that it was taking service or acting as Elders in the

40 Continuing Presbyterian Church.

Q. Practically you told him in conversation about what you told the court to-day what happened at the meeting?—A. Yes, just about the same thing as far as I can remember.

Cross-examined by MR. STEWART.

Q. I understood you to say what you told Mr. Proudfoot was what you said in court here to-day?—A. I would not go as far as that.

Q. I understand that was the answer you gave to the last question of counsel?—A. In general conversation.

*In the
Supreme
Court of
Nova Scotia.*

Defendants'
Evidence.

No. 12.
Robert A.
Robertson.
Examination
—continued.

Cross-
examination.

*In the
Supreme
Court of
Nova Scotia.*

Defendants'
Evidence.

No. 12.
Robert A.
Robertson.
Cross-
examination
—continued.

Q. How long did you discuss the matter with Proudfoot?—A. A very few minutes, possibly less than that.

Q. Was anything said about an election of Elders at this meeting of July 10th the meeting of the Session?—A. There was nothing said about an election, there was something said about replacing them.

Q. Replacing them with new Elders or other Elders, is that what was said?—A. Well, replacing them.

Q. Was the length of notice to be given for voting discussed?—A. No, there was no question as to the time for voting or the length of notice.

Q. Or the method of voting?—A. No. 10

Q. By putting the paper in an envelope and the envelope in the collection plate; was nothing of that kind said at the meeting?—A. No.

Q. Was the word "re-election" used with reference to your own future attitude or your own future service in the church?—A. Well, Gunn got up, when they commenced to button their coats, and said they were through, I said no we are not through; I said "if the Elders resign in a body I shall resign with them and we may as well remain until it is settled," because they went out before the question was settled and we all left together.

Q. Did Gunn make any reply to this statement of yours?—A. No, 20 I don't think so.

Q. Did W. H. McKay make any remark when you said this?—A. He said there would be no use in us staying any longer.

Q. What was the remark previous to him saying there was no use of him staying any longer?—A. Well he seemed to be a little huffed with Mr. McDonald and I seemingly taking sides with the Continuing Presbyterians.

Q. I thought you made it clear you were not taking sides with the Continuing Presbyterians?—A. That is the inference they accepted from my attitude. 30

Q. It was with you they were annoyed you think, with you and Mr. McDonald?—A. I imagine they were, yes.

Q. It was not with Mr. Johnston?—A. Well, I will include Mr. Johnston too.

Q. You and Mr. McDonald and Mr. Johnston were the three with whom McKay and Gunn were dissatisfied, is that what you think?—A. Yes.

Q. Were there any heated words between Johnston on the one hand and McKay on the other?—A. There was some discussion pretty heated, but I do not know it was on the propaganda used during the campaign. 40

Q. How long previously had these words been used?—A. The heated words?

Q. The words that were the subject of the heated words?—A. Well, before the start, towards the start of the meeting, and Mr. Johnston kind of cooled the thing down a little, and we went on then.

Q. There were no words used between Mr. McKay and Mr. Johnston?—A. Not personally, no.

Q. Nor between Gunn and Johnston?—A. No, no hot argument.

Q. Was the expression "Continuing Presbyterian Church" used that day at that meeting of the Session?—A. I don't think so. 50

Q. But the expression "Non-Concurring Presbyterians" was used, was it?—A. I would not be positive; The Anti-Union Church or Non-Concurring Church, either of those might have been used, I cannot be positive which.

Q. Was it not the "Non-Concurring Presbyterians," was that not the expression used?—A. I would not be positive.

Q. Either that or the "Anti Union"?—A. Well to me the three terms meant the same thing.

Q. You don't remember which of those two expressions were used?
10 —A. No.

Q. You say when you arrived at the Session meeting Mr. Johnston was already there?—A. Yes.

Q. Who else was there?—A. If I remember right, McKay and Gunn came in almost at the same time as myself, just a little ahead of me perhaps; I think the three were there when I came.

Q. McDonald was later than yourself?—A. Yes.

Q. Fraser arrived when?—A. I think he came with Mr. McKay and Gunn as far as I remember.

Q. Was Harrison there when you arrived?—A. I did not see
20 Harrison.

Q. It was after your arrival that the meeting was opened with prayer?—A. Yes.

Q. I think you said at one stage Mr. Johnston said "We must have new Elders"; do you remember him saying that or that being said?—A. No, I do not.

Q. What is your recollection as to that?—A. Well, my recollection was—

Q. What is your recollection of what Mr. Johnston said with reference to the necessity for new Elders?—A. That they would have to strengthen the Session, I think, or words to that effect, or elect new Elders, I am not sure.

Q. What reply was made to that by any of the Elders?—A. I don't
30 recollect any reply being made.

Q. Did you not say that you were ready to write out your resignation?
—A. I did.

Q. And Mr. Johnston said that would be unnecessary?—A. Yes, or words to that effect.

Q. When you said that you would resign in writing, Johnston said it was not necessary; what followed after that, did the subject drop?
—A. Yes.

Q. Nothing more was said about resignation?—A. Well, Gunn said
40 that we need not remain any longer.

Q. How long did this Session take?—A. Not very long.

Q. When did you start, what time of the day, morning, afternoon or evening?—A. In the afternoon.

Q. What time in the afternoon?—A. Around about 2 or half past.

Q. It was over when?—A. I could not be positive.

Q. Was it an hour's meeting?—A. No.

Q. About half an hour?—A. I should judge about half an hour.

HIS LORDSHIP: Did you think you were an Elder when you went out?—A. Yes I did.

No. 13.

Evidence of Munroe Gunn.

*In the
Supreme
Court of
Nova Scotia.*

Defendants'
Evidence.

No. 13.
Munroe Gunn.
Examination.

MUNROE GUNN, Sworn, Examined by Mr. McInnes.

Q. You are a member of the Session of St. Luke's Presbyterian Church, Saltsprings?—A. Yes.

Q. Were you present at the meeting on the 10th of July when Robert Johnston was present?—A. Yes.

Q. Did you preside at that meeting?—A. No.

Cross-
examination.

Cross-examined by MR. STEWART.

Q. Was there any talk of your resigning at that meeting of July 10th?—A. He asked me if I did not tell somebody that I wanted to resign.

Q. Mr. Johnston asked you that that day?—A. Yes.

Q. What was your reply?—A. My reply was that it was not union or anti-union with me. It was for the sake of holding the congregation together.

Q. You said you were not union or anti-union?—A. Yes.

Q. To Mr. Johnston during this meeting of the Session of July 10th?—A. Yes.

Q. Were all the other Elders there at the time?—A. Yes. 20

Q. Did you answer his question as to whether you wanted to resign or not?—A. Yes, I answered any questions put to me.

Q. How did you answer the question as to whether you wanted to resign or not?—A. I said "No, sir."

Q. You said you did not want to resign?—A. That I did not want to.

Q. You said you wanted to continue as an Elder, did you?—A. Yes.

Q. The others were there when you made this statement?—A. Yes.

Q. Was that just at the opening of the meeting just after the meeting commenced?—A. No, Mr. Robertson spoke before that and Mr. McDonald and I think Mr. McKay; probably I was before McKay. 30

Q. Had Mr. Johnston asked them the same question?—A. Yes.

Q. What was their answer, take Robertson?—A. Robertson said he was willing to resign for the good of the cause.

Q. What did McDonald say when Mr. Johnston asked him the question?—A. Practically the same; he said he was willing to resign for the good of the cause, or words to that effect, that is what I understood.

Q. What did McKay say?—A. He said he was not willing to resign.

Q. What did Fraser say?—A. Well, he said he had been so many years in the Sessions he thought it was hardly worth his while.

Q. Worth his while to what?—A. To resign or to continue as he 40 was, he felt he was too old a man to make any change.

Q. Did Johnston ask you if you were willing to act as an Elder in the Anti-Union Church?—A. Yes.

Q. What did you say?—A. "No, Sir."

Q. Did he ask Mr. McKay the same question?—A. Yes.

Q. What did McKay say?—A. "No."

Q. Did he ask Mr. Fraser?—A. Yes, I think he did.

Q. To the best of your recollection what did Fraser say?—A. It was to that effect that he thought he was too old to make any change, or something like that.

Q. Did he ask that same question of Robertson?—A. No, I don't think he did.

Q. Did he ask that question of McDonald?—A. No, I don't think he did.

10 Q. That is the best of your recollection?—A. Yes.

Q. This meeting of July 10th was the last meeting of Session before the second vote was it not, this was the last meeting of the Session before the second vote was taken?—A. Yes.

Q. Do you remember any discussion at this meeting of July 10th about the election of new Elders?—A. I cannot remember of anything said.

Q. Was it not said that notice of the election of Elders should be given on two Sundays?—A. I did not hear it.

20 Q. You are not prepared to say it was not said?—A. Sometimes I cannot hear all that is said on account of being a little deaf.

Q. Was it not said at that meeting that the voting should be by the members writing the names of proposed Elders on a slip of paper and putting that paper in an envelope on the collection plate?—A. I was not present at that time, I don't think; I am a long piece from the Church.

HIS LORDSHIP: Did anything of that kind take place on July 10th the day you were there?—A. I cannot remember that.

No. 14.

Evidence of D. H. Ross.

D. H. ROSS, Sworn, Examined by Mr. McInnes.

30 Q. You are a member of the Session of St. Luke's Church, Salt Springs?—A. Yes.

Q. You have been a member of the Session for some time?—A. Quite a number of years.

Q. Were you present at a meeting on the 10th of July when Mr. Johnston was present?—A. No.

Q. Did you have any notice of that meeting?—A. Yes, I heard about it.

Q. How did you hear about it?—A. I think it was through Mr. McKay by conversation.

40 Q. Did you ever resign as an Elder of the Church?—A. I was never asked to.

Q. And you never did?—A. No.

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*In the
Supreme
Court of
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Defendants'
Evidence.

No. 13.
Munroe Gunn.

Cross-
examination
—continued.

No. 14.
D. H. Ross.
Examination.

*In the
Supreme
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Defendants'
Evidence.

No. 14.
D. H. Ross.
Cross-
examination.

Cross-examined by MR. STEWART.

Q. How long since you have attended a meeting of the Session of this congregation?—A. I was at all the meetings right along.

Q. Have you been at any during 1925 prior to July 10th?—A. I was at them all I think likely.

Q. Do you remember any being held this year prior to the one on July 10th?—A. I don't just remember, I think there was meetings right along.

Q. But you cannot speak positively about any prior to that date to July 10th?—A. No. 10

HIS LORDSHIP: Were you at the meeting of July 10th?—A. No.

Re-
examination.

Re-examined by MR. McINNES.

Q. What time did McKay tell you that there was to be a meeting of the Session, was it before the meeting or after?—A. It was before.

Q. Was it by telephone or word of mouth?—A. I think we just met somewhere, he just told me about it, just happened to tell me, I just don't remember exactly where it was; that is the way I heard about it.

Q. That is the only notice you had?—A. That is the only notice I had, as far as I can remember. 20

HIS LORDSHIP: Did he tell you where the meeting was to be held and what hour?—A. I think so.

Re-cross-
examination.

Re-cross-examined by MR. STEWART.

Q. Was this a day or two before the meeting?—A. Yes, shortly before the meeting.

Q. Did he not tell you that Mr. Harrison had asked him to tell you?—A. I don't remember that he might have.

Q. Did he tell you the purpose of the meeting?—A. No.

Q. You had lots of time to get there after getting this notice, had you not?—A. Yes. 30

MR. McINNES: I think I have no further evidence to offer except that I want to offer the Communion Roll.

HIS LORDSHIP: I will receive that any time.

MR. STEWART: I may want to examine as to the day on which it was made up.

MR. McINNES: I am instructed that on the Communion Roll there are from 160 to 165 communicants. He suggested this morning there were over 300. I think my learned friend is taking in both branches of the congregation. When the Communion Roll has been excised there are about 165 communicants on the roll. 40

MR. STEWART: That is just the point on which I will have to examine, because we have returns of the Presbytery which show a very different number.

MR. McINNES: They include both congregations.

MR. STEWART : Yes, and a fair allowance for the other congregation is about 60. Possibly it is unimportant because if the ballot on the second occasion was incorrect it would not make any difference what the number was.

HIS LORDSHIP : If you do not agree about the Communion Roll then evidence may be taken about it. I will hear it in Halifax any time if necessary.

MR. McINNES : I am tendering the papers that I have had marked, including document marked Exhibit D.

*In the
Supreme
Court of
Nova Scotia.*

Defendants'
Evidence.

No. 14.
D. H. Ross.
Re-cross-
examination
—continued.

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CASE CLOSED.

No. 15.

Reasons for Judgment of Harris C.J.

HARRIS C.J. : This is another of the cases arising under the two Acts known as "The United Church of Canada Act," Chapter 100 of the Acts of the Parliament of Canada for the year 1924 and Chapter 122 of the Acts of the Legislature of Nova Scotia for the year 1924.

There was a meeting of the Salt Springs Presbyterian congregation held on December 22, 1924, and there was a vote of non-concurrence in the Union, the members in full communion voting 55 for and 69 against, 20 and adherents 9 for and 19 against.

A second meeting of the congregation was held on the 27th July, 1925, when the vote was 100 for and 0 against Union. This vote was restricted to communicants and there were 164 on the roll, *i.e.*, after allowing for names of persons absent from the Province.

The principal controversy in the action is, as to the regularity of the proceedings leading up to this second vote, and as to whether or not a second vote could legally be taken at the time it was.

After the vote of December 22nd, 1924, against Union, the Minister, who favoured Union, left Salt Springs, and the Reverend Robert Johnston, 30 of New Glasgow, was appointed Interim Moderator, on the 5th of May, 1925, by a body designated as the Presbytery of Pictou. Whether there was a Presbytery of Pictou on the 5th of May, 1925, outside the United Church depends upon the interpretation to be placed upon the two Acts, already referred to, and upon the legality of a meeting and certain resolutions passed thereat by the non-concurrent members of the General Assembly after the General Assembly of the Presbyterian Church had at Toronto voted to enter the Union. The General Assembly had adjourned to a date after that set for the Union to take effect, and the opponents of Union met after the adjournment and claimed that the adjournment was 40 illegal and that they were the General Assembly and had all the power of that body. It was further suggested that even if the acts of the so-called General Assembly done after the adjournment were illegal still there

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Reasons for
Judgment of
Harris C.J.,
December
1925.

*In the
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No. 15.
Reasons for
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Harris C.J.,
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—*continued.*

was a Presbytery of Pictou in connection with the non-concurring Presbyterian Churches which had been constituted by these Churches meeting together. Assuming this to be so, there was nothing before me to show that such a meeting had been held nor was there anything to show that the church or congregation of Salt Springs had become subject to or concurred in the formation of this Presbytery. The only evidence on the point would seem to negative that it ever did anything to make it a part of the Presbytery of Pictou in connection with the non-concurring Presbyterian Churches. In my opinion the meeting of the non-concurrents at Toronto after the General Assembly had adjourned was not a meeting 10 of the General Assembly, and their acts and resolutions bound no one but themselves, and it follows, I think, that the constitution of the Presbytery of Pictou in so far as it depended upon those acts and resolutions was invalid.

It may very well be that there is a valid Presbytery of Pictou constituted in some other way which may give it power to act in respect to other churches and congregations than Salt Springs. I expressly refrain from saying anything about that as it is not before me. All I say is that it is not shown that the congregation or church of Salt Springs ever assented to or became in any way subject to or under the jurisdiction 20 of the Presbytery of Pictou formed by the non-concurring congregations, if such was formed.

If I am right as to this, it seems to dispose of practically all the objections raised as to the second vote of the congregation, because it would follow, I think, that the Reverend Robert Johnston never became Interim Moderator of the Salt Springs church or congregation. It may however be useful to consider in detail the various objections raised upon the assumption that there was a Presbytery of Pictou properly constituted having jurisdiction to appoint an Interim Moderator for the Salt Springs church or congregation.

It is alleged in the pleadings that the Plaintiffs John McN. Campbell 30 and Alexander Halliday were appointed assessors by the Presbytery of Pictou and together with the Reverend Robert Johnston constituted the Session of Salt Springs congregation. There is no evidence whatever of their appointment by the Presbytery of Pictou, assuming that body had power to make such an appointment. Under Section or Rule 59 of the Rules and Forms of Procedure of the Presbyterian Church in Canada, application has to be made for the appointment of assessors, and it can only be made when there are not sufficient Elders (two in this case) to form a quorum: a condition of affairs which I do not think ever arose. 40 I do not think anything turns on the question as to the appointment of these assessors, but I thought it best to deal with it as it is raised by the pleadings.

The Reverend Robert Johnston was away almost from the time of his appointment as Moderator until the following July, and on the 10th July he went to Salt Springs and met some of the members of the Session, and they held a meeting. I am unable to say from the evidence that notice of the meeting of the Session was given from the pulpit. One witness thought it was, but on cross-examination he said he might be

mistaken, and several other witnesses swore that no such notice was given. Under Section or Rule 58 of the Blue Book, meetings of the Session are called on the authority of the Moderator either by notice from the pulpit or by personal notice to the members. The evidence is that one or two members of the Session had no personal notice and did not attend the meeting. It would therefore seem that the meeting was not a regular one apart from the question as to whether the Reverend Robert Johnston was properly appointed Interim Moderator.

It is perhaps of some significance that at this meeting the Minutes
 10 of the last meeting were not read nor were any Minutes kept of the proceedings as required by Rule 61.

It is contended on behalf of the Plaintiffs that at this meeting on the 10th July, 1925, a number of the members of the Session resigned their offices and ceased to be members of the Session.

Rule 283 provides that Elders continue Elders for life unless deposed or suspended in process of discipline. Nevertheless, they may demit the office in any particular congregation either of their own motion or when requested by the congregation or by order of a Superior Court. All Elders of the congregation are under Rule 49 members of the Session. How they
 20 may demit the office does not seem to be dealt with. I suppose "demit" as used in Rule 283 means resign or relinquish the office, but whether they can resign to the Session or must resign to the congregation by whom they are elected (Rule 277), whether the resignation can be verbal or must be in writing, and whether it has to be accepted by the Session or congregation are all matters left unanswered so far as I can find by the Rules. The only evidence on the point is that of the Secretary of the Presbytery of Pictou, the Reverend D. A. Frame, and he said a resignation must be accepted before becoming effective. If this be so,
 this meeting could not accept because it was not a regularly called
 30 meeting of the Session. It was a meeting only of some members of the Session.

There is unfortunately considerable contradiction as to what took place at this meeting on the 10th July. There is no doubt that all the Elders present were in favour of Union and the Reverend Robert Johnston was opposed to it, and he was naturally anxious to get a Session which would work harmoniously with the Continuing Presbyterian Church. There is no doubt that Mr. Johnston asked each of them if they would continue as members of the Session, and some of them said they would, and some said they would not. I think it is also likely that the election of
 40 new Elders was discussed, but the weight of the evidence is against a method of election having been agreed upon and against a time having been fixed for such an election. One of the members offered to resign in writing and Mr. Johnston told him he did not think it was necessary.

On the whole, I cannot find as a fact that any of the Elders resigned—they all swear they did not resign, but it is certain that some of them afterwards told other people that the whole Board had resigned—and I have no doubt the Reverend Robert Johnston thought they had resigned, but there was nothing, so far as I can find from the evidence, which amounted to a resignation or laying down of the office. There was some

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—continued.

discussion about resignation, and some of the Elders expressed their willingness to resign if by so doing they could bring peace to the congregation, but there is an absence of evidence of any specific thing done by any of these Elders which could or ought to be construed as a formal resignation. There is no suggestion that there was anything like acceptance of any resignation: there were no Minutes of the proceedings and the meeting itself was not a meeting of the whole Session and therefore could not bind any one; so that it is quite impossible for me to find that any of the Elders went out of office.

The next question which arises is as to the meeting of the congregation held on July 27th, 1925. What happened was that 99 members in full communion signed a written petition requesting the Elders to call a meeting of the congregation for the purpose of taking another vote upon the question as to whether the congregation should not concur in the Union of the church with the United Church of Canada. Then all the Elders signed a notice summoning the congregation to a meeting for the purpose of voting. I quote this notice in full:

“ Notice is hereby given that a meeting of the congregation shall
“ be held at the Church on the 27th day of July, 1925, at 2 o'clock
“ p.m. for the purpose of considering and voting upon a resolution 20
“ that St. Luke's Presbyterian Church, Salt Springs, concur in the
“ Union of the Churches provided for by Chapter 122 of the Acts of
“ Nova Scotia for 1924, and that said St. Luke's Presbyterian Church
“ at Salt Springs shall become part of the United Church of Canada.
“ The meeting and the voting there shall take place under the
“ provisions of said Section 8 of said Chapter 122 of the Acts of
“ Nova Scotia, 1924.

“ Dated at Salt Springs, N.S., this 18th day of July, 1925.

“ D. H. Rodd,

“ W. H. MacKay,

“ William Fraser,

“ John R. Young,

“ Alex. C. McDonald.

Elders

30

“ Rod MacKay,

“ Munro Gunn,

“ R. A. Robertson,

“ George Gray.

Elders.

“ Read by W. H. MacKay on Sunday 19th of July, 1925.

“ Read by R. A. Robertson on Sunday 26th of July, 1925.

“ And also by Rev. Farquhar at evening service, 26th of July, 1925.” 40

This notice, the minister, Mr. Harrison, who was occupying the pulpit on July 19th, refused to read, and it was read on Sunday by one of the Elders, William H. MacKay, from the choir stand near to the pulpit during the service.

On July 26th the Reverend Robert Johnston came to take the service and he also declined to read the notice when requested to do so by the Elders. For some reason not explained there was no collection on this Sunday, and consequently there was not the usual break or interval in the service for giving out notices, and the benediction was pronounced before the Elder got a chance to read the notice, but then it was read by Elder R. A. Robertson from the choir stand or stall. It was again read on the 26th July at a service in the afternoon in the church by the Rev. Mr. Farquhar, the officiating clergyman.

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10 First: It is objected that this meeting could not be called except by the Session, and that there was no meeting of the Session authorizing it, and it is contended that therefore the vote is inoperative.

The Blue Book provides by Section 49 that:

“The Session consist of the Minister or Ministers and Elders
“of a Congregation.”

And Section 19 provides that:

20 “Meetings of the Congregation are called by the authority of
“the Session of its own motion or on requisition in writing . . .
“of a number of persons in full communion . . . meetings
“are called by public notice read before the Congregation on the
“Lord’s Day. Such notice specifies the object of the meeting and
“is given on at least one Sabbath before the time of meeting unless
“otherwise and specially provided for.”

Section 52 provides that:

“The Minister is Moderator of the Session.”

And Section 53 reads:

30 “*The duty of the Moderator is to preside: to preserve order:
“to announce the decisions of the Court and to pronounce censures.
“The Moderator may introduce any competent business and may
“express his views upon any matter under consideration. He has
“only a casting vote.”*

There was no minister in regular charge of the congregation at this time. If the Reverend Robert Johnston was not properly appointed Interim Moderator, and if he was not the minister of the congregation, he would not be a part of the Session, and then the objection would be without substance, because the signing of the notice by all the elders would seem to do away with the necessity of any meeting; but I propose also to discuss the matter on the assumption that the Reverend Robert Johnston was properly appointed Interim Moderator. The situation
40 was, as everybody knew, that the Reverend Robert Johnston would oppose in every way the taking of a second vote on the question of Union by this congregation. His attitude throughout shows this. If a meeting of the Session had been asked for there is no reason to suppose that he would have called it; and if he had called it he would have had no vote at the Session meeting, because all the Elders were unanimously for the holding of a meeting, and the minister only had a casting vote in case of an equal division. Under the circumstances the holding of a meeting of the Session would have been a mere formality and the question is

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whether the notice given by all the Elders was not under the circumstances a good notice for the purpose. I think it was.

Second : It is objected that the notice of the congregational meeting was not properly given.

All that Rule 19 requires is that the notice is to be “ read before “ the congregation on the Lord’s Day : such notice specifies the object “ of the meeting and is given on at least one Sabbath before the time “ of meeting.”

Whatever may be said of the notice read by the Elder on the 26th July, the notice on the 19th complies strictly with Rule 19 and so does the notice by the Reverend Mr. Farquhar on July 26th : and notice on one Sunday only is called for.

It is, I think, obvious that nothing in Section 8 of Chapter 217 of the Acts of 1906 applies to this meeting. That has reference only to the annual meeting of the congregation.

Third : It was also argued that there was no provision for a second vote upon the question of Union, and that once a congregation had voted against Union no further vote was permissible. The latter part of Section 8 (a) of Chapter 122 of the Acts of 1924, N.S., specifically states that if a congregation has decided not to concur that it may at a later date decide to enter the Union.

The arguments were :

(1) That this latter part of 8 (a) was inconsistent with 8 (aa) and must be held to be repealed by 8 (aa).

I cannot see that they are inconsistent. My duty is to construe them together, and I cannot see how there can be any doubt whatever that this congregation had the right to take a second vote.

(2) That the words “ later time ” as used in the latter part of Section 8 (a) mean and refer to a period after the six months within which the first meeting could be held and do not refer to the time when the first meeting was held.

In my opinion that is an impossible construction. The section obviously refers to any later time than the time of holding the first meeting.

There was also an argument that Section 167 of the Act of 1925 applied to the case and in some way did away with the right to take a second vote.

It does not, I think, take away the right to have a second vote, which is in my opinion beyond all question conferred by Section 8 (a).

For these reasons I think the second vote was good, and the Plaintiffs’ action must be dismissed with costs.

(Sgd.) ROBT. E. HARRIS C.J.

Halifax, December, 1925.

No. 16.

Order for Judgment.

*In the
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This Action coming on for trial before the Honourable the Chief Justice, Pictou, and after hearing the pleadings, and witnesses as well for the Plaintiffs as for the Defendants, and what was alleged by Counsel for the Plaintiffs and the Defendants, the Chief Justice was pleased to reserve his decision and has now delivered the same in favour of the Defendants.

No. 16.
Order for
Judgment,
2nd Febru-
ary 1926.

Now Upon Motion of counsel for the Defendants.

10 It Is Ordered, Adjudged and Decreed that the Plaintiffs recover nothing in this action, but that the same be and it is hereby dismissed with costs.

It Is Further Ordered that the Defendants may enter judgment for such costs when taxed.

Dated at Halifax, N.S., this 2nd day of February, 1926.

(Sgd.) A. G. CUMMINGS,
Prothonotary.

(Sgd.) W. A. H., Plaintiffs' Sol.

(Sgd.) L. A. L. for Defendants.

20

No. 17.

Notice of Appeal.

No. 17.
Notice of
Appeal,
11th Febru-
ary 1926.

Take Notice that the Plaintiffs intend to appeal and hereby do appeal to the Supreme Court of Nova Scotia in banco from the whole of the decision of His Lordship the Chief Justice of Nova Scotia filed herein and dated December, 1925, and from the whole of the Order for Judgment granted thereon and dated the 2nd day of February, A.D. 1926.

30 And Take Notice of the hearing of such appeal before the said Supreme Court of Nova Scotia in banco at the Court House in Halifax in the County of Halifax for Tuesday the 9th day of March, A.D. 1926 at the hour of ten o'clock in the forenoon or so soon thereafter as counsel can be heard.

And Take Notice that upon the hearing of the said appeal the said Supreme Court in banco will be moved at the time and place aforesaid for an Order wholly annulling, vacating and setting aside the said decision and the said Order for Judgment and granting to the Plaintiffs the relief prayed for in the Statement of Claim herein.

Dated this 11th day of February, A.D. 1926.

To L. A. LOVETT, Esq., K.C.
Solicitor for Defendants.

ROD. G. MCKAY,
Solicitor for Plaintiffs.

*In the
Supreme
Court of
Nova Scotia.*

No. 18.

Agreement settling contents of Case on Appeal.

No. 18.
Agreement
settling
contents of
Case on
Appeal,
19th Febru-
ary 1926.

It is Hereby Agreed by and between the solicitors of the respective parties hereto that the following shall constitute the Printed Case on Appeal herein.

1. Statement of Claim.
2. Defence.
3. Evidence.
4. Exhibits.
5. Decision of His Lordship, the Chief Justice. 10
6. Order for Judgment.
7. Notice of Appeal.
8. This Agreement.

It Is Also Agreed that on the hearing of this Appeal either party may refer to the "Blue Book" so-called of the Presbyterian Church in Canada and any papers referred to on the trial or argument.

Dated at Halifax, N.S., this 19th day of February, A.D. 1926.

ROD. G. MCKAY,
Solicitor of Plaintiffs' Appellants.

L. A. LOVETT,
Solicitor of Defendants' Respondents. 20

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No. 19.

Reasons for Judgment.

No. 19.
Reasons for
Judgment.
(A) Rogers J.

(A) ROGERS, J., I have had the privilege of reading the opinion of my brother Graham, and I agree with the conclusions at which he has arrived, and the reasoning on which they are based.

Owing to the importance of the principles involved, I deem it well to state in my own language my own opinion, notwithstanding that there is likely to be some mere repetition.

The essential facts are as follows: 30

The Salt Springs congregation voted non-concurrence on December 22nd, 1924, and this vote was validated by Chapter 126 of the Acts of the Province of Nova Scotia, 1925.

The same congregation purported to vote into the Union at a meeting held on July 27th, 1925, thus reversing its position. This vote was taken by virtue of the last sentence of Section (8a) of the Nova Scotia Act, reading as follows: "Should such congregation decide in the manner aforesaid at any time later to enter the Union and become part of the United Church, then this Act shall apply to the congregation and all the property thereof from the date of such decision." By the words 40 "in the manner aforesaid," used in the sentence just quoted, is meant

at a meeting of the congregation regularly called and held as in the case of a vote of non-concurrence.

The Act of Union came into force on the 10th day of June, 1925, although by its provisions found in the Dominion Act, it was in force for the purpose of taking votes of congregations on the 10th of December, 1924. (Chapter 100, Section 2.)

The case for the Plaintiffs, who are members of the Salt Springs congregation, and were and are against Union, is that the meeting of July 27th, 1925, was ineffective on the simple ground that no meeting
10 of the Session of the congregation was held authorizing the calling of the meeting for the purpose of taking a second vote and that in the absence of the authorization of the Session, a valid meeting could not be held.

Other objections as to the regularity of the proceedings were taken, but I do not deem it necessary to deal with them. In my opinion this contention of the Plaintiffs must be given effect to, and it must be held that the meeting of July 27th, 1925, was not "a meeting of the congregation regularly called and held" in accordance with the requirements of Section 8 (a).

20 All Presbyterian congregations, including that of Salt Springs, as well as the higher governing bodies of the Church, are regulated by the rules and forms of procedure adopted by the General Assembly in 1889 and revised in 1919, and these rules in the prefatory note of the 3rd edition are referred to as setting forth "the law and practice of the Church." It would, I think, be quite out of the question to undertake to determine the regularity and validity of the acts of the congregation or its Session without reliance upon some such body of rules. However, even if there were no specially prescribed rules, the principles of the common law
30 are quite in accord with the specific rules which have been prescribed.

By Rule 19 of the group of rules dealing with the congregation, it is provided that "meetings of the congregation are called by the "authority of the Session of its own motion or on requisition in writing ". . . of a number of persons in full communion . . ." It is clear, upon the proper construction of this rule, that the Session is the authority which must call meetings of the congregation, and it may call such meetings either of its own motion or upon being required in writing by a number of communicants so to do. If the Session does not act of its own will, it can be compelled to act upon being duly requisitioned
40 in writing. The preliminary authority of the Session is necessary.

By Rule 49 in the group of clauses relating to the Session, it is provided that the Session consists of the Minister or Ministers and Elders of the congregation, and by Rule 50 one of the duties of the Session is to "call congregational meetings." By Rule 52 the Minister is Moderator of the Session, and if there are two, they preside alternately. By Rule 54, in the absence of the Moderator, or when for prudential reasons, he deems it better not to preside, another Minister of the Church having authority from him may act as Moderator pro tempore. When the Minister has been removed by death or otherwise, a Moderator pro tempore is appointed

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by the Presbytery. By Rule 28 the Moderator has power to convene the Session when he sees fit, and he is bound to do so when enjoined by a superior church court or requested by one-third of the Elders. Meetings of Session are called on the authority of the Moderator, either by notice from the pulpit or by personal notice to the members. By Rule 59 it is provided that the Moderator and two other members constitute a quorum, and that, when the number of Elders is not sufficient to form a quorum, application is made to the Presbytery for assessors to act with the other members until new Elders have been elected.

It will be observed from these provisions and from the general frame- 10 work of the regulations that the Session, consisting of the Minister and Elders, is the important governing body of the congregation, and that through the Session alone can the appropriate steps be taken to call the congregation together. The importance of the Moderator in his capacity as Minister and presiding officer, both of the Session and of congregational meetings is emphasised throughout. The provisions for meetings under the Act incorporating the trustees to hold the Church property are not inconsistent with the powers of the Session when dealing with the status of the congregation in its religious affiliations.

* *sic.*

It is indisputable ground that the Rev. *Rupert Johnston was on 20 May 5th, 1925, some six weeks before the Act of Union came into force, appointed interim or pro tempore Moderator of the congregation. The congregation had voted non-concurrence, Mr. Johnston was a prominent non-concurrent Minister, and it would appear in the regular course of events that the Presbytery of Pictou, with which the congregation was associated, should have appointed him to that position. When, therefore, on June 10th, 1925, the Act of Union, merging the Presbyterian, Methodist and Congregational Churches into one corporate body, came into effect, the position of the individual Salt Springs congregation was not affected in any way. The Presbytery of Pictou, of course, by that 30 Act, became a Presbytery associated with the United Church, but Mr. Johnston's appointment having pre-dated the Union, remained valid. The local church having previously become non-concurrent, it remained a separate and distinct congregation, with the same Moderator, the same Elders, the same Session and the same individual organization throughout.

At that time there was separation from the mother-church, so to speak, by the merging of the Presbyteries and all higher church organizations into the Union, but the individual congregation which voted non-concurrent voted for that separation and for its own individualism, 40 until the time would arrive when it might associate itself with new bodies which would be formed in the ordinary course of events into Presbyteries or other forms of association. This appears to be abundantly clear upon due consideration of all the provisions in both the Dominion and Provincial Acts. Some confusion has been caused by a suggestion made at the trial to the effect that Mr. Johnston was representing a Presbytery of non-concurrents, but I agree with the trial Judge that such a body, even if existent, did not affect the legal situation as to the Salt Springs congregation on June 10th, 1925, nor at the time of the calling and holding of the meeting of July 27th, 1925.

There was a meeting of the Session on July 10th, 1925, and it is alleged that at that meeting the Elders of the Church resigned. I agree with the finding of fact below that the evidence does not disclose that the Elders had resigned. If the Session had at that meeting determined to call a congregational meeting for the purpose of taking a second vote, and it had been taken at a meeting thus called, the proceedings could not have been well impugned. This course was not taken, and the meeting of the Session separated in confusion without having accomplished anything. It is apparent that there was a wide difference of opinion as
 10 between the interim or pro tempore Moderator and the Elders, or some of them.

The proper course on the part of the Elders would then have been, if they believed that the congregation had changed its view and now desired to enter the Union, to request another meeting of the Session under Rule 58, for the purpose of passing a resolution requiring the calling of another congregational meeting, but, unfortunately, this course was not followed. Instead of that, a number of the members of the congregation requested the Elders to call a meeting, and this they did, disregarding the Session, the only body which could call a congregational meeting,
 20 and ignoring also the Moderator. This meeting the non-concurrents regarded, and I think properly, as having been illegally called, and the result was, that when the meeting was held on the 27th July, 1925, all who voted at the meeting were concurrents, the non-concurrents neither attending nor voting. There has thus arisen an important question of law as to whether in view of the requirements of the statute and in view of the application of the prescribed rules and in view of well settled rules of the common law, the meeting of July 27th was held under such circumstances that there was a valid determination of the congregation to reverse its former verdict and to change its status so as to become
 30 a congregation of the newly incorporated United Church of Canada.

It is well settled rule (to cite the language of Dillon on Municipal Corporations, 5th Edition, Section 501, page 825) that when Boards of any kind are called upon to perform acts involving discretion and judgment in administering public affairs, they can only act at an authorized meeting duly held. The Board must act as a Board. The members cannot make a valid determination binding upon the corporation by their assent separately and individually expressed. This principle applies, in my opinion, and for very cogent reasons, to a body such as the Session of the Presbyterian Church or other such bodies having like functions to
 40 discharge on behalf of others. Indeed, in order to modify the well established rule it has been found well to provide by statute or by by-law or regulation authorized by statute as a matter of convenience the validity of a resolution in writing signed by all the members of such bodies. There is no such statute or regulation to which we can appeal in this case. The Session is the Church Court of the congregation and its very name suggests a body sitting in conference. It matters not to my mind that the Moderator has a casting vote only or whether he has any vote. He is while Moderator the head of both Session and congregation and his advice and the expression of his views may be and in a case such as that before us may well

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be of the highest value, even if not decisive. He may well have advised further deliberation or delay or the holding of the meeting if the Session wished it at a later date; but whatever course he may have advised the Elders had, in my view, no right to disregard his authority and hold a meeting of Session in his absence and without notice to him, and much less to proceed to call a meeting of the congregation as Elders without even meeting as Elders. The requisitioners should have moved against the Session as such, not against the Elders as such, as has here been attempted.

For these reasons I think the appeal must be allowed with costs, 10 and the action succeed with costs. But there should be a direction to the taxing authority that the costs of the trial be disallowed in so far as they have been increased by the allegation that the Elders on July 10th resigned their offices as Elders and members of the Session. I agree that the declaration and other directions should be made as suggested by my brother Graham.

Another point has been suggested to the effect that, assuming the second vote to be valid and the Salt Springs church as a congregation of Presbyterians became on July 27th merged into the United Church, the property of the congregation did not pass. This argument is based 20 on Section 6 of the Provincial Act, and Section 8 of the Federal Act, which enact that :

“ Any real or personal property belonging to or held by or in
“ trust for or to the use of any congregation, whether a congregation
“ of the negotiating churches or a congregation received into the United
“ Church after the coming into force of this section, solely for its
“ own benefit, and in which the denomination to which such con-
“ gregation belongs has no right or interest, reversionary or otherwise,
“ shall not be subject to the provisions of Section 3 and 4 hereof
“ or to the control of the United Church, unless and until any such 30
“ congregation at a meeting thereof regularly called for the purpose
“ shall consent that such provisions shall apply to any such property
“ or a specified part thereof.”

This section adopts in effect the words of Section 7 of the Basis of Union.

The argument is, if I understand it, that inasmuch as the trustees of the Salt Springs congregation are incorporated under Cap. 217 of the Nova Scotia Acts, 1906, and its church edifice and lands are vested in trustees for the benefit of the congregation, Section 6 prevents the passing of the property under Section 4 because no meeting of the con- 40 gregation called for the purpose has consented that Section 4, which in ordinary cases would pass the real and personal property, should apply. In my view it was not intended that Section 6 should apply to property held upon the usual trusts conferred upon trustees of the property held obviously in the ordinary course of events for the use of the congregation as one of many, probably the great majority of, such congregations. That Section is by its terms confined to property a congregation holds “ solely for its own benefit and in which the denomination to which such

congregation belongs has no right or interest reversionary or otherwise." It can hardly be said of any of the many congregations associated with the Presbyterian Church in Canada under its scheme of church polity and government whether its property is formally held by trustees or not that that property is held "solely for its own benefit" and that the Presbyterian denomination has "no right or interest in it reversionary or otherwise." The definition of the term "The Presbyterian Church in Canada" in both Acts includes all congregations heretofore and not connected with that church whether the same shall have been organized

10 under statute or deed of trust or Act of Incorporation or as union or as joint stock churches or otherwise. The latter part of Section 4 protects all special trusts and Section 6 is intended I think to enable any congregations to continue to hold, after the union, property strictly congregational and not intended under any circumstances to be used in whole or in part for the use of the denomination at large. If there is such property the congregation must if it wished to bring it into the general unionist scheme so that it can be after the union administered for the benefit of the congregation as a part of the United Church, then the local church or congregation must so determine the matter at a meeting called for the

20 purpose. The Section would undoubtedly apply to glebe lands held only for local church endowment or gifts made in terms for the benefit of the local congregation as distinguished from the denomination; but when it is declared, as it is by the last clause of Section 8 (a), that upon a later vote into Union the Act shall apply to the congregation and all the property thereof the clear legislative intent is to pass the ordinary property of a Presbyterian congregation whether held for it by trustee or otherwise, that is the church edifice and grounds, including usually a burial ground and a manse.

Moreover, it is manifest from an examination of the course of legisla-

30 tion beginning with the early Union effected in 1875 (See Chapters 99 and 100 of the Nova Scotia Acts of that year) as well as from the rules (See for example Rules 17 and 18) and the form of the model trust deed in the appendix to the Blue Book (p. 166) that great care has always been taken to associate the title of the congregation through its trustees as that of a congregation "in connection with the Presbyterian Church in Canada." Indeed in the case of Salt Springs the caption of the local incorporating Act expressly so associates that congregation, but I do not at all emphasize here the importance of the caption. It is enough that the congregation was in fact so associated; that it was a denomina-

40 tional congregation. This position is further fortified by the Nova Scotia Act of 1908, Sections 4, 5, 6 and 12, which is clearly intended to make secure for the ultimate benefit of the church at large all property which should be regarded as denominationally Presbyterian. If there should be a dissolution of the corporate body holding the title to the reversionary interest (to use the statutory term evidently not used in a strictly technical sense either in Section 6 of the Union Act or in Section 6 of the Act of 1908) the property would pass by way of the Board of Trustees of the Presbyterian Church in Canada, Eastern Section, to the United Church. It is also to be noted that the congregational assent, were it required

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(B) Mellish J.

under Section 6 of the Union Act, can be given at any time after the vote for Union. The congregation determines that at its pleasure, and in the meantime the property remains precisely as it was, unaffected by either the statute or the vote for union.

In my opinion the Appellants' main contention must prevail and the appeal be allowed, but I think that there is no substance in their alternative suggestion.

(B) MELLISH J. The St. Luke's congregation, under the authority of the Dominion Act incorporating the United Church of Canada, duly decided not to enter the United Church. In consequence of this decision 10 by Section 8 (a) of the Provincial Act, 1924, Cap. 122, "the property "real and personal belonging to or held in trust for or to the use of such "non-concurring congregation shall be held by the existing trustees or "other trustees elected by the congregation, for the sole benefit of "said congregation."

At the time the vote for non-concurrence was taken, the Defendant corporation under Cap. 217 of the Nova Scotia Act for the year 1906 held the Church edifice at Salt Springs "for the use and benefit of said congregation": at that time this congregation was a congregation 20 in connection with the Presbyterian Church in Canada.

In consequence of said non-concurrence by the terms of Section 10 (a) of the Dominion Act of Union, Cap. 100, 1924, the property including the church edifice was held (the congregation not having entered any other church formed by non-concurring congregations) by the Defendant "free from any trust or reversion in favour of the respective negotiating churches" which included the Presbyterian Church in Canada—"and free from any control thereof or connection therewith."

I am taking it for granted, and it was not questioned on the hearing, that all the provisions of the Dominion Act are valid and binding especially in view of the Provincial Act which expressly provides for the Dominion 30 Act of Incorporation of the negotiating churches, and further provides by Section 27 that the provisions of such act "shall have full force and effect with respect to any property or civil rights within this Province." While matters stood thus, and after the Dominion Act had come into force on June 10th, 1925, it is claimed that the St. Luke's congregation, Salt Springs, purporting to act under Section 8 (a) of the Provincial Act, voted to enter the Union and become part of the United Church. This Section 8 (a) after providing for congregations voting themselves 40 out of the Union after the negotiating churches should have been merged by the Dominion Act of Union into the United Church at meetings of the congregations "regularly called and held" and by a "majority of votes" further provides:

"Should such congregation" (i.e. as I understand it quoting from the first part of the section "any congregation in connection or communion with any of the negotiating churches") "decide in manner aforesaid "at any later time to enter the Union and become part of the United "Church, then this Act shall apply to the congregation and all the pro- "perty thereof from the date of such decision."

It can be said, I think, with some force that the vote contemplated by this latter clause could not be applied to the congregation in question because after the Dominion Act was passed the negotiating churches as such had ceased to exist and that it was therefore impossible that there could be "any congregation in connection or communion" therewith, and this view is emphasized by the provisions of 8 (b) which are as follows :

10 " (b) the persons entitled to vote under the provisions of the
 " first clause of this section shall be those who by the constitution
 " of the congregation, if so provided or by the practice of the church
 " with which they are connected, are entitled to vote at a meeting
 " of the congregation."

However applicable this language might be to a congregation of the negotiating churches existing before the Dominion Act effecting the Union came into force, it might be inapplicable to a congregation which necessarily owes allegiance to no church as such in consequence of having voted for non-concurrence in the Union.

From both the Dominion and Provincial Acts it appears that the negotiating churches had "agreed to unite and form one body or denomination of Christians" and had petitioned Parliament to incorporate the
 20 church to be formed by the said Union, and that both the Acts were passed on petition of the negotiating churches in furtherance of the said agreement. This consideration and the terms of the Basis of Union agreed upon by the negotiating churches before the Acts were passed, and of the Acts themselves, I think clearly shew that it was the paramount intention and purpose of Parliament and the Legislature to obliterate each of the negotiating churches as such and their ministry and membership. I am stating what appears to have been the paramount legislative intention to assist in interpreting the portions of the Acts under consideration. I have nevertheless come to the conclusion that Section
 30 8 (a) must be read as referring to the church connections of the congregation as existing at the time the Provincial Act was passed, even though they might cease to exist at the time when the Act would come into force—a view borne out by Section 8 (aa) which clearly also shews that the vote contemplated to effect non-concurrence is to take place after the Union takes place and if effective is to be considered as retroactive. In this respect the section differs from the corresponding section of the Dominion Act which requires the vote of non-concurrence to be made before the Union. It is not suggested that either Act is ineffective; but the vote of non-concurrence made in this case is validated by the Provincial
 40 Act 1925. And the Provincial Act of Union, by a later section already referred to (27), provides that the Dominion Act "shall have full force and effect with respect to any property or civil rights within this Province."

It is said that the vote to enter the Union is bad because the meeting of the congregation was not regularly called by the authority of Session. I do not think the Session then had any authority over the congregation. Indeed, it would appear that those who had been the members of Session refused to function, as I think they had a right in law to do. And there is no evidence, I think, to shew that at the time the vote was taken the

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congregation in question was a congregation of any church. I cannot come to the conclusion that the vote was bad or ineffective for any reason, and I can see no ground for holding that the congregation by a vote fairly obtained did not enter the United Church even although the formalities incident to Presbyterian discipline were necessarily not complied with in obtaining such vote.

It is perhaps worth noting here that many Presbyterian congregations could hold meetings not called by the Elders. Under statutory provisions affecting many congregations such meetings are clearly, I think, intended to be called without reference to the Elders. (See for example the Act 10 incorporating the Defendant corporation, 1906, Cap. 217, Sections 8 and 10): the Act incorporating the Trustees of St. Andrew's Presbyterian Church, Sydney Mines, 1906, Cap. 209, Sections 8, 9, 11, and especially Section 18: the Act incorporating the Trustees of Warden Presbyterian Church, New Aberdeen, 1906, Cap. 218, Sections 5, 6, 7, and especially Section 12. There are doubtless other Acts of similar import. I have casually noticed the foregoing, all contained in the volume of the Statutes for the year 1906; and I am not at all convinced that apart from Statute—the rules of the "Blue Book" must have been necessarily followed to obtain a meeting of the congregation. 20

I think that the "Session" and other courts of the negotiating churches were continued merely as a part of the machinery of the component congregations of the United Church, and not as courts of the negotiating churches which as such ceased to exist, and I should have come to this conclusion even if the restrictive clause of Section 22 of the Dominion Act had not been included therein.

But the Plaintiffs also contend, and I think rightly, that the defendant corporation has no right to use the congregational property for the purposes of the United Church without the congregations consent. Both the Acts contemplate the continuance of existing congregations as bodies 30 having interests in property real and personal, and Section 6 of the Provincial Act provides that the property belonging to or held in trust for any congregation received into the United Church after the Union solely for its own benefit and in which the denomination to which such congregation belongs has no right or interest is not subject to the clauses of the Act vesting property in the United Church unless and until the congregation at a meeting called for the purpose consents thereto.

I do not think the Presbyterian denomination had any right or interest in the property in question within the meaning of this section by reason of the Provincial Act of 1906, Cap. 212, Section 6: and even 40 if it had, I think such a right or interest was terminated when the congregation voted non-concurrence before the union took place, by reason of Section 10 (a) of the Dominion Act above quoted and Section 8 (a) of the Provincial Act; and I do not think that the Defendant corporation is entitled to hold the congregational property in trust for the benefit of the congregation as a part of the United Church unless the congregation consents thereto. It is perhaps idle to consider the policy of the Statutes (there is a corresponding clause in the Dominion Act, viz.: Section 8) in this respect. It suggests itself, however, that a member of the congre-

gation, although willing to enter the United Church, might at the same time be unwilling to deprive a non-concurring member of, for example, the right to be buried in congregational property. And it seems to have been the intention of Parliament and the Legislature to conserve the interests of non-concurring congregations in denominational property and at the same time to conserve the interests of non-concurring members in congregational property. Such an interpretation is, I think, equitable and consistent. I think there is nothing to prevent members of any congregation entering the United Church at any time if the church is

10 willing to receive them without any vote, and it is perhaps of little importance, if any, whether the Salt Springs congregation entered the United Church as a body or not. The individual members of the congregation in question have doubtless the right to select their own church—but not to alter the property rights of each other, unless so authorized by Statute. The “consent” contemplated is not the consent of the congregation as a part of the United Church, but in this case I think the quondam congregation of the Presbyterian Church in Canada known as St. Luke’s. And their property can, I think, be dealt with under the Act incorporating their trustees to reasonably meet any situation whether the congregation

20 enters the Union in a body or not. The point now under discussion was not raised before the learned Chief Justice on the trial. I agree in the result with the conclusion he has reached on the other branch of the case, and I think therefore that the appeal should be allowed and the injunction claimed in the action granted to restrain the Defendants from using the property held by the Trustees for the purposes of the United Church, without costs here or below.

(c) GRAHAM J. St. Luke’s Presbyterian congregation of Salt Springs in the County of Pictou, was a congregation in connection with the Presbyterian Church in Canada. Under the provisions of “The

30 United Church of Canada Act” (Can.) it voted on December 22, 1924, not to concur in union. This vote, by virtue of Chapter 19 of the Acts of Nova Scotia, 1925, was deemed to be a vote taken under “The United Church of Canada Act” (N.S.). The congregation therefore did not on June 10th, 1925, enter the Union, and the church property continued to be held for it by the Trustees incorporated by Chapter 217 of the Acts of Nova Scotia, 1906. On May 5th, 1925, the Presbytery of Pictou, of The Presbyterian Church in Canada, appointed Rev. Robert Johnston of New Glasgow, N.S., Interim (pro tempore) Moderator of its Session, and until after July 27th, 1925, no minister was inducted to the charge.

40 So much is common ground.

In the month of July, requisitions were signed by a large number of the members of the congregation asking the Elders to convene a congregational meeting for the purpose of taking a second vote under the provisions of “The United Church of Canada Act” (N.S.). The Elders called a meeting for the 27th of July. The members who attended voted unanimously to become part of the United Church. Members opposed to union then brought this action for a declaration, inter alia, that the meeting and proceedings taken were null and void; that the congregation

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is a Presbyterian congregation and not a congregation of or in connection with the United Church of Canada.

The discussion in the main, in view of Section 4 (c) and 10 (a) of the Federal Act, turns upon the interpretation of the Nova Scotia Statute, and upon the procedure governing the congregation as a Presbyterian congregation.

“The United Church of Canada Act” (N.S.) requires that the congregational meeting shall be “regularly called and held.”

Chapter 217 of the Acts of 1906 provided for certain special meetings, but for procedure in calling congregational meetings generally, the only rule is that contained in “The Rules and Forms of Procedure in the Church Courts of the Presbyterian Church of Canada,” which are in evidence. They provide that one of the duties of the Session is to call congregational meetings; that “meetings of the congregation are called by the authority of the Session . . . on requisition . . . of a number of persons in full communion,” that the “Session” consists of the Moderator and Elders; that the Moderator presides, takes the vote of the Session, but has himself only a casting vote.

At the outset of the discussion two questions are raised: First—Could a second vote be taken? Second—Was the meeting of July 27th 20 “regularly called and held”?

The first enquiry presents no serious difficulty. Section 8 (a) of “The United Church of Canada Act” (N.S.) clearly provides for a second vote. It was argued that Section 8 (aa) abrogates the provision; but the answer is that the purpose and effect of Section 8 (aa) is to make abundantly clear that the status and property of a congregation which (subsequently) votes not to concur has not been in any way affected by the Act, up to the time the vote is taken. Afterwards the last clause of Section 8 (a) may be invoked to change that status. The Sections are easily and naturally construed together. There is no conflict between 30 them.

The second question is more involved. The finding of His Lordship the Chief Justice, that the Elders did not resign, has not been attacked. Rev. Robert Johnston had been duly appointed pro tempore Moderator of the Session by the proper tribunal. It is true that afterwards, on the 10th of June, 1925, the “Presbytery of Pictou” of “The Presbyterian Church in Canada,” by which he had been appointed, became part of the organization of the United Church; but if it went out of existence, an appointment made—a right, previously acquired by its Act, would not expire with it. Having been legally appointed to perform the function of 40 the minister of the congregation as Moderator of its Session, he continued to be Moderator. His office depended for its existence not upon the continuity of the appointing body, but upon the continuity of the body to which he had been appointed. The Session then, at all material times, was fully constituted and consisted of the Interim Moderator and the Elders.

The members of the congregation who favoured union may, or may not, have been in the majority; but until July 27th, they and their fellow-members who opposed union, were voluntarily associated and organized as a Presbyterian congregation. All had, impliedly if not

expressly, agreed to the consequences which that association and organization entailed. They had taken the rules of that church for a constitution. These rules were still the constitution. One of them provided that congregational meetings be called by the Session. No doubt because in a voluntary association it was important, that congregational action should not be initiated without formal hearing and determination by the congregational court—not for the purpose of getting the unanimous consent of the court, but to ensure proper deliberation and prevent ill-considered or factional or illegal action. The rule plainly served the
 10 double purpose of prescribing the tactical course to be taken by those who proposed to move in congregational matters, and of shielding and safeguarding those who opposed action.

Apart from the statute the status of the congregation could not be changed, nor its property taken away, without unanimous consent. The statute gave the majority power to override the minority; but only at a meeting “regularly called and held.” Such a situation suggests that the form of procedure merged in the substance; and that compliance with the rule fixed for calling the meeting should be, not only in effect, but in terms. However, without pressing beyond the broad boundary
 20 of good sense, it is fair to say that it should at least be substantially complied with; and the decision on this phase of the case turns upon whether there was substantial compliance. It is a question of degree and of essentials to be determined on the facts, by the light of reason and justice; and from its very nature gives room for grave difference of opinion. I have already considered the subject matter of the rule, its purpose and importance, and the object intended to be secured. In order to reach a conclusion it remains to review the relevant facts and the result of departure from the rule. The Interim Moderator was a minister of the non-concurring Presbyterians. The Elders favoured
 30 union. The Session had held a meeting on the 10th of July. What transpired is disputed. It is perhaps not material that the Moderator mistakenly assumed that the Elders resigned; but it is important that some of the Elders themselves told some non-concurring members of the congregation that they and their fellow Elders had resigned. They gave such members reason to ignore the notice, and to believe that they might safely absent themselves, as they subsequently did, from a congregational meeting irregularly called by persons, who from their own statements appeared no longer to be in office. They at least made it more necessary that proceedings be clothed with prescribed formality.
 40 But with matters in this situation, they made no attempt to lay the foundation of action. Without consulting the Moderator, or meeting as a Session, or at all, they signed a notice calling the congregational meeting. Presumably one, or more, of them procured the signatures of fellow Elders. They did not ask the Moderator to convene the Session, and there was no refusal on his part to do so. It may be surmised that he heard of the notice from the minister who occupied the pulpit on the 19th; but there is no positive evidence that he had knowledge of the action of the Elders before July 26th. All that appears is, that on that day, when about to begin the Sabbath morning service, he was asked to read
 50 the notice and declined.

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The inference that, if the Session had met, it would have called the meeting, was the real support of the argument that there was substantial compliance. In strict reason it is not directly relevant to that conclusion. The probability that departure from the rule did not change the result is logically a matter which may turn the scale in a debatable case. If it were in itself decisive, the omission of prescribed formalities would not be material, unless the result was thereby changed. Considering all the circumstances, I can only say, with great deference and not without hesitation, that in my judgment the rule requiring action to be taken by the Session was not substantially complied with, and that I must 10 answer the second question—No.

Having reached the foregoing conclusion it is not necessary to discuss the validity of the publication of the notice.

The question—Whether the church property passed on this vote—was raised and argued—and because another vote may be taken, I shall deal with it.

The whole tenor of the Act shows that it was intended that congregations should carry their churches into the United Church. Section 4 was designed to effectuate that intention. It was drafted in general terms and Section 6 was in effect a proviso reserving certain other 20 congregational property to be specially dealt with by the congregations. Let us see how the matter stands. Section 4 provides, subject to Section 6, that property held in trust for a congregation shall be held used and administered for the benefit of the congregation as part of the United Church in the manner and subject to the provisions of Schedule A. The schedule sets out only trusts for church and allied purposes. Section 6 then must be taken in this case to deal with property (if any) not so used, held for the congregation solely for its own benefit, in which the Presbyterian denomination had no right or interest. With respect to such property a special vote would be required. The property here was the 30 church premises itself. It was held in trust, not solely for the benefit of the congregation who worshipped there as an aggregation of individuals but for them as a congregation of Presbyterians, and in it therefore that denomination had a right or interest. It was covered by Section 4 uncontrolled by Section 6. If the meeting had been regularly called, and the vote properly taken, the church would be held by the congregation as a congregation of the United Church.

The Plaintiffs are entitled to a declaration :

- (1) That the meeting of July 27th, 1925, and all proceedings taken thereat are null and void, and of no effect ; 40
- (2) That the Rev. Robert Johnston is pro tempore Moderator ;
- (3) That the congregation is a Presbyterian congregation, and not a congregation of, or in connection with, the United Church of Canada.

The injunction should be granted, but in order not to disturb the status quo and to avoid unnecessary confusion, they should not be enforced until after June 30th, 1927, or in case of appeal, until the appeal is disposed of. Another meeting of the congregation, under the latter part of Section 8 (a) should be held in the interim—the sooner the better. The elders should be regarded as having continued and still to be the

elders, and the members *prima facie* those who were upon the roll on the 27th of July, A.D. 1925. The Rev. Robert Johnston as Moderator *pro tempore* should, forthwith, of his own motion, in accordance with Rule 58 of the Church Rules, convene the Session to consider the requisition, and call a congregational meeting for the purpose of taking a fresh vote in lieu of that which has now been determined to be void. If he neglects to perform this duty, which as Moderator he owes to the congregation as a whole, one third of the elders may require him to do so. Failing that, a Judge of this Court may direct it. But with this intimation, 10 the Moderator will no doubt act at once. If the meeting votes for Union, the injunctions should be suspended indefinitely. If the vote be against Union there would appear to be no occasion for further order.

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(D) CARROLL J. I agree with the conclusions reached by both (D) Carroll J. my brethren Rogers and Graham and merely wish to add that I agree with my brother Mellish as to the conditions or terms under which this particular property is held.

No. 20.

Formal Judgment.

No. 20.
Formal
Judgment,
9th April
1927.

20 PRESENT : The Honourable Mr. Justice Mellish.
The Honourable Mr. Justice Rogers.
The Honourable Mr. Justice Graham.
The Honourable Mr. Justice Carroll.

This appeal from the judgment of the Honourable the Chief Justice being heard before the Supreme Court *in banco* on Thursday the 13th day of January, A.D. 1927, and upon reading the printed case on appeal herein and upon hearing what was alleged by Counsel on behalf of the Plaintiffs (Appellants) and on behalf of the Defendants (Respondents) their Lordships were pleased to reserve their decisions and having subsequently delivered the same allowing the Plaintiffs' appeal :

30 1. It is ordered, adjudged and decreed that the said Appeal be and the same is hereby allowed.

2. It is ordered, adjudged and decreed :

(1) That the meeting of St. Lukes Presbyterian Congregation of Saltsprings held on or about the 27th day of July, 1925, and all proceedings taken thereat and resulting therefrom were and are null and void and of no effect ;

(2) That the Reverend Robert Johnston was at all material times and is Moderator *pro tempore* or Interim Moderator of the said congregation ;

40 (3) That the said congregation was at all material times and is a non-concurring congregation within the meaning of Chapter 100 Canada

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Formal
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1924, and Chapter 122 Nova Scotia 1924, and is not a congregation of or in connection with the United Church of Canada.

3. It is further ordered, adjudged and decreed that the Defendants be and they are hereby restrained from using the real or personal property of the said congregation or suffering or permitting the same to be used on the footing that the said congregation is a congregation of or in connection with the United Church of Canada, or in any manner inconsistent with the status of the said congregation as a congregation as aforesaid and from interfering with the exercise by the Plaintiff, Robert Johnston, of the rights, powers and privileges of the office of Moderator 10 pro tempore or Interim Moderator of the said congregation.

4. And the Court being of the opinion that the congregation at a meeting regularly called and held may pursuant to the latter part of Section 8(a) of Chapter 122 of the Acts of the Province of Nova Scotia, 1924, enter the Union and become part of the United Church and being further of the opinion that congregational meetings are to be called by the Session and that the Session is to be convened by the Moderator or another minister having authority from him.

It is further ordered that pending the holding of such a regularly called meeting and its determination and pending the final decision of 20 the Supreme Court of Canada in the event of an appeal asserted to that Court, and the further order of the Court, the declarations in favour of the Plaintiffs set forth in Paragraph 2 of this decree shall not be enforced and the restraining order directed by Paragraph 3 hereof be suspended.

Further consideration of this paragraph is reserved with liberty to either to apply.

5. It is further ordered, adjudged and decreed that the Plaintiffs (Appellants) have leave to enter judgment for the costs of the trial and appeal herein, when taxed, save only and excepting the costs of such 30 part of the trial as are occasioned by the allegation that the Elders on July 10th resigned their offices as Elders and members of the Session and that with respect to this allegation there be no costs to either side.

6. And it is further ordered that the action against the Defendants D. A. Frame and D. M. Matheson be dismissed without costs.

Dated at Halifax, this 9th day of April, 1927.

By the Court.

A. G. CUMMINGS,
Prothonotary.

No. 21.**Bond on Appeal, 18th May 1927.**

(Not printed.)

*In the
Supreme
Court of
Nova Scotia
in banco.*

No. 21.

No. 22.**Notice of Motion to approve security for Costs.**

Take notice that a motion will be made before the Honourable Mr. Justice Mellish in Chambers on the 25th day of May, A.D. 1927, at ten o'clock in the forenoon or so soon thereafter as Counsel can be heard by Mr. Stuart Jenks, K.C., that an order be made approving of security tendered by the Defendants other than the Defendants D. A. Frame and D. M. Matheson that they will effectually prosecute their appeal in this action to the Supreme Court of Canada and pay such costs and damages as may be awarded against them by the Supreme Court of Canada.

No. 22.
Notice of
Motion to
approve
security for
Costs,
20th May
1927.

And take notice in support of said application will be read the Bond of the Canadian Surety Company dated the 18th day of May, A.D. 1927 and the affidavit of Robert Bailey filed.

Dated at Halifax, N.S., this 20th day of May, A.D. 1927.

20 L. A. LOVETT of
35 Bedford Row,
Halifax, N.S.,
Solicitor.
Defendants (Respondents).

To
W. A. HENRY, Barrister,
Solicitor,
Plaintiffs (Appellants).

No. 23.**Order approving Bond, 25th May 1927.**

(Not printed.)

No. 23.

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*In the
Supreme
Court of
Nova Scotia
in banco.*

No. 24.

Notice to vary Formal Judgment.

No. 24.
Notice to
vary Formal
Judgment,
1st June
1927.

Take notice that the Plaintiffs (Respondents) intend upon the hearing of this Appeal before the Supreme Court of Canada to contend that the order of the Supreme Court of Nova Scotia in banco, dated the 9th day of April, 1927, be varied by striking therefrom the whole of Paragraph 4 of said Order, and that the parts of the judgments in the said Supreme Court of Nova Scotia, upon which said Paragraph 4 is based, be varied accordingly.

Dated at Halifax, N.S., this 1st day of June, 1927.

10

ROD G. MCKAY,
New Glasgow, N.S.,
Solicitor for Plaintiffs (Respondents).

To L. A. LOVETT, K.C.,
Solicitor for Defendants (Appellants).

No. 25.

No. 25.

Agreement settling contents of Printed Case, 29th August 1927.

(Not printed.)

*In the
Supreme
Court of
Canada.*

No. 26.

Appellants' (Defendants') Factum.

20

In the Supreme Court of Canada.

No. 26.
Appellants'
(Defendants')
Factum.

On Appeal from the Supreme Court of Nova Scotia in Banco.

Between

TRUSTEES OF ST. LUKE'S PRESBYTERIAN CONGREGATION
OF SALT SPINGS, a body corporate, ALEX C. MAC-
DONALD, WILLIAM FRASER, WILLIAM H. MACKAY,
D. HEDLEY ROSS, MUNRO GUNN, ROBERT A.
ROBERTSON, GEORGE GRAY, RODERICK MACKAY,
JOHN R. YOUNG, D. A. FRAME, D. M. MATHESON

(Defendants) Appellants. 30

and

ALEXANDER CAMERON, GORDON PROUDFOOT, C. A.
MAXWELL, K. A. MURRAY, JOHN BISHOP, W. C.
PROUDFOOT, ROBERT JOHNSTON, JOHN MCN. CAMP-
BELL AND ALEXANDER HALLIDAY ...

(Plaintiffs) Respondents.

This action was tried by The Honourable The Chief Justice at the Pictou sittings of the Supreme Court of Nova Scotia and arises out of the votes directed to be taken by Section 10, Chapter 100, of the Statutes of Canada 1924, known as The United Church of Canada Act. The Plaintiffs were at the time of the Union (10th June, 1925) members of St. Luke's Presbyterian congregation, at Salt Springs in Pictou County, other than Reverend Robert Johnston, who claimed to be an interim Moderator of The Session. The Defendants are the Trustees of the congregation appointed under its Act of Incorporation, Chapter 217 of the Acts of the Province of Nova Scotia 1906, and the elders of the congregation other than Reverend D. A. Frame and Reverend D. M. Matheson, who are Ministers of The United Church of Canada. The action was dismissed as against Messrs. Frame and Matheson both at the trial and by the appeal court.

The congregation previous to the Church Union Act was one of the congregations in connection with the Presbyterian Church in Canada when, by The United Church of Canada Act, The Presbyterian Church, The Methodist Church and the Congregational Church became united in one body known thereafter as The United Church of Canada. Copies of The United Church Act both as passed in Parliament and in the legislature of Nova Scotia are filed for the Court but sections that are considered relevant are for ready reference printed as an appendix to this Factum.

This congregation under Section 10 of The United Church of Canada Act called a meeting of the congregation on the 22nd December, 1924, to decide as to whether or not it would enter the Union and the vote of members in full communion was 55 in favour and 69 against; a separate poll was taken of adherents of which 9 were for and 19 against. (Record p. 43, l. 17). Under the Church Union Act and under Chapter 122 of the Acts of Nova Scotia 1926 (an Act practically identical with the Dominion Act) only communicants had the right to vote in this congregation. No point on the qualification of voters arises in this action. The Church Union Act came into force on the 10th June, 1925 (Sec. 2, Chap. 100 Can. 1924), so that then St. Luke's congregation was non-concurring.

Section 8 (a) Chapter 122 of the Statutes of Nova Scotia 1924 (appendix) however, enables any congregation to hold a second vote at a later time. The congregation, accordingly, called a second meeting for the 27th July and the vote taken at that meeting was 100 for and none against Union. The total number of communicants on the roll is 164. (Record p. 107, l. 11). It is as to the regularity of the calling of this second meeting that is the chief matter in controversy in this action. It is convenient to state these objections now: These are minutely detailed in the Statement of Claim, page 6, line 19 et seq.

Under the Rules of the Presbyterian Church as contained in the Blue Book (copies of which are filed and the relevant Rules printed in the appendix) it is the duty of the Session, among other things, "to call congregational meetings on the requisition in writing x x x of a number of persons in full communion." (Rule 19, p. 12 Blue Book, Record p. 72; Rule 50, p. 17 Blue Book, Record, p. 72.)

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After the first vote was taken the then minister of the congregation resigned and the Reverend Robert Johnston was on the 5th May, 1925, appointed interim moderator by the Presbytery of Pictou, then in connection with The Presbyterian Church in Canada. It will be recalled that the first vote was taken the previous December and that the Union of the Churches was not effective under The United Church of Canada Act until the 11th June following. The Blue Book says that "when the minister has been removed by death or otherwise x x x a moderator pro tempore is appointed by the Presbytery" (Blue Book p. 17, Rule 54, Record p. 78.) Reverend Robert Johnston though appointed 10 5th May did not meet with the Session or take any part in the congregational work until the 10th July following. It is apparent there was a reversal of the feeling in the congregation as to Union and the whole Session consisting of nine members were Unionists. The Reverend Robert Johnston recognised this and had a meeting with the Session 10th July, 1925, that is described as "a pretty high-pitched meeting," aggravated, no doubt, by previous statements in the Press that there would be drastic measures to remove the elders if they did not co-operate (Record p. 36, l. 44 et seq; page 37, l. 1-10).

Rev. Mr. Johnston took an individual poll of the members at that 20 meeting of Session and all expressed themselves as in favour of Union, though two would have co-operated with a continuing Presbyterian Church, but would use their influence in favour of Union. (Record p. 25, ll. 24-26; p. 36, l. 19).

There is an allegation in the Statement of Claim that the elders or several of them resigned their offices at this meeting. The trial Judge and the Court of Appeal both find against this contention and it is not now further discussed.

This statement as to the attitude of the Rev. Mr. Johnston and of the Session towards each other is necessary to explain what followed. 30 A large requisition signed by 99 communicants (Exhibit A, Record p. 106) was presented to the elders to call a second meeting of the congregation under Section 8 of Chapter 122 of the Nova Scotia Statutes (Appendix). All the elders thereupon signed the notice calling a meeting of the congregation (Exhibit B, p. 106). Mr. Harrison, the student then supplying the congregation, was asked to read the notice at the regular service on Sunday, the 19th July, and on his refusal the notice was read from the space for the choir, which is an extension of the pulpit platform. (Record p. 31, l. 5-16) by one of the elders.

The next Sunday Rev. Robert Johnston took the service and on his 40 refusal to read the notice calling the meeting of the congregation, Mr. Robertson, one of the elders, read it. (P. 31, l. 27 et seq.; P. 47, l. 1 et seq).

The meeting of the congregation was duly held on the 27th July and a resolution was passed that the church concur in the Union, 100 communicants voting in favour and none against (Exhibit C, p. 106 and 107). There has been no adverse comment on the regularity of the proceedings at this meeting.

This action was instituted on the 1st September, 1925 and the reasons therefor and the relief claimed are set out in the Statement of Claim at

page 6 of the Record. The trial was had before the Chief Justice, who dismissed the action (Record p. 43). An appeal asserted by the Plaintiffs was heard before Mellish, Rogers, Graham and Carroll, JJ. and allowed. Mellish, J. thought the meeting regular and valid but was of opinion that under the provisions of Section 6 of the Church Union Act (Chapter 122 Nova Scotia 1924 [Appendix]) that the vote on whether a congregation should or should not concur in the Union had not the result of transferring the property of the congregation for the use of The United Church until such congregation at a meeting regularly called for the purpose should at
 10 another meeting consent that the provisions of Section 4 of the Act should apply. It may be stated that Sections 4 and 6 of the Nova Scotia Act are in the same language as Sections 6 and 8 of the Dominion Act.

Both Mr. Justice Rogers and Mr. Justice Graham were of opinion that the meeting of the congregation was improperly called for the reason that there was no regular meeting of the Session authorizing the calling of the meeting, as the Rev. Robert Johnston was still moderator, and there could be no regular meeting of the Session without his presence. Further, that the Session should have met as a body and authorized the calling of the meeting. They relied upon Rules 19 and 53 of the Book of
 20 Forms (Blue Book) (Record pp. 72 and 73). Mr. Justice Rogers at length differs from the view expressed by Mellish J. as to the necessity of a special meeting being held to consent to the use of the church property (Record p. 54 from l. 10 to conclusion of his opinion). Mr. Justice Carroll agreed with the conclusions of Rogers and Graham, JJ. as to the calling of the meeting and with Mellish J. as to the conditions or terms under which this particular property was held (Record p. 63, l. 13).

II

The Chief Justice dismissed the action but a part of his opinion is based upon an incorrect conception of the facts in that he thought that
 30 Reverend Robert Johnston was appointed a pro. tem. moderator by a non-concurring Presbytery. It can be appreciated from his reasoning that in view of the discussion at the trial how the error occurred, and especially as in this Province no stenographic note is made of Counsel's summing up. In considering the Chief Justice's opinion it is suggested that that portion from page 43, line 31, to page 44, line 30 be omitted. This error of fact does not affect the reasoning so far as the points for decision at the trial and on this appeal come under review as at page 47, line 37, he says: "But I propose also to discuss the matter on the assumption
 40 "that the Reverend Robert Johnston was properly appointed Interim Moderator," and does discuss that position.

The Appellants rely upon the reasons for judgment given by the Chief Justice. The Appellants also rely upon the judgment of Mr. Justice Mellish that the congregation could take a second vote under Section 8a of the Nova Scotia Act. The opinions of the five Judges before whom this case passed in review are unanimous in their opinion on this point. Appellants also rely upon the reasoning of Mr. Justice Mellish as to the validity of the meeting of the 27th July when the vote was taken in favour

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of Union. (Page 57, l. 33 to p. 58, l. 26.) But Mr. Justice Mellish is in error in his opinion that the Defendants must fail because there must be a second vote of the congregation directed to the use of the congregational property after a congregation concurs in the Union. Or, specifically, Section 4 of Chapter 122 Nova Scotia prevents the passing of property under Section 6 until a congregational meeting so directs. His reasons are found at page 58, line 27, to the conclusion of his opinion, and Sections 4 and 6 are printed in the Appendix.

It is submitted that Mr. Justice Mellish misconceives the meaning and purpose of Section 6. It is not intended to apply to property held 10 by trustees for the general purposes of the congregations, such as churches. It applies only to property held by a congregation "solely for its own benefit and in which the denomination to which such congregation belongs has no right or interest reversionary or otherwise."

Appellants contend that the reasons for judgment of Rogers and Graham, JJ., in so far as the validity of the meeting of the 27th July are discussed are erroneous in that they interpret the Book of Rules as a hard and fast code of Presbyterian Church government. These opinions do not give full consideration to the complete merger of all the Courts of the Presbyterian Church into The United Church by The Church Union 20 Act (Section 4 (b) Canada), and that until non-concurring congregations formed themselves into a new organization they were individual associations without a constitution.

III

It is submitted that Mr. Justice Mellish's opinion as to the effect of Section 6 of the Nova Scotia Act (Appendix) is wrong for the reasons stated so fully in the opinions of Mr. Justice Rogers (Record p. 54, line 17 to p. 56, line 4) and of Mr. Justice Graham (Record p. 62, line 12 to p. 62, line 37). The Nova Scotia Act referred to by Mr. Justice Rogers —1906, Chapter 212, is found in the Appendix. 30

The reasons of Mr. Justice Rogers and Mr. Justice Graham as to the Rules set out in the Blue Book are founded on the erroneous view that these Rules are to be construed with the same rigidity as the Articles of Association of a commercial company. This was not intended by the Assembly of the Presbyterian Church. The prefatory note to the Book of Rules when it was approved by the General Assembly is printed at the beginning of the Blue Book under the caption, "Prefatory Note to Second Edition" and is in this language: "The final report was represented 40 "to the General Assembly and recommendations were adopted, viz. :

" I. That the Book of Forms, as now submitted to the Assembly, 40
" be approved and adopted as a useful guide for the members, the
" office-bearers and the Courts of the Church in the transaction of
" ecclesiastical business."

The Rules are therefore a useful guide and not a code that cannot be departed from.

It is submitted that the non-consultation with the Interim Moderator preparatory to the calling of the meeting of the 27th July, even if Rev.

Robert Johnston was Moderator pro tem. was at most an irregularity and would be so considered even under similar provisions of The Companies Act. The following excerpt is taken from a judgment of Swinfen Eady J. in *Boschoek Proprietary Company v. Fuke*, 1906, 1 Ch. at p. 162 :

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“ I now proceed to consider the alleged confirmations by the
“ company in general meeting of Fuke’s position and salary. Ques-
“ tions were raised as to the validity of the past acts of the directors ;
“ the opinion of counsel was taken, certain alterations of the articles
“ were recommended, and on May 14, 1903, at a board meeting, the
10 “ secretary was instructed to convene a general meeting of the
“ company for May 25, 1903. The Plaintiff company has objected
“ to the validity of any resolutions passed at this meeting on two
“ grounds. The first ground is that there was no duly constituted
“ board which could validly convene a general meeting of the com-
“ pany. This meeting was called by the only persons acting as
“ directors, and the persons who for upwards of three months had
“ been acting as the Board : the resolution for calling it was passed
“ at a board meeting ; notice of it was duly sent to every shareholder,
“ and one of the objects of the meeting was to confirm the acts
20 “ theretofore done by persons purporting to act as directors. Under
“ these circumstances, I must consider any informality in convening
“ the meeting as a mere irregularity, and not sufficient to invalidate
“ any resolution passed at it. The case is governed by *Browne v.*
“ *La Trinidad* 37 Ch. D.1, *Southern Counties Deposit Bank v. Rider*
“ 73 L.T. 374, and *British Asbestos Co. v. Boyd* (1903) 2 Ch. 439,
“ rather than by *In re Haycraft Gold Reduction and Mining Co*
“ (1900) 2 Ch. 230, and *In re State of Wyoming Syndicate* (1901)
“ 2 Ch. 431. In the two latter cases the secretary had convened the
30 “ meeting in question without any authority from a board meeting
“ of directors or persons acting as such.”

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The essential thing aimed at by the rules is that communicants should have notice of meetings. Salt Springs is a closely settled farming community and it will be apparent that the previous discussion as to Church Union and the unusual method of giving the notice of the meeting made the subject one of notoriety in that congregation and that every person interested knew of this meeting and its object. The purpose of the notice is that communicants could attend and vote if they wished to. There was a frankness about the proceedings on the part of the Session that was commendable.

40 Reference is had to *People vs. Peck*, 11 Wend. 604.

The Statute in New York provided that at elections of trustees of Churches, two of the elders or church wardens must preside ; if there be no such officers, then any two of the members of the Church may preside.

An election of trustees of a Church is good although the requirements of the Statute in respect of the notice of such election have not been complied with provided that the election was fairly conducted and there was no complaint for want of notice.

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The Appeal Court in the exercise of its discretion suspended the operation of Paragraph 3 of its order pending the holding of a meeting of the congregation which in its opinion ought to be held at which a vote was to be taken as to whether the congregation desired to become part of the United Church, p. 64, l. 12.

The Appellants move to vary the order for judgment settled by the Appeal Court by striking out paragraph 4, page 66. It is submitted that this was a proper exercise of the powers of the Court.

Under the circumstances it is "just and convenient" that a second ¹⁰ vote be taken the result of which would end all controversy and that the Plaintiffs ought at once to have accepted the judgment of the Court.

HECTOR McINNES,
Of Counsel with Appellants.

APPENDIX.

The United Church of Canada Act (Extracts) Statutes of Canada, 14-15 Geo. V. Chapter 100.

The United Church of Canada Act (Extracts) Statutes of Nova Scotia, 1924, Chapter 122.

An Act to incorporate the Board of Trustees of the Presbyterian ²⁰ Church in Canada, Eastern section (Extracts). Statutes of Nova Scotia, 1906, Chapter 212.

An Act to amend the United Church of Canada Act, Statutes of Nova Scotia 1925, Chapter 167.

(The above Statutes are contained in a separate appendix.)

Extracts from Blue Book.

19. Meetings of the congregation are called by the authority of the Session of its own motion or on requisition in writing of the Deacons' Court or Board of Managers, or of a number of persons in full communion, or by mandate of a superior court. Meetings are called by public notice, ³⁰ read before the congregation on the Lord's Day; such notice specifies the object of the meeting and is given on at least one Sabbath before the time of meeting, unless otherwise and specially provided for. Congregational meetings are opened and closed with prayer.

49. The Session consists of the Minister, or Ministers, and Elders of a congregation.

50. The duty of the Session is to watch over and promote in every Scriptural way the spiritual interests of the congregation; more particularly to receive applicants for admission into the Church, to watch over those who have been baptized and to admit them into full communion, ⁴⁰ and to receive persons bringing certificates of membership from other congregations; to grant certificates to members leaving the congregation; to watch over the christian deportment of the members of the congregation; to exercise discipline by admonition, rebuke, suspension, or exclusion from membership; to restore to privileges; to care for the religious

instruction of the young, including the oversight of Sabbath Schools ; to determine all matters touching the order of public worship, including the service of praise ; to arrange for the dispensation of the sacraments ; to appoint congregational fasts or thanksgivings ; to appoint the time and mode of making special collections, and where there are no deacons, to provide for the necessities of the poor ; to call congregational meetings ; to examine and judge of the qualifications of persons elected to the eldership and the deaconship ; to receive and judge of petitions ; to transmit papers to the Presbytery, and to do whatever else may, in their opinion, promote the religious interests of the congregation.

54. In the absence of the moderator, or when, for prudential reasons, he deems it better not to preside, another minister of the Church, having authority from him, may act as moderator *pro tempore*. When the minister has been removed by death or otherwise, or is under suspension, a moderator *pro tempore* is appointed by the Presbytery.

58. The moderator has power to convene the Session when he sees fit ; and he is bound to do so when enjoined by a superior court or requested by one-third of the Elders. Meetings are called on the authority of the moderator, either by notice from the pulpit or by personal notice to the members.

59. The moderator and two other members constitute a quorum. When, from any cause, the number of elders is not sufficient to form a quorum, application is made to the Presbytery for assessors to act with the other members until new Elders have been elected.

61. When the Session has been constituted, the names of the members present are recorded. The minutes of last stated meeting and of any other meetings which have intervened, are then read, and when sustained are signed by the moderator and the clerk.

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PART I.

STATEMENT OF FACTS.

This action was brought by the Respondents respectively members in full communion, pro tempore Moderator and the Session of St. Luke's Presbyterian Congregation of Salt Springs in the County of Pictou, Province of Nova Scotia, against the Appellant Corporation and the individual Appellants whose various statutes are set forth in Paragraph 2 of the Statement of Claim (p. 2, l. 1) claiming, inter alia

40 (a) That the alleged meeting of St. Luke's Presbyterian Congregation of Salt Springs held on or about the 27th day of July 1925 whereby the said congregation purported to vote concurrence in

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union with the United Church of Canada and all proceedings taken thereat were and are null and void and of no effect.

(b) That Reverend Robert Johnston is Moderator pro tempore or Interim Moderator of the said Congregation.

(c) That the said Congregation is a Presbyterian Congregation.

(d) That the said congregation is not a congregation of or in connection with the United Church of Canada.

And also claiming an injunction restraining the Defendants from using the real or personal property of the said congregation, or suffering the same to be used on the footing that the said congregation is a congregation of or in connection with the United Church of Canada or in any manner inconsistent with the status of the said congregation as a Presbyterian congregation. (P. 6, l. 33.)

The material facts are not in dispute and are briefly as follows :

For a long time prior to the 10th day of June 1925 St. Luke's Presbyterian Church of Salt Springs, was a congregation in connection or communion with the Presbyterian Church in Canada within the bounds and under the jurisdiction of the Presbytery of Pictou.

By a vote taken on December 22nd 1924 under the provisions of " The United Church of Canada Act " Cap. 100 Canada 1924 the congregation voted not to concur in the union of churches contemplated by that Act and consequently did not enter the Union on June 10th 1925 and the Church property continued to be held for it by the Trustees incorporated by Cap. 217 of the Acts of Nova Scotia 1906. (P. 43, l. 17, P. 59, l. 27.)

Almost immediately after this vote the Reverend C. C. Walls who was then Minister of the congregation and Moderator of the Session resigned (p. 16, l. 31).

On May 5th 1925 the Presbytery of Pictou having jurisdiction in that behalf according to the Rules and Procedure of the Presbyterian Church appointed Reverend Robert Johnston to be Interim or pro tempore Moderator of the Session of St. Luke's Presbyterian Church of Salt Springs (p. 9, l. 15); (p. 21, l. 39 to p. 22, l. 1) and until after July 27th 1925 no Minister was inducted to the charge. (Judgment of Mr. Justice Graham, p. 59, l. 39.)

In the month of July 1925, requisitions were signed by a large number of the congregation asking the Elders to convene a congregational meeting for the purpose of taking a second vote on the question of union. (Judgment of Mr. Justice Graham, p. 59, l. 41.)

No meeting of the Session was called to consider or discuss the question of calling a second congregational meeting as is required by the Rules and Forms of Procedure of the Presbyterian Church but a notice purporting to call such meeting was read during service on Sunday July 19th 1925 by one, W. H. MacKay. And after the conclusion of the service, on Sunday July 26th 1925, a similar notice was read by one, Robert A. Robertson. (P. 30, l. 46 to p. 31, l. 40) Judgment of Mr. Justice Rogers (p. 51, l. 7).

Notwithstanding the illegality of the manner in which it was called the alleged congregational meeting was held on July 27th 1925 and purported to pass the resolution contained in Exhibit " C " (p. 106, l. 38).

Only those members of the congregation who were in favour of the Union attended the meeting. (P. 31, l. 41.)

The allegations contained in Paragraphs 16, 17, 18 and 19 of the Statement of Claim (p. 5, ll. 25 et seq.) upon which the Respondents base their claim for relief are not denied.

The case by consent of the parties was tried before the Honourable, The Chief Justice of Nova Scotia in Halifax on the 11th day of November 1926, without a jury. The Learned Judge held in effect that the appointment of the Reverend Robert Johnston by the Presbytery of Pictou
10 as Interim Moderator on the 5th of May 1925 was invalid and that the meeting of July 27th 1925 was effective to pass the congregation into the United Church of Canada, and that all congregational property also so passed.

Decision of the Trial Judge (pp. 43 to 48).

From this decision the present Respondents appealed to the Supreme Court of Nova Scotia, in banco, and the appeal was heard at the January 1927 Sittings before a Court consisting of His Lordship Mr. Justice Mellish, His Lordship Mr. Justice Rogers, His Lordship Mr. Justice Chisholm and His Lordship Mr. Justice Carroll.

20 The decision of Mr. Justice Mellish is to the effect that the congregational meeting of July 27th 1925 was regularly called and was effective to pass the congregation into the United Church of Canada but notwithstanding this that by reason of the provisions of Section 6 of the United Church of Canada Act, being Chap. 122 of the Statutes of Nova Scotia for the year 1924 no property of the congregation would pass to or come under the control of the United Church unless and until the congregation at a meeting thereof regularly called for the purpose should consent thereto. Decision of Mr. Justice Mellish (pp. 56 to 59).

30 The Decisions of their Lordships Mr. Justice Rogers and Mr. Justice Graham are to the effect that the alleged congregational meeting of July 27th 1925 was irregularly called and therefore invalid and that the congregation is not a congregation in connection with the United Church of Canada. They, however, did not agree with the Decision of Mr. Justice Mellish that even if the meeting had been regularly called and valid a separate vote would have to be taken in order to pass the property.

Decision of Mr. Justice Rogers (pp. 50 to 56).

Decision of Mr. Justice Graham (pp. 59 to 63).

40 His Lordship Mr. Justice Carroll concurred in the Decision of Mr. Justice Rogers and Mr. Justice Graham as to the invalidity of the meeting and vote of July 27th 1925 and also concurred with Mr. Justice Mellish as to the conditions or terms upon which the property was held.

Decision of Mr. Justice Carroll (p. 63, l. 13).

The Order granted upon these Decisions appears on pp. 63 and 64 of the Record.

From the Judgment and Order of the Court, in banco, the Appellants have asserted this Appeal and the Respondents have given Notice that on the hearing of such Appeal they will contend that the Order of the Court, in banco, be varied by striking therefrom the whole of Paragraph 4 thereof and that the parts of the Judgments in the Supreme Court of

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Nova Scotia, in banco, upon which said Paragraph 4 is based be varied accordingly.

“The Rules and Forms of Procedure, Presbyterian Church in Canada” are in evidence in this action but for the sake of convenience have not been printed in the Record, it being agreed between counsel that sufficient copies of the Book containing same will be provided for the use of Their Lordships on appeal.

PART II.

POINTS IN ERROR OF WHICH THE RESPONDENTS ALLEGE ERROR.

The Respondents respectfully contend that the Supreme Court 10 of Nova Scotia, in banco, erred in respect of the following points :

1. In holding, as in effect it did, that another vote of the congregation should be taken on the question of entering the United Church and that the members entitled to vote thereat should be *prima facie* the members who were on the Roll on July 27th 1925.

2. In ordering the suspension of the declaration and injunction in favour of the respective Plaintiffs until a second vote had been taken.

3. In not holding, as did their Lordships, Mr. Justice Mellish and Mr. Justice Carroll, that a vote of the congregation taken at a meeting called for the purpose is necessary in order to vest the congregational property 20 in the United Church of Canada.”

PART III.

BRIEF OF ARGUMENT.

1. AS TO APPEAL.

1. The meeting of July 27th 1925 was inoperative, ineffective and invalid because

(a) It was not “a meeting of the congregation regularly called” within the meaning of Chapter 122 of the Acts of Nova Scotia, 1924, Section 8 (a).

It is submitted, that a “meeting of the congregation regularly 30 called” means a meeting called in accordance with the procedure of the Presbyterian Church in Canada. The Procedure for calling “a congregational meeting” is set forth in Sections 49, 50, 52, 53, 54, 58 and 59 of “The Rules and Forms of Procedure of the Presbyterian Church in Canada.”

These Sections provide as follows :—

Section 52. “The Minister is Moderator of the Session.”

Section 53. “The duty of the Moderator is to preside, to preserve order, to take the vote, to announce the decisions of the Court, and to pronounce censures. The Moderator 40 may introduce any competent business and may express his views upon any matter under consideration. He has only a casting vote.”

- Section 54. "In the absence of the Moderator, or when, for prudential reasons, he deems it better not to preside, another minister of the Church, having authority from him, may act as Moderator *pro tempore*. When the Minister has been removed by death or otherwise, or is under suspension, a Moderator *pro tempore* is appointed by the Presbytery."
- Section 58. "The Moderator has power to convene the Session when he sees fit, and he is bound to do so when enjoined by a superior court or requested by one-third of the Elders. Meetings are called on the authority of the Moderator, either by notice from the pulpit or by personal notice to the members."
- Section 59. "The Moderator and two other members constitute a quorum."
- Section 50. "The duty of the Session is * * * to call congregational meetings, * * *."

The evidence clearly discloses that no meeting of the Session properly convened or constituted ever called or authorized the calling of the
 20 alleged congregational meeting of July 27th, 1925.

The said meeting not being regularly convened was abortive and nothing done or purported to be done thereat could in any way affect the status or property of the congregation.

Dayton vs. Carter 206 Penn. State Reports, 491 Dillon on Municipal Corporations, 5th Ed., Sec. 501, p. 825.

The Respondents beg to adopt as their own the reasoning on this point of Mr. Justice Rogers and Mr. Justice Graham in the Supreme Court of Nova Scotia and respectfully submit that the Appellants' Appeal should be dismissed.

II. AS TO CROSS-APPEAL.

30 The Respondents appeal from Paragraph 4 of the Order (p. 64, l. 12) and from the Decisions on which that paragraph is based.

This Decision is to be found in the Judgment of Mr. Justice Graham (p. 62, ll. 44 to p. 63, l. 12).

It is respectfully submitted that the learned Judge erred in finding as he did on this point and that the Court, in banco, erred in including Paragraph 4 in the Order for the following reasons :

(1) If, as has been found by the Court, in banco, the meeting of July 27th 1925 was irregularly called and was consequently invalid,
 40 it was a nullity and no rights could be fixed either by it or by the attempts to call it.

By the vote of December 22nd 1924 the congregation, as it had power to do under the Dominion Statute, Chapter 100 of 1924, Section 10 (a) and by the Nova Scotia Statute, Chapter 122 of 1924, Section 8 (a) voted non-concurrence in the Union and thereafter continued to exist as a non-concurring congregation and as such, by virtue of the above quoted Sections, its property was not affected by the provisions of the

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Dominion Statute but was held by the then existing Trustees or other Trustees elected by the congregation solely for the benefit of the congregation. This vote was confirmed by Chapter 167 of the Acts of Nova Scotia 1925.

This was the state of affairs when the attempt to hold the meeting of July 27th 1925 was made.

If, as is alleged by Appellants, the Interim Moderator was wrong in not summoning a meeting of Session to authorize the holding of a congregational meeting to take a second vote on the question of Union the remedy of the Appellants was by way of application to the Supreme Court of Nova Scotia to compel him by mandamus to do so. 10

They decided not to adopt this course but proceeded in their own way to convene a meeting now held to be a nullity.

Being a nullity it could, as before submitted, fix no rights, and there is in this action no claim on the part of the Appellants for a mandatory Order to compel the calling of a meeting of Session nor any evidence upon which such an Order could be based. Nor is there any evidence that the Session as at present constituted would order the holding of a congregational meeting.

If, as is alleged by Appellants, but not admitted by Respondents, 20 it is still competent for the congregation to vote on the question of entering the Union, the terms and conditions upon which such vote shall be taken are fixed by Section 8 (a) of the Provincial Statute, and it is not competent to the Court in banco to vary or add to these terms and conditions.

(2) Many members of the congregation of Salt Springs as it existed on July 27th 1925 have severed themselves from the congregation and become members of the United Church of Canada subscribing to its doctrines, enjoying its property rights and taking part in its councils. That the Supreme Court of Nova Scotia could by Order in an action in which such relief was not even asked, invest them even temporarily with 30 power, while still in communion with the United Church to not only vote as members of a congregation which never entered the Union but to sit as members of the Courts of that congregation, is, it is respectfully submitted, something not contemplated by either the Dominion or Provincial Statute.

Apart from statutory enactment to the contrary all former members of the congregation who allied themselves with the United Church would lose all rights in congregational property.

Free Church vs. Overtown, 1904 A. C. 515.

(3) It is impossible to comply with the direction contained in Paragraph 4 as it is not consistent with the other provisions of the Order. Paragraph 4 suspends the operation of Paragraph 2 until the holding of a "regularly called meeting," but until Paragraph 2 becomes effective no "regularly called meeting" can be held as, by virtue of the decision of the learned Chief Justice, the Reverend Robert Johnston is not the Moderator of the Session and the meeting of July 27th 1925 was regularly held, thus precluding the holding of any further meeting for the same purpose. 40

(4) Even if the meeting of July 27th 1925 had been regularly and validly convened and held it would not have operated to pass the property to the United Church of Canada, because after the vote at the meeting of December 22nd 1924 whereby the congregation voted non-concurrence all its property real and personal was held for the sole use of the congregation.

Chap. 122 Statutes of Nova Scotia, 1924, Section 8 (a).
Chap. 100 Statutes of Canada, 1924, Section 10 (a).

Section 6 of the Provincial Statute provides that property of any congregation held solely for its own benefit shall not be subject to the provisions of Sections 3 and 4 of that Act or to the control of the United Church unless and until any such congregation at a meeting thereof regularly called for the purpose shall consent that such provisions shall apply to any such property or a specified part thereof.

Section 6 of the Provincial Statute is a re-enactment of Section 8 of the Dominion Act and both were professedly passed to give effect to the Basis of Union.

In the Basis of Union under the caption "Polity" there is to be found the following:—

20 "7. Any property or funds owned by a church, charge, circuit or congregation at the time of the Union solely for its own benefit, or vested in trustees for the sole benefit of such church charge, circuit or congregation and not for the denomination of which the said church, charge, circuit or congregation formed part shall not be affected by the legislation giving effect to the Union or by any legislation of the United Church without the consent of the Church, charge, circuit or congregation for which such property is held in trust."

No attempt was ever made to hold a meeting for any such purpose and consequently the Appellants have no claim to the property in dispute 30 in this action.

The Appellants beg leave to adopt as their own the reasoning of Mr. Justice Mellish on this point.

All of which is respectfully submitted.

C. B. SMITH,
H. P. MACKEEN,

Of Counsel with Respondents.

APPENDIX.

An Act incorporating The Trustees of St. Luke's Presbyterian Congregation of Salt Springs in connection with the Presbyterian Church 40 in Canada (Extracts). Statutes of Nova Scotia, 1906, Chapter 217.

The United Church of Canada Act (Extracts). Statutes of Canada, 14-15 Geo. V. Chapter 100.

The United Church of Canada Act. Statutes of Nova Scotia, 1924, Chapter 122.

An Act to amend the United Church of Canada Act. Statutes of Nova Scotia, 1925, Chapter 167.

(The above Statutes are contained in a separate Appendix.)

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No. 27.
Respondents'
(Plaintiffs')
Factum
—continued.

Reasons for Judgment.

*In the
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No. 28.
Reasons for
Judgment.
(A) Anglin
C.J.C.

(A) ANGLIN C.J.C.: I have had the advantage of reading the carefully prepared opinion of my brother Newcombe. While I concur in his disposition of this appeal, its dismissal can, in my opinion, be rested on a short and simple ground, not taken at bar, but so obvious from a consideration of the statutes that to direct re-argument upon it would seem unnecessary.

The Dominion Statute, 1924 (14-15 Geo. 5, c. 100) alone provides for the incorporation of the United Church of Canada, a Dominion-wide body. The provincial statute of Nova Scotia (C. 122 of the year 1924) of course makes no provision for incorporation and deals chiefly with matters affecting property.

The Dominion Act, by section 10, provides for a meeting of "any congregation in connection or communion with any of the negotiating churches" "being held" "at any time within six months before the coming into force of the Act," at which a majority of the persons present and entitled to vote may decide "not to enter the said Union of the said Churches." While s. 2 of the Dominion Act, which was assented to on the 19th of July, 1924, provides that the Act as a whole is not to come into force until the 10th of June, 1925, it also expressly provides that s. 10 thereof shall come into force on the 10th of December, 1924.

Section 29 of the Nova Scotia Act reads as follows :

" 29. This Act shall come into force on the day upon which the United Church shall be incorporated by Act of the Parliament of Canada, provided that the said date in respect of the whole of this Act or any section or sections thereof may be altered to such date or dates as shall be fixed by proclamation of the Lieutenant-Governor-in-Council to be made upon the request of the sub-committee on Law and Legislation of the joint committee on Church Union to be evidenced by the hands of its chairman and secretary."

No proclamation bringing into force the whole or any section or sections of this Act was referred to in argument, nor have I been able to find any such proclamation in the Royal Gazette of Nova Scotia. It would seem, therefore, that the Nova Scotia Act came into force only on the 10th of June, 1925.

The congregation of St. Luke's Presbyterian Church at Salt Springs held a meeting, now admittedly regularly called, on the 22nd of December, 1924, at which a majority of those present and qualified to vote decided "not to enter the said Union of the said Churches." Obviously, this meeting was held under s. 10 of the Dominion Act, as s. 8 of the Provincial Act did not come into force until the 10th of June, 1925.

Clause (A) of section 8 of the Nova Scotia Act reads as follows :

" 8. (A) Provided always, that if any congregation in connection or communion with any of the negotiating churches shall, at a

“ meeting of the congregation regularly called and held within six
 “ months *after* the coming into force of this section, decide by a
 “ majority of votes of the persons present at such meeting and entitled
 “ to vote thereat, not to concur in the said union of the said churches,
 “ then and in such case the property, real and personal, belonging
 “ to or held in trust for or to the use of such non-concurring congrega-
 “ tion shall be held by the existing trustees, or other trustees elected
 “ by the congregation for the sole benefit of said congregation.
 “ Should such congregation decide in the manner aforesaid at any
 10 “ later time to enter the union and become part of the United Church,
 “ then this Act shall apply to the congregation and all the property
 “ thereof from the date of such decision.”

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In 1925 the Legislature of Nova Scotia, by c. 167, amended its Act of 1924 and enacted this declaratory section :

“ 1. Any vote on the question of entering the said union taken
 “ in a congregation prior to the coming into force in pursuance of
 “ and in accordance with the provisions of the Act of Incorporation,
 “ shall be deemed to be the vote of such congregation for the purposes
 “ of this Act.”

20 The manifest purpose of this provision was to make “ any vote on the question of entering the said union ” taken under the authority of s. 10 of the Dominion Act of 1924 of the same efficacy for the purposes of the Nova Scotia Act, as if such vote had been taken under and in conformity with the earlier provisions of s. 8 (A) above quoted.

Subsequently, on the 27th of July, 1925, another meeting was held, the regularity of which the respondents challenge, but at which the majority of those present decided to enter the Union and become part of the United Church. This meeting was professedly called under the last sentence of clause (A) of s. 8 of the Nova Scotia Act. There is no corre-
 30 sponding provision in the Dominion Act. Obviously, if effective for any purpose, the resolution for concurrence passed at that meeting could not bring about the entry of the congregation into the incorporated body known as “ The United Church of Canada,” since that body is a Dominion corporation. It would follow, if there were no other objection to the validity of the transactions of the meeting, that, while the property of the congregation might possibly be affected in some way by such resolution, the congregation itself did not thereby become part of the United Church of Canada. Under the constating act of that body corporate (s. 10) the congregation of Salt Springs had definitely and under the provisions
 40 of the Dominion Act apparently irrevocably voted itself out of the Union on the 22nd of December, 1924.

But for the amending Act of 1925, there would have been a deeper objection to the efficacy of what was done at the meeting of the 27th of July 1925. The last sentence of clause (A) of s. 8 of the Nova Scotia Act deals with “ such congregation,” *i.e.*, a congregation which had already held a meeting under the earlier provision of clause (A) of s. 8, and thereat voted non-concurrence. But no such meeting was ever held because s. 8 only came into force on the 10th of June, 1925, and the only meeting at

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which non-concurrence was voted had been held on the 22nd of December, 1924, exclusively under the authority of the Dominion Act. To the congregation of St. Luke's Presbyterian Church at Salt Springs, the last sentence of clause (a) of s. 8, therefore, could not apply, unless by virtue of the legislation of 1925. Consequently the meeting of the 27th of July, 1925, could not have been validly held under that provision. Nor can any meeting under the earlier part of clause 8 (A) be now held, since that clause prescribes that such a meeting must be held within six months after the coming into force of the statute, *i.e.*, before the 10th of December 1925.

But, assuming that the vote of non-concurrence taken in December, 1924, should, by virtue of the Nova Scotia Act of 1925, be deemed for all purposes of the Nova Scotia Act of 1924 to be a vote taken under and in conformity with the earlier provisions of s. 8 (A) of the latter Act, nevertheless the resolution voted on the 27th of July 1925, being ineffective to bring the Salt Springs congregation into the Union, and to make it a constituent part of the Dominion Corporation, "The United Church of Canada," *its only avowed purpose*, it cannot operate indirectly to affect the property held by the defendant trustees for such congregation. If it had any such operation that property would thereafter be held by the 20 trustees for a body legally non-existent, *i.e.*, The Presbyterian congregation of Salt Springs in connection or communion with the United Church of Canada. That the legislature contemplated or intended any such anomalous result is inconceivable. Moreover, the only decision at which the last sentence of clause (A) of s. 8 purports to authorize the meeting, for which it provides, to arrive is "to enter the Union and become part of the United Church." The application of the Act "to the congregation and all the property thereof" is manifestly dependent on such "decision" being effectively made. Wholly inefficacious to cause the congregation "to enter the Union and become part of the United Church," the resolution 30 for concurrence which the meeting purported to pass cannot bring about the application of the Nova Scotia Act either to the congregation or to its property.

On this ground, therefore, I would affirm the judgment of the Supreme Court of Nova Scotia en banc in favour of the Respondents with the variation in its terms indicated by my brother Newcombe.

(B) Duff J.

(B) DUFF J. : There was no disagreement, and apparently no doubt, in the Court below, upon the capacity of a majority of St. Luke's congregation to take the necessary proceedings to make the congregation a part of the United Church; and to bring the congregational 40 property under the trusts of the model trust deed adopted by the Basis of Union and the Act of Incorporation. Neither was there any doubt as to the power of the United Church to receive St. Luke's, at the critical date (27th July, 1925), as one of its constituent congregations.

As these subjects were not discussed or even touched upon in the argument before us, I should not have adverted to them but for the views in respect of them which form the principal ground of the judgment of the majority of the Court.

For that reason only, I review briefly the statutory enactments bearing upon these points, before proceeding to the discussion of what I conceive to be the substantial question in controversy. The United Church Act (The Act of Incorporation) (Cap. 11, 14-15 Geo. V), after reciting that the Presbyterian, Methodist, and Congregational Churches had agreed to unite and form one body or denomination of Christians under the name of the "United Church of Canada" declared that the union of these churches should be effective on the day on which the statute should come into force (10th June, 1925). The "Churches" so united included all
 10 congregations in communion or in connection with them, except such as should declare their non-concurrence within six months before "the coming into force of this Act" or within any time limited by the Local Legislature having jurisdiction over the property of the congregation.

On this appeal we are immediately concerned with the effect of this statute (the Act of Incorporation) upon the status and the rights of the non-concurring congregations. Some of its provisions touching upon this subject could only become completely operative under the sanction of provincial legislation, and the Nova Scotia Act of 1924, Cap. 122, which came into effect on the same date as the Dominion Act (10th of June,
 20 1925) gives in express terms "with respect to property and civil rights" in Nova Scotia, the force of law to these provisions (s. 27).

The effect of the Act of Incorporation in point of law—and this of course is the only aspect of the legislation with which we are concerned—is not obscure. Such a congregation was, so far as legislative enactment could bring it about, the moment the statute came into operation, segregated from the organized ecclesiastical body or connection to which it belonged, that body having now become absorbed in the United Church; and its congregational property freed from all denominational interest and control and the congregation itself from denominational jurisdiction.

30 The Act of Incorporation contains no explicit provision purporting to enable a non-concurring congregation to reverse its decision and to enter the United Church after the consummation of the Union. But power to receive congregations is given unmistakably to the United Church by sec. 18 (j) ("To do all such lawful acts or things as may be requisite "to carry out the terms, provisions and objects of the Basis of Union "and this Act"); and that power is explicitly recognized by sec. 8 of the Act and by Article 8 of the Basis of Union.

I am unable to discern any ground for a contention that after the Union the United Church was destitute of power to receive the St. Luke's
 40 Congregation as a congregation of that body. The Act of Incorporation does not deal with the subject from the point of view of the non-concurring congregation. In virtue of the Act of Incorporation and the supplementary Provincial legislation, such a congregation having, by voting non-concurrence, severed its former denominational connections, its civil rights and property became, as subjects of legislation, merely provincial matters, within the exclusive jurisdiction of the Provincial Legislature; and accordingly it is to the law of the Province of Nova Scotia that we must turn to ascertain the scope of the congregation's rights and the conditions controlling their exercise.

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The governing enactment is sec. 8 (a) of the Nova Scotia Act of 1924 (Cap. 122), as amended and interpreted by sec. 1 of the Act of 1925 (Cap. 167). These enactments are in these words :

“ 8 (a). Provided always, that if any congregation in connection
“ or communion with any of the negotiating churches shall, at a
“ meeting of the congregation regularly called and held within six
“ months after the coming into force of this section, decide by a
“ majority of votes of the persons present at such meeting and
“ entitled to vote thereat, not to concur in the said union of the said
“ churches, then and in such case the property, real and personal, 10
“ belonging to or held in trust for or to the use of such non-concurring
“ congregation shall be held by the existing trustees, or other trustees
“ elected by the congregation, for the sole benefit of said congregation.
“ Should such congregation decide in the manner aforesaid at any
“ later time to enter the Union and become part of the United Church,
“ then—

“ this Act shall apply to the congregation and all the property
“ thereof from the date of such decision.”

“ Sec. 1. Chapter 122 of the Acts of 1924 is amended by
“ the addition of the following sub-section to Section 8 : 20

“ (d) 1. Any vote on the question of entering the said
“ union taken in a congregation prior to the coming into force
“ in pursuance of and in accordance with the provisions of
“ the Act of Incorporation, shall be deemed to be the vote of
“ such congregation for the purposes of this Act.”

The Nova Scotia Courts, as I have observed, have had no doubt about the effectiveness of this legislation to empower St. Luke's Congregation by appropriate proceedings to enter the United Church. “ The purposes of this Act ” mainly contemplated by the clause introduced into sec. 8 of the Act of 1924 by the amendments of 1925, are manifestly 30 the “ purposes ” of the first clause of the same section clause (a)—which specifically declares the consequences of a vote of non-concurrence. A vote of non-concurrence therefore pursuant to and in accordance with the provisions of the Act of Incorporation is, in virtue of this amendment, a vote within the meaning of sec. 8 (a). It is, in short, in the words of the statute of 1925, a vote of non-concurrence for “ the purposes of ” clause (a) and for all the purposes of that clause—for the purposes of that part of the clause which enables a non-concurring congregation to enter the United Church, as well as of that part of it which declares the effects of non-concurrence. 40

St. Luke's congregation is therefore a congregation within the operation of the second sentence of sec. 8 (a) : “ should such congregation “ decide in manner aforesaid at any later time to enter the Union and “ become part of the United Church, then this Act shall apply to the “ congregation and all the property thereof from the date of such decision.”

Sec. 8 (a) and the Statute of 1925 were not intended to take effect in vacuo. They must be read with the Act of Incorporation, which empowers the United Church to receive congregations after the Union.

The capacities of the United Church, in so far as they affect the exercise of rights in relation to property or other civil rights within the province, are recognised by the Provincial Statute (s. 27). The enactments of that statute (as is evidenced by sec. 27) are intended to operate in harmony with the Act of Incorporation, and must be read in light of this legislation as a whole.

Sec. 8 (a), by necessary implication, empowers a non-concurring congregation to which it applies, to take, as a congregation, the steps prescribed, in order to "enter the Union, and become part of the United Church"; and again by necessary implication, to take these steps in co-operation with the United Church, acting under the powers derived from the Act of Incorporation and in pursuance of its provisions. It is, perhaps, not out of place to observe that the main purpose of the enactment being clear, it ought not to be reduced to a nullity, in consequence of infelicities of draughtsmanship. *Salmon v. Duncombe*, 11 A.C. 627.

As to the property of the congregation, the Nova Scotia Statute is to apply to it. It matters little, it seems to me, whether that property comes under sec. 4 or sec. 6. If under sec. 6, that section sanctions (as do sec. 8 of the Act of Incorporation and Article 8 of the Basis of Union) the use by a congregation of the United Church of congregational property in which, as property, the United Church has no interest and over which it has no control. The congregation, as a congregation of the United Church, has control over the congregational property (affected by sec. 6) for congregational purposes; and after proper proceedings under sec. 8 (a), the congregation is pursuing its legitimate congregational objects in exercising its ecclesiastical and religious functions as a congregation of the United Church. The trustees hold the property for the benefit of the congregation, that is to say, to enable the congregation to make use of it for such legitimate congregational purposes. In either view, the plaintiffs must fail if the proper steps have been taken under sec. 8 (a).

Turning now to the question of procedure. The enactments of the Act of Incorporation and the decision of the congregation to become a non-concurring congregation, necessarily affected the congregational procedure. The Book of Rules envisages a congregation under the Presbyterian polity; under a denominational system of church government in the Presbyterian form and in full vigour.

By sec. 8 (a) the property of a non-concurring congregation "shall be held . . . for the sole benefit of the congregation." This necessarily implies capacity in the congregation to act as a congregation; and the last sentence of the clause, authorising such a congregation "to enter the Union" if "such congregation decide, in the manner aforesaid" to do so, implies the existence of capacity on the part of the congregation to reach a decision, "in the manner aforesaid," that is to say, in the words of the earlier part of the clause, "at a meeting of the congregation regularly called and held" to "decide by a majority."

A non-concurring congregation, so long as it remains unconnected with a denominational system acknowledging the Presbyterian form of government, is outside the sphere of Presbyteries and other superior church courts; and on the separation taking effect, all rules involving

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* *sic*
retention.

the exercise of authority by such superior courts were necessarily ipso facto suspended or modified in their practical operation. The suspension* of all such rules in their entirety may be put out of question, because that would have the effect, the obvious effect, in contingencies likely to occur in the ordinary course, contingencies which must have been foreseen, of paralysing the congregation as an ecclesiastical body. The participation of the Presbytery, for example, in the selection and induction of a minister became impossible; and the appointment of a minister, therefore, also impossible, unless plenary authority in relation to such matters vested in the congregation in consequence of the severance. So also, if the minister died or resigned or became incapable of acting a Session could not be properly constituted, according to the strict prescriptions of the Book of Rules; because according to the rules the appointment of an interim moderator rests exclusively with the Presbytery. There could, under the rules, be no properly constituted Session, and therefore, if the view advanced by the respondents be accepted, no properly constituted meeting of the congregation—no such meeting “regularly called and held.”

It cannot be supposed that the legislature intended that the enactments of clause (a) should become nugatory in circumstances and conjunctures so probable that they must be taken to be contemplated; in such easily foreseeable contingencies, for example, as the resignation of the minister after a vote of non-concurrence. The Act of Incorporation for the Trustees of St. Luke’s (Cap. 217 of Nova Scotia Statutes of 1906) provides for an annual meeting of the congregation on a specified date, and prescribes the notice to be given. It enacts also that no property of the congregation shall be disposed of, and no action or suit brought by the trustees without the authority of the congregation, given at a regular meeting, called for the purpose of granting such authority. There is nothing in this Act requiring meetings of the congregation to be called by the Session or requiring notice of the annual meeting, which the statute itself enjoins, to be given under the authority of the Session.

But, assuming the proceedings directed and authorised by the St. Luke’s Act to be governed by the rules in the Book of Rules, the Nova Scotia Legislature, in enacting sec. 8 (a) and in giving its sanction to the Dominion enactments in the Act of Incorporation can hardly have intended to deprive a congregation, situated as St. Luke’s was, of the power of functioning as a congregation in relation to its property or in holding an annual meeting. A decision of such congregation “in the manner aforesaid” which, by the second limb of sec. 8 (a) is the condition upon the performance of which such a congregation enters the Union, does not require for its validity a meeting “regularly called and held” within the strict prescriptions of the Book of Rules—a condition impossible of performance in such cases as those alluded to. What is required is a meeting fairly called in a manner conforming to the customary procedure in such a degree as is reasonably practicable, and, having regard to the disruption, fairly demanded in the circumstances of the particular case.

I now turn to a brief consideration of the circumstances in which the impeached decision of the congregation was arrived at. First of all,

it is well to correct an impression which one might gather from the judgments in the Full Court, that there was in fact no meeting of the Elders who signed the notice calling the meeting of the congregation. There is evidence that the Session, that is to say, the Elders who were members of the Session, in the absence, of course, of Mr. Johnston, decided to call a meeting of the congregation for the purpose of having a second vote. This evidence is uncontradicted and there was no cross-examination upon it. For the purposes of this Appeal, it must be taken that the Elders professed to meet, without Mr. Johnston, as a Session, and that, 10 as such, they decided upon calling the congregational meeting. In the circumstances, it would appear that the Elders did everything that could reasonably be required of them. Mr. Johnston had, at a meeting of the Presbytery of Pictou on the 5th day of May, been appointed interim moderator. On the 10th of June, the legislation constituting the United Church took effect and the vote of non-concurrence by St. Luke's Congregation in December became operative. Mr. Johnston, himself a non-concurrent, together with the Pictou Presbytery constituted by the non-concurring Presbyterian congregations, of which he was a member, assumed that St. Luke's came under the jurisdiction of this Presbytery— 20 a not unnatural supposition perhaps in view of the vote in the December preceding. In fact, St. Luke's had not adhered, and never did adhere to the Church formed by the continuing Presbyterians, and the Presbytery never acquired any jurisdiction over that congregation. At a meeting of the Session on the 10th of July, at which Mr. Johnston, was present, there was a good deal of acrimonious discussion, and Mr. Johnston reported to the Presbytery that the Elders had resigned: the Presbytery accordingly, acting no doubt under the belief that it possessed the authority to do so, appointed assessors, who with Mr. Johnston were to act as the Session (R. 59). In this action, the respondents took the 30 position that these proceedings by the Presbytery were effective, that the Elders had resigned as Mr. Johnston had reported, and that the assessors so appointed had been regularly constituted assessors, under the constitution by which the congregation was governed.

The learned trial Judge, the Chief Justice of Nova Scotia, held that although Mr. Johnston had acted under a belief that the Elders had resigned, there never was any intention on their part to do so, and that they had not in fact done so. The learned trial Judge evidently accepted the evidence of the Elders, and was convinced that there was a quarrel and a misunderstanding as to what had occurred. The learned Judge also 40 finds that Mr. Johnston was notoriously opposed to union and opposed to the holding of a meeting for the purpose of taking a second vote.

I cannot in these circumstances doubt that the Elders, who unanimously desired a meeting of the congregation for that purpose, were entitled to proceed as they did. They and they alone represented the congregation as members of the Session. There was no minister. The presence of an interim moderator could not, for the reasons I have given, be essential to the proper constitution of a meeting of the Session.

It is argued that the present case differs from those suggested because there was an interim moderator who had been duly appointed; and

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it is contended that it was necessary to observe the rules in so far as it was possible to do so in the circumstances. There are I think weighty reasons for doubting that Mr. Johnston's authority as interim moderator survived the separation of the congregation from the Church which, by force of legislative enactment, had become incorporated in the United Church of Canada. Up to that time, he was interim moderator and possessed of such authority as pertained to that office under the constitution of the Presbyterian Church of Canada. But it was not an authority attaching to him personally in the sense that he was entitled to wield it according to his uncontrolled discretion. He was the appointee 10 of the Presbytery; he was subject to the direction of the Presbytery as to calling meetings of the Session and in respect of other things; against him complaints could be addressed to the Presbytery, which had full powers to deal with such matters as well as a general superintendency over the Session. The records of the Session were subject to review by the Presbytery, to which an appeal lay from the Session. The Presbytery in its turn was subject to the jurisdiction of superior courts, the general assembly and the Synod. It would be superfluous to pursue these matters into their details. What is now contended is that Mr. Johnston, having been appointed interim moderator of this Session 20 under a polity which conferred upon him certain very important powers touching matters pertaining to the spiritual and temporal affairs of the congregation, but subject, in the exercise of them, to the control and discipline of the superior courts of the church, still retained those powers in their full vigour, but free from any such discipline and control. I am disposed to think that the authority of the interim moderator lapsed when the disruption occurred which deprived the congregation of the protection provided in the Presbyterian polity against ill-judged or arbitrary acts by a moderator in whose appointment the congregation itself had no voice. That is the view upon which I am disposed to think 30 this branch of the Appeal ought to be decided; but beyond that I am wholly unable to assent to the proposition that an interim moderator in Mr. Johnston's position, assuming the attitude he assumed, asserting an authority derived from a Presbytery which had no jurisdiction over the congregation, could insist upon being recognised as the official solely entitled to initiate the proceedings necessary to call the congregation together for the transaction of business of vital moment to the congregation itself.

If the Elders were strictly bound by the letter of the rules, they were in the circumstances powerless. By those rules it is the moderator who 40 convenes the Session. It is true that he is bound to do so when enjoined by a superior court or when requested to do so by one third of the Elders. There was no longer a superior court possessed of jurisdiction. It is improbable that he would have recognised any of the Elders (who, he believed, had resigned), if they had requested him to call a meeting. It is equally improbable that he would have called a meeting for such a purpose of his own motion. And if he had called one, there can be little doubt that he would have recognised only the assessors appointed by the Presbytery as entitled to take part with himself in the business

of the Session. Under the rules, in their integrity, the Elders would have had their remedy by way of complaint or appeal. In the circumstances, if the view advanced by the Respondents be accepted, the Elders of the congregation were subjected to the arbitrary dictates of the interim moderator.

The appeal should be allowed with costs.

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(c) NEWCOMBE J. (concurring in by RINFRET J.): This action relates to a division which has unfortunately taken place in the congregation known to the law as "St. Luke's Presbyterian Congregation of Salt Springs in connection with the Presbyterian Church in Canada," as to the position which that congregation occupies with regard to the recent legislative union of the churches. It is maintained by the Plaintiffs, on the one hand, that the congregation is non-concurrent, while it is contended by the Defendants, on the other hand, that the congregation belongs to the Union.

(c) New-
combe J.
(concurring
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The Plaintiffs, whose contention has been upheld by the majority of the Supreme Court en banc, were, at the time of the Union (10th June, 1925), members of the congregation in full communion, and the Rev. Robert Johnston, who was pro tempore or interim Moderator of the Session. It is claimed, on behalf of the Plaintiffs, that Mr. Cameron and Mr. Halliday were also Assessors to the Session, and a question was suggested in the Court below as to the validity of their appointment, but that is a question which, in my view, it will not be necessary to consider.

The Defendants are the Trustees of the congregation under the Statute of Nova Scotia, ch. 217 of 1906, entitled *An Act to Incorporate the Trustees of St. Luke's Presbyterian Congregation of Salt Springs in connection with the Presbyterian Church in Canada*: also two reverend gentlemen, Mr. Frame and Mr. Matheson, who were in some wise thought to be concerned in the controversy, and against whom the action was dismissed.

The question depends upon the meaning of the legislation, to which I shall now refer, in its application to the material facts.

The Act incorporating the United Church of Canada, ch. 100 of the Dominion, received assent on 19th July, 1924, and may be cited as *The United Church of Canada Act*: it recites that the Presbyterian Church in Canada, the Methodist Church and the Congregational Churches of Canada, believing the promotion of Christian unity to be in accordance with the Divine Will, recognize the obligation to seek and promote union with other churches adhering to the same fundamental principles of the Christian faith, and, having the right to unite with one another without loss of their identity, upon terms which they find to be consistent with such principles, have adopted a basis of union, which is set forth in Schedule A to the Act, and have agreed to unite and form one body or denomination of Christians under the name of "The United Church of Canada"; and it is declared that the Act shall come into force on 10th June, 1925, "except the provisions required to permit the vote provided

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“for in Section 10 being taken, which section shall come into force on the
“tenth day of December, 1924.” Some definitions follow, including these:

“(c) ‘Congregation’ means any local church, charge, circuit,
“congregation, preaching station, or other local unit for purposes
“of worship in connection or in communion with any of the ne-
“gotiating churches or of The United Church of Canada.”

“(E) ‘The Presbyterian Church in Canada’ shall include
“. . . the Presbyterian congregations separately incorporated
“under any statute of the Dominion of Canada or of any province
“thereof, and all congregations heretofore and now connected or in
“communion with the Presbyterian Church in Canada, whether the
“same shall have been organised under the provision of any statute
“or deed of trust or as union or as joint stock churches or otherwise
“howsoever.”

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* * * * *

“(K) ‘Non-concurring congregations’ shall mean those con-
“gregations which decide, as hereinafter provided, not to enter
“the Union hereinafter mentioned.”

By sec. 4, the union of the Presbyterian Church in Canada, the
Methodist Church and the Congregational Churches becomes effective
when the Act comes into force, namely, on 10th June, 1925, “and the
said churches, as so united, are hereby constituted a body corporate and
politic, under the name of ‘The United Church of Canada.’” The several
corporations, described as the Presbyterian Church in Canada, the
Methodist Church and the Congregational Churches are merged in the
United Church, and the congregations of these churches, which are known
as the “negotiating churches,” are admitted to, and declared to be con-
gregations of, the United Church; but it is provided, notwithstanding
anything in the Act contained, that members of any non-concurring
congregation “shall be deemed not to have become, by virtue of the said
union or of this Act, members of the United Church”; and provisions
follow to the effect that any minister or member of the negotiating
churches may, within six months from the coming into force of the Act,
notify in writing to the prescribed authority his intention not to become
a minister or member, as the case may be, of the United Church, and
that, in such event, he shall be deemed not to have become, by virtue
of the union or of the Act, such minister or member.

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Sections 5 to 9 inclusive relate to church or congregational property,
and need not, for the present, be considered. Section 10 is the important
section. It provides in effect that if any congregation in connection or
communion with any of the negotiating churches shall, “at a meeting of
the congregation regularly called and held at any time within six months
before the coming into force of this Act (10th June, 1925) or within
the time limited by any statute respecting the United Church of Canada
passed by the Legislature of the province in which the property of the con-
gregation is situate, before such coming into force, decide by a majority
of votes of the persons present at such meeting and entitled to vote
thereat not to enter the said union of the said churches, then and in such
case the property, real and personal, belonging to such non-concurring

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congregation shall remain unaffected by this Act, except that any church formed by non-concurring congregations of the respective negotiating churches into which such congregation enters shall stand in the place of the respective negotiating churches in respect of any trusts relating to such property, and except that in respect of any such congregation which does not enter any church so formed, such property shall be held by the existing trustees or other trustees elected by the congregation free from any trust or reversion in favour of the respective negotiating churches and free from any control thereof or connection therewith.”

10 It is further enacted by s. 10 that the persons entitled to vote shall be only those who are in full membership and whose names are on the roll of the church “at the time of the passing of this Act” (19th July, 1924); but it is nevertheless provided that

“In any province where by an Act of the Legislature respecting the United Church of Canada passed prior to the passing of this Act, a different qualification for voting has been prescribed the qualification for voting under this section shall be as provided in such Act.”

Then it is provided by paragraph (c) that

20 “The non-concurring congregations in connection, or in communion with any or all of the negotiating churches may use, to designate the said congregations, any names other than the names of the negotiating churches, as set forth in the preamble of this Act, and nothing in this Act contained shall prevent such congregations from constituting themselves a Presbyterian Church, a Methodist Church, or a Congregational Church as the case may be, under the respective names so used.”

It will have been observed by the foregoing that the meeting of the congregation at which the power of non-concurrence may be exercised is, by the express direction of the statute, to be regularly called and held. Paragraph (d) of s. 10 proceeds to define more closely the method by which the meeting may be called. It may be called by the authority of the Session of its own motion, and shall be called by the Session on requisition to that body in writing of a number of members entitled to vote, depending upon the total membership of the congregation; and it is further provided that such meeting shall be called by public notice read before the congregation at each diet of worship on two successive Lord's Days on which public service is held, and that such notice shall specify the object of the meeting.

40 These directions follow very nearly, although with variations, the method described by the *Rules and Forms of Procedure of the Presbyterian Church in Canada* to be found in Rule 19 thereof. That rule is as follows:

“19. Meetings of the congregation are called by the authority of the Session of its own motion or on requisition in writing of the Deacons' Court or Board of Managers, or of a number of persons in full communion, or by mandate of a superior court. Meetings are called by public notice, read before the congregation on the

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“ Lord’s Day ; such notice specifies the object of the meeting and is
“ given on at least one Sabbath before the time of meeting, unless
“ otherwise and specially provided for. Congregational meetings
“ are opened and closed with prayer.”

Before passing on to consider the provincial legislation, attention should, perhaps, be directed to s. 22 of the Dominion Act, by which it is provided that all synods and presbyteries of the Presbyterian Church in Canada, and all other courts or governing bodies of any of the negotiating churches shall

“ save as to non-concurring congregations, continue to have, 10
“ exercise and enjoy all or any of their respective powers, rights,
“ authorities and privileges, in the same manner and to the same
“ extent as if this Act had not been passed, until such time or times as
“ the United Church, by its general council shall declare that the
“ said powers, rights, authorities and privileges, or any of them,
“ shall cease and determine.”

There is no evidence of any such declaration, and I refer to this section because the Appellants endeavour to justify an inference from it that, once a congregation becomes non-concurring, it ceases to be subject to any of the church courts or governing bodies. The section, however, 20 did not come into effect until 10th June, 1925, when the non-concurrence became operative, and then it did not, in my view, operate to displace the regulations for the holding of meetings contemplated by the previous clauses to which I have referred, and which, I think, must have their application, notwithstanding any inference which may be admissible under S. 22.

The promoters of the union, in order to obtain adequate legislative sanction, and for the avoidance of doubts, sought legislation, not only by the Dominion, but also by the provinces, and, in Nova Scotia, the local provisions are to be found in ch. 122 of 1924, entitled “ *An Act 30
Respecting the Union of Certain Churches therein Named,*” enacted on 9th May, as amended by ch. 167, enacted on 7th May of the next following year. We were told that the common intent was, in one way or another, to have each legislative provision sanctioned by both the Parliament and the provincial legislature, and no question of legislative power was in terms raised or suggested at the hearing, although the point is specifically made in the statement of claim that the proceedings upon which the Defendants rely are “ null and void and of no effect.” So far as the intention of Parliament and of the legislature appear to be the same, it is, perhaps, unnecessary to define their respective limits of authority, but, 40 as I shall presently show, the Assembly has, in some material particulars, purported to enact provisions which form no part of the incorporating Act. The local statute is however largely in conformity with and anticipates the enactments of the *United Church of Canada Act*. It is provided by s. 29, the concluding section, that

“ This Act shall come into force on the date upon which the
“ United Church shall be incorporated by Act of Parliament of
“ Canada, provided that the said date, in respect of the whole of this

“ Act or any section or sections thereof, may be altered to such
 “ date or dates as shall be fixed by proclamation of the Lieutenant-
 “ Governor in Council, to be made upon the request in writing of
 “ the said Committee on Law and Legislation and the joint com-
 “ mittee of Church Union to be evidenced by the hand of its
 “ Chairman and Secretary.”

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Our attention was not directed to any such proclamation, and none
 appears to have been published in the Nova Scotia Gazette. The local
 provisions affecting non-concurrence are to be found in s. 8 of the Nova
 10 Scotia Act, and they correspond, in some measure, with s. 10 of the
 Dominion Act, but it will be useful, I think, to reproduce s. 8. It reads
 as follows :

“ 8. (A) Provided always, that if any congregation in con-
 “ nection or communion with any of the negotiating churches shall,
 “ at a meeting of the congregation regularly called and held within
 “ six months after the coming into force of this section, decide
 “ by a majority of votes of the persons present at such meeting
 “ and entitled to vote thereat, not to concur in the said union of the
 “ said churches, then and in such case the property, real and personal,
 20 “ belonging to or held in trust for or to the use of such non-concurring
 “ congregation shall be held by the existing trustees, or other trustees
 “ elected by the congregation for the sole benefit of said congregation.
 “ Should such congregation decide in the manner aforesaid at any
 “ later time to enter the Union and become part of the United Church,
 “ then this Act shall apply to the congregation and all the property
 “ thereof from the date of such decision.

“ (AA) Notwithstanding the provisions of this sub-section (a)
 “ no congregation of the negotiating churches within the Province
 30 “ of Nova Scotia excepting such congregation as have prior to the
 “ passing of this Act joined with any one or more congregations
 “ of any of the other negotiating churches for purposes of worship
 “ shall be deemed to have entered the Union or become part of the
 “ United Church, nor shall all the property, real or personal, belonging
 “ to or held in trust for or to the use of such congregation be affected
 “ by the provisions of this Act, if within six months from the day
 “ upon which this Act comes into force such congregation at a meeting
 “ of the congregation regularly called shall decide by a majority
 “ of votes of the persons present at such meeting and entitled to vote
 “ thereat not to concur in the said union of said churches.

40 “ (B) The persons entitled to vote under the provisions of the
 “ first clause of this section shall be those who by the constitution
 “ of the congregation, if so provided, or by the practice of the church
 “ with which they are connected, are entitled to vote at a meeting
 “ of the congregation.

“ (c) ‘ Congregation ’ in this section means a local church as
 mentioned in the Basis of Union.”

Paragraph (b) of this section should be read in connection with
 Rule 14 of the *Rules and Forms of Procedure of the Presbyterian Church in
 Canada*, by which it is prescribed that

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“ All members in full communion, male and female, have the right to vote at all congregational meetings, and to them exclusively belongs the right of choosing ministers, elders and deacons. At any meeting of the congregation when matters relating to the temporal affairs of the congregation, and not affecting the order of worship, the discipline of the Church, or the disposal of property are under consideration, adherents who contribute regularly for the support of the Church and its ordinances may vote.”

It will have been perceived that the Nova Scotia Act came into force as a whole on 10th June, 1925, and there is no such exception, as there is in s. 2 of the Dominion Act, with respect to the “ provisions required to permit the vote provided for in section ten being taken,” and that, by the provincial requirement, the time for a meeting of the congregation to authorize non-concurrence in the union is within six months after the coming into force of s. 8 ; and, moreover, there is introduced into s. 8 the concluding sentence of paragraph (a), which provides that

“ Should such congregation decide in the manner aforesaid at any later time to enter the Union and become part of the United Church, then this Act shall apply to the congregation and all the property thereof from the date of such decision.”

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There is no corresponding enactment in the Dominion Act, nor does that Act contain any express provision whereby a non-concurring congregation may enter the Union ; and, moreover, according to the meaning of s. 8 (a), the intention seems to be that this concluding sentence applies only to a congregation which, at a meeting within six months after 10th June, 1925, has decided, by a majority of votes, not to concur in the union.

What happened may now be stated in the order of the events.

On 22nd December, 1924, the congregation of Salt Springs, then under the ministry of the Rev. C. C. Walls, voted not to concur in the union. There is, notwithstanding a suggestion to the contrary by the learned Chief Justice who tried the cause, no dispute as to the regularity and effect of this meeting. The vote was for non-concurrence, and the congregation admittedly then became non-concurrent. The minister, who was in the minority, resigned. The congregation was within the bounds of the Presbytery of Pictou, and that body, following the prescribed practice in like cases, at a meeting on 5th May, 1925, appointed a *pro tempore* Moderator of the Session. The Rev. Robert Johnston was selected, and, by the minute, his appointment was to take effect from 10th May. His powers and duties as Moderator are regulated by Rules 53, 54, 58 and 59 of the Forms and Rules of Procedure, as follows :

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“ 53. The duty of the moderator is to preside, to preserve order ; to take the vote, to announce the decisions of the court and to pronounce censures. The moderator may introduce any competent business, and may express his views upon any matter under consideration. He has only a casting vote.

“ 54. In the absence of the moderator, or when, for prudential reasons, he deems it better not to preside, another minister of the Church, having authority from him, may act as moderator *pro*

“ *tempore*. When the minister has been removed by death or otherwise, or is under suspension, a moderator *pro tempore* is appointed by the Presbytery.

“ 58. The moderator has power to convene the Session when he sees fit; and he is bound to do so when enjoined by a superior court or requested by one-third of the elders. Meetings are called on the authority of the moderator, either by notice from the pulpit or by personal notice to the members.

10 “ 59. The moderator and two other members constitute a quorum. When, from any cause, the number of elders is not sufficient to form a quorum, application is made to the Presbytery for assessors to act with the other members until new elders have been elected.”

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At the December meeting, there had been a substantial minority of the congregation voting against non-concurrence, and subsequently a question of reconsideration arose. There were, nominally, nine Elders. On 10th July, Mr. Johnston met the Session, when he ascertained that three of the five Elders who attended were unwilling to continue in office. There was talk about resignations, and the minister apparently understood
20 that the way was open for the election or re-election of seven Elders. Notice was to be given on the two next following Sabbaths, 12th and 19th July, and the ballots were to be taken on the third Sabbath, 26th July. Whether or not this was done does not appear by the evidence, but I infer that the election did not take place. Some of the Elders caused to be read at the church on 19th and 26th July the following notice :

“ Notice is hereby given that a meeting of the congregation shall be held at the Church on the 27th day of July, 1925, at 2 o’clock p.m. for the purpose of considering and voting upon a resolution
30 “ that St. Luke’s Presbyterian Church, Salt Springs, concur in the Union of the Churches provided for by Chapter 122 of the Acts of Nova Scotia for 1924, and that said St. Luke’s Presbyterian Church at Salt Springs shall become part of The United Church of Canada. The meeting and the voting thereat shall take place under the provisions of said Section 8 of said Chapter 122 of the Acts of Nova Scotia, 1924.

“ Dated at Saltsprings N.S. this 18th day of July, 1925.”

This notice was preceded by a requisition, signed by some of the members of the congregation, which reads as follows :

40 “ The undersigned members in full communion of St. Luke’s Presbyterian congregation at Saltsprings hereby request the Elders to call a meeting of the congregation to be held at the earliest time possible under the Constitution of the Church for the purpose of considering and voting whether or not the said congregation shall concur in the union of St. Luke’s Church with The United Church of Canada, and become part of the said The United Church of Canada.

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“ The said meeting is to be called under Section 8 of Chapter
“ 122 of the Statutes of Nova Scotia for the year 1924.

“ Dated at Saltsprings N.S. this 15th day of July, 1925.”

The pulpit was supplied, on 19th July, by Mr. Harrison, a student
for the ministry, who had for some time been conducting services for the
congregation under authority of the Presbytery, and, on the 26th, Mr.
Johnston preached, but each of them declined to read the notice.

Pursuant to the notice thus advertised, a meeting was held at the
time and place thereby appointed, when, according to the notes of the
meeting, Mr. W. H. McKay, one of the Elders, was appointed Chairman 10
of the meeting, and Mr. C. H. McKay, Secretary. The notice was read,
and the following resolution, moved and seconded by two of the Elders,
was put to the meeting and carried by a standing vote :

“ Resolved, that St. Luke’s Presbyterian Church, Saltsprings,
“ concur in the Union of Churches, provided for by Chapter 122 of the
“ Acts of Nova Scotia for 1924, and that St. Luke’s Presbyterian
“ Church, Saltsprings, shall become part of the United Church of
“ Canada.”

The votes having been counted by scrutineers, who were then
appointed, the Chairman declared 100 for, and none opposing, and he 20
then proceeded to declare

“ That St. Luke’s Presbyterian Church, Saltsprings, is now
“ a part of the United Church of Canada.”

Then a letter was prepared by the Rev. Mr. Farquhar, “ the minister
in New Glasgow,” who had been invited to attend the meeting, and signed
by Mr. A. C. MacDonald, the Clerk of the Session. The letter is addressed
to Mr. Harrison, the student who had been supplying the congregation
at Saltsprings, and reads as follows :

“ St. Luke’s Church,

“ Saltsprings, 30
“ July 27, 1925.

“ Mr. E. Harrison,
“ Saltsprings.

“ Dear Sir :—

“ You will recall that some time ago a resolution was passed
“ and communicated to you that we held ourselves responsible
“ for your services for two Sundays only, your services to terminate
“ on June tenth. You have since continued to give services in the
“ congregation of St. Luke’s while it remained an independent con-
“ gregation and neither at the request of nor with the acquiescence 40
“ of the Elders of the congregation, in whose hands all arrange-
“ ments for pulpit supply, for the time being, lay.

“ To avoid difficulty we have till now taken no action. To-day
“ the congregation of St. Luke’s has decided to enter the United
“ Church of Canada.

“ This is to inform you that from to-day any further attempt
“ on your part to supply St. Luke’s will be in opposition to the wishes

“ of the elders and the congregation and contravene the authority
 “ of the Presbytery of Pictou of the United Church of Canada,
 “ under whose jurisdiction this congregation now lies.

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“ We write you thus because we are persuaded that you are not
 “ aware of the gravity of the situation, and the very serious matter
 “ of contravening constituted authority.

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“ We would also inform you that the Presbytery of Pictou
 “ of the United Church of Canada is asked to send supply to the
 “ pulpit of St. Luke’s on Sunday next.

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“ Yours very truly,
 “ (Sgd) ALEX. C. McDONALD,
 “ Session Clerk.”

The writ was issued on 1st September, 1925.

The trial was had before the learned Chief Justice. He had some doubts as to the validity of the meeting of December *24, 1924, when the congregation voted non-concurrence. He concluded that the Elders had not resigned. He thought that if the *pro tempore* moderator had not been properly appointed, he would not be a constituent of the Session, and that the signing of the notice for the congregational meeting of 20 27th July “ would seem to do away with the necessity of any meeting ” of the Session ; but, upon the assumption that Mr. Johnston had been properly appointed, he expressed the following view :—

* *Sic. qy. 22.*

“ The situation was, as everybody knew, that the Reverend
 “ Robert Johnston would oppose in every way the taking of a second
 “ vote on the question of Union by this congregation. His attitude
 “ throughout shows this. If a meeting of the Session had been
 “ asked for there is no reason to suppose that he would have called
 “ it ; and if he had called it he would have had no vote at the Session
 “ meeting, because all the elders were unanimously for the holding
 30 “ of a meeting, and the minister only had a casting vote in case of
 “ an equal division. Under the circumstances the holding of a
 “ meeting of the Session would have been a mere formality and the
 “ question is whether the notice given by all the Elders was not under
 “ the circumstances a good notice for the purpose. I think it was.”

He held that the notice of the congregational meeting complied with the rules, that s. 7 of ch. 217 has reference only to the Annual Meeting of the congregation, and does not apply to the meeting of 27th July, and he held that, although it had been argued that there was no provision for a second vote upon the question of union, and that once the congregation 40 had voted against union, no further vote was permissible, the latter part of s. 8 (a) of the Provincial Act specifically states that after the congregation has decided not to concur it may, at a later date, decide to enter the union. Accordingly, he dismissed the action.

The Plaintiffs appealed, and the judges en banc were Rogers, Mellish, Graham and Carroll, JJ. The majority (Rogers, Graham and Carroll, JJ.) were of the view that the congregational meeting of 27th July, 1925, was ineffective because no meeting of the Session was held authorizing the calling of the congregational meeting, and that, in the absence of such

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authorization, a valid meeting could not be held, seeing that, by the requirements of s. 8 (a) of the Provincial Act, non-concurrence of a congregation could not be authorized, unless “ at a meeting of the congregation regularly called and held.” The learned Judges referred to the *Rules and Forms of Procedure*, adopted by the General Assembly, as setting forth the law and practice of the Church, and they considered that the regularity of the procedure was to be judged by these rules, and that, if the Elders believed that the congregation had changed its view, and desired to enter the union, their proper course would have been to request another meeting of the Session, under Rule 38, for the purpose¹⁰ of passing a resolution for the calling of another meeting. Mellish, J., on the other hand, was of the opinion that it was the paramount intention and purpose of Parliament and the Legislature “ to obliterate each of the negotiating churches as such, and their ministry and membership,” and he says that, after the Union, the Session of the Salt Springs congregation had no right to function, that it no longer remained a court of a negotiating church, and that the Elders and congregation were no longer under any obligation to respect or conform to the previously existing rules with respect to meetings. Mellish, J., seems therefore to have been of the opinion, if I do not misjudge his reasoning, that the July meeting²⁰ was regularly called and held within the meaning of s. 8 (a) of the Provincial Act.

Beyond this, he held that the Trustees of the Salt Springs congregation are not entitled to hold the congregational property in trust for the benefit of the congregation as part of the United Church, unless the congregation consent thereto; that the individual members of the congregation have the right to select their own church, but not to alter the proprietary rights of each other, unless so authorized by statute, and that “ The consent contemplated is not the consent of the congregation³⁰ “ as a part of the United Church, but in this case I think the quondam “ congregation of the Presbyterian Church in Canada known as St. Luke’s. And their property can, I think, be dealt with under the Act “ incorporating their Trustees to reasonably meet any situation whether “ the congregation enters the union in a body or not.” This point, it is said, was not raised before the learned Chief Justice at the trial and it is rejected by Rogers and Graham, JJ., who are in agreement throughout, although Carroll, J., concurs with Mellish, J.

“ as to the conditions or terms under which this particular property “ is held.”

In the result, upon the latter point, the Court en banc is equally divided,⁴⁰ but in the view which I take of the case, it is not necessary for me to consider it.

One must desiderate, in these judgments, an explanation or statement of the reasons which led the judges in Nova Scotia to permit the Provincial Act to operate in a manner to affect the constitution of the United Church as incorporated and established by Act of Parliament. It is remarkable that no attention was paid to that subject, but it is none the less obvious that, by the *United Church of Canada Act*, every congregation of the Presbyterian Church in Canada was a negotiating church, and, subject

to the provisions or exceptions of s. 10 of that Act, became embodied in the union, on 10th June, 1925, when the union of the Presbyterian Church in Canada, the Methodist Church and the Congregational Churches, became operative, and the churches, as so united, were constituted a body corporate and politic under the name of The United Church of Canada. The legislative description is that the several corporations embraced within the definitions of s. 3 are merged in the United Church, and the congregations are admitted, and declared to be, congregations of the United Church, and, moreover, the congregations which, in the
 10 manner and within the time prescribed, decided not to enter the Union, were excepted from the Union as non-concurrent. These remain, as to their property, unaffected by the Act of Union except in respect of trusts and reversions as to which there are special provisions, intended no doubt for the protection of the non-concurring congregations and to produce equity.

Now the time for non-concurrence was within six months before 10th June, 1925, "or within the time limited by any statute respecting " the United Church of Canada passed by the legislature of the province " in which the property of the congregation is situate, before such coming
 20 " into force," and the meeting of non-concurrence was held on 22nd December, 1924, before the Provincial Act, or any of its provisions, came into force, and not otherwise than under the Church Union Act of Canada. This proceeding seems definitely to have placed Saltsprings in the category of a non-concurring congregation. Certainly the Nova Scotia Act, including s. 8, was passed before the Dominion Act, if that be a relevant circumstance, but neither s. 8, nor any other provision of the local Act, was meant to come into force until 10th June, 1925, nor had it anything to do with bringing about the condition of non-concurrence in which Saltsprings has stood since the meeting of 22nd December, 1924,
 30 by the effect of the Dominion Act; and, the power of non-concurrence which the congregation duly exercised under that Act, having been invoked with affirmative consequences, is, in my opinion, exhausted, and cannot be reviewed by the congregation. Under the authority of the Dominion Act there is no sanction for re-trial of the vote upon a future occasion; and by the amending Act of Nova Scotia, ch. 167 of 1925, it is enacted in terms that:—

" 1. Any vote on the question of entering the said union taken
 " in a congregation prior to the coming into force in pursuance of
 " and in accordance with the provisions of the Act of incorporation,
 40 " shall be deemed to be the vote of such congregation for the purposes
 " of this Act.

" 2. Notwithstanding any informality in the taking of any vote
 " or defect in the proceedings relating thereto, and notwithstanding
 " that persons not entitled to vote have voted, or that persons entitled
 " to vote have been deprived of the vote, all votes taken or purporting
 " to have been taken in pursuance of the Act of incorporation shall
 " be valid and binding upon the congregations respectively in which
 " such votes have been taken unless on or before the 10th day of

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 (concurrent
 in by
 Rinfret J.)
 —continued.

*In the
Supreme
Court of
Canada.*

No. 28.
Reasons for
Judgment.
(c) New-
combe J.
(concurring
in by
Rinfret J.)
—continued.

“ June, 1925, a proceeding is taken in the Supreme Court of Nova Scotia for the purpose of having such vote set aside or declared of no effect.”

The concluding sentence of s. 8 (a) of the provincial Act does not help, first, because the premises or conditions in which it is intended to operate never did in fact, exist; and secondly, because that clause relying, as it does, solely upon provincial authority, is incompetent to the legislature of the province, according to principles which are very plainly established by such cases as *Dobie v. The Temporalities Board*, 7 Ap. Cas., 136 *Colonial Building and Investment Assn. v. Attorney General of Quebec*, 9 Ap. Cas. 10 157, and the more recent authorities.

Moreover, the formula of the vote, by which a congregation of the negotiating churches may escape union, as prescribed by the Dominion Act and by s. 8 (a) of the Nova Scotia Act, differs from that which has been adopted in this case under the authority said to be derived from s. 8 (a). What is required, in order to disqualify and exclude a congregation from the operation of the Act of Union, is a majority of qualified votes “ not to enter such union of the said churches,” and in fact the vote of 22nd December, 1924, is the only vote which complies with that requirement. No effect is given by Parliament to a resolution, expressing 20 concurrence in the union of the Churches, or that a congregation “ shall become part of the United Church of Canada,” nor is any authority given for the holding of a meeting for such a purpose.

As to the invalidity of the meeting of 27th July, I agree with the reasons of the majority of the Supreme Court en banc. A meeting of non-concurrence is held under the authority of the United Church of Canada Act, and should, as I interpret the statute, be held before the union comes into force. It is, for the purposes of this case, a meeting of a congregation of the Presbyterian Church in Canada and I should have thought, that in the absence of any express statutory provision, 30 the regulations of that Church applicable to holding a congregational meeting in like circumstances were apt to regulate the meeting for which the statute provides.

Now I have already shown that Rule 19 requires that meetings of the congregation shall be called by the authority of the Session, which may act of its own motion or on requisition in writing of the Deacons' Court or Board of Managers, or of a number of persons in full communion, or by mandate of a superior Court, and rule 50 reiterates that it is the duty of the Session “ to call congregational meetings.” These rules were not followed as to the meeting of 27th July, and there was no antecedent 40 meeting of the Session; but, moreover, by s. 10 (d), the statute itself specially provides that a meeting of the congregation for the purposes of expressing non-concurrence may be called by authority of the Session of its own motion, and shall be called by the session on requisition to it in writing of twenty-five members entitled to vote, in congregations, such as this, having over 100, and not more than 500, members. There was no compliance with these provisions, and in consequence it seems to me to be very plain that the meeting of 27th July was not regularly called

or held, and that consequently, if for no other reason, it failed of its purpose. I do not think the Court is entitled to infer that, although the regulations were disregarded, the meeting, such as it was, would have been held, or would have reached the identical result, if the prescribed preliminaries had been observed, and it is, I should think, very unlikely that Parliament or the Legislature intended to leave congregations who were in doubt about their future affiliation, without adequate directions for the determination of that vital question.

The suggestion that the defect in the meeting of 27th July is, at most, an irregularity, which does not affect the reality of the thing accomplished, ought therefore to be rejected. The prescribed regulations must, I should think, rather be regarded as essential requirements of procedure in the polity or administration of the Church. And, besides, there is a two-fold answer : In the first place, the statute in this particular case, which involves the whole status of the congregation, expressly insists that the meeting shall be regularly called and held, and therefore it would seem that irregularity is not to be tolerated ; and, secondly, even assuming regularity in the calling of the meeting, its object and business, in so far as it could effectively serve any purpose, was, in substance, the reversal of a statutory election or option which, having been already competently exercised, could not be revoked by the congregation : *quod semel placuit in electionibus amplius displicere non potest*. The case is not within the principal enunciation in the cases of which the well-known judgment of Mellish, L.J. in *McDougall v. Gardiner*, 1 Ch. D., 25, is a leading example.

For these reasons, I would dismiss the appeal, but I think the judgment of the Supreme Court of Nova Scotia en banc should be varied by striking out the fourth paragraph, which begins with a statement of opinion " that the congregation, at a meeting regularly called and held, may, pursuant to the latter part of s. 8 (a) of ch. 122 of the Acts of the Province of Nova Scotia, 1924, enter the union and become part of the United Church," because I am not satisfied that this congregation may, pursuant to that authority, exercise such a power, and certainly cannot do so in the present circumstances with the consequence of uniting or merging the congregation with the united body.

The costs of the appeal should follow the event.

(D) SMITH J. : I agree with the Chief Justice and my brother Newcombe that the Provincial Act could not introduce into the Dominion corporation a congregation that the latter Act, in pursuance of the vote of non-concurrence under it, expressly excluded. This ground, however, was not taken, either in the court below or here, and my brother Newcombe has therefore deemed it advisable to discuss the merits of the appeal upon the grounds presented to the Court.

If this be advisable, I would concur in his conclusions, as I agree with him that the meeting of 27th July, 1925, was not strictly regular. It seems to me that the rules of procedure of the Presbyterian Church in Canada continued to apply to this congregation after the union, so far as applicable, and that the officers of the congregation continued in office. I think there was a method by which a meeting of the Session could have

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Supreme
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No. 28.
Reasons for
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(c) New-
combe J.
(concurred
in by
Rinfret J.)
—continued.

(D) Smith J.

*In the
Supreme
Court of
Canada.*

No. 28.
Reasons for
Judgment.
(D) Smith J.
—continued.

been had, in accordance with these rules, notwithstanding any efforts by the temporary Moderator to prevent it.

The object of the meeting was to enable the members of the congregation who wished to go into the union to carry with them into the union the property of the congregation. If that could be done at all, under authority of the provincial statute, it could only be done by the vote of a meeting regularly called. It is argued that what was done by the individual members of the Session in calling a meeting is precisely what would have been done had a meeting of the Session been regularly called, and that therefore there is no substantial difference, and that the contention that the meeting was not regular is a mere technicality, without substantial merit. There is, of course, weight in this argument and it was pressed with great force. The answer to it would be that if the statute authorises the transfer of the property of the congregation from the congregation to another body, upon a vote taken at a meeting regularly called, this condition must be strictly fulfilled, and here it was not fulfilled, because the meeting was not regular. The point is, of course, a debatable one, as is indicated by the difference that has arisen in judicial opinion concerning it in this case. I have, however, intimated that in my opinion, for the reasons set out by the Chief Justice, and also by my brother Newcombe, the vote of the 27th July, 1925, even if the meeting had been regular, was ineffective to carry either the congregation or its property into the union. 10

I concur in disposing of the appeal as proposed by my brother Newcombe.

No. 29.

Formal Judgment.

In the Supreme Court of Canada.

Present :

THE RIGHT HONOURABLE FRANCIS A. ANGLIN, P.C., C.J.C. 30
THE RIGHT HONOURABLE MR. JUSTICE DUFF, P.C.
THE HONOURABLE MR. JUSTICE NEWCOMBE.
THE HONOURABLE MR. JUSTICE RINFRET.
THE HONOURABLE MR. JUSTICE SMITH.

Between :

TRUSTEES OF ST. LUKE'S PRESBYTERIAN CONGREGATION
OF SALTSPRINGS, a body Corporate, ALEX. C. MAC-
DONALD, WILLIAM FRASER, WILLIAM H. MACKAY,
D. HEDLEY ROSS, MUNRO GUNN, ROBERT A.
ROBERTSON, GEORGE GRAY, RODERICK MACKAY, 40
JOHN R. YOUNG, D. A. FRAME, D. M. MATHESON
(Defendants) Appellants,

and

ALEXANDER CAMERON, GORDON PROUDFOOT, C. A.
MAXWELL, K. A. MURRAY, JOHN BISHOP, W. C.
PROUDFOOT, ROBERT JOHNSTON, JOHN McN.
CAMPBELL and ALEXANDER HALLIDAY ... (Plaintiffs) Respondents.

No. 29.
Formal
Judgment,
5th Febru-
ary 1929.

The appeal of the above named Appellants and the cross-appeal of the above named Respondents from the judgment of the Supreme Court of Nova Scotia in banco, pronounced in the above cause on the ninth day of April, in the year of our Lord One thousand nine hundred and twenty-seven, reversing the judgment of the Honourable the Chief Justice of the Supreme Court of Nova Scotia, rendered in the said cause on the second day of February, in the year of our Lord One thousand nine hundred and twenty-six, having come on to be heard before this Court on the fifth and sixth days of November in the year of our Lord
 10 One thousand nine hundred and twenty-eight, in the presence of Counsel as well for the Appellants as the Respondents, whereupon and upon hearing what was alleged by Counsel aforesaid this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment.

This Court did Order and Adjudge that the said judgment of the Supreme Court of Nova Scotia in banco should be and the same was varied by striking out the fourth paragraph thereof, and that the said judgment, as so varied, should be and the same was affirmed, and that the said appeal should be and the same was dismissed with costs to be
 20 paid by the said Appellants to the said Respondents.

(Sgd.) E. R. CAMERON,
Registrar.

*In the
 Supreme
 Court of
 Canada.*

No. 29.
 Formal
 Judgment,
 5th Febru-
 ary 1929
 —continued.

No. 30.

Order in Council granting special leave to appeal to His Majesty in Council.

At the Court at Buckingham Palace.

The 15th day of August, 1929.

Present :

THE KING'S MOST EXCELLENT MAJESTY.
 LORD PRESIDENT.
 LORD THOMSON.
 LORD PASSFIELD.
 LORD MUIR-MACKENZIE.
 MR. GREENWOOD.

30

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 22nd day of July, 1929, in the words following viz. :—

“Whereas by virtue of His late Majesty King Edward the
 “Seventh's Order in Council of the 18th day of October 1909 there
 “was referred unto this Committee a humble Petition of the Trustees
 40 “of St. Luke's Presbyterian Congregation of Saltsprings a body
 “Corporate Alex. C. Macdonald William Fraser William H. Mackay
 “D. Hedley Ross Munro Gunn Robert A. Robertson George Gray
 “Roderick Mackay and John R. Young in the matter of an appeal
 a

*In the
 Privy
 Council.*

No. 30.
 Order in
 Council
 granting
 special leave
 to appeal to
 His Majesty
 in Council,
 15th August
 1929.

*In the
Privy
Council.*

No. 30.

Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
15th August
1929

—*continued.*

“from the Supreme Court of Canada between the Petitioners
 “Appellants and Alexander Cameron Gordon Proudfoot C. A.
 “Maxwell K. A. Murray John Bishop W. C. Proudfoot Robert
 “Johnston John McN. Campbell and Alexander Halliday Respondents
 “setting forth (amongst other matters) that the Petitioners desire
 “to obtain special leave to appeal to Your Majesty in Council from
 “a Judgment of the Supreme Court (Anglin C.J.C., Newcombe,
 “Rinfret and Smith JJ.—Duff J. dissenting) dated the 5th February
 “1929 affirming with a material variation a Judgment of the Supreme
 “Court of Nova Scotia in banco (Rogers, Graham and Carroll, JJ.— 10
 “Mellish J. dissenting) dated the 9th April 1927 reversing the
 “decision at the trial (Harris, C.J.) dated the 2nd February 1926
 “whereby the Respondents’ Action had been dismissed: that the
 “Judgment of the majority of the Supreme Court is based principally
 “on the view not argued before them that after the Statutory Union
 “on the 10th June 1925 of the Presbyterian Church in Canada
 “the Methodist Church and the Congregational Church in the
 “United Church of Canada a congregation which prior to the Union
 “on the 10th June 1925 had elected to remain outside the Union
 “could not afterwards enter the United Church: that a declaration 20
 “to the contrary effect contained in the Judgment of the Nova
 “Scotia Court in banco was accordingly struck out: that all the
 “Judges in Nova Scotia and Duff J. in the Supreme Court accept
 “the view that such a congregation could by taking proper steps
 “enter the Union but three Judges in Nova Scotia were of opinion
 “that in the present instance the proper procedure had not been
 “followed: that the questions in dispute depend upon the con-
 “struction of Dominion and Provincial legislation giving effect to
 “the Union as on the 10th June 1925 of the Presbyterian Church
 “in Canada the Methodist Church and the Congregational Churches 30
 “in Canada (in the Act referred to as ‘the negotiating churches’)
 “in a single body or denomination known as ‘The United Church of
 “Canada’ on the terms contained in ‘the Basis of Union’ approved
 “by the negotiating churches: that the Dominion Act which in-
 “corporated the United Church of Canada and made provision for
 “the Union is ‘The United Church in Canada Act’ (14-15 Geo. V.
 “c. 100): that Provincial legislation was passed in each Province
 “dealing with matters within Provincial jurisdiction: that the
 “Federal and Provincial legislation together cover the whole field:
 “that these Acts have the effect of merging the negotiating Churches 40
 “and their several congregations in the United Church and vesting
 “the congregational property on new trusts: that in exercise of a
 “power reserved by the Acts the Congregation of St. Luke’s at a
 “regular meeting held on the 22nd December 1924 elected not to
 “enter the Union: that at a further meeting of the Congregation of
 “St. Luke’s on the 27th July 1925 it was resolved that the congrega-
 “tion should enter the Union: that the facts are set forth in the
 “Petition: that on the 1st September 1925 the Respondents brought
 “an Action against the Petitioners in the Supreme Court of Nova

10 “ Scotia : that the Respondents claimed declarations that the
 “ meeting held on the 27th July 1925 and all proceedings thereat
 “ were null and void and that the congregation was a Presbyterian
 “ congregation and an injunction restraining the Petitioners from
 “ interfering with the exercise by the Respondent Robert Johnston
 “ of the rights powers and privileges of the Office of Moderator :
 “ that the trial Judge (Harris, C.J.) on the 2nd February 1926
 “ dismissed the Action holding that the congregation had the right
 “ to take a second vote and that the vote taken was effective : that
 “ on appeal the Nova Scotia Court in banco held (Mellish J. dis-
 “ senting) on the 9th April 1927 that the second meeting of the
 “ congregation on 27th July 1925 had not been regularly called and
 “ that consequently the resolution then passed had no effect but
 “ included in the Judgment a declaration ‘ that the congregation
 “ ‘ at a meeting regularly called and held may pursuant to the latter
 “ ‘ part of section 8 (A) of the Nova Scotia Act enter the Union and
 “ ‘ become part of the United Church . . . ’ : that the Petitioners
 “ appealed and the Respondents cross-appealed : that the majority
 “ in the Supreme Court of Canada held that after the Union came
 20 “ into force on the 10th June 1925 there was no means of reviewing
 “ the prior election not to concur in the Union : And humbly praying
 “ Your Majesty in Council to order that the Petitioners shall have
 “ special leave to appeal from the Judgment of the Supreme Court
 “ of Canada dated the 5th February 1929 for such further or other
 “ Order as to Your Majesty in Council may appear fit :

30 “ The Lords of the Committee in obedience to His late Majesty’s
 “ said Order in Council have taken the humble Petition into con-
 “ sideration and having heard Counsel in support thereof Their
 “ Lordships do this day agree humbly to report to Your Majesty
 “ as their opinion that leave ought to be granted to the Petitioners
 “ to enter and prosecute their Appeal against the Judgment of the
 “ Supreme Court of Canada dated the 5th day of February 1929
 “ upon depositing in the Registry of the Privy Council the sum of
 “ £400 as security for costs :

40 “ And Their Lordships do further report to Your Majesty that
 “ the authenticated copy under seal of the Record produced by the
 “ Petitioners upon the hearing of the Petition ought to be accepted
 “ (subject to any objection that may be taken thereto by the
 “ Respondents) as the Record proper to be laid before Your Majesty
 “ on the hearing of the Appeal.”

His Majesty having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General Lieutenant-Governor or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

*In the
Privy
Council.*

No. 30.
Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
15th August
1929
—continued.

COLIN SMITH.

EXHIBITS.

Exhibits.

A.
Requisition
for a
Meeting of
St. Luke's
Church,
Saltsprings,
N.S.,
15th July
1925.

A.—Requisition for a Meeting of St. Luke's Church, Saltsprings, N.S.

The undersigned members in full communion of St. Luke's Presbyterian congregation at Salt Springs, hereby request the Elders to call a meeting of the congregation to be held at the earliest time possible under the Constitution of the Church for the purpose of considering and voting whether or not the said congregation shall concur in the union of St. Luke's Church with The United Church of Canada, and become part of the said The United Church of Canada.

The said meeting is to be called under Section 8 of Chapter 122, of 10 the Statutes of Nova Scotia for the year 1924.

Dated at Salt Springs, N. S., this 15th day of July, 1925.

B.
Notice of
Meeting of
Congregation,
18th July
1925.

B.—Notice of Meeting of Congregation.

Notice is hereby given that a meeting of the congregation shall be held at the Church on the 27th day of July, 1925, at 2 o'clock p.m. for the purpose of considering and voting upon a resolution that St. Luke's Presbyterian Church, Salt Springs, concur in the Union of the Churches provided for by Chapter 122 of the Acts of Nova Scotia for 1924, and that said St. Luke's Presbyterian Church at Salt Springs, shall become part of The United Church of Canada. The meeting and the voting 20 thereat shall take place under the provisions of said Section 8 of said Chapter 122 of the Acts of Nova Scotia, 1924.

Dated at Salt Springs, N. S., this 18th day of July, 1925.

C.
Minutes of
Meeting of
Congregation
and
Resolution,
27th July
1925.

C.—Minutes of Meeting of Congregation and Resolution.

St. Luke's Church, Salt Springs,
July 27th, 1925.

On the above date and place at 2 o'clock p.m., after regular notice given, a meeting of the congregation of Salt Springs was held.

After devotional exercise by R. A. Robertson (Elder) on motion of Daniel Robertson and seconded by H. V. Ross, and unanimously passed, 30 W. H. MacKay appointed Chairman of meeting.

Moved by Munro Gunn and seconded by Mrs. Daniel Robertson that C. H. MacKay be Secretary of meeting. Motion carried.

Chairman stated object of meeting and also read notice which was read on the two previous Sundays, of meeting.

The following resolution which was moved by R. A. Robertson and seconded by Munro Gunn, was read as follows :—

Resolved that St. Luke's Presbyterian Church, Salt Springs, concur in the Union of Churches, provided for by Chapter 122 of the Acts of

Nova Scotia for 1924, and that St. Luke's Presbyterian Church, Salt Springs, shall become part of the United Church of Canada.

It was moved by D. C. Davies and seconded by Neil MacLeod, that this resolution be voted on by a standing vote. Motion carried.

Chairman appointed Neil MacLeod and J. W. Fraser, scrutineers to count the vote.

Chairman then asked all in favour of resolution to please stand and remain so until counted, names of those who voted were also taken down in writing.

10 Chairman then asked all those who were opposed to resolution to stand. As there was no response, Chairman declared for resolution 100 and none opposed.

Chairman also declared that St. Luke's Presbyterian Church, Salt Springs, is now a part of the United Church of Canada.

On motion of D. C. Davies and seconded by J. W. Fraser that meeting do now adjourn.

Meeting was adjourned by prayer by Munro Gunn (Elder).

W. H. MacKAY,
Chairman.

20

C. H. MacKAY,
Secretary.

ALEX C. MacDONALD,
Clerk of Session.

Salt Springs,

July 27, 1925.

Resolved, that St. Luke's Presbyterian Church, Salt Springs, concur in the Union of the Churches prepared for by Chapter 122 of the Acts of Nova Scotia for 1924 and that St. Luke's Presbyterian Church, at Salt Springs shall become part of The United Church of Canada.

Contains 100 Signatures.

30

1.—Blue Book.

(See separate volume.)

2.—Letter : A. C. McDonald, Session Clerk, to E. Harrison.

St. Luke's Church, Saltsprings,
July 27, 1925.

Mr. E. Harrison,
Saltsprings.

Dear Sir:—You will recall that some time ago a resolution was passed and communicated to you that we held ourselves responsible for your services for two Sundays only, your services to terminate on June

Exhibits.

C.
Minutes of
Meeting of
Congregation
and
Resolution,
27th July
1925
—continued.

1.

2.

Letter :
A. C.
McDonald,
Session
Clerk, to
E. Harrison,
27th July
1925.

Exhibits.

2.

Letter:
A. C.
McDonald,
Session
Clerk, to
E. Harrison,
27th July
1925
—continued.

tenth. You have since continued to give services in the congregation of St. Luke's while it remained an independent congregation and neither at the request of nor with the acquiescence of the Elders of the congregation, in whose hands all arrangements for pulpit supply, for the time being, lay.

To avoid difficulty we have till now taken no action. To-day the congregation of St. Luke's has decided to enter the United Church of Canada.

This is to inform you that from to-day any further attempt on your part to supply St. Luke's will be in opposition to the wishes of the Elders and the congregation and contravenes the authority of the Presbytery 10 of Pictou of the United Church of Canada, under whose jurisdiction this congregation now lies.

We write you thus because we are persuaded that you are not aware of the gravity of the situation, and the very serious matter of contravening constituted authority.

We would also inform you that the Presbytery of Pictou of the United Church of Canada is asked to send supply to the pulpit of St. Luke's on Sunday next.

Yours very truly,

ALEX. C. McDONALD,

Session Clerk. 20

3.

3.—Envelope enclosing Exhibit 2.

In the Privy Council.

No. 98 of 1929.

On Appeal from the Supreme Court of Canada.

BETWEEN

TRUSTEES OF ST. LUKE'S PRESBYTERIAN
CONGREGATION OF SALTSPRINGS a
body Corporate, ALEX. C. MACDONALD,
WILLIAM FRASER, WILLIAM H. MACKAY,
D. HEDLEY ROSS, MUNRO GUNN,
ROBERT A. ROBERTSON, GEORGE GRAY,
RODERICK MACKAY and JOHN R.
YOUNG (Defendants) Appellants.

AND

ALEXANDER CAMERON, GORDON PROUD-
FOOT, C. A. MAXWELL, K. A. MURRAY,
JOHN BISHOP, W. C. PROUDFOOT,
ROBERT JOHNSTON, JOHN McN. CAMP-
BELL ALEXANDER HALLIDAY
(Plaintiffs) Respondents,

RECORD OF PROCEEDINGS.

BLAKE & REDDEN,
17, Victoria Street, London, S.W.1,
for the Appellants.