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*April 28, 29.
*Oct. 7.

JOHN FERGUSON AND OTHERS (PLAINTIFFS) ..... APPELLANTS;

AND

LACHLAN H. MACLEAN AND OTHERS (DEFENDANTS) ..... RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK, APPEAL DIVISION

Church organizations and property—United Church of Canada Acts, 14-15 Geo. V (Dom.), c. 100; 14 Geo. V (N.B.), c. 59—Votes of Presbyterian congregation in favour of union—Legality of votes—Qualification of voters—Method of voting—Congregation entering Union by statutory operation in absence of vote of non-concurrence—Claim by those non-concurring to congregational property or interest therein—Rights and interests in property of congregation under earlier New Brunswick legislation—Interpretation and effect of s. 6 of 14 Geo. V (N.B.), c. 59—"Right or interest, reversionary or otherwise" of denomination in congregational property—"Reversionary" interest—"Otherwise"—Ejusdem generis rule—Constitutional validity of s. 29 of 14 Geo. V (N.B.), c. 59.

Plaintiffs, as representing all communicants, pewholders and adherents of St. James Presbyterian Church, Newcastle, N.B., not concurring in church union (under c. 100 of 14-15 Geo. V, Dom., and c. 59 of 14 Geo. V, N.B.), claimed the church property (or a share therein), attacking the legality of the congregational votes (one taken under the provincial Act and the other under the Dominion Act, aforesaid) in favour of union, and contending that, in any case, the property fell within s. 6 of c. 59, 14 Geo. V, N.B., and therefore, there having been no "consent" under that section, the property had not vested in the United Church but belonged to the continuing Presbyterians of the congregation.

*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Rinfret and Lamont JJ.

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Held: The congregation not having passed a vote of non-concurrence, it became, by statutory operation, a congregation of the United Church, and, (Anglin C.J.C. and Rinfret J. dissenting), even if the property fell within s. 6 of c. 59, 14 Geo. V, N.B. (and corresponding s. 8 of c. 100, 14-15 Geo. V, Dom.), yet, after the Union, it was held for the benefit of the congregation as a congregation of the United Church; the absence of consent under s. 6 merely leaving the property unaffected by the trusts, and not subject to the terms and conditions, set out in the "Model Deed" (schedule A of the provincial Act; schedule B of the Dominion Act).

Per Duff J., further: The property did not come within s. 6 of c. 59, 14 Geo. V, N.B. (s. 8 of c. 100, 14-15 Geo. V, Dom.). In view of the interest created in favour of the denomination by 7 Edw. VII (N.B.), c. 79, s. 6, it could not be said that the property was held solely for the benefit of the congregation and that the denomination had "no right or interest, reversionary or otherwise" therein (the *ejusdem generis* rule, and the meaning to be given the words "reversionary interest," discussed at length, and authorities cited; the scope of the phrase "right or interest, reversionary or otherwise" is not controlled by the strict sense of the term "reversion", as understood in property law; the phrase "reversionary interest" is comprehensive enough to include any interest in real property, vested or contingent, the enjoyment of which is postponed, such as a reversion or a remainder, and analogous interests in personal property). S. 29 of c. 59, 14 Geo. V, N.B., having regard to its part in the design and procedure of all the legislation, was valid and effective (*Hodge* v. *The Queen,* 9 App. Cas. 117, at p. 132, cited).

Per Anglin C.J.C. and Rinfret J. (dissenting): Plaintiffs could not succeed on the ground of illegality of the votes; the franchise of the voters (a question in issue) was governed, as to the one vote, by s. 8 (*b*) of c. 59, 14 Geo. V, N.B., and as to the other, by the corresponding s. 10 (*b*) of c. 100, 14-15 Geo. V, Dom., the requirements of which in that regard were fully complied with; the vote under the Dominion Act, which was taken by signed ballot, was not a vote "by ballot" as required by s. 10 (*a*) of that Act (the method adopted lacking the essential of secrecy: The *Maple Valley* case, [1926] 1 D.L.R. 808); and *quaere* whether said requirement of voting "by ballot" did not apply also to the vote under the provincial Act (which was taken by roll call); but, under the circumstances, the validity or invalidity of either or both of the votes was immaterial; each gave a majority for union; and if neither was validly taken the result was merely that non-concurrence was not established, and, therefore, the congregation having been placed in the United Church by s. 4 of the Dominion Act, in the absence of a vote of non-concurrence, it remained there, and it must now so remain, as the time for taking such a vote had expired. But the property of the congregation fell within s. 6 of c. 59, 14 Geo. V, N.B., as being property held "solely for (the congregation's) own benefit, and in which the denomination to which such congregation belongs has no right or interest, reversionary or otherwise"; under earlier New Brunswick legislation (1 Wm. IV, c. 11, 2 Wm. IV, c. 18, 3 Wm. IV, c. 15, 38 Vic., c. 48, 38 Vic., c. 99) the property of St. James Presbyterian Church had been vested absolutely in the trustees of that church; and the mere possibility of a

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future interest created by 7 Edw. VII (N.B.), c. 79, s. 6, was not such a "right or interest, reversionary or otherwise" in the denomination (Presbyterian Church in Canada) as was contemplated by s. 6 of c. 59, 14 Geo. V, N.B. (the meaning of "reversion"; and of "otherwise", with regard to the *ejusdem generis* rule, discussed at length and authorities cited; and the interpretation of said phrase discussed with regard to the legislation in question). The result was that, there having been no consent within s. 6 of c. 59, 14 Geo. V, N.B., the property did not pass, under ss. 3 and 4, to the United Church, but (until otherwise determined at a meeting called for the purpose of s. 6) continues in the trustees for the benefit of the congregation as it was prior to June 10, 1925 (when the United Church Acts came into force), including those members thereof who have since become members of the United Church. As to plaintiffs' attack on the constitutionality of certain sections of the Dominion Act and the efficacy of s. 29 of the provincial Act, this judgment proceeded on statutory provisions not open to challenge in that regard, and consideration further of the point was unnecessary.

Judgment of the Supreme Court of New Brunswick, Appeal Division, affirmed in the result (Anglin C.J.C. and Rinfret J. dissenting).

APPEAL by the plaintiffs from the judgment of the Supreme Court of New Brunswick, Appeal Division, which allowed the defendants' appeal, and dismissed the plaintiff's cross-appeal, from the judgment of Hazen, C.J. N.B.

At a meeting of the congregation of St. James Presbyterian Church at Newcastle, New Brunswick, on June 29, 1925, called for the purpose of taking a vote under c. 59, 14 Geo. V, N.B., a vote was taken which resulted in favour of church union. At a subsequent meeting of the congregation, on July 25, 1925, called in pursuance of a requisition made by certain members of the church, provision was made for taking a vote under c. 100, 14-15 Geo. V, Dom., which vote was taken between July 25 and August 12, 1925, and resulted in favour of church union.

The plaintiffs, four in number, sued for themselves and all persons having the same interest, to wit: all communicants, pewholders and adherents of St. James Presbyterian Church not concurring in or agreeing to church union under the said Acts. The defendants, fourteen in number, were the joint ministers and certain officials of the Newcastle United Church, including the former minister and certain former officials of the St. James Presbyterian Church; and one or two persons who had been officials of St. James Church and were now members of the United Church, but who apparently did not hold office in it. The

defendants were made defendants "as well personally as in their said respective official capacities."

In their statement of claim the plaintiffs alleged (*inter alia*) that the voting at the first meeting was taken by roll-call (which was admitted); that the names of many pewholders were not called and that the voting was not confined to male communicants of the full age of 21 years and pewholders according to Acts of New Brunswick in such case made and provided; that many pewholders were, by refusal to call their names, deprived of their right to vote on the disposition of the property of St. James Church; that in the second vote (provided for by the meeting on July 25) ballots were accepted from female voters and from male voters not of the full age of 21 years, and pewholders as such were not permitted to vote and unsigned ballots were not accepted; that the said meetings were wrongfully and illegally constituted and held and the said votings were wrongful and illegal and not in accordance with the laws governing St. James Church, and that by such wrongful and illegal act the defendants and each of them had deprived the plaintiffs of their right in the said church and congregation and in the property thereof. The statement of claim also referred to certain subsequent proceedings taken or conducted in regard to the alleged local union of St. James Presbyterian Church aforesaid and St. John's Methodist Church at Newcastle and in regard to the alleged United Church of Canada at Newcastle thereby formed; and to the property of St. James Presbyterian Church. The plaintiffs claimed: the setting aside of said votes; a declaration of nullity of the alleged union of St. James Presbyterian Church and St. John's Methodist Church, and that certain defendants who had assumed offices and duties under the alleged union had illegally mixed in and interfered with the affairs and property of St. James Presbyterian Church; a declaration that the defendants hold their offices illegally and any acts done by them in their several capacities as ministers, elders and stewards in connection with the property and assets of St. James Presbyterian Church were illegal and null; a declaration as to the rights of the plaintiffs in the property and assets of the said church; prevention of waste, etc., an account, mandamus, injunction, and mesne profits.

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The case was tried before Hazen, C.J. N.B. In the course of his judgment, he referred to earlier legislation of New Brunswick affecting St. James Presbyterian Church (1 Wm. IV, c. 11; 2 Wm. IV, c. 18; 3 Wm. IV, c. 15; 14 Vic., c. 9; 38 Vic., c. 48; 38 Vic., c. 99; 8 Edw. VII, c. 84), dealt with the United Church of Canada Acts (14 Geo. V, c. 59, N.B.; 14-15 Geo. V, c. 100, Dom.), and considered the evidence in the case (which included the "Rules and Forms of Procedure of the Presbyterian Church in Canada," from Rules 14 and 63 of which he quoted). He held that the persons who had the right to vote at the votings in question were those who were in full membership and whose names were on the roll of the church at the time s. 8 of c. 59, 14 Geo. V, N.B., came into effect; that neither of the meetings or votes was illegal, but that they were held in accordance with the law governing such elections and laid down in the Statutes; and that on this point the plaintiffs failed. But he held in favour of a further contention of the plaintiffs, namely: that down to the time of the Church Union Act of 1924 the Presbyterian Church in Canada had no interest in any property of St. James Church, and that the property in dispute was held entirely by that church for that congregation under c. 48 of 38 Vic., N.B.; that there never had been any vote taken affecting the property of St. James Church as contemplated by s. 6 of c. 59, 14 Geo. V, N.B.,* and that the congregation had never at a meeting regularly called for the purpose consented that the provisions of ss. 3 and 4 should apply to the property of St. James Church; that the property was purely congregational, i.e., held for the use of the congregation, and could only be taken over by the United Church if the congregation voted in favour of so

* S. 6 of c. 59, 14 Geo. V, N.B., reads as follows:

6. 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 congregation belongs has no right or interest, reversionary or otherwise, shall not be subject to the provisions of Sections 3 and 4 hereof 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.

doing; in other words, to complete the union and transfer all the property there would have to be two votes, one for the union of the churches, and the other for the transfer of the property. On this point his Lordship concluded as follows:—

> If this is not the case I do not see what meaning is to be attached to s. 6, and I have come to the conclusion that the property of St. James Church held for the use of the congregation of that church did not become transferred to the United Church as the preliminary of the consent of the congregation of St. James Church passed at a meeting thereof regularly called was not complied with. On this ground I am of opinion that the plaintiffs must succeed.

and on this ground he gave judgment for the plaintiffs.

The defendants appealed to the Supreme Court of New Brunswick, Appeal Division, and the plaintiffs cross-appealed against that part of the judgment of Hazen, C.J. N.B., in which he held in favour of the legality of the votes.

By the judgment of the Appeal Division the defendants' appeal was allowed with costs and the plaintiffs' cross-appeal was dismissed with costs, and the plaintiffs' suit was dismissed with costs. Grimmer J. and Barry, C.J. K.B, each delivered a written judgment, and White J. agreed in the result with them both. Both Grimmer J. and Barry, C.J. K.B., held (agreeing with the trial judge in this respect) that the votes were legal and proper votes. They also held that, by virtue of 7 Edw. VII, c. 79, s. 6 (N.B.), the Presbyterian Church in Canada, the denomination to which the St. James Church belonged, had a "right or interest, reversionary or otherwise" in the congregational property, within the meaning of s. 6 of c. 59, 14 Geo. V, N.B., and therefore the property was excluded from the operation of that section; that the property went with the congregation into the Union, and that the plaintiffs, who had not concurred in the Union and had separated themselves from the congregation, had no claim to the property. Grimmer J. held, further, that it never was intended by s. 6 of c. 59, 14 Geo. V, N.B., that, if a congregation whose property was held by it solely for its own benefit decided to remain in the Union, it was required to vote to retain its property, under penalty of having the same forfeited if it did not do so, or that, the congregation having voted in favour of entering the Union, there must be a second

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vote to carry the property with it; s. 6, where it applied, meant that the property was to be held for the use of the congregation in the United Church, but (in the absence of consent under s. 6) to be vested in the local church corporation for the use of the congregation, instead of being brought under the trusts contained in the Model Deed (Schedule A of c. 59, 14 Geo. V, N.B.) for the use of the congregation. Barry, C.J. K.B., in his judgment, referred to the fact that neither the corporation created by *The United Church of Canada Act* (c. 100, 14-15 Geo. V, Dom.) nor the corporation of "The Trustees of St. James Presbyterian Church, Newcastle," a body corporate and politic under and by virtue of 2 Wm. IV, c. 18, and confirmed by subsequent legislation, was joined as a party to the action, and referred to defendants' objection that, since the legal title to the property and temporalities of St. James Church must rest in one or the other of those corporations and because (as was said) they could not be bound by a judgment pronounced in an action to which they were neither parties nor privies, the plaintiffs should not be permitted further to maintain the action, but that the same should be dismissed. He pointed out that the objection did not seem to have been raised in the court below, nor (as he held) was it raised in the statement of defence. In any case, as the appeal was determinable on other and meritorious grounds (referred to above), he preferred to dispose of it on those grounds.

From the said judgment of the Appeal Division the plaintiffs appealed to the Supreme Court of Canada.

Gregor Barclay, K.C., and *A. B. Gilbert* for the appellants.

P. J. Hughes, K.C., and *G. W. Mason, K.C.*, for the respondents.

ANGLIN C.J.C. (Rinfret J. concurring) (dissenting).—The plaintiffs appeal from the judgment of the Appeal Division of the Supreme Court of New Brunswick, reversing in part the judgment of Hazen, C.J. N.B., who tried this action.

The action was brought by the plaintiffs on behalf of themselves and others, pewholders and communicants of the St. James Presbyterian Church at Newcastle, N.B., who

did not concur in, or agree to, Church Union, under the Act of Canada, 14-15 Geo. V, c. 100 (assented to on the 19th of July, 1924, and which came into force on the 10th of June, 1925, hereinafter called the "Dominion Act"), and the Act of the Province of New Brunswick, 14 Geo. V, 1924, c. 59 (assented to on the 17th of April, 1924, which also came into force on the 10th of June, 1925, hereinafter called the "Provincial Act"). The plaintiffs sued to set aside certain votes upon the issue of Church Union, taken, one on the 29th of June, 1925, under the Provincial Act (s. 8 (a)), and the other between the 25th of July and the 12th of August, 1925, under the Dominion Act (s. 10 (a)); for a declaration of the nullity of the alleged Union of St. James Presbyterian Church and St. John's Methodist Church, and in regard to some consequential matters; for a declaration that the defendants hold office illegally; for a declaration as to the rights of the plaintiffs in the property and assets of the said St. James Presbyterian Church, and for consequential relief, including prevention of waste; for an account; for a mandamus requiring the defendants to suffer and permit the plaintiffs to use the church and church buildings, etc.; for an injunction to restrain the defendants from using the church and church buildings, etc.; and for mesne profits.

The action was tried before Hazen C.J., on the 26th of March, 1929, and following days, and he gave judgment on the 30th of April, 1929, upholding the validity of both of the votes which resulted in large majorities for Church Union, but declaring, in the plaintiffs' favour, that the property of the St. James Presbyterian Church was property held solely for the benefit of that church and that in it the denomination, to which the congregation thereof belonged, had "no right or interest, reversionary or otherwise." Accordingly, he held that, by virtue of s. 6, that property did not vest in the United Church under the provisions of ss. 3 and 4 of the Provincial Act, no meeting, regularly called for that purpose, having consented that those provisions should apply thereto, or to any part thereof; and that the plaintiffs (presumably), as "continuing" members of the said St. James Presbyterian Church, were entitled to the possession of it, and to other relief claimed in respect thereof, including an account of receipts and ex-

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penditures and mesne profits, as prayed; and further directions were reserved.

From this judgment an appeal and cross-appeal, taken to the Appeal Division of the Supreme Court of New Brunswick, were heard by White J., Grimmer J., and Barry C.J. K.B.

Agreeing with the Chief Justice of New Brunswick that the two votes on the question of Church Union, taken under the Provincial Act and the Dominion Act respectively, were valid, the court dismissed the cross-appeal of the plaintiffs on that aspect of the case. On the other hand, the appeal of the defendants, in so far as the property in question had been held not to be vested in the United Church of Canada pursuant to the provisions of ss. 3 and 4 of the Provincial Act, was allowed, the Appeal Division taking the view that, by virtue of a statute of New Brunswick of 1907 (7 Edw. VII, c. 79, s. 6), the Presbyterian Church of Canada, Eastern Section, to which the congregation of St. James Presbyterian Church belonged, had a reversionary interest in the several properties belonging to St. James Church and that, accordingly, those properties were not excepted by s. 6 of the Provincial Act from the operation of ss. 3 and 4 of that statute, and, therefore, that no formal consent of the congregation at a meeting regularly called for that purpose was necessary to effect a transfer of such property to the United Church or to the application thereto of ss. 3 and 4.

The present appeal is brought against this judgment by the plaintiffs.

Dealing first with the question of the efficacy of the two votes on Church Union: The first vote, that of the 29th of June, 1925, was taken under the Provincial Act. The only objection made to the regularity of this vote, which, as provided by s. 8 (*a*), was taken within six months after the Provincial Act came into force, is as to the franchise of the voters. The claim of the appellants is that certain pewholders and others not upon the roll were entitled to vote. The Provincial Act, however, is conclusive against that claim, since, by clause (*b*) of s. 8, it provides that

(*b*) The persons entitled to vote under the provisions of the first clause of this section shall be only those persons who are in full mem-

bership and whose names are on the roll of the church at the time of the coming into force of this section.

We entirely agree with the view, which prevailed below, that clause (*b*) governed the franchise at the meeting in question and that its requirements were fully complied with. This opinion is confirmed by s. 30 of the statute which enacts that

30. All Acts and portions of Acts of the Legislature of this Province inconsistent with the provisions of this Act are hereby repealed in so far as may be necessary to give full effect to this Act.

As to the vote under the Dominion Act, however, two objections are taken. S. 10 of that statute, so far as material, reads as follows:

(10) (*a*) 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, 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 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 or held in trust for or to the use of such non-concurring congregation shall remain unaffected by this Act * * *. The vote herein provided for shall be taken by ballot in such form and manner and at such time within the limit prescribed by this subsection as the congregation may decide: Provided that not less than two weeks shall be allowed for the taking of said vote by ballot as aforesaid.

(*b*) The persons entitled to vote under the provisions of the first clause of this section shall be only those persons who are in full membership and whose names are on the roll of the Church at the time of the passing of this Act. * * *

The same question is raised with regard to the franchise of the voters and must be determined in the same way as under the Provincial Act, since the governing franchise is declared, by clause (*b*) of s. 10 of the Dominion Act, in terms identical with those of s. 8 (*b*) of the Provincial Act.

Another, and a more formidable objection, however, which does not appear to have been taken in the provincial courts, is that s. 10 (*a*) ordains that the vote therein provided for shall be taken "by ballot." The congregation determined to vote "by signed ballot"; and the vote was taken accordingly. It seems to me abundantly clear that the vote by signed ballot was not a vote "by ballot" within the meaning of section 10 (*a*). It lacked the essential of

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secrecy (The *Maple Valley* case (1)). Although this objection was taken at a very late stage of the proceedings, it might, but for the considerations presently to be noticed, have been most material.

This vote, however, was not taken " within six months before the coming into force " of the Dominion Act. It, therefore, was not a vote within clause 10 (a) of that statute. But the effect of invalidity of that vote would be merely to render it null, with the result that, so far as it was a factor, the congregation of St. James would remain in the United Church of Canada, having been placed therein by s. 4 of the Dominion Act, and there having been no vote by which it became a " non-concurring " congregation under section 10.

Moreover, it would seem at least arguable that the requirement that the vote should be " by ballot " applied also to the vote taken under the Provincial Act (which was " passed * * * before (the) coming into force " of the Dominion Act), if that vote is to be relied on as a vote for Church Union made effective by s. 10 (a) of the Dominion Act, being, in that aspect, a " vote (t)herein provided for ". That it should be so regarded seems necessary to its affecting the determination of the question whether the congregation of St. James Church should enter the United Church of Canada, which is a Dominion corporation (s. 2 (i) N.B.), or should be outstanding as a " non-concurring congregation " (s. 3 (i) D).

But a conclusive answer to the appellants on this branch of their case appears to be this: Either one of the votes—that of the 29th of June or that of the 25th of July-12th of August—was validly taken under s. 10 (a) of the Dominion Act, in which event the plaintiffs must fail since a majority on each of these votes clearly favoured St. James Congregation entering the Union; or neither of those votes was vadily taken, with the result that non-concurrence of St. James congregation was not established; and, having been placed in the United Church by s. 4 of the Dominion Statute, in the absence of a vote of non-concurrence under s. 10 (a), that congregation remained in the United Church; and it must now so remain, since no further vote on that

(1) [1926] 1 D.L.R. 808.

question can be taken, the periods therefor respectively named in s. 8 (a) of the Provincial Act and in s. 10 (a) of the Dominion Act having both long since expired. In this view, the plaintiffs likewise fail in this branch of their case. It seems immaterial, therefore, to consider further the validity or invalidity of these two votes, interesting though the questions raised in regard to them may be.

It follows that the property of the St. James congregation became vested in the United Church under the provisions of s. 4 of the Provincial Act, unless, and except in so far as, it fell within s. 6, to the provisions of which s. 4 was expressly made subject. This s. 6, which is the vital provision to be considered, reads as follows:

> 6. 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 congregation belongs has no right or interest, reversionary or otherwise, shall not be subject to the provisions of Sections 3 and 4 hereof 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.

By earlier legislation of the province of New Brunswick, set forth at length by the Chief Justice in his judgment, to wit, c. 11, 1 William IV, (1831), c. 18, 2 William IV, (1832), c. 15, 3 William IV, (1833), c. 48, 38 Vic., (1875), and c. 99, 38 Vic., (1875), it was made abundantly clear that the property of St. James Presbyterian Church at Newcastle was vested fully and absolutely, and to all intents and purposes, and without qualification, in the Trustees of that church. It is said, however, for the respondents, that by a New Brunswick Act of 1907 (7 Edw. VII, c. 79), a reversionary right or interest therein was created in "The Board of Trustees of the Presbyterian Church in Canada, Eastern Section," because of the provision, that

> 6. All lands and premises which have been or shall hereafter at any time be held by any trustee or trustees for any congregation which shall have ceased to exist, or has become disorganized, shall vest in the said board of trustees in trust to sell the same, and pay over the proceeds of the said sale to the treasurer of the said church for the benefit of the Home Mission scheme thereof, or as may be otherwise determined by the Synod of the said church.

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We are, however, unable to regard the mere possibility of a future interest thus created in favour of the Home Mission Scheme, or other object to be selected by the Synod of the Church, (assuming it to be in favour of "the denomination" to which the St. James Congregation belonged), as such a "right or interest, reversionary or otherwise," as is contemplated by s. 6 of the Provincial Act.

That the possibility of some right or interest in the property in question arising in favour of the Home Mission Scheme, or other body to be designated by the Synod of the Presbyterian Church, was not a reversionary interest seems abundantly clear. In the first place, a reversion is an undisposed of estate in property, left in a grantor after he has parted with some particular interest less than the fee-simple therein. In the second place, it is an estate which returns to the grantor after the determination of such particular estate (1 Plowd. 160*a*). The derivation of the word from the Latin verb *revertor,* makes this perfectly clear (Co. Litt. 142*b*). "There cannot, in the usual and proper sense of the term, be a reversion expectant upon an estate in fee-simple." (Per Selborne, L.C., in *Attorney-General of Ontario* v. *Mercer* (1)). That St. James Church held the fee-simple in these properties is not questioned.

To quote from Stroud's Judicial Dictionary, p. 1754,

> The reversion is what is left; and the remainder is that which is created by the grant after the existing possession. Both words are technical phrases. And though it is said in the Touchstone (p. 249) that "a reversion may be granted by the name of a remainder, or a remainder by the name of a reversion"; yet it needs a very strong context for such a construction.

In *Symons* v. *Leaker* (2), we find Field J. using the following language:

> As Lord Redesdale says in *Mason* v. *Wright* (3): "It is dangerous where words have a fixed legal effect to suffer them to be controlled without some clear expression or necessary implication." Reversion is a well known legal expression, and its meaning and the distinction between it and a remainder is clearly pointed out in the passage from Williams on Real Property (14th Ed., p. 255) to which we were referred by the counsel for the defendants.

(1) (1883) 8 App. Cas. 767, at p. 772.

(2) (1885) 15 Q.B.D. 629, at p. 632.

(3) *Jesson* v. *Wright,* (1820) 2 Bligh, 1, at p. 56.

This Act of Parliament is dealing with a technical subject. The words used in it have a technical and legal meaning, and I cannot see why the words "person entitled to any reversion" in s. 8 of the Prescription Act should be construed to apply to a remainderman.

And Manisty J., at p. 633 of the same case, said,

As to the construction of that section, I cannot bring myself to believe that the experienced lawyers who framed this highly technical Act * * * could have meant a remainderman when they used the term "reversioner." One cannot help seeing how easy it would have been to have said "reversion or remainder" if that was meant.

A like view was taken by Jessel, M.R., in *Laird* v. *Briggs* (1), when, speaking of s. 8 of the *Prescription Act,* he said,

The whole of the section and the whole of the Act is of a strictly technical character from beginning to end. As far as I can see, technical words are used in their proper technical senses * * * *Prima facie* it appears to me that the rule applies that technical words must have their technical meaning given to them unless you can find something in the context to overrule them. * * * A reversion in law is not a remainder, the difference being that the reversion is what is left and the remainder is that which is created by the grant after the existing possession. I am not prepared to say that I can find anything in the nature of the case or in the context which would allow me to alter the meaning of the word "reversion"

The application of these authorities to the case at bar is obvious. The statute in question was carefully revised by experienced counsel representing the interests of the United Church of Canada. There is no reason to suppose that these lawyers were not fully aware of the meaning of the word "reversionary" or that, having such knowledge, they used that word in any other than its technical sense.

If, then, the interest conferred on "The Board of Trustees of the Presbyterian Church in Canada, Eastern Section," by the Act of 1907, be not "reversionary," but a mere possibility, probably introduced to obviate any question of escheat, and which can take effect, if not as a contingent remainder (*Purefoy* v. *Rogers* (2)), only, by virtue of the statute, as something akin to a "springing use" in the legal sense, can it be said that it is a "right or interest, reversionary or otherwise" without giving to the word "otherwise" an application to something entirely distinct in its nature and character from a reversion? We think not.

(1) (1881) 19 Ch. D. 22, at pp. 33-4.

(2) (1669) 2 Wms. Saunders, 768, at p. 781, n. 9.

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Whether such extension should, under some circumstances, be given to the word "otherwise" may be an arguable question. *Sutton* v. *London, Chatham and Dover Ry. Co.* (1); *Brain* v. *Thomas* (2). But there can be no doubt that the general rule is that the word "otherwise" should receive an *ejusdem generis* interpretation much the same as the word "other". (*Haren* v. *Archdale* (3); Stroud's Judicial Dictionary, p. 1370). Indeed, in the Act now before us, the adverb "otherwise" appears to be used in the sense of the adjective "other": the phrase would be grammatically more accurate if it read "reversionary or other." As to this general rule no authority is necessary (*per* Cleasby B., in *Monck* v. *Hilton* (4)), and it is equally clear that s. 6 of the Provincial Act cannot be read as if the words "reversionary or otherwise" were entirely deleted therefrom, so as to make it apply to any right or interest whatsoever (*ibid,* at p. 275). As put by Pollock B., in the same case (pp. 278-9), the words "or otherwise" should be taken as meaning something "of the same general character as is indicated by the earlier words of the section."

Again, in *Parkinson* v. *Dashwood* (5), dealing with a marriage settlement containing the words "accruer, survivorship or otherwise", Romilly M.R. held that the words "or otherwise", "must be restricted to an acquisition * * * in a mode similar to that by survivorship or accruer."

In *In re Clark* (6), it was held by the Court of Appeal that the words "or otherwise" in s. 3 of the *Married Women's Property Act* of 1882, which occur in the phrase, "Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise * * *," did not include a loan by a wife to her husband for purposes unconnected with the trade or business. This decision approved

(1) (1896) 12 T.L.R. 425.
(2) (1881) 50 L.J. Ex. 662 at p. 664.
(3) (1883) 12 L.R. Ir., 306, at p. 318.
(4) (1877) 2 Ex. D., 268, at p. 276.
(5) (1861) 30 Beav., 49, at p. 51.
(6) [1898] 2 Q.B. 330.

that of Cave J. in *In Re Tidswell* (1). See also *Mackintosh* v. *Pogose* (2); compare *Alexander* v. *Barnhill* (3).

So, in *Cheese* v. *Lovejoy* (4), the Court of Appeal held that a will was not revoked where the testator had written over it "This is revoked" and thrown it among a heap of waste papers in his sitting-room, from which a servant took it up and put it on a table in the kitchen where it remained till the testator's death, because that was not "otherwise destroying" the will within the meaning of the phrase "burning, tearing or otherwise destroying the same." See also *Doe* v. *Harris* (5).

Again, in *Owners of Cargo on Board SS. Waikato* v. *New Zealand Shipping Co. Ltd.* (6), the Court of Appeal, affirming Bigham J., held that a defect, obvious from the commencement of the voyage, was not within an exemption from liability for "defects latent on beginning voyage or otherwise."

Having regard to the fact that the respondents are seeking a construction of the statute which would have the effect of vesting in themselves, to the exclusion of the plaintiffs, all property belonging to St. James Presbtyerian Church, and thus depriving the latter of a substantial interest in property which they had enjoyed and of advantages to be derived therefrom, the statute invoked, revised as it was by counsel representing the United Church, must be strictly construed. Upon no construction that I can conceive of could the words "right or interest, reversionary or otherwise," include a mere possibility which, if it should come into effect, could only do so as a remainder, unless one should read out of the statute entirely the words "reversionary or otherwise", so that it would cover any interest or right whatever. The legislature must be credited with the intention of placing some restriction upon the nature of the right or interest in the denomination, which was to deprive the non-concurring members of the congregation of their property rights, when it placed the qualifying words, "reversionary or otherwise", in the statute. The only possible operation which can be given to these

(1) (1887) 56 L.J. (N.S.) Q.B. 548.
(2) [1895] 1 Ch. 505.
(3) (1888) 21 L.R. Ir. 511.
(4) (1877) 2 P.D. 251.
(5) (1837) 6 Ad. & E. 209.
(6) [1899] 1 Q.B. 56.

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words is by reading them as restricting the right or interest held by the denomination, which would have the effect of taking away the plaintiffs' right in the properties in question, to a vested right or interest reversionary in its nature, or of the same general character as such a reversionary right or interest. That the possibility created in favour of the Home Mission Scheme, or other object to be designated by the Synod, was not of that character, would seem beyond question. On a proper construction of the statute (s. 6 of the Provincial Act) a contingent future interest, or postponed possibility, such as that now under consideration, must fall within the second limb of the condition (i.e., must be reversionary in character), in order to prevent the property of the congregation being regarded as not held by it "solely for its own benefit," within the purview of the first limb of the condition.

We are, therefore, of the opinion that, there having been no meeting of the congregation of St. James Presbyterian Church, regularly called for the purpose of giving consent under s. 6, and the provisions of ss. 3 and 4 of the Provincial Act therefore not applying to its property, or to any part thereof, because excluded by s. 6, such property continues vested in the Trustees, who hold it for the benefit of that congregation, as it was prior to the 10th of June, 1925, and did not pass under sections 3 and 4, to the United Church of Canada. See *Trustees of St. Luke's Presbyterian Congregation of Salt Springs* v. *Cameron* (1).

It does not, however, at all follow that the plaintiffs are entitled to the use of the property to the exclusion of the defendants or others who were members of the congregation, as it existed prior to the 10th of June, 1925, and who have become members of the United Church. On the contrary, until, at a meeting, regularly called for the purpose, it is otherwise determined as to the "property, or a specified part thereof," the property real and personal, as a whole, remains in the hands of the Trustees for the benefit of the entire congregation as it existed up to the 10th of June, 1925, including many of the defendants as well as the plaintiffs. It follows that, while the plaintiffs are entitled

(1) [1929] Can. S.C.R. 452; [1930] A.C. 673.

to a declaration that their rights in the property in question remain intact, as they were before the Statute effecting Church Union came into force, and that such property did not pass under sections 3 and 4 of the Provincial Act, they are not entitled to the further relief prayed for—and granted by the Chief Justice of New Brunswick.

The judgment on appeal should be modified accordingly.

The question raised as to the necessity for having before the court the corporation created by the *United Church of Canada Act* (14-15 Geo. V, c. 100 (D.)), and the Corporation of the Trustees of the St. James Presbyterian Church of Newcastle, (2 Wm. IV, c. 18), is dealt with by Barry, C.J. K.B., in his judgment in the Court of Appeal. In view of the conclusions reached here, it does not seem necessary further to consider it.

The same observation applies to the questions presented by counsel for the appellant as to the constitutionality of ss. 4, 5, 6, 7, 8 and 10 of the Dominion Act and the efficacy of s. 29 of the Provincial Act. As will be noted, this judgment proceeds upon a specific provision of the Dominion Act (s. 10), so far as concerns the entry into the United Church of the St. James Presbyterian Church congregation, the validity of which in that regard cannot be challenged; and, so far as the disposition of the property in question is concerned, it proceeds upon section 6 of the Provincial Act, which likewise is not open to challenge. As to the propriety of passing s. 29 of the Provincial Act, which is spoken of as an anticipatory attempt to validate impugned sections of the Dominion Act, then not yet enacted, it is unnecessary to express any view. We can scarcely doubt, however, that the Legislature had before it a draft of the provisions of the Dominion Act which it purported by s. 29 to declare should "have full force and effect with respect to any property or civil rights within this province."

Under all the circumstances, there should be no order as to the costs of this appeal.

DUFF J.—I shall first assume that the property in question held in trust for the congregation of St. James Church was, as the appellants contend, property falling within section 8 of the Dominion Act and section 6 of the New Brunswick Act. Where the congregation of one of the negotiating churches was entitled to property within these

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sections, two courses were apparently open to the congregation on entering the United Church. It might, if it so desired, give its consent to the property being held upon the trust, subject to the terms and provisions set forth in schedule A of the New Brunswick Act and schedule B of the Dominion Act, or it might withhold such consent and retain the property under the terms of section 6 (8), by which it was not to be affected by the trusts, or subject to the terms and conditions in the schedule mentioned. In the last mentioned case, I can see no reason whatever for supposing that the congregation would not be entitled to make use of such property for congregational purposes as a congregation of the United Church. Indeed that seems to be the necessary result of the provisions of the Act. The Act provides for the union of the three churches, which, as united, are to constitute the United Church of Canada, and the churches, so united, include all congregations who do not vote themselves out under the provisions of the Act. I do not propose to discuss the question of the validity of the votes taken. The judgments below have dealt with the subject fully, and it seems quite clear that the congregation of St. James Church did not become a non-concurring congregation within the meaning of the Act.

By section 28 of the Dominion Act it is declared:

(*a*) That the said union of the negotiating churches has been formed by the free and independent action of the said churches through their governing bodies and in accordance with their respective constitutions, and that this Act has been passed at the request of the said churches in order to incorporate the United Church and to make necessary provision with respect to the property of the negotiating churches and the other matters dealt with by this Act.

By section 20 (a) of the Provincial Act it is declared that

Each Board of Trustees now or hereafter holding any property in trust for the use or benefit of any congregation in connection with The United Church referred to in section 4 of this Act, and their successors, shall be a body corporate by the name of The Trustees of The United Church of Canada (at the place where, etc.) * * * and by that name shall hold the property heretofore held by them as Trustees, and shall have the power and capacity of taking, holding and dealing with any property, real or personal, and all instruments requiring the seal thereof to be affixed thereto shall be executed by such officer or officers as may be authorized thereto by the said body corporate. Provided that in the exercise of such rights, powers and privileges the said body corporate shall be subject to the provisions of this Act and the trusts, terms and provisions set out in Schedule "A" hereto, or Schedule "B" of the Act of Incorporation or to

any amendment to said Schedule "B" made by any Act of the Parliament of Canada.

The proviso, by force of the last sentence of sub-section (b), has no relation to property within section 6 (8).

Section 13 of the New Brunswick Act and section 15 of the Dominion Act provide as follows

> Where, prior to the coming into force of this Section, any existing trust has been created or declared in any manner whatsoever for * * * the support, assistance, or maintenance of any congregation * * *or for the furtherance of any * * * congregational * * * purpose, in connection with any of the negotiating churches * * * the entry of any congregation into The United Church shall not be deemed a change of its adherence or principles or doctrines or religious standards within the meaning of any such trust.

The application of these provisions to the case of St. James Church seems to present no difficulty. The congretion became a congregation connected with the United Church by force of the agreement and the legislation, and section 20 (a) plainly contemplates that the trustees in whom the property is vested shall continue to hold it as a body corporate as trustees of the United Church of Canada (at the place where, etc.); and, that this provision of section 20 (a) applies to property within section 6 (8) seems to be put beyond doubt by the provision of s. 20 (b), by which such property is exempted from the operation of the proviso. Then section 13 (15) quoted above also makes it clear that, in point of law and for the purpose of the execution of the trusts under which the property was held, St. James congregation did not, by entering the United Church, cease to be a Presbyterian congregation within the meaning of the trusts.

This is sufficient to dispose of the principal contention advanced by the appellant. On this aspect of the case I entirely agree with my brethren Newcombe and Lamont. But it is right to add that I am unable to accept the contention that the trusts upon which the property in question is held are of such a character as to bring the trust property within section 6 (8). Section 4, were it not for section 6 (8), would clearly embrace that property. It is for the appellants to shew that it comes within the terms of section 6 (8). There are two indispensable conditions which must be fulfilled in order to justify that conclusion; first, that the property, when the legislation came into

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force, belonged to, or was held by, or in trust for, or to the use of, the congregation of St. James "solely for its own benefit"; and second, that the denomination to which the congregation belonged had then no "right or interest, reversionary or otherwise", in the property.

At the time the United Church Act took effect, the property was vested in the Board of Trustees of St. James Church, incorporated by statute in 1832, in trust for the congregation, as a congregation in connection or communion with the Presbyterian Church in Canada. The trustees had power to sell or let pews, but no power to alienate land except for a term not exceeding twenty-one years. By a statute passed in 1907, the Board of Trustees of the Presbyterian Church in Canada, Eastern Section, was incorporated, and by the same statute, it was enacted as follows:

> 6. All lands and premises which have been or shall hereafter at any time be held by any trustee or trustees for any congregation which shall have ceased to exist, or has become disorganized, shall vest in the said board of trustees in trust to sell the same, and pay over the proceeds of the said sale to the treasurer of the said church for the benefit of the Home Mission scheme thereof, or as may be otherwise determined by the said Synod of the said church.

The property now in question was one of the properties affected by this enactment.

Therefore, in 1924, when St. James Church entered the Union, the property was vested in the Board of Trustees in trust for the congregation, as a congregation in connection or communion with the Presbyterian Church in Canada; and by force of the statute of 1907, upon the congregation ceasing to exist as an organized body, the property was to pass to the trustees of the Presbyterian Church in Canada to be held by them on the trusts declared in that statute.

The appellants describe the interest of the Presbyterian Church in Canada in the property as a contingent remainder. Remainder it certainly was not. The trustees for the congregation had an estate in fee and no remainder could, of course, be limited upon such an estate. And although the event upon which the property was to pass to the Trustees of the Presbyterian Church in Canada would be described, in popular language, as a contingency, it is not a contingency of the character contemplated by property

law in the distinction between vested and contingent estates; since the transfer would take place upon the very events which would bring the trust for the congregation to an end by the failure of the objects of that trust, and, since "the present capacity for taking effect in possession, if possession were to become vacant" (Fearne, Contingent Remainders, 216) always characterized the interest of the Trustees of the Presbyterian Church in Canada from the enactment of the statute of 1907. In truth, the rights and interests affecting this property are so largely the creatures of statute, that it would seem to be of small utility to attempt to assign them to precise categories in conformity with the strict definitions of property law.

On behalf of the appellants the view advanced is that the interest of the Presbyterian Church of Canada arising out of the trust, upon the dissolution or disorganization of the congregation, is not an interest within the meaning of section 6 (8), and, consequently, it is said, that section applies.

I have already observed that there are two conditions upon which the application of section 6 (8) depends. It makes no difference whether these be treated as distinct conditions, or two different forms of words intended to embody the same condition. If they are distinct, I do not see how it can be said that this property was held solely for the benefit of the congregation. I think that condition excludes any other beneficiary, contingent or not. On the other hand, if we are to treat the two forms of expression as mutually explanatory statements of the same condition, the words "held * * * in trust for * * * any congregation * * * solely for its own benefit" seem to throw some light upon the subsequent expression "in which the denomination * * * has no right or interest, reversionary or otherwise." I shall revert to this later.

The substance of the appellants' point is this: "right or interest, reversionary or otherwise", takes its significance, they say, from the word "reversionary", which must control the scope and purport of "otherwise", which appears to be used here as an adjective, and may be treated as intended for "other". Then, the argument proceeds, "reversion-

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ary" must be read as taking its meaning from "reversion" in the strict sense of real property law, which the interest of the Presbyterian Church in Canada in this property was not, and which it is said, also, it did not resemble. Lest I should fail to do justice to the argument, I quote the passage from the appellants' factum in which the point is, I think, stated as the appellants would desire it to be:

> Section 6 merely gives the Board of Trustees of the Presbyterian Church in Canada, Eastern Section, a contingent remainder in trust to sell. It is not a reversion since the latter is a vested interest in him by whom the particular estate was created. None of the property of Saint James Church was acquired from the denomination but was all purchased by private contribution or devised or bequeathed to the Church. The words "reversionary or otherwise" in Section 6 of The United Church Act (N.B.) clearly contemplate a right or interest in the nature of a reversion, that is, a vested interest. The words "or otherwise" are usually given an *ejusdem generis* construction depending on the preceding words.

The rule *ejusdem generis* does not, I think, assist the appellants. It is commonly stated in the form in which it was put by Lord Campbell in *Clifford* v. *Arundell* (1):

> Where, after a specific enumeration of different subjects, general words are added, the general words are to be confined to subjects *ejusdem generis*.

A view has been taken of the purport of the rule which I can best state in the words of an extract from Scrutton on Charter Parties (12th ed.), page 248:

> It must be remembered that the question is whether a particular thing is within the *genus* that comprises the specified things. It is not a question (though the point is often so put in argument), whether the particular thing is like one or other of the specified things. The more diverse the specified things the wider must be the *genus* that is to include them: and by reason of the diversity of the specified things the *genus* that includes them may include something that is not like any one of the specified things.

This view has the support of the Court of Appeal in *Tillmanns & Co.* v. *SS. Knutsford Ltd.* (2), in which Farwell L.J. said (at p. 403): "Unless you can find a category there is no room for the application of the *ejusdem generis* doctrine." To the same effect are the judgments of Vaughan Williams L.J., at page 395, and of Kennedy L.J., at page 406. In *Larsen* v. *Sylvester & Co.* (3), Lord Loreburn appears to have acted upon this principle; the words to be construed, he said, "follow certain particular specified

(1) (1860) 1 De G.F. & J. 307. (2) [1908] 2 K.B. 385.
(3) [1908] A.C. 295.

hindrances, which it is impossible to put into one and the same genus". If this be the true view, it is not so easy to apply the rule where there is no specific enumeration but where there is a description in a single phrase of a class of things of more or less restricted scope followed by wider general words. In such a case it would, in the abstract, be difficult to put a limit to the number of possible genera. Another view, however, has been taken and it is this. It is not necessary to define or ascertain the genus or category which describes all the specified cases; it is sufficient to bring a given case under the general words that it be a case "akin to" or "resembling" or "of the same kind as" those specifically mentioned. This appears to be the test contemplated in the judgments of Lord Halsbury, Lord Herschell and Lord Macnaghten in *Thames and Mersey Marine Ins. Co. Ltd.* v. *Hamilton, Fraser & Co.* (1). Long before, Lord Ellenborough in *Cullen* v. *Butler* (2), had said that the question to be answered is: "Is the alleged exception of the like kind with those specially enumerated and occasioned by similar causes?" This view of the rule was adopted by Greer J. in *Aktieselskabet Frank* v. *Namaqua Copper Co. Ltd* (3), and in *Adelaide Steamship Co. Ltd.* v. *The King* (4).

Of course, upon either view there may be great difficulty in applying the test; and if the maxim were to be treated as supplying in itself the means of ascertaining the effect of the words to which it is to be applied its application may always be attended with not a little risk of miscarriage. In the abstract, there will usually be more than one category or genus to which the enumerated cases could be referred according to the aspect in which the particular cases are viewed, and, as already said, where the general words are preceded by only one description of less general import, the possible number of categories may be indefinitely great. Under the form of the rule favoured by Greer J., there is still the question to be asked, likeness in what respect? In practice, of course, these questions must be capable of an answer by reference to subject matter and context, as,

(1) (1887) 12 App. Cas. 484.
(2) (1816) 5 M. & S. 461.
(3) (1920) 25 Com. Cas. 212, at pp. 218-220.
(4) (1923) 29 Com. Cas. 165, at p. 170.

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for example, in *Chung Chuck* v. *The King* (1), or the rule is valueless. As Hamilton J. said in *Thorman* v. *Dowgate Steamship Co. Ltd.* (2): "The *ejusdem generis* rule is a canon of construction only. The object of it is to find the intention of the parties. The instrument, the nature of the transaction, and the language used must all have due regard given to them," and the intention of the parties is to be ascertained by the consideration of their language in accordance with its ordinary and natural meaning.

In *Larsen* v. *Sylvester & Co.* (3), Lord Loreburn and Lord Ashbourne repeated the warning of Fry J., that in loosely applying the doctrine *ejusdem generis* there may be great danger in "giving not the true effect" to the words used "but a narrower effect than they were intended to have." In *Anderson* v. *Anderson* (4), Rigby L.J. says: "The doctrine has, I think, frequently led to wrong conclusions on the construction of instruments". In the *Earl of Jersey's* case (5), Bowen L.J. says the rule "is after all but a working canon to enable us to arrive at the meaning of the particular document". In *In re Stockport* (6), Lindley M.R. says: "I am quite aware that there have been cases * * * where the court has protested against pushing the doctrine of *ejusdem generis* too far. It is very often pushed too far."

Prima facie, general words are to be given their natural meaning. In *Attorney General of Ontario* v. *Mercer* (7), Lord Selborne says: "It is a sound maxim of law that every word ought, *prima facie,* to be construed in its primary and natural sense, unless a secondary or more limited sense is required by the subject or the context", and this principle was applied by the Court of Appeal in *Anderson* v. *Anderson* (8), where Lord Esher said, in dealing with construction of general words appended to an enumeration of particulars, "I reject the supposed rule that general words are *prima facie* to be taken in a restricted sense."

(1) [1930] A.C. 244.
(2) [1910] 1 K.B. 410, at p. 416.
(3) [1908] A.C. 295, at p. 296.
(4) [1895] 1 Q.B. 749, at p. 755.
(5) (1889) 22 Q.B.D. 555, at p. 561.
(6) [1898] 2 Ch. 687, at p. 696.
(7) (1883) 8 App. Cas. 767, at p. 778.
(8) [1895] 1 Q.B. 749.

The appellants restrict " reversionary interest " to an interest which is of the nature of a reversion in the sense that it is something reserved to the grantor. But every postponed interest is like a reversion in the sense that it is a postponed interest. When one considers the first condition of section 6 (8), namely, that the property shall be held by the congregation " solely for its own benefit ", one has some difficulty in understanding why the operation of that section should be limited to cases in which the denomination has no reversionary interest in the sense argued for. According to the contention, if the denomination had an interest which was reversionary in that sense, section 6 (8) does not operate and the property passes under section 4. But if it has an interest which is in the nature of a remainder, and therefore, according to the argument, not " reversionary ", section 6 operates and the property does not pass. Why, for the purposes of the statute, such a distinction should be drawn, it is difficult to understand. In truth, I should think that the word " reversionary " was inserted *ex majore cautelâ* to make it clear that interests in reversion, and especially perhaps contingent interests in reversion, are interests within the meaning of the section; in other words, that " reversionary or otherwise " might accurately be paraphrased: " including those which are reversionary," or " reversionary or not."

In truth, the whole argument is founded on a mis-reading of the term " reversionary ". " Reversionary interest " and " interest in reversion " are phrases quite broad enough to comprehend such an interest as that confronting us here. The strict technical sense of the word " reversion ", as used in property law, does not at all govern the sense of these expressions. That such is not the case in respect of the expression in section 6 (8), should be sufficiently evident from the circumstances, first, that the enactment deals with personal property as well as real property, and, more important still, that it applies to property in Quebec no less than to property situated elsewhere. It is not necessary, however, to rely upon this last consideration. The common law knew no such thing as a remainder or reversion of a chattel. Successive interests in chattels may, of course, be created in equity and postponed interests under settlements of shares, choses in action, and other chattels per-

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sonal, as well as in chattels real, are referred to commonly and indeed usually as "reversionary interests". "All leases which are not to take effect in possession immediately, but from a future day, are considered as reversionary leases, within the meaning of powers to grant leases in possession and not in reversion." Woodfall's Law of Landlord and Tenant, 22nd ed., p. 254. "In legal acceptance, a future lease and a lease in reversion are synonymous. If a man make a lease for life, and afterwards grant the lands to another for 21 years after the death of the tenant for life, these words are sufficient to pass a reversionary interest by way of future lease." Woodfall, page 255.

The term "reversionary interest" is commonly used in text books and in reports of cases under various topics of the law, to describe future interests in real as well as personal property which are not by operation of law or otherwise interests reserved to the grantor or donor; but are merely interests which take effect at the expiration of a preceding estate or interest, or, as in the passage relating to leases quoted above from Woodfall, to interests which simply take effect in the future. It is perhaps superfluous to exemplify this. Osborne's "Concise Law Dictionary" defines "reversionary interest" as "any right in property the enjoyment of which is deferred, e.g., a reversion or remainder or analogous interests in personal property." This definition is too narrow if it implies that the term embraces only vested interests. Examples of this usage—they could be multiplied indefinitely—are to be found in: *Fry* v. *Lane* (1); *Honner* v. *Morton* (2); *Caldwell* v. *Fellowes* (3); *Purdew* v. *Jackson* (4); *Spring* v. *Pride* (5); *Butcher* v. *Butcher* (6); *Rose* v. *Cornish* (7); *Re Roy's Settlement* (8); *In Re Owen* (9); *Hugill* v. *Wilkinson* (10). The application of the phrase to interests which are contingent is illustrated in: *Hughill* v. *Wilkinson* (11); *In re Owen* (12); *Lloyd* v. *Prichard* (13).

(1) (1888) 40 Ch.D. 312, 318, 320 and 322.
(2) (1828) 3 Russ., 65, 67.
(3) (1870) L.R. 9 Eq. 410, 411.
(4) (1823) 1 Russ. 1.
(5) (1864) 4 De G.J. & S., 395. 396, 402, 403.
(6) (1851) 14 Beav. 222, 223.
(7) (1867) 16 L.T. 786.
(8) (1906) 50 S.J., 256, 257.
(9) [1894] 3 Ch. 220, 225.
(10) (1888) 38 Ch.D., 480, 482, 483.
(11) (1888) 38 Ch.D., 480, 482, 483.
(12) [1894] 3 Ch., 220, 225.
(13) [1908] 1 Ch., 265, 267, 272, 273.

It is necessary to add an observation with regard to section 29 of the New Brunswick Statute. It is in these words:

> The provisions of the Act of Incorporation shall have full force and effect with respect to any property or civil rights within this Province.

On behalf of the appellants, it is denied that this section can legally take effect. The argument is stated thus, in the factum:

> The Provincial Act was passed April 17, 1924, and at that time there was no Act of Incorporation, because the Dominion Act was not passed until July 19, 1924. Virtually, the Provincial Legislature attempted to give up its entire legislative authority to the Parliament of Canada without even seeing the terms of the legislation which Parliament intended to enact. Such a delegation of legislative authority is entirely contrary to the terms of the Act of Confederation.

The meaning of the phrase "Act of Incorporation" is made clear by reference to the preamble, the first paragraph of which is as follows:

> Whereas, the Presbyterian Church in Canada, The Methodist Church and the Congregational Churches of Canada have by their petition represented that they have agreed to unite and form one body or denomination of Christians under the name of "The United Church of Canada," in accordance with the terms and provisions of a Basis of Union agreed upon by them, and whereas they have petitioned the Parliament of Canada for an Act to incorporate the Church to be formed by the said Union under the name "The United Church of Canada."

It may be assumed that the Legislature of New Brunswick had before it not only the Basis of Union, but the Act of Incorporation as well, substantially in the form in which it eventually passed. Indeed, the very basis, the *raison d'être* of the New Brunswick Act was the contemplated Act of Incorporation. The design of creating the ecclesiastical corporation, the United Church, which was the subject of all the legislation, Dominion and provincial, was one which required in order to give it legal efficacy, the co-operation of the Dominion and provincial legislatures. The procedure was quite well understood. As far as its powers enabled it to do so, the Dominion Parliament was to give the sanction of law to the Act of Incorporation and the several provinces were, so far as their powers extended, to give legal effect to that enactment in respects in which the powers of the Dominion might fall short.

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Duff J.

I cannot doubt the validity, under the *British North America Act,* of such a procedure. In *Hodge* v. *The Queen* (1), the Privy Council said:

> It appears to their Lordships, however, that the objection thus raised by the appellants is founded on an entire misconception of the true character and position of the provincial legislatures. They are in no sense delegates of or acting under any mandate from the Imperial Parliament. When the British North America Act enacted that there should be a legislature for Ontario, and that its legislative assembly should have exclusive authority to make laws for the province and for provincial purposes in relation to the matters enumerated in section 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by section 92 as the Imperial Parliament in the plentitude of its power possessed and could bestow. Within these limits of subjects and area the local legislature is supreme.

This statement of the law seems to be conclusive.

The appeal should be dismissed with costs.

NEWCOMBE J.—I am willing to accept the findings of my Lord, the Chief Justice, except with relation to the meaning and effect of the three sections relating to church and congregational property; namely, sections 5, 6 and 8 of the *United Church of Canada Act,* chapter 100 of the Dominion, 1924, and the identic sections, 3, 4 and 6 of the *United Church of Canada Act,* chapter 59 of New Brunswick, 1924. But in my opinion, the plaintiffs have no legal cause to complain or to seek any declaration or relief, even though the congregation has not consented that the provisions of the said sections, 5 and 6 of the Dominion, and 3 and 4 of the province, shall apply to its property, or to any part of it.

The congregation of St. James Presbyterian Church at Newcastle, not having passed a resolution of non-concurrence, was admitted to and declared to be a congregation of the United Church of Canada, on 10th June, 1925, by force of the *United Church of Canada Act,* chapter 100 of the Dominion, 1924; it entered the Union as a statutory consequence, and the property of the congregation passed with it, subject to the provisions of sections 6 and 8 of the Dominion Act, and the corresponding sections, 4 and 6, of the provincial Act. As set out in paragraph 3 of the statement of claim, the plaintiffs bring this action, not only for

(1) (1883) 9 App. Cas. 117, at p. 132.

themselves, but "as well for all persons having the same interest, to wit: all communicants, pew-holders and adherents of the said Church not concurring in or agreeing to Church Union under the Acts hereinafter mentioned"; and the Acts here referred to are those which I have cited above.

In my judgment of the case, it is not shewn, either by the allegations or the proof, that the plaintiffs have any right to the declarations or relief claimed. It is not denied that the body in question became, by the operation of the statutes, a congregation of the United Church of Canada, and the intention, as I interpret it, was not to detach the congregation from its separate property, but rather to recognize and uphold its independence in relation to that property, although with power of consent or election, which has not been exercised, to introduce the terms and provisions incorporated by sections 6 and 4 of the Dominion and Provincial Acts, respectively. Unless the congregation consent, the property which it holds, in the words of the statute, solely for its own benefit, and in which its denomination has no right or interest, must remain where it was when the Union became effective, namely, with the congregation, and its consent is entirely discretionary.

The non-concurring minority, formerly members of the congregation, if they still continue to belong to it, may, of course, agitate in a constitutional manner for the disposal of its property, within the scope of its powers; and I presume they might, if they wish, have a meeting convened for the purpose mentioned in the aforesaid sections, 8 and 6; but, they have not taken the prescribed steps, and obviously such a meeting is not what they claim or desiderate.

On the other hand, if the plaintiffs and those whom they represent have ceased to be members of the congregation, they have no longer any voice in the conduct or decision of the business or policy of the congregation, or in the disposition of its property.

Any other conclusions seem to leave the property unrepresented by any beneficial owner. It is neither in the United Church, nor in the congregation as it exists; and, unless that congregation is empowered to grant the con-

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sent provided for, the property is in the air; a result which, with all due respect, cannot possibly have been intended.

I would, therefore, dismiss the appeal.

LAMONT J.—This is an appeal from the judgment of the Appeal Division of the Supreme Court of New Brunswick dismissing the plaintiffs' action. The plaintiffs, who were members or adherents of St. James Presbyterian Church at Newcastle, N.B., not concurring in or agreeing to Church Union, brought this action for (*inter alia*) a declaration as to their rights in the property and assets of the Church, the majority of the congregation of which had voted in favour of entering the Union. Numerous arguments were advanced for the purpose of procuring a reversal of the judgment of the Appeal Division and of shewing that the plaintiffs had some right or interest in the church property. Of these I find it necessary to refer to one only, namely, that under section 6 of the New Brunswick Act (14 Geo. V, ch. 59) a second vote of the congregation was needed to decide whether or not the property of the church should pass with it into the Union and that as such vote had not been taken the church property was held by the trustees thereof for the use of the non-concurring members or at least for the use of those who, prior to the Union, had constituted the congregation.

The congregation of St. James Presbyterian Church, not having voted non-concurrence within the time fixed therefor by statute, became merged in the United Church of Canada on June 10th, 1925, by virtue of section 4 of the *United Church of Canada Act* (Dom.), 14-15 Geo. V, c. 100. Thereafter as a congregation it was part of the United Church.

The statutory provisions dealing particularly with the property of a congregation joining the Union, are sections 3, 4 and 6 of the New Brunswick Act, which are embodied in sections 5, 6 and 8 of the Dominion Act. Section 3 of the local Act, with certain reservations, vests in the United Church the properties of the uniting church organizations as distinguished from properties of the congregations. Section 4 deals with congregational property and provides that, subject to section 6, all property within the province belonging to or held in trust for any congregation of any of

the negotiating churches shall, from the coming into force of the section, be held, used and administered for the benefit of the same congregation as a part of the United Church, upon the trusts and subject to the provisions of a Model Deed set forth in the schedule. The property, therefore, of every congregation entering the Union was thereafter held by the trustees thereof upon the terms contained in the Model Deed, except in those cases falling within section 6. Section 6, upon which the appellants rely, reads as follows:—

> 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 congregation belongs has no right or interest, reversionary or otherwise, shall not be subject to the provisions of Sections 3 and 4 hereof 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.

It was contended that under certain New Brunswick statutes the Trustees of St. James Presbyterian Church held the church property in trust solely for the benefit of the congregation thereof and that the Presbyterian Church in Canada, as a denomination, had no right or interest, reversionary or otherwise, therein.

In the view I take of the rights of the parties, it is unnecessary to determine whether or not the contention is well founded. I will assume that it is, and that the denomination had no right or interest in the congregational property. As there was no consent given by the congregation to the application of the provisions of section 3 or section 4 to its property as provided for in section 6, those sections do not apply, and the only question is: For whom do the trustees, in whose names the property is vested, hold it in trust?

Section 6 was enacted to give effect to the agreement contained in a clause in the Basis of Union (Schedule "A" to the Dominion Act) which provided that any property owned by a congregation or vested in trust for it solely for its own benefit should not be affected by the legislation giving effect to the Union, or by any legislation of the United Church, without the consent of the congregation.

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It therefore seems clear that in those cases to which section 6 applies it was the legislative intention that the congregational property should not be vested in the United Church or brought under the terms of the Model Deed unless and until the congregation by a proper vote consented thereto. No consent being given in this case, the congregational property, in my opinion, (and I state my conclusions merely) is held by the trustees thereof solely for the benefit of the congregation of St. James Church. That congregation, however, entered the Union and became a congregation of the United Church. In my opinion that does not affect its right to its property. By entering the Union it did not lose its identity (See Preamble to Dominon Act). The scheme of the legislation which brought about the union of the churches was to permit the majority to determine the action of the congregation. If the majority decided to enter the Union, the congregation, as a congregation, became part of the United Church. If the majority decided against entering the Union, the congregation remained outside the Union with all its property. The majority spoke for the congregation. The congregation of St. James Presbyterian Church, by entering the Union, effected a change in its name but not of its identity. Under the Act it was still the same congregation although some of its members refused to go with it into the Union. Those who did go thereafter constituted the congregation, and the trustees in whose names its property was vested held it after the Union for the benefit of that congregation, as a congregation of the United Church. Without the consent of the congregation duly given, as provided in section 6, the congregational property cannot be vested in the United Church nor brought under the terms of the Model Deed, but I fail to find anything in any of the legislation indicating an intention that a congregation on entering the Union was either to forfeit its property or share it with former members thereof now non-concurring, because it preferred to continue keeping for itself the absolute control over its own property and refused to give the United Church any interest therein or control thereover. The congregation, as it is constituted at the present time, is alone, in my opinion, beneficially interested in the property and entitled thereto.

This, as I see it, is the meaning and intent of the legislation. As the plaintiffs are no longer a part of the congregation in the Union, they have no valid claim to share in its property.

The appeal should be dismissed.

Appeal dismissed with costs.

Solicitor for the appellants: *Allan A. Davidson.*
Solicitor for the respondents: *Peter J. Hughes.*