The Legal Problems of the Canadian Church Union of 1925

by D.J.M. Corbett

The legal issues related to the Canadian Church Union of 1925 are many and various. They involve a consideration of the Common Law concerning the Union of Churches, the dispute within the Presbyterian Church as to the constitutionality in church law of the action of the majority in seeking Union, as well as a review of the Federal and Provincial Legislation and its judicial aftermath.

The Presbyterian Church was bitterly divided over the question of Union. In the end a sizeable minority continued as the Presbyterian Church in Canada. A study of the legal problems of Church Union in Canada is largely a study of the struggle within the Presbyterian Church. The cases which were brought before the courts after the Union are the culmination of this struggle. The legal issue was simple: Did the Church as a Church go into Union? Or did the unionists become members of a newly constituted Church apart from the Presbyterian Church in Canada, which was carried on by the non-unionist minority? Even in our own time these questions are disputed. It is hoped that this study may be of some value in determining the matter.

SECTION ONE: THE PROBLEM AT COMMON LAW

It may be wondered why the union in Canada was accomplished by means of legislation in the Federal Parliament and the Legislatures of the Provinces. Why was it not possible for the Churches which sought to unite to take such a step without legislation?

The reason why legislation was sought can be best understood after consideration of the famous case of Bannatyne v. Overtoun (1904 A.C., 515). In October, 1900, the Free Church of Scotland and the United Presbyterian Church joined together to form the United Free Church of Scotland. There was no opposition to the union in the United Presbyterian Church, but within the Free Church there was a small but vocal minority opposed. It was their contention that the terms of the union made subscription to the principle of establishment an optional matter and further that adherence to the Westminster Confession had been rendered less stringent by the Assembly under the Declaratory Act Concerning the Confession of Faith of 1892. Thus the minority contended basic principles of the Free Church were being abandoned in the Union of 1900.

The Act of Union passed the Assembly by a vote of 643 to 27. The minority immediately protested claiming that the union on the proposed basis was unconstitutional and that all persons taking part in it must lawfully be considered as having withdrawn from the Free Church of Scotland. (This statement was received with great amusement by the Assembly.) The protest further claimed that the minority were entitled to continue the Assembly in session and to exercise all its powers.

With regard to the property of the Church, the Union Act which the Assembly had adopted provided that all property held by trustees for the use of the Free Church of Scotland, should from that time forward be held for the use of the United Free Church of Scotland.

The continuing minority Free Church began an action claiming the entire property, funds and endowments of the Free Church as at the time of the union. The Court of Session dismissed the action and appeal was taken to the Second Division of the Inner House. The action was also dismissed there. Appeal was finally taken to the highest Court in the United Kingdom, the House of Lords. After considerable argument and a re-hearing necessitated by the death of one of the Judges, the Lords allowed the appeal.

The result of the decision was that over a thousand Church buildings and manses, the Assembly Hall, Colleges and Mission buildings of the Church, as well as over ten million pounds were turned over to the continuing Free Church of Scotland! The minority was so small that it was apparent that they could not properly manage the trust which the courts had placed in their hands. It was manifest that some adjustment consistent with justice should be made. Accordingly in 1905, the Parliament of the United Kingdom passed an Act which provided very generously for the Free Church (they were to hold any buildings in which they could muster the support of one-third of the congregation), but gave the bulk of the property to the United Free Church. It cannot be questioned that in view of the smallness of the minority any other action would have been contrary to good sense. Nevertheless, the legal principles enunciated are of profound significance for what was to happen in Canada.

What was the identity of the Free Church? Lord Halsbury stated it thus:[1]

> Speaking generally, one would say that the identity of a religious community, described as a Church, must consist in the unity of its doctrines. Its creeds, confessions, formularies, tests, and so forth are apparently intended to ensure the unity of the faith which its adherents profess; and certainly among all Christian Churches the essential idea of a creed or confession of faith appears to be the public acknowledgment of such and such religious views, as the bond of union, which binds them together as one Christian community. If this be so, there is no lack of material from which to deduce the identity of the Free Church of Scotland. Its founders left their Claim, Declaration, and Protest to stand for all time as a clear exposition both of their reasons for leaving the Church of Scotland...and as a profession of their faith as the true Church of Scotland though separated from the Establishment....

His Lordship found considerable evidence to the effect that an essential principle of the original Free Church was that there was a duty on the part of the civil magistrate to maintain and support an establishment of religion in accordance with God's Word. His Lordship further cited Dr. Chalmers to the effect that the Free Church was unalterably opposed to the position of the Voluntarists who were opposed to any support of the Church by the State. The United Free Church sought to make allowance for

---

1 1904 A.C., 515

both opinions within its ranks. It was not sufficient that the matter should be left unsaid. By not speaking, or, speaking uncertainly on the matter, the United Free Church had substantially departed from the doctrinal position of the Free Church.

His Lordship observed that every Christian believer had the right to change his beliefs, but that it did not therefore follow that he had the right to convert property given in trust that it should foster certain doctrines, to the use of a body holding such new doctrines:[2]

> My Lords, apart from some mysterious and subtle meaning attached to the word "Church", and understanding it to mean an associated body of Christian believers, I do not suppose that anybody will dispute the right of any man, or any collection of men, to change their religious beliefs according to their own consciences. But when men subscribe money for a particular object, and leave it behind them for the promotion of that object, their successors have no right to change the object endowed.

With regard to the rights of majorities as against minorities within Churches involved in disputes, Lord Robertson had this comment:[3]

> The adherents of the appellants are numerically few--some few thousands; but it has not been suggested that this introduces any legal difference from the situation as it would have been had they been more numerous. Since the days of Cyrus it has been held that justice is done by giving people, not what fits them, but what belongs to them.

There is no identity of the Church in the mere fact that they are in the majority. The identity of a Church lies with those who are true to its fundamental affirmations.

The Free Church case has been applied in the Canadian Courts. In Stein v. Hauser (1913, 15 D.L.R. 223) a group within a Lutheran congregation belonging to the Missouri Synod sought to identify themselves with the Ohio Synod and to take their property with them. They were in the majority in the congregation. On the application of the minority who desired to remain with the Missouri Synod, the Court held that the Free Church of Scotland v. Overtoun decision applied. The test for ownership was not a consideration of the numbers of persons so desiring a specific course of action. The test was which faction adhered to the religious tenets and principles of those who built the place of worship.

Anderson v. Gislason (1920, 53 D.L.R. 491) was concerned with a dispute between two factions in a congregation of Icelandic Lutherans. The Court held that where a Church is formed for promoting defined doctrines of religious faith set forth in its corporate articles or constitution, the Church property which it acquires is impressed with a trust to carry out that

---

2 1904 A.C., 515
3 1904 A.C., 515

purpose, and a majority of the congregation cannot divert the property to inconsistent uses against the protest of a minority, however small. Mr. Justice Dennistoun made the following remark during the course of his judgment:[4]

> The guarantee of religious freedom has nothing to do with property. It does not guarantee freedom to steal churches. It secures to individuals the right of withdrawing, forming a new society, with such creed and government as they please, but it does not confer on them the right of taking the property consecrated to other uses by those who may now be sleeping in their graves.

There is no doubt that the common law so enunciated would have been applicable in Canada at the time of the union controversy had it not been superseded by legislation. It has often been suggested by those favourable to the union cause that legislation was a mere convenience and was not really necessary to bring the union about. An understanding of the common law is sufficient to show the fallacy of such a claim. Without legislation, the entire property of the Presbyterian Church in Canada before June 10, 1925 would probably have legally belonged to the minority who desired to continue the Church since the doctrinal Basis of Union involved a far greater change from distinctively Presbyterian principles than did the union of the two Presbyterian Churches in Scotland.

SECTION TWO: THE DECISION TO SEEK LEGISLATION

In Canada the Assembly in 1915, in adopting the Basis of Union, adopted an Appendix on Law seeking legislation to effect the proposed union. As Mr. Gershom W. Mason (one of the lawyers who drafted the original Acts for the Union Committee) noted in his 1956 book on the subject:[5]

> It was essential to guard against the application to the United Church and its congregations of the principles enumerated in the judgment of the majority in the Free Church case...in 1904. This judicial decision was considered by the framers of the Appendix on Law, and in order to remove any doubt as to the powers of the uniting Churches, it was determined that such legislation should be sought as would meet any possible situation created by the Free Church Decision.

At the time of the adoption of the Basis of Union by the General Assembly of 1915, and the ratification of the Appendix on Law, certain members of the Union Committee submitted a minority report expressing opposition to such procedure. They contended that there was no power in the Assembly to end its own existence and that such procedures under the Barrier Act were entirely unconstitutional. This became the basis of their continuing protest.

---

4 1920 53 D.L.R. 491ff.

5 Mason G., The Legislative Struggle for Church Union, Pages 8-9

In 1921 it was decided to move to organic union as expeditiously as possible. The Assembly of 1923 was presented with the proposed legislation which had been prepared on the instructions of the Committee on Law and Legislation of the Joint Committee on Church Union. The report was received and the Assembly resolved to seek organic union on the terms set forth in the draft legislation. The Committee was authorized to seek the passage of this legislation before the Federal Parliament and the Provincial Legislatures.

A minority report of the Church Union Committee was presented by Dr. D.G. Fraser and signed by twelve members of the Committee. It referred to the proposed legislation as that which proposed "coercion of the people and confiscation of Trust and Endowments held by and for the Presbyterian Church in Canada, in trust for the maintenance of the Standards as set forth in the Basis of Union of 1875."[6]

Thus the proposed legislation was presented to Parliament and to the Provinces on the authority of the General Assembly. Did the General Assembly have the right to request such legislation?

The unionists held that, as all the required forms had been adhered to according to Church Law, there could be no question as to the constitutionality of the action of the majority. For them the fundamental question was the right of the Church Courts, and the highest Court, the General Assembly, to alter the doctrinal position and standards of the Church. They contended that the General Assembly had power over the doctrine, worship, discipline and government of the Church. No change in any of these particulars could be affected without the consent of the Presbyteries, the matter being referred to them under the Barrier Act. Since these rules had been adhered to, the adoption of the Basis of Union in 1916 and the various measures taken to effect Union preceeding 1925 were within the constitutional powers of the Assembly.

The non-unionists contended on the other hand that there was no power in the General Assembly to enter a union which would "put an end to the Church". Nor was there any power in the Assembly to adopt the Basis of Union in disregard of its inconsistencies and conflicts with the Standards of the Church as set forth in the Basis of Union of 1875. They contended, that, as in the Free Church case, the Barrier Act itself was only procedural and did not confer on the Assembly the right to radically alter the character of the Church.

Here then was the basic dispute between the unionists and the non-unionists. The unionists held that the identity of the Church rested in the majority who had correctly adhered to the rules and forms of the Church. The minority contended that the identity of the Church rested with those who adhered to its Reformed Standards.

In this regard it is interesting to look at the protest entered after the adjournment of the Assembly of 1925 on the ninth day of June. The Assembly was reconstituted by a former Moderator, Dr. McQueen, and the following protest of 79 Commissioners was laid upon the table by Dr. Wardlaw Taylor. In it the Standards and Credal affirmations of the Presbyterian

---

6 Assembly Minutes 1923 page 67

Church in Canada are set forth and the following significant claim is made:[7]

> It is in her faithful adherence to the aforesaid standards of doctrine and worship, and forms of discipline and government, adequately secured unto her by the said Covenant of Union in 1875, that the real historical and hereditary identity of the Presbyterian Church in Canada consists, as well as her continuity as the lawful successor in this Dominion of the Reformed Churches of the motherland.

SECTION THREE: THE UNITED CHURCH OF CANADA ACT BEFORE THE FEDERAL PARLIAMENT AND THE PROVINCIAL LEGISLATURES

A. THE BILL IN THE PROVINCIAL LEGISLATURES:

The way in which the proposed legislation was presented to the Parliament and the Legislatures of the Provinces was by means of a petition for a private bill. A private bill may roughly be defined as that which is more particularily of private than public interest.

The United Church of Canada Act, drawn up by the legal advisors to the Joint Committee on Law and Legislation, was presented to the various legislative bodies in the form of a petition asking for its passage as a private bill. This meant that the Act was considered first by the Private Bills Committees of the various legislatures, and after hearing representations from all interested parties, referred to the House for action.

It is unnecessary to say that the legislation attracted universal interest throughout the country. Probably no other private bill in history has attracted as much attention or engendered more controversy. What follows is just a brief summation of these remarkable debates, both before the various Private Bills Committees and in the legislative bodies themselves.

The proposed legislation was first introduced in the West. There was opposition, but there was great unionist sympathy in the West and the legislation passed in the three prairie provinces without significant amendment.

The Maritime provinces saw considerable controversy and debate. New Brunswick passed the Act without serious amendment, but in Nova Scotia the bill was in serious trouble. There was considerable opposition in the Legislative Assembly and the Legislative Council (the upper house, still then in existence) was opposed to the basic purpose of the legislation. The opposition in Nova Scotia forced certain amendments to the Bill but it eventually passed in its essential form.

A rather amusing, and admittedly unconstitutional event took place in the Province of Prince Edward Island. The Bill passed both Houses and all that awaited its becoming law was the royal assent. On April 11, 1924, Lieutenant-Governor McKinnon (a convinced "continuing" Presbyterian) refused to give the necessary assent to the bill and prorogued the Legislature, making further consideration impossible! As a result, the bill

---

7 Minutes of Assembly, 1925, Page 89

had to be re-introduced in the session of 1925 and only after its second passage in that year did it receive the Royal Assent and become law. (It is interesting to note that by this time the Federal bill had passed with several important amendments--including the taking of the congregational vote before rather than after union--and all the Provincial Acts passed after it were revised accordingly.)

In March, 1924, the Private Bills Committee of the Ontario Legislature began hearings on the bill. There was considerable opposition to the passage of the bill in its proposed form. Both unionists and non-unionists had the opportunity to present their views. The non-unionists characterized the property provisions as a violation of trusts and contended that it was not just, that the Church as a Church should be legislated into union since they desired to continue the Presbyterian Church in Canada.

The Chairman of the Committee, who was also the Attorney General, the Hon. W.F. Nickle, K.C., was a non-unionist Presbyterian and there was considerable support for the Presbyterian cause throughout the Committee. The result was that the bill was amended in Committee to provide for the preservation of the three negotiating churches as separate entities and to give to any congregation the right by vote of its members to remain in its mother church and to keep its own property. This carried 36 to 26.

The Unionists contended that this amendment destroyed the basic principle of the bill--that the Churches as Churches went into the union and that those not concurring were withdrawing from the Church. The unionists therefore asked to have the bill withdrawn and determined to present the bill again in its unamended form the following year. Since the legislation was of a private nature, there was no option but to permit the bill to be withdrawn on the request of the petitioners.

When the proposed legislation came before the Quebec Private Bills Committee in the spring of 1924, it was apparent that it could not pass in the original form. There was considerable opposition among the Roman Catholic members to any principle which made it possible for the civil authority to legislate a Church out of existence. The matter was argued before the committee with representations from both sides. It is a matter of historical interest that the Presbyterian Church Association was represented on this occasion by the future Prime Minister of Canada, Mr. Louis St. Laurent, K.C. On March 12, the Legislature passed a resolution to the effect that no action should be taken on the bill at the present session and that future action should depend upon what the Province of Ontario did with the legislation. This resolution committed Quebec to follow Ontario's lead in the matter, otherwise the legislation may never have been passed in Quebec. As it was, it was not until the spring of 1926, after the union had been consummated, that the Province of Quebec passed the bill.

The unionists brought the legislation, amended to conform in certain respects to the Federal Act, before the Private Bills Committee of the Ontario Legislature in February of 1925. It was again evident that the bill in its original form could not be passed and that some concessions or compromises would be necessary. After many meetings, it was agreed

that the anti-unionists would accept the property provisions of the bill and the unionists would give up the claim to Knox College.

The Ontario Act also included a significant amendment to the effect that the non-concurring congregations of the Presbyterian Church would stand in the same relation to the Church to be formed by non-concurring congregations as they had formerly borne to the Church before Union. This made it impossible for any non-concurring Presbyterian congregations to stay apart from the Continuing Church as separate entities. The section which permitted non-concurring congregations to enter the Union at any time after June 10, 1925 by a vote being taken to that effect, was omitted in the Ontario Act.

The progress of the Act in the Federal Parliament must now be studied, before consideration is given to the Act itself.

B. THE BILL BEFORE THE FEDERAL PARLIAMENT

On April 10, 1924, Mr. Robert Forke, the member for Brandon and Leader of the Progressive party in the House of Commons, moved the first reading of Bill 47 entitled: "An act incorporating The United Church of Canada." It was agreed that second reading would be passed without the normal debate on the principle of the Bill, and the Act was referred to the Select Standing Committee on Miscellaneous Private Bills. This committee began its sessions on the 30th of April, 1924.

The Committee spent considerable time hearing representations from the various parties. The whole problem of the constitutionality of the action of the General Assembly was considered. Also considered was the problem of the constitutionality of the Act with regard to the division of powers between the dominion and the provinces.

Mr. Eugene Lafleur, K.C., contended on behalf of the Presbyterian Church Association that the union proposals were not constitutional to the General Assembly. He said, "What I do assert with confidence is that within the Presbyterian Church there is no power given to the church court and to the highest of the church courts, the General Assembly, to put an end to this church."[8] He cited the Overtoun case for the propositions that no General Assembly, even by an unanimous vote, could destroy the Church and that no majority within a Church court had power to convert property from its original purpose to an entirely new purpose.

At the conclusion of these discussions, the Committee itself began to deal with the Bill. On the 23rd of May, the Committee passed an amendment to the preamble to the effect that since there was considerable doubt as to the authority of the General Assembly of the Presbyterian Church in Canada to request the passage of the Bill, and since there was further doubt as to the constitutionality of the Bill itself, the Bill should not therefore come into effect until July 1, 1926, and not then, unless the Courts had by that time successfully disposed of any questions which the two matters presented. This amendment was proposed by Mr. Duff of Lunenburg and was passed in the Committee by a vote of 27 to 23. In effect, the Union was to be delayed a year while the Courts were to rule on the constitutionality of the action of the General Assembly in proceeding to union, and secondly, on the constitutionality of the Bill under the British North America Act.

---

8 As cited in House of Commons Debates, 1924, page 3735

Certain other amendments were added by the Committee. The section permitting non-concurring congregations to enter the United Church any time after 1925 was dropped. The final Federal Act also provided for the vote in congregations to be taken six months before Union rather than six months after.

The scene now shifted to the discussion of the Bill in the House of Commons itself. As soon as the Bill (as amended by the Private Bills Committee) came before the House for consideration, Mr. Brown of Lisgar moved that the amended section be struck out and that the section simply read that the Act should take effect on June 10, 1925. The unionists expressed the opinion that any reference to the Courts and any delay in the implementation of the Bill was in reality an attempt to defeat the principle of the Bill and that such reference was unnecessary.

The Prime Minister, Mr. Mackenzie King, speaking as a private member, supported the reference of the Bill to the Courts:[9]

> In the Presbyterian Church there is from one end of Canada to the other, a great body of earnest and God-fearing men and women who feel very deeply in this matter. They may be a majority, they may be a minority. If we can help, as I have said, to remove from their minds the feeling that their Church is being torn asunder and substitute for it a feeling that whatever division is now inevitable is being made in accordance with what is reasonable and right and in accordance with the best traditions of Parliament, then we will be rendering a great service not only to the parties interested in the consummation of this important union, but also to the country as a whole.

In the significant vote on the amendment of Mr. Brown to remove the amendment to refer the matter to the Courts, the vote was 110 yeas and 58 nays. The union would take effect on June 10, 1925.

Thus it was that, after a few minor amendments being accepted from the Senate (where there had also been strong opposition), the Bill was read the third time and passed, July 4, 1924.

SECTION FOUR: AN OUTLINE OF THE MORE IMPORTANT PROVISIONS OF THE UNITED CHURCH OF CANADA ACT

The Preamble to the Act sets forth the names of the Churches seeking Union and speaks of them as having the right to unite with each other "without loss of their identity", under the name, The United Church of Canada. The seeming intention of those who framed the Act was to hold that the Churches as Churches went into the United Church without loss of their individual identity.

The Act is cited as, The United Church of Canada Act. It is to come into force on June 10, 1925. Section four, subsection (a) provides that:[10]

> The Union of the said Churches, The Presbyterian Church

---

9 House of Commons Debates, 1924, page 3749

10 The United Church of Canada Act, 14-15 George V, Chapter 100, Statutes of Can.

> in Canada, the Methodist Church and the Congregational Churches, shall become effective upon the day upon which this Act comes into force and the said Churches as so united are hereby constituted a body corporate and politic under the name of "The United Church of Canada", hereinafter called "The United Church".

Section 5 of the Act is paralleled by Section 3 of most of the Provincial Acts. It provides for the transfer of all property, real or personal belonging to any of the negotiating churches to the United Church of Canada to be used and administered in accordance with the terms of the Basis of Union.

Section 10 in the Federal Act, and similar sections in the various Provincial Acts provided for the possibility of non-concurring congregations voting at a congregational meeting regularly called within six months before the coming into force of the Act (some Provincial Acts provide for the vote after the Union), and if a majority are opposed their property shall remain unaffected by the Act.

Subsection (c) of this section provides that:[11]

> The non-concurring congregations...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.

At first glance this would seem to preclude the use by the continuing Church of the name, The Presbyterian Church in Canada. The matter is by no means settled alone on this ground. An assessment of the right to the use of the name can only be given after the judicial decisions have been considered.

SECTION FIVE: THE JUDICIAL AFTERMATH OF UNION

The "continuing" Assembly of 1925 determined to use the historic name of the church, "The Presbyterian Church in Canada". Mr. J. G. Pelton, seconded by Judge Farrell moved the adoption of the following motion:[12]

> Your Committee have carefully considered the question of the name of the Church as referred to it and begs to recommend that the Assembly endorse and reaffirm its action in its fifteenth sederunt held in St. Andrew's Church, Toronto, on Thursday morning, June 11th, 1925, when it declared this Assembly to be the fifty-first General Assembly of the Presbyterian Church in Canada, and we recommend that we continue without change the name by which our Church has been known for the past half century.

---

11 Ibid.

12 Assembly Minutes, 1925, page 110

The United Church did not let this matter go unnoticed. Each year for some years following union the following protest was made to the Assembly of the Presbyterian Church:[13]

> (The following is an extract from a letter dated May 31, 1932 from the United Church of Canada, over the name of T. Albert Moore, Secretary, The General Council, to the General Assembly of the Presbyterian Church)
>
> Gentlemen:-
>
> Under the authority of the General Council of the United Church of Canada, we again notify the General Assembly of the non-concurring congregations of The Presbyterian Church in Canada, as has been done each year since the consummation of Church Union in 1925, that the Presbyterian Church in Canada, by action in accordance with its Constitution, and as provided in The United Church of Canada Act (14-15 George V.Cap.100), continues its identity in The United Church of Canada. We renew our protest against your use of the name "The Presbyterian Church in Canada", and against your claim to the continuity of "The Presbyterian Church in Canada", in your Church....

Several judicial decisions had a bearing on this question of the identity of the Church. The first case to be considered is, In Re Patriquin Estate; Fraser v. McLellan (1930 3 D.L.R. 241). Eliza Patriquin bequeathed $100.00 to the trustees of Tatamagouche Presbyterian Church. Her will was made January 5, 1924. At the time of Union, this congregation joined the United Church of Canada. Mrs. Patriquin in the meantime had removed her name from the roll of the Church and had become a member of Sedgewich Memorial Presbyterian Church. She died May 22, 1926, without changing her will. The issue in the case was, to which group did the $100.00 bequest belong? The larger issue indeed was, in which group, the continuing Church or a congregation of the United Church of Canada, did the identity of the Presbyterian Church reside?

The United Church applied for the bequest. The Supreme Court of Canada held that as both the bequest and the residue were to benefit the Tatamagouche Presbyterian Church, and that, as the congregation had been divided, the congregation of the United Church was no longer identical with the congregation which it had been Mrs. Patriquin's intention to benefit and therefore, the United Church was not entitled to receive the bequest. In effect, the Court held that the new corporation constituted by the Act was not the same entity to which the testatrix made her bequest, and therefore the United Church could not take it. It was held, incidentally, that the religious affiliation of Mrs. Patriquin after the union was not to be a matter for consideration in deciding the legal meaning of the will.

Smith J., in delivering the judgment of the Court held that the effect of the United Church Act was such as to constitute the United Church as

---

13 Assembly Minutes, 1932, page 15

"an entirely new and distinct legal entity". He further observed:[14]

> ...and it seems clear that the beneficiary she had in mind was the "Tatamagouche Presbyterian Church"; as a congregation of the Presbyterian Church in Canada as it then existed, and it cannot be said that a congregation of the United Church of Canada at Tatamagouche is the same religious institution as was within the contemplation of the testatrix in making this bequest to the Tatamagouche Presbyterian Church.

Re Gray, (1935, 1 D.L.R. 1), is the most significant of these cases with regard to the problem of the identity of the Presbyterian Church in Canada. The case came before the Supreme Court of Canada in October, 1934. Jessie Gray, the testatrix, and a resident of Hopewell in the County of Pictou, Nova Scotia, made her will in 1921 leaving a bequest of $500.00 to the Home Mission Fund of the Presbyterian Church in Canada and $500.00 to the Foreign Mission Fund of the Presbyterian Church in Canada. She was a member of the St. Columba congregation at Hopewell. This congregation entered the United Church in 1925 and Jessie Gray remained a member of it until her death. The testatrix died in September, 1929, and the executors sought an originating summons asking who was to be the recipient of the bequests: the United Church of Canada, or the Presbyterian Church in Canada (as it continued after 1925)?

The Supreme Court of Nova Scotia gave the bequests to the (continuing) Presbyterian Church. On appeal to the Supreme Court en banc, the judgment was upheld. The United Church then appealed to the Supreme Court of Canada. The Supreme Court of Canada dismissed the appeal, following the Patriquin case. In doing so Crocket J., observed that the United Church claim was that the Presbyterian Church in Canada as it had existed before June 10, 1925 became a constituent part of the United Church of Canada without loss of its identity, and that it therefore still existed as it had before, but within the new body. In dismissing this contention, Justice Crocket observed that the United Church of Canada Act created a new corporation and that the United Church was therefore not the same entity as the Presbyterian Church in Canada before the union. He quoted Smith J. to the effect that the United Church, under the Act was an entirely new and distinct legal entity:[15]

> To hold that the several Church organizations described in that Act as the negotiating Churches, viz, the Presbyterian Church in Canada, the Methodist Church, the Congregational Union...were all constituted a single Church under the new name of the United Church of Canada without loss of their identity would necessarily imply, not only that each continued to exist within the new Church corporation as a distinct and separate body as formerly, but that each retained the right to control its own internal affairs within the United Church without reference to the others, which was clearly never intended by the incorporating Act.

---

14 1930, 3 D.L.R. 244
15 1935 1 D.L.R. page 5

He concluded that the appellant United Church of Canada had no rights whatever in the matter and was therefore unable to challenge the right of the respondent, the Presbyterian Church in Canada, to receive the bequests.

It must be understood that the judgment did not establish the fact that the continuing Church was the Presbyterian Church in Canada, (though it does not say that it is not) but rather it precludes the United Church from making any such claims under the laws of Canada.

CONCLUSION

This paper has been specifically concerned with the LEGAL problems of church union. There are larger and certainly more important issues involved. What I have tried to do is to look to the legal aspect in order to shed some light on these larger issues.

In reality the union of 1925 divided the Presbyterian Church. The majority entered the United Church believing they took the Church's identity and reformed heritage with them. This heritage had taught them to seek the unity of the Church and that the Church could not be captive to the theological past.

The opponents of union were determined to maintain the Church as they had known it and believed the Church's identity was in its faithfulness to its historic standards.

Canadian Presbyterians divided as a denomination. In the perspective of history we can see that we remain together as Christians, seeking God's will for the Church.

BIBLIOGRAPHY

Baird, Frank — Canadian Church Union and the Courts
Pictou N.S. Article: Knox College Archives

Fleming, J.R. — A History of the Church in Scotland, 1875-1929
Edinburgh, T & T. Clark, 1933

M'Neil, A. — The Free Church Case, Edinburgh, Wm. Hodge and Co., 1904

McNeill, J.T. — The Presbyterian Church in Canada, 1875-1925
Toronto, Presbyterian Church, 1925

Mason, G. W. — The Legislative Struggle for Church Union, Toronto, Ryerson Press, 1956

Morrow, E. L. — Church Union in Canada, Toronto, Thos. Allen, 1923

Orr, R. L. — The Free Church of Scotland Appeals, 1903-4, Edinburgh, MacNiven and Wallace, 1904

Pidgeon, G. C. — The United Church of Canada, the Story of the Union, Toronto, Ryerson Press, 1950.

Scott, E. — "Church Union" and the Presbyterian Church in Canada, Montreal, John Lovell & Son, 1928

Taylor, T. Wardlaw — Church Union and Church Law, Article, Knox College Archives.

Taylor, Sir T. W. — The Public Statutes relating to the Presbyterian Church in Canada, Winnipeg, Hart & Co., 1897

Acts and Proceedings of the General Assembly of the Presbyterian Church in Canada, 1915-1936, Toronto

Statement of Claim, Cunningham et al v. Pidgeon et al, Knox College Archives. 1924

House of Commons Debates, 1924, King's Printer, Ottawa

The Manual, of the United Church of Canada, Toronto The United Church Publishing House, 1940

Minutes of the Select Standing Committee on Miscellaneous Private Bills regarding Bill No.47, "An Act Incorporating the United Church of Canada", 1924. Knox College Archives.

Rules and Forms of Procedure in the Church Courts of the Presbyterian Church in Canada, Toronto, The Westminster Co. Ltd., 1914.

Statutes of Canada, 14-15 Georve V, Chapter 100.

Table of Abbreviations:

D.L.R.	Dominion Law Reports
A.C.	Appeal Cases
O.W.N.	Ontario Weekly Notes