

Dobie case, and a provisional injunction had been issued, restraining the present respondents from administering or acting as a Board. The Privy Council had declared the Quebec statute to be unconstitutional and *ultra vires*, so that the pretention of the appellants had been fully sustained.

*Morris*, for the respondents, submitted that the contract, which formed the basis of the action was made as long ago as 1860, and there was no question, therefore, as to the indebtedness. The right of the respondents to sue for the recovery of this debt was not dependent on the constitutionality of the Quebec statute, 38th Victoria—that was merely an amending Act, and the judgment by which it had been declared unconstitutional had the effect of leaving the original Act of incorporation still in force. It was from this original charter that the respondents derived their right. Being a duly incorporated body, they had a right to collect their debts and enforce payment of dues. It had been said that the respondents were restrained by an injunction from acting or administering as a Board; but the fact was that the injunction in the Dobie case was quashed by the judgment of the Superior Court before the present action was taken out. The injunction once dissolved, could not be restored by an appeal, and there was nothing to prevent the respondents from administering and collecting debts. The appellants had no right, by a plea to an action of debt, to criticise the election of the Board. Directors *de facto* are *prima facie* Directors *de jure*, and their receipt is a valid discharge. The only interest of the appellants was to pay to a party whose receipt would hold good. It was also submitted that by the by-laws, the respondents had a right to sue. The chairman holds office until his successors are legally elected. If the election under the Quebec Act of 1875 was invalid, the chairman was still entitled to administer, until a new and valid election had taken place. In conclusion, it was submitted that by a public Act of the Dominion Parliament, which had not been attacked, the proceedings of the Board elected in 1876 were ratified and confirmed. Therefore, the appellants in any case were not entitled to have the action dismissed. The judgment of the Court below should be confirmed, even if the costs were awarded against the respondents.

Some discussion ensued as to the effect of the

Dominion Act referred to (45 Vict. cap. 124) upon pending cases. Subsequently a re-hearing was allowed on this point, at which,

*Macmaster*, for the appellants, submitted:—The Statute of Canada 45 Vic., cap. 124, is not retroactive, saving as expressly specified. It does not reanimate the unconstitutional Act of Quebec 38 Vic., cap. 64; it merely confirms and ratifies all "acts and doings" of the Board and of the acting members thereof since the Act 38 Vic., cap. 64 was passed—"had thereunder"—that is, in virtue of 38 Vic., cap. 64. These "acts and doings" can only mean acts and doings contemplated by the provisions of the (unconstitutional) Act 38 Vic., cap. 64, such as the payment of a subsidy to Queen's College, the payment of increased allowances to ministers, &c.—provisions in excess of the terms of the original Statute 22 Vic., cap. 66; but the right to sue is not conferred by the unconstitutional amendment, and the present action could not have been instituted by virtue of its provisions. The suit is not therefore ratified and confirmed by the Canada Act 45 Vic., cap. 124. As respondents say in their factum, it is not from the amending Act, (38 Vic., cap. 64), that the respondents derive their right to hold property and collect their debts, but from their original charter." It is true that the right to sue is derived from the original charter; but the plaintiffs here attempting to collect are not the corporation created by the original charter with 38 Vic., cap. 64, superadded. The defendants do not owe respondents—whose head was lopped off by the decision of the Privy Council, and has not been restored by the recent Act (45 Vic., cap. 124) of the Parliament of Canada. They owe the old corporation. 1. The defendants owe to the old corporation (22 Vic., c. 66), and there is no privity of contract with the corporation suing. 2. The corporation created by 22 Vic., cap. 66, and 38 Vic., cap. 64, claim from defendants by the present suit. 3. Defendants say they do not owe this new corporation; that it is an illegal body; and that the judgment of the Privy Council in *Dobie v. Temporalities Board* annulled 38 Vic., cap. 64. 4. There is nothing in Statute of Canada 45 Vic., cap. 124, which revives the annulled Statute 38 Vic., cap. 64 and restores to plaintiffs the corporate character and qualities they assumed at the time they instituted this action. The new Canadian Statute is not retro-