

ment n'est pas illicite, et que la demanderesse et ceux qu'elle représente existaient au temps où le dit legs a pris effet en leur faveur.

"Considérant que si depuis la promulgation de notre Code Civil, il peut se faire qu'on exprime du doute sur le droit de la demanderesse, à raison de la rédaction de l'article 838 du dit Code, ce doute n'était pas possible dans notre pays avant le Code, particulièrement dans le cas où le legs était fait à des enfants déjà nés, ainsi qu'à d'autres à naître ;

"La Cour maintient la réponse en droit faite par la demanderesse à l'exception péremptoire en droit plaidée par le défendeur Henry A. Martin, produite en cette cause, et fondée sur la prétention que la demanderesse et ceux dont elle réclame les droits en vertu du dit testament n'étaient pas nés ni même conçus lors du décès du testateur John Irish, et rejette la dite exception avec dépens distracts à Messrs. Lynch, Amyrauld & Fay, avocats de la demanderesse."

Lynch, Amyrauld & Fay, attorneys for plaintiff.

Geo. B. Baker, Q.C., attorney for defendant, Martin.

(T. A.)

SUPERIOR COURT.

MONTREAL, NOV. 25, 1882.

Before TORRANCE, J.

LORANGER, Atty. Gen. P.Q., v. THE MONTREAL TELEGRAPH CO.

Action against corporation for forfeiture of charter—Provincial Attorney-General—C. C. P. 997.

Held, that the Attorney-General for the Province of Quebec had a right to petition, under C. C. P. 997, to have it declared that the Montreal Telegraph Company had forfeited its charter.

This was a petition by the Attorney-General, under C. C. P. 997, praying that the defendants, for reasons given, should be declared to have forfeited their charter. The case was before the Court on the merits of an *exception à la forme* made by defendants on the ground that the proceeding should have been in the name of the Attorney-General of the Dominion of Canada, and not of the Attorney-General of the Province of Quebec.

PER CURIAM. By the Confederation Act of 1867, sec. 130, it was enacted that "until the Parliament of Canada otherwise provides, all officers

of the several Provinces having duties to discharge in relation to matters other than those coming within the classes of subjects by this act assigned exclusively to the Legislatures of the Provinces, shall be officers of Canada, and shall continue to discharge the duties of their respective offices under the same liabilities, responsibilities and penalties as if the union had not been made." So far, it would seem that the Attorney-General of the Province had authority to sue. We have next the Statute of Canada of 1868, Cap. 39. Section 3 enacts that the Attorney-General of Canada "shall have the regulation and conduct of all litigation for or against the Crown or any public Department, in respect of any subjects within the authority or jurisdiction of the Dominion." It is now to be remarked that the first statutes creating or extending the powers of the defendant, were provincial, passed by the late Province of Canada, and the chief office of the Company was at Montreal. Since confederation, two or three acts have been passed by the Dominion Parliament extending the powers of the company over other Provinces of the Dominion.

My conclusion is that the Provincial Attorney General has a right to petition as he has done, and that the exception should be overruled. It may be competent to the Attorney-General of the Dominion to intervene in this suit. Perhaps he should do so, but the power of the petitioner to present his petition should not be questioned.

Exception dismissed.

J. E. Robidoux for petitioner.

Abbott, Tail & Abbotts for defendants.

SUPERIOR COURT.

MONTREAL, DEC. 16, 1882.

Before TORRANCE, J.

O SHAUGHNESSY et al. v. HARVEY et al.

Liquidation of Mutual Building Society—Distribution of Assets.

In the liquidation of a mutual building society, a resolution passed at a meeting of the borrowing members, to discharge those who within three months should pay 80 per cent. of their indebtedness, the overplus after paying the non-borrowing members in full, to be divided between the borrowing members, does not bind non-borrowing members who did not acquiesce in the resolution.