

dowment of the See of Montreal, and after the death of Bishop Mountain they received, under said indenture, from the Church Society of the Diocese of Quebec an amount of over \$19,000 to be held in trust as an endowment of the said See of Montreal, and under the Act of Incorporation of the Synod the Church Society of the Diocese of Montreal was merged into the Synod and all this property passed to, and became the absolute property of the Synod, subject to the same trust as the Church Society that held the same. In this way it was contended by the intervenant that the whole of the moneys originally held by the Church Society became vested and were the absolute property of the Synod, and included in this property were the said moneys so received from the Society for the Propagation of the Gospel in Foreign parts, and consequently that these moneys were held by the Synod, subject to the trust mentioned in said indenture, and that under said indenture the Synod was bound to pay over to the Bishop, for the time being, of the Diocese, the revenue of such moneys to the extent of \$5,000 per annum.

The Synod contended that the moneys seized under the attachment were in reality the very same moneys that the Synod had become vested with in the manner before mentioned, and, therefore, claimed that the moneys were not liable for the debt on Trinity Church, which was contracted by Bishop Oxenden simply for the purposes and uses of Trinity Church alone, and independently of the property of the Diocese, and under the special authority of the Provincial Statute, 38 Victoria, chap. 63, and that it was incompetent to Bishop Oxenden, to pledge, nor did he pretend to pledge, any portion of the said Episcopal Endowment Fund.

The Right Reverend Bishop Bond also intervened personally, and claimed that the only fund out of which his salary, as Bishop, could possibly be paid was the revenue arising from said loans, and that the same could not be attached under the present proceedings. There was also an incidental point in the case in the shape of a contestation by the plaintiffs of the declaration of James Hutton, one of the *tiers-saisis*.

MACKAY, J., said that the Lord Bishop of Montreal is a corporation sole, and before the Act of 1875 he was vested with the property of Trinity Church. That Church being in pecuniary difficulties, got an Act passed by which a

loan was authorized, and the Bishop authorized to mortgage the church property as security. His Honour could not see that the Bishop had any power at all to involve his successors in office. The Act (38 Vic. c. 63) was a law in favor rather of the minister and church-wardens of Trinity Church; it was they who petitioned for the Act. It was perfectly clear what the object was, viz., that the Bishop might borrow and for security mortgage the property with the consent of those interested, and that upon failure to pay, the church might be seized and taken in execution, and that was all. It did not authorize him to declare that he bound his successors to pay; as he has declared. The Church has been sold at the suit of the plaintiffs, but has not produced enough to pay them in full. There is a deficit, and it is contended that the successors of the Bishop are liable for it, and monies vested in their name are seized. The powers of the Bishop in this province are well known; he cannot borrow without leave. Several instances have occurred of the Roman Catholic Bishops here asking for powers to borrow money; and in France a Bishop can never borrow or mortgage a property which he is holding in trust, without authority. The case of the Synod here was made out, the moneys seized belonging to the Synod of the diocese. The judgment would, therefore, maintain the intervention of the Synod, *mainlevée* being granted as regards the two *tiers saisies*; costs of contestation against plaintiffs in favor of intervenant; "considering that the Synod, intervenant, has proved its material allegations of intervention, and its title to the monies claimed by it, subject, however, to the trust stated in the intervention: considering that under the circumstances disclosed upon the record, the seizure in this cause of monies in the hands of the *tiers saisies* must be declared vain, null and void; considering the contestation by the plaintiff of the Synod's intervention unfounded, and its denial of the Synod's proprietorship unfounded, and so its allegations of simulation and fraud."

Intervention maintained.

*. TRUST AND LOAN CO. V. THE RIGHT REV. THE LORD BISHOP OF MONTREAL, MUNRO and HUTTON, *tiers saisies*, the RIGHT REV. BISHOP BOND, intervenant, and plaintiff contesting.—In this case