

COURT OF QUEEN'S BENCH.

MONTREAL, November 24, 1882.

MONK, RAMSAY, TESSIER, CROSS & BABY, JJ.

RENFORD et al. (defts. below), Appellants, & LES
ECCLESIASTIQUES DU SÉMINAIRE DE MONTRÉAL
(plffs. below), Respondents.

Sale of immoveable—Warranty.

Redpath sold to appellants a piece of real estate. They paid a portion of the price, leaving \$20,000 secured on the property, payable in ten years, with interest. This balance Redpath gave to McGill College, and appellants accepted the transfer. Appellants then sold the immoveable to Burland, who bound himself personally to pay the debt, and the property remained hypothecated to secure the debt. Burland then exchanged the property with the Seminary for another property; and as the property coming from appellants was mortgaged as well for the balance of the original price (the \$20,000 made over to McGill College) as for the extra price Burland agreed to pay, Burland hypothecated to the Seminary the property they gave him in exchange. Burland then sold to Ross the property he had acquired from the Seminary. The Seminary became parties to this last deed, and discharged Burland of his personal liability to them, and accepted Ross in his stead. Subsequently the rights of McGill College devolved on one Cunningham who notified the Seminary of the transfer. Interest on the \$20,000 fell due, and as it was not paid by any of the parties personally liable, Cunningham sued the Seminary hypothecarily. The Seminary paid the debt, and were subrogated in the rights of Cunningham. They then sued the appellants who pleaded as an answer to the demand the discharge of Burland by the Seminary.

The question was as to the effect of this discharge.

The Court below (Rainville, J.) held that the action of the Seminary should be maintained.

This judgment was maintained in appeal, Ramsay, J., dissenting on the ground that to maintain the action appeared to lead to a useless circuit of actions.

Judgment confirmed.

Girouard & Wurtele, for Appellants.

S. Bethune, Q.C., Counsel.

Geoffrion & Co., for Respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, Jan. 20, 1883.

DORION, C.J., RAMSAY, TESSIER & BABY, JJ.

MINISTER AND TRUSTEES OF ST. ANDREW'S CHURCH,
MONTREAL, (defts. below), Appellants, and
BOARD FOR THE MANAGEMENT OF THE TEMPO-
RALITIES FUND OF THE PRESBYTERIAN CHURCH
OF CANADA IN CONNECTION WITH THE CHURCH
OF SCOTLAND, (plffs. below), Respondents.

Retrospective Legislation—45 Vict. (Can.) cap. 124.

Held, that the Act 45 Vict. (Can.) cap. 124, confirming and ratifying all acts and doings of the Board of Temporalities, since the passing of the 38 Vict., cap. 64, was sufficient to sustain an action instituted by the Board before the passing of the 45 Vict., and the Dominion Parliament had authority to enact said statute, although the Privy Council in England had by their judgment in Dobie & Temporalities declared the Board to be illegally constituted.

In this case the right of the Board for the Management of the Temporalities Fund to collect the amount of a mortgage dating back to the year 1860, was called in question. The action, it may be stated, was taken out after the judgment in the Superior Court dissolving the injunction in the Dobie case, but before the final judgment of the Judicial Committee of the Privy Council, declaring the Quebec Act 38 Vict., chap. 64, to be unconstitutional. (5 L. N. 58.)

The Court below maintained the action, whereupon the present appeal was instituted.

Macmaster, for the appellants, said the main pretension of his clients was this: The persons who call upon us to pay are not the persons to whom we owe the amount sought to be recovered. The indebtedness of the appellants, if any, was to a corporation created by an Act of the late Province of Canada (22 Vict., cap. 66), and the plaintiffs (now respondents) are not such corporation; but the persons now suing are a corporation existing and illegally administering, and constituted under an Act of the Quebec Legislature, 38 Victoria, which Act was illegal and unconstitutional, and could confer no right upon the respondents to collect the debt sued for, or to grant a legal receipt therefor. The validity of the Quebec statute had been contested before the courts in the