

legatees; and it is my will and desire that they do hold the same in trust for the following intents and purposes, namely: to establish at Montreal, in Canada, an institution to be called the 'Fraser Institute,' to be composed of a free public library, museum and gallery, to be open to all honest and respectable persons whomsoever, of every rank in life without distinction, without fee or reward of any kind."

Held, 1st. That the introduction of unlimited power of bequest into the law of Lower Canada (41 Geo. III) has not had the effect of abrogating the Declaration of December, 1743.

2nd. That the Declaration of 1743 has not been abrogated by the cession of Canada to Great Britain.

3rd. That the statute 41 Geo. III reproduced in articles 831 and 836 of the Civil Code forbids bequests to corporations which have not been granted permission to receive them.

4th. That in the Colonies the Royal Prerogative may be restricted in all that does not pertain to the fundamental principles and rights on which the sovereign authority rests, if formal laws exist in the colony restricting the Crown prerogative.

5th. That in substance (if not in form) the Declaration of 1743 is in conformity with the common law of England.

6th. That, although by the *Magna Charta*, it was forbidden to make gifts to religious communities directly or by trusts, this prohibition did not extend to the establishment of schools, nor to gifts made for the support of the poor, or for other charitable objects.

7th. Finally, that by the *ensemble* of the existing laws of Lower Canada, and more particularly under the provisions of Cons. Stat. of Canada, c. 71, c. 72, and article 869 of the Civil Code, the Declaration of 1743 does not apply to the "Fraser Institute."

The judgment is based upon the following grounds:

"Considering that the object of the aforesaid bequest, to wit, the establishment of a Public Library and Museum of Art, is legal, and does not require previous letters patent authorizing the same.

"Considering that under the said will the said Hon. J. J. C. Abbott and Frederick Torrance became and were vested with the estate so as aforesaid bequeathed to them for the purpose in the said will mentioned, and are authorized to construct the buildings necessary for the same.

"Considering that such bequest is valid under the provisions of article 869 of the Civil Code, and that the said residuary fiduciary legatees may hold the said estate and manage the same so as to carry out the desires of the said testator, until a corporation be regularly formed to administer the said Public Library, after the erection of the necessary buildings, and that until such time, no contestation as to the right of such corporation to take the legacy and bequest can take place; and that therefore the plaintiff's action cannot be maintained, doth dismiss the same with costs." Beaudry, J.