it is true. The report is that, upon a certain theory which he propounds, Mr. Matte's conclusions may be susceptible of refutation, and that possibly no deficiency may have occurred at all. Mr. McDonald cannot be admitted, however, to judge of the effect of Mr. Matte's evidence, except as to its effect on himself as an expert. He says that upon his theory it is susceptible of refutation. Then by all means let it be refuted,—but refuted by facts and proof, not by hypothesis and opinion There is the deficiency clearly shown, as far as Lesperance is concerned; but when, and to what extent with reference to the time of the contract? In my judgment, after devoting much time to this case, I think that the Company's guarantee can only apply to the deficiency of $1,400 clearly shown to have occurred after the contract. It was a contract to make good the consequences of any misconduct that might occur after it was made. By no rule can it be made to apply to deficiencies occurring previously. Those were purely at the risk of the Bank, whether known to it or not, and whether its officer covered up and concealed them or not. The judgment, therefore, is for the whole amount against Lesperance, and for $1,400 only against the Company, jointly and severally with him, and with costs.

*Geoffrion & Co.* for plaintiff.

*Mousseau & Co.* for Lesperance.

*J. C. Hatton* for Canada Guarantee Co.

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SUPERIOR COURT.

MONTREAL, April 29, 1881.

*Before* JOHNSON, J.

MORRISON es qual. v. MCCUAIG.

*Trustees—Right of Survivor.*

*Certain property was acquired by a number of trustees for the congregation of a church. No right of survivorship was referred to in the deed of conveyance.*

*Held, that a person claiming to be sole surviving and remaining trustee had no right of action to get back the property from alleged unlawful holders.*

PER CURIAM. The plaintiff and defendant were, both of them, co-trustees along with others of a Presbyterian Church, and in that capacity, and before the passing of the statute of 1875, they, all of them, acquired some land for the congregation and built a church. Soon afterwards proceedings took place in consequence of the provisions of the statute, and one party contends that there has been a lawful secession, and the other that there has not. The plaintiff belongs to the Union party, and the defendant to the Anti-Union; and the plaintiff brings the action to get back the church and land, alleging the defendant's individual and unlawful possession of them.

The plaintiff styles himself "John Morrison, "of Cote des Anges, in the County of Soulanges, "District of Montreal, farmer, in his quality of "sole surviving and remaining trustee legally "appointed and authorized to hold the real "estate, and representing the civil rights of the "religious congregation of Cote St. George, in "the said county, in connection or communion "with, and forming part of *the Presbyterian "Church in Canada, suing in his said quality*, and "on behalf of all the other members of the said "congregation." These are the important capacities assumed by the plaintiff, and he brings his action against the defendant personally, describing him merely as, "Donald McCuaig, of "Cote St. Patrick, in the County of Soulanges, "in the District of Montreal, farmer."

Of course, the real object of the action is to have it decided to which party the church rightfully belongs, but the defendant by his first plea contends that the plaintiff has no quality to bring the action at all; and that he, the defendant, has no quality to defend it. With respect to the plaintiff's right, it is questioned on two grounds: one of law and the other of fact; first, it is said he would not by law represent the civil rights of the congregation as the surviving trustee; and secondly, as matter of fact, that there was another body of trustees elected, and who would have had the right of action if any existed. Now, without going into the question of fact at all, even with regard to this preliminary question of procedure, and still less on the merits, it seems that the right of property in this building and in the land, was conveyed by the deed of the 23rd November, 1871. It was there conveyed to William McNaughton, John Morrison (the present plaintiff), Duncan McClellan and Donald McCuaig (the defendant), "en leurs qualités de "Syndics de la congregation Presbytérienne en "connection avec l'église d'Ecosse des dites "Cotes St. Georges, St. Patrice, partie du Town-"ship de Newton attachés, et qui font et feront "profession à l'avenir de la dite religion Pres-"bytérienne." Then follows the description of the land conveyed. There is no right of survivorship here mentioned at all. The conveyance seems to be to these gentlemen as trustees, and the right of action would seem, so far, to be vested in them and their successors in office.

The deed further goes on to say: "Pour le "dit terrain et dépendances jouir, user, faire et "disposer en toute propriété par la susdite con-"gregation Presbytérienne, &c." Whether the right of action therefore would be in the congregation, or in the trustees, is another question altogether, and it was to that point merely that I understood the argument of the learned counsel for the defendant to be directed; and there certainly was much force in his argument that, if the property was vested in them as a corporation, there was no right of action through another or others, under Art. 19 of the Code of Procedure. But the point now is different from that: It is, whether the deed, not having provided for the succession of the trust, and the