residue of the personal estate and the whole of the real estate of the said Hugh Fraser is given without any previous authority, enactment, statute or Letters Patent in due course of law first had and obtained to allow the same; that such bequest and devise is made to the Trustees and fiduciary legatees with the duty, obligation and for the sole purpose of transmitting the whole of the said estate, after deducting certain special legacies, to create and establish a lay corporation to be called the "Fraser Institute," to which the whole residue of the estate, moveable and immoveable, is intended to revert and for such object is by the will devised to the said Honorable John J. C. Abbott, and the Honorable Frederick Torrance, in their pretended capacity of Trustees or fiduciary legatees, which is null and void and in direct violation of law; That this disposition is moreover null and void, inasmuch as the same is made to a supposed future and anticipated corporation to be created after the death of the testator and which had no legal existence at the date of the will or at the time of the death of the testator, and consequently without any legal capacity to take or receive any such bequest or devise or any portion of the estate.

The Appellants, by the conclusion of their action, demanded that the part of the will in question by which the testator ordered his executors to transfer the balance of his moveable estate, after payment of the legacies, to the fund vested by the provisions of the will in the Trustees and fiduciary legatees, and also the devise and bequest of the rest and residue of his estate real and personal, moveable and immoveable, to the said Honorable John J. C. Abbott and Frederick Torrance, to establish at Montreal the said "Fraser Institute," be declared illegal, null and void and set aside. And further, that the said Appellants be declared alone entitled to the residue of the said estate, and Respondents ordered to surrender the same to them and account for the rents and profits thereof, &c.

The Defendants pleaded to the action, and fyled, 1st, a demurrer, by which they pretended that it did not appear by the action that the testator had not the power to bequeath or that the Defendants had not power to take the property disposed of by the said will, or that Defendants had not or have not now power to hold. 2nd. A plea by which it was alleged that the property real and personal claimed by the Plaintiffs had been validly bequeathed to the Defendants, and more particularly to