Bishop Bond intervened as interested in the fund. He is entitled to the interest of the monies seized, and has a right to have it declared that the interest should be paid him. The petition in intervention by him is maintained, and *main-levée* of the seizure is granted as prayed; costs of contestation by plaintiffs against them in favor of intervenant; considering that the intervenant has proved his material allegations and his interest to have and maintain such intervention; considering the contestation of the said intervention of the Lord Bishop intervening, unfounded, etc.

TRUST AND LOAN CO. v. THE RIGHT REVEREND LORD BISHOP OF MONTREAL, and HUTTON, et al., *tiers saisis*, and plaintiff contesting.—This came up on a contestation of the declaration of the garnishee Hutton. On similar grounds the contestation must be dismissed, but without costs of this contestation: Considering that the *tiers saisi* has established the truth and sufficiency of his allegations in his answer to plaintiff's contestation of his declaration, considering that the said *tiers saisi* is really debtor only to the Synod of the diocese of Montreal, and it was by error that he obliged himself towards defendant by the obligation referred to in plaintiff's contestation.

Judah & Branchaud for Trust and Loan Co.
Bethune & Bethune for intervenants.

SUPERIOR COURT.

MONTREAL, Oct. 10, 1881.

Before MACKAY, J.

PROVOST v. LA BANQUE D'HOCHELAGA.

Promissory note—Stamps.

An endorser paid to the discounting bank the amount of a note which, as he subsequently discovered, had not on it the proper stamps. It was proved that the note was properly stamped when discounted by the bank. Held, that he had no action to recover the amount of the note from the bank.

PER CURIAM. The action is *en répétition de l'indu*, in other words, for recovery back of a sum (over five thousand dollars) paid by plaintiff to defendant in 1876. The plaintiff had endorsed a note made by Victor Hudon, endorsed first by one Desmarteau. The note went to protest, and defendants made the plaintiff pay it, who at first gave them collateral securities; these having realised enough, the bank gave up to the defendant the original note during the summer of 1880, when, says plaintiff, I saw that the note had never been stamped, and was, therefore, from the beginning a nullity, and the protest a nullity, and myself never under responsibility as endorser of it; the bank was in fault in not stamping and cancelling stamp on the note as required by law; the note amount was paid before plaintiff discovered the real facts, he says, and the bank has delivered to him a note of no use, to serve against the maker, and the first endorser, inasmuch as it has not been stamped. The payment by me made was null under the Stamp Act, says plaintiff; the civil code treats it as "payment of money not dve, and Article 1047 gives me right to have my money restored to me."

The article certainly reads clearly: "He who receives what is not due to him, through error of law or of fact, is bound to restore it." It calls for observation that the plaintiff only commenced his suit in April, 1881, after having had the note in possession probably six or seven months.

The bank pleads that the note was duly stamped and the stamps cancelled, but that they must have fallen off. It also pleads that the note was a renewal of a former one that went to protest, upon which the plaintiff was liable, and can yet be charged, if he succeed in the present suit.

That former note is produced; I notice that it was over five years due at the date of the defendant's pleas. As regards the note filed by the plaintiff, the bank proves it to have been stamped duly at the time of the discounting of it, and two witnesses testify that it bears marks of the stamps having been cancelled duly. The machine, by means of which it is claimed that the defacing was operated, is filed by the bank. For myself I have extreme difficulty to discover the marks of defacing that the witnesses describe. The stamps, supposing them to have once existed, have disappeared, and there is reason for fixing the date of their disappearance at a time before the protest of the note; for the protest is indicative of no stamp, and the notary says that it seems there was none at the time of protest. Here it may be useful to observe that a notary protesting a note which he sees is unstamped shows some in-