

THE

FIFTH REPORT

THE FRASER INSTITUTE,

30th JUNE, 1893.

MONTREAL,
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The revenue for the past year has amounted to \$5058.55, or \$135.55 more than the amount estimated in last year's Report. But the expenditure has somewhat exceeded the estimate. The sum of \$418.39 advanced by the President was not included in that estimate; and the repayment of that sum, with some unexpected repairs, and certain small arrears of interest and of assessments, have caused the increase. The balance of cash carried forward to the credit of revenue is \$192.06.

The expected increase of revenue from the Knox Farm and St. Sacrament Street property has been realised, and amounts to about \$700 in excess of the rental previously derived from those properties. There is no reason to expect any addition to the current expenditure in the coming year, except in respect of the legal expenses of the suit herein-after referred to. The final balance of old arrears of assessments due the City will, however, require to be paid out of the revenue. A small reduction in the expenditure has been effected by reducing the interest on the balance of mortgage on the Knox Farm from 8 per cent to 6 per cent, and the net current revenue for the coming year may be expected to reach about \$2000.

In the month of December last, the property in Dorchester Street, known as the High School property, was offered for sale by auction by the School authorities of the City of Montreal; and as the site appeared to be the most eligible for the purposes of the Institute that could be found in the City, it was thought desirable to make an effort to raise money with which to purchase it. The Governors considered that, with such a net revenue as was expected to be at their disposal, they might endeavour to carry out the arrangements which had been long under discussion, for the acquisition of the library and fund of the Mercantile Library Association, and of the property and collection of the Natural History Society. Their plan was to endeavour to procure the subscription of funds sufficient to purchase the High School Property; to put the present High School building in order; fit it with shelves and such furniture as would be absolutely essential for the purpose; and then to endeavour to complete the proposed arrangements with the Mercantile Library Association and the Natural History Society, and to open the contemplated Free Library. They were convinced that a strong feeling existed in Montreal as to the necessity for such an institution; and they believed that if it could once be opened, and an opportunity afforded for showing its capacity for usefulness; such assistance as would be needed to make it efficient, would speedily be received. And they also hoped that an opportunity might offer for the sale of some of the property of the Institute, by means of which its revenue might be increased to such an amount, as to enable its objects to be carried out with some degree of vigour.

The High School property having been accordingly put up for sale by auction, the President in order to secure it for the Institute, became

the purchaser of it for \$30,000, and advanced the sum of \$10,600, to make the requisite payment on account of the price, and to pay the charges upon the sale. And he thereupon intimated to the Board that he would hold it at the disposal of the Institute, until an effort could be made to obtain the means of paying for it; without however holding the Institute responsible for the purchase in any way.

The Governors thereupon issued a circular to a limited number of friends, in the following terms:—

“ MONTREAL, January 31st, 1883.

“ SIR,

“ On behalf of the Fraser Institute, I apply to you to aid in establishing without further delay, in Montreal, a Free Library, Museum and Gallery, open to all persons, without distinction of class, nationality, or religion.

“ This application is made at this time, because it appears to the Board that the High School property is the most advantageous site for such an institution remaining in the city, and is now at the disposal of the Institute; and the revenue of the Institute appears to justify its being opened without further delay, if a suitable building could be obtained for the purpose, without cost.

“ I enclose you the annual reports of the Institute for the past two years, ending 30th June last. In the statements accompanying these reports you will find particulars of its revenues, of its receipts and disbursements, and of the administration of the estate generally since it came into the possession of the Board. And you will perceive that there is every reason to expect a fair surplus revenue for the present financial year, and an increase of it to above \$1,500 during the coming year.

“ The third report contains a description of the properties and movable assets belonging to the Institute. The revenue from the properties is very much below the interest on their value; and it is hoped that ere long, the value of real estate will have so far recovered itself in Montreal and its vicinity, as to enable the Board to sell some of those properties for a fair price. The increase of revenue which would result, would enable the Institution to be conducted upon a more liberal scale. And if it were once opened, the Board is confident that assistance from without, both in the way of donations of books, and of money, will not be wanting.

“ The plan which the Board now desires to adopt is as follows:—

“ 1. To endeavour to induce friends of education in Montreal to contribute a sufficient sum with which to purchase the High School property, say \$30,000.

“ 2. Immediately upon that being acquired, to fit up the building fronting on Dorchester Street, as a Free Library.

“ The Board now has an understanding with the Mercantile Library Association for the acquisition of its Library. Valuable donations of books have been received from the Honorable Mr. Justice Ramsay and others, and contributions have been promised to enable the Board to form at once a useful collection.

“ As means are acquired for the purpose, a Gallery will be fitted up for the reception of the handsome collection of paintings contributed by the Honorable Mr. Justice MacKay and Mrs. MacKay, and it is believed that arrangements can be made for obtaining the Museum of the Natural History Society, upon terms which have been practically agreed upon.

“ It is proposed that the subscribers to the fund shall be called together as soon as the requisite amount has been promised, and that they shall decide whether the title of the property shall be placed in

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"the name of the Fraser Institute, or in the hands of trustees for the
"benefit of the Fraser Institute, to be ultimately conveyed to it, within
"a reasonable time, if it is successful in opening and carrying on the
"on the Institution; otherwise to be utilized for the benefit of the
"subscribers,

"I enclose you a slip, which please return to me with your sub-
"scription.

"The subscription has been commenced as follows:—

" J. J. C. Abbott.....	\$4,000
" Hon Judge Torrance.....	1,000
" D. Morrice.....	1,000
" Geo. W. Stephens.....	1,000

"Your obedient servant,

"J. J. C. ABBOTT,

President."

In addition to the sums mentioned in the circular, the following
gentlemen have agreed to contribute as follows;

Mr. Peter Redpath.....	\$1,000
Mr. Hugh McLennan.....	1,000
Mr. Wm. C. MacDonald.....	1,000
Mr. George Hague.....	250
Mr. O. S. Wood.....	250
Messrs. Hutchison & Steel.....	250

making a total of \$10,750 which was immediately subscribed in further-
ance of the step which the Governors desired to take.

The line of action upon which they had determined was not, how-
ever, proceeded with; in consequence of an action instituted for the
second time, in the name of the Honorable Attorney General for Lower
Canada, to annul the charter of the Institute.

In September, 1879, a proceeding was taken by the Attorney General
for the time being, on the information of Mr. John Fraser, praying for
the revocation of the charter of the Institute, the particulars of which
proceeding are given in the second Report, dated 30th June, 1880.

In that case, all the charges that had previously been made by Mr.
Fraser against the trustees and executors, and against the Governors, in
respect of the administration of the estate, were recited; the greater por-
tion of which charges had reference to the accounts audited and certified
by Messrs. Riddell & Evans, when the Corporation of the Institute
received the estate. In consequence of Mr. Fraser having repeated
many of these charges in a letter to Sir Hugh Allan, and to the Corpora-
tion of Montreal; Mr. Evans, the surviving auditor, brought an action
for libel against Mr. Fraser, which was maintained, and was subsequently
confirmed in review. The investigation of the alleged libel, comprised
the investigation of all the accounts which the Attorney General, on the
information of Mr. Fraser, had alleged to be incorrect and fraudulent;
and when the evidence taken upon the trial in Mr. Evans' case had
shewn that the charges were without foundation, the proceeding against
the Corporation was withdrawn.

Notwithstanding this result, however, the new proceeding recently
taken, was almost entirely, an exact repetition of the same charges which
had been disposed of in the Evans case; which had been made in
the subsequent action of the Attorney General; and which had been
withdrawn by the Attorney General in withdrawing the former proceed-
ing. It is presumed that the present Attorney General did not exercise
the discretion which the law gives him, of inquiring into the probability
of there being any real ground of action against the Corporation, before he
gave his assent to the new proceeding by Mr. Fraser; as, if he had made
any such inquiry, the fact that the former proceeding was withdrawn, was

of record in the Attorney General's office, and had been referred to in correspondence with him on several occasions, when ineffectual demands were made by the Institute for payment of the balance of the costs for which he held security. And it cannot be supposed that the Attorney General would have given his consent to the new suit, had he been aware that the charges it contained had already been disposed of.

Be that as it may, however, the balance of costs remaining from the old suit in 1879 was paid in December last on behalf of the Attorney General, that being a necessary preliminary to the institution of the new proceeding, which was then immediately taken out and served upon the Institute.

The charges made by Mr. Fraser in the name of the Attorney General, impute to the Governors dishonesty and maladministration of the grossest kind. The leading points may be summed up as follows :—

1. The reception by the executors and trustees, of large sums of money which were not entered in the accounts rendered by them to the Institute.
2. The alleged payment of large sums of money by the executors and trustees, which were not actually paid by them.
3. The falsification and suppression of the accounts prepared by Messrs. Riddell & Evans; and the substitution of false and fraudulent accounts prepared for the purpose, at the instance of the trustees and executors.
4. The mismanagement and sacrifice of the Merchants Bank Stock left by Mr. Fraser, from which heavy loss had accrued to the fund.
5. Speculation and dealing in real estate by the Governors, from which also a large loss had resulted to the trust.
6. The mismanagement and neglect of the property of the trust, by which the revenues had been greatly reduced; and finally,
7. It was charged that by these means the fund had been so reduced that it was no longer sufficient to carry out the objects of the testator; and that by the unnecessary and improper delay of the trustees and Governors in opening the Institute, the charter had been forfeited.

From a legal point of view it will be obvious that the only charge contained in this voluminous indictment, which affected the charter of the Corporation, was the last one. But the Governors determined not to take advantage of that fact; and get rid of the charges, by pleading their inapplicability to the conclusions of the proceeding; but, on the contrary, to meet them all by a full and unreserved statement of the facts in respect of each charge, in order that their conduct might be judged without reference to any legal technicality whatsoever.

Their answer to the charges may be summed up, as follows :—

1. They reply that the monies received but not mentioned in the return of the executors to the Institute, were sums of money received for goods held on consignment, which had been remitted direct to the consignors. That these sums did not belong to Mr. Fraser, and therefore could not be made over to the Institute.
2. That no sums were charged, or alleged to be paid, by the trustees and executors, which had not actually been *bonâ fide* paid, and which were not amply and regularly vouched for.
3. That there had been no alteration of the accounts prepared by Riddell & Evans; and in proof of it, they produced those accounts from the archives of the Institute, and filed them in Court. And that the abstract of those accounts annexed to the deeds of conveyance to the Institute, precisely accorded with those accounts.
4. That the Merchants Bank Stock subscribed for by the trustees and executors, was a part of the increased capital of the Bank offered at a low premium, and the subscription for it was at the time an advantage

to the trust; and that the trustees were not responsible for the subsequent diminution in value of Merchants Bank Stock.

5. That the only dealing in real estate, was the purchase of a lot in Crescent Street, as a site for the Institute, which the Governors had made on the decision by the Privy Council that Mr. Fraser's will was valid; but which they were forced to return to the vendor, when further legal proceedings by Mr. Fraser prevented them from commencing the Institute. And that the whole loss involved in this transaction was an insignificant amount of interest and taxes.

6. That the trust had been so managed that the revenues had been greatly increased, being in fact at the time of the institution of the suit, nearly double what they had been, when the property was taken over from Mr. Fraser's estate; and finally;

7. That the property was sufficient for the purposes contemplated by the testator: but that the Governors had not been able to avail themselves of the proper period for disposing of it, in consequence of the proceedings of Mr. John Fraser. That the expense of its administration was trifling, except in the matter of the legal expenses forced upon the Governors by Mr. John Fraser: that that the revenue was increasing: that the mortgages left by Mr. Fraser, had been much reduced: and that the Governors were administering the estate with the greatest care and economy, in the hope that the cessation of litigation would sometime enable them to carry out the objects of the testator. And that as to the delay which had occurred in opening the Institute, it was entirely owing to the persistent, malignant, and unfounded attacks upon the Governors through the Courts, and through the Legislature, which had been unceasingly carried on by Mr. John Fraser, from the time of his brother's death.

The case was inscribed by the Institute for trial, and a thorough investigation of all the charges was made before Mr. Justice Rainville, during the last ten days of the Session of the Superior Court at Montreal before the Summer Vacation. Mr. John Fraser, being unable even by his own testimony to explain or make good the charges he had brought against the Governors, applied for access to the books of the trust, in order that he might endeavor to discover in them evidence in support of those charges; and during the investigation, which lasted for eight days, he was on three several occasions given full and unrestricted communication of the books of the estate. The matter was finally submitted to the Judge after a most patient inquiry on his part; and on the 29th of September last he rendered a judgment: which is also printed *in extenso* in the Appendix.

This judgment may be shortly summed up as follows:—

1. That the irregular and incorrect entries alleged by Mr. John Fraser to exist in the Books, and with regard to the cash, existed only, "in the imagination" of Mr. John Fraser.

2. That the assertion as to the substitution of falsified accounts for the accounts made by Riddell & Evans, was unfounded, the accounts produced being the identical accounts made by them—and no others having ever been made.

3. That the loss on Bank stock was in no respect the fault of the Executors: and that their action under the circumstances was prudent and justifiable.

4. That there was no speculation or dealing in real estate.

5. That the management of the Executors had been proper and judicious.

6. That the delays in the commencement of the Institute were attributable to Mr. John Fraser's conduct, who had instituted several actions against the Trustees, and had subsequently by new actions, new

protests and by petitions to the Legislature, continually embarrassed the action of the Trustees and of the Institute.

7. That the Institute had proved the allegations of its plea; and that the grievances of the real Plaintiff in the cause, Mr. John Fraser, existed rather in his imagination, than in the record. (*Existent plus dans son imagination, que dans le dossier.*)

The Governors do not expect that the efforts of Mr. John Fraser to prevent the establishment of the Institute, will cease on account of this judgment; but the only importance which they have for sometime attached to his statements and charges, has been the effect which they feared they must produce, upon some portion at least of the general public. They trust that they will not need in future to have any fear on that subject. The elaborate investigation by Judge Rainville, and the conclusive decision at which he arrived, will probably satisfy every section of the public, of the true character of the attacks upon the Governors by Mr. John Fraser; without reference to the numerous previous defeats which he has met with in the Courts, and particularly to the judgment in Mr. Evans' favour on similar points, and to the withdrawal of the previous charges made by the Attorney General.

They have therefore determined to renew the appeal to the public, which they felt bound to suspend for the time being, when the last proceeding by the Attorney General was commenced. That being now disposed of, they propose to repeat the application to all persons who are interested in the well-being of Montreal, to assist them in making an effort to establish and open the Free Library, which was the main object of Mr. Fraser's bequest.

They are aware that objections are made to giving assistance for this object, because the testator has attached an individuality to the Institute, by causing his name to appear in its title.

The Governors hope that this objection may not be allowed undue weight. The bequest of Mr. Fraser was undoubtedly a noble one. As it now stands, after a full liquidation of all the liabilities of the estate, and after having paid the expenses of a litigation unparalleled in volume and persistency; the estate is represented by 770 acres of valuable land upon the Lower Lachine Road, in a locality rapidly increasing in value: by 9000 square feet of property in the very heart of the business part of the City; and by Bank stock of the market value of \$25,000. The estimate placed upon the real estate has varied at various times, being affected by the fluctuations in such property, and in fact being dependent upon the opinion of each individual. But the Governors consider that the actual value of the estate, if it could now be realised, would reach from \$125,000 to \$150,000; and estimates have been furnished them of its value, reaching twice or thrice those sums. The Governors believe that it cannot properly be said, that the giver of such a donation, was not justified in desiring that his name should form part of the title of the institution for which he made it. The bequest by the late Honorable Mr. McGill to the University of McGill College was not, when he made his will, of as great a value as the bequest of Mr. Fraser to the Fraser Institute. Yet our citizens have not been deterred from assisting in the establishment and improvement of that noble University, by the fact that it bears the honored name of McGill. The Governors hope that the citizens of Montreal will see in the Fraser Free Library, another powerful factor in the education of the community. And they trust that public-spirited men will not allow themselves to be deterred from contributing to the establishment and maintenance of that Library, by the fact that it bears the name of its principal benefactor.

The Governors believe that the time has arrived for an energetic effort to create an institution worthy of Montreal. From time to time

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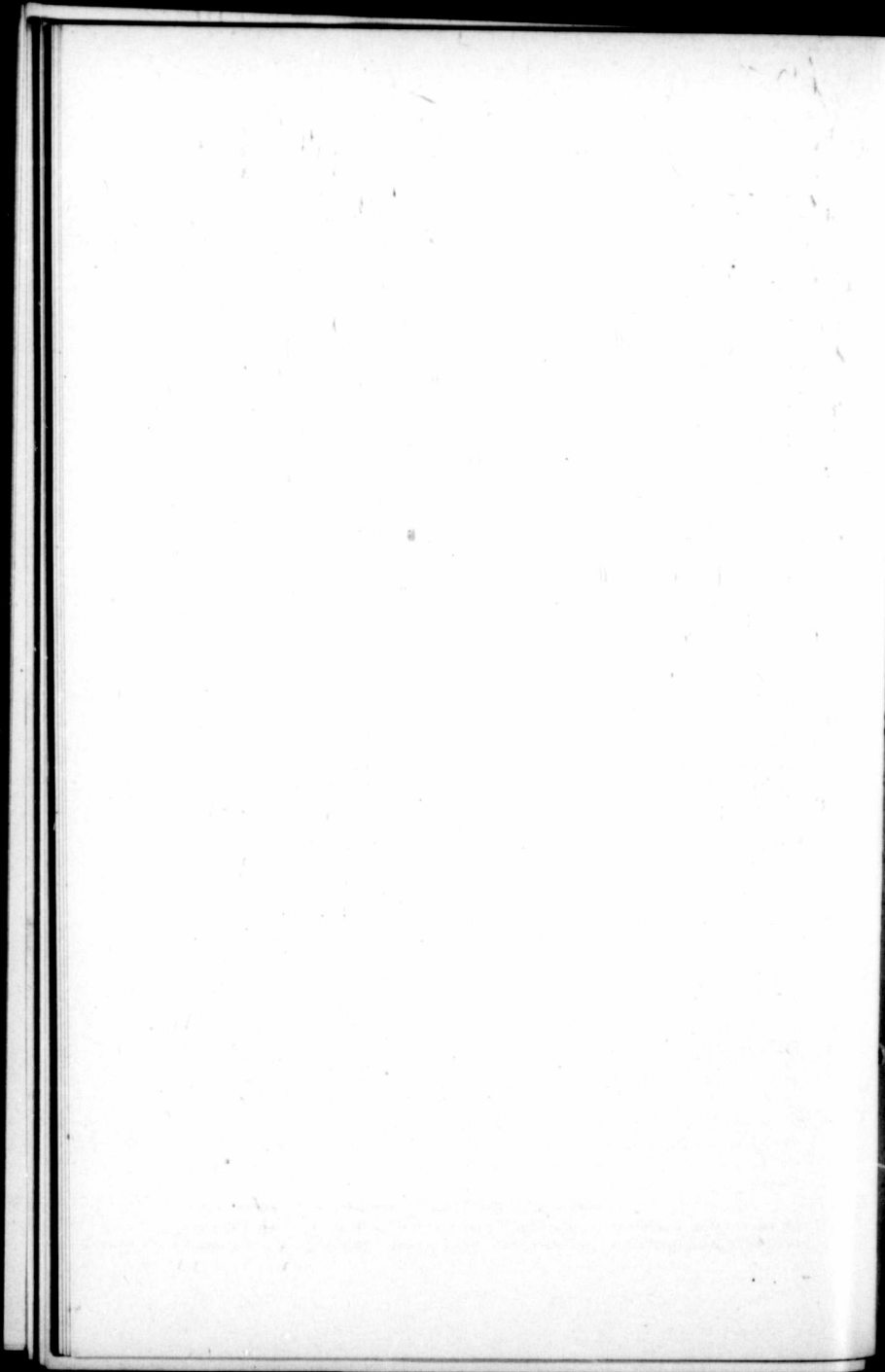
public spirited men have established centres of Science, and Art, and
 Industry. But the vigor and vitality produced by the concentration of
 energy, have been wanting.

Most praiseworthy efforts have been made from time to time by
 eminent citizens, resulting in the establishment of such institutions as
 the Mechanics Institute, the Mercantile Library Association, the Natural
 History Society, and the Society of Arts. Successful as most of these
 have been, it cannot be denied that their success would have been greater,
 and their usefulness increased, by their combination in a body possessing
 a substantial endowment for their maintenance and improvement. The
 Governors have been negotiating with a view to such a consolidation;
 and with regard to the Mercantile Library Association and the Natural
 History Society, these negotiations are in a favourable position. And
 they do not despair of procuring the consolidation of the whole of
 these institutions under the charter of the Institute; under provisions
 for the management of the different branches, which their charter enables
 them to popularise in a large degree; and which they design to carry
 out by calling in administrative aid from amongst the persons who
 contribute to the required addition to their funds.

With these objects and under these considerations, the Board of
 Governors of the Fraser Institute will make a further appeal to the
 citizens of Montreal to complete the fund required for the acquisition of
 the High School property; and, if possible, also to place it in proper
 repair, and prepare it for the reception of books and for the establish-
 ment of a reading-room. The purchase of the building would require
 additional subscriptions to the amount of \$20,000; and an increase of
 those further subscriptions to a minimum of \$25,000 would enable the
 Institute to pay for the property in full, and place it in fair repair, with
 such furniture as would be actually necessary. Under the proposed
 arrangements with the Mercantile Library Association, and with a further
 quantity of books received from the Honorable Mr. Justice Ramsay and
 others, the Library could be stocked at once with from 4000 to 5000
 volumes. A reading-room, in which the best literary and scientific
 periodicals would be found, could be established for a moderate annual
 sum. And the Board of Governors are prepared to undertake the
 management of the Institution with the net revenue they already possess,
 relying upon assistance from without, to place the Institute speedily upon
 a more efficient footing.

MONTREAL, 1st November, 1883.

J. J. C. ABBOTT,
 President.



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APPENDIX A.
COPY OF JUDGMENT.

PROVINCE OF QUEBEC, }
District of Montreal. } SUPERIOR COURT.

No. 338.

THE HON. J. A. MOUSSEAU,

Attorney-General for the Crown,

PLAINTIFF;

AND

THE FRASER INSTITUTE,

DEPENDANT.

The Court, after having heard the parties by their respective counsel, on the merits of the case; examined the procedure and documents produced, heard the witnesses, and deliberated:

Considering that the Plaintiff alleges that the late Hugh Fraser, by his will, of date the 23rd April, 1870, appointed the Hon. J. J. C. Abbott and John Cowan his testamentary executors, into whose hands he committed his moveable property with instructions to hand over, after the payment of his debts and certain legacies, the balance remaining on hand to his fiduciary legatees; that he appointed as such fiduciary legatees and trustees, the said Hon. J. J. C. Abbott and the Hon. F. W. Torrance, to whom he bequeathed the balance of all his property in trust for the purpose of founding an institution to be called "The Fraser Institute," and directed them to obtain the requisite powers, and a charter to incorporate the said Institute.

That the said Hugh Fraser died on the 15th of May, 1870; that an inventory of the property of the said Hugh Fraser was made; that the said trustees obtained, on the 24th December, 1870, a charter incorporating the said "Fraser Institute."

That the said Trustees, from the day of the said charter, became responsible as Governors of the said Institute; that the Board of Governors became responsible, and were held to exercise a control over the said succession, and that they ought to have had the remainder of the succession transferred immediately to themselves, which they failed to do,—and that without reason:

That on the 28th November, 1874, the said Trustees transferred to the said Fraser Institute the immoveable property of the said Fraser Estate;

That on the 7th December, 1874, the said executors rendered account of their administration to the said Trustees, and that on the 11th December, 1874, the latter transferred to the said Fraser Institute, the balance

of the succession of the said Hugh Fraser, substituting in their stead the said Institute, which approved their account, and discharged them.

That the said Trustees and the said Fraser Institute employed Messrs. Riddell & Evans, to prepare an account and statement of the affairs of the said Fraser Estate since the death of the late Hugh Fraser; and that the said Accountants made the said statement up to the 7th December, 1874:

That the said Fraser Institute and the said two Trustees suppressed the statements of account prepared by the said Accountants, and substituted for them other falsified statements, which contain errors and omissions, shewing that the Estate of the said Hugh Fraser has been unjustly and fraudulently administered:

That the said Fraser Institute was bound by law to verify the value of the said Estate, and to superintend its realisation and administration:

That the realisation was made illegally, and that the Governors of the said Institute sanctioned this realisation:

That the stock-in-trade of the said Fraser Estate was entrusted to one Mr. Menzies, who was at the same time the administrator appointed by the Executors:

That the said late Hugh Fraser was at the time of his death the owner of six hundred shares of one hundred dollars each of paid-up capital of the Merchants Bank of Canada; and of three hundred shares on which ten per cent. had been paid up; that the said shares were worth at that time twenty to thirty per cent. premium; that the said executors, although they had not paid the balance due on the said three hundred shares, subscribed illegally for three hundred and sixty-five more, on which they paid only ten per cent.; and instead of disposing of these shares, the said executors transferred the said six hundred and sixty-five shares to the said Institute, thus making it responsible for \$56,850.00:

That at the time of the said transfer, the said shares were worth twenty per cent. premium.

That since that time, these shares have been reduced by one third of their value:

That the said Institute bought from Mrs. Phillips a piece of land for which it was unable to pay, and which it has been obliged to return in part, thereby suffering considerable loss, and which the said Institute had no right to purchase:

That the properties of the said Fraser Estate have depreciated in value, and that they do not yield one half the revenue they formerly did:

That the said Institute has not the means of accomplishing the object for which it was created; that John Fraser, brother of the late Hugh Fraser, obtained permission from the Attorney-General to institute the present proceedings:

That in consequence of the fact that the said Institute has, by its negligence, allowed the Estate to go to waste, and the immoveable property to decrease in value, the only effect of the continuation of the charter will be to squander the estate:

That in consequence of these facts, the Plaintiff is entitled to an exact account from the said Institute of the receipts and disbursements appertaining to the administration of the said Estate; and that the charter of the said Institute should be annulled;

Considering that the Plaintiff concluded in consequence, that the said Institute be condemned to render a true and faithful account of its

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administration of the said Estate, and to produce the books, documents,
and papers relative to that administration, and that the accounts rendered
by the said Executors and Trustees be declared irregular, incomplete, and
false ; and that the said charter be annulled and revoked ;

Considering that the said Institute pleaded that, at the time of the
death of the said late Hugh Fraser, an inventory of his property was
made, establishing an apparent surplus on the immoveable property of
more than \$33,000, but that the stock-in-trade was estimated at par, and
the debts set down as good ;

That immediately on the death of the said Hugh Fraser, the said
John Fraser instituted an action against the said Executors and Trustees
to have the will of the said Hugh Fraser annulled ; that the said cause
was carried to the Privy Council ; and that by the judgment of that
tribunal, the said action was dismissed ;

That the said John Fraser caused to be inserted in the Act of Incor-
poration clauses by which the said Executors and Trustees could not
receive any part of the Estate of the said Hugh Fraser for the object for
which the said Act was passed ; and the said Institute could not act ;
until the actions which might be taken in respect of the said will, had
been disposed of or decided ;

That during* the time that the said case was pending before the
Privy Council, the said Executors and Trustees instructed Messrs. Rid-
dell & Evans to prepare an account of their administration : which
account was prepared and rendered to the said Institute ;

That the said account is correct, and that all the allegations of the
petition with respect to that account, are false :

That as to the realisation of the stock-in-trade, the Institute is not
responsible therefor, inasmuch as it did not then exist ; but that, in fact,
the said realisation was made in the interest, and for the greater benefit,
of the Estate : that with regard to the Bank shares, the Institute had
control of them only in December, 1874 ; that besides, the Executors, in
view of the Act of Incorporation, the action of the said John Fraser, and
the said protests by the Bank, did not sell the shares, and that in accept-
ing the 365 new shares which the Bank issued, they acted as any prudent
person would have done, inasmuch as the shares in the said Bank were
at a considerable premium ; that the said John Fraser, by his numerous
actions, has always hampered the said Executors and Trustees, prevent-
ing them from selling the properties and Bank shares, and so realising
their value ;

That as regards the property acquired from Mrs. Phillips, no loss
was incurred ;

That the farms are now let at a higher rent than at the time of the
death of the said Hugh Fraser ; that all the facts alleged by the Plaintiff
and admitted, are false ;

That the said Institute has the means of fulfilling the object for
which it was endowed ;

That the said Institute is not compelled to render account of its
administration of the affairs of the said Estate, nor yet of those of the
said Executors and Trustees ;

Considering that in law the Plaintiff cannot demand the rendering
of an account from the Executors, Administrators and Trustees of the
said late Hugh Fraser, inasmuch as they are not parties to the present
action ;

Considering that in fact, the said Plaintiff has not proved his allega-
tions ; and particularly the allegation that falsified statements of account

were substituted for those prepared in 1874 by Messrs. Riddell & Evans ;

Considering that, on the contrary, it is proved that the statements of account of the administration, and of the affairs of the said Estate, prepared by Messrs. Riddell & Evans, are identical with those now produced ;

Considering that it is proved that the realisation of the assets of the late Hugh Fraser has been effected in the manner most conducive to the interests of the Estate ;

Considering that the complaint made by the said Plaintiff of the fact that the Executors had subscribed for shares in the capital of the Merchants Bank without paying them up, and when there were some at that time in the name of the Estate on which only ten per cent. had been paid up, is unfounded, inasmuch as the said Executors acted as business men would act, in taking stock issued at par, when the shares of the Bank were at a premium ;

Considering that the said shares afterwards lost their value by reason of the general depreciation in Bank shares ; but that the said Executors cannot be held responsible therefor ;

Considering that it is further proved that John Fraser, (who appears to be the real prosecuting party in this cause), did by his protests prevent the said Executors from realising the said Bank shares ;

Considering that by the charter creating the Corporation of the Fraser Institute, it was provided that neither the said Institute, nor the Executors or Trustees, could dispose of the Estate of the late Hugh Fraser, so long as the actions to annul the will of the said late Hugh Fraser should remain pending ;

Considering that the said John Fraser had at that time instituted an action to annul the said will ; which action was rejected only in November, 1874, by judgment of the Privy Council ;

Considering, therefore, that neither the said Executors, or Trustees nor the said Institute, could act freely ; and that if they have not sooner realised the object for which the said Institute was created, it is owing to the vexatious proceedings (*procedures vexatoires*) of the said John Fraser ;

Considering that the said Institute did not suffer loss by reason of the acquisition of the property of Mrs. Phillips, nor by its return ;

Considering that the various grievances detailed by the said John Fraser in his deposition are without foundation, and that the irregularities in entries, of which he complains are fully explained by the deposition of Mr. Evans ;

Considering that the said Defendant has proved the allegations of its defence ; maintains it ; and dismisses the complaint of the said Plaintiff *à sa qualité* ;

And the Court recommends that the Government of the Province of Quebec, do pay the costs of this cause.

(Signed), H. J. RAINVILLE,
J. S. C.

In rendering judgment, the Honorable Judge presiding, after stating the pretensions on both sides, made the following remarks : He said :

At the time of the *enquête*, the Plaintiff after having detailed his pretensions in the affidavit *c/* John Fraser, (who is the instigator of the present proceeding), desired that the Court should order a complete audit of all the accounts of the Fraser Institute. I refused this demand, because neither the trustees nor the executors were parties in this cause, and because the

Messrs. Riddell & Evans ; proved that the statements of the executors of the said Estate, are not in accordance with those now produced.

Realisation of the assets of the Estate in the manner most conducive to the benefit of the said Plaintiff of the Estate.

As to the said Plaintiff of the Estate, it is proved that when there were some at par, the said Executors acted as if they were at par, when the shares

lost their value by reason of the depreciation ; but that the said Executors

John Fraser, (who appears to have acted as if by his protests produced Bank shares ;

of the Corporation of the said Institute, nor of the Estate of the late Hugh Fraser, of the said late Hugh

at that time instituted an action, and as rejected only in November

said Executors, or Trustees of the said Institute, if they have not sooner been created, it is owing to the (defects) of the said John

to suffer loss by reason of the depreciation, nor by its return ;

as detailed by the said John Fraser, and that the irregularities complained of explained by the deposition

proved the allegations of the Plaintiff, and the complaint of the said Plaintiff

of the Province of the said Plaintiff.

J. RAINVILLE,

J. S. C.

age presiding, after stating the following remarks : He said :

er having detailed his proceedings, and the instigator of the proceedings, in order to obtain a complete audit of all the accounts, because neither the Plaintiff, nor the said John Fraser, has since continually embarrassed the action of the Institute and of the trustees.

Institute could not be held responsible for the administration of the Estate by those persons. At the same time, all the complaints made by Fraser in his affidavit appeared to me to be without foundation.

As to the pretension that the statements now produced are not the statements originally made by Riddell & Evans, but that the latter had been concealed in order to substitute the present accounts, it is entirely without foundation ; the only accounts which were ever prepared being those which are now produced.

As to the pretension that the executors had sold the stock-in-trade to Menzies ; I think that the course they actually took was under the circumstances perfectly justifiable. Menzies had been the confidential manager of the affairs of the late Hugh Fraser ; and it was not surprising that the executors should have continued him in the administration of the affairs of the Estate : an administration which was complicated, in consequence of the numerous matters which called for settlement. And, besides, it is proved that the stock-in-trade, as it was realised, produced more than it would have done, had it been sold *en bloc*.

Another complaint is that the executors had taken a number of shares in the Merchants Bank, which were then at a premium ; and that without paying up these shares, they had continued to hold them ; and that they became depreciated afterwards ; and therefore the Estate sustained a considerable loss. I must remark upon this that the executors commenced to realise these shares, but that in consequence of a protest made by John Fraser, the Bank refused to continue to allow the transfers to be made, or even to allow them to withdraw the dividends. Later, the Bank, having augmented its capital, offered to its shareholders shares at par in proportion to the number of shares that they already owned ; and these shares being then at a premium, it would have been unreasonable on the part of the Executors to refuse to accept them, for in accepting them, they realised a benefit, since these shares were at a premium. But John Fraser, having by his conduct prevented the executors from realising, and the crisis which caused a depreciation, having occurred ; the shares belonging to the Estate of Fraser suffered the common loss ; but the executors are certainly not in any respect responsible for this.

There remain as to the keeping of the books and the statements produced in this cause, several other complaints by John Fraser. He complains of certain irregularities, and of what he calls "incorrect entries ;" but according to the proof made by Mr. Evans, I consider that these complaints are without reason ; and in so far as I can appreciate the reasons given by Mr. Evans, I think that the irregularities and the incorrect entries of which Mr. Fraser complains, exist only in his imagination.

I must remark in conclusion that the cause which has in the greatest degree embarrassed the more effective and expeditious realisation of the Estate of Fraser, has been the proviso, which it appears probable was inserted in the charter creating the Institute at the instance of Mr. John Fraser ; that neither the executors nor the trustees, nor the Institute, could dispose of the assets of the succession, as long as there was an action pending to annul the will of the late Hugh Fraser. For it is the same Mr. John Fraser, who in 1870, brought such an action, which was not rejected by the Privy Council until the end of the year, 1874. And since, the same Mr. John Fraser by new actions, and now protests and petitions to the Government, has since continually embarrassed the action of the Institute and of the trustees.

Upon the whole, I am of opinion that the Institute has proved the allegations of the defense, and that the complaints of the Plaintiff in this cause, Mr. John Fraser, exist more in his imagination than in the record.

The action is therefore dismissed.

A P P E N -

Abstract of Receipts and Disbursements, Fraser Institute,

RECEIPTS.		
Dividends on Merchants' Bank Stock		\$1330 00
Profit accrued on policy of D. Lanigan		59 55
Damages recovered from former Tenant of Kings Post Farm		105 90
Taxes collected from the McMartin Farm	\$13 60	
Taxes from Knox Farm	76 50	
		90 10
Rents derived from the Kings Post Farm	\$1100 00	
Rents Knox Farm	750 00	
Rents McMartin Farm	200 00	
Rents St. Peter Street property	223 00	
Rents St. Sacramento Street property	1200 00	
		3473 00
		\$5058 55

Audited and found correct.

(Signed,) EDWARD EVANS,
Accountant.

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APPEN-

bursements, Fraser Institute,

		\$1330 00
.....		59 55
Post		105 90
.....	\$13 60	
.....	76 50	
		90 10
.....	\$1100 00	
.....	750 00	
.....	200 00	
.....	223 00	
.....	1200 00	
		3473 00
		\$5058 55

EDWARD EVANS,
Accountant.

DIX B.

for one year, from 30th June, 1882, to 30th June, 1883.

DISBURSEMENTS.		
Paid R. Moat, interest, on mortgage on the St. Sacramento Street property.....	\$1260 00	
Paid Alex. Fraser, interest on mortgage on the Kings Post Farm.....	144 00	
Paid Alex. Fraser, annuity.....		\$1344 00
Paid interest to Geo. Chapman, tutor.....	\$1000 00	
	180 00	
		1180 00
Paid premium of insurance on St. Sacramento and St. Peter Streets properties.....	\$64 05	
Paid premium of insurance on McKay pictures.....	19 25	
Paid premium of insurance on life of H. Barnes.....	37 52	
Paid premium of insurance on life of D. Lanigan.....	65 00	
		185 82
Paid assessments on St. Sacramento and St. Peter Streets properties.....		
Paid assessment on farms, to Parish of Lachine.....	\$407 57	
	64 00	
		471 57
Paid Phillips for Notarial Copy of lease.....		2 50
Paid R. W. Shepherd, interest on mortgage due the Estate Gibb, on the Knox Farm.....		360 00
Paid for repairs to buildings &c., Kings Post Farm.....		
Paid for repairs on St. Peter and St. Sacramento Streets properties.....	\$50 00	
Paid for repairs to fences on McMartin Farm.....	156 00	
	60 94	
		266 94
Paid O. W. Stanton, Commission for leasing store.....		10 00
Paid Larkin & Co., for printing reports.....		63 00
Paid J. Parslow, for books &c.....		8 60
Paid Riddell & Stevenson, for making and auditing statement of accounts.....		100 00
Paid Hon. J. J. C. Abbott, amount advanced.....		418 39
Paid expenses of managements, keeping accounts &c., &c., 5 per cent. on \$5058.55.....		253 07
Paid Cab hire to Kings Post Farm.....		2 60
By Cash on hand carried forward.....		\$4866 49
		192 06
		\$5058 55

To the PRESIDENT & GOVERNORS
of the FRASER INSTITUTE.

GENTLEMEN :

In accordance with your instructions I have examined and audited the annexed statements of receipts and disbursements of the Institute, from 30th June, 1882, to 30th June, 1883, and beg to report that I have found the vouchers entirely satisfactory and in order.

I remain,

Gentlemen,

Your obedient servant,

EDWARD EVANS,

Accountant.

RS
TUTE.

ions I have examined and
eipts and disbursements of
o 30th June, 1883, and beg
rs entirely satisfactory and

n,
ient servant,
EDWARD EVANS,
Accountant.