

ACTS RELATING TO THE TEMPORALITIES

The Church Temporalities Act, 14-15 Victoria, Chap. 176.

An Act to make provision for the management of the Temporalities of the United Church of England and Ireland in the Diocese of Montreal and for other purposes therein mentioned.

Proclaimed December 18th, 1852

(As amended by—

53 Victoria, Chap. 123 (1890)

1 Edward VII, Chap. 84 (1901)

1 George V, Chap. 104 (1911))

WHEREAS by an Act of the Parliament of this Province made and passed in the sixth year of Her Majesty's Reign, intituled *An Act to make provision for the management of the Temporalities of the United Church of England and Ireland in the Diocese of Quebec, in this Province and for other purposes therein mentioned*, provision was made by law for the internal management, by the members of the said Church, in the said Diocese of Quebec, of the Temporalities thereof, and for allowing the endowment thereof; And whereas by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date the eighteenth day of July, one thousand eight hundred and fifty, so much of the said Diocese of Quebec as constitutes the District of Montreal in Lower Canada aforesaid, was and is erected into a separate See or Diocese, under the name or style of the Bishopric or Diocese of Montreal; And whereas it is in consequence desired, on behalf of the Church of England in Canada in the said Diocese of Montreal, that separate provision should be made by law for the internal management by the members of the said Church in the said Diocese of Montreal, of the Temporalities thereof, and also for allowing the endowment thereof, and it is just and expedient that such provision should be made.

I. Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, that from and after the passing of this Act, the soil and freehold of all Churches and Chapels of the communion of the said Church of England in Canada now erected or hereafter to be erected in the said Diocese of Montreal, and of the church-yards and burying grounds attached or belonging thereto respectively, shall be in the Parson or other Incumbent thereof for the time being, and the Churchwardens to be appointed as hereinafter is mentioned, by whatever title the same may now be held, whether vested in trustees for the use of said United Church, or whether the legal estate remains in the Crown by reason of no Patent having been issued, though set apart for the purposes of such Church or Chapel, Church-yard or Burying Ground; provided always, that nothing in this section contained shall extend to affect the tenure of any Parsonage or Rectory now established by Letters Patent, or of any Proprietary Church or Chapel.

II. And be it enacted, That all pew-holders in such Churches or Chapels, whether holding the same by purchase or lease, and all persons holding sittings therein by the same being let to them before the passing of this Act by the Churchwardens, or after the passing of this Act by the Corporation of such Church or Chapel, and holding Certificate from such corporation of such sitting, shall form a Vestry for the purposes in this Act mentioned and declared: Provided that no such pew-holders or persons holding sittings shall be entitled to vote at any Meeting of such Vestry, unless all the rent due and payable in respect of such pews or sittings be paid in full (53 Victoria, Cap. 123) and unless such person be a member of the Church of England in Canada, and shall have declared himself in writing, in a book to be kept for that purpose, to belong to the Church of England in Canada, and to no other religious denomination. A simple majority of the members of each of two or more Churches or Chapels having the same Incumbent may request the Bishop to declare them a combined Vestry and if the Bishop shall consent to such request he shall so declare whereupon all members of each of such Churches or Chapels shall together form a Vestry which shall meet to elect Churchwardens and fulfil all other duties and responsibilities for the combined Churches or Chapels as are described in this Act for the Vestry of each separate Church or Chapel."

Rev. by Synod
1970

Order-in-Council
July 1971

III. And be it enacted, That a Meeting of such Vestry shall be holden on or before January 31st, in each and every year, after due notice thereof given during Divine Service, for the purpose of appointing Churchwardens for the ensuing year, and that at such meeting one Churchwarden shall be nominated by the Incumbent of the said Church or Chapel, and the other shall be elected by the majority of those present and entitled to vote at such Vestry meeting as aforesaid: Provided nevertheless, that in case of such Incumbent declining or neglecting to nominate a Churchwarden, then both of the said Churchwardens shall, for the current year, be elected in the manner aforesaid: and in case the members of such Vestry shall neglect to elect a Churchwarden, then both of such Churchwardens shall, for the current year, be nominated by the Incumbent: Provided always, that if, from any cause, a Vestry meeting shall not take place at the time aforesaid, such appointment of Churchwardens may take place at any subsequent Vestry meeting to be called in the manner hereinafter provided, and in case of the death, resignation, refusal to act, or change of residence to ten miles or more from any such Church or Chapel of either of the said Churchwardens, a Vestry meeting shall be thereupon called for the election of a new Churchwarden by the said Vestry, or for the nomination of a new Churchwarden by the Incumbent, as the case may require.

IV. And be it enacted, That no person shall be eligible to the office of Churchwarden, except members of the said Church of the full age of twenty-one years, and who shall also be members of such Vestry.

V. And be it enacted, That such Churchwardens shall hold their office for one year from the time of their appointment, or until the election of their successors, except in case of an appointment, or nomination to fill up any vacancy occasioned by death, resignation, refusal to act, or change of residence as aforesaid, and in such case the person so appointed or nominated shall hold the said office until the next annual election, or until the election of a successor.

VI. And be it enacted, That such Churchwardens so to be elected and appointed as aforesaid, shall, during their term of office, together with the Incumbent, be a Corporation, under the name or style of "The Incumbent and the Churchwardens of Church (or Chapel, as the case may be), of the parish of or of (naming the place, as the case may be), in the Diocese of Montreal," to represent the interests of such Church or Chapel and of the members thereof, and shall and may sue and be sued, answer and be answered unto, in all manner of suits and actions whatsoever, and more particularly shall and may sue for, recover and receive all arrears of rent actually due and payable at the passing of this Act. as well as any rent becoming due hereafter, in respect of any pews or sittings in such Church or Chapel, and may prosecute indictments, presentments, and other criminal proceedings, for and in respect of such Churches, Chapels and Churchyards, and all matters and things appertaining thereto, and shall and may make and execute faculties or conveyances, or other proper assurances in the law, to all pew-holders holding their pews by purchase, or lease to those holding the same by lease, and shall and may grant certificates to those who shall have rented sittings, such conveyances, leases and certificates to be given within a reasonable time after demand made, and at the charges of the person applying for the same; and, further, it shall be the duty of such Corporation, from time to time, to sell, lease and rent pews and sittings, upon such terms as may be settled and appointed at Vestry meetings to be holden for that purpose, as hereinafter provided: Provided always, that any such sale, lease or renting shall be subject to such rent, charge, or other rent, as may from time to time be rated and assessed in respect thereof at such Vestry meeting.

VII. And be it enacted, That in case of the absolute purchase of any pew in any such Church or Chapel as aforesaid, the same shall be construed as a freehold of inheritance, not subject to forfeiture by change of residence, or by discontinuing to frequent the same, and the same may be bargained, sold and assigned to any purchaser thereof, being a member of the Church of England in Canada, and such purchaser, provided the same be duly assigned and conveyed to him, shall hold the same with the same rights, and subject to the same duties and charges as the original purchaser thereof; Provided that if by reason of such change of residence, or by discontinuing to frequent such Church or Chapel, any pew shall not be occupied by such pew-holder, by himself or family, or by some other person under his authority, the Corporation shall have the power to lease the said pew from year to year, in such manner and subject to such conditions for the immediate re-occupation of the same by the said pew-holder, or person acting under his authority, on request, as shall be provided by a By-law of the Corporation to be made for such cases, the said Corporation accounting to the pew-holder for the rent of the said pew.

VIII. And be it enacted, That any pew-holder, whether by purchase or lease, and any person renting a pew or sitting, shall and may, during their rightful possession of such pew or sitting, have a right of action against any person injuring the same, or disturbing him or his family in the possession thereof.

IX. And be it enacted, That such Churchwardens, so to be appointed as aforesaid, shall, yearly and every year, within fourteen days after other Churchwardens shall be nominated and appointed to succeed them, deliver unto such succeeding Churchwardens a just, true and perfect account in writing (fairly entered in a book or books to be kept for that purpose, and signed by the said Churchwardens), of all sums of money

by them received, and of all sums rated or assessed, or otherwise due and not received, and also of all goods, chattels and other property of such Church, Chapel or Parish, in their hands as such Churchwardens, and of all moneys paid by such Churchwardens so accounting, and of all other things concerning their said office, and shall also pay and deliver over all sums of money, goods, chattels, and other things which shall be in their hands, unto such succeeding Churchwardens, which said account shall be verified by oath before one or more of Her Majesty's Justices of the Peace, who are hereby authorized to administer the same, and the said book or books shall be carefully preserved by such Churchwardens, and they shall and are hereby required to permit any member of such Vestry, as aforesaid, to inspect the same at all reasonable times, and in case such Churchwardens shall make default in yielding such account as aforesaid, or in delivering over such money, goods or other things as aforesaid, it shall be in the power of the succeeding Churchwardens to proceed against them at law for such default, and in case of the reappointment of the same Churchwardens, then such account, as aforesaid, shall, in like manner as is aforesaid, be made and rendered before an adjourned meeting of such Vestry, fourteen days after such re-appointment.

X. And be it enacted, That it shall be in the power of the Incumbent of any such Parsonage, Parish, Church or Chapel as aforesaid, or (in the absence of the Incumbent), of the Churchwardens thereof, to call a Vestry meeting whenever he or they shall think proper so to do, giving at least eight days' notice thereof, by proclaiming it in the usual manner in the Church or Chapel, and by notice affixed to the outer door or doors of the said Church or Chapel, as the case may be, and it shall be his and their duty so to do upon application being made for that purpose in writing, by six at least of the members of such Vestry as aforesaid; and in case, upon such written application being made as aforesaid, such Incumbent and Churchwardens shall refuse to call such meeting, then, one week after such demand made, it shall be in the power of any six of such members of the Vestry to call the same by notice, to be affixed on the outer door or doors (where more than one) of such Church or Chapel, at least one week previous to such intended meeting.

XI. And be it enacted, That at all Vestry meetings, the Incumbent of the Church or Chapel shall preside as Chairman when present; and, in his absence, such one of the Churchwardens as shall be present, and if both the Churchwardens be present, then such one of them or such person as the majority present at such meeting shall name; and the Vestry Clerk, when there is one and present, or in case there be no Vestry Clerk, or he be absent, then such person as the Chairman shall name, shall be the Secretary of such Vestry meeting, and the minutes of the proceedings of such Vestry meetings shall be entered in a book to be kept for that purpose, and shall be signed by such Incumbent, Churchwardens, or other person presiding as Chairman, and countersigned by such Vestry Clerk, or Secretary, and shall be preserved in the custody of the Corporation of the said Church or Chapel; and such minutes so entered, signed and countersigned, or a copy thereof duly certified by such Incumbent, and countersigned by such Vestry Clerk, shall be *prima facie* evidence of the matters and things therein set forth, and that such meetings were regularly and legally held under the requirements of this Act, without proof of the signature of such Incumbent and Vestry Clerk required to be made.

XII. And be it enacted, That the rent charge to be paid upon pews holden in freehold, and the rent to be paid for the pews and sittings in pews, leased or rented, shall be regulated from time to time by the majority of those present at such Vestry meetings as aforesaid: Provided nevertheless, that no alterations shall be made therein except at Vestry meetings called for such special purpose, and so expressed in the notice calling the same; and, further, that the charges to be made in respect of such conveyances, leases and certificates shall, in like manner, be regulated at such Vestry meetings as aforesaid.

XIII. And be it enacted, That the Clerk of the Church or Chapel, the Organist, the Vestry Clerk, the Sexton, and other subordinate servants of the Church or Chapel, shall be nominated and appointed by the Corporation of such Church or Chapel, and that their salary and wages shall be brought into the general account, to be rendered as aforesaid by such Church-wardens.

XIV. And be it enacted, That the fees on marriages, registration of baptisms, and for other services of the Church of the like nature, and the charges payable on breaking the ground in the cemeteries or church-yards and in the said Churches or Chapels for burying the dead, shall be regulated by the Bishop of the Diocese, or such person as he may appoint as Ordinary.

XV. And be it enacted, That at all meetings of the said Corporation, any two members thereof shall be a quorum for the transaction of business, but no business shall be transacted except at a meeting duly convened by the Incumbent, or otherwise, as hereinbefore provided.

XVI. And be it enacted, That it shall be in the power of the members of such Vestries, by the majority of those present at any meetings as aforesaid, to make By-laws for the regulation of their proceedings and the management of the Temporalities of the Church, Chapel or Parish to which they belong, so that the same be not repugnant to this Act, nor contrary to the Canons of the said Church of England in Canada.

XVII. And be it enacted, That all duties, powers and authority conferred upon the Bishop of Quebec, for the time being, by an Act of the Parliament of Great Britain and Ireland, passed in the sixth year of the Reign of His late Majesty, George the Fourth, intituled: "An Act to provide for the extinction of Feudal and Seigniorial rights and burthens on lands held a *titre de Fief* and a *titre de Cens* in the Province of Lower Canada, and for the gradual conversion of those Tenures into the Tenure of free and common soccage, and for other purposes relating to the said Province," so far as the provisions of the same have reference to lands situated within the said Diocese of Montreal, and all duties, powers and authority relating to matters within the said Diocese of Montreal conferred upon the Bishop of Quebec by any other Act or Acts, or by any authority whatever, and all or any office or offices within the said Diocese of Montreal conferred upon the Bishop of Quebec and his successors in office, in his and their official capacities, by an Act or Acts, charter or charters, or by any authority whatever, shall devolve upon, and be exercised and held by the Bishop of Montreal and his successors in office; and all acts done and performed by the Bishop of Montreal or his successors in office, in the performance of such duties, in the exercise of such power and authority, or in the performance of the duties of such office or offices, shall be valid and effectual in as full and ample a manner as if he were Bishop of Quebec aforesaid.

XVIII. And be it enacted, That any deed or conveyance of land, or of personalty, that may be made to any Bishop of the said Church, in the said Diocese of Montreal, and to his successors, for the endowment of his See, or for the general uses of the said Church, as such Bishop may appoint, or otherwise, or for the use of any particular Church or Chapel then erected, or thereafter to be erected, or for the endowment of a parsonage or living, or for other uses or purposes appurtenant to such Church in general, or to any particular Church, Chapel or Parish to be named in such deed, and any such deed or conveyance to any Parson or other Incumbent and his successors, for the endowment of such parsonage, rectory or living, or for other uses or purposes appurtenant thereto, shall be valid and effectual to the uses and purposes in such deed or conveyance to be mentioned and set forth, the Acts of Parliament commonly called the Statutes of Mortmain, or other Acts, Laws or Usages to the contrary thereof notwithstanding; Provided that all such deeds of real estate (except leases for a term not exceeding nine years) shall be duly registered according to law, within six calendar months after the making and execution thereof; otherwise the same shall be void and of none effect; and that such registration within the said term of six months shall not give any greater effect in other respects to any such deed than is by law given to the registration of any other deed of real estate in Lower Canada.

XIX. And be it enacted, That in the event of any person or persons, bodies politic or corporate, desiring to erect and found a Church or Churches, Chapel or Chapels, in the said Diocese of Montreal, and to endow the same with a sufficiency for the maintenance of such Church or Chapel, and of Divine Service therein, according to the Rites of the said Church of England in Canada, it shall and may be lawful for him or them to do so upon procuring the license of the Bishop under his hand and seal for that purpose; and thereupon, after the erection of a suitable Church or Chapel, and the appropriation by the founder thereof of such Church or Chapel so erected, and of lands and hereditaments, or other property adequate to the maintenance thereof and of an Incumbent, and adequate to the usual and ordinary charges attendant upon such Church or Chapel, such provision being made, to the satisfaction of the Bishop of the said Diocese for the time being, such founder, his heirs and assigns, being members of the said Church or such body politic or corporate, as the case may be, shall have the right of presentation to such Church or Chapel as an advowson in fee presentative, according to the Rules and Canons of the said Church.

XX. And be it enacted, That all lands or personalty heretofore in any manner or way conveyed to any Bishop of the said Church, for the use of benefit or any particular Parish, Church or Chapel, then erected or thereafter to be erected within the said Diocese of Montreal, or for the endowment of any parsonage or living within the said Diocese of Montreal, or for other uses or purposes appurtenant to any Church, Chapel or Parish within the said Diocese of Montreal, and all lands situated within the said Diocese of Montreal heretofore in any manner or way conveyed to any Bishop of the said Church, for the general uses of the said Church, or for uses or purposes appurtenant thereto in general, shall be, and they are hereby vested in the said Bishop of Montreal and his successors in office, for the uses and purposes mentioned and set forth in the several deeds or conveyances thereof respectively; Provided that the said Bishop shall not have, hold, possess or enjoy lands and tenements or real estate, in virtue of this

Act, for the uses and purposes of his said See, exceeding Five Thousand Pounds in annual value at any time; and shall at all times, when called upon so to do by the Governor of this Province, render an account in writing of such property held by him under this Act, and of the income derived therefrom, and the means by which the same has been acquired.

XXI. (1 George V, Cap. 104.) And be it enacted that the Bishop of the said Church, in the said Diocese, for the time being, shall have the administration of all lands and personalities vested in him or his predecessors in office, or conveyed to him or them for the endowment of his See, or for the general use of the said Church or for the use of any particular Church or Chapel then erected or thereafter to be erected, or for the endowment of any parsonage, Church, Chapel, or living, or for other uses or purposes appurtenant to such Church in general, or to any particular Church or Parish, and shall have power to borrow money and to sell, alienate and transfer any lands or personalty, and hypothecate or mortgage any immoveable property, vested in, or conveyed to him as aforesaid, for the general uses or purposes of the said See or of the said Church, and shall also have power, by and with the consent and participation of the incumbent and corporation of the Parish wherein the same may be situate, to borrow money and to alienate and transfer any land or personalty, and hypothecate or mortgage any immoveable property, vested in or conveyed to him as aforesaid for the endowment of any parsonage or living, or for uses or purposes appurtenant to any particular Church, Chapel or Parish; and the parson, or other incumbent of any parsonage, Church, Chapel or living, to whom any lands or personalty shall have been or may be conveyed for the endowment of such parsonage, Church, Chapel or living, or for other uses or purposes appurtenant thereto, shall have power to borrow money and to sell, alienate or transfer the same, and to hypothecate or mortgage immoveable property, by and with the consent and participation of the bishop of the said Church in the said Diocese, for the time being, provided always that the price or consideration of such mortgage, sale, alienation or transfer be applied to the uses and purposes for which the land or personalty so mortgaged, sold, alienated or transferred was conveyed, and provided also that such mortgage, sale, alienation or transfer be not inconsistent with or contrary to the conditions of the deed of conveyance to the said Church or to any Bishop thereof, or to such parson or incumbent, as the case may be, of the land or personalty so to be mortgaged, sold, alienated or transferred.

XXII. And be it enacted, That nothing in this Act contained shall extend or be construed to extend in any manner to confer any spiritual jurisdiction or ecclesiastical rights whatsoever upon any Bishop or Bishops, or other ecclesiastical person of the said Church, in the said Diocese of Montreal.

XXIII. And whereas it is expedient to make provision for the election of Churchwardens by the Congregations of Churches or Chapels newly erected, or in which the pews and sittings are neither sold nor leased; Be it therefore enacted, That whenever in any Church or Chapel of the said Church, in any Diocese in this Province, Churchwardens are required to be appointed for the first time, the Vestry of such Church or Chapel shall, for all the purposes of either of the said Acts, or of this Act, as the case may require, be held to be composed, for that time only, and until the Monday in Easter Week next after the appointment of such first Churchwardens, of all such persons being members of the said Church as shall have con-

tributed to the erection or endowment of such Church or Chapel; and that all persons being members of the said Church, who have contributed, or shall hereafter contribute in any manner or way, to the erection or endowment of any Church or Chapel of the said Church, in any Diocese in this Province, in which the pews and sittings shall be free, and neither sold nor leased, shall at all times form a Vestry of such Church or Chapel for the purpose of this Act or of the said first above recited Acts as the case may require; Provided always, that each and every contributor towards the payment on any debt incurred for the erection or completion of any such free Church or Chapel shall be held to be a contributor to the erection thereof.

Synod 1966
Order-in-Council
July 1971

XXIIIa. (53 Victoria, Cap. 123) It shall be in the power and shall be the duty of each existing vestry in the various Churches and Chapels of the said Church in the Diocese of Montreal, in which the pews and sittings are free, to fix and determine, on or before Easter Monday in the year eighteen hundred and ninety, the amount of annual contribution that shall be necessary to entitle the Members of each such Church and Chapel to be Members of the vestry; and thereafter the vestry in each such Church or Chapel shall consist of, and be limited to such persons, being of the full age of eighteen years, as shall declare themselves in writing, in a book to be kept for that purpose, to be Members of the Church of England in Canada, habitually attending worship in such Church or Chapel, and contributors to the funds thereof to the extent fixed by the vestry of such Church or Chapel, and not in arrears with respect to such contributions.

The rate of such contribution may at any time be altered by the vestry.

Amendment
Moved 1959
Confirmed 1960
Order in Council
1962

Notwithstanding the foregoing, any church or chapel in which the pews and sittings are free, and any other church or chapel, may, by resolution adopted at any annual meeting of the vestry, determine (but without prejudice in the case of any such other church or chapel to the right of any pewholder or person holding sittings therein to continue to be a member of the vestry thereof) that in future its vestry shall be composed:

1966
Order-in-Council
July 1971

1. Of persons of the full age of 18 years who have been communicant members of the Anglican Church of Canada habitually attending the services of the said Church or chapel, for the space of six months during the year prior to the date of such meeting, or:

2. Of persons of the full age of 18 years who have been habitual attendants at the services of the said church or chapel, for the space of six months during the year prior to the date of such meeting."

XXIIIb. (53 Victoria, Cap. 123) The said Synod is empowered to restrict the rights, defined in section IV, to communicant members of the said Church, by vote at any annual meeting of the Synod.

XXIV. And be it enacted, That from and after the passing of this Act, the said Act so made and passed, as aforesaid, in the sixth year of Her Majesty's Reign, shall cease to have any force and effect whatever, in respect of the said Diocese of Montreal, save and except as to all existing corporations which shall continue as if this Act had not been passed, and as to Acts heretofore lawfully done and contracts heretofore lawfully entered into, under and in virtue of the said Act, which shall be and remain to all intents and purposes as good, valid and effectual as if this Act had not been passed; and save and except as to all By-laws heretofore lawfully made by the Vestry of any such Church or Chapel as aforesaid in the said part of Lower Canada, now constituting the said Diocese of Montreal, which shall remain in force until repealed by competent authority under the provisions of this Act; and save and except also as to all appointments of Churchwardens, or other servants of any such Church or Chapel there, who shall continue in office until the appointment of their respective successors under the provisions of this Act, in the same way and to the same effect and with the same powers and duties as if they themselves had been appointed under this Act.

Note: Canons formerly numbered XXIX to XXXV (1872 - 1889) inclusive and XXXVII (1895 - 96, with Decrees I - XXVII enacted between 1872 and 1950 which have not been rescinded) deal with the creation, division and subdivision of parishes to that date. They may be referred to in the Diocesan Archives

The text of the Letters Patent of the Crown creating the Diocese of Montreal and Acts of the former Province of Canada and of the Province of Quebec relating to the Church may be found in the Diocesan Archives.

The text of the following Acts constituting the Synod of the Diocese of Montreal may also be found in the Archives:

19-20 Victoria, Chap. 141 (28.5.1857)

22 Victoria, Chap. 139 (16.8.1858)

31 Victoria, Chap. 38 (24.2.1868), as amended by 21 George V, Chap. 144 (1931) and 2-3 Elizabeth II, Chap. 146 (1953-4)

35 Victoria, Chap. 19 (23.12.1871)

12 George V, Chap. 138 (8.3.1922)