

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

churches which were attached to his parish. A commission was issued by the Bishop, under the provisions of Canon No. 8, of the Synod of the said diocese, "To enquire into the causes which led to the closing of the said churches, and to report whether there was 'lawful excuse' for the said Rev. J. H.'s discontinuance of the exercise of his ministerial offices in said churches, and to report whether there was sufficient *prima facie* ground for instituting further proceedings against the said Rev. J. H., as provided by said canon."

The Commissioners reported that the churches had been closed "because the members of the church refused to attend, and provide for the ministrations of the Rev. J. H. in these churches;" that an estrangement existed between the said Rev. J. H. and his parishioners, and that they decline his ministrations. But that in their opinion (the Commissioner's) the proofs adduced were not of such a nature as could be relied on to procure a conviction in an Ecclesiastical Court; and they declined to recommend the prosecution of further legal action, although they believed that there was no hope of a restoration of his ministerial usefulness there, and that there was a sufficient *prima facie* ground for instituting further proceedings against him as provided by Canon 8; but they were of opinion that without the production of other and much stronger evidence than that adduced, the institution of further proceedings would not result in a charge of breach of discipline under the said canon being sustained. After the making of this report, and upon the said Rev. J. H. refusing to resign his said incumbency, the Bishop, by an instrument, under seal, revoked, or purported to revoke, his license, and appointed the Rev. A. F. E. as his successor, and the Synod declined to pay him (the Rev. J. H.) the annual proceeds of the endowment. Upon an action being brought by the said Rev. J. H. to compel the Synod to pay him such annual proceeds, it was

Held, that the offence (if any) came within the second section of the canon; that any one charged with such an offence has the right to be tried, under section one, by the Diocesan Court, and has the right of appeal to the Metropolitan, under section thirteen, and that the Bishop had not the power to cancel and

annul the license of the plaintiff, either without or for cause, without a trial by the Diocesan Court, and that the plaintiff must succeed.

S. H. Blake, Q. C., for the plaintiff.
Walkem, Q. C., for the defendants the Synod.

Boyd, C.]

(September 5.

GRASETT V. CARTER.

Motion to commit—Revivor of the case in Appeal—Service of certificate of Supreme Court—Specific acts of disobedience of an injunction—Mandatory injunction.

On a motion to commit a defendant for non-compliance with a decree which contained this clause: "And this court doth further order and decree that an injunction be awarded to the plaintiff, perpetually restraining the defendant, his servants, workmen, and agents, from trespassing upon the lands of the plaintiff in the pleadings mentioned." The trespass complained of being two walls built by the defendant on four inches of the plaintiff's land, it was objected. (1) That the suit was revived while pending in the Court of Appeal, by an order issued from the Division of the High Court of Justice, appealed from. (2) That the certificate of the Supreme Court (which had in substance affirmed the decree) had not been served; and (3) that the notice of motion did not specify the acts of disobedience. It was

Held, that the suit was properly revived. That it was not necessary to serve the certificate of the Supreme Court, when the decree was not materially altered, and when the defendant well knew that the decree would be enforced, and that where (as in this case) a correspondence had shown the defendant what acts were complained of, it was not necessary to repeat them in the notice of motion, and the objections were overruled.

Held, also under the form of the decree the plaintiff was entitled to have the walls removed, and if the defendant did not remove them within a month, the order must go.

MacLennan, Q. C., and *E. D. Armour*, for the plaintiff.

George Bell, for the defendant.