

Synod of the Diocese of Toronto, who had in turn taken from the Church Society, the share of the Commutation Trust Fund, the outcome of the Clergy Reserve Secularization Act, 18 Vict. ch. 2, and an agreement made by commuting clergy with the then Church Society, which of right belonged to the Diocese of Niagara. The trusts subject to which the fund was so acquired were: "First, to pay the commuting clergy their stipend or allowance during life; and secondly, after the death of each of the clergy so commuting, that the sum for which he had commuted should become the property of the Synod for the support and maintenance of the clergy of the Church of England in Canada within the diocese of Niagara, or such other dioceses as the said diocese should thereafter be divided into, and in such manner as should from time to time be declared by any by-law or by-laws of the said Synod to be from time to time passed for that purpose." Neither plaintiff nor defendant Spencer is a commuting clergyman. Defendant Spencer has served longer in the Diocese of Niagara than plaintiff.

This fund was, until 1893, administered under a by-law passed in 1877. In 1893 the Synod passed a new by-law, which, as corrected in 1894, was that in force when the questions now under consideration arose. The right to pass this by-law cannot well be doubted since the decision in *Wright v. Diocese of Huron*, 9 A. R. 411, 11 S. C. R. 95.

The by-law is in part as follows:—

"I. The Commutation Fund shall be managed and administered by the standing committee.

"II. The charges on this fund shall be:

"(1) The payment to all the original commutants of their stipulated annuities.

"(2) The expenses of management of said fund.

"(3) The payment to such other annuitants, as have been, or may from time to time be, added to the list, of the amounts to which under this by-law they have been or may become entitled, subject to the provisions of clause V., sub-section (c).

"III. Those eligible under sub-section 3 of clause II. shall be the clergy of the Diocese, in order of seniority, being in priests' orders, and

"(a) Not holding an endowed living, yielding to the incumbent thereof \$400 per annum or over. Should, however, the net income from the endowment of any parish fall below