

[Chan. Div.]

NOTES OF CANADIAN CASES.

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injunction pending the determination of the question at the trial, and an injunction was granted upon a consideration of the balance of convenience in favour of the plaintiffs.

*Letten v. Goodden*, L.R. 2 Eq. 130, and *Cory v. Yarmouth etc., R. W. Co.*, 3 Ha. 593, considered and followed.

*Waddell*, for the plaintiffs.

*Osler*, Q.C., for the defendant.

[Ferguson, J.]

[March 30.]

THE INCORPORATED SYNOD OF THE DIOCESE OF TORONTO V. LEWIS ET AL.

*St. James' Rectory—Imp. Stat. 31 Geo. III. c. 31, sec. 38—Endowment of rectory with lands—City rectory—Township rectory—Sale of lands under 29 & 30 Vict. c. 16—Distribution under 41 Vict. c. 69 (O.)—City incumbents—Township incumbents—Who entitled to participate.*

The Church of St. James was erected into a rectory at the city of Toronto within the said township (York), by patent, under Imp. Stat. 31 Geo. III. s. 38, in 1836, and was endowed at different times with lands, situate some in the city of Toronto and some in the township of York.

When the lands were sold under 29 & 30 Vict. c. 16, and had to be distributed by the Synod under 41 Vict. c. 69 (O.), there were clergymen of parishes in the city of Toronto and in the township of York, and it was contended that only those clergymen of the city parishes were entitled to participate in the distribution of the fund.

On a special case being stated for the opinion of the court, it was

*Held*, that the city of Toronto was for the purposes of the grant erecting the rectory considered as being within and a part of the territory of the township of York, and the grant was for the benefit of both the township and the city as one territory.

That the duties of the first rector of St. James extended over the whole township. The township was his parish.

That the incumbents of the Churches in the township must, under 41 Vict. c. 69, s. 2 (O.), be included among the participants of the fund, unless there is some reasonably clear enact-

ment taking their rights away which does not appear either in that statute or 29 & 30 Vict. c. 16.

*Moss*, Q.C., for the plaintiffs.

*Robinson*, Q.C., and *McMichael*, Q.C., for the township incumbents.

*MacLennan*, Q.C., for the city incumbents.

[Boyd, C.]

[April 7.]

GILMORE ET AL. V. GILMORE ET AL.

*Will—Devise—Lands charged with legacies conveyed during lifetime of testator—Effect of maintenance—Dower—Election—Personal estate—Legacies payable out of.*

J. G., by his will, (1) devised lands to his son, J. G., Jr., (3, 4 and 5) devised lands to three grandsons, (7, 8, 9 and 10) devised legacies to four different daughters and charged them upon the lands devised to J. G., Jr., (16) charged the lands devised by 3, 4 and 5 with the maintenance and support of his widow for life, and two infant children until they became of age, and inserted two clauses in these words: "And I hereby charge the executors of this my last will and testament, hereinafter named, with the performance and execution of all trusts and charges by me heretofore made, the same to be borne out of my personal estate. I further charge that my personal estate be sold by my executors hereinafter named, said personal estate consisting of all goods and chattels, farm stock and utensils, same to be equally divided after all debts and funeral and testamentary expenses be paid, the same to be equally divided between all my children."

The testator in his lifetime conveyed the land covered by clause 1 to J. G., Jr., without any reference to the charges created by 7, 8, 9 and 10.

*Held*, that the widow was entitled to both dower and maintenance out of the lands charged with the maintenance.

That the infant was entitled to maintenance, and the benefit under the will, to be invested and accumulate for him.

That there was no intestacy as to any part of the personal estate, as it all passed under the wording of the clause set out.

That the legacies to the daughters were payable out of the general personal estate.