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NOTES OF CANADIAN CASES.

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priated and that such part of the said land as was not so required for the use of the parishioners should be held upon and for the trusts and uses thereafter stated, which trusts were as follows: "In trust to hold the same for the sole use and benefit of the resident clergyman of the said Town of York, and his successors appointed or to be appointed Rectors of the Episcopal Church therein to which the said land is appurtenant, to make lease of the same with the assent of the incumbent, and to receive the rents due or to grow due therefrom to his use . . . and when a rectory was erected and an incumbent appointed . . . the trustees should convey to such incumbent . . . and his successors forever as a corporation sole to and for the same uses and upon the same trusts." Certain other lands were also granted by another patent from the Crown dated April 26th, 1819, to W. D. P., J. B. and J. S. upon trust to observe such directions and to consent to and allow such appropriation and disposition of them and to convey the same in such manner as should thereafter be directed by order in Council. These lands were subsequently conveyed by W. D. P., J. B. and J. S. to the other trustees, D. B., J. B. R. and W. A., by deed dated July 4th, 1825, reciting an Order-in-Council dated December 2nd, 1824, requiring the grantors to convey the said lands to the grantees for the use of the church and of the clergyman incumbent thereon for the time being (which recital was the only evidence of the contents of the Order-in-Council). "Upon trust nevertheless that the grantees should hold the lands for the sole use and benefit of the resident clergyman of the Town of York and his successors appointed or to be appointed incumbent of the parsonage or rectory of the Episcopal Church, according to the rites and ceremonies of the Church of England therein to which the said lands are appurtenant, which deed contained a proviso for conveyance by the trustees upon the erection of a parsonage or rectory and presentation thereto in the same terms as that contained in the patent of the 4th of September, 1820. The Town of York was subsequently incorporated as the City of Toronto, and by letters patent dated the 16th of January, 1836, a parsonage or rectory was erected and constituted in the said City of Toronto designated as the first parsonage or rectory within the Township of York,

otherwise known as the parsonage or Rectory of St. James, and 800 acres of land were set apart as a glebe or endowment to be held appurtenant with the said parsonage or rectory and that the Hon. and Rev. J. S. was duly presented to be the incumbent of the said parsonage or Rectory of St. James, and by deed poll dated the 10th of February, 1841, reciting the patent of the 4th of September, 1820, the deed of the 4th of July, 1825, and the presentation of the Hon. and Rev. J. S., the said J. B. R., W. A. and J. G. S., the then trustees, granted the said lands described in the said patent and deed to the said the Hon. and Rev. J. S., Rector of St. James, and his successors in the said rectory forever as a corporation sole to and for the same uses and upon the same trusts as are mentioned and expressed in the said patent and deed. The Rev. H. J. G. succeeded the said Hon. and Rev. J. S. as incumbent on the 16th of February, 1847, and was in possession of the said lands and in receipt of the rents and profits thereof until the time of his death, which happened on the 20th of March, 1882. In a suit brought by the incumbents of several rectories which were subsequently erected in the said City of Toronto and the Synod of the Diocese to have the lands covered by the patent of 1820 and the deed of 1825 divided up under the provisions of 29 and 30 Vict. c. 16, it was

*Held* (sustaining the judgment of FERGUSON, J.), that the lands in question were covered by the terms of the Act. That prior to the year 1866 there were rectory lands derived directly from the Clergy Reserves and lands specially granted to trustees which were treated as endowments for rectories, and that the Legislature intended to deal with both classes. That the delivery up and cancellation of the patent of 1817 being to correct an error could not be held to be such a consideration as would make the patent of 1820 a grant for value. That Crown grants which were of a *quasi* public character were different from private gifts, and the Synod in the case of the former had petitioned for and obtained the power they desired. That 14-15 Vict. c. 175 sec. 2 (C. S. C. ch. 74) affords strong evidence that prior to the year 1866 there had been endowments for rectories out of the public domain as well as out of the clergy reserves.

After the hearing and before the appeal was