or physical inability is a cause for superannuation. Appellant, not employed in any business or occupation other than clerical, occupies a house in Prescott. There is a parsonage of the Methodist Church in Prescott, occupied by the Rev. George McRitchie, the regularly stationed minister of the Methodist Church in Prescott.

Dowsley, for appellant, cited a judgment of Judge McDougall, of county of York, in connection with the assessment of the city of Toronto, reported in the current volume of the CANADA LAW JOURNAL, page 158.

M. E. O'Brien, contra, cited *Jarvis* v. *Corporation of Kingston*, 26 C. P. 526.

MCDONALD, Co.J.—With all respect for the learned judge of the County Court of the county of York, I am unable to concur in the conclusion at which he arrived. In my judgment, the exemption is of the parsonage when occupied as such, or unoccupied, and if there be no parsonage, the dwelling house used in lieu of such, and as such occupied by the minister in regular duty and appointed to the particular church (not church in the sense of a religious community, but in the sense of an edifice), to which such parsonage, or the dwelling house used in lieu thereof, is attached. I dismiss the appeal and confirm the decision of the Court of Revision, and the assessment of the assessors.

NOTES OF CANADIAN CASES.

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COMMON PLEAS DIVISION.

DIVISIONAL COURT.

O'Connor, J.] [September 11.

MCDOUGALL v. HALL.

Deed—Omission to tender for execution before action brought—Evidence that execution would have been refused—Dispensing with tender.

The general scope of the O. J. Act, and especially sub-sec. 8*a* of sec. 16, requires that the matters in controversy between the parties may be completely and finally determined, and multiplicity of legal proceedings concerning such matters be avoided, so that whenever a subject of controversy arises in an action, the Court should, if possible, determine it so as to prevent further and needless litigation.

In this case, where in strictness there should have been a tender of a conveyance for execution before action brought, but no such tender was made, and the defendant, in his statement of defence, though setting up the absence of such tender, at the same time indicated that if it had been made, he would have refused to comply therewith, and the tender would therefore have been futile.

Held, under the circumstances, judgment must be entered for the plaintiff.

MCLACHLIN v. GRAND TRUNK RY. CO.

Railways—Overhead bridge—Accident—Liability.

Action to recover damages sustained by plaintiff by reason of a bridge being less than seven feet above the top of the freight car on which plaintiff was employed while in the service of the defendants. At the time of the accident the defendants were operating the Midland Railway under an agreement made 22nd September, 1883, whereby it was agreed that the defendants should "take over all the lines of the Midland Railway, buildings, rolling stock, stores and materials of all kinds; and shall, during the continuance of this agreement, well and efficiently, work the said lines, and keep and maintain them with all the works of the Midland in as good repair as they are when so taken over." The agreement was to be in force for twenty-eight years. The Midland Railway Co., though incorporated under 44 Vict. ch. 67 (O.), was brought under the control of the Dominion Legislature by 46 Vict. ch. 24 (D.), passed in 1883, before the agreement was executed. By the Act of 1881, amending the Consolidated Railway Act, 44 Vict. ch. 24, sec. 3 (D.), "Every bridge or other erection or structure under which any railway passes existing at the time of the passing of this Act, of which the lower beams are not of sufficient height from the surface of the rails to admit of an open and clear headway of at least seven feet, shall be reconstructed or altered within twelve months from the passing of the Act, so as to admit of such open and clear headway of at least seven feet. Such bridges shall be reconstructed or altered