

hand, we are not to forget how necessary it is, as you have yourself observed, that every one of us "should exert himself in forwarding it to the best of his ability."

With the view of procuring further aid, several of the members of the congregation have applied for help to friends in the mother country, whose hearts, I earnestly trust, will be opened to respond to their appeal.

Brethren! for seventeen years we have assembled together in the building which we see before us, and which is now about to give place to one of more durable materials, as well as of a size more adequate to our wants.

A very beautiful ornamented silver trowel was presented to Mr. Palmer by the Architect, hearing the following inscription: The Chief Corner Stone of the Church of St. George in the Parish of Guelph, was laid on Thursday, the 17th July, 1851, by the Rev. A. Palmer, Rector and Rural Dean. And on the reverse.

PRESENTED TO THE REV. A. PALMER, R. D. BY WILLIAM THOMAS, ARCHITECT, TORONTO. Guelph, 17th July, 1851.

DIOCESE OF QUEBEC.

Opinion of His Honour Judge Meredith in the case, Christian Wurtelle v. The Lord Bishop of Quebec.

The Rector of this parish, who is also the Bishop of the diocese, in the affidavit which he has made in answer to the rule served on him, declares that there has been no absolute refusal on his part to bury the body of the petitioner's infant son.

His Lordship the Bishop, in the same affidavit, further declares that a portion of the piece of land in this parish, known as Mount Hermon Cemetery, has been set apart for the burial of the dead according to the rites of the Church of England; and that the ground thus set apart has, with the consent of the above-named corporation, been consecrated as a place of Burial by him as the Bishop of the Diocese.

The Bishop is ready and willing to permit of the interment of the body in the place thus set apart and consecrated.

The petitioner will not consent to this, but insists on the body being buried in the ground that has not been consecrated. Viewed in this light, the question before the court reduces itself to this: Can a clergyman of the Church of England, in a parish in which there is a burial ground, set apart and consecrated by the proper authorities of his own Church, be compelled to bury the dead in a place that has not been sanctioned or approved of as a burying-ground, by the authorities of that Church?

The 68th canon of the Church ordains that no minister shall refuse or delay to bury any corpse that is brought to the Church or Church-yard. The Book of Common Prayer requires the clergyman to meet the corpse "at the entrance of the church-yard," and Burns, in his work on Ecclesiastical Law, vol. 1, page 261, says, "Burial in the parish church-yard is a common law-right inherent in the parishioner."

It does not however follow, because a clergyman of the Church of England is bound by law to perform the burial service in the parish church-yard, which in England, in every case, was set apart as such with the sanction of the authorities of this Church, that he can be compelled to perform that duty in a place which has not been set apart as a burial-ground with the sanction of the authorities.

In each of the cases cited by the learned counsel who argued this case, or to which I have been able to refer, the burial-ground in which the applicant sought to cause the interment to be made, was a burial ground set apart and used as such, with the consent of the proper ecclesiastical authorities, and in this important particular the present case differs from those cited. Were we to grant the present application, we would, so far as depends upon us, indirectly, but most effectually, divest the Church of England of the authority which it has at all times possessed of determining upon the places that ought to be set apart for the burial of the dead who have died in the communion of the Church. Such a determination might not, in this particular case, be productive of inconvenience, but I apprehend that general results might be very injurious, not only to the Church, but to the community at large.

In connection with this part of the case, it may be observed, that in England, as has been shewn, a burial in the parish church-yard is a common law-right inherent in the parishioner. The obligation in England on the part of the Rector of a parish to bury in the parish church-yard is the necessary consequence of the parishioner's rights of sepulture in that particular place. The right of the applicant in the present case to inter the body of his infant son in the unconsecrated part of Mount Hermon Cemetery, is clearly not a common law right; it is a right founded merely on a contract between him and the owners of that place; and although that contract may give him a right of sepulture there, it cannot impose upon third parties—namely, upon the Clergy of the Church of England in this parish—an obligation to attend at that place.

As to the statute 12 Vict. c. 91, incorporating certain

gentlemen and their successors under the name of "The Mount Hermon Cemetery," it is sufficient to observe—1stly, that that statute was not intended to impose, and does not impose, any new obligation on the Protestant Clergy of this parish; and 2ndly, that it had not the effect of making the piece of land described in it a church-yard or place of burial within the meaning of the canons of the Church of England, which require the Clergy of that Church to bury the dead.

As in the affidavit which has been produced on the part of the applicant, it is declared "that the ceremony of consecration is not required by any of the canons of the Church of England," and as that ceremony is the cause of the difference upon which it is now our duty to decide, I deem it fitting to refer to some works in which that ceremony is spoken of.

In Jacobs' Law Dictionary, vol. 1, p. 453, we read—A Church, to be adjudged such in law, must have administration of the sacraments and sepulture annexed to it. The manner of founding Churches in ancient times was, after the founders had made their applications to the Bishop of the diocese, and had his license, the Bishop or his commissioners set up a cross, and set forth the church-yard, where the church was to be built, and then the founders might proceed in the building of the church; and when the church was finished, the Bishop was to consecrate it; and then, and not before, the sacraments were to be administered in it.

But by the common law and custom of this realm, any person, who is a good Christian, may build a church without license from the Bishop, so as it is not prejudicial to any ancient churches; though the law takes no notice of it as a church, until consecrated by the Bishop; which is the reason why a church is to be tried and certified by the Bishop. The writer then describes what he says were "the ancient ceremonies in consecrating the ground on which the church was intended to be built, and of the church itself after it was built;" but adds, "the form of consecration was left to the Bishop, as it is at this day." The same author also says, "the church-yard is a common place of burial for all the parishioners."

In another work, which I think may be referred to without impropriety on the present occasion, it is said, "Cemeteries among the primitive Christians were held in great veneration. It even appears from Eusebius and Tertullian that, in the early ages, they assembled for Divine worship in the cemeteries."

Valerius seems to have confiscated the cemeteries and other places of divine worship, but they were restored again by Gallienus. The practice of consecrating cemeteries is of some antiquity, and the author then describes the forms observed in performing that ceremony. Burns Vol. i. p. 255 says, "About the year 750, shars of ground adjoining the churches were carefully enclosed and solemnly consecrated and appropriated to the burial of those who had been entitled to attend Divine Service in those churches."

These authorities elucidated the maxim, Ceteritium gaudet eodem privilegio qui eclesia. This maxim, in the most important matters, was given effect to by the statute law of England, as will be seen by reference to the 32 Hen. 8, c. 12, by which criminals were allowed to take refuge and sanctuary in the church-yard for the same time and with the same effect, in law, as if they took refuge in the church itself.

Blackstone, Vol. 4, p. 146, speaks of churches and church-yards as being consecrated. He says "All affairs in a church or church-yard are esteemed very heinous offences, as being indignities to him to whose service these places are consecrated.

And to come down as it were to the present day, we find that in the act of the Imperial Parliament, 10 and 11 Vic. c. 65, known as "The Cemeteries Clause Act," provision has been made most carefully, for the consecration of the parts of public cemeteries set apart for the burial of the dead, according to the rites of the Church of England.

The 23rd section of that statute is in these words,— "The Bishop of the Diocese, in which the cemetery" (that is, any cemetery to be established under the act,) "is situated, may on the application of the company, consecrate any portion of the cemetery set apart for the burial of the dead, according to the rites of the Established Church, if he be satisfied with the title of the company to such portion, and thinks fit to consecrate such portion, and the part which is so consecrated shall be used only for burials according to the rites of the Established Church."

These authorities satisfy me, that although, as stated in Mr. Wurtelle's affidavit, the ceremony of consecration is not required by any of the canons of the Church yet that it is in accordance with the principles of the Church of England, and is generally observed by that Church.

I therefore think that there is nothing unreasonable or oppressive on the part of the Bishop of Quebec, in requiring the clergy under his authority to observe this ceremony whenever the observance of it is possible.

There have been, and are cases, where owing to particular circumstances its observance is impossible, but to those cases the maxim, impossibilium nulla obligatio est, is applicable.

Upon the whole I am of opinion, that a clergyman of the Church of England, in a parish in which there is a burial-ground set apart and consecrated by the authorities of his own Church, cannot be compelled to bury the dead, in a place that has been so set apart and consecrated; and I therefore concur in the judgment discharging the rule.

DIOCESE OF FREDERICTON.

(From the St. John's Courier.)

A LETTER to the Venerable and Rev. Charles Thorpe, D. D., F. R. S., Archdeacon of Durham, and Warden of the University of Durham; occasioned by certain reflections upon the Church of England in the British Provinces, in a work called "Notes on North America, Agricultural, Economical and Social, by James F. W. Johnston, M. A., F. R. S. S., L. & E., F. G. S., C. S., &c., Reader in Chemistry and Mineralogy in the University of Durham." By a resident in New Brunswick.

MR. ARCHDEACON,— One of the gentlemen connected with the University over which you worthily preside as Warden, has lately

* See also, the 56 Geo. III. c. 141, intitled "An Act for enabling Ecclesiastical Corporations under certain circumstances to alienate lands for enlarging cemeteries."

The preamble is in these words, "Whereas cemeteries, church-yards and burying-grounds are in various places found to be too small, and the same cannot be conveniently enlarged without appropriating for consecration some parts of the land belonging to corporations, &c., &c., and by the enacting part, certain corporations are empowered to use, for the purpose of consecration, such lands as may be necessary for enlarging any such cemetery, church-yard or burying-ground.

been publishing a work, which has just reached the British Provinces, under the title of "Notes on North America, Agricultural, Economical and Social." In the preface to this work, Mr. Johnston says, that he has "endeavoured to speak fairly and with candour, both of the institutions, and of the social condition of the British North American Provinces." It may be, that he does not consider the Church of England as one of the "institutions of the Province," for Mr. Johnston is a person, who appear to me, to hold very peculiar opinions on some points; but if he does consider "the Church of England as by Law established in this Province of New Brunswick," in that light,—then I must say, in justice to our Church, that he has not spoken of her, her Bishop, her Clergy, or her institutions, either fairly or with candour. Indeed the general tenor of his remarks on subjects connected with religion, is calculated to excite the suspicion, that while in the service of this Province,—a service for which he was well paid, and for the payment of which the members of the Church of England have been taxed in common with others,—he went purposely out of his way in order to traduce the Church, her clergy and institutions, to hold up her proceedings in such a light, as might make her English benefactors dissatisfied with her, and unfairly to depreciate whatever belongs to, or is done by the Church, and unjustly to extol whatever is sectarian.

Mr. Johnston professes to have cultivated the "exact sciences," the "sciences of observation," and he has the reputation of having done so with some success. I have no wish to call in question the merits of your Reader in Chemistry in his own line, but I must be excused, if I have formed the opinion that Mr. Johnston is either not an exact observer of what came within the reach of his observation, or not an exact relater of what he observed himself, or learned from others. I will commence by giving one or two rather remarkable instances of this want of exactness, which, to me, are perfectly unaccountable, simply for the purpose of shewing, that his observations and relations are not to be received with too implicit a reliance.

Under date, Dec. 24th, 1849, he says—"I left St. John this morning on my way to Boston. The frozen harbour of St. John, and the cold and stormy season of the year, had laid up all the steamers along the coast, had no other resource, therefore, but to face the severity of the weather, and proceed by land." This is a very remarkable statement on the part of your Reader. If he did really see the harbour of St. John in a frozen state, he is the first person who ever witnessed it in such a condition. St. John harbour, it is well known, is not only never frozen, but is, in point of fact, the only harbour in the northern portion of North America which has never been obstructed by ice. Although it may seem superfluous to produce proof of a fact which every body knows, I will yet put before you a little evidence in support of what I say.—Speaking of the harbour of St. John, Mr. Morton, State Engineer of Maine, in a report to the Governor of that State, of March 24th, 1851, says—"Vessels are able to enter the harbour of St. John at all seasons of the year, it never being obstructed by ice."

And the following is a list of the vessels which actually did arrive in the harbour, between the 50th and 31st days of the month, on the 24th of which Mr. Johnston says it was frozen: viz. Ships Catherine, and Java; Barques Pearl, Columbine, and Actress; Brigs Juverna, Matilda, Francis, Victoria, Palermo, Gipsy, Gem, Sarah, Lion, P. I. Nevius, and Tweed,—in all sixteen square-rigged vessels. It is perfectly clear, that if the harbour had been frozen, those vessels could not have arrived, nor could Mr. Johnston, as he certainly did, himself have crossed it, on the day above named, in a Steam Ferry-boat, sitting in the St. Andrews Mail Stage. Again, he says, vol. 1, p. 5, "until recently the Bishop of the Church of England in the Colonies was the only person addressed as 'My Lord'—a solitary and invidious title." This is another most extraordinary observation on the part of your Reader, because it is a well known fact, that in Nova-Scotia, with reference to which this observation was made, as well as in Upper Canada and Newfoundland, the Judges of the Supreme Court have always, from the very foundation of the respective Colonies, been addressed in Court as my "Lord," like the Judges in England. And this observation is rendered still more extraordinary by the fact, that he went, as he says, "into the Jury Court, where the author of 'Sam Slick' was the presiding Judge." It is a very fortunate circumstance that Mr. Johnston did not hear, what I think he must have heard, the title of 'My Lord' given to a Judge. If he had heard it, he would not have written two of the most valuable pages of his work; his list of grievances against the Church of England would have been diminished in number; and he would have lost the opportunity of offering for the consideration of the Home Government, a suggestion which reflects great credit upon his surpassing sagacity, viz. that "Presbyterians and the Baptists being stronger bodies than the English Episcopal or the Roman Catholic in these Colonies, and therefore more entitled to consideration at the fountain of honor—their moderator or president for the time being, should be equally honored" with the title of 'My Lord.'

By two instances, two out of very many, having shewn that Mr. Johnston's statements must be received with a good deal of caution, I shall proceed to point out the gross unfairness, with which he treats the Church of England in the Province, her Bishop and Clergy, and her institutions.

In the passage from Mr. Johnston's 'Notes' which I have just quoted, in which he animadverts upon "the great grievance in the eyes of Presbyterians and others," that the Bishops of the English and Roman Catholic Churches are addressed as "My Lord," he says, you will observe, that "the Presbyterians and Baptists are stronger bodies" than either of them, both in Nova-Scotia and New Brunswick. This is an assertion which he is fond of making, reiterating it frequently, and in several places making it specifically in relation to New Brunswick. Coming, as this assertion does, from a man of "exact science," of facts and figures, of returns and tables, it really takes one quite by surprise. In the course of his work, he says very little about the Baptists, though he makes the Presbyterians one of his most important topics. I shall follow the same course, pass over the Baptists without remark, and by a comparison of the strength of the Church of England with that of the whole Presbyterian body, show the inaccuracy of his statement.

The tables which Mr. Johnston has introduced into his work are numerous; but there is not one which bears directly upon this point, and only one that does so indirectly. That occurs vol. 2, p. 184: "The prevailing denominations of Christians in New-Brunswick are those of the Church of England, the Roman Catholics, Presbyterians, Methodists and Baptists."

The relative numbers are not precisely ascertained, "but the general attendance at places of public worship is stated to be, among the Roman Catholics, 32,300; Wesleyan Methodists, 24,400; Baptists, 19,290; Presbyterians, 8,930. Were these numbers taken to represent the relative proportions of the Roman Catholic and Protestant sects, they would give too high "an estimate for the former." No doubt they would; but still this return does not by any means afford a proof of the correctness of Mr. Johnston's assertion; on the contrary, as far as it goes, it makes directly against it. Let us then try the point upon some other basis.

The New Brunswick Almanac for 1851 was compiled about the time that Mr. Johnston was engaged in writing his 'Notes.' It contains returns, made by the parties themselves, of the number of Ministers belonging to the several denominations among us, with the stations which they respectively occupy. There are in the Province no less than five different bodies of Presbyterians, viz.—1. The Established Church of Scotland, with eight Ministers; 2. The Free Church of Scotland; 3. The Presbyterian Church in connexion with the Synod of Ulster—these two being united into the Presbyterian Church in New Brunswick, with ten Ministers; 4. The Reformed Presbyterian Church of Ireland, with three Ministers; and 5. The Associate Presbyterian Church of Nova Scotia, with two Ministers—23 in all. The Clergy of the Church of England are in number 53. If the Presbyterians are, in routh, as Mr. Johnston says they are, the strongest body, it would then seem strange that their Ministers do not amount to half the number of the Clergy of the Church of England.

But in order to compare the stations which are respectively occupied, let us follow Mr. Johnston's different routes through the Province. He landed first at St. John, the principal seaport town, vol. 1, p. 42. In that City of St. John will be found, of Presbyterian Ministers, one of the Established Church, one of the Free Scotch, and two of the Irish Church, together with one of the Reformed Irish, and one Missionary of the same—in all six, leaving seventeen for the rest of the Province. The number of Presbyterian places of worship is five. In the three Parishes which form the harbour of St. John, there are three Parish Churches and two Chapels, one of them a district Chapel, with seven Clergymen, leaving 46 for the rest of the Province.

Mr. Johnston's first route (chap. 2, 3) was from St. John to the Little Falls, a distance of above 250 miles. On this line of country there are, of Presbyterian Ministers, one of the Established Church, and one Missionary of the same, and one of the Associate Church of Nova Scotia—in all three; while there are on that line, beside the Bishop, seventeen Clergymen of the Church of England.

His second route (chap. 3, 4) was from Fredericton to Miramichi, and thence to St. John by Sussex Vale, a distance also of about 250 miles. On this line there are seven Presbyterian Ministers, two of the Established Church, four of the Free, and one of the Nova Scotia, while there are ten Clergymen of the Church of England.

His third route (chap. 14—18) was from the Restigouche to the Miramichi, round the north eastern part of the Province, from Richibucto to Shepody, and round the south east corner of it to St. John. In that portion of this line, which is not embraced in the second route, there are two of the Established Church and one of the Free—in all three, Presbyterian Ministers; while there are six Clergymen of the Church of England.

His fourth route (chap. 19—21) was from St. John to St. Andrews, and thence to Fredericton, on which line there are three Presbyterian Ministers one of the Established Church, two of the Free, while there are seven Clergymen of the Church of England.

And in places which lay out of the line of his routes, there is one minister of the Reformed Irish Church, while there are five clergymen of the Church of England. Since these returns were made, two clergymen have been added to the then existing number, but I have not heard of any addition having been made to the number of Presbyterian ministers.

It certainly would not appear from this comparative statement, that the Presbyterian could be a stronger body than the Church of England. But it may, perhaps, be thought that their ministers are placed with so much judgment, as to render them, in spite of their inferior number, more effective than the Church of England Clergy. Such an idea would be founded in error, for there is a passage in the "Notes," vol. 2, p. 3, which would make it appear as if the Presbyterian body does not gain any additional strength, by any such peculiarly judicious mode of placing their ministers, as would in way compensate for the disparity which is shewn to exist in point of number. Mr. Johnston says,—"Nineteen miles from Dalhousie we met with a 'Free Church Minister.' Most of the Scotch settlers, he informed me, had joined the Free Church. They had already one Church twelve or fifteen miles on this side Dalhousie, and are about to build another in the town itself, where there is already one belonging to the Scottish Establishment." I doubt whether the strength of the Presbyterian body is greatly increased by the setting up, in this way, of rival Churches among themselves.

Looking thus at the number of Ministers in both bodies, and the stations they respectively occupy, I cannot help being decidedly of opinion, that Mr. Johnston is quite as much at fault when he says, that the Presbyterian is a stronger body in New Brunswick than the Church of England, as he certainly was when he declared that the harbour of St. John was frozen when he crossed it in a steamer on December 24th, 1849, and that the Bishops are the only persons in the British North American Colonies who are addressed by the title of "My Lord."

(To be Continued.)

CHURCH UNION.

OAKVILLE—BRANCH UNION.

On Monday the 9th ult., a meeting was held in Oakville, to take into consideration the expediency of forming a Branch of the Church Union of the Diocese of Toronto, in this neighbourhood, when, after due consideration of the great utility of such an Association, if effectively and judiciously carried out, it was unanimously resolved—

"That a Branch of the said Union be formed in this neighbourhood to be called 'the Oakville' Branch of the Church Union."

The following officers were then elected:— Rev. Charles Dade, M.A., Chairman, Arthur Grantam Esq., R.N., Deputy Chairman, Rev. S. Givins, Chaplain, Mr. James Reid, Secretary and Treasurer.