

to that Colony, the Terms "a Protestant Clergy," there being no Words in the Statute which necessarily restrain and limit the Meaning of the Expression, we think it must be held to include the Clergy of the Protestant Church established in Scotland; and we feel ourselves confirmed in this Opinion by observing that on several Occasions the precise Expression is to be found in the Statute Book, "the Clergy of the Established Church of Scotland." The 48 Geo. III. c. 138. in its very Title mentions "the Clergy of Scotland." In the 50 Geo. III. c. 84. "the Rights and Interests of the Clergy of Scotland" are repeatedly spoken of; and in the 5 Geo. IV. c. 72. s. 7. a Reference will be found to several Acts of Parliament which make mention of the "Poor Clergy of the Established Church of Scotland."

And although in answering your Lordships Question we specify no other Church than the Protestant Church of Scotland, we do not thereby intend that besides that Church the Ministers of other Churches may not be included under the Term "Protestant Clergy." At the same Time, as we do not find on the Statute Book the Acknowledgment by the Legislature of any other Clergy answering that Description, and as we are not furnished by your Lordships with any Information as to the Doctrine or Discipline of any other Denominations of Protestants to which the Statute of the 31st Geo. III. can by possibility apply, we are unable to specify any other to your Lordships as falling within the Statute.

My Lords,—In answer to the Question secondly put to us, we are all of Opinion that the Effect of the Forty-first Section of the Statute is prospective only, and that the Power thereby given to the Legislative Council and Assembly of either of the Provinces cannot be extended to affect Lands which have been already allotted and appropriated under former Grants; for the manifest Import of the Forty-first Section appears to us to be limited to this, namely, "the varying or repealing the Provisions respecting the Allotment and Appropriation of Lands," and not to comprehend "the varying or repealing Allotments or Appropriations which have been already made under Provisions of the Act, whilst such Provisions continued unrepealed and in full Force." The Provisions of the Statute of Wills might be varied or repealed without affecting the Devises of Land already made under it.

My Lords,—In answer to the Question lastly proposed, we all agree in the Opinion that the Legislative Council and Assembly of the Province of Upper Canada have exceeded their Authority in passing the Act "to provide for the Sale of the Clergy Reserves, and for the Distribution of the Proceeds thereof," in respect of *both* the Enactments specified in your Lordships Question. As to the Enactment "that it should be lawful for the Governor, by and with the Advice of the Executive Council, to sell, alienate, and convey in Fee Simple all or any of the Clergy Reserves," we have, in answer to the Second Question, already stated our Opinion to be such, as that it is inconsistent with any such Power in the Colonial Legislature; and as to the Enactment "that the Proceeds of all past Sales of such Reserves, which have been or may be invested under the Authority of the Act of the Imperial Parliament passed in the 7 & 8 Geo. IV. for authorizing the Sale of Part of the Clergy Reserves in the Provinces of Upper and Lower Canada, shall be subject to such Orders and Directions as the Governor in Council shall make and establish for investing in any Securities within the Province of Upper Canada the Amount now funded in England, together with the Proceeds hereafter to be received from the Sales of all or any of the said Reserves," we think such an Enactment is in its Terms inconsistent with and contradictory to the Provisions of the Statute of the Imperial Parliament 7 & 8 Geo. IV., and therefore void, there being no express Authority reserved by that Act to the Colonial Legislature to repeal the Provisions of such latter Statute.

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