

In the case of *ex parte Blackmore*, referred to at the argument, the application was "for a *mandamus* to compel the Rector to bury the corpse."

In the case of the *King vs. Coleridge*, also cited at the argument, the application was for a *mandamus* to the Rector, officiating curate, churchwardens and sexton of the parish of St. Andrew, commanding them to bury or to do every act necessary to be done, in order to the burial in the church yard of the parish, of the corpse of M. J. deceased."

The present applicant, by his former protest, required the Bishop "to bury the said child according to the form of the Church of England in the Mount Hermon Cemetery."

I deem it needless to accumulate citations on this point; I shall, therefore, add merely that I have not been able to ascertain that an application such as the present, that is to say, an application for a *mandamus* to compel the reading of the funeral service merely, was ever before made.

It may be said, in answer to the objection above urged, that although the protest did not require the Bishop to bury the body, yet that it was evident from the whole of the contents of that instrument, that it was the intention of Mr. Wurtele to cause the remains of his infant child to be buried in his own lot in Mount Hermon Cemetery. This answer would not meet the objection, which consists in this, that the performance of the funeral service should take place at the burial and not elsewhere; and this would not have been the case, if, as proposed by Mr. Wurtele, the burial service was to be read at one time and place, and the actual interment to be made at another time and place, independently of the minister who read the service, and without his having any personal knowledge of the fact.

The act for the registration of baptisms, marriages, and burials, was also referred to by the counsel for the applicant.

The 5th section of that act provides, that in the entries of burials in the registers aforesaid mention shall be made of the day, month, and year, of the person's burial and that the entry shall be signed by the clergyman who performs the burial service. This enactment requires the clergyman to certify the date of the burial, that is to say, the date of the day on which the body was committed to the grave.

A certificate stating that on a particular day, the funeral service had been read over the body, would I think be materially different from that required by law, and would, I apprehend, be inoperative; and it is plain that had the Bishop complied with Mr. Wurtele's request, and merely read the funeral service, he could not have certified that he had buried the body.

The Book of Common Prayer furnishes another objection to the granting of the application.

The 2d direction in the office for the burial of the dead, is as follows, "when they come to the grave, while the corpse is made ready to be laid in the earth the priest shall say"—&c.

And afterwards we find it ordered—that while the earth shall be cast upon the body by some standing by, the priest shall say—&c.

In the present case it appears by the protest and affidavit, that the Bishop was required to read the whole of the burial service in the church, although the place at which it was proposed to bury the child, was at a distance of some miles from the church; and although it was intended that the burial itself should take place without the concurrence, or even personal knowledge of the Bishop.

The learned counsel who argued this cause on behalf of his Lordship, observed that his client would have been liable to censure, had he acquiesced in the petitioner's request; and I am convinced that such is the case.

Such being my views on this question, it is needless for me to express an opinion on the other important questions which have been so ably argued in this case; and I feel the less disposed to do so, as I had occasion to advert at some length to the most important of those questions, in rendering judgment upon the petitioner's former application. We then held, that the Rector of this parish, could not be compelled to bury in the unconsecrated part of Mount Hermon Cemetery; and this court now holds, that he

cannot be compelled to read the funeral service over a corpse, in the church, in order that that corpse may be interred, without his knowledge, by some other person, at some other time and place.

It was very strenuously contended on behalf of the petitioner that, whatever might be our opinion, we ought to allow the writ of *mandamus* to issue, in order to secure to the petitioner the power of appealing.

The statute regulating this matter provides that "an appeal shall be from all final judgments rendered by the Superior Court in all cases provided for by the act, except in cases of *certiorari*."

The Court of Appeals has not decided that an appeal will not lie from a judgment such as that which we now propose to render, and until such a decision shall have been pronounced, it is our duty, in determining the questions that come before us under the act, to be guided exclusively by our own judgment, giving to these new and important questions the best consideration in our power.

Upon the whole, I am of opinion, not only that the act which his Lordship the Bishop was requested to perform, did not constitute a legal duty on his part, but that he could not have performed that act, in the manner requested, consistently with his duty; and I therefore necessarily come to the conclusion that the writ prayed for ought to be refused.

Province of Canada, }
District of Quebec. } In the Superior Court.
The eighteenth day of September, one thousand eight hundred and fifty-one.

Ex parte—CHRISTIAN WURTELE.

The Court having heard the petitioner, Christian Wurtele, upon his petition in this cause filed, praying a Writ of *Mandamus* in this cause; and the Right Rev. George Jehoshaphat Mountain, Lord Bishop of the Diocese of Quebec, and Rector of the Parish of Quebec, in the same Diocese, by their counsel respectively, and having seen the affidavit of the said Christian Wurtele, in this cause filed, by which appears that the said Christian Wurtele, on the twenty-sixth day of July last past, notified and required the said George Jehoshaphat Mountain, as such Rector of the said Parish of Quebec to open the parish Church of the said Parish at the hour of eight of the clock in the forenoon on Monday the twenty-eighth day of the said month of July, or at such hour as the said George Jehoshaphat Mountain might, at the time of the making of the said requisition, indicate, and there read, or cause to be read over the deceased infant child of him the said Christian Wurtele, the funeral service, as prescribed by the Book of Common Prayer of of the Church of England; and considering that the said George Jehoshaphat Mountain was not, and is not by law bound to comply with the said request on the part of the said Christian Wurtele, it is ordered that the prayer of the petition be, and the same is hereby dismissed with costs.

Hon. F. W. Primrose and Andrew Stuart, Esq., for Mr. Wurtele.

Hon. Henry Black, for the Bishop.

DIOCESE OF TORONTO.

TRINITY COLLEGE.

At the Meeting of the Council of Trinity College, held on Wednesday the 17th September, the following orders were made in acknowledgment of sundry very valuable gifts of Books to the Library of that institution:

Whereas there has been received for the Library of Trinity College Church University, from the office of The Society for the Propagation of the Gospel in Foreign Parts, five cases, containing Theological, Classical, and Miscellaneous books, to the number of about 960 vols., many of them of very great value, which books have been contributed by friends in England, (whose names are unknown to the Council) in accordance with the request of the London Committee on behalf of the Church University, Upper Canada, as contained in their address issued on the 19th of June, 1850.