



## DIocese OF QUEBEC.

PARISH OF QUÉBEC.—We give below the Judgment delivered by Judge Meredith, in the case of an application recently made to the Judges of the Superior Court in Chambers, for a Mandamus to compel the Rector of Quebec to bury a child in the unconsecrated portion of Mount Hermon Cemetery. Our limited space will not permit us to add more than that the judgment of Mr. Justice Duval entirely concurred with that of Judge Meredith, but as it was not committed to writing, we have been unable to obtain an authorized copy.

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 upon him, declares that there has been no absolute refusal on his part to bury the body of the petitioner's infant son. On the contrary, the Bishop asserts, and it is admitted that he would have allowed the interment at the place desired by the petitioner, if the latter would have consented to the consecration of the ground.

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? No case that has been cited, or that I have been able to find, would justify us in answering this question in the affirmative.

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 Burn, in his work on Ecclesiastical Law, vol. 1, p. 261, says, "Burial in the *parish church-yard* is a common-law right inherent in the parishioner," and in *Ex parte Blackmore*, 1 Barnent and Adolphus, p. 122, Judge Littledale said, "The clergyman is bound by law to bury the corpses of the parishioners *in the church-yard*."

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 his 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 those 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 should, 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 the general results might be very injurious, not only to the church, but to the community at large. I abstain, however, from entering into any argument on this point, for so far as regards the application before us, it is sufficient to observe, that as the applicant calls upon us to compel the Rector of the parish to perform a particular duty, in a particular manner, it is incumbent upon him to shew that the law requires that duty to be done in that manner, but in my opinion the applicant has not succeeded, and could not succeed in establishing this.

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 12th 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 the administration of the sacraments and sepulture annexed to it. The manner of founding churches in ancient times was, after the