

Sup. Ct.]

NOTES OF CANADIAN CASES.

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PUBLISHED IN ADVANCE BY ORDER OF THE
LAW SOCIETY.

SUPREME COURT.

Ontario.]

SYNOD OF HURON V. WRIGHT.

*Member of Synod—Trust, construction of—Vested
rights—Commutation fund.*

The sum received for commutation under the Clergy Reserve Act was paid to the Church Society, upon trust to pay for the commuting clergy their stipend for life and when such payment should cease then "for the support and maintenance of the clergy of the Diocese of Huron in such manner as should from time to time, be declared by any by-law or by-laws of the Synod to be from time to time passed for that purpose." In 1880 a by-law was passed providing that out of the surplus of the commutation fund, clergymen of eight years and upwards active service should receive each \$700 with a provision for increase in certain events. In 1873 the plaintiff became entitled under this by-law and in 1876 the Synod (the succession of the Church Society) repealed all previous by-laws respecting the fund and made a different appropriation of it,

Held, affirming the judgment of the Court below (FOURNIER and HENRY, JJ., dissenting), that under the terms of the trusts, the trustees were free at all times to repeal previous by-laws respecting the funds in question and make a different appropriation of it and that the plaintiff had no contract or vested right which entitled him to object.

Appeal dismissed with costs.

McCarthy, Q.C., and *Harding*, for appellant.
S. H. Blake, Q.C., for respondents.

Manitoba]

McKENZIE V. CHAMPION.

*Agent—Sale by—Duty of agent—Commission—
Mis-trial.*

The plaintiffs, real estate brokers at Winnipeg, were instructed generally by the defendants to sell certain lands of theirs at a certain price and terms of payment. The plaintiffs did make a sale of these lands and signed a receipt for \$5,000 cash paid on account of purchase money which was paid to defendants. The purchasers subsequently refused to carry out the purchase and from the absence of writing signed by them they could not be compelled to do so. The plaintiffs then brought their action for commission upon the entire purchase money as if the contract had been carried out by the purchasers. The case came on for trial before a jury who followed the charge of the Chief Justice and found a verdict in favour of the plaintiffs for the full amount of their claim, viz., two and one-half per cent. commission upon the entire purchase money of the lands. The jury were not asked to pronounce upon the nature of the terms upon which the plaintiffs were employed. In review before the full Court a new trial was granted if plaintiffs were not willing to reduce verdict to commission of two and one half per cent. on the \$5,000 paid,) on the ground that it was the duty of the plaintiffs to bind the purchasers as well as the defendants.

On appeal to the Supreme Court of Canada.

Held (STRONG, J., dissenting), affirming the judgment of the Court below, that there had been a mis-trial.

Appeal dismissed with costs.

Macmahon, Q.C., for appellants.

McCarthy, Q.C., for respondents.