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# The Canadian Ecclesiastical Gazette;

OR

MONTHLY CHURCH REGISTER FOR THE DIOCESES OF QUEBEC, TORONTO, AND MONTREAL.

VOLUME IV.

TORONTO, MAY, 1867.

No. 6.

In order to give room for the important decision of the Court of Appeal on the Rectory question, we have been obliged to leave out some reports and documents sent to us for publication in this number, although we have printed nearly the paper double its usual size.

## NOTICE TO OUR MONTREAL SUBSCRIBERS.

We have the pleasure to announce that Messrs. Hill & Martin, Booksellers (Depôt of the Society for Promoting Christian Knowledge), 20, Great St. James Street, Montreal, have consented to act as Agents for the *Canadian Ecclesiastical Gazette*. Subscribers in Montreal and vicinity are requested to pay their subscriptions to Messrs. H. & M., who will also receive any orders on the business of the paper.

## Ecclesiastical Intelligence

### DIOCESE OF TORONTO.

Last year the Rector and Churchwardens of St. Peter's Church, Brockville, succeeded in securing a lot adjoining the Church, chiefly through the liberality of Mrs. Sidney Jones, for a site for a parochial School, at a cost of £275. On the Sunday before Easter the Rev. Dr. Lewis addressed the congregation, exhorting them to follow up the good work and aid the building fund by devoting their Easter offerings to that purpose. The result was gratifying, \$867 having been given at the Easter Offertory. The Receipt of which the Rector and Churchwardens take this opportunity of acknowledging.

At a Vestry Meeting held on Easter Monday in St. Peter's Church, Brockville, it was moved by George Sherwood, Esquire, and Seconded by W. B. Simpson, Esq., and

*Resolved*, "That the thanks of the congregation are justly due, and are hereby rendered to Mrs. Sidney Jones, for her munificent present of a Communion Service of plate to this Church, and that the Rector be requested to communicate this resolution to her."—Carried.

The Service consists of a Flagon, two Chalices, and two Patens of Silver, richly

carved and gilt, from the firm of Keith & Butterfield—cost £125—each piece bears an inscription as follows:—



"In honorem S S Trinitatis et in memoriam dilectissimi, mariti Sidney, hanc capullam in usum Ecclesie S. Petri apud Brockville, Susan Jones obtulit. August, 1856."

We would recommend that the Public Annual Meeting of the Church Society, usually held on the second Wednesday in June, be postponed, so that it may be held the same time as the meeting of Synod.

### CHURCH SOCIETY, DIOCESE OF TORONTO

At the Meeting of the Church Society the following grants of books were ordered:—

"To the Rev. Geo. Hill, to the amount of £2, for the use of his Sunday School"

"Two Bibles and Prayer Books, small size, for the use of the Curate of St. Catherine's at two out-stations."

Two applications for grants for Churches were presented, but the Standing Committee recommended that no more grants be promised until after the accounts for the past year have been audited.

*Resolved*, "That the Home District Branch having guaranteed a stipend to a Travelling Missionary in the said District, the Society pledges itself to make up any deficiency in the fund required for that purpose, for the period of three years from the date of appointment of the said Missionary."

*Resolved*, "That when a Travelling Missionary is appointed to the Midland District, if the District Branch guarantees £100 per annum, the Society will grant £50 towards his stipend, and a like sum to a second Travelling Missionary on the same conditions.

Notice was given the Secretary of the Home District Branch that the Rev. H. C. Cooper, and J. B. Harris, Esq. were duly elected as delegates from that Branch.

A certificate was handed in from the Venerable Archdeacon of Kingston, that the Rev. H. Mulkins, and Thomas Kirkpatrick, Esquire, were elected delegates for the Midland District.

The Rev. H. Mulkins gave notice that at the next meeting he would move the XVIII. section of the Constitution to be amended thus:

By substituting for the first nine lines in the XVIII. sec. the following:

"In connection and correspondence with the Society, District Associations shall be established comprising one or more Districts (as shall be approved by the President), the same to be composed of the Clergy resident within the bounds of the District, and all other members who shall contribute in aid of the Society's Funds: the archdeacon, or senior clergyman resident within its bounds, shall ex officio be chairman of such District Branch Associations, with whom shall be associated, as composing a Committee of Management, all Clergymen in the District, and one or two Laymen from each congregation which observes the constitution, rules and regulations of the Society, and from none others, the lay members to be elected at the Annual Meeting of the District Branch."

The following gentlemen were nominated for election as Incorporate Members—F. Gates, Esq., of Hamilton; W. B. Simpson, Esq., of Brockville; Rev. A. Williams, of Moore & William; R. Vidal, Esq., of Sarnia.

### PROPOSED ALTERATIONS IN THE CONSTITUTION OF THE SYNOD OF THE DIOCESE OF TORONTO.

WEDNESDAY, May 13th, 1867.

The Executive Committee, of whom were present—

THE LORD BISHOP,  
THE ARCHDEACON OF YORK,  
REV. DR. BEAVEN,  
REV. DR. CRONYN,  
RURAL DEAN BLAKE,  
RURAL DEAN PALMER,  
RURAL DEAN PATTON,  
RURAL DEAN FULLER,  
HON. P. B. DE BLAQUIÈRE,  
HON. J. H. CAMERON,  
HON. G. J. GOODHUE,  
H. C. BAKER, Esq.,  
J. W. GAMBLE, Esq.,  
THOMAS KIRKPATRICK, Esq.,  
S. B. HARMAN, Esq.,  
JAMES PATTON, Esq.,  
W. B. SIMPSON, Esq.

Have recommended the following revision of the Constitution of the Synod to be considered at the next general meeting thereof:—

*Article I.* To expunge the following words: "or holding office in any College or School under the jurisdiction of the Bishop."

*Article II.* To add the following words: "The said declaration not to be required unless the qualification so stated be questioned."

*Article VII.* After the word "infirmity" to add the words "not under ecclesiastical censure." To expunge the words "and vote thereat," and insert the words "but not to vote thereat."

To add the following Article as Article VIII.: During the necessary or authorized absence of the Rector or Incumbent of any Parish or Cure, the Clergyman acting as Assistant Minister or Curate of such Incumbent shall be entitled to vote at meetings of the Synod, but not otherwise, unless licensed to a congregation, regularly organized, independent of that presided over by his Rector or Incumbent.

*Article XI.* (which would then be Article XII.) to add the words, "the same to have power to appoint an Assistant Secretary."

[The Executive Committee have recommended the following Rules and Regulation in regard to the Election of Bishops.]

1. That at the election of a Bishop it be necessary that not less than two-thirds of the whole number of the Clergy, and of the Lay Delegates by parishes entitled to vote, be present. That no Clergyman be publicly nominated for the office of Bishop; but that the Clergy and Lay representatives, by parishes, in their separate places, be directed, each and severally, to write upon a card the name of the Clergyman whom they would desire to elect as Bishop. That the same be dropped into a balloting-box, to be handed round to each individually by two persons appointed for that purpose. That whatsoever Clergyman shall have such a number of the votes of each order respectively as shall constitute a clear majority of the whole number of each order respectively entitled to vote in such Diocese shall be declared duly elected. That there be no election, unless with such majority of both Clergy and Laity, the latter voting by parishes.

2. In the event of the subdivision of any Diocese, the portion intended to form the new Diocese shall be bound in all their public proceedings by the Constitution of the Diocese of which they formed a part, until the said new Diocese

shall be fully organized by the election and consecration of the Bishop.

3. Any Clergyman elected a Bishop, and holding at the time of such election any preferment or ecclesiastical income, shall resign such preferment or income upon his consecration.

[Four copies of the above have been sent to every Clergyman in the Diocese. We applied for a list of the Lay Delegates with a view to forwarding them copies, but, though the Constitution provides that their names be sent to the Secretary within six days after their election, we were told that only three parishes had complied with the regulation.]

THOS. S. KENNEDY,  
Pro Secretaries.

At a meeting of the Executive Committee of the Synod, held on the 12th of May, it was moved by the Rev. Rural Dean PATON, seconded by the Hon. J. H. CAMERON, and

*Resolved*,—That the Meeting of the Synod of the Diocese of Toronto, appointed to be held on the second Thursday in June, be postponed until the assent of Her Majesty the Queen to the Bill now awaiting Her Majesty's concurrence be obtained, and the same proclaimed in this Province; and that the Lord Bishop be requested to summon the Synod as soon as Her Majesty's assent to the said Bill is proclaimed—not less than twenty days' notice being given of the same.

JOHN TORONTO.

The University of Trinity College, Dublin, has conferred the degree of LL.D. upon the Rev. W. B. LAUDER, Rector of Napanee, in this Diocese, he being a graduate of that College.

#### REPORT

*Of the Niagara District Branch of the Church Society.*

In presenting this, their fifteenth Annual Report, your Committee would desire to record their humble and hearty thanks to Him from whom all good works do proceed, for the blessings which He has vouchsafed to them, and heartily do they pray that an increased measure of success may attend the operations of the Society during the coming year. When this Association last met, the war which was being waged against Russia was still going on, though its fury was in a great measure abated—Your Committee have unfeigned happiness in being able to thank God, that in His good providence He has put an end thereto, and given again to our much-favoured land the blessings of peace and plenty; and they earnestly pray that He may, for His dear Son's sake, infuse such a spirit into the nations of the world, that the time may speedily arrive "when they shall beat their swords into ploughshares, and their spears into pruning-hooks, nation shall not lift up sword against nation,

neither shall they learn war any more," and give themselves with the more earnestness and determination to the endeavour to spread the knowledge of our blessed Lord and Saviour not only within their own borders, but also to the yet spiritually destitute parts of the earth.

Your Committee have to congratulate every member of our Holy Zion on the auspicious meeting of the Church in Diocesan Synod, convened in the early part of May last at Toronto; and though its decisions were not on the whole such as we could have wished, and on some questions much vantage ground was lost which should have been maintained with all our vigour; and had it been maintained by such a body as was then assembled, little doubt can arise but that ere long our point would have been gained, and the essential, if not sacred, principle of separate schools conceded to our church, as nothing more than justice due to such an influential body as in this Diocese it has now become: yet on the whole much has been effected, and the great fact established, that the church can meet in its legislative capacity and discuss matters affecting its well being, without any danger of disturbing the harmony of its members, or of overstepping the bounds of decorum which a body of Christian men should show the one towards the other, however widely they may differ in the carrying out the details as well in spiritual as in temporal matters.

Your Committee cannot omit noticing the earnest and unanimous desire evinced by that assembly of about one hundred and fifty Clergymen, and nearly double that number of the Laity, that our Synodical decisions should have more than binding force *in fero consecutio*, and for this purpose to obtain from our Legislature the necessary powers. They would congratulate the Society and the Church at large in the unanimous and gratifying response that our Legislature made to our petition that they would pass a bill authorising the Church to meet in Synod, and legally to arrange her own affairs.—And while they make these gratulatory remarks, and also express a hope that the bill passed may soon become law; yet they cannot but deeply regret that, notwithstanding the principle of self-government conceded to this country, the Home authorities should have so long delayed to recommend that the royal assent should be given to the "Canadian Church Synod Bill."

Your Committee would also venture to express a hope that the Church at home, may soon be permitted to meet in Convocation, and transact that business which cannot safely be entrusted to any other hands, and which the necessities of "the Church" both at home and abroad so loudly call for and demand.

Your Committee have to congratulate the members of the Church on the prospect of the division of this immense Diocese soon being effected, and a Bishop appointed to the Western portion, the Candidate for the same to be the selection of the Synod of that portion of the Diocese duly convened.

The Committee would now refer with thankfulness to the Report of the Parent Society, presented last June, in which they perceive a gratifying improvement in its income as compared with the previous year. The Committee would also notice with satisfaction the increased energy which the Parent Society has evinced in behalf of the Indian Missions, and they look forward with anxiety and pleasure to the working of the fund that is now being established for the spreading the knowledge of our common Saviour among the yet heathen aborigines of this vast diocese. They also anticipate beneficial results from the formation of a Tract Committee of the Society, which will be considered a branch of that Venerable Body at home, the S. P. C. K., and thus enable the Society to circulate its tracts and other books at members'

prices, a rate much lower than at present, adding merely the expenses consequent upon their importation.

Your Committee have to reiterate their deep regret expressed in their two last annual Reports that our Travelling Mission is still vacant; they looked forward with anxious hope that this sad want would long ere this have been supplied, but from circumstances over which your Committee have no control the mission is still vacant. And they fear, that on account of the delay in the appointment of a missionary to the spiritually destitute portions of this Denary, the Church is suffering, and must suffer a diminution in its members, inasmuch as there being no shepherd, the wolf creeps in and scatters the sheep. Through the kind exertions of your late indefatigable Secretary, one portion, viz., Marshville and Merrittsville has been as regularly supplied and services held once a month, as the roads and weather would permit. At Merrittsville he meets with much encouragement, the services are well attended, and a subscription is opened for the building of a church on a site already given, and ready to be decided, if only the necessary exertions were now being made by the Church to supply the required services of the Missionary. Your Committee would notice that this want is being seriously felt in this place, where there is even now a provision, though small, for a clergyman, and where the people are ready to come forward and give towards his support whenever one is licensed thereto. In the meantime the Committee would call upon all the faithful to pray that the "Lord of the vineyard would send forth labourers into the vineyard;" and not only to pray, but at the same time to give of their substance for the supporting, and use all proper and legitimate influence in the furtherance of the appointment of, a Missionary not merely for this field of labour, but also for the remaining portion of the Mission.

Your Secretary, in lieu of public meetings, preached sermons in behalf of the Society at Jordan and Port Dalhousie, at Fort Erie and Bertie.

Your Committee would here briefly refer to a work called "Gold and the Gospel," which has been studiously circulated in this Diocese by some unknown friends, comprising a series of essays by gentlemen of various denominations of Christians on the subject "How much ought a Christian to give to God of his worldly means;" and they all with singular unanimity arrive at the same conclusion, that God requires from the Christian a tenth of his worldly substance for the conduct of the sanctuary, resting very strongly on that of St. Paul I Cor. IX as well as many other passages of Holy writ; "Do you not know that they who minister about holy things live of the sacrifice, and they who wait at the altar are partakers with the altar? Even so hath the Lord also ordained that they who preach should live of the Gospel." All must allow much, very much remains to be done; for until we all as a body become impressed with the importance of the work which we have to do, also, of the vastness of our responsibilities, until we all learn to understand that we each have talents to account for, until we learn that all we have belongs to God, and that we are only His stewards in the disposition thereof, and until we feel all this, and acknowledge that He requires a certain and due portion of our worldly means for His service, and then give to Him accordingly, we shall not be doing our duty or acting up to our high responsibilities.

The Parochial Branches included within the bounds of this District Branch Association report as follows:—

NIAGARA—The Parish of Niagara reports the sum of £54 6s., being a large increase over last year. This increase is very satisfactory, inasmuch as this parish has contributed upwards of thirty

pounds to the four quarterly collections of the Society, and has raised for church purposes a further sum of upwards of £150 specially, and an amount of upwards of £60 has been contributed at the offertory, and a handsome chandelier and set of lamps in addition, procured for the use of the Church at a cost of between £20 and £30.

St. CATHARINES—This parish reports:—

Annual Subscriptions.....	£63	1	3
Donations to Missionary Fund	3	5	1
Total.....	£66	3	6

This amount, considering the loss of some subscribers, and the great depression in trade, and consequent scarcity of money, which has been seriously felt in this parish during the past year, the Parochial Committee considers very encouraging. It is true they have to express regret that some few have diminished the amount of their subscriptions, and that others contented themselves with contributing one dollar or less who must be conscious that thrown as the Church is for her Missionary operations upon the voluntary offerings of her people, they ought to have given more liberally in proportion to their means; still, against this dark side of the picture, the Parochial Committee have to record the very pleasing fact, that some have this year doubled, and others more than doubled their former subscriptions. This noble example, worthy of all imitation, coupled with the zealous exertions of the collectors, especially the young ladies who collected in the town, greatly cheers the Committee and induces them heartily to "thank God and take courage."

CHIPPAWA—This parish reports the sum of £46 10s. being an increase on last year. The United Association of Stamford and Drummondville in the Parish of Chippawa report as follows:

Donations to W. O. Par Soc. £2 16s. including Clergyman's subscription.	
Donations to Mission Fund .....	£0 15 10
ditto Students' Fund ...	0 5 0
ditto G. P. F. ....	0 5 0
Indian Mission Fund .....	2 10 2
Subscriptions and donations... 19	4 4½
Total.....	£25 15 4½

Against £20 Gs. of last year, making in all from the parish of Chippawa £72 5s. 4½d. The Committee would express a hope that this is only an earnest of a still further increase in future years. It is but justice to this portion of the parish here to mention that this is in addition to great exertions which are now being made to complete a very beautiful and substantial stone Church in Drummondville; nearly £650 being already expended thereon. In accordance with the resolution of the District Branch they report £99 Gs. 6d. as collected and subscribed in these united charges for Church purposes, for the year ending Easter, 1856.

THOROLD—The Chairman of this Parochial Association reports that the collections for this year for general purposes amount to £28 2s. 6d. which, considering the very general failure not only of the wheat, but also of the spring crops, is deemed very encouraging; for when the farmer loses his crops, as was very generally the case in this neighbourhood, all persons in the community suffer. Besides this, the members of the Church at Port Robinson have contributed very liberally towards the purchase of a very large and fine-toned Bell for that Church, whilst one of their members contributed £12 10s to that excellent object, in addition to a like sum for the purchase of appropriate hangings for the Reading-desk, Pulpit, and Communion Table, together with a beautiful fair linen cloth for the same. The members of the Church at Thorold have this year, for the first time, been called upon to contribute to the support of their Church in the shape of pew rents, and have exhibited very commendable readiness to respond to

this call. Notwithstanding these increased calls upon the people and their decreased ability to meet them, it is believed that had we been able to obtain the services of a Travelling Missionary for the destitute parts of the district, a far larger sum could have been obtained. Whilst, therefore, the Chairman of the Parochial Committee regrets that he cannot make a more favourable report, yet he thinks he has shewn some reason for not being able to do so.

DUNNVILLE—The Committee report as collected £11 Gs. 10½d.

FORT ERIC—The Parish of Fort Erie reports the sum of £11 10s. 7½d.

JORDAN—This Parish reports the sum of £11 9s. 4d. The Rev. Secretary was kind enough a few weeks since to preach two sermons (at Jordan and the Port) explanatory of the objects of the Church Society, and well calculated to excite a greater interest in its prosperity. In addition to the sum above mentioned, this parish, which is probably one of the weakest in the District, subscribed during the past year £60 towards the stipend of the clergyman, and other church objects. The offertory collections, at St. James, Port Dalhousie during the same period amount to about £18 additional. The Treasurer's report is subjoined hereto.

In thus bringing their report to a conclusion, your Committee cannot omit expressing an earnest hope that the members of the Church will use increased efforts in the cause of Christ, to give for the extension of the same, more liberally, for the time to come, of that which God has given them. For after all they can only say, "Of thine own we have given Thee. That great spiritual destitution exists not only in more distant settlements, but every where around us, is too apparent. "The harvest truly is plenteous, but the labourers are few." Many for whom Christ died, are born, live, and die without God in the world. Let a sense of this appeal with its full force to every heart, and there will be found little time and less inclination for any thing but what may conduce to the salvation of those whose spiritual wants call upon us for relief. "Freely ye have received, freely give."

All which is respectfully submitted,

CHARLES LEYCESTER INOLES,  
Secretary.

Niagara, March, 1857.

Resolution I. Moved by Col. Kingsmill, seconded by the Rev. W. McMurray, D. D., and

Resolved, That the report now read be adopted, and that it be printed in the Ecclesiastical Gazette, and 200 copies ordered for distribution among the Parochial Branches.

Resolution II. Moved by the Rev. J. Flood, seconded by J. Simpson, Esq., and

Resolved, That this Society acknowledge the hand of Him without whom nothing is strong, nothing is holy, in all its undertakings.

Resolution III. Moved by Rev. T. B. Fuller, D. D. R. D., seconded by Captain Baxter, and supported by Rev. H. Phillips, and

Resolved, That this Society rejoice in the progress the Church is making towards the attainment of full Synodical action, and earnestly prays that She may receive, that which She now, more than ever demands, the increased and well sustained efforts of her members, to obtain for her permanence and stability in our land.

Resolution IV. Moved by Rev. T. S. Kennedy, Sec. Par. Soc., seconded by Rev. A. Dixon, M. A., and

Resolved, That this Society demands from the members of the Church in this Denary increased support for the sustaining and extending its Mission, particularly those to the Indians, as well as for the successfully carrying on the other branches of operation.

Resolution V. Moved by J. Powell, Esq., seconded by G. A. Clement, Esq., and

Resolved, That the thanks of this District Branch Association are due to the office bearers for their services during the past year; and that the Rev. T. B. Fuller, D.D., R.D., be requested to act as Treasurer, and that the Rev. C. L. Inglos, Secretary, for the ensuing year.

CHARLES LEXCESTER INOLES,  
Secretary.

#### REPORT

##### Of the Windsor Parochial Branch.

The last Meeting of this Parochial Branch was held on the happy day on which was laid the foundation stone of the Church now in course of erection in this village. Circumstances, which it would be out of place to refer to here, have delayed the prosecution of that work with the rapidity which we then ventured to anticipate. Yet, we trust, that early in the ensuing summer we shall be able to occupy it for the worship of God. In undertaking the erection of a building, which in its fair proportions, and ritual comeliness, as well as the lasting materials of which it is constructed, should be in some measure suitable to its holy purpose, the congregation incurred a very heavy charge; the Church here is, so to speak, but in its infancy; and whether we consider the number of Churchmen, or their means, it is evident that strenuous exertions on their part, and earnest self-denial, are requisite, before they can hope to see their purpose fully accomplished.

While their own urgent necessities are thus pressing upon them, it is not possible that they should extend to the wants of the Church at large that liberal aid which may be expected from members of older and wealthier congregations. Yet it must not be supposed that they are insensible to those wants, or regardless of the important objects which the Diocesan Church Society has in view. The collections for the special objects of the Society have increased in amount, and even the annual subscriptions, although several of the most liberal contributors have removed from the place, exceed those of last year. And it may reasonably be hoped that when the liabilities occasioned by the erection of the Church have been defrayed, the members of the Church in this place will be found willing to co-operate heartily and liberally with their fellow Churchmen throughout the Diocese, in promoting the success of a Society, the objects of which are so entirely in accordance with the principles of their holy faith.

#### EXTRACT FROM REPORT. COLLINGWOOD.

In presenting their first Report, your Committee are gratified in being able to announce a slight increase of £112s. 11d. over the amount contributed last year. When they consider the hardness of the times, and the local difficulties with which we have to contend, in consequence of the debt upon the Church, and in order to make up the sum of £150 guaranteed towards their clergyman's salary, they trust they have sufficient evidence of the interest felt in the Church's work of extension. The sum of £124s. 8d. has been collected up to this date. The Committee are unwilling to give up the principle adopted last year, of sending the whole amount to the Parent Society; yet from their really pressing wants, they are compelled to retain five pounds to purchase catechetical and other books for the Sunday School.

#### CREMORÉ.

It was impossible to hold a meeting here in consequence of the impassible state of the roads at the time appointed. The sum collected is inconsequence much less than that of last year. Only £33s. 6d. has yet been received. Many of those, however, who gave last year have not yet been asked;

and as the collectors have promised to renew their efforts so soon as the state of the roads will permit, it is hoped there will be as much at least obtained in the whole township as was sent in last year.

There are seven other stations at an average distance of 20 miles from Collingwood, which have been supplied with monthly services on a week day by the Missionary of this township. In each of these a large congregation would assemble, could service by any means be held on Sunday. As it is, after the third or fourth time, the attendance is for the most part very small.

#### PRESENTATION AT BATH, C.W.

[With great pleasure we insert the following letter addressed to the *Echo*, for a more consistent Churchman or indefatigable Missionary (so far as his physical strength will admit of) than the Rev. W. S. Harper, we have never met with in this Diocese.]

To the Editor of the *Echo*.

DEAR SIR—Persons are apt to underrate the labours of those self-denying men who gave up opportunities of worldly preferment—oftimes brilliant opportunities—to devote themselves solely to the preaching of the Word of Life; even professing Christians who have identified themselves with Churches, frequently fail to appreciate the toil of its Pastors. When such forget the struggles of the Clergyman, it is not surprising that he is regarded with indifference by the mass of the professedly unregenerate.

But it is gratifying in these days of selfishness and irreligion, to see that all efforts to elevate the spiritual condition of the people are not suffered to pass unnoticed.

I have much pleasure, Dear Sir, in making known through the *Echo*, that the Rev. W. S. Harper of this place has received tangible evidence that his ministry has been appreciated. On Easter Sunday morning a Surplice and Scarf, accompanied by a Purse of Money, were presented to the Rev. Gentleman. The manner in which the presentation was made evinced great delicacy and good taste in the donors. The gift was laid on the Altar and termed as it were an Easter Offering. Mr. Harper had not received the slightest intimation of the intended presentation, and was as much surprised as gratified at the action of his Congregation.

On Easter Monday a vestry meeting was held, at which a vote of thanks to Mrs. Harper for her long and unremunerated services as Organist was passed, and at the same time she was presented with a handsome Melodeon.

Yours, &c. &c.

Bath,  
14th April, 1857.

CHURCHMAN.

#### TRINITY COLLEGE, TORONTO.

The Annual Examination for Matriculation and for Scholarships will commence on Monday, 28th of September, 1857.

The following Scholarships will be open to competition:—

Four Scholarships, tenable for three years—viz, one of thirty pounds currency, per annum; one of twenty-five pounds, and two of twenty pounds, open to all candidates for Matriculation who have entered into their seventeenth year.

The holders of these Scholarships will be required to attend Lectures and Examinations in the Arts Course.

All persons presenting themselves for Examination must produce testimonials of good conduct. Candidates for Matriculation must have entered on their sixteenth year.

The subjects for Examination may be learned by application to the Provost of Trinity College, who

will furnish any other information that may be required.

One Wellington Scholarship, of the annual value of fifty pounds currency, tenable for two years, and one Bishop Strachan, and one Allan Scholarship, each of the annual value of thirty pounds currency, and tenable for three years, will be awarded to Students, commencing their College course in October next, according to the result of the yearly Examination in the following June.

N. B.—Students entering Trinity College in or after October next, and intending to study for Holy Orders, will be eligible as candidates for Divinity Scholarships either after having graduated in Arts, or after having spent at least one year in the Arts Course, provided, in the latter case, that they have entered on their twenty-second year, and have been considered qualified for entering the Theological Class.

Four Divinity Scholarships, one of thirty pounds currency per annum, two of twenty-five pounds, and one of twenty pounds, tenable for two years, will be awarded annually.

The following Circular has been addressed by the Lord Bishop to the Clergy of the Diocese:—

Rev. Sir, The Church Society has recently ascertained that it possesses the privilege of procuring Bibles, Testaments, Prayer-books, and other Books and Tracts, from the Society for Promoting Christian Knowledge, in England, at members' prices. As, therefore, the previous arrangements for the supply of Books and Tracts have not been found to work well, the Society has determined to endeavour to avail itself of this privilege, in the hope that by so doing it may enable the Clergy and other members of the Church to obtain, on very advantageous terms, such books as they may require for Schools or other charitable purposes.

To accomplish this end, the Book and Tract Committee of the Church Society has been authorized to obtain and manage a separate Fund, which will be kept distinct from the other Funds of the Society, in order to avoid the former errors of management of the Church Depository.

In order that the Committee may commence its operations, a special contribution is required, as the Books procured from England must be paid for when purchased. I therefore invite you to solicit the assistance of your Parishioners for this object in such way as may seem to you most expedient, and with as little delay as possible, as it is very desirable that an order for Books should be transmitted to England forthwith. The amount collected may be remitted to the Secretary of the Church Society.

It is intended that eventually all subscribers of 12s. 6d. or upwards to this branch of the Society's funds should be allowed to purchase Books at a reduction from the ordinary cost; but for the first year we shall not be in a position to give them this privilege.

I am, Rev. sir, your faithful servant,

JOHN TORONTO.

## COURT OF APPEAL.

## THE RECTORY CASE.

## JUDGMENT OF CHIEF JUSTICE ROBINSON.

The British Statute 31 Geo. III., ch 31, provided for the support of a Protestant Clergy in Upper and Lower Canada, by directing a reservation or allotment to be made for that purpose out of the then ungranted lands of the Crown within each of the said Provinces, which reservation was to be in a proportion, as nearly as could be estimated, equal in value to the seventh part of the lands which had theretofore been granted, and of such lands as should thereafter be granted within each Province respectively.

The 37th clause of the same statute enacted that the rents, profits and emoluments which should at any time arise from such lands so allotted and appropriated, should be applicable solely to the maintenance and support of a Protestant Clergy, within the Province in which the same shall be situated.

The 38th clause provided for turning this allotment of the lands to account in supporting a Protestant Clergy; and as the question brought before us in this appeal mainly turns upon that clause, I shall give it in its very words.

And be it further enacted by the authority aforesaid that it shall and may be lawful for his Majesty, his heirs or successors, to authorise the Governor or Lieutenant Governor of each of the said Provinces respectively, or the person administering the Government therein, from time to time, with the advice of such Executive Council as shall have been appointed by his Majesty, his heirs or successors, within such Province for the affairs thereof, to constitute and erect within every township or parish, which now is, or hereafter may be formed, constituted, or erected within such Province, one or more Parsonage or Rectory, or Parsonages or Rectories, according to the establishment of the Church of England, and from time to time by an instrument under the great seal of such Province, to endow every such Parsonage or Rectory with so much or such part of the land so allotted and appropriated as aforesaid, in respect of any lands within such township or parish, which shall have been granted subsequent to the commencement of this Act, or of such lands as may have been allotted and appropriated for the same purpose by or in virtue of any instructions which may be given by his Majesty in respect of any lands granted by his Majesty before the commencement of this Act, as such Governor, Lieutenant Governor, or person administering the Government, shall, with the advice of the said Executive Council, judge to be expedient under the then existing circumstances of such township or parish."

The 39th and 40th clauses contain provisions not directly bearing upon the question to be determined by us, but applying to the presentation of incumbents or ministers of the Church of England to such Parsonages or Rectories, the rights they shall enjoy, the duties they are to perform, and the Ecclesiastical jurisdiction to which they are to be subject.

And the 40th and 41st clauses provide that the Legislature of each Province shall have the power, under certain restrictions, to vary or repeal these enactments for the maintenance of a Protestant Clergy; for the erecting and endowing Parsonages or Rectories, and respecting the presentation of incumbents, and their rights and duties.

To return to the 38th clause, it will be seen that the effect of that clause is to make it lawful for his Majesty to authorise the Governor or Lieutenant Governor of each Province, from time to time, with the advice of his Executive Council,

to constitute or erect the Parsonages or Rectories spoken of; and by an instrument under the great seal of such Province, to endow every such Parsonage or Rectory with so much of the lands reserved in respect of the lands granted within the Township or Parish in which such Parsonage or Rectory has been established, as the Governor or Lieutenant Governor, with the advice of his Executive Council, shall think fit. The statute does not of itself direct or allow the Governor of either Province to create Rectories, or endow them; but it empowers his Majesty to give to the Governor authority to do both or to do either.

On the 16th of January 1836, during the administration of Major General Sir John Colborne, Lieutenant Governor of Upper Canada, letters patent were issued under the great seal of that Province, and like other letters patent, in the name of the Sovereign, setting forth the ecclesiastical arrangement by which Upper Canada had been made part of the diocese of the Bishop of Quebec, and also the provisions of the British statute 31 George III., chapter 31, respecting the constitution of Parsonages or Rectories, and then proceeding as follows:—"And whereas we," (that is our late Sovereign King William the Fourth, in whose name the patent issued), "having due regard to the spiritual welfare of all our loving subjects resident within the Township of York, in the Home District (of Upper Canada), and being desirous of making a permanent provision for their instruction according to the doctrine and discipline of the Church of England, and also for the support of a Protestant Clergyman, duly ordained according to the rites of the said church here, pursuant to the provisions of the said recited act, and by and with the consent and advice of our Executive Council of our said Province of Upper Canada, determined to erect and constitute, and by these presents, and by and with the advice and consent aforesaid, do erect and constitute a Parsonage or Rectory at the City of Toronto, within the said Township, according to the establishment of the Church of England, to be hereafter known, styled, and designated as the first Parsonage or Rectory within the said Township of York, otherwise known as the Parsonage or Rectory of St. James, and by virtue of the same authority, and by and with the advice and consent of our said Executive Council, we do hereby command that there shall be henceforth, and for ever, set apart out of the lands which we now hold in our said Province, by virtue of our royal prerogative, certain parcel or parcels of land situated in the said township, composed of—(here specifying the lands)—as a glebe and endowment to be held appurtenant with the said Parsonage or Rectory; we intending, and willing by virtue of our royal prerogative, forthwith to present an Incumbent or Minister of the said established Church of England to the said Parsonage, so (hereby) created, and constituted as aforesaid, with its appurtenances; saving nevertheless to ourselves the right of hereafter erecting and constituting one or more Parsonages or Rectories in the said township. Given under the great seal of our Province of Upper Canada, Witness our trusty and well-beloved Sir John Colborne, K. C. B., Lieutenant Governor of our said Province and Major General commanding our forces therein, this 16th day of January, in the year of our Lord, 1836, in the sixth year of our reign."

Into the Parsonage and Rectory thus constituted, one of the defendants, the Rev. Mr. Gravel, has been inducted not being, (as we all necessarily know,) the first incumbent, and after the lapse of more than sixteen years, this suit has been brought, not to call in question on any ground the validity of his title to the enjoyment of the rights or emoluments of the Parsonage or Rectory,

but to try the validity of that act of the Governor of Upper Canada by which the Parsonage or Rectory was created.

An information in the name of the Attorney General was filed in August, 1852, which was answered in January following. Whatever may have been the cause of the delay, the suit was not heard till September, 1855, when the Court of Chancery, by the unanimous opinion of the three Judges, sustained the validity of the Patent creating and endowing the Parsonage or Rectory; and dismissed the information with costs.

This judgment being appealed from, the case was argued before us at the sittings of this Court in December last. The suit, it is well understood, has been instituted by the Crown, not for the purpose of attacking this particular Rectory, but in order, as we are told in the argument, to have certain questions of general interest settled by a judicial decision.

Forty-four Rectories, it seems, were at the same time created in Upper Canada by the Lieutenant Governor, Sir John Colborne, with the consent of his Executive Council, by patents similar to that which is set out in the present case; and they have been endowed in all, I think, with somewhere between 15 and 20,000 acres of the two or three millions which had been set apart under the British Statute, 31 Geo. 3, for the support of a Protestant Clergy.

The objections which have been taken to this measure of the Colonial Government are stated as follows, in the reasons of appeal. It is maintained that the Judgment of the Court of Chancery in favour of the defendants is erroneous.

1st. Because the Lieutenant Governor, Sir John Colborne, had not at any time authority to issue the patent in question, or to establish the said Rectory of St. James, in the Township of York, or to endow the same with the lands contained in the said Patent.

2nd. Because if he ever had such authority it was, before issuing the Patent, revoked, nullified, or suspended expressly, or by implication.

3rd. Because the issuing of the Patent and the erection and endowment of the Rectory, at the time it took place, "were all against the mind and intention of his Majesty and his Government."

4th. Because the transactions complained of took place under such circumstances of mistake as are sufficient to avoid the Patent.

5th. Because the Patent is void for not defining the boundaries of the Parish, and for not naming the grantee.

These are the objections; and first us to the authority to the Governor. In order to see upon what foundation Sir John Colborne's authority in this matter stood, we are to consider first the statute 31 Geo. III., chap 31.

2nd. The Commission to Sir John Colborne, as Lieutenant Governor of Upper Canada, (page 98 of the evidence), which empowered him, during the absence of the Governor General from Upper Canada, to execute in the Province the powers of the Royal Commission to the Governor General for the time being.

3rd. The Commission to Lord Gosford, who was the Governor General at the time when Sir John Colborne, as Lieutenant Governor, erected and endowed these Parsonages or Rectories—(page 71).

4th. The King's instructions which accompanied the Commission to Lord Gosford—(page 215).

5th. The instructions to his predecessor, Lord Aylmer, to which instructions Lord Gosford was referred—(page 214).

6th. The instructions to Lord Dalhousie, to which Lord Aylmer was referred—(page 194)—especially the 47th.

These instructions are a mere transcript of the body of instructions under which Sir George



Provost administered the Government in 1811, and I think all of them, except such as were framed to meet the requirements of statute 31 Geo. III., chap. 31, were of a much earlier date than the statute.

The Commission to Sir John Colborne, as Lieutenant Governor of Upper Canada, is printed in page 98 of the evidence.

It shows us that we are to look at the Royal Commission to the Governor General for the time being, in order to find what powers could be exercised in his absence by Sir John Colborne as Lieutenant Governor.

The Commission to Lord Gosford is set out in page 71, and some following pages; it authorised (page 75) Lord Gosford, with the advice of the Executive Council for each Province respectively, from time to time to form, constitute and erect townships or parishes within the said Provinces, and also to constitute and erect within any township or parish which then was or thereafter might be formed within the said Provinces, one or more Parsonage or Rectory, or Parsonages or Rectories, according to the establishment of the Church of England, and from time to time by an instrument under the great seal of the said Provinces respectively, to endow every such Parsonage or Rectory with so much, or such part of the said land so allotted as by the said Act (31 Geo. III., chap. 31) is mentioned, in respect of any lands within such township or parish, which shall have been granted subsequent to the commencement of the same acts, or of such lands as may have been allotted and appropriated for the same purpose by, or in virtue of any instructions which shall be given by his Majesty in respect of any lands granted before the commencement of the said act, as the Governor General, with the advice of the Executive Council of such Province, shall judge to be expedient under the existing circumstances of such townships or parish, "subject nevertheless (the Commission adds) to such instructions touching the premises as shall or may be given to you by us under our signet and sign manual, or by our order in our Privy Council, or through one of our principal Secretaries of State." And then the Commission proceeds thus:—"And we do also by these presents authorise and empower you to present, subject to the provisions in the above mentioned act in that behalf, to every such Parsonage or Rectory, and to every Church or Chapel, or other ecclesiastical benefice according to the establishment of the Church of England, within either of the said Provinces, an Incumbent or Minister of the Church of England, who shall have been duly ordained according to the rites of the said church, and to supply from time to time such vacancies as may happen of Incumbents or Ministers of the said Parsonages, Rectories, Churches, Chapels or benefices, or any of them respectively."

I find nothing else in the Commission to Lord Gosford which bears particularly on the subject of erecting or endowing Parsonages or Rectories in Canada.

But the Commission contains also this clause—"And in case of your death or absence out of our said Province of Lower Canada, we do by these presents in either of such cases give and grant all and singular the powers and authorities herein to you granted, to our Lieutenant Governor for the time being of such Provinces respectively, or of either of them, as the case may be."

If we compare with the Statute 31 Geo. 3, chap. 31, this commission to Lord Gosford, which, in the absence of any royal instructions to the contrary, was to be the guide of Sir John Colborne's conduct in his government, we shall find that the passages which I have extracted amount to much the same thing as a mere direction or authority to him to carry those provisions of the act into effect which related to the erection

and endowment of Parsonages and Rectories, and the presentation of Incumbents. But there are two peculiarities in the commission on which points have been raised in the discussion of this case

1st. The Statute 31 Geo. 3, gave no directions respecting the formation of parishes or of Townships: It mentioned them as divisions of territory which it was assumed did then exist or might thereafter be created in both or either of the Provinces. But the commission to Lord Gosford we see authorises his Lordship, with the advice of the Executive Council, &c., "to form, constitute, or erect townships or parishes within the said Provinces."

2ndly. The statute merely makes it lawful for his Majesty "to authorise" the Governor, &c., to erect and endow Parsonages or Rectories, not expressly saying that such authority, when once given, is to be subject to instructions that may be afterwards given by his Majesty to the Governor. The commission to Lord Gosford, however, as we see, did in express terms make the authority which his Majesty conveyed to him in regard to these matters, subject to such future instruction touching the premises as shall or may be given to the Governor under his Majesty's signet and sign manual, or by his order in his Privy Council, or through one of his Majesty's principal Secretaries of State.

I am only pointing out this diversity in the language without saying at present whether it does, or does not, create any difference in substance.

Then as to the Royal instructions to which Sir John Colborne was bound to conform, none are shown to have been addressed to himself, personally, but Lord Gosford, whose commission and authority he was to execute in his absence, was referred for his guidance to the instructions which had been given to his predecessor, Lord Aylmer, which again we see were in reality the same as those which had been communicated to a former Governor-General, the late Lord Dalhousie.

This body of instructions, which has been handed over by one Governor General to another, is admirable for the judgment and care with which it was framed. It is an exact transcript of the Royal instructions which accompanied the commission to Sir George Provost, in 1811; and I have no doubt that with some exceptions they are to be traced back to a period long antecedent to the passing of the Statute 31 Geo. 3, chap. 31.

The instructions sent to Canada after the passing of the act, were necessarily somewhat modified, to suit its requirements; but in the main they were, I have no doubt, the same that had for a long period before accompanied the Royal Commissions to the Governors of Colonies.

The articles which relate to religion and religious establishments are the 11st and twelve following articles; none of which it appears to me have any legal bearing upon the questions raised in this suit. I refer, however, to the 47th article, because it was a good deal adverted to in the argument, it runs thus "you shall recommend to the Legislative Council and General Assembly of the Province of Upper Canada, to settle the limits of parishes in such manner as shall be deemed most convenient."

I take that to be probably mere repetition of an article, which has long formed part of the code of Royal Instructions; and that it was not inserted with a view to any peculiarity in regard to the erection of parishes supposed to have been created in Canada by the Statute 31 Geo. III. I infer this, because we know that in many of the colonies, as for instance in Virginia and South Carolina, while they were British Colonies; in Nova Scotia, and, I believe in our West India Islands, Acts of Assembly were passed from time

to time dividing the colony into parishes; and Mr. Stokes, in his work on the British Colonies, published in 1783, tells us that in most of the colonies before the civil war (except in the New England Provinces, where the Independents had the upper hand), an Act of Assembly was passed to divide the colony into parishes, and to establish religious worship therein, according to the rites and ceremonies of the Church of England.

It seems to have been left to the Colonial Legislature so to create the parochial divisions in such manner as it might seem to them would best accommodate the inhabitants; but I do not imagine that things took that course because it was considered that parishes could not be constituted by his Majesty alone in the exercise of his Royal Prerogative; and there seems no ground whatever for supposing that the 47th article of the Royal instructions was framed with any idea of carrying out what was supposed to be required by the Statute 31 Geo. III.; for that act makes no provision whatever respecting the formation of parishes, *eo nomine*, but provides for the creation and endowment of Parsonages or Rectories in parishes or townships.

There is nothing to be noticed, I think, under the head of instructions, or authority, besides what I have stated, except that we have some account in the documents before us of an instruction having come from the Secretary of State to Mr. President Smith, dated 2nd April, 1818, (conveying the authority of his Royal Highness the Prince Regent, for erecting "Parishes" (or Parsonages,) and Rectories in conformity to the Statute 31 Geo. III, ch. 31.

We have not before us the copy of that official document; but we have in evidence the following despatch from Earl Bathurst, then Secretary of State for the colonies, to Major General Sir Peregrine Maitland, dated 22nd July, 1825.

"Sir,

"I have received His Majesty's commands that you do, from time to time, with the advice of the Executive Council for the affairs of the Province of Upper Canada, constitute and erect within any township or parish which now is, or hereafter may be formed, constituted or erected within the said province, one or more Parsonage or Rectory, or Parsonages or Rectories, according to the establishment of the Church of England; and that you do from time to time by an instrument under the Great Seal of the said province, endow every such Parsonage or Rectory with so much, or such parts of the land so allotted and appropriated, as aforesaid, in respect of any lands within such Township or Parish, which shall have been granted subsequently to the commencement of a certain Act of the Parliament of Great Britain passed &c., (31 Geo. III, chap. 31) or of such lands as may have been allotted and appropriated for the same purpose, by or in virtue of any instruction which may have been given by his said late Majesty before the commencement of the same act, as you shall, with the advice of the said Executive Council, judge to be expedient under the existing circumstances of such Township or Parish.

"You shall also present to every such Parsonage or Rectory an Incumbent or Minister of the Church of England, who shall have been duly ordained according to the rites of the said Church; and supply from time to time such vacancies as may happen therein.

(Signed)

BATHURST."

It has been said of this formal and separate instruction, which was given in 1825 to Sir John Colborne's immediate predecessor, that it could not be acted upon by Sir John Colborne, because it was given by a Sovereign who was no longer reigning, and to a Governor who was not governing at the time of the Rectories being established.

This is an objection altogether distinct from the question whether by any thing that had taken place, between 1825 and 1836, this instruction could, in a court of justice, be held to have been cancelled either expressly or virtually. It turns altogether upon the legal effect upon official acts in a colony, produced by the demise of the Sovereign or by a change of persons in the office of Governor of the colony. Questions of that nature have, as we suppose, not unfrequently presented themselves; and from an early period a great deal of legal learning has been employed on both sides of the Atlantic in discussing them.

If it could be at any moment, (which under the circumstances it cannot be) to consider in the present case the effect of the change in the person of the Sovereign or of the Governor, or of both, upon an authority such as we are speaking of, I apprehend that upon a close investigation some difficulty would be found in coming to the conclusion that the authority of his late Majesty, King George the Fourth, to Sir Peregrine Maitland, to carry the provisions of an Act of Parliament into effect, had become legally of no force from the changes I have spoken of.

My own opinion at present, so far as I have formed one, is the other way. But the existence of a much later authority, equally explicit, and conveyed in a manner more formal, from the King who was reigning, to the Governor who was in office at the time the patents complained of were issued, makes it wholly immaterial to consider in what position Sir John Colborne's acts would have stood if this separate instruction to his predecessor had been his only authority.

Then with the statute 31 George III., chap. 31, before us, and with this evidence which we have, of the royal commissions to the Governor of Canada which issued after the statute, and of the Royal instructions which accompanied or followed them, we are called upon to determine whether it can be properly held, as it is contended by the Attorney General, "that the Lieutenant Governor, Sir John Colborne, had not at any time authority to issue the patent in question in this suit, or to establish the rectory therein mentioned, or to endow the same with the lands contained in the patent."

It is true that the 38th clause of the statute does not enact that it shall be lawful for his Majesty to constitute Parsonages, or Rectories, or to endow them; nor does it enact that the Governor of each Province, might do with the advice of his Council. But it makes it "lawful for his Majesty to authorise" the Governor of each Province, with the advice of his Council, to constitute and endow Parsonages, or Rectories; and under another state of facts it might have appeared rather a nice question for a court of justice to determine what degree of force it would be proper to give to the word "authorise," as used in the 38th clause; in other words what evidence of the fact of the Governor having been "authorised," it would be reasonable to call for, after a lapse of sixteen years and upwards, during which the Rectors had been in the enjoyment of their Rectories and endowments, and suffered to build upon, improve, and lease them, without any proceedings having been instituted in any court of justice to question their right.

The statute 31st George III., was very ably and carefully framed; the different objects to be provided for are systematically arranged; and there is a clearness and precision of language such as might be looked for from the eminent men by whom it is known to have been prepared. There are some of the clauses of that statute in which it is distinctly specified with what degree of formality his Majesty is to authorise his Governor, or Lieutenant Governor to do certain acts. Thus, in the 3rd, 13th and 14th clauses, it is provided that his Majesty may authorise the Governor "by an

instrument under his sign manual," to do the several things mentioned in those clauses.

In the 25th, 26th, 36th, 39th, and 48th clauses, in just the same form of expression as is used in the 38th clause, it is made "lawful for his Majesty to authorise the Governor," &c., without pointing out any particular form or instrument by which the authority shall be conveyed. And again the 8th and 31st clauses prescribe particular methods of making known his Majesty's permission, or his decision upon the matters to which they refer.

It is not probable that these variations in the language were accidental and undersigned. I think I see reasons for the diversity, and that it proves the careful discrimination with which the act was framed.

For instance Parliament, having by its direct legislative authority, constituted a Legislative Council for each Province, it was intended that the members of it should be such persons as his Majesty (and not his Lieutenant Governor) should think fit to appoint. The nomination was reserved to the Crown; and it was made necessary therefore, as in all such cases, that the selection should be manifested by some form of appointment.

So by the 13th clause, the foundation was to be laid of our representative form of constitution; and it seemed proper that the measures which were to be taken in the colony by the Lieutenant Governor for calling these provisions into operation, should be shewn by some solemnity of form to have emanated from his Majesty.

In all these cases, therefore, the authority from the Crown to the Governor is expressly required by the Act to be conveyed by an instrument under the sign manual.

By the eighth clause, it is enacted that a Legislative Councillor shall forfeit his seat if he resides out of the Province for four years continually, without the permission of his Majesty signified to the Legislative Council by the Governor. But by what formality, or in what manner his Majesty is to signify his permission is not stated in the Act.

No one, I suppose, would think of enquiring what foundation the Governor had for communicating his Majesty's permission.

Practically his announcing the permission in his Majesty's name, would be taken as proof that it had been given, or in other words would be accepted as a compliance with the Act.

In the 31st clause, which relates to disallowance of Bills passed by the Legislature, the disallowance is required to be expressed in an order of his Majesty in Council, and to be certified under the hand and seal of the Secretary of State. These solemnities are evidently proper, both in regard to the nature of the Act to be done, and also for the purpose of shewing by some written record of the precise day of disallowance, that it has taken place within the two years limited by the statute. So, also, in providing by the 48th clause for fixing the time when this important constitutional charter should come into force, it was made lawful for his Majesty, with the advice of his Privy Council, to declare, or to authorise the Governor to declare the date of the commencement of the Act in each Province.

That must be taken to imply, as I suppose, the necessity for an order in Council; a formality not unusual on similar occasions, and peculiarly necessary in this instance, since it could not, upon any general principle, have come within the sphere of duty of a colonial Governor, to fix the period of commencement of a British Act of Parliament. But with respect to those other clauses, in which, as in the 38th, nothing more is said than that his Majesty may authorise the Governor to do the acts mentioned in them, viz: the 25th, 26th, 36th and 39th clauses, they respect matters which are all of them of internal concern, and some of them

periodically recurring; and matters which, after the new Government should be organized and be in operation, it would, upon constitutional principles, have been competent for the representative of the Sovereign to deal with, by virtue of the Royal prerogative. One is not therefore surprised that the irregularity of such acts, when done by the Governor, in the name of the Sovereign, is not by the statute made to depend upon the existence of an instrument under the sign manual, or of an instrument executed with any other prescribed degree of solemnity.

Take for instance the constitution of the Rectories, under the 38th clause, which is the matter we have now to do with. If it had not been for public discussions and movements, not growing out of any such claim of interest in the subject matter, as courts of justice can recognize, we can see plainly enough that the Rectories might have existed without their validity being contested, from their establishment in 1836 to the year 1862, when this information was filed. Rectors would have been appointed, as indeed they have been, from time to time, throughout the whole period, notwithstanding the addresses and dispatches which are collected in the volume before us. The Rectors would not have been likely to demand rigid proof of the manner in which his Majesty had authorised the Governor to constitute their Rectories; but would, as we may suppose, have entered into possession of the lands which they found annexed to their livings, as endowments, and would have improved or leased them, assuming that all was right. And, if in 1852, when it seems this information was filed, after large sums of money had been expended by the Rectors or their lessees in buildings and improvements, the Colonial Government had either upon, or without, an application from either branch of Legislature, directed its Attorney General to call the legality of the Rectories in question, by filing an information for cancelling the patents, upon the mere ground of inability in the Rectors to produce an authority under his Majesty's sign manual, or in any other shape more formal, I do not believe that such a suit could have received much countenance either upon legal, or equitable principles.

We should not, in that case, have had (nor have we now,) the Sovereign complaining that the Patents had been issued in the name of her royal predecessor, but without his authority, and desiring on that account to abolish the Rectories, and dispossess the Rectors; but we should have had, as we now have, the Colonial Government praying a Court of Justice to bring things to that issue.

And when we look at the information itself, and all the documents submitted to us, we see very clearly that it is not because either the legislature or the Governor of Canada for the time being, advisedly denies the validity of the Rectories, or maintains that Sir John Colborne in the use which he made of the Royal authority, acted injuriously, or in error, that this proceeding is pending; but because one or both branches of the Legislature desires to have the question of validity determined.

A Court of Justice, however, can dispose of no question as a merely abstract, or speculative question, with a view to its bearing upon political considerations, and without regard to the legal interests that may be involved. They must assume that the suit is brought in order to accomplish the object prayed for; and must deal with it accordingly.

And if the question had been before us under such circumstances as I have supposed: that is, without any positive and direct evidence of authority having been sent to the Lieutenant Governor, we should have had to ask ourselves whether the Rectories could be cancelled, and the endowments resumed after such a lapse of time, on this ground only, that the Rectors could not produce evidence



of the Governor for the time being having been specially authorised by His Majesty to carry into effect the provisions of this public statute, to the extent he had done.

We should have had in that case many things to consider, into which I need not now enter, because an express authority from his Majesty to his Lieutenant Governor, to do what was done in his name, is shewn, and is relied upon; and the question we are to determine is whether that authority, considering all the circumstances that are brought before us, is sufficient to uphold the patent.

I may seem to have dwelt at an unnecessary length upon considerations, which it is clear this case will not turn upon, but it is because I have a strong sense of the inconvenience and injustice, and of the great public confusion which might follow, from giving an apparent countenance to an unreasonable construction and application of legal principles in cases of this kind.

When an act of Parliament provides, as in this case, that the Sovereign may authorise certain public acts to be done by the Governor of a Colony, without prescribing any particular formality as evidence of the authority, it does not seem to me to place such an act on any footing greatly different from those acts which upon principles of the common law, the Governor would be competent to perform, if not restrained by the Crown, in the general exercise of the powers inherent in him, in virtue of his commission: I mean not on a different footing as to the legal validity of the act, so long as the Sovereign in whose name, and by whose authority, it was assumed to be done, does not disavow it, and take measures within a reasonable period to resume what has been granted.

Individuals, or public bodies, whose rights may depend on the validity of the Governor's acts in such cases, can hardly be expected to be able at any distance of time to ascertain and prove what may have passed between the Sovereign and his representative.

I take it that such acts of Government, especially if not attempted to be disturbed until large and complicated interests have grown up under them, are not to be looked upon by Courts of Justice in the same spirit as they would in a case between individuals, look upon an appointment made in the execution of a power.

It would be proper in any such case to consider that the common law favours all benevolent purposes, such as provision made for the support and advancement of religion and learning, and upholds them where it can; and when, in consequence of restraining statutes, or of any imperfection in the manner of carrying out the pious or benevolent intentions, it is likely to fail of its effect, Courts of Equity frequently lend their aid to supply what is wanting, and endeavour to accomplish the end in view by a disposition as nearly in accordance with the arrangement intended as the law of the land will permit.

If, at this distance of time, the only objection taken were that nothing can be produced to shew a special authority actually given to Sir John Colborne to constitute these Rectories, and if we were called upon to determine what must be the effect upon the validity of his Public Act, of the mere absence of any positive proof of a special authority to the Governor, my impression is that we could not on that ground have felt ourselves warranted in disturbing the existing order of things. For it must be considered that this was not a thing done in a corner. The creating of 44 Rectories and the presentation, time after time, of as many incumbents, must have been acts perfectly notorious in the Province.

We know that in fact the measure was not passed over in silence; and if when the attention of the

Colonial Government had been called to the very point of the validity of the patents, steps were nevertheless not taken till after the lapse of ten or fifteen years for calling in question the rights held under them, the presumption that a signification of the Royal authority had been in some manner conveyed to the Governor, would be at least so far entertained, I think, that the Colonial Government itself could not be allowed to raise the question with any hope of success.

But it is more to our purpose to consider whether it is or is not shewn by the evidence that Sir John Colborne had in fact authority sufficient, under the 38th clause of the statute, for issuing the patent in question in this suit. The defendants affirm that he had; the Attorney General denies it.

As the statute says nothing more particular in regard to the authority to be given, than that his Majesty "may authorise the Governor," without saying how he may authorise him, room is left for the question as to whether a verbal authority to the Governor, conveyed either by his Majesty or through his Secretary of State, would be sufficient, or whether it must not be by some formal instrument.

But at least there need not be, nor could be any more formal method of giving the authority than by an instrument under the great seal of England; and the defendants contend that proof of such authority is given; and so no doubt it is, not only in the documents before us, but in the statements contained in the information—for though there is indeed an apparent inconsistency in the statements in this respect, yet it is plain how they are intended to be reconciled.

In the first place it is affirmed that this and all the other Rectory patents were issued without any authority or instructions to Sir John Colborne from the then Sovereign, King William the Fourth, under his sign manual, or by order of his Privy Council, or through any Secretary of State, or otherwise however, to constitute, erect, or endow the Rectory of St. James, or any of the other Rectories."

There could be no more complete denial than this of any authority from the Crown to Sir John Colborne in the matter; and yet a little further on in this information we are told that the authority of any Governor, or Lieutenant Governor of Upper Canada, was always conferred by Royal Commission, addressed to each at the time of his appointment, "which commissions always had been and were in the same form to every Governor, Lieutenant Governor, &c., and amongst other things purported to authorise such Governor, with the advice of the Executive Council, to erect Parsonages or Rectories in the terms of the 38th section of the said statute, and that the Commission to Sir John Colborne, which was from his late Majesty King William the Fourth, declared such authority to be subject nevertheless to such instructions, touching the premises, as should or might be given to him by His Majesty, under his signature, or sign manual, or by his Majesty's order in his Privy Council, or through one of his principal Secretaries of State."

The meaning of this, I presume, is that like his predecessors Sir John Colborne was made Lieutenant Governor of Upper Canada, by a commission which referred him to the powers, authority, and instructions contained in the commission to the Governor General, of both provinces for the time being, which, during the absence from Upper Canada of the Governor General, he, as Lieutenant Governor, was authorised to execute in the name of His Majesty.

In January, 1836, the patent in question was issued by Sir John Colborne, while Lord Gosford the Governor General was resident in Quebec, and administering the Government of Lower Canada under a commission dated in June 1835, and which

we see from the copy of it laid before us did contain precisely such authority, as it is admitted in the information, the Governor of Upper Canada had always held. Not that the commission to any of the Lieutenant Governors of Upper Canada had contained these words, as the information would seem to impart; but that they were to be looked upon as in effect incorporated in the commission which authorised them to execute the powers committed to the Governor General for the time being.

The terms in which His Majesty authorised Lord Gosford to erect and endow Parsonages are in exact accordance with the Statute; and the authority being under the Great Seal of England, and given by the commission which was in force when the act was done, it cannot be material to consider what might or might not otherwise have been done, under the separate instructions sent by Lord Bathurst to the Lieutenant Governor of Upper Canada, in July, 1825, or under any other authority or instruction more or less formal than that. If any previous authority differed nothing from that expressed in the commission to Lord Gosford, then it cannot by possibility be material. If, on the other hand, it differed in substance, then the latest declaration of the Royal pleasure conveyed in the most authoritative form, is that which must govern. For I do not assume that parliament did not mean that when authority should be once given by His Majesty to the Lieutenant Governor under the 38th clause, it should be an authority incapable of being recalled or modified.

I do not mean that it could be annulled, so as to make void what had been done under it; but that a restraint might be placed upon the Governor in regard to any further proceedings upon it.

It has been taken for granted in framing the Royal Commission to Lord Gosford, that the authority would be subject, or at least might be made subject to such instructions touching the matter, as might afterwards be given by His Majesty; and so I think it might; but it is not shewn or asserted that between the issuing of the commission in June, 1835, and the issuing of the Rectory Patents in January, 1836, any thing had been done to cancel or abridge the authority given in this respect to Lord Gosford; and all that remains to be considered, is whether the fact of the authority being conveyed, *subject* to further instructions, makes it as has been contended an incomplete authority; one that can only be acted upon in case some further instructions shall come; or whether it be not the more obvious meaning and effect of those latter words that His Majesty reserved to himself and his successors, the power of interposing, by revoking the authority, or by sending such instructions as might in some particulars narrow the discretion of the Governor, as for instance in regard to the number of Rectories, or the extent of the endowments.

I fully concur in the view taken of that point in the Court below. It is plain, I think, that under the authority given in Lord Gosford's commission the Lieutenant Governor of Upper Canada could, without further instructions, legally proceed in carrying out the provisions of the statute in regard to Rectories and endowments, until he should be checked by some subsequent instruction.

In the royal instructions accompanying the commission to the Governor General, he is told that he is to administer the Government according to the power and authority given by his commission, and by those instructions; and according to such further power and authority as he shall at any time hereafter receive, under his Majesty's signet or sign manual, or by order of his Majesty in his Privy Council.

And in fact in the commission itself which issued to Lord Gosford, we find that in regard to all other matters, as well as this of constituting Rectories,

he is told that he is to execute his powers according to the directions contained in his commission, and in the Statute 31, Geo. 3, and according to the instructions which were then given to him, "or which may from time to time be hereafter given to him under his Majesty's sign manual, &c."

Those last words only express what would at any rate have been implied; and if this could be held to have the effect of keeping all his authority in abeyance till he should receive some further instructions, which might never come, there would be little use in the commission and instructions delivered to him.

It is not an uncommon thing for Legislative bodies, when they pass acts creating Joint Stock Companies with corporate powers and privileges, to reserve to themselves the power of modifying by future acts certain provisions of the charter.

This was done in order to give fair warning to persons taking stock, of the position in which they will stand; and that it may not be imputed to the legislature that they have acted improperly by the stockholders if they afterwards make any substantial alteration in the terms of the charter.

So also in many acts of Parliament we find a clause reserving the power of amending it by any act to be passed during the same session.

But it was never imagined that such reservations had the effect of making the first Statute inoperative until some later Statute on the subject had passed; in other words, of suspending it indefinitely, for there might be no further occasion found for recurring to the subject.

This seems to be so plain that I should have treated the point as one too clear to be discussed, which is the view taken of it in the Court below; but in the argument before us, it was insisted upon with so much earnestness that I cannot doubt it was meant seriously to be relied on.

When it is stated in the information that Sir John Colborne issued the Patents without any authority or instructions from his Majesty, what is meant, I think, is that he issued them without any other authority or instruction than such as was in its terms suspended until he should receive further instructions; and that no further instructions ever came.

But this is surely taking an incorrect view of Lord Gosford's Commission. And if this cannot be denied, as I think it cannot, then it is abundantly proved, and is in fact admitted in the information itself, that so far from the Lieut. Governor of Upper Canada never having been authorised to grant and endow Parsonages or Rectories, he really was at no time without such authority.

The 2nd, 3rd and 4th grounds of objection, as stated in the reasons of appeal, all turn upon the effect of the despatches, addresses, and other documents in evidence, as being equivalent to a recall of the authority given in Lord Gosford's Commission to act upon the Statute in erecting and endowing Rectories.

The effect that could fairly be given to the correspondence and documents relied upon for supporting that point in the argument, was carefully considered, and is clearly stated by the Learned Judges of the Court of Chancery, in whose view of the matter I entirely concur.

I shall therefore say but little upon it.

As to this measure of the Colonial Government in 1836 being "against the mind and intention of His Majesty's Government," if that were the fact, it could not be made to affect the validity of the patent on any principle of law or equity, unless it were shown that before the patents were issued, the Lieutenant Governor had been put in possession of the pleasure of his Majesty, decidedly expressing that his royal authority which had been given, should not be acted upon; but was to be considered as annulled or suspended.

The Commission to Lord Gosford, and the instructions to which it referred, were the rules by which Sir John Colborne was to govern himself in his administration; and they were the latest declaration of his Majesty's will on the subject, which we are discussing; the latest, I mean, of which we have any knowledge.

They came to the Province long after those despatches of the Secretary of State written in 1832, which it has been urged ought to have given the Governor of Upper Canada to understand, that the power given by Statute to establish and endow Rectories should be regarded as having been withdrawn, or suspended.

Without desiring to add to what has been observed in the Court below, upon the reasonableness of any such inference being drawn from the correspondence referred to, it seems obvious to remark that the question is not what Lord Goderich or Lord Glenelg thought or wrote in 1831, or 1832, but what was the expressed intention of his Majesty's Government up to, and at the time of the Patents being issued, (which was in January, 1836,) of which there could be no better evidence than the commission to Lord Gosford in 1835, there being nothing in the mean time that I can discover in the evidence to indicate a withdrawal of the express authority given by that commission.

As to the alleged mistake on the part of the Government of Upper Canada, in misconstruing the terms of Lord Goderich's despatch of 5th April, 1832, any misapprehension of the kind supposed could signify nothing unless it could be properly made to affect the validity of the act done.

The Governor of Upper Canada cannot be supposed to have been ignorant in 1835, of the Commission and instructions under which he was then daily acting.

In a legal point of view those were more material than a correspondence with the Secretary of State, which had taken place more than three years before, and whatever authority those formal acts of Government contained, can upon clear legal principles, which are constantly acted upon, be advanced in support of the act, even though they were absent from mind of the person acting at the moment, which we have no right to conclude these were.

It was made necessary by the 38th Clause, that the Governor should advise with the Council before he acted in this matter. This, it is clear from the evidence, he did; and if it were indispensable that the Council should concur in opinion with the Governor upon the steps to be taken, it is clear that they did so concur.

It would be a dangerous doctrine to hold that the validity of any act required to be done with the advice of the Council, should be liable to be questioned in a Court of Justice many years afterwards, upon an allegation that the Council, in making up their minds upon it, appeared to have been influenced by a misconception, either of law or fact; especially when the despatch or document which they are supposed to have misapprehended, was fully before them, and called for, and could receive the same deliberate consideration from them as it can since have received from others.

If we read the despatches alluded to, and if we suppose that the Executive Council was certainly under the impression that Lord Goderich meant that despatch to be in itself, and without reference to any other document or correspondence, an authority to create and endow Rectories, rather than an approbation of what Sir John Colborne had suggested on that head, and an expression of a willingness to concur with him in approving the condition of the Rectors, they would seem to have misunderstood the letter. But the Council can hardly have been ignorant, (and we may assume they were not) that authority of the most formal

kind to erect and endow Rectories was already in the possession of the Government, and of a recent date, I mean in the commission to the Governor General issued six months before.

And unless the Council had some other reason for imagining that the Secretary of State was unfavourable to the measure, they were certainly not likely to receive such an impression from perusing the despatch of 5th April, 1832; for they could scarcely have imagined that Lord Goderich was contemplating with satisfaction the proposed endowment of Rectories that neither had been, nor were ever likely, to be established, or that he was desirous of aiding by his suggestions in making the endowments more valuable, in order to increase the future comfort of Rectors, who were to have no real existence.

A great deal of the evidence before us consists of proceedings in the House of Assembly; but the votes or resolutions or addresses of either branch of the Legislature can furnish no ground of legal argument on a question of right to property; however they may seem to exhibit the temper and feelings of the time.

Such of them as were of later date than the issuing of the Patent before us, can have no possible effect upon the question of its legality; and such as preceded it, could not in themselves be material, unless they led to some such act of his Majesty's Government as can affect the question by its legal operation; and then it would be that act, and not what moved to it, that it would be the duty of the Court to consider.

The communication which came from the Secretary of State in November, 1831, if it had led to legislative measures such as his Lordship advised, would no doubt have placed the whole subject upon a new footing, and produced a decisive change; but as his Lordship's recommendation was not adopted, it ended in nothing; and his Lordship, it is plain from the subsequent despatches, considered himself in consequence relieved in a great measure from responsibility as to the issue of the question, and absolved from the necessity of making further attempts at a settlement.

And after all there is this fact, that his Majesty's commission under which the Government of Canada was conducted in 1836, contained an express authority to the Governor in the very words of the act to constitute and endow Rectories; which authority could not be affected by any thing that is shown to have proceeded from His Majesty between the time of the commission being sealed, and of the authority which it contained being acted upon by Sir John Colborne.

Within that short period (about seven months) a letter was written by Lord Glenelg, [that of 5th December 1835,] which treated of the Clergy Reserves, and a variety of other matters; but it contained no restriction upon the constitution of Rectories, or the endowment of them; and announced no system of policy on the subject, neither did it make any allusion to the authority which a few months before had been given in unequivocal terms by his Majesty's Commission to Lord Gosford.

And besides this despatch being addressed to Sir John Colborne's successor after his recall, could not have been seen by either of them till after the Patents had issued.

On a review of this part of the case, I will add to what I have said that in pages 64 and 65 of the evidence we see the considerations stated, which induced Sir John Colborne to desire the Rectories should be established, in the form in which they were established, and the date of this document then printed, 5th May, 1835, shows that the measure which he carried into effect in January, 1836, was not hastily resolved upon, but had been long in preparation; and that he had, as he asserts, the

approbation of the Secretary of State signified to him in 1832. We see also in page 70 of the evidence that these communications of Sir John Colborne with his law officers, were laid before the Executive Council in June, 1835, and from these the Council must have seen that Sir John Colborne had expressly affirmed that the course which he desired to pursue was sanctioned by the Secretary of State for the Colonies in 1832.

The Lieutenant Governor may, or may not have alluded in that passage to Lord Golesch's despatch of 5th April, 1832, which it is surmised was misapprehended by the council; but it is clear that the executive council had the declaration of Sir John Colborne in unequivocal terms that the measure had been approved of by the Government in England; and if they did suppose at the time that his Excellency certainly referred to that despatch, and to no other, they could easily see, that with the knowledge which he must necessarily have had of the contents of his own despatch, to which that was an answer, he might well be able to say that he had received in that despatch the sanction of the Secretary of State to the measure which he proposed to adopt.

And it certainly is very material upon this part of the case to notice the evidence, which is to be found in the documents submitted to us, of the acquiescence subsequently expressed by his Majesty's Government in this moderate provision which had been made for a limited number of clergymen, and of the declaration of the Assembly in 1837, that "they regarded as inviolable the rights acquired under the patents, by which Rectories had been endowed, and that they could not either invite or sanction any interference with the rights thus established."

Nor can it be left out of view that in 1841 the royal assent was promulgated to an act passed by the two branches of the Legislature in Upper Canada, which had been specially reserved for her Majesty's consideration (3 Vic. chap. 74), in which various provisions are contained respecting Parsonages and Rectories and their incumbents, when certainly nothing of that kind existed in the Province, otherwise than as they had been constituted by the patents issued by Sir John Colborne, in 1836.

The last objection taken against the validity of the Rectories is one of a strictly legal character. The patent before us, it is insisted, is void in law, because it does not define the boundaries of the Rectory, or Parsonage; and because it contains no name of a grantee.

In connection with this question, I have read the interesting report of the Attorney General, Mr. Sewell, presented to the Government of Lower Canada in 1801, which is printed as one of the documents; and also the opinions of the Attorney General and Solicitor General of Upper Canada, upon the proper form of the patents. And I have examined the copy of the patent which was issued in 1818 for erecting "the Parsonage, or Rectorry of the Parish Church of Montreal."

That patent, I observe, recites that the Governor "had been by her Majesty duly authorised to constitute and endow the Rectorry;" which recital was proper, but not indispensable.

It creates a parish of Montreal, making it, as I apprehend, embrace the same territory as the existing Roman Catholic Parish, and it creates within the parish, so constituted by the Patent, one Parsonage or Rectorry to be called the Parsonage or Rectorry according to the establishment of the Church of England, of the Parish Church of Montreal; declaring the precincts contained within the limits of the Parish of Montreal to be the precincts of the Parsonage or Rectorry of the Parish Church of Montreal; and by the same instrument J. L. Clark is nominated and presented to the Parsonage or Rectorry and Parish Church; and the Parsonage or Rectorry is endowed with the freehold of the

Church, and with a small parcel of land therein described, being the site, as I suppose, on which the Church stood.

The Patent prepared by the Attorney General of this Province differs from this in several respects; and is contended that it is void for the two reasons I have mentioned. 1st. Because it fixes no bounds. 2nd. Because it names no grantee.

Upon the first point we must consider that when the 31st Geo. III. was passed, a great part of Lower Canada had been long settled, and had been divided into parishes, though not with any reference to the Church of England. The civil division into townships did not prevail on the then settled parts of Lower Canada, [as it was afterwards constituted] there were no parishes, except I believe one or two Roman Parishes in the Western District, but the organized territory was divided into townships of 10 or 12 miles square.

The Statute was framed, no doubt, with a perfect knowledge of these circumstances, as the 38th clause clearly shews; for it authorises the erection of one or more Parsonages or Rectories in each parish or township, that is in each of the Roman Catholic Parishes, where that was the territorial division, and in each township where the territory had been divided into townships only, and not into parishes.

Whatever were the considerations which led the Government of Upper Canada to prefer the course which the Attorney General sanctioned by his opinion, but which was thought illegal by his colleague, I think we cannot but hold that there is nothing in the Statute, or in the commission to the Governor, that rendered it necessary to begin by constituting a parish.

"To erect one or more Parsonage or Rectorry, or Parsonages or Rectories in each township," was what the Statute expressly allowed; and in this case one Parsonage or Rectorry—to wit, the Rectorry of St. James, was erected in the township of York, and being erected, as the Patent declares, with a view to the spiritual welfare of all the King's subjects resident within the township of York, I think we must hold the Rectorry to be contemporaneous with the Township, until his Majesty, or his successors should establish some other Parsonage or Rectorry within the same township under the reservation of the right to do so which is contained in the patent.

I think it would have been better, on several accounts, that the Patent had given some limits to the Rectorry; and I prefer in that respect the form of the instrument by which the Rectorry of Montreal was constituted.

But there is nothing in the Statute which requires limits to be assigned; and I do not think that any legal objection lies on that account.

"A Parsonage or Rectorry (we are told) is a Parish Church endowed with a house, glebe, tithes, &c., or a certain portion of lands, tithes, and offerings established by law, for the maintenance of a minister, who hath the cure of souls; and though properly a Parsonage or Rectorry doth consist of glebe land and tithes, yet it may be a Rectorry though it hath no glebe but the church and churchyard; also there may be neither glebe, nor tithes, but payment in lieu thereof." (Parsons' Councillor 190; Huges' Parsons' Law 155.)

There was, as we have seen in the evidence, a reason which influenced the Government of Upper Canada at that time, in preferring the course sanctioned by the Attorney General, to that advised by the Solicitor General; and whatever it may have been, it appears to me that the Rectorry of St. James is sufficiently descriptive; and that the Parsonage or Rectorry so constituted could be endowed as this has been in the same instrument which created it; and that the endowment could be annexed before any Rector had been inducted or instituted. This refers to the last reason of appeal,

and the principle on which the patent may, in that respect, be supported, is laid down in the case of Sutton's Hospital, 10 Co. 23.

The Statute provides that Parsonages or Rectories shall be endowed with land, &c., and this patent specifies certain lands which are to be held as an endowment of the rectorry of St. James, and as appertaining to the said Rectorry. It is clear that all may be done in one instrument, and that the land being set apart and declared by his Majesty to be granted as an endowment to this particular Rectorry, is a literal compliance with the Statute, and must constitute a good parliamentary title, so far as any objection of this kind is concerned, though the ordinary operative words of grant are not used; and though the endowment was granted before any Rector had been instituted, and therefore before the name of any individual as being at the time Rector, could have been inserted.

I notice another difference between the patents issued for constituting the Rectorry of Montreal, and that now before us, which it may be worth while to notice.

In preparing the patent for the Montreal Rectorry, it seems to have been thought best to take it in its literal acceptation, the provision of the 38th clause, 31 George III., "that it shall be lawful for his Majesty to authorise the Governor to erect parsonages, and to endow them," although the clause speaks of an instrument under the great seal of the Province, and instead of making the King erect the Parsonage and endow it, it is the Governor who is made to do both, though the great seal is used, and the letters patent run, as in all other cases, in the name of the King.

This makes the instrument rather an anomalous one. The patent before us seems to have been framed under another, and, as I think, a more correct view of the intention of the statute in that respect.

It assumes that the operative words of the instrument were intended to run, as usual in all such instruments, in the name of the Sovereign; that it was the King and not the Governor who was to erect and to grant; and that what was meant by his Majesty authorising the Governor to do those acts under the great seal was, not that the former of great seal as instruments were to be changed on this occasion, but merely that the Governor must have the King's authority before he made that particular use of his name, and of the great seal.

But I do not apprehend that it can be very material to consider such objections as have been raised, or might be raised, to the validity of this patent upon the ground of any thing peculiar in its form. The King had in, 1836, the title to the land now held by the Rector of St. James; and could grant it for the purpose for which he did grant it. If there was any imperfection in the language of the patent which could afford good reasons for contending that the instrument must fail of its intended effect, still the court of Chancery could not, as I conceive, be called upon to use its active interference for enabling the Crown on that ground to dispossess those whose title depended on the validity of the patent, and to resume possession of the endowment.

There would be as little justice or good conscience in the crown taking such a course, as there would be in a case between individuals; and if any individual should seek to have his deed annulled, not because he had been defrauded or misled, or had made the title under a mistake, but because he had himself done informally and defectively what he intended to do, he would not find that the assistance of any court of law or equity would be given for the purpose of enabling him to resume possession of the land.

Whether the proceeding in this case is to be regarded as an equitable remedy, or one that belongs more properly to the Common Law Juris-

diction of the Chancellor, the ground that the patent is incapable of conveying a legal interest is not one, I conceive, that could incline the Court of Chancery to set aside the patent. Whoever claims an interest under it, would be left to support that interest without the active interference of the Chancellor against him, at the instance of the Crown.

I speak now only of the objections which have been taken to the form of the patent; and which have been urged as reasons why the Court of Chancery should cancel the patent, and the Crown be allowed to resume the land granted twenty years ago.

It is not probable that objections of that kind would have induced the government to question the validity of the act by which the Rectories were established; but, however that may be, I agree in the view taken of the Court below, of this as well as the other points made in the case; and am of opinion that the appeal should be dismissed with costs.

The Chief Justice of the Common Pleas, who heard the argument, requested me to state that he has considered this case; and is of opinion that the judgment given by the Court of Chancery should be affirmed.

COLLECTIONS TO 6th MAY, 1857.

The names of the Stations were put in as usual, but we were forced to change the form afterwards for want of room.

COLLECTIONS APPOINTED TO BE TAKEN UP IN THE SEVERAL CHURCHES, CHAPELS AND MISSIONARY STATIONS IN THE DIOCESE OF TORONTO, IN THE MONTH OF APRIL, IN BEHALF OF THE STUDENTS' FUND OF THIS SOCIETY.

Previously announced.....	£11 11 0
St. Geo. Etobicoke, per Churchwarden	1 9 8
St. Luke, Camden, per Churchwarden..	0 10 0
Per Rev. H. Brent.....	1 13 0
Per Rev. J. Smyth.....	1 0 3
Per Rev. J. Hilton.....	1 11 3
St. James, Wilmot, per Rev. W. B. Rally	1 10 0
St. James, Paris, per Churchwarden...	2 9 11
Per Rev. R. L. Stephenson.....	2 17 8
Per Rev. J. B. Read.....	1 15 0
St. Geo. Goderich, per Rev. E. L. Ellwood	2 7 4
St. Pauls, Yorkville, per Churchwardens	9 2 6
Per Rev. F. D. Faugiere.....	2 0 4
St. Peters, Osnabruck, per Rev. T. Ker	0 10 0
St. James, Maitland, per Churchwarden	4 17 6
Per Rev. C. L. Ingles.....	3 17 8
Chippawa, Per Rev. W. Leeming.....	3 6 4
Mersca, per Rev. J. Kennedy.....	0 6 10
Christ's Church, Chatham, per F. W. Sandy's.....	1 10 0
Per Rev. F. Ramsey.....	2 10 0
Christ Church, Hamilton, per C'warden	10 12 8
St. George's, St. Catherines, per Rev. A. F. Atkinson.....	7 3 2
St. John's, Portsmouth, per Churchwarden	1 10 0
Per Rev. W. Ritchie.....	1 0 0
Playter's Corners, per Churchwarden...	0 12 0
Brampton, per Rev. T. Leach.....	0 10 0
Belleveille, per Rev. J. Grier.....	3 14 1
Christ Church, Amherstburg, per Rev. F. Mack.....	1 0 0
Trinity Church, Merrickville, per Rev. J. Lauder.....	1 9 9
Ascension Church, Hamilton, per Churchwarden.....	3 0 0
Emily (3 stations), per Rev. R. Harding	0 15 0
Streetsville, per Churchwarden.....	0 10 0

St. James, Penetanguishene, per Churchwarden.....	0 17 3
Per Rev. T. B. Fuller.....	3 0 9
St. John's Oakridges, per Rev. Dr. Beaven.....	0 12 6
St. Andrews, Grimsby, per Rev. Dr. Lundy.....	1 5 0
Per Rev. T. W. Marsh.....	1 8 3
Per Rev. G. A. Anderson.....	0 11 8
Per Rev. A. Lampman.....	0 11 3
Per Rev. W. Belt.....	2 13 6
Per Rev. D. E. Blake.....	2 3 1
Christ Church, Mimico, per Churchwarden.....	0 9 6
Per Rev. E. Dencroche.....	4 3 9
Per Rev. J. G. McKenzie.....	2 5 0
Per Rev. E. J. Boswell.....	1 10 0
St. Paul's, London.....	7 5 0
Per Rev. T. Roberts.....	2 6 6
St. John's, London Township.....	2 5 0

78 Collections amounting to £122 1 9

MISSION FUND.

Previously announced.....	£275 17 2
Per Rev. J. Fletcher.....	1 17 4
St. John's, Mersca, per Rev. J. Kennedy.....	0 7 6
Christ Church, Ottawa, per Churchwarden.....	5 7 2
Per Rev. J. G. Armstrong.....	4 12 0
Ascension Church, Hamilton, per Churchwarden.....	3 0 0
Per Rev. G. A. Anderson.....	0 11 9
St. John's, London, per Churchwarden	3 0 10

178 Collections amounting to £294 13 9

GENERAL PURPOSES FUND.

Previously announced.....	£211 11 0
Per Rev. J. G. Salter.....	3 3 3
St. George, Goderich, per Rev. E. L. Ellwood.....	2 0 0
Franktown, per Rev. E. Morris.....	0 15 0
St. Peter's, Tyrconnel, per Rev. H. Holland.....	2 5 0
Per Rev. J. Fletcher.....	1 12 7
Per Rev. J. Kennedy.....	0 5 8
Christ Church, Chatham,.....	1 10 6
Trinity Church, Woodstock, per Churchwarden.....	6 8 0
Per Rev. E. H. Dewar.....	8 3 6
Christ Church, Ottawa, per Churchwarden.....	3 4 8
Trinity Church, Merrickville, per Rev. J. Lauder.....	2 0 0
Christ Church, Amherstburg, per Rev. F. Mack.....	0 11 0
Ascension Church, Hamilton, per Churchwarden.....	4 0 0
Trinity Church, Streetsville, per Churchwarden.....	1 0 0
St. Andrews, Grimsby, per Rev. Dr. Lundy.....	0 11 2
Per Rev. J. G. Armstrong.....	3 16 9
Per Rev. G. A. Anderson.....	0 15 1
Per Rev. W. Belt.....	2 8 9
St. John's, London, per Churchwarden	2 8 3

149 Collections, amounting to £253 9 8

WIDOWS AND ORPHAN'S FUND.

Previously announced.....	£415 10 2
St. Luke's, Camden.....	0 15 0
Per Rev. J. G. Salter.....	3 17 6
St. George's Church, Goderich, per Rev. E. L. Ellwood.....	7 6 3

Franktown, per Rev. E. Morris.....	0 15 0
Per Rev. J. Fletcher.....	2 2 7
Christ Church, Mersca, per Rev. J. Kennedy.....	0 10 0
Christ Church, Chatham, per Rev. F. W. Sandy's.....	2 10 0
Per Rev. E. H. Dewar.....	2 5 3
Christ Church, Ottawa, per Churchwarden.....	4 17 8
Per Rev. J. G. Armstrong.....	4 8 11
Ascension Church, Hamilton, per Churchwarden.....	10 0 0
St. Andrew's, Grimsby, per Rev. Dr. Lundy.....	1 7 11
Per Rev. G. A. Anderson.....	0 12 1
St. John's, London, per Churchwarden	3 3 11

204 Collections amounting to £460 2 10

PAROCHIAL BRANCHES.

St. Peter's, Kemptville, per Rev. R. Lewis.....	0 5 0
Christ Church, Marlboro' †, per Treasurer.....	5 0 0
St. George's Church, Clarke, per Rev. H. Brent.....	8 0 0
Elora, including 2 incorporate members' subscriptions, per Rev. E. Smithurst.....	7 2 6
Sarnia, including 3 incorporate members and 2 clergymen's subscriptions, per Rev. J. G. R. Salter.....	9 12 0
Sarnia special subscription for W. & O. Fund.....	4 0 0
Ditto ditto Miss. Fund.....	1 0 0
Moore, per Rev. J. G. R. Salter.....	3 1 3
Moore, special for W. & O. Fund.....	1 5 0
Grimsby, † including J. H. Pettits, Esq., Life sub. £12 10s., per Rev. Dr. Lundy.....	14 0 0
West Hawkesbury and Vankleek's Hill † including 3 incorporated members' subscription, per Rev. R. Stephenson.....	8 0 0
Orillia, per Rev. T. B. Read.....	6 0 0
Goderich, including his annual subscription, per Rev. E. L. Ellwood	5 8 9
Zorra, per Rev. F. D. Faugiere.....	9 2 6
St. Paul's, Yorkville, per Rev. S. Givens.....	10 0 0
Christ Church, Ottawa, per Treasurer	12 12 9
Gwillimbury † including annual subscription, per Rev. J. Fletcher...	7 9 6
St. John's Mersca, per Rev. J. Kennedy.....	2 0 0
Chatham, including his ann. sub. per Rev. F. Sandy's.....	6 0 0
Georgina † per Rev. W. Ritchie.....	3 0 0
St. John's Sandwich, †, per Rev. E. H. Dewar.....	0 11 3
Windsor, † including annual subscription, per Rev. E. H. Dewar.....	4 0 7
Woodstock, including annual subscription, per Rev. J. Gibson..	28 15 0
Merrickville, †, including annual subscription, per Rev. J. Lauder.....	3 6 10
Christ Church, Amherstburg, †, including annual subscription per Rev. F. Mack.....	6 0 0
Per Rev. T. W. Allen.....	9 5 0
Per Rev. J. Hilton.....	8 5 0
Per Rev. J. G. Armstrong.....	25 16 8
Per Rev. J. Langtry.....	10 8 2
Christ Church, Emily, including ann. subscrip'n per Rev. R. Harding	3 9 1
Trinity Church, Streetsville, per Rev. H. J. MacGeorge.....	3 10 0
St. Pauls, Fort Erie, per Treasurer..	2 5 2
Gore and Wellington District, includ-	

ing 18 clergymen and 18 lay members' subscription, per Treasurer...	202	8	0
Niagara District, per Treasurer .....	83	18	6
Tecumseth, $\frac{1}{2}$ , per Rev. F. L. Osler ...	17	4	6
Richmond, per Rev. G. B. Pettit.....	12	10	0
Pembroke Mission, including annual subscription, per Rev. E. H. Baker.	7	10	0
Per Rev. W. Belt .....	12	18	10
Piton, $\frac{1}{2}$ , per Treasurer .....	5	17	10
Per Treasurer, Home District Assoc.	64	4	1
Muncey, per H. C. Hogg .....	2	15	0
Holy Trinity, Toronto, per Treasurer	18	0	0
London, St. Paul's.....	4	0	0
do. Township, St. John's.....	5	2	0
Caradoc and Delaware .....	2	10	0
St. Thomas.....	10	0	0
Hantley special for Indian Missions, per Rev. J. Godfrey .....	3	3	7
Kingston, including incorporated members' subscription, per Rev. J. A. Stuart.....	10	0	0
Biddulph and St. Mary's .....	4	7	8
Port Stanley .....	1	5	0

ANNUAL SUBSCRIPTIONS AND DONATIONS.

Lord Bishop of Toronto.....	£12	10	0
Rev. E. Campbell.....	1	5	0
“ S. Givens .....	1	5	0
“ S. S. Strong .....	1	5	0
“ T. W. Allen .....	1	5	0
“ J. W. Marsh .....	1	5	1
“ C. C. Brough .....	1	5	0
“ J. Godfrey .....	1	5	0
Hon. Geo. Boulton .....	5	0	0
“ P. B. DeBlaquiere.....	5	0	0
W. Boturn, Esq. ....	1	5	0
J. Bower Esq. ....	1	5	0
W. Medd, Esq. ....	1	0	0
J. W. Brent, Esq.....	1	5	0
Rev. R. Lewis .....	1	5	0
T. Roberts .....	1	5	0

DIocese OF MONTREAL.

The offices of Archdeacon of Montreal and Examining Chaplain to the Bishop of that Diocese, having become vacant by the resignation of Archdeacon Lower, M.A., on his removal to the Diocese of Newfoundland, his Lordship, the Bishop of Montreal, has appointed the Rev. Canon Gilson, M.A., to succeed him both as Archdeacon and Chaplain.

CHURCH SOCIETY'S OFFICE,  
6th May, 1857.

A Meeting of the Central Board of the Church Society, was held this day, the Lord Bishop in the Chair.

The Treasurer reported that the following sums had been received since the last Meeting:—

Collections at Dereham .....	£2	15	0
Bedford.....	1	7	6
Donation from a friend per Rev. W. Anderson .....	0	10	0
Collection at St. Martin .....	1	2	1
St. Thereso .....	0	3	1
Abbotsford .....	1	7	7
Rougemont .....	0	17	10
Farnham West.....	0	12	8
St. Brigide .....	0	5	8
Adamsville .....	0	11	3
Edwardstown .....	11	6	0
Hemmingford .....	0	3	3

At Rawson, at Weekday Services during Lent, for W. & O. Fund.....	1	0	0
Subscription of Rev. J. Scott ...	1	17	6
Rev. T. A. Young	1	17	6
St. Martin and St. Thereso .....	4	1	3
St. George's, Clarenceville.	6	8	9
St. Thomas, ditto.	2	0	0
Subscription of Rev. Canon Townsend ...	1	17	6
Subscription at Rougemont.....	1	10	0
“ Abbotsford.....	1	5	0
Subscription of Rev. Canon Reid	1	17	6

EDWARD J. ROGERS, Secretary.

SOCIETY FOR THE PROPAGATION OF THE GOSPEL IN FOREIGN PARTS.

79, Pall Mall, April 9, 1857.

MONTHLY MEETING.

Lord Lyttelton, chairman of the Finance Committee, presented their report, which shewed that there were in 1856 a variation from the estimates favourable to the Society, in respect to both the income, which exceeded, and the expenditure, which fell below what had been calculated at the beginning of the year.

The Finance Report gave the following estimate of expenditure on account of the General Fund in 1857, being the amounts (exclusive of the Special Funds) which the Society stands pledged to raise in 1857, for the several dioceses.—viz. Nova Scotia, £4,252, Fredericton £4,638, Quebec £2,680, Montreal £3650, Toronto (last instalment) £4937, Rupert's Land £200, Newfoundland £5110, Jamaica £1050, Antigua £100, Barbados £150, Guiana £1100, Capetown 1941, Grahamstown £1500, Natal £550, Mauritius £200, Seschelles £77, Calcutta £7735, Madras £9821, Colombo £1323, Labuan £1500, Sidney £950, Melbourne £650, Adelaide £500, Perth £250, Newcastle £300, Tasmania £125, Norfolk Island £100, New Zealand £1171.

The Report further showed that the Society had in hand a surplus balance, which, after paying off the last instalment of a grant voted in aid of the Clergy Reserves Commutation Fund, in the Diocese of Toronto, amounted to £10500; and it recommended that this sum should be expended in grants spread over three years. But besides this it appeared that the sum of £4500 a year might fairly be appropriated from the ordinary income of the Society, which therefore had an available sum of £8000 a year for the next three years, to apply in any way which might seem most instrumental to the propagation of the Gospel.

After full and careful consideration of the various claims upon the Society's Funds, the following additional grants were made:—Diocese of Capetown £1200, diocese of Natal, for heathen missions, £1000. A grant to Grahamstown, amounting out of the Society's General Fund, to £2250 was renewed. Heathen Missions:—Diocese of Labuan [Borneo] £500, diocese of Colombo £200, diocese of Mauritius £300, Diocese of Newcastle £200, diocese of Rupert's Land £50.

It was resolved also to devote a sum of £250 a year towards the establishment of a mission in Vancouver's Island, where there is a population of 26,000 native Indians.

The sum of £3000 a year was reserved for new missionary operations in India; £300 of it only having been appropriated to the very promising mission of Cuddapah, in the diocese of Madras. For the most profitable expenditure of the remain-

ing £2700 the Society waits for well considered schemes to be sent home from India. A Grant of £60 a year was made out of the Emigrants' Spiritual Aid Fund, towards the support of a chaplain to the emigrants embarking at the London Docks.

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54 KING STREET EAST, TORONTO,

or at any of the Agencies.

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