

not founded upon conflicting evidence, but upon the theory that the best evidence must be given, and that it was essential to produce the debtor (who could not be found) and prove the fact of actual marriage by him. This was a wrong assumption in point of law, by which was nullified the beneficial effect of the exemption as extended to labourers' wages up to \$25 from the effects of compulsory process. Prohibition as asked on authority of *Elston v. Rose*, L. R. 4 Q. B. 5, and *Liverpool Gas Co. v. Everton*, L. R. 6 C. P. 414. No costs.

BOYD, C.

DECEMBER 10TH, 1902.

CHAMBERS.

RE JOHNSTON, CHAMBERS v. JOHNSTON.

Will—Construction—Bequest to One for Use of a Church—Trust—Mixed Fund—Perpetuity.

Motion by executors for directions as to disposition of \$2,000, part of estate of James Johnston. The testator made his will more than six months before his death, thereby directing that land should be sold and out of the mixed realty and personalty, \$2,000 paid to the Rev. N. W. for the use of the Reformed Presbyterian Church. He added that such sum was to be expended by N. W. in the manner best calculated by him to advance the principles of the church.

W. M. Douglas, K.C., for the executors.

D. W. Saunders, for the Reformed Presbyterian Church.

J. G. O'Donoghue, for next of kin.

BOYD, C.:—This is a bequest of moneys derived from the lands, to N. W. as trustee for the church named, and it is valid under sec. 24 of the Religious Institutions Act (R. S. O. ch. 307). The person named having exercised the functions of his trusteeship by granting the fund (as N. W. had done), to the church, there the fund was at home, and should not be disturbed. So far as the \$2,000 came out of personalty no objection could arise as to perpetuity. Costs out of estate.

MACMAHON, J.

DECEMBER 10TH, 1902.

TRIAL.

PHELPS v. McLACHLIN.

Sale of Goods—Refusal of Vendor to Deliver until Payment—Breach of Contract—Damages—Reference.

Action for damages for non-delivery of certain poles, under a written contract, which, as the plaintiff contended,