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WILL.

1. *M.*, by will made in 1810, devised certain lands in trust "for the benefit of a Protestant Orthodox Minister, duly authorized, as also for the building thereon, a house for the public worship of Almighty God, a parsonage house, a school house, and burying ground for the use of the inhabitants of the Western part of the township of *Cornwallis*, whenever there may be a sufficient number united in the promotion of the public worship of God in that quarter."

There was not in 1819, nor up to the time of *M.*'s death, any Presbyterian Church, or Protestant Church of any kind in *West Cornwallis*, but the members of the Presbyterian Church residing there communed with the Presbyterian Church in *East Cornwallis*, and *F.*, the Minister of the latter Church, occasionally officiated in *West Cornwallis*.

M. died in 1834, and from the year 1800 to the time of his death, was an elder of the Church of *F.*, who was a Minister of the Church of *Scotland*.

The plaintiff, who was a Minister of the Reformed Presbyterian Church, and the first Presbyterian Minister that was settled and had a congregation in *West Cornwallis*, claimed the benefit of the devise.

The trustees of *M.*, had declared the land to be held for the use of the Free Church of *Scotland*, now having a resident minister in *West Cornwallis*, and claiming the land as rightfully belonging to them.

It appeared that according to the principles of the Reformed Presbyterian Church, a member of that Church could not consistently hold a civic office under government, or be a magistrate.

No such principles were held either by the Established Church of *Scotland* or the Free Church of *Scotland*, and *M.* had been for many years previous to, and at the time of his decease, a magistrate and a Major in the Militia.

It further appeared that the plaintiff would not commune with members of the Church of *Scotland*.

Held: That, in order to ascertain the intentions of *M.*, the Court was bound to consider all the circumstances surrounding him at the time the will was made, and that, in view of these circumstances, and of other clauses in the will, the plaintiff was not entitled to the benefit of the devise.—*Sommerville v. Morton et al.* 50

2. A testator bequeathed a certain sum of money to his wife, which he stated he supposed to be one-third of the worth of his property, after the payment of his debts and necessary expenses. By subsequent