

## TESTAMENTARY APPOINTMENT—REVOCATION.

In *Sotheran v. Dening*, p. 99, the Court of Appeal decides that a general clause in a will revoking all former wills, revokes a prior testamentary appointment. It was argued, as against this view, that a general clause of revocation in a will does not revoke a testamentary appointment contained in a previous will unless there is a special reference to it, or some other evidence of intention to revoke it, and two decisions of Sir Cresswell Cresswell were referred to in support of this argument, which Baggallay, L.J., reconciles with the decision in the present case, by saying:—"It has been decided that a general revocation of wills does not necessarily revoke an appointment by will. That view is adopted by Sir C. Cresswell in the two cases referred to. But it must be shown that it is entirely unreasonable that it should have that effect, otherwise it will be a revocation."

## BREACH OF TRUST—DOWER—STALE DEMAND.

In the next case, *in re Cross, Harston v. Tenison*, p. 109, the Court of Appeal say in the judgment, which is the judgment of the Court:—"We consider it to be a well established rule that a *cestui que trust* who, knowing that his trustee has committed a breach of trust, obtains from him a part only of that to which he is entitled, does not thereby waive his right to such further relief as he may be able to obtain, unless there is something in the surrounding circumstances from which an intention so to do can be clearly inferred;" and it seems sufficient to add that this case illustrates the application of the rule so enunciated, the Court holding that though the *cestui que trust* in question had obtained from the trustee a part, but a part only, of what they were entitled to, yet they did not thereby waive their right to further relief, for there was nothing to show that this was their intention, and they must not be taken to have elected to abandon their claim against the trustee, and to rest content with what they had obtained.

A.H.F.L.

## REPORTS.

## ONTARIO.

(Reported for the LAW JOURNAL.)

## ASSESSMENT CASE.

IN RE APPEAL OF THE REV. JOHN STEWART  
FROM THE COURT OF REVISION OF THE  
TOWN OF KINCARDINE, IN THE COUNTY  
OF BRUCE.

*Exemption from taxation—Probationer—R.S.O.  
cap. 180, sec. 6, sub-sec. 23.*

The appellant was a duly ordained minister in actual connection with the Presbyterian Church in Canada, and at the time of the assessment, being without a charge, was duly entered on the list of probationers of the said Church, and performing his duties as such. He and his family resided upon and occupied property in the Town of Kincardine, owned by him, consisting of a dwelling house and two acres of ground attached, assessed at \$1,300. His duty was performed entirely outside of the municipality, and at no particular place except as required by the probationers list. He claimed exemption under the Act.

*Held*, that appellant, as a probationer of the Presbyterian Church in Canada, though not doing duty in the municipality, is entitled to exemption under sub-sec. 23, sec. 6. R. S. O. cap. 180.

The appeal was heard by consent at the Village of Underwood, on 11th July, 1882.

From the evidence produced, it appeared that appellant was a regularly ordained minister of the Presbyterian Church in Canada, and had until December last been in charge of a congregation at Rodney, in the County of Elgin, Ont., had then resigned that position owing to ill-health, and came to Kincardine with his family to reside on property there (consisting of a dwelling house and two acres) belonging to himself. He was not doing duty as a clergyman or minister in the municipality. He had upon his resignation, and at his own request, been placed on a list, known as the "Probationer's List," of the Church, which is a list composed of names of ministers without charge, and whose names are entered on the list for the purpose of enabling them to obtain employment in the Church, and permanent settlement should a call be extended to them. A probationer in the Presbyterian