

them, but in the meantime the Archbishop of the Diocese declined to give his consent to the introduction of the Jesuit Order, and, in the absence of his consent, it was impracticable to carry out the testator's intentions. The period of 21 years having elapsed since the testator's death and the fund being still unapplied, under the circumstances mentioned,

Held, 1, affirming the judgment of Townsend, J., that the discretion of the executors to withhold and accumulate could only be exercised until such time as, in the opinion of the Court, a "reasonable and desirable time" had elapsed.

2. That in view of the lapse of time, and the refusal of the Archbishop to admit the Jesuit Order into his Diocese, and the fact that such refusal was not arbitrary but was supported by ground which appeared to him to be strong, and that no appeal had been taken from such refusal, although sufficient time had elapsed to have enabled the executors to have done so, the executors should be directed to frame a scheme for the disposition of the income in accordance with the wishes of testator as expressed in the clause of his will relating to charitable institutions and religious orders in connection with the Roman Catholic Church.

L. G. Power, and *H. Mellish*, for appellants. *Ritchie*, K.C., and *Chisholm*, for respondents.

Province of Manitoba.

KING'S BENCH.

Richards, J.]

GEBBINS v. METCALFE.

[Jan. 29.

Examination for discovery—Disclosure of names of witnesses—Questions not relating to the matters in question in the action.

This was a motion on behalf of a defendant to compel the plaintiff to answer certain questions which, on his examination for discovery, he had refused to answer.

RICHARDS, J.: The first four questions are, I think, within the rule that a party is not compellable on such examinations to disclose the names of his witnesses. The remaining questions relate to whether the plaintiff has received from persons or corporations, not parties to this action, assistance or promise of assistance or indemnity as to the costs of the suit, or as to whether the plaintiff before action consulted with such other persons as to his bringing this suit.

I am unable, after careful search, to find any authority holding such questions admissible as "touching the matters in question in this action," on any other ground. The concluding words of Rule 379 of the King's