

SECOND DIVISIONAL COURT.

NOVEMBER 18TH, 1920.

## McGUIRE v. EVANS.

*Church—Contest as to Right to Funds—Action for an Account—  
Findings of Trial Judge—Appeal—Various Funds of Church—  
Trustees—Parties—Amendment—Costs.*

An appeal by the plaintiffs from the judgment of FALCONBRIDGE, C.J.K.B., 17 O.W.N. 382.

The appeal was heard by MULOCK, C.J. Ex., SUTHERLAND and MASTEN, J.J., and FERGUSON, J.A.

I. F. Hellmuth, K.C., and George Wilkie, for the plaintiffs.  
W. R. Smyth, K.C., for the defendants, respondents.

MULOCK, C.J. Ex., in a written judgment, said that the action was brought on behalf of the Toronto branch of the Reorganised Church of Jesus Christ of Latter Day Saints to recover from the defendants certain moneys which, the plaintiffs contended, were the property of the Toronto branch—moneys forming certain funds known as the Tithing Fund, Sunday School Fund, Zion Religio Fund, Sermons and Theatres Fund, Building Fund, and Ladies Auxiliary Fund. During the argument counsel for the defendants admitted that the moneys in the hands of the Zion Religio Society belonged to the Toronto branch and said that the defendants made no claim thereto; and counsel for both parties informed the Court that it had been agreed that all moneys in the Sunday School Fund up to the 14th April, 1918, were to belong to the plaintiffs, and that any moneys collected for that fund between that date and the 3rd June, 1918, should be divided equally between the plaintiffs and defendants, and that the adjustment and disposition thereof would be arranged by counsel for the parties without the aid of the Court. After action begun, the defendant R. C. Evans paid into Court \$341.50 in full of the balance admitted by him to belong to the Tithing Fund, and during the argument counsel did not challenge the correctness of this balance nor did they ask for an accounting in respect of the Tithing Fund. It must be assumed that they were satisfied that the payment of this sum into Court rendered any further accounting unnecessary; the defendant R. C. Evans was entitled to a declaration that he had fully accounted in respect of that fund; and the judgment appealed from should be amended accordingly, and also by making proper directions as to the disposition of the sum paid into Court.