

this duty by declining to permit a witness whom he has believed to be prosecuted for perjury, at the instance of a witness whom he did not believe, and where, upon the perjury charge, there could be no further evidence than that given upon the trial of the assault.

It is not in the public interest that the retrial of a trivial assault case should be had in this indirect way.

Rex v. Meehan No. 2, 5 Can. Crim. Cas. 312, Ex p. MacMahon, 48 J.P. 70, and Re Parke, 30 O.R. 498, establish the law governing me.

Motion dismissed with costs.

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MIDDLETON, J., IN CHAMBERS.

SEPTEMBER 25TH, 1911.

BROOKE v. BROOKE.

*Will—Trust—Advancement of Adult—Beneficiary—Application of Capital of Estate—Powers of Trustee—Deed of Appointment—Meaning of “Advancement.”*

Motion by Harold John Brooke for payment out of Court of \$1,000, pursuant to an appointment executed by Emily Brooke, surviving trustee of the will of the late Daniel Brooke.

R. S. Cassels, K.C., for the applicant.

E. C. Cattanaach, for the infants.

MIDDLETON, J.:—Daniel Brooke died on the 6th November, 1873, and by his will (clause 3) devised and bequeathed to his son D. O. Brooke and his son's wife, Emily Brooke, all his estate upon trust for the support and maintenance of the said D. O. Brooke and his wife during their joint lives and the life of the survivor, and for the support, education, and maintenance of their children in their discretion, and upon their death to be divided share and share alike between the surviving children and the heirs lawfully begotten of such as may not survive.

The son and his wife, or the survivor, are given power to make any other disposition of the estate between the children and their heirs, and there is given this further power, which I have now to consider: “To convey and make over to any of them” (i.e., the children or their heirs), “by way of advancement, any portion of the same” (i.e., his real and personal estate or the