

Teetzel, J.]

R. BARRETT.

[May 18.]

*Will—Gifts to religious societies—"Charitable use"—Date of execution of will—Six months' limitation—Statutes—Repeal by implication—Religious Institutions Act—Mortmain Acts—Construction—"Land"—Proceeds of sale.*

A testatrix, dying June 14, 1904, by her will, executed Dec. 4, 1903, gave and devised all her real and personal estate to her executors and trustees to sell, and, after payment of some small legacies and debts and expenses, to keep the residue of the moneys realized and invest it and pay the interest to the trustees of a church, upon certain conditions, and on failure of compliance with the conditions to pay one-half of the moneys to a home missionary society and the other half to a foreign missionary society for their sole use.

By 50 Vict. c. 91 (O.) these societies were authorized to receive gifts and devises of real and personal property, provided that no gift or devise of any real estate should be valid unless made by deed or will executed at least six months before the death of the testator. There is a similar provision in s. 24 of the Religious Institutions Act, R.S.O. 1897, c. 307.

*Held*, that the six months' limitation contained in these two Acts must be regarded as having been repealed by s. 4 of the later Mortmain and Charitable Uses Act, R.S.O. 1897, ch. 112, the original of which was passed April 14, 1892.

2. Gifts for religious purposes are within the term "charitable use" in s. 4.

3. The gift was not of "land," as interpreted by s. 3 of c. 112, but of "personal estate arising from or connected with land," within the meaning of s. 8.

*In re Sidebottom* (1902) 2 Ch. 389, and *In re Ryland* (1903) 1 Ch. 467 followed.

4. The statute which is now R.S.O. 1897, c. 112, was based upon the English Act of 1891, and the later Ontario Mortmain and Charitable Uses Act, 1902, upon the earlier English Act of 1888; but by s. 1 of the Act of 1902, it is provided that that Act shall be read as part of c. 112; and the result is to put the two Ontario Acts practically in the same position as the two English Acts (*In re Hume, Forbes v. Hume* (1895) 1 Ch. 422); and therefore s. 7 of the Act of 1902 does not apply to wills, but only to assurances inter vivos. *Re Kenney* (1903) 6 O.L.R. 459 followed.

5. The question whether the full period of six months had elapsed between the making of the will and the testatrix's death,