

Held, also, that the rule is not universal that persons guilty of contempt can take no step in the action. A party notwithstanding his contempt is entitled to take the necessary steps to defend himself, and as the defendants here are ordered to appear within ten days on pain of having judgment signed against them, they have the right to shew if they can that the service upon them is not permitted by the practice; and the motion was refused under the circumstances without costs.

Fry v. Ernest (1863) 9 Jur. N.S. 1151, and *Ferguson v. County of Elgin* (1893) 15 P.R. 399, followed.

C. A. Moss, for the motion. *O'Donoghue*, contra.

Falconbridge, C. J. K. B., Street, J., Britton, J.]

[April 4.]

RE JOHNSTON, CHAMBERS v. JOHNSTON.

Will—Devise—Proceeds of realty and personally—For the use of a church

A testator who died on the 12th April, 1895, by his will, made the 6th September, 1894, directed land to be sold, and out of the proceeds thereof and some personalty directed \$2,000 to be paid to N.W. for the use of the Reformed Presbyterian Church, such sum to be expended by N.W. in the manner best calculated by him to advance the principles of that church. N. B. assigned the whole fund to the church.

Held, a good bequest.

Held, also, that the assignment by N.W. to the trustees of the church was a valid exercise of the discretion given him by the will.

Judgment of Boyd, C., affirmed.

O'Donoghue, for appellants. *Saunders*, for trustees. *Douglas*, K.C., for executor.

Falconbridge, C. J. K. B., Street, J., Britton, J.]

[April 4.]

REX v. LEWIS.

Criminal law—Information—Warrant differing from—Arrest—Information amended—Read to prisoner but not resworn—Trial, without objection—Fine—Commitment—Form of conviction—Distress.

The prosecutor hired a boy to work for him and purchased his railway ticket to get him to his farm. The boy worked a few hours at the farm but not long enough to repay the price of the ticket, refused to work any longer and left his employ. The prosecutor then swore to an information before a justice of the peace, that "W. L. did . . . accept the sum of \$1.30 to pay his fare to B. on the condition that the said amount was to be worked out and that the said W. L. refused to work after reaching this place with the exception of four hours and thirty minutes." The magis-