

defendant Dana only resigned his office on 18th March, 1902, and is willing to account under the terms of the bond to that date, the amount at present recoverable is not affected by any consideration as to the effect of the resignation upon future instalments. Plaintiff to have costs of the action on the High Court scale.

APRIL 4TH, 1903.

DIVISIONAL COURT.

RE JOHNSON, CHAMBERS v. JOHNSON.

Will—Construction—Bequest to One for Use of a Church—Trust—Mixed Fund—Perpetuity—Abatement of Legacies—Mortmain Acts.

Appeal by Jennie Ball and Elizabeth M. Rice, two of the legatees under the will of James Johnson, deceased, from an order of BOYD, C., in Chambers (1 O. W. R. 806), on a motion by the executor of the deceased under Rule 938 for an order construing the will.

J. G. O'Donoghue, for appellants.

D. W. Saunders, for the trustees of the church.

W. M. Douglas, K.C., for the executors.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.) was delivered by

STREET, J.—Testator died 12th April, 1895, and by his will, amongst other things, directed his executors to sell his real and personal estate, and out of the proceeds, amongst other things, to pay the Reverend Nevin Woodside \$2,000 for the use of the Reformed Presbyterian Church, such sums to be expended by him in the manner best calculated by him to advance the principles of that church; and he bequeathed \$500 each to the appellants. It was admitted that the legacies in question were, in the result, payable almost entirely out of the proceeds of land directed to be sold by the will in question, and that, the fund being insufficient to pay all the legacies, there must be an abatement. . . . The bequest for the use of the church is a good charitable bequest for the advancement of religion: *Baker v. Sutton*, 1 Keene 232; *Townsend v. Carns*, 3 Hare 257; *Thornton v. Howe*, 31 Beav. at pp. 19, 20. *Stewart v. Greene*, Ir. R. 5 Eq. 470, distinguished. Being a good charitable bequest, it is not subject