

any questions of seniority which may arise under this clause, nothing shall be allowed any clergyman resigning as aforesaid for time which had expired subsequent to the date of his resignation, and that clergymen then junior to him on the list may gain priority over him by reason of service after his resignation.

“2. Add new clause XI.:

“XI. Whenever a surplus in the commutation trust fund is reported to the standing committee, the committee shall cause a notification to this effect to be sent to all clergymen who would be entitled by seniority to go on the fund were it not for sub-sections (a) and (b) of clause III. hereof.

“Add new clause XII.:

“XII. Should any doubt at any time arise as to the interpretation of this canon, the same shall be referred to the chancellor of the diocese, whose decision thereon in writing, after due notice to all concerned, shall be final.”

For 1903 no payments were made to plaintiff, defendant Spencer, or defendant Gardiner. In March, 1904, \$384.13 had accumulated to the credit of the fund after meeting all other charges. To this money defendant Spencer and plaintiff both made claim. Defendant Gardiner was also a claimant. The standing committee resolved that the opinion of the chancellor be obtained as to the distribution of the surplus income, amounting to \$384.13, and that the secretary be instructed to act in accordance therewith. . . .

Mr. Kirwan Martin, who had been appointed chancellor on 9th May, 1904, proceeded to deal with this question. He caused notice to be given to the 3 claimants of an appointment to consider it and to hear the respective claimants. Defendant Spencer attended in person pursuant to such notice. Defendant Gardiner appeared by counsel. Plaintiff refused to attend or be represented. The chancellor delivered not merely an opinion for the guidance of the committee, but what purports to be a decision adjudicating upon the priorities of the respective claimants, and awarding the \$384.13 to defendant Spencer. In taking this course the chancellor, as I understand the matter, professed to proceed under clause XII. of the by-law added in 1902. . . . There can be, as far as plaintiff is concerned, no suggestion of a voluntary submission to the arbitration of the chancellor. . . .

For plaintiff it was argued that the opinion of the late chancellor, given in 1902, is in effect an award of a referee in plaintiff's favour, acquiesced in by both defendants, and