

said church, in trust to apply the whole of the surplus in payment upon the principal of the debt upon the said church of St. Mary Magdalene, Napanee, so soon as a sum equal to the said surplus has been contributed by the members of the congregation of the said church by direct offertory (sic) towards the principal debt of the said church, and in the meantime to allow the said surplus to remain on deposit in the said bank, accumulating at bank interest."

At the date of the will there was a debt upon the church in question of about \$6,500, but this was at the time of the death of this testatrix reduced to about \$1,800. This result was brought about by the receipt of moneys which I do not think it can be reasonably said were at all likely to be present to the mind of the testatrix when she made this will. They certainly were not the "direct offertory" of the members of the congregation.

The residuary estate dealt with by the paragraph I have quoted is not (after applying the \$3,000 for tower and bell) all required for the purpose of liquidating this balance of debt, upon the basis of one-half being taken out of the residuary estate and the other half being derived from the "direct offertory" of the members of the congregation.

The question is thus raised, whether or not the surplus can, by the application of the doctrine of *cy-près*, be used for other charitable purposes of this church, or must be paid to the next of kin.

I think it must go to the next of kin.

All that can be said of this residuary gift being for charitable purposes generally, could, with much greater force, have been said of numerous other gifts that have been held to have been given for a particular purpose only, and not for charity in any and every event.

I read this part of this will as intended, next after the completion of the tower and the placing of a bell therein, as providing for the payment of the church debt, and incidentally thereto evoking a spirit of charity in the congregation.

I see no other intention. The completed church fabric, freed from debt, having been secured, the entire purpose, of or for charity, ceases.

Upon such a reading of the will there is not any room left for the application of the *cy-près* doctrine in any way to this residuary bequest. . . .

[Re Rymer, [1895] 1 Ch. 19, and authorities reviewed by Lord Herschell at p. 27 et seq., referred to.]