

incurred in building the church, a committee was formed to collect contributions to be applied in liquidating the debt by means of a "building fund," and the testatrix made her will by which she bequeathed certain real property to that committee. The committee were relieved of their duty and the fund ceased to exist several years later, and during the year previous to the death of the testatrix the original debt in respect of which the building fund had been established was fully paid. There remained, however, at the time of her death, balances of debt still due for expenses incurred for other building purposes. In an action to have the bequest declared to have lapsed on account of failure in its ulterior disposition:—

*Held*, affirming the judgment appealed from (Q.R. 46, S.C. 97), Duff and Anglin, JJ., dissenting, that, in the circumstances of the case, the bequest must be construed as a bounty to the trustees of the church for the purposes of building expenses, including debts incurred for such purposes subsequent to the construction of the church; that the motive of the testatrix was not to make a contribution to any particular fund, but to benefit the congregation in respect to its building liabilities generally, and that the legacy did not lapse in consequence of the "building fund" having ceased to exist and the extinction of the debt in regard to which contributions to that fund were to be applied.

*Per* Duff and Anglin, JJ., dissenting:—It was of the essence of the gift that it should be capable, at the time of the death of the testatrix, of being applied in furtherance of the specific purpose for which the "building fund" had been instituted, and, in consequence of the failure of that ulterior disposition, it lapsed, under the provisions of art. 964 of the Civil Code.

Appeal dismissed with costs.

C. M. Holt, K.C., and W. F. Chipman, for the appellant.

J. E. Martin, K.C., for the respondents.

Alberta.] ROWLAND v. CITY OF EDMONTON. [Feb. 2.

*Highway—Old trails of Rupert's Land—Survey—Width of highway—Construction of statute—60 & 61 Vict. ch. 28, sec. 19—North-west Territories Act, sec. 108—Transfer of highway—Plans—Registration—Dedication—Estoppel—Expenditure of public funds.*

The plaintiff's lands, held under Crown grant of 1887, were bounded on the south by the middle line of Rat Creek (now in the