

MEREDITH, C.J.C.P.

MAY 14TH, 1918.

*REINHART v. BURGAR.

Contract—Promise of Gift and Loan of Money to Trustees of Church for Erection of Parsonage—Donor to Have Home in Parsonage—Impossibility of Performance by Reason of Death of Donor—Vis Major—Action against Administrator—Constructive Fraud—Want of Independent Advice—Improvvidence—Evidence.

Action by the trustees of a church to recover \$2,500 from the administrator of the estate of Salome Morningstar, deceased.

The action was tried without a jury at Welland.

S. F. Washington, K.C., and L. C. Raymond, K.C., for the plaintiffs.

T. D. Cowper, for the defendant.

MEREDITH, C.J.C.P., in a written judgment, said that Salome Morningstar, an aged woman, unmarried, was found dead in her house on a day in midwinter. She was worth about \$5,000. A farm, which she had owned and upon which she had lived quite alone, was sold by her in the autumn of 1917 for \$2,500, but she continued to live there because the arrangements which she had made with the plaintiffs for a new home had not been carried out.

After the sale of the farm, an agreement was made between her and the plaintiffs, the trustees of a church of which she was a member, that she should contribute \$1,000 towards the erection of a parsonage, as a gift, and should lend the trustees \$1,500 to be also expended in the erection of the parsonage; that the parsonage should be erected on a certain acre of land, and that the building of it should be "proceeded with at once" by the trustees; that provision should be made, satisfactory to her, for her own quarters in the parsonage; and that she should have the right to occupy them for life; that she should be paid interest half-yearly at 5 per cent., and should have a lien on the parsonage for the payment of it, and for payment of any part of the principal not exceeding \$100 a year that she might from time to time require, but that if it were not all thus repaid in her lifetime that which remained should belong to the church; that the deed of the one acre should be made to her; and that, as soon as the deed should be made to her, she would advance the \$1,000 to the trustees to enable them to proceed with the erection of the building.