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The Law of Charitable Trusts

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THESIS.

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Ithaca, New York.

June, 1893.
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THE LAW OF CHARITABLE TRUSTS.

The Law of Charitable Trusts may be called, and justly so, one of the most interesting subjects, to the public at large, that could be written upon.

The manifold benefits derived from the many institutions owing their existence and present sustenance to the provision and allowances made by the Law of Charitable Trusts, are of vital and absorbing interest to the two great classes of the people, if we classify them, in a general way, on the basis of circumstances.

To the wealthy, who desire to better the condition of their less fortunate fellow-men, by donating to their social needs some of the superfluous wealth which they possess, it is interesting, because they can do so with a full and perfect confidence that their wishes and intentions will be sacredly regarded and carried out, and that the money will be applied with strict impartiality to the purpose for which it was given.

To the poor man or boy, who desires to rise to a higher intellectual life, but has not the means, the Law of Charitable Trusts distributing through its many agents, the moneys of good men, builds him a broad and solid road, upon which he may
travel to the goal of his ambition.

As in the erection of a building, in order that the structure may stand firmly, the foundation must rest upon the solid bed rock, so in the treatment of this subject, we will go down to the very bottom of its existence, and commence the work, by making an examination;

First—Of the Origin, and Rise of the Law of Trusts in General. In nearly all of the historical accounts of the Origin and Rise of the Law of Trusts, the words Use, and Trust, are used in a very unsatisfactory and confusing manner. We will attempt now, in the beginning of this subject, to bring them out in their proper signification, and attitude toward each other. There seems to be great confusion as to whether the two words have the same, or different meanings. To clear this up, we must observe them from a standpoint of time.

Chancellor Kent says, "Trusts are what Uses were before the Statute of Uses, so far as they are mere fiduciary interests distinct from the legal estate, and to be enforced only in Equity."

Lord Henly, in Burgess V. Wheat, I. William Blackstone 180, said, "That there was no difference, in the principles, between the Modern Trust and the Ancient Use, though there was a wide difference in the application of those principles. The difference consists in a more liberal construction of them, and at the same time, a more guarded care against abuse."

Mr. Bispham, in his work on Equity, says, "Before the Statute of Uses, there appears to have existed a distinction between the technical Use, and a Trust. When a Trust, "says Bacon,
is not special nor transitory, but general and permanent, then it is a Use. The permanent Use was the natural result and outgrowth of the special trust?

So we see, that while before the Statute of Uses there appears to have been a recognized technical difference between the two terms, since the Statute, while a very slight technical difference may yet remain, for all intents and purposes, and according to the common legal understanding and usage, the terms Use and Trust are used interchangeably.

There seems to be a great deal of obscurity surrounding the origin of uses and trusts, both as to their nature, and the date of their birth in the English Law. We find writers of great eminence giving distinctly contradictory theories in regard to their origin, in their different accounts.

One group of authorities on the subject say, "That while no exact date can be given for the origin of uses, or as they were afterwards called, Trusts, we shall find that they existed in the Roman Law under the name of Fidei Commissa, or trusts. They were introduced by testators to evade the Municipal Law which disabled certain persons, as Exiles, and Strangers, from being heirs and legatees. The inheritance or legacy was given to a person competent to take, in trust, for the person who was the real object of the testator's bounty. But such a confidence was a very precarious one, and was called by the Roman Lawyers; Jus Precarium; for it rested entirely on the good faith of the trustee, who was under no legal obligation to execute it. To make the patronage of the Emperor in favor of these defenseless trusts, they were created under an appeal
to him, as Rogate Per Salutem. Augustus was flattered by the appeal and directed the Praetor to afford a remedy to the Cestui que trust. These fiduciary interests increased so fast after that, that a special Equity jurisdiction was created to enforce the performance of the trusts. This “Particular Chancellor for uses”, as Lord Bacon terms him, who was charged with the support of these trusts was called Praetor Fidei Commissarius. If the testator requested a certain person to be his heir, and requested him, as soon as he should enter upon the inheritance, to restore it to another, (the testator’s intended beneficiary), he was bound to do it. The Emperor Justinian gave great efficiency to the remedy against the trustee by authorizing the Praetor, in cases where the trusts could not otherwise be proved, to make the heir, or any legatee disclose or deny the trust upon oath, and when the trust appeared to compel the performance of it.

The English Ecclesiastics, in order to evade the Statutes of Mortmain, borrowed the uses from the Roman Law and introduced them into England in the reign of Edward III., or Richard II. They caused lands to be granted to third persons to the Use of the Religious houses, and these conveyances, the Clerical Chancellors held to be Fidei Commissa, and binding in conscience. When this evasion of the Law was met and suppressed by the Statute of 15 Richard II., uses were applied to save lands from the effects of attainder; for the use being a mere right in Equity, to the profits of the land, was exempt from Feudal responsibilities. Uses were afterward applied to a variety of purposes in the business of civil life, and grew up into a refined and regular system.
Judge Story, in speaking of the origin of trusts, says, "It is highly probable, that those trusts which are exclusively cognizable in courts of Equity, were, in their origin, derived from the Roman Law, being very similar in their nature to the Fidei Commissa of that Law."

The other group of authorities referred to, give a direct opposite theory in regard to the origin and rise of Uses and Trusts. They hold that there is a broad distinction between trusts and the Fidei Commissa, which has been pointed out by high authority. We will proceed to consider them.

In McDonough's Executors v. Murdock, 15 Howard 367, the question arose, whether a trust was within the language of the Louisiana Code prohibiting Substitutions, and Fidei Commissa, and it was held by the court that it was not.

The material difference between the two is obvious from a consideration of the Fidei Commissa as they existed under the Roman Law. The Fidei Commissum, as has been stated, was the means employed to carry out substitutions which could not otherwise be affected by the testator. By a substitution, a party could be appointed to take the inheritance in case the person who was designed as heir in the first instance, did not make his election to accept the inheritance within a specified time, or in case he was a descendant of the testator, and after becoming heir, died under puberty.

II. Commentaries of Gaius, Sec. 176, 180.

If, however, a stranger, and not a descendant was institute as heir, a Substitution could not be made in such a way that if the heir died within a specified time, some other person should be heir to him. But this end was affected by means of
the Fidei Commissum, whereby the heir was bound to deliver the inheritance over to the beneficiary, in whole or in part, at, or after a designated time.

II. Gaius Commentaries, Sec. 184.

The transmission of estates to be enjoyed by successive owners, was accomplished by means of the Fidei Commissa. It is also to be noted, that while in both of these estates, there was presumed to exist a confidential relationship, in the Fidei Commissum, it was presumed to exist in order to transmit the inheritance, while in the trust it exists to regulate the present enjoyment of the estate in the trust.

Having thus considered the substance of the Fidei Commissum, and the Modern Trust, we see that there are two main points of difference between the two. First, - That the Fidei Commissum arose out of testamentary dispositions; whereas the English Trust was created only by conveyances Inter Vivos, since land could not be devised before the Statute of Henry VIII., or the Statute of Wills. Second, - That in the Fidei Commissum, there was no separation of the legal and Equitable title; there was nothing but a request, which afterward became a duty imposed upon the heir to convey the inheritance to another person, either immediately, or after the death of the first taker. While in the case of the trust, a perfect ownership is decomposed into its constituent elements of legal title, and beneficial interest, which are vested in different persons at the same time.

We have now considered very carefully, the two great theories advanced as to the origin of the Law of Trusts, and from the distinct stands taken by each set of authorities it is a
very difficult matter to formulate a moderate theory. I am inclined, however, to take in the main, the theory of the second class of authorities cited, among whom is Mr. Dispham. It can be seen, that the Fidei Commissum, and the Trust, may, in their mere superficial idea, be similar, yet when we consider carefully the nature of the estates, and the different purposes that they are designed to carry out respectively, that they are entirely separate and distinct. I am very strongly of the opinion that they are indigenous to England, and owe their existence to the brain and cunning of some of the early Clergy, learned in the Law, as many of them were at that period of the history of England; and furthermore, that they do not come from the Roman Law, since the only Roman Law that could have influenced England, was the Old Roman Law.

The question as to the approximate date, of the origin of Trusts, is also a difficult one. Some authorities claim that trusts existed in the time of King Alfred, but the better opinion seems to be that the instance referred to, was the description of a tenure, and not the case of a trust. It is highly probable that trusts were recognized some time before the Statute of Quia Emptores, (13 Edward I), and became very common after that date. As a safe date, we may assume, according to Mr. Bigelow, "That in the Reign of Edward III., the beneficial enjoyment of land, as distinguished from the legal ownership, was distinctly recognized."
We have so far made a historical consideration of the Law of Trusts from the date of their origin, up almost to the present time, we will now proceed to make a technical discussion of the same, and this connection, the first thing to be considered is, what is a trust? Here we have a variety of definitions by different authors, differing somewhat in their wording, and to a small degree in their scope, but all of them expressing the same main idea, some of which we will now give.

Lord Coke, in describing the nature of a Use or Trust in land according to the Common Law, uses the following language, "A Use is a trust or confidence reposed in some other, which is not issuing out of the land, but as a thing collateral, annexed in privity to the estate of the land, and to the person, touching the land— that is, that the Cestui que Use shall take the profit, and that the terre tenant shall make an estate according to his direction."

Story Equity J.P., Sec. 968.

Lord Hardwick, in Stuart v. Mellish, 2 Atkinson, 612, held that a "Trust is, where there is such a confidence between the parties, that no action at Law will lie; but is merely a case for the consideration of the Court of Equity."


In Mr. Snell's Work on Equity we find the following definition of a trust. "A trust is a beneficial interest in, or a beneficial ownership of, real or personal property, unattended with the legal ownership thereof." Snell E.J.P. page 59.

Judge Story in his Work on Equity gives I think, the most comprehensive and brief definition of a trust that I have been able to find, and is as follows, "A trust is, in the most
enlarged sense, in which that term is used in English Jurisprudence, may be defined to be an equitable right, title, or interest in property, real or personal, distinct from the legal ownership thereof."

Trusts in general may be classified under three heads: Express Trusts; Implied Trusts; and Constructive Trusts.

Those falling under the head of Express Trusts may be again sub-divided, according to their objects, or their end and purpose into, Express Private Trusts; and Express Public, or Charitable Trusts.

It is with Express Public or Charitable Trusts, that we have to do with in the present investigation.

It was formerly supposed that Charitable trusts owed their origin to the Statute of Charitable Uses, 43 Elizabeth, C.4., which was in fact an act designed for the sole purpose of picking out charities which were already in existence, and providing for their proper enforcement. This statute, because it enumerated a great many objects that were charitable, came in the course of time, to be considered the origin of the jurisdiction of the Court of Chancery over Charitable Trusts. This opinion was held in both England and the United States, until as late as 1844, when the great case of Vidal v. Girard's Executors was decided, and in the arguments in that case, the error was shown.

In that case, one of the learned Counsel, in his argument, by references to the proceedings of the Court of Chancery in the time of Queen Elizabeth, demonstrated the fact that that Court had exercised jurisdiction over trusts of this description, prior to the passage of the Statute of Charitable Uses.
The cases were few in number and some of them very unsatisfactory, as examples of charitable uses, but upon the authority of these precedents, it is now a well settled fact that the jurisdiction of chancery over charitable uses does not depend upon the "STATUTE", but was in existence independently of, and prior to, its enactment.

Henry VIII. in his struggle with the Pope was obliged to attack and destroy many charitable institutions, for the purpose of asserting the supremacy of the Crown over the authority of the Pope. To do this many statutes were passed abolishing charitable institutions. The Abbies, Monasteries and other religious houses were the objects aimed at, but a number of the acts applied to colleges, chapels, schools and hospitals. In the short reign of Edward VI. and the bloody reign of Philip II. and Mary these abuses multiplied and piled themselves one upon the other. After the accession of Elizabeth to the throne and the Reformation was established, attention was at once turned to the correction of these abuses and the encouragement of charities, and several important statutes were passed for the purpose of so doing: As for instance 39 Eliz. Chap. 6. which authorized the Queen to appoint a commission to enquire if grants or gifts to hospitals and other charitable uses were misemployed, and if so, to correct such abuses. Another, 43 Eliz. C. 2, was the foundation of the poor laws of England and from them probably originated the Pauper Laws in force in many of the states of this country. All of these statutes culminated in the statute, 43 Elizabeth, C. 4, known as the Statute of Charitable
table Uses. The question as to the origin of the jurisdiction of the Court of Chancery has great practical importance for the reason that where the statute of Elizabeth is not in force, or has not been adopted, the right of courts of Equity to assume control over questions of this kind must depend upon their original jurisdiction.

Let us consider the question, as to what is a charity as comprehended under charitable uses. Mr. Binney, one of the counsel in the great Girard Will case, 2 Howard, 128, defined a Charity to be, "What ever is given for the love of God, or for the love of your neighbor, in the Catholic and universal sense—given from these motives and to these ends—free from the stain or taint of every consideration that is personal, private, or selfish." This definition has been approved by the Supreme Court of Pennsylvania, in the case of Price v. Maxwell, 4 Casey, 35, which was the case of where a devise to a school under the auspices and control of a religious denomination, and confined to the youth of its members, both rich and poor, was held a devise to a charitable use, and it was held that it did not cease to be a charitable use because it extended to the rich as well as the poor, Judge Lewis, citing and approving the definition of Mr. Binney in 2 Howard 128.

Lord Camden, in the case of Jones v. Williams, where a testator left a sum of money to a city for the purpose of bringing good water to it for the public use, and for keeping the public fountains in repair, formulated the following definition, "A charity is a gift to a general public use, which extends to the rich as well as the poor."
This is a definition of great clearness and brevity and has been adopted by such high authorities as the Supreme Court of the United States, in Perin v. Carey, 24 How. 506, and also by Chancellor Kent, in the case of Coggeshall v. Pelton, 7 Johnson's Chancery, 294, where a testator, William Henderson, left a sum of money to the town of New Rochelle, for the purpose of building a town house for the transacting of town business, the Chancellor held the bequest to be a valid charitable trust, since it was for the poor as well as the rich.

In Jackson v. Phillips, 14 Allen, 555, Justice Gray in the opinion said, "That a charity in its legal sense, was a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting and maintaining public buildings or works, or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in its nature."

The Statute of 43 Elizabeth, C. 4., points out the exact things which are held to be charitable in their use in the law. It is really a syllabus of charities. The uses comprehended under the Statute, are set forth in the preamble, and are as follows: - "The relief of aged, and impotent, and poor people; the maintenance of sick and wounded
soldiers and mariners; schools of learning; free schools; houses of correction; repairs of bridges; ports, havens, causeways, sea banks, and highways; the education and preferrment of orphans; the marriages of poor maids; supportation and help of tradesmen; handicraftsmen; persons decayed; the relief or redemption of prisoners and captives; in aid or ease of any poor inhabitants concerning the payment of fifteenths, setting out of soldiers, and other taxes". Gifts for any of these purposes were charitable. In addition to these objects expressly provided for, by the express letter of the Statute, there were a number of similar objects which were held to be within the spirit of the statute, as tending to assist in carrying out its main intent and object, and were therefore held to be charities, and enforced as such. As for example, a gift for the repairing of a church.

From our consideration of the foregoing authorities and cases, we can with some degree of certainty, classify charitable trusts under four heads, or classes:—

(1). Educational Purposes—This class would include all trusts for the founding, endowing, and supporting of schools and other similar institutions which are not strictly private. This class is illustrated in the case of Donohugh's Appeal, 5 W.N.C. (2 com. pleas, Phila.) 196. In this case there was a provision of the Pennsylvania constitution involved. The Constitution of Pennsylvania exempted from taxation, institutions of purely public charity, and the question was, whether the library company of Philadelphia fell within the phrase. Judge Mitchell
held that it did. For Libraries and other Literary institutions as the above cited case illustrated.

(2). Benevolent purposes; trusts for the poor, the very poor, the widows and orphans of a specified town. The case of In Re Williams, well illustrates this class. Here a bequest was left for the purposes of keeping in repair certain tombs, and the residue was to be accumulated and when it reached twenty-five pounds, when it was to be given to the poor of the parish until the surplus was reduced to twenty pounds. The first part of the bequest failed, and was held that the whole income went to the object which was charitable.

In Re Williams, 5 L.R. Chan. Division, 735.

(3). Religious purposes, as for instance, the propagation and support of religion, the advancement of Christianity among the Infidels, or the maintaining of Divine worship. The case of DeCamp V. Dobbin, 29 New Jersey Equity 36, is, I think, in point as an illustration of this head. This was the case where a provision in the will of a testator read as follows:—“The residue of my estate I give and devise to the North Reformed Church of Newark, in trust, that they may use the same to promote the religious interests of the said church, and to aid the missionary, educational, and benevolent enterprises to which the said church is in the habit of contributing,” was held to be a good charitable bequest.

(4). Gifts for erecting or maintaining public buildings and works, or otherwise lessening the burdens of government, provided that the subject of the trust is
a gift and not the result of a contract, for in the latter case it would be held not to be charity, since it would not be based on bounty as a charity must necessarily be.

I now think, from the results of our investigation, we have a fair idea of the nature of the objects which partake of the bounty of charitable trusts. We will therefore proceed to consider some of the leading characteristics of charitable trusts by which they are specially distinguished from ordinary trusts.

Charity, from its very essence, is for the many, and not the few, and in order that it may adequately care for the needs of all those who seek its help, it should continue for all time.

Therefore, in Charitable Trusts, which are designed to carry out the intents and purposes of charity, we find two main characteristics:

(1). That charitable trusts are entirely unaffected by the rules against perpetuities and accumulations. In this connection, we know, that as to perpetuities and accumulations, the law will not allow them in the case of a trust, any more than it will in the case of an individual, but in the case of charity, the law has relaxed its severity, and in a trust for charity, property may remain in the hands and under the control of the trustees, and their successors for all time, since, as we have stated before, the object of charity is that it may be perpetual. In the case of Odell V. Odell, 10, Alien, 1, an annual income was left to trustees for the term of fifty years, to be by them invested and accumulated, and then applied to a charity. The bequest was here held good, even though it
was on the face of it, a perpetuity.

The court may, if necessary and expedient, sell some of the property and invest the proceeds in some other form, or in the case of an institution of any kind, as a school, it may remove it to some other location. But during all of this, the trust is continuous.

We will now proceed to consider the second characteristic of charitable trusts; that is, the generality and uncertainty of the objects or beneficiaries. In the ordinary trusts, these must be stated with great clearness and precision. But in Charitable trusts, they need only be stated with sufficient clearness and precision, to show that the testator had a charitable intent, and to enable the court by means of well settled doctrines, to carry the intent into effect. But since this is clearly explained and set forth in the well known doctrine of Equity, called the "Cy Pres" doctrine, we will now proceed to make a careful consideration of that doctrine.

In England, the doctrine of Cy Pres, was administered two ways. It was applied by the Chancellor personally, exercising a prerogative of the King under the sign manual of the Crown; or, in the second place, the Chancellor applied it judicially, as the Chancellor of the court of Equity.

In all cases where a testator died and left a bequest the intent of which was charitable, and mentioned no beneficiaries, or no trustees to carry it out; or, where the object of the charity failed; the Chancellor would, instead of allowing the bequest to revert to the heir-at-
law, apply it to some charity, for which he considered it was intended in a general way, by the testator. Where the chancellor applied the Cy Pres doctrine personally, it was really an exercise of the executive, rather than the judicial authority, and through a misunderstanding in this country, of the fact that the doctrine is not exercised in that manner here, it has been severely criticised and has been adopted less generally by the different states than it should, and otherwise might have been.

In this country, however, we have none but what is known as the pure Judicial Cy Pres doctrine. This doctrine as stated by Mr. Bispham, is as follows:—“where a gift is made to trustees for a charitable purpose, the general nature of which is pointed out, and which is lawful and valid, at the time of the death of the testator, and no intention is expressed to limit it to a particular institution, or mode of application; and afterwards, either by change of circumstances the scheme of the testator becomes impracticable, or by change of law, becomes illegal, the fund having once vested in the charity, does not go to the heirs-at-law, as a resulting trust, but is to be applied by the court of chancery, in the exercise of its jurisdiction in Equity, as near the testator’s particular directions as possible, to carry out his general charitable intent”.

A good example of this doctrine is found in the case of The Attorney-General V. the Ironmonger’s Company, II.I.M. and K., 576. Here, one Thomas Betton, in the residuary clause of his will, made in 1723, bequeathed the residue of his
estate to the Ironmonger's Company, of London, as trustees forbidding them to diminish the capital thereof, or to apply the interest or profits in any other way than the one mentioned. He directed them to apply one-half of the income to the redemption of British slaves in Turkey, or Barbary. Of the other one-half, he bequeathed one-fourth to the Ironmonger's Company for the maintenance of a minister to carry on Divine worship, and the remaining one-fourth, to found charitable schools in London. The half bequeathed to the purpose of freeing slaves in Turkey and Barbary, failed in the main, for the want of beneficiaries, as there were few, if any slaves to free. The question was, then, what was to be done with the property. In the decision of the case on the trial, the Chancellor held that the court could disburse the money in a manner, and as near the apparent intentions of the testator as possible. He held that the character of charity was impressed on the whole fund; the presumed intention of the testator was, that if one object failed, it was to be applied to some similar object, in order to carry out the charitable intent of the testator; it was therefore applied to the establishment of charitable schools in parts of England and Wales, that being considered a carrying out of the testator's intention, since he did not limit in his will, the first moiety to the poor of London.

In America, and as a whole, upon the entire subject, the greatest case is that of Jackson v. Phillips, 14 Allen 539, at page 530.
In this case, Francis Jackson, of Boston, bequeathed to William Lloyd Garrison, Wendell Phillips, Edmund Quincy, and others, as trustees, the sum of ten thousand dollars, to use and expend at their discretion, without responsibility to any one, in such sums, at such times, and such places as they deemed best, preparation and circulation of books, newspapers, the delivery of speeches, lectures, and such other means, as in their judgement, would create a public sentiment that would put an end to Negro slavery in this country.

He further bequeathed the sum of two thousand dollars to the same trustees, for the benefit of fugitive slaves who might escape from the slaveholding states. He expressed his desire that the trustees would become a permanent organization, and gave them power to appoint their successors. These provisions mentioned in the will were valid before the war, but when slavery was abolished, the objects failed. The executors filed a bill in equity, asking for instructions in regard to the disposition of the trust estate. The court, in an opinion by Judge Cary, held, that these charitable bequests were not terminated by the failure of the object expressed by the testator in his will, but were to be applied to carry out in a lawful manner, the intentions of the testator, as nearly as possible, according to a scheme to be settled by a master in chancery, and approved by the court, before the funds were paid over to the trustees; and that upon the return of the master's report, both sums should be paid over to such trustees.
The first amount was to be paid by them, from time to time, to an association, already established, to promote the education, support, and interests of the freedmen, lately slaves, in those states in which slavery had been abolished, to be expended for that object. The amount of the second bequest, was paid to the use of needy persons of African descent, in Boston and its vicinity, preference being given to such ones as had escaped from slavery. In the opinion of the court reviews and discusses the entire question of charities many which propositions have been stated in the preceding part of this thesis.

The doctrine of Cy Pres, also applies to a residuary gift for charities. It was so held in the case of Mayor of Lyons V. The Attorney General of Bengal, L.R.1 Appeals cases, 91.

We might cite a large number of cases on the subject of the Cy Pres doctrine, but as we have but a limited space and time, we must proceed with our investigation, since I think we have given sufficient to make perfectly clear the general nature and scope of the doctrine.

If the gift is for a charity generally, it must be made to trustees, so that the court will not have to act as a trustee; but the gift will not be allowed to fail for the want of a trustee.

The Cy Pres doctrine has been adopted in some states and repudiated in others. In North Carolina, Indiana, Iowa, Alabama, and New York, it has been repudiated. In Pennsylvania, while the principles of the Statute of Elizabeth were adopted, the Cy Pres doctrine was not, but the prin-
Principles have to a limited extent, been adopted by statute. The most notable instance of the repudiation of the Cy Pres doctrine in this country, was in the case of Tilden v. Green, 130 N.Y. 39. Samuel J. Tilden by his will, bequeathed his residuary estate to Messrs. Bigelow, Green and Smith, his executors, as trustees, to hold the same during a period not exceeding two lives in being, and to apply the same to certain objects specified in the will.

These objects were, that the trustees were to procure the incorporation of an institution to be known as the "Tilden Trust," with capacity to establish and maintain a free library and reading room, in the city of New York, and to promote such scientific and educational purposes as they shall designate. He authorized the trustees in case such institution was incorporated during the lifetime of the survivor of the two lives specified, to convey and apply to its use, the residuary estate, or so much of it as they should deem expedient. In case the institution was not incorporated during the period limited, "or if for any reason the trustees should deem it inexpedient to so convey or apply the residue, or any part of it," they were authorized to apply the whole or such portion as was not so applied, to such charitable educational purposes as in their judgement would render it, "most widely beneficial to mankind." In the opinion of the court by Judge Brown, with dissenting opinions on the part of three of the justices, the gift was declared void for the uncertainty of the beneficiaries; the court holding that the doctrine of Cy Pres was not nor never had been recognized in the
in the state of New York.

In the New England states, the doctrine has quite generally adopted, or is now an open question. Missouri and Illinois have adopted the doctrine, and New Jersey has not yet passed upon the question.

In Maryland, Virginia, New York, South Carolina, trusts are governed and exist solely by virtue of statute, and in conclusion, we will consider trusts under the statutes in those states. To the above states we should add, Michigan, Wisconsin, Minnesota, and West Virginia.

In these states it may be stated as the correct and only possible rule on the subject, that a trust having for its object some charity, if it possessed all of the essential elements of a valid ordinary private trust, namely; a trustee certain, and competent to hold, and beneficiaries certain, or capable of being made certain, would be upheld and properly enforced. In other words, an express trust otherwise valid, would not become invalid, because the ultimate purpose was charitable.

Finis.