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CHARITIES - CORPORATION ORGANIZED FOR POLITICAL PURPOSES AS A CHARITABLE ORGANIZATION

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CHARITIES — CORPORATION ORGANIZED FOR POLITICAL PURPOSES AS A CHARITABLE ORGANIZATION — A statute provided, in substance, that bequests in a will to charitable organizations may not collectively exceed one-third of the estate of a testator leaving heirs.¹ Plaintiff, a legatee under a will, appealed from a decree which found the American Jewish Congress was not a charitable organization and therefore was entitled to the full sum bequeathed to it. Among the corporate purposes stated in the articles of incorporation

¹ Cal. Prob. Code (1931), § 41 (formerly found in Civil Code, § 1313, repealed by Prob. Code, Appendix Code Civ. Prac., § 1700): "No estate, real or personal, may be bequeathed or devised to any charitable or benevolent society or corporation, or to any person or persons in trust for charitable uses, unless done by will duly executed at least thirty days before the death of the testator . . . [but provided] they may not collectively exceed one third of the estate of the testator who leaves legal heirs, and if they do, a pro rata deduction from such devises and legacies shall be made so as to reduce the aggregate thereof to one third of the estate."

were: (a) to further the development of the Jewish National Home in Palestine, and (b) to secure and maintain equality of opportunity for Jews everywhere. *Held*, decree reversed; although incorporated for political purposes, the corporation is a charitable organization, and its bequest must be reduced accordingly. *In re Murphey's Estate*, 7 Cal. (2d) 712, 62 P. (2d) 374 (1936).

In order to classify a corporation as a charitable organization, the corporate purposes expressed in the charter must be such as are recognized in law as charitable.² The legal signification of the word charity is derived chiefly from the English Statute of Charitable Uses;³ and a charitable bequest is said to be one which is within the principle and reason of the statute, although not expressly named therein.⁴ The problem of whether a political purpose may nevertheless be charitable has frequently been raised in cases involving the validity of a trust to effect changes in existing laws or governmental structures. The minority view, as propounded by the Massachusetts and English courts, is that such trusts cannot be sustained as charitable, reasoning that the court has no means of judging whether a proposed change in the laws or frame of government will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift.⁵ The trend of modern authority is to distinguish between trusts whose purpose is to violate the law, and those which merely attempt to change the existing law by lawful means;⁶ and thus, to hold that a trust for a public charity is not invalid merely because it contemplates the procurement of such changes in existing laws as the donor deems beneficial to the people in general, or to a class for whose benefit the trust is created.⁷ The reasoning of such cases, while more especially refer-

² See I WORDS AND PHRASES, 3d ser., 1125 (1928).

³ 43 Eliz., c. 4 (1604).

⁴ *Staines v. Burton*, 17 Utah 331, 53 P. 1015 (1898); *Buchanan v. Kennard*, 234 Mo. 117, 136 S. W. 415, 37 L. R. A. (N. S.) 993 (1911). See 5 R. C. L. 323 (1914).

⁵ *Jackson v. Phillips*, 14 Allen (96 Mass.) 539 (1867); *Bowditch v. Attorney General*, 241 Mass. 168, 134 N. E. 796, 28 A. L. R. 713 (1922) (trust to promote the cause of women's political rights by securing appropriate legislation, held not sustainable as a charitable trust); *Slee v. Commr. of Internal Revenue*, (C. C. A. 2d, 1930) 42 F. (2d) 184 (gift to a corporation whose purpose was to secure legislation regarding birth control held not a gift to a charitable organization); *In re Killen's Will*, 124 Misc. 720, 209 N. Y. S. 206 (1925) (bequest in trust to further the development of the Irish Republic held invalid—"a trust for the attainment of political purposes has always been held invalid"); *Bowman v. Secular Society Ltd.*, [1917] A. C. 406 (abolition of religious tests, secularization of education, alteration of laws touching religion or marriage, held purely political purposes and unsustainable as charitable).

⁶ 71 UNIV. PA. L. REV. 89 (1922).

⁷ *Taylor v. Hoag*, 273 Pa. 194, 116 A. 826, 21 A. L. R. 946 (1922) (trust to promote improvements in structure and methods of government is charitable); *Collier v. Lindley*, 203 Cal. 641, 266 P. 526 (1928) (trust to promote improvements in methods of government, e.g., furthering initiative, referendum, and recall, and to strengthen legislation regarding intoxication and narcotics, held a valid charitable trust, though for political purposes); *Garrison v. Little*, 75 Ill. App. 402 (1897)

able to proposed reforms in legislation, is equally applicable to such social and economic changes as would in the opinion of the donors improve the status and conditions of any particular race or class of the population.⁸ The view presented by the Massachusetts court in *Jackson v. Phillips*⁹ and *Bowditch v. Attorney General*¹⁰ has been criticized as hindering progress and change in legislation and government.¹¹ The California court, in the instant case, reasons that since it has previously held that a trust for the promotion of political purposes is charitable,¹² it is now bound, and "cannot distinguish between political purposes, saying one is charitable and another is not, assuming, of course, that the changes sought are not *contra bonos mores* and are to be brought about by peaceable means, and not by war, riot, and revolution."¹³ This is in line with the authorities that, as long as the trust purpose is lawful and not against public policy, the court is not to be concerned with the wisdom of the plan or change.¹⁴ While it is true that the mere fact that a trust is created for the benefit of members of a community outside the United States does not prevent the trust from being charitable,¹⁵ it has been held that trusts, having purposes substantially similar to that of the corporation in the instant case, cannot be sustained as charitable for the reason that they are against public policy.¹⁶

(trust to promote attainment of woman suffrage held a valid charitable trust). See note, 28 A. L. R. 720 (1924).

Trusts to reduce and abolish use of intoxicating liquor as valid charitable trusts, see: *Bowditch v. Attorney General*, 241 Mass. 168, 134 N. E. 796 (1922); *Buell v. Gardner*, 83 Misc. 513, 144 N. Y. S. 945 (1914); *Harrington v. Pier*, 105 Wis. 485, 82 N. W. 345, 50 L. R. A. 307 (1900); *Haines v. Allen*, 78 Ind. 100, 41 Am. Rep. 555 (1881). And see note, 73 A. L. R. 1361 (1931).

Jackson v. Phillips, 14 Allen (96 Mass.) 539 (1867); and *In re Lewis's Estate*, 152 Pa. 477, 25 A. 878 (1893) (trusts to employ all legal means to prevent discrimination against the colored race sustained as charitable notwithstanding the existence of laws in Southern states requiring carriers to maintain separate cars for colored persons).

For validity of charitable trusts to promote changes in law or methods of government, in general, see note, 21 A. L. R. 951 (1922); *BOGERT, TRUSTS*, § 58 (1921); 2 *BOGERT, TRUSTS AND TRUSTEES*, § 378 at p. 1204 (1935); 2 *TRUSTS RESTATEMENT*, § 374, comment j (1935).

⁸ *Collier v. Lindley*, 203 Cal. 641, 266 P. 526 (1928).

⁹ 14 Allen (96 Mass.) 539 (1867).

¹⁰ 241 Mass. 168, 134 N. E. 796, 28 A. L. R. 713 (1922).

¹¹ *BOGERT, TRUSTS*, § 58 (1921); 2 *BOGERT, TRUSTS AND TRUSTEES*, § 378 (1935); 71 *UNIV. PA. L. REV.* 89 (1922); Bartlett, "Charitable Trusts to Effect Changes in the Law," 16 *CAL. L. REV.* 478 (1928).

¹² *Collier v. Lindley*, 203 Cal. 641, 266 P. 526 (1928).

¹³ *In re Murphey's Estate*, 7 Cal. (2d) 712 at 715, 62 P. (2d) 374 (1936).

¹⁴ *Zollman*, *American Law of Charities* 149 (1924); *Taylor v. Hoag*, 273 Pa. 194 at 200, 116 A. 826 (1922): "With the wisdom of the proposed changes, the courts are not concerned. We perform our duty in determining whether or not the method adopted to make the change violates the established law."

¹⁵ 2 *TRUSTS RESTATEMENT*, § 374, comment (i) (1935).

¹⁶ *Habershon v. Vordon*, 4 De G. & Sm. 467, 64 Eng. Rep. 916 (1851) (trust to effect political restoration of the Jews to Jerusalem held void as conducive to

The California court, while recognizing the fact that the purposes espoused by the corporations have already fomented disputes with the Arabs, finds them not against public policy, and that the case is controlled by former decisions. It is submitted that the California court has adopted that reasoning which encourages both growth and liberalization of the scope of charities, and is thus in keeping with the modern trend.¹⁷

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revolution in a friendly country); *In re Killen's Will*, 124 Misc. 720, 209 N. Y. S. 206 (1925) (trust to further the development of the Irish Republic held void as against public policy); *Karen Kayement Le Jisroel, Ltd. v. Commr. of Inland Revenue*, [1932] A. C. 650 (association to acquire lands in Palestine for Jews held not a charitable organization).

¹⁷ "New discoveries in science, new fields and new opportunities for human action, the differing condition, character, and want of communities and nations, change and enlarge the scope of charity and where new necessities are created, new charitable uses must be established." *Collier v. Lindley*, 203 Cal. 641, 266 P. 526 (1928).