

Michigan Law Review

Volume 34 | Issue 1

1935

TRUSTS - CY PRES DOCTRINE -APPLICATION TO CHARITABLE TRUSTS - ACCUMULATIONS

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Estates and Trusts Commons](#)

Recommended Citation

TRUSTS - CY PRES DOCTRINE -APPLICATION TO CHARITABLE TRUSTS - ACCUMULATIONS, 34 MICH. L. REV. 142 (1935).

Available at: <https://repository.law.umich.edu/mlr/vol34/iss1/25>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

TRUSTS — CY PRES DOCTRINE — APPLICATION TO CHARITABLE TRUSTS — ACCUMULATIONS — *A* bequeathed the residue of her estate to the Trustees of Bowdoin College in trust to apply two-thirds of the annual income to the purposes of the Medical School of Maine and to accumulate the other one-third with another fund left by *A* for the same purpose until the whole should reach \$50,000, when all should be applied for the purposes of the Medical School of Maine. The Medical School ceased to function, and the trustees applied to the court for instructions. *Held*, that there was a general charitable intent, indicated by the use of the word "purposes," and that the *cy pres* doctrine will keep the fund from reverting to the heirs. And since one clear intention of the testatrix was to allow the fund to accumulate, the court directed all of the residue to be accumulated until such time as the fund should reach \$50,000, when the trustees should apply to the court for disposition, with leave to modify the decree if circumstances should offer a better way to effectuate the purposes of the testatrix. *Snow v. President and Trustees of Bowdoin College*, (Maine 1934) 175 A. 268.

The decision represents the prevailing American doctrine of judicial *cy pres* as a rule of construction applied to charitable trusts.¹ Where there is a disposition of a fund in trust for a specific charity which has become impossible of execution, and where there is a general charitable intent,² equity courts in the great majority of states will direct the disposition of the fund for purposes as closely related as

¹ 2 PERRY, TRUSTS, 7th ed., secs. 717-728 (1929).

² *Jackson v. Phillips*, 14 Allen (96 Mass.) 539 (1867); 74 A. L. R. 671 (1931).

possible to the purpose designated.³ At least one state has refused to accept the *cy pres* doctrine, though applying it in a modified form.⁴ The principal case is thought to be novel, however, in its application of the *cy pres* power to the provision for accumulation. In the absence of statute⁵ the courts have indicated that accumulation for charity will be permitted for a longer period than accumulations for other purposes.⁶ No case has been found in which the court has thus resorted to accumulation of income and postponed the final disposition of the fund, so that future developments might point to a better application of the *cy pres* power. Thus, though the final disposition is merely postponed by this device, the case suggests an important extension of the *cy pres* power and is commendable for its effort to effectuate the intent of the testatrix.

D. D.

³ *Tincher v. Arnold*, (C. C. A. 7th, 1906) 147 Fed. 665; 33 HARV. L. REV. 598 (1920); 35 YALE L. J. 643 (1926), discussing the degree of impossibility required; N. Y. Consol. Laws, Personal Property, sec. 12 (2); *Patton v. Pierce*, 114 N. J. Eq. 548, 169 Atl. 284 (1933); *City of Newport v. Sisson*, 51 R. I. 481, 155 Atl. 576 (1931); *O'Hara v. Grand Lodge*, 213 Cal. 131, 2 Pac. (2d) 21 (1931).

⁴ *Dunn v. Ellisor*, 225 Ala. 15, 141 So. 700 (1932), the "doctrine of approximation."

⁵ 18 GEORGETOWN L. J. 59 (1929).

⁶ *Bogert, Trusts* 236 (1921); 2 PERRY, TRUSTS, 7th ed., sec. 738 (1929); *Wardens of St. Paul's Church v. Attorney General*, 164 Mass. 188, 41 N. E. 231 (1895); *Duggan v. Slocum*, (C. C. A. 2d, 1899) 92 Fed. 806, with a discussion of the Connecticut cases; 41 HARV. L. REV. 514 (1928). Cf. *Girard Trust Co. v. Russell*, (C. C. A. 3d, 1910) 179 Fed. 446, distinguishing between gifts to charity which vest immediately in the beneficiary and those which do not vest until after the period for accumulation.