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TRUSTS-EFFECT OF GIFT TO EXECUTOR FOR "CHARITY AND OTHER WORTHY OBJECTS"

TRUSTS—EFFECT OF GIFT TO EXECUTOR FOR "CHARITY AND OTHER WORTHY OBJECTS"—A testator directed his executor to sell all his assets within five years and to distribute the proceeds to "such charities and worthy objects" as the executor and the testator's sister should determine, "remembering . . . the City of Fort Worth . . . , the City of Vancouver . . . , Parker County, in Texas, and England, places to which I have become attached." The executor proceeded to administer the estate and gave some of it to the Methodist Episcopal Bishop of Texas for the use of his church. The attorney general of Texas then filed a bill seeking to enjoin the executor from further administration of the estate for alleged misconduct, to appoint a receiver for the estate, and to appoint a master to determine to what charities the assets should be given. The heirs and next of kin of the testator were not joined as parties. The Supreme Court of Texas affirmed the dissolution of a temporary injunction against the executor, dismissed the bill, and *held*, that the trust was not necessarily for public charity, so the attorney general had no interest and was not a proper party to enforce it.

By way of dictum the court said that the gift to the Methodist bishop was a reasonable exercise of the discretion of the trustee, thus inferentially holding that the will created a valid private trust. *Allred, Attorney General, v. Beggs,* (Tex. 1935) 84 S. W. (2d) 223.

Since the leading case of *Morice v. The Bishop of Durham,*[1] it has been an accepted doctrine in the law of trusts that, except in the case of trusts for public charities, a trust with no cestuis que trustent defined by name or class is too indefinite to be carried out, and when a will purports to create such a trust the property so designated becomes subject to a resulting trust for the benefit of the heirs or next of kin of the testator.[2] Nevertheless, in several cases where a testator has left property in trust for indefinite objects, some charitable and some non-charitable, and the trustee must (under the words of the will) give some part to charity, courts have given partial effect to the trust by merely eliminating the trustee's discretion and dividing the property equally among charitable and non-charitable objects, imposing a resulting trust for the benefit of the heirs and next of kin on the shares allotted to non-charities.[3] Where, however, the trustee (by the words of the will) has been given discretion to apportion the whole bequest to non-charitable objects, the great mass of decisions hold the whole trust void.[4]

[1] 9 Ves. Jun. 399, 32 Eng. Rep. 656, 10 Ves. Jun. 521, 32 Eng. Rep. 947 (1805).

[2] Morice v. The Bishop of Durham, 9 Ves. Jun. 399, 32 Eng. Rep. 656, 10 Ves. Jun. 521, 32 Eng. Rep. 947 (1805); James v. Allen, 3 Mer. 17, 36 Eng. Rep. 7 (1817); Ommanney v. Butcher, T. & R. 260, 37 Eng. Rep. 1098 (1823). Vezey v. Jamson, 1 Sim. & St. 69, 37 Eng. Rep. 27 (1822); Fowler v. Garlike, 1 Russ & M. 232, 39 Eng. Rep. 90 (1830); Williams v. Kershaw, 5 Cl. & F. 111, 7 Eng. Rep. 346 (1835); Ellis v. Selby, 1 Myl. & Cr. 286, 40 Eng. Rep. 384 (1836); Stubbs v. Sargon, 2 Keen 255, 48 Eng. Rep. 626, 3 Myl. & Cr. 507, 40 Eng. Rep. 1022 (1838); Harris v. Du Pasquier, 26 L. T. R. 689 (Chanc. 1872); Buckle v. Bristow, 10 Jur. N. S. (part 1) 1095 (1864); Leavers v. Clayton, 8 Ch. D. 584 (1878); In re Nottage, [1895] 2 Ch. 649; Chamberlain v. Stearns, 111 Mass. 267 (1873); Nichols v. Allen, 130 Mass. 211 (1881); Adye v. Smith, 44 Conn. 60 (1876); Holland v. Alcock, 108 N. Y. 312, 16 N. E. 305 (1888); Taylor v. Kemp, 2 Brad. (Ill. App.) 368 (1878); Stewart v. Green, 1 Ir. R. Eq. 470 (1871); Browne v. King, 17 L. R. Ir. 448 (1885); In re Cullimore's Trusts, 27 L. R. Ir. 18 (1890); McHugh v. McCole, 97 Wis. 166, 72 N. W. 631 (1897); Ames, "The Failure of the 'Tilden Trust,'" 5 HARV. L. REV. 389 (1892); Grady, "Gifts for a Non-Charitable Purpose," 15 HARV. L. REV. 509 (1902). But see Re Gibbon, [1917] 1 Ir. R. 448.

[3] In re Clarke: Bracey v. Royal National Lifeboat Institution, [1923] 2 Ch. 407; Re Bennett, [1920] 1 Ch. 305; Re Baron Ludlow, 58 W. N. 126, 314 (1923); Clark v. Cummings, 83 N. H. 27, 137 A. 660 (1927).

[4] In re Tetley, [1923] 1 Ch. 258, affd. [1924] A. C. (H. L.) 262 (held the following trust void: "for such patriotic purposes or objects and such charitable institutions or charitable object or objects in the British Empire as they in their absolute discretion should select," because the trustees could appoint to objects other than charity); Thomas v. Davis, [1923] 1 Ch. 225 (trust "for the benefit of one or more charitable or public institutions as they may deem advisable in their absolute discretion" held void for uncertainty); In re Eades, [1920] 2 Ch. 353; Smith v. Pond, 90 N. J. Eq. 445, 107 A. 800 (1919), noted in 29 YALE L. J. 242 (1919) (trust "for the support of a church or such benevolent purposes as the trustees of the church shall direct" held void); Matter of Shattuck, 193 N. Y. 446, 86 N. E. 445 (1908) (for "religious,

The cases where the whole trust has failed because the trustee has been held to have the power to exclude charities have been in the main ones in which the charitable and non-charitable objects were connected in the disjunctive. Where, as in the principal case, the objects are connected in the conjunctive ("charities *and* worthy objects"), there is authority for holding that the trustee must give some part to charity, and therefore that the trust is enforceable as a charity as to one-half the property transferred.[5] There is apparently but one case in support of the Texas court's dictum sustaining the validity of the whole trust in the principal case. *Re Gibbon*[6] involved a bequest by a Roman Catholic priest to his executors, also priests, to dispose of the property transferred "to my best spiritual advantage, as conscience and sense of duty may direct." The Irish court held that this was neither a charitable trust nor a beneficial bequest to the executors, but allowed the executors to carry it out if they were willing. The willingness indicated in the principal case to permit the executor to carry out the trust does permit enforcement of the testator's intent, but the court leaves unanswered the question whether or not effective enforcement of such a trust can be secured through suit by the heirs or next of kin of the testator in the event of default or misconduct of the trustee.[7]

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educational, or eleemosynary institutions" held void); 2 PERRY, TRUSTS AND TRUSTEES, 7th ed., § 711 (1929).

[5] In re Bennett, [1920] 1 Ch. 305 ("for the benefit of schools and poor and other objects of charity or any other public objects in the parish of X"; "*or*" interpreted as meaning "*and*"); Re Baron Ludlow, 58 W. N. 126, 314 (1923) ("for hospital or other charitable or benevolent institution"); Clark v. Cummings, 83 N. H. 27, 137 A. 660 (1927) ("to dispose among charitable, fraternal, benevolent, and educational institutions and corporations, public and private, in New Hampshire"); In re Clarke, [1923] 2 Ch. 407 (where the testator directed his executors to divide the residue among *a*, *b*, *c* and *d*—*a*, *b*, and *c* being definitely named charitable corporations and *d*, "such other funds, charities and institutions as my executors in their absolute discretion shall see fit,"—and the court divided three-quarters of the residue equally among *a*, *b*, and *c* and gave the remaining one-quarter to the next of kin).

[6] [1917] 1 Ir. R. 448.

[7] See Gray, "Gifts for a Non-Charitable Purpose," 15 HARV. L. REV. 509 (1902), supporting Morice v. The Bishop Durham and criticizing the view taken by Ames, "The Failure of the 'Tilden Trust,'" 5 HARV. L. REV. 389 (1892), which advocated allowing a willing trustee to carry out non-charitable trusts with indefinite objects. Cases are collected in 3 A. L. R. 287 (1919) and 45 A. L. R. 140 (1926). See also Smith, "Honorary Trusts and the Rule Against Perpetuities," 30 COL. L. REV. 60 (1930).