

# Michigan Law Review

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Volume 46 | Issue 5

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1948

## TRUSTS-CHARITIES-ERECTION OF MONUMENT

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### Recommended Citation

J. Barrett, *TRUSTS-CHARITIES-ERECTION OF MONUMENT*, 46 MICH. L. REV. 705 (1948).

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TRUSTS—CHARITIES—ERECTION OF MONUMENT—Testatrix directed “that my executors . . . erect in the courthouse park at Madera, California, a granite tower . . . to contain a carillon . . . to be placed in the park at a reasonable cost . . . with an inscription . . . to be cut in a conspicuous place on the granite . . . to read as follows: ‘Dedicated to the memory of all those . . . who strove to make Madera and Madera County all that it is. John L. Butin, M.D. Mary Ryerson Butin, M.D.’” *Held*, the devise constituted a charitable gift. *In re Butin*, (Cal. 1947) 183 P. (2d) 304.

It is well recognized that charities constitute an exception to the requirement

that a trust have a definite beneficiary.<sup>1</sup> In fact, indefiniteness of the ultimate beneficiaries is in a sense an essential characteristic of a charitable use;<sup>2</sup> yet clearly the purpose must be shown to be charitable with sufficient certainty that the court may enforce the trust.<sup>3</sup> Definitions of charity are manifold,<sup>4</sup> the most concise and comprehensive classification being that of Lord Macnaghten: "Charity in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads."<sup>5</sup> Within this fourth group have been included funds for a life-boat,<sup>6</sup> for the erection of a townhouse,<sup>7</sup> for the paving, lighting, cleansing and improving of a town,<sup>8</sup> for bringing spring-water to a town,<sup>9</sup> for such public purposes as trustees think best,<sup>10</sup> for a public park,<sup>11</sup> for the payment of bell-ringers ringing in commemoration of the Restoration,<sup>12</sup> and for equestrian monuments.<sup>13</sup> Excluded have been funds for an existing public waterworks,<sup>14</sup> for the perpetual upkeep of a spiritualist memorial,<sup>15</sup> and for "patriotic purposes."<sup>16</sup> Particularly, gifts of funds for ornamental arches<sup>17</sup> and for monuments<sup>18</sup> to illustrious persons<sup>19</sup> have been upheld as

<sup>1</sup> *Morice v. Bishop of Durham*, 9 Ves. 399, 32 Eng. Rep. 656 (1804), 10 Ves. 522, 32 Eng. Rep. 947 (1805). For a detailed study see Zollmann, "The Development of the Law of Charities in the United States," 19 COL. L. REV. 91, 286 (1919).

<sup>2</sup> See cases cited in 3 PAGE, WILLS, 3d ed., §§ 1230-1231 (1941). But see 2 BOGERT, TRUSTS AND TRUSTEES, § 362 (1935).

<sup>3</sup> *In re McDole's Estate*, 215 Cal. 328, 10 P. (2d) 75 (1932); *In re Graves' Estate*, 242 Ill. 23, 89 N.E. 672 (1909); *Wilcox v. Atty. Gen.*, 207 Mass. 198, 93 N.E. 599 (1911). See 10 AM. JUR., Charities, §§ 82, 96 (1937); 14 C.J.S., Charities, § 22 (1939).

<sup>4</sup> For instance, see *Jackson v. Phillips*, 14 Allen (Mass.) 539 at 556 (1867), and cases cited in 14 C.J.S., Charities, § 1 and in 2 PERRY, TRUSTS, 7th ed., § 697 (1929).

<sup>5</sup> *Commissioners for Special Purposes of Income Tax v. Pemsel*, 16 App. Cas. 531 at 583 (1891). See also Brunyate, "The Legal Definition of Charity," 61 L. Q. REV. 268 (1945).

<sup>6</sup> *Johnston v. Swann*, 3 Madd. 457, 56 Eng. Rep. 573 (1818).

<sup>7</sup> *Coggeshall v. Pelton*, 7 Johns. Ch. (N.Y.) 291 (1823).

<sup>8</sup> *Atty. Gen. v. Heelis*, 2 Sim. & St. 67, 57 Eng. Rep. 270 (1824).

<sup>9</sup> *Jones v. Williams*, Amb. 651, 27 Eng. Rep. 422 (1767).

<sup>10</sup> *Peirce v. Atty. Gen.*, 234 Mass. 389, 125 N.E. 609 (1920).

<sup>11</sup> *Bartlett, Petitioner*, 163 Mass. 509, 40 N.E. 899 (1895).

<sup>12</sup> *In re Pardoe, McLaughen v. Atty. Gen.*, [1906] 2 Ch. 184.

<sup>13</sup> *Estate of Smith*, 181 Pa. St. 109, 37 A. 114 (1897); *In re Graves' Estate*, 242 Ill. 23, 89 N.E. 672 (1909).

<sup>14</sup> *Doughten v. Vandever*, 5 Del. Ch. 51 (1875).

<sup>15</sup> *In re Stephan's Estate*, 129 Pa. Super. 396, 195 A. 653 (1937).

<sup>16</sup> *Atty. Gen. v. Nat. Provincial Bank*, [1924] A.C. 262. Generally, see notes in 50 A.L.R. 593 (1927); 14 L.R.A. (N.S.) 49 at 103 (1908); 37 L.R.A. (N.S.) 993 at 1009 (1912).

<sup>17</sup> An ornamental arch at some suitable part of the Civic Center, *Haggin v. Trust Co.*, 69 Colo. 135, 169 P. 138 (1917), noted in 16 MICH. L. REV. 444 (1918). See also, *Matter of Barnard*, 170 Misc. 875, 11 N.Y.S. (2d) 115 (1939); *Rhode Island Hospital Trust Co. v. Benedict*, 41 R.I. 143, 103 A. 146 (1918).

<sup>18</sup> For a discussion of possible meanings of the word "monument," see Keasbey, "Gifts for Public Monuments," 29 YALE L. J. 729 (1920).

<sup>19</sup> *To Roger Williams, Faunce v. Peoples Savings Bank*, 46 R.I. 75, 124 A. 731

being for charitable purposes. By analogy, the principal case would seem to fall within this group, even though those to be commemorated were not specifically named and were more numerous than in the usual case. The rationale of such cases is that, notwithstanding the testator's direction that his name be placed on the monument as donor, or that the monument be inscribed to the memory of a private person or group, the primary purpose of the gift is for the enlightenment, benefit, or use of the public.<sup>20</sup> Another approach, however, would seem to be available to the court in the principal case inasmuch as testatrix provided a fund for the erection of the carillon only, and not for its maintenance or for the ringing of its bells, no continuing trust is necessary, and the bequest may be sustained as for a non-charitable, private burial monument which must be erected within a reasonable time, certainly within the period of the rule against perpetuities.<sup>21</sup> The trust would, in effect, be an honorary trust.<sup>22</sup> It would be difficult to frame precisely a principle which will satisfactorily anticipate all possible situations.<sup>23</sup> The result in a given case, it is submitted, will depend finally upon the court's own disposition to view the testator's purpose as having been either primarily for the public benefit, or basically for selfish ends.

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(1924); to Stonewall Jackson, Cobb, and Bartow, *Gilmer v. Gilmer*, 42 Ala. 9 (1868).

<sup>20</sup> In the following cases the use was held to be primarily for private purposes, only incidentally public: *Bates v. Bates*, 134 Mass. 110 (1883) ("momento of Hope, Faith and Charity"); *Morristown Trust Co. v. Morristown*, 82 N.J. Eq. 521, 91 A. 736 (1913) (trust for erection of flagstaff in park, to bear inscription in memory of testator's father).

<sup>21</sup> *Waller v. Sproles*, 160 Tenn. 11, 22 S.W. (2d) 4 (1929); *Lounsbury v. Trustees of Square Lake Burial Assn.*, 170 Mich. 645, 129 N.W. 36, 137 N.W. 513 (1912); *Hartson v. Elden*, 50 N.J. Eq. 522, 26 A. 561 (1892), contra, where bequest was of a fund which "may be employed" for the erection of the monument.

<sup>22</sup> See illustrations in 1 TRUSTS RESTATEMENT, § 124 (1935). Criticism is made of the doctrine in 1 BOGERT, TRUSTS AND TRUSTEES, § 166 (1935).

<sup>23</sup> Flexibility and adaptability are necessary. This end is better served, as is suggested by Brunyate in "The Legal Definition of Charity," 61 L. Q. REV. 268 (1945), by judicial decision than by legislative pronouncement.