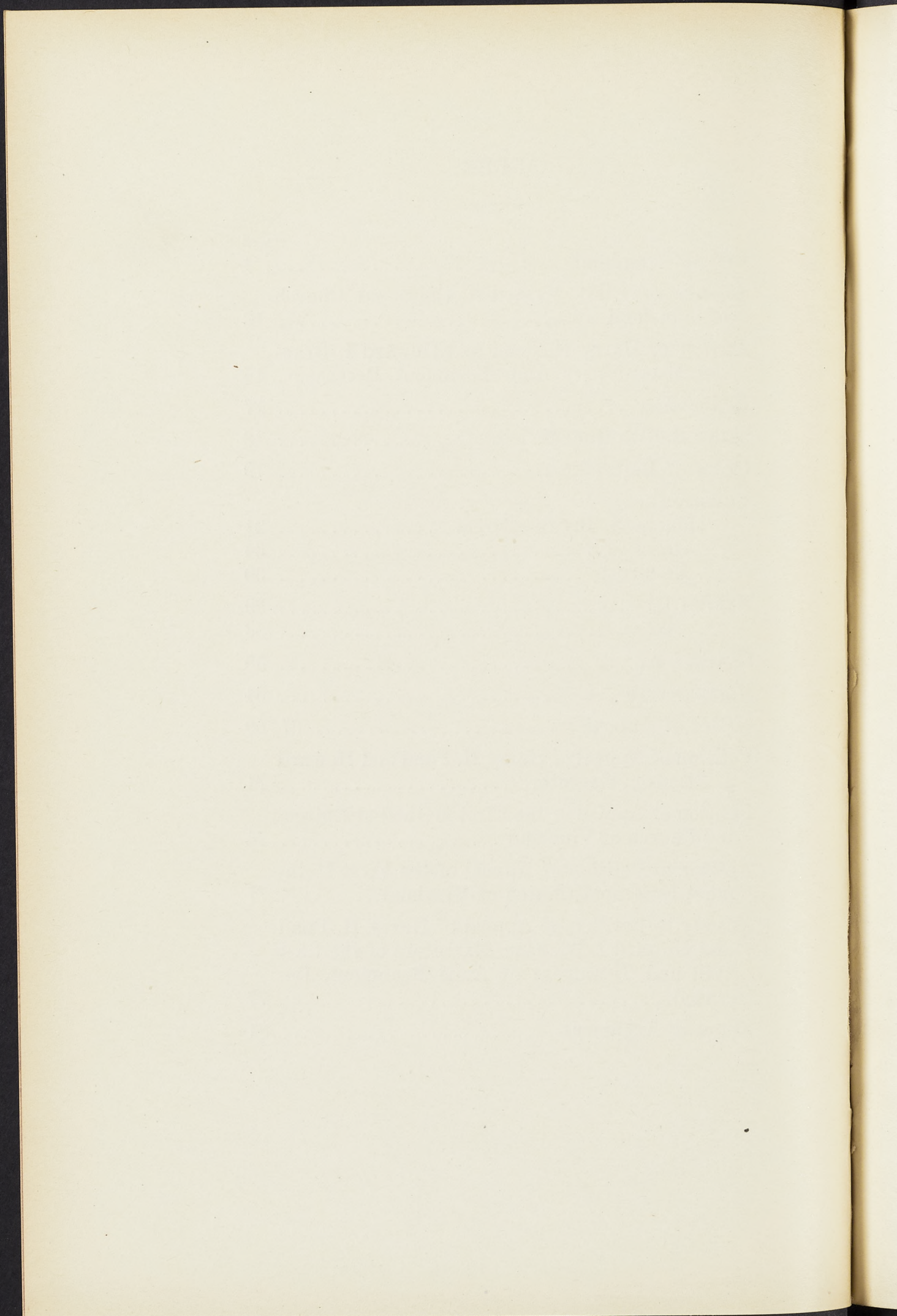


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BILL OF COMPLAINT.

(Filed February 13, 1919.)

IN CHANCERY OF NEW JERSEY.

*To the Honorable Edwin Robert Walker, Chancellor
of the State of New Jersey:*

The complainant, Ann Isabel Smith, of Burley in Wharfedale, Yorkshire, England, a lunatic, by Frank S. Kelley, of the Borough of Chatum, County of Morris and State of New Jersey, her next friend, shows: 10

1. That pursuant to an order made by this Honorable Court on the fourth day of February, A. D. nineteen hundred and nineteen, Frank S. Kelley, Esquire, was appointed the next friend of the said complainant and authorized to file this bill in this Honorable Court on her behalf as will appear by the said order now on file in this Honorable Court. 20

2. That on or about the third day of February, nineteen hundred and eighteen, Anne Beaumont, then of the City of Vineland in the County of Cumberland and State of New Jersey, departed this life, having made, executed and published in due form of law her last will and testament and codicils thereto in writing, which were duly admitted to probate by the Surrogate of said County of Cumberland on the eighteenth day of February, nineteen hundred and eighteen and recorded in Book W of Wills, page 365, in the office of said Surrogate; that a copy of the said will and codicils is hereunto annexed and made part hereof and marked Schedule "A." 30

3. That letters testamentary were duly granted on the said last mentioned day by the Surrogate of said Cumberland County to Howard I. Branson and Harry H. Pond, the executors therein named, who duly qualified as such executors and took upon themselves the burden of the administration of said estate agreeably to the said will.

4. That in and by her last will and testament the said testatrix bequeathed to the complainant, her
10 niece, the sum of five thousand dollars (\$5,000) and in addition thereto all her household goods of every description, furniture, piano, books, bric-a-brac, clothing, etc. etc., contained in and about her home as will appear in the first and second paragraphs of her will, a copy of which is hereunto annexed; that in and by the codicil to her will made the twenty-seventh day of April 1910, the said testatrix did give and
20 bequeath to the complainant the sum of one thousand dollars (\$1,000) in addition to the five thousand dollars given her under the first clause of her will, making the total bequest six thousand dollars (\$6,000) as will appear by said codicil, a copy of which is hereto annexed.

5. That the said testatrix made the said complainant her residuary legatee and devisee in and by the twenty-third paragraph of her will which provides as follows:

30 "Should there be anything real or personal remaining after making the above-mentioned bequests I do give and bequeath the same to my niece Ann Isabel Smith now residing with me. The same to be in addition to what she is to receive under the first and second clauses of this will."

6. That in and by the twenty-second paragraph of her will, said testatrix made disposition of her homestead property as follows:

“Twenty-second. I order and direct my executors to sell at either public or private sale my home property now occupied by me and situate on the north side of Landis Avenue between East and Valley Avenues, Vineland, New Jersey, consisting of buildings and five acres of land, and I do hereby give and bequeath to the trustees of the First Methodist Episcopal Church of Vineland, New Jersey, the amount of the net proceeds of said sale of my home. The said church Trustees to hold the amount received in trust nevertheless as an endowment fund. Said endowment fund to be safely invested and the net income arising therefrom shall be used for the support of the church or such benevolent purposes as the trustees of said church shall direct.”

10

20

7. That the executors of the said will have sold the said homestead property above-mentioned and realized therefor the sum of nine thousand dollars (\$9,000) and now have said sum of money in their hands as the proceeds thereof.

8. That the First Methodist Episcopal Church of Vineland, a religious corporation of the State of New Jersey, claims to be the beneficiary named in the twenty-second paragraph of the will of said testatrix and claims to be entitled to receive the said sum of nine thousand dollars (\$9,000) so realized by the executors from the sale of lands as aforesaid.

30

9. That complainant is advised by counsel that the said bequest in the said twenty-second paragraph contained to the trustees of The First Methodist Episcopal Church of Vineland, New Jersey, is void and illegal; that by reason thereof the proceeds of the sale of said property, to wit the sum of nine thousand dollars (\$9,000) have fallen into and become a part of the residuary estate of the said testatrix to which the complainant is entitled.

- 10 10. That complainant has given notice of the invalidity of the bequest in the said twenty-second paragraph of said will to the executors thereof; that said executors insist that the said bequest in said paragraph contained is valid and legal and have notified complainant that they would pay over the proceeds of the sale of said lands to the said The First Methodist Episcopal Church of Vineland, unless restrained from so doing by a court of competent jurisdiction; that complainant has requested the
20 executors of said will to file a bill in this Honorable Court for the construction of the same in the respects above-mentioned, but they have declined so to do and insist that the bequest is in all respects valid and legal.

Complainant is without adequate remedy in the courts of law and therefore prays:

- 30 1. That Harry H. Pond and Howard I. Branson, executors of the last will and testament of Anne Beaumont, deceased, and The First Methodist Episcopal Church of Vineland, who are the defendants to this suit, may answer this bill of complaint without oath and each statement therein made.

2. That this Honorable Court may construe the will of the said Anne Beaumont, deceased, and particularly the twenty-second paragraph thereof hereinabove set forth.

3. That the bequest contained in the twenty-second paragraph of the will of the said Anne Beaumont to the trustees of The First Methodist Episcopal Church, of Vineland, New Jersey, may be held and declared to be illegal and void. 10

4. That the said sum of nine thousand dollars (\$9,000) derived from the sale of the said homestead premises of the testatrix as aforesaid may be held to be a part of the residuary estate of the said testatrix and to pass to the complainant under and by virtue of the residuary clause of the will of the testatrix and to be payable to her or her guardian duly appointed. 20

5. That the said Harry H. Pond and Howard I. Branson, executors as aforesaid, may be enjoined and restrained from paying over the said proceeds of the sale of the said homestead property to the said trustees of The First Methodist Episcopal Church of Vineland, New Jersey, during the pendency of this suit.

6. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises. 30

*Solicitors for and of counsel
with Complainant.*

SCHEDULE A.

I, ANNE BEAUMONT, of Vineland, Cumberland County and State of New Jersey, being of sound and disposing mind and memory, do hereby make, publish and declare this to be my last will and testament, hereby revoking all wills previously made by me.

10 First: I give and bequeath to my niece Ann Isabel Smith now residing with me the sum of five thousand (\$5000.00) Dollars.

Second: I also give and bequeath to my niece Ann Isabel Smith, in addition to the above-mentioned five thousand dollars, all my household goods of every description, furniture, piano, books, bricabrac, clothing, etc. etc. contained in and about my home.

Third: I give and bequeath to Eva Smith, my niece of Leeds England the sum of five hundred dollars (\$500.00).

20 Fourth: I give and bequeath to Magdolen J. Masten my niece residing at Dixon Illinois the sum of five hundred (\$500.00) dollars.

Fifth: I give and bequeath to Mabel Shaw my niece residing at Dixon Illinois the sum of five hundred (\$500.00) dollars.

Sixth: I give and bequeath to Gwendolen Bardwell my niece residing at Dixon Illinois the sum of five hundred (\$500.00) dollars.

30 Seventh: I give and bequeath to George March Redihalg of Leeds England the sum of five hundred (\$500.00) dollars.

Eighth: I give and bequeath to Sarah Mirfield of South Shaftsburg, Vermont one-one thousand dollar general mortgage $4\frac{1}{2}\%$ bond of the Chesapeake and Ohio Railroad Company or its equivalent in money.

Ninth: I give and bequeath to Mary Beaumont Salter of 40 Warthing Road, South Sea, England one one thousand dollar general mortgage 4½% bond of the Chesapeake and Ohio Railroad Company or its equivalent in money.

Tenth: I give and bequeath to Alfred Beaumont of Kankakee Illinois the sum of five hundred (\$500.00) dollars.

Eleventh: I give and bequeath to George Beaumont of Kankakee Illinois the sum of five hundred (\$500.- 10 00) dollars.

Twelfth: I give and bequeath to John Beaumont of Bennington Vermont the sum of five hundred (\$500.- 00) dollars.

Thirteenth: I give and bequeath to the Mutual Benefit Association of the Missionaries in the employ of the Womans Foreign Missionary Society of the Methodist Episcopal Church, New York Branch, Mrs. J. A. Barhaus 2401 Magnolia Avenue, Chicago, Ill. financial and corresponding secretary, the sum 20 of five hundred (\$500.00) dollars.

Fourteenth: I give and bequeath to the Womans Home Missionary Society of the Methodist Episcopal Church Vineland Branch, Vineland, New Jersey the sum of five hundred (\$500.00) dollars.

Fifteenth: I give and bequeath to the Ladies Aid Society of the Methodist Episcopal Church of Vineland, New Jersey, the sum of five hundred (\$500.00) dollars.

Sixteenth: I give and bequeath to the Vineland His- 30 torical and Antiquarian Society of Vineland New Jersey the sum of five hundred (\$500.00) dollars.

Seventeenth: I give and bequeath to Mrs. Cihyo Sekigawa of Nagoya Japan, wife of the Rev. G. Sekigawa, the sum of two hundred (\$200.00) dollars.

Eighteenth: I give and bequeath to Siloam Ceme-

tery Association of Vineland, New Jersey, the sum of one hundred (\$100.00) dollars. Said one hundred dollars to be added to the one hundred dollars previously given by me to said Siloam Cemetery Association and now in their hands and placed in a trust fund, the income arising from the investment of said trust fund to be used in the care of my lot and monument in Siloam Cemetery.

10 Nineteenth: I give and bequeath to Howard I. Branson of Vineland, New Jersey, the sum of one hundred (\$100.00) dollars.

Twentieth: I give and bequeath to Harry H. Pond of Vineland, New Jersey, the sum of one hundred (\$100.00) dollars.

Twenty First: I order my executors to place a marker at the foot of my grave marked "A. B." and to properly letter my monument.

20 Twenty second: I order and direct my executors to sell at either public or private sale my home property now occupied by me and situate on the North side of Landis Avenue between East and Valley Avenues Vineland, New Jersey, consisting of buildings and five acres of land, and I do hereby give and bequeath to the Trustees of the First Methodist Episcopal Church of Vineland, New Jersey, the amount of the net proceeds of said sale of my home. The said church Trustees to hold the amount received in Trust nevertheless as an endowment fund. Said endowment fund to be safely invested and the net income arising therefrom shall be used for the support of the church or such benevolent purposes as the trustees of said church shall direct.

30 Twenty Third. Should there be anything real or personal remaining after making the above mentioned bequests I do give and bequeath the same to my niece Ann Isabel Smith now residing with me.

The same to be in addition to what she is to receive under the first and second clauses of this Will.

Twenty Fourth: I do hereby constitute and appoint Harry H. Pond and Howard I. Branson both of Vineland, Cumberland County, New Jersey, executors of this my last will and testament and order and direct that they be not required to give bonds.

In Witness whereof I have hereunto set my hand and seal at Vineland, New Jersey, this nineteenth day of April, nineteen hundred and nine.

Anne Beaumont (seal) 10

Signed, sealed, published and declared by the above named Anne Beaumont to be her last will and testament in the presence of us, who at her request, in her presence and in the presence of each other, have hereunto subscribed our names as witnesses.

Wm. Chambers

Vineland, N. J.

Edgar S. Ale,

Vineland, N. J. 20

I, Anne Beaumont of Vineland, Cumberland County and State of New Jersey do this thirty first day of July nineteen hundred and nine make publish and declare this to be a codicil to my last will and testament dated the nineteenth day of April nineteen hundred and nine, in manner following, that is to say:

Whereas, since making my last will and testament Mrs. Sarah Mirfield of South Shaftsbury Vermont legatee mentioned in the eighth clause of said will has died and

Whereas, I desire that the amount given to Sarah Mirfield, under the eighth clause shall go to the Wo-
mans Foreign Missionary Society of the Methodist Episcopal Church, New York Branch, Therefore I do hereby revoke the bequest made in the eighth clause of said will and do give and bequeath the 30

amount thereof to the Womans Foreign Missionary Society of the Methodist Episcopal Church New York Branch for hospital work as the Society shall deem wise.

Anna Beaumont (Seal)

Signed, sealed, published and declared by the said Anne Beaumont as a codicil to her last will and testament, in the presence of us, who at her request were present at the same time and subscribed our names
 10) as witnesses in her presence and in the presence of each other.

Edgar S. Ale
 Amasa Keith

I, Anne Beaumont of Vineland Cumberland County and State of New Jersey do this twenty seventh day of April nineteen hundred and ten make publish and declare this to be a codicil to my last Will and testament dated the nineteenth day of April nineteen hundred and nine in manner following, that is to say
 20 First: I give and bequeath to the Physicians Hospital Association of Vineland New Jersey the sum of Five Hundred (\$500.00) dollars.
 Second: I give and bequeath to the Womans Christian Temperance Union of Vineland the sum of three hundred (\$300.00) dollars.
 Third: I give and bequeath to my Niece Ann Isabel Smith now residing with me the sum of one thousand (\$1,000.00) dollars in addition to the five thousand dollars (\$5,000.00) given her under the first
 30 clause of my will, making the total bequest six thousand (\$6000.00) dollars.
 Fourth: I give and bequeath to my niece Eva Smith of Leeds England the sum of five hundred (\$500.00) dollars in addition to the five hundred (\$500.00) dollars given her under the third clause of my will making the total bequest one thousand (\$1000.00) dollars.

Fifth: I do give and bequeath to George Mirfield, Ralph Mirfield and Harry Mirfield of South Shaftsbury Vermont the sum of five hundred (\$500.00) dollars to each of them.

Sixth: I do give and bequeath to Magdolen J. Masten my niece residing at Dixon Illinois the sum of three hundred (\$300.00) dollars in addition to the five hundred (\$500.00) dollars given her under the fourth clause of my will, making the total bequest eight hundred (\$800.00) dollars.

Seventh: I do give and bequeath to the Mutual Benefit Association of the Missionaries in the employ of the Womans Foreign Missionary Society of the Methodist Episcopal Church, New York Branch the sum of five hundred dollars (\$500.00) in addition to the five hundred dollars given under the thirteenth clause of my will, making a total bequest of one thousand (\$1000.00) dollars. 10

Eighth: I give and bequeath to Mrs. Cihyo Sekigawa of Nagoya Japan the sum of one hundred dollars (\$100.00) in addition to the two hundred (\$200.00) dollars given under the seventeenth clause of my will making the total bequest three hundred (\$300.00) dollars. 20

Ninth: I give and bequeath to Mrs. Lucy Benson Dudley wife of P. H. Dudley whose address is "care of Grand Central Station, New York, N. Y." the sum of two hundred dollars (\$200.00).

Tenth: I order and direct that the words "at either public or" be stricken out of the twenty second clause of my will so that it shall read, "I order and direct my executors to sell at private sale my home property, etc." 30

Eleventh: In all other respects I order and direct that my estate be settled in accordance with my will dated April nineteenth, nineteen hundred and nine

and further codicil thereto dated July thirty-first
nineteen hundred and nine.

Anne Beaumont Seal.

Signed, sealed, published and declared by the said
Anne Beaumont as a further codicil to her last will
and testament in the presence of us, who at her re-
quest were present at the same time and subscribed
our names as witnesses in her presence and in the
presence of each other.

10

Edgar S. Ale
Vineland, N. J.
Amasa Keith
Vineland, N. J.

20

30

ANSWER OF THE FIRST METHODIST EPISCOPAL CHURCH OF VINELAND.

(Filed March 4, 1919.)

IN CHANCERY OF NEW JERSEY.

10

Between
ANN ISABEL SMITH by
FRANK S. KELLEY, a next
friend,
Complainant,
and
HARRY H. POND, *et. als.,*
Defendants.

} On Bill for Construc-
tion of Will.
Answer of the First
Methodist Episco-
pal Church of
Vineland.

20

THE ANSWER OF THE FIRST METHO-
DIST EPISCOPAL CHURCH OF VINELAND, A
CORPORATION OF THE STATE OF NEW JER-
SEY, LOCATED IN THE BOROUGH OF VINE-
LAND, IN THE COUNTY OF CUMBERLAND
AND STATE OF NEW JERSEY.

This defendant answering says:

30

1. This defendant has no knowledge or informa-
tion sufficient to form a belief as to the statements
in paragraph one (1) of the bill of complaint.

2. Defendant admits paragraphs two (2) to eight
(8) inclusive in said bill of complaint.

14 *Answer of First Methodist Episcopal
 Church of Vineland*

3. Defendant denies paragraph nine (9) of the bill of complaint and avers that said bequest to the First Methodist Episcopal Church of Vineland is a legal and valid bequest due and payable unto said church pursuant to paragraph twenty-two (22) of the last will and testament of Anne Beaumont, deceased.

4. Defendant admits paragraph ten (10) of the bill of complaint.

10

5. Defendant denies complainants are entitled to the relief set forth in paragraphs one (1) to six (6) in the prayer for relief as contained in said bill of complaint and avers the truth to be that said bequest as set forth in paragraph (6) of the bill of complaint to the First Methodist Episcopal Church of Vineland as contained in paragraph twenty-two (22) of the last will and testament of Anne Beaumont is a legal and valid bequest to said church.

20

HERBERT C. BARTLETT,
*Solicitor for and of Counsel with
Defendant, First Methodist
Episcopal Church of Vineland.*

30

ANSWER OF HARRY H. POND AND HOWARD I. BRANSON, EXECUTORS OF ANNE BEAUMONT, DECEASED.

(Filed March 4, 1919.)

IN CHANCERY OF NEW JERSEY.

Between
ANN ISABEL SMITH by
FRANK S. KELLEY, a next
friend,
Complainant,
and
HARRY H. POND, *et. als.*,
Defendants.)

On Bill for Construc-
tion of Will.
Answer of Harry H.
Pond and Howard
I. Branson, Execu-
tors of Anne Beau-
mont, Deceased.

10

20

THE ANSWER OF THE DEFENDANTS, HAR-
RY H. POND AND HOWARD I. BRANSON, EX-
ECUTORS OF THE LAST WILL AND TESTA-
MENT OF ANNE BEAUMONT, DECEASED.

These defendants answering say:

1. These defendant have no knowledge or informa- 30
tion sufficient to form a belief as to the statements in
paragraph one (1) of complaint.
2. Defendants admit paragraphs two (2) to eight
(8) inclusive in said bill of complaint.

3. Defendants deny paragraph nine (9) of the bill of complaint and aver that said bequest to the First Methodist Episcopal Church of Vineland is a legal and valid bequest due and payable unto said church pursuant to paragraph twenty-two (22) of the last will and testament of Anne Beaumont, deceased.

10 4. Defendants admit paragraph ten (10) of the bill of complaint.

20 5. Defendants deny complainants are entitled to the relief set forth in paragraphs one (1) to six (6) in the prayer for relief as contained in said bill of complaint and aver the truth to be that said bequest as set forth in paragraph six (6) of the bill of complaint to the First Methodist Episcopal Church of Vineland as contained in paragraph twenty-two (22) of the last will and testament of Anne Beaumont is a legal and valid bequest to said church.

*Solicitor for and of counsel with
Defendants Harry H. Pond
and Howard I. Branson, Ex-
ecutors of Anne Beaumont, de-
ceased.*

REPLICATION.

(Filed March 11, 1919.)

46/74

IN CHANCERY OF NEW JERSEY.

10

Between,
 ANN ISABEL SMITH,
Complainant,
 and
 HARRY H. POND, *et als.,*
Defendants.

On Bill &c.
 Replication.

The replication of Ann Isabel Smith by Frank S. 20
 Kelley, her next friend, complainant, to the answers
 of Harry H. Pond and Howard I. Branson, execu-
 tors of Anne Beaumont, deceased, and the First
 Methodist Episcopal Church of Vineland, defen-
 dants.

The complainant joins issue on the answers of the
said defendants.

LUM, TAMBLYN & COLYER,
Solicitors for and of Coun- 30
sel with Complainant.

ORDER SUBSTITUTING SOLICITOR.

(Filed April 4, 1919.)

IN CHANCERY OF NEW JERSEY.

	Between	
	ANN ISABEL SMITH,	}
	<i>Complainant,</i>	
10	and	
	HARRY H. POND, <i>et als.</i> ,	
	<i>Defendants.</i>	On Bill &c. Order Substituting Solicitor.

It appearing to the Court that Herbert C. Bartlett, solicitor of The First Methodist Episcopal Church of Vineland, one of the defendants in the above-entitled cause, is also solicitor for Harry H. Pond and Howard I. Branson executors of Anne Beaumont deceased, and desires that another solicitor be substituted in his place and stead for the said The First Methodist Episcopal Church of Vineland.

It is on this fourth day of April, A. D. 1919, ordered that William Elmer Brown, Jr. be substituted as solicitor for the said Herbert C. Bartlett as solicitor for The First Methodist Episcopal Church of Vineland one of the answering defendants in the above-entitled cause.

EDWIN ROBT. WALKER,
C.

30

I consent to above order.

HERBERT C. BARTLETT,
*Solicitor of Defendant
First Methodist Epis-
copal Church of Vine-
land.*

ORDER OF REFERENCE.

(Filed March 14, 1919.)

46/74.

IN CHANCERY OF NEW JERSEY.

10

Between ANN ISABEL SMITH, <i>Complainant,</i> and HARRY H. POND, <i>et als.,</i> <i>Defendants.</i>	}	On Bill &c. Order of Reference.
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The solicitor of the defendants consenting hereto, it is on this 14th day of March, A. D. nineteen hundred and nineteen, on motion of Lum, Tamblyn & Colyer, of counsel with complainant, Ordered that the above stated cause be referred to Honorable John H. Backes one of the Vice-Chancellors, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

20

EDWIN ROBT. WALKER,
C.

30

I consent to the entry of the above order.

HERBERT C. BARTLETT,
Solicitor for Defendants.

TESTIMONY.

DOCKET 46-74.

IN CHANCERY OF NEW JERSEY.

	Between	
10	ANN ISABEL SMITH by FRANK S. KELLEY, a next friend,	}
	<i>Complainant,</i>	
	and	
	HARRY H. POND, <i>et. als.</i> <i>Defendants.</i>	
		On Bill &c. Testimony.

20 Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Monday, the nineteenth day of May, 1919, at 10.30 A. M.

Before HON. JOHN H. BACKES, Vice-Chancellor.

APPEARANCES:

30 LUM, TAMBLYN & COLYER, ESQS., by MR. LUM, for Complainant.
WILLIAM ELMER BROWN, Esq., for the First Methodist Episcopal Church of Vineland.
HERBERT C. BARTLETT, Esq., for Executors of Anne Beaumont, defendants.

Mr. Brown: I wish to offer as a part of the proofs for the defendants in this case the certified copy of the will in question.

I want to offer in addition to that the certified copy of the certificate of the corporate name of the trustees of the Methodist Episcopal Church of Vineland.

(Said papers are marked Exhibit "D1" and "D2," respectively.)

10

THOMAS S. BROCK, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Brown:

Q. Your full name, please.

20

A. Thomas S. Brock.

Q. Where do you reside?

A. 20 South Eighth Street, Vineland, New Jersey.

Q. What is your occupation?

A. Clergyman, pastor of the First Methodist Episcopal Church.

Q. Of what?

A. Vineland, New Jersey.

Q. How long have you been pastor of that church? 30

A. I am now serving my fifth year, being appointed each year in March.

Q. Will you tell us, please, how the First Methodist Episcopal Church of Vineland, is governed, by what bodies?

Mr. Lum: That is objected to; I object to any testimony being given of this kind, on the ground that the terms of the will govern, and that extrinsic evidence would be inadmissible. I object to the testimony and any testimony of this kind now, as I do not wish to be constantly interrupting counsel.

The Court: Objection overruled.

10 A. The First Methodist Episcopal Church of Vineland is governed by the official board of the church, which board receives its authority from the Quarterly Conference, the high authority in the church.

Q. The official board is what?

A. It is composed of nine trustees and 21 stewards and local preachers and exhorters and class leaders, what there may be.

By the Court:

20 Q. You mean your church in Vineland?

A. Yes.

By Mr. Brown:

Q. What are the duties of the trustees?

30 A. To care for the church property and hold any legacies that might be left them for the benefit of the church. The discipline of our church says the duties of the trustees are, to hold all properties in trust for the Methodist Episcopal Church; I think that is the language.

Q. How are the finances of the church controlled?

A. Under the supervision of the official board, and the official board has a finance committee which has the general supervision of all the finances of the

church, and this finance committee is appointed by the official board.

Q. The finances of the church are composed of what?

A. There are two general funds in the church, one known as the benevolent fund, and the other as the current expense account.

Q. Tell us, Dr. Brock, what the benevolences of the church are?

A. The benevolences of the Methodist Episcopal Church are eight general boards, provided for by the General Conference of our church, and incorporated in the Discipline. By the Methodist Episcopal Church I mean the church body generally. 10

By the Court:

Q. Are you distinguishing between your church and the church body; which do you mean?

A. There is no distinction between them; it is a connectional church. 20

Q. Are you speaking of your church?

A. The General Conference of the Methodist Episcopal Church meets once every four years, and it is the law making body of the church, and provides for the benevolences of each local church in Methodism; not merely in New Jersey, but throughout the world.

By Mr. Brown:

30

Q. What are the benevolences?

A. There are eight general boards of the church, to which funds of the church are contributed from the benevolence funds of each church.

Q. What are they?

A. The Board of Foreign Missions, with head-

quarters in the City of New York, that supports the missionary enterprises of the Methodist Episcopal Church throughout the world; the Board of Home Missions, with headquarters in the City of Philadelphia, which supports the Home Missionary enterprises of the Methodist Episcopal Church in the United States, Alaska, the Hawaiian Islands and Porto Rico; the Freedman's Aid Society, with headquarters in Cincinnati, which cares for the work of the Methodist Episcopal Church in the Southland among the colored people; in supporting schools, colleges and churches; the Board of Sunday Schools, with headquarters in the City of Chicago, whose duty it is to open mission schools throughout the entire United States and in all the foreign lands wherever the Methodist Episcopal Church is established, for the propagation of the faith; The American Bible Society, which is a designated benevolence by the General Conference, which publishes at cost Bibles and Testaments, which are circulated throughout the world at cost, for instance, the American Bible Society is not a profit making institution.

By the Court:

Q. And it distributes at cost?

A. Yes, sir, and it gets its support from all the churches, and the General Conference —

Q. For the management and —

30 A. Yes, sir, an extension and so on, and the Methodist Episcopal Church has designated that as one of the benevolences of our church.

By Mr. Brown:

Q. The next one?

A. The Board of Temperance, located in the City of Washington, whose duties are to promote the general temperance movement throughout the entire world, under the direction of the Board of Managers. It holds property and publishes magazines, etc. —

Q. We don't want that—give us the others.

A. The Deaconess Board, with headquarters in the City of Buffalo, whose business it is to conduct schools for the training of deaconesses. 10

By the Court:

Q. What do they do?

A. Visitation and instruction in the primary department. Such work as visiting the sick and looking after any of the welfare work of the church.

Q. And it is for their support?

A. For the maintenance of training schools and for their support. Each church is assessed a certain sum of money in each year, which is one of the things that support the entire enterprise. 20

By Mr. Brown:

Q. What is the next?

A. The Board of Education, with headquarters in New York City. 30

Q. What is its function?

A. The function of the Board of Education is to assist schools and colleges of Methodism in securing proper endowments and assisting them with suitable equipment, and caring for some schools in the South-

land, particularly among the whites, and assisting students who may not have means to get an education.

By the Court:

Q. These benevolences are open to all people?

A. Yes, sir.

Q. And all peoples?

A. Of the whole world, yes, sir.

10

By Mr. Brown:

Q. These benevolences you have named here, are they prescribed by the General Conference, and are they followed by the church at Vineland?

A. They are.

Q. Do you have another set of benevolences in connection with the First Methodist Church of Vineland?

20 A. Local benevolences.

Q. What do you mean by local benevolences of that church?

A. Assistance to any of our local churches; the Italian Mission, the Colored Methodist Church, and some benevolences that are a little bit wider and come in what we call benevolences of the annual conference, such as the hospital in Vineland —

30

By the Court:

Q. Have you any so called benevolences connected with the Methodist Church as a body and your church as a congregation of that body, that are not charities?

A. I don't know whether I understand the legal

definition or not. There isn't anything that are not charities if these I have mentioned are all charities. We distinguish between charities and benevolences. Benevolences are things you raise for a definite purpose, and charities are the things you give away, that might come up in a spontaneous way. A man might call for some help, and I would simply hand him out some money if he needed the help.

By Mr. Brown:

10

Q. Is the word "benevolence" a word peculiar in the discipline of the Methodist Church?

A. Yes, sir, very peculiar to the Methodist Episcopal Church.

Q. In what respect?

A. All the benevolent work of the church is done under the title of "Benevolences" as designated here by me. These are designated by the General Conference of our church as a portion of the disciplinary benevolences provided for by the book of Discipline, which comes down to each local Methodist Episcopal Church throughout the world. The word "charity" has a different meaning. We do not look upon this work of benevolence as charity work.

20

Q. This work of the eight institutions?

A. Yes, sir, they are not charity; that does not enter into our phraseology whatever. You take the method by which we receive our money, it has one general title "Benevolences." We have established the duplex system in our church; we have the current expense account and the benevolence account, and they have no connection so far as drawing on one or the other; they are both separate by themselves. The envelope used in my church has printed upon it "Benevolence."

30

Q. Meaning moneys to be applied to these eight items?

A. Exactly. If we have local benevolences, the Anti-Saloon League as an illustration, if you want to call that a charity or a benevolence, we do not give any of this money to them. For instance, the only way that money could be secured for Anti-Saloon League purposes would be for a representative to come to our church and ——

10 Q. Give me all of the possible local benevolences.

A. We would say our local hospital and local churches; we have two churches that we support; an Italian Presbyterian Church that we give a certain amount of money to each year, and half the teachers come out of my church; we have contributors that support that church, and that is a local benevolence. We give a certain amount of money to the Colored Methodist Church, that is a local benevolence; we raise that in other ways. Take the
20 Old Aged Woman's Home at Ocean Grove: we designate that as a local benevolence, because we have a certain time of the year when we pass the plates, and what comes in goes to them; we have envelopes distributed for the Methodist Hospital in Philadelphia, and whatever money comes in goes to them directly; there is no connection between them and the eight.

Q. What others?

A. That practically covers them.

Q. They are all similar?

30 A. I have given you two in the town and two outside, that have no connection whatever with these general benevolences of the church. And another distinction; we have a General Commission of Finance in the church that makes an apportionment to every church in Methodism, and all the rest of these local things are purely voluntary.

Q. Are they compulsory?

A. They are binding on the conscience; we think we ought to raise that amount of money for that work.

Q. Is there any restriction upon the Methodist Episcopal Church preventing the distribution of any other moneys to purposes other than those you have named?

A. All moneys that come into the hands of the church for benevolences are restricted to these eight boards; other moneys are for specific purposes and are so distributed. 10

Q. Is there any regulation in your church law relating to legacies?

A. Well, as I recall now, it says that all trust funds shall be held by the trustees in trust for the church. Now, when a legacy, for instance, would come into the—when the trustees would be the custodians of a legacy for a specific purpose, they have only one thing to do, and that is, to administer that purpose; they would not administer that for anything else except that. 20

Q. As these funds are collected in your congregation for the eight items you have mentioned, to whom does that immediately go?

A. Into the hands of the treasurer of the church.

Q. Is he a member of the Board of Trustees?

A. He is elected by the congregation and is a member of the official board.

Q. Disassociated from the trustees? 30

A. Disassociated from the trustees.

Q. The trustees have no control over the funds at all, over the benevolent fund making up these eight items?

A. Only as they are represented on the Finance Committee; it is purely a representative control.

Q. Dr. Brock, did you know Anne Beaumont in her lifetime?

A. Very well.

Q. How long did you know her prior to her death?

A. I should say—she died in February?

Q. Yes, February 4th.

A. I knew her for four years, except one month.

Mr. Lum: Of course, your Honor, this is all objected to.

10

Q. Was Anne Beaumont a member of the First Methodist Episcopal Church of Vineland in her lifetime?

A. A lifelong member.

Q. Did she contribute to the various funds of the church in her lifetime?

A. Very generously.

Q. Will you explain to the Court the method of the contribution of the members of that church to the
20 funds of the church?

Mr. Lum: That is objected to, as are all these extrinsic matters.

The Court: Objection overruled.

A. The general method is for the church to have every member canvassed of the entire membership of the church previous to the beginning of the financial year the first of March, and every member of
30 the church is asked to make a voluntary contribution for current expenses and benevolences, two items which are very thoroughly understood by the people called Methodists.

Q. And understood by them as being the eight items you have mentioned?

A. The two terms being thoroughly understood by Methodists, the one term referring to the general support of the church, such as the maintenance of buildings, the salaries of the church, which would include the ministerial support, which covers more than the pastor's support; it includes the support of the Bishop and the District Superintendent and the retired ministers and the pastor; that is the ministerial support, and the word "Salaries" is sufficient to cover all salaries of the church; that covers it. 10

Q. That is current expenses?

A. That is current expenses.

Q. And that is understood by the parishioners?

A. They understand that when they make their contributions to the benevolences they are supporting the eight general boards of the Methodist Episcopal Church that I have mentioned.

Q. How do you know they do?

A. I know they understand it, because they are informed of it. We send a circular letter, for instance, to the members of the church previous to the canvass, explaining to them exactly what they are to do. 20

Q. As to benevolences?

A. Yes, sir, they understand that thoroughly.

Q. Is it taught them in the church?

A. Yes.

Q. On Sundays?

A. On Sundays. 30

Q. Are they informed by the pastor when they contribute to benevolences, that they are contributing to these eight items?

A. They are.

Q. And they are also circularized?

A. Yes, sir, line upon line in many ways upon that particular point.

Q. Isn't the percentage distribution of the benevolence fund, these eight benevolences, reported to the members of the church?

A. Yes, sir, frequently we will have some things in our church bulletin, some reports of these items and these percentages are all worked out —

10 Q. Is your congregation also informed from the pulpit of the functions and finances of these eight boards?

A. Yes, sir, and also from the use of our church bulletin, and then we have church literature —

Q. Was the testatrix a regular attendant?

A. Very regular; never missed a Sunday until the last illness; during the early portion of my ministry she was there every Sunday.

Q. Was she a contributing member?

20 A. She was; I have personal knowledge of her contributions, and she frequently talked to me about them and what she planned to do in providing —

Q. I don't want that.

A. I don't mean she had one conversation with me only, but in the midst of general conversations she gave me certain facts.

The Court: You may go on. It might have a bearing on the case.

30

Q. Did you have any conversations with Anne Beaumont during her lifetime indicating any knowledge on her part of the benevolences of the church and what they were?

Mr. Lum: That is objected to.

The Court: Objection overruled.

A. Mrs. Beaumont was very conversant with all of the benevolences of the church, and she was a very generous contributor.

Q. Answer the question. (Stenographer repeats the question.)

A. I did.

Q. What were they?

10

Mr. Lum: That is objected to.

The Court: Objection overruled.

A. The character of the conversations were to the effect that she was greatly interested in all of the benevolences of the Methodist Episcopal Church, and she gave evidence of her interest by liberal contributions.

Q. All of them?

20

A. All of the eight benevolences of the Methodist Episcopal Church; she was intensely interested in every one, and frequently made additions to her regular weekly contribution by some special contribution to the funds of the church, in order that some of them might be enlarged; I had frequent conversations with her concerning these.

Q. Was the testatrix an active member of any one of these benevolent bodies?

A. She was very active in an auxiliary society of the church known as the Woman's Foreign Missionary Society; she was the president and gave direction to that organization.

30

Q. You said a while ago, that the moneys coming into the church were deposited with the treasurer?

A. Yes, sir.

Q. What connection does the treasurer have with the official board?

A. He is the responsible custodian of all the church funds of the official board.

Q. Who governs the distribution of the moneys in the treasurer's hands?

A. Do you mean by that, for instance —

Q. How were they withdrawn?

A. They are withdrawn on order; I speak of the
10 current expense account; the current expense account is withdrawn on order; the bills are presented to the official board, and the board O. K's and passes them; the salaries are paid automatically by general resolution. The benevolences of the church are paid automatically at different periods, once a quarter, to the various benevolent boards of the church, on the pro rata basis provided for by the Committee of Finance of the Methodist Episcopal Church.

Q. These eight boards you have spoken of?

20 A. Yes, sir.

Cross-examination.

By Mr. Lum:

Q. The trustees then do not direct ordinarily in your church what sums shall go to what particular one of these eight that you have mentioned; that is covered, as I understand you, by a pro rata distribution?

30 A. In case the full amount of the apportionment is not raised, then the total amount is distributed on the pro rata basis; where the total amount of money is raised by the congregation, then the church itself as a body provides that the moneys in hand shall be distributed to the Board of Foreign Missions, and so one down the line.

By the Court:

Q. Do you ever have a surplus in the treasury?

A. Very seldom.

Q. Do you have deficits?

A. No, because we make them up.

Q. If there is a deficit in these benevolences can that be, or is it ever, made up from funds in the hands of the Board of Trustees?

A. If the trustees have funds in their hands for benevolences, then the trustees distribute that money to the custodian of the funds of the church, and automatically it passes in—if the trustees of a church are the custodians of a legacy which produces money for the benevolences of the church, that money is paid by the trustees to the treasurer of the church for distribution, with all the other benevolences of the church. 10

By Mr. Lum:

20

Q. So that the trustees do not themselves determine the direction of the funds normally?

A. The trustees are members of the official board, and also members of the Finance Committee, and are also members of the Quarterly Conference. In the Methodist Episcopal Church the final authority in a local church is vested in the Quarterly Conference; that conference may organize at its pleasure an official board which shall perform the functions which naturally belong to the trustees—the Board of Stewards — 30

Q. Then I am correct in assuming that the trustees do not themselves determine the direction of the funds?

A. You are not correct; you are trying to draw out the inference, but you are overlooking the fact that the trustees are members of the Finance Committee of the Quarterly Conference.

Q. The direction of funds is not as trustees, but by the fact that they are members of other bodies?

10 A. I don't know whether I understand what you mean; we consider the official board as one body, composed of men who may be trustees of the church; they have an organization in which they elect a president and secretary only; the treasurer of the church being elected by the congregation; that is provided for by the statute law of the State of New Jersey.

Q. Have you ever had cases where the trustees as such deemed it wise that funds should be expended in one way, and these other bodies you have just spoken of determined it should be spent in another way?

20 A. I have never heard of it, because they are co-ordinate.

By the Court:

Q. They may advocate but not control?

A. Yes.

By Mr. Lum:

30 Q. Ordinarily the funds are held by the treasurer, not by the trustees?

A. The treasurer of the church is a representative man elected by the congregation to hold the funds of the church.

Q. He is the disbursing officer?

A. Yes.

Q. So that the trustees themselves do not ordinarily hold the funds?

A. You are raising a technical point whether the trustees or stewards or I as pastor hold the funds and so on; it seems to me that your point —

Q. Never mind that.

A. That cannot be answered pro and con; if there is a definite fund left, the trustees of the church, the trustees as a body, pass upon the use of that fund; then when they have passed upon the use of that fund, they transfer it to the custodian of the church funds; that is merely a formality with us. 10

Q. Do the trustees of the church at Vineland never distribute or give any funds outside of these specific purposes you have mentioned, these eight and the local charities?

A. None whatever.

Q. Under any circumstances?

A. Under any circumstances.

20

By the Court:

Q. And that is known to the parishioners?

A. Yes, sir, that is known to the parishioners. These constitute the benevolences of the church designated as benevolences, and local benevolences.

By Mr. Lum:

Q. Ordinarily, then, the trustees of the church do not direct for what benevolent purposes funds shall be expended? 30

A. The church at large gives direction as to the general benevolences of the church.

Q. And the amount that should be expended as to each?

A. No, they make a suggestion and request the church to raise that amount if possible. The funds the trustees may have in trust will be an adjunct —

By the Court:

Q. To make up deficiencies?

A. If you wish to use that particular word, yes, sir.

10

By Mr. Lum:

Q. Of course, you don't know whether any members of your church have knowledge of other benevolent purposes outside of these particular ones you have mentioned?

A. Would you mind illustrating what you mean?

Mr. Bartlett: That is objected to.

20

A. Of course, I don't. I don't think any ordinarily intelligent person would.

Q. Miss Beaumont knew then, did she not, that the trustees did not usually direct the benevolent purpose for which funds should be expended?

30 A. Anne Beaumont was perfectly familiar with the customs of the Methodist Episcopal Church in Vineland, and she knew that in order to leave money or property it would have to go to the trustees according to the statute law; that was perfectly clear; there is a difference whether property is left in one form or how it is administered; she was familiar with both.

Re-direct examination.

By Mr. Brown:

Q. How are the trustees selected?

A. The trustees are chosen at a congregational meeting once a year, three trustees being elected each year for a period of three years, which complies with the statute law of the State of New Jersey.

10

EXHIBIT D1.

To Frank F. Wallace Esquire,
SURROGATE OF THE COUNTY OF CUMBER-
LAND NEW JERSEY.

20

In the matter of the probate of the last
Will and Testament of Anne Beaumont }
deceased. } Petition.

This petition of Harry H. Pond of Plainfield New Jersey and Howard I. Branson of the County of Cumberland, and State of New Jersey, shows: That Anne Beaumont late of said county, died at Township of Landis, in the County of Cumberland, in the State of New Jersey, on the third day of February, A. D. nineteen hundred and eighteen having made and executed her last will and testament; and that your petitioners are the executors named therein, and that

30

the said Anne Beaumont left her surviving her heirs at law and next of kin the following named persons to wit:

	KIN	P. O. ADDRESS
Ann Isabel Smith	Niece	Leeds England
Eva Smith	Niece	Leeds England
Magdolena J. Mastin	Niece	Dixon Illinois
Mabel Shaw	Niece	Dixon Illinois
Gwendolen Bardwell	Niece	Dixon Illinois

10 Your petitioner therefore prays that the said Will may be proved and letters granted thereon according to law.

HARRY H. POND,
HOWARD I. BRANSON.

CUMBERLAND COUNTY, ss.

20 Harry H. Pond and Howard I. Branson the petitioner, named in the foregoing petition, being duly sworn, deposes and says that they read the foregoing petition by them subscribed and know the contents thereof, and that the same is true to the best of their knowledge, information and belief.

HARRY H. POND.

Sworn and subscribed before me this eighteenth day of February, A. D. 1918.

30

J. BRODY MCGEAR,
Deputy Surrogate.

Will.

I, Anne Beaumont of Vineland Cumberland County and State of New Jersey, being of sound and disposing mind and memory, do hereby make, publish and declare this to be my last will and testament, hereby revoking all wills previously made by me.

Third—I give and bequeath to Eva Smith, my niece Smith now residing with me the sum of five thousand (\$5000.00) dollars. 10

Second—I also give and bequeath to my niece Ann Isabel Smith, in addition to the above-mentioned five thousand dollars, all my household goods of every description, furniture, piano books, bricabrac, clothing etc etc contained in and about my home.

Third—I give and bequeath to Eva Smith, my niece of Leeds England the sum of Five hundred dollars (\$500.00)

Fourth—I give and bequeath to Magdolen J. Masten 20 my niece residing at Dixon Illinois the sum of five hundred (\$500.00) dollars.

Fifth—I give and bequeath to Mabel Shaw my niece residing at Dixon Illinois the sum of five hundred (\$500.00) dollars.

Sixth—I give and bequeath to Gwendolen Bardwell my niece residing at Dixon Illinois the sum of five hundred (\$500.00) dollars

Seventh—I give and bequeath to George March Redihalg of Leeds England the sum of five hundred (\$500.00) dollars 30

Eighth—I give and bequeath to Sarah Mirfield of South Shaftsbury Vermont one—one thousand dollars general mortgage 4½% bond of the Chesapeake and Ohio Rail Road Company or its equivalent in money.

Ninth—I give and bequeath to Mary Beaumont Salter of 40 Warthing Road South Sea England one one thousand dollar general mortgage 4½% bond of the Chesapeake and Ohio Rail Road Company or its equivalent in money.

Tenth—I give and bequeath to Alfred Beaumont of Kankakee Illinois the sum of five hundred (\$500.00) dollars.

10 *Eleventh*—I give and bequeath to George Beaumont of Kankakee Illinois the sum of five hundred (\$500.00) dollars.

Twelfth—I give and bequeath to John Beaumont of Bennington Vermont the sum of five hundred (\$500.00) dollars.

20 *Thirteenth*—I give and bequeath to the Mutual Benefit Association of the Missionaries in the employ of the Womans Foreign Missionary Society of the Methodist Episcopal Church, New York Branch, Mrs. J A Barhans 2401 Magnolia Avenue Chicago Ill, financial and corresponding secretary, the sum of five hundred (\$500.00) dollars.

Fourteenth—I give and bequeath to the Womans Home Missionary Society of the Methodist Episcopal Church Vineland branch, Vineland New Jersey the sum of five hundred (\$500.00) dollars.

Fifteenth—I give and bequeath to the Ladies Aid Society of the Methodist Episcopal Church of Vineland New Jersey the sum of five hundred (\$500.) dollars.

30 *Sixteenth*—I give and bequeath to the Vineland Historical and Antiquarian Society of Vineland New Jersey the sum of five hundred (\$500.00) dollars.

Seventeenth—I give and bequeath to Mrs Cihyo Sekigawa of Nagoya Japan, wife of the Rev. G. Sekigawa, the sum of two hundred (\$200.00) dollars.

Eighteenth—I give and bequeath to Siloam Cemetery Association of Vineland New Jersey the sum of one hundred (\$100.00) dollars. Said one hundred dollars to be added to the one hundred dollars previously given by me to said Siloam Cemetery Association and now in their hands and placed in a trust fund, the income arising from the investment of said trust fund to be used in the care of my lot and monument in Siloam Cemetery.

Nineteenth—I give and bequeath to Howard I. Branson of Vineland New Jersey the sum of one hundred (\$100.00) dollars. 10

Twentieth—I give and bequeath to Harry H. Pond of Vineland New Jersey the sum of one hundred (\$100.00) dollars.

Twenty first—I order my executors to place a marker at the foot of my grave marked "A". B." and to properly letter my monument.

Twenty second—I order and direct my executors to sell at either public or private sale my home property now occupied by me and situate on the north side of Landis Avenue between East and Valley Avenues Vineland New Jersey, consisting of buildings and five acres of land, and I do hereby give and bequeath to the Trustees of the First Methodist Episcopal Church of Vineland New Jersey the amount of the net proceeds of said sale of my home. The said Church Trustees to hold the amount received in trust, nevertheless as an endowment fund. Said endowment fund to be safely invested and the net income arising therefrom shall be used for the support of the church or such benevolent purposes as the trustees of said church shall direct. 20 30

Twenty third—Should there be anything real or personal, remaining after making the above mentioned

bequests I do give and bequeath the same to my niece Ann Isabel Smith now residing with me. The same to be in addition to what she is to receive under the first and second clauses of this will

Twenty fourth—I do hereby constitute and appoint Harry H. Pond and Howard I. Branson both of Vineland Cumberland County New Jersey executors of this my last will and testament and order and direct that they be not required to give bonds.

10 In witness whereof I have hereunto set my hand and seal at Vineland New Jersey this nineteenth day of April nineteen hundred and nine

Anne Beaumont (Seal)

Signed, sealed, published and declared by the above named Anne Beaumont to be her last will and testament in the presence of us, who at her request, in her presence and in the presence of each other have hereunto subscribed our names as witnesses.

Wm. Chambers

20

Vineland N. J.

Edgar S. Ale

Vineland N. J.

I, Anne Beaumont of Vineland Cumberland County and State of New Jersey do this thirty first day of July nineteen hundred and nine make publish and declare this to be a codicil to my last will and testament dated the nineteenth day of April nineteen hundred and nine, in manner following; that is to say;

30

Whereas since making my last will and testament Mrs Sarah Mirfield of South Shaftsburg Vermont legatee mentioned in the eight clause of said will has died and

Whereas, I desire that the amount given to Sarah Mirfield under the eighth clause shall go to the

Womans Foreign Missionary Society of the Methodist Episcopal Church, New York Branch

Therefore I do hereby revoke the bequest made in the eighth clause of said will and do give and bequeath the amount thereof to the Womans Foreign Missionary Society of the Methodist Episcopal Church New York Branch for hospital work as the Society shall deem wise.

Anne Beaumont (Seal)

Signed, sealed, published and declared by the said Anne Beaumont as a codicil to her last will and testament, in the presence of us, who at her request were present at the same time and subscribed our names as witnesses in her presence and in the presence of each other. 10

Edgar S. Ale
Amasa Keith.

I, Anne Beaumont of Vineland Cumberland County and State of New Jersey do this twenty seventh day of April nineteen hundred and ten make publish and declare this to be a codicil to my last will and testament dated the nineteenth day of April nineteen hundred and nine in manner following, that is to say 20

First—I give and bequeath to the Physicians Hospital Association of Vineland New Jersey the sum of Five hundred (\$500.00) dollars.

Second—I give and bequeath to the Womans Christian Temperance Union of Vineland the sum of three hundred (\$300.00) dollars. 30

Third—I give and bequeath to my niece Ann Isabel Smith now residing with me the sum of one thousand (\$1000.00) dollars in addition to the five thousand dollars (\$5000.00) given her under the first clause of my will, making the total bequest six thousand (\$6000.00) dollars.

Fourth—I give and bequeath to my niece Eva Smith of Leeds England the sum of five hundred (\$500.00) dollars given her under the third clause of my will, making the total bequest one thousand (\$1000.00) dollars.

Fifth—I do give and bequeath to George Mirfield, Ralph Mirfield and Harry Mirfield of South Shaftsbury Vermont the sum of five hundred (\$500.00) dollars to each of them.

- 10 *Sixth*—I do give and bequeath to Magdolen J. Masten my niece residing at Dixon Illinois the sum of three hundred (\$300.00) dollars in addition to the five hundred (\$500.00) dollars given her under the fourth clause of my will, making total bequest eight hundred (\$800.00) dollars.

- 20 *Seventh*—I do give and bequeath to the Mutual Benefit Association of the Missionaries in the employ of the Womans Foreign Missionary Society of the Methodist Episcopal Church New York branch the sum of five hundred dollars (500.00) in addition to the five hundred dollars given under the thirteenth clause of my will, making total bequest one thousand (\$1000.00) dollars.

Eighth—I give and bequeath to Mrs Cihyo Sekigawa of Nagoya Japan the sum of one hundred dollars (100.00) in addition to the two hundred (\$200.00) dollars given under the seventeenth clause of my will making the total bequest three hundred (\$300.00) dollars.

- 30 *Ninth*—I give and bequeath to Mrs Lucy Benson Dudley wife of P. H. Dudley whose address is “care of Grand Central Station New York N. Y.” the sum of two hundred dollars (\$200.00)

Tenth—I order and direct that the words “at either public or” be stricken out of the twenty second clause of my will so that it shall read “I order and

direct my executors to sell at private sale my home property etc.”

Eleventh—In all other respects I order and direct that my estate be settled in accordance with my will dated April nineteenth nineteen hundred and nine and further codicil thereto dated July thirty first nineteen hundred and nine.

Anne Beaumont (Seal)

Signed, sealed, published and declared by the said Anne Beaumont as a further codicil to her last will and testament in the presence of us, who at her request were present at the same time and subscribed our names as witnesses in her presence and in the presence of each other. 10

Edgar S. Ale
Vineland N J

Amasa Keith
Vineland N J

20

STATE OF NEW JERSEY, }
CUMBERLAND COUNTY, } ss.

EDGAR S. ALE, one of the witnesses to the annexed writing, purporting to be a codicil to the last will and testament of Anne Beaumont deceased, the testatrix therein named, being duly sworn doth depose and say that he saw the said testatrix sign and seal the same, and heard her publish and declare it to be a codicil to her last will and testament; that at the time of the doing thereof, the said testatrix was of sound and disposing mind, memory and understanding, as far as this deponent knows, and as he verily believes; and that Amasa Keith the other subscribing witness thereto was present at the same time with this depon- 30

ent, and that they together subscribed their names thereto as witnesses, in the presence of the testatrix and of each other.

EDGAR S. ALE.

Sworn and subscribed this 18th day of February, 1918, before me.

J. BRODIE MCGEAR,
Deputy Surrogate.

10

STATE OF NEW JERSEY, }
CUMBERLAND COUNTY, } ss.

EDGAR S. ALE, one of the witnesses to the annexed writing, purporting to be a codicil to the last will and testament of Anne Beaumont deceased, the testatrix therein named, being duly sworn doth depose and say that he saw the said testatrix sign and seal the same, and heard her publish and declare it to be a codicil to her last will and testament; that at the time of the doing thereof, the said testatrix was of sound and disposing mind, memory and understanding, as far as this deponent knows, and as he verily believes; and that Amasa Keith the other subscribing witness thereto was present at the same time with this deponent, and that they together subscribed their names thereto as witnesses, in the presence of the testatrix and of each other.

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EDGAR S. ALE.

Sworn and subscribed this 18th day of February, 1918, before me.

J. BRODIE MCGEAR,
Deputy Surrogate.

STATE OF NEW JERSEY, }
 CUMBERLAND COUNTY, } ss.

EDGAR S. ALE, one of the witnesses to the annexed writing, purporting to be a codicil to the last will and testament of Anne Beaumont deceased, the testatrix therein named, being duly sworn doth depose and say that he saw the said testatrix sign and seal the same, and heard her publish and declare it to be her last will and testament; that at the time of the doing 10 thereof, the said testatrix was of sound and disposing mind, memory and understanding, as far as this deponent knows, and as he verily believes; and that William Chambers the other subscribing witness thereto was present at the same time with this deponent, and that they together subscribed their names thereto as witnesses, in the presence of the testatrix and of each other.

EDGAR S. ALE.

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Sworn and subscribed this 18th day of February, 1918, before me.

J. BRODIE MCGEAR,
Deputy Surrogate.

STATE OF NEW JERSEY, }
 CUMBERLAND COUNTY, } ss.

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HARRY H. POND and HOWARD I. BRANSON the executors in the annexed writing named, being duly sworn do depose and say, that the said annexed writing contains the true last will and testament of Anne Beaumont deceased, the testatrix therein named, as far as they know, and as they verily believe; that they

will, as the executors thereof, well and truly perform the same, by paying first the debts of said deceased, and then the legacies therein specified as far as the goods, chattels and credits of said deceased can thereunto extend: that they will make and exhibit into the Surrogate's Office of the County of Cumberland, a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased that have or shall come to their possession or knowledge, or to the possession of any other person or persons for their use, and that they will well and truly account when thereunto lawfully required; and that said testatrix died more than ten days ago, to wit, on the third day of February A. D. 1918.

HARRY H. POND,
HOWARD I. BRANSON.

Sworn and subscribed this 18th day of February, 1918, before me.

J. BRODIE MCGEAR,
Deputy Surrogate.

20

CUMBERLAND COUNTY SURROGATE'S
OFFICE.

In the matter of the probate
of the alleged Will of Anne Order for Probate.
Beaumont deceased.

30

Application having been made by Harry H. Pond and Howard I. Branson for probate of the last will of Anne Beaumont deceased, and letters testamentary thereon, and the Surrogate having inquired in-

to the circumstances and taken proof, and being satisfied of the genuineness of the will and codicils produced, the validity of its execution and the competency of the testatrix and the probate of the said will and codicils not having been contested, and it appearing that the testatrix died more than ten days ago, it is, on this eighteenth day of February A. D. 1918, adjudged that the instrument offered for probate in this matter is the last will and testament and codicils of Anne Beaumont deceased, and the same is hereby admitted to probate; and it is ordered that letters testamentary be issued thereon to Harry H. Pond and Howard I. Branson the executors named in said will and codicils who may qualify thereunder.

FRANK F. WALLACE,
Surrogate.

CUMBERLAND COUNTY SURROGATE'S OFFICE. 20
(Seal)
STATE OF NEW JERSEY.

CUMBERLAND COUNTY, ss.

I, Frank F. Wallace, Surrogate of the County of Cumberland, do certify the annexed to be a true copy of the last will and testament and codicils of Anne Beaumont late of the County of Cumberland, deceased, and that Harry H. Pond and Howard I. Branson the executors therein named, proved the same before me, and are duly authorized to take upon themselves the administration of the estate of the testatrix agreeably to the said will and codicils.

(Seal) Witness, my hand and seal of office, the
eighteenth day of February in the year of
our Lord, one thousand nine hundred and
eighteen.

FRANK F. WALLACE,
Surrogate.

10 CUMBERLAND COUNTY SURROGATE'S
OFFICE.

STATE OF NEW JERSEY,
(Seal) ss.
COUNTY OF CUMBERLAND,

I, Charles V. Marshall, surrogate and ex-office
20 clerk of the Surrogate's Court of the County of Cum-
berland, and State of New Jersey, do hereby certify
that I have compared the annexed copy of the last
will and testament and codicils of Anne Beaumont
late of the county and state aforesaid, deceased; and
the annexed copies of the application for probate, of
the proofs, of the order of the surrogate granting
the probate of said will and of the Letters Testa-
mentary granted and issued thereon of record in
30 application for letters testamentary page 417 as
taken from and compared with the records thereof,
now remaining in this office, and have found the same
to be a correct transcript thereof.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this sixteenth day of May, A. D. one thousand nine hundred and nineteen.

CHAS. V. MARSHALL,
*Surrogate and Clerk of the
Surrogate's Court.*

10

EXHIBIT D2.

CERTIFICATE OF A CORPORATE NAME.

*To the Clerk of the Court of Common Pleas of the
County of Cumberland:*

Whereas the religious society and congregation usually Meeting for public worship in Vineland in the Township of Millville County of Cumberland did assemble at their said place of Meeting on the second day of July in the year of our Lord one thousand eight hundred and sixty three, ten days previous notice of the time and purpose of the assembling haveing been given by an advertisement set up in open view, near such place of meeting and when so assembled did by plurality of voices of such of the said society and congregation, as were present, elect John H. Haswell Richard F. Lombard Justin H. Loomis George W. Houdleth and Pardon Gifford of the said Society and congregation to be trustees of the same Now therefore we the said trustees selected as aforesaid do hereby certify that we have taken upon ourselves the name of The Trustees of the Methodist Episcopal Church of Vineland State of New Jersey and do request this our certificate to be by you recorded according to law.

20

30

Witness our hands and seals this second day of July A. D., eighteen hundred and sixty three.

John H. Haswell (SEAL)

Richard F. Lombard (SEAL)

Justin H. Loomis (SEAL)

George W. Houdleth (SEAL)

Pardon Gifford (SEAL)

Rec'd July 6th 1863)

and recorded)

- 10 The above certificate was sent to this office for recording about a month since but returned on account of informality.

STATE OF NEW JERSEY, }
COUNTY OF CUMBERLAND, } ss.

20

I, L. H. Hogate, clerk of the County of Cumberland, also clerk of the Circuit Court, and Courts of Common Pleas, in and for said county, same being Courts of record, do hereby certify the foregoing to be a true copy of the certificate of a corporate name therein recited, as taken from and compared with the record of the same, as found recorded in my office in book "G" of miscellaneous records, page 203.

- 30 (Seal) In Witness Whereof, I have hereunto set my hand and affixed the seal of said County and Courts this 16th day of May, A. D. 1919.

L. H. HOGATE,
Clerk.

by ROBT. S. SCHILLER,
Dep. Clerk.

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

Submitted June 17, 1919. Decided July 15, 1919.

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Between
 ANN ISABEL SMITH by
 FRANK S. KELLEY, her
 next friend,
Complainant,
 and
 HARRY H. POND, *et. als.,*
Defendants.

} Conclusions.

20

For the complainant: Messrs. Lum, Tamblyn & Colyer.

For the executors: Mr. Herbert C. Bartlett.

For the defendant, The First Methodist Episcopal Church of Vineland: Mr. William Elmer Brown.

For the Attorney General: Mr. Thomas F. McCran: *pro se.*

30

BACKES, V. C.

The question propounded is: Does the following bequest create a valid perpetual trust for public charity?

10 “Twenty-second. I order and direct my executors to sell at either public or private sale my home property now occupied by me and situate on the North side of Landis Avenue between East and Valley Avenues, Vineland, New Jersey, consisting of buildings and five acres of land, and I do hereby give and bequeath to the trustees of the First Methodist Episcopal Church of Vineland, New Jersey, the amount of the net proceeds of said sale of my home. The said church trustees to hold the amount received in trust nevertheless as an endowment fund. Said endowment fund to be safely invested and the net income arising therefrom shall be used for support of the church *or such benevolent purposes as the trustees of said church shall direct.*”

20 The italics are used to emphasize the point upon which the discussion hinges. The bequest is contained in the twenty-second clause of the will of Anne Beaumont, deceased. The executors have sold the land. The bill is filed by the residuary legatee, lunatic, by her next friend thereunto duly authorized, for a construction of the bequest, and a declaration that it is void for uncertainty and in violation of the rule against perpetuities, and a decree that the executors hold the legacy as a part of the residuary estate.

30 As I read the paragraph of the will, the trustees were given discretionary power to do either one of two things,—to devote the entire income of the fund to the support of the church, or wholly to such benevolent purposes as they might select; or perhaps they may allot it between the two sets of objects. To which of the two sets of objects the testatrix intended

the income to go, or if to both how much to either, is left in uncertainty. The trust to the use of the church is charitable and not within the rule against perpetuities, but the alternative use to "such benevolent purposes as the trustees shall direct" embraces objects that are not charitable and is within the rule. A gift to objects charitable in their nature, or to charity generally, to be appointed at the discretion of the trustees, is sufficiently certain and will be enforced in equity. Equity will compel the trustees to exercise their direction, or upon their failure to act, equity itself will administer the trust, supplying the trustee and defining the objects and, when necessary, will administer it according to the doctrine of *cy pres*. But a gift to be effective in perpetuity must be to charity exclusively and must be so indicated by the donor, although the selection of the objects of the charity may be delegated to the discretion of the trustees. If the trust be to uses charitable or to uses not charitable, in the discretion of the trustee, promiscuously and unapportioned, it will fail for want of certainty. Equity is powerless to compel the trustee to exercise his discretion favorably to the lawful use as against the direction of the donor that he may exercise it in favor of a use not countenanced by law, and equity itself is equally powerless to apply the trust to the lawful use in the face of the donor's intention that it may be applied to one not lawful. A trust to such mixed uses is void. This is the established doctrine, and I am bound by authority to apply it to the bequest in hand and to declare the trust invalid. In *Norris vs. Thomson's Executors*, 19 N. J. Eq. 307, affirmed 20 N. J. Eq. 489, the testator empowered his wife by her last will and testament to give and devise a certain portion of his estate "among such benevolent, religious

or charitable institution as she may think proper." The bequest was held to be void because it was vague and indefinite, and was not sustainable as a gift to charity because it was to "*benevolent, religious or charitable institutions;*" benevolence having a wider meaning than charity in its legal signification. In *De Camp vs. Dobbins*, 31 N. J. Eq. 671, to the North Reform church of Newark, the gift was in trust, to use the fund to "promote the religious interests of the church and to aid the missionary, educational and benevolent enterprises, to which said church is in the habit of contributing." The church had been in the habit of contributing to certain enterprises which were charities. The gift was upheld in an opinion delivered by Chief Justice Beasley, who also spoke for the Court of Appeals in *Thomson's Executors vs. Norris*, in which he pointed out the distinguishing features of the two cases. He said, "It is urged, that this entire trust cannot be said to be charitable, within the legal signification of that term, inasmuch as the word "*benevolent,*" by its natural force, takes in objects and purposes that are not charities. That this term has this latitudinarian meaning, was, upon full consideration, decided by this Court in the case of *Norris vs. Thomson's Ex'rs.*, 5 C. E. Gr. 489. That exposition went on the ground of the intrinsic meaning, and the unchecked form, of the term, for on that occasion it was considered that there was nothing present tending to hem in or narrow its import. As the word "*benevolent*" is admittedly broader in its meaning than the word "*charitable*" in its technical sense, I am unable to comprehend how the decision in question could have been other than it is, unless upon the inadmissible assumption that, when there is no guide to the testator's intention but his language, the Court

is possessed of the arbitrary power of altering such language. It will be found, I think, in almost all the decisions, that when these expressions have been taken in any sense but the technical or popular sense respectively, there has been something in the context justifying the particular interpretation." * * *

"In this will, the words in question do not depend on their intrinsic qualities alone for their signification. The facts shown, clearly demonstrate the sense in which the testatrix used these terms. It does not seem to me that the matter has been left in the least uncertainty. It appears in the case, by the proofs, that this church has been in the habit of making donations to certain enterprises and objects, such as the foreign and domestic missions, the Bible society, &c., all of which enterprises are charities in the legal sense of the term. When, therefore, this will declares the trust, and directs the property to be used 'to aid the missionary, educational and benevolent enterprises to which the said church is in the habit of contributing,' the will itself provides a standard by which the word 'benevolent' is to be measured. The fund is not to be used to aid any benevolent enterprise, but only benevolent enterprises of a certain defined character, and they are charities. **The** word 'benevolent' is thus, by the context and the subject matter, cut down into legal dimensions." In Hyde's Executors vs. Hyde, 64 N. J. Eq. p. 6, the gift was to executors in trust "for such religious, charitable or educational *or other purposes* as they may deem advisable." The gift was declared to be void because of the addition of the words "or other purposes." Chancellor Magee remarking that "the clause, looked at by itself, clearly expresses the intent to permit the trustees to devote the fund, if they chose to do so, to purposes other than those

- which are educational or religious or charitable." In *Hegeman's Executors vs. Roome*, 70 N. J. Eq. 562, the gift was to the testatrix's husband "for the purpose of making such distribution among religious, benevolent or charitable objects as he may select." In declaring the trust ineffective, Vice-Chancellor Bergen said, "A bequest to benevolent, religious or charitable institutions without qualification has been so often held to be void by the courts of this state
- 10 as to place the question beyond successful argument. Citing the cases from which I have quoted." In *Van Syckel vs. Johnson*, 80 N. J. Eq. 117, the fund was to executors in trust to use the income for the care of graves (not a charity) and for the payment of any deficiency in the salary of the pastor of a named church (a charity). Vice-Chancellor Walker, now Chancellor, held that because there was a mixing of charitable uses with objects not charitable, the bequest was void.
- 20 There is nothing in the will other than what is contained in the twenty-second clause above quoted, to indicate the intention of the testatrix. With an earnest desire to sustain the gift I have carefully searched the context of the clause for something to limit the word "benevolent" to a purpose strictly charitable, but without success. Counsel point out as significant of the charitable intentions of the testatrix that the gift was to the church *eo nomine*, that the "church trustees" were to hold the fund, and
- 30 that it was to be held as an "endowment fund;" and I have considered these incidents in connection with the third section of the Religious Society Act (C. S. 4308), which enables church trustees to receive and hold legacies for the use of the congregation, but they do not impress me as of importance, in view of the discretion given to the trustees to use the income

for benevolent purposes. They are, of themselves, too feeble, it seems to me, to restrict the broad meaning of benevolence; and as for the statute, the limited power thereby vested in church trustees cannot be read into the will to circumscribe and limit the uses otherwise declared by the testatrix. And further, I cannot allow that the testatrix intended the fund as an endowment of the church,—and in this, such charitable benevolences as the church, under its regulations, is called upon to support,—for, had that been her aim, the primary bequest to the church, without more, would have accomplished her purpose. To give such a construction to the clause would be to entirely ignore the bequest upon trust with the uses declared to the support of the church or to benevolences, as the trustees may decide, which, of course, is inadmissible. 10

Testimony was admitted to show that the church, under its discipline, contributes regularly to Home and Foreign Missions and other worthy causes that are legal charities; that they are known in the church literature as benevolences; that the testatrix was a devout member of the church and familiar with its rules and herself was a liberal contributor to them. These facts, it is contended, show the sense in which the executrix used the term benevolent, and fix with certainty the objects of her bounty, and bring the case within the doctrine of *De Camp vs. Dobbins*. In that case the testatrix nominated the objects of her benevolence, and upon evidence being let in to identify them they were found to be charities. “The will itself,” said the chief justice, “provides a standard by which the word ‘benevolent’ is to be measured.” In the present case there is no guide to the intention of the testatrix, except the word benevolent. Now, if we assume that the facts brought out were all with- 20 30

in the knowledge of the testatrix, where is there anything in the will to show that she intended to confine "benevolent" to those charitable benevolences to which she and the church were accustomed to contribute? The testimony is without probative value. The intention of the testatrix must be found in the will. It cannot be established *aliunde*.

Counsel further contend that the gift should be upheld as a charity because the delegation of power
10 to the trustees to designate the objects was in the alternative; that the use of the disjunctive "or" permits them to ignore the gift to benevolent purposes, and enables them to perform the trust, consistently with the law, by using the entire income for the support of the church. I fail to see any force in the argument. It seems to me to be utterly immaterial whether the disjunctive "or" or the copulative "and" was used, as it was in *Van Syckel vs. Johnson*, *supra*, which counsel endeavor to distinguish.
20 The determination of whether the gift is a valid charity depends upon the intention of the testatrix as expressed in the will, and if it is not found there, the contrivances of the trustees cannot supply the deficiency. I am referred for authority to the text in *Corpus Juris*, Vol. 11, p. 330 where, after stating the principle that a gift fails as a charity where purposes charitable are mingled with those not charitable, it is said that a "class of cases exists
30 where there is a general overriding trust for charitable purposes, but some of the particular purposes to which the fund may be applied are not strictly charitable, or one of two alternative modes of application is invalid in law. In such cases the Court will give effect to the general charitable trust, but the trustees are restricted from applying the fund to the purposes or in the manner which is objection-

able." The text is supported by the authorities cited. Judge Gray in *Jackson vs. Phillips*, 96 Mass. 539 on page 556, expresses it in this manner: "When a charitable intent appears on the face of the will, but the terms used are broad enough to allow of the fund being applied either in a lawful or unlawful manner, the gift will be supported, and its application restrained within the bounds of the law," and he quotes from and cites leading English cases that illustrate this secondary rule of interpretation. A cursory reading of the authorities found in the footnotes to *Corpus Juris* and in Judge Gray's opinion will readily disclose the inapplicability of the rule to the will under consideration. If we keep in mind that the trust and not the gift is in the church, that is, that the gift was not to the church as a charity, that the bequest is not complete, and that the testatrix left it to the trustees to supplement her will, by writing into it the objects of the gift, charitable or non-charitable, in their discretion, we experience no difficulty in reaching the conclusion that a charitable intent as to the whole fund does not appear on the face of the will. If the gift had been to the church to be devoted to its charities and benevolences, of which some might not be charities, we would have a familiar example of a general overriding trust for charitable purposes. For other illustrations see the cases in the footnotes to *Corpus Juris*.

The result that I have reached, upon principle and authority, is not to my satisfaction, for I am of the impression that the testatrix understood benevolent to be synonymous with charitable, and it is regrettable that her wishes should be frustrated by the inadvertent use of an inept term. However, it is the Court's duty to construe wills not to make them.

The complainant is entitled to a decree according to the prayer of her bill.

FINAL DECREE.

(Filed August 26, 1919.)

44/74.

IN CHANCERY OF NEW JERSEY.

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	Between	
	ANN ISABEL SMITH by	}
	FRANK S. KELLEY, her	
	next friend,	
	<i>Complainant,</i>	
	and	
	HARRY H. POND, <i>et als.,</i>	} On Bill &c. Final Decree.
20	<i>Defendants.</i>	

30 This cause coming on to be heard before the Court in the presence of Ralph E. Lum, of counsel with the complainant, and Herbert C. Bartlett, Esquire, of counsel with the defendants Harry H. Pond and Howard I. Branson, executors of the last will and testament of Anne Beaumont, deceased, and William Elmer Brown, Jr., Esquire, of counsel with the defendant, The First Methodist Episcopal Church of Vineland, and Thomas F. McCran, Esquire, Attorney General of the State of New Jersey, *pro se*, and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments

and it appearing to the Court that the complainant is entitled to the relief sought and prayed for by her in her bill of complaint, and that the bequest contained in the twenty-second clause of the will of the said Anne Beaumont, deceased, to the said The First Methodist Episcopal Church of Vineland, New Jersey, is void for uncertainty and in violation of the rule against perpetuities and that the executors of the said will hold the said legacy as a part of the residuary estate:

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It is on this 26th day of August, A. D., nineteen hundred and nineteen (1919) by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, Ordered, Adjudged, and Decreed, and the said Chancellor by virtue of the power and authority of this court, doth hereby Order, Adjudge and Decree that the bequest contained in the twenty-second paragraph of the will of the said Anne Beaumont, deceased, to the trustees of The First Methodist Episcopal Church of Vineland is illegal and void, and that the said defendants Harry H. Pond and Howard I. Branson, executors of the last will and testament of the said testatrix, hold the sum of nine thousand (\$9,000.00) dollars derived from the sale of the homestead premises of the testatrix as a part of the residuary estate of the said testatrix to which the said complainant is entitled under said will.

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And it is further Ordered, Adjudged and Decreed that the complainant recover her costs of this suit to be taxed and a counsel fee of three hundred and fifty dollars and that the same be paid by the said executors of Anne Beaumont, deceased, out of the funds of the estate in their hands.

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And it is further Ordered, Adjudged and Decreed that a counsel fee of three hundred and fifty dollars together with his taxed costs be allowed and paid to

Herbert C. Bartlett, Solicitor of Harry H. Pond and Howard I. Branson, executors of Anne Beaumont, deceased; and that a counsel fee of three hundred and fifty dollars together with his taxed costs be allowed and paid to William Elmer Brown, Jr., Solicitor for defendant The First Methodist Episcopal Church of Vineland; all of said costs and fees to be paid by the executors of Anne Beaumont out of the funds of said estate in their hands.

10

E. R. WALKER,
C.

Respectfully advised
JOHN H. BACKES,
V. C.

A true copy.
JESSE R. SALMON,
Clerk.

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NOTICE OF APPEAL.

(Filed September 10, 1919.)

IN CHANCERY OF NEW JERSEY.

Between	}	
ANN ISABEL SMITH by		
FRANK S. KELLEY, her		
next friend,		
<i>Complainant,</i>		On Bill &c. 10
and		Notice of Appeal.
HARRY H. POND, <i>et. als.,</i>		
<i>Defendants.</i>		

The defendants, Harry H. Pond and Howard I. Branson, executors of the last will and testament of Anne Beaumont, deceased, hereby appeal from the final decree made by the Chancellor in the above stated cause on the twenty-sixth day of August, 1919, whereby the said Chancellor ordered and adjudged that the complainant is entitled to the relief sought and prayed for by her in her bill of complaint, in that the bequest contained in the twenty-second paragraph of the will of Anne Beaumont, deceased, to the trustees of The First Methodist Episcopal Church of Vineland, is illegal and void and in violation of the rule against perpetuities, and that the said defendants Harry H. Pond and Howard I. Branson, executors of the last will and testament of the said testatrix, hold the sum of nine thousand (\$9,000.00) dollars, derived from the sale of the homestead premises of the testatrix, as a part of the residuary estate of the said testatrix to which the said complain-

ant is entitled under said will of Anne Beaumont; excepting, however, from said appeal that portion of the said decree ordering the payment of counsel fees and costs to the respective parties in interest, which said part of the final decree is not appealed from.

The said appeal is taken to the Court of Errors and Appeals in the last resort in all causes.

10 HERBERT C. BARTLETT,
*Solicitor for and of counsel with
the Defendants Harry H. Pond
and Howard I. Branson, ex-
ecutors of the Last Will and
Testament of Anne Beaumont,
deceased.*

I conceive there is a good cause for appeal in the above-stated cause.

20 HERBERT C. BARTLETT,
*Of Counsel with Defendants
Harry H. Pond and Howard I.
Branson, executors of Anne
Beaumont, deceased.*

[ENDORSED]

30 Service of a copy of the within notice
of appeal is hereby acknowledged this
eighth day of September, A. D. 1919.
Lum, Tamblyn & Colyer,
Solicitor of Complt.

NOTICE OF APPEAL.

(Filed September 10, 1919.)

IN CHANCERY OF NEW JERSEY.

Between
 ANN ISABEL SMITH by
 FRANK S. KELLEY, her
 next friend,
Complainant,
 and
 HARRY H. POND, *et als.,*
Defendants.

10
 On Bill &c.
 Notice of Appeal.

The defendant, The First Methodist Episcopal Church of Vineland, hereby appeals from the Final Decree made by the Chancellor in the above-stated cause on the twenty-sixth day of August, 1919, whereby the said Chancellor ordered and adjudged that the complainant is entitled to the relief sought and prayed for by her in her bill of complaint, in that the bequest contained in the twenty-second paragraph of the will of Anne Beaumont, deceased, to the trustees of The First Methodist Episcopal Church of Vineland, is illegal and void and in violation of the rule against perpetuities, and that the defendants Harry H. Pond and Howard I. Branson executors of the last will and testament of the said testatrix, hold the sum of nine thousand (\$9,000.00) dollars, derived from the sale of the homestead premises of the tes-

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tatrix, as a part of the residuary estate of the said testatrix to which the said complainant is entitled under said will of Anne Beaumont; excepting, however, from said appeal that portion of the said decree ordering the payment of counsel fees and costs to the respective parties in interest, which said part of the final decree is not appealed from.

The said appeal is taken to the Court of Errors and Appeals in the last resort in all causes.

10

WILLIAM ELMER BROWN, JR.,

*Solicitor for and of counsel with
the Defendant The First Meth-
odist Episcopal Church of
Vineland.*

I conceive there is a good cause for appeal in the above-stated cause.

20

WILLIAM ELMER BROWN, JR.,

*Of counsel with defendant The
First Methodist Episcopal
Church of Vineland.*

[ENDORSED]

Service of a copy of the within notice of appeal is hereby acknowledged this eighth day of September, A. D. 1919.

30

Lum, Tamblyn & Colyer,
Solicitor of Complt.

PETITION OF APPEAL OF HARRY H. POND AND HOWARD I. BRANSON, EXECUTORS.

(Filed September 11, 1919.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
ANN ISABEL SMITH by
FRANK S. KELLEY, her
next friend,
Complainant,
and
HARRY H. POND, *et als.*,
Defendants.

On Bill &c.
Petition of Appeal
of Harry H. Pond
and Howard I.
Branson, Execu-
tors.

10

*To the Honorable the Court of Errors and Appeals
in the last resort in all causes:*

The petition of Harry H. Pond and Howard I. Branson, executors of the last will and testament of Anne Beaumont, deceased, the appellant in the above-stated cause respectfully shows:

That your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date August 26th, 1919, wherein the said Anne Isabel Smith by her next friend Frank S. Kelley was complainant and Harry H. Pond and Howard I. Branson executors of Anne Beaumont, deceased, and The First Methodist Episcopal Church of Vineland defendants in this respect to wit, where-

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in said decree doth order, adjudge and decree "that the complainant is entitled to the relief prayed for in her bill of complaint, in that the bequest contained in the twenty-second paragraph of the will of said Anne Beaumont deceased to the trustees of The First Methodist Episcopal Church of Vineland is illegal and void and that the said defendants Harry H. Pond and Howard I. Branson executors of the
10 last will and testament of said testatrix hold the sum of \$9,000.00 derived from the sale of the homestead premises of the testatrix as a part of the residuary estate of the said testatrix to which complainant is entitled under said will."

And your petitioners appeal from all of said decree; excepting, however, that part of the decree which allows counsel fees and costs to the respective parties, for the reason that said decree is erroneous and that complainant should be denied the relief
20 sought and her bill of complaint dismissed as the said bequest to The First Methodist Episcopal Church of Vineland is a legal and valid bequest.

Your petitioners therefore pray that said decree be reversed, set aside and for nothing holden and that complainant's bill be dismissed and said bequest to The First Methodist Episcopal Church of Vineland be declared legal and valid.

And that your petitioners may have such relief in the premises as to this Honorable Court shall seem
30 meet.

HERBERT C. BARTLETT,
*Solicitor for and of counsel with
Harry H. Pond and Howard I.
Branson executors of Anne
Beaumont, Deceased.*

Petition of Appeal of Harry H. Pond 73
and Howard I. Branson, Executors

[ENDORSED]

Sept. 8, 1919.

Service of a copy of the within is
hereby ack'd.

Lum, Tamblyn & Colyer,
Solr. for Complt.

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**PETITION OF APPEAL OF THE FIRST METH-
ODIST EPISCOPAL CHURCH OF
VINELAND.**

(Filed September 11, 1919.)

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10

Between
ANN ISABEL SMITH by
FRANK S. KELLEY, her
next friend,
Complainant,
and
HARRY H. POND, *et als.*,
Defendants. } On Bill &c.
Petition of Appeal
of The First Meth-
odist Episcopal
Church of Vine-
land.

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*To the Honorable the Court of Errors and Appeals
in the last resort in all causes:*

The petition of The First Methodist Episcopal Church of Vineland, the appellant in the above-stated cause respectfully shows:

30 That your petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing dated August 26th, 1919, wherein the said Ann Isabel Smith by her next friend Frank S. Kelley was complainant and Harry H. Pond and Howard I. Branson executors of Anne Beaumont, deceased, and The First Methodist Episcopal Church of Vineland, defendants in this respect

to wit: Where said decree doth order, adjudge and decree "that the complainant is entitled to the relief prayed for in her bill of complaint, in that the bequest contained in the twenty-second paragraph of the will of said Anne Beaumont deceased to the trustees of The First Methodist Episcopal Church of Vineland is illegal and void and that the said defendants Harry H. Pond and Howard I. Branson executors of the last will and testament of said testatrix hold the sum of \$9,000.00 derived from the sale of the homestead premises of the testatrix as a part of the residuary estate of the said testatrix to which complainant is entitled under said will." 10

And your petitioner appeals from all of said decree; excepting, however, that part of the decree which allows counsel fees and costs to the respective parties, for the reason that said decree is erroneous and that complainant should be denied the relief sought and her bill of complaint dismissed as the said bequest to The First Methodist Episcopal Church of Vineland is a legal and valid bequest. 20

Your petitioner therefore prays that said decree be reversed, set aside and for nothing holden and that complainant's bill be dismissed and said bequest to The First Methodist Episcopal Church of Vineland be declared legal and valid.

And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet. 30

WM. ELMER BROWN, JR.,
*Solicitor for and of counsel with
The First Methodist Episcopal
Church of Vineland.*

76 *Petition of Appeal of First Methodist
Episcopal Church of Vineland*

[ENDORSED]

Sept. 8, 1919.

Service of a copy of the within is
hereby acknowledged.

Lum, Tamblyn & Colyer,
Solrs. for Compt.

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**ANSWER TO PETITION OF APPEAL OF THE
FIRST METHODIST EPISCOPAL CHURCH
VINELAND.**

(Filed Sept. 25, 1919.)

NEW JERSEY COURT OF ERRORS AND APPEALS. 10

Between	}	On Bill &c.
ANN ISABEL SMITH,		Answer to Petition
<i>Complainant-Respondent,</i>		of Appeal of the
and		First Methodist
HARRY H. POND, <i>et als.</i> ,		Episcopal Church
<i>Defendants-Appellants.</i>		of Vineland. 20

The answer of the above-named respondent to the petition of appeal of The First Methodist Episcopal Church of Vineland, appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true for answer thereto, nevertheless, says and admits that a decree was on the twenty-sixth day of August, nineteen hundred and nineteen, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. 30

78 *Answer to Petition of Appeal of First
Methodist Episcopal Church of
Vineland*

And this respondent is advised and believes, that the said decree is agreeable to equity and she prays that the same may be affirmed, with costs to be adjudged to this respondent.

LUM, TAMBLYN & COLYER,
*Solicitors for and of counsel with
Respondent.*

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**ANSWER TO PETITION OF APPEAL OF
HARRY H. POND AND HOWARD I. BRAN-
SON, EXECUTORS OF THE LAST WILL
AND TESTAMENT OF ANNE BEAU-
MONT, DECEASED.**

(Filed Sept. 25, 1919.) 10

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between
ANN ISABEL SMITH,
Complainant-Respondent,
and
HARRY H. POND, *et als.,*
Defendants-Appellants.

On Bill &c.
Answer to Petition
of Appeal of Harry
H. Pond and How- 20
ard I. Branson, Ex-
ecutors of the last
will and testament
of Anne Beaumont,
Deceased.

The answer of the above-named respondent to the
petition of appeal of the above-named appellants. 30

This respondent, not acknowledging all or any of
the matters which in the said petition of appeal are
contained to be true, for answer thereto, neverthe-
less, says and admits that a decree was on the twenty-
sixth day of August, nineteen hundred and nineteen,

80 *Answer to Petition of Appeal of Harry
 H. Pond and Howard I. Branson,
 Executors*

made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced.

10 And this respondent is advised and believes, that the said decree is agreeable to equity and she prays that the same may be affirmed, with costs to be adjudged to this respondent.

 LUM, TAMBLYN & COLYER,
 *Solicitors for and of counsel with
 Respondent.*

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NOTICE OF ARGUMENT.

(Filed October 1st, 1919.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between	}	
ANN ISABEL SMITH by		
FRANK S. KELLEY, her		
next friend,		
<i>Complainant-Respondent,</i>		On Appeal.
and		Notice of Argument.
HARRY H. POND, <i>et als.</i> ,		
<i>Defendants-Appellants.</i>		

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Sir:

Take notice of the argument of the issue joined in this cause before the New Jersey Court of Errors and Appeals, to be held at the State House, in the City of Trenton, in the State of New Jersey, on the third Tuesday in November, A. D., 1919, at eleven o'clock in the forenoon of said day, or as soon thereafter as the said Court can attend to the same.

Dated, September 27th, 1919.

Yours respectfully,
 HERBERT C. BARTLETT,
Attorney of Defendants-Appellants, Harry H. Pond and Howard I. Branson, executors of Anne Beaumont, deceased.

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To

LUM, TAMBLYN & COLYER,
*Attorneys of Complainant-
Respondent.*

[ENDORSED]

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Service of a copy of the within notice
acknowledged this 29th day of September,
A. D. 1919.

Lum, Tamblyn & Colyer,
Attys. of Compl.
Respondent.

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New Jersey Court of Errors and Appeals

ANN ISABEL SMITH, by Frank S. Kelley,
her next friend,

Complainant-Respondent,

vs.

HARRY H. POND and HOWARD I. BRANSON,
executors of Anne Beaumont, deceased,
and the First Methodist Episcopal
Church of Vineland,

Defendants-Appellants.

On Appeal.

BRIEF FOR COMPLAINANT-RESPONDENT.

This is an appeal from a decree of the Court of Chancery declaring invalid paragraph 22 of the last will and testament of Anne Beaumont. The facts are set out with completeness and accuracy in the brief of defendants-appellants.

I.

The bequest to the trustees is void for uncertainty of its object.

Anne Beaumont was a member of the Methodist Episcopal Church of Vineland, N. J. Evidence which was permitted to be taken on the ground that it might have some relevancy, showed that the testatrix was familiar with the benevolences of the Church (page 30, line 10; page 33, line 1). The reading of the testimony shows conclusively that the trustees of the Church did not determine what amounts should be paid for what benevolent purposes. They were merely members of the official board, the final authority being vested in the Quarterly Conference (page 35, line 20, etc.). As it was well put, the trustees may advocate, but not control (page 36, line 22). The testimony then throws no light on the question before the Court and is of no value except to show that the testatrix was acquainted with the eight specific so-called benevolent uses among which the Church appropriated its funds in a certain ratio. Had she intended her funds to be controlled, as she knew it was the custom, of the Church to control them for the

eight benevolent purposes alone, she would, of course, not have permitted discretion to have lodged in the trustees, for under the evidence she certainly knew that the expenditure of the funds by the Church and the ratio of distribution was determined by another body, which was not even controlled by the trustees, but of which they, by virtue of their office, chanced to be a part. She ordered her executors to sell her house and pay the proceeds to the trustees of the Church, they to hold the amount received in trust as an endowment fund to be safely invested "*and the net income arising thereon shall be used for the support of the Church or such benevolent purposes as the trustees of said Church shall direct.*" Had the testatrix intended the funds left by her to be used for the benevolent purposes of the Church, she would have said so without question, and the bequest would have been good. She undoubtedly assumed that she could leave her money in that form, giving to the trustees the alternative, however, of using the income for any other benevolent purpose, as they should direct. It happens that the benevolent purposes to which the Church was in the habit of contributing were entirely charitable, but there was, of course, by the language of the will no possible limitation on any other benevolent purpose.

II.

The terms of the bequest are such that the objects of the trust if created could not surely be fixed by this court. Under this test it fails for uncertainty.

2 Story's Juris., Secs. 979-1183; *Baptist Association v. Hart's Exr's*, 4 Wheat. 1, 33, 43.

If the bequest in question were permitted to be held by the trustees, they could use it for any "benevolent purpose" which "they shall direct." They could use it for purchasing candy to be given worthy scholars of the Sunday School at Christmas time (held void in *Goodell v. Union Association*, 29 N. J. Eq. 32), and in innumerable other ways could make other expenditures, all benevolent, but none coming within the protection of charity.

The language of the testatrix can be no more narrowly limited than the plain import of the words expressed and judicial construction should not be permitted to cut down the definite unequivocal language of the testatrix.

Clearly, then, the bequest is void as in conflict with the law against perpetuities.

III.

The exception made in case of charities is not applicable here.

The use must be charitable and its beneficiaries must be so far defined or capable of definition that it can certainly be specifically executed by the Court, or some competent trustees, otherwise it will fail. Clearly in the present case, as has been said, the trustees might use the income for any benevolent purpose for which they in their discretion might see fit to use it. The object of the appointment is not necessarily charitable and so the bequest is not within the exception applicable to charities.

The special characteristics of the general objects are not named or defined by the bequest, nor are the objects even limited to the State of New Jersey. It is well settled that heirs can be disinherited only by express words or necessary implication.

The object upon which the discretion of the trustees is to be executed is neither limited nor specific. In fact, the gift is not even to an institution, but is merely to the trustees. There is no force whatever in the argument of the other side that they are the trustees of this certain particular church. That merely determines what trustees they are; fixes those who will at any given time determine the benevolent purposes to which they shall direct the payment of the fund. We can avoid confusion and see the issue clearly by assuming that no question having been raised as to the validity of this trust, those who happen to be the trustees of "said church" at this time should determine to use a proportion of the income for a certain line of educational work in the Town of Vineland or in Philadelphia,—a work clearly recognized, let us admit, as benevolent, but not as charitable. The effort of any member of the Vineland Methodist Episcopal Church to inhibit, limit or prevent this direction on behalf of the trustees would be entirely unsuccessful, for the language could not possibly permit a construction which would confine the direction of the benevolent purposes to the inner working of the Church alone.

There is no context to assist in the present case, as was found in *DeCamp v. Dobbins*, 29 N. J. Eq. 36, to aid in making definite the language of the testatrix. Clearly in the present

case the language of the bequest does not confine it to the power of a charitable use alone, but leaves a latitude of choice to the trustees beyond that which the law protects under the cover of charity. We cannot at this late date get away from the history of the subject and the adopted rule as accepted for so many years in this State. The old English cases are set up at length in *Thompson's Exrs. v. Norris*, 20 N. J. Eq. 489, at page 523, *et seq.*, and we may find there situations practically identical with the one before us. Certainly it would be hard to distinguish the present case from the famous case of *Maurice v. Bishop of Durham*, 9 Vesey, 339, and 10 Vesey, 521. If the matter were one entirely open to judicial interpretation our courts might have adopted a rule that where a bequest was to trustees, as in the present case for two purposes, one of which was good and the other bad, the courts would permit the use entirely for the good purpose. It was that view we had in mind in an article written some years ago, N. J. L. J., Vol. 26, page 67. That rule, however, has never prevailed or been adopted in this State.

In *DeCamp v. Dobbins*, 29 N. J. Eq. 36, at page 47, Chancellor Runyon says: "But merely purposes of a kind generally beneficial as of those of benevolence and liberality, without specifying the objects who are to receive, and those objects not being the poor, the Court will never attempt to execute," and at the bottom of page 46 it is said, "Where a trust is in such general terms that the fund may be applied at the discretion of the trustees, not only to purposes strictly charitable according to the settled meaning of the term, but also to other indefinite purposes of benevolence or liberality, it is void for the reason that the Court cannot direct the application of any part to charitable uses against the terms of the trust, giving an option to the trustees to apply it wholly to other purposes of a different kind." This rule has been adopted and constantly obtains through all the decisions of this State. Multitudes of decisions may be found in other jurisdictions adopting all sorts of rules and one might almost say some vagaries. It would seem to us to add no good purpose to attempt to here classify or analyze them at this date.

The rules mentioned in Cyc. Vol. 6, page 948, and in Corpus Juris, Vol. 2, page 30, are not part of our substantive law and in the light of previous adjudications could hardly now be made so. Moreover, an examination establishes that many of

the citations do not at all support the text. For instance, in *Soulsbury v. Denton*, 69 Reprint, 1219; 3 Kay and J. 529, the discretion was between two bequests, both of which were good. The case at hand, however, comes under the first phases of the rule mentioned in *Corpus Juris, supra*, where under note 17 the New Jersey cases are set out.

There is no possible discretion in the present case which was not equally applicable in the case of *Thompson's Exrs. v. Norris, supra*; *Van Syckle v. Johnson*, 70 Atl. 657; *Hyde's Exrs. v. Hude*, 53 Atl. 593, etc.

As Chancellor Walker said in *Van Syckle v. Johnson, supra*: "When an unascertainable part of a fund is given upon a void trust and the residue upon a valid trust, the whole fails" (page 658). We are dealing with that identical situation in the present instance.

Under *Russling v. Russling*, 9 Stew. Eq. 603, and the cases reviewed at length in *State v. Ready*, 78 N. J. Law, 599, at 601, etc., the effect of the evidence introduced in this case is of course definitely limited and controlled and can have no possible effect in enlarging or cutting down the bequest to the trustees. There was nothing to explain and nothing to construe, other than the language used by the testatrix. There could be nothing left but to speculate, if we were to be permitted to speculate, as to whether she intended to limit the benevolences to those to which the church formerly contributed for she leaves the discretion to the trustees, going indefinitely into the future. The money may be spent, if this bequest was held good according to the language used, for any benevolent purposes as the trustees shall direct.

Citations from decisions might be made at exhaustive length without adding anything of value to the definitely established adjudications now existing in New Jersey.

It is immaterial that the trustees are trustees of the church.

The third section of the Religious Societies Act (Vol. 3, Comp Stat., p. 4368, Sec. 3) provides that the trustees shall by such name of incorporation be able and capable to acquire, purchase, receive for and hold among other things, legacies, donations, moneys, goods and chattels in trust for the use of the said society or congregation. There is nothing, however, in this legislation which purports to say that trustees of a church because they happen to be so, may not on receipt of

funds under a will exercise a discretion and trust lodged in them to use the funds for any benevolent purpose.

The powers granted in the will are not limited in any way by denominational practise or to the benevolences of this particular church, and the trustees, if this bequest should be held good, are left with the power to apportion the income whether for the support of the Church or such benevolences as they shall direct. It is apparent from the wording of the will that the trustees were to be possessed of special powers over the distribution of this income. It is not the corporation which holds the property of the Vineland Church that is to exercise this discretion, but evidently the *persons* who happen to be trustees at the time of apportionment. In view of these broad powers thus attempted to be conferred upon the trustees as a class, it must follow that the bequest is void for the reasons herein stated, and as is so painstakingly and carefully pointed out in the conclusions of Vice-Chancellor Backus (Book, page 55).

There is no doubt but that Anne Beaumont thought that she could permit by her will a discretion which our decisions do not allow. She must have known that the trustees do not themselves normally determine the direction of the funds used by the various benevolences of the Methodist Episcopal Church. She could have left the fund to the Finance Committee, or the Quarterly Conference, or better yet, if she had actually intended that the fund should be used for the purposes of the Church only, she would never have added more, for there could have been no other possible reason for her adding the last twelve words of the 22nd paragraph. The situation legally is exactly as though the testatrix had named the same individuals who were trustees of the Church trustees of the will, and had lodged the discretion in them. We respectfully urge that the established law of this State should be followed and the decree affirmed.

Respectfully submitted,

LUM, TAMBLYN & COLYER,
Solicitors for Complainant-Respondent.

RALPH E. LUM,
of Counsel.

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

Between
ANN ISABEL SMITH by
FRANK S. KELLY, her
next friend,
Complainant-Respondent,
and
HARRY H. POND and HOW-
ARD I. BRANSON, executors
of ANNE BEAUMONT, de-
ceased, and THE FIRST
METHODIST EPISCOPAL
CHURCH OF VINELAND,
beneficiary thereunder,
Defendants-Appellants.

On Appeal from De-
cree of Court of
Chancery.

BRIEF OF FACTS.

The question in controversy is whether under paragraph 22 of the will of Anne Beaumont a valid perpetual trust for public charity is created. The clause of her will in question is found on page 43, also page 8 of printed case:

“Twenty-second: I order and direct my ex-
ecutors to sell at either public or private sale my
home property now occupied by me and situate
on the North side of Landis Avenue between

East and Valley Avenues, Vineland, New Jersey, consisting of buildings and five acres of land, and I do hereby give and bequeath to the Trustees of the First Methodist Episcopal Church of Vineland, New Jersey, the amount of the net proceeds of said sale of my home. The said church Trustees to hold the amount received in Trust nevertheless as an endowment fund. Said endowment fund to be safely invested and the net income arising therefrom shall be used for the support of the church *or such benevolent purposes as the trustees of said church shall direct.*"

The complainant, who seeks to set aside this bequest as void for uncertainty of its object, is Ann Isabel Smith, a lunatic residing in England, who appears by her next friend. She is the residuary legatee under clause 23 of the will, pages 43-8 of case, reading as follows:

"Twenty-third: Should there be anything real or personal remaining after making the above-mentioned bequests I do give and bequeath the same to my niece Ann Isabel Smith now residing with me. The same to be in addition to what she is to receive under the first and second clauses of this Will."

POINTS.

1. The words "or such benevolent purposes as the trustees of said church shall direct" are limited to benevolences connected with the First Methodist Episcopal Church of Vineland, which are all charitable purposes.

A. The whole bequest revolves around the First Methodist Episcopal Church of Vineland.

B. Nature and character of donee.

C. Intent of donor.

2. If it should be determined that the bequest for benevolent purposes is invalid then the use of the fund may be restricted to the support of the church only.

A. The bequest is divisible by reason of the use of the word "or."

3. What effect, if any, is to be given to the limitations on the power of trustees of religious corporations to hold legacies, etc., in trust for the use of the society or congregation, etc., in construing the debated words of the will "or such benevolent purposes as the trustees of said church shall direct."

FIRST POINT.

1. The words "or such benevolent purposes as the trustees of said church shall direct" are limited to benevolences connected with the First Methodist Episcopal Church of Vineland, which are all charitable purposes.

A. The whole bequest revolves around the First Methodist Episcopal Church of Vineland.

B. Nature and character of donee.

C. Intent of donor.

A. The whole bequest revolves around the First Methodist Episcopal Church of Vineland.

"Benevolent purposes as the Trustees of said Church shall direct" must be taken as benevolent purposes connected with that Church, the word

“benevolent,” in the manner in which it is used, being synonymous with the word charitable. Furthermore, the words “benevolent purposes” are narrowed down by the context preceeding their use. The words “for the support of the church” measures the benevolent purposes which must be benevolent purposes connected with the First Methodist Episcopal Church of Vineland.

See *De Camp vs. Dobbins*, 31 N. J. Equity, p. 671.

“ ‘Benevolent’ as used in a devise to a religious society to aid the missionary, educational and benevolent enterprises to which the society habitually contributed cannot be construed as having a wider signification than the word charitable, though intrinsically it includes more than legal charities, but its meaning may be narrowed down by the context and the will itself proves a standard by which the word is to be measured and the fund was not to be used to aid any benevolent enterprise, but only those to which the church was in the habit of contributing.”

The words used in *De Camp vs. Dobbins* were:

“That they may use the same to promote the religious interests of said church and to aid the missionary, educational and benevolent enterprises to which the said church is in the habit of contributing.”

If this devise or bequest provides a standard by which the word benevolent is to be measured, then defendants-appellants maintain that the use of the words “benevolent purposes” in the case in hand is measured by the words “and the net income arising therefrom shall be used for the support of the church.”

Chief Justice Beasley in *De Camp vs. Dobbins* stated:

“The word benevolent is thus by the context and the subject matter cut down in its legal dimensions”,

and we maintain the same situation exists in the case at hand in the use of the word “benevolent.”

If the intent of the donor is to be upheld, and the purpose of the Court is to sustain a charitable bequest, if possible, there is no reason why this bequest should not receive the benefit of this construction.

In the case of *Hesketh vs. Murphy*, 9 Stew. Eq. 304, Chief Justice Beasley, speaking for the Court of Errors, said:

“That it was an acknowledged doctrine that on all matters of construction Courts are bound to lean in favor of charity rather than against it. Where the language of the testator standing alone requires a construction which would make void and ineffective the gift it may, when read with other language of the will, be found to be restricted from its natural meaning and confined within limits which effectuate the gift.”

“The context of a particular sentence or clause in a statute, contract, will, etc., comprises those parts of the text which immediately precede and follow it. The context may sometimes be scrutinized to aid in the interpretation of an obscure passage.”

Black's Law Dictionary, p. 258.

Bowyer's Law Dictionary, p. 654.

“The word ‘benevolent’ as used in a will shall be taken in its broad sense unless it is

apparent from other directions in the will that the term was used in a stricter sense when it is to be construed as synonymous with charity."

Kelly vs. Nichols, 25 Atlantic Reporter, p. 840; 18 R. I., p. 62; 19 L. R. A., p. 413.
Words and Phrases, Vol. 1, p. 753.

In *Suter vs. Hilliard*, 132 Mass. 412, 42 Am. Rep. 444, it is held:

"Where the word 'benevolent' is used in connection with other words explanatory of its meaning, and indicating the intent of the donor to limit it to purposes strictly charitable, it has been held to be synonymous with, or equivalent to 'charitable.' Numerous instances of such use of the word in the statutes of this Commonwealth are referred to in *Saltonstall vs. Sanders*, 11 Allen, 446, 468. And it was said by Mr. Justice Gray, in delivering the judgment on that case, 'whatever may be the meaning, in the law of Mass. of the word "benevolence" by itself, there can be no doubt that when used in connection with "charity," as in this will, it is synonymous with it. 11 Allen, 47.' The language there was 'in aid of objects and purposes of benevolence or charity, public or private.' "

In *People vs. Powers*, 147 N. Y. 104, 35 L. R. A. 502, there was a bequest to a certain trustee named, which was to be disposed of among "charitable and benevolent institutions or corporations in the city of Rochester, as he shall choose, and such sums and portions as he shall deem proper." The Court said:

"It is urged, however, that the word 'benevolent' as used in this will is coupled with the word

‘charitable,’ and that the institution or institutions intended as beneficiaries must be both charitable and benevolent; in other words, that benevolent as here used was intended to mean charitable. This view, we think, we may properly adopt.”

We must then look to the language used by the testatrix in the paragraph of the will here under consideration, in order to determine what was her intention. It is insisted by the defendant, for whom this brief is submitted, that the word benevolent as used in this will was used in its popular sense and is synonymous with charity, meaning thereby well-doing and not well-wishing.

The fund in question is to be held by the trustees of the church as an endowment fund, the income used for the support of the church and the words “or such benevolent purposes as the trustees of the said church shall direct” must mean benevolent purposes connected with the church and carried on by it such as its Home Missionary Society, Foreign Missionary Society, etc.

The power of the trustees to use this fund for benevolent purposes is limited and narrowed to the benevolent purposes connected with that church.

The word “benevolent” as used in the Methodist Church Disciplinary is a technical word and relates to eight disciplinary benevolences of that church (state of the case, pages 23 to 26). The trustees of the church cannot use endowment funds or funds left to them for benevolent purposes for any other benevolence save those defined by the Church Discipline, which are eight in number and all charitable. Their use of funds of this description is checked and defined absolutely and the fact that the

fund was left to them narrows its use to such benevolent purposes as they can contribute to and not to any they may see fit. They have no discretion beyond the eight defined benevolences, all of which are charitable purposes.

By a further reading of the paragraph of the will here asked to be considered, it is noted that "said church trustees are to hold the amount received in trust, nevertheless, as an endowment fund." By reading to this point it is quite clear that the trust is still connected with the church in question, in that the testatrix has referred to the trustees as "said church trustees."

It is also urged that the use of the word "endowment" necessarily means or implies a fund used in connection with some institution, which in this case would be The First Methodist Episcopal Church of Vineland. In the case of state, *First Reformed Dutch Church, pros. vs. Lyon, Assessor*, 32 N. J. L. 360, the Court defined the word "endowment" to mean "that particular fund or part of the fund of the institution put aside for its more permanent use and usually kept sacred for the purpose intended."

The further reading of the said paragraph of the will in question discloses the following language: "said *endowment fund* to be safely invested and the net income arising therefrom shall be used for the support of the church or such benevolent purposes as the trustees of said church shall direct." Here, again, it is to be noted that the testatrix had in mind and intended that the use of the fund should be for the benefit of the church and its purposes. This is evident, first, from the use of the term "endowment fund"; second, from the use of the clause "for the support of the church"; and third, from the reference to "the trustees of said church." The fact that

the moneys received by the church trustees are to be an endowment fund sufficiently fastens the bequest to the church, a charitable institution, as to leave no doubt that the income arising therefrom should be used for the church purposes, both current and benevolent, and therefore for charitable purposes.

The fund is bequeathed to the trustees of the church; they are to hold the amount as an endowment fund, invest it and use the net income; the whole management is placed in the church. If not to be used for church purposes why did she make the "trustees of the First Methodist Episcopal Church of Vineland" the custodians of the fund. Would she not have made the executors of her will the trustees had she wished it used for other benevolent purposes than those connected with the church?

In the New Jersey cases of:

Van Syckel vs. Johnson, 80 N. J. Equity p. 117;

Hegeman's Executor vs. William J. Roome, 70 N. J. Equity, p. 565;

Thomson's Executors vs. Norris, 20 N. J. Equity, p. 489,

the executors of the will were named as trustees of the fund which was to be used for benevolent purposes and naturally they would not be limited to using the same for benevolent purposes connected with the church. But in this case, the further appointment of the trustees of the church limits the use of the fund to church purposes connected with the church, or taking even a broader view of the use of the words "benevolent purposes" certainly in the appointment of the trustees of a church to administer such a fund it must be limited to those purposes which are of a charitable nature.

B. Nature and character of the donee.

It is to be noted that the gift or bequest is to the trustees of the First Methodist Episcopal Church of Vineland, State of New Jersey, a body incorporated under that name (state of the case, page 53), this fact alone signifies a charitable intention on the part of the testatrix.

As is stated in 11 *Corpus Juris*, page 321:

“As the term ‘church’ imparts an organization for religious purposes, a gift to a church or church society by name, with declaration or restriction as to the use to be made of the subject matter of the gift, must be deemed to be a gift for the promotion of the purpose for which the church was organized and therefore to be a gift for a charitable purpose.”

The recipient of this trust (the trustees of the First Methodist Episcopal Church of Vineland, New Jersey) was organized and incorporated for religious purposes only (state of the case, page 53); and such purposes have always been considered charitable. As was said in the case of *Mills vs. Davison*, 54 N. J. Equity, 659, 666:

“The object for which the donee of a charity was incorporated is always an important element in the construction of the instrument by which a charity is created.”

The solicitor for complainant-respondent in the court below endeavored to distinguish this case from *De Camp vs. Dobbins*, 29 N. J. Equity, p. 36, as follows:

“The subject upon which the discretion of the trustees is to be executed is neither limited nor specific. In fact, the gift is not even to an in-

stitution, but is merely to the trustees, and there is no context, as in the case of *De Camp vs. Dobbins*, 29 N. J. Eq., 36, to aid in making definite the language of the testatrix."

It is plain that the solicitor for complainant-respondent in presenting this point lost sight of the fact that this bequest was made to "the trustees of the First Methodist Episcopal Church of Vineland" as a corporate body and not to the officials of said church known as the trustees.

C. Intent of donor.

Courts invariably lean to upholding the bequests of this nature and will inquire into the meaning of the testator or donor and if the meaning implies a charity the trust stands, otherwise not.

See *Murdock vs. Bridges*, 39 Atlantic Reporter, p. 477.

91 Maine, p. 124.

"Trusts having for their object a charity are usually defined by the words 'benevolent' or 'charitable.' Benevolent is a word of much broader signification than charitable and may include what are not charities; and the Courts invariably inquire into the meaning of the testator or donor; and if the meaning implies a charity the trust stands, otherwise not."

Murdock vs. Bridges, 39 Atlantic Reporter, 477;

91 Maine, p. 124;

Words and Phrases, Vol. 1, p. 754.

In 11 *Corpus Juris*, page 312, it is stated:

"In considering and applying the terms of an

instrument creating a charitable trust, the intention of the donor or testator must be carried out as nearly as possible, even if the particular manner indicated by the donor is illegal or impracticable and even though the fund can be more efficiently or judiciously administered in another place, or applied to a different object. However, in considering such instruments courts of equity consider charity as the substance, while in other instruments the simple intent of the donor and the mode in which it is to take effect are deemed of the substance. The terms used are not to be measured separately, but each is to be considered in its relation to the entire provision and the general manner of each restricted by its association and made subordinate to the main issue."

The meaning and intent of the donor appears clearly in the bequest, as is hereinbefore pointed out in this brief.

The testimony given in the court below tends still further to establish the charitable intention of the testatrix (see particularly pages 32 and 33 of state of the case). There is appears that testatrix was an active and contributing member of the First Methodist Episcopal Church of Vineland, conversant with and interested in the charities or benevolences connected with that church.

The Vice Chancellor in his opinion, state of case, page 63, states: "The result that I have reached, upon principle and authority, is not to my satisfaction, for I am of the impression that the testatrix understood benevolent to be synonymous with charitable, and it is regrettable that her wishes should be frustrated by the inadvertent use of an inept term."

Having in mind then that the bequest is here made to the corporate body, "The First Methodist Episcopal Church of Vineland," we call attention to the admission of solicitor for complainant-respondent in his brief filed below as follows:

"If the testatrix had intended to provide for the benevolent purposes of the church, then the testimony given would have been relevant and the bequest could have been held charitable and sustained."

SECOND POINT.

If it should be determined that the bequest for benevolent purposes is invalid, then the use of the fund may be restricted to the support of the church only.

A. The bequest is divisible by reason of the use of the word "or."

Defendants-appellants maintain that the use of the word "or" in the clause reading "said endowment fund to be safely invested and the net income arising therefrom shall be used for the support of the church *or* such benevolent purposes as the trustees of said church shall direct."

It is to be noted that the testatrix has used the disjunctive "or" and there is nothing in the language of the will which makes it mandatory for the trustees of said church to use any of the income of said fund for benevolent purposes. It is entirely within their discretion. In such case it has been held that a provision, such as we find here, is divisible and in case the Court should consider that the term "benevolent purposes" includes such as are non-charitable, the trustees may be restricted by the Court in the use of said fund for the support of the

church alone. Then the Court would be virtually carrying out the intention of the testatrix and the will in question would not be materially affected thereby. In 11 *Corpus Juris*, page 330, the author in considering this subject says that there is a class of cases where when there is a general overriding trust for charitable purposes, to which the fund may be applied, are not strictly charitable or one of two alternative modes of application is invalid in law. It states "in such case the Court will give effect to the general charitable trust, but the trustees are restricted from applying the fund to the purposes or in the manner which is objectionable."

In the case of *Van Syckel vs. Johnson*, 80 N. J. Eq., 117, there was a mandatory direction of the testator to his executors that they should apply the income of a certain fund to keep in good repair the graveyard of a certain church, *and* to make up any deficiency in the salary of the pastor of said church. The executors, in said case, were legally bound to do both of these things in order to carry out the directions of the will. A compliance with only one of the two directions of the testator cannot be a full performance of the duty imposed by the testator upon his executors as trustees. There was no discretionary power given to the trustees for the application of said fund to either or both of said purposes. In this respect the Beaumont will, now before the Court, differs from the will construed in the case of *Van Syckel vs. Johnson*.

In *Van Syckel vs. Johnson*, there was no opportunity given the Court to separate the two provisions, but they were both linked together by the word "and," the charitable as well as the non-charitable fall together. In the case now before the Court, however, the word "or" distinctly separates the chari-

table from the questionable clause and the trustees of the First Methodist Episcopal Church of Vineland are given the power to use it for one purpose or the other.

Appellants insist that the fund bequeathed by the Beaumont will may be used for the support of the church only, even without the direction of this Court, and the intention of the testatrix would be thereby carried out in accordance with established principles of law.

A careful examination of New Jersey cases fails to show any on the question above raised of control over the trustees by the Court of Chancery, but the English authorities, as well as other states, show clearly the power of the Court to compel the trustees to use the fund for charitable purposes.

The following English cases show the power of the Court to direct the trustees to use the fund (where the bequest is divisible) for charitable purposes only:

In re. Williams, L. R. 5 Ch. D, 735:

“A testator gave a fund to trustees upon trust to apply the income in keeping in repair certain tombs, and directed them to accumulate the surplus income from time to time till it mounted to £25 and upwards, and when that took place to pay over in equal shares to the ‘incumbents of two parishes for the benefit of poor persons, such sum as would reduce the accumulations to £20.’

“Held that the invalidity of the trust for the repair of the tombs did not render the whole gift void, but that, the first object having failed, the will must be read as if nothing was applicable to the repair of the tombs and that the whole fund went to the incumbents.”

Said "in this case if the first gift cannot take effect, there is no reason whatever why the whole fund should not be applied to the second object. If the first gift had taken effect, only a small part of the fund would have been absorbed. It is, therefore, only so much as is required for the illegal purpose which is abstracted. The gift being void, none is required, and consequently the entire fund remains applicable to the valid purpose."

In re. Birkett, L. R. 9 Ch. D., 576:

"Bequest to the incumbent for the time being of Unsworth of £500, the income to be applied, when necessary, in keeping in repair the grave and the railing and tombstone of A., and the remainder of such income to be applied in providing wine and bread for the sick poor of Unsworth, with a gift of the residue to the executor in trust for B.

"Held, that the first purpose of the gift being invalid, the whole of the income was applicable to the charity; and that the sum should be paid to the official charity trustee to invest and pay the income to the incumbent of Unsworth for the time being to be applied by him for the sick poor of the parish, as in the will directed."

In re. Hedgman, L. R. 8 Ch. D, 156:

"Whether the cases upon this subject will ever cease it is impossible to say. The authorities are too numerous to mention, but there happens to be no decision upon these particular words. This is a gift of money to be applied 'in supporting or founding free or ragged schools, for gutter children or for the poorest of the

poor' in a particular parish. The contention on one side is that the words 'supporting or founding' are not to be read literally, but as 'supporting and founding.' I see no reason for adopting that contention. The fair reading of the words is the literal one; it is an alternative trust. Now we have the fact that the testator had for some years before the date of his will supported a school, and that this school was held in a room in Barnes, hired for the purpose. The testator was the principal subscriber to the school; he paid the rent of the room, and the teachers' salary; that was his position as regards the school at the dates of his will, of his codicil, and of his death.

"There was then a school actually existing at Barnes which he himself supported; and, therefore, considering how he himself stood as regards this particular school, and the fact that he was its principal supporter, I think the words are plain.

"Now, what does the word 'support' mean? Does it imply a direction that the money shall, in the words of the statute (9 Geo. 2, C. 36), be laid out or disposed of in the purchase of any lands, tenements or hereditaments? If anybody were to tell me he intended to 'support' a particular charity I should not infer that he was going to buy land or build a house for the purpose. There is no reason for assuming that the word has any such meaning. It does not convey to one's mind the notion of building, or of buying land. In order to hold that a trust to 'support' a charity is obnoxious to the statute I must consider it as a trust to 'purchase lands, tenements or hereditaments.' I am of the opinion it has no such meaning."

“Reading, then, the words of the gift literally, they do not necessarily or primarily imply the purchase of land or a house, and, therefore, I hold this to be a good charitable gift.”

Lewis vs. Allenby, L. R. 10 Eq., 668:

“This is an entirely new question, but it is not attended with any serious difficulty. In *Grimmett vs. Grimmett*, following his own decision in *Sorresby vs. Hollins*, Lord Hardwicke said: ‘If a devise is in the disjunctive, and leaves the executors to two methods to do a particular thing by, the one lawful and other other prohibited by law, can any Court say, because one method is unlawful that therefore the other is so too, and the whole bequest void? No; for if one method is lawful that shall be pursued and take effect. In this case the testator has given to his trustees power to name the charities that shall receive benefit under his will. Suppose the whole personal estate were impure personal estate, and the trustees were to name charities which were subject to the operation of the Mortmain Act, they would in such case be exercising their power in favor of charities which are not proper objects of the power, and it would be of no effect. This power can only be properly exercised as to the impure personalty in favor of such charities as are exempted from the law of Mortmain, and all other charities are excluded as not objects of the power.’

“If, indeed, the trustees were to select some charities within the Mortmain Act, that would be good so far as the pure personality is concerned, and a question of marshalling might possibly arise. But no such question has been sug-

gested, or is likely to be raised. There must, therefore, be a direction that the trustees submit to me, at Chambers, the names of the charities proposed by them to be benefited.”

Fisk vs. Atty. Gen'l, L. R. 4 Eq., 521:

“Testatrix gave the capital of £1000 consols to the rector and churchwardens of a parish and their successors, upon trust to apply each of the dividends thereof as should ‘from time to time be necessary or required in keeping in repair’ her family graves; and to pay and divide ‘the residue of the said dividends’ at Christmas every year forever amongst the aged poor of the parish.”

Held: “It was contended on behalf of the rector and church wardens, that they were entitled to receive the whole fund, the trusts of part being such as the Court must disregard and that the whole fund was theirs free of the void charge; and I think upon the whole that that is the sound construction of the will. The gift is not to the executors to do certain things and pay the residue to the rector and churchwardens; the gift is out-and-out to the rector and churchwardens, and then there is a gift of a portion for a purpose which fails.

“In conclusion the Court said, ‘There will be a declaration that the legacy of £1000 given to the rector and churchwards of St. James, Liverpool, is a good gift, and that they take the same discharged from the obligation of keeping in repair the family grave of the testatrix.’ ”

Hunter vs. Bullock, L. R. 14 Eq., 45:

“Testator devised and bequeathed all his estate and effects upon trust for his niece for her

life; and after her death, he bequeathed legacies, and directed that all the residue of his estate should be divided as a mixed fund amongst three residuary legatees. He then desired that his executors should pay to the trustees of a charity a sum of £1000 stock for the following use, namely, 'to pay the required amount for painting and keeping in repair' the gravestone of himself and his niece for a certain day (his birthday) yearly, 'if required,' and to pay 'the balance that may remain' for the purposes of the charity.

"Held that the trust to keep in repair the gravestones was honorary only; and hence, though the sum which would be required for that purpose was uncertain in amount, the uncertainty did not render void the gift of the residue of the sum of £1000 stock."

Dawson vs. Small, L. R. 18 Eq., 114:

"Testator bequeathed to his executors £600 out of his pure personal estate, upon trust to invest and apply the income in keeping in good repair all the tombstones and headstones of his relatives and himself at Guisborough Churchyard, and directed that any surplus that might remain after defraying yearly the expenses as before stated should be given by his executors every year to poor pious members of the Methodist Society at Guisborough above the age of fifty years.

"Held that the trust to keep the tombstones in repair being honorary only, the whole £600 was well given for the benefit of the Methodist poor, discharged from the obligation of keeping the tombstones in repair."

The Mayor, etc. of Faversham vs. Ryder, Eng. Rep. 43, Reprint 905:

“Where trustees have by the terms of a gift a discretion to apply the benefit of it either in a way which the law allows or in one which the law disallows, the presumption ought to be, that the discretion will be exercised in the former mode.”

Sowesby vs. Hollins, 88 Reprint (Eng. Rep.) 410:

“If a devise in a will is in the disjunctive, and leaves to the executors two methods to do a particular thing by, the one lawful and the other prohibited by law, can any Court say, because one method is unlawful that, therefore, the other is so, and the whole bequest void? No; for if one bequest is lawful, that shall be pursued and take effect.”

AMERICAN CASES.

The following cases show how the Courts of the United States have adopted the rule:

Staines vs. Burton, 17 Utah 331, 53 Pac. 1015, 70 Am. S. R. 788:

“The testator named in the clause quoted schools, parks, a water supply to cities, planting forests, acclimatizing foreign plants and any other similar enterprise, as objects to which his trustee was authorized to devote the income from the estate mentioned. The terms of the trust did not require the trustee to aid all of them. He might devote all of the income to schools or parks, or to either or any of them, if, in his judgment, by so doing, the members of the church would be benefited most. He did not name any unlawful object, or any purpose for-

bidden by the law against perpetuities; and, if the trustee were to attempt to expend the fund for any unlawful purpose, the Court, in the exercise of its chancery jurisdiction, would be authorized to limit such expenditures to charitable and lawful purposes: *United States vs. Late Corporation, etc.*; 8 Utah 342; *Jackson vs. Phillips*, 14 Allen 539; *Mormon Church vs. United States* 136 U. S. 1; *Beach on Trusts, sec. 324.*”

United States vs. Late Corporation, etc., 8 Utah 342:

“When the dedication is broad enough to allow the trustee to apply the fund to unlawful as well as lawful purposes, the Court will limit the application to the lawful ones. When the terms of the gift authorize the trustee to devote the fund to either of two objects—one lawful and the other illegal—its application will be confined to the legal purpose, and the unlawful one will be rejected.”

Jackson vs. Phillips, 14 Allen 539:

“When a charitable intent appears on the face of the will, but the terms used are broad enough to allow of the fund being applied either in a lawful or an unlawful manner, the gift will be supported, and its application restrained within the bounds of the law. The most frequent illustrations of this in the English courts have arisen under the statute of 9 George 11, chapter 36 (commonly called the statute of mortmain), prohibiting devises of land, or bequests of money to be laid out in land, to charitable uses. In the leading cases Lord Hardwicke held that a direction of executors to ‘settle and secure, by pur-

chase of land of inheritance or otherwise, as they shall be advised, out of my personal estate; two annuities as to be paid yearly forever for charitable objects' was valid, because it left the option to the executor to make the investment in personal property, which was not prohibited by the statute; and said, 'This bequest is not void, and there is no authority to construe it to be void, if by law it can possibly be made good or (according to another, and perhaps more accurate report) no authority to construe it to be void by law if it can possibly be made good.' "

Woodruff vs. Marsh, 63 Conn. 125, 38 Am. S. R. 346:

"If two modes of construction are fairly open, one of which turns a charitable bequest in a will into an illegal perpetuity, while the other makes it valid and operative, the latter construction must be adopted."

THIRD POINT.

What effect, if any, is to be given to the limitations on the power of trustees of religious corporations to hold legacies, etc., in trust for the use of the society or congregation, etc., in construing the debated words of the will "or such benevolent purposes as the trustees of said church shall direct."

In volume 3, page 4308, sec. 3, Compiled Statutes of New Jersey, under title of General Religious Society Act of 1875 with Supplements, reads as follows:

"3. POWERS OF TRUSTEES; TO ACQUIRE, HOLD, ETC., PROPERTY IN TRUST FOR SOCIETY; TO SUE AND BE SUED; TO HAVE COMMON SEAL: That the

said trustees and their successors shall, by such name of incorporation, be able and capable to acquire, purchase, receive, have and hold any lands, tenements, hereditaments, legacies, donations, moneys, goods and chattels in trust for the use of said society or congregation, to an amount in value not exceeding two thousand dollars a year, and the same or any part thereof to sell, grant, assign, demise, alien and dispose of; to sue or be sued, implead, or be impleaded, in any court of law or equity; to make and use a common seal, and the same to alter and renew at their pleasure. (Rev. 1877, p. 958.)”

Under this section the trustees and their successors may receive legacies, etc., in trust for the use of said society or congregation, etc.

It will be noticed it must be for the use of said religious society. And in the case of *Morgan vs. Rose*, 22 New Jersey Equity, page 583, it is held that the trustees *must hold and dispose* of the property in conformity with the direction of their *cestius que* trust who may be either the congregation or certain officials, *according to the rules or discipline of the particular church or society*.

This was the argument of the executors and trustees at the hearing that the bequest under the Beaumont will for other benevolent purposes—must be the eight (8) benevolent purposes defined in the discipline of the Methodist Episcopal Church and the trustees could not use the fund for other purposes.

In the brief of solicitor for complainant-respondent filed below it is stated under this heading that the trustees were not limited in the application of the fund to the rules of the denomination: “It is not the corporation which holds the property of the Vineland Church that is to exercise this discretion,

but evidently the persons who happen to be trustees at the time of the appointment who may exercise their discretion.”

We differ from this statement for the reasons we have already given. Furthermore, we again call attention to the fact, that the true title of the incorporation of the Vineland church is:

“The trustees of the Methodist Episcopal Church of Vineland,” see exhibit p. 2 (state of the case, page 53). They are in fact the corporate body.

We call attention of the Court to *Mills vs. Davison*, 54 New Jersey Equity, p. 659:

“The grant being to a religious society incorporated as a Protestant Episcopal Church, the object for which the donee was incorporated is an important element in the construction of the instrument by which the charity is created.”

Mills vs. Davison, 54 N. J. Eq., p. 661.

Again same case, page 666:

“The grant is of the entire estate in fee to hold to the religious society and their successors forever; excluding, nevertheless, all beneficial ownership or use of the property except for religious purposes for which grantee was incorporated.”

We respectfully submit that the bequest to the trustees of the First Methodist Episcopal Church of Vineland is good and valid and should be sustained.

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