10

Court of Errors and Appeals.

20

Between MARY ANN HESKETH, Appellant, *and* JOHN MURPHY, EXECUTOR AND TRUSTEE, Respondent.	*Bill for construction of will.* *Appellant's Brief.*

30

The appellant in this case was the complainant below; she was the sister of the testator and is his only surviving relative; she is in destitute circumstances. The bill in this case was filed by her for the construction of the testator's will. The clause in question is

paragraph 5, p. 3, of the printed case. That paragraph is worded as follows: "And after the death of my said wife I hereby empower and direct my said trustees or trustee for the time being of this my will to employ the annual income of the said moneys so invested and from time to time to be invested for the relief of the most deserving poor of the city of Paterson aforesaid forever, without regard to color or sex, but no person who is known to be intemperate, lazy, immoral or undeserving to receive any benefit from the said fund."

It is contended on the part of the appellant that the so-called bequest or trust described in this paragraph is void for indefiniteness and because no power is given to select the beneficiaries.

1.

The operation of the statute of charitable uses and how far applicable to this case.

a.—The statute of charitable uses (43 Eliz., c. 4) is not in force in this state. Pat. 1799, p. 436, § 4; R. L. 1821, p. 726, § 2. Latter act repealed 1846. R. S., p. 684, ¶ 102, § 1; Id. p. 710, § 5; *Ould v. Washington Hospital*, 5 Otto, 303. *Vide* note to *De Camp v. Dobbins*, 2 Stew., 36. It may well be that a bequest obviously for a charity and which in England would be carried into effect might not be enforced in our own courts on the ground of the indefiniteness of its objects or the impracticability of its exact execution. Beasley, C. J., in *Thomson's Exrs. vs. Norris*, 5 C. E. Gr., 522.

b.—Jurisdiction of the English court of chancery prior to the statute of Elizabeth.

It is not settled finally at this late day that the English court had inherent original jurisdiction over charitable uses prior to that statute. In *Baptist Ass. v. Hart's Exrs.*, 4 Wheat., 1, the contrary opinion was ex-

pressed by Marshall, C. J., but in *Vidal v. Girard's Exrs.*, 2 How., 127, by the light which the report of the Commissioners of the Public Records in 1827 cast upon the dark recesses of the court of chancery, Story, J., held that the English court had jurisdiction over charitable trusts independent of the statute. See argument of Horace Binney, in case last cited; argument of Theo. W. Dwight in the Rose will case, reported 4 Abb., app., N. Y., but see also the argument of William Courtis Noyes in *Beekman v. Bonsor*, 23 N. Y., 298, and printed in an appendix to that volume. 10

In order to ascertain what are charitable purposes recourse is usually had to the preamble of the statute 43 Eliz., c. 4. Every conceivable bequest that is in any way certain will in England be upheld under the statute. It provides for the appointment of four commissioners, one of whom shall be the Bishop of the diocese, empowering them to enquire by the oaths of twelve good men how best the trust could be executed. Gifts so diverse as for the establishment of a botanical garden or for the establishing and upholding an institution for the investigation and cure of diseases of quadrupeds have been construed charitable. *Johnston v. Swann*, 3 Mad, 457; *Whicker v. Hume*, 14 Beav., 509. 20

c.—Under the operation of the English statute the court of chancery is empowered, if charity be the general intention, though the mode provided for its execution fails, to effectuate the trust even by applying the fund to a different purpose from that contemplated by the testator. 4 Ves, Ch, 14; 7 Id., 69, 82. This is known as the doctrine of *cy pres*. No New Jersey Judge has adopted this mode of execution, and therefore to that part of the Chancellor's opinion in this case which *seems* to support the view that our court of chancery has power to direct a scheme for the execution of the trust we say that it is wholly unsupported by authorities and has been openly repudiated in most of our sister states. *Downing v. Marshall*, 23 N. Y., 366; *White v. Fiske*, 22 30

Conn., 31; *Miller v. Chittenden*, 2 Iowa, 315; *Carter v. Balfour*, 19 Ala., 814; *Williams v. Pearson*, 38 Ala., 299; *Witman v. Lex*, 17 Serg., & R., 88,92; *Beekman v. Bonsor*, 27 Barb., 260; *Methodist Church v. Remington*, 1 Watts, 218. *Board of Education v. Edson*, 18 Ohio St., 221; *Grimes v. Harmon*, 35 Ind., 246.

The reason why the English court has stretched the power inherent in it by the doctrine of *cy pres* and *parens patrie* so far is, perhaps, because of the great number of poor people in England at the time of the enactment of the 43 of Eliz., and of the rendering of the more important of the decisions under it. Macauley says that at that time the poor rate was the heaviest tax borne by the people, (Macauley's Hist., Vol. 1, c. 3, p. 330); consequently every opportunity was seized upon by the court of chancery to lighten this heavy burden. Latitudinarian constructions of gifts to charitable uses made valid illegal and inequitable gifts. *Cessante ratione legis cessat et ipsa lex.*

The Chancellor of this state has no such power; he does not like the English Chancellor represent the King or government as *parens patrie*, and consequently if the bequest be indefinite it cannot be upheld or applied to other purposes.

d.—Bequests to charitable uses are liberally construed by the courts; but all bequests to charity in this state, nor even in England, will not be upheld. *Clark v. Taylor*, 1 Drew, 642; *Doe d. Phillips v. Aldridge*, 4 T. R., 264; *Ommanney v. Butcher*, T. & R., 260; *Thompson v. Shakespear*, Johns., 612; *Carne v. Long*, 29 L. J., Ch., 503. *Maurice v. Bishop of Durham*, 9 Vesey, 405; s. c., 10 Vesey, 521. Trusts of this kind must be given in accordance with legal and equitable rules. Perry on Trusts, § 729.

The following are the cases of charitable uses in this state. *Trustees Reformed Church of Acquackanonk v. Ersx., of Ackerman*, (about 1820), unreported; *McBride v.*

Elmer, 2 Hal. Ch., 107; *Baldwin v. Baldwin*, 3 Hal. Ch., 211; *Magie v. German Evangelical Dutch Church*, 2 Beas., 77; *N. Y. An. Con. M. M. Ass. Soc., v. Exrs. Clarkson*, 4 Hal., 541; *Atty Gen. v. Moore*, 3 C. E. Gr., 256; s. c., on appeal, 4 C. E. Gr., 503; *Norris v. Thompson's Exrs.*, 4 C. E. Gr., 307; s. c., on appeal, 5 C. E. Gr., 489; *Mason v. Methodist Episcopal Church*, 12 C. E. Gr., 49; *Stevens v. Shippen*, 1 Stew., 532; *Trustees of Cory Universalist Society v. Beatty*, 1 Stew., 570; *DeCamp v. Dobbins*, 2 Stew., 36; s. c., on appeal, 4 Stew., 671; *Goodell v. Ass.*, 2 Stew., 32; *Taylor v. Trustees of Bryn Mawr*, 7 Stew., 101; *Brown v. Pancost*, 7 Stew., 321. In all these cases the bequests are specific, the directions of the testator clear and the disposition of the legacy according to equitable rules. To establish a public school or an orphan asylum; to employ a preacher; to build a church; etc., etc.; all these bequests can, if not carried out by the executors, be effectuated by a decree of the court.

The only case at all in point is *Goodell v. Ass.*, *supra*, but the power of selecting the beneficiaries is there given to the executor in unmistakable language. The case in hand stands alone, and the questions raised here have never been answered in this state by the court of last resort.

2.

The said trust is void because it is not for any definite purpose.

The gift is for the relief of the most deserving poor of the city of Paterson forever, without regard to color or sex, but no person who is known to be intemperate, lazy, immoral or undeserving to receive any benefit from the said fund.

Similar trusts have been held void not only in the United States, but in England. *Widmore v. Woodroofe*, Amb., 636; *Ommanney v. Butcher*, T. & R., 260; *Doe d. Toone v. Copestake*, 6 East, 328; *Maurice v. Bishop of Durham*, 9 Vesey, 399; *Id*, 10 Vesey, 522; *Brunsden v. Woolredge*, Amb, 507; *Vesey v. Jamsen*, 1 S. and St., 69; *Ellis v. Selby*, 7 Sim., 352, affirmed 1 My. and Cr., 286; *Williams v. Kershaw*, 5 L. J. (N. S.), Ch. 84; 5 Cl., & Fin., 111; *Kendall v. Granger*, 5 Beav., 303; *Down v. Warral*, 1 My. and K., 561; *In re Williams*, 5 L. R. Ch. D., 735; Webb's case, 1 Roll Ab., 609, (D); 1 *Chapman v. Brown*, 6 Vesey, 404; *Atty Gen. v. Hinxman*, 2 Jac. and Walk., 270; *Limbrey v. Gurr*, 6 Madd, 151; Perry on Trusts, § 713; *White v. Fiske*, 22 Conn., 31; *Grimes v. Harmon*, 35 Ind., 246; *Wilderman v. Baltimore*, 8 Md., 551; *Needles v. Martin*, 33 Md., 609; *Trippe v. Frazier*, 4 Harr. & J., 446; *Dashiell v. Atty Gen.*, 5 Harr. & J., 392; 6 Id., 1; *Atty Gen. v. Soule*, 28 Mich., 153; *Schmucker v. Reel*, 61 Mo., 592; *Miller v. Atkinson*, 63 N. C. 26; *Gallego v. Atty Gen.*, 3 Leigh, 450; *Janey v. Latone*, 4 Leigh, 351; *Library Fund v. Lawson*, 10 Leigh, 148; *Hester v. Hester*, 2 Ired. Eq. (N. C.), 330; *Holland v. Peck*, 2 Ired. Eq., 250; *Bridges v. Pleasants*, 4 Ired Eq. (N. C.), 26; *Carpenter v. Miller*, 3 W. Va., 174; *Heiss v. Murphy*, 40 Wis., 276; *Wheeler v. Smith*, 9 How. (U. S.), 55; *Fountain v. Ravenal*, 17 How. (U. S.), 369; *Treat's appeal*, 30 Conn., 116; *Adye v. Smith*, 44 Conn., 60; *Beall v. Drane*, 25 Ga., 430; *White v. Atty Gen.*, 4 Ired. Eq., 19; *Williams v. Williams*, 4 Seld. 527; *Owens v. Missionary Society of the Methodist Episcopal Church*, 14 N. Y., 380; *Beekman v. Bonsor*, 23 N. Y., 298; *Levy v. Levy*, 33 N. Y., 97; *Chittenden v. Chittenden*, 1 Am. Law Reg., 543; *Goddard v. Pomeroy*, 36 Barb., 546.

These cases support this position; in minor details one may differ from another, but they all assert and establish the law that even bequests for charitable uses are void for uncertainty and indefiniteness. Gifts "to the real distressed poor of Talbot county," *Trippe v. Frazier*,

4 Harr. and Johns, 446; "for the support of indigent pious young men for the ministry in New Haven." *White v. Fiske*, 22 Conn., 31; "for the relief and support of the indigent and necessitous poor persons who may from time reside in the twelfth ward of the city of Baltimore," *Wilderman v. Baltimore*, 8 Md., 551; "for some promising young man of good talents and of the Baptist order." *Hester v. Hester*, 2 Ired. Eq. (N. C.), 330; "for the benefit of Roman Catholic orphans," *Heiss v. Murphy*, 40 Wis., 276; for the education of free colored persons in 10 the city of Baltimore, *Needles v. Martin*, 33 Md., 609; "to foreign missions to be applied as my executors may think the proper objects according to the Scriptures, the greater part to missionary purposes," *Bridges v. Pleasants*, 4 Ired. Eq. (N. C.), 26; "for the poor orphans of North Carolina to be by my trustees selected," *Miller v. Atkinson*, 63 N. C., 557; "to be applied toward feeding and clothing end educating the poor children belonging to the congregation of St. Peter's Protestant church in the city of Baltimore and also for the poor 20 children of a certain county," *Dashiel v. Atty Gen.*, 5 Harr. and John, 392; 6 *Id*, 1; "to the nearest and poorest of my relations," *Hazel v. Rumney*, cited in the note to 1 Vern., 226; "for such charitable or other purposes as the trustees shall think fit," *Ellis v. Selby*, 7 Sim., 352; app. 1 My. & Cr., 286; "payable once for all to poor relations," *Brunsden v. Woolredge*, Amb. 507; "residuum to go to the support of indigent respectable persons," *Beekman v. Bonsor*, 23 N. Y., 298; "residuum to the Methodist General American Missionary Society appoin- 30 ted to preach the gospel to the poor L. C," *Owens v. The Missionary Society*, 14 N. Y., 387, etc., etc., have been held void. *Williams v. Williams*, 4 Seld, 527..

Can the bequest under consideration in this case be executed by a judicial decree? We are decidedly of the opinion that it can not. In what way can the court ascertain that the trustee has fulfilled his trust? Can he be made to account? If so must he produce a voucher for

every infinitesimal disbursement of the fund? An affirmative answer to these questions borders upon the absurd. But can the trustee not distribute the annual income of the moneys invested among the several hospitals, orphan asylums or other charitable institutions of the city of Paterson? The will does not say that the trustee has the power to select the beneficiaries. Even if it did, it would not confer upon the trustee power or authority so to distribute the moneys. If he can do this, the
10 court can, but the court cannot, as it can not create a scheme for distribution under our law. This gift is not capable of being enforced by a judicial sentence, and our court of chancery cannot make an order of this nature without exercising functions which are not judicial. In England this power rests on prerogative and is there exercised by the sign manual of the sovereign, or by the court of chancery as the keeper of his conscience. *Beekman v. Bonsor*, 23 N. Y., 309.

The will says "to the most deserving poor." Deserv-
20 ing of what? Of liberality, benevolence or charity? To those deserving education, medical attendance or food and raiment? To devote the fund to benevolent purposes is to make the gift void *in toto*. *Ellis vs. Selby* 7 *Sim.*, 352.; *Vesey v. Jamsen*, 1 S. & St., 69; *Williams v. Kershaw*, 5 Cl. & Fin, 111; *Maurice v. Bishop of Durham*, 9 Ves., 339; *Id.*, 10 Ves., 532; *Norris v. Thompson's Ex'rs*, 4 C. E. Gr., 307; 5 *Id*, 489. Yet the trustee may, so far as any restriction or direction in the will is contained, distribute the moneys arising from the fund to purposes
30 other than charitable uses. But it must be here noticed that where the bequest is for charitable purposes and also for purposes of an indefinite nature not charitable, and no apportionment of the bequest is made by the will so that the whole might be applied for either purpose, the whole bequest is void. 1 Jarman on Wills, 404. What would be deserving poor to the testator might not be to his duly appointed trustee, and those

who would be deserving poor to the latter might not be to his successor.

Thus the subject fluctuates at every turn, and all is uncertainty and indefiniteness.

"To the most deserving poor of the city of Paterson." Is it the poor of Paterson at the time of the testator's death, or of Paterson as it increases year after year; Paterson with 40,000 or Paterson with 100,000 inhabitants?

Who shall define the word "poor," the court or the trustee? Shall it be the poor who receive relief from the city? But this is even counter to English construction, for in *Atty Gen. v. Clarke*, Amb., 422; 14 Ves., 364; 1 Jar. on Wills, 388, "poor" was construed to mean those not receiving parochial relief. Shall it then be the poor who do not receive municipal aid? Shall the trustee before he gives relief be compelled to determine whether or not the persons to be benefited are recipients of the city's charity, and shall he study the habits, customs and morals of the whole city in order to determine who among them are not lazy, intemperate or immoral? To perform such a duty would make the trustee's services worth more than the income from the fund.

3.

The said trust is void because no power is given to select the beneficiaries.

The only words used to express such power are, "I hereby *empower* and *direct* my said trustees or trustee for the time being to *employ* the annual income of the said moneys so invested for the relief of the most deserving poor of the city of Paterson forever, without regard to color or sex, but no person who is known to be intemperate, lazy, immoral or undeserving to receive

any benefit from the said fund." There is nothing in this section of the will to indicate that the trustee has the power to select the beneficiaries; nowhere is this expressly given. He is merely directed and empowered to employ the income of the money invested for the relief of the most deserving poor; this is further restricted by the words "intemperate, lazy, immoral or undeserving." These words limit the beneficiaries in such a way that the judgment of the trustee is tested in a
10 high degree to make a proper selection; this power has not been conferred on him, and in its absence the trust is too indefinite and is void, Peray on Trusts, § 708, 719. In *Dashiell v. Atty. Gen.*, 5 Harr. & Johns., 392, the power to select the beneficiaries among the poor was specifically given to the trustee by the words "as he thinks fit;" in *Wilderman v. The City of Baltimore*, 8 Md., 551, by such words "as they may judge best," and in *White vs. Fiske*, 22 Conn., 31, a bequest for the support of pious young men for the ministry, the power to select
20 was given by the words "the moneys to be expended by my trustees," and in each case the trust was declared void.

When the distribution is to be among several persons with no power to specify or select all take in equal degree. The rule at common law was to require some allotment however small to each person where the power was given to and among several persons, but the rule in equity requires a real and substantial portion to each, and a mere nominal allotment to one is deemed illusory
30 and fraudulent, 4 *Kent* * 342, 343. In this case the income to be expended annually is small, viz.: the interest of about $11,000, and the persons to whom it is to be paid are many, so that no material gain or benefit will inure to them. The number of poor to be selected will each year become greater, and consequently the benefit cannot be either substantial or beneficial, but must of necessity be illusory.

Of the cases cited previously concerning the construction given to charitable uses in this state, that of *Goodell v. Union Ass.*, 2 Stew., 32, is the one which most resembles the case in hand. The power to select the beneficiaries in that case is given in emphatic language. In other respects we regard that decision as open to the same objections raised in this case.

In England devises to charitable uses were used for purposes foreign to real charity, and to prohibit this alienation of lands the statute of Mort., 9 George II., ch. 36, was passed; of that statute Story, J., says, "it deserves the consideration of every wise and enlightened American legislator, whether provisions similar to those of this celebrated statute are not proper to be enacted in this country with a view to prevent undue influence and imposition upon pious and feeble minds in their last moments, and to check an unfortunate propensity (which is sometimes found to exist under a bigoted fanaticism), the desire to acquire fame, as a religious devotee and benefactor, at the expense of all the natural claims of blood and parental duty." *Story Eq. Jur.*, § 1194.

We ask for an expression of opinion of the highest tribunal in this state upon the question raised in this case that will settle the law forever.

DEWITT C. BOLTON,
WILLIAM B. GOURLEY.

10

Court of Errors and Appeals.

Between MARY ANN HESKETH, *Appellant,* *and* JOHN MURPHY, Executor and Trustee, *Respondent.*	*On Bill, &c.* *Respondent's Brief.*

20

30

STATEMENT.

William S. Malcolm departed this life about the year 1872, having first made his will, bearing date December 18th, 1871, and appointed Cornelius C. Hopper and John Murphy trustees and executors thereof. Said

John Murphy proved the same, the said Cornelius C. Hopper having relinquished and refused to prove the same. The said John Murphy, alone, duly performed all the trusts in said will. Emily S. Malcolm, the widow of the testator, is dead.

The trustee holds the estate under said will upon the following trust:

"And after the death of my said wife I hereby empower and direct my said trustees or trustee for the time being of this my will to employ the annual income of the said moneys so invested and from time to time to be invested for the relief of the most deserving poor of the City of Paterson aforesaid forever, without regard to color or sex, but no person who is known to be intemperate, lazy, immoral or undeserving to receive any benefit from the said fund.

And for the purpose of preserving and continuing a perpetual succession of trustees for the purpose of carrying into full effect the provisions of this my will, I do hereby empower my said trustees or trustee for the time being, if any, whether retiring from the office of trustee or not, or if none, then I direct and hereby empower the proving executors or executor for the time being, or the administrators or administrator for the time being of the last surviving trustee, to substitute, by any proper writing under his, her or their hands or hand, any fit person or persons in whom alone, or, as the case may be, jointly with the surviving or continuing trustees or trustee my trust estate shall vest, or by proper assurances be vested."

The bill avers that the trustee ought not to proceed to execute the said trust for the following reasons:

"First. The said trust is void, because no power is given in said trust to select the beneficiaries under the same.

Second. The said trust is void because it is not for any definite purpose.

Third. The said trust is void, because the power of

said trustee in regard to the said fund is not limited to charitable purposes but may be extended to benevolent, liberal or other purposes.

FOURTH. The said trust is void for uncertainty."

The defendant answers: That the said trust created by said will is legal; that it is for a charitable and defined purpose; it is certain—the meaning and intention of the testator in creating, defining and providing for the carrying of it into effect, as well in regard to the beneficiaries contemplated as to the provision for executing the same, is plain and in no wise uncertain. 10

ARGUMENT.

This is a devise for a charitable purpose, and is favored in the law and should be liberally expounded. Jackson *vs.* Philips, 14 Allen, 539. 20

It is for the relief of the "most deserving poor of the City of Paterson," and is included within the statute of charitable uses 43 Eliz., ch. 4.

Among the uses enumerated in the preamble of that statute as charitable are, "devises for the relief of aged, impotent and poor people. For relief, aid or ease of any poor inhabitants." 2 Story's Eq. Jur., § 1160.

But it has been decided *Norris* vs. *Thompson's Exrs.*, 4 C. E. Green, 307, that that statute is not in force in this state, and therefore cannot limit the authority of this court to enforce charitable gifts not included within it. Hence the charitable devise in question can be enforced if it were not included in that statute. 30

It is well settled that there need not be any legally existing institution to receive the gift, provided the object or purpose of the gift is specified. See references in *Norris* vs. *Thompson's Exrs.*, 4 C. E. Green, p. 314. *Taylor* vs. *Trustees of Bryn Mawr College*, 7 Stewart, 101.

As charities are highly favored in the law, they are to receive a more liberal construction than the law will allow in gifts to individuals.

So when the legacy is to charity, the Court of Chancery will consider charity as the substance; and in such a case, if the mode pointed out fail, it will provide another mode, by which the charity may take effect. A still stronger case is that, if the testator has expressed an absolute intention to give a legacy to charitable purposes, but he has left uncertain, or to some future act, the mode by which it is to be carried into effect; then, the Court of Chancery, if no mode is pointed out, will of itself supply the defect, and enforce the charity. 2 Story's Eq. Jur., § 1167.

Also the doctrine has been pressed yet farther, and it has been established that, if the bequest indicate a charitable intention, but the object to which it is to be applied is against the policy of the law, the court will lay hold of the charitable intention, and execute it for the purpose of some other charity agreeably to the law, in the room of that contrary to it. 2 Story's Eq. Jur., § 1168.

Also another principle, equally well established, is that, if the bequest be for charity, it matters not how uncertain the persons or the objects may be, or whether the persons who are to take are *in esse*, or not, and where a literal execution becomes inexpedient or impracticable, the court will execute it as nearly as it can, according to the original purpose, or *Cy-pres*. 2 Story's Eq. Jur., § 1169.

"So, where a devise was to the poor generally, the Court decreed it to be in favor of three public charities in London." 2 Story's Eq. Jur., § 1170.

To constitute a charity in the legal sense, the poor commonly are its sole or special object. 1 Jarman on Wills, 396, Randolph & Talcott's edition, and see notes. Charities in New Jersey have been upheld in numerous cases.

In *De Camp* vs. *Dobbins*, 2 Stewart, 36, Chancellor Runyon says: "The law of this State on the subject of charitable uses does not, it has been authoritatively declared, differ from the common law of England on that head, which has grown up in a series of decisions founded in part on the statute of charitable uses, the 43rd of Elizabeth, ch, 4.

The general principle is that courts of chancery uphold and administer gifts where they are made to particular purposes, which are charitable within the letter and spirit of the statute just referred to, or where they are made to charity generally, if there is a trustee with power to make them definite." *Norris* vs. *Thompson's Exrs.*, 5 C. 6, Green 489.

The trust in that case was " to promote the religious interests of the said church, and to aid the missionary, educational and benevolent enterprises to which the said church is in the habit of contributing." and which was held to be a legal charity, notwithstanding the word "benevolent" was used therein.

In the trust in question no such doubtful word is employed, but the intention of the testator cannot be doubted. See the trust in will.

The purposes to which the gift is to be devoted are not uncertain. They are all charitable. For the relief of the most deserving poor of the city of Paterson, without regard to color or sex; but no person who is known to be intemperate, lazy, immoral or undeserving to receive any benefit from the said fund.

A gift by devise for the relief of the poor of a particular place has always been, both in England and in this country, by uniformity of decisions, held to be a charity.

In the case, *McBride* vs. *Exrs of Elmer, and others*, 2 Halst. Ch., 107, the following bequest, "I give to the Bridgeton Trustees for Free Schools one thousand dollars, the interest to be applied annually for ages as far as may be practicable for the tuition of poor children

without regard to denomination or color in the elements of English literature," was held to be good as a trust to be executed. That the only difficulty was a mistake in naming the trustees, and that the court would appoint trustees. See brief of Henry W. Green printed with that case.

Equity will not permit a charitable bequest to fail, either for want of trustees, or because the objects of the testator's bounty are indefinite, if the general intent is apparent, and if the will cannot be executed precisely in the mode the testator directed, the court will execute the intent *as near as may be.* 2 Roper on Leg., 140 sec. 5.

In the case of *Mason's Exrs.* vs. *Trustees of M. E. Church at Tuckerton*, 12 C. E. Gr., 47; "The gift to the townships of Little Egg Harbor and Bass River of the sum of $500, to be invested on bond and mortgage of real estate, for the use and benefit of the inhabitants of those townships; the interest to be collected annually, and divided between those townships in proportion to the number of inhabitants in each, for the purpose of educating their poor orphan children; and in case the interest should not all be 'consumed,' or used for this purpose, the balance to be appropriated, annually, to the poor widows of the townships is a charity such as this court will sustain and effectuate."

In the case of *Stevens* v. *Shippen*, 1 Stewart, 532, it was held by the Chancellor that "The devise to the executors as trustees of the school houses and furniture and the lots whereon the houses stand, for the sole use and purpose of furnishing there a free, plain and practical English education to such of the children residing within the boundaries of the city of Hoboken, from time to time, as the authorities of that city, or such other authorities as shall at any time have the legal power over the common schools in the boundaries of the city as they existed at the time of the testator's death, shall permit to go there for those purposes, is a valid gift,

and a charitable trust is thereby created which this court will recognize."

The case above cited and the case in question are somewhat similar. The former limits the object of the charity to the city of Hoboken; the latter to the city of Paterson.

In the former the recipients of the bounty are those whom the authorities shall permit to share in it; in the latter the objects of the bounty are certain, to wit; "the most deserving poor." 10

In the former, the trustees can direct to whom the tuition shall be entirely free and who shall pay; in the latter no discrimination is made between persons holdind the same relative position,

In the case of the *Attorney General* vs. *Moris Exr's*, 4 C. E. Gr., 503, the court held: Where the charity is definite in its objects and lawful in its creation and capable of being executed according to the directions of the donor, and is to be executed and regulated by trustees, whether they are private individuals or a corporation, the administration properly belongs to such trustees. 20

In the case of *Trustees of Cory Universalist Society* vs. *Beatty*, 1 Stewart, 571, a bequest of a fund to certain trustees, to be paid after their incorporation to employ a preacher of the Universalist denomination, was held good as a charitable bequest.

In that case Chancellor Runyan said: "In the case before me the thing given is certain; there are competent trustees to take the fund and administer it as directed, and the charity is definite. This court will, therefore, uphold the trust." 30

The language used by the Chancellor in that case is applicable to the trust in question.

AS TO CERTAINTY.

In the case of *Odell* vs. *Odell et. als.*, 10 Allen, p. 2, the following: "6th. I give to the Trustees of the Salem Savings Bank in trust, one hundred dollars annually for fifty years, to be paid to them by my executors, to be safely invested by said trustees, the interest to be added to the principal by them semi-annually. At the expiration of fifty years the sum which shall have accumulated shall be appropriated by a society of ladies from all the Protestant religious societies in Salem to provide and sustain a home for respectable, destitute, aged, native-born American men and women. The above annual payment shall be made from the income of my real estate, which real estate shall be held in trust by my executors until the last payment shall have been made to the Trustees of the Salem Savings Bank; then my real estate shall be divided equally among the grand-children of my late brother James," was held valid.

Justice Gray, in the above case, says: "'Relief of aged, impotent and poor people' is the first charitable use mentioned in the St. of 43 Eliz., c. 4; and it is not denied that the declared purpose of this testator 'to provide and sustain a home for respectable, destitute, aged, native-born American men and women,' was strictly charitable, in the eye of the law.'"

The rule, as laid down by Mr. Perry, in his treatise on Trusts, § 732, is that "it is immaterial how uncertain, indefinite and vague the *cestuis qui trust* or final beneficiaries of a charitable trust are, provided there is a legal mode of rendering them certain by means of trustees appointed or to be appointed. In other words, it is immaterial how uncertain the beneficiaries or objects are, if the court, by a true construction of the instrument, has power to appoint trustees, to exercise the discretion or power of making the beneficiaries as certain as the nature of the trust required them to be." *Going* v. *Emery*, 16 Pick. 107. *Bartlett* v. *King*, 12 Mass. R., 546.

By the English law (which we have adopted) a trust which is so vague and indefinite that courts of equity cannot clearly ascertain either its objects or the persons who are to take, will be held to be void. But as to trusts to charitable uses, they will be held valid, though expressed and indicated with the greatest generality and vagueness, such as would render any other trust absolutely void. So far is this partiality in favor of charities carried, that if a gift be made without any purpose at all being expressed, except only, in general, that it is intended for *charitable* purposes, or for any general purpose (such as religious or educational), which belongs to the category of charitable purposes, still it will be upheld; and if a trustee is appointed with discretionary powers, in such case, he may select the charity to be established, and the manner of carrying it out; but if no trustees be appointed, or he fail to act, the king, by his sign manual, will approve a scheme for the charity. 4 Seld., 548.

An exception to the general rule against perpetuities is also made in the case of charitable uses. When property is given to a charitable use, it may be forever devoted to that use, without any limitation in regard to time.

In the case of *Saltonstall and others* vs. *Sanders and others*, 11 Allen, 446, a testator bequeathed the residue of his estate to his executors in trust to hold and invest the same and the income thereof, and appropriate so much or the whole of the principal or income as they might think proper "to the furtherance and promotion of the cause of piety and good morals, or in aid of objects and purposes of benevolence or charity, public or private; or temperance, or for the education of deserving youths," and gave said trustees and their successors "full power, discretion and authority to appropriate and expend said income or capital in such manner as in their judgment may best promote the objects above mention-

ed." *Held*, that by "objects and purposes of benevolence or charity, public or private," the testator intended general relief of the poor, either through public institutions or alms-giving by the agency of individuals; and that this was a good charitable bequest.

In this case the trusts and the objects of the bounty are sufficiently clear; and definite and may be carried into effect.

The object of the bequest is a charity. A gift for the
10 support of schools, or the promotion of education, is a charity; and "poor children" is a sufficient designation of the objects of the bounty. *Atty General* vs. *Williams*, 4 Bro., C. C. 526; 2 Roper on Legacie, 101. It is a legal charity. *Goodell* v. *Union Association, &c, of Burlington Co.*, 2 Stewart, 32. *Drury* v. *Hatrick*, 10 Allen, 169.

The United States Supreme Court has held a gift for the benefit of the poor, as determined by trustees. *Lorings* vs. *Marsh*, 6 Wall., 373; also, for executors to distribute among such charitable institutions as they may
20 deem most beneficial to mankind, *Fontain* vs. *Ravenal*, 17 Howard, 369; "and also, for the education of the poor." *McDonough* vs. *Murdock*, 15 Howard 367, to be sufficiently certain and definite.

H. A. WILLIAMS,
Solicitor, and of counsel with the Respondent.

30

In Chancery of New Jersey.

Between MARY ANN HESKETH, *Complainant,* and JOHN MURPHY, Executor and Trustee of William S. Malcom, deceased, *Defendant.*	*Bill for Construction of Will, &c.*

To his Honor Theodore Runyon, Chancellor of the State of New Jersey. 10

Humbly complaining sheweth unto your Honor your oratrix, Mary Ann Hesketh, of the City of Paterson in this State, half sister of William S. Malcom deceased, that on the eighteenth day of December A. D. eighteen hundred and seventy-one, the said William S. Malcom then living in the City of Paterson aforesaid made and executed his last will and testament in writing in due form to pass real estate and personal property according to the laws of this State, and duly published and declared the same to be his last will and 20 testament in presence of two subscribing witnesses thereto, who signed their names thereto as attesting witnesses in

the presence of said testator and of each other at his request, and that said William S. Malcom signed the same in the presence of said subscribing witnesses.

And that said will and testament was in the words and figures following to wit:

"In the name of God amen—I William S. Malcom of the City of Paterson in the County of Passaic and State of New Jersey being in sound health of body and of disposing mind and memory do make and publish this my last will
10 and testament hereby revoking all former wills by me at any time made in manner following that is to say:

"1. I direct that all my just debts including funeral expenses and the expenses of administration be paid by my executors hereinafter named as soon as conveniently may be after my decease.

"2. I give and bequeath to my wife Emily S. Malcom all my household furniture, plate, linen, glass, china, books, pictures, prints, house keeping stores and other personal effects of like nature also my gold watch and chain and
20 wearing apparel.

"3. I give devise and bequeath all the residue of my estate both real and personal of every kind whatever and wherever situate which I may have or to which I may in any way be entitled either severally or jointly or in common with any other person or persons whatever at the time of my decease to Cornelius C. Hopper of Ward street in the City of Paterson aforesaid carpenter and John Murphy of Passaic street in said city Bleacher their heirs successors and assigns upon trust that is to say upon trust to sell
30 and dispose of all my said real estate at such time or times and in such manner either at private or public sale as they shall deem proper and to execute sign and deliver all deeds and other writings which may be necessary and proper to convey the said real estate when so sold to the purchaser or purchasers thereof, and also to convert get in and dis-

pose of such residuary personal estate and to invest the moneys arising from the sale of such real estate and such residuary personal estate in the names or name of such trustees or trustee for the time being of this my will in government or other good securities, and upon the further trust to pay out of the annual income of the said moneys so invested in at least half yearly payments to Kate Lazare of the City of Paterson in the State of New Jersey a single woman the sum of three hundred and fifty dollars so long as she shall remain single and unmarried and after her marriage or death should either occur during the life time of my said wife Emily S. Malcom to pay the said annual sum of three hundred and fifty dollars of the said annual income in at least half yearly payments to my said wife during her life but in case of the death of my said wife before the marriage or death of the said Kate Lazare then in that case after the marriage or death of the said Kate Lazare to dispose of the said annual sum of three hundred and fifty dollars and the securities whereon the said principal sum may be invested in the same manner as is hereinafter directed in reference to the trust and annual payments in favor of my said wife for her life.

"And upon the further trust to pay the balance of the said annual income of the said moneys so as aforesaid directed to be invested by said trustees to my said wife Emily S. Malcom in at least half yearly payments during her life.

"And after the death of my said wife I hereby empower and direct my said trustees or trustee for the time being of this my will to employ the annual income of the said moneys so invested and from time to time to be invested for the relief of the most deserving poor of the city of Paterson aforesaid for ever without regard to color or sex, but no person who is known to be intemperate lazy immoral or undeserving to receive any benefit from the said fund.

"And for the purpose of preserving and continuing a per-

petual succession of trustees for the purpose of carrying into full effect the provisions of this my will I do hereby empower my said trustees or trustee for the time being if any whether retiring from the office of trustee or not or if more then I direct and hereby empower the proving executors or executor for the time being or the administrators or administrator for the time being of the last surviving trustee to substitute by any proper writing under his her or their hands or hand any fit person or persons in whom
10 alone or as the case may be jointly with the surviving or continuing trustees or trustee my trust estate shall vest or proper assurances be vested.

"And I exempt every trustee of my will from liability for losses accruing without his own wilfull default, and lastly I appoint the said above-named trustees Cornelius C. Hopper and John Murphy also executors of this my will. In witness whereof I have hereunto set my hand and seal this eighteenth day of December in the year of our Lord one thousand eight hundred and seventy-one.

20 W. S. MALCOM [L.S.]

"Signed, published, acknowledged and declared by the said William S. Malcom the testator to be his last will and testament in the presence of us, who at his request and in his presence and in the presence of each other at the same time have subscribed our names hereto as attesting witnesses. The words 'of this my will' on the second page and the words 'during the' on the third page struck out before execution."

H. A. WILLIAMS, Paterson, N.J.
30 JAMES H. ROGERS, Paterson, N.J.

And your oratrix further shows that afterwards to wit: on or about the nineteenth day March A.D. one thousand eight hundred and seventy-two, the said William S. Malcom departed this life, leaving him surviving his widow, the said

Emily S. Malcom, but leaving no issue of his body and leaving no brother or sister either of the whole or half blood or the survivors of any of them save and except your oratrix his half sister as aforesaid.

That the said last will and testament was duly proved before Isaac Van Wagoner, surrogate of the county of Passaic, state aforesaid, and that said will was on the twelfth day of April A.D. eighteen hundred and seventy-two duly admitted to probate by said Isaac Van Wagoner, surrogate, as aforesaid, and letters of probate granted thereon by said 10 surrogate to one of said executors named therein, to wit; the defendant John Murphy, as executor thereof, the other executor named therein having failed to act. And that said John Murphy has taken upon himself the burthen of the execution thereof, and has converted all of said property into bonds, mortgages, &c., as directed in said will, and has paid the annual sums as directed by said will, to said Kate Lazare from the time of the decease of said William S. Malcom up to the present time, and still continues to pay the said sums as directed as aforesaid, and that said 20 executor has paid the remainder of the income of said estate to Emily S. Malcom as directed by said will from the time of the decease of the said William S. Malcom to the time of her death which occurred on the fifteenth day of April A.D. eighteeen hundred and eighty-one.

Your oratrix further shows that the said John Murphy, executor and trustee aforesaid, has now in his hands belonging to said trust fund about elven thousand dollars composed of United States government bonds, mortgages, etc., as shown by his annual account filed in the office of the 30 surrogate of the county of Passaic on the fourth day of September A.D. eighteen hundred and eighty.

And your oratrix further shows, that none of the property left by the said William S. Malcom, came to him either by descent or inheritance, but that the same was ac-

cumulated by his own labor and skill together with the aid and assistance of your oratrix; that your oratrix before her marriage and while working in the mills of the City of Paterson, State aforesaid, gave most of her earnings to her brother, said William S. Malcom, who paid her no interest on the same, giving as his reasons for not doing so, that some day, because of his having no children or brothers or sisters, save and except your oratrix, that your oratrix would receive all his property.

10 Your oratrix further shows, that the said John Murphy, executor and trustee as aforesaid, ought not to proceed to execute or carry out the perpetual trust created by said will for the following reasons:

First. The said trust is void, because no power is given in said trust to select the beneficiaries under the same.

Second. The said trust is void, because it is not for any definite purpose.

Third. The said is void, because the power of said trustee in regard to said fund is not limited to charitable pur-
20 poses, but may be extended to benevolent, liberal or other purposes.

Fourth. The said trust is void for uncertainty.

Your oratrix further shows, that the balance of the income of said fund after the payment of the said annual sums to Kate Lazare as directed by said will should be paid to your oratrix, or that the balance of the said fund in excess of what is required to produce the amount necessary to pay to said Kate Lazare, the annual sums as by said will directed, should be paid to your oratrix, and that
30 after the death or marriage of the said Kate Lazare, the whole amount of said fund remaining in the hands of said John Murphy, trustee, as aforesaid, should because of the failure of said trust, go to your oratrix.

And your oratrix further shows, that the said perpetual trust ought to be set aside as void, or established and con-

strued by this honorable court before the said John Murphy, executor and trustee of said fund, begins to carry the said trust into effect and execution, and the mode of executing said trust ascertained and settled by this court, and that the said trustee execute the same only under and by the directions of this honorable court.

In tender consideration whereof, and for as much as your oratrix is remediless in the premises in the courts of law, and can only have adequate relief in a court of equity where matters of this and the like nature are properly cog- 10 nizable and relievable, and to the end that said defendant, John Murphy, executor and trustee as aforesaid may, not under oath, true, full and perfect answers make to all and singular the matters and things, and each fact hereinabove set forth and particularly according to the best of his knowledge, information and belief, as if the same were herein again repeated, and be thereto interrogated paragraph by paragraph.

And your oratrix prays that a decree may be made by this honorable court declaring that the clause of said will 20 creating the said perpetual trust is void for uncertainty, and that the balance of the income of said fund after the payment of the said annual sums to Kate Lazare, should be paid to your oratrix or that the balance of the fund in excess of what is required to produce the amount necessary to pay to said Kate Lazare, the said annual sums, should be paid to your oratrix, and that it may be decreed that after the death or marriage of the said Kate Lazare, the whole amount of said fund remaining be paid to your oratrix, and that your oratrix may have such further and 30 other relief, as the nature of this case may require, and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your oratrix, a writ of subpœna issuing out of and under the seal of this honorable court, to be directed

to the said defendant, John Murphy, therein and thereby commanding him on a certain day and under a certain penalty therein to be inserted, to be and appear before your Honor in this honorable court then and there to answer all and singular the premises, and to stand to and abide by, and perform such order and decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

And your oratrix as in duty bound will ever pray, &c.

10 DeWitt C. Bolton,
Solicitor of Complainant.
Henry S. Drury,
of Counsel with Complainant

ANSWER OF DEFENDANT.

IN CHANCERY OF NEW JERSEY.

Between Mary Ann Hesketh, *Complainant,* and 20 John Murphy, Execu'or, &c., *Defendant.*	On Bill &c.

The answer of John Murphy Executor and Trustee of the last will and testament of William S. Malcom, deceased, to the bill of complaint of Mary Ann Hesketh.

This defendant now and at all times hereafter, saving and reserving to himself as executor and trustee under the last will and testament of William S. Malcom, deceased, all manner of benefit and advantage of exception to the many errors, uncertainties and imperfections in the said bill of complaint contained for answer thereunto, or unto so much thereof as this defendant is advised, is material or necessary for him to make answer unto, he answering, says:

That he admits that the said William S. Malcom made and executed his last will and testament as in that behalf in said bill mentioned, and that the same is correctly set out therein. 10

And this defendant also admits that the said William S. Malcom departed this life at the time in said bill mentioned leaving surviving him, his widow Emily S. Malcom and leaving no issue nor brother nor sister, either of the whole or half blood, or the issue of any except the complainant his half sister.

And also that the said will was proved and letters granted to this defendant, the other executor named therein having failed to qualify, as stated in said bill. And that this defendant took upon himself the burden of the execution thereof and performed all the duties required of him as executor and trustee thereof, and as mentioned and set forth in said bill. 20

And this defendant further answering says that he has as such executor and trustee belonging to said trust fund about eleven thousand dollars as mentioned in said bill and that he now holds the same for the purposes provided and mentioned in said will, 30

And this defendant further answering says he has no positive knowledge but does not believe it to be true as stated in said bill that the property of the said William S. Malcom was accumulated by his own labor and skill together with the aid and assistance of the complainant but

he believes that the same was accumulated by the labor and skill of the said William S. Malcom alone.

And this defendant has no knowledge that the complainant before her marriage and while working in the mills of the city of Paterson gave most of her earnings to her brother the said William S. Malcom and that he paid her no interest for the same and leaves it to the complainant to prove the same as she may be advised if it is to be considered material.

10 And this defendant further answering, says: That he respectfully submits to this Honorable Court that the said trust in the said will of the said William S. Malcom is not void for the supposed reasons in the complainant's said bill in that behalf alleged, but on the contrary thereof this defendant, as the executor and trustee of the said will as aforesaid, respectfully insists that he ought not to be, by the decree of this Honorable Court, as prayed in the complainant's said bill, prevented from carrying the said trust
20 into effect according to the intention and direction of the said testator; because this defendant avers that the said trust created by said will is a legal one; that it is for a charitable and defined purpose; it is certain and the meaning and intention of the testator in creating, defining and providing for the carrying of it into effect, as well in regard to the beneficiaries as to the provisions for executing the same is plain and in no wise uncertain.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said
30 bill charged, without this that there is any other matter cause or thing in the said bill contained material to be answered unto and not herein and hereby answered, confessed, avoided, traversed or denied, that is true, to the knowledge or belief of this defendant; and this he is ready to aver and maintain; wherefore he prays to be hence dis-

missed with his reasonable costs and charges in this behalf most unjustly sustained, to be paid to him &c.

H. A. WILLIAMS,

Solicitor for and of counsel with the Defendant.

State of New Jersey }
County of Passaic. }

John Murphy, the above-named defendant, being duly sworn, on his oath saith that the matters and things set forth in the above answer so far as relates to his own acts are true, and so far as relates to the acts of others he be- 10 lieves them to be true.

Sworn and Subscribed before me this seventh day of September A.D. 1881. } JOHN MURPHPY.

EDMUND E. DAYTON
Master in Chancery of N.J.

Opinion

~~REASONS FOR DECREE~~.

THE CHANCELLOR: After quoting the trust clause in will. (See Pp 3. & 4)

The objection made to the gift is that it is too indefinite, 20 especially seeing that, as it is contended, no power of selection of the objects is conferred. The gift is for the relief of the most deserving poor of the City of Paterson, without regard to color or sex, to whom alone it is to be confined. A gift for the relief of the poor of a city generally is undoubtedly a valid charity. *Shelf., on Mortmain*, 62.

And so too when the gift is confined to a certain class of poor persons "As to poor pious persons;" *Nash* v. *Morely*, 5 *Beav.*, 177). "The widows and orphans (construed to mean poor widows and orphans) of a parish." *Atty. Gen.* v. *Comber* 2. *Sim.*, *&. Stu.*, 93, and the deserving poor of a

town; *Goodell* v. *Association*, 2 *Stew.*, 32. "Where" says Lord Harwicke in *Atty. Gen.* v. *Pearce*, 2 *Atk.*, 87, "testators have not any particular person in their contemplation, but leave it to the discretion of a trustee to choose out the objects, though such person is private and each particular object may be said to be private yet in the extensiveness of the benefits accruing from them they may very properly be called public charities."

A sum to be disposed of "by A. B. and his executors
10 at their discretion among the poor housekeepers" is of this kind. The general principle is that courts of chancery uphold and administer gifts where they are made to particular purposes, which are charitable within the letter and spirit of the statute (43 *of Eliz. C. 4*), or when they are made to charity generally, if there is a trustee with power to make them definite. *De Camp* v. *Dobbins*, 2 *Stew.*, 36.

In the case in hand the testator describes a class of persons for whose relief the trust is designed and the duty of selection necessarily and obviously falls on the trustee. By
20 the terms of the gift he is to employ the income for the purpose mentioned. For want of a trustee this court would appoint one to execute the trust.

In *Barclay* v. *Maskelyne*, 4 *Jur.*, *N. S.*, 1294, where the gift was for the benefit of such poor persons emigrating as the trustees should consider most deserving, and the trustees declined to act, the court directed a scheme for the execution of the trust. The gift in question is a valid charity.

DECREE.

IN CHANCERY OF NEW JERSEY.

Between MARY ANN HESKETH, *Complainant,* and JOHN MURPHY, Executor and Trustee of William S. Malcom, Deceased, *Defendant.*	On Bill, &c. Final Decree.

10

This cause coming on to be heard before the Chancellor in the presence of D. C. Bolton of counsel with the complainant, and of H. A. Williams of counsel with the defendant, upon bill and answer, and the same having been read and the arguments of the respective counsel having been heard and considered and the Court having duly considered the said pleadings and arguments; and it appearing in the pleadings in said cause mentioned that the said William S. Malcom departed this life in the year eighteen hundred and seventy-two, leaving his last will and testament unrevoked and in full force, which said last will and testament 20 among other things contained the following provision: "After the death of my said wife I hereby empower and direct my said trustees or trustee for the time being of this my will to employ the annual income of the said moneys so invested, for the relief of the most deserving poor of the City of Paterson aforesaid for ever; without regard to color or sex; but no person who is known to be intemperate, lazy, immoral or undeserving, to receive any benefit from the said fund; and for the purpose of preserving and con-

tinuing a perpetual succession of trustees for the purpose of carrying into full effect the provisions of this my will, I do hereby empower my said trustees or trustee for the time being, if any, whether retiring from the office of trustee or not, or if none, then I direct and hereby empower the proving executors or executor for the time being or the administrators or administrator for the time being of the last surviving trustee to substitute by any proper writing under his, her or their proper hands or hand any fit person or persons
10 in whom, alone, or as the case may be jointly with the surviving or continuing trustees or trustee, my trust estate shall vest or proper assurance be vested." And it appearing to the Court that the complainant is *not* entitled to the relief sought and prayed for by her in her bill of complaint, to wit: that the said gift should be decreed to be void for uncertainty and indefiniteness, but it appearing to the satisfaction of the Court that the gift in question is a valid charity:

It is therefore on this twentieth day of February, one
20 thousand eight hundred and eighty-two, on motion of H. A. Williams of counsel with the defendant, by the Chancellor of the State of New Jersey, ordered adjudged and decreed that the said complainant is *not* entitled to the relief sought and prayed for by her in her said bill of complaint, and that the said gift in the said will and herein above particularly set forth is a valid charity.

And it is further ordered that the costs of the complainant and of the trustees in this cause to be taxed be and the same are hereby ordered to be paid by the said executor
30 and trustee out of the testator's estate; and to the counsel of said executor and trustee and the counsel of the complainant there be a counsel fee of one hundred and fifty dollars to each side out of said estate.

THEODORE RUNYON, *C.*

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between MARY ANN HESKETH, *Complainant,* and JOHN MURPHY, Executor of William S. Malcom, deceased, *Defendant.*	On Bill &c., Appeal.

10

The complainant hereby appeals from so much of the final decree made in this Court in the above stated cause as declares that the complainant is not entitled to the relief sought and prayed for by her in her said bill of complaint and from so much of said decree as declares that the gift made by the will of William S. Malcom deceased and set forth in the bill filed in this case is a valid charity, to the Court of Errors and Appeals in the last resort in all cases of law.

20

Dated April 29th 1882.

DEWITT C. BOLTON,
Solicitor of Complainant.
HENRY S. DRURY,
Of Counsel with Complainant.

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

HENRY S. DRURY,
Counsellor at Law.

PETITION OF APPEAL.

Between MARY ANN HESKETH, *Appellant.* and JOHN MURPHY, Executor and Trustee of William S. Malcom, dec., 10 *Respondent.*	On Bill, &c. Petition of Appeal.

To the Honorable the Court of Appeals in the last resort in all causes of law:

The humble petition of Mary Ann Hesketh the appellant in the above stated cause, respectfully shows, that your petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor, Theodore Runyon, Chancellor of New Jersey, bearing date the twentieth day of February, A. D., eighteen hundred and eighty-two, wherein the said Mary Ann Hesketh was complainant, and the said John Murphy, executor of and trustee, under the last will and testament of William S. Malcom, deceased, 20 was defendant, in this respect to wit; that the said decree adjudges that the said complainant is not entitled to the relief sought and prayed for by her in her said bill of complaint and that the gift to the deserving poor of the City of Paterson, made by the will of William S. Malcom, deceased, and set forth in her said bill filed in this cause is a valid charity.

And your petitioner humbly appeals from that part of the said decree of the Chancellor, which decrees as afore-

said upon the ground that the same is erroneous for that the said gift is not a valid charity.

Your petitioner therefore prays, that the said decree of the said Chancellor may be, in the particulars aforesaid reversed, set aside, and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable court may seem meet.

Dated April 29, 1882.

DeWitt C. Bolton,
Solicitor of Appellant. 10

Henry S. Drury,
of Counsel with Appellant.

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

Henry S. Drury,
of Counsel with Appellant.

ANSWER TO PETITION OF APEEAL.

COURT OF ERRORS AND APPEALS.

Between MARY ANN HESKETH, *Appellant,* and JOHN MURPHY, Executor &c., of William S. Malcom, deceased, *Respondent.*	On Petition. Answer.

10

The answer of the above named respondent to the petition of appeal of the above named 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 twentieth day of February last past 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. And this respondent is advised and believes that the said decree is agreeable to equity and he prays that the same may be affirmed with costs to be adjudged to this respondent.

20

H. A. WILLIAMS,
Solicitor and of counsel with the Respondent.