

NEW JERSEY COURT OF ERRORS AND
APPEALS.

VINELAND TRUST COMPANY,
Complainant-Respondent,

vs.

KATHARINE WESTENDORF,
et al.,

Defendants-Respondents,
and

DANIEL E. DYER, *et al.,*

Defendants-Appellants.

APPEAL FROM

CHANCERY.

BRIEF OF DEFENDANTS-APPELLANTS.

1.

STATEMENT OF THE CASE.

The bill is filed by the Vineland Trust Company, administrator of Ellen M. Dyer, deceased, to obtain a construction of the will of the said Ellen M. Dyer, deceased, and instructions as to its duties and rights in the premises.

The defendants are Katharine Westendorf and Helen Campbell, trustees mentioned in the will, and Daniel E. Dyer and others, next of kin of the testatrix.

The next of kin contend:

That a portion of the will of the said Ellen M. Dyer, deceased, should be decreed to be too vague and indefinite to be carried out;

That the same does not create a charitable use and that it is incapable of being executed and supervised by the Court;

And that the trust should be decreed to be a naked trust for the benefit of the next of kin.

The portion of the will of the testatrix, which is sought to be construed in this cause, after the expiration of a life estate, now terminated, reads as follows:

“On the decease of the said Eliza Freeman Spencer, I further give, devise and bequeath, all my estate as it shall then stand, to Mrs. Katharine Westendorf, of Denver, Arapahoe County, State of Colorado, teacher of vocal expression and oratory, and to her friend, Mrs. Helen Campbell, author, to be used jointly by them in the furtherance of the broadest interpretation of metaphysical thought, in whatsoever manner and by whatsoever means they may jointly consider proper and best, authorizing them to sell and convey any and all real estate and use the proceeds thereof for the above purposes.”

II.

GROUND OF APPEAL.

1. Because the decree should have determined that the bequest or devise contained in the will of Ellen M. Dyer, deceased, to Katharine Westendorf and Helen Campbell was not a charitable trust and was too vague, indefinite and uncertain to be capable of being executed or supervised by the Court.

2. Because the said decree should have determined that the said gift, bequest or devise was not necessarily educational and not, therefore, a legal charity.

3. That the said decree should have determined and declared that the said bequest or devise to the said trustees, was a naked trust for the benefit of the next of kin and heirs-at-law of the said Ellen M. Dyer, deceased.

4. That the said decree should not have authorized or directed the complainant to pay the estate to the said trustees.

III.

ARGUMENT.

1. It seems advisable first to consider what is metaphysical thought. The Century Dictionary defines this term as follows:

“Highly abstruse; apart from ordinary or practical modes of thought.” “Pertaining to abstractions or modes of thought as objects, and named as if they were things; abstract.” “Preternatural or supernatural.”

In a work entitled, “A New Dictionary on Historical Principles,” founded mainly on the materials collected by the Philological Society, edited by Sir James A. H. Murray, &c., &c., vol. 6, page 386, Oxford 1908, I find the following definitions:

“b. Applied with more or less of reproach, to reasoning, ideas, &c., which are considered

oversubtle or too abstract." "The word is also used to denote subtle, abstract and refined, in which sense we say, such reasoning, such a proof, is too metaphysical, &c." "Based on abstract, general reasoning; determined on theoretic or *a priori* principles." Applied especially in explicit contrast to physical, to what is immaterial, incorporeal or supersensible." "That is above or goes beyond the laws of nature; belonging to an operation or agency which is more than physical or natural; supernatural." "Used for fanciful, fantastic, imaginary."

In examining into the matter, I take the following from a dictionary of philosophy by Baldwin, vol. II, page 72:

Metaphysics owes its name to the editorial arrangement of Aristotle's treatise on the subject by Andronicus of Rhodes, who placed it after the treatise on physics with the general superscription on physics, Greek. Aristotle's own name for the discussions contained in it was First Philosophy or Theology, and from his description of them as concerned with the nature of being as being; the latter term ontology was coined. The name metaphysics first appears as a singular noun, in averroes and the scholastics of the 13th Century.

The term has proved an unfortunate one as suggesting that the science is divorced from experience and concerned altogether with the transcendent. Kant is responsible for spreading this idea of metaphysics by his repeated descriptions of it as "a science of assertions about the transcendent, a science moreover involved in a series of unverifiable self contradictions." He certainly had historical ground for his strictures upon the old metaphysic,

if we take Wolff's definition of it as "the science of all that is possible as far as it is possible"—a science supposed to be evolved by analysis from the logical principle of identity or contradictions. Metaphysics was divided by Wolff, into a general part (ontology), which treats of the most abstract determinations of being in general, whether corporeal or spiritual, and three special parts (rational cosmology, rational psychology and rational theology), named according to their principal subjects (the world, the soul and God). These latter disciplines form the subject of Kant's attack in the *Dialectic*, and in contrast with the Wolffian metaphysics, he gives his own idea of the science of metaphysics, as the only science which admits of completion. "This science is nothing more than the inventory of all that is given us by pure reason, systematically arranged." To this science, the *Critique*, as the doctrine of the limits of pure reason, was designed to form an introduction. According to this Kantian usage, metaphysics would become synonymous with Epistemology or with a part of that science." Wolff's system represents, however, neither the best modern nor the old Aristotelian conception of philosophy—metaphysics as the central philosophical discipline, might rather be defined as simply the systematic interpretation of experience and the explication of all its implicates. The implicates of experience cannot be described—in any condemnatory sense at least, as "beyond" experience; although, doubtless, the result of metaphysical analysis may be to show that impossibility of identifying experience with the isolated particulars of sensationalistic philosophy. If experience be taken without any such arbitrary limitations of its meaning, metaphysics seeks simply to harmonize or rationalize experience, *i. e.*, to exhibit it as a system or

interconnected whole. Metaphysics, as William James pithily puts it "means only an unusually obstinate attempt to think clearly and consistently," or as Plato expressed it, it is the effort to think things together,—not in isolation and abstraction, but in relation to one another, and as parts or aspects of one concrete whole.

The different sciences are all "abstract" because each starts with certain presuppositions or working postulates, which give true results within the limits of the science itself, but which are found in critical explanation, to be full of obscurity and contradiction, if offered as true in the full sense of that term, namely, as giving a finally intelligible explanation of the experience in question. Metaphysics aims at correcting the abstractions of the different sciences and relating them one to another, reaching thereby, an expression of the concrete truth of experience as such. The truth, however, which metaphysics seeks to reach, even when represented under the questionable designation of absolute truth, does not really transcend experience in any other sense than that in which the whole transcends its parts. Metaphysics, in this sense, must obviously coincide to a large extent with epistemology, conceived as "criticism of categories," or with logic in the Hegelian sense; and according to the most convenient usage (and that most in harmony with the history of the term), is probably to regard metaphysics—the theory of knowing and being—as the wider term, including as its two subdivisions or aspects, epistemology and ontology. The latter term would be used to signify what is the culmination of metaphysical effort, a synthetic statement in ultimate terms of the nature of the real, so far as that is attainable from the human standpoint. But the disuse of the term ontology

in current philosophical writing has led to a considerable variety of usage in regard to the term metaphysics, which is till further increased, of course, by the divergencies of philosophical creed in the writers. Many writers of positivistic and Neo Kantian tendencies, attaching to metaphysics the old associations of transcendency, deny the possibility of the science, and put epistemology, or analysis of conceptions, in its place. Others, on the contrary, Hegelian in general tendency, associate epistemology solely with subjectivistic attempts of a Kantian or skeptical kind, to pronounce on the validity of thought as such, and deny in consequence, the possibility of such a science; but they would apparently apply the term metaphysics to an analysis of conceptions much resembling what the former set of writers include under the head of epistemology. Among recent English writers, it may be noted that both Shadworth, Hodgson and Laurie use metaphysics very clearly as equivalent to epistemology, but the former finds it necessary to supplement this investigation by what he calls the "constructive branch of philosophy." (*cf. Philos. of Reflection*, Chap. XI.), while the latter indicates a distinction between this "analytic" or metaphysic considered as a demonstrative science, and what he calls "speculation" or "a synthetic cosmic construction on the basis of the preceding analytic" (ref.). Perhaps the commonest usage at the present day, and one that has much in its favor is to use metaphysics in a narrower sense as opposed to epistemology, in which case it corresponds with the definition of ontology given above. In this sense it is used, for example, by Paulsen, Kulpe, and Volkelt, the most recent authors of Introductions to Philosophy. Kulpe points out that if the analysis of knowledge and its conceptions be excluded from its

sphere, there still remains that task of metaphysics proper, "the development of a *Weltanschauung*." In essaying this task, he proceeds, "Metaphysics is based upon practical motives on the one hand, and on the other, upon the demand for a completion of scientific knowledge which shall be free from contradictions. In a sense, any such view of the world as a whole may be said to transcend the fragmentary data at one's disposal. Within the domain of the sciences, which start from certain hypotheses, demonstration and verification of particular propositions may be possible on the assumption of these hypotheses, but metaphysics, in rising to its supreme hypotheses or postulates, can obviously never hope to offer demonstration or verification in the same sense. It is one thing, as Volkelt puts it, 'to postulate supreme principles of a certain name, that is, starting from the facts of experience, to declare that the solution of certain problems can be only in the direction of certain fundamental thought; it is something quite different to exhibit everything individual as arising, so to speak, out of the highest principles, and explainable from the inner necessity of these principles.' "

In very similar words, at the conclusion of his metaphysics, Lotze expresses his profound conviction of "the living and active meaning of the world," but adds, "we do not know this meaning in its fullness, and, therefore, we cannot deduce from it what we can only attempt, in one universal conviction, to retrace to it." This is, indeed, the main difference between the pretentious metaphysics of the Wolffian type and the more modest attitude of the present day thinkers.

If the last mentioned usage be adopted—which seems advisable, we have the term Philosophy (*q. v.*) to include both epistemology and ontology (Meta-

physics). Dict. of Philosophy and Psychology—Baldwin—Vol. II, p. 72.

I have examined the authorities in a good many of the states concerning what is lawful and what has been held to be insufficient as to bequests of a charitable nature, and it appears to me unnecessary to refer to any of them outside of this state, as the subject has been very thoroughly treated by the Courts of our state.

I now refer to several of these cases, as follows:

In the case of *George vs. Braddock*, 18 Stewart, 757 (45 Eq.), Ch. J. Beasley, speaking for the Court of Errors and Appeals, held that George Hutchins' bequest for the distribution of the works of Henry George was charitable and lawful. This was a definite purpose.

School Trustees of Hoboken vs. Hoboken, 70 N. J. Eq. 630. In this case, Vice-Chancellor Garrison considered the bill as one to establish and enforce a charitable use. "If the words of donation specify some definite purpose which is regarded by the law as charitable or for some general purpose which the law regards as charitable, that is sufficient. Libraries and schools have been held to be charitable."

In the case of the *Morristown Trust Company vs. Morristown*, 82 N. J. Equity, page 521, two legacies were declared void.

The first legacy was \$5000.00 for the erection of a bronze and granite base for the flag-staff in the Morris Park, and was declared void because it was considered a private trust and in violation of the rule against perpetuities.

The other legacy was to the Society for Providing Medical Attendance to the Worthy Poor of the Township of Morris. This failed because the society was a voluntary association and disbanded shortly after the testator's death. The Court determined the latter legacy was not a general charity and that the Court should not carry the same out by formulating a scheme for the administration of the fund.

In the leading case of *Thompson's Executors vs. Norris*, 20 N. J. Equity, page 489, Chief Justice Beasley, in stating the opinion of the Court of Errors and Appeals, said, on page 522, quoting the portion of the will involved in the decision, "Shall be authorized and empowered by her last will and testament to give and devise the same among such benevolent, religious or charitable institutions as she may think proper."

"Such a bequest, upon the most familiar principles, is not to be sustained except upon the theory that it constitutes a gift to a charitable use. Is the purpose indicated, then, a charity in a legal point of view? I do not understand that there is any difference whatever between the common law of England and the law of this state upon the point as to what constitutes the legal definition of a charity. And by this common law, I mean that system, so far as respects this question, which has grown up in a series of decisions founded, in part, upon the 43rd of Elizabeth ch. 4 (the statute of charitable uses). The doctrine of the English Court of Chancery with regard to the mere classification of things which are, and those which are not, charities in the eye of the law, has been very generally recognized in this country."

"The discrepancy between the English and American systems regulating charities, consists in this, that in England a bequest for a charity will be ef-

fectuated no matter how uncertain the objects or the persons may be, or whether the bequest can be carried into exact execution or not, for when a literal execution becomes impracticable, the Court will administer it on the doctrine of cy press. In some instances Courts of this country have refused to exercise so extensive a jurisdiction. I am not aware that in our own courts, this subject has received any elucidation. It may well be, therefore, 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. But this is a diversity of legal administration, and not of legal classification. Upon the questions what is, or what is not, a charitable use, we have no criterion but the rules of the common law, and those rules, consequently, are obligatory upon us.

Accepting this guide, I readily come, on this head, to the same conclusion with the Chancellor. The bequest is to "benevolent, religious, or charitable institutions." This is too broad. Benevolence is wider than charity in its legal significations. In *James vs. Allen*, 3 Mer. 17, the will gave property to "be applied and disposed of for, and to such benevolent purposes," as the executors in their discretion, might unanimously agree upon. Sir William Grant, Master of the Rolls, decided this bequest void, remarking, "that although many charitable institutions are very properly called benevolent, it is impossible to say that every object of a man's benevolence is also an object of his charity." The ground of the decision was, that as the bequest could, consistently with the will, be applied to other than strictly charitable purposes, the Court could not execute the trust.

In *Williams vs. Kershaw*, 5 Clark & Fin. 111, note, the devise was to "such benevolent, charitable and religious purposes as the executors should, in their discretion, think most advantageous and beneficial." Upon a review of the authorities, the decision of Lord Cottenham was, that the introduction of the word "benevolent" rendered the purposes of the testator too indefinite for judicial execution, and that the gift could not take effect. *Ellis vs. Selby*, 1 Myl. & Craig, 286, and *Williams vs. Williams*, 5 Law Journal, ch. 4, are cases holding a similar doctrine, and are much in point. Many other decisions to the same effect will be found collected in 2 *Roper on Leg.* 1237. These decisions appear to me to rest on a proper foundation. It is important that the fact as to what as legal charities which will be executed by the courts, should be settled. To sanction the introduction of a general term of so wide a signification as the word "benevolent" would have a tendency to involve the subject in such confusion.

Livesey vs. Jones, 55 N. J. Equity, 204, a bequest or devise "for the promotion of the religious, moral and social welfare of the people in any locality whenever and wherever he may think most needful and necessary," since it includes objects not charitable, must fail for indefiniteness.

It was declared void because it was "so general and indefinite that the Court cannot see to its execution."

The words, "religious, moral and social," are not used conjunctively in such manner that *every* object to which may be applied *must* conduce at one and the same time, to the advancement of religion and morality and to the social welfare of the people."

That a trust to promote the religious welfare of the people is charitable is admitted. Whether a trust

to promote their moral welfare is so, I need not consider. I am clear that the trust to promote the social welfare of the people in the manner declared in this will is not. I think it may be said without much fear of contradiction that there are many ways of advancing the social welfare of the people which have nothing to do with charity.

In the case of *Hyde's Executors vs. Hyde*, 64 N. J. Equity, page 6, Chancellor Magie held that where directions were given in a will to executors, to distribute \$100,000 "for such religious, charitable or educational or other purposes as they may deem advisable," the bequest was void for uncertainty, because it might be used for other purposes than those which were charitable.

The effect of this decision in this case was to give the fund to the persons which the testator expressly specified should not receive the same.

In the case now before the Court, it appears to counsel for the next-of-kin that two things are to be considered.

First: Is the bequest or devise *necessarily* charitable?

Second: In case it is deemed to be charitable, is it *sufficiently definite* as to be capable of being executed and the trust *supervised* or *controlled* by the Court?

Under the first section it is clear, under the decisions in this state, that this will cannot be sustained unless it is held to be charitable. The only theory on which this clause can be held to be charitable is because it may be held to be for educational purposes.

Under this clause, there is no doubt but what the fund, if the clause is considered sufficiently definite and certain, *might* be applied for educational purposes which would be charitable; but the test is, *could* it be applied to anything *else* which is *not* charitable,—something *not educational*.

The wording of the bequest or devise is so very general, "For the furtherance of the broadest interpretation of metaphysical thought," that there are practically no limits.

The fund might be used for a multitude of purposes, not educational or charitable,—for instance, the trustees might use the fund to organize and operate a bureau of entertainments for the demonstration of metaphysical thought, with mind readers and clairvoyants, to cause the public to think of things mysterious, unusual, supernatural and metaphysical and to create awe or respect for the same in some, and to puzzle, please, entertain and amuse the people, without in any way teaching its mysteries or revealing its secrets, in other words, not making it educational.

The fund might be used by the trustees for their support, while they ceased work in other lines and occupied their time in thinking about spiritual and metaphysical things. This would not be charitable, within the meaning of the decisions on the subject.

The fund might be employed by the trustees, in designing, sculpturing and erecting a monument to the memory of Aristotle, or some other writer on metaphysical thought, with the purpose and object, on the part of the trustees, to create a respect for metaphysical thought and to inspire the community or some members of the community, to study and investigate along spiritual or supernatural lines. This use of the fund would not be charitable.

Secondly, Is the bequest or devise sufficiently definite and certain to be carried out, in case it is considered to be necessarily charitable? What control could our courts have over the trust?

By studying the definition of metaphysical thought, what can be considered to be more vague and uncertain? The best writers on the subject are uncertain and have opposite views as to the meaning of the word.

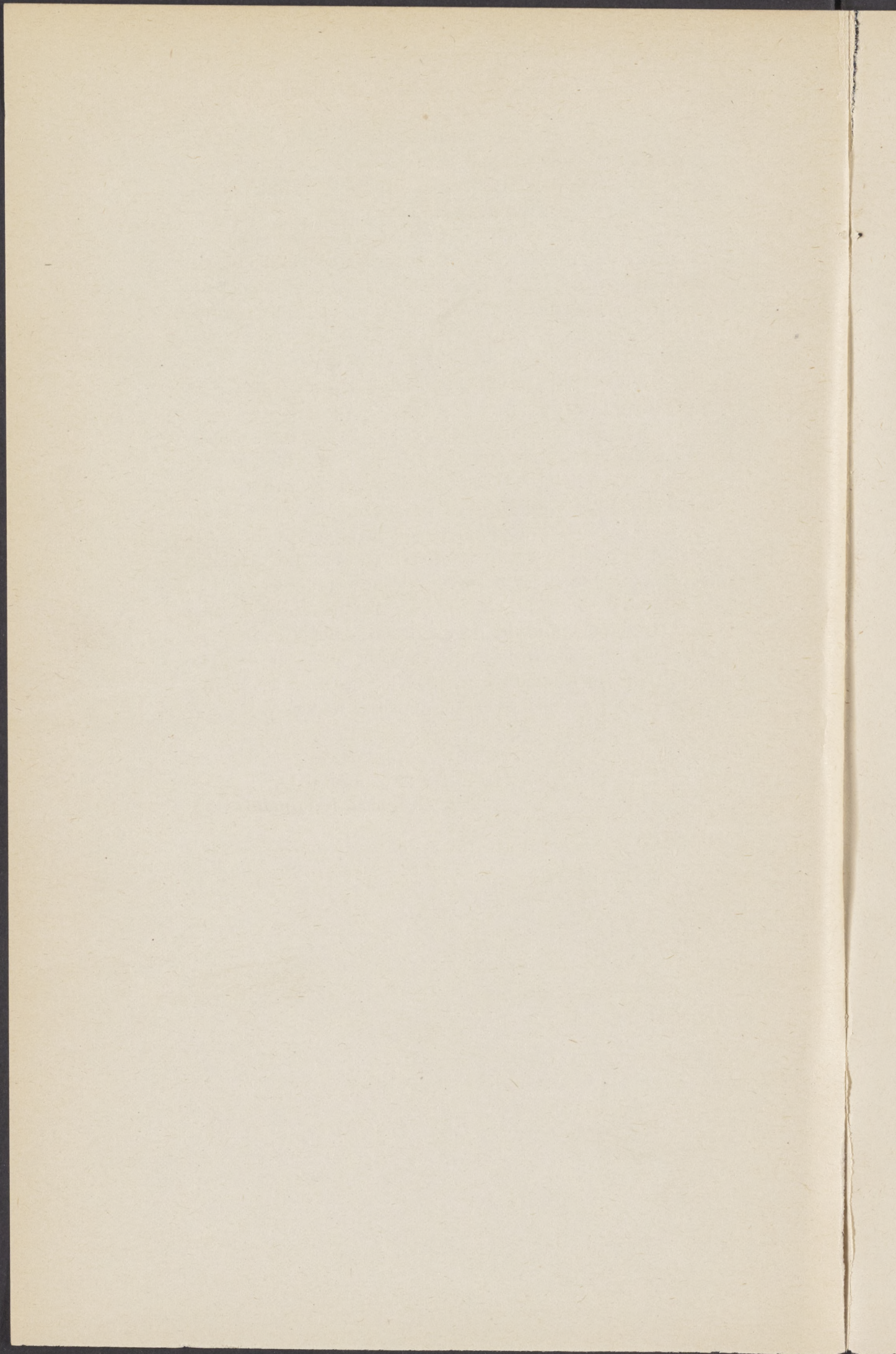
Who is to be benefitted by the bequest? Where is the fund to be expended? When is the fund to be expended? How shall the fund be used?

No scheme is fixed or suggested. What control can this Court, or any Court, have over the trust?

Other schemes for the use of funds in other cases have been set aside by our courts because they were *too broad, too comprehensive*. What could be more broad and more comprehensive than "the broadest interpretation of metaphysical thought"?

Counsel for the next-of-kin respectfully insists that the trust should be enforced; that the bequest should either be decreed to be void, or to be for the benefit of the next-of-kin, and be decreed to be executed and turned over to the next-of-kin.

Respectfully submitted,
HENRY S. ALVORD,
For Defendant-Appellants.



NEW JERSEY COURT OF ERRORS AND
APPEALS.

VINELAND TRUST COMPANY, <i>Complainant-Respondent,</i>	}	APPEAL FROM CHAN- CERY.
VS.		
KATHARINE WESTENDORF, <i>et</i> <i>al.,</i>		
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BRIEF OF COMPLAINANT-RESPONDENT.

1.

ARGUMENT.

The appellants' brief beginning on page No. 3, and ending at the bottom of page No. 8, appears to be only historical and speculative, and not argumentative or authoritative, and, therefore, we pass it over without further comment.

On page No. 9 of appellants' brief counsel states that it appears to be unnecessary to refer to any cases outside of this state, "as the subject has been very thoroughly treated by the Courts of our state." In this expression of opinion I readily concur be-

cause the decisions in the Court of Errors and Court of Chancery of New Jersey conclusively and positively establish the validity of the will of the testatrix, whose will is now before this Court for consideration, and an expression of its opinion thereon.

The first case cited by appellants' counsel is the case of *George vs. Braddock*, 18 Stewart 757 (45 Eq.). We contend that this case alone and cases there cited are ample and sufficient to establish the validity of the decedent's will now in controversy before this Court.

Metaphysics is a science and branch of learning prescribed in the regular curriculum of Harvard, Yale, Princeton, and all the other leading colleges of the United States as part of the course of study for the senior classes, and must be considered educational, and a donation by bequest or devise which has for its object the elucidation and advancement of this branch of education must be considered charitable.

Concerning certainty or definiteness of purpose which this case establishes on page 759, at the middle of the page; testator's purpose is expressed in these words: "to constitute a sacred trust for the express purpose of spreading the light on social, and political liberty and justice, in these United States of America," we contend that the testator's expression of the purpose of his donation in the *George vs. Braddock* case, was less certain and definite, than the expression of the purpose of the donation of the testatrix, Ellen M. Dyer, wherein she donates by her will "for the futherance of the broadest interpretation of metaphysical thought."

In the opinion rendered by Chief Justice Beasley, in the case of *George vs. Braddock*, on page 765, he quotes the case of *Jackson vs. Philips*, reported in 14 Allen 539.

This controversy also related to a charitable use, the bequest being of a fund to trustees, "to be expended at their discretion in such sums, at such times, and such places, as they may deem best, for the preparation and circulation of books, newspapers, the delivery of speeches, lectures, and such other means as, in their judgment, will create a public sentiment that will put an end to negro slavery in this country."

The decision of the Court, in its own language, was (p. 566): "The bequest itself manifests its immediate purpose to be to educate the whole people upon the sin of man holding his fellow man in bondage; and its ultimate object, to put an end to negro slavery in the United States; in either respect, a lawful charity."

In this case the means to be employed to accomplish and reach the desired end was quite uncertain and indefinite, and the means to be employed to accomplish the desired result was left largely to the discretion and judgment of the trustees, and yet was held to be sufficiently certain and definite to establish a lawful charity.

So, in the case now before the Court, the means to be employed to accomplish the end and result desired is left discretionary with the trustees, who are to employ the fund and use it for the educational and charitable purposes directed by the testatrix.

In the case of *School Trustees of Hoboken vs. Hoboken*, 70 N. J. Eq. 630, there was nothing there decided to add new light upon the present controversy, which case is quoted by counsels for the appellants.

Counsels for the appellants quote the case of *Morristown Trust Company vs. Morristown*, 82 N. J. Eq. 521. This was not a charity, and, therefore, was decided unlawful because it attempted to establish a perpetuity not charitable.

Counsel for appellants quote the case of *Livesey vs. Jones*, 55 N. J. Eq. 204. This was a bequest or devise to quote the text of the will, "for the promotion of the religious, moral and social welfare of the people in any locality whenever and wherever he may think most needful and necessary." Since it included objects not charitable, it failed for indefiniteness.

Appellants' counsel cites the case of *Hyde's Executors vs. Hyde*, 19 Dick. Chan. 6 (64 N. J. Eq. 6). On page No. 10 of this case, Chancellor Magee uses this expression of opinion, "therefore, when the testator adds the words, 'or other,' the clause, looked at by itself, clearly expresses the intention to permit the trustees to devote the fund, if they choose to do so, to purposes other than those which are educational, or religious, or charitable. This view requires a declaration that the gift is void" and was so decided because the trustees were permitted or directed to use the fund for purposes not charitable.

No authority, direct or implied, is given in the will of the testatrix now before this Court to use the fund donated for any purpose not educational or charitable.

Cases cited by counsel of complainant-respondent, *George vs. Braddock*, 45 N. J. Eq. 557, (18 Stew. 557); *Thorntown vs. Howe*, 31 Bevan, 14; *Hyde's Executors vs. Hyde*, 64 N. J. Eq. 6 (19 Dick. Ch. 6); *McBride vs. Elmer's Executor*, 2 Halstead Ch. 107; *Stevens vs. Shippen*, 1 Stew. Eq. 487; *Mason's Executors vs. Trustee, etc.*, 12 C. E. Green. Chan. 47.

Such charities as designated in the will before the Court have been heretofore upheld as charitable bequests, "to promote interests and to aid missionary, educational and benevolent enterprises of a church." *DeCamp vs. Dobbins*, 29 N. J. Eq. 36. Affirmed in

30 N. J. Eq. 671. "For the most deserving poor of the citizen of Paterson" upheld in *Hesketh vs. Murphy*, 35 N. J. Eq. 23, Affirmed in 36 Eq. N. J. Eq. 304. "For the purpose of books upon the philosophy of spiritualism." *Jones vs. Waterford*, 62 N. J. Eq. 339. Affirmed in 64 N. J. Eq. 785. *Glover vs. Baker*, 76 N. H. 393; *Chase vs. Dickey*, 212 Mass. 555; 99 N. E. 410. The Courts in these cases held that the will of Mary Baker Eddy, which gave a part of her estate in trust to be devoted and used for the purpose of promoting and extending the religion of Christian Science as taught by her, created a religious and charitable trust, and was not invalid for want of certainty and definiteness.

On page No. 13, in middle of the page, counsel for appellants asks this question: First, is the bequest or devise contained in the will now before the Court necessarily charitable? My answer to this question is, that that question has been answered no less than twelve times by the decisions in our courts. Second, in case it is deemed to be charitable, is it sufficiently definite, so as to be capable of being executed and the trust supervised or controlled by the Court? Our answer to the second question is that the cases already cited show that the will before the Court is sufficiently definite, and if not sufficiently definite in the details of executing the trust, it can be made specifically definite by the exercise of the judgment and discretion of the trustees in whom the testatrix had unlimited confidence, and if that confidence is abused, the Court where the trust is executed would have the power to restrain any improper use of the trust fund, and could prescribe and direct how the trust funds should be used, and especially how the fund should not be used.

On page No. 14, near the middle thereof, counsel for appellant say the fund might be used for multitude of purposes, not educational or charitable, and then suggest, hypothetically, how it might be used, in a manner not educational or charitable. It is not presumed, or presumable, that trustees would exceed their authority in the use of the funds in an educational and charitable manner, when the will gives no authority for so doing, and if there were any improper application and appropriation of the funds the trustees would be under the controlling power of the court where the trust fund was employed and used.

On page No. 15 in brief of appellant, counsel asks this question, "Who is to be benefited by the bequest? Where is the fund to be expended? When is the fund to be expended? How shall the fund be used?" Our answer to these questions is as follows: Any one and every one, who desires to attend the lectures and the methods of interpreting and teaching metaphysics, are to be benefited by this bequest. The place where the fund is to be expended, may be in this state, or may be in the state of Colorado, where the trustees resided when the decedent's will was made. The fund is to be expended, within a reasonable time, after the trustees become possessed of it. The fund shall be used in accordance with the best judgment and discretion of the trustees, as directed by the testatrix. She had a perfect right to authorize them to use the fund in such a manner as they thought best in teaching and interpreting metaphysical thought. Testatrix has a right to bestow this power upon her trustees, and if this power and authority is not abused, no one has a right to complain.

No one has a right to anticipate wrongdoing on the part of these trustees.

Wherefore, complainant-respondent says the decree of the Court of Chancery should be affirmed with costs.

Respectfully submitted,
LEVERETT NEWCOMB,
For Complainant-Respondent.

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

New Jersey Court of Errors and Appeals 10

Between
VINELAND TRUST COMPANY,
Complainant-Respondent,

and

KATHERINE WESTENDORF and
HELEN CAMPBELL,
Defendants-Respondents,
DANIEL E. DYER and others,
Defendants-Appellants.

November
Term.
No. 142.

20

**MEMORANDUM FOR DEFENDANTS-
RESPONDENTS.**

This is an appeal from a decree made and entered on or about the 12th day of September, 1916, by which it was adjudged that the complainant as substituted administrator c. t. a. of Ellen M. Dyer, deceased, pay over to the defendants-respondents the residue of her estate, and that the portion of her will which reads as follows:

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“On the decease of the said Mrs. Eliza Freeman Spencer, I further give, devise and bequeath all my said estate as it shall then stand, to Mrs. Katherine Westendorf of Denver, Ara-

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10 pahoe County, State of Colorado, Teacher of Vocal Expression and Oratory, and to her friend Mrs. Helen Campbell, Author, to be used jointly by them in the furtherance of the broadest interpretation of metaphysical thought, in whatsoever manner, and by whatsoever means they may jointly consider proper and best,"

is a valid trust of a charitable use and that the trust thereby created is not vague, indefinite nor incapable of being executed and supervised by the Court.

State of the Case.

20 This cause came on to be heard before Vice Chancellor Backes on the bill praying for a construction of the portion of the will above referred to (page 1) and the answers of the trustees (page 9) and the next of kin (page 8, page 20).

30 The complainant and the trustees had witnesses in attendance, but the Court preferred to dispose of the matter on the inspection of the will. The complainant, however, submitted to the Court two pamphlets which we suppose will be before this Court, showing that Miss Dyer was herself conducting an institution which she called "The Aloha Metaphysical School."

It further should be noted that from the will itself it appears that Mrs. Westendorf is a teacher and Mrs. Campbell a writer.

40 The objections urged by the defendants next of kin as appears from their answer and the petition of appeal (page 37) are that the legacy is too vague and indefinite to be capable of execution or supervision by a Court (lines 16-18), and that it is not a trust for charitable purposes (line 25).

Both objections are considered and conclusively disposed of by the Vice Chancellor in his opinion (page 41).

FIRST POINT.

The trust is for a charitable use.

We shall contend that the gift is charitable, both as an educational and as a religious trust. 10

(1) The trust is educational.

As the Vice Chancellor says:

“The fund is to be used for the teaching of metaphysics, the science of being—the science which deals with ultimate reality; the philosophy of mind; the science beyond experience; the realm of transcendental thought and of speculation of the philosophers. The subject is purely and essentially educational. It is a course of study in our colleges and universities” (page 42). 20

The elaborate discussion of the nature of metaphysics contained in the appellant's brief, going back to the time of Aristotle, shows in itself that metaphysics has been the subject of study for ages. 30

That there is divergence in theory and treatment is no reason for denying the right to investigate and to teach. In philosophy, we find realists, idealists and conceptualists, in political economy, free traders and protectionists, in physical science, followers of the inductive and deductive method.

The trust under examination, “to be used in the furtherance of the broadest interpretation of metaphysical thought” is no less educational than the trust sustained in *George vs. Braddock*, 45 N. J. E., 40

757, by this Court. Counsel has referred to this case and distinguishes it on so erroneous a ground that we shall refer to it at some length. The trust there was "for the express purpose of spreading the light on social liberty and justice in these United States of America."

10 This the Court declared to be a charitable trust, as a self evident proposition.

The difficulty was, not in the trust, but in the means which the testator described "The gratuitous, wise, efficient and economically conducted distribution all over the land" of Henry George's books on the land question, particularly Progress and Poverty.

20 Counsel says, at page 9 of his brief, this was a definite purpose, and for that reason good, but the facts were that the vice chancellor had held that as Henry George taught that private ownership of land was robbery, the trust should be declared bad as being immoral. He was reversed on appeal, Chief Justice Beasley carefully pointing out that as the trust was itself good, it is no concern of the Court whether the means appointed by the testator are fit or unfit, good or bad, the best possible or the worst possible.

30 The true test to be applied is stated in a single sentence as being that the trust must not be hostile to religion, to law, or to morals.

To explain further the law, the Chief Justice referred to the cases of Thornton vs. Howe, 31 Beav. 14 a trust to propagate the writings of Johanna Southgate, a foolish woman who by continually brooding upon religious topics had brought herself into the belief that she was divinely ordained to carry out special purposes, had been permitted to hold conversations with the Devil and was with child by the Holy Ghost, and Jackson vs. Phillips, 40 14 Allen, 539, a trust for the creation of a public

sentiment that would put an end to negro slavery in this country, by means of books, lectures "and such other means" in the discretion of the trustees, both of which were held good.

We might add to the cases cited, the later cases of *Haines vs. Allen*, 78 Ind., 100, and *Buell vs. Gardiner*, 83 Misc. (N. Y.), 513, a gift for the suppression of the manufacture and sale of intoxicating liquors, and *Garrison vs. Little*, 75 Ill. App., 452, a gift to be used for the attainment of woman suffrage in the United States. 10

To attain abolition of slavery, nation wide prohibition or suffrage for women would require a constitutional amendment; but in each case the trust was sustained.

Further examples of educational trusts sustained are *Thompson vs. Thompson*, 1 Colly, Ch., 381, the case of a will leaving an annuity to a "literary man, preferably not over fifty years of age," to be selected by the trustees. A codicil provided that it was the object of the testator "to give assistance to a worthy literary person who had not been successful in his career, and as far as possible to enable him to assist in extending the knowledge of those doctrines in the various branches of literature to which I have turned my attention and pen, in order to ascertain what appears to be the truth, and to teach it to those who would listen." 20 30

This was held to be a legal disposition for a charitable purpose.

Peth vs. Spear, 115 Pac., 163 Wash.

A gift of land in trust for the benefit of the membership of an unincorporated association for the purpose of owning and maintaining a community industrial institution and the education of the people in the principles of socialism. 40

Re Kavanaugh's Estate, 126 N. W., 632
Wisc.

Gift to be applied for the benefit of indefinite number of persons by bringing their hearts under the influence of education.

10 (2) The trust is for a religious purpose.

The Vice Chancellor referred to this contention, in his remark that the scope of the investigation was left to the judgment of the trustees to be perhaps "within the narrower sphere of spiritualism or of Christian Science" (page 43).

20 We contended below that "Metaphysical Thought" is one of those new American religions, an out-growth of Christian Science, analogous to the Higher Thought, or the New Thought, which hold in substance, that faith and prayer can triumph over bodily ills. Under the ruling of the Vice-Chancellor, no proof was offered as to the nature of this particular religion other than is to be found in the pamphlets already referred to.

30 If this Court can take judicial knowledge of what "Metaphysical Thought" is, that is an end of the case. To promulgate a new religion is so clearly a charitable trust that as was remarked by Chief Judge Bartlett in a concurring memorandum in the recent case of *People vs. Cole*, 219 N. Y., 98, 112, it is beyond the power of the Legislature to make the healing of disease by prayer a crime.

40 The Courts of New Hampshire (*Glover vs. Baker*, 76 N. H., 393) and Massachusetts (*Chase vs. Dickey*, 212 Mass., 555) have recently had occasion to examine the will of Mrs. Eddy which contained a direction that the residue of her estate "shall be devoted and used by said residuary legatee for the purpose of more effectually promot-

ing and extending the religion of Christian Science as taught by me."

Both Courts held that this was for a religious purpose over the objection that Christian Science is not a religion, and the New Hampshire Court further held that it was also an educational trust.

We therefore submit that the trust in Miss Dyer's will should be sustained as a charitable trust, in its nature both educational and religious. 10

SECOND POINT.

The trust is not indefinite.

It is the essence of a charitable trust that the beneficiaries shall be indefinite, and it is no objection to such a trust that the method of carrying it out should be left to the discretion of the trustees. 20

Counsel very ingeniously suggested in his brief below and will no doubt argue here various methods of carrying out the trust which the trustees might think themselves at liberty to adopt and which would not be within the scope of a charitable trust.

This line of argument was attempted and disposed of in the case of Whicker vs. Hume, 14 Beav., 509 (affd. 1 DeG. M. & G. 506; affd. 7 H. L. C., 124), in which the facts were that a trust was created for the benefit of the advancement and propagation and learning in every part of the world. This was held not too indefinite to be good as a charitable bequest and not to be invalid because it would be difficult to carry it out in other parts of the world. The Court said at page 521: 30

"I am not at all pressed by the argument that it is possible to suggest various modes by which learning may be advanced, which if they 40

had been specified, could not be called properly charitable requests, because I think the Court would consider the true intent of the testator and that if it found that the trustees carrying the bequest into effect in a manner which the Court thought was not for the advancement of learning in the proper sense of the term it would prevent their so doing.”

10

In the House of Lords the Lord Chancellor said at page 154:

20

“If there are two meanings of a word, one of which will effectuate and the other will defeat a testator’s object, the Court is bound to select the meaning of the word which will carry out the intentions and object of the testator.”

In the case of *Matter of Robinson*, 203 N. Y., 380, the Court said, at page 388:

30

“It is doubtless true that the paragraph of the will by which the trust is attempted to be created is susceptible of more than one construction, but a construction which is fairly within the rules of law and that sustains the trust and devotes the fund included therein to purposes permitted by law and to the good of humanity, should be preferred.”

The fact that the fund is given to trustees to be used in their discretion removes the objection of indefiniteness.

Re Dulles, 218 Penn., 162;
Minot vs. Baker, 147 Mass., 348;
Going vs. Emery, 16 Pick., 107.

40

In *Johnson vs. Bowen*, 85 N. J. E., 76, this Court said:

“The fact that the beneficiaries must be indefinite distinguishes the charitable trust sharply from the private trust, and charitable trusts are treated with much greater leniency by the courts of equity than are private trusts; and so friendly is equity to a charitable trust that it will stretch its powers to sustain and carry out a charitable trust. Any person capable of taking and holding real and personal property may be a trustee, including aliens and married women, and a statute requiring trustees to be residents of the state is unconstitutional. * * * The testator vests his executors and the municipal authorities of Logansport with discretion as to carrying out his charitable intent and this is sufficient.” 10

In *Chase vs. Dickey*, 212 Mass., 565, above referred to, the trust under Mrs. Eddy’s will was attacked as too indefinite, but the Court said:

“The promotion of the religion of Christian Science is as definite as many donations which have been upheld as public charities. Relief of spiritual destitution, religious or moral ignorance, intolerance or perversity, is a good public trust. * * * Christian Science as a denomination of christianity may be assumed to be no more difficult of ascertainment than many other sects.” 30

In *Hyde’s executor, vs. Hyde*, 64 N. J. E., 6, although the decision was against the validity of the trust, the Court holds as well-settled law that a gift for a charitable use will not fail of effect 40

because the donor has not pointed out the particular beneficiaries to whom he wishes his bounty to go, provided he has endowed some person with express or implied power to select them. The power to dispense carries with it the power to select.

10 Upon the foregoing authorities as well as those cited by the Vice Chancellor in his opinion, page 43, we submit that the bequest is not invalid for indefiniteness.

THIRD POINT.

Counsel's Citations of New Jersey Law do not Support his Contentions.

20 George vs. Braddock we have already discussed. Instead of being readily distinguishable it is a controlling authority against him.

School Trustees of Hoboken vs. Hoboken, a case involving the gift of land and money for a school contains the statement quoted by counsel, with which we have no quarrel. But it does not aid him in his argument.

30 Morristown Trust Company vs. Morristown, as appears from counsel's statement involved two trusts, one of which was obviously bad, as being private, and the other was held to have lapsed by reason of the legatee, an association, having dissolved within a year of the probate of the will, having thereby refused the gift, the Court finding that it was intended that the gift should be administered by that particular association.

Thompson vs. Norris is clearly distinguishable. The gift was for *benevolent*, religious or charitable institutions and was therefore bad.

40 Livesey vs. Jones was for religious, moral and social purposes, clearly too broad.

Hyde's Extr. vs. Hyde involved a gift for religious charitable or educational *or other* purposes. It was, of course, held void. The Court however, gave a very clear statement of what would be a good trust, to which we called attention under our last point.

FOURTH POINT.

10

The decree appealed from should be affirmed with costs.

Respectfully submitted,

ROBERT H. SOUTHARD,
Solicitor for Defendants-Respondents.

JOHN O. BIGELOW,
GEORGE H. GILMAN,
of Counsel.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

VINELAND TRUST COMPANY,
Complainant-Respondent,
VS.
KATHARINE WESTENDORF,
et al.,
Defendants-Respondents,
AND
DANIEL E. DYER, *et al.,*
Defendants-Appellants.

APPEAL FROM
CHANCERY.

BRIEF OF COMPLAINANT-RESPONDENT.

ARGUMENT.

The appellants' brief beginning on page No. 3, and ending at bottom of page No. 8, appears to be only historical and speculative, and not argumentative or authoritative, and, therefore, we pass it over without special comment.

On page No. 9 of appellants' brief, counsel states that it appears to be unnecessary to refer to any cases outside of this state, "as the subject has been very thoroughly treated by the Courts of our state." In this expression of opinion we concur.

FIRST POINT.**The Bequest and Devise of the Testatrix in This Case Creates a Charitable Trust.**

Because the decedent's estate is to be used for the advancement of education for the benefit of the public in a valuable science and branch of learning taught in all our leading colleges and universities.

The first case cited by appellant's counsel is the case of *George vs. Braddock*, 18 Stewart, 757 (45 N. J. Eq. 757).

We contend that this case alone and cases therein cited are ample and sufficient to establish the validity of the decedent's will in every respect, now in controversy before this Court.

On page 759 of this case, the language of Chief Justice Béasley is as follows: "The testator's direction is that the property designated by him shall constitute a sacred trust for the express purpose of spreading the light on social and political liberty and justice in these United States of America."

Metaphysics is a science and branch of learning prescribed in the regular curriculum of Harvard, Yale and Princeton, and all the other leading colleges in the United States, as part of the course of study for the senior classes, and must be considered educational and a donation by bequest or devise which has for its object the elucidation and advancement of this branch of education for the general good of the public must be considered charitable.

In the case of *Jackson vs. Philips*, reported in 14 Allen, 539, dealt with a controversy relating to a charitable use, the bequest being of a fund to trustees, "to be expended at their discretion in such

sums, at such times, and such places, as they may deem best for the preparation and circulation of books, newspapers, the delivery of speeches, lectures, and such other means as, in their judgment, will create a public sentiment that will put an end to negro slavery in this country."

The decision of the Court in its own language, was (on page 566): "The bequest itself manifests its immediate purpose to be to educate the whole people upon the sin of man holding his fellow man in bondage; and its ultimate object, to put an end to negro slavery in the United States; in either respect a lawful charity."

In the case of *Thornton vs. Howe* (31 Bevan, 14); *McBride vs. Elmer's Executors*, 2d Halstead's Chancery, 107; case of *Stevens vs. Shippen*, 1st Stew. Eq. 487; *Mason's Executors vs. Trustee, &c.*, 12 C. E. Green Chan. 47; support the contention that a devise and bequest of testatrix constitutes a charitable use.

Such charities as created by the will before this Court have been sustained as charitable bequests by the decisions in the state of New Jersey.

In the case of *DeCamp vs. Dobbins*, 2 Stew. Chan. (29 N. J. Eq.) 36. This was a devise and bequest "to promote interests to aid missionary, educational and benevolent enterprises of a church." Which case was affirmed the 31 N. J. Eq. 671.

In the case of *Jones vs. Waterford*, 62 N. J. Eq. 339, was "for the purpose of books upon the philosophy of spiritualism." This case was affirmed in 64 N. J. Eq. 785, and was held to be for a charitable use.

In the late case of *Glover vs. Baker*, 76 N. H. 393, and in the case of *Chase vs. Dickey*, 212 Mass. 555 (99 N. E. 410). The Courts in these cases held that

the will of Mary Baker Eddy, which gave part of her estate in trust to be devoted and used for the purpose of promoting and extending the religion of Christian Science as taught by her, created a religious and charitable trust and was not invalid for want of certainty and definiteness.

SECOND POINT.

The Bequest and Devise is Sufficiently Definite According to the Case of George vs. Braddock, 18 Stewart, 760 (middle of page).

“It matters not in the least to judicial inquiry, whether the instrumentalities appointed by the donor, to fulfil his purpose, be good, or bad, fit or unfit; whether they be the best possible, or the worst possible. In this particular the largest discretion resides, and properly resides, in the creator of the trust.”

McBride vs. Elmer, 2 Halstead Chan. (6 N. J. Eq.) 167.

This was a bequest to the Bridgeton trustees for free schools, but there were no such parties, but there were trustees of public schools for the city of Bridgeton, and the Court upheld the trust and appointed the trustees of the public schools of Bridgeton, thereby adopting the rule of *cy pres*, and upheld the bequest as charitable. “For the benefit of poor children without regard to denomination or color.”

McKenzie vs. Trustees of Presbytery of Jersey City, 1 Robbins Chan. (67 N. J. Eq.) 652, and on page 673, at middle of page, the language of the Court of

Errors is as follows: "The judicial doctrine of *cy pres* as defined and applied to charities, may have, we think a proper place in the jurisprudence of this state." And the doctrine of *cy pres* was employed in the decision of the Court of Errors in this case.

Huspeth vs. Murphy, 8 Stew. Chan. (35 N. J. Eq.) 23. "The annual income to be used for relief of most deserving poor of the city of Paterson forever without regard to color or sex," affirmed in 36 N. J. Eq. (9 Stew. Chan.) 304, held to be a valid and charitable use, and cases there cited.

"The power to dispense the fund carries with it by implication the power to select the beneficiaries."

Nichols vs. Newark Hospital, N. J. Chancery, 63 Atlantic Reporter, 621. This was a case where funds were given to a hospital association organized in 1857, P. L. 44, which association was incapable of doing the work for which it was organized. Held that the devise would be paid to another hospital in the same city having the same objects in view under the doctrine *cy pres*.

Trenton Society vs. Howell, N. J. Chancery, 63 Atlantic Reporter, 1110. "A devise to an association of a sum to be invested and applied to relieving the deserving poor, as the association had been accustomed to do, gave power to determine the beneficiaries."

Lanning vs. Commissioners of Public Instruction, 18 Dick. Chan. (63 N. J. Eq.) page 1. In this case it was held "that in substituting another trustee the Court may determine who, in addition to the teachers, pupils, apprentices and mechanics, shall be admitted to the benefits of the trust, on principles deducible from the intent of the testator in creating the trust."

THIRD POINT.

There is no Reason to Doubt That This Educational Charity can be Executed by the Trustees Selected by the Testatrix, and in Case of Their Disability or Death Other Trustees can and Will be Appointed by the Court to Supply the Place of the Original Trustees.

The Court of Chancery is a guardian of all trusts and charities, and on application to this Court may prescribe, what the trustees of a charitable fund may do, or what they may not do.

The same rule applies to the Courts of other states having equity jurisdiction.

Perry on Trusts, Sec. 17;

Speakman vs. Tatum, 3 Dick. Chan. 136;
affirmed in 5 Dick. Chan. 484.

In the case of *Jackson vs. Philip*, 14 Allen, 529, the means to be employed to accomplish the desired end was quite uncertain and indefinite and was left largely to the discretion and judgment of the trustees, and yet was held to be sufficiently certain and definite to establish a lawful charity.

So in the case before the Court, the means to be employed to accomplish the end and result desired is left discretionary with the trustees, who are to employ the fund and use it for the educational and charitable purposes directed by the testatrix.

Counsel for the appellants quote the case of *Morristown Trust Company vs. Morristown*, 82 N. J. Eq. 521. This was not a charity, and, therefore, was decided unlawful because it attempted to establish a perpetuity not charitable.

Counsel for the appellants quote the case of *Livesey vs. Jones*, 55 N. J. Eq. 204. This was a bequest or devise to quote the text of the will, "for the promotion of the religious, moral and social welfare of the people in any locality whenever and wherever he may think most needful and necessary." Since it included objects not charitable it failed for indefiniteness.

Appellants' counsel cites the case of *Hyde's Executors vs. Hyde*, 19 Dick. Chan. 6 (64 N. J. Eq. 6). On page number ten of this case, Chancellor McGee uses this expression of opinion: "therefore, when the testator adds the words, or other, the clause, looked at by itself, clearly expresses the intention to permit the trustees to devote the fund, if they choose to do so, to other purposes than those which are educational, or religious, or charitable. This view requires a declaration that the gift is void." And it was so decided because the trustees were permitted or directed to use the fund for purposes not charitable.

No authority, direct or implied, is given in the will of the testatrix now before this Court to use the fund donated for any purpose not educational or charitable.

ARGUMENT.

On page 14 of appellants' brief, near the middle thereof, counsel say the fund might be used for a multitude of purposes, not educational or charitable, and then suggest, hypothetically, how it might be used, in a manner not educational or charitable.

It is not to be presumed, that the trustees would

exceed their authority in the use of the fund, when the will gives no authority for so doing.

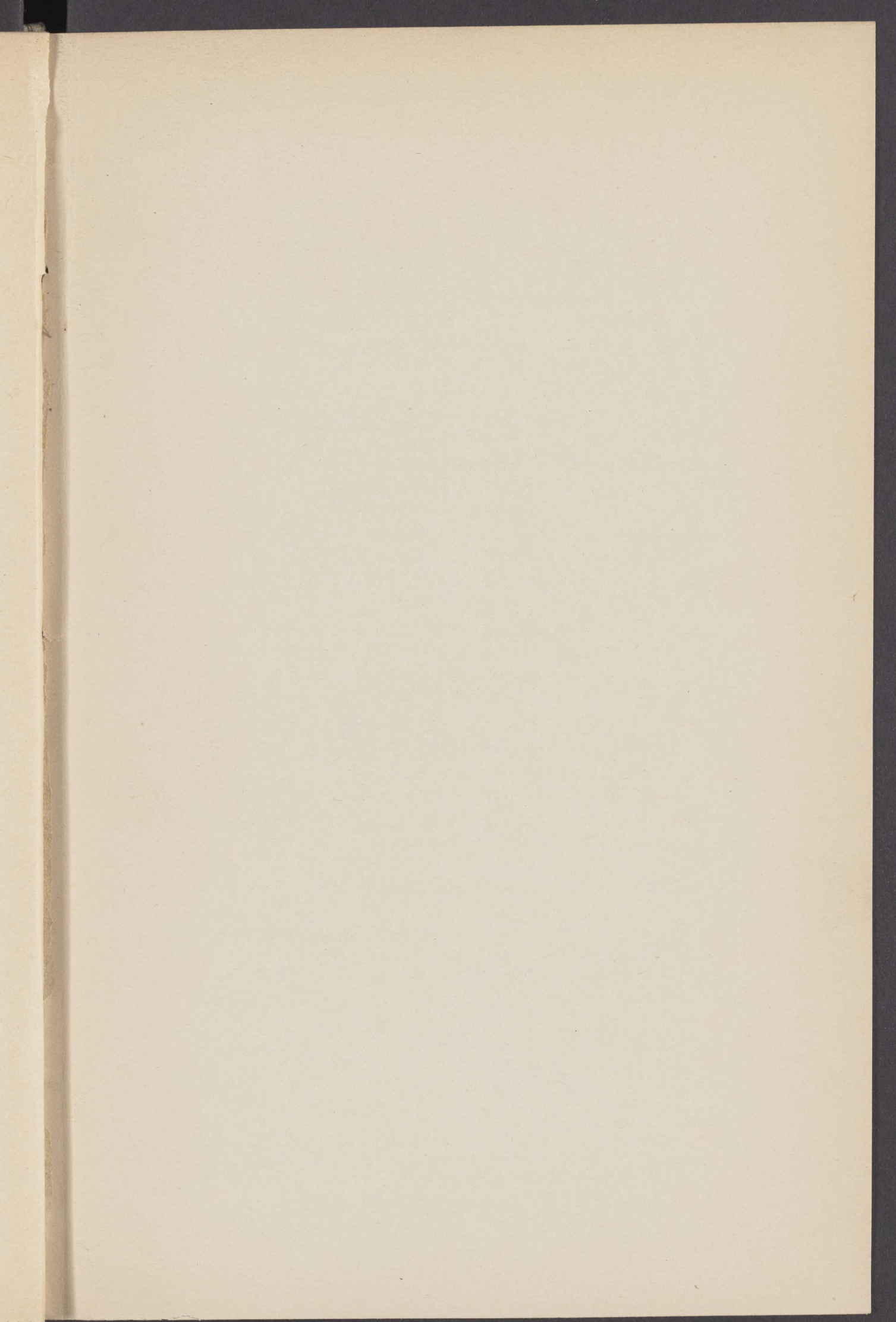
On page number fifteen of appellants' brief, counsel asks this question, "Who is to be benefited by the bequest? Where is the fund to be expended, when is the fund to be expended? How shall the fund be expended?"

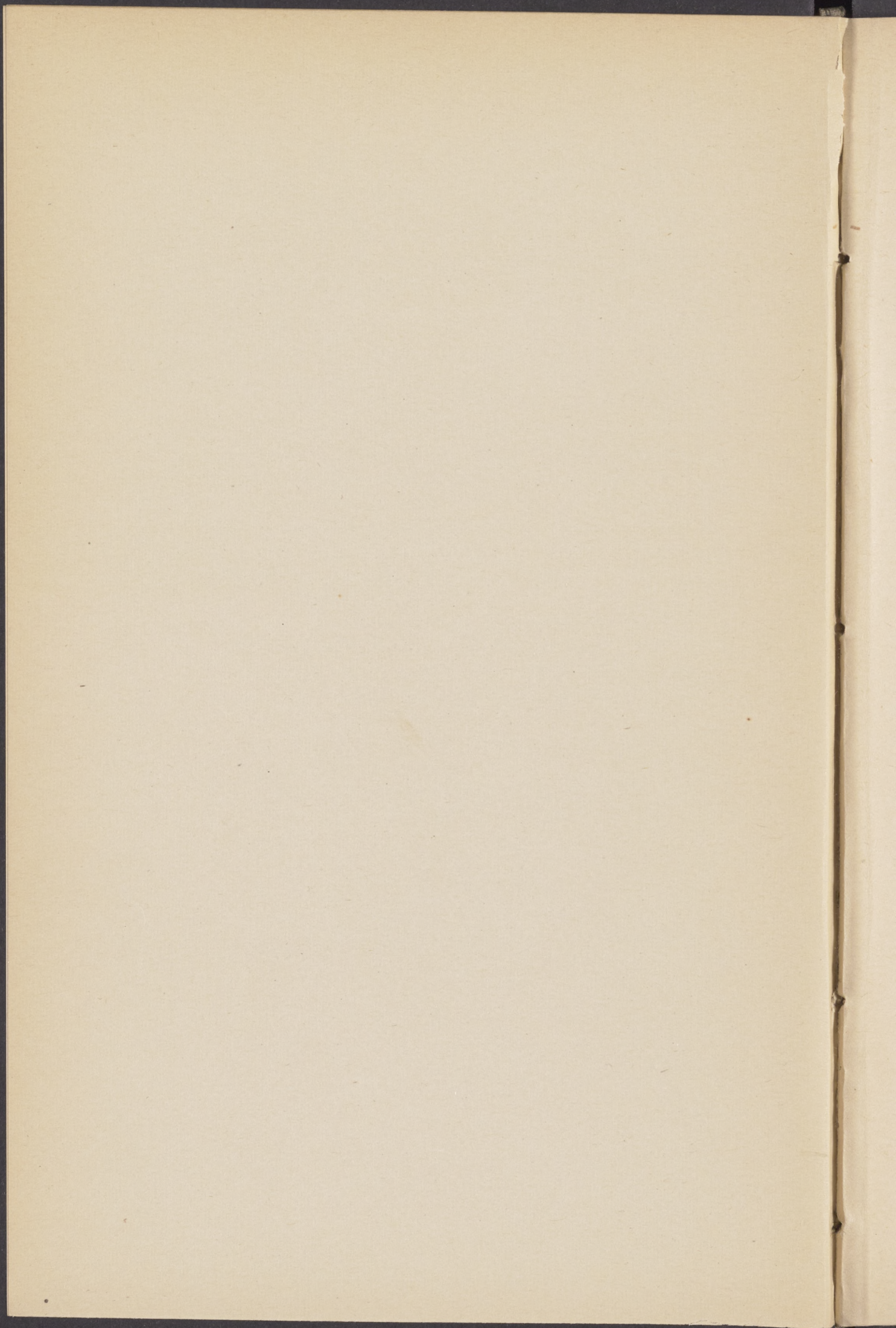
Our answer to these questions is as follows: Anyone and everyone who desires to attend the lectures and avail themselves of the methods of interpreting and teaching metaphysics, are to be benefited by the bequest. The place where the fund is to be expended may be in this state, or may be in the state of Colorado, where the trustees resided when the decedent's will was made. The fund is to be expended within a reasonable time. The fund will be used in accordance with the best judgment and discretion of the trustees, as directed by the testatrix. She had a perfect right to authorize them to use the fund in such a manner as they thought best in teaching and interpreting metaphysical thought. Testatrix had a right to bestow this power upon her trustees and if this power and authority is not abused, no one has a right to complain.

And no one has a right to anticipate wrongdoing on the part of these trustees.

Wherefore, complainant-respondent says the decree of the Court of Chancery should be affirmed with costs.

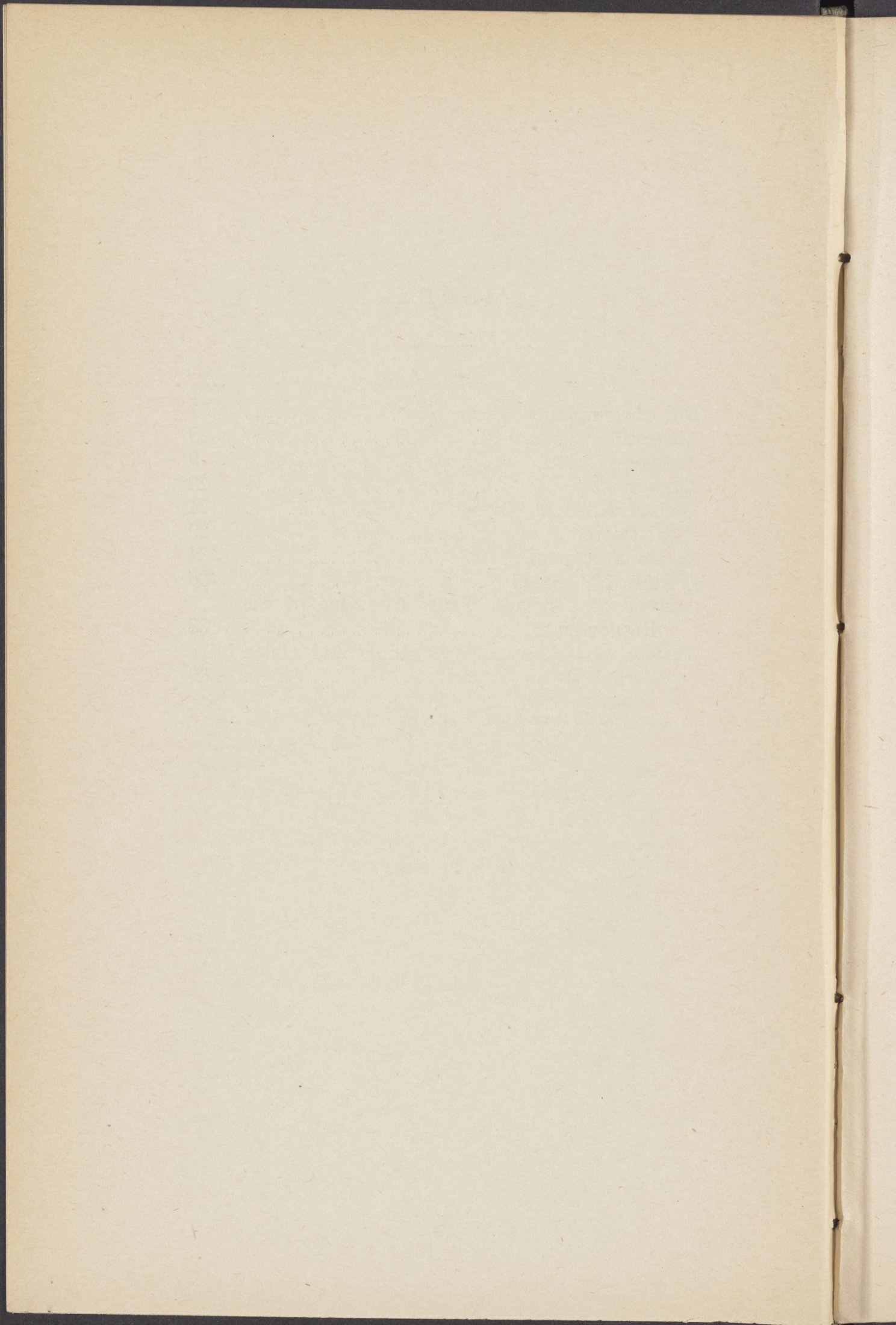
Respectfully submitted,
LEVERETT NEWCOMB,
For Complainant-Respondent.





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BILL OF COMPLAINT.

(Filed May 1, 1915)

IN CHANCERY OF NEW JERSEY.

*To his Honor, Edwin Robert Walker, Chancellor of
the state of New Jersey:*

10

Humbly complaining unto your Honor, your orator, Vineland Trust Company, shows, charges and avers as follows:

1. That your orator is a corporation organized under the laws of the state of New Jersey, doing business in the borough of Vineland, county of Cumberland, and state of New Jersey, and authorized, by its certificate of incorporation and the laws of said state, to act as administrator, and execute trusts of that character. 20

2. That on or about the tenth day of September, nineteen hundred three, Ellen M. Dyer, who, at that time, resided in the borough of Vineland, departed this life, first having made a last will and testament, which was duly proved and probated in the office of the Surrogate of Cumberland County on the twenty-fourth of September, nineteen hundred three, a true copy of which will hereto annexed, made part hereof and marked Exhibit 1, to which reference is hereby made. 30

3. That the said will gave to Mrs. Eliza Freeman Spencer, of Vineland aforesaid, a life estate in the property of said decedent, both real and personal,

with a proviso that after the death of the said Eliza Freeman Spencer the said property should go to and vest in Mrs. Katherine Westendorf, of Denver, Colorado, and Mrs. Helen Campbell, of Boston, Massachusetts, to be used by them in accordance with the terms of said will.

4. That on the thirty-first of March, nineteen hundred fourteen, Eliza Freeman Spencer, the life tenant
10 ant of said estate, departed this life, first having made a last will and testament, in which she appointed Benjamin Stevens, of Vineland aforesaid, executor.

5. That on or about the ninth day of December, nineteen hundred fourteen, your orator was appointed substituted administrator of the last will and testament of Ellen M. Dyer, deceased, and duly qualified as such administrator, and has undertaken
20 the burden of the administration of said estate, and is now in the active discharge of its trust.

6. The estate of the said Ellen M. Dyer, at the time of the death of the said Eliza Freeman Spencer, consisted of real estate located in the borough of Vineland aforesaid, worth approximately the sum of eighteen thousand dollars, and personal property of the value of three thousand dollars, which said personal property will, upon the settlement of the
30 accounts of the said Benjamin Stevens, executor of the said Eliza Freeman Spencer, come into the hands of your orator for distribution, under the terms of the will of the said Ellen M. Dyer.

7. Your orator is informed that the next of kin are as follows: Daniel E. Dyer, Charles Dyer Paine,

Phoebe E. Horner, Mabel S. Dyer, Charles E. Dyer, Wilhemina Dyer, Harvey S. Dyer and Arthur C. Dyer; and they are represented by Frank C. Bray, an attorney at law of Vineland, and Henry S. Alvord, an attorney of the same place.

8. The said next of kin, by their respective attorneys, have contended and now contend that the gift and devise to the said Katherine Westendorf and Helen Campbell, or any trust created by said will in their favor, was and is null and void and inoperative, for the reason that the said bequest is not a charity, and the purpose for which the same is created is illegal and null and void, and the said trust and said purpose are too vague, uncertain and indefinite to be fulfilled, performed and enforced, and that by reason thereof the said Katherine Westendorf and Helen Campbell are not entitled to receive from your orator the said personal estate of the said testatrix for any purpose whatever or for their own benefit but that a proper interpretation of said will requires that the said estate should be distributed by your orator to the next of kin of the said Ellen M. Dyer.

9. On the other hand, the said Katherine Westendorf and Helen Campbell contend and demand of your orator that the personal estate of the said Ellen M. Dyer be paid to them by your orator under the terms of said will, and that the bequest to them, contained in said will, is perfectly valid and legal and capable of being enforced, and is not void for any reason whatever.

10. For the reasons above stated, your orator is unable to proceed with the administration of said es-

tate and final distribution thereof with respect to the personal property, and is uncertain as to the meaning of the terms of said will regarding the matters and things above set forth and cannot safely proceed in the premises without the construction and interpretation of said will and the aid of this Honorable Court in the premises, where matters of this kind are cognizable and relievable.

- 10 To the end, therefore, that the said Katherine Westendorf and Helen Campbell, and Daniel E. Dyer, Charles Dyer Paine, Phoebe E. Horner, Mabel S. Dyer, Charles E. Dyer, Wilhemina Dyer, Harvey S. Dyer and Arthur C. Dyer may, but without oath, full, true and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they and each of them distinctly interrogated thereto, and that they and each of them may set forth and assert
- 20 their particular claims and demands as persons interested as legatees and devisees under said will or as next of kin of the said Ellen M. Dyer, with respect to the matters and things above set forth; and that the said will may be construed and interpreted, so far as it relates to the disposition, after the death of the said Eliza Freeman Spencer, of the personal property in the hands of your orator, and that it may be ascertained and determined what disposition your orator shall make of the personal property in
- 30 the hands of your orator, and whether or not the same should be distributed and paid to the said Katherine Westendorf and Helen Campbell under the terms of said will, or whether the devise and bequest to them is null and void for any reason, and that distribution should be made of said balance as if the said Ellen M. Dyer had died intestate thereof,

and that it may be determined whether the bequest to the said Katherine Westendorf and Helen Campbell "to be used jointly by them in the furtherance of the broadest interpretation of metaphysical thought, in whatsoever manner, and by whatsoever means they may jointly consider proper and best," as set forth in said will, is a valid and lawful disposition of said property, both real and personal; and that your orator may have such other and further relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience. 10

May it please your Honor, the premises considered, to grant unto your orator the state's writ of subpoena issuing out of and under the seal of this Honorable Court, to be directed to the said Katherine Westendorf and Helen Campbell, and Daniel E. Dyer, Charles Dyer Paine, Phoebe E. Horner, Mabel S. Dyer, Charles E. Dyer, Wilhemina Dyer, Harvey S. Dyer and Arthur C. Dyer, defendants, 20 commanding them and each of them by a certain day and under a certain penalty therein expressed, 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, abide by and perform such order or decree therein as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

30

*Solicitor for and of Counsel with
Vineland Trust Company.*

I, Ellen M. Dyer, of Vineland in the County of Cumberland, and State of New Jersey; do make, publish, and declare this my last will and testament, as follows, to wit:

After the payment of all my just debts and funeral expenses, I give devise and bequeath all my property both real and personal, wheresoever situate, **and** whatever the same may be, to Mrs. Eliza Freeman
10 Spencer, of Vineland, Cumberland County, State of New Jersey, for her use of the interest and income thereof accruing, during the term of her natural life, with the full and free use of the homestead and all its appurtenances, and I authorize and empower her to make such changes in the investment and disposition of the principal or any part thereof as may seem to her advantageous to the estate, and also empower her to dispose of clothing and personal effects belonging to the home, at such time and in
20 such manner as she, the said Mrs. Eliza Freeman Spencer may see fit.

On the decease of the said Mrs. Eliza Freeman Spencer, I further give devise and bequeath all my said estate, as it shall then stand, to Mrs. Katherine Westendorf, of Denver, Arapahoe County, State of Colorado, Teacher of Vocal expression and oratory and to her friend Mrs. Helen Campbell, Author, to be used jointly by them in the furtherance of the broadest interpretation of metaphysical thought in
30 whatsoever manner, and by whatsoever means they may jointly consider proper and best, authorizing them to sell and convey any and all real estate and use the proceeds thereof for the above purposes.

I hereby nominate and appoint Mrs. Eliza Freeman Spencer, executrix of this my last will and testament and it is my will that my said executrix shall

not be required to give any bond for the discharge of said trust.

In Witness Whereof, I have hereunto set my hand and seal this seventeenth day of August, in the year of our Lord, one thousand eight hundred and ninety eight, hereby revoking all former wills by me made.

Ellen M. Dyer, (SEAL)

Signed, published and declared by the testatrix to be her last will and testament, in the presence of us, who were all present at the said time, and subscribed our names as witnesses hereto in the presence of the testatrix, and of each other 10

Benjamin F. Ladd.

James C. Parkinson.

Thomas B. Steele.

Cumberland County, ss:

JAMES C. PARKINSON, witness to the within will being duly sworn did depose and say, that he saw Ellen M. Dyer the testatrix therein named, sign and seal the same, and heard her publish, pronounce and declare the within writing to be her last will and testament, and that at the doing thereof the said testatrix was of sound and disposing mind and memory; as far as this deponent knows and as he verily believes; and that Benjamin F. Ladd and Thomas B. Steele the other subscribing witnesses were present at the same time and signed their names as witnesses to the said will, together with this deponent in the presence of the testatrix. 20 30

James C. Parkinson.

Sworn and subscribed before me at Bridgeton this 24th day of Sept. A. D. 1903.

Frank C. Bray, Surrogate.

ANSWER.

IN CHANCERY OF NEW JERSEY.

10	BETWEEN VINELAND TRUST Co., <i>Complainant,</i> AND KATHERINE WESTENDORF, <i>et</i> <i>al.,</i> <i>Defendants.</i>	}	ON BILL, &c. ANSWER.
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20 The answer of the defendants, Daniel E. Dyer, Charles Dyer Paine, Phoebe F. Horner, Mabel S. Dyer, Charles E. Dyer, Wilhelmina Dyer, Harvey S. Dyer and Arthur C. Dyer, to the counter-claim of defendants, Katherine Westendorf and Helen Campbell.

These defendants, Daniel E. Dyer, *et al.*, as heirs-at-law of Ellen M. Dyer, deceased, answering the counter-claim of the said defendants, Katherine Westendorf and Helen Campbell, say that:

30 1. Paragraphs 1 to 4 inclusive, are admitted, subject to the right of these defendants to produce documents for greater certainty.

2. Paragraph 5 is denied.

3. Paragraph 6 is admitted.

HENRY S. ALVORD,
Solicitor for Defendants,
Daniel E. Dyer, et al.

ANSWER.

IN CHANCERY OF NEW JERSEY.

BETWEEN		
VINELAND TRUST COM-		
PANY,		10
<i>Complainant,</i>		
AND		
KATHERINE WESTENDORF,		
HELEN CAMPBELL, DAN-	ON BILL, &c.	
IEL E. DYER, CHARLES		
DYER PAINE, PHOEBE E.	ANSWER.	
HORNER, MABEL S.		
DYER, CHARLES E. DY-		
ER, WILHELMINA DYER,		20
HARVEY S. DYER and		
ARTHUR C. DYER,		
<i>Defendants.</i>		

The answer of Katherine Westendorf and Helen Campbell to the bill of complaint of Vineland Trust Company, substituted administrator, with the will of said Ellen M. Dyer, deceased, annexed.

These defendants, answering the bill of complaint 30 in the above-entitled cause for answer, say:

1. These defendants admit that complainant is a corporation organized under the laws of the state of New Jersey, doing business in the borough of Vineland, county of Cumberland and state of New

Jersey, and authorized by its certificate of incorporation and the laws of said state, to act as administrator and execute trusts of that character.

2. These defendants further admit that on or about the tenth day of September, nineteen hundred and three, said Ellen M. Dyer, who, at that time, resided in said borough of Vineland, departed this life, first having made a last will and testament, 10 which was duly proved and probated in the office of the surrogate of Cumberland County on the twenty-fourth of September, nineteen hundred three, a true copy of which will is annexed to the said bill of complaint, made part thereof, and marked Exhibit 1, to which reference is thereby made.

3. These defendants further admit that said will contained a devise and bequest to these defendants 20 of some such purport and effect as in the 3rd paragraph of said bill of complaint alleged, but as to the exact purport and effect of which these defendants beg leave for greater certainty to refer to the original of said will or a duly authenticated copy thereof to be produced.

4. These defendants further admit that on the thirty-first day of March, nineteen hundred fourteen, said Eliza Freeman Spencer, the life tenant 30 of said estate, departed this life, first having made a last will and testament, in which she appointed Benjamin Stevens, of Vineland, aforesaid, in said bill of complaint mentioned, executor.

5. These defendants further admit that on or about the ninth day of December, nineteen hundred

fourteen, said complainant, Vineland Trust Company, was appointed substituted administrator of the last will and testament of Ellen M. Dyer, deceased, aforesaid, and duly qualified as such administrator and has undertaken the burden of the administration of said estate, and is now in the active discharge of its trust.

6. These defendants further admit that they are informed and believe and therefore admit, that the estate of the said Ellen M. Dyer, at the time of the death of the said Eliza Freeman Spencer, included real estate located in the borough of Vineland, aforesaid, worth approximately the sum of eighteen thousand dollars, and personal property of the value of at least three thousand dollars, which said personal property should upon the settlement of the accounts of said Benjamin Stevens, executor of said Eliza Freeman Spencer, in whose hands it now is, be distributed under the terms of the will of the said Ellen M. Dyer.

7. These defendants further admit that the next of kin of said Ellen M. Dyer, deceased, are as follows: Daniel E. Dyer, Charles Dyer Paine, Phoebe E. Horner, Mabel S. Dyer, Wilhelmina Dyer, Harvey S. Dyer and Arthur C. Dyer; and that they are represented by Frank C. Bray, an attorney at law, of Vineland, and Henry S. Alvord, an attorney of the same place, as these defendants are informed and believe.

8. These defendants further admit that the said next of kin have made and do make some such contentions as in paragraph 8th of said bill of complaint mentioned to the purport that, for the

reasons therein mentioned or for some other reasons, said bequest and devise to these defendants is null, void, inoperative and illegal and that, therefore, these defendants are not entitled to receive said personal estate but that the said estate should be distributed to the next of kin of the said Ellen M. Dyer, as to the exact nature, purport and reasons of which contentions these defendants are not more particularly informed.

10

9. These defendants further admit that they contend and demand that the personal estate of the said Ellen M. Dyer be paid to them under the terms of her said will and that the bequest to them, contained in said will, is perfectly valid and legal and capable of being enforced, and is not void for any reason whatever.

10. These defendants further admit that for the reasons in said bill of complaint stated or for some such reasons, said complainant is unable to proceed with the administration of said estate, and final distribution thereof with respect to the personal property, and is uncertain as to the meaning of the terms of said will regarding the matters and things as in paragraph 10th of said bill of complaint mentioned and cannot safely proceed in the premises without the construction and interpretation of said will and the aid of this Honorable Court in the premises where matters of this kind are cognizable and relievable.

And these defendants, Katherine Westendorf and Helen Campbell, by way of cross bill exhibited against complainant, Vineland Trust Company, as substituted administrator of the goods, chattels

and credits which were of Ellen M. Dyer, deceased, in said bill of complaint named, with her will annexed and also against Daniel E. Dyer, Charles Dyer Paine, Phoebe E. Horner, Mabel S. Dyer, Charles E. Dyer, Wilhelmina Dyer, Harvey S. Dyer, and Arthur C. Dyer and each of them, both as heirs-at-law and next-of-kin of said Ellen M. Dyer, deceased, and also against Benjamin Stevens, as executor of the last will and testament of Eliza Freeman Spencer, deceased, in said bill of complaint named, 10
say:

1. On the 10th day of September, 1903, said Ellen M. Dyer, then of Vineland, in the county of Cumberland and state of New Jersey, died, having first duly made and published her last will and testament, a copy of which is hereto annexed and marked "Schedule A," and made part hereof, in and by which she did, among other things provide, that

"After the payment of all my just debts and 20
funeral expenses, I give, devise and bequeath
all my property, both real and personal, where-
soever situate and whatever the same may be,
to Mrs. Eliza Freeman Spencer, of Vineland,
Cumberland County, State of New Jersey, for
her use of the interest and income thereof ac-
cruing during the term of her natural life,
with the full and free use of the homestead and
all its appurtenances, and I authorize and em-
power her to make such changes in the invest- 30
ment and disposition of the principal or any
part thereof, as may seem to her advantageous
to the estate, and also empower her to dispose
of clothing and personal effects belonging to
the home, at such time and in such manner as
she, the said Mrs. Eliza Freeman Spencer, may
see fit.

10 “On the decease of the said Mrs. Eliza Freeman Spencer, I further give, devise and bequeath all my estate, as it shall then stand, to Mrs. Katherine Westendorf, of Denver, Arapahoe County, State of Colorado, Teacher of Vocal Expression and Oratory and to her friend Mrs. Helen Campbell, Author, to be used jointly by them in the furtherance of the broadest interpretation of metaphysical thought in whatever manner and by whatsoever means they may jointly consider proper and best, authorizing them to sell and convey any and all real estate and use the proceeds thereof for the above purposes”;

and did further appoint said Eliza Freeman Spencer, executrix of said will.

20 2. Thereafter, said will of Ellen M. Dyer, deceased, was duly proved in the office of the surrogate of said Cumberland County and letters testamentary issued thereon to said executrix, who duly qualified and took into her possession and control real property of which said Ellen M. Dyer, died seized and entitled of the value of some eighteen thousand dollars and upwards, situated in the borough of Vineland, in the county of Cumberland and state of New Jersey, bounded and described as follows, to wit:

30 “Tract No. 1. Situate on the South side of Landis Avenue, ninety-three feet West of Sixth Street, with a frontage of thirty feet westwardly and extending thence at right angles thereto, between parallel lines in length or depth Southwardly one hundred and fifty feet; together with a right of way therefrom Westwardly and Southwardly ten feet wide to Elmer Street.

“Tract No. 2. Situate on the North side of Landis Avenue, beginning four hundred feet Eastwardly from the center of the West Jersey Railroad; thence extending eastwardly on Landis Avenue forty-two feet and at right angles thereto between parallel lines in length or depth northwardly one hundred and ten feet, together with a right of way along the East line of said land from the rear thereof southwardly to Landis Avenue.

10

“Tract No. 3. Beginning at the intersection of the northerly side of Wood Street with the Westerly side of Seventh Street; thence westwardly along Wood Street one hundred feet and extending thence at right angles thereto between parallel lines in length or depth northwardly one hundred and fifty feet.”;

and also personal property of which said Ellen M. Dyer, died possessed and entitled of the value of some three thousand dollars and upwards.

20

3. Subsequently said Mrs. Eliza Freeman Spencer died on the 31st day of March, 1914, then of Vineland, in the county of Cumberland and state of New Jersey, aforesaid, possessed of said real and personal property, leaving a last will and testament in which she named said Benjamin Stevens, of Vineland, aforesaid, executor, who, thereafter duly proved the said will of said Eliza Freeman Spencer, deceased, before the surrogate of said county of Cumberland, qualified, received letters testamentary thereon and took upon himself the burden of the execution thereof, and took into and has in his possession said personal property of the value of some three thousand dollars and upwards.

30

4. Subsequently, on the 9th day of December, nineteen hundred fourteen, said Vineland Trust Company was duly appointed by the Orphans' Court of said county of Cumberland, substituted administrator of the goods, chattels and credits which were of said Ellen M. Dyer, deceased, with her will annexed, and has duly qualified and taken upon itself the burden of such administration.

10 5. On the decease of said life tenant Mrs. Eliza Freeman Spencer, these defendants, Katherine Westendorf and Helen Campbell, as such devisees and legatees under said will of Ellen M. Dyer, deceased, entered upon and ever since have been and now are in the open, notorious and peaceful possession of said real property of the estate of said Ellen M. Dyer, deceased, without question, dispute or adverse claim by any one except for the actings, doings, pretences and claims of said defendants, heirs-at-law
20 of said Ellen M. Dyer, deceased, hereinafter mentioned.

6. The said Ellen M. Dyer, left her surviving as her heirs-at-law and next of kin the said defendants, Daniel E. Dyer, of Malden, in the county of Middlesex and state of Massachusetts, Charles Dyer Paine, of Winchester, in the county of Litchfield, and state of Massachusetts, Phoebe E. Horner, of Camden, in the county of Camden, and state of New Jersey,
30 Mabel S. Dyer, Charles E. Dyer, Harvey S. Dyer and Arthur C. Dyer, all of Somerville in the county of Middlesex, and state of Massachusetts, who claim and pretend that said remainder devise and bequest to these defendants, Katherine Westendorf and Helen Campbell, is, because of its not being a charity and for an illegal purpose and because of its vagueness, uncertainty and indefiniteness or for some other

reasons, illegal, null, void and incapable of fulfillment and that by reason thereof or for some other reasons, they as such heirs-at-law, are entitled to said real property and, as such next of kin, to said personal property of the estate of said Ellen M. Dyer, deceased, to the exclusion of these defendants, Katherine Westendorf and Helen Campbell, whereas these defendants last named, charge the contrary thereof to be true.

In consideration whereof and foreasmuch as these defendants have not a complete and adequate remedy in the premises of and by the strict rules of the common law to the end, therefore, that the said Vineland Trust Company, Benjamin Stevens, Daniel E. Dyer, Charles Dyer Paine, Phoebe E. Horner, Mabel S. Dyer, Charles E. Dyer, Wilhelmina Dyer, Harvey S. Dyer, and Arthur C. Dyer, may, but without oath, which is hereby expressly waived, true, full and perfect answer make to all and singular the premises, as fully and particularly as if the same were here repeated and they and each of them particularly interrogated thereto according to the best of their knowledge, information, remembrance and belief and that they and each of them may set forth and assert their particular claims and demands in the premises; and that said will of Ellen M. Dyer, deceased, may be construed and interpreted and such remainder, devise and bequest in trust to these defendants, Katherine Westendorf and Helen Campbell, established and the title of these defendants, Katherine Westendorf and Helen Campbell as trustees thereunder confirmed; and that said Benjamin Stevens as executor of said will of Mrs. Eliza Freeman Spencer may, under the directions of this court account for her acts with respect to the property of said Ellen M. Dyer, deceased, and that said Benjamin Stevens, as such executor and said Vineland Trust Company as sub-

stituted administrator aforesaid, may discover and account for all property of said Ellen M. Dyer, that may have come into the possession or control of them or either of them and that the same may be distributed under the directions of this court under said will of said Ellen M. Dyer, deceased, and that these defendants may have such other and further relief in the premises as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

10 May it please your Honor, the premises considered, to grant unto these defendants, Katherine Westendorf and Helen Campbell, a writ or writs of subpoena issuing out of and under the seal of this Honorable Court to be directed to the said Benjamin Stevens as executor of the will of said Eliza Freeman Spencer, deceased, and to Daniel E. Dyer, Charles Dyer Payne, Phoebe E. Horner, Mabel S. Dyer, Charles E. Dyer, Wilhelmina Dyer, Harvey
20 S. Dyer and Arthur C. Dyer, as heirs-at-law, as well as next of kin of said Ellen M. Dyer, deceased, therein and thereby commanding them and each of them on a certain day and under a certain penalty, therein to be inserted, to be and appear before your Honor and this Honorable Court, then and there to answer all and singular the premises and to stand and abide by and perform such order and decree therein as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

30 And these defendants as in duty bound will ever pray, &c.

ROBERT H. SOUTHARD,
Solicitor for Defendants, Katherine Westendorf and Helen Campbell.

JOHN O. BIGLOW,
of Counsel.

SCHEDULE A.

I, Ellen M. Dyer, of Vineland in the County of Cumberland, and State of New Jersey; do make, publish, and declare this my last will and testament, as follows, to wit:

After the payment of all my just debts and funeral expenses, I give devise and bequeath all my property both real and personal, wheresoever situate, and whatever the same may be, to Mrs. Eliza Freeman Spencer, of Vineland, Cumberland County, State of New Jersey, for her use of the interest and income thereof accruing, during the term of her natural life, with the full and free use of the homestead and all its appurtenances, and I authorize and empower her to make such changes in the investment and disposition of the principal or any part thereof as may seem to her advantageous to the estate, and also empower her to dispose of clothing and personal effects belonging to the home, at such time and in such manner as she, the said Mrs. Eliza Freeman Spencer may see fit.

On the decease of the said Mrs. Eliza Freeman Spencer, I further give devise and bequeath all my said estate, as it shall then stand, to Mrs. Katherine Westendorf, of Denver, Arapahoe County, State of Colorado, Teacher of Vocal Expression and Oratory and to her friend Mrs. Helen Campbell, Author, to be used jointly by them in the furtherance of the broadest interpretation of metaphysical thought in whatsoever manner, and by whatsoever means they may jointly consider proper and best, authorizing them to sell and convey any and all real estate and use the proceeds thereof for the above purposes.

I hereby nominate and appoint Mrs. Eliza Free-

man Spencer, executrix of this my last will and testament, and it is my will that my said executrix shall not be required to give any bond for the discharge of said trust.

In Witness Whereof, I have hereunto set my hand and seal this seventeenth day of August, in the year of our Lord, one thousand eight hundred and ninety eight, hereby revoking all former wills by me made.

Ellen M. Dyer (Seal)

10

Signed, published and declared by the testatrix to be her last will and testament, in the presence of us, who were all present at the said time, and subscribed our names as witnesses hereto in the presence of the testatrix, and of each other.

Benjamin F. Ladd,
James C. Parkinson,
Thomas B. Steele.

20

ANSWER.

IN CHANCERY OF NEW JERSEY.

BETWEEN

VINELAND TRUST Co.,
Complainant,

AND

KATHERINE WESTENDORF,
et al.,

Defendants.

ON BILL FOR RELIEF.

ANSWER.

30

The joint answer of Daniel E. Dyer, Charles Dyer Paine, Phoebe E. Horner, Mabel S. Dyer, Charles E. Dyer, Wilhelmina Dyer, Harvey S. Dyer and

Arthur C. Dyer, as next of kin of Ellen M. Dyer, deceased.

These defendants answering say :

1. They admit the facts stated in the bill of complaint in this cause and also admit that the Court should consider the matters therein set forth and should give the complainant the benefit of its advice, to the end that the complainant may safely proceed with the administration and distribution of the personal estate of the said Ellen M. Dyer, deceased. 10

These defendants submit themselves to the jurisdiction of this Honorable Court in the premises.

HENRY S. ALVORD,
*Solicitor for and of Counsel with
said Defendants, next of kin of
Ellen M. Dyer, deceased.*

Formal Replications duly filed joining issue.

20

WILL OF ELLEN M. DYER.

To Frank C. Bray, Esquire,
Surrogate of the County of Cumberland, New
Jersey.

In the matter of the pro-
bate of the last Will and
Testament of Ellen M.
Dyer, deceased.

}
Petition.

30

This petition of Eliza Freeman Spencer, of the County of Cumberland, and State of New Jersey, shows: That Ellen M. Dyer, late of said County, Ulster

died at Kingston, in the County of Cumberland, in
 York,
 in the state of New Jersey, on the Eighth day of
 September, A. D. Nineteen Hundred and three, hav-
 ing made and executed her last Will and Testament;
 and that your petition is the executor named therein,
 and that the said Ellen M. Dyer left her surviving as
 her heirs at law and next of kin the following named
 persons to wit:

10

	KIN	P. O. ADDRESS
--	-----	---------------

N.B.

Oct. 29, '03. The following list of heirs fur-
 nished by Mabel S. Dyer.

Charles E. Dyer	Cousin	Winchester, Mass.
Daniel Dyer	“	Woburn, “
Charles Dyer Paine	“	Foxcroft, Maine
H. H. Dyer	“	Somerville, Mass.

20

(Frank C. Bray)

Deponent at this time does not know who are the
 next of kin or the address of any of them, but has
 reason to believe there are cousins of the deceased
 living and reside near Boston, Mass.

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

Sept. 24th, 1903.

30

Eliza Freeman Spencer

.....

CUMBERLAND COUNTY, ss.

.....Eliza Freeman Spencer
 the petitioner, named in the foregoing petition, be-
 ing duly sworn, deposes and says that she read the
 foregoing petition by her subscribed and know the

contents thereof, and that the same is true to the best of her knowledge, information and belief.

Eliza Freeman Spencer

.....

Sworn and Subscribed
before me this twenty-
fourth day of Septem-
ber, A. D. 1903.

Frank C. Bray,
Surrogate.

10

I, Ellen M. Dyer of Vineland in the County of Cum-
berland, and State of New Jersey, do make, publish
and declare this my last will and testament, as fol-
lows, to wit:

After the payment of all my just debts and funeral
expenses, I give devise and bequeath all my property
both real and personal, wheresoever situate, and
what ever the same may be, to Mrs. Eliza Freeman
Spencer, of Vineland, Cumberland County, State of
New Jersey, for her use of the interest and income
thereof accruing, during the term of her natural life
with the full and free use of the homestead and all
its appurtenances, and I authorize and empower her
to make such changes in the investment and disposi-
tion of the principal or any part thereof as may seem
to her advantageous to the estate, and also empower
her to dispose of clothing and personal effects be-
longing to the home, at such time, and in such manner
as she, the said Mrs. Eliza Freeman Spencer may see
fit.

On the decease of the said Mrs. Eliza Freeman
Spencer, I further give devise and bequeath all my
said estate, as it shall then stand, to Mrs Katherine

Westendorf, of Denver, Arapahoe County State of Colorado, Teacher of Vocal Expression and Oratory, and to her friend Mrs Helen Campbell, author, to be used jointly by them in the furtherance of the broadest interpretation of Metaphysical Thought in whatsoever manner, and by whatsoever means they may jointly consider proper and best, authorizing them to sell and convey any and all real estate and use the proceeds thereof for the above purposes.

- 10 I hereby nominate and appoint Mrs Eliza Freeman Spencer, executrix of this my last will and testament, and it is my will that my said executrix shall not be required to give any bond for the discharge of said trust.

In witness whereof, I have hereunto set my hand and seal this seventeenth day of August, in the year of Our Lord, One thousand, eight hundred and ninety-eight, hereby revoking all former wills by me made,

- 20 Ellen M. Dyer (S.S.)

Signed, published, and declared by the testator to be her last will and testament, in the presence of us, who were all present at the same time, and subscribed our names as witnesses hereto, in the presence of the testatrix, and of each other.

Benjamin F. Ladd
James C. Parkinson
Thomas B. Steele

- 30 CUMBERLAND COUNTY, ss.

James C. Parkinson, witness to the within Will, being duly sworn did depose and say, that he saw Ellen M. Dyer, the Testatrix therein named, sign and seal the same, and heard her publish, pronounce and declare the within writing to her Last Will and Testament, and that at the doing thereof the said Testa-

trix was of sound and disposing mind and memory; as far as this deponent knows and as he verily believes; and that Benjamin F. Ladd and Thomas B. Steele, the other subscribing witnesses were present at the same time, and signed their names as witnesses to the said Will, together with this deponent in the presence of the Testatrix.

James C. Parkinson

Sworn and subscribed
before me at Bridgeton,
this 24th day of Sept., A.
D. 1903.

10

Frank C. Bray,
Surrogate.

CUMBERLAND COUNTY, ss.

Benjamin F. Ladd, witness to the within Will being duly sworn did depose and say, that he saw Ellen M. Dyer the Testatrix therein named, sign and seal the same, and heard her publish, pronounce and declare the within writing to be her Last Will and Testament, and that at the doing thereof the said Testatrix was of sound and disposing mind and memory; as far as this deponent knows and as he verily believes; and that James C. Parkinson and Thomas B. Steele, the other subscribing witnesses were present at the same time, and signed their names as witnesses to the said Will, together with this deponent in the presence of the Testatrix.

20

Benjamin F. Ladd 30

Sworn and subscribed
before me at Bridgeton,
this 24th day of Sept., A.
D. 1903.

Frank C. Bray,
Surrogate.

CUMBERLAND COUNTY, ss.

Eliza Freeman Spencer, Executrix in the within Testament named, being duly sworn did depose and say, that the within instrument contains the true Last Will and Testament of Ellen M. Dyer the Testatrix therein named, so far as she knows and as she verily believes and that she will well and truly perform the same by paying first the debts of the said deceased, and then the legacies in the said Testament specified,
 10 so far as the goods, chattels and credits of said deceased can thereunto extend, and that she will make and exhibit into the Surrogate's Office, at Bridgeton, a true and perfect inventory of all and singular the goods, chattels and credits of said deceased that have or shall come to her knowledge or possessions, or to the possession of any other person or persons for her use and render a just and true account when thereunto lawfully required.

Eliza Freeman Spencer.

20 Sworn and subscribed
 before me this 24th day
 of Sept., A. D. 1903.

Frank C. Bray,
 Surrogate.

[SHIELD]

STATE OF NEW JERSEY.

30 CUMBERLAND COUNTY, ss.

I, Frank C. Bray, Surrogate of the County of Cumberland, do certify the annexed to be a true copy of the last Will and Testament of Ellen M. Dyer, late of the County of Cumberland, deceased, and that Eliza Freeman Spencer, the Executrix therein named, proved the same before me, and is duly authorized to

take upon herself the administration of the estate of the testatrix agreeably to the said Will.

Witness, my hand and seal of office, this
Twenty-fourth day of September, in the
(Seal) year of our Lord, one thousand nine hundred and three.

Frank C. Bray, Surrogate.

CUMBERLAND COUNTY SURROGATE'S
OFFICE.

10

In the matter of the probate of the alleged Will of Ellen M. Dyer, deceased.

Order for Probate.

Application having been made by Eliza Freeman Spencer for probate of the last Will of Ellen M. Dyer, deceased, and Letters Testamentary thereon, and the Surrogate having inquired into the circumstances and taken proof, and being satisfied of the genuineness of the Will produced, the validity of its execution and the competency of the testatrix and the probate of said Will not having been contested, and it appearing that the testatrix died more than ten days ago, it is, on this Twenty-fourth day of September, A. D. 1903, adjudged that the instrument offered for probate in this matter is the last Will and Testament of Ellen M. Dyer, deceased, and the same is hereby admitted to probate; and it is ordered that Letters Testamentary be issued thereon to Eliza Freeman Spencer, the Executrix named in said Will who may qualify thereunder.

Frank C. Bray
Surrogate.

CUMBERLAND COUNTY SURROGATE'S
OFFICE.

State of New Jersey,
(Shield) } ss.
County of Cumberland. }

I, Frank C. Bray, Surrogate and ex-officio Clerk
of the Surrogate's Court of the County of Cumber-
land, and State of New Jersey, do hereby certify that
10 I have compared the annexed copy of the Last Will
and Testament of Ellen M. Dyer, late of the County
and State aforesaid, deceased; and the annexed cop-
ies of the application for probate, of the proofs, of
the order of the Surrogate granting the probate of
said Will and of the Letters Testamentary granted
and issued thereon to Eliza Freeman Spencer, the
executrix, as found in Book "O" page 80, etc. of
Wills and Book "C" page 384 of Applic— for Let-
ters Testamentary as taken from and compared with
20 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 of
(Seal) office this 13th day of November, A. D.
one thousand nine hundred and three.

Frank C. Bray
Surrogate and Clerk of the Surrogate's Court.

FINAL DECREE.

(Filed Sept. 12, 1916)

IN CHANCERY OF NEW JERSEY.

BETWEEN VINELAND TRUST CO., <i>Complainant,</i> AND KATHERINE WESTENDORF, <i>et als.,</i> <i>Defendants.</i>	}	ON BILL, &C. FINAL DECREE.	10
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This cause coming on to be heard on bill and the answer of Katherine Westendorf and Helen Campbell and the answer of Daniel E. Dyer, Charles Dyer Payne, Phoebe E. Horner, Mable S. Dyer, Charles E. Dyer, Wilhelmina Dyer, Harvey S. Dyer and Arthur C. Dyer, heirs-at-law and next of kin of Ellen M. Dyer, deceased, and upon the counter-claims or cross-bills of the said defendants, above named, and replications and proofs, in the presence of Leverett Newcomb, of counsel with the complainant, and Robert H. Southard, of counsel with the defendants, Katherine Westendorf and Helen Campbell, and Henry S. Alvord, of counsel with the above-mentioned heirs-at-law and next of kin of the said Ellen M. Dyer, deceased, and it appearing that the said counter-claim has been taken as confessed against Benjamin Ste-

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vens, executor of the will of Eliza Freeman Spencer, deceased, and the pleadings having been read, and the proofs having been taken in open court, and the arguments of respective counsel having been heard and considered, and the Chancellor being of the opinion that the complainant, as substituted administrator with the will of the said Ellen M. Dyer, deceased, is entitled to the aid of the Court in the construction and interpretation of the said will, as
10 prayed for in said bill of complaint;

And the Court being further of the opinion that the gift, devise and bequest contained in that portion of the said will, which reads as follows:

“On the decease of the said Eliza Freeman Spencer, I further give, devise and bequeath all my estate, as it shall then stand, to Mrs. Katharine Westendorf, of Denver, Arapahoe County, State of Colorado, teacher of vocal expression and oratory, and to her friend, Mrs. Helen
20 Campbell, author, to be used jointly by them in the furtherance of the broadest interpretation of metaphysical thought, in whatsoever manner and by whatsoever means they may jointly consider proper and best, authorizing them to sell and convey any and all real estate and use the proceeds thereof for the above purposes.”

creates a valid trust for a charitable use, and is not vague, indefinite, nor incapable of being executed or
30 supervised by the Court, and that the said gift, devise and bequest, after the death of Eliza Freeman Spencer, vested in the said defendants, Katherine Westendorf and Helen Campbell, all of the estate of the said Ellen M. Dyer, including real estate and personal property, jointly as trustees, for the trusts, uses and purposes mentioned and set forth in that

portion of the said will, above recited, and that the defendants, above named, as heirs and next of kin of the said Ellen M. Dyer, deceased, have no estate, right, title or interest therein, and that the said Katherine Westendorf and Helen Campbell, trustees, as legatees under said will, are entitled to receive from the complainant the balance in the hands of the said complainant, after the settlement of its accounts in the Orphans' Court in the county of Cumberland, according to the course and practice of that court, upon bond being given as hereinafter provided. 10

It is, thereupon, on this twelfth day of September, 1916, 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, does hereby order, adjudge and decree that a valid and legal trust for a charitable use was, and is created by that portion of the will of the said Ellen M. Dyer, deceased, which reads as follows: 20

“On the decease of the said Eliza Freeman Spencer, I further give, devise and bequeath all my estate, as it shall then stand, to Mrs. Katharine Westendorf, of Denver, Arapahoe County, State of Colorado, teacher of vocal expression and oratory, and to her friend, Mrs. Helen Campbell, author, to be used jointly by them in the furtherance of the broadest interpretation of metaphysical thought, in whatsoever manner and by whatsoever means they may jointly consider proper and best, authorizing them to sell and convey any and all real estate and use the proceeds thereof for the above purposes.” 30

and that the trust estate thereby created is not vague, indefinite, nor incapable of being executed or supervised by the Court;

And it is further ordered, adjudged and decreed that the gift, devise and bequest, contained and set forth in that portion of said will above recited, to take effect after the death of Eliza Freeman Spencer, vested and established a valid title in fee simple, in and to all of the real estate of which the said Ellen M. Dyer died seized, in the said defendants, Katherine Westendorf and Helen Campbell, jointly as trustees, subject to the trusts, uses and purposes mentioned and set forth in said will; and that the
10 said Katherine Westendorf and Helen Campbell, jointly as trustees, are entitled to receive from the complainant all of the personal property of said Ellen M. Dyer, held by the complainant after the settlement of its account; said personal property also to be held subject to said trusts, uses and purposes;

And it is further ordered, adjudged and decreed that the defendants above named, as heirs and next of kin of the said Ellen M. Dyer, deceased, did not,
20 either by said will, nor upon the death of said Ellen M. Dyer, become seized of or entitled to any estate, right, title or interest in her real estate and personal property;

And it is further ordered, adjudged and decreed that the said complainant, upon the settlement of its accounts in the Orphans' Court of the county of Cumberland, according to the course and practice of that court do pay or turn over to the said Katherine Westendorf and Helen Campbell, trustees, as legatees
30 under said will of Ellen M. Dyer, deceased, the balance of the personal estate of the said Ellen M. Dyer in its hands, upon the said Katherine Westendorf and Helen Campbell giving to the Ordinary of the State of New Jersey a bond in such amount, form and surety as the said Orphans' Court may determine, in accordance with the requirements of the statute in such case made and provided;

And it is further ordered, adjudged and decreed that the counter-claims or cross-bills, above referred to, be and the same are hereby dismissed;

And it is further ordered, adjudged and decreed that the complainant, as substituted administrator aforesaid, pay to Leverett Newcomb, its counsel in this cause, its taxed costs and a counsel fee of \$500.00, and that the complainant also pay to Robert H. Southard, the solicitor of the defendants, Katherine Westendorf and Helen Campbell, their taxed costs and a counsel fee of \$500.00, and that the complainant also pay to Henry S. Alvord, solicitor for the heirs-at-law and next of kin of the said Ellen M. Dyer, deceased, their taxed costs and a counsel fee of \$500.00, all of said sums to be paid by said complainant from the funds in its hands arising from the collection of the personal property of the said Ellen M. Dyer, deceased.

Respectfully advised,

JOHN H. BACKES,
V. C.

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NOTICE OF APPEAL.

(Filed Oct. 18, 1916)

IN CHANCERY OF NEW JERSEY.

10	BETWEEN	}	
	VINELAND TRUST Co.,		
	<i>Complainant,</i>		
	AND		ON BILL, &c.
	KATHARINE WESTENDORF,		NOTICE OF APPEAL.
	<i>et al.,</i>		
	<i>Defendants.</i>		

20 The defendants, Daniel E. Dyer, Charles Dyer
Payne, Phoebe E. Horner, Mabel S. Dyer, Charles E.
Dyer, Wilhelmina Dyer, Harvey S. Dyer and Arthur
C. Dyer, heirs-at-law and next of kin of Ellen M.
Dyer, deceased, hereby appeal from the whole and
every part of the final decree made in this cause
wherein and whereby it was ordered, adjudged and
decreed that a valid and legal trust for a charitable
use was created by that portion of the will of the
30 said Ellen M. Dyer, deceased, which reads as fol-
lows:

“On the decease of the said Eliza Freeman
Spencer, I further give devise and bequeath all
of my estate as it shall then stand to Mrs. Kath-
arine Westendorf of Denver, Arapahoe County,
State of Colorado, teacher of vocal expression

and oratory and to her friend Mrs. Helen Campbell, author, to be used jointly by them in the furtherance of the broadest interpretation of the metaphysical thought in whatsoever manner and by whatsoever means they may jointly consider proper and best, authorizing them to sell and convey any and all real estate and use the proceeds thereof for the above purposes.”

Adjudging and decreeing that the trust estate 10
thereby created is not vague, indefinite nor incapable
of being executed or supervised by the Court;

And these defendants expressly appeal from such
portion of the decree as authorizes the payment by
the complainant to the said trustees of the balance
of the personal estate of the said estate.

The only portion of the said decree not intended
to be appealed from by this appeal is that portion
of the decree ordering and permitting the payment
of tax costs and counsel fees to the respective solici- 20
tors interested in the said cause.

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

Dated: October 3, 1916.

HENRY S. ALVORD,
Solicitor and of Counsel
with said Appealing De-
fendants.

I conceive there is a good cause for appeal in the 30
above-stated cause.

HENRY S. ALVORD,
Of Counsel with Complainant.

[ENDORSED]

Service of the within notice of appeal
is hereby acknowledged.

Oct. 3, 1916.

Leverett Newcomb,
Sol'r of Comp'l't.
Robert H. Southard,
Sol'r of Katharine Westendorf and Helen Campbell.

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PETITION OF APPEAL.

(Filed Oct. 23/1916)

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

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<p>BETWEEN VINELAND TRUST Co., <i>Complainant,</i></p> <p>AND</p> <p>KATHARINE WESTENDORF, <i>et al.,</i> <i>Defendants.</i></p>	}	<p>ON BILL, &c. PETITION OF APPEAL.</p>
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*To the Honorable Court of Errors and Appeals, in
the Last Resort in all Causes:*

The petition of Daniel E. Dyer, Charles Dyer
Payne, Phoebe E. Horner, Mabel S. Dyer, Charles E.

Dyer, Wilhelmina Dyer, Harvey S. Dyer and Arthur C. Dyer, next of kin of Ellen M. Dyer, deceased, defendants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by the decree made in the Court of Chancery, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date September 12, 1916. And your petitioners humbly appeal from the decree in said cause and from the whole and every part of the said decree, excepting only that portion of the said decree ordering and permitting the payment of taxed costs and counsel fees to the respective solicitors and counsel interested in the said cause. 10

And your petitioners appeal from the said decree upon the ground that the legacy and devise to Katharine Westendorf and Helen Campbell is too vague and indefinite and because the same is not capable of being executed or supervised by this Court, and because the trust intended to be created by the bequest and devise to the said Katharine Westendorf and Helen Campbell should be decreed to be a naked trust for the benefit of the appellants, the next of kin and heirs-at-law of Ellen M. Dyer, deceased, and the said decree should be reversed because the said bequest or devise to the said trustees should not be held to operate as a valid trust for a charitable use, but should be held to be void. And your petitioners pray that the said decree may be reversed, set aside and for nothing holden and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet. 20 30

HENRY S. ALVORD,
*Solicitor for and of Counsel
with Appellants.*

[ENDORSED]

Service acknowledged Oct. 19/16.

Leverett Newcomb,
Sol'r of Comp'l't.

Service acknowledged Oct. 19/16.

Robert H. Southard,
Sol'r of Katharine
Westendorf and
Helen Campbell.

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Filed Oct. 23, 1916.

**ANSWER OF VINELAND TRUST CO., ONE OF
THE RESPONDENTS.**NEW JERSEY COURT OF ERRORS
AND APPEALS.

20 BETWEEN
VINELAND TRUST Co.,
Appellants,
AND
KATHARINE WESTENDORF,
et al.,
Respondents.

THE ANSWER OF
VINELAND TRUST
COMPANY, ONE OF
THE RESPONDENTS
TO THE PETITION OF
APPEAL OF THE
ABOVE-NAMED AP-
PELLANTS.

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
twelfth day of September, last past, made and en-
tered 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 it prays that the same may be affirmed, with costs to be adjudged to this respondent.

LEVERETT NEWCOMB,
Solicitor and Counsel with Respondent, Vineland Trust Co.

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ANSWER.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

BETWEEN
VINELAND TRUST COMPANY,
Complainant-Respondent,

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AND

KATHERINE WESTENDORF
AND ANOTHER,
Defendants-Respondents,

ON APPEAL FROM

CHANCERY.

ANSWER.

AND

DANIEL E. DYER AND
OTHERS,
Defendants-Appellants.

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The answer of the respondents, Katherine Westendorf and Helen Campbell, to the petition of appeal of the above-named appellants.

These respondents, not acknowledging to be true any or all of the matters which in the said petition of appeal are contained, for answer thereto, nevertheless, say and admit that a final decree was made and entered in the Court of Chancery, dated the twelfth day of September, 1916, in the cause for that purpose mentioned in the said petition as is therein stated, but as to the substance and form thereof,
10 these respondents pray to refer thereto when the same shall be produced.

And these respondents are advised and believe that the said decree is in all respects agreeable to equity, and they pray that the same may be affirmed with costs to be adjudged to these respondents.

ROBERT H. SOUTHARD,
*Solicitor for Respondents,
Westendorf and
Campbell.*

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JOHN O. BIGELOW,
Of Counsel.

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IN CHANCERY OF NEW JERSEY.

BETWEEN
 VINELAND TRUST COMPANY,
Complainant,

AND

KATHARINE WESTENDORF AND
 HELEN CAMPBELL, *et als.,*
Defendants.

CONCLUSIONS.

A bequest in trust for "the furtherance of the 10
 broadest interpretation of metaphysical thought" is for
 a charitable use and not invalid for indefiniteness.

For the Complainant: MR. L. NEWCOMB;

For the Defendant—Legatees:

MESSRS. ROBERT H. SOUTHARD
 and GEORGE H. GILMAN, of the
 New York Bar;

For the Defendant—Next of Kin:

MR. HENRY S. ALVORD; 20

BACKES, V. C.

This bill involves a construction of the last will and
 testament of Ellen M. Dyer, deceased. By the will,
 she gave her residuary estate to Eliza Freeman
 Spencer for life, and disposed of the remainder in this
 language:

"On the decease of the said Eliza Freeman
 Spencer, I further give, devise and bequeath all
 my estate, as it shall then stand to Mrs. Katharine 30

Westendorf, of Denver, Arapahoe County, State of Colorado, teacher of vocal expression and oratory, and to her friend, Mrs. Helen Campbell, author, to be used jointly by them in the furtherance of the broadest interpretation of metaphysical thought, in whatsoever manner and by whatsoever means they may jointly consider proper and best, authorizing them to sell and convey any and all real estate and use the proceeds thereof for the above purposes."

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Eliza Freeman Spencer is deceased. The next of kin of the testatrix, having questioned the legality of the bequest and protested against its payment, the complainant, administrator with the will annexed, seeks the advice of the court and its protecting decree.

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The attack made upon the legacy is that the trust created thereby is not for a charitable use and that it is vague and indefinite and incapable of being executed or supervised by the court. The grounds are untenable. The fund is to be used for the teaching of metaphysics—the science of being—the science which deals with ultimate reality; the philosophy of mind; the science beyond experience; the realm of transcendental thought and of speculation of the philosophers. The subject is purely and essentially educational. It is a course of study in our colleges and universities, and the trust is in every sense, a legal charity. The infinitude of the subject and consequently the great latitude given to the trustees in executing the trust, creates no legal infirmity. The field of contemplative research is well defined, and whether the investigation is to be pursued on the lines of materialism, idealism or realism, and whether according to the conception of the ancient philosophers or of the more recent Kant, Wolf, or of Herbert Spencer, or within the narrower sphere of spiritualism or of Christian Science, was left to the judgment of the trustees. There is no

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uncertainty as to the objects of the bounty. All mankind may share in its benefits. The charity is general, with power in the trustees to make it definite. Such charities have been uniformly upheld; as for instance: For the tuition of poor children in the elements of English literature, *McBride v. Elmer*, 6 N. J. Eq., 107; To promote the religious interests and to aid missionary, educational and benevolent enterprises of a church, *DeCamp v. Dobbins*, 29 N. J. Eq., 36; *Affd.*, 30 N. J. Eq., 671; For the most deserving poor of the city of Paterson, *Hesketh v. Murphy*, 35 N. J. Eq., 23, *Affd.*, 36 N. J. Eq. 304; For the purpose of spreading the light on social and political liberty and justice in these United States of America, *George v. Braddock*, 45 N. J. Eq., 757; For the purchase of books upon the philosophy of spiritualism, *Jones v. Watford*, 62 N. J. Eq. 339; *Affd.* on this phase, 64 N. J. Eq., 785. 10

In *Glover v. Baker*, 76 N. H., 393, and in *Chase v. Dickey*, 212 Mass. 555, 99 N. E. 410, the courts held that the will of Mary Baker Eddy, which gave the residue of her estate in trust, to be in part devoted and used for the purpose of more effectually promoting and extending the religion of Christian Science as taught by her, created a charitable trust and was not invalid for, indefiniteness or ambiguity. 20

The Complainant will be decreed to pay the estate to the legatees-trustees.

