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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

Complainant, Catharine Bloomer, of Philadelphia, Pennsylvania, shows unto your Honor that she is the complainant in this cause and further that:

1. On September 9, 1906, your complainant's brother, one James Doris, died in Atlantic City, New Jersey, leaving a last will and testament in said Atlantic City, Atlantic County, New Jersey, which said will was duly probated September 28, 1906, before the surrogate of Atlantic County, New Jersey, a true copy of which said will is annexed hereto and made a part hereof and marked Exhibit C1.

2. That after making numerous gifts under said papers and creating certain trusts, which will be disclosed by the said instrument, said testator gave to your complainant all the rest, residue and remainder of his estate.

3. In several cases under said will, the testator gave to his executors certain sums of money, the income from which was to be paid to certain specified individuals for and during their natural life with a gift over of the principal of said sum to his executors to be used and devoted toward assisting the worthy poor in Ireland as by the said paper will appear.

4. Your complainant says that in each and every case where said testator directed his executors to use and devote any sums of money or property toward assisting the worthy poor in Ireland that such gift is void and unenforceable and that the said trust so created should be decreed void for indefiniteness and unascertainability and vagueness, and that the same should be so regarded as void by the said executors of James Doris, deceased.

5. The executors named under the said will were Catharine Bloomer, Bernard Corr, and John F. Reardon, all of whom qualified before the surrogate of said Atlantic County, New Jersey.

6. That any moneys or property given to the executors under said will by the testator to be used and devoted toward assisting the worthy poor in Ireland or to the worthy poor in Ireland, if declared void, unenforceable and of no effect by the Honorable Court, would become a part of the residuary estate of the said testator and the property of your complainant.

7. Complainant further says that the testator, under the said paper, gave no power to his executors nor the right to choose in their discretion such of the worthy poor in Ireland as would become the recipients of the testator's bounty and that this failure on the part of the testator further makes void the trust described aforesaid as by the will appears, the gift being too remote, vague and indefinite and no tangible method of selecting the said beneficiaries in Ireland being provided for in the said will or no proper power given the executors for so choosing the worthy poor in Ireland.

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

1. That Catharine Bloomer, Bernard Corr and John F. Reardon, executors of the estate of James Doris, deceased, who are the defendants in this suit, may answer this bill of complaint and each and every statement therein made.

2. That a decree by this Honorable Court be made declaring void and unenforceable any gift, trust, bequest or legacy to the executors under the will of James Doris, deceased, to be used and devoted toward assisting the worthy poor in Ireland and that any and all of such gifts or trusts described in the will be void for indefiniteness, unascertainability and vagueness.

That any money or property so given to the executors for the purpose aforesaid be declared to be and decreed a part of the residuary estate under the said will and, therefore, the property of your complainant.

That the executors, Catharine Bloomer, Bernard Cowr and John F. Reardon, be discharged from the duty of disbursing or distributing further any money or property toward assisting the worthy poor in Ireland and that the said estate be released from any such trusts.

That the executors already named be required to pay over to your complainant any moneys presently in their possession which would otherwise be used toward assisting the worthy poor in Ireland and that hereinafter they be required to pay over to your complainant any moneys which may later come into their hands which would otherwise be used and devoted toward assisting the worthy poor in Ireland.

3. That your complainant shall have such other relief as will to this Honorable Court seem equitable and just.

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

COLE & COLE,
Solicitors of Complainants.
C. L. COLE,
Of Counsel.

EXHIBIT "C1."

Be it remembered that I, James Doris being of sound mind and well disposing memory do hereby make, publish and declare this to be my last will and testament.

I direct that all my just debts and funeral expenses be paid as soon as convenient may be after my decease.

I give, devise and bequeath unto St. Michael's Catholic Church of Atlantic City, New Jersey, the vacant lot of ground on Atlantic Avenue, adjoining where I reside, (One hundred and ten feet front by One hundred feet deep) for the purpose of building a Church and School on said lot and also direct that the sum of Ten thousand dollars shall be given towards the building of said Church on said piece of ground.

I give and bequeath unto my sister, Catharine Bloomer, the sum of two thousand dollars absolutely and direct that the interest or income arising from the sum of fifteen thousand dollars be given her for and during the term of her natural life and after her death I direct that my Executors hereinafter named shall use and devote the said principal of Fifteen thousand dollars towards assisting the worthy poor in Ireland.

I direct that the income or interest arising from the sum of Fifteen thousand dollars shall be paid or given to my sister Mary McVeigh for and during the term of her natural life and at her death the said sum of Fifteen thousand dollars shall be given to her son Edward J. McVeigh if he shall then be living.

I direct that the income or interest arising from the sum of Fifteen thousand dollars shall be paid to my sister Sarah Toner and her husband Matthew Toner or the survivor of them, and upon the death of both of them I direct that my Executors hereinafter named shall use and devote the said sum of Fifteen thousand dollars in assisting the worthy poor in Ireland.

I direct that the interest or income arising from the sum of Fifteen thousand dollars shall be paid to my brother Bernard Doris for and during the term of his natural life and upon the death of said Bernard Doris the said sum of Fifteen thousand dollars shall be divided Share and Share alike among his children then living. I also direct that whatever sum of money my said brother Bernard Doris may owe me on Mortgage shall at the discretion of my Executors hereinafter named shall cancel and satisfy said Mortgage without any payment from him or any money on account of same; I also direct that the sum of Five thousand dollars, if so much is necessary, to pay the debts of my said brother Bernard Doris.

I give and bequeath unto my friend John F. Reardon the sum of One thousand Dollars, absolutely.

I direct that my Executors hereinafter named shall expend the sum of Ten thousand dollars in having celebrated One hundred Masses each for the happy repose of the souls of my father, mother, and each of my brothers and sisters.

I give and bequeath unto my cousin Timothy Doris the sum of Five hundred dollars.

I give and bequeath unto my cousin Ellen Chapman the sum of One thousand dollars.

I give and bequeath unto my cousin Sarah A. McGrady the sum of Five hundred Dollars.

I give and bequeath unto my friend Bridget O'Neill the sum of Two hundred dollars.

I direct that the sum of One thousand dollars shall be expended in having Masses celebrated for the happy repose of my soul.

I direct that the sum of Five hundred dollars be given towards building a School in connection with the Star of the Sea Catholic Church at Atlantic City.

I direct that the interest or income arising from the sum of Ten thousand dollars shall be given to assist the Catholic Missionaries in instructing the Indians of the United States in the principles and doctrines of the Roman Catholic Church.

I direct that the interest or income arising from the sum of Fifteen thousand dollars shall be given to assist the Catholic Missionaries in instructing the Negroes of the United States in the principles and doctrines of the Roman Catholic Church.

ALL the rest, residue and remainder of my estate, I give, devise and bequeath to my sister Catharine Bloomer.

I hereby nominate, constitute and appoint my sister Catharine Bloomer and my friends Bernard Corr and John F. Reardon or the survivor of them the executors of this my last will and testament and hereby authorize, direct and empower them to sell at public or private sale for such price or prices as to them may seem best any and all of my real estate without any liability on the part of the purchaser or purchasers thereof to see to the application of the purchase money or moneys.

In witness whereof I have hereunto set my hand

and seal this Tenth day of August A. D. One thousand nine hundred and six (1906).

James Doris (Seal)

Signed, sealed published and declared by James Doris the testator above named as and for his last will and testament in the presence of us.

Rev. John Quaremba.
Walter A. Costello.

ANSWER OF JOHN F. REARDON, ONE OF THE DEFENDANTS.

IN CHANCERY OF NEW JERSEY.

Between CATHARINE BLOOMER, *Complainant,* and CATHARINE BLOOMER, *et als.*, Executors, &c., *Defendants.*	On Bill, &c. Answer of John F. Reardon, one of the Defendants.

John F. Reardon, of the City and County of Philadelphia, in the State of Pennsylvania, one of the defendants, answering the bill of complaint in this cause, says:

1. Admits that on the 9th day of September, 1906, James Doris, the testator, died in Atlantic City, New Jersey, leaving a last will and testament which

was duly probated before the surrogate of Atlantic County as set forth in said bill of complaint and that Exhibit A therein is a copy of said will.

2. Admits that testator made numerous gifts in and by his last will and testament, and further admits that the complainant is named as the residuary legatee under said will and entitled to all the rest, residue and remainder of testator's estate.

3. Answering paragraph three, this defendant avers that the testator in and by the third paragraph of his said will, did bequeath absolutely to the said Catharine Bloomer, the sum of two thousand dollars, and further directed that the interest or income arising from the sum of $15,000 be given her for and during the term of her natural life and after her death, directed the disposition of said fund in language following:

> "I direct that my Executors hereinafter named shall use and devote the said principal of Fifteen thousand dollars towards assisting the worthy poor in Ireland."

And further answering, this defendant avers the fact to be that he, together with the said Catharine Bloomer, the complainant herein, now hold as trustees, the sum of $15,000 aforesaid upon the trust declared by the said testator, and they have regularly paid to the said Catharine Bloomer, the interest or income arising from the said sum.

Further answering, this defendant says that testator in and by the fifth paragraph of his said will, directed that the income or interest arising from the sum of $15,000 should be paid to his sister, Sarah Toner and her husband, Matthew Toner, or the survivor of them, and upon the death of both of them,

directed the disposition of said fund in language following:

> "I direct that my Executors hereinafter named shall use and devote the said sum of Fifteen thousand dollars in assisting the worthy poor in Ireland."

And this defendant further avers that the said Sarah Toner and her husband, Matthew Toner, the 10
life tenants, are now deceased and that the survivor died more than three years ago, and that the income and interest on said fund has been accumulating in the hands of the trustees, and that this defendant, as one of the trustees, is prepared and willing to carry out the direction of the testator and distribute said fund to the beneficiaries designated by the said testator in and by his said will; that the complainant, Catharine Bloomer, the other trustee, has at all times refused and now refuses 20
to carry out the directions of the testator and asserts and claims that as the residuary legatee under the will of the said testator, she is entitled to the said fund.

4. Answering paragraph four, this defendant denies that the bequests made by the testator in and by his said will as hereinbefore set forth, toward assisting the worthy poor in Ireland, is void and unenforceable, or that the said trust should be decreed to be void for indefiniteness or uncertainty and 30
vagueness, or that the same should be regarded as void by the executors, but, on the contrary, this defendant avers that said bequests by the testator are gifts for a charitable purpose, the purpose of which is to give relief to the worthy poor in Ireland; that the beneficiaries so named are readily ascertainable and certain, and that the trustees named by the

said testator are in a position to select and designate the beneficiaries entitled to receive the bounty of the said testator, and, therefore, this defendant alleges that said trust imposed upon him and his co-executor is certain and not indefinite, capable of being executed and is not void.

5. Answering paragraph five, this defendant admits that Catharine Bloomer, the complainant, Bernard Corr and John F. Reardon, this defendant, were named the executors of testator's will and they qualified and entered upon the discharge of their duties; that Bernard Corr, one of the executors, is now deceased, and that the complainant and this defendant are the two surviving executors and trustees under said will.

6. Answering paragraph six, this defendant admits that if the aforesaid bequests are null and void and unenforceable and of no effect, that the trusts now held by them would become part of the residuary estate of the testator.

7. Answering paragraph seven, this defendant admits that the testator by his said will, gave no direction or power to his executors as to the selection of his beneficiaries or the recipient of his bounty, but avers that he vested in his executors and trustees, or the survivor of them, the power to select from the worthy poor in Ireland, the objects of his bounty, and therefore, the gift became absolute and the power of selection fixed, and the discretion as to such selection vested in the executors and trustees. That said bequests thus became capable of being carried out, and said gifts are not remote, vague, indefinite or intangible, nor is the selection of said beneficiaries from the most worthy poor in Ireland too remote, vague, indefinite and intangible.

And this defendant avers that the aforesaid gifts for said charitable purposes should be upheld and that this defendant as trustee be permitted to disburse said funds in the manner directed by the testator's will.

And this defendant prays to be hence dismissed with his reasonable costs.

PETER BACKES,
Solicitor of Defendant,
John F. Reardon.

REPLICATION.

IN CHANCERY OF NEW JERSEY.

CATHARINE BLOOMER, *Complainant,* v. CATHARINE BLOOMER, *et als.,* Executors, &c., *Defendants.*	On Bill, &c. Replication.

Complainant joins issue on the answer of the defendant, John F. Reardon.

COLE & COLE,
Solicitors of Complainant.

REPLICATION.

IN CHANCERY OF NEW JERSEY.

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Between
CATHARINE BLOOMER,
Complainant,

and

CATHARINE BLOOMER, *et als.*,
Executors, &c.,
Defendants.

On Bill, &c.
Replication.

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Complainant admits the averments of facts stated in the several paragraphs of the answer, but denies the conclusions, deductions and statements of law made therein.

COLE & COLE,
Solicitors for Complainant.

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CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

Between
CATHARINE BLOOMER,
Complainant,

and

CATHARINE BLOOMER, *et als.*,
Executors, &c.,
Defendants.

On Bill, &c.
On Final Hearing.
Conclusions.

MESSRS. COLE & COLE, for the complainant.
MR. PETER BACKES, for the defendant, John F. Reardon.

INGERSOLL, V. C.:

On September 9th, 1906, James Doris died testate. His will was probated September 28th, 1906, before the surrogate of Atlantic County.

In said will are the following clauses:

"I give and bequeath unto my sister Catharine Bloomer the sum of two thousand dollars absolutely and direct that the interest or income arising from the sum of fifteen thousand dollars be given her for and during the term of her natural life and after her death I direct that my Executors hereinafter named shall use and devote the said principal of fifteen thousand dol-

lars towards assisting the worthy poor in Ireland."

"I direct that the income or interest arising from the sum of Fifteen thousand dollars shall be paid to my sister Sarah Toner and her husband Matthew Toner or the survivor of them, and upon the death of both of them I direct that my Executors hereinafter named shall use and devote the said sum of Fifteen thousand dollars in assisting the worthy poor in Ireland."

Executors were appointed by said will and duly qualified.

The complainant, Catharine Bloomer, prays:

"That a decree by this Honorable Court be made declaring void and unenforceable any gift, trust, bequest or legacy to the executors under the will of James Doris, deceased, to be used and devoted toward assisting the worthy poor in Ireland and that any and all of such gifts or trusts described in the will be void for indefiniteness, unascertainability and vagueness."

"A gift to a trustee, of a sum of money to the end that the interest be applied at discretion alleviating the wants and suffering of the deserving poor of Mount Holly is a charity which this Court will protect and effectuate."

Goodell v. Union Association &c. of Burlington County, 29 N. J. Eq. 32.

Likewise where interest of a fund in trust to be employed for "the relief of the most deserving poor of the City of Paterson * * *."

Hesketh v. Murphy, et al., 36 N. J. Eq. 304.

The opinion in this case by the late Chief Justice Beasley also sets at rest the effect of the allegation

in the bill, that the trust was void for the reason, *inter alia*, that, "No tangible method of selecting the said beneficiaries in Ireland being provided for in the said will or no proper power given the executors for so choosing the worthy poor of Ireland."

The Court held that such a bequest conferred upon the trustees not only the power to distribute the funds confided to them, but, as a necessary incident to that function, also the right to select the beneficiaries.

These cases were followed by Vice-Chancellor Leaming in *Hilliard v. Parker*, 76 N. J. Eq. 447.

In *Kitchen v. Pitney*, 94 N. J. Eq. 485, a like gift for the proper and suitable maintenance of * * * *bona fide* residents of New Jersey was held valid.

These cases declare valid a trust where the benefits were limited to a class in a community (Mount Holly), in a city (Paterson), and throughout the State. It must follow that such a bequest for the benefit of "the worthy poor of Ireland" must also be valid.

A decree will be advised dismissing the bill.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between
CATHARINE BLOOMER,
Complainant,
and
CATHARINE BLOOMER, *et als.*,
Executors, &c.,
Defendants.

On Bill, &c.
Final Decree.

This matter coming on for final hearing on bill, answers and facts admitted in open court, and it appearing that both the complainant and John F. Reardon, one of the defendants, are the surviving trustees of the will of James Doris, deceased, and the complainant praying "that a decree by this Honorable Court be made declaring void and unenforceable any gift, trust, bequest or legacy to the executors under the will of James Doris, deceased, to be used and devoted toward assisting the worthy poor in Ireland and that any and all of such gifts or trusts described in the will be void for indefiniteness, unascertainability and vagueness," and after reading the pleadings and the facts agreed upon and hearing counsel for the respective parties, and the Court being of the opinion that the bequest for the benefit of the "worthy poor in Ireland" is valid and should be sustained and the prayer of the complainant should be denied,

It is thereupon on this 14th day of January, 1926,

ordered, that the bill of complaint in this cause be and the same is hereby dismissed.

And it is further ordered, that the trustees of said fund do pay to the solicitors and counsel of the complainant and to the solicitor and counsel of the defendant, John F. Reardon, their taxed costs, together with a counsel fee of $250 each.

E. R. WALKER.

Respectfully advised,
R. H. INGERSOLL,
V. C.

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between CATHARINE BLOOMER, *Complainant,* and CATHARINE BLOOMER, *et als.*, Executors, &c., *Defendants.*	On Bill, &c. Notice of Appeal.

To Peter Backes, Esquire, Solicitor of Defendants:

The complainant hereby appeals from the whole and every part of the final decree made in this court by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Robert H. Ingersoll, Esquire, Vice-Chancellor, in the above

stated cause, on the 14th day of January, 1926, to the Court of Errors and Appeals in the last resort in all causes.

Dated May 4, 1926.

COLE & COLE,
Solicitors for Complainant.

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

C. L. COLE,
Of Counsel with Complainant.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between CATHARINE BLOOMER, *Complainant-Appellant,* and CATHARINE BLOOMER, *et als.*, Executors, &c., *Defendants-Respondents.*	On Appeal from Chancery. Petition of Appeal.

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

The petition of Catharine Bloomer, the appellant in the above stated cause, respectfully shows that

your petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Hon. Robert H. Ingersoll, one of the Vice-Chancellors thereof, bearing date the 14th day of January, 1926, wherein the said petitioner was complainant and Catharine Bloomer and John F. Reardon, surviving trustees of the will of James Doris, deceased, were defendants, and from the whole and every part thereof, to wit: That said decree denies to complainant the relief prayed for in the bill when it should have granted such relief. And your petitioner humbly appeals from every part of said decree of the said Chancellor upon the ground that the same is erroneous. Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, sat aside and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

COLE & COLE,
Sol'rs and Counsel with Appellant.

ANSWER TO PETITION OF APPEAL.

Formal answer to petition of appeal.

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New Jersey Court of Errors and Appeals.

Between

CATHERINE BLOOMER,

Appellant,

and

CATHERINE BLOOMER ET AL.,
EXECUTORS, &C.,

Respondents.

On Appeal from a Final Decree advised by Robert H. Ingersoll, Esq., Vice-Chancellor.

Brief of Peter Backes, of Counsel with John F. Reardon, one of the Executors and Trustees and Respondents.

From a final decree made by the Chancellor, dated January 14, 1926, advised by Robert H. Ingersoll, Esquire, Vice-Chancellor, dismissing the bill of complaint, the complainant appeals.

The appellant, Catherine Bloomer, is one of the co-trustees of this fund as well as the residuary legatee of the estate of James Doris, deceased. She filed her bill of complaint against herself and John F. Reardon, surviving executors 10
and trustees of said estate, in which she prayed "for a decree of the court declaring void and unenforceable any gift, trust, bequest or legacy to the executors under the will of James Doris, deceased, which is to be used and devoted toward assisting the worthy poor in Ireland, and that any and all of such gifts or trusts described in the will be void for in-

definiteness, uncertainty and vagueness;" and further, "that any money or property so given to the executors for the purposes aforesaid to be declared a part of the residuary estate under the said will, and, therefore, the property of this complainant;" and further, "that the executors be discharged from said trust, and they should pay the fund to the complainant."

The trusts arise out of and under the third and fifth paragraphs of testator's will, which provide as follows:

Paragraph 3. "I give and bequeath unto my sister Catherine Bloomer the sum of two thousand dollars absolutely and direct; that the interest or income arising from the sum of fifteen thousand dollars be given her for and during the term of her natural life, and, after her death, I direct that my executors, hereinafter named, shall use and devote the said principal of fifteen thousand dollars toward assisting the worthy poor in Ireland."

Paragraph 5. "I direct that the income or interest arising from the sum of fifteen thousand dollars shall be paid to my sister Sarah Toner and her husband, Matthew Toner, or the survivor of them, and upon the death of both of them I direct that my executors, hereinafter named, shall use and devote the said sum of fifteen thousand dollars in assisting the worthy poor in Ireland."

When the final accounting and distribution was made, it was found that there was not sufficient moneys available to pay the legacies in full. The trustees set aside and they now hold the sum of $12,888 for each of these funds. The income from the first fund has been regularly paid to the complainant. The income on the second fund was paid to Sarah Toner during her lifetime, and then to her husband, who survided her until his death in 1922, since which time the income has accumulated and is now in the hands of the executors.

The appellant, as residuary legatee, contends that the trusts created by the testator are void, uncertain, indefinite, unascertainable and vague, and that testator gave his executors no right or power to select such worthy poor in Ire-

land who would become recipient of testator's bounty, and further asserts that this failure on testator's part makes these trusts void, and, therefore, she, as the residuary legatee, is entitled to said funds, and they should be paid to her.

The defendant John F. Reardon, the other co-executor, who is entirely disinterested, insists that the trusts should be carried out as directed by the will, and that the fund arising under the fifth paragraph of the will should now be distributed to such worthy poor in Ireland as the executors may select.

The other fund arising under the third paragraph should be held during the lifetime of the appellant, and then distributed by the executors to such worthy poor in Ireland as may be selected by the trustee of the fund.

The question submitted to this court for solution is, Are these trusts void for any of the reasons advanced by the appellant, and, if void, shall this fund be paid to the residuary legatee?

The respondent respectfully submits that it was clearly the intent of the testator that these funds should be used for public and charitable purposes; that the beneficiaries are not uncertain, but may be readily ascertained; that they are capable of selection by the executors from a class of persons living in Ireland composed of the worthy poor of that country.

What constitutes a charitable trust is defined in sections 1018-1019 of *Pomeroy's Equity Jurisprudence,* volumes third and fourth editions:

> "It is an essential feature of public or charitable trusts that the beneficiaries are uncertain—a class of persons described in some general language, often fluctuating, changing in their individual numbers, and partaking of a *quasi*-public character. The most patent examples are 'the poor' of a certain district, in a trust of a benevolent nature, or 'the children' of a certain town, in a trust for educational purposes.
>
> "In order that a trust may be charitable, the gift must be for the benefit of such an indefinite class of persons that the charity is really a public, and not a mere private, benefaction."

In this state the cases on the subject of charitable trusts were collected by the late Judge Green in the case of *McKenzie et al.* v. *The Trustees of the Presbytery of Jersey City,* 67 *N. J. Eq.* 652, on *pages* 664, 665 and 666.

The purpose of these gifts being charitable, to assist the "worthy poor in Ireland," the next question submitted is, Can there be any doubt that Ireland has within its confines worthy poor persons who are entitled to receive this charity which the testator intended as a gift to the persons of his native land?

We are next confronted with the contention, Who has the power of selecting the beneficiaries of this charity? It may be urged many worthy persons will be deprived of participation therein; that others may be favored in selecting the objects of this charity, but we submit this duty testator confided to his executors to select the same. In fact, the will imposes this duty on them. He said: "I direct my executors shall use and devote the said principal of $15,000 toward assisting the worthy poor in Ireland; that my executors hereinafter named shall use and devote the said sum of $15,000 in assisting the worthy poor in Ireland," so that the executors under the will have the power of selecting the beneficiaries, and this they can readily do by making a selection from such poor persons in Ireland whom they may deem to be worthy of this charity.

This trust is given to a class, namely, the most *worthy poor,* which class is certain and fixed, namely, the "poor in Ireland."

It is not necessary to the validity of this trust that the charitable intent should be confined to those so absolutely destitute that the almshouse is their only public place of refuge. Men who are partially unable to support themselves may be objects of charity, as well as those who are wholly destitute and entirely dependent upon others, the difference between them being but of degree, as is the difference between the poor and the worthy poor, the sick and the hopelessly incurable, the weak-minded and the insane.

Charitable trusts similar to the present one, confined in their scope to municipalities in this State, have been upheld by our courts, and the fact that the beneficiaries must be

selected from amongst the worthy poor of a foreign country cannot invalidate this trust.

In *Goodell* v. *Union Assn.*, 29 *N. J. Eq.* 32, the trust was to alleviate the wants and suffering of the deserving poor of Mount Holly, N. J.

In *Hesketh* v. *Murphy,* 36 *N. J. Eq.* 304, it was for the most deserving poor of the city of Paterson.

In *Hilliard* v. *Parker,* 76 *N. J. Eq.* 447, it was for the purchase of fuel for the most needy woman of the borough of Woodstown. The trust in each of these cases was upheld and enforced.

In *Kitchen* v. *Pitney,* 94 *N. J. Eq.* 485, on an appeal from a decree of Vice-Chancellor Fielder, upholding a trust under the will of Marcus L. Ward, wherein he devised and bequested all the residue of his estate to his executors and trustees in trust for the following purposes:

> "They are to use such rest, residue and remainder of by estate for the purpose of establishing and maintaining a house for aged and respectable white bachelors and widowers who may have, through misfortune, lost the means which they once had for their own support, and have become wholly or partially unable to support themselves."

In this case it was contended that this charity was for the benefit of bachelors and widowers who are partially, as well as wholly, unable to support themselves, and the trust was not exclusively for charitable uses, and, therefore, must fail. It was also contended that the will was too vague, uncertain and indefinite as to the class of persons intended to be benefited. It was next urged that the trust was too narrow in that it was confined by its limitations to but a small number of men; it was further urged that the corporation to be formed might make the selection contrary to the direction of the will, and further objection was made that the trust was against public policy.

All these objections were brushed aside by the Vice-Chancellor, who said:

> "The establishment of such a home is in the interest of the public, and a charity, such as the testator evidently intended this to be, is favored by our courts."

The decree was affirmed by the Court of Errors and Appeals.

The power to dispense this fund carries with it the right to select the particular beneficiaries.

The power to dispense this fund is given to the executors to use and devote the principal of $15,000 toward assisting the worthy poor in Ireland, and, again, the second fund shall use and devote the said sum of $15,000 in assisting the worthy poor in Ireland.

In *Hesketh* v. *Murphy, Ibid.* In this case no power was conferred on the executors of selection. Chief-Justice Beasley, in speaking for this court, said: "For if we assume that the power to employ this charity involves the power of selecting the beneficiaries, the case is divested of every element of uncertainty."

So, Vice-Chancellor Fielder, in *Kitchen* v. *Pitney, Ibid.* 489, said: "If from this description of the men who he desired should be the objects of his bounty, his intent can be ascertained, so that his trustees may employ the trust according to such intent with reasonable certainty; it is sufficient."

Counsel further contends that this gift to "the worthy poor in Ireland" is a foreign charity over which our courts have no right of administration, and, therefore, it is void, and must fail, and the fund fall into the residue and is payable to the appellant. Counsel cited *Taylor* v. *The Trustees of Bryn Mawr College,* 34 *N. J. Eq.* 101, as his authority in the matter. This case discloses the following facts:

A suit brought by the executors of Joseph W. Taylor for the construction of the residuary clause of his will and for a direction as to the manner of distributing the residuary estate. Testator by his will named certain persons to hold his estate in trust until a corporation shall be established under the laws of Pennsylvania for a college. These trustees formed a corporation under the general laws of Pennsylvania, known as Bryn Mawr College, and applied to the executors for the residuary estate amounting to about $750,000. The executors claimed, after they conceded the claim of the corporation, the fund would pass out of the jurisdiction of the courts

of this State, and expressed doubt whether said corporation was entitled to receive anything from them. The court in determining the case (1) the nature of the trust, it held the same to be a charity, citing a number of cases, among them New Jersey cases, on page 104; (2) the court then took up the question of a foreign charity, and said:

> "Nor does the fact that the charity is a foreign one constitute a valid objection to the gift. This court will not administer a foreign charity, but it will direct money devoted to such use [provided the charity is not repugnant to our laws or policy, and is in accordance with the laws of such state] to be paid to the proper parties, leaving it to the courts of the state within which the charity is to be established to see to its due administration."

And again cited a number of cases; (3) the court finally determined that Bryn Mawr College was entitled to the fund, and decree "that the trustees of Bryn Mawr College are entitled to receive the residue of the estate, and that the executors pay it over to them."

So, we have in the case relied on by the complainant, the fact that our courts recognize the charitable trust, upheld the same and decreed payment thereof to a foreign corporation found to be competent to carry out the trust declared by the testator. Our courts did not permit a charitable trust to fail, because, located in a foreign jurisdiction, it could not administer the same.

So, in the present case, the charity being a valid charitable trust, the funds in the hands of the executors, to whom it was given by the testator, are bound to carry out these trusts. They cannot deliver this trust fund to the residuary legatee.

If this court should hold that the executors have no power of selection, then this court may determine upon some charitable organization, or some corporate body authorized to carry on charities in Ireland to whom this fund should be delivered, in order that the testator's wishes may be fulfilled.

The beneficiaries under this charity are *persons* residing in a foreign county, namely, Ireland. It is not a foreign charity in the sense that it requires administration through

persons in a foreign jurisdiction, and who are not under the control of this court.

The executor and trustees named by the testator must exercise this power, and if they fail to do so this court will appoint a new trustee.

It is a charity which the testator directed his trustees to carry out. He gave the trustees this fund and directed that they should use and devote the same in relieving the worthy poor in Ireland. This fund and the representatives of this fund are within the jurisdiction of this court and are amenable to its process and decree. The complainant, as one of the trustees, cannot divert this charitable trust to her own use, and thus defeat the object of the donor.

In *Bruere* v. *Cook,* 63 *N. J. Eq.* 624, the testator, by residuary bequest, gave the residue of his estate "to the Board of Missions of the Baptist Church of New Jersey, one-third part for the home and two-thirds part for foreign missions." It was held (1) that this was a valid gift of the residue, one-third part to the home missions and two-thirds part to the foreign missions of the Baptist Church; and (2) that it was a gift in the nature of a trust which this court will aid and enforce; and (3) the legatee or trustee named by the testator to receive the gift and apply it to home and foreign missions is non-existent, but this will not be permitted to defeat the gift. This court will appoint competent trustees to receive and apply it according to the testator's declared purpose; (4) an executor of a will containing such a residuary request may apply for the appointment of such trustees in order that he may perform his duty and pay out the legacy.

In this Bruere case the residuary gift was held to be a valid bequest in favor of the home missions of the Baptist Church to the extent of the one-third part thereof, and in favor of the foreign missions of the Baptist Church to the extent of the remaining two-thirds part, and that no efficient trustee is indicated by the testator's will to whom the complainant can pay the fund in his hands, and that it is his duty to apply to some competent court for the appointment of trustees to receive this legacy and execute the trust. A decree was advised accordingly.

In the instant case the trustees are capable and competent of carry out this trust. They can select the beneficiaries, and, having selected them and paid out this fund, they can account in this court and be discharged.

The executors have the power to designate the particular persons to be benefited by this trust.

"The general principle is that courts of equity uphold gifts to a charitable purpose if there is a trustee with power to designate the particular persons to be benefited thereby." *DeCamp* v. *Dobbins,* 29 *N. J. Eq.* 36; *affirmed,* 31 *N. J. Eq.* 671; *Hesketh* v. *Murphy,* 36 *N. J. Eq.* 304; *Hyde* v. *Executors of Hyde,* 64 *N. J. Eq.* 6; *King* v. *Rockwell,* 93 *N. J. Eq.* 46.

For the respondent, it is submitted that the testator by his will established a public and charitable trust which is not vague, uncertain or indefinite; that the beneficiaries can be ascertained and must be selected by the trustees named in the will from a class of "worthy poor in Ireland;" that the appellant is not entitled to have these funds as the residuary legatee under the will of the testator, and that the decree appealed from should be affirmed, with costs.

PETER BACKES,

Solicitor for and of Counsel with John F.

Reardon, one of the Respondents.

114 MAY.T.1926

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals.

BETWEEN
CATHERINE BLOOMER,
Complainant-Appellant,

and

CATHERINE BLOOMER ET AL., EXECUTORS, &C.,
Defendants-Respondents.

} On Appeal from Chancery.

BRIEF FOR APPELLANT.

Statement.

Counsel for respondents furnished us with his brief before this brief was attempted. His brief sets forth the essential facts and cites all the New Jersey cases upon the subject with which we are familiar. No further statement by us is necessary or advisable.

Argument.

The cases cited by counsel for the respondents seem to be in point and controlling. The instant case has slightly variant facts. Do these create a sufficient distinction to justify a reversal or a different conclusion than that reached in the cases cited?

The "worthy poor of Ireland" are the beneficiaries. In all the cited cases the gift was to be administered in this country. In each of the cases there was a direct

gift to a named trustee. In the instant case if there be a gift it must be by implication. In paragraphs three and five there is a direction that the interest or income arising from the sum of $15,000 be given to Catherine Bloomer and Sarah Toner, respectively, then follows this language:

> "And after her death I direct that my executors hereinafter named shall use and devote said principal of $15,000 for assisting the worthy poor in Ireland."

No trustees are named. No trust is expressly created. Upon the death of the executors named in the will there would be no one to use the money in the way provided in the will. If it can be contended that the quoted language created a gift to the executors the administration of the gift is made personal to them. As appears by the answer, so far one of the executors has refused to aid the worthy poor in Ireland, and the respondent has taken no steps to execute the power. The executors are resident in Pennsylvania. It would be impractical for them to devote the time which will be necessary to ascertain who are the "worthy poor in Ireland" and the expense incident to the ascertainment of the fact will exhaust a considerable portion of the fund. They can have no first-hand information upon the subject and must necessarily rely upon the opinion and advice of others. In all the cases cited by respondent there was a source which could execute the trust through the courts of the jurisdiction over the class or classes selected by the benefactor. This is not so in the case before us. There seems no practical method or way whereby the fund in question can be administered and the courts of either this country or Ireland have control over it or the executors. The thought in mind seems to receive approval in *Taylor* v. *Trustees,* 34 *Equity, page* 101. At page 104, it is said:

> "Nor does the fact that the charity is a foreign one (it was another State of the Union) constitute a valid objection to the gift. This Court

> will not administer a foreign charity but it will direct money devoted to such use * * * to be paid to the proper parties, leaving it to the courts of the State with which the charity is to be established to see to its due administration."

With the conceded facts of this case, it is our insistence that the attempt, if there was one, to create a charitable trust, was abortive because of its uncertainty, vagueness and impractical character. If it can be said that the executors in this case have the right to go to a foreign country such as Ireland and expend the greater portion, or practically all of the fund, in order to ascertain who are the "worthy poor in Ireland" then, of course, the same could be said without regard to the distance between the executors and the place of the administration of the fund.

The decree should be reversed.

Respectfully submitted,

COLE & COLE,

Solicitors for and of Counsel with Appellant.

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