MODERN CHARITABLE TRUSTS AND THE LAW

BY PAUL R. STINSON

Attempts of disappointed heirs and collateral kindred to overthrow gifts to charity have been, perhaps always will be, common. The practitioner under whose direction the charitably inclined give, should bear in mind that the instrument will probably be subjected to judicial scrutiny. The usual grounds of attack are that the trust is not purely charitable, or that as a charity its declared purposes are so indefinitely expressed as to be unenforceable. Such instruments are often assailed also upon the grounds that they violate the rule against perpetuities, the rule against accumulations, or the rule against restraints on alienation of property. On the other hand, donors have plans for their gifts almost infinite in variety; charitable needs are constantly changing and expanding with the advance of civilization; experience has taught that gifts to narrowly compassed uses often encounter disaster and disuse; and finally trusts of perpetual duration are common where the purpose is charitable. The ideal gift is, therefore, one which not only expresses the donor's intent, but is also flexible enough to accommodate itself, if necessary, to the needs of future generations, and which at the same time is invulnerable to legal attack.

The law of charitable trusts is a law unto itself. Charity is a favorite of equity. It has often been called a ward of chancery. Courts consider it their duty to preserve them to their sacred purposes, and they regard that duty as founded on principles of the highest public policy. Because of this, property devoted to charitable objects is exempt from many of the restrictive rules of law. Many other rules, applicable only to charity, have been formulated to protect them.

The distinction between charitable and private trusts, both in their attributes and legal requisites, is fundamental. A private trust will fail unless there are beneficiaries specifically nominated or capable of ascertainment. Indefiniteness of beneficiaries is of the essence of charitable trusts, and it has many times been said that charity begins where certainty of beneficiaries ends; that if there are beneficiaries for whose particular

use the trust is created, it is not charitable.[1] The public is the beneficiary of all charity.[2] A private trust is invalid unless its declared purposes and objects are clearly defined.[3] Charitable trusts, however, are sufficiently declared though expressed in the most general terms. The only requisite of certainty is that the will of the giver be expressed in such manner that a trustee of ordinary intelligence may understand it, and a court of equity may know the limits of his powers.[4]

The English Common Law of Charities, prior to the Statute of Elizabeth, and the Statute of Elizabeth itself, are the genesis of American charity law. Missouri has adopted both.[5] In Missouri, and it is believed in all states which have adopted the English Common Law of Charities and the Statute of Elizabeth, gifts *to trustees,* invested with a discretion to apply the funds to any charitable object are valid.[6]

In their earlier histories (though the rule has now generally been modified by statute), New York, Maryland, the Virginias, North Carolina and a few other states repudiated the English Law of Charities, and either repealed or failed to adopt the Statute of Elizabeth. In those states, even the nomination of a trustee did not validate a charitable gift unless some limitation was placed on his authority of selection. The theory of these cases was that a testator had, in effect, attempted to confer on another the power to make a will for him, and that unlimited discretion is tantamount to ownership. On more than one occasion, Missouri courts have said that decisions from those states have little or no influence.[7] Expressions in certain Missouri

[1] See argument of Horace Binney in the case of Vidal v. Girard's Exec'rs. (U. S. 1844) 2 How. 127.

[2] Dickey v. Volker (1928) 321 Mo. 235, 11 S. W. (2d) 278.

[3] Jones v. Jones (1909) 223 Mo. 424, *l. c.* 450, 123 S. W. 29.

[4] Russell v. Allen (1882) 107 U. S. 163 (construing a Missouri trust).

[5] Chambers v. St. Louis (1860) 29 Mo. 543; Buchanan v. Kennard (1911) 234 Mo. 117, 136 S. W. 415.

[6] Chambers v. St. Louis, *supra;* Howe v. Wilson (1886) 91 Mo. 45; 3 S. W. 390; Powell v. Hatch (1890) 100 Mo. 592, 14 S. W. 49; Barkley v. Donnelly (1892) 112 Mo. 561, 19 S. W. 305; Buckley v. Monck (Mo. 1916) 187 S. W. 31; Sappington v. School Fund Trustee (1894) 123 Mo. 32, 27 S. W. 356; Sandusky v. Sandusky (1914) 261 Mo. 351, 168 S. W. 1150; In re Rahn's Estate (1927) 316 Mo. 492, 291 S. W. 120; Harger v. Barrett (1928) 319 Mo. 633, 5 S. W. (2d) 1100; St. Louis Union Trust Co. v. Little (1928) 320 Mo. 1058, 10 S. W. (2d) 47.

[7] Chambers v. St. Louis, *supra;* St. Louis Union Trust Co. v. Little, *supra.*

opinions have led to the view in some quarters that to be valid, a charitable trust must be to some definite charitable purpose and for the benefit of a definite class. It will be found, however, that where Missouri cases have held void attempted gifts to charity, the decisions rest, not on the proposition that a gift to a trustee for charity generally is void, but rather for the reasons that in the particular will, the vagueness of its declared purposes made it impossible for the court to determine what the testator meant; or that he had communicated to his trustees secret or oral instructions outside of the will, rendering it impossible for the court to prevent or correct an abuse of the trust; or that the gift was direct to charity without the intervention of a trustee.[8]

By the Elizabethan statute chancery courts were authorized through the appointment of a commission to select the charity and administer the gift where the instrument evidencing the gift neither designated a specific charitable purpose nor appointed a trustee. Prior to the statute the King, as parens patriae, made such selections and administered such gifts as a part of the royal prerogative. American equity courts, however, have generally been regarded as not possessing these so-called administrative or executive powers. In America, therefore, as has many times been said, there is a wide distinction between a gift to charity generally and a gift to trustees who have qualified and are willing to act, and who have been invested with general charitable powers.[9] The assertion that unlimited discretion to trustees to give in charity is tantamount to ownership, and is in effect the substitution of the will of the trustee for that of the testator, is wholly unsupportable in principle. All charitable trusts are discretionary. And, be the discretion narrow or wide, in either instance, the trustee in the performance of his duties is merely carrying out his testator's will, not making it. Power to apply the fund to one or several charitable objects or for the benefit of one or several classes, is as broad in law as the discretion to apply the fund to charity

[8] Schmucker's Estate v. Reel (1876) 61 Mo. 592; Board of Trustees v. May (1906) 201 Mo. 360, 99 S. W. 1093; Hadley v. Forsee (1907) 203 Mo. 418; Jones v. Patterson (1917) 271 Mo. 1, 195 S. W. 1004; Robinson v. Crutcher (1919) 277 Mo. 1, 209 S. W. 104; Buckley v. Monck, *supra.*

[9] Chambers v. St. Louis, *supra;* Howe v. Wilson, *supra.*

itself. The difference is only in degree, not in principle. In either case, the measure of control of the courts over the trustee is precisely the same. In either instance, the trustee may violate his duties, and the court may prevent or correct such violation by restraint, or removal. While the limits of charity are wider than those of any of its divisions or branches, they are nevertheless as clearly defined. American courts of equity are never called on to execute or administer either until a breach has been committed or is threatened. When this happens, the remedy is exactly the same, and equally efficacious. A trust, therefore, for general charitable purposes is neither too vague nor indefinite for enforcement. Generality is not vagueness.

A study of recent cases discloses that the earlier narrow judicial attitude of some courts toward trusts for general charitable purposes, has been relaxed in favor of a more liberal view. There is a reason for this. Evolution has taken place in the art of public giving.

Donations to perpetual charitable objects have always been valid.[10] No man has ever been found wise enough accurately to forecast the needs of future generations. Many great men who have sought to immortalize themselves with their philanthropies have succeeded only in perpetuating their mistakes. In England today, some twenty thousand English foundations have ceased to operate because changing conditions have nullified the good intentions of their donors. Julius Rosenwald said:

> Millions—soon it will be billions—of dollars are today lying idle because the purposes for which they have been endowed have largely disappeared.

In the Bryan Mullanphy will,[11] the testator gave a huge sum of money in trust for the benefit of poor immigrants passing through St. Louis on their way bona fide to settle in the West. Time has paralyzed this trust's usefulness. Alexander Hamilton drew the Randall will of the famous *Sailor's Snug Harbor* case,[12] whereby the testator's farm was given to be used as a haven for superannuated sailors. Many years later the *cy-pres* doctrine had to be applied to prevent a failure of the gift. Today

[10] Russell v. Allen, *supra.*

[11] Chambers v. St. Louis, *supra.*

[12] Inglis v. Trustees of the Sailor's Snug Harbor (U. S. 1830) 3 Pet. 99.

Fifth Avenue, New York, runs through what once was the farm, and the tract is valued at between thirty and forty million dollars. The swollen fund is of little practical value. Benjamin Franklin, in drawing his will, assumed that there would always be "workmen's apprentices" and made a charitable bequest for loans to "young married artificers not over the age of twenty-five." He further provided that the unused interest, as well as the principal, was to be lent out for one hundred years, at which time the capital was to be spent for the benefit of the City of Boston for constructing "fortifications, bridges, aqueducts, public buildings, pavements, etc." He also foresaw that the wells which in his day supplied Philadelphia with water would in time become polluted, and he provided a fund which could be used by Philadelphia for piping waters from a creek nearby into the city.[13] "Poor artificers" and "apprentices" soon ceased as a class. When the accumulated principals of the funds were ready for distribution Boston had provided herself with pavements and no longer needed to be fortified; and Philadelphia had in the meantime provided herself with a water supply. Many years ago an Englishman who in his lifetime had been captured by pirates, left a huge fortune for the ransom of any British subject suffering the same fate. The last use of the fund was in 1723, and today pirates are found only on the moving picture screen. Funds devoted to specified research purposes, for the ascertainment of the cause and the cure for various diseases, such as yellow fever, typhoid, etc., became useless immediately upon discovery of the cause and the cure. Some years ago a railroad president gave a huge fortune for the purpose of providing a home for the widows and orphans of railroad engineers and firemen killed in railroad accidents. Today the institution is sheltering six of the class, and advertising extensively to get them. Instances could be multiplied where the gifts of good-intending but short-sighted donors have become useless, purposeless, impossible. The *cy-pres* power of equity courts has been invoked innumerable times with varying success in efforts to save circumscribed gifts from destruction.

Practical, systematic and scientific methods have replaced

[13] Boston v. Doyle (1903) 184 Mass. 373, 68 N. E. 851; Franklin v. Philadelphia (1893) 2 Pa. Dist. Reps. 435.

haphazard, impulsive and unsystematic giving. Gifts of great fortunes are now made for purposes of the most general character. The charter of the Rockefeller Foundation, organized as a corporation under the laws of New York in 1913, to which already has been given almost two hundred million dollars, provides that its object is to receive and maintain funds to apply the principal and income thereof "to promote the well-being of mankind throughout the world." The Julius Rosenwald Fund, organized as a corporation, provides in its charter and by-laws: "The object for which it is organized shall be the well-being of mankind." Thus, these two great Foundations hold their funds on trusts of the widest possible charitable range, and the beneficiary is the public of the world. *Inter vivos* charitable trusts are subject to the same legal rules as testamentary dispositions of the same character. The Cleveland Foundation trust, community chests in various cities in the country, have no limitation on their powers in charity giving.

Mr. Rosenwald believed that the dedication of huge fortunes to perpetual charitable uses was ill-advised. Accordingly he provided shortly before his death that the entire principal and income of the Rosenwald fund should be expended within twenty-five years from that event. Other great and wealthy men believe in perpetual endowments and limit their trustees to the expenditure of income. It would seem that a trust which adheres to neither of these extreme views is preferable. We suggest a gift to trustees and their successors, with authority to use income or capital. The operation of such a trust would be so flexible that the funds could be applied to any current need, even "in states unborn and in accents yet unknown." Such a plan recognizes that trustees in charge of the funds at any later time, will best be fitted to sense a current need and fill it.

The advantages of a wide discretion are apparent. The objects of trusts for generally declared purposes can never fail. Their usefulness will never be impaired. Never will suits for construction be filed. No person, corporation or group has, or ever will have, a claim on it. The *cy-pres* doctrine need never be invoked or applied.

If fire devastates a city, if flood lays waste, or famine, pestilence or even the blight of war comes, all or any part of the fund may be used to alleviate conditions or ameliorate suffering.

A trust without specific beneficiaries named or capable of ascertainment is valid only if its purposes be purely charitable. If in such a trust both charitable and non-charitable purposes are so commingled that some definite portion of the fund is not devoted to the purely charitable object, the entire trust will fail.[14] It is obvious, therefore, that the trust's purely charitable character should be made manifest in the instrument creating it.

There is a wide difference between the popular and the legal meaning of the word "charity." At one time it was supposed that charities derived their existence from the Statute of Elizabeth.[15] It was developed later, however, that that Act created no new charities, but only recognized and codified those already existing under the English Common Law.[16] But it did enumerate and define legal charities,[17] and in Missouri and all states where it has been adopted, all gifts are charitable which fall within any of its divisions or within its equity, spirit or analogy.[18]

The most famous American definition is that of Judge Gray (later Mr. Justice Gray) in *Jackson v. Phillips*.[19] It has been adopted and followed in many Missouri opinions.[20] This is the famous language:

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[14] Zollman, AMERICAN LAW OF CHARITIES, sec. 394; Perry ON TRUSTS, (7th ed. 1929) sec. 711; Attorney General v. Soule (1873) 28 Mich. 153.

[15] Baptist Association v. Hart (U. S. 1819) 4 Wheat. 1.

[16] Vidal v. Girard's Exec'rs., *supra*.

[17] The purposes enumerated by the Statute as charitable are ". . . some for Relief of aged, impotent and poor People, some for Maintenance of sick and maimed Soldiers and Mariners, Schools of Learning, Free Schools, and Scholars in Universities, some for Repair of Bridges, Ports, Havens, Causways, Churches, Sea-Banks and Highways, some for Education and Preferment of Orphans, some for or towards Relief, Stock or Maintenance for Houses of Correction, some for Marriage of poor Maids, some for Supportation, Aid and Help of young Tradesmen, Handicrafts-men and Persons decayed, and others for Relief or Redemption of Prisoners or Captives, and for Aid or Ease of any poor inhabitants concerning Payments of Fifteens, setting out of Soldiers and other Taxes."

[18] Irwin v. Swinney (D. C. W. D. Mo. 1930) 44 F. (2d) 172, *aff'd* Gossett v. Swinney (C. C. A. 8, 1931) 53 F. (2d) 772; Buchanan v. Kennard, *supra*.

[19] (Mass. 1867) 14 Allen 539.

[20] Crow v. Clay County (1906) 196 Mo. 234, *l. c.* 260, 95 S. W. 369; Newton v. Newton Burial Park (1930) 326 Mo. 901, 34 S. W. (2d) 118; In re Rahn's Estate, *supra;* Catron v. Scarritt College (1914) 264 Mo. 713,

> A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds and hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.[21]

Judge Sherwood's definition in *Missouri Historical Society v. Academy of Science*[22] has been widely copied in Missouri and other states:

> . . . Any gift not inconsistent with existing laws, which is promotive of science or tends to the education, enlightenment, benefit or amelioration of the condition of mankind, or the diffusion of useful knowledge, or is for the public convenience, is a charity within the meaning of the authorities cited, and it is none the less a charity because not so denominated in the instrument which evidences the gift.

In *State ex rel. v. Academy of Science,*[23] a non-profit educational institution was held to be operated "for scientific public purposes," and this instructive definition of charity given:

> A gift designed to promote the public good by the encouragement of learning, science and the useful arts, without any particular reference to the poor, and any gift for a beneficial public purpose not contrary to any declared policy of the law, is a charity. And, if such a gift is administered according to the intention of the donor, the property is used for charitable purposes (Adams' Eq. 172; American Academy of Arts v. Harvard College, 12 Gray, 582, 594).

The most famous English definition (approved in *Catron v. Scarritt Collegiate Institute*[24]) is that of Lord Macnaghten given in *Pemsel's Case*:[25]

725-726, 175 S. W. 571; State ex rel. v. Powers (1881) 10 Mo. App. 263, 266.

[21] Crow v. Clay County, *supra.*

[22] (1902) 94 Mo. 459, 466-467, 8 S. W. 346, 348.

[23] (1883) 13 Mo. App. 213, 216.

[24] *Supra,* n. 20.

[25] (1891) A. C. 531.

> . . . Charity in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. . .

Horace Binney's definition in his argument in the *Girard Will Case* (approved in *Crow v. Clay County*[26]) is as follows:[27]

> And whatever is given for the love of God or for the love of your neighbor, in the catholic and universal sense, given with these motives and to these ends, free from the stain or taint of every consideration that is personal, private or selfish, is a gift for charitable uses.

In *Bok v. Collector*,[28] the Edward Bok Foundation was held charitable. Judge Buffington, writing for the Third Federal Circuit, after approving the definitions of Binney, Gray and Lord Camden, said:

> A trust for popular education in music, or for making higher education accessible to the many, or for stimulating American patriotism by recalling the unselfish sacrifices of the fathers, or for the relief of human suffering through new and improved surgical methods, or for the encouragement of craftsmanship, or for the beautification of a city, would be a charitable trust tested by any of the definitions which the authorities supply. And if a trust for the promotion of any one of these interests would be a charitable trust, it follows that a foundation to promote all of them is a trust that partakes of the nature of each.

Other leading and accepted definitions have been given or adopted in Missouri opinions.[29]

Study of the opinions of the Federal District Court and of the United States Circuit Court of Appeals in the recent *Loose Will Case*[30] will be found profitable. In that case, Harry Wilson

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[26] *Supra*, n. 20.

[27] Vidal v. Girard's Exec'rs., *supra*.

[28] (C. C. A. 3, 1930) 42 F. (2d) 616, *l. c.* 619.

[29] See Crow v. Clay County, *supra*. See also Perin v. Carey (U. S. 1861) 24 How. 465; Newton v. Newton Burial Park, *supra;* Ould v. Hospital (1877) 95 U. S. 303; Catron v. Scarritt Collegiate Institute, *supra;* Perry ON TRUSTS (7th ed. 1929) sec. 687; Zollman, AMERICAN LAW OF CHARITIES, sec. 225.

[30] Irwin v. Swinney, *supra;* Gossett v. Swinney, *supra*.

Loose, who died domiciled in Kansas City, Missouri, left the residuum of his estate, approximating four million dollars to named trustees and their successors, with authority to apply the principal and income of the fund "for the furtherance and development of such charitable, benevolent, hospital, infirmary, public, educational, scientific, literary, library or research purposes in Kansas City, Missouri, as said trustees shall in their absolute discretion determine to be in the public interest."

Mr. Loose's surviving collateral kindred filed a bill in Equity challenging the validity of the trust upon the two grounds that it was not purely charitable and that as a charity the powers of the trustees were too broad for validity. Both the District Court and the Circuit Court of Appeals upheld the trust and the Supreme Court of the United States has recently denied *certiorari.* In ruling the trust valid it was held that its validity was to be determined by the law of Missouri; that the gift fell within the great and accepted definitions of a legal charity, and that as a charity it met the requisites of certainty prescribed by Missouri law. The words "benevolent" and "public," plaintiffs charged empowered the trustees to devote the fund to other than charitable purposes.

Following the doctrine first announced in *Morice v. Bishop of Durham,*[31] many English decisions have held that donations for objects of benevolence or liberality may be applied to purposes not charitable in the legal sense. So also under some English authorities, gifts for "public" purposes have been held not necessarily charitable.[32] The English view of the word "benevolent" has had some American following. While Missouri courts have not directly ruled on the word, they nevertheless have used it interchangeably with "charitable," as has the Missouri legislature.[33] So also in Missouri and America generally, a

[31] (1804) 9 Ves. Jr. 399, 32 Eng. Repr. 656.

[32] James v. Allen (1817) 3 Mer. 17, 36 Eng. Repr. 7; Williams v. Kershaw (1835) 5 Cl. & Fin. 111, 7 Eng. Repr. 346; In re Jarman's Estate (1878) L. R. 8 Ch. Div. 584; In re MacDuff (1896) 2 Ch. 451, Attorney-General v. National Prov. and Union Bank of England (1924) A. C. 262 *l. c.* 265; Blair v. Duncan (1902) A. C. 31; Houston v. Burns (1918) A. C. 337.

[33] Hadley v. Forsee, *supra;* Society of the Helpers, etc. v. Law (1916) 267 Mo. 667, 675-677, 186 S. W. 718, 725; Turnverein v. Hagerman (1911) 232 Mo. 693, 703-4, 135 S. W. 42; State ex rel. v. Rusk (1911) 236 Mo.

testamentary trust for "public" purposes is to an unquestioned charitable use.[34] Other and better reasoned English cases hold that a gift for public purposes is charitable.[35]

Whatever isolated meaning "benevolent" or "public" may have as descriptive terms in a trust, if they are associated with "charitable" or other words of undeniable charitable import, they are accorded the same meaning.[36]

By another familiar rule of interpretation, "benevolent" and "public" will be construed as words of charitable purpose. It must be accepted that in one of their meanings, at least, these words in a testamentary gift import charity. Where a word has two meanings, one of which will defeat and the other sustain the trust, the courts are bound to give it that construction which will uphold it.[37]

201, 216, 139 S. W. 199; Buckley v. Monck, *supra;* Adams v. University Hospital (1907) 122 Mo. App. 675, 99 S. W. 453; Estate of Jacob Rahn, *supra;* R. S. Mo. (1929) sec. 602.

[34] Buchanan v. Kennard, *supra;* Newton v. Newton Burial Park, *supra;* Dickey v. Volker, *supra;* Perin v. Carey, *supra;* Stuart v. City of Easton (C. C. A. 3, 1896) 74 F. 854; Russell v. Girard Trust Co. (C. C. E. D. Pa. 1909) 171 F. 161; Girard Trust Co. v. Russell (C. C. A. 3, 1910) 179 F. 446; Todd v. Citizens' Gas Co. (C. C. A. 7, 1931) 46 F. (2d) 855; Vidal v. Girard's Executors, *supra.* See also State ex rel. v. Trustees of William Jewell College (1911) 234 Mo. 299, 136 S. W. 397; Halbruegger v. City of St. Louis (1924) 302 Mo. 573; 262 S. W. 379; Jasper County Farm Bureau v. Jasper County (1926) 315 Mo. 560, 286 S. W. 381.

[35] Attorney General v. Heelis (1824) 2 Sim. & St. 67, 57 Eng. Repr. 270 (followed in Stuart v. City of Easton, *supra*); Dolan v. Macdermot (1867) L. R. 3 Ch. App. 676; Nightingale v. Coulburn (1847) 5 Hare 484, 67 Eng. Repr. 1003; Trustees of the British Museum v. White (1826) 2 Sim. & St. 594, 57 Eng. Repr. 473 (approved in Lackland v. Walker (1899) 151 Mo. 210, *l. c.* 241, 52 S. W. 414, *l. c.* 423).

[36] Saltonstall v. Sanders (Mass. 1865) 11 Allen 446 (approved in Howe v. Wilson, *supra*); Barkley v. Donnelly (1892) 112 Mo. 561, 19 S. W. 305; Estate of Hinckley (1881) 58 Cal. 457, *l. c.* 510 (approved in Crow v. Clay County, *supra*); Tappan's Appeal (1885) 52 Conn. 412; Thorp v. Lund (1917) 227 Mass. 474, 116 N. E. 946; In re Huyck (1905) 10 Ont. L. R. 480; In re Sutton, Stone v. Attorney-General (1885) 28 Ch. Div. 464; Halbruegger v. City of St. Louis (1924) 302 Mo. 573, 262 S. W. 379; In re Robinson (1911) 203 N. Y. 380, 96 N. E. 925; In re Frash's Will (1927) 245 N. Y. 174, 156 N. E. 656; St. Paul's Church v. Attorney General (1895) 164 Mass. 188, 41 N. E. 231; In re Bennett, Gibson v. Attorney-General (1875) 1 Ch. Div. 305; In re Salters, Rea v. Crozier et al. (1911) 1 Ir. R. 289; Rickerby v. Nelson (1912) 1 Ir. R. 343; Hay's Trustees v. Baillie (1908) Scottish Court of Sessions Cases 1224; Paterson's Trustees v. Paterson (1909) Scottish Court of Sessions Cases 485; Wilson v. The Lord

It is the duty of courts, first to ascertain, then to give effect to a testator's intent. When a charitable intent is once established, a charitable trust results. Even literal meanings fade before a charitable intent. If need be, courts will supply, omit words, or even transpose sentences, in order to give effect to such intent. And where a charitable intent is apparent, the law preserves the gift to its sacred purposes as a matter of highest public policy.[38]

To the foregoing analysis and review we venture to add some practical suggestions. No gift should be made to or for a charitable purpose, as such, without the intervention of a trustee. Every charitable trust should provide for the succession or substitution of the nominated trustee or trustees. This will negative a possible inference that the delegation of power or discretion was personal. Donations to specific charitable institutions or purposes should be alternated by gifts over to other charitable institutions or purposes, in the event that the primary gift should for any reason fail. Such provisions do not violate the rule against perpetuities as to remoteness.[39] Somewhere in the trust it should be made clear that every declared purpose is charitable. A qualifying phrase, following the words of description, that the fund is to be applied to such of the declared purposes as are for the public benefit, welfare, or advantage, would, it would seem, insure a charitable trust. Detailed or unalterable directions as to the administration of the trust should be avoided. It should never be forgotten that civilization is in a constant state of flux, and that broad discretion and general powers are preferable. Care should be observed clearly

Advocate (1926) Scottish Court of Sessions Cases 579; 11 C. J. 302; 46 C. J. 496.

[37] In re Estate of Jacob Rahn, *supra;* Sappington et al. v. Sappington School Fund Trustees, *supra;* Russell v. Allen, *supra;* Whicker v. Hume (1858) 7 H. L. C. 124, 11 Eng. Repr. 50; Irwin v. Swinney, *supra;* Gossett v. Swinney, *supra.*

[38] Grace v. Perry (1906) 197 Mo. 550, 559, 95 S. W. 875; Sappington v. School Fund Trustees, *supra;* State ex rel. v. Trustees of William Jewell College, *supra;* Plummer v. Roberts (1926) 315 Mo. 627, 287 S. W. 316; St. Louis Union Trust Co. v. Little, *supra;* Russell v. Allen, *supra;* Inglis v. Trustees of Sailor's Snug Harbor, *supra;* Field v. Seminary (C. C. D. Del. 1890) 41 F. 371, 375; Matter of Durbrow's Estate (1927) 245 N. Y. 469, 474, 157 N. E. 747, 748.

[39] Russell v. Allen, *supra.*

to separate the legal from the beneficial estate, and both should be created by the use of words of the present tense, such as "I give, devise and bequeath." Of course, the beneficial enjoyment may be postponed if that be the giver's desire, but the transfer of the estate to the charitable use or purpose should be immediate and present.