court, on habeas corpus, in effect gave petitioner a declaratory judgment that his appeal was pending.

L. E. M.
V. M.

TAXATION—BEQUEST TO CHARITABLE OR RELIGIOUS CORPORATION—EFFECT OF POLITICAL ACTIVITY—[Federal].—Testatrix died in 1933 leaving a bequest to the Board of Temperance, Prohibition and Public Morals of the Methodist Episcopal Church. Petitioner, executor of deceased, contended that this bequest came within the provisions of the Revenue Act of 1926[1] which authorized the deduction from the value of the gross estate of the amount of all bequests "to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes." The certificate of incorporation of the beneficiary stated that its objects were to promote temperance by every legitimate means and to aid such causes as would advance public welfare.[2] The beneficiary having no by-laws of its own, operated under the constitution of the church which expressly stated among its purposes the securing of legislation throughout the world to suppress traffic in liquor and narcotics.[3] In practice, the Board of Temperance participated in political activity and published propaganda. The Board of Tax Appeals disallowed the deduction on the ground that the Board of Temperance was not engaged *exclusively* in any or all of the purposes enumerated in the statute.[4] *Held:* reversed, for petitioner. The beneficiary was organized exclusively for religious purposes, and its political activity was merely an incidental and natural part of its attempt to spread its views. One judge dissented. *Girard Trust Co. v. Commissioner of Internal Revenue.*[5]

Two questions are apparent in this case. First, do the purposes of the beneficiary qualify as one or more of the five kinds listed by the statute?

(2d) 146, cert. den. (1932) 286 U. S. 550; Ex parte Clay (1889) 98 Mo. 578, 11 S. W. 998; Ex parte Mitchell (1891) 104 Mo. 121, 16 S. W. 118; Finkelnburg and Williams, *Missouri Appellate Practice* (2d ed. 1906) 244; 25 A. J. 157.

1. Revenue Act 1926, 44 Stat. 9, c. 27, §303(a)(3), 26 U. S. C. A. Int. Rev. Acts, p. 234.

2. "To promote the cause of temperance by every legitimate means; to prevent the improper use of drugs and narcotics; to render aid to such causes as in the judgment of the board of trustees, tend to advance the public welfare."

3. Article 478 of the Discipline of 1922 provides: "Section 2. Article 1. The object of this Board is to promote voluntary total abstinence from all intoxicants and narcotics, to promote observance and enforcement of all existing constitutional provisions and statutory enactments that suppress the liquor traffic and the traffic in narcotic drugs, to promote the speedy enactment of such legislation throughout the world, and to defend and maintain established civil and religious liberties."

4. Girard Trust Company and W. Nelson L. West, Executors of the Estate of Ida Simpson, deceased (1940) 41 B. T. A. 157.

5. (C. C. A. 3, 1941) 122 F. (2d) 108.

A negative answer to this would preclude the second question. Second, if the purposes are of a kind listed, do they meet the further statutory requirement of being *exclusively* those listed? Concerning the first problem, it may be questioned whether the purposes of the Board of Temperance were religious, as the majority of the court found.[6] However, considering its articles of incorporation, it would appear that the Board of Temperance clearly was organized for charitable purposes at least.[7] But the question still is whether its political activities would prevent its being classed as a charity at all, within the meaning of the statute. The dissenting judge adopts the English rule,[8] which prevails in America only in Massachusetts,[9] that a court cannot say that a gift for an otherwise charitable purpose which involves securing a change in existing laws is a charitable gift, because the court is not competent to predict whether or not the proposed change will benefit mankind. The overwhelming weight of authority in America[10] is that the courts in such cases are not called upon to decide whether or not such proposed legislation or political activity is wise—the people and their representatives are burdened with that duty—and the fact that the purpose of a charitable trust may involve advocacy of a change in the law will not defeat it as a charity.[11] It is submitted that the American view is better. Lawful change of existing laws is part of the essence of our democratic theory. If, therefore, proper political activity be a legiti-

6. "Whether a given set of dogmas or rules will be dignified with the name of a 'religion' by a court does not depend upon the name which the settlor has placed upon his trust. He cannot make a scheme for material betterment a religion by calling it such. It would seem that the court must find an element of spiritual improvement in the plan before it can be properly termed a religion." 2 Bogert, *Trusts and Trustees* (1935) 1185.

7. The articles of incorporation state, "to promote the cause of temperance by every legitimate means; to prevent the improper use of drugs and narcotics; to render aid to such causes as in the judgment of the board of trustees, tend to advance the public welfare."

"A trust for the promotion of purposes which are of a character sufficiently beneficial to the community as to justify permitting property to be devoted forever to their accomplishment is charitable." Restatement, *Trusts* (1935) §374.

A gift to promote or minimize manufacture, sale or use of intoxicating liquor is a valid charitable trust. See collection of cases 73 A. L. R. 1361; 3 Scott, *Trusts* (1939) §374.1; Restatement, *Trusts* §374(b).

8. 4 Halsbury's Laws of England (2d ed., 1932) 137; Bowman v. Secular Society, Ltd. (1917) A. C. 406; Inland Revenue Commissioners v. Temperance Council of Christian Churches of England and Wales (1926) 42 T. L. R. 618.

9. Jackson v. Phillips (1867) 14 Allen (96 Mass.) 539 (trust to promote women's rights held not charitable); Bowditch v. Attorney General (1922) 241 Mass. 168, 134 N. E. 796, 28 A. L. R. 713 (trust to promote women's political rights by securing legislation held not charitable).

10. Restatement, *Trusts* (1935) §374, comments j, k; 3 Scott, *Trusts* (1939) §374.4; 2 Bogert, *Trusts and Trustees* (1935) §378; Bartlett, Charitable Trusts to Effect Changes in the Law (1928) 16 Cal. L. Rev. 478; Comment (1937) 36 Mich. L. Rev. 139; Comment (1931) 4 So. Cal. L. Rev. 418; Comment (1922) 71 U. Pa. L. Rev. 89; Note (1922) 21 A. L. R. 951.

11. Taylor v. Hoag et al. (1922) 273 Pa. 194, 116 Atl. 826, 21 A. L. R. 946; commented on in (1922) 71 U. Pa. L. Rev. 89.

mate means, a charitable institution employing such means should not be disqualified on that basis alone.

Assuming that the political activities of the Board of Temperance would not prevent its being held a charity, the problem still remains whether those activities should not prevent its being held *exclusively* a charity within the language of the statute. The Board of Tax Appeals, in the light of the evidence, including the constitution under which the beneficiary operated,[12] felt obliged to hold that its other activities were substantial enough to disqualify it.[13] The Circuit Court of Appeals drew from the same evidence a contrary conclusion, and reasoned that the final natural step in the beneficiary's religious and charitable activities was "to secure the sanction of organized society for or against certain outward practices thought to be essential."[14] What constitutes a "substantial" part of a charity's activities cannot be measured with scientific accuracy. The decision must necessarily be the product of various factors bearing on each particular situation; in the instant case, the fact that the Board of Temperance was affiliated with a recognized church doubtless influenced the court's decision. Viewing all the political activities[15] in which the Board of Temperance engaged, they appear to be sufficient to constitute a "substantial" part of the beneficiary's operations. In the light of other decisions,[16] it is submitted that the conclusions of the Board of Tax Appeals ought to have been affirmed.

Had the operative facts of this case occurred under the 1934 amendment[17] to the Revenue Act of 1926, which disqualified a corporation organized for religious, charitable, scientific, literary or educational purposes if a *substantial* part of its activities was carrying on propaganda or otherwise attempting to influence legislation, this court would probably have decided

12. See note 3, supra.

13. The evidence showed that the Board of Temperance issued a monthly publication called "The Voice" and another monthly called "The Clip"; that in "The Voice" readers were urged to write letters to their Congressmen concerning action on various bills before Congress dealing with the liquor situation; that Churches were urged to pass resolutions and send them to Congressmen; that the Board actively participated in the presidential campaign of 1928 urging the election of certain candidates; that the Board was represented in House hearings on legislation relative to the sale of beer and had opposed the "wet" program, etc. For a description of the Board's activities see Girard Trust Co. and W. Nelson L. West, Executors of the Estate of Ida Simpson, deceased (1940) 41 B. T. A. 157.

14. Girard Trust Co. v. C. I. R. (1941) 122 F. (2d) 108, 110.

15. See note 12, supra.

16. The following cases involved the deduction of gifts for income tax purposes: appeal of Herbert F. Fales (1927) 9 B. T. A. 828; Joseph M. Price (1928) 12 B. T. A. 1186; Slee v. C. I. R. (C. C. A. 2, 1930) 42 F. (2d) 184, 72 A. L. R. 400; Henrietta T. Noyes (1934) 31 B. T. A. 121. The following cases involved the deduction of certain legacies in computing the estate tax; Leubuscher v. C. I. R. (C. C. A. 2, 1932) 54 F. (2d) 998; Vanderbilt v. C. I. R. (C. C. A. 1, 1937) 93 F. (2d) 360.

17. Amended by the addition of the phrase "and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation." 26 U. S. C. A. Int. Rev. Acts p. 235, 48 Stat. 755, c. 277, §406.

the same way. In the first place, this amendment is merely a legislative enactment of already existing administrative and judicial policy.[18] Before the amendment, courts reasoned that the purposes were not "exclusively" those listed in the statute, if a "substantial" part of the activities was political.[19] In the second place, this amendment may possibly destroy the dissent's legal theory, because by implication Congress has recognized that a corporation organized for charity may engage in some political activity. In the third place, although tax exemptions are usually a matter of grace, and apparently the express terms of revenue laws should be enforced, tax exemptions relating to charitable institutions are in a different category. Because bequests for purposes which benefit mankind are an aid to good government and, through private funds, relieve the public of a possible burden, the exemption of such bequests is less a matter of grace and more a matter of public policy; therefore, such exemptions are liberally construed.[20] Assuming that this court would reach the same decision under the amended statute as it did in the instant case, these three points would apparently support the court's decision. But, it is submitted that, viewing the evidence[21] of the Board of Temperance's political activities and giving reasonable content to the word "substantial," the court should not exempt the bequest under either the amended statute or the unamended statute.

F. L. N.

TORTS—FRAUD—DUTY TO EXERCISE DILIGENCE IN DISCOVERING—SECURITIES AND EXCHANGE ACT—[Federal].—Plaintiff, in November, 1936, on the strength of defendant broker's tip that Schenley's stock would advance 15 points within a reasonable time owing to buying operations of a syndicate of New York bankers, purchased 100 shares; despite a prompt and gradual fall in price, the plaintiff continued to hold the stock until the broker's misrepresentation was explained to him 15 months later, in February, 1938. He thereupon brought this action under Section 9 of the Securities and Exchange Act of 1934 which imposes a liability upon brokers for misrepresentations concerning the price of stock. *Held:* Since plaintiff had not "entered a false market or paid a false price to enter a genuine market" the action was improperly brought under Section 9 of the Securities and Exchange Act of 1934;[1] *obiter*, though plaintiff might have had an action under Section 12 of the 1933 Securities and Exchange Act,[2] the statute of limitations in the act would have run against him. *Rosenberg v. Hano.*[3]

18. Girard Trust Co. and W. Nelson L. West, Executors of the Estate of Ida Simpson, deceased (1940) 41 B. T. A. 157, 161.

19. See note 16, supra.

20. Helvering v. Bliss (1934) 293 U. S. 144, 55 S. Ct. 17, 79 L. Ed. 246, 95 A. L. R. 207; Cochran v. C. I. R. (C. C. A. 4, 1935) 78 F. (2d) 176.

21. See note 13, supra.

1. (1934) 48 Stat. 881 c. 404, 15 U. S. C. A. §78.
2. (1933) 48 Stat. 84, c. 38, §12, 15 U. S. C. A. §77e.
3. (C. C. A. 3, 1941) 121 F. (2d) 818.